

Gonser 11.21.19.txt

1

1 ROUGH DRAFT ROUGH DRAFT ROUGH DRAFT

2

3

4

UNITED STATES DISTRICT COURT

5

SOUTHERN DISTRICT OF CALIFORNIA

6

UNITED STATES EQUAL  
EMPLOYMENT OPPORTUNITY

7

8

COMMISSION,

9

Plaintiff,

10

vs.

CASE NO.: 18-cv-  
1853-W-AGS

11

BAY CLUB FAIRBANKS RANCH,  
LLC d/b/a FAIRBANKS RANCH  
COUNTRY CLUB; FAIRBANKS  
RANCH COUNTRY CLUB, INC.,  
and DOES 1 - 10, inclusive,

12

13

14

Defendants.

---

15

16

17

VIDEOTAPED DEPOSITION OF

18

DONNA GONSER

19

20

21

November 21, 2019

22

9:45 a.m.

Page 1

Gonser 11.21.19.txt

23

24

25

402 West Broadway  
Suite 1550  
San Diego, California



2

1

2

3

Christine L. Herzing, CSR No. 7467

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

Gonser 11.21.19.txt

7 and we want to accommodate you.

8 And that's why we're here today. And that's why  
9 we did not move your deposition date. We want to  
10 accommodate you.

11 MR. ALLEN: On that note, I just formally want  
12 to put on the record the objection of defendant that the  
13 deposition was today when the attorneys of record in this  
14 case are unavailable and in fact are in a jury trial at  
15 this very moment.

16 I understand Ms. Gonser is moving out of state,  
17 however, we formally object. And we are -- defendant is  
18 reserving the right to recall Ms. Gonser at a later  
19 dep- -- date pending the parties negotiating where and  
20 when that would occur, but to ask Ms. Gonser to answer  
21 additional questions at a later date.

22 MS. LIEM: And I want to respond to that.  
23 Our -- the EEOC's position is that this -- Ms. Gonser was  
24 noticed at an reasonable time. And we followed all the  
25 rules.

↑

15

1 And should defendant Bay Club -- the Bay Club --  
2 the Bay Club Fairbanks Ranch, LLC move to take -- we take  
3 her deposition, the EEOC would object if it imposes an

Gonser 11.21.19.txt

1 MR. PRATO: What?

2 MS. LIEM: Do you have another copy?

3 MR. PRATO: I gave him a copy and I have one  
4 more copy.

5 MS. LIEM: Okay. Do you want to mark this as  
6 Exhibit 36, Chris.

7 (Exhibit 36 marked)

8 BY MS. LIEM:

9 Q Okay. Ms. Gonser, we've marked what's -- what's  
10 been deemed as Exhibit 36.

11 It is -- it is - that is a Declaration signed by  
12 you -- is it on or about November 15, 2019; is that  
13 correct?

14 A Correct.

15 Q Okay. And just -- just for the record, you  
16 requested that your deposition be taken today as noticed  
17 in the Subpoena and the deposition Notice because if we  
18 were to move the deposition, you would experience undue  
19 hardship, correct?

20 A I would have to come back from Chicago, yes.

21 Q Okay. So it was your -- your -- you -- you  
22 requested that the deposition be taken today, correct?

23 A So I was subpoenaed to appear for a deposition  
24 that was scheduled for today. And I didn't even -- I

Gonser 11.21.19.txt

25) wasn't aware that there was a chance or a question of it

↑

17

1) being changed.

2                   When I talked to my attorney, I indicated to  
3 him that I was staying in town in San Diego until the  
4 21st because of the deposition and then I was leaving for  
5 Chicago.

6           Q     Okay. But you wanted the deposition to be taken  
7 today pursuant to the Notice that -- that you were served  
8 with, correct?

9           A     Correct. Yes.

10          Q     And just for the record, Exhibit 36 is a true  
11 and correct copy of your Declaration, correct?

12          A     Yes, it is.

13          Q     Okay. And tomorrow you intend to leave for  
14 Chicago?

15          A     Yes.

16          Q     Okay. In the event that -- I would hope not,  
17 but in the event that -- that we needed to contact you  
18 again regarding this case, are you willing to accept --  
19 are you willing to allow your attorney, Mr. Prato, to --  
20 to accept any -- a trial Subpoena?

