

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

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BORENSTEIN, MAX,)
)
 PLAINTIFF-APPELLANT,)
) SUPERIOR COURT
 -VS.-) CASE NO. 22STFL08826
)
 GOLDSHTEYN, SOFIYA,)
)
 DEFENDANT-RESPONDENT.)
)

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE SCOTT J. NORD, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

TUESDAY, FEBRUARY 24TH, 2026

APPEARANCES:



FOR THE PLAINTIFF/
 RESPONDENT:

LAW OFFICE OF KAPLAN, TROPE &
 GEKHT
 BY: GARRY M. GEKHT, ESQ.
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 SUITE 1650
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FOR THE DEFENDANT/
 APPELLANT:

LAW OFFICE OF J.R. HOWELL
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VOLUME 1 OF 1
 PAGES 1-100, INCL.

JAIME DERDERIAN, CSR NO. 14258
 OFFICIAL COURT REPORTER

SESSIONS

TUESDAY, FEBRUARY 24TH, 2026
A.M. SESSION

6

M A S T E R I N D E X

VOL 1; FEBRUARY 24, 2026

CHRONOLOGICAL INDEX OF WITNESSES

WITNESSES: PAGE_____

BORENSTEIN, MAX

EXAMINATION BY MR. GEKHT: 30, 50

EXAMINATION BY MR. HOWELL: 40

GOLDSHTEYN, SOFIYA

EXAMINATION BY MR. HOWELL: 52, 80, 87

EXAMINATION BY MR. GEKHT: 69, 85

M A S T E R I N D E X

VOL 1; FEBRUARY 24, 2026

ALPHABETICAL INDEX OF WITNESSES

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PAGE_____

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69, 85

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VOL 1; FEBRUARY 24, 2026

EXHIBITS

PETITIONER'S	DESCRIPTION	MARKED RECEIVED	
EXHIBIT 1	CONTRACT	31	36
EXHIBIT 4	CONTRACT	37	40

RESPONDENT'S	DESCRIPTION	MARKED RECEIVED	
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1 CASE NUMBER: 22STFL08826
2 CASE NAME: BORENSTEIN, MAX V
3 GOLDSHTEYN, SOFIYA
4 LOS ANGELES, CALIFORNIA TUESDAY, FEBRUARY 24TH, 2026
5 DEPARTMENT: ST35 HON. SCOTT J. NORD, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: JAIME DERDERIAN, CSR NO.
8 14258
9 TIME: A.M. SESSION

10

11 APPEARANCES:

12 PETITIONER, MAX BORNSTEIN, PRESENT WITH
13 COUNSEL, GARRY B GEKHT AND CARLY TIMM-BIJOLD, ATTORNIES
14 AT LAW; RESPONDENT, SOFIYA GOLDSHTYN, PRESENT WITH
15 COUNSEL, JIMMY RAY HOWELL, ATTORNEY AT LAW; ATTORNEY
16 ELISE GREENBERG FOR THE MINORS, WHO ARE NOT PRESENT.

17

18 ---000---

19

20 THE COURT: NUMBER 3, 22STFL08826, MAX
21 BORENSTEIN VERSUS SOFIYA GOLDSHTEYN. COME FORWARD,
22 PLEASE.

23 MR. GEKHT: YOUR HONOR, I KNOW THE COURT WILL
24 PROBABLY INTERRUPT US FOR THE INTERPRETER, DO YOU WANT
25 US TO SET UP?

26 THE COURT: GO AHEAD. WE'RE GOING TO START
27 AND IF THE INTERRUPTER COMES IN -- THOSE ARE QUICK
28 MATTERS, SO YOU DON'T HAVE TO WORRY ABOUT IT.

1 MR. GEKHT: THANK YOU.

2 THE COURT: GOOD MORNING. IF THE PARTIES
3 COULD STATE AND SPELL THEIR NAMES FOR THE RECORD,
4 PLEASE.

5 MR. BORENSTEIN: MAX BORENSTEIN, M-A-X
6 B-O-R-E-N-S-T-E-I-N.

7 MS. GOLDSHTEYN: SOFIYA GOLDSHTEYN,
8 S-O-F-I-Y-A G-O-L-D-S-H-T-E-Y-N.

9 THE COURT: DID YOU BOTH JUST TAKE THE OATH A
10 MOMENT AGO?

11 MS. GOLDSHTEYN: YES.

12 THE COURT: SIR?

13 MR. BORENSTEIN: YES.

14 THE COURT: COUNSEL, YOUR APPEARANCES.

15 MR. GEKHT: GOOD MORNING, YOUR HONOR. GARRY
16 GEKHT, KAPLAN, TROPE, GEKHT & DECAROLIS, FOR THE
17 PETITIONER, MAX BORENSTEIN, WHO IS PRESENT AT COUNSEL
18 TABLE.

19 MR. HOWELL: GOOD MORNING, YOUR HONOR. JIMMY
20 RAY HOWELL FOR RESPONDENT, SOFIYA GOLDSHTEYN.

21 THE COURT: DO WE HAVE SOMEBODY ELSE ONLINE?

22 MR. GEKHT: OH, I BELIEVE IT'S MY ASSOCIATE.

23 THE COURT: DOES SHE WANT TO MAKE HER
24 APPEARANCE?

25 MR. GEKHT: I'LL MAKE IT FOR HER, CARLY
26 TIMM-BIJOLD, FROM MY FIRM, FOR THE PETITIONER.

27 THE COURT: ALL RIGHT.

28 MR. GEKHT: YOUR HONOR, AS A HOUSEKEEPING

1 MATTER, WE FILED TWO NOTICES OF LODGING OF THE
2 PETITIONER'S TRANSCRIPT. DOES THE COURT WANT COPIES?

3 THE COURT: UH-HUH.

4 MR. HOWELL: I DID THE SAME WITH RESPECT TO
5 LEGISLATIVE HISTORY ABOUT THE REPRODUCTIVE HISTORY
6 ACT -- REPRODUCTIVE PRIVACY.

7 THE COURT: YOU GUYS TOLD ME IT WILL TAKE
8 THREE HOURS.

9 MR. GEKHT: THIS SHOULD TAKE NO MORE THAN AN
10 HOUR, TOPS.

11 THE COURT: WELL, MR. HOWELL IS BRINGING ME
12 THREE MASSIVE BINDERS, AND I AM LIKE "THAT DOESN'T LOOK
13 LIKE A THREE-HOUR HEARING."

14 MR. HOWELL: THIS IS FOR CONSULTATION IF
15 THERE'S A LEGISLATURE HISTORY ISSUE.

16 THE COURT: OKAY.

17 MR. HOWELL: BUT I SPOKE WITH MR. GEKHT, AND I
18 THINK THAT -- I'M SORRY, YOUR HONOR. I THINK THAT
19 WE -- IT WON'T TAKE THREE HOURS.

20 THE COURT: OKAY. USUALLY, WHEN SOMEONE WALKS
21 IN WITH BINDERS LIKE THIS, IT DOES NOT LOOK LIKE A
22 THREE-HOUR HEARING. THAT'S WHY I'M LIKE, WAIT, A
23 SECOND, YOU HAD ALL THESE DATES AND YOU GUYS -- YOU
24 CALLED FOR A DAY, AND I'M LIKE OKAY.

25 MR. HOWELL: THE OTHER MATTER I WANTED TO
26 BRING TO THE COURT'S ATTENTION IS THAT LAST NIGHT,
27 THERE WAS A LATE FILED MOTION IN LIMINE. I KNOW YOUR
28 HONOR DOES NOT FAVOR MOTION IN LIMINES, BUT THIS IS THE

1 WAY TO BRING TO THE COURT'S ATTENTION, WE HAD SOME LATE
2 FILED EXHIBITS FROM PETITIONER I WANTED TO ADDRESS.

3 THE COURT: OKAY. YOU GAVE SOMETHING TO MY
4 CLERK THIS MORNING, I DIDN'T TAKE IT BECAUSE, AGAIN, IT
5 WASN'T THERE THIS MORNING, I DIDN'T HAVE AN OPPORTUNITY
6 TO READ IT. IT'S NOT EVEN IN -- I MEAN, I LEFT LAST
7 NIGHT AT 4:30, AND IT WASN'T EVEN THERE THIS MORNING,
8 IT'S THERE NOW. AND I DIDN'T KNOW IF MR. GEKHT HAD AN
9 OPPORTUNITY TO SEE IT AND WHEN HE GOT IT, SO I WASN'T
10 GOING TO READ SOMETHING THAT I DIDN'T KNOW IF HE HAD
11 SEEN IT.

12 MR. GEKHT: IT CAME IN AT I THINK
13 9:00-SOMETHING LAST NIGHT, YOUR HONOR --

14 THE COURT: OKAY.

15 MR. GEKHT: -- I REVIEWED IT, I CAN ARGUE IT.
16 I HAVE A BIG ISSUE WITH IT IN THAT, AT 2:20-SOMETHING
17 YESTERDAY, MR. HOWELL SENT ME A MEET AND CONFER
18 CORRESPONDENCE, ASKING THAT I RESPOND BY 5 O'CLOCK OR
19 HE'LL FILE A MOTION IN LIMINE. I RESPONDED WITH PAGE,
20 LINE, AND VERSE ALL THE DISCOVERY QUESTIONS AND ANSWERS
21 AS TO WHY HIS MOTION I DO NOT BELIEVE HAD ANY MERIT.
22 MY RESPONSE IS CONSPICUOUSLY ABSENT FROM MR. HOWELL'S
23 MOTION, AND MY RESPONSE CAME IN WITHIN AN HOUR OF THE
24 MEET AND CONFER.

25 SO, ABOUT 2:33, HE SENDS HIS E-MAIL, I
26 RESPOND WITHIN AN HOUR, HE FILES HIS MOTION IN LIMINE
27 AT 9:00, MY RESPONSE IS NOWHERE THERE. AND THE REASON
28 THAT I MENTIONED THAT IS, THERE'S AN ASSERTION THAT A

1 DOCUMENT WAS REQUESTED -- THESE DOCUMENTS WERE
2 REQUESTED IN DISCOVERY. I POINTED OUT TO MR. HOWELL
3 THAT THE RESPONSES WERE OBJECTED TO; THAT THERE WAS NO
4 FURTHER MEET AND CONFER; AND IN ANY EVENT, THESE ARE
5 DOCUMENTS THAT ARE EQUALLY AVAILABLE TO BOTH PARTIES,
6 WE ALL KNEW ABOUT THEIR EXISTENCE. I QUESTIONED
7 MS. GOLDSHTEYN AT HER DEPOSITION ABOUT THESE CONTRACTS,
8 DID SHE SIGN THEM.

9 SO TO SAY THAT THERE'S AN ELEMENT OF
10 SURPRISE OR SOMETHING WAS LATE FILED, WE FOLLOWED ALL
11 THE COURT ORDERS, WE EXCHANGED EXHIBITS WITH MR. HOWELL
12 ON THE EXACT SAME DAY. AND THESE ARE FAIRLY
13 DISPOSITIVE CONTRACTS, I DON'T UNDERSTAND WHY IT'S
14 SUDDENLY A SURPRISE THAT, A, THESE EXIST --

15 THE COURT: HOLD ON.

16 MR. HOWELL: SO, THERE'S FIVE EXHIBITS, HE'S
17 TALKING ABOUT FOUR OF THEM. I WANT TO LEAD WITH
18 EXHIBIT 6 --

19 THE COURT: I DON'T KNOW WHICH ONE THAT IS.

20 MR. HOWELL: -- 240 PAGES OF ATTORNEY BILLING
21 RECORDS THAT WERE PRODUCED TO ME FOR THE FIRST TIME
22 YESTERDAY. SO, WHY WAS THERE GARRY -- "MR. GEKHT,
23 PLEASE GET BACK TO ME BY THE END OF THE DAY," BECAUSE I
24 GOT THESE 240 PAGES AT AROUND 4 O'CLOCK.

25 MR. GEKHT: I'VE ALREADY EXPLAINED TO
26 MR. HOWELL --

27 THE COURT: SO, THIS IS OVER AN ATTORNEY FEE
28 ISSUE?

1 MR. HOWELL: NOT JUST THIS, BUT THIS
2 EXHIBIT 6 --

3 THE COURT: WHICH I DON'T KNOW WHAT IT IS.

4 MR. GEKHT: YOUR HONOR, I'VE ALREADY EXPLAINED
5 THIS --

6 THE COURT: WHERE IS EXHIBIT 6 SO I COULD SEE
7 IT? DOES SOMEONE HAVE IT?

8 MR. GEKHT: IT'S JUST A STACK OF MY BILLING
9 STATEMENTS.

10 THE COURT: DO YOU HAVE AN EXHIBIT BOOK FOR
11 ME?

12 MR. GEKHT: YES, RIGHT HERE. I EXPLAINED TO
13 MR. HOWELL THAT, NORMALLY, WHAT HAPPENS IN A TRIAL IN
14 FAMILY LAW IS, YOU GET YOUR RULING, AND THEN THE COURT
15 SETS A BRIEFING SCHEDULE FOR FEES. WE'RE NOT SEEKING
16 FEES RELATED TO THE TRIAL, THE ONLY THING WE WOULD BE
17 SEEKING, ONCE THE COURT ISSUES ITS RULING, IS SANCTIONS
18 OR 271. MY OFFICE, IN AN ABUNDANCE OF CAUTION, BECAUSE
19 I WOULD HAVE TO TESTIFY AND LAY FOUNDATION, IF THE
20 COURT HAS US PROCEED BY TESTIMONY, AS OPPOSED TO
21 DECLARATION; INCLUDED ALL THE BILLS FROM START TO
22 FINISH, IN CASE THE COURT HAD ANY QUESTIONS. I'M NOT
23 SEEKING THOSE FEES FROM MS. GOLDSHTEYN.

24 IN FACT, THERE WAS A DEAL POINT
25 MEMORANDUM THAT RESOLVES THE ISSUE OF FEES. THEY WERE
26 THERE, IN AN ABUNDANCE OF CAUTION, IN CASE I HAD TO GET
27 UP ON THE STAND AND TESTIFY. I EXPLAINED TO MR. HOWELL
28 THAT THE LIKELY OUTCOME IS, THE COURT WILL SAY "ALL

1 RIGHT. HERE'S MY RULING, YOU GUYS COULD BRIEF FEES OR
2 SANCTIONS IN THREE WEEKS AND I'LL ISSUE A RULING ON
3 THAT," AND IT NORMALLY GOES BY DECLARATION. I DON'T
4 REALLY KNOW WHAT TO DO BEYOND THAT IF THERE'S NO --
5 REALLY NOT A POINT FOR SANCTIONS OF THE HISTORY OF THE
6 BILLING, IT'S JUST IN THERE, IN CASE THE COURT HAD A
7 QUESTION AND I HAD TO TESTIFY TO RATES OR SOMETHING
8 ELSE.

9 THE COURT: MR. HOWELL, OTHER THAN THAT -- I
10 MEAN, I'M NOT -- AGAIN, I HAVEN'T EVEN HEARD IF THERE'S
11 A BASIS FOR 271 SANCTION.

12 MR. HOWELL: RIGHT, AND NEITHER HAVE I, AND
13 271B REQUIRES ADVANCE NOTICE. SO, IMAGINE MY SURPRISE
14 WHEN I GET 240 PAGES A DAY BEFORE TRIAL.

15 THE COURT: WELL, TECHNICALLY, YOU COULD MAKE
16 AN ORAL REQUEST FOR IT, I JUST HAVE TO GIVE YOU AN
17 OPPORTUNITY TO RESPOND. BUT, AGAIN, I HAVE NOT HEARD
18 ANY REQUEST FOR ANY SANCTIONS AT THIS POINT.

19 MR. HOWELL: I'M IN THE SAME BOAT, I'M
20 CONFUSED, I DON'T KNOW WHY I GOT AN EXHIBIT THE DAY
21 BEFORE TRIAL.

22 THE COURT: WELL, AGAIN, IT'S NOT -- I DON'T
23 REALLY REMEMBER SEEING SOMETHING IN THE BRIEF ABOUT 271
24 SANCTIONS, MAYBE I MISSED IT, I DON'T THINK SO. YEAH,
25 THERE'S NOTHING IN THE BRIEF ABOUT 271 SANCTIONS. IF
26 THEY WANT TO MAKE AN ORAL REQUEST, I COULD GIVE YOU
27 OBVIOUSLY PLENTY OF OPPORTUNITY TO RESPOND, BUT I
28 HAVEN'T HEARD A REQUEST FOR THAT. AND, AGAIN, I STILL

1 HAVE TO FIND THAT SHE ACTED UNREASONABLE OR THIS WAS
2 DONE TO CAUSE DELAY OR SOME OTHER BASIS FOR WHICH
3 SOMEONE SHOULD BE SANCTIONED. AND, AGAIN -- I HAVEN'T
4 EVEN HEARD THAT, YET --

5 MR. GEKHT: CORRECT.

6 THE COURT: -- HIS IS A CONTRACTUAL ARGUMENT
7 AND HIS A FUNDAMENTAL RIGHT ARGUMENT, WHICH I'M NOT
8 SURE THE COURT HAS EVER REALLY RESOLVED, THANK YOU VERY
9 MUCH.

10 MR. HOWELL: SO, GOOD LUCK. BUT ON THAT
11 SCORE, I WANT TO TALK ABOUT EXHIBITS 1 THROUGH 4,
12 WHICH --

13 THE COURT: HAVE A SEAT REAL QUICK, LET ME DO
14 THE SPANISH MATTER. YOU GUYS DON'T HAVE TO GO
15 ANYWHERE, YOU COULD JUST STAY WHERE YOU ARE. LET ME DO
16 THE SPANISH MATTER SO I COULD GET THE INTERPRETER OUT
17 OF HERE, THESE ARE GOING TO BE QUICK, THEN WE CAN COME
18 BACK AND LIST THEM. AS FASCINATING AS THIS IS FOR ME,
19 I HIGHLY DOUBT THESE PEOPLE REALLY WANT TO LISTEN TO
20 THE LEGISLATIVE HISTORY OF REPRODUCTIVE RIGHTS IN THE
21 STATE OF CALIFORNIA.

22

23 (BRIEF PAUSE WHILE OTHER UNRELATED MATTERS CALLED.)

24

25 THE COURT: AS TO THE BILLING -- BACK ON
26 BORENSTEIN VERSUS GOLDSHTEYN. AS TO THE BILLING, IS
27 THERE -- OTHER THAN THAT, I'M NOT GOING DO ANYTHING
28 WITH IT TODAY. SO, IS THERE ANY OTHER ISSUE ON THAT

1 THAT WE NEED TO DEAL WITH?

2 MR. HOWELL: NOT WITH THE BILLING.

3 THE COURT: OKAY. WHAT ABOUT THE OTHER
4 EXHIBITS?

5 MR. HOWELL: EXHIBITS 1 THROUGH 4, THEY WERE
6 PRODUCED TO MY OFFICE FOR THE FIRST TIME FOUR COURT
7 DAYS AGO. LOCAL RULES REQUIRE THAT THEY BE PRODUCED,
8 IF AT ALL, TRIAL EXHIBITS, AT LEAST FIVE COURT DAYS
9 BEFORE.

10 AND THE BIGGER PROBLEM ISN'T JUST THAT
11 THEY WERE ONE DAY LATE, IT'S THAT THEY WERE NEVER
12 PRODUCED, AND I SUBMITTED A NUMBER OF DISCOVERY
13 REQUESTS SEEKING THESE DOCUMENTS. EARLIER, YOU HEARD
14 FROM MR. GEKHT THAT WE HAD KNOWN ABOUT THESE DOCUMENTS,
15 AND SO IT'S NOT A SURPRISE THAT THEY'D BE OFFERED INTO
16 EVIDENCE, BUT THEIR CONTENTS ARE A SURPRISE. YES, WE
17 KNEW THAT THEY EXISTED, THAT'S WHY WE WERE TRYING TO
18 GET THEM. AND IN PETITIONER'S TRIAL BRIEF, HE REFERS
19 -- EXCUSE ME -- TRIAL SETTING CONFERENCE BRIEF ON MARCH
20 3RD, 2025, HE REFERRED TO THESE DOCUMENTS. WE
21 SUBMITTED DISCOVERY REQUESTS, THEY WEREN'T PRODUCED AT
22 THAT TIME.

23 WE FILED A MOTION TO COMPEL COMPLIANCE
24 WITH A PREVIOUS RESPONSE TO REQUEST PRODUCTION OF
25 DOCUMENTS, AND YOUR HONOR DID GRANT THE MOTION TO
26 COMPEL COMPLIANCE AND ISSUED AN ORDER THAT THE
27 PETITIONER WAS TO PRODUCE VARIOUS DOCUMENTS BY A DATE
28 CERTAIN. THE CONTRACTS, EXHIBITS 1 THROUGH 4, WOULD

1 HAVE BEEN IMPLICATED IN THAT ORDER, EXCEPT FOR THE FACT
2 THAT ONE OF THE QUESTIONS WAS "PRODUCE DOCUMENTS THAT
3 ARE RESPONSIVE TO THE INTERROGATORIES."

4 AND THE INTERROGATORY IN QUESTION WAS
5 "IDENTIFY ANY AGREEMENTS AMONG THE PARTIES." AND THE
6 AGREEMENTS, EXHIBIT 1 THROUGH 4, WEREN'T LISTED THERE.
7 SO, WHAT WE'RE DEALING WITH NOW IS NONDISCLOSURE, WHERE
8 THERE WAS AN EFFORT TO CONCEAL HIGHLY IMPORTANT
9 DOCUMENTS. THE DOCUMENTS ON WHICH THE PETITIONER IS
10 BASING, FROM WHAT I UNDERSTAND, IS HIS ENTIRE CASE,
11 THAT HE HAS WITHHELD FOR YEARS. THE PETITION WAS FILED
12 IN 2022; RIGHT? SO, WHY DID WE GET THEM FOR THE FIRST
13 TIME JUST FOUR COURT DAYS AGO? WHAT I'M SAYING IS,
14 THERE'S PREJUDICE TO US BECAUSE OF ALL THE TIME THAT
15 WENT BY THAT WE DIDN'T HAVE THEM. WE COULDN'T
16 CROSS-EXAMINE WITNESSES, WE COULDN'T TAKE ADVANTAGE OF
17 WHAT LOOKS, TO ME, TO BE LIKE A RIGHT TO REVOKE A
18 DISPOSITION DIRECTIVE. AND TO UNDERSTAND WHAT EMBRYOS
19 ARE AT ISSUE WITH THESE VERY CONFLICTING CONTRACTS,
20 BECAUSE THERE ARE DIFFERING DISPOSITIONS AMONG THESE
21 DOCUMENTS.

22 SO, WE SEEK TO EXCLUDE EXHIBITS 1
23 THROUGH 4 BECAUSE OF THE PREJUDICE AND BECAUSE OF THE
24 VIOLATION OF COURT RULES AND ABUSE OF THE DISCOVERY
25 PROCESS.

26 THE COURT: MR. GEKHT?

27 MR. GEKHT: THANK YOU, YOUR HONOR. SO, A LOT
28 OF THAT IS SPECIOUS BUT NOT ACTUAL. NUMBER ONE, THESE

1 CONTRACTS WERE SIGNED BY BOTH PARTIES, AT THE PLACE
2 WHERE BOTH OF THEM WENT TO GET IVF TREATMENT; EQUALLY
3 AVAILABLE TO BOTH PARTIES THROUGHOUT THE FOUR YEARS,
4 AND I BELIEVE CLOSE TO A MILLION DOLLARS THAT
5 MS. GOLDSHTEYN SPENT ON LITIGATION. THAT'S NUMBER ONE.

6 NUMBER TWO, IT HAS NEVER BEEN, CERTAINLY
7 IN THE TWO AND A HALF, THREE YEARS THAT I'VE BEEN DOING
8 THIS CASE, A PHONE CALL OR REQUEST FROM MR. HOWELL OR
9 ANY OF OTHER TWO LAW FIRMS REPRESENTING MS. GOLDSHTEYN,
10 SAYING "HEY, CAN YOU GET ME THESE CONTRACTS? MY CLIENT
11 CAN'T GET THEM." NEVER.

