

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) ERIC COOMER	DATE FILED: November 18, 2021 10:37 AM
v.	CASE NUMBER: 2020CV34319
Defendant(s) DONALD J TRUMP FOR PRESIDENT INC et al.	
△ COURT USE ONLY △	
Case Number: 2020CV34319	
Division: 409 Courtroom:	
Order Re: Plaintiff's Motion for Expedited Relief from the OAN Defendants' Evidentiary Objections with attachment	

The motion/proposed order attached hereto: REVIEWED.

Counsel for OAN and Ms. Rion shall file a Response to this Motion by 5:00pm on Friday, November 19, 2021.

Issue Date: 11/18/2021



MARIE AVERY MOSES
District Court Judge

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	
ERIC COOMER, Ph.D., Plaintiff vs. DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Plaintiff Charles J. Cain, No. 51020 <u>ccain@cstrial.com</u> Steve Skarnulis, No. 21PHV6401 <u>skarnulis@cstrial.com</u> Bradley A. Kloewer, No. 50565 <u>bkloewer@cstrial.com</u> Zachary H. Bowman, No. 21PHV6676 <u>zbowman@cstrial.com</u> CAIN & SKARNULIS PLLC P. O. Box 1064 Salida, Colorado 81201 719-530-3011 / 512-477-5011 (Fax) Thomas M. Rogers III, No. 28809 <u>trey@rklawpc.com</u> Mark Grueskin, No. 14621 <u>mark@rklawpc.com</u> Andrew E. Ho, No. 40381 <u>andrew@rklawpc.com</u> RECHTKORNFELD PC 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900	Case Number: 2020cv034319 Division Courtroom: 409
<p style="text-align: center;">PLAINTIFF'S MOTION FOR EXPEDITED RELIEF FROM THE OAN DEFENDANTS' EVIDENTIARY OBJECTIONS</p>	

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Eric Coomer, Ph.D., by and through his attorneys, files this Motion seeking expedited relief from the OAN Defendants' (Defendants Herring Networks, Inc. dba One America News Network and Chanel Rion's) evidentiary objections, which total more than 1,200 pages. Plaintiff also seeks the same relief with respect to the subsequent joinders served by Defendants Sidney Powell, Sidney Powell P.C., Defending the Republic, Inc., James Hoft, and TGP Communications LLC dba The Gateway Pundit. Plaintiff respectfully requests that the Court order the OAN Defendants to amend their objections, because one can only conclude that they are being asserted in bad faith.

C.R.C.P. 121 § 1-15 CERTIFICATION

The undersigned counsel certifies that he attempted in good faith to confer with counsel for the OAN Defendants on November 15, 2021. Undersigned counsel noted that the objections were excessive and that they would unduly burden Plaintiff and waste judicial resources. Counsel for the OAN Defendants insisted that all of their objections were valid and requested that Plaintiff identify individual objections before they would consider revising.

ARGUMENT AND AUTHORITIES

1. With the consent of all parties, the Court fashioned the current evidentiary objection and rebuttal protocol from the bench during the anti-SLAPP hearing held on October 13-14, 2021. On November 12, 2021, the parties stipulated to file all objections and corresponding responses in a single document on November 29, 2021, instead of filing separate objections and rebuttals. As a result, this Motion arises from a unique

procedural mechanism that is not directly addressed in the Colorado Rules of Civil Procedure. In conferral on the November 12, 2021 stipulation, the OAN Defendants did not disclose, and Plaintiff could not have reasonably anticipated, that they intended to serve 1,215 pages of objections. Had the OAN Defendants filed their objections independently, Plaintiff would have sought this relief under those established procedures. However, the Court has discretion under various comparable scenarios to address the relief requested herein. *See, e.g.*, C.R.C.P. 26(c) (“[T]he court may make any order which justice requires to protect a party or person from . . . undue burden or expense”); C.R.C.P. 12(f) (“[U]pon the court’s own initiative at any time, the court may order any redundant, immaterial, impertinent or scandalous matter stricken from any pleading, motion, or other paper”); *see also Broyles v. Fort Lyon Canal Co.*, 695 P.2d 1136, 1144 (Colo. 1985) (holding that “every ruling or order made in the progress of an ongoing proceeding may be rescinded or modified during that proceeding upon proper grounds”); *In re Bass*, 142 P.3d 1259, 1263 (Colo. 2006) (holding that has discretion to clarify or revisit prior rulings.)

