

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: October 4, 2021 7:18 PM FILING ID: D2BAF3F2B4956 CASE NUMBER: 2020CV34319</p>
<p>ERIC COOMER, Ph.D., Plaintiff</p> <p>vs.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff Charles J. Cain, No. 51020 ccain@cstrial.com Steve Skarnulis, No. 21PHV6401 skarnulis@cstrial.com Bradley A. Kloewer, No. 50565 bkloewer@cstrial.com Zachary H. Bowman, No. 21PHV6676 zbowman@cstrial.com CAIN & SKARNULIS PLLC P. O. Box 1064 Salida, Colorado 81201 719-530-3011/512-477-5011 (Fax)</p> <p>Thomas M. Rogers III, No. 28809 trey@rklawpc.com Mark Grueskin, No. 14621 mark@rklawpc.com Andrew E. Ho, No. 40381 andrew@rklawpc.com RECHTKORNFELD PC 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900</p>	<p>Case Number: 2020cv034319</p> <p>Division Courtroom: 409</p>
<p>PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR SANCTIONS</p>	

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Eric Coomer, Ph.D. (Dr. Coomer) files this Reply to Defendants' Response in Opposition to Plaintiff's Second Motion for Sanctions Pursuant to C.R.C.P. 37, to which Defendants Joseph Oltmann, FEC United, Inc., Shuffling Madness Media, Inc. dba Conservative Daily (collectively Oltmann) filed their response in opposition to on September 29, 2021. Defendants Herring Networks dba One America News Network and Chanel Rion (the OAN Defendants) joined in the Oltmann Defendants' Response on October 1, 2021 even though they were not directly implicated by the motion.

1. Dr. Coomer files this Reply to correct the record and re-urge his request for additional sanctions because, once again, Oltmann is thumbing his nose at this Court's directives.

2. First, incredibly, Oltmann now denies that he knows the actual identity of his alleged conduit for the alleged Antifa call. Instead, Oltmann faults Dr. Coomer for assuming Oltmann actually knew his full "baptismal name". See Response at ¶ 1. This is utter nonsense.

3. As the Court is well aware, Oltmann has spent months insisting that he will never reveal his alleged conduit's identity despite this Court's repeated orders because the disclosure would put the source's life in danger.¹ Similarly, Oltmann previously claimed

¹ See Joe Oltmann, FACEBOOK, (Aug. 1, 2021), at 7:53, <https://caincloud.egnyte.com/dl/guS5hlsrWl/>? (last visited Oct. 1, 2021); Joe Oltmann, *Joe Oltmann-August is Traditionally a Hot Month*, THE MATRIXXX GROOVE SHOW (Aug. 4, 2021), at 22:24, <https://caincloud.egnyte.com/dl/sdpkpEKLoE/>? (last visited Oct. 1, 2021); Joe Oltmann, *Mike Lindell Cyber Security Symposium*, at 9:07 (Aug. 11, 2021), <https://caincloud.egnyte.com/dl/9rqmeGvrQ4/>? (last visited Oct. 1, 2021); Steve Bannon, *Episode 1,165 – The Receipts Are Being Shown (w/David Clements, Joe Oltmann, David Zere)*, WAR ROOM: PANDEMIC PODCAST (Aug. 11, 2021), at 6:10, 7:54, <https://caincloud.egnyte.com/dl/L5qqLInnIy/>? (last visited Oct. 1, 2021).

that he knew the names of the other participants on the alleged call but could not reveal them because, by process of elimination, those participants could then identify the conduit and put his life in danger. **Exhibit A**, July 7, 2021 Tr. at 28:15-29:17.

4. In the latest of numerous material changes to Oltmann's story over the last year, Oltmann now insists that he never actually knew the names of those individuals, despite his prior sworn testimony to the contrary. Oltmann (and his counsel) apparently expect this Court to believe that Oltmann spent months traveling the country claiming on various right wing and QAnon platforms and podcasts that he would never reveal the identity of his source, only to now claim that he never knew his actual identity. None of this is credible.