12 THE DOCUMENT REQUEST THAT MR. HOWELL
13 REFERS TO, WHAT HE'S NOT TELLING THE COURT AND WHAT I
14 WROTE TO HIM IS, THEY MADE A REQUEST, WE ISSUED AN
15 OBJECTION, THEY DIDN'T DO ANYTHING WITH IT, THE
16 OBJECTION STOOD. THEY'RE NOT ENTITLED TO THESE
17 DOCUMENTS BASED ON HOW THEY WROTE THEIR REQUEST AND THE
18 OBJECTION. THE FACT THAT THESE DOCUMENTS WERE SOMEHOW
19 CONCEALED IS AN ABSOLUTE RED HERRING. SO, NOT ONLY ARE
20 THEY THE PARTIES' MEDICAL RECORDS, AGAIN, ALL SHE HAD
21 TO DO WAS PICK UP THE PHONE AND GET THESE DOCUMENTS,
22 ASSUMING SHE DIDN'T HAVE THEM BEFOREHAND.

23 I'LL ALSO TELL THE COURT THAT, AT THE
24 TIME THE PARTIES SEPARATED, ALL THESE DOCUMENTS WERE IN
25 MY CLIENT'S OFFICE, WHICH THEY TOOK ALL THE DOCUMENTS
26 THAT WERE IN HIS OFFICE WITHOUT HIS KNOWLEDGE OR
27 CONSENT AND HAD THEM SCANNED. SO, THEY'VE HAD
28 THOUSANDS UPON THOUSANDS OF PAGES.

1 REGARDLESS OF THAT, THEY COULD HAVE
2 ISSUED A SUBPOENA TO THE PLACE WHERE THESE CONTRACTS
3 WERE ISSUED, BECAUSE AGAIN, THE PARTIES DID ALL OF THIS
4 TOGETHER. SOFIYA'S SIGNATURE AND INITIALS ARE ON EVERY
5 PAGE OF THIS DOCUMENT. I QUESTIONED HER AT HER
6 DEPOSITION ABOUT THESE DOCUMENTS. MR. HOWELL WAS AT
7 THE DEPOSITION --

8 THE COURT: SO, ARE THESE ATTACHED TO HER
9 TRANSCRIPTS?

10 MR. GEKHT: NO, THEY'RE NOT.

11 THE COURT: JUST THE NATURE OF THE DOCUMENT.

12 MR. GEKHT: THE NATURE OF THE DOCUMENTS. SHE
13 KNEW EVERYTHING ABOUT THEM; IT SHOWED WHEN SHE SIGNED
14 THEM, WHEN SHE INTENDED TO SIGN THEM, ALL OF THAT.
15 THIS HAS NEVER BEEN AN ISSUE, PERIOD. AND MR. HOWELL,
16 AND I'LL HAVE THE COURT KNOW, IN HIS MOTION, DOES NOT
17 INCLUDE THE DISCOVERY REQUEST, DOES NOT INCLUDE THE
18 RESPONSE THAT OBJECTS TO THIS REQUEST. AMONG THE
19 THINGS THAT OBJECTS TO IS A BURDENSOME REQUEST, AND SHE
20 HAS THESE DOCUMENTS, WHY ARE YOU ASKING US FOR THEM?
21 AND SHE DIDN'T DO ANYTHING WITH THEM, SO THE OBJECTION
22 STANDS. WE EXCHANGE EXHIBITS ON THE SAME DAY, SO I
23 DON'T UNDERSTAND HOW MR. HOWELL IS NOW ARGUING THAT WE
24 WERE LATE. THE E-MAILS LITERALLY WENT LIKE THIS --

25 MR. HOWELL: THAT'S NOT TRUE.

26 THE COURT: HOLD ON, MR. HOWELL. ONE AT A
27 TIME.

28 GO AHEAD.

1 MR. GEKHT: -- AND I COULD DEMONSTRATE THAT TO
2 THE COURT, I COULD PLUG IN RIGHT NOW. IT CAN ALSO -- I
3 HAVE PAGE, LINE, AND VERSE ON ALL THE DISCOVERY
4 REQUESTS. WHAT MR. HOWELL IS SEEKING TO DO -- BY THE
5 WAY, HE'S HAD THESE DOCUMENTS SINCE AT LEAST LAST WEEK,
6 BUT I THINK HE'S HAD THEM THIS WHOLE TIME, BUT
7 CERTAINLY, OUR EXHIBITS, WE SENT OVER TO THEM LAST
8 WEEK, AS THE LOCAL RULES REQUIRE US TO DO. THERE WERE
9 NO DIFFERING ORDERS ISSUED BY THIS COURT, AS FAR AS
10 TRIAL ORDERS. WE COMPLIED WITH ALL OF THEM, ALL THE
11 TRIAL ORDERS ISSUED BY THIS COURT. FOR THE FIRST TIME
12 YESTERDAY AFTERNOON, HE TAKES ISSUE WITH IT? HE DIDN'T
13 EVEN LOOK AT THEM FOR A WEEK.

14 AND, AGAIN, THEY HAVE HAD THEM THIS WHOLE
15 TIME. THIS IS JUST A HAIL MARY ATTEMPT TO GET THE
16 WHOLE NATURE OF THE CASE THROWN OUT. THE PHAM CASE IS
17 WHAT GOVERNS THIS. IT'S A RECENT DECISION. THERE'S NO
18 SURPRISE, THERE'S NO PREJUDICE, THERE'S NO EXPLANATION
19 FROM THE RESPONDENT AS TO WHY NOBODY HAS EVER ASKED ME
20 FOR THESE DOCUMENTS, NUMBER ONE. AND NUMBER TWO,
21 THEY'RE HER DOCUMENTS, JUST AS MUCH AS THEY'RE HIS
22 DOCUMENTS.

23 THE COURT: MR. HOWELL?

24 MR. HOWELL: SO, NUMBER OF ITEMS TO CORRECT.
25 SO LET'S START WITH THE -- I DID REQUEST THEM A NUMBER
26 OF TIMES. I REQUESTED THEM IN THE SECOND SET OF
27 REQUEST FOR PRODUCTION OF DOCUMENTS IN 2024; AND THEN
28 IN THE THIRD SET OF REQUEST OF PRODUCTION OF DOCUMENTS

1 AFTER HER DEPOSITION, AFTER THE TRIAL SETTING
2 CONFERENCE BRIEF IDENTIFIED THESE CONTRACTS, I
3 REQUESTED THEM. WE FOLLOWED IN UP IN MEET AND CONFER
4 CORRESPONDENCE, AND YOU HAD -- THE PETITIONER ATTEMPTED
5 TO KEEP THE OBJECTION, TO USE THE OBJECTIONS TO PREVENT
6 DISCLOSURE, FOR SOME REASON.

7 SO, IT'S JUST NOT TRUE THAT WE WEREN'T
8 TRYING TO GET THIS INFORMATION. YOUR HONOR WILL SEE, I
9 IMAGINE, WHEN THERE'S QUESTIONING, THAT SOFIYA'S
10 UNDERSTANDING OF WHAT THESE DOCUMENTS WERE CAME FROM
11 WHAT SHE WAS TOLD ABOUT WHAT THEIR CONTENTS WERE. AND
12 HER DEPOSITION TESTIMONY DOES REFLECT SOME
13 DISCREPANCIES FROM WHAT SHE UNDERSTOOD AND FROM WHAT
14 THE DOCUMENTS ACTUALLY SAY; THAT WILL BE SEEN LATER.
15 BUT THE POINT IS, WE DIDN'T HAVE ACCESS TO THEM, THE
16 KIND OF ACCESS THAT MR. GEKHT IS REPRESENTING.

17 THE DOCUMENTS IN QUESTION, YES, THERE
18 WERE DOCUMENTS COPIED FROM THE HOUSE THAT WERE
19 MR. BORENSTEIN'S FILES, BUT THESE DOCUMENTS WERE NOT IN
20 THE BOXES THAT WERE COPIED. THEY WERE IN, I WOULD
21 IMAGINE, IF ANYTHING, BOXES IN HIS OFFICE ITSELF, AND
22 WE DIDN'T TOUCH THOSE, OR A FILING CABINET IN THE
23 GARAGE, WHICH HE, MR. BORENSTEIN, TOOK IN APRIL OF
24 2023.

25 WHETHER WE EXCHANGED EXHIBITS ON THE SAME
26 DATE, THERE'S NUANCE THERE; WE EXCHANGED EXHIBIT LISTS
27 ON THE SAME DATE, AROUND THE SAME TIME; BUT MY EXHIBITS
28 THAT I MADE COPIES OF HAPPENED THAT DAY. THE

1 EXHIBIT -- THE CONTENTS OF THE EXHIBITS FROM PETITIONER
2 DIDN'T COME UNTIL FOUR COURT DAYS BEFORE TODAY. THE
3 IDEA THAT I DIDN'T LOOK AT THEM, NO, I DID, I DID LOOK
4 AT THEM, AND I SPENT AS MUCH TIME AS I WAS ABLE TO,
5 UNDER THE CIRCUMSTANCES, BECAUSE IMAGINE THIS ISN'T MY
6 ONLY CASE, AND ALSO, I'M PREPARING FOR TRIAL DURING
7 THAT TIME PERIOD.

8 THERE IS PREJUDICE, WE HAVE BEEN SEEKING
9 THESE DOCUMENTS, THE RULES EXISTS FOR A REASON. LOCAL
10 RULE 5.15 SAYS "ABSENT SHOWING OF GOOD CAUSE," THERE
11 HAS BEEN NO SHOWING OF GOOD CAUSE, "EXCLUSION IS
12 MANDATORY."

13 THE COURT: WELL, GIVE ME ONE SECOND. I DON'T
14 HAVE THE PAGES OR ANYTHING LIKE THAT. CAN YOU TELL ME
15 WHERE IN HER DEPOSITION THIS IS REFERENCED, I DON'T
16 HAVE THE PAGE IN THE --

17 MR. GEKHT: YES, YES, YES, ONE SECOND.

18 MR. HOWELL: SOMEWHERE BETWEEN 115 OR 120.

19 THE COURT: IT CAN'T BE 120 BECAUSE THE
20 DEPOSITION ENDS AT PAGE 96.

21 MR. GEKHT: ONE SECOND, YOUR HONOR, I'LL PULL
22 THAT UP WITH THE WORD SEARCH. THERE'S ALSO TWO
23 TRANSCRIPTS, I WANT TO MAKE SURE THE COURT IS LOOKING
24 AT THE RIGHT ONE.

25 MR. HOWELL: THE ONE FROM FEBRUARY.

26 MR. GEKHT: YES.

27 THE COURT: I'M SORRY. I AM LOOKING AT
28 VOLUME II, SO IS IT VOLUME I, YOU SAID?

1 MR. GEKHT: YES.

2 THE COURT: HERE IT IS, VOLUME I.

3 MR. GEKHT: I'M PULLING IT UP RIGHT NOW, YOUR
4 HONOR. I'LL ALSO, AS AN OFFER OF PROOF, MY CLIENT WILL
5 TESTIFY --

6 THE COURT: WELL, JUST TELL ME WHERE IT IS IN
7 HERE, AND I'LL LOOK AT IT.

8 MR. GEKHT: OKAY. ONE SECOND. SO, STARTS AT
9 PAGE 15, YOUR HONOR.

10 THE COURT: OF VOLUME I OR VOLUME II?

11 MR. GEKHT: VOLUME I, PAGE 15, AND IT GOES
12 THROUGH THIS. WELL, YOU MAY WANT TO SKIP, THERE'S AN
13 ANSWER THAT SOFIYA GIVES THAT GOES ON FOR FOUR PAGES.
14 SO, PAGE 19 IS WHERE WE START TALKING ABOUT THE
15 DESTRUCTION; PAGE 20, LINE 10 GOES TO CONTRACTS.

16 I'LL ALSO REPRESENT TO THE COURT, AND I
17 DON'T THINK MR. HOWELL WILL EVEN DISPUTE, THE PAYMENT
18 OF THE STORAGE FACILITY AND THE INVOICES WENT BACK AND
19 FORTH BY E-MAIL BETWEEN OUR OFFICES. ALSO, ALL HE HAD
20 TO DO IS PICK UP THE PHONE AND CALL THE STORAGE
21 FACILITY OR CALL THE DOCTOR, WHICH IS WHAT MY CLIENT
22 DID, TO GET THE CONTRACTS.

23 THE COURT: SO, I HEAR WHAT YOU'RE SAYING
24 MR. HOWELL, THAT YOU MAY NOT HAVE SEEN THESE CONTRACTS,
25 AND THEY MAY BE -- YOU DID MAKE A DISCOVERY DEMAND AND
26 THEY WEREN'T TURNED OVER, BUT AGAIN, I AM NOT AWARE OF
27 ANY DISCOVERY DEMAND WHERE THERE WAS A MOTION TO COMPEL
28 FURTHER, AND THEY STILL DIDN'T TURN THEM OVER. THERE

1 WAS A REQUEST, THERE WAS AN OBJECTION, BUT THEN NOTHING
2 FURTHER CAME OF THAT. IS THAT CORRECT?

3 MR. HOWELL: WELL, THERE WAS A MOTION TO
4 COMPEL COMPLIANCE.

5 THE COURT: WHICH IS FURTHER RESPONSE, BECAUSE
6 THEY DIDN'T RESPOND, THEY OBJECTED. SO YOU WANT ME TO
7 RULE ON THEIR OBJECTION AND ORDER THEM TO PRODUCE THEM.

8 MR. HOWELL: NO. WE FELT, BASICALLY, THEY
9 WOULD COMPLY WITH THE DISCOVERY REQUEST AND THEY
10 DIDN'T, AND THEN WE FILED A MOTION TO COMPEL AND THESE
11 DOCUMENTS WEREN'T FILED.

12 MR. GEKHT: FALSE, YOUR HONOR. I WOULD LIKE
13 MR. HOWELL -- IN FACT, CAN I SHOW THE COURT THE REQUEST
14 AND THE RESPONSES, THIS IS JUST DEMONSTRABLY FALSE, AND
15 I POINTED THIS OUT TO MR. HOWELL YESTERDAY.

16 THE COURT: OKAY. SO, IS THERE A DISCOVERY --
17 GIVE ME THE DISCOVERY REQUEST --

18 MR. HOWELL: WHAT I --

19 THE COURT: -- SPECIFICALLY WHAT DOES IT SAY?

20 MR. HOWELL: THE PARTICULAR REQUEST --

21 THE COURT: I'M ASKING YOU BY MEMORY. IF YOU
22 HAVE IT, GET IT OUT AND TELL ME WHAT IT SPECIFICALLY
23 SAYS.

24 MR. HOWELL: IT WAS TO PRODUCE ANY DOCUMENTS
25 IDENTIFIED IN RESPONSE TO INTERROGATORY. WHAT I SAID
26 EARLIER WAS THAT, IF THEY HAD CONCEALED -- PETITIONER
27 HAD CONCEALED THE EXISTENCE OF THESE AGREEMENTS FROM
28 THE INTERROGATORIES, THEY WERE NOT IDENTIFIED

1 EXPLICITLY, IT WAS MORE IMPLICITLY. AND SO, THE
2 INVASION IS SO COMPLETE THAT THIS ENABLES THIS
3 ARGUMENT.

4 THE COURT: WHAT THE --

5 MR. GEKHT: I DON'T EVEN UNDERSTAND WHAT THAT
6 MEANT, YOUR HONOR.

7 THE COURT: OKAY. GIVE ME THE DISCOVERY
8 DEMANDS THAT WERE MADE, JUST TELL ME WORD-FOR-WORD WHAT
9 THEY SAY AND WHAT THEIR RESPONSES WERE. I DON'T WANT
10 YOUR INTERPRETATION OF IT, MR. HOWELL, I WANT TO KNOW
11 WHAT THE ACTUAL DEMAND WAS, AND WHAT THEY DID NOT
12 RESPOND TO.

13 MR. HOWELL: SO, WITH RESPECT TO PREVIOUS
14 DISCOVERY REQUESTS, THEY WERE TO PRODUCE THE EMBRYO --

15 THE COURT: THIS IS FROM YOUR MEMORY, I AM
16 ASKING --

17 MR. HOWELL: WELL, I DON'T HAVE THOSE IN FRONT
18 OF ME TODAY.

19 THE COURT: OKAY. SO, HOW DO I RULE ON THIS
20 IF YOU'RE NOT TELLING ME EXACTLY WHAT WAS ASKED FOR,
21 OTHER THAN YOUR INTERPRETATION OF WHAT THEY SAY?

22 MR. HOWELL: I THINK IT'S FAIRLY EASY TO RULE
23 AND ENFORCE THE LOCAL RULES.

24 THE COURT: WELL, AGAIN, HERE IS THE PROBLEM
25 WITH THIS: YOU'RE SAYING THAT THEY DIDN'T GIVE YOU
26 THESE DOCUMENTS, BUT IF YOU DIDN'T ASK FOR THESE
27 DOCUMENTS, THEY HAD NO OBLIGATION TO GIVE THEM TO YOU.
28 IF YOU ASKED FOR THEM AND THEY OBJECTED AND THEN THEY

1 DIDN'T RESPOND, AND YOU DIDN'T DO ANYTHING ABOUT THAT,
2 THAT'S ON YOU.

3 THE OTHER THING I'M GOING TO POINT OUT, I
4 UNDERSTAND YOUR POSITION, THE PROBLEM IS
5 MS. GOLDSHTEYN'S DEPOSITION WAS TAKEN BACK ON
6 FEBRUARY 24TH, 2025. IN THAT DEPOSITION, THEY ASK HER
7 QUESTIONS ABOUT THESE CONTRACTS. AND THE QUESTION IS,
8 AND THIS IS ON PAGE 21, "AND WHAT DOES THE CONTRACT
9 STATE, TO YOUR KNOWLEDGE?"

10 SHE SAYS THE CONTRACT STATES WHAT HAPPENS
11 TO THE EMBRYOS IN CASE OF DISSOLUTION. SO, SHE KNOWS
12 THERE'S CONTRACTS, SHE KNOWS THAT THE CONTRACTS TALK
13 ABOUT THIS. SO, SHE ALREADY HAS -- THEORETICALLY, YOU
14 KNOW IT AND SHE KNOWS THESE CONTRACTS ARE OUT THERE.
15 THIS IS A YEAR AGO; RIGHT? ON TOP OF THAT, YOU GUYS
16 WENT TO JUDGE WAYSER, YOU SETTLED ALL OF THESE ISSUES,
17 ALMOST EVERYTHING ELSE BUT THIS. SO, AGAIN, YOU GUYS
18 KNEW WHAT THEIR CONTENTION WAS WHEN YOU WENT TO JUDGE
19 WAYSER, WHAT, TWO MONTHS AGO, THREE MONTHS AGO WHEN YOU
20 CALLED AND TOLD ME YOU AREN'T GOING?

21 MR. GEKHT: YES.

22 THE COURT: SO, YOU KNEW THAT THE ONLY ISSUE
23 COMING FORTH TODAY WAS THIS ISSUE THAT THEY INTENDED TO
24 ENFORCE THIS CONTRACT, AND YOU'RE SAYING, NO, THESE
25 CONTRACTS ARE NOT ENFORCEABLE, BECAUSE THAT'S REALLY
26 WHAT THIS CASE IS ABOUT. SO, HOW DO I FIND THAT YOUR
27 CLIENT HAS BEEN PREJUDICED BECAUSE, AT THE VERY LEAST,
28 YOU COULD HAVE COME A MONTH AGO AND SAY "HEY, WE NEED

1 TO REOPEN DISCOVERY, WE NEVER RECEIVED THESE
2 CONTRACTS."

3 MR. HOWELL: SO, TO BE CLEAR, WHAT I TRIED TO
4 SAY EARLIER, I'LL SAY IT AGAIN, IS THAT, WHAT SOFIYA'S
5 ANSWERING IN HER DEPOSITION IS NOT BASED ON A CONTRACT
6 SHE'S SEEN OR REMEMBERS, IT'S BASED ON WHAT SHE
7 UNDERSTOOD THEM TO BE ON WHAT WE REPRESENTED.

8 THE COURT: BUT THE ISSUE IS THAT SHE HAD
9 KNOWLEDGE THAT THERE WAS A CONTRACT OUT THERE.

10 MR. HOWELL: WELL --

11 THE COURT: SHE KNEW THERE WERE CONTRACTS.
12 AGAIN, HER INTERPRETATION IS -- I AM NOT HOLDING HER TO
13 WHAT HER INTERPRETATION IS, RIGHT; WHAT I'M SAYING IS,
14 SHE KNEW, SHE KNEW THERE WAS CONTRACTS, WHICH MEANS YOU
15 HAD CONSTRUCTIVE KNOWLEDGE THAT THERE WERE CONTRACTS.

16 MR. HOWELL: I DOUBTED THAT THERE ACTUALLY
17 WERE. AND I BROUGHT THIS UP TO JUDGE WAYSER, IN
18 DECEMBER, BECAUSE THEY HAD NEVER BEEN PRODUCED. I HAD
19 SINCERE DOUBTS THAT THERE WAS ANYTHING THAT A LAWYER
20 WOULD CONSIDER TO BE LEGALLY BINDING, BECAUSE I NEVER
21 SEEN ANYTHING. AND I DID SUBPOENA SOFIYA'S MEDICAL
22 RECORDS THROUGH A NUMBER OF HER MEDICAL PROVIDERS, AND
23 I DIDN'T SEE ANYTHING LIKE --

24 THE COURT: WHAT ABOUT THE CLINIC ITSELF?

25 MR. HOWELL: I JUST HAVE NOT SEEN ANY,
26 EXHIBITS 1 THROUGH --

27 THE COURT: SHE KNEW THAT THESE WERE IN A
28 STORAGE FACILITY.

1 MR. HOWELL: WE DON'T KNOW THAT BECAUSE --

2 THE COURT: SHE KNEW IT.

3 MR. HOWELL: I DON'T --

4 THE COURT: SHE TESTIFIED TO IT.

5 MR. HOWELL: THE CONTRACT WITH THE STORAGE
6 FACILITY?

7 THE COURT: SHE TESTIFIED THAT SHE KNEW THAT
8 THE EMBRYOS WERE AT THE STORAGE FACILITY, SHE KNEW.

9 MR. HOWELL: BUT THAT DOESN'T NECESSARILY MEAN
10 THAT WE KNOW THAT'S WHERE THE CONTRACT WAS LOCATED.

11 THE COURT: BUT YOU SAID YOU SUBPOENAED THE
12 RECORDS FROM THESE OTHER PARTIES.

13 MR. HOWELL: MEDICAL PROVIDERS, YES.

14 THE COURT: RIGHT.

15 MR. GEKHT: DID YOU EVER SUBPOENA THE DOCTOR
16 THAT DID THE EGG RETRIEVAL AND THE EXAMINATION?

17 MR. HOWELL: I CAN'T RECALL.

18 THE COURT: MR. GEKHT, PLEASE.

19 MR. GEKHT: SORRY.

20 THE COURT: AND YOU ASKED HER, "DID YOU
21 EXECUTE ANY CONTRACT WITH AN ENTITY RELATED TO YOUR
22 EMBRYOS AT ANY POINT?"

