IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GUERRERO FAMILY TRUST, et al., **Plaintiffs,** **v.** **KINKI NIPPON TOURIST, LTD., et al.,** **Defendants.**	**Civil Action No. 04-0574** **ORDER DENYING PLAINTIFFS' MOTION TO SUPPRESS VIDEOTAPED DEPOSITIONS**

THIS MATTER was heard on December 1, 2008 at 9:00 a.m. William Fitzgerald and Daniel Benjamin appeared on behalf of plaintiffs Herman T. Guerrero and Jesus T. Guerrero, as trustees of the Guerrero Family Trust, Carmen Deleon Guerrero Borja, Clarence T. Tenorio, Norman T. Tenorio and Ana T. Sablan as co-trustees of the Jose C. Tenorio Trust, Juan S. Tenorio, as administrator of the Estate of Santiago C. Tenorio, Juan T. Guerrero, Jesus T. Guerrero, and Antonio C. Tenorio, as trustee of the AJT Trust (collectively, "Plaintiffs"). Anita Arriola appeared on behalf of defendant Morgan Stanley Japan Limited (Morgan Stanley). Anthony Long appeared on behalf of defendant Saipan Hotel Corporation (SHC). Thomas Sterling and Thomas Clifford appeared on behalf of defendants Kinki Nippon Tourist Co., Ltd. (KNT) and K.K. Ing Karuiza Wa Training Institute (ING).

Having considered the arguments of counsel, the pleadings, materials on record, and the relevant rules and case law, the Court is prepared to rule.

I. FACTUAL AND PROCEDURAL BACKGROUND

In September and October 2007, Defendants KNT, SHC, Pacific Development, Inc. (PDI), Pedro J.L. Igitol, in his official capacity as Secretary of SHC, Morgan Stanley, and ING (collectively, "Defendants") videotaped the deposition testimony of eight (8) people.[1] The depositions resulted in approximately ninety (90) hours of videotaped testimony. Plaintiffs were aware that the depositions were being recorded by videotape rather than stenographically and did not object before or during the depositions. Due to various recording equipment problems, the audio quality of the deposition videotapes was very poor.[2] Nevertheless, Defendants retained Veritext National Deposition & Litigation Services (Veritext) to prepare transcripts from the videotapes. According to Veritext's Office Manager,

> The transcribers each viewed and listened hour-by-hour to the videotaped depositions conducted such that every audible word was heard, transcribed, verified, and recorded by the Transcribers as accurately as possible . . . . Where a passage could not be discerned it was noted as [Inaudible] in the transcript . . . .

(Apodaca Aff. at 3.)

In November 2007, Morgan Stanley also retained Practical Solutions (PS), a Saipan-based firm, to review the transcripts for accuracy by comparing the transcripts to the videos. Instead of performing a second hour-by-hour review of the transcripts, PS used a review process in which it conducted a "cursory" review of the transcript index for unfamiliar or foreign words (including names of people and/or places) along with a search for any indication from transcribers regarding gaps or skips in the audio as well as any point in the transcript

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[1] The deponents were Annie T. Sablan, Frances Borja, Juan Tenorio, Jesus Guerrero, Clarence Tenorio, Herman Guerrero, Juan Guerrero, and Brenda Tenorio.

[2] The poor audio quality resulted from noise interference (e.g., paper rustling and coughing), microphones placed too far away from the speakers, speakers mumbling, speakers speaking on top of each other, and speech tone, pattern, and pronunciation issues. (Fitzgerald Aff. Ex. A at 2).

keyed as "inaudible" or "indiscernible." (Fitzgerald Aff. Ex. A at 2.) PS stated that "[i]n some instances, reviews went quickly as there were very few key words . . . to identify for correction; while the majority were monstrous." (*Id.*) Proposed corrections were sent to Veritext, which only implemented a correction if its transcriber was able to personally identify it by listening to audio/video clips provided by PS. (Apodaca Aff. at 3.) On April 2, 2008, final copies of the transcripts were emailed to Plaintiffs and hard copies arrived on April 7, 2008. (Pl's Motion at 3-4.)