21          A     Yes.

Gonser 11.21.19.txt

7 and Mark Kooreny. And it's the entire history of text  
8 communication that I had with him during my employment  
9 with The Bay Club Company.

10 Q Okay.

11 MR. ALLEN: And I'm going to formally state on  
12 the record now, for the record, the documents have not  
13 been turned over to either the EEOC or myself. They are  
14 still in the possession of Mr. Prato. We have been  
15 informed that these communications with Mr. Kooreny were  
16 in this production.

17 Defendant maintains that those are -- those are  
18 or could be subject to attorney/client privilege and have  
19 asked for a first look inspection right to determine  
20 whether any potential privilege exists prior to them  
21 being produced to the EEOC.

22 Ms. Liem has refused contending that the  
23 disqualification order entered in this case constitutes  
24 an absolute waiver of attorney/client privilege during  
25 the entire time at issue.

↑

23

1 Obviously, defendant believes that misstates the  
2 law and insists on the first look and intends to take any  
3 appropriate action should the EEOC force a disclosure of

Gonser 11.21.19.txt

4 defendant's attorney/client privileged information.

5 BY MS. LIEM:

6 Q Just for the record, to -- to your knowledge, is  
7 Mr. Kooreny the only attorney that you communicated with  
8 in your production -- in your production today?

9 A Via text --

10 Q Yes.

11 A -- do you mean?

12 Q Email or anything of that nature.

13 Is he the only attorney in your mind that you  
14 communicated with?

15 MR. ALLEN: Objection to the extent it calls for  
16 speculation.

17 THE WITNESS: I had conversations with a number  
18 of attorneys relative to the case.

19 BY MS. LIEM:

20 Q Okay. But in your production today --

21 A Yes --

22 Q -- is Mr. Kooreny --

23 A -- only Mark Kooreny.

24 Q Only Mark Kooreny. Okay.

25 Can we -- can you please -- can we -- could you

↑

24

Gonser 11.21.19.txt

1 produce those documents to the EEOC in response to the  
2 subpoena right now?

3 MR. ALLEN: Objection. Calls for disclosure of  
4 attorney/client privileged information. Once again, we  
5 are insisting on a first look right to determine whether  
6 there are potentially privileged documents that exist in  
7 this production.

8 MS. LIEM: Can we get the document production?

9 MR. PRATO: Are you ordering me --

10 MS. LIEM: Yes.

11 MR. PRATO: -- to give them to you?

12 MS. LIEM: Yes, I'm asking.

13 MR. PRATO: Under Subpoena you're ordering me to  
14 give them to you, right?

15 MS. LIEM: Pursuant to Subpoena on your client  
16 we are asking you to produce those documents, correct.

17 MR. ALLEN: Formally, for the record again,  
18 object to the --

19 MS. LIEM: You've made your objection. This is  
20 the third time. You sound like a broken record.

21 Thank you. Okay.

22 BY MS. LIEM:

23 Q Okay. So your attorney, Mr. Prato, just handed  
24 me copies of text messages. We're going to review this



Gonser 11.21.19.txt

19 Katherine Banks. Her correct name is C-a-t-h-e-r-i-n-e.

20 And -- and there are not, correct?

21 A There are not.

22 Q Are there any documents responsive to request

23 Number 12?

24 A No, there are not.

25 Q Okay. Are there any documents responsive to

↑

27

1 request Number 13?

2 A No, there are not.

3 Q Are there any documents responsive to request

4 Number 14?

5 A There are not.

6 Q Are there any documents responsive to request

7 Number 15?

8 A No, there are not.

9 Q Okay. So just for the record --

10 MR. ALLEN: For the record -- for the record,

11 I apologize. I have reviewed the text communications

12 perfunctorily with Mark Kooreny.