23 AND SHE SAID, AND THIS IS ON PAGE 20,
24 LINES 12 TO 13, "DO YOU MEAN A STORAGE FACILITY?"

25 AND MR. GEKHT SAID "ANY ENTITY, BE IT
26 MEDICAL OFFICE A."

27 AND SHE SAID "YES."

28 AND THEN "AND HOW MANY CONTRACTS HAD YOU

1 EXECUTED, TO YOUR KNOWLEDGE?"

2 AND SHE SAID "TWO."

3 AGAIN, IT KEPT GOING, AND THEN ON
4 PAGE 21, AND THEN SHE SAYS "SO I UNDERSTAND YOU AND MAX
5 SIGNED IT, BUT I'M ASKING WHO YOU SIGNED IT WITH," YOU
6 OBJECTED AS TO FORM, AND SHE SAID "THE STORAGE
7 FACILITY." SO, SHE KNOWS -- THERE'S KNOWLEDGE OUT
8 THERE THAT THESE DOCUMENTS EXIST. SHE KNOWS THEY
9 EXIST, SHE KNOWS ABOUT THE STORAGE FACILITY, SHE KNOWS
10 THAT THIS IS AN ISSUE BETWEEN THE TWO OF THEM. AND,
11 AGAIN, UNLESS YOU COULD DEMONSTRATE TO ME THAT THERE
12 WAS A REQUEST FOR PRODUCTION OF DOCUMENTS THAT SAYS
13 "PROVIDE US ALL DOCUMENTS FROM THE STORAGE FACILITY,"
14 AND THEY OBJECTED; AND EVEN THEN, IF YOU DIDN'T FILE A
15 MOTION TO COMPEL FURTHER, I THINK MY HANDS ARE TIED,
16 BECAUSE THEY'RE NOT TECHNICALLY VIOLATING A COURT ORDER
17 FOR NOT TURNING THEM OVER.

18 BUT HERE'S YOUR REMEDY, I'M NOT GOING TO
19 STRIKE THESE. IF YOU WANT A CONTINUANCE, I'LL GIVE YOU
20 A CONTINUANCE, BUT I'M NOT GOING TO NOT ALLOW THEM TO
21 OFFER INTO EVIDENCE. BECAUSE, AGAIN, THESE DID NOT
22 JUST COME OUT OF THIN AIR AND NO ONE HAS MENTIONED
23 THEM, AND THIS SUDDENLY APPEARED TODAY AND WE HAVE A
24 SURPRISE WITNESS, MORE SURPRISING THAN THE NEXT, WHO IS
25 GOING TO START TESTIFYING ABOUT THINGS YOU NEVER HEARD
26 OF. THESE ARE NOT -- THIS IS NOT A SURPRISE, SO I'M
27 NOT EXCLUDING THEM.

28 IF YOU TELL ME YOU NEED TIME TO LOOK AT

1 THEM WITH YOUR CLIENT AND YOU WANT A CONTINUANCE, I'LL
2 GIVE YOU A CONTINUANCE, BUT THAT'S THE BEST I'M GOING
3 TO DO. BUT THIS ISSUE, AT THE VERY LEAST, YOU GUYS
4 HAVE DEALT WITH THIS ISSUE SINCE DECEMBER, WITH JUDGE
5 WAYSER, AND YOU COULD HAVE FILED AN EX-PARTE ASKING TO
6 REOPEN DISCOVERY TO GET THESE CONTRACTS.

7 WERE THESE DOCUMENTS DISCUSSED -- SHOWN
8 TO JUDGE WAYSER, MR. GEKHT? WERE THEY BROUGHT TO THE
9 MSC, DO YOU KNOW? I DON'T WANT TO KNOW WHAT WAS
10 DISCUSSED, BUT WERE THEY BROUGHT TO THE MSC? CLEARLY,
11 THERE WAS A DISCUSSION ABOUT THE -- IN FACT, I HAD A
12 DISCUSSIONS WITH YOU GUYS SAYING "HEY, THERE'S A RECENT
13 COURT CASE THAT DEALS WITH THIS."

14 MR. GEKHT: CORRECT.

15 THE COURT: SO, CLEARLY, AT LEAST A MONTH AGO,
16 OR WHENEVER I SAW YOU GUYS LAST, I MENTIONED THIS ISSUE
17 WAS RAISED IN A COURT CASE.

18 MR. GEKHT: I'LL ALSO REPRESENT TO THE COURT,
19 YOUR HONOR, THAT, I'M NOT GOING TO SAY THE CONTENTS OF
20 WHAT WAS DISCUSSED, BUT THIS WAS DISCUSSED IN MEDIATION
21 LIKE A YEAR AND A HALF AGO.

22 MR. HOWELL: BUT NEVER THE CONTRACTS --

23 THE COURT: MR. HOWELL, DO YOU NEED AN
24 EXTENSION? DO YOU WANT A CONTINUANCE SO YOU CAN LOOK
25 AT THESE DOCUMENTS, BECAUSE YOU SAY YOU JUST SAW THEM
26 FOR THE FIRST TIME? I'M NOT EXCLUDING THEM, I AM NOT
27 PREVENTING THEM. WE CAN RESET THIS FOR ANOTHER
28 AFTERNOON AND COME BACK AND DISCUSS IT.

1 MR. HOWELL: IF THAT IS OUR REMEDY, THANK YOU
2 FOR GIVING US THE TIME TO TALK ABOUT THIS, BUT I'LL
3 DECLINE.

4 MR. GEKHT: OKAY.

5 THE COURT: ALL RIGHT. SO I'M NOT GOING TO
6 EXCLUDE THEM. IT'S CLEAR THAT THE PARTIES WERE WELL
7 AWARE -- THAT THERE WAS AMPLE INFORMATION AND AMPLE
8 KNOWLEDGE THAT THIS WAS LITERALLY THE POSITION OF EACH
9 PARTY. THESE DOCUMENTS HAVE BEEN KNOWN FOR AT LEAST A
10 YEAR, AND I HAVE NO EVIDENCE THAT THEY WERE NOT
11 PRODUCED NOR THERE WAS AN ORDER TO PRODUCE THEM, AND
12 THEY STILL WERE NOT PRODUCED. IF THAT HAD BEEN THE
13 CASE, I WOULD BE MUCH MORE RECEPTIVE TO YOUR ARGUMENT,
14 BUT I HAVE NO EVIDENCE THAT THEY WERE EVER ORDERED TO
15 BE PRODUCED AND THEY WEREN'T. SO MY HANDS ARE KIND OF
16 TIED, EVEN IF THEY WERE NOT TURNED OVER IN DISCOVERY.

17 SO, WITH ALL THAT BEING SAID, MR. GEKHT
18 YOU'RE THE PETITIONER.

19 MR. GEKHT: THANK YOU, YOUR HONOR. IT'S
20 REALLY UP TO THE COURT. MY FIRST WITNESS WOULD BE MY
21 CLIENT. I CAN GIVE THE COURT AN OFFER OF PROOF IF THE
22 COURT WANTS TO SAVE SOME TIME. MY CLIENT WOULD JUST
23 TESTIFY TO THE FACT THAT EXHIBITS 1 THROUGH 4 ARE THE
24 CONTRACTS HE SIGNED, AND THAT HE DOES NOT HAVE ANY
25 DESIRE --

26 THE COURT: WELL, I THINK THERE SEEMS TO BE A
27 DISPUTE ABOUT THESE CONTRACTS, SO I THINK YOU WANT --

28 MR. GEKHT: OKAY. THEN, I CALL MAX BORENSTEIN

1 TO THE STAND. ACTUALLY, CAN WE DO A TWO-MINUTE
2 FACILITIES BREAK, AND THEN I'LL CALL MAX BORENSTEIN TO
3 THE STAND.

4 THE COURT: SURE. WHY DON'T WE TAKE FIVE
5 MINUTES.

6 MR. GEKHT: OKAY.

7 THE COURT: MA'AM, IF YOU WANT TO GO USE THE
8 RESTROOM, YOU CAN AS WELL, OR GO GET SOME WATER,
9 WHATEVER YOU NEED. IT'S NOT A ONE-SIDED THING, THEY
10 DON'T JUST GET TO USE THE BATHROOM, IF YOU NEED TO GO,
11 YOU CAN AS WELL.

12
13 (BREAK TAKEN AT 9:45 A.M.)

14
15 THE COURT: ALL RIGHT. COME ON UP AND HAVE A
16 SEAT, SIR. SIR, IF COULD YOU JUST CLOSE THAT FOR ME.

17
18 EXAMINATION

19
20 BY MR. GEKHT:

21 Q. MR. BORENSTEIN, DURING YOUR MARRIAGE TO THE
22 RESPONDENT, DID YOU CREATE ANY EMBRYOS THAT HAVE YOUR
23 GENETIC MATERIAL AND THE RESPONDENT'S GENETIC MATERIAL?

24 A. YES.

25 Q. OF THOSE EMBRYOS YOU CREATED, TO YOUR
26 KNOWLEDGE, HOW MANY ARE REMAINING?

27 A. ONE.

28 Q. DID YOU SIGN ANY DOCUMENT RELATED TO THE

1 DISPOSITION OF THAT EMBRYO IN CASE OF A DIVORCE?

2 A. YES.

3 Q. I WANT YOU TO LOOK AT EXHIBIT 1 IN FRONT OF
4 YOU. IF YOU'RE HAVING TROUBLE LET ME --

5 A. NO, I GOT IT.

6

7 (EXHIBIT 1 MARKED FOR IDENTIFICATION.)

8

9 BY MR. GEKHT:

10 Q. PLEASE LOOK THROUGH ITS 11 PAGES, AND LET ME
11 KNOW WHEN YOU'RE DONE.

12 A. I'M DONE.

13 Q. DO YOU RECOGNIZE EXHIBIT 1?

14 A. YES.

15 Q. EXHIBIT 1 STATES, AT THE VERY TOP, "THE
16 SOUTHERN CALIFORNIA CENTER FOR REPRODUCTIVE MEDICINE."
17 ARE YOU FAMILIAR WITH THE SOUTHERN CALIFORNIA CENTER
18 FOR REPRODUCTIVE MEDICINE"?

19 A. YES.

20 Q. HOW ARE YOU FAMILIAR WITH IT?

21 A. SOFIYA AND I USED THEIR SERVICES IN ORDER TO
22 CREATE THESE EMBRYOS.

23 Q. DO YOU SEE AT THE BOTTOM OF PAGE 1, THERE'S --
24 THE BOTTOM RIGHT, THERE'S A SECTION THAT SAYS
25 "INITIALS"?

26 A. YES.

27 Q. DO YOU RECOGNIZE THE HANDWRITTEN NOTATIONS ON
28 THE INITIALS LINE, AT THE BOTTOM OF PAGE 1?

1 A. YES.

2 Q. WHAT DO YOU RECOGNIZE IN THAT REGARD?

3 A. I RECOGNIZE BOTH MY INITIALS AND SOFIYA'S
4 INITIALS.

5 Q. HOW LONG WERE YOU AND SOFIYA CO-HABITUATING --
6 WELL, STRIKE THAT. HOW LONG WERE YOU AND SOFIYA
7 MARRIED, APPROXIMATELY?

8 A. I'M SORRY. TO BE CLEAR, IN TERMS OF BEFORE WE
9 SEPARATED?

10 Q. CORRECT.

11 A. SO, WE MARRIED ON DECEMBER 31ST, 2014, AND WE
12 SEPARATED IN OR AROUND MAY OF 2022; SO THAT WOULD BE
13 FIVE MONTHS, SEVEN YEARS.

14 Q. AND DID YOU LIVE TOGETHER DURING YOUR
15 MARRIAGE?

16 A. YES.

17 Q. DURING YOUR MARRIAGE, DID YOU HAVE OCCASION TO
18 OBSERVE SOFIYA HANDWRITE THINGS?

19 A. YES.

20 Q. ARE YOU FAMILIAR WITH HER HANDWRITING?

21 A. YES.

22 Q. ARE YOU FAMILIAR WITH HER SIGNATURE?

23 A. YES.

24 Q. ARE YOU FAMILIAR WITH HER INITIALS?

25 A. YES.

26 Q. IF YOU COULD PLEASE GO TO PAGE 6.

27 A. UH-HUH.

28 Q. DO YOU SEE THERE ARE --

1 THE COURT: WAIT. ARE YOU USING THE BATES
2 STAMP NUMBERS OR THE ACTUAL PAGE NUMBER -- THERE'S A 6
3 AND 11, AND THERE'S A BATES STAMP, JUST TO BE CLEAR.

4 MR. GEKHT: IT SHOULD BE THE SAME, YOUR HONOR.

5 THE COURT: OKAY.

6 BY MR. GEKHT:

7 Q. DO YOU SEE THERE ARE MULTIPLE LINES THERE THAT
8 SAY "MALE PARTNER"?

9 A. YES.

10 Q. DO YOU RECOGNIZE THE SIGNATURE ABOVE THOSE
11 LINES?

12 A. I DO.

13 Q. AND WHOSE SIGNATURE IS THAT?

14 A. MINE.

15 Q. DO YOU SEE THE MULTIPLE LINES THAT SAY "FEMALE
16 PARTNER"?

17 A. I DO.

18 Q. DO YOU RECOGNIZE THE SIGNATURE ON THAT?

19 A. YES.

20 Q. WHOSE SIGNATURE IS THAT?

21 A. SOFIYA GOLDSHTEYN.

22 Q. CAN YOU PLEASE GO TO PAGE 8 -- SORRY, PAGE 9.

23 A. I'M THERE.

24 Q. DO YOU SEE AT THE TOP IT SAYS "IN THE EVENT OF
25 DIVORCE, DISSOLUTION, OR LEGAL SEPARATION, WE SELECT
26 THE FOLLOWING DISPOSITION OF ALL PRIOR PRESERVED EMBRYO
27 IN STORAGE (PLEASE CHECK ONE, BOTH PARTNERS MUST
28 INITIAL BELOW.)" DO YOU SEE THAT?

1 A. YES.

2 Q. DO YOU SEE THEIR INITIALS NEXT TO THE LINE
3 THAT SAYS "ALL EMBRYOS ARE TO BE DONATED TO MEDICAL
4 RESEARCH"?

5 A. YES.

6 Q. DO YOU SEE THE SECOND SET OF INITIALS?

7 A. I DO.

8 Q. WHOSE INITIALS ARE THOSE?

9 A. MINE.

10 Q. DO YOU SEE THE FIRST SET OF INITIALS?

11 A. I DO.

12 Q. WHOSE INITIALS ARE THOSE?

13 A. SOFIYA'S.

14 Q. LOOK ON THE NEXT PAGE, PLEASE. IS THAT YOUR
15 SIGNATURE ON "MALE PARTNER"?

16 A. YES.

17 Q. DO YOU RECOGNIZE THE SIGNATURE ON "FEMALE
18 PARTNER"?

19 A. YES.

20 Q. WHOSE SIGNATURE IS THAT?

21 A. SOFIYA'S.

22 Q. DO YOU KNOW WHEN YOU EXECUTED THOSE DOCUMENTS?

23 A. ACCORDING TO THE DOCUMENT, 7/10/21.

24 Q. DID YOU KNOW WHY YOU WERE SIGNING THIS
25 DOCUMENT ON 7/10/21?

26 A. YES.

27 Q. WHY WERE YOU SIGNING THEM?

28 A. BECAUSE WE WERE SEEKING TO CREATE EMBRYOS, AND

1 THIS WAS A REQUIRED PART OF THAT PROCESS.

2 Q. DID YOU AND SOFIYA HAVE ANY DISCUSSIONS ABOUT
3 WHAT WOULD HAPPEN TO THE EMBRYOS PRIOR TO SIGNING THIS
4 DOCUMENT?

5 A. YES.

6 Q. AND WHAT WAS THE NATURE OF -- WHAT WAS THE SUM
7 AND SUBSTANCE OF THAT DISCUSSION?

8 A. WE DISCUSSED THE SUBSTANTIVE CHOICES WE HAD TO
9 MAKE IN THE DOCUMENT, INCLUDING WHAT WOULD HAPPEN IN
10 THE EVENT OF OUR DEATHS AND WHAT WOULD HAPPEN IN THE
11 EVENT OF DISSOLUTION OF OUR MARRIAGE.

12 Q. DID YOU REACH ANY AGREEMENTS?

13 A. YES. WE AGREED TO WHAT WE THEN SELECTED IN
14 THIS DOCUMENT.

15 Q. CAN YOU JUST FLIP THROUGH THE PAGES 1
16 THROUGH 11 AND CONFIRM TO ME THAT THE INITIALS AT THE
17 BOTTOM OF EACH PAGE ARE, TO YOUR KNOWLEDGE, YOURS AND
18 SOFIYA'S.

19 A. YES.

20 MR. GEKHT: I ASK THAT EXHIBIT 1 BE RECEIVED,
21 YOUR HONOR.

22 THE COURT: MR. HOWELL?

23 MR. HOWELL: OBJECTION.

24 THE COURT: WHAT IS YOUR OBJECTION?

25 MR. HOWELL: I OBJECT ON THE RELEVANCE
26 GROUNDS.

27 THE COURT: IT'S NOT RELEVANT?

28 MR. HOWELL: YEAH. THE RELEVANCE WOULD BE IF

1 THE ENFORCEMENT OF THE CONTRACT WOULDN'T BE AN OVERRIDE
2 OF HER CONSTITUTIONAL RIGHTS. AND THERE ARE THREE
3 OTHER CONTRACTS -- OR TWO OTHER CONTRACTS THAT APPEAR
4 TO HAVE DIFFERENT DISPOSITION DIRECTIVES.

5 THE COURT: OKAY. THAT WOULD GO TO WHAT
6 WEIGHT I GIVE EACH DOCUMENT, NOT WHETHER OR NOT IT'S
7 ADMISSIBLE.

8 MR. HOWELL: I ARGUE THAT IT'S INADMISSIBLE
9 BECAUSE IT'S IRRELEVANT BECAUSE IT WOULDN'T ULTIMATELY
10 DICTATE THE OUTCOME FOR THE EMBRYO DISPOSITIONS.

11 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING.
12 OVERRULED. THE MERE FACT THAT THE DOCUMENT IS
13 ADMISSIBLE DOESN'T NECESSARILY MEAN I'M GOING TO RULE
14 IN THEIR FAVOR, I'M JUST SAYING THAT THEY'VE LAID A
15 FOUNDATION, THE DOCUMENT CAN BE ADMITTED FOR ITS
16 PURPOSES. SO, IT WILL BE ADMITTED.

17

18 (EXHIBIT 1 ADMITTED INTO EVIDENCE.)

19

20 BY MR. GEKHT:

21 Q. MR. BORENSTEIN, IN ADDITION TO THE SOLE EMBRYO
22 THAT HAS YOUR AND SOFIYA'S GENETIC MATERIAL, WERE ANY
23 OTHER EMBRYOS CREATED DURING YOUR MARRIAGE TO SOFIYA,
24 TO YOUR KNOWLEDGE?

25 A. YES.

26 Q. AND WHOSE GENETIC MATERIAL DID THOSE HAVE, TO
27 YOUR KNOWLEDGE?

28 A. MINE AND THAT OF A DONOR, AN EGG DONOR.

1 Q. DO YOU KNOW APPROXIMATELY HOW MANY EMBRYOS
2 THERE ARE OF THOSE?

3 A. TO MY KNOWLEDGE, 19.

4 Q. AND JUST SO THAT WE'RE CLEAR, THOSE EMBRYOS DO
5 NOT HAVE SOFIYA GOLDSHTEYN'S GENETIC MATERIAL; CORRECT?

6 A. THOSE DO NOT, NO. AND I WOULD HAVE TO SEE
7 EXACTLY HOW MANY WE HAVE.

8 Q. I WOULD LIKE YOU TO LOOK AT EXHIBIT 4, PLEASE.

9

10 (EXHIBIT 4 MARKED FOR IDENTIFICATION.)

11

12 BY MR. GEKHT:

13 Q. THIS APPEARS TO BE ALMOST AN IDENTICAL
14 DOCUMENT TO EXHIBIT 1 FROM THE SOUTHERN CALIFORNIA
15 CENTER FOR REPRODUCTIVE MEDICINE. CAN YOU JUST FLIP
16 THROUGH THE 11 PAGES AND LET ME KNOW IF THE INITIALS AT
17 THE BOTTOM ARE STILL YOURS AND SOFIYA'S?

18 A. YES.

19 Q. AND IF YOU LOOK AT PAGE 6, CAN YOU CONFIRM
20 THAT THE SIGNATURES UNDER THE "PATIENT AND PARTNER"
21 LINES ARE YOURS AND SOFIYA'S.

22 A. YES.

23 Q. WITH YOU BEING THE PATIENT AND SOFIYA BEING
24 THE PARTNER; IS THIS ACCURATE?

25 A. THIS IS ACCURATE.

26 Q. WHEN DID YOU SIGN THIS DOCUMENT?

27 A. FEBRUARY 8TH, 2022.

28 Q. DID YOU AND SOFIYA HAVE ANY DISCUSSIONS PRIOR

1 TO SIGNING THIS DOCUMENT?

2 A. YES.

3 Q. WHAT WERE YOUR DISCUSSIONS -- THE SUM AND
4 SUBSTANCE OF YOUR DISCUSSION IN THAT REGARD?

5 A. WE DISCUSSED THE FATE OF THE EMBRYOS IN THE
6 EVENT OF OUR DEATHS OR SEPARATION.

7 Q. CAN YOU PLEASE GO TO PAGE 9. IF YOU LOOK AT
8 THE TOP OF PAGE 9, IT SAYS "IN THE EVENT OF DIVORCE,
9 DISSOLUTION, OR LEGAL SEPARATION, WE SELECT THE
10 FOLLOWING DISPOSITION FOR ALL PRIOR PRESERVED EMBRYOS
11 IN STORAGE." AND THERE ARE INITIALS NEXT TO THE LINE
12 THAT SAYS "ALL EMBRYOS ARE TO BE TRANSFERRED TO THE
13 MALE PARTNER." DO YOU SEE THAT?

14 A. YES.

15 Q. DO YOU SEE THE FIRST SET OF INITIALS THAT SAYS
16 "MB"?

17 A. YES.

18 Q. ARE THOSE YOUR INITIALS, SIR?

19 A. YES.

20 Q. DO YOU SEE THE NEXT SET OF INITIALS THAT SAYS
21 "SG"?

22 A. YES.

23 Q. DO YOU KNOW WHOSE INITIALS THOSE ARE?

24 A. YES.

25 Q. WHO INITIALS ARE THEY?

26 A. SOFIYA'S.

27 Q. WHY IS IT THAT THE ORIGINAL AGREEMENT FOR THE
28 ONE EMBRYO TRANSFERRED THEM TO -- I THINK HAD THEM

1 DONATED TO MEDICAL RESEARCH, AND THIS ONE HAS THEM
2 RELEASED TO YOU, IF YOU KNOW?

3 A. BECAUSE THIS -- IN THE CASE OF THE ONE THAT WE
4 DECIDED TO TRANSFER TO MEDICAL RESEARCH, THAT EMBRYO IS
5 MADE UP OF BOTH OF OUR COMBINED DNA, HERS AND MINE.
6 AND IN THE CASE OF THESE EMBRYOS, THAT THEY ONLY
7 CONTAIN MY DNA AND THE DNA OF AN EGG DONOR, WHOSE EGG
8 WE PURCHASED. SO THAT WAS THE DIFFERENCE.

9 Q. DID YOU DISCUSS THAT WITH SOFIYA PRIOR TO
10 SIGNING THIS DOCUMENT?

11 A. YES.

12 Q. DID SHE AGREE THAT ALL EMBRYOS SHOULD BE
13 TRANSFERRED TO YOU IN CASE OF DISSOLUTION?

14 A. YES.

15 Q. MR. BORENSTEIN, AS YOU SIT HERE TODAY, DO YOU
16 WANT TO SEE -- LET'S START WITH THE EMBRYO THAT'S
17 GENETICALLY YOURS AND SOFIYA'S, DO YOU WANT TO HAVE
18 THAT EMBRYO BE IMPLANTED AND CARRIED TO TERM?

19 A. NO.

20 Q. DO YOU WANT TO HAVE A CHILD FROM THAT EMBRYO?

21 A. NO.

22 Q. AS IT RELATES TO THE 19 EMBRYOS THAT ARE YOURS
23 AND AN EGG DONOR, IN TERMS OF GENETIC MAKEUP, DO YOU
24 WANT TO SEE ANY OF THOSE EMBRYOS CARRIED TO TERM?

