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19 UNITED STATES DISTRICT COURT

20 DISTRICT OF NEVADA

21 CARY KATZ, an individual,
22 Plaintiff,

23 vs.

24 MARK STEYN, an individual; MARK
25 STEYN ENTERPRISES, INC., a New
26 Hampshire corporation; and DOES 1-10,
27 inclusive,

28 Defendants.

Case No. 2:18-CV-00997-JAD-GWF
Hon. Jennifer A. Dorsey, Courtroom 6D

**MOTION FOR PROTECTIVE ORDER
OVER AN IMPROPER VIDEO
RECORDING OF PLAINTIFF'S
LAWYERS DURING DEFENDANTS'
DEPOSITIONS AND FOR SANCTIONS;
DECLARATION OF KATHRYN E.
STUART IN SUPPORT THEREOF**

Judge: Hon. Jennifer A. Dorsey, Courtroom
6D

Trial Date: None Set

1 **I. INTRODUCTION**

2 This motion by Plaintiff Cary Katz (“Plaintiff” or “Mr. Katz”) arises in this context of an
3 acrimonious defamation case and seeks an order that may be a first for this Court (it certainly is
4 for this counsel): the Court direct Defendants Mark Steyn, any individual acting on behalf of
5 Defendant Mark Steyn Enterprises (US), Inc., and their attorney to destroy all copies of an illicit
6 video of Mr. Katz’s attorneys questioning Mr. Steyn and Melissa Howes at their depositions,
7 which were also being videotaped pursuant to proper notice by Plaintiff.

8 This bizarre situation was orchestrated by Mr. Steyn, Ms. Howes, and their lawyer who
9 arranged the videotaping, refused to cease videotaping when asked, and later reneged on an
10 agreement to not give the recording to Mr. Steyn or anyone else. Mr. Steyn is sure to put clips of
11 this improper recording all over the internet as he has with private arbitration proceedings
12 involving Mr. Katz’ company. Not only was counsel’s action contrary to the Federal Rules of
13 Civil Procedure, it was contrary to civility by an officer of this court.¹

14 The sole purpose of recording Mr. Katz’s lawyers taking the deposition was so that Mr.
15 Steyn, a well-known conservative media personality who often guest hosts the Rush Limbaugh
16 show and regularly appears on Fox News’ Tucker Carlson Tonight, could promote his animus
17 towards Mr. Katz and his lawyers on Mr. Steyn’s website, talk shows and wherever else Mr. Steyn
18 is able to continue his jihad against Mr. Katz. Not only should all copies of the recording be
19 ordered destroyed, but Mr. Steyn and his lawyer should be sanctioned for their gross conduct.

20 On January 8, 2019, after months of effort and with an impending discovery cut-off,²
21 Plaintiff deposed Defendant Mark Steyn and Melissa Howes (as President of Defendant Mark
22

23 ¹ Mr. Murphy, who was given two opportunities to back off from this stunt but refused to do
24 so, is admitted to practice in Nevada *pro hac vice*. In addition to the opportunity at deposition,
25 Mr. Murphy was given the choice to agree to destroy the recording without the parties having to
resort to Court intervention, but Mr. Murphy refused to respond to Plaintiff’s counsel.
(Declaration of Kathryn Stuart (“Stuart Decl.”) ¶ 15, Exhibit D.)

26 ² The discovery cut-off in this action was originally December 3, 2018. The parties
27 stipulated to extend that date to February 1, 2019. On January 15, 2019, after missing at least one
28 important deadline, Defendants were granted an extension by Magistrate Foley to move the
discovery cut-off date to May 2.

1 Steyn Enterprises (US), Inc.) in Burlington, Vermont. A little over an hour into the deposition,
 2 counsel for Plaintiff noticed there were multiple cameras recording the proceedings. Counsel
 3 inquired, and was told that in addition to the videographer Plaintiff had retained (per proper
 4 notification in the deposition notices), Steyn brought their own videographer. Steyn's
 5 videographer was not hired to film the witness as Mr. Steyn testified under oath; he was hired to
 6 film Plaintiff's two lawyers! Steyn provided no prior notice he was hiring a videographer to film
 7 counsel and the illicit videographer surreptitiously failed to identify himself during initial
 8 appearances. (Stuart Decl. ¶ 6, Exhibit A.)

9 Katz's lawyers vehemently objected, yet Steyn and his lawyer refused to stop the filming.
 10 Because Katz had noticed Steyn and Howes' depositions numerous times (Steyn delayed time
 11 after time), and had flown across the country to take the depositions, counsel had no real choice
 12 but to proceed with the depositions and try to deal with it after-the-fact. At no time did either of
 13 Plaintiff's counsel consent to taping – they both vigorously objected. Plaintiff and counsel
 14 therefore now seek an order from this Court (1) precluding Defendants from using the videotape;
 15 (2) that the media (and all copies) be destroyed; and (3) for sanctions relating to Defendants and
 16 their counsel's improper conduct.

17 18 **II. STATEMENT OF FACTS**

19 **A. Defendants and Their Counsel Surreptitiously Record Plaintiff's Counsel.**

20 It took over three months to get Mark Steyn and Melissa Howes to sit for deposition.³

21
 22 ³ Plaintiff served its initial deposition notice on Mark Steyn on September 20, 2018. The
 23 deposition was scheduled for October 11, 2018. (Stuart Decl. ¶ 1.) However, Steyn refused to
 24 appear. On or around October 4, 2018, Plaintiff's counsel was informed that Michael Murphy
 25 would be entering as lead counsel, and he would make decisions regarding scheduling depositions.
 26 (Stuart Decl. ¶ 3.) In light of receiving this information, on October 8, 2018, Plaintiff's counsel
 27 sent out new deposition notices for Mark Steyn and Melissa Howes to take place on November 7
 and 8, 2018 in San Francisco because Defendants' counsel had said that Defendant would be in
 San Francisco on surrounding dates. (*Id.*) Plaintiff's counsel then attempted to accommodate the
 schedule of Defendants, eventually agreeing to take the depositions of Steyn and Melissa Howes
 in Vermont.

28 Plaintiff served deposition notices on November 6, 2018 for December 3, 2018, with an

1 Plaintiff served his initial deposition notice on Mark Steyn on September 20, 2018 but were
2 unable to confirm Steyn's attendance until January 8, 2019. Defendants asked that Steyn be
3 deposed in Vermont. All of Plaintiff's deposition notices to Steyn and Howes stated that the
4 depositions would be recorded by a videographer.

5 On January 8, 2019, the deposition of Steyn commenced. A little over an hour into the
6 deposition, Plaintiff's counsel, Mr. George, noticed that there were two video cameras and two
7 operators filming the proceedings and inquired as to why. In response to Mr. George's question
8 "You've been recording me?" Mr. Steyn, while under oath, misrepresented on the record "[b]oth
9 cameras are on me." (Stuart Decl. ¶ 7, Exhibit A at p. 4.) Defendants' counsel also initially
10 evaded the questions but finally fessed up that Defendants had hired the second cameraman to film
11 Plaintiff's counsel during the depositions. (*Id.*) Defendants had not provided any notice that they
12 intended to videotape the depositions of Steyn and Howes or counsel. (Stuart Decl. ¶ 10.) Nor
13 had the second videographer even orally identified himself at the outset of the deposition. (Stuart
14 Decl. ¶ 6, Exhibit A at pp. 2-3.) When asked by Plaintiff's counsel, Defendants' counsel would
15 not represent that the recording would not be used for purposes other than as required for the
16 proceeding. (Stuart Decl. ¶ 7, Exhibit A at p. 5.) Mr. George objected and spoke off the record
17 with Defendants' counsel, but Defendants and their counsel refused to stop recording Mr. George
18 and his associate, Kathryn Stuart. (Stuart Decl. ¶¶ 7, Exhibit A at pp. 4-7; 8.) Counsel could not
19 seek assistance from the Court as the dispute occurred before 8 a.m. Nevada time. (Stuart Decl. ¶
20 9.)

