

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD MEYER,
Plaintiff,

v.

MARK WAID,
Defendant.

§
§
§
§
§
§
§

CASE NO.: 1:18-CV-00800

(Jury Demanded)

RESPONSE TO MOTION TO DISMISS FIRST AMENDED COMPLAINT

Plaintiff Richard Meyer files this Response to the Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Subject Matter Jurisdiction [Dkt. 43] (the "Second Motion to Dismiss").

I. INTRODUCTION

1. Here we go again. Despite the magistrate's recommendation that Waid's first motion to dismiss be denied as to Plaintiff's tortious interference claim and this Court's granting leave for Meyer to amend its defamation claim, Waid rehashes the same arguments in his Second Motion to Dismiss. As previously briefed, Waid's intentional actions directed toward a Texas publisher to breach a contract with another Texas resident give rise to Meyer's tortious interference claim. Likewise, Waid's conduct at a comic book convention in Houston Texas where he publicly defamed Meyer provides the basis for Meyer's defamation claims. Waid should have had every expectation of being haled into a Texas court under these circumstances. The Second Motion to Dismiss must be denied.

II. JURISDICTIONAL FACTUAL SUMMARY¹

A. Waid intentionally interfered with a contract between Texans to be performed in Texas

2. As described in Plaintiff’s First Amended Complaint [Dkt. 40] (the “Amended Complaint”), Meyer is a lifelong fan of comic books and particularly superhero comic books. Amended Complaint ¶ 5. After creating his successful YouTube channel reviewing comic books by Waid and others, Meyer faced criticism that he had never written or drawn a comic book of his own. *Id.* ¶¶ 9-10, 14. In April, 2018, Meyer publicly announced that he was publishing his own comic book, JAWBREAKERS—Lost Souls, a story about five ex-superheroes that come out of retirement to protect a giant, mutant ape from being exploited by a warlord. *Id.* ¶ 15.

3. By that time, Meyer had already begun discussions with Antarctic Press (“AP”), an independent comic book publisher located in San Antonio, Texas. *See* Ex. A, Deposition of Joeming Dunn (“J. Dunn Depo.”), at pp. 18:24-19:20, 21:18-22:16.² By April 29, 2019, AP had agreed to publish JAWBREAKERS. *Id.*, at p. 25:13-19; Amended Complaint, ¶¶ 16-17. And on May 9, 2018, Antarctic Press publicly announced it was publishing JAWBREAKERS via Twitter saying, “It’s official! We’re publishing JAWBREAKERS in September!” Amended Complaint, ¶ 17; Ex. A, J. Dunn Depo., at pp. 26:13-27:10.

4. Even before making that announcement, AP was aware of negative reaction to Meyer’s book within portions of the comic book community and that some stores even discussed plans to boycott the book. Ex. A, J. Dunn Depo, Ex. 15. Criticism of AP’s decision continued

¹ In his Second Motion to Dismiss and his Declaration, Waid again recounts at length statements allegedly made by Meyer in 2017 that have no bearing on whether Waid is subject to this Court’s jurisdiction. There will be an appropriate time to respond to those allegations, but that time has not yet come. This response will focus on the facts showing that Waid’s contacts with Texas are more than sufficient for this Court to exercise jurisdiction over Waid.

² Antarctic Press has been a comic book publisher since 1984 and has always been located in San Antonio, Texas. *Id.*, pp. 8:3-25, 18:13-15.

on social media throughout May 10, 2018 and into May 11, 2018. *Id.*, at pp. 27:19-29:21; *see also id.*, at Exh. 18 (email dated May 10, 2018 at 9:48 p.m. instructing AP personnel to observe “radio silence” regarding the JAWBREAKERS controversy and deflect any criticism to its creator, Richard Meyer).

5. On May 11, 2019, Mark Waid stoked the negative reaction to AP’s announcement in a Facebook post:

I have a call in to Antarctic Press. Until I hear back, I’m (hesitantly) willing to give them the benefit of the doubt that they don’t really understand who or what they’re getting into business with, which – though it would seem a stretch – is a possibility. If I do hear back, I’ll report in. Curious as to how they feel about publishing creators whose marketing strategy is to allegedly (*koff*) *encourage their fans to threaten employees of stores*, and/or harass and one-star-review-bomb stores, that don’t order their product.

Exh. B, Deposition of Mark Waid (“Waid Depo.”), at p. 72:18-22 & Exh. 6 (emphasis added). Waid posted that message after calling AP’s landline telephone number in San Antonio, Texas and left a message, as Waid describes it, saying, “I wish to speak to the owner,” so that Waid could make sure the owner “understood why the backlash [was] happening.” *Id.*, pp. 38:4-6, 40:18-41:9; *see also* Exh. A, J. Dunn Depo., at pp. 35:5-36:6 (testifying about Waid’s call to AP’s landline office telephone).

6. AP’s office manager conveyed Waid’s message to Joeming Dunn (“Dunn”), AP’s owner, at 12:25 p.m. stating that Waid was “looking to warn us of how badly our association with Rich Meyer might be for us,” and had “mentioned death threats, among other things.” Exh. A, J. Dunn Depo. at pp. 37:10-18 & Exh. 18. At that time, Dunn understood that AP had contractually committed to publishing JAWBREAKERS. *Id.*, p. 41:15-19; *see also id.*, Exh. 19 (acknowledging that AP was “contractually obligated” to publish Meyer’s comic book). Frustrated with being caught in the middle between Waid’s followers and Meyer’s supporters,

Dunn sent a lengthy screed at 4:38 p.m. to one of AP's contributors complaining that AP was being bullied into not publishing Meyer's comic book because of past statements and political viewpoints of an author that were unrelated to the book being published. *Id.* at 42:21-43:4 & Exh. 19. In that missive, Dunn makes clear that AP had not decided to cancel Meyer's book at that time.³ *Id.* 44:13-49:17 & Exh. 19.

7. Ten minutes after sending that email, Dunn returned Waid's telephone call. *Id.*, at 51:2-51:24. The call was not brief but rather lasted twenty-seven minutes. *Id.* Immediately after the call, Ben Dunn⁴ ("Ben"), who was with his brother (Dunn), described him as "visibly upset" and that Ben could tell that "whatever transpired was not something positive." Exh. C, Deposition of Ben Dunn ("B. Dunn Depo.") at pp. 20:3-22:1. Before that call, Ben understood that AP was committed to publishing Meyer's book. *Id.* at 20:24-21:6. Thirty-six minutes after the call between Dunn and Waid ended, Dunn sent a text message to Waid's phone stating, "I have decided to drop the project," and that a statement on Facebook would be forthcoming. Exh. B, Waid Depo., at p. 73:2-7 & Exh. 7. Later that same evening, Dunn instructed AP personnel to announce on Facebook that AP would not be publishing JAWBREAKERS. Exh. A, Dunn Depo., at 61:6-62:4.

8. Waid could not contain his excitement. He responded, "You are a VERY good man. Text or DM me when the statement goes up and I will recirculate it if you'd like." Exh. B, Waid Depo., Exh. 7 (emphasis original). After Dunn confirmed that the cancellation was public,

³ Among other comments, Dunn remarked in the first paragraph about AP's options: "We could not release this book *even though we are contractually obligated to do so* and succumb to social media pressure (which feels a bit like we are being bullied to not release the book) or we could publish the book and continue to get the wrath we have undergone these past days from a multitude of sources." *Id.*, Exh. 19 (emphasis added).

⁴ Ben Dunn is the former owner of Antarctic Press.

Waid again praised Dunn and thanked Dunn for doing so: “Good man. Thank you and stay in touch.” *Id.*

9. Just two days later, Waid was quoted at length in an article where he described his phone call with Dunn. Exh. C, B Dunn Depo Exh. 10, at pp. 13-15.⁵ There, Waid professed to have met AP’s owner and stated that the owner “seemed like a good guy” and later described AP’s owner as someone Waid “knew to be a good guy.” *Id.*, at p. 13, 14. Waid also recounted that part of the impetus for his call was as follows:

I was surprised that [the publisher would] want to get in bed with someone whose idea of marketing was to ask his fans to put together a list of stores that chose not to carry his book and to then circulate that list along with the full names, first and last, of the stores' employees and their phone numbers for ease of targeting and harassment.

Id., at 13.

10. Over the next few days, Waid and Dunn continued to communicate via text message. On May 15, 2018, Waid asked, “Holding up? Why in the world is Meyer claiming that you called him in tears?” Exh. B, Waid Depo., Exh. 7. When Dunn declined to discuss the matter, Waid responded, “I don’t blame you. *You haven’t turned on me, I hope?*” *Id.* (emphasis added).

⁵Due to the length of the article, only an excerpt of the exhibit is attached. The full article may be found here: <https://www.bleedingcool.com/2018/05/13/no-enemy-but-peace-richard-meyer/>

Again, Dunn declined to discuss the matter with Waid. In response, Waid pleaded with Dunn to confirm that Waid had not bullied Dunn into withdrawing support for JAWBREAKERS:

Well, I understand that, and you know that I'm here to help. You're not even getting any blame any more—the story is that you called in tears to confess and that I bullied you. I think that's 100% fiction—You said at the time you didn't feel I was bullying or harassing you in the least, correct?

Ben?

Id. When Dunn refused to provide that validation, Waid begged for it:

Ben, that is all I will ever ask of you, and it stays between us. Do you now think that I bullied you?

You said I didn't bully you. Do you still feel that way? It weighs on me.

Because everything you are saying to me indicates that you weren't straight with me when you confirmed you didn't feel bullied by me at all and that we were good.

Are you changing your story to say that I bullied you, or were you straight with me on Friday? That's all I need to know, then I'll leave you alone.

I'll lose your number, you never need to hear from me again.

Just tell me I didn't intentionally bully you or hurt you, because if I did, I need to know.

Delivered

Id. Dunn refused. Exh. B, Waid Depo., at p. 49:8-17.

B. Waid Defames Meyer in Houston, Texas

11. Less than two weeks later, Waid traveled to Houston, Texas to attend a book-signing event at a comic book store and a comic book convention between May 22-27, 2018. *See* Exh. D., Waid Response to Interrogatory 1, at p. 4. On May 26, Waid participated in a question and answer session with a panel of comic book creators. *Id.* During that session, Waid was asked about Meyer and Antarctic Press. *See* Amended Complaint, ¶ 22; Exh. B, Waid Depo, at pp. 49:19-50:5. Waid spoke for approximately five minutes recounting his version of the events leading to AP’s decision to drop JAWBREAKERS. *Id.* at pp. 52:17-65:5.⁶ After confirming that he was talking about Meyer and his artist collaborator, Waid made the following public statements while in Houston:

- “Uh these guys created the, you know, they did their comic, great, awesome. . . . there was, there was a bunch of stores that decided they weren’t going to carry the comic, so these guys made a list of those stores . . . and their phone numbers and the names, first and last of all their employees.” *Id.* 58:18-59:1.
- “And with the idea that, ‘oh no, don’t call them and harass them, we’re not telling you to do that at all!’ But here’s their phone numbers and their first and last names of all their employees. Well, c’mon.” *Id.*, at p. 59:12-22.⁷
- “So, *there was a publisher here in Texas*, who was going to publish their comic, for, after it had been kickstarted they were gonna, like publish it for comic stores.” *Id.*, at p. 60:9-12 & Exh. 2, at p. 2 (emphasis added).
- “These guys are, these are indefensible human beings. . . . they harass women, they harass minorities, they harass LGBTQ people, um, they’re full of hate. What are you doing?” *Id.*, at pp. 60:16-20.
- “But *I knew the publisher*, and I don’t think he was aware of why all of a sudden it was this gigantic groundswell of hate towards him. So I said before I burn this

⁶ A transcript of the recording was also attached as Exhibit 2 to Waid’s deposition. Waid confirmed that the transcript was accurate. *Id.*, Waid Depo., Exh. 2.

⁷ When asked if Waid intended that comment to suggest that Meyer was directing his followers to harass the stores and their employees, Waid responded, “Absolutely.” *Id.*, at pp. 59:25-60:4.

place to the ground . . . Let me just call him and find out what’s going on . . . *I know the guy* and want to make sure he knows why the Hordes of Hell are descending on him right now. *Id.*, at pp: 61:17-62:24 (emphasis added).

Thus, Waid (who professed to have previously known Dunn) not only travelled to Texas where he described his recent interference with the Meyer/AP contract, admitting in the process that AP was Texas-based, while at the same time making defamatory statements about Meyer. *See* Amended Complaint, at ¶ 24.

III. ARGUMENT AND AUTHORITIES

A. Legal Standard—Purposeful Actions Directed at Forum

12. **Prima Facie Only; Conflicts Resolved in Plaintiff’s Favor.** While it is true that “[t]he plaintiff bears the burden of establishing jurisdiction,” the plaintiff “need only present *prima facie* evidence” of jurisdiction to meet its burden. *WithdrawalEase.com v. Withdrawalaid.com*, Cause No. 1:14-CV-878-LY, 2014 WL 1247940, at *2 (W.D. Tex. Dec. 18, 2014) (quoting *Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002)(emphasis original). When evaluating such evidence, the court must accept the plaintiff’s uncontroverted allegations as true and resolves any conflicts between evidence submitted by the parties in favor of the plaintiff. *See id.* To establish specific personal jurisdiction, the plaintiff must show that the defendant purposely directed activity at a resident of the forum and the defendant’s contact with Texas “arise from, or are directly related to, the cause of action.” *Trois v. Apple Tree Auction Center, Inc.*, 882 F.3d 485, 489 (5th Cir. 2018) (internal quotations omitted).

13. **Single Phone Call Will Suffice.** The Fifth Circuit has long held that minimum contact with the forum state can be established through a single phone call. *See Brown v. Flowers Indus., Inc.*, 688 F.2d 328, 332- 34 (5th Cir. 1982) (holding defamatory statements made during

single telephone call was sufficient to support personal jurisdiction).⁸ In fact, the Fifth Circuit recently upheld jurisdiction based on single phone call that included Texas citizens even though the call was not even initiated by the defendant. *See Trois v. Apple Tree Auction Ctr.*, 882 F.3d at 490-91. There, the defendant participated in a conference call initiated by a third party during which, the plaintiff asserted, one of the defendants made fraudulent statements concerning his auction company. *Id.* In rejecting the defendants' claim that a single phone call was insufficient to confer jurisdiction, the court stated:

Although Schnaidt [the defendant] did not initiate the conference call to Trois in Texas, Schnaidt was not a passive participant on the call. Instead, he was the key negotiating party who made representations regarding his business in a call to Texas. It is that intentional conduct on the part of Schnaidt that led to this litigation. . . . The defendants should have reasonably anticipated being haled into Texas court as a result of reaching out to Texas via phone in order to garner business and make specific representations.

Id. at 491. This Court has likewise found jurisdiction where the content of the non-resident's communication with Texas formed the basis of the plaintiff's cause of action. *See OfficeVP LLC v. Ideal Health Inc.*, No. A-11-CV-741-LY, 20112 WL 787041, at *6 (W.D. Tex. March 6, 2012) ("When the actual content of communications with a forum gives rise to intentional tort causes of action, this alone constitutes purposeful availment.") (internal quotations omitted). Thus, personal jurisdiction for intentional torts is established

⁸ The Fifth Circuit has repeatedly cited *Brown v. Flowers Industries* for this proposition. *See Trois v. Apple Tree Auction Center, Inc.*, 882 F.3d 485, 491 (5th Cir. 2018) (citing *Brown v. Flores* and upholding jurisdiction where misrepresentations were made during a single phone call); *Lewis v. Fresne*, 252 F.3d 352, 358-59 (5th Cir. 2001) (citing *Brown* and stating that a "single act by a defendant can be enough to confer personal jurisdiction if that act gives rise to the claim being asserted."); *SGS-Thompson Micro-Electronics, Inc. v. Ferris*, No. 93-9115, 1995 WL 313932 (5th Cir. May 1, 1995) ("In *Brown*, the panel reversed a district court decision that one phone call by a non-resident into the forum was insufficient "minimum contact" to support jurisdiction over the non-resident in the forum."); *D.J. Investments, Inc. v. Metzeler Motorcycle Tire Agent Gregg, Inc.*, 754 F.2d 542, 545 (5th Cir. 1985) ("One of the defendants had initiated a single telephone call into the forum state, during which he allegedly committed the intentional tort of defamation. The claim of jurisdiction was predicated on this single telephone call.");

when the cause of action arises from the defendant's communication with a citizen of the forum state.⁹

B. Waid's intentional actions directed toward Texas gave rise to Meyer's tortious interference with contract claim.

14. Waid intentionally directed his actions towards Texas to interfere with a contract that was between Texas citizens and performable in Texas. This Court has personal jurisdiction over Waid as a result.

15. AP and Meyer, both citizens of Texas, entered a contract to publish JAWBREAKERS that was performable in Texas. It is undisputed that Waid intentionally reached out to AP by calling AP's landline, business phone to discourage AP from publishing JAWBREAKERS. And Waid bragged on social media that he had done so.

16. Despite Waid's initial denial under oath to this Court that he did not know where AP was located until this suit was filed,¹⁰ faced with his recorded comments in Houston days after the call he now admits (as he must) that he knew that AP was Texas-based at least by then. His claim that he only learned of AP's location after the call is completely implausible. He is unable to explain how he became aware of that fact. *See* Exh. B, Waid Depo., at pp. 44:24-46:10, 60:9-12 & Exh. 2, at p. 2. Waid also professed on at least two occasions within that same two week period that he had previously met and knew AP's owner (Dunn) and knew that he was a "good guy." *See* Exh. C, B Dunn Depo Exh. 10, at pp. 13-15; Exh. B, Waid Depo. pp: 61:17-62:24. He denies using the internet to identify the 210 area code number he dialed for AP's landline, probably because AP's San Antonio address is prominently displayed on its website; he claims

⁹ Waid's continued reliance on *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482 (1984) and related cases is unavailing. The Fifth Circuit has made clear in *Trois v. Apple Tree Auction Center* and elsewhere that the correct analysis is to determine whether the defendant's "conduct connects it to the forum in a meaningful way." *Sangha v. Navig8 ShipManagement Private Ltd.*, 882 F.3d 96, 104 (5th Cir. 2018).

¹⁰ *See* November 1, 2018 Declaration of Mark Waid [Dkt. 10-1].

instead to have procured the number from some unidentified industry source. *Id.*, at p. 38:7-39:1. Waid's assertion that he did not know where he was calling when he reached out to AP is simply not credible.

17. Waid's actions during that call were intentional and deliberate – he wanted AP to drop JAWBREAKERS, and Waid succeeded. This case falls directly in line with *Trois v. Apple Tree Auction Center, Inc.*, discussed above. Like the defendant in that case, Waid intentionally reached out to a Texas citizen to interfere with its contract to publish JAWBREAKERS. When Dunn spoke to Waid, Waid was an active participant advocating against publication of Meyer's book just as the defendant in *Trois v. Apple Tree Auction Center, Inc.* was an active participant making misrepresentations. *Trois v. Apple Tree Auction Center, Inc.*, 882 F.3d 485, 489 (5th Cir. 2018). Here, Waid was a party in two telephone calls with Texas participants, one with AP's office manager and later with AP's owner, with the intention of convincing AP to breach its contract with Meyer. Waid's actions during those calls alone are sufficient contacts with Texas for this Court to assert personal jurisdiction over Waid.

18. Waid's reliance on *Michiana Easy Livin' Country, Inc. v. Holten* is misplaced. Aside from not being the law of the Fifth Circuit,¹¹ that case involved a single, unsolicited phone call to Indiana initiated by the plaintiff from Texas. *See Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 781 (Tex. 2005). Again, the Fifth Circuit has repeatedly stated that intentional, tortious actions during a single telephone conversation are sufficient for the defendant to be haled into court in the forum state. *See* footnote 8, *supra*. Moreover, in this case it was Waid who initiated contact by calling AP to threaten repercussions if it published Meyer's book.

¹¹ Because jurisdiction is determined by the reach of Due Process Clause under the Texas long-arm statute, this Court must follow Fifth Circuit precedent. *See Tyson v. Austin Eating Disorders Partners LLC*, No. A-13-CA-180-SS, 2013 WL 3197641, at *4 (W.D. Tex. June 21, 2013) (rejecting defendant's reliance on *Michiana Easy Livin' Country, Inc. v. Holten* due to the Fifth Circuit's broader interpretation of the reach of the Due Process Clause).

During his half hour call with Dunn, Waid bullied him into cancelling the book. These are intentional actions taken by Waid during those phone calls.

19. Even if Waid were being truthful regarding his alleged ignorance of AP's Texas citizenship despite the evidence to the contrary, that is not enough to defeat jurisdiction. It is undisputed that Waid called AP's business telephone with a San Antonio area code. Federal courts are critical of arguments that willful ignorance of the state to which the defendant direct a communication defeats jurisdiction. *See Strange v. Carnival Corp.*, No. 18-0295, 2019 WL 1281251, at *9 (W.D. La. March 20, 2019) (citing cases and approving of courts' rejections of the argument that a defendant's ignorance of the location of the phone the defendant had called defeated jurisdiction); *Luna v. Shac, LLC*, No. 14-607, 2014 WL 3421514, at *3 (N.D. Cal. July 14, 2014) (holding that sending unsolicited text messages to forum state subjected the defendant to personal jurisdiction in that state regardless of the defendant's knowledge of the recipient phone's location); *See also, Schneider v. Hardesty*, 669 F.3d 693, 700–01 (6th Cir.2012) (“[T]he only possible explanation [for defendant's ignorance of the plaintiff's geographic location] is that [he] intentionally buried his head in the sand, and that cannot save [him] from being subject to jurisdiction.”). In this case, Waid intentionally reached out to a San Antonio business with a San Antonio area code for the purpose of interfering with that business' contract, solicited a call back from the company's owner, and executed on his intention to interfere with AP's contract.

20. Finally, there is also no question that Waid's bullying influenced AP's owner to cancel publication of JAWBREAKERS. As described above, Dunn lamented to his colleague just before his will with Waid that AP was caught in the middle and was being bullied into not publishing Meyer's book, but that he was still proceeding with publication. When Dunn called Waid, they spoke, at length, immediately after which AP announced its decision to drop the

project. Obviously concerned about exposure, Waid sought to insulate himself from the consequences of his actions by repeatedly soliciting an admission from Dunn that Waid had not bullied him (which Dunn refused to provide). Exh. B, Waid Depo., Exh. 7. That is not how innocent people act. It is clear that the telephone conversation between Waid and Dunn was the tipping point for AP, and Waid knows it.

C. This Court has jurisdiction over all of Meyer’s defamation claims.

21. Waid’s jurisdictional objections to Meyer’s defamation claims focus on Waid’s feigned ignorance of the fact that Meyer was a Texas resident when Waid defamed Meyer. But knowledge of Meyer’s Texan citizenship is not required for this Court to assert jurisdiction over Waid for Waid’s defamatory statements made in Texas to Texans, and this Court should exercise pendent jurisdiction over Waid’s other defamatory statements.

22. The Amended Complaint alleges that Waid committed an intentional tort, defamation, while he was in Texas. Despite those allegations, Waid relies entirely on cases involving defendants who made defamatory statements or committed other intentional torts from outside the forum state. That is a critical distinction. As the Fifth Circuit recently observed, “[i]n most cases, the defendant’s commission of a tort while physically present in a state will readily confer specific jurisdiction.” *Carmona v. Leo Ship Management, Incorporated*, 924 F.3d 190, 194 (5th Cir. 2019). As to that situation, the Fifth Circuit remarked, “We are aware of no example – and [the defendant] has cited none – in which a court lacked jurisdiction under those circumstances.” *Id.*; *see also id.* (“Generally, the commission of an intentional tort in a forum

state is a purposeful act that will satisfy the purposeful availment prong.”)(internal quotations omitted).¹²

23. In this case, there is no question that Waid voluntarily attended, and participated as a celebrity panelist in a multi-day comic book convention in Houston, Texas. In response to a question from an audience member, Waid made defamatory remarks about Meyer. Amended Complaint, at ¶¶ 22, 24. Waid committed the intentional tort of defamation while in Texas, and this Court definitely has jurisdiction over Waid herein; the claims in the Amended Complaint are far from futile.

24. Waid’s jurisdictional complaint regarding his other defamatory statements made through social media and elsewhere is another red herring. Even if this Court would not otherwise have specific jurisdiction over those actions, this Court can, and should, exercise pendent jurisdiction over them. “Pendent personal jurisdiction exists when a court possesses personal jurisdiction over a defendant for one claim, lacks an independent basis for personal jurisdiction over the defendant for another claim that arises out of the same nucleus of operative fact, and then, because it possesses personal jurisdiction over the first claim, asserts personal jurisdiction over the second claim.” *Halcyon Biomedical Inc. v. Glatt Air Techniques, Inc.*, No. H-19-690, 2019 WL 2420232, at *7 (N.D. Tex. June 10, 2019). The exercise of pendent jurisdiction

¹² After finding minimum contact with the forum state through the defendant’s employees’ presence and alleged negligence in the state, the *Carmona v. Leo Ship Management* court examined whether the defendant’s contact with the forum was purposeful. *See id.*, at 195-97. Because the defendant had notice that its employees would travel to the forum state, the defendant’s contacts were purposeful and the district court had personal jurisdiction over the defendant. *See id.*, at 197.