5. Second, Oltmann also denies that he repeatedly conversed with his lawyers during questioning and insisted on a bathroom break upon being confronted with a written admission by Individual 2 discussing "[w]hen [his] team preserved material from Eric Coomer" prior to any alleged "connection to Dominion." **Exhibit E**, Oltmann, Sept. 8, 2021 Depo Tr. at 82:14-18. On both points, both the written transcript and the video recording of the deposition speak for themselves. **Exhibit C**, Oltmann, Sept. 8, 2021 Depo Video at 10:10, 21:25, 42:10, 1:46:12, 1:51:50, <https://caincloud.egnyte.com/dl/8fqHlhjPzB>.

6. Third, Oltmann misrepresents the record with respect to discussions regarding the individual who provided Oltmann access to Dr. Coomer's Facebook posts. Here again, Oltmann paints a malicious and bad faith picture of Dr. Coomer's counsel, when reference to the record easily clarifies the issue. Undersigned counsel had a good

faith belief that information related to the individual who provided Oltmann access to the Facebook posts was included in the July 19, 2021 protective order, not by virtue of the order itself, but as a result of the August 27, 2021 hearing where this issue was addressed in conjunction with other matters related to the protective order. *See Exhibit D*, Aug. 27, 2021 Tr. at 39:6-41:3; *see also Exhibit E*, Oltmann Sept. 8 Depo. Tr. at 90:1-15; 116:15-117:3. Counsel stated on the record that he stipulated to that information being included in the protective order. *Id.* If there were any ambiguity to this understanding, which Oltmann knew would be raised during his deposition by virtue of this Court's August 27, 2021 order, he could have clarified it further with the Court between that date and his September 8, 2021 deposition. In any case, the notion that Dr. Coomer poses some sort of threat to this person is groundless. Dr. Coomer may in fact know this individual's identity and when Oltmann was asked about him during his deposition, he did not deny that this individual had provided him with this access. *Id.* at 109:7-22. There is no threat to this individual, nor has there ever been.

7. Fourth, Oltmann also conveniently misrepresents his compliance with the Court's directives regarding document production. Oltmann claims that "All written information received from the Researcher was disclosed on July 9, 2021, in a document Bates Numbered 81-198 (Coomer investigation 81-198)." However, prior to Oltmann's deposition, Dr. Coomer had no idea who the author of the "personal dossier" disclosed as "JODisclosures 81-198" could be, and the document itself, like virtually everything else Defendants have relied on in this case, is unsigned, anonymous, and unverified.

8. Only during his deposition did Oltmann suggest that he had relied on an individual who Oltmann implausibly claims he only knows as “The Researcher.” At that point, it became clear that Oltmann had not, in fact, disclosed his multiple emails with “The Researcher,” including the emails that attached the document which had been disclosed. It is true that Oltmann and his counsel insisted on the record that the emails had been disclosed, but it is also true that in reality, the emails had not been previously disclosed. Given the extended back and forth that followed this realization, and Oltmann’s subsequent communication providing the emails which had not been disclosed, it appears that counsel for Oltmann is intentionally misleading the Court on this issue.

9. Fifth, Oltmann claims that “Plaintiff was not prejudiced in any way by Mr. Oltmann’s failure to provide the identity of the individual who gave him the Facebook posts.” This represents an apparent failure to appreciate the facts in dispute in this case, or the evidence necessary for the parties to carry their respective burdens. It remains possible, if not likely, that Oltmann became aware of Dr. Coomer’s Facebook posts at some time prior to his claimed discovery of those posts on or about November 6, 2020. Oltmann potentially admitted as much on video on the day he became aware of this lawsuit.² As a result, one of the many potential versions of Oltmann’s events that cannot be ruled out is that Oltmann intentionally grafted Dr. Coomer onto any alleged call he may have “infiltrated” after the fact (and after the election had been called), based on

² See Joe Oltmann, *Pending Lawsuit*, CONSERVATIVE DAILY PODCAST (Dec. 23, 2020) at 6:58, <https://www.youtube.com/watch?v=48dR5mwhAJI> (last visited Oct. 1, 2021).

information he had previously obtained and was waiting to weaponize for that purpose. Again, at this point, only Oltmann remains the source for Oltmann's claims about the Antifa call while Dr. Coomer has provided several declarations to the contrary. *See* Declarations of Individuals 3 and 4, Exhibits Q & T to Plaintiff's Omnibus Response to anti-SLAPP Motions. In any case, it is certainly convenient that Oltmann was apparently able to identify someone who would give him access to Dr. Coomer's private Facebook posts and send him screenshots of those posts apparently within hours of his claimed revelation as to Dr. Coomer's alleged involvement in election rigging. **Exhibit E**, Sept. 8, 2021 Depo Tr. at 112:9-12.

