

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE ROSS C. MOODY, JUDGE PRESIDING
DEPARTMENT NUMBER 606

KEVIN HALPERN & CELLURIDE
WIRELESS, INC.,
Plaintiffs,

CERTIFIED
TRANSCRIPT
Case No. CGC-15-545825

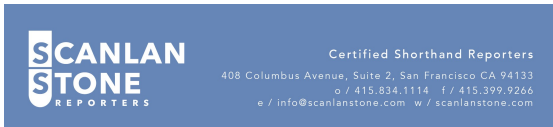
UBER TECHNOLOGIES, INC.;
TRAVIS KALANICK; GARRETT CAMP;
BILL TRENCHARD; SCOTT BELSKY;
BILL GURLEY; BENCHMARK
CAPITAL; BENCHMARK FOUNDER
COLLECTIVE; FIRST ROUND
CAPITAL; RAISER, L.L.C.;
RAISER CA L.L.C., and DOES
1-250,

Defendants.

Reporter's Transcript of Proceedings

TUESDAY, JANUARY 21, 2020

Reported by:
LUCY CARRILLO-GRUBBS CSR No. 6766 RMR-RPR-CRR-CCRR



1 PROCEEDINGS
2 Tuesday | January 21, 2020 | 10:05 a.m.
3 ---o0o---
4 THE CLERK: Remain seated, come to order.
5 Department 606 is now in session.
6 THE COURT: Good morning, everyone.
7 (All said good morning.)
8 THE COURT: Let's go on the record, please, in
9 Halpern, et al versus Uber, et al.
10 Appearances, please.
11 MR. GREENBERG: Good morning, Your Honor, Alan
12 Greenberg of Greenberg Gross for the plaintiffs.
13 MR. GROSS: And Wayne Gross for the plaintiff
14 as well.
15 MR. TANGRI: Good morning, Ragesh Tangri from
16 Durie Tangri for all defendants. With me from my law
17 firm are Daralyn Durie and Raghav Krishnapriyan, with me
18 from Uber's legal department are Randall Haimovici and
19 Ariel Ruiz.
20 MS. POPKEN: Good morning, Your Honor, Betsy
21 Popken from Orrick, Herrington & Sutcliffe.
22 THE COURT: Good morning, everyone.
23 (All said good morning.)
24 THE COURT: Welcome to our new home, permanent
25 home. No more traveling to the hall of justice for you.
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34 Randall Haimovici, In-House Counsel, Uber
35 Technologies, Inc.
36 Ariel F. Ruiz, In-House Counsel, Uber
37 Technologies, Inc.
38 ---o0o---

1 And we have some issues to address here today.
2 I seem to have misplaced my copy of the
3 proposed jury questionnaire. The last place I saw it
4 was on my desk over at 850 Bryant, but my recollection
5 is that there was a general agreement with perhaps one
6 issue.
7 MR. TANGRI: Yeah, Your Honor, that's correct.
8 On the jury questionnaire, I believe the only issue --
9 and I have a copy here, I just need to figure out
10 whether I scribbled on it or not. I don't think I have.
11 But the only issue was that they objected to
12 our question 52, and I think we could -- I'm hopeful we
13 can resolve this.
14 Question 52 says: "This case is about whether
15 plaintiffs filed their lawsuit within the time period
16 allowed by law. This is often referred to as a 'statute
17 of limitations.' What have you heard or what thoughts
18 do you have about the statute of limitations?"
19 And then 53, to which -- I think plaintiffs
20 may have proposed, but in any event, to which they did
21 not object, was: "Do you have any strong feelings about
22 rules requiring plaintiffs to file their lawsuits within
23 a certain period of time or about defendants who offer
24 the statute of limitations as a defense to plaintiffs'
25 legal claims?"



1 My suggestion would be, we can live with just
 2 53, provided that we insert into it something that takes
 3 that first concept in 53, namely, rules requiring
 4 plaintiffs to file their lawsuits within a certain
 5 period of time, and it makes clear that that is what the
 6 statute of limitations is.

7 Because the second half of 53 refers to the
 8 statute of limitations without connecting those dots,
 9 just in case a juror is not familiar with it.

10 So we can say, you know, plaintiffs filed
 11 their lawsuit within a period of time (known as a
 12 statute of limitations), or about defendants who offered
 13 the statute of limitations as a defense to plaintiffs'
 14 legal claims.

15 THE COURT: What do you think about that?

16 MR. GREENBERG: I had not heard that proposal
 17 before, but it seems fine. My problem with 52 was about
 18 asking the jurors what they heard about something was
 19 like a legal test as opposed to what their feelings are,
 20 which seemed appropriate. So I think with the addendum
 21 proposed, I think number 53 is fine and we would no
 22 longer have 52.

23 THE COURT: All right.

24 I thought 52 and 53 there was some duplication
 25 there and I think this is a good proposal. I think we

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1 should adopt it, make that change to 53 and strike 52.
 2 I don't know -- there was a joint submission, I don't
 3 know who has the document.

4 MR. GREENBERG: We can submit the final
 5 version with that change.

6 THE COURT: Very good. Thank you.

7 So it was the similar feeling I had about the
 8 proposed jury instructions, there was some dispute but
 9 quite a bit of agreement.

10 MR. TANGRI: And, Your Honor, if I may, I
 11 think there would be some more agreement. We've taken
 12 another look at this in part in reaction to the hearing
 13 last week, and there are a few things that we can take
 14 off the table and simply live with plaintiffs' forms.

15 THE COURT: Okay.

16 MR. TANGRI: That would include 101, that
 17 would include 200. I believe they had just proposed the
 18 standard CACI and we can live with that.

19 We would agree that as to 205 the Court
 20 doesn't need to decide that now. That's failure to
 21 explain or deny evidence. I believe their objection was
 22 it's simply premature. I don't think there was an
 23 objection -- I believe we proposed the CACI form
 24 assuming that's just a question of we'll wait and see if
 25 that's appropriate, that's fine with us.

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1 For 4421, we're okay with the standard CACI
 2 instruction, which is what I believe they proposed. And
 3 with -- with modifications to put in people's names and
 4 such, modifications that we -- I think both sides are
 5 pretty close on agreeing on the top part so we may talk
 6 about that just a little bit.

7 The first paragraph we expressed the same
 8 concept but in different words, but in the second
 9 paragraph, that is okay.

10 On the special instruction on bifurcation, we
 11 can live with theirs.

12 And then the other ones that are on the list
 13 we would like to be heard on.

14 MR. GREENBERG: Yes, Your Honor.

15 Most of that seems fine, because they're
 16 agreeing on certain ones that we had proposed.

17 On numbers 101 and the special regarding
 18 bifurcation, I think we may have to revisit those, but
 19 also we -- they want to agree now with ours, but we're I
 20 guess either withdrawing or putting an asterisk on ours
 21 that we -- we think it may need to be amended.

22 Part of that may depend on the rest of today's
 23 hearing, on what the jury needs to be told about why
 24 we're here, and how much are they going to be told about
 25 what they are to assume about the statute of

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1 limitations, which I mentioned this last time, I don't
 2 know if Your Honor would remember, because it was a long
 3 hearing, that we -- we may have to modify I think 101
 4 and that's related special, describing to the jury what
 5 their role is and what they are to assume.

6 Depending on what evidence we're allowed to
 7 bring in so that they wouldn't have to assume it, we
 8 could show it. If we can't show it, I think they have
 9 to assume it.

10 So I guess what I'm trying to do is kind of
 11 punt 101 and the special bifurcation until after we get
 12 into more of the evidence issues so that we can have a
 13 better understanding of what the jury needs to be told
 14 and an instruction.

15 THE COURT: I do recall you indicating that
 16 you were concerned that given the motion in limine
 17 rulings that you received last week that you thought
 18 that perhaps 101 needed to be altered or amplified.

19 And you'll be prepared to take a position on
 20 that later today, as we go through the deposition
 21 designations?

22 MR. GREENBERG: I believe so.

23 THE COURT: All right.

24 MR. GREENBERG: I mean, that's the goal, I'll
 25 at least be able to address it.

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1 THE COURT: And do you agree that deferring
 2 205 until we have evidence one way or the other.
 3 MR. GREENBERG: Yes, that's what we had asked
 4 because I think that's what's typically done.
 5 THE COURT: Okay.
 6 Well, we have a lot of material that we're
 7 going to cover, and I know that the facts as educed at
 8 deposition and as presented with substantial objections
 9 going both ways, it's going to sort of give us more
 10 context for these instructions.
 11 Maybe we should set them aside until after we
 12 go through the deposition issues, and then we can return
 13 to them and finalize them later.
 14 What about the verdict forms?
 15 MS. DURIE: Your Honor, with respect to the
 16 verdict form, I think both sides probably offered forms
 17 that were a little more complicated than need to be.
 18 They had two questions, we had three.
 19 We took a look at whether it would be possible
 20 to simplify this to a simple question for the jury to
 21 answer, and I actually think at the end of plaintiffs'
 22 trial brief, the very last sentence where they
 23 articulated the question, they did a good job of
 24 distilling the issue for the jury. This is on page 9 of
 25 the plaintiffs' trial brief. And it actually comes

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1 straight out of CACI.
 2 And -- and it would be -- the question for the
 3 jury to resolve would be whether before March 15th, 2012
 4 plaintiffs did not discover nor with reasonable
 5 diligence should have discovered facts that would have
 6 caused a reasonable person to suspect the defendants
 7 misappropriated plaintiffs' trade secrets.
 8 So just turning that from an assertion into an
 9 interrogatory, the question would be, before March 15th,
 10 2012, did plaintiffs discover or with reasonable
 11 diligence should they have discovered facts that would
 12 have caused a reasonable person to suspect the
 13 defendants had misappropriated plaintiffs' trade
 14 secrets, that just parrots the CACI language and would
 15 be a single appropriate question for the jury to
 16 resolve.
 17 MR. GREENBERG: I don't know if Your Honor's
 18 looking for me to respond.
 19 THE COURT: Sure.
 20 MR. GREENBERG: I like our proposed verdict
 21 form and I'd like to stick with it. I think it is
 22 appropriate, not complex at all. It just asks the jury
 23 if the statute did -- if the claim of each plaintiff was
 24 filed within the statute as to each defendant, I think
 25 that's what they're supposed to decide.

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1 THE COURT: That's a deft move to use your
 2 language as the proposed verdict form.
 3 MR. GREENBERG: On their part?
 4 THE COURT: Yeah.
 5 MR. GREENBERG: Agreed.
 6 THE COURT: So is the -- are the defendants --
 7 are you offering me two options, are you withdrawing the
 8 written option in favor of the oral presentation that
 9 you made.
 10 MS. DURIE: I am happy to withdraw the written
 11 suggestion in favor of the single question, which I
 12 think is simpler and more straightforward.
 13 The concern we have with plaintiffs' proposal
 14 is really at least twofold. It asks separate questions
 15 for each of the two plaintiffs. There is no daylight in
 16 their claims. That simply risks introducing confusion
 17 as to the relationship between Mr. Halpern and
 18 Celluride, but there's never been any claim --
 19 suggestion in the case that the statute could run
 20 differently for them.
 21 And framing it in terms of whether the
 22 misappropriation of trades secret claim is barred by the
 23 statute of limitations creates some disjunct between
 24 that and the specific CACI instructions that they'll be
 25 given with respect to the delayed discovery rule.

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1 So I think it's appropriate, the question in
 2 the verdict form to line up with the instructions that
 3 they will be given with respect to the tests they are to
 4 apply.
 5 THE COURT: And with respect to all of the
 6 sort of preface -- the prefatory language about need
 7 nine out of 12, et cetera, that's on your proposed form,
 8 is that something that you are keeping?
 9 MS. DURIE: So I think that is appropriate and
 10 helpful to the jury to have it in the verdict form, to
 11 make clear that they understand the task. But I view
 12 that as a separate and distinct question from the form
 13 of the question that they are to answer.
 14 THE COURT: I just wanted to make sure you
 15 were presenting this very stripped down --
 16 MS. DURIE: Right.
 17 THE COURT: -- verdict form and I just wanted
 18 to appreciate how far you were going.
 19 MS. DURIE: Correct.
 20 THE COURT: Since I have written material here
 21 and I wanted to know how much you wanted to keep.
 22 MS. DURIE: I would -- I would simply replace
 23 the specific questions one through three on our proposed
 24 verdict form with the question taken from the last
 25 sentence of the plaintiffs' trial brief.

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1 THE COURT: Would you like to respond to her
 2 specific objection to the way that your special verdicts
 3 are framed.
 4 MR. GREENBERG: I think that it's -- the way
 5 things have developed, I think that it's okay to put the
 6 plaintiffs into one question and just say -- I don't
 7 think we need to separate them out, which was the first
 8 comment.
 9 I think the defendants need to be separated
 10 out, which didn't come up, but the -- and so I guess I'm
 11 not -- there -- Your Honor didn't ask and I'm not sure
 12 if some of the language in their proposed form after the
 13 part about nine out of 12, I don't think is necessary or
 14 appropriate about legal terms being clarified in the
 15 jury instructions. I've never seen that in a verdict
 16 form before, so I -- if they're proposing to keep that,
 17 I would object to that.
 18 THE COURT: And what about the specific focus
 19 on the word "barred".
 20 MR. GREENBERG: I would have to take another
 21 look at it. There may be a way to reframe it, but I
 22 think it's fine. I mean, that is what the case is,
 23 they're asking if the claim is barred by the statute of
 24 limitations.
 25 THE COURT: I mean, that's the legal effect of
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1 answers to certain factual questions, but it's not
 2 really the factual question and framed as a factual
 3 question.
 4 MR. GREENBERG: Well, it's the ultimate
 5 verdict of the jury, isn't it? Or I think it is. I
 6 mean, that's what they're being asked to decide.
 7 THE COURT: Well, I think what the defense is
 8 saying to me is what they're going to be asked is to
 9 decide is in the -- the instruction and the instruction
 10 focuses them on this question of did someone know
 11 something or should they have known something by X date,
 12 as opposed to the ramification of that as a legal
 13 matter, am I getting that right?
 14 MS. DURIE: Correct, Your Honor.
 15 MR. GREENBERG: I think it's typical that if
 16 you have a one-question verdict form that just asks the
 17 ultimate question, the jurors are presumed to follow the
 18 instruction, there is an instruction that tells them how
 19 to answer the question, so I don't think the verdict
 20 form needs to parrot the language of the question.
 21 I think -- I thought that the comment
 22 actually -- now that I'm refreshed on it, what the
 23 comment was, was that the word "barred" does not appear
 24 in the instruction so it's a new concept of this word
 25 "barred" so there may be a way to -- I think the jury
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1 instruction speaks in terms of was the claim timely, and
 2 so it may be that we should just ask the jury that in
 3 using that language.
 4 THE COURT: And what was your -- what was your
 5 reference to treating the defendants differently in the
 6 verdict form?
 7 MR. GREENBERG: Candidly, for some reason I
 8 have their verdict form and I don't have my verdict form
 9 here, so...
 10 MS. DURIE: I can address that, Your Honor.
 11 The plaintiffs' verdict form answered -- asks two
 12 questions total. It simply asked is the claim of
 13 plaintiff Celluride Wireless for the misappropriation of
 14 trade secrets barred by the statute of limitations, and
 15 then asked the same question for plaintiff Kevin
 16 Halpern.
 17 We now have agreement that those should be
 18 asked together. Even plaintiffs' proposal did not
 19 purport to ask this question --
 20 MR. GREENBERG: I'm sorry, I didn't mean to
 21 interrupt. In light of our discussion last hearing and
 22 the rulings on the motion where there are different
 23 accrual dates potentially for different defendants, I
 24 think we would submit a new proposed verdict form that
 25 would break out each defendant so that the jury will
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1 have to decide the question as to each defendant.
 2 MS. DURIE: And, Your Honor, this will come up
 3 in the context of jury instructions, because we have a
 4 jury instruction that we have propounded and as to which
 5 we would like to be heard with respect to this question
 6 of the accrual dates for different defendants and the
 7 application of them in our case in view of the facts
 8 here.
 9 THE COURT: The way that the defendants'
 10 proposed verdict form before me handles this, it says
 11 before March 15th, 2012, did either Kevin Halpern,
 12 Celluride Wireless, Inc., or both, suspect that at least
 13 one defendant had misappropriated information that
 14 plaintiffs claim as their trade secrets, so it provided
 15 a -- it didn't have a list, but it provided an ability
 16 to consider each defendant separately.
 17 MR. GREENBERG: But it's all for one and one
 18 for all. So if the jury were -- under their way of
 19 looking at it, if the jury were to find that a single
 20 defendant, that the claim was time barred, then it works
 21 as to all defendants, and I think that's not correct, as
 22 we went over last time where they were moving to have a
 23 single accrual date, and that was denied, that there are
 24 some defendants who potentially will have -- I think the
 25 proof at trial will be that they have different accrual
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1 dates, and, therefore, they have to be considered
 2 individually and not as one lump group.
 3 MS. DURIE: And I think the issue here, Your
 4 Honor, is there was one count in this claim for trade
 5 secret misappropriation. There is an argument that the
 6 different defendants are, as the plaintiffs put it in
 7 their trial brief, coconspirators with respect to that
 8 one count.
 9 There's one count of alleged misappropriation
 10 and one set of damages that is requested as a
 11 consequence of that alleged misappropriation.
 12 And so this is a situation where like in
 13 Norgart, even to the extent the plaintiffs contend they
 14 were not aware of the identity of each of the defendants
 15 who might have been engaged in the act of
 16 misappropriation, a timely filed lawsuit would have
 17 uncovered the identity of all of those alleged
 18 coconspirators within the limitations period.
 19 We take the Court's point that that might not
 20 technically be the accrual date for statute of
 21 limitations. I don't think it needs to be framed that
 22 way. But this is one count brought against multiple
 23 defendants as coconspirators with respect to one set of
 24 trade secrets that were allegedly misappropriated by
 25 one enterprise, used by that one enterprise, and
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1 resulted in one set of damages.
 2 That's why this case is fundamentally like the
 3 Norgart case but different from the Cypress case, the
 4 case on which the plaintiffs rely where there were two
 5 distinct courses of conduct. And as the Court put it in
 6 that case, the second entity, not part of the original
 7 misappropriation, never had any direct relationship, was
 8 a different type of misappropriation in the words of
 9 that case, which is not the situation here.
 10 And I think the fact that the plaintiffs' own
 11 verdict form reflects what has been the understanding
 12 throughout this case, which is that this is one instance
 13 of misappropriation.
 14 MR. GREENBERG: Well, we will propose a new
 15 verdict form that was written a long time ago.
 16 The issue is that, first of all, someone can
 17 join a conspiracy after the inception of it and they
 18 cannot be sued. It's not about discovering their
 19 identity. It's that they didn't join yet. So there are
 20 people who can join the conspiracy later, and there's no
 21 way to sue them until they join it.
 22 So the statute cannot run as to them until
 23 they join it, no matter what, and there's no case that
 24 says different.
 25 And also we're talking about a multiyear old
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1 pleading, there's been discovery, there are defendants
 2 who I think will take the position that they had nothing
 3 to do with Uber until after Mr. Halpern had already
 4 heard of Uber and looked at the Internet about it, and
 5 so there was no way he could conceivably discover their
 6 existence in relation to Uber since they didn't have one
 7 yet according to them.
 8 So even though the complaint may allege a set
 9 of facts, it's all on information and belief, it's not
 10 something within the personal knowledge of Mr. Halpern
 11 or Celluride.
 12 The discovery has shown that there -- there
 13 may, in fact, be different accrual dates where -- and it
 14 may be different conduct, that it's not just the --
 15 because the complaint focuses on the inception of Uber,
 16 and there are people who invested in Uber at later dates
 17 who also had the trade secrets and to the extent they
 18 used those trade secrets to get involved and make that
 19 involvement, that's a separate misappropriation. It's a
 20 different accrual. We went over this last time.
 21 So I think that -- that they need to be broken
 22 out separately. It can't just be automatic that if
 23 Travis Kalanick misappropriated in 2008, that Bill
 24 Trenchard if he invested in 2010 and had nothing -- if
 25 he says he had nothing to do with Uber until 2010, that
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1 somehow the statute ran as to him in 2008, that doesn't
 2 make any sense.
 3 MS. DURIE: And, Your Honor, the issue is not
 4 whether the statute ran in 2008, the date for purposes
 5 of this case is March of 2012. We have a stipulation
 6 that is agreed upon in this case, that all the
 7 misappropriation by all defendants that is alleged took
 8 place prior to that date.
 9 Which means that a timely filed lawsuit would
 10 have uncovered whatever the evidence is that they're
 11 relying on with respect to all of the defendants.
 12 What the Norgart cite case says is in that
 13 situation you can effectively extend the limitations
 14 period in question by the filing of the complaint, to
 15 the extent that the identity of additional defendants is
 16 discovered, they get added by virtue of an amendment.
 17 That applies four square here.
 18 And again, I've heard no rebuttal to the
 19 notion that what has always been alleged, including in
 20 the plaintiffs' trial brief, one course of conduct by
 21 coconspirators, one count of trade secret
 22 misappropriation and one set of damages are claimed as a
 23 result.
 24 MR. GREENBERG: Your Honor, it's completely
 25 different from that case. Because it is physically
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1 impossible for Mr. Halpern when he heard of Uber in
 2 January or February of 2010 to have sued even as a Doe,
 3 people who had not yet done anything with Uber. They --
 4 that's not what that case deals with.
 5 If they had later conduct, yes, it was before
 6 March of 2012, but they have a separate statute, and the
 7 test for the jury to decide about that particular
 8 defendant will be based on whether Mr. Halpern
 9 discovered or reasonably should have discovered that
 10 particular defendant's misappropriation by March of
 11 2012.
 12 And they're different facts, they're different
 13 situations for different defendants. They're not the
 14 same.
 15 THE COURT: Did you just tell me a minute ago
 16 that investing in Uber, the act of investing in Uber is
 17 a misappropriation of trade secrets.
 18 MR. GREENBERG: No, we're not -- I did not say
 19 that.
 20 We're not saying --
 21 THE COURT: That is what you said. You said
 22 if -- if one of these defendants possessed the trade
 23 secrets and then invested in Uber in 2010, that that was
 24 an act of misappropriating trade secrets. I heard you
 25 say it.

1 MR. GREENBERG: I apologize if I was not
 2 clear. I'm not saying ipso facto that making an
 3 investment is a misappropriation. That would be a phase
 4 two issue, not a phase one issue.
 5 What I'm saying is, if -- I'm pretty sure I
 6 used the word "if," if an investor who had the Celluride
 7 information used that information in connection with
 8 making his investment in misappropriation of the trade
 9 secrets, then that would be the date upon which the
 10 statute could start to run for that defendant, that's
 11 what I meant to say.
 12 And so there was an if in there, but we're
 13 here to assume that -- assume or prove, whichever one we
 14 get to do, that there was a misappropriation by each
 15 defendant.
 16 And so the timing of that misappropriation is
 17 important to the application of the statute.
 18 I'm not saying it's automatic, like just
 19 investing automatically is a misappropriation, but it
 20 certainly can be a misappropriation by using trade
 21 secrets for one's benefit, yes, absolutely.
 22 MS. DURIE: Your Honor, here's what the
 23 plaintiffs said in their trial brief. They said: "It
 24 was not until late 2012 that Halpern discovered that
 25 Kalanick was associated with Uber and that Kalanick was

1 running the company. To Halpern's disbelief, Kalanick
 2 not only claimed to have conceived of the GPS-based
 3 transportation service, but he also engaged some of the
 4 very same people with whom Halpern had confidentially
 5 discussed plaintiffs' trade secrets.
 6 "Rather than keeping plaintiffs' trade secrets
 7 confidential as they had promised, Kalanick and his
 8 coconspirators used plaintiffs' trade secrets to start
 9 and develop Uber. Armed with this new information,
 10 plaintiffs commenced this action."
 11 That -- the question is whether that could or
 12 should have happened prior to March 15th, 2012, rather
 13 than after. There are no distinct facts as to any of
 14 the individual defendants with respect to the answer to
 15 that question.
 16 Under plaintiffs' view of the world, all of
 17 these facts took place in 2010, and the severe risk of
 18 prejudice from the plaintiffs' proposal is that Norgart
 19 is clear to the extent that plaintiffs believed they had
 20 a misappropriation claim by Uber and by Travis Kalanick,
 21 they were obliged to bring that claim in a timely
 22 fashion.
 23 And to the extent that discovery in connection
 24 with that action that needed to be filed before March of
 25 2012 would have revealed the identity of the other

1 coconspirators, those claims are all time blocked and in
 2 this case it would have.
 3 THE COURT: So it does seem to me that there's
 4 been a substantial change in your position from January
 5 6th when you submitted your trial brief and you're
 6 indicating that the verdict forms were written a long
 7 time ago. The submission is January 15th, and my -- the
 8 conclusion that I am drawing is that based on my ruling
 9 in your favor regarding whether I would force you to
 10 accept a certain date and accept no evidence about any
 11 date after a date certain offered by the defense, that
 12 this has become sort of the opportunity for you to
 13 change your position.
 14 MR. GREENBERG: I wouldn't necessarily tie it
 15 to your ruling. I understand what Your Honor's saying,
 16 that we did file an opposition to their motion on that
 17 point and take these positions before January, so it's
 18 not just like we suddenly have a ruling and are changing
 19 what we're saying.
 20 The ruling was based on our position, which we
 21 filed back in December, so the -- you know, the trial
 22 brief is brief, it's a general summary of information.
 23 It is not intended to be a binding pleading and a
 24 judicial admission of any kind. It's just lawyers
 25 writing a general summary of things.

