

NYC OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

COUNTY OF NEW YORK

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NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL

HYGIENE,

Petitioner,

Summons No. 30198-19L0

-against-

MALKY ROTH TABAK,

Respondent.

- - - - - x.

66 John Street  
New York, New York

August 28, 2019  
10:11 a.m.

B E F O R E:

HONORABLE DAVID LEUNG.

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2 MR. LEUNG: Let me just say,  
3 Doctor, to the best -- to your own  
4 personal knowledge, you can't speak  
5 to anyone else, just to your own  
6 personal knowledge.

7 I am going to ask to take a  
8 break. Just give me two seconds. I  
9 am just going to pause the hearing  
10 for a second.

11 (Whereupon, a brief recess was  
12 taken.)

13 MR. LEUNG: Okay. The record  
14 should reflect that I stepped out,  
15 spoke to a hearing supervisor, and  
16 now I'm back in. Go ahead, counsel.

17 MR. SIRI: Okay. Thank you.

18 EXAMINATION BY

19 MR. SIRI:

20 Q. Doctor, does the MMR vaccine  
21 involve an injection into the body?

22 A. I would like to go back to your  
23 question.

24 Q. Your attorney -- when I'm  
25 done --

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MR. MERRILL: Yeah.

MR. SIRI: When I'm done you  
can redirect.

MR. LEUNG: Two things.  
Counsel, I don't mean to cut you  
short.

MR. SIRI: Yes.

MR. LEUNG: We have other  
hearings. What I'm going to ask you  
is, your overall argument here in  
this line of questioning is that it  
wasn't medically necessary for this  
child or --

MR. SIRI: That's one of the  
reasons under the order is that  
whether it was medically appropriate  
and I seek to establish here today.  
Yes. But I need the opportunity to  
establish that factual record, your  
Honor. Without establishing it, I  
don't know how you can rule on -- on  
that point.

MR. LEUNG: Okay. Normally,  
you would establish that record by

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bringing in evidence. In other words --

MR. SIRI: You want to put the burden on my client?

MR. LEUNG: No. No. No. I'm not putting the burden, but the issue is that you were served a summons that said there was no proof of immunization or proof of immunity or proof of a medically -- a medical exemption. So those are the three allegations here. No immunization, no proof of immunity, and no --

MR. SIRI: It doesn't say anything about a medical exemption in the violation in the last sentence. But even if it did, I certainly should have the opportunity to present a defense that it wasn't medically appropriate. How can I not?

MR. LEUNG: No. No. You can present a defense. All I'm saying is that if you ask her questions and she

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says -- you know what, I'm going to let you continue. Go ahead.

MR. SIRI: Thank you, your Honor.

Q. Does the MMR vaccine involve an injection into the body?

A. Yes.

Q. What company manufactures the MMR vaccine in the United States?

MR. LEUNG: Okay. That's what I'm talking about. How is that relevant to the hearing?

MR. SIRI: They are ordering -- she testified that an injection of this product into my client's body -- you don't think that in understanding that product, its risks, its benefits, is relevant to whether it's moderately appropriate to require that injection?

MR. LEUNG: The issue right now is whether or not -- I understand your overall argument in terms of constitutional arguments --

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2 MR. SIRI: No. No. Not only  
3 that constitutional argument. The  
4 order provides it should be medically  
5 appropriate. So All right -- I am  
6 seeking to establish that it was  
7 medically appropriate.

8 MR. LEUNG: Okay. Let me just  
9 take a look here, real quick, of what  
10 the order says. Because what's going  
11 to happen here is --

12 MR. SIRI: So your saying that  
13 there is no medical exemption given  
14 this order? Your saying that this  
15 child has to get it no matter what?

16 MR. LEUNG: No. No. No. I'm  
17 saying that you are served with a  
18 summons and that they are --

19 MR. SIRI: I understand.

20 MR. LEUNG: The summons  
21 established that -- okay. The  
22 summons established a prime facia  
23 case against your client that they  
24 didn't get immunized as ordered by  
25 the Commissioner. Or in the

1  
2 alternative, show proper immunity to  
3 the measles or a proper medical  
4 exemption. We're here for that  
5 hearing now. The summons alleges  
6 that.

7 So their saying that your  
8 client didn't do any of those three  
9 alleged things. Getting immunized,  
10 show proof of immunity --

11 MR. SIRI: Even if I accept  
12 everything you just said, your  
13 Honor --

14 MR. LEUNG: No. It's an  
15 allegation. I'm not saying accept  
16 it. I'm just saying that's what the  
17 summons alleges.

18 MR. SIRI: Right. Well, if the  
19 summons does allege that, though I  
20 will say it says, failed to vaccinate  
21 or provide proof of immunity. But  
22 let's just say that it also failed to  
23 provide, you know, medically -- you  
24 know, that it is not medically  
25 appropriate, which doesn't say that

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in the last sentence.

MR. LEUNG: Okay. Right.

MR. SIRI: This, I'm seeking to establish that right now.

MR. LEUNG: Establish what?

MR. SIRI: That it's not medically appropriate.

MR. LEUNG: Medical exemption --

MR. SIRI: Your using the term "medical exemption." It says, medically appropriate.

MR. LEUNG: Okay. What I'm going to do is, your making an argument that it is not medically appropriate for this client. Well, I'm asking you to say it. You can testify, you can say affirmatively what these questions are that your trying to establish, which is that there may have been an adverse reaction to certain ingredients. But what your trying to establish is that, she doesn't know whether or not



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he does or not. Which establishes --  
what I'm trying to --

MR. SIRI: Well, moving on from  
there already.

MR. LEUNG: Yeah.

MR. SIRI: I'm just going to  
move onto other stuff.

MR. LEUNG: What I'm trying to  
do is -- what I'm doing is -- what I  
have been told by my supervisor is,  
you need to move on because if these  
are not -- what I'm trying to do is,  
prevent the other nine from being  
defaulted. What their saying, is  
that time is of the essence in terms  
of getting these down.

MR. SIRI: Look, I've got to  
put a proper defense. I just can't  
stress enough, you know --

MR. LEUNG: I think this  
hearing began over an hour ago, sir.

MR. SIRI: Your -- these people  
are just living in their homes.

MR. LEUNG: Now, I

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understand --

MR. SIRI: They're just existing.

MR. LEUNG: I understand that.

MR. SIRI: And their in violation for existing --

MR. LEUNG: Right.

MR. SIRI: -- as God created that. That's literally what we're talking about here today.

MR. LEUNG: I know.

MR. SIRI: If I -- I need to be able to make a proper record, not only for this hearing, but also for appeal.

MR. LEUNG: And I think I've given you the opportunity to make a proper record.

MR. SIRI: I would say I have not even touched on the medical appropriateness then.

MR. LEUNG: Well, I'm going to ask you --

MR. SIRI: But you know, I --

1  
2 you know, I would say that -- let's  
3 look at it this way, if you can carry  
4 over the record from here to the  
5 other hearings, that will make it --  
6 but I need an opportunity to make my  
7 record.

8 MR. LEUNG: You can make your  
9 record. You can ask a couple of more  
10 questions and then we're going to  
11 have to move along.

12 MR. SIRI: I got to object to  
13 that.

14 MR. LEUNG: You can object to  
15 anything you want.

16 MS. PEONE: I'm sorry. Can I  
17 just --

18 MR. SIRI: I know. I'm just  
19 putting on the record my objection  
20 that I have not been given enough --  
21 asking just a few more questions is  
22 not, you know -- I strenuously object  
23 because I'm not being provided an  
24 opportunity to create a record.

25 MR. LEUNG: I understand your

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objection, counsel.

MR. SIRI: Okay.

Q. All right. So again, what companies manufacturer the MMR vaccine that this order says my client should be injected with?

MR. LEUNG: You can answer that. Go ahead.

A. Merck.

Q. Merck?

A. Yes.

Q. They're the only manufacturer, correct?

A. I can't comment on that.

Q. Do you know when the MMR vaccine was licensed?

MR. LEUNG: Counsel, I'm going to stop it here because I don't -- you can make your ultimate argument. If your ultimate argument is that you believe this MMR --

MR. SIRI: How can I make an ultimate argument without a factual record, your Honor.

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MR. LEUNG: Because what we're doing right now --

MR. SIRI: You want me to just say into the ether that it's not medically appropriate? How do I do that without a factual record?

MR. LEUNG: You can ask the doctor and you can establish --

MR. SIRI: You want me to just say is it medically appropriate?

MR. LEUNG: Well, what is your basis? You can make --

MR. SIRI: I'm trying to establish that.

MR. LEUNG: Your trying to establish what?

MR. SIRI: That it's not medically appropriate, but I need to be given an opportunity to question the doctor.

MR. MERRILL: I object to the term "medically appropriate." That's not in the order anyway.

MR. LEUNG: Well, I --

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MR. SIRI: It's in the violation. It's in the summons.

While your looking at that, can I just ask a few more questions?

MR. LEUNG: Go ahead.

MR. SIRI: Okay.

Q. Well, I'm going to -- I'll try to make this quicker. Can the MMR vaccine cause brain damage?

A. Serious allergic -- serious reactions to the MMR vaccine is very rear.

Q. Please answer the question. Can the MMR vaccine cause brain damage? Yes or no?

A. That is not a typical reaction of the MMR vaccine.

Q. Can the MMR vaccine cause brain damage? Yes or no?

MR. LEUNG: Okay. Counsel, I'm going to just -- the reason why I'm doing this --

MR. SIRI: Can I make an application to have a deposition and we can come back another day?

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MR. LEUNG: Yeah. First off --

MR. SIRI: After I've had an opportunity to figure out --

MR. LEUNG: This is the offset of a trial hearing. It is not a full blown hearing. It's not a full blown trial. So the procedures are streamlined for an efficiency and to get to the facts.

MR. SIRI: I don't --

MR. LEUNG: There's no provisions for depositions.

MR. SIRI: Okay. Okay. So your denying the application?

MR. LEUNG: I'm denying the application. Yes.

MR. SIRI: That's fine. Okay. So I'd like to continue to question the witness.

MR. LEUNG: Okay. I'm going to rule and I don't mean to -- counsel, let me just establish -- I don't even know what time this hearing started. It's almost noon now. I think its

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2           been over an hour. You have nine  
3           other cases.

4           The issue that I'm going to  
5           read here is the following: On  
6           page 2 of the order that is at issue  
7           here in the summons, is that the  
8           child should be vaccinated against  
9           measles and such parent or guardian  
10          shall demonstrate that the child has  
11          immunity or document to the  
12          satisfaction of the Department that  
13          said child should be medically exempt  
14          from this requirement. So questions  
15          right now regarding whether or not  
16          the -- who made the MMR vaccine, does  
17          it cause X, Y, and Z damages done,  
18          does not go to the issue of whether  
19          or not the child had immunity,  
20          whether he had the proper  
21          vaccination, or whether he was  
22          medically exempt.

23                 MR. SIRI: Really? Why not?

24                 MR. LEUNG: Because medically  
25          exempt is an issue, an affirmative



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2 defense that you can raise by  
3 producing evidence, that my client is  
4 medically exempt for X, Y, and Z  
5 reasons and here's a doctor's note.  
6 Or here's my document that says that  
7 it's medically exempt. It's not by  
8 asking questions that can be negated  
9 by this -- negated by this doctor  
10 saying no to every question you ask.  
11 It doesn't establish the medically --

12 MR. SIRI: But your assuming --  
13 you just assumed that --

14 MR. LEUNG: I'm not assuming  
15 anything. No. No.

16 MR. SIRI: They're not just --

17 MR. LEUNG: I'm assuming based  
18 upon the chain of questions and the  
19 questions that I've allowed that I  
20 should have stopped. Such as, who  
21 makes the vaccine. I mean, that's a  
22 discovery question for counsel in a  
23 civil litigation. It has nothing to  
24 do with whether or not the child was  
25 vaccinated.

