IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

DENA LEWIS-BYSTRZYCKI, Plaintiff, v. CITY OF COUNTRY CLUB HILLS, a municipal corporation, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA in their individual capacity, Defendants.	No. 2012 L 009916 Honorable Brigid McGrath

DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND 502(d) NON-WAIVER ORDER

Defendants, City of Country Club Hills, Joseph Ellington, Carl Pycz, and Roger Agpawa by and through their attorneys, Keefe, Campbell, Biery & Associates, LLC, move the Court for a protective order pursuant to Illinois Supreme Court Rule 201, and an Illinois Rule of Civil Evidence 502(d) non-waiver order and in support of the same, state as follows:

INTRODUCTION

1. On April 29, 2016 Defendants' filed their response to Plaintiff's Second Motion to Compel. A copy of the response, without exhibits, is attached as Exhibit 1.

2. On August 31, 2016, the parties were before the Court on Plaintiff's Second Motion to Compel and for Sanctions. A copy of the Court's order of August 31, 2016 is attached as Exhibit 2.

3. During the hearing on August 31, an issue regarding Plaintiff's request for an inspection of four computers at the Country

Club Hills Fire Department (to look for pornography) was discussed with the Court. A copy of the report of proceedings of the August 31, 2016 hearing is attached as Exhibit 3.

4. A forensic imaging of the four computers hard drives and data, allegedly from the four computers, saved on servers, was imaged on January 26, 2017.

5. On April 20, 2016, Defense counsel re-deposed Plaintiff for two hours. Plaintiff identified six fire fighters she alleges she has seen watching pornography. See Exhibit 1, page 2-4 referring to deposition testimony. Although no report has been obtained regarding the forensic imaging, it is possible the drives may contain information from many persons not alleged by plaintiff to have viewed pornography.

Based on counsel's behavior in other cases of record in the Chicagoland area, and the information purportedly that may be derived from the data search of the City of Country Club Hills Fire Department's (the "Fire Department") computer servers, it is expected that counsel will attempt to gain a potential edge in this litigation through use of sensitive information and case evidence to influence the jury pool through the media and other means. Hence, a protective order would allow for the protection of Defendants against embarrassment, harassment, and oppression, and would further protect the integrity of a fair jury pool at the trial of this matter, while simultaneously not prejudicing the plaintiff.

ARGUMENT

I. ANY IRRELEVANT OR IMMATERIAL DATA OBTAINED FROM THE FIRE DEPARTMENT'S COMPUTER SERVERS SHOULD BE PROTECTED AGAINST DISCLOSURE

Any irrelevant or immaterial data obtained from the Fire Department's computers should be initially screened by the Court (and also by defendants) to determine whether that data is relevant and material to the issues subject to the instant lawsuit. This should be done in advance of the plaintiff receiving any of the relevant and material data from its expert that was obtained from the Fire Department's computer servers. Otherwise, plaintiff will likely obtain irrelevant and immaterial data to use in a negative light in the media and jury pool against the Fire Department in an effort at a smear campaign as opposed to obtaining relevant and material information from the data search for purposes of plaintiff prosecuting her case.

Illinois discovery law generally provides:

> (c) Prevention of Abuse.
>
> (1) Protective Orders. The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression.
>
> (2) Supervision of Discovery. Upon the motion of any party or witness, on notice to all parties, or on its own initiative without notice, the court may supervise all or any part of any discovery procedure.

> (3) Proportionality. When making an order under this Section, the court may determine whether the likely burden or expense of the proposed discovery, including electronically stored information, outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

Ill. Sup. Ct. R. 201(c) (West 2016). Defendants have reason to believe that plaintiff attempts to obtain both irrelevant and immaterial data as a part of its search of the Fire Department's computers. As a result, the Court and Defendant's counsel should first be allowed to review the data obtained to determine whether it is both relevant and material to plaintiff's claims. If it is, then perhaps further protective orders can be considered, but for the time being, plaintiff should not have unfettered access to information that is both irrelevant and immaterial.

For instance, if the data search of the Fire Department's computers demonstrates information that is not related to the plaintiff's complaints, it is expected that plaintiff's counsel will use that type of information in an effort to apply public pressure on the Defendants when the very same information is irrelevant and immaterial to her claims. In other words, there should be a protective order from the Court providing for *in camera* inspection of any returned data from the search; preventing plaintiff or her counsel from reviewing that data until the Court and defense counsel have reviewed it; requiring that plaintiff's counsel not be allowed to view any irrelevant or immaterial data—based on the Court's final decision as to what is relevant and material to plaintiff's claims.

II. THE COURT SHOULD IMPOSE RESTRAINTS AGAINST PLAINTIFF'S EFFORTS TO INFLUENCE THE JURY POOL.

In the past in this litigation, plaintiff attempted to influence the jury pool and public in advance of trial. In fact, on or about August 19, 2015, plaintiff submitted deposition video footage to local media in an effort at the same. See http://www.fox32chicago.com/news/local/9852271 (accessed on Feb. 3, 2017) More recently, see http://edgarcountywatchdogs.com/2017/01 /country-club-hills-sanctioned-by-court-possible-pornography-on-fire-department-computers/. (accessed on Feb. 3, 2017).

Moreover, Defendants believe that plaintiff's counsel makes this a pattern and practice of her litigation tactics as determined by Judges in other venues in the State of Illinois. See Exhibit 4, Opinion and Order from September 29, 2016, of Judge Sara L. Ellis, United States District Judge, from Fuery v. City of Chicago, et al, Case No. 07 C 5428. Consequently, the Court should stop plaintiff's attempts to communicate with the potential jury pool.

