

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2018-CA-002317-XXXX-MB

WALTER E. SAHM and PATRICIA SAHM,

**CERTIFIED
ORIGINAL**

Plaintiffs,

vs.

BERNSTEIN FAMILY REALTY, LLC, et al

Defendant.

11 | _____ /

TRANSCRIPT OF PROCEEDING

BEFORE

THE HONORABLE JOHN S. KASTRENAKES

Palm Beach County Courthouse

205 North Dixie Highway

West Palm Beach, Florida 33401

March 5, 2020

8:43 a.m. - 9:05 a.m.

1 INDEX TO APPEARANCES
2

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1 (Thereupon, proceedings commence at 8:43 a.m.)

2 THE COURT: Who are you?

3 MR. BERNSTEIN: I'm Eliot Bernstein, Your Honor.

4 THE COURT: Hi Mr. Bernstein. How are you?

5 MR. BERNSTEIN: Good.

6 THE COURT: Do you have an attorney? You do not.

7 MR. BERNSTEIN: I'm pro se.

8 THE COURT: Who is the attorney that's coming?

9 MS. CRISPIN: Your Honor it's Cary Sabol.

10 THE COURT: Oh, hi.

11 MS. CRISPIN: Hi. Ashley Crispin. I represent
12 Brian O'Connell who's also a defendant.

13 THE COURT: Okay.

14 MS. CRISPIN: Um.

15 THE COURT: That's who we're waiting on.

16 MS. CRISPIN: He is the assignee of the mortgage
17 that Mr. O'Connell held as personal representative.
18 He is representing the trustee of the decedents
19 revocable trust.

20 THE COURT:

21 Got it.

22 MS. CRISPIN: We'll be assigning the mortgage
23 too.

24 MR. SWEETAPPLE: Oh, so we have a separate
25 mortgage that we are foreclosing. This whole issue
before you in case you want to know what we're

1 reading.

2 THE COURT: Oh, I read it.

3 MR. SWEETAPPLE: After what you saw as the
4 response objections to the hearing.

5 THE COURT: I did not.

6 MR. SWEETAPPLE: Okay so there is an objection
7 by pro se by the Bernstein's who have been living in
8 the home without paying for it now for many years.
9 And it's my position that this is not an answer or a
10 response to the pleading of the court that you're
11 interested in. And in addition, Mr. Bernstein filed.
12 There was a something. I'm going to go back something
13 to try to prevent justice -

14 MR. BERNSTEIN: I filed an emergency hearing to
15 get protective orders from an attorney who's
16 threatening who also frauded documents in my parent's
17 estate case.

18 THE COURT: Well I'll look at it while we're
19 waiting on somebody.

20 MR. BERNSTEIN: Your Honor, I didn't file an
21 answer on - I've never been served. My wife has never
22 been served. Bernstein Family Realty who he's got his
23 mortgage with is a now dissolved entity by a judge.

24 THE COURT: Wait a minute. I don't know, you
25 know, in order to establish a default, we've got to

1 establish that you were served.

2 MR. SWEETAPPLE: He's appeared Your Honor. He's
3 filed the same pleading with regard to the
4 (inaudible). He's been served and I have a copy.

5 THE COURT: We're waiting on an attorney who was
6 involved in the case and we're going to hear
7 everything at once.

8 THE COURT: We're not going to do anything until
9 that person gets here.

10 MR. SWEETAPPLE: They were served by E-service
11 and the date of service is June 18th and I'm only
12 Your Honor at this time seeking as to the unknown
13 tenants and let me give you the exact names of the
14 Bernstein's since there's so many Bernstein's-

15 THE COURT: There's a Bernstein Family Realty
16 LLC.

17 MR. SABOL: We're going consent to default that
18 because they were a second mortgage that's been
19 assigned out already which I'll be handling.

20 THE COURT: Okay.

21 MR. SABOL: So I think we're okay with
22 defaulting Bernstein LLC for now.

23 THE COURT: And as to the other, well it's not
24 that's why I'm here you know. Alright so. Ask as a
25 default well I'll get an order on that.