1 Frankly, I didn't even want to file a trial
 2 brief, but I announced to the Court when we were asked
 3 to, I typically as a plaintiff don't file a trial brief.
 4 But we filed it because we were asked to.
 5 And so the trial is the trial. The facts will
 6 come out at trial. The -- it's very well known what our
 7 position is now to the defense. They knew it when we
 8 filed that opposition. They knew it before that. But
 9 they certainly knew it when we opposed their motion in
 10 limine.
 11 Their motion in limine was denied. They've
 12 known our position. They still know it. And, you know,
 13 I -- I understand about the verdict form, it was
 14 circulated between the parties many weeks ago, and I
 15 apologize if it caused any confusion, but I don't think
 16 that it really caused any prejudicial confusion for the
 17 defense. I think they know what our position is about
 18 these people, and they just want to try to sweep that
 19 under the rug or, you know, put the genie back in the
 20 bottle on that.
 21 THE COURT: Well, unless I'm mistaken, today
 22 is basically the last day that we're scheduled to have
 23 any proceedings in this case until February 3rd when
 24 we're going to call a jury in. And so for these issues
 25 to be up in the air as late as today is problematic.
 Page 25

1 For example, I don't know what you're going to
 2 propose by way of verdict form with respect to each of
 3 these defendants, and I don't know what you're going to
 4 propose with respect to the changes to the introductory
 5 instruction, et cetera, and that's something that I
 6 think both sides need to have firmly in mind before they
 7 start asking questions of prospective jurors. So we're
 8 going to have to wrestle this to the ground today, I
 9 think.
 10 MR. GREENBERG: I understand. And this is
 11 actually a -- and it does have its benefits of dealing
 12 with all of this up front, I agree. In a lot of jury
 13 trials in civil cases we wind up arguing the verdict
 14 forms and jury instructions midtrial. I think it's fine
 15 to do it now. But sometimes they change during trials
 16 based on the way evidence comes in.
 17 In this case we're trying to get out ahead of
 18 it, and I understand the desire to do that. I just
 19 think that we need to get it right and whether that's
 20 today and that's fine or whether we -- you want us at
 21 the end of today to submit something and take it up on
 22 February 3rd, I think that's fine too.
 23 I would like to get it right regardless of the
 24 timing of it.
 25 THE COURT: I want to get it right as well.
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1 MR. GREENBERG: I'm sorry?
 2 THE COURT: I want to get it right as well.
 3 MR. GREENBERG: Thank you.
 4 MR. TANGRI: Your Honor, I just -- I'm not
 5 going to argue this, but if I may interject a bit of
 6 factual history here. Judge Wiss applied the Norgart
 7 test in ruling on demurrer, and in grant of the demurrer
 8 on several issues in part based on that as to this
 9 multiple defendant theory.
 10 She applied it as well in the trade secret
 11 demurrer on earlier stages and it was never an argument
 12 about this then.
 13 We then filed to bifurcate the case and this
 14 was not run in opposition to that. There was no
 15 assertion that the reason the case shouldn't be
 16 bifurcated is there were different accrual dates and we
 17 have to get into the merits to do that.
 18 And so the case proceeded for almost three
 19 years now on a bifurcated fashion with discovery
 20 limited, based on this single theory.
 21 And so to undo it now and say, well, trial's
 22 trial and who knows what evidence shows up is profoundly
 23 prejudicial in part because it's going to be a basis --
 24 you can already see it previews the coming attraction
 25 and run around the merits ruling that Your Honor made,
 Page 27

1 you know, one excluding the merits.
 2 And it -- it's -- go back to that problem,
 3 which is there's no evidence been developed for the past
 4 three years to deal with that.
 5 MR. GREENBERG: Your Honor, I was not involved
 6 in the case until 2018, or I'm sorry, 2019, so a lot of
 7 that took place before I was involved.
 8 But I will tell you, I do know this,
 9 Mr. Trenchard was not deposed until long after the case
 10 was bifurcated so there's new information that came
 11 out -- and Mr. Belsky as well, new information that came
 12 out about their timing and their position on things,
 13 that was not available at the time of the demurrer or
 14 the bifurcation motion.
 15 And I -- I understand why Mr. Tangri is taking
 16 this position, of course, but I do think that if he's
 17 saying that this information had been presented two
 18 years before Mr. Trenchard and Mr. Belsky's depositions,
 19 that Mr. Tangri would not have asked for bifurcation or
 20 that he would not have perceived bifurcation, I find
 21 that hard to believe.
 22 I think Mr. Tangri would like to keep the
 23 bifurcation and have all the defendants raise the
 24 statute of limitations before getting the decision by a
 25 trier of fact on the merits.
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1 That's why we're here and I don't -- I don't
 2 hear him to be retracting that based on this new
 3 situation, which is, frankly, not all that complex.
 4 MS. DURIE: Your Honor, three points. Point
 5 number one, they moved to unbifurcate the proceedings
 6 after those depositions. They never raised this issue
 7 and suggested that there were separate dates for
 8 separate defendants.
 9 Two, what you just heard is that this is
 10 information that came out in discovery about the nuances
 11 of these individuals' involvement. That is precisely
 12 our point. You timely file a case, information comes
 13 out in discovery as part of that case.
 14 Three, part of why we are so prejudiced is
 15 that the plaintiffs' position all along has been all I
 16 needed to know in order to be able to bring a lawsuit
 17 was Travis Kalanick's involvement in Uber. That was the
 18 aha moment. You see it in their trial brief, that was
 19 the -- that is what we have spent all of this time
 20 developing evidence to rebut and to present to the jury,
 21 that a reasonable investigation would have discovered
 22 the very thing that Mr. Halpern says he needed to know.
 23 To now suggest that additional evidence will
 24 be required, which has not been developed about facts
 25 specific to each of the other defendants, is contrary to
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1 the entire history of the case and is not the evidence
 2 that we have been developing for trial.
 3 MR. GREENBERG: Your Honor, Mr. Trenchard and
 4 Mr. Belsky know what -- they're going to give testimony
 5 as to what they are going to say that they did and when
 6 they did it.
 7 We're not retracting what Ms. Durie just said
 8 about Mr. Halpern had his recognition moment when he
 9 heard about Travis Kalanick being involved with Uber.
 10 So that clearly is his discovery of Mr. Kalanick and
 11 Uber's misappropriation.
 12 It doesn't -- and then he filed less than
 13 three years after that. So that's not -- I'm not sure
 14 how that addresses Mr. Trenchard or Mr. Belsky, frankly.
 15 Their involvement is when it is -- it is what
 16 it is. They know what their involvement is. If they're
 17 going to say that they had nothing to do with Travis
 18 Kalanick or Uber until 2010, then they can't have it
 19 both ways. They can't say, well, but then our statute
 20 should have started to run in 2008 when they hadn't done
 21 anything.
 22 MS. DURIE: Again, the issue is not -- we take
 23 Your Honor's point on this. The issue is not whether
 24 the statute started to run in 2008. The issue is
 25 whether the claim should have been brought before March
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1 15th, 2012. That is the issue.
 2 What you just heard is Mr. Greenberg say,
 3 well, Mr. Trenchard and Mr. Belsky are going to take the
 4 stand and testify about what they did and when they did
 5 it, that is the merits. That is not what we are here to
 6 try. What we're here to try is simply this question of
 7 whether the case was timely filed relative to that March
 8 2012 date.
 9 And what we have consistently heard throughout
 10 this case is, the only thing that is relevant is this
 11 connection between Mr. Kalanick and Uber, because that's
 12 what was required in order for Mr. Halpern to know that
 13 a claim needed to be brought, and under Norgart that's
 14 what he needed to know.
 15 MR. GREENBERG: And it's not the merits, it's
 16 just when they got involved, so that's not -- involved
 17 isn't the merits. Involved is had anything to do with
 18 it. So if they say they have nothing to do with it,
 19 then the statute couldn't have run. And Mr. Halpern
 20 could not have discovered their involvement if they were
 21 not involved by their own testimony.
 22 So that is something that -- as to those
 23 individual defendants, it's not about merits. It's just
 24 about -- it's as simple as that. He could not have sued
 25 them if they say they had nothing to do with it at all,
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1 zero.
 2 MS. DURIE: Your Honor, it's 2010, all the
 3 defendants were involved by 2010. There is no factual
 4 dispute about that. We will put that on the record.
 5 They are going to agree they were involved with Uber by
 6 2010. Last time I checked that's before March 15th of
 7 2012, which is the relevant question.
 8 So again, the question is could a case timely
 9 have been brought before March 15th, 2012. All the
 10 defendants were indisputably involved with this single
 11 active trade secret misappropriation as part of this
 12 alleged coconspiracy before that date.
 13 MR. GREENBERG: And I don't think it's a
 14 single act when somebody by their own conduct joins the
 15 conspiracy or uses the information separately from the
 16 others at a later date. And, yes, it took place before
 17 March of 2012, but let's say, for instance, it took
 18 place in February of 2012, and I know it happened during
 19 2010, we'll all saying that.
 20 But just to illustrate the point, if it was
 21 March -- if it was February of 2012, that would give
 22 Mr. Halpern only one month to figure out that person
 23 misappropriated or reasonably discover it, and he gets
 24 three years from when they acted.
 25 And so if they -- if the investment is in the
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1 summer of 2012, let's say July, I mean -- sorry, 2010,
 2 if the investment is the first contact that someone had
 3 with Uber, and it happened in July of 2010, Mr. Halpern
 4 says he heard of Uber and went on the Internet and
 5 didn't find anything in February of 2010, then that's a
 6 different question of starting in July how Mr. Halpern
 7 could have discovered and when should he have discovered
 8 that this new person misappropriated.

9 THE COURT: Are you expecting to have the
 10 March 2012 date moved through evidence that you're going
 11 to present.

12 MR. GREENBERG: No, the March 2012 date is set
 13 in stone because that's three years before the filing.

14 So Mr. Halpern had to, under the -- I think
 15 everyone agrees that the test will be, as to all the
 16 defendants, did Mr. Halpern discover or should he
 17 reasonably have discovered the involvement or
 18 misappropriation that he's claiming as to each defendant
 19 prior to that date, because if he discovered it prior to
 20 that date or reasonably should have, then he's out,
 21 because he'll be more than three years before he filed
 22 the case.

23 THE COURT: I had to ask you that because the
 24 position you're taking today is so different from
 25 anything that I've read in the first complaint, the
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1 second complaint, the third complaint, the trial brief,
 2 the motions in limine. This is sort of very, very new
 3 and different and I'm trying to understand the contours
 4 of it.

5 I mean, the defense read from your trial brief
 6 which was filed earlier this month with this unified
 7 theory that they're all working together and there's
 8 nothing in there breaking them out, and suggesting that,
 9 you know, acts late in 2010 as opposed to the 2008 time
 10 frame is your theory of the case.

11 MR. GREENBERG: It's exactly what was
 12 discussed at the hearing last Monday, though, on that
 13 motion in limine, and it's actually what we said in
 14 opposition to that motion in limine.

15 So it's not like I'm just coming here today
 16 and saying it for the first time. We went over the same
 17 exact argument last week, and -- and the motion was
 18 denied.

19 THE COURT: Perhaps the motion was ill framed,
 20 because I -- the idea of foreclosing of factual
 21 presentation and couching it to a specific date was
 22 something I found inherently troubling upon first
 23 reading, but in terms of denying that motion, I did not
 24 intend to rip the cover off and reopen three years of
 25 complex litigation with multiple demurrers and multiple
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1 narrowing orders for this case.

2 And when I listen to the way that the defense
 3 is arguing this about which case applies and how the
 4 accrual works and get the case started and bring the
 5 Does in as you discover through discovery additional
 6 acts, that all is harmonious with what Judge Wiss did in
 7 all the hard work she put in on this case, and I'm
 8 wondering if perhaps -- perhaps I made a mistake last
 9 Monday to the extent that this is -- this is what I'm
 10 receiving here today.

11 MR. GREENBERG: We don't think that you did,
 12 Your Honor. We think you were smart on this one, and
 13 that the -- look, the issue isn't demurrers. Demurrers
 14 are demurrers and those were many years ago. Demurrers
 15 are just dealing with prior pleadings and then
 16 ultimately there's a pleading, then there's discovery.

17 I agree with the concept and I think it's
 18 uncontroversial, that if people join together to
 19 misappropriate and then the plaintiff finds out about
 20 just one of the defendants or just finds out that there
 21 was a misappropriation and doesn't even know who did it
 22 but knows there's a misappropriation, the plaintiff can
 23 bring a case against Does, but Does are not future
 24 actors. Those are people who already have done
 25 something. You just don't know who they are.
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1 And then under the Doe statute, if you file
 2 later a Doe amendment, the amendment relates back to the
 3 time when you filed against the Does. This is a
 4 different situation in which -- and we did talk about
 5 this last week, that there are people that got involved,
 6 I thought I heard 2011 last week, 2010 and 2011, which
 7 is long after Mr. Halpern heard about Uber.

8 And their case is going to be that he
 9 discovered or should have discovered the involvement of
 10 Mr. Kalanick and the people who were involved,
 11 Mr. Graves -- I'm sorry, Mr. Graves is not a defendant,
 12 Mr. Camp, Mr. Kalanick.

13 But if someone, a defendant is taking the
 14 position that they weren't a part of that and that they
 15 only got involved later, then the date of their
 16 involvement is the first time that they could have had a
 17 misappropriation.

18 MS. DURIE: And the point I would say, Your
 19 Honor, of Cypress, is what matters is whether that date
 20 of first involvement or that act of misappropriation was
 21 before or after March 15th, 2012.

22 What Cypress says is, if as of the accrual
 23 date you did not yet have a claim against that person
 24 and it's a separate act of misappropriation that took
 25 place later, unrelated to the first act of
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1 misappropriation within the statute, that's one thing.
 2 That's not the situation that we have here.
 3 And you've heard repeatedly concessions, and there is a
 4 stipulation in this case to the effect. It's reflected
 5 in the plaintiffs' own proposed jury instruction on this
 6 affirmative defense. There is a stipulation that all
 7 the alleged acts of misappropriation by all -- each
 8 defendant is claimed to have occurred before March 15th,
 9 2012, which is three years before the effective date.
 10 MR. GREENBERG: We stipulate to that. It's a
 11 different question. It doesn't mean it didn't happen in
 12 2010. That's still before 2012, but it's after
 13 Mr. Halpern looked at the Internet. It's a different
 14 fact pattern.
 15 Those cases just don't say what they're being
 16 offered for. They don't require someone to sue a
 17 defendant before the defendant lifted a finger to do
 18 anything wrong, period.
 19 THE COURT: Well, I think that what they're
 20 arguing is that, you know, in the cases where there's a
 21 separate distinct use of the trade secrets, that that's
 22 a different situation than one where there's really the
 23 first use, the creation of Uber, essentially, is the
 24 theory in this case. And so if someone invests in Uber
 25 after that creation has occurred, if that creation

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1 leveraged the trade secrets of your client, then it
 2 all -- it all accrues from that.
 3 It's not as though there was like Uber 2.0 was
 4 created or a spinoff of Uber or something like that that
 5 is the subject of this. It's all part and parcel of
 6 whether or not this ride sharing company was created
 7 through misappropriation.
 8 And I don't have the ability to talk about
 9 these cases by their name, but I remember the concepts.
 10 The concept of the -- the vendor who then violates the
 11 prior ruling and says, I'm not bound by that so I'm
 12 going to publish these, I'm going to use them, I'm going
 13 to leverage them, that's like -- that's a new act. It's
 14 not part of what was litigated before.
 15 And I think that the defense -- that their
 16 theory is consistent and has been presented and ruled
 17 upon in whittling this case down to -- to what we have
 18 before us, the bifurcation order, the date and
 19 everything else.
 20 MR. GREENBERG: We agree with the bifurcation
 21 order, it's an order that binds us, and the date -- we
 22 stipulated to the date that Mr. Halpern had to have
 23 discovered or reasonably discovered.
 24 But that does not answer the question, and the
 25 cases simply do not require you to assume someone was

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1 not yet active.
 2 And while Mr. Halpern, plaintiffs allege under
 3 information and belief a certain set of facts, the
 4 defense has taken the position that that's not the case.
 5 And so -- and that the timing is different for two of
 6 the defendants.
 7 And so their timing is their timing. At least
 8 it's their belief as to the timing of their actions.
 9 I don't think that the -- that the defense is
 10 saying that those people acted before they testified
 11 that they acted.
 12 THE COURT: Maybe if we go through some of
 13 these designations we can get into factual grounding of
 14 what will assist us on this.
 15 MR. GREENBERG: Agreed, that makes sense.
 16 THE COURT: Is there one you would prefer to
 17 start with.
 18 MR. TANGRI: Your Honor, I guess what I
 19 would -- let me say this about the designations.
 20 As to the designations of the defendants,
 21 which I think is what would be relevant, if anything, as
 22 to this issue that we're hearing about, we can -- we can
 23 work our way through and we've got Belsky, Camp, Graves,
 24 Kalanick and Trenchard. They've designated those. We
 25 can take them in whatever order you like.

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1 As to the designations that we made as to
 2 Mr. Halpern and Mr. Barabash, I'll let others address
 3 Mr. Barabash. Mr. Halpern, there's a fair bit of
 4 material designated. He's obviously the plaintiff. In
 5 order to spare both the Court and the parties a need to
 6 slug through all of that, I was going to propose the
 7 following:
 8 We may use a small amount of that in opening,
 9 the parties are going to exchange their opening and
 10 we'll be talking with Your Honor on that, either on the
 11 3rd or the 4th, depending how the timing shakes out,
 12 that will be a small volume of material we can address
 13 then.
 14 And depending on how his testimony comes in
 15 and what the plaintiffs do, we may have a bit more to
 16 play at some point, but it's not going to be -- I mean,
 17 here, obviously, it's not going to be everything that
 18 we've designated, so I think we could skinny that down
 19 before it becomes an issue that's worth consuming time
 20 and attention of.
 21 As to the defendants, it's for them to say
 22 what they want -- what they want to fight about, but
 23 we're happy to talk through all of them.
 24 MR. GREENBERG: This won't come as a surprise,
 25 I was going to make the opposite suggestion, that we

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1 start with Mr. Halpern's deposition and their
 2 designations from his testimony, because I think that
 3 will help to show -- it will help us to go through the
 4 defense view of what they would like to show and what is
 5 from their view pertinent in terms of Mr. Halpern's
 6 testimony.
 7 MR. TANGRI: And to be clear about that, the
 8 other reason for this is at the time we made these
 9 designations we didn't have the benefit of your motion
 10 in limine ruling excluding the merit.
 11 So we had to be prepared for that. I think a
 12 lot of this we would -- that's what I'm saying, we're
 13 not going to use all of it because we now have the
 14 rulings on the merits that are out.
 15 Certainly Mr. Halpern's testimony about the
 16 merits is really out because he doesn't -- and you've
 17 heard today this is all on information and belief. He
 18 doesn't have evidence about when, he doesn't have
 19 evidence to offer about when different people got
 20 involved in Uber.
 21 He has evidence to offer about what he looked
 22 for and when.
 23 MR. GREENBERG: And what he created that was
 24 the trade secret.
 25 MR. TANGRI: And that is the merits.

1 MR. GREENBERG: Well, it's not to the extent
 2 that it goes to the issue of how he could have
 3 discovered that someone else was using it or whether
 4 it's the same thing or not, et cetera.
 5 So --
 6 MR. TANGRI: That's precisely what we argued
 7 or Mr. Greenberg argued last week and was rejected.
 8 THE COURT: That's true. When I was looking
 9 over these designations I was struck by how -- how many
 10 of them -- how many of the objections were already
 11 adjudicated based on my motion in limine rulings, and I
 12 was ready to do great violence to some of these
 13 objections based on -- based on those rulings. There's
 14 no reason to relitigate these things.
 15 The format, I kept flipping back and forth,
 16 you know, I was reading -- sort of read through the
 17 transcripts and I thought it was very -- it was very
 18 challenging to go from one where it was one, two, three,
 19 four, versus one, two, three, four, it really kept me on
 20 my toes based on how the different reporting agencies do
 21 their four to a page.
 22 MR. GREENBERG: Right, we have that same issue
 23 reading them.
 24 THE COURT: Rubbing my eyes saying this
 25 doesn't make any sense and then realizing I was --

1 MR. GREENBERG: That's what they call complex
 2 litigation.
 3 THE COURT: Yes, thank you. This is
 4 definitely triggering, as they say.
 5 But I did find myself thinking, there were
 6 whole tranches of objections that I was going to
 7 overrule or grant based on eliminating the -- the merits
 8 and allowing the spoliation.
 9 And, you know, we can go through that as an
 10 exercise.
 11 I did -- you know, the designations of your
 12 client, those were -- you know, it's a very dense set of
 13 objections, and counter objections, and designations,
 14 and when -- when there's an offer on the table to defer
 15 that, that's obviously attractive, but I don't disagree
 16 that it would -- it would provide some context of what
 17 we're going to be trying here.
 18 MS. DURIE: Right. I mean, our suggestion to
 19 be clear, and I think this probably applies across the
 20 board, we had the same reaction, Your Honor's ruling
 21 mooted a lot of what we were arguing about. It would
 22 probably behoove the parties to go back and skinny down
 23 the disputes that we would actually want to present to
 24 the Court for adjudication in view of those rulings. I
 25 think from our perspective it's a substantially narrow

1 set.
 2 MR. GREENBERG: We actually talked about the
 3 option at the end of last Monday's hearing and I think
 4 Your Honor took it upon yourself to read these now with
 5 the -- before we would skinny them down in order to I
 6 think put some meat on bones of what these rulings are
 7 and how they affect different proffered testimony.
 8 I think it would be -- I agree with the Court
 9 that it would be helpful for the parties to hear the
 10 Court's thinking on specific testimonies.
 11 THE COURT: We did kind of go back and forth
 12 in your absence --
 13 MS. DURIE: Understood.
 14 THE COURT: -- about whether or not it would
 15 be useful to narrow them down, and I think -- I think
 16 everybody agreed that that might be useful, but given
 17 the timing of the case and the fact that these were
 18 basically already in the can, so to speak, that
 19 Mr. Greenberg was saying it would probably take too long
 20 to try to revise them, it would be better to just find
 21 out where -- where I was coming out on -- on them on
 22 more of a retail level.
 23 So why don't we -- why don't we start with the
 24 designation for Garrett Camp, how's that.
 25 MR. GREENBERG: Your Honor, my I grab some

1 water.

2 THE COURT: Sure.

3 All right, so looking down this list of

4 defendants' objections on pages 4 and 5, my tentative is

5 to sustain each objection.

6 MR. GREENBERG: Sorry. Four and five of the

7 pleading?

8 THE COURT: The format is page 4 at the top it

9 says plaintiffs' designations, and then there's a table

10 and most of the cells on page 4 have an objection.

11 For example, at lines 5 through 7, they're

12 using R for relevance, Evidence Code 352, incomplete,

13 that's the objection to 17, line 6 through 18, line 21.

14 And my tentative is to sustain the objection. Same with

15 respect to the one below that, and, in fact, as to each

16 of these on this page.

