Case No. S 130203

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

ABDUL-JALIL al-HAKIM,
Plaintiff-Appellant,
vs.
RESCUE INDUSTRIES, INC.,
Defendant-Respondent.

After a Decision by the Court of Appeal
First Appellate District, Division Five
Case No. A 101832

On Appeal from the Superior Court of the County of Alameda
The Honorable David C. Lee, Judge
Case No. 8218852

PETITION FOR REVIEW TO THE ATTORNEY GENERAL

AND SUPREME COURT

OF THE UNITED STATES OF AMERICA

RESPECTFULLY SUBMITTED BY

ABDUL-JALIL al-HAKIM,

Plaintiff-Appellant

7633 SUNKIST DRIVE
OAKLAND, CA 94605
PHONE: (510) 839-5400
FAX: (510) 638-8889

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INTRODUCTION

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INTRODUCTION

This is an appeal by appellant ABDUL JALIL AL-HAKIM, (plaintiff below), from two final judgments following jury verdicts in the Alameda County Superior Court award a judgment in favor of defendant RESCUE INDUSTRIES, INC. (hereinafter referred to as "Rescue Industries") and a judgment in favor of defendant BAY AREA CARPET CLEANING (hereinafter referred to as "Bay Area Carpet" or "Respondent").

ABDUL JALIL AL-HAKIM (hereinafter referred to as "Appellant") also appeals from the Superior Court's order granting Intervener CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU (hereinafter referred to as "CSAA-IIB") leave of court to intervene by filing a complaint in intervention herein.

The underlying action is based on a complaint for negligence, nuisance and damages arising out of the negligent repair, remediation and clean up of residential plumbing problems that occurred on or about February 18, 1997, in the lower level of Appellant's residence also used in his home operated business. (AR 1:1-6, Appeals Transcript at Exhibit K)

Essentially, the action is a property damage negligence action sounding in tort for

contamination of real property.

FACTUAL HISTORY

Appellant is a homeowner who sued Respondent drainage company, and Respondent carpet-cleaning company for contaminating his house in 1997 with mold and bacteria, and failing to properly clean it up. Appellant challenged a jury verdict for the defense on the grounds that the trial court erroneously admitted evidence of an unrelated 1991 sewage spill, when it erroneously admitted evidence that the homeowner had insurance coverage, and when it erroneously allowed Appellant's homeowner's insurance carrier CSAA-IIB to intervene in the action.

Plaintiff in the trial court brought his negligence and nuisance action against Defendants Rescue Industries and Bay Area Carpet for damages to his residential real property located at 7633 Sunkist Drive, Oakland California after Rescue Industries responded to a service call from Plaintiff that he had drainage problems at his residence.

A plumbing technician responded to Plaintiff's service request on February 18, 1997, inspected the plumbing at the residence and performed certain plumbing work that led to sewage water release into the lower level of Plaintiff's residence which he used for both office activities and recreational activities. The plumbing technician left the premises in a state of disrepair, but advised Plaintiff that he would have someone come and clean up the premises. (RT Vol.1 173:8-21)

Defendant Bay Area Carpet was called to clean up the water and sewage that had been released into the residence, however, Plaintiff asserted at trial that Bay Area Carpet did not perform its work properly, and as a result exacerbated the problem by causing contamination in part, in the nature of mold spores, to be released into the residence.

Additionally, as a result of this sewage spillage, Plaintiff filed a property damage/loss claim with his insurer, Intervener CSAA-IIB to complete the work and clean up started by Rescue Industries and Bay Area Carpet. (RT Vol.1 183:21-184:12)(RT Vol.1 252:22-253:9)

Around February 1998 Plaintiff also experienced roof leak and thus submitted a property loss claim completely independent of the spillage associated with Rescue Industries and Bay Area Carpet in that he had suffered water leaks and water damage in the upper level of his residence. While it took some time to repair the roof problems, they were finally completed to Plaintiff's satisfaction. (RT Vol.1 204:21-206-23)

CSAA-IIB ultimately paid a portion of Plaintiff's claim of loss for the roof leaks and associated damage to the upper level of his home and issued him a check in the sum of $92,032.17, a part of which sum was required to be paid to Plaintiff's mortgage company as part of the negotiations concerning of this disputed claim with CSAA-IIB. Plaintiff returned that check for $92, 032.17 and several other checks to CSAA-IIB because they were not sufficient to cover the amount of damage. (RT Vol.1 289:5-290:10; RT Vol.1 290:25-291:26)

CSAA-IIB and Plaintiff continued to disagree on the claim of loss until it reached a

point that the disagreement had to be resolved through litigation. Thus, in April 1999, Plaintiff filed an action in the Alameda County Superior Court, Case Number 811337-3, al-Hakim v. California State Automobile Association, et al., (AR 4:18, p.1:21-28 and 4:19, p.2:7-p.3:17; AR 4:26, Appeals Transcript at Exhibit K) because CSAA-IIB subsequently denied coverage of his claim. Additionally, CSAA-IIB filed a cross-complaint against Plaintiff in that action for reimbursement of policy benefits. (AR 4:6, at lines 9-11, Appeals Transcript at Exhibit K)

PROCEDURAL HISTORY

Plaintiff sought to exclude evidence of a sewage spill which occurred in 1991 as a result of a City of Oakland main piping problem as being unrelated to the issues in this lawsuit. (AR 10:45-55, Appeals Transcript at Exhibit K) He also sought to exclude of insurance in the negligence case under a collateral source theory by not opposing defendants motion seeking the same. (AR 11:56-57, Appeals Transcript at Exhibit K) At the commencement of trial Plaintiff sought to dismiss the complaint in intervention, or in the alternative to bifurcate the CSAA-IIB claim or address this issue in post-trial proceedings. (AR 9:38-44, Appeals Transcript at Exhibit K; TR Vol.1 2:17-3:9; TR Vol.1 3:21-5:25; TR Vol.1 9:2-13) The trial court determined that the claim in intervention presented a dispute of fact for the jury (TR Vol.1 11:12-17) and that CSAA-IIB had standing to present evidence, but not to present evidence that goes beyond the call of the case. (TR Vol.1 12:3-13)

A jury verdict was rendered in favor of both defendants, Rescue Industries and Bay Area Carpet and final judgments were entered as a result of these jury awards. (AR 12:59-60; AR 13:61-62, Appeals Transcript at Exhibit K) Notice of entry of judgment on verdict after jury trial dated January 3, 2003 and filed (AR 14:63-64, Appeals Transcript at Exhibit K) and this appeal was taken against the aforesaid final judgments.

BACKGROUND

The defendants filed motions for summary judgment and to dismiss all the charges, inclusive of fraud, misrepresentation, and discrimination and the courts denied them in January 2003 and held that they had committed tortuous acts against plaintiff. There were other causes of action that this complaint was amended to include, Abuse of Process and Violation of California Business and Professionals Code §17,200 ET SEQ, etc. in November 2003. The complaint was amended and this time the Law and Motion judge partially granted the defendants motions for summary judgment. That contention is before the California Appeals court today.

In February 1997 the lower level of plaintiff/appellant's home was contaminated with fecal sewage as a result of a backup while the drain was being cleared by a Rescue Rooter plumber. Four days later Rescue Rooter sent out Bay Area Carpet Cleaning to try to save the carpets and only further spread the contamination by not properly disinfecting the areas before they turned on four high velocity air blowers for four days to dry out the carpet and lower level of the home. This was a grave mistake.

After months of submitting several bids for the projected repairs to the home without having a scope of work or any satisfactory response from Rescue regarding their promise to make appellant whole, they suddenly denied their liability when it became apparent that the cost of repairs would be substantially higher than they were prepared to pay.

Even though there were numerous contacts by appellant with his insurance carrier, CSAA, they never came out to the home to adjust the claim until October 1997. After an attempt at a minor fix by installing a room deodorizer in the home for two more weeks that only further contaminated the home, and plaintiff/appellant's being told that everything was "OK", to move his family back in, plaintiff/appellant requested testing of the home for biological contamination. It was confirmed in December 1997 to have E-Coli, Stachybotrys, Bacillus, Penicillium, Aspergillus, Fecal Coliform(Feces), Mold, Fungi, Bacteria, etc., and was very dangerous, deadly. It was also found to contain asbestos that had been disturbed by CSAA workers further damaging the home. The result is the home has to be torn down and all personal property destroyed under EPA guidelines and the home rebuilt with all the personal property replaced. In spite of all this new information they maintained that plaintiff/appellant's family remain in the home.

In February 1998 the upper level of the home suffered some water damage from the El Nino Storms.

In May 1998 plaintiff/appellant received an unsolicited check for $94,000 as full payment for the damage to the lower level of the home. CSAA denied that there was any coverage for the business property, and sent two other unsolicited checks for $11,500 for all the personal property and $2,100 for the roof, which were returned. Plaintiff knew that was not nearly enough to cover the damage incurred and asked for substantiation for those figures and qualifications from the proposed contractors. None was ever forthcoming.

Plaintiff/appellant tired after 8 months of asking for proof for their position and in November 1998 decided to sue. CSAA responded with requesting Appraisal on the lower level and plaintiff moved to include the upper level as well. CSAA failed to respond timely to their own request for appraisal on the lower level and after their discrediting plaintiff's appraiser, plaintiff moved forward with his suit in April 1999.

PLAINTIFF/APPELLANT'S law suit was filed in April 1999 in Alameda County Superior Court, case #811337-3 captioned al-Hakim vs CSAA, Ken George, Willoughby Stuart & Bening, and Attorney Ron Cook where they are being represented by the firm of Ropers, Majeski in San Jose. The complaint for real and personal property damage demands for the complete removal under EPA guidelines and rebuilding of the home, and replacement of personal property, includes Professional Negligence, Breach of Good "Bad" Faith, Breach of Insurance Contract, Intentional Infliction of Emotional Distress, Fraud, Misrepresentation, Unruh Act, etc.

In an attempt to avoid plaintiff/appellant's law suit, defendants then went to court to compel appraisal and was granted the order in August 1999.

CSAA returned to the home in December 1999 under court order for an inspection, accepting full responsibility for any damage. Through their destructive testing, they caused a disastrous disturbance of the asbestos and bacteria in the lower

level. They did this testing under the supervision of both legal counsels from Willoughby Stuart & Bening; and Ropers Majesksi; their many experts and without regard to the required protocol set forth by their experts and in full violation of all federal and the CAL/OSHA laws and regulations.

Plaintiff/Appellant then discovered that the selected umpire was irreparably flawed and moved to have him and the tainted panel dismissed due to corruption. CSAA denied coverage on the lower level claim, and refused to comply with the court ordered appraisal, which they had obtained, twice. While CSAA canceled plaintiff/appellant's policy alleging many acts of fraud and concealment, the court ordered CSAA back to appraisal on both claims. CSAA admitted that they did cause a disturbance of the asbestos and bacteria from the December 1999 testing, but only mildly. The tainted appraisal panel rendered the appraisal awards wherein the total award was approximately the same amount of money ($120,000) CSAA had tendered in spite of CSAA's experts' minimum appraisal figure being over $300,000 to $700,000 and plaintiff/appellant's experts being over $1.3 million in damage.

Plaintiff/Appellant moved to vacate the fraudulent appraisal awards in August 2000 and after 3 years of defendants legal delays to prevent the motion from being heard, plaintiff prevailed in his Motion to Vacate the Appraisal awards against CSAA in February 2003.

The courts found that the awards had to be vacated if, among other grounds, "the award was procured by corruption, fraud, or other undue means"; or the appraisers(A. Michael DeCeasare, Ruben Estrada, Ron Magin and Gene Roberts) "exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted". The order further cited the improper use of "cash value" as replacement cost, use of erroneous "used cost" figures, denial of coverage, injection of fraud, concealment, breach of contract, and coverage issues without any reason or evidence, CSAA could not defend their actions nor those of their own appraiser. The matter of true Cost and Value is now to be submitted to proper appraisal and the new trial date is not set. This victory locks CSAA in on the Bad Faith actions we have submitted to the courts and are subject to summary judgment.

In the defendants first motion for summary judgment in January 2003, the court found that the defendants Willoughby Stuart & Bening, and Attorney Ron Cook had committed tortuous acts against plaintiff/appellant and denied their motion to be dismissed from the suit. The second motions for summary judgment and to dismiss in August 2004, also before the same judge, was denied again but the Willoughby Stuart & Bening, and Attorney Ron Cook motion for summary judgment was only denied in part this time.

In this recent decision, the judge stated that the response to the second motion for summary judgment did not go far enough in it's answer to deny their motion. He further stated that he knew many other facts of this case that could have been used in the response that were not and the response did not have to be limited to the alleged facts raised by the defense. It was discovered that plaintiff's then attorney had a conflict when he was reminded by the defense that he had worked with and for the three defendant partners of the law firm that were dismissed from the suit by virtue of his

defective response at the conclusion of the hearing. Plaintiff had tried to get the files from the attorney that filed the defective response for over five weeks before plaintiff/appellant even got a reply from him a week before the response was due. On two occasions plaintiff/appellant called to inform him that plaintiff/appellant was coming to get the files and was told that he could not get them.

Plaintiff/Appellant was also monitoring the proceedings with representatives from the offices of Congressman John Conyers, Charles Rangel and Barbara Lee and Alameda County Supervisor Keith Carson, during this time and has been ever since.

CURRENT MATTER

In the trial of Plaintiff/Appellant against defendants Rescue Rooter and Bay Area Carpets, held in October-November 2003 before the Honorable Judge David C. Lee, judge Lee conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of the Supreme Law of the Land, of the State of California, his duty as a judge and of the Code of Judicial Conduct with a repeated shockingly poor job of posturing the legal issues raised by the plaintiff, making and allowing comments, prohibiting plaintiff from his proper course of litigation, etc., while committing a Hate Crime, inciting Islamophobia and Xenophobia and therein cast a horrible example by a judge that has left no doubt about his contempt for a number of our most cherished constitutional guarantees.

Further, Judge Lee allowed or was the victim of defense counsels William Jemmott, Dan Crowley and Dan Hernandez and defendant Rescue Rooter orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony; committed fraud upon the Court of the State of California; aided and abetted criminal activity; committed willful, criminal and corrupt perjury; fraud; fraudulent concealment; conspiracy to commit fraud; conspiracy; subornation of perjurious testimony and solicitation of perjurious testimony; that when Maine v. Moulton is applied, bring all their actions into a new trial without the protection of privilege.

Additionally, Judge Lee allowed or was the victim of defendants Ron Cook, and his law firm of Willoughby Stuart and Bening, the hostile intervener CSAA and it's defense counsels Shawn O'Halloran and Stephan Barber and the firm of Ropers Majeski orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony; patterned criminal, willful, and corrupt fraud upon the court of the State of California; engaged in acts and created documents to coverup the unlawful tactics; fraudulent concealment by willfully and intentionally withholding their knowledge and insight of the intervention hearing and the transcript of said hearing to gain an order from the court after being denied; they failed and refused to disclose to the court their stealthily absconding the City of Oakland files

without the permission or knowledge of the City Attorney's staff; their spoliation of evidence with the disappearance of court records; and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents; their unpardonable breach in the chain of custody of said documents; conspiracy to commit fraud; conspiracy; extrinsic fraud; and for the doctrine of unclean hands with the appropriate consequent sanctions and punishment upon them.

Respectfully Submitted,

Abdul-Jalil al-Hakim
Plaintiff/Appellant

7633 Sunkist Drive
Oakland, CA, 94605
Phone(510) 839-5400
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MATTER FOR REVIEW

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Edward Ryan, a former Chief Justice of the Wisconsin Supreme Court and delegate to that state's constitutional convention in 1846, perhaps said it best. He said that the judiciary "represents no man, no majority, no people. It represents the written law of the land . . . it holds the balance and weighs the rights between man and man, between rich and poor, between the weak and the powerful."

***

Courts have said a trial judge must always remain fair and impartial. Kennedy v. Los Angeles Police Dep't, 901 F.2d 702, 709 (9th Cir. 1989). "He must be ever mindful of the sensitive role [the court] plays in a jury trial and avoid even the appearance of advocacy or partiality." Id. quoting United States v. Harris, 501 F.2d 1, 10 (9th Cir. 1974). "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

The above is applicable to this court by application of Article VI of the United States Constitution and Stone v Powell, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).

The Attorney General does not merely head up the Justice Department. He is responsible for ensuring that America is a nation in which justice prevails. Judge David C. Lee conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of the Supreme Law of the Land, of the State of California, his duty as a judge and of the Code of Judicial Conduct with a repeated shockingly poor job of posturing the legal issues raised by the plaintiff, making and allowing comments, prohibiting plaintiff from his proper course of litigation, etc., while committing a Hate Crime, inciting Islamaphobia and Xenophobia and therein cast a horrible example by a judge that has left no doubt about his contempt for a number of our most cherished constitutional guarantees. "Where law ends, tyranny begins. Over the years, I have come to believe that the law ends precisely where the justice system has failed in its duty to ensure impartiality and fairness....Supreme Court Justice Alan Page".

Under any ordinary circumstance, if a plaintiff in a matter before the court has an issue that might reasonably be considered for a mistrial, he would take the matter up with the trial court judge. That is not possible here because the trial court judge is the primary source of the complaint and with this being his last matter before he retired, there was no one unbiased to appeal to. The next step might be to address the matter with the presiding judge of the court. That option is unattractive for the same reasons as taking the matter up with the perpetrator.

The State Appeals court did not want to make a fair, informed, impartial evaluation of the facts and evidence, and the California State Supreme court has not considered it for some reason that defies the information they provided to plaintiff and counsel. To refer the matter to the Judicial Council is of no value because they could only "inquire" about the matter and do not have the power to remand the matter for a new trial. Thus this complaint to the United States Attorney General and I will go as high as necessary to right this wrong.

Further, Judge Lee allowed or was the victim of defense counsels William Jemmott, Dan Crowley and Dan Hernandez and defendant Rescue Rooter orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony; committed fraud upon the Court of the State of California; aided and abetted criminal activity; committed willful, criminal and corrupt perjury; fraud; fraudulent concealment; conspiracy to commit fraud; conspiracy; subornation of perjurious testimony and solicitation of perjurious testimony; that when Maine v. Moulton is applied, bring all their actions into a new trial without the protection of privilege.

As well, Judge Lee allowed or was the victim of defendants Ron Cook, and his law firm of Willoughby Stuart and Bening, the hostile intervener CSAA and it's defense counsels Shawn O'Halloran and Stephan Barber and the firm of Ropers Majeski orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the

unlawful act of suborn and solicited perjurious testimony; patterned criminal, willful, and corrupt fraud upon the court of the State of California; engaged in acts and created documents to coverup the unlawful tactics; fraudulent concealment by willfully and intentionally withholding their knowledge and insight of the intervention hearing and the transcript of said hearing to gain an order from the court after being denied; they failed and refused to disclose to the court their stealthily absconding the City of Oakland files without the permission or knowledge of the City Attorney's staff; their spoliation of evidence with the disappearance of court records; and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents; their unpardonable breach in the chain of custody of said documents; conspiracy to committ fraud; conspiracy; extrinsic fraud; and for the doctrine of unclean hands with the appropriate consequent sanctions and punishment upon them.

I request that a full and complete investigation into the willful violations of the Law and Code of Judicial Conduct by Judge David C, Lee, the hostile intervener and their counsels and the defendant and their counsels be made by the United States Attorney General, California State Attorney General, the California Attorney Bar Association, the California Insurance Commissioner, and the Judicial Council Inquiry Board of the State of California.

NOTE: ALL REFERRENCES TO ACCOMPAINING DOCUMENTS UNLESS OTHERWISE SPECIFIED ARE TO THE "TRIAL TRANSCRIPT". THE REFERRENCES ARE SHOWN AS " (V2P271L4)" which represents V= volume of transcript, P= page of volume, L= line of page in volume.

Judge Lee's actions are in direct violation Federal and State laws and of each of the following laws published by the Attorney General constituting Hate Crimes and Civil Rights transgressions in the State of California and The United States of America:

ISSUES PRESENTED

The following issues are presented for review by the Attorney General and the Supreme Court of the United States of America:

1. **Judge David C. Lee committed a Hate Crime, incited Islamaphobia and Xenophobia, Prejudicial Error, Abuse of Discretion, Misconduct, Bias, Conduct Prejudicial, and improperly tried this case to the Irreparable Harm of the appellant.**

During the ensuing trial the trial Judge David C. Lee committed a Hate Crime, incited Islamaphobia and Xenophobia, Judicial Misconduct, Prejudicial Error, Abuse of Discretion, Conduct Prejudicial, Gross Negligence, exhibited Disdain, Bias and Malice toward the Appellant, and had illegal and inappropriate Ex Parte Communications to the irreparable harm of the appellant.

Hate Crimes are defined within the Unruh and Ralph Civil Rights and the Bane Acts as follows:

Unruh Civil Rights Act, Civil Code section 51, makes it an unlawful practice for a person to deny or to aid, incite, or conspire in the denial of the rights therein and the rights protected by Civil Code sections 51.5, 51.7, 54, 54.1, or 54.2.

The Ralph Civil Rights Act, Civil Code section 51.7, addresses the repugnance of racial, ethnic, religious, gender, age, disability, sexual orientation, and political violence in California by providing civil and administrative remedies for those who are victims of this type of violence, or of violence directed against any particular class of persons.

Addittionally there are hate crimes construed under Civil Code section 52.1, Penal Code section 422.6., section 11410, section 13519.6, Government Code section 11135, section 12948, and 42 U.S.C. section 1983.

Civil Code section 52.1 protects all people within this state from interference with their free exercise or enjoyment of the rights guaranteed them by the state or the United States. If the interference is by means of speech alone, however, no remedy will be available to you under the Bane Act unless it can be shown that the speech itself threatened violence against you; that you reasonably feared violence would be committed against you or your property because of the speech; and that the person threatening

violence had the apparent ability to carry out the threat. 8

Penal Code section 422.6. In addition to civil remedies, the Bane Act establishes criminal remedies. Penal Code section 422.6, subdivision (a), makes it unlawful to, by force or threat of force, oppress, injure, intimidate, or interfere with any other person in the free exercise or enjoyment of any right secured by the state or federal government because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation or because it is perceived that the victim has one or more of these characteristics. If the force or threat of force is through speech alone, it must be shown that the speech itself threatened violence against a specific person or group of persons, and that the accused had the apparent ability to carry out the violence.

Penal Code section 11410 (terrorism) expresses the Legislature's intent that it is the right of every person, regardless of his or her race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation and physical harm caused by the activities of violent groups and individuals. This section also contains the Legislature's express finding that the advocacy of unlawful violent acts by groups against other persons or groups where death and/or great bodily injury is likely, is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal and civil sanctions.

Penal Code section 13519.6 provides that the Commission on Peace Officer Standards and Training shall develop guidelines and a course of instruction and training in hate crimes for law enforcement officers who are employed as peace officers or enrolled in a training academy for law enforcement officers. Hate crime for purposes of this section means any act of intimidation, harassment, physical force, or the threat of physical force, directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability or sexual orientation of that person, with the intent to cause fear and intimidation.

Government Code section 11135 prohibits any program or activity funded by or receiving financial assistance from the State from discriminating against or unlawfully denying benefits to a person on the basis of that person's ethnic group identification, religion, age, sex, color, or disability.

Government Code section 12948 makes it an unlawful practice under the FEHA for a person to deny or to aid, incite, or conspire in the denial of the rights created by the Unruh Civil Rights Act, Civil Code section 51, and the rights protected by Civil Code sections 51.5, 51.7, 54, 54.1, or 54.2.

42 U.S.C. section 1983 creates a private right of action to redress deprivations

under color of state law of any federal rights, privileges or immunities. The purpose of section 1983, according to the United States Supreme Court, was "to interpose the federal courts between the States and the people, as guardians of the people's federal rights- to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" (*Mitchum v. Foster* (1972) 407 U.S. 225, 242.)

The challenged conduct must constitute governmental action. In other words, rather than regulating purely private actions, section 1983 regulates state and local governmental conduct. Thus, if one has been discriminated against by some form of government action in a manner depriving you of your federal rights, then a section 1983 action may be appropriate.

A few important points concerning section 1983 should be considered. First, section 1983 permits relief in the form of nominal, compensatory, and punitive damages, and/or injunctive relief, depending upon the circumstances. Second, attorney's fees can be recovered by the prevailing party in a section 1983 action. Third, no federal statute of limitations applies to section 1983, so state statutes of limitation will generally control section 1983 suits. In California, there is a one-year period to file section 1983 actions. Many cities have adopted their own ordinances to supplement state laws forbidding discrimination(see *Ricotta v. California* (S.D.Cal. 1998) 4 F.Supp.2d 961, 980, affd. (9th Cir. 1999) 173 F.3d 861, cert. den. (1999) 528 U.S. 864.)

The standards of conduct to which judges are held are reflected in part in the canons of the Code of Judicial Conduct. Although these canons do not have the force of law or regulation, "they reflect a judicial consensus regarding appropriate behavior" for California judges. (Kloepfer v. Commission on Judicial Performance (1989) 49 Cal. 3d 826, 838, fn. 6 [264 Cal. Rptr. 100, 782 P.2d 239, 89 A.L.R.4th 235]; see Cannon v. Commission on Judicial Qualifications (1975) 14 Cal. 3d 678, 707, fn. 22 [122 Cal. Rptr. 778, 537 P.2d 898].) The failure of a judge to comply with the canons "suggests performance below the minimum level necessary to maintain public confidence in the administration of justice." (Kloepfer v. Commission on Judicial Performance, supra, 49 Cal. 3d at p. 838, fn. 6.)

An impartial and independent judiciary is indispensable to our legal system. Of equal importance is public confidence in the independence and integrity of the judiciary, because the effective functioning of our legal system is dependent upon the public's willingness to accept the judgments and rulings of the courts. (Cal. Code Jud. Conduct, com. to canon 1.) Appellant agrees that the court can not allow this type of willful misconduct in office and conduct prejudicial to the administration of justice (moral turpitude, corruption, and dishonesty) that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).)

The charge of willful misconduct connotes "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, . . ." (Id. at p. 284.) "Bad faith" is equivalent to actual malice and encompasses the intentional commission of acts which the judge knew or reasonably should have known were beyond his lawful power, as well as acts which though within the ambit of lawful judicial authority are committed for purposes

other than the faithful discharge of judicial duties. (Spruance v. Commission on Judicial Qualifications (1975) 13 Cal. 3d 778, 796 [119 Cal. Rptr. 841, 523 P.2d 1209].)

The lesser included charge of conduct prejudicial connotes "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office," as well as willful misconduct out of office, "i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity." (Geiler, supra, 10 Cal. 3d at p. 284 & fn. 11.) (6) A judge may be censured or removed from the bench only for willful misconduct or conduct prejudicial.

By his actions, Judge Lee has violated the Unruh and Ralph Civil Rights and the Bane Acts, as well as canon 2A of the Code of Judicial Conduct, which requires that judges conduct themselves "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The judge's brash comments and statements were manifestly uttered in bad faith while he was acting in his judicial capacity. (Spruance, supra, 13 Cal. 3d at p. 796.) His actions therefore constitute willful misconduct.

Judge Lee committed this hate crime, incited islamaphobia and xenophobia, prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making the damning comments about appellants arabic name, religion and belonging to a "sect" while relating that to a recent bombing tragedy in Moscow, terrorism, murder and 911.
TO WIT:
(a) In "**DEMONIZING and Vilifying"** appellant by referring to acts of **Terrorism, Murder** in Moscow **and appellant belonging to a "Sect"** in connection with Appellant's religion and arabic name before the jury:

As the other chief architect of these actions, along with the hostile intervener and the defense counsels, Judge Lee shamed the nation and endangered American Civil Rights and liberties by performing the sort of atrocious acts the United States has always condemned. The court has an obligation to demand and to compel Judge Lee to account for his policies and actions; the hostile intervener to account for their repeated unclean hands, fraud and deception on the court; and the defense to account for their suborned and solicited perjurious testimony, before proceeding with this matter. However, by itself, a new trial is not sufficient to end the systematic violations of religious, civil and human rights laws that the court has committed in this matter.

Judge Lee began this atrocious travesty before anyone ever took the stand, setting the stage by not performing the proper fact-finding on the pretrial motions and arguments with regards to justifying the presence of the hostile intervener in this matter, and the admission of the 1991 City of Oakland file spoiled and tainted by the hostile intervener. This is closely followed with the hate crimes and comments, the scandal of the solicited perjurious testimony and the alleged assault, the denial of witness testimony, the contempt for due process at the trial and the seemingly unending revelations of judicial prejudice, bias, the abuse of discretion and misconduct. Clearly, reasonable minds could easily determine that the actions of Judge Lee rose to the level

of extreme and outrageous conduct.

Inciting Islamaphobia and Xenophobia in the commission of a Hate Crime during the civil jury trial of plaintiff, Judge Lee depicted evil in the form of Islamic extremists, as America's evil du jour appears in the person of the plaintiff, cast as the jihadists on trial.

On the morning of Monday, October 28, 2002, in convening the court after a brief delay, the judge dismissed the only African-American juror(V2P271L4-8) and tells the jury "In the general world situation and particularly in view of the tragedy that took place in Moscow over the weekend(referring to an alleged hostage massacre by islamic terrorist)" and "the fact that the plaintiff uses an arabic name and that that may be a token that he is a follower of the Muslim sect."(V2P271L13-20) To even mention any religion in a court room environment is improper and illegal. In this post 911 world environment and the rampant, uncontrolled Islamophobia and Xenophobia that reigns supreme in the world today, it is impossible for someone with and Arabic name, or middle eastern dress or look, or of the Islamic belief not to have that held against them. To align the plaintiff, who is not a member of any "sect", with 911, terrorism, hostages taking, sects, and murder while announcing that the only African American on the jury panel was being dismissed was outrageous, illegal, totally inappropriate, a modern day legal lynching, a judicial terrorist travesty of justice, a highjacking of the plaintiffs civil rights and the judges' hostage taking of his right to due process. Further, to give an example of that islamophobia and xenophobia, the Russian investigation determined that the hostage killings in the theater were committed by the Russian police themselves, no one else(V2P271L12-P272).

This is what America, and the jury fears - Islamic terrorism. This fear of what we are fighting, capitalizes on Americans' fears of Islamic fundamentalists, allowed Judge Lee to accomplished two things: One was to draw a critical outcry from the jury by announcing the plaintiff might be muslim and belong to a "sect", and the other to boldly lay claim to America's (and the rest of the world's, for that matter) not-so-proud history of demonizing various ethnic groups to advance the interest of the defense in this matter by referring to terrorist and murder in Russia in association with the plaintiff being in "sect". Remember "the Injuns"? The "Nips," the "Japs" and the "Riceballs"? The "Commies" and the "Reds" "Charlie" and the "Gooks"?

The plaintiff, having been identified for the jury as a Muslim and belonging to a "sect" only conjures up the image and belief of his being an extremist, even outside the norm of any moderate muslim or islam. The connotation of the word "sect" to this fearful nation and jury is akin to calling the plaintiff a terrorist. But now being referred to as individual and not by an ethnic pejorative, his treatment at the hands of Judge Davidson before the jury is not so different from what was accorded this country's enemies of yore.

America has made images of shiftless, lazy ex-slaves(Negros or Blacks); savages of blood-thirsty Indians; devious Mexicans; sneaky Japanese bomber pilots; goose-stepping Nazis; and now the rag head "sand niggers"(middle easterners); each of whom represents a new wave of fear, cultural bias and the resulting vilification - that the world has exaggerated for maximum dramatic purposes- but the meaning to all is clear and permission to lynch, maim, beat, kill, cheat, discriminate, and persecute is granted.

As our government initiated a war on terror and created the Department of Homeland Security, good and conscience Americans who struggled through the politically correct years of peacetime and who ritually demonized Nazis, aliens or monolithic corporations to avoid antagonizing specific ethnic groups suddenly have at their disposal a new face of terror. Ethnic and religious attacks are back in style under the guise of patriotism.

The plaintiff and others are portrayed as villains because of their religion, names, have Middle Eastern complexions, have dark hair, some speak with pronounced accents, for their racial profiles, which match those of our new foe. They provide a visual link to the terrorist in the Russian incident referred to by Judge Lee at trial, the 9/11 hijackers, Osama bin Laden, the insurgents in Iraq and our imaginings of terrorist cell members who may be living among us while plotting our destruction. It is this Islamaphobia and Xenophobia that is "casting a shadow of suspicion on ordinary American Muslims such as the plaintiff.

The representation of Muslims in the court room and our popular culture is an exhibition of American insensitivity and bigotry, false antidotes to the climate of fear and retribution that have sprung up in the aftermath of 9/11.

From a vacuum where the few Muslims visible in our culture are generally seen under FBI wanted signs, Judge Lee dared to tip the legal scales of Justice in the favor of the defense by feeding the fears of a worried jury and population. The structure of a court room is an unacceptable forum for a nuanced portrait of "the enemy in the form of the plaintiff" before a fearful jury. Even if the intended result of that dialogue and trial was to balance and insure the fair preception and judging of the plaintiff and Muslim character, it can be argued that, legally and culturally speaking, it was retrograding.

What was in danger of being lost and consequently was, was a sense of fairness toward the plaintiff. In any honest portrayal, villainy almost always has more than one face, and human evil or error is never confined to one side, one faith or one skin type. These actions left the plaintiff feeling threatened, oppressed, injured, intimidated, and fearful of the ultimate retribution in the forms of physical, judicial, legal and jury verdict retaliation with his being identified as Muslim by Judge Lee, while referring to and associating plaintiff with acts of terror and murder in Russian and his being in the "Muslim sect". This attack on his integrity, assasination of his character and assault on his litigation, resulted in the murder of any remote chance of fairness by the jury, the hostage taking of his right to due process by the judge and the highjacking of his rights by the legal system, both now and in the future. The plaintiff, who was the victim of terror in that court, now has no recourse but to pay the ransom of appeal and is very fearful of the weapon of mass destruction of retaliation from the judiciary in this, other pending and all future matters

You will conclude that under the Unruh and Ralph Civil Rights and the Bane Acts, the above comments are a particularly egregious example of a Hate Crime, inciting Islamaphobia and Xenophobia, Judicial Misconduct, Prejudicial Error, Abuse of Discretion, Conduct Prejudicial, Gross Negligence, Disdain, Bias and Malice toward the Appellant and partiality towards the defense. There is no reason to ever mention appellant's arabic name, believed religion, Islam, Muslims, terrorism, murder, being in a "sect", or anything

else of a personal nature regarding appellant, as it was totally extraneous to any issues in this case. The judge's incitement of "Islamophobia among the jury and his "follow-up actions reveal his intent to enable the jury to draw the adverse inference that appellant was violent, a liar, evil, vicious, not trust worthy. These instances of misconduct also can not be cured by any admonition or instruction.

Appellant was victimized as per the Unruh and Ralph Civil Rights and the Bane Acts, and denied his rights to a fair trial and to due process under the federal and state Constitutions (U.S. Const., 6th & 14th Amends; Cal. Const., art. 1, §§ 7, 15, 24), because "the trial court engaged in a systematic 'pattern of judicial hostility,' " which consisted of being aligned with terrorism, murder, hostage taking, and being a member of the "Muslim sect", continual admission of tainted and spoiled evidence, allowing the improper and illegal testimony of defense witnesses, disparaging comments regarding appellants' honesty, and erroneous exclusion of crucial appellant evidence and testimony. Your review of the record and applicable law, will easily reverse the decision and remand for a new trial. One will easily conclude these material instances of judicial misconduct prejudicially deprived appellant of his rights to due process and a fair trial.

Judge Lee certainly knew that any religious, ethnic or sexual references or remarks he may have made, even if they were made in jest, can be construed as to have treated that religious, ethnic or minority group unfairly. However, Judge Lee' subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary. Such facially blatant religious slurs and assault indictments of the appellant as those Judge Lee repeatedly uttered from the bench are apt to alienate and offend both jurors and appellant and may be construed by the public at large as highly demeaning to appellant, Muslims and minorities. Regardless, Judge Lee should have known that his courtroom comments were in violation of the law and appellants rights, while at a minimum, unbecoming and inappropriate. The terrorist, murder, sect, islamophobic and xenophobic slurs coupled with the assault charges uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as willful misconduct and conduct prejudicial. (Geiler, supra, 10 Cal. 3d at pp. 283-284.)

These comments also pose a serious threat to public esteem for the integrity of the judiciary. However, as held in In re Stevens (1982) 31 Cal. 3d 403 [183 Cal. Rptr. 48, 645 P.2d 99], ethnic and racial epithets uttered in chambers do constitute the lesser offense of conduct prejudicial. (Id. at p. 404.) Derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer's esteem for the judiciary -- again regardless of the speaker's subjective intent or motivation. The reputation in the community of an individual judge necessarily reflects on that community's regard for the judicial system. You must hold that Judge Lee's "terrorist, murder, sect" and "assault" remarks constitute a **Hate Crime, inciting Islamaphobia and Xenophobia, Prejudicial Error and show Abuse of Discretion, Misconduct, Bias, and Conduct Prejudicial** to the administration of justice and as the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(b) by referring to an **Alleged Assault** inflicted by Appellant in a police report used to stipulate to a date on which defendants met with Appellant:

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making several comments and references to an alleged assault committed by the appellant upon a defendant, when in fact it was appellant that was assaulted in his own home by the defendant.

TO WIT:

On Tuesday, November 5, 2002, in convening the court after a brief delay at 3:30 p.m., the judge does not allow plaintiffs rebuttal witness from the Oakland Police Department to testify and present her file and notes regarding the contact of defendant Rescue Rooter in this matter. This evidence clearly established that the defense had the official and complete report**(attached hereto as exhibit C)** of the alleged assault from the Oakland Police Department and therein full knowledge of all dates and occurrences of the events as testified by plaintiff, that their entire defense of "No Knowledge" was a conspiracy and fraud, and at a meeting in August 2002 at San Ramon the headquarters of Rescue defendants counsel William Jemmout had orchestrated and solicited the knowingly false testimonies of defendants Chris Peterson, Rick Syrett, witnesses Rick Staben, and the expert witness Kent Lauder in perjury and should all have been disallowed and/or stricken. Rather the judge allows a stipulation and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants" without the slightest reference to there having been significant perjury by the defendants to declare a mistrial, no proof of the alleged assault, nor the importance of the fact that all their defense was based on "no knowledge" due to the changed date TR Vol. 4 1008:14-22. On Thursday, November 7, 2002, he again repeats that statement and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants"(V5P1034L19-22).

Appellant contends the foregoing comments by Judge Lee exemplified the undermining of appellant's credibility and case causing irreparable harm. These exclamations was an attempt by the court to vouch for defendant's admitted perjurious testimony thereby undermining appellant's credibility in the eyes of the jury. Specifically, his proclamations of the "assault" on several occasions, were not only argumentative, but called for speculation without any proof. It wasn't until the court received knowledge of appellant's dissatisfaction about the repeated references to the "assault" that Judge Lee stated that he was reminded that there was an "alleged assault" and he should not have referred to it, thereby inferring appellant might possibly have a legal right to disturb the court proceedings and findings by the jury with these type of improper references.

The trial judge's interference was opprobrious and oppugned appellant's integrity. Moreover, the taint of such prejudicial proclamations can not be dispelled by any

admonition or instruction.

The repeated proclamations of the assault by the court was "designed to infer that appellant not only committed the alleged assault, an offense with which he was never questioned or charged, but was violent and did knowingly and willfully with no regard for the seriousness of the court proceeding, lied about the entire case in question. Further, such repeated "comments, inferences, and questioning of appellant was argumentative and improper."

Judge Lee was intemperate and stepped outside the boundaries of what could be characterized as proper. A plain reading of the transcript clearly reflects that the judge's intent was to infer and thereby elicit from appellant his admission that he knowingly and willfully committed the assault, was violent, a liar, and as such, impress on the jury a judicial imprimatur of the defense's position. (See People v. Brock (1967) 66 Cal.2d 645, 649, 654-655 [58 Cal. Rptr. 321, 426 P.2d 889]; People v. Flores, supra, 17 Cal. App. 3d at p. 587 ["When the trial judge's remarks transgress the bounds of critical comment and assume the complexion of partisan advocacy and conclude with an expression of a defendant's guilt such comment is prejudicial as a matter of law"].)

The judges statements was not only argumentative and in part cumulative, but again, the trial court undertook to develop evidence favorable to the defense: the inference being raised that since there was a police report of an assault, appellant had committed the assault[and] therefore was violent, lying and not to be trusted. The judge persisted in negating appellant's testimony and his credibility by his repeat subsequent highlighting the inference that appellant had committed an assault, and that appellant was not being forthright when he testified otherwise.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(c) by **Judge Lee's Inappropriate and Illegal Ex Parte Communications** in discussing the Appellant's case and character with another judge outside the course of the proceedings who was biased against Appellant through unrelated prior proceedings.

As a matter of law Judge Lee has also violated canon 2B of the Code of Judicial Conduct, which provides that "A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him . . . ." In Spruance the court held a similar violation of canon 2B to constitute willful misconduct. (Spruance, supra, 13 Cal. 3d at p. 798.) Judge Lee had to know there was something judicially improper about his conduct that could not preclude a charge of willful misconduct, for that term embraces intentional conduct that a judge should have known was beyond his judicial authority. (Geiler, supra, 10 Cal. 3d at p. 286.)

Case No. S 130203

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

ABDUL-JALIL al-HAKIM,
Plaintiff-Appellant,
vs.
RESCUE INDUSTRIES, INC.,
Defendant-Respondent.

After a Decision by the Court of Appeal
First Appellate District, Division Five
Case No. A 101832

On Appeal from the Superior Court of the County of Alameda
The Honorable David C. Lee, Judge
Case No. 8218852

PETITION FOR REVIEW TO THE ATTORNEY GENERAL

AND SUPREME COURT

OF THE UNITED STATES OF AMERICA

MATTER FOR REVIEW

RESPECTFULLY SUBMITTED BY

ABDUL-JALIL al-HAKIM,

Plaintiff-Appellant

7633 SUNKIST DRIVE, OAKLAND, CA 94605 PHONE: (510) 839-5400 FAX: (510) 638-8889

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Edward Ryan, a former Chief Justice of the Wisconsin Supreme Court and delegate to that state's constitutional convention in 1846, perhaps said it best. He said that the judiciary "represents no man, no majority, no people. It represents the written law of the land . . . it holds the balance and weighs the rights between man and man, between rich and poor, between the weak and the powerful."

***

Courts have said a trial judge must always remain fair and impartial. Kennedy v. Los Angeles Police Dep't, 901 F.2d 702, 709 (9th Cir. 1989). "He must be ever mindful of the sensitive role [the court] plays in a jury trial and avoid even the appearance of advocacy or partiality." Id. quoting United States v. Harris, 501 F.2d 1, 10 (9th Cir. 1974). "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

The above is applicable to this court by application of Article VI of the United States Constitution and Stone v Powell, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).

The Attorney General does not merely head up the Justice Department. He is responsible for ensuring that America is a nation in which justice prevails. Judge David C. Lee conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of the Supreme Law of the Land, of the State of California, his duty as a judge and of the Code of Judicial Conduct with a repeated shockingly poor job of posturing the legal issues raised by the plaintiff, making and allowing comments, prohibiting plaintiff from his proper course of litigation, etc., while committing a Hate Crime, inciting Islamaphobia and Xenophobia and therein cast a horrible example by a judge that has left no doubt about his contempt for a number of our most cherished constitutional guarantees. "Where law ends, tyranny begins. Over the years, I have come to believe that the law ends precisely where the justice system has failed in its duty to ensure impartiality and fairness....Supreme Court Justice Alan Page".

Under any ordinary circumstance, if a plaintiff in a matter before the court has an issue that might reasonably be considered for a mistrial, he would take the matter up with the trial court judge. That is not possible here because the trial court judge is the primary source of the complaint and with this being his last matter before he retired, there was no one unbiased to appeal to. The next step might be to address the matter with the presiding judge of the court. That option is unattractive for the same reasons as taking the matter up with the perpetrator.

The State Appeals court did not want to make a fair, informed, impartial evaluation of the facts and evidence, and the California State Supreme court has not considered it for some reason that defies the information they provided to plaintiff and counsel. To refer the matter to the Judicial Council is of no value because they could only "inquire" about the matter and do not have the power to remand the matter for a new trial. Thus this complaint to the United States Attorney General and I will go as high as necessary to right this wrong.

Further, Judge Lee allowed or was the victim of defense counsels William Jemmott, Dan Crowley and Dan Hernandez and defendant Rescue Rooter orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony; committed fraud upon the Court of the State of California; aided and abetted criminal activity; committed willful, criminal and corrupt perjury; fraud; fraudulent concealment; conspiracy to commit fraud; conspiracy; subornation of perjurious testimony and solicitation of perjurious testimony; that when Maine v. Moulton is applied, bring all their actions into a new trial without the protection of privilege.

As well, Judge Lee allowed or was the victim of defendants Ron Cook, and his law firm of Willoughby Stuart and Bening, the hostile intervener CSAA and it's defense counsels Shawn O'Halloran and Stephan Barber and the firm of Ropers Majeski orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them; engaged in actions to interfere with the litigant's legal case; engaged in actions to coverup the

unlawful act of suborn and solicited perjurious testimony; patterned criminal, willful, and corrupt fraud upon the court of the State of California; engaged in acts and created documents to coverup the unlawful tactics; fraudulent concealment by willfully and intentionally withholding their knowledge and insight of the intervention hearing and the transcript of said hearing to gain an order from the court after being denied; they failed and refused to disclose to the court their stealthily absconding the City of Oakland files without the permission or knowledge of the City Attorney's staff; their spoliation of evidence with the disappearance of court records; and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents; their unpardonable breach in the chain of custody of said documents; conspiracy to committ fraud; conspiracy; extrinsic fraud; and for the doctrine of unclean hands with the appropriate consequent sanctions and punishment upon them.

I request that a full and complete investigation into the willful violations of the Law and Code of Judicial Conduct by Judge David C, Lee, the hostile intervener and their counsels and the defendant and their counsels be made by the United States Attorney General, California State Attorney General, the California Attorney Bar Association, the California Insurance Commissioner, and the Judicial Council Inquiry Board of the State of California.

NOTE: ALL REFERRENCES TO ACCOMPAINING DOCUMENTS UNLESS OTHERWISE SPECIFIED ARE TO THE "TRIAL TRANSCRIPT". THE REFERRENCES ARE SHOWN AS " (V2P271L4)" which represents V= volume of transcript, P= page of volume, L= line of page in volume.

Judge Lee's actions are in direct violation Federal and State laws and of each of the following laws published by the Attorney General constituting Hate Crimes and Civil Rights transgressions in the State of California and The United States of America:

ISSUES PRESENTED

The following issues are presented for review by the Attorney General and the Supreme Court of the United States of America:

1. **Judge David C. Lee committed a Hate Crime, incited Islamaphobia and Xenophobia, Prejudicial Error, Abuse of Discretion, Misconduct, Bias, Conduct Prejudicial, and improperly tried this case to the Irreparable Harm of the appellant.**

During the ensuing trial the trial Judge David C. Lee committed a Hate Crime, incited Islamaphobia and Xenophobia, Judicial Misconduct, Prejudicial Error, Abuse of Discretion, Conduct Prejudicial, Gross Negligence, exhibited Disdain, Bias and Malice toward the Appellant, and had illegal and inappropriate Ex Parte Communications to the irreparable harm of the appellant.

Hate Crimes are defined within the Unruh and Ralph Civil Rights and the Bane Acts as follows:

Unruh Civil Rights Act, Civil Code section 51, makes it an unlawful practice for a person to deny or to aid, incite, or conspire in the denial of the rights therein and the rights protected by Civil Code sections 51.5, 51.7, 54, 54.1, or 54.2.

The Ralph Civil Rights Act, Civil Code section 51.7, addresses the repugnance of racial, ethnic, religious, gender, age, disability, sexual orientation, and political violence in California by providing civil and administrative remedies for those who are victims of this type of violence, or of violence directed against any particular class of persons.

Addittionally there are hate crimes construed under Civil Code section 52.1, Penal Code section 422.6., section 11410, section 13519.6, Government Code section 11135, section 12948, and 42 U.S.C. section 1983.

Civil Code section 52.1 protects all people within this state from interference with their free exercise or enjoyment of the rights guaranteed them by the state or the United States. If the interference is by means of speech alone, however, no remedy will be available to you under the Bane Act unless it can be shown that the speech itself threatened violence against you; that you reasonably feared violence would be committed against you or your property because of the speech; and that the person threatening

violence had the apparent ability to carry out the threat. 8

Penal Code section 422.6. In addition to civil remedies, the Bane Act establishes criminal remedies. Penal Code section 422.6, subdivision (a), makes it unlawful to, by force or threat of force, oppress, injure, intimidate, or interfere with any other person in the free exercise or enjoyment of any right secured by the state or federal government because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation or because it is perceived that the victim has one or more of these characteristics. If the force or threat of force is through speech alone, it must be shown that the speech itself threatened violence against a specific person or group of persons, and that the accused had the apparent ability to carry out the violence.

Penal Code section 11410 (terrorism) expresses the Legislature's intent that it is the right of every person, regardless of his or her race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation and physical harm caused by the activities of violent groups and individuals. This section also contains the Legislature's express finding that the advocacy of unlawful violent acts by groups against other persons or groups where death and/or great bodily injury is likely, is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal and civil sanctions.

Penal Code section 13519.6 provides that the Commission on Peace Officer Standards and Training shall develop guidelines and a course of instruction and training in hate crimes for law enforcement officers who are employed as peace officers or enrolled in a training academy for law enforcement officers. Hate crime for purposes of this section means any act of intimidation, harassment, physical force, or the threat of physical force, directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability or sexual orientation of that person, with the intent to cause fear and intimidation.

Government Code section 11135 prohibits any program or activity funded by or receiving financial assistance from the State from discriminating against or unlawfully denying benefits to a person on the basis of that person's ethnic group identification, religion, age, sex, color, or disability.

Government Code section 12948 makes it an unlawful practice under the FEHA for a person to deny or to aid, incite, or conspire in the denial of the rights created by the Unruh Civil Rights Act, Civil Code section 51, and the rights protected by Civil Code sections 51.5, 51.7, 54, 54.1, or 54.2.

42 U.S.C. section 1983 creates a private right of action to redress deprivations

under color of state law of any federal rights, privileges or immunities. The purpose of section 1983, according to the United States Supreme Court, was "to interpose the federal courts between the States and the people, as guardians of the people's federal rights- to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" (*Mitchum v. Foster* (1972) 407 U.S. 225, 242.)

The challenged conduct must constitute governmental action. In other words, rather than regulating purely private actions, section 1983 regulates state and local governmental conduct. Thus, if one has been discriminated against by some form of government action in a manner depriving you of your federal rights, then a section 1983 action may be appropriate.

A few important points concerning section 1983 should be considered. First, section 1983 permits relief in the form of nominal, compensatory, and punitive damages, and/or injunctive relief, depending upon the circumstances. Second, attorney's fees can be recovered by the prevailing party in a section 1983 action. Third, no federal statute of limitations applies to section 1983, so state statutes of limitation will generally control section 1983 suits. In California, there is a one-year period to file section 1983 actions. Many cities have adopted their own ordinances to supplement state laws forbidding discrimination(see *Ricotta v. California* (S.D.Cal. 1998) 4 F.Supp.2d 961, 980, affd. (9th Cir. 1999) 173 F.3d 861, cert. den. (1999) 528 U.S. 864.)

The standards of conduct to which judges are held are reflected in part in the canons of the Code of Judicial Conduct. Although these canons do not have the force of law or regulation, "they reflect a judicial consensus regarding appropriate behavior" for California judges. (Kloepfer v. Commission on Judicial Performance (1989) 49 Cal. 3d 826, 838, fn. 6 [264 Cal. Rptr. 100, 782 P.2d 239, 89 A.L.R.4th 235]; see Cannon v. Commission on Judicial Qualifications (1975) 14 Cal. 3d 678, 707, fn. 22 [122 Cal. Rptr. 778, 537 P.2d 898].) The failure of a judge to comply with the canons "suggests performance below the minimum level necessary to maintain public confidence in the administration of justice." (Kloepfer v. Commission on Judicial Performance, supra, 49 Cal. 3d at p. 838, fn. 6.)

An impartial and independent judiciary is indispensable to our legal system. Of equal importance is public confidence in the independence and integrity of the judiciary, because the effective functioning of our legal system is dependent upon the public's willingness to accept the judgments and rulings of the courts. (Cal. Code Jud. Conduct, com. to canon 1.) Appellant agrees that the court can not allow this type of willful misconduct in office and conduct prejudicial to the administration of justice (moral turpitude, corruption, and dishonesty) that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).)

The charge of willful misconduct connotes "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, . . ." (Id. at p. 284.) "Bad faith" is equivalent to actual malice and encompasses the intentional commission of acts which the judge knew or reasonably should have known were beyond his lawful power, as well as acts which though within the ambit of lawful judicial authority are committed for purposes

other than the faithful discharge of judicial duties. (Spruance v. Commission on Judicial Qualifications (1975) 13 Cal. 3d 778, 796 [119 Cal. Rptr. 841, 523 P.2d 1209].)

The lesser included charge of conduct prejudicial connotes "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office," as well as willful misconduct out of office, "i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity." (Geiler, supra, 10 Cal. 3d at p. 284 & fn. 11.) (6) A judge may be censured or removed from the bench only for willful misconduct or conduct prejudicial.

By his actions, Judge Lee has violated the Unruh and Ralph Civil Rights and the Bane Acts, as well as canon 2A of the Code of Judicial Conduct, which requires that judges conduct themselves "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The judge's brash comments and statements were manifestly uttered in bad faith while he was acting in his judicial capacity. (Spruance, supra, 13 Cal. 3d at p. 796.) His actions therefore constitute willful misconduct.

Judge Lee committed this hate crime, incited islamaphobia and xenophobia, prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making the damning comments about appellants arabic name, religion and belonging to a "sect" while relating that to a recent bombing tragedy in Moscow, terrorism, murder and 911.
TO WIT:
(a) In "**DEMONIZING and Vilifying**" appellant by referring to acts of **Terrorism, Murder** in Moscow **and appellant belonging to a "Sect"** in connection with Appellant's religion and arabic name before the jury:

As the other chief architect of these actions, along with the hostile intervener and the defense counsels, Judge Lee shamed the nation and endangered American Civil Rights and liberties by performing the sort of atrocious acts the United States has always condemned. The court has an obligation to demand and to compel Judge Lee to account for his policies and actions; the hostile intervener to account for their repeated unclean hands, fraud and deception on the court; and the defense to account for their suborned and solicited perjurious testimony, before proceeding with this matter. However, by itself, a new trial is not sufficient to end the systematic violations of religious, civil and human rights laws that the court has committed in this matter.

Judge Lee began this atrocious travesty before anyone ever took the stand, setting the stage by not performing the proper fact-finding on the pretrial motions and arguments with regards to justifying the presence of the hostile intervener in this matter, and the admission of the 1991 City of Oakland file spoiled and tainted by the hostile intervener. This is closely followed with the hate crimes and comments, the scandal of the solicited perjurious testimony and the alleged assault, the denial of witness testimony, the contempt for due process at the trial and the seemingly unending revelations of judicial prejudice, bias, the abuse of discretion and misconduct. Clearly, reasonable minds could easily determine that the actions of Judge Lee rose to the level

of extreme and outrageous conduct.

Inciting Islamaphobia and Xenophobia in the commission of a Hate Crime during the civil jury trial of plaintiff, Judge Lee depicted evil in the form of Islamic extremists, as America's evil du jour appears in the person of the plaintiff, cast as the jihadists on trial.

On the morning of Monday, October 28, 2002, in convening the court after a brief delay, the judge dismissed the only African-American juror(V2P271L4-8) and tells the jury "In the general world situation and particularly in view of the tragedy that took place in Moscow over the weekend(referring to an alleged hostage massacre by islamic terrorist)" and "the fact that the plaintiff uses an arabic name and that that may be a token that he is a follower of the Muslim sect."(V2P271L13-20) To even mention any religion in a court room environment is improper and illegal. In this post 911 world environment and the rampant, uncontrolled Islamophobia and Xenophobia that reigns supreme in the world today, it is impossible for someone with and Arabic name, or middle eastern dress or look, or of the Islamic belief not to have that held against them. To align the plaintiff, who is not a member of any "sect", with 911, terrorism, hostages taking, sects, and murder while announcing that the only African American on the jury panel was being dismissed was outrageous, illegal, totally inappropriate, a modern day legal lynching, a judicial terrorist travesty of justice, a highjacking of the plaintiffs civil rights and the judges' hostage taking of his right to due process. Further, to give an example of that islamophobia and xenophobia, the Russian investigation determined that the hostage killings in the theater were committed by the Russian police themselves, no one else(V2P271L12-P272).

This is what America, and the jury fears - Islamic terrorism. This fear of what we are fighting, capitalizes on Americans' fears of Islamic fundamentalists, allowed Judge Lee to accomplished two things: One was to draw a critical outcry from the jury by announcing the plaintiff might be muslim and belong to a "sect", and the other to boldly lay claim to America's (and the rest of the world's, for that matter) not-so-proud history of demonizing various ethnic groups to advance the interest of the defense in this matter by referring to terrorist and murder in Russia in association with the plaintiff being in "sect". Remember "the Injuns"? The "Nips," the "Japs" and the "Riceballs"? The "Commies" and the "Reds" "Charlie" and the "Gooks"?

The plaintiff, having been identified for the jury as a Muslim and belonging to a "sect" only conjures up the image and belief of his being an extremist, even outside the norm of any moderate muslim or islam. The connotation of the word "sect" to this fearful nation and jury is akin to calling the plaintiff a terrorist. But now being referred to as individual and not by an ethnic pejorative, his treatment at the hands of Judge Davidson before the jury is not so different from what was accorded this country's enemies of yore.

America has made images of shiftless, lazy ex-slaves(Negros or Blacks); savages of blood-thirsty Indians; devious Mexicans; sneaky Japanese bomber pilots; goose-stepping Nazis; and now the rag head "sand niggers"(middle easterners); each of whom represents a new wave of fear, cultural bias and the resulting vilification - that the world has exaggerated for maximum dramatic purposes- but the meaning to all is clear and permission to lynch, maim, beat, kill, cheat, discriminate, and persecute is granted.

As our government initiated a war on terror and created the Department of Homeland Security, good and conscience Americans who struggled through the politically correct years of peacetime and who ritually demonized Nazis, aliens or monolithic corporations to avoid antagonizing specific ethnic groups suddenly have at their disposal a new face of terror. Ethnic and religious attacks are back in style under the guise of patriotism.

The plaintiff and others are portrayed as villains because of their religion, names, have Middle Eastern complexions, have dark hair, some speak with pronounced accents, for their racial profiles, which match those of our new foe. They provide a visual link to the terrorist in the Russian incident referred to by Judge Lee at trial, the 9/11 hijackers, Osama bin Laden, the insurgents in Iraq and our imaginings of terrorist cell members who may be living among us while plotting our destruction. It is this Islamaphobia and Xenophobia that is "casting a shadow of suspicion on ordinary American Muslims such as the plaintiff.

The representation of Muslims in the court room and our popular culture is an exhibition of American insensitivity and bigotry, false antidotes to the climate of fear and retribution that have sprung up in the aftermath of 9/11.

From a vacuum where the few Muslims visible in our culture are generally seen under FBI wanted signs, Judge Lee dared to tip the legal scales of Justice in the favor of the defense by feeding the fears of a worried jury and population. The structure of a court room is an unacceptable forum for a nuanced portrait of "the enemy in the form of the plaintiff" before a fearful jury. Even if the intended result of that dialogue and trial was to balance and insure the fair preception and judging of the plaintiff and Muslim character, it can be argued that, legally and culturally speaking, it was retrograding.

What was in danger of being lost and consequently was, was a sense of fairness toward the plaintiff. In any honest portrayal, villainy almost always has more than one face, and human evil or error is never confined to one side, one faith or one skin type. These actions left the plaintiff feeling threatened, oppressed, injured, intimidated, and fearful of the ultimate retribution in the forms of physical, judicial, legal and jury verdict retaliation with his being identified as Muslim by Judge Lee, while referring to and associating plaintiff with acts of terror and murder in Russian and his being in the "Muslim sect". This attack on his integrity, assasination of his character and assault on his litigation, resulted in the murder of any remote chance of fairness by the jury, the hostage taking of his right to due process by the judge and the highjacking of his rights by the legal system, both now and in the future. The plaintiff, who was the victim of terror in that court, now has no recourse but to pay the ransom of appeal and is very fearful of the weapon of mass destruction of retaliation from the judiciary in this, other pending and all future matters

You will conclude that under the Unruh and Ralph Civil Rights and the Bane Acts, the above comments are a particularly egregious example of a Hate Crime, inciting Islamaphobia and Xenophobia, Judicial Misconduct, Prejudicial Error, Abuse of Discretion, Conduct Prejudicial, Gross Negligence, Disdain, Bias and Malice toward the Appellant and partiality towards the defense. There is no reason to ever mention appellant's arabic name, believed religion, Islam, Muslims, terrorism, murder, being in a "sect", or anything

else of a personal nature regarding appellant, as it was totally extraneous to any issues in this case. The judge's incitement of "Islamophobia among the jury and his "follow-up actions reveal his intent to enable the jury to draw the adverse inference that appellant was violent, a liar, evil, vicious, not trust worthy. These instances of misconduct also can not be cured by any admonition or instruction.

Appellant was victimized as per the Unruh and Ralph Civil Rights and the Bane Acts, and denied his rights to a fair trial and to due process under the federal and state Constitutions (U.S. Const., 6th & 14th Amends; Cal. Const., art. 1, §§ 7, 15, 24), because "the trial court engaged in a systematic 'pattern of judicial hostility,' " which consisted of being aligned with terrorism, murder, hostage taking, and being a member of the "Muslim sect", continual admission of tainted and spoiled evidence, allowing the improper and illegal testimony of defense witnesses, disparaging comments regarding appellants' honesty, and erroneous exclusion of crucial appellant evidence and testimony. Your review of the record and applicable law, will easily reverse the decision and remand for a new trial. One will easily conclude these material instances of judicial misconduct prejudicially deprived appellant of his rights to due process and a fair trial.

Judge Lee certainly knew that any religious, ethnic or sexual references or remarks he may have made, even if they were made in jest, can be construed as to have treated that religious, ethnic or minority group unfairly. However, Judge Lee' subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary. Such facially blatant religious slurs and assault indictments of the appellant as those Judge Lee repeatedly uttered from the bench are apt to alienate and offend both jurors and appellant and may be construed by the public at large as highly demeaning to appellant, Muslims and minorities. Regardless, Judge Lee should have known that his courtroom comments were in violation of the law and appellants rights, while at a minimum, unbecoming and inappropriate. The terrorist, murder, sect, islamophobic and xenophobic slurs coupled with the assault charges uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as willful misconduct and conduct prejudicial. (Geiler, supra, 10 Cal. 3d at pp. 283-284.)

These comments also pose a serious threat to public esteem for the integrity of the judiciary. However, as held in In re Stevens (1982) 31 Cal. 3d 403 [183 Cal. Rptr. 48, 645 P.2d 99], ethnic and racial epithets uttered in chambers do constitute the lesser offense of conduct prejudicial. (Id. at p. 404.) Derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer's esteem for the judiciary -- again regardless of the speaker's subjective intent or motivation. The reputation in the community of an individual judge necessarily reflects on that community's regard for the judicial system. You must hold that Judge Lee's "terrorist, murder, sect" and "assault" remarks constitute a **Hate Crime, inciting Islamaphobia and Xenophobia, Prejudicial Error and show Abuse of Discretion, Misconduct, Bias, and Conduct Prejudicial** to the administration of justice and as the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(b) by referring to an **Alleged Assault** inflicted by Appellant in a police report used to stipulate to a date on which defendants met with Appellant:

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making several comments and references to an alleged assault committed by the appellant upon a defendant, when in fact it was appellant that was assaulted in his own home by the defendant.

TO WIT:

On Tuesday, November 5, 2002, in convening the court after a brief delay at 3:30 p.m., the judge does not allow plaintiffs rebuttal witness from the Oakland Police Department to testify and present her file and notes regarding the contact of defendant Rescue Rooter in this matter. This evidence clearly established that the defense had the official and complete report**(attached hereto as exhibit C)** of the alleged assault from the Oakland Police Department and therein full knowledge of all dates and occurrences of the events as testified by plaintiff, that their entire defense of "No Knowledge" was a conspiracy and fraud, and at a meeting in August 2002 at San Ramon the headquarters of Rescue defendants counsel William Jemmout had orchestrated and solicited the knowingly false testimonies of defendants Chris Peterson, Rick Syrett, witnesses Rick Staben, and the expert witness Kent Lauder in perjury and should all have been disallowed and/or stricken. Rather the judge allows a stipulation and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants" without the slightest reference to there having been significant perjury by the defendants to declare a mistrial, no proof of the alleged assault, nor the importance of the fact that all their defense was based on "no knowledge" due to the changed date TR Vol. 4 1008:14-22. On Thursday, November 7, 2002, he again repeats that statement and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants"(V5P1034L19-22).

Appellant contends the foregoing comments by Judge Lee exemplified the undermining of appellant's credibility and case causing irreparable harm. These exclamations was an attempt by the court to vouch for defendant's admitted perjurious testimony thereby undermining appellant's credibility in the eyes of the jury. Specifically, his proclamations of the "assault" on several occasions, were not only argumentative, but called for speculation without any proof. It wasn't until the court received knowledge of appellant's dissatisfaction about the repeated references to the "assault" that Judge Lee stated that he was reminded that there was an "alleged assault" and he should not have referred to it, thereby inferring appellant might possibly have a legal right to disturb the court proceedings and findings by the jury with these type of improper references.

The trial judge's interference was opprobrious and oppugned appellant's integrity. Moreover, the taint of such prejudicial proclamations can not be dispelled by any

admonition or instruction.

The repeated proclamations of the assault by the court was "designed to infer that appellant not only committed the alleged assault, an offense with which he was never questioned or charged, but was violent and did knowingly and willfully with no regard for the seriousness of the court proceeding, lied about the entire case in question. Further, such repeated "comments, inferences, and questioning of appellant was argumentative and improper."

Judge Lee was intemperate and stepped outside the boundaries of what could be characterized as proper. A plain reading of the transcript clearly reflects that the judge's intent was to infer and thereby elicit from appellant his admission that he knowingly and willfully committed the assault, was violent, a liar, and as such, impress on the jury a judicial imprimatur of the defense's position. (See People v. Brock (1967) 66 Cal.2d 645, 649, 654-655 [58 Cal. Rptr. 321, 426 P.2d 889]; People v. Flores, supra, 17 Cal. App. 3d at p. 587 ["When the trial judge's remarks transgress the bounds of critical comment and assume the complexion of partisan advocacy and conclude with an expression of a defendant's guilt such comment is prejudicial as a matter of law"].)

The judges statements was not only argumentative and in part cumulative, but again, the trial court undertook to develop evidence favorable to the defense: the inference being raised that since there was a police report of an assault, appellant had committed the assault[and] therefore was violent, lying and not to be trusted. The judge persisted in negating appellant's testimony and his credibility by his repeat subsequent highlighting the inference that appellant had committed an assault, and that appellant was not being forthright when he testified otherwise.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(c) by **Judge Lee's Inappropriate and Illegal Ex Parte Communications** in discussing the Appellant's case and character with another judge outside the course of the proceedings who was biased against Appellant through unrelated prior proceedings.

As a matter of law Judge Lee has also violated canon 2B of the Code of Judicial Conduct, which provides that "A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him . . . ." In Spruance the court held a similar violation of canon 2B to constitute willful misconduct. (Spruance, supra, 13 Cal. 3d at p. 798.) Judge Lee had to know there was something judicially improper about his conduct that could not preclude a charge of willful misconduct, for that term embraces intentional conduct that a judge should have known was beyond his judicial authority. (Geiler, supra, 10 Cal. 3d at p. 286.)

Judge Lee had illegal ex parte communications and committed prejudicial error, abuse of discretion, gross misconduct, conduct prejudicial, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by having inappropriate ex parte communications with Judge Michael Ballachi and discussing the appellant and his case at bench during the trial in question.

TO WIT:

During post trial deliberations on November 12, 2002, the Honorable Judge Stanley Lee related to plaintiff's attorney Frank McKeown that he recently had lunch with Judge Michael Ballachi and was informed during that meeting that plaintiff was a liar and had failed to pay child support in a matter before Ballachi and that Ballachi had plaintiff jailed for same. Judge Lee further stated that he felt that plaintiff was a pathological liar and would say anything on the stand. Since there was no cause for judge Lee to conduct any outside private inquiry, nor relevance to nor proof of appellant's child support matter nor lying, to cast the plaintiff as a liar and a deadbeat dad was prejudicial, outrageous, illegal and totally inappropriate, and had to play a roll in some of the decisions that Judge Lee made during the trial. Plaintiff's attorney, Frank McKeown stating that Judges talk among themselves, felt that this opinion and attitude toward plaintiff had played a roll in some of the decisions that Judge Lee and others have made against plaintiff during the trial and in prior matters in this and the related insurance case over the years.

One need only look at the case of Fremont Indemnity Co. v. Workers' Comp. Appeals Bd., 153 Cal. App. 3d 965 to find the inappropriate context of Judge Lee's action. Consider that " The Initiation and Consideration by a Judge of Ex Parte Communications Concerning a Proceeding Pending Before That Judge Violates the Requirements of a Fair Trial and Due Process of Law".

Where a workers' compensation judge's misconduct legally or practically prevents any party from having a fair trial, the findings and award resulting from such misconduct must be annulled, and the matter remanded for further proceedings as in the event of a mistrial in municipal and superior courts. (Reimer v. Firpo (1949) 94 Cal.App.2d 798, 801 [212 P.2d 23].) Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible. (See Fidelity & Cas. Co. of New York v. Workers' Comp. Appeals Bd. (1980) 103 Cal.App.3d 1001, 1015-1016 [163 Cal. Rptr. 339]; Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (1982) 132 Cal.App.3d 796, 806-807 [183 Cal. Rptr. 440].)

You will find Gimbel v. Laramie (1960) 181 Cal.App.2d 77 [5 Cal. Rptr. 88] to be analogous to the case at bench. In Gimbel, an auto accident case in which the plaintiff contended that he sustained a traumatic myocardial injury from striking the steering wheel, the judge called counsel into chambers after the case was submitted and advised them that he asked a friend, an amateur photographer, to examine the photograph of the steering wheel which was entered into evidence, and the friend stated that he was unable to detect any evidence of damage to the steering wheel. The reviewing court stated that, at that point, counsel could have properly moved for a mistrial because the friend of the judge was testifying as an unsworn witness concerning evidence in the case

at a time when court was not in session, and he was not subject to cross-examination, and that this procedure constituted a denial of due process. (Id., at p. 85.)

You will find that, as in Gimbel, when the judge herein obtains further information and opinion, and in the process discussed the appellant's prior legal matters and character involved in this and the prior case, the judge effectively denied the appellant a fair trial and due process of law by discussing the case with an unsworn witness out of court.

The California Code of Judicial Conduct, adopted by the Conference of California Judges, reads, in part: "Compliance With the Code of Judicial Conduct
"Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code . . . ."

Canon 3 A(4) of the California Code of Judicial Conduct provides: "(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

The initiation or consideration, by a judge, of ex parte or other communications concerning a pending proceeding is proscribed by the California Code of Judicial Conduct since it denies to those persons legally interested in the proceeding the full right to be heard according to law.

The roles of independent investigator and of advocate are not compatible with the role and adjudicative responsibilities of a judge. Judges should be meticulous in their care to keep those roles separate since to unite them not only tends to violate the requirements of due process of law but also tends to erode "public confidence in the integrity and impartiality of the judiciary." (See Cal. Code of Jud. Conduct, canon 2.)

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be tolerated and the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(d) by committing **Misconduct, Conduct Prejudicial, Abuse of Discretion, and Bias, causing Irreparable Harm** to appellant by allowing defense attorney's slanderous statements characterizing appellant as a drinker with **"Drinking Buddy" comment:**

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by

allowing defense counsel Jemmott's slanderous comment of appellant's witness "drinking buddy" testimony regarding the issue of the 1991 backup at appellant's home and the nature or extent of the damage therein. As established earlier, there was no need for any testimony regarding the 1991 occurrence since there was no proof that it caused the contamination in 1997.

TO WIT:

During closing statements, defendants attorney William Jemmout repeatedly called appellant witness and neighbor "his drinking buddy" (V5P1075L6-12). When plaintiff's attorney, Frank McKeown, objected to the comment referencing the drinking and stated "Mr. al-Hakim does not drink", the Honorable Judge Stanley Lee overruled the objection on grounds that there was no evidence that appellant did not drink. Since there was no proof of his drinking, to allow the aligning of the plaintiff with drinking, which is against his religion, was prejudicial, outrageous, illegal and totally inappropriate. The judges remarks concerning the appellant's drinking constitute reprehensible conduct which is not to be condoned.

By his actions again Judge Lee has violated canon 2A of the Code of Judicial Conduct, which requires that judges conduct themselves "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The judge's brash comments and statements were manifestly uttered in bad faith while he was acting in his judicial capacity. (Spruance, supra, 13 Cal. 3d at p. 796.) His actions therefore constitute willful misconduct and conduct prejudicial.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(e) by committing **Abuse of Discretion with "American Sterling Claim" comment:**

The court has ruled "A trial judge may examine witnesses to elicit or clarify testimony [but he or she] must not become an advocate for either party or under the gui[s]e of examining witnesses[,] comment on the evidence or cast aspersions or ridicule on a witness." (People v. Rigney (1961) 55 Cal.2d 236, 241 [10 Cal. Rptr. 625, 359 P.2d 23, 98 A.L.R.2d 186].)

Judge Lee prejudiced the jury with his comments regarding the issue of a claim being filed by appellant with his insurance company at the time of the 1991 backup. This reference to the "claim" had the effect of casting the appellant as a money grubbing, double dipper trying to sue everyone for everything, regardless of the nature or extent of the damage therein.

TO WIT:

On Wednesday morning, October 30, 2002 at 9:30 a.m., after convening the court the defense called Vaughn Holden as an eye witness to the 1991 back up at the residence. Mr. Holden testified that he investigated claim made by al-

Hakim(V3P503L7-16). Court raises relevance of "claim" made with American Sterling, prior damage and it's influence on subsequent damage(V3P503L22).

One would have to further conclude the above record reflects that the trial judge was intemperate in his conduct and examination of appellant during the presentation of his case and that in several specific instances, the judge prejudicially interfered with same and conducted himself as though he sided with the defense. See People v. Perkins, 109 Cal. App. 4th 1562 109 Cal. App. 4th 1562; 1 Cal. Rptr. 3d 271; 2003 Cal. App. LEXIS 956; 2003 Cal. Daily Op. Service 5738; 2003 Daily Journal DAR 7213.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(f) by committing **Abuse of Discretion with Asbestos analogy to Home:**

As mentioned above, "A trial judge may examine witnesses to elicit or clarify testimony [but he or she] must not become an advocate for either party or under the gui[s]e of examining witnesses[,] comment on the evidence or cast aspersions or ridicule on a witness." (People v. Rigney (1961) 55 Cal.2d 236, 241 [10 Cal. Rptr. 625, 359 P.2d 23, 98 A.L.R.2d 186].)

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making a prejudicial comment regarding the issue of the contamination of appellant's home with asbestos and the nature or extent of the damage therein.

TO WIT:

While the defense expert is explaining to the court that he is, in fact, not and asbestos expert(V4P995L18), Judge Lee makes an indiscreet, malicious and prejudicial comments while proffering the lethal analogy to clients home being contaminated with asbestos and bacteria and dangers therein to the jury(V4P996L9).

Again you will conclude the above record reflects that the trial judge was reckless in his analogy of appellant's home and that in this specific instance, the judge prejudicially interfered with same and conducted himself as though he sided with the defense. See People v. Perkins, 109 Cal. App. 4th 1562 109 Cal. App. 4th 1562; 1 Cal. Rptr. 3d 271; 2003 Cal. App. LEXIS 956; 2003 Cal. Daily Op. Service 5738; 2003 Daily Journal DAR 7213.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(g) by committing **Abuse of Discretion** with **al-Hakim unbelievability comment:**

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross

negligence, bias, and showed malice toward appellant and thus prejudiced the jury by making a prejudicial comment about appellants truthfulness and believability regarding the 1991 collapse of the sewer actually beginning five days before the occurrence at the home.

TO WIT:

Judge Lee states on the record, "He(appellant) meant the five days preceding the sewer collapse. That's what he's testified to. If you find that incredulous that's beside the point"(V1P236L21). However, in questioning later, Pat Smith testifies that her notes reveal that- "sewer main collapse began before spill on 10/20/91, that City crew came out Friday to clear main line that was clogged until 11:30 pm, left because it was too dark, returned Sat. and al-Hakim had to call Roto Rooter on Sun., Mr. Marcel Banks(sewer guru) determined that it was City responsibility(V3P647L8-28)". This testimony completely supports and corroborates appellants testimony.

The law provides "A trial judge may examine witnesses to elicit or clarify testimony [but he or she] must not become an advocate for either party or under the gui[s]e of examining witnesses[,] comment on the evidence or cast aspersions or ridicule on a witness." (People v. Rigney (1961) 55 Cal.2d 236, 241 [10 Cal. Rptr. 625, 359 P.2d 23, 98 A.L.R.2d 186].)

Again the above record reflects that the trial judge was contemptuous and showed disdain for appellant in his conduct and statement as to appellant's honesty during the presentation of his case and that in several specific instances, the judge prejudicially interfered with same and conducted himself as though he sided with the defense. See People v. Perkins, 109 Cal. App. 4th 1562 109 Cal. App. 4th 1562; 1 Cal. Rptr. 3d 271; 2003 Cal. App. LEXIS 956; 2003 Cal. Daily Op. Service 5738; 2003 Daily Journal DAR 7213.

One must conclude that the above comment was a particularly egregious example of bias against appellant and partiality towards the defense. The comment was totally extraneous to any issues in this case other than to prejudice the jury against the appellant. Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(h) by committing **Abuse of Discretion** by allowing Defense counsel William Jemmott's collateral impeachment **"Liar"** comment:

Judge Lee prejudiced the jury by allowing defense counsel Jemmott's slanderous comment of appellant being a "Liar" in his testimony regarding the issue of the 1991 occurrence at appellant's home, the involvement of former Oakland Mayor Elihu Harris in the settlement of the suit against the City and the nature or extent of the damage therein.

TO WIT:

During closing statements, defendants attorney William Jemmot called

plaintiff a liar regarding the 1991 event and during a recess, the Honorable Judge Stanley Lee objected on the grounds that "for the purpose of credibility, is collateral impeachment and it is improper. He had specifically ruled that the event may be referred to during the course of the evidence as to how it, through your experts, could have caused, in part or in whole, the condition of the house as it is now". He further states that "The impression that I got that I want you to clarify is that he lied, therefore, you can't believe him. You can impeach him as to the details of what happened for purpose of the analysis of your experts as to the significance of the '92, '93--. Judge Lee instructed Jemmott to take back his statement that al-Hakim was lying. Also Judge Lee stated " They can believe that he testified falsely as to what happened then, but I don't want to run into an impeachment from collateral issue. So I want you to think on the remedy for that. Because I told them that the purpose of the '91 was to show the condition of the property. Insofar as Mr. al-Hakim, if they believe it, misrepresented to them the condition of the property you certainly can impeach him with his own words. That it's collateral impeachment(V5P1068L4-P1069L16). This was never corrected on the record and no admonition was given that could ever have corrected this egregious, blatant error.

The law provides "A trial judge may examine witnesses to elicit or clarify testimony [but he or she] must not become an advocate for either party or under the gui[s]e of examining witnesses[,] comment on the evidence or cast aspersions or ridicule on a witness." (People v. Rigney (1961) 55 Cal.2d 236, 241 [10 Cal. Rptr. 625, 359 P.2d 23, 98 A.L.R.2d 186].)

Again the above record reflects that the trial judge was contemptuous and showed disdain for appellant in his conduct and statement as to appellant's honesty during the presentation of his case and that in several specific instances, the judge prejudicially interfered with same and conducted himself as though he sided with the defense. See People v. Perkins, 109 Cal. App. 4th 1562 109 Cal. App. 4th 1562; 1 Cal. Rptr. 3d 271; 2003 Cal. App. LEXIS 956; 2003 Cal. Daily Op. Service 5738; 2003 Daily Journal DAR 7213.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(i) by committing **Abuse of Discretion** with the post verdict **al-Hakim comment:**

Judge Lee exhibited his latent prejudiced, disdain, malice and bias toward the appellant to the jury by making the post-verdict derogatory comment of appellant disagreeing with their verdict that "declare everyone a winner".

TO WIT:

During post trial verdict comments to the jury, Judge Lee tells the jury that he was satisfied with the questions that they asked, their demeanor and attention that the discharged their duties appropriately. "For that reason, even though Mr. al-Hakim may

disagree with you, your findings declare everyone a winner"(V5P1120L4-9). These comments by Honorable Judge Stanley Lee reveals his bias, prejudice, malice, misconduct, and underlying guilt in his mishandling of this matter, while merely underscoring the fact that the judge denied plaintiff's rights repeatedly, and is a feeble attempt to ease the minds and assure the jurors that the matter was adjudicated properly. Why did the judge feel the need to single out the plaintiff individually before the jury as the only one that would disagree with the decision?. Plaintiff's counsel had already declared on the record that sufficient error had already occurred for an appeal (V1P3L 21) and to declare a mistrial BEFORE the trial began as to render the trial useless that he certainly could not have agreed with the decision. This comment is just another of the many examples of the continuous egregious, blatant misconduct and prejudicial error on behalf of the judge.

The law provides "A trial judge may examine witnesses to elicit or clarify testimony [but he or she] must not become an advocate for either party or under the gui[s]e of examining witnesses[,] comment on the evidence or cast aspersions or ridicule on a witness." (People v. Rigney (1961) 55 Cal.2d 236, 241 [10 Cal. Rptr. 625, 359 P.2d 23, 98 A.L.R.2d 186].)

This sentiment reflects that the trial judge was hateful toward appellant in his conduct and statement as to appellant's feelings regarding the jurors verdict, and during the presentation of his case and that in several specific instances, the judge prejudicially interfered with same and conducted himself as though he sided with the defense. See People v. Perkins, 109 Cal. App. 4th 1562 109 Cal. App. 4th 1562; 1 Cal. Rptr. 3d 271; 2003 Cal. App. LEXIS 956; 2003 Cal. Daily Op. Service 5738; 2003 Daily Journal DAR 7213.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(j) The trial Court erred, showed bias, prejudice and improperly tried this case by **DENYING APPELLANT'S KEY REBUTTAL WITNESS,** former Mayor of Oakland Elihu Harris, **TESTIMONY:**

The court is required to afford all parties the fundamental right of due process which requires that " All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. " (Massachusetts Etc. Inc. Co. v. Ind. Acc. Com., supra, 74 Cal.App.2d 911, 914.)

