

EXHIBIT "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
CASE No. 8:15 cv 11 T 17 TBM

OXEBRIDGE QUALITY RESOURCES
INTERNATIONAL, LLC

Plaintiff,

v.

March 16, 2016
9:30 A.M.

MARC TIMOTHY SMITH,
individually and doing business
as Cayman Business Systems

Defendant.

TRANSCRIPT OF ORDER TO SHOW CAUSE HEARING
BEFORE THE HONORABLE THOMAS B. MCCOUN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

LEIGHANNE CONNERY BOONE
William R. Wohlsifer, PA **Not present.**
1100 E Park Ave Ste B
Tallahassee, FL 32301-2651

For the Defendant:

MARC SMITH, pro se

Reported By:

Sandra K. Provenzano, RPR
Official Court Reporter
U.S. District Court
801 North Florida Avenue
Tampa, FL 33602
(813) 301-5699

STENOGRAPHICALLY REPORTED
COMPUTER-AIDED TRANSCRIPTION

**There appears to be many errors in this transcript. It appears to have
been computer generated (not written by a person).**

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EXHIBITS:

IDENTIFIED:

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Nos. 1, 2, 3, 4, 5, 23
6

Smith was not notified of this "evidence" book as required by the Magistrate Judge in January. As such, this should not have been allowed to be used in the hearing. It was an obvious attempt to "blind side" Smith by Chris Paris' attorney..

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P R O C E E D I N G

THE COURT: Good morning. We're here for an order to show cause hearing. And if the clerk will call the case, please.

COURTROOM DEPUTY CLERK: Case number 8:16 cv 11 T 17 TBM. Oxbridge Quality Resources International versus Smith.

THE COURT: We're going to record these proceedings electronically. We've also got a court reporter present today. The backup tape feeds off the microphone there in front of you.

So my rule of thumb is you can remain seated throughout all the arguments, all the discussions. Just when you speak, speak into the microphone. That will help the court reporter to hear you, and it will also help us make a backup tape.

If you -- obviously, if you wish to come to the podium you may do so. And -- but again speak into the microphone if you would.

Yes, sir. Let's have everybody to identify themselves first. Who's here for the plaintiff?

MS. BOONE: Good morning, Your Honor. Leighanne Boone for the plaintiff.

MS. GRAY: My name is Marc Smith. I'm the defendant. Sir, I'm sorry, but I can hardly hear you when

1 you speak.

2 THE COURT: All right. I'll try to speak up.

3 COURT REPORTER: You are not coming through the
4 microphones, Judge.

5 THE COURT: Let's try this again. Because I'm
6 not sure the mic was on. If it was on, it as very low. If
7 you'll speak into it.

8 MS. BOONE: Certainly. Here we go. Leanne Boone
9 for the plaintiff.

10 THE COURT: All right. You're Mr. Smith, and,
11 Mr. Smith, I'll try to speak loudly enough to where you can
12 hear me.

13 Plaintiff has filed a verified second notice of
14 defendant's breach of the mediation settlement agreement
15 which we had a hearing on some time back, and I agreed that
16 it was necessary that we have an evidentiary hearing on the
17 matter.

18 In the -- in the order that was entered back on
19 January 13th I indicated that the parties could proceed by
20 way of testimony, affidavits, and documentary exhibits.

21 And as agreed at the hearing the Court would
22 unseal the motion, defendant's response, the mediation
23 settlement agreement, and the joint stipulation at the
24 hearing which shall be placed into public record of the
25 court.

Done
(finally in
PACER)
on
approx. 2
August
2016.

1 Is there any reason why we should not follow
2 through with the unsealing of those four matters?

3 MS. BOONE: No, Your Honor.

4 THE COURT: All right. Then I'm going to direct
5 that the plaintiff's verified notice, Mr. Smith's response,
6 the first being Document 59, the second being Document 76,???
7 the mediation settlement agreement which is document 60-1 by
8 the copy I've got, and the -- it may be -- -- 60-1 for the
9 mediation settlement agreement at Document 33, which is a
10 joint stipulation on injunction, which I think actually is
11 already in the public record.

12 All of them will be -- will be placed into the
13 public record of the Court.

14 Miss Boone, tell me how you anticipate proceeding
15 today if you would, please.

16 MS. BOONE: I have two witnesses, Your Honor, Mr.
17 Paris and Mr. Smith. We were going to proceed with the
18 current violations that are still public, uhm, the joint stip
19 and mediation agreement.

20 THE COURT: Let's see if we can get some focus
21 here.

22 The pleadings that we've been looking at suggest
23 that there were essentially three violations which were
24 complained of by the plaintiff.

25 The injunction -- the injunction stated or the

1 stipulation for injunction stated that Mr. Smith agreed to
2 refrain from publishing commentary on the personal
3 professional business or other affairs of Paris and
4 Oxebridge.

5 It specifically had some subparagraphs, and 5B
6 said that Smith will remove any online commentary regarding
7 Oxebridge or Paris authored by Smith on any other website,
8 social network, or any other manner of technology or
9 communication now known or later become known.

10 And in paragraph sub5C it says Smith will not
11 publish any new content about Oxebridge or Paris on the
12 Elsmar.com internet forum or any other website and so on.

13 And then there was an agreement as part of the
14 medication ^{???} settlement agreement which appears to be 2D that
15 Smith would shut down and cease operating www.Elsmar.com and
16 will not operate any similar website relating to the ISO
17 industry.

18 The pleadings also suggest that the plaintiff
19 complains that Mr. Smith has violated the settlement
20 agreement by revealing the contents of the mediation
21 settlement agreement.