17 And I'm making the same ruling with respect to

18 the objections at lines 3 through 13 on page 5.

19 Do you want to be heard on that?

20 MR. GREENBERG: Yes, Your Honor. First I want

21 to make sure I understand it. We're talking about on

22 pages 4 and 5 of the Camp pleading, the pleading that

23 sets forth the designations, is Your Honor saying that

24 Your Honor is declined to sustain the objections of all

25 of the objections that are shown on those two pages?

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1 THE COURT: That's correct.

2 MR. GREENBERG: I kind of envisioned this

3 hearing going more one at a time, so I would have to

4 look at them in order to respond to each one.

5 THE COURT: That's fine.

6 MR. GREENBERG: That may take a few minutes to

7 leaf through them.

8 THE COURT: I wanted to give you a tentative

9 so you can understand where I'm coming from. I'm happy

10 to go through them one at a time.

11 MR. GREENBERG: You know, what might make

12 sense is -- and I'm just obviously throwing this out as

13 a suggestion, is if the Court has tentatives and we know

14 what they are now, we're approaching the lunch hour,

15 maybe we can figure out over lunch whether there's any

16 particular ones we want to be heard on, come back and

17 argue to the tentatives, because it may be some of the

18 tentatives that we don't bother or even many of them

19 that we don't bother to address. And I don't want to

20 take up everyone's time going through each one

21 unnecessarily on the record.

22 THE COURT: Well, I mean, on the one hand you

23 could say we're approaching the lunch hour at 11:07. On

24 the other hand we started the hearing at 10:00 o'clock,

25 so I -- to partially accommodate your travel, and so I

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1 think that we should just -- we're doing this in part at

2 your suggestion from last week, that we dig into the

3 details here.

4 MR. GREENBERG: No, I appreciate that, and I

5 understand what Your Honor is saying. I just meant we

6 could use the time. I didn't mean that we need to leave

7 before noon. There's other things that we can

8 accomplish, I thought. I just think it might help for

9 me to be able to go through the tentative rulings in

10 order to see what, if anything, I think is worth

11 bringing up.

12 Because many of them I may submit on.

13 THE COURT: All right. Turn to page 17

14 through 18 on Mr. Camp's deposition. It is on pages 12

15 and 13 of the document.

16 Do you have any argument to offer on that,

17 sir?

18 MR. GREENBERG: Well, the testimony -- is it

19 okay if I sit, Your Honor?

20 THE COURT: Yeah.

21 MR. GREENBERG: Okay.

22 The testimony was offered, it goes to the

23 credibility of Mr. Camp and other witnesses, in terms of

24 their conversations that they claim to have had

25 regarding Mr. Halpern when the case was filed. This

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1 plays into a larger issue. We're kind of starting

2 with -- this wouldn't be the first thing that we would

3 show logically, so it's not on its face necessarily

4 readily apparent to the Court how it would be used.

5 So let me lay a little context. Mr. Halpern

6 will testify at trial, as he did in his deposition, that

7 he first heard of Uber Cab, as it was called then in

8 early 2010, from Mr. Macafee, and went on the Internet

9 and found very little, other than Mr. Graves was the

10 person associated with it, and that's what Mr. Macafee

11 told him and Mr. Graves had no apparent connection to

12 anybody that Mr. Halpern had shared the trade secrets

13 with.

14 Part of the reason why it went down that way

15 is because the people who started Uber in 2008 worked on

16 Uber from 2008 through the end of that year and all

17 through 2009, and then they hired Mr. Graves at the

18 beginning of 2010, shortly before this came to the

19 attention of Mr. Macafee who brought it to the attention

20 of Mr. Halpern.

21 For that year, I'll say year and a half,

22 roughly, period, from the advent of Uber until

23 Mr. Macafee told Mr. Halpern that he'd heard about this

24 Uber and this guy Ryan Graves, the defendants, and in

25 particular I'm talking about the one that was involved

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1 in the beginning of Uber, meaning Mr. Kalanick and
 2 Mr. Camp, chose not to inform Mr. Halpern that they were
 3 starting a company using his information that he had
 4 shared with Mr. Kalanick.
 5 So it's central to our case on the statute of
 6 limitations, that the defendants, in particular
 7 Mr. Kalanick as the central defendant, chose and -- to
 8 conceal from Mr. Halpern for that period of time that
 9 they were doing this, such that when Mr. Halpern found
 10 out about Uber, he had no way to find out that
 11 Mr. Kalanick was involved. And that this is something
 12 Mr. Kalanick did by design.
 13 And so that then triggers various testimony of
 14 various defendants, especially Mr. Kalanick, and to some
 15 extent Mr. Camp who is cofounder with Mr. Kalanick,
 16 about their knowledge of Mr. Halpern, their choice not
 17 to notify him and to remain in the background and not
 18 have their names associated with Uber, or Mr. Kalanick,
 19 the one who Mr. Halpern knew, chose not to have his name
 20 associated with Uber for that period of time.
 21 And there's -- as the Court read in various
 22 deposition testimony, Mr. Kalanick took the position at
 23 his deposition, which was kind of a shock to the
 24 plaintiffs and their lawyers at the time, that
 25 Mr. Kalanick was denying -- he said he didn't remember
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1 Mr. Halpern, but he strongly implied that he had never
 2 met Mr. Halpern or ever heard of him, and this is
 3 inconsistent with not only the truth, but with prior
 4 information. And it will be inconsistent with
 5 Mr. Halpern's testimony, of course.
 6 And so -- and so there's a fair amount of this
 7 deposition testimony that we're offering for the purpose
 8 of dealing with this issue of what the defendants will
 9 say at trial as to why they did not notify Mr. Halpern.
 10 They're basically saying on the one hand that
 11 Mr. Kalanick did not even know who Halpern was. On the
 12 other hand, when Mr. Halpern sued, and that's what this
 13 particular Mr. Camp testimony's about, when Mr. Halpern
 14 sued, if he was a stranger to Kalanick, he had no idea
 15 who he was, then one would think -- the trier of fact
 16 would think, at least we can submit to that, that they
 17 would have had a conversation along the lines of who's
 18 this nut who sued us, we never heard of, and that's not
 19 what happened.
 20 What actually happened is that they had a
 21 brief conversation. There was no discussion between
 22 them of that there's some guy who I never heard of who's
 23 suing us saying that he gave us the idea.
 24 And so I'm sorry to go on and on and on about
 25 it, but I think it's important for context because
 Page 50

1 there's going to be various designations of Mr. Camp and
 2 Mr. Kalanick, especially, along these lines. And I
 3 don't know that I was, until now, able to explain to the
 4 Court what I just said, and so I just wanted the Court
 5 to understand that.
 6 THE COURT: Okay. That's pretty high level
 7 when I'm just asking about two pages of deposition
 8 transcript. Do you have anything else on this
 9 particular one.
 10 MR. GREENBERG: It's high level and lengthy
 11 because I'm putting in context with other things coming
 12 up, I don't have to repeat all of that.
 13 THE COURT: I understand.
 14 MR. GREENBERG: I can refer back to it in the
 15 future.
 16 THE COURT: Yes, but anything more on these
 17 two pages.
 18 MR. GREENBERG: No, that's what it's about.
 19 THE COURT: I'm going to sustain the
 20 objection.
 21 The next one is page 59 of the deposition,
 22 which appears on page 23. And do you want to offer
 23 argument on that?
 24 MR. GREENBERG: No, just this is -- goes to
 25 the issue that we talked about last week.
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1 THE COURT: So I'll sustain the objection with
 2 respect to that material.
 3 Turning to page 72.
 4 MR. GREENBERG: Well, this goes to the issue
 5 of -- and again, this requires some factual background.
 6 Mr. Graves was a young gentleman who was hired by Uber
 7 when there really was no Uber, other than -- there was
 8 no operation yet. They were just starting to operate or
 9 to build an operation. They brought in Mr. Graves and
 10 put his name on it, and that's the name that Mr. Halpern
 11 heard, because he was the one who was interfacing with
 12 Mr. Macafee, he, Mr. Graves, was interfacing with
 13 Macafee, and this snippet which they've objected to is
 14 talking about the cofounder of Uber, Mr. Camp had no
 15 knowledge of Mr. Graves, who was really their only
 16 employee and put in charge, had any background in
 17 transportation at all and so it's -- again, it's a
 18 snippet. It's not like the most central evidence. It's
 19 part of telling a story that we would like to tell in
 20 the trial.
 21 THE COURT: I'm going to sustain the objection
 22 on relevance and 352.
 23 The next one is page 94 through 101, which
 24 is -- starts on page 32. I mean, this I think clearly
 25 is knocked out by motion in limine number one.
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1 Do you want to be heard on that?
 2 MR. GREENBERG: Just a moment, please, Your
 3 Honor.
 4 I think this is a motion in limine number one
 5 issue.
 6 THE COURT: Yes. I will sustain the
 7 objection.
 8 The next in the list is on page 113 in the
 9 transcript, which is -- begins on page 36.
 10 MR. GREENBERG: Again, we would like to use
 11 this, but I think it's covered by motion in limine
 12 number one.
 13 THE COURT: I agree. It's sustained.
 14 Page 121, which is on page 38.
 15 MR. GREENBERG: This is a follow up to that,
 16 to that first clip, so same arguments I would make to
 17 this one.
 18 THE COURT: All right. It's sustained.
 19 Next is 148, which is --
 20 MR. GREENBERG: This is, again, a follow up to
 21 that same line, and it -- as I suggested earlier, this
 22 line goes into Mr. Kalanick's credibility in saying that
 23 he never met or doesn't remember Mr. Halpern, which is
 24 something that we feel he's committing perjury about and
 25 would like to present in court. It seems to us to go to
 Page 53

1 the statute of limitations issue so we feel very
 2 strongly about it, but I have nothing to add beyond what
 3 I already said about that.
 4 THE COURT: All right, I'm going to sustain
 5 the objection.
 6 Next is pages 156 through 157.
 7 MR. GREENBERG: I mean, the detail goes to
 8 motion in limine number one, I think the jury needs to
 9 understand that Mr. Camp and why he sued in some way,
 10 shape or form.
 11 THE COURT: I understand your argument, I'm
 12 going to sustain the objection.
 13 162 to 163.
 14 MR. GREENBERG: This is the beginning of some
 15 clips that go to the lobby conference and which is at
 16 least allegedly, depending on whose version you're
 17 listening to, where Uber started getting some traction
 18 between Mr. Camp and Mr. Kalanick.
 19 And so this particular clip is -- just back to
 20 the one Your Honor asked about is just some general
 21 background on when Mr. Camp was attending the lobby
 22 conference, which I think in the later clips talks about
 23 that he was there with Mr. Kalanick.
 24 THE COURT: The objections to these, I guess
 25 there's sort of three in a row, the 162 through 165,
 Page 54

1 various clips lifted from those pages is relevance, 352
 2 and motion in limine number one.
 3 Do you have additional argument to present?
 4 MR. GREENBERG: The next one I was looking at
 5 is 167 so I have no additional argument beyond what I
 6 said before that. Are we on this one yet?
 7 THE COURT: All right, thank you, so I'm going
 8 to sustain the objection to those three, 162 to 163, 163
 9 to 164, and 164 to 165.
 10 And we can turn to the next one, the one you
 11 referenced, page 167.
 12 MR. GREENBERG: So in here, specifically
 13 Mr. Camp references that he met Mr. Kalanick for the
 14 first time at that lobby conference in 2007, and it goes
 15 to the same issues I've already discussed about --
 16 because that was after -- 2007 is after Mr. Halpern had
 17 met with and shared his trade secrets with Mr. Kalanick.
 18 And so it goes to the issue of Mr. Kalanick
 19 and Mr. Camp getting together on Uber with that
 20 information and not letting Mr. Halpern know about
 21 Mr. Kalanick's involvement and keeping it away from him,
 22 such that he did not discover it and could not with
 23 reasonable diligence have discovered it.
 24 THE COURT: All right. I'm going to sustain
 25 the objection based on the stated reasons, relevance,
 Page 55

1 352, motion in limine number one.
 2 The next on the list is 171.
 3 MR. GREENBERG: This clip is a follow up to
 4 the ones that we've been discussing, or the same
 5 rationale.
 6 THE COURT: I'm going to make the same
 7 finding, sustain the objection on the basis indicated.
 8 Page 173 to 175.
 9 MR. GREENBERG: I think this is covered by the
 10 motion -- well, at least on the part -- before I turn
 11 the page, it was covered by the motion about origin
 12 story. But again, we want to offer it in order to show
 13 that the defendants, Mr. Kalanick and Mr. Camp in
 14 particular, are being untruthful in their testimony
 15 about that in order to cover up for the fact that they
 16 were keeping Mr. Halpern from discovering it.
 17 THE COURT: All right. I'm going to sustain
 18 the objection on relevance, motion in limine number one
 19 and Evidence Code 352.
 20 Page 175.
 21 MR. GREENBERG: The same discussion.
 22 THE COURT: Yes.
 23 MR. GREENBERG: I mean, same discussion on my
 24 part, I would just repeat myself.
 25 THE COURT: Thank you. I'm going to make the
 Page 56

1 same finding.
 2 Now, there's a big jump to page 308, which is
 3 on page 85.
 4 MR. GREENBERG: I mean, I think this goes to
 5 the evolution of Uber and what it was at the time when
 6 they're saying Mr. Halpern should have figured it all
 7 out in 2010. It was prelaunch. They had -- you know,
 8 you could text to get an Uber. It was something not
 9 common, still in development.
 10 THE COURT: And I think that the main focus of
 11 the defense objection is that this is -- goes to the
 12 merits of the trade secret claim. They also argue
 13 relevance and Evidence Code 352, I'm going to sustain
 14 the objection.
 15 Next objection is to the material at pages 313
 16 through 314, which is on pages 86 and 87.
 17 MR. GREENBERG: I think this goes to something
 18 the jurors could relate to that goes specifically to the
 19 statute of limitations, that is, that the Uber that
 20 they're used to interacting with for the most part, Uber
 21 X, did not even exist until 2012 or 2013, according to
 22 the cofounder of Uber. And of course the date by which
 23 they think Mr. Halpern should have discovered all of
 24 this was by March 15 of 2012, there was no such thing
 25 yet even as Uber X.

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1 I mean, that has to come in through the
 2 defendants, because Mr. Halpern, as they've said, is
 3 not -- he's not an expert witness on what Uber was doing
 4 after-the-fact, so he can't testify about what Uber was
 5 doing afterward.
 6 But I think the people who are running it need
 7 to explain, and here it's on video, what Uber was in
 8 that 2010 to 2012 time frame that could have been
 9 discovered.
 10 THE COURT: I am sensitive to that and I was
 11 discussing that at the motions in limine. I understand
 12 your argument, which is, you know, Uber is this
 13 pervasive cultural phenomenon at this point in 2020 and
 14 you need to persuade the jurors that it was very
 15 different a decade ago.
 16 And there were some spots in the other
 17 depositions where I was looking at sort of number of
 18 users at this time, things like that, for that early
 19 time period that I thought was probably useful to allow
 20 over the objection of the defendant or the defense.
 21 But this doesn't fall into that category for
 22 me, so I'm going to sustain the objection.
 23 376.
 24 MR. GREENBERG: 376, there's no bracket around
 25 it. Is that an oversight?

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1 THE COURT: Oh, you know what, I think it
 2 might be. I agree with you, there's no red box around
 3 it but there is an R in the table, relevance objection.
 4 MR. TANGRI: Yes.
 5 THE COURT: So let's adjudicate it.
 6 MR. GREENBERG: Well, Mr. Camp in here is
 7 saying that from 2008 to 2010 he was estimating he put a
 8 quarter of his time into Uber, meaning, it was something
 9 that was being worked on.
 10 Because, again, in the timeline -- at some
 11 point we have to be able to give the jury a timeline of
 12 what Uber was at different times because it goes right
 13 to the heart of the question of what Mr. Halpern should
 14 have discovered and when.
 15 And, you know, Uber was like a zygote compared
 16 to a -- you know, an elephant, there's a difference.
 17 So there's -- but here in 2008, '9, up through
 18 '10, Mr. Camp was saying he spent a quarter of his time
 19 on it, so it was a project being developed. And I think
 20 Mr. Kalanick had similar testimony, they're the two
 21 cofounders, and they, during that time frame, did not
 22 have Mr. Kalanick's name out there publicly available
 23 such that Mr. Halpern could find it.
 24 And we would suggest that that was on purpose
 25 and was hidden from Mr. Halpern, which seems to me to be

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1 central to the statute of limitations issue.
 2 THE COURT: I'm going to sustain the relevance
 3 objections to these handful of lines on page 376.
 4 Defendants' counter designations, the first
 5 objection is on page 181.
 6 MR. TANGRI: Your Honor.
 7 THE COURT: Uh-hmm.
 8 MR. TANGRI: I believe that since I think
 9 you've sustained everything of substance other than the
 10 gentleman's name, that I don't think we even have
 11 counters.
 12 THE COURT: I take your point.
 13 MR. TANGRI: He's --
 14 THE COURT: So I have sustained the -- looking
 15 at the second cell, the designations on pages 17, 175
 16 through 176, so it's moot.
 17 MR. TANGRI: Right.
 18 THE COURT: Okay.
 19 I have Mr. Trenchard's next in my stack here,
 20 any reason why we shouldn't do that one?
 21 And I'll note for the record that there are a
 22 couple of objections that are based on relevance alone,
 23 but the vast majority of these objections are based on
 24 my ruling to motion in limine number one, and I intend
 25 to make rulings here today that are consistent with my

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1 ruling on motion in limine number one.
 2 What's at page 25?
 3 MR. GREENBERG: The ones on page 25 and 26 are
 4 just background information on Mr. Trenchard from his
 5 LinkedIn profile. On 26 he says it's true and accurate,
 6 to the best of his knowledge.
 7 THE COURT: What's the relevance of his
 8 LinkedIn profile to this case.
 9 MR. GREENBERG: I'm sorry.
 10 THE COURT: What's the relevance?
 11 MR. GREENBERG: Just an introductory of who
 12 the man is.
 13 THE COURT: All right. I'm going to sustain
 14 the objection to 25 and 26.
 15 Page 40 appears on page 18 of the attachment.
 16 MR. GREENBERG: Sorry, where, Your Honor?
 17 THE COURT: Page 40 and 41.
 18 MR. GREENBERG: Okay. This is, again,
 19 background on Mr. Halpern's interaction with
 20 Mr. Trenchard, just general background on how they met,
 21 which goes into some of the other designations in terms
 22 of their relationship and Mr. Trenchard not notifying
 23 Mr. Halpern about what he was doing with Uber, even
 24 though he had Celluride, Mr. Halpern's information, and
 25 I think that goes to statute of limitations on when
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1 Mr. Halpern reasonably should have discovered
 2 Mr. Trenchard's involvement, given that Mr. Trenchard,
 3 who clearly knew Mr. Halpern, and clearly had his
 4 information, did not let Mr. Halpern know that he was
 5 doing anything with the information.
 6 THE COURT: All right. I'm going to sustain
 7 the objection. I think that it is part of the motion in
 8 limine number one, and also under Evidence Code section
 9 352, balancing the probative value with the prejudicial
 10 impact of consumption of time.
 11 The next objection is to page 43 on relevance,
 12 which appears on page 19.
 13 MR. GREENBERG: So this goes together with the
 14 next designation on page 44, and it is -- if you look at
 15 the end, it's where Mr. Trenchard says that the
 16 investment that he directed in Uber was in 2010, which
 17 we discussed earlier.
 18 THE COURT: All right. I'm going to sustain
 19 the objection on 43, as well as 44.
 20 The next page is page 50, which is on page 21
 21 of the attachment.
 22 MR. GREENBERG: This is more background on the
 23 same issue. We're on 50 and 51, correct?
 24 THE COURT: True.
 25 All right. I'm going to sustain the objection
 Page 62

1 to the material on 50 through 51.
 2 Turning to page 58, which is on page 23.
 3 MR. GREENBERG: Well, this is saying that he
 4 could not even if he -- that if he wanted to, he could
 5 not invest in Uber earlier. In other words, he's saying
 6 that the allocation -- that the reason he did not invest
 7 earlier was because of the allocation that was available
 8 at the time.
 9 THE COURT: I see what it says, what it's
 10 relevant to.
 11 MR. GREENBERG: It all goes to the timing of
 12 his involvement.
 13 THE COURT: All right. I'm going to sustain
 14 the objection.
 15 Page 74 through 75, which is on page 27.
 16 MR. GREENBERG: Again, this goes to the
 17 timing. Mr. Trenchard testifies that he first learned
 18 of Uber from Travis Kalanick in the summer of 2010,
 19 which is what we were talking about earlier. So if
 20 that's his testimony, the statute could not have been
 21 running from 2008, because he won't -- he's saying he
 22 had nothing to do with it, he'd never heard of it in
 23 2010.
 24 So the question of what Mr. Halpern should
 25 have discovered about Mr. Trenchard's involvement, when
 Page 63

1 reasonably he should have done that, he could not have
 2 done it before July of 2010, or summer of 2010, because
 3 according to Mr. Trenchard, it didn't exist, which,
 4 again, seems very central to the issue in phase one.
 5 THE COURT: All right. I disagree and I'm
 6 going to sustain the objection.
 7 The next -- the next objection to be
 8 adjudicated is on page 88, which is on page 30 of the
 9 attachment.
 10 MR. GREENBERG: Same issue, summer of 2010.
 11 THE COURT: Same issue, same argument?
 12 MR. GREENBERG: It's the same argument. It's
 13 after Mr. Halpern heard about Uber and he could not have
 14 sued before -- he could not have sued Mr. Trenchard or
 15 Founder Collective until they were involved with Uber.
 16 THE COURT: All right. I'm going to sustain
 17 the objection.
 18 Looking to the next cells, page 112, which is
 19 on page 36.
 20 MR. GREENBERG: This is, again, background on
 21 Mr. Trenchard learning of Mr. Halpern and of Celluride,
 22 and then the next one is part of the same subject
 23 matter.
 24 THE COURT: All right. I'm going to sustain
 25 the objection on 112 and 113, based on motion in limine,
 Page 64

1 relevance and Evidence Code 352.
 2 Page 116 is on the following page.
 3 MR. GREENBERG: It's, again, part of the
 4 timing and -- and existence and content of
 5 Mr. Trenchard's interaction with Mr. Halpern about
 6 Celluride, which I think informs, among other things,
 7 credibility, as well as the timing of Mr. Trenchard's
 8 involvement, as well as the timing of Mr. Trenchard
 9 having his involvement be publicly known, such as
 10 Mr. Halpern could figure it out.
 11 THE COURT: All right. I disagree on that.
 12 Sustain the objection on the material at 116.
 13 The next dispute is for the material at page
 14 118 through 119 on page 38.
 15 MR. GREENBERG: This is further follow up
 16 about the same issue and the relationship between Mr. --
 17 general background regarding how Mr. Halpern knew
 18 Mr. Trenchard and his associate Mr. McKenna, and we
 19 would like to tell the story of what happened within the
 20 context of the statute of limitations, and this was part
 21 of that.
 22 THE COURT: And it looks like the same theory
 23 applies to the material lower on the page, the material
 24 on page 119 of the transcript?
 25 MR. GREENBERG: It does.

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1 THE COURT: All right. I'm going to sustain
 2 the objection, sustain the objection on motion in limine
 3 number one, relevance and 352.
 4 131 is the next dispute that's on page 41.
 5 MR. GREENBERG: Right, there's two
 6 designations there in a row, starting on 131, again,
 7 it's information about the interaction back in 2008
 8 between Mr. Halpern and Mr. Trenchard regarding
 9 Celluride, which informs all of the issues that I've
 10 been talking about.
 11 THE COURT: All right. I'm going to sustain
 12 the objection. I believe it's adjudicated under motion
 13 in limine number one and also considering the relevance
 14 of 352 objections as well. And that's as to all of the
 15 material on page 131.
 16 Page 133, it seems like a merits discussion.
 17 MR. GREENBERG: Well, again, I -- I cannot
 18 agree because we're offering it for the statute of
 19 limitations as part of telling the story of
 20 Mr. Trenchard's involvement, what it was and when it
 21 happened, going to the statute, not asking for any
 22 adjudication that constituted a misappropriation of
 23 trade secrets.
 24 THE COURT: All right. I'm going to sustain
 25 the objection.

