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

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

**PLAINTIFF'S RESPONSE TO DEFENDANTS'**
**MOTION AND EMERGENCY MOTION FOR PROTECTIVE ORDER**

Plaintiff respectfully files this response to Defendants' Motion for Protective Order and Defendants' Emergency Motion for Protective Order.[1] Defendants' motions ask this Court to issue a "gag" order on Plaintiff and her counsel from talking to the press. As discussed below, such an order, or any variation thereof, would constitute a prior restraint in violation of the First Amendment and would be unconstitutional. All of the case law cited by Defendants support the opposite of what Defendants are seeking in this case; in fact, the cases cited by Defendants show that such orders were reversed on appeal or by the Illinois Supreme Court, with a finding that such restraints are unconstitutional. Moreover, Defendants have not met their burden of showing that any conduct by Plaintiff or her counsel constitutes "a serious and imminent threat to the administration of justice." Defendants' motions for a protective order must be denied.

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[1] Both Defendants' motions in substance are essentially the same.

## I. INTRODUCTION

On February 3, 2017, Defendants filed a motion for protective order regarding the issue of this Court's August 31, 2016 order, which required imaging of certain computers at the City's fire stations. The Court set a briefing schedule on this motion. On February 6, 2017, Defendants filed a second motion for protective order as an emergency, essentially saying the same thing as in the original motion. The Court denied the emergency motion in relevant part, and the same briefing schedule was set. Plaintiff's counsel agreed to have Plaintiff's expert provide a preliminary report to Defendants' counsel on Monday, February 13, 2017, which was done. (Ex. 1, 2/8/17 Order; Ex. 2, Boddicker Email confirming receipt.)



Defendants' motions for protective order fail to lay out the procedural history regarding Plaintiff's motion to compel that led to this Court to order the imaging of Defendants' Fire Department computers. On April 6, 2016, Plaintiff filed her second motion to compel and for sanctions, in part requesting the Court to enter an order requiring the forensic imaging of Defendants' Fire Station computers. On April 22, 2016, the Court entered an order setting a briefing schedule on this issue. (Ex. 3, 4/22/16 Order.) Defendants filed their response on May 2, 2016. Plaintiff filed her reply on May 9, 2016. (Ex. 4, 5/9/16 Pl.'s Reply in Support of Second Motion to Compel and for Sanctions.) On August 31, 2016, this Court granted Plaintiff's Second Motion to Compel and for Sanctions, and ordered the forensic imaging of the Fire Station computers. (Ex. 5, 8/31/16 Order.) The court held:

> 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 work with Larry . . . [Gillespie] . . . 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.



(Ex. 6, 8/31/16 Court Transcript (excerpt).) Despite the Court's order requiring the forensic imaging of Defendants' computers, Defendants dragged their feet in confirming a date for the imaging. Plaintiff sent several notice of inspections that were repeatedly cancelled by Defendants. Plaintiff sent her fourth notice of inspection on January 11, 2017. (Ex. 7, 1/11/17 Notice of Inspection.) There was no protocol, as Defendants acknowledge in their motion. (*See* Ex. 7.) On January 20, 2017, Plaintiff had finally had enough feet-dragging and was forced to file another Motion for Sanctions, for violations of the Court's order regarding the computer imaging. (Ex. 8, Pl.'s Mot. for Sanctions re: Pornographic Material.) On January 23, 2017, the Court granted Plaintiff's motion and ordered the inspection/forensic imaging to take place on January 26, 2017, ordered that Defendants had *waived any objections*, and ordered Defendants to reimburse Plaintiff's expert's fees and costs. (Ex. 9, 1/23/17 Order (emphasis added).)

Defendants now argue that there was a protocol in place as to the imaging of the Fire Department computers relative to the pornography issue. (Defs.' Emergency Mot. ¶ 7.) However, Plaintiff's counsel has repeatedly told Defendants that there is no "protocol" on the imaging of the computers for pornographic material, as one is not necessary. No protocol was not ordered by the Court on this issue. (*See* Ex. 6, 8/31/16 Court Transcript (excerpt).) The imaging was noticed by way of a Notice of Inspection (Ex. 7, 1/11/17 Notice of Inspection), which does not reference a protocol (*id.*). And, the Court found that Defendants' waived any objections (Ex. 9, 1/23/17 Order).



No protocol is necessary because there are no "privilege" issues as to whether or not male employees were viewing pornographic material in the fire station. Essentially we are talking about web browser history. It is also relevant that 13 days after the Court ordered the imaging, Defendants had someone "completely" "wipe" the hard drives of the very same computers the Court ordered be imaged. Defendants did this in a deliberate attempt to destroy evidence and in direct violation and in contempt of this Court's order. (Ex. 10, 2/8/17 Court Transcript at 13.) As Plaintiff's ESI expert explained to the Court:

> I haven't written a report, your Honor. I gave her a preliminary verbal report. I said there's thousands of Web searches for pornography. It's all over the board. And I also let her know that it appears that they've wiped the hard drives, reloaded them, and I gave her three dates in which that was completely done, and that's a complete wipe, but the problem was, once the computers were hooked back up, the server pushed down profiles that had information of the previous Web history and the searching of pornography.

(Ex. 10, 2/8/17 Court Transcript at 13.) Thus, despite Defendants' attempts to argue to the contrary, the information found by Plaintiff's ESI expert is relevant and reasonably calculated to lead to the discovery of admissible evidence.

## II. THIS COURT HAS ALREADY HELD THAT THE ISSUE OF WHETHER OR NOT MALE EMPLOYEES WERE WATCHING PORNOGRAPHIC MATERIAL IN THE FIRE STATION IS RELEVANT AND ORDERED THE IMAGING OF DEFENDANTS' COMPUTERS

Defendants are apparently attempting to circumvent this Court's order, granting Plaintiff's motion to compel and for sanctions as to the imaging of Defendants' computers at the fire stations by arguing that "it is possible the drives may contain information from many persons not alleged by plaintiff to have viewed pornography." (Defs.' Mot. ¶ 12.) It appears that Defendants are trying to suggest that if Plaintiff did not see one of the specific male employee (among others) that is shown from the analysis to be watching pornography, then it is not relevant. Defendants' argument misses the point. The information relating to the imaging of the computers and the evidence of male employees watching pornography goes to among the following: First, the breadth of the pornography being searched and viewed goes to the pervasiveness of the conduct.[2] Second, supervisors' knowledge of the conduct (by its pervasiveness), and thus, knowledge of violations of the Fire Department's and City's rules, for which male employees were *not* disciplined, is relevant to comparative evidence of how Plaintiff



[2] Plaintiff testified that numerous male employees watched pornography in the fire station, and supervisors admitted that they saw male employees watching pornographic material in the fire stations.

was disciplined for far less alleged infractions.[3] Third, the mere evidence that male employees were watching pornography on the Fire Department's computers is relevant to the fact that Defendants attempted to cover it up with a sham investigation, in which they claim there was no evidence of pornography. The forensic imaging shows otherwise, and shows that male employees were looking at pornography on the work computers, on work time, and on taxpayer dime.[4] Fourth, the evidence that Defendants started wiping the computer hard drives just 13 days after this Court ordered the imaging on August 31, 2016, is relevant to Defendants' spoliation of evidence and contempt of this Court's orders. As such, all of the evidence obtained relative to the Court-ordered imaging and inspection is relevant to Plaintiff's claims of sexual harassment and retaliation, and will be relevant to Plaintiff's claim of spoliation and contempt motions, which Plaintiff intends to file once the preliminary report is released to Plaintiff's counsel, and the ESI expert finalizes his report on these issues.



[3] Plaintiff was disciplined for allegedly telling Defendant Pycz to "bite me," which Plaintiff denies, after he told her to wash and rewash a rig. Plaintiff was also disciplined for complaining about the harassment. Yet, the evidence from the imaging may show that male employees were watching pornography in the fire station with impunity and were never disciplined or fired.

[4] The Illinois Human Rights Act, just like Title VII, requires employers to take effective remedial measures to ensure that sexual harassment does not occur in the work place and to remedy complaints. Here, Defendants covered it up rather than truly investigating, and rather than putting a stop to it.

## III. DEFENDANTS' REQUEST FOR A "GAG" ORDER IS AGAINST PUBLIC POLICY, ESPECIALLY IN THIS CASE, WHICH HAS GARNERED SIGNIFICANT INTEREST FROM VARIOUS WATCHDOG GROUPS AND NEWS SOURCES

Defendants, without any basis in fact, argue that "plaintiff attempted to influence the jury pool and public in advance of trial," citing a link to Fox News: http://www.fox32chicago.com/news/local/9852271, however, that link shows "page not found;" and an article published by a watchdog group based on a publicly filed pleading in this case: http://edgarcountywatchdogs.com/2017/01/country-club-hills-sanctioned-by-court-possible-pornography-on-fire-department-computers. (Defs.' Mot. at 5.) Plaintiff did not send anything to the watchdog group. The watchdog group wrote an news article about the Court's order granting sanctions against Defendants, which would be a matter of public record from the court file. In fact, it is clear from the posting that the watchdog group was referencing the publicly filed motion, Plaintiff's motion to compel and for sanctions, and the Court's order granting sanctions. The file-stamped pleading is contained as a link on the watchdog article. Fox News covered the story about Plaintiff's amended complaint, which was also publicly filed with the Court, in 2015. News sources often monitor cases and obtain records from the court file or other sources of documents filed with the Court.