A gag order preventing plaintiff from submitting materials and discovery obtained in this case to any media source would prevent irreparable, serious, and imminent threats to Defendants' rights to a fair trial. Several courts have recognized an exception to the general rule on gag orders where disclosure of information concerning pending litigation by the parties or their counsel would present a clear and present danger or a reasonable likelihood of a serious and imminent threat to the litigants' right to a fair trial. (See, e.g., *Hirschkop v. Snead* (4th Cir.1979), 594 F.2d 356; *Chicago Council of Lawyers v. Bauer* (7th Cir.1975), 522 F.2d 242, 251; *CBS, Inc. v. Young (6th Cir.*1975), 522

F.2d 234, 239; *Chase v. Robson* (7th Cir.1970), 435 F.2d 1059, 1061; *United States v. Tijerina* (10th Cir.1969), 412 F.2d 661, 666; *Ruggieri v. Johns-Manville Products Corp.* (D.R.I.1980), 503 F.Supp. 1036, 1040; *United States v. Marcano Garcia* (D.P.R.1978), 456 F.Supp. 1354, 1357–58; *Cooper v. Rockford Newspapers, Inc.* (1975), 34 Ill.App.3d 645, 650–51, 339 N.E.2d 477.) *Kamner v. Monsanto Co.*, 112 Ill.2d 223, 243 (Ill. 1986). While some courts have applied the "reasonable likelihood" test, others have rejected that test as being too broad and have, instead, applied the more narrow and restrictive test of a "serious and imminent threat" of interference with the fair administration of justice. *Id.* at 243-4, *citing* Chicago *244 Council of Lawyers v. Bauer (7th Cir.1975), 522 F.2d 242, 249; see Note, Attorney "Gag" Rules: Reconciling The First Amendment and the Right to a Fair Trial, 1976 U.Ill.L.F. 763, 778.

The instant case presents a potential conflict between the first amendment right of free speech and the right to a fair trial guaranteed by the due process clause of the fourteenth amendment. In order to achieve the delicate balance between the desirability of free discussion and the necessity for fair adjudication, free from interruption of its processes, the trial court can restrain parties and their attorneys from making extrajudicial comments about a pending civil trial only if the record contains sufficient specific findings by the trial court establishing that the parties' and their attorneys conduct poses a clear and present danger or a serious and imminent threat to the fairness and integrity of the trial. *Kemner*, 112 Ill.2d at 244. Further, any restraining order which denies parties and counsel their first amendment rights in the interest of a fair trial must be neither vague nor overbroad. *Id.* (internal citations omitted).

Here, the Court should impose restraints on plaintiff. This is not only based on her past conduct in these proceedings, but on her counsel's pattern and practice of submitting materials to the local media in other proceedings in an effort to influence the jury pool, and get evidence to them that may be excluded from a potential trial. Plaintiff should know better, but she does not.

III. THE COURT SHOULD ENTER A RULE 502(d) NON-WAIVER ORDER.

An Illinois Rule of Evidence 502(d) non-waiver order protects the parties and their counsel against a waiver of attorney-client privilege or work product protection that can potentially occur in discovery, especially with the ESI. Defendants respectfully request the Court enter such order, due to the nature of the information searched on the Fire Department's computer server.

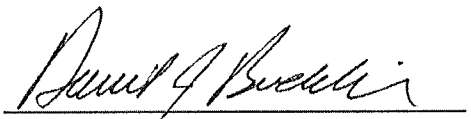
CONCLUSION

In sum, since the data obtained from the search of the Fire Department's computer server will likely have a tendency to result in a large amount of irrelevant and immaterial data, potentially involving persons not even identified by plaintiff as having viewed pornography, the Court should impose a protective order that adequately accounts for that risk. Additionally, it is expected—based on past pattern and practices—that plaintiff—through her counsel—will attempt to unjustly and purposefully influence the potential jury pool, so Defendants will be irreparably harmed by not getting a fair trial on the relevant, material, and ultimately admissible evidence. Thus, the Court should impose a

restriction upon plaintiff from submitting materials obtained in the Case to the media or public.

WHEREFORE, the Defendants, CITY OF COUNTRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA, respectfully request this Court enter a protective order and a Rule 502(d) order for any other relief this Honorable Court deems just.

Respectfully submitted,



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Attorney for Defendants

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PAGE 1 of 6
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CIVIL LAW DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

DENA LEWIS-BYSTRZYCKI, Plaintiff, v. CITY OF COUNTRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA, Defendants.	No. 2012 L 009916 Honorable Brigid Mary McGrath

DEFENDANTS' RESPONSE TO PLAINTIFF'S SECOND MOTION TO COMPEL

NOW COMES the Defendants, CITY OF COUNTRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA, by the through their attorneys, Keefe, Campbell, Biery & Associates, LLC, and for their Response to Plaintiff's Motion to Compel with respect to Plaintiff's seeking a forensic inspection of computers regarding pornography, Defendants respectfully request this Court to enter a protective order denying Plaintiff's request for inspection in its entirety and/or quashing the Notice of Inspection and for any other relief this Honorable Court deems just, and in support thereof, states as follows:

1. On April 22, 2016, the parties were before the Court on Plaintiff's Second Motion to Compel and for Sanctions. A copy of the Court's order of April 22, 2016 is attached as Exhibit 1.