The court must observe the mandate of the Constitutions of the United States and of California. This cannot be done except by due process of law. (Carstens v. Pillsbury (1916) 172 Cal. 572, 577 [158 P. 218].)

The right of examination of witnesses is fundamental, and its denial or undue

restriction is reversible error. (Jackson v. Feather River Water Co. (1859) 14 Cal. 18, 23.)

To deny a litigant the right to cross-examine a witness who testifies against him is a denial of due process of law. (Caesar's Restaurant v. Industrial Acc. Com., 175 Cal.App.2d 850 [1 Cal. Rptr. 97]; Fewel v. Fewel, 23 Cal.2d 431, 436 [144 P.2d 592].) The error is compounded when hearsay evidence directly contradicts testimony given under oath in open court and in the presence of the litigant.

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and malice toward appellant and thus prejudiced the jury by denying the testimony of appellants key rebuttal witness and introduction and admission of critical evidence regarding the settlement of the City of Oakland suit and the circumstances and events surrounding the same. More damaging was Judge Lee allowing defendants entire "collateral impeachment" defense theory that was largely based on depicting the appellant as a "liar" and that was improper.
TO WIT:

Defense counsel Jemmott had called former Mayor of Oakland, Elihu Harris as a rebuttal witness against al-Hakim in his attempt to portray plaintiff al-Hakim as a liar and influence peddler in City Hall as he implied governmental corruption in the settlement of al-Hakim's lawsuit against the City of Oakland.

al-Hakim testified that the settlement with the City of Oakland resulted from a conversation with then mayor Elihu Harris. The City had Dr. Danielson's report that indicated little damage if any to repair from the spill, no damage remaining from the spill, there had been more than required remediation to the home, the City offer was at $125,000 and he was compensated for all the contributing factors of several years in the settlement process(V2P347L16). Defense counsel Jemmott asked witness Pat Smith if the Mayor could settle a claim against the City by himself and she responded that she doesn't know(V3P633L27). During closing statements, defendants attorney William Jemmot called plaintiff a liar regarding the 1991 event and stated al-Hakim "would have you believe that he sat down with the Mayor of Oakland(Elihu Harris) and (Harris)decided I'll take care of you. We'll give you $125,00 even though there's nothing wrong with the house(V5P1065L27-P1066L3). The Honorable Judge Stanley Lee then calls for a recess of the proceedings. Judge Lee had already denied plaintiff's right to examine defense witness Harris after he conducted a private interview with the witness, outside the presence of the jury, determined that former mayor Harris' testimony corroborated that of appellant, was unnecessary and dismissed the witness without him taking the stand. This testimony was critical for the plaintiff because the defense had attacked his credibility continuously. During the recess judge Lee, realizing he had let Jemmott go too far in his conclusions in closing to the jury, directed the closing for Jemmott by suggesting that "for the purpose of credibility, this was allowing collateral impeachment and it is improper. He further states that "The impression that I got that I want you to clarify is that he lied, therefore, you can't believe him. You can impeach him as to the details of what happened for purpose of the analysis of your experts as to the significance of the '92, '93--. Judge Lee instructed Jemmott to take back his statement

that al-Hakim was lying. Also Judge Lee stated " They can believe that he testified falsely as to what happened then, but I don't want to run into an impeachment from collateral issue. So I want you to think on the remedy for that. Because I told them that the purpose of the '91 was to show the condition of the property. Insofar as Mr. al-Hakim, if they believe it, misrepresented to them the condition of the property you certainly can impeach him with his own words. That it's collateral impeachment(V5P1068L4-P1069L16). This was never corrected on the record by defense counsel Jemmott or Judge Lee and no admonition was given that could ever have corrected this egregious, blatant error.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

THE HOSTILE INTERVENER:

2. The Court of Appeal decision was improper and inconsistent with the law by deciding that Judge David C. Lee and the Trial Court did not abuse its discretion by the following acts:

(a) when it **granted the Motion to Intervene brought by CSAA-IIB:**

Judge Lee committed prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and show malice toward appellant and thus prejudiced the jury by allowing the presence of the hostile intervener, who tainted and spoiled the City of Oakland files when they broke the chain of command and took custody of them, into this matter to the irreparable harm of the appellant.

ALLOWED THE PRESENCE OF THE HOSTILE INTERVENER:
Criminal Deception and Patterned Fraud, Fraud Upon the Court and Law, Extrinsic Fraud, Fraudulent Concealment, Subornation and Solicitation of Perjurious Testimony, Spoliation of Evidence, and Unclean Hands by the Hostile Intervener and their Defense Counsel:

Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. (1) No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived. (Armstrong v. Wasson, 93 Okla. 262 [220 P. 643].) The statutes of California expressly provide that the suppression of a fact by one who gives information of other facts likely to mislead for want of communication of the fact concealed is deceit (Civ. Code, sec. 1710), and any other act fitted to deceive is actual fraud. (Civ. Code, sec. 1572.) (2) Where a deceiving, misleading document is presented

to the court for the purpose of obtaining an order, this of itself is an act of fraud both upon the court and upon the party adversely affected, and any judgment based thereon will be set aside.(Stern v. Judson, 163 Cal. 726 [127 P. 38].) The codes are as follows:

Civ. Code, sec.
1710. A deceit, within the meaning of the last section, is either:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

1571. Fraud is either actual or constructive.

1572. Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

1573. Constructive fraud consists:
1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

1574. Actual fraud is always a question of fact.
(a) Except as provided in subdivision (b), an order admitting a will to probate or appointing a personal representative, when it becomes final, is a conclusive determination of the jurisdiction of the court and cannot be collaterally attacked.
(b) Subdivision (a) does not apply in either of the following cases:
(1) The presence of extrinsic fraud in the procurement of the court order.
(2) The court order is based on the erroneous determination of the decedent's death.

As has been said, fraud may be committed by the suppression of the truth as well as by the suggestion of falsehood. It may consist in suppression of that which it is one's duty to declare as well as in the declaration of that which is false (12 Cal. Jur. 770). Had such facts known to the hostile intervener and concealed by them been disclosed to the court, there would have been no need for them to present to the court the order, for court had already concluded that it was not a proper party to this litigation.

TO WIT:

In pretrial motions, the Honorable Judge Stanley Lee had ruled that the hostile intervener CSAA was not a proper party to this action and would not be allowed to participate in the trial(V1P1L 24-pg13). Again during closing arguments, he states that "I had specifically ruled that the 1991 event may be referred to during the course of the evidence as to how it, through your experts, could have caused, in part or in whole, the condition of the house as it is now"(V5P1068L6-9). That was the entire limit placed on the use of anything regarding the 1991 event. He not only went against his own ruling based on a motion that retired Judge Hodge granted to CSAA in January 2001, during the time that plaintiff was not represented and serving in Pro Per and allowed the intervener into the case, further allowed full and complete exploration of the 1991 matter before the jury. What Judge Lee did not know was that the hostile intervener had deceived and perpetrated extrinsic fraud, and criminal, corrupt fraud on the court and law by not disclosing that Judge Hodge, in his last day on the bench, had granted their motion to intervene in the matter at that time, but further conditioned that order that he would leave it to the trial judge to determine if they could, in fact and law, intervene and be a proper party to the trial. **Now, AFTER Judge Lee has determined that the hostile intervener is not a proper legal party to the action,** the hostile intervener produced to Judge Lee only the order for their intervention, but willfully and intentionally concealed and withheld their knowledge and insight from the hearing and the transcript from said hearing**(attached hereto as exhibit A)**, though they had a copy of the transcript and full knowledge of the events of the hearing, so as to sabotage the appellants case with their subversive actions. Since the transcript clearly states that the trial court judge will make the decision if the intervention is proper, and the trial court judge has already ruled that the intervention was not proper, the order to allow them in was moot and of no effect, thus should have never been presented.

It is charged that this material fact was concealed from the court and under plaintiff's evidence there was criminal fraud upon the court, extrinsic fraud practiced upon the court and law that consisted of the suppression of facts which the intervener and his attorneys were bound to disclose (Civ. Code, § 1710). That they had a duty to inform the court that the attorneys were aware of the truth of the judges order and the nature of the hearing transcript is not open to doubt. The fact that the plaintiff/appellant had filed pretrial objections to the request for intervention and the court heard the matter and ruled against them, only to have the attorneys return with just the order only, would indicate to the court, quite persuasively, that the intervener

was aware of the order and hearing transcript, was informed of the content therein and considered the transcript a death blow to their efforts. Little did the court know that the attorneys for the intervener could not allow for a fair and impartial trial and had all the facts we have mentioned been known to the court, the evidence of the order itself would have been without significance.

With their two bites at the apple, the allowance of the presence of the hostile intervener into this matter set off a chain of events, shrouded in deception and criminal patterned fraud upon the court that has shaken the very foundation of the legal system and is a major cause of contention in this petition. As you will witness, this was not the first nor last fraud or deception that the hostile intervener was to have their unclean hands involved in. These facts, which should have been made known to the court, were concealed from it.

The evidence proved these allegations. It will be presumed, without special pleading or proof that, if the court had been informed of these circumstances, it would have refused to enter the order allowing the intervention or even entertaining the possibility. A fraud upon the court was thus pleaded and proved, and the strict rules applying to the pleading of fraud generally are not controlling under these circumstances. The interest of the state in the preservation of the right to anyone to a fair trial makes it an interested party in the proceedings and any action of the principals which conceals the true facts and circumvents this interest is against the public policy and is a fraud upon the court. The rule is stated in McGuinness v. Superior Court, 196 Cal. 222, 230 [237 P. 42, 40 A. L. R. 1110], as follows: "It was also extrinsic fraud in so far as the court itself granting such decree was concerned since it was effected through concealment from the court in an ex parte proceeding of facts which the defendant in said action was bound to disclose and which if disclosed would have rendered improper the granting and impossible the procurement of such final decree."

The foregoing recitals are ample to show fraud, when we consider that notwithstanding them the hostile intervener appeared before the court in October, 2002, and without disclosing any of the recited facts, testified and induced the court to grant them an order. In McGuinness v. Superior Court, 196 Cal. 222 [237 Pac. 42, 40 A. L. R. 1110], it was held that the concealment of the real facts constituted a fraud upon the court. It could not be otherwise. The law books are full of statements to the effect that the state is interested and concerned with a fair trial and the welfare of all litigants, and to conceal such facts from the court constitutes a fraud upon the court and the adverse party. Here the fraud established by the showing of the respondent was extrinsic (McGuinness v. Superior Court, supra; Tomb v. Tomb, 120 Cal. App. 438 [7 Pac. (2d) 1104]), and it has been determined that where it is of that character, the court has the inherent power to set aside the decree regardless of the limitations prescribed by section 473. (McGuinness v. Superior Court, supra; Aldrich v. Aldrich, 203 Cal. 433 [264 Pac. 754]; McKeever v. Superior Court, 85 Cal. App. 381 [259 Pac. 373]; Tomb v. Tomb, supra.). A court has inherent power to set aside a decree for extrinsic fraud (Cross v. Tustin, 37 Cal.2d 821, 825, [236 P.2d 142]) when a party has been prevented from fully presenting his case and there has therefore been no adversary trial

of the issue. (Bacon v. Bacon, 150 Cal.477, 491 [89 P. 317]; Howard v. Howard, 27 Cal.2d 319, 321 [163 P.2d 439].)

This act by the hostile intervener was evasive and insincere on its face, and it is obvious from the entire record that they knew the facts and supported the defendants and planned to have the verdict in this case used as res judicata in their case. This is criminal fraud upon the court and law, extrinsic fraud -- fraud on the appellant, which prevented him from having his day in court and which, according to his testimony, has deprived him and his family of the celebration of their daily lives with the pursuit of happiness, ruined their health, destroyed his business, the savings of a lifetime, and it was also a fraud upon the court.

The hostile intervener committed bad faith, criminal fraud upon the court and law, fraudulent concealment, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by admitting and allowing questions, evidence and testimony of a deposition taken by the hostile intervener in another insurance case, into this matter by supplying that transcript to the defense, to the irreparable harm of the appellant. Further, Judge Lee allowed the defense to raise insurance issues, and ask insurance coverage and related questions for the hostile intervener. The hostile intervener was suppose to be aiding the representation of the appellant, their client and insured.

The hostile intervener committed bad faith, criminal fraud upon the court and law, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence tainted and spoiled by defendant Ron Cook, the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, regarding the City of Oakland file of the previous 1991 backup that was tainted and spoiled by the defendant and hostile intervener when they took custody of the files for nine months. Although the files in the previous matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the control of the above mentioned defendant and hostile intervener.

ADMITTED AND ALLOWED QUESTIONS, EVIDENCE AND TESTIMONY OF HARUN al-HAKIM'S DEPOSITION TESTIMONY taken by the HOSTILE INTERVENER IN INSURANCE MATTER on roof leaks and INSURANCE COVERAGE AT TRIAL.

Judge Lee committed prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and show malice toward appellant and thus prejudiced the jury by admitting and allowing questions, evidence and testimony of Harun al-Hakim's deposition taken by the hostile intervener in the insurance case, into this matter to the irreparable harm of the appellant. Further, Judge Lee allowed the defense to raise insurance issues, and ask insurance coverage and related questions for the hostile intervener.

TO WIT:

The defense discredited the testimony of Harun al-Hakim with the use of a deposition taken and provided to them in the insurance matter by the hostile intervener in their collective efforts to defense a verdict by the insured plaintiff. On several occasions during her testimony at trial she was repeatedly asked questions that she had previously answered and explained in her deposition cast her as a lair trying to aid the cause of her dad and line her own coffers. This defense strategy was revealed at the conclusion of the deposition of Harun al-Hakim, wherein counsel for the defendant/intervener Steve Barber engages in the following exchange with plaintiff's counsel regarding Harun's review of the deposition at page 72(Harun Deposition V1P72L1 **attached hereto as exhibit B):**

P72 L1

1 MR. BARBER: I think we need to do a stipulation on how long she will have to read the transcript. The trial starts the 23rd.

4 MR. McKEOWN: The trial doesn't start until after -- it's not going to start until probably September.

6 MR. BARBER: I imagine she is going to be subpoenaed to testify in the first trial.

8 MR. McKEOWN: This isn't a deposition in that case. In any case what are you proposing?

This clearly indicates the intention and plan of the hostile intervener to provide and use the deposition in the Rescue trial as there was no date set for any trial between the parties to the deposition being taken at that time. The testimony regarding the deposition and the roof leaks were TO WIT:

On Wednesday afternoon, October 30, 2002 at 1:00 p.m., after convening the court the defense called Harun al-Hakim as a witness to the 1997 back up and roof leaks at the residence. She testified she first noticed roof leaks in her early twenties(Harun V3P567L10) and daughter was 5 years old (V3P568L5-12). Ms. al-Hakim answered repeated questions regarding CSAA deposition by defense counsel Todd Jones at (Harun V3P568L26 and V3P569L14, and by defense counsel William Jemmott on deposition at V3P572L26-P573L20, and V3P574L11).

She stated she vaguely remembers 91 spill, was not there then, has no smell, remembers remodeling (V3P577L27-P578L20).

She having tuff time emotionally, does not have a clear recollection of time period(V3P579L12-17).

Saw no leaks 92-93(V2P336L14).

In her deposition Harun had already testified that the skylights leaked during a specific time- not all her life and she may have been 18 years old but not sure actually(Harun al-Hakim Deposition P40L16-22 **(attached hereto as exhibit B)**, her daughter was born when the roof leaked(Harun Deposition P41L2), she was 22 years old when the roof was leaking, not 16-18 as implied by defense intervener counsel Barber(Harun al-Hakim Deposition P56L15-25 **(attached hereto as exhibit B)**. None of this testimony was taken in the Rescue rooter case, none of this testimony was new

or different from the trial testimony, and was inappropriately used by the defense with the compliance of the hostile intervener to biased the trial against their own insured in an effort to aid there on insurance defense.

Abdul-Jalil al-Hakim testified:

Appellant testified that his grandson born June 1997, daughter not doing well emotionally after her husband was murdered, and that due to the circumstances, "I'm the father"(al-Hakim V2P378L2-17)

Bob Gils testified:

Plaintiff's expert Bob Gils testified that you can't measure molds from roof leak vs spill, go by al-Hakim symptoms(V1P101L4-28). Roof leaks from 92-could be source of mold, but only in area of leak, not all over dwelling(Gils V1P109L25).

Rudy Von Borg testified:

Defense expert Von Borg testified that he determined roof leaks from Harun al-Hakim deposition, saw sever water damage (V4P791L2).

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(b) when it **admitted evidence and testimony concerning an unrelated 1991** spill at the Appellant's residence.

Judge Lee committed prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and show malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence tainted and spoiled by defendant Ron Cook, the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, regarding the City of Oakland file of the 1991 backup that was tainted and spoiled by the hostile intervener when they took custody of the files**(see letter from Mike Michel dated July 5, 2005 attached hereto as exhibit H).** Although the files in the 1991 matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the control of the above mentioned defendant and hostile intervener.

In pretrial motions, Judge Lee had ruled that all evidence and testimony of an alleged back-up that occurred in 1991 at the residence in question would be disallowed unless there was absolute proof of causation of the current contamination of the residence by the defendants contamination expert witness Rudy Von Borg. There was no evidence provided by any of the defendants witnesses that corroborated that theory and in fact their experts never stated that any incident from 1991 to 1997 caused the contamination alleged by the defendants at any time. The following testimonies prove beyond any reasonable doubt that the entire testimonies of all the defense witnesses,

Vaughn Holden, Pat Smith, Rich Neary, and expert witnesses Rudy Von Borg, Kent Lauder, Mark Hunter, and Gary Hall should all have been disallowed and/or stricken(V5P1068L4-pg1069L19).

As you will witness below, appellant clearly established that even though the only expert from the 1991 spill to have provided a scope of work had determined that there was no need to do any cleanup after the 1991 spill, appellant had addition clean up performed on four occasions and the City of Oakland had performed an exhaustive clean up the same day the spill occurred. All of the current experts agreed that the cleanup performed in 1991 was above and beyond the standard of care used today and that there is no way to establish that the contamination that exist in the home today was caused by the 1991 spill. This finding renders all discussion of the 1991 spill moot and irrelevant.

TESTIMONY ON 1991 BACK UP

Remediation:

TO WIT:

al-Hakim testified:

Appellant al-Hakim testified there was no feces or toilet paper in water that came into home in 91(V1P240L22).

That Dr. Danielson's report states it was a "gray water spill"(V2P331L5) and that he performed Danielson's scope of work(V2P372L13-18). al-Hakim stated Dr. Danielson spoke with City and others(V2P393L20) regarding spill. The court asks about Alameda County involvement in 1991 to ascertain contamination(V2P394L5), that FEMA and County came out to home(V2P394L9-22), court asks how appellant had referrals to FEMA, County, soils engineers, etc. and filled out forms(V2P395L3-12). Appellant states Dr. Danielson scope recommendation for Public health firm for permits was the same work performed by City(V2P396L7-21), and appellant had done additional cleaning both before and after the Danielson letter(V2P396L28). Appellant swore that there was no fecal matter nor any eyewitness to such in 1991(V2P397L18-27) and there was never any fecal matter to show anyone(V2P398L1).

Pat Smith testified:

City of Oakland investigator Pat Smith testified that work crews for City of Oakland does clean up work, use hoses to extract water and debris, crew appeared to have cleaned up, she had no recall of wet walls, and that Jim Burchardt reported only 5 rooms of wet carpet in call from OPW(V3P646L7-28). Her notes from 10/5/92 indicate Mr. Banks felt there was no damage, if there was greater damage , she would have investigated, and no one else did(V3P649L3-19).

Bob Gils testified:

Appellant expert Bob Gils testified that 1997 Sewage intrusion was the primary source of contamination without proper cleaning, which cleaning that was done exacerbated problem (V1P59L6,17). He further states that the remediation in 1991 with the removal of the wet carpet, no use of blowers, was good and industry standard (V1P117L17-28).

Rudy Von Borg testified:

Defense expert testified that if the City of Oakland did same day work in 1991

that would be the correct way to remediate mold(V4P807L16).

Gary Hall testified:

Defense expert Gary Hall testified that most of the damage to the home was upstairs, not downstairs, water sources upstairs caused elevated mold, therefore the 1991 spill was not a substantial factor in contamination of home(V4P997L8-26).

Given this testimony, any and all evidence, testimony, and references to the 1991 spill should have been disallowed. Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

TESTIMONY ON 1997 BACK UP.

Remediation:

As you will witness below, appellant clearly established that there was only a partial attempt to clean up by the defendants from the 1997 back up while that was done improperly thus worsening the problem, and even though appellant and the hostile intervener also attempted to clean up, there remained the existing contamination. The experts agree the 1997 back up was never cleaned up properly as per any scope of work and they determined that there is a greater need to do a proper clean up now and that the current condition of the home could not have been caused by the 1991 spill.
TO WIT:

Bob Gils testified:

Appellant expert Bob Gils testified that the 1997 Sewage intrusion was the primary source of contamination without proper cleaning, which cleaning was done exacerbated problem (V1P59L6,17), that the spill untreated and the use of blowers is contamination problem(Gils V1P57L11-18).

The court asks Gils about the contamination tests and Gils tells the jury where Bierman found E-Coli, which is not found after a year, which means there was fecal matter present and it was not cleaned properly(V1P71L23-P79L4). He said that he is not separating roof leaks from the sewage problem because the prime event was the 1997 spill(V1P80L7-27), that prior roof leaks had no impact(V1P81L11-24) and the fact that appellant moved out of home in 1991 was irrelevant in report(V1P83L14-18). He reiterates that the primary incident is 1997 sewage spill(V1P83L28) and that al-Hakim did not tell him house flooded with sewage in 1991, that he moved out house, was sweeping water out of door into pool was not relevant to 1997 spill(V1P84L5-P85L18) He explains that Biermans samples only relate to 1997 spill, other spills irrelevant(V1P91L26), Biermans tests at P & K Lab reveal fecal contamination, which concludes the home was not cleaned properly(V1P40L13-19), (V1P41 L2-25). Further, Gils repeats the inappropriateness of the clean up at(V1P38 L11-28, V1P39L3-27, V1P48 L18-28, and V1P121L8), and draws the conclusion that the sewage spill was not cleaned up properly(V1P55L28), the problem was aggravated by the attempted cleanup,

the contaminated material was not removed, the home was never really cleaned completely. This conclusion consummates in it's too late to cleanup inexpensively now, that in remediation you don't clean up fecal blooms, you must clean up and document it appropriately, if it fails, clean it again(V1P53L2-13).

Rudy Von Borg testified:

Defense expert Rudy Von Borg stated E-Coli comes from fecal matter, that he saw reports of finding fecal matter after the cleanup which means there was no clean up(V4P783L15-22). He says that 1997 was a gray water spill but it still contains E-Coli(V4P787L22) and you can't distinguish 1991 E-Coli from 1997 E-Coli(V4P788L4).

Gary Hall testified:

Defense expert Gary Hall testified that Stachybotrys was found in master, boys and girls bedrooms, and dining room, but none downstairs(V4P980L21-26). He stated that the HVAC system could be a source of contamination from sewage in 1991 since it was never replaced, and could be a method of distributing mold spores through home if you had a source(V4P985L25). The court asks if air intake for the HVAC system is in contaminated area in basement, if so it would redistribute spores, he answers he doesn't know but spores could only go from that source area to another(V4P986L7-19). He also testified that it is not good to wait 4 days before you begin a Black water cleanup, it must be performed within 24 hours(V4P990L8-28) as mold colonies grow in 48 hours, and the clean up crew should have responded to 1997 spill within 24 hours if black or gray water or sewage(V4P991L3-24). He declares that if the spill was remediated properly in 1997 the costs would have been approximately $35,000(V4P1002L8) and it can be more expensive the longer you wait to repair(V4P10030L4).

Given all this evidence and testimony, it is clear that the source of the contamination of the home is obviously the 1997 spill and any reference to the 1991 backup should have been disallowed. Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(c) when it **admitted evidence, testimony and questions of insurance coverage by the defense and the Hostile Intervener** in the underlying negligence case.

In pretrial motions, the Honorable Judge David Lee had ruled that the hostile intervener CSAA was not a proper party to this action and would not be allowed to participate in the trial(V1P1L 24-pg13). He later went against his own ruling based on a motion that was granted to CSAA during the time that plaintiff was not represented and serving in Pro Per. He allowed the following evidence, testimony and questions to be asked by the defense and the intervener, over the objection of counsel (McKeown objects to line of questioning(V2P288L6 and again at (V2P294L18-25), to the irreparable harm

of the appellant. Although the intervener testified that all the moneys were for repairs to the home, virtually every payment made was for a reimbursement of an expense payment appellant or a vendor had already made in an authorized replacement or repair of damage that was caused by defendant/ hostile intervener, and several payments claimed were made were for repairs that never happened at the appellant's residence. This entire testimony should have never occurred yet did to the irreparable harm of the appellant.

Judge Lee committed prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, bias, and show malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence, testimony and questions by defense counsel of insurance coverage for the hostile intervener.

ALLOWED EVIDENCE AND TESTIMONY OF THE HOSTILE INTERVENER: TO WIT:

On Tuesday evening, November 5, 2002 at 3:30 p.m., after convening the court the intervener CSAA called Doug Kroll as the CSAA claims specialist to the 1997 back up at the residence. Mr. Kroll testified he has personal knowledge of al-Hakim claim(V4P1009L28-P1010L10). After being presented with defendants exhibit #301, he acknowledges draft for $1,800 to reimburse al-Hakim for loss of use during ozone testing of home (V4P1010L28). Draft for $475.20 to London Construction for heaters(V4P1011L17). **The hostile Intervener presents a draft for $4,450 to Synergy Environmental for replacement of furnace and asbestos vinyl floor work(V4P1011L25)**. There is repeated testimony(see paragraphs 2, 3 and 4 following) that the furnace/heater/air conditioner and asbestos floor tiles were never replaced and are still present in the home today. All this repair work has the same claim number(V4P1012L4-15). Draft to reimburse al-Hakim for $324.92 for electrical repair damaged by tear out(V4P1012L22-26). Draft for $1,449 to reimburse al-Hakim for equipment to scan files recommended by Ken George(V4P1013L4-8). Draft for $2,504.20 to Servicemaster for failed Ozone cleaning and tear out(V4P1013L12-16). Draft for $92,032.71 to al-Hakim and Atlantic Mortgage for repairs(V4P1013L20-26). Draft for $5,222.11 to al-Hakim and Atlantic Mortgage for repairs(V4P1014L2-5). Draft for $4,109.20 to al-Hakim for partial payment of personal property(V4P1014L9). Draft for $3,500 to reimburse al-Hakim for 1 month loss of use(V4P1014L13). Draft for $7,4064 to Four Star for inventory(V4P1014L17). Viewing Def. Ex #302 he identifies draft to reimburse al-Hakim for $150 for moving piano pursuant to a different claim(roof)(V4P1015L12-18).

To rebut this testimony, al-Hakim says the heater was never replaced(V2P340L13-24), Vaughn Holden says in his report on the furnace room- "replace sheet rock ceiling, walls, furnace, Laundry- tear out wood paneling, sheet rock ceiling" (Holden V3P518L3-28) reiterating that this repair was never done and expert Gary Hall states the HVAC system could be "a source of contamination from sewage in 1991, from 1986, and was never replaced" to date(V4P969L13-27).

Appellant argues that the court can not allow this type of abuse of discretion,

willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

ALLOWED QUESTIONING FOR THE HOSTILE INTERVENER:
TO WIT:

Defense counsel was allowed to question Dr. Numan about appellant's rental and the insurance question if $3,500 monthly is $150 a day?(V2P285L19). The relevance of that question is to the insurance policy and the inherent loss of use the defendant/hostile intervener is liable for to pay appellant until the claim is settled. The matter of $3,500 per month or $150 per day is a point of contention between the hostile intervener and appellant. The Hildreth rental by appellant(V2P285L21) and the authorization to pay rent to Melton(V2P286L15). The court allowed questions regarding the Clyde Wallace rental at $3, 500 a month(V2P286L23) and again to pay such rent to Melton(V2P287L5), then finally asked the insurance question of appellant receiving money from the insurance company(al-HakimV2P287L17) wherein McKeown objects to line of Questioning(V2P288L6) is overruled.

Defense counsel was allowed to ask about the partial Cameron estimate spoiled by the intervener (V2P288L22), any insurance paid on spoiled Cameron estimate (V2P289L3-20). Appellant establishes that Cameron bid requested by CSAA as Defense Exhibit #211(V2P292L10-27) was not retained by appellant(V2P293L9-13) and McKeown objected to questioning-sustained(V2P294L18-25).

Defense was allowed to ask about Atlantic Mortgage company demanding appellant to make mortgage balance payment due to CSAA involvement(V2P346L12-28) and that CSAA demanded mortgage company keep money until repairs were made(V2P346L22).

Defense was allowed to ask al-Hakim if he paid brother $20,000 rent(al-Hakim V2P379L8), if he supports Harun al-Hakim(V2P379L18-25) and supports brother and daughter(V2P380L15-P381L8).

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

(d) when **it failed to grant certain motions in limine submitted by Appellant/Plaintiff**, including those oral motions argued at commencement of trial once the jury was impaneled?

3. The Trial Court erred, showed bias, prejudice and improperly tried this case by the **Admission of Evidence Tainted and Spoiled by the Hostile Intervener that**

violated the EVIDENCE CHAIN OF CUSTODY:

The rules for establishing chain of custody are as follows: " 'The burden on the party offering the evidence is to show to the satisfaction of the trial court that, taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, it is reasonably certain that there was no alteration. [P] The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. Left to such speculation the court must exclude the evidence. [Citations.] Conversely, when it is the barest speculation that there was tampering, it is proper to admit the evidence and let what doubt remains go to its weight.' " (People v. Diaz (1992) 3 Cal. 4th 495, 559 [11 Cal. Rptr. 2d 353, 834 P.2d 1171], quoting People v. Riser (1956) 47 Cal. 2d 566, 580-581 [305 P.2d 1]; see also People v. Williams (1989) 48 Cal. 3d 1112, 1134 [259 Cal. Rptr. 473, 774 P.2d 146]

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence tainted and spoiled by defendant Ron Cook, the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, regarding the City of Oakland file of the 1991 backup that was tainted and spoiled by the hostile intervener when they took custody of the files. Although the files in the 1991 matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the secret, unauthorized control of the above mentioned defendant and hostile intervener.

For the instant case, in or about October 1999 defendants Ron Cook and the law firm of Willoughby Stuart and Bening and the hostile intervener CSAA's defense counsel Stephen Barber, under the guise of viewing the file, took custody of the appellant's legal file from the Oakland City Attorney's office of the 1991 spill and it disappeared. When appellant's attorney Mike Michel and appellant contacted the City attorney's office later in November 1999, they were informed by the City Attorneys' office that the file was mysteriously missing, could not be found, and the file was unaccounted for. Appellant and his attorney repeatedly contacted the City attorney's office until May 2000 only to be informed that the file was still missing and unaccounted for. Finally, in late July 2000, after the completion of the award phase of the CSAA second appraisal in which the court vacated due to, among other grounds, "the award was procured by corruption, fraud, or other undue means"; or the appraisers "exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted", the file was equally mysteriously returned. The order**(attached hereto as exhibit D)** further cited the improper use of "cash value" as replacement cost, use of erroneous "used cost" figures, denial of coverage, injection of fraud, concealment, breach of contract, and coverage issues without any reason or evidence. What the court did not address in the motion to vacate was the actual collusion and fraud again perpetrated

upon the court by the defendant Ron Cook and the hostile intervener when they provided to and the appraisal panel adopted the improper "cash values" used in the vacated award that was further prepared and written by defendant Cook and the hostile intervener. But now, however, the City attorney's office contacted both appellant's attorney and appellant to inform them of the return of appellant's file. When asked to respond as to it's unaccounted whereabouts for the previous nine months, the City Attorney responded that they did not know and merely stated that it had been returned in it's present condition by the defense law firm of Ropers Majeski and was last traced backed to Stephen Barber at that firm**(see letter from Mike Michel dated July 5, 2005 attached hereto as exhibit H).**

Judge Lee subpoenaed and ordered the original case file of the 1991 spill from the City of Oakland tainted and spoiled by the hostile intervener, to be brought into evidence, be admitted as part of the record and allowed it's contents to be used as exhibits and to make the record. Judge Lee admitted and allowed the evidence contaminated and spoiled by the hostile intervener, and testimony on and regarding said evidence causing bias, prejudice and irreparable harm to plaintiff. During the course of the trial it was pointed out that the file was incomplete, inaccurate and many not even copies of the original. The photos from Pat Smith, Vaughn Holden and the plaintiff were all conveniently missing, among many other important documents that resulted in perjurious and conflicting testimony by and in favor of the defense.

In committing this continual deception and patterned criminal fraud upon the court, the intervener failed, refused, and never revealed to the court their improper and illegal transgressions regarding the fact of their spiriting away the files under the cloak of secrecy and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents and their unpardonable breach in the chain of custody**(see letter from Mike Michel dated July 5, 2005 attached hereto as exhibit H).**

Given the above, with the worst example of the chain of custody being broken by the City of Oakland files being absconded with by defendant Ron Cook and the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, clearly the court must exclude the evidence and sanction the perpetrators of this crime of unclean hands.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

4. The trial Court erred, showed bias, prejudice and improperly tried this case by the **Admission of Evidence Tainted and Spoiled by the Hostile Intervener of and related to missing Photos from the 1991 event:**

The courts have concluded that- he who, without mistake or accident destroys primary evidence, deprives himself of the production and use of secondary evidence. The

best evidence is required, and if a party with this in his power destroys it voluntarily, the law knows no relaxation for him, whatever may be given for accident or misfortune; to admit such evidence under these circumstances would open a door to frauds without number; by such spoliation of his own security the holder destroys his right of action. (Broadhead v. Stiles, 3 Halsted, 58; Vananken v. Hornbeck, 2 Green, 180; Livingstone v. Rogers, 2 Johns. Cases, 488; Blade v. Noland, 12 Wend. 174.)

In People v. Hitch, supra, 12 Cal. 3d at pp. 649-654, our Supreme Court held that evidence is inadmissible when their contents had been lost; the failure to preserve favorable evidence to a defendant was a violation of due process. Lost evidence is deemed material for the purposes of triggering the due process concern of Hitch if there is a reasonable possibility it would be favorable to the defendant on the issue of guilt or innocence. (People v. Hitch, supra, 12 Cal. 3d at pp. 649-654; see also People v. Zamora (1980) 28 Cal. 3d 88, 99-100 [167 Cal. Rptr. 573, 615 P.2d 1361]; People v. Nation (1980) 26 Cal. 3d 169, 176 [161 Cal. Rptr. 299, 604 P.2d 1051].)

In People v. Goss (1980) 109 Cal.App.3d 443 [167 Cal. Rptr. 224], this court held it was Hitch error, albeit harmless, for the trial court to refuse to suppress prosecution testimony concerning a defendant's first unrecorded statement when the prosecution failed to establish it had used sufficient precautions to avoid erasure of the tape used to record the defendant's second statement since the erased tape could have had impeachment value as to prosecution testimony concerning both statements of the defendant. (Id., at pp. 448-456.) A reasonable inference arises from Goss that if a confession is not tape recorded, the officer's notes of the conversation should be preserved because of their potential impeachment value.

In United States v. Harris (9th Cir. 1976) 543 F.2d 1247, 1248, cited by Justice Reynoso, states: "We reject the contention of the government that the good-faith destruction of rough notes in accordance with normal agency procedure is justifiable. Notes taken by FBI agents in interviews either with prospective government witnesses or, as in this case, with the accused, constitute potentially discoverable materials. [Citations.] Since the routine disposal of potentially producible materials by the FBI amounts to a usurpation of the judicial function of determining what evidence must be produced in a criminal case, we hold that such original or rough interview notes must be preserved."

In re Jessie L. (1982) 131 Cal.App.3d 202, 208-211 [182 Cal. Rptr. 396], involved rough notes taken by a police officer during an interview of someone other than the defendant which related to testimony supporting probable cause to arrest the defendant. The reviewing court's rhetorical statement that neither Hitch nor the Constitution "[requires] police officers to act like pack rats, saving every scrap of paper generated in an investigation" is inappropriate in the context of the facts of this case. (Id., at p. 211.) Here, the photos, documents, and notes would have been material to impeach defendant's witness testimony about the condition of appellant's home during the inspections, which was not reflected in the typewritten reports. When an appellant's case is at issue, due process considerations mandate that every reasonable effort be made to preserve the integrity of the files.

The **SPOLIATION OF EVIDENCE** in this matter is clearly exhibited by the many missing photos from the file that was tainted and spoiled by the hostile intervener of the 1991 occurrence that were critical and dispositive to the appellant while easily proving his case. Although the files in that matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and files that were tainted and spoiled by the hostile intervener. Indeed, I would essentially ask the court to assume, for the purposes of this appeal, that the lost evidence was material and exculpatory, and the court chose this course. The court felt obliged to proceed in this manner because the judge heard some evidence on these issues and then allowed the jury to make factual findings based in part on the evidence heard, now one would question whether the appellant had had the fair opportunity to litigate the factual issues addressed in such findings effectively. (See Mueller v. J. C. Penney Co. (1985) 173 Cal.App.3d 713, 720 [219 Cal. Rptr. 272].)

In committing this continual deception and patterned criminal fraud upon the court, the intervener failed, refused, and never revealed to the court their improper and illegal transgressions regarding the fact of their spiriting away the files under the cloak of secrecy and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents and their unpardonable breach in the chain of custody.

THE COURT INTRODUCED EVIDENCE CONTAMINATED AND SPOILED BY THE HOSTILE INTERVENER AND ALLOWED TESTIMONY ON SAID EVIDENCE:

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence tainted and spoiled by defendant Ron Cook, the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, regarding the City of Oakland file of the 1991 backup that was tainted and spoiled by the hostile intervener when they took custody of the files. Although the files in the 1991 matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the control of the above mentioned defendant and hostile intervener.

TO WIT:

<u>al-Hakim testified:</u>

Appellant testified he took pictures(al-Hakim V2P345L19) that were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener and the repair work is shown by changes in pictures(V2P348L6) that were missing from the City of Oakland files. Al-Hakim testified the photos from 1991(al-Hakim V2P374L23-P376L6) were missing. Al-Hakim testified he gave pictures to City of Oakland and they knew the condition of home(V2P376L10-18, and V2P376L27) that were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener. The court asks al-Hakim about the timing of pictures, appellant testified he took them during the incident(V2P376L22-24).

Pat Smith testified:

Pat Smith's notes show 5 rooms of wet carpet, bath, hot tub, and pool. She says saw fecal matter behind a refrigerator in the family room, hot tub, and near pool (V3P621L9-28) but photos depicting those conditions were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener. She said that the damage was confined to the lower level of home, referring to her notes-there was a smell(terrific stench(V3P622L2-6), and took pictures of the residence (V3P622L13). Defense Exhibit #249 photos she took at home on 10/22/91 (V3P622L14) but were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener. She stated she took photos for a record of damage, to document damage (V3P623L4-20) but the photos were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener. The exhibit was received into evidence(V3P624L1).

She swears she saw fecal matter behind a refrigerator in the family room, had no pictures, they were missing from the City of Oakland files(V3P650L19-25) that were tainted and spoiled by the hostile intervener. The court asks about the pictures- she says there was a picture of fridge downstairs, has picture of front- not back where the feces was, saw feces the hot tub, bath, and pool, can't say where in hot tub- there are no pictures of any of these claims, she doesn't know how feces got in pool, but al-Hakim adamant that it got in pool, behind fridge, in hot tub, and had a problem with computer- that she did not understand how it could happen either (V3P651L1-27). She first claims to have seen these conditions and took photos to document the damage, but the photos were missing from the City of Oakland files that were tainted and spoiled by the hostile intervener, and finally says that it was appellant that was saying that there was feces in those locations and she could not understand how it could have happened. She also did not remember going into the backyard, or checking around pool (V3P652L2-6) where she claimed to have seen and taken pictures of feces.

Vaughn Holden testified:

On Wednesday morning, October 30, 2002 at 9:30 a.m., after convening the court the defense called Vaughn Holden as an eye witness to the 1991 back up at the residence. Mr. Holden testified that he worked for Crawford Adjusters from 11/89 for six years, is a meticulous adjustor(V3P525L10) and took pictures of the residence and interviewed the plaintiff at the residence after the back up in 1992. He related to the jury that he was assigned the case Feb. 1992 and went into the home that had terrible smell with army boots(V3P505L13) on, saw sewage markings 5-7 inches up the walls(V3P507L20, V3P531L4) throughout the entire lower level of the home(V3P506L7-13) and told plaintiff to remove carpets(V3P508L11), that sewage had flowed down into the lower level thru the ceiling from the first level damaging the acoustic ceiling tile(V3P530L10), the pool was full of sewage(V3P531L4 and V3P534L16-p536), and that sewage had flowed down the entire 100 foot side of the home from the street above (V3P531L4) into the pool(V3P508L20), that sewage ran along side of house(V3P521L2) (V3P532L4), sewage came from street above and ran along side of house(V3P532L1-P533). He stated appellant gave him a copy of the Crowley/Lundeen Report, he only checked the

lower level of the home and found the home unfit for living (V3P507L6) . He noted the home was still damp(V3P508L20) in Feb. 1992, he told appellant to remove the family room carpets still there(V3P513L26-P516), floor tiles must be replaced, paneling in laundry room(V3P518L23) (V3P525L1). He said he saw clumps of feces 4 months after backup(V3P521L10) (V3P531L4), (V3P524L12-P526). Yet he had no pictures of any of these stated claims and his written reports contradicted his testimony (V3P524L12-P526) were he writes the home is well maintained(V3P528L1, V3P538L4). When asked why there were no pictures of these evident conditions(V3P539L28), he testified that he did not recall(V3P532L4) and admitted that he was going to be paid an undisclosed sum of money for his testimony(V3P534L24). He swears that he took photos that were with his report that were missing from the City of Oakland files(V3P539L28) that were tainted and spoiled by the hostile intervener.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

5. The trial Court erred, showed bias, prejudice and improperly tried this case by the **Admission of Evidence Tainted and Spoiled by the Hostile Intervener of and related to missing Documents from the 1991 event:**

In People v. Hitch, supra, 12 Cal. 3d at pp. 649-654, our Supreme Court held that evidence is inadmissible when their contents had been lost; the failure to preserve favorable evidence to a defendant was a violation of due process. Lost evidence is deemed material for the purposes of triggering the due process concern of Hitch if there is a reasonable possibility it would be favorable to the defendant on the issue of guilt or innocence. (People v. Hitch, supra, 12 Cal. 3d at pp. 649-654; see also People v. Zamora (1980) 28 Cal. 3d 88, 99-100 [167 Cal. Rptr. 573, 615 P.2d 1361]; People v. Nation (1980) 26 Cal. 3d 169, 176 [161 Cal. Rptr. 299, 604 P.2d 1051].)

The **SPOLIATION OF EVIDENCE** in this matter is clearly exhibited by the many missing and incomplete documents that were critical and dispositive to the appellant while easily proving his case. However the court still allowed testimony on those issues and files that were tainted and spoiled by the hostile intervener. The defense and the intervener's failure to prevent their destruction of the originals, photos, documents, and handwritten notes, however, made it impossible for the appellant or defense to verify whether the evidence presented reflects the originals or the reality of the missing documents. In this respect the present case closely resembles Hitch, in which the police preserved the results of the breathalyzer test, but effectively precluded the defendant from verifying the accuracy of those results.

In committing this continual deception and patterned criminal fraud upon the court, the intervener failed, refused, and never revealed to the court their improper and illegal transgressions regarding the fact of their spiriting away the files under the cloak of secrecy and allowed the trial to proceed knowing their responsibility and the legal impact

of their spoliation of evidence with the documents and their unpardonable breach in the chain of custody.

THE COURT INTRODUCED EVIDENCE CONTAMINATED AND SPOILED BY THE HOSTILE INTERVENER AND ALLOWED TESTIMONY ON SAID EVIDENCE:

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence tainted and spoiled by defendant Ron Cook, the hostile intervener's defense counsel Stephan Barber and the firm of Ropers Majeski, regarding the City of Oakland file of the 1991 backup that was tainted and spoiled by the hostile intervener when they took custody of the files. Although the files in the 1991 matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the control of the above mentioned defendant and hostile intervener.

TO WIT:

Mr. al-Hakim testified to the City of Oakland files that were tainted and spoiled by the hostile intervener, and documents provided by Jemmott for impeachment of al-Hakim(V1P230L21-27 and interrogatories(V1P232L1).

Mr. al-Hakim testified to the letter dated Feb. 28, 92 to Pat Smith(V1P233L20) Backup ran 5 days uncontrolled BEFORE the 91 main collapse (V1P235L22-P236L2). Court to take answers to documents under submission (V1P237L28).

Mr. al-Hakim testified to the letter dated May. 13, 92 to Pat Smith(V1P238L6).

Mr. al-Hakim testified to the letter dated Oct. 13, 92 to Pat Smith(V1P242L4). Defense Exh 244 taken into evidence(V1P244L8)

Mr. al-Hakim testified to the letter dated Jan. 23, 93 to Pat Smith, Defense exhibit 244(V1P238L6). Letter says house was "inhabitable" not uninhabitable (V1P245L10)

*McKeown does not waive content of hearsay documents(V1P249L11).

Mr. al-Hakim testified to the Defense Exhibit 231 the City of Oakland complaint(V2P272L16) and not a verified complaint(V2P273L18), and Judge Lee takes it under submission(V2P274L10).

Mr. al-Hakim testified to the Defense Exhibit 246, a July 8, 93 letter(V2P276L13) because of disrepair.

Mr. al-Hakim testified to the Defense exhibit #247, a September 23, 93 letter that excludes asbestos, rent, fees(V2P283L7)

Mr. al-Hakim testified to the Baywide estimate Defense Exhibit 272, questionable document (V2P281L4).

McKeown objects to and question use of al-Hakim deposition but Judge Lee overruled(V2P315L9-15). Deposition question on seeing carpet cleaning, objection, Judge Lee overruled(V2P316L5-9).

Jurors excused for lunch and court debates use of Deposition from CSAA in this trial(V2P317L19-P319).

Defense counsel Todd Jones was allowed to read verified interrogatory and answer to 7.1 Judge Lee receives answers to City interrogatories Defense Exhibit 232 in evidence(V2P320L 6-322L9)

Mr. al-Hakim testified to the Defense Exhibit 253 letter from Mike Neary inspection warrant. City replaced main April 1993 and reconnected laterals(V2P334L23).

Mr. al-Hakim testified to the Defense exhibit 241 Jan. 24, 92 letter to Pat Smith for $160,000 based on defective Crawford estimate(V2P341L10). Court takes Ex 241 under submission.

Mr. al-Hakim testified to the Defense Exhibit 248 form/part of Crawford document(V2P343L26-P344L21) has pages missing.

Vaughn Holden took pictures(al-Hakim V2P345L19). Repair work show changes in pictures(V2P348L6) but the pictures were missing from the files that were tainted and spoiled by the hostile intervener.

Judge Lee receives Defense Exhibits 241 and 242 into evidence but 242 is not a form of Danielson's letter(V2P350L23).

Mr. al-Hakim testified to the Defense Exhibit 233, Case management conference statement from City(V2P352L10) and court explains(al-Hakim V2P352L28). Information came from complaint(V2P354L2). Judge Lee admits into evidence(V2P354L10).

Judge Lee admits partial Cameron bid into evidence as Defense Exhibit 267 (V2P391L10-14).

Mr. al-Hakim testified to the California Energy Containment bid submitted by Cameron(V2P391L24). Court asks about completeness of bids and appellant states California Energy document incomplete(V2P392L7). That was one of documents submitted with Cameron package(al-Hakim V2P392L15) Camerons documents more than two pages(V2P393L12).

Pat Smith required her notes to respond to questions, she created near time of event, part of claims file(V3P618L20-P619L6).

Pat Smith's notes show 5 rooms of wet carpet, bath, hot tub, and pool, saw fecal matter behind a refrigerator in the family room, hot tub, and near pool (V3P621L9-28). Damage confined to lower level of home, refers to notes-there was a smell(terrific stench(V3P622L2-6). She swears that she took pictures of the residence (V3P622L13) but they were missing from the files. Defense Exhibit #249 photos at home on 10/22/91 (V3P622L14). She testified she took photos for a record of damage, to document damage (V3P623L4-20) but there were no photos depicting this damage. defense exhibit #249 received into evidence(V3P624L1).

She stated she told al-Hakim on 10/29/91 he needed to file claim, On 10/31/91 al-Hakim filed claim against City, Defense Exhibit #230 (V3P627L14 -P628L27). Defense Exhibit #230 received into evidence(V3P630L21).

She testified on Defense Exhibit #237, letter from al-Hakim dated 2/28/92 discussing business displacement,costs over $90,000 Crawford report, can't entertain clients, daughter sick, office out of order(V3P635L7-636L13). She felt al-Hakim was moving out of home, Defense Exhibit #237 received into evidence(V3P636L17-23).

Mrs. Smith refers to notes- testified that there were back ups reported on

10/13/92, 1/3/92, 1/6/92(V3P641L18-P642L6).

She testified to an al-Hakim letter of 10/13/92, Defense Exhibit #244 was filed. She relied on information in letters, estimates to evaluate claim(V3P644L7-13). Received into evidence(V3P645L4).

Pat Smith recalled plaintiff submitted one estimate for repair to home with a fax, not a Baywide bid(V3P654L10-27).

Vaughn Holden testified he reviewed the City documents that were tainted and spoiled by the hostile intervener when investigating claim made by al-Hakim(V3P503L7-16).

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).) Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

6. The Trial Court erred, showed bias, prejudice and improperly tried this case by allowing the illegal product of the **UNCLEAN HANDS DOCTRINE** from the Hostile Interveners actions to cause **Irreparable Harm to Appellant:**

Appellant's set of contentions concerns the trial court's allowance of the illegal product of the unclean hands by the hostile intervener to be admitted as evidence, subjected to testimony, and fostered it's use to prejudice the jury. In committing their continual deception and patterned criminal fraud upon the court of the State of California, the intervener engaged in acts to coverup the unlawful tactics, failed and refused to disclose to the court, after having been rejected as a proper party to the suit by Judge Lee, that they willfully and intentionally withheld their knowledge, and insight from their intervention hearing and the transcript from said hearing that stated the trial judge would determine if they could, in fact and law, be a proper party to the trial so as to gain the presence necessary to sabotage the appellants case with their subversive actions; nor inform Judge Lee of their improper and illegal transgressions regarding the fact of their removing the City files for nine months without the knowledge or permission of staff and allowed the trial to proceed knowing their liability and the legal impact of their spoliation of evidence of the documents therein and their unpardonable breach in the chain of custody of the City of Oakland files. Appellant asserts error, and the court should rule that the hostile intervener's misconduct in connection with the Rescue case qualified for consideration as unclean hands. Their actions meet the requirement that, to be considered as unclean hands, a party's misbehavior must relate to the transaction in suit and to the adversary party.

Unclean hands is an equitable doctrine that bars relief to a litigant who has "violated conscience, good faith or other equitable principles in his prior conduct." (Fibreboard Paper Products Corp. v. East Bay Union of Machinists (1964) 227 Cal. App. 2d 675, 727, 39 Cal. Rptr. 64 (Fibreboard).) In modern times the doctrine has been held

applicable to suits for legal as well as equitable relief. (227 Cal. App. at pp. 727-728; 39 Cal. Rptr. 64; see also Unilogic, Inc. v. Burroughs Corp. (1992) 10 Cal. App. 4th 612, 619-620 (Unilogic).) Among the dimensions of unclean hands is that "The misconduct which brings the . . . doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants." (Fibreboard, supra, at p. 728.) In other words, "'The misconduct must infect the cause of action before the court.'" (Moriarty v. Carlson (1960) 184 Cal. App. 2d 51, 57, 7 Cal. Rptr. 282; accord, Pond v. Insurance Co. of North America (1984) 151 Cal. App. 3d 280, 290, 198 Cal. Rptr. 517.)

The court must consider the applicable action, charge and doctrine of unclean hands to appellant's claim, by reason of the hostile intervener's conduct of deception and patterned criminal fraud upon the court from the intervention hearing transcript and order, and their falsifying and destroying evidence in this case -- the chain of custody of the records from the City of Oakland, the resultant missing photos and documents from that file that were tainted and spoiled by the hostile intervener, the introduction of false documents, evidence and testimony by the hostile intervener -- as well as the defendant's, their experts and witnesses false testimony at trial. Appellant contends this was far beyond error due to the egregious extent and seriousness of their misconduct. Appellant reasons that this misconduct was directed against appellant, and that the misconduct was directly related to, and in part occurred before and during, the matters in suit herein, which appellant sees as being hostile interveners' attempt to successfully assert their insurance defense in this case.

The hostile intervener's falsification and destruction of evidence was directed at appellant al-Hakim. All of these transgressions occurred before and during the Rescue case, and was arguably, if not certainly, intended to influence the outcome of that case and aid their insurance defense. Moreover, the hostile intervener's conduct was totally directed at the appellant to defense this case, and it plainly had an effect on it. Once unveiled, the hostile interveners misconduct put appellant in the position of having to try not just a negligence case, but one saddled with tainted and spoiled evidence as a result of their actions of intentional tampering with said evidence. That, in turn, directly implicated the present case. This case did not concern simply whether defendants had improperly failed to service and clean up a black water spill. The ultimate issue is whether intervener is responsible for the over $3 million damage in the insurance case, which occurred during and after the Rescue service, and at least partly because of, their negligence and bad faith that resulted in their misconduct in the case. Thus, the hostile intervener's misconduct was both directed at appellant and his handling of the underlying case by aiding the defense and deeply interconnected with the present one. (See Blain v. Doctor's Co. (1990) 222 Cal. App. 3d 1048, 1063-1064, 272 Cal. Rptr. 250.

This misconduct was beyond the ambit of an unclean hands, for there is a direct connection between this trial result and their equitable insurance defense: 'The trial of the issue relating to clean hands cannot be distorted into a proceeding to try the general morals of the parties. But the doctrine does apply 'if the inequitable conduct occurred in

a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. . . . ' [Citation.] In short, 'the misconduct must infect the cause of action before the court.' [Citation.]" (Unilogic, supra, 10 Cal. App. 4th at p. 621.)

An analogous situation was presented in **Pond v. Insurance Company of North America, supra, 151 Cal. App. 3d 280**. There an insurer had unsuccessfully sued an insurance agent for indemnity of a settlement of a case for which the agent had procured the policy, but the insurer had contended there was no coverage. During the coverage and indemnity cases, the agent concealed evidence, and made false statements, concerning what he had known and informed the insured about the scope of coverage. This misconduct came to light when the agent sued the insurer for malicious prosecution of the indemnity claim. The insurer then asserted the defense of unclean hands, on grounds the agent's misconduct had caused it to settle the liability suit to its detriment. The trial court granted the insurer summary judgment, and the Court of Appeal affirmed, agreeing that the agent was guilty of unclean hands as a matter of law. Addressing the issue presently raised by appellant, the court stated: "Here it is obvious that Pond's activities in INA's indemnity suit against him relate directly to the malicious prosecution action before the court because the indemnity suit is the entire basis of Pond's claim." (Id. at p. 290.)

A holding that the facts of this case warrant a sanction of the intervener/defendant for unclean hands for the terrible tortuous conduct towards the underlying tort plaintiff in order to obtain a favorable jury verdict against appellant. This argument clearly establishes and recognizes the very necessity for misconduct directed toward appellant and the underlying case that appellant otherwise asserts and enhanced by the perjury committed therein, demands a finding of and for unclean hands by the hostile intervener with appropriate sanctions. (Cf. Blain v. Doctor's Co., supra, 222 Cal. App. 3d 1048.) An insurance agent guilty of negligence, or an intentional tort, against an insurer would not ipso facto be chargeable with unclean hands towards his defense counsel; but if he also concealed evidence and made false answers to interrogatories in the underlying case, he might be. (Cf. Pond v. Insurance Company of North America, supra, 151 Cal. App. 3d 280.) And a laboratory that negligently reported that an employee had drugs in his system would not be barred by unclean hands from recovering the resultant settlement with the employee from its lawyer in a malpractice case. But if the laboratory undermined its and the lawyer's defense, and enhanced its exposure, by perjury, fabricating evidence, and destroying evidence, it might well be. That is all that the trial court decided in this case. The approval of that ruling is neither novel nor productive of unwarranted exemptions from legal malpractice liability.

To the extent appellant can assert Maine v. Moulton (1985) 474 U.S. 159 [88 L. Ed. 2d 481, 106 S. Ct. 477] and United States v. Covarrubias, supra, 179 F.3d at p. 1224 are relevant to whether the solicitation charges are inextricably intertwined with the truthful testimony of the defendant's, their witnesses and experts; the false assault charge; and the denial of appellants key witness evidence and testimony from the City of Oakland Police Department, this suggest that all documents, notes, meetings and

conversations with defendants and counsels are admissible as to the solicitation charges. (Maine v. Moulton, supra, 474 U.S. at p. 180 & fn. 16 [permitting admission of evidence on retrial as to, at a minimum, the plan to kill the witness]; United States v. Covarrubias, supra, 179 F.3d at p. 1224 [interpreting Maine v. Moulton as "allowing for the possibility that the information could be used in a subsequent trial regarding the plan to kill the witness"].)

Given the above, appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment, remand for a new trial and consider the charges of fraud and unclean hands with the appropriate consequent sanctions upon the defendants Ron Cook, the hostile intervener and it's defense counsel.

7. The Trial Court erred, showed bias, prejudice and improperly tried this case by **DENYING APPELLANT'S KEY WITNESS,** Debbie Fallehy, the Custodian of Records for the Oakland Police Department, **TESTIMONY:**

The court is required to afford all parties the fundamental right of due process which requires that " All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. " (Massachusetts Etc. Inc. Co. v. Ind. Acc. Com., supra, 74 Cal.App.2d 911, 914.)

The court must observe the mandate of the Constitutions of the United States and of California. This cannot be done except by due process of law. (Carstens v. Pillsbury (1916) 172 Cal. 572, 577 [158 P. 218].)

The right of examination of witnesses is fundamental, and its denial or undue restriction is reversible error. (Jackson v. Feather River Water Co. (1859) 14 Cal. 18, 23.)

To deny a litigant the right to examine a witness is a denial of due process of law. (Caesar's Restaurant v. Industrial Acc. Com., 175 Cal.App.2d 850 [1 Cal. Rptr. 97]; Fewel v. Fewel, 23 Cal.2d 431, 436 [144 P.2d 592].) The error is compounded when hearsay evidence directly contradicts testimony given under oath in open court and in the presence of the litigant.

A similar situation to that present in the case at bench has reached your Court of Appeal. There, in a pandering prosecution, ambiguous tape recordings of conversations were supported by a witness testifying under an assumed name. On cross-examination, the witness was asked her true name and address. An objection to the question was sustained after a finding of preliminary fact based upon substantial evidence that the witness' life was in danger and that the danger would be enhanced if she answered the question. The Court of Appeal held that the denial of the answer to the question was prejudicial error requiring reversal of the conviction. The court noted that the trial

involved a direct conflict of testimony between the defendant and the one live prosecution witness, and stated: "Under the circumstances, the credibility of the two opposing witnesses constitutes the fulcrum upon which the determination of the defendant's guilt or innocence must be balanced. We conclude that the identity of the witness was an essential element in the protection of the defendant's right to a fair trial." (People v. Brandow, 12 Cal.App.3d 749, 755 [90 Cal. Rptr. 891]; see also Smith v. Illinois, 390 U.S. 129 [19 L.Ed.2d 956, 88 S.Ct. 748].)

The probative value of the evidence barred in Brandow is less than that barred in the case at bench. There it went only to possible impeachment. Here it goes to impeachment and, much more significantly, to the integrity of the real evidence offered against appellant. The risk of harm to the witness in Brandow is much greater than that present here. There the risk was to the life of the witness. Here it is no risk to anyone since the appellant was already been tried and convicted by the Judge while being offered up for sacrifice to the jury. The decision in Brandow, that risk of harm to the witness did not justify the exclusion of relevant evidence, impels a like holding here where the evidence is of greater importance and the risk to the witness materially less.

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and malice toward appellant and thus prejudiced the jury by denying the testimony of appellants key witness and introduction and admission of critical evidence regarding the alleged assault, the date thereof and the circumstances and events surrounding the same. The defendants entire "no knowledge" defense theory was largely based on the date of the alleged assault and their actions therein while being the product of the orchestration of the suborned and solicited perjurious testimony by defense counsel William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter. TO WIT:

On October 28, 2002 during evidentiary discussions while on a break, William Jemmout offered to the court that they had tried to get a copy of the police report of the assault against Mr. Syrett as evidence against al-Hakim that was available but he could not obtained it. Judge Lee had ruled that all evidence had to be presented to the opposition before it could be offered/admitted unless it was of the rebuttal nature and would be used as such.

On Tuesday, November 5, 2002, in convening the court after a brief delay at 3:30 p.m., appellant al-Hakim called Debbie Fallehy, the Custodian of Records for the Oakland Police Department as a rebuttal witness to Rescues' defense of "no knowledge" with records and testimony that they in fact had intimate knowledge of the correct date of an alleged assault and meeting at the residence in question. The Judge Lee denied her taking the stand or presenting any evidence and sealed her documents while not allowing appellants rebuttal witness from the Oakland Police Department to testify and present her file regarding the contact of Rescue Rooter in this matter. Her evidence included an affidavit signed by Rick Syrett dated June 28, 2002, notarized and filed in San Joaquin County the same date, in authorizing the defense counsel agent, V. Clausen to receive copies of the report #RD 97 21212 from the Oakland Police Department**(attached hereto as exhibit C)**. Her records included, among others things, notes of

conversations with V. Clausen regarding the contents of the report and the date of the alleged assault in the report.

The report, hand written by Syrett, who suffers from Turrets syndrome (V3P659L1-6), wherein he sweats, is nervous, and has ticks where his body make involuntary movements where one commonly curses profanity without provocation, clearly indicts himself as the perpetrator of the assault on the appellant. His testimony at trial is that "his adrenaline was pumping and five minutes seem like hours"(V3P725L13), as he swears in the police report that:

"Jalil began to discuss his complaint (about the back up), he then inexplicably became irate shouting that I(Syrett) was a lair". I attempted to explain at which time Jalil states words to the effect "don't point at me". He then grabbed my throat with both his hands. I then defensively pushed him away. He again lunged at my throat. My supervisor R. Staben then intervened and Jalil then abruptly left the room." Although Syrett claims that this happened at 3:00 p.m. that same day and he suffered scratches to his throat, he refused medical treatment.

It does not take too much reason to logically deduce what happened and who was really assaulted. Mr. Syrett swears that appellant was irate, already set and tense before they got there(V3P724L11-14) yet Peterson sates that appellant was pleasant upon their arrival(Peterson Deposition V1P61L23 with attorney Dan Crowley **attached hereto as exhibit E)**. Syrett says he was explaining what occurred during the back up when appellant inexplicably became irate shouting that- I(Syrett) was a lair" and says "don't point at me". What had Syrett done to cause appellant to make that comment?. Had Syrett pointed his finger in appellants face and called him a liar? Something obviously had to precede and precipitate the exchange of appellant saying "don't point at me". He further states that he "defensively pushed him(appellant) away" when appellant grabbed his throat. While Syrett claims he suffered scratches to his throat, Peterson says Syrett did not have any scars from the alleged chocking(Peterson Deposition V1P74L3 with attorney Dan Crowley **attached hereto as exhibit E)**. What Mr. Syrett is trying to avoid saying is that he grabbed appellant by the shirt, stuck his finger in appellants face, called him a lair while pushing appellant backwards down the step from the bathroom to the family room. Appellant responded " you are going to call me a lair, stick your finger in my face, and push me in my house?". Appellant then went upstairs, out of the house to the kitchen steps and retrieved the large Tide box of debris cleaned from the back up and presented it to Peterson. Appellant stated that "if you(Syrett) cleaned up as you said, then what is this?". This proved that Syrett had not cleaned up the bath or family room as he had said. Appellant stated that he was going to file a police report of the incident and expected that Rescue would make whatever remediation necessary to repair the problem. Peterson apologized for Syretts actions and told him to go to the car. He again apologized for everything that had happened to date, the problems that the back up had caused, he promised to make full repairs immediately, went over the items that needed repair, asked me to secure bids for the repairs and to submit them to him, he did not want to get his insurance company involved. He was there for over 30 minutes after the assault on appellant(Peterson Deposition V1P67L23, V1P68L19 and V1P72L19

with attorney Dan Crowley **attached hereto as exhibit E)**. During that meeting Peterson said he never recalled appellant using profanity(Peterson Deposition V1P66L2 with attorney Dan Crowley **attached hereto as exhibit E)**, and after the Syrett battery on appellant, in the 30 minute discussion of the needed repairs they were never attacked by appellant(Peterson Deposition V1P68L4 with attorney Dan Crowley **attached hereto as exhibit E)**, and appellant never made any threats to or accusations of them(Peterson Deposition V1P68L15 with attorney Dan Crowley **attached hereto as exhibit E)**. He took the large Tide box of debris with him and they left the home(Peterson Deposition V1P71L15 with attorney Dan Crowley **attached hereto as exhibit E)**). This entire incident was overheard and the portion after appellant went upstairs was witnessed by a third party in the home. As Peterson had observed, though incorrectly, someone was arriving at the home when they were(Peterson Deposition V1P60L17 with attorney Dan Crowley **attached hereto as exhibit E)**, however appellants trial counsel decided not to have that person testify.

The documents and evidence would clearly establish and verify that defendants and their counsels had full, explicit and intimate knowledge of the all dates of the meeting and occurrences of the events as testified to by appellant at his home, and the defendants counsel had suborned and solicited the incredible admitted perjurious testimonies by the defendants and witnesses Chris Peterson, Rick Syrett, John Bartha, Rudy Von Borg, Kent Lauder, Mark Hunter, Gary Hall and John Sophinos in perjury, the fact that all their defense of "no knowledge" was crafted by the defense counsels out of this conspiracy and fraud, held no truth, and that there was no proof of the alleged assault. This fact supporting the orchestration of the suborned and solicited perjurious testimony by defense counsel Jemmott is revealed more clearly when one views the notes of Rescue defense expert Kent Lauder wherein he writes during the meeting in San Ramon **"do not mention May" and "(al-Hakim)did not complain till May of 97"** (Kent Lauder deposition P40L12-20 with attorney Dan Hernandez **attached hereto as exhibit F)**. Lauders notes also indicated that he had arranged to meet with Bay Area Carpets expert Gary Hall to go over that planned and orchestrated deposition and trial testimony **(attached hereto as exhibit F)**.

Rather defense counsel, Jemmout offered to stipulate to and the judge allowed such stipulation and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants" without the slightest reference to there having been significant perjury by the defendants to declare a mistrial, no proof of the alleged assault, nor the incredible admitted perjurious testimonies by the defendants and their witnesses, nor the importance of the fact that all their defense was based on "no knowledge" was crafted by the defense counsels out of this conspiracy held no truth. All their witnesses testimonies, should have been stricken due to the changed date(V4P1008L14-22) and/or made to testify over with the real truth established.

To add insult to injury, the judge again later repeats that statement and informs the jury that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants".

Judge denied critical admissible testimony and evidence of crucial witness causing irreparable harm to plaintiff.

Syrett testified that he doesn't know when Staben did the investigation, that he was contacted by Rescue in August 2002 for the meeting at San Ramon headquarters with Jemmott, Peterson, Staben, experts and others unnamed(V3P726L1-28). He swears that they went over what happened during the case and their testimony, the intent of meeting to discuss their testimonies, that it lasted an hour, and that he came from (Sacramento) 90 miles away. He said he had been contacted about 6-7 months before by different Rescue attorney(Dan Crowley) handling case before Jemmott, whom had an investigator(V. Clausen) contact him to get copies of the police report of the alleged assault- then Jemmott took over, (Jemmott objects to questions about investigator and Judge Lee sustains on base of 352).

Respondent can not argue that any error in excluding the evidence and testimony offered by appellant key witness was prejudicial. Any examination of the record indicates that appellant was prejudiced within the meaning of California Constitution, article VI, section 13. The determination at trial of the case at bench depended upon the choice of credibility of appellant's testimony or the evidence given by appellant and his witnesses. Erroneous restrictions upon the appellants witness and upon evidence relevant to establish his reliability and dishonesty of the defendants and all their witnesses of necessity interfered with the proper resolution of this issue and case. The defense's case was by no means overwhelming. There was not a scintilla of corroboration of any of their testimony, and to the contrary, they all admitted perjury. The use of the "no knowledge, it happened in May, June 1997" defense was as a minimum unorthodox and was exposed as their scheme through Lauders notes of the meeting in San Ramon. The defendants and the hostile intervener had a strong motive to vindicate their position by securing a verdict against the appellant, particularly since he was in position to gain from the truth being heard. Everyone of the defendants and their witnesses testified of the incorrect date of the meeting at appellants home, and had notes from a meeting held at respondents offices that " al-Hakim did not complain until May 97",and "do not mention May", a most unusual occurrence. On balance, it seems probable that a result more favorable to appellant would have been reached had the court admitted the evidence which it erroneously excluded. The decision must be reversed.

8. The Trial Court erred, showed bias, prejudice and improperly tried this case by allowing the **ADMISSION OF HEARSAY FROM SUBORNED AND SOLICITED PERJURIOUS TESTIMONY** by the defendants and their counsels to cause **Irreparable Harm to Appellant:**

Subornation of Perjury

Penal Code section 127 provides that: "Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured."

Penal Code section 664 provides in pertinent part that: "Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the

perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows: [para.] 1. If the offense so attempted is punishable by imprisonment in the state prison, the person guilty of such attempt is punishable by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense so attempted; provided, however, that if the crime attempted is one in which the maximum sentence is life imprisonment or death the person guilty of such attempt shall be punishable by imprisonment in the state prison for a term of five, seven, or nine years."

Since an essential element of subornation of perjury is the actual commission of perjury by the witness (People v. Ross (1894) 103 Cal. 425 [37 P. 379]; People v. Jones (1967) 254 Cal.App.2d 200 [62 Cal. Rptr. 304]; 2 Witkin, Cal. Crimes, § 833, p. 783), it would appear that, as appellant contends, any intentional undertaking to procure false testimony, accompanied by a direct, unequivocal act toward that end which fell short of the actual commission of perjury by the witness would be punishable as an attempt under Penal Code section 664.

On the other hand, in a later high court opinion you find the suggestion that such a crime is indeed cognizable under California law. (People v. Coffey (1911) 161 Cal.433, 442 [119 P. 901].) And one appellate court decision will come to your attention which upheld a conviction for attempted subornation of perjury. (People v. Gray (1942) 52 Cal.App.2d 620, 655, 656 [127 P.2d 72].)

There, in a learned and lengthy discussion by Justice Henshaw on the nature of accomplice culpability, the following language appears as part of a hypothetical discussion of Penal Code section 654: "And as specific illustrations, subornation of perjury is declared a crime punishable by imprisonment in the state prison for not less than one nor more than fourteen years. (Pen. Code, secs. 126, 127.) A futile effort to induce a witness to commit perjury may be punished as an attempt under section 664 of the Penal Code, . . ."

See also, seemingly to the same effect, People v. Baker (1978) 88 Cal.App.3d 115, 121-122 [151 Cal. Rptr. 362]. As part of a discussion of the marital privilege against disclosure of confidential interspousal communications, there occurs this language: "In addition, under Evidence Code section 981, '[there] is no privilege . . . if the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or a fraud.' Defense counsel's conversations with the defendants and their experts at the planning and strategy meeting at Rescue's headquarters in San Ramon in June 2002 was the execution of his plan and strategy to suppress evidence and induce false testimony, and both are crimes. (Pen. Code, §§ 118, 127.)" (Id., at pp. 121-122.)

Solicitation of Perjury

Solicitation is defined as an offer or invitation to another to commit a crime. (See generally, 1 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) Elements of Crime, § 124, pp. 143-144.) It does not, by itself, constitute an attempt, but may escalate into an attempt to commit a crime after the offeror commits "a direct, unequivocal act towards

committing the crime[.]" (Id., § 143, p. 161, 21a ["An attempt . . . consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission."].) (1b) Therefore, the distinction between an attempt, and the solicitation of another under section 653f, subdivision (d) is twofold: (1) The attempt charge requires a "direct, unequivocal act" beyond the solicitation itself; and (2) the solicitation offense found in section 653f requires only an invitation to another, without any further act towards the crime's commission, and carries only a misdemeanor penalty.

It is a punishable offense in California to solicit a person to commit or join in the commission of any of the crimes mentioned in section 653f of the Penal Code.

"Every person who solicits another to offer or join in the offer or acceptance of a bribe, or to commit or join in the commission of murder, robbery, burglary, grand theft, receiving stolen property, extortion, rape by force and violence, perjury, subornation of perjury, forgery, or kidnapping is punishable by imprisonment in the county jail not longer than one year or in the state prison not longer than five years, or by a fine of not more than five thousand dollars. Such offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances."

Legislative concern with the proscribed soliciting is demonstrated not only by the gravity of the crimes specified but by the fact that the crime, unlike conspiracy, does not require the commission of any overt art. It is complete when the solicitation is made, and it is immaterial that the object of the solicitation is never consummated, or that no steps are taken toward its consummation. (People v. Haley, 102 Cal.App.2d 159, 165 [227 P.2d 48]; People v. Gray, 52 Cal.App.2d 620, 653 [127 P.2d 72]; 1 Burdick, The Law of Crime (1946), §§ 104-106.)

Appellant contends that a reversal is required because defendants solicitation was proved by the testimony of two witnesses or by that of one witness and corroborating evidence and circumstances, as required by section 653f of the Penal Code. Defendant's solicitations were proved by the testimony of Syrett, Peterson, the comments made by defense counsel Willam Jemmott and by that of the defense plumbing expert Kent Lauder with his notes.

Deception, Fraudulent Concealment, and Criminal Patterned Fraud Upon the Court and Law, and Extrinsic Fraud

As mentioned above, fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. (1) No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived. (Armstrong v. Wasson, 93 Okla. 262 [220 P. 643].) The statutes of California expressly provide that the suppression of a fact by one who gives information of other facts likely to mislead for want of communication of the fact concealed is deceit (Civ. Code, sec. 1710), and any other act fitted to deceive is actual fraud. (Civ. Code, sec. 1572.) (2) Where a deceiving, misleading document is presented to the court for the purpose of obtaining an order, this of itself is an act of fraud both upon the court and upon the party adversely affected, and any judgment

based thereon will be set aside.(Stern v. Judson, 163 Cal. 726 [127 P. 38].) The codes are as follows:

Civ. Code, sec.
1710. A deceit, within the meaning of the last section, is either:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

1571. Fraud is either actual or constructive.

1572. Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

1573. Constructive fraud consists:
1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

1574. Actual fraud is always a question of fact.
(a) Except as provided in subdivision (b), an order admitting a will to probate or appointing a personal representative, when it becomes final, is a conclusive determination of the jurisdiction of the court and cannot be collaterally attacked.
(b) Subdivision (a) does not apply in either of the following cases:
(1) The presence of extrinsic fraud in the procurement of the court order.
(2) The court order is based on the erroneous determination of the decedent's death.

Plaintiff/Appellant also contend and it is established by the trial court that the action instituted by defendant for the perjurious testimony worked a fraud upon the court. You will be of the opinion that this finding should be sustained. It will be recalled that after the court ruled against the defense on the non-suit action, they had to present their witnesses, including those mentioned herein. As part of their testimony they had to swear as to their knowledge and to documents. That means thatthe defense counsel had searched the records. They must, therefore, have discovered the police report with the subject date repeatedly denied by defendants in the trial. Notwithstanding this fact, without any notice to court, the perjurious testimony was given and when the truth of the matters was revealed, the proceedings were allowed to go forward with the judge granting a stipulation as to the changed date. This was a fraud upon the court, the plaintiff/appellant and the family in interest. As set forth in Conlin v. Blanchard, supra, to permit such defendant "to come into a court of equity and to prevail solely on proof of a judgment obtained in that manner it would be necessary to disregard all rules applicable to the equity side of the court".

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by allowing the testimony of defense witnesses and introduction and admission of critical evidence regarding the alleged assault, the date thereof and the circumstances and events surrounding the same. In doing so, Judge Lee fostered to conclusion the defendants entire "no knowledge" defense theory was largely based on the date of the alleged assault and their actions therein while being the product of the orchestration of the suborned and solicited perjurious testimony by defense counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter. These false testimonies constituted the direct, unequivocal act towards the commission of the crime of fraud upon the court and law, extrinsic fraud, conspiracy to commit fraud, conspiracy, perjury, subornation of perjurious testimony and solicitation of perjurious testimony.

SUBORNATION AND SOLICITATION OF PERJURIOUS TESTIMONY:

TO WIT:

Defense counsel William Jemmout, in August 2002 arranged a meeting in Rescue's San Ramon headquarters with Jemmott, Peterson, Staben, Syrett, and expert Kent Lauder for discussions of an evidentiary nature to be offered to the court that they had tried to get a copy of the police report of the alleged assault and date thereof against Mr. Syrett as evidence against al-Hakim that was available but they could not obtained. At that time defendants and their counsels had full, explicit and intimate knowledge of the all dates of the meeting at al-Hakim's residence and occurrences of the events as testified to by appellant at his home, and the defendants counsel had suborned and solicited the incredible admitted criminal perjurious testimonies by the defendants and witnesses Chris Peterson, Rick Syrett, Rudy Von Borg, Kent Lauder, Mark Hunter, and Gary Hall in perjury. In fact, all their defense of "no knowledge" was crafted by the defense counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter, out of this conspiracy and fraud, held no truth, and that there was no proof of the alleged assault, and this incorrect date of the meeting being late May or

June 1997 was fabricated to appear as if Rescue had never attempted to mitigate their damages by soliciting a remediation company. Yet this meeting, it's purpose and content is revealed in the testimony of the defendants and their experts with their notes, and further corroborated by the files and notes of the witness from the City of Oakland Police department, Debbie Fallehy.

al-Hakim testified:

Appellant testified that Rescue was attempting to mitigate their damage to home during meeting at home(al-Hakim V1P254L13). Appellants testimony is contrary to defendants of water on floor and pushing it with a broom when tech arrived(V1P257L2-11).

al-Hakim had mitigated his damage(V2P305L10-26, V2P307L18-27) and relied on Rescue(V2P306L4-P307L17). Appellant al-Hakim did not call for clean up, he did it(V2P314L4-20) and questioned the use of blowers by BAC(V2P322L22-26).

al-Hakim did not discuss order with tech because it was completed after he signed it to include the information desired by the defense(V2P325L7) and was told the job was to much for Bay Area(V2P328L16)

Appellant testified that Syrett appeared not to have known what happen to cause backup and never mentioned any flushing of a toilet(V2P386L19-27).

al-Hakim testified that Syrett was there 30-45 minutes more(V2P387L1). His invoice says water on floor and carpet(V2P387L9). He states that it wasn't until Syrett was leaving that they saw bath and spill(V2P387L11). al-Hakim states that after Syrett left he cleaned-up(V2P387L22-28) and put debris in Tide box(al-Hakim V2P388L5-9).

Chris Peterson testified:

Defendant Chris Peterson testified he only talked to Rick Syrett in June 1997 about the spill at the al-Hakim residence for the first time(V3P585L14-25). He talked to Rich Staben for the first time 90 days after the spill, that it was being investigated, and Staben had been to house(V3P587L4-P588L14){ He changes his story}

He says he was told by Staben that the spill caused wet carpets, soaked sheetrock, and a damaged tile floor(V3P589L2-28){He changes his story}

He said that his investigation revealed that there was a toilet back up(V3P590L7-16). He said that there was a report on the damage from Water Damage Experts but it was not written, just verbal(V3P590L22-28). He says he paid BAC $1,329 for clean up(V3P591L6){He changes his story}. He swears Staben handled clean up, he knew nothing about it until June 97, and the carpets still wet when Staben visited home(V3P591L16-27)

He swears he is not sure of date of the al-Hakim complaint, in June when he first became aware of flood, Staben investigated the problem, thought that it was a service complaint, Staben told him it was Feb. service, once he found out problem, he investigated, gathered as much info as possible, went to property, Staben had been out to home, there was a conflict on how to resolve problem and cause, he wanted to arrange a meeting with everyone at al-Hakim home(V3P739L4-27). Met with Syrett and Staben at home, had a walk through in June where he saw water, toilet paper and matter coming up out of the shower stall, walk thru the second or third week of June 97, signs of a prior stoppage in shower(V3P740L1-27). However, as is his consistent pattern of

contradictory lies, Peterson testified at his deposition that he did not see wet carpet or wet sheetrock when he was at the home for the meeting (Peterson deposition V1P85L16-21 with attorney Dan Crowley **attached hereto as exhibit E).** Peterson swore there were damp carpets near the clean out in June 1997, knew of May 97 service, thought there was other back ups between May and June visit, that Rick and al-Hakim discussed prior water problem, and there was a history of prior floods(V3P741L1-28). Contrary to that sworn statement, Peterson testified at his deposition that he **did not** have the understanding that what damage Mr. Staben had observed at the al-Hakim home the day prior to his visit had happened after the February 18, 1997 service call(Peterson deposition V1P38L20 with attorney Dan Crowley **attached hereto as exhibit E).** He testified, based on that the family room was unused, floor was stained, buckling tile, wet carpet, signs of sewage coming up in the shower, bath floor rotted, al-Hakim was mad, explained their findings in February that back up had already occurred, that water could, run in the home for a long time and al-Hakim would not know it, and al-Hakim got upset called Rick liar(V3P742L4-28). He says al-Hakim lunged at and chocked Syrett, al-Hakim restrained by Staben as Peterson took Syrett out of the house, al-Hakim complained about some toilet paper in the garbage can from the May 1997 service so he took the garbage out to please al-Hakim(V3P743L5-24). He says there was dry toilet paper in box, he pulled it out of trash, drove it back to store, communicated with al-Hakim on June 23, 1997 that they didn't cause problem, they decided to resolve the matter with the cost of the clean up of the carpet only, and did not hear from al-Hakim(V3P744L1-28). Next time he heard from al-Hakim was when suit filed, as defense introduced Exhibit #206 Letter to al-Hakim from Peterson dated June 25, 1997, stating that the spill was not Rescues fault(V3P745L6-27). He testified that he was confused with Bay Area on the amount of the invoice because of the amount of work that was done at the home(V3P746L1-26).