Defendants' unsupported and vague assertions are not sufficient for this Court to grant a protective order or "gag" order, as Defendants are seeking. All of the cases cited by Defendants support Plaintiff's position that a "gag" order would violate the First

Amendment and would be an abuse of this Court's authority. As all of the cases cited by Defendants hold, Defendants must show through clear and convincing evidence that there is a "serious and imminent threat of interference with the fair administration of justice," which Defendants have not shown in this case. *See, e.g., CBS Inc. v. Young,* 522 F.2d 234 (C.A.Ohio 1975) ("[I]n absence of substantial evidence to justify conclusion that a clear and imminent danger to fair administration of justice existed because of publicity the order was constitutionally impermissible."); *Cooper v. Rockford Newspapers, Inc.,* 34 Ill.App.3d 645, 650–51 (Ill.App. 1975) ("they are to be issued only upon a finding that 'clear and present danger' to the administration of justice exists").



In *Hirschkop v. Snead,* the court held that the rule was void for vagueness and that the rule was unconstitutionally overbroad insofar as it restricted the comments that could be made by lawyers associated with civil litigation. 594 F.2d 356 (C.A.Va., 1979). The *Hirschkop* court held: "Civil actions may also involve questions of *public concern*. . . . The lawyers involved in such cases can often enlighten public debate. It is no answer to say that the comments can be made after the case is concluded, for it is well established that the first amendment protects not only the content of speech but also its timeliness." *Id.*at 373 (emphasis added), *citing Bridges v. California,* 314 U.S. 252, 268 (1941). The court also noted that "the principal case imposing a gag on lawyers during a civil trial was reversed because the order infringed the first amendment." *Id., citing CBS, Inc. v. Young,* 522 F.2d 234 (6th Cir. 1975).

In *Chicago Council of Lawyers v. Bauer,* the court found the rule with respect to extrajudicial comments in regard to civil litigation would be constitutionally impermissible if deemed presumptively prohibited. 522 F.2d 242 (C.A.Ill. 1975). The court noted, which is of importance here, the following:

> Since lawyers are considered credible in regard to pending litigation in which they are engaged and are in one of the most knowledgeable positions, they are a crucial source of information and opinion. Often their clients will not be as articulate or informed. And despite our primary focus on prejudicial statements, we must keep in mind that there are important areas of ***public concern*** connected with current litigation. We can note that lawyers involved in investigations or trials often are in a position ***to act as a check on government by exposing abuses or urging action.*** It is not sufficient to argue that such comment can always be made later since immediate action might be necessary and it is only when the litigation is pending and current news that the public's attention can be commanded.

*Id.* (emphasis added). Here, there are issue of public concern, male firefighters watching pornographic material while at work on the taxpayer dime, subjecting female employees to pornographic material with impunity, supervisors being aware of it, the City attempting to cover it up with a sham investigation, and then Defendants acting in contempt of a court order requiring the imaging of the computers by destroying the evidence and completely wiping the drives. The only reason that some of the information still exists is because "once the computers were hooked back up, the server pushed down profiles that had information of the previous Web history and the searching of pornography." (Ex. 10, 2/8/17 Court Transcript at 13.)

In *CBS, Inc.,* the appellate court issued a writ of mandamus directing the lower court to vacate its order concerning discussions of the case by the parties and others with the

news media and the public. 522 F.2d at 242. The court held that "[a]lthough the news media are not directly enjoined from discussing the case, it is apparent that significant and meaningful sources of information concerning the case are effectively removed from them and their representatives. To that extent their protected right to obtain information concerning the trial is curtailed and impaired," and further held that "[a] more restrictive ban upon freedom of expression in the trial context would be difficult if not impossible to find." *Id.* The Court also discussed the long line of cases before the Supreme Court on this issue:



> In a long series of cases the Supreme Court has made it clear that prior direct restraints by government upon First Amendment freedoms of expression and speech must be subjected by the courts to the closest scrutiny. *See generally Near v. Minnesota*, 283 U.S. 697, 716 [] (1931), and *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546 [] (1975). This principle has been expressed by the Supreme Court in a variety of ways to justify imposition of a prior of a prior restraint, the activity restrained must pose a clear and present dangerous threat to a protected competing interest. *Wood v. Georgia*, 370 U.S. 375 (1962), and *Craig v. Harney*, 331 U.S. 367 (1947). A system of prior restraints of expression bears a heavy presumption against its constitutional validity. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 [] (1963); *Southeastern Promotions, Ltd. v. Conrad, supra.* Hence, the government carries a heavy burden of showing a justification for its imposition. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 [] (1971); and *See New York Times Co. v. United States*, 403 U.S. 713 [] (1971). The restraint must be narrowly drawn and cannot be upheld if reasonable alternatives are available having a lesser impact on First Amendment freedoms. *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 183 (1968); *Shelton v. Tucker*, 364 U.S. 479, 488 [] (1960).

*CBS Inc.*, 522 F.2d at 238. The CBS court went on to hold that "before a trial [court] can limit [a party's] and their attorneys' exercise of first amendment rights of freedom of speech, the record must contain sufficient specific findings by the trial court

establishing that [the party's] and their attorneys' conduct is "a serious and imminent threat to the administration of justice." *Id.* at 239, *citing Craig v. Harney*, 331 U.S. 367 (1947).

In *Chase v. Robson*, also cited by Defendants, the court held that the lower court's order that counsel for both Government and defendants, as well as each and every defendant, make no statements regarding the case was constitutionally impermissible, no matter which standard was applied, *i.e.*, that the speech must create a "clear and present danger" of a serious and imminent threat to the administration of justice, or the lesser standard that there must be a "reasonable likelihood" of a serious and imminent threat to the administration of justice. 435 F.2d 1059, 1061 (C.A.Ill. 1970). Here, Defendants cannot meet either standard, and the Illinois Supreme Court has held that the stricter standard applies: the speech must create a "clear and present danger" of a serious and imminent threat to the administration of justice. *Kemner v. Monsanto Co.*, 112 Ill.2d 223 (Ill.,1986).



In *Ruggieri v. Johns-Manville Products Corp.*, also cited by Defendants, the court held that conduct of the attorney for the plaintiff in appearing on a nationally televised show, which dealt in part with nationwide asbestos litigation, and in making comments on that show which reflected adversely on character of asbestos insulation manufacturers was not a basis for prohibiting the attorney from making extrajudicial comments concerning litigation absent a basis for concluding that conduct impacted on any potential jurors. 503 F.Supp. 1036 (D.C.R.I., 1980). The court held that "[i]t is equally

important that it be accommodated to first amendment rights so as not to improperly curtail access to information. Rigid restrictions upon the rights of attorneys to discuss pending litigation or disclose information concerning a case encroaches upon his right to freedom of expression." *Id.* at 1038-39. The court held that even the "serious and imminent threat" test is not without possible exceptions, giving the example that "[c]onceivably there may be cases where anticipated comment might present a serious and imminent threat to the trial if heard by a jury ***already impanelled*** but which in ***the best interest of the public*** should not be barred. In such cases the sequestration of the jury may well safeguard the competing rights of the First, Sixth and Seventh Amendments." *Id.* at 1040. Here, the trial is not set until September 2017, and no jury has been impaneled; there are great public policy concerns as to the facts alleged in this case and Defendants attempt to cover up the violations of the law, as well as spoliation of evidence, despite the Court's order and a requirement that the computers be preserved.



Once we are at trial in this matter in September 2017, the Court can certainly and should ask potential jurors if they have seen any news stories on this case, and if so, further questions can be asked to ensure that jurors actually impaneled can be fair and impartial to both sides, which is exactly what the court held in *Ruggieri*:

> The impact of pretrial publicity can be evaluated through Rule 47(a) of the Federal Rules of Civil Procedure which gives the trial judge broad discretion in conducting the examination of prospective jurors. After many years on the bench, it is this Court's opinion that jurors who are properly instructed by the court as to the solemnity of their service rise to the occasion and express their

> biases candidly and honestly. It is a disservice to lose faith in these men and women, who in the main are being called upon for the first time in their lives to participate in the noble cause of justice. As they can be screened before trial so can they be controlled during the trial even to the point, as I have already stated, of sequestering them if the circumstances so demand. I know of no studies that disprove the conclusion that overwhelmingly they will follow instructions of the court not to read any news accounts of the case, discuss the evidence, or place themselves in any prejudicial ambience.
>
> With all appreciation that a fair trial is the most fundamental of all freedoms, it cannot be gainsaid that its infinite capacity is best achieved when exposed in all its phases to an enlightened public. Overreaction by the courts to an occasional mistrial only jeopardizes one fundamental right against the other. Surely the Judicial Conference realized this in refusing to proscribe through preordained rules attorney comment in civil litigation.
>
> . . . . It would be a serious invasion of a treasured liberty to prohibit him from continuing to discuss this very controversial issue of asbestos inhalation. When the trial is reached, at some time in the future, the Court can then assess what if anything need be done to assure a fair trial.

