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1 (The following was heard in open court at 3:03
2 p.m.)

3 THE COURT: Good afternoon.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated, everyone. Let's
6 see. I know almost everyone in the courtroom. You must
7 be Mr. Girardi.

8 MR. GIRARDI: I'm Tom Girardi, yes, Your
9 Honor.

10 THE COURT: Hello. I saw you on the screen
11 last, and you look a little different here -- much
12 tanner here in person.

13 MR. GIRARDI: Yes, Your Honor. There's a lot
14 of pressure in this courtroom, so you get a little tan.

15 THE COURT: Is that what it is? Well, I hope
16 that today we alleviate all pressure and get this
17 resolved, I hope. On behalf of yourself, Mr. Girardi,
18 is anyone else with you?

19 MR. GIRARDI: No, Your Honor.

20 THE COURT: Okay. Thank you. You may be
21 seated. And on behalf of GSK?

22 MS. GUSSACK: Yes, Your Honor. Nina Gussack
23 for GSK, and sitting with us at counsel table I think
24 you know Mr. Lehner and Mr. Zucker and Maria Miller is
25 with us, Your Honor.

1 THE COURT: Hello. I don't get to see you too
2 often, Ms. Miller.

3 MS. MILLER: Good afternoon.

4 THE COURT: Nice to see you.

5 And we have also present Plaintiffs' Advisory
6 Committee representatives and the liaison counsel for
7 the Avandia MDL, right?

8 MR. CORR: Yes, Your Honor.

9 MS. NAST: Yes, Your Honor.

10 THE COURT: Okay. So we entered the Rule to
11 Show Cause because of the correspondence that was
12 received by the Court and the difficulty that this Court
13 was having in seeing that what we had directed was being
14 done in an orderly and professional manner.

15 And I say that because of what I read in the
16 letters, and I have to ask you, Mr. Girardi, to address
17 this. Can you please explain to me what's going on,
18 sir. Tell me how we can resolve it without me finding
19 anybody in contempt, and at the same time preserving a
20 settlement that you at one time thought was good for
21 your clients.

22 MR. GIRARDI: Okay.

23 THE COURT: And that is a priority to me,
24 because there are many, many plaintiffs involved in your
25 settlement.

1 MR. GIRARDI: Your Honor, that's true. So let
2 me start from the idea that we did not follow the
3 Court's arbitration orders and so forth. The day that
4 you submitted those orders, we immediately went to work.
5 And, Your Honor, I'm telling you this under penalty of
6 perjury, it's just not -- just a lawyer's statement --
7 under penalty of perjury.

8 THE COURT: You are proceeding as an officer
9 of the Court. If you noticed, I didn't make you swear
10 yourself in. We didn't swear you in. We're treating
11 you like the professional that I pray that you are.

12 MR. GIRARDI: All right, Your Honor. Thank
13 you.

14 THE COURT: Okay.

15 MR. GIRARDI: I've done this for 48 and a half
16 years, and I've never been accused of violating any
17 Court orders and I didn't violate any Court order here
18 and let me just explain this.

19 As soon as you issued the order that we have
20 to arbitrate this case, we immediately went out and got
21 a list of arbitrators who are well known all over the
22 country dealing with large firms and large cases. We
23 eliminated everyone from JAMS because counsel said they
24 wouldn't accept anyone from JAMS. So then -- then it
25 took us --

1 THE COURT: I know full well -- we're not
2 going back over old history.

3 MR. GIRARDI: Well, Your Honor --

4 THE COURT: This is what happened between the
5 time you were on that screen in my courtroom and from
6 the time I got those letters that you were penning --

7 MR. GIRARDI: All right. Your Honor --

8 THE COURT: -- to your adversary. I'm not
9 rewriting history, I don't have the time and neither do
10 you.

11 MR. GIRARDI: Then as soon as you issued that
12 order, we submitted the arbitrators just like you wanted
13 us to. They rejected those. They sent us some, we
14 accepted Layn Phillips, Judge Layn Phillips. Terrific.
15 We talked to his office every day as did they. They set
16 the first arbitration hearing for Sunday, April 27th,
17 just to let you know that we were totally on top of
18 making sure that this gets done.

19 Then we got a call from his administrative
20 assistant saying the law firm represents the defendant.
21 So I said well, this would be a terrible position to put
22 Judge Phillips in. On the other hand, we want to
23 resolve this. We'll go forward with the --

24 THE COURT: Well, Judge Phillips withdrew,
25 didn't he?

1 MR. GIRARDI: I'm sorry, Your Honor.

2 THE COURT: Judge Phillips withdrew, didn't
3 he?

4 MR. GIRARDI: Your Honor, yes. However, we
5 said we want to get this resolved. We will use this
6 date that you've already selected; namely, Sunday, the
7 27th, to be a mediation. Then he said, I have these
8 other arbitrators who would be great. I said, great,
9 give it to them, give it to us. We immediately selected
10 one of those or more and sent it off to Judge Phillips,
11 and that's where we ended.