Mr. Peterson testified that al-Hakim says spill occurred 2/18/97, but has no knowledge when it happened, he has seen invoices, and sent Bay Area Carpet(hereinafter BAC) out few days after 2/18/97(V3P755L19-28). Says he didn't investigate when BAC showed at home, he called them out to do carpet cleaning, where they extracted water, pulled carpets and cleaned others, and he did not know about the use of the high velocity air blowers to dry out the carpet until later(V3P729L9-27). He says the invoice didn't state how many rooms BAC cleaned, he was told about use of blowers by counsel a year ago(2001), it was first time he heard of it, never heard of carpet cleaning using blowers on dry carpets, {Changes story}first heard about use of blowers/complaint from Staben(V3P757L1-27). He swears he told Staben to investigate the claim, Staben told him carpets still wet when he visited and he saw damage to tile, and the sheetrock soaked(V3P758L1-24). Peterson swears he was not aware of any calls from Bay Area Carpets in February or March 1997 until after summons- didn't know details then, had no record of telephone calls, had not investigated claim personally in March 1997, and doesn't believe he and Staben investigated claim while carpets wet and not before May 1997(V3P759L15-25). He says he was not talking with al-Hakim while extraction going on, not going to address damage to home based on Syrett info and report from Water

Damage Experts, it may not have been in writing, doesn't have written report(V3P760L5-28). Water Damage Experts report may exist, referred to as written, said Syrett was terminated at deposition and trial, if a tech is on a difficult job, they should contact the office, not a written policy(V3P761L2-26). If a tech is in over head and doesn't call manager, he's below standard of care, tech should note the problems and declination of customer for the recommended service but not policy, should write declination up, only require 1 license plumber in all of Rescue Industries, has one in Hayward, Syrett could call if has code problem(V3P762L1-22).

Peterson never had any contact with anyone from Bay Area regarding the service at al-Hakim home(V3P754L3-24). First involvement with BAC was because of billing problem, not involved in ordering work, didn't control how BAC did work, could tell to go clean carpets(V3P754L1-27).

Negotiated lower bill, BAC did more work than asked to do, if had to clean 5 rooms with sewage,e-coli would have called Service Master and Water Damage Experts, if they caused damage would file claim, get info, investigate, submit to San Diego manager (V3P747L1-27). Based on invoice, job should not have been more than couple hundred dollars not $1,300, did what they felt was right, normally big flood caused by water main or cut copper line, snake doesn't cause water to come out drain, if water is there- call restoration company(V3P748L3-27).

Syrett testified:

Syrett testified that he met at the home with Peterson(GM) and Staben(his Boss), went over spill with owner, al-Hakim was irate and tense before they got there, al-Hakim called him a liar, lunged at and chocked him in small bath downstairs, wasn't room for 4 people (V3P724L1-28). They were going over the spill in disagreement, boss sent him to car as al-Hakim cursed and challenged him in front of house while he was in car and wanted to fight, Chris told him not to argue and stay in car, Chris and Rick stayed downstairs for maybe 5 minutes more while he was in car, doesn't remember if they returned with Tide box, feces couldn't be in box 4-6 months later(V3P725L2-25). He said he doesn't know when Staben did investigation or if carpets were wet, that he was contacted by Rescue in August 2002 for meeting in San Ramon headquarters with Jemmott, Peterson, Staben, experts, and others(Gary Halpin, Ron Cook?) unnamed (V3P726L1-28). At the meeting they went over what happened, intent of meeting, it lasted an hour, he came from (Sacramento) 90 miles away, he was contacted about 6-7 months before by different attorney handling case before Jemmott(Dan Crowley), had investigator (V. Clausen) contact him to get copies of Oakland police report- then Jemmott took over, (Jemmott objects to questions about investigator court sustains on base of 352).

Kent Lauder testified:

Defense expert Kent Lauder testified he was told what Syrett had testified to by Jemmott (V4P828L24-829L4). He says Jemmott told him Syrett saw water on the ground and flowing from shower basin upon his arrival at the home(V4P829L6-P830L15).

He said that he met with Staben, Peterson, Syrett, others unnamed(Gary Halpin, Ron Cook?) and Jemmout in July 2002 (V4P850L15-24). He said that he was told that al-

Hakim was seen sweeping 50-70 gallons of water out the back door with notes from meeting (V4P851L7-852L10). At his deposition, Lauder testified Pipe Pros, the intervener's expert from their court vacated fraudulent appraisal awards, schematic of waste lines was incorrect, that it left out the main line in question(Lauder deposition P7L4-16 with attorney Dan Hernandez **attached hereto as exhibit F)** that he was given the plans at the first meeting in San Ramon by someone that he does not know(Gary Halpin?), but provided by Jemmott(Lauder deposition P8L18-P9L1 with attorney Dan Hernandez **attached hereto as exhibit F).** Lauder states that he discussed what the testimony should be and was told about plaintiffs experts testimony by Jemmott(Lauder deposition P11L21 with attorney Dan Hernandez **attached hereto as exhibit F).** He says he first talked to Syrett at first meeting August 20, 2002, it was a general discussion, everyone participated, and someone else there he can not name or describe, he wrote some names down, they discussed the stoppage and what happened at home(Lauder deposition P17L3-P19L5 with attorney Dan Hernandez **attached hereto as exhibit F).** He was given diagrams at the meeting prepared by Gary Halpin of Insurance Technical Services Group, the hostile intervener's expert from their court vacated fraudulent appraisal awards, of the home, does not know if the other person at the meeting was Gary Halpin from the insurance company, and repeats twice that Syrett told him when he went to the job site plaintiff was sweeping water out the back door of his home(Lauder deposition P20L1-21, P33L19-22, P34L19 with attorney Dan Hernandez **attached hereto as exhibit F).** He says Syrett described plaintiff sweeping a substantial sewage backup out back door in his presence(Lauder deposition P24L17-P25L17 with attorney Dan Hernandez **attached hereto as exhibit F).** He says that Syrett described he was opening those two clean-outs and at the same time Mr. al-Hakim is there sweeping all this water out the back door(Lauder deposition P27L7 with attorney Dan Hernandez **attached hereto as exhibit F).** Lauder says that it would take a day or two to make what Syrett described and enough of a sewage spill to be sweeping it all out the back door of 100 gallons(Lauder deposition P31L18-24, P37L16, P38L5 with attorney Dan Hernandez **attached hereto as exhibit F).** He was never able to disclose if it was Gary Halpin or who the other people at the meeting in San Ramon were(Lauder deposition P40L12-20 with attorney Dan Hernandez**(attached hereto as exhibit F).** He even had notes from the meeting wherein he writes **"do not mention May" and "(al-Hakim)did not complain till May of 97"(attached hereto as exhibit F).**

With regards to the defendants subornation of perjury, certainly the People of this state have a compelling interest both in preventing corrupt interference with the administration of justice and protecting themselves from exposure to such inducements to interfere with the solemn process of law. And it cannot be doubted that the purpose of the law of attempt is both to penalize conduct which would have been harmful if not fortuitously prevented, and to permit intervention by law enforcement personnel before the harm has occurred. You must conclude, therefore, that the general attempt statute, Penal Code section 664, is a viable and legitimate tool for the protection of the People of this state from subornation of perjury in its inchoate stage.

On the facts here presented and under the general concepts and principles of the law of "attempts" embodied in Penal Code section 664 , defendant's acts had sufficiently advanced past the stage of "mere preparation" to the point of "perpetration." You must believe they did.

The defendant's subornation of perjury committed at trial occurred, when defendant's, their counsel, witnesses and experts testified at trial, that the perjurious statements and representations which had been solicited by defendant's counsel were actually sworn to as true, defendant's, their counsel, witnesses and experts thereby committed willful and corrupt perjury and being procured to do so by the defendant's counsels William Jemmott, Dan Crowley and Dan Hernandez. Under this count, the defendant's, their counsel, witnesses and experts must be found to have committed subornation of perjury and be charged with fraud, conspiracy to commit fraud, conspiracy, perjury, and solicitation of perjurious testimony.

While mere ineffectual solicitation of another to commit a crime does not of itself constitute an attempt to commit the crime (Ex Parte Floyd (1908) 7 Cal.App. 588 [95 P. 175]), solicitation in connection with other acts may suffice. (People v. Lanzit (1925) 70 Cal.App. 498 [233 P. 816].) (1c) Here, defense counsel not only solicited the false testimony, but proceeded to meet the prospective perjurers at their offices and then planned and strategized the perjury. Such conduct goes far beyond "mere preparation," and so justifies their being charged with the crime and conviction of attempted subornation of perjury. Indeed, it is difficult to conceive of a situation, with the actual commission of perjury itself, in which subornation of perjury could surpass the point of consummation and not be a crime.

As to the charge and conviction of the crime of solicitation of perjurious testimony is born by the incredible variation between the testimony of the defense witnesses and the police officer's report as to the details of the alleged assault, the date of the meeting/alleged assault and what the defendant's knew about the alleged assault, is of great significance, for it shows that the two variations were in fact suggested by defendant as alternative means by which their defense of the case could be effected. Thus, in the light of the well established rule that the corroborative evidence need not be strong nor sufficient in itself, without the aid of other evidence, to establish the fact in issue (People v. Gallardo, 41 Cal.2d 57, 63 [257 P.2d 29]; People v. Baskins, 72 Cal.App.2d 728, 731 [165 P.2d 510]; see also People v. Wilson, 25 Cal.2d 341, 347 [153 P.2d 720]), one must conclude that the testimony of the defendants, their notes and of the police officer are more than adequate to satisfy the requirements of section 653f. Moreover, the admissions in defendant's own testimony supply sufficient corroborative evidence. (People v. Wilson, supra, 25 Cal.2d 341, 347; People v. Griffin, 98 Cal.App.2d 1, 25 [219 P.2d 519], and cases cited.)

The false testimonies constituted the direct, unequivocal act towards the commission of the crime of fraud, conspiracy to commit fraud, conspiracy, perjury and thus takes the case out from under the mandatory umbrella of section 653f. The court will find that the actions involved here were exactly what the Legislature intended to proscribe under the new solicitation statute of section 653f, subdivision (d). In other

words, the very facts used to prove that the witnesses did not have knowledge of the facts surrounding the date and nature of the meeting/assault were the exact facts proving they solicited the perjurious testimony established by the police officer's report, the pragmatic test for determining the application of the rule that special statutes preempt the generalized laws. (Cf. People v. Coronado (1995) 12 Cal. 4th 145, 153-154 [48 Cal. Rptr. 2d 77, 906 P.2d 1232].) (3) Under the Swann-Gilbert rule, prosecution under the generalized statutes is barred when a specific law is intended by the Legislature for a given factual situation. (People v. Gilbert, supra, 1 Cal. 3d at p. 479; People v. Swann, supra, 213 Cal. App. 2d at p. 449.)

The evidence, viewed in the light most favorable to the judgment, shows that defense counsel asked the defendant's, their witnesses and experts to give testimony containing at least one statement that counsel and defendant's all knew was false. This was solicitation of perjury.

Although the actual commission of perjury is not a requirement of the offense of solicitation of perjury, the defendants testimony, notes and the defendant's acknowledgment that they attended a trial planning and strategy meeting at Rescue's headquarters in San Ramon after counsel had possession of the police report that contained the true facts of the alleged assault, and it's date, establishes their willful false testimonies, and would be sufficient to support a conviction for perjury and the charges of fraud, conspiracy to commit fraud, conspiracy, perjury, subornation of perjurious testimony and solicitation of perjurious testimony. (People v. Todd (1935) 9 Cal. App. 2d 237, 243-244 [49 P.2d 611] [rejecting claim that evidence was insufficient to show that defendant knowingly swore falsely to an affidavit because defendant testified that she accidentally signed affidavits meant for another instead of those meant for her].)

There was thus probable cause to believe that defense counsels William Jemmott, Dan Crowley and Dan Hernandez solicited false testimony. The testimony solicited related to the very purpose of the proceeding, and it is material that the proceeding pending at the time of the solicitation. Defendant's counsel acts fall clearly within Penal Code section 653f.

That section is designed not only to prevent solicitations from resulting in the commission of the crimes solicited, but to protect "inhabitants of this state from being exposed to inducement to commit or join in the commission of the crimes specified. . . ." (People v. Burt, 45 Cal.2d 311, 314 [288 P.2d 503, 51 A.L.R.2d 948].) "Purposeful solicitation presents dangers calling for preventive intervention and is sufficiently indicative of a disposition towards criminal activity to call for liability. Moreover, the fortuity that the person solicited does not agree to commit the incited crime plainly should not relieve the solicitor of liability. . . ." (Model Penal Code, § 5.02, comment [Tent. Draft No. 10, 1960] 82.) (6) The act solicited must, of course, be criminal. If the solicitor believes that the act can be committed "it is immaterial that the crime urged is not possible of fulfillment at the time when the words are spoken" or becomes impossible at a later time. (Williams, Criminal Law § 136 p. 468, § 137 p. 468; see People v. Rojas, 55 Cal.2d 252, 258 [10 Cal. Rptr. 465, 358 P.2d 921]; People v. Camodeca, 52 Cal.2d

142, 145-147 [338 P.2d 903]; Model Penal Code, § 5.01(1) (a), comment [Tent. Draft No. 10, 1960] 31.) This rule was clearly enunciated as early as 1864 in Commonwealth v. Jacobs, 91 Mass. (9 Allen) 274, 275. In that case a statute made criminal the solicitation of another to leave the state to offer himself as a draft substitute for the solicitor. The court rejected defendant's contention that since the person solicited, without the solicitor's knowledge, had been rejected as physically unfit by the army before the solicitation, the impossibility of completing the act barred a conviction. (See People v. Dessus, 12 Porto Rico 330, 341.) (7) Solicitation itself is the evil prohibited by the Legislature, and prosecution therefor is particularly appropriate for the very case in which the crime solicited does not take place Benson v. Superior Court of Los Angeles County, 57 Cal. 2d 240; 57 Cal. 2d 240; 368 P.2d 116; 18 Cal. Rptr. 516; 1962 Cal. LEXIS 168 .

The foregoing recitals are ample to show fraud, when we consider that notwithstanding them the defendant's, their counsel, witnesses and experts appeared before the court in October, 2002, and without disclosing any of the recited facts, testified and induced the jury to grant them a verdict. In McGuinness v. Superior Court, 196 Cal. 222 [237 Pac. 42, 40 A. L. R. 1110], it was held that the concealment of the real facts constituted a fraud upon the court. It could not be otherwise. The law books are full of statements to the effect that the state is interested and concerned with a fair trial and the welfare of all litigants, and to conceal such facts from the court constitutes a fraud upon the court and the adverse party. Here the fraud established by the showing of the respondent was extrinsic (McGuinness v. Superior Court, supra; Tomb v. Tomb, 120 Cal. App. 438 [7 Pac. (2d) 1104]), and it has been determined that where it is of that character, the court has the inherent power to set aside the decree regardless of the limitations prescribed by section 473. (McGuinness v. Superior Court, supra; Aldrich v. Aldrich, 203 Cal. 433 [264 Pac. 754]; McKeever v. Superior Court, 85 Cal. App. 381 [259 Pac. 373]; Tomb v. Tomb, supra.). A court has inherent power to set aside a decree for extrinsic fraud (Cross v. Tustin, 37 Cal.2d 821, 825, [236 P.2d 142]) when a party has been prevented from fully presenting his case and there has therefore been no adversary trial of the issue. (Bacon v. Bacon, 150 Cal.477, 491 [89 P. 317]; Howard v. Howard, 27 Cal.2d 319, 321 [163 P.2d 439].)

The defendant's, their counsel, witnesses and experts at all times during said testimony knew and remembered the meeting between al-Hakim and the defendant's at the home, which took place on or about March 5, 1997, and that with regard to said meeting in San Ramon, that there was conversation between those persons heretofore named and unnamed about the proposed testimony to be given before the jury by the defendants and their witnesses and that the defendant's counsel then and there made arrangements for them to testify as to the date being May -June 1997 and to read the deposition theretofore made in connection with the suit against them, in which the nature and extent of the damage to the home, the series of actions that caused the back up, the alleged assault and dates were mentioned, the defendant counsel then and there further called to the attention the fact that they should testify that they never received any bids or scopes of work, nor ever entered into any discussions regarding the

same so as not to appear as to have been engaging in any remediation or settlement of said damage to the home and that this information should be kept away from the said jury.

That the defendant's counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter had caused the employment of Kent Lauder as a plumbing expert; defendant's, and their witnesses to attend upon themselves that they should falsely lead the jury to believe that the defendants and Syrett at all times during the course of their testimony before the said jury, knew and remembered the aforesaid meeting, the actions and conversation thereof at the appellant's home in substance and the approximate date thereof. This was perjuriously testified to by all though they all knew the true and correct events of that meeting.

That all of the testimony so given by the said defendant's, their witnesses and experts as aforesaid, was material to the issue and point of trial before the said jury taking place before Judge Lee while engaged in the matters and considerations heretofore set out and in connection with the matters then pending in said trial before said jury in which such testimony was given, as aforesaid, and thereby they, the said defendant's, their counsel, witnesses and experts, did commit willful and corrupt perjury.

Appellant argues that the defense counsel, in the procuring of these false testimonies constituted the direct, unequivocal act towards the commission of the crime of fraud, conspiracy to commit fraud, conspiracy, perjury, subornation of perjurious testimony and solicitation of perjurious testimony, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony, committed fraud upon the court of the State of California, aided and abetted criminal activity, and the court can not allow this despicable judicial dereliction, abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

9. The trial Court erred, showed bias, prejudice and improperly tried this case by the **Admission of Tainted and Spoiled Evidence and Testimony of and related to Documents withheld from appellant in discovery as defense counsel Jemmoutt's "SMOKING GUN" evidence but used at trial:**

Judge Lee committed prejudicial error, abuse of discretion, misconduct, gross negligence, bias, and malice toward appellant and thus prejudiced the jury by allowing the introduction and admission of evidence withheld from appellant by defendant Rescue during the discovery process and Rescue informed the court that it would be used for impeachment purposed only. Although the files were not used for any impeachment of any witness and their relevance under those circumstances was questionable to the case in point and should never have been used, the court still allowed testimony on those issues and the documents.

TO WIT:

On October 22, 2002 during evidentiary discussions while on several breaks, William Jemmout offered to the court that he had "Smoking Gun" evidence against al-Hakim that was available to the plaintiff but plaintiff had not obtained it. Judge Lee had ruled that all evidence had to be presented to the opposition before it could be offered/admitted. Jemmout held the evidence out as being of the rebuttal nature and would be used as such. During al-Hakim's testimony of an alleged back-up that occurred in 1991 at the residence in question, Jemmout offered three invoices for services at al-Hakim's residence from Rescue Rooter from 1994, 1995, 1996, and 1997 claiming to be services for other back ups. These invoices were never provided to al-Hakim prior to their use at trial and should have been disallowed unless they were absolute proof of causation of the current contamination of the residence by the defendants contamination expert witness Rudy Von Borg. There was no evidence provided by any of the defendants witnesses that corroborated that theory and in fact their experts never stated that any incident caused the contamination alleged by the defendants at any time. The entire testimonies of all the defense witnesses, Vaughn Holden, Pat Smith, Rich Neary, and expert witnesses Rudy Von Borg, Kent Lauder, Mark Hunter, and Gary Hall should all have been disallowed and/or stricken.

Chris Peterson says Defense Ex #280 was Rescue invoice dated Sept. 1,1994, prepared near time of service call(V3P604L22-P605L20). Court asks him, he's not sure if document was taken from Rescue records(V3P606L3-9). {Changes story} He pulled document from Rescue files (V3P6046L8-28). Ex 280 admitted into evidence as documenting an act or event(V3P607L8). Invoice shows main line blockage (V3P608L23). Used 300 machine, for 3-4 in sewers, with blade(V3P609L2-19). Access was clean out in lower level stack, run snake 150 ft., 1 hour estimate (V3P610L5-14).

Defense shows him Def. Ex. #282, a Rescue invoice dated Oct. 6, 1995, he took from rescue files, court asks- to review before admitting into evidence (V3P611L5-P612L7)

Peterson says Rescue at home four times from 94-97, each time for a blockage in main line, they cleared, he doesn't know if there was water spill on any of those calls(V3P729L6-26)

Appellants expert Bob Gils stated Rescue service calls in 94-96 not a factor(Gils V1P118L9).

In Bellizzi v. Superior Court (1974) 12 Cal. 3d 33, 36-37 [115 Cal. Rptr. 52, 524 P.2d 148], the People's failure to comply with a pretrial discovery order led to dismissal of charges. The defendant told a defense witness of the dismissal, whereupon the witness left town. The People then refiled the charges. Our Supreme Court held defendant could not obtain dismissal of charges on the basis the prosecution's conduct had made a key witness unavailable. The defendant should have realized the prosecution might appeal the dismissal order or refile charges, and made sure he could contact the witness if necessary; defendant's negligence was largely responsible for that witness's unavailability. The same reasoning applies here. It is impossible for defendant Rescue to have managed to lose, withhold and deny having documents crucial to the appellant's case, and provide perjurious testimony regarding the same without acting in bad faith,

where this court would not be expected to remand for new trial, dismiss their case and apply other sanctions. One must find the facts before you are essentially indistinguishable from such a case. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

10. The Court of Appeals erred, showed bias, and prejudice by allowing the **INEFFECTIVE ASSISTANCE OF COUNSEL** to cause **Irreparable Harm to Appellant:**

Alternatively, appellant contends his attorney was ineffective (U.S. Const., 6th Amend.) in failing to object to such judicial misconduct and timely file for a mistrial under the circumstances. Former counsel had informed appellant that there was ample grounds for a mistrial being declared before the trial began as a result of the inclusion of the hostile intervener**(see letters from McKeown dated November 15, 2002; and from al-Hakim dated November 18, 2002, November 19, 2002, November 25, 2002, December 10, 2002, and December 28, 2002 attached hereto as exhibit G)** and that it was well established between the parties. However, after promising to declare and file for a mistrial, he waited until the day before the deadline to file for said mistrial to inform appellant that he would not do so**(see letter from McKeown dated January 31, 2003 attached hereto as exhibit G)**. Further, counsel refused to provide appellant counsel one single document of the files to make the appellant record**(see letter dated March 7, 2003 from Lewis Nelson attached hereto as exhibit G).**

In the present case, trial counsel's failure to make a Hitch objection to the introduction of the officer's testimony concerning appellant's statements constituted ineffective representation by counsel under People v. Pope (1979) 23 Cal. 3d 412, 424-426 [152 Cal. Rptr. 732, 590 P.2d 859, 2 A.L.R. 4th 1]. You should reverse the judgment because trial counsel should have objected to the presence of the intervener and provided the hearing transcript; the introduction of the City of Oakland file tainted and spoiled by the hostile intervener; the intervener's insurance documents, testimony and questions; the denial of testimony and evidence by appellant's key witness Debbie Fallehy from the Oakland Police Department; the denial of questioning, testimony and evidence by appellant of defendant's key rebuttal witness former City of Oakland Mayor Elihu Harris; the Demonizing comments regarding appellant's religion; the repeated verbal convictions of the assault; the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel; and the denial of cross examination by appellant on the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel. Because this was Judge Lee's last trial before retiring and he rushed the case along, appellant did not knowingly and intelligently waive his right to object to the above. Appellant also argues that fundamental fairness requires that appellant be permitted to impeach the the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel after they have now admitted the perjury; examine the spoliation of the City of Oakland file committed by the intervener

and defendant's in the insurance case; detective's explanation by use of the original notes taken at the time of the event. Thus, these issues must be deemed to have substantial materiality for impeachment purposes.

The court is required to preserve the process and the denial of the rights to the answers of these issues for possible use at trial, the appellant is placed in an impossible position. He cannot impeach the the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel, or examine the spoliation of the City of Oakland file committed by the intervener and defendant's in the insurance case since it was not permitted by the court due to time or otherwise. If you accept appellant's position, you must presume that because of the solicited perjurious testimony and the spoliation of evidence now having been exposed, the changed evidence and testimony based on the truth would shed new light on appellant's case at trial. It is quite possible, however, that due to time, error, bias, discretion or omission by the court, this course was not allowed to go forward.

Further, appellant and counsel were prevented from providing a full, more complete record to the appeals court because their efforts were frustrated by former trial counsel Frank McKeown whom refused to provide any notes of the case from any period of time, pre-trial motions and related documents, motions in limine, side bar conversations, in chambers discussions, jury instructions, a brief of trial, the case files in this matter, a declaration of any kind, even asked current counsel not to take the matter on appeal, and adamantly refused to cooperate with any investigation of the facts surrounding this case and it's proper appeal of all pertinent issues that would reveal his dereliction and malpractice. Even though appellant gave written instructions to provide the case files to appellants counsel only**(see letter from al-Hakim dated May 19, 2003 and June 24, 2003 attached hereto as exhibit G)**, McKeown even went as far to dispatch the files to another attorney that was not involved in the matter in any way**(see letter from McKeown dated June 25, 2003 and June 27, 2003 attached hereto as exhibit G)**, while requesting $1,000 for appellants counsel for a copy of appellants own files that he requested be sent to appellants attorney handling the appeal. To this day McKeown has never spoken with appellant or his counsel regarding his actions; sent the requested documents, records or files of any type or importance; and refuses to cooperate in any way with this matter**(see letter from al-Hakim dated June 24, 2003 and June 26, 2003 attached hereto as exhibit G).**

In relations to the precise facts of the instant case, appellant's trial counsel was required under the standard of People v. Pope, supra, 23 Cal. 3d 412, 425 to make a Hitch objection and to move for the applicable bar. A reasonably competent attorney acting as a diligent advocate would have done so.

With the results of People v. Murtishaw, supra, 29 Cal. 3d 733, and this court's opinion in People v. Goss, supra, 109 Cal.App.3d 443, Justice Reynoso's dissent in In re Gary G. (115 Cal.App.3d 629 [171 Cal. Rptr. 531]) , appellant's trial counsel was put on notice of the real possibility that a Hitch motion would have been successful if it had been timely made in the present case. The fact that there was no published opinion squarely in point on under circumstances such as here, is of no importance. Under then

existing law, reasonably competent trial counsel would have been alerted to the potential merits of the Hitch objection.

Appellant contends he was deprived of his right to effective assistance of counsel and denied his rights to a fair trial and to due process under the federal and state Constitutions (U.S. Const., 6th & 14th Amends; Cal. Const., art. 1, §§ 7, 15, 24), because "the trial court engaged in a systematic 'pattern of judicial hostility,' " which consisted of continual interference with appellant case, allowing the hostile intervener to participate in the trial, admitting evidence tainted and spoiled by the hostile intervener, allowing testimony on said evidence tainted and spoiled by the hostile intervener, admitting evidence and allowing testimony on the 1991 back up, admitting evidence and allowing testimony on same by defense on insurance coverage for the hostile intervener, admitting evidence and allowing testimony on insurance coverage by the hostile intervener, denying appellant's crucial key witness testimony and evidence, making demonizing and disparaging comments regarding appellant, and erroneous inclusion of crucial defense evidence. Alternatively, he contends his attorney was ineffective (U.S. Const., 6th Amend.) in failing to object to such judicial misconduct and timely file for a mistrial under the circumstances.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct and dereliction. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct and dereliction necessitates reversal of the judgment and remand for a new trial.

11. Judge Lee committed **a Hate Crime, incited Islamaphobia and Xenophobia, Prejudicial Error, Abuse of Discretion, Misconduct, had Inappropriate and Illegal Ex Parte Communications, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act of suborned and solicited perjurious testimony, allowed the defense to committ fraud upon the court of the State of California, aided and abetted criminal activity, allow Ineffective Assistance of Counsel, Improper Questioning, Admitted Evidence Tainted and Spoiled by the Hostile Intervener, Denied Appellant Key Witness Testimony, Admitted Hearsay from Suborned and Solicited Admitted Perjurious Testimony, Allowed the Admission of Evidence that fell under the Doctrine of Unclean Hands, committed Bias, denied the Cumulative Effect of it's egregious indiscretions, and improperly try this case to the Irreparable Harm of the appellant:**

As herein cited, the standards of conduct to which judges are held are reflected in part in the canons of the Code of Judicial Conduct. Although these canons do not have the force of law or regulation, "they reflect a judicial consensus regarding appropriate behavior" for California judges. (Kloepfer v. Commission on Judicial Performance (1989) 49 Cal. 3d 826, 838, fn. 6 [264 Cal. Rptr. 100, 782 P.2d 239, 89 A.L.R.4th 235]; see Cannon v. Commission on Judicial Qualifications (1975) 14 Cal. 3d 678, 707, fn. 22 [122 Cal. Rptr. 778, 537 P.2d 898].) The failure of a judge to comply with the canons

"suggests performance below the minimum level necessary to maintain public confidence in the administration of justice." (Kloepfer v. Commission on Judicial Performance, supra, 49 Cal. 3d at p. 838, fn. 6.)

An impartial and independent judiciary is indispensable to our legal system. Of equal importance is public confidence in the independence and integrity of the judiciary, because the effective functioning of our legal system is dependent upon the public's willingness to accept the judgments and rulings of the courts. (Cal. Code Jud. Conduct, com. to canon 1.) Appellant agrees that the court can not allow this type of willful misconduct in office and conduct prejudicial to the administration of justice (moral turpitude, corruption, and dishonesty) that brings the judicial office into disrepute. (Art. VI, § 18, subd. (c).)

Judge Lee had and committed a hate crime, incited islamaphobia and xenophobia, illegal ex parte communication, prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, and exhibited his latent prejudiced, disdain, bias and malice toward the appellant and thus prejudiced the jury by committing, making and allowing the many, various derogatory and incriminating comments regarding appellant and acts of injustice against appellant that caused irreparable harm to appellant. The facts on the appeal record of this matter to establish the basis for a new and fair trial of the true facts are astonishingly despicable.

In doing the above, Judge Lee failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary. These type of abuses of its discretion in determining the charges set forth herein below concerning the formal proceedings involving Judge Lee, who is charged with the protection of the public from judicial corruption-- was blatant, bias, cruel, inaccurate, and misleading in numerous material respects, clearly may fall within the scope of such reprehensible behavior and culpable mens rea. This conduct was manifested by each and every one of the following specific incidents.

TO WIT:

The court must consider Judge Lee's illegal and inappropriate ex parte communication with Judge Balachi, whom was found to have committed misconduct against the appellant previously, regarding appellant; the demonizing and vilifying association of appellant, his name and religion by his incitement of islamophobia and xenophobia with the comments of "terrorism, murder, and belonging to a sect" by the trial judge; three convicting utterances of appellant's assault on the defendant by the trial judge when it was the appellant that was assaulted; the allowance of testimony that there was any assault; the allowance of the hostile intervener into the case; the allowance of evidence tainted and spoiled by the hostile intervener with unclean hands; the allowance of testimony and questions on said tainted evidence; the allowance of questions, testimony and evidence of the 1991 occurrence without absolute nor any proof of it's causation of the 1997 contamination; the allowance of insurance coverage questions, testimony and evidence of payments for repairs to appellants home by the hostile intervener that were never made to appellant; the allowance of insurance coverage questions, testimony and evidence by the defense for the hostile intervener;

the allowance and admission of insurance coverage questions, testimony and evidence of Harun al-Hakim's deposition taken in the insurance matter by the hostile intervener, by the defense for the hostile intervener; the allowance of the defense to raise insurance issues for the hostile intervener; the allowance and admission of questions, testimony and evidence procured thru admitted suborned and solicited perjurious testimony by the defense counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter; the denial of the appellant's key witnesses evidence and testimony; the comments questioning appellants honesty; the negative commenting on the contamination of appellants home with asbestos; the disparaging comments on an alleged "claim" filed by appellant against his insurance company in 1991; the allowance of defense counsels slanderous "drinking buddy" comment; the allowance of questions, testimony and evidence of defense counsels "smoking gun" evidence that allegedly was withheld for rebuttal impeachment purposes of appellant's testimony but was used for the purposes of concealing their "no knowledge" defense, the suborned and solicited perjurious testimony and was never provided to appellant during the discovery process; the allowance of defense counsels collateral impeachment of appellant's entire testimony by calling appellant a "liar" while indicting appellant and former Mayor Elihu Harris with corruption during closing arguments; to finally, making the insensitive and inappropriate declaration that the appellant would disagree with the decision of the jury that was "good for everyone"; which appellant assures conveyed to the mind of the jury the impression that the judge was convinced of the dishonesty and guilt of the appellant and that his sympathy was wholly with the defense.'" (201 Cal. at pp. 621-622.)

The version of all of the events given by appellant was contradicted in all substantial particulars by the defense, the hostile intervener, the evidence, and the testimony of their experts and by the witnesses. But appellant, and who, according to all the defense posturing, had been called and was a "liar", managed to clearly establish the real truth of the matters at hand.

The defendants Syrett, and Peterson and their expert Lauder testified collectively that they had no recollection of any complaint of poor service on behalf of appellant, and did not attend any meeting at appellants home until late May- June 1997. However, appellant provided a copy of the Oakland police report that easily proved that they were all again lying and was at appellants home on March 5-6 for the meeting just as he had testified. As we know now, this defense testimony and evidence was procured thru admitted suborned and solicited perjurious testimony by the defense counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter, and was totally a lie to hide the fact that they had began to mitigate the damaged they had caused to appellant by engaging contractors for a scope of work and bids for that repair to the home.

The defense attempted to establish appellant as a violent, aggressive hothead, who assaulted Syrett at the appellants home during the above referenced meeting at appellants home in March 1997. However, the facts of the Oakland Police report bear out appellants version that in fact he was assaulted by Syrett that day not vice-versa.

The defense put all their eggs in Syretts testimonial basket regarding the alleged

flooded condition of the home upon his arrival to perform the service appellant had called for. Clearly, they wanted the jury to feel sorry for Syrett, who as they proclaimed suffers from Tourretts, was going thru a divorce, had a limb amputated, a leg with gangrene, was going to have more surgery the next day, and other assorted maladies. Although he and all the other defense witnesses first swore repeatedly that he saw appellant sweeping 50-100 gallons of water out the back door of the home into the pool, and this lie was adopted by all the defense witnesses and maintained even after Syrett admitted otherwise, but the impact was lost on the jury. Syrett went from an eyewitness to this condition, to saying he cleaned up the spill to finally admitting he never saw any of the water, he was just told that happened by the appellant. Again a libelous witness verifies the truth of the appellants statement that there was never any flood in 1997 before Syrett performed the work at his home, there were never any eyewitnesses to that allegation and all the damage was caused by Syretts negligence.

The many conflicting, vile, insidious, and divergent perjurious lies told on the witness stand by defendants Syrett and Peterson that was choreographed by their defense counsels on every issue at trial, are too numerous to list them all in this petition. The very dangerous "three stooges tango" that they attempted to dance with those lies were an insult to the citizens of America, the system of justice, the court, the jury and appellant. This civil society that we live in has no place for these actions performed under the auspices and guise of the law and merely augmented the proof of the consistent truthfulness of the appellant.

The defense tried to inject the premise of criminal deceit on part of the appellant by calling John Sophinos to testify that al-Hakim wanted to have BAC to do a complete remediation job at the home of pre-existing damage and bill Rescue for it. Although there was much testimony by Sophinos and the defendants regarding the alleged conditions of the home, Sophinos contradicts all defense strategy by his admissions at trial that he in fact, stated at his deposition "al-Hakim wanted the house done. He seemed like a sincere person who wanted to get his house back to normal, like most people"(V1P151L24). When asked that question again, Sophinos again reiterates that answer(VP152L18). Again, the defense's own witness verifies and corroborates the truthful testimony of the appellant to their peril.

Judge Lee attacked the character of appellant when he made the "unbelievable" reference to his testimony regarding the alleged back up running uncontrolled for 5 days being before the actual occurrence in 1991 . After having made that statement, Judge Lee asks the City of Oakland investigator Pat Smith if this had occurred and when. Much to the chagrin of Judge Lee and the defense, she corroborates appellants testimony that the main began to collapse several days before the backup and the City had serviced it several times at the request of the appellant.

The defense called Pat Smith, a former investigator for the City of Oakland to attempt to discredit appellant testimony regarding the 1991 occurrence. She testified that she was a eyewitness to the occurrence, saw feces behind the refrigerator, in the hot tub, pool, on the side of the home and took pictures took to document the damage. Under cross examination she expressed that she was not there when the back up

occurred, she came out several days after the city crew had cleaned up the spill, she had no pictures of these conditions she said she saw, the pictures were missing, her notes contradicted her testimony and finally she says that appellant told her these were the conditions at the time of her visit. Her notes clearly reflect that the crew had come out to the home at the time of the occurrence, cleaned up for several days after the event, that there was only water that was present in 5 rooms and the public works supervisor present felt it was the city's fault but there was not much damage to the home. This completely verifies appellants testimony.

The defense called Vaughn Holden, a former adjustor for the appellants insurance company to attempt to discredit appellant testimony regarding the 1991 occurrence. He testified that he was an eyewitness to the flooded condition of the home in March 1992, that the sewage flowed into the home from the street above, he saw feces all over the family room floor, in the hot tub, pool, on the side of the home, water damage to the entire lower level of home and ceiling from the floor above, and took pictures took to document the damage. Under cross examination he expressed that he was not there and did not know when the back up occurred, he did not know why the city crew had not cleaned up the spill for 4 months or just left the sewage there, he had no pictures of these conditions he said he saw, the pictures were missing, his notes contradicted his testimony and finally he admitted he was getting paid for his testimony. Oddly enough, his report of this incident is the only one that exist with no reports from the city or appellant of it's occurrence. His notes do not include these conditions, yet clearly state that the home was "well maintained" at the time of his visit, there were no hazards present, and that the city had accepted it's fault for the damage to the home. This is irreconcilable proof of appellants truthful testimony and the deviousness of the witness.

Appellant produced photos at the trial of the home that were taken at the time of the 1991 occurrence that accurately depict the condition of the home. The photos clearly exhibit there is no feces anywhere in or outside the home, and show the wet carpet in family room, the refrigerator, hot tub, pool, and wet carpet in the office. There was never any feces anywhere, again, substantiating the appellants testimony.

Appellant testified to and always maintained that there was no eyewitnesses to the 1991 occurrence that saw anything but water in his home during the the occurrence. He produced photos, a witness to such, and the City had 8-12 men crews and a supervisor on three separate occasions cleaning up the home during and after the occurrence and no one ever saw, said, or noted the presence of any feces. In fact the city file notes the supervisor writing that there was simply 5 rooms of wet carpet and they extracted the water**(note attached hereto as exhibit J)**. With so many people at the scene of the 1991 occurrence during those three cleanups, it would have been very easy for the defense to find someone to testify regarding the presence of feces and if there had been anything else, it would have been noted in the reports and the appellant would not have missed it with a camera. Instead, all of their "percipient eyewitnesses" are reduced to paid, third party hearsay and criminal solicited perjurious testimony.

This series of incredible events of circumstances must demonstrate the

truthfulness of appellant and portray the extreme injustice of the facts not supporting the verdict. On every count, the appellant was found to have been truthful and proven beyond a shadow of a doubt that he was rehabilitated as a witness from being cast as a liar by the defense and triumphs with his vindication.

This court must declare such an attitude on the part of a trial court as that here disclosed cannot be passed over so lightly. Jurors rely with great confidence on the fairness of judges, and upon the correctness of their views expressed during trials. For this reason, . . . a judge should be careful not to throw the weight of his judicial position into a case, either for or against the defendant. . . . When, as in this case, the trial court persists in making numerous, repeated, prejudicial error and utter frequent comments from which the jury may plainly perceive that the appellant is not believed by the judge, and in other ways discredits the cause of the appellant, it has transcended so far beyond the pale of judicial fairness as to render a new trial necessary. (Id., pp. 626-627 passim, and pp. 627-628. See People v. Zammora (1944) 66 Cal.App.2d 166, 205-211 [152 P.2d 180]; People v. Williams (1942) 55 Cal.App.2d 696, 703 [131 P.2d 851], and cases collected; Witkin, Cal. Criminal Procedure (1963) §§ 440-442, pp. 440-445.)

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Such misconduct also can not be dispersed by any admonition or instruction and none was given. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

12. The Trial Court erred, showed bias, prejudice and improperly tried this case to the irreparable harm of the appellant because **the facts do not support the verdict of the jury.**

This action of the appeal petition is based on the ground the facts do not support the decision (Code Civ. Proc., § 663, subd. 1, § 657, subd. 6.), and share the same purpose as motions to vacate and motions for new trial: to persuade the trial court to make a different order or judgment. (Stratton v. First Nat. Life Ins. Co. (1989) 210 Cal. App. 3d 1071, 1080 [258 Cal. Rptr. 721].) Both motions, if granted, lead to the same result. (Gonzales v. State of California (1977) 68 Cal. App. 3d 621, 632 [137 Cal. Rptr. 681].)

Appellant has asserted that the facts do not support the verdict, and appellant contend that the court so erred in it's administering of justice that the resulting prejudice requires a new trial to be granted. The basis of (1)the evidence does not justify the findings of fact; (2) the findings of fact do not support the decision or award; and (3) the Court has acted without and in excess of its powers. The petition incorporates the facts set forth herein as appellant's petition for review filed on December 18, 204. In addition, the petition alludes to evidence in support thereof predicated upon the assertion that the trial jury and appeal decisions were incorrect.

Judge Lee had and committed illegal ex parte communication, prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act

of suborned and solicited perjurious testimony, allowed the defense to committ fraud upon the court of the State of California, aided and abetted criminal activity, and exhibited his latent prejudiced, disdain, bias and malice toward the appellant and thus prejudiced the jury by committing, making and allowing the many, various derogatory and incriminating comments regarding appellant and acts of injustice against appellant that caused irreparable harm to appellant. The facts on the appeal record of this matter to establish the basis for a new and fair trial of the true facts are as demonstrated herein the petition.

The verdict of the jury denying appellant is not supported by the evidence. In order to overthrow the verdict, there exist more than substantial evidence in the record which on any hypothesis would support a finding that appellant's case was not fairly tried. As hereinabove shown, evidence was presented establishing that appellant was positively credible as a witness and at every turn, his truth blazed brightly, repeatedly be corroborated and verified through the testimony and evidence of others.

If you have reviewed with care and made a close reading of the entire transcript on appeal, this petition for review leaves no doubt that the basic issues were not fairly presented to the jury. This petition for review is a motion for a new trial, while affording a new opportunity for the court to renew its study and appraisal of the problems that had arisen out of the trial. Appellant has come up with more than just criticisms of the trial verdict now urged for a reversal. While the Judge and jury are, in the respects indicated, amenable to criticism, the criticisms when considered in their entirety state the law of the case fairly and clearly. Therefore, error played a major part in the jury's deliberation; certainly more than enough to sufficient justify the conclusion that a different verdict might have otherwise been rendered.

Appellant further contends that the court would commit error in not granting his appeal and consequent remanding for a new trial on the basis that the facts do not support the verdict. This appeal is for a new trial because there was no substantial evidence to sustain the verdict, the trial courts compounded errors, and the appeal court not having the benefit of the enclosed information, the courts have concluded that this case must be ordered to new trial when "addressed to the sound discretion of the trial judge who was required to independently weigh the evidence [citation] whose decision will not be disturbed in the absence of showing of abuse of discretion [citation] . . . ." People v. Marchialette (1975) 45 Cal.App.3d 974, 983 [119 Cal. Rptr. 816].) Appellant recognizes that a judgment supported by the testimony of a witness who has not been discredited and whose testimony is not inherently improbable will be affirmed. (People v. Johnson (1960) 187 Cal.App.2d 116, 121-122 [9 Cal. Rptr. 571].) The defendant's testimony in most instances were admitted and proven to be lies, or was improbable because of the defendant's description of the defendant's actions themselves were groundless. As the court said in People v. Johnson, supra, page 122, "[testimony] is not inherently improbable unless it appears that what was related or described could not have occurred. [Citations.] 'To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent

without resorting to inferences or deductions. [Citations.]'" Nothing in the victim's story is inherently improbable or physically impossible. The admitted lies and inconsistencies between the defendant's and the truth's revealed by the appellant's testimonies are more than sufficient to overturn the trial jury and appeal court verdict and remand for a new trial.

13. The Trial Court committed a **Hate Crime, incited Islamaphobia and Xenophobia, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act of suborned and solicited perjurious testimony, allowed the defense to committ fraud upon the court of the State of California, aided and abetted criminal activity, misconduct, erred, showed bias, prejudice and improperly tried** this case by allowing the **CUMULATIVE EFFECT** of their actions as a **Hate Crime** to cause **Irreparable Harm to Appellant:**

14. Cumulative Effect/Error.

Appellant claims the cumulative prejudice of the asserted hate crime, inciting of islamaphobia and xenophobia, judicial errors, abuse of discretion, misconduct, bias and ineffective assistance of counsel requires reversal of this decision. If you have considered each claim on the merits, they both singly and cumulatively establish prejudice requiring the reversal of the decision. You must believe that these transgression, their seriousness and number, and relatively egregious and overwhelming, created such a cumulatively prejudicial impact that it was a gross abuse of discretion to have found otherwise in considering the matters complained about before this court.

15. The Court of Appeal **Improperly Prejudice Appellant** when it denied his motion to augment the record with the transcripts of the January 2001 court hearing on CSAA's motion to intervene and the Examination Under Oath?

The Court of Appeals committed prejudicial error, abuse of discretion, gross negligence, and bias toward appellant and thus prejudiced the jury by not allowing the introduction and admission of evidence to augment the record to establish the grounds in which the court had ruled that the hostile intervener could be allowed to intervene and participate in the trial. This dereliction led to the none review of their status as a legal participant and the resultant damage of the City of Oakland file of the 1991 backup that was tainted and spoiled by the hostile intervener when they took custody of the files. Although the files in the 1991 matter were not relevant to the case in point and should never have been used, the court still allowed testimony on those issues and the files that were tainted and spoiled by the hostile intervener with most crucial documents missing, incomplete, inaccurate, and unoriginal after being in the control of the above mentioned defendant and hostile intervener.

Appellant filed and argued the opposition to Intervention in Pro Per and no attorney appeared on his behalf to argue the matter. The transcript of that hearing was available

and dispels all those contentions raised by the appeals court. CSAA had waived their rights to intervention during the EUO**(in pertinent part attached hereto as exhibit I)**. The trial court did not have the benefit of the transcript from the EUO or original hearing on intervention that would have cleared up that matter and allowed the trial judge to dismiss CSAA from the proceedings as he had previously ruled in "sur-rebuttal" in Pre-Trial Motions in Limine.

Appellant argues that the court can not allow this type of abuse of discretion, willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. As the court shall now demonstrate, such misconduct necessitates reversal of the judgment and remand for a new trial.

WHY REVIEW SHOULD BE GRANTED

The Attorney General and the Supreme Court should order review of the Court of Appeal decision for the following reasons:

1. To prevent a miscarriage of justice due to judicial bias and/or prejudice and denial of a complete record on review.

2. To make new law addressing and regulating the charges from the trial referenced herein above that:

a. Judge Lee had and committed a hate crime, incited islamaphobia and xenophobia, illegal ex parte communication, prejudicial error, abuse of discretion, misconduct, conduct prejudicial, gross negligence, exceeded his lawful authority, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act of suborned and solicited perjurious testimony, allowed the defense to committ fraud upon the court of the State of California, aided and abetted criminal activity, and exhibited his latent prejudiced, disdain, bias and exhibiting malice toward the appellant and thus prejudiced the jury;

b. defense counsels William Jemmott, Dan Crowley and Dan Hernandez for defendant Rescue Rooter orchestration of the defense strategy, witness testimony and evidence that was procured thru admitted suborned and solicited perjurious testimony by them, engaged in actions to interfere with the litigant's legal case, engaged in actions to coverup the unlawful act of suborn and solicited perjurious testimony, committed fraud upon the court of the State of California, aided and abetted criminal activity, committed willful, criminal and corrupt perjury, fraud, conspiracy to commit fraud, conspiracy, subornation of perjurious testimony and solicitation of perjurious testimony, that when Maine v. Moulton is applied, bring all their actions into a new trial without the protection of privilege. (Maine v. Moulton, supra, 474 U.S. at p. 180 & fn. 16 [permitting admission of evidence on retrial as to, at a minimum, the plan to kill the witness]; United States v. Covarrubias, supra, 179 F.3d at p. 1224 [interpreting Maine v. Moulton as "allowing for the possibility that the information could be used in a subsequent trial regarding the plan to kill the witness"].) and;

c. defendants Ron Cook, and his law firm of Willoughby Stuart and Bening, the hostile intervener and it's defense counsel Stephan Barber and the firm of Ropers Majeski committed fraud upon the court of the State of California, engaged in acts to coverup the unlawful tactics, fraudulent concealment by willfully and intentionally withholding their knowledge and insight of the intervention hearing and the transcript of said hearing **from the court, AFTER Judge Lee had denied their motion to intervene,** though they had a copy of the transcript and full knowledge of the events of that hearing while they failed and refused to disclose to the court their improper and illegal transgressions regarding their stealthily absconding the City of Oakland files

without the permission or knowledge of the city attorney's staff and allowed the trial to proceed knowing their responsibility and the legal impact of their spoliation of evidence with the documents and their unpardonable breach in the chain of custody, has committed patterned willful, criminal, and corrupt deception and fraud upon the court, extrinsic fraud, spoliation of evidence with the disappearance of court records, and qualify for the doctrine of unclean hands with the appropriate consequent sanctions and punishment upon them.

d. Obviously, actions like these severely undermine appellants' rights. They also shake public confidence in our justice system. And they mire that system in costly retrials that never would have had to take place if hostile intervener and defense counsel's had shown the court and jury the evidence it was meant to see -- and only that evidence -- in the first place.

Because this shocking evidence of intervener and defense misconduct has surfaced, a new trial is mandatory. Jurors and the court were forced to hear testimony, and view evidence, that if the hostile intervener and defense counsel had properly and honestly reported, the court would have ruled that the intervener was not a proper party to the case and the evidence inadmissible. Their presence, allowed by the judge, had been "very influential."

One must concluded that the hostile intervener and the defense counsel's misconduct was intentional and reckless -- not merely an innocent mistake. It emerged that they both had failed to turn over crucial exculpatory evidence to the court and plaintiff.

Why did they not turn the evidence over -- as they were obligated to do with any and all exculpatory evidence, under Brady v. Maryland? The hostile intervener has never said they thought that it wasn't "important" -- and the defense claim of "no knowledge" with the admitted perjurious witness testimony specifically corroborating the defense's theory was hardly excusable given that all the other evidence, in the objective view, overwhelmingly pointed to their guilt. In short, they appointed themselves judge and jury over the plaintiffs', jury and courts' fate to get out of their own legal troubles.

Respectfully Submitted,

Abdul-Jalil al-Hakim
Plaintiff/Appellant
7633 Sunkist Drive
Oakland, CA, 94605
Phone(510) 839-5400
Fax(510) 638-8889

Case No. S 130203
IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

ABDUL-JALIL al-HAKIM,
Plaintiff-Appellant,
vs.
RESCUE INDUSTRIES, INC.,
Defendant-Respondent.

After a Decision by the Court of Appeal
First Appellate District, Division Five
Case No. A 101832

On Appeal from the Superior Court of the County of Alameda
The Honorable David C. Lee, Judge
Case No. 8218852

PETITION FOR REVIEW TO THE ATTORNEY GENERAL

AND SUPREME COURT

OF THE UNITED STATES OF AMERICA

DECLARATION OF ABDUL-JALIL al-HAKIM IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR REVIEW BY THE ATTORNEY GENERAL

I, ABDUL-JALIL al- HAKIM, hereby declare as follows:

1. I am the Plaintiff and Appellant in the above-entitled action and this declaration is submitted in support of the PETITION FOR REVIEW TO THE ATTORNEY GENERAL AND SUPREME COURT OF THE UNITED STATES OF AMERICA. I have personal knowledge of the contents of this declaration and, if called as a witness, could and would testify competently to them.

2. Prior to the trial in the above entitled action, I was a litigant in a family law proceeding in the Alameda County Superior Court wherein during the course of those proceedings, I was improperly cited with civil contempt, and the sanctions were imposed

by the judge hearing the case. That matter was overturned because of judicial misconduct.

3. During post trial proceedings, after the above entitled case had been given to the jury for deliberations, appellant learned from his trial counsel that the trial judge in this case had private conversations with the aforesaid family law judge that had cited him with contempt, and that the two judges had discussed his character and his case.

4. The family law judge referred to herein has recused himself from all proceedings that came before him since the family law proceedings wherein appellant have been a litigant.

5. Appellant is informed and believe and thereon state that the trial judge was prejudiced and biased against him as a result of his ex parte communication discussions with the family law judge

6. Appellant filed and argued the opposition to intervention in Pro Per and no attorney appeared on his behalf to argue the matter. The transcript of that hearing was available to the court of appeal, however, appellant was not able to obtain a copy of the same until shortly before oral argument was to be made, and the court of appeal decided not to permit augmentation of the record to include this relevant information, to appellants prejudice.

7. The trial court did not have the benefit of the transcript of the intervention motion hearing proceedings, nor did counsel for defendants/respondents inform the trial court that these proceedings had been recorded. In fact, the judge at the motion hearing left it up to the trial judge to reconsider CSAA-IIB's rights to intervention in the context of the trial, including the effect of subrogation, and the issue of bifurcation of the liability and damages phases of trial.

8. Appellant is informed and believe and thereon state that had the trial court known of the motion hearing judge's deliberations, it would have been clear to him that he could

have dismissed CSAA-IIB form the proceedings as he had previously ruled in "sur-rebuttal" in deciding the pre-trial motions in limine.

9. Appellant never claimed, as alluded to in the court of appeal decision, that the insurance payment made to him was solely for the 1998 roof leak and not the 1997 spill.

10. That I am not an attorney and I am not currently represented by counsel. I am unfamiliar with judicial procedure, unable to conduct depositions, answer pleadings, file oppositions and the necessary motions to competently litigate this case so that it can be decided on it's merits and not my inability to serve as an attorney.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of July, 2005, at Oakland, California.

ABDUL-JALIL al-HAKIM
Plaintiff/Appellant

Case No. S 130203
IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

ABDUL-JALIL al-HAKIM,
Plaintiff-Appellant,
vs.
RESCUE INDUSTRIES, INC.,
Defendant-Respondent.

After a Decision by the Court of Appeal
First Appellate District, Division Five
Case No. A 101832

On Appeal from the Superior Court of the County of Alameda
The Honorable David C. Lee, Judge
Case No. 8218852

PETITION FOR REVIEW TO THE ATTORNEY GENERAL

AND SUPREME COURT

OF THE UNITED STATES OF AMERICA

Plaintiff would offer some issues to be included in the Petition for Review to the Supreme Court regarding the Bay Area Carpet's/Rescue Rooter appeal.

The appellate decision**(attached hereto as exhibit K)** contains egerious errors and controvertible opinions in err within the Factual and Procedural background at:

1)
Pg 2, Pra 1, Ln 3 House was "inhabitable", not "uninhabitable".
The letter dated Jan. 23, 93 to Pat Smith Defense Ex 244(V1P238L6). Letter says house was "inhabitable" not uninhabitable (V1P245L10)
2)
Pg 2, Pra 1, Ln 3-7 Both investigator and consultant saw feces in home, were very thorough in their duties, and took pictures but neither had pictures to corroborate this testimony. (Now see trial transcript as follows)
Pat Smith testified:

On Thursday morning, October 31, 2002 at 9:30 a.m., after convening the court the defense called Pat Smith as an eye witness to the 1991 back up at the residence. On cross examination Mrs. Smith testified that the work crews for City of Oakland only does temporary clean up work(V3P646L7) use hoses to extract water and sewage, crew appeared to have cleaned up. Jim Burchardt reported only 5 rooms of wet carpet in call from OPW, no record of wet walls(V3P646L7-28), City crew came out Friday to clear main line clogged until 11:30 pm too dark, returned Sat. (V3P647L8-28) and al-Hakim had to call Rescue on Sun., Mr. Banks determined that main clogged, City was at fault(V3648L4-12). Her notes from 10/5/92 indicate Mr. Banks felt there was no damage(V3P648L27). She was negotiator of claim for City(V3P652L11-26), she does not remember any sewage from ceiling or in obvious positions in home, and would not expect crew to leave any feces or toilet paper in obvious positions in home for 4-5 months (V3P653L16-p654). She was never told that there was any contamination so they did no testing (all al-Hakim's letters refer to contamination and claims form mentions it V3P653L2-13) and she was aware that home was contaminated with sewage and never told Mr. al-Hakim that City had tested and found no contamination (V3P656L15-24), would have sent a CIH and done testing if it was contaminated. She further stated that Crowley was the expert designated by City of Oakland to negotiate with al-Hakim(V3P655L26-p656). She received remediation report from 4 Star(V3P649L23-p650) and may have gotten other estimates for repair but did not have them(Baywide), was at home on 10/22/91 at 10:30 a.m. and saw fecal matter behind a refrigerator in the family room(V3P650L), the hot tub, bath, bar and pool (V3P650L18-p652) while the entire lower level of the home was wet from sewage (V3P646L20-p648). She also had no pictures of any of these stated claims(V3P650L17-p652) and her written reports contradicted her testimony. When asked why there were no pictures of these evident conditions, she testified that she had been told these things and they had been pointed out by the plaintiff and admitted that she was going to be paid by the defense an undisclosed sum of money for her testimony. She goes from an eye witness to offering third party hearsay evidence.

Vaughn Holden testified:

On Wednesday morning, October 30, 2002 at 9:30 a.m., after convening the court the defense called Vaughn Holden as an eye witness to the 1991 back up at the residence. Mr. Holden testified that he worked for Crawford Adjusters from 11/89 for six years, is a meticulous adjustor(V3P525L10) and took pictures of the residence and interviewed the plaintiff at the residence after the back up in 1992. He related to the jury that he was assigned the case Feb. 1992 and went into the home that had terrible smell with army boots(V3P505L13) on, saw sewage markings 5-7 inches up the walls(V3P507L20, V3P531L4) throughout the entire lower level of the home(V3P506L7-13) and told plaintiff to remove carpets(V3P508L11), that sewage had flowed down into the lower level thru the ceiling from the first level damaging the acoustic ceiling tile(V3P530L10), the pool was full of sewage(V3P531L4 and

V3P534L16-p536), and that sewage had flowed down the entire 100 foot side of the home from the street above (V3P531L4) into the pool(V3P508L20), that sewage ran along side of house(V3P521L2) (V3P532L4), sewage came from street above and ran along side of house(V3P532L1-P533). He stated appellant gave him a copy of the Crowley/Lundeen Report, he only checked the lower level of the home and found the home unfit for living (V3P507L6) . He noted the home was still damp(V3P508L20) in Feb. 1992, he told appellant to remove the family room carpets still there(V3P513L26-P516), floor tiles must be replaced, paneling in laundry room(V3P518L23) (V3P525L1). He said he saw clumps of feces 4 months after backup(V3P521L10) (V3P531L4), (V3P524L12-P526). Yet he had no pictures of any of these stated claims and his written reports contradicted his testimony (V3P524L12-P526) were he writes the home is well maintained(V3P528L1, V3P538L4). When asked why there were no pictures of these evident conditions(V3P539L28), he testified that he did not recall(V3P532L4) and admitted that he was going to be paid an undisclosed sum of money for his testimony(V3P534L24). He swears that he took photos that were with his report that were missing from the City of Oakland files(V3P539L28) that were tainted and spoiled by the hostile intervener.

3)
Pg 2, Pra 2, Ln 3-5 Repairs did not have to be made was demonstrated by the 1992 report and the only scope of work for the repairs to the property by Dr. Danielson.

Appellant testified that repairs were done with Dr. Danielson's scope of work as shown in Defense Exhibit 263(V2P284L21). Proof was given that the City had Danielson's report before settlement of $125,000(V2P285L13). It was Dr. Danielson report that states it was a "gray water spill"(V2P331L5). Dr. Danielson report merely corroborated the findings of others(V2P349L8) and was the only remediation plan for the 1991 spill (V2P371L22-25). Appellant testified he removed the carpet and did more work than the Danielson scope required(V2P372L9-11) and they performed Danielson's scope(V2P372L13-18). Danielson's' recommendations were not instructions(V2P372L27)
It was the appellant that got 4 Star and Danielson to asses the damage from the spill(V2P374L7-16). Dr. Danielson spoke with City and others regarding 1991 spill(V2P393L20). Court asks why was County involved in 1991, appellant responds to ascertain contamination(V2P394L5). Danielson scope recommendation for Public health firm for permits, same work performed by City(V2P396L7-21), and appellant had done additional cleaning both before and after Danielson's letter(V2P396L28).

4)
Pg 2, Pra 3, Ln 6-9 Defendants never presented any evidence that roof leaked as

early as 1992 and that testimony came from a deposition of Harun al-Hakim taken by CSAA in the insurance matter, not the RR/BAC case. How did it find it's way into this case? CSAA surely.

Harun al-Hakim testified she first noticed roof leaks in her early twenties (V3P567L10) and daughter was 5 years old (V3P568L5-12) answer repeated regarding CSAA deposition(V3P568L26 and V3P569L14, and by Jemmott on her deposition at V3P572L26-P573L20, V3P574L11). Father set out buckets in other areas of home from leaks(V3P569L19). Saw heavy water leaks through roof, buckets would be changed, carpets wet(V3P570L5-16). She says she remembers roof leaking after Jan. 98(V3P580L25-581L2). relates that the skylights leaked during a specific time- not all her life and she may have been 18 years old but not sure actually(Harun Deposition P40L16-22 **attached hereto as exhibit B)**, her daughter was born(Harun Deposition P41L2 **attached hereto as exhibit B)**, she was 22 years old when the roof was leaking, not 16-18 as implied by defense intervener counsel Barber(Harun Deposition P56L15-25 **attached hereto as exhibit B)**. The statements of Barber at the conclusion of Harun al-Hakims deposition clearly indicates the intention and plan of the hostile intervener to provide and use the deposition in the Rescue trial as there was no date set for any trial between the parties to the deposition being taken at that time(Harun Deposition V1P72L1 **attached hereto as exhibit B)**.

5)
Pg 3, Pra 2, Rescue tech stated appellant showed him 50-70 gallons of sewage spilled into home. Tech said he saw it, he cleaned it up, appellant cleaned it up, he never saw it, appellant told him that is what happened. Spill was on floor as well as carpet.

Syrett swears that al-Hakim told him lot of water on floor, he swept it out of glass door and was sweeping out of basement , showed him shower stall, he(Syrett) observed this(V3P661L3-12). The court asks Syrett and he swears he saw dirty water, couldn't tell if sewage, but was sludge and toilet paper in the shower, and toilet easiest access to blockage(V3P662L8-28).

Syrett swears he saw quite a bit of water in bath and family room, from downstairs to glass door, 50-70 gallons and he saw al-Hakim sweeping water out back door, but does not recall what he was sweeping with(V3P682L4-14).
Syrett swears sewage was there before he got there, saw water on floor, not out of toilet, but blocked shower, and he could see where it had run out down floor(V3P692L3-28). Syrett swears he saw toilet paper and sludge pushing up through shower drain, not when he got there, saw that it had stopped coming out, that al-Hakim told him about the spill, he told al-Hakim he needed to pull toilet, but client disagreed, so he did what he could and went into secondary line(V3P693L4-27).

Syrett swears that al-Hakim showed him the water on floor, told him that he had swept water out the sliding door, as water was running across the floor, that al-Hakim

did not have phone or broom in his hands, that water all the way out back door, traces not standing water, 20-25 ft of water had flowed to back door(V3P695L9-27). He swears there was no water, small amount left when he came, no visible sewage, there was boxes of jerseys, that al-Hakim had cleaned up all water, water just in shower and small amount on floor, and says he never talked to al-Hakim about spill on floor (V3P697L4-27). He swears that the shower pan full of water, floor not full, no standing water on bath floor(V3P698L15-28). Standing water just in the shower, came out shower stall, that al-Hakim was not sweeping, he went back upstairs and let Syrett work as the expert, he states he told Rescue expert al-Hakim told him that he had swept water(sewage) out the door, he did not see al-Hakim doing so (V3P699L4-28). He didn't recall seeing or saying sewage to Rescue expert, but that was being said all the time, it was alleged that there was sewage there, that with water and toilet paper there is going to be feces, that the cause was a blocked drain, he needed other clean outs, he never ran water upstairs, never checked bath upstairs(V3P700L2-28). Syrett swears he saw water but did not note on invoice water on floor upon arrival, did not think of it(V3P675L7-28).

He swears he never entered the sewer main and saw water on ground upon arrival(V3P680L3-8).

During opening statements, defendants attorney Todd Jones proclaimed there was water on the ground when tech arrived observed plaintiff "sweeping water out or sewage out the back door at the Lower level of his house upon arrival"(V1P28L1-4) During opening statements, defendants attorney William Jemmout proclaimed there was water on the ground when tech arrived(V1P22L20) and plaintiff had been "pushing water out of his house with a broom"(V1P23L16-26).

Chris Peterson testified that Syrett told Staben that prior to him coming out, that there was water coming out of the shower, water coming out of the toilet, water coming out of the laundry area, all that were downstairs, which water came up; and that was wet prior to his arrival(Peterson deposition V1P88L22 **attached hereto as exhibit E).**

Rescue expert Kent Lauder swears that twice at the first meeting in San Ramon Syrett told him when he went to the job site plaintiff was sweeping water out the back door of his home(Lauder deposition P20L1-21, P33L19-22, P34L19 **attached hereto as exhibit F).** He says Syrett described plaintiff sweeping a substantial sewage backup out back door in his presence(Lauder deposition P24L17-P25L17 **attached hereto as exhibit F).** He says that Syrett described he was opening those two clean-outs and at the same time Mr. al-Hakim is there sweeping all this water out the back door(Lauder deposition P27L7 **attached hereto as exhibit F).** Lauder says that it would take a day or two to make what Syrett described and enough of a sewage spill to be sweeping it all out the back door of 100 gallons(Lauder deposition P31L18-24, P37L16, P38L5 **attached hereto as exhibit F).** He was never able to disclose who the other people at the meeting in San Ramon were(Lauder deposition P40L12-20 **attached hereto as exhibit F).**

6)

Pg 3, Pra 3, BAC tech could not determine if there was a clean water spill.

BAC owner John Sophinos testified that John Bartha called back and told him that the clean up needed more than carpet cleaning, it needed water extraction(V4P874L16-25). He explains Bartha's reports it not carpet cleaning- but water damage, and told Bartha don't do anything (V1P139L15). He declares that he felt they were sent there by Rescue under false circumstances(V1P139L24-P140L22).
He claimed that he had no personal knowledge of spill, the removal of carpet and pad, the extent of contamination, only that they cleaned 4 rooms(V1P143L2-16).
The court asks Sophinos if they discarded carpet, he replies they didn't cut out carpet and throw away because it was not sewage backup(V1P153 L13-26).
The court asks about the clean water spill, he responds that Bartha told him it was clean water spill(V1P157 L6).

BAC defense counsel Todd Jones says in opening statements "The remediation was beyond their abilities, that's not why they were called out"(V1P29L7-9).

7)
Pg 3, Pra 3, One defense expert testified that the BAC cleanup was "OK" but the expert for RR and plaintiff both disagreed with him. (see trans)

Appellants experts Bob Gills testified the sewage intrusion was primary source of contamination without proper cleaning which cleaning was done only exacerbated problem(V1P59L6,17). He states the spill untreated and the use of blowers, is the contamination problem(V1P57L11-18).

The court asks Gils about the contamination test results and he explains, Bierman found E-Coli, which is not found after a year, and fecal matter present, which means it was not cleaned properly(V1P71L23-P79L4). Gils explains E-Coli found but not fecal coliforms, this dates the spill, establishes that it was not cleaned properly, and the resultant positive tests for sewage spill (V1P102L11-27). He had reviewed BAC documents on clean up(V1P103L10-27). BAC used blowers(V1P104L19), and should not use without containment(V1P106L17-26). That BAC's applying fungicide, bactericide, fogging was inadequate by IIRC standard, and failed to do proper remediation(V1P38 L11-28). He testified that the additional clean up with ozone where appellant's family left home, and the tests still found contamination demonstrates the spill still not treated properly(V1P39L3-27). He swears Biermans tests at P & K Lab reveal fecal contamination, concluded home was not cleaned properly(V1P40L13-19). Bierman Report shows areas of visible water damage, mold, fecal growth, E-Coli, means the cleaning was inadequate, and the crew disturbed the asbestos(V1P41 L2-25). The tests results clearly show that appellant had a spill and inappropriate clean up(V1P48 L18-28).
He testified that the conclusion is, sewage spill not cleaned up properly(V1P55L28). Further, the problem was aggravated, the contaminated material not removed, never

really cleaned completely, it's too late to properly clean now, that in remediation you don't clean up fecal blooms, you must clean up and document it appropriately, if it fails, clean it again(V1P53L2-13).

Defendants expert, Rudy Von Borg testified that E-Coli comes from fecal matter, that he saw reports of finding fecal matter, which means there was no clean up(V4P783L15-22). He warns that if you place blowers on mold, as BAC did, they bloom into thousands and spread like dust, into HVAC, if not sanitized(V4P806L23-P807L11).

If the City of Oakland did same day work in 1991 that would be the correct way to remediate mold(V4P807L16). Pat Smith testified that the City of Oakland was there on the same day until after midnight and returned for three straight days cleaning and sanitizing(V3P647L8-28). She testified the work crews for City of Oakland does clean up work, use hoses to extract water and debris, the crew appeared to have cleaned up, she had no recall of wet walls, Jim Burchardt reported only 5 rooms of wet carpet in call from OPW(V3P646L7-28).

Defendants expert, Gary Hall testified that he was aware that Service Master, not BAC, took up carpets, pads, did a decontamination and ozone treatment for 12 days after BAC work, and Bierman took tests after those treatments, and still found elevated mold levels(V4P988L18-27). He acknowledged that it is not good to wait four days before you begin a Black water cleanup, that it must be done properly within 24 hours(V4P990L8-28), and that you can't do partial clean up(V4P998L27), (V4P1001L3-28)

Bay Area Carpets owner John Sophinos testified that it was not good idea to use blowers on sewage spills(V1P150 L10-28).

8)

Pg 3, Pra 4, Defendants BAC were the ones who made the claims of the pre-existing damage after it was determined that they could/would not make the necessary and proper remediation to the property.(see trans)

Defendant BAC owner John Sophinos testified he told Rescue there was problem at job, spoke to owner(V1P148 L14-26). Sophinos states he sensed trouble so he sent tech out on February 25, 1997 to document situation and he spoke with Rescue about job(V1P149 L4-28).

He says Bartha called back on February 220 1997 and told him that it needed more than carpet cleaning, it needed water extraction(V4P874L16- 25).

He testified he told Bartha to just simply vacuumed up the water and to clean the top of the carpet(V4P875L12). Sophinos says he called Rescue about doing the extra work, it took 45 minutes to get everybody organized, where he was told by Rescue to vacuum water, but that it was a water damage job not a carpet cleaning job(V4P875L23-P876L15). He testified he spoke to al-Hakim, and the Court asks what was said, Sophinos says "he told me carpet soaked, can't just clean top", and that he initiated call to al-Hakim(V4P876L17-P877L6).

Sophinos acknowledges Ex #208(a 3 part invoice and scope of work) that was prepared Monday or Tuesday after the work was done on request from Earnest to fix water damage(V4P874L2-24).

He testified he spoke with al-Hakim over the weekend and al-Hakim wanted more work to be done and Sophinos talked with his crew, talk with Rescue, thought it would be good to meet Rescue at the home with himself(V4P883L2-26). He talked with Rescue and felt damage was pre-existing so sent a tech(Jason Ryan) to the home on Tuesday to check over area that had not been affected-, tech noted that there was urine stains that won't come up(V4P884L1-27), when the carpet was pulled up they saw salt crystals in urine that stain carpet and floor (V4P885L19), the bath floor rotten, drill holes, had long term water damage, carpet black (V4P886L2 -24). He stated that al-Hakim wanted them to do work that was pre-existing and bill Rescue, that he lied(V1P151 L4-P152L18). He testified that Rescue called him and told them it was a carpet cleaning job and to only do that, to return to job, take notes and rebill (V1P155 L11-28).

9)
Pg 4, Pra 1, Plaintiff was told that all the contamination was remediated with the ozone treatment.

10)
Pg 4, Pra 4, Ln 3-4 Any repairs appellant would have made to the lower level of home would have made him liable for any disturbance to contamination without the ability to pay for the necessary and proper repairs.

11)
Pg 4, Pra 6, CSAA had waived it's right to intervene.

See copy of **EUO transcript(attached hereto in pertinent part as exhibit I)** wherein Ron Cook states that CSAA will not run after Rescue to recover for the loss.

Appeal Courts Discussion

I) Inadequacy of Appellate Record

Appellant counsel was prevented from providing a full, more complete record to the court because his efforts were frustrated by former trial counsel Frank McKeown whom refused to provide any notes of the case from any period, a brief of the trial, the case files in this matter, a declaration of any kind, even asked counsel not to take the matter on appeal, and adamantly refused to cooperate with any investigation of the facts surrounding this case and it's proper appeal of all pertinent issues that would reveal his dereliction and malpractice.

II) Admission of Evidence of 1991 Spill

The court had ruled that there would be no testimony on 1991 spill unless it was conclusive as the source of the contamination in 1997. That was never established and proved to the contrary.(see trans) I did testify that the repairs were made.

III) Admission of Evidence of Insurance Coverage

There was no factual evidence or testimony of any roof leaks prior to 1998 at home and E-Coli does not have a life span longer than one year and could not have existed from 1991 to 1997-8. There was no eye witness testimony nor evidence that the 1991 spill contained anything but water and and was promptly cleaned up, nor that any intrusion was left for weeks or months at a time. Quite the contrary, the city investigator testified that the city report filed by the head of the Public Works crew that performed the work stated that the clean up was of "water" only and done at the time that it occurred**(Jim Burchardt reported only five rooms of wet carpet in call from OPW V3P646L7-28)**.

IV) Intervention

Appellant filed and argued the opposition to Intervention in Pro Per and no attorney appeared on his behalf to argue the matter. The transcript of that hearing was available and dispels all those contentions raised by the appeals court. CSAA had waived their rights to intervention during the EUO. The trial court did not have the benefit of the transcript from the EUO or original hearing on intervention that would have cleared up that matter and allowed the trial judge to dismiss CSAA from the proceedings as he had previously ruled in "sur-rebuttal" in Pre-Trial Motions in Limine. Appellant never claimed that the payments made to him were solely for the 1998 roof leak and not the 1997 spill. Finally, the trial courts proposal to try the CSAA case before the RR/BAC case is insignificant given the fact that the court allowed CSAA to intervene in this case, and still had the effect of prejudice once they proceeded with CSAA a party when the trial began.

Plaintiff's Trial Observations and Defense Flood Theroy

Defense orchestrated and solicited the knowingly false testimonies of defense witnesses

On Monday afternoon, November 4, 2002 at 1:30 p.m., after convening the court the defense called Kent Lauder as an expert witness to the 1997 back up at the residence. Mr. Lauder testified he has owned a plumbing company for 40 years in Burlingame, has a C36 license. He stated that if there was water in the clean out that tells you that the main blockage is in home. He said that city main line drops at a 18%

fall- 2% is the norm, and should have no obstructions. He felt that the blockage was impossible and a water flow is 120 gallons a minute, and that there could be a back up downstairs and not know it upstairs. He stated the date that he was told that the meeting at plaintiff's residence occurred was May or June 1997 when it was discussed and agreed to that being the date at the August 2002 meeting in the San Ramon headquarters of Rescue Rooter attended by Rudy Von Borg, Kent Lauder, Gary Hall, Chris Peterson, Rick Syrett, and conducted by defense counsel William Jemmout. On X-exam He said that he was told that al-Hakim was seen sweeping water out the back door and if he had seen such a thing he would talk to the owner. The type of toilet that al-Hakim has would only flow at a rate of 2 gallons per minute.

CSAA Flood Theory

The entire idea that there was a flood of 50-70 gallons of sewage in the appellants home in February 1997 was a complete fabrication and has never been written, voiced, or implied by appellant nor anyone truthful about the event. This theory was first surfaced in the writings of defendant Ron Cook as CSAA's insurance defense to their liability in this matter in 1999.

In the depositions of John Sophinos and Chris Peterson taken in 2001, they never mentioned anything remotely close to a back up of any degree. They also mentioned that they had never spoken to anyone from CSAA nor Ron Cook (Peterson Deposition V1P92L17-25).

Oddly enough, it was at Peterson's deposition that appellant first heard of the "no knowledge" defense to the mitigation efforts of Rescue by claiming that the meeting with appellant at the home occurred in May-June 1997. When questioned "if he talked to Syrett a day or two after the incident" Peterson is told by counsel Dan Crowley " this a perfect time to say I don't remember" and in not answering that question, Peterson asks for a break to speak with Crowley(V3P586L10-22). With this claim, Rescue hoped to dispel any notion that they had engaged in any possible remedies for the remediation and repair to appellant's home, thereby assuming responsibility. They attempted to show that there was no damage to the home in February 97, appellant had never complained of any damage, so therefore they could not have known about any damage nor made any attempts to remediate any damage. Peterson contends that appellant never complained about anything until May-June 1997 and that was in regards to a service in May 97 and he quickly resolved the dispute.

At trial during opening statements and on examination defense counsel William Jemmott claims and Syrett testified he was met at the front door of the home by appellant and saw 50-70 gallons of water covering the entire family room, with the appellant on the phone sweeping the sewage out the lower level of the home down into the backyard. He even estimates how much sewage there was and describes it composition. Those statements were repeated by and testified to by all the defendant's, their witnesses and experts as the truth and having been discussed at

the planning meeting at Rescue headquarters in July-August 2002 as observed by Syrett as an eyewitness to the back up. The defense plumbing expert Ken Lauder says he was told about the 50-70 gallon back up at the planning meeting and in deposition says Syrett told him "appellant was sweeping water out the back door"(V4P851L7-852L10) and he even had notes from the meeting wherein he writes **"do not mention May" and "(al-Hakim)did not complain till May of 97"**. Syrett testified that the purpose of the planning meeting was to discuss their trial strategy(V3P727L4) and date of the flood was "going around" in the meeting. He also testifies that he had been contacted by Rescue counsel Dan Crowley six or seven months earlier (February 2002) and signed a sworn affidavit to release the police report of the Oakland Police Department regarding the alleged assault to a private investigator hired by Rescue(Jemmott objects to questions about investigator court sustains on base of 352 V3P727L20-28, yet Jemmott told the court during a recess that he had attempted to get a copy of the police report but could not do so when he had the information all the time). He even testified that he filed the police report the same day as the meeting in May-June 1997(V3P723L1-25). This report and information was provided to the investigator whom had several discussions with the clerk of the records department, Debbie Fallehy about it's contents. Defense counsel William Jemmott, the defendants, each and every one of them, their witnesses and experts all had full knowledge of the contents of the report and knew the date of the meeting at the home of the appellant. Even more importantly, **the police report, a sole testament by Syrett, clearly establishes that it was the appellant that was attacked and assaulted in his own home by Syrett.** That is why there was never any investigation, interview or charges filed against the appellant by the Oakland police department. It is not fathomable that all these people could have mistaken the date of the meeting from February 1997 when they have produced reports of their services at the residence from years before the back up, employment records, time cards and computer generated reports. Even more interesting, how could they all remember the same time frame as the date of the meeting? How could they mistake noting the date, time, and length of a meeting involving the district manager, office manager, and technician of a small operation that all are getting paid by the hour? When it was established that they had all committed perjury and that proof was within their knowledge, they had no answer, no response other than to stipulate to the date being as testified to by the appellant. This substantiates the orchestrated perjurious testimony solicited by the defense counsel William Jemmott.

However, under cross examination, Syrett changes his story several times and admits he did not see the 50-70 gallon sewage flood, that he was told that this had happened by the appellant. He now becomes an eyewitness to his own caused back up but not the alleged one that he claimed occurred before he arrived at the home. There has never been any evidence or proof of such a back up having occurred and only made it's way into this case with the insurance defense theory of the intervener.

It was Ron Cook that originated the claimed that there was a flood of sewage in the lower level of the home, no one else. It was Cook and his appraiser from the

vacated appraisal awards, Mike DeCeasre, that concocted and calculated, with the help of Dr. Sigmund Schrandel, the flood theory, in part to discredit the appellant and to push the liability off on the City of Oakland. Cooks insurance defense theory is that if the back up occurred and brought in water from off the premises of the home then it would be the liability of the City of Oakland, not CSAA. He reasons he can establish this by virtue if the collapse of the City main in 1991. However these are two drastically different incidents.

Respectfully Submitted,

Abdul-Jalil al-Hakim
Plaintiff/Appellant
7633 Sunkist Drive
Oakland, CA, 94605
Phone(510) 839-5400
Fax(510) 638-8889

THE PARTIES:

Plaintiff/Appellant:

Abdul-Jalil al-Hakim
7633 Sunkist Drive
Oakland, CA, 94605
Phone(510) 839-5400
Fax(510) 638-8889

Defendants/Respondents:

Rescue Industries
Formerly Represented by:
William Jemmott, Dan Hernandez,
and Dan Crowley(No longer employed)
Caven, Cleaveland, Murray
1 Market St., 8th Flr.
San Francisco, CA 94105

Now by:
Joel K. Liberson
Gordon & Rees, LLP
275 Battery St., Ste. 2000
San Francisco, CA 94111

Bay Area Carpet Cleaning
Represented by:
Todd A. Jones
Archer Norris
2033 North Main St., Ste. 800
Walnut Creek, CA 94596

Hostile Intervener:

CSAA, Ken George, Ronald J. Cook and firm of Willoughby, Stuart & Bening
Represented by:
Sean O'Halloran and Stephan Barber
Ropers, Majeski, Kohn
80 North First St.
San Jose, CA 95113

Ronald J. Cook and firm of Willoughby, Stuart & Bening
50 W. San Fernando, Ste.#400
San Jose, CA 95113

Case No. S 130203
IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

ABDUL-JALIL al-HAKIM,
Plaintiff-Appellant,
vs.
RESCUE INDUSTRIES, INC.,
Defendant-Respondent.

After a Decision by the Court of Appeal
First Appellate District, Division Five
Case No. A 101832

On Appeal from the Superior Court of the County of Alameda
The Honorable David C. Lee, Judge
Case No. 8218852

PETITION FOR REVIEW TO THE ATTORNEY GENERAL

AND SUPREME COURT

OF THE UNITED STATES OF AMERICA

EXHIBITS

RESPECTFULLY SUBMITTED BY

ABDUL-JALIL al-HAKIM,

Plaintiff-Appellant

7633 SUNKIST DRIVE, OAKLAND, CA 94605 PHONE: (510) 839-5400 FAX: (510) 638-8889

EXHIBIT “A”

ABDUL-JALIL AL-KAHIM V. RESCUE INDUSTRIES, INC.

