

Transcript of Proceedings
December 08, 2023

Rasmussen
vs.
The Walt Disney Company



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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 6

HON. ELIHU M. BERLE, JUDGE

LARONDA RASMUSSEN, ET AL., ON)
BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)
)

PLAINTIFF(S),)

CASE NO. 19STCV10974

VS)
)

THE WALT DISNEY COMPANY,)
ET AL.,)
)
)

DEFENDANT(S).)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DECEMBER 8, 2023

APPEARANCES OF COUNSEL ON FOLLOWING PAGE

REPORTED BY:
LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE

JOB NO.: 10131728

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I N D E X
DECEMBER 8, 2023

CHRONOLOGICAL INDEX OF WITNESSES

WITNESSES:

(NONE)

EXHIBITS

MARKED RECEIVED

(NONE)

1 CASE NUMBER: 19STCV10974
2 CASE NAME: RASMUSSEN VS. THE WALT DISNEY COMPANY
3 LOS ANGELES, CALIFORNIA - FRIDAY, DECEMBER 8, 2023
4 DEPT. SSC 6 HON. ELIHU M. BERLE, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: LISA A. AUGUSTINE, CSR. NO. 10419
7 TIME: 10:00 A.M.

8 -000-
9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
10 COURT:)

11 THE COURT: GOOD MORNING, COUNSEL. PLEASE BE
12 SEATED AND MAKE YOURSELF COMFORTABLE.

13 RASMUSSEN VERSUS WALT DISNEY COMPANY.
14 COUNSEL, APPEARANCES.

15 MS. ANDRUS: GOOD MORNING, YOUR HONOR. LORI
16 ANDRUS ON BEHALF OF PLAINTIFFS, AND I CAN ALSO INTRODUCE
17 MY CO-COUNSEL, CHRISTINE WEBER.

18 MS. WEBER: GOOD MORNING, YOUR HONOR.

19 MS. ANDRUS: BYRON GOLDSTEIN.

20 MR. GOLDSTEIN: GOOD MORNING, YOUR HONOR.

21 MS. ANDRUS: ON COURT CALL, YOUR HONOR, IS JAMES
22 KAN AND PHOEBE WOLF. THEY'VE ALREADY STATED THEIR
23 APPEARANCES, BUT I'D ALSO LIKE TO RECOGNIZE, YOUR HONOR,
24 THAT SEVERAL OF OUR NAMED PLAINTIFFS ARE ON COURT CALL.
25 THEY ARE LARONDA RASMUSEN, ENNY JOO, NANCY DOLAN, KAREN
26 MOORE, DAWN WISNER JOHNSON, AND PLAINTIFF BECKY TRAIN IS
27 HERE IN THE COURTROOM, YOUR HONOR.

28 THE COURT: THANK YOU.

1 COUNSEL FOR DEFENDANTS.

2 MS. DAVIS: GOOD MORNING, YOUR HONOR. FELICIA
3 DAVIS WITH PAUL HASTINGS REPRESENTING DEFENDANTS.

4 MS. SULLIVAN: GOOD MORNING, YOUR HONOR. CARSON
5 SULLIVAN ALSO WITH PAUL HASTINGS REPRESENTING DEFENDANTS.

6 MS. SABA MURPHY: GOOD MORNING, YOUR HONOR.
7 CLAIRE SABA MURPHY WITH PAUL HASTINGS REPRESENTING
8 DEFENDANT.

9 THE COURT: ANYONE ELSE ONLINE AND VIRTUAL
10 APPEARANCE?

11 MS. BESNOFF: GOOD MORNING, YOUR HONOR. THIS IS
12 SARAH BESNOFF WITH PAUL HASTINGS REPRESENTING DEFENDANT.

13 THE COURT: GOOD MORNING.

14 ANYONE ELSE?

15 ALL RIGHT. THANK YOU.

16 MS. ARANDA OSORNO: I'M JACQUELINE OSORNO. I
17 REPRESENT KNOCK L.A. WE'RE A THIRD PARTY SEEKING LEAVE TO
18 PARTICIPATE IN THIS CASE, AND OUR MOTION IS ALSO SET FOR
19 10:00 A.M.

20 THE COURT: ALL RIGHT. THANK YOU.

21 I HAVE SEEN THE PROPOSAL FOR THE APPOINTMENT
22 OF LISA AUGUSTINE AS COURT REPORTER PRO TEM.

23 ANY OBJECTIONS?

24 NOT HEARING ANY OBJECTIONS, LISA AUGUSTINE,
25 PRESENT IN THE COURTROOM THIS MORNING, IS HEREBY APPOINTED
26 COURT REPORTER PRO TEM.

27 GOOD MORNING.

28 MS. REPORTER: GOOD MORNING.

1 THE COURT: MATTERS ON CALENDAR OF THE CONTINUED
2 HEARING, THE MOTION FOR CLASS CERTIFICATION. WE ALSO HAVE
3 SOME MOTIONS TO SEAL. WE'LL DEAL WITH THOSE AT THE END.

4 ANYONE WISH TO BE HEARD ON THE MOTION FOR
5 CLASS CERTIFICATION?

6 MS. ANDRUS: YES, YOUR HONOR, PLAINTIFFS WOULD
7 LIKE TO.

8 THE COURT: PLEASE PROCEED.

9 MS. ANDRUS: ONCE AGAIN, LORI ANDRUS ON BEHALF OF
10 PLAINTIFFS, YOUR HONOR. THANK YOU AND GOOD MORNING.

11 THE COURT: GOOD MORNING.

12 MS. ANDRUS: WE WILL INCORPORATE THE ARGUMENTS
13 THAT WERE MADE BY MY COLLEAGUES IN SUPPORT OF OUR MOTIONS
14 TO STRIKE THE EXPERTS OF DISNEY AND OUR OPPOSITION
15 ARGUMENTS TO DISNEY'S MOTIONS TO STRIKE OUR EXPERTS.

16 I WILL NOT -- I DO NOT INTEND TO REPEAT ANY
17 OF THOSE ARGUMENTS, YOUR HONOR, THAT WERE MADE AT THE LAST
18 HEARING.

19 AND, MAY IT PLEASE THE COURT, I WOULD LIKE
20 TO RESERVE TIME ON REBUTTAL ALTHOUGH I WILL DO MY BEST TO
21 ADDRESS ALL ARGUMENTS IN MY OPENING.

22 YOUR HONOR, DISNEY PREMISES THEIR ARGUMENT
23 ON A FEW FACTUAL DISPUTES THAT WHEN DECIDED, WILL APPLY TO
24 ALL CLASS MEMBERS. FOR EXAMPLE, DISNEY CLAIMS THAT ITS
25 GLOBAL JOB LEVELING FRAMEWORK DID NOT GROUP JOBS THAT ARE
26 SUBSTANTIALLY SIMILAR BASED ON SKILL, RESPONSIBILITY, AND
27 EFFORT, BUT PLAINTIFFS HAVE PUT FORTH SUBSTANTIAL
28 DOCUMENTARY EVIDENCE AND THIS IS BEFORE MERITS DISCOVERY.

1 WE'VE PUT FORTH DOCUMENTARY EVIDENCE TO SUPPORT THAT
2 ALLEGATION.

3 EXHIBIT 84, YOUR HONOR, IS A PERFECT EXAMPLE
4 AND IT PLAINLY STATES THAT THE LEVELING PROJECT WAS
5 DESIGNED TO PAY EMPLOYEES CONSISTENTLY THROUGHOUT DISNEY'S
6 ORGANIZATION. THIS IS A FACTUAL DISPUTE THAT WILL BE
7 DECIDED ONCE AND FOR ALL FOR ALL CLASS MEMBERS THROUGH
8 COMMON PROOF. AND DISNEY WILL -- EXCUSE ME, THE JURY WILL
9 DECIDE WHETHER IT BELIEVES DISNEY'S WITNESSES OR THE
10 DOCUMENTS THAT WERE CREATED OVER TIME.

11 ANOTHER EXAMPLE OF A FACTUAL QUESTION THAT
12 WILL BE DECIDED ON COMMON PROOF IS THE QUESTION OF WHO
13 CONTROLS DECISION MAKING REGARDING STARTING PAY. DISNEY
14 SAYS THAT THOUSANDS OF INDIVIDUAL HIRING MANAGERS MAKE
15 THOSE DECISIONS. BUT PLAINTIFFS HAVE PROVIDED SUBSTANTIAL
16 EVIDENCE THAT SHOWS IT IS ACTUALLY A SMALL GROUP OF
17 COMPENSATION DECISION MAKERS WHO ALL REPORT TO SENIOR VICE
18 PRESIDENT OF COMPENSATION FOR ALL OF DISNEY.

19 THIS IS ANOTHER FACTUAL DISPUTE CORE TO THE
20 CASE THAT WILL BE DECIDED FOR ALL CLASS MEMBERS THROUGH
21 COMMON PROOF. THE JURY CAN DECIDE THOSE FACTUAL DISPUTES,
22 YOUR HONOR, AND PLAINTIFFS EXPECT THAT AFTER MERITS
23 DISCOVERY, WE'LL HAVE EVEN STRONGER EVIDENCE OF SYSTEMATIC
24 DISCRIMINATION AT DISNEY.

25 IN ADDITION TO THE FACTUAL QUESTIONS THAT
26 WILL BE PRESENTED WITH COMMON PROOF, WE HAVE LEGAL
27 QUESTIONS THAT LEND THEMSELVES TO DETERMINATION ON A CLASS
28 BASIS. UNDER CALIFORNIA SUPREME COURT AUTHORITY, AS THE

1 COURT WELL KNOWS, THE COURT SHOULD FOCUS ON THE
2 PLAINTIFFS' THEORY OF LIABILITY WHEN EVALUATING
3 PREDOMINANCE, AND THOSE ARE MOSTLY, YOUR HONOR, THE CASES
4 OF SAVE-ON AND AYALA THAT STAND FOR THAT PROPOSITION.

5 PLAINIFFS PROCEED ON TWO LEGAL THEORIES;
6 WRIT LARGE WITH A VIOLATIONS OF THE FAIR EQUAL HOUSING --
7 SORRY, FAIR EMPLOYMENT HOUSING ACT AND ALSO CALIFORNIA'S
8 EQUAL PAY ACT.

9 FOR OUR FEHA CLAIMS WE ALLEGE THREE
10 COMPANY-WIDE POLICIES OR PRACTICES THAT RESULT IN EQUAL
11 PAY -- UNEQUAL PAY FOR DISNEY'S FEMALE EMPLOYEES. THAT'S
12 BASICALLY, YOUR HONOR, A DISPARATE IMPACT CLAIM UNDER
13 FEHA. THOSE THREE POLICIES ARE THAT DISNEY USED PRIOR PAY
14 TO SET STARTING PAY. THAT DISNEY HAD A SMALL NUMBER OF
15 COMPENSATION PROFESSIONALS AT ANY GIVEN TIME RESPONSIBLE
16 FOR SETTING STARTING PAY USING COMMON CRITERIA. AND THAT
17 FOR ANNUAL RAISES DISNEY FOCUSES ON PERCENTAGE INCREASES
18 WHICH PERPETUATE DISCRIMINATORY PAY. IN OTHER WORDS,
19 WOMEN START LOW AT DISNEY AND THEN THEY STAY LOW BECAUSE
20 OF PERCENTAGE INCREASES.

21 UNDER THE EQUAL PAY ACT, PLAINTIFFS' THEORY
22 IS THAT DISNEY PAYS WOMEN LESS FOR SUBSTANTIALLY SIMILAR
23 WORK.

24 DISNEY HOPES TO DEFEAT CLASS CERTIFICATION
25 BY POINTING TO ITS AFFIRMATIVE DEFENSES. IN ORDER TO
26 DEFEAT A CLAIM UNDER FEHA, DISNEY MUST SHOW THAT THE THREE
27 PRACTICES WE CHALLENGE ARE JUSTIFIED BY BUSINESS NECESSITY
28 WHICH IS VALID AND JOB RELATED.

1 AND STENDER HELD THAT THIS DEFENSE CAN BE
2 ADJUDICATED COLLECTIVELY AS DID MC REYNOLDS OUT OF THE 7TH
3 CIRCUIT AND CHEN-OSTER.

4 DISNEY DID NOT RESPOND TO THIS POINT IN ITS
5 OPPOSITION. INSTEAD, DISNEY FOCUSES ON THE EQUAL PAY ACT
6 DEFENSES, BUT THERE IT ONLY MAKES VAGUE ARGUMENTS THAT
7 THEIR STRATEGY AT TRIAL WILL BE TO PUT ON DUPLICATIVE
8 WITNESSES. DISNEY HAS NOT IDENTIFIED A SINGLE AFFIRMATIVE
9 DEFENSE THAT WOULD TAKE OUT A SINGLE PLAINTIFFS' CLAIMS.

10 IN REALITY DISNEY'S EQUAL PAY ACT DEFENSE
11 IS, BY ITS NATURE, A COLLECTIVE ONE. TO PREVAIL ON A
12 DEFENSE UNDER THE EPA, DISNEY HAS TO SHOW THAT THE REASON
13 FOR THE WAGE DISPARITY IS JOB RELATED CONSISTENT WITH
14 BUSINESS NECESSITY AND APPLIED REASONABLY. YOU CANNOT
15 SHOW THAT SOMETHING WAS REASONABLY APPLIED UNLESS YOU SHOW
16 THAT IT WAS CONSISTENTLY APPLIED IN OTHER SITUATIONS. AND
17 THAT'S THE BELFY CASE. IN OTHER WORDS, DISNEY WILL HAVE
18 TO SHOW HOW IT SYSTEMATICALLY APPLIED THOSE FACTORS
19 WHETHER IT'S DEFENDING AN INDIVIDUAL CASE OR CLASS CASE.
20 IT WILL BE THE SAME EVIDENCE.

21 DISNEY CLAIMS THAT PLAINTIFFS CANNOT SHOW
22 COMMONALITY BECAUSE THE COMPANY IS TOO LARGE AND TOO
23 DIVERSE TO CERTIFY A CLASS. BUT COURTS HAVE CERTIFIED
24 LARGE CLASSES BEFORE. FOR EXAMPLE, KMART V. RADIO SHACK
25 CERTIFIED A CLASS OF 15,000 EMPLOYEES. AND IN THE HIGH
26 TECH ANTI-POACHING CASES, A CLASS OF 60,000 EMPLOYEES WAS
27 CERTIFIED AGAINST MULTIPLE EMPLOYERS.

28 IT COMES DOWN TO THIS, YOUR HONOR, WHETHER

1 IT'S 200 JOBS OR 2,000 JOBS, THE QUESTION IS CAN YOU
2 ANALYZE THOSE JOBS USING STATISTICAL CONTROLS FOR THE
3 VARIOUS FACTORS; HERE WE CAN. AND WERE THE SAME POLICIES
4 AND PRACTICES APPLICABLE TO ALL; HERE THEY ARE. THE
5 ANSWER IS YES TO BOTH OF THOSE QUESTIONS AND, THEREFORE,
6 IT IS MORE MANAGEABLE TO HAVE A 3,000 JOB CLASS WHERE
7 COMMON EVIDENCE WILL DETERMINE LIABILITY THAN IN A
8 CIRCUMSTANCE WHERE THERE ARE ONLY 30 JOBS BUT THERE IS NO
9 COMMON EVIDENCE.

10 PLAINTIFFS HAVE PRODUCED STRONG EVIDENCE OF
11 DISNEY'S CENTRALIZATION AND UNIFORMITY OF ITS PRACTICES.
12 DISNEY ITSELF HAS CONDUCTED TWO EQUAL PAY AUDITS WITHIN
13 THE CLASS PERIOD. IT IS NONSENSE TO SAY THAT IT CANNOT BE
14 DONE. AND IT CAN BE DONE USING A REGRESSION ANALYSIS.
15 LAVIN-MCELENEY SAYS THAT YOU CAN USE A REGRESSION ANALYSIS
16 FOR LIABILITY UNDER THE EQUAL PAY ACT AND FOR DAMAGE
17 PURPOSES. WE'RE NOT JUST LOOKING AT THE AVERAGE. WE TAKE
18 INTO ACCOUNT ALL OF THE INDIVIDUAL FACTORS AND DEFINITELY
19 UNDER MULTIPLE CASES CITED IN OUR BRIEFING, IT'S CLEAR
20 THAT THERE IS NO CHERRY-PICKING, AND WE DO NOT ENGAGE IN
21 THAT THROUGH OUR EXPERT REPORTS, YOUR HONOR.

22 REGARDING SUPERIORITY FOR OUR FEHA CLAIMS
23 WHETHER THEY WERE INDIVIDUAL OR CLASS CLAIMS, EACH CLASS
24 MEMBER MUST IDENTIFY A FACIALLY NEUTRAL PRACTICE THAT HAS
25 A DISPARATE IMPACT ON WOMEN. THIS IS THE SAME PROOF FOR
26 EVERYONE, AND A JURY WILL DECIDE OUR FEHA CLAIMS ONCE AND
27 FOR ALL.

28 FOR THE EQUAL PAY ACT, EACH CLASS MEMBER

1 MUST SHOW THAT DISNEY ORGANIZES ITS WORKERS INTO JOBS THAT
2 ARE SUBSTANTIALLY SIMILAR. WE WILL RELY ON THE SAME PROOF
3 TO DO THAT. WHETHER DISNEY RELIED ON PRIOR PAY OR NOT IS
4 A JURY QUESTION THAT WILL BE DEMONSTRATED THROUGH COMMON
5 PROOF. DISNEY HAS ALREADY CONCEDED THAT IT IS AN
6 INTEGRATED ENTERPRISE FURTHER JUSTIFYING CLASS
7 CERTIFICATION.

8 AND PLAINTIFFS SEEK INJUNCTIVE RELIEF.
9 INJUNCTIVE RELIEF, OF COURSE, FOCUSES ON DISNEY'S BEHAVIOR
10 AND NOT ON INDIVIDUAL ISSUES.

11 THE PURPOSE OF THE CALIFORNIA EQUAL PAY ACT,
12 YOUR HONOR, IS TO ELIMINATE THE WAGE GAP. THE LEGISLATURE
13 WROTE THE LAW TO BE STRONGER THAN THE FEDERAL EPA, AND THE
14 PURPOSE OF FEHA IS TO ELIMINATE DISCRIMINATORY PRACTICES.
15 ABSENT CLASS TREATMENT, SYSTEMATIC DISCRIMINATION REMAINS
16 UNADDRESSED AND IT IS HIGHLY UNLIKELY THAT ANY INDIVIDUAL
17 WOMAN WOULD TAKE ON DISNEY AND SUCCEED.

18 IN SHORT, YOUR HONOR, OUR CLASS IS NUMEROUS,
19 IT IS ASCERTAINABLE, WE HAVE A WELL-DEFINED COMMUNITY OF
20 INTEREST. QUESTIONS OF LAW, IN FACT, PREDOMINATE.
21 PLAINTIFFS ARE TYPICAL AND ADEQUATE.