EXHIBIT
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2. During the hearing on April 22 an issue regarding Plaintiff's request for an inspection of certain computers at the Country Club Hills Fire Department to look for pornography was raised with the Court. A copy of Plaintiff's Second Amended Notice of Inspection is attached as Exhibit 2.

3. Defense counsel noted Plaintiff's inability to testify to a date of any alleged occurrence of her viewing pornography during her recent deposition and objected to the notice as a fishing expedition. As to that issue, the Court requested defendants file a response. The Court's order of April 22, at (4) states, as to Plaintiff's request for forensic inspection of computers regarding pornography, Defendants are to respond to the motion by April 29, 2016.

4. This issue is not new. Defendants filed a Motion for Protective Order on July 17, 2015 related to an earlier Notice of Inspection. See attached Exhibit 3. Plaintiff responded to the motion on August 14, 2015. See attached Exhibit 4. Defendant's replied to the response on August 22, 2015. See attached Exhibit 5.

5. On September 16, 2015 this court ordered Plaintiff could take a photo/video inspection and entered and continued Defendant's Motion for Protective order to November 2, 2015. See attached Exhibit 6.

6. On November 2, 2015 the court order the production of the investigation of computer and cable use results. See Exhibit 7.

7. The report of the investigation was produced timely by Defendants.

8. On April 20, 2016, Defense counsel re-deposed Plaintiff for two hours. A copy of the deposition transcript is attached as Exhibit 8.

9. Plaintiff was asked about her interrogatory answer related to her alleged viewing of pornography which was on page 25 of her second supplemental answers to Defendants first

set of interrogatories. See Exhibit 9, page 25. The testimony in general is shown on Exhibit 8, starting at 51 and ending at page 81.

10. Plaintiff identified six fire fighters she alleges she has seen watching pornography. See Exhibit 8, page 53, line 12 to Page 54, line 2.

11. With respect to the first firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, page 56, lines 19 to page 57, line 2, (every day she was at work); Page 57, line 24 to page 58, line 18 (changes testimony to 50% of the time she worked with him). She could not identify a name or title of a show allegedly being watched, see Exhibit 8, Page 60, line 23 to Page 61, line 3.

12. With respect to the second firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, Page 59, line 10 to Page 60, line 2 (testified every single day shift she worked with him). She could not identify a name of title of any show he was allegedly watching. See Exhibit 8, Page 61, line 8 to line 11.

13. With respect to the third firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, Page 61, line 12 to Page 62, line 11. (testified she would have to look at a schedule from work to see what were the dates that him and I were on schedule and if that was one of the days that I remember him watching....I can't just pick a day out of my head for you....I don't know of an exact date for you); (testified he did not watch pornography every shift, Page 61, line 24 to Page 62, line 3); (testified she could not give dates she allegedly saw him glance up at the T.V. when porn was on, Page 66, line 8 – line 10).

14. With respect to the fourth firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, Page 66, line 20 to Page 67, line 17. She testified she "probably had heard or walked past the door three or four times and then

decided on four times." See Exhibit 8, Page 67, line 3 – 17. She later testified she thought the incidents had occurred over a five –year period of time and she did not know what years. See Exhibit 8, Page 67, line 18 to Page 68, line 8. She later changed her testimony to one time a year over the alleged five year period. See Exhibit 8, Page 68, line 19 to Page 69, line 11. She testified she did not walk into the room and did not know if it was on a computer or television. Exhibit 8, Page 72, line 6 to Page 73, line 2. She testified he was alone in his room and she did not say anything to him or complain. Exhibit 8, Page 73, line 3 to Page 73, line 16. She could not identify a title or show he was allegedly watching. Exhibit 8, Page 73, line 17 – 20.

15. With respect to the fifth firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, Page 69, line 18 to Page 70, line 21. She testified she would have to guess the number of times she witnessed him allegedly watching pornography. See Exhibit 8, Page 70, line 2 – 12. She testified she thought the incidents had occurred over a one year period of time when he was her Lieutenant and she did not know what year. See Exhibit 8, Page 70, line 11 – 21. She could not identify a title or show he was allegedly watching. Exhibit 8, Page 73, line 21 – 24. She testified she never walked into the room when the programs were on. Exhibit 8, Page 74, line 16 – 17. She testified she was guessing as to where she allegedly saw him watching pornography. Exhibit 8, Page 75, line 18 to Page 76, line 10.

16. With respect to the sixth firefighter she identified, she could not give a date she allegedly saw him watching pornography. See Exhibit 8, Page 76, line 16 to Page 77, line 2, and Page 79, lines 19 - 24. She testified she would have to guess the number of times she witnessed him allegedly watching pornography. See Exhibit 8, Page 77, line 3 to Page 78, line 1. She testified she thought the incidents had occurred over a period of time from 1998 to 2015. See Exhibit 8, Page 80, line 2 – 5.

17. She testified she did not make a note of every day someone was allegedly watching porn. See Exhibit 8, Page 62, line 12 - 17. She testified she did not make any note of any time she saw anybody watching pornography at the fire station. See Exhibit 8, Page 81, line 10 – 17.