1 MR. SABOL: I'm Cary Sabol.

2 THE COURT: Oh, thanks for coming. You represent
3 the Bernstein Family LLC is that right sir?

4 MR. SABOL: I represent the Bernstein Family
5 Trust which is a separate entity.

6 THE COURT: Okay.

7 MR. SABOL: And maybe if we could just ask for 20
8 days to answer. I mean I think we have a negotiated
9 resolution.

10 THE COURT: I know. Hang on let's take it one
11 step at a time. So, Bernstein Family Realty LLC
12 consent default. I'll ask for an order from Mr.
13 Sweetapple. Brian O'Connell a successful personal
14 representative of the estate of Simon L. Bernstein,
15 you are not seeking foreclosure on that?

16 MR. SWEETAPPLE: I'm not. I think we're just
17 going to assign - and waive the stipulation.

18 THE COURT: Okay. Alexandra Bernstein.

19 MR. SWEETAPPLE: We're going to have a
20 stipulation with regards to Alexandra. I can save the
21 court time with the exception of Mr. Bernstein and
22 his wife.

23 MR. BERNSTEIN: And my children your honor. Who
24 were also-

25 THE COURT: Who Mr. Bernstein before the court.

1 Who is this gentleman? What's his name?

2 MR. BERNSTEIN: Eliot Bernstein.

3 MR. SWEETAPPLE: He's the one that filed the
4 motion.

5 THE COURT: Okay I see. Eliot Bernstein and
6 Candice Bernstein. Mr. Bernstein's filing is not an
7 answer or even addresses the default here. Looks to
8 me like something totally collateral to what's before
9 me today. So. Alright. With respect to Eliot
10 Bernstein and Candice Bernstein is that Ms. Bernstein
11 who's seated here? Are you seeking a court default?

12 MR. SWEETAPPLE: Yes, Your Honor and also as to
13 unknown tenants at the home. As the court concede Mr.
14 Bernstein was served with a summons. As to the
15 unknown tenants if I can approach?

16 THE COURT: Okay. Thank you.

17 MR. BERNSTEIN: Can I see a copy of that?

18 MR. SWEETAPPLE: Sure.

19 THE COURT: And that service took place in was
20 that June? June 2019?

21 THE COURT: It was actually the 20th of September
22 2018. Is that right?

23 MR. SWEETAPPLE: Yes that was the original.

24 THE COURT: And then he's representing himself?

25 MR. SWEETAPPLE: He's appeared. He's come in,

1 yes. In fact, this motion as you can see in that
2 capacity as well.

3 THE COURT: So has he ever answered this
4 complaint?

5 MR. SWEETAPPLE: Never answered. We always kept
6 saying - collateral events - some collateral events.

7 (inaudible, talking over each other)

8 THE COURT: So that's been the last third amended
9 complaint filing was in June of last year? Alright
10 Mr. Bernstein?

11 MR. BERNSTEIN: Correct. Yes, Your Honor.

12 THE COURT: You are representing yourself? Ms.
13 Bernstein, you're representing yourself ma'am, is
14 that right?

15 MR. BERNSTEIN: She's never been served either.
16 That service wouldn't - the one he sent you isn't
17 served upon me. It's served upon some unknown person
18 that doesn't match the description of anyone at our
19 home.

20 MR. SABOL: Your Honor. If I could respond. Mr.
21 Bernstein is obviously aware of the action. He's
22 filed multiple responses, but he is not a party of
23 interest. He is nothing more than a tenant in the
24 property. There's a number of parties that have
25 interest through the estate. This Mr. Bernstein is

1 not one of them. He's nothing more than a tenant.

2 THE COURT: So, let me ask you this. Is this a
3 single-family residence?

4 MR. SABOL: It is. So, it's a father who bought
5 it under an LLC and borrowed some money from the
6 plaintiff and has a second mortgage and Mr. Bernstein
7 was permitted to live there.

8 THE COURT: So, who owns the, who owns the
9 property right now before all of these judgements?

10 MR. SABOL: The -

11 THE COURT: The estate?

12 MR. SABOL: No, it's in a trust. It's been
13 transferred over. Alright Mr. Bernstein, this Mr.
14 Bernstein is not entitled in any form, he's just not.

15 THE COURT: Alright, I'll hear what you have to
16 say.

17 MR. BERNSTEIN: And so, I've never been served.
18 My wife has never been served otherwise I would have
19 filed an answer and a counterpoint. My children who
20 are sued, are sued as minor children Mr. Sahm's very
21 aware that my children are not minor only one is. So,
22 they haven't been served. They own the house. They
23 bought the house with their money from their trusts.