On April 7, 2008, defense counsel William Blair filed a Declaration containing excerpts from the original deposition transcripts.[3] Testimony from the excerpts was cited by KNT and ING in their Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, of which Mr. Blair was the primary drafter. (Blair Aff. at 2.) Prior to filing the Memorandum, however, Mr. Blair received the final deposition transcripts. (*Id.* at 3.) Mr. Blair caused a member of his staff to compare the draft excerpts with the final excerpts and asserts that, at least in those excerpts, the draft and final transcripts were identical. (*Id.*)

On April 18, 2008, PS produced its Summary Report (the "PS Report") describing the methods it employed to review the original transcripts. (Fitzgerald Aff. Ex. A.) Plaintiffs received a copy of the PS Report shortly thereafter. Plaintiffs filed their Motion to Suppress on May 2, 2008, arguing that the poor audio quality of the videotapes and the manner in which the depositions were transcribed rendered the transcripts unreliable and inaccurate. (Pl's Motion at 1.) Defendants argue that Plaintiffs waived their right to object to the manner in which the

[3] Excerpts from the rough draft transcripts were taken from the depositions of Juan T. Guerrero, Brenda Y. Tenorio, Annie T. Sablan, Herman T. Guerrero and Frances DLT Borja. The excerpts were attached as Exhibits S, T, U, V and Y to the Declaration file by William J. Blair on April 7, 2008 and referred to in his subsequent Affidavit filed on April 28, 2008.

depositions were recorded by failing to object before or during the depositions, and that there is no basis for Plaintiffs' Motion. (Def's Opp. at 2-4.)

II. ANALYSIS

A. Plaintiffs' Lack of Objection to the Manner in which the Depositions were Recorded

1. Plaintiffs waived their right to object to the manner in which the depositions were recorded.

While Plaintiffs' Motion to Suppress is more broadly based on the argument that the deposition transcripts are unreliable and inaccurate, they attribute the resulting poor audio quality of the depositions to defendants' decision to record and videotape the depositions instead of using a stenographer as stipulated by the parties. The court finds that Plaintiffs waived any objection to the manner in which the depositions were taken when they failed to raise their objection before or during the depositions.

Commonwealth Rule of Civil Procedure 30(b)(2) specifically permits deposition testimony to be recorded by audiovisual means.[4] Objections to the non-stenographic recording of a deposition should be raised prior to the commencement of the deposition via a motion for a protective order under Commonwealth Rule of Civil Procedure 26(c) or at the commencement of the deposition under Commonwealth Rule of Civil Procedure 30(c). Commonwealth Rule of Civil Procedure 32(d)(3)(B) echoes the requirements for an objection to the manner in which a deposition is recorded under Rule 30(b)(2). Specifically, Rule 32(d)(3)(B) provides that,

> Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if

[4] The Rule permits depositions to be recorded by "sound, sound-and-visual, or stenographic means." Com. R. Civ. P. 30(b)(2).

> promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

Com. R. Civ. P. 32(d)(3)(B).

The focus of Rule 32(d)(3)(B) is to ensure that objections are made at a point in the proceedings where they will allow the parties the opportunity to correct the alleged errors so that the depositions might still be of some use in the court proceedings. *Bahamas Agr. Indus. Ltd. v. Riley Stoker Corp.*, 526 F.2d 1174, 1181 (6th Cir. 1975) (analyzing the analogous Federal Rule of Civil Procedure 32(d)(3)(B)). In this case, Plaintiffs were aware that a stenographer was not present during the depositions and that the depositions were being recorded by videotape. Plaintiffs did not object to the depositions being recorded by videotape before or during the approximately ninety (90) hours of testimony. Any objection to the depositions being recorded by videotape is therefore waived.

2. *Plaintiffs' waiver in the manner of taking the depositions did not preclude their Motion to Suppress.*

Plaintiffs' failure to object to the manner in which the depositions were recorded does not preclude them from filing a motion to suppress the final transcripts. Rule 32(d)(4) provides that,

> Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Com. R. Civ. P. 32(d)(4).