18. Trial courts have wide discretion in matters of discovery including the entry of protective orders. *In re Daveisha C.*, 17 N. E. 3d 857 (1st Dist. 2014). Under Illinois Supreme court rule 201C, a court may enter a protective order, either at the request of a party or on its own motion as justice requires. *Id.* Whether justice requires a protective order, and the parameters of that order, falls within the discretion of the trial court. *Id.* Protective orders are among the tools the circuit courts may use in order to oversee and prevent harassment during discovery. *JPMorgan Chase Bank, N.A. v East-West Logistics, L.L.C.*, 9 N.E.3d 104 (1st. Dist. 2014). In line with Supreme Court rules, the right of discovery is traditionally limited to disclosure of matters relevant to the case at issue. In order to protect against abuses and unfairness, a court should deny discovery requests when there is insufficient evidence that the requested discovery is relevant or will lead to such evidence. *In Re All Asbestos Litigation v. LaConte*, 385 Ill.App.3d 386 (1st Dist. 2008). Courts generally hold that wide, sweeping discovery requests are considered an abuse of discretion. *Id.*

19. In this matter the requested inspection is irrelevant to the actual issues in the case. It would not lead to any admissible evidence. Plaintiff has not alleged any dates of alleged viewing of pornography or any complaints to anyone of viewing pornography. Any investigation of the computers or televisions would not lead to any admissible evidence. It is simply a fishing expedition.

WHEREFORE, the Defendants, CITY OF COUNTRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA, respectfully request this Court enter a protective order denying Plaintiff's requests for inspection in their entirety and/or quash the Notice of Inspection and for any other relief this Honorable Court deems just.

Respectfully submitted,

Daniel J. Boddicker
Attorney for Defendants

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Chicago, IL 60661
Phone: 312-756-1800
Firm No. 49785

Order

(2/24/05) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Serafeim Bystrezychi

v.

City of Country Club Hills, et al

No. 2012 L 9916

ORDER

This matter coming before the court on several motions; it is hereby ordered:

(1) Plaintiff's Second Motion to Compel as to the forensic imaging of certain computers is granted as stated on the record (see transcript);

(2) Plaintiff's Motion to Strike Def's Forensic Expert is denied;

(3) Plaintiff's 3rd Motion for Sanctions is denied without prejudice for the reasons stated on the record;

(4) Plaintiff to provide Defs with outstanding ESI/forensic imaging emails and completed ESI documents;

(5) Status set for September 26, 2016 @ 9:45 AM

ENTERED.

Dated: AUG 31 2016

Judge Brigid M. McGrath

Judge's No.

ENTERED
JUDGE BRIGID MARY McGRATH-1806
AUG 31 2016
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS

Atty. No.: 43132
Name: Kurtz Law Offices
Atty. for: Plaintiff
Address: 32 Clark St
City/State/Zip: Hinsdale IL 60521
Telephone: 630 323 9444

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT
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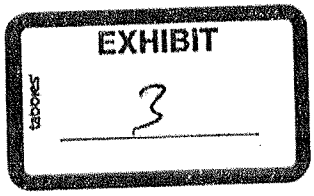
STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

DENA LEWIS-BYSTRZYCKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2012 L 009916
	)	
CITY OF COUNTRY CLUB HILLS, a municipal corporation, and CARL PYCZ, JOSEPH ELLINGTON and ROGER AGPAWA, in their individual capacity,	)	
	)	
Defendants.	)	

REPORT OF PROCEEDINGS had at the hearing in the above-entitled cause before the HONORABLE BRIGID MARY McGRATH, Judge of said court, on Friday, the 31st day of August, A.D., 2016 at the Richard J. Daley Center, Room 1907, 50 West Washington Street, Chicago, Illinois, at approximately 9:30 a.m.



APPEARANCES:

KURTZ LAW OFFICES, LTD.
BY: MS. DANA L. KURTZ
32 Blaine Street
Hinsdale, Illinois 60521
(630) 323-9444

appeared for the Plaintiff;

KEEFE, CAMPBELL, BIERY & ASSOCIATES, LLC
BY: MR. DANIEL J. BODDICKER
118 North Clinton, Suite 300
Chicago, Illinois 60661
(312) 756-3721

appeared for the Defendants.

THE CLERK: Lewis vs. Country Club Hills.

MS. KURTZ: Good morning, your Honor. Dana Kurtz for the Plaintiff.

MR. BODDICKER: Good morning, Judge. Daniel Boddicker for the defendants.

THE COURT: Thank you both for your patience. Of course, after you left that day I found it. I had it on the chair with stickers on it, but it gave me a chance to look at everything again.

MS. KURTZ: And, your Honor, the defendants did file a motion with respect to the deposition of Velda Washington. I don't know if you want to deal with that first. She is in court and she doesn't need to be here for everything else.

THE COURT: Let's deal with that.

MR. BODDICKER: Judge, it's a petition for rule to show cause.

THE COURT: Okay. So you noticed her for deposition and she didn't show up.

MR. BODDICKER: Several times, judge.

THE COURT: What is going on? These are court orders.

MS. WASHINGTON: Yes, ma'am. On July 8th I was subpoenaed to come to court. I got the time confused. I

thought it was for 2:00 as opposed to like 10:00. Mr. Boddicker then called me and said are you coming. I live in Oak Forest. We were coming downtown. He said can you get here in an hour. I said I can't, I just kind of got confused on the time.

He rescheduled for July 14th in Miss Kurtz's office. I went there, I sat there for deposition. He insisted on a video dep. I said I did not agree with that and he decided just to cancel it.

So I have responded, your Honor.

THE COURT: And why are you objecting to a video dep?

MS. WASHINGTON: Your Honor, because I was released from the City of Country Club Hills. I was suing the City of Country Club Hills, an EEOC claim for discrimination, a wage claim because they did not pay me monies that they owed me after the case.

They ruined my reputation in the City of -- in south suburban Cook County with other black mayors and managers where I can't get employment. I don't want a video dep because it is permanent and I believe that they are trying to damage my reputation.

