

<p>DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, COLORADO</p> <p>Address of Court: 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: October 1, 2021 5:31 PM FILING ID: 8B653CE4131C4 CASE NUMBER: 2020CV34319</p>
<p>Plaintiff: ERIC COOMER, Ph.D.</p> <p>v.</p> <p>Defendants: DONALD J. TRUMP FOR PRESIDENT, INC., <i>et al.</i></p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for defendants Herring Networks, Inc., d/b/a One America News Network, and Chanel Rion: Richard A. Westfall, No. 15295 Westfall Law, LLC 5842 W. Marquette Drive Denver, Colorado 80235 Telephone: (720) 904-6022 Email: rwestfall@westfall.law</p> <p>Blaine C. Kimrey (<i>Pro Hac Vice</i>) Jeanah Park (<i>Pro Hac Vice</i>) Bryan K. Clark (<i>Pro Hac Vice</i>) Julia L. Koechley (<i>Pro Hac Vice</i>) Vedder Price P.C. 222 N. LaSalle Street, Suite 2600 Chicago, Illinois 60601 Telephone: (312) 609-7500 Facsimile: (312) 609-5005 Email: bkimrey@vedderprice.com jpark@vedderprice.com bclark@vedderprice.com jkoechley@vedderprice.com</p>	<p>Case Number: 2020CV034319</p> <p>Courtroom: 409</p>
<p>DEFENDANTS HERRING NETWORKS, INC., D/B/A ONE AMERICA NEWS NETWORK, AND CHANEL RION'S REPLY IN SUPPORT OF THEIR MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S SEPTEMBER 22, 2021 ORDER</p>	

I. Introduction

Plaintiff Eric Coomer filed this SLAPP lawsuit alleging defamation and purported damage to his reputation. By doing so, Dr. Coomer placed his reputation squarely at issue. But Dr. Coomer apparently believes that he can accuse defendants Herring Networks, Inc., d/b/a One America News Network (“OAN”), and Chanel Rion (the “OAN Defendants”) of malicious behavior while ignoring his own depraved conduct and lies. Core to the OAN Defendants’ defense is the right to shine a light on Dr. Coomer’s poor reputation, explain how only he is responsible for that reputation, and demonstrate that the OAN Defendants’ reporting newsworthy events had no impact on his bad reputation. Consistently with the way he has conducted himself throughout this case, however, Dr. Coomer believes he is the only party permitted to accuse others of being liars.¹ Not so. And his lawsuit itself is an “ad hominem” attack.

In his response to the Motion for Partial Reconsideration of this Court’s September 22, 2021 Order (“Motion”), Dr. Coomer sidesteps the Court’s plain error in denying the OAN Defendants the right to take depositions and instead ironically accuses the OAN Defendants and their counsel of engaging in “ad hominem” attacks of Dr. Coomer and failing to act in a way that “promote[s] professionalism.” (Response at 4.) In another astounding demonstration of his lack of self-awareness, Dr. Coomer does not realize (or care) that by attacking the OAN Defendants and their counsel for purportedly acting unprofessionally, he is engaging in personal attacks on the OAN Defendants and their counsel. The OAN Defendants and their counsel have conducted themselves professionally. But, unlike Dr. Coomer, the OAN Defendants and their counsel simply

¹ From his first pleading, Dr. Coomer has accused defendants OAN, Chanel Rion and Joseph Oltmann of being liars and making false allegations. (*See* December 22, 2020 Compl. ¶ 5 (“Defendants relied heavily upon false allegations made by Joseph Oltmann. . . .”); ¶ 37 n. 29 (“Rion knowingly relied on Oltmann as a source of her false statements. . . .”) ¶ 17 n. 32 (“OANN [sic] knowingly relied on Oltmann as its source for false statements it published. . . .”).)

quoted Dr. Coomer's own words from *New York Times Magazine* and Facebook and presented a mirror to him that reflects his own disreputable conduct. Dr. Coomer apparently does not like what he sees and thus attacks the messengers.

Dr. Coomer ignores that the Court previously denied reciprocal discovery. (Oltmann Defendants' Mot. for Reciprocal Limited Discovery at 3-4 (FILING ID 1D05187AF416B); Oltmann Defendants' Am. Mot. for Reciprocal Limited Discovery at 3-4 (FILING ID 7FFE791AEE723); Aug. 23, 2021 Order Denying Oltmann Defendants' Am. Mot. for Reciprocal Limited Discovery.) And the Court effectively denied the Oltmann Defendants' renewed request for reciprocal discovery by limiting Dr. Coomer's deposition to only two hours. (Oltmann Defendants' Renewed Mot. for Reciprocal Discovery at 2-3 (FILING ID 45E5EE62C7030); Sept. 7, 2021 Order.) Dr. Coomer instead argues that the OAN Defendants have not established good cause to "reopen discovery" and take the depositions of the nine declarants in support of Dr. Coomer's 150-page Omnibus Response to the defendants' anti-SLAPP motions (the "Nine Declarants"). But discovery has never "closed," and even Dr. Coomer must acknowledge that the Court itself stated that it is "very open to other parties conducting discovery in this matter" provided there is good reason for it. (August 27, 2021 Tr. of Proceedings at 49:19-21.) Ignoring the record, Dr. Coomer also argues that the OAN Defendants should have requested these depositions before Dr. Coomer filed his Omnibus Response. For the reasons set forth below and in the OAN Defendants' Motion, Dr. Coomer is wrong, and the Court should reconsider its September 22, 2021 Order ("Order").