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1 I believe, like last time, it's not necessary
 2 to go through the counter designations in view of my
 3 rulings.
 4 MR. TANGRI: I believe that is correct, Your
 5 Honor. I'm just trying to -- I -- correct.
 6 THE COURT: Thank you.
 7 How about Mr. Graves, are his designations
 8 here?
 9 The first dispute is on page 12, which is on
 10 page 11 of the attachment.
 11 MR. GREENBERG: This particular one, in
 12 addition to being the important background, also goes to
 13 Mr. Graves' credibility. Mr. Graves is differently
 14 situated from the ones we went over, because Mr. Graves
 15 is the person -- he's actually not a defendant, but he
 16 is the person who started developing the operation of
 17 Uber in San Francisco, contacted Mr. Macafee, and which
 18 led to Mr. Halpern becoming aware of that.
 19 Mr. Graves -- so Mr. Graves' testimony, unlike
 20 the ones where the Court sustained I think all the
 21 objections, Mr. Graves' testimony is specifically about
 22 his interaction with Mr. Macafee, that goes to the
 23 reasonableness in 2010 of Mr. Halpern's actions, and so
 24 Mr. Graves' credibility is going to be centrally at
 25 issue. And this particular clip on page 12, when

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1 compared with another clip we're going to get to later,
 2 I think is something we'd like to challenge his
 3 credibility with.
 4 THE COURT: What's the -- what's the other
 5 clip?
 6 MR. GREENBERG: The other clip is about the
 7 one with the e-mail where Mr. Graves said it was -- that
 8 that was the first time he ever heard of Celluride was
 9 when Mr. Macafee e-mailed him in 2010.
 10 Here on page 12 he's saying it was when the
 11 lawsuit was filed, and then in the one on the e-mail
 12 from 2010, as we went over last time, I mentioned
 13 Mr. Graves actually fixed the spelling of Celluride when
 14 he wrote back to Mr. Macafee, which I think proves that
 15 Mr. Graves did not hear about it for the first time
 16 then, or certainly on page 12 when the lawsuit was
 17 filed.
 18 So he's -- he's -- I think it's a credibility
 19 issue. He can't just tell different stories under oath,
 20 and I think they're going to come up, because it's part
 21 of the whole story of what happened in 2010 and what
 22 Mr. Halpern learned.
 23 THE COURT: Can you give me a page cite to
 24 the -- the Celluride other than on page 12?
 25 MR. GREENBERG: Just a moment.

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1 THE COURT: I think it's on page 117, 118?
 2 MR. GREENBERG: Right. So we're somewhat
 3 jumping out of chronological order because now we're in
 4 the summer of 2010 and a lot of what Mr. Graves --
 5 Mr. Graves established the dialogue with Mr. Macafee.
 6 Mr. Macafee was an acquaintance of Mr. Halpern and
 7 notified Mr. Halpern of this contact from Mr. Graves,
 8 and then the back and forth of what Mr. Graves had with
 9 Mr. Macafee is going to be part of the trial, in terms
 10 of what Mr. Halpern learned or could have learned, I
 11 think the defendants are going to use that too.
 12 THE COURT: Let me ask the defendants about
 13 that. There's some tension between the answer given on
 14 page 12 with the answers given on page 118.
 15 MR. TANGRI: Your Honor, I think it's correct
 16 based on those answers that Mr. Graves, when he was
 17 deposed in 2017 and what he's saying is when he -- when
 18 he heard about this lawsuit in 2015, he did not recall
 19 the company Celluride, that he had a few conversations
 20 with Mr. Macafee in which that came up, although that
 21 was not Mr. Macafee's company back in 2010. So whatever
 22 it's worth, that he didn't remember a company from a
 23 fleeting e-mail in 2010 five years later or seven years
 24 later, is worth that.
 25 We can address some of the material on 2017
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1 separately to the extent -- we don't dispute that the
 2 conversations between Mr. Graves and Mr. Macafee, the
 3 fact of them, the timing of them is going to be
 4 relevant. There's material on 117, 118, 119 we feel
 5 gets more in into the merits of trying to differentiate
 6 or trying to draw an association between Uber and
 7 Celluride, that's merits, we think that's out.
 8 THE COURT: Okay, but I only went to it to
 9 understand better what -- how sharp the contrast was
 10 between I've never heard of Celluride and I first
 11 learned of Celluride in 2010, so I'm only adjudicating
 12 your first objection here, the one on page 12. I'm not
 13 adjudicating page 117 and 118.
 14 But I'm going to overrule the objection to the
 15 extent there's a discrepancy, I think it's fair game for
 16 Mr. Graves to be asked about it.
 17 MR. TANGRI: Okay.
 18 THE COURT: All right. On to page 56.
 19 MR. GREENBERG: This one also goes to the
 20 heart of an important issue that's going to come up in
 21 the trial, which is, there's going to be an accuracy
 22 contest about who's right about the timing of certain
 23 things, and Mr. Graves -- or sorry, Mr. Macafee and
 24 Mr. Halpern are going to say that the contact -- the
 25 first contact with Mr. Graves about Uber took place
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1 earlier than Mr. Graves is going to say, and that's very
 2 important to the case, because Uber was a zygote at the
 3 time and was -- there was virtually nothing on the
 4 Internet about Uber for someone to find when Mr. Halpern
 5 looked, that's what Mr. Halpern's going to testify to.
 6 Mr. Graves I think is going to try to put his
 7 first contact with Mr. Macafee later in time when you
 8 could have gone on the Internet and found more
 9 information about Uber and Mr. Kalanick.
 10 And so a central issue in the trial, I mean,
 11 as central as it gets, is when did those conversations
 12 take place. Mr. Graves was -- so the detailed
 13 chronology of Mr. Graves' involvement with Uber what he
 14 did, where he was, what he was doing for Uber and
 15 starting in January 2010, when he was hired, is very
 16 important to lay out that story.
 17 And we will be challenging Mr. Graves' view of
 18 events, so this particular bracketed section or objected
 19 section is talking about who Mr. Graves was, when he got
 20 involved, what he was doing.
 21 And in point of fact, I don't know if this is
 22 too much information for the Court, Mr. Graves was hired
 23 through Twitter in January of 2010. He went to New York
 24 for a very, very preliminary discussion with
 25 Mr. Kalanick.
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1 He then -- Mr. Graves came to San Francisco at
 2 the end of January and beginning of February. This is
 3 according to Mr. Graves, and that's the time when we say
 4 Mr. Graves contacted Mr. Macafee.
 5 Mr. Graves I think is going to say -- whether
 6 he denies it or just really doesn't remember, he's going
 7 to try to -- and the defense will try to push
 8 Mr. Graves' contact with Mr. Macafee into several months
 9 later. And so the fact that Mr. Macafee was hired, he
 10 was here in San Francisco, what he was doing.
 11 THE COURT: You mean Graves, right?
 12 MR. GREENBERG: I meant Mr. Graves, if I
 13 didn't say that.
 14 Is as central as it gets.
 15 And also, just even his background, because
 16 one of the issues is when Mr. Halpern found out about
 17 Mr. Graves, what he found out was Mr. Graves was someone
 18 who was, as it says in here, worked at GE, not in San
 19 Francisco, seemed to have no connection to anyone that
 20 Mr. Halpern had ever discussed Celluride with.
 21 THE COURT: All right, let me hear from the
 22 defense.
 23 MR. TANGRI: Your Honor, you heard earlier
 24 today a theory about fraudulent concealment, you heard
 25 about it on the 3rd as well and the 6th as well, and the
 Page 72

1 Potemkin CEO theory, that's what we took this evidence
 2 going to. To the extent that that's going to be
 3 excluded as -- as argument about that is going to be
 4 excluded and this just goes to when did Mr. Graves, you
 5 know, meet with Mr. Kalanick, I will point out this
 6 excerpt is not about a trip to San Francisco. It's
 7 about a trip to New York and he's in Connecticut, but --
 8 but we don't have a strong objection to this testimony.
 9 It's the argument around the fraudulent -- we think
 10 fallacious and excluded fraudulent concealment theory
 11 that we had an objection to.

12 THE COURT: Okay. I'm going to overrule this,
 13 at least, and put it in the basket upon which the
 14 plaintiff can draw, but I'm not revisiting my prior
 15 ruling regarding the argument you just described.

16 So next is page 65, which is the bottom of
 17 page 24.

18 MR. GREENBERG: And this is just, again,
 19 background on Mr. Graves, which is important because it
 20 came -- this is the type of information that came to the
 21 attention of Mr. Halpern that Mr. Graves was someone in
 22 Crotonville, New York, doing something that had nothing
 23 to do with Celluride or Mr. Halpern, and that is part of
 24 what gave Mr. Halpern the assurance that his trade
 25 secrets had not been misappropriated, but this was just
 Page 73

1 some guy who had had a similar idea and was working it.
 2 THE COURT: I thought it was because
 3 Mr. Graves didn't know if he was in Connecticut or New
 4 York.

5 MR. GREENBERG: No, I happen to be from that
 6 area exactly where he's talking about, so I don't see
 7 how someone can think that was Connecticut, but the jury
 8 probably wouldn't care about that issue.

9 THE COURT: All right.
 10 I'm going to sustain the objection on
 11 relevance and 352 to the Crotonville materials on page
 12 65.

13 Turn to page 72.

14 MR. GREENBERG: I already made this argument,
 15 because it -- it goes to the very core of when
 16 Mr. Graves visited San Francisco in January and February
 17 2010, which is when Mr. Macafee and Mr. Halpern are
 18 going to say they learned about Mr. Graves, from
 19 Mr. Graves.

20 Well, Mr. Macafee from Mr. Graves, and then
 21 Mr. Halpern.

22 THE COURT: So the objection is 352, it seems
 23 based on this argument I'm hearing from the plaintiff,
 24 that it's another fact they want to use to talk about
 25 the timing.
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1 MR. TANGRI: And, Your Honor, subject to the
 2 counter, which I believe is not objected to, we don't
 3 have a problem with that.

4 THE COURT: Okay. I'll overrule the objection
 5 to the material on page 72.

6 And so that we don't forget it, let me just
 7 address the expansion essentially.

8 They want to go down to line 23 on page 72,
 9 and I will permit that, based on a lack of objection.

10 MR. GREENBERG: Right, we did not object to
 11 that.

12 THE COURT: Very good.
 13 Let's try one more, page 75.

14 MR. TANGRI: Your Honor, I apologize for
 15 taking this back, but there was an additional counter to
 16 that same testimony on pages -- from 69, line 21 through
 17 70, line 14, that also was not objected to, in the
 18 interest of efficiency.

19 THE COURT: Okay.

20 MR. GREENBERG: We have no objection to that.

21 THE COURT: So that material will be put in
 22 the basket as well.

23 Thank you for the clarification, very timely.
 24 Page 75, that's on page 27.

25 MR. GREENBERG: The part that all of this -- I
 Page 75

1 mean, it's -- in order for comprehensibility, there's
 2 more included than the important part, but the important
 3 part, really, is on page 76 and 77, where it gets into
 4 that Mr. Graves acknowledged that it's correct that he
 5 prepared a slide deck with his vision for Uber, that
 6 Mr. Kalanick edited it and then they presented it to
 7 Mr. Camp on that occasion of that visit, showing how far
 8 along Mr. Graves' involvement was, and so -- and what he
 9 was doing while he was here, that he was working on Uber
 10 with Mr. Kalanick and Mr. Camp on that occasion, which
 11 is the same occasion we say that he contacted
 12 Mr. Macafee.

13 So he wasn't just here on vacation or doing
 14 something else. He was actively working on putting
 15 together the Uber model. It's not about merits. We're
 16 not saying the Uber model is different, the same than
 17 the Celluride model.

18 What we're saying is Mr. Graves was here
 19 presenting a slide deck about what Uber was to become,
 20 and that he, as part of doing that, was going out and
 21 interviewing people, that's how he found Mr. Macafee.

22 Because he was going out and talking to people
 23 locally about their ideas for -- about limo services and
 24 that were helping to put this deck together.

25 THE COURT: So basically you're arguing 75 --
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1 75 and 76 and 76 and 77 together.
 2 MR. GREENBERG: Yeah, I mean, 75 and 76 seems
 3 innocuous enough and it's just background that leads
 4 to -- because I guess it starts with if you stick with
 5 that same paragraph, so maybe -- I don't even know if we
 6 really need 75 and 76. The part that we really want is
 7 76 and 77.
 8 MR. TANGRI: Your Honor, if I may briefly,
 9 part of the objection to this is not so much the subject
 10 matter, when did the gentleman come to San Francisco,
 11 when did he not, what was he doing, but plaintiffs'
 12 counsel, these gentlemen's predecessor, chose to examine
 13 him about this by means of asking him on a book that is
 14 hearsay and they're reading hearsay statements out of
 15 the book and asking him to testify in light of that.
 16 It's going to be very hard for anyone to
 17 follow without that book. We've objected to the book
 18 itself as hearsay, and it -- it just creates a confusing
 19 record, and it -- and it introduces as hearsay from a --
 20 from some author who's not a witness.
 21 MR. GREENBERG: If Mr. Graves had said, yeah,
 22 that's not a correct statement in the book, then it
 23 would be hearsay. We couldn't offer the book. But he
 24 said it's correct, so for -- it's not hearsay. It's
 25 Mr. Graves' testimony.

1 We just have to -- it's the same as if the
 2 question had been asked without reference to a book,
 3 just saying, is it true that X, and he says, yes, that's
 4 correct is a valid question and answer, so I don't --
 5 we're not getting into anything that there's any dispute
 6 of what's in a book.
 7 I think he's being asked here is it correct,
 8 and he says it is.
 9 MR. TANGRI: Your Honor, there's two pieces
 10 here. The first piece, which is the piece that goes to
 11 where was he and when was he in San Francisco, is on 75
 12 to 76, especially on 76. And carrying over from 75 to
 13 76 he's asked, do you believe that statement to be
 14 accurate? I do not. What is inaccurate about it? And
 15 he explains.
 16 And then he says, oh, scratch that, and he
 17 quotes -- he quotes the book and he says, I guess one
 18 could interpret that that I started going back and
 19 forth, that could be an accurate interpretation, so
 20 he -- he's very clearly trying to interpret and give
 21 perhaps benefit of the doubt to this author he doesn't
 22 want to call a liar, but it's not a clean answer on
 23 where were you, when were you, what were you doing.
 24 The only thing that he says is a correct
 25 statement is on pages 76 to 77, it's about the slide

1 deck. And that is something that I think has been ruled
 2 out in other things that gets to the idea and who
 3 generated it, and that is more of a merits issue.
 4 But as to the testimony that seems to be
 5 critical to the theory they're talking about, it's
 6 highly ambiguous and it's embedded within an
 7 interpretation that could be accurate, could be
 8 inaccurate of book that is hearsay.
 9 MR. GREENBERG: And we don't need that part,
 10 like I said, in that -- where he was equivocating -- the
 11 part on 76 into 77 where he flat out says it's correct
 12 is the part we want to use, so it's not hearsay.
 13 And it's -- like I said, it's nothing to do
 14 with the merits. It's about what Mr. Graves was doing,
 15 which goes -- in San Francisco on those days, which goes
 16 to when he contacted Mr. Macafee. It's part of that
 17 circumstance.
 18 THE COURT: All right. I'm going to sustain
 19 the objections to both passages based on hearsay, motion
 20 in limine number one, relevance and 352.
 21 MR. GREENBERG: Your Honor, can I amend the --
 22 to get rid of the hearsay part, just start on -- on page
 23 77, line 6 with "is it a correct statement," that's not
 24 hearsay.
 25 MR. TANGRI: It's not it, it's "that," the

1 "that" is the hearsay book.
 2 THE COURT: No, I'm not going to get into
 3 that. I agree with the way the defense has
 4 characterized the hearsay aspects of this.
 5 And motion in limine number one is very much
 6 in play on that as well.
 7 Okay, we're going to take our noon recess,
 8 going to the staff's -- the court staff's lunch hour,
 9 we're going to resume at 1:45.
 10 MR. TANGRI: Thank you, Your Honor.
 11 (Recess taken.)
 12 (Whereupon, a lunch recess was taken from
 13 12:05 p.m. to 1:46 p.m.)
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1 AFTERNOON SESSION; 1:45 P.M.
 2
 3 THE COURT: We're back on the record for the
 4 afternoon session, and we can continue litigating the
 5 designation of excerpts from Mr. Graves.
 6 We left off on page 4 at line 16 and 17, which
 7 is the designation on page 87.
 8 MR. GREENBERG: Are you ready?
 9 THE COURT: Yes, sir.
 10 MR. GREENBERG: Thank you, Your Honor.
 11 The one on page 87 is the same argument that
 12 we made earlier about what Mr. Graves was doing on his
 13 important visit to San Francisco in early February of
 14 2010.
 15 THE COURT: All right. I understand your
 16 argument. I'm going to sustain the objection based on
 17 motion in limine number one, relevance, hearsay and
 18 Evidence Code 352.
 19 The next one in line is page 90 to 91, it's on
 20 the following page and the attachment.
 21 MR. GREENBERG: This particular excerpt talks
 22 about the size and scope of Uber in 2010, the beginning
 23 of 2010, which I -- I'm not sure the nature of the
 24 objection.
 25 THE COURT: Looks like it is listed as
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1 relevance, motion in limine one and 352. Let me ask
 2 Mr. Tangri about -- essentially the plaintiff is
 3 indicating this is one of the opportunities to reflect
 4 the scope or, rather, the size of Uber in its early --
 5 in its early development.
 6 MR. TANGRI: Your Honor, this is testimony
 7 about an action, actions that took place in New York in
 8 early 2010. I believe it's not disputed. I believe it
 9 was even before Mr. Halpern's earliest date of having
 10 heard of Uber, point one.
 11 Point two, it's in New York. It's not in San
 12 Francisco. There's no allegation that he was supposed
 13 to have heard about this thing for the same reason. We
 14 don't have a strong objection to it. It just doesn't
 15 seem relevant to anything and we felt like it might try
 16 to come in for the merits.
 17 THE COURT: Okay, I'm going to overrule the
 18 objection on this one. I -- I'm not sure that it's
 19 particularly strong evidence, but it does go to the
 20 point of Uber in January of 2010 was nothing like it is
 21 now or was in even 2012. So I'll overrule it.
 22 The next one is on pages 92 to 95, it starts
 23 on that same page, page 31.
 24 MR. GREENBERG: Right, so this one, which goes
 25 on through -- right through page 95, is getting into --
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1 is Mr. Graves getting into detailed answers about what
 2 he did on that trip, the people he spoke with, about the
 3 cons- -- about -- well, generally about learning
 4 information that would help him start Uber's operations
 5 with the -- in conjunction with the others.
 6 And, again, this goes to the fact that
 7 Mr. Graves was here doing that in the time frame that
 8 Mr. Macafee says that Mr. Graves contacted him, so the
 9 fact that Mr. Graves was pounding the pavement talking
 10 to people who were in the industry or have knowledge
 11 about car services is, to us, important and I don't
 12 really see it as being particularly controversial. I'm
 13 not sure why they're objecting.
 14 MR. TANGRI: The objection, Your Honor, was,
 15 as we discussed earlier, we had a similar one, this --
 16 it felt to us when we reviewed this as though it was
 17 being designated behind this false CEO, he was a front
 18 man, he didn't have any experience theory, and we think
 19 that theory has been excluded.
 20 Assuming that theory stays excluded, the facts
 21 in here as long as they're not being used to argue in
 22 support of that theory, which goes to the merits, we're
 23 fine with.
 24 THE COURT: All right. I'll overrule the
 25 objection on the evidence. I'm not changing my ruling
 Page 83

1 on the theory. But to the extent this -- the -- to the
 2 extent the plaintiffs believe that this deposition
 3 material can support their version of the timeline for
 4 the Macafee meeting, then I think it's relevant and can
 5 be put in the basket.
 6 All right, the next one is at 98 to 99.
 7 MR. GREENBERG: If we're not going to get into
 8 the slide deck, then this is going to be out of context.
 9 We would like to use them in conjunction with some of
 10 the testimony that's already -- that had objections
 11 sustained to it.
 12 THE COURT: Mr. Tangri, are the quotes here
 13 quotes from the book you referenced earlier, like --
 14 MR. TANGRI: Yes, Your Honor.
 15 MR. GREENBERG: Maybe I'm on the wrong one. I
 16 was on 98 to 99, there's no book, is there?
 17 THE COURT: I think if you look at lines 24
 18 and 25 on page 98, it's in quotes and above that it says
 19 "it says" and then there's a quotation, and I was asking
 20 Mr. Tangri if it was his contention that the quotation
 21 is from the book.
 22 MR. GREENBERG: That's the next one, Your
 23 Honor. I'm lost because I'm looking at 98, line 24 does
 24 not say that. It's page 99, line 24. I think we
 25 skipped one, one -- one designation, 98, line 13 through
 Page 84

1 99, line 5.
 2 THE COURT: Okay.
 3 MR. GREENBERG: That's the one I was saying
 4 deals with the slide deck and I would -- we wanted to
 5 use it in conjunction with the other discussions about
 6 Mr. Graves doing this slide deck as to what he was doing
 7 in San Francisco, but we need the others in order for
 8 this one to make any sense and you've already sustained
 9 objections to the other ones.
 10 THE COURT: I agree and I'm going to sustain
 11 the objection to this one too for the same reason.
 12 Maybe that's why my eyes just gravitated to the next
 13 one. I guess I was treating the 98 to 99 as one, but we
 14 dealt with the first one, now on to what would be 99 to
 15 101.
 16 And this is the one that was referenced to the
 17 book.
 18 MR. GREENBERG: Right, and if I could have one
 19 moment, please, Your Honor.
 20 THE COURT: Okay.
 21 MR. GREENBERG: I mean, I understand the
 22 objection about the book. It seems to me maybe we could
 23 start it to eliminate the book part on page 101, line 7,
 24 which is not -- which is the question that doesn't
 25 reference any book. And we could probably end it then
 Page 85

1 at line 12 on 101, so it would only be those lines from
 2 7 to 12 on page 101, and we can just get rid of the
 3 book.
 4 THE COURT: What do you think about that?
 5 MR. TANGRI: I think, Your Honor, out of
 6 context like that, this brief question and answer, which
 7 boils down to I don't recall -- specifically recall when
 8 that was, doesn't add anything, and it's potentially
 9 confusing. There's other testimony that -- that Your
 10 Honor has allowed in about that subject, who he was
 11 talking to in this January trip, and then we have
 12 counter distributions on it -- that cover it much more
 13 fully, so I -- I think this doesn't add anything. It
 14 just injects confusion.
 15 MR. GREENBERG: I don't know that that's
 16 really an objection to the testimony. The testimony is
 17 Mr. Graves is saying he does not recall when he started
 18 talking to car services and that is a relevant issue in
 19 the trial.
 20 MR. TANGRI: Well --
 21 MR. GREENBERG: Because Mr. Macafee's a car
 22 server.
 23 MR. TANGRI: The objection is under 352, Your
 24 Honor, there's testimony that we countered as needed
 25 that we looked at earlier and was ruled in that says he
 Page 86

1 did not talk to anyone other than one driver who was
 2 working closely with Mr. Kalanick during that January
 3 trip.
 4 THE COURT: All right. I'm going to sustain
 5 the objection to everything except for line 7 through 12
 6 on page 101, so it will start with: "At some point you
 7 did start talking to car services, correct?"
 8 "Answer: At some point, yes."
 9 "Okay, do you recall when that was?"
 10 "Answer: I do not specifically recall when
 11 that was, no."
 12 The rest of that I think is 352.
 13 MR. GREENBERG: We withdrew the rest so it's
 14 not even --
 15 THE COURT: All right, you withdrew the rest,
 16 fair enough.
 17 The next one's on page 117 -- it's on page 37,
 18 it's 117 through 129.
 19 MR. GREENBERG: Right, this is the back and
 20 forth between Mr. -- testimony of Mr. Graves about his
 21 back and forth with Mr. Macafee in August of 2010, and
 22 so I think there's going to be a variety of e-mails
 23 that -- including this one, that the defense would use
 24 to show the contacts between Mr. Macafee and Mr. Graves.
 25 We would want Mr. Graves' testimony about it to be part
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1 of the case, part of the trial.
 2 I think they're taking the position that
 3 Mr. Macafee shared with Mr. Halpern what he was learning
 4 from Mr. Graves and so I -- if they're going to take
 5 that position, then I think it's fair game to get
 6 Mr. Graves commenting on what they were talking about.
 7 THE COURT: You're standing, go ahead.
 8 MR. TANGRI: No, I was waiting for you to
 9 read, Your Honor.
 10 As we discussed this briefly this morning in
 11 connection with the very first one, we don't disagree
 12 that contacts between Mr. Graves and Mr. Macafee and the
 13 timing of those are -- can be relevant. This passage
 14 reads into the record various statements Mr. Macafee
 15 made in an e-mail, which are hearsay.
 16 This passage also seems more directed to
 17 establishing an identity between Uber and Celluride,
 18 which is a merits issue, if it's anything, and not a
 19 statute of limitations issue.
 20 So if it was just a question when these
 21 gentlemen were communicating when did this e-mail take
 22 place, this e-mail takes place much later than late
 23 January and early February, and we do believe that case
 24 is supportive of our case.
 25 But the testimony here and the recitation of
 Page 88

