

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
FRANCESCO PORTELOS,	: 12-cv-03141-RRM-VMS
Plaintiff,	:
	:
- versus -	: U.S. Courthouse
	: Brooklyn, New York
CITY OF NEW YORK, et al.,	:
Defendant	: December 15, 2014
-----X	

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

<u>For the Plaintiff:</u>	Bryan D. Glass, Esq. Glass Krakower LLP 100 Church Street, 8th Fl. New York, NY 10007
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1 THE COURT: Hi, this is Judge Scanlon. So
2 we're here for Portelos v. City of New York, et al.
3 It's 12-cv-3141.

4 So for the plaintiff?

5 MR. GLASS: Bryan Glass is here and Francesco
6 Portelos is on the line, as well.

7 THE COURT: Okay. And for the City defendants?

8 MS. GIAMBRONE: Assistant Corporation Counsel
9 Jessica Giambrone.

10 Good morning, your Honor.

11 THE COURT: Good morning. All right. Just
12 before we get going, as you know, we've had numerous
13 telephone conferences that sometimes get quite difficult.
14 So I am going to ask you not -- when you're speaking, to
15 let the other person finish and not try to talk over each
16 other because if that happens, I can't hear either of
17 you. So let's see if we can do this.

18 All right. Let me just make sure paperwork-
19 wise, I have the letter from the City for December 5th
20 and December 8th but then Mr. Glass, did you file
21 something because --

22 MR. GLASS: Yeah, I supplemented with --

23 THE COURT: Because --

24 MR. GLASS: -- a letter.

25 THE COURT: Okay, but what it says on the

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1 docket -- I mean is it on your letterhead or on --

2 MR. GLASS: No, I kept it on our letterhead
3 because it's supposed to be a joint letter, it's just
4 (indiscernible).

5 THE COURT: All right.

6 MR. GLASS: I didn't have enough time to
7 respond to it, so I just kind of italicized in mine.

8 THE COURT: All right. So that's why, I wasn't
9 sure because I saw that you had filed it. This is the
10 one on the docket at 68 but I got it. I wasn't sure what
11 this was supposed to be. All right.

12 Let's just jump ahead to this issue for which
13 the City -- Corporation Counsel is asking for an in-
14 person conference. Does this need to happen? Can we
15 talk about it now? What's --

16 MS. GIAMBRONE: We can talk about it now, your
17 Honor. You know, earlier on in the litigation, I had
18 requested a confidentiality order regarding the
19 e-mails --

20 THE DEFENDANT: Right.

21 MS. GIAMBRONE: -- and your Honor denied that
22 application. And I am just renewing that application
23 because it's now come to my attention that in October,
24 you know, after there had been an exchange of e-mails,
25 Mr. Portelos had e-mailed a Ms. Lori Wood (ph.), who is a

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1 PTA president, a PTA member, was -- you know, nothing to
2 do with the fact pattern except being a non-party witness
3 perhaps who had made complaints to the principal about
4 some of his behavior, disruptive behavior and he e-
5 mailed her and cc'd one of the e-mails that had been
6 exchanged --

7 THE COURT: Okay.

8 MS. GIAMBRONE: -- and the entire e-mail is to
9 Ms. Wood saying, "We can't thank you enough for your
10 years of service," and then the e-mail is entitled -- the
11 attached e-mail, "Lori Wood ignored issues."

12 THE COURT: Uh-hum.

13 MS. GIAMBRONE: And the e-mail is one in which
14 Ms. Wood had e-mailed Principal Hill saying, "Ms. Hill:
15 I just wanted to let you know I received this e-mail from
16 Mr. Portelos." So, Ms. Wood had been forwarding
17 something to the principal, you know, I guess that had
18 been concerning to her and, you know, this is just par
19 for the course with this plaintiff. He has been using
20 this discovery to harass, you know -- in my estimation,
21 to harass potential non-party witnesses. And actually,
22 Ms. Wood then forwarded that to Ms. Hill and said, "This
23 is creeping me out. How does he have access to my e-
24 mails and why is he contacting me, since he is no longer
25 affiliated with this school?" which is I.S. 49.

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1 Additionally, Mr. Portelos has been blogging,
2 attaching e-mails from Andrew Borden, that pertain
3 specifically to him, certainly are not, you know,
4 regarding an issue of public concern.

5 So it has been my concern throughout that Mr.
6 Portelos uses these materials for his own personal
7 reason, that his own personal attempts to harass
8 individuals who are even tangentially related to this
9 litigation, and I think it appropriate at this time that
10 they be marked confidential and if there's something
11 specifically that he believes is concerning to the
12 public, that he identify those and make a specific
13 application because I have yet to see him using these
14 appropriately and I think it's an abuse of the process.