REPORTER'S TRANSCRIPTS OF PROCEEDINGS

VOLUME I

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE DAVID C. LEE, JUDGE

DEPARTMENT NO. 19

---oOo---

ABDUL-JALIL AL-HAKIM
PLAINTIFF,

vs.

RESCUE INDUSTRIES, INC.,
DEFENDANT.
_____/

NO. C-821885

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ADMINISTRATION BUILDING
1221 OAK STREET
OAKLAND, CALIFORNIA

OCTOBER 21, 23, 24, 2002

A P P E A R A N C E S

For the Plaintiff:	FRANCIS McKEOWN McKeown, Price 2030 Addison St., #300 Berkeley, CA 94704
For Defendant Rescue:	WILLIAM JEMMOTT Jackson & Harrigan One Market, 8th Floor San Francisco, CA 94105
For Defendant Bay Area Carpet:	TODD JONES Archer, Norris 2033 North Main St., #800 Walnut Creek, CA 94596
For Defendant CSAA:	SEAN O'HALLORAN Ropers, Majeski, Kohn, Bentley 80 North First St San Jose, CA 95113

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ARTHUR SIMS
EXECUTIVE OFFICER
JURY COMMISSIONER AND
CLERK OF THE SUPERIOR COURT
1225 FALLON STREET
OAKLAND, CA 94612

ROOM 109
APPEALS SECTION
PHONE: (510) 272-6780

06-05-03

NELSON, LEWIS N.

141 SEQOUYAH VIEW DRIVE
OAKLAND, CA 94605

Action No: 821885
Case: HAKIM VS. RESCUE INDUSTRIES

5.1 m

We are enclosing herewith your copy of reporter's and ~~clerk~~'s transcript(s) on appeal in the above entitled action. Also, please find a copy of the Notice of Certification of Record on Appeal.

Please acknowledge receipt of the transcripts on the enclosed copy of this letter and return it to this office.

Very truly yours,

CLERK OF THE SUPERIOR COURT

By Roza D Sabri
Deputy

I hereby acknowledge receipt of the above mentioned transcripts:

Date:_____

Signed:_____

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ARTHUR SIMS
EXECUTIVE OFFICER
JURY COMMISSIONER AND
CLERK OF THE SUPERIOR COURT
1225 FALLON STREET
OAKLAND, CA 94612

ROOM 109
APPEALS SECTION
PHONE: (510) 272-6780

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CLERK'S NOTICE re CERTIFICATION OF RECORD ON APPEAL

ENDORSED
FILED
ALAMEDA COUNTY
JUN 05 2003
CLERK OF THE SUPERIOR COURT
By Liza D. Sabio, Deputy

Action No. 821885

HAKIM VS. RESCUE INDUSTRIES
Plaintiff(s)/Defendant(s)

In accordance with the California Rules of Court, the above captioned record on appeal is hereby certified to the Court of Appeals, First Appellate District and is being transmitted to said court this date.

Date: 06-05-03

CLERK OF THE SUPERIOR COURT

By: Liza D Sabio
Deputy

CERTIFICATE OF TRANSMITTAL

I certify that on 06-05-03, I sent a copy of this notice to the address indicated below by the following method:

( ) United States Postal Service at Oakland, CA with postage fully prepaid.

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CLERK OF THE SUPERIOR COURT

By: Liza D Sabio
Deputy

NELSON, LEWIS N.

141 SEQOUYAH VIEW DRIVE
OAKLAND, CA 94605

OCTOBER 21, 2002 MORNING SESSION

P R O C E E D I N G S

---oOo---

THE COURT: Good morning, Counsel.

MS. McKEOWN: Good morning.

MR. JEMMOTT: Good morning, your Honor.

THE COURT: I noticed in the Court's file a packet which I just looked at which says, subpoenaed records from R. David Bierman, REA care of Safe Environments. Apparently, they're subpoenaed records and they're not submitted in the proper form. They're not double sealed, not at all authenticated by the custodian of whatever the records may be. And I gather these are the plaintiff's subpoenaed records.

MR. McKEOWN: No, your Honor.

THE COURT: Is there somebody involved in this case whose name is McKeown?

MS. McKEOWN: Yes.

THE COURT: Subpoena duces tecum to R. David Bierman.

MR. McKEOWN: Yes, your Honor. I expected Mr. Bierman to bring those to trial with him when he responded to my subpoena. And I've actually spoken to Mr. Bierman so that's a surprise to me.

THE COURT: All right. Going to the last item to be dealt with, and that is the issue of the intervener status in this case.

Mr. O'Halloran, had you quickly pointed out to the Court that there was a contested hearing regarding the intervention

status I would not even had you do all this work. I have noted in the Court's file that on January 19th, 2001 Richard A. Hodge, judge of this court, after considering the points and authorities of Abdul-Jalil al-Hakim filed January 11th, 2001 opposing the motion to intervene granted the motion to intervene. Therefore, the law of this case is that California State Auto Association is, in fact, a party to this case by intervention.

O'HALLORAN: Thank you, your Honor.

MR. McKEOWN: May I be heard, your Honor?

THE COURT: Yeah, but I'm not the Court of Appeal.

MR. McKEOWN: I recognize that.

THE COURT: And I don't have any authority to overrule the case management judge's leave particularly since he apparently heard a contested hearing, or at least considered the contest.

MR. McKEOWN: Your Honor, the plaintiff in pro per opposed that motion -- opposed that intervention on very sound instinct. The intervention is legally improper. This Court quite properly found that it was legally improper. Nothing about -- everything that the Court found last week is still true. There is not a proper basis for complaint of intervention in this case, and none of those issues were raised by plaintiff in pro per.

THE COURT: Here's my problem with that analysis. One, if it be error it's invited error. Two, jurisdictionally my concern was whether or not there had been a predicate, a legal predicate. And I agree if there is no legal predicate it

can be raised at any time. The legal predicate was considered. The statute was followed. The claim of intervention was allowed. Clearly by reason of the filing of the claim of intervention the Court's jurisdiction was invoked. The Court ruled in favor of the intervener. The problem that I identified with a that there had been no facial showing that the intervener had taken any steps to properly intervene. Now I see that, indeed, they have. At this point I'm content that Judge Hodge's order must be acknowledged.

MR. McKEOWN: For the record, your Honor. At the hearing before Judge Hodge I was not present. It was my understanding that even Judge Hodge threw up his hands and said, I don't know why I've done it this way. I don't know why I didn't --

THE COURT: Excuse me. That's not before the Court. I can't consider that.

MR. McKEOWN: Your Honor, then I ask the Court to -- Basically, is your Honor saying that I'm not entitled to bring a motion to strike a complaint in intervention?

THE COURT: Correct. Not before this Court.

MR. McKEOWN: All right. And the problem -- one of the problems with that that I see, your Honor, is based upon what the Court has quite correctly noted before we will have an appeal as of right which should be granted which makes this case a potential waste of time.

THE COURT: All cases are potentially a waste of time.

MR. McKEOWN: Finally, your Honor, even the Court, I

believe, has observed, as the defendants have observed, that the presence of CSAA may, if handled improperly, be a real prejudice to the plaintiff in this case. I ask that to the extent we have defenses which we believe we have very strong defenses to the complaint in intervention that we be allowed to bring those but not in a manner to prejudice our case, but bring them after the principle case and the case be bifurcated on those issues.

For instance, your Honor, there is no reason whatsoever to bring in evidence of the amount of monies that the insurance company paid. Obviously the plaintiff takes a very strong stand that those were inadequate.

THE COURT: Counsel, look, the case is here before me for trial. I told you before, I'll tell you again, I think that this is the tail that's wagging the dog. It's my opinion that the bad faith action should have been filed and tried first. Why this has been bumped up to the head of the line, I do not know. The bad faith case in my opinion is the essence of this trial. If you lose on that, then all you have is a claim for some non-compensated damage to the property occasioned by the defendants. If you prevail in that, that doesn't necessarily prevent you from going forward in this, but it may very well result in a global settlement of the case.

This case, in my opinion, and apparently you're the one who wanted to go forward with it -- I'm hearing from the other folks, Mr. Jemmott didn't think it was appropriate. I'm now of the opinion that the other defendant similarly disposed, and I think this is premature.

MR. McKEOWN: Your Honor, the fact is, as the Court's pointed out, we do have to play the hand that we're dealt here. And as the Court observed before I came in somewhat late and this hand was dealt to me as well.

Your Honor, it is very easy, it is very easy, to minimize the prejudice to the plaintiff in this case. The plaintiff is perfectly willing to stipulate to the amount of monies that CSAA gave to the plaintiff in this case. There's no reason to put that before the jury. It is extremely prejudicial and it will be stipulated to, your Honor.

THE COURT: Would you accept such a stipulation?

O'HALLORAN: Your Honor, CSAA, as the Court noted, has a right to participate in this action and there is no reason to stipulate because -- we've seen no evidence the plaintiff will admit to what's been received and for what reason.

THE COURT: If you're going to stipulate, fashion a meaningful stipulation and then that will put Mr. O'Halloran back up against the wall. If the stipulation is CSAA paid 130 whatever it is, thousand dollars for repairs to the property occasioned by the alleged spillage of 1997 and that they are entitled to recoup that, insofar as a jury finds that such an amount was incurred by the plaintiff in that case without prejudice to going forward with the bad faith action, then maybe that would be something he'd accept.

MR. McKEOWN: Your Honor --

THE COURT: I know there's some dispute about the roof.

MR. McKEOWN: That is the sort of thing I am suggesting. In chambers, it was discussed and I believe conceded by CSAA, and I'm sure it would be conceded now, that in that number of 134,000 or whatever they have in their complaint of intervention, is amounts paid for repair of the roof, which we have asserted is an expansion of the issues in this case. I know the Court won't hear us on that.

THE COURT: The only question is, is it an expansion or is that some damage you're going to be seeking from the defendants because of the corruption of the premises which you allege was occasioned by the incident in 1997.

MR. McKEOWN: Of course not, your Honor.

THE COURT: Okay.

O'HALLORAN: Your Honor, I've heard both sides from plaintiffs on this. I would prefer to wait and see the evidence presented.

MR. McKEOWN: Your Honor, I have to challenge that. He's not heard both sides from me on this. I'm willing to represent right now, as I always have, that we're not make a claim for roof repair in this case.

O'HALLORAN: Your Honor, the nature and extent of damages is not just roof repairs, it's clean up, etc, on the second floor. It's part of plaintiffs case in chief.

THE COURT: Counsel has just stipulated that there shall be no request for compensation from the defendants for any roof repairs. That seems like a fairly simple thing. It inures to the benefits of both of the defendants. It inures to the detriment of you if you're seeking compensation for it, and

it inures to the detriment of the plaintiff because he is stipulating that there is no prayer for repairs to the roof in this case.

Is that correct?

MR. McKEOWN: That is correct, your Honor.

MR. JEMMOTT: Your Honor, if I may on that issue. You already told me not to speak up on the issues with the intervener, but I think this floats over to the main case.

If, in fact, plaintiff is making such a stipulation would that stipulation necessarily include not just a roof repair but all the damage to the premises as a result of the leaky roof, which is essentially our position as part of their entire damage claim. It's not just repair the roof and whatever dollars it costs to put the roof on, whatever. But it's the repairs to the floor upstairs, the drywall upstairs, the painting, the rebuilding of the second floor as part of the rebuilding of the house. If that's the stipulation, great, but I want to make sure we're on the same page of that so we're not arguing this issue later on.

MR. JONES: And I join in that request, your Honor.

MR. JEMMOTT: Also, the loss of use. The premise as a result to the damage to the roof in 1998. Essentially we're talking about a case that deals with a damages from January '97, or thereabouts -- excuse me. February '97 through February of '98. If that's the stipulation, then so be it.

MR. McKEOWN: Your Honor, this case is pretty simple. We're not making claims for roof repair. We're not making claims for the amount that the insurance company paid.

THE COURT: Did you hear what Mr. Jemmott said? He said he wants clarification. Are you stipulating that none of the repairs which have heretofore been represented as having been occasioned by a roof leak will be prayed for as part of the damage in this case. Is that right?

MR. JEMMOTT: Including the litany of claims I set forth.

THE COURT: Tell you what. We're going to call for the jury very shortly. As it stands right now there seems to be the possibility of simplifying this case. I'll give you five minutes to fashion a written stipulation. If you can fashion a written stipulation, send Mr. O'Halloran home. He'll be happy to go home to his desk and probably has a lot of pink telephone tags as we speak.

MR. McKEOWN: Your Honor, you're right if my assumptions about the motivations of CSAA are incorrect. If I'm right about them they won't accept it, but we'll see.

O'HALLORAN: Your Honor, I object to that characterization, but I'm happy to work.

THE COURT: Well, I don't think he's signaling you out. I'll give you five minutes to fashion a stipulation.

MR. McKEOWN: Thank you, your Honor.

O'HALLORAN: Thank you, your Honor.

(Whereupon, a pause was made in the proceedings.)

THE COURT: We're just going to rack them up. Bring up the jury. The only way I can perceive that you can avoid the prejudices that you perceive, Counsel, is to stipulate to

vacate this trial date and go forward with your other trial.

MR. McKEOWN: Respectfully, your Honor, I have already proposed other ways that would remediate the problem. And, frankly, I have a proposal, there's no reason the defendant would not oppose it. My stipulation is that CSAA -- the value of CSAA's complaint in intervention is monies that -- rather monies that the plaintiff is seeking in this case that have been paid by CSAA-IIB and those are approximately $4,000 in business loss, exactly $7,000 for loss of use for two months rental while they were fixing the property, and $98,000 paid for repair of the property. That's the sum total of what we're seeking in this case that was paid by CSAA, and we're willing to stipulate to that.

O'HALLORAN: I don't agree to any such stipulation.

THE COURT: Bring up the jury.

MR. McKEOWN: Your Honor, while we're waiting for the jury may I ask a question?

THE COURT: Sure.

MR. McKEOWN: I don't know if that should be handled in chambers. Is CSAA going to be entitled to be cross-examining my witnesses and bringing on witnesses?

THE COURT: It was my understanding to what was said that all they intend to show up how much money they have expended on the claim against the policy that Mr. Al-Hakim has made.

Is that a correct or incorrect assumption?

MR. O'HALLORAN: That's a correct assumption, your Honor.

THE COURT: And to that end, if you have evidence that some of the monies paid were not for this claim and they don't agree to that, I suppose they will actively participate because they have a claim in intervention that has been permitted over the objections of your client.

So I guess the essence of it is, they're seeking recovery for some or all the monies they have paid. I do not know what amounts they are, but it is clear they are seeking compensation for monies they have paid. Whether it be that which you agreed to or otherwise, I don't not know. Obviously, if you can reach an agreement then they don't need to be here.

MR. McKEOWN: Also, your Honor, to the extent that I will stipulate to what they seek to prove this should not be allowed to put on the evidence which is going to be prejudicial to my client.

THE COURT: Depends on whether you stipulate such that it is not an issue. If it's not an issue then of course there is no evidence that need be taken on it. If you stand up and say plaintiff stipulates that CSAA paid by and for damages to the property for the injuries that were suffered as a result in the 1997 sewage leak and any complications that flowed from that and you stipulate to the amount that they agree is what they paid, there's no issue. If they disagree as to the amount then there's an issue.

MR. McKEOWN: Your Honor, since I have just stood up and made a stipulation as to the vast majority of that, I would submit that then the evidence with respect to that should be taken off the table.

THE COURT: You didn't stipulate before the jury. If once a jury is selected, if you stipulate, either in your opening statement or by a separate stipulation as to the amount of damage that they are entitled to subrogate, then fine. But you'll have to specify to what it's for if it's not the total amount.

MR. JEMMOTT: Your Honor, just to make clear. Wouldn't it be a stipulation with respect to a claim as opposed to a dollar amount?

THE COURT: No.

MR. JEMMOTT: Because as I see it --

THE COURT: No. Unless they concede to the entirety of the claim in intervention there is a dispute of fact. The dispute is either how much was paid or why it was paid. There is a disputed fact that only the trier of fact can resolve unless the parties stipulate such that there is not an issue of fact.

MR. JEMMOTT: I should clarify what I said. I don't mean either/or. Shouldn't it be a stipulation that encompasses a claim, in addition to a dollar amount. As I understand it, it's not my issue but it does flow as to how this case plays out. If in fact there's a stipulation that X amount of dollars was paid and the jury awards, let's say, $5 total for the damage to the house but doesn't award a loss of use. Then wouldn't the intervener then have a claim that was not properly addressed by the jury if you don't clarify it and say --

THE COURT: My guess is Counsel doesn't want your help.

MR. JEMMOTT: To the extent it affects how this trial plays out.

THE COURT: It doesn't affect anything as to how this trial plays out. He has a complaint in intervention. He is entitled to present his claim, how much was paid and why it was paid. Plaintiff has the obligation of showing what his damages were, and most specifically for each of the types of damage. If he is deficient in his presentation, then CSAA as the holder of the complaint in intervention has a right to present evidence as to what it did pay and for what. And they're an independent party. They have standing to present evidence. They do not have standing to present evidence that goes beyond the call of the case.

Your jury is assembling out in the corridor.

MR. McKEOWN: Your Honor, one further question before the jury comes in.

THE COURT: I can't stop them from coming in.

MR. McKEOWN: I shall wait.

THE COURT: Please have a seat in the back there if you would.

(Whereupon, there was a stipulation by counsel that jury voir dire not be reported)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE RICHARD A. HODGE, JUDGE

DEPARTMENT NO. 30

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ABDUL-JALIL al-HAKIM,

Plaintiff,

vs. No. 811337-3

CALIFORNIA STATE AUTO MOBILE ASSN. INTER-INSURANCE BUREAU, et al.,

Defendants.

_____/

ABDUL-JALIL al-HAKIM,

Plaintiff,

vs. No. 821885-2

RESCUE INDUSTRIES, INC., dba RESCUE ROOTER, LLC, BAY AREA CARPET CLEANING dba BAY AREA WATER & SMOKE DAMAGE RESTORATION, et al.,

Defendants.

_____/

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU,

Intervenor.

_____/

U.S. POST OFFICE, OAKLAND, ALAMEDA COUNTY, CALIFORNIA

FRIDAY, JANUARY 19, 2001

TRANSCRIPT OF PROCEEDINGS

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GERALD A. DOHRMANN, C.S.R.#2046

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

For the Plaintiff:	ABDUL-JALIL al HAKIM In Propria Persona
For the Defendant: and Intervenor (CSAA/IIB)	ROPERS, MAJESKI, KOHN & BENTLEY BY: SEAN R. O'HALLORAN, ESQ.
For the Defendant: (Bay Area Carpet)	NORLAND & KAYS BY: ERIC P. NORLAND, ESQ.
For the Defendant: (Rescue Rooter)	CAVEN, CLEVELAND, MURRAY & PAYNE BY: STEPHEN A. ROBERTS, ESQ.

FRIDAY, JANUARY 19, 2001

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- P R O C E E D I N G S -

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THE COURT: Okay. This is the matter of Abdul-Jalil al-Hakim vs. Rescue Industries; and also al-Hakim vs. California State Automobile Association. There's two separate numbers: 821885-2, 811337-3. These are separate cases here for case management. They are not consolidated.

There's also a motion on for 1:30, which I'm going to hear now, because all of the parties are here. And that is a motion to do what? To intervene California State Automobile in which case?

MR. O'HALLORAN: To intervene in the case the plaintiff has brought against --

THE COURT: What's the number? That's the reason I put the numbers on it.

MR. O'HALLORAN: Certainly, Your Honor. That would be case No. 821885-2.

THE COURT: All right. Your appearances, please.

MR. AL-HAKIM: Abdul-Jalil al-Hakim, the plaintiff.

MR. ROBERTS: Stephen Roberts on behalf of Rescue Router.

MR. NORLAND: Eric Norland for Bay Area Carpet.

MR. O'HALLORAN: Sean O'Halloran for CSAA/IIB and other defendants.

THE COURT: IIB?

MR. O'HALLORAN: IIB, Inter-Insurance Bureau.

THE COURT: The matter is here for case management conference, which I usually don't report. But the record should reflect that we started this conference earlier, and I expressed my view that I wanted to hear the motion for leave to intervene at the same time, since it's set for 1:30, since I have an afternoon-long hearing set for 1:30, and since we got all of the parties here at this moment, I couldn't see any reason to put it over.

But Mr. al-Hakim objected, so I thought it's time to put these things on the record, so we don't have any ambiguities about it.

I'm going to hear the Motion for Leave to Intervene first. So, tell me about it, counsel. What is it about?

Don't assume that I know a great deal about this. Let's make the record as full as possible.

MR. O'HALLORAN: Your Honor, with respect to the case that I just mentioned, plaintiff has brought an action against Rescue Router and Bay Area Carpet Cleaning for alleged negligence in the creation or cause of an alleged incident wherein a sewage intrusion occurred on or about February 17th or 18th of 1997 in the basement of plaintiff's residence.

THE COURT: And the allegation is that Rescue was responsible for this intrusion?

MR. O'HALLORAN: That is correct, Your Honor.

THE COURT: Go ahead.

MR. O'HALLORAN: Based upon that same incident, plaintiff submitted a claim for insurance coverage, and pursuant to that claim, CSAA/IIB paid out sums in the amount of approximately $135,000 to plaintiff.

Now, based upon those sums, CSAA/IIB asserts that it has a right to subrogate any sums plaintiff may recover, if plaintiff does recover sums, against the two defendants in the case we are here to on --

THE COURT: Let me ask you a question. These are two separate cases, and each of them has a trial date now or not?

MR. O'HALLORAN: No, Your Honor.

THE COURT: Are there trial dates on those cases?

MR. O'HALLORAN: I believe Your Honor suggested that you would set a trial date at this C.M.C., and I believe that the first trial would be in this case -- that is, hyphen-2, if you will -- first and the other case would trail.

THE COURT: Okay.

MR. AL-HAKIM: I don't recall that being the issues that had been decided in the last case management.

THE COURT: I didn't decide anything. I just said that I would look at it now. Obviously -- maybe it's not obvious, I will hear from you in a second -- I don't know whether it's time to set this case for trial or not, and that's what we will see about.

Why shouldn't I permit him to intervene in the second case?

MR. AL-HAKIM: Well, actually, Your Honor, you already denied this action with the Motion to Consolidate. This was part of that action. I don't know why they are coming here to bring it before you again. It was made very clear in the Motion to Consolidate, when you denied it at that time, that they had denied coverage, that they breached their contract, and they waived their right to subrogation by virtue of that breach.

They are claiming that they have no way to recover. There is no rescission here, that there is no coverage here. And if they are going to deny my right to indemnify me, quite naturally, they have no way of recovering, when I have gone ahead and filed suit against the defendant to recover against them. They have no right. They have waived their right, and that was already proven and established with your prior decision.

THE COURT: Well, all I did was to keep them separate for purposes of adjudication. I didn't rule on the merits.

MR. AL-HAKIM: This was part of that issue.

THE COURT: It was part of the issue. But it still remains to be adjudicated.

MR. AL-HAKIM: Well, we have no right --

THE COURT: What is your response?

MR. O'HALLORAN: Your Honor, first of all, I would respond that, my understanding is correct, that there were no decisions on the merits. My understanding of the reason why the Court denied the Motion to Consolidate was that the Court had concerned itself with overlapping of evidence of bad faith handling with evidence of negligence on the part of these defendants, and that might be cause for jury confusion, and may be a lengthy trial. And for that reason, consolidation, which is totally different than intervention, was denied.

THE COURT: Well, let's talk about Mr. al-Hakim's point that, by intervening, you might be accomplishing the same problem, that is, to have you in there making a claim for insurance proceeds, which the jury, which is attempting to determine the issues of negligence, then might get either confused about or find out that there is coverage, which might compromise his rights against them.

What about that issue?

MR. O'HALLORAN: These are typically where intervention is allowed. And there is no potential for prejudice with regard to the fact that an insurance

carrier is there and will assert a claim at the end of the day if there is a finding of fact as to negligence.

The scope of this trial is much more limited than it would have been if there had been consolidation; therefore, there is the potential of somehow believing that just because an insurance carrier is asserting a subrogation right in the event that plaintiff's facts are proved, I don't believe --

THE COURT: Would the subrogation be tried to the jury?

MR. O'HALLORAN: I believe it's an equitable claim, Your Honor, so it wouldn't be.

THE COURT: So, the jury wouldn't necessarily hear anything about it, in any event.

MR. O'HALLORAN: That's correct. That is my understanding.

MR. AL-HAKIM: That may be arguable, Your Honor. First of all, if they have denied the right of coverage, they don't have the right of subrogation, and --

THE COURT: I'm going to grant the leave to intervene, making it very clear, however, that I'm not trying to co-opt the trial judge in any way. And any order that the trial judge may make with respect to this motion, in terms of whether he bifurcates the proceeding or whether he handles it as an equitable matter, or whatever he or she chooses to do, I'm not, by granting the motion to intervene, again, attempting to co-opt the

trial judge with respect to any of these issues.

So, I'm still leaving to the trial judge, and I want to emphasize this for the record. If you need this record, you may want to order it for the trial judge. I'm leaving to the trial judge whatever discretion that judge has to figure out how best to handle these interlocking issues.

I will say, parenthetically, when I'm the trial judge, and some judge has made orders like this before, I often get miffed. So, I want to make it very clear that I'm permitting the Motion to Intervene, but how that's going to be adjudicated at the trial level is going to be for the trial judge, and how he or she chooses to, say, handle it as an equitable matter, or try it first or last or whatever, that's entirely up to the trial judge.

Now, having decided that, aren't we now to the time of selecting a trial date for this case and getting it going? Is there any reason not to try it?

MR. O'HALLORAN: Are we going to be at issue?

THE COURT: I don't know. Who is not in this?

MR. NORLAND: The reason is, because now CSAA/IIB will file their Complaint in Intervention, and we will have to respond to that. I don't know whether that makes the case at issue or --

THE COURT: Well, I'm going to set it, and you get these things done.

MR. AL-HAKIM: There was a Motion for Stay,

Your Honor, as well.

THE COURT: You don't want to go?

MR. O'HALLORAN: I'm not prepared to go. I'm waiting, and I've been waiting -- the issue that we had when you reserved the rights to, you know, schedule this thing at this --

THE COURT: Let me interrupt you.

MR. AL-HAKIM: I'm sorry.

THE COURT: I should be the one that's sorry that I'm interrupting you. But I'm assuming that you want to go. If you don't want to go to trial, and we are not at issue, fine. I don't care.

MR. AL-HAKIM: No, we are not even close to it, because the reason why we had -- the reason why I had petitioned the Court for the stay was because we were waiting until the Motion to Vacate was heard to select counsel, and that's the same issue we had.

THE COURT: The Motion to Vacate.

MR. AL-HAKIM: There is a Motion to Vacate the appraisal award that they have gone in now for and had a year's worth of delays.

THE COURT: That's in Department 31?

MR. AL-HAKIM: Yes.

THE COURT: I see.

MR. AL-HAKIM: And until that issue is resolved, we cannot select counsel.

THE COURT: Where does that stand?

MR. AL-HAKIM: They have gone in and got

another continuance until April 19th. So, as part of this proceeding, I petitioned to the Court -- to you, actually -- that we would stay this proceeding -- actually not stay the proceeding, but to continue this hearing until July 19th, which we will have time to select counsel and move forward.

At this point, we are not prepared to do anything. I don't think they are prepared to --

MR. NORLAND: I think what will resolve all of it is that, if we set a trial date out far enough, it will put pressure on all of the parties to get done what they need to be done.

I know that there are Motions to Compel that are on file and pending, there is a Motion for Stay that the plaintiff has brought on February 6th, which we will oppose; on February 8th, there is a Motion for Terminating Sanctions brought by CSAA. So, their case may be resolved as of February 8th.

THE COURT: Terminating sanctions for discovery abuses.

MR. NORLAND: Yes.

THE COURT: You should be very careful about that.

MR. AL-HAKIM: They have all been complied with, Your Honor.

MR. NORLAND: So, in my --

THE COURT: Well, let me ask. Now, put yourself in my position as an administrator of our

judicial system in our Alameda County. Why in the world would I set a trial date if you have a terminating sanction pending?

MR. NORLAND: I don't know. To keep us from having to come back on another case management conference in two months?

THE COURT: The only thing worse than that from my perspective is having a day next August when there are 25 cases on calendar and 12 judges available, and 24 of those cases turn out not going to trial. We have 11 judges sitting on their rearends.

So, there is a balance here. So, I try not to set cases if it doesn't sound like it's ready to be set just yet, but soon. And this case will be tried by the end of the year. It can't go longer than that.

MR. AL-HAKIM: Your Honor, can I say something?

THE COURT: Sure.

MR. AL-HAKIM: First of all, I would be tended to apologize to you. I did not know you had something set for later on this afternoon. Personally, when I filed the motion -- I didn't file the motion. When I requested in my declaration to continue this matter is because I was expected to be out of town today. I had had thought that this was not going to go forward, and I spent two weeks trying to get with counsel to set another date at the request of Mrs. Edgerly, and they all refused. So, I had to cancel all my plans to be

here.

THE COURT: I will tell you, frankly, I'm more cautious in this chambers discussion with people who don't have lawyers than if they have lawyers. I can cuss at lawyers and scream and yell at them, and all they can do is take me to the Commission on Judicial Performance, and they all know better than that. But mere citizens who haven't required the lofty appellation of "lawyer" don't understand when judges do that, and they take it personally.

So, I'm just being careful by having it on the record. So, don't worry about it. We're just handling it the same way as we would have, anyway.

But I don't see any reason to have you come back at 1:30 if you are all here.

MR. AL-HAKIM: That's fine with me. I don't -- I didn't know we had to be here today at all.

THE COURT: We are done. Does it make any sense to set this trial date?

Here is the deal. I'm leaving in March. I'm gone forever. And it doesn't matter. There will be another judge in here.

MR. NORLAND: For what it's worth, you indicated that you would set us in May the last time we were here.

THE COURT: For trial?

MR. NORLAND: For trial.

MR. AL-HAKIM: I'm not certain that's sure,

Your Honor. That was under the assumption that we were going to have counsel, too.

At that point in time we were days away from having this motion heard. They tried it in the court and got another four-month delay. They have only had the file in opposition -- they had a year to file an opposition, and failed to do so.

THE COURT: When are you going to get a lawyer?

MR. AL-HAKIM: I have to wait until this issue with the Motion to Vacate is resolved. The lawyers who handle your appraisals will not handle your bad faith. I have already gotten caught up in that, and that's the reason I'm in pro per right now.

THE COURT: On the other hand, it's a critical issue in this case.

MR. AL-HAKIM: Your Honor, it's all part of their brinksmanship, if you want to call it that, but that's exactly what they are doing. They are trying to litigate this case on the ground and hopefully something will fall through the cracks, and they can walk out.

They have gone out and taken the time to have an appraisal hearing and then brought forth all of the issues themselves to totally disprove their own case, and neither one of them have a right to even be here based on what they have done.

So, I'm only trying to get to trial, but I also know I want to do it properly, Your Honor, and I can't

do it without proper counsel. And too much has happened already. That's the reason I filed the Motion for Stay, so we can get this issue resolved. We won't have to be here before you and other judges with needless Law & Motion week after week.

THE COURT: That's what we get paid for.

MR. AL-HAKIM: I don't, and it's only compromising my case.

THE COURT: I know I have already told you this.

MR. AL-HAKIM: It's only compromising my case.

THE COURT: I know I already told you this: If you don't have a lawyer there, you are skating on very thin ice. I won't say another word.

MR. AL-HAKIM: I definitely intend to have counsel, and am definitely going to have counsel.

MR. NORLAND: There is a mixing, and I just wanted to try to divide. These are two separate cases. One is a mere negligence action.

THE COURT: I understand.

MR. NORLAND: And why we are getting dragged along with the insurance case is -- you know, I understand why, but there is no real reason for it.

THE COURT: In other words, you say why not set your case and let the other one --

MR. NORLAND: Well, they are the ones who have the terminating sanctions. We may ultimately have that. But what we have is a negligence action with damages,

and we are going forward with discovery.

THE COURT: Aren't you going ahead with that case?

MR. AL-HAKIM: It's the same attorneys. That's the only issue. That's the only compromising thing here.

And, as I said before, it's part of their tactic. You know, it's try to get this thing and run it in the ground before we get --

THE COURT: I don't think so. I think if I represented Rescue Rooter, and I thought we had a pretty good case, I would want to get it over.

MR. AL-HAKIM: Me, too. No one has gone through this but me and my family for four years.

THE COURT: Let's get it over.

MR. AL-HAKIM: I definitely want to do it, but I want to do it properly. I don't want to sacrifice myself.

THE COURT: I hear what you are saying, but I'm also telling you, you ought to have a lawyer in here directing these steps.

MR. AL-HAKIM: That's exactly my point. That's exactly my point. I can't do that until this Motion to Vacate is heard.

THE COURT: I'm going to leave this mess for the next judge. I don't know what else to do.

So, I'm granting the Motion for Leave to Intervene, and other than that, I'm simply going to put

it on the calendar for another case management.

When is your terminating sanction on?

MR. O'HALLORAN: February 8th.

THE COURT: So, I'm going to have you come back on April 13th.

MR. AL-HAKIM: Your Honor, could I ask one thing?

THE COURT: Sure.

MR. AL-HAKIM: The issue with regards to the Motion to Vacate is going to be heard on April 19th. Can we schedule sometime shortly after that?

THE COURT: Sure. Sure.

MR. AL-HAKIM: I have proposed --

THE COURT: May 11th.

MR. AL-HAKIM: I actually proposed the time of June 19th is what I proposed.

THE COURT: Do you care?

MR. NORLAND: The first date you gave in May, I'm going to be on vacation. So, it's good for June.

THE COURT: Let's do it May 25th. Let's just do May 25th, and that's going to be your next case management date. So, it would be May 25th at 9:00 o'clock.

MR. NORLAND: Which department?

THE COURT: Here. I have no idea which judge will greet you.

MR. O'HALLORAN: I'm sorry. Did you say 9:00 o'clock?

THE COURT: Yes, 9:00 o'clock. It would be my guess that it would be Judge Sabraw. So, we will see.

MR. ROBERTS: Are we required to file an additional case management?

THE COURT: Not required.

This is off the record now.

(Short discussion off the record)

(End of proceedings)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

CERTIFICATE OF REPORTER

I, GERALD A. DOHRMANN, Certified Shorthand Reporter, do hereby certify that I am an Official Court Reporter of the Superior Court of the State of California, and that, as such, I reported the proceedings had in the above-entitled matter at the time and place set forth herein.

I further certify that my stenograph notes were thereafter prepared by computer-assisted transcription into typewriting, and that the foregoing pages numbered 1 through 16 constitute a full, true and correct transcription of said notes in the above- entitled proceedings.

Dated at Oakland, California, this 3rd day of February, 2001.

GERALD A. DOHRMANN

GERALD A. DOHRMANN, C.S.R. #2046

EXHIBIT “B”

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

--o0o--

ABDUL-JALIL AL-HAKIM,

Plaintiff,

vs. NO. C-811337-3

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, KENNETH C. GEORGE, RONALD J. COOK, WILLOUGHBY, STUART & BENING, and DOES 1 through 100, inclusive.

Defendants.

_____/

DEPOSITION OF HARUN AL-HAKIM

(Pages 1 through 74, inclusive)

Taken before RICHARD LENZI

CSR NO. 2564

August 5, 2002

Aiken and Welch

One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

I N D E X

DEPOSITION OF HARUN AL-HAKIM

BE IT REMEMBERED, that pursuant to Notice and on the 5th day of August, 2002, commencing at the hour of 1:22 pm, in the OFFICES OF AIKEN & WELCH, INC., One Kaiser Plaza, Suite 505, Oakland, California 94612, personally appeared HARUN AL-HAKIM, produced as a witness in said action, and being by me first duly sworn, was thereupon, examined as a witness in said cause.

--oOo--

FRANCIS M. McKEOWN, McKeown Price LLP, 2030 Addison Street, Suite 300, Berkeley, California 94704, appeared for Plaintiff.

STEPHAN A. BARBER, 80 North First Street, San Jose, California 95113, appeared for the Defendants.

ALSO PRESENT: Abdul-Jalil Al-Hakim

HARUN AL-HAKIM,

Sworn as a witness

testified as follows:

EXAMINATION BY MR. BARBER:

Q. Can you please state your full name and spell both names for us.

A. Harun, H-A-R-U-N, Marwan, M-A-R-W-A-N, Al-Hakim, A-L hyphen H-A-K-I-M.

Q. Do you go by Ms., Mrs., Miss or do you care?

A. Harun is just fine.

Q. My name is Steve Barber. I represent all the defendants in a lawsuit that your father filed against them arising out of two insurance claims that he has made to the main defendant which is California State Automobile Association Inter-Insurance Bureau.

We are here to take your deposition to ask you some questions to find out what you may or may not know that is relevant to your father's case. So I am going to be asking you a series of questions that you will need to answer for me if you can.

Have you ever been through a deposition before?

A. No.

Q. Have you ever testified in court?

A. Yes.

Q. How many times have you testified in court?

A. Once.

Q. How long ago was that?

A. Five years ago.

Q. That case where you testified have anything to do with your father?

A. No, it did not.

Q. Have you ever attended a deposition just to watch a deposition?

A. No.

Q. Let me go through a few ground rules that will help you testify. First of all you are under oath. Do you understand that?

A. Yes.

Q. That is the same oath that you would give if you were testifying in court except we don't have a judge or a jury. But you are still obligated to tell the truth. Okay?

A. Okay.

Q. And we don't have a judge here, obviously. So the procedure that is followed is I will ask you questions, you will give me the answers as best you can and the court reporter here to your left is going to write everything down on his machine and then he is going to make all of the things that are said into a booklet that is called a deposition transcript. Okay?

A. Okay.

Q. And everything that is said in this deposition, unless we have agreed to go off the record, is go to be put in that booklet. So if you say anything, say you make a joke or you think out loud or talk to somebody else besides me that is all going to be on the record. Okay?

A. Okay.

Q. After the deposition is over, probably about a week or so, you are going to get a letter from the court reporter telling you that there is a transcript available, everything that has gone on here. And that you have the right to read that transcript within a certain period of time. And that you have the right to make any changes to the transcript that you think are necessary. Do you understand you have that right?

A. Yes.

Q. But if you were to make a significant change to an answer, let's say I asked you did you ever talk to Mr. So and So and you said no and then you changed that answer to yes when you read the transcript say a couple of weeks from now, a couple of things could happen.

One, I might have to ask you to come back to give a second deposition because I asked you did you talk to Mr. So and So and you said no but then you said yes. So

I would have to ask you follow-up questions to find out what you and he talked about.

The other thing that might happen is if you made significant changes or a series of significant changes to your testimony, any of the lawyers at the trial, if you were to testify, could comment on the fact that you changed your testimony. And that could be embarrassing to you. Because somebody might suggest that you have a bad memory or you are not telling the truth or something like that or it could be harmful to your father's lawsuit.

So what I would ask you to do is try to be as accurate as you can today in giving your answers even if you need to go back to a question that you answered let's say twenty minutes ago because you now want to correct it or add to it or whatever, let's do that today rather than wait to get the transcript and make the changes then. Okay?

A. Okay.

Q. I am going to ask you questions, as I told you. If I ask you a question that you don't understand, it's not clear to you in some way or it just doesn't sound right can you please tell me that you are having difficulty with the question so I can do something about it like rephrase it or repeat it, okay?

A. Okay.

Q. Because if you don't say anything then I am not going to know that you are having difficulty with the question unless you grimace or make a funny face or something like that. Okay?

A. Okay.

Q. We also need you to wait until I am finished with my question before you answer so that we only have one person talking at a time and so that you are clear on the question. We don't want to be stepping on each other's words. Okay?

A. Okay.

Q. You also need to do like you are doing and that is to answer with words rather than uh-huhs or huh-uh. And try to avoid saying uh-huh, huh-uh or shaking your head up and down or to the side. We won't have a clear record. If I ask you a question and the answer is yes and you say uh-huh I will say do you mean yes or do you mean no or whatever I think your answer is and then you will have to give me the words. Okay?

A. Okay.

Q. Now, since we don't have a judge here like in a trial there is nobody here to rule on objections. So if I ask you a question and then Mr. Al-Hakim's lawyer wants to make an objection he will state that on the

record. You still need to answer the question. If the question and answer are important in the trial the judge can rule on the objection at that time. You still need to answer the question even if there is an objection. Okay?

A. Okay.

Q. We are entitled to your recollection if you have a recollection in order to answer a question. On the other hand you are not obligated to answer every question if you don't know the answer. So if you don't know or you can't remember you should tell me that rather than feel like you are supposed to make some wild guess. Okay?

A. Okay.

Q. On the other hand if you can give me an estimate that is reasonable, say a date, a place, a time, a distance, then I am entitled to know what your best estimate is.

For example, let's say I asked you when did this event occur and you knew -- you didn't know the exact day but you knew it was in the spring of 1997. Then you need to tell me it was the spring of 1997 to the best of your memory. That would be an example of an estimate. If you just don't know the answer at all you need to tell me that. Okay?

A. Okay.

Q. Let me give you an example of the difference between a guess and an estimate. If I were to ask you how long this table is at which we are seated you could probably look at it even without measuring it and give me an estimate as to its length. That would be an estimate. On the other hand, let's say I asked you how long is the table in my office. Unless you have been in my office, which I know you haven't, that would require you to make actually two guesses.

One, you would have to guess whether I have a table in my office and the other guess would be how long is it. So that is the difference between a guess and an estimate. Okay?

A. Okay.

MR. McKEOWN: I would just like to interpose one clarification. I am sorry to interrupt. There was a statement made, I don't think Steve meant to say it, but there are certain questions that could be so improper calling for speculation, calling you to guess, not even relevant to the subject matter, certain things like that that you shouldn't answer. But I will let you know if they come up. I doubt Mr. Barber will be asking you those questions.

BY MR. BARBER:

Q. Is there any reason you can't give accurate testimony today such as you are not feeling well or you are taking heavy medication or something of that nature?

A. No.

Q. Could you please give us your residence address?

A. Currently it's 3414 Augusta Court, A-U-G-U-S-T-A, Court, Hayward, California 94542.

Q. And is there an apartment number?

A. No.

Q. Do you reside there with anyone?

A. With my parents and my two children.

Q. And your children are pretty young, aren't they?

A. Five and eight.

Q. And just for the record who are your parents?

A. My parents being my biological mother and my stepfather.

Q. And their names, please?

A. Patty Flannery Kellogg and Dale Kellogg. This address is from July 15th of 2002.

Q. So you just moved there recently?

A. Yes.

Q. Do you have any plans to move from that address in the next three months?

A. Yes, I do.
Q. When are you planning to move?
A. Sometime next week.
Q. Where are you going to move to?
A. Pinole, California.
Q. Do you have an address in Pinole?
A. I believe it is 1141 A, San Pablo Avenue in Pinole, California.
Q. And that is next week you are going to move to that address?
A. Sometime next week.
Q. Should the letter from the court reporter be mailed to the Hayward address or to the Pinole address?
A. Hayward address is fine.
Q. And when you move to San Pablo you are still going to live with your children, I take it?
A. Pinole. Yes, I would.
Q. I am sorry. Anybody else you are going to live with at the new address?
A. No.
Q. Is there a phone number where you can always be reached?
A. 510 581-9894.
Q. Is that the phone number at the Hayward house?
A. Yes.

Q. Are you employed currently?
A. No.
Q. When was the last time you were employed?
A. April 2001.
Q. What kind of work did you do?
A. Medical assisting.
Q. Can you, please, tell me what your educational background is starting with high school?
A. I completed high school and I recently graduated from Western Career College. And that was 2001.
Q. What type of career did you train in at Western Career College?
A. Medical assisting.
Q. Do you have plans to go to any other colleges or institutions in the future?
A. Yes, I do.
Q. What are those plans?
A. I plan to become an RN and will be going back to school in the fall.
Q. Where are you planning to go to school?
A. Contra Costa College for my prerequisites.
Q. Is that a JC?
A. Yes.
Q. Could I please get your birth date?

A. April 27th, 1975.

Q. Your biological father is Abdul-Jalil Al-Hakim, is that correct?

A. Yes.

Q. Was Mr. Al-Hakim one time married to Patty?

A. No.

Q. After you were born what house did you live in, if you know?

A. I lived primarily with my mother.

Q. Where was that? Growing up where did you live?

A. In Hayward.

MR. McKEOWN: Vague as to time.

BY MR. BARBER:

Q. Has your biological mother lived in Hayward ever since you were born, to your knowledge?

A. Pretty much. About six months after I was born.

Q. Now, have you ever lived in your father's house on Sunkist in Oakland?

A. Yes, I have.

Q. Can you tell me either what years you lived there or what ages you lived there?

A. Since I can remember I have always spent, I would, say from five which is the earliest as I can remember, from five to about sixteen I spent Wednesdays

and every other weekend there and pretty much anytime that I wanted to be there at that residence. And from sixteen to about seventeen I pretty much lived there full-time.

Q. After age seventeen where did you live?

A. Back and forth between the two homes.

Q. Your mother's and your father's?

A. Yes.

Q. I know you probably didn't get much mail up until the time you were sixteen. But when you were at your father's house on Wednesdays and every other weekend did you ever receive mail at your father's house?

A. I am sure I received some mail there.

Q. Have you ever used your father's Sunkist address as your official mailing address?

A. No.

Q. Let's say up until the time you had your first child would you use your mother's address as your official mailing address?

A. Yes.

Q. So, for example, when you got your driver's license you used your mother's address?

A. Yes.

Q. In February of 1997 do you remember where you

were living?

A. February of '97 I was living in San Leandro, California.

Q. With your mother?

A. With my children's father and my two children or my one child at that time and pregnant with my son.

Q. Do you remember the address you lived at in San Leandro or the street?

A. I lived on East 14th but that wasn't the actual address to the Hamlet Apartments. I lived in the Hamlet Apartments.

Q. Do you remember what months or years that you lived in the Hamlet Apartments?

A. February 1st was the first day that I lived there. February 1st, 1997.

Q. And do you remember when you moved out?

A. Officially moved out as far as all of my belongings I moved out in probably November. But I was not staying -- November 1997 but I was no longer currently living in that residence.

Q. After you stopped officially living in the Hamlet Apartments do you remember where you moved to?

A. To my father's home in Oakland.

Q. On Sunkist?

A. Yes.

Q. So that would in November of '97 you moved to his house?

A. That was actually around June that I moved into my father's house. But I did not give notice to the Hamlet Apartment manager to move until November 1997.

Q. But in sometime in June '97 you started living permanently with your father?

A. Yes.

Q. Was your child also living there?

A. Two children at this time.

Q. You had two children? In fifteen words or less why did you move out of Hamlet and into your father's house in approximately June of '97?

A. February 1997 my fiance was tragically killed. At that time I stayed in my apartment for a few months just for privacy. After my son was born I needed more help with my children. And I needed just the comfort of my father's home.

Q. Do you remember what day your fiance passed away?

A. February 24th, 1997.

Q. Where were you living before you moved into the Hamlet Apartments?

A. I was primarily in a residence in San Leandro but oftentimes I stayed at my father's address.

Q. This is kind of a silly question but I have to ask it. Do you have any records or day planners or anything like that that would show what days you stayed at your father's house in '96 and '97?

A. No.

Q. In 1996 were you receiving any kind of financial support from your father on a regular basis such as he gave you $300 a month or something like that?

A. Yes.

Q. During the entire year of 1996 did you get some kind of assistance from him?

A. Yes.

Q. Do you remember what that was?

A. It ranged from $250 to maybe $500.

Q. Every month?

A. Every month.

Q. Was that a loan or a gift or something else?

A. Support.

Q. Was it something you had to pay back?

A. No.

Q. How about in 1997, were you receiving any kind of regular financial support or help from your father?

A. Besides me living at his residence?

Q. Right. I am talking about cash or money of some type.

A. Yes.

Q. What was the arrangement in '97? Were you still getting money from your father on a regular basis?

A. The arrangement?

Q. Yes.

A. Could you --

Q. Sure. Did he give you a certain amount of money every month or how did that work?

A. There was no sort of amount of money every month. Just if I needed it when I needed it. And the amount of monies would vary for whatever it was needed for.

Q. In February of '97 were you working?

A. No.

Q. This would have been in your late teen years. Did you ever become aware that there had been some kind of a sewage spill in the first floor of your father's home on Sunkist?

A. And this is 1997?

Q. No. When you were in your teens. In your late teens. Did you ever become aware there was some kind of a sewage spill where a sewer line broke and sewage came into your father's house?

MR. McKEOWN: Objection. Vague and ambiguous.

THE WITNESS: No, I don't recall.

BY MR. BARBER:

Q. Did you ever hear about your father suing or making some claim against the City of Oakland for sewage spill at the Sunkist house in Oakland?

A. Not that I recall.

Q. When you were around sixteen, seventeen, eighteen, somewhere in there, did you ever see in the first floor of your father's Sunkist residence any evidence that there had been some kind of a sewage spill such as stains or smell or damage, anything like that?

A. No, I don't recall. I don't recall to either floor. But I would like for you to clarify what are you considering the first floor of his home.

Q. The first -- that's a good point. The lower level. Is that what you call it, the lower level?

A. That's fine.

Q. That's where he has a bar and you would walk out to a swimming pool?

A. Yes.

Q. Just so we are clear, when you were around sixteen, seventeen, eighteen did you ever become aware of any kind of a sewage spill or escape in the lower level of your father's home?

A. No, I don't recall.

Q. And you were living at your father's home at

least sometimes when you were ages sixteen, seventeen and eighteen?

A. Yes.

Q. Now, in February of '97 did you ever become aware that there was some kind of a sewage spill or toilet backup or something like that in the lower level of your father's home?

A. Could you repeat the question?

(Record read: Now, in February of '97 did you ever become aware that there was some kind of a sewage spill or toilet backup or something like that in the lower level of your father's home?)

THE WITNESS: No.

BY MR. BARBER:

Q. At anytime in 1997 did you ever become aware that there had been some kind of a sewage spill, toilet backup, pipe backup or some incident in the lower level?

A. Yes.

Q. Just tell me in general what you became aware of and then I will ask you some other questions.

A. March I would say of 1997 I do remember my father telling me that there had been something that happened there and that we weren't allowed to go downstairs.

Q. Tell me as best you can either on the first

time you heard about it or on other times what your father told you had supposedly happened on the lower level.

A. I am not sure what he specifically said happened. I just remembered that we were not allowed to go downstairs. Also at this time I was grieving for the loss of my fiance so I cannot specifically in clarity recall if he had told me.

Q. Now, when you stayed at your father's house did you have a regular bedroom that you used?

A. Yes, I did.

Q. What level was that on in the house?

A. That's the entry level.

Q. From the street?

A. From the street.

Q. So that would be the upper floor?

A. Upper floor.

Q. Did you ever have your bedroom on a lower floor?

A. Never had.

Q. As you sit here today do you have any understanding or belief as to what supposedly happened in the lower level that caused your father to tell you not to go downstairs?

A. Well, today I know that there was some type of

spill. But not at that time. I can't say that I was aware of it.

Q. Did you ever go downstairs in your father's house after he told you not to go down there?

MR. McKEOWN: Vague as to time.

THE WITNESS: Not for several months after.

BY MR. BARBER:

Q. When was the first time you went downstairs after your father told you that you shouldn't go downstairs?

A. I am not sure of the specific time and date. Several months after.

Q. Was it in 1997 that you went down there for the first time that he told you not to?

A. It's possible.

Q. Do you remember why you went down there? Did your father say it was okay to go down there or you were curious to look or what?

A. Probably a little of both. And there was also the washroom was there. So probably to wash or get something from the freezer.

Q. Between the time that your father told you not to go downstairs and the time that you actually went downstairs did you ever look inside any of the windows of the lower level to see what was there or what might

be there?

A. No, I can't say that I did.

Q. Did you smell any strange odors that seemed to be coming from the lower level during that period of time?

A. Not that I remember.

Q. Did you ever see your father go down to the lower level during this time when he told you you couldn't go down there?

A. Not that I remember.

Q. The washer and dryer were downstairs at this time, correct?

A. Yes.

Q. Where were you doing your laundry after your father told you you shouldn't go downstairs?

A. Primarily at my mother's residence.

Q. Do you know where your father was doing his laundry?

A. I am not aware.

Q. During this period of time between the time your father told you not to go downstairs and the time you actually went down there are you aware of any workers or construction people that went into the lower level of your father's house?

MR. McKEOWN: Objection. Vague.

THE WITNESS: I don't recall. At this time again I had a lot of other things that were on my mind and just wasn't these things.

BY MR. BARBER:

Q. After your father told you you shouldn't go downstairs, did he ever tell you that there was some kind of danger in the house or health hazard of some type?

A. Not at that particular time, no.

Q. Did he ever tell you later on that there was some kind of a health hazard or danger in his house?

A. Yes.

Q. When did he first tell you that?

A. This is probably an estimated guess of November of 1997.

Q. What did he tell you at that time?

A. He told me that myself and my children and my brother would have to leave that residence for some machine testing that was going to be going on.

Q. Did he tell you how long you had to be gone?

A. Approximately two weeks.

Q. Did you leave?

A. Yes.

Q. Did you go stay with your mother?

A. Yes, I did.

Q. Did you come back to your father's house approximately two weeks later?

A. No.

Q. Did you ever come back to permanently live in your father's house after November of '97?

A. For a short time, I believe.

Q. Do you remember when that was?

A. That may have been -- I would say maybe April of '98. Maybe April of '98.

Q. For what period of time around April of '98 did you live at your father's house?

A. From April until about October of '98.

Q. Just in general why did you live with your father during that approximate six month period of time?

A. Well, this was pretty much my home. So I just go there whenever I need to be there. If I need to be there now for two or three months I could go there, to my father's residence.

Q. I understand that. I am trying to find out if there was a particular reason or reasons that you were there during that six month period after having not been there for several months.

A. Probably financial reasons. I am not sure.

Q. And then you moved out in approximately October of '98?

A. Yes.

Q. Have you lived there on any permanent basis since?

A. No.

Q. Would it be fair to say that you have lived with your biological mother steadily ever since October of '98?

A. No.

Q. Where else have you lived besides with your mother since October of '98?

A. I have had several of my own apartments. And I also lived with my sister for some time while I was in school.

Q. Going back to the time when your father said that you would have to leave the house for a couple of weeks for this testing that was going to be done. By that time had you gone down to the lower level of the house?

A. Yes.

Q. Now, the first time you went down there after your father told you not to, do you remember if you saw anything unusual in the lower level such as damage of some type or staining or sewage or anything like that?

MR. McKEOWN: Objection. Vague.

THE WITNESS: Nothing like that that I recall.

BY MR. BARBER:

Q. When you went down to the lower level for the first time after your father told you you shouldn't go down there, did you see anything different about it such as it had been redecorated or rooms changed or anything like that?

MR. McKEOWN: Objection. Vague.

THE WITNESS: Maybe that the carpet was gone is about the only thing that I could remember specifically.

BY MR. BARBER:

Q. Do you remember any furniture being gone that had been there before?

A. Not gone. Maybe moved to another room.

Q. Did you notice any unusual odors or smells about the lower level the first time you went down there after your father told you not to?

A. Not that I could recall.

Q. Did you think it was unsafe to be downstairs the first time you went down there after your father told you not to go down there?

A. No, I didn't believe it was unsafe.

Q. Now, after you went down there this first time and saw that the only difference apparently was that the carpet was gone, did you continue to periodically go downstairs at your father's house?

A. No. I couldn't say that I recall periodically going there.

Q. Was there any reason for you to go downstairs?

A. No.

Q. When you were living there as a teenager, let's say when you were about age sixteen to eighteen living at your father's house, would you regularly go downstairs?

A. Yes.

Q. What would cause you to go downstairs, the TV down there or something like that?

A. There is a TV room. There is an office there. Also to wash clothes or the hot tub was there. Most of the entertaining things were downstairs.

Q. Your father had his office down there, correct?

A. Yes.

Q. At anytime while you were living in the house of your father, either permanently or off and on as you described, did you ever see any of his clients at the house?

A. No.

Q. Do you know if he ever entertained clients or prospective clients at his house?

A. Yes.

Q. How do you know that?

A. Well, he has always pretty much done those type of things at his home.

Q. Is that what he told you?

A. No, I am aware that he has done that. I just wasn't there for his business. But he did do business at his residence.

Q. That is what he has told you?

A. Yes.

Q. But you haven't actually seen any clients or prospective clients at the house when you have been there?

A. Not in several years. Probably when I was younger I was around more and seen more clients. But I don't recall as far as sixteen or seventeen do I remember him always or, you know, having clients around. I don't.

Q. At anytime in your life when you have been in the lower level of your father's house have you ever smelled something that smelled like sewage or feces or anything of that nature?

A. Never have.

Q. Has your brother ever told you that he smelled sewage, feces or a similar smell in the lower level?

A. Never has.

Q. Was your brother living in your father's house

in February of '97?

A. No, he was not.

Q. Do you remember if he lived at your father's house at anytime in 1997?

A. November of 1997.

Q. Did he move in in that month?

A. Yes.

Q. And then he moved out for that testing?

A. Yes.

Q. Do you know if he came back to live there at anytime after that?

A. No.

Q. No, he didn't or no you don't know?

A. No, he did not come back to live there.

Q. Have you ever talked to anybody that was an adjuster or claims representative for Triple A Insurance Company?

A. No, I have not.

Q. Did your father ever tell you in 1997 that he had made some kind of an insurance claim to Triple A?

A. No.

Q. When was the first time you heard that your father had some kind of a lawsuit against Triple A?

A. Maybe two years ago.

Q. Do you remember how you heard about that?

A. I don't recall the conversation. I just kind of remember vaguely him discussing this with me.

Q. He meaning your father?

A. He meaning my father.

Q. What did he tell you, that you recall?

A. He told me -- it wasn't specifically Triple A or whatever, no names, but he just explained to me that I may be reimbursed for my loss of use of my home and for the illnesses that myself and my children have suffered from a period of time.

Q. Now, have you suffered some kind of an illness that you attribute to your father's house in some way?

A. I am not sure if that is where it's from.

Q. What illness have you had that you are not sure about?

A. I have had several allergies. My son has had an allergy and bronchial problems that may be attributed to some dust, pollens or other things that cause these problems.

Q. Your son is five now?

A. My son is five.

Q. When was he born?

A. He was born June 1997.

Q. And were you residing at your father's house when he was born?

A. Yes.

Q. And then you lived there until November and moved out, correct?

A. Yes.

Q. During the time your son was born until he moved out of your father's house in November of '97 did your son have any allergy like problems?

A. Yes.

Q. What did he have?

A. He had watery eyes and irritations of the eyes and skin.

Q. When did that start?

A. Started shortly after birth. About two weeks.

Q. Did you take him to the doctor for that?

A. Yes, I did.

Q. Who was the doctor?

A. At this time it was Doctor Lareese in Hayward.

Q. How do you spell that?

A. L-A-R-E-E-S-E.

Q. Do you know the doctor's first name?

A. Ricci. R-I-C-C-I.

Q. That is his first name?

A. Yes.

Q. And did Doctor Lareese tell you what he thought was causing the watery eyes and/or itchy skin?

A. No.

Q. Did either one of those problems ever stop?

A. No. My son has been ill his whole five years.

Q. When you say ill you mean watery eyes and itchy skin?

A. Watery eyes, itchy skin. Bronchial problems.

Q. Do they seem to be getting worse?

A. Yes.

Q. And has any doctor told you what the cause or causes of the watery eyes, itchy skin and bronchial problems are?

A. They have given me some suggestions to what it could be.

Q. What are the suggestions?

A. Like I stated before, dust, pollen and also several things could be attributed to the bronchial problems but --

Q. Has any doctor told you that your son's health problems are somehow attributed to your father's house?

A. No. I specifically asked Doctor Kaplan. I explained to her what had happened at my father's residence and asked her does she feel that that may be a cause. And she agreed that that may be a cause to why he is having some of the problems.

Q. This is his current doctor?

A. Current doctor.

Q. What is her name?

A. Mira, M-I-R-A, Kaplan of Oakland Allergy Department, Kaiser.

Q. In your son's five years of life how many months has he lived at your father's house?

A. Probably eighteen months maybe.

Q. Off and on?

A. Off and on.

Q. Has your daughter had any of these problems that your son has been having?

A. Hers are not to the extent of his. But she does have the watery eyes and the irritated skin.

Q. Your daughter is eight now?

A. My daughter is eight.

Q. She had those problems since she was born or closely thereafter?

A. Between three and four we noticed it more.

Q. When did you first notice it?

A. Probably at the beginning of her third year. And more so between getting closer to four years old.

Q. What is her month and year of birth?

A. 9-24-1993.

Q. Do you remember where you were living when you first noticed that she had watery eyes or itchy skin?

A. Probably in San Leandro.
Q. Did she go to a doctor for these problems too?
A. Yes.
Q. Who does she go to?
A. Doctor Kaplan as well.
Q. And are you having some kind of similar problems?
A. Yes.
Q. What are the problems that you have?
A. Chronic severe allergies and eczema that I had never had before 1997.
Q. When in 1997 did you start experiencing these problems?
A. More so I noticed in 1998. Before I didn't really realize what it was and I wasn't treating the problem at all.
Q. Do you remember when in '97 you first started noticing you were having these problems even if you didn't really think they were serious?
A. I am not sure.
Q. Do you remember where you were living?
A. I was living in San Leandro. But then again I have always been back and forth between my own residence and my father's residence.
Q. Has your biological mother had any similar

problems to your knowledge?

A. No.

Q. How about her husband?

A. No.

Q. Has any doctor told you what is causing your allergies?

A. Yes.

Q. What have you been told?

A. I have been told that I was allergic to dust, dust mites, and specific things that I was allergic to such as pet dander and dogs and cats. Pollens and things like that.

Q. And this is Doctor Kaplan has told you that?

A. Yes.

Q. Are you taking medication for that?

A. Yes, I do.

Q. Do your allergies seem to be seasonal, worse at certain times of the year than others?

A. No.

Q. Bad all year around?

A. Yes. But the symptoms vary with the seasons, I guess.

Q. When you started living with your father at his house in June of '97 did you pay him rent of any type?

A. No.

Q. When you moved out in November of '97 did you pay rent to your mother?

A. November of '97 I got my own apartment on Oakland Avenue.

Q. I am sorry. So November of '97 you got your own apartment?

A. No, not in November of '97, I take that back. November of '97 -- no, I did not have my own apartment.

Q. Did you live with your mother?

A. Yes.

Q. Did she charge you rent?

A. No.

Q. And then when you got your own apartment in '98 did that have anything to do with not being able to live in your father's house?

A. Primarily that's the reason why I got my own place, yes.

Q. Because you felt you couldn't live in your father's house?

A. Yes.

Q. Why couldn't you live in your father's house as you understood it?

A. We were leaving for testing and after that I just pretty much needed -- well, this is '98. I probably left because of that reason because I couldn't

be there.

Q. Why couldn't you be at your father's house as you understood it in 1998?

A. There was no specific reason.

Q. In '94, '95, '96 you were living off and on at your father's house, is that correct?

A. Yes.

Q. In the upstairs or the upper level of the house was there wood floors?

A. Yes.

Q. In the '94 to '96 time --

A. There was not wood floors. There was carpet on the floors before.

Q. That's what I wanted to ask you. In the '94 to '96 time frame there was a wood floor in the living area in the upper level, correct?

A. Yes.

Q. Was that completely covered by carpet or were there rugs or what?

A. Carpet.

Q. Was it completely covered wall to wall?

A. Yes.

Q. Now, there was also skylights in the roof, correct?

A. Yes.

Q. At anytime while you lived in the house with your father or were visiting did you ever become aware the skylights were leaking?

A. Yes.

Q. Do you know if both skylights were leaking?

A. Yes.

Q. When was the first time you became aware that the skylight or skylights were leaking?

A. I am not sure of the exact time or date.

Q. Can you remember approximately how old you were?

A. Probably eighteen. Seventeen or eighteen.

Q. Did you ever actually see water leaking through the skylights when it was raining?

A. Yes.

Q. To your knowledge whenever it rained would the skylights leak at your father's house?

A. During a specific time, yes. Just not all my life I have lived there, no.

Q. Well, you knew about it starting at about age eighteen, correct?

A. Possibly eighteen. I am not sure actually.

Q. You were a teenager?

A. Yes.

Q. And you became aware of the skylights leaking

before your daughter was born, correct?

A. No. She was born.

Q. She was a baby?

A. Yes.

Q. And then when you first became aware of the skylights leaking was that because you saw them leaking or did somebody tell you they leaked or both?

A. I saw them leaking.

Q. Whenever you were in the house and it was raining would the skylights leak?

MR. McKEOWN: Asked and answered.

THE WITNESS: Sometimes. Sometime during this period I saw the skylights leaking when it rained.

BY MR. BARBER:

Q. Did it seem like the skylights would leak when it was a heavy rain only?

A. I am not sure actually. I wasn't there all of the time. When I came there on occasion that it was raining I saw the skylights leaking.

Q. And then when you would see them leaking when you were a teenager could you describe how they leaked? Was it little drips or little steady stream or what?

A. Steady stream and sometimes drip maybe. I am not sure.

Q. Would your father or anybody else do anything

when the skylights were leaking such as put up buckets or tarps or plastic or something like that?

A. Yes.

Q. What did he do?

A. Both.

Q. Would he put plastic over the outside of the skylights, do you know?

A. No. Just in the house on the floor he would put the buckets under where the water was leaking.

Q. Do you know if your father -- prior to the time you moved in with him after your fiance died do you know if your father did anything to try to repair the skylights?

A. He repaired the roof, I believe.

Q. What did he do to repair the roof to your knowledge?

A. I am not sure. I just remember black tar stuff being put up there around the lights or something.

Q. Do you remember when that was?

A. No, I don't.

Q. Was it before or after your fiance passed away?

A. I am not sure.

Q. Did you ever see any repair people out there working on the skylights or the roof at your father's house?

A. Yes. I recall them working on the roof. That's all.

Q. That's when they were putting the tar around?

A. Yes.

Q. At or about the time the skylights would leak when it rained did you ever see anybody pull up the carpet in the upper level?

A. I am not sure if I was around that time. But I do remember the carpet being taken up.

Q. Do you remember seeing any damage to the wood floor underneath the carpet?

A. Yes.

Q. What do you recall observing about the floor?

A. The floor was buckled.

Q. It was warped?

A. Warped.

Q. Was it stained? Water stains of some type?

A. I am not sure.

Q. In the upper level where you go from the living room into the kitchen would there be carpet right up to the edge of the kitchen entrance or was it bare floor right there, your father's house?

A. There was carpet.

Q. Were you ever present at your father's house when the roof or the skylights were leaking really

badly?

A. Yes.

Q. Do you remember when that happened? Or first of all was that more than once that that happened that it was really leaking badly?

A. Yes.

Q. How many times do you recall the roof leaking badly? When you were there.

A. Several days.

Q. In a row?

A. I don't know if they were in a row.

Q. But in the same general period of time?

A. Yes. Same period of time.

Q. Do you remember when that was?

A. No, I don't.

Q. It was in the winter, correct?

A. Yes.

Q. And when you say the roof was leaking badly several times in a short period of time.

A. Not the roof, the skylights.

Q. What was happening to make you think that they were leaking badly?

MR. McKEOWN: Objection. Lack of foundation.

THE WITNESS: I would have no relevant basis. I don't have anything to base it on why it would be

leaking. I don't know.

BY MR. BARBER:

Q. Did you see any holes in the skylights, for example, or cracks?

A. No holes or cracks.

Q. What did you observe in the way of water coming in that made you think they were leaking badly?

A. The water leaking in the house and the buckets and all of those things.

Q. Did you have to put out more buckets than usual or were they overflowing or just describe for me what happened?

A. I would say every maybe twelve hours, maybe more, the buckets would have to be changed. I am not sure of the time frame. Sometimes it would be heavy streams and sometimes it would be drips.

Q. Was the carpet getting wet during this period of time?

A. Some area of the carpet was I am sure getting wet.

Q. Was there a period of time when the people living in the house had to move out because of these leaking skylights?

A. Not for that specific reason.

Q. Do you know whether your father had new

skylights put in at anytime?

A. Not that I can recall.

Q. Do you know if he had a new roof put on?

A. I am not sure.

Q. Did you ever see any either black, green or some other color of mold growing anywhere in the upper level of your father's house?

A. No.

Q. How about on the lower level?

A. No.

Q. Did you ever smell what appeared -- what seemed to you like mold in your father's house?

A. No. I wasn't aware of any of those things.

Q. In the last year -- let's just take the year 2002, have you been to your father's house?

A. Yes.

Q. How many times would you say?

A. Maybe three times.

Q. And have you been downstairs in 2002?

A. No.

Q. Has there been any reason for you to go downstairs?

A. No.

Q. When you have been there in 2002 has your father been there also?

A. He came with me to let me in.

Q. And when you entered the house at anytime in 2002 have you worn any protective clothing or anything of that nature?

A. No.

Q. Have you seen your father wearing any kind of protective clothing or mask or things like that when he is in the house with you in the year 2002?

A. No.

Q. Has your father told you he thinks it's dangerous to be in his house now or some kind of a health hazard?

A. No. I wouldn't say he said it was a health hazard.

Q. Are you afraid to be in his house now?

A. I just don't prefer to be there.

Q. Why is that?

A. I am not sure. It's my preference.

Q. Does that have anything to do with the physical structure of the house that makes you prefer not to be there?

A. Maybe that and also the fact that -- it just may -- I don't know. I just prefer not to be there.

Q. In the year 2001 did you ever go to your father's house?

A. I am sure. Maybe.

Q. Do you know how many times approximately?

A. No. I have gone there just to get things out of the storage that are like under the garage, some things that I may need. But not to be there.

Q. Have you gone to get anything out of the house itself that you needed as opposed to the storage area such as clothes or furniture or things like that?

A. This year?

Q. Right.

A. No.

Q. How about last year?

A. No, not last year either.

Q. At anytime when you have ever either lived in your father's house or gone there for any reason have you ever worn some kind of mask or thing to protect your breathing?

A. No.

Q. Have you ever worn any protective clothing of any type?

A. No.

Q. Have you taken your kids there with you in the last couple of years?

A. Yes.

MR. McKEOWN: Objection.

BY MR. BARBER:

Q. Let me ask you this. Generally when you go to your father's house in the last couple of years your kids go with you?

A. It's very rare that we go there to my father's house.

Q. I understand that. When you do go are your kids usually with you?

A. They have been with me probably once or twice.

Q. And when the kids have gone in the house have they ever worn any protective masks or respirators or anything to protect their breathing?

A. No.

MR. McKEOWN: Objection. Vague.

BY MR. BARBER:

Q. Have they ever worn any protective clothing of any type when they went in the house?

MR. McKEOWN: Objection. Vague. It's too vague what in the house means.

THE WITNESS: No.

BY MR. BARBER:

Q. Is your father, your biological father, living in the house on Sunkist now as far as you know?

A. No.

Q. Do you know where he lives?

A. San Leandro.

Q. Back in the time when you were seventeen, eighteen, nineteen, that age, are you aware of any construction work that was done to the lower level of your father's house?

A. No.

Q. Are you aware of any walls having new sheetrock or wallboard put in in the lower level when you were about say, seventeen, eighteen, nineteen years old?

A. No, not that I can recall.

Q. When you were seventeen, eighteen, nineteen years old, that age area, did you ever see any contractors or workers at your father's house at anytime for any reason?

A. No.

Q. When you were seventeen, eighteen and nineteen you were living at your father's house off and on, is that a fair statement?

A. Yes.

Q. And even though you were living somewhere else you would visit him on occasion at his house?

A. Yes.

Q. But at no time whenever you were on his property did you see any contractors or workers or anything like that when you were seventeen, eighteen,

nineteen years old?

A. No.

Q. And to this day are you aware of any walls that have been replaced or patched in the lower level of your father's house?

A. No.

Q. I just need to ask you a few questions about your larger family, so to speak, things that have come up recently. Do you have a relative named Clyde Wallace?

A. Yes.

Q. Is he your uncle?

A. Yes.

Q. Do you know approximately how old he is?

A. Approximately 60 something.

Q. And he is your father's older brother?

A. Yes.

Q. When was the last time you saw Clyde?

A. Maybe -- oh, actually I saw him about four months ago.

Q. Have you talked to him on the phone since then?

A. No.

Q. Do you remember where you saw him about four months ago?

A. I saw him at Food Co grocery store.

Q. Just ran into him?
A. Yes.
Q. When you last saw him was he having any health problems that you are aware of?
A. Yes, he was.
Q. What health problems was he having that you know of?
A. He wasn't walking. He was on a little scooter thing.
Q. Do you know why? Was it a broken leg or something like that?
A. No. He just wasn't walking. I am not sure.
Q. And nobody has told you why he uses a scooter or why he was using a scooter that day at least?
A. I know he has been ill but I am not sure exactly why he was on the scooter.
Q. When you ran into him at Food Co you talked to him, correct?
A. I just spoke with him, gave him a hug.
Q. Did he have any trouble talking that you observed?
A. He was a little slow with his speech but nothing else I could recall.
Q. He seemed to be able to understand what you said to him?

A. Yes.

Q. And you were able to understand what he said to you?

A. Yes.

Q. Have you heard that Clyde has some kind of dementia or Alzheimer's disease or something like that?

A. No.

Q. When was the last time you saw your brother?

A. Probably about nine months ago.

Q. Have you talked to him since that time?

A. I talked to him maybe once since that time.

Q. Again I am not trying to pry in any family things but these are things that came up recently. Are you aware of any kind of rift or falling out between your father and your brother?

A. No.

Q. You haven't heard that happening?

A. No.

Q. Are you aware of any falling out or rift between you and your brother?

A. No.

Q. Or your brother and any other member of your family?

A. No.

Q. Do you have any plans to leave this area, say

go on a vacation or something else in the next couple of months?

A. No.

MR. BARBER: That's all I have. Thank you very.

THE WITNESS: Thank you.

EXAMINATION BY MR. McKEOWN:

Q. I have just a couple of follow-up questions. With respect to your brother --

MR. AL-HAKIM: Can we take a break?

MR. McKEOWN: Let's take a quick break.

(Recess)

MR. McKEOWN: Back on the record.

BY MR. McKEOWN:

Q. I just have a few questions. First with respect to your brother, do you know his address or telephone number?

A. No.

Q. Were you guys raised together?

A. No.

Q. Do you know if your father has his telephone number or address?

A. Not that I am aware of.

Q. I would like to take you through some of the dates. The record will speak for itself. I think some of the questions before were asking you questions about

when you were seventeen and eighteen and when you were in 1997 or something. In 1997 were you seventeen or eighteen or sixteen years old?

A. No.

Q. Well, let's go through it this way. Around 1991 were you living permanently with your dad around 1991?

A. No.

Q. I think you already described Wednesdays and weekends, right?

A. Yes.

Q. And occasionally other times, right?

A. Yes.

Q. Did you notice any difference, any changes to the downstairs area during the period 1991, 1992?

A. I do remember a new tile and toilet downstairs.

Q. Do you know what happened to the old toilet?

A. It was replaced by the new one and put out on the deck.

Q. And where is the old one now?

A. Is it's still on the deck.

Q. Any other changes or any changes with respect to the family room itself?

A. Not that I can recall in the family room. Just maybe the washroom.

Q. Well, with respect to the family room, was there ever carpeting in the family room?

A. Yes.

Q. Is there carpeting now in the family room?

A. No.

Q. When did that carpeting come up in the family room?

A. I am not sure specifically what year or month.

Q. Can you give me your best estimate as to when? Was it closer to 1991 or closer to 1997?

MR. BARBER: Vague.

BY MR. McKEOWN:

Q. If you are not sure.

A. I am not sure.

Q. Now, you talked about the skylight leaking and I think you were asked in 199 -- you were asked if it was leaking when you were seventeen or eighteen and then you were asked if it was leaking in 1997 and 1998. And again in 1998 how old were you?

A. 1998 I was probably --

Q. You were born in '75, right?

A. I was probably around 22.

Q. Around 1998, around that age, was the skylight leaking?

A. Yes.

Q. Now, you described some issues with some health of your babies. When your son was born you brought your son into that house on Sunkist, right?

A. Yes.

Q. Did your son ever go downstairs to the downstairs area?

A. Once that I could recall.

Q. Can you describe that for me?

A. Probably someone had left the door open and my son had gotten downstairs and was found in the family room.

Q. Do you know whether he got sick or anything?

A. He did get sick.

Q. What happened?

A. We had to take him to the hospital at about one o'clock in the morning. We meaning myself and their fraternal grandparents.

Q. So not Jalil?

A. Right. Is that fraternal or paternal?

Q. I think I got the picture.

MR. AL-HAKIM: Grandmother on his father's side.

BY MR. McKEOWN:

Q. What hospital?

A. Kaiser Oakland. And he was treated at that time for what they suspected to be bronchitis.

Q. Is there a clear understanding of what his condition was later?

A. Several years later.

Q. What was that?

A. And that's just that he had severe inflammation of his bronchial tubes, asthma, eczema and allergies.

Q. Now, you said you have eczema?

A. Chronic eczema and allergies.

Q. Do you still have it right now?

A. Yes, I do.

Q. Did you have it before 1997?

A. No, I had allergies but never eczema. Allergies to pollen and bees, penicillin, things like that.

Q. With respect to Clyde, you haven't seen him in four months, correct?

A. Correct. And before that I hadn't seen him for probably several years.

Q. You don't know whether he has had a stroke, do you?

A. I do recall something. I am not sure if it was a stroke. It may have been.

Q. Have you ever treated him yourself?

A. Never.

Q. You said in 1998 -- let me take you back a

little bit more. You had the family tragedy?

A. '97.

Q. In February of 1997. And you started spending more and more time at the Sunkist house, right?

A. Yes.

Q. And then you actually just permanently moved into the Sunkist house when did you say, around June of '97?

A. Around June of '97, yes. I started coming there a little more often than I had in March.

Q. When was your son born?

A. June.

Q. So basically when you came back from the hospital you moved in with your dad?

A. Yes.

Q. And you lived there and I gather from the previous testimony you didn't spend -- you were still grieving, right?

A. Yes.

Q. Would you say you are still grieving now?

A. I don't know if it's grieving. But I could say that I am emotionally distressed from that situation and others that have occurred during the five year period of time.

Q. Well, after this occurred in 1997, I know you

already testified you had to move out for a two week period of time anyway, right?

A. Yes.

Q. That was when, around Thanksgiving?

A. November of 1997.

Q. And then when did you move back into Sunkist?

A. Probably around January of 1998.

Q. Why do you say that?

A. I remember that we went away. We went to LA for a few weeks.

Q. Who is we?

A. Myself and my brother. We went out there to look for a new residence for a few weeks.

Q. So you were going to move in with your brother then?

A. My brother had lived with me prior to this.

Q. Does your brother live in Los Angeles somewhere?

A. I don't know where he lives now. But at this time we are going out there to look for a place to live.

Q. Did you move in and live with your brother for a while?

A. No. My brother always lived with me.

Q. Then you said around January of 1998 you moved back into the Sunkist property.

A. Yes.

Q. Was that full-time or bounced around?

A. That was still pretty part-time.

Q. Pretty part-time. Where else were you living then?

A. I was living with my friend Moshae. And sometimes with my mother also.

Q. So at that point you probably were getting a lot of support from different family and friends?

A. Yes.

Q. Then did you start living more and more again at the Sunkist property? Is that really your principal address?

A. In April I moved back on a more permanent basis. From January to April I would say I went from my mom's to there to my friend Moshae's.

Q. Now, in 1998 were you told anything about what to do with your clothes? I may have the date wrong. It may be 1997. Were you told at any point to dispose of your clothing or the baby's clothing?

A. Yes. I believe it was in 1998.

Q. Do you remember when? I know it's been a while.

A. Around August.

Q. And who told you that?

A. My father.

Q. Did he tell you who told him to do that?

A. I don't recall.

Q. Do you know why you were supposed to do that?

A. Because he felt or someone felt at that time that the clothes may be contaminated.

Q. I think you said around October of 1998 you and your father and your children all moved out of the Sunkist house, is that right?

A. About that time, yes.

Q. Do you know why? Were you told why you were moving out of that house then?

A. Maybe for them to do repairs. I don't remember specifically. I believe it was for repairs.

Q. So your dad told you you had to move out, everyone had to move out?

A. Yes.

Q. And your dad moved out too?

A. Yes.

Q. Have you ever moved back?

A. No.

MR. McKEOWN: That's all my questions.

EXAMINATION BY MR. BARBER:

Q. Just a few more. During this last break we took during the deposition did you talk to your father's

attorney?

A. Yes.

Q. With your father present?

A. Yes.

Q. What did you talk about?

A. We talked about clarifying my ages during some of the questions you had asked me.

Q. Anything else? Did you talk about the floor being replaced downstairs?

A. No.

Q. You said that the floor in the bathroom was replaced in the downstairs.

A. No.

Q. Was there a floor replaced somewhere that you were aware of?

A. It was tile. It was tiles in the bathroom. The bathroom is primarily tile.

Q. On the floor?

A. Yes.

Q. What was done to the floor tile to your knowledge?

A. Just I guess replaced.

MR. McKEOWN: Lack of foundation.

BY MR. BARBER:

Q. When you say tile do you mean regular ceramic

type tile?

A. Ceramic tile. I believe it's the shower portion and the floor is tile.

Q. And you think all the tile was replaced or just some of it?

A. I am not particularly sure. I just know that some of it. I just know that it was changed from what it was before.

Q. Was it changed in color that you observed?

A. Changed in color, yes.

Q. Do you know why it was changed?

A. I am not sure.

Q. A new toilet was put in?

A. Yes.

Q. At the same time as you understand it?

A. Yes.

Q. Do you know when that was, what year? Or if you can't remember the year how old you were approximately.

A. I was approximately sixteen or seventeen years old.

Q. You were in high school still at the time?

A. Yes.

Q. You don't know why the floor in the toilet changed?

A. I don't remember the specific reason, no.

Q. Do you know when the carpet was removed from the family room?

A. I am not sure what year that was.

Q. Can you give me an estimate without guessing?

A. Probably '97. I am not sure.

Q. Do you know why it was pulled up?

A. I am not sure.

Q. Was the carpet ever put back?

A. No.

Q. Do you know when the carpet was put in the family room?

A. No. I don't recall.

Q. Regardless of what year it was when the carpet was pulled up in the family room, did it appear to you to be old carpet that needed to be replaced?