*See id.* at 1040-41.



In *Kemner*, the Illinois Supreme Court held that a "gag" order was unconstitutionally vague and overbroad. 112 Ill.2d at 246-47. The Court held: "a 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," Id.* at 244, which does not exist here. Notably, the *Kemner* court further held:

> We find no substantial evidence to justify the circuit court's conclusion that a "serious and imminent threat to the fair administration of justice" existed because of Monsanto's communication with the media regarding the present case. Plaintiffs have not alleged that any jurors saw or were influenced by the

> March 19 *Belleville News Democrat* story. Nonetheless, the circuit court reasoned that "no one requires this Court to be blind to possibilities." (133 Ill.App.3d 597, 601 [].) A finding of "possibilities," however, is not sufficient to support a conclusion that a "serious and imminent threat to the administration of justice exists." Because the circuit court's finding does not justify the conclusions necessary for entry of a "gag" order, the April 2 order constitutes an impermissible prior restraint on Monsanto's right of free speech.

*Id.* at 246-47. As in Kemner, Defendants' attempts here to have the Court impose a "gag" order on Plaintiff or her counsel from talking to the press or even sending out a press release (which Plaintiff's counsel has not done) is unconstitutional. *Id.* ("Because the heavy presumption against the constitutional validity of the 'gag' order has not been overcome, we hold that the circuit court's April 2 order is an unconstitutional prior restraint of free speech protected by the first and fourteenth amendments of the United States Constitution."). As such, Defendants' motions for a protective order and "gag" order should be denied.



## IV. CONCLUSION

In light of the case law cited above (all of which are cited by Defendants in a string cite with no discussion or analysis), Defendants' request that "the Court should impose restraints on plaintiff," and a "gag" order, should be denied outright, as it is unconstitutional.

While Defendants attempt to throw rocks at Plaintiff's counsel for something from another case,[5] they should really focus on their own conduct (or misconduct) in this

[5] As to the *Fuery* case referenced by Defendants, the *Chicago Tribune* wrote an article acknowledging that they had the materials that were at issue for years prior to that case going

case, which has led to a default judgment being entered against them, them having to pay Plaintiff's attorneys' fees for not answering the complaint in a timely manner and not responding, no less than 4 motions to compel and sanctions having to be filed by Plaintiff in this case, and almost all of them being granted. And now to make matters worse, Defendants have engaged in spoliation of evidence by "wiping" the hard drives 13 days after the court ordered the imaging of Defendants' computers. Defendants are in contempt of this Court's August 31, 2016 order, and have deliberately engaged in tactics to destroy evidence and commit spoliation.



WHEREFORE, for the above stated reasons, Defendants' motion for Protective Order should be denied. In light of the evidence of spoliation and Defendants' contempt of this Court's August 31, 2016 Order, the Court should enter an order requiring Defendants to preserve all ESI and an immediate injunction that they cannot delete or destroy any ESI or attempt to "wipe" any hard drives or computers without obtaining an order and permission from the Court. Plaintiff requests other such relief that is just and equitable.

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to trial: "A publicist for Kurtz had given the materials to the Tribune -- but three years earlier when there were no restrictions on their release. At least one television station had broadcast the materials as well three years ago." (Ex. 11, *Chicago Tribune* Article.) That case is currently on appeal and is completely irrelevant to the case before this Court.

Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

*s/Dana L. Kurtz*

Attorney for Plaintiff

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION AND EMERGENCY MOTION FOR PROTECTIVE ORDER** was served via the Court's ECF system and via email upon the parties designated below on February 15, 2017:

Daniel Boddicker dboddicker@keefe-law.com

*s/Dana L. Kurtz*

Dana L. Kurtz

# EXHIBIT 1

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Lewis Bystrzycki

v.

City of Country Club Hills, et al

No. 2012 L 009916

**ORDER**

Cause coming to be heard Defendants' Emergency Motion for Protective Order (1) Plaintiff agrees plaintiff's forensic expert will provide a preliminary report to defendants' counsel only by February 13, 2017; (2) Parties agree they will not terminate discovery of forensic imaging report or results if the preliminary report for Rule 502(d) fast track is granted; (3) the ruling on this motion for protective order is entered and continued pursuant to Agreed Scheduling Order entered on February 6, 2017 to stand

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Atty. No.: 49745

Name: Kelly Cardascia Bracy

Atty. for: Defendants

Address: 116 N. Clinton St. #300

City/State/Zip: Chicago, IL 60661

Telephone: 312 726-1800

ENTERED:

Dated: _____

Judge Brigid M. McGrath

ENTERED
JUDGE BRIGID MARY McGRATH-1800
FEB - 8 2017
CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL

Judge's No. 1800

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

# EXHIBIT 2

## Dana Kurtz

**From:** Daniel Boddicker <DBoddicker@keefe-law.com>
**Sent:** Wednesday, February 15, 2017 9:16 AM
**To:** 'Andrew Garrett'; Dana Kurtz
**Cc:** Elena Vieyra
**Subject:** RE: Lewis v CCH

Yes they were received.

Daniel J. Boddicker
Attorney - Bio
Keefe, Campbell, Biery & Associates, LLC
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**From:** Andrew Garrett [mailto:agarrett@garrettdiscovery.com]
**Sent:** Tuesday, February 14, 2017 7:31 PM
**To:** Daniel Boddicker; Dana Kurtz
**Subject:** Lewis v CCH
**Importance:** High

Mr. Boddicker,

I had not received a confirming email from you that you are in receipt of the reports I generated in the above matter. Can you confirm your receipt?

Have the parties worked out a date to examine the email ESI?

Respectfully,

Andy Garrett
eDiscovery / Computer Forensic Expert

Garrett Discovery Inc
Ph 312.818.4788
Mobile 217.280.7782
Fax 888.508.9130

# EXHIBIT 3

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

Dena Lewis Byszczyski

V.

NO. 2012L009916

County Club Hills, et al

ORDER

This matter coming to be heard on Plaintiff's 2nd Motion to Compel and Depos and other oral motions, it is hereby ordered:

(1) Defendants will comply with ¶¶ 4, 5, 8, 9, 11, 12, 13, 15, 17, 28 (produce all documents re investigation & pornography), 33, and to the extent documents do not exist provide declaration(s), as stated on the record (see May 5 tr.); within 14 days, by May 6, 2016

(2) Pl's Motion as to computer inspection is entered and continued, as counsel, IT, TIS counsel, and forensic expert will confer via call next 7 days, by April 29, 2016 and Parties will discuss search terms;

(3) as to 2d depositions, the parties will confer by April 29, 2016

(4) as to TIS request for forensic inspection & computers re: pornography, Defs to respond to motion by April 29, 2016, Pl's reply by May 6, 2016, courtesy copies by May 9, 2016 @ 9:45am

(5) hearing on the remaining items in Motion on May 20, 2016

(6) Defs oral motion to compel TIS Dep, granted, limited to 2 Hours;

(7) Defs motion to quash SIT granted without prejudice as Defs to produce per motion to compel ¶14.



Firm Kurtz Law Offices
Attn. for: Plaintiff
Address: 32 Blanke
City/Zip: Hinsdale IL 60521
Telephone: 630.323.9444
Firm No.: 45132

FILE STAMP ONLY

ENTERED
JUDGE BRIGID MARY McGRATH-1800
APR 22 2016
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTERED:

Judge Brigid Mary McGrath

# EXHIBIT 4

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

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



**PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S SECOND MOTION TO COMPEL AND FOR SANCTIONS**

Plaintiff Dena Lewis-Bystrzycki, through her undersigned counsel, files this Reply in support of Plaintiff's Second Motion to Compel and for Sanctions and in response to Defendants' Response to Plaintiff's Second Motion to Compel and for Sanctions, and states:

1. In response to Plaintiff's Second Motion to Compel and for Sanctions, this Court requested the parties submit briefs on Plaintiff's request to conduct a forensic examination of Defendant Country Cub Hills ("CCH") Fire Department's computers and cable televisions.