25 A. NO.

26 Q. DO YOU WANT TO HAVE A CHILD FROM THOSE
27 EMBRYOS?

28 A. NO.

1 MR. GEKHT: GIVE ME ONE SECOND, YOUR HONOR. I
2 THINK I'M ALSO DONE. I ALSO ASK THAT THIS EXHIBIT BE
3 RECEIVED.

4 THE COURT: ANY OBJECTION?

5 MR. HOWELL: I'LL OBJECT. SAME RELEVANCE
6 GROUNDS. BUT IN THE EVENT THE COURT DOES ACCEPT IT,
7 BECAUSE IT IS AN INTERSPOUSAL TRANSFER -- PURPORTS TO
8 BE AN INTERSPOUSAL TRANSFER, I ASK THAT THE COURT
9 CONSIDER IT UNDER FAMILY CODE SECTION 721 WITH RESPECT
10 TO ENFORCEABILITY.

11 THE COURT: I'M GOING TO ADMIT IT.

12

13 (EXHIBIT 4 ADMITTED INTO EVIDENCE.)

14

15 MR. GEKHT: NOTHING FURTHER OF THIS WITNESS,
16 YOUR HONOR.

17 THE COURT: MR. HOWELL?

18 MR. HOWELL: THANK YOU, YOUR HONOR.

19

20

EXAMINATION

21

22 BY MR. HOWELL:

23 Q. MR. BORENSTEIN, IN YOUR -- IN THE TRIAL BRIEF
24 THAT WAS FILED ON YOUR BEHALF, THERE'S AN ASSERTION OF
25 A RIGHT ON YOUR BEHALF, AND I WANT TO UNDERSTAND MORE
26 ABOUT THAT; A RIGHT AGAINST -- OR CORRECT ME IF I'M
27 ARTICULATING INCORRECTLY, A RIGHT AGAINST FORCED
28 FATHERHOOD.

1 MR. GEKHT: OBJECTION. NO QUESTION PENDING.

2 THE COURT: I DON'T KNOW IF HE WAS DONE WITH
3 HIS QUESTION OR NOT.

4 BY MR. HOWELL:

5 Q. I WOULD LIKE TO UNDERSTAND, WHAT IS THE RIGHT
6 THAT YOU FEEL WOULD BE INVADED IF EMBRYOS WERE
7 TRANSFERRED TO SOFIYA'S USE AND CONTROL?

8 MR. GEKHT: OBJECTION. CALLS FOR A LEGAL
9 CONCLUSION.

10 THE COURT: OVERRULED.

11 THE WITNESS: I'M NOT AN EXPERT ON RIGHTS
12 AND --

13 BY MR. HOWELL:

14 Q. SO, I WANT TO JUST UNDERSTAND, IS IT A
15 RELIGIOUS OBJECTION? IS IT ETHICAL OBJECTION? I JUST
16 WANT TO UNDERSTAND WHERE THIS COMES FROM.

17 A. WHAT COMES FROM -- I'M LOOKING AT CONTRACTS.

18 THE COURT: WHY DON'T YOU WANT HER TO BE ABLE
19 TO USE THE EMBRYOS, THAT'S WHAT HE'S ASKING.

20 THE WITNESS: WHICH EMBRYO ARE YOU ASKING
21 ABOUT?

22 THE COURT: LET'S START WITH THE ONE WITH BOTH
23 OF YOUR GENETIC MATERIALS. HE'S ASKING YOU AN
24 OPEN-ENDED QUESTION, SO YOU CAN GIVE AN OPEN-ENDED
25 RESPONSE. WHY DON'T YOU WANT HER TO HAVE THAT EMBRYO?

26 THE WITNESS: WELL, I BELIEVE THAT I SHOULD BE
27 ABLE TO HAVE A CHILD WITH SOMEONE WHO WANTS TO HAVE A
28 CHILD WITH ME, AND WE MAKE A DECISION TOGETHER. SOFIYA

1 AND I MADE A DECISION TO HAVE CHILDREN TOGETHER AND NOT
2 TO DO THAT WITH THESE EMBRYOS, SPECIFICALLY, IF IN THE
3 EVENT OF DISSOLUTION OF OUR MARRIAGE. I FEEL VERY
4 STRONGLY ABOUT THAT, STILL, AND I BELIEVE -- I DON'T
5 KNOW IF YOU'RE ASKING ME ANYTHING ELSE ABOUT RIGHTS
6 BUT --

7 BY MR. HOWELL:

8 Q. ARE YOU INVOKING ANY LEGAL RIGHT?

9 MR. GEKHT: OBJECTION. CALLS FOR A LEGAL
10 CONCLUSION.

11 THE COURT: SUSTAINED.

12 BY MR. HOWELL:

13 Q. IF I UNDERSTAND YOUR TESTIMONY FROM EARLIER,
14 CORRECT ME IF I'M WRONG, YOU HAVE AN APPROXIMATE NUMBER
15 OF THE NUMBER OF EMBRYOS THAT ARE IN STORAGE RIGHT NOW
16 BUT NOT AN EXACT NUMBER?

17 A. OFF THE TOP OF MY HEAD, NO.

18 Q. OF THE NUMBER OF EMBRYOS THAT WERE PROVIDED --
19 THAT WERE MADE FROM DONOR EGGS, HOW MANY WERE MADE IN
20 TOTAL?

21 A. AS I SAID, I'M NOT A HUNDRED PERCENT SURE OFF
22 THE TOP OF MY HEAD.

23 Q. DO YOU KNOW IF ANY OF THOSE WERE THE EMBRYOS
24 MADE OF DONOR MATERIAL, IF ANY HAD BEEN GIVEN AWAY,
25 DISCARDED FOR ANY REASON? SO THE NUMBER THAT WERE
26 CREATED MIGHT BE THE SAME AS THE NUMBER THAT EXISTED IN
27 STORAGE.

28 A. NOT TO MY MEMORY OR KNOWLEDGE.

1 Q. YOU MEAN YOU DON'T KNOW OR --

2 A. WHAT IS THE QUESTION?

3 THE COURT: IF YOU GUYS MADE 20 EMBRYOS, ARE
4 ALL 20 STILL THERE, OR IS THERE NOW ONLY 15 BECAUSE
5 SOMETHING HAPPENED --

6 THE WITNESS: I HAVE NO KNOWLEDGE OF ANYTHING
7 HAPPENING TO ANY OF THEM.

8 THE COURT: SO WHATEVER YOU CREATED SHOULD
9 THEORETICALLY STILL BE THERE --

10 THE WITNESS: YES.

11 THE COURT: -- UNLESS THERE WAS SOME KIND OF
12 MEDICAL REASON THEY DIDN'T TAKE OR WHATEVER?

13 THE WITNESS: TO MY KNOWLEDGE, YES.

14 BY MR. HOWELL:

15 Q. AT ANY POINT, WAS THERE ANY DONATION OF THOSE
16 EMBRYOS TO ANYONE ELSE?

17 A. NOT TO MY KNOWLEDGE.

18 Q. WAS THERE ANY DONATION OF ANY EMBRYOS THAT
19 WERE BIOLOGICALLY YOURS AND SOFIYA'S?

20 A. NO, NOT TO MY KNOWLEDGE.

21 Q. THE EMBRYOS THAT WERE MADE BETWEEN YOU AND
22 SOFIYA, WITH BOTH OF YOUR GENETIC MATERIAL, THOSE CAME
23 ABOUT THROUGH SOFIYA'S EGG RETRIEVAL; CORRECT?

24 A. CORRECT.

25 Q. HOW MANY EGG RETRIEVALS WERE THERE?

26 A. I DON'T REMEMBER, EXACTLY; CERTAINLY TWO,
27 MAYBE THREE.

28 Q. HOW MANY EMBRYOS IN TOTAL WERE MADE USING YOUR

1 COMBINED GENETIC MATERIAL?

2 A. I DON'T RECALL, EXACTLY.

3 Q. DO YOU KNOW THE FIRST TIME THERE WAS AN EGG
4 RETRIEVAL?

5 A. I DON'T RECALL THE DATE.

6 Q. DO YOU HAVE A BALLPARK? A YEAR?

7 A. NO.

8 Q. AND IS THE ANSWER THE SAME FOR THE SECOND AND
9 MAYBE THE THIRD EGG RETRIEVALS?

10 A. I DON'T RECALL THE DATES.

11 Q. WHEN DID YOU RECEIVE THE FIRST BATCH OF DONOR
12 EGGS?

13 A. I DON'T RECALL THE DATES.

14 Q. DO YOU HAVE A YEAR?

15 A. WELL, I BELIEVE -- WELL, I DON'T KNOW IF IT
16 WAS 2019 OR 2020, I DON'T RECALL.

17 Q. THANK YOU. IT'S YOUR TESTIMONY THAT THERE IS
18 ONLY ONE EMBRYO THAT IS BIOLOGICALLY MADE OF YOUR AND
19 SOFIYA'S GENETIC MATERIAL; CORRECT?

20 A. TO MY MEMORY.

21 Q. AND DID THAT EMBRYO HAVE A QUALITY RATING?

22 A. I BELIEVE IT WAS RATED POOR.

23 Q. HOW MANY DOCTORS CONDUCTED SOFIYA'S EGG
24 RETRIEVALS?

25 A. I REMEMBER TWO -- WELL, I SHOULD SAY, I DON'T
26 REMEMBER WHO DID THE RETRIEVALS THEMSELVES, SO I
27 COULDN'T TELL YOU, EXACTLY.

28 THE COURT: WERE YOU IN THE ROOM WHEN THEY

1 WERE BEING DONE?

2 THE WITNESS: NO. IN OTHER WORDS, I REMEMBER
3 WE SAW TWO DIFFERENT OB/GYN OFFICES, BUT I DON'T KNOW
4 WHO THE DOES THE RETRIEVALS, AND I'M NOT IN THE ROOM
5 WHEN THAT'S HAPPENING.

6 Q. HOW MANY STORAGE FACILITIES HAVE BEEN USED FOR
7 THESE EMBRYOS?

8 A. IT'S POSSIBLE TWO, I DON'T RECALL, EXACTLY.

9 Q. HOW MANY SURROGATES DID YOU WORK WITH TO
10 ATTEMPT TO BRING ANY OF THESE EMBRYOS TO TERM?

11 A. IT DEPENDS WHAT YOU MEAN BY "WORK WITH," HOW
12 FAR?

13 Q. HOW MANY OF THESE EMBRYOS WERE IMPLANTED IN
14 SURROGATES?

15 A. IT'S BEEN A MINUTE. I BELIEVE --

16 MR. GEKHT: OBJECTION. AMBIGUOUS TO "THESE
17 EMBRYOS."

18 THE COURT: SUSTAINED.

19 BY MR. HOWELL:

20 Q. ANY EMBRYO, ANY OF THE EMBRYOS THAT THE TWO OF
21 YOU CREATED DURING THE MARRIAGE, HOW MANY SURROGATES
22 WERE THEY IMPLANTED IN?

23 A. I BELIEVE THREE, BUT IT'S AN EMOTIONAL TIME,
24 AND SOME OF THEM WERE VERY FAST, SO I HAVE TO LOOK BACK
25 INTO MY MEMORY OR MY NONEXISTENT DIARY.

26 Q. IS IT THREE, OR ARE YOU BACKTRACKING ON THAT
27 STATEMENT, MAYBE YOU DON'T KNOW?

28 A. I DON'T KNOW.

1 Q. OKAY. THANK YOU. I WANT TO MAKE SURE I HAVE
2 THIS RIGHT, BECAUSE APPARENTLY THERE IS A DISTINCTION
3 NOW BETWEEN EMBRYOS THAT WERE CREATED AND EMBRYOS THAT
4 WERE USED. HOW MANY -- I DON'T NECESSARILY THINK I
5 HAVE THIS IN MY NOTES RIGHT, AND I WANT TO MAKE SURE I
6 HAVE THE RECORD CORRECT. HOW MANY EMBRYOS ARE IN
7 STORAGE RIGHT NOW?

8 A. I DON'T HAVE THAT INFORMATION IN FRONT OF ME.

9 Q. DO YOU KNOW HOW MANY EMBRYOS THE TWO OF YOU
10 CREATED COMBINED WITH DONORS AND --

11 A. I DON'T HAVE A NUMBER.

12 Q. OKAY. TO YOUR KNOWLEDGE, HOW MANY DOCUMENTS
13 DID YOU SIGN THAT CONTAINED EMBRYO DISPOSITION
14 DIRECTIVES?

15 A. I DON'T RECALL OFF THE TOP OF MY HEAD, EXACTLY
16 BUT --

17 Q. DO YOU THINK IT'S MORE THAN WHAT WAS ON YOUR
18 EXHIBIT LIST?

19 A. NO. I JUST DON'T RECALL HOW MANY DOCUMENTS I
20 SIGNED IN THE COURSE OF ALL OF OUR EMBRYO CREATION AND
21 DEALING WITH EGG RETRIEVALS AND SO FORTH.

22 Q. DO YOU RECALL SIGNING ANY PRIOR TO YEAR 2021?

23 A. CERTAINLY.

24 Q. IF THERE IS A WAY TO ABSOLVE ANY LEGAL
25 OBLIGATION; CHILD SUPPORT, THAT SORT OF THING, LEGAL
26 PARENTAGE; WOULD THAT SOLVE YOUR OBJECTIONS TO SOFIYA
27 HAVING THE OPPORTUNITY TO ATTEMPT TO BRING ONE OR MORE
28 OF THESE EMBRYOS TO TERM?

1 A. I'M NOT SURE WHAT YOU'RE REFERRING TO, LEGAL
2 THINGS THAT ARE ABOVE AND BEYOND MY HEAD, SO I DON'T
3 KNOW HOW TO ANSWER THAT.

4 Q. SURE. IF THERE WERE A WAY TO ABSOLVE
5 POTENTIAL OBLIGATION TO POTENTIAL CHILD SUPPORT, WOULD
6 THAT SOLVE YOUR OBJECTIONS?

7 A. THAT'S NOT MY ONLY OBJECTION.

8 Q. ARE THERE OTHER OBJECTIONS THAT COULD BE
9 ADDRESSED THROUGH THE LEGAL PROCESS?

10 MR. GEKHT: OBJECTION. CALLS FOR A LEGAL
11 CONCLUSION.

12 THE COURT: WHAT'S THE QUESTION, AGAIN?

13 MR. HOWELL: ARE THERE OTHER OBJECTIONS THAT
14 COULD BE RESOLVED THROUGH THE LEGAL PROCESS -- I'LL
15 REPHRASE.

16 MR. GEKHT: CALLS FOR SPECULATION.

17 THE COURT: GO AHEAD, REPHRASE.

18 MR. HOWELL: I WILL REPHRASE.

19 BY MR. HOWELL:

20 Q. I CAN'T FIX A MORAL OBJECTION, BUT IF THERE
21 WERE OTHER WAYS TO ABSOLVE ANY OTHER OBJECTIONS, I'M
22 WONDERING, IF CHILD SUPPORT ISN'T THE ONLY OBJECTION,
23 ARE THERE OTHER OBJECTIONS IN THAT NATURE?

24 A. I DON'T KNOW WHAT THAT NATURE IS, I HAVE OTHER
25 OBJECTIONS.

26 Q. AND THOSE ARE?

27 A. I BELIEVE THAT I HAVE A RIGHT TO HAVE A CHILD
28 THAT I DECIDE TO BRING INTO THE WORLD AND TO RAISE THAT

1 CHILD AND BRING THAT CHILD TO TERM WITH SOMEONE WHO I
2 CHOOSE, AND SOFIYA AND I AGREED TO THAT TOGETHER. AND
3 IT'S ALL VERY EXPLICITLY LAID OUT IN THESE CONTRACTS
4 THAT WE DECIDED, AND I STILL FEEL, THAT IT'S -- WHEN I
5 BRING A CHILD INTO THE WORLD, I WANT TO BRING IT INTO
6 THE WORLD WITH SOMEONE TOGETHER. AND THE DECISION WE
7 MADE AT THE TIME WAS THAT IF WE'RE NOT TOGETHER, WE
8 WOULD DONATE THAT EMBRYO TO SCIENCE. I STILL BELIEVE
9 THAT'S THE APPROPRIATE THING TO DO AND I -- YEAH.

10 Q. THANK YOU, MR. BORENSTEIN. APPRECIATE YOUR
11 CANDOR. REGARDING THAT, YOU DIDN'T HAVE TO CREATE
12 EMBRYOS, RIGHT, YOU COULD HAVE FROZEN JUST HER EGGS; IS
13 THAT CORRECT?

14 A. I DON'T KNOW WHAT I -- I DIDN'T DO ANY OF IT,
15 BUT ONE COULD FREEZE EGGS.

16 Q. AND YOU PARTICIPATED IN THE DECISION TO
17 FERTILIZE HER EGGS TO CREATE THE EMBRYOS; CORRECT?

18 A. I AGREED TO DO THAT, YES.

19 Q. YOU VOLUNTARILY, WITH YOUR OWN FREE WILL, YES?

20 A. YES.

21 Q. THANK YOU. SO, WASN'T EXHIBIT 4, THAT YOU
22 WERE LOOKING AT, THE LAST EXHIBIT -- OR WAS THAT
23 EXHIBIT --

24 MR. GEKHT: FOUR.

25 BY MR. HOWELL:

26 Q. -- EXHIBIT 4. SO CAN YOU ACCESS EXHIBIT 4 FOR
27 ME, PLEASE.

28 A. I HAVE IT.

1 Q. IN YOUR QUESTIONING ON DIRECT EXAM, YOU WERE
2 ASKED WHOSE INITIALS WERE AT THE BOTTOM OF THE PAGE;
3 CORRECT?

4 A. YES.

5 Q. AND YOUR ANSWER WAS THAT THOSE ARE YOURS AND
6 THOSE WERE HERS; CORRECT?

7 A. YES.

8 Q. BUT SHE'S NOT THE ONE WHO PUT HER INITIALS
9 THERE; CORRECT?

10 A. NO, NOT CORRECT.

11 Q. SO, ARE YOU SAYING THAT YOU DID NOT SIGN HER
12 INITIALS AT THE BOTTOM OF THE PAGE?

13 A. I'M SAYING I DID NOT SIGN -- I'M LOOKING AT
14 PAGE 5, EXHIBIT 4?

15 Q. ANY OF THOSE PAGES, PAGE 1, 2, ANY OF THOSE
16 PAGES WITH THE INITIAL AT THE BOTTOM, YOU'RE SAYING
17 THAT SOFIYA SIGNED HER INITIALS --

18 A. YES.

19 Q. -- AT THE BOTTOM OF THOSE PAGES?

20 A. THAT IS CORRECT.

21 Q. OKAY. LET ME FIND THE DISPOSITION DIRECTIVE.
22 SORRY I JUST GOT THESE. SO, ON PAGE 9, THE DISPOSITION
23 DIRECTIVE --

24 A. PAGE 9 OF EXHIBIT 4?

25 Q. YES, SIR -- THE INITIALS ON THE DISPOSITION
26 DIRECTIVE "ALL EMBRYOS ARE TO BE TRANSFERRED TO THE
27 MALE PARTNER," YOU SIGNED YOUR INITIALS?

28 A. I SIGNED MY INITIALS.

1 Q. AND YOU ALSO SIGNED HER INITIALS, DID YOU NOT?

2 A. I DID NOT.

3 Q. SO, ON THE NEXT PAGE, THERE IS NOTICE TO BE
4 GIVEN TO A THIRD PARTY, GREG BORENSTEIN. DO YOU SEE
5 THAT?

6 A. I DO.

7 Q. DID SOFIYA WRITE GREG BORENSTEIN OR DID YOU
8 WRITE GREG BORENSTEIN?

9 A. I DON'T RECALL.

10 THE COURT: WHOSE HANDWRITING IS THAT?

11 THE WITNESS: IT DOESN'T APPEAR TO BE MINE.

12 MR. HOWELL: OKAY. THANK YOU.

13 MR. HOWELL: I'M FINISHED.

14 THE COURT: NO FURTHER QUESTIONS?

15 MR. HOWELL: NO FURTHER QUESTIONS.

16 THE COURT: MR. GEKHT?

17 MR. GEKHT: JUST VERY TINY BIT OF REDIRECT.

18

19 EXAMINATION

20

21 BY MR. GEKHT:

22 Q. MR. BORENSTEIN, YOU ANSWERED QUESTIONS ABOUT
23 THE SOLE EMBRYO YOU HAVE GENETICALLY WITH SOFIYA AS
24 RATED POOR. DO YOU HAVE AN UNDERSTANDING WHAT RATED
25 POOR MEANS, GENERALLY?

26 A. GENERALLY, MY UNDERSTANDING IS THAT IT'S NOT
27 AS GOOD AS MODERATE OR GOOD.

28 THE COURT: THANK YOU FOR THAT DEFINITION OF

1 POOR.

2 BY MR. GEKHT:

3 Q. DO YOU HAVE ANY CONCERNS RELATED TO THE RATING
4 OF THE EMBRYO THAT AFFECT YOUR DESIRE TO HAVE IT
5 BROUGHT INTO THE WORLD?

6 A. YEAH. WE DECIDED -- ONE OF THE REASONS THAT
7 WE -- OR NOT ONE OF, THE PRIMARY REASON WE DECIDED TO
8 USE A DONOR EGG WAS BECAUSE -- AND USE DONOR EGGS AND
9 MAKE THE LAST BATCH OF EMBRYOS, WAS BECAUSE WE WERE
10 DOWN TO AN EMBRYO THAT WAS NOT WELL SUITED, ACCORDING
11 TO THE DOCTOR; AND THE IDEA OF BRINGING TO TERM A CHILD
12 THAT HAD ANY KIND OF GENETIC ISSUES WAS SOMETHING THAT
13 BOTH OF US, AT THE TIME, LOATHED TO DO.

14 MR. GEKHT: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: MR. HOWELL, ANYTHING FURTHER?

16 MR. HOWELL: NOTHING FURTHER.

17 THE COURT: THANK YOU, SIR. YOU MAY STEP
18 DOWN.

19 MR. GEKHT: I'M ASSUMING THE CLOCK IS WRONG,
20 AND IT IS NOT THE LUNCH BREAK.

21 THE COURT: IT IS NOT THE LUNCH BREAK. IF IT
22 IS, EVERYDAY I WOULD BE OUT OF HERE WHEN I WALKED IN.
23 BUT LET'S TAKE A HALF BREAK, SEE EVERYBODY BACK IN LIKE
24 SEVEN MINUTES. YOU COULD LEAVE YOUR STUFF.

25 MR. GEKHT: THANK YOU, YOUR HONOR.

26

27 (BREAK TAKEN AT 10:29 A.M.)

28

1 THE COURT: MR. GEKHT, ANY OTHER WITNESSES?

2 MR. GEKHT: YES. MR. HOWELL AND I MET AND
3 CONFERRED OUTSIDE, AND WITH THE COURT'S PERMISSION, WE
4 WOULD LIKE TO HAVE MY 776 WITH THE RESPONDENT COMBINED
5 WITH MY CROSS, SO WE COULD JUST GET THEM TO LUNCH.

6 THE COURT: SURE, FINE.

7 MR. GEKHT: THEN I'LL JUST DEFER TO THAT,
8 MR. HOWELL, I BELIEVE HIS ONLY WITNESS IS
9 MS. GOLDSHTEYN.

10 MR. HOWELL: THAT IS CORRECT.

11 MR. GEKHT: SO, MS. GOLDSHTEYN TO THE STAND.

12 THE COURT: COME ON UP. MR. HOWELL, WHENEVER
13 YOU'RE READY.

14

15 EXAMINATION

16

17 BY MR. HOWELL:

18 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

19 THE COURT: I KNOW HER NAME.

20 THE WITNESS: SOFIYA GOLDSHTEYN.

21 BY MR. HOWELL:

22 Q. SOFIYA, I WANT TO TALK A LITTLE BIT ABOUT YOUR
23 BACKGROUND BECAUSE OF THE WAY IT MAY IMPACT YOUR
24 DECISIONS TODAY SO COULD YOU TELL A LITTLE BIT ABOUT
25 WHERE YOU'RE FROM ORIGINALLY?