21 Because it had taken multiple notices to get Steyn and Howes to appear, and because they
22 had traveled cross-country, counsel proceeded with the depositions under protest and the parties
23 agreed to present the issue to the Court within fourteen days. In the meantime, Defendants'

24
25 open location for Mark Steyn, and December 10, 2018 for Melissa Howes. (Stuart Decl. ¶ 4.)
26 Defendants again would not appear on those dates. Plaintiff therefore served notices on
27 November 28, 2018 for January 8 and 9, 2019 for Steyn and Howes in New York. Defendants,
28 however, asked that Steyn be deposed in Vermont. Accordingly, Plaintiff served yet another
round of deposition notices for the January 8 and January 9, 2019 depositions in Vermont. (Stuart
Decl. ¶ 5.)

1 counsel agreed to retain exclusive possession of the recording and to not distribute it to his clients
2 until the matter is resolved. (Stuart Decl. ¶ 7, Exhibit A at pp. 6-7.)

3 Mr. George stated on record:

4 I'm going to propose a stipulation that deals with the fact that I was
5 unaware that there was a separate videographer here just dealing
6 with a -- an assignment given by the defendants to videotape the
7 room, not just the deponent; no notice was given to me prior to the
8 deposition, so I've met and conferred with counsel, and what we've
9 agreed to do is I've accepted his word that Mr. Murphy will retain
10 custody of the videotape of the defendants' videographer's
11 videotape and until such time as we have a ruling by the Court in the
12 federal district court in Nevada, the video will not be shared with
13 defendants themselves or anybody else and that I will have a set
14 period of time to seek relief from the Court on that.

15 Mr. Murphy agreed. "Fourteen days. So stipulated." (Stuart Decl. ¶ 7, Exhibit A at pp. 6-7.)

16 Ten days after the stipulation, Mr. Murphy acted in contravention of this agreement. Mr.
17 Murphy shared either the recording itself or the substance of the recording with Defendants or
18 someone else who shared it with Defendants. On January 18, 2019, Mr. Steyn, acting *pro se* in
19 another proceeding, sent an email to an arbitrator attaching a string of emails regarding this
20 proceeding, stating "[d]uring last week's waste-of-time deposition in Vermont, Miss Stuart
21 disclosed to the court reporter that she had just returned from her own ski vacation in Aspen."
22 (Stuart Decl. ¶ 11, Exhibit B.) The only way Mr. Steyn could have obtained this knowledge is by
23 having watched or by receiving information about the substance of the recording. (Stuart Decl. ¶
24 12.)

25 **B. Defendants Plan to Disclose the Recording As A Vehicle for Further**
26 **Defamation of Plaintiff Under The Guise of The Litigation Privilege.**

27 Defendants plan to disclose the recording on their website, SteynOnline, as a vehicle for
28 further harassment of Plaintiff under the guise of the litigation privilege.

Defendants have already published numerous articles regarding the deposition on their website:

- “I’ll be spending the whole of today, Tuesday, being deposed by litigious cockwomble Cary Katz’s lawyers. If we get a moment in between the brutal questioning, I may post a photo from the deposition dungeon.” Available at: <https://www.steynonline.com/9131/tippy-topping-tripping>;
- “this week I was deposed by a shyster in blue jeans, which I was resentful of mainly because, if your client (the student-loan cockwomble Katz) is suing me for fifteen million bucks, I feel you could at least dress for the shakedown.” Available at: <https://www.steynonline.com/9135/primal-fear>;
- “last week was taken up with the ongoing tedious meritless litigation from college-loan cockwomble Cary Katz and ‘Blaze Media.’” Available at: <https://www.steynonline.com/9136/a-sennight-of-steyn-january-7-13>; and
- “If you’re holed up in court-ordered mediation or (as I was) deposition by cockwombles in a windowless room all day, the invisible world beyond shrinks to irrelevance, except insofar as it impinges on one’s case. If you leave the room to find that North Korea has nuked Cleveland, one’s first thought is whether opposing counsel will use this to move to continue the pre-scheduling hearing.” Available at: <https://www.steynonline.com/9132/the-real-crisis>.

Given the substance of Mr. Steyn’s statements at deposition, it is obvious he will disclose his improper recording online to grandstand his position regarding defamatory statements at issue in this proceeding. Mr. Steyn repeated the substance of his defamatory statements about Plaintiff at every opportunity during the deposition, for example:

- “my view has changed, obviously, in the last couple of years in that I’ve had the good fortune not to do business with people who are involved in criminal enterprises for the last several decades.”
- “I certainly have said those words, and I stand by those words. He is a bum and a scofflaw and a deadbeat.”
- “Well, if you mean did it give me a big laugh to see Cary Katz in a pussy hat after he called me Pussy Steyn, yes, I did approve of it. He looks good in his pussy hat. It’s better than the crappy baseball cap he usually wears...but when you see it in the pink, Cary Katz in his pussy hat after calling me Pussy Steyn, he looks delightful in it.”
- “But if it’s not a reference to Cary Katz, I’m happy to say that I would like it to be retrospectively credited as a Tweet about the dishonorable behavior of your scumbag client.”
- “If I didn’t say he was dishonorable on April the 25th, I wish I had, because he is dishonorable. I certainly called him dishonorable. I believe this is the day after the Rush Limbaugh Show when I called him dishonorable on over 600 American radio stations to an audience in the tens of millions.”

- “I have answered that, and I am aware of other things. I’m also aware that by conscious choice your scumbag of a client hides behind false fronts, including in this most recent merger of his, so that Katz’s complete strategy has been, in effect, to remove himself from general coverage.”

(Stuart Decl. ¶ 13, Exhibit A, at pp. 8-13.)

C. Defendants Also Plan to Disclose the Recording to Harass Plaintiff’s Counsel.

It is also likely that Defendants will use the recording to harass Plaintiff’s counsel.

Defendants has a (slightly amusing) personal vendetta against Plaintiff’s counsel. In May 2018 Mr. Steyn emailed Plaintiff calling Mr. George a “loser,” “dishonest and incompetent,” and a “buffoon.” (Stuart Decl. ¶ 14, Exhibit C.) Mr. Steyn has called Ms. Stuart “shameless” and a “liar” and suggested that the Court order Plaintiff’s counsel to undergo court ordered psychiatric evaluation in briefing. (Stuart Decl. ¶ 16.) Defendants have engaged in numerous *ad hominem* attacks on Plaintiff’s counsel in multiple public for a as an additional form of harassment.

III. ARGUMENT

A. The Recording Should be Destroyed Because Defendants Failed to Provide Notice.

The recording should be destroyed because Defendants failed to provide notice to Plaintiff’s counsel that they intended to record the depositions or Plaintiff’s counsel during Defendants’ depositions. Fed. R. Civ. P. 30(b)(3) provides “[w]ith prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice.” In direct contravention of this rule, Defendants and their counsel provided no notice that they planned to record Plaintiff’s counsel during the depositions. Mr. Steyn engaged in recording by ambush after months of evasive techniques to get Defendants to sit for deposition and after counsel for both parties had expended significant sums to travel across the country to obtain Defendants’ depositions. Plaintiff’s counsel were left with no choice but to keep taking Defendants’ depositions after Defendants and Mr. Murphy refused to discontinue the improperly noticed recording.

For this reason alone, this Court should issue a protective order mandating the recording,

1 and all copies, be destroyed.

