

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

DISTRICT COURT  
DENVER COUNTY, COLORADO  
1437 Bannock Street  
Denver, Colorado 80202

---

Plaintiffs/Appellants:  
ERIC COOMER,

v.

Defendants/Appellees:  
DONALD J. TRUMP FOR PRESIDENT, ET AL.

---

FOR COURT USE ONLY\*  
CASE NO. 20CV34319  
COURTROOM: 409

For the Plaintiff:  
CHARLES CAIN, ESQ.  
THOMAS ROGERS, ESQ.  
BRAD KLOEWER, ESQ.

For the Defendant:  
ANDREA HALL, ESQ.  
MARGARET BOEHMER, ESQ.  
THOMAS QUINN, ESQ.  
RANDY CORPORON, ESQ.  
JONATHAN BURNS, ESQ.  
BARRY ARRINGTON, ESQ.  
SHAUN PEARMAN, ESQ.  
MICHAEL REAGOR, ESQ.

---

DIGITAL RECORDING TRANSCRIPT (AUGUST 27, 2021)

---

The matter came on for HEARING before the  
HONORABLE MARIE AVERY MOSES, Judge of the District  
Court, and the following proceedings were had.

---

PARTIES APPEARED VIA WEBEX

1                   AFTERNOON SESSION, AUGUST 27, 2021

2                   (Whereupon the following proceedings were  
3 had:)

4                   THE COURT: Good afternoon. We are on the  
5 record in 2020CV34319, Coomer versus Donald J. Trump for  
6 President, et al.

7                   As we get started, I would like the same  
8 rules that we have had in the past to apply. If you are  
9 an attorney on the case, please have your microphone on  
10 so that you populate my screen. If you are not an  
11 attorney on the case, or if you're not a party on the  
12 case, please have your videos turned off, that way I  
13 won't have you on my screen.

14                  All right. Will counsel enter their  
15 appearance starting with the plaintiff. And I am going  
16 to ask, since we do have so many people on, I'm going to  
17 have my law clerk make sure that everyone is muted so  
18 then when the attorneys are speaking, you can unmute  
19 yourself. So let's make sure we have that working.

20                  All right. Great. So counsel for plaintiff  
21 that will be -- who is here today and who will be  
22 handling arguments?

23                  MR. CAIN: Good afternoon, Your Honor. My  
24 name is Charlie Cain, I'm here with Steve Skarnulis,  
25 Trey Rogers and Brad Kloewer. I will be handling the

1 majority of the argument. Mr. Skarnulis is going to  
2 speak to the 30(b)(6) issues.

3 THE COURT: Okay. Thank you. And I'm taking  
4 these in somewhat alphabetical order for how they are on  
5 the Court's docket. Do we have anyone here for  
6 Defending the Republic?

7 MR. SEERVELD: Good afternoon, Your Honor.  
8 Chris Seerveld and Michael Reagor for Defending the  
9 Republic.

10 THE COURT: Thank you all. I can see you --  
11 just so you know, when you do address the Court, you are  
12 very faint, so the two of you will need to use your  
13 outdoor voices when you speak.

14 All right. Donald J. Trump for President.

15 MR. HOLWAY: Good afternoon, Your Honor.  
16 Eric Holway on behalf of the Trump campaign.

17 THE COURT: Thank you. For defendant  
18 Oltmann, FEC and Shuffling Madness.

19 MS. HALL: Good afternoon, this is and Adrea  
20 Hall, and Ingrid DeFranco is also on the call and I will  
21 be handling the argument.

22 THE COURT: Thank you. Defendant Giuliani?  
23 Do we have either Mr. Blue or Mr. Sibley present? I  
24 don't see or hear them. All right. We will move on to  
25 the OAN defendants.

1                   Who is here today?

2                   MR. RHODES: Your Honor, Bernie Rhodes and  
3 I'll be handing the argument. And with me is Stephen  
4 Dexter and Brad Johnson.

5                   THE COURT: Okay. That was actually really  
6 hard for me to hear. Can you repeat that again.

7                   MR. RHODES: Yes, I'm sorry. Bernie Rhodes  
8 along with Stephen Dexter and Brad Johnson. I'll be  
9 handling the argument.

10                  THE COURT: Thank you, sir. For James Hoft  
11 and TGP.

12                  MR. BURNS: Yes, Your Honor, this is Jonathan  
13 Burns and Randy Corporon is here as well for Mr. Hoft,  
14 I'll be handing the argument.

15                  THE COURT: Okay. You are also a little bit  
16 hard to hear, Mr. Burns.

17                  MR. BURNS: I'm sorry, about that. I'm going  
18 to be back in my office in about five minutes and I'll  
19 have better audio.

20                  THE COURT: Sounds great. Thank you.

21                                And for defendant Malkin.

22                  MR. QUEENAN: Gordon Queenan, Your Honor.  
23 Good afternoon.

24                  THE COURT: Good afternoon. And for  
25 defendant Metaxas?

1                   MR. QUINN: Good afternoon, Your Honor. Tom  
2 Quinn. And to the extent that we contribute to the  
3 arguments, I'll be the one commenting.

4                   THE COURT: Thank you. And for defendant  
5 Powell.

6                   MR. ARRINGTON: Good afternoon, Your Honor.  
7 Barry Arrington appearing on behalf of Sydney Powell and  
8 Sidney Powell, PC.

9                   THE COURT: Thank you. All right. And  
10 before we get started, I'll just ask again, has anyone  
11 joined for defendant Giuliani? Nope? Okay.

12                   All right. I want to start by letting  
13 everyone know that we only have about 90 minutes today,  
14 hopefully we won't take the full 90 minutes, but we do  
15 need to conclude this matter within that time frame.

16                   I want everyone to know that I have read all  
17 of the pleadings, I have reviewed all of the exhibits, I  
18 have reviewed the deposition transcripts, so counsel  
19 should not feel the need to repeat themselves and -- and  
20 you all can be brief in your remarks today.

21                   Before we begin talking about the arguments  
22 regarding the motion for sanctions with respect to  
23 defendants Oltmann, FEC United and Shuffling Madness, I  
24 do want to acknowledge my extreme gratitude for the  
25 defendants and their counsel that really have been

1 engaged in the hard work of getting discovery completed.

2           We had a -- a tight discovery time line and I  
3 want you all to know that I see you and I really do  
4 appreciate your commitment to your obligations. And I  
5 just want all of the -- those other defendants to know  
6 that your cooperation in this process is not  
7 overshadowed over the actions of any other defendants.

8           So I have read all of your briefs, I want you  
9 all to know that as we address matters relating to the  
10 Oltmann, FEC and Shuffling Madness defendants, I want  
11 you to know that I'm very cognizant about the remedies  
12 that I'm -- the remedies and sanctions that I might  
13 impose that I'm going to try to be very careful to make  
14 sure that those orders that I issue do not impact the  
15 defendants that are complying with the orders and with  
16 their discovery obligations.

17           So I just want you to know that your good  
18 work is seen, it is appreciated and I am going to try to  
19 be very careful in terms of how instructions, if any,  
20 how they may or may -- I don't want them to impact the  
21 rest of you.

22           So we are now going to address the motions  
23 for sanctions against the parties that I'm going to  
24 refer to collectively as the Oltmann defendants, and  
25 those are Mr. Oltmann individually, FEC United and

1 Shuffling Madness Media.

2 I want to start off with a discussion of what  
3 we are here to do today and what we're not here to do  
4 today. First off, although contempt is an available  
5 remedy under Rule 37, I do not believe that we are at  
6 that stage at this point. Therefore, I'm not going to  
7 be imposing Rule 107 contempt sanctions today. If I  
8 ever do start considering Rule 107 contempt sanctions,  
9 you will know that because I will issue a contempt  
10 citation. I have not done that, so I am not in a Rule  
11 107 proceeding at this point.