26 A. OKAY. I WAS BORN IN ODESSA, UKRAINE, WHILE IT
27 WAS STILL UNDER THE SOVIET UNION ITSELF, I WAS STILL A
28 KID. THEN MY MOM AND I CAME OVER AS REFUGES TO LOS

1 ANGELES. IT'S JUST MY MOM AND I, MY OTHER CLOSEST
2 FAMILY WAS MY FAVORITE PERSON, MY GRANDPA, HE DIED
3 DURING COVID. MY GRANDMA DIED FROM BREAST CANCER,
4 WHICH I INHERITED IT, AND MY AUNT AS WELL HAD BREAST
5 CANCER.

6 BASICALLY, IT'S ME, MY MOM, MY AUNT, HER
7 HUSBAND, AND MY COUSIN, I GUESS THAT'S ALL OF US. A
8 LOT OF US DIED IN WWII AND, YOU KNOW, ON ACCOUNT OF THE
9 NAZIS. AND SO, YEAH, IT'S KIND OF SLIM PICKINGS IS HOW
10 I WOULD DESCRIBE MY FAMILY -- YEAH.

11 AND IN TERMS OF THE BREAST CANCER THING,
12 I FOUND A LUMP IN MY BREAST WHEN I WAS 32, 33, AND IT
13 TURNED OUT THAT IT WAS CANCER. STAGE 1, I HAD A
14 LUMPECTOMY; I HAD CHEMO FOR A YEAR, AND I HAD RADIATION
15 FOR 30 DAYS; AND I'M STILL CONSIDERED TO BE IN
16 TREATMENT. I SEE MY ONCOLOGIST EVERY THREE MONTHS OR
17 BLOOD DRAWS TO SEE IF I STILL HAVE ANY TUMOR MARKERS OR
18 PHYSICAL EXAM, BASICALLY FOR THE REST OF MY LIFE. AND
19 I'M ALSO ON HORMONE SUPPRESSANTS THAT DON'T LET ME MAKE
20 PROGESTERONE OR ESTROGEN BECAUSE THAT'S WHAT MY TUMOR
21 WAS POSITIVE FOR. SO, ESSENTIALLY, I'VE BEEN IN FORCED
22 MENOPAUSE SINCE I WAS 33.

23 THE DAY THAT I GOT DIAGNOSED WITH THE
24 BREAST CANCER WAS ALSO THE DAY I HAD TO DECIDE TO GO
25 ON, ESSENTIALLY, FERTILITY SHOTS IF I WANTED TO HAVE
26 KIDS, BECAUSE THEY SAID HUGE CHANCE OF CHEMO DAMAGING
27 THE EGGS AND WE MIGHT NOT BE ABLE TO HAVE KIDS LATER.
28 SO IF THIS IS SOMETHING YOU'RE THINKING ABOUT EVEN A

1 LITTLE BIT, THEN, LIKE, WE HAVE TO DO IT TODAY; LIKE,
2 LITERALLY, PICK UP THE MEDS, START INJECTIONS IN YOUR
3 STOMACH.

4 SO I DID THAT, AND THEN I STARTED CHEMO
5 AND ALL THAT STUFF. THE FIRST EGG RETRIEVAL WAS 2016,
6 WHICH WAS RIGHT WHEN I STARTED TREATMENT, AND IT
7 RESULTED IN 13 EGGS BUT ONLY TWO HEALTHY EMBRYOS, BOTH
8 BOYS. AND WE WERE SUPER THRILLED ABOUT THAT --

9 MR. GEKHT: YOUR HONOR, IF YOU MAY, SO A
10 COUPLE OF THINGS: NUMBER ONE -- AND I WANT TO SAVE
11 SOME TIME AND NOT DO MOTIONS TO STRIKE, AND THERE WAS
12 SOME HEARSAY IN THERE, AS LONG AS THE COURT IS GOING TO
13 GIVE EVERYTHING THE APPROPRIATE AMOUNT OF WEIGHT --
14 I'LL JUST LET THE RECORD REFLECT THAT THE COURT NODDED.
15 AND I BELIEVE WE ARE A LITTLE OUTSIDE OF THE BACKGROUND
16 QUESTION.

17 THE COURT: OKAY. SUSTAINED.

18 MR. HOWELL: ALTHOUGH, SHE DID GET RIGHT INTO
19 WHERE I --

20 THE COURT: WHY DON'T YOU JUST ASK ANOTHER
21 QUESTION, JUST "AND THEN WHAT HAPPENED?" THEN WE CAN
22 GO FORWARD.

23 BY MR. HOWELL:

24 Q. SO, YOU WERE TALKING ABOUT THE EGG RETRIEVALS
25 IN 2016. CAN YOU TELL US WHAT HAPPENED NEXT.

26 A. SO, AFTER THE FIRST EGG RETRIEVAL, WE RETAINED
27 SERVICES OF A SURROGATE, MANDY. AND SHE GOT PREGNANT,
28 AND SHE MISCARRIED AFTER THREE MONTHS, WHICH IS REALLY

1 RARE, BECAUSE THE EMBRYOS GET TESTED UP THE WAZOO
2 BEFORE THEY GET FROZEN OR ANYTHING. AND IT WAS
3 DEVASTATING BECAUSE WE ALREADY HEARD THE HEARTBEAT AND
4 ALL OF THE STUFF. AND WHEN THAT HAPPENED, WE THOUGHT
5 IT WAS A FREAK THING, WE WERE READY TO TRY AGAIN.

6 THE SECOND SURROGATE, WHICH WAS AMALIA,
7 AND THAT RESULTED IN A BIOCHEMICAL PREGNANCY, SO IT WAS
8 A MISCARRIAGE AT ABOUT TWO WEEKS OR SO.

9 Q. CAN YOU TELL US THE TIMING. DO YOU REMEMBER
10 THE TIMING?

11 A. SO, MY RETRIEVALS WERE IN 2016, 2020, 2021. I
12 HAD THREE RETRIEVALS. THE LAST ONE RESULTED IN ZERO
13 HEALTHY EMBRYOS, AND THAT IS WHEN WE STARTED LOOKING
14 FOR A DONOR, EGG DONOR.

15 Q. THANK YOU FOR THAT, BUT WHAT I MEANT WAS, THE
16 TIMING WHEN YOU WERE WORKING WITH THE SECOND SURROGATE.
17 DO YOU KNOW?

18 A. WHICH TIMING?

19 Q. SO --

20 A. WHEN I RETAINED HER OR --

21 Q. YES. LIKE, THE YEAR YOU WERE WORKING WITH THE
22 SECOND SURROGATE.

23 A. I MEAN, I BELIEVE IT WAS 2021, RIGHT -- 2020,
24 2021, SOMETHING LIKE THAT. I MEAN, I KNOW EXACTLY, IN
25 MY HEAD, THE NUMBERS ARE ALL FOREVER OF HOW MANY
26 EMBRYOS AND HOW MANY MISCARRIAGES AND HOW MANY MONTHS
27 AND WHO THE LADIES WERE AND WHEN IT HAPPENED. THAT'S
28 KIND OF WHAT I REMEMBER THE MOST.

1 AND YEAH, BASICALLY, THE FIRST RETRIEVAL
2 RESULTED IN TWO HEALTHY BOY EMBRYOS, AND THEY BOTH WERE
3 MISCARRIED. AND WE DID THE SECOND RETRIEVAL, AND THAT
4 RESULTED IN TWO MORE HEALTHY EMBRYOS, A BOY AND A GIRL,
5 THE ONLY GIRL WE'VE EVER MADE TOGETHER. THAT'S THE
6 EMBRYO THAT WE'RE CURRENTLY ON TRIAL ABOUT, AND SHE WAS
7 NOT RATED POOR, THAT'S JUST NOT A THING THAT EXISTS,
8 SHE'S RATED FAIR. AND THEY DON'T FREEZE EMBRYOS THAT
9 ARE NOT VIABLE BECAUSE IT'S JUST AN INSANE AMOUNT OF
10 MONEY. THEY TEST TO THE UTMOST, AND THEN THE ONES THAT
11 YOU HAVE, THEY RATE FROM EXCELLENT TO GOOD TO FAIR.
12 AND NOTHING IS BELOW FAIR, THEY DON'T FREEZE THEM. AND
13 THEY DON'T SAY "DON'T HAVE THE FAIR ONE," OR THEY WOULD
14 NOT MAKE IT AN OPTION, THAT'S HOW THAT WORKS.

15 MR. GEKHT: MOTION TO STRIKE EVERYTHING WHAT
16 THEY SAID.

17 THE COURT: SUSTAINED.

18 BY MR. HOWELL:

19 Q. THE EMBRYO THAT IS REMAINING, WHAT IS ITS
20 RATING --

21 A. FAIR, IT IS FAIR.

22 Q. AND THE THIRD SURROGATE, WHEN WAS SHE
23 IMPLANTED, AROUND WHAT TIME PERIOD?

24 A. SHE WAS IMPLANTED IN 2021, I BELIEVE. AND
25 THAT'S JESSICA, AND SHE ALSO MISCARRIED RIGHT ABOUT
26 THREE MONTHS, WHICH, AGAIN, IS A FREAK THING, AND THEY
27 COULD NEVER EXPLAIN. AND SO, WE ONLY HAD ONE EMBRYO
28 LEFT. WE DECIDED TO DO MY THIRD AND FINAL RETRIEVAL,

1 BUT IT WAS JUST UNSUCCESSFUL. AND DOCTOR WANG SAID
2 "THE CHANCES OF YOU PRODUCING ANYMORE HEALTHY EGGS IS
3 SLIM TO NONE." AND I CAN'T CARRY MY OWN CHILD BECAUSE
4 PREGNANCY MAKES YOU SURGE WITH PROGESTERONE AND
5 ESTROGEN, AND THAT GIVES PRETTY HIGH OCCURRENCE --
6 CHANCE. MY ONCOLOGIST DESCRIBED IT AS IN THE 20'S, 23,
7 26 PERCENT OF ME GETTING CANCER AGAIN, AND IT WOULDN'T
8 BE NECESSARILY IN MY BREAST, IT WOULD BE ANYWHERE IN MY
9 BODY --

10 MR. GEKHT: SAME OBJECTIONS, YOUR HONOR. WAY
11 OUTSIDE THE SCOPE. NONRESPONSIVE AT THIS POINT.
12 HEARSAY. AGAIN, I KNOW IT ALSO SAVES TIME BECAUSE THE
13 RESPONDENT IS GETTING HER STORY OUT, SO THE COURT COULD
14 JUST KIND OF GO THROUGH THAT AND GIVE EVERYTHING THE
15 APPROPRIATE WEIGHT.

16 THE COURT: I WILL.

17 MR. GEKHT: APPRECIATE IT.

18 THE COURT: SO, MA'AM, YOU HAD AN EGG
19 RETRIEVAL 2016, 2020, AND 2021? I AM SORRY, SO IF YOU
20 COULD JUST GO THROUGH IT ONE MORE TIME, YOU REALLY WENT
21 SUPER FAST AND --

22 THE WITNESS: YEAH, YEAH. SORRY, I COULD TELL
23 GARRY REALLY HATED IT.

24 THE COURT: THAT'S OKAY. SO, THERE WAS 13,
25 WAS THAT IN 2016? IS THAT WHEN THERE WAS ONLY TWO
26 BOYS?

27 THE WITNESS: THIRTEEN EGGS, THEY GET
28 INSEMINATED IMMEDIATELY, AND THE ONLY ONES VIABLE AND

1 GOT TESTED AND FROZEN WAS THE TWO BOYS.

2 THE COURT: AND THAT WAS 2016?

3 THE WITNESS: YES.

4 THE COURT: AND THERE WAS A SECOND RETRIEVAL
5 IN --

6 THE WITNESS: THAT RESULTED IN TWO HEALTHY
7 EMBRYOS, ONE BOY ONE GIRL.

8 THE COURT: WHEN WAS THAT?

9 THE WITNESS: THAT'S 2020.

10 THE COURT: AND THEN IN 2021, THERE WAS NO
11 HEALTHY EGGS.

12 THE WITNESS: THE EGGS CAME OUT BUT NO
13 EMBRYOS. THEY ALL GOT FERTILIZED, FIVE EGGS, BUT NONE
14 OF THE FIVE EMBRYOS ENDED UP BEING VIABLE. AND THAT'S
15 WHEN WE DECIDED TO GO FOR AN EGG DONOR.

16 THE COURT: AND NOW THE THREE SURROGATES -- SO
17 THERE'S FOUR EMBRYOS, FROM THE 2016 AND 2020, TOTAL --

18 THE WITNESS: YES.

19 THE COURT: -- THREE OF THEM WERE WITH
20 SURROGATES AND NOW ONE REMAINS.

21 THE WITNESS: YES, EXACTLY.

22 THE COURT: OKAY. I GOT IT.

23 MR. HOWELL: EXCELLENT.

24 BY MR. HOWELL:

25 Q. WAS THERE A FOURTH SURROGATE?

26 A. THERE WAS NO FOURTH SURROGATE, THERE WAS AN
27 EGG DONOR. THERE WAS A SURROGATE THAT WE GOT MATCHED
28 WITH RIGHT AS WE STARTED OUR SEPARATION, I THINK MAYBE

1 DAY OF.

2 Q. AND DID THE TWO OF YOU DISCUSS THAT SELECTION?

3 A. WE TEXTED ABOUT IT. I THINK I SAID SOMETHING
4 TO THE EFFECT OF "I STILL WOULD WANT TO HAVE A CHILD
5 WITH YOU, NO MATTER WHAT," SOMETHING LIKE THAT. AND HE
6 I THINK REPLAYED WITH LIKE A HEART OR SOMETHING LIKE
7 THAT OR "ME TOO" OR SOMETHING LIKE THAT. SO THAT WAS
8 THE CONVERSATION WE HAD.

9 Q. CAN YOU TELL US ABOUT THE SURROGATE SELECTION
10 PROCESS.

11 A. YES --

12 MR. GEKHT: OBJECTION. RELEVANCE.

13 THE COURT: YEAH. MR. HOWELL, WHY IS IT
14 REALLY RELEVANT TO WHERE WE ARE TODAY?

15 MR. HOWELL: IT GOES TO SOFIYA'S EFFORTS TO
16 CHOOSE TO BEAR A CHILD --

17 THE COURT: I THINK IF GOES TO BOTH PARTIES'
18 EFFORTS. I MEAN, THEY WENT THROUGH THIS THREE TIMES
19 EGG RETRIEVALS --

20 THE WITNESS: SO, RESPECTFULLY, HE DOESN'T
21 EVEN REMEMBER WHAT HAPPENED. I WENT THROUGH SURGERY, I
22 WAS UNDER GENERAL ANAESTHESIA THREE TIMES. AND EVERY
23 TIME I HAVE TO GO THROUGH AN EGG RETRIEVAL, I HAVE TO
24 GO OFF MY CANCER MEDICATION AND THEN GO BACK ON. SO,
25 THREE TIMES I LITERALLY RISKED MY LIFE TO TRY TO HAVE A
26 CHILD. HE JUST PUT SPERM SOMEWHERE, IT'S REALLY NOT
27 THE SAME. I'D REALLY NOT LIKE THIS TO BE EQUIVALENT.

28 THE COURT: WELL, MA'AM, I AM NOT SAYING IT'S

1 EQUIVALENT, I DIDN'T SAY THAT; I JUST SAID I DON'T KNOW
2 IF IT'S REALLY RELEVANT. I UNDERSTAND EVERYTHING YOU
3 WENT THROUGH. HE WAS SAYING HE DIDN'T KNOW THE EXACT
4 DATES, BUT I DIDN'T SAY HE DIDN'T KNOW WHAT YOU WENT
5 THROUGH.

6 THE WITNESS: HE DIDN'T KNOW HOW MANY EMBRYOS,
7 HE DIDN'T REMEMBER ANY OF IT.

8 THE COURT: OKAY. BUT, MA'AM, AGAIN, I'M NOT
9 SURE WHY THAT'S RELEVANT FOR TODAY. THAT MIGHT BE
10 RELEVANT LATER ON. AGAIN, IF YOU PREVAIL, YOU GET THE
11 EMBRYOS, IT DOESN'T REALLY -- OR THE EGGS, YOU GET ALL
12 OF THEM, I DON'T KNOW IF IT REALLY MATTERS WHETHER OR
13 NOT THERE WAS A FOURTH OR FIFTH OR TWENTIETH EGG AT
14 THIS POINT. THAT'S WHAT I AM SAYING, IT'S NOT REALLY
15 RELEVANT FOR OUR PURPOSES TODAY, MORE ABOUT THE
16 AGREEMENTS THE PARTIES REACHED, WHAT WAS DISCUSSED;
17 THAT'S REALLY WHAT IS RELEVANT. I MEAN, YOU GUYS, AT
18 THE LAST ONE, BASICALLY, SEPARATED, SO THEORETICALLY,
19 IF THERE WAS GOING TO BE A FOURTH, IT WOULD HAVE BEEN
20 AFTER YOUR DATE OF SEPARATION; RIGHT?

21 THE WITNESS: A FOURTH WHAT?

22 THE COURT: SURROGATE.

23 THE WITNESS: WE GOT MATCHED, WE DIDN'T RETAIN
24 HER.

25 THE COURT: RIGHT. THAT'S BECAUSE YOU GUYS
26 ALREADY SEPARATED AT THAT POINT.

27 THE WITNESS:

28 THE COURT: YEAH. I DON'T THINK IT'S REALLY

1 RELEVANT. AGAIN, I'M NOT TRYING TO DENIGRATE
2 EVERYTHING YOU WENT THROUGH --

3 THE WITNESS: THAT'S OKAY.

4 THE COURT: AGAIN, I'M NOT HERE TO CHOOSE AN
5 EQUIVALENCY OF WHO DID WHAT, I'M JUST HERE TO TRY TO
6 FIGURE THIS OUT.

7 MR. HOWELL: SO, YOUR HONOR IS NOT PERMITTING
8 MY QUESTION AS TO A DESCRIPTION OF THE SURROGATE
9 SELECTION PROCESS?

10 THE COURT: I DON'T THINK IT'S REALLY
11 RELEVANT. THEY PICKED THREE, UNFORTUNATELY, IT DIDN'T
12 WORK OUT; THAT'S NOT REALLY WHY WE'RE HERE TODAY.

13 MR. HOWELL: OKAY.

14 THE COURT: IF SHE PREVAILS, SHE'LL GO THROUGH
15 THE WHOLE SELECTION PROCESS HERSELF AND FIGURE OUT WHO
16 SHE MATCHES AND EVERYTHING ELSE, IT'S NOT REALLY
17 RELEVANT FOR MY DECISION.

18 BY MR. HOWELL:

19 Q. YOU HAD MENTIONED THAT WHEN YOU WENT THROUGH
20 THE EGG RETRIEVAL PROCESS THERE WAS SOME RISK. CAN YOU
21 TALK ABOUT THAT.

22 A. YES.

23 MR. GEKHT: OBJECTION. RELEVANCE.

24 MR. HOWELL: WHAT SHE PUT HER BODY THROUGH IN
25 ORDER TO ATTEMPT TO MAKE THESE EMBRYOS IS DIRECTLY
26 RELEVANT.

27 MR. GEKHT: YOUR HONOR, MAY I BE HEARD?

28 THE COURT: GO AHEAD.

1 MR. GEKHT: SO --

2 THE COURT: YOU COULD SIT, IF YOU LIKE, IT'S
3 OKAY.

4 MR. GEKHT: I PREFER TO STAND. SO, IT'S A
5 PRETTY NARROW ISSUE HERE; RIGHT? SO, THERE ARE TWO
6 ARGUMENTS BETWEEN THE PARTIES. MY CLIENT'S POSITION IS
7 A POSITION UNDER PHAM, AND THAT IS, WE HAVE CONTRACTS,
8 THE COURT NEEDS TO UPHOLD THAT CONTRACT. THE
9 RESPONDENT'S POSITION, ITS MOST BASIC FORM IS,
10 NOTWITHSTANDING THESE CONTRACTS, MY INTERPRETATION OF
11 THE CALIFORNIA CONSTITUTION'S REPRODUCTIVE FREEDOM
12 SECTION IS THAT I SHOULD BE ABLE TO CHOOSE TO HAVE
13 THESE CHILDREN OVER THE OBJECTION OF THE PETITIONER.
14 THAT'S ESSENTIALLY THE ARGUMENT HERE.

15 I DON'T THINK EITHER ONE OF THOSE FACTUAL
16 CONSIDERATIONS REQUIRE THE BACKSTORY OF WHAT HAPPENED,
17 AND IT'S A 352 ISSUE. IS IT GOING TO BE COMPELLING,
18 YES. DOES IT ULTIMATELY AFFECT THE DECISION THAT THE
19 COURT HAS TO MAKE, NO. SO WE CAN SPEND A LOT OF TIME
20 HERE, AND I CERTAINLY DON'T WANT TO TRIVIALIZE ANY OF
21 THE MEDICAL THINGS THAT TRANSPIRED TO THE RESPONDENT,
22 BUT THIS IS NOT WHAT THE TRIAL IS ABOUT. THE TRIAL IS
23 ABOUT WHETHER THESE CONTRACTS BIND OR DON'T BIND AND ON
24 A VERY LEGAL ARGUMENT, WHETHER ONE PARTY HAS SUPERIOR
25 RIGHT UNDER THE CONSTITUTION REPRODUCTIVE FREEDOM THAN
26 ANOTHER PARTY.

27 THE COURT: MR. HOWELL?

28 MR. HOWELL: HER ANSWER LIKELY WOULD HAVE BEEN

1 BRIEFER THAN THAT. I TAKE ISSUE WITH THE WAY OUR
2 POSITION IS CHARACTERIZED. I'M BUILDING A RECORD SO
3 THAT SOFIYA HAS AN OPPORTUNITY TO SAY WHAT THE DANGERS
4 SHE EXPERIENCED TO HER BODILY HEALTH AND TO POTENTIALLY
5 HER LIFE, TO HAVING THESE EGG RETRIEVED FROM HER BODY,
6 AND HOW THAT MAY IMPACT THE ULTIMATE DISPOSITION,
7 BECAUSE I DON'T THINK PHAM IS CONTROLLING.

8 THE COURT: LET'S ASSUME FOR THE SAKE --
9 AGAIN, I AGREE WITH YOU, THE DISCUSSION IS PROBABLY FAR
10 LONGER THAN THE AMOUNT OF TESTIMONY WOULD HAVE BEEN.
11 BUT LET'S ASSUME THAT I AGREE WITH YOU -- I MEAN,
12 AGAIN, ANY SURGERY IS DANGEROUS. RIGHT? THERE'S
13 ALWAYS RISK FOR COMPLICATIONS NO MATTER WHAT THE
14 SURGERY IS, WHETHER IF IT'S A TOOTH EXTRACTION OR
15 SOMETHING MORE INVASIVE; I'M NOT SURE, DOES THAT
16 REALLY -- HOW DOES THAT ADVANCE THE BALL FOR US HERE
17 TODAY?

18 I MEAN, SHE WENT THROUGH IT, KNOCK ON
19 WOOD, THERE ARE NO COMPLICATIONS THAT I HEARD OF.
20 THERE'S MEDICAL ISSUES, BUT THEY'RE RELATED TO HER
21 OTHER ISSUES. BUT I HAVEN'T HEARD OF ANY MEDICAL
22 COMPLICATIONS THAT AROSE AS A RESULT OF THESE
23 PROCEDURES. SHE WENT THROUGH THEM, THEY'RE INVASIVE,
24 I'M AWARE OF THAT FACT. OBVIOUSLY, AS SHE SAID, SHE
25 WAS SEDATED; BUT BEYOND THAT, I'M NOT SURE HOW THIS
26 ADVANCES HER ARGUMENT ONE WAY OR ANOTHER.