The *Carmona* court’s analysis follows previous decisions by the Fifth Circuit and this Court looking to the defendant’s actions directed at the forum state to determine whether jurisdiction existed. *See Trois v. Apple Tree Auction Center, Inc.*, 882 F.3d 485, 489 (5th Cir. 2018) (finding that personal jurisdiction exists when the defendant intentionally reaches out to a forum “arise from, or are directly related to, the cause of action”); *OfficeVP LLC v. Ideal Health Inc.*, No. A-11-CV-741-LY, 20112 WL 787041, at *6 (W.D. Tex. March 6, 2012) (“When the actual content of communications with a forum gives rise to intentional tort causes of action, this alone constitutes purposeful availment.”) (internal quotations omitted).

promotes judicial economy and prevents piecemeal litigation. *See Canyon Furniture Co., v. Rueda Sanchez*, No. SA-18-CV-18-00753-OLG, 2018 WL 6265041, at *13 (W.D. Tex. Nov. 8, 2018). It is appropriate for a court exercise pendent jurisdiction when the claims over which the court has personal jurisdiction share a common nucleus of operative fact with the claims the court does not have jurisdiction. *See id.*; *see also CSIdentity Corp. v. New Equity Prod. Co.*, No. 1:18-CV-00870-RP, 2019 WL 3884158, at *4 (W.D. Tex. Aug. 19, 2019) (exercising pendent personal jurisdiction over claims for which the court would not have an independent basis for personal jurisdiction);

25. The cases relied upon by Waid are irrelevant as a result. At best, Waid's authority stands for the proposition that personal jurisdiction cannot be based solely on statements being accessible on social media or the internet in the forum state. *See, e.g., Higgins v. Save Our Heroes*, No. 18-42, 2018 WL 2208319, at *3-5 (D. Minn. May 14, 2018) (dismissing for lack of jurisdiction where defamatory statements were made solely on the internet, including Facebook and Twitter). In this case, Waid repeated the defamatory statement to a Texas audience in Houston. Waid should have every expectation of being haled into a Texas court as a result.

D. Exercising jurisdiction over Waid will not violate traditional notions of fair play and substantial justice.

26. Waid's conclusory complaints about fair play and substantial justice fall flat. Waid has no trouble travelling to Texas for comic book conventions and book-signings. Waid's inconvenience is slight, at best, as a result. There is no question that Texas clearly has a substantial interest in preventing interference with contracts between Texans that are performable in Texas. For the same reason, the relevant witnesses for Meyer's tortious interference and defamation claims, except for Waid, are all in Texas. Likewise, the state of Texas clearly has a substantial interest in defamation cases where the statements were made in Texas, about a Texas citizen, and to Texas

residents. Traditional notions of fair play and substantial justice are not offended by this Court's exercise of jurisdiction over Waid.

IV. CONCLUSION AND PRAYER

27. Waid's intentional actions directed towards Antarctic Press and Richard Meyer give rise to Meyer's tortious interference and defamation claims. Waid should not be allowed to tortiously interfere with Texas contracts and defame Texas citizens while in Texas and then claim he could not reasonably expect to be haled into a Texas court. This Court clearly has jurisdiction. Waid's Motion to Dismiss must be denied.

WHEREFORE, Plaintiff Richard Meyer respectfully requests that Defendant's Motion to Dismiss for Lack of Jurisdiction be denied, and that Plaintiff be granted all other relief to which he is justly entitled.

Respectfully submitted,

FRITZ, BYRNE, HEAD & GILSTRAP, PLLC
221 West Sixth Street, Suite 960
Austin, Texas 78701
Telephone: (512) 476-2020
Telecopy: (512) 477-5267

BY: /s/ Daniel H. Byrne
Daniel H. Byrne
State Bar No. 03565600
Email: dbyrne@fbhg.law
Dale L. Roberts
State Bar No. 24001123
Email: droberts@fbhg.law

ATTORNEYS FOR PLAINTIFF RICHARD MEYER

CERTIFICATE OF SERVICE

I certify that this document was served on the counsel of record listed below using the Court's ECF system on August 21, 2019:

Beverly Reeves

breeves@reevesbrightwell.com

Ryan Pierce

rpierce@reevesbrightwell.com

Reeves & Brightwell, LLP

221 West Sixth Street, Suite 1000

Austin, Texas

Mark S. Zaid

mark@markzaid.com

Mark S. Zaid, P.C.

1250 Connecticut Avenue, Northwest, Suite 700

Washington, D.C. 20036

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION

4 RICHARD MEYER, *
 Plaintiff, *

5 VS. * CIVIL ACTION NO.
 1:18-CV-00800-LY

6 MARK WAID,
 Defendant. * (Jury Demanded)

7
 8
 9 VIDEOTAPED ORAL DEPOSITION
 10 OF
 11 JOEMING W. DUNN, M.D.
 12 MARCH 6, 2019

13
 14
 15 VIDEOTAPED ORAL DEPOSITION of JOEMING W.
 16 DUNN, M.D., produced as a witness on behalf of
 17 Plaintiff and duly sworn, was taken in the above-styled
 18 and numbered cause on March 6, 2019, between the hours
 19 of 12:20 p.m. and 4:08 p.m. before Shan Morris
 20 Blanchard, Certified Shorthand Reporter in and for the
 21 State of Texas, reported by computerized stenotype
 22 machine at the offices of Langley & Banack, Inc., 745
 23 E. Mulberry, Suite 700, San Antonio, Texas 78212
 24 pursuant to Federal Rules and the provisions stated on
 25 the record or attached hereto.

Page 3

1 APPEARANCES CONTINUED:
 2 ALSO PRESENT:
 3 Richard Meyer
 4 Mark Waid (via telephone)
 5 Mark Zaid (via telephone)

6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 2

1 APPEARANCES
 2
 3 FOR THE PLAINTIFF:
 4 Mr. Daniel H. Byrne
 5 Fritz, Byrne, Head & Gilstrap, PLLC
 6 221 W. 6th Street, Suite 960
 7 Austin, Texas 78701
 8 Telephone: 512-477-2020
 9 Fax: 512-477-5264
 10 Email: dbyrne@fbhg.law

11 FOR THE DEFENDANT:
 12 Mr. Ryan Pierce
 13 Reeves & Brightwell, LLP
 14 521 West Sixth Street, Suite 1000
 15 Austin, Texas 78701
 16 Telephone: 512-334-4500
 17 Fax: 512-334-4492
 18 Email: rpierce@reevesbrightwell.com

19 FOR THE WITNESS:
 20 Mr. Otto S. Good
 21 Langley & Banack, Inc.
 22 745 E. Mulberry, Suite 900
 23 San Antonio, Texas 78212
 24 Telephone: 210-735-6600
 25 Fax: 210-735-6889
 Email: ogood@langleybanack.com

WITNESS:
 Joeming W. Dunn, M.D.

CERTIFIED SHORTHAND REPORTER:
 Shan Morris Blanchard

VIDEOGRAPHER:
 Lawrence Delgado

Page 4

INDEX	PAGE ₁
Stipulations	1
Appearances	2
JOEMING W. DUNN, M.D.	
EXAMINATION BY:	
MR. BYRNE	7
MR. PIERCE	68
MR. BYRNE	116
Reporter's Certificate	119
EXHIBITS	PAGE
NO. DESCRIPTION	
Ex. 11 Email string from Timothy Lim to Diversity & Comics, et al, dated March 12, 2018	21
Ex. 12 Email string from Timothy Lim to Diversity & Comics, et al, dated April 1, 2018	22
Ex. 13 Email string from Diversity & Comics to Brian Denham, et al., dated April 28, 2018	25
Ex. 14 Email string from Drake Harris to Diversity & Comics, et al., dated May 2, 2018	25
Ex. 15 Email string from Brian Denham to Diversity & Comics, dated May 9, 2018	28
Ex. 16 Email string from Diversity & Comics to Brian Denham dated May 9, 2018	29
Ex. 17 Printout from Antarctic Press website	33

Page 5

1 EXHIBITS CONTINUED:

2 Ex. 18 Email string from Doug Dlin to Joe 37
 Dunn, et al., dated May 11, 2018

3 Ex. 19 Email string from Joe Dunn to Joey 41
 Weltjens dated May 11, 2018

4 [REDACTED]

5 [REDACTED]

6 Ex. 21 Media statement on Twitter 61

7 Ex. 22 Email from Joe Dunn to Brian Denham, 61
 et al., dated May 11, 2018

8 Ex. 23 Screen shots of text message between 64
 Joe Dunn and Richard Meyer

9 Ex. 24 Email string from Brian Denman to Joe 74
 Dunn, et al., dated May 9, 2018

10 Ex. 25 Email string from Brian Denham to Joe 76
 Dunn, et al., dated May 9, 2018

11 Ex. 26 Screen shot of Twitter posts by 78
 Diversity & Comics, dated May 9, 2018

12 Ex. 27 Screen shot of Twitter post by 80
 Diversity & Comics dated May 10, 2018

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Ex. 29 Screen shot of Twitter post by 82
 Diversity & Comics dated May 11, 2018

19 Ex. 30 Email string from Brian Denham to Joe 83
 Dunn, et al., dated May 10, 2018

20 Ex. 31 Email string from Doug Dlin to Brian 85
 Dehnam, et al., dated May 10, 2018

21 Ex. 32 Email string from Doug Dlin to Joe 86
 Dunn, et al., dated May 10, 2018

22 Ex. 33 Email string from Joe Dunn to Jochen 94
 Weltjens dated May 11, 2018

23

24

25

Page 7

1 (The reading of introductions into the

2 record according to Rule 30(b)(5)(A) was waived by all

3 parties present.)

4 THE VIDEOGRAPHER: We're on the record on

5 March the 6th, 2019, at 12:20 p.m.

6 JOEMING W. DUNN, M.D., the witness, being

7 duly cautioned and sworn to tell the truth, the whole

8 truth and nothing but the truth, testified as follows:

9 (Time: 12:20 p.m.)

10 EXAMINATION

11 BY MR. BYRNE:

12 Q. Would you state your name for the record,

13 please, sir?

14 **A. My full name is Joeming Wolf Dunn, D-u-n-n.**

15 Q. And do you go by Joe Dunn?

16 **A. I go by Joe or Joeming depending on who my**

17 **friend are, I guess.**

18 Q. Okay. Mr. Dunn, my name is Dan Byrne, and I'm

19 representing Richard Myer in a lawsuit that I think

20 you're aware of that's been brought against Mark Waid,

21 and I'm sitting here with Mr. Meyer to my right and

22 Mr. Waid's counsel, Ryan Pierce, is sitting across the

23 table. All right?

24 **A. Yes, sir.**

25 Q. And you -- you and I haven't met or talked

Page 6

1 EXHIBITS CONTINUED:

2 Ex. 34 Email string from Joe Dunn to Jochen 96
 Weltjens dated May 11, 2018

3 Ex. 35 Email string from Doug Dlin to Joe 101
 Dunn, et al., dated May 11, 2018

4 Ex. 36 Screen shot of Twitter post dated 103
 May 12, 2018

5 Ex. 37 Screen shot of Twitter post by 107
 Antarctic Press

6 Ex. 38 Screen shot of Twitter post by 108
 Antarctic Press

7 Ex. 39 Screen shot of social media posts 109
 dated May 12, 2018

8 Ex. 40 Response to Subpoena to Produce 114

9

10

11

12

13

14 TIME USED BY ATTORNEYS

15 ATTORNEY TIME USED

16 Mr. Daniel H. Byrne 2 hours 0 minutes

17 Mr. Ryan Pierce 1 hour 13 minutes

18 Mr. Otto S. Good 0 hours 0 minutes

19

20

21

22

23

24

25

Page 8

1 before today; correct?

2 **A. No, sir.**

3 Q. Okay. We learned a little bit about your

4 business, Antarctic Press, this morning in the

5 deposition of your -- your brother, Ben, but I'm going

6 to go over that a little bit just to -- to make sure

7 that you and he are -- are in agreement?

8 MR. PIERCE: And, Dan -- sorry -- same

9 agreements on objections?

10 MR. BYRNE: Yes.

11 MR. PIERCE: Sorry. Go ahead.

12 Q. (BY MR. BYRNE) How long have you been

13 affiliated with Antarctic Press?

14 **A. Since 1989, around in that time.**

15 Q. Is that when you bought it from your brother?

16 **A. No, sir.**

17 Q. Okay. Tell me what happened in 1989.

18 **A. My brother had a partner named Mark Ripley, and**

19 **they started Antarctic Press in '85, end of '84, and**

20 **Mark was supposed to be the financial partner and what**

21 **happened was Mark kind of stopped doing work for the**

22 **company and so my brother needed somebody to help with**

23 **the finance -- finances and, you know, paying the bills**

24 **and I was apt to do that, and so I helped him at that**

25 **point in time.**

<p style="text-align: right;">Page 17</p> <p>1 A. She's a freelance creator.</p> <p>2 Q. And what -- what does Joe White do?</p> <p>3 A. He also is a freelance creator.</p> <p>4 Q. And what does Austin Rogers do?</p> <p>5 A. Austin is a -- he used to -- or still does --</p> <p>6 I -- runs a publishing company called Guardian Knights</p> <p>7 and -- they're also here based in San Antonio and</p> <p>8 they're -- recently their editor-in-chief left and he</p> <p>9 took over and we were trying to do some collaborations</p> <p>10 together and so his company kind of attached to our</p> <p>11 company.</p> <p>12 Q. So at the time that you were deciding to</p> <p>13 publish Jawbreakers, you were exploring collaboration</p> <p>14 opportunities with Guardian Knights?</p> <p>15 A. Correct.</p> <p>16 Q. Who was the editor-in-chief for Antarctic Press</p> <p>17 back in the spring of 2018?</p> <p>18 A. Jochen Weltjens.</p> <p>19 Q. And does he have a nickname that he goes by?</p> <p>20 A. He goes by Joey sometimes.</p> <p>21 Q. Okay. I've seen references to Joey and --</p> <p>22 A. Yes.</p> <p>23 Q. -- and I'm wondering --</p> <p>24 A. His full name is Jochen Weltjens, but we call</p> <p>25 him "Joey" and "Joe." We have a lot of Joes at</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Yes, sir.</p> <p>2 Q. And does Antarctic Press have an office</p> <p>3 presence here, a physical office?</p> <p>4 A. Yes.</p> <p>5 Q. And where is that located?</p> <p>6 A. Currently, it's in -- the address is 4700 Timco</p> <p>7 West, Suite Number 100, San Antonio, Texas 78238.</p> <p>8 Q. And is -- has that been its place of business</p> <p>9 throughout 2018 and 2019?</p> <p>10 A. Yes.</p> <p>11 Q. Do you maintain an internet website for</p> <p>12 Antarctic Press?</p> <p>13 A. Yes.</p> <p>14 Q. And does that website show the physical</p> <p>15 location of Antarctic Press as best you know?</p> <p>16 A. I -- I think so, yes.</p> <p>17 Q. You mentioned that you are -- you're not much</p> <p>18 of a person for being on the internet or using social</p> <p>19 media. Did I hear that correctly?</p> <p>20 A. Correct.</p> <p>21 Q. Do you recall having any email exchanges with</p> <p>22 either Richard Meyer or Mark Waid prior to the phone</p> <p>23 conversation you recall having with Mr. Waid in May of</p> <p>24 2018?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 18</p> <p>1 Antarctic Press.</p> <p>2 Q. Well, at least you can distinguish between Joe</p> <p>3 and Joey when you're using nicknames; right?</p> <p>4 A. That's correct.</p> <p>5 Q. And do you recall about when you made the</p> <p>6 decision to publish Mr. Meyer's book Jawbreakers?</p> <p>7 A. Oh, I -- I -- I can't recall --</p> <p>8 Q. Okay.</p> <p>9 A. -- exact date, no.</p> <p>10 Q. We'll get to some exhibits in a minute that</p> <p>11 might help you pin that down.</p> <p>12 A. Right.</p> <p>13 Q. Has Antarctic Press always been based in San</p> <p>14 Antonio, Texas?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And have you lived in San Antonio throughout</p> <p>17 the -- the period when you graduated from medical</p> <p>18 school and today?</p> <p>19 A. No, I did my residency in Dallas for three</p> <p>20 years.</p> <p>21 Q. Okay. And so when did you move back to San</p> <p>22 Antonio?</p> <p>23 A. '95, 1995.</p> <p>24 Q. So you've been in San Antonio continuously</p> <p>25 since 1995; correct?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. How about any communications via Twitter or</p> <p>2 Facebook or other social media?</p> <p>3 A. Not me personally.</p> <p>4 Q. Okay. Were you aware of any Twitter or</p> <p>5 Facebook communications concerning Mr. Meyer or</p> <p>6 Mr. Waid prior to your conversation with Mr. Waid?</p> <p>7 A. I am aware of Brian communicating with</p> <p>8 Mr. Meyer via Twitter sometimes, but me directly, no.</p> <p>9 Q. And is that something you know secondhand</p> <p>10 because you were told about it by Brian?</p> <p>11 A. Correct.</p> <p>12 Q. Back to the meeting where the decision was made</p> <p>13 to publish Jawbreakers. Was there any discussion about</p> <p>14 whether Jawbreakers would be a particularly good seller</p> <p>15 for Antarctic Press?</p> <p>16 MR. PIERCE: Object to form.</p> <p>17 A. At the time when we discussed Jawbreakers,</p> <p>18 Brian had mentioned that Mr. Meyer had a large number</p> <p>19 of followers on YouTube, and I was thinking</p> <p>20 that because he had a large number of followers, it was</p> <p>21 possible that he could translate that to some sales.</p> <p>22 Q. (BY MR. BYRE) Was -- was the -- was the group</p> <p>23 that was discussing the decision to publish excited</p> <p>24 about the prospects for successful sales from this</p> <p>25 decision?</p>

Page 21

1 MR. PIERCE: Object to form.
 2 **A. I believe it was a -- I didn't think it was any**
 3 **more unusual than any other submission.**
 4 Q. (BY MR. BYRNE) Okay. Does Antarctic Press
 5 have a sort of philosophy about a willingness to
 6 publish potentially controversial work?
 7 MR. PIERCE: Object to form.
 8 **A. Our philosophy is to support creators, and so**
 9 **we -- if we like it we, you know, publish it.**
 10 Q. (BY MR. BYRNE) Okay. Do you have a policy or
 11 philosophy about distinguishing between creators and
 12 the creator's work?
 13 MR. PIERCE: Object, form.
 14 **A. No.**
 15 MR. BYRNE: Okay. I think we're going to
 16 need some more.
 17 (Deposition Exhibit 11 marked.)
 18 Q. (BY MR. BYRNE) Let me hand you what's been
 19 marked as exhibit -- Deposition Exhibit Number 11.
 20 This is a -- an email string that looks like it is all
 21 dated March 12th, 2018. Do you -- is this -- the Brian
 22 Denham in this string the Brian Denham that you
 23 testified is an independent contractor associated with
 24 Antarctic Press?
 25 **A. Correct.**

Page 22

1 Q. Okay. Does this refresh your recollection
 2 about the timing of Antarctic's decision to publish
 3 Mr. Meyer's Jawbreaker comic?
 4 **A. It says, "March 12th, 2018," and that sounds**
 5 **about right.**
 6 Q. Okay. Now, at this point, had the decision
 7 been made to go ahead and publish or did that actual
 8 decision get made at a later date? Do you know?
 9 **A. When -- whenever a -- Brian or one of my**
 10 **editors makes a suggestion for a book and they think**
 11 **that it's viable, then I usually do not put it -- much**
 12 **barriers to -- for publication.**
 13 Q. Okay. So -- so as best you can recall, the
 14 decision to proceed with publishing was a go as of
 15 March 12th of 2018; is that fair?
 16 MR. PIERCE: Object, form.
 17 **A. Correct, yes.**
 18 (Deposition Exhibit 12 marked.)
 19 Q. (BY MR. BYRNE) Mr. Dunn, I'm handing you
 20 what's been marked as exhibit -- Deposition Exhibit 12.
 21 Is this another email exchange in April of 2018
 22 involving Brian Denham concerning the Jawbreaker
 23 publication by Antarctic Press?
 24 **A. Okay.**
 25 Q. Is that what it is?

Page 23

1 **A. This is an email between Brian and Timothy Lim**
 2 **in regards to suggestions for Mr. Meyer's Kickstarter.**
 3 Q. And what is your understanding of Kickstarter
 4 and how it works in the comics business, just
 5 generally?
 6 **A. Well, Kickstarter, in my opinion, it was a**
 7 **platform to help kick start projects, just like the**
 8 **namesake, and it is used to generate funds to help**
 9 **whatever project a person has. In the comic book**
 10 **industry, it has become a way to finance a lot of**
 11 **projects that people want to publish. So I don't know.**
 12 **It's -- has changed a little bit in that regard, but in**
 13 **my opinion Kickstarter is -- meant what it was supposed**
 14 **to be, a kick start.**
 15 Q. Is there a -- isn't there another platform
 16 that's also used for raising money for comic book
 17 projects?
 18 **A. Yes, the other main one is a platform called**
 19 **Indiegogo, I think.**
 20 Q. Okay. Do you know whether Mr. Meyer's book,
 21 Jawbreaker, was being launched through either of those
 22 platforms?
 23 **A. I -- I recall that -- I think it was launched**
 24 **through Indiegogo.**
 25 Q. Okay. Did the -- do the -- do the two -- two

Page 24

1 platforms work in similar ways?
 2 **A. I think there is some differences in how they**
 3 **receive the money, but I think, in essence, yes.**
 4 Q. Okay. And is the -- is it typical, ordinary
 5 course of business for Antarctic's editors, like
 6 Mr. Denham, to offer tips about how to -- how to manage
 7 projects as set forth in this email?
 8 **A. We have had experience with Kickstarter and --**
 9 **and so we have some suggestions always for creators**
 10 **that may want to launch some projects through**
 11 **Kickstarter, and so these look like some of the**
 12 **suggestions that we make to creators.**
 13 Q. So this is a -- this is a normal type of
 14 communication --
 15 **A. Yes.**
 16 Q. -- that -- that you offer your -- your
 17 contributors?
 18 **A. Yes.**
 19 Q. And I gather this is the kind of communication
 20 that you would normally expect to see a few weeks after
 21 a decision is made to -- to go ahead -- go ahead with
 22 publishing or is that not case?
 23 MR. PIERCE: Object -- object to form.
 24 **A. Can you restate that question again, please?**
 25 Q. (BY MR. BYRNE) Is the normal sequence once a

<p style="text-align: right;">Page 25</p> <p>1 decision is made to within a few weeks offer tips like 2 those set forth in Deposition Exhibit 12 to your 3 contributors? 4 MR. PIERCE: Object, form. 5 A. If a creator asks us for Kickstarter or 6 Indiegogo tips, we do offer it to them. 7 (Deposition Exhibit 13 marked.) 8 Q. (BY MR. BYRNE) Let me hand you what's been 9 marked as Deposition Exhibit 13, which is another email 10 exchange involving Brian Denham concerning the 11 Jawbreakers publication. Have you seen this before? 12 A. I have not seen this email exchange. 13 Q. Okay. So when Mr. Denham says on Sunday, 14 April 29th, 2018, in this email that, "It is a firm yes 15 that we'll publish Jawbreakers," is that an accurate 16 statement of Antarctic Press's position as of that 17 date? 18 MR. PIERCE: Object, form. 19 A. Yes. 20 (Deposition Exhibit 14 marked.) 21 Q. (BY MR. BYRNE) I've handed you what's been 22 marked as Deposition Exhibit 14, which is another 23 series of emails involving Mr. Denham dated May 2nd, 24 2018. Do you recall seeing this back prior to today? 25 A. No.</p>	<p style="text-align: right;">Page 27</p> <p>1 posted. 2 Q. And -- and you -- you ultimately control what 3 gets said when you choose to exercise that control; is 4 that fair? 5 MR. PIERCE: Object to form. 6 A. Correct -- oh -- correct. 7 Q. (BY MR. BYRNE) Did you have any problem with 8 this announcement decision made by Brian as reflected 9 in Exh bit 8? 10 A. No. 11 Q. Okay. Prior to -- and I believe that's 12 May 8th? 13 A. May 9th. 14 Q. May 9th. So prior to May 9th of 2018, had you 15 become aware of any negativity or controversy 16 surrounding either Mr. Meyer or the decision by 17 Antarctic Press to publish his comic book? 18 A. No. 19 Q. And when did you first become aware of any such 20 negativity, if you can recall? 21 A. The first time I remember -- I don't remember 22 the exact date, but after the -- shortly after the 23 announcement, there was something that came up with a 24 Facebook group which were made by a bunch of comic book 25 retailers.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. Does the -- do the exchanges here 2 between Mr. Denham, Mr. Meyer at Diversity & Comics, 3 and Mr. Harris, are they typical, ordinary course of 4 business types of exchanges that you see in your 5 business when moving toward publication of a comic 6 book? 7 MR. PIERCE: Object to form. 8 A. Yes. 9 Q. (BY MR. BYRNE) So as of May 2nd, 2018, was -- 10 was it still the position of Antarctic Press that it 11 would proceed with publishing the Jawbreakers comic? 12 A. Correct. 13 Q. I hand you what was previously marked as 14 Deposition Exhibit Number 8. Is that a posting that 15 was authorized by you to formally announce the decision 16 to publish Mr. Meyer's comic, Jawbreakers? 17 A. Brian is in charge of our Twitter account and I 18 don't -- he doesn't clear things with me before he 19 posts on Twitter, but, yeah, I mean, I typically trust 20 him on posting what we talk about in the meetings. 21 Q. Okay. Do you sometimes give specific 22 instructions about what will and what will not been 23 said on behalf of Antarctic Press? 24 A. Typically, no. However, in some circumstances 25 when the need arises, we discuss what needs to be</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And was this a group of retailers that was 2 organizing a boycott of sorts? 3 A. My understanding was it was a group of 4 retail -- comic book retailers that were going boycott 5 Antarctic Press. 6 Q. Okay. When you heard about that, did you 7 decide immediately to reverse your decision to publ -- 8 publish Jawbreakers? 9 MR. PIERCE: Object to form. 10 A. No. 11 (Deposition Exhibit 15 marked.) 12 Q. (BY MR. BYRNE) I hand you what's been marked 13 as Deposition Exhibit 15. Have you seen this email 14 string before today? 15 A. No. 16 Q. Did you have internal discussions with your 17 team, your staff, about the boycott threat? 18 A. Yes. 19 Q. And why did that boycott threat not prompt you 20 to immediately reverse your decision? 21 A. As in most things that I do in making 22 decisions, I like to get all the information possible. 23 Q. Okay. In Exhibit 15, there's a line there from 24 Mr. Denham dated May 9th where he says, "That just 25 shows me we're doing the right thing standing with</p>

