

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: September 22, 2021 10:01 PM FILING ID: 8B34C83EB522E CASE NUMBER: 2020CV34319</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>ERIC COOMER, Ph.D., Plaintiff</p> <p>vs.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants</p>	<p>Case Number: 2020cv034319</p> <p>Division Courtroom: 409</p>
<p>PLAINTIFF'S SECOND MOTION FOR SANCTIONS AGAINST THE OLTMANN DEFENDANTS PURSUANT TO C.R.C.P. 37</p>	

Plaintiff Eric Coomer, Ph.D. (Dr. Coomer) files this Second Motion for Sanctions Against Defendants Joseph Oltmann, FEC United, and Shuffling Madness Media, Inc. dba Conservative Daily, pursuant to C.R.C.P. 37.¹ Plaintiff seeks additional monetary sanctions, an order striking these Defendants' pending anti-SLAPP motions, and an order dissolving the protective order for the reasons explained herein.

“Sunlight is said to be the best of disinfectants.”

Justice Louis Brandeis

I. FACTUAL BACKGROUND

1. Dr. Coomer files this Motion seeking further sanctions against Oltmann, FEC United, and Shuffling Madness Media dba Conservative Daily (collectively Oltmann) arising from their violation of this Court's July 7 and August 27, 2021 discovery orders.

2. On July 7, 2021, Defendant Oltmann stated under oath that he knew both the name of the individual who supposedly got him onto an alleged “Antifa conference call,” as well as the names of the other participants on that call.² But, he refused to provide either.

3. The Court found Oltmann's testimony with respect to that call be to “evasive and not credible.”³ The Court further held that Oltmann's story was probably false.⁴ As a result of these findings, the Court found that the Colorado Reporter's privilege, C.R.S. § 13-90-119, could not serve to shield disclosure of Oltmann's alleged source for

¹ The Court has indicated a reluctance to hold contempt proceedings pursuant to C.R.C.P. 107. Because of this, Plaintiff is not currently moving for such relief but reserves the right to do so in the future.

² See **Exhibit 1**, July 7, 2021 Hearing Transcript, at 29:13-17.

³ *Id.*, at 90:22-91:7.

⁴ *Id.*

the alleged call. The Court ordered Oltmann to disclose the name of the alleged “Antifa call” conduit, as well the names of the other individuals on the call.⁵ In order to address Oltmann’s claimed concerns about the alleged conduit’s safety, the Court ordered the identities of any alleged participants on the alleged call to be subject to a protective order.⁶ The issuance of the protective order was *based on the underlying assumption that Oltmann would comply with the Court’s discovery orders.*

4. Shortly after the Court issued its order, Oltmann began insisting he would never abide by the Court’s Order.⁷

5. Oltmann was originally scheduled to appear for a deposition in person in the courthouse on August 11, 2021. He filed a Motion seeking relief from that Order on August 9, 2021, falsely claiming that he was concerned about the Delta variant of Covid-19. In reality, Oltmann flew to South Dakota where he appeared maskless onstage at Mike Lindell’s cyber symposium with various other election conspiracy theorists.⁸ He again promised to never abide by the Court’s Orders.⁹

6. In response, Plaintiff filed a Motion for Sanctions Pursuant to C.R.C.P. 37 and C.R.C.P. 107 and Request for Order to Show Cause on August 18, 2021. The Court held a hearing on that motion on August 27, 2021.

⁵ *Id.*, at 92:14-18.

⁶ *Id.*, at 92:19-93:6.

⁷ See **Exhibit 2**, Aug. 3, 2021 Facebook video transcript, at 7:6-16.

⁸ See <https://caincloud.egnyte.com/dl/KLr23jif6gv/?> (last visited Sep. 22, 2021).