22 AND FOR ALL THOSE REASONS, CLASS CERT SHOULD
23 BE GRANTED.

24 I'D LIKE TO RESERVE SOME TIME ON REBUTTAL.

25 THANK YOU, YOUR HONOR.

26 THE COURT: THANK YOU.

27 COUNSEL FOR DEFENSE.

28 MS. DAVIS: THANK YOU, YOUR HONOR. I HAVE A

1 BINDER OF MATERIALS I'D LIKE TO REFER TO.

2 MAY I APPROACH?

3 THE COURT: YOU CAN SUBMIT THEM TO THE CLERK. AND
4 YOU GAVE THEM TO OPPOSING COUNSEL ALSO?

5 MS. DAVIS: YES, THEY RECEIVED COPIES. THANK YOU.

6 GOOD MOURNING. FELICIA DAVIS WITH PAUL
7 HASTINGS REPRESENTING DEFENDANTS.

8 CERTIFICATION OF THIS CASE, YOUR HONOR,
9 WOULD BE UNPRECEDENTED. YES, IT IS LARGE. PLAINTIFFS'
10 FEHA CLASS INCLUDES MORE THAN 12,000 WOMEN. THE EPA CLASS
11 MORE THAN 9,000. BUT THE SIZE ALONE IS NOT WHAT MAKES IT
12 EXTRAORDINARY. IT'S THE DIVERSITY OF THE PUTATIVE CLASS
13 THAT IS UNPRECEDENTED, UNCOMMON, AND AT THE END OF THE
14 DAY, UNMANAGEABLE.

15 NO DISCRIMINATION OR PAY EQUITY CLASS LIKE
16 THIS HAS EVER BEEN CERTIFIED. THE PUTATIVE CLASS AND THE
17 ALLEGED COMPARATORS INCLUDES IN-HOUSE ATTORNEYS, LANDSCAPE
18 ARCHITECTS, GRAPHIC DESIGNERS, MUSIC PRODUCERS,
19 TRANSPORTATION MANAGERS, SET DESIGNERS, NURSES, CASTING
20 COORDINATORS, PASTRY CHEFS, MECHANICAL ENGINEERS,
21 COSTUMERS, VISUAL EFFECTS DESIGNERS, TRAFFIC MANAGERS,
22 SECURITY INVESTIGATORS, COPYWRITERS, AIRCRAFT MECHANICS,
23 VACATION CLUB GUIDES, HR SPECIALISTS, ILLUSION MAKERS,
24 THEATER OPERATIONS MANAGERS, GUEST COMMUNICATIONS
25 MANAGERS, TECHNICAL WRITERS, ARCHITECTS, INTERPRETERS,
26 CHARACTER MANAGERS, VISUAL EFFECTS DIRECTORS, RIDE
27 ENGINEERS. YOUR HONOR, THE LIST GOES ON AND ON AND ON.

28 THE COURT: EXCUSE ME JUST A MOMENT. WHAT IS ALL

1 THIS MATERIAL THAT YOU SUBMITTED IN THESE BINDERS?

2 MS. DAVIS: YOUR HONOR --

3 THE COURT: DEFENDANTS' ORAL ARGUMENT BINDER.

4 MS. DAVIS: YOUR HONOR, THESE ARE ALL MATERIALS
5 THAT HAVE BEEN SUBMITTED IN EVIDENCE, AND I JUST PLAN TO
6 REFER TO THEM DURING THE ARGUMENT.

7 THE COURT: EVERYTHING HERE HAS BEEN SUBMITTED IN
8 EVIDENCE AS EXHIBITS SOMEPLACE?

9 MS. DAVIS: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. PLEASE PROCEED.

11 MS. DAVIS: THANK YOU.

12 THE NUMEROUS JOBS THAT I JUST LISTED FROM
13 LANDSCAPE ARCHITECTS TO MUSIC PRODUCERS TO COSTUMERS AND
14 HR SPECIALISTS, THESE ARE ALL MEMBERS OF THE PUTATIVE
15 CLASS. THEY ARE IN DIFFERENT SEGMENTS. THEY WORK IN
16 DIFFERENT BUSINESS AREAS. THEY ARE IN DIFFERENT
17 LOCATIONS. AND THEY REPORT TO DIFFERENT MANAGERS.

18 THEY'RE IN COMPLETELY DIFFERENT INDUSTRIES
19 WHICH PAY COMPLETELY DIFFERENTLY. THEY'RE IN CRUISE
20 LINES, TECHNOLOGY, THEME PARKS, MARKETING, TELEVISION, HR,
21 FILM, HOTELS, RETAIL STORES, FINANCE, RESTAURANTS, LEGAL.
22 IF YOU NAME A JOB, IT IS PART OF THIS LAWSUIT.

23 THE COURT: ALL RIGHT. ASSUMING THAT THAT'S
24 ACCURATE, WHAT EFFECT WOULD THAT HAVE ON EPA IF COLLECTIVE
25 PLAINTIFFS' ARGUMENTS IS DISCRIMINATION BETWEEN JANITORS
26 AND SO WHAT DIFFERENCE DOES IT MAKE ABOUT THE TYPE OF WORK
27 THAT THE INDIVIDUAL WAS DOING IF THERE'S NO REAL SYSTEMIC
28 DIFFERENTIATION?

1 MS. DAVIS: YOUR HONOR, THE EPA HAS TWO
2 REQUIREMENTS, RIGHT. THERE ARE TWO ELEMENTS OF A CLAIM.
3 ONE IS THAT WOMEN ARE PAID LESS THAN MEN AND, TWO, FOR
4 SUBSTANTIALLY SIMILAR WORK. SO THINKING ABOUT JUST THAT
5 SECOND PRONG FIRST, FOR SUBSTANTIALLY SIMILAR WORK,
6 PLAINTIFFS NEED TO IDENTIFY -- PLAINTIFFS NEED TO, AT
7 TRIAL, SHOW WHICH WOMEN AND WHICH MEN ARE PERFORMING
8 SUBSTANTIALLY SIMILAR WORK. NOW --

9 THE COURT: PLAINTIFF SAYS, OKAY, ACCORDING TO
10 YOUR LIST THERE'S AN ARCHITECT, A MALE ARCHITECT, WHO'S
11 PAID ONE SALARY AND A FEMALE ARCHITECT PAID ANOTHER
12 SALARY, AND THERE'S A CUSTODIAN PAID DIFFERENT SALARIES.

13 SO WHY DOES IT HAVE TO GO EMPLOYEE BY
14 EMPLOYEE IF THERE'S AN OVERALL POLICY TO DISTINGUISH
15 BETWEEN GENDERS UNDER THE EPA I'M TALKING ABOUT?

16 MS. DAVIS: SURE. UNDER THE EPA -- WELL, JUST TO
17 BE CLEAR, THERE'S NO POLICY TO DISTINGUISH BETWEEN GENDERS
18 OR TO PAY MEN AND WOMEN DIFFERENTLY. BUT UNDER THE EPA,
19 YOU'VE GOT TO FIRST IDENTIFY WHICH INDIVIDUALS ARE
20 PERFORMING SUBSTANTIALLY SIMILAR WORK.

21 THE COURT: ALL RIGHT. SO PLAINTIFF SAYS ALL
22 EMPLOYEES.

23 MS. DAVIS: ALL EMPLOYEES ARE NOT PERFORMING
24 SUBSTANTIALLY SIMILAR WORK. THAT'S NOT PLAINTIFFS'
25 THEORY.

26 THE COURT: YOU HAVE TO GO INTO EVERY SINGLE
27 CATEGORY OF EMPLOYMENT IF THE COMPANY DISTINGUISHES
28 BETWEEN MALE AND FEMALE EMPLOYEES?

1 MS. DAVIS: WELL, YOUR HONOR, THE EPA REQUIRES A
2 SHOWING THAT WOMEN ARE PAID LESS THAN MEN FOR
3 SUBSTANTIALLY SIMILAR WORK. SO FIRST THING YOU NEED TO DO
4 IS DETERMINE WHICH GROUPS ARE PERFORMING SUBSTANTIALLY
5 SIMILAR WORK. AND ACCORDING TO PLAINTIFFS, THERE ARE MORE
6 THAN 3,000 DIFFERENT JOB GROUPINGS HERE.

7 THE COURT: ALL RIGHT. SO PLAINTIFF SAYS 3,000
8 JOBS, EACH CATEGORY IS A DISTINCTION BASED UPON COMPANY
9 POLICY TO PAY DIFFERENT RATES OF PAY, AND THAT'S NOT
10 SUFFICIENT FOR CLASS CERTIFICATION?

11 IT'S NOT -- WE'RE NOT TALKING ABOUT A MERITS
12 CASE. MERITS IS TOTALLY DIFFERENT. OBVIOUSLY DEFENDANT
13 WOULD HAVE AN OPPORTUNITY TO PRESENT ORAL DEFENSES AS TO
14 WHETHER THERE ARE DISTINCTIONS OR NOT AND WHETHER IT'S
15 EQUAL TYPE OF WORK OR NOT.

16 BUT IN TERMS OF CERTIFICATION BASED UPON
17 PLAINTIFFS SHOWING ARGUMENT THAT THERE'S NO OVERALL
18 POLICY, ARE YOU SAYING THAT PLAINTIFF CANNOT SHOW THAT?

19 MS. DAVIS: WELL, THE JURY -- IF WE THINK ABOUT
20 WHAT THE TRIAL WOULD BE LIKE IF A CASE LIKE THIS WAS
21 CERTIFIED, RIGHT, THE JURY WOULD NEED TO DETERMINE WHICH
22 INDIVIDUALS ARE PERFORMING SUBSTANTIALLY SIMILAR WORK.

23 THE COURT: WHY?

24 MS. DAVIS: BECAUSE THAT'S AN ELEMENT OF AN EPA
25 CLAIM. IF THERE'S NO IDENTIFICATION OF SUBSTANTIALLY
26 SIMILAR WORK, THEN THERE IS NO VIOLATION. THERE'S NO
27 CLAIM.

28 THE COURT: SO YOU THINK THAT PLAINTIFF WILL HAVE

1 TO SHOW WHATEVER NUMBER OF EMPLOYEES THERE ARE AT WALT
2 DISNEY COMPANY, 20,000. THEY'LL HAVE TO GO THROUGH 20,000
3 EMPLOYEES?

4 MS. DAVIS: NO, NOT NECESSARILY. BUT WHAT THEY
5 WOULD NEED TO DO IS TO SHOW -- IS TO HAVE SOME TYPE OF
6 EVIDENCE WHERE THE JURY COULD CONCLUDE WHICH INDIVIDUALS
7 ARE PERFORMING SUBSTANTIALLY SIMILAR WORK. NOW --

8 THE COURT: ARE YOU SAYING THAT THERE'S A
9 POLICY -- OR YOU CAN PROVIDE EVIDENCE THAT THERE'S A
10 POLICY WHERE THERE IS -- WE DON'T KNOW WHAT THE EVIDENCE
11 IS GOING TO BE OR THERE MAY BE SOME MANAGEABILITY CONCERNS
12 WHICH WE'LL HAVE TO DISCUSS, BUT IF THERE'S AN OVERALL
13 POLICY, I WOULD THINK EACH CATEGORY OF EMPLOYEES THAT
14 THERE'S A DISTINCTION BETWEEN MALE AND FEMALE PAYMENTS.

15 THAT IS NOT SUFFICIENT IN YOUR MIND.

16 MS. DAVIS: WELL, ONE, THEY HAVEN'T SHOWN ANY
17 RESULTS FOR ANY GROUP OF EMPLOYEES. ALL THEY'RE DOING IS
18 SHOWING AN OVERALL ALLEGED SHORTFALL FOR KIND OF ALL WOMEN
19 COMPARED TO ALL MEN. BUT EVEN IF PLAINTIFFS WANT -- IF
20 THEIR THEORY IS THAT THEY CAN USE WHAT THEY CALL A POLICY,
21 RIGHT, WHICH IS THE JOB FAMILY LEVEL, THAT'S THEIR THEORY.
22 THEY CAN GO IN FRONT OF THE JURY AND JUST SIMPLY USE JOB
23 FAMILY LEVEL TO IDENTIFY WHICH EMPLOYEES ARE PERFORMING
24 SUBSTANTIALLY SIMILAR WORK. THAT DOESN'T MEAN THAT
25 DEFENDANTS ARE REQUIRED TO RELY ON THAT EVIDENCE IN
26 RESPONSE. IN RESPONSE AND TO DEFEND OURSELVES, WE ARE
27 ENTITLED TO, UNDER DURAN, INTRODUCE INDIVIDUALIZED
28 EVIDENCE THAT SHOWS THAT THOSE JOB GROUPINGS, IN FACT, ARE

1 NOT APPROPRIATE. AND WITH A CASE THAT INVOLVES THIS
2 NUMBER AND THIS VOLUME OF DIFFERENT ROLES, THAT WOULD
3 SIMPLY BECOME UNMANAGEABLE.

4 NOW, THIS IS NOT A CASE LIKE THOSE THAT, YOU
5 KNOW, MS. ANDRUS HAS CITED AND THOSE THAT ARE CONTAINED IN
6 PLAINTIFFS' BRIEFS WHERE THERE'S JUST A HANDFUL OF
7 DIFFERENT JOBS. DOESN'T REALLY -- THE VOLUME OF EMPLOYEES
8 IS NOT REALLY WHAT'S RELEVANT HERE. WHAT'S RELEVANT IS
9 THE NUMBER OF DIFFERENT JOBS. AND IF PLAINTIFFS ARE GOING
10 TO USE JOB FAMILY LEVEL TO IDENTIFY SUBSTANTIALLY SIMILAR
11 WORK, THAT'S THEIR PREROGATIVE, BUT THERE'S NOTHING THAT
12 LIMITS DEFENDANTS FROM BEING ABLE TO INTRODUCE
13 INDIVIDUALIZED EVIDENCE THAT SHOWS THAT JOB FAMILY LEVEL
14 SIMPLY ISN'T THE WAY THAT SUBSTANTIALLY SIMILAR WORK IS
15 IDENTIFIED.

16 KIND OF GOING A LITTLE BIT FURTHER TO THAT,
17 YOUR HONOR, PLAINTIFFS HAVE TALKED ABOUT THE FACT THAT,
18 YOU KNOW, THERE ARE DOCUMENTS THAT THEY SAY SHOWS THAT JOB
19 FAMILY AND LEVEL IDENTIFIED SUBSTANTIALLY SIMILAR WORK.

20 MS. ANDRUS ACTUALLY TALKED ABOUT ONE OF THE
21 EXHIBITS THAT'S BEEN PRESENTED. SHE TALKED ABOUT EXHIBIT
22 84 WHICH IS ACTUALLY AT TAB 2 OF THE BINDERS THAT WE'VE
23 PRESENTED. AND SHE TALKS ABOUT THE FACT THAT THE DOCUMENT
24 DOES SAY WE STRIVE TO HAVE A CONSISTENT APPROACH ACROSS
25 ALL BUSINESS UNITS AND HOW WE THINK ABOUT PAY AND WHAT
26 GOES INTO DEFINING PAY FOR EACH EMPLOYEE.

27 BUT PLAINTIFFS LEAVE OUT THE VERY NEXT
28 SENTENCE OF THAT DOCUMENT WHICH SAYS, HOWEVER, WE KNOW ONE

1 SIZE DOES NOT FIT ALL WHEN IT COMES TO PAY. AND SPECIFIC
2 PAY PROGRAMS ARE ADJUSTED TO MEET THE UNIQUE NEEDS OF OUR
3 DIVERSE BUSINESSES AND ROLES. THEY SIMPLY MISCITED THESE
4 DOCUMENTS IN ORDER TO TRY TO GET PAST CLASS CERTIFICATION.

5 ON THE NEXT TAB, TAB 3, WHICH IS ALSO FROM
6 THAT SAME EXHIBIT THAT PLAINTIFF CITED, EXHIBIT 84. THEY
7 CITE THIS TEXT BASICALLY FOR THE PROPOSITION THAT
8 EMPLOYEES IN THE SAME JOB FAMILY REGION AND LEVEL ARE PAID
9 IN A COMPARABLE RANGE. BUT THEY LEAVE OUT THE REST OF THE
10 SENTENCE WHICH SAYS, QUOTE, THOUGH THERE ARE PAID
11 DIFFERENCES BASED ON THE SPECIFIC ROLE.

12 AND AT TRIAL PLAINTIFFS HAVE PROPOSED THAT
13 ALL THEY NEED TO DO IS RELY ON THESE DOCUMENTS, WHICH WE
14 BELIEVE HAVE BEEN MISCITED, AND TESTIMONY FROM THEIR IO
15 PSYCHOLOGIST, DR. LEAETTA HOUGH, IN SUPPORT OF THEIR
16 THEORY THAT JOB FAMILY AND JOB LEVEL EQUAL SUBSTANTIALLY
17 SIMILAR WORK.

18 DR. HOUGH CONDUCTED NO INDEPENDENT ANALYSIS
19 AND MOST IMPORTANTLY SHE DIDN'T LOOK AT ANY OF THE DATA
20 THAT WAS PRODUCED IN THIS CASE AND AVAILABLE TO HER. NOR
21 DID SHE DO ANYTHING ELSE TO TEST WHETHER HER HYPOTHESIS IS
22 TRUE. SHE SIMPLY RELIED ON THESE SAME MISCITED DOCUMENTS
23 AND ASSUMED THAT DEFENDANTS WORK TO ASSIGN JOB FAMILIES --
24 JOBS TO FAMILIES AND LEVELS IS ENOUGH TO IDENTIFY
25 SUBSTANTIALLY SIMILAR WORK.

26 AND THAT MAY BE ENOUGH TO DEFEAT A MOTION TO
27 STRIKE, BUT IT'S NOT SUBSTANTIAL EVIDENCE SUPPORTING
28 CERTIFICATION.

1 NOW, PARTICULARLY HERE IN THINKING ABOUT THE
2 EVIDENCE THAT WOULD BE PRESENTED IF THERE WAS A TRIAL IN
3 THIS CASE, YOUR HONOR, THE VERY EMPLOYEES ACTUALLY
4 INVOLVED IN THE WORK ASSIGNING JOBS TO JOB FAMILIES AND
5 LEVELS ATTEST THAT THAT WAS NOT THE PURPOSE OF THIS
6 EXERCISE AT ALL. AND AT TAB 4 WE HIGHLIGHT SOME OF THE
7 DECLARATIONS THAT WE SUBMITTED.

8 HEIDI MUKAMAL, WHO IS A COMPENSATION
9 DIRECTOR IN THE STUDIO. SHE TALKS ABOUT THE FACT THAT SHE
10 WAS INVOLVED IN THE JOB FAMILY ASSIGNMENT WORK. SHE
11 WORKED ON THE JOBS THAT FELL INTO CASTING, CREATIVE
12 DEVELOPMENT, AND PUBLICITY AND MARKETING. AND SHE TALKS
13 ABOUT THE FACT THAT BECAUSE THERE'S SO MANY JOBS AND
14 THERE'S SO MANY JOBS THAT ARE UNIQUE PARTICULARLY
15 DIFFERENT CREATIVE ROLES, THAT SOMETIMES TRYING TO PUT
16 THESE JOBS IN A JOB FAMILY AND LEVEL WAS, QUOTE, LIKE
17 FITTING A SQUARE PEG IN A ROUND HOLE. AND SHE SAYS THAT
18 THE GOAL OF THIS PROJECT WAS NOT AT ALL TO ALIGN JOBS FOR
19 PAY EQUITY PURPOSES. THAT WOULD HAVE BEEN A COMPLETELY
20 DIFFERENT PROCESS IF THAT WAS THE GOAL.