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MR. SIRI: Whether it's a predicate to the documentation that shows?

MR. LEUNG: Do you --

MR. SIRI: I have plenty of documentation.

MR. LEUNG: Are you having Merck --

MR. SIRI: I wanted to establish --

MR. LEUNG: Counsel, do you have documentation showing whether or not this child is medically exempt from the requirement or has the proper immunity?

MR. SIRI: Yes. All of this over here shows that this child should not receive the MMR vaccine and I need to go through it with this document and establish that.

MR. LEUNG: Okay. So all of those documents show what? Just tell me what it shows.

And the record should reflect

1  
2 that counsel is pointing to a box  
3 full of documents. What will those  
4 documents show? Just give an offer  
5 of proof.

6 MR. SIRI: Sure. The offer of  
7 proof shows that the risks of the MMR  
8 vaccine outweigh the benefits for  
9 this child.

10 MR. LEUNG: Okay. And how does  
11 that address the following issues:  
12 Whether or not the child was  
13 vaccinated, whether or not the child  
14 had the proper immunity, or whether  
15 or not the child was medically  
16 exempt?

17 MR. SIRI: Should be medically  
18 exempt because the risks outweigh the  
19 benefit.

20 MR. LEUNG: Okay. And it's  
21 through questioning and -- what  
22 documents do you have to show that --

23 MR. SIRI: I have the clinical  
24 trials of the MMR. I've got all  
25 kinds of documents regarding the

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product.

MR. LEUNG: Please testify in a summary fashion as to what your evidence will show. Because I want that to be in the record and I don't want to exclude your evidence, but I'm not going to allow you to question this doctor as to every chain of science leading up to whether or not the MMR vaccine is or is not safe.

MR. SIRI: Well, your assuming what I was going to ask.

MR. LEUNG: I'm not assuming anything. I'm just trying to expedite this hearing to give you a fair hearing and also to allow you to --

MR. SIRI: Is she going to get to respond to what I say?

MR. LEUNG: It doesn't --

MR. SIRI: Well, in that case, it's totally unfair and prejudicial. What your saying to me is, I need to

1  
2 basically preview to the witness all  
3 of the arguments so that she can then  
4 be coached -- coached as to what  
5 she's going to say.

6 MR. LEUNG: No. No. No.  
7 Because this is a hearing --

8 MR. SIRI: Doctors should have  
9 to --

10 MR. LEUNG: Counsel, let me  
11 just speak.

12 MR. SIRI: Yeah. I wanted to  
13 finish my argument.

14 MR. LEUNG: Because this is a  
15 expedited hearing in terms of us  
16 getting to the facts. It's not a  
17 trial. The rules of evidence are  
18 relaxed. I'm going to ask you to get  
19 to the substance of what your  
20 evidence will show and I'm giving you  
21 an opportunity to summarize it  
22 without asking 100 questions to the  
23 doctor. So before I close the  
24 hearing, I'm going to give you an  
25 opportunity.

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2 MR. SIRI: I probably could  
3 have gotten through half of my  
4 outline already.

5 MR. LEUNG: Okay. But it we  
6 have been on this hearing for over an  
7 hour now and we have nine additional  
8 hearings.

9 MR. SIRI: So --

10 MR. LEUNG: I'm sorry.

11 MS. DIRECTOR: Can you pause  
12 the audio so I can address all the  
13 parties.

14 MR. LEUNG: Let me just pause  
15 that real quick.

16 MS. DIRECTOR: All right.

17 MR. LEUNG: It's not paused.  
18 Hold on. I'll tell you when it's  
19 paused.

20 MS. DIRECTOR: All right.

21 (Whereupon, a brief recess was  
22 taken.)

23 MR. LEUNG: Okay. The record  
24 should reflect we're back on the  
25 record. We spoke with the assistant

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2 director of adjudication, who came in  
3 and determined that the substantive  
4 argument regarding constitutional  
5 arguments that have taken up a  
6 significant amount of this hearing,  
7 can be transferred over to the  
8 subsequent hearings. And we're going  
9 to -- in the other eight hearings  
10 reference the argument regarding  
11 that.

12 Counsel, Mr. Siri.

13 MR. SIRI: Yes.

14 MR. LEUNG: As to the other  
15 eight subsequent hearings, to the  
16 extent obviously they're all  
17 individualized with different  
18 children or individuals, you can make  
19 your defenses individually just like  
20 you did in the beginning of this.

21 MR. SIRI: Right.

22 MR. LEUNG: When we get to this  
23 portion of the argument, you can just  
24 tell me on the record that your  
25 referencing the same arguments.

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MR. SIRI: Absolutely.

MR. LEUNG: Okay.

MR. SIRI: Gotcha.

MR. LEUNG: So --

MR. SIRI: And those others  
should go a lot quicker. Very  
quickly.

MR. LEUNG: And Mr. -- when we  
last spoke before I paused the  
record, what I was doing is, I was  
cutting you off in the politest way  
possible, from asking additional  
questions of this doctor to establish  
your offer of proof that the MMR  
vaccine, in your opinion, and this is  
the substance of your question, the  
benefits -- the health benefits do  
not outweigh the health risks and  
dangers of the MMR vaccine.

And you were going to ask  
questions of this doctor to establish  
that. What I was trying to tell you  
that you don't need to ask her  
questions. You can assert



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affirmatively what you believe  
through your evidence. Okay.

MR. SIRI: I understand. I  
just, for the record --

MR. LEUNG: Yeah.

MR. SIRI: Their the one who  
issued the violation.

MR. LEUNG: That's true. I  
don't mean to cut you off. That's  
true. However, you are asserting the  
affirmative defense of, Hey, this  
summons doesn't apply to me because I  
know this child doesn't have the  
vaccine. And I know there's nothing  
in his record, and I'm assuming that  
it is a him, that shows that he has  
the immunity, but it's not  
medically --

MR. SIRI: With the Health  
Department --

MR. LEUNG: He should be  
medically exempt. Now, medically  
exempt is -- I'm going to ask the,  
Doctor.

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2           What does medically exempt and  
3           what is the proof required for a  
4           medical exemption according to the  
5           statute in the Department of Health.

6           MS. ROSEN: So a provider would  
7           submit documentation stating that a  
8           person has a contraindication to  
9           receiving the MMR vaccine and there  
10          are standard criteria. The Advisory  
11          Committee on the Immunization  
12          Practices and we have a copy of the  
13          summary outlines what  
14          contraindications are to different  
15          vaccinations.

16          MR. LEUNG: And is this a --  
17          this has to be a letter from a  
18          physician.

19          MS. ROSEN: You want to pull up  
20          the wording from --

21          MR. SIRI: That is not what it  
22          says in the -- this doesn't say  
23          anything about a letter from a  
24          physician.

25          MR. LEUNG: I understand that.

1  
2 I'm just asking what the  
3 definition of that term "medically  
4 exempt," what is that.

5 MS. ROSEN: This would not be  
6 -- this would not come from -- it's  
7 not a parent's decision about having  
8 a contraindication. It would be  
9 coming from a medical provider who  
10 deems this person to have a medical  
11 contraindication and that  
12 contraindication should be valid  
13 based on the Advisory Committee on  
14 Immunization Practice national  
15 standard.

16 MR. LEUNG: And Doctor, in your  
17 experience in dealing with MMR cases,  
18 what has been an acceptable  
19 medically -- what has been determined  
20 as being medically exempt? Accepting  
21 proof of medical exemption.

22 MS. ROSEN: So criteria would  
23 include somebody who's pregnant.  
24 There are very few contraindications  
25 to the MMR vaccine.

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2           Contraindications include pregnancy,  
3           someone who is severely  
4           immunocompromised. That would, for  
5           example, include somebody perhaps  
6           who's on chemotherapy, or cancer  
7           treatment, somebody who has a severe  
8           allergic reaction to a vaccine.

9           A document -- someone who has  
10          documented severe allergic reaction  
11          to a vaccine that they have received  
12          or a vaccine component previously  
13          documented to a severe allergic  
14          reaction. When we say, severe, that  
15          means something that is threatening.  
16          Something like anaphylactic reaction  
17          or someone can't breathe. Not a  
18          rash, for example.

19          MR. LEUNG: So the child cited  
20          in the summons -- and I don't mean --  
21          I just have to. As to the child  
22          cited in the summons, you do not know  
23          for certain whether or not this child  
24          has these contraindications or does  
25          not have it; is that correct?

1  
2 MS. ROSEN: We're left to  
3 assume that don't, because they did  
4 not submit documentation, as that  
5 line in the summons showing that they  
6 have the medical contraindication.  
7 Medical contraindications are very  
8 rear. Most people are eligible to  
9 receive the vaccine.

10 MR. LEUNG: Mr. Siri, can you  
11 ask your questions of the Doctor that  
12 go to the issue of medical exempt --

13 MR. SIRI: Sure.

14 MR. LEUNG: -- as it's defined?

15 MR. SIRI: Sure.

16 Q. Can the MMR vaccine cause brain  
17 damage?

18 A. That is not an expected  
19 reaction to that MMR vaccine.

20 Q. Can it cause brain damage?

21 A. It's not an expected reaction.

22 And given the person's background, the  
23 safety of vaccines is monitored very  
24 closely. Millions of doses of this vaccine  
25 has been given as a routinely recommended

1  
2 vaccine.

3 MR. SIRI: I mean, can you  
4 direct the witness to answer the  
5 question?

6 MR. LEUNG: I'm going to allow  
7 it.

8 MR. SIRI: It's kind of  
9 difficult because it takes a while  
10 because I don't get an answer.

11 MR. LEUNG: Well, I'm going to  
12 ask you this: I allowed that  
13 question, but how does that go to the  
14 issue of medically exempt? Because  
15 medical exempt based upon what the  
16 doctor testified to is a doctor's  
17 note. I mean, I'm just going to lay  
18 out, it's a doctor's note from the  
19 child's physician saying that the  
20 child's medical condition, as it  
21 existed at the time, the doctor wrote  
22 the note exempts the child because of  
23 some condition.

24 So how does this question  
25 establish that?

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2 MR. SIRI: You know, your  
3 Honor, under the City Charter --  
4 okay. It provides that the City  
5 Charter says that -- and this is  
6 Section 10495. It says that an  
7 administrative law judge appearing --  
8 officer, may dismiss a Notice of  
9 Violation when in interest of  
10 justice. And then it goes onto give  
11 criteria.

12 MR. LEUNG: Okay. So --

13 MR. SIRI: So there's also --  
14 I'm just adding on that there's also  
15 an interest of justice here. And  
16 that's a proffer argument that I can  
17 make under the City Charter and all  
18 of this also goes to that.

19 MR. LEUNG: Okay. I understand  
20 that, but what I'm trying to tell you  
21 is, that I'm asking you to restrict  
22 your questions to the issue of  
23 medically exempt. You can make the  
24 argument and you can testify as to  
25 why you believe an interest of

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justice of dismissal is appropriate.  
However, your asking questions such  
as, you know, who makes it? That  
doesn't go to the --

MR. SIRI: I'm just asking if  
the MMR can cause brain damage.

MR. LEUNG: And I'm allowing  
her to answer the way it is. I'm not  
going to --

Q. Can the MMR vaccine cause  
deafness?

A. I'm not aware of the vaccine  
causing deafness.

Q. Can the MMR vaccine cause long  
term seizures?

A. I'm not aware --

MR. LEUNG: Counsel, again --

MR. SIRI: I'm almost done.  
I'm almost done on that one. I'm  
going to give you evidence right now.

MR. LEUNG: Go ahead.