2 **B. The Recording Should be Destroyed Because Defendants Plan to Use the**
 3 **Recording to Further Grandstand Their Position Regarding Plaintiff and to**
 4 **Harass Plaintiff's Counsel.**

5 The recording should also be destroyed because Defendants, given their refusal to
 6 represent that the recording would not be used outside of the proceeding, obviously plan to use the
 7 recording for myriad improper purposes. These purposes are (1) to further harass Plaintiff and his
 8 counsel by attempting to impede or further delay the deposition process; (2) to attempt to
 9 grandstand Defendants' views regarding Plaintiff by broadcasting the recording on SteynOnline
 10 under the guise of the litigation privilege; and (3) as an improper litigation tactic to force Plaintiff
 11 to incur attorney's fees in preparing and filing this motion (and needlessly burden this Court).

12 Pursuant to Federal Rule of Civil Procedure rule 26(c), "[t]he court may, for good cause,
 13 issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue
 14 burden or expense." A court has "broad discretion ... to decide when a protective order is
 15 appropriate and what degree of protection is required." *Phillips v. Gen. Motors Corp.*, 307 F.3d
 16 1206, 1211 (9th Cir.2002) (citation omitted). Federal Rule of Civil Procedure rule 37(a)(3)(c)
 17 allows a questioning party's counsel to either "complete or adjourn the examination before
 18 moving for a[] [protective] order."

19 Federal and state courts in Nevada have not addressed similar abusive and unseemly tactics
 20 of improperly recording an examining attorney during a deposition, but a California state appellate
 21 court has. In *Green v GTE California, Inc.*, 29 Cal App 4th 407, 409 (Cal. Ct. App. 1994), the
 22 trial court issued sanctions against plaintiff's counsel who (after several continuances of the
 23 deposition) attempted to record defendant's counsel during plaintiff's deposition. There, plaintiff
 24 Green's counsel "wished to control what he believed to be 'intimidation tactics' practiced by his
 25 opposing counsel... include[ing] facial expressions and gestures, which would not appear in a
 26 transcript. Nor would they appear on defendant's reporter's video equipment." (*Id.*) Green's
 27 counsel "brought his own video camera for the purpose of taping defense counsel during the
 28 deposition" to inhibit or control what plaintiff's counsel perceived as defense counsel's "offending

1 actions.” (*Id.*) Counsel for defendant GTE California, Inc. (“GTE”) objected, but Green’s counsel
2 refused to stop recording and GTE’s counsel requested and the trial court awarded sanctions
3 against plaintiff’s counsel for improperly recording the deposition by stating “[y]ou [Green’s
4 counsel] were wrong in the first instance and you are wrong now and what’s worse, you know you
5 are wrong.” (*Id.*) The appellate court upheld the sanctions by stating “[t]he [trial] court was right.”
6 The appellate court also stated, and to which Plaintiff here agrees, that “[b]oth the legal profession
7 and the courts would be better served if litigation arose from legitimate disputes between the
8 litigants instead of from wasteful bickering between their attorneys.” Plaintiff did not want to
9 bring this motion and Nevada courts should not have to hear them.

10 It is highly likely that Defendants will post the recording on their website, as they have
11 already published numerous articles regarding the deposition on their website for the purpose of
12 annoying, embarrassing, burdening, and harassing Plaintiff and his counsel. Given Defendants’
13 prior statements about Plaintiff’s counsel and their additional negative statements made about
14 Plaintiff during Defendants’ depositions, Defendants’ motivation to publish the proceedings
15 outside of what is required for litigation is clearly the type of annoyance, embarrassment, burden,
16 and harassment that rule 26(c) is designed to protect against. Given their history toward Plaintiff
17 and his counsel (such as the defamation claims at issue in this proceeding and other public *ad*
18 *hominem* attacks against Plaintiff and his counsel identified herein), Defendants obviously
19 concocted this plan and will use the deposition recording for a variety of improper purposes.

20 Mr. George acted pursuant to rule 37(a)(3)(C) by completing the deposition and, despite
21 Mr. Murphy’s apparent reneging, stipulating that the recording would not be disclosed to
22 Defendants or anyone else.

23 Plaintiff respectfully requests this Court (and Mr. Murphy, a California lawyer) take the
24 *Green* decision into consideration. Defendants here, as in *Green*, failed to properly notice the
25 videotaped deposition. Defendants here, as in *Green*, plan to and did use the recording for
26 improper purposes outside the legitimate purposes of this proceeding. Defendants and their
27 counsel here, as in *Green*, should be punished for their conduct. Plaintiff here, as was the case in
28 *Green*, should be awarded attorney’s fees for having to burden the court by bringing this motion.

1 Additionally, this Court should make an example of Defendants and their counsel and simply not
2 allow these improper and harassing litigation tactics.

3 Accordingly, Plaintiff requests this Court order the recording (and all copies) be destroyed
4 and restrict it from ever being used.

5 **C. Sanctions Are Proper Against Defendants' Counsel.**

6 This Court should issue sanctions against Defendants and their counsel, as well as award
7 attorney's fees to Plaintiff's counsel for their time expended in being forced to bring this motion.
8 Federal Rule of Civil Procedure 30(d)(2) provides the Court with the power to issue sanctions
9 against Defendant and Defendants' counsel in this situation. Rule 30(d)(2) provides "[t]he court
10 may impose an appropriate sanction--including the reasonable expenses and attorney's fees
11 incurred by any party--on a person who impedes, delays, or frustrates the fair examination of the
12 deponent."

13 Not only did Defendants and Mr. Murphy evade deposition for months, but impeded and
14 frustrated Defendants' depositions by failing to provide notice that the deposition would be
15 recorded. This maneuver resulted in the inability of Plaintiff's counsel to have sufficient time
16 before the depositions to resolve the issue in front of a magistrate or judge. Given the (then)
17 looming discovery cut-off and Defendants' evasive tactics to try to avoid deposition, Mr. George
18 was left with no choice but to resume questioning Defendants when Mr. Murphy refused to stop
19 recording Plaintiff's counsel during the depositions. Mr. Murphy reneged on the stipulation and
20 disclosed the content of the videotape to Defendants or someone who notified them of Ms.
21 Stuart's Aspen trip. The recording clearly was intended by Defendants as a harassment tactic
22 directed at Plaintiff and his counsel. When given the opportunity to resolve the issue without
23 Court intervention, Mr. Murphy simply refused to respond to Plaintiff's counsel.

24 As a result, Plaintiff's counsel was forced to bring this motion to prevent further
25 inappropriate conduct by Defendants and incurred fees as a result.

26
27 **IV. CONCLUSION**

28 For the reasons stated above, Plaintiff and its counsel respectfully request this Court issue a

1 protective order mandating the destruction of Defendants' recording of their depositions and for
2 sanctions, including attorney's fees in bringing this motion, against Defendants and their counsel.

3
4 Dated: January 22, 2019

BROWNE G. GEORGE ROSS LLP



5
6 ERIC M. GEORGE, ESQ.

CA State Bar No. 166403 (*Admitted Pro Hac Vice*)

7 KATHRYN E. STUART, ESQ.

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9 Los Angeles, California 90067

(310) 274-7100

10 *Attorneys for Plaintiff Cary Katz*

DECLARATION OF KATHRYN E. STUART

I, Kathryn E. Stuart, declare and state as follows:

1. I am an attorney at law, duly admitted to practice before this Court and all courts of the State of California, New York, and New Mexico. I am an associate with Browne George Ross LLP, counsel of record for Plaintiff Cary Katz in this matter. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could competently testify thereto.

2. Plaintiff served its initial deposition notice on Mark Steyn on or around September 20, 2018.

3. On or around October 4, 2018, Plaintiff's counsel, including myself, were informed that Michael Murphy would be entering as lead counsel, and he would make decisions regarding scheduling depositions. On or around October 8, 2018, Plaintiff's counsel sent out new deposition notices for Mark Steyn and Melissa Howes to take place on November 7 and 8, 2018 in San Francisco because Defendants' counsel had said that Defendant would be in San Francisco on surrounding dates.