Rule 32(d)(4) applies to errors or irregularities that occur after the depositions are completed, such as errors or irregularities in the manner in which the testimony is transcribed

or the deposition is otherwise prepared. This is different than Rule 32(d)(3)(B) which only applies to errors and irregularities occurring at the oral examination that could have been corrected during the deposition. Furthermore, the rule allows a motion to suppress as long as it is made with "reasonable promptness after such defect is, or with due diligence might have been ascertained." *Id.* In this case, the depositions were completed in September and October 2007. Although Plaintiffs received the original transcripts months before the final transcripts arrived on April 2, 2008, Plaintiffs did not discover the review process PS employed to review the original transcripts until Plaintiffs received the PS Report dated April 18, 2008. Plaintiffs' Motion to Suppress was filed on May 2, 2008, two weeks after the PS Report was produced. Plaintiffs therefore filed their Motion to Suppress with reasonable promptness after discovering, or after with due diligence they might have discovered, the alleged defects in the deposition transcripts.

B. Plaintiffs' Motion to Suppress

The plain language of Commonwealth Rule of Civil Procedure 32(d)(4) contemplates circumstances in which a "deposition or some part thereof" might be suppressed. Com. R. Civ. P. 32(d)(4). Because the Commonwealth has not had the opportunity to consider the standard regarding a motion to suppress brought under the Commonwealth rule, this Court turns to other jurisdictions interpreting the analogous federal rule for guidance.[5] The federal rule states,

> An objection to how the officer transcribed the testimony--or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition--is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

[5] Where CNMI case law has not addressed an issue of law, the Court applies "the rules of common law, as expressed in the restatements of law [and] as generally understood and applied in the United States, ..." 7 C.M.C. § 3401; *Ito v. Macro Energy, Inc.*, 1993 WL 614805, at *7 (N.Mariana Island Oct. 26, 1993).

Fed. R. Civ. P. 32 (d)(4).

While jurisdictions interpreting the analogous federal rule have allowed the exclusion of entire deposition transcripts, the facts allowing such exclusions are distinguishable from the instant case. For example, in *Bunch v. Ballard*, the court excluded a deposition when it was transcribed a week before trial, two years after it was taken, and was delivered to the opposing party on the morning of the trial without being signed or filed. *Bunch v. Ballard*, 795 F.2d 384, 391 (5th Cir. 1986). The party moving to suppress the deposition was completely unaware that the transcript would be used at trial or that it had even been transcribed. *Id.* In this case, Plaintiffs are aware that the deposition testimony has been transcribed, that Defendants are attempting to use the transcripts in court proceedings, and by now have had both draft and certified final transcripts for many months. The trial in this case is not scheduled until June 8, 2009, which gives Plaintiffs ample time to prepare their use at trial.

Plaintiffs cite *Thomas Ex Rel. Jackson v. Johnson*, 2001 W.L. 66309 *1 (N.D.N.Y. 2001), to show that Rule 32(d)(4) has been applied to challenge discrete portions of a deposition. (Pl's Motion at 6.) In *Thomas*, the trial judge affirmed the decision of a magistrate that a portion of a deposition transcript should be suppressed due to "transcription errors." *Thomas*, 2001 W.L. 66309 at *1. The transcription errors, however, are not described in the decision and the magistrate granted leave for the witness to be redeposed with respect to the issues contained in the portion of the transcript that was suppressed. *Id.* Because the *Thomas* decision does not describe the "transcription errors" which justified the suppression of certain portions of the transcript, the case does not clarify the standard for bringing a motion to suppress under Rule 32(d)(4). Moreover, the facts of the instant case are quite different than

Thomas because Plaintiffs in this case are seeking a blanket suppression of all ninety (90) hours of deposition testimony.