2. In accordance with this procedural background, on October 29, 2021, Plaintiff provided all Defendants with a chart of exhibits that could be filled in with the parties’ objections and corresponding responses. The chart encompassed all of the evidence attached to Plaintiff’s Omnibus Response to Defendants’ anti-SLAPP motions, as well as the evidence presented during the October 13-14, 2021 hearing. In response to Plaintiff’s evidence, the Defendants’ objections varied, with most raising at least some objections. For example, Defendant Eric Metaxas raised no objections, Defendant

Michelle Malkin objected to eight exhibits specific to her, and Defendant Rudolph Giuliani objected to nine exhibits, one video clip, and three deposition excerpts implicating him. Plaintiff disagrees with these objections—and will respond to them on or before the current November 29, 2021 deadline¹—but does not doubt that they were at least raised in good faith.

3. The OAN Defendants, however, have submitted 1,215 pages of objections, including hundreds of pages of objections to evidence against other Defendants, to which those Defendants themselves have not objected. A true and correct copy of the OAN Defendants' objections is attached hereto as **Exhibit A**. With an average of 4-5 objections per page, it is not an exaggeration to say that the OAN Defendants appear to have asserted as many as 5,000 objections to Plaintiff's evidence. Plaintiff is simply not in a position to respond to these objections—nor should he be required to. The excessive nature of the OAN Defendants' objections is apparent throughout. The overwhelming majority of the OAN Defendants' objections are frivolous, redundant, dilatory, without merit, not made for any proper purpose, intended to needlessly increase the cost of litigation, and/or intended to harass Plaintiff and this Court. Due to the sheer number of objections, and out of respect for the Court's time and resources, Plaintiff focuses the Court's attention on just a few examples.²

4. The OAN Defendants begin with 137 pages of objections to Plaintiff's declaration. After first objecting that Plaintiff lacks foundation and personal knowledge

¹ See Nov. 17, 2021 Order.

² Any omission in this Motion should not be construed as an acknowledgment of merit or waiver of Plaintiff's right to respond.

of his own name, age, and state of mind, the OAN Defendants make dozens of objections that are without merit and seem to contradict their previous positions. For example, this statement by Plaintiff elicited three separate objections from the OAN Defendants:³

Evidence	OAN's Objections
<p>Exhibit A – Declaration of Eric Coomer: “A user of Dominion’s technology could not adjudicate multiple ballots simultaneously if they wanted to, and in every instance adjudicated ballots retain a durable auditable log of all changes made.” (¶ 6, Line 3.)</p>	<p>C.R.E. 401/402/403 – No relevance to Dr. Coomer’s burden of producing clear and convincing admissible evidence that the OAN Defendants exhibited knowing falsity or reckless disregard for the truth (subjective awareness of probable falsity) with the allegedly defamatory statements made by the OAN Defendants “of and concerning” Dr. Coomer; any probative value outweighed by undue prejudice.</p> <p>C.R.E. 602 – Lack of foundation.</p> <p>C.R.E. 701 – Lay witness attempting to offer improper expert testimony regarding capabilities of Dominion voting machines.</p>

These objections suggest that the OAN Defendants have no idea what this case is about or are using these objections purely to harass. In “Dominion-izing the Vote,” the OAN Defendants discussed the adjudication process for several minutes and used this discussion as a lead-in to false claims about Plaintiff. Whether the machines are capable of adjudicating more than one ballot at a time is a readily verifiable fact, and one that directly implicates whether the OAN Defendants, or any other Defendants, investigated their sources’ claims, willfully avoided the truth, disregarded reliable sources, or leaned into a pre-conceived narrative—all of which are directly relevant to the Court’s consideration of the anti-SLAPP motions. In fact, Plaintiff holds patents related to the

³ See **Exhibit A**, Objection to Exhibit A, Declaration of Eric Coomer, at 10-11.

adjudication function, which were specifically referenced in “Dominion-izing the Vote” and addressed at length in Plaintiff’s Omnibus Response.⁴ There can be no dispute that the Dominion machines’ adjudication function is relevant. And perhaps no one more qualified to speak to that function than Plaintiff.