THE COURT: Now, is that case still pending? Has it been settled?

MS. WASHINGTON: Uh, it is still --

THE COURT: Still in the courts?

MS. WASHINGTON: Yes.

MR. BODDICKER: Judge, her case is gone. She filed an EEOC complaint. It was dismissed. She has not refiled. The time has lapsed. She's got no ongoing litigation. We want a video deposition.

THE COURT: Do you have case law that states that you are entitled to it even over her objection?

MR. BODDICKER: It's in my motion, Judge.

MS. KURTZ: And, your Honor, if I can just add for the court for reference in terms of historically. We had subpoenaed the mayor for his deposition and he objected to video. We agreed to a protective order and I believe even in that --

THE COURT: What was the nature of the protective order?

MS. KURTZ: That we wouldn't use the video and I want to say we ended up not -- It was an associate that handled it so don't quote me on it but I want to say we ended up not using the video or the video was pointed to the ceiling and there was some agreement that we wouldn't use it.

No, actually I take that back, your

Honor. For the entire time of the deposition the mayor sat with his hands over his face but we did agree pursuant to the protective order that we would not use the video in any circumstance. So there is sort of precedent in this case, you know. I have attempted to work this out with defense counsel.

He did literally sit with his hands over his face the entire time of the deposition.

MS. WASHINGTON: It is also said in the transcript, your Honor, where Attorney Kurtz said we could point the camera in a different direction, we can continue, she is here but he did not want to continue.

THE COURT: Let me see. I have not had this come up before. Petition for rule to show cause.

MS. WASHINGTON: So I have some exhibits if you want to see where we agreed to the 14th. I did come on the 14th.

THE COURT: That is fine. It seems like the main issue right now is whether or not I can force a video deposition against the wishes of the deponent.

Now, why do you want a video dep?

MR. BODDICKER: She is incredibly hostile to the City, Judge. I can let you listen to some of the messages she's left for me right now basically stating

that, how dare you subpoena me for a deposition.

THE COURT: What does it matter? I mean why do you want the video?

MR. BODDICKER: Because we believe the video is clearly going to show she is not a credible witness, that she is --

THE COURT: This isn't an evidence dep though, right?

MS. KURTZ: It's not an evidence dep.

MR. BODDICKER: This is not an evidence dep, Judge. This is a discovery deposition because plaintiff's counsel has identified Miss Washington as somebody with knowledge of discrimination. Plaintiff's counsel has refused to give me anymore information than that so right now I have absolutely no idea why Miss Washington was named. Miss Washington was a former Human Resources Director at the City of Country Club Hills.

MS. WASHINGTON: No, I was a generalist.

MR. BODDICKER: In fact, there are several things that I will probably be objecting to if she tries to state them in the deposition based on attorney client privilege. So it is very important that we take this deposition and that we see her reactions.

As I said, she just stated to you how she

believes the City is trying to ruin her reputation. She is incredibly hostile to my client. We want a video deposition to show her.

MS. WASHINGTON: Your Honor, can I play a voice mail from Mr. Boddicker please? He has surveillanced my house. He has sent people to subpoena my house when my 20-year old daughter was at home alone. As soon as she pulled into the driveway, she had some man banging at our front door. He has since come to our front door. We have to live in our house with our blinds closed because Boddicker and his crew are surveillancing my home. It's just absolutely ludicrous at this point.

I know nothing about this case, your Honor, nothing, nothing. I have nothing to contribute to this case at all, nothing. This actual case, Lewis-Bystrzycki, precedes me. I was an employee for six months.

THE COURT: Can we do a quick dep, five minute dep, in the jury room with the court reporter?

MR. BODDICKER: I am not prepared to take her deposition right now, judge.

THE COURT: Well, she doesn't know anything. You're telling me --

MR. BODDICKER: Judge, I have asked --

THE COURT: No, no, don't interrupt me.

MR. BODDICKER: Sure.

THE COURT: Now I have the deponent before me saying I don't know anything about this. So what is the prejudice in you at least establishing that for the record right now, here and now?

MR. BODDICKER: As long as I have leave to redepose her.

THE COURT: If it turns out that later on down the road that she, in fact, does have information?

MR. BODDICKER: Judge, this is what I have to say. Plaintiff's counsel, I have asked Dana Lewis whether or not she would --

MS. KURTZ: Dana Lewis?

MR. BODDICKER: Excuse me. I asked Miss Kurtz whether or not she will just say I don't want to call Miss Washington as a witness in this case. She has refused to do that.

THE COURT: I would ask you, Counsel. What is your understanding?

MS. KURTZ: If I can respond, your Honor?

THE COURT: Yes.

MS. KURTZ: So one is, and I don't know if Miss Washington will remember this, there is an email that

defense counsel produced where they had directed Miss Washington to give notice to the plaintiff that she was on administrative leave. After we filed this case, they put her on administrative leave. She is still on administrative leave, they're not letting her back to work. So that's one --

THE COURT: That is the issue that she was placed on administrative leave on a time and date certain?

MR. BODDICKER: She was placed on administrative leave.

MS. WASHINGTON: I have the email of her being placed on administrative leave. I also have an email here of me saying to the mayor "Mayor, I know nothing about this."

THE COURT: Would you stipulate to the authenticity, both sides, if this went to trial; would you stipulate to the foundation of this email without requiring this woman's deposition testimony?

MS. KURTZ: We would, judge.

THE COURT: Okay.

MS. KURTZ: That's fine.

There is a separate issue of under the case law with respect to sexual harassment retaliation cases.