15 THE COURT: For the plaintiff?

16 MR. GLASS: She's throwing a lot of terms
17 around like harassing and things like that but unless she
18 can identify specifically the context, I'm sort of at a
19 loss as to what exactly he's been doing that she's
20 claiming. I mean, you denied the protective order about
21 a year ago and now at the end of the litigation, there
22 seems to be a complaint.

23 I believe there was one e-mail to the PTA
24 president, he expressed -- I don't think he even shared
25 the e-mail. It's my understanding he expressed his

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1 concerns that she had been forwarding e-mails about him
2 behind his back to the principal which she was aware of
3 during the course of the litigation but I don't know.
4 This is kind of generic. She's just kind of saying
5 there's a general harassing pattern. She's not giving a
6 lot of details and unless they have specifics about what
7 the issue is --

8 She forwarded me one e-mail -- didn't have a
9 conversation with me, sent me one e-mail about Lori Wood
10 that said something like, "Thank you for your services."
11 I honestly don't even understand the context of it. So
12 it's hard for me to respond because, you know, it's just
13 sort of this generic, he's harassing people.

14 But does he blog about his case? He does blog
15 about his case. But he assures me he is not using
16 confidential materials to do that and he's just -- you
17 know, that's what this whole case has been about, about
18 you know what he's been going through. So I don't think
19 there's anything to preclude that, I mean, unless she's
20 identifying particular e-mails that are at issue. I
21 mean, it does seem she's asking for a broad-brush
22 approach, sort of shut down any of these activities, any
23 of his blogging activities and I don't think she's
24 identified anything in particular for the Court that
25 suggests that he's violating anything.

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1 He's got sources -- you know, not everything he
2 comes across is part of the litigation. He's got a lot
3 of this stuff coming from FOIL and from other sources.
4 So for her to say did you use any of the e-mails,
5 specifically in this case without identifying the e-
6 mails, makes it extremely difficult for me to respond.

7 If she wants to say he's revealed document
8 number 0366 in this context or, you know -- then I could
9 respond to it but she's just kind of saying he's
10 generally engaging in this harassing behavior and paints
11 him as this -- you know, as this troublesome person for
12 the Board and I don't think that's fair.

13 Now if she wants to get into specific e-mails
14 and show that he violated a protective order, then I
15 think it's appropriate but to just say, you know, we
16 don't like some of his blogging activities without
17 identifying anything specific, that's very difficult to
18 respond to.

19 THE COURT: All right. What about Ms. Wood who
20 Corporation Counsel is saying is a potential witness and
21 apparently wrote something that said that Mr. Portelos
22 being in touch with her was creeping her out. I mean,
23 how is that not a problem?

24 MR. GLASS: Well, it's the nature in which he's
25 been doing the whole time. Every time there's a -- she

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1 was a PTA president of the school, my understanding is
2 that, you know, Mr. Portelos was revealing information to
3 her, you know, about the principal and she would just
4 kind of go to the principal and just rat on him,
5 basically, to the principal and says he's undermining you
6 or he's doing things that you're not going to like, Ms.
7 Principal. So to curry favor with the principal, this
8 seems to be along the same lines and I think Mr. Portelos
9 made one simple comment or I think he said she's a
10 neighbor and said something to the fact like, thanks a
11 lot for ratting me out. I found out you ratted me out
12 all the time.

13 He didn't talk about any specific comment. He
14 didn't talk about any specific e-mail, nothing
15 confidential. He just said, you know, Ms. Wood, you
16 know, my neighbor. Why have you been revealing all this
17 stuff to the principal behind my back when I say things
18 in confidence and you just report it right to the
19 principal? That's what that's about and now Ms. Wood is
20 doing the same thing she did the whole time, she did when
21 Mr. Portelos was revealing confidential -- giving her
22 confidential information in his quest to try ti, you
23 know, change the school. She would basically just report
24 everything right back to the principal.

25 And so it was a breach of trust that he was

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1 commenting on. It wasn't anything specific that -- it
2 wasn't any specific e-mail that was revealed or anything
3 like that. He was just offended that she had breached
4 his trust and now she again, was trying to curry favor
5 with the principal and say look what he's doing. He's
6 contacting me again.

7 You know, so --

8 MS. GIAMBRONE: Well, this is the
9 (indiscernible)

10 THE COURT: Don't interrupt.

11 MR. GLASS: --- (indiscernible) nothing
12 specific about anything. She's not saying that he was
13 revealing any particular e-mail. She's basically just
14 saying that Ms. Wood is a little concerned because Mr.
15 Portelos has expressed his dissatisfaction that she's
16 been, you know, ratting him out. And I think that --

17 THE COURT: All right. Hang on.

18 MS. GIAMBRONE: I --

19 MR. GLASS: You know --

20 THE COURT: I don't -- I don't --

21 MR. GLASS: -- I am just saying (indiscernible)
22 with Ms. Wood, I think --

23 THE COURT: All right.

24 MR. GLASS: -- that would --

25 THE COURT: All right.

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1 MR. GLASS: -- take care of the issue.