12 Despite what a number of you all have  
13 speculated, I am not interested in putting Mr. Oltmann  
14 in jail. There was quite a lot of briefing surrounding  
15 the fact that Mr. Oltmann's in person discovery -- or  
16 deposition was going to be held in the courthouse so  
17 that I could put him in jail on a direct contempt, that  
18 is simply not true. I was on vacation that week, direct  
19 contempt was never going to happen. So the speculation,  
20 by any party, that Mr. Oltmann was looking at jail by  
21 virtue of appearing here in this court was a flight of  
22 fancy of anyone who engaged in that speculation.

23 What I am interested in is having Mr. Oltmann  
24 and the other Oltmann defendants comply with their  
25 discovery obligations so that this case can move forward

1 and everyone can be on an even playing field.

2           As I understand it, we have the following  
3 discovery issues that need to be addressed today: The  
4 first is Mr. Oltmann's failure to appear at his  
5 deposition; the second is Mr. Oltmann's statements that  
6 he will not, when he is deposed, answer questions  
7 concerning any specifics regarding the alleged Antifa  
8 conference call; the third is the failure to provide  
9 discovery documents in any sort of useful format, either  
10 useful or something that can be read or authenticated;  
11 and then the fourth issue is the failure to have  
12 appropriate cooperate designees attend the 30(b)(6)  
13 depositions.

14           Those are the four broad categories that I  
15 see. If plaintiff believes that I have missed a  
16 category when it is your turn to address me, you can  
17 speak to that, but those are what I view as the four  
18 categories that we have to deal with today.

19           As I said, what I am interested in is not  
20 putting Mr. Oltmann in jail, what I am interested in is  
21 securing the Oltmann defendants' compliance with their  
22 discovery obligations.

23           So to that point, I want to first hear from  
24 Ms. Hall as to why Mr. Oltmann has not complied with his  
25 discovery obligations and what needs to occur to make



1 sure that he does comply with those obligations.

2           Once we hear from Ms. Hall, I will then enter  
3 orders -- I will have -- provide plaintiffs an  
4 opportunity to respond to that. I will then enter  
5 orders about what needs to occur and then I will also  
6 identify the sanctions that will be imposed if those  
7 next things do not occur.

8           Okay. So before we begin, my first question  
9 is -- I know we have a lot of people appearing by  
10 telephone. As far as I can tell, every time they join,  
11 almost like an angel getting their wings there is a  
12 little bell that sounds. When someone is joining by  
13 telephone, are the microphones cutting out or is  
14 everyone still able to hear?

15           MS. HALL: It cuts out a little bit. I don't  
16 know if there's a way on your end to mute the entrance  
17 of someone. I know typically on Zoom you can turn that  
18 notification off, but I don't know how your system  
19 works.

20           THE COURT: Well, we will see how it goes. I  
21 have toggled something on my WebEx and let's see if that  
22 keeps things quiet for now. Maybe I have achieved that  
23 result. I guess not.

24           Okay. Ms. Hall, to my -- my question to you  
25 is why hadn't -- why hasn't the Oltmann defendants

1 complied and what needs to happen to get their  
2 compliance?

3 MS. HALL: Well, Judge, I disagree with the  
4 statement that they didn't comply. It's our position  
5 that they did comply --

6 THE COURT: That's not accurate, Ms. Hall.  
7 You acknowledge in your pleadings that he disobeyed the  
8 order to appear for his deposition. So let's not  
9 pretend he is complying.

10 MS. HALL: Judge, I -- I stated fully that he  
11 did not appear for his deposition, I didn't dispute  
12 that.

13 THE COURT: Okay.

14 MS. HALL: What I am saying is that I believe  
15 most of what you're saying here that, you know, he  
16 failed to comply with discovery, and he failed to  
17 provide appropriate people we disagree with.

18 I believe that I stated my position quite  
19 clearly in my motion and that my client, you know,  
20 doesn't feel safe and he fears for the individual that  
21 is being required by this Court to disclose that  
22 individual's name, and at this point in time, I am in a  
23 position that I'm not able to state anything more than  
24 what I stated in my motion as an ethical obligation to  
25 my client.

1                   So I'm not going to directly answer the  
2 Court's question because I have an ethical obligation to  
3 my client. I believe I stated our position in our  
4 motion and that's all the further information I can give  
5 the Court.

6                   THE COURT: Well, I need you to specify for  
7 me, under what circumstances Mr. Oltmann will be deposed  
8 and under what circumstances he will testify as to the  
9 -- the alleged Antifa conference call.

10                  MS. HALL: Judge, I don't believe --

11                  THE COURT: If you remember, Ms. Hall, the  
12 request was that Mr. Oltmann be deposed in person and I  
13 granted that request because remote depositions are  
14 hard. You have trouble with exhibits, you have trouble  
15 with technology and this is a witness that needs -- that  
16 is critical to this case, and so I wanted the discovery  
17 deposition to go as smoothly as possible from a  
18 procedural standpoint, right? With not having technical  
19 problems, not having trouble with exhibits, that's why I  
20 said that it needed to be in person.

21                  You then raised safety concerns and wanting  
22 to have armed guards at the deposition, that's why you  
23 wanted to do it at your office. The Court then entered  
24 the order that it would be done at the courthouse  
25 because it was the most secure location because of the

1 security. So tell me how to address your client's  
2 ongoing personal security concerns.

3 MS. HALL: Well, Judge, I believe that we  
4 have asked for the deposition to either be a via Zoom or  
5 at my office where my client could have his personal  
6 security available and he felt secure. The Court denied  
7 that in the past, the Court recently denied that motion  
8 as well.

9 And my client willfully sat down for five --  
10 excuse me, seven and a half hours and spoke to four  
11 attorneys. Gave a sworn testimony for seven and a half  
12 hours that any one of these people that are involved can  
13 have access to. We already said that we would share  
14 both the transcription, as well as the video.  
15 Plaintiff's counsel was offered to participate in that  
16 and they refused.

17 THE COURT: Offering to participate is  
18 different than -- then having your own deposition --

19 MS. HALL: And I understand the Court's  
20 position.

21 THE COURT: Yeah.

22 MS. HALL: But I'm just telling the Court  
23 what has happened. And --

24 THE COURT: Are you telling --

25 MS. HALL: -- I have an ethical obligation to

1 my client. I am not going to divulge any information.  
2 I think the Court is attempting to get me to respond to  
3 them and I am not going to do that.

4 THE COURT: No, I -- again, you keep  
5 apparently misinterpreting the Court's instructions and  
6 motives here. I'm not attempting to have you reveal any  
7 client confidences, I'm asking you, under what  
8 circumstances would your client feel personally safe --  
9 you know, I reject the notion that someone is not safe  
10 in the Denver District courthouse, that is, you know,  
11 preposterous to the Court, frankly, given the level of  
12 security, given the types of matters that are held  
13 throughout this entire judicial district, this is a safe  
14 place.

15 MS. HALL: As my -- as my client's security  
16 team stated to you while they were in the courtroom,  
17 they disagreed with that.

18 THE COURT: That is not true. Again, Ms.  
19 Hall, the security detail said they were safe in the  
20 courthouse. What they were raising concerns about was  
21 coming to and from the courthouse, and that is obviously  
22 outside of this Court's jurisdiction. Everyone has  
23 agreed that this courthouse is a safe place.

24 MS. HALL: Well, I understand what your  
25 position is and we disagree with that.

1                   THE COURT: And I would note that -- have you  
2 produced any evidence of that? I don't believe you have  
3 given me any evidence of that.