24 THE COURT: Right.

25 MR. BERNSTEIN: Individual trusts. My dad wrapped

1 it in an LLC and some trusts. The LLC Bernstein
2 Family Realty owns the house but they're no longer
3 because Judge John Phillips dissolved the LLC and
4 thus Mr. Sahm and the estates knows distributed the
5 assets to me and my wife and I tried to say it was
6 because I'm trying to protect Mr. Sahm who is my
7 father's dear friend who did this sweet deal for my
8 family that me and my wife loved. We talk to him
9 consistently, we've got a settlement sitting on the
10 table with him, that's in the filing I filed. I put a
11 copy of that in there. Now some other facets are this
12 gentleman is representing my brother as trustee of my
13 father's trust. My father's trust says specifically
14 my brother is considered dead for all purposes of
15 this trust. So, one of the first things we need to
16 establish is, are they committing a fraud here before
17 you which this case is littered with fraud. John
18 Tesher's, who's been around the block here a bunch,
19 frauded documents in my father's estate. My mother's
20 estate first and then they created a fraudulent trust
21 of my mother's and distributed it.

22 THE COURT: Okay.

23 MR. BERNSTEIN: They got caught. They got caught
24 right at the same time for insider trading. They had
25 to resign off all of our matters. Now Mr. Tesher

1 accepted service for Bernstein Family Realty, and I
2 sent you documents that are in the exhibits that show
3 that Mr. Tesher had resigned from Bernstein Family
4 Realty and therefore had no legal right to accept it.
5 He was disbarred for three years and he accepted this
6 plea, which then was passed over to his friend Alan
7 Rose, so Bernstein Family Realty technically hasn't
8 been served yet so you can't really default on them
9 because they don't exist anymore. They all know that
10 but they're running a fraud and I feel bad because
11 it's complicated.

12 THE COURT: Right.

13 MR. BERNSTEIN: But what he just told you -

14 THE COURT: Who is paying the mortgage on the
15 home?

16 MR. BERNSTEIN: Okay the one mortgage -

17 THE COURT: Who?

18 MR. BERNSTEIN: - to Mr. Sahm, my dad's friend -

19 THE COURT: Who?

20 MR. BERNSTEIN: - was being paid for by Bernstein
21 Family Realty when my dad was the manager. Then he
22 died. He flipped it over to Openheimer who paid until
23 a certain point and then that became the Openheimer
24 case before Cole Lynn very complicated case again
25 lots of fraud.

1 THE COURT: Right.

2 MR. BERNSTEIN: At the end of all that Judge
3 John Phillips came in and dissolved the Children's
4 Trusts and BFR and handed me and my wife the assets.

5 THE COURT: Got it.

6 MR. BERNSTEIN: So, their mortgage, Mr. Sahm's
7 mortgage, is with BFR a now defunct entity that you
8 can't serve because nobody's there to serve. So that
9 whole service is bogus. Which basically makes his
10 case. He's got a mortgage against, so he's got to go
11 deal with people who conned Judge Phillips to
12 dissolve BFR despite the fact that there were two
13 mortgages there. A second mortgage.

14 THE COURT: I appreciate that.

15 MR. BERNSTEIN: Okay. The second mortgage -

16 THE COURT: Is there any, do you want to make
17 any further argument with respect to the default
18 motion?

19 MR. BERNSTEIN: I would first of all I'd like to
20 answer the complaint, so I'd like to be served. My
21 wife would like to be served, my children would like
22 to be served so we can all file answers and counter
23 complaints because -

24 THE COURT: You've appeared on your behalf on
25 this matter.

1 MR. BERNSTEIN: Where?

2 THE COURT: In this court.

3 MR. BERNSTEIN: Well, I've never been served to
4 file an answer in response. People have been emailing
5 me things but that's not service. I'm used to
6 service, a dude shows up at the door, hands me the
7 package I take it, I get 20 days or whatever the
8 number is, I file my answer in response. So, I've
9 been waiting for that. He has no documents serving me
10 anything other than that one which appears bogus
11 because they gave it to some unknown party down the
12 street. Now, so we never got that.