2 THE COURT: Mr. Glass?

3 MR. GLASS: I think that's the only --

4 THE COURT: Mr. Glass?

5 MR. GLASS: -- issue I hear here.

6 THE COURT: Mr. Glass? Mr. Glass?

7 MS. GIAMBRONE: Judge?

8 THE COURT: I don't -- hang on. Hang on. Hang
9 on. I don't need -- that answer was long and repetitive.
10 Let's try to cut to the chase on these things. Do you
11 agree --

12 MS. GIAMBRONE: Well, your Honor --

13 THE COURT: Hang on, hang on, hang on, hang on.
14 Do you agree -- this is for Mr. Glass -- do you agree
15 that Ms. Woods is a potential witness in this case?

16 MR. GLASS: No, I don't believe so. She's
17 never been identified as a potential witness for anybody
18 in this case.

19 THE COURT: All right.

20 MR. GLASS: She's not any witness list. She's
21 not anything. She's never -- I never even heard of her
22 name until Ms. Giambrone e-mailed me her information, you
23 know, a few minute -- about a week ago. I didn't even
24 know who she was.

25 MS. GIAMBRONE: Well, there's a lot that Mr.

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1 Glass doesn't know about this litigation.

2 THE COURT: All right. Just stop --

3 MS. GIAMBRONE: I don't (indiscernible)
4 response to (indiscernible).

5 THE COURT: Stop with the sniping. We just
6 started this conversation. Don't make the ad homonym
7 attacks. What's the City's -- what's your response, Ms.
8 Giambrone?

9 MS. GIAMBRONE: Well, my response is that this
10 is exactly the problem with the plaintiff. Anyone who
11 disagrees with him, he then personally goes on a mission
12 to smear and attack and intimidate. This woman is a PTA
13 member. She is fully entitled to contact the principal
14 and speak to her about anything she wants. And if Mr.
15 Portelos is telling her things, she is at liberty to then
16 pass them along to the principal and it was only at the
17 end of October 2014, he's no longer at I.S. 49. What, if
18 any, legitimate purpose does he have to contact this non-
19 party witness and even if this particular individual does
20 not testify at trial, the fact is that Mr. Portelos has a
21 reputation now and has had such a chilling effect on
22 everyone associated, because they know that if they speak
23 out or they say anything contrary to him, he then posts
24 their name all over his blog. He embarrasses them. He
25 makes grandiose allegations.

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1 Mr. Glass himself uses the language that Mr.
2 Portelos does about ratting them out -- about ratting him
3 out. So nobody wants to cooperate because Mr. Portelos
4 has been successful in using materials in this litigation
5 to further intimidate people.

6 And with regards to Bates-stamping and whatnot,
7 I'm not able to do that because Mr. Portelos cuts and
8 pastes portions of e-mails and even when he was asking me
9 for a privilege log would not actually exchange the
10 document identifying it with a Bates stamp. Instead, he
11 cuts and crops out portions and then adds them to another
12 document, so I cannot piece together the source.

13 But if you look on his blog, he freely admits
14 that he's obtained thousands of documents in relation to
15 his federal litigation exposing everyone that has ratted
16 him out and exposing everyone who has felt against him.

17 So, you know, I don't see what legitimate
18 reason he has to publicly disseminate these materials and
19 he has yet to do so. Instead, he just uses it for his
20 own personal reasons which I submit harasses even those
21 that we have identified as potential witnesses because I
22 have had many people explain to me, "I don't want to have
23 anything to do with this because of the way he treats
24 people when they get involved."

25 THE COURT: All right. Do you have a list of

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1 people who have contacted you saying they don't want to
2 hear from him?

3 MS. GIAMBRONE: Well, Mr. Candia (ph.), Susan
4 Abramowitz (ph.).

5 THE COURT: Uh-hum.

6 MS. GIAMBRONE: I mean the named defendants
7 are --

8 THE COURT: Obviously, but they're represented.

9 MS. GIAMBRONE: -- ever (indiscernible). You
10 know, it's not -- no one wants to -- he just personally
11 goes after people.

12 THE COURT: I know, but -- all right, so
13 there's a couple of things. Obviously, the named
14 defendants he can't be in touch with. Are there other
15 people who told you --

16 MS. GIAMBRONE: Well, he still does.

17 THE COURT: Right.

18 MS. GIAMBRONE: And he still uses these
19 materials on the blog. And he tweeted about Erminea
20 Claudio, that she had misused millions of dollars of
21 funds which was, you know -- I have no idea where that
22 came from. She was extremely upset about that.