21 DEBBIE YANDELL, THE NEXT PAGE, WAS ALSO A
22 COMPENSATION DIRECTOR. SHE'S PERSONALLY WORKED ON THIS
23 PROJECT. SHE SAID MANY OF THE JOBS IN D-PACK, WHICH IS
24 THE PARKS AND RESORT SEGMENT, ARE UNIQUE AND THEY WERE
25 JUST TRYING TO FIND THE BEST PLACES TO PARK THE JOBS.

26 AND THEY TALK ABOUT THE FACT THAT THE JOB
27 FAMILY AND LEVEL GROUPING, WHICH IS WHAT PLAINTIFFS INTEND
28 TO USE TO SHOW SUBSTANTIALLY SIMILAR WORK, EVEN TODAY

1 GROUPS JOBS THAT ARE ON DIFFERENT PAY GRADES, DIFFERENT
2 BONUS ELIGIBILITY AND EVEN JOBS THAT ARE CATEGORIZED
3 DIFFERENTLY UNDER THE FLSA, SO IT GROUPS TOGETHER JOBS
4 THAT ARE EXEMPT AND NONEXEMPT.

5 AND SHE TALKS ON THE NEXT PAGE AND SAYS IF
6 SHE'S LOOKING TO IDENTIFY JOBS THAT ARE SIMILAR FOR PAY
7 PURPOSES, SHE MIGHT START WITH JOB FAMILY AND LEVEL, BUT
8 THEY COULD ALWAYS LOOK FURTHER INTO THE ACTUAL JOB.

9 NOW, WE SUBMITTED THESE DECLARATIONS BECAUSE
10 PLAINTIFFS DIDN'T ASK THE PMK WITNESSES ABOUT THIS TOPIC.
11 AND PMK TESTIMONY IS GOING TO BE LIMITED TO THE QUESTIONS
12 THAT WERE ASKED, AND THEY SIMPLY WEREN'T ASKED THIS. BUT
13 WHEN PMK'S WERE ASKED ABOUT HOW THEY WOULD IDENTIFY
14 COMPARATORS OR WHAT INFORMATION THEY WOULD USE FOR PAY
15 EQUITY PURPOSES, THEY WERE CLEAR THAT JOB CODE IS ALSO
16 CRITICAL; IT IS NOT JUST JOB FAMILY AND LEVEL.

17 AND AT TAB 5 WE HAVE THE DEPOSITION
18 TESTIMONY THAT IS SUBMITTED. KARA ANDERSON, COMPENSATION
19 VP FOR D-MED. SHE TALKS ABOUT THE FACT -- SHE WAS ASKED
20 WHAT HAPPENS IF YOU HAD TWO MATERIALLY DIFFERENT JOBS IN
21 THE SAME JOB FAMILY AND LEVEL, WOULD YOU JUST CREATE A NEW
22 JOB FAMILY. AND SHE SAID NOT NECESSARILY. WE DON'T WANT
23 TO HAVE THOUSANDS OF FAMILIES.

24 BUT SHE NOTES, QUOTE, WE HAVE OTHER WAYS TO
25 DISTINGUISH THE JOB DIFFERENCES, THE DIFFERENT JOB CODES
26 OR JOB KEYS. SO SHE'S IN COMPENSATION. THE VERY PEOPLE
27 THAT MS. ANDRUS IS SAYING ARE MAKING THE DECISIONS AND
28 SHE'S SAYING, LOOK, THAT'S NOT WHAT I LOOK AT. I DON'T

1 LOOK AT JOB FAMILY LEVEL. I LOOK AT THE ACTUAL JOB BEING
2 PERFORMED.

3 ON THE NEXT PAGE, SHAWN BACON, COMPENSATION
4 VP FOR STUDIOS. SHE SAYS -- SHE'S ASKED HOW SHE MIGHT
5 IDENTIFY COMPARATORS FOR PAY EQUITY PURPOSES. SHE SAID
6 SHE STARTS BY IDENTIFYING THE QUOTE SHE CALLS A COHORT.
7 AND SHE ASKS HOW SHE IDENTIFIES THE COHORT. SHE SAYS SHE
8 LOOKS TO THE JOB KEY WHICH IS THE SAME THING AS THE JOB
9 CODE.

10 NOW, AS I SAID, PLAINTIFFS, YOU KNOW, SAYING
11 WE CAN IGNORE ALL OF THIS AND THAT WE CAN JUST RELY ON
12 THEIR THEORY OF THE CASE, BUT AS I SAID, JUST BECAUSE THEY
13 WANT TO RELY ON THEIR THEORY, DOESN'T MEAN DEFENDANTS NEED
14 TO DO THE SAME. AND AS YOU KNOW, DURAN EXPRESSLY HOLDS
15 THAT CLASS ACTIONS MAY NOT BE USED TO ABRIDGE A PARTY'S
16 SUBSTANTIVE RIGHTS. AND DEFENDANTS CAN'T BE FORCED TO
17 DEFEND THEMSELVES ONLY USING COMMON EVIDENCE. TO DO SO
18 WOULD INDEED ABRIDGE DEFENDANTS' SUBSTANTIVE RIGHTS.

19 AND DEFENDANTS' EVIDENCE IS NOT GOING TO BE
20 COMMON. IT IS NOT GOING TO LOOK LIKE WHAT PLAINTIFFS ARE
21 GOING TO DO. JUST A TASTE OF WHAT IT WILL LOOK LIKE IS
22 VERY EVIDENT FROM THE DECLARATIONS WE'VE SUBMITTED.

23 FOR EXAMPLE, ONE OF THE JOB FAMILY GROUPS AT
24 ISSUE IN THIS CASE IS THE PRODUCING JOB FAMILY LEVEL P4.
25 AND AT TAB 7 REDECLARATION FROM PAMELA CHEN HEMINGWAY,
26 VICE PRESIDENT OF TV NEWS, SHE WORKS FOR K-ABC HERE IN LOS
27 ANGELES. SHE'S A PUTATIVE CLASS MEMBER HERSELF, AND SHE
28 SUPERVISES A NUMBER OF PRODUCERS IN THE PRODUCING JOB

1 FAMILY AT LEVEL P4.

2 AND SHE TALKS ABOUT THE FACT THAT SOME OF
3 THOSE INDIVIDUALS ARE NEWS PRODUCERS AND OTHERS ARE
4 DIGITAL PRODUCERS. AND THE NEWS PRODUCERS THEY PRODUCE
5 THE LOCAL NEWS THAT YOU AND I WATCH ON TELEVISION.
6 DIGITAL PRODUCERS THEY DON'T DO ANY PRODUCING REALLY AT
7 ALL. THEY'RE FOCUSED ON PUSHING OUT NEWS CONTENT CREATED
8 BY OTHERS TO DIGITAL AND SOCIAL MEDIA PLATFORMS.

9 AND SHE EVEN NOTES THAT THERE ARE EVEN OTHER
10 PRODUCERS IN OTHER BUSINESS AREAS LIKE PRODUCERS THAT WORK
11 ON THE JIMMY KIMMEL SHOW WHO ARE IN THE SAME JOB FAMILY
12 AND JOB LEVEL, BUT IN A DIFFERENT BUSINESS AREA, SO SHE
13 BELIEVES THEY DO DIFFERENT WORK, BUT SHE WOULD ACTUALLY
14 NEED SOMEONE FROM THAT OTHER GROUP TO COME IN AND TESTIFY
15 ABOUT THE JOB CONTENT IN ORDER FOR THE JURY TO REALLY
16 UNDERSTAND WHETHER THOSE JOBS ARE SUBSTANTIALLY SIMILAR TO
17 THE NEWS PRODUCERS AND DIGITAL PRODUCERS ON MS. CHEN'S
18 TEAM. AND THAT'S VERY DIFFERENT FROM OTHER EVIDENCE.

19 LIKE WE HAVE ALSO A MUST HAVE, CATHERINE
20 THORSTEN, GENERAL MANAGER AT DISNEYLAND OPERATIONS WORKING
21 AT DISNEYLAND RESORT IN ANAHEIM. SHE HAS MULTIPLE
22 DIFFERENT JOBS ON HER TEAM WORKING UNDER MERCHANDISE
23 SALES, JOB FAMILY, A LEVEL M1, AND SHE EXPLAINS AT
24 PARAGRAPH 9 OF HER DECLARATION THAT ALTHOUGH THESE JOBS
25 ARE IN THE SAME JOB FAMILY AND LEVEL, THEY'RE PAID ON
26 DIFFERENT PAY GRADES. THEY ARE AFFIRMATIVELY PAID
27 DIFFERENTLY WHICH IS HIGHLY SUGGESTED, BUT THEY ARE NOT
28 SUBSTANTIALLY SIMILAR.

1 AND PLAINTIFFS DISPARAGE THESE DECLARATIONS
2 BY CALLING THEM HAPPY CAMPERS. I THINK IT'S INSULTING TO
3 THESE WOMEN. THESE ARE NOT COOKIE-CUTTER DECLARATIONS
4 LIKE YOU MIGHT FIND IN A WAGE-AND-HOUR CASE. THESE ARE
5 DECLARATIONS UNDER OATH GENERALLY FROM PUTATIVE CLASS
6 MEMBERS TO DESCRIBE THE VERY ISSUES THAT ARE AT THE HEART
7 OF THIS CASE. AND PLAINTIFFS COULD DEPOSE THESE
8 WITNESSES. THEY ASK FOR TWO MONTHS FOR THEIR REPLY TO DO
9 THAT. THEY NEVER DID. AND WE'VE SUBMITTED 35
10 DECLARATIONS FROM RECRUITERS, FROM COMPENSATION DIRECTORS,
11 AND FROM MANAGERS. THERE IS NO REASON WHY THESE
12 EMPLOYEES, WHO ARE MOSTLY WOMEN, SHOULD NOT BE BELIEVED OR
13 THEIR TESTIMONY DISCOUNTED.

14 BUT YOUR HONOR, IF YOU WANT TO IMAGINE WHAT
15 A TRIAL OF THIS CASE MIGHT LOOK LIKE.

16 THE COURT: I KNOW IT'S GOING TO BE HORRENDOUS.

17 ARE YOU TELLING ME THAT DISNEY HAS NO SYSTEM
18 OF CATEGORIZING PAY GRADE LEVELS?

19 MS. DAVIS: WE HAVE SYSTEMS OF CATEGORIZING PAY,
20 YOUR HONOR.

21 THE COURT: PAY GRADE LEVELS. CODING FOR EMPLOYEE
22 LEVELS. DISNEY HAS NO CODE FOR PAY GRADE, IS THAT WHAT
23 YOU'RE SAYING?

24 MS. DAVIS: NO, YOUR HONOR. WE CERTAINLY HAVE
25 BOTH WAYS THAT WE CATEGORIZE JOBS TO ORGANIZE THEM AND
26 ALSO --

27 THE COURT: PAY GRADE.

28 MS. DAVIS: YES.

1 THE COURT: YOU HAVE TWO PEOPLE IN PAY GRADE AND
2 PAYING DIFFERENTLY, THAT'S NOT APPROPRIATE EVIDENCE.

3 MS. DAVIS: YOUR HONOR, JUST BECAUSE EMPLOYEES ARE
4 ON THE SAME PAY GRADE DOESN'T MEAN THEY'RE PERFORMING
5 SUBSTANTIALLY SIMILAR WORK UNDER THE CALIFORNIA EPA.
6 THOSE ARE TWO DIFFERENT QUESTIONS.

7 THE COURT: SO THE SAME PAY GRADE, SAME LEVEL OF
8 EXPERIENCE, SAME TENURE AND DIFFERENT PAY, SO THEN WE'LL
9 SAY ONE IS WORKING IN OAKLAND AND THE OTHER ONE IS WORKING
10 IN MIAMI AND ONE WORKS IN A HIGH-RISE AND ONE WORKS IN A
11 LOW RISE AND SO THEY'RE DIFFERENT AND THEY HAVE A
12 DIFFERENT TITLE EVEN THOUGH THEY'RE THE SAME PAY GRADE AND
13 IT'S OKAY TO PAY DIFFERENT SALARIES NOTWITHSTANDING
14 GENDER, RIGHT?

15 MS. DAVIS: YOUR HONOR, THE QUESTION THAT HAS TO
16 BE ANSWERED WHICH IS REQUIRED BY THE EPA IS WHETHER THE
17 JOB IS PERFORMING SUBSTANTIALLY SIMILAR --

18 THE COURT: IF YOU WANT YOU CAN GET DOWN -- GET
19 DOWN TO MINUTIA AND FIND THAT EVERY ONE OF 20,000
20 EMPLOYEES ACTUALLY DOES SOMETHING DIFFERENT BECAUSE THEY
21 WORK ON DIFFERENT SHOWS. ONE WORKS ON JIMMY KIMMEL, SO
22 THEIR JOB IS DIFFERENT THAN WORKING ON WHATEVER SOME OTHER
23 DISNEY-OWNED SHOW.

24 IF YOU WANT TO GET INTO MINUTIA, OF COURSE,
25 WE CAN DISTINGUISH BETWEEN A SECRETARY WORKING AT ONE DESK
26 AND A SECRETARY WORKING AT ANOTHER DESK BECAUSE THE
27 SUPERVISOR IS DIFFERENT.

28 MS. DAVIS: THAT'S NOT WHAT WE'RE ARGUING, YOUR

1 HONOR. BUT THERE ARE MATERIAL DIFFERENCES BETWEEN THESE
2 JOBS INCLUDING THE FACT THAT MANY OF THEM ARE ACTUALLY ON
3 DIFFERENT PAY GRADES.

4 THE COURT: ALL RIGHT. CAN WE GO ON TO ANOTHER
5 ARGUMENT. I THINK YOU'VE BEAT THIS TO DEATH WITH REGARD
6 TO DIFFERENT DESCRIPTIONS OF EMPLOYMENT.

7 MS. DAVIS: OKAY. I'LL MOVE ON, YOUR HONOR.

8 THE OTHER ELEMENT OF AN EQUAL PAY ACT CLAIM
9 IS THAT PLAINTIFFS MUST SHOW THAT WOMEN ARE PAID LESS THAN
10 MEN PERFORMING SUBSTANTIALLY SIMILAR WORK.

11 THERE IS NOTHING IN PLAINTIFFS' BRIEFS OR IN
12 ANY OF THEIR EXPERTS, DR. NEUMARK'S REPORTS, THAT TELL US
13 WHICH WOMEN ARE PAID LESS THAN MEN IN THE SAME JOB FAMILY
14 AND LEVEL. THERE IS NO LIST OF JOB FAMILY LEVEL GROUPS
15 WHERE WOMEN ARE PAID LESS THAN MEN. THERE ARE NO RESULTS
16 FOR ANY JOB FAMILY LEVEL GROUP SHOWING WOMEN ARE PAID LESS
17 THAN MEN. DR. NEUMARK DOESN'T EVEN KNOW WHETHER LARONDA
18 RASMUSSEN, WHO IS THE LEAD NAMED PLAINTIFF IN THIS CASE,
19 HAS AN EPA CLAIM.

20 IF YOU LOOK AT TAB 8, WHICH IS JUST A
21 SNAPSHOT OF DR. NEUMARK'S TESTIMONY, MS. RASMUSSEN WAS IN
22 THE TECHNOLOGY PRODUCT MANAGEMENT JOB FAMILY, LEVEL M2.
23 SO I ASKED DR. NEUMARK, ARE WOMEN IN THE TECHNOLOGY
24 PRODUCT MANAGEMENT JOB FAMILY IN LEVEL M2 UNDERPAID
25 COMPARED TO MEN IN THE SAME JOB FAMILY AND LEVEL. THAT
26 IS -- THOSE ARE THE REQUIREMENTS UNDER THE EPA. HIS
27 RESPONSE, QUOTE, I DON'T HAVE A DIRECT ESTIMATE OF
28 UNDERPAYMENT OR OVERPAYMENT FOR THAT PARTICULAR JOB FAMILY

1 AND LEVEL.

2 AND DR. NEUMARK ADMITS HE DOESN'T HAVE A JOB
3 FAMILY LEVEL SPECIFIC ESTIMATE IN HIS REPORT FOR A SINGLE
4 JOB FAMILY LEVEL GROUPING. AND TO FIND LIABILITY UNDER
5 THE EPA, THE JURY HAS TO FIND THAT WOMEN ARE PAID LESS
6 THAN MEN FOR SUBSTANTIALLY SIMILAR WORK.

7 NOW, HERE, WITH MORE THAN 3,000 JOB
8 GROUPINGS, THERE ARE GOING TO BE SOME GROUPS, PROBABLY
9 MANY GROUPS, WHERE WOMEN ARE PAID EQUALLY TO MEN. THEY
10 DON'T HAVE AN EPA CLAIM. THERE ARE PROBABLY A NUMBER OF
11 GROUPS WHERE WOMEN ARE PAID MORE THAN MEN. THEY ALSO DO
12 NOT HAVE AN EPA CLAIM. AND WE KNOW THERE ARE GROUPS WHERE
13 WOMEN DO NOT HAVE ANY MALE COMPARATORS AT ALL INCLUDING
14 FOUR OF THE NAMED PLAINTIFFS.

15 YOUR HONOR, AT TAB 9 WE HAVE A SECTION FROM
16 PLAINTIFFS' REPLY BRIEF, AND THEY ADMIT THAT PLAINTIFFS
17 MOORE, DOLAN, EADY MARSHALL AND HANKE ARE EPA CLASS
18 MEMBERS. THEY HAVE JOB FAMILIES AND LEVELS ASSIGNED.
19 THEY ARE MEMBERS OF THE EPA CLASS. BUT THERE ARE NO MEN
20 IN THEIR JOB FAMILY LEVEL WHICH IS HOW PLAINTIFFS HAVE
21 DEFINED SUBSTANTIALLY SIMILAR WORK. SO THEY CANNOT, AS A
22 MATTER OF LAW, HAVE AN EPA CLAIM. THERE IS NO MALE
23 COMPARATOR TO COMPARE THEM WITH UNDER PLAINTIFFS' THEORY
24 OF THE CASE.

25 NOW, PLAINTIFFS CLAIM THAT THIS HAS NO
26 BEARING ON CERTIFICATION. THAT IT'S JUST A QUESTION OF
27 DAMAGES. BUT THAT IS FALSE. THERE IS A DIFFERENCE
28 BETWEEN LIABILITY AND DAMAGES. UNDER THE EPA IF YOU DON'T

1 HAVE COMPARATORS, THERE IS NO EPA LIABILITY. IF YOU'RE
2 NOT PAID LESS THAN SIMILARLY-SITUATED MEN, THERE IS NO EPA
3 LIABILITY. THOSE ARE NOT DAMAGES. THOSE ARE ELEMENTS OF
4 AN EPA CLAIM, AND PLAINTIFFS DO NOT PRESENT A METHOD FOR
5 THE JURY TO DETERMINE EITHER OF THOSE ELEMENTS IN AN EPA
6 CLAIM. WOMEN ARE PAID LESS THAN OR FOR SUBSTANTIALLY
7 SIMILAR WORK ACROSS THIS GROUP. AND AS A RESULT,
8 PLAINTIFFS' EPA CLASS REALLY CANNOT BE CERTIFIED.