One of the ways in which proving motive of discriminatory or retaliatory intent is showing comparatives and how they have treated others.

As your Honor recalls, you have ordered defendants to produce the EEOC charges, the complaints and lawsuits filed by other individuals. I still don't have those documents, including Miss Washington's EEOC charge that she filed.

THE COURT: Miss Washington is telling me that she worked there after your client.

MS. WASHINGTON: Well, it preceded me. Everything in terms of, you know, filing the charge for harassment preceded me. I was never included in that, your Honor.

They hired a consultant by the name of Marian Williams who came in and sat with the fire chief and everyone else to investigate the claim. I was not involved. I was simply hired as a generalist and that was to manage benefits and payroll and things like that. I was rarely even invited to the meetings.

I do have my EEOC charge here that talks about that I believe the City is just -- They've discriminated against me. Your Honor, they harass me. I have been in HR for 25 years, a director for 15. I am a

credible person. I have a Master's Degree. I am a responsible individual so I am not sure what is going on here.

MS. KURTZ: So I mean, your Honor, as much as I obviously don't want to bring other people into the case in terms of witnesses but the case law provides that in terms of proving motive of retaliatory intent or discriminatory intent that we can point to others. She was working there at the time towards the end of the retaliation before they put Miss Lewis-Bystrzycki on administrative leave. Miss Lewis-Bystrzycki does have a retaliation claim for the complaints of gender discrimination as well as a retaliation claim under the Illinois (inaudible) Protection Act.

So that's where the comparatives would be relevant in terms of how others were treated. If other people were retaliated against, that's certainly evidence that we can present at trial or, you know, we should at least be entitled to discovery on.

THE COURT: So you are going to be stuck giving a deposition. I hate to tell you this but you are going to be stuck giving a deposition.

Now, if this were an evidence dep, I would require her to sit and be filmed. It isn't. You

though instead of having a film may have your client there because you're probably wanting to show your client what's going on.

MR. BODDICKER: My client knows exactly how she is going to react. She is so hostile to the City and I want that to be shown, judge, how hostile she is to the City and to everybody involved.

THE COURT: Yeah, and for a trial if it is an evidence dep go for it; but this is a discovery deposition for purposes of obtaining evidence. If you want your client there, you may have your client there, you have that right anyway. If she does not want a video dep, bring your client instead. Just for the record if this was an evidence dep I would require it.

MS. KURTZ: Thank you, your Honor.

MS. WASHINGTON: Thank you.

THE COURT: So when can we do this?

MS. WASHINGTON: Did you say we can do this now, your Honor?

THE COURT: No, because it is going to be a while.

MS. WASHINGTON: That is fine. We can set up a time. Thank you.

THE COURT: So what time?

MR. BODDICKER: How about within the next three weeks sometime?

MS. KURTZ: That's fine.

THE COURT: Within the next 21 days. So you all will be in touch as to the exact time. We will go from there.

MS. WASHINGTON: And once again, your Honor, thank you and I know nothing about this case so he is going to get the same result. Thank you.

THE COURT: Okay, thank you.

(Miss Washington excused.)

Now, I thank you both for your patience in giving me time to look at everything again.

After reviewing everything, I am granting the second motion to compel regarding plaintiff's request for a forensic examination regarding those computers in the classroom at station one, the middle office across from the bathroom at station one, the paramedic writing room computer at station two and the computer in the hallway by the engineer's office at station two.

After reading the depositions, I have concluded this isn't a fishing expedition. The plaintiff was not wholly unable to come up with (inaudible) that she witnessed fellow employees watching porn. The

problem is according to her the porn watching was pervasive. So, for example, every time she would worked with Larry, I don't know how to pronounce it, Giseppe -- Giseppe?

MR. BODDICKER: Gillespie.

THE COURT: (Continuing) -- he was watching porn. And that applied to Mr. Marcus 65 percent of the time and Mr. Boyd 50 percent of the time. Again that is according to her testimony.

When I couple that testimony with the defendants' witnesses' testimony that they admit witnessing firefighters watching porn or watching porn themselves, I conclude that the forensic examination requested may lead to discoverable evidence and does not constitute a fishing expedition.

MS. KURTZ: Thank you, your Honor.

THE COURT: Okay. Anything else?

MS. KURTZ: Yes. There are two other motions up for today and I didn't want to burden the court with filing another motion but there are other issues in the second motion to compel that defendants have not complied with so I will address that separately.

And, your Honor, you know, I don't typically file motion for sanction after motion for

sanction. And I don't think it is Mr. Boddicker, I actually think it is his client but he has an obligation to make sure that his client is complying with the court's orders.

We had filed a motion to bar the -- motion to strike the defendants' expert. I don't know if you have that motion. We did give courtesy copies.

THE COURT: No, but go ahead.

MS. KURTZ: And I can certainly give the court my copy, essentially -- And I can do that, your Honor. Just ignore my scribble on it.

THE COURT: Just give me the gist of it.

MS. KURTZ: Yes, exactly.

So you entered an order requiring disclosures back in 2015. The defendants did not disclose any experts at that time or file a motion for an extension. They have never filed a motion to extend the expert discovery disclosure. We did disclose experts within that time frame. This motion, the motion of our defense expert, has been pending since June of 2016. Defendant has never filed a response nor moved for leave to disclose an economic expert.

They belatedly requested a psychological evaluation under the guise of that they needed that for

purposes of the mediation. If you recall, the parties agreed to a private mediation. I agreed to that psychological evaluation even though it was beyond the expert disclosure because under the assumption that we were proceeding in good faith to legitimately talk about settlements. It was not in good faith. Despite that I am not seeking to bar the defendants' psychological expert.