23 THE COURT: But that's not -- look, there's a
24 couple of issues here. One, is the use of the discovery
25 materials. Two, is contacting witnesses and being

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1 harassing if they're known to be witnesses. And three is
2 this overall suggestion that there's harassment going on.

3 Mr. Portelos has a right -- we'll start with
4 the last one -- has a right to exercise his First
5 Amendment right to speech.

6 MS. GIAMBRONE: Yes.

7 THE COURT: That being -- hang on, hang on --
8 that being said, you know, he's still an employee of the
9 DOE and if his conduct and what he's doing now is
10 violative of whatever rules and regulations there are,
11 then why isn't it this a current employment issue? I
12 understand -- well, I am hazarding the guess, that
13 there's some reluctance to do things at that rate because
14 then there will be a claim of retaliation but if there is
15 material and information to support that he's doing
16 things he shouldn't be doing to employees in his current
17 capacity, then that seems to me to be an employment
18 issue.

19 Look --

20 MS. GIAMBRONE: But, your Honor --

21 THE COURT: Go ahead.

22 MS. GIAMBRONE: -- using these materials that
23 have been obtained in -- I mean, this is not the
24 appropriate use of discovery materials and while yes, if
25 there were materials that centered upon something that

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1 were of public concern, that he was using to exposing
2 wrongdoing or whatnot, then I would concede that yes, he
3 has a right and the process is supposed to be transparent
4 for those very reasons but that's not what's happening.

5 I mean there's -- what is the legitimate reason
6 to contact a PTA member with materials obtained in this
7 litigation?

8 THE COURT: Well --

9 MS. GIAMBRONE: There's none.

10 MR. GLASS: I could --

11 THE COURT: I mean he could call -- normally,
12 he could call whoever he wants. It's just if those
13 people are witnesses, then -- and he should know they're
14 witnesses and you're telling me they've said they don't
15 want to be contacted by him, then that's a particular
16 kind of person and thing that we can deal with.

17 But if it's more general and you're basically
18 saying he shouldn't be talking to people, then that
19 doesn't really, you know --

20 MS. GIAMBRONE: Well, no --

21 THE COURT: -- I can't stop him from doing
22 that. Go ahead. Go ahead.

23 MS. GIAMBRONE: What I'm requesting is that he
24 not be permitted to use e-mails other than within this
25 litigation because of his past behavior --

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1 THE COURT: I know but --

2 MS. GIAMBRONE: -- that he's exhibited through
3 this litigation.

4 THE COURT: But the substance of these
5 materials is not confidential. So you're basically
6 saying don't -- you know, even though they're not
7 confidential, now retrospective -- I understand you asked
8 for the relief at the time but that he should -- really
9 as a means to stop him from using non-confidential
10 materials, I should make them confidential and that's not
11 really the issue.

12 It's not to make -- it may be an effective way
13 because then you'll have an order and then you would be
14 able to say, you know, he violated the order if he does
15 it, but that's not really the wrong that you're getting
16 at. Your concern is that his communications, some of
17 which you think are inflammatory, maybe defamatory, it's
18 not that the substance --

19 MS. GIAMBRONE: No, your Honor.

20 THE COURT: -- is confidential.

21 MS. GIAMBRONE: I think the federal rules allow
22 for a protective order where a party is using materials
23 to harass others.

24 THE COURT: Yeah, but the protective order is
25 not of the materials. The protective order is of stop

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1 doing the harassing communications.

2 MS. GIAMBRONE: Well --

3 THE COURT: And so the question is how to stop
4 the communications. It's not to change or misdescribe
5 the materials. So if what you're --

6 MS. GIAMBRONE: Well, I want to ensure at the
7 very least --

8 THE COURT: Uh-hum.

9 MS. GIAMBRONE: -- that he be halted from using
10 these materials to intimidate anyone else. So if that's
11 the best I can get that he can't use these materials on
12 his blog or he can't use these materials to contact
13 people and in an underhanded manner, intimidate them by
14 letting them think, look, I have access to all your
15 communications and thereby, you should stop communicating
16 with the principal and having a chilling effect.

17 I mean, this is an active member of the
18 Intermediate School 49 community.

19 THE COURT: I know, but that's why that goes
20 back to my question of why isn't this a -- go ahead,
21 forget it. Why isn't this more of an employment issue?

22 MS. GIAMBRONE: Well, no, because as you --
23 because he's using the materials to do this.

24 THE COURT: I understand what he's doing but
25 it's --

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1 MS. GIAMBRONE: It might be both, your Honor.