<p style="text-align: right;">Page 29</p> <p>1 you." Do you see that, the very top paragraph?</p> <p>2 A. Okay.</p> <p>3 Q. Did -- did you at that time share -- share that</p> <p>4 sentiment expressed by Mr. Denham?</p> <p>5 MR. PIERCE: Object, form.</p> <p>6 A. I can't -- I mean, I can't speak for what Brian</p> <p>7 was thinking at the time when he spoke about that.</p> <p>8 Q. (BY MR. BYRE) I was asking whether you also</p> <p>9 thought that you were doing -- your company was doing</p> <p>10 the right thing by standing with Mr. Meyer --</p> <p>11 A. I think --</p> <p>12 MR. PIERCE: Object, form.</p> <p>13 Q. (BY MR. BYRNE) -- at the time?</p> <p>14 A. I think at the time I believe that -- that we</p> <p>15 believed that publishing was the right thing to do.</p> <p>16 Q. So was your company at that time pressing on</p> <p>17 with the -- the process of preparing the comic for</p> <p>18 eventual publication?</p> <p>19 A. I think at the time when we -- I first heard of</p> <p>20 the Facebook group, that I wanted to gather everybody</p> <p>21 and get information about this project.</p> <p>22 (Deposition Exhibit 16 marked.)</p> <p>23 Q. (BY MR. BYRNE) I hand you what's been marked</p> <p>24 Exhibit 16 to your deposition. It looks like an</p> <p>25 exchange between Mr. Meyer and Mr. Denham later in the</p>	<p style="text-align: right;">Page 31</p> <p>1 personally attended, probably around three a year.</p> <p>2 Q. Okay. Are they typically located in Texas or</p> <p>3 at various locations around the country?</p> <p>4 A. The ones I've attended are in Texas.</p> <p>5 Q. And had you ever seen Mr. Waid -- Mark Waid</p> <p>6 present at any of those conventions?</p> <p>7 A. No.</p> <p>8 Q. Where -- did you ever attend any conventions</p> <p>9 where he was in attendance, to your knowledge?</p> <p>10 A. I'm sure I've attended some conventions that he</p> <p>11 was in attendance.</p> <p>12 Q. Okay. Does Antarctic Press do something to</p> <p>13 create a presence at -- at these conventions? Does it</p> <p>14 have a booth or do any advertising?</p> <p>15 A. Yes.</p> <p>16 Q. What -- what is the normal activity that</p> <p>17 Antarctic Press takes -- takes at -- at the comic</p> <p>18 conventions you're familiar with?</p> <p>19 A. We usually set up as a booth.</p> <p>20 Q. Okay. And how would attendees at conventions</p> <p>21 come to know -- what -- what would they learn about</p> <p>22 Antarctic Press in the course of seeing a booth for</p> <p>23 you?</p> <p>24 MR. PIERCE: Object to form.</p> <p>25 A. Typically, at a booth that we attend --</p>
<p style="text-align: right;">Page 30</p> <p>1 morning of May 9th which suggests that the -- the</p> <p>2 process of preparing the book for publication</p> <p>3 continued. Is that a far interpretation of this</p> <p>4 exchange?</p> <p>5 A. Yes.</p> <p>6 MR. PIERCE: Hey, Dan, when you get to a</p> <p>7 good place, can we take a bathroom break? No -- no</p> <p>8 rush. Just --</p> <p>9 MR. BYRNE: I guess this is as good a</p> <p>10 time as any. Let's go off the record.</p> <p>11 MR. PIERCE: Thank you.</p> <p>12 THE VIDEOGRAPHER: Going off the record</p> <p>13 at 1:05 p.m.</p> <p>14 (Recess taken 1:05 p.m. to 1:11 p.m.)</p> <p>15 THE VIDEOGRAPHER: Back on the record at</p> <p>16 1:12 p.m.</p> <p>17 BY MR. BYRNE:</p> <p>18 Q. Mr. Dunn earlier I think you testified that you</p> <p>19 attended various comic-related conventions over the</p> <p>20 years?</p> <p>21 A. Yes.</p> <p>22 Q. How many on average per year do you -- have you</p> <p>23 typically attended, say, over the last five or ten</p> <p>24 years?</p> <p>25 A. Over the last five or ten years as a -- me</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. (BY MR. BYRE) Let -- let me -- let me rephrase</p> <p>2 that question. What -- what is it that you attempt to</p> <p>3 convey about your company by setting up a booth to the</p> <p>4 people attending these conventions?</p> <p>5 A. Typically, when we set up at conventions, we</p> <p>6 try to reach the audience that attends the conventions</p> <p>7 that may be comic book fans in hopes to obtaining new</p> <p>8 fans.</p> <p>9 Q. New customers?</p> <p>10 A. New customers, yes.</p> <p>11 Q. And what is it that you convey about yourself</p> <p>12 in order to attempt to create new customers?</p> <p>13 A. We typically sell the books that we published</p> <p>14 during that period of time, and if possible, to have</p> <p>15 creators attend our booth to meet with the fans and</p> <p>16 potential customers.</p> <p>17 Q. Do you convey that you're a -- a -- a</p> <p>18 Texas-based publisher in the course of these</p> <p>19 promotions?</p> <p>20 MR. PIERCE: Object to form.</p> <p>21 A. Typically not.</p> <p>22 Q. (BY MR. BYRE) Okay. Do you -- do you have a</p> <p>23 sign up that identifies you as based in San Antonio?</p> <p>24 A. No.</p> <p>25 Q. Do you believe that folks know where you're --</p>

<p style="text-align: right;">Page 37</p> <p>1 proceed with publication of Jawbreakers? 2 MR. PIERCE: Object to form. 3 A. I believe -- my recollection of the time right 4 before I talked to Mr. Waid, I was being inundated with 5 information and I was, you know, trying to organize all 6 my thoughts in my head. And so I don't think a final 7 decision had been made, but there was quite a few 8 things in my head at that point in time. 9 (Deposition Exhibit 18 marked.) 10 Q. (BY MR. BYRNE) Let me hand you what I've 11 marked as Exhibit 18 to your deposition. And I think, 12 Mr. Dunn, it kind of starts chronologically on the -- 13 at the end and works its way up. 14 A. Uh-huh. Okay. 15 Q. Is this a series of internal email exchanges 16 between you and other members of the Antarctic Press 17 team occurring between May 9th and May 11th of 2018? 18 A. Correct. 19 Q. And is Doug Dlin's -- it's D-I-I-n; right? 20 A. Correct. 21 Q. Is -- is Doug Dlin's email address the one that 22 apcog1? 23 A. That's correct. 24 Q. Okay. And just to identify the participants in 25 these exchanges, "mzajza" refers to who?</p>	<p style="text-align: right;">Page 39</p> <p>1 announcement, there was the -- we started getting the 2 response to the announcement and the response to the 3 announcement was -- came very fast and a lot of things 4 came in at the same time, and -- and then I think -- I 5 believe Doug received, you know, a multitude of calls 6 and -- at the office in regards to it, and so I think 7 he was curious to know how to respond and -- and that's 8 when I started getting more involved I guess on that 9 aspect of it. 10 Q. And did you agree initially with Brian's advice 11 that the inquiries should be ignored? 12 MR. PIERCE: Object to form. 13 A. I believe that that was discussed with -- with 14 Brian and I think that I agreed with that, not to 15 respond. 16 Q. (BY MR. BYRNE) Did you learn that there was 17 both negative and positive social media activity 18 concerning your decision? 19 A. Yes. 20 Q. Okay. Were you trying to evaluate whether 21 the -- the negative outweighed the positive? 22 MR. PIERCE: Object to form. 23 A. I think I was -- at the time, I was thinking 24 what exactly -- what transpired to create such a 25 passionate response on both sides of the equation and I</p>
<p style="text-align: right;">Page 38</p> <p>1 A. Joey Weltjens, Jochen Weltjens. 2 Q. Okay. And is Brian Denham cleverly named 3 briandenham@gmail? 4 A. Correct. 5 Q. And who is twilightTXmail? 6 A. That is Joe White. 7 Q. And David Hutchison uses his real name at 8 Yahoo; correct? 9 A. Correct. 10 Q. All right. Starting on -- on May 9th at the 11 very end of this string, who raises the question about 12 thoughts on a response? Who is "apcog" again? 13 A. I think at the time -- 14 Q. That was Doug; right? 15 A. Correct. 16 Q. And then on the -- the third page in you have 17 Brian Denham responding to Doug's inquiry about 18 ignoring the response. Do you see that? 19 A. Correct. I see that on May 9th. 20 Q. Okay. And was Brian at the time telling you 21 that you had generated a lot of fans on Twitter by your 22 announcement? 23 A. I believe -- 24 Q. It's toward the bottom of the third page. 25 A. I believe at the time when -- after the</p>	<p style="text-align: right;">Page 40</p> <p>1 wanted to get information about all that. 2 Q. (BY MR. BYRNE) Okay. On the very first page 3 of Exhibit 18, there's an entry there coming from 4 jdunn@antarcticpress. That's you; correct? 5 A. Correct. 6 Q. And so on Thursday evening at 9:48 p.m. you 7 told your team what about responding to inquiries and 8 emails? 9 A. I think at that point in time I was surprised 10 about the response on both sides of the equation and -- 11 and to keep -- I -- I -- I believe that I decided to 12 say not to respond to anything, and the reasoning 13 behind that was to not fuel any fires. And I believe 14 that if we had said -- you know, anything that could be 15 said could be misconstrued, so I decided let's not say 16 anything so that there's no -- there's no 17 miscommunication because of the fact that -- how things 18 sometimes at the internet -- you know, we -- you know, 19 so that's -- I think that's the reasoning behind it. 20 Q. Did -- did you use the term "radio silence"? 21 A. Correct. 22 Q. Okay. So you told your team to be radio silent 23 in either direction on this? 24 A. Correct. 25 MR. PIERCE: Object to form.</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. (BY MR. BYRNE) So during the following day, 2 Friday the 11th, did you continue to gather information 3 or did you tune out? 4 A. Among the people that -- you know, that were 5 closest to me in the -- and I think at the time my 6 brother came to visit -- I had -- was still gathering 7 information and I had gotten some information that, you 8 know, I wanted clarified and I wanted to -- and from 9 that perspective, I think that I -- you know, I removed 10 myself from any social media or internet because I knew 11 how things were -- people were responding according to 12 other people, and so then at that point in time, I 13 just -- still gathering my thoughts about this whole 14 situation. 15 Q. Okay. At that time, did you understand that 16 you had made a commitment to Mr. Meyer to publish his 17 comic? 18 MR. PIERCE: Object to form. 19 A. Yes. 20 (Deposition Exhibit 19 marked.) 21 Q. (BY MR. BYRNE) I hand you what's been marked a 22 Exhibit 19 to your deposition. This is an email string 23 that starts with something to you from Joey at about 24 3:00 o'clock in the afternoon on Friday, May 11th, to 25 which you respond at 4:38 p.m. on Friday, May 11th.</p>	<p style="text-align: right;">Page 43</p> <p>1 they put -- they were put into a no-win situation, but 2 one student that was able to beat the Kobayashi Maru, 3 which was Captain Kirk, and so I felt like this was a 4 no-win situation for our -- our company. 5 Q. Did you -- did you have the Captain Kirk 6 solution fashioned yet? 7 MR. PIERCE: Object to form. 8 A. No. 9 Q. (BY MR. BYRNE) You make reference to social 10 media pressure. Was that social media pressure coming 11 in both direction? 12 MR. PIERCE: Object to form. 13 A. Yes. 14 Q. (BY MR. BYRNE) Now, in the -- in the second 15 paragraph you make a reference to, "I'm going to rant 16 not to each of you personally, but to everyone who has 17 put us in this situation." Was this -- was this being 18 circulated beyond just Joey? 19 A. No, it was just between me and Joey. 20 Q. Obviously, you use a -- a lot of powerful 21 language here, Mr. Dunn, and I don't need to go through 22 it with you line by line. By the end of this email, 23 are you still, at least at this point, standing by your 24 decision to proceed with the publication? 25 MR. PIERCE: Object to form.</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Correct. 2 Q. Do you see that? 3 A. Yes, sir. 4 Q. And this is just you responding directly to 5 Joey; correct? 6 A. Correct. 7 Q. There's some -- some aspects of your lengthy 8 email here that seem to be infused with some emotion. 9 A. Correct. 10 Q. Were you feeling that emotion toward Joey or 11 toward the situation or both? 12 A. I think my emotion was mostly to the situation. 13 Q. And -- and it's fair to say that Joey was 14 expressing discomfort with continuing with your 15 decision to proceed with Jawbreakers publication? 16 A. I think that at the time, yes, because of the 17 information we had gathered. 18 Q. And you start out by making reference to the 19 Kobayashi Maru of comic books, no-win situation. What 20 is that a reference to? 21 A. There's a movie, Star Trek II, the Wrath of 22 Khan, and in that movie the Kobayashi Maru is an 23 introduction -- it was introduced at that time and 24 basically it was a test for -- if you're familiar with 25 the Star Trek it is a test for Star fleet cadets that</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I -- I think at -- by the end of this rant that 2 I did in this email, I had felt that my emotional 3 status had been drained and I felt like I didn't want 4 to continue down that pathway. 5 MR. WAID: Yes. 6 MR. BYRNE: Let's go off the record. 7 THE VIDEOGRAPHER: Off the record at 8 1:42 p.m. 9 (Recess taken 1:42 p.m. to 1:52 p.m.) 10 THE VIDEOGRAPHER: Back on the record at 11 1:52 p.m. 12 BY MR. BYRNE: 13 Q. Mr. Dunn, before we went on the break we were 14 talking about Exhibit 19, which is the email you sent 15 at 4:38 p.m. on Friday, May 11th, last year. To put 16 this email in context, was this email written after you 17 had received the message that Mr. Waid wanted you to 18 call him back? 19 A. I think so. 20 Q. But was it written before you actually spoke to 21 Mr. Waid? 22 A. I think so. 23 Q. And what was the reaction around your office 24 when Mr. Waid left his message, that you recall? 25 A. At the time, Mr. Waid called the office, the --</p>

Page 45

1 **most of the people that work or do work for me do not**
 2 **work at the office, and so I think that at the time**
 3 **Doug was the only one at the office and he just relayed**
 4 **the message to -- I think to all of us at that time.**
 5 Q. Because Mr. Waid is kind of a big deal in the
 6 comics industry, isn't he?
 7 MR. PIERCE: Object, form.
 8 **A. I believe so.**
 9 Q. (BY MR. BYRNE) You recognized his name when
 10 the message was left; right?
 11 **A. Yes.**
 12 Q. And reading this -- this email you -- you make
 13 some comments in what you call your rant about
 14 distinguish between the art and the artist?
 15 **A. Correct.**
 16 Q. Is that something that Antarctic Press tried to
 17 do in making its publication decisions?
 18 **A. Correct.**
 19 Q. There is a reference in here to the credo of
 20 the company being somehow related to creator of rights.
 21 **A. Correct.**
 22 Q. Is that --
 23 **A. We believe in -- the original creation of**
 24 **Antarctic Press was for creator rights to have**
 25 **opportunity for creators to publish their books,**

Page 46

1 **maintain their rights to their book with no strings**
 2 **attached.**
 3 Q. Was that a factor that weighed in favor of your
 4 decision to publish Jawbreakers --
 5 MR. PIERCE: Object to form.
 6 Q. (BY MR. BYRNE) -- initially?
 7 **A. I believe that the reason for Jawbreakers, at**
 8 **least in my mind, was that he had a following.**
 9 Q. And that was because his following translated
 10 into potential financial -- positive financial outcome
 11 for Antarctic Press; correct?
 12 **A. Correct.**
 13 Q. Was -- was also was -- another factor in the
 14 decision the company's history of supporting creator
 15 rights?
 16 MR. PIERCE: Object, form.
 17 **A. Correct.**
 18 Q. (BY MR. BYRNE) You knew that when you returned
 19 Mr. Waid's call he was going to be on the side of -- of
 20 trying to dissuade you from publishing Jawbreakers;
 21 correct?
 22 MR. PIERCE: Object to form.
 23 **A. Yes.**
 24 Q. (BY MR. BYRNE) Did you know before you
 25 returned Mr. Waid's call that he -- he would be opposed

Page 47

1 to Antarctic Press proceeding with the publication?
 2 MR. PIERCE: Object to form.
 3 **A. I was aware that he was opposed to Jawbreakers.**
 4 Q. (BY MR. BYRNE) And even before you talked to
 5 Mr. Waid you'd be -- you'd be getting -- you -- you
 6 were aware of pressure from some segments of the
 7 industry to try to persuade you on behalf of arctic --
 8 Antarctic Press to change your publication decision;
 9 correct?
 10 MR. PIERCE: Object to form.
 11 **A. Correct.**
 12 Q. (BY MR. BYRNE) In the last paragraph of your
 13 email, you -- you say a couple of times, "Even if we
 14 decide to publish the book," and then a few lines later
 15 you say, "If we publish the book." Would -- would it
 16 be fair to say that you -- you were still considering
 17 possibly proceeding with publication at the time you
 18 wrote those words?
 19 MR. PIERCE: Object to form.
 20 **A. I believe that I was thinking was --**
 21 Q. (BY MR. BYRE) Let -- let me come at it -- let
 22 me ask you a different question. Did the information
 23 you gathered and the pressure you were getting from
 24 certain segments of the industry via social media
 25 prompt you to consider reversing your decision to

Page 48

1 publish as of the time you wrote this email?
 2 **A. I believe I was extremely upset with the**
 3 **situation that we were in and the time and effort and**
 4 **the -- that was going into it, and I believe that --**
 5 **that in conjunction with many factors was going through**
 6 **my mind. I mean, I -- I'll embellish and say that I**
 7 **don't like being pushed around, but I also understand**
 8 **the reality of the world.**
 9 Q. Did you have a sense at the time you wrote this
 10 email at 4:38 on the afternoon of May 11th that you
 11 were being bullied?
 12 MR. PIERCE: Object to form.
 13 **A. I believe that I was unduly influenced by a lot**
 14 **of factors.**
 15 Q. (BY MR. BYRNE) In all caps in the very last
 16 paragraph you -- you capitalize the phrase "more
 17 bullying." Was that referring to bullying that you
 18 felt was being directed toward you or your company?
 19 **A. Yes.**
 20 Q. And was that bullying that originated from
 21 those in the industry who were disappointed to hear of
 22 your decision to publish Jawbreakers?
 23 MR. PIERCE: Object to form.
 24 **A. I believe that -- I mean, it's hard for me to**
 25 **know exactly -- you know, I mean, we had been inundated**

<p style="text-align: right;">Page 49</p> <p>1 with a lot of messages, and so -- but I suspect it was 2 for people that were in the industry or familiar with 3 the industry. 4 Q. And from people who you understood to be 5 opposed to your decision to publish? 6 MR. PIERCE: Object to form. 7 A. Correct. 8 Q. (BY MR. BYRNE) At the very end -- well, let me 9 ask -- go back to the other question I have. Do you 10 acknowledge that your words here suggest that you had 11 not yet finalized a decision not to proceed with 12 publication because of the various references to the 13 possibility of doing so, but with your names 14 disassociated? 15 MR. PIERCE: Object to form. 16 A. I don't think I had made a final decision at 17 this point in time. 18 Q. (BY MR. BYRE) Okay. And at the very end you 19 say -- you make reference to losing a friend close to 20 family that -- that pissed you off. Who is that 21 person? 22 A. I think it was Joey. 23 Q. It was Joey? 24 A. Yes. 25 Q. Okay. Because you -- you felt that -- your</p>	<p style="text-align: right;">Page 51</p> <p>1 (Deposition Exhibit 20 marked.) 2 Q. (BY MR. BYRNE) Okay. Let me hand you what 3 I've marked as Exhibit 20 to your deposition. 4 A. Okay. 5 Q. And just -- there's one entry highlighted that 6 I think came to us highlighted. 7 A. Uh-huh. 8 Q. Is that highlighted phone record from your 9 cellphone? 10 A. Yes. 11 Q. And is that the call to Mr. Mark Waid on 12 May 11th, 2018, that's highlighted? 13 A. Correct. 14 Q. And when did it say it start, 4:48 p.m.? 15 A. 4:48, correct. 16 Q. And it ended 27 minutes later? 17 A. Correct. 18 Q. Okay. So going back to Exhibit 19, you called 19 Mr. Waid back 10 minutes after sending this email to 20 Joey; correct? 21 A. Yes, I guess so. 22 Q. And 27 minutes after 4:48 p.m. would have been 23 what time, 5:35? 24 A. Approximately. 25 Q. And the very first text message you have here</p>
<p style="text-align: right;">Page 50</p> <p>1 relationship with Joey at this time was such that he 2 was close to your family? 3 A. Correct. 4 Q. And you were worried that if you stuck with 5 your decision to publish that that might alienate Joey? 6 A. Among other things, yes. 7 Q. Turn to Exhibit 7 in this deposition binder, if 8 you can. First of all, just let me ask you to 9 generally confirm that this is a series of text 10 messages between your cellphone and that of Mr. Mark 11 Waid that took place between -- well in May of 2018. 12 A. Okay. I do remember this actually. 13 Q. So is that, in fact, a series of text messages 14 between you and Mr. Waid from May of '18? 15 A. Yes, but I am going to -- I'm going to make a 16 clarification. I was texting and responding to a lot 17 of people and I actually am not -- I thought this was 18 somebody else when I was texting some of these 19 messages, I think. And so I can't remember who I was 20 talking to at the time, but there was a whole bunch of 21 texts that I was responding to -- to a variety of 22 people and I don't think I was aware that this was Mark 23 Waid until later on, and -- and then on -- on these 24 series of texts when I realized it was Mark, I said 25 that I'm not commenting anymore.</p>	<p style="text-align: right;">Page 52</p> <p>1 on Exhibit 7 is 16 minutes later; -- 2 A. Correct. 3 Q. -- correct? So are you telling -- are you 4 thanking Mr. Waid for talking to you that afternoon in 5 this text? 6 A. Like I said, I don't think so actually. I 7 think I was talking to somebody else. 8 Q. Who -- who else did you talk to that afternoon 9 about the -- 10 A. I talked to a multitude of people -- or texted 11 a lot of people, and I think -- like one of the people 12 was Timothy Lim, who was at the time friends with or -- 13 I'm guessing still with -- friends with Mr. Meyer, and 14 my brother. 15 Q. Your -- your brother -- 16 A. Well, my brother was there so I -- I guess I 17 was talking to him at my -- at my house, but I remember 18 talking to a whole bunch of different people, texting a 19 whole bunch of people, and I may have been confused 20 about who I was texting at the time. 21 Q. Okay. You were at your house that afternoon? 22 A. Correct. 23 Q. Do you have a landline? 24 A. I do. 25 Q. Do you have phone records for your landline?</p>



Antarctic Press | Comics And Chill

@AntarcticPress

Follow

It's official! We're publishing JAWBREAKERS in September! It will be different than the graphic novel offered on Indiegogo. We'll have a different cover.

8:14 PM - 9 May 2018

331 Retweets 1,096 Likes



163

331

1.1K





Diversity & Comics <diversityandcomics@gmail.com>

Fwd: JAWBREAKERS 2

1 message

Timothy Lim <ninjaink@gmail.com>
To: Diversity & Comics <diversityandcomics@gmail.com>

Mon, Mar 12, 2018 at 11:40 PM

----- Forwarded message -----

From: **Brian Denham** <briandenham@gmail.com>
Date: Mon, Mar 12, 2018 at 11:04 PM
Subject: Re: JAWBREAKERS 2
To: Timothy Lim <ninjaink@gmail.com>

He can email me. He said not to follow him on Twitter so I'm not sure he can send direct messages there.

Jon Malin is a good get. It should be a fun project.

On Mon, Mar 12, 2018 at 10:54 PM, Timothy Lim <ninjaink@gmail.com> wrote:

Awesome! I'm sure he'll love hearing that. If he has any questions, can he PM you on Twitter or e-mail you?

The fact that he's getting Jon Malin on it will be the big selling point. Both of them combined have a substantial following, plus their YouTube presence reaches at least 50,000 people.