There has been -- Even prior to defendants disclosing, belatedly disclosing an economic expert they filed two motions, at least two motions to move the trial date.

Your order of May 25th, 2015 indicates the expert disclosures by September 4th, 2015. Defendants did not comply with that order. They have not complied with numerous orders of this court.

They produced a report May 12, 2016 without leave of court, without seeking to extend the time frame and, judge, it's just -- it's too late. We are almost done with the wrapping up of the fact discovery on these issues that have been subject to our motions to compel, now which is the second and third motions. We're done with expert discovery and then defendants belatedly produce.

THE COURT: Counsel, what is the problem?

MR. BODDICKER: There is no problem, judge. What counsel I think basically misrepresented to the court is that we never disclosed our expert. There is an expert disclosure on February 16th of 2013 where we disclosed James McGovern. That's the expert at issue.

MS. KURTZ: Can I see what you produced to the court?

MR. BODDICKER: And that's not a complete copy, judge, because it is 126 pages long; but if you will look at that disclosure on February 16th of 2013 --

MS. KURTZ: No, it's 2016.

MR. BODDICKER: Excuse me. Yes, the 16th, February 26th. (Sic) And when counsel says oh, yes, we filed motions to continue, this case originally had a trial date in October of 2015. She's referring way back to then. At that point in time when that trial got continued we had a big discussion about all the expert discovery that still needed to be done and that we were disclosing experts and you said we could do that.

THE COURT: So this is your expert, Mr. McGovern?

MR. BODDICKER: Mr. McGovern is the expert at issue. I disclosed him in February of this year. The

depositions, you know, the schedule had been continued to be extended. I offered, I've got emails where I offered his deposition and counsel said oh, no, it's too late, we can't do that.

The bottom line is our economic expert, Mr. McGovern, if you look at his disclosure, I mean the difference in what he says compared to their economic expert is over a million dollars difference. It would be highly prejudicial to keep us from having Mr. McGovern who was timely disclosed and who was timely offered for a deposition, just the fact that counsel didn't want to take it, you know, and now is trying to say no it's too late, it's just wrong.

MS. KURTZ: Your Honor, if I can just briefly respond to that.

So this is what he gave me in February of 2016. No report. There's no opinions in here. It doesn't even comply with 213. The report he actually produced was May 12th, 2016 so several months after. And again without filing a motion to extend, without leave of court, not in compliance with this court's orders and it's just further delaying this case.

And, your Honor, the prejudice to my client, they have put her on administrative leave.

She's not -- With pay but she is not getting overtime. She doesn't get training. That is essentially --

THE COURT: But we aren't even done with discovery. You still are looking at computers. We are nowhere near done with discovery. So this doesn't make any difference to the trial. He disclosed it in February. I am going to deny the motion to strike.

MS. KURTZ: Thank you.

THE COURT: Okay. So next?

MS. KURTZ: So next is our third motion for sanctions pursuant to Rule 219 based on defendants' repeated violations of the court's orders and most recently the June 24, 2016 order. Do you have a copy of that?

THE COURT: I have it.

MS. KURTZ: Excellent. Thank you, your Honor.

And mainly, if you look at page four of the motion, it sort of sets out the history with respect to that particular order of June 24, 2016.

We initially requested electronic documents, ESI in our request for production. On July 21st, 2015, I had requested emails to and from the chief and other supervisors. There are also other requests regarding electronic discovery.

On August 6th, 2015 I requested the electronic nada (phonetic) forms of all the documents because there are emails -- as you know, there are emails that have not been produced or attachments that have not been produced. We were forced to file a motion to compel production of the emails responsive to the discovery request. After the hearing on the motion, the court granted the motion in part saying we were to provide the page line. We complied with that order.

And then the hearing was continued to November 2nd where the court ordered defendants' counsel to ensure and report that electronic documents and emails have been searched. That was not done.

November 12th I provided to defense counsel a list of search terms and emails. There has been no response to that.

On January 26, 2016 I sent a 201(k) letter requesting compliance with plaintiff's email search terms. As a consequence of defendants' failure to comply, I requested that defendants should be required to pay for the forensic examination. That's all part of the second motion to compel and for sanctions.

On April 22nd, 2016 you granted the second motion to compel and for sanctions in substantial

part and ordered, with respect to this issue, defendants to confer with their IT person and plaintiff's counsel and forensic expert within seven days. It was a bit after seven days but we did have a telephone call with a forensic expert and their IT person could not answer any of the forensic expert's questions. We then sent a list of questions in writing asking them to answer it because the person that they had on the phone could not answer those questions. They failed to respond to that list of questions.

We again had to address it with the court and then on -- The court ordered the defendants to comply and answer the questions by July 8th. That's the June 24th, 2016 order and again defendants failed to comply. The last time we were in you asked him to actually answer them. We did finally get answers.

But this has cost my client and my firm money. Having the forensic expert sit on the phone, not getting any answers, having to -- So there is prejudice.

THE COURT: Is there anything outstanding at this point regarding what I had ordered in that order as far as -- Is there anything that they haven't done up to this point?

MS. KURTZ: They did answer the -- As to this

issue of answering those questions, he did finally send me answers and I have forwarded that to our forensic expert.

There is one question on, the reference to a dummy computer which this is the first time we are hearing of it so I did get a response on that.