4                   MS. HALL: Mr. Popice (phonetic) was in the  
5 courtroom, I left the podium and had a conversation with  
6 him and readdressed that with you at the podium and we  
7 submitted that transcript to the Court.

8                   THE COURT: Right. And that has nothing to  
9 do with safety in the courthouse.

10                  MS. HALL: I understand that's your --

11                  THE COURT: Does your client feel safe on  
12 Zoom?

13                  MR. CAIN: Yes, that's how he appeared before  
14 four other attorneys.

15                  THE COURT: Okay. And -- all right. Are  
16 there any other matters that you want me to consider,  
17 Ms. Hall?

18                  MS. HALL: As far as what?

19                  THE COURT: What it's going -- well, let's  
20 see. The other issue that we have is Mr. Oltmann's  
21 statement that he is not going to answer questions  
22 regarding the alleged Antifa conference call, does that  
23 remain his position?

24                  MS. HALL: Judge, I -- I don't believe I can  
25 answer that question.

1           THE COURT: Okay. Tell me your prospective  
2 on the -- the issue of the format of the documents that  
3 have been produced. For example, I understand that  
4 screenshots were provided of a gmail inbox, but that the  
5 actual e-mails were not produced; is that accurate?

6           MS. HALL: I provided what my client gave me  
7 to the plaintiff.

8           THE COURT: Yes.

9           MS. HALL: That is what I can tell the Court.

10          THE COURT: But that doesn't help me because  
11 I haven't seen those documents. Is it true that it was  
12 a screenshot of just, you know, the gmail inbox and it  
13 wasn't actually the e-mails?

14          MS. HALL: My client spent a significant  
15 amount of time, and yes, we did provide screenshots of  
16 things. My client then informed me that he went through  
17 those e-mails and he provided what -- what he believed  
18 complied with the Court's order and so I turned over  
19 what my client gave me. I understood the plaintiff says  
20 that it's not in a readable format --

21          THE COURT: Uh-huh.

22          MS. HALL: -- they asked for a native format.  
23 We were the only defendant that was required to turn  
24 anything over in native format. My client turned over  
25 the native format. They're now they can't read that.

1 That is not my problem --

2 THE COURT: It is --

3 MS. HALL: -- they --

4 THE COURT: It is -- hang on, Ms. Hall, it is  
5 your problem, right? Because what we need to do is get  
6 your client to disclose information in a format that can  
7 be read. And I'm not saying it's going to be native  
8 format --

9 MS. HALL: Okay. But he complied with the  
10 order, so now the rules to the game are once again  
11 changing.

12 THE COURT: They are not --

13 MS. HALL: They asked for native format, he  
14 gave them native format, and now you're telling me that  
15 that is not okay and that he now has to give them  
16 something else. So the documents they produced to us  
17 asked for the items to be produced in native format, he  
18 gave it to them.

19 THE COURT: So that's what we're here to  
20 resolve, right? I'm not imposing sanctions on that,  
21 right? What I'm doing is making sure that in this  
22 proceeding that we are all on the same page, as we would  
23 be in any other case or in any other discovery dispute,  
24 is to make sure that the documents that are produced are  
25 readable and useful, right?



1           So we're not going to dance around over the  
2 terms native format, not native format, a screenshot  
3 that is not legible, those sorts of things. We need to  
4 get to the bottom of how we're going to produce  
5 documents in a manner that are useful, right?

6           That means, if you are disclosing an e-mail,  
7 it has to be a legible e-mail, you would agree with me  
8 on that, right?

9           MS. HALL: Yes.

10          THE COURT: And my understanding, and this is  
11 where I'm asking you if I'm wrong, did you produce  
12 legible e-mails?

13          MS. HALL: Yes.

14          THE COURT: Were they Bates labeled?

15          MS. HALL: What I turned over, yes, I Bates  
16 labeled, yes.

17          THE COURT: Okay. So would you identify, for  
18 plaintiff's attorney, what you believe you disclosed in  
19 the terms of legible e-mails?

20          MS. HALL: I don't have that in front of me,  
21 I'm on a separate computer and it's in the Dropbox --

22          THE COURT: Okay.

23          MS. HALL: -- that everyone has access to. I  
24 don't exactly know what Bates stamp numbers are.

25          THE COURT: Okay. Who were the e-mails to

1 and from that you think satisfy those requests?

2 MS. HALL: To be honest, I don't know. I  
3 know that there was for sure e-mails from -- sorry,  
4 those are text messages.

5 THE COURT: Right. I'm talking -- why don't  
6 you -- while we're sitting here, why don't you take a  
7 look at your Dropbox and tell me what e-mails were  
8 produced.

9 Ms. DeFranco, did you intend to share your  
10 screen?

11 MS. DEFRANCO: Yes, Your Honor, I did. Ms.  
12 Hall asked me to.

13 THE COURT: Okay. Would --

14 MS. HALL: This is what was provided.

15 THE COURT: Okay. So can you pull up for me  
16 and let me see one of these e-mails that's been  
17 produced.

18 Okay. So can I now can hear from you, Mr.  
19 Cain. So I'm looking at an e-mail that looked fairly  
20 legible, is that representative of the types of e-mails  
21 that you were getting in discovery?

22 MR. CAIN: Your Honor, of the documents that  
23 were produced, we received 5934 pages of documents. The  
24 vast majority of those documents, 4,083, were illegible,  
25 so that was approximately 70 percent of the documents

1 that were produced. The -- the majority of the legible  
2 documents were screenshots apparently of Mr. Oltmann's  
3 inbox where he would run searches for various --  
4 inaudible -- and was able to screenshot and it looked  
5 like a gmail account.

6           And then the other legible e-mails consisted  
7 of the notices from You Tube that contents had been  
8 removed of various natures. There were over 4000  
9 illegible documents in there. We sent those to the  
10 service providers -- and I will disagree with counsel, I  
11 think Mr. Hoft and Gateway Pundit was one of the  
12 documents that produced the documents in native format,  
13 which we were able to load onto the appropriate -- what  
14 our service provider said was that the roughly 4,000  
15 pages of documents in HTML format, a web page format,  
16 and many of those appear to be Excel file, which he  
17 could produce in native format and it's certainly  
18 possible.

19           But the example that I'm seeing here is not  
20 Bates labeled. There may have been -- inaudible --  
21 interspersed, and the vast majority, like I said, were  
22 simply -- inaudible. And that is when I asked counsel  
23 to at least confer with what we have on August 9th and  
24 they declined to do that and said sorry that they can't  
25 help me with that.

1 THE COURT: Okay.

2 MR. CAIN: They have information for our  
3 document provider, it seems to me like this is a fairly  
4 easy issue to address if you wanted to address it to get  
5 us that information.

6 THE COURT: Yeah, it strikes me of the 4,000  
7 documents that were produced, they all need to be  
8 legible, right? And, you know, with none of our law  
9 degrees do we know whether that is in native format in  
10 all cases or only in some cases, but I think we all know  
11 what you can read and what you can't read, right? What  
12 videos you can pull up on your screen and play and, you  
13 know, what e-mails you can pull up and read.

14 So all of the documents that the Oltmann  
15 defendants have produced in response to discovery needs  
16 to be legible. It needs to be something that can be  
17 made into an exhibit, can be viewed in court without  
18 special technology, right? Other than a computer that  
19 you can hit play on, right?

20 So it seems like everyone agrees that this  
21 stuff exists, and the Oltmann defendants have  
22 acknowledged that they need to produce it, it's just a  
23 matter of making sure it's produced in a manner that is  
24 legible and useful.

25 Would you agree with me, Ms. Hall? The stuff

1 you're producing has to be legible, right?