9 NOW, WE HAVEN'T TOUCHED -- AND MS. ANDRUS
10 DID RAISE AND WE HAVEN'T TOUCHED AT ALL ON WHETHER
11 DEFENDANTS' AFFIRMATIVE DEFENSES CAN BE TRIED CLASSWIDE.
12 EPA EXPRESSLY PROVIDES AFFIRMATIVE DEFENSE FOR EMPLOYERS
13 THAT THEY CAN SHOW THAT A PAY DIFFERENCE IS EXPLAINED BY
14 BONA FIDE FACTORS OTHER THAN SEX SUCH AS EDUCATION,
15 TRAINING, OR EXPERIENCE AS LONG AS IT'S JOB RELATED AND
16 APPLIED REASONABLY.

17 NOW, PLAINTIFFS CLAIM THAT THAT CAN ONLY
18 OCCUR IF THOSE FACTORS ARE APPLIED ACROSS THE CLASS. BUT
19 THAT IS NOT -- THAT'S NOT THE CASE AT ALL. BELFY, WHICH
20 IS ONE OF THE CASES THEY CITE, IS NOT A CLASS ACTION. IT
21 HAS NO RELEVANCE. AND IT HAS NOTHING TO DO WITH WHETHER
22 AN EMPLOYER'S AFFIRMATIVE DEFENSES CAN DIFFER BETWEEN JOBS
23 OR WHETHER THERE CAN BE DIFFERENT BONA FIDE FACTORS OTHER
24 THAN SEX EXPLAINING PAY DIFFERENCES WITHIN A JOB GROUPING.
25 BECAUSE OF COURSE THERE CAN BE.

26 THE RATIONALE FOR PAY DIFFERENCES IN ONE JOB
27 WILL VARY FROM THE RATIONALE FOR PAY DIFFERENCES IN OTHER
28 JOBS. THE FACT THAT THEY ARE DIFFERENT DOES NOT MAKE THEM

1 LESS APPLICABLE OR TRUE. BUT WHAT IT DOES MAKE THEM IS
2 VERY DIFFICULT, IF NOT IMPOSSIBLE, TO TRY ON A CLASS
3 BASIS.

4 IF YOU TAKE A VERY SIMPLE EXAMPLE, HAVING A
5 JUDICIAL CLERKSHIP MAY EQUATE TO HIGHER PAY FOR AN
6 IN-HOUSE ATTORNEY, BUT BE TOTALLY IRRELEVANT FOR A TV
7 WRITER OR PRODUCTION ASSISTANT. OR HAVING A PH.D. MAY
8 HAVE A SIGNIFICANT PAY IMPACT FOR AN I.T. PROFESSIONAL BUT
9 NOT AT ALL FOR A CREATIVE EXEC.

10 AND THIS IS NOT TO MENTION PERFORMANCE AND
11 OTHER CONTRIBUTIONS MADE BY DIFFERENT EMPLOYEES WHICH
12 DEFENDANTS -- ALL OF THESE DEFENDANTS HAVE A DUE PROCESS
13 RIGHT TO PRESENT AS DURAN HOLDS.

14 AND THESE ARE NOT HYPOTHETICAL ISSUES AS
15 MS. ANDRUS SUGGESTS. IF THERE'S A TRIAL HERE, THE COURT
16 IS GOING TO NEED TO DEAL WITH THEM. AND, AGAIN, WE
17 PRESENTED SOME EXAMPLES OF EXACTLY THE KIND OF TESTIMONY
18 THAT WE WOULD SEE IN A CASE LIKE THIS.

19 BONNIE MC LEAN, WHO'S THE DIRECTOR -- THIS
20 IS AT TAB 11. BONNIE MC LEAN IS A DIRECTOR OF L.A. BUREAU
21 CHIEF FOR ABC NEWS. SHE TALKS ABOUT THE FACT THAT
22 EXPERIENCE AT CNN WAS RELEVANT TO A HIRE SHE MADE AND THAT
23 PERSON RECEIVED A PAY PREMIUM FOR THAT EXPERIENCE OVER
24 EXPERIENCE AT LOCAL NEWS. CNN EXPERIENCE CANNOT BE
25 CONTROLLED FOR IN DR. NEUMARK'S MODEL.

26 ON THE NEXT PAGE THERE'S A RECRUITER
27 DISCUSSING TECHNOLOGY ROLES AND HOW NEW TECHNOLOGY MAY
28 LEAD TO HIRE PAY FOR EMPLOYEES WITH NICHE SKILLS. TALKS

1 ABOUT FLUTTER PROFICIENCY AS SOMETHING CURRENTLY IN HIGH
2 DEMAND. BUT FLUTTER PROFICIENCY CANNOT BE CONTROLLED FOR
3 IN A MODEL.

4 THERE'S ANOTHER WITNESS WHO TALKS ABOUT
5 HIRING FOR A PRODUCTION DESIGNER RESPONSIBLE FOR PAINTING
6 THE CASTLE AT DISNEYLAND AND THAT THAT HIRING MANAGER
7 WANTED A COLORIST TO DESIGN A VERY SPECIFIC COLOR FOR THE
8 CASTLE. AND THERE WAS A PAY PREMIUM ASSOCIATED WITH THAT
9 EXPERIENCE. THAT INFORMATION CANNOT BE IN A MODEL.

10 THESE ARE ALL LEGITIMATE BONA FIDE
11 JOB-RELATED FACTORS. THEY DON'T FIT NEATLY IN MODELS, AND
12 THEY'RE NOT THE SAME FOR EVERY JOB, BUT THEY DO EXPLAIN
13 PAY DIFFERENCES. DEFENDANTS WOULD BE ENTITLED TO PRESENT
14 THIS INFORMATION AS AFFIRMATIVE DEFENSES FOR PLAINTIFFS'
15 CLAIMS.

16 I THINK ANY ONE OF THESE ARE SEPARATE
17 REASONS TO DENY PLAINTIFFS' CERTIFICATION, THE
18 CERTIFICATION OF PLAINTIFFS' EPA CLAIM.

19 IF I MAY TOUCH JUST BRIEFLY ON THE FEHA
20 CLAIM. PLAINTIFFS' THEORY OF LIABILITY IS THAT THERE ARE
21 THREE SUPPOSED CLASSIFIED PRACTICES THAT CAUSE WOMEN TO BE
22 PAID LESS THAN SIMILARLY-SITUATED MEN. AND WE'LL TALK
23 ABOUT THE PRACTICES IN ONE MINUTE.

24 BUT PLAINTIFFS NEVER DISCUSSED THE STANDARD
25 FOR SIMILARLY SITUATED UNDER FEHA. THEY NEVER CITE A CASE
26 OR OTHERWISE DESCRIBE WHAT IT MEANS TO BE SIMILARLY
27 SITUATED FOR THIS CLAIM.

28 WE DO. AND THE CASES ARE CLEAR. AND ON A

1 PAY DISCRIMINATION CASE LIKE THIS ONE WHERE EMPLOYEES
2 ALLEGE THEY ARE PAID LESS THAN MALE COMPARATORS, THE
3 STANDARD TO IDENTIFY THOSE COMPARATORS IS THE SAME AS THE
4 EPA AND HERE THAT IS SUBSTANTIALLY SIMILAR WORK. NOT
5 EQUAL WORK UNDER THE FEDERAL EPA OR PREVIOUS VERSIONS OF
6 THE CALIFORNIA EPA, THE EPA STANDARD THAT APPLIES IN HERE
7 THAT IS SUBSTANTIALLY SIMILAR WORK.

8 AND THAT MATTERS. EVEN IF WE'RE WRONG,
9 THOUGH, YOUR HONOR, AND AS YOU KNOW UNDER FEHA A
10 TRADITIONAL DISCRIMINATION ANALYSIS, EVEN IF IT WAS
11 OUTSIDE OF THE PAY DISCRIMINATION CONTEXT, SIMILARLY
12 SITUATED MEANS SIMILAR IN ALL MATERIAL RESPECTS. AND
13 PLAINTIFFS, AGAIN, HAVE NOT SHOWN A WAY THAT THEY CAN
14 IDENTIFY EMPLOYEES WHO ARE SIMILAR IN ALL MATERIAL
15 RESPECTS AT TRIAL.

16 WHAT THEY DO IS THEY USE VERY BROAD JOB
17 FUNCTIONS LIKE FINANCE OR OPERATIONS OR CREATIVE OR SALES.
18 BUT THERE IS ZERO EVIDENCE. THERE ARE NO EXPERTS. THERE
19 ARE NO DOCUMENTS. THERE IS NO TESTIMONY. THERE ARE NO
20 DECLARATIONS. THERE IS NOTHING THAT SUGGESTS JOBS IN THE
21 SAME JOB FUNCTION AND LEVEL ARE SIMILAR IN ALL MATERIAL
22 RESPECTS.

23 AND IT RESULTS IN ABSURD COMPARATOR GROUPS.
24 PLAINTIFFS' FEHA ANALYSIS ASSUMES TEACHERS FOR TODDLERS
25 AND INFANTS IS A JOB SIMILARLY SITUATED TO QUALITY CONTROL
26 ANALYST. IT ASSUMES SECURITY K-9 MANAGERS, SOCIAL MEDIA
27 MANAGERS FOR STAR WARS, AND GUIDE OPERATIONS MANAGERS FOR
28 ADVENTURERS BY DISNEY, ARE SIMILARLY-SITUATED JOBS. THERE

1 IS NO REASON TO BELIEVE THOSE JOBS ARE SIMILAR IN ALL
2 MATERIAL RESPECTS.

3 BUT EVEN IF YOU IGNORE ALL OF THAT, EVEN IF
4 PLAINTIFFS WANT TO USE FUNCTION AND LEVEL TO PROVE THEIR
5 FEHA CASE TO THE COURT -- TO THE JURY, AGAIN DEFENDANTS
6 ARE NOT REQUIRED TO DO SO. WE ARE ENTITLED TO PRESENT
7 EVIDENCE TO SHOW WHY TEACHERS FOR INFANTS AND TODDLERS ARE
8 NOT SIMILARLY SITUATED TO QUALITY CONTROL ANALYSTS. OR
9 WHY SECURITY K-9 MANAGERS ARE NOT SIMILARLY SITUATED TO
10 SOCIAL MEDIA MANAGERS FOR STARS WARS OR GUIDE OPERATIONS
11 MANAGERS FOR ADVENTURES BY DISNEY.

12 AND AGAIN, IT IS NOT HARD TO SEE HOW A CLASS
13 OF MORE THAN 3,000 DIFFERENT JOB GROUPINGS, EVEN WITH ONE
14 HOUR OF TESTIMONY FOR EACH, WHICH MAY NOT BE ENOUGH, A
15 TRIAL OF THE FEHA CLAIM ALSO WOULD QUICKLY BECOME
16 UNMANAGEABLE.

17 BUT PUTTING ALL OF THAT ASIDE, A DISPARATE
18 IMPACT CLAIM CANNOT STAND BASED SOLELY ON ALLEGED ADVERSE
19 OUTCOMES. SO LET'S TALK ABOUT PLAINTIFFS' THEORY OF THEIR
20 ALLEGED ADVERSE OUTCOMES.

21 NOW, FIRST WITH RESPECT TO STARTING PAY.

22 THE COURT: JUST A MINUTE. HOW MUCH MORE TIME DO
23 YOU NEED?

24 MS. DAVIS: I'LL BE DONE IN LESS THAN FIVE
25 MINUTES.

26 THE COURT: ALL RIGHT. FIVE MINUTES.

27 MS. DAVIS: THANK YOU.

28 WITH RESPECT TO STARTING PAY, PLAINTIFFS'

1 THEORY IS THAT OVER A MORE THAN 50-YEAR PERIOD, BECAUSE
2 THAT'S THE PERIOD OF TIME THE CLASS WAS -- PUTATIVE CLASS
3 WAS HIRED. OVER A 50-YEAR PERIOD, HUNDREDS OF
4 COMPENSATION PROFESSIONALS, NOT A SMALL GROUP AS
5 MS. ANDRUS DESCRIBED, BUT HUNDREDS OF COMPENSATION
6 PROFESSIONALS, SET STARTING PAY FOR MORE THAN 24,000
7 EMPLOYEES EVALUATING THEIR PRIOR RELEVANT EXPERIENCE,
8 EDUCATION, AND INTERNAL EQUITY. BUT NOT THROUGH A FORMAL
9 PROCESSOR SYSTEM AND NOT USING ANY FORMULA OR SET
10 CRITERIA. AND THAT THOSE DECISION MAKERS MAY HAVE, BUT
11 ALSO MAY NOT HAVE, CONSIDERED THE APPLICANT'S PRIOR PAY IN
12 DOING SO.

13 THAT'S PLAINTIFFS' THEORY OF THE CASE. THAT
14 IS THEIR ALLEGEDLY COMMON POLICY TO BIND THIS CLASS. BUT
15 REMEMBER PLAINTIFFS' THEORY IS ALSO THAT THIS POLICY
16 CHANGED MIDWAY THROUGH THE CLASS PERIOD. IT CHANGED IN
17 2017 ACTUALLY MORE THAN 75 PERCENT -- WELL, MORE THAN
18 25 -- LESS THAN 25 PERCENT INTO THE CLASS PERIOD THAT THE
19 POLICY CHANGED TO ACTUALLY PROHIBIT CONSIDERATION OF PRIOR
20 PAY.

21 AND THEN AFTER THAT TIME, COMPENSATION
22 PROFESSIONALS, AGAIN, ACCORDING TO PLAINTIFF, 40 TO 75
23 DIFFERENT PEOPLE EVERY YEAR CONTINUE TO MAKE STARTING PAY
24 DECISIONS EVALUATING CANDIDATES' PRIOR RELEVANT
25 EXPERIENCE, EDUCATION, AND INTERNAL EQUITY. AND THAT
26 DURING THIS TIME, AGAIN, MORE THAN 75 PERCENT OF THE CLASS
27 PERIOD, THERE'S BEEN NO STARTING PAY SHORTFALL FOR WOMEN.
28 THAT IS PLAINTIFFS' THEORY. THAT HUNDREDS OF DECISION

1 MAKERS USE THEIR JUDGMENT AND DISCRETION TO SET STARTING
2 PAY BUT THAT THE PROCESS TO DO SO SIGNIFICANTLY CHANGED
3 AND THAT DURING MOST OF THE CLASS PERIOD, THERE WAS NO
4 STARTING PAY SHORTFALL. THAT IS NOT A COMMON PRACTICE
5 SUFFICIENT TO CERTIFY PLAINTIFFS' FEHA CLASS.

6 NOW, WITH RESPECT TO MERIT INCREASES DURING
7 ANNUAL COMPENSATION PLANNING, PLAINTIFFS' THEORY IS THAT
8 THOUSANDS OF MANAGERS CALLED PLANNERS EXERCISE INDEPENDENT
9 JUDGMENT AND DISCRETION TO GIVE EMPLOYEES MERIT INCREASES
10 EACH YEAR THAT ARE EXPRESSED AS A PERCENTAGE RATHER THAN A
11 DOLLAR.

12 BUT AT TAB 13 YOU CAN SEE, ACCORDING TO
13 PLAINTIFFS' REPLY, QUOTE, PLAINTIFFS ARE NOT CLAIMING THAT
14 EMPLOYEES ALL RECEIVE THE SAME PERCENTAGE RAISE DURING THE
15 ACP PROCESS. PLAINTIFFS ACKNOWLEDGE THROUGHOUT THEIR
16 ARGUMENT THAT INDIVIDUAL EMPLOYEES RECEIVE DIFFERENT
17 PERCENT INCREASES. AND PLAINTIFFS ARE NOT CHALLENGING THE
18 DECISIONS OF THESE PLANNERS OR CLAIMING THAT THEY EXERCISE
19 DISCRETION IN THE SAME WAY.

20 AGAIN, THAT IS PLAINTIFFS' THEORY THAT
21 THOUSANDS OF MANAGERS EXERCISE THEIR JUDGMENT AND
22 DISCRETION TO AWARD PAY INCREASES AS THEY SAW FIT, BUT USE
23 PERCENTAGES RATHER THAN DOLLARS TO DO SO.

24 YOUR HONOR, THIS IS QUINTESSENTIAL
25 DECENTRALIZED DECISION MAKING. THIS IS THE OPPOSITE OF
26 THE KIND OF COMMON OR UNIFORM PRACTICE REQUIRED FOR CLASS
27 CERTIFICATION.

28 NOW, IF USING PERCENTAGES RATHER THAN

1 DOLLARS TO AWARD PAY INCREASES OR EVALUATING A CANDIDATE'S
2 PRIOR RELEVANT EXPERIENCE AGAINST THE JOB THEY'RE BEING
3 HIRED INTO ARE SUFFICIENT FOR CLASS CERTIFICATION, THEN
4 ALMOST EVERY EMPLOYER IN THE STATE IS SUBJECT TO
5 CERTIFICATION BASED SOLELY ON THE FACT THAT THEY ALLOW
6 PAID DECISIONS TO BE MADE BASED ON INDEPENDENT JUDGMENT
7 AND DISCRETION AND THAT IS NOT CERTIFICATION LAW.

8 YOUR HONOR, THE NAMED PLAINTIFFS WILL HAVE
9 THEIR DAYS IN COURT. THEY WILL PRESENT EVIDENCE OF THE
10 INDIVIDUALS THEY BELIEVE TO BE THEIR COMPARATORS. AND BY
11 THE WAY, IN DEPOSITION, MOST OF THE NAMED PLAINTIFFS
12 IDENTIFIED COMPARATORS WHO WERE NOT IN THEIR JOB FAMILY
13 AND LEVEL, SO IT WAS NOT CONSISTENT WITH THE PLAINTIFFS'
14 THEORY FOR CLASS CERTIFICATION.

15 BUT REGARDLESS, IN THEIR INDIVIDUAL TRIALS,
16 THE PLAINTIFFS WILL PRESENT EVIDENCE OF THEIR COMPARATORS.
17 DEFENDANTS WILL RESPOND ABOUT THE COMPARATORS AND PRESENT
18 EVIDENCE ABOUT BONA FIDE FACTORS THAT MAY EXPLAIN ANY PAY
19 DIFFERENCE. AND THE JURY WILL DECIDE WHETHER THE
20 EMPLOYEES PERFORM SUBSTANTIALLY SIMILAR WORK, WHETHER THE
21 NAMED PLAINTIFFS WERE PAID LESS THAN THEIR MALE
22 COMPARATORS, AND WHETHER ANY BONA FIDE REASONS EXPLAIN THE
23 DIFFERENCE.

24 IMAGINE 3,000 OF THOSE TRIALS. BECAUSE THAT
25 IS WHAT IS REQUIRED TO TRY THIS PROPOSED CLASS AND PROTECT
26 DEFENDANTS' DUE PROCESS RIGHTS.