13 THE COURT: Okay. I'd like to hear from your
14 wife. Do you want to, um any additional arguments?

15 MS. BERNSTEIN: Yes, I'd like to have an answer
16 file an answer when I get served. I've never received
17 anything.

18 THE COURT: Okay so you both are maintaining the
19 position that you have never been served in this
20 lawsuit. Is that right?

21 MR. BERNSTEIN: Correct.

22 THE COURT: Okay then my focus and it's obvious
23 to me that you've never answered the lawsuit?

24 MR. BERNSTEIN: Correct.

25 THE COURT: Alright. So, if he proves to me and

1 shows me the document showing that you've been
2 served, I'm entering a default.

3 MR. BERNSTEIN: Okay.

4 THE COURT: Okay, let's go. Mr. Sweetapple
5 that's the only thing you need to respond to, sir.
6 All the other Philips accusations and all this other
7 stuff.

8 MR. SWEETAPPLE: They have, they have Your
9 Honor, they have appeared for themselves and as
10 guardians of any minor children and the return shows
11 that Mr. Bernstein was served so we also as an
12 abundance of caution served unknown tenants which is
13 all they really are. They have no ownership, there's
14 been no settlement, there's been no payment they're
15 just squatting in this property. And he did make the
16 one point that we are also addressing, Your Honor,
17 that's valid and that is that I did go back and look
18 at the situation with Mr. Tesher. The Bernstein
19 Family Realty was dissolved and it shows a corporate
20 registered agent so to the extent that Mr. Tesher may
21 not have had authority to accept, we are going to go
22 ahead and re-serve the registered agent of record and
23 then obviously move for default based on the fact
24 that they're not paying their fees and they're not
25 even in existence.

1 MR. BERNSTEIN: Who is the registered agent?

2 MR. SWEETAPPLE: The registered agent is shown
3 on Sunbiz.

4 MR. BERNSTEIN: As who?

5 MR. SWEETAPPLE: It's an entity that accepts
6 service.

7 THE COURT: Yeah this is the Tesher for the
8 Family Realty LLC.

9 MR. SWEETAPPLE: I'm sorry I didn't hand you the
10 one. I think earlier I handed you the unknown tenant
11 one-

12 THE COURT: Either an unknown tenant.

13 MR. SWEETAPPLE: They appeared if you look in
14 the file Your Honor that motion, they appeared
15 immediately, they've appeared repeatedly they filed.
16 He doesn't understand all these filings that he's
17 made including last night of his appearance.

18 MR. SABOL: Mr. Bernstein, there is a return of
19 service on Mr. Bernstein, it even describes him
20 physically.

21 THE COURT: Okay, hang on, hang on, one second.

22 MR. BERNSTEIN: That's confidential.

23 THE COURT: No let's please, Mr. Bernstein don't
24 address the attorney. You can address me, sir. Give
25 me a second here.

1 MR. SWEETAPPLE: And keep in mind Your Honor,
2 I'm sorry, I just, we just appeared in this case
3 after it was initiated.

4 THE COURT: Okay. Alright. Docket entry 17
5 October 9, 2018.

6 MR. SABOL: Yes, Judge specifically says Eliot
7 Bernstein. Describes him physically 5'11". Weight
8 140. Black hair. No glasses.

9 MR. BERNSTEIN: Your Honor that is not me.
10 Whoever served that I don't weigh that. I'm 240
11 pounds. Dude. And I don't have black hair I have
12 brown hair.

13 THE COURT: Listen Mr. Bernstein.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: Do not interrupt the other side.

16 MR. SABOL: And then Judge October 18 says I
17 Eliot Bernstein answer to complaint and summons. So,
18 to say he hasn't been served, I think is a little bit
19 disingenuous.

20 THE COURT: Eliot Ivan Bernstein, that's the
21 gentleman before me.

22 MR. SABOL: Yes. Eliot Ivan Bernstein. Correct.

23 THE COURT: Okay. Hang on one second.

24 MR. SABOL: Docket Entry 18 says defendant's
25 answer to claim summons and summons and complaint.

1 THE COURT: He answered what could be described
2 as the initial -

3 MR. SABOL: Correct. Correct. So, they don't
4 have to serve by mail once the initial -

5 THE COURT: Correct. Correct. Alright so the
6 court has jurisdiction over it.

7 MR. SABOL: Yes, Judge. Thank you.

8 THE COURT: Okay now what about Candice?

9 MR. SWEETAPPLE: I, he's filed saying that it's
10 on behalf of both of them. If you look at the motion
11 that they filed last night, and the motion asking
12 they object to the hearing, she's objected to the
13 hearing. More importantly Your Honor all I really
14 need to submit to you, which I don't have with me, is
15 a default as well on the unknown tenants.