2 MS. HALL: Understood.

3 THE COURT: So what more specific orders do  
4 you need from the Court in that regard so that you're  
5 able to produce it, Ms. Hall?

6 MS. HALL: I don't need anything  
7 specifically.

8 THE COURT: But it sounds like there's been a  
9 problem so far.

10 MS. HALL: Judge, I can only do what has been  
11 given to my and I did that.

12 THE COURT: I'm not talking about you, I'm  
13 talking about your client's obligation.

14 MS. HALL: And I understand that. And as I  
15 stated previously, I've done my job, that's all I can  
16 do.

17 THE COURT: So is your client unwilling to  
18 produce these in legible format?

19 MS. HALL: I didn't say that. My client  
20 complied with the order and he felt like he was  
21 sufficient.

22 THE COURT: Right. And --

23 MS. HALL: I understand what the Court is  
24 saying right now and I will convey that information to  
25 my client.

1           THE COURT: Right. He's got to produce it in  
2 a way we can read it. I didn't know that had to be  
3 specified, maybe it does, but it has to be something  
4 that people can read.

5           So I will enter an order that everything that  
6 has been produced, all 4,000 of those documents, or  
7 whatever it is, and the screenshots from the gmail  
8 account that has been identified, they all need to be  
9 produced in a legible format, and they need to be  
10 produced -- let's see -- let's say that it needs to be  
11 produced in by -- by 4:00 next Friday.

12           MR. CAIN: Your Honor, may I chime in on this  
13 issue a little bit more?

14           THE COURT: Yeah. On this one issue, yes.

15           MR. CAIN: I think a practical solution is  
16 simply to have Mr. Oltmann and Ms. Hall deal with a  
17 third party e-discovery provider, like we have. Those  
18 folks tend to speak the same language, and if the files  
19 that have been produced can be dealt with with their own  
20 e-discovery provider so that they have someone that  
21 knows how to make this type of production and those two  
22 parties, i.e. my e-discovery provider and their  
23 e-discovery provider, can coordinate that I think that  
24 things can be produced fairly quickly.

25           THE COURT: Ms. Hall, are you using an

1 e-discovery provider?

2 MS. HALL: Judge, my client is a tech guy.

3 THE COURT: That wasn't my question. My  
4 question was: Are you using an e-discovery provider?

5 MS. HALL: No, and it's not necessary. I  
6 just said my client is a tech guy.

7 THE COURT: Well, I'm concerned, right?  
8 Because what he has produced has not been legible so I  
9 was testing Mr. Cain's question -- proposal that his  
10 tech guy talks to your e-discovery provider, so I wanted  
11 to find out if you had one. And I understand from your  
12 answer that you don't, right?

13 So Mr. Cain, I don't think that -- your  
14 proposed solution will work. So I think, you know, we  
15 are going to need to, Mr. Oltmann is going to need to  
16 try again. And, you know, it needs to be produced a  
17 format where someone can read it and read it on a piece  
18 of paper, right? And if it's a video, it needs to be  
19 something that can be played using standard media  
20 players.

21 MS. HALL: Judge, just to further address Mr.  
22 Cain's comment about the You Tube stuff, we provided  
23 them with details --

24 THE COURT: With what?

25 MS. HALL: Sorry?

1                   THE COURT: You cut out and I couldn't hear  
2 you.

3                   MS. HALL: So Mr. Cain mentioned that there  
4 is the You Tube videos that he still wants clarification  
5 on. We supplied him with the e-mail communication that  
6 we have received from You Tube because You Tube took  
7 down the videos. As I stated numerous times, Mr.  
8 Oltmann did not take down any videos, You Tube took  
9 those videos down.

10                  THE COURT: Yeah.

11                  MS. HALL: So those videos were done live and  
12 we do not have possession of them, and we have supplied  
13 Mr. Cain's office with the e-mail communication that we  
14 received from You Tube. We don't have any other  
15 documentation other than what You Tube sent and said  
16 these videos were will taken down as a violation of  
17 their rule. That's all we have.

18                  THE COURT: And -- and what you're telling  
19 the Court is that there are no copies of the videos in  
20 your client's possession?

21                  MS. HALL: That's correct. They were done  
22 live. It's not any different than doing a Facebook  
23 live, it records it; and if they take it down, no one  
24 has access to it.

25                  THE COURT: Okay.



1           MR. CAIN: The question was what was legible  
2 that is produced and I said there was some e-mails that  
3 we saw from You Tube communication that indicated that  
4 they had taken down some posts --

5           THE COURT: That's on page six of your  
6 motion, right?

7           MR. CAIN: Yes, ma'am.

8           THE COURT: Okay. So I'm sorry, what else  
9 are you --

10          MS. HALL: Those were legible, I'm not sure  
11 what he's saying they are not legible --

12          THE COURT: I agree.

13          MS. HALL: We forwarded the emails we have.

14          THE COURT: What further do you need, Mr.  
15 Cain?

16          MR. CAIN: Just legible production --  
17 nothing. The example of the You Tube is simply there  
18 were parts of this. And to reiterate, Judge, it was  
19 5934 pages that were produced to us of which a little  
20 over 4,000 were illegible. The legible ones included  
21 those communications from You Tube. Those were one of  
22 the items that we could use, the others was the  
23 screenshots of the gmail account -- of the inbox not the  
24 --

25          THE COURT: E-mails? All right.

1           All right. Let me -- let me address the  
2 30(b)(6) depositions. Like I said, I read the notices  
3 about what topics needed to be -- that were going to be  
4 addressed. I read the deposition transcripts, and I  
5 have considered the holding of DR Horton, Inc. versus  
6 DNS Landscaping, LLC, 215 P.3d 1163, a Colorado Court of  
7 Appeals case from 2008. The Colorado Supreme Court  
8 denied cert on this case. The Court does consider this  
9 good law.

10           Specifically, DR Horton says: Allowing a  
11 company to designate a witness who is unprepared and not  
12 knowledgeable, would simply defeat the purpose of the  
13 rule and sandbag the opposition. The corporation has an  
14 affirmative duty to produce a representative who can  
15 answer questions that are both within the scope of  
16 matters described in the notice and are known and  
17 reasonably available to the corporation. Where a  
18 corporation designates a deponent who appears, but is  
19 unable to answer all of the questions specified in the  
20 notice, a Court may issue sanctions for failure to  
21 appear under C.R.C.P. 37.

22           Indeed, when the corporation fails to  
23 designate the proper person, the appearance is, for all  
24 practical purposes, no appearance at all.

25           Having review those deposition transcripts, I

1 do conclude and find that those individuals that were  
2 designated and did appear did not have sufficient  
3 knowledge to be able to respond in any meaningful way to  
4 the -- to the 30(b)(6) deposition notices. And the  
5 gentlemen that did appear, certainly did their best; but  
6 as they repeatedly indicated, the person that has that  
7 information, and the information that was properly being  
8 sought, was in fact Mr. Oltmann.

9           So the Court does find that the FEC United  
10 and Shuffling Madness, and to the extent that CD  
11 Solutions is involved, that those depositions were not  
12 sufficient, and the Court is going to impose sanctions  
13 under Rule 37 for those depositions.

14           Is there a record that you need to make on  
15 that, Ms. Hall?

16           MS. HALL: Yes, Judge. I think we  
17 specifically stated in the motion that both witnesses  
18 were able to answer the questions that were posed based  
19 on the -- inaudible -- that was given by plaintiff's  
20 counsel. I believe we showed that they only answered  
21 five times, maybe six times. I don't know. The rest of  
22 the time they gave the answer that was appropriate.

