

No. 15-55446

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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AMERICANS FOR PROSPERITY FOUNDATION,  
Plaintiff-Appellee,

v.

KAMALA HARRIS,  
in her official capacity as the Attorney General of California,  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:14-cv-09448-R-FFM

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**DECLARATION SUPPORTING RESPONSE OF PLAINTIFF-APPELLEE  
TO DEFENDANT-APPELLANT'S MOTION  
TO STAY TRIAL PROCEEDINGS PENDING APPEAL**

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QUINN EMANUEL URQUHART &  
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*Counsel for Plaintiff-Appellee  
Americans for Prosperity Foundation*

I, Derek L. Shaffer, declare as follows:

1. I am a Partner at Quinn Emanuel Urquhart & Sullivan, LLP and counsel for Plaintiff-Appellee Americans for Prosperity Foundation. I submit this declaration in support of the Response of Plaintiff-Appellee to Defendant-Appellant's Motion to Stay Trial Proceedings Pending Appeal. I am competent to testify to the matters in this declaration, and, if called, would so testify.

2. Attached as **Exhibit 1** is a true copy of excerpts of the November 3, 2015, deposition of Ms. Kevis Foley, the recently retired Registrar of Charitable Trusts for the Attorney General's Office of the California Department of Justice. Ms. Foley was designated as the Attorney General's 30(b)(6) witness regarding the Attorney General's policy surrounding Schedule B, including as to confidentiality.

3. Attached as **Exhibit 2** is a true copy of excerpts of the October 29, 2015, deposition of Mr. Steve Bauman, a supervising investigative auditor for the Attorney General's Office of the California Department of Justice. Mr. Bauman was designated as the Attorney General's 30(b)(6) witness regarding the Attorney General's use of Schedule B for purposes of regulatory enforcement.

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

Executed on November 5, 2015, in Washington, D.C.

*/s/ Derek L. Shaffer* \_\_\_\_\_

Derek L. Shaffer

*Counsel for Plaintiff-Appellee  
Americans for Prosperity Foundation*

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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AMERICANS FOR PROSPERITY  
FOUNDATION,

Plaintiff,

v.

KAMALA HARRIS, in her Official  
Capacity as Attorney General of  
the State of California,

Defendant.

-----x

VIDEOTAPED DEPOSITION OF

KEVIS FOLEY

VIDEOTAPED 30(B) (6) DEPOSITION OF KAMALA HARRIS

Sacramento, California

November 3, 2015

9:30 a.m.

Reported by:  
WENDY E. ARLEN  
Job No: 41421

KEVIS FOLEY

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Kevis Foley  
November 3, 2015  
9:30 a.m.

Videotaped deposition of KEVIS FOLEY,  
individually and as a 30(b)(6) witness, held  
at the offices of DOWNEY BRAND, 621 Capitol  
Mall, 18th Floor, Sacramento, California,  
pursuant to Notice, before WENDY E. ARLEN,  
CSR 4355, RMR, CRR within and for the State  
of California.

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A P P E A R A N C E S

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A P P E A R A N C E S (Cont'd)

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ALSO PRESENT:

Matt Miller, Videographer



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1 Q. Do you have a sense of how many students came  
2 through the Registry over the course of time that you  
3 were there, the ten years you were there?

4 A. I don't know. I would say at least 50. That  
5 would be an estimate.

6 Q. Did you ever alert the Beyond Baroque  
7 Foundation yourself or do you know of anyone from the  
8 Registry alerting the Beyond Baroque Foundation to  
9 the fact that their Schedule B for 2009 had been  
10 inadvertently posted on the Web site?

11 A. No.

12 Q. When we look back at your response to  
13 Interrogatory 18 that we were looking at on  
14 Exhibit 15, were you conscious of the fact that there  
15 were other instances beyond those two where a  
16 Schedule B that ought to have been confidential was  
17 in fact inadvertently posted on the public Web site  
18 for whatever period of time?

19 A. Only in the general sense that I know I had  
20 to fix them, but I couldn't tell you who they were  
21 or -- you know what I mean? It was like part of the  
22 daily -- of the daily work. I wouldn't make a note  
23 of it. It was not a, you know --

24 These were -- I believe these were the only  
25 two we could actually pin down and had some sort of

1 documentation on them.

2 Q. I take it for the other instances you did not  
3 alert the other charities that their Schedule B's had  
4 inadvertently been posted on the Web site for  
5 whatever period of time.

6 A. No.

7 Q. You had not done so, correct?

8 A. No.

9 Q. Let me, if I could, show you what we'll mark  
10 as the next numbered exhibit.

11 (Deposition Exhibit 38 marked for  
12 identification.)

13 Q. MR. SHAFFER: Am I correct that this is a  
14 listing of the individuals at whatever point in time  
15 who were within the Registry and authorized to have  
16 access to Schedule B's?

17 A. Yes.

18 Q. Do you know what snapshot in time this was  
19 taken at?

20 A. Oh, let's see. It's fairly recently because  
21 most of these people -- there's a couple that are  
22 gone now that were here, you know, when I left. So I  
23 would say it was probably -- I'm not sure. Within  
24 the last -- within 2015 whenever we submitted the  
25 information as part of your interrogatories.

1 Q. Was there any system by way of a log or  
2 otherwise for determining who had -- basically had  
3 access to or checked out a particular confidential  
4 Schedule B at a particular point in time?

5 A. Well, I'm not sure what you mean by checked  
6 out. We don't check out. I mean, anyone that had  
7 access to the system could look on the record and  
8 look at the documents on the record, but there is no  
9 like -- if someone went to view it on there, there is  
10 no kind of log of that. It doesn't do that kind of  
11 audit.

12 Q. Is there any limitation on someone  
13 downloading the Schedule B?

14 A. If they did what?

15 Q. Downloading. Downloading the Schedule B,  
16 someone within the Registry.

17 A. You mean like opened it up and saved a file  
18 onto their desktop?

19 Q. Correct.

20 A. No.

21 Q. Is there any limitation to them printing a  
22 hard copy?

23 A. No, not for internal staff.

24 Q. Is there any limitation on how they treat and  
25 dispose of a hard copy once it's been printed?

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1 A. Yes, we have shred boxes all around the  
2 Registry for confidential information.

