

1 P R O C E E D I N G S

2 (Friday, June 28, 2019, 11:40 a.m.)

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4 THE COURT: Good morning.

5 MR. BEARD: Ty Beard for Victor --
6 mignogna and Carey Christie will be here in a moment.

7 MR. ERICK: Casey Erick for Monica Rial
8 and Ronald Toye.

9 MR. JOHNSON: I^I'm Sam Johnson for Jamie
10 Marchi.

11 MR. VOLNEY: I'm John Volney for
12 Funimation Productions.

13 THE COURT: All right. So what's going
14 on?

15 MR. BEARD: Your Honor, we have a motion
16 to compel already on file, and I hate to go through all
17 that today, but we deposed Ronald Toye today, and we --

18 COURT REPORTER: Can you speak up? I
19 can't hear you.

20 MR. BEARD: Oh, I'm sorry.

21 We have a motion compel on file now, and
22 I won't waste your time going through all that today, but
23 yesterday we deposed Mr. Toye, and we considered his
24 answers to be highly evasive. There were 342 tweets that
25 we gave him. He did not -- he couldn't remember posting

1 any of them, and the transcript will show --

2 THE COURT: If you had asked for that,
3 then maybe --

4 MR. BEARD: Yeah, I -- here's why this
5 matters, okay. The other side has not responded to
6 requests for production, and you can read the motion. I
7 won't bore you with the details on that, but we don't
8 have the tweets from production. And those -- they have
9 had these for like 74 days now, these requests for
10 production, okay.

11 And I need to be able to authenticate
12 them so that when they file their motion to dismiss under
13 TCPA, I've got those tweets available to me as evidence.

14 Well, if you haven't authenticated -- I
15 wasn't making it a big issue, because I wanted him to
16 authenticate them at the deposition, and then problem
17 would be solved. I'm not really complaining about the
18 lack of production, we'll work that out, you know, and
19 apparently we haven't necessarily complied either, so
20 that's fine.

21 But I need this stuff because of an
22 impending deadline because as you know, when they file
23 that motion to dismiss, an automatic stay kicks in. And
24 so I asked opposing counsel to agree to produce the
25 tweets within some reasonable period of time to agree

1 that we would have a couple hours more with his client to
2 compensate us for the time we lost wrangling over these
3 tweets and hundreds of other questions, and agree that we
4 would get these things done, regardless of whether or not
5 there was a motion to dismiss under the TCPA.

6 And counsel asked me if I would be
7 willing to agree to produce some other stuff, and I said
8 sure. But he is unwilling to enter into a Rule 11
9 agreement today, and since we were all here I wanted to
10 get this resolved today, if at all possible.

11 I can notice it for a hearing and do it
12 next week, but with the 4th of July, I didn't think that
13 was going to work very well.

14 MR. ERICK: Thank you, Your Honor. We
15 have produced those documents that they requested.
16 Mr. Ron Toye was deposed yesterday. I think he had about
17 three hours left of the deposition, and he passed the
18 witness, he was here, and he could have asked any
19 questions he wanted, and he was done. This, to me, is a
20 request for a do-over for a witness that he has done. He
21 completed his cross-examination with him.

22 The tweets, though, Mr. Toye said, that's
23 my tweet, that's my handle, or whatever it's called.

24 THE COURT: Do you have any objection to
25 the authenticity of the tweets of any of the statements?

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MR. ERICK: No.

THE COURT: Okay. See you later.

MR. BEARD: Well, let me -- the tweets in Exhibit 28 attached to the deposition of Ronald Toye, are you agreeing they're all authentic?

MR. ERICK: I agree that's what he said.

THE COURT: You are not going to object to hearsay or 902 or anything like that?

MR. ERICK: No.

THE COURT: Okay. What are you doing here? Why don't you --

MR. ERICK: Your Honor, just to be fair, I said he did authenticate them, they're authenticated.

THE COURT: All right.

(Ending of hearing)

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