23           I know that Mr. Cain's office believes that  
24 FEC United is somehow involved this and our position is  
25 that they're not. FEC United is a nonprofit, so their

1 answers to the questions posed by the plaintiff are  
2 absolutely appropriate. They're wanting to say that  
3 somehow they're involved in this and they're not. Just  
4 because Mr. Oltmann made comments, that doesn't mean  
5 that any business he is associated with or --  
6 inaudible -- is a partner in, is somehow involved in  
7 this lawsuit.

8           And the fact that he was able to -- are that  
9 those people that were appearing, Mr. Butler as well as  
10 Mr. Popit (phonetic), were able to answer the  
11 appropriate questions, they might not like their  
12 answers, but there is still the same answers they're  
13 going to get whether that is through Mr. Oltmann or  
14 through the individuals that appeared.

15           FEC United is not involved in this and  
16 neither is Shuffling Madness Media. And we've told them  
17 from the beginning that they have the wrong defendant  
18 and they continue to pursue that Shuffling Madness Media  
19 is involved. I gave plaintiff's counsel an opportunity  
20 to pick who they wanted to depose and they said that  
21 they wanted the person that was involved with the  
22 podcast, and so we provided somebody; and so now the  
23 Court is going to give them another bite at the apple?  
24 This is completely inappropriate.

25           THE COURT: It's not inappropriate. I have

1 read the deposition transcripts word for word and I  
2 disagree with your argument that the questions were  
3 sufficient. They -- they simply were not on many of the  
4 key factors. So --

5 MS. HALL: Additionally, Judge, it sounds  
6 like you are allowing to have general discovery and that  
7 is not what this was about.

8 THE COURT: No.

9 MS. HALL: This was supposed to be limited  
10 discovery. And yes, you have not sat in depositions, I  
11 have sat in all of the depositions, and plaintiff's  
12 counsel has repeatedly gone beyond the scope of what  
13 they were allowed to be asking in these limited  
14 depositions, way beyond the scope.

15 THE COURT: And that issue is not before the  
16 case, I am specifically looking at the depositions of  
17 FEC United and CD Solutions. So I'm not addressing  
18 anything having to do with anybody else's depositions.  
19 Right now I'm simply saying that the deposition  
20 questions that were posed were appropriate and limited  
21 to the -- the Court's prior orders allowing limited  
22 discovery, and that the individuals that your clients,  
23 FEC United and either Shuffling Madness or CD Solutions  
24 put up simply didn't have the -- the knowledge.

25 So. All right --

1                   MS. HALL: Then just to be clear, what you're  
2 allowing them to do is to depose Shuffling Media  
3 Madness. And Shuffling Media Madness has no  
4 information, so once again we are going to waste three  
5 hours of time because that company has no information.  
6 And I'm telling the Court right now that they are not  
7 involved in this. So I do not want to be back in front  
8 of this Court addressing this again and allowing them to  
9 get sanctioned, because we've stated numerous times that  
10 Shuffling Media Madness has no involvement in this, they  
11 have no information, and they will not be able to  
12 address anything regarding the podcast.

13                   So when they say, I don't know, repeatedly  
14 for three hours, I do not want to be back here and them  
15 asking for sanctions. Everyone is on notice that they  
16 have brought in the wrong defendant for that entity and  
17 the answers are going to be, I don't know. I've talked  
18 to the CEO of that company and he knows nothing about  
19 Conservative Daily podcast and we allowed them the  
20 opportunity to depose the right person.

21                   Again, they don't like these answers, so they  
22 come back to this Court and the Court is allowing them  
23 to have a second bite at the apple, which is  
24 inappropriate.

25                   THE COURT: Okay. All right.

1           Mr. Cain, let me address you for a minute.

2           As I said at the beginning, my interest is  
3 getting the discovery done, and I want Mr. Oltmann to be  
4 deposed pursuant to the Court's prior orders; but again,  
5 since I am not looking for putting anybody in jail right  
6 now, I am inclined to allow a remote deposition of Mr.  
7 Oltmann, so I would like to hear arguments from you in  
8 terms of why I might be wrong about that.

9           I'm inclined -- and then the other thing that  
10 I wanted to address is I'm inclined to require Mr.  
11 Oltmann to sit for depositions of FEC United, CD  
12 Solutions and maybe Shuffling Madness Media. I'm  
13 inclined to enter an order requiring Mr. Oltmann to  
14 respond to what I will call the hot questions regarding  
15 the Antifa conference call.

16           We've talked about producing discovery in a  
17 readable format. I do want -- and then I'm also, as I  
18 said, going to clearly on the record outline what  
19 sections I think will be imposed if there is further  
20 noncompliance. But I agree with the other defendants,  
21 that is how I'll refer to them, that your requests for  
22 sanctions are too broad in that the sanctions that you  
23 have requested would negatively impact the ability of  
24 other defendants to present their cases.

25           So the sanctions that I'm considering are

1 going to be much more narrow than what you are  
2 suggesting. So I want to give you an opportunity to  
3 present me with some other proposals for sanctions  
4 involving evidence preclusion that are not going to  
5 impact other defendants' ability to present their cases.

6 MR. CAIN: Okay. Let me -- let me start with  
7 your first question, which is your inclined -- or  
8 statement that you're inclined to allow the remote or  
9 Zoom deposition of Mr. Oltmann as opposed to in person  
10 deposition. I'm -- I'm obviously respectful of what the  
11 Court believes here. I will say that this is becoming a  
12 pattern and practice of Mr. Oltmann which would  
13 ultimately lead to him benefiting from his contempt of  
14 this court, which to be honest with you is being shown  
15 on social media that we're in this case -- in this  
16 hearing, which is why there are so many participants on  
17 this call --

18 MS. HALL: Just so we're clear, Mr. Cain, the  
19 court is open to the public.

20 MR. CAIN: Of course it is. Of course it is.  
21 But what Mr. Oltmann is continuing to do, Your Honor, is  
22 to indicate his contempt of both your rulings and your  
23 ability to compel him to answer, as you put it, the  
24 highly relevant questions in this case and he is  
25 continuing to say, Your Honor, that he's not going to



1 answer these questions. Even in this remote Zoom  
2 interview or deposition, which I understand it included  
3 -- they keep saying it was seven hours, I learned about  
4 it from Mr. Oltmann's social media after it occurred.  
5 It's true that I would not have attended it, but it's  
6 not true that I knew it was going on at the time.

7           If you review that transcript, Your Honor,  
8 his counsel, Ms. DeFranco and Ms. Hall, are still  
9 instructing him not to answer these questions even when  
10 presumably friendly lawyers in the form of Ms. Powell  
11 and Defending the Republic are asking the questions.

12           So how is that going to move the needle if --  
13 if we accommodate the Zoom deposition when Mr. Oltmann  
14 has made it clear over and over and over and over again  
15 that he's not going to cooperate with this Court's  
16 order?

17           THE COURT: And --

18           MS. HALL: Judge, I would -- I would object  
19 to this inflammatory comments that Mr. Cain continues to  
20 make about my client --

21           THE COURT: Ms. Hall?

22           MS. HALL: -- it's completely inappropriate  
23 and --

24           THE COURT: Ms. Hall?

25           MS. HALL: -- as well as they were fully on

1 notice and they chose not to participate.

2 THE COURT: Ms. Hall, you were not  
3 interrupted and you are not to interrupt anyone. So  
4 please wait your turn to be recognized by the Court  
5 before you address the Court, Ms. Hall.

6 Mr. Cain, I believe you are addressing two  
7 separate issues, which are: Number one, the format of  
8 the deposition; and number two, what sanctions will be  
9 imposed if answers aren't provided, right?

10 MR. CAIN: Yes, ma'am.

11 THE COURT: So I do want the deposition to go  
12 forward, it does need to be rescheduled. Can you  
13 provide me with some dates that you would be able to do  
14 a remote deposition of Mr. Oltmann?