A. No. I don't recall it being old carpet needing to be replaced.

Q. I got a little confused. When you talked about your son going downstairs when he wasn't supposed to.

A. Yes.

Q. Do you remember how old he was at the time?

A. He was probably a little over a year old.

Q. Old enough to walk?

A. Old enough to walk, yes.

Q. Was your son taken to Kaiser Hospital the same night that he went downstairs?

A. It was actually the early morning. It was one o'clock. I guess that's the next day, considered the next day.

Q. When you took him to the hospital were you staying the night at your father's house or somewhere else?

A. Yes. I was staying the night at my father's house.

Q. Had your son been showing any kind of illness before you took him to the hospital?

MR. McKEOWN: Asked and answered.

THE WITNESS: No.

BY MR. BARBER:

Q. He just suddenly got ill at one o'clock in the morning?

A. Well, there was sometime during the night. Actually he was with his grandparents and they called me and told me that he was having some severe problems breathing and so they came to pick me up and we took him to Kaiser.

Q. So you were at your father's house when --

A. I was at my father's.

Q. And your son was at your mother's house?

A. My son was at his father's parents' home. Before he left me he didn't show any symptoms of being ill.

Q. Did you talk to the doctors that treated your son that evening or that morning?

A. Yes.

Q. Did any of them tell you that they thought his bronchitis was caused by something environmental?

A. That was not a discussion at that time, no.

Q. Did they give him medication?

A. Yes.

Q. Antibiotics of some type?

A. I am not sure what exactly it was.

Q. And then did the bronchitis go away eventually?

A. Yes.

Q. Has he had bronchitis since then?

A. Yes.

Q. Has he had bronchitis on many occasions?

A. He has had bronchitis probably on two or three other occasions after that. He has a bronchial condition.

Q. Right.

A. That he has had for five years.

Q. So he is more susceptible to bronchitis as you understand it?

A. Yes. And other respiratory infections.

Q. Has your doctor told you that he has something like restrictive airway disease?

A. Yes.

Q. RADs they call them.

A. No, not that specifically, no.

Q. But they say he has restrictive airways disease?

A. Sometimes he does get restricted passages and airways.

Q. You said your father told you to dispose of your clothes. Did he tell you specifically why he thought you should?

A. Because they were thought to be contaminated.

Q. Did he tell you who thought the clothing was contaminated?

A. I am not sure. He may have. I don't recall.

Q. Did you throw away any clothing after that?

A. Yes.

Q. All of it or just some?

A. The majority of what was downstairs in the washroom, what may have been exposed. Some of the things we had downstairs. Their toys. Stuff like that.

Q. Did you talk to anybody yourself to verify what your father told you or to get a second opinion or

anything like that?

A. No, I didn't.

Q. You didn't throw away all your belongings that had been in your father's house, did you?

A. Not all of my belongings that were there. But I threw away a majority of the belongings that were there. What may have been exposed to the downstairs. And also the toys of my children and their clothes.

Q. To this day do you know what supposedly was downstairs that was bad to be exposed to?

MR. McKEOWN: Objection. Lack of foundation.

THE WITNESS: No.

BY MR. BARBER:

Q. Have you ever asked your father what supposedly is bad to be exposed to downstairs?

A. Yes.

Q. What has he told you?

A. He told me possibly E-Coli and bacteria..

Q. Did he tell you where it came from, if it's down there?

A. No. I couldn't say he did.

Q. You said that you moved out in '98 because there were going to be repairs done to the house.

A. Possibly repairs, yes.

Q. Has your father told you possibly repairs?

A. Yes.

Q. Has he ever said what was going to be repaired?

A. He didn't specify. To my knowledge whatever damage that was done to the house.

Q. He wasn't specific such as water damage to the upstairs or in floors or whatever?

A. Yes. The floors. But again I am not specific on it.

Q. Do you know whether any repairs were in fact done to the house after you moved out?

A. There were some repairs done to the kitchen that I was aware of.

Q. What repairs were done to the kitchen that you are aware of?

A. The cabinet. And also there was like a door that was blocked off. An entryway from the kitchen to my childhood bedroom. They were planning to block that off.

Q. Do you know why?

A. I am not sure.

Q. Do you know what was wrong with the cabinet that needed to be fixed or be replaced?

A. I am not sure.

Q. Any other work that you are aware of than that you just described?

A. No other work.

MR. BARBER: I don't have anymore questions. Thank you.

EXAMINATION BY MR. McKEOWN:

Q. Just one or two. This deposition is going forward because there have been representations made you were subpoenaed. Have you ever been subpoenaed for a deposition in this case?

A. No. Not me specifically. There was a subpoena sent to my mother's address and I was not living there at that time.

Q. So you never were served with it?

A. Never was served.

Q. Thank you very much. One other follow-up. Do you know what color the grout is in the downstairs bathroom?

A. I haven't been there. But I assume that it's the same pink as it was the last time.

Q. Do you have a specific recollection it's pink?

A. I do remember that it was pink.

Q. Why is that?

A. Because I just remember that it was pink. Most of his bathrooms were pink, I believe. I don't know why.

MR. McKEOWN: That's all my questions. Thank you.

MR. BARBER: I think we need to do a stipulation on how long she will have to read the transcript. The trial starts the 23rd.

MR. McKEOWN: The trial doesn't start until after -- it's not going to start until probably September.

MR. BARBER: I imagine she is going to be subpoenaed to testify in the first trial.

MR. McKEOWN: This isn't a deposition in that case. In any case what are you proposing?

MR. BARBER: I would propose that she has until August 31st -- let's take that -- until August 28th to make any corrections or changes.

MR. McKEOWN: I think that will be fine.

MR. BARBER: So that means you are going to get a letter from the court reporter that tells you that you have the right to have the transcript made available to you. It will probably be about 40 or 50 pages. And then if you want you can have it made available to you, you can read it over, make any corrections or changes, and you have until August 28th of 2002 to do that. If you don't make any corrections or changes or you don't read it, the deadline is over as of August 28th and then the transcript will be used as if you had read it or corrected it.

THE WITNESS: Okay.

(Whereupon, the deposition adjourned at 3:01)

_____
SIGNATURE OF WITNESS

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

I, RICHARD LENZI, a Certified Shorthand Reporter for the State of California, do hereby certify:

That HARUN AL-HAKIM, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings which took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 7th day of August, 2002.

RICHARD LENZI
Certified Shorthand Reporter
CSR NO. 2564

EXHIBIT "C"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
Francis M. McKeown, Esq. SBN 122796
Colin C. Munro, Esq. SBN 195520
McKEOWN PRICE, LLP
2030 Addison Street, Suite 300
Berkeley, CA 94704
TELEPHONE NO.: (510) 549-8787 FAX NO.:
ATTORNEY FOR (Name): Abdul Jalil al-Hakim

FOR COURT USE ONLY

NAME OF COURT: Alameda Superior Court
STREET ADDRESS: 1225 Fallon Street
MAILING ADDRESS:
CITY AND ZIP CODE: Oakland, CA 94612
BRANCH NAME:

PLAINTIFF/ PETITIONER: ABDUL JALIL al-HAKIM

DEFENDANT/ RESPONDENT: RESCUE INDUSTRIES, INC. dba RESCUE

CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents and Things at Trial or Hearing AND DECLARATION

CASE NUMBER: 821885-2

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of witness, if known)*:
Custodian of Records, Oakland Police Department, (510) 238-6886, 455 7th Street, Rm 306, Oakland, CA 946

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.**

a. Date: November 6, 2002 Time: 9:30 a.m. [X] Dept.: 19 [ ] Div.: [ ] Room:
b. Address: 1221 Oak Street, Oakland, CA 94612

2. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

3. YOU ARE *(item a or b must be checked)*:
   a. [X] Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
   b [ ] Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

4. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
   a. Name of subpoenaing party or attorney: Colin C. Munro b. Telephone number: (510) 549-8787

5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date Issued: November 6, 2002

Colin C. Munro, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)

ATTORNEY FOR PLAINTIFF
(TITLE)

(Declaration in support of subpoena on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
982(a)(15.1) [Rev. January 1, 2000]

CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING AND DECLARATION

Code of Civil Procedure § 1985 et seq.
Legal Solutions Ca Plus

PLAINTIFF/PETITIONER: ABDUL JALIL al-HAKIM	CASE NUMBER
DEFENDANT/RESPONDENT: RESCUE INDUSTRIES, INC. dba RESCU	821885-2

The production of the documents or the other things sought by the subpoena on page one is supported by *(check one)*:
[ ] the attached affidavit or declaration [X] the following declaration:

DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING

(Code Civ. Proc., §§ 1985, 1987.5)

1. I, the undersigned, declare I am the [ ] plaintiff [ ] defendant [ ] petitioner [ ] respondent
   [X] attorney for *(specify)*: Plaintiff, Abdul Jalil al-Hakim
   [ ] other *(specify)*:
   in the above-entitled action.

2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified in the *Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing* on page one of this form *(specify the exact documents or other things to be produced)*:
   Oakland Police Department Crime Report **RD#97 21212** Dated March 6, 1997.

   [ ] Continued on Attachment 2.

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
   Debbie Fallehy at Oakland Police Department has custody of this document. Plaintiff's office has discussed this matter with her on November 1, 2002 and she has agreed to appear at this case. Ms. Fallehy is aware of the reasons why this document is necessary and she agreed to waive the customary fee of $150.00 (if for any reason it is required, Plaintiff will comply when requested). November 6, 2002 is the last day of trial. Prior to today, Plaintiff did not know of the existence of this Police Report.

   [ ] Continued on Attachment 3.

4. These documents or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:
   The fact that a police report was made is directly relevant to a Defense raised by a party that it had no knowledge of the Plaintiff's Complaint until months after this police report was made, and that Plaintiff failed to properly mitigate his damages (for an incident in February 1997). A witness has testified that the Police Report could only have been made in May or June of 1997. The report is necessary to show that it was made in March 1997 not May or June. The claim involves a substantial amount of money and this issue is directly relevant to the Defense raised and an argument regarding mitigation of damages.
   [ ] Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 1, 2002

Colin C. Munro, Esq.
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF [ ] SUBPOENAING PARTY [X] ATTORNEY FOR SUBPOENAING PARTY)

(Proof of service on page three)

CITY OF OAKLAND

POLICE ADMINISTRATION BUILDING • 455 - 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

RE: Abdul Jalil al-Hakim v. Rescue Inductries, Inc. dba Rescue
ACTION: 821885-2

DECLARATION

I, the undersigned, being the duly authorized custodian of records on file in the Oakland Police Department Records Section, and having the authority to certify such records, declare under penalty of perjury that the records being provided are all true copies of the original records that were prepared by personnel of the Oakland Police Department in the ordinary course of business at or near the time of the incident to which they pertain.

CERTIFICATION OF RECORDS

_XX_ copies of all the records described in the Subpoena Duces Tecum are provided.

CERTIFICATION OF PARTIAL, OR NO RECORDS

A thorough search of the records on file in the Oakland Police Department Records Section:

____ Revealed only a portion of the records described in the Subpoena Duces Tecum.

____ Failed to reveal any of the records described in the Subpoena Duces Tecum.

____ Revealed only a portion of the records described in the Subpoena duces Tecum. The remainder of the records described are not maintained in the Records Section and may or may not exist as described.

____ The records described in the Subpoena Duces Tecum are not maintained in the Records Section and may or may not exist as described.

It is possible that those records which could not be found do exist, but were not located with the information provided in the Subpoena Duces Tecum.

Executed on ___November 4, 2002___ at Oakland, California.

Robert K. Fife
Police Records Manager
Oakland Police Department

97-21212

M E M O R A N D U M

DATE: JUNE 28, 2002

TO: OAKLAND POLICE DEPARTMENT
RECORDS DIVISIONS

FROM: RICHARD SYRETT

RE: COPY OF POLICE REPORT VIA REPRESENTATIVE

Due to a pending court case please supply me, via a representative, a copy of the report which resulted from the complaint made by me to your department. My representative, E. Clausen or V. Clausen, will pick up the copy from your office at your earliest convenience.

MY NAME AS COMPLAINTANT: RICHARD SYRETT
MY BIRTH DATE: 8/19/59
MY DRIVERS LICENSE NUMBER: N5603775
MY CONTACT NUMBER: 916-600-4058 916-354-1860
MY CURRENT ADDRESS: 14823 CORTINA COURT, RANCHO MURIETTA, CA 95683

APPROXIMATE DATE OF INCIDENT: ABOUT EARLY 1997
LOCATION OF INCIDENT: OAKLAND HILLS, REPORTED BY ME IN PERSON AT THE LOCAL POLICE STATION
POSSIBLE OTHER PARTY NAME: ABDUL J. ALHAKIM, 7633 SUNKIST DRIVE, OAKLAND (ALHAKIM - RANDY WALLACE)

PLEASE CALL 1 800 900 8909 WHEN THE REPORT COPY IS AVAILABLE FOR PICK UP.

THANK YOU,

RICHARD A. SYRETT

Completed
6-28-02
12.55
4033

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Joaquin } ss.

On June 28 2002, before me, Colby K. Yeager, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard A Sybrett
Name(s) of Signer(s)

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

COLBY K. YEAGER
Comm. # 1344653
NOTARY PUBLIC - CALIFORNIA
San Joaquin County
My Comm. Expires Feb. 25, 2006

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CRIME REPORT

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

ASSIGN TO: MAU

RD # 97 21212

BOOKING: [ ] CID [ ] YCSD [ ] VICE [ ] CSS [ ] TRAFFIC [ ] D.A. VICTIM/WIT

OUTSIDE REPORTING AGENCY | REPORTING AGENCY CASE NUMBER | BEAT: 28 | INCIDENT NO.: 1767

VICTIM

Number: 1 | LAST, First, Mid | [ ] Business Name | [ ] LOCAL/STATE/FEDERAL | SEX: M | RACE: W | D.O.B.: 8-19-59 | AGE: 37

Sylvett, Richard

HOME ADDRESS: 4923 Conway Terrace, FREMONT | CITY | [ ] OAKLAND | ZIP: 94555 | HOME/MSG. PHONE: 794-0618

BUSINESS ADDRESS / SCHOOL: Bryan Rooter P.O. Box 3008, Hayward | CITY | [ ] OAKLAND | ZIP | WORK PHONE: 732-0445

OCCUPATION: Denver Tech | EMPLOYING HOURS: 5-11 | E.I. NUMBER/STATE | [ ] VICTIM INJURED | [ ] SEX ASSAULT VICT. REQUESTS CONF. | [ ] RESOURCE INFO PROVIDED

ADDITIONAL PERSON

[ ] RP [ ] PARENT [ ] WITNESS

LAST, First, Mid | SEX | RACE | D.O.B. | AGE

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME/MSG. PHONE

BUSINESS ADDRESS / SCHOOL | CITY | [ ] OAKLAND | ZIP | WORK PHONE

VICTIM ACTIVITY (Check All That Apply)
[ ] AT HOME [ ] AT SCHOOL [ ] AT WORK [ ] IN JAIL [ ] ON STREET [ ] IN HOSPITAL [ ] AT SHOPPING CNTR [ ] AT THE PARK [ ] SLEEPING [ ] ON VACATION [ ] DRIVING [ ] WALKING [ ] JOGGING

LOCATION
[ ] BANK/ATM [ ] CONVENT MKT [ ] GAS STATION [ ] OTHER COMM. [ ] RESIDENCE [ ] STREET [ ] MISC.

POINT OF ENTRY
[ ] DOOR [ ] WINDOW [ ] GARAGE [ ] ADJ. PREM. [ ] VENT/SKYLIGHT [ ] OTHER

LOCATION P.O.E.
[ ] FRONT [ ] REAR [ ] SIDE [ ] ROOF [ ] UNK.

METHOD OF ENTRY
[ ] OPEN/UNLOCKED [ ] FORCED SCREEN [ ] CUTTING DEVICE [ ] BODY FORCE [ ] DRY TOOL [ ] CHANNEL LOCKS [ ] ATTEMPT FORCE [ ] BREAK GLASS [ ] REMOVE DOOR [ ] REMOVE WINDOW [ ] POSS. EMPLOYEE [ ] KEY [ ] WATER METER [ ] NONE

BURGLARY
[ ] AUTO [ ] RESIDENTIAL [ ] COMMERCIAL [ ] OTHER
[ ] ALARM RESP

WEAPON USED
[ ] FIREARM [ ] CUT/STAB INSTR [ ] HANDS, FEET, FIST [ ] CHEMICAL [ ] OTHER [ ] NONE

[ ] GANG RELATED | [ ] HATE CRIME MOTIVATED BY: [ ] RACE [ ] ETHNICITY [ ] RELIGION [ ] SEXUAL ORIENTATION [ ] PHYSICAL DISABILITY [ ] MENTAL DISABILITY

CRIME

COMMON NAME: Bathing | SECTION / SUBSECTION: 240 P.C. | CODE | PERTAINS TO: V: 1

LOCATION (ADDRESS/BLOCK NO./INTERSECTION) [ ] CHA [ ] ABC: 7633 Dunkirk

	DATE	TIME	DAY
OCCURRED ON OR FROM	1 mar 97	1300	Thur
TO			
REPORTED	1 mar 97	1558	Thur

VANDALISM
[ ] KICKED [ ] BREAK WINDOW [ ] SHOOT WINDOW [ ] GRAFFITI [ ] MAIL BOX [ ] KEYING / SCRATCHING [ ] SLASH TIRES [ ] OTHER

LOSS

[ ] NONE

(CHECK ALL THAT APPLY)
1 [ ] CURRENCY / NOTES
2 [ ] CLOTHING / FURS
3 [ ] JEWELRY / PRECIOUS METAL
4 [ ] FIREARMS
5 [ ] OFFICE EQUIPMENT
6 [ ] TVS, RADIO, STEREO
7 [ ] HOUSEHOLD GOODS
8 [ ] CONSUMABLE GOODS
9 [ ] LIVESTOCK
10 [ ] MOTOR VEHICLES
11 [ ] MISCELLANEOUS

U.C.R. CODE: (LIST MOST EXPENSIVE ITEM ABOVE)

TYPE OF THEFT
[ ] POCKPOCKET [ ] PURSESNATCH [ ] AUTO ACCESS [ ] AUTO CLOUT [ ] SHOPLIFTING [ ] BICYCLE [ ] COIN OP.DEVICE [ ] FROM BUILDING [ ] OTHER

SOLVABILITY FACTORS (CHECK ALL THAT APPLY)
[ ] CAR BOOKING [ ] VEH NOT RECOVERED [ ] WITNESS [ ] BANK ROBBERY
[ ] SURVEILLANCE PHOTO [ ] EXTENSIVE LOSS [ ] SERIOUS INJURY [ ] EVIDENCE
[ ] SUSPECT IN CUSTODY [ ] NAMED SUSPECT [ ] IDENTIFIABLE SUSPECT [ ] PVO REQUESTS INVEST.

[ ] The VICTIM / REPORTING PARTY contacted the police department to report the THEFT/ LOSS/DAMAGE of the listed property. There are no known suspects. This report is made to alert the police. No narrative was completed

VICTIM VEHICLE

LICENSE NUMBER/STATE | [ ] SECURED AT THE SCENE [ ] RELEASED TO THE OWNER [ ] HOLD (Use?) | [ ] TOWED [ ] FINGERPRINTED [ ] STOLEN | TOW NUMBER

YEAR | MAKE [ ] CAR [ ] TRUCK | MODEL | BODY TYPE | COLOR | VIN #

[ ] STOLEN BICYCLE | [ ] MENS [ ] WOMENS | [ ] MTN. [ ] ROAD | COLOR | BRAND | MODEL | SPEED | LICENSE # | SERIAL NO.

PROPERTY / NARRATIVE

[ ] LOSS [ ] EVIDENCE [ ] SAFEKEEPING [ ] RECOVERED

LOCATION WHEN STOLEN: [ ] INTERIOR [ ] EXTERIOR [ ] GARAGE

ITEM	QUANTITY	ITEM TYPE, BRAND, MODEL#, SIZE, COLOR, MARKS, ETC.	SERIAL #	VALUE $

TOTAL NUMBER OF: VICT. 1 | WIT. 2 | SUSP. 1 | ARR. 0

PHONE REPORT [ ] | PHOTOS TAKEN [ ] YES [✓] NO | EVIDENCE COLLECTED [ ] YES [✓] NO | TECH ON SCENE [ ] YES [✓] NO | TECH TAG LEFT [ ] YES [✓] NO | REC. VALUE | LOSS VALUE

REPORTED BY: L. O'Rourke 7332 | SERIAL # | WATCH: 2 | DISTRICT: 6 | SUPERVISOR: D. Wilson | SERIAL # | REVIEWER | SERIAL #

TF-3040 (4NOV94)

ORI 00109

O.P.D. POLICE REPORT — SUSPECT REPORT

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

RD # 97 21212

CRIME: 242 P.C. | INCIDENT NO.: 1767 | V1 | VICTIM LAST, First, Mid.: Lynett Richard

SUSPECT

Number: 1 | LAST, First, Mid.: Ibis, Abdul | RELATIONSHIP TO VICTIM: Customer | IN CUSTODY THIS OFFENSE [ ] YES [ ] NO | CITE #

SEX	RACE	D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	DL NUMBER	PEN
M	B		38	6-1	170	Blk	Brn		

HOME ADDRESS: 7633 Dunkirk | CITY [ ] OAKLAND | ZIP | APT. NO. | HOME MSG. PHONE: ( ) 839-5300

WORK ADDRESS (Name of Business) (School) | CITY [ ] OAKLAND | ZIP | OCCUPATION | WORK PHONE: ( ) Unk

ADMONISHMENT: ADMONISHED [ ] YES [ ] NO REFUSED [ ] YES [ ] NO STATEMENT [ ] YES [ ] NO

BY: (OFFICER/DATE/TIME) _____

[ ] PROBATION COUNTY _____ Officer _____

[ ] PAROLE AGENT _____ [ ] PAL

DESCRIPTION PROVIDE BY: Vic #1 | CLOTHING, SCARS, MARKS, TATOOS, WORDS USED

HAIR LENGTH
[ ] SHORT
[ ] MED. (HALF EAR)
[ ] LONG (COVER EAR)
[ ] COLLAR
[ ] SHOULDER
[ ] BALD/SHAVED
[ ] RECEDING

HAIR STYLE
[ ] NATURAL / AFRO
[ ] BRAIDED
[ ] CREWCUT
[ ] CURLY
[ ] PONYTAIL
[ ] PUNK
[ ] CONSERVATIVE

FACIAL HAIR
[ ] NONE
[ ] BEARD
[ ] MUSTACHE
[ ] BEARD & MUSTACHE
[ ] GOATEE
[ ] SIDEBURNS

COMPLEXION
[ ] LIGHT
[ ] MEDIUM
[ ] DARK
[ ] FRECKLED
[ ] ACNE
[ ] POCKMARK
[ ] RUDDY

APPEARANCE
[ ] CASUAL
[ ] WELL GROOMED
[ ] UNKEMPT
[ ] RIGHT HANDED
[ ] LEFT HANDED
[ ] BIRTHMARK
[ ] MOLE

SPEECH
[ ] LOW PITCH
[ ] HIGH PITCH
[ ] SLURRED
[ ] STUTTER
[ ] ACCENT
TYPE _____
[ ] OTHER

DEMEANOR
[ ] CALM
[ ] POLITE
[ ] APOLOGETIC
[ ] NERVOUS
[ ] PROFESSIONAL
[ ] OFFENSIVE
[ ] HOSTILE
[ ] VIOLENT

OTHER DISTINCTIVE FEATURES
[ ] GOLD TOOTH [ ] MISSING TEETH [ ] LARGE EYES
[ ] SILVER TOOTH [ ] GLASSES [ ] MISSING LIMBS
[ ] BODY ODOR TYPE _____

WEAPON USED [ ] REVOLVER [ ] SEMI-AUTO PISTOL [ ] SHOTGUN [ ] RIFLE
CAL _____ BARREL _____ [ ] SAWED OFF [ ] NICKEL [ ] BLUED
[ ] BLUDGEON / CLUB [ ] HANDS / FEET [ ] ROCK / BRICK [ ] CUT / STAB [ ] VEHICLE

SUSPECT

Number | LAST, First, Mid. | RELATIONSHIP TO VICTIM | IN CUSTODY THIS OFFENSE [ ] YES [ ] NO | CITE #

SEX	RACE	D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	DL NUMBER	PEN

HOME ADDRESS | CITY [ ] OAKLAND | ZIP | APT. NO. | HOME MSG. PHONE ( )

WORK ADDRESS (Business) (School) | CITY [ ] OAKLAND | ZIP | OCCUPATION | WORK PHONE ( )

ADMONISHMENT: ADMONISHED [ ] YES [ ] NO REFUSED [ ] YES [ ] NO STATEMENT [ ] YES [ ] NO

BY (OFFICER/DATE/TIME) _____

[ ] PROBATION COUNTY _____ Officer _____

[ ] PAROLE AGENT _____ [ ] PAL

DESCRIPTION PROVIDE BY | CLOTHING, SCARS, MARKS, TATOOS, WORDS USED

HAIR LENGTH
[ ] SHORT
[ ] MED. (HALF EAR)
[ ] LONG (COVER EAR)
[ ] COLLAR
[ ] SHOULDER
[ ] BALD/SHAVED
[ ] RECEDING

HAIR STYLE
[ ] NATURAL / AFRO
[ ] BRAIDED
[ ] CREWCUT
[ ] CURLY
[ ] PONYTAIL
[ ] PUNK
[ ] CONSERVATIVE

FACIAL HAIR
[ ] NONE
[ ] BEARD
[ ] MUSTACHE
[ ] BEARD & MUSTACHE
[ ] GOATEE
[ ] SIDEBURNS

COMPLEXION
[ ] LIGHT
[ ] MEDIUM
[ ] DARK
[ ] FRECKLED
[ ] ACNE
[ ] POCKMARK
[ ] RUDDY

APPEARANCE
[ ] CASUAL
[ ] WELL GROOMED
[ ] UNKEMPT
[ ] RIGHT HANDED
[ ] LEFT HANDED
[ ] BIRTHMARK
[ ] MOLE

SPEECH
[ ] LOW PITCH
[ ] HIGH PITCH
[ ] SLURRED
[ ] STUTTER
[ ] ACCENT
TYPE _____
[ ] OTHER

DEMEANOR
[ ] CALM
[ ] POLITE
[ ] APOLOGETIC
[ ] NERVOUS
[ ] PROFESSIONAL
[ ] OFFENSIVE
[ ] HOSTILE

OTHER DISTINCTIVE FEATURES
[ ] GOLD TOOTH [ ] MISSING TEETH [ ] LARGE EYES
[ ] SILVER TOOTH [ ] GLASSES [ ] MISSING LIMBS
[ ] BODY ODOR TYPE _____

WEAPON USED [ ] REVOLVER [ ] SEMI-AUTO PISTOL [ ] SHOTGUN [ ] RIFLE
CAL _____ BARREL _____ [ ] SAWED OFF [ ] NICKEL [ ] BLUED
[ ] BLUDGEON / CLUB [ ] HANDS / FEET [ ] ROCK / BRICK [ ] CUT / STAB [ ] VEHICLE

SUSPECT VEHICLE

VEHICLE WAS [ ] TOW (#) [ ] SECURED AT SCENE [ ] FINGERPRINTED [ ] RELEASED TO OWNER [ ] HOLD (UNIT) _____

DAMAGE DETAILS, UNIQUE FEATURES | OTHER DESCRIPTION

OWNER | ADDRESS | CITY [ ] OAKLAND ZIP | PHONE

LIC./STATE/OR PLATE COLORS	YEAR	MAKE	MODEL	STYLE	EXTERIOR COLOR	CONDITION	INTERIOR COLOR	INTERIOR
						[ ] CLEAN [ ] NEW [ ] DIRTY [ ] POOR		[ ] CLEAN [ ] POOR [ ] DIRTY [ ]

TIRES	RIMS	LEVEL	ROOF	WINDOWS	SEATS	TRANSMISSION
[ ] STOCK [ ] WIDE [ ] SMALL [ ]	[ ] STOCK [ ] CHROME [ ] MAGS [ ] SPOKE	[ ] STOCK [ ] LOWERED [ ] RAISED [ ]	[ ] VINYL [ ] LANDAU [ ] PONY	[ ] TINTED [ ] BROKEN	[ ] VINYL [ ] BENCH [ ] CLOTH [ ] BUCKET	[ ] AUTOMATIC [ ] MANUAL

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #
K. O'Rourke	3275	2	6	Lt. Wood	

TF-3041 (4NOV94)

ORI 00109

O.P.D. POLICE REPORT

Victim Witness

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

RD # 97 21212

CRIME: Battery
INCIDENT NO.: 1767
V1
VICTIM LAST, First, Mid [ ] Business Name: Dyrett, Richard

ADDITIONAL PERSONS

CLASS: V W R/P
LINKED TO: V R/P W S

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B	AGE
W	V1	Otrbian, Rick	M	W		45

HOME ADDRESS / CITY / [ ] OAKLAND / ZIP / HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL: P.O. Box 3098 / CITY: Hayward / [ ] OAKLAND / ZIP / WORK PHONE ( ) 8322045
OCCUPATION: Dept. Mgr. / WORKING HOURS: M-F 9-5 / D.L. NUMBER/STATE
VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B	AGE
W	V1	Peterson, Chris	M	W		45

HOME ADDRESS / CITY / [ ] OAKLAND / ZIP / HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL: P.O. Box 3098 / CITY: Hayward / [ ] OAKLAND / ZIP / WORK PHONE ( )
OCCUPATION: Area Mgr. / WORKING HOURS: M-F 9-5 / D.L. NUMBER/STATE
VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B	AGE

HOME ADDRESS / CITY / [ ] OAKLAND / ZIP / HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL / CITY / [ ] OAKLAND / ZIP / WORK PHONE ( )
OCCUPATION / WORKING HOURS / D.L. NUMBER/STATE
VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE

HOME ADDRESS / CITY / [ ] OAKLAND / ZIP / HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL / CITY / [ ] OAKLAND / ZIP / WORK PHONE ( )
OCCUPATION / WORKING HOURS / D.L. NUMBER/STATE
VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE

HOME ADDRESS / CITY / [ ] OAKLAND / ZIP / HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL / CITY / [ ] OAKLAND / ZIP / WORK PHONE ( )
OCCUPATION / WORKING HOURS / D.L. NUMBER/STATE
VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #

PAGE 3 OF 5

ORI 00109

TF-3042 (4NOV94)

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 97 21212

CRIME: 242 P.C. [ ] SUPPLEMENTAL | INCIDENT #: 1762 | V1 | VICTIM LAST, First, Mid: Syrett, Richard

SUSPECT LAST, First, Mid: Jalil, Abdus | INCIDENT LOCATION: 7433 Dunlop | DATE OF THIS REPORT: | ORIGINAL DATE REPORTED: 6 MAR 97

PROPERTY (and/or NARRATIVE)

ITEM #	QNTY.	ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE

STATEMENT:

Today at approximately 3:00 p.m. my supervisor Sgt. Brown and I responded to 7433 Dunlop. We were responding to a customer complaint from Jalil. On 2-18-97 I had cleared the sewer line at his residence. He had then alleged that there was water damage in his residence due to my negligence. We then set up an appointment for today's date to discuss and inspect his residence. Jalil began to discuss his complaint, he then inexplicably became irate, showing that I was a "liar." I attempted to explain at which time Jalil stated words to the effect "Don't point at me." He then grabbed my wrist with both his hands. I then defensively pushed him away. He again lunged at my wrist. My supervisor Sgt. Brown then intervened & Jalil then abruptly left the room. I then left the residence to prevent any further confrontations. My neck is sore, red, & scratched. I do not require medical attention & will press charges. This is a true statement.

Richard A Syrett

Richard A Syrett

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
L. O'Rourke	1502	2	6	Lt. Wynn		2 OF 5

ORI 00109

TF-3044 (4NOV84)

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 97 21212

CRIME	☐ SUPPLEMENTAL	INCIDENT #	V1	VICTIM LAST, First, Mid.
242 P.C.		1767		Dysart, Richard

SUSPECT LAST, First, Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
Jalil, Abdus	7433 Dunkirk		6 Mar 97

PROPERTY (and/or NARRATIVE)

ITEM #	QNTY	ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE

Dysart walked into the Eastmont Sub-station to report the battery. I observed Dysart's neck to be red & swollen. I observed several small scratches on either side of his neck.

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
K. O'Rourke	7329	2	6	Lt. Ward		2 OF 5

ORI 00109

TR-3048 (4NOV94)

EXHIBIT "D"

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ABDUL-JALIL AL-HAKIM, Plaintiff, vs. CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, et al. Defendants.	No. C-811337-3 ORDER GRANTING PETITION TO VACATE APPRAISAL AWARD

The Petition of Plaintiff Abdul Jalil al-Hakim ("plaintiff") to Vacate Appraisal Awards came on regularly for hearing on January 2, 2003, in Department 31 of this Court, the Honorable James A. Richman, presiding. Plaintiff appeared by Francis M. McKeown and Colin Munro. Defendants California State Automobile Association Inter-Insurance Bureau ("CSAA"), Kenneth C. George, Ronald J. Cook, and Willoughby, Stuart & Bening (when referred to collectively, "defendants") appeared by Sean R. O'Halloran.

After full consideration all the papers and evidence submitted on behalf of the parties, as well as the arguments presented at the hearing, and good cause appearing, the Court ORDERS that the Petition is GRANTED.

An appraisal award will be vacated if, among other grounds, "the award was procured by corruption, fraud, or other undue means"; or the appraisers "exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (Code Civ. Proc. §§1250(a), 1286.2(a)(1) and (a)(4).) Although appraisals are generally governed by the same statutory framework as arbitration, one "significant difference" is that appraisers only have the power to determine a specific question of fact, "the amount of damage resulting to various items submitted for their consideration. It is certainly not their function to resolve questions of coverage and interpret provisions of the policy." (*Safeco Ins. Co. of America v. Sharma* (1984) 160 Cal.App.3d 1060, 1063-1064; *Jefferson Ins. Co. of New York v. Superior Court* (1970) 3 Cal.3d 398, 403 ("*Jefferson*").) Therefore, in *Jefferson*, where the appraisers erroneously interpreted "actual cash value" as meaning "replacement cost less depreciation," the appraisal award was "based on a misconception of law," and the Supreme Court denied the writ seeking to set aside the order of this Court vacating the award. Put another way, the award was properly vacated. (*Id.* at 403.) Likewise here.

Plaintiff's insurance policy with CSAA provides that losses will be paid based on replacement value without deduction for depreciation. Although neither side's papers on this Petition included the policy itself, defendants' counsel subsequently submitted a copy of the entire policy. The policy includes a "Home Replacement Cost Guarantee Endorsement," which provides in part: "Coverage is limited to the amount reasonably necessary to repair or replace the dwelling and other building structures...."

(Homeowners Policy Special Form – HO-3 (submitted with letter from Stephan Barber to Hon. James A. Richman, dated February 13, 2003) at 33.) The policy also includes a "Replacement Value Endorsement -- Personal Property," which provides in part:

> For an additional premium, we agree, subject to all conditions in this endorsement, to settle losses under Coverage C – Personal Property at replacement value instead of actual cash value.
>
> "Replacement value" means the current cost at time of loss without deduction for depreciation to replace the damaged, destroyed or stolen property with articles of like kind and quality.

(*Id.* at 33-34.)

Such coverage was confirmed in a March 30, 2000 letter to then counsel for plaintiff, where Defendant Cook quoted the policy as follows: "[c]overed property losses are settled ... at replacement cost without deduction for depreciation." (Declaration of Michael D. Michel, filed December 16, 2002, Ex. O, p. 7.)

Replacement value policies are available out of a recognition that an owner might not be made whole by traditional coverage for actual cash value. (See *Conway v. Farmers Home Mutual Ins. Co.* (1994) 26 Cal.App.4th 1185, 1189.) In the words of a recent A.L.R. Annotation:

> [W]hile a standard policy compensating an insured for the actual cash value of damaged or destroyed property makes the insured responsible for bearing the cash difference necessary to replace old property with new property, replacement cost insurance allows recovery for the actual value of property at the time of loss, without deduction for deterioration, obsolescence, and similar depreciation of the property's value.

(Annot., Construction and Effect of Property Insurance Provision Permitting Recovery of Replacement Cost of Property (2002) 1 A.L.R.5th 817, §2; see also *Higginbotham v. New*

Hampshire Indemnity Co. (La.Ct.App. 1986) 498 So.2d 1149, 1152 [proper measure of roof's replacement cost was cost of a "new roof with the same type of composition shingles currently on the home"]; and *Moehring v. United States Fidelity and Guaranty Co.* (N.D.Ill. 1988) 1988 U.S. Dist. LEXIS 6769, *9, fn. 1 [discussing replacement value of personal property].) The insured presumably pays a higher premium for this additional coverage. (See *Moehring, supra*, 1988 U.S. Dist. LEXIS at *8-9.)

Here, the appraisers interpreted "replacement cost without deduction for depreciation" as meaning "actual cash value" or "fair market value." This is most evident in the valuation of plaintiff's personal and business property, which was based on "average USED" price according to an internet guide, bluebook.com. (Appraisal Award (Corrected), pp. 2, 6, 23-24 ["Contents (UPP) Worksheet – Summary"], 26-31 ["Contents (UPP) Worksheet -- Detail"], 33-63 ["Blue Book Prices" from bluebook.com; capitalization in original].) Although original purchase price is not necessarily the same as the current replacement cost, it is notable that bluebook.com's used prices are as low as 2% of the manufacturers' suggested retail prices. (*Id.* at 33.)

Although the policy provides for replacement cost, the appraisers also determined the value of the loss based on "fair market value" and "actual cash value," "regardless of whatever coverages might apply." (Defendants' Memorandum of Points and Authorities in Opposition at 7:5-6; Declaration of Michael D. Michel, filed December 16, 2002, Ex. G [hereinafter "Appraisal Award (Corrected)"]; see also Declaration of A. Michael De Cesare, filed December 23, 2002, at 8:22-9:8.) This approach was appropriate, because

the replacement value endorsements set forth conditions under which they may not apply. (See Homeowners Policy Special Form -- HO-3, at 33-34.) However, the appraisers fundamentally misunderstood these other property valuation measures.

"Actual cash value" and "fair market value" are actually synonymous, and do not mean replacement cost less depreciation. (*Jefferson, supra*, 3 Cal.3d at 402.) Indeed, for any given loss, replacement value less depreciation can be more or less than fair market value. (See *Community Assisting Recovery, Inc. v. Aegis Security Ins. Co.* (2002) 92 Cal.App.4th 886, 894 [replacement cost less depreciation can result in a more favorable settlement than actual cash value].) However, the appraisers measured actual cash value as the difference between the replacement cost and the fair market value. Furthermore, the appraisers believed that replacement cost less depreciation was, by definition, equal to fair market value. These misconceptions are evident from the declaration of A. Michael De Cesare, CSAA's chosen appraiser:

> I understand Mr. Al Hakim asserts there is an error in the formula used to arrive at the values listed in the appraisal award. This is how it works. In California, insurance policies can cover damage based upon several contingencies and a certain formula is used so that whatever coverage may exist, a value to the loss can be assessed. The formula provides that a value be determined for the full amount of Replacement Cost for any damage. Then a value is determined based upon the condition of the property before it was damaged. This value is known as Fair Market Value. It really reflects depreciation of the property based upon the condition of the property immediately before it was damaged, including what the dwelling structure or damaged items would sell for on the market. Actual Cash Value then is Replacement Cost minus Fair Market Value (depreciation).

(Declaration of A. Michael De Cesare at 8:21-9:3; see also *Jefferson, supra*, 3 Cal.3d at 403 ["The declaration of an appraiser is properly received to show what the appraisers

considered the issue to be, for the purpose of determining whether they exceeded their powers by making an error of law"].)

The appraisal award must also be vacated for an additional, independent reason: CSAA injected into the appraisal process whether plaintiff had actually suffered the claimed losses, or whether some policy defenses might pertain. As noted above, appraisers only have the power to determine the amount of damage, and may not determine coverage issues. (*Safeco, supra*, 160 Cal.App.3d at 1063-1064.)

> When an insurer disputes an insured's description in identification of the lost or destroyed property, it necessarily claims the insured misrepresented -- whether innocently or intentionally -- the character of the loss in filing a proof of loss. In turn, this claim opens the door to allegations of fraud.... Certainly, an insurer is free to litigate whether the insured has misrepresented what he lost but it is beyond the scope of an appraisal.

(*Id.* at 1066.)

The Court ordered that "[t]he entire claims, both 01 and 02, are to be submitted to contractual appraisal." (Order on Defendants' Motion to Compel Contractual Appraisal and for Stay of Action, entered October 7, 1999.) However, several communications by CSAA raised fraud and coverage issues, going beyond "questions relating to value, e.g., quality or condition." (See *Safeco, supra*, at 1066.) For example, in a January 14, 2000 letter to the appraisal panel, Defendant Cook stated that CSAA was declining coverage of Claim 01 in its entirety, based on "numerous breaches of Conditions in the policy, including 'Concealment and Fraud.'" (Declaration of Michael D. Michel, Ex. N.) Without giving a reason, CSAA also stated that it was declining coverage of portions of Claim 02. (*Id.*) Moreover, in a March 30, 2000 letter to appraiser Ronald Magin,

Defendant Cook stated that CSAA was "prepared to demonstrate that ... the loss at issue in Claim 01 did not occur." (Declaration of Michael D. Michel, Ex. O, p. 2.)

The record supports that the appraisal award was influenced by the improper injection of fraud and coverage issues. According to CSAA's own evidence, the *lowest* estimate of the cost of dwelling repairs in Claim 01 was $92,032.71. (Declaration of Michael D. Michel, Ex. R, p. 1.) However, the appraisal award for dwelling repairs in Claim 01 was $40,551.57. (Appraisal Award (Corrected), p. 2.) Similarly, CSAA valued plaintiff's personal property portion of claim 01 at $71,070.16, but this portion of the appraisal award was $39,919.34. (*Id.*; Declaration of Michael D. Michel, Ex. W.) Defendants have offered no explanation for why the appraisers' findings are significantly less than CSAA's own experts' lowest estimates. The only explanation evidenced by the record is the improper introduction of fraud and coverage issues, resulting in an award that both was procured by undue means and was beyond the powers of the appraisal panel.

The Court notes defendants' argument that, if not confirmed, the appraisal award can be corrected rather than vacated. Defendants have not cited any legal authority for the proposition that the Court may "order the appraisal panel to re-label and/or recalculate the amount of the loss." (See Memorandum of Points and Authorities in Opposition to Petition to Vacate Appraisal Award, filed December 23, 2002, at 13:10-13.) Rather, the Court itself may correct the award if:

(a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to

in the award;

(b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or

(c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(Code Civ. Proc. §1286.6.)

Defendants have not specifically indicated how the errors in the existing award can be corrected by recalculation, without affecting the merits. In particular, the erroneous interpretation of replacement cost cannot be corrected by substituting the retail price at time of purchase for the erroneous "used" value. (See *FSC Paper Corp. v. Sun Ins. Co. of New York* (7th Cir. 1984) 744 F.2d 1279, 1282, fn. 2 [historical cost is not necessarily the same as current replacement cost].) Defendants do suggest that the appraisers' erroneous belief that there is a difference between "actual cash value" and "fair market value" can be corrected by just using the appraisers' estimation of actual cash value. (Memorandum of Points and Authorities in Opposition to Petition to Vacate Appraisal Award, at 12:14-16.) But even if they did, this still would not address the appraisers' erroneous belief that fair market value is equivalent to replacement cost less depreciation.[1] Finally, defendants do not suggest how recalculation can correct any error resulting from the insertion of

[1] This very misconception was the basis for vacating the appraisal award in *Jefferson*. Furthermore, if either of the different figures given by the appraisers for actual cash value and fair market value accurately represented the fair market value, it would more likely be the figure denominated by the appraisers as fair market value, rather than the figure denominated as actual cash value, since the latter appears to be depreciation or some variation thereof. (See Declaration of A. Michael De Cesare, at 8:21-9:3.)

coverage issues into the appraisal process.

For each, and all, of the reasons set forth above, the appraisal award is VACATED. Unless both parties consent, the rehearing shall be before new appraisers. (See Code Civ. Proc. §1287.)

Dated FEB 2 7 2003

James A. Richman
Judge of the Superior Court

EXHIBIT "E"

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ABDUL-JALIL AL-HAKIM

Plaintiff,

CASE NO. 821885-2

vs.

RESCUE INDUSTRIES, INC., DBA RESCUE ROOTER, RESCUE ROOTER, LLC, AND DOES through 50, inclusive

COPY

Defendants.

_____/

Deposition of

CHRIS PETERSON

Wednesday, January 30, 2002

NOTICING ATTORNEY: STEVEN J. BRADY, ESQ.

REPORTED BY: LORRIE L. HINTON, RPR, CSR NO. 10523

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February 22, 2002

To: Chris Peterson
C/o Rescue Industries
P. O. Box 3098
Hayward, CA 94540

Re: AL-HAKIM vs. RESCUE INDUSTRIES

Dear Mr. Peterson:

Please be advised that the original transcript of your deposition, taken on January 30, 2002, in the above matter, has been completed and is now ready for your review by appointment in our San Rafael office.

In the alternative, you may choose to discuss this matter with your attorney to determine if counsel requires that the original transcript of your deposition be read, corrected and signed by you before it is sealed.

Your rights regarding signature of this deposition are contained in the California Code of Civil Procedure which requires that the original deposition transcript be sealed after 35 days from the date of this letter and thereafter sent to the noticing attorney.

Yours very truly,

Lorrie L. Hinton

LORRIE L. HINTON, CSR

cc: Original Transcript
All Counsel

APPEARANCES OF COUNSEL

For the Plaintiff:

STEVEN J. BRADY, ESQ.
1015 Irwin Street
San Rafael, California 94901
(415) 459-7300

For the Witness:

JACKSON & HARRIGAN
BY: DAN CROWLEY, ESQ.
1 Market Plaza,
Spear Street Tower, 8th Floor
San Francisco, California 94105
(415) 543-3434

For the Defendants:

ARCHER NORRIS
BY: TODD A. JONES, ESQ.
2033 North Main Street, Suite 800
Walnut Creek, California 94596-3728
(925) 930-6600

For the Intervenor CSAA-IIB: (via telephone)

ROPERS, MAJESKI, KOHN & BENTLEY
BY: SEAN O'HALLORAN, ESQ.
80 N. First Street
San Jose, California 95113
(408) 287-6262

Also present:

Abdul-Jalil al-Hakim

-oOo-

I N D E X

-oOo-

SAN RAFAEL, CALIFORNIA

WEDNESDAY, JANUARY 30, 2002; 2:05 P.M.

CHRIS PETERSON, a witness, was sworn, examined and testified as follows:

THE REPORTER: Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to offer will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

EXAMINATION BY MR. BRADY

MR. BRADY: Q. Could you state your full name for the record, please.

A Christopher Adam Peterson.

Q And Mr. Peterson, you understand you're here today pursuant to a deposition subpoena for the person most knowledgeable at Rescue Industries?

A Yes.

Q All right.

MR. CROWLEY: The deposition notice, not subpoena.

MR. BRADY: Deposition notice, that's absolutely right.

And, you know, my secretary gave you the wrong

notice. She gave you one for -- but we will give you the correct notice.

Q Let me show you a Notice of Deposition, which we'll make a copy of at the break, and we'll attach as Exhibit 1, for notice of the deposition of the person most knowledgeable at Rescue Industries. That is you?

A Yes.

Q Okay. That deposition notice asked you to bring with you your entire file regarding the February 18th, '97, flood loss. Have you brought any documents responsive to that?

A Just the documents here, yes.

MR. BRADY: Okay. For the record, counsel has handed me four pages of documents which the witness has produced.

Q Do these constitute your file, absent any documents from your attorneys and yourself that are privileged by the attorney-client or work product privilege?

A I don't understand the question.

Q Are these four documents your entire file, other than correspondence with your attorney that are privileged?

MR. CROWLEY: Relating to February whatever the date of this incident.

MR. BRADY: Is that right?

MR. CROWLEY: Yes, it is.

THE WITNESS: Yes.

MR. BRADY: We'll attach these documents collectively as Exhibit 2. Do you want to hold on one second. Let me just make a couple of copies.

(Exhibits 1 and 2 marked.)

MR. BRADY: Q. Are you currently employed, Mr. Peterson?

A Yes.

Q Who's your employer?

A ServiceMaster.

Q And what's your job title in that position?

A Regional manager for the northwest region.

Q How long have you held that job title and position?

A Two and a half years.

Q Is ServiceMaster related somehow to what was or what may still be Rescue Rooter?

A Yes, they are. Yeah.

Q What's the relationship?

A ServiceMaster is a company doing business as Rescue Rooter.

Q Other than the documents that you produced to me, the four pages of documents pursuant to the depo

notice, have you reviewed any other documents in preparation for your deposition here today?

A No.

Q Have you ever had your deposition taken before, Mr. Peterson?

A Yes.

Q How many times?

A One time.

Q Was that in connection with your employment for ServiceMaster?

A Yes.

Q How long ago was that?

A Oh, long time. I'd say '84, '85.

Q That's a long time ago.

A Yes.

Q Do you remember what the circumstance was or what the matter was about?

MR. CROWLEY: You can tell him if you remember or not. But beyond that, I don't want you answering the question. The question is: Do you remember the circumstances?

THE WITNESS: I was a witness.

MR. BRADY: Q. Was that involving -- or was it some kind of a lawsuit against your employer?

A Yes.

Q Arising out of some customer who had some complaint?

MR. CROWLEY: No. We're not going to go down that road. He's not answering the question.

MR. BRADY: You're refusing to allow him to answer?

MR. CROWLEY: Yes.

MR. BRADY: On what grounds?

MR. CROWLEY: It's not relevant, and has absolutely nothing to do with this case. He's not answering it.

MR. BRADY: Relevancy objections are preserved for trial.

MR. CROWLEY: I understand. He's not answering the question.

MR. BRADY: Dan, you don't have to be rude. I'm going to make your record. You make your record. I'll let you finish. Come on. Let's be polite anyway. Okay? We can have a difference of opinion without making it personal. Okay?

So you're refusing him to answer on the grounds that it's irrelevant?

MR. CROWLEY: That's correct.

MR. BRADY: Okay.

Q Have you had any substantive conversations

about Mr. al-Hakim's claim with anyone, other than your lawyers?

MR. CROWLEY: Define "substantive conversations."

MR. BRADY: Q. Anything about what happened, what Rescue Industries' involvement, if any, was, anything other than the scheduling of you coming here today.

MR. CROWLEY: Well, I'm going to object to the question because it may call for conversations protected by the work product attorney-client privilege. He's not going to answer the question as phrased.

MR. BRADY: I just qualified it by saying "other than with your attorneys." So you're refusing to allow him to answer the question --

MR. CROWLEY: As phrased.

MR. BRADY: -- on the attorney-client privilege?

MR. CROWLEY: As phrased.

MR. BRADY: Okay.

Q Have you spoken to any other employees of Rescue Industries concerning this matter, your deposition here today regarding Mr. al-Hakim's case?

MR. CROWLEY: You can answer the question as long as it was not a conversation that you had in

anticipation of litigation, or it was a conversation you had with somebody else that involved your attorneys.

MR. BRADY: He can answer "yes" or "no," whether he even had the conversation, without violating any privileges, Counsel.

MR. CROWLEY: No.

MR. BRADY: Q. Can you answer my question with your attorney's constraints? He's reasked the question slightly.

A I'm -- there's a confusion here. So you're asking me if I had a conversation about being here today?

Q About -- no. About Mr. Jalil's claim, with anyone other than your attorneys or their representatives.

MR. CROWLEY: That was not done in anticipation of litigation, or was not done in your attorney's presence. And by that, I mean not only me, but the company's attorneys.

So with those two caveats, if you can answer his question -- and let me give you an example that I think he's talking about.

If the day after this incident that allegedly occurred, you had a conversation with somebody about Mr. al-Hakim's residence, I think that would fall within

the ambit of his question.

But if you had any conversations with anybody that dealt with the litigation aspects of this, I'm going to instruct you not to answer the question.

THE WITNESS: No. I can't answer the question, then.

MR. BRADY: Q. I'm sorry.

A Then I can't answer the question.

Q You didn't have any conversations within the weeks or months of this incident, but before the litigation was brought with Rick about this case?

A Rick who?

Q I understood that Rick was the technician who appeared at Mr. al-Hakim's residence on the day of this incident.

A I had a conversation with Rick, yes.

Q What's Rick last name?

A Syrett.

Q Could you spell the last name.

A It may not be correct, but it's S-Y-R-E-T-T.

Q Is he still with ServiceMaster?

A No.

Q Do you know -- when is the last time you've spoken to Mr. Syrett?

A The day he terminated. I do not have the

exact date when they terminated him.

Q What year did you terminate his employment?

A I don't know the exact date. Probably '98. 1998, sometime in 1998.

Q Was he terminated because of anything he did in connection with Mr. al-Hakim's --

A He wasn't terminated. He quit.

Q You have no idea about his current whereabouts?

A No.

Q Let me just quickly go over with you the basic rules of deposition etiquette, and it will make your attorney happy, too.

In regular conversation -- can I call you Chris?

A M-hm.

Q Chris, in regular conversation, we tend to jump in and help the speaker, once we know what information they're seeking. It sort of moves it along. And that's the way we tend to converse with one another. That doesn't work here for deposition purposes.

In a deposition, you need to completely wait for me to finish my question, and then pause for a moment to give the court reporter a chance to change speakers. Because she can only take down one of us

speaking at a time.

Do you understand that?

A I understand.

Q Okay.

The court reporter is here, because she, again, is taking us both down, needs us to try and pause between speakers. So just try and let me finish my question, even though you are going to be able to anticipate 99 percent of my questions.

You know what we're here to discuss. You know the subject matter. I'm not going to try and trick you or get into areas that, you know, are unrelated to this case. Even still, please wait for me to finish so you hear the whole question, pause, count to three in your head for a minute.

It will give your lawyer a chance to make an objection, which he may want to do. And it will also give the court reporter a chance to change speakers. I'll give you the same courtesy in allowing you finish my [sic] answer before beginning another question.

Do you understand?

A I do.

Q You're doing very well answering my questions using words. Please continue to do so. You're nodding your head, but you are also speaking, which is good.

The court reporter is not allowed to interpret body language. We commonly nod our head, use our hands to gesture, and other kinds of nonverbal communication to convey our meanings in ordinary conversation.

But, again, this is a contrived situation which allows us to get a record that we can then use on -- at the time of a trial. So I need you to answer using words. Answers like "uh-huh" and "huh-uh" look like a lot of Us and Hs on the page, since the written word does not show intonation.

So, again, we'll remind you if you forget. But if you try to use words, it will be helpful. I'm not going to try and trick you, Chris, with any of my questions. If you don't understand a question, or you want me to repeat it or rephrase it, just ask. I'll be happy to do so.

But at the same time, if you do answer a question without asking for any clarification, I'm entitled to assume that you've understood the question, and I'm especially entitled to rely on your answer.

Do you understand that?

A I do.

Q Okay. You will have an opportunity after the deposition is finished to take a read over your transcript. The testimony that's being taken down here

today will be typed up by the court reporter into a little booklet with my question typed out, followed by your answer.

And you'll be able to make any changes or corrections that you feel are necessary or appropriate, but I would like to warn you now that if you make any substantive changes later in your transcript, that can be proved to be, again, embarrassing to you and harmful to your employer's cases because we'll be able to wonder and ask why it was that you answered one way today now, and changed your answer later.

So you understand also that your testimony here is under oath; it's the same as if we were in court?

A I understand.

Q The upshot is, look, Chris, I just want your best answers here today. If you don't know the answer to one of my questions, you can certainly answer that way. You're not obligated to search the heavens here.

If you can give me a reliable answer based on your recollection or the documents in front of you, you're entitled to do so. You're free to refer to the documents that you've brought with you here today and any documents that I provide you during the deposition today to refresh your recollection at any time. I don't

expect this depo is going to take more than a couple of hours. But if at any time you need a break for any reason, let me know, and we'll be happy to accommodate you. Okay?

A Okay.

Q Any reason why physically, mentally, emotionally, otherwise, that you can't give me your best testimony here today?

A No.

Q Okay. Prior to becoming the regional manager of the northwest region at ServiceMaster, did you hold another job title and position with the company?

A Yes, I did.

Q What was the last job? Why don't you just kind of take it back for me. Before regional manager, what position did you hold?

A District manager.

Q What years, approximately?

A '97 -- I'm sorry, '98 to 2000, roughly.

Q Since 2000 you have been the regional manager for the northwest region?

A Yes.

Q Prior to '98, when you became district manager, what was your title or job position?

A General manager.

Q For what years?

A I went back and forth. So general manager from -- I'd say probably ninety- -- '95 through -- '95 through '98 -- whatever date I gave you for the district manager position -- as a general manager. Before '95 -- the district manager position was, kind of, doing both roles, general manager and district manager. So it's kind of hard to say doing one.

Q What did you do as the district manager?

A District manager is in charge of multiple locations, up to four locations, which I was in charge of in the Bay area.

Q And how about as general manager?

A General manager is in charge of one service center.

Q Okay. And prior to becoming general manager in '95, the position you held before that?

A I was a regional -- and again, I went back to being a regional manager for the company. It was called Rescue Industries at the time.

MR. CROWLEY: Just answer the question.

MR. BRADY: Q. Were your jobs -- I'm sorry, I didn't ask you before. As regional manager, you were responsible for overseeing a number of locations in different geographic areas?

A Yes.

Q What does the northwest region comprise?

A Thirteen service centers.

Q In how many states?

A You've got California, Oregon, Washington --

MR. CROWLEY: How many states?

THE WITNESS: I'm counting them.

MR. CROWLEY: Count them to your head -- count them quietly.

THE WITNESS: Five.

MR. BRADY: Q. California, Oregon, Washington, and what other states?

A Five.

Q Which other states besides California, Oregon, and Washington?

A We got Utah, Phoenix.

Q Arizona?

A M-hm.

Q How many service centers does ServiceMaster have here in California at this time?

A Some of them are not my responsibility. So I'm estimating roughly about 20.

Q And how many are under your responsibility?

A Four.

Q Are some independent contractor -- or

independent shops and some company stores, is that how it's broken down, or do you have parts of California?

MR. CROWLEY: He's not going to answer the question as phrased. One, it's compound. Two, you're asking him for information currently that has absolutely nothing to do with what occurred in 1997, Steve.

MR. BRADY: It's just -- it's just preparatory and background, Dan. It's one question. I just want to get an idea where his territory is now.

MR. CROWLEY: Then ask him where his territory is now. But asking him if things are independently owned, if there's a franchise system, what is going on currently with ServiceMaster has absolutely nothing to do with what occurred in 1997.

MR. BRADY: Are you going to refuse to allow him to answer questions about --

MR. CROWLEY: He is here -- he is here as the PMK for February 18th, 1997. So if you want to ask him questions about that, let's move forward. He's not going to answer your question.

MR. BRADY: I'll tell you what, I'll ask the questions, and you make the objections, and then give him the instructions. Okay?

MR. CROWLEY: Good enough.

Don't answer the question.

It's outside the scope of the deposition.

MR. BRADY: Back in February of 1997, you were a district manager or a general manager?

A District manager.

Q And what was the name of your district in February of '97?

A It did not have a name.

Q What -- you had -- you were in charge of four service centers; is that right?

A Three, at that time.

Q Which ones?

A San Francisco, San Jose, and Hayward.

Q Which service center responded to the call from Mr. al-Hakim for service in February of 1997?

A Hayward.

Q And in '97, the company that you worked for was called Rescue Industries?

A Rescue Rooter. It was -- Rescue Industries was our headquarters name, yeah.

Q Was there any relationship with ServiceMaster at that point?

A No.

Q So Rescue Industries was the parent company or the owner of the Rescue Rooter at that time?

A Correct.

Q How long have you been with Rescue Rooter in one name, shape, or form?

A A total of 23 years.

Q Have you been in management the whole time, or did you start off working in the field?

A Twenty of those years are in management.

Q Three in the field?

A M-hm.

Q So if my math is right, you started with them in about 1978 or '79?

A Eighty- -- '81. So I might be wrong on the 23 years. '81. April 11th of 1981.

Q And you were a service technician?

A Yes.

Q Were you a journeyman plumber at that time?

A No.

Q Did you have any plumbing training when you hired on with service --

MR. CROWLEY: Stop. Don't answer the question.

MR. BRADY: His background is relevant here, Dan.

MR. CROWLEY: No, it's not. He's been designated as the person most knowledgeable. Besides, even if it was relevant, what his background was at the

time he hired on in 1981 is not relevant. It's outside the scope of the deposition notice. Please move forward.

MR. BRADY: You're going to refuse to allow him to answer questions about his background?

MR. CROWLEY: No. If you want to ask him, on February 18th or 17th, whatever the date was, 1997, what was his level of experience, he can answer the question.

What his level of experience was in 1981 -- April 11th of 1981 has absolutely nothing to do with the deposition notice. He's not going to answer the question, Steve. You can think what you want. You can rephrase it. Let's move forward.

MR. BRADY: Sure.

Q Why don't you tell me about all of your background, training, and experience as a plumber that you possessed in February of 1997.

MR. CROWLEY: Go ahead.

THE WITNESS: I'm a certified plumber through the company, which had its own training course. I was IAPMO certified.

(Reporter clarification.)

THE WITNESS: IAPMO, International Association Plumbing Mechanical Organization.

I have been involved in many workshops, tech

skill classes.

MR. BRADY: Q. What's the highest level of formal education you completed?

A High school.

Q When did you graduate?

A 1977.

Q Did you have work experience in the plumbing area before you started with -- this is the last question -- before you started with Rescue Industries?

A No.

Q Okay. Have you ever testified in court?

A No.

Q Have you prepared any documents regarding Mr. al-Hakim's February 1997 claim?

MR. CROWLEY: Other than the documents that have been produced? Because there's a letter in there. So --

MR. BRADY: I understand.

MR. CROWLEY: Well, are you asking him, other than documents --

MR. BRADY: Yes.

Q Other than the documents that have been produced, have you prepared any other documents regarding this matter?

MR. CROWLEY: If you've prepared anything in

anticipation of litigation or at the request of your attorneys, either your present attorneys, with me, or company attorneys, don't answer the question.

If you prepared anything outside of that, you can answer the question, if it's other than what we've produced today.

THE WITNESS: I can't answer the question, then.

MR. BRADY: Q. How many conversations have you had with Rick Styrett -- I'm mispronouncing his name -- Syrett regarding what happened at Mr. al-Hakim's case in February 1997?

A I really don't recall how many.

Q Are we just talking a couple, maybe two or three?

A I -- I don't recall. A few.

Q You said Mr. Syrett left the company in 1998. Had he left the company by the time the lawsuit came in or -- if you know?

MR. CROWLEY: Assumes facts not in evidence. When was the lawsuit -- when did the lawsuit -- you're talking about when the lawsuit was filed?

MR. BRADY: Yes.

MR. CROWLEY: What was the date the lawsuit was filed?

MR. BRADY: I don't have it in front of me. It doesn't matter.

Q I just want to know whether or not Mr. Syrett, was still there when you were served with the lawsuit. That's a fair question.

MR. CROWLEY: One, you're assuming he was served with the lawsuit.

MR. BRADY: If he knows. If he doesn't know when he was served with the lawsuit, he can say that. You don't have any -- if you've got a legal objection, make it.

MR. CROWLEY: It assumes facts not in evidence.

MR. BRADY: Q. Do you know whether or not Mr. Syrett was still working at the company when the lawsuit was served by Mr. al-Hakim on Rescue Industries?

A I really don't know.

Q Did you talk to Mr. Syrett about this matter on the day that he came back from doing the job at Mr. al-Hakim's home?

A No.

Q Did you talk to him within a day or two of the time that he actually went out to Mr. al-Hakim's residence?

THE WITNESS: I need to talk to you about

that.

MR. CROWLEY: Okay. Let's take a break.

MR. BRADY: Off the record at the witness' request.

(Recess was taken 2:31 p.m. to 2:33 p.m.)

MR. CROWLEY: There is a question pending. And he'll answer your question.

MR. BRADY: Yeah.

MR. CROWLEY: But I do want to caution Mr. Peterson, if you don't recall dates, be very comfortable in just saying, "I don't remember when the conversation was." As I told you, they are asking you questions about things that occurred four years ago -- literally, four years ago. So be very comfortable, if you don't remember --

MR. BRADY: I told him that before we started --

MR. CROWLEY: Yeah, I know.

MR. BRADY: -- if he doesn't remember one of my questions, that's fine.

Do you want to read the last question back, please, Ms. Reporter.

(Record read as follows:

Did you talk to him within a day or two of the time that he actually went out to

Mr. al-Hakim's residence?)

THE WITNESS: I don't remember.

MR. BRADY: Q. When was the first time that you became aware that there was a problem stemming from Mr. Syrett's service call at Mr. al-Hakim's residence on February 18th, 1997?

MR. CROWLEY: This is the kind of question where it's perfectly legitimate to say "I don't remember."

MR. BRADY: Let's let him answer. Maybe he does. Let's not coach him.

MR. CROWLEY: I'm not coaching him.

MR. BRADY: Maybe -- you know, I'll help refresh his recollection.

Q And, again, let me just explain something to you, because this may make it easier, too, Chris. A lot of times you may not remember an exact date, and that's not what I'm seeking. I'm entitled to your best estimate here today. So if you can say "within a couple of days" of the time that the service call happened, "within a week, "within one to three days," some range, any kind of a reasonable answer, I'm entitled to it.

But I don't want you to guess, and neither does anyone else. And to kind of quickly illustrate the difference, if I was to ask you to estimate the width of

this conference room table you and I are sitting across from one another at, you could tell me, based on your experience and working with measurements, and your ability to see the table and perceive it that it's three or four feet across, right?

A Correct, yes.

Q Okay. If I was to ask you, though, the width of the conference room table at my sister's law office in Seattle, Washington, you'd just be guessing because you've never seen the table, and you don't have enough information to give me any kind of a reasonable answer.

Do you understand the difference?

A Yes, I do.

Q Okay. I'll work with you, and we'll try and narrow things down. But, again, we don't want you to guess here. If all you'd be doing in response to one of questions is guessing, you can tell us that. But I will try and work with you, and maybe we can get some ranges as to when things occurred.

I know there's been a substantial amount of time passage; I'm aware of it. I couldn't tell you any specifics about things I did on February 18th of 1997. But I could give you some idea within a reasonable period of time after special events occurred in connection with my work, when things happened.

If you can, great. I'm entitled to them. If you can't, you can't. And I would heed to your counsel's recommendation and what I previously told you in this case.

Do you understand?

A Yes, I do.

MR. CROWLEY: Now, just so that we're clear, when you start a question with the word "when," you are not referring to a specific date?

MR. BRADY: That's correct.

MR. CROWLEY: You are referring to -- just so you understand --

MR. BRADY: Q. Your best estimate.

MR. CROWLEY: -- because you are entitled to take the words that he gives and interpret them.

THE WITNESS: So "when" means an exact date.

MR. CROWLEY: Exactly right. So that's why I am telling you, when he starts a sentence or question with the word "when," if you can answer that within a time frame, go ahead. If you cannot answer that within a time frame or specific date, be very comfortable and just say "I don't remember."

MR. BRADY: I'm very hopeful we'll finish by 4:00 if you can do that. Otherwise, I have no idea, and I won't be responsible.

Q But go ahead. Do you have some -- can you give me some, then, estimate within what period of time you believe after this incident occurred at Mr. al-Hakim's house on the 18th of February, 1997, that you became aware of it?

A I believe it was probably 90 days.

Q So you believe 90 days after the incident was the first time you got wind of it?

A Yes.

Q And you were the regional manager of the area that included the Hayward store that Mr. Syrett worked out of back in this period of time, in 1997, when you got knowledge of this claim?

MR. CROWLEY: Misstates his testimony. He was the district manager.

MR. BRADY: I'm sorry.

Q You were a district manager of the district which included the Hayward store?

A Yes.

Q Was that true in February 18th of '97, when the incident occurred?

A Yes.

Q And also true 90 days or so thereafter when you first heard about it?

A Yes.

Q Okay. For purposes of my questions, whenever I talk about "the incident" today, will you understand that I'm talking about the sewage backup that occurred at Mr. al-Hakim's house on February 18th of 1997, so I don't have to keep repeating that over and over again? I'm not going to talk to you about any other incidents.

A Yes.

Q So if I use the word "incident," you know that's what I'm referring to?

A I do.

Q Okay. How did you first became aware in this period or this time around 90 days after, say, mid-May of 1997, what it was that -- or how was it that this matter came to your attention?

A My assistant manager that worked for the Hayward facility notified me that he had a conversation with Mr. Hakim.

Q Al-Hakim.

A Al-Hakim. Sorry.

Q Who was that assistant manager you're referring to?

A Rick Staben.

Q Could you spell his last name.

A S-T-A-B-E-N.

Q Okay. He was your assistant district manager

at the time?

A Actually, he was the operations manager at the time.

Q And he was also in your district, that -- within -- that included the Hayward store?

A He was just the operations manager of the Hayward location.

Q Is Mr. Staben still with the company?

A No.

Q How long has he been gone?

A I'm guessing three years now.

Q Have you spoken to him at all since that time?

A Yes.

Q When is the last time you talked to Mr. Staben?

A I'd say roughly about a month ago.

Q When is the last time you spoke to Mr. Staben about this case?

MR. CROWLEY: Same caveat that I told you before. If you talked to Mr. Staben about this case while it's in litigation or while your attorneys were present or at the request of your attorneys, don't answer the question. If you talked to Mr. Staben about this case outside of those parameters, you can answer the question.

THE WITNESS: I can't answer the question.

MR. BRADY: My understanding of the privileges that confidential communications that -- you know, if he was a party to and Mr. Staben would be a party to, would certainly be covered. I believe you're overly, broadly restricting this witness' testimony. And I hate to have to bring a motion.

Are you willing to bend on that last instruction at all?

MR. CROWLEY: No.

MR. BRADY: I don't want to argue with you here today.

MR. CROWLEY: Neither do I.

MR. BRADY: Q. Did you have any conversations with Mr. Staben about this incident -- strike that.

When Mr. Staben first notified you about this matter, you say 90 days after it occurred or thereabouts, what did he tell you?

A That there was a complaint from the customer; that we're being accused of causing a flood.

Q Anything else you recall?

A That's when I first -- you know, the first thing I heard about it.

Q Okay. What did you say to him?

A To go meet with -- go out on the job site and

look at the damage, if there's any.

Q Did he agree to do that?

A Yes.

Q When was the next time -- how long after this first contact with Mr. Staben about this incident was it that you talked to him again?

A A few -- roughly, maybe a few days after that.

Q What did Mr. Staben tell you at that time?

A Based upon his findings, he did not feel that our plumber caused any damage.

Q Did he tell you what he did to come to his conclusion that -- and when you say -- I'm sorry, let me back up. Strike that.

He told you that, based on his findings, he didn't believe that your plumber had done any damage, correct?

A Correct.

Q When he referred -- he was saying "your plumber," you're referring to Rick Syrett?

A The technician that was out there on February 8th, yeah, Rick Syrett.

Q Were you aware -- when you first talked to Mr. Staben mid-May, say, of 1997, that Mr. Syrett was the technician who had done the work at Mr. al-Hakim's house?

A Yes.

Q He told you that?

A Yes.

Q Did Mr. Staben, in the second conversation that you had with him about this matter, tell you what he had done to come to his conclusion that Mr. Syrett had not done anything wrong in connection with the service work he had done at Mr. al-Hakim's residence?

A Yes. He reviewed the work that Rick Syrett did, looked at where he was performing the work, investigated the basement, and gave me feedback based upon his visit.

Q When you say he "investigated the basement," what did he do? What was your understanding?

A Visually looked at the damage.

MR. CROWLEY: In the basement?

THE WITNESS: In the basement, correct.

MR. BRADY: Q. Did Mr. Staben tell you what he believed to be the cause of the damage to the basement?

A He did not know what the cause was. He did not know what the cause was.

Q Did he tell you anything about the extent of the damage in the basement when he went out and inspected the home?

A He told --

Q "He," meaning Mr. Staben.

A He told me there were carpets that were wet. There was damage to the tile. There was Sheetrock that was soaked.

Q Anything else that you recall?

A That's about it.

Q Okay. Did Mr. Staben tell you, when he first spoke to you the first time, in May of 2000 -- of 1997, I'm sorry -- why he waited 90 days after the incident -- or why it was that he hadn't notified you sooner than, say, 90 days following this incident?

MR. CROWLEY: It's argumentative.

MR. BRADY: Q. You can answer the question.

MR. CROWLEY: If you understand what he's asking you, it assumes that Staben waited for some period of time, as opposed to when the complaint first came in. And that's the basis for it being argumentative. If you want to rephrase it --

MR. BRADY: Sure.

Q Did Staben tell you when -- in the first conversation with him, when he first became aware that Mr. al-Hakim had a complaint regarding Mr. Syrett's work at his home on February 18th, 1997?

A Well, I thought I made that clear. It was

that Rick Staben -- it was roughly 90 days when he first found out about the complaint. He did not wait 90 days before he informed me of it.

Q Okay. Was it your understanding that Mr. Staben notified you immediately after Mr. al-Hakim --

A Yes.

Q -- complained?

A Yes.

Q You've got to wait for me to finish.

A I'm sorry.

Q Did Mr. Staben tell you why, or if he discussed with Mr. al-Hakim why Mr. al-Hakim waited 90 days before complaining to Rescue Industries about Mr. Syrett's service call on February 18th, 1997?

A No.

Q Did you conclude that whatever damage had occurred at Mr. al-Hakim's -- in Mr. al-Hakim's basement was caused by something that happened after the February 18th, 1997 service call by Mr. Syrett?

MR. CROWLEY: I'm going to allow you to answer the question, but with the same caveat I put on it before. If you reached any conclusions or anything else, in conversations with your attorneys --

MR. BRADY: No. Let me ask it a different

way. Let me --

Q Back at the time that you talked to Mr. Syrett in May of '97 -- I'm sorry, with Mr. Staben, when he first notified you and then told you a few days later that he had investigated, and it wasn't a Rescue Industries problem, did you assume at that time that whatever damage Mr. Staben had seen in Mr. al-Hakim's basement was caused sometime after the February 17th, 1997 service call?

MR. CROWLEY: Don't answer the question.

Calls for you to guess or speculate.

When you ask him did he assume -- please rephrase the question.

MR. BRADY: Q. Did you have an understanding, back in May of '97, that whatever damage Mr. Staben had observed in Mr. al-Hakim's basement had happened sometime after the February 18th, 1997 service call?

MR. CROWLEY: If you had that understanding, one way or the other.

THE WITNESS: No.

MR. BRADY: Q. Did you have -- did you believe or have any opinion one way or the other about whether or not any of the wet carpets, the damage to the tile, or the Sheetrock that was soaked that Mr. Staben told you he had seen in the basement -- any of that

damage was at all in any way related to anything that Mr. Staben had -- I'm sorry, that Mr. Syrett had done back on the February 18th service call?

A Rephrase it. That's a big, long question there.

Q Sure. You understood after you spoke to Staben the second time that there had, in fact, been, if not sewage, certainly water intrusion in Mr. al-Hakim's basement sometime before May of 1997, correct?

A Yes. But he --

Q Carpets were still wet --

A Go ahead. I'm sorry.

Q The carpets had been just -- reported to you were still wet, there had been damage to the tile, and the Sheetrock was soaked --

A Yes.

Q -- when Mr. Staben was there in May, correct?

A Yes.

Q Okay. Did you have any understanding as to whether or not any of the wetness that -- or the -- the water intrusion damage, which was apparently still fresh when Mr. Staben saw it in May, was in any way related to any work that Mr. Syrett had done in February of 1997?

A We believe it was not.

Q Did Mr. Staben tell you when you spoke to him

on the second occasion about this, after he did his investigation, that he had spoken to Mr. Syrett about what he had done on February 18th, 1997, during his service call?

A Repeat the question again.

Q Did Mr. Staben tell you, in the second conversation you had with him, that part of his investigation involved interviewing the tech, Rick Syrett, about what he had done or not done back on February 18th of 1997, when he was at Mr. al-Hakim's home?

MR. CROWLEY: You can answer the question. But this is asking for a specific recollection during the second conversation. So if you recall that during the second conversation, tell him. If you don't recall it, tell him you don't recall it.

MR. BRADY: Please. Make a legal argument -- objection, if you have it. You don't need to coach him after each question. He knows now if he doesn't recall something not to answer it. Please, Counsel. You're just coaching the witness. It will be transparent on the transcript and we won't get out of here by 4 o'clock.

THE WITNESS: I do know he talked to Rick Syrett.

MR. BRADY: Q. And he talked to him between the time of your first and second call with him, or is that your understanding?

A He did talk to him from the first time we found out that there was a problem at the residence, and maybe a few days afterwards, between that time period.

Q When you spoke to him for the second time?

A When Rick Staben spoke with Rick Syrett, yes.

Q That would be the first thing you would expect your assistant manager to do in an investigation, after a customer complaint, would be to contact the service tech who did the job, correct?

MR. CROWLEY: You're talking about the February 18th, 1997 incident?

MR. BRADY: Yeah.

MR. CROWLEY: Okay. Then you can answer the question.

THE WITNESS: Yes.

MR. BRADY: Q. What did Staben tell you in the second conversation with him that Syrett had told him about what had gone down during that February 18th service call?

A Basically, what Rick Syrett -- the services that Rick Syrett performed, where he performed his work, what the cause of the blockage was, and asked him

whether he, you know, caused this damage. He asked him what happened.

Q When Mr. Staben talked to Mr. Syrett about what happened, Mr. Syrett did admit that there had been some type of a spill of sewage water in the home -- in Mr. al-Hakim's home, correct?

A Yes.

Q Was it your understanding, though, that Mr. Syrett, even though this sewage spill had occurred, did not believe he was responsible for that spill having occurred?

MR. CROWLEY: Can you read the question back.

(Record read as follows:

Was it your understanding, though, that Mr. Syrett, even though this sewage spill had occurred, did not believe he was responsible for that spill having occurred?)

MR. CROWLEY: I do have a problem with the use of the word "sewage." Because in your client's deposition, there was many different definitions of the word "sewage." So --

MR. BRADY: Let's just -- let's let "sewage" include toilet water.

MR. CROWLEY: I don't know what "sewage" -- I thought I knew what it meant until your client's

deposition. After your client's deposition, I have no idea what it means, whether it means clear water, whether it means feces in the water, whether it means -- I have no idea what it means.

So I don't know how this witness could know what you mean when you talk about "sewage water."

If you understand -- or you have a definition, in your own mind, of what sewage water means --

MR. BRADY: Why don't you let me define it. That way will easy. Okay?

MR. CROWLEY: Go ahead then.

MR. BRADY: Q. When I talk about "sewage water," I'm talking about water that goes from a toilet supposedly down to a sewer, presumably because it's come in contact either directly or indirectly with human excrement.

Do you understand that to be sewage water?

A Yes, I do.

Q Okay. Using that definition, which is pretty straightforward, I think --

MR. CROWLEY: Certainly not pretty straightforward with your client.

MR. BRADY: We're not talking about my client.

MR. CROWLEY: We can discuss that at another time.

MR. BRADY: Are you done?

MR. CROWLEY: Ask your question.

MR. BRADY: It's already been asked. Can you read back my last question, please.

(Record read as follows:

Was it your understanding, though, that Mr. Syrett, even though this sewage spill had occurred, did not believe he was responsible for that spill having occurred?)

THE WITNESS: I need you to define "spill."

MR. BRADY: Q. Well, real simply, that water had come out the plumbing system and into the interior of the basement of the house, either from need to you drain or need to you toilet or some other element of the plumbing in the home.

MR. CROWLEY: If you can't answer his question with that definition, tell him you can't answer the question. Because I -- whatever.

THE WITNESS: I can, but I need to explain need to you little bit more.

MR. CROWLEY: No. You're not going to explain. If you can answer his question --

MR. BRADY: Are you making a legal objection or instructing him not to answer, or are you going to try and coach him through this, Dan? Come on.

MR. CROWLEY: Are you done?

MR. BRADY: If a question requires --

MR. CROWLEY: Are you --

MR. BRADY: -- a brief explanation, the Code allows the witness to give a brief explanation.

MR. CROWLEY: No, it doesn't.

MR. BRADY: I don't have to ask "yes" or "no" questions, Counsel. That is not the rule.

MR. CROWLEY: Okay. And if he cannot answer your question with a "yes" or "no," he doesn't have to give an explanation.

MR. BRADY: Is it your understanding now that I must ask only "yes" or "no" questions here today?

MR. CROWLEY: You want to ask him a question, or you want to have a discussion? What do you want to do?

MR. BRADY: I want him to answer my question so I don't have to bring a motion. This is getting obstructive.

MR. CROWLEY: You know what, don't talk to me about being obstructive. Don't even go there. Let's try to get through this.

If you can answer his question as phrased, go ahead. If you cannot, don't.

THE WITNESS: One more time, can you read the

question.

(Record read as follows:

Was it your understanding, though, that Mr. Syrett, even though this sewage spill had occurred, did not believe he was responsible for that spill having occurred?)

THE WITNESS: Yes.

MR. BRADY: Q. And why did Mr. Syrett feel that he wasn't responsible for any type of a sewage spill that occurred during his visit there on February 18th, 1997?

MR. CROWLEY: If you can answer the question without speculating because of the way it's phrased, do so.

MR. BRADY: Okay. Go ahead.

THE WITNESS: He believed that the water that was there was there prior to him servicing the house.

MR. BRADY: Q. So my understanding, if I'm hearing you here, is that Staben reported to you that Mr. Syrett said that there was some sewage water present in the basement, but that it had been there prior to his arrival?

A Correct.

Q And then no additional water -- sewage water spilled in the home during his service visit?

A There was additional water.

Q Where did the additional water come from, did you understand that?

A Yes. It came from a cleanout in the basement taking off the cleanout to gain access. Water was told to be stopped. No water being used, and water was continuing to come out, very slowly.

And the tech -- Rick Syrett asked if there was any water being run in the houses. He was told no. He went and investigated upstairs and found out that the toilet upstairs had a flapper ball that was stuck open, which was causing the toilet to continuously run.

He fixed that problem, went downstairs, and the water stopped. Roughly, approximately, three gallons of water had come out of the cleanout.

Q That was what Mr. Syrett estimated?

A Yes.

Q Did Mr. Staben see evidence, when he went to the house, that he reported to you that there had only been a few gallons of water that had come out of the cleanout as a result of that release while Mr. Syrett was at the house?

A No evidence of water coming out. That would be hard to determine, which is his water and their water.

Q Is it fair to say the damage that Mr. Staben reported to you would have entailed a great deal more than three gallons of leakage of sewage water in that basement?

A He didn't estimate how much damage was there.

Q Well, did he tell you that the water that he -- or the damage he saw in the basement would not have been caused by three gallons of water from the cleanout?