4. Plaintiff served deposition notices on or around November 6, 2018 for December 3, 2018, with an open location for Mark Steyn, and December 10, 2018 for Melissa Howes.

5. Plaintiff served yet another round of deposition notices for the January 8 and January 9, 2019 depositions in Vermont.

6. During appearances at Mark Steyn's deposition, Defendants' videographer failed to identify himself during initial appearances. Attached as Exhibit A is a true and correct copy of the rough deposition transcript of Mark Steyn taken on January 8, 2019. Pages two and three show Defendants' videographer, who I believe is a man named Whittaker Ingbretson, failed to identify himself.

7. Pages four through seven of Mr. Steyn's deposition transcript excerpts (pages 50-52 of the rough transcript itself) of Exhibit A, show the interaction between counsel regarding the improper recording.

1 8. Mr. George objected and spoke off the record with Defendants' counsel, but
2 Defendants and their counsel refused to stop recording Mr. George and myself during both Mr.
3 Steyn and Ms. Howes' depositions.

4 9. Counsel could not seek assistance from the Court as the dispute occurred before 8
5 a.m. Nevada time.

6 10. Defendants did not provide me nor anyone else at Browne George Ross with notice
7 that they intended to videotape the depositions of Steyn and Howes or counsel.

8 11. On or around January 18, 2019, Mr. Steyn, acting *pro se* in another proceeding,
9 sent an email stating "[d]uring last week's waste-of-time deposition in Vermont, Miss Stuart
10 disclosed to the court reporter that she had just returned from her own ski vacation in Aspen." A
11 true and correct copy of this email (with minor redactions to preserve the confidential nature of the
12 limited amount of relevant information contained in that email) is attached hereto as Exhibit B.

13 12. At no time did I have a conversation with the court reporter about my personal
14 matters during which Mr. Steyn, Ms. Howes or Mr. Murphy were present. It is reasonable to
15 conclude therefore that my conversation with the court reporter occurred during a break in the
16 deposition while I was unknowingly being recorded and that Mr. Murphy shared with Mr. Steyn
17 either the video itself or the substance of the video. He did not say he or anyone else overheard
18 my conversation with the court reporter.

19 13. Pages eight through thirteen of Mr. Steyn's deposition transcript excerpts (pages 5,
20 17, 34, 39, 43, and 71 of the rough transcript itself), Exhibit A, *supra*, show various statements
21 Mr. Steyn made during deposition to grandstand his position about Plaintiff.

22 14. Attached hereto as Exhibit C is a true and correct copy of a document produced by
23 Mark Steyn in this proceeding (MS004722-MS004728), which purports to be an email chain
24 between Plaintiff and Mr. Steyn between May 20, 2018 and May 30, 2018.

25 15. On or about January 18, 2019, I emailed Mr. Murphy in an attempt to come to an
26 agreement regarding this motion and the recording without Plaintiff's having to resort to Court
27 intervention. Attached hereto as Exhibit D is a true and correct copy of this email. Mr. Murphy
28

1 did not responded to my request to reconsider their position with respect to the recording or this
2 motion.

3 16. Mr. Steyn has called me “shameless” and a “liar” and suggested that the Court
4 order Plaintiff’s counsel, including myself, should be ordered by a court to undergo psychiatric
5 evaluation in confidential arbitration proceedings briefing. Due to the confidential nature of the
6 proceeding, I do not include this document as an exhibit to this publicly filed motion.

7
8 Executed this 22 day of January 2019, at Los Angeles, California.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct.

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12 
13 Kathryn E. Stuart
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EXHIBIT A

UNCERTIFIED ROUGH DRAFT

1

1 Deposition of: Mark D.H. Steyn
2 Date: January 8, 2019
3 DISCLAIMER: This uncertified rough draft transcript is
4 unedited and uncertified and may contain untranslated
5 words, a note made by the reporter, a misspelled proper
6 name, and/or word combinations that do not make sense.
7 All such entries will be corrected on the final
8 certified transcript which we will deliver to you in
9 accordance with your requested delivery arrangements.

10 Due to the need to correct entries prior to
11 certification, this rough draft transcript can be used
12 only for the purposes of annotating counsel's notes and
13 cannot be used or cited in any court proceedings.

14 * * *

15 (Deposition Exhibit Nos. 1-19 and 21-25
16 were marked for identification prior to
17 the commencement of the proceedings.)

18 THE VIDEOGRAPHER: Good morning. We're going
19 on the record at 9:19, Tuesday, January 8th, 2019.
20 This is media unit number one of the video-recorded
21 deposition of Mark Steyn taken by counsel for the

22 plaintiff in the matter of Cary Katz vs. Mark Steyn, an
23 individual; Mark Steyn Enterprises, Incorporated, a New
24 Hampshire corporation; and Does 1 through 10,
25 inclusive. This is U.S. District Court of Nevada, Case

UNCERTIFIED ROUGH DRAFT

2

1 No. 2:18-cv-00997-JAD-GWF. Deposition is being held at
2 Court Reporters Associates located at 148 College
3 Street, Burlington, Vermont. My name is Mary Doud from
4 Veritext, and I'm the videographer. The court reporter
5 is Johanna Massé from Court Reporters Associates.

6 Counsel and all present in the room and anyone
7 attending remotely, please state your appearances and
8 affiliations for the record.

9 MR. MURPHY: Michael Murphy, counsel for the
10 deponent.

11 MS. HOWES: Melissa Howes, Mark Steyn
12 Enterprises.

13 MS. CLARK: Catherine Clark.

14 MS. STUART: Kathryn Stuart, counsel for
15 plaintiff.

16 MR. GEORGE: Eric George, counsel for

17 plaintiff.

18 MS. SMITH: Stephanie Smith, counsel for

19 plaintiff.

20 THE VIDEOGRAPHER: Okay. If there are any

21 objections to proceeding, please state them at the time

22 of your appearance beginning with the noticing

23 attorney.

24 MR. GEORGE: No objections.

25 THE VIDEOGRAPHER: Okay. Will the court

UNCERTIFIED ROUGH DRAFT

3

1 reporter please swear in the witness.

2 EXAMINATION

3 BY MR. GEORGE:

4 Q. Good morning, Mr. Steyn. Mr. Steyn, prior to

5 signing the binding term sheet, both individually and

6 behalf -- and on behalf of Mark Steyn Enterprises, on

7 or about May 9, 2016, what did you know about Cary

8 Katz?

22 THE VIDEOGRAPHER: Back on the record at
23 10:39.

24 MR. GEORGE: Maybe I'm clueless. We have two
25 videos here?

UNCERTIFIED ROUGH DRAFT

50

1 MR. MURPHY: Yes.

2 MR. GEORGE: You've been recording me?

3 MR. MURPHY: Yeah. We have a video -- our guy
4 videotaping, yes.

5 MR. GEORGE: Just me?

6 MR. MURPHY: No. Videoing the whole -- the
7 whole --

8 THE WITNESS: Both cameras are on me.

9 THE VIDEOGRAPHER: We're on the record.

10 MR. GEORGE: That's okay. Why do we have two
11 cameras?

12 MR. MURPHY: It's because we wanted a video of
13 this as well. You noticed for a video.

14 MR. GEORGE: I've never heard of this. You
15 don't want to have us share one and eliminate the
16 expense?

17 MR. MURPHY: Well, ours is not connected

18 actually to a court reporter, so I don't know if I
19 could even use this in a -- you know, connected with
20 the transcript. So yours is actually connected to the
21 transcript. So yours is the official.