2 THE COURT: -- (indiscernible).

3 MS. GIAMBRONE: It might be an employment issue
4 and at the same time, he's misusing litigation materials.

5 THE COURT: Hmm.

6 MS. GIAMBRONE: So it may very well be an
7 employment issue, as well, but at the moment I am going
8 down the path of ensuring that these litigation materials
9 are not misused.

10 You know, I am not -- if (indiscernible)
11 decides to pursue employment action, that's not something
12 that I tell them to do, you know?

13 MR. GLASS: I don't see this as -- the only
14 thing she's identified is Lori Wood. Lori Wood is Mr.
15 Portelos' neighbor and if Mr. Portelos wants to say to
16 Lori Wood in the street, by the way, I'm kind of upset by
17 the way I understand you're -- you know, you've been
18 revealing information about me to the principal that I
19 thought was between us, this is what she's asking to
20 protect. She's steering my client, trying to suggest
21 he's harassing, using these big terms like harassing.
22 He's been harassed through this whole case, that's why we
23 have this case in the first place and she's just smearing
24 him and basically saying that he's harassing all the way
25 to the -- because what they do is Every time there's a

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1 contact from Mr. Portelos, they run to the principal and
2 they say, oh, we're scared, we're scared. They've been
3 doing this from the (indiscernible) litigation. And this
4 is how this whole thing started in the first place and
5 why there were 38 false investigations against him at OSI
6 that were unsubstantiated but the principal had initiated
7 it because --

8 THE COURT: All right.

9 MR. GLASS: -- Every time he said something,
10 they ran to the principal.

11 THE COURT: All right.

12 MR. GLASS: What she's going to do is turn this
13 into like a blanket protective order for him to stop his
14 blogging activity when he's revealing the truth. There's
15 (indiscernible) and all she is (indiscernible) one single
16 e-mail that's been revealed. She hasn't revealed
17 anything. All she says is (indiscernible) one time --

18 THE COURT: I got it.

19 MR. GLASS: -- sent (indiscernible).

20 THE COURT: I got it.

21 MR. GLASS: -- you know, thank you for that.

22 THE COURT: I got it.

23 MR. GLASS: Thank you for revealing my
24 confidences.

25 THE COURT: I got it.

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1 MR. GLASS: That's all she has right now --

2 THE COURT: I got it.

3 MR. GLASS: -- and the (indiscernible).

4 THE COURT: I got it. I got it. I got it. I
5 understand. And really, we're going to go through a
6 couple of more issues. I don't want -- it's not helpful
7 to get long repetitive answers. Just make the point and
8 stop.

9 All right. Look, Rule 26 allows for protective
10 orders. So I'm just going to read -- this is 26 -- let's
11 see 4 -- no, sorry, 5. All right. "See Protective
12 orders: In general, a party or any person from whom
13 discovery is sought may move for a protective order in
14 the Court where the action is pending. And the motion
15 must include a good -- a certification that the movant
16 attempted good faith conferred" -- dah-dah-dah, whatever.
17 I got that.

18 "The Court may for good cause issue an order to
19 protect a party or a person from annoyance,
20 embarrassment, pressure or undue burden or expense
21 including one or more of the following." So I suppose
22 one could say that (b) would be a version of what's being
23 asked for her, "Specifying the terms including the time
24 and place where the disclosure or discovery," -- and
25 other various limitations.

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1 I don't think there's good cause shown here.
2 We have one example of one person who says that she is
3 creeped out by something.

4 MS. GIAMBRONE: Well, your Honor, in addition
5 there are the individuals I cited in the original
6 protective motion.

7 THE COURT: Do you know where that is on the
8 docket?

9 MS. GIAMBRONE: I have to pull up ECF.

10 THE COURT: So you have the protective order,
11 the one at 50. Is that a different one?

12 MS. GIAMBRONE: No, I --

13 THE COURT: This is sort of just generic, I
14 guess. Those are the materials, suggested at -- let's
15 see. 37, I think is the order on it, right?

16 MR. GLASS: I think that's the memorandum and
17 order.

18 THE COURT: Yeah, right. So these are the
19 folks that I think this is the one that talks about it.
20 All right. I'm just looking for the list of names. All
21 right. Let's see. These are the papers that start at 32
22 and go forward.

23 MS. GIAMBRONE: Right.

24 THE COURT: I'm just looking for the names.
25 All right. I don't see the names and let's see, maybe

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1 it's in the affidavit.

2 MR. GLASS: Could I just ask, is there anything
3 new that -- other than Ms. Wood, has there been any other
4 complaints about anything recent that he's done with
5 these individuals because this stuff was from way back in
6 the beginning of the case. I'm not aware of anything new
7 that -- any new complaints, other than this Lori Wood
8 complaint. Is there anything else that (indiscernible)
9 at issue here?