3 Q. But how would you make sure that a particular  
4 hard copy once printed was in fact put in a shred box  
5 as opposed to carried out of the office in a  
6 suitcase?

7 A. We wouldn't. I mean, I don't know of any  
8 particular -- we don't have any -- no one gets  
9 frisked when they walk out the door and leave work,  
10 if that's what you're asking.

11 Q. I'm asking something else. Were there  
12 instructions given to people that they were not  
13 permitted to take a hard copy of a Schedule B outside  
14 the Registry with them?

15 A. Well, yes. They're not take to take any  
16 information outside of the Registry that they work on  
17 in the Registry. All documents stay in -- stay in  
18 the Registry office.

19 Q. Where is that memorialized?

20 A. Pardon?

21 Q. Where is that memorialized?

22 A. It's part of their training. They sign  
23 confidentiality agreements when they all start  
24 working.

25 Q. I'm sorry. I haven't seen any

1 confidentiality agreements that specify they cannot  
2 take documents to work from home, for instance. Is  
3 there any specification?

4 A. I don't know. I don't think there's anything  
5 written in like our office procedures. Not that I  
6 can think of. I would have to go back through our,  
7 you know, procedures, but there is no reason for  
8 anyone to take any documents home to work. All the  
9 work is done in the office.

10 Q. Well, what would prevent, say, an auditor  
11 from taking a Schedule B with him into the field or  
12 into another office?

13 MS. GORDON: Objection, calls for  
14 speculation.

15 THE WITNESS: I can't speak to what the  
16 auditors do. They're not in my office.

17 Q. MR. SHAFFER: Do you know of anything that  
18 would prevent the auditor from taking a hard copy  
19 with them outside of the Registry?

20 A. They don't come to the Registry. They have  
21 access to the system in their computers, and we don't  
22 have auditors that work in the Registry.

23 Q. Do you know of anything that would prevent  
24 them from taking the Schedule B with them in the  
25 world wherever they may go?

1 A. No.

2 Q. Did you ever provide any instructions to any  
3 auditor that the Schedule B needed to be treated as  
4 confidential by them?

5 A. Some of them -- well, I can't say for -- I  
6 don't do the training for the auditors. Their senior  
7 assistant Attorney Generals would have trained them  
8 about confidentiality of the documents. So I can't  
9 say -- I didn't personally tell them these are  
10 confidential. They -- I would have to say they know  
11 that. It's part of their training that they received  
12 in the office.

13 Q. But if they say they didn't get that  
14 training, you're not in any position to contradict  
15 them, are you?

16 A. That would be correct.

17 Q. And did you ever speak to the person who is  
18 responsible for their training to ask whether they  
19 were being trained in the confidentiality of Schedule  
20 B's?

21 A. Not specifically, no.

22 Q. Did anyone from your office ever ask that  
23 specifically and report to you about it?

24 A. I'm not sure. Anyone in the office, like  
25 someone that works for me asked whether the auditors

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1 have been trained? Is that what you're saying?

2 Q. Correct. Did they ever indicate to you that  
3 they had undertaken an inquiry into that question and  
4 obtained an answer one way or the other?

5 A. Not that I recall.

6 Q. Did you ever ask an auditor, Have you been  
7 trained in the confidentiality of the Schedule B's?

8 A. I don't believe I -- not to my recollection.  
9 It's not to say I never did, but not that I recall.

10 Q. What prevents someone else from the Attorney  
11 General's office from coming to the Registry and  
12 asking to review a Schedule B, if anything?

13 A. Well, the doors to the Registry have  
14 separate -- are separately secured. The regular  
15 doors are not in the office. The badge access is  
16 only -- the Registry is only accessible to Registry  
17 staff.

18 So they would have to have knocked on the  
19 door and asked to get in. I've never had anyone do  
20 that trying to look at Schedule B's that didn't --  
21 didn't work in the Registry.

22 Q. Well, have you ever had someone who didn't  
23 work in the Registry come into the Registry and want  
24 to be inside the Registry? Has that ever happened?

25 A. Well, sure. I mean, there's been -- we have

1 Schedule B information.

2 A. That's correct.

3 Q. Do you know of them ever doing a specific  
4 cyber security audit of the Registry?

5 A. Not of the Registry. Our servers are housed  
6 in the same place all the criminal ones are. So they  
7 would all be done by them.

8 Q. Do you know of any specific audit that  
9 extended to the information that the Registry is  
10 uploading to the backend of its database or to the  
11 public Web site?

12 A. Not specific. You would have to ask them  
13 again. I don't know. They are auditing and doing  
14 security improvements all the time.

15 Q. When you say all the time, you don't mean  
16 literally all the time.

17 A. All the time. I mean every day.

18 Q. Every day.

19 A. Every minute probably.

20 Q. And what is that based on?

21 A. Based on just e-mails that come out from them  
22 about what they're doing, upgrades to the security,  
23 you know, just from knowing what they do over at the  
24 data center.

25 Q. And your sworn testimony is their account of



1 it is they're doing it literally every minute?

2 A. I would not swear that in my testimony. Just  
3 from what I've seen it's an ongoing event. That's  
4 their job.

5 MR. SHAFFER: Let me show you what we'll mark  
6 as Exhibit 55 to today's deposition.

7 (Deposition Exhibit 55 marked for  
8 identification.)

9 Q. MR. SHAFFER: Do you recognize this document,  
10 Ms. Foley?

11 A. Yes.

12 Q. Am I correct that that's basically -- well,  
13 let me refer to it by its title. It's, as I  
14 understand, the "Incompatibility Statement of the  
15 Department of Justice"; is that correct?

16 A. Yes.

17 Q. This extends throughout the California  
18 Department of Justice?

19 A. As far as I know, yes.

20 Q. Is this provided to individual personnel at  
21 the Registry?

22 A. Yes.

23 Q. When they start essentially?

24 A. Yes.

25 Q. And am I correct that if you turn to the

1 second page, number 8 -- let me just read it into the  
2 record in its entirety.