15 MR. CAIN: Well, I presume if -- obviously at  
16 this point our weekend through the early part of next  
17 week was -- was blocked off because our response is due  
18 on the first of September, so I presume that is going to  
19 be adjusted to accommodate the rest of this -- this  
20 discovery.

21 THE COURT: Yeah.

22 MR. CAIN: If that's the case, then I've  
23 already got the 31st, which is next Tuesday, next  
24 Wednesday, and I cannot do next Friday, so I can do the  
25 31st or the 1st are available. Mr. Skarnulis is taking

1 the appropriate depositions, so I would defer to him on  
2 his scheduling those.

3 THE COURT: And what about the following week  
4 of September 7th, because I do want you to have the  
5 benefit of the written discovery that is supposed to be  
6 provided to you by Friday, September 4th?

7 MR. CAIN: Well --

8 THE COURT: Unless you don't want it and want  
9 the deposition to be next week.

10 MR. CAIN: No. No. You raise a good point.  
11 I wasn't thinking of that when you were talking about  
12 the 4th. So if we were to get it on the 4th, I would  
13 say that the next week we would need some time with  
14 that, so I would say the 8th or the 9th that week.

15 THE COURT: Okay. Ms. Hall, can you clear  
16 those dates, the 8th and the 9th for a Zoom deposition?

17 I'm sorry, can you repeat that?

18 MS. HALL: I'm sorry, I supposed to be in  
19 depositions somewhere else and I have not had a chance  
20 to speak with my client. So I'm not necessarily able to  
21 commit to that.

22 THE COURT: Ms. DeFranco, are you available?

23 MS. DEFRANCO: Yes, Your Honor.

24 THE COURT: Ms. DeFranco, are you available?

25 MS. DEFRANCO: Yes, Your Honor, I am.

1           THE COURT: Okay. So since Ms. DeFranco is  
2 available, I will order that Mr. Oltmann will submit to  
3 a Zoom deposition on either -- I'm sorry, did you say  
4 the 7th and 8th, Mr. Cain?

5           MR. CAIN: I believe the 8th and 9th, Your  
6 Honor.

7           THE COURT: Okay. I'm sorry. Either  
8 September 8th or 9th and that's a date to be confirmed  
9 by Monday, August 30th. We need to have the date that  
10 that Zoom deposition is going to take place.

11           I do want -- I am going to impose certain  
12 conditions on that deposition. I want there to be -- I  
13 want it to be video recorded and for Mr. Oltmann to be  
14 visible from the chest up, but also for a large part of  
15 the room to be available -- be visible just to make it  
16 as close as possible to an in-person deposition in terms  
17 of things that counsel is able to observe. I do think  
18 that has a lot to do with credibility.

19           So because Mr. Oltmann is unwilling to appear  
20 in person, and we are going to have to do it by Zoom, I  
21 do want it to be as close to an in-person deposition as  
22 possible.

23           Mr. Cain, you are going to need to provide  
24 Ms. Hall and Ms. DeFranco with all potential exhibits  
25 that you are going to use during the deposition.

1                   And Ms. Hall, you need to be responsible for  
2     having paper her copies of those exhibits prepared,  
3     printed out in an organized, you know, notebook with  
4     tabs and things like that and available to Mr. Oltmann  
5     for his deposition. So, for example, when Mr. Cain  
6     says, please turn to Exhibit 75, he has a notebook in  
7     front of him and he is able to turn to tab 75.

8                   Any other specifics regarding the -- the  
9     logistics of this deposition?

10                  MR. SKARNULIS: Your Honor, if I may be heard  
11     on the corporate representative depositions.

12                  THE COURT: Yes.

13                  MR. SKARNULIS: CD Solutions, this argument  
14     is relatively new that there's a misidentification of  
15     the entity responsible for Conservative Daily. That  
16     entity is not a party to this lawsuit, and last I  
17     checked was not validly in existence in Colorado.

18                  So I -- I'd like to make clear that we're  
19     looking for the representative of Shuffling Madness  
20     Media to appear, even if they're going to say, I don't  
21     know, I need to ask those questions.

22                  THE COURT: Yeah. And I have the ability to  
23     enter a wide array of sanctions and -- as part of this  
24     process. And so I do want to be clear, I am allowing  
25     three 30(b)(6) depositions in this case: FEC United,

1 Shuffling Madness Media and CD Solutions.

2 MS. HALL: Your Honor, they're not even named

3 --

4 THE COURT: They don't --

5 MS. HALL: -- as defendants --

6 THE COURT: They don't need to be, Ms. Hall,  
7 they don't need to be. But the games that your clients  
8 have been playing, in terms of trying to hide the ball  
9 in discovery, warrant an expansion of the Court's prior  
10 orders regarding the depositions.

11 MS. HALL: Okay. Whatever. Never heard of  
12 such a thing.

13 THE COURT: All right. Anything else having  
14 to do with the logistics of the depositions?

15 All right. Hearing none --

16 MS. HALL: So you're allowing three entities  
17 to be deposed for three hours each, even though one of  
18 the entities was not named in this lawsuit?

19 THE COURT: To your point, I do want to be  
20 able to get all of this done in one day, so it will be a  
21 long day, but I will allow each of the three entities to  
22 be two hour depositions instead of three hours. I don't  
23 know that they'll take that long; but yes, I do want to  
24 allow -- I do want them all to happen on the same day,  
25 and in order to do that, I will shorten the entity

1 depositions to two hours. Thank you.

2 MS. HALL: And to be clear, you're allowing a  
3 deposition to happen of an entity that is not a named  
4 defendant in this case?

5 THE COURT: Correct. Correct.

6 All right. Moving on. The Court is entering  
7 a specific order, again, that Mr. Oltmann, whether it is  
8 in his individual capacity or his capacity with relation  
9 to any of these corporate entities is required to fully  
10 respond to all questions regarding the Antifa conference  
11 call. That includes, but it's not limited to, the  
12 information about the date and time that the alleged  
13 call took place, the platform on which the call was  
14 conducted, the name and contact information of the  
15 individual that provided him access to the conference  
16 call, the name and contact information, if it's  
17 available, of any other individual that can corroborate  
18 that Mr. Oltmann participated in the alleged call, and  
19 the name, address and telephone number of any other  
20 individual that participated in the conference call.

21 MR. CAIN: Your Honor, may I ask a related  
22 question, please?

23 THE COURT: Yes, Mr. Cain.

24 MR. CAIN: I intended to get into --  
25 according to Mr. Oltmann and the timing of this I think

1 matters greatly, he indicated that he obtained access to  
2 Dr. Coomer's Facebook -- private Facebook account, and  
3 through some other individual that was involved in that,  
4 and I intend to go into detail about those topics with  
5 Mr. Oltmann, temporal issues as well as who was involved  
6 in all of that as well. So those relate to this  
7 particular issue that I'm entitled to go into.

8 MS. HALL: I would object, Your Honor, they  
9 do not relate to those issues, and whether or not Mr.  
10 Oltmann had access to Mr. Coomer's Facebook page is not  
11 part and parcel of this. They're alleging that he  
12 somehow illegally got on to Mr. Coomer's Facebook page,  
13 and that is not an element with regard to defamation.

14 THE COURT: So I -- I agree that it's not  
15 related to the conference call, but I do think that it  
16 is extremely relevant to all of the other issues in the  
17 case, and actually particularly as it relates to the  
18 other defendants and their claims.

19 MS. HALL: Inaudible.

20 THE COURT: So I will allow inquiry into  
21 those areas with Mr. Oltmann.

22 MS. HALL: Judge, please explain how that is  
23 relevant?

24 THE COURT: Ms. Hall, if you read all of the  
25 other pleadings, you know how they are relevant. And



1 maybe you haven't read the other pleadings, I don't  
2 know, but I am referencing the other defendant's  
3 pleadings in this matter.