12 So in terms of following what you wanted to do
13 as arbitrating all of this stuff, we were happy to do
14 so, and we did so. So that's what happened. Then the
15 only reason Judge Phillips couldn't do it was because he
16 -- his firm represented the defendant. And we sent a
17 very nice letter saying, gosh, this wouldn't be good for
18 you, it would be terrible. So let's get somebody else.
19 That's what we did. We did everything I think that you
20 told us to do without a doubt.

21 THE COURT: And how did you do it? That's
22 what this is about, isn't it?

23 MR. GIRARDI: I beg your pardon?

24 THE COURT: In part -- and in large part, it's
25 how did you do it?

1 MR. GIRARDI: Well, I know we couldn't have
2 done any better than selecting the person they
3 suggested. We couldn't do any better than saying if he
4 doesn't work, then let's get somebody else.

5 THE COURT: He can't work. He withdrew. He
6 withdrew and that's on him --

7 MR. GIRARDI: Well --

8 THE COURT: -- because he did that after you
9 sent him the letter that you sent.

10 MR. GIRARDI: Right. I sent him a letter
11 saying obviously -- Your Honor, if you were a lawyer,
12 could you have a mediator who represents the defendant
13 being the mediator -- I mean, or being the -- the
14 arbitrator?

15 THE COURT: Well, I want you --

16 MR. GIRARDI: I don't think so.

17 THE COURT: -- to not say two things at once,
18 okay? Because even so, even when you knew that, you
19 still wanted to get this over with, you just said, so
20 you proceeded to say, let's keep the date, let's -- you
21 know, I'll overlook it. I think that's what I'm hearing
22 you say. But apparently that's not the way it went, and
23 that's fine. That's not why you're here. I'm --

24 MR. GIRARDI: I don't know why --

25 THE COURT: -- I'm looking at letters that I

1 think are very unprofessional and possibly will lead you
2 to disciplinary action if we don't get this cleared up.
3 I may have an obligation to do that. I don't want to do
4 that, not to you, not to any attorney. But this kind of
5 behavior would doom --

6 MR. GIRARDI: Your Honor --

7 THE COURT: -- any mediation, Judge Phillips
8 or not. It doesn't matter who it is. It's going to be
9 doomed, Mr. Girardi, if you continue to write letters
10 like this and say things that are represented here.

11 MR. GIRARDI: Well, Your Honor, I'd like to
12 tell the Court some underlying facts. I think the
13 Court's referring to a fact that I said, "Let the
14 fraudulent conduct continue." There's one.

15 THE COURT: Well, that's a big fact.

16 MR. GIRARDI: All right.

17 THE COURT: And --

18 MR. GIRARDI: Your Honor, here's -- can --

19 THE COURT: -- I'm not giving you permission
20 to do that because I'm looking at your conduct right
21 now, nobody else's.

22 MR. GIRARDI: Your Honor --

23 THE COURT: And I will look at somebody else's
24 conduct when I see the grounds. But can you please tell
25 me what you've been doing with Justice Trotter since you

1 appeared before me and my order was entered March 26th?
2 What has been going on with him?

3 MR. GIRARDI: Well, there was the settlement
4 conference where we settled this case with Justice
5 Trotter being present. It was all agreed to.

6 THE COURT: When?

7 MR. GIRARDI: This was months ago, three
8 months ago. It was done, it was over with.

9 There are three parts of this case. Number
10 one, there are a whole group of plaintiffs that they
11 agreed in writing they owe this money. That was a year
12 ago. Number two, there was group two of plaintiffs that
13 they agreed this is the money that they're entitled to.
14 And then there was a third group of which there's
15 contestability. It was contested as to onset of injury,
16 the type of injury. That's fine. These are all
17 agreements.

18 We then had a settlement conference with them,
19 Justice Trotter was present, in which we settled
20 everything. We agreed when they would start paying the
21 people that they owed here, the people they owed here,
22 and we agreed on the number that is over here. It was
23 all done.

24 I sent letters out. These clients had been
25 waiting for two years since the settlement to get some

1 money. "My dear pals: I know you don't believe me, but
2 the thing is finally resolved."

3 Then after that we hear from them saying, oh,
4 no, we don't have a settlement. And I should point out
5 to the Court that there was authority to settle this,
6 according to counsel because on this third group, we
7 were attempting to get another 20 percent over the offer
8 to cover costs, and they said no. The only authority we
9 have is this. This is the extent of the authority.
10 That's over with.