27 MR. HOWELL: WITHOUT SAYING TOO MUCH, I WOULD
28 JUST LIKE TO SAY, IT GOES TO EQUAL PROTECTION ISSUES;

1 THAT PEOPLE WHO -- THAT MEN DO NOT PUT THEIR BODY AT
2 RISK THE WAY WOMEN DO.

3 THE COURT: OKAY. I'M NOT SURE -- AGAIN, I'M
4 NOT TRIVIALIZING WHAT SHE WENT THROUGH, AND I'M NOT
5 SAYING THAT SHE DIDN'T GO THROUGH EVERYTHING; BUT I'M
6 NOT SURE THAT THAT ADVANCES THE BALL HERE. I'M NOT
7 GOING TO MAKE A DECISION THAT BECAUSE SHE WAS SEDATED,
8 SHE HAS A SUPERIOR RIGHT THAN HE DOES, WHO BASICALLY
9 WAS IN A ROOM, WITH SOME MAGAZINES. I'M NOT EQUATING
10 THE TWO, THAT'S NOT HOW THE LAW LOOKS AT IT. FOR LACK
11 OF A BETTER DESCRIPTION, SHE ROWED THE BOAT A LITTLE
12 HARDER THAN HE DID, THAT'S NOT THIS ARGUMENT; THAT
13 BECAUSE SHE WENT THROUGH FAR MORE THAT SHE SHOULD HAVE
14 SUPERIOR RIGHT. THAT IN AND OF ITSELF WOULD BE A
15 VIOLATION OF EQUAL PROTECTION ARGUMENT, SAYING "OH, YOU
16 RISKED MORE, SO THEREFORE, YOU GET MORE."

17 MR. HOWELL: HECOX VERSUS LITTLE, THE CASE
18 THAT WAS BEFORE THE U.S. SUPREME COURT IN THE 9TH
19 CIRCUIT TALKS ABOUT BIOLOGICAL DIFFERENCES THAT THE LAW
20 MAY TAKE INTO ACCOUNT WHEN -- ACCORDING TO THE RIGHTS
21 AMONG MEN AND WOMEN. AND THAT IS POTENTIALLY GOING TO
22 BE IMPLICATED AT SOME POINT WHEN WE'RE TALKING ABOUT
23 THE CALIFORNIA REPRODUCTIVE PRIVACY ACT. AND I WANTED
24 TO BUILD A RECORD TO TALK ABOUT THE WAY SOFIYA DID
25 DIRECTLY PUT HERSELF IN A SPOT WHERE SHE WAS AT RISK IN
26 A WAY THAT MEN WOULD NOT BE.

27 THE COURT: I UNDERSTAND THAT FACT. I MEAN,
28 SHE ALREADY TESTIFIED SHE WAS SEDATED, THAT THERE'S

1 LITERALLY A NEEDLE STUCK INTO HER BODY, USING
2 TECHNOLOGY TO, LITERALLY, FIND THE EGGS AND EXTRACT
3 THEM OUT --

4 THE WITNESS: THAT WASN'T THE BIGGEST
5 DANGER --

6 THE COURT: I REALIZE THAT, MA'AM. BUT ANY
7 TIME YOU'RE SEDATED, THERE'S A DANGER.

8 THE WITNESS: WELL, OF COURSE.

9 THE COURT: THERE'S LOTS OF THINGS THAT COULD
10 HAPPEN WHEN YOU'RE SEDATED. THEN THEY STICK A NEEDLE
11 INTO YOU TO EXTRACT THESE EGGS. BEYOND THAT -- I
12 UNDERSTAND ALL OF THAT, SO WHAT AM I MISSING HERE?
13 AGAIN, WE'RE TAKING UP A LOT OF TIME TALKING ABOUT
14 THIS, I PROBABLY SHOULD JUST LET HER TESTIFY, PROBABLY
15 BE QUICKER.

16 MR. HOWELL: IT'S THE CANCER TREATMENT ASPECT.

17 THE COURT: SHE ALREADY TESTIFIED ABOUT THAT,
18 THAT SHE COULDN'T DO A LOT OF THINGS BECAUSE SHE WAS
19 AFRAID THAT THE ESTROGEN OR PROGESTERONE -- I AM SORRY
20 IF I MISSPOKE, I'M NOT LOOKING AT MY NOTES -- COULD
21 HAVE CAUSED THE CANCER TO COME BACK IN DIFFERENT AREAS
22 FAR WORSE THAN IT ALREADY WAS. SHE'S ALREADY TESTIFIED
23 ABOUT THAT.

24 MR. HOWELL: WELL --

25 THE COURT: I UNDERSTAND ALL OF HER HEALTH
26 ISSUES, I UNDERSTAND EXACTLY WHY SHE DID THIS, I
27 UNDERSTAND WHY SHE WENT THROUGH THE PROCESS, I
28 UNDERSTAND WHAT THE IVF PROCESS IS.

1 MR. HOWELL: WELL, NOW IT'S ALL ON THE RECORD,
2 BUT I THANK YOU, YOUR HONOR, AND I COULD LIVE WITH
3 THAT.

4 THE COURT: MR. GEKHT?

5 MR. GEKHT: I THINK WE'RE GOOD, THEN.

6 BY MR. HOWELL:

7 Q. DO YOU HAVE AN UNDERSTANDING OF THE COSTS OF
8 THE SURROGACY PROCESS?

9 A. YES, SO MUCH MONEY.

10 Q. CAN YOU TALK A LITTLE BIT ABOUT THAT.

11 A. IT'S IN THE HUNDRED OF THOUSANDS AT THIS
12 POINT, AND IT'S NOT SOMETHING I OBVIOUSLY WOULD BE ABLE
13 TO AFFORD ALONE. AND IF I WOULD NOT GET THESE
14 EMBRYOS -- I WOULD HAVE TO START ALL OVER AND IT WOULD
15 BE DONOR SPERM, DONOR EGG, ANOTHER SURROGATE, YEAH.
16 AND YOU KNOW, I WOULD BE DOING THAT AS A SINGLE PARENT.

17 THE COURT: SO YOU'RE SAYING YOU COULD NOT
18 AFFORD TO DO THE SURROGACY ON YOUR OWN?

19 THE WITNESS: UH-HUH.

20 THE COURT: IS THAT A "NO"?

21 THE WITNESS: NO, SORRY. NOT JUST THAT, BUT
22 MY BODY IS INCAPABLE OF MAKING ANYMORE HEALTHY EGGS, SO
23 THAT'S MY ONLY CHANCE TO HAVE A BIOLOGICAL CHILD, THE
24 ONE EMBRYO THAT EXISTS ALREADY.

25 BY MR. HOWELL:

26 Q. YOU HEARD MAX TESTIFY ABOUT THE CLINIC FORMS.

27 A. UH-HUH.

28 Q. THE INITIALS ON THOSE PAGES, DID YOU SIGN

1 THOSE?

2 A. I COULD TELL THE DIFFERENCE BETWEEN OUR
3 INITIALS, AND YOU COULD SEE FOR A LOT OF THE DOCUMENTS,
4 HE FILLED EVERYTHING OUT, BUT MY SIGNATURE IS MINE.
5 AND YOU COULD TELL EVEN THE WAY THE DATES ARE WRITTEN
6 OR WHATEVER, YOU COULD TELL -- I COULD TELL. SO I
7 WOULD SAY NOT ALL OF THE INITIALS ARE MINE AT ALL, BUT
8 THE SIGNATURE IS MINE.

9 Q. ON THE DISPOSITION DIRECTIVES, DID YOU INITIAL
10 NEXT TO THOSE?

11 A. I DON'T THINK SO.

12 MR. HOWELL: THOSE ARE ALL THE QUESTIONS I
13 HAVE AT THIS TIME.

14 THE WITNESS: CAN I SAY SOMETHING?

15 THE COURT: NO. THERE'S NO QUESTION PENDING,
16 MA'AM. GIVE ME ONE SECOND.

17 THE WITNESS: WELL, IT'S TO CLARIFY SOMETHING
18 THAT YOU GUYS --

19 THE COURT: YOUR LAWYER WILL HAVE ANOTHER
20 CHANCE TO ASK QUESTIONS TO CLARIFY.

21 THE WITNESS: OKAY.

22 THE COURT: YOU SAID SOMETHING INTERESTING,
23 MA'AM, THAT I WANT TO ASK YOU ABOUT. YOU SAID THE ONE
24 EGG THAT HAS BOTH OF YOUR GENETIC MATERIALS IS YOUR
25 LAST CHANCE TO HAVE A BIOLOGICAL CHILD BECAUSE YOU
26 CAN'T MAKE ANYMORE EGGS. SO IF THAT WERE THE CASE, WHY
27 DO YOU WANT THE OTHER ONES? THOSE AREN'T BIOLOGICALLY
28 YOURS, THE EGGS AREN'T YOURS, THE REST OF THE MATERIAL

1 IS HIS BIOLOGICAL MATERIAL; SO, WHY DO YOU NEED THOSE,
2 THEN?

3 THE WITNESS: I WANT A CHILD, AND THE WAY I
4 CHOSE THE EGG DONOR, IT'S NOT JUST A RANDOM WOMAN WHO'S
5 HEALTHY, I TRIED TO CHOOSE SOMEBODY THAT IS MOST LIKE
6 ME THAT I COULD FIND; NOT JUST PHYSICALLY BUT
7 PERSONALITY, WHAT THEY'RE INTO, WHAT THEIR FAMILY IS
8 LIKE, TO LITERALLY TRY TO HAVE AS CLOSEST AS I COULD;
9 INCLUDING MY ANCESTRY, TO HAVE SOMEBODY JEWISH AND
10 EASTERN EUROPEAN, TO GET AT LEAST AS CLOSE I COULD, TO
11 TRY TO HAVE A BIOLOGICAL CHILD.

12 SO, TO ME, THOSE ARE NOT, LIKE, STRANGE
13 EMBRYOS, THEY'RE EMBRYOS TO ME THAT MATTER AND THAT I
14 CHOSE TO MAKE SPECIFICALLY WITH THAT WOMAN. IT
15 DOESN'T -- YOU KNOW, IT COULD HAVE BEEN ANYBODY, BUT
16 IT'S PATON FOR A REASON. AND YEAH, I DON'T WANT ANY OF
17 HIS MONEY, I DON'T WANT ANYTHING, I JUST WANT THE
18 CHANCE TO HAVE THE CHILDREN FROM THE EMBRYOS THAT
19 ALREADY EXIST. THEY ARE, TO ME, AS CLOSE AS I AM GOING
20 TO GET, AND IF I DON'T GET THEM, I DON'T THINK THAT
21 THIS IS GOING TO BE IN THE CARDS FOR ME; NOT THAT
22 ADOPTION ISN'T OR SOMETHING LIKE THAT, YOU KNOW.

23 I'M JUST SAYING THAT I DON'T -- IT JUST
24 SEEMS AS A SACRILEGE AFTER ALL THE MONEY AND THE WORK
25 AND PRAYING I WENT INTO MAKING THEM, TO JUST GET RID OF
26 THEM, IT DOESN'T FEEL RIGHT TO ME AND THAT'S --

27 THE COURT: OKAY. MA'AM, AGAIN, I'M ASKING
28 YOUR FEELINGS ON THE DIFFERENT -- BECAUSE ONE HAS YOUR

1 GENETIC MATERIAL, OBVIOUSLY, AND THE OTHER ONE DOESN'T
2 HAVE YOUR GENETIC MATERIAL, AND THAT'S WHY I WAS ASKING
3 YOU HOW DO YOU FEEL ABOUT DIFFERENT SIDES OF IT. OKAY.
4 MR. GEKHT?

5 MR. GEKHT: THANK YOU.

6
7 EXAMINATION

8
9 BY MR. GEKHT:

10 Q. WHEN YOU TESTIFIED THAT IT WAS HUNDREDS OF
11 THOUSANDS OF DOLLARS FOR SURROGACY, DO YOU HAVE AN
12 UNDERSTANDING OF HOW MUCH IT WOULD COST TO GET AN EGG
13 DONOR?

14 MR. HOWELL: OBJECTION. SPECULATION.

15 THE COURT: OVERRULED. HE'S ASKING IF SHE
16 KNOWS.

17 THE WITNESS: ARE YOU ASKING ME ABOUT A
18 SPECIFIC PART OF EVERY PROCESS OR FOR, LIKE, THE ENTIRE
19 THING?

20 BY MR. GEKHT:

21 Q. EITHER OR.

22 A. IT'S ABOUT \$30,000 FOR A SURROGATE.

23 Q. OKAY. AND THEN, HOW MUCH MORE TO TAKE YOU
24 FROM \$0 TO DONOR EGGS, FERTILIZED WITH DONOR SPERM, IF
25 YOU KNOW?

26 A. I HAVE NO IDEA. MORE EXPENSIVE THAN WHAT WE
27 DID BECAUSE WE ALREADY HAVE THE SPERM.

28 Q. DID YOU LOOK INTO HOW MUCH IT'S GOING TO COST?

1 A. IT'S GOING TO BE IN THE HUNDREDS OF THOUSAND
2 DOLLARS. I'M NOT GOING TO BREAKDOWN A WORKSHEET
3 BECAUSE I DON'T WORK AT A FERTILITY CLINIC; BUT IF
4 YOU'D LIKE ME TO, I COULD LOOK IT UP.

5 Q. MY QUESTION IS, HAVE YOU LOOKED IT UP?

6 A. YES, I HAVE. IT IS PROHIBITIVE.

7 Q. WHAT WAS THE NUMBER THAT WAS PROHIBITIVE?

8 A. I'M NOT SURE WHAT YOU WOULD LIKE ME TO SAY. I
9 DON'T EVEN HAVE \$30,000 TO PUT TOWARDS THIS, SO
10 HUNDREDS OF THOUSANDS. WHETHER IT'S \$100,000,
11 \$200,000, \$300,000, IT DOESN'T MATTER TO ME, IT'S THE
12 SAME BECAUSE I CAN'T AFFORD IT.

13 Q. YOU JUST RECEIVED \$2 MILLION ON OR AROUND JULY
14 OF -- SORRY, JANUARY 31ST OF THIS YEAR FROM MAX IN
15 CASH, AS PART OF YOUR EQUALIZATION; CORRECT?

16 A. YEAH.

17 Q. DO YOU STILL HAVE THAT MONEY?

18 A. NOT ALL OF IT, NO.

19 Q. HOW MUCH DO YOU HAVE LEFT?

20 A. I'M NOT EXACTLY SURE THAT THIS IS -- YOU DON'T
21 GET TO DECIDE HOW MUCH I SPEND ON WHAT, AND IT SEEMS
22 REALLY WEIRD TO GIVE A TALLY OF MY BANK ACCOUNT RIGHT
23 NOW.

24 MR. GEKHT: MOTION TO STRIKE AS NONRESPONSIVE.

25 THE COURT: SUSTAINED. MA'AM, YOU REPRESENTED
26 THAT YOU COULD NOT AFFORD TO DO THIS BECAUSE IT WOULD
27 COST IN THE HUNDREDS OF THOUSANDS OF DOLLARS. HIS
28 STATEMENT IS YOU JUST RECEIVED \$2 MILLION. SO YOU

1 BASICALLY PUT YOUR FINANCIAL SITUATION OUT THERE, SO
2 THAT'S WHY I'M ALLOWING IT.

3 THE WITNESS: I'M SAYING, JUST BECAUSE SOMEONE
4 RECEIVED A CERTAIN AMOUNT OF MONEY, DOESN'T MEAN THAT
5 THAT IS NOW FULLY AVAILABLE TO A THING. IT'S ALREADY
6 NOT THAT SUM. I'M STILL PAYING ATTORNEY'S FEES, I'M
7 STILL PAYING MY ACCOUNTANTS. MY MOM IS 75, I TAKE CARE
8 OF HER, LIKE, NOW SO --

9 THE COURT: YOU SAID A SURROGATE IS ABOUT
10 \$30,000, BUT YOU DIDN'T BREAK OUT TO ME -- SO, IF I
11 WANT TO GO OUT AND BUY EGGS, I GO ON EBAY -- I'M BEING
12 FACETIOUS ABOUT THAT, BUT WHAT DOES IT COST TO BUY
13 DONOR EGGS? I DON'T KNOW, I'M ASKING YOU TO GIVE ME AN
14 IDEA OF WHAT -- YOU KEEP SAYING IT PROHIBITIVE, BUT I
15 DON'T KNOW WHAT THAT MEANS.

16 THE WITNESS: OKAY. SO, YOU GO THROUGH AN
17 AGENCY FOR EVERY PART OF IT, AND ALL THE AGENCIES ARE
18 SEPARATE. SO, THERE'S AN AGENCY THAT FINDS YOU AN EGG,
19 AN AGENCY THAT FINDS YOU A SURROGATE, AND AN AGENCY
20 THAT FINDS YOU, LIKE, WHATEVER OTHER THINGS ARE IN THE
21 PROCESS. THEY'RE ALL SEPARATE. SO, ONE WILL BE LIKE
22 15 GRAND --

23 THE COURT: OKAY. SO, IF I GO TO AN AGENCY TO
24 GET EGGS, WHAT AM I LOOKING AT PRICE-WISE?

25 THE WITNESS: THE PICK-UP IS GOING TO BE ABOUT
26 15 TO 20.

27 THE COURT: OKAY. SO, BECAUSE YOU'RE NO
28 LONGER MARRIED TO MR. BORENSTEIN, YOU NOW NEED A SPERM

1 DONOR. WHAT IS THAT ROUGHLY GOING TO COST?

2 THE WITNESS: I DON'T KNOW.

3 THE COURT: ANY IDEA OFF THE TOP OF YOUR HEAD?
4 YOU SAID YOU DID THE RESEARCH, I'M ASKING YOU --

5 THE WITNESS: NO, I DID, BUT I DIDN'T LOOK AT
6 THE SPERM PART OF IT.

7 THE COURT: OKAY. SO, IF THE EGG DONOR IS 15
8 TO 20, THE SPERM DONOR IS PROBABLY CHEAPER?

9 THE WITNESS: DEFINITELY CHEAPER.

10 THE COURT: OKAY. AND THE SURROGATE IS ABOUT
11 \$30,000. SO, RIGHT THERE, WE'RE LOOKING AT ROUGHLY
12 AROUND \$60,000?

13 THE WITNESS: AND THIS DOESN'T INCLUDE PAYING
14 FOR THE HEALTH INSURANCE FOR THE SURROGATE THE ENTIRE
15 TIME SHE'S PREGNANT; DOESN'T INCLUDE ANY OF THE
16 CONTRACT STUFF, WHERE YOU HAVE TO, LIKE, BASE AMOUNTS
17 FOR DIFFERENT PARTS OF IT; IT DOESN'T INCLUDE, SAY, ANY
18 OF THE -- I MEAN, THERE'S SO MANY MORE THINGS,
19 BASICALLY, THAT ARE NOT JUST THOSE BASIC COSTS THAT
20 LOOK LIKE --

21 THE COURT: SO ARE WE TALKING ABOUT A
22 \$100,000?

23 THE WITNESS: PROBABLY.

24 THE COURT: OKAY. AGAIN, I'M TRYING TO
25 FIND -- I'VE NEVER GONE THROUGH THAT PROCESS, MA'AM, SO
26 THAT'S WHY I'M ASKING YOU BECAUSE I DON'T KNOW, SO I
27 WANT TO MAKE SURE I HAVE ALL THE --

28 THE WITNESS: ALL THE TESTING IS ALSO HUGE

1 EXPENSIVE AND GENERALLY NOT COVERED, TO MAKE SURE THAT
2 GENETICALLY THE EMBRYOS ARE GOOD.

3 THE COURT: BUT ROUGHLY, FROM START TO FINISH,
4 \$100,000 WOULD BE A FAIR --

5 THE WITNESS: I'M COMFORTABLE WITH YOU SAYING
6 THAT.

7 THE COURT: OKAY. MR. GEKHT?

8 MR. GEKHT: I STILL HAVEN'T GOTTEN MY ANSWER
9 TO MY QUESTION, HOW MUCH OF THE \$2 MILLION SHE HAS
10 LEFT.

11 THE COURT: ASSUMING THAT YOU GOT THIS \$2
12 MILLION, MA'AM, THEORETICALLY, IS THERE \$100,000 IN
13 THERE --

14 THE WITNESS: YES.

15 MR. GEKHT: THANK YOU, YOUR HONOR.

16 BY MR. GEKHT:

17 Q. AND BY THE WAY, IN ADDITION TO THAT, YOU ALSO
18 HAD \$600,000 ALREADY SAVED FROM FUNDS RECEIVED FROM
19 MAX, IN THIS DIVORCE, IN YOUR MORGAN STANLEY ACCOUNT;
20 CORRECT?

21 A. I DID NOT, I BOUGHT A HOME.

22 Q. YOU BOUGHT A HOME IN CASH?

23 THE COURT: YOU HAVE TO SAY "YES" OUT LOUD,
24 MA'AM, YOU'RE NODDING YOUR HEAD.

25 THE WITNESS: SORRY, YES.

26 BY MR. GEKHT:

27 Q. AND YOU BOUGHT IT FOR AROUND \$600,000;
28 CORRECT?

1 A. YES.

2 Q. AND YOU LIVE IN THAT HOME; CORRECT?

3 A. CORRECT.

4 Q. SO YOU HAVE NO MORTGAGE ON THAT HOUSE;
5 CORRECT?

6 A. YES.

7 Q. AND IN ADDITION TO THAT, YOU SIGNED A
8 STIPULATION THAT, FOR ALL PURPOSES IN THIS CASE, YOU
9 ARE DEEMED TO BE EARNING \$7,000 A MONTH; CORRECT?

10 A. THAT'S SOMETHING THAT I HAD TO TESTIFY TO WHEN
11 WE WERE DISCUSSING SPOUSAL SUPPORT, AND I BELIEVE IT
12 WAS A VERY COMPLICATED THING.

13 Q. DO YOU RECALL SIGNING A STIPULATION THAT
14 SAYS --

15 A. YES, I RECALL IT.

16 Q. GREAT --

17 MR. HOWELL: OBJECTION. AT THIS POINT, I
18 THINK WE'VE ADDRESSED THE FINANCIAL ASPECT OF THIS.

19 MR. GEKHT: THAT WAS MY LAST QUESTION, SO
20 MR. HOWELL IS CORRECT.

21 THE COURT: HER INCOME WAS \$7,000.

22 MR. GEKHT: YES.

23 BY MR. GEKHT:

24 Q. YOU HEARD WHEN MAX TESTIFIED ABOUT THE TWO
25 CONTRACTS WITH THE REPRODUCTIVE CENTER; CORRECT?

26 A. YES.

27 Q. DID YOU SIGN THOSE CONTRACTS?

28 A. YES.

1 Q. DID YOU REVIEW THEM BEFORE YOU SIGNED THEM?

2 A. YES.

3 Q. DID YOU UNDERSTAND WHAT YOU WERE SIGNING WHEN
4 YOU SIGNED IT?

5 A. YES.

6 Q. DID YOU AND MAX HAVE A DISCUSSION AT THE TIME
7 YOU SIGNED THE FIRST CONTRACT, IN CASE OF DIVORCE, THE
8 EMBRYOS WOULD BE DONATED TO MEDICAL RESEARCH?

9 A. WE HAD THREE SEPARATE DISCUSSIONS FOR EACH.

10 Q. FOR EACH CONTRACT?

11 A. YEAH.

12 Q. DID THE CONTRACT THAT YOU SIGNED, AT THE TIME
13 THAT YOU SIGNED IT, I'M TALKING ABOUT EXHIBIT 1, THE
14 FIRST CONTRACT, CORRECTLY STATE YOUR INTENTION OF WHAT
15 WOULD HAPPEN TO THE EMBRYOS IN CASE OF YOU AND MAX
16 SEPARATING?

17 A. I THINK THE FIRST ONE IS FROM 2016, AND I
18 DON'T THINK I'VE EVER SEEN IT.

19 Q. I'M TALKING ABOUT EXHIBIT 1, MA'AM.

20 THE COURT: SHE DOESN'T HAVE THE -- DO YOU
21 WANT TO SEE IT, MA'AM?

22 THE WITNESS: YEAH --

23 THE COURT: HE TOOK THE --

24 MR. GEKHT: SORRY, I DIDN'T REALIZE IT WAS NOT
25 IN FRONT OF HER. MAY I APPROACH THE WITNESS, YOUR
26 HONOR?

27 THE COURT: YEAH.

28 BY MR. GEKHT:

1 Q. IF YOU COULD TAKE A SECOND AND REVIEW
2 EXHIBIT 1, AGAIN, PLEASE, AND LET ME KNOW WHEN YOU'RE
3 DONE. SPECIFICALLY, IF YOU COULD GO TO PAGE 6 OF 11,
4 THAT'S THE PAGE THAT HAS ALL THE SIGNATURES.