3 "Divulging confidential information,  
4 data, or records of the Department of  
5 Justice, to any person to whom issuance of  
6 such information, data, or records has not  
7 been authorized, or divulging or making use  
8 of any records of the Department of Justice  
9 for a mailing list or for any other purpose  
10 without proper authorization."

11 And that's among the prohibited activities,  
12 correct?

13 A. Yes.

14 Q. You understand that to extend to the  
15 divulging of a Schedule B?

16 A. Yes.

17 Q. Does it extend to the inadvertent divulging  
18 of a Schedule B?

19 A. I don't know.

20 Q. Have you ever obtained anyone's opinion on  
21 that?

22 A. No.

23 Q. Do you know of any consequence for a  
24 violation of the provision that we were just looking  
25 at, provision 8 or any of the other provisions?

1 A. Consequences? Could be state disciplinary  
2 process through the department if it was -- depending  
3 on what the violation was and whether it was  
4 repetitive, how serious it was. I've never  
5 personally dung anyone on that. So...

6 Q. Do you know of anyone being dung on it by  
7 anyone?

8 A. No, not offhand.

9 Q. Do you know of anyplace where it's written  
10 down what the penalties would be for violation of one  
11 of these prohibitions?

12 A. I do not off the top of my head. It's  
13 possible it's in -- the department's got a lot of  
14 procedures and policies and how they're implemented.  
15 Probably in there somewhere.

16 Q. You don't recall reviewing that in your time  
17 at the Registry.

18 A. No.

19 Q. You don't recall providing that to anyone in  
20 your time at the Registry.

21 A. No, only in -- no, not really, no.

22 Q. Now, apart from what we reviewed in terms of  
23 the confidentiality policy and the training documents  
24 we looked at on that, do you know of any other  
25 memorialization of what the do's and don't's or

1 penalties are associated with Schedule B  
2 confidentiality policy?

3 A. You mean for violations of it or the policy  
4 itself?

5 Q. Let's break it out. As to the policy itself,  
6 the contours of it, the application of it, the  
7 implementation of it, do you know of any piece of  
8 paper beyond what we've reviewed today? Can you  
9 think of any?

10 A. No, other than there could be occasional  
11 e-mails directly to a staff person, but, I mean, off  
12 the top of my head, I can't think of one.

13 Q. In terms of how individual employees need to  
14 comply with the confidentiality policy, what they can  
15 and cannot do consistent with that, do you know of  
16 anyplace where that is written down outside of the  
17 training procedures that we looked at today?

18 A. No, not off the top of my head.

19 Q. In terms of what the theoretical or actual  
20 penalties are for violating the confidentiality  
21 policy, do you know of anyplace where that is written  
22 down?

23 A. Again, not off the top of my head.

24 Q. Do you recall having seen any document like  
25 that that says if you violate the confidentiality

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1 policy you may be subject to the following penalties?

2 A. I believe there is one somewhere. I just --  
3 I can't think of where it is off the top of my head.  
4 So it's probably in another one of the forms that we  
5 sign when we -- when they hire people.

6 Q. You didn't create any such document, did you?

7 A. I didn't create. I'm not the one that gets  
8 the employees to sign it. So...

9 Q. You didn't revise any such document, did you?

10 A. No.

11 Q. You didn't disseminate any such document, did  
12 you?

13 A. No.

14 Q. Let me, if I could, get you to walk us  
15 through the Registry Web site itself, the public  
16 facing Web site, so that we can understand how that  
17 operates in practice. To do that, we may need to  
18 employ some technology that will project onto the  
19 screen what we have on the computer from the Web  
20 site.

21 A. Okay.

22 MR. SHAFFER: I tell everyone Ms. Thomas is  
23 always indispensable to me, but never more so than  
24 right now. She'll be our navigator through this.

25 Q. But am I correct, Ms. Foley, that what we're

1 looking at now is the home page basically of the  
2 Registry's Registry, the publicly available, public  
3 facing Web site where you can search the publicly  
4 available documents?

5 A. This is the home page for the verification.  
6 It's not what I would consider the home page for the  
7 charities Web sites.

8 Q. Okay. I appreciate that. It's the home page  
9 for the verification, and I take it what you mean by  
10 that is this is where members of the public can go to  
11 review the specific documents to verify the bona  
12 fides of a particular charity.

13 A. Yes.

14 Q. And am I correct that those are all different  
15 search mechanisms that the member of the public can  
16 use to enter the Web site to get information on a  
17 particular charity?

18 A. Yes.

19 Q. So for illustration, why don't we just look  
20 at Americans for Prosperity. There we go. The  
21 search takes a little while.

22 A. Only if you search by name. If you search by  
23 a number, it's fast.

24 Q. And that would be the registration number,  
25 that's the fastest way to search?

1 A. Okay. I believe you.

2 Q. Now, how did you say we'd be able to know if  
3 there was a delinquency for 2006?

4 A. Well, the whole record would be delinquent.  
5 So up here there's a status. It says registration  
6 status is delinquent.

7 Q. And my only point, I guess, is, and I just  
8 want to confirm it, that won't differentiate whether  
9 the delinquency comes from, whether it's the 2006  
10 year as opposed to the 2013.

11 A. That's correct. You would have to look --  
12 what else is on this page that -- see, there's no  
13 annual -- I don't see any annual renewal information.  
14 There should be another box that's not showing.

15 Q. Annual renewal?

16 A. Yeah, that would be the information from the  
17 RRF's and you can see which years was filed and which  
18 were not accepted. It looks like -- because these  
19 people have not filed anything since two thousand --  
20 look down here. Yeah, there should be information on  
21 the RRF panel. I don't know why there's none of it  
22 showing up there.

23 Q. I'm sorry. The RRF panel.

24 A. Yeah. Well, go back up where it says -- see  
25 that little black line that says annual renewal

1 information?