11 THE COURT: That doesn't sound like it was a
12 settlement.

13 MR. GIRARDI: Oh, no. Then --

14 THE COURT: It doesn't sound like a complete
15 settlement if there are terms that haven't been
16 resolved.

17 MR. GIRARDI: No. No, no. Then I agreed.
18 Then, fine, we'd get over the 20 percent, we agree with
19 whatever they say. And to prove to you that that was
20 the case, we've now entered into a written settlement
21 agreement, the terms of which are identical penny for
22 penny as the terms that we did two months ago.

23 Now, then, I --

24 THE COURT: Now, where is that settlement
25 agreement? Where is it?

1 MR. GIRARDI: They have a copy of it. We
2 signed it.

3 THE COURT: When did you sign it?

4 MR. GIRARDI: A couple days ago. They have
5 it.

6 THE COURT: Did you have any assistance
7 through a mediator to do that?

8 MR. GIRARDI: No. Because this was the same
9 settlement agreement that they had agreed to pay about
10 two or three months ago, word for word.

11 THE COURT: Okay. Before you go any further,
12 may I see such a document if it exists?

13 MS. GUSSACK: Your Honor, I'm going to hand up
14 what I believe Mr. Girardi is referring to which is an
15 agreement that has his signature on it, and this is a
16 confidential --

17 THE COURT: We'll keep it under seal as it is
18 confidential.

19 MS. GUSSACK: Thank you, Your Honor.

20 THE COURT: Any objection to that, Mr.
21 Girardi?

22 MR. GIRARDI: No, Your Honor. That's the
23 agreement I signed.

24 THE COURT: So this is a letter agreement, and
25 without looking at the particular terms, it consists of

1 a number of pages, that is six pages, but a seventh page
2 is an additional signatory page, and it bears Judge --
3 Judge Trotter was involved with this. He signed this
4 along with you, Mr. Girardi, on the 21st, and Providio
5 MediSolutions, what is that?

6 MR. GIRARDI: That's just the Medicare liens.

7 THE COURT: So this was to resolve liens?

8 MR. GIRARDI: No, no, resolve the whole ball
9 game, everything.

10 THE COURT: But the liens had to be resolved
11 at the same time?

12 MR. GIRARDI: And they're resolved.

13 THE COURT: Yes. That lien resolution has
14 held up quite a few completed settlements in the MDL --

15 MR. GIRARDI: Your Honor --

16 THE COURT: -- because it is the lien.

17 MR. GIRARDI: -- I'm sorry, Judge, I didn't
18 mean --

19 THE COURT: It's all right.

20 MR. GIRARDI: -- Your Honor, I didn't mean to
21 speak over you.

22 THE COURT: But I am looking for GSK's
23 signature.

24 MS. GUSSACK: Your Honor, we have not signed
25 it for reasons that I can describe when Mr. Girardi's

1 completed.

2 THE COURT: Okay.

3 MR. GIRARDI: They -- they sent it to us.

4 This is the same agreement that we entered into three
5 months ago, word for word.

6 THE COURT: Well, whether it's the same or not
7 is not my issue. What I wanted to know was what were
8 you talking about? Now, I have a copy of the latest
9 agreement, not any other agreement. But this is a total
10 agreement that was sent to you by Ms. Gussack on behalf
11 of her client, that I have.

12 MR. GIRARDI: More --

13 THE COURT: And you did sign it? This is your
14 signature?

15 MR. GIRARDI: Yes.

16 THE COURT: And Judge Trotter signed it on the
17 21st of April, right?

18 MR. GIRARDI: Yes.

19 THE COURT: Okay.

20 MR. GIRARDI: More importantly, funds are due
21 within ten days of that -- of my signature, and then the
22 total funds are due within 20 days after that, I think,
23 or May -- towards the third week in May.

24 THE COURT: Justice Trotter was your lien
25 resolution administrator, right?

1 MR. GIRARDI: He discussed the matter with the
2 company that we paid about \$500,000 to to --

3 THE COURT: Yes. But he was the formal lien
4 resolution administrator through Robert Marcino,
5 Esquire --

6 MR. GIRARDI: No.

7 THE COURT: -- representing Providio?

8 MR. GIRARDI: No, Your Honor. He was --

9 THE COURT: That's what it says here.

10 MR. GIRARDI: -- he was appointed by the
11 California Court to assist us in the resolution of the
12 case and to assist the clients in the resolution of the
13 case, he and Justice Panelli.

14 (Pause in proceedings.)

15 THE COURT: "Within ten days following full
16 execution of this memorandum of understanding, GSK will
17 make a second payment."

18 The first payment had already been made. So
19 the second payment is within ten days following a full
20 execution. Do you consider this fully executed yet?

21 MS. GUSSACK: No, Your Honor.

22 THE COURT: And I think it is important for
23 this Court to clarify the role of Justice Trotter. You
24 say he was appointed by the Court, Mr. Girardi?

25 MR. GIRARDI: No, Your Honor. Let me -- let

1 me back up.