5. If the Court scrolls down another 75 pages, it will find objections to Plaintiff’s statements concerning undisputed facts and his own experience watching “Dominion-izing the Vote”:⁵

Evidence	OAN’s Objections
Exhibit A – Declaration of Eric Coomer: “Rion’s broadcast further quotes Oltmann saying ‘Eric Coomer was this, you know, he’s not just Antifa, he was responsible for putting his finger on the scales of our election,’ with Rion adding, ‘If Coomer is investigated and found to have indeed tampered with a presidential election, such an action could be tried for treason. Unfortunately, the question is, will the FBI step up to investigate?’” (¶ 34, Line 7.)	C.R.E. 602 – Lack of foundation. C.R.E. 901 – Lack of authentication. C.R.E. 1002 – Secondary evidence not admissible where original records still exist.

There cannot be any dispute that this exchange took place. Nor can there be any dispute that Plaintiff has seen the video and knows what was said. The Court viewed the footage during the hearing on October 14, 2021, and can consult the evidence to confirm the statements itself. But here, as elsewhere throughout the OAN Defendants’ objections, the purpose was not to raise a colorable legal concern.

⁴ See Plaintiff’s Omnibus Resp., at pp. 54-59.

⁵ See **Exhibit A**, Objection to Exhibit A, Declaration of Eric Coomer, at 86-87.

6. Scrolling down another hundred or so pages, the Court will find this pair of objections to evidence asserted against Defendant Michelle Malkin.⁶

Evidence	OAN's Objections
PX 26 11-25-20 email from Michelle Malkin to Pierce Sargeant re Sovereign Nation – Wednesday pretape – guest/contact info	<p>C.R.E. 401/402/403 – No relevance to Dr. Coomer's burden of producing clear and convincing admissible evidence that the OAN Defendants exhibited knowing falsity or reckless disregard for the truth (subjective awareness of probable falsity) with the allegedly defamatory statements made by the OAN Defendants "of and concerning" Dr. Coomer; any probative value outweighed by undue prejudice.</p> <p>C.R.E. 901 – Lack of authentication.</p>

The evidence in question is an email exchange that includes a draft of the script for Malkin's November 28, 2020 interview of Oltmann. Malkin herself does not object to this evidence, nor does she join in the OAN Defendants' objections. Malkin produced the document herself and has admitted to its authenticity under oath.⁷ Given these undisputed facts, it is unclear how or why the document's probative value is outweighed by undue prejudice, in what manner it lacks authentication, or why the OAN Defendants have taken it upon themselves to burden the Court with these objections.

7. The OAN Defendants have repeated the same objections literally thousands of times. They have objected to evidence against other Defendants, even when those Defendants themselves have stipulated to same. They have included numerous assertions

⁶ See **Exhibit A**, Objection to Exhibit F-1, PX 26, at 182.

⁷ See Michelle Malkin, July 27, 2021, Depo. Tr. at 74:23-77:14.

that the evidence at issue has not been authenticated, despite its production or authentication by an individual with personal knowledge.

8. Moreover, by asserting excessive invalid objections, the OAN Defendants waived any valid objections they may have had. *See Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Ct. of Montana*, 408 F.3d 1142, 1149-50 (9th Cir. 2005) (finding numerous general objections that obscure valid objections may result in a waiver of the valid objections absent a showing of good cause). If the OAN Defendants persist in their refusal to present reasonable objections, then the Court may strike their objections altogether.

CONCLUSION

9. Based on the foregoing, Plaintiff respectfully requests that the Court order the OAN Defendants to amend their objections within five days to (1) eliminate all unfounded, frivolous, and/or bad faith objections, and (2) remove all objections to evidence against other Defendants that do not otherwise implicate the OAN Defendants. Plaintiff further requests an additional ten days to respond.⁸ Plaintiff believes that the OAN Defendants should be given an opportunity to amend their objections and, if that effort fails, Plaintiff will likely seek relief under C.R.C.P. 11.

⁸ Plaintiff is prepared to respond to the other defendants' objections by the original November 29, 2021 deadline.