1 the text from the e-mail, we think, is excludable.
 2 MR. GREENBERG: This confuses me, because it
 3 seems that Mr. Tangri is suggesting that they want to
 4 use the e-mail, but he doesn't want the e-mail text
 5 read, does seem inconsistent to me.
 6 If the e-mail's going to be in evidence, then
 7 anyone can read to the jury or show them what's in the
 8 e-mail, and so the fact that it's quoted in the passage
 9 seems to be neither here nor there.
 10 THE COURT: I thought he was taking that time
 11 honored position that the fact of the communication
 12 could be brought in but not the content of it, which
 13 should be excluded as hearsay, that's what I heard him
 14 say in kind of a high level way. They're nodding at me.
 15 MR. GREENBERG: Well, if the fact of it --
 16 it's either coming into evidence -- I guess it could
 17 come into evidence not for the -- for a limited purpose,
 18 but it still would be in evidence. I'm not sure -- in
 19 other words, we would not be offering this for a hearsay
 20 purpose. We're not offering this to talk -- to say that
 21 an out-of-court statement by Mr. Macafee is being
 22 offered to prove the truth of what Mr. Macafee is
 23 saying. It's to show the back and forth and get -- not
 24 for the truth, but the fact that it happened, and to get
 25 Mr. Graves' testimony about it, and about what he -- and
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1 his testimony's not hearsay, because Mr. Graves was
 2 Uber.
 3 THE COURT: There's a lot to unpack in that.
 4 Let me ask Mr. Tangri, you're not going to
 5 offer this e-mail as evidence, right?
 6 MR. TANGRI: Correct.
 7 THE COURT: Okay, but you're conceding perhaps
 8 in part -- well, strike that.
 9 You're conceding that the timing of the
 10 contacts between these two individuals could be relevant
 11 to the statute of limitations case.
 12 MR. TANGRI: Correct. This e-mail, to be
 13 clear, is dated August 12th, 2010, which isn't January
 14 or February.
 15 THE COURT: Right.
 16 MR. GREENBERG: Well, I --
 17 MR. TANGRI: We don't need the content of the
 18 e-mail to come into evidence to establish that. We
 19 could do that through either witness based on the
 20 e-mail.
 21 THE COURT: In fairness to Mr. Greenberg, the
 22 other thing he wants out of this is the delta between --
 23 I never heard of Celluride until -- until litigation was
 24 filed and this discussion of Celluride right here.
 25 Do I have that right?
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1 MR. GREENBERG: That's certainly something I
 2 said earlier and I -- I -- that's correct.
 3 THE COURT: I tend to agree with Mr. Tangri
 4 that the farther we get into this excerpt the more it
 5 strikes me as something that I've excluded under motion
 6 in limine number one. More on the merits issue.
 7 So I think that the date of the e-mail and the
 8 subject of it generally is potentially relevant, but
 9 once you start to get into this -- the value and the
 10 other things that are described later on, I just don't
 11 see how that's relevant to the statute of limitations
 12 case.
 13 MR. GREENBERG: Well, in this instance that
 14 was just testing Mr. Graves' veracity in his discussion
 15 about it, so it was -- these are really rhetorical
 16 questions about what Mr. Graves meant in the e-mail and
 17 I think what comes across is that he's -- he's not being
 18 credible. And so --
 19 THE COURT: What.
 20 MR. GREENBERG: I think his credibility is
 21 important.
 22 THE COURT: With respect to when he learned
 23 about Celluride and Halpern.
 24 MR. GREENBERG: No, in general about his
 25 discussions with Mr. Macafee and that he's basically
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1 helping Uber with his testimony and not being accurate,
 2 because he's tripped up by these questions and he's --
 3 he's not -- he's not credible, in our view.
 4 I know -- they don't have to agree, obviously,
 5 but that's how we -- we want to show it, to show that
 6 he's not being credible in discussing his communication
 7 with Mr. Macafee.
 8 MR. TANGRI: Your Honor, it's not even about
 9 that. As this thing goes on, when you look at it,
 10 they're arguing with him about why he says we're not
 11 Celluride, what the value proposition of Celluride was
 12 versus what the value proposition of Uber is.
 13 I mean, I don't -- I don't even know if that
 14 relates to the merits, but if it relates to anything, it
 15 relates to the merits. It certainly doesn't relate to
 16 the statute of limitations. If somebody wanted to -- so
 17 anyway, back to the --
 18 MR. GREENBERG: Well, I guess thinking out
 19 loud a little bit, which maybe I shouldn't do, if
 20 Mr. Tangri's saying that none of the e-mails between
 21 Mr. Macafee and Mr. Graves should come in, but we should
 22 only know that they existed, then at least I would be
 23 consistent. I think to just say you have an e-mail and
 24 not be able to get into what it was when they're going
 25 through a series of e-mails, see what they were talking
 Page 92

1 about, which they want to charge the knowledge of to
 2 Mr. Halpern, I don't see how they could have it both
 3 ways.
 4 THE COURT: Well, it's challenging for me to
 5 talk about these things categorically. I'd rather just
 6 do it piece by piece. So when we come across an e-mail
 7 that falls into that category that he's offering, you
 8 point it out to me and I'll ask him some questions about
 9 it, but I'm prepared to give you a ruling on this one.
 10 Anything more?
 11 MR. GREENBERG: No, I think we've said what we
 12 had to say.
 13 THE COURT: All right. So I'm going to permit
 14 the first part of this, page 117, line 21 through page
 15 118, line 13.
 16 So the concluding question and answer are:
 17 "Okay, is that the first time you became aware of
 18 Celluride and Mr. Halpern?
 19 "Yes, it is."
 20 And we're going to cut it off after that, when
 21 it gets into the discussion about Celluride and the rest
 22 of it, which I believe, like Mr. Tangri said, goes to
 23 the merits and not the statute of limitations case.
 24 MR. GREENBERG: Understood, Your Honor.
 25 MR. TANGRI: Then, Your Honor, the balance of
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1 the designations from Mr. Graves I believe are ours. I
 2 believe the first two you've already said may come in.
 3 The remaining ones there's no objection to, and they all
 4 go to -- they're counter designations to pieces that
 5 were either allowed in or that we did not object to and
 6 hence were allowed in.
 7 THE COURT: Okay.
 8 MR. GREENBERG: I did not keep track of that,
 9 but assuming that Mr. Tangri's being accurate, then I
 10 don't think there's anything else to talk about on that
 11 front.
 12 THE COURT: All right. I agree.
 13 Shall we turn to Mr. Belsky?
 14 MR. TANGRI: Yes, Your Honor.
 15 THE COURT: Looks pretty clean. Let's see.
 16 Page 27.
 17 MR. GREENBERG: That first one is similar to
 18 one we went over from Mr. Camp, so it would be the same
 19 discussion, in terms of its use and admissibility.
 20 THE COURT: Why does the discussion between
 21 Mr. Camp and Mr. Belsky about the litigation, why is
 22 that relevant to the statute of limitations?
 23 MR. GREENBERG: Well, it, again, goes to the
 24 issue of that these people knew who Mr. Halpern was and
 25 we're not surprised that a guy named Kevin Halpern sued
 Page 94

1 them, such that they did not -- their discussion was not
 2 along the lines of why didn't somebody named Kevin
 3 Halpern sue us, they -- when we don't know who that is.
 4 And so the fact that they did not have the
 5 discussion I just described to me is probative of that
 6 they knew who Mr. Halpern was and chose not to clue him
 7 in to what they were doing.
 8 And kept it from him to the extent that they
 9 did not share it with him and did not, for a period of
 10 time, make it publicly available in any easy manner for
 11 anyone to find.
 12 THE COURT: Okay. I'm going to sustain the
 13 objection on pages 27 and 28 on relevance and 352
 14 grounds.
 15 The next is on page 33.
 16 MR. GREENBERG: The first question and answer
 17 there are along the lines of what I just said,
 18 Mr. Belsky, who clearly knew Mr. Halpern and had
 19 correspondence with him, said that he did not recall who
 20 Mr. Halpern was. And we then -- it then further
 21 explores that topic, which we think is admissible and
 22 useful for the statute of limitations and we've already
 23 discussed why. So I'm not going to make -- subject
 24 everyone to hearing me repeat myself.
 25 THE COURT: When we talked about this with
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1 Mr. Graves, you indicated that in a different portion of
 2 Mr. Graves' deposition he gave a different answer about
 3 whether he knew who Celluride was before the litigation
 4 was filed, you were able to point it out to me. Can you
 5 do the same thing with this gentleman?
 6 MR. GREENBERG: No. This is different because
 7 Mr. Belsky actually had e-mails with Kevin Halpern
 8 before 2010 about Celluride. So Mr. Belsky at the time
 9 of his deposition was well aware of that, and is
 10 basically saying, he knows that, but he did not remember
 11 it in the past.
 12 THE COURT: I heard from the defense on that.
 13 MR. TANGRI: Your Honor, first and foremost,
 14 we felt like this was in to go to the merits to try to
 15 establish meetings between Mr. Belsky and Mr. Halpern,
 16 which is obviously a merits issue and was alleged to be
 17 how he learned information about the supposed trade
 18 secrets. The -- I don't understand, frankly, the
 19 relevance of this at all to the statute of limitations
 20 and the discovery rule issue. It doesn't talk about
 21 what information was or wasn't available to Mr. Halpern
 22 in 2010, 2011 and 2012.
 23 The theory that Counsel articulated this
 24 morning appears to relate somehow or asserted to relate
 25 somehow to a fraudulent concealment theory, why didn't
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1 he call him and fraudulent concealment is not the
 2 defense. It's not in the case.
 3 MR. GREENBERG: Just for clarity, we're not
 4 saying fraudulent concealment. We're just saying the
 5 question is when Mr. Halpern discovered or should have
 6 discovered. If they took steps to make sure he did not
 7 know, then it doesn't have to be fraudulent concealment.
 8 It just goes to the ultimate fact of when Mr. Halpern
 9 should have discovered it.
 10 MR. TANGRI: That merges -- attempts to merge
 11 fraudulent concealment with discovery rule and the issue
 12 on the discovery rule doesn't have to do with why
 13 information may not have been out there. It has to do
 14 with what information was out there, would a reasonable
 15 search have found it.
 16 The evidence will show that there was a lot of
 17 information out there between 2010 and 2012, and the
 18 fact that it -- I don't even understand how this
 19 would -- the fact that he doesn't remember somebody
 20 relates to taking steps to conceal or try to keep
 21 information from being out there.
 22 But the issue is, the information that was out
 23 there was out there, and if Mr. Halpern had occasion --
 24 should have been aware of it -- during the 2010, 2012
 25 time period, then he should have been aware of it.

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1 MR. GREENBERG: I just want to be clear, we're
 2 not offering this testimony to show that Mr. Belsky is
 3 accurately saying that he did not remember Mr. Halpern's
 4 e-mail, as Mr. Tangri suggests. We're offering it to
 5 show that Mr. Belsky, along with Mr. Camp -- I'm sorry,
 6 Mr. Kalanick and Mr. Trenchard and Mr. Belsky all
 7 conveniently did not say that they did not remember
 8 Mr. Halpern when they all had interaction with
 9 Mr. Halpern on something that was, in fact, very similar
 10 to Uber. And with Mr. Belsky and Mr. Trenchard, there's
 11 actually e-mails sending them the Celluride information
 12 that is very similar to Uber.
 13 Now, this is not a -- again, being offered to
 14 prove merits, because that's not something the jury will
 15 even decide. It's being offered to prove that these
 16 people are not telling the truth under oath, and that
 17 they're not telling the truth about something that does
 18 go to the statute of limitations, which is that one way
 19 Mr. Halpern could have discovered or -- and also how
 20 reasonable it was for him to have found out about the --
 21 about Uber is tied to that these people, these
 22 defendants, including Mr. Kalanick, did not want
 23 Mr. Halpern to find out, and did not tell him about it,
 24 even though they did know who he was, they did know
 25 about Celluride, and they're falsely testifying.

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1 We should be able to use all of that. I know
 2 Your Honor's ruled already on Mr. Trenchard, but we're
 3 going to get to Mr. Kalanick and it's going to be the
 4 same situation.
 5 But I'm clarifying because Mr. Tangri
 6 suggested that we were somehow offering this, what
 7 difference does it make that Mr. Belsky did not
 8 remember, was Mr. Tangri's statement.
 9 What I'm clarifying is, we don't believe that
 10 he did not remember. So we're not offering it on its
 11 face to say that Mr. Belsky is being correct. We're
 12 suing Mr. Belsky.
 13 THE COURT: So the lie that you say was told
 14 under oath is "I don't remember Mr. Halpern."
 15 MR. GREENBERG: In that clip, yes. That --
 16 I'm not saying that's the only lie, but that's the
 17 main -- that's the first question in that clip, and
 18 we're saying that that was untrue, yes.
 19 And all three of them did it, Trenchard,
 20 Belsky and Kalanick, they all -- despite obvious facts
 21 in the -- in all three of them, but in the case of
 22 Trenchard and Belsky, actual e-mails that they admit are
 23 legitimate. And they set up meetings and then they say,
 24 oh, we didn't remember Mr. Halpern.
 25 So, to me, it goes to the statute of

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1 limitations when Mr. Halpern should have discovered it.
 2 I mean, they didn't want him to discover it or they
 3 would have told him.
 4 And now they're here raising as a defense that
 5 he didn't figure it out when they didn't want him to
 6 figure it out.
 7 THE COURT: Well, some of that doesn't --
 8 doesn't get a lot of traction with me because I think
 9 that this idea that they were under a duty to disclose
 10 something to him, I think that was -- that was explained
 11 to my satisfaction by Mr. Tangri during the motion in
 12 limine.
 13 MR. GREENBERG: Oh, I wouldn't -- sorry.
 14 THE COURT: But the notion that there's
 15 some -- well, that there's some evidentiary value in a
 16 statement "I don't remember" and you being able to show,
 17 well, why is he saying that, look at the e-mails, et
 18 cetera, et cetera, that seems like more classic
 19 impeachment.
 20 So I -- I think I understand that part of it,
 21 for whatever it's worth.
 22 MR. TANGRI: And I rise to say it's not worth
 23 anything, because whether he remembers him or not, or
 24 says I don't remember him, might be relevant to the
 25 merits if he were trying to deny that he ever met the

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1 man and they say, look, we can prove that you met him so
 2 there's a path of transmission.
 3 It might be relevant to statute of limitations
 4 if we were saying, oh, we called him and they're saying,
 5 no, you didn't call him and the way we know you didn't
 6 call him is you didn't even remember him.
 7 We're not going to offer testimony that these
 8 gentlemen did notify him, as Your Honor said. We've
 9 established in the motion in limine hearing that the
 10 fact they didn't call him doesn't go to anything because
 11 they're not under a duty to call him.
 12 So trying to impeach someone to say you're
 13 testifying falsely when you say you don't remember
 14 because you did, in fact, meet him briefly or have
 15 e-mails with him some years before, years before the
 16 complaint was filed, five years, six years, seven years,
 17 it's not a relevant issue in this phase of the case.
 18 And impeaching somebody on an irrelevant issue is not
 19 appropriate.
 20 And I would just add that you heard the length
 21 that Mr. Greenberg wants to make, which is what you
 22 should have remembered because this was so similar to
 23 Uber that when you joined Uber, you must have noticed
 24 how similar it was, we're right back in the merits.
 25 MR. GREENBERG: And just -- again, we're not
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1 arguing that there was a duty under the law for them to
 2 notify Mr. Halpern. We're arguing as a matter of fact
 3 that they, by not notifying him and lying about why, did
 4 not want him to find out. And then -- and now we're in
 5 court telling the jury that he should have figured it
 6 out sooner, when they didn't want him to know.
 7 And that seems to be fair game. It's not
 8 about legal duty.
 9 THE COURT: All right. Thank you.
 10 I'm going to sustain the objection under
 11 relevance, 352 and motion in limine number one.
 12 The next portion is pages 48 through 51, it
 13 starts on page 19. And the defense has indicated this
 14 runs afoul of motion in limine number six, relevance and
 15 352.
 16 MR. TANGRI: You basically excluded the
 17 identical evidence this morning in Mr. Trenchard's
 18 transcript, Your Honor.
 19 THE COURT: I know.
 20 MR. TANGRI: Okay, just --
 21 MR. GREENBERG: My argument would be similar
 22 on this one.
 23 THE COURT: I'm going to sustain it.
 24 I guess my poker face is working today.
 25 MR. TANGRI: Very well.
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1 THE COURT: Page 151.
 2 MR. GREENBERG: I mean, this is squarely
 3 within the same argument that was just discussed, about
 4 Mr. Belsky conveniently, all too conveniently denying
 5 recollection of things that he clearly recalled about
 6 Mr. Halpern.
 7 THE COURT: All right, and your argument would
 8 be similar to what you said earlier?
 9 MR. TANGRI: Yes, Your Honor.
 10 THE COURT: I'm going to sustain the
 11 objection, relevance, motion in limine one and 352.
 12 Page 182 and 183, which is on page 53.
 13 MR. GREENBERG: This is, again, along the same
 14 lines. This is the actual e-mail that was transmitted
 15 by Mr. Halpern to Mr. Belsky with an attachment
 16 regarding Celluride in -- or at least there's a
 17 reference to 2008. I don't have the e-mail so I don't
 18 have the exact date in front of me, but it was before
 19 2010, certainly.
 20 And this goes in hand with the other e-mails
 21 about Mr. Belsky claiming not to remember, and here
 22 again, he plausibly is not remembering something that I
 23 think the trier of fact in this case, the jury, would
 24 correctly ascertain he is not being truthful about
 25 something that, at the risk of repeating myself, goes to
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1 the intent of the defendants not to want Mr. Halpern to
 2 find out what they were doing, which goes to how
 3 reasonable it was of when he should have figured it out.
 4 THE COURT: All right. I don't see it that
 5 way. It seems like it goes right into the teeth of
 6 motion in limine number one, and I'm going to sustain
 7 the objection on the grounds stated, relevance, motion
 8 in limine number one and 352.
 9 MR. GREENBERG: The next one I would say the
 10 same argument so I'll just say ditto.
 11 THE COURT: All right.
 12 MR. GREENBERG: Which is on page 190.
 13 THE COURT: I see it. I'm going to sustain it
 14 on the same grounds.
 15 And the last one is 196.
 16 MR. GREENBERG: It's the same issue, it's
 17 Mr. Belsky sending an e-mail, talking about Kevin
 18 Halpern and Celluride and it goes to, again, his lack of
 19 veracity, in our view, on his recollection.
 20 THE COURT: Looks like a merits argument that
 21 I believe Mr. Tangri has already decided.
 22 Anything more on that one?
 23 MR. GREENBERG: Just about what I said
 24 about --
 25 THE COURT: I'll sustain the objection based
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1 on relevance, motion in limine number one and 352.
 2 MR. TANGRI: I believe all of our counters,
 3 Your Honor, were to testimony that has been excluded so
 4 we don't need those.
 5 THE COURT: Okay. So that moves us with
 6 Halpern, Kalanick and Barabash.
 7 What was the issue with Barabash, the issue
 8 with -- the order in which to do these things?
 9 MR. TANGRI: I don't think there's a
 10 particular issue with Barabash. There's a fair bit of
 11 it that we're going to withdraw in light of where we're
 12 at and what Your Honor's ruling have been, and
 13 Mr. Krishnapriyan is going to address that.
 14 THE COURT: Okay.
 15 MR. TANGRI: With Mr. Halpern we were saying
 16 we thought it might make more sense to just let us
 17 propose with stuff in the opening and deal with it in
 18 that context. There's going to be a small volume of
 19 material, but we're happy to do it however you like.
 20 Mr. Kalanick, he's a defendant, it might make sense to
 21 take him next, because --
 22 THE COURT: Maybe that's what I was
 23 remembering about Barabash, that it was going to be less
 24 significant than otherwise thought. What do we want to
 25 do with the Barabash designations.

1 MR. KRISHNAPRIYAN: Well, just very briefly
 2 speaking, I think we are willing to narrow it down to
 3 the e-mails that are attached to it. So just to give
 4 some background, Mr. Barabash is the person most
 5 knowledgeable who is produced by Mr. Halpern's e-mail
 6 host in response to our subpoena, and among other
 7 things, he attached a number of e-mails that the e-mail
 8 host sent to Mr. Halpern in November of 2014, after
 9 Mr. Halpern stopped paying for his e-mail account.
 10 And so broadly speaking, I'm happy to go
 11 through the individual excerpts, but we're willing to
 12 keep his excerpts to his background and what's needed to
 13 authenticate those e-mails and forego the remainder.
 14 THE COURT: I just would note that for the
 15 most part the motion in limine number two is what is --
 16 your motion in limine number two is what is being cited,
 17 I did adjudicate that in favor of the defense, so...
 18 MR. GREENBERG: The plaintiff or the defense?
 19 Part of it was in favor of the plaintiff, which is the
 20 part about the Shukla spoliation claim and a lot of
 21 Mr. Barabash's is on that subject.
 22 THE COURT: That's a fair point, because I
 23 want to -- as far as the spoliation related to the
 24 Celluride e-mail server, there's a lot of that in here.
 25 There's some sort of Shukla cross-contamination, if you

1 will, that we do need to address. I mean, I want you to
 2 have the benefit of your win and suffer the pain of your
 3 loss.
 4 MR. KRISHNAPRIYAN: No, understood. And I
 5 think I can short-circuit it a little bit. We are
 6 not -- I understand what Counsel and Your Honor's
 7 referring to when you refer to the Shukla piece. I
 8 think you're referring to the crash of the e-mail
 9 server. We're not intending to get into that in light
 10 of Your Honor's ruling.
 11 What we're intending to offer are the e-mails
 12 sent in November of 2014 relating to this case when
 13 after Mr. Halpern threatened to file this case he
 14 stopped payment.
 15 MR. GREENBERG: If all they're offering is a
 16 series of e-mails about what Counsel just said, then it
 17 probably makes sense for us to meet and confer about
 18 that. And if there is going to be an issue to present
 19 to the Court, probably be something that would take five
 20 minutes, at some point maybe we should look at -- and
 21 maybe we can come to an agreement on it, so then it
 22 would take no minutes.
 23 THE COURT: On one hand that's always an
 24 attractive offer. On the other hand, I wonder if we
 25 could do it in ten minutes, with the papers.

1 MR. TANGRI: Yeah.
 2 THE COURT: Just be done with it.
 3 MR. TANGRI: Right.
 4 THE COURT: Do you have like a surgical strike
 5 that you could make to tell me what pages you need.
 6 MR. KRISHNAPRIYAN: Sure, I have it written
 7 out here. If Your Honor has his designation in front of
 8 you, everything on the page labeled 2 I think we are
 9 offering, because it has to do with his background. I
 10 think we're willing to forego on the page labeled 3,
 11 designations 17, page 17, line 25.
 12 THE COURT: All right, let me stop you.
 13 MR. KRISHNAPRIYAN: Sure.
 14 THE COURT: Because you lost me right at the
 15 beginning, because the designation -- defendants'
 16 designation with the table has a four on it, not a two.
 17 MR. TANGRI: I think, Your Honor -- the
 18 problem, Your Honor, is that you're looking at a
 19 document that was prepared by the plaintiffs jointly to
 20 be filed.
 21 THE COURT: I see.
 22 MR. TANGRI: And I think we're looking at what
 23 we sent them so if you just go with page and line
 24 numbers from the depo it will all sort out.
 25 MR. KRISHNAPRIYAN: Makes sense, yeah.