2. Defendants' only argument in their response is that the "requested inspection is irrelevant to the actual issues in the case," and that "Plaintiff has not alleged any dates of alleged viewing of pornography." (Defs.' Resp. ¶ 19.) The forensic examination is highly relevant for among the following reasons:

a. Plaintiff has alleged that "throughout [her] employment, and on an ongoing basis, Plaintiff has witnessed male firefighters and supervisors watching pornography on the computer and televisions in the fire station," and that "[c]urrent Lieutenants have admitted that they are aware of male employees watching pornography in the fire stations. One Lieutenant admitted he saw nothing wrong with it. That same Lieutenant also testified that he himself watched pornography at the fire station, even since he has been a Lieutenant." (Pl.'s Second Amend. Compl. ¶¶ 16, 17, 18.)

b. Defendants' responses to these allegations were that they "do not have sufficient knowledge or information regarding the allegations . . . and, therefore, neither admit nor deny same, but demand strict proof thereof." (Ex. 1, Defs.' Ans. to Pl.'s Second Amend. Compl. ¶¶ 16, 17, 18.)

c. Defendants have failed to produce the purported investigation they did of their own computers or audits of those computers, and Defendants' purported audit was on dates *after* Plaintiff's allegations of male employees viewing pornographic material, and thus would not necessarily prove, or disprove Plaintiff's allegations that male employees were watching pornographic material.

d. The forensic examination should confirm when, who, and to what extent Defendants and Defendants' employees were watching pornographic material on the computers in the station, and if Defendants have attempted to "wipe" their computers after these allegations came to light, the forensic examination may show that as well. *See Jackson v. N'Genuity*, 2011 WL 1134302, at *1 (N.D.Ill. 2011) ("following a court-ordered forensic examination of the defendants' computers, the untruth of the repeated representations that there were no accounting records was revealed"); *see also Peal v. Lee*, 933 N.E.2d 450, 456 (Ill. App. 1 Dist. 2010) (forensic expert determined that at least 20,000 files had been destroyed).

e. Plaintiff's request for a forensic examination is limited to those computers that Plaintiff saw male employees viewing pornographic material: "(a) the classroom at Station 1, (b) the middle office across from the bathroom at Station 1, (c) the paramedic writing room computer at Station 2, (d) the computer in the hallway by the engineers' office at Station 2."

f. Just because Plaintiff cannot recall exact dates (without looking at work schedules), does not mean the information is not relevant or likely to lead to the discovery of admissible evidence. In fact, it makes the forensic examination all the more relevant in that it

should provide dates and users that were watching pornographic material, and confirm that employees were actually watching pornographic material on the computers (despite inconsistent testimony and positions by Defendants).

g. Defendants' and Defendants' witnesses inconsistent testimony about whether or not they viewed and/or saw others viewing pornographic material further supports Plaintiff's need for the forensic examination to confirm the fact that they wee viewing pornographic material and to resolve the dispute.



3. Defendants correctly note in their response that this issue was previously brought before the Court, but not resolved. Defendants' counsel represented that they were conducting an investigation, so the Court ordered the production of the "investigation." The investigation was initiated by CCH Fire Department Chief Roger Agpawa on November 9, 2015 and conducted by an outside purported investigative "HR consulting firm," "MJW Consulting."[1] (Ex. 2, Report of "Investigation.") Defendant Agpawa indicates in his memorandum that he "got the [City's] IT Department to recheck all City computers that the Firemen have access to in their areas." (*Id.*) While Defendants produced the Report of the alleged "investigation," the report says nothing about the investigation into the material contained on the Fire Station computers.

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[1] Plaintiff's counsel has since learned that Marion J. Williams is not an HR consultant but a realtor.

4. In addition to the incomplete and inconclusive investigation, Defendant's inconsistencies in their pleadings and deposition testimony to Plaintiff's claims of pornography viewing actually support Plaintiff's arguments for a forensic analysis of the computers. Defendant City's position that Plaintiff is going on a fishing expedition completely ignores Plaintiff's claims. Compare Defendant City's Answer of "lack of knowledge" (as cited above, Ex. 1), to the deposition testimony of fire department supervisors (Ex. 3, Dangoy Dep.; Ex. 4, Pycz Dep.), to the report of MJW Consulting (Ex. 2).

5. Fire Department Lieutenants Derek Dangoy and Carl Pycz (a named defendant) both admitted in their depositions that they had witnessed CCH fire fighters watching porn on televisions and computers at the fire station. Lt. Dangoy admitted that he saw others watch porn at the fire station, as well as watched porn himself on a computer in his office. (Ex. 3, Dangoy Dep. (excerpts) at 192:14-195:22.) Lt. Pycz also admitted that he saw porn. (Ex. 4, Pycz Dep. (excerpts) at 40:4-41:24.)

6. In his initiation of an investigation into pornography, Chief Agpawa himself contacted the Country Club Hills IT Department to "recheck all City computers that the Firemen have access to in their areas. This was done off their normal scheduled reviews for City computers." (Ex. 2 at CCH008397.) The check of computers consisted of an "Internet Usage Software Audit" at both fire stations, with no indication of what was done as part of the "audit." (Ex. 2 at CCH008413.) The Audit of the fire house computers was conducted on one day's usage, 8/28/15. (Ex. 2 at CCH008413.) Likewise,

an Audit of computers in the Ambulances and Fire Engine was conducted on one day's usage, 9/10/15. (Ex. 2 at CCH008413.) The dates of these audits came *after* Plaintiff's allegations of porn watching and thus would not necessarily prove, or disprove Plaintiff's allegations.[2] As far as Plaintiff can tell, Defendants have done nothing to investigate Plaintiff's allegations that male employees were watching pornographic material at the fire station. Plaintiff's proposed forensic examination of the computers and cable access may corroborate Plaintiff's allegations.[3] Plaintiff's discovery request for a forensic examination is clearly not a fishing expedition, but a valid and important part of the discovery process that must take place in this sex harassment/hostile work environment case.



7. Moreover, there are numerous inconsistencies among Defendants and Defendants' witnesses from the deposition testimony and the "investigation" conducted by MJW Consulting. Defendant's attempt to turn Plaintiff's allegations of pornography viewing "on its head" (*see* Ex. 2, Report of "Investigation"), along with their inconsistencies regarding the viewing of pornography, creates the necessity that Plaintiff conduct a forensic examination.

---

[2] Despite the Court's order that Defendants are to produce the investigation, Defendants have not produced the results of this alleged audit.

[3] Plaintiff's computer forensic expert has indicated that they may be able to tell who was watching pornography on the computers and when, since Defendant's employees generally use a login code for access to the computers.

8. Additionally, whether the Defendants conducted a valid investigation and the timing of such "investigation" are also very relevant issues to this case, and support Plaintiff's motion to compel the forensic examination of the computers.

9. Defendants attempt to invalidate Plaintiff's allegations that male employees watched pornography at the fire station in her presence by arguing that Plaintiff cannot remember any specific (exact) dates. However, Plaintiff cannot reasonably be expected to know in her 14 years of working for CCH FD the exact dates she saw male employees watching pornography. In fact, Plaintiff testified that if she saw her previous work schedules, she may be able to come up with some exact dates.[4] (*See* Defs.' Ex. 9 at 51-92.) Plaintiff testified: "Give me my work calendar, and – and we'll say any day that I worked with Larry, it was on, because that's pretty easy. Any day that I worked with Marcus, it was on." "You're refusing to actually hear my answer. Because I said look at the calendar of my work days." "I would say 50 percent of the time that Norm [Boyd] was working, he was watching it. A hundred percent of the time that Larry was working, he was watching it." (Defs.' Ex. 9, Lewis-Bystrzycki Dep. 54:14-22, 57:24-58:18.) The forensic examination of Defendants' computers would provide these dates.



[4] Ironically, Plaintiff's Third Request for Production, dated November 12, 2015, requested "rosters and schedules of employees that worked on the same days that Plaintiff worked." Defendants never responded to this production request, and the Court recently ordered Defendants produce these schedules.

10. Defendants do not argue that the inspection would be unduly burdensome, and in fact it would not. The examination can be done such that not all computers within one fire house will be inoperable at one time, and Plaintiff has limited her request to specific computers.

WHEREFORE, for the reasons stated in Plaintiff's Second Motion to Compel and for Sanctions, and for the reasons stated above, Plaintiff respectfully requests this court grant her Motion to Compel and for Sanctions, allow Plaintiff to conduct a forensic examination of the computers in the fire stations, and for such other relief that is just and equitable.



Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

*/s/Dana L. Kurtz*

Attorney for Plaintiff

KURTZ LAW OFFICES, LTD.
32 Blaine Street
Hinsdale, Illinois 60521
Phone: 630.323.9444
Facsimile: 630.604.9444
Firm No. 43132

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S SECOND MOTION TO COMPEL AND FOR SANCTIONS** was served upon the parties designated below on May 9, 2016, as follows:

**By Electronic Service Only**

Daniel Boddicker
Keefe, Campbell, Biery & Associates, LLC
118 North Clinton Street, Suite 300
Chicago, Illinois 60661
Email: dboddicker@keefe-law.com

*s/Dana L. Kurtz*

Dana L. Kurtz

# EXHIBIT 1

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

| | |
|---|---|
| DENA LEWIS-BYSTRZYCKI,<br><br>Plaintiff,<br><br>v.<br><br>CITY OF COUNTRY CLUB HILLS, a municipal corporation, and CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA, in their individual capacity,<br><br>Defendants. | No. 2012 L 009916<br><br>Honorable Brigid Mary McGrath<br><br>Plaintiff Demands Trial By Jury |



**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT**

NOW COME DEFENDANTS, CITY OF COUTNRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINTON AND ROGER AGPAWA ("Defendants") through their attorneys, Keefe, Campbell, Biery & Associates, and for their Answer to Plaintiff's Second Amended Complaint state as follows:

1. Plaintiff Dena Lewis-Bystrzycki ("Lewis") seeks redress for retaliation in violation of the Illinois Whistleblower Protection Act (740 ILCS § 174/15) against Defendants City of Country Club Hills, Carl Pycz, Joseph Ellington, and Roger Agpawa (Count I); for gender discrimination and for creating a hostile work environment in violation of the Illinois Human Rights Act ("IHRA") (775 ILCS § 5/1-102) against Defendant City of Country Club Hills (Count II); and for retaliation also in violation of the IHRA against Defendant City of Country Club Hills (Count III). Plaintiff also seeks declaratory and injunctive relief as well as damages for her injuries.