On Mon, Mar 12, 2018 at 10:22 PM, Brian Denham <briandenham@gmail.com> wrote:

Hi Tim,

Great news! Antarctic is interested in publishing the Jawbreaker comic.

Antarctic is there as a publisher to Richard in any capacity he needs us. We don't force an agenda and we are welcome to all creators.

KICKSTARTER-

There is concern that money would be raised for the Kickstarter project before the art is finished.

If the art can be completed before raising money for the printing/publishing that would be preferable.

It was suggested that the Kickstarter would probably do better in Richards hands working as an individual than from us as a company, but it's something that can be discussed. We've run over 20 successful Kickstarter projects and we have a small staff that can handle shipping and storage of books.

If the money is raised first through Kickstarter we can still offer it through Diamond and generate extra sales that way.

Let me know if you guys have any more thoughts or concerns.

Brian Denham

Virus-free. www.avast.com

On Mon, Mar 12, 2018 at 4:38 PM, Timothy Lim <ninjaink@gmail.com> wrote:
Sounds good, thanks! I'm super stoked. Richard has his fingers crossed

Original Fwd: JAWBREAKERS

On Mon, Mar 12, 2018 at 4:17 PM Brian Denham <briandenham@gmail.com> wrote:
Hi Tim. I am headed to our weekly meeting now. I will bring up the Jawbreakers Kickstarter.

I have time this week to get started on the pages I need to draw.

I'll write you after the meeting.

On Mon, Mar 12, 2018 at 10:48 AM, Timothy Lim <ninjaink@gmail.com> wrote:

Hi Brian,

Richard (D&C) and I were talking and he wanted me to prod y'all to see if you'd be interested in publishing / Kickstarting the JAWBREAKERS one-shot. Don't tell anyone but the artist that he is negotiating with is Jon Malin. They're expecting a substantial turnout for funding but wanted to approach y'all first, and he knows that I'm working with you guys.

I looked at the Black Hops pages last night and realized that you have 3, not 5, pages to do. Hope that helps take the edge off! 😁

--
Timothy Lim
Professional Illustrator
[NINJAINK, LLC: Portfolio](#)
[WELOVEFINE: Licensed Work](#)

--
Timothy Lim
Professional Illustrator
[NINJAINK, LLC: Portfolio](#)
[WELOVEFINE: Licensed Work](#)

--
Timothy Lim
Professional Illustrator
[NINJAINK, LLC: Portfolio](#)
[WELOVEFINE: Licensed Work](#)

--
Timothy Lim
Professional Illustrator
[NINJAINK, LLC: Portfolio](#)
[WELOVEFINE: Licensed Work](#)



Diversity & Comics <diversityandcomics@gmail.com>

Jawbrake-ers

4 messages

Brian Denham <briandenham@gmail.com>
To: Diversity & Comics <diversityandcomics@gmail.com>

Wed, May 9, 2018 at 9:52 AM

Richard,

I just heard Comics Pro retailers were going to boycott your book, and Antarctic Press if they find out we're going to publish your book. That just shows me we're doing the right thing standing with you.

Let me know if you need anything from me today.

Diversity & Comics <diversityandcomics@gmail.com>
To: Brian Denham <briandenham@gmail.com>

Wed, May 9, 2018 at 9:53 AM

Who'd you hear that from? I just saw some furry tweeting it and it only have like 6 likes.
[Quoted text hidden]

Brian Denham <briandenham@gmail.com>
To: Diversity & Comics <diversityandcomics@gmail.com>

Wed, May 9, 2018 at 10:09 AM

I heard it from a retailer who heard it from his boss. It might have gotten blown out of proportion.
[Quoted text hidden]

Diversity & Comics <diversityandcomics@gmail.com>
To: Brian Denham <briandenham@gmail.com>

Wed, May 9, 2018 at 10:36 AM

The only evidence I see is of this



Ryan Higgins @RyanHigginsRyan · 24h

I have never refused to order a comic, or stock a publisher's work.

I might tomorrow.



I wrote to the guy and asked him if he wanted to talk about it.

Richard
[Quoted text hidden]



1/10/2019

Print

Subject: Re: Jawbreakers
From: Antarctic Press (apcog1@gmail.com)
To: jdunn@antarctic-press.com;
Cc: briandenham@gmail.com; alcperes@live.com; twilightxmail@yahoo.com; davidjhutchison@yahoo.com;
Date: Friday, May 11, 2018 12:25 PM

Just got a call from Mark Waid, of all people, looking to warn us of just how badly our association with Rich Meyer might be for us. He stressed he wasn't trying to dictate what we can or can't publish, but he felt we might be entering into this agreement without full awareness of what Rich is like. He mentioned targeted death threats, among other things. I claimed ignorance and said I'd pass along his message and his phone number to Joe Dunn, and thanked him for his concern.

Doug

On Thu, May 10, 2018 at 10:02 PM, Antarctic Press <apcog1@gmail.com> wrote:

I still plan to ignore the two initial complaints I've received. I'll give them that response if they write me again. (The second one seemed to come from Richard himself, though.)

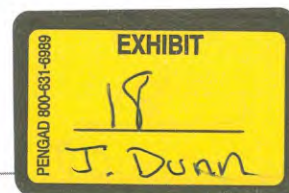
Doug

On Thu, May 10, 2018 at 9:48 PM, Joeming Dunn <jdunn@antarctic-press.com> wrote:

I have decided on radio silence on Jawbreakers...essentially ignore any inquiry or email or discussion with any one...if you get a question, tweet, facebook post or call about it just say...we publish lots of books and I don't have any info on the book at this time if you have any questions about the book the creator told us you can contact him and he will answer your questions...do not engage any interview or request for questions or any inquiry...if they are not satisfied with that answer be apologetic and tell them any questions will be happily answered by the creator of the book since we cannot talk in his place. We cannot divulge his info but he can found on facebook, twitter etc...

Brian if you tweet anything...just be tweet about other books, no mention of Jawbreakers....check out these books coming out in "whenever"...you have been doing a good job on humor and deflection on twitter so keep that up...deflect any response...and be self effacing...if someone ask about Jawbreakers...give the aww shucks sorry I do not know the answer to that question...hey...you should ask the creator.

If someone emails you Doug...you can respond...thanks we appreciate your email...we are aware of your concerns about "whatever"...it may be best to contact the creator about those "statements" so that he can clarify or explain that statement to you since we cannot talk for him. You can reach him via twitter or facebook since we cannot divulge his personal information.



From: Brian Denham <briandenham@gmail.com>
To: Joey <Mzajza@aol.com>
Cc: Antarctic Press <apcog1@gmail.com>; Joeming Dunn <jdunn@antarctic-press.com>
Sent: Thursday, May 10, 2018 9:19 PM
Subject: Re: Jawbreakers

1/10/2019

Print

I didn't know about that stuff. I looked it up online.

He did call Heather a cum dumpster in a private video for certain elite tier fans of his channel. One of them released the private video to the public. He later publicly apologized.

Richard has called people "pedophiles", or "they look like pedophiles" before. He has said those things about Mark Waid and Dan Slott.

I can't find that line about Mags- the "DC Transgendered writer" being a fucking crazy person... etc.", but it might be in one of his videos.

Him and Mags have apologized to each other, and then they started up again when a comic writer called out Richard for having a dishonorable discharge and Mags supported that creator.

On Thu, May 10, 2018 at 7:49 PM, Joey <Mzajza@aol.com> wrote:
Brian, are any of the statements attributed to Richard below true?

On May 10, 2018, at 2:23 PM, Antarctic Press <apcog1@gmail.com> wrote:

Okay, but none of that tells explains what these retailers have against Jawbreaker. However, this email I just received might:

On Thu, May 10, 2018 at 1:19 AM, Meyers Richard <cmxanddiversity@gmail.com> wrote:

Just saw the news that you're publishing Richard C. Meyer's JAWBREAKERS.

Your newest writer has publicly refereed to a female Marvel editor as a "cum dumpster," who sucked her way to the top, called an online reporter a "fucking fag," and suggested writers Brian Bendis, Dan Slott and Mark Waid were pedophiles.

He also referred to a transgendered DC writer as, "...a fucking crazy person, a criminal, who is definitely, definitely going to kill himself and it's just where when and how."

Good to know where your standards lie, guys, and that you don't mind being associated with such a class act, because you're now tied together at the hip.

Hope it's worth it.

Certainly none of that appears flattering, but neither does it prove how much of that it is true or explain why any of it might have happened.

Also, I'm not sure if the fact that it came from a Richard Meyers and is about a Richard Meyers is due to odd coincidence or a name spoof or what.

Doug

On Wed, May 9, 2018 at 9:47 PM, Brian Denham <briandenham@gmail.com> wrote:

The retailers have a group on Facebook.

Some of the retailers have heard Jawbreaker would be not only a fundraised Indiegogo, but it would be offered in stores.

So this happened...

<image.png>

Another retailer posted on Twitter yesterday that if he finds out the publisher of Jawbreakers he will have to consider a boycott.

Richard reached out to one of the retailers to inform him of what's going on. He promised to not rat them out. So that retailer informed Richard. Richard posted on Youtube that retailers are colluding with each other to boycott the unannounced publisher. So the retailers have been trying to figure out it's us.

It's all happening earlier today and some of it is going on right now.

On Wed, May 9, 2018 at 9:42 PM, Antarctic Press <apcog1@gmail.com> wrote:

Well, I guess that's good to know. How did these complaints that led to a boycott even get started? Was it anything of substance, or something blown out of proportion, or nothing at all?

Doug

On Wed, May 9, 2018 at 9:38 PM, Brian Denham <briandenham@gmail.com> wrote:

There will be a lot more. Ignore them.

A few of retailers got together in a secret Facebook group to boycott whatever publisher picked up Jawbreakers.

Richard (Diversity and comics) will announce tonight on Youtube who the publisher will be. Some have speculated it's us. That's why you may have gotten this letter early.

There will be a lot more this week, but they probably don't order from us anyway.

There are a lot more fans supporting us. Don't worry about these retailers. The customers will order from retailers who support them.

These boycott retailers are saying they won't support any of our books if we carry Jawbreakers.

But the fans are hearing this and they will boycott the stores and order it directly from us, or from other retailers who support their choices.

We've already one up by a lot of fans on Twitter. Fans are going to start buying stuff off the site so you may see a small uptick in online sales.

1/10/2019

Print

On Wed, May 9, 2018 at 8:18 PM, Antarctic Press <apcog1@gmail.com> wrote:

Well, this is interesting. Any thoughts on a response?

Doug

----- Forwarded message -----

From: **Megan Kilar** <megankilar@gmail.com>

Date: Wed, May 9, 2018 at 8:05 PM

Subject: Jawbreakers

To: apcog1@gmail.com

Based on the harassment online by Diversity and Comics, I have decided to boycott your company if you choose to publish Jawbreakers.

I am responsible for the Diamond order at my retail location and we will no longer be ordering from a company that supports online harassment and threats.

Regards,

Megan M Kilar

10/2019

Print

Subject: Re: It Appear AP is moving

From: Joeming Dunn (jdunn@antarctic-press.com)

To: Mzajza@aol.com;

Date: Friday, May 11, 2018 4:38 PM



As you are all well aware we are in the Kobayashi Maru of comic books, a no win situation. As you are all aware we have agreed to publish Jawbreakers which is authored by a very controversial figure. This has created a passionate response on both sides of this unfortunate equation in the comic book community. This essentially put us in a **“NO WIN” situation**. We could not release this book even though we are contractually obligated to do so and succumb to social media pressure (which feels a bit like we are being bullied to not release the book) or we could publish the book and continue to get the wrath we have undergone these past days from a multitude of sources. So we are stuck in between a rock and a hard place.

As you all know we have taken a “silence” line in regards to this situation. There are two reasons for my decision to do this. One is that as with any viral controversies on the internet, they tend to be put to the side after a couple of days, especially over the weekend. Second that gives us time to meet on Monday to make a decision on this situation. My most important concern is to protect everyone at Antarctic Press and I hope to make a decision about our direction on Monday. But in the meantime I am going to rant...not at each of you personally but to everyone who has put us in this situation. On Monday we are going to vote on this situation and in lieu of that impending vote I want everyone to be aware of the rant I will most likely give. No matter the decision I will take the heat for the decision so there will be nobody getting thrown under a bus and nobody will point fingers. I can take the heat and I will take the brunt of the criticism.

Now originally I was going to list the pros and cons of our decision but I realized that this is not just a pros and cons thing. This has become a personal issue in many regards with no black and white answers. But we can go over the basic facts. In its purest form this is a decision on whether we as a company can separate the “ART” from the “ARTIST.” Do we hold accountable the fact that this person has said many mean spirited and controversial statements which goes beyond then normal “opinions”. It is where we are going to draw the line. Do we draw the line at Rod saying many insulting condescending thing about conservatives and their policies? Or is it Ben saying some things about liberals? Are those “tolerable” lines and opinions we can accept since we know them both. We have never “vette” a creator but we all know bias goes with any decision we make. If we meet a creator we don’t like I am sure in the back of your mind you would say that I would never give that creator a chance to publish their work even though we are supposed to be unbiased. If anyone had a personal grudge with someone, I would certainly take that into account if especially if we decided to consider their work. That is vastly unfair but I know that life is unfair. Are we drawing a line at this creator for his severely offensive rhetoric? He did not commit a crime but he expressed an offensive opinion. I will accept any line that you all vote for but my rant to everyone else in the industry...WHERE DO YOU DRAW THAT FUCKING LINE? And where is the line drawn on these type of issues...if a creator has 10 offensive tweets 5 years ago does that preclude them from being published now...or is the line 15 tweets...or 20...or is just 2...or even 1 tweet from last year...where is the proverbial line for any creator? What if we want to publish someone who is Islamic or an anti-abortionist or a socialist or have a certain sexual orientation? Are we precluded from publishing them since they may have a statement or opinion that you do not agree with? Are we now restricted from publishing someone who may be an ultra douche bag? We are an ALL-INCLUSIVE publisher for the very we believe in ALL INCLUSIVITY. Have we gotten to the point where when someone from the certain religion does something bad we blame the whole religion,. When a cop does something bad, we accuse all the cops of being bad. When one person of color commits a crime, we condemn the entire race. When one politician or media member lies we think all the politicians and media members lie. So now that we publish a book that people do not agree with because of the creator of the book (for whatever reason) people are making judgments on our entire publication line? FUCK THEM.

1/10/2019

Print

I will admit that to a certain aspect this was a financial decision for me...I knew that he was a popular online figure I just did not realize he was that polarizing. As everyone knows we are running on fumes. Over the past two years I have had to put close to \$70,000 of my own money to keep Antarctic Press afloat. To make sure bills are paid on time, to keep the lights and phone on...to keep the printers going. I know currently this is not just a financial decision and prior to this shit storm I looked at it as a purely financial decision and I thought we could handle it (using My Hero as a measure). I was extremely happy that My Hero saved our ass these past weeks... his online sales for has been remarkable and a godsend despite the flack we received (which is tame compared to what we have been getting with Richard). What Jawbreaker did on Indigogo did put some dollar signs in my eyes. Could I finally get some sustainability for Antarctic Press without me having to contribute constantly? Could he bring the fans to us as My Hero did? Now again my rant again not to you but to everyone else...I know this is not going to be a purely financial decision but I know that he could help us financially as I know his fans are passionate and supporting. But it bothers the fuck out of me that we are getting these industry professionals and pundits telling us how we should run our business even as an ALL-INCLUSIVE supporter of creator's rights. I will stand by our record of inclusion for any sex, race, religion, social standing and sexual orientation and any other fucking thing you can think of...but in this case that is completely irrelevant now. But how many of these people really support Antarctic Press? Does Rich Johnston only write about Antarctic Press when there is some sort of controversy? Would any of these "industry" supporters really support us if we called for help? If I asked Lea Hernandez to do some art for us or Mark Waid to write us a story to help us out do you think she or he would do it for free? How many of these people on the internet telling us what to do actually bought and Antarctic Press book both fans and retailers...How many copies of the 300 sales on Rochelle or the 600 sales on Adventure Finders did they buy or even worse the 1400 copies of Gold Digger? While Richard may be the most offensive fuck in the whole world he came to us with fans and financial support where no other professional did so. Even though I do not agree with Tim's political opinions when I talked to him all he wanted to do is make sure Antarctic Press was viable and financially supported and he followed up with his fans coming to us and buying his book. And for all the posers who are telling our ALL INCLUSIVE Company what to do and how to do it and never buy an Antarctic Press book...FUCK YOU!

All you do work for AP way beyond the call of duty and I will have your back. Even if we decide to publish his book I will most likely remove any of our names from anywhere in the book. Antarctic Press will still be the publisher and we will not hide that fact but IF we publish the book we can remove our personal association with it...which gets me to not to the credo of the company (Creator rights) or the financial aspect but the moral aspect. Not the moral aspect of agreeing or disagreeing with Richard but now another fucking rant...I do not give a flying fuck if you agree or disagree with Richard. But we now have to make a decision on a book based on GUILT BY ASSOCIATION. It does not matter that we are ALL INCLUSIVE CREATOR'S RIGHTS Company...but now I have to deal with the repercussions of this guilt. Richard made some very offensive inflammatory comments about many people in the industry and now because of that could that come back to harm some of you individually. You would hope any personal attack on someone by Richard would not translate into because we published him we must be like him...but I fucking know life is fucking unfair...GUILT BY ASSOCIATION. People are now taking us to task on Jawbreakers now they may take it out on the innocent people (us) just because of fucking GUILT BY ASSOCIATION. AND THOSE FUCKING PEOPLE DO NOT SEES THE FUCKING DOUBLE STANDARD IRONY of those types of actions. Richard's actions are bullying but the reaction to this is MORE BULLYING by people who are against Richard...fucking double standard irony. If I don't like a person or a product I DON'T FUCKING buy it. If I don't like a politician...I DON'T VOTE FOR THEM. But to give us threats of boycotts etc...just because of our ASSOCIATION with Richard... Christ that is so fucking unfair (and I know life is unfair) but that makes them as bad as Richard's actions and what makes it worse is THEY DON'T SEE IT. It is justified in their minds to "make a point." This does not absolve Richard...I think he is an ass online and I think he knows he is an ass online and I would tell him that and he would agree with me. It's because of that I may lose a friend (close to family) to his fucking action and that ROYALLY PISSES ME OFF.

From: Joey <Mzajza@aol.com>

To: Joeming Dunn <jdunn@antarctic-press.com>

1/10/2019

Print

Sent: Friday, May 11, 2018 2:57 PM**Subject:** Re: It Appear AP is moving

I'm honestly not sure you understand what you're getting into, I was at the comicbook store and even Bob said so and he said,"if Joe thinks this is gonna blow over, it isn't." I thought about it long and hard, I haven't been able to sleep or work and that's because it boils down to this: I'm not comfortable being associated with this guy, it's not his work, and it's not his beliefs, it's his conduct. And, if it were any of the other guys at AP that conducted themselves similarly I would divest AP of them as well. There are standards of civil and professional conduct I believe in. This guy obviously has issues. I've told Doug to take my name of the books immediately and I'm also worried about how this may affect other AP creators and San Diego and the booth. Please be careful.

Page 1

1 UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DIVISION OF TEXAS
 3 AUSTIN DIVISION
 4
 5 RICHARD MEYER,)
 6 Plaintiff,) Case No. 1:18-CV-00800-LY
 7 v.)
 8 MARK WAID,)
 9 Defendant.)
 10 _____)
 11
 12
 13 VIDEOTAPED DEPOSITION of MARK WAID taken
 14 on behalf of the Plaintiff at 10250
 15 Constellation Boulevard, 19th Floor, Los
 16 Angeles, California, on Tuesday, February 26,
 17 2019 at 1:26 p.m. before Vivian C. Lane,
 18 Certified Shorthand Reporter No. 11339.
 19
 20
 21
 22
 23
 24
 25

Page 2

1 APPEARANCES:
 2
 3 For Plaintiff:
 4 FRITZ, BYRNE, HEAD & GILSTRAP, PLLC
 5 By: DANIEL H. BYRNE, ESQ.
 6 221 West Sixth Street
 7 Suite 960
 8 Austin, Texas 78701
 9 (512)476-2020
 10 dbyrne@fbhg.law
 11
 12 For Defendant:
 13 REEVES & BRIGHTWELL
 14 By: RYAN M. PIERCE, ESQ.
 15 221 West Sixth Street
 16 Suite 1000
 17 Austin, Texas 78701-3410
 18 (512)334-4503
 19 rpierce@reevesbrightwell.com
 20
 21 -and-
 22 LAW OFFICES OF MARK S. ZAID, P.C.
 23 By: MARK S. ZAID, ESQ.
 24 1250 Connecticut Avenue Northwest
 25 Suite 200
 Washington, D.C. 20036
 (202)454-2809
 mark@markzaid.com
 Also Present:
 John Hank, Videographer
 Richard Meyer

Page 3

1 I N D E X
 2
 3 WITNESS: MARK WAID
 4 EXAMINATION PAGE
 5 BY MR. BYRNE 6
 6
 7 E X H I B I T S
 8 PLAINTIFF'S PAGE
 9 1 Copy of Personal Appearance Agreement 51
 Bates stamped DEF00025 through DEF00027;
 10 3 pages
 11 2 Transcript of part of Mr. Waid's 52
 conversations with audience during
 12 Comicalooza in Houston in May of 2018;
 4 pages
 13 3 Flash drive containing audio recording 54
 of Mark Waid's conversations with
 14 audience at Comicalooza in Houston in
 May of 2018
 15 4 Printout of pages from Facebook; 2 pages 69
 16 5 Printout from Antarctic Press Web page; 70
 5 pages
 17 6 Facebook post Mr. Waid posted on 72
 18 afternoon of May 11th, 2018 while
 19 waiting for Mr. Dunn to return the
 20 message he left; 2 pages
 21 7 Series of text messages exchanged 72
 22 between you and Mr. Dunn beginning on
 Friday May ,11th at 5:51 p.m. and
 23 continuing several days thereafter;
 9 pages
 24
 25

Page 4

1 I N D E X (Continued)
 2
 3
 4
 5
 6
 7 QUESTIONS INSTRUCTED NOT TO ANSWER
 8 (None)
 9
 10
 11
 12
 13
 14
 15 INFORMATION REQUESTED
 16 (None)
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 5	Page 7
<p>1 LOS ANGELES, CALIFORNIA, TUESDAY, FEBRUARY 26, 2019</p> <p>2 1:26 P.M.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: We're on the record to begin the</p> <p>01 : 25 5 video-recorded deposition of Mark Waid in the matter of</p> <p>6 Richard Meyer vs. Mark Waid. Today is February 26th,</p> <p>7 2019. The time is approximately 1:26 p m. The case is</p> <p>8 filed in United States District Court for the Western</p> <p>9 District of Texas, Austin Division, Case</p> <p>01 : 26 10 No. 1:18-CV-00800-LY. This deposition was requested by</p> <p>11 counsel for the plaintiff, Richard Meyer. We are in the</p> <p>12 offices of Glaser Weil located at 10250 Constellation</p> <p>13 Boulevard, Los Angeles, California, 90067.</p> <p>14 The court reporter is Vivian Lane with the</p> <p>01 : 26 15 offices of Barkley Court Reporters. My name is John</p> <p>16 Hank. I'm a representative of Lexitas located at 13101</p> <p>17 Northwest Freeway, Suite 210, Houston, Texas 77040.</p> <p>18 If all counsel present could identify</p> <p>19 themselves, who they represent, and the location of their</p> <p>01 : 26 20 offices.</p> <p>21 MR. BYRNE: Dan Byrne with the firm in Austin,</p> <p>22 Texas, and I'm here representing Richard Meyer.</p> <p>23 MR. PIERCE: Ryan Pierce here for the defendant,</p> <p>24 Mr. Waid, from Austin, Texas. And sitting next to me is</p> <p>01 : 27 25 Mark Zaid from Washington, D.C.</p>	<p>01 : 27 1 Q What kind of a case?</p> <p>2 A I'm sorry?</p> <p>3 Q What kind of a case?</p> <p>4 A It was a copyright case.</p> <p>01 : 27 5 Q All right. You understand the oath you just</p> <p>6 took is the same one you'd take in front of a judge and a</p> <p>7 jury?</p> <p>8 A I do.</p> <p>9 Q And as we just did in the announcements, you</p> <p>01 : 28 10 know I'm here representing Richard Meyer in the lawsuit</p> <p>11 that's pending between the two of you?</p> <p>12 A Yes, sir.</p> <p>13 Q Okay. I'm going to try to be as efficient as</p> <p>14 possible today. Tell me a little bit about</p> <p>01 : 28 15 your -- your -- your background. I -- I think I've read</p> <p>16 somewhere that you were born in -- in Alabama?</p> <p>17 A That's correct. I was born in Alabama. Moved</p> <p>18 around the South as a child. Lived in Virginia, lived in</p> <p>19 Buffalo and in California and in Florida. I've been out</p> <p>01 : 28 20 here off and on for about 16 years.</p> <p>21 Q Okay. Did you go to college somewhere?</p> <p>22 A Virginia Commonwealth University.</p> <p>23 Q Okay. And when did you graduate, if you</p> <p>24 graduated?</p> <p>01 : 28 25 A I did not graduate.</p>
<p>Page 6</p> <p>1 THE VIDEOGRAPHER: Would the court reporter please</p> <p>2 swear in the witness.</p> <p>3</p> <p>4 (The oath was administered to the</p> <p>5 deponent, MARK WAID, as follows:)</p> <p>6</p> <p>7 THE REPORTER: Will you raise your right hand,</p> <p>8 please.</p> <p>9 Do you solemnly state under penalty of perjury</p> <p>10 that the testimony you give in this deposition shall be</p> <p>11 the truth, the whole truth, and nothing but the truth?</p> <p>12 THE WITNESS: I do.</p> <p>13 MR. BYRNE: And let the record also reflect that</p> <p>14 Richard Meyer, one of the parties is -- is also present.</p> <p>15</p> <p>16 EXAMINATION</p> <p>17 BY MR. BYRNE:</p> <p>18 Q Would you state your name for the record,</p> <p>19 please.</p> <p>01 : 27 20 A Sure. William Mark Waid.</p> <p>21 Q And Mr. Waid, have you ever been deposed</p> <p>22 before?</p> <p>23 A Yes. I was an expert witness once.</p> <p>24 Q Okay. Any other times?</p> <p>01 : 27 25 A No.</p>	<p>Page 8</p> <p>01 : 28 1 Q And I think I also read somewhere that there</p> <p>2 was a period of time when you actually lived in Texas?</p> <p>3 A That's correct.</p> <p>4 Q When was that?</p> <p>01 : 29 5 A That would have been from '82 to approximately</p> <p>6 '84, '85.</p> <p>7 Q Okay. And what -- what brought you to Texas in</p> <p>8 the -- in the early '80s?</p> <p>9 A My mother was ill.</p> <p>01 : 29 10 Q And I guess she had relocated there?</p> <p>11 A Right. Exactly, yes.</p> <p>12 Q And were you working during that time?</p> <p>13 A Uh, yes.</p> <p>14 Q And what kind of work were you doing --</p> <p>01 : 29 15 A Assistant to an accountant.</p> <p>16 Q And when did you get into the business</p> <p>17 of -- of -- I'm not sure how to -- the comic book</p> <p>18 industry --</p> <p>19 A Oh, sure.</p> <p>01 : 29 20 Q -- and in what way?</p> <p>21 A I began on staff in 1987 as an assistant</p> <p>22 editor -- associate editor of DC Comics.</p> <p>23 Q And what city was that in?</p> <p>24 A That was in New York.</p> <p>01 : 30 25 Q All right. And how long did you live in New</p>