16 THE COURT: Correct.

17 MR. SWEETAPPLE: These are just tenants in
18 possession. They have no possession interests at all.

19 THE COURT: Exactly.

20 MR. SWEETAPPLE: They have no possessory
21 interest at all but -

22 THE COURT: But they're not unknown.

23 MS. BERNSTEIN: This has been our home for twelve
24 years.

25 MR. SWEETAPPLE: Well they're -

1 MS. BERNSTEIN: I'm sorry.

2 MR. SWEETAPPLE: They're known from the
3 standpoint we believe she's living there with him and
4 he has, she has, she has filed if you'll look, it's
5 on behalf of both of them.

6 THE COURT: Well I see his initial answer.

7 MR. SWEETAPPLE: No, I'm talking about in terms
8 of the pleadings they filed, including the one last
9 night and the one I just handed you, is on behalf of
10 both of them where they objected to the hearing where
11 they've asked the court to take judicial notice of -

12 THE COURT: Oh, the one from last night you mean?

13 MR. SWEETAPPLE: Yeah and even the one I handed
14 you that they filed just recently referring to this
15 current hearing and objecting to the hearing. She's
16 appeared to object to the hearing but did not answer.

17 MR. BERNSTEIN: Your Honor.

18 THE COURT: Please sir. One second.

19 MR. SWEETAPPLE: In fact, the motion filed is
20 entitled Eliot Bernstein and -

21 THE COURT: 20 days to respond - (reading to
22 himself) Okay, um, other than the pleading dated
23 March 2nd related to Candice, let's begin our Candice
24 now, what other document is in the court file
25 acknowledging, I mean I realize that she is the quote

1 unquote unknown tenant? But she's been charged in
2 this claim individually which is one of the
3 defendants. I want to know which document you would
4 rely upon to show that she submitted herself to the
5 jurisdiction of the court for responsive pleading
6 that we got other than the one March 2nd?

7 MR. SWEETAPPLE: I believe, and I have to go
8 back on my ipad but I believe that was filed
9 previously with regard to -

10 THE COURT: When you say back.

11 MR. SWEETAPPLE: The document I gave you the the

12 THE COURT: This thing up here that's the March
13 2nd file.

14 MR. SWEETAPPLE: Yes, and I believe he's filed
15 other -

16 THE COURT: Can you point me to something?

17 MR. SWEETAPPLE: Let see if there are any other
18 motions that he's filed where she's mentioned by
19 herself. The one that was filed last night, Your
20 Honor? The one that was filed last night.

21 THE COURT: Yeah that's March 2nd.

22 MR. SABOL: No but the one I handed you is not
23 March 2nd that was an objection to a hearing before
24 then.

25 MR. SWEETAPPLE: That was March, March 2nd and

1 yesterday was the -

2 MR. SABOL: March 4th correct.

3 MR. SABOL: So, you have both those.

4 THE COURT: Right, but we're within, you know

5 MR. SABOL: look Your Honor. Won't you guy agree
6 you have 20 30 days to answer?

7 THE COURT: So, we'll just agree to give them 20
8 days to answer how about that?

9 MR. SABOL: Well for Mr. Bernstein

10 THE COURT: There's no reason for Mr. Bernstein.
11 He's been served. He's been involved in this case for
12 over a year now and has not answered this complaint
13 that was filed, and the court has jurisdiction over
14 him. I was concerned about Candice Bernstein and I
15 don't see yes, she submitted herself to the
16 jurisdiction of the court now, two days ago for sure,
17 but I wasn't seeing any document where she's filed
18 something or anything on her own. So, here's my
19 issue.