27 YOUR HONOR, AS I SAID BEFORE, THIS CASE IS
28 VERY UNIQUE, AND I THINK YOU APPRECIATE THAT. ALL OF THE

1 CASES CITED BY PLAINTIFFS, NONE OF THEM HAVE CERTIFIED A
2 CLASS WITH A NUMBER OR DIVERSITY OF NICHE ROLES PRESENTED
3 HERE. SCOTT V. FAMILY DOLLAR WAS ONE JOB, STORE MANAGERS.
4 MC REYNOLDS V. MERRILL LYNCH, ONE JOB, FINANCIAL ADVISORS.
5 DURAN, ONE JOB, LOAN OFFICER. SAVE-ON, ONE JOB, ASSISTANT
6 STORE MANAGERS. PAIGE V. CALIFORNIA, ONE JOB, CALIFORNIA
7 HIGHWAY PATROL OFFICERS. KUMAR V. RADIO SHACK, WHICH
8 MS. ANDRUS MENTIONED, ONE JOB, STORE SALES ASSOCIATES.
9 HALL V. RITE-AID, ONE JOB, STORE SALES ASSOCIATES. ELLIS
10 V. COSTCO, TWO JOBS, GENERAL MANAGER AND ASSISTANT GENERAL
11 MANAGER.

12 THE COURT: OKAY. HOW MANY MORE CASES DO YOU WANT
13 TO CITE?

14 MS. DAVIS: YOUR HONOR, I THINK -- I GUESS I'VE
15 MADE MY POINT. WITH ALL OF THE EVIDENCE THAT WE
16 SUBMITTED, WE BELIEVE CLASS CERTIFICATION SHOULD BE
17 DENIED.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MS. DAVIS: THANK YOU.

20 THE COURT: ANY RESPONSE?

21 MS. ANDRUS: YOUR HONOR, EVERYTHING THAT WAS
22 COVERED --

23 SORRY. THIS IS LORI ANDRUS AGAIN ON BEHALF
24 OF PLAINTIFFS.

25 EVERYTHING THAT WAS COVERED BY MS. DAVIS WAS
26 ALSO COVERED IN THEIR BRIEFS AND OUR BRIEFS RESPOND. WE
27 HAVE NO NEED FOR REBUTTAL.

28 IF THE COURT HAS QUESTIONS, OF COURSE, I'M

1 VERY HAPPY TO ENTERTAIN THEM.

2 THE COURT: ALL RIGHT. THANK YOU.

3 CODE OF CIVIL PROCEDURE SECTION 382
4 AUTHORIZES CLASS ACTIONS WHEN THE QUESTIONS WERE UNCOMMON
5 OR A GENERAL INTEREST OF ANY PERSONS OR WHETHER PARTIES
6 ARE NUMEROUS AND IT IS IMPRACTICABLE TO BRING THEM ALL
7 BEFORE THE COURT.

8 IN A SIMILAR CASE ON CLASS ACTIONS, SAVE-ON
9 DRUG V. SUPERIOR COURT, 2004, 34 CAL.4TH 319, CALIFORNIA
10 SUPREME COURT STATED THE PARTY SEEKING CERTIFICATION HAS
11 THE BURDEN OF ESTABLISHING THE EXISTENCE OF BOTH AN
12 ASCERTAINABLE CLASS AND A WELL-DEFINED COMMUNITY IN
13 INTEREST AMONG CLASS MEMBERS.

14 THE COMMUNITY OF INTEREST REQUIRING EMBODIES
15 THREE FACTORS; ONE, THE DOMINANT COMMON QUESTIONS OF LAW
16 OR FACT; TWO, CLASS REPRESENTATIVES WITH CLAIMS WHERE
17 DEFENSE IS TYPICAL OF THE CLASS; AND THREE, CLASS
18 REPRESENTATIVES WHO CAN ADEQUATELY REPRESENT THE CLASS.

19 THE SUPREME COURT WENT ON. THE
20 CERTIFICATION QUESTION IS ESSENTIALLY A PROCEDURAL ONE
21 THAT DOES NOT ASK WHETHER AN ACTION IS LEGALLY OR
22 FACTUALLY MERITORIOUS. A TRIAL COURT RULING ON A
23 CERTIFICATION MOTION DETERMINES WHETHER THE ISSUES, WHICH
24 MAY BE JOINTLY TRIED, WHEN COMPARED WITH THOSE REQUIRING
25 SEPARATE ADJUDICATION, ARE SO NUMEROUS OR SUBSTANTIAL THAT
26 THE MAINTENANCE OF A CLASS ACTION WOULD BE ADVANTAGEOUS TO
27 THE JUDICIAL PROCESS AND TO THE LITIGANTS.

28 AS THE FOCUS IN THE CERTIFICATION DISPUTE IS

1 ON WHAT TYPE OF QUESTIONS, COMMON OR INDIVIDUAL, ARE
2 LIKELY TO ARISE IN THE ACTION RATHER THAN ON THE MERITS OF
3 THE CASE. IN DETERMINING WHETHER THERE IS SUBSTANTIAL
4 EVIDENCE TO SUPPORT A TRIAL COURT CERTIFICATION ORDER, WE
5 CONSIDER WHETHER THE THEORY OF RECOVERY ADVANCED BY THE
6 PROPONENTS OF CERTIFICATION IS, AS AN ANALYTICAL MATTER,
7 LIKELY TO PROVE AMENABLE TO CLASS TREATMENT.

8 REVIEWING COURTS CONSISTENTLY LOOK TO THE
9 ALLEGATIONS IN THE COMPLAINT AND THE DECLARATIONS OF
10 ATTORNEYS REPRESENTING THE PLAINTIFF CLASS TO RESOLVE THIS
11 QUESTION, CLOSED QUOTE.

12 CONSIDERING THE FACTORS ON THE ISSUE OF
13 CERTIFICATION. FIRST, THE CLASS MUST BE ASCERTAINABLE AND
14 NUMEROUS. THE COURT LOOKS AT THE CLASS DEFINITION, THE
15 SIZE OF THE CLASS, AND THE MEANS AVAILABLE FOR IDENTIFYING
16 CLASS MEMBERS.

17 AN ASCERTAINABLE CLASS IS CHARACTERIZED BY
18 CLEAR, OBJECTIVE DEFINITION. SUFFICIENT RECORDS MUST BE
19 AVAILABLE TO IDENTIFY CLASS MEMBERS AT THE RISK THROUGH
20 REMEDIAL STAGE. NEVERTHELESS, THE CALIFORNIA SUPREME
21 COURT HAS CLARIFIED THAT ASCERTAINABILITY DOES NOT REQUIRE
22 AN EXACT INQUIRY.

23 NO SET NUMBERS REQUIRES AS A MATTER OF LAW
24 FOR THE MAINTENANCE OF A CLASS ACTION. TO BE CERTIFIED A
25 CLASS MUST BE NUMEROUS IN SIZE SUCH THAT IT IS
26 IMPRACTICABLE TO BRING THEM ALL BEFORE THE COURT.

27 HOWEVER, IMPRACTICABILITY DOES NOT MEAN
28 IMPOSSIBILITY, BUT ONLY THE DIFFICULTY OR INCONVENIENCE OF

1 JOINING ALL MEMBERS OF THE CLASS.

2 IN THIS CASE, PLAINTIFFS DEFINE THE PROPOSED
3 CLASS AS, QUOTE, WOMEN WHO HAVE BEEN OR WILL BE EMPLOYED
4 BY DISNEY IN CALIFORNIA BETWEEN APRIL 1, 2015, AND THREE
5 MONTHS BEFORE TRIAL BELOW THE LEVEL OF VICE PRESIDENT.
6 AND IN A NONUNION POSITION WITH A JOB LEVEL OF B1 THROUGH
7 B4, T1 THROUGH T4, TL P1 TO P6. P2L TO P5L, M1 TO M3, A15
8 EO OR EO, E1 OR E1X.

9 PLAINTIFFS DEFINED THE SUBCLASS OF THOSE
10 SAME MEMBERS ONLY ADDING THAT FURTHER REQUIREMENT THAT THE
11 MEMBERS ALSO HAVE BEEN ASSIGNED TO A JOB FAMILY.

12 DEFENDANTS DO NOT REASONABLY DISPUTE
13 ASCERTAINABILITY OR NUMEROSITY. THE CLASS AND SUBCLASS
14 DEFINITIONS ARE CLEAR AND OBJECTIVE. MOREOVER, THERE'S NO
15 REASONABLE DISPUTE THAT DEFENDANTS' RECORDS CONTAIN ALL
16 THE INFORMATION NECESSARY TO IDENTIFY THE POTENTIAL CLASS
17 MEMBERS.

18 AS TO NUMEROSITY, THERE'S ALSO NO REASONABLE
19 DISPUTE. INDEED, MOST OF DEFENDANTS' OPPOSITION IS
20 DEDICATED TO UNMANAGEABILITY RELATED TO THE THOUSANDS OF
21 PUTATIVE CLASS MEMBERS SPREAD ACROSS DIFFERENT INDUSTRIES,
22 BUSINESSES, AND LOCATIONS.

23 THEREFORE, THE COURT FINDS THAT NUMEROSITY
24 AND ASCERTAINABILITY PROVIDE NO IMPEDIMENT TO CLASS
25 CERTIFICATION.

26 TURNING TO THE COMMUNITY OF INTEREST
27 REQUIREMENT FOR CERTIFICATION. THERE ARE THREE FACTORS
28 THAT SUPPORT THE COMMUNITY OF INTEREST REQUIREMENT. THAT

1 IS, ONE, DOMINANT COMMON QUESTIONS OF LAW OR FACT; TWO,
2 CLASS REPRESENTATIVES WITH CLAIMS OR DEFENSES TYPICAL IN
3 THE CLASS; AND THREE, CLASS REPRESENTATIVES WHO CAN
4 ADEQUATELY REPRESENT THE CLASS.

5 THE CALIFORNIA SUPREME COURT HELD IN THE
6 SAVE-ON CASE THAT THE CENTRAL ISSUE IN A CLASS
7 CERTIFICATION MOTION IS WHEN THE QUESTIONS THAT WILL ARISE
8 IN THE ACTION ARE COMMON OR INDIVIDUAL; NOT PLAINTIFFS'
9 LIKELIHOOD OF SUCCESS ON THE MERITS OF THE CLAIMS.

10 THE UNITED STATES SUPREME COURT HAS MADE IT
11 CLEAR THAT ANY COMPETENTLY DRAFTED CLASS COMPLAINT CAN
12 RAISE COMMON ISSUES, BUT THE COMMON QUESTION MUST BE OF
13 SUCH A NATURE THAT IT IS CAPABLE OF CLASSWIDE RESOLUTION
14 WHICH MEANS THAT DETERMINATION OF ITS TRUTH OR FALSITY
15 WERE RESOLVED AN ISSUE THAT IS CENTRAL TO VALIDITY OF EACH
16 ONE OF THE CLAIMS IN ONE STROKE.

17 A COURT IS NOT TO FOCUS ON POTENTIAL
18 CONFLICTING ISSUES OF FACT OR LAW ON AN INDIVIDUAL BASIS.
19 RATHER THE COURT MUST EVALUATE WHETHER THE THEORY OF
20 RECOVERY ADVANCED BY THE PLAINTIFF IS LIKELY TO PROVE
21 AMENABLE TO CLASS TREATMENT. THE CLASS ACTION IS NOT
22 PERMITTED IF EACH MEMBER IS REQUIRED TO LITIGATE
23 SUBSTANTIAL AND NUMEROUS FACTUALLY UNIQUE QUESTIONS BEFORE
24 RECOVERING MAY BE ALLOWED. IF THE CLASS ACTION WAS
25 SPLINTERED INTO INDIVIDUAL TRIALS, COMMON QUESTIONS DO NOT
26 PREDOMINATE AND LITIGATION AND REACTION OR CLASS FORMAT IS
27 INAPPROPRIATE.

28 TURNING TO THE SPECIFIC CLAIMS IN THIS CASE.

1 FIRST TO THE CALIFORNIA EQUAL PAY ACT, EPA.
2 THE EPA PROVIDES, IN RELEVANT PART, THAT AN EMPLOYER SHALL
3 NOT PAY ANY OF ITS EMPLOYEES AT WAGES LESS -- EXCUSE ME,
4 AT WAGE RATES LESS THAN THE RATES PAID TO EMPLOYEES IN THE
5 OPPOSITE SEX FOR SUBSTANTIALLY SIMILAR WORK WHEN VIEWED AS
6 A COMPOSITE SKILL, EFFORT, OR RESPONSIBILITY AND
7 PERFORMED UNDER SIMILAR WORKING CONDITIONS EXCEPT WHEN THE
8 EMPLOYER DEMONSTRATES, ONE, THE WAGE DIFFERENTIAL IS BASED
9 UPON ONE OR MORE OF THE FOLLOWING FACTORS; A, SENIORITY
10 SYSTEM; B, MERIT SYSTEM; C, A SYSTEM THAT MEASURES
11 EARNINGS BY QUANTITY OR QUALITY OF PRODUCTION; D, A BONA
12 FIDE FACTOR OTHER THAN SEX SUCH AS EDUCATION, TRAINING, OR
13 EXPERIENCE.

14 HOWEVER, PRIOR SALARY SHALL NOT JUSTIFY ANY
15 DISPARITY IN COMPENSATION. TO PROVE VIOLATION, A
16 PLAINTIFF MUST ESTABLISH, BASED ON GENDER, THE EMPLOYER
17 PAYS DIFFERENT WAGES TO EMPLOYEES DURING SUBSTANTIALLY
18 SIMILAR WORK UNDER SUBSTANTIALLY SIMILAR CONDITIONS.

19 IF A PLAINTIFF MAKES THAT PRIMA FACIE
20 SHOWING, THE BURDEN SHIFTS TO THE EMPLOYER TO PROVE THE
21 DISPARITIES PERMITTED BY ONE OF THE EPA'S STATUTORY
22 EXCEPTIONS. IF THE EMPLOYER ESTABLISHES AN EXCEPTION, THE
23 BURDEN SHIFTS BACK TO THE PLAINTIFF TO PROVE PRETEXT.
24 THERE'S NO REQUIREMENT FOR PLAINTIFF TO SHOW
25 DISCRIMINATORY INTENT AS AN ELEMENT OF AN EPA CLAIM.

26 UNDER THE FAIR EMPLOYMENT HOUSING ACT, FEHA.
27 FEHA PROHIBITS EMPLOYERS FROM, AMONG OTHER THINGS,
28 DISCRIMINATING AGAINST A PERSON BECAUSE OF GENDERS WITH

1 RESPECT TO COMPENSATION, TERMS, CONDITIONS OR PRIVILEGES
2 OF EMPLOYMENT. CLAIMS BROUGHT PURSUANT TO FEHA CAN BE
3 BASED ON DISPARATE TREATMENT OR DISPARATE IMPACT.

4 EITHER THEORY MAY BE APPLIED TO A PARTICULAR
5 SET OF FACTS. DISPARATE TREATMENT IS THE MOST EASILY
6 UNDERSTOOD THEORY. THE EMPLOYER TREATS MEMBERS OF A
7 PROTECTED CLASS LESS FAVORABLY THAN OTHERS. PROOF OF
8 DISCRIMINATORY INTENT IS CRITICAL; THAT IS, PROOF OF THE
9 DISCRIMINATORY MOTIVE IS CRITICAL. ALTHOUGH IT CAN, IN
10 SOME SITUATIONS, BE INFERRED FROM THE MERE FACT OF
11 DIFFERENCES IN TREATMENT.

12 CLAIMS DISCRIMINATION MAY ALSO BE FOUNDED ON
13 THEORY OF DISPARATE IMPACT. THAT IS REGARDLESS OF MOTIVE,
14 A FACIALLY NEUTRAL EMPLOYER PRACTICE, OR POLICY. THERE
15 ARE NO MANIFEST RELATIONSHIP JOB REQUIREMENTS; IN FACT,
16 HAVE A DISPROPORTIONATE ADVERSE EFFECT ON MEMBERS OF THE
17 PROTECTIVE CLASS.

18 TO ESTABLISH A PRIMA FACIE CASE UNDER THIS
19 THEORY, THE REQUIREMENTS ARE IDENTIFICATION OF A FACIALLY
20 NEUTRAL PRACTICE, AN ADVERSE IMPACT ON MEMBERS OF THE
21 PROTECTED GROUP, AND THAT WHICH IS CAUSED BY THE SPECIFIED
22 PRACTICE. A PLAINTIFF ESTABLISHES CAUSATION BY OFFERING
23 STATISTICAL EVIDENCE OF A KIND AND DEGREE SUFFICIENT TO
24 ALLOW THE PRACTICE IN QUESTION HAS CAUSED THE EXCLUSION OF
25 APPLICANTS FOR JOBS OR PROMOTIONS BECAUSE OF THEIR
26 MEMBERSHIP IN A PROTECTED GROUP. THE STATISTICAL
27 DISPARITIES MUST BE SUFFICIENTLY SUBSTANTIAL THAT THEY
28 RAISE SUCH AN INFERENCE OF CAUSATION. IF THAT SHOWING IS

1 MADE, THE EMPLOYER MUST THEN DEMONSTRATE THAT ANY GIVEN
2 REQUIREMENT HAS A MANIFEST RELATIONSHIP TO THE EMPLOYMENT
3 IN QUESTION TO AVOID A FINDING OF DISCRIMINATION.

4 PLAINTIFFS' OVERALL THEORY IS THAT
5 DEFENDANTS ARE AN INTEGRATED ENTERPRISE WITH CENTRALIZED
6 CONTROL OVER LABOR INCLUDING COMPANY-WIDE COMPENSATION
7 POLICIES, JOB CLASSIFICATIONS, COMPENSATION BUDGETS, AND
8 COMPENSATION PLANNING. ACCORDING TO PLAINTIFFS,
9 DEFENDANTS HAVE AN ENTERPRISE-WIDE SYSTEM FOR CLASSIFYING
10 JOBS INTO JOB FAMILIES AND JOB LEVELS SO THAT JOBS CAN BE
11 COMPARED AND OFFER COMPARABLE PAY ACROSS THE ENTERPRISE.

12 PLAINTIFF HAS SET FORTH WRITTEN POLICIES,
13 DEPOSITION TESTIMONY, AND OTHER DOCUMENTARY EVIDENCE TO
14 SHOW THAT A RELATIVELY SMALL GROUP OF COMPENSATION
15 LEADERS, DESIGN AND IMPLEMENT ENTERPRISE-WIDE COMPENSATION
16 POLICIES. PLAINTIFFS PRESENT EVIDENCE TO SHOW THAT
17 DEFENDANTS ESSENTIALLY CONDUCTED ANALYSIS OF ITS
18 ENTERPRISE-WIDE COMPENSATION PRACTICES.

19 PLAINTIFF SET FORTH WRITTEN DOCUMENTS AND
20 TESTIMONY TO SHOW THAT DEFENDANTS USE A STANDARDIZED JOB
21 CLASSIFICATION FRAME WORK. PLAINTIFFS CHARACTERIZE THIS
22 AS GLOBAL FRAME WORK INTO FOUR MAIN ELEMENTS THAT DRIVE
23 COMPENSATION DECISIONS. ONE, JOB FUNCTIONS; TWO, JOB
24 FAMILIES; THREE, CAREER BANDS AND JOB LEVELS.

25 ACCORDING TO PLAINTIFFS, JOB FUNCTIONS ARE
26 BROAD GROUPINGS OF JOBS THAT SPAN ACROSS ORGANIZATION
27 USING SIMILAR SKILLS AND KNOWLEDGE, AND JOB FAMILIES ARE
28 GROUPS OF RELATED JOBS WITHIN THE SAME JOB FUNCTIONS THAT

1 FURTHER DIFFERENTIATE POSITIONS BASED ON AREAS OF
2 EXPERTISE.

3 PLAINTIFFS SET FORTH THAT JOB FAMILIES CAN
4 ONLY DETERMINE THE APPROPRIATE SALARY GRADE AND HIRING
5 RANGE FOR OPEN POSITIONS.