13 I believe they contain potentially

14 attorney/client privileged information. I am formally

15 informing the EEOC of our position and asking them to

Gonser 11.21.19.txt

16 cease and desist any review of those communications until  
17 we can have this issue briefed and decided by the court.  
18 And that would include any review by Ms. Liem's law  
19 student whose name, I apologize, but I am blanking on  
20 right now, until this can be briefed.

21 Is the EEOC willing to comply with my request  
22 and my demand?

23 MS. LIEM: I haven't even seen the documents,  
24 and I am going to ask her --

25 MR. ALLEN: My point is -- my point is I'm

28

1 asserting attorney/client privilege over some of these  
2 documents. I am asking you to cease and desist review  
3 of the information we claim to be privileged.

4 MS. LIEM: This is a deposition. You reserved  
5 your objection.

6 I'm not going to answer your question right now.  
7 I want to continue my deposition with the witness.

8 MR. ALLEN: My question is whether you are  
9 willing to cease and desist right now?

10 MS. LIEM: I'm not going to answer that question  
11 again. I'm going to continue with my deposition with  
12 Ms. Gonser. You've reserved your objection.

Gonser 11.21.19.txt

4 A No.

5 Q Okay.

6 A I'm assuming you're talking about since she left  
7 the company?

8 Q Yes.

9 A Yeah.

10 Q Okay.

11 A No.

12 Q Okay. Do you have any email communications with  
13 Ms. Surrell since you left the company?

14 A I do not.

15 Q Okay. Do you have any text messages with  
16 Ms. Surrell since she left the company?

17 A I do.

18 Q Okay. Did that -- did those text messages have  
19 anything to do about this case or sexual harassment at  
20 Bay Club?

21 A No, they did not.

22 Q Those were personal matters?

23 A Personal. Uh-huh.

24 Q Okay. I want to talk about Mark Koorennny,

25 K-o-o-r-e-n-n-y. Okay?

↑

72

Gonser 11.21.19.txt

1 A Okay.

2 Q When did you first meet him or communicate with  
3 him?

4 A I probably met him shortly after I joined the  
5 The Bay Club Company. I don't remember the exact date,  
6 but sometime after I joined the company.

7 Q And what was your understanding of his role when  
8 you first met him?

9 A That he was counsel for The Bay Club.

10 Q And that includes The Bay -- The Bay Clubs  
11 Company, LLC?

12 A Yes.

13 Q And that includes The Bay Club Fairbanks Ranch,  
14 LLC?

15 MR. ALLEN: Objection. Calls for a legal  
16 opinion.

17 THE WITNESS: I would have to -- I guess, yeah.  
18 BY MS. LIEM:

19 Q Do you know what The Bay Club Fairbanks Ranch,  
20 LLC is?

21 A Say that -- say that one more time.

22 Q Do you know what Bay Club Fairbanks Ranch  
23 Country Club, LLC is?

24 A I --

Gonser 11.21.19.txt

25 MR. ALLEN: Objection. Calls for a legal

↑

73

1 conclusion.

2 THE WITNESS: I'm assuming that's the legal name  
3 for Bay Club Fairbanks Ranch.

4 BY MS. LIEM:

5 Q Do you know what date?

6 A I don't.

7 Q And what was Mr. Kooreny's job title when you  
8 first met him back in 2015?

9 A I don't remember.

10 Q Okay.

11 A I'm not sure I ever knew, so I don't remember.

12 Q Did he ever tell you what his job title or role  
13 is with The Bay Club?

14 A All I -- all I knew -- I'm sorry. Go ahead.

15 MR. ALLEN: Objection. Vague and ambiguous as  
16 to job title versus role.

17 THE WITNESS: All I knew was that he was our  
18 corporate attorney.

19 BY MS. LIEM:

20 Q Okay.

21 A But I didn't have details or I didn't know any

Gonser 11.21.19.txt

22 more than that.

23 Q How did you know he was a corporate attorney?

24 A He was a -- well, like I said, I'm assuming he

25 was the corporate attorney. He was addressed -- he was

↑

74

1 introduced as our attorney.