4 All right. So -- so those are the orders for  
5 the things that I expect to occur for Mr. Oltmann and  
6 the Oltmann defendants to be in compliance with their  
7 discovery obligations. I would now like to address  
8 sanctions both for the conduct that occurred with  
9 respect to the depositions that were supposed to take  
10 place on August 10th and sanctions that will be imposed  
11 if these orders that I'm entering today are not complied  
12 with.

13 So Mr. Cain, I had previously asked you to  
14 reconsider the sanctions that you were requesting in a  
15 manner that does not impact the other defendants. Have  
16 you had an opportunity while we have been on this call  
17 to do that?

18 MR. CAIN: I have, Your Honor. If we're  
19 going to try to ride that fine of a line at this point,  
20 in light of what you're ordering, I would say at this  
21 point the only release that I think speaks to where the  
22 Court is at is -- the order of fees and costs under  
23 37(b)(2) and 37(d) with respect to our attendance on  
24 August 11th for the depositions took place at the  
25 courthouse -- or didn't take place.

1                   So I would ask the Court to award us travel  
2 and to hotel expense cost for that in addition to  
3 attorneys fees, which I think are appropriate given the  
4 clear violations of the Court's prior order.

5                   In terms of document issue, I think your  
6 order covers the relief that we're seeking there, and I  
7 have no additional comments in that respect. We did ask  
8 for not a contempt finding today, but an order to show  
9 cause. Given the Court's pronouncement, I think that  
10 should be held in abeyance pending the answers we do or  
11 don't get and the cooperation we do or don't get with  
12 respect to the documents in the deposition that you've  
13 ordered to receive.

14                   I think the Court should also hold in  
15 abeyance a decision on any designation of facts under  
16 37(d), (2) (a) until we complete that, I guess we'll lose  
17 incrementally at this point, because in terms of the  
18 other defendants, you know, I -- I did the clarification  
19 for a purpose. I made the point that it was going to --  
20 inaudible -- them, my point was, I think, similar which  
21 is I'm simply asking to try to get to the information we  
22 think your client should of inquired about originally  
23 asking obvious questions, but I can't fashion anything  
24 at this stage that I think would avoid the issue of  
25 prejudice. So I -- I think that should be tabled,

1 frankly.

2 THE COURT: Okay. Ms. Hall, do you need to  
3 be heard on that?

4 MS. HALL: Yes, Judge. We have not seen any  
5 statement as far as the cost or anything. This is a  
6 violation of due process, we have a right --

7 THE COURT: Let me --

8 MS. HALL: -- receive the information --

9 THE COURT: Let me be clear about that.  
10 Obviously, I'm not going to enter an order for a dollar  
11 amount today. Everything has to be -- the only  
12 attorneys fees and costs that can be awarded are  
13 reasonable and necessary attorney fees and costs, so  
14 there will not be a dollar amount awarded, that is  
15 subject to -- to scrutiny as you suggest.

16 Anything else, Ms. Hall?

17 MS. HALL: No, I guess until we see what  
18 their fees and costs are, we'll respond appropriately at  
19 that point in time.

20 THE COURT: Right. All right.

21 MR. CAIN: I apologize, Your Honor, I meant  
22 to recommend if the Court enters an order, a 14 day  
23 period, which is pretty standard.

24 THE COURT: I'm sorry, you cut out a little  
25 bit. A 14 day period for what?

1           MR. CAIN: Fourteen day period to submit the  
2 proposed cost and a 14 day period for Ms. Hall to object  
3 to any of those.

4           THE COURT: Okay. Thank you.

5           All right. So first off, the Court is going  
6 to enter the sanction of attorneys fees with respect to  
7 the dispositions that were to have occurred on  
8 August 10th, that is the -- Mr. Oltmann's deposition,  
9 the FEC United deposition and the CD Solutions  
10 deposition.

11           Mr. Oltmann shall be responsible for the  
12 reasonable and necessary fees and costs incurred by  
13 counsel for plaintiff preparing for and attending the  
14 deposition that day. Mr. Oltmann will be personally  
15 responsible for those reasonable fees and cost for all  
16 three depositions, Oltmann, FEC and CD Solutions.

17           Ms. Hall and Ms. DeFranco will be jointly  
18 responsible, with Mr. Oltmann, for the 30(b)(6)  
19 deposition reasonable fees and costs. So I do find that  
20 since they are the attorneys for FEC and Shuffling  
21 Madness Media that they did have an obligation to  
22 present witnesses that would be able to respond and they  
23 did not do. So that is why I'm entering the attorneys  
24 fees award with respect to Ms. Hall and Ms. DeFranco  
25 with respect to those 30(b)(6) depositions.

1                   Now, all of these attorney fee and cost  
2 awards obviously do have to be reasonable and necessary,  
3 so plaintiff's counsel will need to submit their  
4 request. They need to -- and as you all know, in order  
5 to request fees, you need to show the fee agreement and  
6 you need to then show itemized billing with confidential  
7 information redacted and then it is going to be subject  
8 to a reasonableness and necessity scrutiny. So you have  
9 14 days to submit that, plaintiff's counsel.

10                   And Ms. Hall, you all have 14 days to object  
11 to those amounts.

12                   MS. HALL: We would object to the Court's  
13 finding that we are somehow responsible as well. So we  
14 will be addressing that in the motion.

15                   THE COURT: Sure. Now, I do agree that I am  
16 going to take an incremental approach. We will at some  
17 point potentially have to reconvene if there is a  
18 problem with either the documents that are produced or  
19 aren't produced, or if there is a failure to attend the  
20 next set of depositions, or if Mr. Oltmann refuses to  
21 answer questions concerning the Antifa call.

22                   I will tell you I will telegraph to you all  
23 what I have been considering as appropriate sanctions,  
24 again, with the idea that if sanctions are entered, it  
25 is related to the disobedient party and not the other

1 defendants.

2           So the type of sanction that I have been  
3 considering is a preclusion on Mr. Oltmann testifying in  
4 any proceeding concerning the alleged Antifa telephone  
5 call. So he would not be able to testify in any  
6 proceeding that the call took place or who was on it or  
7 what he heard, because if he is not willing to allow  
8 anyone to test those claims, the Court views --  
9 preliminarily is viewing that as an appropriate  
10 sanction. I'm not imposing that, I'm just putting  
11 everyone on notice that that is what I'm considering.

12           I think I also, because of the delay in this  
13 discovery, need to push back some deadlines that have  
14 been established in the case. Let me actually -- before  
15 I start talking about deadlines, I do want to give the  
16 other defendants, as you were, the opportunity to weigh  
17 in at this point.

18           Is there anything that you all want me to  
19 consider -- you all have been sitting very quietly --  
20 anything that you want me to consider at this point?

21           MR. ARRINGTON: This is Barry Arrington, Your  
22 Honor, and I would like to pick up on the last thing  
23 that you said. What I heard you saying, secondly, was  
24 the equivalent of I'm considering airing default  
25 judgments against all of the other defendants because it

1 would be the same thing.

2 THE COURT: How?

3 MR. ARRINGTON: Because if we can't have  
4 testimony about the Antifa call, what was heard there  
5 and said there, we can't put on our case. You would be  
6 effectively -- you might as well enter judgment against  
7 us now.

8 THE COURT: I understood you all in your  
9 pleadings to be saying, look, is it doesn't really  
10 matter if it's true or not. You know, what's relevant  
11 for our defendants is whether or not they should of  
12 known about its falsity.