Page 37		Page 39	
02:12	1 substance and content of the -- the actual Jawbreaker 2 comic that is offensive? 3 A To Kickstarter, yes. 4 Q I'm sorry, to -- to Kickstarter?	02:14	1 reaching out making contact -- or trying to make contact. 2 Q Okay. Is it possible you could have Googled it 3 and found it on the Internet? 4 MR. PIERCE: Object to form.
02:12	5 A Yes, sir. 6 Q I'm not asking about Kickstarter right now. 7 I'm asking about you. 8 A That wasn't clear. You were just asking 9 about --	02:14	5 THE WITNESS: Not to my recollec ion. 6 BY MR. BYRNE: 7 Q I didn't ask whe her -- obviously you don't 8 recall going to the Internet. 9 A I don't.
02:12	10 Q Okay. 11 A Okay. Well, based on -- if you're asking to 12 this day, based on my knowledge that Kickstarter rejected 13 this project on the basis of victory and misogyny, then 14 the answer would be yes.	02:15	10 Q Would -- would that not be a normal action hat 11 you would typically take in this situation where you're 12 trying to get a number of a business? 13 MR. PIERCE: Object to form. 14 THE WITNESS: Again, that wasn't -- that wasn't the
02:12	15 Q So you're saying that you assume, even though 16 you don't know, that there's something about he content 17 of the comic that was produced that must be offensive, 18 otherwise Kickstarter wouldn't have done what it did? 19 MR. PIERCE: Object to form.	02:15	15 direction I went. 16 BY MR. BYRNE: 17 Q I'm not asking what you did in this case. I'm 18 asking what you would normally if you want to try to 19 reach a business somewhere around the country, isn't it a
02:13	20 THE WITNESS: I know for a fact Kickstarter rejected 21 the project on those grounds. We have documentation of 22 that fact. 23 BY MR. BYRNE:	02:15	20 normal action for you to type the name of the business in 21 on Google to see if you can find what you need on the 22 Internet? 23 MR. PIERCE: Object to form. 24 THE WITNESS: If it's a company outside the purview
02:13	24 Q Because of the content of he work, not because 25 of the -- hose issues being affiliated with Mr. Meyer?	02:15	25 of my industry, sure. If I'm trying to lodge a complaint
Page 38		Page 40	
02:13	1 MR. PIERCE: Object to form. 2 THE WITNESS: That's correct. 3 BY MR. BYRNE: 4 Q So did you -- at some point you decided to call 5 Antarctic Press? 6 A Correct. 7 Q Did you go online and Google Antarctic Press to 8 get he number? Or did you already have it -- 9 A Not to the best of my recollection.	02:15	1 with Amazon.com, yes. But we're not talking about that. 2 BY MR. BYRNE: 3 Q And why do you not use that same tool when 4 you're within the industry? 5 MR. PIERCE: Object to form. 6 THE WITNESS: It was simply just the direction I 7 went. 8 BY MR. BYRNE: 9 Q I understand that's what happened here.
02:13	10 Q I'm sorry? 11 A Not to the best of my recollection. 12 Q Did you already have contact information in 13 your contacts? 14 A No, sir.	02:15	10 A Right. 11 Q But I'm asking why you would differentiate 12 between how you would reach a business that you didn't 13 have a number for that's in your industry versus one 14 that's outside your industry.
02:14	15 Q How did you go about getting contact 16 information for Antarctic Press? 17 A To the best of my recollection, I contacted 18 industry colleagues, seeing if anybody had contact 19 information for them.	02:16	15 MR. PIERCE: Object to form, asked and answered. 16 THE WITNESS: Honestly, I don't call -- recall. 17 BY MR. BYRNE: 18 Q Who did you talk to first at Antarctic Press? 19 A I don't know the person's name.
02:14	20 Q Do you remember who you contacted? 21 A I remember I contacted [REDACTED]. I don't 22 recall anyone else I may have gotten the information 23 from. I don't necessarily -- I don't recall whether or 24 not [REDACTED] even picked up the phone or whether or not 25 I got the number from [REDACTED]. I do -- I just remember me	02:16	20 Q Whoever answered the phone? 21 A Whoever answered the phone. 22 Q And what do you recall about that conversation? 23 A I recall that I left a message. It was regards 24 their announcement. I said specifically during that 25 conversation, "I wish to speak to the owner" -- not in

Page 41		Page 43	
02:17	1 anger. I said specifically, "I'm not calling to tell you 2 what to publish or not to publish, but I would simply 3 like to speak to Mr. Dunn and see if he understands, you 4 know, why the backlash is happening."	02:20	1 what -- what do you know. And then he explained he had 2 already had a morning and afternoon of angry freelancers 3 and of his own staff being angry and threatening to quit 4 over this situation.
02:17	5 Q So you left a -- a message specifically for Ben 6 Dunn? 7 A I did. 8 Q Okay. And was that on Friday? 9 A Yes, sir.	02:21	5 I said, "How did you not know?" 6 He said, "I'm not on social media. This is not 7 my full-time job." 8 I said, "I am not calling to tell you what to 9 publish or not to publish, that is not my intent, and
02:17	10 Q And how long did it take for that call -- that 11 message to be returned approximately? 12 A Approximately two hours. 13 Q And who called you back? 14 A I believed it was Ben Dunn at the time. I	02:21	10 people can publish whatever they want to publish. I just 11 wanted to make sure you understood why there was such a 12 firestorm coming your way and why there was such an 13 outcry." 14 He indicated that he now understood. He didn't
02:18	15 later learned it was his brother, Joe. 16 Q Had you ever met Joe? 17 A Not to my recollection. 18 Q What do you know about their different roles, 19 or what do you -- did you understand their different	02:21	15 understand at the beginning of that day, but by that time 16 he had understood. He indicated to me that that point he 17 was ready to sever ties with Mr. Meyer. He used the 18 phrase "his behavior is indefensible." 19 Q Uh-huh.
02:18	20 roles were within Antarctic Press at the time of this 21 call? 22 A I had no idea. My understanding at the time 23 was that Ben Dunn was still the publisher/owner, and 24 that's why I went -- reached out to him.	02:22	20 A And from there, we started talking about 21 believing that, you know, we were on the same page at 22 that point. The conversation became more genial. Now, 23 good on you being able to stay in business this long and 24 the good and bad times.
02:18	25 Q And how long did you talk to Mr. Dunn on that	02:22	25 We talked about the role of a publisher,
Page 42		Page 44	
02:19	1 Friday? 2 A To the best of my recollection, approximately 3 15 minutes, perhaps a little longer. 4 Q Was that on your cell phone? 5 A Yes, sir. 6 Q Do you have records of that call? 7 A Not to the best of my recollection, no, sir. 8 Q Have you tried to get them? 9 A I have not tried to get them, no.	02:22	1 how -- you know, the role of divorcing the work from the 2 creative person. Sometimes you -- you know, you won't 3 publish something because you find the -- the author 4 repellent. Sometimes you will. Sometimes my -- it 5 became a conversation about where do you draw the line. 6 How offensive or how immoral does somebody have to be for 7 you, as a publisher, to say, all right, I can't divorce 8 the work from this person, I can't publish this. It was 9 a very congenial and very friendly conversation.
02:19	10 Q So he talked about the recognition in the 11 industry, that the work and the person should not be 12 viewed as one thing but should be viewed independently, 13 correct? 14 MR. PIERCE: Object to form.	02:23	10 Q So he talked about the recognition in the 11 industry, that the work and the person should not be 12 viewed as one thing but should be viewed independently, 13 correct? 14 MR. PIERCE: Object to form.
02:20	15 THE WITNESS: Not correct, no, sir. 16 We talked about to the extent at which that's 17 the case. He never indicated absolutely that you should 18 always separate the person from the product. That 19 was -- that was the whole point of the conversation.	02:23	15 THE WITNESS: Not correct, no, sir. 16 We talked about to the extent at which that's 17 the case. He never indicated absolutely that you should 18 always separate the person from the product. That 19 was -- that was the whole point of the conversation.
02:20	20 A Certainly. 21 Mr. Dunn called -- I was expecting -- I was 22 expecting a call, or at least hoping to expect a call, so 23 I picked up the phone. The first words out of Mr. Dunn's 24 mouth were a sigh and then "I know."	02:23	20 BY MR. BYRNE: 21 Q So when you got the call on your -- do you have 22 an iPhone? 23 A I do. 24 Q When you got your -- the call on your iPhone, 25 did you notice that the origination of the number was
02:20	25 I laughed and we started talking about	02:23	25 did you notice that the origination of the number was

Page 45		Page 47	
02:23	1 San Antonio, Texas? 2 A I don't recall. 3 Q When did you figure out that Antarctic Press 4 and Mr. Dunn were based in San Antonio?	02:38	1 questions. 2 BY MR. BYRNE: 3 Q The Friday that we're talking about here where 4 this phone call took place --
02:24	5 A To the best of my recollection, it was in the 6 week or week-and-a-half following when the entire thing 7 became a giant industry brew-ha-ha. And there was much 8 discussion, there was much hatred flying my way on social 9 media. Much anger and somewhere in that maelstrom, I	02:38	5 A Yes. 6 Q -- is May 11th, 2018, correct? 7 A Correct. 8 Q And did you come away from your call with 9 Mr. Dunn on May 11th with the understanding that he
02:24	10 believe it was brought or it was just brought to my 11 attention that Mr. Meyer was in Texas -- which was news 12 to me. That Antarctic Press was in Texas, which was news 13 to me.	02:39	10 was -- his company was not going to proceed with 11 publishing Mr. Meyer's comic book? 12 A My understanding was that he had personally 13 made that decision.
02:24	14 Q And why would that have been a relevant data 15 point in the -- in the maelstrom that followed the phone 16 call?	02:39	14 Q And did you feel like as a result of that 15 decision that you had achieved your goal -- 16 MR. PIERCE: Objection; form. 17 BY MR. BYRNE: 18 Q -- for the call?
02:25	17 A Well, with respect that you would -- I -- you'd 18 have to ask the people who put that information out 19 there. Um, to the best of my recollection, it became, 20 you know -- you know, well, you know, this is -- this is 21 bad behavior, and I honestly don't know.	02:39	20 the -- of the hornet's nest he was stumbling into. So 21 any sense that that mission was accomplished, was 22 accomplished within the first 30 seconds of the call. 23 Q Well, did you have any sense personally that 24 you had won?
02:25	22 Q Mr. Waid, is it possible that you knew, based 23 on your prior extensive familiarity with the industry and 24 it being a fairly small industry, that Antarctic Press 25 was based in San Antonio before you made the call there?	02:39	25 MR. PIERCE: Object to form.
Page 46		Page 48	
02:25	1 MR. PIERCE: Object to form. 2 THE WITNESS: Not that I recall. 3 BY MR. BYRNE: 4 Q But you also can't recall how it came up in the	02:40	1 THE WITNESS: There was no winning or losing, no, 2 sir. That was not the -- that was not the object. 3 BY MR. BYRNE: 4 Q Well, you would acknowledge that your hoped-for
02:25	5 context of the discussions in the week or two following 6 the call that Texas was where you had directed your 7 communications during that call? 8 MR. PIERCE: Object to form. 9 THE WITNESS: Not to the best of my recollection,	02:40	5 outcome when you initiated the call was for him to 6 reconsider the decision to publish Mr. Meyer's book, 7 right? 8 MR. PIERCE: Object to form. 9 THE WITNESS: Not necessarily, sir.
02:26	10 no, sir. 11 MR. PIERCE: Dan, when you get to a good point, 12 okay? We've been going about an hour. Can we take a 13 bathroom break? Just whenever you get to an okay 14 stopping point.	02:40	10 BY MR. BYRNE: 11 Q Would you say you were pleased with the 12 decision Mr. Dunn made at -- by the conclusion of your 13 call? 14 MR. PIERCE: Object to form.
02:26	15 MR. BYRNE: Sure. This is as good as any. 16 Off the record. 17 THE VIDEOGRAPHER: We are off the record at 2:26. 18 (Recess taken.) 19 THE VIDEOGRAPHER: We are back on the record at	02:40	15 THE WITNESS: I would say that's accurate. 16 BY MR. BYRNE: 17 Q What's the next substantive communication you 18 recall having in the days following your call on he 19 Antarctic Press announcement that related to Mr. Meyer?
02:38	20 2:38. 21 THE WITNESS: If I may, before we start, there's a 22 couple of things I'd like to clarify. 23 MR. BYRNE: You can just do that when you get your 24 deposition transcript if you feel like you need to	02:41	20 A Not long after. I -- I can't remember exactly 21 how long. But that afternoon or early that evening I 22 received a text message from Mr. Dunn that initiated a 23 conversation that was quite pleasant. 24 Q A text conversation?
02:38	25 correct something, or your lawyer can ask follow-up	02:41	25 A Yes, sir.

Page 49		Page 51	
02:41	1 Q Okay. All right. And did that text 2 conversation continue into the following week? 3 THE WITNESS: Gesundheit. 4 I wouldn't say "continue." There were -- there	02:45	1 (Plain iff's Exhibit 1 was marked for 2 identification by he court reporter and was 3 attached hereto.) 4 THE WITNESS: Thank you.
02:41	5 were other conversations. Yes, I believe there were 6 three interactions via text in all. 7 BY MR. BYRNE:	02:45	5 BY MR. BYRNE: 6 Q I'm going to hand you what's been marked as 7 Exhibit 1 to your deposition.
02:42	8 Q And you were seeking assurance from Mr. Dunn 9 that he didn't feel bullied by you during your call, 10 correct?	02:45	8 A Uh-huh. 9 Q Do you recognize this as the Personal 10 Appearance Agreement that you entered into in connection 11 with your appearance at the Houston event in May of 2018?
02:42	11 MR. PIERCE: Object to form. 12 THE WITNESS: That is correct. 13 BY MR. BYRNE:	02:45	12 A I do. 13 Q And is there a signed version of this 14 somewhere?
02:42	14 Q Did he ever give you that -- that assurance in 15 the days following the call?	02:46	15 A I assume there is. 16 Q Okay. Did you -- did you make any effort to 17 locate it?
02:42	16 MR. PIERCE: Object to form. 17 THE WITNESS: He did not. 18 BY MR. BYRNE:	02:46	18 A No, sir. 19 Q Is this a fairly standard form of agreement you 20 get for appearing at these events?
02:42	19 Q Do you recall the issue of Mr. Meyer and the 20 Antarctic Press "Jawbreaker" decision coming up during 21 your appearance in Houston later in May?	02:46	21 A It's hard to say. This was a new arrangement 22 with a -- a representative who had organized these 23 things, and then he's paid and then I am paid through 24 him.
02:43	22 A I do. 23 Q And what is it that prompted you to remember 24 that conversation?	02:46	25 Q So you had a different promoter for this one
02:43	25 A I was speaking at a panel, as one does at these		
Page 50		Page 52	
02:43	1 things, in front of a group of fans who asked questions 2 about my career, about my involvement, about my life, 3 about whatever. I'm an open book when it comes to that 4 kind of stuff. And at some point, someone asked about 5 Meyer or about the foofaraw that had blown up around it.	02:46	1 than you usually use? 2 A I generally don't use promoters. 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
02:43	6 Q And had you forgotten about answering questions 7 about Mr. Meyer in Houston in May of 2018 when you filled 8 out your first affidavit in support of a motion to 9 dismiss in this case?	02:46	11 (Plaintiff's Exhibit 2 was marked for 12 identification by the court reporter and was 13 attached hereto.) 14 THE REPORTER: Thank you. 15 THE WITNESS: You're welcome.
02:43	10 A Yes. That's why we followed up with the 11 correction once I remembered, yes.	02:47	16 BY MR. BYRNE: 17 Q I'm going to hand you what's marked as 18 Exhibit 2 to your deposition and ask you if that appears 19 to be a accurate transcript of part of your conversation 20 with the audience during the Houston event in May of 21 2018.
02:44	12 Q Okay. I'll just tell you, for the record, that 13 that affidavit was executed on November 1st and -- and 14 there was a follow-up one -- a day or so later. Several 15 days -- excuse me -- on November 12th.	02:47	22 MR. PIERCE: You're -- are you asking him to certify 23 that this is an accurate transcript of -- 24 MR. BYRNE: Yeah, I'm asking if it looks right to 25 him.
02:44	16 A Uh-huh. 17 Q So what happened between November 1st and 18 November 12th of 2018 to refresh your recollection about 19 the fact that you had indeed directed communications 20 concerning Mr. Meyer to persons in the state of Texas?	02:47	
02:44	21 A I honestly don't recall. 22 Q Did you go back and listen to the audio of your 23 interview before you signed your supplemental affidavit?	02:48	
02:45	24 A The supplemental one, yes, sir. 25 MR. PIERCE: Oh, you'll get that copy.		

Page 53			Page 55		
02:48	1	MR. PIERCE: Yeah.	02:51	1	just as there are in pop -- I mean, right
	2	MR. BYRNE: I'm not asking him to give a verbatim		2	there in -- in -- in the world right now, not
	3	blessing to it.		3	just in comic books but in the world, you
	4	MR. PIERCE: So just generally?		4	got... heavily, you know, male heavy... um,
02:48	5	MR. BYRNE: Just generally, yes.	02:51	5	movements of guys who where trying to move
	6	(Whereupon, the witness reviews the		6	things back, or towards white supremacy, back
	7	document.)		7	towards a world in which women knew their
	8	THE WITNESS: Okay. The question again was?		8	place, uh... that kind of nonsense, um, and
	9	BY MR. BYRNE:		9	they are the proud boys or they're, you know,
02:49	10	Q Does that appear to generally be an accurate	02:51	10	the -- they're this group or they're that
	11	transcription of your comments and -- and your		11	group.")
	12	interaction with an audience member at the Houston		12	MR. BYRNE: Let me just pause right there.
	13	May 2018 event?		13	BY MR. BYRNE:
	14	A Yes, sir.		14	Q Is that your voice that we're hearing on the
02:49	15	Q I'm -- I'm going -- let me just play the --	02:51	15	recording?
	16	A Sure.		16	A Yes, sir.
	17	Q -- the one that's marked.		17	Q Okay. And so far, does the transcription track
	18	THE WITNESS: Okay. Which?		18	a fair degree of accuracy what -- what you were saying
	19	MR. BYRNE: I'm going to play the audio file.		19	back at the time?
02:49	20	THE WITNESS: The one that's marked? I don't --	02:52	20	MR. PIERCE: Object to form.
	21	you're looking for the one that's marked?		21	THE WITNESS: Yes, sir.
	22	MR. PIERCE: Has this been marked yet?		22	BY MR. BYRNE:
	23	THE REPORTER: I -- I'll sticker it later.		23	Q Is there anything about it that was inaccurate
	24	THE WITNESS: Oh, okay. I see what you're saying.		24	that you've heard?
02:50	25	MR. PIERCE: Okay.	02:52	25	A Not that I've caught.
Page 54			Page 56		
02:50	1	MR. BYRNE: So it will be marked as Exhibit 3?	02:52	1	Q Okay. And you, in making these comments, were
	2	THE REPORTER: Yes.		2	responding to an audience member's question about
	3	(Plaintiff's Exh bit 3 was marked for		3	Diversity & Comics and Mr. Meyer, correct?
	4	identification by the court reporter and was		4	A Let me read his question again.
02:50	5	attached hereto.)	02:52	5	(Whereupon, the witness reviews the
	6	MR. BYRNE: I'll ask you to listen to this		6	document.)
	7	recording.		7	THE WITNESS: The answer to the question would be a
	8	THE WITNESS: Uh-huh.		8	little more general about these people, but yes.
	9	(The audio recording was played as		9	BY MR. BYRNE:
02:50	10	follows:	02:52	10	Q But there is a specific question about
	11	"You guys created the -- did their		11	Diversity Comics which you -- you identify with
	12	comic. Great. Awesome. Then they started		12	Mr. Meyer, correct?
	13	doing things like making a list of		13	A Buried in here there is a specific question.
	14	the -- there was a -- there was a bunch of		14	Q Okay.
02:50	15	stores that decided they weren't going to	02:52	15	(The audio recording was played as
	16	carry the comic" --)		16	follows:
	17	MR. BYRNE: I think I may be playing the wrong		17	"And comics has you know a group or two
	18	excerpt.		18	like that too, comics fans have a group like
	19	MR. PIERCE: Yeah. That was in the middle.		19	that or two too, and it's a shame, um, trying
02:50	20	(The audio recording was played as	02:52	20	to say without inflaming anything.
	21	follows:		21	"Recently um one of them one of these
	22	"That's tough to answer me because I'm		22	groups kickstarted a comic and great, awesome,
	23	trying to... you don't want to give oxygen too		23	they're gonna do their own graphic novel
	24	much to toxic, toxic people. But what he's		24	because they're super conservative, hyper
02:51	25	basically talking about there is, there are --	02:53	25	conservative guys.")