1 THE COURT: Okay.
 2 MR. KRISHNAPRIYAN: So the designations from
 3 page 10 of the depo to page 16 of the depo I think we
 4 would still be offering.
 5 THE COURT: All right.
 6 And that's 10, lines 15 to 25; 11, lines 5 to
 7 17 and 21 to 25; 13, line 7 to 23; and 16, lines 9
 8 through 20.
 9 MR. KRISHNAPRIYAN: Exactly.
 10 THE COURT: Let me take a quick peek at that.
 11 Do you want to be heard on any of this?
 12 MR. GREENBERG: To the extent that
 13 Mr. Barabash is referencing or the questions are
 14 referencing a declaration, we've objected that those are
 15 hearsay, and so we would stand on that objection.
 16 In addition, on the excerpt on page 16 we also
 17 objected, foundation and speculation. Basically I don't
 18 know how much we're going to get into this, because I
 19 don't know what's being offered other than some e-mails,
 20 but a lot of Mr. Barabash's declaration and his
 21 deposition, which he was asked about the content of that
 22 declaration, he ultimately admitted I had no basis to
 23 make these statements, other than hearsay, at best from
 24 asking other people, and he really didn't have any
 25 knowledge of some key stuff.

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1 And so -- and so they designated the parts
 2 where he did not admit that he didn't know what he was
 3 talking about and then we counter designated the parts
 4 where he says I don't know, I don't know, over and over
 5 and over again about -- and the things he does not know
 6 are -- really undercut the things that they're offering.
 7 And so, again, we may be going down a path
 8 when I say that that's not necessary if they're really
 9 offering very limited stuff. But on these particular
 10 offerings, I also have to take them one at a time, so
 11 there are things in here that we objected, in
 12 particular, any reference to the declaration and the
 13 matters on page 16 for which they've not laid any
 14 foundation and Mr. Barabash I believe is speculating.
 15 THE COURT: Okay.
 16 MR. KRISHNAPRIYAN: Your Honor, I think we can
 17 short-circuit things if plaintiffs are simply willing to
 18 stipulate to the admission of the e-mails, again, the
 19 portions that -- of the declaration that we would want
 20 to get in, we're trying to get in, because the e-mails
 21 were attached to this declaration.
 22 And we -- to the extent, you know, plaintiffs
 23 are maintaining their personal knowledge objection to
 24 those e-mails, then we have something to discuss there,
 25 but if not, then I think we can short-circuit all this.

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1 MR. GREENBERG: And that's the part I wanted
 2 to look at because I don't have the e-mails here and I'd
 3 have to go to the pages where that's discussed and then
 4 figure out. Even if we objected, we may withdraw the
 5 objection if it makes sense to do so.
 6 But I can't consider that in a vacuum and I
 7 need them to point me to what they really want from this
 8 and what e-mails they really want, and then I can
 9 consider either agreeing or at least we could narrow it
 10 to objecting on that, whatever the objection is, to
 11 those e-mails.
 12 MR. KRISHNAPRIYAN: Your Honor, I have the
 13 e-mails here. I think I can provide a copy to Counsel
 14 and to you and the declaration as well for good measure.
 15 MR. GREENBERG: It would -- in addition to
 16 that, it would help to know what specific part of the
 17 deposition authenticates the e-mails.
 18 THE COURT: Well, you know, we don't have to
 19 do it in any special way. We could just go through and
 20 you could tell me what you want to designate and you can
 21 tell me what your objections are. I'll give you a
 22 quality ruling on your objections, and in half an hour
 23 we'll have the whole thing knocked out.
 24 MR. GREENBERG: We can. I think it would take
 25 five minutes if I knew the very specific part that they

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1 actually care about.
 2 THE COURT: It would appear so, but the more
 3 you say, the less I believe that.
 4 MR. GREENBERG: Okay.
 5 THE COURT: So I'm going to overrule your
 6 objections on the pages that I read out earlier, the
 7 one, two, three, four, five top cells on page 4,
 8 starting at line 4, ending at line 12.
 9 What else do you want to put in?
 10 MR. KRISHNAPRIYAN: The next selection that we
 11 would want to put in is page 19, line 8 of the
 12 deposition to line 12 of that same page.
 13 MR. GREENBERG: Again, I don't see any
 14 foundation, and so we objected on the basis that it
 15 lacks foundation and calls for speculation.
 16 THE COURT: All right, your objection's
 17 overruled.
 18 MR. KRISHNAPRIYAN: The next selection is same
 19 page, line 17 through 22.
 20 THE STENOGRAPHER: Line 17?
 21 MR. KRISHNAPRIYAN: Through 22.
 22 MR. GREENBERG: Same objection, even answers
 23 in the punting text, or punting tense, meaning, he says
 24 that's what would have been brought over, he's not
 25 speaking from personal knowledge.

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1 THE COURT: Okay, overruled.
 2 MR. KRISHNAPRIYAN: The next selection is line
 3 21 -- sorry, page 21, line 16 through 25.
 4 MR. GREENBERG: We don't need to object to --
 5 to this passage on page 21.
 6 THE COURT: All right. Do you withdraw your
 7 objection or do you want me just to rule on it? The one
 8 on the page.
 9 MR. GREENBERG: I already put on the record
 10 that we're not really objecting so I guess we'll
 11 withdraw it.
 12 THE COURT: Okay, that material, line 16 to 25
 13 on 21 is in.
 14 What's next?
 15 MR. KRISHNAPRIYAN: The next one is page 25,
 16 lines 10 through 17. The introduction of the e-mails we
 17 were talking about.
 18 MR. GREENBERG: We object to this one and the
 19 rest. Again, if I -- I hadn't considered independently
 20 whether we would object to the document, because that's
 21 different from the deposition, but just looking at the
 22 deposition, I would refer the Court to the counter
 23 designation on page 30 and 31 and 32, and in those
 24 counter designations Mr. Barabash admits in five
 25 different ways that he really does not know how the
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1 system works and cannot really authenticate these
 2 documents.
 3 THE COURT: Aren't these the same documents
 4 that are handed to your client and he's examined them at
 5 length?
 6 MR. GREENBERG: I don't know, Your Honor.
 7 That's why I said if I -- I'm hearing this for the first
 8 time that they're isolating to this one issue, so I
 9 haven't analyzed that specifically. And that's why I
 10 wanted to confer, because if Mr. Halpern in portions
 11 where -- if he acknowledges these particular e-mails,
 12 then we don't even need Mr. Barabash to authenticate
 13 them because they're already going to come in anyway.
 14 If that's true, if what Your Honor said is
 15 true, then we're just wasting time, in my opinion. I
 16 mean, the Court can do whatever -- if it's in any order
 17 and I'm here for the duration, but it just seems to me
 18 that if they're coming in, then we don't need this. And
 19 if they're not coming in -- or if they're not coming in
 20 some other way and this is the way they're relying on,
 21 then they can't bring it in through a guy who doesn't
 22 really know that they're authentic or can't say for
 23 certain how the system works that he pulled them from or
 24 that he had somebody pull them from.
 25 THE COURT: Well, what confuses me is that
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1 when we were last together we all agreed that we were
 2 going to go through these designations today, and so I'm
 3 just going through the designations that were teed up
 4 for today, and the defense is selectively offering them
 5 at this point. They're not adding anything to it.
 6 They're subtracting portions of what they were offering.
 7 MR. GREENBERG: Yeah, but we object.
 8 THE COURT: So you should be ready to go on
 9 all of it. And so --
 10 MR. GREENBERG: We are, we object. I was
 11 responding to the Court's question about a different
 12 evidence, and whether these are the same as something
 13 somewhere else, which I don't know off the top of my
 14 head. But if this is what's being offered, we object.
 15 The witness is not competent to introduce those e-mails
 16 as referenced in these counter designations, that's our
 17 objection.
 18 THE COURT: Okay. Well, I'm happy to do it in
 19 a piecemeal fashion like this and we can just keep
 20 going.
 21 Your objection to lines 10 through 17 on page
 22 25, overruled.
 23 MR. KRISHNAPRIYAN: The next portion, Your
 24 Honor, is page 25, lines 22 through 24.
 25 THE COURT: All right. Appears the only
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1 objection to that is spoliation.
 2 MR. GREENBERG: Well, in isolation we don't
 3 object to those three lines, but they only make sense
 4 if -- in the context of our -- of the broader part that
 5 we do object to.
 6 THE COURT: All right. Overruled.
 7 MR. KRISHNAPRIYAN: Next is page 26, lines 1
 8 through 12.
 9 MR. GREENBERG: Same objections, the witness
 10 later says he doesn't understand how any of this works,
 11 so we would -- it lacks foundation.
 12 THE COURT: Overruled.
 13 MR. KRISHNAPRIYAN: The next one is page 26,
 14 line 24 through page 27, line 4. It is a piece that we
 15 just went --
 16 MR. GREENBERG: Same objection, he's answering
 17 without foundation.
 18 THE COURT: Overruled.
 19 MR. KRISHNAPRIYAN: Next is page 27, line 7
 20 through 15.
 21 MR. GREENBERG: Same objections.
 22 THE COURT: Overruled.
 23 MR. KRISHNAPRIYAN: Next is page 27, line 18
 24 through 28, line 14.
 25 MR. GREENBERG: Same objections, he's just
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1 reading a document that he doesn't understand the
 2 creation of.
 3 THE COURT: Overruled.
 4 MR. KRISHNAPRIYAN: Page 28, line 17 through
 5 page 30, line 10.
 6 MR. GREENBERG: Sorry, which? Can I -- can I
 7 have the page line repeated back.
 8 THE COURT: Page 28, line 17, so it's the
 9 bottom right corner of page 19 through 30/10.
 10 MR. GREENBERG: Ah.
 11 Same objection, there's no foundation for any
 12 of this.
 13 THE COURT: Overruled.
 14 MR. KRISHNAPRIYAN: Next is page 31, lines 5
 15 through 8.
 16 MR. GREENBERG: Again, there's no foundation
 17 and we counter designated the passage right above it and
 18 below it in yellow that shows that he doesn't know what
 19 he's talking about.
 20 THE COURT: Overruled.
 21 MR. KRISHNAPRIYAN: Next is page 33, lines 11
 22 through 17.
 23 MR. GREENBERG: The answer is potentially on
 24 line 17. He's speaking without knowledge.
 25 THE COURT: Overruled.

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1 MR. KRISHNAPRIYAN: Page 34, line 1 through
 2 page 35, line 17.
 3 MR. GREENBERG: Your Honor, if I could just
 4 draw -- because this goes to this one and the prior one.
 5 We're talking about -- he's talking here about a
 6 database and whether it's queried in the course of the
 7 duties of the employees. At the bottom of page 32, he
 8 says he doesn't even know what database they're talking
 9 about.
 10 So I -- I'm not going to argue into the
 11 ground, but the guy admits that he doesn't know any of
 12 this. So we object to its -- lacks foundation and he's
 13 speculating, and there's hearsay elements to it too,
 14 because he's reading off a sheet that he didn't prepare,
 15 that he doesn't know how it was prepared, and it's
 16 hearsay.
 17 THE COURT: I think you're -- the way you're
 18 arguing it is just overinclusive. I'm just taking it
 19 step by step, and so far you haven't convinced me on any
 20 of the specific grounds, so I'm going to overrule your
 21 objection.
 22 What's the next one?
 23 MR. KRISHNAPRIYAN: Next one is page 35, line
 24 21 through line 25.
 25 MR. GREENBERG: He's just reading off a

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1 hearsay document that he didn't create and doesn't know
 2 how it was created, we object.
 3 THE COURT: Overruled.
 4 MR. KRISHNAPRIYAN: And I believe that is
 5 everything, Your Honor.
 6 MR. GREENBERG: There are various counter
 7 designations that are tied to those passages, basically
 8 all of them through -- the last one is page 50, 5-0, to
 9 page 51. All the ones after that are not counter to any
 10 of this, but all the ones through that are.
 11 So up through page 50.
 12 THE COURT: So what you're saying is if I
 13 start at your counter designations I should consider the
 14 ones that start on page 16 and end on page 50?
 15 MR. GREENBERG: 51, correct, 50 to 51,
 16 correct, Your Honor.
 17 THE COURT: So first one, page 16, lines 2
 18 through 8, there's a relevance objection to this. Why
 19 is it relevant?
 20 MR. GREENBERG: It is relevant to the
 21 designations that they made above and below it. They're
 22 introducing this person as somebody who has knowledge of
 23 things prior to when he joined the company, and so we've
 24 counter designated the part where he says that he was
 25 not with the company in that time frame.

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1 THE COURT: All right. I'm going to sustain
 2 the relevance objection on 16, 2 through 8.
 3 Next is 16, 23 through 17/1.
 4 MR. GREENBERG: I think we can actually
 5 withdraw that one. I think that one goes to the ones
 6 that they're not -- that goes to the pre-2000.
 7 THE COURT: The Shukla.
 8 MR. GREENBERG: Yeah, basically the Shukla
 9 part of it.
 10 THE COURT: I'll mark it as withdrawn based on
 11 the scope of what defense was offering.
 12 Next is --
 13 MR. GREENBERG: I think -- yeah, sorry, I'll
 14 withdraw the next one on the same basis.
 15 THE COURT: Okay.
 16 MR. GREENBERG: The one that's on page 17, 14
 17 through 18.
 18 THE COURT: Very good. So that takes us to
 19 19, lines 13 through 16.
 20 MR. GREENBERG: Of course by the same token,
 21 these are just as relevant or irrelevant as the things
 22 that they're countering. So, for instance, on page 19,
 23 line 8, Mr. -- I think they're still offering that one,
 24 Mr. Barabash is talking about what was acquired back in
 25 2008, so the counter is to that, they seem to go

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1 together.

2 THE COURT: I don't disagree with that.

3 I would -- I think, unless the defense feels

4 very strongly about it, I think that 13 through 16 and

5 23 through 25 is just a complete sort of narrative about

6 the transition from Hostopia to its acquisition of

7 Uplinkearth, do you feel strongly about it?

8 MR. KRISHNAPRIYAN: We don't, Your Honor.

9 THE COURT: Okay, so we will bring in the

10 material on lines 13 through 16 and 23 through 25.

11 MR. GREENBERG: Sorry, are those the page

12 numbers we're talking about?

13 THE COURT: It's a little confusing because

14 we're on page 19 and you are making an excellent

15 argument that lines 13 through 16 was sort of more the

16 same from what was above it and below it, and I found

17 myself agreeing with you, then I found myself agreeing

18 with you also with respect to lines 23 through 25 on

19 that page.

20 MR. GREENBERG: Right. But that's our

21 counter, I thought we -- I thought the Court was also

22 agreeing and I think they just said they were

23 withdrawing something, but I got lost on what it was.

24 MR. KRISHNAPRIYAN: No, we were just saying

25 that we don't object strongly to the counters on these

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1 pages.

2 MR. GREENBERG: Okay, why don't we just keep

3 the counters if they don't feel strongly about them.

4 THE COURT: That's what we're doing.

5 MR. GREENBERG: Okay.

6 THE COURT: I'm just trying to document it.

7 MR. GREENBERG: I'm caught up now, thank you.

8 THE COURT: I could repeat everything in a

9 very specific way, but let me just say, between what the

10 parties have designated and what I am going to allow, it

11 will be on page 19, starting at line 8, and going

12 through 5 -- this is, again, one of those issues where

13 the -- where the pages break on these different formats,

14 so this is A, C, B, D format, which is -- I was -- it's

15 my fault, Mr. Greenberg.

16 Let me back up and ask, I was looking at the

17 material in the top right corner of page 17, and I was

18 reading as though that were -- what followed was in the

19 bottom left corner, the material at lines 13 through 16

20 on page 19 of the deposition transcript I think is very

21 benign and should be left in for context.

22 MR. KRISHNAPRIYAN: That's fine.

23 THE COURT: I think the defense is agreeable

24 to that.

25 Do you have any problems with the material on

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1 page 20 going on to page 21 as the counter designation?

2 Again, it appears to be just sort of a fuller context of

3 the acquisition of the one company by the other one.

4 MR. KRISHNAPRIYAN: Yeah. I mean, it doesn't

5 have to do with the e-mail information, which is all

6 that we're trying to get in. But if Your Honor feels it

7 should be in there, I don't think we will fight strongly

8 about that.

9 THE COURT: Okay, so we will include, going

10 back to the grid here, 13 through 16 on page 19, and

11 then 19/23 through 21/15.

12 So I will overrule, the defense objections are

13 withdrawn, however you choose to interpret it.

14 Let's look at page 23.

15 MR. GREENBERG: So that's a counter to page 22

16 and also what follows. Page 22 is reading hearsay from

17 a hearsay declaration and they just cut it off where he

18 says he sees in his declaration a statement, he says I

19 do. And then they leave out the part when it says it's

20 only to the best of his knowledge. And then later on

21 page 24 -- well, going back to 22, in the declaration

22 where he says he sees that in his declaration, this is

23 on line 13, page 22, the IT security team for Hostopia

24 searched for information.

25 And then on page 24, lines 5 through 7 our

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1 counter is, are you part of the IT security team you

2 were referring to here? He says he's not. So it's

3 double hearsay because they're reading a declaration

4 which is hearsay, and then he's talking in the

5 declaration about what the security team did, and he's

6 not even part of the team.

7 So it's double hearsay. If it would come in,

8 then we need to at least keep in the counter

9 designations on page 23 and 24 to show what's going on.

10 Then in green, on page 24, I have a counter

11 counter designation, asking him if he asked the IT

12 security team for the information, and he says he did,

13 further proving my point that this is all hearsay.

14 He asked the security team that he's not a

15 part of something, that he put it in the declaration and

16 they want to read the declaration to the jury, and --

17 and they didn't even want to keep in the yellow parts

18 that we put in where he says he doesn't really know.

19 So at a minimum, just down to the yellow parts

20 now, I would strongly urge the Court to include the

21 yellow parts.

22 THE COURT: Do you want to read the

23 declaration to the jury?

24 MR. KRISHNAPRIYAN: The only portion of the

25 declaration that we think is relevant is the portion

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1 that says the e-mails are attached, that's paragraphs 4
 2 and 5. We don't want to read the rest.
 3 MR. GREENBERG: Am I mistaken that page 22,
 4 the blue on page 22 was offered by them today and my
 5 objection was overruled? I may have gotten that wrong.
 6 MR. KRISHNAPRIYAN: That -- yeah, it's
 7 paragraph 4 -- as I said, paragraphs 4 and 5 of the
 8 declaration.
 9 MR. GREENBERG: Sorry, is the ball in my
 10 court?
 11 THE COURT: I'm just trying to -- you
 12 occasionally say something that is different from my
 13 understanding of what I've ruled or what they're asking
 14 me to rule on so I paused to inquire. And the reason
 15 that they're going through this on a piecemeal basis is
 16 that they only want the e-mails, and so they're asking
 17 for the material that they think supports bringing the
 18 e-mails in.
 19 MR. GREENBERG: But I think I just heard that
 20 the stuff on page 22 is not that, and so if 22 -- page
 21 22, their designation on page 22 was offered and -- and
 22 my objections are overruled to it, then -- which, again,
 23 I think is not correct, because it's double hearsay,
 24 then I at least want the yellow counter designations on
 25 page 23 and 24 that show that it is, in fact, something
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1 that the witness did not actually do himself or know
 2 about and just ask other people.
 3 But I'm confused because I'm hearing that they
 4 don't necessarily need that part, but I haven't heard
 5 them withdraw it.
 6 THE COURT: Well, they're not going to
 7 withdraw it. They do need it in their view of the
 8 world, because it establishes that the Celluride e-mail
 9 account was transferred from Hostopia to Uplink or vice
 10 versa. I can't keep it straight who acquired who. It
 11 migrated, and then that gives evidentiary value to the
 12 e-mail saying, if you don't pay we're going to shut it
 13 off.
 14 Do I have that right?
 15 MR. KRISHNAPRIYAN: That's exactly right.
 16 THE COURT: Okay.
 17 MR. GREENBERG: Okay. Well, if -- if -- now I
 18 guess I'm clear that they are, in fact, offering that.
 19 And so, again, I object that all of that is hearsay as
 20 indicated by these counter designations, but we're
 21 submitting the counter designations on page 23 and 24,
 22 and two of those they've objected to, the one on 23,
 23 lines 13 to 16 and 24, lines 5 through 7, and we submit
 24 that those should be included in the video.
 25 THE COURT: Okay, submitted on that point.
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1 MR. GREENBERG: From me.
 2 MR. KRISHNAPRIYAN: Yes.
 3 THE COURT: I'm going to sustain the defense
 4 objection to those designations on the relevance
 5 grounds.
 6 MR. GREENBERG: Clarification, I'm a little
 7 lost on how their counter designation that specifically
 8 is following to one of their designations can be not
 9 relevant, since their designation is relevant, according
 10 to the Court's ruling. If I'm asking for an advisory
 11 opinion, I apologize. I'm just a little bit bewildered.
 12 THE COURT: I accept your apology. Let's move
 13 on to the next topic at hand, which I believe is page
 14 24, you tell me.
 15 MR. GREENBERG: I think -- I thought you just
 16 ruled on the one on 24, but if you didn't, then I feel
 17 better about it and I'll reiterate.
 18 THE COURT: I ruled on 23.
 19 MR. GREENBERG: Okay.
 20 We're also submitting the one on -- maybe
 21 that's the cause of my bewilderment. On page 24, where
 22 Mr. Barabash says he's not part of the IT security team
 23 that he just said in his declaration did certain things
 24 to me has to be relevant to -- since theirs is relevant,
 25 so we submit page 24, lines 5 through 7 as being --
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1 should be included.
 2 MR. KRISHNAPRIYAN: Your Honor, Mr. Barabash
 3 said on page 11 and 12, which Your Honor read earlier,
 4 Mr. Barabash says he's the person responsible for the
 5 back end development of the company's e-mail platform
 6 and that he's familiar with their systems for storing
 7 information relating to e-mail accounts that the company
 8 has, so that's his basis for knowing this information.
 9 MR. GREENBERG: On page 24, lines 8 through
 10 10, which is their counter counter designation, he flat
 11 out said he knew it because he asked the IT security
 12 team, which he is not a part of.
 13 So he may know certain things, but he is
 14 saying he does not know this, other than asking the IT
 15 security team.
 16 THE COURT: All right. I'm going to include
 17 the counter designation as well as the counter counter
 18 designation, lines 5 through 10 on page 24.
 19 MR. GREENBERG: I'm sorry, Your Honor, did you
 20 say include?
 21 THE COURT: Yes, I did.
 22 MR. GREENBERG: Thank you.
 23 THE COURT: So the yellow portion, 5 through 7
 24 and the green portion, 8 through 10, just for context
 25 and completeness.
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1 MR. GREENBERG: The next designation on page
 2 25, line 7 through 9, which directly follows from the
 3 designation above it, lines 3 through 6.
 4 THE COURT: I think we're skipping over the
 5 designation on lines 24 and 25 of 24 onto lines 1 and 2
 6 of 25.
 7 MR. GREENBERG: It's not bracketed on my copy.
 8 If they objected, it's a missing bracket.
 9 MR. KRISHNAPRIYAN: Correct.
 10 THE COURT: No objection to that.
 11 MR. KRISHNAPRIYAN: No objection.
 12 THE COURT: Thank you.
 13 How strongly do you feel about 7 through 9?
 14 MR. KRISHNAPRIYAN: That's fine, Your Honor,
 15 include it.
 16 THE COURT: Okay. Lines 7 through 9 will be
 17 included, I'll overrule the objection.
 18 Turn to page 30.
 19 MR. GREENBERG: Right, so on page 30, this is
 20 all talking to Mr. Barabash about this Exhibit 118 that
 21 they're relying on, and he's asked specifically where
 22 the information came from, and with a specific example
 23 here from it, and he says on the top of page 31, he does
 24 not know the specifics of how Exhibit 118 was populated.
 25 So we would submit that that's certainly -- if
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1 they're going to get to use the rest, then that's
 2 certainly a fair inclusion, again, without rearguing, I
 3 think it shows that the rest -- the whole Exhibit 118
 4 should come out.
 5 And then on the next one, on 31, lines 9
 6 through 11, he reiterates that he cannot say for certain
 7 whether the database would have been populated with the
 8 e-mail information at around the time it was sent, which
 9 is one of the predicates to the hearsay exception for a
 10 business record.
 11 He's -- he says that in the -- in their
 12 designation that it would -- that one e-mail would have
 13 been, but then he says he cannot say as to the others,
 14 on lines 9 through 11.
 15 So it's -- anyway, if any of this is included,
 16 I think it should include lines 9 through 11 to be fair,
 17 so that we get not only his answers where he gives what
 18 they want to hear, but also the answers that say he
 19 doesn't really know.
 20 THE COURT: And then I think that the defense
 21 is going to ask me to give them 12 through 18 if I start
 22 to expand the record, what are your views on that?
 23 MR. GREENBERG: Well, we objected in the
 24 document, in the designations that it lacks foundation
 25 and calls for speculation. He's being asked a question
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1 in the form of, do you have any reason to believe that
 2 the information on an exhibit that he didn't create and
 3 doesn't know how it was created was not entered around
 4 the time the e-mails were sent, and he says no, he
 5 doesn't know -- he doesn't have reason to believe it
 6 wasn't. But that's not how you get a hearsay object --
 7 exception, by saying you don't know if it's not a
 8 hearsay exception.
 9 So we don't think that's a valid question and
 10 answer and I think it undercuts all of this, the whole
 11 Exhibit 118.
 12 THE COURT: All right, hear from you.
 13 MR. KRISHNAPRIYAN: So I think -- you know,
 14 Mr. Barabash testifies that he's familiar with the
 15 systems for handling e-mail. He says that this e-mail,
 16 the database was populated around the time the e-mail
 17 was sent. On page 30 he says that this database was
 18 kept in the regular course of business. On page 33 he
 19 says that employees use this database.
 20 I think that's at least enough information to
 21 provide the basis for a business records exception to
 22 hearsay, and, you know, to the extent that plaintiffs'
 23 counter here on page 31, lines 9 to 11 is included, then
 24 the counter counter bears on exactly the same questions,
 25 so that should be included as well.
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1 MR. GREENBERG: I'd like to refer the Court to
 2 the counters on the next page, 32, which addressed this
 3 issue and speak to what Counsel just said. Mr. Barabash
 4 was asked on line 10 of page 32: "Was the database
 5 updated with information about those e-mails around the
 6 time those e-mails were sent?"
 7 And his answer is: "I cannot tell you for
 8 certain."
 9 He said later in that answer, he said: "When
 10 it's populated into the database, I do not know."
 11 And then he was asked: "Do you have a
 12 ballpark figure for when?"
 13 And he said: "No, I do not."
 14 And then on line 22, he was asked: "What is
 15 the database that we're even talking about on Exhibit
 16 118?"
 17 And he said: "I do not know."
 18 So, again, he doesn't know. This witness
 19 cannot be the shepherd of Exhibit 118 on a hearsay
 20 exception that it was prepared at or about the time of
 21 the event when he admits that he does not know. He
 22 doesn't even know what the database was in the first
 23 place.
 24 MR. KRISHNAPRIYAN: I'm sorry, go ahead.
 25 THE COURT: Go ahead, sir.
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1 MR. KRISHNAPRIYAN: Yeah, we're just talking
 2 about the admissibility of the e-mail, and Mr. Barabash
 3 says that he knows when that e-mail went out and he
 4 knows that the database was populated with information
 5 about the e-mail that we're talking about around the
 6 time it was sent.