6 AS RECENTLY AS 2019, DEFENDANTS LAUNCH
7 PROJECT VISTA. A COMPREHENSIVE REVIEW OF JOB FAMILY IS TO
8 REMOVE REDUNDANCIES AND CREATE ANY NEEDED JOB FAMILIES.
9 ACCORDING TO PLAINTIFFS' EVIDENCE, SINCE 2015 EVERY
10 POSITION HAS BEEN ASSIGNED TO A JOB LEVEL. JOB LEVELS ARE
11 ASSIGNED BASED ON SPECIFIC RESPONSIBILITIES AND SKILLS
12 REQUIRED TO PERFORM VARIOUS JOBS. PLAINTIFF HAS SET FORTH
13 EVIDENCE THAT JOB LEVELS ARE BASED ON STANDARD JOB
14 COMPETENCIES SUCH AS FUNCTIONAL KNOWLEDGE, BUSINESS
15 EXPERTISE, LEADERSHIP, PROBLEM SOLVING, BUSINESS IMPACT,
16 AND INTERPERSONAL SKILLS. PLAINTIFFS FOCUS ON JOB LEVEL
17 AND JOB FAMILY.

18 ACCORDING TO PLAINTIFF, JOB FAMILY AND JOB
19 LEVEL DETERMINE PAY RANGE. PLAINTIFFS ALSO SET FORTH THAT
20 JOB LEVEL AND JOB FAMILY ARE FUNDAMENTAL AS TO HOW
21 DEFENDANTS' BENCHMARK A PARTICULAR JOB TO THE EXTERNAL
22 MARKET TO DETERMINE A PAY RANGE.

23 ACCORDING TO PLAINTIFFS' EVIDENCE, JOB
24 FAMILY AND JOB LEVEL ARE PAID IN THE SAME PAY GRADE OR
25 RANGE WITH STANDARD ADJUSTMENTS BASED ON GEOGRAPHIC
26 REGION.

27 AS TO PLAINTIFFS' EPA CLAIM, PLAINTIFFS
28 THEORY OF RECOVERY IS THAT DEFENDANTS PAY WOMEN LESS THAN

1 MEN FOR SUBSTANTIALLY SIMILAR WORK. PLAINTIFFS ORGANIZE
2 THIS THEORY INTO TWO OVERARCHING COMMON QUESTIONS. ONE,
3 DOES THE GLOBAL JOB CLASSIFICATION SYSTEM OF JOB LEVELS
4 AND JOB FAMILIES CLASSIFIED TOGETHER BASED ON
5 SUBSTANTIALLY SIMILAR WORK. SECOND, DO DEFENDANTS PAY
6 WOMEN LESS THAN MEN WITHIN THOSE CLASSIFICATIONS.

7 FOR THE FIRST QUESTION, PLAINTIFFS RELY ON
8 THE TESTIMONY OF DR. HOUGH WHO HAS CONDUCTED -- EXCUSE ME,
9 WHO HAS CONCLUDED THAT DEFENDANTS USE A CLASSIFICATION
10 SYSTEM OF JOB LEVEL AND JOB FAMILY WHICH CLASSIFIES JOBS
11 BASED ON SUBSTANTIALLY SIMILAR WORK. PLAINTIFFS RELY ON
12 DOCUMENTARY EVIDENCE OF DEFENDANTS INCLUDING THE REPEATED
13 USE OF COMBINATIONS OF JOB LEVEL AND JOB FAMILY AS KEY
14 IDENTIFIERS OF LIFE JOBS ALONG WITH CORPORATE WITNESS
15 TESTIMONY SUBSTANTIATING SUCH.

16 TO SHOW THAT DEFENDANTS PAY WOMEN LESS FOR
17 SUBSTANTIALLY SIMILAR WORK, PLAINTIFFS RELY ON
18 DR. NEUMARK'S MULTIPLE REGRESSION ANALYSIS. THIS ANALYSIS
19 CONTROLS FOR SUBSTANTIALLY SIMILAR WORK BY MEANS OF JOB
20 FAMILY AND JOB LEVEL AND SHOWS A STATISTICALLY SIGNIFICANT
21 DEVIATION.

22 HOWEVER, DEFENDANTS ARGUE THAT THE DIVERSITY
23 ROLES AND THE NUMBER OF DECISION MAKERS MAKE THE CLAIMS
24 INCAPABLE OF CLASSWIDE RESOLUTION. THAT IS, THE WOMEN IN
25 THE PUTATIVE CLASS WORK IN MULTIPLE INDUSTRIES AND THEIR
26 JOB CONTENT IS DISSIMILAR. FOR EXAMPLE, THE CLASS
27 INCLUDES MECHANICAL ENGINEERS, SALES REPRESENTATIVES,
28 PRESCHOOL TEACHERS AND NEWS PRODUCERS TO NAME JUST A FEW.

1 THE DURESS, SKILL SENSE, AND EXPERTISE REQUIRED TO PERFORM
2 THE THOUSANDS OF JOBS WITHIN THE PUTATIVE CLASS PROHIBIT
3 ANY COMMON FORMULA OR CRITERIA FOR SETTING PAY, AND PAY
4 DECISIONS ARE MADE ON A HOST OF FACTORS WHICH VARY
5 DEPENDING ON THEIR ROLE. ALL OF THIS WOULD RESULT IN
6 OVERWHELMING AMOUNTS OF INDIVIDUAL TESTIMONY AND ANALYSIS
7 OF DOZENS OF COMPARATORS.

8 MOREOVER, ACCORDING TO DEFENDANTS,
9 PLAINTIFFS' ANALYSIS FAILS TO PROPERLY CONSIDER THE MORE
10 IMPORTANT DIFFERENTIATED LEVEL OF JOB CODES. ACCORDING TO
11 THE DEFENDANTS, THE COMPANY LOOKS TO JOB CODES WHEN
12 COMPARING TWO INDIVIDUALS FOR PAY PURPOSES.

13 AT BEST, DEFENDANTS SIMPLY ARE REQUIRING A
14 MUCH MORE EXACTING STANDARD THAN REQUIRED BY STATUTE AND
15 AT WORSE SEEMINGLY SEEKS AND MERITS DETERMINATION.

16 LABOR CODE SECTION 1197.5 REQUIRES
17 SUBSTANTIALLY SIMILAR WORK WHEN VIEWED AS A COMPOSITIVE
18 SKILL EFFORT AND RESPONSIBILITY AND PERFORMED UNDER
19 SIMILAR WORKING CONDITIONS. WHETHER DRAWN COMPARISON IS
20 DRAWN BY PLAINTIFF MEET THE SUBSTANTIALLY SIMILAR
21 REQUIREMENT, WILL BE FOR THE ULTIMATE FACT FINDER TO
22 RESOLVE.

23 DEFENDANTS NEXT CONTEND THAT PLAINTIFFS'
24 EXPERT ANALYSIS IS FLAWED AND CAN'T OTHERWISE ESTABLISH
25 COMMONALITY. DEFENDANTS RELY ON THEIR OWN EXPERTS'
26 ANALYSIS AND SUPPORT. THE COURT HAS ALREADY RULED AGAINST
27 EXCLUDING PLAINTIFFS' EXPERTS. MORE IMPORTANTLY THE TASK
28 AT HAND IS NOT TO WEIGH THE COMPETING EXPERT FINDINGS.

1 FOR THE PURPOSES OF PLAINTIFFS' PRIMA FACIE CASE SUCH THE
2 DISPARATE ANALYSIS WOULD BE COMMON EVIDENCE APPLICABLE TO
3 THE CLASS.

4 DEFENDANTS OFFER NO ON-POINT AUTHORITY THAT
5 THE EPA REQUIRES THAT EACH PARTICULAR PLAINTIFF OR FEMALE
6 EMPLOYEE NEED TO POINT TO A SPECIFIC INDIVIDUAL AS
7 COMPARATIVE. DEFENDANTS CONTEND THAT THEIR AFFIRMATIVE
8 DEFENSES ARE NOT CAPABLE OF CLASSWIDE RESOLUTION.

9 RECALL, AS ALREADY MENTIONED, IF A PLAINTIFF
10 MAKES A PRIMA FACIE SHOWING, THE BURDEN SHIFTS TO THE
11 EMPLOYER TO PROVE THAT A DISPARITY IS PERMITTED BY ONE OF
12 THE EPA'S STATUTORY EXCEPTIONS. FOR EXAMPLE, THE WAGE
13 DIFFERENTIAL MIGHT BE BASED ON A SENIORITY SYSTEM, A MERIT
14 SYSTEM, PRODUCTION SYSTEM, OR OTHER BONA FIDE FACTOR
15 UNRELATED TO SEX.

16 DEFENDANTS WOULD BE ABLE TO SUBMIT THE SAME
17 TYPE OF EVIDENCE USED TO ESTABLISH ALLEGED WAGE
18 DISPARITIES WITHIN THE JOB FAMILIES AND JOB LEVELS, BUT
19 WITH THEIR EVIDENCE INSTEAD SHOWING THAT THE DISPARITY IS
20 ATTRIBUTED TO BONA FIDE FACTORS AND RELATED TO GENDER.

21 NOTABLY, DEFENDANTS' ARGUMENT REGARDING ITS
22 AFFIRMATIVE DEFENSE CONSISTS OF ESSENTIALLY THE FOLLOWING
23 TWO SENTENCES OF THE ANALYSIS. QUOTE, THOUGH PLAINTIFFS
24 INCORRECTLY ARGUE THAT THEY CAN PROVE THEIR CASE THROUGH
25 EXPERT TESTIMONY, PMQ TESTIMONY, AND DISNEY DOCUMENTS,
26 DEFENDANTS ARE NOT REQUIRED TO DO THE SAME. PLAINTIFFS'
27 FAILURE TO MEANINGFULLY ADDRESS HOW TO MAGICALLY TRY
28 INDIVIDUALIZED AFFIRMATIVE DEFENSES PRECLUDE

1 CERTIFICATION, CLOSED QUOTE.

2 THIS ARGUMENT PRESENTED BY DEFENDANTS IS NOT
3 ACTUALLY A COMMONALITY OF PREDOMINANCE ARGUMENT. IT'S A
4 MANAGEABILITY ARGUMENT. THE COURT IS NOT PERSUADED
5 DEFENDANTS BURDEN TO ESTABLISH A LEGITIMATE REASON FOR
6 THEIR ALLEGED DISPARITY CANNOT ALSO BE ESTABLISHED BY
7 COMMON PROOF OR THAT IT WOULD BE OTHERWISE OVERWHELMING,
8 THE COMMON ISSUES WITHIN INDIVIDUALIZED ONES.

9 TO THE EXTENT DEFENDANT CITES TO DURAN V.
10 U.S. BANK NATIONAL ASSOCIATION, 2014, 59 CAL.4TH 1 FOR THE
11 PROPOSITION THAT THEY HAVE A DUE PROCESS RIGHT TO EXPLAIN
12 THE BONA FIDE REASONS, THE CALIFORNIA SUPREME COURT
13 EXPLAINED THAT NO CASE HOLDS THAT A DEFENDANT HAS A DUE
14 PROCESS RIGHT -- DUE PROCESS RIGHT TO LITIGATE AFFIRMATIVE
15 DEFENSE AS TO EACH INDIVIDUAL CLASS MEMBERS. THIS IS
16 DURAN AT 38.

17 NEVERTHELESS, IF TRIAL PROCEEDS WITH
18 STATISTICAL MODEL AND PROOF, DEFENDANTS WOULD BE GIVEN AN
19 OPPORTUNITY TO IMPEACH THAT MODEL. WHILE THE COURT WILL
20 FURTHER ADDRESS THE MANAGEABILITY ISSUE LATER, THE
21 PREDOMINANCE OF COMMONALITY FACTOR WITHSTANDS IS NO
22 IMPEDIMENT TO CLASS CERTIFICATION OF THE EPA CLAIMS.

23 TURNING TO THE FEHA CLAIMS. PLAINTIFFS BASE
24 THE CLAIMS ON THE THEORY OF DISPARITY IMPACT; THAT IS,
25 PLAINTIFFS' THEORY IS THAT COMMON PRACTICE IS THAT
26 SPATIALLY NEUTRAL EMPLOYMENT PRACTICES HAD DISPARATE
27 IMPACT ON WOMEN WORKING FOR DEFENDANTS.

28 FOR PURPOSES OF PLAINTIFFS' DISPARATE IMPACT

1 CLAIMS, PROOF OF COMMONALITY OVERLAPS EXTENSIVELY WITH THE
2 EPA CLAIMS; THAT IS, THE COMPANY-WIDE POLICIES AND
3 PRACTICES LED TO A PAID DISPARITY OF STATISTICAL
4 SIGNIFICANCE THE EXISTENCE OF WHICH WILL BE SHOWN BY
5 COMMON EVIDENCE OF DEFENDANTS' DOCUMENTS AND DEONENTS AND
6 PLAINTIFFS' EXPERT STATISTICAL ANALYSIS.

7 WHILE JOB FUNCTION AND JOB FAMILY ARE
8 ENCOMPASSED, PLAINTIFFS' EXPERT ANALYSIS UTILIZED MULTIPLE
9 REGRESSION CONTROLS FOR CERTAIN VARIABLES INVOLVING
10 INCLUDING JOB LEVELS TO ISOLATE THE IMPACT THAT GENDER HAS
11 ON SALARIES. HOWEVER, IN ORDER TO DEMONSTRATE COMMONALITY
12 FOR THE FEHA CLAIMS, IT IS NOT ENOUGH OF PLAINTIFFS
13 SHOWING THEY DISPROPORTIONATELY ARE PAID LESS THAN MEN
14 LIKE UNDER THE EPA CLAIMS. INSTEAD, PLAINTIFFS MUST SHOW
15 THAT THE REASON BEHIND THAT DISCRIMINATION IS THE SAME FOR
16 ALL CLASS MEMBERS THAT IS CAUSATION; IN OTHER WORDS, TO
17 ESTABLISH A PRIMA FACIE CASE UNDER THE FEHA THEORY,
18 PLAINTIFFS MUST NOT ONLY ESTABLISH THAT THE NEUTRAL
19 PRACTICE AND THE ADVERSE IMPACT IS AMENABLE TO COMMON
20 PROOF, BUT ALSO THAT THE DISPARITY WAS CAUSED FROM THE
21 SPECIFIED PRACTICE. TO DO SO PLAINTIFFS RELY ESSENTIALLY
22 ON THE SOLE THEORY THAT DEFENDANTS' COMMON METHOD OF
23 SENDING STARTING PAY AND SUBSEQUENT RAISES BASED ON THIS
24 STARTING PAY CAUSED THE DISPARATE IMPACT.

25 SPECIFICALLY PLAINTIFFS BASE THIS ON THE
26 MOTION THAT DEFENDANTS RELIED ON THE CANDIDATES' SALARY AT
27 THEIR PRIOR JOB OR PERHAPS THEIR SALARY EXPECTATIONS IN
28 SETTING THE COMPENSATION OFF. PLAINTIFF SET FORTH

1 EVIDENCE THAT DEFENDANTS PERMITTED THE CONSIDERATION OF
2 THE CANDIDATES' PRIOR SALARY IN DEVELOPING COMPENSATION
3 RECOMMENDATION BEFORE OCTOBER 2017. DUE TO LEGISLATIVE
4 CHANGES, DEFENDANTS ANNOUNCED A NEW PRACTICE IN OCTOBER
5 2017, AND IN NOVEMBER 2022 DEFENDANTS CHANGED ITS POLICY
6 ALL TOGETHER TO NO LONGER INVITE THE EXPRESSION OF SALARY
7 EXPECTATIONS.

8 PLAINTIFFS' THEORY IS THAT WOMEN WHO ARE
9 ALREADY WAGE DISADVANTAGED OR OTHERWISE UNDERCOMPENSATED
10 WOULD EFFECTIVELY HAVE AN ADJUSTMENT DOWNWARD FROM MEN WHO
11 ARE OTHERWISE SUBSTANTIALLY EQUAL CANDIDATES. THIS, IN
12 TURN, WOULD COMPOUND ITSELF ANNUALLY AS THE RAISES WERE
13 BASED ON PERCENTAGES. THE SIGNIFICANCE OF THE PAY GAP
14 WOULD GROW EVEN WHERE THE PERCENTAGE INTEREST WOULD BE
15 IDENTICAL WITH THAT OF A COMPARATOR. HOWEVER, BY USING AN
16 ADVOCATE OF STATISTICAL ANALYSIS OF PRIMARY EVIDENCE OF
17 DISPARATE IMPACT, PLAINTIFFS' ARGUMENT ESSENTIALLY RELIES
18 ON BOOTSTRAPPING; THAT IS, THE IMPACT PROVIDES THE COMMON
19 THREAD AS TO THE REASON FOR THE DISCRIMINATION. THIS,
20 WHICH IS EFFECTIVELY SINGULATOR PURPORTED COMPANY-WIDE
21 POLICY TO PLAINTIFFS' POINT IS THE EXTENT OF CLASS-WIDE
22 GLUE THAT BINDS THE CLAIMS TOGETHER SUPPOSED PERMITTED
23 RESOLUTION AT ONE FAIL SWOOP. THEREFORE, THE QUESTION
24 BECOMES WHETHER THE POLICY IS, IN ESSENCE, MANDATORY
25 PRINCIPAL UPON WHICH THE HIGHER MANAGER MUST APPEAR SUCH
26 THE POLICY CAUSED -- SUCH THAT THE POLICY CAUSED THE
27 DISPARATE PAY SHOWN BY THE STATISTICAL ANALYSIS.
28 PLAINTIFFS' EVIDENCE FAIL TO SUFFICIENTLY ESTABLISH THE

1 NEXUS. BUT ALSO DEFENDANT'S EVIDENCE REVEALS THIS INQUIRY
2 IS NOT CAPABLE OF CLASSIFIED RESOLUTION.

3 FIRST AND FOREMOST, DEFENDANTS HAVEN'T EVEN
4 SHOWN THAT THERE'S NO COMMON CLASSIFIED POLICY MANDATORY
5 OR OTHERWISE THAT PRIOR COMPENSATION OR SALARY EXPECTATION
6 FACTORED INTO THE COMPENSATION LAW. INSTEAD WHAT HAS BEEN
7 SHOWN IS THAT DIFFERENT INDUSTRIES, DIFFERENT HIRING
8 MANAGERS, DIFFERENT RECRUITERS AND DIFFERENT COMPENSATION
9 PARTNERS ALL HAVE HAD DIFFERENT PRACTICES REGARDING PRIOR
10 PAY OR PAY EXPECTATIONS. FOR EXAMPLE, SOME RECRUITERS
11 NEVER ASKED WHAT PRIOR PAY WAS. SOME COMPENSATION
12 PARTNERS NEVER USE SALARY EXPECTATIONS AS A FACTOR.