20 MR. SWEETAPPLE: Whether or not he could appear
21 as her attorney?

22 THE COURT: He can't.

23 MR. SWEETAPPLE: Right so she didn't actually -

24 THE COURT: Here's what I'm going to do. I mean
25 there's you know, you know you're a tremendous lawyer

1 and you know what you're doing, obviously if you
2 didn't charge her individually, but she was just the
3 unknown tenant absolutely was service for the unknown
4 tenants, but she his charged individually and
5 therefore I have to look at her as an individual
6 because she is a defendant individually and I'm going
7 to give her 20 days to answer the complaint. I am
8 defaulting Mr. Bernstein unless you agree with Mr.
9 Bernstein to give him more time to answer the
10 complaint or not. But right now, you know, he should
11 be defaulted.

12 MR. SWEETAPPLE: Yes, I'm gonna, I'm gonna
13 submit a default on Mr. Bernstein and also submit
14 separately on the unknown tenants.

15 THE COURT: Okay.

16 MR. SWEETAPPLE: And then I will set Mrs.
17 Bernstein for deposition and set the case for trial
18 as we file our stipulations.

19 THE COURT: Well, she's gotta answer.

20 MR. SWEETAPPLE: I know. That's what I'm saying,
21 after she answers, we'll just move to trial.

22 THE COURT: Okay. Alright. Thank you. Mr.
23 Bernstein I've heard your argument. I find against
24 you that you were served you failed to answer the -

25 MR. BERNSTEIN: I got that. I got that.

1 THE COURT: You failed to answer the complaint-

2 MR. BERNSTEIN: My children were sued as minors.

3 They are all adults except one.

4 THE COURT: You are served in the capacity as a
5 guardian for your children.

6 MR. BERNSTEIN: I'm not.

7 MR. SWEETAPPLE: It doesn't, they're unknown
8 tenants Your Honor they -

9 MR. BERNSTEIN: They're not even legal adults
10 and they own the house. They paid for this house with
11 money out of their trusts.

12 THE COURT: Alright. Alright. I'm defaulting.
13 How many individuals in this case? Eliot Bernstein.
14 Unknown tenants. And that's it. That's all you're
15 asking me to do. I'm giving Candice Bernstein, who is
16 also before the court, 20 days from today's date to
17 answer this complaint or she will also be defaulted
18 and that's the ruling of the court. If you would hand
19 me, I didn't speak to you, but you're a client in
20 this case. Have you worked out something with Mr.
21 Sweetapple?

22 MS. CRISPIN: I have Your Honor because it's
23 been assigned. I represent the personal
24 representative and Mr. Sable who is now come in for
25 the assignee.

1 THE COURT: Okay, so okay fine. So, whatever
2 your agreed order is with her, then it's fine. I've
3 defaulted Mr. Bernstein, but I gave Ms. Bernstein 20
4 days to answer the complaint. Now if you guys work
5 out something with Mr. Bernstein to set aside the
6 default for some reason you can file whatever wish
7 you wish with me. Okay?

8 MR. BERNSTEIN: Your Honor.

9 THE COURT: Sir, we're done.

10 MR. BERNSTEIN: Can I make one point please?

11 THE COURT: No were done. Thank you, sir.

12 MR. SWEETAPPLE: May I submit these to the
13 court?

14 THE COURT: Yes. Thank you.

15 THE COURT: Mr. Sweetapple are you going to be
16 submitting that on the CAD sir?

17 MR. SWEETAPPLE: Yes.

18 THE COURT: Alright. Thank you.

19 (Thereupon, the proceedings end at 9:05 a.m.)

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23

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25

1 CERTIFICATE OF COURT REPORTER
2

3 THE STATE OF FLORIDA:

4 :ss.

5 COUNTY OF PALM BEACH:

6
7 I, FORTUNO JEANFORT, a Court Reporter
8 in and for the State of Florida at Large, do hereby
9 certify that I was authorized to and did report the
10 proceedings in the above-styled cause before the
11 Honorable JOHN S. KASTRENAKES, at the time and place set
12 forth: that the foregoing pages, numbered from 1 through
13 24, inclusive, constitute a true and complete record of
14 my notes.15 I further certify that I am not an attorney or
16 counsel of any of the parties, nor related to any of the
17 parties, nor financially interested in the action.

18

19 Dated this 24th day of March 2020.

20
21 
22

23 Fortuno Jeanfort

24 Court Reporter

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