10. The source who provided access to the Facebook posts, the timing when that individual alerted Oltmann to those posts, and his motive for doing so, are all highly relevant to the facts in dispute in this case, as the Court implicitly acknowledged in ordering the disclosure of that information. As a result, the suggestion that Dr. Coomer seeks "retribution" against this individual is completely unsupported. Dr. Coomer seeks to clear his name and tell the truth, and this individual's testimony would serve to further both ends.

11. Sixth, Oltmann's Response focuses on his failure to disclose information related to the individual who gave Oltmann access to Dr. Coomer's Facebook posts while making no reference to the Court's August 27, 2021 order that specifically requires that that information be disclosed. At this point, Oltmann appears to be taking this Court's

orders with the same level of seriousness that resulted in a recent default judgment against Alex Jones.³

12. Seventh, Oltmann makes no argument whatsoever with respect to his refusal to disclose the identity of his supposed Antifa call conduit, which this Court has repeatedly ordered and for which refusal both Oltmann and his counsel have already been sanctioned. Oltmann's counsel does, however, implicitly acknowledge that her description of the withheld emails was not accurate, stating that she "bear[s] no responsibility for a client's inadvertent failure to disclose emails."

13. As a result of the foregoing, Dr. Coomer requests an award of reasonable fees and costs against both Oltmann and his counsel, as well as an order striking the Oltmann Defendants' Special Motion to Dismiss Pursuant to C.R.S. § 13-20-1101. An award of fees and costs is appropriate and necessary when a noncompliant party refuses to obey court orders to provide testimony during a deposition. Under such circumstance, "the court shall require the party failing to obey the order, or the attorney advising the party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." C.R.C.P 37(b)(2). Here, there is no justification for Oltmann's conduct, or for his attorneys, who knew that Oltmann had been ordered to disclose relevant information and persisted in defending his dishonest and evasive refusal to do so. Oltmann and his counsel were well aware of the testimony and

³ See Infowars host Alex Jones is responsible for damages triggered by his false claims on the Sandy Hood shooting, judge rules. <https://www.cnn.com/2021/10/01/us/alex-jones-loses-sandy-hook-cases/index.html> (last visited Oct. 4, 2021)

documentary evidence sought and refused to provide this integral and essential information ordered disclosed by the Court. And this was not the first time.

14. While serious and partially dispositive, an order striking Oltmann’s Special Motion to Dismiss is similarly appropriate under the circumstances, and expressly allowed by the Rule, which allows for “[a]n order striking out pleadings or parts thereof.” C.R.C.P. 37(b)(2)C). Oltmann elected to file a special motion to dismiss pursuant to the anti-SLAPP statute, which expressly allows for specified discovery upon a showing of good cause. C.R.S. § 13-20-1101(6). Oltmann has repeatedly refused to abide by this Court’s orders pertaining to that specified discovery. He should not be allowed to seek refuge from the protections that the statute potentially offers while simultaneously refusing to comply with the obligations the statute imposes.

PRAYER

Plaintiff Dr. Eric Coomer respectfully requests that the Court grant Plaintiff’s Second Motion for Sanctions Pursuant to C.R.C.P. 37 and enter appropriate sanctions against Defendants Joseph Oltmann United, and Shuffling Madness Media, Inc. dba Conservative Daily, and their counsel, and for such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Charles J. Cain

Charles J. Cain, No. 51020

Steve Skarnulis, No. 21PHV6401

Bradley A. Kloewer, No. 50565

Zachary H. Bowman, No. 21PHV6676

Thomas M. Rogers III, No. 28809

Mark Grueskin, No. 14621

Andrew Ho, No. 40381