5 A. UH-HUH.

6 THE COURT: IS THAT "YES"?

7 THE WITNESS: SORRY, SORRY, YES. I'M ON IT.

8 BY MR. GEKHT:

9 Q. ARE THOSE YOUR SIGNATURES WHERE ABOVE THE LINE
10 "PARTNER"?

11 A. YES.

12 Q. DID YOU SIGN THIS DOCUMENT ON FEBRUARY 8TH,
13 2022?

14 A. I'M LOOKING AT 7/10/21, IS THAT NOT WHAT WE'RE
15 LOOKING AT?

16 Q. I APOLOGIZE, YOU'RE RIGHT, I'M WRONG. I HAD
17 WRONG EXHIBIT UP. 7/10/21?

18 A. UH-HUH.

19 Q. WAS THAT A "YES"?

20 A. YES.

21 Q. IF YOU GO TO PAGE 9 OF 11, PLEASE.

22 A. YES.

23 Q. WAS IT YOUR INTENTION ON JULY 10TH OF 2021, TO
24 DONATE FOR MEDICAL RESEARCH THE EMBRYOS THAT WOULD BE
25 REMAINING IN THE EVENT OF DIVORCE, DISSOLUTION, OR
26 LEGAL SEPARATION?

27 A. YES.

28 Q. AND DOES THIS DOCUMENT ACCURATELY REFLECT YOUR

1 INTENTION AT THE TIME THAT YOU SIGNED IT?

2 A. YES.

3 Q. I'M GOING TO ASK YOU TO PLEASE GO TO
4 EXHIBIT 4. AND LET ME KNOW IF YOU HAVE TROUBLE
5 NAVIGATING.

6 MR. HOWELL: I'M GOING TO OBJECT TO THE LAST
7 TWO QUESTIONS. I DIDN'T KNOW --

8 THE COURT: IT'S A LITTLE LATE FOR THAT, SHE
9 ALREADY ANSWERED.

10 MR. HOWELL: BUT IT'S NOT THE ANSWER, IT'S THE
11 QUESTIONS AND THE ANSWERS THAT I WOULD LIKE STRICKEN,
12 BECAUSE THE QUESTIONS DIDN'T IDENTIFY WHICH EMBRYOS
13 WE'RE TALKING ABOUT.

14 THE COURT: WELL, HE'S ASKING IF THIS
15 AGREEMENT, BASICALLY -- IF THIS WAS HER POSITION WHEN
16 SHE SIGNED THIS AGREEMENT, THAT THEY COULD BE DESTROYED
17 OR TURNED OVER TO MEDICAL RESEARCH.

18 MR. HOWELL: MY OBJECTION IS ABOUT THE
19 VAGUENESS AS TO "THEY," WHAT COULD BE DESTROYED?

20 THE COURT: THEY COULD BE DESTROYED OR TURNED
21 OVER TO MEDICAL RESEARCH.

22 MR. HOWELL: WHAT COULD BE TURNED OVER TO
23 MEDICAL RESEARCH?

24 THE COURT: IT SAID "ALL." THE DOCUMENT SAYS
25 "ALL."

26 OVERRULED. SHE ALREADY ANSWERED -- THE
27 PROBLEM IS YOU WAITED TO LATE, YOU WAIVED THE
28 OBJECTION.

1 THE WITNESS: I'M ON THAT PAGE.

2 BY MR. GEKHT:

3 Q. YOU'RE ON EXHIBIT 4, AND IF I COULD HAVE YOU
4 FIRST GO TO PAGE 6 OF EXHIBIT 4. DO YOU SEE THERE,
5 BELOW MAX'S SIGNATURE, THERE'S SIGNATURES, ARE THOSE
6 YOUR SIGNATURES?

7 A. YES.

8 Q. AND DID YOU SIGN THIS DOCUMENT ON
9 FEBRUARY 8TH, 2022?

10 A. YES.

11 Q. AND DID YOU SIGN THIS DOCUMENT IN CONJUNCTION
12 WITH THE APPROXIMATELY 19 EMBRYOS THAT HAVE DONOR
13 GENETIC MATERIAL AND MAX'S GENETIC MATERIAL?

14 A. NO.

15 Q. WHAT EMBRYOS, IF ANY, DID YOU SIGN THIS
16 DOCUMENT IN RELATION TO?

17 A. THERE WERE NEVER 19, THERE WERE ONLY EVER 12,
18 6 BOYS AND 6 GIRLS.

19 Q. DID YOU SIGN IT IN RELATION TO THOSE?

20 A. YES.

21 Q. AND THOSE HAVE MAX'S GENETIC MATERIAL AND
22 DONOR GENETIC MATERIAL; CORRECT?

23 A. CORRECT.

24 Q. IF YOU COULD PLEASE GO TO PAGE 9, WHERE YOU
25 SEE "IN THE EVENT OF DIVORCE, ALL EMBRYOS TO BE
26 TRANSFERRED TO MALE PARTNER." DO YOU SEE THAT?

27 A. ON 9?

28 Q. PAGE 9.

1 A. OH, YEAH, OKAY.

2 Q. DO YOU SEE THAT?

3 A. YES, I DO.

4 Q. WAS THAT YOUR INTENTION AT THE TIME YOU
5 INITIALED THIS?

6 A. YES.

7 Q. AND DID YOU INITIAL THIS AT THE SAME TIME YOU
8 SIGNED IT, ON FEBRUARY 8TH, 2022?

9 A. I ASSUME IT WAS ALL THE SAME DAY, YEAH.

10 Q. AND WAS THAT ELECTION THAT WAS MADE ON THE
11 DOCUMENTATION A RESULT OF YOUR DISCUSSIONS WITH MAX?

12 A. YEAH.

13 Q. SO, WE'VE TALKED ABOUT EXHIBIT 4. EXHIBIT 1,
14 THAT WE TALKED ABOUT, DID YOU SIGN EXHIBIT 1 IN
15 RELATION TO THE -- AT LEAST TO THE EMBRYO, THE SOLE
16 REMAINING EMBRYO THAT HAS YOUR GENETIC MATERIAL AND
17 MAX'S GENETIC MATERIAL?

18 A. LET ME LOOK AT EXHIBIT 1, AGAIN.

19 Q. OF COURSE.

20 A. YES. THIS IS IN RELATION TO THE REMAINING
21 EMBRYO THAT IS OUR GENETIC MATERIAL, YES.

22 Q. THANK YOU. COUPLE MORE QUESTIONS: YOU HAD
23 TESTIFIED ABOUT THE FACT THAT YOU WANT TO -- AND I'M
24 PARAPHRASING, TO HAVE A CHILD THAT'S GENETICALLY
25 YOURS -- IF YOU'RE UNABLE TO HAVE A CHILD THAT IS
26 GENETICAL YOURS, THAT'S GOING TO BE AS CLOSE AS
27 POSSIBLE TO YOUR GENETIC MAKEUP; CORRECT?

28 A. UH-HUH.

1 THE COURT: IS THAT "YES"?

2 THE WITNESS: YES. I'M SO SORRY, I'M NOT USED
3 TO --

4 BY MR. GEKHT:

5 Q. HAVE YOU LOOKED INTO ADOPTION OF CHILDREN FROM
6 UKRAINE TO SHARE YOUR GENETIC MAKEUP?

7 MR. HOWELL: OBJECTION. RELEVANCE.

8 THE COURT: OVERRULED.

9 THE WITNESS: HAVE I RESEARCHED ADOPTION AS AN
10 OPTION, YEAH, I'VE LOOKED INTO IT.

11 BY MR. GEKHT:

12 Q. SPECIFICALLY CHILDREN FROM UKRAINE THAT SHARE
13 YOUR GENETIC MAKEUP?

14 A. I DID NOT, BECAUSE I DIDN'T KNOW THAT YOU
15 COULD REALLY -- I JUST KNOW -- I MEAN, I GUESS I NEVER
16 THINK OF SORTING THEM THAT WAY, I ONLY DID IT FOR WHEN
17 I WAS MAKING EMBRYOS. I DON'T LOOK AT IT AS AN
18 EXISTING CHILD, IF THAT MAKES SENSE.

19 MR. GEKHT: NOTHING FURTHER, YOUR HONOR.

20 MR. HOWELL: I HAVE A FEW QUESTIONS.

21 THE COURT: SURE.

22

23 EXAMINATION

24

25 BY MR. HOWELL:

26 Q. SOFIYA, YOU TESTIFIED THAT -- WAS IT
27 EXHIBIT 1 -- APPLIED TO YOUR LAST REMAINING BIOLOGICAL
28 EMBRYO?

1 A. YES.

2 Q. AND WHEN WAS THAT DOCUMENT SIGNED?

3 MR. GEKHT: OBJECTION. ASKED AND ANSWERED.

4 MR. HOWELL: WELL, I'M TRYING TO --

5 THE COURT: OVERRULED.

6 THE WITNESS: 7/10/21.

7 BY MR. HOWELL:

8 Q. AND WHEN DID YOU -- DID YOU SAY THAT YOU
9 CREATED THE OTHER EMBRYO IN 2020 -- I'M SORRY. THE
10 LAST REMAINING EMBRYOS THAT WERE BIOLOGICALLY YOURS,
11 WAS THAT 2020?

12 A. UH-HUH.

13 THE COURT: IS THAT "YES"?

14 THE WITNESS: YES.

15 BY MR. HOWELL:

16 Q. ARE YOU SURE THIS CONTRACT DEFINITELY APPLIES
17 TO THE 2020 EMBRYOS?

18 A. I THINK SO. I GUESS I'M NOT SURE, SURE.

19 Q. CAN YOU LOOK AT THAT DOCUMENT AND SEE IF
20 THERE'S ANYWHERE IN THERE THAT INDICATES TO WHICH
21 EMBRYOS IT REFERS?

22 A. NO. THE DOCUMENT DOESN'T HAVE ANY SPECIFICS
23 LIKE THAT.

24 Q. OKAY. AS WE WERE ENDING QUESTIONING, YOU SAID
25 YOU NEEDED TO CLARIFY SOMETHING. SO I WANT TO ASK YOU,
26 IS THERE ANYTHING YOU NEED TO CLARIFY?

27 MR. GEKHT: OBJECTION. BEYOND THE SCOPE OF
28 CROSS.

1 THE COURT: I'LL ALLOW IT.

2 THE WITNESS: I JUST WANTED TO CLARIFY,
3 THERE'S NOT 19 EMBRYOS, THERE'S 12. AND I ALSO -- WHEN
4 I CHECKED WITH THE FACILITY, THE NUMBER WASN'T EVEN
5 THAT, SO --

6 MR. GEKHT: MAY I INQUIRE WHEN --

7 THE COURT: HANG ON. LET MR. HOWELL FINISH.
8 BY MR. HOWELL:

9 Q. SO, LET'S START WITH YOUR RECOLLECTION, YOUR
10 UNDERSTANDING, I WANT TO GET SOME CLARITY. YOU JUST
11 SAID 12, DO YOU MEAN 12 DONOR EGGS?

12 A. NO. TWELVE FERTILIZED EMBRYOS, SIX BOYS AND
13 SIX GIRLS.

14 Q. AND THEN THERE'S ONE THAT --

15 A. A GIRL.

16 Q. SO IS THAT 13 OR 12?

17 A. THIRTEEN TOTAL.

18 Q. OKAY. AND YOU SAID YOU CONTACTED THE STORAGE
19 FACILITY?

20 A. YEAH. SO, THE EGGS -- THE EMBRYOS ARE STORED
21 IN TWO DIFFERENT PLACES, AND WHEN I CHECKED THE
22 RECORDS, ALL THE EMBRYOS LEFT DON'T ADD UP TO 12.

23 THE COURT: WHAT DO THEY ADD UP TO, 13; RIGHT?

24 THE WITNESS: NO, EIGHT.

25 THE COURT: THERE'S ONLY EIGHT THERE?

26 THE WITNESS: YEAH.

27 THE COURT: DO WE KNOW WHAT HAPPENED TO THE
28 OTHER ONES?

1 THE WITNESS: THERE'S NO CONTRACTS OR
2 ANYTHING, THERE'S NOTHING THAT WOULD SUGGEST THAT --

3 THE COURT: SO JUST DISAPPEARED?

4 THE WITNESS: LITERALLY HAVE NO IDEA.

5 THE COURT: SO THERE'S EIGHT --

6 THE WITNESS: PRESUMABLY --

7 THE COURT: IS IT 1 AND THE 7, OR 8, BUT WE
8 DON'T KNOW WHAT MAKES UP THE 8?

9 THE WITNESS: IT'S EIGHT, AND WE DON'T KNOW
10 WHAT MAKES UP THE EIGHT. AND THE TIMING OF THE -- DOES
11 NOT MAKE SENSE, OF THE RECORDS.

12 BY MR. HOWELL:

13 Q. IS THERE ANOTHER STORAGE FACILITY WHERE THE
14 BALANCE MAY BE LOCATED?

15 A. IT WOULDN'T MAKE SENSE, BECAUSE COMPLETELY
16 DIFFERENT -- LIKE, ONE WAS DONE THROUGH THE ART
17 REPRODUCTIVE CENTER AT CEDAR'S, THE OTHER ONE WAS DONE
18 THROUGH NEWPORT, AND THAT'S THE ONE THAT INVOLVES THE
19 DONOR EGGS. SO I DON'T -- THEY'RE NOT THE SAME
20 FACILITY.

21 THE COURT: SO DOES THE ONE WITH BOTH OF YOUR
22 GENETIC MATERIAL, DOES THAT STILL EXIST?

23 THE WITNESS: I HOPE SO, I HOPE THAT ART
24 REPRODUCTIVE CENTER STILL HAS IT.

25 THE COURT: DID YOU CALL THEM?

26 THE WITNESS: UH-HUH.

27 THE COURT: IS THAT "YES"?

28 THE WITNESS: YES, SORRY.

1 THE COURT: DID THEY SAY IT STILL EXISTS?

2 THE WITNESS: YES, BUT THERE'S NO -- I DON'T
3 HAVE A RECORD OF WHAT OR WHEN IT'S FROM OR -- IT'S NOT
4 LIKE IT'S LABELED, LIKE IS IT THE GIRL? IS IT THE
5 OTHERS? IS IT --

6 THE COURT: THEY DON'T HAVE, LIKE, A LABEL
7 LIKE THIS WAS DONE ON THIS DATE --

8 THE WITNESS: I THINK THAT OURS, THE ONE THAT
9 WE MADE IS AT ART, AND I THINK THE OTHERS ARE AT THE
10 NEWPORT ONE; BUT THE DATES ON THEM DON'T MAKE SENSE.
11 SO I DON'T KNOW HOW TO ANSWER THAT.
12 BY MR. HOWELL:

13 Q. COULD YOU SAY WHY THEY DON'T MAKE SENSE, THE
14 DATES DON'T MAKE SENSE?

15 A. YEA. SO, SIX EMBRYOS ARE FROM A TIME PERIOD
16 THAT IT WOULD MAKE SENSE THEY WERE DONOR EGGS THAT WERE
17 FERTILIZED TO BECOME THE EMBRYOS, SO THEY COULD BE PART
18 OF THE ORIGINAL 12. THEN THERE'S TWO THERE THAT ARE
19 FROM DATES THAT DON'T MAKE SENSE.

20 THE COURT: LIKE, FOR EITHER ONE OF YOU, LIKE
21 1972, LIKE A RANDOM DATE --

22 THE WITNESS: NO, BUT ON MONTHS THAT NOT
23 RELATED TO ANY OF THE RETRIEVALS OR FERTILIZATIONS.
24 AND IT'S WEIRD IT'S TWO, BECAUSE OBVIOUSLY I KNOW THAT
25 I ONLY EVER HAD TWO, THEN TWO, AND THEN ONLY ONE LEFT.
26 SO I HAVE NO FREAKING IDEA.

27 THE COURT: BUT THIS ISN'T SOMETHING
28 MR. BORENSTEIN DID, THIS SOUNDS LIKE SOMETHING THE

1 FACILITY GOT SCREWED UP. YOU'RE NOT ALLEGING
2 MR. BORENSTEIN DID ANYTHING, THIS IS MORE --

3 MR. GEKHT: NO.

4 THE WITNESS: NO ONE KNOWS, NO ONE KNOWS, I
5 HAVE NO IDEA.

6 MR. HOWELL: THERE'S NO ACCUSATION?

7 THE WITNESS: NO, NOT AT ALL.

8 THE COURT: THIS IS MORE THE FACILITY HAS DONE
9 SOMETHING. OKAY. DO YOU WANT TO ASSIGN YOUR RIGHTS TO
10 SUE --

11 THE WITNESS: I PREFER NEVER TO GO TO COURT,
12 AGAIN.

13 MR. HOWELL: I HAVE NO FURTHER QUESTIONS AT
14 THIS TIME.

15 THE COURT: MR. GEKHT?

16 MR. GEKHT: JUST A COUPLE OF THINGS.

17

18 EXAMINATION

19

20 BY MR. GEKHT:

21 Q. YOU SAID YOUR FIRST FERTILIZATION WAS AT ART
22 REPRODUCTIVE -- SORRY -- FIRST PROCESS WAS AT ART
23 REPRODUCTIVE; CORRECT?

24 A. YES.

25 Q. WHEN DID YOU CONTACT ART REPRODUCTIVE TO CHECK
26 WHAT THEY HAD IN TERMS OF EMBRYOS?

27 A. LIKE EARLIER IN THE YEAR, I WOULD SAY.

28 Q. AND HOW DID YOU KNOW TO CONTACT ART

1 REPRODUCTIVE AND NOT, YOU KNOW, JOHN SMITH REPRODUCTIVE
2 CENTER?

3 A. I MEAN, I HAVE AN E-MAIL CHAIN FROM WHEN WE
4 DEALT WITH THEM.

5 Q. AND IS THE SAME TRUE FOR NEWPORT?

6 A. YES. AND I COULD LOG INTO THE SYSTEM TO SEE
7 THE INVOICES.

8 MR. GEKHT: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ANYTHING FURTHER?

10 MR. HOWELL: THAT IS ALL.

11 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
12 DOWN.

13 THE WITNESS: THANK YOU.

14 MR. GEKHT: SORRY, YOUR HONOR. ONE MORE
15 QUESTION REAL QUICK.

16 THE COURT: YOU COULD HAVE A SEAT, MA'AM, HE
17 COULD ASK YOU FROM THERE.

18 MR. GEKHT: THANK YOU SO MUCH.

19 BY MR. GEKHT:

20 Q. IN YOUR COMMUNICATIONS WITH ART OR WITH
21 NEWPORT IN THE LAST YEAR, DID ANYTHING PREVENT YOU FROM
22 ASKING FOR A COPY OF ANY CONTRACTS YOU SIGNED WITH
23 THEM?

24 A. I DIDN'T CALL NEWPORT, I WENT ON THE WEB
25 THING, AND THEY DON'T HAVE THAT AGREEMENT THERE.

26 Q. DID ANYTHING PREVENT YOU FROM CALLING OR
27 FURTHER MAKING AN INQUIRY?

28 A. NO.

1 Q. DID ANYTHING PREVENT YOU FROM CALLING ART
2 REPRODUCTIVE AND MAKING AN INQUIRY?

3 A. NO.

4 Q. AND YOU KNEW WHAT THE NAMES OF THE FACILITIES
5 WERE; CORRECT?

6 A. YES.

7 MR. GEKHT: NOTHING FURTHER, YOUR HONOR.

8 MR. HOWELL: FOLLOW-UP QUESTION.

9 THE COURT: SURE.

10

11 EXAMINATION

12

13 BY MR. HOWELL:

14 Q. DID YOU HAVE ANY REASON TO BELIEVE THAT THEY
15 WERE THE CUSTODIANS OF ANY EMBRYO DISPOSITION
16 AGREEMENTS?

17 A. NO.

18 MR. HOWELL: THAT IS ALL.

19 THE COURT: THIS IS OPEN-ENDED TO YOU, MA'AM,
20 SO YOU COULD EXPLAIN AS MUCH AS YOU WANT, I'M NOT GOING
21 TO CUT YOU OFF. BUT YOU SIGNED AGREEMENTS --

22 MS. GOLDSHTEYN: UH-HUH.

23 THE COURT: IS THAT A "YES"?

24 MS. GOLDSHTEYN: YES.

25 THE COURT: AND BOTH THE AGREEMENTS YOU SIGNED
26 HAD DISPOSITIONS, THAT YOU GUYS TALKED ABOUT, YOU READ
27 YOU REVIEWED, YOU SIGNED IT, YOU SAID "I AGREE THAT IF
28 THIS DOESN'T WORK OUT, IF OUR MARRIAGE FALLS APART, I

1 AGREE THIS IS WHAT'S GOING TO HAPPEN." WHY SHOULDN'T I
2 PUT PURPOSE TO YOUR WORDS? I MEAN, YOU AGREED TO THIS.
3 I MEAN, WHY SHOULDN'T I ENFORCE WHAT YOU AGREED WITH
4 MR. BORENSTEIN WITH, BECAUSE -- AND LET ME JUST POINT
5 THIS OUT, I MEAN, IT'S QUITE POSSIBLE IF YOU SAID "I
6 REFUSE TO DO THIS," HE MAY NOT HAVE DONE THE OTHER.
7 RIGHT?

8 HE MIGHT HAVE SAID "WELL, I'M NOT GOING
9 TO GO THROUGH WITH THE SECOND ROUND, I AM NOT GOING TO
10 BUY THE DONOR EGGS, IF YOU'RE NOT GOING TO -- IF WE GET
11 DIVORCED --" DO YOU UNDERSTAND WHAT I'M SAYING? HOW
12 DOES HE GET THE BENEFIT OF HIS BARGAIN? YOU WANT ME TO
13 DISREGARD IT AND GIVE YOU EVERYTHING, BUT THAT'S NOT
14 WHAT YOU GUYS NEGOTIATED FOR.

15 MS. GOLDSHTEYN: WHAT I THINK --

16 THE COURT: THAT'S WHAT I'M ASKING YOU, I'M
17 OPEN-ENDED. YOU READ THE AGREEMENT, YOU SIGNED IT, NOW
18 I'M ASKING YOU WHY SHOULDN'T I ENFORCE IT?

19 MS. GOLDSHTEYN: I THINK THE MAIN REASON IS
20 THAT, IF I WIN OR WHATEVER, I WIN A CHANCE OF HAVING A
21 BIOLOGICAL CHILD; THAT HE IN NO WAY HAS TO BE
22 RESPONSIBLE FOR. IF HE WINS, HE DESTROYS MY ONLY
23 CHANCE FOR A BIOLOGICAL CHILD, IN ADDITION TO THESE
24 OTHER ONES THAT I ALSO WAS A PART OF CREATING. I TRIED
25 TO BUILD A FAMILY WITH THIS MAN FOR 17 YEARS, IT'S OKAY
26 THAT IT'S OVER, I NEVER THOUGHT THAT IT WOULD BE.

27 SO WHEN I WAS SIGNING THOSE DOCUMENTS,
28 THIS IS FOR A FUTURE I COULD'VE IMAGINED. THIS WAS MY

1 PARTNER FOR LIFE, I'VE KNOWN HIM SINCE WE WERE IN HIGH
2 SCHOOL. WE MET AT 23, WE'VE NEVER BEEN APART. SO I
3 DID NOT SIGN THOSE THINKING THIS IS ANY KIND OF REALITY
4 THAT'S GOING TO HAPPEN. AND, TO ME, SURE, THESE ARE
5 CONTRACTS, I'M NOT SAYING THEY'RE NOT, BUT AGAIN, IF HE
6 DOESN'T -- IF HE WINS, I LITERALLY LOSE SOMETHING; AND
7 IF I WIN, HE LOSES NOTHING, HE COULD HAVE HIS CHILDREN
8 ANYTIME HE WANTS, THIS WON'T BE AFFECTING HIM. WHEN WE
9 HAD SPOKEN IN PRIVATE ABOUT THIS, HE WAS LIKE "OH, SO
10 YOU WOULDN'T WANT ME TO PAY FOR ANYTHING" OR WHATEVER;
11 IT WAS OUTSIDE OF MY DEPOSITION.