2 Q. Yeah.

3 A. There should be a whole block of information  
4 in there for each year's filing.

5 Q. Could that be a function of the fact that  
6 there is this delinquency, according to the Registry  
7 and --

8 A. No.

9 Q. -- information is still outstanding?

10 A. No, it should show up on there. I don't know  
11 why it's not.

12 Q. Now, have you ever yourself gone through the  
13 Web site to see if you can find confidential Schedule  
14 B's that are available through the Web site?

15 A. No.

16 Q. Have you ever asked someone to do that?

17 A. Have I ever what?

18 Q. Asked someone to do that.

19 A. No, I don't even know -- you mean just  
20 randomly put in numbers and put in their documents --  
21 we don't have time to sit around doing that.

22 Q. Well, have you ever asked anyone to spend an  
23 hour just to see if they find any Schedule B's on  
24 there that shouldn't be on there?

25 A. No.



1 Q. Well, would you be concerned if it turned out  
2 that one such Schedule B was on the Web site that was  
3 meant to be kept confidential?

4 A. Would I be surprised? No, I would be  
5 disconcerted, but it wouldn't surprise me. If you  
6 searched all, you know, 600,000 documents, it's  
7 possible there's one out there that shouldn't be  
8 public.

9 Q. What if you found a dozen? Would that be  
10 surprising or concerning to you?

11 A. Again, I would have to look at the individual  
12 cases and see what they were, how old they were, what  
13 they were from.

14 Q. If there were hundreds of them.

15 A. Hundreds I might be concerned about.

16 Q. If there was well upwards of a thousand,  
17 would you be concerned about that?

18 A. Yes.

19 Q. Let me offer to you what I will represent to  
20 you and to counsel is not an exhaustive sampling, but  
21 through the best means available to us in part to  
22 search through the actual documents without looking  
23 at what we consider to be and we understand  
24 California says it treats as confidential Schedule B  
25 information, we through a team of attorneys who spent

1 no more than seconds looking at what appeared to be  
2 unredacted Schedule B's that were improperly posted  
3 in violation of the confidentiality policies. There  
4 was no scrutiny of individual names and addresses,  
5 just enough to determine that, yes, indeed, these are  
6 confidential Schedule B's that are on the Web site in  
7 violation of the policy.

8 I don't expect you to testify to that,  
9 Ms. Foley. I'm going to pass you the document that  
10 we have reflecting more than 1400 such instances.  
11 I'd ask that it be marked as the next numbered  
12 exhibit, and so that we don't all stay here all past  
13 when we want to be here, I would ask you, Ms. Foley,  
14 to pick out of there at random just a few of these  
15 charities. We'll go look at them and whatever the  
16 fastest way possible is, and we will very briefly  
17 gaze upon them to see if in fact these are unredacted  
18 Schedule B's that are available publicly on the Web  
19 site in violation of the confidentiality policy.

20 THE WITNESS: Okay.

21 MS. GORDON: I will just reserve the right  
22 obviously to find out what your methodology is to  
23 authenticate this to find out the foundation for  
24 this, et cetera.

25 MR. SHAFFER: That's fine. It's the witness

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1 A. Yes.

2 Q. Okay. We've reached individual donor names  
3 and addresses and amounts.

4 A. Yes.

5 Q. Again, we found a document that is on the Web  
6 site today in violation of the confidentiality policy  
7 as you have testified to it, correct?

8 A. Yes.

9 Q. Do you want to keep going, Ms. Foley?

10 A. Not really. I mean, we can if you want.

11 Q. Well, you tell me. Are you convinced now  
12 that there is cause for you as the former Registrar  
13 of the Registry and the Attorney General's 30(b)(6)  
14 designee to be deeply concerned about the Registry's  
15 failure to maintain confidentiality to which the  
16 Schedule B's are entitled?

17 A. Well, again, when you look at the scope, I  
18 don't know how many there are here, but if you  
19 compared it to how many records are out there, I  
20 guess I would be somewhat -- I am somewhat concerned.  
21 But, again, percentagewise I still think it would be  
22 a very tiny percent.

23 Q. Close enough for horseshoes, is that your  
24 testimony?

25 MS. GORDON: Objection, argumentative.

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1 THE WITNESS: I don't know what that means.

2 So...

3 Q. MR. SHAFFER: Ms. Foley, you're looking at a  
4 document that is 87 pages long, correct?

5 A. Yes.

6 Q. It has about 17 entries on each of those  
7 pages, correct?

8 A. If you say so, yes.

9 Q. We're looking at a number that's above 1400,  
10 correct? You can run some math on a calculator.

11 A. I believe your math is correct. 1400 out of  
12 600, 700, a million records, I still think that's a  
13 pretty small percent, in my view.

14 Q. You consider this consistent with the sworn  
15 testimony that you've offered through three  
16 declarations and throughout today's testimony.

17 A. Well, to the best of my knowledge, I didn't  
18 know about all these, so, yes. I was surprised that  
19 there is this many. I need to hire your programmer  
20 that was able to identify to help us identify them.  
21 Or not me personally anymore since I don't work there  
22 anymore.

23 Q. You don't know of any such programmer  
24 currently being on the staff, do you?

25 A. Not on ours.

1 Q. Does a reasonable public charity or its  
2 donors have any less reason to be concerned than you  
3 do about the State of California's policy with  
4 respect to Schedule B's and public charities?

5 MS. GORDON: Objection, vague.

6 THE WITNESS: I'm not sure what you want my  
7 opinion on, whether they should be -- I don't think  
8 they should be worried, but...

9 Q. MR. SHAFFER: Do they have any less reason to  
10 be worried than you do?

11 A. Less reason? Oh, probably. I mean, yes. I  
12 don't have a charity. So...

13 Q. No, you don't understand my question.

14 A. I guess not.

15 Q. Okay. You said that you're concerned,  
16 somewhat concerned about what we've seen today.

17 A. Yes.

18 Q. Do they have any less reason to be somewhat  
19 concerned about what we've seen today?

20 A. I don't know because I don't know what their  
21 concerns would be.

22 Q. Let's take one more look --

23 A. I would assume if they were really concerned  
24 and they saw the information out there they would  
25 have said something to us.

# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

-----x

AMERICANS FOR PROSPERITY  
FOUNDATION,

Plaintiff,

v.

KAMALA HARRIS, in her Official  
Capacity as Attorney General of  
the State of California,

Defendant.

-----x

VIDEOTAPED DEPOSITION OF STEVEN BAUMAN

Los Angeles, California

October 29, 2015

9:41 a.m.

Reported by:  
Kristi Caruthers, CLR, CSR 10560  
Job No: 41445

STEVEN BAUMAN

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Steven Bauman  
October 29, 2015  
9:41 a.m.

Videotaped Deposition of STEVEN  
BAUMAN, held at the offices of  
Quinn, Emanuel, Urquhart & Sullivan  
LLP, 865 South Figueroa, 10th Floor,  
Los Angeles, California, pursuant to  
notice, before Kristi Caruthers, CLR,  
CSR Number 10560.



STEVEN BAUMAN

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A P P E A R A N C E S

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STEVEN BAUMAN

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(Telephonic Appearance)

STEVEN BAUMAN

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A P P E A R A N C E S

ALSO PRESENT:

Scott McNair, Videographer

STEVEN BAUMAN

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1 again: What do you mean by that?

2 A. There are certain transactions that  
3 charities are required to give us either notice or  
4 get our approval if they enter into this type of  
5 transaction.

6 Q. And can you give me an example of  
7 those types of transactions?

8 A. Mergers, sale of all or  
9 substantially all assets, conversions, amendments,  
10 dissolution.

11 Q. And so the charity submits some  
12 information about it and then you kick off  
13 something. I guess they're looking for your stamp  
14 of approval about what they're planning to do is  
15 A-OK by your standards?

16 A. Yes.

17 MR. CALIA: Objection; vague as to  
18 "your."

19 BY MR. FORST:

20 Q. And that again ranges on an annual  
21 basis? I've multiplied out 36 to 120, which is on  
22 a slow month, three, on a busy month, about ten?

23 A. Yes.

24 Q. Okay. Did those transactions also  
25 include self-dealing or potential self-dealing

STEVEN BAUMAN

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1 transactions with directors or officers?

2 A. We do get those occasionally. It's  
3 pretty rare.

4 Q. Okay. So, then, separate and apart  
5 from the index transactions, you talked about  
6 other cases or investigations that your team  
7 performs in L.A.; right?

8 A. Yes.

9 Q. And that was two to three a month?

10 A. Correct.

11 Q. Okay. And how would you -- how are  
12 those different than index transactions?

13 A. We will open up a case. There will  
14 be a reason we're opening up a case, and depending  
15 on that reason, we will be requesting certain  
16 documents of the charity or start doing an  
17 investigation, look them up on the Internet, do  
18 research that way, maybe talk to people.

19 Q. Okay. So, again, if I multiply  
20 those out, then if you do roughly 36 a year over  
21 the last decade, ten years, that's about 360  
22 investigations and/or cases; correct?

23 A. That are being assigned.

24 Q. Right. And out of those 360, your  
25 team identified five that implicated Schedule B at

STEVEN BAUMAN

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1 some point along the way?

2 A. They identified five that, upon  
3 looking at, they weren't able to recall a  
4 schedule -- the use of Schedule B.

5 Going back to 2005, though, we  
6 don't document when we use Schedule B or any of  
7 the other schedules of 990 -- attached to the 990.  
8 So that's why the ones -- examples that you have  
9 are pretty much all current.

10 Q. They're all recent examples?

11 A. Yes.

12 Q. And so how recent are they?

13 A. Last year or two.

14 Q. But to be clear, you gave this  
15 specific instruction and you yourself said, "Think  
16 back to 2005 and identify anything that" -- "in  
17 which you guys remember, recall or there's a  
18 record of using Schedule B in connection with your  
19 investigation"?

20 A. "Here are the cases that have been  
21 assigned since 2005. Take a look at those, and do  
22 you recall any specific use of Schedule B."

23 Q. Okay. Now, of the cases that were  
24 assigned to you and/or your colleagues, roughly  
25 the five, how many of those was Schedule B the

STEVEN BAUMAN

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1 impetus or the genesis or the originated document  
2 that clued you in to an investigation needs to  
3 take place?

4 A. To make sure I understand, you're  
5 asking how many of those was Schedule B the reason  
6 we kicked off the investigation.

7 Q. Said even better. That's exactly  
8 what I'm asking.

9 A. I don't believe any of them.

10 Q. In how many of those five  
11 investigations did you guys have the Schedule B in  
12 unredacted form without having to ask for it from  
13 either the charity themselves or the IRS?

14 A. I don't know.

15 Q. Could you figure that out?

16 A. I would have to go talk to the  
17 auditors. I believe -- yeah, I don't recall.

18 Q. Of the five that were identified  
19 from your group, how many did you specifically  
20 identify?

21 A. One.

22 Q. So in that instance, was the  
23 Schedule B the reason you kicked off the  
24 investigation?

25 A. It was not.

STEVEN BAUMAN

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1 Q. And in that case, did you have the  
2 Schedule B, or could you have gotten the  
3 Schedule B from the registrar without having to  
4 ask the charity or subpoena the charity for it?

5 A. I don't -- I don't recall asking  
6 the charity for Schedule B, so we must have  
7 already had it.

8 Q. Are you able to obtain unredacted  
9 Schedule Bs from the IRS directly?

10 A. No.

11 Q. No?

12 A. No.

13 Q. Why does that make you chuckle?  
14 I'm just curious.

15 A. It's been my experience that I  
16 can't get anything from the IRS.

17 (Whereupon, Bauman Exhibit 2 was  
18 marked for identification by the  
19 deposition reporter and is attached  
20 hereto.)

21 BY MR. FORST:

22 Q. Mr. Bauman, what's in front of you  
23 has been marked Exhibit Number 2.

24 Do you recognize this document?

25 A. Yes.



STEVEN BAUMAN

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1 perhaps?