II. The Court erred by basing its denial of the OAN Defendants' request to depose the Nine Declarants on the defendants' alleged failure to seek discovery previously.

In its Order, this Court denied the OAN Defendants' request to take the depositions of the Nine Declarants because, according to the Court, the defendants in this action "fail[ed] to pursue

the available avenues of discovery in a timely manner.” (Order at 2.) As the OAN Defendants pointed out in their Motion, however, the Court made a manifest error of fact in so ruling because the Court overlooked that defendants Joseph Oltmann, FEC United, and Shuffling Madness Media, Inc., d/b/a Conservative Daily (the “Oltmann Defendants”) **had** sought discovery, which the Court previously denied. (Mot. at 3.)

In his response, Dr. Coomer does not deny this error but instead argues that Colorado’s anti-SLAPP statute, C.R.S. § 13-20-1101, does not permit reciprocal discovery. (Resp. at 4-6.) To be clear, the OAN Defendants agree that discovery was not proper under the anti-SLAPP statute in these circumstances, but that ship sailed when the Court reversed Judge Rappaport’s prior order against discovery. The Court’s denial of the OAN Defendants’ request to depose the Nine Declarants on an alleged failure by the defendants to seek discovery earlier was simply wrong, and the Court should reconsider the OAN Defendants’ request and grant them the opportunity to take the depositions of the Nine Declarants.

III. Dr. Coomer’s surprise ambush with nine declarations is good cause for the OAN Defendants to depose the Nine Declarants and extend the anti-SLAPP hearing date.

Dr. Coomer next argues that the OAN Defendants have not established good cause to take the depositions of the Nine Declarants because they should have sought this discovery earlier. (Resp. at 6-9.) Dr. Coomer’s argument ignores that the OAN Defendants did not even know that the declarations (or eight of the Nine Declarants) existed before Dr. Coomer dropped his 150-page Omnibus Response, its 5,100 pages of exhibits, and its 50 hours of audio and video files. According to Dr. Coomer, the OAN Defendants were supposed to divine that Dr. Coomer intended to support his Omnibus Response with declarations of, by way of example, a purported QAnon expert (Mike Rothschild), a purported social media expert (Doug Bania), and a purported journalism ethics expert (Frederick Brown). There is no conceivable way the OAN Defendants

could have known that Dr. Coomer would even retain these purported experts, much less attempt to use their irrelevant and inadmissible testimony to oppose the OAN Defendants' anti-SLAPP Motion. If these Declarations are not struck (which they should be), the OAN Defendants should be given the opportunity to depose all of Dr. Coomer's purported "experts."

Additionally, even though Dr. Coomer has been denying for months that a conference call of antifa activists occurred and repeatedly has called defendant Joseph Oltmann a liar ("The above statements made by Oltmann about me are false.") (Coomer Decl. ¶ 18, attached as Ex. A to Omnibus Response), Dr. Coomer attached to his Omnibus Response a declaration of an individual who testified that a conference call of left-wing activists **did occur** on September 25, 2020, which is consistent with when Mr. Oltmann has testified that the antifa conference call occurred. There is no way the OAN Defendants could have known that this individual existed, much less that he attended the very call Dr. Coomer has denied having attended. The OAN Defendants clearly have established good cause to take the depositions of all of the surprise, purported fact witnesses whose declarations Dr. Coomer relies on to counter the OAN Defendants' anti-SLAPP motion (if those declarations are not struck). And the Court should extend the anti-SLAPP hearing and the deadline for the OAN Defendants' anti-SLAPP reply to accommodate these depositions. Without the opportunity to take these depositions and the depositions of Dr. Coomer's purported experts, the Court's Order violates the OAN Defendants' due process rights and will unduly prejudice them. (Motion p. 6.)

IV. Conclusion

WHEREFORE, for the foregoing reasons and reasons set forth in the OAN Defendants' Motion, the OAN Defendants respectfully request that the Court reconsider its Order and (1) allow the OAN Defendants to depose the Nine Declarants within the scope of their declarations (or strike the declarations altogether); (2) extend the anti-SLAPP hearing until after those depositions are

completed (if the declarations are not struck); and (3) extend the anti-SLAPP reply brief deadline to 28 days before the hearing setting (if the declarations are not struck).

Respectfully submitted on this 1st day of
October 2021,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October 2021, a true and correct copy of the foregoing was electronically served via the Integrated Colorado Courts E-Filing System (ICCES) and has been e-served via ICCES on all counsel of record.

s/ Richard A. Westfall