Plaintiffs argue that where uncertainty and error infect the entire transcript, a motion to suppress the entire transcript is appropriate, citing *Wanke v. Lynn's Transp. Co.*, 836 F. Supp. 587, 593 (N.D. Ind. 1993). (Pl's Motion at 6.) In *Wanke*, the plaintiff sought to use the defendant's unsigned deposition so that she could refer to it in her response to a motion in limine. *Wanke,* 836 F. Supp. at 593. The court in *Wanke* merely noted that Federal Rule of Civil Procedure 30(e) allowed a party the right to use an unsigned deposition where the deponent failed or refused to sign the deposition unless the court found reason to grant a motion to suppress. *Id.* Since the defendant never brought a motion to suppress, the court allowed the plaintiff to use the defendant's unsigned deposition. *Id.* The decision did not, however, explore the circumstances that might warrant suppression of an entire deposition if a motion to suppress had been brought. The discussion concerning the suppression of depositions in *Wanke* begins and ends with the verbatim language of Federal Rule of Civil Procedure 30(e). *Wanke* therefore does not offer any guidance for purposes of determining the standard for a motion to suppress an entire deposition transcript.[6]

Even if this court adopted Plaintiffs' proposed standard that where uncertainty and error infect the entire transcript, a motion to suppress the entire transcript is appropriate, Plaintiffs have not met this threshold. Plaintiffs point out four main concerns with the transcripts:

[6] Plaintiffs bring their motion pursuant to Rule 32(d)(4), which pertains to errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer. In *Wanke*, the court is discussing Rule 30(e), which pertains to the use of unsigned depositions. *Wanke*, 836 F. Supp. at 593. Although both rules mention a party's right to bring a motion to suppress, Plaintiffs have made no argument as to whether the standards for a motion to suppress under Rule 30(e) would be the same as a motion to suppress brought under Rule 32(d)(4). Nevertheless, there was no motion to suppress brought in *Wanke* under either rule. *Id.*

- The fundamentally flawed recording procedures that were used that included misplaced microphones and garbled recordings (PS Report at 2);

- The "monstrous" nature of the irregularities found in the transcripts as first prepared (*id.*);

- That the "correction" method chosen was a "random" one that did **not** include a review of all ninety hours of defective tape (*id.* at 1-2); and

- That **even when errors in the transcripts were detected by the sound experts where words were not accurately transcribed, the court reporters in some instances did not make the correction to the transcripts because they still could not hear the missing words** (*id.* at 2).

(emphasis added by Plaintiffs) (Pl's Motion at 4.)

While it is undisputed that there were flawed recording procedures used in recording the depositions, it has been noted that even stenographers have problems producing perfect transcripts when encountering problems such as speakers speaking on top of each other, speakers mumbling, and noise interference. *Champagne v. Hygrade Food Prods. Inc.*, 79 F.R.D. 671, 673-74 (D.C. Wash. 1978). Unlike stenographic recording, however, videotape is able to capture things like body language, delays, and coaching by counsel. *See Riley v. Murdock*, 156 F.R.D. 130, 131 (E.D.N.C. 1994). For these reasons, parties often choose to record depositions using videotape rather than stenographers. *Id.* Here, the depositions were recorded by videotape and Plaintiffs did not object. Once the depositions were completed, Veritext's Office Manager states that the transcribers "each viewed and listened hour-by-hour to the videotaped depositions conducted such that every audible word was heard, transcribed, verified, and recorded by the Transcribers as accurately as possible...." (Apodaca Aff. at 3.) The fact that Defendants hired PS to perform a second review of Veritext's first hour-by-hour

transcription demonstrates that Defendants took extraordinary measures to ensure the transcripts were as accurate as possible.

Contrary to Plaintiffs' assertion that PS employed a "random" review method, the PS Report explains that PS first made a "cursory" review of the transcript index to target portions containing "unfamiliar or foreign words (including names of people and/or places) along with a search for any indication from transcribers regarding gaps or skips in audio as well as any point in the transcript keyed as "inaudible" or "indiscernible." (Fitzgerald Aff. Ex. A at 2.) This approach was strategic rather than random as it targeted areas of the transcript where errors were most likely to have occurred. Furthermore, the efforts of PS were only in addition to the hour-by-hour transcription work already performed by Veritext. The Affidavit submitted by defense counsel William Blair asserts that, at least in the portions of the transcript cited by KNT and ING in their Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, there were no changes made between the original and final draft transcripts. (Blair Aff. at 3.) Therefore, not all portions of the original transcript transcribed by Veritext even needed the PS review.