A Yes.

Q Did you believe, then, that whatever had caused the damage to -- or rather, that the damage that Staben saw, the wet carpet, the tile, and the dryrot -- on the Sheetrock, involved some larger spill that had occurred prior to Syrett's visit there at the home?

A Are you asking whether Rick Staben felt that way?

Q Yes.

A Yes.

Q Did Rick Syrett tell Staben that there had -- that there were wet carpets and other sewage water damage in the basement, when he arrived there at Mr. al-Hakim's home on February 18th, 1997?

MR. CROWLEY: Did Staben report to you that Syrett had told him that --

THE WITNESS: I understand.

MR. CROWLEY: -- not that you were present?

THE WITNESS: Yes.

MR. BRADY: Q. So that was the basis, then, for Staben's belief that this damage that he went and saw there at the house had preexisted or had been caused prior to Syrett's arrival at Mr. al-Hakim's home, on February 18th, 1997?

A That's correct.

Q Do you know when Mr. Syrett first reported the spill from the cleanout that you've described that was caused from the upstairs toilet that was stuck -- when he first reported that to anyone from Rescue Rooter or Rescue Industries?

A I'm not sure when he reported it.

Q Did he make any note of it in his paperwork that he prepared there at the residence, on February 18th, 1997? And again, refer to the document.

MR. CROWLEY: Take a moment and look at the documents.

THE WITNESS: Yes, he did.

MR. BRADY: And again, we've marked collectively as Exhibit 2, the four pages of documents that you produced here today. I'm going to mark those 2-1, 2-2, 2-3, and 2-4. And, here, I'll give you these

so you can see the order. There you go.

What is 2-1?

A That is a computer-generated call slip. When the call is entered into our system, it gives a history.

Q This call came in -- it says on February 18th, 1997 at -- it looks like 1712 or 5:12 p.m.?

A That's correct.

Q Is that the time Mr. al-Hakim, you believe, contacted Rescue Rooter to have the technician come to his home?

A I don't recall.

Q What does that show, the call time? What -- are you familiar with the procedure on here?

A Yes.

Q Okay. It's down below it, it shows it says "NTFY," which I understand is notify, is that right?

A Yes.

Q And then arrive, "ARR," and finish, "FIN;" is that right?

A Yes.

Q So it's safe for us to assume, in looking at this 2-1, that the call comes from the customer, presumably Mr. al-Hakim, at around 5:13 p.m.; that the technician arrives at his home around 1830 or 6:30 p.m. and departs his home at approximately 7:36 p.m.; is that

what this indicates?

MR. CROWLEY: Go ahead and answer.

THE WITNESS: That's what this indicates, yes.

MR. BRADY: Q. Is that consistent with your understanding of what took place in this case?

A Yes.

Q That's consistent with what Mr. Staben told you?

A Yes.

Q And Mr. Syrett told you?

A I didn't have a conversation --

MR. CROWLEY: He's asking you about times now.

THE WITNESS: I understand. I did not have a conversation with Rick Syrett over that.

MR. BRADY: Q. Nothing about any problem with any leakage on 2-1, any sewage spill, correct?

A No.

Q Is that correct?

A No.

Q That's not correct?

A No. I'm sorry. There is no documentation of it.

Q Okay. I'm not trying to get you to say a double negative here.

Let's turn then to 2-2. Is this the actual

invoice or whatever we should call it that the tech, Mr. Syrett, here would have had with him and filled out at the scene?

A It is a copy of the invoice.

Q This is a document that your technicians fill out at the customer's home at the time they do the work to bill the customer for the work, correct?

A That's correct.

Q And this is the document that you were speaking of a moment ago that indicates that a sewage spill, albeit a minor one, did occur during the course of the service call?

A That's correct.

Q And it states, "After I opened up cap, one minute later water came out from upstairs bathroom." And then it says, "3 gallons on floor and carpet."

A That's correct.

Q And that's what indicated to you -- you believe Mr. Syrett prepared this back on the date of the service at Mr. al-Hakim's residence?

A I'm not sure -- I can't recall when he wrote what he wrote.

Q Does this service order -- strike that.

Where did you understand that the three gallons of water on the floor in the carpet --

what part of the home did that water go into?

A In the basement, in the laundry area.

Q That's based on what Mr. Staben told you?

A No.

Q Is that based on your own --

A Yes.

Q -- review?

A Yes.

Q After you and Mr. Staben spokea, a few days after this was first reported by Mr. al-Hakim, how did you leave it with Mr. Staben after he had advised you that his findings were that the damage that he observed in the home was not caused by Rescue Rooter?

A I told him to inform -- I'm sorry, is it al-Hakim?

Q Al-Hakim.

A Al-Hakim -- I told him to inform al-Hakim and to give him his findings. And Rick basically wanted me to review it and take -- go out and take a look at the job as well.

Q Did Mr. Staben write a letter to Mr. al-Hakim to report his findings?

A Not that I know of.

Q Is the only letter that was written from Rescue Industries to Mr. al-Hakim the letter that you

have produced?

A I believe so.

Q Okay. So the only letter that you're aware of that Rescue Industries or Rescue Rooter sent to Mr. al-Hakim is this letter that we've marked 2-4 that you produced here today, dated June 25th, 1997?

A Yes.

Q And is this a letter that you wrote?

A Yes, it is.

Q Did Mr. Staben assist you in preparing this letter?

A Yes, he did.

Q Did he write it for your signature, basically?

A No.

Q How did Mr. Staben assist you in preparing this letter?

A Taking what we found, based upon our investigation.

Q After you had this second conversation with Mr. Staben, when he said his findings were that Rescue Rooter wasn't responsible, you asked him to notify Mr. al-Hakim --

A M-hm.

Q -- of that? "Yes"?

A Yes.

Q Did you have some understanding as to how it was -- if Mr. Staben did notify Mr. al-Hakim at that time?

A I do not recall.

Q Did he -- how long after this second conversation with Mr. Staben did you speak to Mr. Staben again about this matter, roughly?

A From the second --

Q After the second conversation.

A When did I talk to him again about that?

Q Yeah.

A Probably the next day.

Q What was the substance of that conversation?

A A site visit to go out and take a look at the damage.

Q So you spoke to Mr. Staben. He told you his findings, and then the following day you spoke to him again about actually going out with him to the al-Hakim residence?

A I believe it was roughly around one to two days afterwards.

Q So we're still talking probably May of 1997?

A M-hm.

Q "Yes"?

A Yes.

Q Why did you feel you needed to go out to the residence if Mr. Staben had already inspected the damage and determined that Rescue Industries was -- Rescue Rooter was not responsible?

MR. CROWLEY: You keep phrasing your questions argumentatively. You can ask the same question so it's not argumentative.

MR. BRADY: I didn't think it was argumentative. I just asked him why he wanted to go out there.

Q Why did you want to go out there after Mr. Staben told you his findings?

MR. CROWLEY: When you started out with "why," it's argumentative.

MR. BRADY: You've got to be kidding.

MR. CROWLEY: No, I'm not.

MR. BRADY: I've never heard that before, but I'll keep that in mind.

THE WITNESS: Rick Staben asked me to.

MR. BRADY: Q. So even though he reported to you his findings were Rescue Rooter was not responsible, Mr. Staben requested that you come out and actually look at the damage?

A Yes.

Q Did he tell you why it was that he wanted you

to look at it?

A Yes.

Q Why was that?

A He felt that there could be an argument that occurred, because we believe it was not our responsibility or our fault. And mainly, he wanted me to come out and take a look at it as well.

Q What argument did he feel there was that the damage had actually been caused by Rescue Rooter, if he told you?

MR. CROWLEY: I think that misstates his testimony.

THE WITNESS: What's that?

MR. CROWLEY: I think that misstates his testimony. If it doesn't, go ahead and answer the question.

MR. BRADY: Q. What argument was it that Mr. Staben felt that there might be that Rescue Rooter had caused this flood damage that he observed?

A We were being accused of it.

MR. CROWLEY: I think you did misstate his testimony, or you misunderstood his testimony.

MR. BRADY: I must have --

MR. CROWLEY: I don't know which it was, and I don't really care.

MR. BRADY: I tried to use his words. Let me ask another question.

Q Is it fair to say that Mr. Staben wanted to get a second opinion from you before he notified the -- Mr. al-Hakim of the company's decision about this damage?

A No.

Q Why, then, did he tell you that he needed you -- or asked you to go out there to look at the places as well?

MR. CROWLEY: It's already been asked and answered.

MR. BRADY: I didn't understand the answer last time.

THE WITNESS: He thought it was a difficult situation and wanted the support of me coming out there with the technician to look at the problem.

MR. BRADY: Q. What was difficult about the situation?

A Being accused of something that we had no part of.

Q My understanding, he saw some fairly extensive damage that he felt Rescue Industries wasn't responsible for so he wanted to make sure that it was documented?

A Correct.

Q So you made a plan to talk to him on the following day after the second conversation to coordinate a trip out there?

A I believe it was within that time period, yeah.

Q And how long after that did you actually go out to Mr. al-Hakim's home?

A I believe it was sometime in June, roughly, maybe the first week of June, somewhere around there.

Q Within a couple of weeks of the time that you planned to do so with Mr. Staben?

A It didn't seem two weeks after the call. I mean, it seems like we went out there pretty quickly.

Q Did anybody else go with you and Mr. Staben to Mr. al-Hakim's home?

A Yes.

Q Who?

A Rick Syrett.

Q So all three of you headed out to take a look?

A Yes.

Q And was this during the week, during your regular business hours?

A Yes.

Q And did you notify Mr. al-Hakim that you wanted to meet with him ahead of time?

A I did not call. I don't know.

Q Did you have Mr. Staben or Mr. Syrett call and set this up?

A Yes.

Q Was Mr. al-Hakim at the residence when you went out there, sometime in early June of '97?

A Was he at the residence when we called or when we arrived?

Q When you arrived.

A Yes.

Q So he was there for a planned meeting with you?

A Don't know if it was a planned meeting.

MR. CROWLEY: He was there.

MR. BRADY: Q. Was anybody else there besides the three of you from Rescue Rooter and Mr. al-Hakim?

A There was someone leaving his residence when we arrived. I don't know who that person was.

Q Does the person have any connection to this matter?

A No, not that I know of.

Q All right. Did you have a conversation with Mr. al-Hakim when you got to his home that day in early June of '97?

A I greeted him, told him who I was.

Q Had you ever met him before?

A No.

Q Did you do any research or check to see whether or not Rescue Rooter had made any prior calls to Mr. al-Hakim's residence?

MR. CROWLEY: Don't answer the question.

MR. BRADY: You're refusing to allow him to answer?

MR. CROWLEY: Yes.

MR. BRADY: On what grounds?

MR. CROWLEY: He is here as the PMK for the February 18, 1997 incident. Please confine your questions to that date and that incident.

MR. BRADY: Is that a legal objection?

MR. CROWLEY: Do not -- do not answer the question.

The legal objection is the question is outside the scope of the Notice of Deposition. He will not answer questions outside the scope of the deposition notice.

MR. BRADY: Q. Was Mr. al-Hakim pleasant to you when you arrived at his home in early June 1997?

A Yes.

Q And what did you ask him or say to him at that time?

MR. CROWLEY: You know what I mean. This is where you've got to think about his question. You say he is pleasant --

THE WITNESS: When we greeted, he was pleasant, yes, when we were greeting him.

MR. BRADY: Q. Did he become unpleasant?

A Yes.

Q What happened?

A We investigated the problem, took a look, showed him where the technician performed the work, explained the water that came out, how much water came out, what type of damage it would cause and we did not believe that the damage that was there was our fault.

We believe the water came up -- we went into a bathroom to show him, prior to us coming up, where the water came up. The technician, Rick Syrett, was explaining to him what he found when he got there on February -- whatever the date is, February 17th -- 18th, I'm sorry -- and showed him where the water was coming up.

And there seemed to be an argument. Mr. al-Hakim was accusing Rick of lying, and Rick said the same thing, that "You're not being honest." And he lunged towards him and started choking our technician.

Q Mr. al-Hakim lunged at Rick Syrett?

A Yes.

Q Did he actually physically touch him?

A Yes.

Q He grabbed him around the neck?

A Yes.

Q Did he hurt him?

A Yes.

Q Did Mr. Syrett need any type of medical attention?

A We got Mr. Syrett out of the house immediately, and he did go to the doctor's office.

Q Which doctor did you take him to?

A I do not recall. He stated he was going to the doctor's office.

Q So you don't know if he really did?

A I don't know.

Q Did you see any marks on his body from where Mr. al-Hakim grabbed him?

A Yes.

Q What did you see?

A Fingernail marks on his neck.

Q Just so I understand this, Mr. Syrett was trying to explain to Mr. al-Hakim how the damage in his basement was caused from the water coming up out of a toilet, unrelated to work he was doing at the home. And

Mr. al-Hakim called him a liar, he called Mr. al-Hakim a liar?

MR. CROWLEY: No. That misstates the testimony. Don't --

MR. BRADY: I'm sorry. How about letting me finish my question. If it misstates it, he can tell me.

Q But am I a generally understanding -- you observed this; is that right?

A Yes.

Q You observed Mr. Syrett explaining to Mr. al-Hakim what he thought caused the damage in his basement, correct?

A Yes.

Q And then you heard Mr. al-Hakim accuse Mr. Syrett of being a liar, correct?

A Yes.

Q And then Mr. Syrett told Mr. al-Hakim that he was being untruthful or a liar?

A Mr. Syrett -- Mr. Syrett did not call him a liar. He said he was not being honest.

Q And at that point, Mr. al-Hakim attacked Mr. Syrett?

A Yes.

Q Would you say this was a vicious attack?

MR. CROWLEY: Don't answer the question.

MR. BRADY: Q. Was Mr. al-Hakim -- did it look to you like he was trying to hurt Mr. Syrett?

A Yes.

Q Did you and Mr. Staben need to intercede to pull Mr. al-Hakim off of Mr. Syrett?

A I did not. The bathroom was small. Mr. Staben did.

Q So he had to -- Mr. Staben had to physically restrain Mr. al-Hakim?

A Yes.

Q Was Mr. al-Hakim yelling or saying anything or doing anything, other than trying to choke -- I mean, grab Mr. Syrett's neck?

A He was very angry. I don't know what he was saying.

Q Did he use any colorful metaphors?

A Who?

Q Calling -- Mr. al-Hakim, did he call Mr. Staben any names?

A No.

Q Any profanity?

A Mr. Staben, no.

Q I'm sorry. Did Mr. al-Hakim use any profanity?

A Towards?

Q Mr. Syrett or any of you.

A I don't recall.

Q What caused you to believe Mr. al-Hakim was very angry?

MR. CROWLEY: Don't guess or speculate --

MR. BRADY: Q. Just based on what you saw.

MR. CROWLEY: -- if it's anything other than what you saw or heard.

THE WITNESS: Assume prior to what made him angry? I don't understand.

MR. BRADY: Q. No, no. You described Mr. al-Hakim as very angry.

A M-hm.

Q What caused you to believe that he was very angry?

MR. CROWLEY: Other than what --

THE WITNESS: Other than lunging towards our technician and choking him? I find that to be defined as angry.

MR. BRADY: Q. You actually saw Mr. al-Hakim lunge at Mr. Syrett and choke him?

A Yes.

Q Were you surprised?

A Yes.

Q This caught you off guard?

A Yes.

Q And Mr. Syrett was injured badly enough that he told you he was going to leave Mr. al-Hakim's residence to go seek medical attention?

MR. CROWLEY: No. Misstates his testimony.

But if you can answer the question, go ahead.

MR. BRADY: Q. Is that fair?

A Later on, yes.

Q What do you mean, "later on"?

A He didn't go to the doctor right there. We got him out of the house.

Q But after you got him out the house, he told you he was going to go seek medical attention?

A No.

Q When did he tell you that?

A When we arrived back at the service center in Hayward.

Q Did he tell you that he was suffering some kind of physical pain at that time?

A I don't recall.

Q Immediately after this attack by Mr. al-Hakim, did the three of you leave Mr. al-Hakim's residence?

A We got Mr. Syrett out of the house, and Rick and I stayed in the house for approximately maybe about 30 minutes longer.

Q Did Mr. al-Hakim attempt to attack either you or Mr. Staben during that 30-minute period after you got Mr. Syrett out of the house?

A No.

Q Did Mr. al-Hakim calm down after you got Mr. Syrett out of the house?

A No.

Q Did he remain angry the entire time that you were there?

A Yes.

Q Did he say anything to cause you to believe he was still angry?

A Just raising his voice, upset, clearly upset.

Q Did he make any threats or accusations?

A No.

Q What did you talk to Mr. al-Hakim about during this 30 minutes after you got your injured colleague there out of the house?

A Well, he wanted us out of the house. And once we got Rick Syrett in the vehicle, he requested us to go ahead and clean up the mess that the service technician was there before. So that's what we were doing during roughly that 30 minutes.

Q There had been some mess that was created while the three of you were out at the home that day?

A No. The mess was put in his garbage can, and he did not like that it was put in his garbage can.

Q What mess?

A Raw sewage.

Q Who put raw sewage in his garbage can?

MR. CROWLEY: If you know.

THE WITNESS: I don't know who did it. But I was told who did it.

MR. BRADY: Q. Who were you told put the raw sewage in his garbage can?

A Rick Syrett cleaned up and put the raw sewage in his garbage can, is what I was told.

Q The raw sewage that was there back on February 18th of 1997?

MR. CROWLEY: He can tell you what he was told.

MR. BRADY: Yes.

MR. CROWLEY: He can't tell you when --

MR. BRADY: Right.

THE WITNESS: I'm assuming it was the raw sewage from that date, yes.

MR. BRADY: Q. So you're there in early June of 1997. And Mr. al-Hakim is telling you that he wants you to get garbage, raw sewage in his trash can that's been sitting there since February 18th out of the trash

can? Is that what's happening? I'm just trying to understand.

MR. CROWLEY: He was told that there was raw sewage in the garbage can.

THE WITNESS: He didn't say when or where it was from; just to clean the raw sewage out of the garbage can.

MR. BRADY: Q. And you and Mr. Staben attempted to do that?

A We did do it.

Q Why?

A We didn't want him to be more angry.

Q Was it your understanding that the raw sewage that you and Mr. Staben cleaned out of his garbage that day was the same raw sewage that Mr. Syrett had cleaned up when he'd been out there back in February?

A I'm not sure.

Q Is that what Mr. al-Hakim told you?

A Yes.

Q Did Mr. Syrett -- did you ask him about it later, saying, "Did you throw any raw sewage in the garbage can?"

A No.

Q So you don't know whose raw -- or what the genesis of this raw sewage was? You simply wanted to

mollify Mr. al-Hakim at that point so you agreed to his request?

A Yes.

Q And you pulled the raw sewage out of his garbage, put it in your truck?

A Had some plastic bags, put it in the plastic bags, and carried it in my personal car.

Q Was there literally pieces of raw sewage in the thrash can?

A I didn't bother to look inside the bag. It was just toilet paper.

Q Did it smell bad?

A Sure.

Q And you put it in your personal car?

A M-hm. My trunk.

Q Did it smell up the car?

A No.

Q How much are we talking about? How many garbage bags full of raw sewage?

A Very small bag, maybe about two handfuls.

Q So -- and this is what Mr. al-Hakim seemed upset about, two handfuls of toilet paper?

A Yes.

MR. CROWLEY: Okay.

MR. BRADY: Q. How long did it take you and

Mr. Staben to clean up this raw sewage that was in his garbage can?

A Five minutes.

Q What did you do with it after you put it in your trunk, drove back to your office with it?

A I don't recall what I did with it. I'm sure I threw it away.

Q Did you have any further discussion about what had occurred or the damage that -- the cause of the damage in Mr. al-Hakim's basement, with him, after you cleaned up the raw sewage in his garbage can?

A Conversation with who?

Q Mr. al-Hakim.

A No.

Q You said you were there for about a half-hour after you guys removed Mr. Syrett from the house. What else went on during that half-hour besides the cleanup of this raw sewage in his garbage can?

A Well, that was pretty much it. It took a while to find out that we had to clean out the raw sewage, and what the complaints were, and what his arguments were. And it was roughly about 30 minutes after the choking incident. And we left.

Q Did anyone call the police about this attack?

MR. CROWLEY: That you know of.

MR. BRADY: Q. That you know of?

A Yes.

Q Who called the police?

A Rick Syrett.

Q So Rick reported that he had -- reported to the Oakland police that he had been assaulted by Mr. al-Hakim?

A He had a conversation with me that he was going to contact the police department.

Q Do you know -- did he tell you later if he ever did that?

A I don't recall.

Q Did you suggest to him that he call the police and file a complaint against Mr. al-Hakim for attacking him?

A No.

Q When he told you he was thinking of doing that, did you tell him whether or not you thought that was appropriate?

A I told him if he felt comfortable enough to do that, that was his decision.

Q Did Mr. Syrett miss any time from work from his injuries from this attack by Mr. al-Hakim?

A I believe roughly around one day. I don't know if it was related to that.

Q Did Mr. Syrett have any scars from this choking attack by Mr. al-Hakim that you're aware of?

A Not that I'm aware of.

Q And you don't know whether he did actually go for any medical treatment?

A Not that I'm aware of.

Q Did he make any claim, Mr. Syrett, for workers' compensation benefits from his injuries from this attack?

A No.

MR. CROWLEY: You'll have a chance to request him all these questions at trial.

MR. BRADY: I'm sorry?

MR. CROWLEY: You'll have a chance to ask Syrett all these questions at trial.

MR. BRADY: Q. Did you ever go back out to Mr. al-Hakim's residence at any other occasion after this meeting in early June of 1997?

A No.

Q Did you ever personally see Mr. al-Hakim on any occasion after that date until today?

A No.

Q Have you ever spoken to Mr. al-Hakim on any occasion after this meeting in early June of 1997 until today?

A No.

Q Let's take a look at Exhibit 2-4, your June 25th letter.

A M-hm.

Q You indicate in here, and I'm quoting you, about five lines down, that your opinion was based on your "visit to your residence where we investigated the damage and a written letter from Water Damage Experts who confirmed that the damage was cause by several other floods in the past."

Do you have a copy of that letter from Water Damage Experts?

A No, I don't.

Q Do you remember who you talked to over at Water Damage Experts?

A I wrote "Chris" in the letter. I do not know his last name.

Q Who was your claims adjustor that you refer to there in the letter?

A Jim Baker.

Q And who is he with?

A He was an employee of ours that worked in our headquarters office in San Diego at the time.

Q Was Water Damage Experts a firm that Rescue Rooter worked with in connection with its work?

Well, back in June of '97, when you wrote this letter, what was the relationship, if there was any, between Rescue Rooter and Water Damage Experts?

A We use all kinds of companies. I just -- I don't know how that company got called out, whether it was us or whether he called them out.

Q Did you use them for analysis or cleanup of situations when a problem arose on a job?

MR. CROWLEY: Wait a minute. He's not going to answer the question. February 18th, 1997, was the deposition notice. It's outside the scope.

MR. BRADY: Q. Well, when you hired -- when you -- did you ask Water Damage Experts to do some work in this case back in June of '97?

MR. CROWLEY: He already said he doesn't know if they called them out or al-Hakim called them out. He's already answered that.

THE WITNESS: No.

MR. BRADY: Q. So you don't know who called out Water Damage Experts?

A No.

Q But you believe that Water Damage Experts provided a written report to Rescue Rooter, or you got a copy of a report they wrote which exonerated Rescue Rooter for any damage caused in Mr. al-Hakim's

basement?

A Yes. But I don't recall the details of what was written on there. I don't have a copy of it.

Q But it supported your position that Rescue Industries -- or Rescue Rooter and Rick Syrett had done nothing wrong, correct?

A It supported the fact that the flood was caused over a long -- over a period of time prior to us coming out.

Q Where in this letter do you mention the fact that Mr. al-Hakim attacked Mr. Syrett during this visit?

MR. CROWLEY: The document speaks for itself.

MR. BRADY: Q. Well, is there some reason why, Mr. Peterson -- I've read the letter a number of times -- that you didn't mention in your June 25th, '97 letter, the attack that you describe that Mr. al-Hakim made on Mr. Syrett during your inspection?

A Other than trying to resolve an issue quickly and not let emotions get involved. I didn't feel we needed to go and rehash that.

Q Did you make any written report to anyone regarding this attack you witnessed by Mr. al-Hakim on Mr. Syrett?

A I did not.

Q Do you know whether Mr. Syrett did?

A No.

Q Did you ever see a written report or document that Mr. Syrett wrote about this attack Mr. al-Hakim made on your visit there?

A No.

Q How about Mr. Staben? Did he write any type of report documenting Mr. al-Hakim's attack on Mr. Syrett?

A I'm not sure.

Q It says "We paid for the initial water extraction, even though it was not caused by the work our technician did."

Why did you agree to do that?

A To resolve the matter. That's not uncommon.

Q It says, "The blockage in your sewer line caused your downstairs toilet to overflow in your basement prior to our arrival."

What did you base that understanding on?

A Information from our visit, Rick Syrett's statements that the place was flooded prior to him coming out.

Q Do you have any written documentation of the first time that Mr. al-Hakim complained to Rescue Rooter about the spill that occurred on February 18th, '97 during Mr. Syrett's work there at the property?

MR. CROWLEY: We have produced all the documents that were asked for in the Notice of Deposition relating to this incident. You have the file on this incident in front of you.

MR. BRADY: Q. Do any of these documents that you produced here today -- this is -- you don't have any other documents about this matter; is that right?

A No, not pertaining to this date and time, no.

Q Do you have any documentation or anything in the documentation you produced to substantiate when Mr. al-Hakim first reported to Rescue Rooter that he had a complaint about the February 18th service?

A No.

MR. BRADY: All right. Can we take a five-minute break?

(Recess was taken 3:30 p.m. to 3:36 p.m.)

MR. BRADY: Q. Let me ask you a few other questions. On page 2-1, the first page there, see the date up in the upper right-hand corner, "March 23rd, 00"? Do you know what that date is?

A That's probably a date we pulled up history on it.

Q Okay. So this is archived, and you just pulled it up then?

A Yes.

Q Okay. So that doesn't have anything to do with this case?

A No.

Q Okay. How did you -- you said that you and Staben got Syrett out of the house. Did you have to literally carry him out of the house?

A No.

Q How did you get him out of the house after al-Hakim attacked him?

A Rick Staben just talked to him, told him, "Hey, get out of here. Get out to the car. Sit down, you know. We'll be back." Just to get him out of the house.

Q Weren't you and Staben afraid that al-Hakim was going to try and attack you if he was angry and had just attacked Syrett?

A I was.

Q But you stayed anyway?

A No. I left.

Q But then you came back, is that it, to clean up this raw sewage in the -- in the garbage?

A Yes.

Q Why did you come back? Why did you even deal with Mr. al-Hakim again, if he was so angry and you were afraid of your physical health?

A I had Rick Staben there. He was visibly upset, but I knew he was upset at Rick Syrett.

Q So you felt he was -- that Rick Syrett, the technician, was the only one who was in real danger?

A Later on, yes.

Q Was Mr. al-Hakim upset because Mr. Staben said he wasn't being honest or because -- or did it appear he was upset because of the damage to his house, or if you know?

A He did not tell me why he was upset.

Q Did Mr. al-Hakim attack Mr. Syrett, though, immediately after Mr. Syrett said to him he wasn't being honest?

A Pretty quickly, right after that, yes.

Q Didn't Mr. al-Hakim walk out of the room first and go upstairs before that attack occurred?

A No.

Q After you wrote Mr. al-Hakim this letter, 2-4, dated June 25, 1997, that was your last contact with Mr. al-Hakim, correct?

A Yes.

Q You never corresponded with him, spoke to him, or talked to him again?

A No.

Q And this is the only time you ever

corresponded with him, correct, this June 25th, 1997 letter?

A That's the last time I corresponded with him, yes.

Q Did you send him other letters before that?

A No.

MR. CROWLEY: Relating to this incident?

MR. BRADY: Relating to anything.

MR. CROWLEY: No. We're not talking about "anything." We're talking about February 17th or 18th, whenever it is.

MR. BRADY: Well, maybe --

MR. CROWLEY: Let me finish.

MR. BRADY: Counsel, you let me finish talking to --

MR. CROWLEY: Let me finish. Otherwise, we are going to leave.

MR. BRADY: You can do whatever you would like to do, but you can't be rude to me. That, you can't do in my office.

MR. CROWLEY: The deposition notice called for the PMK for February 18th, 1997. We have produced somebody responsive to that deposition notice. Questions are going to be limited to "the incident," as you have defined it in this deposition, not whether or

not my client sent your client Christmas cards or God knows what else at any other time.

MR. BRADY: Q. Had you ever heard of my client before Mr. Staben called you in June of 1997 to tell you about his complaint?

MR. CROWLEY: Misstates his testimony.

MR. BRADY: I'm sorry, May of 1997.

Q Before Staben called you in May '97 and told you about this complaint, had you ever had heard of Abdul Jalil al-Hakim.

A No.

Q And following sending him this letter in June 25th of '97, you've had no further dealing with him, correct?

A Correct.

Q And this letter is the only letter that you recall ever sending -- strike that.

It's the only letter regarding any complaint Mr. al-Hakim had, from the February service, that you ever sent to Mr. al-Hakim, correct?

A Yes.

Q Did Mr. al-Hakim write any letters to you?

A No.

Q So you never received anything from him, correct, from Mr. al-Hakim?

A Not -- that I recall.

Q What happened to the letter from the Water Damage Experts, that you reference in your letter of June 25th, 1997? What happened to the letter that you had from the Water Damage Experts that you believe supported Rescue Rooter's position that the flood damage in his basement was caused by an incident prior to February 8th of 1997?

A The files pertaining to this case were sent to Jim Baker in San Diego. And since then, I haven't heard anything. Since I sent it to Jim Baker. We were acquired by ServiceMaster; so where those archives are now, are in our legal department somewhere in Memphis.

Q So you do have more documents about this that you haven't produced today. But you believe they are in your legal department in Memphis?

A I'm not sure whether they're there. All I know is I sent the documents to Jim Baker in San Diego.

MR. CROWLEY: These are the only documents we can find. I'll tell you that right now.

MR. BRADY: Did you make an attempt to contact the legal department?

MR. CROWLEY: Yes, we did.

MR. BRADY: Q. Did you contact them -- or you can tell me that. Did you contact the legal document to

see if they had any additional documents about this loss?

A Yes.

Q And they told you they did not?

A They could not find them.

Q So based on your reasonable diligent inquiry, these are the only documents that Rescue Rooter still has about this particular incident?

A Yes.

Q Have you attempted to contact Water Damage Experts to get a copy of their letter that supported your position that Rescue Rooter didn't cause the damage that Mr. Staben and you observed in Mr. al-Hakim's basement?

A No.

Q When you went to the house in early June of 1997, did you observe the wet carpet that Mr. Staben mentioned?

A It was not wet when I arrived there.

Q Did you see the wet Sheetrock?

A No.

Q Did you see evidence that there had been water damage to the Sheetrock?

A Yes.

Q Could you tell how recent it was?

A I couldn't recall how recent it was.

Q Did you see any damaged tile in the basement when you were there in early June of 1997?

A Yes.

Q Did you attribute that to the flooding which had occurred sometime just prior to Mr. Syrett's visit in February of 1997?

A I did not know when that occurred.

Q Did you ask Mr. al-Hakim if any efforts had been made to -- well, strike that.

You say in your letter that you paid for initial water extraction, even though it was not caused by the work your technician did. What water extraction are you talking about? Which water did you pay to extract that you saw when you were out there in early June?

A I don't know exactly what they extracted. I don't know how many gallons they extracted. This was just a bill that was submitted to us.

Q Was there still wetness and dampness, though, in the building, from the flood or the sewage spill in there, when you came out there in early June of 1997?

A I believe the carpet area where the technician was working was a little damp.

Q How about the Sheetrock, was it still damp or

moist?

A I don't recall.

Q It says "The blockage in your sewer line caused your downstairs toilet to overflow in your basement prior to our arrival."

Did you make some determination about how long we're talking about, whether it was days, weeks, or months, maybe, before the arrival?

A Some basic assumptions.

Q What was your assumption? Was it a matter of days before the February 18th service visit?

A The assumption -- I don't know how many days before. But there was some basic assumptions that the living quarters is mainly upstairs. And this is a basement that is not occupied -- or did not look like it was occupied, where someone upstairs could be running that water for quite some time before going downstairs and finding out they have a flood.

Q No. I mean, but was it obvious to you that the flood down in the basement that you observed damage from had occurred within a short time, at least -- within a matter of weeks, say -- of the February 18th service visit, as opposed to sometime years earlier?

MR. CROWLEY: The problem I have with the question, I think the question is vague and ambiguous.

You keep mentioning "flood," and I don't think anybody has testified that they observed flood damage. If you want to lay the foundation, go ahead.

MR. BRADY: No.

Q I'm talking about the same sewage spill that you saw evidence of in the basement. Did this appear to be something that had happened just prior to Syrett's visit or something that happened a long period before?

A I don't know how long before. Are you talking about -- now I'm confused. Are you talking about the three gallons that we're talking about?

Q No. The other damage that you say was not attributable to that, the wet carpets, the wet Sheetrock.

A I have no way of assuming how long beforehand that would cause that damage.

Q But Syrett told Staben, when he spoke to him, that that wet carpet and wet Sheetrock and all the other damage down there was -- was apparently still fresh when he got there, but had been caused before he began working there on the 18th, correct?

A No. The conversation was more prior to him coming out, that there was water coming out of the shower, water coming out of the toilet, water coming out of the laundry area, all that were downstairs, which

water came up; and that was wet prior. How much? How many gallons, I'm not sure.

Q But it was wet when Syrett got there?

A Prior to him coming out there, absolutely.

Q And wet when he got there?

A Yes.

Q Okay. So whatever was going on down there that caused the damage that you saw happened some period of time relatively close to when Syrett was out there if he still saw it fresh when he was there, correct?

A Yes. I don't know how long.

MR. CROWLEY: Don't guess or speculate.

MR. BRADY: Q. It says, "Rick Syrett worked in an area that was approximately 20 feet away."

20 feet away from what?

A 20 feet away from the bathroom. He was working in the laundry area. And I recall, how the basement is laid out, the bathroom is roughly 20 feet away.

Q Your testimony is that it was obvious, when you guys looked at it, that the bathroom -- the bath -- I'm sorry, that the toilet and the shower in the bathroom both had been leaking before Syrett's service call?

A It was known that there was water that --

there were signs of water coming up through those areas prior to Rick Syrett performing any type of service.

Q And that's what you thought caused the wetness that you observed?

A No. No. The wetness I observed, my belief, came from the three gallons of water that he indicates came out of the cleanout from the faulty flapper ball was stuck upstairs.

Q I see. So when you say you saw that there was some wetness in the carpet when you were out there in June, that was just from that three-gallon spill that Rick Syrett has taken responsibility for having occurred while he was there; is that right?

MR. CROWLEY: Don't guess or speculate. If you know, you can answer. If you don't know --

THE WITNESS: I don't know, to be exact.

MR. BRADY: Q. But is that what you believe that the wetness on the carpet was from, the three-gallon spill, as opposed to this other damage from his toilet or shower?

A No. I believe it to be the three gallons and any type of water that came up prior to Rick Syrett coming out.

Q Are there both a main and a secondary cleanout in Mr. al-Hakim's basement?

A Every house has a main and a secondary one.

Q When you say a "a small amount of water came out the cleanout," are you talking about main cleanout or secondary?

A The cleanout that he worked from.

Q Which one was that?

A I'm not sure exactly what cleanout he worked from.

Q Did Mr. Syrett tell you or tell Staben that he had removed the cover on the secondary to relieve pressure before removing the cover on the main?

A No.

Q Did you understand that's what he did?

A No.

Q Was that proper procedure?

A No. What I was told -- what he did was he took a cleanout to gain access to run his cable through, not to relieve pressure -- to gain access for the line, to snake it out.

Q Should Staben -- I'm sorry, should Mr. Syrett have checked the upstairs toilet to see that the flapper balls were not stuck and that nothing was running before opening that cleanout?

A No.

Q Wouldn't water have immediately started to

come out of the cleanout when he took the lid off, if the flapper ball was stuck upstairs?

MR. CROWLEY: Don't answer the question.

MR. BRADY: Q. Did you ever get any letters from CSAA about this?

A Not that I recall.

Q Did you ever speak to anybody at CSAA about this loss?

MR. CROWLEY: Wait a minute.

MR. BRADY: Q. About this incident.

MR. CROWLEY: About the February 18th, 1997 incident.

THE WITNESS: No.

MR. BRADY: Q. Have you ever spoken to Ron Cook about this incident?

MR. CROWLEY: Do you know who Ron Cook is?

THE WITNESS: I don't know who Ron Cook is.

MR. BRADY: Q. You never heard of him?

A M-hm.

Q "No"?

A I don't know who -- the name, I don't recall the name.

Q So you don't believe you ever spoke to Mr. Cook about this incident?

A I don't know if I have or not. I don't know

who Ron Cook is.

Q You have no idea of Mr. Syrett's current whereabouts, right?

A No, I don't.

MR. BRADY: All right. I think we're almost done. Just give me a minute to talk to my client.

(Recess was taken 3:52 p.m. to 3:53 p.m.)

MR. BRADY: Just a couple more, and we're done here.

Q You say, in this case, you don't know whether or not Mr. al-Hakim hired Water Damage Experts or Rescue Rooter; is that right?

A I'm not sure.

Q But Rescue Rooter had used Water Damage Experts in the past?

A Yes.

Q And you believe they did competent work?

A Yes.

Q You would stand by their report regarding this matter?

A I'm not sure who was out there that did the work. I can't answer that.

Q You believe they're a reliable company that does good work?

A Yes.

Q What's a "300 machine"?

A The manufacturer we buy our drain cleaning equipment is called Spartan. And the 300 is a mid-sized machine you use to clean out main lines.

Q When Syrett says here on the invoice, Exhibit 2-2, "After I opened cap 1 minute later water came out from upstairs bathroom, 3 gallons on floor and carpet," what "cap" is he referring to here, if you know?

A I don't know.

Q It says, "Water came out from upstairs bathroom, 3 gallons on floor and carpet."

Does that mean water came out in the upstairs bathroom, or water came out in the basement?

A Water came out on the basement through the cleanout that he pulled off -- that he took off.

Q Did you ever ask Rick Syrett or Staben if any raw sewage, rather than just water, had come out of that cleanout?

A I did not ask them.

Q Do you have any understanding as to whether or not it was just water or whether actual raw sewage -- rather, feces or other types of sewage came out of there as well?

A I just didn't ask them exactly what came out.

I know what's in sewer lines. So ...

Q That would include feces?

A It could include feces.

Q You don't know whether it did in this case?

A No.

Q Is that correct?

A I don't know.

Q Did Mr. al-Hakim ever call you after you sent him in June 25th, 1997 letter?

MR. CROWLEY: You know, you've asked the same question three times now. Have you had any further contact with Mr. al-Hakim? He said no. Was there any correspondences? He said no.

MR. BRADY: I'm trying to get at -- did he respond in any way that --

Q Any way to your June 25th, '97 letter, or did you just figure the matter was done?

A He never called.

Q So you figured after you sent this letter, the matter was finished?

A Yes.

Q And the next time you heard about this was after the litigation was going on?

A Yes.

MR. BRADY: I have nothing further. Thanks.

THE REPORTER: Mr. Crowley, do you need a copy of this?

MR. CROWLEY: I do. I just need a condensed.

MR. JONES: Yes. All of the above.

THE REPORTER: Any expedite?

MR. BRADY: No.

(Deposition session was concluded at 3:56 p.m.)

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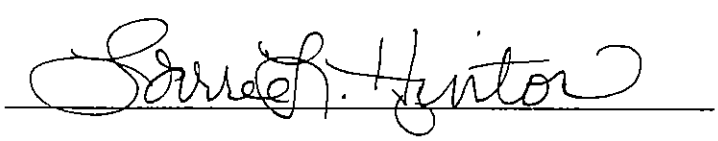
SIGNATURE OF WITNESS

CERTIFICATE OF DEPOSITION OFFICER

I, LORRIE L. HINTON, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, hereby certify that the witness in the foregoing deposition was by me sworn to testify to the truth in the within cause; that said deposition was taken at the time and place set forth; that the testimony of said witness was reported by me and transcribed by means of computer-aided transcription; that the foregoing is a full, complete and true record of said testimony; that the witness was given an opportunity to read and correct said deposition and to subscribe to the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, or in any way interested in the outcome of the cause named in said caption. And I further certify this copy is a true and exact copy of the original.

Dated: This 21st day of February, 2002.



LORRIE L. HINTON, C.S.R. 10523

Deposition Officer

STEVEN J. BRADY, ESQ. (State Bar No. 116651)
LAW OFFICES OF STEVEN J. BRADY
1015 Irwin Street, Suite A
San Rafael, CA 94901

Phone: (415) 459-7300
Fax: (415) 459-7303

Attorneys for Plaintiffs

CALENDARED
CMM

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ABDUL-JALIL al-HAKIM ,

Plaintiffs,

vs.

RESCUE INDUSTRIES, INC. dba RESCUE ROOTER, RESCUE ROOTER, LLC, and DOES 1 through 50, inclusive

Defendants.

NO. 821885-2

NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE AT RESCUE INDUSTRIES, INC. dba RESCUE ROOTER, RESCUE ROOTER, LLC REGARDING ABDUL-JALIL al-HAKIM'S FLOOD LOSS ON FEBRUARY 18, 1997 AT HIS RESIDENCE LOCATED AT 7633 SUNKIST DRIVE, OAKLAND, CALIFORNIA

Date: January 18, 2002
Time: 10:00 a.m.
Location: Law Offices of Steven J. Brady, 1015 Irwin Street, Suite A San Rafael, CA 94901 (415) 459-7300

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT THE DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE AT RESCUE INDUSTRIES, INC. dba RESCUE ROOTER, RESCUE ROOTER, LLC REGARDING ABDUL-JALIL al-HAKIM'S FLOOD LOSS ON FEBRUARY 18, 1997 AT HIS RESIDENCE LOCATED AT 7633 SUNKIST DRIVE, OAKLAND, CALIFORNIA will be taken at the Law Offices of Steven J. Brady, 1015 Irwin Street, Suite A, San Rafael, CA 94901; telephone: (415) 459-7300, commencing

at 10:00 a.m. on January 18, 2002 and continuing day to day thereafter.

YOU ARE FURTHER NOTIFIED THAT said deponent, who is a party or an employee or agent of a party to this action, is required to produce the following documents, records or other materials at said deposition:

1. Your entire file regarding ABDUL-JALIL al-HAKIM'S FLOOD LOSS ON FEBRUARY 18, 1997 AT HIS RESIDENCE LOCATED AT 7633 SUNKIST DRIVE, OAKLAND, CALIFORNIA .

Dated: December 20, 2001

Law Offices of Steven J. Brady

Steven J. Brady
Attorney for Plaintiff
ABDUL-JALIL al-HAKIM

Al-Hakim vs. Rescue Industries, Inc., et al.
Alameda Superior Court Case No.: 821885-2

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 1015 Irwin Street, Suite A, San Rafael, CA 94901, which is located in the county where the mailing described below took place.

On the date set forth below, I served the following documents:

NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE AT RESCUE INDUSTRIES, INC. dba RESCUE ROOTER, RESCUE ROOTER, LLC REGARDING ABDUL-JALIL al-HAKIM'S FLOOD LOSS ON FEBRUARY 18, 1997 AT HIS RESIDENCE LOCATED AT 7633 SUNKIST DRIVE, OAKLAND, CALIFORNIA

[x] BY MAIL by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the offices of Steven J. Brady, 1015 Irwin Street, Suite A, San Rafael, CA 94901, addressed as shown below. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same date it was placed for collection and processing.

[ ] BY OVERNIGHT DELIVERY by placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Law Offices of Steven J. Brady, to be delivered by express delivery to the address(es) shown below.

[ ] BY FACSIMILE TRANSMISSION by transmitting a true copy thereof by facsimile transmission from facsimile number (415) 459-7303- to the address(ees) at the facsimile number(s) shown below.

Dan Crowley, Esq.
JACKSON & HARRIGAN
1 Market Plaza, Spear Street Tower
8th Floor
San Francisco, CA 94105
Phone: (415) 543-3434
Fax: (415) 546-7019

Todd A. Jones, Esq.
ARCHER NORRIS
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, CA 94596-3728
Phone: (925) 930-6600
Fax: (925) 930-6620

Abdul-Jalil al-Hakim
Superstar Management
7633 Sunkist Drive
Oakland, CA 94605-3024

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 28, 2001 at San Rafael, California.