I mean what I would -- If the court is not going to -- I mean really what we are asking for, your Honor, this is what I set forth in the sanctions requested, you know, if the court is going to -- if we are going to proceed with the forensic expert, I would request that my fees in terms of having to file these motions be granted and we can proceed and try to get discovery answers and get discovery finalized so that we can get this case to trial. That would be my request at this point.

THE COURT: Counsel.

MR. BODDICKER: And, judge, we would absolutely object to her fees for anything related to what we have disclosed to her that the -- All the emails had been disclosed. It's right in Chief Agpawa's deposition which she took in 2015. He affirmatively said, no, I have disclosed everything that's been requested of me and I have told counsel that. For her to sit here and say, oh,

we didn't respond to that? Not true.

With respect to her wanting to seek additional forensic evidence, why should we be -- We should not have to pay for that. We have disclosed thousand of pages of documents in this case, everything that has been requested we have responded to; and I just -- I don't understand why she is thinking, oh, there is something else out there.

And, you know, she says as you know, judge, there are things that haven't been produced. What do you mean as you know? Where, where is that? I don't know that there is anything that hasn't been produced.

MS. KURTZ: And that is going to be the subject of another motion for sanctions where defendants have not complied with the court's order on the second motion to compel, judge. They haven't answer the 6th and 7th document request. They have not searched their emails which in cases nowadays you've got to search emails. They have not done a search of any electronic or emails responsive to the discovery. This was addressed in our second motion to compel and for sanctions, which is why the court ordered --

THE COURT: Well, regarding this first motion to compel, the one that we're arguing right now, not the

one contained in your second motion to compel, your motion for sanctions I should say --

MS. KURTZ: Yes, so this is that -- and I'm sorry, your Honor -- this is actually the third motion for sanctions.

THE COURT: I am going to deny it. It is without prejudice. If due to your forensic analysis you discover that there are weighty documents that should have been produced that weren't, I will reconsider sanctions.

MS. KURTZ: Thank you.

MR. BODDICKER: And to be clear, judge, the forensic analysis that you have authorized is for them to look at those computers, those specific computers in the fire department, related to pornography.

MS. KURTZ: Well, there are two separate things. There is the pornography and then there is the email and electronic documents.

THE COURT: Yes. That's what I am discussing, the email and electric documents.

If they find, you know, emails that are, I would say weighty, a weighty email, then I am going to reconsider a motion for sanctions.

MR. BODDICKER: And, judge, here is the

question. How is she allowed to do any sort of forensic examination of emails? Other than on those computers, is that what we're talking about?

THE COURT: I have already ordered that. I am not going to revisit that at this point. That is pursuant to my --

MS. KURTZ: Yes, the second motion to compel. And essentially, judge, we were supposed to work out a protocol. And that has been part of this attempt to work out a protocol of getting these questions answered so the forensic expert can actually propose a protocol knowing what the environment, the computer environment, is like. So he can do that now with respect to the answers that we finally got.

MR. BODDICKER: To give me something so we can have a protocol as far as what they want to search?

MS. KURTZ: I mean what is typical in ESI cases is the forensic expert comes up with protocol as to how they are going to search the emails.

MR. BODDICKER: And, judge, just to be clear here, too, because counsel has not even mentioned this. The City has old email servers that were only in, you know, in operation for a few years. Other than that it was all in the cloud (phonetic) out in, I think, it was

Comcast which counsel has already subpoenaed their documents. So I'm not sure exactly -- Are we looking at these old servers, is that what the forensic expert is going to be doing?

THE COURT: I ordered this before --

MS. KURTZ: Yes.

THE COURT: (Continuing) -- in conjunction with a previous motion to compel.

MR. BODDICKER: What you ordered, judge, was for our IT people to talk with their IT people which we did; and we answered every single question that her forensic expert asked, you know, which is exactly the opposite of what counsel just told you but it's true and then they put together the list of questions which we have responded to.

MS. KURTZ: So, judge, what I would propose at this point. Let me get him the protocol from the forensic expert. If there is an issue, we can notice up a motion before your Honor. But maybe, I don't know if Mr. Boddicker has seen computer protocol forensic examinations before, so maybe that's the stopping point, I don't know.

MR. BODDICKER: Well, I certainly haven't seen one from you.

MS. KURTZ: Well, because we have been trying to get these questions answered.

THE COURT: Okay. So you're going to have a 201(k) with your tech people so they can consult each other on that.

MS. KURTZ: Thank you.

Do you want to set a status?

THE COURT: Yes.

Within three weeks time you are going to get that witness's deposition.

MR. BODDICKER: That is Velda Washington. We still have my expert's deposition, Mr. McGovern. We still have plaintiff's husband, Mr. Bystrzycki, who has not been taken yet.

MS. KURTZ: No, his deposition was taken. You're talking about Corey Patience (phonetic), the son who was in -- he was in the Marine Corp.

MR. BODDICKER: Mr. Bystrzycki hasn't been taken yet. We had it set and then it was canceled.

THE COURT: You guys will double check. I want to keep this on a shorter leash.

MS. KURTZ: A shorter leash.

THE COURT: Okay, thirty days.

MR. BODDICKER: Thirty days at what time,

judge?

THE COURT: Pick the day and my clerk will give you the time.

(Which were all the proceedings had on this date.)

STATE OF ILLINOIS)
) ss:
COUNTY OF C O O K)

I, Linda K. Madison, a Certified Shorthand Reporter, do hereby certify that I reported in shorthand the proceedings had at the above-entitled cause and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid and contains all the proceedings had at the aforementioned hearing before the Honorable BRIGID MARY McGRATH.

Certified Shorthand Reporter
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