MR. SIRI: I'm going to give  
you evidence right now. I just --

Q. Can the MMR cause --



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MR. SIRI: I can go fast. I just need to give it some --

MR. LEUNG: What I'm going to do right now, counsel, I know your going fast, but I'm going to stop you there. I'm going to stop you there because again, it's not addressing the issue of whether this child --

MR. SIRI: How do you know? I haven't asked my questions.

MR. LEUNG: Because I've given you a lot of leeway.

MR. SIRI: I've really not got to ask any questions. We've spent like 40 minutes arguing about asking questions. I haven't got to ask many questions.

MR. LEUNG: The question that you just asked -- forget about the line of questioning. The question that you just asked does not -- the specific questions that you just asked, does not go to the issue of whether or not this child has a

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medical exemption.

MR. SIRI: It goes to whether or not the summons is appropriate if they don't know the condition of the child beforehand, they don't understand what the vaccine -- they don't understand what the vaccine can cause. What reactions it causes. How can they issue this order? Of course it's appropriate. They need to understand what medical issues the vaccine causes. What the condition of the child is. And if they don't know, how are they issuing the summons?

MR. LEUNG: Again, your question then --

MR. SIRI: It goes to injustice.

MR. LEUNG: Your question then goes to the issue of why this summons issued have been issued in the beginning, which -- you just told me --

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MR. SIRI: Their both. Their both.

MR. LEUNG: Okay.

MR. SIRI: I know you want to restrict it to that particular point, but I actual have other arguments including injustice of the Charter. There's that.

MR. LEUNG: I understand. And one of your arguments that you just made is that you asked a question because you believe this summons was improperly issued to begin with. That they had no basis to issue the summons.

MR. SIRI: That's right.

MR. LEUNG: And again, I'm going to deny your request to ask that question because that doesn't go to the issue that I ultimately have to decide. I'm not going to decide whether or not there was a good cause basis to issue the summons. I'm going to tell you straight up. I'm

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not going to do that.

MR. SIRI: And I get that.

MR. LEUNG: So the question is not relevant for me making that decision. So I'm going to stop you there and I'm going to ask --

MR. SIRI: But it is relevant to the question of injustice --

MR. LEUNG: I'm going to stop you there.

MR. SIRI: -- under the Charter that you can argue the ruling.

MR. LEUNG: I understand. You've asked the questions and I've allowed them and I understand your argument.

MR. SIRI: Really? I haven't asked my questions.

MR. LEUNG: And your argument is that the summons does not conform to the interest of justice. And your line of question -- and your line of questioning goes to that. I understand that.

1  
2 MR. SIRI: Can I -- let me ask  
3 some questions -- quick questions.  
4 Okay. Honestly, I could have gotten  
5 through a lot of this already, you  
6 know. So let me just -- here. I'll  
7 put this into evidence (handing).

8 MR. LEUNG: What is this? What  
9 are you handing me?

10 MR. SIRI: This is from the  
11 CDC. This is something called a  
12 vaccine information statement.

13 MR. LEUNG: Respondent's 2.  
14 I've marked and I'm going to show it  
15 to counsel for Department of Health  
16 (handing).

17 MR. SIRI: Here's a copy.  
18 Okay. Can I just see --

19 MR. LEUNG: Read that and let  
20 me know. Hearing no objections,  
21 it'll be admitted.

22 MR. SIRI: And this vaccine  
23 information statement published by  
24 the CDC provides that risks of the  
25 MMR vaccine include deafness, long

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term seizure, coma, and brain damage.  
Okay.

MR. LEUNG: As the hearing  
officer --

MR. SIRI: I'm going to tie it  
all back to the client.

MR. LEUNG: As the hearing  
officer, I am taking that testimony  
in and I am considering this in my  
decision. You have just testified to  
something that is relevant. Your  
saying that there is a federal CDC  
printout that shows that there is a  
danger to this MMR vaccine.

And ultimately that issue goes  
to what about this summons that your  
saying that it addresses?

MR. SIRI: It's not appropriate  
to issue it.

MR. LEUNG: I'm sorry. Just --

MR. SIRI: But it needs to be  
-- that the summons was unjust to  
issue, but not in a vacuum.  
Obviously, that alone --

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MR. LEUNG: Does it go other than to --

MR. SIRI: -- to the injustice.

MR. LEUNG: Does it go to the issue of whether or not there's a medical exemption?

MR. SIRI: It goes to the medical exemption. It goes to the appropriateness of the violation.

MR. LEUNG: How does it go to the medical exemption? Just explain it to me so I can --

MR. SIRI: Well --

MR. LEUNG: How does the CDC outline or whatever this form is go to the issue of medical exemption?

MR. SIRI: It goes to the question of whether or not at the end of the day -- if you look -- when you look at the violation itself -- okay. On the violation it says -- it says, "Document to prove that the immunization is not medically appropriate." Okay.

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MR. LEUNG: Where are you reading?

MR. SIRI: I'm reading from the violation itself.

MR. LEUNG: The summons.

MR. SIRI: The summons.

MR. LEUNG: Okay.

MR. SIRI: So I'm trying to provide you the documentation, including through testimony --

MR. LEUNG: Okay. But that's --

MR. SIRI: -- is not medically appropriate. I know what you want. You want me to get some doctor's note to do that.

MR. LEUNG: No. Medical -- there are two different stances. What's written on the summons isn't what I have to decide. What I have to decide is whether or not the law -- the order was complied with in the sense that the child was either vaccinated, had the proper immunity,



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2 or was medically exempt. And what  
3 your showing me -- what I'm trying to  
4 do is -- I'm not denying you  
5 presenting evidence.

6 What I'm trying to say is, that  
7 what your giving me, tie it into one  
8 of those three things. Oh, an  
9 interest of justice.

10 MR. SIRI: An interest of  
11 justice is off --

12 MR. LEUNG: When you give me  
13 some -- all I'm asking is --

14 MR. SIRI: Okay.

15 MR. LEUNG: -- what pigeon hole  
16 are you putting this into?

17 MR. SIRI: Understand.

18 MR. LEUNG: Are you putting it  
19 into the interest of justice pigeon  
20 hole or are you putting this into the  
21 -- that's all I'm asking.

22 MR. SIRI: Interest of justice  
23 appropriateness of the summons.

24 MR. LEUNG: Okay.

25 Appropriateness of the summons is

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something that --

MR. SIRI: Yeah. So there's  
three.

MR. LEUNG: Okay.

MR. SIRI: There's interest of  
justice.

MR. LEUNG: Okay.

MR. SIRI: There's  
appropriateness of the summons  
because you have to have a factual  
background. Meaning, they have --  
she should have basic knowledge  
regarding the product their saying  
the child should be injecting with  
and the child.

MR. LEUNG: Okay.

Appropriateness of the summons.

MR. SIRI: And the third is --

MR. LEUNG: Interest of  
justice.

And what's the third?

MR. SIRI: And medically  
appropriate.

MR. LEUNG: Medically

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appropriate.

MR. SIRI: What are you calling  
medical exemption? Whatever you want  
to call it.

MR. LEUNG: Okay. Okay.  
That's fine.

MR. SIRI: And the interest of  
justice has a subpoint that they have  
not -- that, you know, I'm going to  
present you -- they can't  
substantiate that the risks -- that  
the benefits outweigh the risks.

MR. LEUNG: Okay.

MR. SIRI: I'm going to  
substantiate that.

MR. LEUNG: I've let you make  
the argument.

MR. SIRI: Yes.

MR. LEUNG: Yet the benefit  
does not outweigh the risk.

MR. SIRI: Yes.

MR. LEUNG: And I've allowed  
you to present some documents.

Is there any other documents

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you want to present or any evidence  
that you want to present?

MR. SIRI: Yes.

MR. LEUNG: Okay. Go ahead.

MR. SIRI: Okay. So the next  
document I'm going to present  
requires a little bit of testimony.  
Probably four questions.

Can I ask the witness?

MR. LEUNG: What are the basis  
of the questions? I mean, I just --  
go ahead. Start your questioning.

MR. SIRI: Okay. Just so we  
know what we're talking about here --  
all right. I just want to make sure  
we're on the same page with what  
we're talking about.

Q. This is a MMR vaccine  
container, right?

A. Correct.

MR. LEUNG: Let the record  
reflect that Mr. Siri is holding up  
an MMR container.

Q. And this is a dose of MMR? One

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dose that you would give to one child,  
correct?

A. It's a vial of MMR vaccine.

Q. That would be administered to a  
child under the order, to comply with the  
order, this is what they would need to be  
injected with, correct?

A. Correct.

Q. This is -- and this is -- so  
you can see what it is. This is a vial of  
MMR without the label on it so you could  
see it's actually in powder form. This  
powder form encounters liquid solution  
before it's injected, right?

A. Correct.

Q. Okay. And this is the typical  
needle that you use to do that?

A. Correct.

Q. I'm going to use the  
appropriate procedure for putting it back  
on. I think I did that right. That's an  
unopened one. Okay.

Before this product is licensed  
in 1978 it underwent a clinical trial,

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right?

MR. LEUNG: I'm going to --

MR. SIRI: Three more questions.

MR. LEUNG: No. No. Counsel, I'm stopping you right there.

MR. SIRI: Let me get back to the clinical trial.

MR. LEUNG: Get to your testimony.

MR. SIRI: Give me Exhibit 175. I don't know how I can do this without testimony. But I mean, I'm just going to object for the order.

MR. LEUNG: You can object, counsel. You can put your objection on the record.

MR. SIRI: Not 175. Exhibit 317.

Q. As the exhibit is being pulled out, to have a proper clinical trial you need thousands -- tens of thousands of participants to see significant results, correct?

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2 MR. LEUNG: Counsel, I'm going  
3 to object. Counsel, I'm not going to  
4 let you ask her the foundation of how  
5 the MMR vaccine came into existence,  
6 the clinical trials, the positives  
7 and negatives of it.

8 MR. SIRI: Why not? Doesn't  
9 that go to all four of the points we  
10 just talked about.

11 MR. LEUNG: No. No. I'm going  
12 to allow you to tell us -- I'm going  
13 to allow you to submit evidence as to  
14 that.

15 MR. SIRI: Okay. But she -- so  
16 if that -- if I'm going to do it that  
17 way, I want to make -- I want a  
18 directive that she doesn't have an  
19 opportunity to actually then opine on  
20 it. Because what's going to happen  
21 is --

22 MR. LEUNG: Counsel, I'm not  
23 going to make a preliminary ruling as  
24 to what another witness can and  
25 cannot do. I'm not going to bar them

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2 from doing that. You can make an  
3 application at the end of your  
4 presentation. If they start talking,  
5 then you can say that's  
6 inappropriate. I don't want them to  
7 talk and I'll make an application,  
8 but you can't bar them. I can't put  
9 a restriction --

10 MR. SIRI: But your barring me  
11 from asking her questions.

12 MR. LEUNG: No.

13 MR. SIRI: But you don't want  
14 to bar her from --

15 MR. LEUNG: I'm not.

16 MR. SIRI: Okay. I'm fine with  
17 -- if you want to bar me from asking  
18 questions, I will offer my proffers  
19 of proof.

20 Can I just make an objection on  
21 the record?

22 MR. LEUNG: No. No.

23 MR. SIRI: But I would like  
24 similar directives that counsel for  
25 the DOH cannot also ask questions.



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2 MR. LEUNG: Let me just put on  
3 record, I'm not barring you from  
4 asking questions. I'm barring you  
5 from asking questions that are not  
6 relevant.