13 So for that reason, I'm -- that's why I've  
14 been looking at the sanction in that way, right? If you  
15 all are telling me whether it's true or false doesn't  
16 matter, and to the extent that Mr. Oltmann is not  
17 allowed to testify about it, I don't view it as a  
18 default judgment.

19 Again, I don't know -- I don't know that we  
20 need to have full argument on this because look, you  
21 know, no one hopes more than I do that he appears at his  
22 deposition and answers these questions and we never have  
23 to cross this bridge.

24 So I -- I appreciate hearing from you. My  
25 intention again is not to enter default -- it's to try

1 to limit the scope as much as possible of the sanction.  
2 So, you know, I will throw out to all of you I'm open to  
3 brainstorming. So if any of you other defendants have  
4 an idea of how to deal with the potentiality that Mr.  
5 Oltmann is not going to provide the testimony that he is  
6 required to present and how I can narrowly tailer  
7 sanctions, I don't just say you can't enter those  
8 sanctions, suggest to me what sanctions do appropriately  
9 address his failure to comply with discovery if it  
10 happens.

11 So any way I'm opening -- I'm certainly open  
12 to hearing from you all about specifically what you  
13 think might work.

14 MR. ARRINGTON: I would just respond that the  
15 Court perhaps misunderstood my argument. I never said  
16 that it doesn't matter whether it's true or false, what  
17 matters is whether it was reasonable to have believed  
18 it. In that respect it doesn't matter if it's true or  
19 false, but whether it's reasonable to have believed it  
20 is a function of all of the facts and circumstances  
21 surrounding the call which we can only get through Mr.  
22 Oltmann's testimony.

23 If he said that he had the call in a cafe in  
24 a crater on Mars, that would just be goofy, and -- and  
25 -- but if he says, well, this is where I had the



1 conversation and -- and this is the time line and all of  
2 that checks out and this is just one little piece of  
3 information that he refuses to talk about, I think we  
4 have a right to have a fact finder know about that.

5 THE COURT: Well, that's why we're not --  
6 nobody -- I'm not imposing any sanctions right now,  
7 right? Because we don't know what information he is  
8 going to provide.

9 MR. ARRINGTON: Right.

10 THE COURT: Yeah.

11 MR. ARRINGTON: When it comes to evidence, we  
12 have now heard that while Mr. Oltmann may be refusing to  
13 provide evidence, the plaintiff has affirmatively  
14 destroyed evidence, and so we need to be thinking about  
15 sanctions in that regard as well.

16 THE COURT: Whoa, whoa, whoa, I did see that  
17 motion was filed this morning, so we can get a shortened  
18 briefing on that, because as I indicated in response to  
19 Mr. Oltmann's request for discovery, I am very open to  
20 other parties conducting discovery in this matter, you  
21 just need to give me a good reason for it. Which, you  
22 know, Mr. Oltmann originally did not do.

23 Mr. Arrington, I have looked at your motion  
24 and certainly want to give plaintiffs an opportunity to  
25 respond to that. So -- so that is an open issue as far

1 as I am concerned.

2 MR. ARRINGTON: Okay. Thank you, Your Honor.

3 THE COURT: Yep. Any other defense counsel  
4 that needs to weigh in?

5 MR. HOLWAY: Judge, this is Eric Holway on  
6 behalf of the Trump campaign. I had one quick  
7 clarifying question. The two dates that were offered,  
8 September 8th and September 9th, were those for the  
9 depositions of Mr. Oltmann and the three business  
10 entities 30(b)(6) depositions and we're just trying to  
11 put four depositions in those two days somehow?

12 THE COURT: Four depositions in one day.

13 MR. HOLWAY: In one day?

14 THE COURT: If -- if people can agree to do  
15 them on the 8th and 9th, I'm certainly fine with that.  
16 If you can only agree on one day, you know, it's going  
17 to be a long day.

18 MR. HOLWAY: Okay. We are talking about four  
19 total depositions --

20 THE COURT: Correct.

21 MR. HOLWAY: And Your Honor, I guess --

22 THE COURT: Mr. Oltmann --

23 MR. HOLWAY: Go ahead, I'm sorry.

24 THE COURT: Mr. Oltmann is three hours and  
25 the corporate ones are two hours.

1                   MR. HOLWAY: Thank you. Your Honor, along  
2 the lines of what Mr. Barrington had asked -- Barry  
3 Arrington, I'm sorry.

4                   THE COURT: Like Bennifer, right?

5                   MR. HOLWAY: Yes, it all comes together. My  
6 apologies, Mr. Arrington. Will the defendants have an  
7 opportunity to file a written response in the event  
8 there is a violation of the Court's order, in the event  
9 that the Court awards sanctions in the future, I just  
10 want to make sure that we all have an opportunity not  
11 only to be heard on that issue, but also submit a  
12 written response in that regard.

13                   THE COURT: Absolutely. And just so you all  
14 know, as soon as motions are filed, you all need to  
15 start on your responses because we are going to be --  
16 I'm dealing with everything on a forthwith basis with  
17 shortened response times because we've got deadlines and  
18 so we can't be waiting 21 days for responses.

19                   MR. HOLWAY: Thank you Your Honor.

20                   THE COURT: Yep.

21                   Anybody else? All right. Now, let's talk --

22                   MR. CORPORON: Your Honor --

23                   THE COURT: I'm sorry, Mr. Burns?

24                   MR. CORPORON: It's Randy Corporon, I don't  
25 have a camera access at the moment.

1 THE COURT: Okay. Yes, Mr. Corporon.

2 MR. CORPORON: Just while this topic is fresh  
3 and knowing that the Court is considering potential  
4 sanctions depending on the answers that are provided or  
5 not provided by Mr. Oltmann for deposition, certainly  
6 we'll be asking the Court to consider the necessity for  
7 all other defendants to be able to question Mr. Oltmann  
8 about the Antifa call in front of the jury, because it  
9 will be essential that they have an opportunity to  
10 assess his credibility or appearance of credibility  
11 themselves to help their assessment of whether our  
12 clients should of relied on him as a credible witness at  
13 the time.

14 THE COURT: Well, you do raise an interesting  
15 point regarding the jury, which I think is pretty far  
16 down the road, right? Before we ever get to a jury, we  
17 have to get through the anti-slap motions. I don't  
18 know, you know, if I grant all of the slap motions to  
19 dismiss, you're never getting to a jury. I do think  
20 when you're talking about sanctions, at this point we're  
21 talking about the anti-slap hearing.

22 MR. CORPORON: Fair enough.

23 THE COURT: Okay. All right. Other defense  
24 counsel need to be heard?

25 All right. Mr. Cain, can you remind me what

1 your current deadlines are?

2 MR. CAIN: Deadline to file our response is  
3 September 1st, Your Honor, the replies are due  
4 September 10th.

5 THE COURT: And then we have the hearing on I  
6 want to say October, something.

7 MR. CAIN: Thirteen and 14.

8 THE COURT: Yeah, okay. All right. So since  
9 we are dealing -- so I am going to extend your deadline  
10 for filing your -- your responses to the special motions  
11 to dismiss, I'm going to extend those to September 17th,  
12 and then I will extend the replies to September 27th.

13 All right. Does anyone need to be heard on  
14 those rescheduling issues? Nope? Okay. Well, we are  
15 only two minutes late. Thank you. We will be off the  
16 record.

17 MR. CAIN: Thank you, Your Honor.

18 (End of proceedings.)

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

I, Christine Reeder, working under the capacity of High Plains Reporting and Transcription, LLC, certify that the foregoing is a correct transcript, to the best of my knowledge and belief (pursuant to the quality of the recording) from the recording of proceedings in the above-entitled matter.

Dated this 3rd day of September, 2021.

  
Christine Reeder  
Transcriptionist/Reporter