22 MR. GEORGE: I'm missing something. Why are
23 we doing -- why are we doing this?

24 MR. MURPHY: There's no -- there's no secret
25 to miss. It's just we have a video going ourselves of

UNCERTIFIED ROUGH DRAFT

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1 this process. It's no -- there's no magic, no secret,
2 no --

3 MR. GEORGE: Is this video being utilized for
4 anything other than the court proceeding?

5 MR. MURPHY: I don't know what it is used --
6 right now it is not -- there's no feed. It's just
7 being taped on to -- on to an electronic media, so --

8 MR. GEORGE: Can you represent to me that this
9 video will be used solely for purposes of this court
10 proceeding?

11 MR. MURPHY: No.

12 MR. GEORGE: Let's you and I discuss this off

13 record.

14 MR. MURPHY: Sure.

15 THE VIDEOGRAPHER: Going off the record at
16 10:41.

17 (A recess was taken.)

18 THE VIDEOGRAPHER: We're back on the record at
19 11:12.

20 MR. GEORGE: Okay. I'm going to propose a
21 stipulation that deals with the fact that I was unaware
22 that there was a separate videographer here just
23 dealing with a -- an assignment given by the defendants
24 to videotape the room, not just the deponent; no notice
25 was given to me prior to the deposition, so I've met

UNCERTIFIED ROUGH DRAFT

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1 and conferred with counsel, and what we've agreed to do
2 is I've accepted his word that Mr. Murphy will retain
3 custody of the videotape of the defendants'
4 videographer's videotape and until such time as we have
5 a ruling by the Court in the federal district court in
6 Nevada, the video will not be shared with defendants
7 themselves or anybody else and that I will have a set
8 period of time to seek relief from the Court on that,

9 which I will say will be -- we haven't discussed this

10 part, two weeks' time from today. Fair enough?

11 MR. MURPHY: Fourteen days. So stipulated.

12 MR. GEORGE: Thank you, Counsel.

15 Q. Before entering into a business relationship
16 with him, was it important to you to know what
17 reputation he had?

18 A. I don't really deal with that side of things.
19 If you mean is his company a criminal enterprise or
20 anything like that, that's not the sort of thing I
21 would check. I don't do that kind of thing myself.

22 Q. Why not?

23 A. Because it's not -- it's something that others
24 do for me. I don't -- my -- my general view is that
25 America is a foreign place to me, so I wouldn't

UNCERTIFIED ROUGH DRAFT

18 Q. Let's go to the second page. Second to last
19 paragraph. Did you communicate these words -- and this
20 is about a third of the way up from the bottom of the
21 page - "no, Katz is a bum. He's a scofflaw and a
22 deadbeat"?

23 A. I can't recall making them on that day, but I
24 certainly have said those words, and I stand by those
25 words. He is a bum and a scofflaw and a deadbeat.

UNCERTIFIED ROUGH DRAFT

17

8 Q. Did you see this photo prior to the time that

9 it was posted?

10 A. Yes, I did.

11 Q. Did you approve of it?

12 A. Well, if you mean did it give me a big laugh

13 to see Cary Katz in a pussy hat after he called me

14 Pussy Steyn, yes, I did approve of it. He looks good

15 in his pussy hat. It's better than the crappy baseball

16 cap he usually wears.

UNCERTIFIED ROUGH DRAFT

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6 Q. My question is, In this -- in these words that
7 purport to be from you, were you referring to the
8 dishonorable men as including Cary Katz?

9 MR. MURPHY: Objection. Asked and answered.

10 A. Well, I've just told you that you -- you
11 haven't represented to me what this -- I mean, if you
12 want to make this Tweet something, what you have to do
13 is publish it so that it shows what I'm referring -- it
14 has to show the conversation. As I said, you -- you --
15 it's not -- those words are not of and concerning Katz
16 or CRTV as they appear. Presumably the Tweet from
17 Marilyn, whoever Marilyn is, makes clear that this is a
18 reference to Cary Katz.

19 Q. When you wrote --

20 A. But if it's not a reference to Cary Katz, I'm
21 happy to say that I would like it to be retrospectively
22 credited as a Tweet about the dishonorable behavior of
23 your scumbag client.

24 Q. When you wrote those words, did you intend
25 them to be of and concerning Cary Katz?

UNCERTIFIED ROUGH DRAFT

13 Q. Sir, when you approved these words, did you

14 have Cary Katz in mind?

15 A. I said that's a reasonable assumption from the

16 context when I did my Hercule Poirot routine, but you

17 haven't demonstrated that. If I didn't say -- what

18 date is this? If I didn't say he was dishonorable on

19 April the 25th, I wish I had, because he is

20 dishonorable. I certainly called him dishonorable. I

21 believe this is the day after the Rush Limbaugh Show

22 when I called him dishonorable on over 600 American

23 radio stations to an audience in the tens of millions.

24 Q. Okay. Let's go down to the last part of the

25 page.

UNCERTIFIED ROUGH DRAFT

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9 Are you aware of anything that's been written
10 at all about Cary Katz other than what we've addressed
11 in the exhibits and what you just answered my prior
12 question?

13 A. Oh, yes. I've -- I've -- I have answered
14 that, and I am aware of other things. I'm also aware
15 that by conscious choice your scumbag of a client hides
16 behind false fronts, including in this most recent
17 merger of his, so that Katz's complete strategy has
18 been, in effect, to remove himself from general
19 coverage. For a man who claims his network reaches 165
20 million people or whatever bollocks he was spouting the
21 other day and for a man who is the second biggest
22 political donor in Nevada, he has a deliberately low
23 public profile that he has consciously chosen to keep
24 artificially low by hiding behind others, and that's my
25 answer on that.

UNCERTIFIED ROUGH DRAFT

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EXHIBIT B

Kathryn Stuart

From: Mark Steyn <mdhs@marksteyn.com>
Sent: Friday, January 18, 2019 6:15 PM
To: Philip O'Neill
Cc: Kathryn Stuart; Benjamin Scheibe; melissa@ajpromos.com; Eric M. George; Claudia Bonilla; Nancy Torrecillas; Diane Torosyan; Allen Mikailian; AAA Karen Jalkut; Julissa Backus Fields
Subject: RE: Order #10

Dear Mr O'Neill,

Further to Miss Stuart's note, her designated replacement in the Nevada federal action - a Mr August - has now said (see his exchange with our counsel below) that he has to have another fortnight's stay to accommodate his ski vacation in Japan.

During last week's waste-of-time deposition in Vermont, Miss Stuart disclosed to the court reporter that she had just returned from her own ski vacation in Aspen.

Mr George, purported lead counsel in this abusive and malevolent Re-Arbitration, is said to be presently out of the country - Val d'Isère?

We would be grateful if the Browne George Ross slalom team could take a brief interlude from their ski vacations to focus on prosecuting their multiple cases against us in a timely manner.

We expect to go to trial on March 25th, regardless of their ski schedule.

Given that Mr Scheibe has now got an extra week to respond ' , Defendants request leave to make one small modification to it: Katz , so we'd like to to match his. Sauce for the goose, etc.

Thank you.

Yrs, etc,

Mark Steyn

From: Michael Murphy
Sent: Friday, January 18, 2019 5:28:23 PM
To: Andrew A. August; Kathryn Stuart
Cc: Kevin Parr; Melanie Hill; Benjamin Scheibe; Stephanie Smith; Eric M. George; Michael Terry; Christine Coopey
Subject: RE: Depositions next week

Mr. August:

I am trying to be polite here, but it is a little cheeky to step into a lawsuit, and within an hour of your introduction insist upon a two week stay on discovery to accommodate your ski trip to Japan. If BGR wanted your trip to have any bearing on scheduling, someone should have spoken up during our hearing three days ago and advised the court that your firm would insist upon a freeze of depositions so a new lawyer can go skiing.

If the only dates that work include dates during your vacation, send my friends Mr. George, Mr. Scheibe, Mr. Mitchell, Ms. Cohen, or any of the other able lawyers at your firm. But, let me be very clear, I am not delaying anything for your trip.