13 DEFENDANTS POINT OUT THAT PLAINTIFFS' MOTION
14 ITSELF STATES BEFORE OCTOBER 2017 DEFENDANTS PERMITTED THE
15 CONSIDERATION AND ITS PRIOR SALARY. BUT WHAT IS NOT
16 STATED IS IMPORTANT; THAT IS, WHETHER THE DEFENDANTS
17 MANDATED SUCH CONSIDERATION. IN OTHER WORDS, THE OPTION
18 TO CONSIDER PRIOR PAY DOES NOT ESTABLISH A COMMON PRACTICE
19 BY ANYONE LET ALONE EVERYONE.

20 INSTEAD, THE EVIDENCE BEARS OUT THAT HIRING
21 MANAGERS TO RECEIVE PAY MANAGERS POTENTIAL NEW HIRES, BUT
22 ULTIMATELY MADE INDEPENDENT DECISIONS WITHIN THAT RANGE.

23 IN THAT RESPECT THE PRIOR COMPENSATION, WHEN
24 IT WAS MADE AVAILABLE, WAS AT BEST A DATA POINT THAT THE
25 MANAGER COULD CONSIDER BUT DID NOT NEED TO CONSIDER. THE
26 RECORD DOES NOT DEMONSTRATE CENTRALIZED DECISION MAKING --
27 THAT CENTRALIZED DECISION MAKERS INSERTED THEIR JUDGMENT
28 INTO THE HIRING DECISION TO ADJUST OFFERS TO CORRESPOND

1 WITH PRIOR PAY.

2 THE EVIDENCE MORE LIKELY SUGGESTS INDIVIDUAL
3 ANALYSIS OF WHETHER ANY PARTICULAR HIRING MANAGER
4 COLLECTED PRIOR PAY HISTORY AND THEN USED THIS HISTORY TO
5 SET THE STARTING PAY WITH RESPECT TO ANY PARTICULAR NEW
6 HIRE.

7 THE COURT NOTES AFTER REGRESSION ANALYSIS
8 CONDUCTED SHOWS A STATISTICALLY SIGNIFICANT DIFFERENCE IN
9 PAY EVEN WHEN CONTROLLING FOR MULTIPLE FACTORS APART FROM
10 GENDER.

11 HOWEVER, UNLIKE THE EPA CLAIMS, THE ISSUE
12 WITH THE FEHA CLAIMS IS WHETHER THE COMMON IMPACT RESULTS
13 FROM A COMMON POLICY. WHILE PLAINTIFFS OFFER EVIDENCE OF
14 DISPARATE IMPACT, THEY FAILED TO ESTABLISH A COMMON MATTER
15 IN EXERCISING DISCRETION APPLIED TO WHAT MUST BE
16 EFFECTIVELY ALL HIRING DECISIONS MADE BY DEFENDANTS.

17 AS MENTIONED, PLAINTIFFS' THEORY IS THAT USE
18 OF PRIOR PAY HISTORY RESULTED IN WOMEN RECEIVING
19 DISPROPORTIONATE AND LOW PAY THAN MEN DESPITE SIMILAR
20 QUALIFICATIONS. YET BECAUSE OF THE DISCRETION AFFORDING
21 HIRING PERSONNEL, IT WOULD BE NECESSARY TO DETERMINE AS TO
22 EACH PUTATIVE MEMBER WHETHER THE APPLICANT PROVIDED THE
23 SALARY DATA AND WHETHER THE HIRING PERSONNEL ACTUALLY USED
24 SUCH DATA TO SET PAY. THE EVIDENCE SHOWS THAT SOME HIRING
25 MANAGERS DID NOT USE SUCH DATA IN THE HIRING PROCESS.

26 ACCORDINGLY, THE EVIDENCE SUPPORTS A FINDING
27 THAT INDIVIDUALIZED INQUIRIES WILL BE NECESSARY FOR EACH
28 EMPLOYEE TO DETERMINE WHETHER ANY PRIOR COMPENSATION HAD A

1 DISPARATE IMPACT ON THE PAY OFFERED BY DEFENDANTS. THESE
2 INDIVIDUAL INQUIRIES APPEAR TO OVERWHELM THE COMMON ONES.

3 SO IN SUM, PLAINTIFFS DO NOT SUFFICIENTLY
4 ESTABLISH THAT STARTING PAY WAS A REQUIRED FACTOR IN
5 MAKING STARTING PAY DECISIONS THROUGHOUT THE VARIETY OF
6 POSITIONS. PLAINTIFFS' FAILURE TO POINT TO SUCH COMMON
7 AND REQUIRED POLICY IN THE HIRING PROCESS IMPEDES A COMMON
8 ANALYSIS. PLAINTIFFS DO NOT ESTABLISH THAT THE ISSUE OF
9 CAUSATION CAN BE RESOLVED ON A CLASSWIDE BASIS AND MUCH
10 LESS DO THEY ESTABLISH COMMON QUESTIONS WOULD PREDOMINATE
11 AN INDIVIDUAL WITH RESPECT TO THE FEHA CLAIMS. QUITE THE
12 CONTRARY, THE RESOLUTION IN THE AFOREMENTIONED INDIVIDUAL
13 ISSUES WILL OVERWHELM THE COMMON ONES AND THE CLASS CAN'T
14 BE CERTIFIED AS TO FEHA CLAIMS FOR THAT REASON.

15 DIFFERENT RESULTS OCCURS WITH RESPECT TO THE
16 EPA CLAIMS. WHILE DEFENDANT POINTS OUT A NUMBER OF
17 POTENTIAL PROBLEMS WITH THE MERITS OF PLAINTIFFS' EPA
18 CLAIMS AND WITH MANAGEABILITY OF THE EPA CLAIMS, THE
19 QUESTION IS WHETHER INDIVIDUAL INQUIRIES WILL OVERWHELM
20 THE COMMON ONES. ALTHOUGH DEFENDANTS HAVE ADDRESSED SOME
21 POTENTIAL LEGAL AND FACTUAL SHORTCOMINGS, MOST, IF NOT
22 ALL, CAN BE RESOLVED ON A CLASSIFIED BASIS.

23 ACCORDINGLY, WITH RESPECT TO EPA CLAIMS,
24 PLAINTIFF ESTABLISHED THAT THE PROPOSED CLASS ACTION MEETS
25 THE PREDOMINANCE REQUIREMENTS.

26 A FINAL NOTE ABOUT COMMONALITY. PLAINTIFF
27 SET FORTH THAT THE UCL AND LABOR CODE SECTION 203 CLAIMS
28 WERE ESSENTIALLY DERIVATIVE OF THE FEHA AND EPA CLAIMS.

1 ACCORDINGLY, PLAINTIFFS' ARGUMENT WAS THAT CERTIFICATION
2 IN THE DERIVATIVE CLAIMS, IN ESSENCE, STAND ON FOURS WITH
3 THE CERTIFICATION OF FEHA AND EPA CLAIMS. THIS ALSO
4 APPEARS TO BE DEFENDANTS' UNDERSTANDING. AS DEFENDANTS DO
5 NOT SO MUCH AS MENTION A LABOR CODE SECTION 203 CLAIMS AND
6 ONLY MENTION OF THE UCL CLAIMS IN THE LAST SENTENCE OF THE
7 LAST FOOTNOTE ON THE LAST PAGE OF THE OPPOSITION WHICH
8 STATES PLAINTIFFS' DERIVATIVE UCL CLAIMS CANNOT BE
9 CERTIFIED FOR THE SAME REASONS.

10 AND, THEREFORE, THE COURT FINDS THAT WITH
11 RESPECT TO THE UCL IN SECTION 203 CLAIMS, THE ISSUE OF
12 WHETHER COMMON QUESTIONS OF FACT AND LAW WILL DOMINATE OR
13 INDIVIDUAL ONES STANDS AND FALLS WITH THE UNDERLYING EPA
14 CLAIM.

15 CONSEQUENTLY, TO THE EXTENT THAT THE UCL
16 CLAIM AND LABOR CODE SECTION 203 CLAIM BY DERIVATIVE OF
17 THE EPA CLAIM, THE COURT FINDS THAT THE DOMINANCE IS
18 ESTABLISHED TO NOT ACCEPT ALSO.

19 TURNING TO THE ISSUE OF TYPICALITY.

20 PLAINTIFFS CONTEND THAT THEIR CLAIMS ARE
21 TYPICAL OF THE CLASS CLAIMS. TYPICALITY REFERS TO THE
22 NATURE OF THE CLASS REPRESENTATIVES CLAIMS OF EVENTS AND
23 NOT TO THE SPECIFIC FACTS FROM WHICH IT AROSE OR THE
24 RELIEF SOUGHT. THE TYPICALITY TEST IS WHETHER OTHER
25 MEMBERS HAVE THE SAME OR SIMILAR INJURY, WHETHER THE
26 ACTION IS BASED ON CONDUCT WHICH IS NOT UNIQUE TO THE
27 NAMED PLAINTIFFS AND WHETHER OR NOT THE CLASS MEMBERS HAVE
28 BEEN INJURED BY THE SAME COURSE OF CONDUCT.

1 IN THIS CASE PLAINTIFFS SET FORTH THAT
2 DEFENDANTS' PRACTICES CAUSED THEM TO BE PAID LESS THAN MEN
3 AND SIMILARLY POSITIONED MEN FOR SUBSTANTIALLY SIMILAR
4 WORK.

5 PLAINTIFFS NOTE IN FOOTNOTE 6 THERE ARE ONLY
6 THREE NAMED PLAINTIFFS. RASMUSSEN, TRAIN, AND JOO ARE
7 SEEKING TO REPRESENT THE EPA SUBCLASS BASED ON FAMILIES.

8 DEFENDANTS CONTEND THAT PLAINTIFFS CANNOT
9 ESTABLISH TYPICALITY. DEFENDANTS' FIRST ARGUMENT IS BASED
10 ON SOME DEPOSITION TESTIMONY WHERE, FOR EXAMPLE, PLAINTIFF
11 RASMUSSEN COMPARED HER WORK TO A SENIOR MANAGER AND NOT TO
12 ANOTHER MANAGER AND TO LIKE HERSELF. HOWEVER, SUPPORT
13 THAT BY PLAINTIFFS WHO ARE MAKING THE MISTAKEN COMPARISON
14 AT DEPOSITION DOES NOT SOMEHOW RENDER THE CLAIMS ATYPICAL
15 OF THE CLASS. THE EVIDENCE, AS SET FORTH INCLUDING
16 PLAINTIFFS' DECLARATIONS, ESTABLISH THE SIMILAR SITUATIONS
17 TO THOSE THEY SEEK TO REPRESENT.

18 DEFENDANTS STATE THAT, ALTHOUGH HIDDEN IN
19 THEIR FOOTNOTE, PLAINTIFFS CONCEDE THAT NAMED PLAINTIFFS
20 MOORE, DOLAN, EADY MARSHALL, HANKE, ARE EXCLUDED AS NAMED
21 PLAINTIFFS FOR THE PROPOSED EPA CLAIMS. THE COURT NOTES
22 THAT WHILE PLAINTIFFS HAVE USED MORE THAN A FEW FOOTNOTES
23 ESSENTIALLY EXTENDING THEIR ABILITY TO COMPRESS
24 INFORMATION BEYOND THE 20 PAGES, THAT INFORMATION
25 NEVERTHELESS IS NOT HIDDEN.

26 THAT PART OF THE FOOTNOTE IS TO CLARIFY THAT
27 ONLY PLAINTIFFS RASMUSSEN, TRAIN, AND JOO WERE SEEKING TO
28 REPRESENT THE EPA CLAIMS AND NOT TO HIDE THAT INFORMATION.

1 DEFENDANTS OFFERED NO FURTHER ARGUMENT AS TO WHY THE NAMED
2 PLAINTIFFS WOULD NOT SATISFY THE TYPICALITY REQUIREMENTS
3 OF THE EPA CLAIMS.

4 THE UNNAMED MEMBERS HAVE SUFFERED THE SAME
5 INJURIES AND THE SAME PRACTICES AS THE NAMED PLAINTIFFS.
6 MORE IMPORTANTLY, PLAINTIFFS RASMUSSEN, TRAIN AND JOO MEET
7 CRITERIA OF TYPICALITY FOR THE EPA DERIVATIVE CLAIMS.

8 TURNING TO ADEQUACY.

9 A NAMED PLAINTIFF MUST ALSO BE ADEQUATE TO
10 REPRESENT A CLASS. ADEQUACY REPRESENTATION DEPENDS ON
11 WHETHER THE PLAINTIFFS AND PLAINTIFFS' ATTORNEY ARE
12 QUALIFIED TO CONDUCT PROPOSED LITIGATION AND PLAINTIFFS'
13 INTERESTS ARE ANTAGONISTIC TO THE INTERESTED CLASS.

14 DEFENDANTS BRIEFLY ARGUE THAT THE EXPANSIVE
15 PUTATIVE CLASS INCLUDES EXECUTIVES AND OTHER MANAGERS WHO
16 MAY BE VERY COMPENSATION-DECISION CHALLENGED BY THE ACTION
17 AND THUS THESE CONFLICT WITH THE RESULT IN AN ADEQUATE
18 REPRESENTATION. IT'S NOT PERSUASIVE.

19 FIRST, THE INDIVIDUAL DECISIONS MADE BY
20 INDIVIDUAL SUPERVISORS DOES NOT BEAR ON THE EPA CLAIMS.
21 AS FOR FEHA CLAIMS, IT STILL DOES NOT ESTABLISH AS A
22 SUPERVISOR OR NONSUPERVISORS WOULD FAIL TO HAVE CORE
23 EXTENSIVE INTEREST.

24 FURTHERMORE, EPA CLAIMS ALLEGE THAT WOMEN IN
25 SUPERVISORY ROLES WERE JUST LIKE THOSE IN NONSUPERVISORY
26 ROLES MAKE LESS THAN THE MEN IN A SUBSTANTIALLY SIMILAR
27 ROLE.

28 FURTHER, THE FEHA CLAIM BASED ON PRIOR PAY

1 AND PERCENTAGE RAISED AS APPLIED TO SUPERVISORS JUST LIKE
2 NONSUPERVISORS; THAT IS, JUST SUPERVISORS MAY HAVE
3 CONSIDERED PRIOR PAY WITH RESPECT TO THE SUPERVISEES SO DO
4 THOSE WHO HIRE THE SUPERVISORS.

5 LASTLY, DEFENDANTS OFFER NOTHING TO SUGGEST
6 THAT MANAGERS OR SUPERVISORS COULD BE HELD LIABLE FOR EPA
7 VIOLATIONS. THE STATUTE PRELIMINARILY PLACES LIABILITY ON
8 THE COMPANY.

9 ALL THIS TO SAY THE ADEQUACY HAS BEEN
10 ESTABLISHED.

11 TURNING TO THE ISSUE OF SUPERIORITY AND
12 MANAGEABILITY. TRIAL COURTS AREN'T REQUIRED TO CAREFULLY
13 WEIGH THE RESPECTIVE BENEFITS OR BURDENS AND TO ALLOW
14 MAINTENANCE OF CLASS ACTION ONLY WHERE SUBSTANTIAL
15 BENEFITS ACCRUE BOTH FOR LITIGANTS AND THE COURTS.

16 COURTS MUST PAY CAREFUL ATTENTION TO
17 MANAGEABILITY CONCERNS WHEN DECIDING WHETHER TO CERTIFY A
18 CLASS. IN THE COURT'S CONSIDERATION OF WHEN A CLASS
19 ACTION IS A SUPERIOR DEVICE FOR RESOLVING A CONTROVERSY,
20 THE MANAGEABILITY OF INDIVIDUAL ISSUES IS JUST AS
21 IMPORTANT AS THE EXISTENCE OF COMMON QUESTIONS UNITING THE
22 PROPOSED CLASS.

23 TRIAL COURTS EVALUATE WHETHER A CLASS ACTION
24 IS A SUPERIOR MEANS FOR RESOLVING LITIGATION BY
25 CONSIDERING MANY FACTORS INCLUDING, BUT NOT LIMITED TO,
26 WHETHER THE ALLEGED CLAIMS MEAN SMALL WOULD NOT BE PURSUED
27 EXCEPT BY WAY OF A CLASS ACTION, WHETHER MULTIPLE LAWSUITS
28 ARE LIKELY, THE CLASS ACTION IS NOT CERTIFIED, WHETHER

1 INDIVIDUAL RIGHTS CAN BE ADEQUATELY PROTECTED IF THE
2 ACTION PROCEEDS AS A CLASS ACTION, AND WHETHER A CLASS
3 TREATMENT IS MORE EFFICIENT AND ECONOMICAL THAN
4 ADJUDICATING THE POTENTIAL NUMBER OF INDIVIDUAL CASES.

5 IN THE PRESENT CASE, PLAINTIFFS HAVE SET
6 FORTH EVIDENCE WHICH ESTABLISHES THAT DEFENDANTS' ALLEGED
7 CONDUCT WAS UNIFORMLY APPLICABLE TO CLASS MEMBERS AND
8 THOSE COMMON ISSUES WOULD PREDOMINATE OVER THE INDIVIDUAL
9 INQUIRIES WITH RESPECT TO THE EPA CLAIMS AND RELATED
10 SUBCLASS.

11 INDEED, LITIGATING WHETHER DEFENDANTS'
12 CONDUCT WAS UNLAWFUL IN A SINGLE CASE, WHICH IS NOT LIKELY
13 TO EVOLVE INTO MANY TRIALS, OFFERS A PREFERABLE BENEFIT OF
14 LITIGATING SUCH MATTERS INDIVIDUALLY. THE MAJORITY OF
15 EVIDENCE IS DRIVING THE DEFENDANTS' BUSINESS RECORDS AND
16 CORPORATE TESTIMONY. MANAGEABILITY DOES NOT PRESENT AN
17 IMMEDIATE CONCERN.

18 ACCORDINGLY, THE COURT FINDS THAT A CLASS
19 TREATMENT IS THE PREFERABLE SUPERIOR METHOD FOR PLAINTIFFS
20 TO TRY THE EPA AND DERIVATIVE CLAIMS. HOWEVER, THE EXACT
21 OPPOSITE IS TRUE FOR FEHA AND RELATED DERIVATIVE CLAIMS TO
22 FEHA.

23 AS THE COURT HAS FOUND, COMMON QUESTIONS
24 SHOULD NOT BE DOMINATED WITH RESPECT TO THE PROPOSED FEHA
25 CLASS CLAIMS AND THUS THE PURSUED INDIVIDUAL CLAIMS IS A
26 BETTER METHOD TO LITIGATE THOSE. IN OTHER WORDS, THE FEHA
27 CLAIMS WOULD DEVOLVE INTO MANY TRIALS AND MAKE THE
28 LITIGATION UNMANAGEABLE.

1 ONE FINAL NOTE ABOUT MANAGEABILITY.
2 DEFENDANTS STATE THAT PLAINTIFFS SUBMIT A WOEFULLY
3 INADEQUATE TRIAL PLAN IN SUPPORT OF THEIR MOTION INCLUDED
4 IN THE WEBBER DECLARATION.

5 THE COURT ACKNOWLEDGES SOME OF DEFENDANTS'
6 CONCERNS. THE COURT NOTES THAT IT IS INCUMBENT ON
7 PLAINTIFF TO ENSURE MANAGEABILITY OF THE CLASS CLAIMS IN
8 ALL STAGES OF LITIGATION.