12 AND I SAID "NO, NO, NO. I'LL SIGN
13 ANYTHING. AND, LIKE, I'M NOT GOING TO BE AN ASSHOLE,
14 I'LL TELL MY CHILD THAT YOU'RE THEIR FATHER." I'M NOT
15 GOING PREVENT ANYTHING, LIKE, I WILL BE COMPLETELY
16 NORMAL AND FAIR. I NEVER MET MY FATHER, AND I WOULD
17 HAVE NEVER WANT TO DO IT TO SOMEBODY ELSE. SO,
18 WHATEVER INVOLVEMENT HE WANTED TO HAVE, LIKE, IF WANTED
19 THE CHILD TO KNOW, NOT TO KNOW, I WOULD FOLLOW ANY OF
20 THAT, ABOUT HIM BEING A PARENT. I DON'T WANT ANYTHING
21 FINANCIAL OR ANY OTHER KIND OF SUPPORT.

22 TO ME, THIS IS -- IF THE CALIFORNIA
23 CONSTITUTION PROTECTS MY RIGHT TO BEAR A CHILD, WHY
24 SHOULD I BE PUNISHED FOR NOT HAVING A WOMB THAT WORKS
25 OR EGGS THAT WORK? BECAUSE IF I'D JUST GOTTEN
26 PREGNANT, IF MY WOMB WORKED, AND HE DECIDED THAT HE
27 DIDN'T WANT ME TO HAVE THAT BABY, I WOULD STILL BE ABLE
28 TO HAVE MY BABY, IT WOULD BE INSIDE ME. SO I DON'T GET

1 THE PROTECTION OF MY OWN BODY BECAUSE MY BODY IS
2 BROKEN, I DON'T THINK THAT THAT IS CONSTITUTIONALLY
3 FAIR. I DON'T THINK HE LOSES ANYTHING, BUT I REALLY
4 DO, AND THAT'S WHY -- THAT'S MY --

5 THE COURT: MR. BORENSTEIN, I GAVE HER AN
6 OPPORTUNITY, DID YOU WANT -- I MEAN, PARTIES REACH
7 AGREEMENTS ALL THE TIME WHEN THEY'RE MARRIED; THIS IS
8 YOUR CAR, THIS IS YOUR HOUSE, I'M BUYING THIS FOR YOU.
9 PEOPLE SIGN DOCUMENTS DURING THE COURSE OF MARRIAGE,
10 NOT REALIZING THAT THEY'RE GIVING UP SOMETHING, GETTING
11 SOMETHING. WHY SHOULD I ENFORCE THE CONTRACT AGAINST
12 HER?

13 MR. BORENSTEIN: I MEAN, WE MADE IT AFTER --
14 AS PART OF A THOUGHTFUL DELIBERATION. IF YOU'RE
15 ASKING -- AND I BELIEVE IT SHOULD STAND BECAUSE I STILL
16 FEEL THAT WAY, AND I UNDERSTAND SHE DOESN'T. ARE YOU
17 ASKING ME WHAT MY VERSION OF THAT IS IN TERMS OF HOW I
18 WOULD FEEL ABOUT A CHILD IN THE WORLD THAT WAS MINE BUT
19 NOT MINE --

20 THE COURT: I'LL BE HONEST WITH YOU, I SEE
21 THESE TWO AS TOTALLY DIFFERENT THINGS. I THINK THERE'S
22 A CATEGORICAL DIFFERENCE BETWEEN THE ONE THAT I
23 THINK -- WHERE I THINK I'M GOING TO HAVE TO GIVE MORE
24 THOUGHT TO THIS WHOLE PROCESS THAN THE OTHER, WHICH IS
25 THE EMBRYOS THAT DO NOT HAVE YOUR GENETIC MATERIAL; I
26 THINK IS IN A DIFFERENT CATEGORY THAN THE EMBRYO THAT
27 DOES HAVE YOUR GENETIC MATERIAL.

28 BECAUSE I THINK IN THAT ONE, IT'S SOLELY

1 HIS GENETIC MATERIAL. AND I KNOW YOU BOUGHT THEM AND
2 THEY WERE PAID FOR AND ALL THE OTHER STUFF, BUT YOU
3 COULD BUY THEM AGAIN. YOU COULD BUY SPERM AND YOU
4 COULD BUY EGGS THAT HAVE ALL THE GENETIC MARKERS THAT
5 YOU'RE LOOKING FOR, WITHOUT HIS GENETIC MAKEUP IN THEM.
6 THAT'S WHY I AM SAYING, THE ONE WITH YOUR GENETIC
7 MATERIAL IS IN A MUCH DIFFERENT SITUATION, A DIFFERENT
8 LIGHT, THAN THE ONE WITHOUT YOUR GENETIC MATERIAL.

9 BECAUSE, AGAIN, THAT PART COULD BE EASILY
10 REPRODUCED, IF THAT MAKES SENSE. YOU COULD GO OUT AND
11 BUY ANOTHER EGG, BUY ANOTHER SPERM, AND EASILY
12 REPRODUCE THAT PART OF IT, WITHOUT HIS GENETIC
13 MATERIAL. THE ONE WITH YOUR GENETIC MATERIAL IS A
14 LITTLE DIFFERENT, THAT'S WHY I'M SAYING I LOOK AT THESE
15 TWO TOTALLY DIFFERENT WAYS. GO AHEAD, SIR, FINISH WHAT
16 YOU WERE SAYING.

17 MR. BORENSTEIN: TO SPEAK TO THAT, THAT'S MY
18 FEELINGS AS WELL. AND TO SPEAK TO THE ONE WITH MY
19 GENETIC MATERIAL AND HER GENETIC MATERIAL; I VERY MUCH
20 UNDERSTOOD, WHILE WE WERE MARRIED, I LEARNED A LOT
21 ABOUT SOFIYA'S EXPERIENCE NOT KNOWING HER OWN FATHER,
22 AND IT WAS ALWAYS A VERY SORE SUBJECT FOR HER. NOT
23 ONLY BECAUSE OF THAT AND THE DAMAGE I SAW THAT CAUSED
24 HER EMOTIONALLY, BUT ALSO, BECAUSE I HAD A VERY CLOSE
25 RELATIONSHIP WITH MY FATHER, WHO SINCE PASSED AWAY.

26 AND I WOULD LIKE ONE DAY, MAYBE, TO HAVE
27 CHILDREN, BUT I DON'T WANT TO, IF I COULD AT ALL HELP
28 IT, HAVE A CHILD IN THIS WORLD THAT I DON'T HAVE A

1 RELATIONSHIP WITH. I BELIEVE I SHOULD HAVE THE RIGHT
2 TO HAVE A RELATIONSHIP WITH THAT CHILD AND RAISE THAT
3 CHILD TO THE BEST OF MY ABILITY, WITH SOMEONE OF MY
4 CHOICE.

5 AND SO, OBVIOUSLY, THAT IS NOT SOMETHING
6 THAT I WISH TO DO WITH SOFIYA. IT'S THE REASON WHY
7 WE'VE BEEN -- ONE OF THE MANY REASONS THAT WE'VE
8 SEPARATED AND GOTTEN DIVORCED, BECAUSE WE DON'T WORK
9 TOGETHER, I DON'T WANT TO RAISE A FAMILY WITH HER, AND
10 THAT'S WHAT THIS WOULD BE. BECAUSE I WOULDN'T WANT TO
11 JUST WALK AWAY AND LET A CHILD BE IN THIS WORLD THAT'S
12 MINE BUT NOT MINE. IT'S NOT LIKE DONATING SPERM, IT'S
13 A PERSON I KNOW, A MOTHER I KNOW, A MOTHER WHO I DON'T
14 WANT TO RAISE A CHILD WITH.

15 THE COURT: MA'AM?

16 MS. GOLDSHTEYN: I HAVE NO DESIRE TO RAISE A
17 CHILD WITH HIM, I DON'T REALLY UNDERSTAND WHAT HE'S
18 SAYING. BECAUSE A CHILD BELONGS TO THE PERSON THAT
19 RAISES THEM. IF I RAISE THE CHILD, IT WILL BE MY
20 CHILD, IT WILL NOT BE --

21 THE COURT: DOES THE CHILD HAVE A RIGHT TO
22 KNOW THEIR FATHER; AND IF THEIR FATHER DOESN'T WANT TO
23 KNOW THEM, DOES THAT CREATE A PROBLEM? I MEAN --

24 MS. GOLDSHTEYN: IF HE DOESN'T WANT TO KNOW
25 THEM, THAT'S FINE --

26 THE COURT: HE'S SAYING HE DOESN'T WANT TO
27 BRING A CHILD INTO THE WORLD; YOU'RE SAYING I WANT TO
28 BRING THIS CHILD INTO THE WORLD, THE CHILD EVENTUALLY

1 SAYS "I WANT TO KNOW WHO MY FATHER IS." AND THEN YOU
2 SAY EITHER "I'M NOT TELLING YOU," BUT OBVIOUSLY, IN
3 THIS DAY IN AGE, IT WON'T BE HARD TO FIGURE IT OUT, ALL
4 HE HAS TO DO IS GOOGLE YOUR NAMES, AND THIS LAWSUIT
5 WILL COME UP AND MY STATEMENT OF DECISION WILL BE
6 THERE, SHOULD IT GO YOUR WAY, AND HE'LL BE ABLE TO
7 FIGURE OUT EXACTLY WHO HIS FATHER IS. RIGHT?

8 MS. GOLDSHTEYN: I'VE NEVER PRETENDED OR
9 WANTED TO HIDE THAT INFORMATION.

10 THE COURT: I'M NOT SAYING YOU WOULD. BUT
11 NOW, THIS CHILD SHOWS UP AT MR. BORENSTEIN'S DOOR AND
12 SAYS "I'M YOUR SON" OR "I'M YOUR DAUGHTER, WHY DON'T
13 YOU WANT ME?" NOW HE'S PUT IN THAT POSITION OF HAVING
14 TO, BASICALLY, IN ESSENCE, THROW THIS CHILD OFF HI
15 PORCH.

16 MS. GOLDSHTEYN: BUT THAT'S LIKE A FANTASY
17 BUILT ON A FANTASY BUILT ON A MAYBE, THAT'S NOT --

18 THE COURT: MA'AM, I LIVE IN A WORLD OF
19 FORECASTING WHAT I SEE WILL HAPPEN IN THE FUTURE OR
20 WHAT COULD HAPPEN.

21 MS. GOLDSHTEYN: DESPITE WHAT MAX HAS SAID
22 ABOUT ME, I TURNED OUT -- I JUST WANT TO SAY THAT,
23 DESPITE NOT HAVING A FATHER, I TURNED OUT OKAY --

24 THE COURT: MA'AM, I'M NOT --

25 MS. GOLDSHTEYN: -- AND I FEEL IF MY CHILD WAS
26 RAISED WITHOUT A FATHER, IT WOULD ALSO TURN OUT OKAY.
27 THERE ARE PLENTY OF PEOPLE RAISED BY SINGLE MOMS
28 EVERYWHERE. AND I THINK IF HE'S SAYING THAT IT'S

1 BECAUSE HE CARES FOR THE CHILD SO MUCH AND IS WORRIED
2 ABOUT THEM, I DON'T THINK THAT PASSES MUSTER. IF IT'S
3 JUST THAT HE CAN'T TOUCH A CHILD THAT'S HIS, I'M SORRY,
4 A LOT OF PEOPLE HAVE FATHERED CHILDREN THAT THEY ARE
5 NOT IN TOUCH WITH. AND NO ONE'S DEMANDING HIS TIME,
6 HIS ATTENTION, ANYTHING FROM HIM, OTHER THAN LETTING ME
7 TRY TO HAVE A CHILD. THAT'S IT.

8 THE COURT: I MEAN, THE PROBLEM IS, THIS CASE
9 TOUCHES ON -- THERE'S LEGAL ASPECTS, THERE'S
10 CONSTITUTIONAL ASPECTS, AND THEN THERE'S A SIGNIFICANT
11 MORAL ASPECT THAT GOES WITH THIS; BRIDGING A CHILD INTO
12 THE WORLD AND THEN SAYING, WELL, I'M JUST GOING TO TURN
13 MY BACK ON THIS CHILD. AGAIN, THIS ALL PRESUPPOSES
14 THAT THIS EMBRYO EVEN BECOMES VIABLE, IS CARRIED TO
15 TERM, AND ALL THE OTHER THINGS HAPPEN; BUT
16 UNFORTUNATELY, I HAVE TO PRESUME THAT THAT MAY HAPPEN.
17 SO WHAT HAPPENS NEXT? AND THE STATE OF CALIFORNIA IS
18 NOT FAVORABLE UPON PARENTS -- YOU CAN'T SIGN AWAY YOUR
19 CHILD'S RIGHTS, YOU CAN'T SIGN AWAY -- I MEAN, YOU CAN
20 IN A SURROGACY SITUATION, BUT THIS ISN'T A TRUE
21 SURROGACY SITUATION.

22 MR. HOWELL: WELL, FAMILY CODE SECTION 75 -- I
23 HAD IT WRITTEN DOWN, I AM GETTING IT WRONG -- 7613(E)
24 WAS AMENDED IN 2024, TO ALLOW A SITUATION WHERE A
25 HUSBAND AND WIFE, WHO ARE IN THE IVF CONTEXT, THE
26 HUSBAND CAN'T DISCLAIM LEGAL PARENTAGE. AND THAT
27 AGREEMENT CAN BE RATIFIED BY A COURT JUDGMENT.

28 MR. GEKHT: A, THAT'S NOT WHAT IS REQUESTED

1 HERE; AND B, YOUR HONOR, THE ISSUE WE HAVE, AND IT'S A
2 PRETTY MONUMENTAL ONE, IN ALL OF THE RESPONDENT'S
3 ARGUMENTS, THE RESPONDENT IS ARGUING THAT SHE'S A
4 CONSTITUTIONALLY PROTECTED RIGHT TO REPRODUCTIVE
5 FREEDOM. WHAT THE RESPONDENT IS COMPLETELY IGNORING,
6 THE PETITIONER HAS AN EQUAL RIGHT UNDER THE CALIFORNIA
7 CONSTITUTIONAL REPRODUCTIVE FREEDOM, AND REPRODUCTIVE
8 FREEDOM MEANS THE CHOICE TO NOT PROCREATE, IT INCLUDES
9 THE CHOICE OF WHOM TO PROCREATE WITH.

10 THERE ARE A VARIETY OF REASONS, WE DIDN'T
11 EVEN GO INTO THAT, BECAUSE I DON'T THINK THEY'RE
12 RELEVANT HERE, AS TO WHY MY CLIENT DOES NOT WANT TO
13 PROCREATE SPECIFICALLY WITH THE RESPONDENT. THERE ARE
14 A VARIETY OF ISSUES THAT --

15 THE COURT: WELL, THEY'RE GETTING DIVORCED, SO
16 THAT'S REASON NUMBER ONE. THE REASON THEY'RE GETTING
17 DIVORCED, WHATEVER THE REASONS ARE; THAT'S CLEARLY WHY
18 THEY DON'T WANT A CHILD BETWEEN THE TWO OF THEM.

19 MR. GEKHT: IT'S A LITTLE DIFFERENT THAN THAT,
20 YOUR HONOR, BECAUSE THERE ARE A LOT OF THINGS THAT
21 DON'T GET MENTIONED IN A DIVORCE WHEN THERE'S NO
22 CUSTODY ISSUES, THAT DON'T AFFECT ANYTHING; BUT THEY
23 WOULD AFFECT THINGS THAT RELATE TO CUSTODY ISSUES. AND
24 SO, THE CHOICE HERE FOR MY CLIENT IS, THE RESPONDENT IS
25 ESSENTIALLY SEEKING AN ORDER THAT THE COURT FORCE HIM
26 TO HAVE A CHILD. AND ALL OF THE TESTS THAT ARE OFFERED
27 BY THE RESPONDENT IN HER BRIEF, THE STRICT SCRUTINY
28 TEST, THAT SHE HAS SUPERIOR CONSTITUTIONAL RIGHTS TO

1 THE PETITIONER; THEY'RE JUST NOT CORRECT. I JUST
2 WANTED TO MAKE SURE THAT WE HAVE --

3 THE COURT: BEFORE YOU GO THROUGH -- DO YOU
4 GUYS WANT TO SUBMIT CLOSING BRIEFS? I HAVE YOUR
5 OPENING BRIEFS, I DON'T KNOW IF YOU WANT TO SUBMIT
6 ANYTHING ELSE.

7 MR. GEKHT: I ACTUALLY WOULD LOVE TO DO A
8 CLOSING BRIEF, BECAUSE I DO BELIEVE THAT WE NEED KIND
9 OF A VERY SPECIFIC RECORD ON THIS, BECAUSE THIS IS SUCH
10 A SPECIFIC ISSUE, AND THERE IS INFORMATION -- BECAUSE
11 WE SERVED OUR BRIEF ON THE DEADLINE WHEN IT WAS DUE.
12 THE BRIEF FROM THE RESPONDENT CAME AFTER HOURS AND
13 ADDRESSES -- SPECIFICALLY RESPONSE TO OUR BRIEF, EVEN
14 THOUGH THEY WERE SUPPOSED TO BE EXCHANGED, SO I DIDN'T
15 HAVE AN OPPORTUNITY TO FILE A REPLY BRIEF. SO, YES, I
16 WOULD LOVE TO DO A WRITTEN CLOSING.

17 THE COURT: MR. HOWELL?

18 MR. HOWELL: IF THEY'RE IN, I'M IN.

19 THE COURT: OKAY.

20 MR. GEKHT: BEFORE THE COURT SAYS WHEN, MAY I
21 MAKE AN INQUIRY TO THE REPORTER OFF THE RECORD?

22 THE COURT: YEAH. I MEAN, THEY'RE NOT GOING
23 ANYWHERE, THEY'RE THEORETICALLY --

24 MS. GOLDSHTEYN: THEORETICALLY.

25 THE COURT: AT THIS RATE, THEY SEEM TO BE
26 RAPIDLY DISAPPEARING BUT NOT BY FAULT OF ANYONE ELSE.
27 SO YOU TELL ME WHAT YOU NEED.

28 JAIME, CAN YOU HAVE THEM BY THE END

1 MARCH?

2 THE REPORTER: OH, YEAH.

3 THE COURT: SO, JAIME WILL HAVE THE TRANSCRIPT
4 BY, IF YOU PAY HER, THE 27TH, LET'S SAY. HOW MUCH TIME
5 DO YOU GUYS NEED?

6 MR. GEKHT: PROBABLY FINE WITH APRIL 15TH,
7 IT'S A LIMITED ADDITION.

8 THE COURT: MR. HOWELL?

9 MR. HOWELL: THAT WILL BE MORE THAN ENOUGH
10 TIME.

11 THE COURT: WHY DON'T WE SAY THE 17TH, IN CASE
12 YOU'RE DOING TAXES.

13 MR. GEKHT: SURE, YOUR HONOR.

14 THE COURT: NOT TO EXCEED 15 PAGES. DO YOU
15 GUYS WANT OPENING AND RESPONSES, OR YOU'RE JUST WANT --

16 MR. GEKHT: IT'LL JUST BE CLOSING.

17 THE COURT: MR. HOWELL?

18 MR. HOWELL: I DO THINK IT WOULD BE VERY
19 HELPFUL, PARTICULARLY FOR YOUR HONOR, IF WE'RE
20 RESPONDING TO EACH OTHER; UNLESS YOUR HONOR DISAGREES.

21 THE COURT: HERE'S WHAT YOU GOT, YOU GOT 15
22 PAGES. YOUR FIRST SET IS DUE APRIL 10TH AND THEN ANY
23 RESPONSE TO THEIRS IS DUE THE 17TH. YOU ONLY GET
24 15 PAGES SO USE HOWEVER YOU WANT. SO, YOU'LL GET THE
25 TRANSCRIPT BY THE 27TH, AND YOUR RESPONSE IS DUE BY THE
26 10TH. IF YOU WANT TO USE ALL 15 PAGES, YOU'RE DONE; IF
27 YOU WANT TO WAIT AND SAVE 2, THEN YOU COULD SAVE IT.
28 BUT EVERYTHING IS DEEMED UNDER SUBMISSION BY THE 17TH.

1 MR. GEKHT: OKAY.

2 THE COURT: DOES THAT WORK?

3 MR. GEKHT: THAT WORKS, YOUR HONOR. NOTICE
4 WAIVED FOR PETITIONER.

5 THE COURT: MR. HOWELL?

6 MR. HOWELL: YES, THAT WORKS.

7 THE COURT: NOTICE WAIVED?

8 MR. HOWELL: NOTICE WAIVED.

9 THE COURT: SO, THE MATTER WILL BE DEEMED --
10 WHAT I'M GOING TO DO IS WE'RE GOING TO SET AN OSC RE
11 UNDER SUBMISSION FOR APRIL 20TH. THAT'S NOT AN
12 APPEARANCE DATE, IT'S A NON-APPEARANCE, JUST FOR ME TO
13 MAKE SURE THAT IT'S UNDER SUBMISSION, THAT I HAVE
14 EVERYTHING, AND THEN I WILL ISSUE -- I ALREADY SAW A
15 REQUEST FOR A WRITTEN STATEMENT OF DECISION, WHICH I'LL
16 ISSUE, ANYWAYS.

17 MR. GEKHT: THANK YOU, YOUR HONOR. DOES THE
18 COURT NEED THAT BINDER I GAVE IT?

19 THE COURT: YES, PLEASE. THE TRANSCRIPT'S IN
20 HERE AS WELL? IT LOOKS LIKE IT IS --

21 MR. GEKHT: THE ANSWER IS YES, BUT IT'S NOT
22 THE TRANSCRIPT YOU NEED.

23 THE COURT: OH, OKAY. WE'LL GET THE
24 TRANSCRIPT AS WELL.

25 AND THESE BINDERS, MR. HOWELL, THAT YOU
26 GAVE ME, THESE ARE THE --

27 MR. HOWELL: LEGISLATIVE HISTORY OF CALIFORNIA
28 REPRODUCTIVE PRIVACY ACT AND ALL THE MATERIALS FOR

1 PROPOSITION 1, THE PRIVACY CONSTITUTIONAL AMENDMENT.

2 THE COURT: I'LL HOLD ON TO THEM AS WELL.

3 MR. HOWELL: I'LL REFERENCE THEM IN THE
4 CLOSING BRIEF.

5 THE COURT: AND MR. GEKHT HAS THOSE AS WELL?
6 KIRK.

7 MR. HOWELL: YES.

8 MR. GEKHT: YES, I DO. CAN'T WAIT TO READ
9 THEM.

10 THE COURT: ANYTHING ELSE?

11 MR. GEKHT: THAT'S IT. THANK YOU, YOUR HONOR.

12 THE COURT: VERY GOOD. FOLKS, HAVE A GOOD
13 DAY.

14 MR. GEKHT: THANK YOU.

15 MS. GOLDSHTEYN: THANK YOU.

16

17 (PROCEEDINGS CONCLUDED AT 11:49 A.M.)

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DEPARTMENT	ST35	HON. SCOTT J. NORD, JUDGE
BORENSTEIN, MAX,		)
		)
PETITIONER,		) CASE NO.
		) 22STFL08826
VS.		)
		) REPORTER'S
GOLDSHTEYN, SOFIYA,		) CERTIFICATE
		)
RESPONDENT.		)

I, JAIME DERDERIAN, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID
CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND
THAT THE FOREGOING PAGES 1 THROUGH 99, INCLUSIVE,
COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE
ABOVE-ENTITLED CAUSE ON FEBRUARY 24TH, 2026.

EXECUTED THIS DAY, SEPTEMBER 2ND, 2026,
AT LOS ANGELES, CALIFORNIA.

JAIME DERDERIAN, CSR NO. 14258