A call to Judge Foley is a bad idea, particularly when you haven't even proposed dates yet. Judge Foley is not our scheduling coordinator. He is a judge. I have zero interest in bothering the Judge just because you want to freeze discovery to accommodate your travel plans. Just propose some dates and we can proceed from there.

Regarding a protective order, what specific documents are you suggesting are covered by such an order? Thus far, your client has refused to comply with virtually every document request. Indeed, everything that has been produced thus far is a matter of public record.

Michael D. Murphy

Ervin Cohen & Jessup LLP

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From: Andrew A. August <aaugust@bgrfirm.com>

Sent: Friday, January 18, 2019 5:07 PM

To: Michael Murphy <mmurphy@ecjlaw.com>; Kathryn Stuart <kstuart@bgrfirm.com>

Cc: Kevin Parr <kparr@ecjlaw.com>; Melanie Hill <melanie@melaniehilllaw.com>; Benjamin Scheibe <BScheibe@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>; Eric M. George <egeorge@bgrfirm.com>; Michael Terry <mterry@bgrfirm.com>; Christine Coopey <cchoopey@bgrfirm.com>

Subject: RE: Depositions next week

Mike –

RE dates, I'll do my best but no guaranties. It may help if you interested in trying to consolidate the location of all the witnesses (especially Mooney who is in S.C.). Please advise. Perhaps we can get in front of Judge Foley early next week to work through the scheduling? I can have my assistant see if he will take a call or meet with us in person.

On a related note, I do not see a confidentiality agreement/protective order in place yet. What is your you thought about using the template of the standard one provided by the U.S. District Court, Northern District of California (attached). The Northern District is known to be the venue of some of the most information sensitive litigation in the U.S. and its template protective order is tried and true.

BTW, what does the BGR lawyer count have to with the price of tea in China?

Andy

Andrew A. August

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Main 415.391.7100 | Fax 415.391.7198

aaugust@bgrfirm.com

www.bgrfirm.com

From: Michael Murphy <mmurphy@ecjlaw.com>

Sent: Friday, January 18, 2019 4:32 PM

To: Andrew A. August <aaugust@bgrfirm.com>; Kathryn Stuart <kstuart@bgrfirm.com>

Cc: Kevin Parr <kparr@ecjlaw.com>; Melanie Hill <melanie@melaniehilllaw.com>; Benjamin Scheibe <BScheibe@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>; Eric M. George <egeorge@bgrfirm.com>; Michael Terry <mterry@bgrfirm.com>; Christine Coopey <cchopey@bgrfirm.com>

Subject: RE: Depositions next week

Noted re CCs

I was referring to Blaze. There will be others.

Regarding the currently noticed witnesses, again, please provide dates within 2-3 weeks of the originally scheduled date. There is an arbitration in March and a close of discovery at the end of April. These dates were not set with your two week vacation in mind. There are plenty of other lawyers in your firm.

Thanks,

Michael D. Murphy

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From: Andrew A. August <aaugust@bgrfirm.com>
Sent: Friday, January 18, 2019 4:22 PM
To: Michael Murphy <mmurphy@ecjlaw.com>; Kathryn Stuart <kstuart@bgrfirm.com>
Cc: Kevin Parr <kparr@ecjlaw.com>; Melanie Hill <melanie@melaniehilllaw.com>; Benjamin Scheibe <BScheibe@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>; Eric M. George <egeorge@bgrfirm.com>; Michael Terry <mterry@bgrfirm.com>; Christine Coopey <ccoopey@bgrfirm.com>
Subject: RE: Depositions next week

Michael –

I will "see you" a CC to Ms. Hill and Mr. Parr and "raise you" a CC to my assistants Mike Terry and Christine Coopey.

As to the non-party witnesses other than the ones you name, help me help you: What "unaccounted for" witnesses are you thinking of? You may assume we will represent Blaze Media for deposition scheduling purposes.

As for new deposition dates, I will get back to on Tuesday with proposed dates. Just so you know, I am taking my sons skiing in Japan from 2/21-3/5 so your 2-3 weeks for all may be a problem. Are you interested in trying to consolidate the location of all the witnesses (especially Mooney who is in S.C.)?

Andrew

Andrew A. August

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aaugust@bgrfirm.com

www.bgrfirm.com

From: Michael Murphy <mmurphy@ecjlaw.com>
Sent: Friday, January 18, 2019 3:55 PM
To: Andrew A. August <aaugust@bgrfirm.com>; Kathryn Stuart <kstuart@bgrfirm.com>
Cc: Kevin Parr <kparr@ecjlaw.com>; Melanie Hill <melanie@melaniehilllaw.com>; Benjamin Scheibe <BScheibe@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>; Eric M. George <egeorge@bgrfirm.com>
Subject: RE: Depositions next week

Andrew:

Thanks for the hello.

Please identify which witnesses, if any, other than Katz, Wood, Mooney, CRTV, and Frieberg (or whatever your proposed expert's name is) your firm is representing. (Are you representing Blaze?) As to each witness, if you are seeking to change their deposition dates, please propose 3 alternative dates for each, so long as those dates are within 2-3 weeks of the currently noticed date.

Also, please always copy (1) my assistant Mr. Parr (copied hereto), as well as (2) my co-counsel Ms. Hill (also copied to this email).

Thanks

Michael D. Murphy

Ervin Cohen & Jessup LLP

9401 Wilshire Boulevard, 9th Floor | Beverly Hills, CA 90212-2974
(310) 281-6367 (t) | (310) 859-2325 (f)

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From: Andrew A. August <aaugust@bgrfirm.com>

Sent: Friday, January 18, 2019 3:46 PM

To: Kathryn Stuart <kstuart@bgrfirm.com>; Michael Murphy <mmurphy@ecjlaw.com>

Cc: Benjamin Scheibe <BScheibe@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>; Eric M. George <egeorge@bgrfirm.com>

Subject: RE: Depositions next week

Michael –

You may have been wondering who I am and why I was cc'd on the email below. Wonder no more:

Sadly for BGR, Katie advised us a few days ago that she is leaving the firm for other pastures...BigLaw in particular. I was asked on Tuesday to take over the Nevada federal lawsuit. I know Katie wanted to tell you herself but she did not hear back from you on her email below and I wanted to get the ball rolling on scheduling.

If you are around this weekend, I will make time to have an introductory call. I am in the process of learning the case both substantively and where it stands procedurally. Although I am not involved in the Vermont arbitration or the New York appeals, I obviously am learning about those cases as well.

Please call me on my direct dial below (highlighted),

Sincerely,

Andrew

Andrew A. August

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Main 415.391.7100 | Fax 415.391.7198

aaugust@bgrfirm.com

www.bgrfirm.com

From: Kathryn Stuart <kstuart@bgrfirm.com>
Sent: Friday, January 18, 2019 8:10 AM
To: mmurphy@ecjlaw.com
Cc: Benjamin Scheibe <BScheibe@bgrfirm.com>; Andrew A. August <aaugust@bgrfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>
Subject: Depositions next week

Hi Michael:

Now that the court has extended the discovery cut-off, I want to discuss with you rescheduling the CRTV 30(b)(6) deposition and the Mooney deposition (currently set for January 23rd and the 25th, respectively).
Call me this afternoon or tomorrow.

On another point, are you still insistent that Mr. Steyn be permitted to use outside of the judicial proceedings the "unauthorized" video recording of Eric and me taking his and Melissa's depositions? We wanted to give you another opportunity to reconsider before forcing us to file a motion.

Katie

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> Dear Mr. O'Neill,

>

> Per Order No. 10, please find attached a letter brief regarding
> discovery in the Nevada proceeding. We are in receipt of Respondents'
> document requests and will be able to provide responses on January 31,
> along with the other submissions you have agreed to extend.