7 THE COURT: All right. I'm going to allow the
 8 counter designation starting on page 30 at line 21
 9 through page 31 at line 4, and I'm going to also include
 10 the counter counter designation on page 31, lines 12
 11 through 18.

12 MR. GREENBERG: I think Your Honor omitted to
 13 rule on page 31, lines 9 through 11.

14 THE COURT: That's in as well, so it's going
 15 to go from 21 -- line 21 on page 30 through line 18 on
 16 page 31.

17 MR. GREENBERG: And then I already really
 18 argued the ones on page 32, they're clearly modifying
 19 everything else that has just been offered and admitting
 20 that the man does not know what he's talking about, so
 21 we would submit that those are certainly valid counter
 22 designations.

23 THE COURT: The tenor of this gentlemen's
 24 testimony is that he's a third party who's testifying.
 25 He's trying to testify with great care. There's

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1 something for each of you in this. I am sufficiently
 2 satisfied with what he says about his knowledge and how
 3 the system works and his status in the company to allow
 4 118 to come in, but I'm certainly also interested in
 5 allowing the things that he doesn't know to come in as
 6 well. We're not trying to make him some expert on all
 7 things at the company, but he's got enough to bring the
 8 e-mails in.

9 So how strongly do you feel about the counter
 10 designations related to the databases, the ones he was
 11 talking about on page 32, 10 through 18 and 22 through
 12 25?

13 MR. KRISHNAPRIYAN: Those two are fine with
 14 us, Your Honor.

15 THE COURT: All right, they're going to come
 16 in.

17 So the next one's on page 36, line 7 through
 18 10, and I think this is an answer to 21 through 25 on
 19 the prior page that I allowed in.

20 MR. GREENBERG: Right.

21 MR. KRISHNAPRIYAN: That one's fine as well,
 22 Your Honor.

23 THE COURT: All right. The designation by the
 24 plaintiff on page 36 is admitted. And we have a very
 25 long one next, pages 45 through 49.

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1 MR. KRISHNAPRIYAN: Your Honor, I think these
 2 have to do with customer service tickets, and that's a
 3 portion of Mr. Barabash's testimony that we're not
 4 attempting to offer. So even though the counter
 5 designations are listed as being a counter to a number
 6 of different designations, including some that we are
 7 offering, I don't think these are actually relevant to
 8 any of the testimony that we are now trying to get in.

9 THE COURT: So you're saying that because of
 10 your strategic fore shortening of this material that you
 11 offered, you think that perhaps this is not relevant to
 12 anything that I've admitted?

13 MR. KRISHNAPRIYAN: I think so. I think this
 14 goes to the Shukla issue and the e-mail server crash,
 15 and again, we are not attempting to introduce that
 16 portion.

17 THE COURT: Do you see it that way,
 18 Mr. Greenberg.

19 MR. GREENBERG: No, I'm having trouble with
 20 that, because page 45, line 4, I took to mean that
 21 they're talking about still the e-mails with Exhibit
 22 118, and whether Mr. Halpern ever contacted the company
 23 about the deletion of his account, which is follow up to
 24 the prior pages, talking about November of 2014 when
 25 the -- he stopped paying the bill.

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1 I don't -- I don't think this has anything to
 2 do with Shukla, basically he -- the witness is admitting
 3 that he does not know to what extent Mr. Halpern
 4 contacted the company about it in response to all these
 5 e-mails or later or at any time.

6 THE COURT: I think the point that they're
 7 making is that he didn't ask me for any of this material
 8 on 36 through 38, 39 through 40, 40, 41, 42, 43, 44 or
 9 45. Am I getting that right?

10 MR. KRISHNAPRIYAN: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. GREENBERG: We designated this as a
 13 counter to, among others, page 25, lines 22 through
 14 26/12; page 27/18 through line 30 -- or page 30, line
 15 10; page 31, lines 5 through 8; page 34, line 1 to
 16 35/17. I don't know if I ran into the part that they
 17 didn't pursue, but there's more after that also.

18 In other words, they did keep in the part
 19 where Mr. Halpern was getting e-mails saying to contact
 20 them or about that his account was going to be deleted,
 21 and then Mr. Halpern contacting them is relevant to
 22 that.

23 So I think it's a valid counter designation.

24 THE COURT: I'm sorry, could you explain that
 25 last part to me again?

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1 MR. GREENBERG: Yeah, any time that -- under
 2 the code, when somebody designates part of a deposition,
 3 it opens up the deposition to anything that's relevant
 4 to the part that was designated. And so it's a pretty
 5 broad opening. It's not something where it just has to
 6 be the next question that clarifies the previous
 7 question. It's -- it's topic driven, subject driven.
 8 And so they want to use this witness from this
 9 third party company to say one thing, but they don't
 10 want him to say the flip side of the same thing, and so
 11 we -- we're offering this counter designation.
 12 MR. KRISHNAPRIYAN: Yeah, Your Honor, we don't
 13 think it's relevant, but if plaintiffs want to include
 14 it, we have no objection. It does have to do with a
 15 different topic, which is, you know, the extent to which
 16 Mr. Halpern contacted Uplinkearth afterwards and whether
 17 there's a record of that, and Mr. Barabash simply says
 18 he -- he doesn't know, which I think is a different
 19 topic. But if it helps, you know, speed things along,
 20 we can agree to this.
 21 THE COURT: Thank you for that. So are you
 22 withdrawing your objection then?
 23 MR. KRISHNAPRIYAN: Yes.
 24 THE COURT: So it's -- let me just get the --
 25 get the lines out, it looks like it's page 45, lines --
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1 line 4 through page 49, line 5.
 2 MR. KRISHNAPRIYAN: That's right.
 3 THE COURT: Okay, so that can be brought in.
 4 It's withdrawn.
 5 And then what is the situation with the
 6 material on lines (sic) 49 through 50, line 22?
 7 MR. GREENBERG: That one, and then the
 8 following short one on 50 to 51, both relate
 9 specifically to follow-up questions on that Exhibit 118
 10 and where these e-mails to Mr. Halpern would have been
 11 coming from and whether he checked all the records and
 12 basically he didn't know a whole lot about it. So we
 13 would like to show that.
 14 THE COURT: What's your view on that.
 15 MR. KRISHNAPRIYAN: The same as before. The
 16 difference actually relates to paragraph 7 of the
 17 declaration, which we're not trying to get in, but if it
 18 helps reduce the disputes, we can withdraw our objection
 19 to that.
 20 THE COURT: All right. I'll indicate your
 21 objection is withdrawn.
 22 And I think we're getting towards the end, I
 23 think page 50 was --
 24 MR. GREENBERG: That was the end of our
 25 counters.
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1 THE COURT: Okay.
 2 Because the counter designations that followed
 3 are into the material that we agree is out of the case.
 4 MR. GREENBERG: Correct.
 5 THE COURT: Okay. All right.
 6 So that concludes the Barabash designations.
 7 I think it's time to give the court reporter a break.
 8 When we come back on the record, I want -- I want to
 9 talk to counsel about where we are in this case with
 10 respect to preparing for trial on February 3rd, in view
 11 of the dates on the calendar between now and then,
 12 whether we're going to get through even the last two
 13 designations in the last hour of the court day and
 14 whether we should schedule an additional day, whether we
 15 should not call a panel in on the third but, you know,
 16 finish our pretrial on that day.
 17 So I can see you reacting to it, you can
 18 script your speech during our 15-minute break and I'll
 19 hear from you.
 20 And I can tell you more fully sort of my
 21 availability between now and the 3rd.
 22 Thank you. See you at 3:40.
 23 (Recess taken.)
 24 THE COURT: Let's go back on the record.
 25 So we're going to try to make some progress on
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1 the designation for Mr. Kalanick, and why don't I just
 2 make a quick record about what we talked about.
 3 We're going to work on this for the rest of
 4 the day, and then we will finish our pretrial
 5 proceedings on the 3rd, and order a panel for the 4th
 6 rather than the 3rd, and that works for everyone.
 7 MR. GREENBERG: Right.
 8 MR. TANGRI: Yes, Your Honor.
 9 THE COURT: Thank you.
 10 All right, so the first designation by
 11 plaintiffs where there's an objection is on page 9, line
 12 11 through page 11, line 15. Rather -- I don't think I
 13 said that right.
 14 I think it's page 9, lines 11 through 17.
 15 MR. GREENBERG: Right.
 16 MR. TANGRI: I think it's -- no, Your Honor, I
 17 think it's page 9, line 11 through line -- page 11, line
 18 15.
 19 MR. GREENBERG: That's not what's color coded.
 20 I'm not sure what happened there.
 21 THE COURT: I'm looking at the little box and
 22 it looks like it's only around a portion of page 9, but
 23 it looks like the designation goes through line 15 on
 24 page 11.
 25 MR. GREENBERG: If it --
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1 MR. TANGRI: Right. And on the document we
 2 sent over with objections it -- we objected to that
 3 entire thing, through page 11, line 15.
 4 THE COURT: Okay.
 5 MR. GREENBERG: Yeah, I think that if we put
 6 Your Honor on the spot because Your Honor didn't review
 7 the rest of that, I apologize. I don't know why it's
 8 bracketed differently from what's actually designated,
 9 but I think we wanted to use the entire designation.
 10 THE COURT: Okay.
 11 Let me hear what the objection is.
 12 MR. TANGRI: The objection, Your Honor, is
 13 simply -- is relevant -- as we say, relevance and 352.
 14 This is a two and a half page long sort of philosophical
 15 inquiry into what is the nature of truth, and we don't
 16 think it gets to anything.
 17 MR. GREENBERG: Well, again, we -- as I
 18 indicated earlier, we are firmly of the view that
 19 Mr. Kalanick is not telling the truth in his deposition,
 20 or stated differently, that he is lying under oath. And
 21 so his preliminary statements about his understanding of
 22 his oath and what the truth is, I think is fair material
 23 to introduce to give context to what he's later going to
 24 say and which we're going to attack the truthfulness of.
 25 THE COURT: All right. Submitted.

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1 MR. TANGRI: Submitted.
 2 THE COURT: I'm going to sustain the
 3 defendants' objections to page 9, line 11 through page
 4 11, line 15.
 5 All right, turning to the next designation,
 6 which is about three pages, starting on page 43, line
 7 19, going to page 46, line 25, and the objections are
 8 relevance, motion in limine one and 352.
 9 MR. GREENBERG: I mean, I'm not going to try
 10 to say that this is not something involved with MIL
 11 number one. It clearly is to a large extent. I think
 12 that beyond the MIL number one part, which is in here,
 13 there is in here also a thing about the timing of when
 14 things happened.
 15 And so like at the bottom of page 44, we're
 16 getting into what was the first year of operation, what
 17 work was going on in 2009 and 2008, and that all goes to
 18 when Mr. Halpern discovered or should have discovered
 19 the information.
 20 MR. TANGRI: Your Honor, this is all about who
 21 had the idea. I mean, it's shot through this whole
 22 thing, which is MIL one. And there's no argument that
 23 Mr. Halpern -- I mean, he discovered it in 2010, and
 24 what he should have discovered after that is what the
 25 case is about. 2008, 2009 aren't even relevant.

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1 THE COURT: All right. Submitted?
 2 MR. TANGRI: Yes, Your Honor.
 3 MR. GREENBERG: Yes.
 4 THE COURT: I'm going to sustain the
 5 objection, based on relevance and motion in limine
 6 number one, as well as 352.
 7 The next one is on page 47.
 8 MR. GREENBERG: That's along the same line,
 9 Your Honor, no additional argument.
 10 THE COURT: I'm going to sustain that one as
 11 well.
 12 The next item of controversy is on page 51,
 13 going on to page 53.
 14 MR. GREENBERG: I mean, they want to use
 15 statements by Mr. Halpern in his verified pleadings, and
 16 this is a statement by Mr. Kalanick in his verified
 17 pleading that -- he's under cross-examination here,
 18 basically unable to explain how it is accurate. So that
 19 seems to me to be just as fair as it is to use
 20 Mr. Halpern's verified pleading, which we did not object
 21 to.
 22 MR. TANGRI: Your Honor, the issue, Your
 23 Honor, isn't whether or not it's a verified pleading.
 24 The issue is what is it about. This is about whether or
 25 not he has profited greatly or will profit greatly from

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1 Uber, and that's exactly what MIL six was directed to
 2 and granted on.
 3 THE COURT: All right. I'm going to sustain
 4 the objection, based on motion in limine six, relevance
 5 and the 352.
 6 The next one is on page 55, going on to page
 7 56.
 8 MR. GREENBERG: I mean, ultimately it's just
 9 saying when the Uber application became available, which
 10 I think is -- should not be controversial testimony.
 11 MR. TANGRI: Your Honor, the -- the beginning
 12 of this feels more like the merits of the last portion
 13 on specifically page 56, lines 8 through 16, we wouldn't
 14 have an objection to.
 15 MR. GREENBERG: You know, at the risk of
 16 sounding like a broken record, on page 55, line 16
 17 through page 56 -- well, line 7, there's a discussion of
 18 what Mr. Kalanick was working on with Uber in 2009 and I
 19 think that that is relevant to the statute of
 20 limitations for the reasons I've already said several
 21 times today.
 22 MR. TANGRI: Your Honor, I guess page 55
 23 doesn't -- I mean 55, line 16 where Counsel just began
 24 reading from through the end of that page doesn't even
 25 have anything for Mr. Kalanick, other than ask the

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| | |
|---|---|
| <p>1 question again. 2 So that's just lawyer colloquy. 3 MR. GREENBERG: I went on to the next page 4 but -- 5 MR. TANGRI: And then, as I said, the issue 6 that -- of timing, which is what they are saying is a 7 relevant issue, begins with the question on page -- on 8 line 8 and through line 16, but submitted. 9 THE COURT: Okay. I'm going to sustain the 10 objection with respect to the material on page 55. I'll 11 overrule it with respect to page 56. 12 I take your point, Mr. Tangri, about line 8, 13 but I think that's -- starting on line 1, if I allow it 14 at line 1 it provides slightly more context for the 15 question, so I will overrule the defense objection to 16 the material on page 56, lines 1 through 16. 17 The next one is on page 68. 18 MR. GREENBERG: Again, this is one where 19 Mr. Kalanick, in our view, is lying about the genesis of 20 Uber and in an attempt to -- because this is a phase one 21 deposition, not a phase two deposition. He's attempting 22 in here for purposes of phase one to excuse his failure 23 to be up front about his own involvement in Uber, up 24 front meaning publicly available information, and 25 attaching his name in a meaningful way to the company, Page 145</p> | <p>1 limitations trial on the issue before the jury, and not 2 on the merits. 3 But I don't have anything to add. 4 THE COURT: How about you? 5 MR. TANGRI: Submitted. 6 THE COURT: Sustained, for the reasons stated. 7 Page 75, it's on the same page, page 28 of the 8 exhibit. 9 MR. GREENBERG: Same conversation, same 10 objections. I mean, same -- 11 THE COURT: Same argument. 12 MR. GREENBERG: Same argument on my behalf, 13 same objections on their behalf, I'm sure. 14 THE COURT: All right, sustained as to the 15 material on line -- on page 75 and 76. 16 Next is page 78. 17 MR. GREENBERG: The part of this that I really 18 want to use most -- because some of it I -- I only feel 19 not that wedded to, but the beginning on page 78, line 20 18 introduces that they're talking about Uber X, and 21 then at the end of the bracketed section on page 79, 22 Travis Kalanick is talking about when Uber X is released 23 and he thinks it is in the middle of 2012, which is 24 after the March 15, 2012 magic date in this case. 25 And as I mentioned this morning, I think the Page 147</p> |
| <p>1 publicly, through -- as a cofounder through this early 2 period, and I think it's relevant to the statute. 3 THE COURT: Are you talking about page 68, 4 lines 11 through 23? 5 MR. GREENBERG: Yes. 6 THE COURT: All right. 7 MR. TANGRI: It appears to be purely on the 8 merits, Your Honor, who came up with this feature -- the 9 idea for this feature, that's a question he's asked. 10 He's responding, he's not interjecting it. And then a 11 question about whether Mr. Camp came up with it, it's 12 core MIL one. 13 MR. GREENBERG: Sorry, I just want to point 14 out, again, this is one where if you read it on its face 15 the way that they would, then it has one meaning. We 16 read it as a lie, that we would like through contextual 17 evidence show is a lie, in order to help prove our case 18 on the statute of limitations. 19 THE COURT: All right. On the information 20 before me, I'm going to sustain the objection on motion 21 in limine one, relevance and Evidence Code 352. 22 Turning to page 73. 23 MR. GREENBERG: Same dialogue as we just had. 24 I think it's Travis Kalanick lying and we want to be 25 able to use it to win the phase one statute of Page 146</p> | <p>1 launch of Uber X, which is the main part of Uber that 2 most of the public deals with, is part of the -- the 3 timing of that I think is important, in the scope of 4 when Mr. Halpern reasonably should have discovered more 5 information about Uber than he did. 6 MR. TANGRI: Your Honor, we did not object to 7 page 78, lines 1 through 6, which went squarely in the 8 timing of the introduction of the feature. We 9 objected -- we did counter designate line 7 through 12, 10 which we think help complete that. 11 We objected to 78, lines 8 -- beginning at 12 line 18 and carrying over to 79 because the core of that 13 is who had the idea and who contributed what feature, we 14 would not object to 79, 15 through 18. 15 MR. GREENBERG: Maybe we could include 79, 16 lines 4 through 6 and then lines 15 through 18, so that 17 it's clear what's being said. 18 MR. TANGRI: No objection to that, Your Honor, 19 4 through 6 is clean. 20 MR. GREENBERG: We'll withdraw the rest other 21 than what we just said. So the part we want included is 22 79, 4 through 6 and 79, 15 through 18 and I think we 23 have agreement on that. 24 THE COURT: And while we're in this area, 25 would you agree to his supplement on the prior page, Page 148</p> |

1 line 7 through 12?
 2 MR. GREENBERG: Yeah, I don't believe we
 3 objected to that.
 4 MR. TANGRI: Not objected to.
 5 MR. GREENBERG: Yeah, not objected to.
 6 THE COURT: No red box, I have to start
 7 showing some more discipline.
 8 MR. GREENBERG: We learned sometimes it's
 9 not --
 10 THE COURT: Better to ask, I guess.
 11 MR. GREENBERG: Yeah.
 12 THE COURT: All right, thank you, so I will
 13 indicate that with respect to the dispute at lines 4
 14 through 6 and lines 15 through 18 on page 79 are in.
 15 The balance of the material is out in that particular
 16 cell.
 17 Okay, the next one is page 115.
 18 MR. GREENBERG: That's what I have, Your
 19 Honor.
 20 And this would be a reargument of the same
 21 concepts that we've been talking about, about
 22 Mr. Kalanick's role and the founding of Uber.
 23 THE COURT: All right. Since we've argued
 24 that fully several times, I'm going to sustain the
 25 objection on page 115 and 116 material.

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1 Next we turn to page 118. Seems similar to
 2 what we've been talking about.
 3 MR. GREENBERG: Yeah, I don't have any new
 4 argument on it.
 5 THE COURT: I will sustain the objection on
 6 that material.
 7 Let's turn to 119 and 120. Similar, I think.
 8 MR. GREENBERG: I mean, it also goes to
 9 timing, but I think I don't really have any further
 10 argument on it.
 11 THE COURT: All right, I'll sustain the
 12 objection.
 13 Page 125.
 14 MR. GREENBERG: This is about the lobby
 15 conference where Mr. Halpern and Mr. Camp met in 2007,
 16 so this is kind of the Kalanick version of what we went
 17 over earlier with Mr. Camp, about the lobby conference
 18 and about their meeting and when it happened.
 19 THE COURT: Seems like it's more relevant to a
 20 phase two.
 21 Do you have additional argument on it?
 22 MR. GREENBERG: No, the same argument.
 23 THE COURT: I'll sustain the objection on the
 24 material on page 125.
 25 And with respect to material on 126 on to 127,

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1 looks like a similar --
 2 MR. GREENBERG: Yeah, the next -- are we on
 3 126 now?
 4 THE COURT: Right.
 5 MR. GREENBERG: Right, this is similar, same
 6 argument.
 7 THE COURT: So sustain the objection to 126
 8 and 127.
 9 Now we're on 127 to 128.
 10 MR. GREENBERG: And this is the Travis
 11 Kalanick version of his conversations with Mr. Camp
 12 about the lawsuit when they sued, which we went over
 13 with Mr. Camp and I think we went over with Mr. Belsky
 14 as well that same concept, and so my argument would be
 15 the same about why it is relevant, but I don't have
 16 anything to add.
 17 THE COURT: I sustain the objection for the
 18 reasons stated with respect to the other gentleman.
 19 And then we're on to the second half of 128 on
 20 to 129, the do you know who Kevin Halpern is.
 21 MR. GREENBERG: Right. And, Your Honor, this
 22 one I alluded to earlier when we were talking about
 23 Mr. Belsky, this one and the next two on the next page
 24 go to the core of one of the theories that we would like
 25 to present in the case.