7 MR. SIRI: Then go to the four  
8 points.

9 MR. LEUNG: I understand you  
10 disagree with me.

11 MR. SIRI: Yes.

12 MR. LEUNG: You think their  
13 relevant.

14 MR. SIRI: I'm just making --

15 MR. LEUNG: I --

16 MR. SIRI: I'm just making a  
17 record.

18 MR. LEUNG: I understand.

19 MR. SIRI: I'm just making a  
20 record.

21 MR. LEUNG: I'm barring you  
22 from asking questions, and I've given  
23 you a lot of leeway, that I believe  
24 is not relevant to my ultimate  
25 determination as to the facts of this

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2 case. That's what I'm barring you  
3 from. I'm not barring you summarily  
4 from asking questions because A, I  
5 don't like you or B, because --

6 MR. SIRI: And I think you did.

7 MR. LEUNG: No.

8 MR. SIRI: You seem very nice.

9 MR. LEUNG: I'm barring you  
10 because I believe the line of  
11 questioning is not relevant. Simple  
12 and that's it. Nothing personal.  
13 And to the extent that your telling  
14 me that they cannot ask questions, I  
15 don't even know what the questions  
16 are. If it's not relevant, then I'll  
17 bar them. But if it is relevant,  
18 then I'll allow it. Your telling me  
19 to put a gag order on them before  
20 they can go.

21 MR. SIRI: Yeah.

22 MR. LEUNG: What I'm telling  
23 you right now is, that you can  
24 present evidence. Any evidence you  
25 want. I'm not barring you from

1  
2 anything. But if you ask questions  
3 that are not relevant, I'm going to  
4 stop you and I've given you a lot of  
5 leeway.

6 MR. SIRI: Okay. I hope the  
7 same standard of relevance that your  
8 applying.

9 MR. LEUNG: It will.

10 MR. SIRI: It will apply to  
11 them too?

12 MR. LEUNG: It will. I  
13 guarantee it.

14 MR. SIRI: Because I can't see  
15 what possible questions can be asked.

16 MR. LEUNG: I guarantee it  
17 will. And to the extent that you  
18 believe that they asked questions  
19 that are not relevant, you object and  
20 I'll make the ruling.

21 MR. SIRI: So any questions  
22 regarding the safety or advocacy is  
23 not relevant, right?

24 MR. LEUNG: Safety or evidence.

25 MR. SIRI: Okay. This is a

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copy of the clinical trial summary by  
the FDA --

MR. LEUNG: How many pages are  
in that, counsel?

MR. SIRI: 214.

MR. LEUNG: Okay. So what are  
you giving that to me for?

MR. SIRI: This --

MR. LEUNG: So what's the  
purpose? Where's the cover letter?  
Where does it go.

MR. SIRI: Yeah. This goes  
into all four of the arguments.

MR. LEUNG: Okay.

MR. SIRI: All four.  
Everything that I'm going to give you  
right now goes into all four of those  
arguments.

MR. LEUNG: This 200 plus page  
document will be marked as  
Respondent's 3 -- I'm sorry  
Respondent's 4.

MR. SIRI: You know, do we have  
a summary?

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MR. LEUNG: Did you give me three separate documents of this or just one?

MR. SIRI: No, your Honor. Just one.

MR. LEUNG: Just one. Okay. So this is Respondent's --

MR. SIRI: 317.

MR. MERRILL: Do you have a copy for me?

MR. SIRI: You know what, I got just the relevant trials from that. I can give you a shorter version. Would you prefer that?

MR. LEUNG: Give me whatever you want, counsel.

MR. SIRI: Okay.

MR. MERRILL: Can I just ask what this is?

MR. SIRI: No. 368.

MR. LEUNG: Can you summarize what this 200 page document is?

MR. SIRI: That is the FDA Summary of the Clinical Trials relied

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2           upon to license the MMR II vaccine  
3           that the order is saying should be  
4           injected into my client.

5           MR. LEUNG: And make an  
6           argument for me. As the finder of  
7           fact, what is the -- what do you  
8           think that supports?

9           MR. SIRI: Sure. So when you  
10          look at this clinical trial, clinical  
11          trials in order to be -- and I was  
12          going to do this through the witness,  
13          but clinical trials in order to be --  
14          they need to usually have a few  
15          elements. One, they typically have a  
16          control group.

17          MR. LEUNG: Just summarize what  
18          those 200 plus pages say. You don't  
19          have to testify as to what -- what  
20          does it say?

21          MR. SIRI: What is shows is  
22          that there are only 800 or so  
23          participants in the clinical trial  
24          that's under powered, so you cannot  
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MR. LEUNG: And therefore, the MMR vaccine is dangerous? Is that what your saying?

MR. SIRI: No. I didn't say that.

MR. LEUNG: Okay.

MR. SIRI: And they looked at safety for 42 days.

MR. LEUNG: Okay.

MR. SIRI: So you couldn't find out what the long term adverse results were? And they had no control group, so you couldn't properly compare what the difference is in getting the MMR and not getting the MMR was. So they were under powered and was not -- and was only at 42 days at safety review and --

MR. LEUNG: I'm going to ask you to get to the end, therefore.

MR. SIRI: And therefore -- the therefore, it's more evidence towards the four points and I'm building the case right now, your Honor.

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MR. LEUNG: But I don't understand. Does that support the --

MR. SIRI: What it shows is that -- what it shows is that the four was licensed. It shows two things. One, you didn't know what the long term adverse reactions to this product was before it was licensed.

MR. LEUNG: Okay.

MR. SIRI: One undisputable. I don't think she would dispute, if I could ask her, because it's safe. Two, when you look at the actual -- it was eight little clinical trials and it has the adverse reactions. So I would like to submit those. So this is a summary of just taking out --

MR. LEUNG: This is a -- how many pages would you say this is here?

MR. SIRI: I don't know. 25.

MR. LEUNG: Mark this as P-4.



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MR. SIRI: This is just the relevant --

MR. MERRILL: This is part of three?

MR. LEUNG: This is all part of that. Okay. I'm sorry.

MR. SIRI: This is part of three, that's right. I wanted to --

MR. MERRILL: I think this is irrelevant.

MR. SIRI: Its irrelevant parts.

MR. LEUNG: I'm going to mark this as P-4 and P-5.

Any objections?

MR. MERRILL: I haven't seen it, but --

MR. SIRI: For completeness, I'm just fine with withdrawing this, if you just want that. That's just the relevant part.

MR. LEUNG: No. Its okay. I will take everything you have, but I would like you to summarize what this

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is. Tell me.

MR. SIRI: Let me get the document here. Take a copy, please. So now, if you look at -- so this is what the -- go to the third page 3. Okay. On the third page this is a summary.

MR. LEUNG: Are you following along? Do you have this?

MR. MERRILL: No, your Honor.

MR. SIRI: Do you have a copy? Here you go (handing).

MR. LEUNG: This is Petitioner's 4. And Petitioner's 4 is the Department of Health and Education and Welfare, date stamped September 15, 1978. Go ahead.

MR. SIRI: Okay. Let me get the FOIL request. I just want to make sure nobody -- this is the clinical trial that licensed this product by the FDA. If there is any objection to that, I also have the FOIL response.

1  
2 MR. LEUNG: Counsel, there is  
3 no objection.

4 What I want you to do is just  
5 get the summary of what it is.

6 MR. SIRI: Third page. If you  
7 go to the third page you can see that  
8 it's the summary of the clinical  
9 trials. Okay. And you can see there  
10 are one, two, three, four, five, six,  
11 seven --- there are eight.

12 Basically, there are eight studies  
13 and you see the total participants is  
14 834 individuals.

15 Do you see that?

16 MR. LEUNG: I do.

17 MR. SIRI: Okay. So that's the  
18 total number of individuals that  
19 received MMR to license this product.  
20 Okay. And if you look at the  
21 Summary, there is no control group  
22 that was used. There's no placebo  
23 control group. So they weren't  
24 comparing it to anything.

25 Please turn to the next page

1  
2 and let's look at the adverse  
3 reactions from the MMR vaccines in  
4 this trial. Please turn now to upper  
5 respiratory illness.

6 Do you see that?

7 MR. LEUNG: Yes.

8 MR. SIRI: Okay. Do you see in  
9 zero to four days? 60 --  
10 39.6 percent of the children in the  
11 trial had an upper respiratory  
12 illness after getting MMR between  
13 five and 12 days. 38.5 percent,  
14 those are very significant numbers of  
15 children that had respiratory illness  
16 in this trial. If you go down and  
17 look at gastrointestinal illness.  
18 Similarly you can see the number of  
19 children that had gastrointestinal  
20 illness following the MMR vaccine.  
21 One of the things that their  
22 complaining about in the order is  
23 that the measles can cause pneumonia  
24 and diarrhea.

25 MR. LEUNG: Mr. Siri, can I

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stop you there?

MR. SIRI: Yeah.

MR. LEUNG: Does the child in question have any of these adverse reactions?

MR. SIRI: He hadn't received the MMR vaccine, your Honor.

MR. LEUNG: Okay.

MR. SIRI: Okay. So how can he? He hasn't received it yet.

MR. LEUNG: Okay.

MR. SIRI: He could.

MR. LEUNG: Does he have a doctor who can testify --

MR. SIRI: There's a doctor right here, your Honor.

MR. LEUNG: No. No. No. Does the child have a doctor that can attest to the fact that this child taking this vaccine will be detrimental to his health?

MR. SIRI: There's an obligation for him to go do that.

MR. LEUNG: Well, I'm trying --

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MR. SIRI: I mean --

MR. LEUNG: There's an obligation in the sense that --

MR. SIRI: There's a --

MR. LEUNG: There's an obligation in the sense that your trying the summons alleging a failure to immunize. And the defense, the allegations says that he wasn't immunized as required by law. Didn't have proper test showing that he had proper immunity or any document showing that there was a proper exemption.

MR. SIRI: Yeah. I'm showing that it's not medically appropriate to give this child -- when you look at the clinic trials, when you look at the post-licensure, safety studies conducted by the CDC.

MR. LEUNG: So your saying that the summons should not -- this is an argument in cubby hole -- that it should not have been issued?

1  
2 MR. SIRI: I'm saying that even  
3 the summons on its face says it  
4 should not be medically appropriate.  
5 Your saying -- adding the requirement  
6 that a doctor issue it. I don't know  
7 why that's required --

8 MR. LEUNG: Okay.

9 MR. SIRI: -- all of a sudden.

10 MR. LEUNG: So your saying it's  
11 not medically -- so your saying that  
12 it supports the idea?

13 MR. SIRI: The four buckets.

14 MR. LEUNG: Okay.

15 MR. SIRI: It's unjust, the  
16 risk outweigh the benefits, it's not  
17 medically appropriate. Right. You  
18 know that part.

19 MR. LEUNG: I have it.

20 MR. SIRI: You have it.

21 MR. LEUNG: Anything else?

22 MR. SIRI: You will continue --  
23 if you go through it, you will see  
24 all of that for all of these. Okay.

25 MR. LEUNG: Okay. Anything

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else in terms of that document?

MR. SIRI: Well, here's the thing, I'd like it to be accepted that, you know, I made a representation, but it's just counsel saying it. The doctor would have said it. What is a properly powered study, what is a placebo control, but I didn't have a chance to do that. So I'm going to leave it then. Obviously, she shouldn't now have a chance to now go and say stuff afterwards, after the fact, now that she's given a preview of the argument. She should have had an opportunity to say it beforehand when she would have, you know, not given a preview of the arguments, when truth was original to her. It's no longer original to her.

MR. LEUNG: I'm hearing arguments and testimony --

MR. SIRI: Because we're not there yet. Now, when the 1986 Act



1  
2 was passed -- I'm going to read two  
3 sentences from two provisions of law  
4 into the record. Okay. One is the  
5 1980 -- the national childhood  
6 vaccine was codified at 42USC300AA 1  
7 through 34. I'm going to read you  
8 one sentence from that Act.