10 MS. GIAMBRONE: Well, I don't know everyone who
11 he has contacted but you're telling me -- it seems that
12 you're telling me, that he's also contacted Ms. Wood in
13 the neighborhood and has had verbal confrontations with
14 her --

15 THE COURT: All right.

16 MS. GIAMBRONE: -- (indiscernible) an e-mail.

17 THE COURT: All right.

18 MR. GLASS: Let me understand, one
19 communication with Lori Wood. Is there any other
20 communication at issue right now or are you just talking
21 about stuff that happened way back at the beginning of
22 the case when you're saying Candi and Abramowitz were
23 contacted by him during the course of this case that led
24 to this litigation.

25 MS. GIAMBRONE: I'm --

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1 MR. GLASS: I haven't heard any new complaints
2 about anything else other than Ms. Wood that you've
3 identified in the last month --

4 MS. GIAMBRONE: Well, (indiscernible) --

5 MR. GLASS: That's why I just want to say
6 something out of that --

7 MS. GIAMBRONE: Erminea Claudio was contacted
8 -- was tweeted by him for no good reason other than to
9 harass her and he posted it on her -- like this
10 superintendent web site or the CSA web site, her union,
11 making grandiose allegations about misuse of millions of
12 dollars of funds. On his blog, he continues to target
13 individuals using these materials.

14 You know, I wasn't planning on speaking about
15 this at length. I thought I --

16 THE COURT: All right.

17 MS. GIAMBRONE: That's why I requested --

18 THE COURT: All right.

19 MS. GIAMBRONE: -- an in-person conference but
20 you know --

21 THE COURT: So look --

22 MS. GIAMBRONE: This is just a pattern -- this
23 is just his typical pattern.

24 THE COURT: All right. So I am just -- just
25 for the record, if you're referring to the same people,

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1 there was basically the blanket suggestion, so the
2 documents referring to non-party administrators, teachers
3 or paraprofessionals at I.S. 49, that they would be
4 limited in their disclosure.

5 And then some of the names that you've
6 mentioned on this call are the people who were mentioned.
7 They seem like Richard Candi, Susan Abramowitz, Ms.
8 Abraham, Ms. Hargraves, Mr. Trombetta, Liotis and Rozio
9 (ph.).

10 Look, for the reasons that are set forth in
11 this order, which is filed on the docket at 37 on the
12 25th of November of last year, I don't think there's good
13 cause shown to give the confidentiality order based on
14 what's been said here today.

15 If there's some other concrete information that
16 would suggest that you meet this good cause standard, you
17 know, then you can raise it but, you know, not based on
18 what's been said so far.

19 All right. Let's talk about discovery. So
20 what is your view as to what's going on? The Corporation
21 Counsel's view is the document discovery is complete?

22 MS. GIAMBRONE: We just need some fresh
23 authorizations but otherwise, yes, and just to respond to
24 plaintiff's statement on the record that he didn't have
25 time. I mean, both parties were supposed to be thinking

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1 about what they believed was still outstanding in this
2 litigation.

3 THE COURT: Right.

4 MS. GIAMBRONE: So it's not as though he needed
5 to wait for me in order to think about what he wants to
6 prosecute his case.

7 THE COURT: Yes, that would be correct. Yes.

8 MR. GLASS: Well again, we get discovery
9 materials, very much the last minute. We're trying to
10 work through all this stuff that's been provided. I
11 don't really anticipate -- we have Ms. Rodi's (ph.)
12 deposition tomorrow. We're just working through the rest
13 of the material. She said she didn't have Bates stamp
14 numbers, so it took a couple of days to relocate those
15 documents. I don't think that's been any major issues.

16 We still have this issue of the amended
17 complaint out there and that would trigger the discovery
18 and I'm not sure how we would handle that. I guess we
19 would just ask for a very limited period to just finish
20 reviewing the documents that were provided.

21 MS. GIAMBRONE: I --

22 MR. GLASS: I'm not saying that she -- she has
23 provided privilege logs. There were some additional
24 documents that we were working through to make sure if we
25 have any additional questions.

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1 MS. GIAMBRONE: I --

2 MR. GLASS: But I am not looking to drag this
3 out forever.

4 MS. GIAMBRONE: No, your Honor.

5 MR. GLASS: I really -- we're concluding
6 discovery and we have the deposition of Ms. Rodi. There
7 was some scheduling issues, so we're doing it tomorrow
8 and (indiscernible) up any significant discovery would
9 how be the event of the complaint is -- you know, with
10 the false arrest claim, if that's going to be part of
11 this litigation. But I think, you know, in all intents
12 and purposes, I think we are substantially complete.