Laurie Rosen

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BKPR1     ¤
B_HIFM    ¤                RESCUE ROOTER #150 - Bay East                ¤03/23/00
                  CALL SLIP HISTORY FILE MANAGEMENT                     ¤14:25
¤Index                  CALL      STATUS   DATE       TAKEN_BY   TIME_RECD
¤Call 36917    °Date  02/18/97°Resp  KIM    °Time Recd 17:12 ¤S/Tech RICK
¤Cust Id °Type ° Company                                          ¤  2nd
¤99      °R    ° Contact ABDUL JALIL                              ¤  3rd
¤ Job Addr 7633 SUNKIST                                           ¤  4th
¤ X-Street EDWARDS AVE                                            ¤  5th
¤      Zip 94605  City OAKLAND          St CA Zone 05             ¤   Call Times
¤  Cust PO 510-839-5400                    -   -                  ¤Canc     :
¤                                                                 ¤Ntfy   17:13 KIM
¤Source 1:  3     2:        Map 15B3     Acq      Status C        ¤Ntfy   17:13 KIM
¤Payment Method  CK                                 °Auth         ¤Arr    18:30 NICK
¤CC No.                    Exp    /      °Ref.                   ¿Fin    19:36 KIM
¤Bill to                                                          ¤   Call Backs
¤99                                                               ¤1st      :
¤                                                                 ¤2nd      :
                                                                  ¤3rd      :
                                                                  ¤4th      :
¤Type of Work   D        ° Appt Time   :          Matl POs ¤RC      -
¤ Skill Level            °      Date   / /          Alt-P  ¤Tech
¤     Invoice   006055   °Resch Slip                        ¤Date   / /
¤     Inv Amount    99.50  [ ] ScourJet          Work Codes
¤       Inv Type MI        [ ] Drainright        D07
¤      Call Type CUSTOMER  [ ] P/M Invoice
¤
¤7640 HANSOM DR   ¤    189043   ° 5    ° 03/16/00 ° MIKE    ° 11:46
¤7640 SUNKIST     ¤   2985058   ° 5    ° 02/02/96 ° 75P20   ° 15:04
¤7640 SUNKIST     ¤   2985807   ° 5    ° 02/15/96 ° DSP20   ° 10:39
¤7640 SUNKIST FER ¤   2984481   ° 5    ° 01/31/96 ° 74P20   ° 15:20
¤7641 CANTEBURY L ¤    182497   ° 5    ° 02/01/00 ° DEBRA   ° 13:45
¤7641 HANSOM DR   ¤    118252   ° 5    ° 11/11/98 ° HEATHE  ° 09:20
¤7641 HANSOM DR   ¤    123407   ° 5    ° 12/15/98 ° DEENA   ° 10:50
 Find  Edit          Prev  Next  Top  Last      Go  Browse  filteR  Index
       ¤          ESC to Exit   F3-Special Instructions        ¤      Ov
```

EXHIBIT 2 1/30/02 Peterson

RESCUE ROOTER® An A Aabco Co. **60 MINUTE MAN®**

PO BOX 3098
HAYWARD, CA 94540

881-8898 451-4030 439-5999 1-800 869-6915
STATE CONTRACTORS LICENSE #363170

CALL SLIP 30917 | ☐ C ☐ E | ☐ MI ☐ NG | ☐ RC ☐ RS | ☐ V ☐ W/P | DATE 2-18-97 | SERV. TECH NAME RICK | SVU NO. 84 | VAN # 16 | CUSTOMER P.O. NO. | INVOICE 150-00605

CUSTOMER I.D. | TYPE | CUSTOMER NAME ABDUL SALL | BILL TO | BILL TO | TIME DISP 1830 | TIME ARVD 1315 | TIME FIN

JOB ADDRESS 7633 SUNKIST | CROSS STREET | ADDRESS | OTHER PHONE | RC INV# | ST#

CITY OAKLAND | ST CA | ZIP 94605 | JOB PHONE 839-5480 | MAP | CITY | ST | ZIP | CONTACT | RS CALL SLIP#

☐ CASH ☐ VISA ☐ M/C ☐ DIS

☐ CK# ABA#

☐ CHG-A/R AUTH#

☐ UA ☐ N/A ☐ OP#

LOCATION OF PROBLEM

01 ☐ KITCHEN SINK
02 ☐ LAUNDRY LINE
03 ☐ WASH BOWL
04 ☐ BATH TUB
05 ☐ SHOWER
06 ☐ TOILET
07 ☐ MAIN DRAIN
08 ☐ STORM DRAIN
09 ☐ POOL DRAIN
10 ☐ SEPTIC TANK
11 ☐ URINAL
12 ☐ GREASE TRAP
13 ☐ FLOOR DRAIN
14 ☐ FLOOR SINK
16 ☐ MAIN DRAIN REPLACEMENT
17 ☐ PLUMBING REPAIR
18 ☐ WATER HEATER
19 ☐ SEWER REPAIR
20 ☐ OTHER
21 ☐ AREA DRAINS
☐ ADDLINE
☐ PARTS
☐ CLEAN-OUT

MACHINES USED

01 ☐ 100
02 ☒ 300
03 ☐ 700
04 ☐ 1066
05 ☐ PLUNGER
06 ☐ AUGER
07 ☐ CAMERA
08 ☐ SCOUR-JET® 4000
09 ☐ SCOUR-JET® 1500
10 ☐ OTHER
11 ☐ VAPO MACH
12 ☐ LINE LOCATOR

ACCESS

☐ TRAP ☐ FIX
☒ C/O ☐ OTHER
☐ RV
☐ MH
☐ O/F

WARRANTY # OF DAYS 90 DAYS

PM | **PRIOR PROBLEMS?** HOW MANY MONTHS AGO? ____ SAME PROBLEM? ☐ YES ☐ NO

LOCATION
CABLE/BLADE
DISTANCE:

SERVICE AGREEMENT

THE ESTIMATED PRICE DOES NOT INCLUDE SALES OR OTHER TAX, IF ANY, OR COVER UNFORESEEN PARTS OR LABOR, WHICH MAY BE NEEDED AFTER THE WORK BEGINS. WRITTEN CUSTOMER AUTHORIZATION WILL BE OBTAINED BEFORE BEGINNING ANY ADDITIONAL OR EXTENDED WORK.

I AUTHORIZE THE PERFORMANCE OF THE WORK, SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH ON THE FACE AND REVERSE SIDE HEREOF, PLUS ANY TAXES UPON COMPLETION. THIS INVOICE IS DUE AND PAYABLE ON RECEIPT.

DAMAGE? NONE ☐ ; YES ☐
IF YES, SEE SEPARATE "CHECKLIST" X ____ INITIALS

ORIGINAL ESTIMATE $ 99.50
X ____ SIGNATURE

ADDITIONAL WORK $ ____ X ____ INITIALS

ADDITIONAL WORK $ ____ X ____ INITIALS

ACTUAL TOTAL $ 99.50

CLEAN-UP
☐ EXCELLENT
☐ SATISFACTORY
☐ POOR

X ____ SIGNATURE

NO.	DESCRIPTION OF SERVICES AND MATERIALS	PER VISIT	ESTIMATE	ACTUAL
	CABLED OUT SECUNDARY LINE DOWN STAIRS WITH 300 MACHINE	99.50	$	$ 99.50
	AFTER I OPENED CAP 1 MIN LATER WATER CAME OUT FROM UPSTAIRS BATHROOM 3 GAL ON FLOOR & CARPET			

RECOMMENDATIONS:

CAUSE OF BLOCKAGE:

MATERIALS NO.	QTY.	PRODUCT	AMOUNT
1			
2			

CHEMICALS QTY.	AMOUNT
1	

SERVICE	
MATERIALS	
SUB TOTAL	
SALES TAX	
ESTIMATE TOTAL	

PRODUCT
☒ DR 001 QT
☐ DR 002 GAL
☐ DR 005 5 GAL
☐ VAPOROOTER
☐ OTHER

PLEASE PAY THIS AMOUNT →

TOTAL → 99.50

SEE IMPORTANT INFORMATION ON REVERSE SIDE

File Copy

RESCUE ROOTER An A Aabco Co. 60 MINUTE MAN State Contractors License 744542

CALL SLIP	INVOICE TYPE	DATE	SERVICE TECH	RV #
36917	MI	02/18/97	SY3446 RICHARD SYRETT	16

INVOICE 150 - 006055

TIME REC	TIME ARR	TIME FIN
17:13	18:30	19:36

JOB SITE

ABDUL JALIL
7633 SUNKIST
OAKLAND, CA 94605
510-839-5400

MAP 1583

BILL TO

ABDUL JALIL
7633 SUNKIST
OAKLAND, CA 94605
510-839-5400

MAP 1583

RC INV# _____ ST# _____

RS CALL SLIP# _____

CASH

VISA M/C DISCOVER

√CK# 3130

ABA# 11-40

CHG-A/R AUTH# _____

UA N/A OP# _____

PROBLEM CODE

KITCHEN SINK	TOILET	URINAL	PLUMBING REPAIR
LAUNDRY LINE	√MAIN DRAIN	GREASE TRAP	WATER HEATER
WASH BOWL	STORM DRAIN	FLOOR DRAIN	SEWER REPAIR
BATCH TUB	POOL DRAIN	FLOOR SINK	CLEAN-OUT
SHOWER	SEPTIC TANK	MAIN DRAIN REPLACEMENT	ADDLINE

MACHINES USED

100	PLUNGER	POWER JET
√300	AUGER	OTHER
700	CAMERA	VAPO MACHINE
1065	SCOUR JET	LINE LOCATOR

WARRANTY 90 DAYS

PM | **FOLLOW-UP**

Customer PO#

SERVICE AGREEMENT

THE ESTIMATED PRICE DOES NOT INCLUDE SALES OR OTHER TAX IF ANY OR COVER UNFORSEEN PARTS OR LABOR, WHICH MAY BE NEEDED AFTER THE WORK BEGINS. WRITTEN CUSTOMER AUTHORIZATION WILL BE OBTAINED BEFORE BEGGINING ANY ADDITIONAL OR EXTENDED WORK.

I AUTHORIZE THE PERFORMANCE OF THE WORK, SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH ON THE FACE AND THE REVERSE SIDE HEREOF, PLUS ANY TAXES UPON COMPLETION. THIS INVOICE IS DUE AND PAYABLE ON RECEIPT.

DAMAGE? YES NO

ORIGINAL ESTIMATE $ _____

ADDITIONAL WORK $ _____ X _____

ADDITIONAL WORK $ _____ X _____

ACTUAL TOTAL $ _____

CLEAN-UP

___ EXCELLENT
___ SATISFACTORY
___ POOR

DESCRIPTION OF SERVICES AND MATERIALS

ITEM	DESCRIPTION	QTY	PRICE	S/T	RH PO#	AMOUNT
D07	SERVICE	1.00	79.20	SY3446		
D07	QT. DRAINRIGHT	1.00	18.75	SY3446		

SERVICE	79.20
MATERIALS	18.75
SUB TOTAL	97.95
SALES TAX	1.55
ESTIMATE TOTAL	
TOTAL	99.50

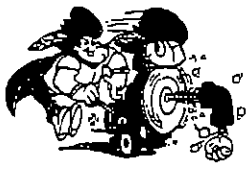
2.3

IMPORTANT NOTICE: This is NOT an invoice. Please see the original invoice for the terms and conditions of this sale.

RESCUE ROOTER

Rescue Rooter
Post Office Box 3098
Hayward, CA 94540
800/869-6915
Fax: 510/784-6115
www.rescuerooter.com

June 25, 1997



Abdul Jalil
7633 Sunkist Dr
Oakland, Ca 94605

Dear Abdul,

This letter is in regards to the flood damage that occurred when your sewer line had a back up. I have talked with our claims adjuster and Chris at Water Damage Experts. It is our opinion that we did not cause the flood that damaged your carpets and tile. This opinion was based on our visit to your resident where we investigated the damage and a written letter from Water Damage Experts who confirmed that the damage was caused by several other floods in the past. Rick Staben, Rick Syrett and myself tried to explain this to you at your residence. We paid for the initial water extraction even though it was not caused by the work our technician did. The blockage in your sewer line caused your down stairs toilet to overflow in your basement prior to our arrival. Rick Syrett worked in an area that was approximately 20' away. A small amount of water came out of the clean out due to the fact that the upstairs toilet was not working properly and the water was constantly running due to a faulty flapper ball.

In our continued efforts to satisfy our customers, we did not make it an issue to place blame. We were more concerned with preventing any further damage to your residence. We feel we are not responsible for the initial flood or any damages that occurred afterward. It is our position that we have settled this matter by paying for the water extraction which, was $1329.56 and consider this matter closed.

If you have any questions, please feel free to contact me any time.

Sincerely,

Chris Peterson
General Manager

2.4

EXHIBIT “F”

ZANDONELLA REPORTING SERVICE, INC.
Certified Shorthand Reporters
2321 Stanwell Drive
CONCORD, CALIFORNIA 94520
(925) 685-6222

September 30, 2002

KENT LAUDER
136 Myrtle Rd.
Burlingame, CA. 94010

RE: ABDUL JALIL al-HAKIM vs. RESCUE INDUSTRIES, et al.
NO. 821885-2

DEAR KENT LAUDER:

The original transcript of your deposition taken on September 24, 2002 in the above entitled matter will be available for the next 35 days at our office every weekday between the hours of 8:00 a.m. and 4:30 p.m. for your inspection and signing.

You have the option of coming into our office to read and sign the original transcript, or you may read your attorney's copy and advise us by letter of any changes you wish to make in your testimony -- questions should not be changed -- and we will then enter any changes you have made in the original deposition, or if you approve the transcript in its printed form we will seal and keep it on file in our office until requested to be filed by the Court.

Please seek the advice of your attorney as to which procedure he wishes you to follow.

Should you desire to read and sign your original deposition at a time other than between the above hours, kindly phone (925) 685-6222 for a mutually convenient appointment.

Sincerely Yours,

K. Alderson

KAREN ALDERSON, Certified Shorthand Reporter

CC: Original Transcript
FRANCIS M. McKEOWN DAN HERNANDEZ
TODD JONES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

--oOo--

ABDUL JALIL al-HAKIM,

Plaintiff,

vs.

RESCUE INDUSTRIES, et al.,

Defendants.

COPY

No. 821885-2

DEPOSITION OF KENT LAUDER

Taken before KAREN ALDERSON, a Certified Shorthand Reporter, License No. C-6279, County of Contra Costa, State of California

September 24, 2002

--oOo--

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INDEX

EXHIBIT

For the Plaintiff:

/ / / / / / / / /

BE IT REMEMBERED, that pursuant to Notice to the respective parties, and on Tuesday, the 24th day of September, 2002, commencing at the hour of 1:30 p.m. thereof, at the Law Offices of McKEOWN PRICE, 2030 Addison Street, Suite 300, Berkeley, Calfornia 94704, before me, KAREN ALDERSON, a Certified Shorthand Reporter, License No. C-6279, County of Contra Costa, State of California, there personally appeared:

KENT LAUDER,

called as a witness on behalf of the Plaintiff, who, being first duly sworn, was then and there examined and interrogated as hereinafter set forth.

--oOo--

FRANCIS M. McKEOWN, Attorney at Law, representing the Law Offices of McKEOWN PRICE, 2030 Addison Street, Suite 300, Berkeley, California 94704, appeared as Counsel on behalf of the Plaintiff;

TODD JONES, Attorney at Law, representing the Law Offices of ARCHER NORRIS, 2033 North Main Street, Suite 800, Walnut Creek, California 94596-3728, appeared as Counsel on behalf of the Defendant Bay Area Carpet Cleaners;

DAN HERNANDEZ, Attorney at Law, representing the Law Offices of JACKSON & HARRIGAN, 1 Market Street, Spear Street Tower, 8th Floor, San Francisco, California

94105, appeared as Counsel on behalf of the Defendant Rescue Industries.

--oOo--

KENT LAUDER,

called as a witness on behalf of the Plaintiff, having first been duly sworn by the Court Reporter to testify the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION BY

MR. McKEOWN:

Q. Would you please state your name for the record?

A. Kent Lauder.

Q. Would you spell your last name?

A. L-A-U-D-E-R.

Q. Mr. Lauder, have you been retained as an expert in this case?

A. Yes.

Q. By whom?

A. By Jackson & Harrigan.

Q. Do you know who they represent?

A. They represent Rescue Rooter.

Q. Okay, and are they -- is one of those two entities paying you for your evaluation of this case?

A. Yes.

Q. Who is that?

A. Would be Jackson & Harrigan.

Q. How much are you being paid?

A. 100 -- either 100 or 110 an hour.

Q. All right.

A. I'm sorry, I don't have the --

MR. HERNANDEZ: Just give your best estimate.

MR. McKEOWN:

Q. You don't have your billing records with you today?

A. No, I don't have billing records.

Q. Can you give me an estimate of how many hours you've spent today?

A. I can tell you exactly. An estimate today of what I've -- how many hours I've spent?

Q. Yes.

A. About 18.

Q. And have you done a site inspection?

A. Yes.

Q. Have you done any sort of testing?

A. No.

Q. What did you do on the site inspection?

A. Observed the inside of the house and the outside of the house.

Q. When was that?

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A. September 5th.

Q. Of this year?

A. Yes.

Q. All right. Did you observe where the -- or where the sewer main is --

A. Yes.

Q. -- in conjunction with the house, with respect to the house?

A. Yes.

Q. And do you know where the laterals are?

A. I have a fairly good idea, since they are underground.

Q. Right. Is there any sign of their presence above ground?

A. No, not that I saw.

Q. All right. How many laterals are there?

A. It looks to be two.

Q. Before you went to examine the site, did you have an understanding as to how many laterals there were?

A. I had been given a sketch drawing and I had heard there were two, but until I got to the site I didn't have a very clear idea of what it looked like.

Q. Was that sketch drawn accurately, in particular with respect to where the laterals were?

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MR. HERNANDEZ: Objection, vague, speculative as to "accurate." I believe the drawing itself is not to scale.

THE WITNESS: Okay. According to this plan it looks to me that they left out one of the main laterals on the drawing.

MR. McKEOWN:

Q. Right. What you're referring to there is diagram number five --

A. Yes.

Q. -- that's in your report or in your file?

A. Right.

Q. Okay. So where is that lateral that was left out?

A. It looks to be going from the main sewer into the weight room and continuing onto the lower bath, and then with the main line going upstairs to the bath above it.

Q. Right. All right, so we're here about an incident that occurred in February of 1997, do you understand that?

A. Yes.

Q. And do you understand that the -- at the time of this incident the lateral that's missing there, the lateral to the downstairs bathroom, was being

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snaked?

A. Yes.

Q. Okay. About how far is it from that lateral to the main -- from that -- excuse me, that clean-out there to the main?

A. From the clean-out or the house to the main?

Q. Well, I guess I'm jumping ahead, but I really wanted to know from the clean-out to the main.

A. The clean-out I would estimate as being 15, 18 feet.

Q. Have you looked at any of the video that's been taken --

A. No.

Q. -- of these pipes, okay.

I saw something in your file from Pipe Pros. Do you know who they are?

A. That was given to me on the first meeting that we had.

Q. By?

A. Do I know who they are? I'm sorry, no, I'm not familiar with them.

Q. Who gave them to you, the attorney?

A. Yes.

Q. Okay. Was it William Jemmott?

A. Yes, I believe so.

Q. All right. How many meetings have you had with Mr. Jemmott?

A. We had an initial meeting, and then we had a site inspection meeting.

Q. Have you had a meeting since that time?

A. No.

Q. Did the site inspection make it clear to you that that lateral that you've already indicated was missing in the drawing?

A. Yes.

Q. Okay, and how did you know from your site inspection that there was a lateral there?

A. I didn't know completely, but there were two indications. One was that the owner had said there's a lateral there and, two, there was a painted mark on the asphalt that indicated that -- it may have been painted by the city or whoever -- that there might be a lateral under there.

Q. In your business are there certain codes or marks that you look at that would indicate that to you?

A. Yes, it looked to me like a green mark, which would indicate a sewer lateral.

Q. All right.

MR. HERNANDEZ: Would you tell me the first word

you said, super lateral?

THE WITNESS: Sewer lateral.

MR. HERNANDEZ: Got it, sewer lateral.

MR. McKEOWN:

Q. Now I take it obviously you didn't dig up the lateral and you haven't run a video down there, correct?

A. Correct.

Q. So do you have an understanding of the shape of the lateral, whether it's arced or a "T" shape to the main?

A. I don't know exactly what's down there. I would have -- I would estimate that it is in a certain configuration.

Q. And okay, you would be guessing or speculating?

A. I would have a pretty good idea that this is the sewer waste line and, I'm sorry, when I'm saying sewer, the sewer is actually the city sewer. The lateral is actually a waste lateral, not a sewer lateral, and the waste lateral I would imagine is perpendicular to the sewer, main sewer.

Q. Why do you say that?

A. Because that's how most laterals are tied in.

Q. All right. Well, assuming -- I mean, they do come out obviously from the main sewer line, but some of them come out at an angle or arc, correct?

A. Yes, they can.

Q. Have you had a chance to review the deposition of Mr. Vincent Long?

A. Yes.

Q. All right. Did you see that Mr. Long testified that he examined the sewer line and it came in an arc?

A. No, I did not see that.

Q. Have you heard or have you reviewed the deposition of Mr. Bell?

A. No.

Q. Okay. Do you have an understanding of what Mr. Bell testified with respect to coming off at an angle?

MR. JONES: Mr. Ball or Bell?

MR. McKEOWN:

Q. I apologize, Mr. Ball.

A. I had only discussed it with William very shortly, and he said basically that their testimony were very close. That's it.

Q. Mr. Ball and Mr. Long, their testimony was very close?

A. Yes.

Q. Close to each other, you mean?

A. Yes.

Q. Okay. Do you have may any criticism of their testimony?

A. Of their opinions, yes.

Q. And what criticism do you have?

A. Well, their basic premise is that --

MR. HERNANDEZ: Let me just stop you. I'm going to object to any opinion as to Mr. Ball because my client has not reviewed the deposition of Mr. Ball.

MR. McKEOWN: All right.

MR. HERNANDEZ: To the extent he wants to comment on Mr. --

THE WITNESS: Did I say "they"?

MR. HERNANDEZ: Just focus on the deposition that you reviewed.

THE WITNESS: Okay.

MR. McKEOWN:

Q. So that would be Mr. Long?

A. Mr. Long only.

Q. So what criticisms do you have of Mr. Long's testimony or opinions?

A. He is under the assumption that there was a coincidental blockage in two pipes, one in the main

sewer line and one in the lateral.

Q. Uh-huh. Why is that not true?

A. Well, I think it was very improbable that both blockages could occur at the same time, especially in the larger six or eight-inch sewer line which I had heard had been sleeved with plastic sleeving some years before.

Q. And why would they have sleeved it with plastic sleeving?

A. Because apparently they had trouble with broken pipes and roots and so forth.

Q. So they had actually had a history of problems with this sewer main --

A. Yes.

Q. -- and problems with it backing up and blocking?

A. I imagine so.

Q. Would that lead you to indicate that maybe it was more likely that it was backing up?

A. No.

Q. All right. Okay, so other than the fact that you think it's improbable, it's too big a coincidence that both the lateral and the sewer main would be blocked at the same time, any other criticisms of Mr. Long's opinions?

A. No. I would have to -- you would have to be more specific on that.

Q. Okay. Now when we talk about a block of a sewer line, in particular something like a sewer main, in your business you don't necessarily think of that as just a total block, correct? It can be -- I've heard it described as sort of the consistency of oatmeal and moving slowly.

MR. HERNANDEZ: Objection, vague and ambiguous. Did you want to restate it?

MR. McKEOWN: Sure.

Q. Are you familiar with the concept of partial blocks?

A. Yes.

Q. Okay. Was it common for a sewer line, even a sewer main, to be blocked partially with -- you know, and be roughly -- the block being roughly the consistency of oatmeal?

A. Well, I can't discuss the consistency of blockages, but -- there can be some partial blockages, but those would only be temporary because generally a partial blockage would become a full blockage within a period of time.

Q. Okay, so that's generally the life cycle of a sewage block, it will get worse and worse and worse

and worse until it completely blocks?

A. Yes.

Q. Okay. Have you had your deposition taken before?

A. Yes.

Q. All right. I haven't gone over the ground rules of a deposition at all.

A. I know.

Q. Is that all right? Do you understand the process?

A. Don't answer before you finish your questions.

Q. That's one of them.

A. I'm sorry.

Q. That's all right, I'm not admonishing you, I'm talking fast myself.

A. I know.

Q. But you understand all those things, you understand you're under oath today and it is being taken down and you will see the transcript; you understand all that, correct?

A. Uh-huh, yes.

Q. Now you understand that there was a sewage spill in the downstairs of this Sunkist property in February of 1997?

MR. HERNANDEZ: Objection, vague and ambiguous as to sewage spill.

THE WITNESS: I heard there was a sewage spill.

MR. McKEOWN:

Q. Right. What's your understanding of what happened?

A. The Rescue Rooter was called out to unplug a stoppage in the line, that a technician had gone out there and had basically unclogged the line.

Q. What happened?

MR. HERNANDEZ: Objection, vague and ambiguous.

MR. McKEOWN:

Q. Do you understand what happened after he unclogged the line?

A. I don't know what happened after he unclogged the line.

Q. Was there any kind of spill?

A. The technician who I have talked to said he went out there and checked in the bathroom downstairs and I guess asked some questions, according to him, and had opened up a clean-out in the laundry room and opened up a clean-out in the other room, which is sometimes called the weight room.

Q. Okay, and so he opened up those two clean-outs before he snaked?

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A. I don't know.

Q. When did you talk to the technician?

A. At our first conference.

Q. "Our" being yours and William's?

A. Yes.

Q. So you were there, William was there and the technician was there?

A. Yes.

Q. And do you remember the technician's name?

A. Rick, and I don't know his last name. I believe it started with an "S."

Q. And I apologize if I asked you this already, but when was that?

A. August 20th.

Q. Of this year?

A. This year.

Q. Where was that?

A. It was in San Ramon.

Q. Did Rick talk about why he had been dismissed from Rescue?

A. No.

Q. Did the fact that he had been terminated from Rescue come up?

A. I don't believe so.

Q. How long did this meeting last?

A. About an hour.

Q. Who did most of the talking?

A. It was a general discussion.

Q. So all three of you participated equally?

A. Yes. There were other people there.

Q. Who else was there?

A. Chris Peterson from Rescue Rooter and one other person I can't remember. I don't have -- I don't remember his name.

Q. What was his role?

A. Or his -- I don't remember his role even.

Q. Was he an attorney?

A. No, I think William was the only attorney there.

Q. Was it an insurance person, insurance claims person?

A. I don't know.

Q. Was it a man or a woman?

A. Man.

Q. What did he look like?

A. I can't remember that either.

Q. Okay. About what age was he, like a college kid or -- --

A. I'm sorry --

Q. -- gray hair?

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A. -- I can't -- I wrote some people's names down, but not everybody.

Q. Do you remember, though, whether he was like a college kid or whether he had gray hair?

A. I don't -- no, I can't.

Q. Okay. What did Chris Peterson say?

A. What did he say?

Q. Uh-huh.

A. Oh, I can't give you verbatim what we talked about.

Q. Do the best you can.

A. Pretty much what I'm talking about --

MR. HERNANDEZ: Before you answer, I'm going to object to that as being vague and ambiguous.

MR. McKEOWN: Okay.

Q. You can go ahead and answer.

A. We talked about the situation at the house, what had happened according to the leaks -- not the leaks, the stoppage, and we tried to orient me and William as to the layout of the property and generally what had happened.

Q. All right. I saw there was -- there's an insurance document in your file. Can I take a look?

A. Yeah.

Q. Yes, this.

A. Oh, that one.

Q. Insurance Technical Services Group, diagrams, where did you get that?

A. I got that at that meeting.

Q. Okay. Was there someone there from CSAA at that meeting?

A. Again, I don't know.

Q. Guy named Sean O'Halloran?

A. I didn't write any name down.

Q. Were you told what the insurance company's position is in this case?

A. No.

MR. JONES: Vague and ambiguous.

THE WITNESS: We didn't discuss the insurance aspect.

MR. McKEOWN:

Q. Okay. All right, what did Rick say happened?

A. Rick said that he went to the job site, he noticed that the owner was sweeping out a lot of water. He went into the house.

Q. Where was he sweeping out water?

A. Out the back door.

Q. All right.

A. And of course I don't know exactly what he

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did, I can only tell you what he told me, which was he checked in the bathroom, he opened up the clean-out, the two-inch clean-out in the --

Q. In the laundry room and what you called the weight room?

A. Yes, three-inch clean-out in the laundry room and two-inch clean-out in the weight room, and he noticed that there was water down in the pipe so that there was a stoppage.

Q. So you're telling me that when he was starting this work, the homeowner was actually downstairs with him --

A. I don't know.

Q. -- sweeping water out the back door?

A. What I had heard, he said he saw him sweeping water out when he got to the job site. I think that's what he told me.

Q. Did he say where?

A. Out the back door --

Q. Out the back door, okay.

A. -- I think.

Q. All right. And did he observe any water on the floor anywhere?

A. I didn't talk to him about that.

Q. Okay. What else did you see? What else

did he say, excuse me?

A. He said that he was going to have to go down the two-inch clean-out because that was the only opening, that he had told the owner not to flush the toilet but that the owner did flush the toilet upstairs and he got some water coming out of the clean-out downstairs.

Q. Okay.

A. He told me water.

Q. So that was because the clean-out was open and when you flush the toilet a little bit of water comes out?

MR. HERNANDEZ: Objection, misstates the witness's testimony.

MR. McKEOWN:

Q. Go ahead.

A. That is correct.

Q. All right, and then did he snake it then?

A. Apparently he snaked it.

Q. Did he say whether the toilet flushed and all that happened a little bit before he snaked it or after he snaked it?

A. Before he snaked it --

Q. Okay.

A. -- because he said he ran a snake down no

more than five feet or so and he was able to clear the stoppage.

Q. All right, but did he confirm the stoppage first?

A. Yes, he said there was water in the pipe, he could look down and see water in the pipe.

Q. Well, you mean from upstairs?

A. No.

Q. Where?

A. The clean-out downstairs is about 10 inches off the ground on a main line going to the kitchen sink upstairs, and when you open that up it's about the same level as the shower downstairs, so that originally if there was a stoppage water would have been coming up out of the shower, but because the clean-out was probably a couple inches lower than the shower, when apparently the toilet was flushed upstairs, instead of coming out of the shower drain it came out of the clean-out, so he had three or four gallons of water from the toilet apparently.

Q. Is it three or four gallons, is that how much a flush is?

A. Yes. It can vary.

Q. And so that was the extent of it, that was the extent of the -- what we're calling the sewage

backup?

A. At the spot where he was cleaning it out, yes.

Q. Okay. Was there some other spot where there was a sewage backup?

A. I don't know.

Q. Did Rick say there was another spot where there was a sewage backup?

A. No, I don't remember him saying so.

Q. Well, you've been retained on a case where there's allegations of all kinds of damages as a result of a sewage backup, and it never came up whether there was a sewage backup?

A. Well, yes.

MR. JONES: Argumentative.

MR. HERNANDEZ: Objection, argumentative.

THE WITNESS: He described obviously -- there obviously must have been a sewage backup because he had seen him cleaning out what he thought was sewage water out the back door.

MR. McKEOWN:

Q. Yeah, you've been in the premises, right, you said?

A. Yes.

Q. So the back door is on the ground floor?

A. Correct.

Q. So your understanding is that the homeowner was right there on the ground floor --

A. Uh-huh.

Q. -- right, sweeping out --

A. Yes.

Q. -- sweeping out water, and sweeping out a substantial -- must have been a substantial sewage backup, right?

MR. HERNANDEZ: Objection, misquotes the witness's testimony.

MR. JONES: Calls for speculation.

MR. McKEOWN:

Q. If he's sweeping water out the back door, it sounds like a pretty substantial sewage backup, doesn't it?

A. Sounds like it.

Q. So what Rick said is the homeowner was down there sweeping out a substantial sewage backup, and Rick was just coming downstairs and walking from one side to the other of the downstairs, which would be the laundry room way over here and the weight room clean-out way over here, just saying hi to Mr. al-Hakim, and then had that one little incident and that's what you were told happened?

MR. HERNANDEZ: Objection, vague, ambiguous, compound, argumentative, misquotes the witness's testimony.

MR. JONES: Lack of foundation. I join in the rest.

THE WITNESS: Well, I don't know the exact time line of what happened. My assumption is that, sure, there was water in one section of the back of the house, but whether he went to the weight room -- the water had not, I assume, gotten to that point. The main backup would have come out of the shower drain and over the shower lip and probably flowed out that bathroom and into the main room downstairs, which is closer to the back door.

MR. McKEOWN:

Q. Okay. But I'm just talking about what Rick said right now, what he observed.

A. Uh-huh.

Q. Have you got an estimate -- you've done this before and you've seen the site. How long would it take to open those two clean-outs?

A. How long would it take?

Q. Right.

A. Not too long.

Q. Like two minutes --

A. Uh-huh.

Q. -- something like that?

A. Yeah.

Q. Okay, and so he was opening those two clean-outs and at the same time Mr. al-Hakim is there sweeping all this water out the back?

A. Apparently.

Q. Apparently at the same time Mr. al-Hakim is upstairs flushing the toilet, right?

MR. HERNANDEZ: Objection, argumentative, misquotes the witness's testimony.

MR. JONES: Join.

THE WITNESS: We're trying to find a conflict between where Mr. al-Hakim was in two different spots at one time, is that what you're trying to resolve here?

MR. McKEOWN:

Q. Why don't you resolve it.

A. Well, I wasn't there so I imagine by the time the technician got his equipment out and got himself set up, then Mr. al-Hakim could be anywhere. I don't know.

Q. Did Rick tell you that he had any kind of conversation with Mr. al-Hakim about this sewage spill that he was sweeping out the back door?

A. I didn't catch anything that he said beyond

that.

Q. Tell me, how long have you been a plumber?

A. Thirty-five years.

Q. And you're good at your profession?

A. I believe so.

Q. If you were asked to clean out a drain and while you were about to clean out the drain, you know, to snake it, you saw the homeowner sweeping a sewage backup out the back door, would you have a talk with him about it?

MR. HERNANDEZ: Objection, misquotes the witness's testimony. It's vague, it's speculative, lacks foundation.

THE WITNESS: I don't know what he talked about with him.

MR. McKEOWN:

Q. Did he tell you whether he had a conversation with Mr. al-Hakim about the sewage backup?

MR. HERNANDEZ: Asked and answered.

THE WITNESS: I don't know beyond what I remember him saying.

MR. McKEOWN:

Q. Good. There was a sewage backup already present, and you know it was already being swept out the back door when Rick came on the site. Should Rick have

just started cleaning out -- should he just have started snaking out drains?

MR. HERNANDEZ: Objection, assumes facts not in evidence. Would you like to couch that in terms of a hypothetical?

MR. McKEOWN: Sure.

MR. HERNANDEZ: Do you understand the question?

MR. McKEOWN:

Q. Assume the facts just stated.

MR. JONES: Incomplete hypothetical.

THE WITNESS: Well, what you would do is assess the situation.

MR. HERNANDEZ: He was going to rephrase it.

MR. McKEOWN:

Q. I'm telling you to assume the facts I've stated.

A. Yeah, yeah.

MR. HERNANDEZ: Object, it is an incomplete hypothetical.

THE WITNESS: You're asking me what he would -- first thing he would do, he would assess the situation, see where he thought the stoppage was and act accordingly.

MR. McKEOWN:

Q. So it would be appropriate when you're

assessing the situation, as a plumber that's competent, to ask a homeowner that's sweeping out a sewage spill, what's going on?

A. Yes.

Q. All right, and failure to do that would be below the standard of care, correct?

MR. HERNANDEZ: Objection, calls for a legal conclusion.

THE WITNESS: I would ask the owner what's happening to get as much information as I could.

MR. McKEOWN:

Q. If there was a significant sewage spill on the premises at the time, wouldn't that make you pause before you started snaking out the sewer lines?

MR. HERNANDEZ: Objection, vague and ambiguous as to "at the time."

THE WITNESS: No, I would assume that there's a stoppage that needs to be cleaned out.

MR. McKEOWN:

Q. You wouldn't be worried or concerned about bringing more sewage in?

A. No.

Q. Would you be interested in evaluating where that sewage came from?

A. I would assume that the sewage is coming

from the home itself, coming up against the stoppage and overflowing in the lowest point, open point, which in this case would be the shower.

Q. Who was living in this home at the time?

A. I don't know.

Q. I'll represent to you and ask you to assume it was one individual at this particular time, one person. Is one person going to produce enough sewage to flood the basement?

MR. HERNANDEZ: Objection, speculative, vague.

THE WITNESS: You can certainly produce enough problem to cause a sewage spill. Now, this is a situation where apparently a stopper on the toilet upstairs had been stuck, which would cause a continuous running of the toilet. That may be a cause or it may be that the owner didn't go downstairs for a long time, maybe a day or two, who knows?

MR. McKEOWN:

Q. Would a day or two be enough to make what Rick described to you, enough of a sewage spill to be sweeping it all out the back door?

A. Possibly, yeah.

Q. How many gallons are we talking about here?

A. I don't know, 100.

Q. One hundred?

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A. That's a guess.

MR. JONES: Calls for speculation.

MR. McKEOWN:

Q. Now, if you were doing this and you were where Rick was, would you have noted it anywhere on the work invoice or anything that the homeowner had had a major sewage spill and was sweeping it out the back door?

MR. HERNANDEZ: Objection, assumes facts not in evidence. Are you couching that as a hypothetical?

MR. McKEOWN: I want to know his opinion.

THE WITNESS: Possibly, possibly.

MR. McKEOWN:

Q. That would be --

A. I mean --

Q. -- would be a pretty obvious thing to do, would it not?

A. Well, it's obvious that you go out because there's a sewage backup, I mean, a backup to a sewer line, so it would kind of be commonplace that when you went out to a job site where there was a sewage backup you would probably have a sewage spill somewhere. Now whether or not it needs to be documented, I can't tell you.

Q. So as I understand it, it's your opinion,

based upon what Rick told you, that the lateral was blocked and not the main, correct?

A. Yes.

Q. And because the lateral was blocked, the toilet was flushed several times over the previous few days so that the downstairs was inundated with approximately 100 gallons of raw sewage when Rick came onto the scene; is that your opinion?

MR. HERNANDEZ: Objection, vague and ambiguous, misquotes the witness's testimony, and it's argumentative.

MR. JONES: Join.

THE WITNESS: When I use the term 100 gallons, that is not even an estimate, that's a guess --

MR. McKEOWN:

Q. Okay.

A. -- all right?

Q. Well, some large volume of sewage?

A. Some volume of sewage.

Q. Sufficient to be swept out --

A. All I know is he swept some water out the back door. This of course is going to have to go with the Rick testimony as to when he saw this, if he saw it, et cetera, et cetera.

Q. But your testimony has been more than that,

your testimony has been that would be coming from the bathroom, go over the lip of the bathroom and then spill, right? It would have to be spilling along that family room area --

A. Uh-huh.

Q. -- and out towards the back door, cover all that and, according to Rick, he was sweeping all that out the back door, correct?

MR. HERNANDEZ: Objection, misquotes the witness's testimony, argumentative.

MR. JONES: Assumes facts.

THE WITNESS: Well, I don't know if the water actually reached the back door, I don't know if he actually just swept it toward the back door, so I don't know.

MR. McKEOWN:

Q. Rick told you he was sweeping it out the back door?

A. That's all he told me. The rest is all speculation.

Q. Does that form any part of your opinion, that he told there was water down there and he was sweeping it out the back door?

A. Yes, it indicates that the damage was caused before Rescue Rooter got onto the site.

Q. For that condition to exist -- let me repeat my question. Then what you believe, how that could have happened -- what you believed happened was a lateral was blocked and nothing was done about it for several days and in the meantime the toilet was repeatedly flushed and many, many gallons of water, sufficient to go over that lip in the downstairs bathroom and then inundate the floor and the ground floor, that had all occurred before Rick even came on the scene?

MR. HERNANDEZ: Objection, vague and ambiguous, lacks foundation, argumentative, it assumes facts not in evidence.

MR. JONES: Misstates testimony.

THE WITNESS: It's possible.

MR. McKEOWN:

Q. Is that your opinion as to what happened?

A. My opinion is I believe there was a leakage before the Rescue Rooter came on to the job site.

Q. Based on what Rick told you?

A. Yeah.

Q. And because you believe Rick?

A. Well --

MR. JONES: Argumentative.

/ / / / / / / / /

MR. McKEOWN:

Q. Well, no, I'm saying that that's really the basis of -- you have to believe what Rick told you.

A. Yes, he makes sense in what he was talking about.

Q. Okay, and now so the clearing of the lateral didn't do anything under that scenario to flood the ground floor with sewage?

A. No, it didn't.

MR. HERNANDEZ: Objection.

MR. McKEOWN:

Q. And all it did was solve the problem so no more water would be coming down?

A. I believe so.

Q. Okay. Now, you haven't -- do you have an estimate -- you said 100 gallons was just a rough estimate.

MR. HERNANDEZ: Objection, misquotes the witness's testimony. I believe he said it was a guess.

MR. McKEOWN:

Q. Was 100 gallons a rough estimate?

A. Very rough, because I have no idea how much came out.

Q. Here's what you do know, though, you've seen the bathroom downstairs, correct?

A. Yes.

Q. And you've seen the floor downstairs --

A. Uh-huh.

Q. -- correct, and the family room, correct?

A. Yes.

Q. Okay, and you have had 35 years, approximately, of experience in plumbing, correct?

A. Yes.

Q. And you've seen a number of floods and spills and overflows in your time, correct?

A. Yes.

Q. All right. Now for a spill to go up over that lip and then flow onto the -- through into the family room, up to the back door, can you give me an estimate of how many gallons that would take?

A. I gave you a guess as to 100 gallons --

Q. Okay.

A. -- but I base that guess on how much a toilet flushes or how much a shower is used or a kitchen sink or any other unit that could be used as an estimate of a day or two of usage. Now if the toilet had a flapper that was malfunctioning and it was running continuously, then you would get something on the order of a gallon a minute.

Q. Okay, now -- but my question was actually

sort of a -- I appreciate that, but my question was really about what volume of sewage would it take to cover that area. Your best estimate would be about 100 gallons, is that right?

A. Yes, yes.

Q. Okay, now your opinion as to how that 100 gallons or so came out was through over how many days when one person is living there?

A. One or two.

Q. Okay, and that's because -- obviously it's not flushes, not toilet flushes, right? It's not 100 gallons in one or two days of toilet flushes?

MR. HERNANDEZ: Object, argumentative.

THE WITNESS: A toilet, if it's working properly, three, four, five gallons.

MR. McKEOWN:

Q. Okay. Well, I mean, you're not suggesting that Mr. al-Hakim flushed the toilet 30 times in two days?

MR. HERNANDEZ: Objection, argumentative.

MR. McKEOWN:

Q. That wouldn't be what you would expect?

MR. HERNANDEZ: Misquotes the witness's testimony.

THE WITNESS: No, I'm including the shower, which

could be 40 gallons or more or less --

MR. McKEOWN:

Q. What's the average?

A. -- or a tub.

Q. What's the average?

A. I believe the average is around 35 or 40 gallons.

Q. Okay, anything else?

MR. HERNANDEZ: Objection, vague.

THE WITNESS: The basin, the kitchen sink.

MR. McKEOWN:

Q. Okay. Anything else?

A. That should be it.

Q. Okay. Are you familiar with Rescue Rooter?

A. No.

Q. Have you worked with them in the past?

A. I've never worked with them. Occasionally if we have jobs that require a larger cleaning out, we call several rooter companies as subcontractors.

Q. So you have hired Rescue Rooter?

A. I'm not sure if we have.

MR. HERNANDEZ: Misquotes --

MR. McKEOWN:

Q. Okay, have they ever hired you?

A. No.

Q. Do you know Chris Peterson?
A. From our first meeting only.
Q. That was the only time you -- first time you met him?
A. Yes.
Q. Did Rick's recollection have to be refreshed? Did he remember very well as to what happened?
A. He seemed to.
Q. And what's he doing now?
A. Don't know.
Q. There were five people at this meeting, lasted about an hour, is that right?
A. Yes.
Q. I'm not trying to trick you.
A. And there's one person that's -- that I'm not sure who was there. I'm pretty sure it was five.
Q. Where did the meeting take place?
A. At the offices of Rescue Rooter in San Ramon.
Q. Did anyone take a statement from Rick?
A. Not that I know of.
Q. Did Rick sign anything?
A. I'm sorry?
Q. Did you see Rick sign anything?

A. No.

Q. What is a plumber's obligation when he sees a sewage backup, a sewage spill of, say, 100 gallons?

MR. HERNANDEZ: Objection, vague and ambiguous, assumes facts not in evidence.

MR. JONES: Very overbroad.

THE WITNESS: An obligation when he sees a sewage spill or a sewage block that needs relief?

MR. McKEOWN:

Q. When he sees a sewage spill.

A. That he is not obligated to clean it up, if that's what you mean.

Q. Should he do anything, should he talk to the homeowner, make recommendations?

MR. HERNANDEZ: Same objections, it's vague and ambiguous, overbroad, it assumes facts not in evidence.

THE WITNESS: He should do what he can to relieve the blockage.

MR. McKEOWN:

Q. And not tell -- should he tell the homeowner that he needs to get it cleaned up and that there's -- there are special things that need to be done to have this cleaned up?

MR. HERNANDEZ: Objection, vague as to --

THE WITNESS: Yes, if I were a plumber I would

recommend that it be cleaned.

MR. McKEOWN:

Q. Did Rick tell you whether he had made that recommendation to Mr. al-Hakim?

A. I don't know if he did or not.

Q. He didn't tell you?

A. No.

Q. I'll ask you to assume that there wasn't approximately 100 gallons of sewage on the ground floor when Rick came on the premises, there was not, and he was asked to take care of a slow leak, okay? Do you have those facts in mind?

A. Okay.

MR. HERNANDEZ: Objection, vague and ambiguous as to the slow leak.

Did you understand slow leak?

MR. McKEOWN: Slow drain, I'm sorry, slow -- not slow leak. Let me redo it.

Q. I'll ask you to assume there was not approximately 100 gallons of sewage on the floor when Rick came on and he was asked to check the pipes for a slow drain, okay?

A. Okay.

Q. Now do you have those facts in mind?

A. Yes.

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Q. Okay. If he opens the clean-out and snakes the lateral, should he go and snake all the way to the main or should he snake the main?

A. It wouldn't matter how far he really snaked as long as he cleared the line. As a general rule, you can run your snake down until you can flush out the line and that should be sufficient.

Q. Is there ever a concern, though, about if you get to the main and snaking the main and clearing a block in the main and the consequence of that; is there a concern of that?

A. There shouldn't be.

Q. Well, is there ever a concern about that?

MR. HERNANDEZ: Objection, it's vague, it's speculative, it's ambiguous.

THE WITNESS: Well, if you had a blockage in the main and you -- there happened to be a blockage in the main past the initial blockage, all you're going to do is help clear the main out, possibly, but it's certainly not going to cause any blockage of sewage.

MR. McKEOWN:

Q. Why not?

A. Because I think it's highly improbable, number one, that you have two blockages; number two, the six or eight-inch main, since it had been sleeved from

the reports that I've read -- not read, but heard --

Q. Who did you hear it from?

A. Several times, once from Mr. -- once from Mr. Jemmott and that may have been it.

Q. Okay. All right, so you heard it --

A. Other than that information, I don't know.

Q. I apologize for cutting you off, but --

A. But if that main were sleeved with plastic sleeving, the chances of it backing up are very slight, if nonexistent, and then to have the lateral also back up to a situation where you're running the snake through that first blockage and actually causing water to back up into the house, I've just never heard of it happening and I think it's very improbable that it did.

Q. Well, have you -- you're heard of a main blocking, haven't you?

A. Yes.

Q. That's not that improbable, is it?

A. No, sewer mains can back up.

Q. Once a sewer main blocks, it makes it more likely that the lateral is going to block, doesn't it?

A. Not necessarily, because you're talking about two separate blockages, not one blockage entirely, because if that were the case then you would have a blockage up and down the line and running a small snake

through there is not going to relieve the upper pressure of the wastewater to back into the system.

Q. Up -- you mean up and down the line of the sewer main?

A. Yes. In other words, you just said that could it be a single blockage, the lateral and the main, and I'm saying if it was and the technician ran a snake down the lateral, he's going -- if he does get to the main, then the snake would go downhill, downslope in the sewer pipe, and wouldn't even touch the pressure that's on the upper side that you're alluding to.

Q. Unless it's arced?

A. No, that wouldn't make any difference either. When you say arced, you're meaning the sewer lateral comes out of the house and goes at, say, a 45-degree turn and goes into the main sewer?

Q. Right.

A. That shouldn't make any difference one way or the other.

Q. So no matter what, it's going to go (indicating), once it reaches the main it's going to go downhill, the snake will?

A. All pipe fittings are meant so when you run a snake -- actually for all flow, they flow downhill, so that when a technician runs a snake in the line he's

confident that it's going to be going downhill, just like a river that's going to be going past the tributaries and getting into a larger and larger pipe further on down to where the blockage is going to be.

Q. Well, isn't it possible that under that scenario where there's one blockage at the main where the lateral meets, that -- you've got enough imagination to imagine a snake clearing that whole blockage out, don't you? You can imagine that happens?

A. Yes.

Q. What would happen if that occurred?

A. Well, then if you've cleared the main, then waters from the -- if its backed up in the main, it's going to go down the main.

Q. It could also back up into the house, could it not?

A. I don't see that happening, because you're going downhill.

Q. Can you imagine any scenario where water -- where -- excuse me, where sewage backs up from the main into the house?

A. Yes, if a sewage line -- apparently this had happened, from what I read, in 1991, that there was a sewage backup in the main and it came up into the house. That's totally possible.

Q. How does that happen?

A. It backs up in the main --

Q. Okay.

A. -- because of, say, roots or broken pipes or whatever, pieces of pipe, and it comes back up. Water seeks its own level. The main sewer line coming from uphill comes on down, and as the water level rises it will come and -- come into the first opening it can, in which case, in this case, it would be the shower downstairs.

Q. Okay.

A. Now that's just one blockage in the main sewer.

Q. So if there was a blockage, you would have to have, for sewage to be coming from the main into the house -- you agree that did happen in 1991, by the way?

A. Apparently it did.

Q. You accept that?

A. Yes.

Q. Now -- and where was the blockage then?

A. I don't know.

Q. It would have been below the lateral, correct?

A. I don't know.

Q. But what you're saying is there has to be a

blockage of the sewer main below the lateral and then it comes -- so sewage is forced into the lateral instead of downhill, down the sewer main, is that right?

A. Right.

Q. Why didn't that happen here?

A. Why didn't it?

Q. Right. Just because it's too big a coincidence that you would have two?

A. Yes, there's one other factor that hasn't been brought up, and that is that the three-inch clean-out was unscrewed and apparently the technician looked down that and saw no blockage, so now we have an even more improbable situation, because if there was a blockage in the main sewer, that blockage would have had to have been between the connection to that three-inch line and the other lateral connection, which is only a few feet further up that line, so that that three-inch sewer clean-out that takes care of one upstairs bathroom and a laundry room, I believe, would have been clear, and then that sewage backup would have backed up into the house and up against this other stoppage.

Q. Well, Mr. Long's opinion isn't based on the idea that more than one lateral was blocked, is it?

A. I believe it is. At first I read his testimony and when I was reading through it I was

thinking this has got to be a two-blockage type of situation, and I thought he wasn't making any sense; and then finally, I believe at the end of his testimony, he said that you would have to have two blockages in order for this to happen.

Q. Uh-huh. Can you imagine another scenario -- well, let me put it this way: I asked you to assume that when the snake is run through the lateral, clears the lateral, I'm asking you to assume here that after that is cleared and it goes in the main, after it is cleared a volume of raw sewage backs up into the house. How does that happen?

A. I don't know how it could happen.

Q. Well, Mr. Long's scenario is one way it could happen, correct?

A. Well, his scenario, at least at first, didn't make a lot of sense because he was talking about he shouldn't have gone into the main sewer, and that thinking is well, so what? You know, all you're going to do is run your snake further down the line. It may not do much because too much snake in a six or eight-inch line may not have much effect. It may -- if it does have an effect, all it's going to do is clear the main sewer line, but if it doesn't nothing else is going to happen.

You're going to pull the sewer line back, and he's assuming that he's poking a hole in the initial blockage, which was a situation that allowed sewer water to come back up but, number one, you would have to assume that when you poked a hole into a blockage you would leave that hole there with the -- still with the same blockage and allowing water to come back through that hole, and that -- again, that doesn't make a whole lot of sense either because I don't think you're going to allow water to come back through without it stopping back up with the stoppage there. I mean, now we're speculating even more, but this whole scenario just does not add up.

Q. So there's just no way that a sewage backup could occur from the main into the house?

MR. HERNANDEZ: Objection, misquotes the witness's testimony.

THE WITNESS: No, I'm saying highly improbable. I'm not going to say impossible because I can't say that.

MR. McKEOWN:

Q. Because it happened in 1991?

A. No, what you said is -- what I am saying is highly improbable is the two sewage blockages. When you're saying is it possible for a blockage with just

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the sewer, just the main sewer, which apparently happened in '91, I say definitely, it happens quite often in towns around the area; but what I'm saying is highly improbable, if not impossible, is the scenario of running a snake through one blockage and somehow allowing pressure from a stopped sewer that would have had to be in almost a precise location, within just a few feet -- it would have to be not below it and not above it, it would have to be exactly in a certain spot in the main sewer, which probably will never get stopped up because it's got at least a six or eight-inch pipe, it's sleeved now, which it wasn't before, meaning a smooth bore, it's very steep, because it goes downhill it's got a lot of pressure on it, and it's got a lot of houses on it. Being a six or eight-inch pipe indicates that you've probably got an awful lot of homes on it, so that, you know, if the scenario did happen, it would be, you know, a major disaster rather than just a few gallons here and there.

Q. And what it would require would be --

A. May have water --

Q. -- a blockage or at least a partial blockage below this lateral, correct, either at the lateral or below the lateral and then another blockage, again either at the lateral or somewhere in the lateral?

A. Well, that's what they're assuming.

Q. That's what you would have to assume. I understand you think that's improbable.

A. We all assume that there was a blockage in the lateral of the house.

Q. Okay, you agree with that?

A. Yes, because apparently the technician had cleared that and the water started running out, not in, so, again, we're going, you know, with the testimony, I'm sure, of the technician.

Q. You have come -- having done plumbing for 35 years, I'm sure you've come on the scene of homes where there's a serious blockage or some big plumbing problem and there's -- it's just a wreck, there's water everywhere? You've seen that, right?

A. A few times.

Q. There's a lot of water around, you've seen that a few times?

A. Uh-huh.

Q. When you've seen that, have you just gone and said okay, cleared the drain and now see you later, or have you done something to facilitate cleanup?

A. If I was not the cause of the original spillage then, you know -- apparently, you know, Rescue Rooter is out there to clear stoppages. Now apparently

when some water came out after he pulled the plug, and he said when he pulled the plug the water was not coming out, and that would make sense because the shower and the clean-out plug are at about the same level, so that, and water reaching its own level, would indicate it was safe to go ahead and pull that plug -- you know what? I've lost my train of thought.

Q. Well, here's what I'm asking, okay, a hypothetical. I've got a plumbing incident in my house that results in my kitchen being flooded, all right, and going into the dining room or something.

If an experienced plumber like you comes on the scene, you snake the drain and then you just say see you later, or do you say here's the cards of people who will help clean this up? Do you do anything to facilitate cleanup?

MR. HERNANDEZ: Objection, incomplete hypothetical. Are you referring to sewage being there?

MR. McKEOWN: Well, anything.

Q. Sewage would be an extreme example but I'm talking about anything, water backup --

A. Yes, I would, certainly, but it's kind of obvious to the owner that he's got a problem.

Q. Uh-huh.

A. The owners not going to say are you going

to clean this up because obviously I didn't cause it. It would maybe take a professional, and the owner -- it would be kind of assumed that the owner would go ahead and take care of the situation. Now if I had caused a spillage, I would do my best to clean it up or what have you.

Q. Okay. If you had caused it, I understand that, so if you as an experienced plumber had caused the backup. In this case, if Rescue had caused the backup and Rick had caused the backup, then he should have taken steps to clean it up, correct?

A. If I had done something to cause a backup and damage, then I would be responsible.

Q. All right. Now, if this -- if this was caused by just one block in the lateral that had been left to go for days, and then the technician comes on the scene and clears that problem, it's your testimony that he shouldn't do anything or have any kind of conversation with the homeowner regarding what should be done next to clean this up, considering it's obviously black water?

MR. HERNANDEZ: Objection, misquotes the witness's testimony, argumentative.

THE WITNESS: I would imagine there would be conversation. I would ask the owner what he plans on

doing.

MR. McKEOWN:

Q. Do you have some expertise in how to handle black water? You know what black water is?

A. Well, you're talking about a sewage spill and feces --

Q. Right.

A. -- in the water.

Q. Something that comes out of a sewer line, correct?

A. Right.

Q. You have some expertise in that?

A. Not on a -- not on chemicals, no.

Q. No, no, not as an environmental expert --

A. Right.

Q. -- but you understand it needs to be taken care of?

A. Yes, you need to clean it up as best you can.

Q. You've got to treat it with respect and get the right people to deal with it, correct?

A. Yes, uh-huh.

Q. And if you're dealing with someone who's got a sewage spill, do you make recommendations as to environmental people they should be calling, whether

they should be calling Four Star or something like that?

A. I would find out what the owner had in mind.

Q. Okay.

A. If he didn't know what to do, maybe if he had names in mind I could give him some names.

Q. Do you have any idea if Rick had any kind of conversations with Mr. al-Hakim?

A. No, I don't.

Q. Okay.

MR. HERNANDEZ: Can we take a short break?

(Break taken at from 2:45 to 3:00 p.m.)

MR. McKEOWN:

Q. Just a couple of questions, which you know means 10.

A. Uh-huh.

Q. Do you have an understanding as to how much feces was collected off the floor from this -- from this spill?

A. No.

MR. HERNANDEZ: Objection.

MR. McKEOWN:

Q. Okay. There was an amount that was put in a Tide box. We haven't got any pictures.

MR. JONES: Your client said they took no

pictures whatsoever of the '97 incident.

MR. McKEOWN:

Q. Some people who were adjusting this thing walked away with like the feces in a box, okay? Now under your scenario, how much would you expect to be there?

MR. HERNANDEZ: Objection, it's vague, it's ambiguous as to "under your scenario."

MR. JONES: Vague and ambiguous as to time, lack of foundation, assumes facts not in evidence. I don't believe there's been testimony about adjusters. You may be referring to Rescue Rooter employees.

MR. McKEOWN: Is it Rescue Rooter employees that took it?

MR. JONES: In May of '97?

MR. McKEOWN: Thanks, that sounds right. That's neither here nor there for the purpose of my question.

Q. How much would you expect? There's a single person living there, and when I refer to "your scenario" I mean this notion that there's just one lateral backup and all the stuff that was being swept out the back door had just come over the previous day or two --

MR. JONES: Same objections.

/ / / / / / / / /

MR. McKEOWN:

Q. -- from inside the house.

A. I have no idea how much came out.

Q. If there was a significant amount of feces, more than that that would be produced by Mr. al-Hakim, then that would mean that the scenario, as you described it, is not correct, isn't that true?

MR. HERNANDEZ: Objection, vague and ambiguous.

THE WITNESS: I didn't quite get the question.

MR. McKEOWN:

Q. Okay, let me try it again: Your scenario, and you understand what I mean by your scenario, correct?

MR. HERNANDEZ: Do you?

THE WITNESS: No.

MR. McKEOWN:

Q. Okay, let me define it for you.

A. Right.

Q. What I mean by your scenario is the scenario in which there is sufficient -- just one block, it's in the lateral, this has nothing to do with the main --

A. Right.

Q. -- and the fact there's a blockage in the lateral means that the sewage in the house stops there.

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A. Yes.

Q. Okay, and so it doesn't have any outlet from the house, correct?

A. Correct.

Q. So it comes up through the other areas as you've described, going over the two-inch lip and then flowing --

A. Yes.

Q. Okay. So that's what I mean by your scenario.

A. Okay.

Q. Okay, you understand that.

Now under your scenario the feces that would be found in the downstairs level would all have had to have come from the homeowner, correct?

A. I would imagine so.

Q. All right, so if there was more feces found than could have been produced by the homeowner in the short space of time, one or two days, then that would indicate that your scenario is incorrect?

MR. JONES: Calls for speculation.

THE WITNESS: If there was more, you're saying? My scenario is very simple. It is that there was a blockage and there was an overflow. Now remember, there was one toilet that was usable that was not blocked up.

MR. McKEOWN:

Q. Right. So you would expect even less feces, correct?

A. No, I wouldn't expect anything, because I have no idea.

Q. Yeah, I know you understand, I don't, but I'm just asking this question, I guess it's really a logical syllogism -- if the evidence shows that there was more feces found in the downstairs area than was being produced in the house, if you'll pardon the crassness of the question --

A. Uh-huh.

Q. -- then it must have come from some other source, like for instance the sewer main?

MR. HERNANDEZ: Objection, calls for speculation, assumes facts not in evidence.

MR. JONES: Vague as to time.

THE WITNESS: I can't speculate on that.

MR. McKEOWN: I'm returning your file to you.

Q. Would you take a look at this? I'm going to have -- what I've just handed you I believe is a copy of your file. Would you look at it and confirm for me it's a true and accurate copy of your file, in which case I'll mark it as an exhibit to this deposition?

A. Looks accurate to me.

MR. McKEOWN: Go ahead and mark that as a group Exhibit, No. 1.

(Whereupon the contents of Mr. Lauder's file were marked as Deposition Exhibit No. 1 for identification.)

MR. McKEOWN:

Q. Refresh my recollection, have you reviewed the deposition of Mr. Peterson?

A. I read I believe three depositions, and I wrote them down. Yes, I did.

Q. Now Mr. Peterson said in his deposition that he talked with Rick, correct?

A. I'm trying to recall his deposition. I read it quite a while ago, and I can't remember.

Q. All right. Well, I'll represent to you, and I'm sure these guys will object, but that's okay -- I'll represent Chris Peterson testified that he talked to Rick about this and Rick told him that there was just basically a flush's worth of water that spilled out of the clean-out, like three gallons, like I described, or five gallons, and that he didn't see all the other sewage until he was on his way out. Does that sound right?

A. I can't remember --

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

I, KAREN ALDERSON, CSR, License No. C-6279, State of California, do certify:

That KENT LAUDER, the witness in the foregoing deposition, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was reported at the time and place therein stated by me, a Certified Shorthand Reporter, and thereafter transcribed into typewriting;

That when so transcribed, the deposition was read to or by the said witness, corrected by the witness in all respects desired and duly subscribed by said witness;

I further certify that I am not interested in the outcome of said action, nor connected with, nor related to, any of the parties of said action or to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 30th day of September, 2002.

K. Alderson

KAREN ALDERSON, CSR, License No. C-6279,
County of Contra Costa, State of California.

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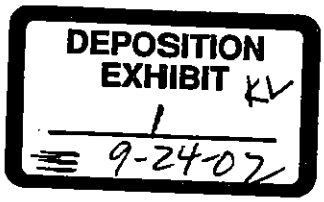

August 7, 2002

List of various firms and construction defect projects for which Lauder Plumbing has acted as expert witness:

FIRM	CASE
Allman & Neilsen 1999 Harrison St. #1900 Oakland, Ca. 94612	1) Cupertino Creekside HOA - 2001
Bradley, Curley, Asiano & McCarthy 150 Spear St. 12th Floor San Francisco, Ca. 94105	1) Andalusia – Fremont - 1998
Clapp, Moroney 4400 Bohannon Dr. #100 Menlo Park, Ca. 94025	1) Werlinger v Pasca – Belmont – 1992 2) Piccone v Stanco – San Jose – 1992 3) Village-In-The-Park – Daly City – 1993 4) Dame v Los Medanos – Danville – 1993 5) Amesport Landing – HMB – 1996 6) Foxborough – Santa Clara - 1997
Farmers Insurance P.O. Box 490 Pleasanton, Ca. 94566	1) Spring Terrace – Burlingame - 2000 2) 222 Lyell St., Los Altos - 2001 3) Foot Loose Juice – Salinas - 1998
Freeland, Cooper, Lehocky & Hamburg 150 Spear St. #1800 San Francisco, Ca. 94105	1) Fox v City of Palo Alto - 1997
Gordon & Rees 275 Bettery St. 20th Floor San Francisco, Ca. 94111	1) Williams Commons – San Jose - 1993 2) Pine Forest – San Jose - 1994 3) Domizile – San Jose – 1999-
Hoge, Fenton, Jones & Appel, Inc. 60 South Market #1400 San Francisco, Ca. 94113	1) Bright v Licursi – San Jose - 1999

FIRM	CASE
Howard, Rowe, Martin & Ridley 643 Blair Island Road #400 Redwood City, Ca. 94064	1) Scott v Montara Sanitary District - 1998
Jackson & Harrigan One Market St. 8th Floor San Francisco, Ca. 94105	1) al-Hakim – Oakland - 2002
Jones, Lamore, Brazier & Riddle 160 West Santa Clara, Ca. 95113 San Jose, Ca. 95113	1) Eucalyptus Knoll – Mill Valley - 1993
Joseph Costella & Assoc. 201 North Civic Drive #201 Walnut Creek, Ca. 94596	1) Chang v Weyerhaeuser – DC - 1998 2) Prometheus – Timberleaf –SJ-1999 3) Prometheus – Alderwood – SJ-1999 4) Higdon v Shea Homes-Pleasanton-2001
Lariviere & Dickerson 540 North First St. San Jose, Ca. 95112	1) Woodside v Summerhill – Milpitas-1995 2) Sandy Cove – HMB - 1997 3) Casa Blanca – Sunnyvale - 1996
Low, Ball & Lynch 255 Shoreline Dr. #400 Redwood City, Ca. 94065	1) 1338 Castillo – Burlingame - 1998
LaMore, Bradier, Riddle & Giampaoli 1570 The Alameda #150 San Jose, Ca. 95126	1) Cypress Cove v Calprop – HMB –2000
Mitchell, Burrow & Gingerich 1631 Willow St. #100 San Jose, Ca. 95125	1) Woodside Terrace – Santa Cruz – 1996

Lauder Plumbing

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DEPOSITIONS

Costello & Associates 04/01	Promethues – Alderwood Santa Clara	Leaking copper pipe in attic Spaces, shower stalls leaking At panel joints, stress cracks In fiberglass tubs, hose bibs Lacking permanent anti- Siphon devices.
Costello & Associates	Prometheus – Timber Leaf	Same as Alderwood.
07/01	Santa Clara	
Gordon & Rees 06/94	Williams Commons Santa Clara	Galvanic corrosion at water Heater, water heater damper, Drip legs, copper piping System, waste line Penetrations, sewer clean Outs, drip tees at furnaces.

Aug 22 - 10a & San Ramon.

Dramatists Personae

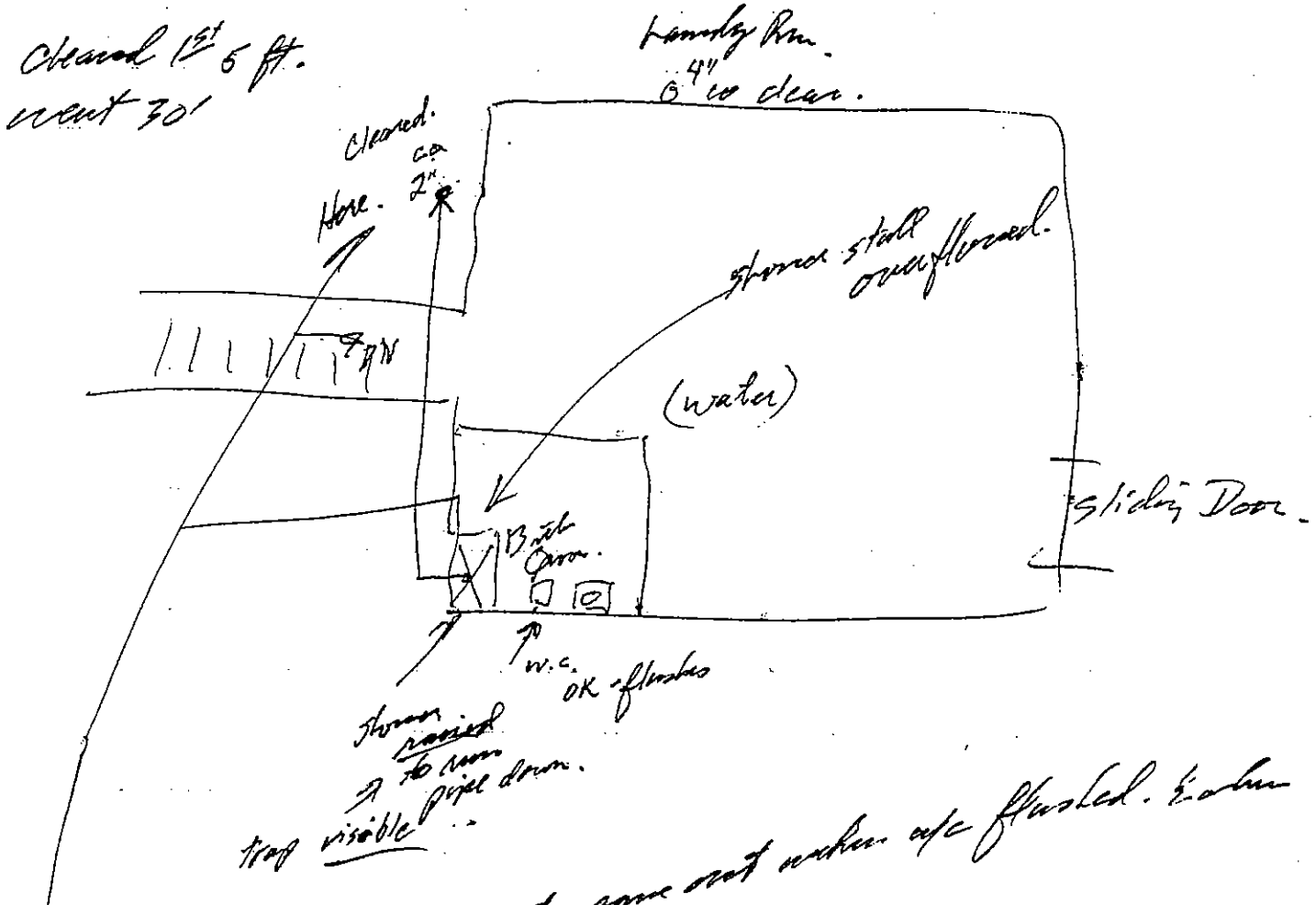
W. Bennett - representing Rescue Rooter.

Brian Peterson - ARS - (Rescue Rooter)

~~Eric~~, Rick - Feb 19-97 - orig. tech. + Rick

owner Alekin - called about "blockage" - Rick noted. f water running - but water comes out when opening C.O. - back in w.c. flapper. - fixed leakage. - No standing H2O in 4" C.O. in basement/laundry room - C.O above floor.

Split level. Shower in room & bath room.



Standing water - when water came out when o/c flushed. Broken flushes into stack

David Ball

Flooded before job.

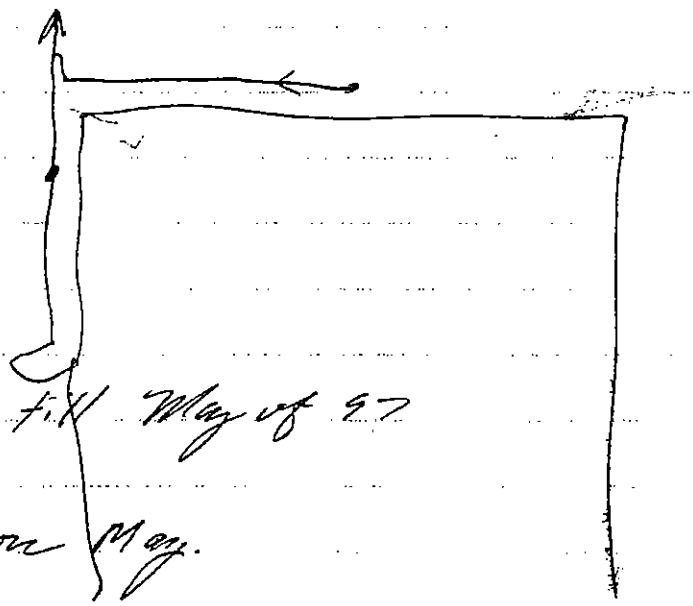
illegal connection.

when 2" co removed - sewer from wfc overflows - indicating 4" line plugged. would not allow tech. to remove wfc - (either one)

2" co. 5' cleared vert. - No resistance to machine 700 - 1000 ft. 2" 300 min line. 1965 600 machine.

Morning blockage - 2nd call one 90 days later - by tech time, bigger not a factor.

Left blockage -



Did not complete fill Way of 97

Do not mention May.

"Pipe Pros" out here in Dec 99' - 2 yrs later

---

running down 4" (clean line) would have been expensive could not remove wfc - so did best he could -

JACKSON & HARRIGAN
ATTORNEYS AT LAW*

YOLANDA M. JACKSON
ANNE B. HARRIGAN
JOHN J. MURRAY
JOHN T. PAYNE
DONALD K. BUSSIERE
STEPHEN L. KATZ
DANIEL HERNANDEZ
LAURA L. ALLEN
WILLIAM E. JEMMOTT
BARBARA A.CAULFIELD
PAMELA A. BOWER

ONE MARKET
SPEAR TOWER
8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE: (415) 543-3434
CIVIL LITIGATION FACSIMILE: (415) 546-7019
WORKERS' COMPENSATION FACSIMILE: (415) 541-4285

August 26, 2002

Kent Lauder
Lauder Plumbing
136 Myrtle Rd.
Burlingame, CA 94010

Re: ***al-Hakim v. Rescue Industries, et al.***
Alameda County Superior - Northern Div. No.: 821885-2
Our File No.: SF950-2696
Date of Loss: 2-18-97

Dear Mr. Lauder:

Mr. Jemmott has instructed me to forward the enclosed Insurance Technical Services Group, Inc. document to you.

Thank you.

Very truly yours,

Thomas Barber
Assistant to William E. Jemmott

Enclosure

L:\2696\Letter to Expert Lauder 08-26-02.doc

* All personnel, including attorneys, are employees of Fireman's Fund Insurance Company.

PIPE PROS

5356 Clayton Road, #220A
Concord, CA 94521
Fax 925-969-9184
1-800-517-PIPE (7473)

December 29,1999

Mr. Ron J.Cook
Attorney
Willoughby, Stuart & Bening
50 West San Fernando, Suite 400
San Jose CA 95113

RE: al-Hakim WSB CASE NO: 2509494B

Dear Mr. Cook:

Background

Pipe Pros Inc. is a corporation that specializes in video inspection of sewer lines and the cause and effects of their failure or their integrity. On or about the day of October 20th 1991, there was a claim against the City of Oakland for the failure of their 6-inch city sewer main by a Mr. al-Hakim. He stated that sewage entered his home due to this sewer main failure. The sewer main in question runs parallel with Mr. al-Hakim's home on his property. This sewer main is approximately 6 to 7 feet deep under asphalt in his driveway. Subsequently the City had a substantial portion of this sewer main replaced. They also reconnected the existing sewer laterals from Mr. al- Hakim house to the new sewer main at the same time. Then approximately 5 years and 5 months later there was another claim made by Mr.al-Hakim. This claim states that after Rescue Rooter cleared an 1 1/2 inch drain that enough sewage exited this drain line to cause a 6 inch sewer main to completely clog up and for flooding to occur again in Mr. al-Hakim's home.

Project Details

We were retained by Ron Cook of Willoughby, Stuart & Bening to videotape and inspect all or as many as possible sewer laterals or mains as they relate to Mr. al-Hakim's home and the city of Oakland main sewer lateral. We began this process on December 21,-1999 at approximately 9:00 am.

Our first attempt was from a 4 inch clean out in the office at the lower level of the home. We removed an ABS plug from a no-hub fitting that was exiting a small flat

area approximately 4 feet above the floor. This entire room was very cluttered which made access very difficult. We proceeded down the line only to find it completely blocked with debris 3 feet from the clean out opening we could not proceed past this point in the line.

Our second attempt was from the weight room and a 1&1/2 inch wye that was in the slab floor. This fitting had a brass plug in it that was very hard to remove due to the amount of rust on the threads of the fitting. This wye has a vertical drain waste and vent pipe attached and a 45 degree angle access from which any cleaning or inspecting of this pipe would commence.(See drawing #2) We tried to put our smallest camera (1 inch in diameter) in this drain line and could only go 6 inches due to the large amount of corrosion and build up in the pipe.

Our third attempt was from the laundry room. This fitting was a 3-inch wye that accepted gray water from the laundry room and what appeared to be waste from the upper level of the home. This line was also full of build up and corrosion and we had to use our smallest camera instead of the one we would have liked to have used (2inch). This drain line also has an obstruction in it and we were unable to video all the way to the city's main line. We marked the spot where the line is obstructed. That spot is just outside the laundry room door.

Our fourth attempt was from the manhole in the street. This line runs from the street above his house under his driveway and through to the neighbors yard below. The main sewer line average 6 to 7 feet deep. This line is very accessible and has a good flow due to its vertical to horizontal ratio. This is a new line and was replaced only 5 years ago. We could not find any reason for this line to back up. There were no breaks, cracks or separations to cause a problem (see attached video).

Observations

I inspected the property as it relates to the removal of solid and liquid waste products and noticed the following.

There appears to be three areas that waste exits and then could re-enter the property at the lower level.

1) The office: This area is well above grade and has a very secure no-hub coupling and an ABS plug in it. Before this would back up the washing machine area would back up.
2) The weight room: This area has a very small drain line in it and the brass plug would had to have been left out of the fitting for it to back up into the downstairs area.
3) The laundry area: This waste line drains the laundry area as well as some fixtures from above. This fitting also has a plug in its fitting and a back up would come out in the laundry drainpipe behind the washing machine.

Equipment Used Per Report from Rescue Rooter

Specs for equipment
1) Spartan 300 machine with a cable diameter of 5/8 inch. Minimum blade diameter of 2 inches. Cable length 75 feet.

In addition I have included the actual spec sheets from the Spartan Equipment Company for your reference..

It would not have been possible for the technician to put his 300 machine in the 1 1/2 inch fitting to clear the line from where Mr.al-Hakim said he did.

Statement of Findings

After reviewing the video, inspecting the property and reading the Rescue Rooter report I have come to the following conclusions:

- First, there is not sufficient evidence for me to believe that sewage entered the property as Mr. al-Hakim stated it did as the equipment doesn't fit the pipe it supposedly went into.
- Second, the size of the cable and blade could not move enough sewage in the line to create a 6-inch sewer main with tremendous head weight to back up with no damage to the pipe showing.