ANSWER: Defendants admit that Plaintiff seeks to state a cause of action for retaliation in violation of the Illinois Whistleblower Protection Act, for gender discrimination, for a hostile

ANSWER: Defendants admit Plaintiff began working for the City of Country Club Hills as a part-time firefighter in 1998 and began her employment as a full time firefighter on January 14, 2002. Defendants deny the remaining allegations.

15. Throughout her employment, Defendants subjected Plaintiff Lewis to harassment and a hostile work environment based on her gender (female). Defendants' perpetuation of a hostile work environment against women and against Plaintiff more specifically has occurred on an ongoing basis and constitutes a continuing violation.

ANSWER: Denied. Further answering, Defendants affirmatively state Plaintiff was treated the same way as all other employees, i.e. with respect and not based on gender or race. Further answering, Defendants deny that Plaintiff has the right to file suit, and that this Honorable Court has jurisdiction of claims for violation of the IDHR related to any alleged acts predating September 4, 2011 (180 days before the filing date of March 2, 2012) or not alleged in Plaintiff's IDHR charge.



16. The continuing violation started from the first day of Plaintiff's employment and has continued to the present, and includes but is not limited to such things as the following: the first day on the job, the former Chief saying to her that he "wanted to cum in [Plaintiff's] pussy and eat it back out;" a male employee throwing his cockring at Plaintiff while she was in the dayroom at the fire house; when Plaintiff was taking a shower at the fire house, a male employee broke the bathroom door down. Plaintiff shouted "Chief!" but former Chief Kasper was already in the hallway, holding a towel to hand to Plaintiff as she exited the shower; the former Chief then reprimanded Plaintiff and wrote her up for not properly locking the bathroom door; a male firefighter took Plaintiff's house keys and made a copy and broke into her home without her

knowledge or permission, and when Plaintiff complained to the Chief, nothing was done; at various times during Plaintiff's employment, certain male firefighters would lean in to kiss her, would hug her, and hit on her in a romantic way; certain male firefighters would walk around the fire house with their pants off or pulled down, and one commented that he "was a shower not a grower;" at other times, when Plaintiff was sleeping in her bunk at the fire station late at night, or in the early morning, several different male firefighters would climb into Plaintiff's bunk and try to "cuddle" with her; throughout Plaintiff's employment, and on an ongoing basis, Plaintiff has witnessed male firefighters and supervisors watching pornography on the computer and televisions in the fire station; and Plaintiff continues to be treated in a hostile manner by certain supervisors, including the Chief, because of her gender and because she has complained. There are additional incidents that are set forth in Plaintiff's deposition testimony and interrogatory answers in this case.



ANSWER: Defendants deny there is a continuing violation. Defendants deny a continuing violation started from the first day of Plaintiff's employment and has continued to the present. Defendants deny that on her first day on the job, the former Chief said to her that he "wanted to cum in [Plaintiff's] pussy and eat it back out". Defendants deny when Plaintiff was taking a shower at the fire house, a male employee broke the bathroom door down; that Plaintiff shouted "Chief!" but former Chief Kasper was already in the hallway, holding a towel to hand to Plaintiff as she exited the shower; the former Chief then reprimanded Plaintiff and wrote her up for not properly locking the bathroom door. Defendants deny that Plaintiff has ever been treated in a hostile manner by supervisors or the Chief because of her gender or because she complained. Defendants do not have sufficient knowledge or information regarding the remaining allegations of paragraph 16 as they are vague and ambiguous and, therefore, neither admit nor deny same, but demand strict proof thereof.

17. Current Lieutenants have admitted that they are aware of male employees watching pornography in the fire stations. One Lieutenant admitted he saw nothing wrong with it. That same Lieutenant also testified that he himself watched pornography at the fire station, even since he has been a Lieutenant.

ANSWER: Defendants do not have sufficient knowledge or information regarding the allegations of paragraph 17 as they are vague and ambiguous and, therefore, neither admit nor deny same, but demand strict proof thereof.



18. Supervisors did and have done nothing to remedy the conduct.

ANSWER: Defendants do not have sufficient knowledge or information regarding the allegations of paragraph 18 as they are vague and ambiguous and, therefore, neither admit nor deny same, but demand strict proof thereof.

19. From September 2011 to present, Defendants also subjected Plaintiff Lewis to retaliation for reporting what she believed to be a violation of law.

ANSWER: Denied.

20. Defendants continue to retaliate against Lewis to the present.

ANSWER: Denied. Defendants affirmatively state that Joe Ellington has retired from the City of Country Club Hills Fire Department.

# EXHIBIT 2

CONFIDENTIAL

# City of Country Club Hills
## Fire Department

November 9, 2015

To: Attorney Daniel Boddicker

From: Fire Chief Roger A. Agpawa

Re: Investigation of Television Usage (Alleged Porn) in Fire Stations



An investigation was conducted by my office after receiving information around August 2015 of alleged improper use of company television. My office set out on some non-judgmental fact finding in effort to make report.

I met with my Deputy Chief and later met briefly and informally with two of the Lieutenants that were indicated in the matter. I did a summary of the question of porn only, from the question to both Lieutenants during their depositions.

With the basics of the question at least for one of them, being the same during his deposition and not being able to ask more in depth to the other, without proper protocol. I then had to turn the matter over to the Public Safety Director for more specified investigation for in depth interviewing.

The interviewing with my suggestion was to interview all Fire Department supervision and provide Union Representation. I further recommended involving Human Resources in the overall process. During this time I investigated available television channels and contacted out IT Department for electronic updates and policy.

I got contact from our Human Resources to get another layer on the investigation and that it would be proper to get another source to review and investigate the alleged porn misusage. Even without ever getting or hearing of any complaints and in informal interviews not hearing much issue. I took action with all Fire Department televisions to discontinue all premium movie channels.

# CONFIDENTIAL

I further got the IT Department to recheck all City computers that the Firemen have access to in their areas. This was done off their normal scheduled reviews for City computers.

I was later contacted and met with Public Safety Director Chief William Brown and he got approval to bring outside HR Consulting firm to conduct formal investigation. (See attached)

During this time several calls were made by my office to Comcast Security Assurance to further investigate television usage. These efforts were very hard to get responses too and after not receiving calls back from both the general customer service and other lines; time would not permit further reviewing. Basic bills were scrutinized at random with no evidence of improprieties.

Cc: Mayor James Ford
Public Safety Director William Brown
Deputy Chief Robert Kopec

**Station 1**
4520 W. 175th Street
Country Club Hills, IL. 60478
708.798.8488
Fax: 708.798.8555

**Station 2**
4350 W. 183rd Street
Country Club Hills, IL. 60478
708. 798.3270
Fax: 708. 798.3883

CONFIDENTIAL

CONSULTING



**Private & Confidential**
Misuse of Company TV Cable
Investigation

**October 7, 2015**

Contents

1. Introduction

2. Methodology

3. Summary of Employee Statements,

- Carl Pycz
- Glenn McAuliff
- Michael Kilburg
- Raymond Bernadisius
- Michelle Hullinger
- Derek Dangoy
- Nicholas Jula
- Lawrence Gillespi

4. Overall Summary/Conclusion

5. Recommendations

6. Appendix

## 1. Introduction

Under The City of Country Club Hills Harassment policy and the notification of possible inappropriate behavior of employees watching Porn during working hours at the Fire house, an investigation was conducted as is required for any formal or informal complaints and or allegations of Harassment.

## 2. Methodology

- As part of The City of Country Club Hills procedures for conducting potential workplace misconduct and harassment investigations, a Human Resources Professional was called upon to (i.e., interview employees to determine the facts with a written summary report). A representative from leadership and Bargaining Unit Representative, were also present in all the investigatory interviews if requested by employee.

| | |
|---|---|
| Investigator: | Marion J. Williams, CHRP |
| Representative from Management: | Roger Agpawa, Fire Chief |
| Representative from Bargaining Unit: | Michael Kilburg, Union Rep |

- All interviews for the investigation were conducted in the Country Club Hills Police Department conference room between the 4th and 18th of September.
- All interviews were conducted in a private room to ensure privacy and confidentiality.
- All interviewees had union representation accept the following employees:
  - Michael Kilburg ( Union Rep)
  - Lawrence Gillespi
  - Nicholas Jula
- Investigation Memo for Misuse of Cable TV and Internet Services was obtained and reviewed.
- Company Policy on Harassment, Including Sexual Harassment was obtained and reviewed.
- City of Country Club Hills Ordinance NO.OA-02-03 was obtained and reviewed.
- All notes taken during the interviews are all attached

- Confidentiality was stressed to all interviewees at the interview

- Managers receiving the report are now reminded of the confidential nature of this report. Please ensure that the information included is not discussed with anyone other than those who need to know.