13 MS. GIAMBRONE: Well, I just want to ensure
14 because as I've mentioned, I am going out on leave
15 imminently and whoever inherits this, I am hoping will
16 just be handling the motion because there has been, you
17 know, at this point by my count, at least over 8,000
18 document exchanged and I just -- I don't feel comfortable
19 leaving this case to someone else to kind of parse
20 through what has been exchanged.

21 At this point, the privilege log was exchanged.
22 I have been in compliance with everything. Every -- any
23 extension I have had has been with the express consent of
24 counsel. So I just -- I don't want -- at this point, I
25 would like discovery -- this documentary discovery to be

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1 deemed closed.

2 THE COURT: WELL, since we haven't decided that
3 motion, I can't tell you that but --

4 MS. GIAMBRONE: Other than the amended
5 complaint.

6 THE COURT: Right, the police-related incident.

7 MR. GLASS: Well, we have Ms. Rodi's
8 deposition. I don't know if it's going to raise -- like
9 I may have to request additional documents. I hope not
10 but I'm just saying, you know, it's just -- you know,
11 we're doing one more deposition and, you know, again if I
12 want to (indiscernible) like a document here and there,
13 (indiscernible) from doing that. I don't expect to be
14 asking for anything substantial at this point.

15 THE COURT: All right. Hold on one second. I
16 mean it depends on what comes up with Rodi but I don't --

17 MS. GIAMBRONE: Well, I think her --

18 THE COURT: The only way --

19 MS. GIAMBRONE: -- deposition is only two
20 hours.

21 THE COURT: Yup.

22 MS. GIAMBRONE: And frankly her involvement
23 was, you know -- it was pretty thin and she really had no
24 decision-making power. She kind of assumed Mr. Gordon's
25 role after he separated from the agency and while Mr.

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1 Portelos was already reassigned and so her involvement is
2 extremely limited. So I am pretty confident there is no
3 -- nothing that should come up that would require further
4 discovery but I guess we'll see what happens tomorrow.

5 MR. GLASS: With all due respect, she's been in
6 charge for quite a while. There were a number of issues
7 that (indiscernible).

8 THE COURT: All right. We talked --

9 MR. GLASS: (Indiscernible).

10 THE COURT: -- we've talked about her ad
11 nauseam. We don't need to talk about her more. All
12 right. So what authorizations does the defendants need?

13 MS. GIAMBRONE: There was a UFT (ph.)
14 authorization that I just need a freshly signed copy
15 that, I guess counsel can bring tomorrow.

16 MR. GLASS: Yeah, he'll be there, so we can
17 (indiscernible).

18 MS. GIAMBRONE: And then the only other issue,
19 your Honor, was the joint pretrial order.

20 THE COURT: I assume you want to make a motion
21 for summary judgment.

22 MS. GIAMBRONE: Yes. And I think the premotion
23 letter is to be filed by the 23rd.

24 THE COURT: Right. What's the plaintiff's
25 position?

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1 MR. GLASS: I'm not opposed to that. I mean, we
2 may be cross-moving for partial summary judgment, as well
3 but I don't have a problem (indiscernible) joint pretrial
4 order.

5 THE COURT: All right.

6 MR. GLASS: But I still don't really -- I don't
7 know what I'm doing with the other claim in this case but
8 the --

9 THE COURT: All right. I'm going to put it off
10 until after the summary -- either the pre-motion
11 conference and if you're not going to do a -- you know,
12 if after your conversation with the district judge,
13 you're not doing a motion, or after you do the motion,
14 it's decided if the case is still alive, then you can do
15 the joint pretrial order then.

16 MS. GIAMBRONE: Thank you.

17 THE COURT: Okay. I mean I it seems to me
18 discovery is done except for what comes up at the Rodi
19 deposition but there's already been lots and lots of
20 discovery related to her. So unless it's something
21 that's totally new, that nobody knew about, there's no
22 more discovery.

23 So her deposition, when is it tomorrow?

24 MS. GIAMBRONE: Tomorrow at 10:00.

25 THE COURT: Excuse me. Sorry.

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1 MS. GIAMBRONE: Bless you.

2 THE COURT: All right. So why don't you give
3 me a letter on the 17th telling me if you're done or if
4 you're not, what the issues are. All right.

5 As much as I would like you -- well, to put in
6 that letter by the 23rd, let me just look at the district
7 judge's rules. Hold on one second. The computer is very
8 slow. Sorry, hold on.