2 A. Correct.

3 Q. And any increased responsibilities  
4 in connection with that?

5 A. Working more cases under the  
6 supervision of General Auditor IIIs.

7 Q. Got it. And by "cases," those are  
8 separate and apart from the index transactions?

9 A. Yes.

10 Q. Okay. And how long were you a  
11 GA-II?

12 A. Approximately three years.

13 Q. Okay. And remind me -- I'm not  
14 going to walk through it all -- when did you  
15 become the supervisor, the current position that  
16 you have?

17 A. 2001.

18 Q. 2001. And what was your title in  
19 the year 2000, if you remember?

20 A. Investigative Auditor III.

21 Q. Okay. Do you have an understanding  
22 when the IRS first created Schedule B and started  
23 mandating that charities fill it out and file it  
24 with the IRS?

25 A. Only based on something you said

STEVEN BAUMAN

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1 earlier, 2000.

2 Q. Okay. But you have no independent  
3 understanding of that?

4 A. No.

5 Q. When did you first become aware  
6 of -- if you weren't aware of Schedule B in 2000,  
7 when did you first become aware of Schedule B,  
8 generally?

9 A. I don't know that I could really  
10 answer that in that we review the 990 as a whole  
11 and all of the schedules attached to it. The  
12 first time I actually saw a Schedule B and it was  
13 an issue, I really don't know.

14 Q. Okay. Was this declaration dated  
15 January 20, 2015 the first time that you ever put  
16 down on paper and memorialized the utility and use  
17 of Schedule B within your group?

18 A. There were drafts in another  
19 declaration that I did. I don't recall if that  
20 came before or after this one.

21 Q. Well, if they came after, then --  
22 oh, drafts of this declaration; is that what  
23 you're referring to?

24 A. Yes.

25 Q. Okay. So let me frame it this way,

STEVEN BAUMAN

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1 then: Besides this writing process associated  
2 with this declaration, had you ever written down  
3 or memorialized the utility and use of Schedule B  
4 in your work as an investigative auditor?

5 A. No.

6 Q. Were you aware throughout the  
7 course of your employment between 2000 and 2015  
8 that most charities didn't file unredacted  
9 Schedule Bs in California?

10 MR. CALIA: Objection; lacks  
11 foundation.

12 THE DEPONENT: I am aware that  
13 there are many charities that don't. I haven't  
14 really sat down to try to -- or ever thought about  
15 quantifying what percentage or most don't or most  
16 do.

17 BY MR. FORST:

18 Q. Okay. But how are you aware of it?

19 A. When I'm reviewing the 990s, I'll  
20 see it in some and I don't see it in all.

21 Q. Okay. And you've been reviewing  
22 990s since the year 2000, at least; right?

23 A. Yes.

24 Q. Okay. In the year 2000, do you  
25 ever remember speaking to a DAG, the attorney

STEVEN BAUMAN

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1 general, anyone else, saying, "You know what? We  
2 need to go make sure that every charity is filing  
3 their Schedule B in unredacted form"?

4 A. No.

5 Q. Okay. Did you do that in 2001?

6 A. No.

7 Q. Did you ever do that between the  
8 years 2001 and 2005?

9 A. Approach a DAG and say we have to  
10 make sure that every -- I have not.

11 Q. Okay. Have you ever done it?

12 A. Have I ever asked a DAG that we  
13 need to make sure that every charity is --

14 (Counsel nodded.)

15 THE DEPONENT: No.

16 BY MR. FORST:

17 Q. Okay, meaning -- this talks about  
18 the Schedule B providing critically important  
19 information; right?

20 A. It talks about the 990 and all the  
21 attached schedules providing critical information.

22 Q. Okay. So you don't think the  
23 Schedule B provides critical information?

24 MR. CALIA: Objection; misstates  
25 testimony, argumentative.

STEVEN BAUMAN

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1 THE DEPONENT: I do think  
2 Schedule B provides critical information in some  
3 cases.

4 BY MR. FORST:

5 Q. In some cases, okay.

6 But then it's fair to say  
7 Schedule B is just one investigative tool that you  
8 use among a wealth of documents and other  
9 resources when investigating a charity?

10 MR. CALIA: Objection; vague.

11 THE DEPONENT: I'm more comfortable  
12 saying it's one of the tools that we use. I don't  
13 know that I want to -- about wealth of.

14 BY MR. FORST:

15 Q. Okay. But you felt, at least in  
16 the years 2000, 2001, 2002, that you could perform  
17 your audits conscientiously and with due diligence  
18 without having unredacted Schedule Bs; right?

19 MR. CALIA: Objection; misstates  
20 testimony.

21 THE DEPONENT: The answer to that  
22 would be on a case-by-case basis. There are times  
23 that we're looking at revenue to an organization  
24 and Schedule Bs would -- are helpful.

25 ///

STEVEN BAUMAN

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1 if -- or hard for you to detect interested  
2 transactions or self-dealing or other things;  
3 right?

4 A. My understanding of your question  
5 was if it's on Schedule B won't it be elsewhere,  
6 and what I'm trying to say is not necessarily, and  
7 that not necessarily may be intentionally or  
8 otherwise.

9 Q. Okay. Again, but you're not  
10 thinking of an example as you sit there and you  
11 say that where if something was on Schedule B that  
12 contradicted information in other places and it  
13 wasn't until you looked at Schedule B that you  
14 figured it out?

15 A. Not that I recall.

16 Q. Okay. So then going back to what  
17 we were talking about, charities have to disclose  
18 interested transactions not only between officers,  
19 directors, key employees, but also between key  
20 contributors and their family members; right?

21 A. I'm not -- I know they have to  
22 disclose the self-dealing between officers,  
23 directors, family members. I know they have to  
24 disclose between donors. I'm not sure about the  
25 donors' families.

STEVEN BAUMAN

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1 Q. You don't know one way or the  
2 other?

3 A. Correct.

4 Q. Okay. We'll look at a schedule in  
5 a little bit. Maybe that will clear it up.

6 But in any event, the point I'm  
7 making is: Interested transactions between donors  
8 and a charity are reflected in other places  
9 besides Schedule B; in fact, that's not what  
10 Schedule B is even about; right?