2 Q Have you ever heard of a law firm called

3 The Mark Kooreny Law Group?

4 A I have not.

5 Q And do you know where Mr. Kooreny's office is

6 back in 2015?

7 A I do not.

8 Q Has anyone ever told you that you and

9 Mr. Kooreny have an attorney/client relationship?

10 MR. ALLEN: Objection. Calls for a legal

11 conclusion.

12 BY MS. LIEM:

13 Q To your knowledge.

14 A No, I don't recall.

15 Q Okay. So just to clarify, did you ever meet

16 with any other corporate attorneys with The Bay Club

17 during your employment with The Bay Club?

18 MR. ALLEN: Objection. Vague and ambiguous.

Gonser 11.21.19.txt

7 MR. ALLEN: So stipulated.

8 And before we get back into questioning, over  
9 the lunch break, I have reviewed the text communications  
10 that Ms. Gonser produced over our objections of her  
11 conversations at -- in the course and scope of her  
12 employment by defendant with defendant's attorney Mark  
13 Kooreny. They -- I have confirmed that they have  
14 attorney/client privileged communications and attorney  
15 work project.

16 Defendant has not waived that privilege.  
17 Defendant refuses to waive the privilege. Ms. Gonser is  
18 not in a position either in her former role or now as a  
19 former employee to waive the privilege.

20 And I would cite to Commodity Futures Trading  
21 Commission v. Weintraub, W-e-i-n-t-r-a-u-b. That's  
22 471 U.S. 343. It came out in 1985. And also Venture Law  
23 Group v. Superior Court, 118 Cal Ap 4th, 96. And that's  
24 from 2004.

25 Defendants are demanding a claw back of those

↑

103

1 communications. They also as Ms. Liem has had an  
2 opportunity and has in fact reviewed those communications  
3 as I've personally witnessed during one of our breaks, we

Gonser 11.21.19.txt

4 object to any further questioning by Ms. Liem as fruit of  
5 the poisonous tree.

6 She has now been exposed to attorney/client  
7 communications that are privileged. And we would,  
8 therefore, ask that another attorney from the San Diego  
9 office come to conduct the questioning who has not  
10 reviewed those communications.

11 We have also spoken spoken with Judge Schopler's  
12 office to confirm whether he's available this afternoon  
13 to advise on this. He is out of the office at a memorial  
14 service.

15 As such, to the extent this deposition  
16 continues, we reserve all rights, including a motion to  
17 strike, any testimony from this point forward as if it  
18 never existed, and also to disqualify counsel and for  
19 move for appropriate sanctions for demanding the  
20 disclosure of attorney/client privileged communications,  
21 and refusing to comply with a timely and necessary claw  
22 back request.

23 Are you willing to concede to any of those  
24 points?

25 MS. LIEM: I have -- no. My response is

↑

104



Gonser 11.21.19.txt

1 Ms. Gonser has testified that no -- that there is no  
2 attorney/client relationship as the client, Ms. Gonser,  
3 has the right to consent to whether or not there existed  
4 -- ever existed an attorney/client relationship. And  
5 today she's testified that it's her understanding that  
6 there has never been an attorney/client relationship.

7 MR. ALLEN: She was --

8 MS. LIEM: Let me finish -- with The Bay Club.

9 So in addition, defendant Bay Club has failed to  
10 move for a protective order regarding these  
11 communications. These communications should have been in  
12 a privilege log produced to the EEOC on July 1, 2019.

13 In a motion to compel we argued that those  
14 privileges had been waived because of a lack of  
15 inadequate privilege log. During September 4, there was  
16 a discovery oral argument hearing in which Judge Schopler  
17 ordered the defendant Bay Club to produce an adequate  
18 privilege log.

19 That has not been done. It was inadequate to  
20 the effect that the EEOC could not ascertain whether or  
21 not any communications were in fact privileged under the  
22 attorney work product or the attorney/client  
23 communications privilege.

24 But that privilege log dated October 4, 2019

Gonser 11.21.19.txt

25 still does not contain the nature of the information for

↑

105

1 anyone to ascertain the -- the -- whether or not the

2 application of those privileges were in effect proper.