9 MS. GIAMBRONE: It looks like a premotion
10 (indiscernible) and a letter not to exceed three pages.

11 THE COURT: Right. What's the response? Does
12 she have a response or not?

13 MS. GIAMBRONE: Parties so served make service
14 by the letter response within five days.

15 THE COURT: Okay. So how does that work for
16 you all? I mean it may be better than waiting until
17 you're going on leave, right?

18 MS. GIAMBRONE: Yeah, I mean I need to get it
19 done, so --

20 THE COURT: Well, what about the response? I
21 mean this is about the cross-motion piece of it.

22 MR. GLASS: I'm sorry, the what motion?

23 THE COURT: Are you -- I don't know about cross
24 but plaintiff's motion, are you making one or not?

25 MR. GLASS: I need to kind of discuss it

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1 actually (indiscernible) decision. I guess -- can I
2 direct that in the response to her paper?

3 THE COURT: No. I mean if it's your motion --
4 I can't tell you the district judge doesn't want to see a
5 cross-motion but I thought that's not -- what you're
6 saying doesn't sound like a cross-motion, is it? I mean,
7 I don't know. He didn't say very much about it, so --

8 MR. GLASS: Yeah, I got to think through it but
9 it probably be a response -- responding to her motion.

10 THE COURT: All right.

11 MR. GLASS: Can I have say like two weeks from
12 (indiscernible)?

13 THE COURT: Well, it's the district judge's
14 rules. It finally came up. Hold on a second. I don't
15 know, what's the Corporation Counsel, your position on
16 having -- plaintiff having some additional time to
17 respond given that it's a holiday week?

18 MS. GIAMBRONE: That's fine.

19 THE COURT: Okay. All right. So you're filing
20 it by the 23rd?

21 MS. GIAMBRONE: Yes.

22 THE COURT: So why don't you respond by the
23 6th?

24 MR. GLASS: Is that a Friday or --

25 THE COURT: It's a Tuesday. It's two weeks

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1 after she's filing it.

2 MR. GLASS: Just a second. Do you mind if I
3 take a look at --

4 THE COURT: Well, let's go back then. Ms.
5 Giambrone, do you want more time? Do you want to do
6 yours a little bit later? I don't know what your
7 schedule is like here.

8 MS. GIAMBRONE: I mean, I'm due on New Year's
9 Day. So if you want to say --

10 THE COURT: Well, I don't know if you want to
11 be working up till the last --

12 MS. GIAMBRONE: No.

13 THE COURT: I mean, this is up to you.

14 MS. GIAMBRONE: I mean we can say the 29th but
15 I'm frankly going to -- I'm working on it as we speak.
16 So hopefully, I'll file it before then but --

17 THE COURT: All right.

18 MS. GIAMBRONE: -- perhaps December 29th, so
19 then --

20 THE COURT: Okay. All right.

21 MR. GLASS: The 29th.

22 THE COURT: Hang on. Let me just write it down.
23 Sorry. One second. The 29th, so -- yeah, I'm sorry,
24 what date did you say, the 9th? Yeah.

25 MS. GIAMBRONE: And I guess there's always an

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1 off-chance you'll be hearing from a colleague that they
2 need more time, so --

3 THE COURT: All right. Well, this is really --

4 MR. GLASS: Do you have any idea who might be
5 covering while you're out?

6 THE COURT: Hang on one second.

7 MS. GIAMBRONE: I'm not (indiscernible).

8 THE COURT: Sorry. This is for the district
9 judge. So I don't know if you need -- if anybody needs
10 more time on the summary judgment piece of it. After
11 this, you should talk to her or write to her chambers.
12 All right.

13 So you're going to let me know on Wednesday,
14 just whatever issues are outstanding discovery-wise and
15 that's only going to come from the deposition. Okay.

16 Anything else?

17 MS. GIAMBRONE: No, your Honor.

18 MR. GLASS: No, I mean as far as that other
19 motion, is that going to be handled by the district judge
20 or you're not sure as far as --

21 THE COURT: I think I probably -- I didn't
22 look back. I think probably I'll handle it. but I've
23 got to look back at the docket. All right. Nothing
24 else? All right.

25 Happy Holidays! Good luck on the 1st.

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1 MS. GIAMBRONE: Thank you.

2 THE COURT: I have --

3 MR. GLASS: Due on New Year's Day?

4 THE COURT: I have a --

5 MS. GIAMBRONE: You might see me in the New

6 York Post.

7 THE COURT: The newspaper, yeah. You might be

8 one of the newspaper kids. It's always super cool

9 photos. All right. Good luck with that.

10 MS. GIAMBRONE: All right. Take care. Thank

11 you.

12 THE COURT: Okay, everybody. Bye.

13 MS. GIAMBRONE: All right. Bye-bye.

14 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this **3rd** day of **February**, 2015.


Linda Ferrara

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