11 A. Schedule B is not about reporting  
12 self-dealing transactions.

13 Q. Right.

14 A. Right.

15 Q. That comes from other places;  
16 correct?

17 A. That comes from other places.

18 Q. Okay. And so if you have a  
19 complaint and you have that information, couldn't  
20 you again say, "We have an instance here where we  
21 have some concerns about self-dealing, about  
22 transactions. I have the particular dollar  
23 amount. I know what's going on. Charity, give me  
24 the identity of that particular contributor or  
25 person so I can investigate this."

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1                   You could do that; right?

2                   A.    We could do that, but, again, that  
3                   then raises my -- the concern I would have about  
4                   that, to be honest, is even bigger than the other  
5                   scenario we gave, because in this case if we  
6                   contact the charity and said, "We want the  
7                   information on this particular donor," that donor  
8                   in this scenario that we're talking about has his  
9                   own legal issues now --

10                  Q.    Right.

11                  A.    -- and is more likely to -- well,  
12                  will be coached and is less likely to be  
13                  forthcoming.

14                  Q.    Okay.  But, again, that concern is  
15                  hypothetical; right?  Because I mean in your  
16                  personal experience, it's never happened to you?

17                  A.    Well, but it has happened.

18                  Q.    One time.

19                  A.    Well, that we are aware of.

20                  Q.    Okay.  But one time.

21                               And we talked about the hundreds  
22                               and hundreds of investigations that you do, you're  
23                               aware of, sitting here today, of one instance?

24                  A.    Well, the hundreds and hundreds of  
25                  investigations that we're talking about are going



STEVEN BAUMAN

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1                   So by the time it gets to us and  
2 we're looking at the 990s, we're already involved.  
3 I mean there's a reason we're looking at them.

4                   Q.    Right.

5                   A.    So we don't really go to the  
6 registry and say, "There's no Schedule B, go get  
7 it." We would -- if we wanted the Schedule B at  
8 that point, we would contact the charity itself.

9                   Q.    Okay. Well, I want to go back to  
10 my question because I think it was a little bit  
11 different and I just said you've never personally  
12 gone to a DAG or the AG, him or herself, and said,  
13 "This charity hasn't filed its Schedule B. We  
14 need to go out and get it"?

15                  A.    I have.

16                  Q.    To a deputy attorney general you've  
17 said that?

18                  A.    To a DAG, yes.

19                  Q.    Okay. Who?

20                  A.    Sandra Barrientos,  
21 B-a-r-r-i-e-n-t-o-s.

22                  Q.    Okay. And when was that?

23                  A.    Within the last year.

24                  Q.    And anytime before that have you  
25 done the same thing?

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1 A. Not to my recollection.

2 Q. You said something in your earlier  
3 answer where you said that by the time you get  
4 involved, it's already -- an issue's come to you  
5 and been flagged, et cetera; right?

6 A. Yes.

7 Q. Your declaration says that the  
8 Form 990 in totality, including Schedule B,  
9 provide critical information for auditing and  
10 investigating charities; right?

11 A. Yes.

12 Q. Okay. Have you ever, before  
13 something's come to you, said just that to the  
14 registry: "In order for us to do our job  
15 effectively, you need to be making sure that  
16 you're getting the entire form and every schedule  
17 before it comes to us, or else we can't do as good  
18 of a job as we otherwise might be able to do"?

19 A. I have not had that conversation.

20 Q. Okay. Has anything prevented you  
21 from having that conversation?

22 A. No.

23 Q. Under what circumstances can you  
24 access -- well, you understand that a Schedule B  
25 that includes names and addresses is, quote,

STEVEN BAUMAN

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1 unquote, "a confidential document" within the  
2 registry; right?

3 A. Yes.

4 Q. It's not made available for public  
5 consumption through the website?

6 A. Correct.

7 Q. Okay. So in what scenario can you  
8 go access a confidential Schedule B if you want to  
9 see it or need it?

10 A. The registry keeps a database that  
11 we have access to called -- we call it MyLicense  
12 Office, and they keep public records and  
13 confidential records on there and we can log in  
14 and see what's in there.

15 Q. Okay. What was that called again,  
16 I'm sorry, the database?

17 A. MyLicense Office.

18 Q. MyLicense Office?

19 A. And I believe that's with the  
20 acronym -- we call it MLO.

21 Q. MILO?

22 A. MLO, M-L-O.

23 Q. Thank you.

24 And that, to your understanding, is  
25 separate and apart from the database that's

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1 improper interested transactions with donors or  
2 their family members, all I'm saying is, one place  
3 you could go look to find that information is  
4 Schedule L.

5 A. My concern in the question is this  
6 would disclose the transaction between a charity  
7 and the money going out to the interested party.

8 I don't know that by looking at  
9 this by itself would give us an indication that  
10 the donor is really connected to this party, the  
11 recipient.

12 Q. Okay. So what you're saying is, "I  
13 see here if the charity is saying they're giving  
14 money to some entity; what I don't know is whether  
15 that entity is also affiliated with a donor on  
16 Schedule B"?

17 A. Correct.

18 Q. Okay. What I'm asking, though, is  
19 if there's a transaction here that jumps out at  
20 you to say, "I need to look at this transaction  
21 further," you don't need to know the identity of  
22 every donor listed on Schedule B to the extent a  
23 charity lists 5,000-plus donors.

24 You don't need to know everybody;  
25 right?

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1 A. We don't need to know everybody.

2 Q. In fact, you might only need to  
3 know one person on that entire list?

4 A. Part of the problem is that we  
5 don't know what we need to know until we know what  
6 we need to know.

7 Q. Well --

8 A. So I mean whether there's one or a  
9 hundred people on Schedule B, just -- I mean  
10 looking at this in and of itself, the fact that,  
11 you know, there are names listed on here, I don't  
12 know if that by itself is going to really raise an  
13 awful lot of red flags.