2 THE COURT: I don't see that here, but --

3 MR. GIRARDI: In these cases wherein there are
4 numerous plaintiffs, we are of the view, and the
5 California State Bar agreed with me, that there should
6 be some outside source to be able to deal with certain
7 economic issues of the various clients, the class that
8 they belong, et cetera, et cetera, to take --

9 THE COURT: We're familiar with that type --

10 MR. GIRARDI: -- to take the lawyer out of the
11 mix.

12 THE COURT: -- of activity.

13 MR. GIRARDI: So we then asked for Judge
14 Edward Panelli, formerly of the California Supreme
15 Court; Justice John Trotter, formerly Presiding Justice
16 of the Court of Appeals, to have that role. They were
17 disclosed to the Judge in Los Angeles who's handled this
18 case for the last five years. He's only handled it for
19 three. Before him was a Judge who then became the
20 Presiding Judge, so then it went over to Judge Elihu
21 Berle, and various clients communicated with Justice
22 Panelli and Justice Trotter.

23 Justice Trotter was also involved in the
24 resolution of the case that we had with defense counsel
25 in which an agreement was made that the -- the matter is

1 now settled.

2 We then sent letters to our clients. At long
3 last -- they've been -- this initial settlement
4 agreement was in April of 2012. So finally these people
5 are going to get some money. We sent them an agreement,
6 we sent them a letter saying, I know you won't believe
7 me, but at long last, we finally have a resolution of
8 this case.

9 Then it was after that time that we hear, no,
10 we don't have a resolution of the case. Then we were
11 sent this document prepared by them, not us. We haven't
12 changed one sentence of it. They wanted to have
13 signatures back immediately, and we signed it, sent it
14 back immediately, including the lien resolution portion.

15 Then, Your Honor, just to make sure these
16 people with heart attacks and strokes finally got some
17 dough, we even agreed to be personally responsible for
18 the liens, to make sure we held the defendant and the
19 attorneys out, no matter what lien claims there were,
20 because we couldn't stand these people not getting any
21 money any longer. So we put ourselves on the line to do
22 that, to do the right thing for these clients.

23 THE COURT: All right. I'm going to direct
24 you, Mr. Girardi, that when I address an issue, I want
25 you to stick to the issue, okay? Because the primary

1 issue before me is the unprofessional conduct that I am
2 seeing revealed through the letters and the
3 correspondence that you've sent to a number of people,
4 and I do not think that I need to have to ask you to
5 explain that. The words speak for themselves.

6 And how it could be that in the middle of
7 trying to negotiate a full and final and fair settlement
8 on these liens which is the issue -- the liens held it
9 up -- it is beyond me that you could produce such
10 invective to your adversaries who are, like you are
11 supposed to be, professionals trying to reach the same
12 goal.

13 And it's very, very disconcerting to this
14 Court. I don't see where -- I don't see how anything
15 you've told me so far or anything you've put in your
16 declaration really gives you any cause to treat anyone
17 that way let alone your professional adversaries.

18 MR. GIRARDI: How about this? They promised
19 me the thing is settled. They promised me these people
20 are going to get some money and that it was a joke --

21 THE COURT: How about you sit down and calm
22 down now, because I don't go for histrionics. Okay?
23 And we'll all get along a lot better and I won't have to
24 call the marshals.

25 There is nothing before me that says they

1 didn't make good or weren't trying to make good on their
2 promise. How many people do you have to have mediate
3 this? So if you have a different idea of how to
4 negotiate, that's one thing. But when you're dealing
5 with professionals in between you and your adversaries,
6 things have got to be a lot cleaner than this, and it's
7 not acceptable --

8 MR. GIRARDI: Your Honor --

9 THE COURT: -- simply not acceptable.

10 MR. GIRARDI: -- Your Honor, how about this?

11 They --

12 THE COURT: No, there's no how about this.

13 MR. GIRARDI: -- well, if they agreed to a --

14 THE COURT: There's no how about this until I
15 ask you.

16 Ms. Gussack, I need a timeline again. I know
17 that you've outlined a number of issues here, in terms
18 of these letters which I find appalling, but give me an
19 outline of what happened with these mediators and where
20 the glitches are from GSK's perspective. I know Mr.
21 Girardi thinks that you're refusing to pay him money. I
22 see things that have to get done in every single
23 settlement, and all of those are with large groups of
24 inventory settlements.

25 Aggregate settlements produce these problems.

1 Lien administrators of various names are all involved in
2 these aggregate settlements. If they're not, there's
3 always problems. But even when they are, there could be
4 differences of opinion. What's happening here from
5 GSK's perspective?

6 MS. GUSSACK: Thank you, Your Honor.

7 First, let me say that it is with great regret
8 that we are even imposing on the Court's time for this
9 discussion and conflict, because I think Your Honor's
10 aware that we have not had this problem in the
11 resolution of any other matter.