Page 57		Page 59	
02:53	1 BY MR. BYRNE: 2 Q Were you referring to -- let me interrupt the 3 recording again. 4 Are you referring to Mr. Meyer as the group 02:53 5 that's going to do their own graphic novel? 6 A He and his collaborator, yes, sir. 7 Q Do you know whether he had any coauthors? 8 A I -- I know because of the way the craft works, 9 that he would have been working with an artist because 02:53 10 he's not a -- 11 Q And a colorist? 12 A And a colorist, yes. 13 Q Okay. So you're referring to that group, 14 Mr. Meyer, and his colorist and his artist, right? 02:53 15 A It's -- we're on the line. I -- one of these 16 groups -- I was talking -- again, that's -- I'm talking 17 specifically about those three people, just more in a 18 general sense of Comicsgate has started. Because again, 19 by that time, in most people's minds, including my own, 02:54 20 Meyers and Comicsgate were interchangeable. 21 Q In this statement, you're actually talking 22 about a graphic novel, correct? 23 A That is correct, yes, sir. 24 Q And that would be Mr. Meyers and his colorist 02:54 25 and his artist, graphic (inaudible) that you're referring	02:55	1 last of all their employees.") 2 BY MR. BYRNE: 3 Q And again, you're referring in this comment to 4 Mr. Meyer, correct? The list of employees that you 02:55 5 testified about earlier? 6 MR. PIERCE: Object to form. 7 BY MR. BYRNE: 8 Q Or is that a reference to someone else? 9 A It's a -- it's a more general statement to 02:55 10 what -- it -- not necessarily to him, but to the people 11 who are working on this book. 12 Q Did -- did anyone besides Mr. Meyer, to your 13 knowledge, circulate a list of stores and phone numbers? 14 A Not that I recall, no. 02:55 15 Q Okay. 16 (The audio recording was played as 17 follows: 18 "And with the idea that, 'oh no, don't 19 call them and harass them, we're not telling 02:55 20 you to do that at all! But here's their phone 21 numbers and their first and last names of all 22 their employees. Well, c'mon. 23 "So, there was a --") 24 BY MR. BYRNE: 02:55 25 Q And is your comment here -- let's pause
Page 58		Page 60	
02:54	1 to, correct? 2 A That's correct. 3 (The audio recording was played as 4 follows: 02:54 5 "And the myth was, the wrap was that 6 comics was not interested in creating 7 conservative creators and we're not, we're 8 throwing conservative creators out. That's 9 not the case at all, it's a lot of 02:54 10 conservative creators at comics, we don't -- 11 we're throwing assholes out, that's [sic] what 12 we're doing and [sic] for every, for every 13 conservative asshole we don't work with in 14 comics, there's ten liberal assholes [sic] we 02:54 15 don't work with in comics, so if that's not, 16 there's no -- there's no political yardstick 17 here. 18 "Uh these guys created the, you 19 know, they did their comic, great, awesome. 02:54 20 Then they started doing things like 21 um...making a list of the stor -- there 22 was, there was a bunch of stores that decided 23 they weren't going to carry the comic, so 24 these guys made a list of those stores...and 02:55 25 their phone numbers and the names, first and	02:56	1 again -- intended to suggest that there was, in fact, a 2 implied direction to harass the stores and their 3 employees? 4 A Absolutely. 02:56 5 Q Okay. 6 Back to the tape. 7 (The audio recording was played as 8 follows: 9 "-- publisher here in Texas who was 02:56 10 going to publish their comic, for, after it 11 had been kickstarted they were gonna, I ke 12 publish it for comic stores and... there was a 13 huge amount of hatred towards that publisher 14 at this moment. There was a, most people in 02:56 15 comics, most fans in comics were looking at 16 this as 'How? What are you doing? These guys 17 are, these are indefensible human beings.' Uh 18 they are, they, they harass women, they harass 19 minorities, they harass LGBTQ people, um, 02:56 20 they're full of hate. What are you doing?") 21 BY MR. BYRNE: 22 Q And Mr. Meyer -- pause again -- 23 Mr. Meyer -- Mr. Waid? 24 A Uh-huh. 02:56 25 Q In this excerpt, you're referring to Antarctic

Page 61		Page 63	
02:57	1 Press, correct?	02:58	1 BY MR. BYRNE:
	2 A Correct.	2	Q And what did -- what did you mean by your
	3 Q And you're using "they" but you're really	3	reference to the "Hordes of Hell"?
	4 referring to Mr. Meyer; are you not?	4	A Another hyperbolic reference to the fact that
02:57	5 MR. PIERCE: Object to form.	02:58	5 there was such a huge social media outcry against this
	6 THE WITNESS: "They" harass. When they harass --	6	from the industry.
	7 you mean, in that context, but they harass, they do this,	7	(The audio recording was played as
	8 yes.	8	follows:
	9 BY MR. BYRNE:	9	"Long story short, I did call the
02:57	10 Q Okay.	02:59	10 publisher and said 'look you do what you want
	11 (The audio recording was played as	11	and I'm not, I'm -- I'm not asking you to not
	12 follows:	12	publish it, I'm not even saying, I'm not
	13 "And my feeling is, look let the baby	13	saying anything, I'm just kinda curious what
	14 have his bottle, let, I don't care who	14	you're thinking.' And the answer was, 'Oh my
02:57	15 publishes the comic. I don't care whether you	02:59	15 God, we had no idea, like we really didn't vet
	16 published this comic or not. I don't care.	16	this before we decided to publish it.' And so
	17 But I knew the publisher and I don't think he	17	they made an announcement they weren't gonna
	18 was aware of why all of a sudden it was this	18	to publish it.
	19 gigantic groundswell of hate towards him. So	19	"Uhhh that's their choice, I wasn't...
02:57	20 I said before we burn this place to the	02:59	20 I, you know, I, I didn't, I wasn't
	21 ground --")	21	intimidating them. I wasn't pushing them into
	22 BY MR. BYRNE:	22	doing one thing or another, I just wanted to,
	23 Q I'm going to pause there.	23	to look out for him, make sure he understood
	24 Um, what did you mean here when you said	24	why people were angry at him. Um, and so
02:57	25 "before we burn this place to the ground," referring to	02:59	25 that's turned into what, me getting death
Page 62		Page 64	
02:57	1 your conversation with Mr. Dunn?	02:59	1 threats every, you know, 5, 6 hours for a
	2 MR. PIERCE: Object to form.	2	while ummm...
	3 THE WITNESS: It was a hyperbolic statement that	3	"Cause I'm clearly hate, you know,
	4 before the industry as a whole decides to condemn hem,	4	clearly hate conservatives. Because I didn't,
02:58	5 let's find out what they really knew, give them the	02:59	5 I said, all right clearly I'm
	6 benefit of the doubt that hey weren't aware.	6	bullying comic-I'm apparently I'm bullying
	7 BY MR. BYRNE:	7	publishers, I'm calling publishers and
	8 Q Were you conveying there that had he not	8	bullying them into not publi-if I could, if I
	9 changed his mind, you would have been one of the people	9	could bully publishers I'd be rich. If I
02:58	10 burning this place to the ground, metaphorically	02:59	10 could bully publishers I'd be writing Superman
	11 speaking?	11	tomorrow, I could-there'd be so many things I
	12 A No --	12	would be doing if I were really-if I had a
	13 MR. PIERCE: Object to form.	13	power to make publishers do what I wanted them
	14 THE WITNESS: No, sir.	14	to do.
02:58	15 BY MR. BYRNE:	03:00	15 "Um does that kinda answer your
	16 Q Okay.	16	question? It's...kinda?
	17 (The audio recording was played as	17	"It's uh,... people can you know feel
	18 follows:	18	how they wanna feel, uh, uh yeah. You are,
	19 "Let me call him and just find out	19	you aren't, you aren't with them, are ya?
02:58	20 what's going on, whether he understands really	03:00	20 (audience laughter) Okay, I didn't, I didn't
	21 what's being-if he wants to publish it it's	21	drive you guys out, did I?... One more
	22 great I don't care but I just, I know the guy	22	question.")
	23 and want to make sure he knows why the Hordes	23	BY MR. BYRNE:
	24 of Hell are descending upon him right now.	24	Q Okay. Does that -- rest of that audio confirm
02:58	25 That seems reasonable, right?")	03:00	25 that the transcript marked as Exhibit 2 is accurate?

Page 65		Page 67	
03:00	1 MR. PIERCE: Object to form. You mean word-for-word 2 verbatim? 3 MR. BYRNE: I'm asking him that, yes. 4 THE WITNESS: With the possible exception of a "and"	03:04	1 BY MR. BYRNE: 2 Q Did you ever uncover any direct evidence of 3 white supremacy on the part -- statements on the part of 4 Mr. Meyer?
03:00	5 or a "the" every once in a while, but substantively, yes. 6 BY MR. BYRNE: 7 Q Okay. And there's a reference in here, 8 Mr. Waid, to five or six hours of death threats. 9 What -- what are you talking about here?	03:04	5 MR. PIERCE: Again, object to form. 6 How does this relate to jurisdiction? 'Cause 7 we're -- we're starting to yonder into, I think, more 8 substantive areas in a way that is really getting away 9 from the Court's order. This has nothing to do --
03:00	10 MR. PIERCE: Object to form. Oh, I'm sorry. Go 11 ahead. 12 THE WITNESS: I'm talking about the fact that once 13 Antarctic Press made their announcement, all of 14 Comicsgate descended on my Facebook feed like locusts. 15 Peppering -- posts not only about comics but about, you	03:04	10 MR. BYRNE: Well -- 11 MR. PIERCE: -- with jurisdiction. 12 MR. BYRNE: I think if there are defamatory 13 statements made in Texas, and there's a reference to 14 white supremacy tied to Mr. Meyer, I think I'm entitled 15 to explore that a little bit.
03:01	16 know, my dog. I mean -- figuratively speaking. But I 17 mean, it had nothing to do with any of this, with fuck 18 you, Mark Waid, fuck you for doing this, I hope you rot 19 in hell, I hope you die, over and over and over again, 20 within the next five or six hours. The whole rest of the 21 evening was me having to try to delete and shoo off all 22 these flies who were descending upon me with absolute 23 hate, blaming me for what has happened. 24 BY MR. BYRNE:	03:04	16 MR. PIERCE: Okay. I get you -- I'll give you a 17 little bit of room. 18 THE WITNESS: Ask it again, please. 19 BY MR. BYRNE:
03:01	25 Q Do you still have any documentation of death threats you received?	03:05	20 Q Do you -- do you have any basis to substantiate 21 a contention that Mr. Meyer is a white supremacist? 22 MR. PIERCE: Object to form. 23 THE WITNESS: I would say in the materials I 24 provided to the Court is various social media posts about 25 how, you know, it's not a -- you know, the one about
03:01	1 A No. Anything I have I would have provided 2 already. 3 Q So did you delete anything that would have 4 evidenced death threats by anyone in response to what 5 happened with Antarctic Press? 6 A I mean, I wish I hadn't, but I did at the time. 7 Why give them more of a platform to keep screaming. 8 Q When did you delete those posts? 9 A Pretty much as they were happening. The idea 10 was to stiff arm and keep -- try to keep it from becoming 11 a giant -- as I put it, a landing. My -- my social media 12 became a landing strip for lunatics. 13 Q Did you take any of the death threats 14 seriously, or did you think of it as venting by folks on 15 the Internet? 16 A Well, at first you take it as venting, but 17 there's only so many times you can get that kind of stuff 18 without it reaching into your head a little bit. 19 Q Okay. And again, I'm going to just make the 20 record clear. The -- the recording that I played in the 21 course of the deposition is, I think, labeled full five 22 minute among several files on that thumb drive. 23 MR. BYRNE: And I also tendered you a duplicate, 24 Ryan.	03:05	1 the -- you know, it's not -- what a sideshow or a circus, 2 whatever, when you hire black people for comics, that 3 sort of thing that's in there, yeah, absolutely. At 4 least indicated a propensity towards what we -- what we 5 refer to as white supremacy these days. It's a pretty 6 broad spectrum. 7 BY MR. BYRNE: 8 Q Do you have any documentation or other evidence 9 of Mr. Meyer directly espousing white supremacist 10 doctrines, or are you inferring from the materials you 11 submitted to the Court that he must think that way? 12 MR. PIERCE: Object to form. 13 What -- what statement is this tied to? I 14 mean, what specific -- you mentioned a defamatory 15 statement. 16 MR. BYRNE: He's talking about moving things back 17 toward white supremacy. 18 THE WITNESS: Are you asking, is there a specific 19 moment when he -- when I am aware of he said "I am a 20 white supremacist?" 21 BY MR. BYRNE: 22 Q Or espoused principles you associate with white 23 supremacist -- 24 A I associate? Absolutely. Again, I stepped on 25 you. I apologize.
03:01	1 threats you received? 2 A No. Anything I have I would have provided 3 already. 4 Q So did you delete anything that would have 5 evidenced death threats by anyone in response to what 6 happened with Antarctic Press? 7 A I mean, I wish I hadn't, but I did at the time. 8 Why give them more of a platform to keep screaming. 9 Q When did you delete those posts? 10 A Pretty much as they were happening. The idea 11 was to stiff arm and keep -- try to keep it from becoming 12 a giant -- as I put it, a landing. My -- my social media 13 became a landing strip for lunatics. 14 Q Did you take any of the death threats 15 seriously, or did you think of it as venting by folks on 16 the Internet? 17 A Well, at first you take it as venting, but 18 there's only so many times you can get that kind of stuff 19 without it reaching into your head a little bit. 20 Q Okay. And again, I'm going to just make the 21 record clear. The -- the recording that I played in the 22 course of the deposition is, I think, labeled full five 23 minute among several files on that thumb drive. 24 MR. BYRNE: And I also tendered you a duplicate, 25 Ryan.	03:05	1 the -- you know, it's not -- what a sideshow or a circus, 2 whatever, when you hire black people for comics, that 3 sort of thing that's in there, yeah, absolutely. At 4 least indicated a propensity towards what we -- what we 5 refer to as white supremacy these days. It's a pretty 6 broad spectrum. 7 BY MR. BYRNE: 8 Q Do you have any documentation or other evidence 9 of Mr. Meyer directly espousing white supremacist 10 doctrines, or are you inferring from the materials you 11 submitted to the Court that he must think that way? 12 MR. PIERCE: Object to form. 13 What -- what statement is this tied to? I 14 mean, what specific -- you mentioned a defamatory 15 statement. 16 MR. BYRNE: He's talking about moving things back 17 toward white supremacy. 18 THE WITNESS: Are you asking, is there a specific 19 moment when he -- when I am aware of he said "I am a 20 white supremacist?" 21 BY MR. BYRNE: 22 Q Or espoused principles you associate with white 23 supremacist -- 24 A I associate? Absolutely. Again, I stepped on 25 you. I apologize.

Page 69		Page 71	
03:06	1 Q Okay. And are -- are -- are all of those 2 materials to substantiate that -- those included among 3 those that you submitted to the Court in connection with 4 the motion that's pending?	03:09	1 that and see if hat refreshes your memory about whether 2 you may have used that as a tool to locate the phone 3 number for Antarctic Press before you left your message 4 for Mr. Dunn?
03:06	5 MR. PIERCE: Object to form. 6 THE WITNESS: To the best of my recollection, that's 7 correct. 8 BY MR. BYRNE:	03:10	5 A No, sir. I have no memory seeing any of this 6 before. 7 Q Okay. Do you see the name "Doug Dlin"? 8 A Uh...
03:06	9 Q And you certainly produced all of them to us in 10 the course of discovery, or given them to your lawyers to 11 produce to us in the course of discovery, correct? 12 MR. PIERCE: Objection to form. 13 THE WITNESS: To the best of my recollection, yes, 14 sir.	03:10	9 Q Second-to-last page. 10 A I do. 11 Q Do you know whether you spoke to Mr. Dlin when 12 you called and left your message? 13 A I have no idea who I spoke to at that time. 14 Q So seeing his name there doesn't ring a bell?
03:06	15 (Plaintiff's Exhibit 4 was marked for 16 identification by the court reporter and was 17 attached hereto.) 18 BY MR. BYRNE:	03:10	15 A I know it was a woman. My recollection is that 16 it was a woman. Let me rephrase that. 17 Q But you don't remember her name? 18 A That's correct. 19 Q By the time you made the call to Antarctic 20 Press to make sure that they were informed, had you 21 already been receiving death threats, or did those come 22 in the wake of your conversation wi h Mr. Dunn and the 23 cancelation? 24 A Specific to this incident in the wake of, 25 although death threats are a part of -- sadly a part of
03:07	19 Q I think you testified earlier you don't recall 20 ever characterizing Mr. Meyer as a doxer? 21 A I don't recall that. 22 MR. PIERCE: This has -- so this has nothing to do 23 with the Houston -- so to clarify, now you're getting 24 into statements that aren't tied to that meeting in 25 Houston or the Q & A session in Houston?	03:11	20 Press to make sure that they were informed, had you 21 already been receiving death threats, or did those come 22 in the wake of your conversation wi h Mr. Dunn and the 23 cancelation? 24 A Specific to this incident in the wake of, 25 although death threats are a part of -- sadly a part of
03:08	25 Houston or the Q & A session in Houston?	03:11	25 although death threats are a part of -- sadly a part of
Page 70		Page 72	
03:08	1 Is -- is that right? 2 MR. BYRNE: Um... 3 MR. PIERCE: I mean, I think we're just get ing too 4 far afield here.	03:11	1 being a public figure, I've gotten many of them in the 2 past. 3 Q Do you remember talking about death hreats in 4 your conversation wi h Mr. Dunn?
03:08	5 MR. BYRNE: All right. We'll save that for the 6 merits. 7 MR. PIERCE: What exhibit number are we on? 8 THE REPORTER: 4. 9 MR. PIERCE: Thank you.	03:11	5 A I have no recollection of that, no, sir. 6 Q It could have come up, you just don't remember? 7 A I don't remember. 8 Q And I take it you don't deny that the phone 9 call you had with Mr. Dunn on the afternoon of May 11th, 10 2018 might have lasted as long as 27 minutes? 11 MR. PIERCE: Object to form. 12 THE WITNESS: It might have. 13 (Plain iff's Exhibit 6 was marked for 14 identification by he court reporter and was 15 attached hereto.) 16 THE WITNESS: Thank you. 17 BY MR. BYRNE:
03:09	10 MR. BYRNE: No, we're on 5. 11 THE REPORTER: You want to keep that as 4? 12 MR. BYRNE: Yep. 13 THE REPORTER: Can I remark that, please? 14 THE WITNESS: Oh, sure. Of course.	03:12	17 BY MR. BYRNE: 18 Q And I'm handing you what's marked as Exhibit 6. 19 Is this a correct copy of a Facebook post hat you posted 20 on the afternoon of May 11th, 2018 while you were waiting 21 for Mr. Dunn to return the message you left? 22 A Yes, sir, that's accurate. 23 (Plain iff's Exhibit 7 was marked for 24 identification by he court reporter and was 25 attached hereto.)
03:09	15 (Plaintiff's Exhibit 5 was marked for 16 identification by the court reporter and was 17 attached hereto.) 18 MR. BYRNE: Sorry. I wasn't real clear. 19 BY MR. BYRNE:	03:13	20 on the afternoon of May 11th, 2018 while you were waiting 21 for Mr. Dunn to return the message you left? 22 A Yes, sir, that's accurate. 23 (Plain iff's Exhibit 7 was marked for 24 identification by he court reporter and was 25 attached hereto.)
03:09	20 Q Mr. Waid, I'm going to hand you what's been 21 marked as Exhibit 5. 22 A Uh-huh. 23 Q And represent to you that that is a printout 24 from the Internet of the Antarctic Press web page as it 25 appeared in May of 2017, and just ask you to glance over	03:14	25 attached hereto.)

Page 73		Page 75	
03:14	1 THE WITNESS: Thank you. 2 BY MR. BYRNE: 3 Q I'm handing you what's been marked as Exhibit 7 4 to your deposition, Mr. Waid, and ask you to confirm that 03:14 5 this is a series of text messages exchanged between you 6 and Mr. Dunn beginning on Friday, May 11th at 5:51 p.m. 7 and continuing several days thereafter. 8 (Whereupon, the witness reviews he 9 exhibit.) 03:15 10 THE WITNESS: That's accurate, yes, sir. 11 BY MR. BYRNE: 12 Q Okay. 'Cause the last series of texts looks -- 13 looks like it's dated Tuesday, May 15th. 14 Is that your interpretation as well? 03:15 15 A I'm not sure where you're seeing a date on the 16 last round of -- or I mean last -- 17 Q Well, if you go to page 2, you see Saturday 18 May 12th. 19 A Right. 03:15 20 MR. PIERCE: There's a Bates number at the bottom. 21 BY MR. BYRNE: 22 Q You go to page 4 which is Bates numbered 23 Defendants '9. There's a May 15th. 24 And that's he last date change I see in this 03:16 25 string.	03:21	1 Facebook page; is that right? 2 A I -- yes, I didn't close the account but I took 3 down the Facebook page, yes. 4 Q And did -- did anyone advise you to do that, or 03:21 5 is that something you decided to do independently of 6 hird-party suggestions or -- 7 A Totally on my own. 8 I stepped on you again. I'm sorry. 9 Q And is that because of negative feedback you 03:21 10 were getting from supporters of he Antarc ic Press 11 publication of "Jawbreakers" that were unhappy with your 12 role in that not happening? 13 MR. PIERCE: Object to form. 14 THE WITNESS: Because of the incessant, yes. 03:22 15 BY MR. BYRNE: 16 Q Have you spoken to Mr. Ben Dunn or Mr. Joe Dunn 17 since May 11th of 2018? 18 A You mean other than texts? 19 Q Right. 03:22 20 A I have not. 21 Q Okay. Are there any texts with either of the 22 Dunns besides those that we've just reviewed that are 23 marked in evidence? 24 A Not to the best of my recollection. I -- if 03:23 25 they're -- because of the way these are cropped on the
Page 74		Page 76	
03:16	1 Am I missing something or did this all happen 2 on Tuesday -- all the entries after that day happen on 3 Tuesday, May 15th as you interpret this? 4 A Well, my recollection is there was a gap 03:16 5 between "I'm happy to leave" -- as you see, it says, "I'm 6 happy to leave you" -- and it's cut off. 7 And then the next one starts up with, "What 8 have I done to offend you?" 9 My recollection is there was a gap there. 03:16 10 Q Okay. 11 A It was a separate conversation. 12 Q A day or two later? 13 A A day or two later. 14 Q Okay. 03:17 15 THE WITNESS: All right. Can we take a bathroom 16 break real quick? 17 MR. BYRNE: Sure. 18 THE VIDEOGRAPHER: We are off the record at 3:17. 19 This is the end of Media No. 1. 03:21 20 (Recess taken.) 21 THE VIDEOGRAPHER: We are back on the record on 22 Media No. 1 at 3:21. 23 BY MR. BYRNE: 24 Q Shortly after your call with Mr. Dunn on 03:21 25 May 11th, within days at least, you took down your	03:23	1 screen caps, as I already indicated, there's one balloon 2 that was, you know, cut off -- you know, "I'm happy to 3 leave you" -- so I also submitted these exact same texts. 4 The cutoffs may be different in mine. 5 So if that makes any sense. So between the two 6 of them -- 7 Q Okay. 8 A -- that would be an accurate record of what's 9 there, yeah. 03:23 10 Q But no hing else substantive that you can 11 recall? 12 A That's correct. 13 Q Besides what we have here, correct? 14 A That's correct. 03:23 15 Q Have you been back to Texas since you were in 16 Houston for the May of 2018 event? 17 A No, sir. 18 MR. BYRNE: All right. We'll reserve the rest of 19 our questions for a later stage of the proceedings. 03:24 20 MR. PIERCE: Could we just take a quick break? 21 MR. BYRNE: Sure. 22 THE VIDEOGRAPHER: We are off the record at 3:24. 23 (Recess taken.) 24 THE VIDEOGRAPHER: We're back on the record at 3:27. 03:27 25 Media No. 1.

Comicalooza, May 25-27, 2018, Houston, Texas

Panel question by audience member and answer by Mark Waid

Audience Member: "I just want to get your quick opinion about small comic book creators like this guy we been hearing about on Twitter ...Diversity & Comics... big-time comic creators like yourself...Marvel...he seems obsessed with ... breaking into the scene, ... I'm trying to figure out, you know what's your opinion obsession..."

Mark Waid: "That's...It's tough to answer, because I'm trying to...you don't want to give oxygen too much to toxic, toxic people. But what he's basically talking about there is, there are....just as there are in pop- I mean right in the world right now, not just in comic books but in the world you got... heavily you know male heavy ...um movements of guys who are trying to move things back towards white supremacy, or back towards a world in which women knew their place, uh... that kind of nonsense, um and they're the proud boys or they're you know they're this group or they're that group."

And comics has you know a group or two like that too, comics fans have a group like that or two too and it's a shame, um... trying to say without inflaming anything.

Recently um one of them, one of these groups kickstarted a comic and great, awesome they're gonna do their own graphic novel cause they're super conservative, hyper conservative guys and the myth was, the rap was that comics was not interested in creating conservative creators or

we're not, we're throwing conservative creators out. That's not the case at all, it's a lot of conservative creators in comics, we don't, we're throwing assholes out, that what we're doing for every, for every conservative asshole we don't work with in comics, there's ten liberal assholes who we don't work within comics, so if that's not, there's no, there's no political yardstick here.

Uh these guys created the, you know, they did their comic, great, awesome. Then they started doing things like um...making a list of the stor-, there was, there was a bunch of the stores that decided they weren't going to carry the comic, so these guys made a list of those stores ...and their phone numbers and the names, first and last, of all their employees. And with the idea that "Oh no, don't call them and harass them, we're not telling you to do that at all!" But here's their phone numbers and their first and last names of all their employees. Well c'mon.

So, there was a publisher here in Texas who was going to publish their comic, for, after it had been kickstarted they were gonna, like publish it for comic stores and ...there was a huge amount of hatred toward that publisher at this moment. There was a, most people in comics, most fans of comics were looking at this as "How? What are you doing? These guys are, these are indefensible human beings." Uh they are, they, they harass women, they harass minorities, they harass LGBTQ people, um, they're full of hate, what are you doing?"

And my feeling is, look let the baby have his bottle, let, I don't care who publishes the comic. I don't care whether you publish this comic or not. I don't care. **But I knew the publisher and** I don't think he was aware of why all of a sudden there was this *gigantic* groundswell of hate towards him. So I said **before we burn his place to the ground,** let me call him and just find out what's going on, whether he understands really what's being- if he wants to publish it that's great I don't care but I just, I *know* the guy and want to make sure he *knows why the Hordes of Hell* are descending upon him right now. That's seems reasonable, right?

Anyway, so, the long story short, I did call the publisher and said "Look, you do what you want and I'm not, im-, I'm not asking you to not publish it, I'm not even saying, I'm not saying anything, I'm just kinda curious what you're thinking." And the answer was, "Oh my God, we had no idea, like we really didn't vet this before we decided to publish it." And so they made an announcement that they weren't gonna publish it.

Uhhh that's their choice, I wasn't... I, you know I, I didn't, I wasn't intimidating them, I wasn't pushing them into doing one thing or another, I just wanted to, to look out for him and make sure he understood why people were angry at him. Um, and so that's turned into what, me getting death threats every, you know 5,6 hours for a while, ummm...

Cause I'm clearly hate, you know, I clearly hate conservatives. Because I didn't, I said, all right clearly I'm bullying comic- I'm apparently I'm bullying publishers, I'm calling publishers and bullying them into not publi-, if I could, if I could bully publishers I'd be rich. If I could bully publishers I'd be writing Superman *tomorrow*, I could- there'd be so many things I would be doing if I were really- if I had a power to make publishers do what I wanted them to do.