### 3. Summary of Employee Statement made by, Carl Pycz

Mr. Pycz was interviewed on September 4, 2015. Mr. Pycz did request to have a Union Representative present during the interview, therefore Mr. Kilburg ( Union Representative) was present. Mr. Pycz stated that he was a Lieutenant/Paramedic with the City of Country Club Hills for 9 years 6 months. Mr. Pycz started he was hired as a Part-time employee and was promoted to full-time after being an employee for 6 months. Mr. Pycz was asked if he had any knowledge of employees watching Porn while at the Fire House; he stated that he had no knowledge of any employee participating in the behavior of watching Porn while at the Fire House." Mr. Pycz was asked to descibe Porn in his own words that would describe the behaviors of Porn. He responded by saying he would define Porn as "Penetration between a Male & Female". He was asked if he had witness any Porn being viewed in the Fire House, he responded by saying, "According to my definition, I have never seen Porn in the Fire House".

Finally, Mr. Pycz was then asked if he was aware if The City of Country Club Hills had a Sexual Harassment/Hostile Work Environment Policy. Mr. Pycz responded by saying, "yes". I asked when he was introduced to the policy and he responded, " When I was hired, when I first started".

**Summary of Employee Statement made by, Glenn Mc Auliff**

Mr. McAuliff was interviewed on September 4, 2015. Mr. McAuliff did request to have a Union Representative present during the interview, therefore Mr. Kilburg (Union Representative) was present. Mr. McAuliff stated that he was a Lieutenant/ Paramedic/Shift Commander on the Black shift at Station 1. Mr. McAuliff has been with the City of Country Club Hills since 2002. Mr. McAuliff was asked if he had any knowledge of employees participating in the behavior of watching Porn while at the Fire House? Mr. McAuliff stated "Yes". Mr. McAuliff stated" about three (3) year ago he saw a Porn image on the desk top of another employees computer. He was asked if he could tell me who that was and he stated, a past employee by the name of Brendan Baldwin, who is no longer with The City of Country Club Hills. Mr. McAuliff was then asked where did this take place, he responded by stating "in the Library/Meeting Room." He stated that he remembered that it took place around 6:45pm. He was asked where he thought employees were getting access to Porn, he answered "he assumed through the internet because we don't have cable channels anymore. Mr.

# EXHIBIT 5

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Sera Lewis-Bystrzycki

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 Defs' economic 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 protocol for ESI/forensic imagery of emails and computer ESI documents;

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



Atty. No.: 43132

Name: Kurtz Law Offices

Atty. for: Plaintiff

Address: 32 Blair St

City/State/Zip: Hinsdale IL 60521

Telephone: 630.323.9444

ENTERED:

Dated:

ENTERED
JUDGE BRIGID MARY McGRATH-1800
AUG 31 2016
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL 1800

Judge
Brigid M. McGrath

Judge's No.

# EXHIBIT 6

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?

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

# EXHIBIT 7

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

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



**FOURTH AMENDED NOTICE OF INSPECTION**

**PLEASE TAKE NOTICE** that Plaintiff, through her undersigned counsel, and pursuant to Supreme Court Rule 201(b)(4) and 214, hereby requests to produce for inspection, testing or sampling the following objects and tangible things, including electronically stored information to take place at the Country Club Hills Fire Department, Station 1 on January 16, 2017 at 10:00 a.m., and continuing day to day thereafter until imaging is complete:

1. The computers identified by Plaintiff and required to be produced for inspection by the Court, pursuant to the Court's order of August 31, 2016, including the computers which are or were located in (a) the classroom at Station 1, (b) the middle office across from the bathroom at Station 1, (c) the paramedic writing room computer at Station 2, (d) the computer in the hallway by the engineers' office at Station 2, and/or (e) any server that may contain information as to whether or not pornographic material

was being viewed at the Fire Department, Station 1, considering that Defendant has identified that "data on Network-PC are considered dumb terminals."

2. To the extent the above referenced computers were moved, altered, or changed in any manner, then the computers maintained by Defendant Country Club Hills sufficient to identify whether or not pornographic material was being viewed by employees at the Fire Department, Station 1.

3. Plaintiff's expert shall be allowed unfettered access to all computers owned, operated or controlled by the defendants in order to identify computers used by the named custodians and subsequently will image those computers.



This notice of inspection requires Defendants and Defendants' agents and employees to not alter in any way, shape, or form, any of the areas, documents, data, contents, and information to be inspected.

Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

*/s/Dana L. Kurtz*

Attorney for Plaintiff

KURTZ LAW OFFICES, LTD.
32 Blaine Street
Hinsdale, Illinois 60521
Phone: 630.323.9444
Facsimile: 630.604.9444
Firm No. 43132

## PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **FOURTH AMENDED NOTICE OF INSPECTION** was served upon all parties designated below by electronic mail before 5:00 p.m. on January 11, 2017.

Daniel Boddicker
dboddicker@keefe-law.com
vpena@keefe-law.com

*/s/Dana L. Kurtz*

Dana L. Kurtz

[ X ] Under penalties as provided by law pursuant to ILL. REV. STAT., CHAP. 100, Sec. 1-109, I certify that the statements set forth herein are true and correct.

# EXHIBIT 8

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

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



**PLAINTIFF'S MOTION FOR SANCTIONS FOR VIOLATIONS OF THE COURT'S ORDER REGARDING INSPECTION OF COMPUTERS FOR PORNOGRAPHIC MATERIAL**

Plaintiff DENA LEWIS-BYSTRZYCKI, through her counsel, respectfully moves this Court to enter an order imposing discovery sanctions on the Defendant City of Country Club Hills for violations of this Court's order allowing the inspection of Defendant's computers for pornographic material. In support, Plaintiff states as follows:

1. On August 31, 2016, this Court granted Plaintiff's motion for a forensic examination of Defendant's computers relating to employees of the fire department watching pornographic material in the fire station. (Exhibit 1, 8/31/16 Order.)

2. Plaintiff has sent four formal notices of inspections for the computers at issue as well as numerous emails to try to confirm a date for the inspection.

3. Most recently, Plaintiff's counsel sent Defendants' counsel Plaintiff's Fourth Amended Notice of Inspection for January 16, 2017. Plaintiff's counsel also sent Defendants' counsel several emails to try to confirm the date of the inspection and that

the eDiscovery expert was confirmed for the inspection/forensic imaging on January 16, 2017.

4. Defendants and Defendants' counsel has continued to evade the court's order granting the forensic imaging, including most recently cancelling the inspection the same morning and only after the eDiscovery expert appeared at the fire station. In fact, the eDiscovery expert, Andrew Garrett was told to proceed by the staff on site prior to Defendant Chief Agpawa's and Defendants' counsel's subsequent cancellation of the inspection. (*See* Exhibit 2, Email Correspondence.)



5. This Court may impose on the offending party and/or their attorney "an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee" Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Rule 219(c) states in relevant part:

> **c) Failure to Comply with Order or Rules.** If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:
>
> (i) That further proceedings be stayed until the order or rule is complied with;
>
> (ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

(iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice;

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

Ill. S. Ct. R. 219(c).

6. As a sanction under Rule 219(c) for failing to comply with the Court's orders, this Court should grant Plaintiff among the following relief:

a. An adverse inference against Defendants on the issue of male employees watching pornographic material in the fire station;

b. An order requiring the inspection/forensic imaging to take place on January 26, 2017 and January 27, 2017, if necessary; and

c. An order requiring Defendants to reimburse Plaintiff for her attorneys' fees and costs, and the cost of her eDiscovery expert having to appear and travel time to/from the fire station as a result of Defendants' last minute cancellation of the inspection.



7. This is Plaintiff's fourth motion to compel and at least third motion for sanctions because of Defendants' and their counsel's continued refusal and failure to comply with the courts orders in this case.

WHEREFORE, for the above stated reasons, Plaintiff asks this Court to enter an order imposing discovery sanctions on the Defendant City of Country Club Hills for violations of this Court's order allowing the inspection of Defendant's computers for pornographic material, and for such other relief that is just and equitable.

Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

*/s/Dana L. Kurtz*

Attorney for Plaintiff

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32 Blaine Street
Hinsdale, Illinois 60521
Phone: 630.323.9444
Facsimile: 630.604.9444
Firm No. 43132

## PROOF OF SERVICE

The undersigned, an attorney, on oath states that I served this notice by electronic filing to the parties shown below on January 20, 2017.

Daniel Boddicker
Email: dboddicker@keefe-law.com

*/s/Dana L. Kurtz*

Dana L. Kurtz

[ X ] Under penalties as provided by law pursuant to ILL. REV. STAT., CHAP. 100, Sec. 1-109, I certify that the statements set forth herein are true and correct.

# EXHIBIT 9

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Louis Bystrzycki

v.