12 And, frankly, while Mr. Girardi has a few
13 years on me personally, I can tell you that sitting at
14 counsel table, even excusing Ms. Miller's young tender
15 years at the Bar, there's a hundred years of lawyer
16 experience and none of us have had an occasion to be
17 accused of conduct that was unprofessional, and that's
18 why we felt it was important to ask the Court's
19 assistance in getting this back on track. And I think,
20 Your Honor, if I can give you just a little bit of
21 chronology, I think we may well be there, and I hope to
22 avert any further proceedings.

23 Mr. Girardi is correct, we reached an
24 agreement in 2012. He had a year to qualify his
25 claimants. He, at the end of a year, had not qualified

1 even 50 percent of them. He asked for an extension to
2 continue the proceedings.

3 We granted that extension. There were a
4 number of terms of the agreement that were not yet met.
5 But in any event, we continued to, as Your Honor is well
6 aware is our practice, to continue to try to find some
7 common ground so that we could resolve the matters.

8 Mr. Girardi is also correct that several
9 months ago in an effort to conclude after much
10 negotiation and disagreement about various terms, we
11 reached an agreement on all terms. Present at that
12 meeting were Justices Trotter and Panelli. Justice
13 Trotter and Justice Panelli are JAMS mediators that Mr.
14 Girardi is using as settlement allocators. They have
15 not been appointed by the Court. They are retained by
16 him.

17 In any event, they have been constructive, and
18 we, after our meeting in which we believed, as Mr.
19 Girardi has said, we reached an agreement on terms,
20 created a document and presented it to Justice Trotter
21 for his confirmation that we had met the terms. Justice
22 Trotter had a few tweaks to the document. We
23 implemented those modifications and sent it back, and we
24 were greeted by Mr. Girardi rejecting the agreement as
25 not meeting the -- what he believed was our discussion.

1 And after that, we came to the Court seeking
2 the Court's assistance in implementing the Master
3 Settlement Agreement term for arbitration. And then I
4 think Your Honor is aware that we believe our attempts
5 to arbitrate were frustrated by some, I think, perhaps
6 intemperate letter to Judge Phillips who then recused
7 himself from wanting to either arbitrate or mediate.

8 In the interim after we wrote our letter of
9 April 16 to Your Honor seeking your assistance in
10 getting us back to an arbitration process, Justice
11 Trotter surfaced and offered the following: If he would
12 take full responsibility for implementation of the
13 agreement that we reached several months ago, he would
14 ensure -- and if he were to obtain Mr. Girardi's -- upon
15 the signature on the agreement, that he would take
16 responsibility for implementing, that he was agreeable
17 to having this Court continue its supervision over the
18 agreement and that we could go forward.

19 And on that representation, we again submitted
20 formal documents -- this time to Justice Trotter, saying
21 this represents our understanding of the deal. Mr.
22 Girardi signed it very quickly as did the lien
23 resolution entity that he has retained, as did Justice
24 Trotter. It was returned to me with the caveat that Mr.
25 Girardi would only agree to this settlement -- these

1 settlement terms if he were relieved of the obligation
2 to appear today.

3 I explained to Justice Trotter as did Mr.
4 Lehner this was not our hearing. This hearing was the
5 authority of the Court, and we could not control that.
6 Nonetheless, we were eager to proceed with this
7 settlement and get back on track. So that is why we
8 have not signed because we were not aware whether Mr.
9 Girardi was confirming his assent to the terms that are
10 in the document before Your Honor.

11 If Your Honor is prepared to maintain
12 supervision of the matter, ensure that Justice Trotter
13 will, in fact, be responsible for implementation, we can
14 go forward and finalize these terms.

15 THE COURT: So you have always -- when you
16 sent this, it was with the hope that it would conclude
17 the TRO and injunctive relief and motion that you had
18 filed earlier, which we had a hearing on, and that
19 things would proceed this way and that arbitration would
20 continue to be the go to remedy for further
21 disagreements?

22 MS. GUSSACK: Well, let me -- there's an
23 arbitration provision in this agreement, but the
24 expectation was that the Court's jurisdiction for
25 venting threats of litigation in other State Courts

1 would continue while this agreement was implemented,
2 that with Justice Trotter's good efforts that it would
3 be implemented as described in this agreement, and that
4 hopefully there would be no need for arbitration because
5 we now have clarity about the terms, and that Mr.
6 Girardi had consented to these terms. And if we have
7 that representation, Your Honor, we can proceed.

8 But as I said to Justice Trotter, I understand
9 Mr. Girardi's interest in obviating the need to appear
10 in Court and to address these issues, and I would
11 happily have reached an agreement, but it was simply not
12 within our authority, and we communicated with the Court
13 to ask the Court's preference here as -- as Your Honor's
14 aware, but we understood that --

15 THE COURT: Of course, we also became
16 concerned about the diatribe coming from Mr. Girardi. I
17 am still appalled, but let's put that aside for just a
18 minute. But I am going to come back to it, Mr. Girardi.