9 It says, "No person may bring a civil  
10 action for damages in the amount  
11 greater than \$1,000 or an unspecified  
12 amount against a vaccine  
13 administrator or manufacturer in a  
14 state of federal court for damages  
15 arising from a vaccine related  
16 injury. That was in 1986. The  
17 reason that was passed was because of  
18 all the harm being caused with  
19 vaccines at that time. There was  
20 only one manufacturer left -- MMR,  
21 DTaP, and Polio.

22 Those were the only three vaccines at  
23 the time. They were going bust. The  
24 U.S. Supreme Court said, the amount  
25 of damages -- the amount of liability

1  
2 was 200 times the amount of revenue  
3 from the DTaP vaccine at that time  
4 and MMR was having similar problems.  
5 So instead of letting them make a  
6 better safer vaccine, what Congress  
7 did, was that they gave them immunity  
8 from liability for their injuries.  
9 Okay.

10 And the U.S. Supreme Court then said  
11 -- just so you know, reading one  
12 sentence. "We hold that the national  
13 childhood and vaccine preempts all  
14 design claims against vaccine  
15 manufacturers. Both by plaintiff who  
16 seek compensation for injury, death  
17 cause of vaccine side effects." And  
18 so, that is what the 1986 Act did.

19 And what it did is it removed  
20 the market forces that drive action  
21 seeking. Instead it made health  
22 departments responsible for vaccine  
23 safety. They sit and not choose --  
24 actually, the Federal Health  
25 Authority -- the CDC does. Now,

1  
2 after the nineteen -- when the 1986  
3 Act was passed, one of the things it  
4 did, it actually told HHS, you need  
5 to look at whether some of these  
6 vaccines cause certain injuries.  
7 HHS then in turn went and hired the  
8 Institute of Medicine to conduct that  
9 review. Okay. In that review -- can  
10 I get the Exhibit 39, please?  
11 The IOM issued its first report in  
12 1991. All right. In that report it  
13 looked at four commonly claimed  
14 serious injuries from the Rubella  
15 component of this vaccine. Okay.  
16 And what it found was that, two of  
17 those common reported conditions are  
18 caused by the vaccine. All right.  
19 The Rubella component of the vaccine.  
20 One of those, okay --

21 MR. LEUNG: I'm going to mark  
22 this was Respondent's 5, The Adverse  
23 Effects of the Rubella Vaccine and  
24 Pertussis.

25 MR. SIRI: Pertussis.

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MR. LEUNG: Pertussis.

MR. SIRI: So if you turn to the second to last page, please.

MR. LEUNG: Any objection to R-5 being admitted?

MR. MERRILL: Sure.

MR. LEUNG: No objection.

MR. SIRI: It's the Institute of Medicine, I mean -- so you go to the second to last page, which you can see this is the Summary of Conclusions. Okay. So under the Rubella vaccine, which is in here RA273, made with human diploid cells. Diploid cells from the body of fetal tissue. It says, "Evidence insufficient to indicate." So they didn't -- so there was no evidence one way or the other whether or not it causes radionucleotide and other neuropath -- neuropathies thrombocytopenic purpura. Okay. But it was -- evidence was consistent with the causal or indicated the

1  
2 causal with chronic arthritis and  
3 acute arthritis. Okay. The next  
4 report issued by the IOM was then in  
5 1994. That's Exhibit 314. Okay.  
6 And what the IOM this time looked at,  
7 they looked at the Rubella component.  
8 As you know, the MMR stands for  
9 Measles Mumps, Rubella.  
10 So they looked at the Rubella  
11 component in the 1991 report. In the  
12 1994 report, they looked at the  
13 measles mumps and the measles  
14 component. And what they did in that  
15 report, they looked at the 22 most  
16 commonly claimed serious adverse  
17 reactions after that vaccine. And  
18 what they found in that report is --

19 MR. LEUNG: Respondent's 6 is  
20 what counsel is going to read from.  
21 If there is any objection by the  
22 Health Department, let me know.

23 MR. MERRILL: No.

24 MR. LEUNG: No objection. It's  
25 admitted. Go ahead.

1  
2 MR. SIRI: Okay. So if you go  
3 to that one -- and if you go to the  
4 fourth -- if you go to the fourth to  
5 last page, this is the Summary of the  
6 Causality Table. Okay. And so, here  
7 they said, okay. These are the  
8 conditions we know we believe are  
9 caused by it. These are the ones  
10 that we believe -- are the ones that  
11 we believe are not caused by it and  
12 these are the ones that we don't  
13 know.

14 And what your going to find is, and  
15 it's very troubling, is that for  
16 eighteen of them, the IOM said you  
17 didn't do the science. We don't  
18 know. Even though they we're  
19 commonly reported, we don't know  
20 whether or not the measles or mumps  
21 component cause encephalopathy, which  
22 by the way, they later found out that  
23 it did. That's brain damage, as you  
24 know. Subacute scoliois or aseptic  
25 meningitis and sterility or optic

1  
2 neuritis. Right. Damages to the  
3 nerves and the eyes. Right.

4 Do you see that under mumps -- under  
5 measles and mumps on the fourth to  
6 last page. Fourth to last page. Can  
7 I lean over, your Honor to --

8 MR. LEUNG: Yep.

9 MR. SIRI: I'm going to help  
10 you out there. Is that okay? I  
11 don't want to get in your space too  
12 much.

13 So here's the measles and the mumps,  
14 a Category 1, is no evidence bearing.  
15 Category 2, the evidence inadequate  
16 to accept or reject. And you can see  
17 under measles and mumps, the science  
18 wasn't conducted to figure out were  
19 these things or were they not caused  
20 by the measles and the mumps.

21 MR. LEUNG: Okay.

22 MR. SIRI: Okay.

23 THE COURT: Gotcha.

24 MR. SIRI: Now, if you go to  
25 the next page, you can also see the

1  
2 evidence favors rejection. So far  
3 there is nothing that was rejected  
4 and the favor did accept causation  
5 for anaphylaxis for the measles  
6 vaccine.

7 MR. LEUNG: Okay. What else do  
8 you have here?

9 MR. SIRI: Okay. And then  
10 there's another page that was also  
11 accepted for thrombocytopenia, as  
12 well as, death. Death can result  
13 from the measles vaccine, according  
14 to the Institute of Medicine. Okay.  
15 Now, what the IOM said in this report  
16 was -- reading one sentence. "The  
17 lack of adequate data regarding many  
18 of the adverse events under study was  
19 a major concern to the committee."  
20 They said, Hey, HHS. Do your job.  
21 You got to do studies to find out.  
22 Does this vaccine -- does it or does  
23 it not cause it? But you know what  
24 HHS answer is. HHS also responded to  
25 Vaccine Court, if it does any study



1  
2 that shows that the vaccine causes  
3 harm, what will happen is that it  
4 will be used against it in Vaccine  
5 Court. So under the 1986 Act, you  
6 can sue for a vaccine injury, but the  
7 Respondent is the Department of  
8 Health and Human Services.

9 MR. LEUNG: Mr. Siri --

10 MR. SIRI: I'm moving on.

11 MR. LEUNG: Before we move on.  
12 How many documents do you have  
13 approximately?

14 MR. SIRI: I don't know.

15 MR. LEUNG: Just give me an  
16 approximate.

17 MR. SIRI: Maybe a dozen, two.

18 MR. LEUNG: Okay. I'm going to  
19 ask --

20 MR. SIRI: I'm going to go  
21 quickly.

22 MR. LEUNG: No. I'm going to  
23 ask you to mark them from R-7 -- mark  
24 them all R-7 upwards. And then I'm  
25 going to ask you to give them to me

1  
2 in mass and I'm going to ask you to  
3 read the title of it. And I'm going  
4 to -- what I don't want you to do is  
5 right now -- I'm allowing you to make  
6 a record.

7 MR. SIRI: 43.

8 MR. LEUNG: But I'm going to  
9 make my determination. And my  
10 instinct right now, is that this is  
11 not relevant to the three issues of  
12 whether or not the child was  
13 vaccinated, whether or not he had  
14 tested immunity, and whether or not  
15 there was a medical exemption. So  
16 I'm going to ask you to mark them, if  
17 you can. R-7 -- Starting with R-7.

18 MR. SIRI: Sure. R-7. So this  
19 is a report from 2012. This looked  
20 at 31 commonly claimed injuries from  
21 the MMR. And R-7 --

22 MR. LEUNG: Yes.

23 MR. SIRI: And this one found  
24 that a significant amount of them  
25 were caused by the MMR, but 23 of

1  
2           them they have no idea. Again, IOM  
3           said, Hey, why aren't you doing the  
4           science that's needed? Exhibit 48.

5           MR. LEUNG: Is your copy --

6           MR. SIRI: Wait a second. Wait  
7           a second. I'm sorry. Is that 43?  
8           Let me get 48. So R-8 -- so the R-8  
9           is an excerpt from the 1994 IOM  
10          Report in which it says, "The  
11          Committee was able to identify little  
12          information pertaining to why most  
13          individuals reacted adversely to  
14          vaccines when most do not." Okay.  
15          And so, what it did was say, Hey, you  
16          got to do the studies for which  
17          children are going to be susceptible  
18          to injury.  
19          Okay. And this is or -- this is  
20          Exhibit 49. And so, this is, you  
21          know, 2012, over a dozen years later.  
22          The IOM, again, looked at this issue  
23          and it said, both epidemiological  
24          mechanistic research suggest the most  
25          individuals who experience an adverse

1  
2 reaction of a preexisting  
3 susceptibility -- these  
4 predispositions can exist for a  
5 number of reasons. Genetic variance,  
6 okay. Environmental exposures,  
7 behavior, renal illness,  
8 environmental stages. All of which  
9 can interact to suggest some of these  
10 are specific to the particular  
11 vaccine, while others may not be.  
12 Some of these predispositions maybe  
13 detectible prior to administration of  
14 vaccines. Much more work remains to  
15 be elucidate and to develop  
16 strategies to document genealogical  
17 mechanisms that lead to adverse  
18 affects in individual patients. What  
19 they're saying is, vaccines, MMR can  
20 cause -- we can't identify which  
21 children will be injured, but you  
22 haven't done the science to figure  
23 that out. Let me get Exhibit 225.  
24 Okay. I would like to ask -- I would  
25 like to ask whether or not they know

1  
2 the child? If the child is pre  
3 genetic predisposition, that would  
4 render them susceptible to an adverse  
5 action of MMR. But I see where your  
6 rejection stands because, for  
7 example, here is -- here is a study  
8 that identifies specific genetic  
9 markers for when a child will have a  
10 seizure -- will have seizures after  
11 the MMR vaccine.

12 This is conducted by a reputable  
13 purviewed science mainstream journal  
14 by institutions.

15 MR. LEUNG: Counsel, I  
16 appreciate you commenting.

17 MR. SIRI: Yep.

18 MR. LEUNG: But move along.

19 MR. SIRI: So this is -- what  
20 is this R-10?

21 MR. LEUNG: I've given you an  
22 opportunity to submit the evidence  
23 and to comment on what it says.

24 MR. SIRI: I mean, I'm doing it  
25 in this fashion, your Honor. But my

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objection stands, that this is not --

MR. LEUNG: I understand your objection.

MR. SIRI: -- appropriate for me to make a proper record.

MR. LEUNG: I understand that. I'm trying to balance the needs of the tribunal, the opportunity to give you a full and fair hearing, and be respectful of the opportunity to expound as much as you can, but I have to use my discretion and limit it as much as I can.

MR. SIRI: Okay.

MR. LEUNG: Your going to move onto R-11, while I let you talk and tell me what this is.

MR. SIRI: So R-11 is -- this is an example of a compensation of \$100 million that was given by the Vaccine Corp for an injury after the MMR vaccine.