3 So this is just another delay tactic by defense

4 counsel for the EEOC to prosecute this case. And I

5 intend to ask Ms. Gonser as a fact witness what her --

6 what her purpose and knowledge is as to whether or not

7 the defendant's allegation that -- that there was

8 adequate remedial action taken in response to when

9 complaints of sexual harassment occurred. Ms. Gonser

10 is -- testified to that.

11 Those -- she is a fact witness. The court on

12 November 6, which is -- which is an order that Judge --

13 that District Judge Whelan issued, found that

14 Mr. Kooreny was -- was a fact witness based on his

15 attorney's representation that he was a fact witness

16 because he investigated -- he investigated the sexual

17 harassment claims.

18 So there is no -- so no privilege should apply

19 for these communications because the court has already

20 ruled on it. If Mr. Kooreny is a fact witness, if

21 Ms. Gonser is a fact witness, no attorney work product

Gonser 11.21.19.txt

22 applies, and no attorney/client communication privilege

23 applies.

24 I want to proceed and --

25 MR. ALLEN: No, because your argument is

↑

106

1 disingenuous. With Ms. Gonser acting in the course and

2 scope of her employment, she was in --

3 MS. LIEM: Can -- can -- can we go off the

4 record?

5 MR. ALLEN: No. No. I -- no. This is --

6 MS. LIEM: This is my deposition.

7 MR. ALLEN: I do not -- I do not consent to --

8 MS. LIEM: I don't --

9 MR. ALLEN: -- going off the record.

10 MS. LIEM: I don't want to -- I don't want --

11 this is my deposition.

12 Let's go off the record.

13 MR. ALLEN: No, I do not consent to going off

14 the record. I need to state my objection. I want to

15 state it on the record.

16 MS. LIEM: You've already stated your objection,

17 Counsel.

18 MR. ALLEN: Your argument is disingenuous. She

Gonser 11.21.19.txt

19 was acting in the course and scope of her employment as  
20 an agent for defendant and communicated with defendant's  
21 attorney.)

22 It is defendant's attorney/client privilege that  
23 is at issue regardless of whether she was represented  
24 outside of her employment --

25 MS. LIEM: Counsel --

107

1 MR. ALLEN: -- by Mr. Kooreny personally.

2 MS. LIEM: Counsel, we heard you.

3 MR. ALLEN: That is Horn Book law.

4 MS. LIEM: We heard you.

5 MR. ALLEN: And you are still refusing --

6 MS. LIEM: Counsel --

7 MR. ALLEN: -- to claw -- to claw back attorney  
8 client privileged information.

9 MS. LIEM: Are you finished with your objection?

10 I want to proceed with this witness. She needs to leave  
11 tomorrow for Chicago.

12 Are you done with your objection? Anything  
13 else?

14 MR. ALLEN: We will be seeking appropriate  
15 sanctions against the EEOC generally and Ms. Liem

Gonser 11.21.19.txt

16 personally.

17 MS. LIEM: Well, let's proceed.

18 BY MS. LIEM:

19 Q Ms. Gonser, there is -- I apologize that you  
20 have to witness this type of behavior from opposing  
21 counsel. I'm just asking you to tell the truth to the  
22 best of your knowledge. Okay.

23 Are you okay to proceed?

24 A I am.

25 Q Okay. Thank you.

↑

108

1 You testified earlier that CEO Matthew Stevens  
2 had a -- visited Fairbanks Ranch Country Club, correct?

3 A Yes.

4 Q And he had employee meetings, correct?

5 A Yes.

6 Q And I believe you -- and correct me if I'm  
7 wrong, but you testified that Mr. Stevens wanted to --  
8 was very enthusiastic about the company, and growth,  
9 et cetera, correct?