19 Are you affirming your agreement on this
20 memorandum of understanding that you signed along with
21 your mediator -- not your mediator, excuse me -- your
22 administrator, Judge Trotter?

23 MR. GIRARDI: I --

24 THE COURT: I don't know if he's a Judge or a
25 Justice, so I don't want to address him incorrectly --

1 MR. GIRARDI: He's a Justice.

2 THE COURT: -- but he works for JAMS now.

3 He's retired, whatever he is.

4 MR. GIRARDI: Right. No. I -- just like the
5 agreement we had three months ago, I affirmed it, too.
6 I affirm this.

7 THE COURT: But you have to follow through on
8 it. You have to follow through on it. And if this is
9 now the result of the post-hearing ongoing efforts to
10 continue to finalize all terms and all understandings,
11 if it's committed to this document, are you affirming
12 this or not?

13 MR. GIRARDI: Of course.

14 THE COURT: Okay.

15 MR. GIRARDI: I signed it.

16 THE COURT: You signed it, yes. Okay. Is
17 that what you're looking for?

18 MR. ZUCKER: Your Honor, if I may?

19 THE COURT: You may.

20 MR. ZUCKER: Just -- and not to prolong these
21 issues, just so the Court is aware. This document had
22 been presented for signature by the Girardi firm before
23 we ever sought the Court's intervention to compel
24 arbitration, and so this was then signed. It was an
25 earlier draft as you can see. It's not on our

1 letterhead. It didn't -- it wasn't dated, but we
2 reiterated our interest in having this document be the
3 material terms of the agreement.

4 THE COURT: But it's addressed to Tom Girardi.

5 MR. ZUCKER: Yes, it was. It was in that same
6 format months ago. I mean, the first version of this
7 was -- was sent to Mr. Girardi and Justice Trotter back
8 in February actually.

9 THE COURT: All right.

10 MR. ZUCKER: There were some minor
11 modifications over time. This that the Court is looking
12 at had been sent prior to the time we first appeared
13 before this Court.

14 It refers to a couple exhibits. I had sent
15 those exhibits to the Girardi firm and to Justice
16 Trotter a couple days ago when they signed this just
17 asking them to confirm that the exhibits are acceptable.
18 I don't think there's any reason why they wouldn't be.
19 I just haven't yet gotten that confirmation.

20 So I don't -- I think we can proceed with the
21 expectation there are a couple ministerial points to be
22 nailed down relative to concluding the signed document,
23 but with Mr. Girardi's signature on this document and
24 with the assurance that Justice Trotter will be
25 overseeing and taking responsibility for implementation

1 of the terms of this agreement, we are perfectly
2 agreeable to proceeding on the terms as outlined in the
3 document.

4 THE COURT: All right. Is there a signature
5 page for Ms. Gussack then?

6 MR. ZUCKER: There is. I'll also mention just
7 -- there is one place in here where there is a typo
8 where the word "not" is missing. It's plain what the
9 intention is. I don't anticipate any -- it was
10 something that I, as I was reviewing again the other
11 day, I saw there's a word "not" that's missing. Again,
12 I don't anticipate that that's going to be a problem at
13 all, but, yes, there's -- it was set up to be a letter
14 sent by Ms. Gussack to be then countersigned by the
15 other folks. And they countersigned it before -- before
16 she signed it, that is.

17 THE COURT: All right. I know that this
18 document has a memo sheet attached to the back of it
19 that it was communicated from JAMS through a Trisha
20 Lunsford on that same date that it shows to be signed,
21 April 21st, 2014, at 6:29 p.m., sent to George Lehner
22 and cc'd to Nina Gussack and Ken Zucker. So we see that
23 it's a fully executed letter, needs Nina's signature and
24 to be dated and with the typo corrected.

25 MR. ZUCKER: And the exhibits -- and the

1 exhibits added, that's correct, Your Honor.

2 THE COURT: Okay. Well, you're free to
3 finalize this, but Mr. Girardi has affirmed his
4 agreement, have you not?

5 MR. GIRARDI: Yes, Your Honor.

6 THE COURT: And it seems to me that -- where
7 is that typo, by the way, so I can just --

8 MR. ZUCKER: Yes, just a second.

9 THE COURT: I'm not going to write on this
10 document because it's not appropriate, but I just want
11 to read it for myself.

12 MR. ZUCKER: Yes. I can. It's paragraph ten,
13 which is the indemnification provision, and one, two,
14 three, four, five, the sixth line down under Romanette
15 iv.

16 It says, "Any claims by participating
17 claimants on the initial list as to whom allocations are
18 not made or by participating claimants who do" -- and it
19 says -- "who do accept their allocations."