Um does that *kinda* answer your question? It's... kinda?

It's uh, ...people can you know feel how they wanna feel, uh uh yeah.

You are, you aren't, you aren't with them are ya? (audience laughter)

Okay. I didn't, I didn't drive you guys out, did I?... One more question."

**Mark Waid**

19 mins •

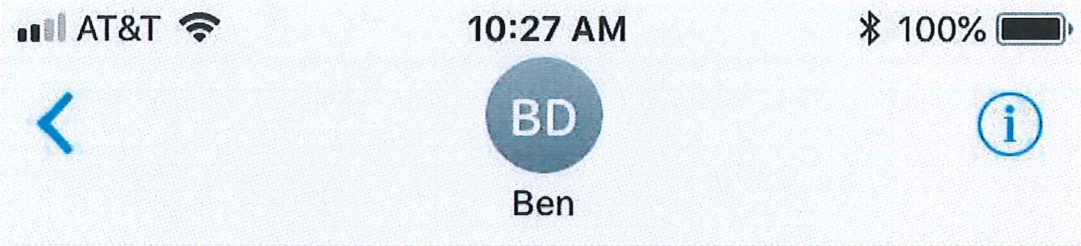
I have a call in to Antarctic Press. Until I hear back, I'm (hesitantly) willing to give them the benefit of the doubt that they don't really understand who or what they're getting into business with, which--though it would seem a stretch--is a possibility. If I do hear back, I'll report in. Curious as to how they feel about publishing creators whose marketing strategy is to allegedly (*koff*) **encourage their fans to threaten the employees of stores, and/or harass and one-star-review-bomb stores, that don't order their product.**

Are we as creators responsible for the actions of our fans? Ultimately, of course not. But it is morally bankrupt f... [Continue Reading](#)



stretch--is a possibility. If I do hear back, I'll report in. Curious as to how they feel about publishing creators whose marketing strategy is to allegedly (*koff*) encourage their fans to threaten the employees of stores, and/or harass and one-star-review-bomb stores, that don't order their product.

Are we as creators responsible for the actions of our fans? Ultimately, of course not. But it is morally bankrupt for creators with a voice to pretend they have zero influence over their fans, and it is incumbent upon them as human beings in a society to use that influence to intervene if and when people are getting harassed or threatened in their name. You can bet your ass that if I ever found out any of my fans were spreading misogyny, transphobia, racism, or bigotry as a way of "supporting" my work, I would take active steps to shut that shit down in a cocaine heartbeat, not just shrug my shoulders.



iMessage
Fri, May 11, 5:51 PM

Thank for talking to me this afternoon...I have decided to drop the project...statement on Facebook coming soon

You are a VERY good man. Text or DM me when the statement goes up and I'll recirculate it if you like.

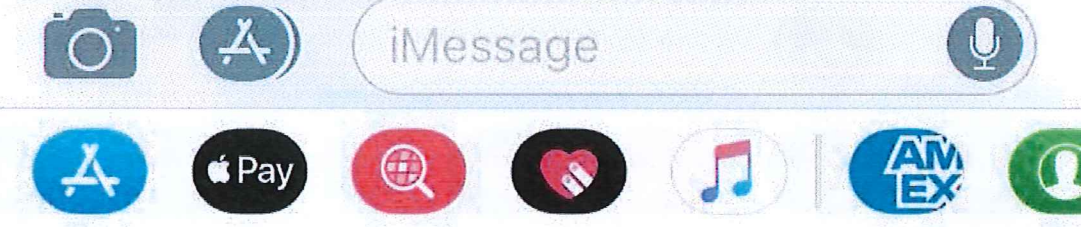
It's posted

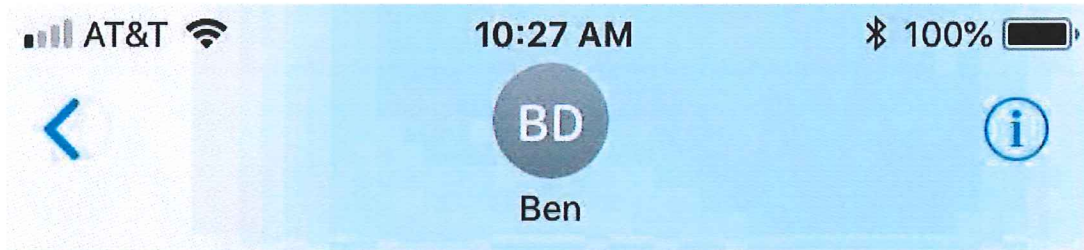
Good man. Thank you, and stay in touch

Do you want me to repost it, or will that create more headaches for you?

I am not sure how to approach it...I'm prepared for the lashing

7





I am not sure how to approach it...I'm prepared for the lashing I'm about to get from the other direction

Why don't I give it a day? That way, it looks less like I'm just trying to take a victory lap.

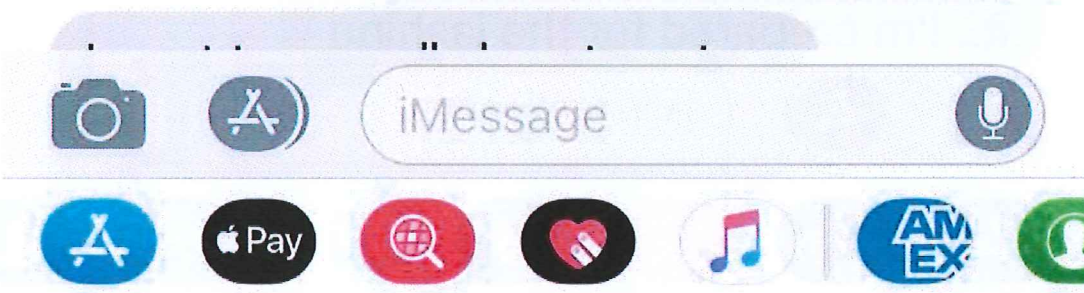
And sleep on it a couple of nights, but my offer to do an interview is still good.

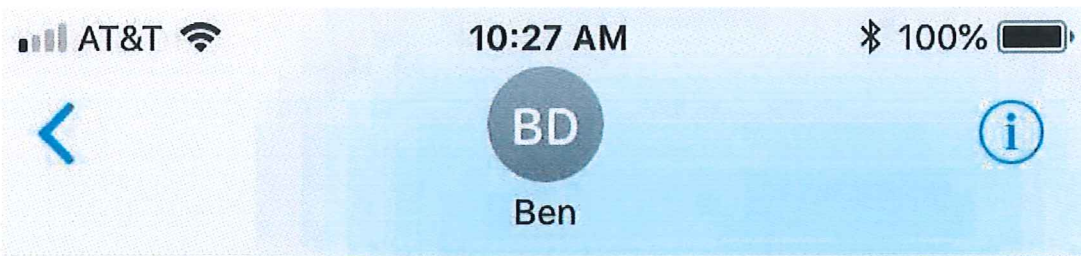
Sounds good...I appreciate your support

Of course. Be well.

Sat, May 12, 1:58 PM

Just checking in to see how you're holding up.





I went to a small show to get away...I have not gone to FaceBook or checked my email since yesterday so that reduces my stress

Thanks for asking

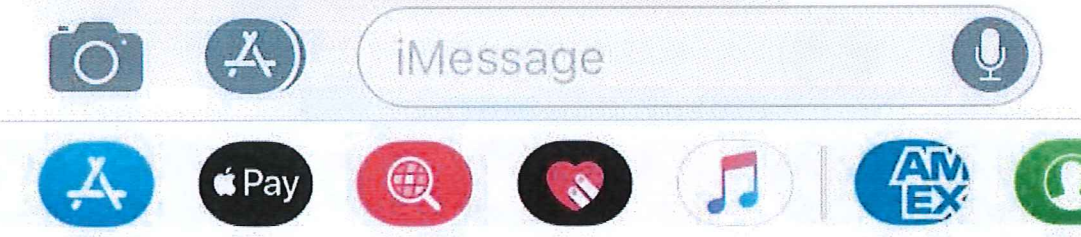
I wrote a 4 page indictment of the industry last night...I think u will enjoy it when I finish

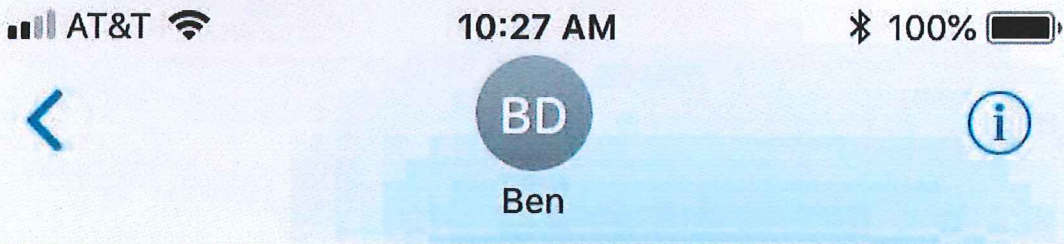
I had to close my FB account after all the non-stop death threats. Would LOVE to read your manifesto.

No problem...also will u be in temple Memorial Day weekend

That Houston show? Yeah

My wife's family reunion is in





My wife's family reunion is in temple Memorial Day weekend

Tue, May 15, 4:04 PM

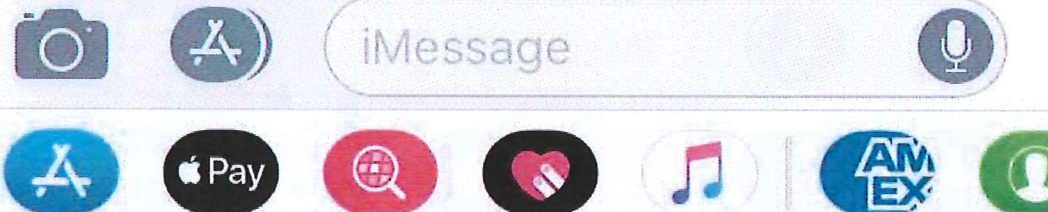
Holding up? Why in the world is Meyer claiming that you called him in tears? Hope you're well.

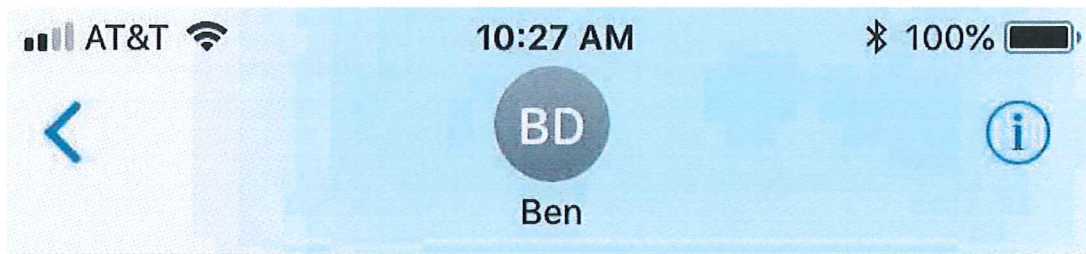
I am not commenting anymore

I don't blame you. You haven't turned on me, I hope?

I said that tongue in cheek, but the lack of a reply has me nervous. When can we talk?

I do apologize...but essentially I am trying to put this behind me and as not to say or do anything that can be misinterpreted or

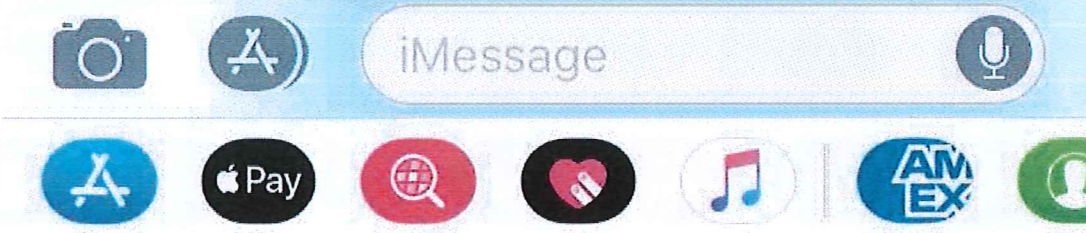


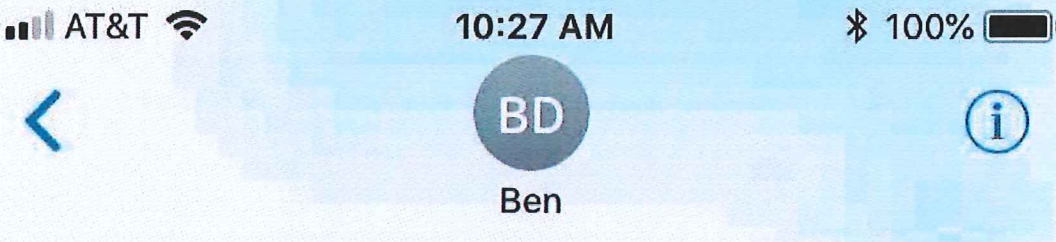


I do apologize...but essentially I am trying to put this behind me and as not to say or do anything that can be misinterpreted or misunderstood I have instructed everyone including myself not to comment on the situation

Well, I understand that, and you know that I'm here to help. You're not even getting any blame any more—the story is that you called in tears to confess and that I bullied you. I think that's 100% fiction—You said at the time you didn't feel I was bullying or harassing you in the least, correct?

Ben?

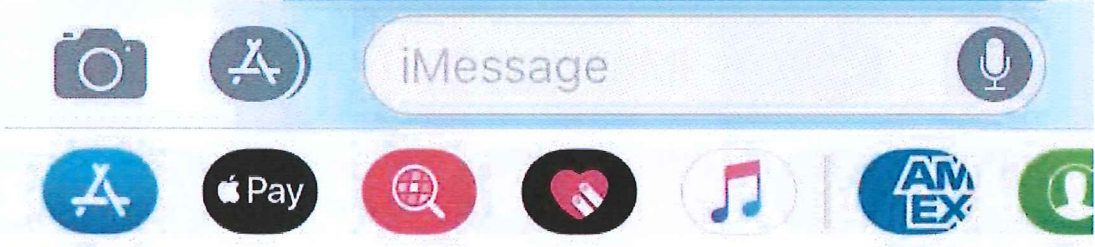


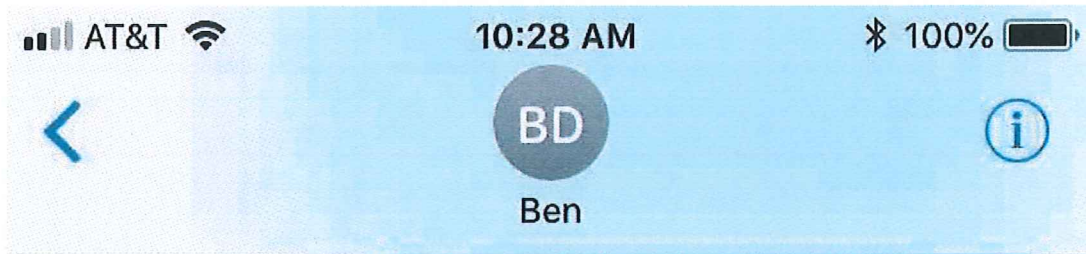


Left you a VM. Not asking for anything but confirmation that you and I are good with one another still—or if not, what can I do?

I'm sorry but this is not Ben..I'm his brother and publisher of Antarctic Press. Again I'm sorry but I've avoided being online and taking calls at all for the past 5 days to avoid all this. This has taken both a mental and physical toll on me and my family. I do not want to say or do anything at this time. I hope you can please respect that.

So long as you let me know that we're good, because now I'm concerned. If you can just do that, I'm happy to leave you



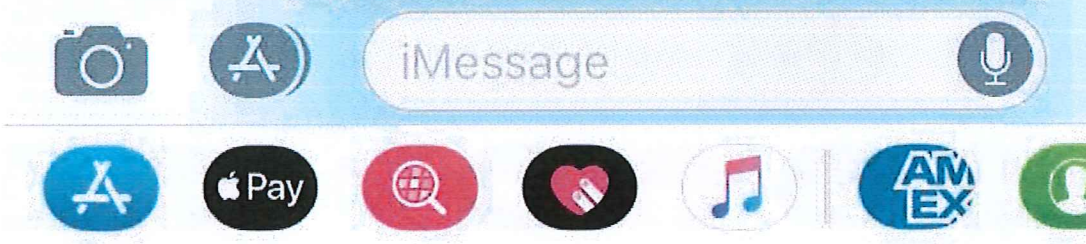


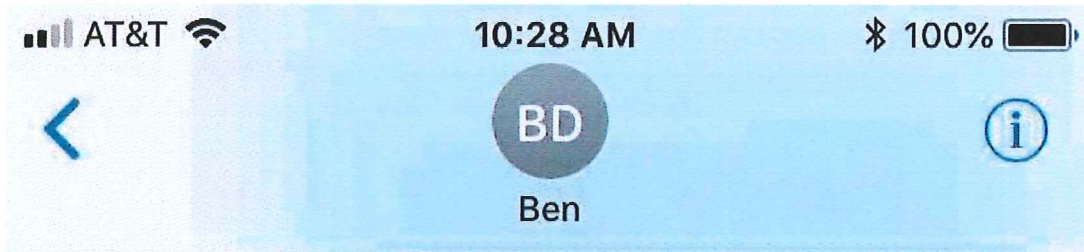
What have I done to offend you?

I do not want to be misconstrued...I do not want to have to use disclaimer words...I do not want any words I use for public consumption...i do not want any misinterpretation... personally I can say we're good in the sense that I'm not angry at anyone but myself..I blame me myself and I for everything and I'm living with that now and I now I have to live with myself that I facilitated more rhetoric. Nobody has offended me I offended myself.

You said I didn't bully you. Do you still feel that way? It weighs on me.

Ben, that is all I will ever ask of



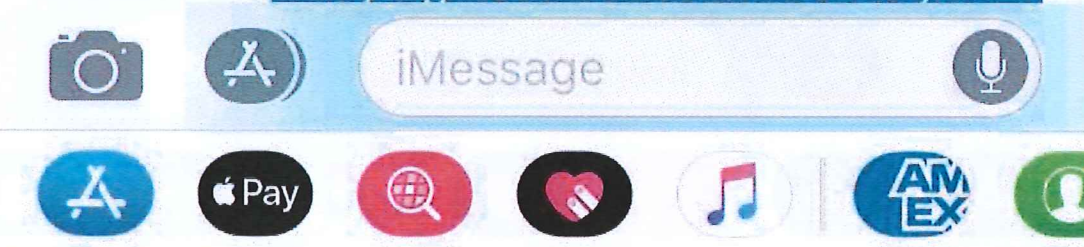


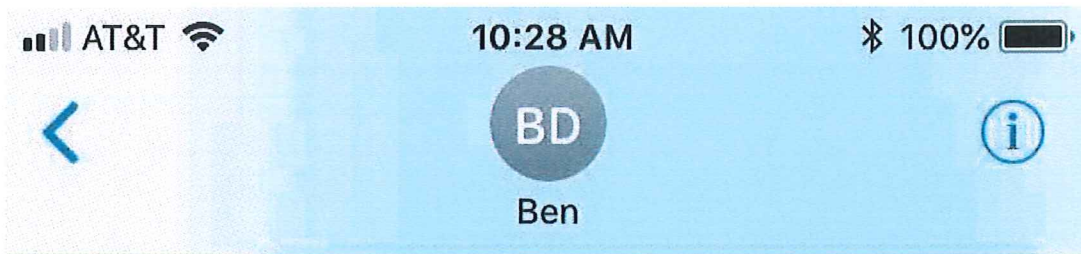
Ben, that is all I will ever ask of you, and it stays between us. Do you now think that I bullied you?

I made my decisions based on a variety of many many many factors to protect me but mostly to protect my family and employees...I ultimately made the decision...it was 100% my decision...I will accept the total consequence of that decision.

No, the consequence is now on me, not you. I wish you'd been honest with me on Friday. All of this, all of it, was an effort to help you. Will you at least give me that?

Because everything you are saying to me indicates that you





help you. Will you at least give me that?

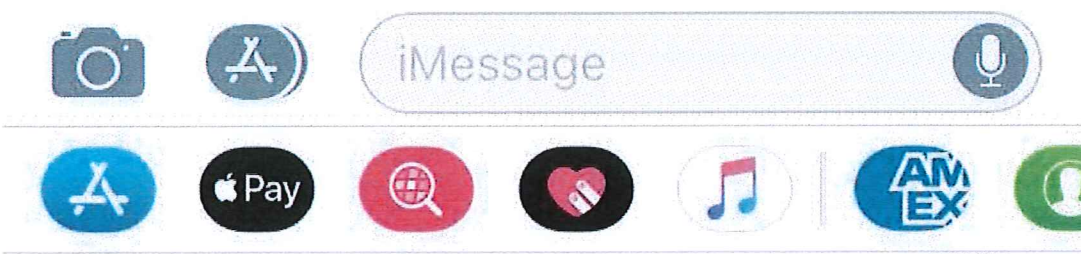
Because everything you are saying to me indicates that you weren't straight with me when you confirmed you didn't feel bullied by me at all and that we were good.

Are you changing your story to say that I bullied you, or were you straight with me on Friday? That's all I need to know, then I'll leave you alone.

I'll lose your number, you never need to hear from me again.

Just tell me I didn't intentionally bully you or hurt you, because if I did, I need to know.

Delivered



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION

4 RICHARD MEYER, *
 Plaintiff, *

5 VS. * CIVIL ACTION NO.
 1:18-CV-00800-LY

6 MARK WAID, *
 Defendant. * (Jury Demanded)

7
 8
 9 VIDEOTAPED ORAL DEPOSITION
 10 OF
 11 BEN DUNN
 12 MARCH 6, 2019

13
 14
 15 VIDEOTAPED ORAL DEPOSITION of BEN DUNN,
 16 produced as a witness on behalf of Plaintiff and duly
 17 sworn, was taken in the above-styled and numbered cause
 18 on March 6, 2019, between the hours of 9:58 a.m. and
 19 11:02 a.m. before Shan Morris Blanchard, Certified
 20 Shorthand Reporter in and for the State of Texas,
 21 reported by computerized stenotype machine at the
 22 offices of Langley & Banack, Inc., 745 E. Mulberry,
 23 Suite 700, San Antonio, Texas 78212 pursuant to Federal
 24 Rules and the provisions stated on the record or
 25 attached hereto.