>

> Kathryn Stuart

>

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>

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>

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>

> www.bgrfirm.com<http://www.bgrfirm.com>

>

>

>

>

> From: Philip O'Neill <poneillarb@gmail.com>

> Sent: Wednesday, January 16, 2019 5:49 AM

> To: Benjamin Scheibe <BScheibe@bgrfirm.com>

> Cc: melissa@ajpromos.com; Kathryn Stuart <kstuart@bgrfirm.com>; Eric M.

> George <egeorge@bgrfirm.com>; Claudia Bonilla <CBonilla@bgrfirm.com>;

> Nancy Torrecillas <ntorrecillas@bgrfirm.com>; Diane Torosyan

> <DTorosyan@bgrfirm.com>; Allen Mikailian <amikailian@bgrfirm.com>;

> mdhs@marksteyn.com; AAA Karen Jalkut <KarenJalkut@adr.org>

> Subject: Re: Order #10

>

>

> Attached is Order # 10. I note that I did not receive any comments on
> the draft from Claimant.

>

>

>

>

>

> Since Respondents have now served a document request upon Claimant, I

> would like to know the earliest date by which the Claimant can provide
> a written response to it.

>

> Philip D. O'Neill, Jr.

> Independent Arbitrator

> FCCA; FCI Arb; C.Arb

> poneillarb@gmail.com<<mailto:poneillarb@gmail.com>>

> 617.513.6666 (M)

> www.pdoneill.com<<http://www.pdoneill.com>>

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>

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>

EXHIBIT C

----- Forwarded message -----

From: **Cary Katz** <ck@gxm.com>
Date: Wed, May 30, 2018 at 3:32 PM
Subject: Confidential Settlement Negotiations
To: Mark Steyn <mdhs@marksteyn.com>
Cc: Melissa Howes <melissa@ajpromos.com>

Mark – I thought you were genuinely interested in settling this matter, but you are still demanding of the arbitration award even before there's a final judgment.

We are appealing \$1.9M of the award which was awarded improperly by the arbitrator, so there is literally no incentive for CRTV to agree to a 100% payout even before there's a court judgment. There's a good chance the NY appellate court will knock out the \$1M in attorney's fees and/or \$900K award to Oak Hill Media. On top of potentially losing \$1.9M of the award, you could add millions in my defamation lawsuit and in the CRTV arbitration. I know you feel your ongoing defamation campaign against CRTV and me is a good strategy, and that (in your own words) the "defamation (of me) stops once I send a big wire". But this isn't going to work. Those damages are the millions now, and you will soon leave me with no other option but to see those cases through to the end.

Also, when the court eventually issues a judgment, it will be against CRTV only. You sued me personally in the arbitration to try and make me responsible to pay the award, but you lost on that. CRTV is a young and growing company and doesn't have the funds to pay the entire award at once unless I loan it more money, and I certainly have no obligation to make a loan to CRTV just to pay you. You're welcome to get in line for payment by CRTV of any ultimate judgment, but if you want payment now before we have finished the appeal process, you need to accept something that is reasonable.

We are willing to pay the \$2.4M today, but if you continue to demand 100% of that absurd arbitration award, we won't reach an agreement, and we will proceed with the CRTV arbitration, my defamation lawsuit, and the appeal.

Respectfully,

Cary

-----Original Message-----

From: Mark Steyn [<mailto:mdhs@marksteyn.com>]
Sent: Tuesday, May 29, 2018 4:37 AM
To: Cary Katz <ck@gxm.com>
Subject: Re:

Dear Cary,

Judge Gordon's final award was \$3,797,427.98 (damages, fees, costs) plus 9 per cent interest backdated 15 months.

MS004722

I will forego the interest if you wire the \$3,797,427.98 before close of business on Friday.

Yrs,

Mark

> Mark - We can call the multi-million payment whatever you want.
>
> We have appeal rights and significant damages as well.
>
> I'm making a good faith effort to negotiate with you. You're a brilliant
> man who should be writing your next great book, not wasting your talents
> on four different legal battles.
>
> Nevertheless, the ball is in your court. I can meet you in person in
> Kansas City on 6/10 or 6/11 or I'm happy to talk with you, Kraig, or
> Melissa anytime.
>
> Respectfully,
>
> Cary
>
>
>> On May 24, 2018, at 7:40 PM, Mark Steyn <mdhs@marksteyn.com> wrote:
>>
>> The word isn't "severance", it's "damages" - including the damage your
>> associates continue to do.
>>
>>> How about \$1.6M (two-year severance) for you and Melissa plus \$800K
>>> for
>>> your attorneys?
>>>
>>> -----Original Message-----
>>> From: Cary Katz
>>> Sent: Tuesday, May 22, 2018 10:51 AM
>>> To: Mark Steyn <mdhs@marksteyn.com>
>>> Subject: Meeting
>>>
>>> So we can make a day trip out of it, how about I book you a private
>>> flight
>>> from Burlington (or an FBO in NH) to Kansas City?
>>>
>>> -----Original Message-----
>>> From: Cary Katz
>>> Sent: Tuesday, May 22, 2018 10:36 AM
>>> To: Mark Steyn <mdhs@marksteyn.com>

MS004723

>>> Subject: Meeting

>>>

>>> How about we meet halfway in Chicago or Kansas City?

>>>

>>> -----Original Message-----

>>> From: Mark Steyn [mailto:mdhs@marksteyn.com]

>>> Sent: Tuesday, May 22, 2018 9:54 AM

>>> To: Cary Katz <ck@gxm.com>

>>> Subject: Re: Meeting

>>>

>>> Sure. I could do June 16th in Toronto.

>>>

>>>> How about somewhere between Nevada and Vermont?

>>>>

>>>>> On May 21, 2018, at 12:45 PM, Mark Steyn <mdhs@marksteyn.com> wrote:

>>>>>

>>>>> I'm open to meeting, too. What say just you and me, one on one, in

>>>>> Vt?

>>>>>

>>>>>> Mark - Thank you for your email. I'm open to meeting in person to

>>>>>> try and settle all claims or we can have a call. I have a good

>>>>>> rapport with Kraig, so I'm happy to talk with him as well.

>>>>>>

>>>>>> Respectfully,

>>>>>>

>>>>>> Cary

>>>>>>

>>>>>>> On May 20, 2018, at 9:04 AM, Mark Steyn <mdhs@marksteyn.com>

>>>>>>> wrote:

>>>>>>>

>>>>>>> Dear Cary,

>>>>>>>

>>>>>>> I write only to point out a couple of things.

>>>>>>>

>>>>>>> We are different people. You are an accomplished and successful

>>>>>>> poker player, and therefore presumably you bluff. I never bluff: I

>>>>>>> simply say what I am going to do and then I go and do it. Oddly,

>>>>>>> in

>>>>>>> our suspicious world, everyone assumes that's merely a subtler

>>>>>>> bluff. But it's not.

>>>>>>>

>>>>>>> The minute the Daily Beast bollocks was published the priority

>>>>>>> became the recovery of my honour and my reputation. Which meant I

>>>>>>> had to win at trial.