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1 And so here's the actual -- rather than talk
 2 in the abstract, here's actual testimony in which
 3 Mr. Kalanick falsely claims that he has no idea who
 4 Mr. Halpern is, other than he's some guy who filed a
 5 lawsuit.
 6 And -- well, that obviously has implications
 7 for phase two. It also has implications for phase one.
 8 And I'm not going to go on for a lengthy argument about
 9 it, because I've already explained it several times, but
 10 the fact that Mr. Kalanick is lying about -- and when I
 11 say the fact, obviously that's our position, but we
 12 would be -- we have a lot of reasons that we can show
 13 why it's very clear that he is lying about that.
 14 And we think that the jury should be able to
 15 see that and determine for themselves that Mr. Kalanick
 16 is lying about not knowing Mr. Halpern because it goes
 17 to the entire concept that Mr. Kalanick was -- did not
 18 have his name attached to Uber in public until after
 19 Mr. Halpern looked at the Internet and saw no indication
 20 of Mr. Kalanick's involvement, which was about a year
 21 and a half after they say Uber was founded.
 22 So he's a cofounder of the company and his
 23 name's nowhere on it and he claims he doesn't know
 24 Mr. Halpern, and I think that goes to, again, the
 25 reasonableness of when Mr. Halpern should have

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1 discovered the involvement of Mr. Kalanick in Uber, and
 2 that Mr. Kalanick did not want him to discover it, and
 3 is lying in service of that agenda.
 4 THE COURT: I don't see what one has to do
 5 with the other, frankly. The idea that you're going to
 6 show that Mr. Kalanick tried to keep his name off of
 7 public Uber materials early and that that changes the
 8 obligations of your client in terms of discovery, what
 9 he discovered, when he should have discovered it, I
 10 understand that argument. But these statements that I
 11 don't know him, I didn't hear about him until the
 12 lawsuit, I don't see the relationship between those
 13 statements and the other concept.
 14 What am I missing?
 15 MR. GREENBERG: I think it's that Mr. Kalanick
 16 is lying for a reason. He's not doing it idly. He's
 17 covering up the fact that he was not wanting Mr. Halpern
 18 to find out about his involvement and kept a low profile
 19 on Uber, Mr. Kalanick did, for an extended period of
 20 time.
 21 And I think that that goes to the
 22 reasonableness of Mr. Halpern's not finding
 23 Mr. Kalanick's involvement until he found it.
 24 THE COURT: I want to hear your argument.
 25 MR. TANGRI: Your Honor, they -- they don't

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1 relate. One thing I wanted to say on this point, unlike
 2 earlier when we had a defendant who at the time of the
 3 lawsuit was filed in the intervening five years or seven
 4 years had forgotten his -- brief interactions with
 5 Mr. Halpern, there's no documentary evidence at all that
 6 Mr. Kalanick and Mr. Halpern ever met.
 7 So that's purely Mr. Halpern's say so versus
 8 Mr. Kalanick's, so just -- that's an important piece of
 9 context on this one.
 10 Second, you're right, it doesn't connect up.
 11 Denying you ever met somebody if somebody can prove
 12 that's false might be -- help with one element of a
 13 trade secret claim on the merits, you had some way of
 14 getting his trade secrets, it was a means of
 15 transmission.
 16 It doesn't relate to the statute of
 17 limitations, which is what information was out there
 18 about Mr. Kalanick in the 2010, '11 '12 time period, of
 19 which there was plenty, and whether or not he didn't
 20 want Mr. Halpern to know, the evidence will show he did
 21 a horrible job of it. He was giving interviews to the
 22 press and speaking at conferences on video and having
 23 posted on the Internet.
 24 MR. GREENBERG: I've got to correct some
 25 things that Mr. Tangri said. It's not only a he said,

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1 he said. It's not just Mr. Halpern's word against
 2 Mr. Kalanick's word, although juries decide that every
 3 day. There are other pieces of evidence that
 4 corroborate what Mr. Halpern is saying.
 5 And some of those, frankly, are the things
 6 that I wanted to use earlier where Mr. Belsky and
 7 Mr. Trenchard conveniently forgot they had e-mails and
 8 meetings with Mr. Halpern, which circumstantially tends
 9 to prove that Mr. Halpern's the one accurately giving a
 10 rendition here of what happened.
 11 But we could put Mr. Halpern and Mr. Kalanick
 12 in the same place at the same time in 2006 when
 13 Mr. Halpern was out working on Celluride through third
 14 party evidence. There's not -- they were clearly in the
 15 same tiny -- a room this big in the same time, just the
 16 two of them, so there's a lot of corroborating evidence.
 17 Mr. Tangri I think -- of course he has a
 18 client to represent and defend, Mr. Tangri knows that
 19 Mr. Kalanick is lying. I know he's not going to admit
 20 that, but Mr. Tangri for two and a half years of this
 21 case, from mid-2015 until late 2017, never once in 14
 22 hearings in the court ever came into court and said, you
 23 know, this is a frivolous case by a guy that my client
 24 never met.
 25 That was never said. So the fact that two and

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1 a half years into the litigation, all of a sudden they
 2 have the position that he -- that Mr. Kalanick actually
 3 has no idea who Mr. Halpern is, is not true. For -- you
 4 know, I don't want to use too hot language, but it is
 5 not true.
 6 THE COURT: You already used some pretty hot
 7 language with respect to Mr. Tangri and he knows that
 8 this is a lie. I mean, that's why he popped right up.
 9 I'll hear from him on that.
 10 MR. TANGRI: Yeah, I don't take lightly being
 11 accused of violating my ethical duties to the court and
 12 that's what that was, to be clear, and that is not
 13 accurate.
 14 Mr. Kalanick's answer in this case, which
 15 came, yes, two years into the case, however long it was,
 16 because we had to remove the case to Federal court, a
 17 copyright claim which the Federal court dismissed with
 18 their consent as a condition to get it back to state
 19 court. We then filed a demurrer that they then amended
 20 on the day before their opposition was due or the day
 21 their opposition was due rather than oppose it, and then
 22 we had to file another demurrer, which was sustained in
 23 its entirety. Then we had to file another demurrer that
 24 was sustained in part.
 25 So yeah, it was two and a half years into the

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1 case before we filed an answer, and the answer
 2 Mr. Kalanick denied ever meeting Mr. Halpern, that was
 3 the first opportunity to go on the record.
 4 THE COURT: Slow down.
 5 MR. TANGRI: Sorry.
 6 So Mr. Kalanick has been consistent in that
 7 from day one. This notion that there was some
 8 about-face in the deposition was part of their motion
 9 to -- is the basis of their motion to unbifurcate the
 10 case that was rejected because we demonstrated to Judge
 11 Wiss that this had been the consistent position from the
 12 moment the position had to be taken.
 13 MR. GREENBERG: Well, that part might be
 14 technically correct, that it was the -- that
 15 Mr. Kalanick said it the moment the position had to be
 16 taken, although he was very -- his answer actually
 17 doesn't say what Counsel said. It's way more vague than
 18 that.
 19 It's not when he had to do it. It's when he
 20 would do it, if it was the truth.
 21 If Mr. Kalanick got sued in 2015, and to put
 22 ourselves back in time, at 2015 Mr. Kalanick was on the
 23 top of his game. This was long before he left Uber.
 24 He gets sued by someone who says that they
 25 actually shared the information of -- that became Uber
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1 with him in 2006, and he -- and they say nothing for two
 2 and a half years about that Kalanick -- Mr. Kalanick's
 3 position is that he never met the -- Mr. Halpern, has no
 4 idea who he is, and they waited until they had to put
 5 something in an answer two and a half years later.
 6 You know, that on its face may be correct, but
 7 that's really elevating form over substance. The
 8 substance is, if Mr. Kalanick knows he's being sued in
 9 2015 by a guy he never met, who says that he met with
 10 Mr. Kalanick and shared this information with him, he
 11 would not wait two and a half years to let it be known
 12 through 14 hearings that that's their position, that
 13 this is a frivolous -- their position would be this is a
 14 frivolous, ludicrous case that should be wiped out
 15 because they never even met.
 16 And they never took that position, and so it
 17 is what it is. That's -- it's pretty obvious to me.
 18 MR. TANGRI: What's obvious, Your Honor, is
 19 that California law does in some circumstances, with no
 20 disrespect to anybody, elevate form over substance. You
 21 bring a demurrer on legal issues. You don't bring a
 22 demurrer on a he said he met me, I said I didn't meet
 23 him.
 24 You can try your case in the press if you
 25 want, but many smart people elect not to. And those are
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1 the only two ways I can think of to interject a core
 2 fact issue into a proceeding before an answer is
 3 required.
 4 And we were pursuing legal remedies in the
 5 form of demurrers, which were largely successful on
 6 legal issues, without injecting extraneous fact issues
 7 to give the appearance of something that would cause the
 8 Court to say it sounds like a fact issue, I'm going to
 9 overrule your demurrer.
 10 THE COURT: That's a very technical response.
 11 Okay, I think I've heard enough. I'm going to
 12 sustain the objection to these materials, which were
 13 sort of argued in tandem, sustained as to page 129, 130.
 14 Is 132 different?
 15 MR. GREENBERG: No, it's the same.
 16 THE COURT: Sustained on that one.
 17 Let's turn to page 137.
 18 MR. GREENBERG: This is going to the fact that
 19 Mr. Halpern was in the same office with Mr. Kalanick in
 20 2006, where Mr. Halpern indisputably visited Mr. Abrams
 21 and Mr. Kalanick indisputably was officed in Mr. Abrams'
 22 office, and Mr. Abrams' office was a small office. It
 23 was not some large place where you would be one of a sea
 24 of people. There were a couple of people and one of
 25 them was Mr. Kalanick, and Mr. Halpern was there, and
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1 it's corroborated.
 2 So that's what this portion is about.
 3 THE COURT: Seems to go more towards the
 4 merits to me. I'm going to sustain the objection on
 5 relevance, the motion in limine number one and 352.
 6 185, this is the Ryan Graves doesn't have a
 7 technical background material.
 8 MR. GREENBERG: Right, basically that
 9 Mr. Kalanick was hiding behind Mr. Graves. He hired the
 10 guy, he used him and Mr. Graves turned out to be
 11 successful in many ways. But at the time, he was a
 12 young, inexperienced person who was made the CEO of the
 13 company and Mr. Kalanick was not made the CEO.
 14 And we think that has a significance that we
 15 would like to tell the jury about Mr. Kalanick basically
 16 hiding behind Mr. Graves.
 17 THE COURT: Hear your view on that.
 18 MR. TANGRI: Your Honor, it's -- it's the same
 19 issue. What was known about Mr. Kalanick and Mr. Graves
 20 and their association was in the public record beginning
 21 in January of 2010 and running throughout the period
 22 through March 15th, 2012.
 23 Mr. Graves' qualifications, I don't even think
 24 they -- I mean, I don't even think they go to the
 25 merits. We didn't object to this based on MIL one, they
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1 just don't go to anything.
 2 THE COURT: So it's relevance and 352, what's
 3 the 352 angle on it.
 4 MR. TANGRI: Well, the 352 angle on it is
 5 simply they're attempting to argue, as you just heard,
 6 that the reason you're hiring somebody who they say is
 7 incompetent, everybody associated with the company says
 8 he was highly competent, he remained there until very
 9 recently, but they're saying he wasn't competent, he had
 10 no prior background in transportation, and, therefore,
 11 something, and the something appears to be that,
 12 therefore, somebody else was really running the thing
 13 behind the scenes and that was Mr. Kalanick.
 14 The one problem with that argument is, that
 15 they claim that Mr. Kalanick didn't have any prior
 16 experience in transportation either and that Mr. Camp
 17 didn't have any prior experience with transportation
 18 either.
 19 And so the -- it really boils down to a
 20 disguise -- I guess it does maybe boil down to a
 21 disguise merits argument, which is all three of these
 22 guys actually got the idea from Mr. Halpern and ran with
 23 it. That is a bad merits argument, but it's a merits
 24 argument, and none of it is statute of limitations.
 25 MR. GREENBERG: I thought it was a good merits
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1 argument, but that's not why we're offering it. We're
 2 not offering it on the merits. We're offering it
 3 because Mr. Graves, who had virtually no experience and
 4 was in his mid-20s, was the front person of Uber, and
 5 became the CEO of Uber in 2010, rather than
 6 Mr. Kalanick.
 7 Eventually Mr. Kalanick became CEO and
 8 replaced Mr. Graves, but that was long after Mr. Halpern
 9 had looked into it and so he missed Kalanick. And by
 10 the time Mr. Kalanick became CEO, Mr. Kalanick had been
 11 working on Uber for two full years, from '08 until late
 12 2010.
 13 And we would like to make arguments from that
 14 fact, because it does seem relevant to us that he did
 15 that, and it goes to the reasonableness of what
 16 Mr. Halpern would learn and when he would learn it.
 17 MR. TANGRI: Mr. -- just for the record,
 18 Mr. Kalanick became the CEO of Uber in 2010.
 19 MR. GREENBERG: That's what I said.
 20 MR. TANGRI: He was announced as the CEO of
 21 Uber in 2010, and he was publicly associated with Uber
 22 beginning in March of 2010. None of that -- I mean,
 23 those things are either true or they're not true.
 24 They're true as it turns out, but Mr. Graves'
 25 qualifications don't make them more or less true.
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1 THE COURT: I'm going to sustain the objection
 2 on relevance and Evidence Code 352.
 3 203 through 204.
 4 MR. GREENBERG: This is along the lines
 5 earlier -- it's not really about his investment per se,
 6 so it's not that MIL. The gist of this is more about
 7 his untruthfulness, his being Mr. Kalanick's
 8 untruthfulness about his role in the early days of the
 9 company.
 10 THE COURT: All right, I'm going to sustain
 11 the objection, relevance, 352 and motion in limine six.
 12 Page 232 through 234.
 13 MR. GREENBERG: Right, and I had to -- in
 14 preparing for today, I went back and reminded myself
 15 what this video is that they're talking about on 232,
 16 line 16 in that question, and the part -- there's a
 17 video that -- at his deposition that Mr. Kalanick was
 18 asked to look at and it's a video of Mr. Kalanick. So
 19 it's not a hearsay issue because it's Mr. Kalanick's own
 20 statement in this video.
 21 And Mr. Kalanick in the video is giving a
 22 presentation in approximately September of 2012, which
 23 to put it in perspective is six months after the magic
 24 date, and three months or actually less than three
 25 months before Mr. Halpern actually found out about
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1 Mr. Kalanick.
 2 And in the video Mr. Kalanick talks about the
 3 size of Uber and how much it has grown by September of
 4 2012, exponentially, and he gives some perspective on
 5 that. And he also says that they have zero marketing
 6 spend, zero. Which also goes to what Mr. Halpern would
 7 learn and when he would learn it.
 8 And so in this -- we want to use -- and by the
 9 way, I realized in going through this that we
 10 inadvertently left the video off the exhibit list so
 11 we're going to add the video -- it was an exhibit to the
 12 video so it didn't get picked up. We'd like to use this
 13 video of Mr. Kalanick in which he says those things, and
 14 here -- he's being asked here if these statements are
 15 correct.
 16 Like on page 234, this is a statement
 17 Mr. Kalanick made in the video. By the way, the video
 18 is a conference, I believe it's Stanford University
 19 where Mr. Kalanick presented about Uber.
 20 And it was in, again, approximately September
 21 of 2012. He said in that video that even as of that
 22 late date, after the magic date for this case, Uber only
 23 had about 120 employees, most of which were outside of
 24 San Francisco.
 25 And then on line 11 of page 234, Mr. Kalanick
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1 says that the time within 2012 that he's being asked
 2 about is important, because they may have grown like 8X,
 3 eight times, within 2012.
 4 So this is very much dramatizing a point that
 5 we want to make, which is, that even at the end of 2012,
 6 Uber was very small, 120 employees, most of which were
 7 outside of San Francisco.
 8 THE COURT: How many independent contractors
 9 did they have.
 10 MR. GREENBERG: That's drivers, we're talking
 11 about employees running the company.
 12 THE COURT: I understand. But, I mean, had
 13 traffic already been degraded in the city of San
 14 Francisco in 2012?
 15 MR. GREENBERG: What they -- what they had --
 16 we have evidence that we also will present separately
 17 that the number of employees of Uber went up again many,
 18 many, many fold from this stage, which on a
 19 demonstrative timeline would show it going from a tiny
 20 kernel into this big thing.
 21 And so this is a weigh station along the way,
 22 that in 2012, which is one of the key periods of time
 23 that it grew eight times within the year, meaning the
 24 year -- and the year before it wasn't like it was
 25 growing less.

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1 In fact, in this video, Mr. Kalanick says that
 2 they grew 16 times the number of rides, 16X in a year.
 3 So if they had a hundred rides, now they're at
 4 1,600 for the same period.
 5 Like it -- and then that was a tiny fraction
 6 of what it is today.
 7 So it is -- it really puts in perspective how
 8 tiny Uber was and how it was still in the early days as
 9 of March 15, 2012, the day that is the key benchmark of
 10 this case.
 11 THE COURT: Hear from you.
 12 MR. TANGRI: Your Honor, we didn't object on
 13 hearsay grounds. We objected on relevance, MIL one and
 14 352. Part of the problem here is, as you just heard,
 15 this is referencing a video, which Counsel is then
 16 summarizing for the witness. The witness is asking
 17 follow-up questions. Counsel was answering them in sort
 18 of an incomplete way. And the witness is saying, it
 19 could be anything, I don't know.
 20 So it is simply highly confusing in its
 21 current form. If they want to add the video to their
 22 witness list, obviously we'll take a look at it and if
 23 we have objections to portions of it, we'll let them
 24 know. If we don't have objections to portions of it,
 25 we'll let them know that too. But the video as a

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1 statement may or may not be admissible.
 2 This is bound up with the video that -- that
 3 isn't being recited. I just want to point out a couple
 4 of things precisely.
 5 When he's asked, do you believe it to be a
 6 correct statement that you had approximately 120
 7 employees, most of which were outside San Francisco, the
 8 witness says, when was the date? The lawyer says 2012
 9 is when you were giving that presentation. It's not
 10 even clear from that that that is scoped to the
 11 statement in the video about when they had 120
 12 employees. So maybe they had 120, we don't know when
 13 the video says they had 120 employees.
 14 And -- and the witness then says, well, in
 15 response to that 2012 is when you gave the presentation,
 16 I mean, we may have grown like 8X in 2012, so it's just
 17 hard to know what you're talking about.
 18 That feels, to me, unhelpful to the jury.
 19 It's a witness obviously speculating about something
 20 that's being summarized for him, not played in the
 21 deposition, not recorded on the transcript.
 22 It can be played -- I mean, I don't dispute
 23 that it's otherwise unobjectionable, it can be played in
 24 court, as I said, we'll address that, but -- but this is
 25 Counsel's essentially hearsay statements about what the

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1 video is or facts about it, may or may not be facts
 2 about it, and then the witness reacting to it by
 3 basically saying I need more information to answer your
 4 question.
 5 We don't think it's helpful. We think it's
 6 unduly confusing to the jury, based on the way they're
 7 going to argue it, prejudicial as well for that reason.
 8 MR. GREENBERG: I -- I guess I expect to
 9 differ. If we show the video saying this -- if
 10 Mr. Kalanick's on the stand we could ask him the same
 11 question, if he gives that answer, it's perfectly a
 12 valid question and answer, and we can show -- if he
 13 gives a different answer, we potentially could show his
 14 video for impeachment. And since he's a party, we
 15 should be able to show it for all purposes.
 16 So it seems to me -- first of all, he does say
 17 in the video currently, as of that time, it was 120
 18 employees, which is the context because he just watched
 19 the video as he's sitting there, so that's why that
 20 question is asked.
 21 He says, when was the date? The questioner
 22 says 2012. And then Mr. Kalanick, he didn't say he
 23 doesn't know what you're talking about. He said it's
 24 hard to know when you were talking about within 2012,
 25 because we could have grown 8X in 2012.

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1 That seems to be an important answer so we
 2 would like to use it.

3 THE COURT: All right, I'm going to sustain
 4 the objection, it's too messy and elliptical to use in
 5 this format. I'm going to ask you to meet and confer on
 6 whether or not the video can be admitted. He's adding
 7 it to his witness list today apparently.

8 MR. TANGRI: Fair enough.

9 THE COURT: All right.

10 MR. GREENBERG: I guarantee there's parts of
 11 the video that are within some of the MILs, but that
 12 part's not so it would be just excerpts.

13 THE COURT: I understand.

14 So are there any -- are there any of the
 15 counter designations that are still in play in view of
 16 my rulings?

17 MR. TANGRI: There are, Your Honor.

18 At least the counter designations on pages 86,
 19 lines 12 to 13.

20 THE COURT: Actually, looking at the box that
 21 says plaintiffs' objections, it appears to be blank.

22 MR. GREENBERG: Right, we did not object to
 23 their counters. And to the extent that the original
 24 designation stays in after the rulings, we have no
 25 objection to their counter to that designation.

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1 MR. TANGRI: That's fine, Your Honor. I
 2 was -- I was trying to list the ones that were staying
 3 in, but I think we understand the rulings, we can get it
 4 done.

5 THE COURT: Okay, thank you. I didn't mean to
 6 cut you off.

7 MR. TANGRI: No, no, that's perfect, it's
 8 4:30.

9 THE COURT: It's 4:30.

10 MR. TANGRI: I understand.

11 THE COURT: We made a lot of progress today.
 12 We didn't finish everything we needed to finish. We
 13 need to do the jury instruction argument, we need to do
 14 the verdict forms, and we need to handle the Halpern
 15 designation.

16 Anything else that's sort of percolating that
 17 has to be addressed before we actually get the panel in
 18 here? So it sounds like you can refine what you want to
 19 use from Halpern based on all the rulings that I made at
 20 our prior session and today.

21 MR. TANGRI: Yes.

22 THE COURT: So I would propose that -- I
 23 guess, Mr. Greenberg, to the extent that you want to
 24 tinker with the introductory instruction or it's time to
 25 put pen to paper so that we can -- we can have something

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1 concrete to talk about.

2 MR. GREENBERG: And just so it helps to -- I
 3 know we're pretty much out of time, but I'm -- without
 4 getting into the detail I'm thinking of a fairly robust
 5 assumption that the jury is told to make about that
 6 there were trade secrets and that they were
 7 misappropriated by these defendants. And that their
 8 decision is going to be whether the claim was filed in
 9 time, and there may have to be some color to what the
 10 trade secrets were, we can't get into that.

11 Because they need to understand what
 12 Mr. Halpern was looking at when he found out about Uber.

13 Again, it can't be in a vacuum where he --

14 THE COURT: I understand.

15 And I also understand that, you know, you're
 16 the driving force for the plaintiff, and so you go ahead
 17 and push.

18 MR. GREENBERG: No pun intended, right.

19 THE COURT: Yeah. That's true, there was no
 20 pun intended.

21 I'm going to probably make lots of
 22 unintentional puns with this case. But I'm happy to
 23 give you an opportunity to put some meat on those bones
 24 and your skilled opponents will give you their view and
 25 I'll give you a quality ruling.

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1 But if you could meet and confer and send
 2 something to them and file something with me before the
 3 3rd, like maybe -- how much time do you think you need?

4 MR. GREENBERG: I mean, it would be -- since
 5 we still have that two-week period, I think I would get
 6 something over to them maybe by the end of the week, and
 7 then we could get something on file by I imagine next --
 8 if you're tied up until next Friday, next Thursday.

9 THE COURT: Seems sensible.

10 MR. TANGRI: If we get it by the end of the
 11 week, Your Honor, that's fine. That's what I'm most --

12 THE COURT: Let's do that.

13 MR. GREENBERG: Okay.

14 THE COURT: Thank you, I'll see you, let's
 15 start at 9:30 on the 3rd.

16 MS. DURIE: Thank you.

17 MR. TANGRI: Thank you.

18 MR. GREENBERG: Very well, Your Honor.

19 THE COURT: See you then.

20 (Whereupon, the proceeding adjourned at
 21 4:33 p.m.)

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1 State of California)
)
2 County of San Francisco)
3
4

5 I, Lucy Carrillo-Grubbs, Certified Shorthand
6 Reporter No. 6766, do hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes
10 all proceedings had and testimony given;

11 That I thereafter transcribed said shorthand
12 notes with the aid of a computer;

13 That the above transcript is a full, true,
14 and correct transcription of said shorthand notes, and
15 a full, true and correct transcript of all proceedings
16 had and testimony taken;

17 That I am not a party to the action or
18 related to a party or counsel;

19 That I have no financial or other interest in
20 the outcome of the action.

21
22 Dated: 21st of January, 2020,

Lucy Carrillo Grubbs

LUCY CARRILLO-GRUBBS, CSR No. 6766

25

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