14 Q. Right. But what's not going to  
15 raise flags in and of itself about an interested  
16 party loan is Schedule B. That's not even about  
17 interested party loans or transactions or  
18 anything --

19 A. Correct.

20 Q. -- right? But if there is a red  
21 flag being raised that causes you to look into it,  
22 Schedule B isn't the triggering document for that?

23 A. It could be the triggering document  
24 in conjunction with, for example, Schedule L.

25 Q. Okay. But, again, to the extent

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1 that you recall or you went back and you looked  
2 at, you know, ProLaw records, Schedule B has never  
3 been that triggering document that kicked off an  
4 investigation?

5 A. Not that I recall.

6 Q. Okay. And so just what I'm driving  
7 at, you understand a little bit in this case is  
8 it's a balancing test: How much do you need that  
9 information relative to the anonymity and the  
10 desire of donors not to be identified; right?

11 Do you understand that?

12 MR. CALIA: Objection; calls for a  
13 legal conclusion.

14 THE DEPONENT: I understand your  
15 argument.

16 BY MR. FORST:

17 Q. Well, it's not really an argument.

18 I'm saying: Do you understand why  
19 you gave the declaration that you gave in this  
20 case?

21 A. Yes.

22 Q. Okay. And why was that?

23 A. Because your clients want to  
24 withhold their identity on Schedule B in  
25 disclosing it to our office.

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1 Q. Right. And do you know why?

2 A. Well, I assume because they're  
3 concerned that there's some harm that may come to  
4 them.

5 Q. Okay. So then the question is  
6 whether does the benefit of having this  
7 information on your side outweigh the potential  
8 risk or harm from disclosure on the other side;  
9 fair?

10 MR. CALIA: Objection; calls for a  
11 legal conclusion.

12 THE DEPONENT: If you're asking me  
13 if there's a balancing act there, I understand the  
14 argument that there is, your argument. I don't  
15 personally buy it.

16 BY MR. FORST:

17 Q. You don't personally buy it. Okay,  
18 fine.

19 But I'm saying -- I'm not asking  
20 for a legal; I'm just saying that has to make  
21 sense.

22 As a reasonable minded, bright  
23 person sitting there, you understand the tension;  
24 right?

25 MR. CALIA: Objection;

STEVEN BAUMAN

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1 Q. Right. Then, conceivably, you  
2 could have a Schedule B with nobody for a  
3 perfectly legitimate charity?

4 A. Yes.

5 Q. So I guess that in and of itself  
6 isn't all that telling; right?

7 A. The fact that there is a Schedule B  
8 with nothing reported on it by itself may not  
9 necessarily be all that telling.

10 Q. Right. So do you know whether  
11 these charities checked the box that said they  
12 were filing -- they needed to submit a Schedule B;  
13 that they were receiving funds from, let's say,  
14 the special exception 33 percent rule?

15 A. I do not know.

16 Q. Again, going back, do you know what  
17 triggered this investigation?

18 A. No.

19 Q. Okay. For any of these, do you  
20 know whether it was necessary to consult the  
21 Schedule B in order to successfully complete the  
22 audit?

23 A. I'm not really sure I understand  
24 the question in that we use Schedule B in various  
25 ways and assisted in completing the audit, and if



STEVEN BAUMAN

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1 you're asking me if you had taken away the  
2 Schedule B if that would have stopped us from  
3 doing the audit, I don't know that it would have  
4 stopped us. We would have continued to work, and  
5 whether we were able to connect the dots  
6 otherwise, I -- I don't know how to answer that.  
7 Maybe, maybe not.

8 Q. What about the one you worked on,  
9 Number 7, this one where Schedule B confirmed that  
10 donations were coming from the public, which I  
11 think again, by definition, that's what Schedule B  
12 means.

13 A. We probably could have completed  
14 that without it.

15 Q. Okay. Are you ever aware of an  
16 investigation that your team or you have done  
17 where, upon consultation of the Schedule B, that  
18 resolved the need or resolved the investigation?

19 In other words, you looked at the  
20 Schedule B and that told you, "You know what?  
21 There's nothing here. We don't need to continue  
22 with an audit or an enforcement action"?

23 A. Would looking at Schedule B stopped  
24 us from doing an investigation. Are you asking me  
25 if that's possible it could have happened, or am I

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1 aware --

2 Q. Are you aware.

3 A. -- of any specific cases?

4 No, I'm not aware of it.

5 MR. FORST: Okay. Last one. This  
6 is 12?

7 DEPOSITION REPORTER: Yes.

8 (Whereupon, Bauman Exhibit 12 was  
9 marked for identification by the  
10 deposition reporter and is attached  
11 hereto.)

12 BY MR. FORST:

13 Q. Mr. Bauman, Exhibit Number 12 looks  
14 like an E-mail from Mr. Hugh Jones on May 29th,  
15 2014 to the Listserv charity with the number  
16 2@ftc.gov, of which you are included underneath  
17 that as a recipient on that list, sir.

18 Do you recognize this E-mail?

19 A. No.

20 Q. You don't recall receiving it?

21 A. I don't read all the Charity 2  
22 E-mails that I get.

23 Q. Do you filter them to a junk  
24 folder?

25 A. I don't read all of the charity --

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1 I do not filter them to a --

2 Q. I see.

3 A. -- a junk folder, but I don't read  
4 very many of them.

5 Q. Now, do they come every day? Is it  
6 routine that you'll get one or more E-mails  
7 through this Listserv on a daily basis?

8 A. Yes.

9 Q. It is?

10 A. Yes.

11 Q. And how many, generally?

12 A. Generally, I would say -- I don't  
13 know, three a day. Could be more on a busy day.

14 Q. Do you ever send anything out via  
15 this Listserv?

16 A. I believe probably about five years  
17 ago I think I sent one.

18 Q. Okay. So this is not a Listserv  
19 that you actively participate in?

20 A. It is not.

21 Q. Okay. And what's the purpose of  
22 it, this E-mail Listserv? Why do you guys have  
23 it?

24 A. It was set up for other attorney  
25 generals or entities that regulate charities in