MR. LEUNG: Thank you. Can we move onto R-12.

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MR. SIRI: The next one requires me to ask questions. It regards antibodies and what antibodies does in the body.

MR. LEUNG: Tell me what R-12 says first.

MR. SIRI: What I just gave you?

MR. LEUNG: No. R-12, the thing that's coming.

MR. SIRI: Not everything I have has exhibits. I'm only giving you exhibits that I have, but I have a lot of -- these are just questions to elicit evidence from the witness. Most of what I was going to do today regarding gaining evidence. In fact, I would think that would be advantageous for them because it is their witness.

MR. LEUNG: No. What I'm doing is, I'm allowing you to produce whatever evidence you want. I'm giving you a sentence to comment on

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what the evidence is.

MR. SIRI: Okay.

MR. LEUNG: And I'm admitting  
it without objection. Okay. So I'm  
giving you every opportunity to put  
in hundreds of pages of documents.  
So can we move onto R-12?

MR. SIRI: Sure.

MR. LEUNG: Move onto R-12.

MR. SIRI: So what this is,  
this is an ingredient list for the  
vaccine, which your going to find is  
-- what's in this vial is -- the  
virus has to grow on something.  
Okay. And they have a growth medium  
that they need to grow on so each  
component -- so the measles, Mumps,  
Rubella are either grown on the  
embryo culture human diploid  
fibroblast fetal bovine serum. And  
actually most of what you have in  
this vial is the actual growth medium  
that it's grown on. So you have  
components from chickens, from cows,



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as well as, human diploid lung fibroblast.

Those are from the cultured cell line of an aborted fetus. So they take an aborted fetus, they take the lung fibroblast, they culture it. It only -- so it dies after generation. And what they do is, they grow the Rubella virus on it.

This vial contains millions of -- millions of pieces of human DNA in it. All broken down below 500 base pairs. Part of the manufacturing process. The whole point of this vaccine is ordered to create antibodies.

If your injecting it into the body, not only with a viral component, but the antigens from the human bovine and chicken components in particular.

The human components, it has the ability to create some various adverse events relating to that.

MR. LEUNG: Understood. We're

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going to move onto R-15.

MR. SIRI: You have Exhibit 60?  
So you'll see on the third page  
there's MMR. So Exhibit 307 and  
Exhibit 341 and 308, these all  
document the use of the aborted fetal  
tissue. And that it is -- and that  
the -- and that the subculture are  
still in this product that your  
looking at right now --

MR. LEUNG: Okay.

MR. SIRI: -- that they want to  
inject into my client's body. And  
they --

MR. LEUNG: This is the  
document --

MR. SIRI: This is the -- so  
you can match up WI38 and MR15C5.  
Those are the ingredients on the  
exhibit. I don't know what it was  
market, the ingredients list, but the  
vaccine you can match up --

MR. LEUNG: I'm going to mark  
this as 13.

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MR. SIRI: Okay. And then  
Exhibit 341 says that --

MR. LEUNG: This is 13. And is  
that 14 for me?

MR. SIRI: Exhibit 341?

MR. LEUNG: Yes.

MR. SIRI: And so, when -- you  
know, when they first licensed this  
vaccine, they didn't understand the  
concept of insertion Genesis. That  
that DNA below 500 base --

MR. LEUNG: Can I ask you  
something?

MR. SIRI: Yes.

MR. LEUNG: And I'm going to  
ask you with all due respect.  
Without like in a professor type  
thing, educating me, Just tell me in  
summary what it says. I don't need  
the background.

MR. SIRI: Right.

MR. LEUNG: Just tell me what  
it purports to.

MR. SIRI: I'm trying my best.

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MR. LEUNG: For instance, R-15.

MR. SIRI: I'm trying my best.

MR. LEUNG: Or whatever you  
just said.

MR. SIRI: I'm trying my best  
to give you what your asking for.

MR. LEUNG: I understand.

MR. SIRI: Despite the fact  
that it is missing critical pieces to  
the connected tissue.

MR. LEUNG: I understand.

MR. SIRI: So I'm not sure what  
your, you know --

MR. LEUNG: What does R-14 tell  
me?

MR. SIRI: You know, so what --  
so R-14 and R15, those are the  
product descriptions for what's on  
the ingredients list.

MR. LEUNG: That's all I need.

MR. SIRI: That's what I was  
telling you.

MR. LEUNG: Thank you.

MR. SIRI: And then R-15 --

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MR. LEUNG: Then we have R-16.

MR. SIRI: Exhibit 341. I don't know what -- R-15. Your up to --

MR. LEUNG: This one that we have, R-15.

MR. SIRI: Yeah. So that's, you know, that's a history of the use of the tissue. Can I get Exhibit 70, please.

This was one of the studies. This was done with, you know, 80 aborted fetuses in order to create the Rubella component. Where they take the fetus and make them into three centimeter cubes --

MR. LEUNG: I'm going to mark -- that was R-16.

MR. SIRI: -- and they culture it to see if it's good for vaccine production. And then let me just skip ahead here to Exhibit 321. And so, Exhibit 321 is -- this is somebody who worked for a major

1  
2 genetics company in Silicone Valley.  
3 And so, she's got a letter regarding  
4 the use of fetal DNA in the MMR  
5 vaccine and issues related thereto.  
6 Can I get Exhibit 267? Now, you  
7 know, measles have been around since  
8 the beginning of reporting history as  
9 I understand. It's something that's  
10 actually part of nature. God,  
11 whatever one wants to call it. Okay.  
12 But the MMR is not -- The MMR is a  
13 manmade product. Okay.  
14 It's something that only comes about  
15 because of man's creation. And so,  
16 you know, there might have been a  
17 reason that the measles vaccine is  
18 part of the natural world as we know  
19 it. What this is, is handing you a  
20 prospect study of 100,000 individuals  
21 in Japan that were followed for  
22 22 years by the Major Health  
23 Authority. And what they found is,  
24 that those that had gotten measles  
25 and mumps -- okay.

1  
2 Those that got measles and mumps,  
3 95 percent of them were still alive.  
4 They didn't die from cardio vascular  
5 disease after 22 years. But of those  
6 that didn't have measles and mumps,  
7 okay, only 85 percent of them  
8 survived. That's a huge  
9 differential. And that is from major  
10 purview study by major institutions.  
11 What it shows is that getting measles  
12 and mumps, potentially -- let me get  
13 the next Exhibit 39. Getting measles  
14 and mumps, the study indicates it  
15 actually protects you from a cardio  
16 vascular death. Cardio vascular  
17 disease killed 6,000 Americans last  
18 year. The measles killed 400  
19 Americans a year in a few years  
20 before the measles vaccine was first  
21 licensed in 1963.  
22 Okay. So if the measles -- in  
23 eliminating measles cause five  
24 percent of cardio vascular deaths.  
25 That far outnumber the deaths from

1  
2 actual measles. You have 309? That  
3 is the -- that's the number of deaths  
4 from heart disease. And that  
5 study -- as far as that study remains  
6 un-rebutted in the medical  
7 literature, there's nothing that  
8 contradicts that finding.

9 MR. LEUNG: That's R-15 -- 19,  
10 counsel is referring to.

11 MR. SIRI: Yes. Now, there's  
12 also numerous -- numerous studies  
13 that show that those who had measles  
14 have far less rates of various  
15 cancers. Can I please have  
16 Exhibit 265? Okay.  
17 This is a study out of the  
18 International Agency for Research on  
19 Cancer in Leon France. Okay. And  
20 what they found, that those who had  
21 measles -- those who did not have  
22 measles had a 66 percent increased  
23 rate of Non-Hodgkin's lymphoma and a  
24 233 percent increase rate of  
25 Hodgkin's lymphoma.



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MR. LEUNG: That's R-20.

MR. SIRI: That's R-20. And that one also remains un-rebutted in the medical literature, as far as we are aware. Can I get exhibits 310, 311, and 330. These are all studies constantly showing purview science, that those who have measles have far less rates of various cancer, including ovarian cancers. And Exhibit 335.

And I'm also going to provide you the number of people that died from Non-Hodgkin's lymphoma. That's 20,000 people last year. A percentage of that relates to people not getting measles. You can just do the math. 400 deaths for measles in the years before 1963, that's according to the CDC, verses how many people have died because you've eliminated measles and people who want to exercise their right not get this vaccine.

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MR. LEUNG: That's R-21.

MR. SIRI: Okay.

MR. LEUNG: Admitted.

MR. SIRI: Which one are you --

MR. LEUNG: Infectious  
childhood diseases and history of  
cancer patients and match control --

MR. SIRI: So one of those  
actually was about ovarian cancer  
kills 13,000 people a year in the  
United States. It shows that having  
measles having half the risk of  
ovarian cancer.

MR. LEUNG: R-22 appears to be  
a --

MR. SIRI: I just want to be  
very clear for the record.

MR. LEUNG: Go ahead.

MR. SIRI: I'm not testifying  
today. I am telling you these are  
documents, and you know, the evidence  
testifies.

MR. LEUNG: Exactly.

MR. SIRI: So these documents

1  
2 speak -- meaning that I'm trying to  
3 fill in the gaps for you. I'm not a  
4 witness. I was intending to create  
5 the connective tissue with their own  
6 witness, but I am not --

7 MR. LEUNG: Well, let me just  
8 say something. These are both  
9 hearings and attorney statements.  
10 When you come in, it is testimony to  
11 the extent that your introducing  
12 these documents. And you can testify  
13 in place of your client.

14 MR. SIRI: Okay.

15 MR. LEUNG: You can testify in  
16 place of the client's doctor. You  
17 can testify -- triple hearsay is  
18 permitted. Whatever you need to say,  
19 I'm taking into consideration.  
20 Everything is testimony. Okay.

21 MR. SIRI: Triple hearsay.

22 MR. LEUNG: Triple hearsay.

23 MR. SIRI: What about  
24 quadruple?

25 MR. LEUNG: Everything. Very

1  
2 informal. R-23 is admitted. R-24 is  
3 admitted. Everything from R-7 upward  
4 that we have admitted. We're now up  
5 to R-24 been admitted without  
6 objection.

7 MR. SIRI: Let me just confirm  
8 that we did -- we did all of these.  
9 This is -- your being handed a survey  
10 from the Department of Healthcare and  
11 Technology University of British  
12 Columbia. Again, documenting  
13 differentials --

14 MR. LEUNG: R-25 is admitted.

15 MR. SIRI: -- between those who  
16 have had measles and those who have  
17 not had measles.

18 MR. LEUNG: Is this the last of  
19 the documents, counsel?

20 MR. SIRI: Nope. 312 is --  
21 that gives you the number of deaths  
22 from ovarian cancer per year. So you  
23 can have a comparative study. There  
24 are various -- I don't know how to do  
25 this? But basically the doctor can

1  
2 explain this, but we're not going to  
3 do that. Essentially, the bottom  
4 line is -- I'll just leave it alone.  
5 Let me get --

6 MR. LEUNG: R-26 is admitted.

7 MR. SIRI: -- 329. These  
8 three. Okay. So these are studies  
9 that show that children who have had  
10 measles have far less allergies and  
11 atopic diseases. Atopic diseases are  
12 things like, asthma. It's when  
13 you're sensitized to something in the  
14 environment. So children that have  
15 had that have had measles have far  
16 less --

17 MR. LEUNG: That's R-27. It's  
18 admitted.

19 MR. SIRI: -- of these  
20 conditions. There are three of  
21 those. 329, 336, and -- 329 and 336.  
22 Just do those two. We don't need to  
23 use the other one. Two is enough.  
24 And then Exhibit 331.  
25 331 is a study that also looked at

1  
2 the Parkinson rate in adulthood in  
3 those who have had measles and those  
4 who don't. Those who have had  
5 measles half the rate of Parkinson's  
6 disease.