Although PS described instances of their review project as "monstrous," PS made this statement to explain the speed at which it was able to complete its review in light of the challenges it faced in working with the ninety (90) hours of problematic audio. It appears that the PS Report was only prepared in response to Plaintiffs' demand for an explanation for the delay in completing the transcripts. (Def's Opp. at 2.) Taken in context, the statement was that,

> "[i]n some instances, reviews went quickly as there were very few key words (i.e. unfamiliar or foreign words, names of people, and/or places, gaps or skips in audio, inaudible or indiscernible) to identify for correction; while the majority were monstrous. The

> biggest difficulties the PS team faced after the video repairs were 1) noise interfering (sic) the speaker (i.e. paper rustling, coughing), 2) speakers too far from the mic, 3) speakers mumbling, 4) speakers speaking on top of each other and not repeating information for the record, and 5) speech tone, pattern and pronunciations.

(Fitzgerald Aff. Ex. A at 2.) As stated above, many of the "difficulties" the PS team faced would have been equally challenging for a stenographer, though a stenographer would not have had the opportunity to review a tape for accuracy. *See Champagne*, 79 F.R.D. at 673-74. Although PS described instances of reviewing the testimony as "monstrous," PS did not state that its challenges were insurmountable. Rather, PS indicates that it spent from late January 2008 until March 18, 2008 methodically working to complete its review. (Fitzgerald Aff. Ex. A at 1-3.)

Finally, the fact that Veritext refused to implement corrections proposed by PS unless a Veritext transcriber was able to personally identify the correction as well only adds, not detracts, from the reliability of the final draft transcripts. In effect, Veritext performed a third check of the potential problem areas in the transcripts and cautiously took responsibility for the accuracy and reliability of the final transcripts.

Plaintiffs also cite to *Matter of Koran Enters., Inc.*, 61 B.R. 321, 324 (W.D. Mo. 1986), for the proposition that the danger sought to be avoided by Federal Rule of Civil Procedure 32(d)(4) is that a "fabricated transcription may be presented to the court instead of a faithful record of the deposition testimony--or at least one which may contain crucial errors." (Pl's Motion at 6.) While this Court agrees with Plaintiffs regarding the dangers sought to be avoided by Rule 32(d)(4), Plaintiffs have not demonstrated that such fabrications or "crucial errors" exist here.

First, although Plaintiffs highlight the poor audio quality of the videotaped depositions and the procedures used to review the original transcripts, nothing in the record indicates that Defendants outright fabricated portions of the transcript. Where the audio was particularly poor, Veritext noted those portions as "[Inaudible]" and only transcribed what it could verify was actually said. (Apodaca Aff. at 3.) Everything in the transcript was therefore heard. PS then performed a second review of the transcript targeting areas which might contain errors such as where the transcript contained unfamiliar or foreign words including names of people and/or places. (Fitzgerald Aff. Ex. A at 2.) Veritext then performed a third review to ensure that proposed corrections were accurately reflected in the original recordings before a change was implemented. (*Id.*) There is simply no evidence of outright fabrication.

Second, while this Court disagrees with Defendants' assertion that Plaintiffs must point to specific irregularities in the transcript,[7] Plaintiffs have not provided sufficient evidence to support an inference that "crucial errors" exist in light of the lengthy transcription and review processes documented by Veritext and PS. No recording process, whether stenographic, audio or audiovisual, renders a completely perfect transcript when faced with difficulties such as speakers speaking on top of each other, speakers mumbling, and noise interference, and it is unreasonable to hold Defendants to such an impossible standard here. *See Champagne*, 79 F.R.D. at 673-74. Plaintiffs may not plausibly maintain that the transcript is rife with "crucial errors" merely because Veritext indicated that some portions of the audio were inaudible and PS was hired to ensure that uncommon words and phrases were transcribed correctly. Furthermore, if Plaintiffs still believe the transcripts contain errors, Commonwealth Rule of