- Third, if there were a back up, it would have exited into the laundry room then under and out of the house at the poor closing side door

Sincerely

Randy Agnetti
President
Pipe Pros Inc.

Enclosures:

Spartan specs
Sketches #1&2
5 videos

UNDERGROUND FACILITY LOCATION SKETCH

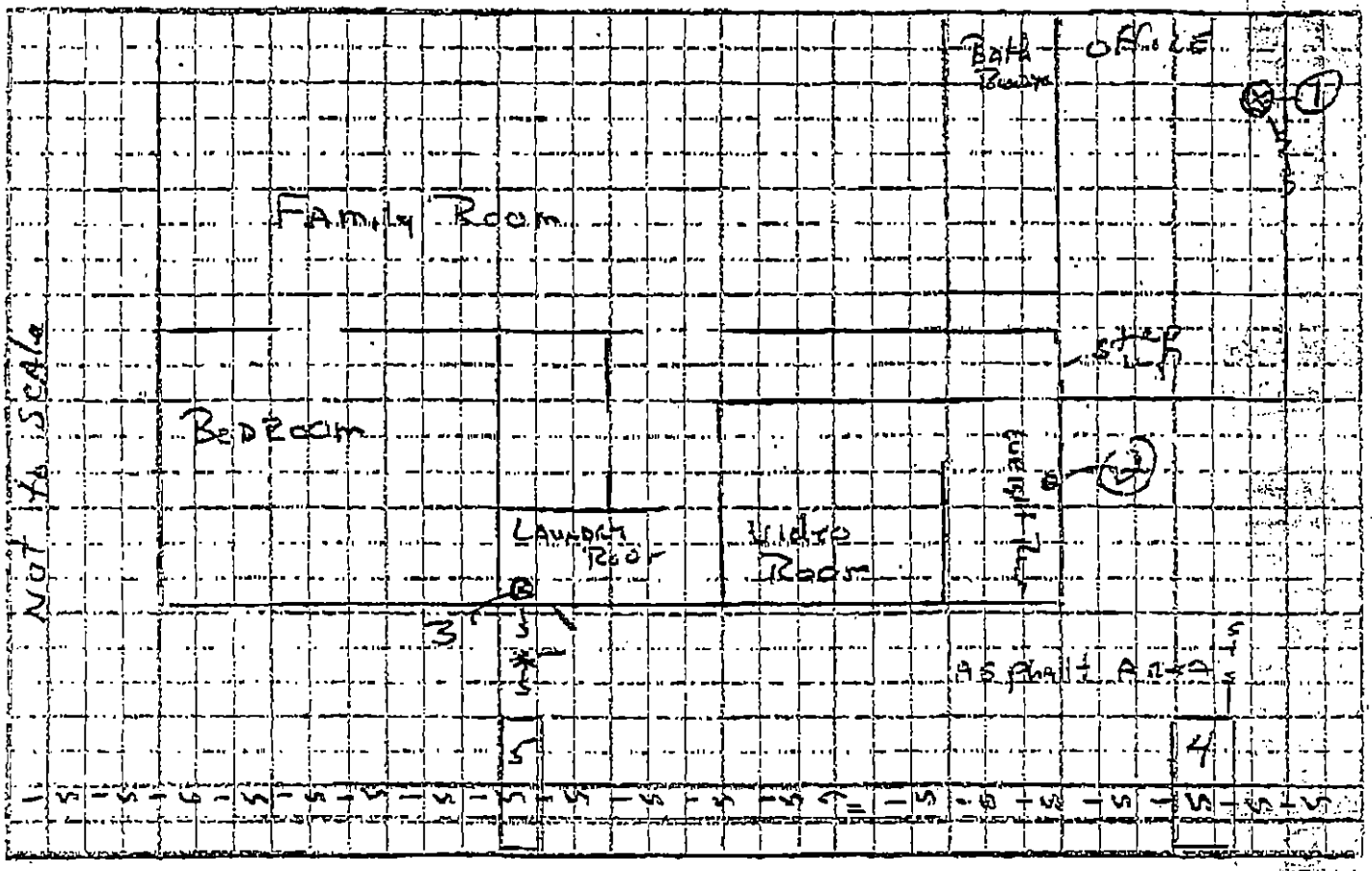
#2 1

TIME ARRIVED _____ TIME COMPLETED _____

HAND DIG AND EXPOSE ALL FACILITIES BEFORE USING MECHANICAL DEVICES NEAR UNDERGROUND FACILILTIES

HOW MARKED: PAINT ☐ FLAGS ☐ NYLON WHISKERS ☐ PRINT # _____

SKETCH AREA



DRAWING SYMBOLS

DIG AREA		FENCE	X X X X X X X X X X X X
GAS		ELECTRIC	
PHONE		CATV	
WATER	W W W W W W	SEWER	S S S S S S

COLOR CODE

PHONE = ORANGE GAS = YELLOW ELECTRIC = RED CABLE = ORANGE WATER = BLUE SEWER = GREEN

THIS SKETCH IS APPROXIMATE. 18 INCHES HORIZONTALLY FROM EXTERIOR MARK IS CONSIDERED A CORRECT LOCATION.

COMMENTS: (1) 4" cleanout in office line is clogged with debris (2) 1½ inches Lots of corrosion impassable (3) 3" c/o line is clogged with debris (4) Tie in to repaired city main (5) tie into city main.

NOTE: All markings are good for 14 days and only for the utilities marked by Pipe Pros Inc. We assume no liability for utilities not specifically marked by Pipe Pros Inc. or damaged by mechanical means as all excavation shall be done by hand within 2 feet of all utilities.

SIGNATURE _____ DATE 12-31-99

000381

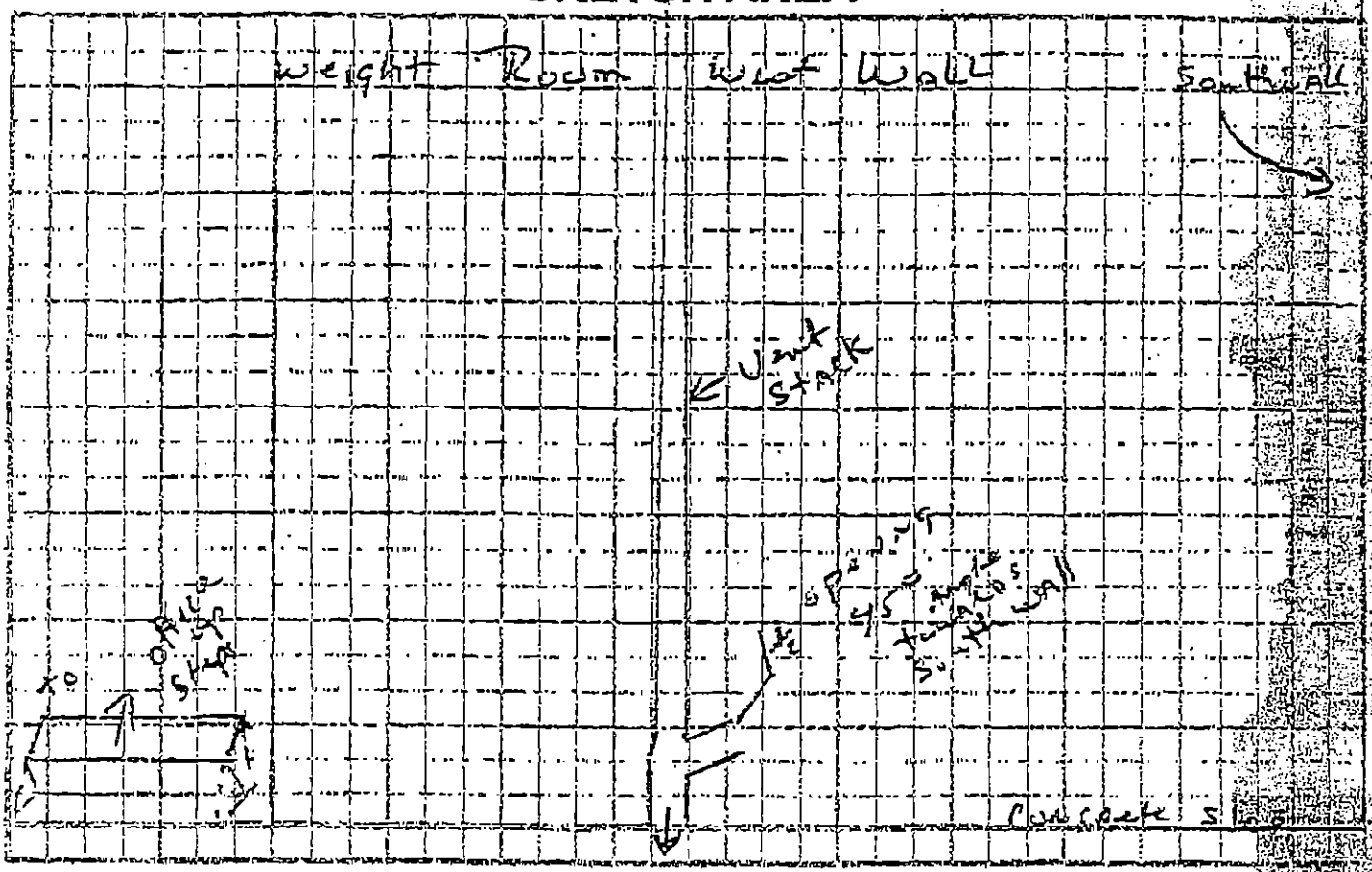
UNDERGROUND FACILITY LOCATION SKETCH #2

TIME ARRIVED_____ TIME COMPLETED_____

HAND DIG AND EXPOSE ALL FACILITIES BEFORE USING MECHANICAL DEVICES NEAR UNDERGROUND FACILILTIES

HOW MARKED: PAINT ☐ FLAGS ☐ NYLON WHISKERS ☐ PRINT #_____

SKETCH AREA



DRAWING SYMBOLS

DIG AREA		FENCE	X X X X X X X X X X X X
GAS		ELECTRIC	
PHONE		CATV	
WATER	W W W W W W	SEWER	S S S S S S

COLOR CODE

PHONE = ORANGE GAS = YELLOW ELECTRIC = RED CABLE = ORANGE WATER = BLUE SEWER = GREEN

THIS SKETCH IS APPROXIMATE. 18 INCHES HORIZONTALLY FROM EXTERIOR MARK IS CONSIDERED A CORRECT LOCATION.

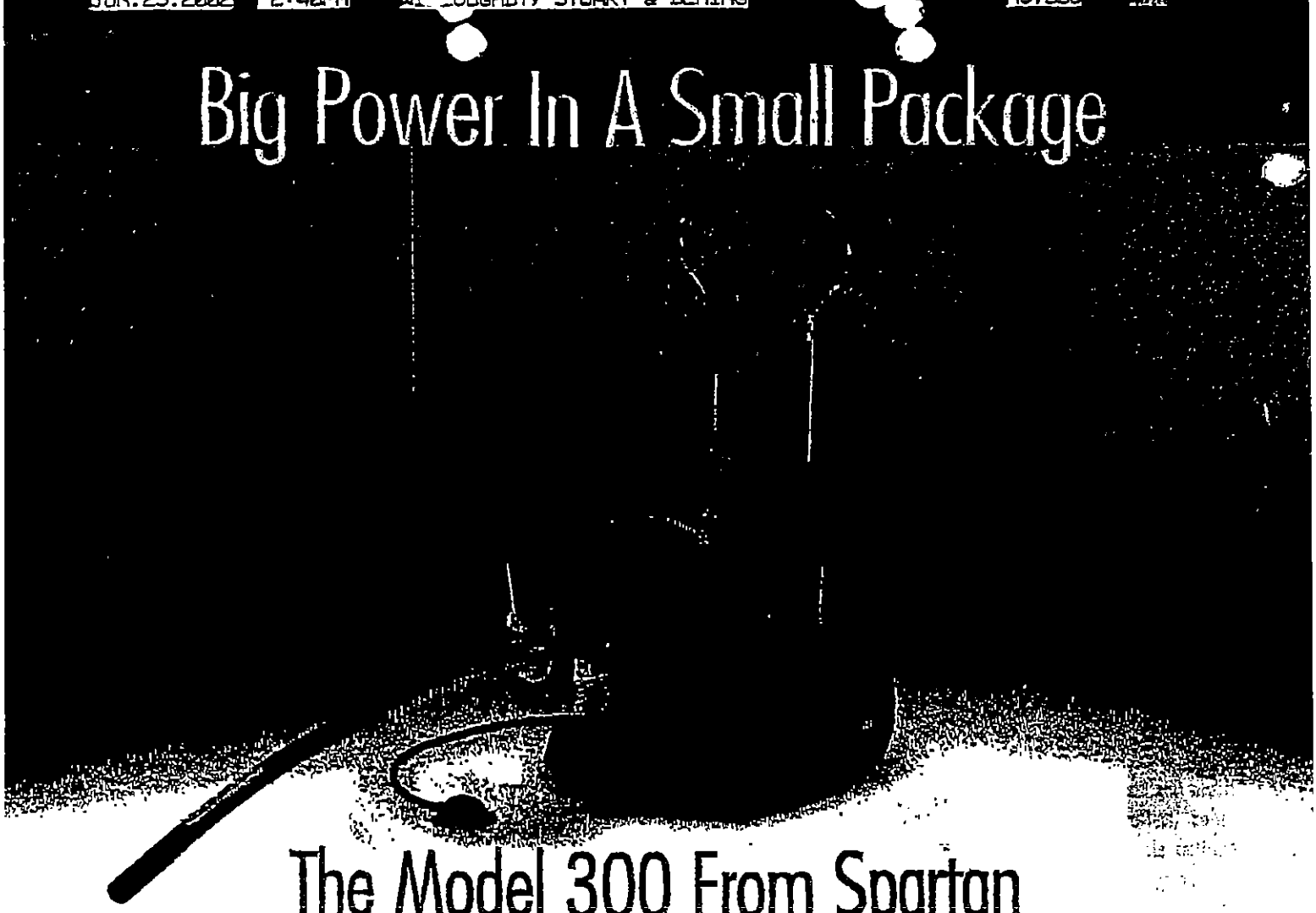
COMMENTS: _____

NOTE: All markings are good for 14 days and ony for the utilities marked by Pipe Pros Inc. We assume no liability for utilities not specifically marked by Pipe Pros Inc. or damaged by mechanical means as all excavation shall be done by hand within 2 feet of all utilities.

SIGNATURE _____ DATE _____

000582

Big Power In A Small Package



The Model 300 From Spartan

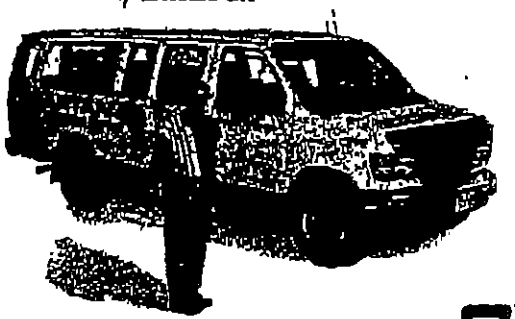
The Model 300 from Spartan provides big power in a small package making it ideal for medium duty jobs - especially in hard-to-reach spaces. The Model 300 combines slimline design and a heavy duty motor to provide up to 8500 rpm to help you get past just about any tight jam you might face.

A Spartan cable machine is one of the few investments you can make that can pay for itself long before it needs to be replaced. So, the money that went down the drain comes right back to your pocket.

The Spartan 300 is available with ***exclusive*** features like our ***patented Dial-A-Cable*** that sends cable in and out of the line automatically and allows you to change cable sizes quickly and conveniently. And ***Smart motors*** that automatically increase the power whenever it's necessary.

Cable can make or break a machine and Spartan offers hundreds of options. Our ***exclusive Magnum Cable*** torques up faster, distorts less and lasts longer. A double wound outer wire is wrapped over an opposite-wound inner core and then attached to a coupling to resist kinking and breaking. Plus, it's almost 27% lighter than inner-core cable so you can get more cable in the drum!

And Spartan brings customer service right to your door. Our National Sales Support Team is on the road every day bringing you ***the industry's only complete line*** of sewer and drain cleaning equipment, including a choice of hydro-jets, cable machines, cameras, root cutters, more than 200 cable options and over 250 accessories.



So if you need help getting out of a tight spot, give us a call at **1-800-435-3866**. We're the ones that **still** make house calls.

The Spartan line is made in America by skilled union workers.

Financing Packages Available.

Visit Us On The Worldwide Web at www.spartantool.com

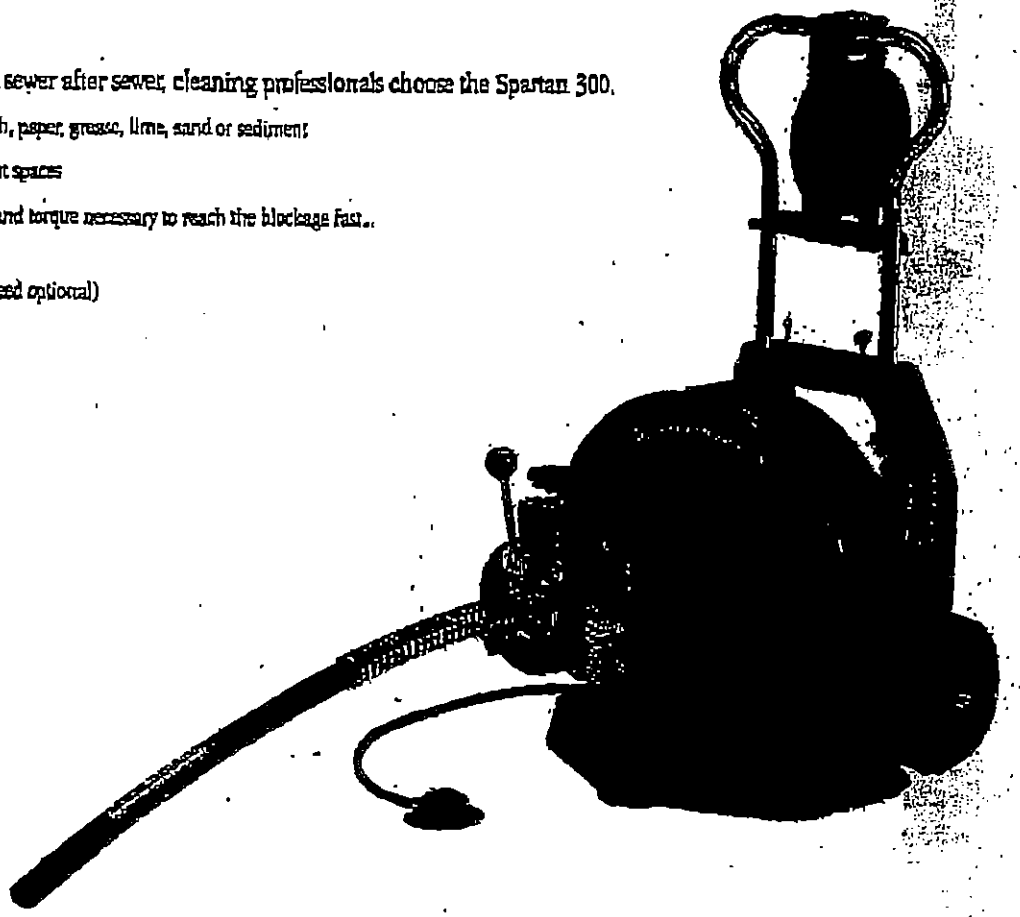
000383

SPARTAN

The Driving Force In Sewer and Drain Cleaning

Spartan Tool, L.L.C., 1506 West Division Street, Mendota, Illinois 61342

Model 300



Time after time, drain after drain and sewer after sewer, cleaning professionals choose the Spartan 300.

- Ideal for medium-duty jobs: light roots, cloth, paper, grease, lime, sand or sediment
- Slimline design permits working in very tight spaces
- Dependable quick-starts give instant power and torque necessary to reach the blockage fast... and blast right through it
- It has a Dial-A-Cable Power Feed (manual feed optional)
- Optional accessories include:
  - Tool box
  - 2", 2 1/2", 3" and 4" blades with holders
  - 3 1/2" saw blade
  - Spear blade
  - 3" and 3 1/2" "F" trap blades with holder
  - Four tubular supports (2 long and 2 short)
  - Cable retriever
  - 5" anchor cable
  - Cable uncoupling stand
  - "T" wrench
  - Cable safety guide and safety gloves
- Recommended choice of cable
  - 5/8" inner-core
  - 5/8" no-tension inner-core
  - 5/8" no-core
  - .55 magnum inner core
- Each cable type has optional accessories
  - Expansion pin with punch
  - 2" flexible leader cable
  - Couplings
  - Splicer
- Pneumatic dig conversion kits available (optional)
- Dimensions: 18" L x 22 1/2" W x 30" H
- Weight: 138 lbs.

Item	Technical Information
Line/Pipe Sizes	3" - 6" diameter
Cable Sizes	5/8" at a wide range of lengths
Max Cable Length	75' with 5/8" or 100' with .55 magnum
Drum Capacities	82' of 5/8" or 107' of .55 magnum (including anchor/leader cable)
Unit Weight	138 lbs.
Power Cord	25 ft. with ground fault interrupter
Motor	Universal AC 4/10 HP fan cooled with reverse capability and watertight switch, 115V, 25-60 cycle 5 amp at 8500 rpm with no load
RPM	8500 rpm geared down to approximately 285 rpm with no load

000384

SPARTAN
The Driving Force in Sewer and Drain Cl

Smallest Blade → 300 machine

Spartan Blades


02799000 2" U- Blade


02799100 3" P.-Trap Blade


44261000 2" Double Cutter


03416800 3" Grease Blade


02786601 3" Half Blade


03400800 2 1/2" Blade


02799200 3 1/2" P-Trap Blade


02786900 3" U-Blade


03416700 4" Grease Blade


02786801 4" Half Blade


02799300
2 - 2 1/2" Blade Holder


02799500 P- Trap Blade Holder


44165200 4" Knife Blade


44008700 2 1/2" Round Cutter


02813501 6" Half Blade

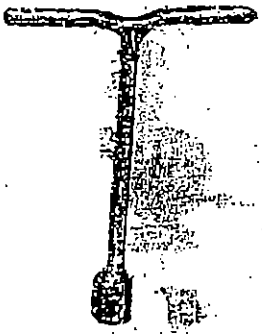

02799800 Spear Blade


02807700 Reriever


02819500 6" U-Blade

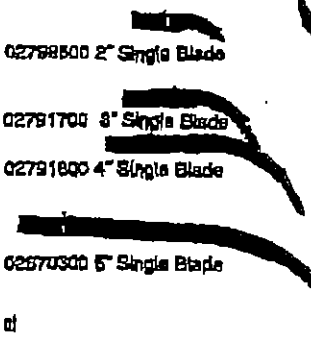

44161600 3" Knife Blade

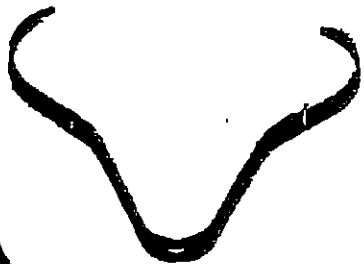

44052600 Boring Tool


03408800 T-Wrench


02799700 8 1/2" Saw Blade


02797500
Tri Blade Holder


02799500 2" Single Blade
02791700 3" Single Blade
02791800 4" Single Blade
02670300 5" Single Blade


02816400 6" U-Blade


02799400 3"- 4"-5" Blade Holder

Visit Us On The Worldwide Web at
www.spartantool.com

The Spartan line is made in America by skilled union workers.

Spartan Tool, L.L.C., 1506 West Division Street, Mendota, Illinois 61342

000385

Cable Ends and Accessories


04220300 1/2" Male Coupling


02878100 5/8" Male Coupling


44119000 .55" Male Coupling


44120600 .65" Male Coupling


02795000 3/4" Male Coupling


04220400 1/2" Female Coupling


02878000 5/8" Female Coupling


44119100 .55" Female Coupling


44120500 .65" Female Coupling


02795300 3/4" Female Coupling


02882100 1/2" Splicer


02878200 5/8" Long Male


44114400 .55" Long Male Coupling


44120400 .65" Long Male Coupling


02797100 3/4" Long Male Coupling

04126500 1/2" Exp. Pin


02878300 5/8" Splicer


44114500 .55" Splicer


44053400 .65" Splicer

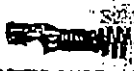

02780800 3/4" Splicer

60871011 13/32" Splicer


04204100 3/4" - 5/8" Double Male


44114200 .55" Double Male


44054800 .65" Double Male

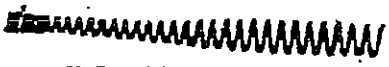

44103700 1/4" Drop Head


02819100 5/16" - 13/32" - 5/8" - 3/4" Pin Punch


02821800 3/4" Exp. Pin


44053300 .55" Exp. Pin


44054900 .55" - .65" Pin Punch


03788700 1/4" Repair Hook


02882200 5/8" Exp. Pin


44117400 .55" Exp. Pin


02781100 5/16" Drop Head


02867200 3/4" BL For 5/16" Cable


02867300 1" BL For 5/16" Cable


02788800 5/16" Repair Hook

02867400 1" BL For 13/32" Cable

02867500 1 1/4" BL For 13/32" Cable


02781300 13/32" Drop Head


02885200 5/16" Repair Bub


02867600 1 1/2" Blade For 1/2" Cable

02867700 1 3/4" Blade For 1/2" Cable

02868000 13/32" Extraction Hook

02788600 13/32" Repair Bub #8

02868100 1/2" Extraction Hook

02788200 13/32" Repair Bub #6

02867800 2" BL For 1/2" Cable

02867900 3" BL For 1/2" Cable

02788500 1/2" Repair Bub #6

Spartan Tool, L.L.C., 1506 West Division Street, Mendota, Illinois 61342

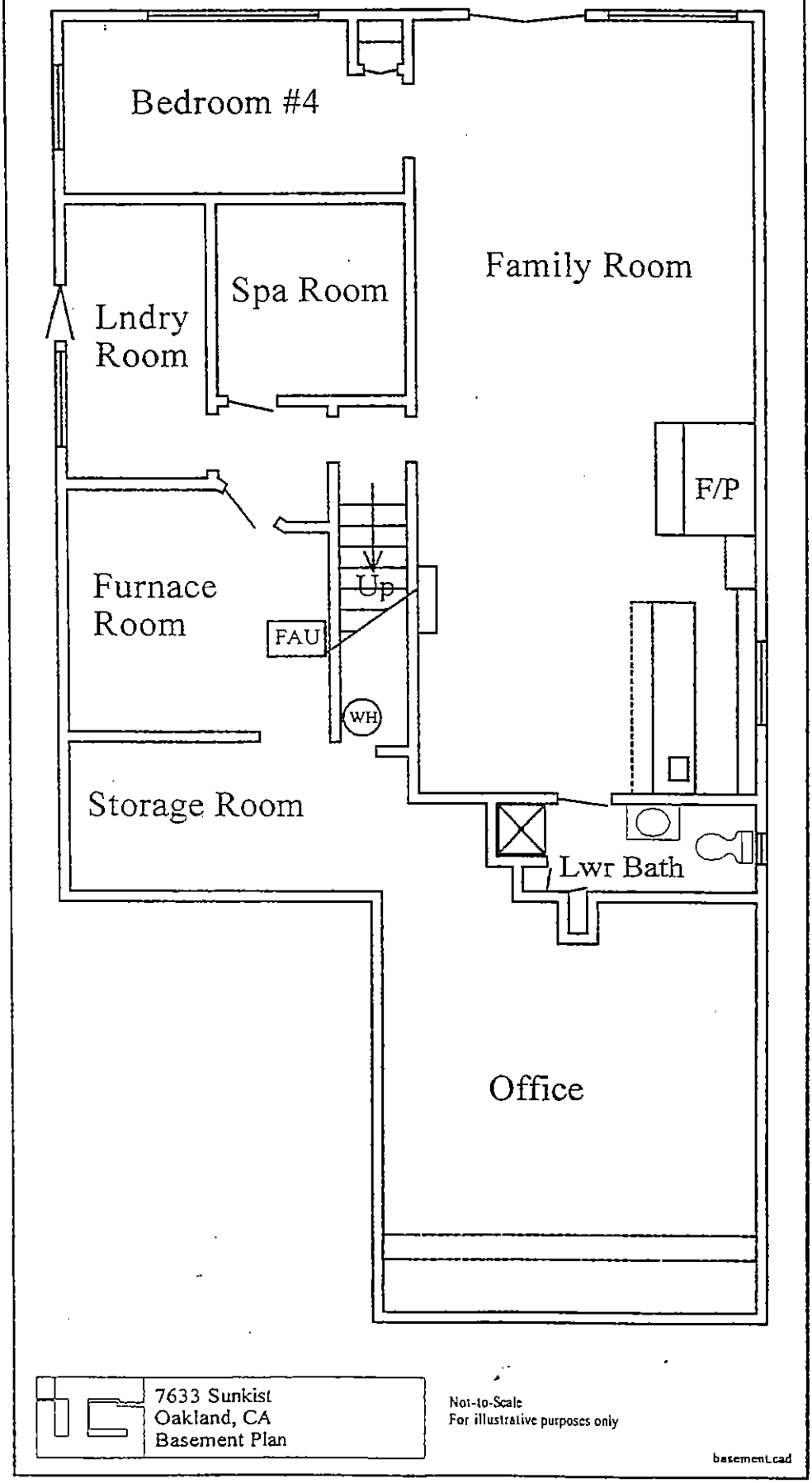
Insurance Technical Services Group, Inc.

255 So. Maple Avenue
So. San Francisco, CA 94080
Phone: (650) 742-9114 Fax: (650) 742-0108

*Damage Appraisals
*Claims Consultant
*Fair Market Valuations

TABLE OF CONTENTS

Diagram #1

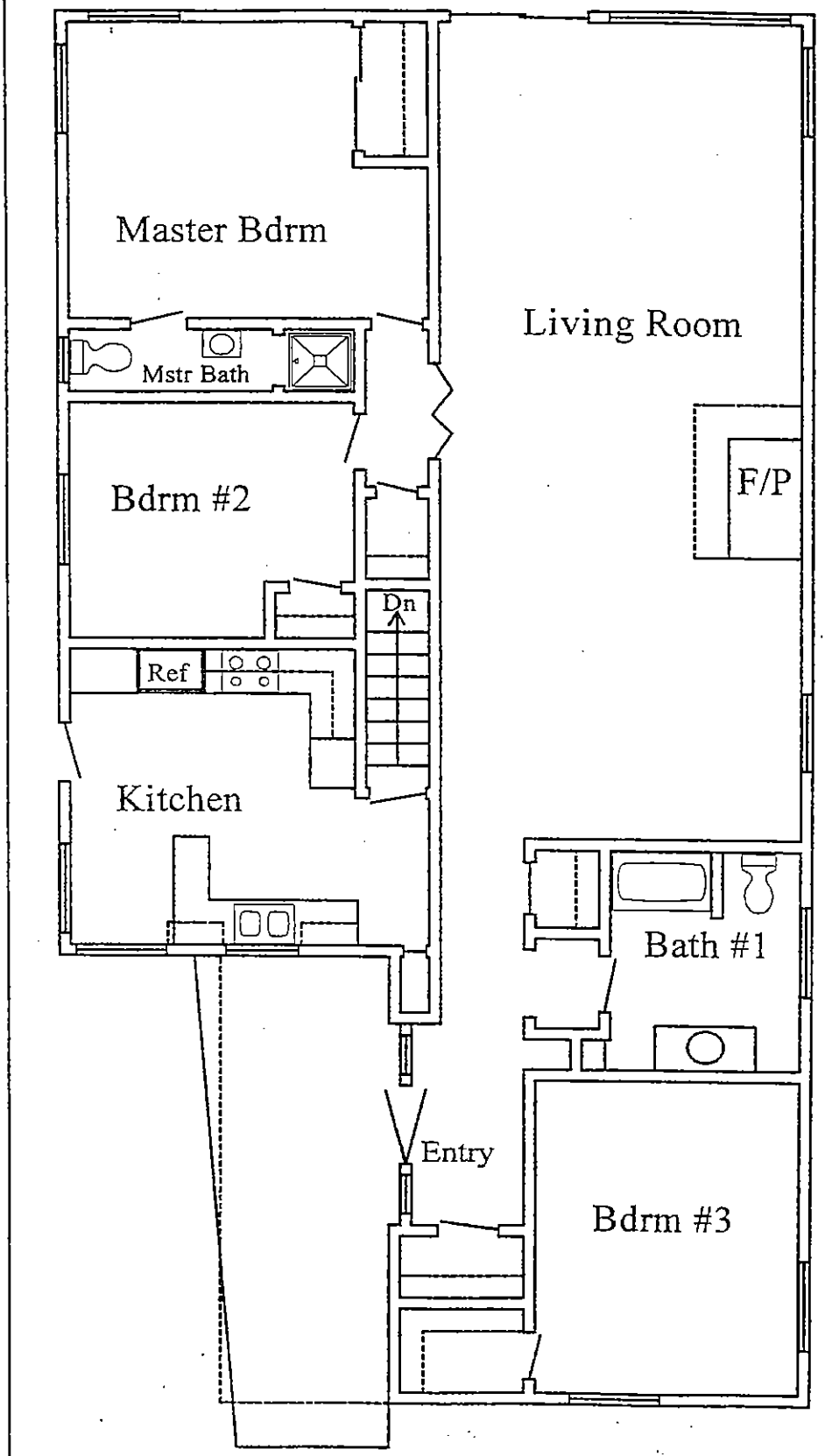


7633 Sunkist
Oakland, CA
Basement Plan

Not-to-Scale
For illustrative purposes only

basement.cad

Diagram #2

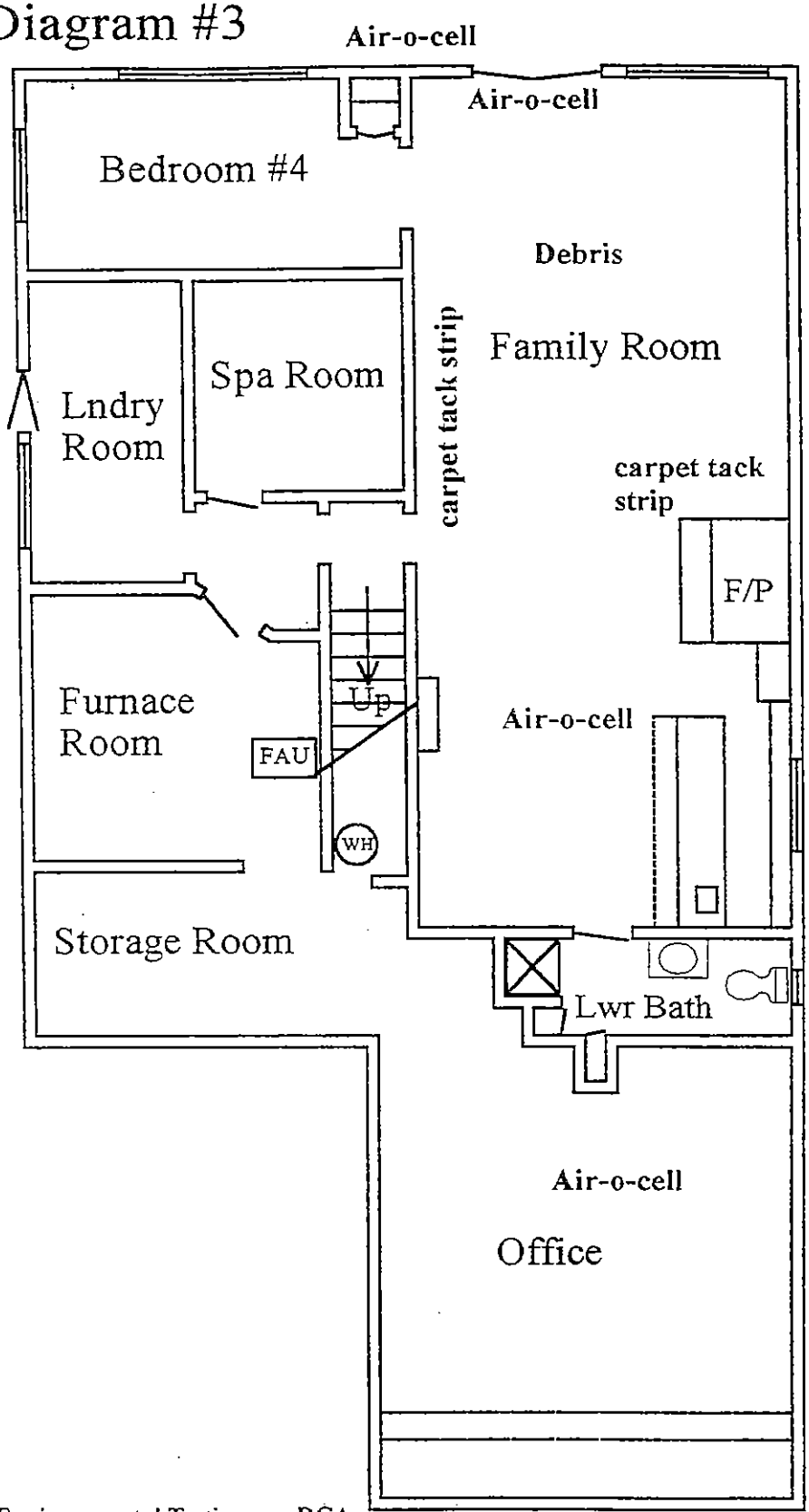


7633 Sunkist
Oakland, CA
Upper Level

Not-to-Scale
For illustrative purposes only

level2 cad

Diagram #3



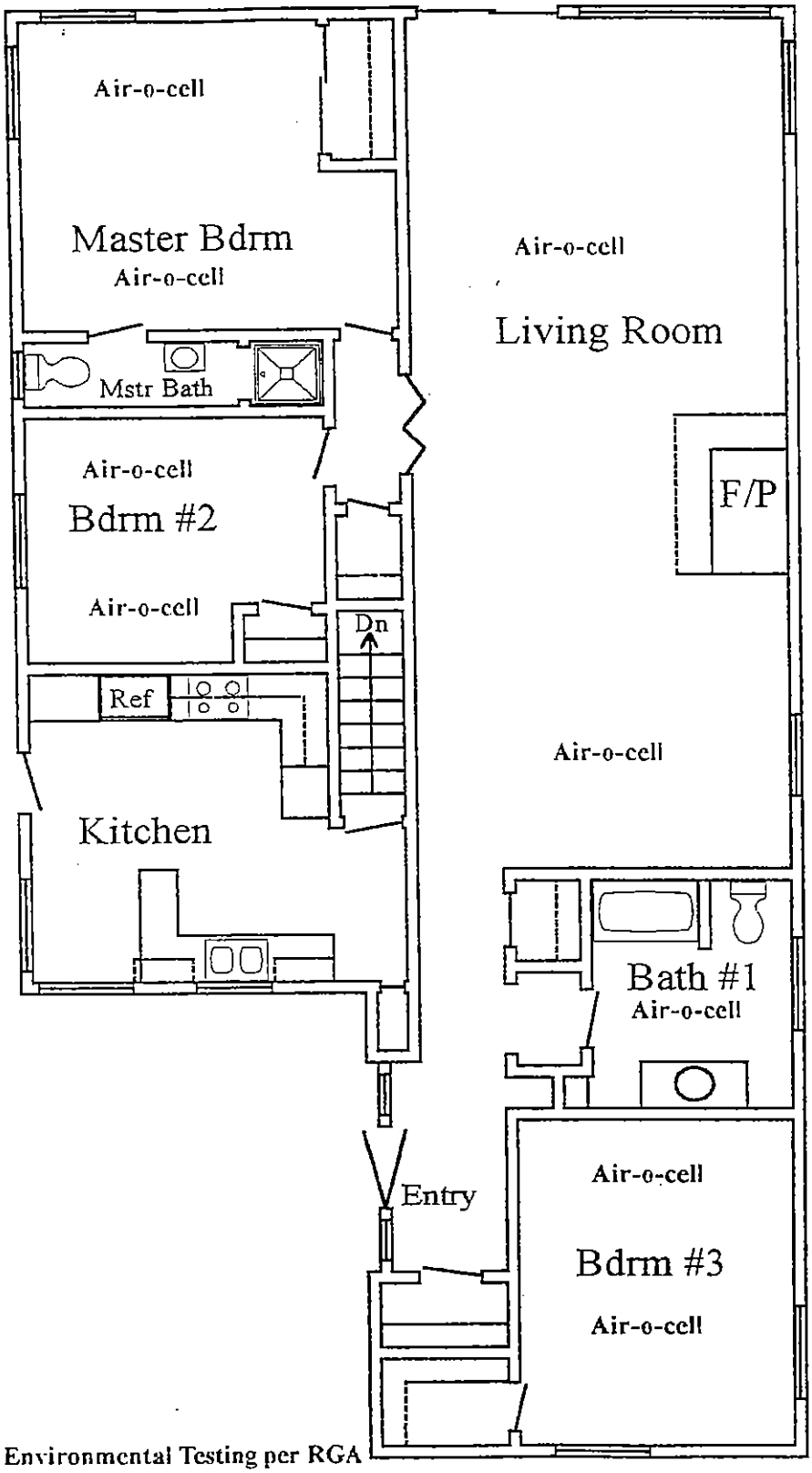
Environmental Testing per RGA
Appendix 1

7633 Sunkist
Oakland, CA
Basement Plan

Not-to-Scale
For illustrative purposes only

basementTests.cad

Diagram #4



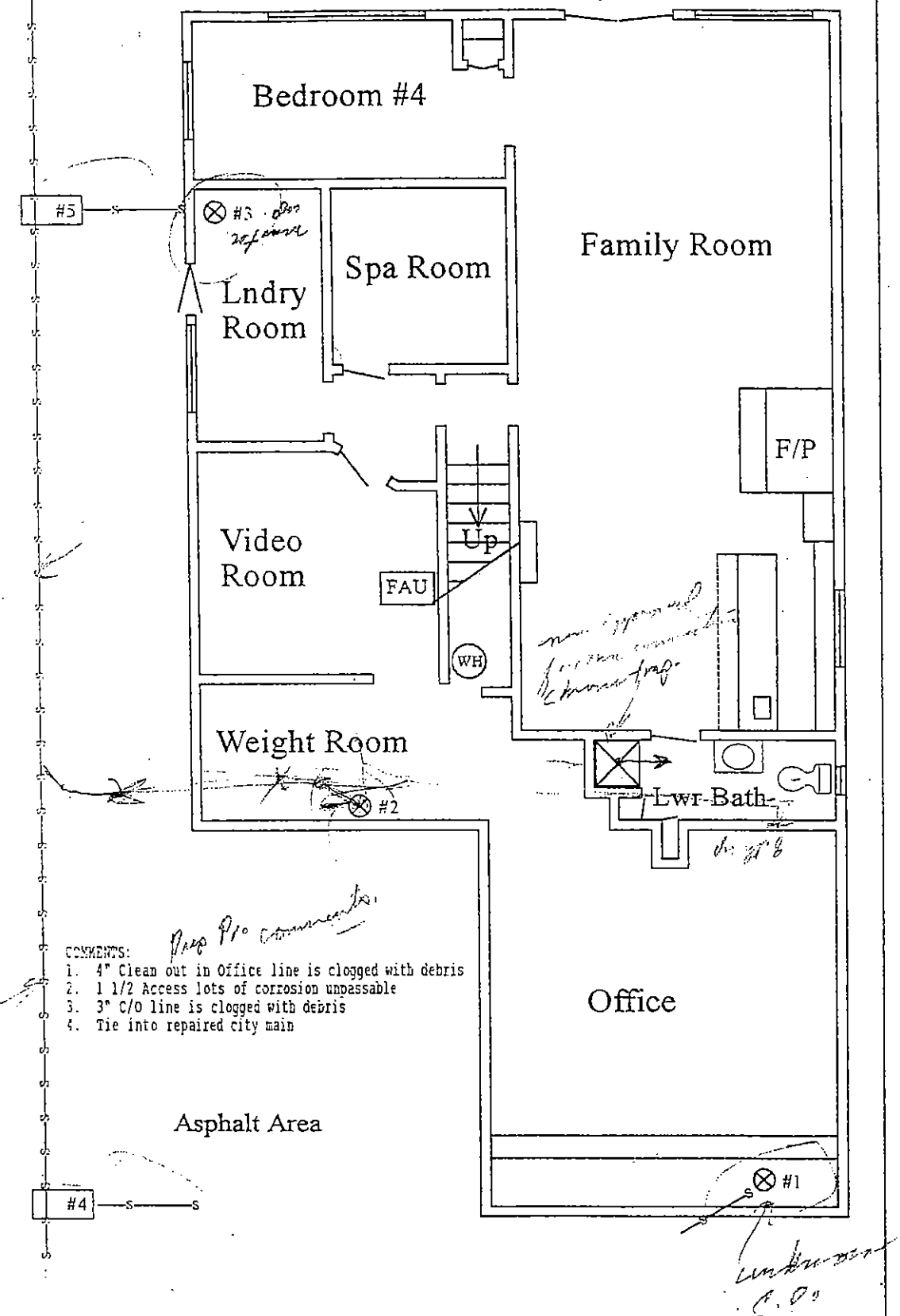
Environmental Testing per RGA Appendix 1

7633 Sunkist
Oakland, CA
Upper Level

Not-to-Scale
For illustrative purposes only

Level2Tests.cad

Diagram #5

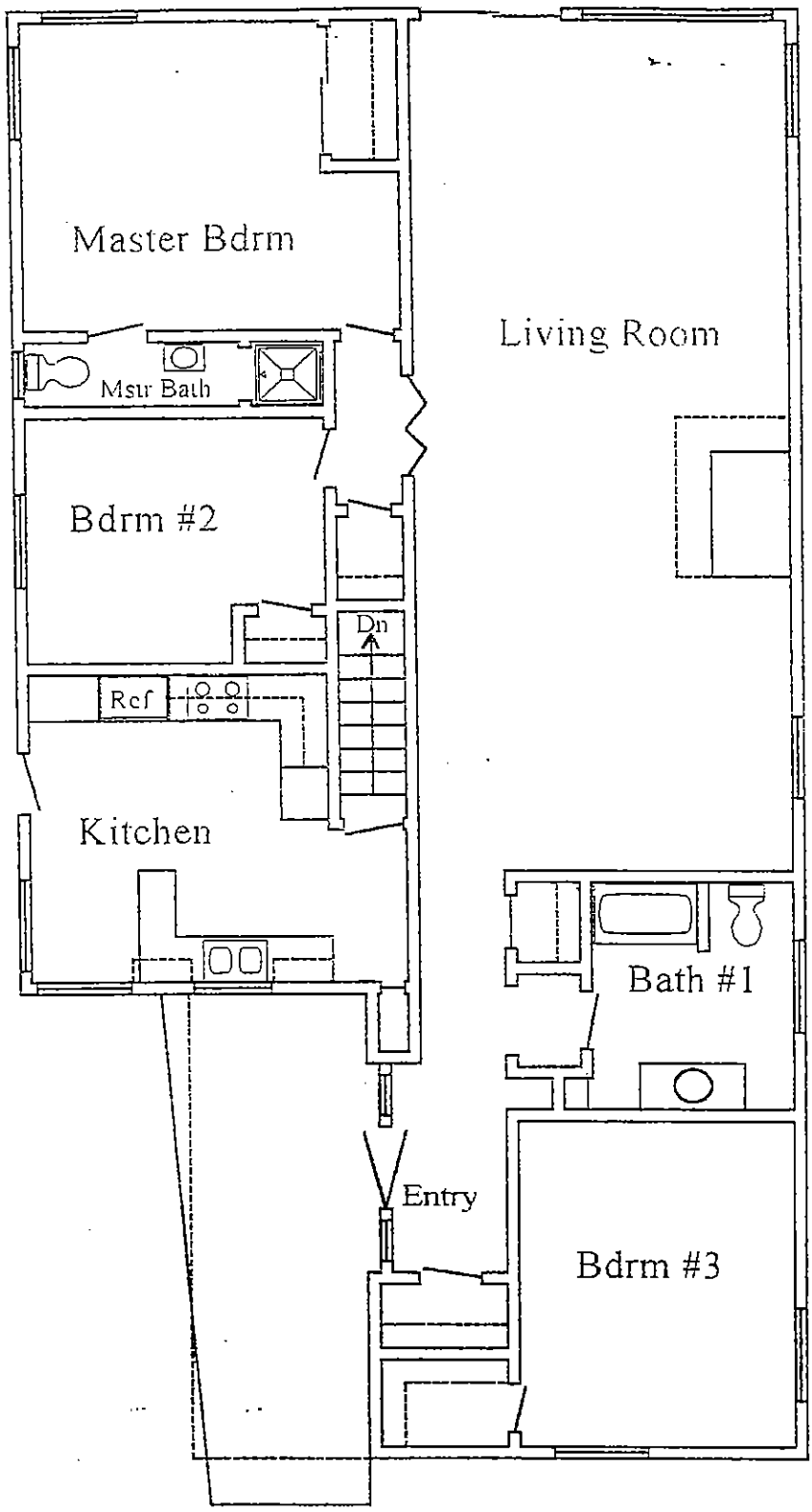


7633 Sunkist
Oakland, CA
Basement Plan Sketch - Pipe Pro's Inc.

Not-to-Scale
For illustrative purposes only

S—S—S - SEWER

PipeProsBasement.cad


Master Bdrm
Living Room
Mstr Bath
Bdrm #2
Dn
Ref
Kitchen
Bath #1
Entry
Bdrm #3

Lauder Plumbing

136 MYRTLE ROAD • BURLINGAME • (650) 347-7811

Read Depos of.

John Soghines
Cleaning Service

Robt Gills.
Ind. Hygienist

V. Long. Plumber.

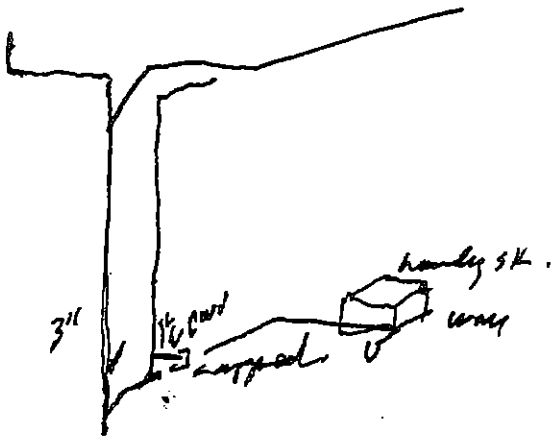
Chris Peterson Assoc.

Ball - not given.

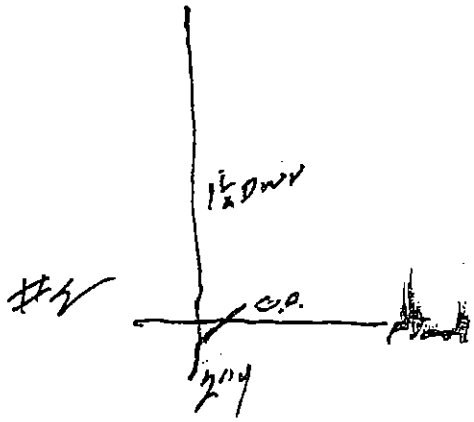
Site Meeting 9/5/02

(2) - Kelco - mid. Hygen. ↔ Carpet Cleaner w/ Mark up.

Chris Peterson / Wm. Jarrett.



#3



#4

Lower Bath

1½ DWV + shower.

JACKSON & HARRIGAN
ATTORNEYS AT LAW*

YOLANDA M. JACKSON
ANNE B. HARRIGAN
JOHN J. MURRAY
JOHN T. PAYNE
DONALD K. BUSSIERE
STEPHEN L. KATZ
DANIEL HERNANDEZ
LAURA L. ALLEN
WILLIAM E. JEMMOTT
BARBARA A. CAULFIELD
PAMELA A. BOWER

ONE MARKET
SPEAR TOWER
8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE: (415) 543-3434
CIVIL LITIGATION FACSIMILE: (415) 546-7019
WORKERS' COMPENSATION FACSIMILE: (415) 541-4285

September 10, 2002

Kent Lauder
Lauder Plumbing
136 Myrtle Rd.
Burlingame, CA 94010

Re: ***al-Hakim v. Rescue Industries, et al.***
Alameda County Superior - Northern Div. No.: 821885-2
Our File No.: SF950-2696
Date of Loss: 2-18-97

Dear Mr. Lauder:

This will confirm that you are available and will appear for an expert deposition on September 18, 2002 at 9:30 a.m. at the offices of McKeown Price, LLP, 2030 Addison Street, Ste. 300, Berkeley, CA (directions enclosed).

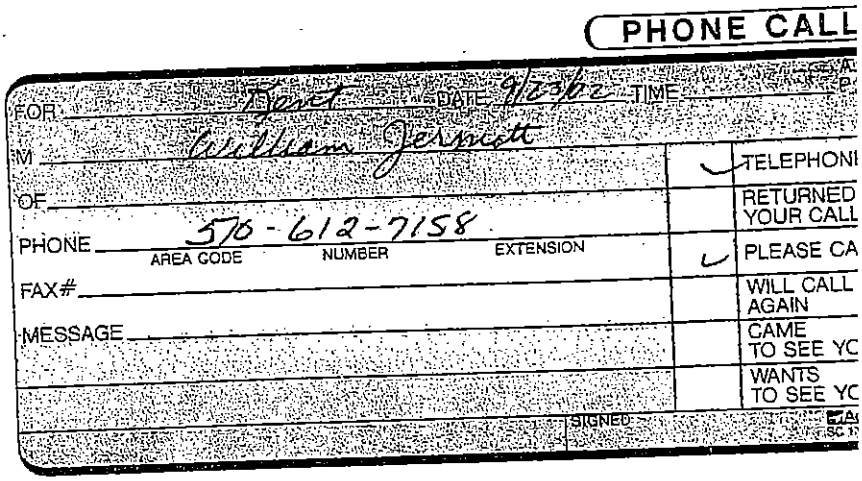
Pursuant to your voicemail, enclosed please find the deposition transcripts of Chris Peterson and John Sophinos (Vols. I and II) for your review. Please do not hesitate to contact the office should you have questions prior to your deposition on September 18th.

Very truly yours,

Shanta Wilber
Secretary to William E. Jemmott

L:\2696\Letter to Lauder 09-10-02.doc

* All personnel, including attorneys, are employees of Fireman's Fund Insurance Company.



PHONE CALL

FOR: Bert DATE: 9/30/2 TIME:

M: William Jarrett

OF:

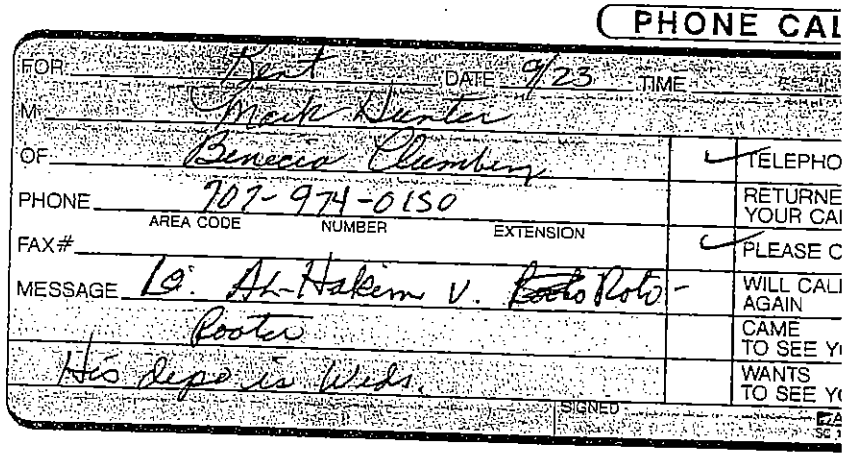
PHONE: 570-612-7158 (AREA CODE / NUMBER / EXTENSION)

FAX#:

MESSAGE:

SIGNED:

- TELEPHONE
- RETURNED YOUR CALL
- PLEASE CA
- WILL CALL AGAIN
- CAME TO SEE YC
- WANTS TO SEE YC



PHONE CAL

FOR: Bert DATE: 9/23 TIME:

M: Mark Hunter

OF: Benecia Plumbing

PHONE: 707-974-0150 (AREA CODE / NUMBER / EXTENSION)

FAX#:

MESSAGE: Lg. Al-Hakim v. Roto-Rooter

His deposition Weds.

SIGNED:

- TELEPHO
- RETURNE YOUR CAI
- PLEASE C
- WILL CALI AGAIN
- CAME TO SEE Y
- WANTS TO SEE Y

BENICIA PLUMBING, INC. ESTABLISHED 1975

BENICIA PLUMBING,INC
265 CHANNEL COURT
BENICIA, CA 94510
Lic.# 329632

MARK HUNTER
CONSULTANT

343 Gloria Drive
Pleasant Hill, CA 94523-2213

(925) 676-3530
Fax (925) 676-3535
e-mail: mhunter1@pacbell.net

PHONE CALL

FOR Bert DATE 8/13/02 TIME A.M. P.M.
M Thomas Barker
OF Jackson & Harrigan
PHONE 415-541-4363 (AREA CODE / NUMBER / EXTENSION)
FAX#
MESSAGE Re: New Case
Wm Jemott 415 543 34

- ✓ TELEPHONED
- RETURNED YOUR CALL
- ~ PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

SIGNED

Adams SC 1154-2D

PHONE CALL

FOR Bert DATE 8/12/02 TIME A.M. P.M.
M William Jemott
OF Jackson & Harrigan
PHONE 415-543-3434 (AREA CODE / NUMBER / EXTENSION)
FAX#
MESSAGE Need expert Witness
Trial is set for
week of 08/26/02

- ✓ TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

SIGNED

Adams SC 1154-2D

Lauder Plumbing

136 MYRTLE ROAD • BURLINGAME • (650) 347-7811

Jim:

Sheet Metal

1 Oakland home. (previous claim in Oakland)

D ⇒ apartment rescue rooter.

W. C. flush. - cleaned up - no charge

Ms. Alma Solomon
Park Blvd.

1st Aug 20.

Danielle Jim Rumme

K·Lauder Plumbing
136 MYRTLE ROAD
BURLINGAME, CA 94010
LIC. # 421222
PH. 347-7811

No. 0865

JOB TICKET

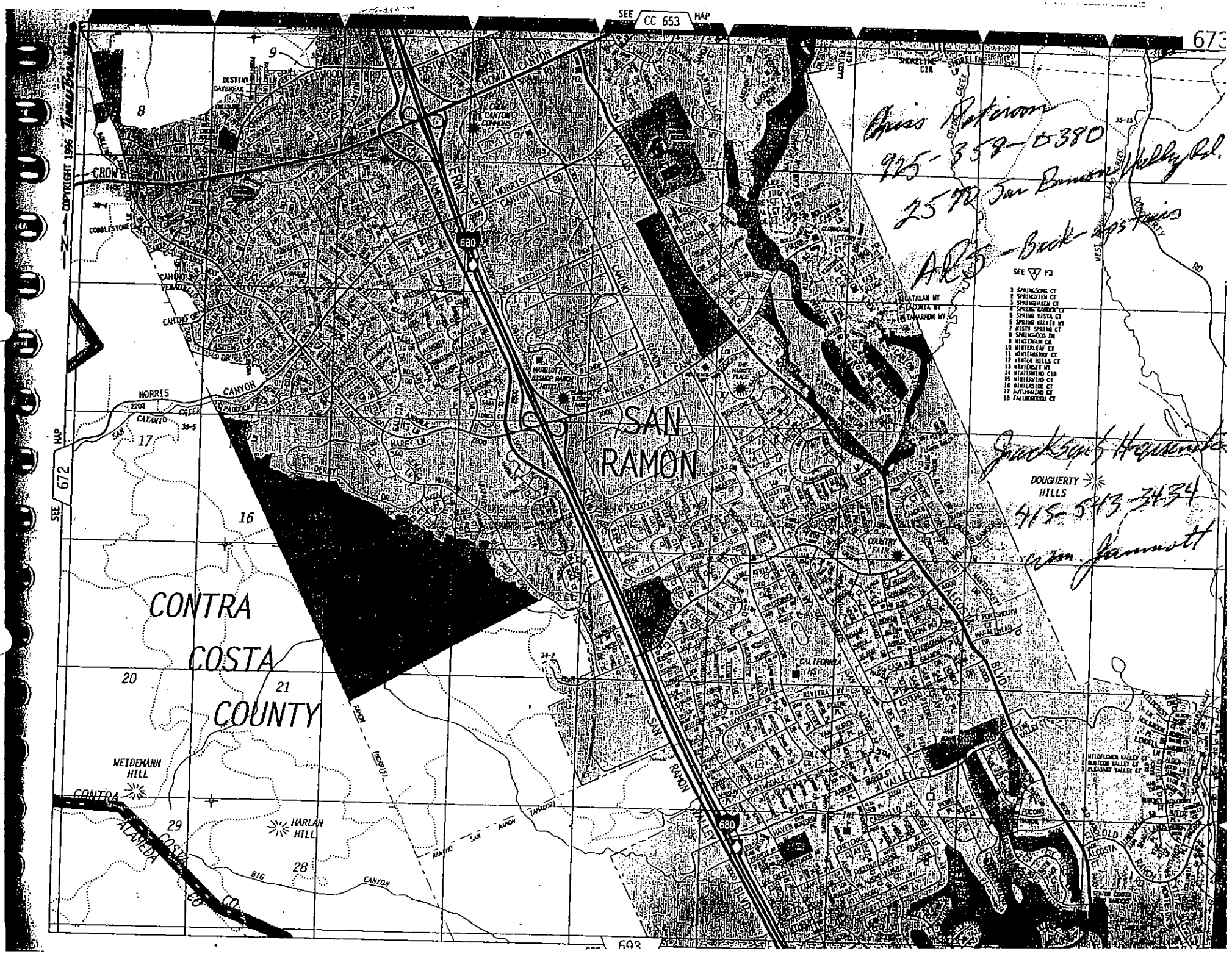
DATE

SERVICE PERSON	JOB LOCATION / NAME	PHONE
DAY	ADDRESS	
HOURS	CITY	STATE ZIP

JOB DESCRIPTION:

QUANTITY	MATERIAL	EACH		
	phone discussions, prelim.	1		
	Aug 20 - meeting in Sun Room w/ Jennet -			
	Criss Peterson - Rick the tech. + wife Rick.	1½ hr.		
	Sept 4 Site inspect.	4 hrs		
	Sept 12 Document ~~review~~	4½		
	" "	3½		
23	Assistance	1		

AUTHORIZED SIGNATURE: _____


SEE CC 653 MAP
673
COPYRIGHT 1996 TeleAtlas
CROW CANYON
DESTINY
DAYBREAK
CAMINO RAMON
ALCOSTA
DOUGHERTY
WEST DUBLIN
HORRIS CANYON
CATARIO CREEK
SAN RAMON
680
DOUGIERTY HILLS
COUNTRY FAIR
CALIFORNIA
RIVIERA
CONTRA COSTA COUNTY
WEIDEMANN HILL
HARLAN HILL
ALAMEDA
BIG CANYON
SAN RAMON VALLEY
DUBLIN BLVD
SEE MAP 672
693
Chris Peterson
925-838-0380
2570 San Ramon Valley Rd.
ACS - Back-Flow
Sprinklers & Heating
415-543-3454
Ron Jarnagin

driving directions

- North America
- Europe
- Saved Routes

What's Nearby

Search 2 miles for:

City Guide

- San Francisco Dining
- San Francisco News
- San Francisco Movies
- San Francisco Entertainment

Yellow Pages

Search **Berkeley** for:

FROM:	TO:
136 Myrtle Rd **Burlingame, CA** **94010-3031 US**	**2030 Addison St** **Berkeley, CA** **94704-1158 US**

Total Distance: 29.32 miles **Total Estimated Time:** 39 minutes

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DIRECTIONS	DISTANCE
1: Start out going Southeast on MYRTLE RD towards BAYSWATER AVE by turning left.	0.05 miles
2: Turn LEFT onto BAYSWATER AVE.	0.05 miles
3: Turn RIGHT onto ANITA RD.	0.12 miles
4: Turn LEFT onto PENINSULA AVE.	0.86 miles
5: Take the US-101 N ramp towards SAN FRANCISCO.	0.17 miles
6: Merge onto US-101 N.	15.38 miles
7: Take I-80 E towards BAY BRIDGE/OAKLAND/SEVENTH ST/US-101 N.	0.09 miles
8: Merge onto I-80 E.	10.51 miles
9: Take the UNIVERSITY AVE exit towards BERKELEY.	0.09 miles
10: Keep LEFT at the fork in the ramp.	0.12 miles
11: Turn RIGHT onto UNIVERSITY AVE.	1.78 miles
12: Turn RIGHT onto MILVIA ST.	0.06 miles
13: Turn LEFT onto ADDISON ST.	0.04 miles
Total Estimated Time:	**Total Distance:**
39 minutes	**29.32 miles**

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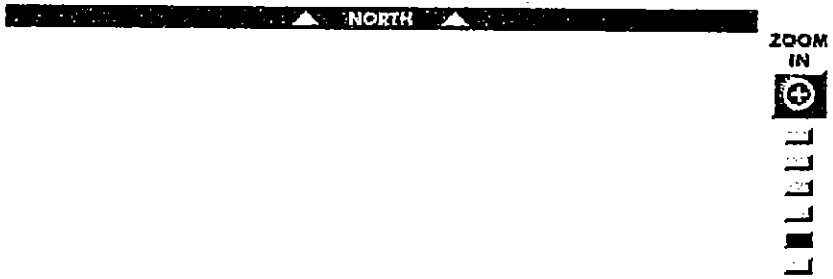
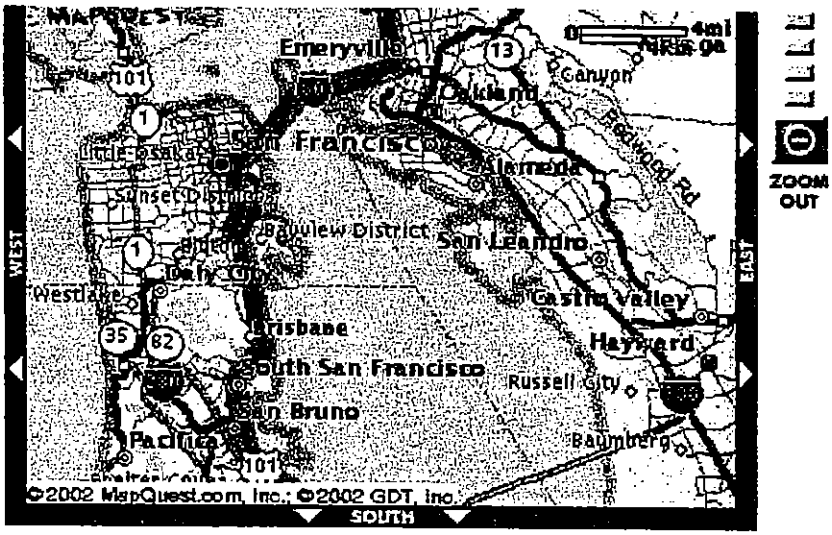
ROUTE OVERVIEW:



Auto repair
Search



CLICKING ON MAP WILL: ○ Zoom In ◉ Re-center

Map Legend NAVTECH ON BOARD

DESTINATION:

2030 Addison St
Berkeley, CA
94704-1158 US

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JACKSON & HARRIGAN
ATTORNEYS AT LAW*

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BARBARA A. CAULFIELD
PAMELA A. BOWER

ONE MARKET
SPEAR TOWER
8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE: (415) 543-3434
CIVIL LITIGATION FACSIMILE: (415) 546-7019
WORKERS' COMPENSATION FACSIMILE: (415) 541-4285

September 20, 2002

VIA FACSIMILE AND U.S. MAIL

Kent Lauder
Lauder Plumbing
136 Myrtle Rd.
Burlingame, CA 94010

Re: ***al-Hakim v. Rescue Industries, et al.***
Alameda County Superior - Northern Div. No.: 821885-2
Our File No.: SF950-2696
Date of Loss: 2-18-97

Dear Mr. Lauder:

This will confirm that your deposition has been rescheduled to September 24, 2002 at 1:00 p.m. and will be taken at the offices of McKeown Price, LLP, 2030 Addison Street, Ste. 300, Berkeley, CA.

Please note that Daniel Hernandez of our offices will defend your deposition on September 24th, as Mr. Jemmott will be in Santa Rosa on another matter. If you have questions, or need additional information, please do not hesitate to contact the office.

Very truly yours,

Shanta Wilber
Secretary to William E. Jemmott

L:\2696\Letter to Lauder 09-20-02.doc

* All personnel, including attorneys, are employees of Fireman's Fund Insurance Company.

JACKSON & HARRIGAN
ATTORNEYS AT LAW*

YOLANDA M. JACKSON
ANNE B. HARRIGAN
JOHN J. MURRAY
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ONE MARKET
SPEAR TOWER
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SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE: (415) 543-3434
CIVIL LITIGATION FACSIMILE: (415) 546-7019
WORKERS' COMPENSATION FACSIMILE: (415) 541-4285

August 28, 2002

VIA FACSIMILE AND U.S. MAIL (650) 347-9635

Kent Lauder
Lauder Plumbing
136 Myrtle Rd.
Burlingame, CA 94010

Re: ***al-Hakim v. Rescue Industries, et al.***
Alameda County Superior - Northern Div. No.: 821885-2
Our File No.: SF950-2696
Date of Loss: 2-18-97

Dear Mr. Lauder:

This will confirm my conversation with your assistant, Lois, wherein she confirmed that you would attend the site inspection of plaintiff al-Hakim's residence, located at 7633 Sunkist Drive in Oakland, CA on Wednesday, September 4, 2002 at 1:00 p.m. Enclosed please find a MapQuest print out of directions to plaintiff's residence.

Thank you for your assistance with this matter. Please feel free to contact the office with questions.

Very truly yours,

Shanta Wilber
Secretary to William E. Jemmott

encl. as stated

L:\2696\Letter to Lauder 08-28-02.doc

* All personnel, including attorneys, are employees of Fireman's Fund Insurance Company.

MAPQUEST.

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FROM:	TO:
135 Myrtle Rd Burlingame, CA 94010-3032 US	7633 Sunkist Dr Oakland, CA 94605-3024 US
Total Distance: 33.52 miles	**Total Estimated Time:** 39 minutes

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DIRECTIONS	DISTANCE
1: Start out going Southeast on MYRTLE RD towards BAYSWATER AVE by turning right.	0.05 miles
2: Turn LEFT onto BAYSWATER AVE.	0.05 miles
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4: Turn LEFT onto PENINSULA AVE.	0.86 miles
5: Take the US-101 N ramp towards SAN FRANCISCO.	0.17 miles
6: Merge onto US-101 N.	15.38 miles
7: Take I-80 E towards BAY BRIDGE/OAKLAND/SEVENTH ST/US-101 N.	0.09 miles
8: Merge onto I-80 E.	7.34 miles
9: Take the I-580 E exit towards CA-24/DOWNTOWN OAKLAND/HAYWARD-STOCKTON.	0.76 miles
10: Merge onto I-580 E.	8.02 miles
11: Take the EDWARDS AVE exit.	0.15 miles
12: Turn RIGHT onto EDWARDS AVE.	0.23 miles
13: Turn LEFT onto SUNKIST DR.	0.29 miles
Total Estimated Time: **39 minutes**	**Total Distance: 33.52 miles**

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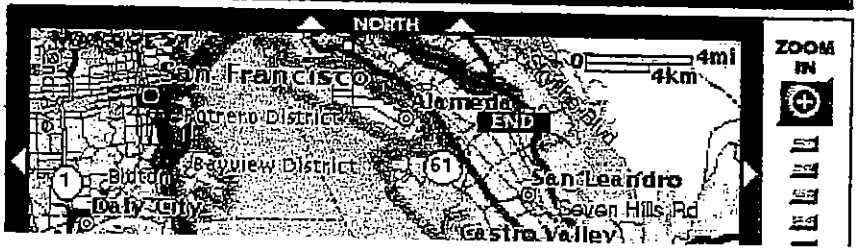
ROUTE OVERVIEW:



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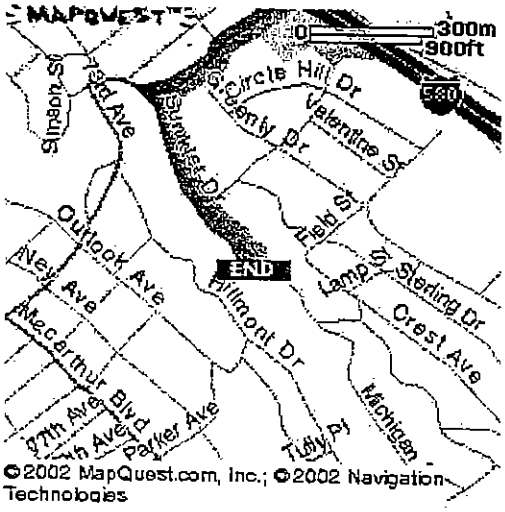
Map Legend

DESTINATION:

7633 Sunkist Dr
Oakland, CA
94605-3024 US



Re-display Directions with:

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RE-DISPLAY ROUTE

EXHIBIT “G”

★ Superstar Management ★
7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: November 15, 2002
RE: Mistrial

Dear Frank:

You were talking about a mistrial before we even selected a jury. No surprise that this is what we have to pursue now, but for many more reasons and with many more grounds. We have had a few days off, now it's time to get back and kick some butt.

Thank you and I will see you later.

Respectfully,

Abdul-Jalil
President

mp

attorneys at law

McKeown Price, LLP
2030 Addison Street
Suite 300
Berkeley CA 94704

tel 510 549 8787
fax 510 549 8788

www.mckeownlaw.com

November 18, 2002

VIA FACSIMILE

Mr. Abdul Jalil al-Hakim
7633 Sunkist Drive
Oakland, CA 94605

RE: Jalil al-Hakim v. Rescue industries, Inc. et al. Case No. 821885-2

Dear Jalil,

I believe, as you do, that both the Judge and the jury made mistakes in this case, and that there are significant grounds for appeal. These include the fact that Judge Lee first ruled that CSAA was not a proper party to the action, and then determined that they would remain in the case anyway, since a previous judge had made the ruling allowing intervention, while you could only oppose it in pro per. The court also allowed a great deal of evidence of insurance which should not have come into play, and allowed collateral impeachment on the 1991 sewer spill despite the fact that Defendants' own experts did not find it to be a substantial factor if fungicides were put down properly.

While I believe that an appeal is probably appropriate, a Motion for New Trial or Judgment not Withstanding the Verdict before Judge Lee will have no chance of prevailing, and therefore I do not believe that we should pursue that avenue.

In the meantime, I have asked Colin to proceed with all deliberate speed to put on calendar the motion to vacate the appraisal award in the CSAA matter.

I suggest we talk some time later in the week to go over the status and strategy that we want to pursue here on out.

Very truly yours,

McKEOWN PRICE, LLP

Francis M. McKeown, Esq.

FMM/jd

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7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: November 19, 2002
RE: Mistrial and Transcripts

Dear Frank:

I have not heard from you about a motion for mistrial, that is not like you.

Well, I would like a copy of Chris Peterson's trial testimony that you received and his deposition transcripts for the investigation. Call me and I will pick them up when they are ready.

Let's go on and get it done.

Thank you and I will see you later.

Respectfully,

Abdul-Jalil
President

★ Superstar Management ★
7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: November 25, 2002
RE: Mistrial and Transcripts

Dear Frank:

As I have sated several times, I definitely want to pursue a motion for mistrial, retrial, or appeal for new trial in the Rescue Rooter/Bay Area Carpets matter. Time is sensitive as to this matter and I know that you are conscious of this, but I want to know what are your plans now. We can not wait any longer.

Also, I would like a copy of Ken Lauder's deposition transcripts for the investigation and a copy of the final "Jury Instructions" for the trial. Call me and I will pick them up when they are ready.

Thank you and I will see you later.

Respectfully,

Abdul-Jalil
President

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7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: December 10, 2002
RE: Appeal/Mistrial and Jury Instructions

Dear Frank:

I was going through the copy of the final "Jury Instructions" for the trial and I was unsure if the ones that you provided me were the same as those submitted to the jury, which are the ones that I wanted.

At our meeting yesterday, you stated that you accept full responsibility for your efforts at the trial, we definitely want to pursue a motion for appeal (mistrial, retrial, or for new trial) in the Rescue Rooter/Bay Area Carpets matter, and you felt that we had six months or so before we had to file for an appeal. You also stated that you wanted to include all costs for the appeal in those submitted in the CSAA trial. That would imply that you intend to file the appeal before February 28, 2002. Is that correct? Could you please let me know when you plan to do it?.

Thank you and I will see you later.

Respectfully,

Abdul-Jalil
President

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7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 2

FROM: Abdul-Jalil
DATE: December 28, 2002
RE: Motion to Vacate, Appeal/Mistrial, and Jury Instructions

Dear Frank:

I faxed a six page response to the Memo of Points and Authorities filed by CSAA in their answer to the Motion to Vacate the Appraisal Awards. It was somewhat complicated because I did not have all their moving papers nor ours. I would like you to please send me their documents and the supplemental filings that were submitted by you and Colin with the Motion to Vacate. In particular, I want to receive the parts addressing the non-disclosure of DeCeasar's having been employed by Ropers and the items mentioned in my six page fax to you of yesterday.

I also received your letter of December 12, 2002, regarding our meeting at your office. While you are correct in stating that you do not recommend any post trial motions (mistrial, retrial, or for new trial), that it is your advice to me not to consider any, and that I have not retained you for that purpose, you are wrong in believing that I accept that position. I, as well as you, have expressed many times over that there were many many transgressions that occurred during that trial that never should have been allowed and should have been handled differently that were grounds for a mistrial. You and I "agree to disagree" regarding issues that were paramount to the trial.

From the judge mentioning "In this post 9-11 environment and the current terrorist killings this weekend in the theater in Russia, it is important that the jury not consider that some one has an arabic name or may be of the Islamic belief and be judged

like anyone else". This was illegal and totally inappropriate.

Even more outrageous was the judge instructing the jury on two occasions that "there was a stipulation on the date of the "assault on Mr. Syrett" was actually March 6, 1997 and not May or June as testified to by the defendants" without the slightest reference to there having been significant perjury by the defendants to declare a mistrial, no proof of the alleged assault, nor the importance of the fact that all their defense was based on "no knowledge" due to the changed date.

There were numerous occasions where he allowed in evidence and testimony that was third party hearsay without any legal or factual basis and was never proven to have been of any substantive benefit to the jury yet was damaging to my case. I am still pursuing every option in this matter and unlike you feel, I have not been "defensed" and are not "licking my wounds and moving on". To that end, I need the copy of the final "Jury Instructions" for the trial that was submitted to the jury ASAP. This can not wait, and if your office is too busy to get them, I can come into the office and make the copies. I am not "rolling over".

At our meeting you stated that you wanted to include all costs for the appeal in those submitted in the CSAA trial and I assumed that was based on our having to pay the cost of the Rescue litigation that CSAA should have litigated. I may be wrong in that but you say that you wanted to include the cost in the fees submitted at trial.

As for the experts, you told me that you wanted to have the experts to agree to wait until after the trial to be paid and that you had talked to two Bad Faith/ Claims Handling experts that were referred to you by Mike Michel. Did you retain anyone or do you want me to speak with them to make some arrangements? Should I look for some other experts? I have a call into Mike, and I can and should do that anyway.

Thank you and I will see you later.

Respectfully,

Abdul-Jalil
President

mp

attorneys at law

McKeown Price, LLP
2030 Addison Street
Suite 300
Berkeley CA 94704

tel 510 549 8787
fax 510 549 8788

www.mckeownlaw.com

January 31, 2003

VIA U.S. MAIL

Mr. Abdul Jalil al-Hakim
7633 Sunkist Drive
Oakland, CA 94605

RE: Jalil al-Hakim v. Rescue Industries, et al.

Dear Jalil:

This will follow up on our previous conversations and correspondence with respect to this matter. We wish to clearly reiterate that this office will not be taking any steps with respect to the appeal in this matter. It is my understanding that you are consulting with other counsel with regard to the appeal. Whether that be the case or no, this office will not be taking steps in furtherance of the appeal.

I do strongly suggest that you consider offering to the other side a waiver of the cost bills against you in exchange for a waiver of appeal. From our previous discussions it is apparent to me that you feel strongly that this is bad advice. Nevertheless, I offer it as my best opinion on the subject.

This will close our file on this matter. I wish you the best in the future.

Very truly yours,

McKEOWN PRICE, LLP

Francis M. McKeown, Esq.

FMM/jd

Enclosures

G:\Plaintiff\al-Hakim\Rescue pleadings\Correspjalil-31-03.doc

LEWIS N. NELSON
Attorney at Law
141 Sequoyah View Drive
Oakland, California 94605-4908
Telephone (510) 428-2777
Fax (510) 562-8037

March 7, 2003

Francis M. McKeown, Esq.
McKeown Price, LLP
2030 Addison Street, Suite 300
Berkeley, California 94704

Re: Abdul Jalil al-Hakim vs. Rescue Industries, Inc. et al.
Alameda County Superior Court Case No. 821885-2
COPIES OF TRIAL PLEADINGS & TRIAL TRANSCRIPTS

Dear Mr. McKeown:

This is follow up to my voice mail message left on your answering service yesterday afternoon, at which time I advised that I would be faxing to you a list of items that I would need to obtain from the court to go forward with Mr. al-Hakim's appeal in the above reference case.

The purpose for my telephone call to you was to determine if you had any of the aforesaid documents or items so that I could avoid having the court produce the same at a substantially higher cost than perhaps you and I could arrive at my mutual agreement.

The following items are materials I believe I must evaluate to prepare Appellant's opening brief:

A transcription of the oral testimony of:

a. All motions in limine, and all rulings thereon;

b. All sidebar discussions and rulings recorded outside the presence of the jury;

c. All proceedings in chambers before the trial judge on motions heard in chambers;

d. All testimony given by the following witnesses on the following dates:

1. Christopher Adam Peterson [10/30/02, 10/31/02 & 11/4/02]

2. Richard A. Syrett [10/31/02, ~~11/5/02~~ & ~~11/7/02~~]

3. Kent Lauder [11/5/02 & illegible]
4. Rudy Von Borg [11/4/02]
5. Gary Hall [11/5/02]
6. Mark Hunter [11/5/02]
7. Vaughn Holden [10/30/02]
8. Patricia Smith [illegible & 10/31/02]

e. All oral argument given by William E. Jemmott on November 7, 2002.

I will also need copies of the following pleadings:

1. Plaintiff's Complaint, filed 01/13/00;
2. Defendant Rescue Industries, Inc.'s Answer to Plaintiff's Complaint, filed 06/19/00;
3. Defendant Bay Area Carpet Cleaning's Answer to Plaintiff's Complaint, filed 07/11/00;
4. Motion For Leave of Court to Intervene by California State Automobile Association Inter-Insurance Bureau, filed 12/12/00
5. Motion For Leave of Court to Intervene by California State Automobile Association Inter-Insurance Bureau, filed 01/19/01;
6. Order Granting Leave to Intervene of California State Automobile Association Inter-Insurance Bureau, filed 01/19/01;
7. Complaint in Intervention of California State Automobile Association Inter-Insurance Bureau, filed 02/08/01;
8. Answer to Complaint in Intervention of CSAA by Defendant Bay Area Carpet Cleaning dba Bay Area Water & Smoke Damage Restoration, filed 02/26/01;
9. Answer to Complaint in Intervention, filed 03/08/01;
10. Motion in Limine to exclude all claims and evidence re. lost business or lost income, filed 10/03/02;
11. Motion in Limine to exclude evidence of Insurance coverage, filed 10/03/02;

12. Motion in Limine to exclude all expert opinions as to testimony not identified in expert disclosure, filed 10/03/02;

13. Motion in Limine to exclude expert testimony regarding allocation of liability, filed 10/03/02;

14. Memorandum of Points and Authorities in Support of motion in limine to exclude standard of care testimony, filed 10/03/02;

15. Memorandum of Points and Authorities to Obtain Jury view of Plaintiff's home, filed 10/03/02;

16. Opposition to Motion in Limine to Exclude Opinion Testimony of Plaintiff, filed 10/11/02;

17. Opposition to Motion in Limine to Exclude Expert Testimony re. Allocation of Liability, filed 10/11/02;

18. Opposition to Defendants' Motion in Limine To Obtain Jury's View of Plaintiff's Home, filed 10/11/02;

19. Opposition to Motion in Limine To Exclude Evidence of Insurance Coverage, filed 10/11/02;

20. Evidence in Support of Motion to Dismiss Complaint in Intervention by CSAA-IIB; Alternate Motion For, etc., filed 10/11/02;

21. Miscellaneous opposition papers filed on 10/11/02 as set forth in the Court's Register of Actions;

22. Miscellaneous Opposition to Defendant's Motions to Exclude Evidence, filed 10/11/02;

23. Reply to Opposition Re. Motion In Limine to Exclude Reference to Insurance, filed 10/15/02;

24. Reply to Opposition Re. Motion To Dismiss And Exclude Complaint In Intervention, filed 10/15/02;

25. Reply to Opposition Re. Motion In Limine To Exclude Reference to 1991 Incident, filed 10/15/02;

26. Reply to Opposition Re. Motion To Exclude Evidence of Settlement-Other Actions, filed 101502;

27. Answer to Complaint in Intervention filed by Abdul-Jalil Al-Hakim, filed 10/15/02;

28. Miscellaneous Motion in Limine to Exclude Irrelevant Matter, filed 10/15/02;

29. Miscellaneous Motion in Limine to Exclude Reference to Insurance, filed 10/15/02;

30. Miscellaneous Supplemental Brief in Opposition to Plaintiff's Motion to Exclude 1991 Evidence, filed 10/15/02;

31. Miscellaneous Plaintiff's Sur-Rebuttal, filed 10/16/02;

32. Reply to Objections to Evidence filed for California State Automobile Association, etc., filed 10/18/02;

33. Miscellaneous Opposition to Motion in Limine to Exclude Opinion Testimony of Plaintiff, filed 11/14/02;

34. Miscellaneous Opposition to Motion in Limine to Exclude Expert Testimony, filed 11/14/02;

35. Miscellaneous Opposition to Motion in Limine to Exclude Mention of Reference to the 1991 Incident, filed 11/14/02;

36. Miscellaneous Defendant Rescue's Third Motion in Limine, filed 11/14/02;

37. Miscellaneous Opposition to Defendant's Motion in Limine to Obtain Jury's view of Plaintiff's Home, filed 11/14/02;

38. Miscellaneous Defendant Rescue Motion In Limine Numbers Five through Seven, filed 11/14/02;

39. Miscellaneous Opposition in Motion in Limine to Exclude evidence of Insurance Coverage, filed 11/14/02;

40. Miscellaneous Defendant's Rescue Fourth Motion in Limine, filed 11/14/02;

41. Miscellaneous CSAA-IIB's Rebuttal to Reply to Opposition on "Motion to Dismiss and Exclude Complaint", filed 11/14/02;

42. Miscellaneous Intervenor CSAA-IIB's Opposition to Motion in Limine to Exclude any expansion of this, etc., filed 11/14/02;

43. Miscellaneous Defendant Rescue Motion in Limine Number One, filed 11/14/02;

44. Miscellaneous Defendant Rescues Second Motion in Limine, filed 11/4/02;

45. Miscellaneous Questions by Jury, filed 11/14/02;

46. Miscellaneous Special Verdict, filed 11/14/02;

If you have copies of any of the above described pleadings or transcripts, please let me know by marking up a copy of this letter identifying those items you can make available to me for designation in the record on appeal. I will be happy to have a copy service arrange to pick and copy your materials then return the same to you within a short period after they are made available to me for copying.

In the event you believe Mr. al-Hakim could benefit from any other documents, pleadings, or transcripts you may have in your files which I have not listed, and which you are able to share with me, please let me know.

Finally, since you tried this case, and are intimately familiar with the trial proceedings, I will be contacting you in the near future to get your sound counsel in identifying those aspects of the trial proceedings where appellate relief is most appropriate.

Thank you for your cooperation in this matter.

Sincerely,

Lewis N. Nelson

LNN:nc

cc. Abdul Jalil al-Hakim.

★ Superstar Management ★
7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

CC: Eric Haas
Burnam Brown, LLP
1901 Harrison St., Suite 1100
Oakland, CA 94612-3501

FAX #: 835-6666
NO PAGES: 1

FROM: Abdul-Jalil
DATE: May 19, 2003
RE: New Counsel and waiver of fees

Dear Frank:

I called your office today to make arrangements for the transfer of the original CSAA files in my case to new counsel, Eric Haas of the firm of Burnam Brown, LLP, 1901 Harrison St., Suite 1100, Oakland, CA 94612-3501.

Jackie returned the call and informed me that you wanted new counsel to call you for such. When you are prepared for us to pick up the files, please call me and I will make the arrangements for same with Jackie.

Thank you.

Respectfully,

Abdul-Jalil
President

attorneys at law

McKEOWN & ASSOCIATES
2030 Addison Street
Suite 300
Berkeley CA 94704

tel 510 549 8787
fax 510 549 8788

www.mckeownlaw.com

June 25, 2003

VIA U.S. Mail

Mr. Abdul Jalil al-Hakim
7633 Sunkist Drive
Oakland, CA 94605

RE: Jalil al-Hakim v. CSAA-IIB, Case No. 811337-3 &
Jalil al Hakim v. Rescue Industries, Inc. et al. Case No 821885-2

Dear Mr. Jalil al-Hakim:

I am in receipt of your letter of June 24, 2003. I sent all materials requested by Mr. Nelson and Mr. Haas long ago. In fact, the complete files were transferred to Mr. Haas' office weeks ago. To the extent Mr. Nelson needs further information from the Rescue Rooter file, he should get it from Mr. Haas who is now in possession of that file along with the materials from the CSAA-IIB file. To the extent that those documents are copies rather than "originals", and you seek "originals", I suggest you contact your previous counsels who have retained files.

Please have your respective counsel contact us directly if they seek further information.

Very truly yours,

McKEOWN & ASSOCIATES

Francis M. McKeown, Esq.

FMM/jd

cc: Erik Haas, Esq. (via fax)
Lewis Nelson, Esq. (via fax)

[illegible]

[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]

June 27, 2003

VIA U.S. Mail

Mr. Abdul Jalil al-Hakim
7633 Sunkist Drive
Oakland, CA 94605

RE: Jalil al-Hakim v. U.S.A. [illegible] Case No. [illegible]
Jalil al Hakim v. Beagle Industries, Inc. et al. Case No. [illegible]

Dear Mr. Jalil al-Hakim

I am in receipt of your letter [illegible] date. Please contact [illegible] Nelson and Mr. Haas regarding these matters. If they [illegible] contact me directly.

I have complied with all of your attorney's requests. When our office called Mr. Nelson about what documents he requested on March 2003, he acknowledged his request for documents from the documents originally sent [illegible] unnecessary copying costs. He has not to date contacted our office for further documents. If at this point he requires further documents from the file, he needs to contact your other attorney Mr. Haas who now has all of the files.

Finally, you are incorrect in assuming that we have retained originals, rather than providing them to Mr. Haas. We have transferred the entire file that was in our possession. That file contains many copies rather than originals because that is what was provided by your prior counsel at our (your) expense. Each previous counsel insisted

upon retaining original files in this matter. I believe your present counsel should contact them if they need original or further documents.

Very truly yours,

McKEOWN & ASSOCIATES

Francis M. McKeown, Esq.

FMM/jd

cc: Erik Haas, Esq. (via fax)
Lewis Nelson, Esq. (via fax)

★ Superstar Management ★
7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: June 24, 2003
RE: Appeal Documents, Discovery Documents and Cases matters on disk.

Dear Frank:

We have received the trial transcript and are pursuing the appeal in the Rescue Rooter/Bay Area Carpets matter, and we would again like to have the documents that were requested by letter on March 7, 2003 from attorney Lewis Nelson ASAP. To date, this has not happened.

Further, I have met with new counsel several times in an effort to make sense of the files that you transferred to them and I was unable to distinguish any of the files from another. I made it plain in my letter to you authorizing the transfer of the CSAA files to Eric Haas of BurnhamlBrown that you were to provide the ORIGINAL DOCUMENTS in the form that they were provided to you. To date, this also has not happened.

Also, I requested the files of all pleadings and correspondence on disk including those provided to you by Steve Brady from himself and Mike Michel. To date, this also has not happened.

I trust that there is some logical reason for the lack of proper response to the above and would expect that you will comply as requested ASAP. Thank you for your attention.

Respectfully,
Abdul-Jalil
President

★ Superstar Management ★

7633 SUNKIST DR., OAKLAND, CA 94605-3024 PH(510) 839-5400 FAX(510) 638-8889
WWW.SUPERSTARMANAGEMENT.COM, EMAIL: JALIL@SUPERSTARMANAGEMENT.COM

FAX MEMO

TO: Frank McKeown
McKeown Price, LLP
2030 Addison St., Suite 300
Berkeley, CA 94704

FAX #: 549-8788
NO PAGES: 1

FROM: Abdul-Jalil
DATE: June 26, 2003
RE: Appeal Documents
CC: Eric Hass, Lew Nelson

Dear Frank:

I have spoken with attorney Lewis Nelson regarding your letter of June 25, 2003 claiming that you had sent the documents to him that were requested by letter from him to you on March 7, 2003 for the appeal in the Rescue Rooter/Bay Area Carpets matter, and **he has never received anything** from you to date. **That request is now a demand to you to provide them ALL ASAP.**

Further, I made it plain in my letter to you authorizing the transfer of the CSAA files to Eric Haas of BurnhamlBrown that you were to provide the ORIGINAL DOCUMENTS in the form that they were provided to you. You were **never** authorized to transfer any other documents related to the Rescue Rooter/Bay Area Carpets matter to anyone else. However, I am sure that you kept copies of all documents to complete Mr. Nelsons' standing four month requests that is now a demand!!!.

I trust that you will provide the files of all pleadings and correspondence on disk including those provided to you by Steve Brady from himself and Mike Michel.

Thank you for your attention.

Respectfully,
Abdul-Jalil
President

EXHIBIT “H”

LAW OFFICES OF
MICHEL & FACKLER
A PROFESSIONAL CORPORATION

MICHAEL D. MICHEL
JEFF M. FACKLER
JONATHAN W. HECK

OF COUNSEL
MARY C. MICHEL

WATERGATE OFFICE TOWER
2000 POWELL STREET
SUITE 1000
EMERYVILLE, CALIFORNIA
94608
(510) 547-7319
Fax (510) 547-7320

July 5, 2005

Via Facsimile Only

Abdul Jalil Al-Hakim
7633 Sunkist Drive
Oakland, California 94605

Dear Abdul Jalil:

I am getting ready for trial and I hope the enclosed letter fits your purposes. At any rate, this is the best I can do for you at this point.

Very truly yours,
MICHEL & FACKLER
A Professional Corporation

By: Michael D. Michel, Esq.

MDM:dls
Enclosure

LAW OFFICES OF
MICHEL & FACKLER
A PROFESSIONAL CORPORATION

MICHAEL D. MICHEL
JEFF M. FACKLER
JONATHAN W. HECK

OF COUNSEL
MARY C. MICHEL

WATERGATE OFFICE TOWERS
2000 POWELL STREET
SUITE 1000
EMERYVILLE, CALIFORNIA
94608
(510) 547-7319
Fax (510) 547-7320

July 5, 2005

Via Facsimile & U.S. Mail
Abdul Jalil Al-Hakim
7633 Sunkist Drive
Oakland, California 94605

Dear Mr. Al-Hakim:

You have asked me to provide you with details concerning my attempt to review a file at the City of Oakland in 2000 concerning a 1991 occurrence at your resident.

Our records reflect that I placed two telephone calls on March 15, 2000 to Janie Wong at the Oakland City Attorney's office regarding the file concerning your earlier claim. These would have been the telephone calls in which I was requesting an opportunity to review the City 's file on that claim.

On March 22, 2000 I received a telephone call from Juanita Hong at the City Attorney's office indicating that the records had been produced to an attorney for CSAA on an earlier occasion and, as I recall, the file could not be located. I was told I would receive a return telephone call as soon as the file was found.

I did not receive a return telephone call either before or during the appraisal hearing in April 2000. At some point after the conclusion of the appraisal hearing, however, I received a telephone call from the City Attorney's office notifying me that the file had been found and it was available for review. I do not recall when I received that telephone call but I would estimate the telephone call was received in May or June 2000.

I hope this information is helpful to you.

Very truly yours,
MICHEL & FACKLER
A Professional Corporation

By: Michael D. Michel, Esq.

MDM:dls

EXHIBIT "I"

In re: al-Hakim Video Exam Under Oath of Abdul-Jalil al-Hakim 10/26/99

Page 344 to Page 611

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

Aiken & Welch, Inc.
The Ordway Building
One Kaiser Plaza, Suite 505
Oakland, CA 94612
Phone: 510-451-1580
FAX: 510-451-3797

we gave to the appraisal panel.

MR. COOK: You understand how the policy reads? The policy requires actual cash value to be to be paid and replacement cost only upon actual replacement.

MR. MICHEL: If you have the question on damage appraisal let's get to it.

THE WITNESS: But I will say this: The other items --

MR. MICHEL: There's no question pending.

THE WITNESS: Go ahead.

MR. COOK: Q. So, I asked a question in the first session about whether or not you have made a claim against Rescue Rooter or the restoration company and your response was something to the effect that CSAA is handling that.

I want to make sure that you and your counsel both understand for purposes of damage appraisal, that, to the extent there are uninsured losses, things that are a part of this claim that under the policy are not covered, that CSAA is not protecting your interest by pursuing other parties who may be responsible for these damages.

So...

MR. MICHEL: Could you please use the

examination for the examination purposes, please?

Ask the questions relevant to damage appraisal.

MR. COOK: So nobody is dependent on us to go chase after Rescue Rooter.

Q. The first page B225 Nokia cellular phone. $499.99. Is that what you paid for the phone or what it cost to replace the phone?

A. These are all replacement costs. Some items are where I could remember what the cost was and couldn't find replacement I used it.

Q. So this is a replacement cost. Where did you buy that item?

A. I don't recall where we got that item from. It was part of the purchase of maybe six phones, five or six phones.

Q. Five or six phones?

A. Yeah. At one time.

Q. Where did you buy them?

A. I'm not sure who it was. It was purchased through someone from GTE, GTE salesperson. I don't know who.

Q. Do you have documents reflecting that purchase?

A. I may have. I'm not sure. I don't -- I

EXHIBIT "J"

PAT SMITH'S NOTES

come on -
- took photos
- advised clt. c/o worked on reimbursements only - suggested he refer to his own insurance carrier for immediate help

- talked to Mr. Banks - says it appears we owe - main is clogged/plugged w/roots

10/23/91 PS Talked to clt.
- wants to know why we cannot advance costs of repairs at this time -
- will need costs to disinfect - remove furniture, carpeting, etc.
- says his ins. carrier cancelled his insurance 2 years ago and he would prefer not to proceed under his own insurance -
- advised him I was not sure whether any emergency measures could be taken to assist him -

10/23/91 PS - Talked to Howard Rude - Farmers Ins. 6350608 re: clts. claim
clts. policy lapsed on 9/24/91 for non payment - no coverage for loss -

10/23/91 PS - discussed w/ Elida - no arrangements can be made to accomodate clt. w/ pre payments -

Abdul Al-Hakim
7633 Sunkist 94605

8/10/03

went to clts. home @ 10:30 on 10/22 to inspect sewer damage -

- based on info from clt. OPW was called on Friday - sewer line appeared to be blocked
- OPW forces left at 11:30pm - said it was too dark - they would return on Saturday
- OPW forces returned on Saturday - told clt they had cleared problem
- Roto Rooter had to be called on Sunday they came out - told clt. that the main was clogged - at that point - sewer water
3:30pm was coming out everywhere -
- he called OPW - Parks came out determined main was clogged with roots

- there are about 5 rooms of wet carpeting in the downstairs area
- bathroom area floors are buckled
- terrific stench -
- residue of fecal matter found behind refrigerator in wet bar area, in hot tub, downstairs bathroom and pool
- computer used for his employment was apparently water damaged - does not

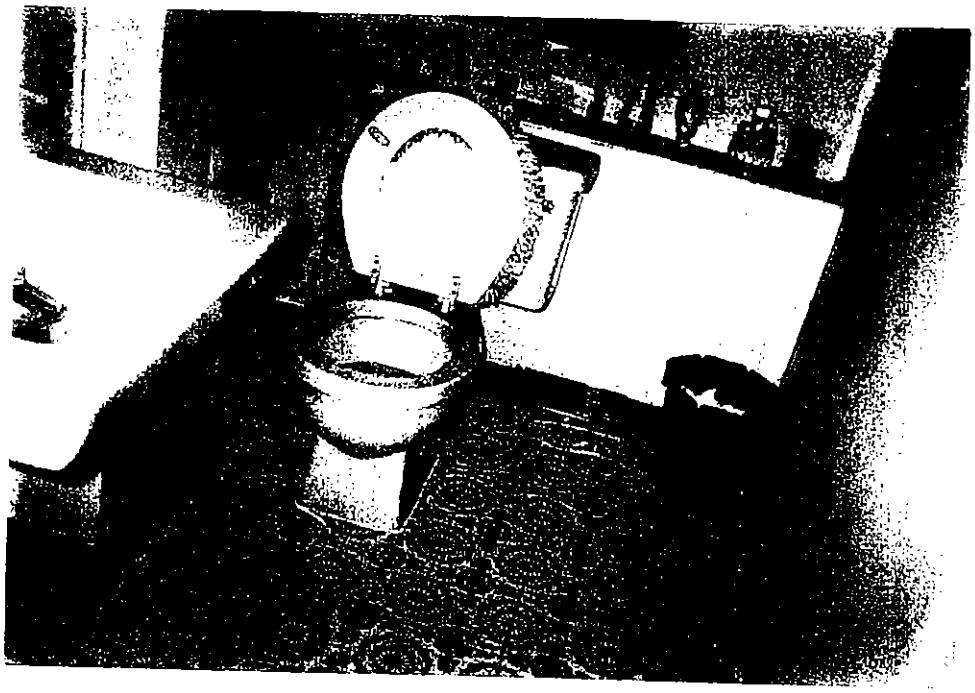

EXHIBIT "K"

Filed

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ABDUL-JALIL AL-HAKIM,
Plaintiff and Appellant,
v.
RESCUE INDUSTRIES, INC., et al.,
Defendants and Respondents.

A101832

(Alameda County Super. Ct. No. 8218852)

A homeowner sued a drainage company and a carpet-cleaning company for contaminating his house with mold and bacteria and failing to properly clean it up. He challenges a jury verdict for the defense on the grounds that the trial court erroneously admitted evidence of a prior sewer spill into the home, erroneously admitted evidence that the homeowner had insurance coverage, and erroneously allowed the homeowner's insurance carrier to intervene in the action. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Abdul-Jalil al-Hakim's Oakland home at some point became contaminated with mold and E coli bacteria. The primary issue at trial was what caused the contamination.

In 1991, a main city sewer line, which ran down a steep hill alongside al-Hakim's house, collapsed and spilled some of its contents into the lower level of his house. Al-Hakim testified that the spill consisted of "gray" water with no toilet paper or feces in it and that it was promptly and thoroughly cleaned up by a city work crew. In 1992 and

1993, however, al-Hakim had written demand letters to the city in which he described the spill as raw untreated sewage that remained in his house for several weeks, contaminating the house to the point where it was uninhabitable. A city claims investigator who visited the house two days after the spill testified that, although the spill had been cleaned up, the stench in al-Hakim's home was terrible and she saw some feces behind a downstairs refrigerator. A consultant who inspected the home four months after the spill said the house had a strong foul odor and feces and toilet paper were visible in the area of the spill.

Al-Hakim made some repairs following this incident. He submitted estimates for further repairs to the city during settlement negotiations and eventually received about $125,000 from the city. He never carried out further repairs. He testified that he submitted the estimates as a device to counter the city's settlement offers and to quantify his damages, but the repairs did not actually need to be done.

Defendants Rescue Industries and Bay Area Carpet Cleaning (the cleanup defendants) presented evidence that additional, smaller-scale sewage spills occurred in al-Hakim's home in 1992, and that al-Hakim had service for a main line blockage in 1994 and further service on his main line in 1995. Al-Hakim testified that in 1992 sewage backed up only into his laundry basin but did not spill onto the floor and that the 1994 and 1995 incidents involved routine maintenance. The cleanup defendants also presented evidence that al-Hakim's roof started leaking as early as 1992 and that moisture damage caused by those leaks was not remedied. The floor of the upper level of al-Hakim's house was warped and stained due to water damage.

Experts for both sides testified consistently regarding the process of mold contamination. Mold will grow on any moist cellulous surface (like drywall or wood) left standing for more than a day or two. If the area dries, the mold will release spores that can survive for years. If the spores again encounter wet conditions, they will start growing again, resulting in larger colonies. Sewage can infect an area with bacteria,

which has a life cycle similar to mold. Spores can be spread around a house through a heating or ventilation system, which al-Hakim had in his home, or on residents' shoes or feet.

In February 1997, al-Hakim called Rescue Industries to clear a drain in his home. According to al-Hakim, he asked the technician to fix a slow drain in an upstairs sink. According to the technician, al-Hakim showed him 50 to 70 gallons of sewage that had spilled into the lower level of his home due to a backup coming out of the shower drain. The technician ran a cable through a cleanout located in the lower level of the house. At some point, liquid spilled out of the cleanout. According to al-Hakim, the technician caused sewage to spill into five rooms in the lower level of the house. According to the technician, al-Hakim had flushed a toilet while the technician was working (contrary to the technician's instructions), which caused three to five gallons of clean water to spill onto the carpet. The technician told al-Hakim that Rescue Industries would send people out to clean up the carpet.

Four days after the spill, Bay Area Carpet Cleaning went to al-Hakim's home to clean the carpet on behalf of Rescue Industries. The carpet cleaner determined, based on his own observations, that the spill consisted of clean water. He extracted the water and fogged the area with an anti-microbial cleanser, and a second cleaning team came out to remove part of the carpet padding and dry the carpet with blowers. The blowers were left on for three to five days. The owner of Bay Area Carpet Cleaning agreed with those experts who opined that the use of blowers is inappropriate for a sewage spill because the blowers would spread mold spores throughout the house. One defense expert testified that this cleanup method was appropriate even assuming the spill was sewage water.

Al-Hakim complained to the cleanup defendants that the area was not properly cleaned. Defendants sent representatives to al-Hakim's home to investigate and they observed evidence of pre-existing water damage in the lower level of the house: rotting floors, soft spots on the bathroom floor, mold growing between cracks and crevices, and

black and mildewed carpet backings. Rescue Industries refused to pay for further cleanup.

Al-Hakim contacted his homeowner's insurance carrier, California State Automobile Association Inter-Insurance Bureau (CSAA). In November 1997, CSAA paid for an ozone treatment of the house, which is designed to get rid of bad odors but does not eliminate mold.

In February 1998, al-Hakim's roof leaked. The roof was not fully repaired for months. Al-Hakim filed a claim with CSAA for losses resulting from this leak.

Without settling al-Hakim's claims, CSAA paid about $92,000 to al-Hakim's mortgage company, which in turn passed about $70,000 on to al-Hakim. Al-Hakim did not use those funds to repair the lower level of his home. He testified that the funds were inadequate to cover the necessary repairs, which would have cost about $500,000.

In April 1999, al-Hakim sued CSAA for failure to pay benefits for his 1997 spill and 1998 roof leak claims. CSAA filed a cross-complaint for reimbursement of policy benefits.

In January 2000, al-Hakim sued the cleanup defendants for negligence and nuisance. CSAA was granted leave to intervene. CSAA alleged that it had paid $135,817.34 on al-Hakim's claim for damages arising from the February 1997 spill, and sought reimbursement from the cleanup defendants for those payments. The case was tried to a jury, which found that neither Rescue Industries nor Bay Area Carpet Cleaning was negligent.

DISCUSSION

I. *Inadequacy of the Appellate Record*

An appealing party has an affirmative obligation to provide an adequate record for review of a lower court's order or judgment. (*Vo v. Las Virgenes Municipal Water District* (2000) 79 Cal.App.4th 440, 447.) Where the record is silent, all presumptions

are indulged in support of the appealed order or judgment. The order or judgment is presumed correct. (*Denham v. Superior Court of Los Angeles* (1970) 2 Cal.3d 557, 564.)

Al-Hakim filed an untimely notice of election to proceed by appendix rather than a clerk's transcript and filed an appendix with his opening brief. (Cal. Rules of Court, rule 5.1(a)(1).) Although he designated a substantial part of the court record as an appendix in his "Amended Notice to Prepare Reporter's Transcript," he included only a few of those materials in his appendix. His appendix includes the briefing and the court's summary order on CSAA's January 2001 motion to intervene, but only an incomplete set of briefs on the other motions that are the subject of this appeal. Respondent's appendix supplements but does not complete the record of the briefing on these motions. No transcripts of the court hearings on the motions are in the record. The reporter's transcript only covers the trial (although the proceedings on the first day of trial did include some discussion of the motions). Al-Hakim requested completion of the record, specifically asking for a transcript of "the hearings and rulings on the motions in limine heard on [October 3, 2002]," and the superior court clerk responded that there was no proceeding on that date. According to the superior court docket sheet included in al-Hakim's appendix, those motions in limine were filed in the superior court on October 3, 2002. The hearing apparently took place later that month. Al-Hakim never corrected his request for completion of the record. Al-Hakim's eleventh-hour attempt to augment the record with a transcript of the January 2001 court hearing on CSAA's motion to intervene is denied.

Because al-Hakim has not provided a complete record of the trial court proceedings relevant to the issues he raises on appeal, where the record is silent we will presume that the trial court made findings necessary to support its orders.

II. *Admission of Evidence of 1991 Spill*

Al-Hakim argues that evidence of the 1991 sewage spill should have been excluded under Evidence Code section 352 because its probative value was substantially outweighed by its unduly prejudicial effect. In reviewing a trial court's exercise of its discretion under section 352, we may not substitute our own judgment for that of the trial judge. "Relief is available only where the alleged abuse of discretion clearly constitutes a miscarriage of justice." (*Cain v. State Farm Mut. Auto. Ins. Co.* (1975) 47 Cal.App.3d 783, 798.)

Al-Hakim argues that evidence of the 1991 spill was unduly prejudicial because it invited rank speculation, unsupported by substantial evidence, that the house was contaminated as a result of that spill rather than the 1997 spill. We disagree. The cleanup defendants presented substantial evidence on these matters, including al-Hakim's own descriptions of the spill in his correspondence with the City of Oakland; the city claims adjuster's and the consultant's descriptions of the spill; professional estimates of the necessary repairs, which demonstrated the extent of the damage resulting from the spill; and al-Hakim's admissions that many of those repairs were not made. Evidence of the 1991 spill did not invite mere speculation. On the contrary, it was directly relevant to the main issue before the jury: whether the contamination of the house was caused by the cleanup defendants' negligence or by some other cause. On appeal, al-Hakim makes no substantive argument that the evidence presented at trial invited mere speculation, and he offers no citations to the record or to case authority to support his brief assertion. The trial court acted well within its discretion in admitting the evidence.

III. *Admission of Evidence of Insurance Coverage*

Al-Hakim argues that the trial court erred by refusing to exclude evidence of his insurance coverage pursuant to the collateral source rule.[1] The cleanup defendants argue that the evidence was directly relevant to their argument that al-Hakim failed to mitigate any damage resulting from the 1997 spill, despite having had the wherewithal to do so.

The collateral source rule operates both as a substantive rule of damages and a rule of evidence. (*Arambula v. Wells* (1999) 72 Cal.App.4th 1006, 1015.) The rule provides that if an injured party receives compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages the plaintiff would otherwise collect from the tortfeasor. (*Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 729-730.) This rule reflects a public policy to encourage citizens to purchase and maintain insurance for personal injuries and other eventualities. (*Id.* at p. 730.)

Generally, evidence of insurance payments should be excluded. "The potentially prejudicial impact of evidence that a personal injury plaintiff received collateral insurance payments varies little from case to case. Even with cautionary instructions, there is substantial danger that the jurors will take the evidence into account in assessing the damages to be awarded to an injured plaintiff. . . . Admission despite such ominous potential should be permitted only upon a persuasive showing that the evidence sought to be introduced is of *substantial probative value*." (*Hrnjak v. Graymar, Inc., supra*, 4 Cal.3d at pp. 732-733 (italics added).) The decision whether to admit evidence under the

---

[1] Al-Hakim argues that the court should have excluded evidence of CSAA's payments for the 1991 spill, the 1997 spill and the 1998 roof leak. First, there is no evidence that CSAA made any payments for the 1991 spill. Al-Hakim received payments from the City of Oakland for his losses due to the spill, but these payments by a tortfeasor, rather than an insurer, are not subject to the collateral source rule. Second, the rule is inapplicable to payments for injuries other than the injuries for which the plaintiff seeks compensation in his lawsuit. The only evidence pertinent to al-Hakim's collateral source rule argument is evidence of insurance coverage for or payments for losses caused by the 1997 spill.

collateral source rule is an exercise of discretion under Evidence Code section 352 and subject to an abuse of discretion standard on appellate review. (*Id.* at p. 733.)

Bay Area Carpet Cleaning argues that al-Hakim's receipt of insurance payments was substantially probative of his failure to mitigate damages allegedly caused by the 1997 spill. Al-Hakim admitted at trial that he received insurance payments following the 1997 spill and 1998 roof leak and that he made no repairs to the lower level of his house with that money. The cleanup defendants presented evidence that the longer mold contamination is left unremediated, the worse the contamination becomes, particularly if there are additional water intrusions into the contaminated area. They presented evidence that repeated water intrusions due to the roof leak aggravated contamination that had originated in 1991. They also argued that al-Hakim's repair estimates were exaggerated and that he could have taken moderate measures to reduce the mold contamination to his home and belongings. Taken together, this evidence supports an inference that the damages al-Hakim presented to the jury were at least partially caused by his failure to repair his home following the 1997 spill. The evidence that al-Hakim had received insurance payments for that spill was substantially probative of a material issue at trial. The trial court did not abuse its discretion in concluding that the substantial probative value of the evidence outweighed the universal prejudicial effect of collateral source evidence.

We also note that even assuming the admission of the evidence was error it is not reasonably likely that the evidence influenced the jury's verdict. (See *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574 [reversal not warranted in civil cases unless it is reasonably likely that appealing party would have achieved a more favorable result absent the error].) First, the jury never reached the issue of damages because it found that

the defendants were not negligent.[2] The evidence did not cause the jury to inappropriately reduce the *amount* of damages al-Hakim would receive due to their awareness that he was insured. Second, even assuming collateral source evidence might affect a liability finding in addition to a jury's calculation of damages, here the evidence at trial overwhelmingly supported the jury's verdict. The defendants' core argument was that the source of the mold and E. coli bacteria in al-Hakim's house was the 1991 spill, not the 1997 spill, and that the source of water intrusion that caused the mold and bacteria to multiply was the roof leak and other sewage spills, not the 1997 spill from the cleanout. Although al-Hakim claimed that the 1991 spill consisted of clean water and that it was promptly and properly cleaned up, he was thoroughly impeached on this subject. Defendants also presented evidence that water intrusions were left unremedied for weeks or months at a time. We conclude that it is not reasonably likely that the jury found defendants not negligent based on the collateral source evidence rather than the other evidence presented at trial.

We reject al-Hakim's argument that the judgment should be reversed based on the admission of collateral source evidence.

IV. *Intervention of CSAA*

After having brought and lost a motion to consolidate al-Hakim's two actions, CSAA sought leave to intervene so that it could seek reimbursement for benefits it had paid al-Hakim for the 1997 spill. Al-Hakim opposed the motion,[3] arguing that CSAA

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[2] Appellant failed to include the jury instructions in his appendix so we cannot assess whether a limiting or cautionary instruction was requested or given. The jury instructions were not transcribed by the court reporter. Compounding the deficiency of the record, the special verdict form and/or special interrogatories on the verdict are not included in the record on appeal.

[3] Al-Hakim claims on appeal that he filed this opposition pro se. Although al-Hakim was prosecuting his action against Rescue Industries pro se at that time, a law firm

had no right to reimbursement because it had unequivocally denied coverage for al-Hakim's property losses and was seeking reimbursement for payments already made on the claim. The trial court allowed CSAA to intervene. No explanation for the trial court's order is in the record. CSAA filed a complaint in intervention alleging that it had paid $135,817.34 on al-Hakim's claim for damages arising from the February 1997 spill, alleging that it was subrogated to that claim, and seeking reimbursement of those payments.[4] In his answer, al-Hakim alleged that CSAA had forfeited its right to subrogation by acting against al-Hakim's interests.

Shortly before trial, al-Hakim, represented by new counsel, resurrected the issue by seeking dismissal of CSAA's complaint in intervention on the ground that CSAA should not have been permitted to intervene. The trial judge, who was not the judge who had granted the motion to intervene, denied the motion based on the law of the case; that is, because CSAA had already been granted leave to intervene following a contested hearing.

Code of Civil Procedure section 387, subdivision (a) provides that any person who "has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both" may intervene and become a party to the action. The purpose of permissive intervention is to protect the interests of persons affected by a judgment, to prevent delay, and to avoid multiplicity of actions. (*Deutschmann v. Sears, Roebuck & Co.* (1982) 132 Cal.App.3d 912, 915.) Whether intervention should be permitted in a particular case is left to the sound discretion of the trial court, based on its consideration

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specially appeared on his behalf to brief and argue his opposition to the intervention motion.

[4] Al-Hakim argues in his reply brief that CSAA failed to demonstrate that its insurance policy provided a contractual right of subrogation. We will not entertain an argument raised for the first time in a reply brief. (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500.) We do note that CSAA's complaint in intervention asserted a claim as a subrogated insurer.

of the facts of the case. (*Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal.App.3d 299, 302.) The court must consider (1) whether the proposed intervenor has a direct and immediate interest in the litigation; (2) whether the issues of the action will be enlarged by the proposed intervention; and (3) whether the reasons favoring intervention are outweighed by the original parties' rights to conduct the lawsuit on their own terms. (*Id.* at p. 303; *People ex rel. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, 660-661.) An order allowing a party to intervene is appealable after entry of final judgment. (*Adoption of Lenn E.* (1986) 182 Cal.App.3d 210, 217.)

A subrogated insurer should generally be permitted to intervene in an action by its insured against a third party tortfeasor. After paying the amount of a loss suffered by an insured due to the acts of a third party tortfeasor, an insurer is generally subrogated in a corresponding amount to the rights of the insured against the tortfeasor. (*Deutschmann v. Sears, Roebuck & Co., supra,* 132 Cal. App. 3d at 915.) That is, the insurer has the right to recover that amount in an action for damages against the tortfeasor. (*Ibid.*) As a subrogee, an insurer has a direct pecuniary interest in the outcome of the litigation, which justifies intervention. (*Ibid.*)

Al-Hakim first argues that the payments he received from CSAA in 1998 (for which CSAA sought reimbursement as an intervenor) were paid on his claim for the 1998 roof leak, not his claim for the 1997 spill. He argues that CSAA thus had no direct interest in al-Hakim's action against the cleanup defendants. Al-Hakim did not raise this argument in opposition to the motion to intervene. He tried to raise the argument in his "sur-rebuttal on motions in limine," but these arguments were made too late. The trial court had already granted the motion to intervene. We will not address arguments first raised on appeal. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.) We also note that CSAA presented evidence at trial that about $125,000 of the payments were made on the claim for the 1997 spill. The trial court reasonably could have found

that the insurance payments were made on the 1997 spill claim, giving CSAA an interest in the litigation.

Al-Hakim next argues that CSAA has no right to intervene as a subrogated insurer because CSAA was disputing al-Hakim's right to insurance coverage for the 1997 spill. The cases he cites do not support his argument. He cites *California Physicians' Service v. Superior Court* (1980) 102 Cal.App.3d 91 for the proposition that CSAA had no right to intervene because its claim of subrogation was based on an insurance contract that was in litigation. In *California Physicians' Service*, the insurer had no right of subrogation due to a provision of the Civil Code applicable to medical malpractice actions. (*Id.* at p. 94 & fn. 2; Civ. Code, § 3333.1, subd. (b).) Because it lacked a right of subrogation, its interest of the case was merely that of a creditor under its insurance contract and under a settlement agreement it made with the plaintiff. (*Id.* at pp. 93-95.) The fact that the insurer and insured at one point disputed the extent of coverage under the policy was not relevant to the court's analysis of the insurer's right to intervene. The insurer lacked a right to intervene because it was a mere creditor, not because the plaintiff's insurance coverage was at one time in dispute. (*Id.* at p. 97.)

Al-Hakim cites *Patent Scaffolding Co. v. William Simpson Constr. Co.* (1967) 256 Cal.App.2d 506, 509, for the proposition that CSAA had no right of subrogation unless it made an unconditional payment for al-Hakim's losses from the 1997 spill. At the cited page of *Patent Scaffolding*, the court discusses the elements of an equitable, rather than a contractual, right of subrogation and makes no mention of a need to make an unconditional payment. (*Ibid.*) The case has nothing to do with disputes about insurance coverage between an insurer and its insured. Rather, the court decided that the insurer-plaintiffs in the case had no right of subrogation because their loss was not caused by the defendant's breach of contract against the insured. (*Id.* at p. 512.)

Finally, al-Hakim cites *Kardly v. State Farm Mut. Auto. Ins. Co.* (1989) 207 Cal.App.3d 479 in support of his argument that "by refusing to cover all losses under its

insurance contract, [CSAA] breached that contract and thereby waved [*sic*] its right to subrogation." But *Kardly* held that "[t]o the extent [an insurer] paid for certain damages, the subrogation clause applies." (*Kardly, supra,* 207 Cal.App.3d at p. 488.) Here, CSAA asserts a right of subrogation only to the extent it paid for certain damages claimed by plaintiff in its action against the cleanup defendants. In sum, al-Hakim fails to cite persuasive legal authority in support of his argument that an insurer lacks a right of subrogation as to a claim that has been paid but is still subject to dispute. (See Cal. Rules of Court, rule 14(a)(1)(B).)

Even assuming CSAA lacked a right of subrogation because it disputed al-Hakim's entitlement to insurance coverage for the 1997 spill, al-Hakim fails to show that he was prejudiced by the intervention. He argues that CSAA's participation enlarged the issues at trial specifically by introducing evidence regarding the 1998 roof leak and associated damages. Al-Hakim apparently means to argue that the 1998 roof leak was an issue in the trial only because the jury had to determine whether the insurance payments al-Hakim received were paid on the 1997 spill claim or the 1998 roof leak claim. But evidence of the 1998 roof leak was directly relevant to the cleanup defendants' argument that al-Hakim's house was contaminated not by the 1997 spill, but by the 1991 spill, which was exacerbated by repeated roof leaks including those in 1998. Evidence of the roof leaks was relevant regardless of whether CSAA participated in the trial.

Indeed, CSAA introduced no evidence regarding the roof leaks and played only a minimal role at the trial. Its presentation was limited to putting a claims adjuster on the stand and introducing copies of the insurance checks written to and cashed by al-Hakim. Its argument to the jury was limited to establishing the amount it had paid to al-Hakim as a result of the 1997 spill and asking for reimbursement in the event the jury found the cleanup defendants liable.

Al-Hakim also argues that he was prejudiced by the intervention because CSAA's participation introduced evidence of al-Hakim's insurance coverage into the trial in

violation of the collateral source rule. For the reasons stated in the preceding section, the cleanup defendants had a right to introduce evidence of al-Hakim's insurance coverage and receipt of insurance payments to prove a failure to mitigate damages, regardless of whether CSAA had intervened in the trial. Therefore, granting the motion to intervene did not unduly prejudice al-Hakim.

We also note that the decision to allow CSAA to intervene did not necessarily mean that the jury deciding the cleanup defendants' liability would learn about al-Hakim's insurance coverage. After his motion to dismiss the complaint in intervention had been denied, al-Hakim asked the trial court to bifurcate the trial, so that evidence of al-Hakim's insurance coverage could be excluded from the trial against the cleanup defendants. The trial court proposed instead that al-Hakim try his action against CSAA before he tried his action against the cleanup defendants. The cleanup defendants agreed with that proposal but al-Hakim declined. Thus, al-Hakim rejected the trial court's proposed accommodation of his concerns. He cannot reasonably complain now that his rights were not protected.

We conclude that the trial court did not abuse its discretion in granting CSAA's motion to intervene.

DISPOSITION

We affirm the judgment.

GEMELLO, J.

We concur.

JONES, P.J.

SIMONS, J.