Country Club Hills, et al

No. 2012 L 9116

ORDER

This matter coming to be heard on Plaintiff's Motion for Sanctions for Violations of the Court's Order Regarding Inspection of Computers for Pornographic Material, it is hereby ordered:

(1) The motion is granted;

(2) inspection/imaging will proceed on January 26, 2017 @ 10:00am by agreement;

(3) The request for reimbursement of expert's time and expenses is granted, the to hourly rate stated in invoice of time and pay at rate of Jan. 30, 2017;

(4) Defs objections to protocol are waived because not raised in a timely manner.

(5) Status set for February 16, 2017 @ 9:45am

ELECTRONICALLY FILED
2/15/2017 10:50 PM
2012-L-009916
PAGE 16 of 27

Atty. No.: 43132

Name: Kurtz Law Offices, Ltd

Atty. for: Plaintiff

Address: 32 Bank St.

City/State/Zip: Hinsdale IL 60521

Telephone: 630.323.9444

ENTERED:

Dated: JUDGE LYNN M. EGAN

JAN 23 2017

Circuit Court-1683

Judge
Brigid M. McGrath

Judge's No.
1800

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

# EXHIBIT 10

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; CARL PYCZ, )
JOSEPH ELLINGTON and ROGER)
AGPAWA in their Individual)
Capacity, )
)
Defendants. )

REPORT OF PROCEEDINGS had at the Hearing on motion in the above-entitled cause before the Honorable Brigid McGrath, a Judge of said Court, on the 8th of February, 2017, at the hour of 10:15 o'clock a.m.



PRESENT:
KURTZ LAW OFFICES, LLC.
BY: MS. DANA KURTZ
32 Blaine Street
Hinsdale, Illinois 60521
630.323.9444
Dkurtz@kurtzlaw.us,

On behalf of the Plaintiff;

KEEFE, CAMPBELL, BIERY & ASSOCIATES, LLC.
BY: MR. DANIEL J. BODDICKER
118 North Clinton
Suite 300
Chicago, Illinois 60661
312.756.1800
Dboddicker@keefe-law.com.

On behalf of the Defendants.



MR. BODDICKER: Good morning. Daniel Boddicker for the Defendant, movant.
MS. KURTZ: Good morning. Dana Kurtz on behalf of Plaintiff. I also have present in court Mr. Garrett who the ESI forensic expert, since he can speak intelligently, unlike me, on these issues.
THE COURT: Wonderful.
MR. BODDICKER: Judge, this is Defendants' emergency motion for a protective order and 502(D) non-waiver order.
In essence, it's in three parts. We're seeking a protective order related to some of the recent forensic imaging of documents and reports that are coming out. We're seeking a protective order related to Plaintiff and/or Plaintiff's counsel's efforts to influence the jury pool.
And finally we're seeking a 502(D) non-waiver order just related to the ESI in general.
You got a copy of our motion there, Judge.
THE COURT: Yes.



MR. BODDICKER: I'm going to try and briefly talk to you about the exhibits. Exhibit 1 is, in essence, a response that we had filed in response to a motion to compel sometime ago.
The importance of it is that the Plaintiff in her responses in discovery had identified six individuals she alleged that she had seen looking at pornography in the fire department.
We were before you back in August, August 31st of 2016, related to the motion to compel, and you had ordered at that time, and it's Exhibit 2, a copy of your court order that Plaintiff was to provide us with protocol related to the computer search that you had ordered to take place.
Exhibit 3 is a copy of your -- the transcript of the order that, in essence, said there's four computers in the fire department, you wanted those looked at.
Exhibit 4 is a copy of the email from Plaintiff's counsel to me on November 15th of 2016 where she attached copies of the

protocols. There were two different protocols. Exhibit 4(a) is really the protocol in question here. It's the protocol for the forensic imaging of those computers that you had ordered looked at.

Of interest, at paragraph eleven of Exhibit 4(a), the protocol, they'll abide by any protective order that's entered.

Exhibit -- or paragraph fourteen of that protocol talks about a search hit report being prepared by their expert after the forensic imaging.

I'm going to move on then to Exhibit 4(b), which is just another protocol for the emails that was provided at that time.

Exhibit 5 is the Fourth Amended Notice of Inspection that Plaintiff's counsel sent in January of 2017.

And of interest in that in particular, there is no protocol provided. It is not even mentioned. So the only protocol that we received is the protocol for 4(a).

Finally, Exhibit 6 is an email which is part of the emergency portion of this



that I received from Plaintiff's counsel, which, in essence, seems to imply that there is no protocol and she's just going to make up her own protocol right now, and she offers to provide us with a preliminary report from Mr. Garrity that we would then have 24 hours to look at for privileges and then she would get a report.

Seems to me she is totally disregarding the protocol.

Based on some of my conversations with Ms. Kurtz, I am very concerned, and my clients are very concerned, that he has already released a bunch of information from his forensic imaging to Plaintiff's counsel, which he is not supposed to have done.

We think that would be in violation of the protocol. It's probably even sanctionable.

But having said that, Ms. Kurtz told me that she only received some preliminary information, which then she didn't want to put in writing what that preliminary information was that she received. However, we received



other communications from Ms. Kurtz that seemed to imply she's got a lot of the information already, which is part of why we are now seeking this protective order.

Initially, the first segment of our motion in seeking a protective order, that any irrelevant or immaterial data from the fire department servers forensic imaging should be protected against disclosure.

And in particular, we're asking that that information be given to us so that we can look at it and that the Court has an opportunity for an in camera inspection of that information to be able to make a determination as to whether or not any of the material is relevant or immaterial.

We suspect, and we don't have a copy of the report yet, but we suspect it's going to be pretty broad, and there may be many other people that may be on that report, other than the six people that Plaintiff had identified in her discovery that she had ever seen.

So, again, we anticipate it's



possible that there might be a lot of immaterial and irrelevant information that we do not believe Plaintiff's counsel has any right to see.

But that would be based on, you know, an in camera inspection and your decision.

We also believe that based on 201, the Court has the ability to prevent abuse, unreasonable annoyance, expense, embarrassment or disadvantage to a party, which we think potentially needs to be done in this case.

Again, we don't have the report, but we're just anticipating it could be very broad.

We would also like the protective order to prevent Plaintiff and Plaintiff's counsel from reviewing the data prior to defense counsel and the Court having a chance to review the same.

And we would also like that you request -- or require Plaintiff's counsel and Plaintiff not be allowed to view any irrelevant

or immaterial data, and, again, based on a decision by the Court after it had the chance for an in camera inspection.

The second portion of the emergency motion in front of you relates to a protective order regarding possible restraints against the efforts to influence the jury panel.

And in summary, Judge, Plaintiff's counsel seems to have a way that she likes to --

THE COURT: Some of this -- okay. I have a ruling that's going to take a half an hour, and then I have two hearings, and then I go right into a trial, so I think that at this point, regarding the emergency basis of this motion, I think the -- you've talked about -- I think you already addressed that issue.

The other issue we're going to brief, the other issues. You'll have a chance to respond to.

But my concern at this point is whether or not the Court's order has been complied with and whether any documents that



are being disseminated that shouldn't be disseminated at this point.

MR. BODDICKER: Judge, if I may, Exhibit 6 was the email I got from Counsel recently that basically said she was going to have her expert give her the report today, which I do not think -- we need protection against that.

THE COURT: The rest of this -- the rest of your motion we're going to brief or set aside to a date where I can actually have a hearing without inconveniencing other litigants who have been on my call for a while.

So if you could address that portion of the motion.

MS. KURTZ: So, Judge, what this is really about is the fact that you entered an order on August 31st, 2016. I've been trying to get the forensic imaging since April of 2016.

On August 31st you granted our motion to compel.

Defendant does not attach a copy of the order, which I have. It says --

MR. BODDICKER: Actually, I do, Judge, it is Exhibit 2.



MS. KURTZ: All right. So it is Defendant's Exhibit 2.

What they didn't attach was a copy of Judge Egan's order granting our motion for sanctions, which I'll cover that.

THE COURT: We don't need to cover that. I've already seen the order.

We have to cover whether or not there has been any skipping of steps in the order of our information.

MS. KURTZ: So, first of all, as I advised defense counsel and as your order, we're talking about Web history. There is no protocol.

The original ESI expert -- and that's why I sent the notice of inspection, which Judge Egan on January 23rd held the Defendants waived any objections.

So the only information that I have, your Honor, is that, in fact, there is porn on these computers. And, in fact, it appears that within less than two weeks of your order, they wiped the hard drives. Mr. Garrett can discuss that.



THE COURT: That's a whole different issue. That's a whole different issue. You two have two more minutes. I'm not going to inconvenience everyone else in this courtroom.

Plaintiff to provide Defendants with protocol for ESI, forensic imaging, emails, and computer --

MS. KURTZ: And that's the email and computer issue. That's the email documents and the documents on the computer. That is a separate issue than the forensic imaging of the four computers as to the porn. There's no privilege issue. We're talking about Web history.

And Mr. Garrett -- I've offered, Mr. Garrett can provide a preliminary report to Mr. Boddicker without me seeing it. He can ensure that there is into privilege issues, which there are not, because we're talking about Web history.

THE COURT: How many documents have you obtained so far?