7 MR. LEUNG: Okay.

8 MR. SIRI: You know, when you  
9 look at the world, my clients believe  
10 that God created the world. That  
11 there is a divine creator. There  
12 might have been a reason that God  
13 created the world the way he did.  
14 They want to exist in this world the  
15 way God created it. I think all of  
16 these purviewed science that -- I  
17 don't know any studies. We're not  
18 aware of any studies that rebut these  
19 findings. Hence, this is the best  
20 available evidence of what --

21 MR. LEUNG: R-29 is admitted.

22 MR. SIRI: -- supports that on  
23 the four prongs that we talked about.  
24 Fairness, justice, medically  
25 appropriate -- is it medically

1  
2 appropriate to increase a child's  
3 risk of cancer, atopic disease, heart  
4 disease, in order to prevent them  
5 from having what's typically been  
6 considered a mild childhood illness.

7 MR. LEUNG: Is this the end of  
8 the documents?

9 MR. SIRI: Almost. So  
10 Exhibit 20 -- let me get Exhibit 20.  
11 So the Exhibit 20, is the package  
12 insert for MMR. The MMR vaccine  
13 itself. So this is from the  
14 manufacturer. You can see in there  
15 despite millions of pieces of DNA,  
16 its never been evaluated for whether  
17 it can mutate genes.

18 MR. LEUNG: Exhibit R-30  
19 admitted.

20 MR. SIRI: Let me get  
21 Exhibit 313. This is a study out of  
22 Canada from their health authorities.  
23 And what they did is, that they  
24 tracked what happens within two weeks  
25 of getting MMR. How many kids went

1  
2 to the emergency room that wouldn't  
3 have otherwise went. One in 168  
4 children ended up in the emergency  
5 room, according to the Canada health  
6 researchers, that wouldn't have  
7 otherwise ended up there because they  
8 received the MMR vaccines.

9 A pretty recent study. I'm still  
10 waiting for an HHS response on that  
11 one. It's quite a concerning  
12 finding, but obviously that's, you  
13 know, an issue in Vaccine Court.

14 Because you know, my firm does  
15 vaccine injury cases.

16 And Vaccine Court, we have cases from  
17 CDC or -- if it shows that the  
18 vaccine causes harm, they're going to  
19 be liable because they're the  
20 Respondent in the vaccine injury  
21 compensation program. It's part of  
22 the Federal Court of Claims. You can  
23 go to the Federal Court of Claims  
24 website anytime. Click on vaccine  
25 claim and you can read all about the



1  
2 Vaccine Injury Compensation Program  
3 down in Washington, D.C. That's  
4 administered in the Federal Court of  
5 Claims and specialized program, but  
6 there's no discovery.

7 And you have to give all your  
8 evidence and the Government is  
9 defended by the law firm called the  
10 Department of Justice. Just like  
11 there are government attorneys here  
12 defending vaccines. There are  
13 government attorneys defending it on  
14 the federal level too. Did we do  
15 exhibit -- where are we at? Okay.  
16 We did 313. Okay.

17 You know in Exhibit 20, just point  
18 out, that it has a long list of  
19 adverse reactions. I'm just going to  
20 read 21CFR. It's one sentence.  
21 201.57C7, and what the code of  
22 federal regulations provides is that  
23 on the package insert, despite  
24 popular belief, the only adverse  
25 reactions that are supposed to be

1  
2 listed that are postmarketing are,  
3 "Only those adverse events for which  
4 there are some basis to believe that  
5 there is a causal relationship  
6 between the drug and the occurrence  
7 of the adverse event."

8 That's the Code of Federal  
9 Regulations. When you see adverse  
10 events on the MMR package insert, the  
11 only reason it's there is because the  
12 manufacturer had a basis that they  
13 are causally related, but they're not  
14 liable. They pop it on there and  
15 then who knows what their evidence is  
16 because it can't be discovered.

17 MR. LEUNG: Are you done with  
18 the documents, counsel?

19 MR. SIRI: 22 and 21. These  
20 are examples of Merck amending their  
21 package insert to add transverse  
22 myelitis in 2014. And another, I  
23 think, serious injury in 2017 -- of  
24 course getting discovery as to the  
25 evidence that's supported that you

1  
2 can't get because you can't sue them  
3 for the injuries. You can get, you  
4 know, hundreds of millions of dollars  
5 for robo violations, but you can't  
6 get a dollar pretty much out of Merck  
7 unless they commit fraud for if a  
8 child dies from an MMR vaccine.  
9 Let me get exhibit number 53. So  
10 there's actually one study that I'm  
11 aware of that looked at the health  
12 outcome of children that are  
13 vaccinated and unvaccinated children  
14 in the United States. It was a small  
15 study. It could be far better, but  
16 it's the only one. It's Exhibit 53.  
17 And what it found was, there's lots  
18 of issues and concerns that the IOM  
19 looked at that are on the package  
20 insert. And that study found it was  
21 out of the School of Public Health -  
22 Jackson University, were increased.  
23 You know, the question is one of, Are  
24 you avoiding a limited infection for  
25 a chronic health issue?

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MR. LEUNG: Counsel.

MR. SIRI: Okay. Moving on.  
Moving on.

MR. LEUNG: Counsel, I'm going to ask you to document -- how many more do you have.

MR. SIRI: Seven --

MR. LEUNG: How many more do you have, approximately?

MR. SIRI: I've only got four more pages. So we went through -- we're on page 19. I got four more pages. So that much (indicating). Okay. Exhibit -- what's was the one that we just did? Exhibit 16?

MR. LEUNG: 34.

MR. SIRI: We just did 34?  
We're on 53.

MR. LEUNG: We just did this one (indicating).

MR. SIRI: We just did that.  
Oh, okay. So you know this is a report by the Congress with regard to, you know, ACIP that we talked

1  
2 about earlier. ACIP makes the  
3 vaccine recommendations, including  
4 adding MMR. And what Congress found  
5 is that, most of those people who  
6 stood on that ACIP Board, have  
7 conflicts with pharmaceutical  
8 companies. You can read it. It's a  
9 wonderful interesting read.

10 Exhibit 238, please. And what you  
11 can find here is that the CDC vaccine  
12 schedule from 2000, which is the same  
13 year that this report was issued, it  
14 was on the schedule at that point.

15 Can I get Exhibit 16 as well -- oh,  
16 we already did 16. Okay. Let's move  
17 onto to Exhibit 272. So, you know,  
18 understanding that pharmaceutical  
19 companies -- I think I'm done in like  
20 five, 10 minutes total.

21 MR. LEUNG: What I'm going to  
22 do, counsel, is -- I'm going to let  
23 you introduce whatever document you  
24 have and I'm going to let the title  
25 of those documents --

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MR. SIRI: I'm going as fast as I can.

MR. LEUNG: No. No. No. You can summarize what's coming.

MR. SIRI: I am -- I'm not slowing this down.

MR. LEUNG: No. No.

MR. SIRI: The only slowing down what's happening is --

MR. LEUNG: Tell me the titles of the documents that's coming in.

MR. SIRI: Okay. This is exhibit -- this is the mandate for a safer child vaccine, which is apart of the 1986 Act codified in the United States Code. It's what under pins vaccines in this country. You can see the title right there. What it does is that it requires -- and you can see these are titles. It has a general rule. It has a task force. It has a report that is submitted every two years to Congress in which HHS documents how they made vaccines

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safer.

Okay. Exhibit 273, you might just leave this out. Don't refer to it as we go through the next two because it is going to be irrelevant.

Essentially, because vaccine manufacturers have immunity, have liability, this is what undermines the activity. HHS is assuring their safety. You can see it under Provision 1.

And so, every year HHS submits a report to Congress. This is a stipulation from Federal Court. And what you'll find is that these reports required by Section C, every year, have never been submitted a single time. This was a stipulated order in Federal showing that they actually do that. And that's a simple requirement. Just submit a report.

Exhibit 274, please. And then for the task force, if I recall under the

1  
2 title. Okay. This is the task force  
3 for -- this document right here --  
4 The Task Force For Safer Childhood  
5 Vaccines okay. This task force is  
6 supposed to make recommendations on  
7 how to make vaccines safer to the  
8 Secretary of HHS. And this is a  
9 response to a FOIL request. And  
10 you'll see that task force was  
11 dissolved in 1998.

12 It doesn't even exist. They're  
13 not doing even the simplest request  
14 to make sure that the MMR vaccine is  
15 safe. Let me get Exhibit 318 and  
16 319. Okay. This is a group of  
17 physicians that have compiled a  
18 summary of the risks of the MMR  
19 vaccine and so forth. You know,  
20 these are physicians. So they're  
21 writing it from the perspective of  
22 physicians.

23 MR. LEUNG: Counsel.

24 MR. SIRI: And those positions  
25 are 319 and 318.



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MR. LEUNG: Counsel, I'm going to stop you right there. I'm going to stop you right there.

MR. SIRI: Yeah.

MR. LEUNG: Let me stop you.

MR. SIRI: Sure.

MR. LEUNG: Let me put on the record, we've been on the record --

MR. SIRI: Deal with 146 --

MR. LEUNG: Hold on, counsel. We've been on the record two hours and 40 minutes now. You have documents to tend to show that the -- we have admitted 39 documents consisting of probably over 600 pages. Counsel, stop.

MR. SIRI: Yep.

MR. LEUNG: Stop. Okay. To the extent that you have further documents to support your proposition that this summons should not have been issued and it was unjust to issue it, I'm going to allow you to admit that and mark it. The next one

1  
2 to be 40. And I'm going to let you  
3 mark it and your assistant mark it  
4 from 40 onward. When it's marked and  
5 everything is ready to be admitted.  
6 Let me know.

7 Right now we're going to --  
8 I'm going to allow both sides to go  
9 to the substance. Is there anything  
10 that you want to argue in terms of  
11 summations? Because I'm moving to  
12 that right now. Is there anything  
13 else after you present this exhibit?  
14 Is there other testimony you want to  
15 provide that's relevant to the issues  
16 in the summons.

17 MR. SIRI: Yeah. Can I just  
18 give direction as to what exhibits  
19 are to be marked, please.

20 MR. LEUNG: Sure.

21 MR. SIRI: So I'm going to  
22 circle the ones that are left to be  
23 marked.

24 MR. LEUNG: Just hold it until  
25 you're ready and then I'm going to

1  
2 read it in all mass. Thank you. The  
3 documents that have been admitted so  
4 far all the way up to Respondent's  
5 39.

6 Department of Health, any  
7 objections? Any objections to those  
8 being admitted into evidence?

9 MR. MERRILL: No objections.

10 MR. LEUNG: Okay. They're  
11 admitted into evidence.

12 MR. SIRI: And so, you know,  
13 between 1900 and 1962 -- okay. When  
14 there was absolutely no measles --

15 MR. LEUNG: Counsel, I'm going  
16 to stop you because I understand --

17 MR. SIRI: You said summations.

18 MR. LEUNG: Yeah.

19 MR. SIRI: Summing.

20 MR. LEUNG: Your summing up?

21 MR. SIRI: Summing.

22 MR. LEUNG: Go ahead.

23 MR. SIRI: You told me to sum.  
24 I figure you were giving me three  
25 sentences.

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MR. MERRILL: Do I get to put a couple of things in?

MR. LEUNG: Sure. Before we do the sum up, I'm going to turn to Department of Health.

MR. MERRILL: Okay. First I just want to add one more document, your Honor. This is the frequently asked questions. It was also handed out and serves to all the Respondents, which gives instructions on how to submit medical proof. I also have a --

MR. LEUNG: This is a multipage document that I'm going to mark as P --

MR. MERRILL: I thought we were on two.