⁹ *Id.*

7. At the conclusion of the hearing, the Court ordered the Oltmann defendants to rectify shortcomings in their written discovery responses, ordered financial sanctions against the Oltmann defendants, reiterated its order that Oltmann disclose the identities of the alleged “Antifa call” participants (including his conduit for the call), extended the anti-SLAPP response briefing timeline, and ordered Oltmann and his related entities to appear for a remote deposition on September 8-9, 2021.¹⁰

8. On September 8, 2021, Oltmann appeared for his remote deposition, where his testimony conflicted with his prior sworn statements. Despite having previously testified to the Court on July 7, 2021 that he knew the names of both his conduit and other alleged participants on the “antifa call,” during his deposition Oltmann claimed that he only knew his conduit by his initials and no other identifying information, and that he did not know the names of any other participants with the possible exception of Individual 3.¹¹ Oltmann claimed the alleged call took place on Zoom, but stated that he did not see any full names or video.¹² He repeatedly conversed with his lawyers during questioning and took an unscheduled early “bathroom” break (within nine minutes of the prior break) during a pending question when the subject of Individual 2 came up and when he was shown Plaintiff’s Exhibit 13.¹³ Finally, Oltmann refused to provide information

¹⁰ **Exhibit 3**, Aug. 27, 2021 Hearing Transcript at 22:1-11; 36:1-37:7; 39:6-20; 44:5-45:11.

¹¹ **Exhibit 4**, Oltmann, Sept. 8, 2021 Depo. Transcript, at 11:13-22, 20:19-38:6, 56:1-62:2.

¹² *Id.*, at 15:18-20:18.

¹³ *Id.*, at 20:19-25; 36:11-37:9; 81:14-89:10.

regarding the individual who acquired Dr. Coomer's Facebook posts despite Plaintiff's counsel's stipulation that that information was covered by the Court's protective order.¹⁴

9. On September 9, 2021, during the course of the deposition of CD Solutions, it became clear that Oltmann had also failed to disclose important documents. Specifically, Oltmann failed to disclose communications from an individual known only as "The Researcher," who Oltmann claimed was his source for his repeated and false claim that Dr. Coomer controls foreign shell corporations and has foreign bank accounts containing millions of dollars.¹⁵ Upon realizing that Oltmann remained in contempt of this Court's August 27, 2021 order with respect to correcting the shortcomings of his written discovery responses, Plaintiff suspended the deposition.¹⁶

10. Furthermore, and notably, following Oltmann's Third Supplemental Disclosure on September 3, 2021, Plaintiff became aware of at least four separate email threads that included relevant communications between Oltmann and Sidney Powell.¹⁷ All four threads explicitly reference "Eric Coomer" and all are sent to or from sidney@federalappeals.com, the email address for which Powell has already disclosed other communications. Perhaps most concerning is a January 22, 2021 thread titled "Catching up." Here, Oltmann writes directly to Powell and states, "You also need to be aware of what we are doing in Colorado in gaining access to the Dominion systems under

¹⁴ *Id.*, at 87:6-9.

¹⁵ **Exhibit 5**, CD Solutions, Sept. 9, 2021 Depo. Tr., 49:11-49:22.

¹⁶ *Id.*, at 63:14-24.

¹⁷ These threads are attached hereto as **Exhibits 6-9**.

the radar. We have several county clerks cooperating.”¹⁸ When asked during his deposition if he followed through and transmitted this information to Powell, Oltmann was again evasive and claimed that he did “not recall.”¹⁹

II. ARGUMENT

11. Colorado Rule of Civil Procedure 37(a)(3) provides that an evasive or incomplete disclosure, answer, or response shall be deemed a failure to disclose, answer, or respond. C.R.C.P. 37(b)(2) expressly authorizes this Court to issue an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claims of the party obtaining the order; an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; an order staying further proceedings until the order is obeyed; or rendering a judgment of default against the disobedient party.

12. The Rule further provides that if a party fails to obey a court order to provide discovery, a court may impose “just” orders regarding the failure, including an order of contempt. The rule goes on to state that a 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.” *Id.* (emphasis added).

¹⁸ **Exhibit 9**, at p. 1.

¹⁹ **Exhibit 10**, FEC United, Sept. 9, 2021 Depo Tr. at 45:18-46:9.