9 AND THE COURT WILL REQUIRE A TRIAL PLAN.

10 SO IN CONCLUSION, THE COURT IS GOING TO
11 GRANT PLAINTIFFS' MOTION FOR CLASS CERTIFICATION WITH
12 RESPECT TO EPA SUBCLASS INVOLVING THE EPA DERIVATIVE
13 CLAIMS WHERE PLAINTIFFS RASMUSSEN, TRAIN, AND JOO TO BE
14 APPOINTED AS CLASS REPRESENTATIVES.

15 THE COURT WILL DENY THE MOTION FOR CLASS
16 CERTIFICATION WITH REGARD TO THE FEHA PUTATIVE CLASS
17 REGARDING FEHA AND THE FEHA DERIVATIVE CLAIMS.

18 COURT WILL REQUIRE A TRIAL PLAN AT THE
19 APPROPRIATE TIME, AND IF THE TRIAL PLAN TO BE PRESENTED BY
20 PLAINTIFFS IS INADEQUATE, IT COULD BE SUBJECT TO A MOTION
21 TO DECERTIFY.

22 AND THE COURT IS GOING TO ORDER COUNSEL TO
23 MEET AND CONFER WITH REGARD TO THE PREPARATION OF THE
24 CLASS NOTICE AND WILL HAVE A STATUS CONFERENCE ON THAT.

25 BUT BEFORE WE ADJOURN, WE'RE GOING TO
26 ADDRESS SOME ADDITIONAL MOTIONS.

27 FIRST, THE MOTION TO SEAL. DEFENDANTS'
28 FILED A MOTION TO SEAL DOCUMENTS RELATED TO PLAINTIFFS'

1 MOTION FOR CLASS CERTIFICATION AND DEFENDANTS FILED A
2 MOTION TO SEAL DOCUMENTS IN SUPPORT OF DEFENDANTS'
3 OPPOSITION.

4 HOWEVER, AS I UNDERSTAND IT, THE DEFENDANTS
5 HAVE WITHDRAWN THEIR MOTIONS TO SEAL. BUT AS FURTHER
6 REPLY, DEFENDANTS ARE NOW SEEKING ONLY TO SEAL TWO
7 PRIVILEGE LOGS IN A SHORT REFERENCE TO PLAINTIFFS' MOVING
8 PAPERS.

9 WE ALSO HAVE ADDITIONAL MOTIONS TO SEAL
10 WHICH HAVE BEEN SUBMITTED AND SCHEDULED ORIGINALLY FOR THE
11 HEARING TODAY. AND THAT HAS TO DO WITH PLAINTIFFS FILING
12 TWO MOTIONS TO SEAL AND THE DIRECTIVE SEALING PRIVATE
13 FINANCIAL INFORMATION OF A FEW SPECIFIC EMPLOYEES.

14 THE COURT IS GOING TO GRANT THE MOTIONS TO
15 SEAL WITH RESPECT TO THE LIMITED MATTERS; THAT IS, THE
16 EMPLOYEE NAMES, EMPLOYEE IDENTIFICATION INFORMATION, AND
17 THE TWO PRIVILEGE LOGS.

18 BEFORE I ADDRESS -- I ALSO MAKE COMMENTS
19 ABOUT DEFENDANTS HAVE OBJECTIONS ON THE MOTION TO STRIKE,
20 THE DECLARATION OF VIRGINIA EADY MARSHALL, DECLARATION IN
21 SUPPORT OF THE REPLY FOR PLAINTIFFS' MOTION FOR A CLASS
22 CERTIFICATION.

23 AND THE COURT DENIES THE MOTION TO
24 STRIKE. DENY -- OVERRULES THE OBJECTIONS. I WILL NOTE
25 THE DECLARATIONS WERE NOT MATERIAL TO THE COURT'S
26 DETERMINATION, SO THE COURT DID NOT CONSIDER MATERIALS IN
27 THOSE REPLIES.

28 FINALLY, WITH REGARD TO -- LET ME JUST SAY

1 SPECIFICALLY WITH REGARDS TO MOTIONS TO SEAL. IT SAYS,
2 FOR THE RECORD, I WILL INDICATE THAT PURSUANT TO
3 CALIFORNIA RULE OF COURT 2.550 AND 2.551, THERE EXISTS AN
4 OVERRIDING INTEREST OR OVERCOMES THE RIGHT OF PUBLIC
5 ACCESS TO THE RECORD OF THE MATERIAL THAT'S SOUGHT TO BE
6 SEALED; NAMELY, PRIVILEGE LOGS AND THE EMPLOYEE
7 IDENTIFICATION INFORMATION. THERE'S AN OVERRIDING
8 INTEREST THAT SUPPORTS THIS IN THE RECORD. THERE'S A
9 SUBSTANTIAL PROBABILITY EXISTING THAT THE OVERRIDING
10 INTEREST WOULD BE PREJUDICED IF THE RECORD IS NOT SEALED
11 AND THE PROPOSED SEALING IS NARROWLY TAILORED AND THERE'S
12 NO LESS RESTRICTIVE MEANS THAT EXIST TO ACHIEVE THE
13 OVERRIDING INTEREST.

14 WITH REGARD TO KNOCK L.A., DOES COUNSEL WISH
15 TO ADDRESS THE COURT? DO YOU WISH TO TELL ME ANYTHING?

16 MS. ARANDA OSORNO: I'LL SUBMIT ON THE PAPERS,
17 YOUR HONOR.

18 THE COURT: ALL RIGHT. THANK YOU.

19 OKAY. AS PROPOSED KNOCK L.A. HAS FILED A
20 MOTION FOR LEAVE TO PARTICIPATE AND TO OPPOSE DEFENDANTS'
21 MOTION TO SEAL DOCUMENTS. I'VE NOTED DEFENDANTS HAVE
22 WITHDRAWN MOTION TO SEAL EXCEPT FOR THE PRIVILEGE LOGS AND
23 KNOCK L.A. PROVIDED NO ARGUMENT WITH RESPECT TO THE
24 PRIVILEGE LOG; HOWEVER, KNOCK L.A. STATES THAT THE
25 INTEREST IN THE PRIVILEGE LOG ARE THEY MAY DEMONSTRATE THE
26 VOLUME AND SCOPE OF DOCUMENTS DEFENDANTS ARE KEEPING FROM
27 PLAINTIFFS. THAT DOES NOT DEMONSTRATE THE RELEVANCE OF
28 PRIVILEGE LOGS TO ANY OF THE COURT'S DETERMINATION WITH

1 RESPECT TO THE MOTION FOR CLASS CERTIFICATION.

2 IN ANY EVENT, KNOCK L.A.'S MOTION DOES NOT
3 ASSIST THE COURT WITH RESPECT TO WHETHER THE PRIVILEGE LOG
4 SHOULD BE SEALED.

5 AND I'VE ALREADY RULED THAT THE PRIVILEGE
6 LOGS WILL BE SEALED, AND THE COURT IS GOING TO DENY KNOCK
7 L.A.'S MOTION FOR LEAVE TO PARTICIPATE.

8 WITH REGARD TO SETTING ANOTHER STATUS
9 CONFERENCE.

10 LET'S HAVE A STATUS CONFERENCE ON
11 FEBRUARY 9, 2024, AT 11:00 A.M. AND I WANT THE PARTIES TO
12 MEET AND CONFER AND SUBMIT A JOINT REPORT NO LATER THAN
13 FEBRUARY 2ND. THIS TIMEFRAME WILL GIVE THE PARTIES
14 OPPORTUNITY TO SEE IF THEY WANT TO ATTEMPT TO RESOLVE THIS
15 CASE, THE APPOINTMENT OF A MEDIATOR OR DIRECT SPECIALIST.
16 AND I ENCOURAGE THE PARTIES TO TRY TO DO THAT.

17 THE REPORT DUE ON FEBRUARY 2ND SHOULD
18 PROVIDE A PROPOSED NOTICE THAT PARTIES WANT TO SUGGEST.
19 SEND OUT TO CLASS MEMBERS.

20 I ASSUME MORE SOPHISTICATED COUNSEL WILL
21 AGREE ON THE CLASS NOTICE. IF YOU CANNOT AGREE ON CLASS
22 NOTICE, EACH SIDE CAN PRESENT A PROPOSED NOTICE RED MARKED
23 AS TO THE DIFFERENCES BETWEEN THE PROPOSED NOTICE. AND
24 THE REPORTS ALSO INDICATE PROPOSALS GOING FORWARD IN TERMS
25 OF SCHEDULING FOR DISCOVERY DEADLINE FOR COMPLETION OF
26 DISCOVERY DEADLINE FOR DESIGNATION OF EXPERTS,
27 COUNTER-DESIGNATION OF EXPERTS.

28 THE DEADLINE FOR PLAINTIFF TO SUBMIT A

1 PROPOSED TRIAL PLAN AND DEFENDANT TO SUBMIT ANY OPPOSITION
2 TO PLAINTIFFS' TRIAL PLAN, UNLESS YOU CAN AGREE, SUBMIT A
3 JOINT TRIAL PLAN, AND A PROPOSED DATE FOR SETTING THE CASE
4 FOR TRIAL. THAT SHOULD ALL BE IN THE REPORT DUE FEBRUARY
5 2ND. WE'LL SEE EVERYONE FEBRUARY 9TH.

6 FINALLY, I'D LIKE TO THANK COUNSEL FOR THEIR
7 EXCELLENT PRESENTATIONS BOTH IN WRITING ON THE BRIEFING
8 AND ORALLY TODAY. I THINK COUNSEL DID AN OUTSTANDING JOB.
9 THEIR CLIENTS SHOULD BE EXCEPTIONALLY PLEASED AND PROUD OF
10 THEIR ATTORNEYS.

11 BEST WISHES TO EVERYONE FOR GOOD HOLIDAYS.
12 SEE YOU IN THE NEW YEAR.

13 MS. ANDRUS: THANK YOU, YOUR HONOR.

14 MS. DAVIS: YOUR HONOR, WOULD IT BE POSSIBLE TO
15 REQUEST A WRITTEN DECISION ON THE CLASS CERTIFICATION
16 MOTION?

17 THE COURT: DON'T WE HAVE A TRANSCRIPT?

18 MS. DAVIS: YES, WE DO, YOUR HONOR. THAT'S FINE.
19 WE CAN USE THE TRANSCRIPT IF THAT'S YOUR PREFERENCE.

20 I DO WANT TO MAKE SURE THAT THE CLASS
21 DEFINITION IS CORRECT BECAUSE I BELIEVE THERE ARE SOME
22 EXCLUSIONS THAT WERE NOT READ INTO THE RECORD, AND I CAN
23 CERTAINLY WORK WITH COUNSEL TO JUST MAKE SURE THAT THAT'S
24 CORRECT.

25 THE COURT: ALL RIGHT. I ORDER COUNSEL FOR THE
26 PLAINTIFF TO PREPARE A PROPOSED WRITTEN DECISION OR
27 PROPOSED STATEMENT OF DECISION AND TO SUBMIT IT TO COUNSEL
28 FOR THE DEFENDANT FOR REVIEW, FOR APPROVAL AS TO FORM AND

1 CONTENT, AND TO SUBMIT THAT. I THINK THAT SHOULD BE DONE
2 IN ADVANCE OF THE HEARING ON FEBRUARY 9TH. SO WHY DON'T
3 WE SET A CALENDAR FOR THAT.

4 COUNSEL FOR THE PLAINTIFF TO SUBMIT A
5 PROPOSED DECISION. THAT SHOULD BE DONE BY JANUARY 5TH AND
6 TO BE SERVED ON DEFENDANTS' COUNSEL FOR APPROVAL AS TO
7 FORM AND CONTENT. AND IF THERE ARE ANY DISAGREEMENTS ON
8 THE STATEMENT OF DECISION, DEFENDANT CAN FILE ITS
9 OBJECTIONS OR AMENDMENTS OR ADDITIONS TO THE STATEMENT OF
10 DECISION. THAT SHOULD BE SERVED ON PLAINTIFF BY JANUARY
11 12TH. THE PARTIES TO MEET AND CONFER AND SEE IF THEY CAN
12 RESOLVE THOSE ISSUES AND THEN IF IT'S NOT RESOLVED, THEN
13 THE PARTIES SHOULD SUBMIT A JOINT STATEMENT WITH REGARD TO
14 THEIR POSITIONS WITH REGARD TO PROPOSED STATEMENT OF
15 DECISION AND THAT JOINT STATEMENT SHOULD BE SUBMITTED BY
16 JANUARY 26TH.

17 MS. ANDRUS: YOUR HONOR, LORI ANDRUS ON BEHALF OF
18 PLAINTIFF.

19 I WANT TO MAKE SURE I UNDERSTOOD THIS
20 CORRECTLY BECAUSE I BELIEVE COUNSEL FOR THE DEFENSE WAS
21 JUST SAYING THE CLASS DEFINITION ITSELF SHOULD BE MADE
22 CLEAR, AND I'M HAPPY TO WORK WITH DEFENSE COUNSEL TO MAKE
23 SURE THAT THE CLASS DEFINITION ITSELF IS ACCURATE AND
24 CLEAR IN YOUR ORDER, BUT IT'S PLAINTIFFS' POSITION THAT
25 THE ORDER YOU JUST READ INTO THE RECORD IS THE ORDER AND
26 THERE SHOULD BE NO NEGOTIATION OVER ANY OTHER PARTS OF
27 YOUR ORDER.

28 THE COURT: WELL, THE PARTIES SHOULD MEET AND

1 CONFER. IF YOU DON'T NEED A STATEMENT OF DECISION, YOU
2 DON'T HAVE TO HAVE IT. IF YOU'RE SATISFIED WITH THE
3 RECORD, THE PARTIES CAN MEET AND CONFER BECAUSE THE CLASS
4 DEFINITION IS GOING TO HAVE TO BE, BY DEFINITION, IN THE
5 NOTICE TO THE CLASS.

6 MS. ANDRUS: AGREED.

7 THE COURT: SO IT WOULD BE INCORPORATED INTO THAT.
8 SEE IF YOU CAN WORK IT OUT WITHOUT GOING THROUGH THE
9 PROCESS OF A STATEMENT OF DECISION OBJECTIONS HEARING AND
10 THAT WE DO HAVE A COMPLETE RECORD AS FAR AS THE
11 TRANSCRIPT.

12 ALL RIGHT. THANK YOU COUNSEL.

13 (ALL SAY, "THANK YOU, YOUR HONOR.")

14 (PROCEEDINGS CONCLUDED AT 11:57 AM.)

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 6 HON. ELIHU M. BERLE, JUDGE

LARONDA RASMUSSEN, ET AL., ON)	
BEHALF OF THEMSELVES AND ALL)	
OTHERS SIMILARLY SITUATED,)	
)	
PLAINTIFF(S),)	CASE NO. 19STCV10974
)	
VS)	
)	
THE WALT DISNEY COMPANY,)	
ET AL.,)	
)	
)	
DEFENDANT(S).)	

I, LISA A. AUGUSTINE, OFFICIAL REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING PAGES 1 THROUGH 66, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON DECEMBER 8, 2023.

EXECUTED THIS 12TH DAY OF DECEMBER, 2023

Lisa Augustine
LISA A. AUGUSTINE, RPR, CSR NO. 10419

<p>-</p> <hr/> <p>-OOO- 5:8</p> <hr/> <p>1</p> <hr/> <p>1 39:4 48:10</p> <p>10419 5:6</p> <p>10:00 5:7 6:19</p> <p>11 29:20</p> <p>1197.5 46:16</p> <p>11:00 62:11</p> <p>11:57 65:14</p> <p>12,000 13:10</p> <p>12TH 64:11</p> <p>13 34:12</p> <p>15,000 10:25</p> <p>19STCV10974 5:1</p> <hr/> <p>2</p> <hr/> <p>2 18:22</p> <p>2,000 11:1</p> <p>2.550 61:3</p> <p>2.551 61:3</p> <p>20 55:24</p> <p>20,000 17:2 25:19</p> <p>200 11:1</p> <p>2004 37:9</p> <p>2014 48:10</p> <p>2015 39:4 44:9</p> <p>2017 33:17 50:3,5 51:14</p> <p>2019 44:6</p>	<p>2022 50:5</p> <p>2023 5:3</p> <p>2024 62:11</p> <p>203 53:27 54:5,11,16</p> <p>24,000 33:6</p> <p>25 33:18</p> <p>26TH 64:16</p> <p>2ND 62:13,17 63:5</p> <hr/> <p>3</p> <hr/> <p>3 19:5</p> <p>3,000 11:6 16:6,7 27:7 32:13 35:24</p> <p>30 11:8</p> <p>319 37:9</p> <p>34 37:9</p> <p>35 24:9</p> <p>38 48:16</p> <p>382 37:3</p> <hr/> <p>4</p> <hr/> <p>4 20:6</p> <p>40 33:22</p> <hr/> <p>5</p> <hr/> <p>5 21:17</p> <p>50-YEAR 33:1,3</p> <p>59 48:10</p> <p>5TH 64:5</p> <hr/> <p>6</p> <hr/> <p>6 5:4 55:5</p>	<p>60,000 10:26</p> <hr/> <p>7</p> <hr/> <p>7 22:25</p> <p>75 33:17,22,26</p> <p>7TH 10:2</p> <hr/> <p>8</p> <hr/> <p>8 5:3 26:20</p> <p>84 8:3 18:22 19:6</p> <hr/> <p>9</p> <hr/> <p>9 23:24 27:15 62:11</p> <p>9,000 13:11</p> <p>9TH 63:5 64:2</p> <hr/> <p>A</p> <hr/> <p>A.M. 5:7 6:19 62:11</p> <p>A15 39:7</p> <p>ABC 29:21</p> <p>ABILITY 55:23</p> <p>ABLE 18:12 47:16</p> <p>ABRIDGE 22:15,18</p> <p>ABSENT 12:15</p> <p>ABSURD 31:23</p> <p>ACCEPT 54:18</p> <p>ACCESS 61:5</p> <p>ACCOUNT 11:18</p> <p>ACCRUE 57:15</p> <p>ACCURATE 14:24 64:23</p> <p>ACHIEVE 61:12</p>	<p>ACKNOWLEDGE 34:15</p> <p>ACKNOWLEDGES 59:5</p> <p>ACP 34:15</p> <p>ACT 9:7,8,21 10:5,10 11:16,28 12:11 26:8 41:1,26</p> <p>ACTION 28:20 37:21, 26 38:2,24 40:8,21, 24 53:24 54:26 56:16 57:14,19,23, 27,28 58:2</p> <p>ACTIONS 22:15 37:4, 8</p> <p>ACTUAL 21:8 22:1</p> <p>ADDING 39:10</p> <p>ADDITION 8:25</p> <p>ADDITIONAL 59:26 60:9</p> <p>ADDITIONS 64:9</p> <p>ADDRESS 7:21 47:27 48:20 59:26 60:18 61:15</p> <p>ADDRESSED 53:20</p> <p>ADEQUACY 56:8,10 57:9</p> <p>ADEQUATE 12:21 56:9,17</p> <p>ADEQUATELY 37:18 40:4 58:1</p> <p>ADJOURN 59:25</p> <p>ADJUDICATED 10:2</p> <p>ADJUDICATING 58:4</p> <p>ADJUDICATION 37:25</p> <p>ADJUST 51:28</p>
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