Page 3

1 APPEARANCES CONTINUED:
 2 ALSO PRESENT:
 3 Richard Meyer
 4 Mark Waid (via telephone)
 5 Mark Zaid (via telephone)

6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 2

1 APPEARANCES
 2

3 FOR THE PLAINTIFF:
 4 Mr. Daniel H. Byrne
 5 Fritz, Byrne, Head & Gilstrap, PLLC
 6 221 W. 6th Street, Suite 960
 7 Austin, Texas 78701
 Telephone: 512-477-2020
 Fax: 512-477-5264
 Email: dbyrne@fbhg.law

8 FOR THE DEFENDANT:
 9 Mr. Ryan Pierce
 10 Reeves & Brightwell, LLP
 11 521 West Sixth Street, Suite 1000
 12 Austin, Texas 78701
 Telephone: 512-334-4500
 Fax: 512-334-4492
 Email: rpierce@reevesbrightwell.com

13 FOR THE WITNESS:
 14 Mr. Otto S. Good
 15 Langley & Banack, Inc.
 16 745 E. Mulberry, Suite 900
 17 San Antonio, Texas 78212
 Telephone: 210-668-6600
 Fax: 210-735-6889
 Email: ogood@langleybanack.com

18 WITNESS:
 19 Ben Dunn

20 CERTIFIED SHORTHAND REPORTER:
 21 Shan Morris Blanchard

22 VIDEOGRAPHER:
 23 Lawrence Delgado

24
 25

Page 4

1 INDEX

2	Stipulations	PAGE	1
3	Appearances		2
4	BEN DUNN		
5	EXAMINATION BY:		
6	MR. BYRNE		5
7	MR. PIERCE		32
8	Reporter's Certificate		43
9			
10	EXHIBITS		
11	NO. DESCRIPTION	PAGE	
12	Ex. 8 Screen shot of Twitter announcement		15
13	Ex. 9 Text message string between Ben Dun and UmbrellaGuy dated June 8 through June 12		25
14			
15	Ex. 10 Article entitled, "No Enemy But Peace - Richard Meyer, Antarctic Press, and Jawbreakers"		34
16			
17			
18			
19	TIME USED BY ATTORNEYS		
20	ATTORNEY	TIME USED	
21	Mr. Daniel H. Byrne		0 hours 43 minutes
22	Mr. Ryan Pierce		0 hours 16 minutes
23	Mr. Otto S. Good		0 hours 0 minutes
24			
25			

Page 5

1 (The reading of introductions into the
2 record according to Rule 30(b)(5)(A) was waived by all
3 parties present.)
4 THE VIDEOGRAPHER: And we're on the
5 record on March the 6th, 2019, at 9:58 a.m.
6 BEN DUNN, the witness, being duly cautioned
7 and sworn to tell the truth, the whole truth and
8 nothing but the truth, testified as follows:
9 (Time: 9:58 a.m.)
10 EXAMINATION
11 BY MR. BYRNE:
12 Q. Would you state your name for the record,
13 please?
14 **A. Ben Dunn.**
15 MR. PIERCE: Dan, do you want to cover
16 the preliminary things we talked about?
17 MR. BYRNE: Sure. Go ahead.
18 MR. PIERCE: Plaintiff's counsel and
19 defendant's counsel have agreed that objection to form
20 will be sufficient to preserve objections relating to
21 form-related objections and that the parties will --
22 will have any -- will have a running objection to
23 questions that go beyond the Court's order regarding
24 jurisdictional discovery.
25 MR. BYRNE: And scope just generally,

Page 6

1 yes. Okay. Those are agreed.
2
3
4
5
6
7
8
9
10
11
12 **A. Yes, sir.**
13 Q. How long have you lived there?
14 **A. I've lived there since February of the year**
15 **before, 2017.**
16 Q. Okay. What is your connection to Antarctic
17 Press?
18 **A. I was the founder of the company. I currently**
19 **freelance with the company and I'm the brother of the**
20 **owner.**
21 Q. Okay. What -- tell me about the founding of
22 Antarctic Press. When -- when was it founded?
23 **A. It was founded in 1985 sometime. I think it**
24 **was in the fall. I'm not quite sure, and we started**
25 **our -- we started sunsetting our first book in that**

Page 7

1 **year which was Mangazine Number 1, M-a-n-g-a-z-i-n-e.**
2 Q. Mangazine Number 1 --
3 **A. Yes, sir.**
4 Q. -- was your first book?
5 **A. Yep.**
6 Q. Okay. Have you ever been deposed before?
7 **A. What does that mean exactly?**
8 Q. Have you ever been in a situation like this
9 where you have a lawyer answer -- asking you questions
10 under oath?
11 **A. Yes.**
12 Q. How many times?
13 **A. Once.**
14 Q. Okay. Well, you understand this -- that you're
15 obligated to tell the truth the same as you would as if
16 you're live in court in front of a judge?
17 **A. Yes, sir.**
18 Q. And the only trick, I guess, I'd say is I have
19 a tendency to slow down toward the end of my questions
20 before I finish them so --
21 **A. Sure.**
22 Q. -- try not the jump in and the court reporter
23 will have an easier job.
24 **A. Yes, sir.**
25 Q. So you've been in the comics industry for --

Page 8

1 I'm going to do the math here -- 35 years or so?
2 **A. Yes, sir.**
3 Q. And where -- when you founded Antarctic Press
4 was your brother all -- always involved?
5 **A. No.**
6 Q. When did -- when did your -- and what's your
7 brother's name?
8 **A. Joeming Dunn.**
9 Q. Okay. Does he go by "Joe" sometimes?
10 **A. Yes, that's his shortened name.**
11 Q. His nickname?
12 **A. Uh-huh, yes, sir.**
13 Q. And when did -- when did Joe become involved
14 with Antarctic Press?
15 **A. Oh, he became involved in 1989.**
16 Q. And prior to that, did you own the company?
17 **A. Yes.**
18 Q. And did you sell it to your brother in 1989?
19 **A. No, he was my financial advisor. He helped run**
20 **the company by doing various things and just generally**
21 **mostly moral support and advisor.**
22 Q. Okay. How long did you maintain ownership in
23 the company?
24 **A. Until about 2001.**
25 Q. Were you the sole owner until 2001?

<p style="text-align: right;">Page 17</p> <p>1 A. -- yes. It was a coincidence.</p> <p>2 Q. Were you privy to any communications once this</p> <p>3 announcement was made that were angry or threatening</p> <p>4 toward Antarctic Press?</p> <p>5 A. No, I was not --</p> <p>6 MR. PIERCE: Objection, form.</p> <p>7 THE WITNESS: Oh, I'm sorry.</p> <p>8 MR. PIERCE: It's okay. No, you can</p> <p>9 answer.</p> <p>10 A. No, I was not privy to any communications. My</p> <p>11 brother would not show me anything.</p> <p>12 Q. (BY MR. BYRNE) Okay. Prior to the phone call</p> <p>13 in question, which we'll get to in a minute, what</p> <p>14 kind -- what -- what you do remember about</p> <p>15 conversations you had with your brother or with other</p> <p>16 people at Antarctic Press about the decision to</p> <p>17 publish Jawbreakers?</p> <p>18 A. All right. Well, prior to the phone call,</p> <p>19 we -- he started getting emails and posts when -- once</p> <p>20 the announcement was made that seemed very hostile</p> <p>21 toward the announcement. And someone had either</p> <p>22 forwarded to him or told him that there was a -- either</p> <p>23 a Facebook post of a bunch of retailers who were</p> <p>24 deciding they weren't going to carry the book because</p> <p>25 of their animosity toward the creator of -- of</p>	<p style="text-align: right;">Page 19</p> <p>1 retaliation, you know, since the announcement, he began</p> <p>2 to tell me that he had never experienced such vitriol</p> <p>3 before, you know, on any book that -- I mean, we've</p> <p>4 done controversial books in the past and we've had our</p> <p>5 share of detractors, but this was nothing we'd ever --</p> <p>6 or at least I've never experienced before. So I can</p> <p>7 only say what my brother must have experienced since he</p> <p>8 didn't want to show me the things he's been -- was</p> <p>9 getting, but he told me he was not -- was -- it was</p> <p>10 not what you -- nice. It was not very nice.</p> <p>11 Q. (BY MR. BYRNE) All right. And on -- on May</p> <p>12 11th of 2018 there was -- were you -- which is the day</p> <p>13 of the phone call.</p> <p>14 A. Yes.</p> <p>15 Q. Were you in the Antarctic Press offices?</p> <p>16 A. No, we were at my brother's residence.</p> <p>17 Q. Okay. And were you there with your brother?</p> <p>18 A. I was there with my brother but not in the same</p> <p>19 room as the phone call.</p> <p>20 Q. Okay.</p> <p>21 A. I was in the next room.</p> <p>22 Q. Okay. Were you there when the phone call came</p> <p>23 in?</p> <p>24 A. I was there when the phone call came in.</p> <p>25 Q. And was the phone call -- well, let me ask you</p>
<p style="text-align: right;">Page 18</p> <p>1 Jawbreakers. So at first, we did not take this</p> <p>2 seriously because it didn't occur to us that this was</p> <p>3 something would -- needed to be taken, you know,</p> <p>4 seriously, and because we -- in the 30 years we've been</p> <p>5 in business, we've never encountered anything of this</p> <p>6 magnitude before.</p> <p>7 Q. Was the -- was there any discussion that you</p> <p>8 had with your brother or the other Antarctic Press</p> <p>9 folks about whether this would be a good thing for the</p> <p>10 company?</p> <p>11 A. Well --</p> <p>12 MR. PIERCE: Object, form.</p> <p>13 Q. (BY MR. BYRNE) Let me -- let me rephrase.</p> <p>14 A. Okay.</p> <p>15 Q. Is -- was there any discussion that you had</p> <p>16 your brother or others at Antarctic Press about whether</p> <p>17 the publication of Jawbreakers would be a good thing</p> <p>18 for the company?</p> <p>19 MR. PIERCE: Object, form.</p> <p>20 A. I was aware of the Kickstarter -- I mean, not</p> <p>21 the Kickstarter -- I -- Indiegogo campaign, and I was</p> <p>22 following it so I knew it was doing quite well. So I,</p> <p>23 in my mind, translated that it would do very well for</p> <p>24 AP as well. You know, and Joe, you know, thought the</p> <p>25 same thing. But once he started getting hostile</p>	<p style="text-align: right;">Page 20</p> <p>1 this. Was -- was the phone call -- do you remember the</p> <p>2 sequence of events -- let me withdraw that question.</p> <p>3 Do you remember the sequence of events leading up to</p> <p>4 the phone call? For example, do you remember whether</p> <p>5 there was a call made to the Antarctic Press offices or</p> <p>6 whether -- who -- who initiated this communication is</p> <p>7 what I'm trying to find out.</p> <p>8 A. I'm not aware of any prior communication. I do</p> <p>9 know that I was in the -- my brother's residence in the</p> <p>10 main living room when he got a phone call on his -- I</p> <p>11 believe it was his cellphone, and he said he had to</p> <p>12 take it because it was from Mark Waid and --</p> <p>13 Q. Do you know whether he dialed out to return a</p> <p>14 message from Mr. Waid or whether the -- the -- the call</p> <p>15 was incoming?</p> <p>16 A. I -- I don't know. I -- I believe he got it</p> <p>17 and he said he had to take it, so he went to another</p> <p>18 room and he closed the door, and either he continued</p> <p>19 the phone call on his cellphone or he transferred to</p> <p>20 a -- a -- I'm not sure.</p> <p>21 Q. Prior -- prior to that phone call, whether it</p> <p>22 was initiated -- whoever it was initiated by?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Was the -- was it -- what was your</p> <p>25 understanding as to whether Antarctic Press was still</p>

<p style="text-align: right;">Page 21</p> <p>1 planning to publish Jawbreakers at that time? 2 MR. PIERCE: Form. 3 A. Yeah, as far as I knew it was -- I'm sorry -- 4 as far as I knew, nothing had changed, even up to that 5 phone call. There was no reason for me to believe 6 otherwise. 7 Q. (BY MR. BYRNE) Okay. So you -- you were not 8 privy to either side of the conversation that took 9 place between your brother and Mr. Waid; correct? 10 A. No, but had I known, I probably would have 11 ingratiated myself, but I thought it was just another 12 business call. 13 Q. Okay. Did you hear any muffled sounds or any 14 tone of the conversation that was taking place in the 15 other room? 16 A. No, I didn't hear anything. 17 Q. Okay. And what -- what happened next after the 18 call was -- 19 A. After the call was over, I could tell my 20 brother was not -- was not -- was visibly upset. I 21 wouldn't say he was shaking or anything, but I could 22 tell that whatever transpired was not something 23 positive because otherwise he would have told me 24 immediately what the phone call was about and what it 25 pertained to, but he didn't say anything about the</p>	<p style="text-align: right;">Page 23</p> <p>1 cancel the -- cancel the book. 2 Q. And do you know whether it was that same day or 3 another day? 4 A. I believe it was the next. It was either later 5 that day or the next day. I -- I can't recollect 6 exactly the time. 7 Q. Okay. I'm just going to ask you to glance 8 quickly through Exhibit 7 to the depositions in this 9 case? 10 MR. PIERCE: Do you have an extra copy? 11 MR. BYRNE: Yeah, I do. 12 MR. PIERCE: My apologies. 13 Q. (BY MR. BYRNE) And -- and I'll just give you 14 this -- I -- I might -- I -- I really want you to 15 confirm that even though that has "Ben" at the top, 16 that -- that this is not -- whether this is a 17 conversation with you or with your brother, a text 18 conversation. 19 A. Uh-huh. 20 MR. PIERCE: Dan, I think I have a copy. 21 A. I -- I don't remember this, but I -- it's 22 possible I did this. 23 MR. BYRNE: Here it is. 24 MR. PIERCE: Thank you very much. 25 A. Okay. What did -- what did you need to know</p>
<p style="text-align: right;">Page 22</p> <p>1 phone call to me at all. 2 Q. So that -- that evening he didn't share 3 anything about the phone call? 4 A. Well, later on -- no, he didn't share anything 5 about the phone call immediately afterwards. Okay. 6 And then later, maybe an hour or two, he said he may -- 7 he had to re -- maybe had to reconsider publishing the 8 book and -- Jawbreakers. And I asked him, "Well, why? 9 You know, why would you want to do that?" He says, 10 "Well, I" -- I believe he told me that he could not 11 bear the -- the overwhelming negative responses he was 12 getting at that time, and I -- I -- I basically just 13 told him, you know, "You -- you're the -- you're the 14 boss of the company. You have to make that decision. 15 You know, I -- I'm against it, but you have to make 16 that final choice because it's your company." 17 Q. Okay. And did you have any more conversations 18 that day about his decision? 19 A. No, he refused to talk about it, so I didn't 20 bring it up. 21 Q. Okay. And do you recall when the decision was 22 announced about not following through on publication? 23 A. Um, he -- I had learned of the -- of the 24 announcement the same as everybody else on the day that 25 AP made the official announcement that they had to</p>	<p style="text-align: right;">Page 24</p> <p>1 about that one? 2 Q. (BY MR. BYRNE) Well, I'll -- I'll just say 3 this. Does this look familiar to you? 4 A. It does somewhat, yes. 5 Q. Does your wife's family have a family reunion 6 in Temple on Memorial Day in 2018? 7 A. Yes. 8 Q. That's your wife? 9 A. Not my wife. My brother's wife. 10 Q. Okay. And you didn't have any conversations 11 with Mark Waid on May 11th? 12 A. No, did not have any conversation with him. 13 Q. After the decision was announced by Antarctic 14 Press to discontinue the publication of Jawbreakers, 15 what's the next substantive interaction you recall 16 having with your brother or anybody else at Atlantic 17 Press concerning Jawbreakers or the Jawbreakers 18 decision? 19 A. Not much really. We -- I -- I told him I would 20 support whatever decision he would make, of course, you 21 know, he's my brother. So I wanted to make sure that 22 he -- I had his back, you know, as far as whatever 23 decision he made. I -- you know, I -- I didn't want 24 him to think that his decision was an error in any way, 25 because, you know, he knew the consequences of it, and</p>



HOME COMICS FILM TV GAMES COLLECTIBLES

POP CULTURE

MENU

SUBMIT TIP

CONTACT

CGC INSIDER

Search ...



Home » BC Network » Recent Updates » No Enemy But Peace – Richard Meyer, Antarctic Press, and Jawbreakers

No Enemy But Peace – Richard Meyer, Antarctic Press, and Jawbreakers

Posted by Rich Johnston May 13, 2018 1710 Comments

758

26



We first covered one of **Richard Meyer's** Kickstarter projects back in 2012 on Bleeding Cool when he was a writer and artist struggling to work professionally in the comics industry. The project, called *No Enemy But Peace* seemed to go well enough, raising almost \$4000 from over a hundred people.

Meyer's latest crowdfunded comic project was on IndieGoGo. *Jawbreakers*, is a military superhero comic to be drawn by well-known comic book artist **Jon Malin**, with covers



Antarctic Press | Comics And Chill

@AntarcticPress

Follow

FACTS: Mark Waid put a call in to our office. Staff took a message and told Mr. Waid our publisher would be informed. Nobody at AP contacted @CBCebulski or @Marvel nor felt threatened in any way by Mr. Waid's call. We have not been bullied into a decision by any comics pro.

10:58 PM - 12 May 2018

107 Retweets 275 Likes



301



107



275



As for the allegations of intimidation, threats, and coercion, I asked Waid what happened. He told me:

When I heard that fans and creators were coming down on the AP publisher for doing business with Meyer, I gave him a call. I'd met him before. He seemed like a good guy, and something didn't jibe; I was surprised that he'd want to get in bed with someone whose idea of marketing was to ask his fans to put together a list of stores that chose not to carry his book and to then circulate that list along with the full names, first and last, of the stores' employees and their phone numbers for ease of targeting and harassment. (No store "owes" it to customers to carry every comic. No store carries every comic. Stores pick and choose what they wish to sell based on what they think their customers will support and, to some degree, on their own personal feelings about the subject matter, the publisher's track record, and other factors—including, sometimes, whether or not they want to put money into the pocket of a

creator or creators who publicly refer to women in comics as “cumbuckets” or transgender creators as “men in wigs.”) Don’t be fooled, by the way—making that list wasn’t about selling comics or helping or healing the industry—for that, like Mark Millar does, you’d be supportive and circulate a list of stores that DO carry your books. This was flat-out about punishing and harassing and intimidating the stores who didn’t carry his book. “Nice store y’got here. Be a shame if there was allasudden a buncha one-star reviews on Yelp and Google...” C’mon. Why else would you make sure a list existed and was circulated that carried the personal information of not the owners but their employees? Would it be cool with you if, because I didn’t like the way your boss does business, I phoned you directly to complain rather than him? Of course not.

So. I called the publisher, who I knew to be a good guy, because I suspected there was more to this than “Yes, sign us up to make money for the transphobe,” and there was. He’s a busy man who has a full-time day job as well as a publishing house, and he’s not much for social media, so it never occurred to him to vet the creators. Why would it? That’s an honest mistake to make—as a publisher myself, if I see work I like and want to publish, it doesn’t automatically occur to me to just, by the way, make sure the creator is a decent human being (but apparently it ought to—lesson learned). I phoned him out of legitimate concern to warn him that there seemed to be a lot of anger directed at him by fans unhappy that he’d so openly embrace someone whose entire reputation was based on harassment and preaching intolerance and bigotry. Not “warn” him like “Hey, if you know what’s good for you, I’m just sayin’...” — warn him, as someone who has respect for him, that he may not realize who he’d gotten in bed with.

As it turns out, he was way ahead of me on this. It’s not my place to speak for him, but he was appalled that stores—the stores he makes his living selling to—were getting harassed. He’d learned an awful lot about his new

partner in the previous 24 hours. He and I had a good, productive conversation, listening to one another, disagreeing on some philosophical points but agreeing on others. Again, by his request, I'm not really at liberty to go into detail about the conversation other than to make clear that (a) he'd pretty much come to his conclusions about what to do long before he and I talked, and (b) he'll back me up when I report that at no time did I ask him not to publish the book or ask him not to affiliate with its creators. (I don't have any more right to bully someone into not publishing a comic than they have the right to bully my publishers.) My purpose in calling was to discuss, as we did, the potential fallout and how to navigate it. I offered to, once the dust settles, conduct an interview with him for publication where we can talk about the choices he's made here and the thinking behind them—they're pretty interesting, particularly when it comes to the difficulty in separating the artist from the art, and I think it'd be terrifically informative.

From my point of view, I think the publisher clearly had no idea what kind of a man he was helping to enrich, and I'm genuinely impressed that, now knowing what he knows, he's taken a stand even though he's in a no-win situation where he can piss off either his longtime customers and creators or a small but loud lynch mob that embraces doxxing and harassment as a marketing strategy

In the light of the cancellation, Richard posted:



Diversity & Comics
@DiversityAndCmx

Follow

Please don't send any negative messages or energy toward @AntarcticPress

They did what they had to do after enduring a vicious wave of bullying from SJW Comic Book Pros that was led by Mark Waid.



JAWBREAKERS- LOST SOULS graphic novel

A team of ex-superheroes attempt to save a monster from a vicious warlord who wants to exploit it!

indiegogo.com

6:08 AM - 12 May 2018

116 Retweets 468 Likes



But it didn't seem to work. As to the targeted stores, I asked **John Hendrick** of Big Bang Comics in Dublin, whose store first tweeted out that they wouldn't be carrying the comic, while letting any customers discover other stores that might.



Big Bang Comics
@TheBigBang_

We are choosing not to stock the upcoming @AntarcticPress comic **JAWBREAKERS**

Please check comicshoplocator.com/Home/1/1/57/575 for an alternate local retailer.

2:45 PM - May 10, 2018

There's A Lot to See and Do at Your Local Comi...

comicshoplocator.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD MEYER,
Plaintiff

§
§
§
§
§
§
§

v.

Case No. 1:18-cv-00800-LY

MARK WAID,
Defendant

**DEFENDANT MARK WAID’S OBJECTIONS & RESPONSES
TO RICHARD MEYER’S FIRST SET OF INTERROGATORIES**

TO: Plaintiff, by and through his attorney of record, Daniel H. Byrne, Dale L. Roberts, Fritz, Byrne, Head & Gilstrap, PLLC, 221 W. 6th St., Suite 960, Austin, TX 78701

Pursuant to the Federal Rules of Civil Procedure, Defendant Mark Waid (“Defendant” or “Waid”) serves these objections and responses to Richard Meyer’s First Set of Interrogatories to Mark Waid.

Respectfully submitted,

REEVES & BRIGHTWELL LLP



Beverly Reeves, Esq.
State Bar No. 16716500
breeves@reevesbrightwell.com
Ryan Pierce, Esq.
State Bar No. 24035413
rpierce@reevesbrightwell.com
221 W. 6th Street, Suite 1000
Austin, TX 78701
(512) 334-4500
(512) 334-4492 (facsimile)

Mark S. Zaid, Esq.
D.C. Bar #440532 (admitted *Pro Hac Vice*)
Mark@MarkZaid.com
Mark S. Zaid, P.C.
1250 Connecticut Ave., N.W., Suite 700
Washington, D.C. 20036
(202) 454-2809
(202) 330-5610 fax

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2019 the above and foregoing document was served via electronic mail and hand delivery on the following counsel of record:

Daniel H. Byrne
Dale L. Roberts
Fritz, Byrne, Head & Gilstrap, PLLC
221 W. 6th St., Suite 960
Austin, TX 78701
dbyrne@fbhg.law
droberts@fbhg.law



Ryan Pierce

INITIAL OBJECTIONS

1. Defendant responds to Plaintiff's discovery requests, subject to and without waiver of Defendant's pending challenge to personal jurisdiction. Defendant has not yet completed either discovery or an investigation of the facts and documents relating to this action. Defendant reserves the right to revise, supplement, or clarify his responses to these requests as may be necessary.

2. These responses are made without in any way waiving:

- a. Any objections as to the relevancy, materiality, and admissibility as evidence for any purpose in this action or any other action;
- b. The right to object to the use of any of these responses in this action or any other action; and
- c. The right to elicit appropriate evidence, beyond the discovery responses themselves, regarding the subjects referred to in or in response to any discovery request.

3. Defendant responds to these requests as specifically provided in the Federal Rules of Civil Procedure. To the extent that Plaintiff seeks to impose on the Defendant any requirements to answer in any other manner, or on behalf of any other persons or entities, Defendant objects to the requests as being outside the scope of discovery permitted by the Federal Rules of Civil Procedure. Defendant further objects to the extent the requests are inconsistent with the Court's November 29, 2018 order.

4. Defendant objects to the extent that any interrogatory seeks information that is protected from discovery by the attorney-client, work-product, or any other privilege.

5. Defendant additionally objects to the extent the interrogatories seek confidential and/or proprietary information without entry of an appropriate protective order or confidentiality agreement. For example, Defendant objects to the extent the interrogatories would require divulging private confidential communications identifying the person, or his or her contact or identifying information, without entry of a protective order or confidentiality agreement, particularly in light of the history of harassment that has occurred in connection with this matter.

OBJECTIONS & RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each instance in which you have traveled to the state of Texas in the last two years, by stating: (1) the date(s) and length of time for each instance; (2) the location(s) within Texas to which you traveled; (3) the purpose of the travel; (4) the persons with whom you interacted; and (5) a description of any presentations, panel discussions, or other public appearances by You while in Texas, including the reason for the appearance and the subject matter addressed.

RESPONSE: Defendant objects to this interrogatory as overbroad and outside the permissible scope of the Court’s November 29, 2018 Order on the basis that its request regarding interactions, presentations, discussions, and appearances reaches beyond any relationship to Meyer and presents an undue burden (e.g., asking him to identify each person with whom Defendant interacted).

Subject to and without waiving Defendant’s initial objections, Defendant responds as follows: I visited Texas once in the last two years. I flew to Houston on May 23, 2018, for a store signing at Bedrock Comics, where I interacted with the store owner and a publicist. I also “interacted” with an estimated 300 fans. On May 24, 2018, I relaxed in my hotel room and visited with friends for dinner. On May 25-27, 2018, I was a guest at the three-day Comicpalooza convention. I signed at a designated table for a couple of hours each day, “interacting” with hundreds of fans who wanted autographs. At these signings, the “interactions” with my fans seeking autographs were brief, mostly just comments like “thank you,” or “Do you want this personalized?” I recall doing three panels: a Superman panel on May 25, 2018, at noon, a “Q&A” session on May 26, 2018, at 10:30am, and I moderated a panel about writing for various publishers on the same date at 1:30pm. The Q&A session for the second panel involved a brief discussion on the subject of Comicsgate and the Plaintiff (as previously identified in my supplemental declaration). On May 27, 2018, I departed Houston.

INTERROGATORY NO. 2: Identify every communication concerning Waid [sic] with any person whom you believed to be, or now know [sic] to have been, a resident of, or located in, Texas at the time of such communication by state: (1) the date of the communication; (2) the persons involved in the communication; (3) the means of communication (e.g., phone, email, in-person conversation, text message, etc.) and (4) the substance of the communication.

RESPONSE: Defendant objects to this interrogatory as vague and ambiguous in its reference to “Waid.” Defendant assumes Plaintiff meant to state “Meyer.” Defendant objects to this request to the extent that it seeks information and/or materials protected by the attorney-client privilege and attorney work product doctrine (including any communications with Texas litigation counsel, communications with whom are protected by the attorney client privilege and work product doctrine). Defendant also objects to the extent the interrogatory seeks disclosure of confidential private communications and personal identifying information, which would be provided only under redactions or with entry of an agreeable protective order or confidentiality order. Defendant further objects

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD MEYER,
Plaintiff,

§
§
§
§
§
§
§

v.

CASE NO.: 1:18-CV-00800

MARK WAID,
Defendant.

(Jury Demanded)

**ORDER DENYING DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT FOR LACK OF JURISDICTION**

CAME ON FOR CONSIDERATION, Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint for Lack of Jurisdiction [Dkt. 43] (the “Second Motion to Dismiss”). Having reviewed Motion to Dismiss and response thereto, along with the evidence submitted therewith, the Court is of the opinion that the Second Motion to Dismiss should be denied. It is therefore,

ORDERED, that Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint for Lack of Jurisdiction is DENIED.

SIGNED on _____, 2019.

UNITED STATES DISTRICT JUDGE