20 THE COURT: It should be do not.

21 MR. ZUCKER: It should be "who do not accept
22 their allocations."

23 THE COURT: Do you have a copy?

24 MR. GIRARDI: Your Honor, I do, and I've seen
25 it and I agree with that, and we changed it ourselves.

1 THE COURT: Yes. It seems like an obvious
2 mis-type. All right. So that doesn't change anything.
3 It clarifies it as to what the parties actually meant.

4 So with this accomplished, where does that
5 leave the parties? What's the next step?

6 MS. GUSSACK: Your Honor, I would both
7 formalize the agreement, date it, execute it and return
8 it to Mr. Girardi. I would expect to communicate with
9 Justice Trotter that we would, with the Court's
10 approval, expect that he would be responsible for all
11 implementation and the provisions of the agreement would
12 start to be implemented, including payment within ten
13 days that Mr. Girardi is referring to.

14 THE COURT: That would be considered full
15 execution of this memorandum of understanding --

16 MS. GUSSACK: Yes, Your Honor.

17 THE COURT: -- as it states in paragraph two?

18 MS. GUSSACK: Yes.

19 THE COURT: And your second payment would then
20 be made, which is an additional percentage of the total
21 amount owed --

22 MS. GUSSACK: Yes.

23 THE COURT: -- for the participating
24 claimants. I'm not going to read into the record --

25 MS. GUSSACK: Exactly.

1 THE COURT: -- the precise amounts of any
2 particular term.

3 MS. GUSSACK: And then, of course, there are
4 steps that need to be taken to establish escrow under
5 Justice Trotter's supervision, to arrange for liens and
6 amounts that are in dispute with the common benefit fee
7 so that we have discharged our obligations and are
8 protected.

9 THE COURT: Then if that's the case, is that
10 acceptable? Is that your understanding of --

11 MR. GIRARDI: Yes.

12 THE COURT: -- what should happen now?

13 MR. GIRARDI: I'm sorry, Your Honor. I didn't
14 mean to step on you.

15 THE COURT: That's all right.

16 MR. GIRARDI: That's already been set up. The
17 Justice Trotter trust for the liens is already set up.
18 They have the wire instructions to that. We've
19 personally guaranteed so they're off the hook on the
20 liens if they're bigger or whatever. We did that
21 because we're desperate to get money to these people,
22 and we've agreed to all these terms. We've given wire
23 transfer information on everything, the three accounts
24 that they have to wire transfer to. And it's an
25 accomplished resolution.

1 THE COURT: Then we have to deal with how we
2 proceed from here in terms of our expectations of
3 professional conduct. Mr. Girardi, I don't know what
4 the problem is, but I know you have a better reputation
5 than what I've seen you write in these letters.

6 MR. GIRARDI: Your Honor, you're going to have
7 to give me a pass, I think. This has been massively
8 frustrating. We --

9 THE COURT: I don't have to give you a pass.

10 MR. GIRARDI: Oh, no, no, Your Honor. I'm
11 just begging you for a pass. I wasn't saying you have
12 to give me a pass.

13 This has been massively frustrating. These
14 clients, heart attacks, strokes and so forth, we get 50
15 calls a day saying, you know, where's the money? And
16 then at least when half -- when the first group was
17 paid, we thought maybe half of the second group would be
18 paid so we could get them something.

19 We haven't taken any fees. Everything we're
20 trying to get to the people. And I suppose that if you
21 think that you're not being treated fairly, even
22 somebody like me who has a very soft spot to him, just
23 reacted that said, gee, this is -- this isn't right. I
24 wouldn't care if it was just me. To hear all these
25 people -- the main reason we settled this case was for

1 these people to get some money. And so --

2 THE COURT: You better -- you better not start
3 saying that you settled this case, even though you don't
4 like it. I don't want to hear that.

5 MR. GIRARDI: Well, no, I --

6 THE COURT: I don't want to hear that. I know
7 that's where you're going because you said it before.

8 MR. GIRARDI: No. I --

9 THE COURT: What I do want to hear from you is
10 that --

11 MR. GIRARDI: Okay.

12 THE COURT: -- something got ahold of you that
13 you allowed to change your usual way of being a
14 professional adversary, or maybe this is how you are.

15 MR. GIRARDI: Your Honor --

16 THE COURT: But it's not what I know about
17 you.

18 MR. GIRARDI: -- don't do that to me. No, I'm
19 -- I'm the -- I have the civility award from ABOTA. I
20 have the presidency -- I was just sworn in to the Trial
21 Lawyer Hall of Fame at Temple University with Clarence
22 Darrow and John Adams and 42 others, and you only get
23 there if you have the utmost of ethics and
24 responsibility and sweetness and kindness and so forth,
25 and I think I have that.