[7] In their Opposition, Defendants assert that "it is the burden of the party seeking exclusion to establish on the record the existence of specific irregularities sufficient to cast into doubt the reliability of the transcript. *See, Champagne v. Hygrade Food Prods. Inc.*, 79 F.R.D. 671, fn3 (D.C. Wash. 1978)." (Def's Opp. at 6.) This holding, however, is not found anywhere in the *Champagne* decision.

Civil Procedure 30(e) allows them to review and correct the transcript. *See Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000) (a deponent may change the substance of a deposition transcript if it can "plausibly be represented as the correction of an error in transcription.") *See also Greenway v. Int'l Paper Co.*, 144 F.R.D. 322 (W.D. La. 1992) (representing a minority view that limits transcript changes only to transcription errors. *Herring v. Teledyne Inc.*, 2002 WL 32068318).

Significantly, *Koran* was a case where the Court excluded a deposition on its own because the deposing party violated Federal Rule of Civil Procedure 30(e) by not affording the deponent an opportunity to either sign the deposition or refuse to sign and state his reasons therefore. *Koran,* 61 B.R. at 324. A motion to suppress was never brought. *Id. Koran* is therefore not illustrative of circumstances justifying a motion to suppress brought because of alleged errors in the manner in which the testimony is transcribed. It does explain, however, the rational behind giving a deponent the opportunity to review and sign the deposition transcript. In this case, Plaintiffs have been given the opportunity to review and sign the final transcripts, and have further been given the opportunity to make corrections if they believe the transcripts contain errors.

C. Plaintiffs' Solution is to Correct the Allegedly Erroneous Transcripts.

If Plaintiffs believe that the final deposition transcripts contain errors, the proper course of action is for Plaintiffs to point out the mistakes and make corrections to the transcripts pursuant to Commonwealth Rule of Civil Procedure 30(e), which provides in pertinent part that,

> If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and if there are changes in

> form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them.

Com. R. Civ. P. 30(e). Plaintiffs have been provided with both the videotaped deposition recordings and the final deposition transcripts, and are therefore equipped to review and correct the transcripts should they choose to do so.

Requiring Plaintiffs to furnish corrections to the transcript does not, as Plaintiffs argue, improperly shift the burden of bearing the costs associated with transcription. The party noticing and conducting the deposition is normally the proper party to bear the costs associated with transcription. *See, e.g., Seaview Terrace v. Diaz*, 1992 WL 365805, *4 (D.Guam 1992)(citing *Melton v. McCormick*, 94 F.R.D. 344, 346 (D.C.N.Y. 1982); see also *Caldwell v. Wheeler*, 89 F.R.D. 145, 147 (D.C.Utah 1981). The party bearing the burden is not, however, held to a standard of absolute perfection. Again, regardless of the recording method chosen, no transcript will be flawless when there are issues such as multiple speakers speaking at the same time, speakers mumbling, and noise interferences. *See Champagne*, 79 F.R.D. at 673-74. Requiring Defendants to produce a perfect transcript is therefore unreasonable. In this case, Defendants bore the cost of videotaping the ninety (90) hours of deposition testimony, hiring Veritext to listen hour-by-hour to the tapes to create the original transcript, and then hiring PS to conduct a strategic review of the potentially problematic areas. Veritext then verified all the corrections proposed by PS to ensure the correction could be heard in the original audio. Defendants have therefore gone above and beyond what most parties undertake due to the unfortunately poor audio quality of the videotapes. Now that the videotapes have been painstakingly transcribed, Plaintiffs have the opportunity to review and correct the transcripts if they believe errors exist.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Suppress the Videotaped Depositions is DENIED. Each deponent shall have thirty (30) days from the date of this order to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given for making them.

IT IS SO ORDERED this 12th day of February, 2009.

PERRY B. INOS, Associate Judge