MR. LEUNG: Two. Okay. I'm going to mark it as P-3. It's a document entitled Frequently Asked Questions New York City Measles Vaccine Order Zip Code 11205, 11206 --

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MR. SIRI: Can I see a copy  
when your done?

MR. LEUNG: -- 11211 and 11249.  
I'm handing it to counsel to look at  
(handing).  
Any objection to that being admitted  
into evidence?

MR. SIRI: My only objection is  
that, I don't have an opportunity to  
cross-examine the Department of  
Health about it.

MR. LEUNG: You can ask them  
questions about it. There are  
representatives here. You have a  
question about it?

MR. MERRILL: It actually came  
up in the testimony that you already  
have about this questionnaire, but --

MR. LEUNG: Okay. But do you  
have any questions for the Department  
of Health, counsel, on this document?

First off, you don't object P-3  
being admitted into evidence?

MR. SIRI: My objection is what

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it was.

MR. LEUNG: Okay.

MR. SIRI: You know this document also says that the vaccine is safe. And I think it implies that the benefits outweigh the risks.

MR. LEUNG: Gotcha. I understand.

MR. SIRI: And --

MR. LEUNG: I'm going to take your testimony that you disagree with the assertions in it.

MR. SIRI: So can I ask about the substance of this document? There's lots of things in here.

MR. LEUNG: What do you mean by, asking about the substance? What are you talking about?

MR. SIRI: Well, you know, there's a lot of assertions in this document.

MR. LEUNG: You don't have to ask questions. You can rebut the assertions based upon your testimony.

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MR. SIRI: Yeah.

MR. LEUNG: You can say,  
paragraph 3, I disagree with it.

MR. SIRI: Okay. So for  
example, the Health Department has  
found multi-strategies to end the  
outbreak. Now, what they did is in  
the Jewish community when there were  
cases, they excluded the children  
from school. Okay. And they did  
that back in 2018. Okay. By using  
that heavy handed approach, for  
months there were not that many  
cases.

What they did is, they left  
those people who have that firm  
belief with injecting this product  
with only two options. They either  
had to give a product that was  
against their conscious to do in the  
way think lived for thousand years or  
they had to give their child measles  
to go back to school.

MR. LEUNG: Counsel, I think

1  
2 this is in support of your summation  
3 that this should not have been  
4 issued. So I'm just asking --

5 MR. SIRI: Well, it's directed  
6 really to what's being argued here.  
7 Because it says in here -- it says,  
8 you know, they tried. And so, what  
9 they're -- I mean, I would do this  
10 through -- you said I should just  
11 summarize it. So the point is that,  
12 what it did is that this wasn't an  
13 outbreak in the traditional sense  
14 epidemiologically. It didn't follow  
15 that trend.

16 What it was that it became a key  
17 component. Is that they had measles  
18 parties as the Commissioner of Health  
19 had said. Measles parties, that's  
20 why it didn't go outside of the  
21 Jewish community. People were trying  
22 to get their kids back in school and  
23 it was the heavy hand in the Jewish  
24 community that did this. There were  
25 cases in public schools where it



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didn't exclude the unvaccinated kids  
in those schools.

MR. LEUNG: So P-3 --

MR. SIRI: I have more -- okay.

MR. LEUNG: So P-3 is admitted.

MR. MERRILL: There was a lot  
of testimony earlier about -- were  
people told that they could submit  
medical objections and proof of  
immunity and that's why --

MR. LEUNG: Was P-3 provided to  
Respondent?

MR. MERRILL: Yes.

MR. LEUNG: Okay.

MR. SIRI: With the violation.

MR. MERRILL: I also want to  
mark -- correct. I also want to  
mark, and there's been a lot of  
statutes and other things submitted,  
but I want to submit a copy of Judge  
McHale's (phonetic) decision, which  
upheld the order back in April. So I  
have a copy for you, Aaron.

MR. SIRI: Thank you.

1  
2 MR. MERRILL: I also want to  
3 point out that the safety of the  
4 vaccine was brought in that case as  
5 well. And if you look at the  
6 decision where there's doctors  
7 testifying, doctors submitting  
8 affidavits, there's a plaintiff  
9 expert, they also cited that Judge  
10 McHale found -- cited that there is  
11 very little mainstream scientific  
12 evidence about the --

13 MR. SIRI: I submit for the  
14 record --

15 MR. LEUNG: Submitted as P-4.

16 Do you have -- we have any  
17 objection to this decision being  
18 admitted?

19 MR. SIRI: Just the  
20 characterization of number one, it  
21 only addresses --

22 MR. MERRILL: I'm quoting from  
23 the --

24 MR. SIRI: It only addresses  
25 one of the constitutional arguments

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that I raised. Not the -- and --

MR. MERRILL: We accepted a lot of hearsay and a lot of studies about the -- I want to point out that the doctors that testified, that were brought in there --

MR. SIRI: Those doctors are not here today. I didn't bring them in my case. I brought evidence from the Institute of Medicine, the FDA, the CDC. So most --

MR. MERRILL: You put in letters.

MR. SIRI: So most of the evidence speaks for itself.

MR. LEUNG: Counsel.

MR. SIRI: Yeah.

MR. LEUNG: Let's --

MR. SIRI: I was responding to his --he cut me off. I was responding.

MR. MERRILL: You cut me off right now. I let you go for hours and put in letters and --

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MR. LEUNG: All right.

MR. MERRILL: And last thing,  
your Honor, I just want to read from,  
I think it's Respondent's 2, the CDC  
Statement, that's in context, which  
has been grossly distorted.

MR. LEUNG: Respondent's 2?

MR. MERRILL: Yes. It talks  
about Section 4, page 2, the risk of  
vaccine reaction. I just want to say  
that in the documents that plaintiff  
has put in --

MR. SIRI: Let the documents  
speak for themselves.

MR. MERRILL: Getting in --  
well, getting an MMR vaccine is much  
safer than gets Measles, Mumps, or  
Rubella disease. Then going down at  
the bottom and it talks about the  
risks and the severe allergic  
reaction. We had a lot of testimony  
about that. It says, any medication  
that causes severe allergic reaction,  
such reactions to vaccines is

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estimated to be one in one million doses.

MR. SIRI: That is only for anaphylactic. Not for brain damage. Not for coma. Not for seizure. That's not for any of those.

MR. LEUNG: Okay.

MR. SIRI: That's not what it says. And severe --

MR. MERRILL: And rear means one in a thousand.

MR. LEUNG: Understood.

Do you have any objection to the Decision that's marked as P-4, that being admitted into evidence?

MR. SIRI: I don't have an -- it's a Decision. I have no objection.

MR. LEUNG: So you consider it --

MR. SIRI: I just want to say.

MR. LEUNG: If it's in evidence, I'll consider it.

Do you have any objection for

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me considering this in my decision.

MR. SIRI: Well, I have -- yes.  
I object to it being considered in  
any way. Anything that is fact --

MR. LEUNG: P-4 is admitted  
into evidence and your going to --

MR. SIRI: I object to you  
considering assertions in there as  
factual.

MR. LEUNG: Gotcha.

MR. SIRI: It's a legal  
decision.

MR. LEUNG: Okay. Understood.

MR. SIRI: The facts. It's not  
an evidence. It is what I --

MR. LEUNG: Understood.

MR. SIRI: And the  
characterization --

MR. LEUNG: Hold on one second  
before you go further. Because I'm  
going to give you an opportunity, I  
promise you. I'm going to give you  
an opportunity.

MR. SIRI: Okay.

1  
2 MR. LEUNG: But you spoke at  
3 length and I want to give the  
4 Department of Health, Mr. Merrill, an  
5 opportunity to address all the issues  
6 that they have.

7 Is there anything else that you  
8 want to add?

9 MR. MERRILL: No.

10 MR. LEUNG: Now that that's  
11 done, I'm going to ask, do you have  
12 anything that you want to testify to?  
13 Anything of substance that you want  
14 to tell me?

15 MR. SIRI: About?

16 MR. LEUNG: About the case.  
17 Why we're here.

18 MR. SIRI: Well, you know, are  
19 we just going to rest on this record.

20 MR. LEUNG: No. We don't have  
21 to rest.

22 MR. SIRI: Look --

23 MR. LEUNG: First of all --

24 MR. SIRI: Listen, the record  
25 is -- well, let's get these in. You

1  
2 know, I just -- I mean, I want to --  
3 my summations is as to the four  
4 arguments. The four core arguments.  
5 I don't believe -- I mean, I just  
6 stand on my objection about not, you  
7 know, being able to make a fulsome  
8 record. Separate from that, I'm  
9 happy. You know, I think that the  
10 arguments that were made on the first  
11 points speak for themselves. I'm  
12 happy to rest on the record here  
13 today if Mr. Merrill is as well.

14 MR. LEUNG: Okay. So there's  
15 nothing further either side wants to  
16 address; is that correct?

17 MR. MERRILL: Correct.

18 MR. SIRI: As long as your  
19 objection stands, then no.

20 MR. LEUNG: You mean your  
21 objection. Right?

22 MR. SIRI: I apologize. Your  
23 limited rulings that I objected to.

24 MR. LEUNG: Right. Okay. I  
25 have enough to make a decision. I'm



1  
2 going to take the case under  
3 advisement and issue a written  
4 decision that you will receive in  
5 30 days. Hearing nothing further  
6 from either parties, this hearing is  
7 adjourned. The record should reflect  
8 that the extensive arguments that  
9 formed the basis --

10 MR. SIRI: Oh, wait. Did we  
11 finish putting the rest in?

12 MR. LEUNG: I'm going to do it  
13 right now.

14 MR. SIRI: Okay.

15 MR. LEUNG: The extensive  
16 arguments made at the end of the  
17 latter portion of this hearing  
18 apprised to subsequent summons that  
19 we were going to either hear today or  
20 adjourn at a later date, if we run  
21 out of time. Mr. Siri has indicated  
22 that the substantive arguments that  
23 have taken up the majority of the  
24 three hour hearing, is common. Is a  
25 common defense to the subsequent

1  
2 summons that we're going to hear. So  
3 to the extent that the subsequent  
4 summons will refer to the record,  
5 here it will be to save time so that  
6 all the arguments that took up over  
7 two hours will not have to repeated.  
8 So this record will be joining the  
9 other records. The record should  
10 reflect that I also admitted the  
11 following documents: We ended at  
12 R-39. We have now gone to R-40,  
13 R-41, R-42, R-43, R-44, and R-45. I  
14 have given a chance to the Department  
15 of Health to review that.

16 Any objection going up to R-45?

17 MR. MERRILL: No, your Honor.

18  
19 (Continued on next page to  
20 include jurat.)  
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1  
2 MR. LEUNG: Hearing no  
3 objections, these are admitted into  
4 evidence. And hearing nothing  
5 further from either parties; is that  
6 correct.

7 MR. MERRILL: That's right.

8 MR. LEUNG: This hearing is  
9 concluded. Thank you.

10 (Whereupon the hearing was  
11 concluded.)  
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2 C E R T I F I C A T E3  
4 STATE OF NEW YORK )  
5 : SS.:  
6 COUNTY OF KINGS )7 I, SHERNELLE GRIFFITH, a Notary  
8 Public for and within the State of New  
9 York, do hereby certify:10 That the witness whose examination is  
11 hereinbefore set forth was duly sworn and  
12 that such examination is a true record of  
13 the testimony given by that witness.14 I further certify that I am not  
15 related to any of the parties to this  
16 action by blood or by marriage and that I  
17 am in no way interested in the outcome of  
18 this matter.19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this 28th day of August 2019.  
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24 SHERNELLE GRIFFITH  
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DEPOSITION OF ERRATA SHEET

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

\_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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