1 THE COURT: But you didn't show that to
2 anybody. In fact, what you said in here was appalling.
3 How you -- your tones, your intonations, you can't
4 threaten anybody, and they are never going to tolerate
5 it --

6 MR. GIRARDI: Your Honor --

7 THE COURT: -- let alone me.

8 MR. GIRARDI: -- Your Honor, it was based on
9 total frustration over this process that I thought was
10 very unfair, and the massive pressure of the people that
11 kept calling us. That was all. I'm a real good guy,
12 Judge.

13 THE COURT: You probably are.

14 MR. GIRARDI: I think Judge Savage would think
15 I was a real good guy. I'm a real good fellow, and if I
16 offended counsel, I apologize.

17 THE COURT: How do you know Judge Savage?

18 MR. GIRARDI: I beg your pardon?

19 THE COURT: How do you know Judge Savage?

20 MR. GIRARDI: One of the Judges of the
21 California State Bar is -- used to walk the beat with
22 him as police officers, and so then because of their
23 close relationship, I was close to him, and then I got
24 to know Judge Savage and that's all. But I think he
25 would think I was a real nice fellow. And, Your Honor,

1 I would like for you some day to say, Tom, he's a real
2 nice fellow. He got a little --

3 THE COURT: I would like to say the same.

4 MR. GIRARDI: -- he got a little screwed up
5 here. So, Your Honor, then what?

6 THE COURT: Whatever there is going on that
7 forced you to act and react in unprofessional ways, I
8 hope you get a grip on them.

9 MR. GIRARDI: Your Honor, you've taken me to
10 the woodshed.

11 THE COURT: Okay.

12 MR. GIRARDI: I swear to God, I appreciate it.

13 THE COURT: That's all I'm going to do about
14 it.

15 MR. GIRARDI: Okay.

16 THE COURT: Because I know that you are
17 smarter and better than that.

18 MR. GIRARDI: Thank you.

19 THE COURT: But I do think that you need to
20 apologize to the people that have been trying to deal
21 with you, because you haven't made it easy.

22 MR. GIRARDI: This is a formal apology.

23 THE COURT: Do you accept that apology? Can
24 we move forward?

25 MS. GUSSACK: Yes, Your Honor. Thank you very

1 much for your help.

2 THE COURT: I don't know if I've helped much
3 but I do think that I -- I don't see a need to proceed
4 now. If you have a dispute, there are terms to regulate
5 that. I do think that we need to maintain the order
6 that we imposed. I'm being requested to do that at any
7 rate, and I will, because I would not want you to turn
8 elsewhere to disrupt anything. This has been disruptive
9 enough.

10 MR. GIRARDI: Your Honor, I won't do that.

11 THE COURT: Well --

12 MR. GIRARDI: With or without your order.

13 THE COURT: Because I'll go to Judge Savage
14 and then you'll see. But -- I'm kidding -- on the
15 record, I'm kidding.

16 MR. GIRARDI: I was only kidding, too.

17 THE COURT: He is my colleague and a good
18 friend, but he has nothing to do with this case, and we
19 don't discuss it. But I did want to ask Ms. Nast or Mr.
20 Corr if there was another matter that we need to tend
21 to, because I know it's in briefing, but I haven't seen
22 anything.

23 MS. NAST: No, Your Honor. In terms of
24 anything related to Mr. Girardi, the only thing that's
25 pending before Your Honor at this point is our motion to

1 -- I don't remember the exact term of it -- but to
2 enforce the seven percent assessment, and that's --
3 that's fully briefed and the -- the post-hearing briefs
4 have been filed by both Mr. Girardi and the Advisory
5 Committee, so it's before the sub judice.

6 THE COURT: All right. So that -- that is
7 something that we still have to address unless you're
8 going to talk about that, but that's not the subject of
9 today's hearing.

10 MR. GIRARDI: Okay. Good.

11 THE COURT: I didn't call you here to address
12 that because --

13 MR. GIRARDI: It's a long way.

14 THE COURT: Well, weren't you going to be
15 somewhere nearby anyway?

16 MR. GIRARDI: I have to be in --

17 THE COURT: Didn't you say in one of your
18 letters that you're going to be in New York or --

19 MR. GIRARDI: No, I have to -- then I have to
20 be in Mississippi, too, Your Honor. I -- I keep trying
21 to avoid process apparently.

22 THE COURT: Okay. Okay. So --

23 MR. GIRARDI: Anyway, Your Honor, thanks very
24 much.

25 THE COURT: You're welcome. Is there anything

1 else?

2 MS. GUSSACK: No, Your Honor. Thank you.

3 THE COURT: Anything else?

4 MR. CORR: No, Your Honor.

5 THE COURT: Okay. That's it. We're
6 adjourned. Have a safe trip.

7 MR. GIRARDI: Thanks.

8 (Proceedings concluded at 3:43 p.m.)

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CERTIFICATION

I, Donna M. Anders, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

5/14/14
Date

Donna M. Anders
Donna M. Anders