10 A Yes.

11 Q Based on those company meetings and your  
12 communications with Mr. Stevens, what was Bay Club's

Gonser 11.21.19.txt

13 A Yes, it appears to be. Sorry.

14 MR. ALLEN: Belated objection. Vague and  
15 ambiguous.

16 BY MS. LIEM:

17 Q Can you answer it?

18 A Yes, it appears to be.

19 MS. LIEM: I think we'll take a break -- a  
20 ten-minute break.

21 THE VIDEOGRAPHER: We're going off the record at  
22 2:15 p.m.

23 (Recess)

24 THE VIDEOGRAPHER: We're going back on the  
25 record at 2:56 p.m.

↑

165

1 MS. LIEM: Counsel, for EEOC and The Bay -- Bay  
2 Club Fairbanks Ranch, LLC have come to an agreement  
3 regarding texts between Ms. Gonser and Mark Koorennny that  
4 she produced today. And Mr. -- correct me if I'm wrong,  
5 so I'll just go ahead and put it on the record.  
6 EEOC counsel and counsel for defendant have  
7 agreed to place all copies of the texts between  
8 Ms. Gonser and Mr. Koorennny that were produced today,  
9 including all copies, and a copy that I had written down

Gonser 11.21.19.txt

10 attorney work product on it, into a sealed envelope.

11 And the EEOC will agree to maintain the envelope

12 in a safe and secure location and will not open the

13 contents of the envelope or use any of the contents of

14 the envelope until counsel for The Bay Club Company's,

15 LLC advises the EEOC by December 3, 2019, close of

16 business, whether any of the materials or texts in the

17 envelope are privileged or -- and if they are, they will

18 serve a redacted copy. And a privileged log or confirm

19 that everything in the -- the texts between Ms. Gonser

20 and Mr. Kooreny are in fact privileged.

21 If that is the case, the EEOC will destroy all

22 copies of the contents of the envelope and -- and not

23 use -- we will confirm that to you if that is the case.

24 And upon receipt of the December 3, 2019 response from

25 Buchalter -- oh, well, we can also return the envelope to

↑

166

1 you or destroy it, whatever is your choice if everything

2 is privileged.

3 MR. ALLEN: If everything is privileged, we will

4 ask for it to be destroyed to update our prior

5 conversations. There has also been a representation from

6 the EEOC that no digital copies exist. That the hard

Gonser 11.21.19.txt

7 copies in the envelope are the only copies in the EEOC's  
8 possession.

9 For clarity of the record, I have one copy of  
10 those text messages in my possession outside of the  
11 envelope in order to do the analysis. And otherwise, we  
12 will advise no later than close of business December 3,  
13 2019, whether any discoverable, nonprivileged information  
14 exists. If everything's privileged, we will so advise.  
15 If not, we will provide a privileged log and redacted  
16 version.

17 MS. LIEM: So stipulated by the EEOC.

18 MR. PRATO: And I have electronic copies so --  
19 but I'm her counsel. I won't provide them to anybody.  
20 So there you go.

21 MR. ALLEN: Yes. If Mr. Prato will stipulate  
22 that should any of those records become subject to a  
23 subpoena or other method of forced disclosure, he will so  
24 advise my office prior to any such disclosure.

25 MR. PRATO: No problem.

↑

167

1 MR. ALLEN: Thank you.

2 MR. PRATO: Actually, I did that in this case.

3 MS. LIEM: All right.



Gonser 11.21.19.txt

7 Q Okay. And were those produced today in response  
8 to the subpoena?

9 A Yes.

10 Q Okay. And what were the dates of those texts?

11 A I don't remember off the top of my head.

12 Q Were those texts made during 2016?

13 A They may have been. I don't -- like I said, I  
14 don't recall the dates.

15 Q Okay. Have you given us all texts?

16 A I have given you every single text I have with  
17 Mark Kooreny, everything.

18 Q Okay.

19 A In fact, I overlapped the content so that you  
20 could see a continuous flow of texts. I gave you  
21 everything.

22 Q Okay. So if there aren't any 2016 texts that  
23 you gave us, you and Mr. Kooreny probably never  
24 communicated via text --

25 A Correct.

↑

215

1 Q -- during 2016?

2 A That's correct.

3 Q Okay. Just to be clear, after your conversation