MS. KURTZ: I have not obtained any documents. The only --

MR. GARRET: I haven't written a report, your Honor. I gave her a preliminary verbal report. I said there's thousands of Web searches for pornography. It's all over the board.

And I also let her know that it appears that they've wiped the hard drives, reloaded them, and I gave her three dates in which that was completely done, and that's a complete wipe, but the problem was, once the computers were hooked back up, the server pushed down profiles that had information of the previous Web history and the searching of pornography.

THE COURT: There hasn't been a dissemination of documents.

MR. BODDICKER: According to what they just said.

MS. KURTZ: I advised Mr. Boddicker of that on the phone, your Honor.

THE COURT: Okay. You're both officers of the court, we're on the record.

So I guess then that can put your mind at ease regarding that issue.



Let's see, then the forensic imaging document report, efforts to influence the jury. Let's -- we can brief that, but at this point I don't want any press releases or anything else at this point --

MS. KURTZ: I am not --

THE COURT: We're getting close to trial.

MS. KURTZ: Judge, I haven't sent out any press releases. The only thing that I saw was that Watch Dog article that he -- I saw that after the fact. Apparently there is an organization that's a watch dog that watches government entities. You know, they can pull stuff from the court file. I have not sent out anything.

THE COURT: So you didn't submit that deposition video footage to the media?

MS. KURTZ: That was way early on with respect to when the amended complaint was filed, the press had called me and asked me for it. That was years ago.

THE COURT: So we don't have to brief it. You will agree there's no announcements to the press? Nothing provided to the press?



MS. KURTZ: Yes.

THE COURT: Because hopefully we can get to trial soon or --

MR. BODDICKER: Judge, I appreciate what you're saying, and we'll put that in the order for sure.

The other question, though, is, would you agree to our protective order being entered that allows you to do an in camera inspection after we've had a chance to look at the report and determine what could be relevant and --

THE COURT: There aren't any documents, right?

MR. GARRET: No.

MS. KURTZ: He'll have a report. And as I advised Mr. Boddicker, I can have him send a preliminary report to Mr. Boddicker to ensure there is no privilege.

THE COURT: Continue that request. It sounds like right now I need to see what the report says so I can understand it.

MR. GARRET: The agreement we had was to only look at Web history and pictures and



videos of pornography.

I have not even processed anything else except the operating system to make sure that we validate that it's a true -- it's a real computer and --

THE COURT: Enter and continue that request. If we find out there are -- it sounds like it might be moot or it might be down the road.

MR. BODDICKER: Judge, my understanding, per the -- the only protocol we've ever received from Counsel is we would get the search hit report from Mr. Garrett and then my expert can take a look at it and see what is actually there.

MS. KURTZ: It doesn't -- that does not apply to the porn issue. And their expert has the imaging. He download the same software that Mr. Garrett used. He has the same information.

So I'm happy to provide. Mr. Garrett can do a preliminary report to Mr. Boddicker.

THE COURT: He will do a preliminary

report.
MR. BODDICKER: A preliminary report and then we will enter and continue our motion for protective order and in-camera inspection.
And, Judge, the 502(D), that's pretty basic.
THE COURT: That's the ESI.
MR. BODDICKER: Yes, that's just the non-waiver order related to -- in case some of the ESI is accidentally or --
THE COURT: Call back.
MS. KURTZ: Unless Mr. Boddicker is like watching URLs, then there is no privilege issue.
THE COURT: I'll allow for call back for any privileged documents that might be produced inadvertently.
MR. GARRET: Just to be clear, we've got no protocol. And I think there is no order to do any document production.
THE COURT: This is regarding another issue.
MS. KURTZ: That I sent him, Mr. Garrett's protocol. He has not responded yet. We have



an order on that.
THE COURT: So I agree to call back. And parties agree nothing to the press, and we'll enter and continue request to review any documents in camera that might be produced pursuant to the -- the first set of documents.
MS. KURTZ: We already have a briefing schedule on his motion, which was the same motion, and that is set for -- the last order of February 6th, 2017 --
MR. BODDICKER: Correct. We were here Monday, which was a similar motion, so we have that briefing schedule.
THE COURT: Wonderful. Thanks for coming down.
MR. BODDICKER: Thank you, Judge.
MS. KURTZ: Thank you.

(WHICH WERE ALL THE PROCEEDINGS HAD.)



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

MAUREEN A. WOODMAN, C.S.R., being first duly sworn, says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings had at the hearing of said cause; that the foregoing is a true and correct transcript of her shorthand notes, so taken as aforesaid, and contains all the proceedings of said hearing.

MAUREEN A. WOODMAN,CSR
License No. 084.002740

# EXHIBIT 11

# Judge throws out jury verdict against off-duty Chicago cop, cites lawyer's conduct

Retired Chicago police Officer William Szura leaves the Dirksen U.S. Courthouse on Dec. 8, 2015. (Brian Cassella / Chicago Tribune)



By **Jason Meisner**
Chicago Tribune

SEPTEMBER 30, 2016, 6:09 PM

Citing repeated misconduct by an attorney, a federal judge took the rare step Friday of throwing out a jury verdict in favor of a woman who alleged an off-duty Chicago police officer attacked her during a road-rage incident on the Stevenson Expressway nearly nine years ago.

U.S. District Judge Sara Ellis blasted attorney Dana Kurtz, saying she engaged in a "pervasive" pattern of misconduct at trial — making repeated misrepresentations to the court, asking questions to deliberately elicit barred testimony and improperly coaching witnesses. The judge also concluded Kurtz had given documents to the Chicago Tribune during the trial in an effort to improperly influence the jury.

"While it is possible that each individual incident, standing alone, should rightly be given the benefit of the doubt and would not merit a severe sanction, the continuous, repetitive nature of the misconduct, the fact that she did not improve her conduct in the face of numerous warnings, and (her) history of censure support the court's finding that her conduct at trial was willful, egregious, and not entitled to a presumption of unintentionality," the judge wrote in her 31-page opinion.

The ruling not only overturns the jury's verdict in December awarding $260,000 in damages to Nicole Tomaskovic for the July 2007 incident involving Officer William Szura but also ends litigation over whether the city had a pattern and practice of covering up for the actions of bad officers.

Ellis, who was an assistant corporation counsel defending Chicago police officers against allegations of wrongdoing between 2004 and 2008, said she recognized that overturning a jury verdict and finding in favor of the losing side "is the most severe sanction available in litigation and should not be imposed lightly."



City lawyers had asked the judge to take the action against Kurtz after the hotly contested trial. A spokesman for the city's Law Department declined comment on the ruling issued Thursday.

Kurtz, who withdrew from the case earlier this year, could not be reached for comment Friday. Tomaskovic's new attorney also was unavailable.

Szura, a longtime mounted officer who has since retired from the force, was accused of attacking Tomaskovic and her two friends, Kelly Fuery and Debra Sciortino, after he pulled over Fuery's car on the side of the expressway as they were headed home from the Gay Pride Parade.

Szura had worked crowd control at the parade with his horse but was off-duty when he said he saw Fuery throw something at his vehicle as they tailgated him. Szura testified at trial in December that he hit the brakes, then pulled to the shoulder of the expressway just west of downtown to calm down.

Fuery alleged, however, Szura forced her off the road by staying in front of her car and slowing to a stop.

Either way, the two left their vehicles, and a confrontation ensued that quickly spun out of control.

Fuery alleged that Szura — without identifying himself as a police officer — drew a handgun and stuck it in her midsection. According to her deposition, she said to Szura, "What are you going to do, shoot me?" Szura then is alleged to have struck Fuery in the face and knocked down Sciortino when she tried to intervene.

Tomaskovic, who had been following in another vehicle, ran up to help but Szura slammed her against a car and concrete barrier so hard it ruptured two discs in her back that later required surgery, according to court filings.

Amid the melee, a motorist called 911 to report seeing a woman knocked into a lane of traffic, court records showed.

"I had to swerve and almost ... hit her," a transcript of the call in court records quoted the motorist as saying.

The jury found in favor of Szura on all counts except for Tomaskovic's claim of excessive force.

The Tribune wrote about the lawsuit in an article in early 2014 and again during the trial in December. In the online version of the December article, the Tribune posted transcripts and audio of the 911 calls as well as a photo of Tomaskovic in the hospital — materials that hadn't been admitted into evidence at trial.



Lawyers for the city cried foul, claiming Kurtz was deliberately trying to influence the jury by leaking the transcripts to the media even though the jury was under strict instructions from the judge not to read or listen to any media accounts of the trial. Ellis later questioned the jurors, and none said they had read the article.

Queried by the judge during the trial, Kurtz denied giving the materials to the Tribune.

Asked by the judge where the Tribune got the materials, a lawyer for the newspaper declined to answer, citing reporters' privilege.

In her ruling, Ellis wrote she was unable to "conclusively determine" how or when the Tribune was given the materials but said that "the most likely scenario is that Kurtz or someone working at her direction provided the materials" to the newspaper.

A publicist for Kurtz had given the materials to the Tribune — but three years earlier when there were no restrictions on their release. At least one television station had broadcast the materials as well three years ago.

*jmeisner@chicagotribune.com*

*Twitter @jmetr22b*