13. Sanctions and the nature of sanctions are within the “sound exercise of the trial court’s discretion.” *Newell v. Engel*, 899 P.2d 273, 275 (Colo. App. 1994). A trial court’s decision regarding sanctions will not be overturned unless the decision constitutes an abuse of discretion. *Id.* at 275-76. “A court should impose a sanction that is commensurate with the seriousness of the disobedient party’s conduct.” *Id.* at 276. Although willfulness is a factor to consider in imposing sanctions (and there is no doubt that Oltmann willfully defied the Court’s order regarding his deposition here), a party *does not even have to* engage in willful conduct for a court to impose sanctions. *Id.* at 277.

14. A trial court has authority to “choose from a broad range of sanctions” under C.R.C.P. 37, including staying the proceedings until the discovery order is obeyed, an order designating facts as established, striking pleadings, or prohibiting the disobedient party for establishing a claim or defense. *See Kwik Way Stores, Inc. v. Caldwell*, 745 P.2d 672, 677-78 (Colo. 1987). In *Frederick on behalf of LF v. Panda No. 1, LLC*, 2018 WL 4627105 (D. Colo. Sept. 26, 2018),²⁰ the court imposed significant sanctions for a plaintiff’s failure to comply with its orders and discovery obligations. *Id.* at *4. The sanctions included: (1) an order of contempt against the plaintiff and his counsel; (2) a “coercive fine and compensatory monetary award” of all fees and costs incurred by the defendant; and (3) dismissal of the action with prejudice. *Id.*

²⁰ In *Kwik Way*, 745 P.2d 672, 676 (Colo. 1987), the Colorado Supreme Court found that it could look to federal interpretation of Federal Rule Civil Procedure 37 in determining the standards for imposition of sanctions.

III. REQUEST FOR RELIEF

15. Based on the conduct described above, Plaintiff believes the following relief is both warranted and commensurate with Oltmann's conduct. All of the relief sought is authorized by C.R.C.P. 37, to wit:

- a. An award against Oltmann, FEC United, Shuffling Madness Media, and their counsel, of Plaintiff's reasonable fees and costs associated with Plaintiff's attempts to obtain a complete document production from them and the taking of Oltmann, FEC United, and Shuffling Media Madness' September 8 and 9, 2021 depositions. This award is sought against counsel as well, jointly and severally with their clients, due to their impermissible sidebars with and coaching of Oltmann during his Zoom depositions and their failure to insure a complete and legible document production prior to the depositions as previously ordered by the Court. *See* C.R.C.P. 37(b)(2); C.R.C.P. 37(d).
- b. An order striking Defendants Joseph Oltmann/FEC United, Inc./Shuffling Madness Media, Inc. dba Conservative Daily's Special Motion to Dismiss Pursuant to § 13-20-1101, C.R.S. (2021) filed April 30, 2021. This order is both narrowly tailored to address the conduct in question while imposing no prejudice on the other defendants (as was the Court's stated concern). *See* C.R.C.P. 37(b)(2)(C).
- c. An order withdrawing the July 19, 2021 protective order, thus allowing full transparency with respect to the facts and proceedings in this case. This order does not violate the privacy interests of the witnesses who willingly provided the Court with declarations in support of Plaintiff's recently-filed response. It also allows Plaintiff greater latitude to investigate the facts that Oltmann has chosen to hide.

PRAYER

For these reasons, Plaintiff Eric Coomer prays that this Court enter an order imposing sanctions against Defendants Joseph Oltmann, FEC 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 this 22nd day of September 2021.

 /s/ Charles J. Cain
Charles J. Cain, No. 51020

CERTIFICATE OF CONFERRAL

Plaintiff’s counsel has not conferred with Oltmann’s counsel about the relief requested in this motion beyond the statements made to the Court during the last hearing. At this point, given the procedural posture of this case, such additional conferral is, in counsel’s opinion, a waste of time.

 /s/ Charles J. Cain
Charles J. Cain, No. 51020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion has been served on all parties receiving notice through ICCES on this 22nd day of September 2021.

 /s/ Charles J. Cain
Charles J. Cain