>>>>>>>

>>>>>>> It's important to grasp that. An amoral twerp like Eric M George

>>>>>>> thinks the Daily Beast dirty-tricks stuff is just leverage. But,

>>>>>>> if

>>>>>>> you're not an amoral twerp but a principled Canadian, it changes

MS004724

>>>>>> the calculation.
>>>>>> It
>>>>>> actually eliminated leverage. So I went to trial.
>>>>>>
>>>>>> I weakened on that just once - because of Melissa's ruined health
>>>>>> and life. Halfway through the trial, when you had gone home, first
>>>>>> thing in the morning, George offered us a walkaway. Because she
>>>>>> was
>>>>>> a wreck, Melissa wanted to take it, and our counsel was ready to
>>>>>> accept her instruction. I felt differently for the above stated
>>>>>> reasons, but I don't have the right to prolong her agonies and I
>>>>>> didn't want to let the moment pass.
>>>>>>
>>>>>> So off the top of my head I countered with two million - which
>>>>>> basically covered the production expenses owed to Melissa's
>>>>>> company
>>>>>> and the cost of fighting your suit. Michael Murphy put that
>>>>>> counter-offer to George in the kitchen just off the "courtroom"
>>>>>> while Judge Gordon waited patiently to start the day's
>>>>>> proceedings.
>>>>>>
>>>>>> George laughed at him and walked out - and never put it to you.
>>>>>>
>>>>>> That's very disturbing (and, in fact, malpractice). Nobody can
>>>>>> negotiate with a lawyer who won't communicate honestly with his
>>>>>> client.
>>>>>>
>>>>>> So, when you text Melissa to say that "Eric has to be a part of
>>>>>> the
>>>>>> negotiations", that won't work for us. And actually it won't work
>>>>>> for you.
>>>>>>
>>>>>> Because "Eric" is the reason you're in this mess.
>>>>>>
>>>>>> A party that isn't present in court relies entirely on the candour
>>>>>> of his lawyer. And your lawyer has been deeply dishonest with you.
>>>>>> That might be acceptable if he was dishonest and effective. But
>>>>>> George is dishonest and incompetent - which is why his strategy
>>>>>> has
>>>>>> cost you not only the four mil to us but the entire Vermont
>>>>>> investment. Where I'd be very happy to be doing shows today under
>>>>>> the Kraig Kitchen deal.
>>>>>>
>>>>>> So, with respect, you're still not looking at this right. A few
>>>>>> examples:
>>>>>>
>>>>>> 1) On February 20th, you formally sued me for \$10 million. On
>>>>>> February 27th, as you testified in court, I counter-demanded \$12.2
>>>>>> million.

>>>>>>>
>>>>>>> You lost on everything. I won on some things. That's not going to
>>>>>>> change, because it's the basic reality of the case. On the one
>>>>>>> hand, you broke the contract; on the other, I'm a wanker foreigner
>>>>>>> Mark Levin's wife can't stand. Advantage: Me.
>>>>>>>
>>>>>>> You asked us if we would have paid up had Judge Gordon awarded you
>>>>>>> the ten mil. Well, we would have done our best.
>>>>>>>
>>>>>>> But that was never going to happen. Because you never had a case.
>>>>>>> And George should have told you that (because he certainly told
>>>>>>> us). You had an argument - Steyn is an obnoxious, snooty, foreign
>>>>>>> showtune queen who gets up Mark Levin's nose - but that's not a
>>>>>>> legal argument, and it's never going to be.
>>>>>>>
>>>>>>> So the minute you brought it to trial, you were doomed to lose.
>>>>>>> And
>>>>>>> the minute George pulled the dirty-tricks crap with The Daily
>>>>>>> Beast, you were going to trial.
>>>>>>>
>>>>>>> That's on George - it's a losing strategy because he's a loser,
>>>>>>> and
>>>>>>> sticking with him has made you one.
>>>>>>>
>>>>>>> 2) You said that, if you paid what Judge Gordon and Judge Bransten
>>>>>>> have ordered, I'd be getting more money for doing nothing than I'd
>>>>>>> be paid for doing the show.
>>>>>>>
>>>>>>> Well, duh (as they say). 'Cause that's showbiz. I wanted to do the
>>>>>>> show, and I was contracted to do the show. And you stopped me from
>>>>>>> doing the show, and thereby damaged me. That's why it's called
>>>>>>> "damages". It costs more to pay me to not do the show than to do
>>>>>>> it.
>>>>>>>
>>>>>>> That's a basic rule of entertainment, and it's sad to have to
>>>>>>> point
>>>>>>> that out to the head of a media enterprise. A chap might do a show
>>>>>>> for a hundred grand a year. But to not do a show and sit at home
>>>>>>> reading The Daily Beast all day will cost at least twice that. I
>>>>>>> ask you to reflect on that because, again, the crude reality isn't
>>>>>>> going to change: The minute you fired me my cost to you increased.
>>>>>>>
>>>>>>> 3) You said you bought Melissa a house. No, you didn't. You bought
>>>>>>> her a house because she had to move to Vermont from the state she
>>>>>>> lived in in order to supervise your show - because, as Judge
>>>>>>> Gordon
>>>>>>> noted, you had nobody (competent) on the ground in Vermont. And
>>>>>>> now
>>>>>>> she's stuck there in a state she has no reason to live in.

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>>>>>>>
>>>>>>> Furthermore, Judge Gordon took the outstanding cost of that house
>>>>>>> into account in the damages to Oak Hill: The figure awarded to OHM
>>>>>>> is the unpaid production expenses plus the balance of OHM's
>>>>>>> contract LESS the house.
>>>>>>>
>>>>>>> I take it that that's another thing the dissembling foot-shooting
>>>>>>> clod George has not explained to you - because you keep adding in
>>>>>>> the cost of the house. You owe us \$4.1 million, not \$4.7. The
>>>>>>> judge
>>>>>>> has already deducted the house.
>>>>>>>
>>>>>>> 4) You're a poker player, so I take it you don't like to lose.
>>>>>>> Nobody does. But you have to accept that George has lost you this
>>>>>>> case - because, until you do, you'll keep losing.
>>>>>>>
>>>>>>> You lost at the interim award in January, and George refused to
>>>>>>> accept it
>>>>>>> - all that crap from him about "multiple prevailing parties" that
>>>>>>> Judge Gordon had to explain as if to a grade-schooler.
>>>>>>>
>>>>>>> So you lost an additional million at the final award, and George
>>>>>>> refused to accept it - that pathetic tortured argument to the NY
>>>>>>> Supreme Court that Judge Bransten rejected in nothing flat.
>>>>>>>
>>>>>>> So now it's confirmed in full with interest of \$955 or whatever
>>>>>>> per
>>>>>>> day, and George is still refusing to accept it. It won't get you
>>>>>>> anywhere, any more than the last 15 months of Eric M George
>>>>>>> areseholian wankery has.
>>>>>>>
>>>>>>> Now you say "Eric" has to be in on the negotiations? Piss off.
>>>>>>> He's
>>>>>>> a buffoon who doesn't tell his own clients about settlement
>>>>>>> proposals and thinks we-know-where-you-live threats are a
>>>>>>> substitute for a theory of the case.
>>>>>>>
>>>>>>> Rather than rehash the last fifteen months, I'll simply go back to
>>>>>>> the very beginning: You sued me for \$10 million on Feb 20th 2017.
>>>>>>> A
>>>>>>> day or two later, Melissa and our corp counsel Catherine had a
>>>>>>> conference call with your guys. Amidst all the usual bluster and
>>>>>>> braggadocio, Eric M George told us we weren't going to get any
>>>>>>> money and, if we were foolish enough to let the suit proceed to
>>>>>>> arbitration, it would be a wash - neither of us would win, but our
>>>>>>> legal bills would kill us.
>>>>>>>
>>>>>>> That was a very interesting and revealing conversation: Here we
>>>>>>> were, on Day One, and George was telling us he didn't have a case.

EXHIBIT D

From: <kstuart@bgrfirm.com>
Date: January 18, 2019 at 08:10:11 PST
To: <mmurphy@ecjlaw.com>
Cc: <BScheibe@bgrfirm.com>, <aagust@bgrfirm.com>, Stephanie Smith <s.smith@moranlawfirm.com>
Subject: Depositions next week

Hi Michael:

Now that the court has extended the discovery cut-off, I want to discuss with you rescheduling the CRTV 30(b)(6) deposition and the Mooney deposition (currently set for January 23rd and the 25th, respectively). Call me this afternoon or tomorrow.

On another point, are you still insistent that Mr. Steyn be permitted to use outside of the judicial proceedings the “unauthorized” video recording of Eric and me taking his and Melissa’s depositions? We wanted to give you another opportunity to reconsider before forcing us to file a motion.

Katie