22 MS. BOONE: That's correct, Your Honor.

23 THE COURT: Is that essentially what we're going
24 to be talking about today, or are there other matters that
25 I'm unaware of or have overlooked?

1 MS. BOONE: I'm going to consult with my client.
2 Just one second.

3 I believe that's everything, Your Honor.

4 THE COURT: Okay.

5 MR. SMITH: Your Honor, one thing that I do want
6 to -- so this is on the record -- the plaintiff's attorney
7 and I -- in fact, I don't recall the date offhand.
8 Unfortunately, even though I'm acting as my own attorney, I'm
9 not afforded the same privileges of being able to bring in a
10 cell phone or anything to go back through notes and things
11 like this.

12 So we had a telephone conversation, and this has
13 to do specifically with the joint stipulation on injunction.
14 **This transcript appears to be missing part of the conversation here.**
15 And it occurs to me at that time to try and talk with
16 Mr. Wohlsifer. And I told you at the time I had tried and
17 not received any calls back. You at that time told him you
18 will get in touch with Mr. Smith.

19 I agreed to try and work this out as well as the
20 case management file with Mr. Wohlsifer on the telephone.

21 At this point my intention is to dispute the
22 joint stipulation on injunction as agreed to because
23 Mr. Wohlsifer told me one thing on the telephone, and the
24 next thing you know he's submitted to the Court a document
25 which was different than what he agreed to on the telephone.

Unfortunately, it was a telephone conversation.

1 Neither one of us have any proof, but in addition I also
2 submitted to you -- I'm not sure which document it was --
3 maybe 73 or 4. I just -- like I say, without being able to
4 bring my computer in to be able to look at my listings and
5 all, I can't come up with document numbers offhand.

6 But there are a number of things in there. For
7 example, in the joint stipulation on injunction, which are
8 impossible, one of which, for example, is --

9 THE COURT: Let me interrupt you on two
10 particulars. If you need your computer or you need your cell
11 phone, we'll make arrangements to allow you to have it here.

12 MR. SMITH: Here's the deal. I drove down to
13 Florida. It took me two days. By the time I get all that,
14 try and get everything organized, it was my understanding --
15 I checked the Internet. We left cell phones outside and
16 everything. I was surprised when --

17 THE COURT: Okay. Did you hear what I said? I
18 said, if you need it, we'll make arrangements to allow you
19 have it. I'm hearing you say that you don't really need it
20 here apparently.

21 The second think I want to note is I'm aware of
22 the fact there is I think a pending -- a pleading which
23 challenges the joint stipulation on injunction. And I know
24 that in your response here you, in a couple of 2 or 3, or
25 perhaps even more, instances urged that the joint stipulation

The hearing should not have been held until it was established whether the Stipulation on Injunction was legal or not.

1 on injunction is not a legally binding document.

2 MR. SMITH: My intention is to challenge that as
3 a legally binding document.

4 THE COURT: For purposes of this proceeding, it
5 is the operative agreement that we're going to address.

6 MR. SMITH: Now I understand --

7 THE COURT: Do me a favor. Don't interrupt me,
8 and I'll try not to interrupt you. Okay?

9 MR. SMITH: Yes, sir.

10 THE COURT: For purposes of this proceeding it is
11 the operative document. I am going to consider that it is
12 binding. If you move forward and convince Judge Kovachevich,
13 who I think is assigned to matter, that it's not a legally
14 binding document, then so be it.

15 But at present that matter has not been resolved.
16 You can make your argument to that effect during the course
17 of your responses and so on here, but understand going
18 forward that I consider it to be one of the binding documents
19 that we are going to look at to see if there's been a breach.
20 Okay.

21 MR. SMITH: I understand that completely, Your
22 Honor. My intention here in stating this was to make sure
23 that this is on the public record in the court record.

24 THE COURT: It is. Okay. How do you anticipate
25 proceeding with your case or your response?

1 MR. SMITH: I don't know how you want to go
2 through it. What I did was I submitted to the Court last
3 week and sent them a copy. I can go through line item by
4 line item.

5 THE COURT: We don't need to do that. I'm aware
6 of your response. I haven't looked at all of the attachments
7 that you may have included, but essentially you are going to
8 rely on that document as opposed to trying to introduce
9 separate exhibits today?

10 Plaintiffs have handed up a small exhibit book
11 suggesting they're going to try to introduce a few exhibits
12 in support of their position.

13 MR. SMITH: These that they gave me?

14 THE COURT: Right. Do you have separate exhibits
15 not referenced in your pleadings? If so, you need to make
16 those available to the Court.

17 If what you are going to argue is based on what
18 you've already filed, that's fine. We've got it. We'll look
19 at it.

20 MR. SMITH: It is, sir.

21 THE COURT: Okay.

22 MR. SMITH: All the things --

23 THE COURT: You can comment on those in a bit.
24 Let's get started here. All right, Miss Boone, your motion.

25 MS. BOONE: Thank you, Your Honor. Today we're

1 here due to Mr. Smith's breach of a Court order on joint
2 stipulation and the mediation settlement agreement.

3 Despite our agreements and the joint stipulation
4 order, Mr. Smith -- for Mr. Smith to refrain from posting
5 further material about Paris and Oxebriidge Quality Resources,
6 Mr. Smith continues to post such material across the
7 Internet, which is in turn reposted by endless numbers of
8 people.

9 Mr. Smith breaches of the joint stipulation has
10 permanently harmed my client as the postings have gotten out
11 of control and simply cannot be put back in the bottle. And
12 the mediation settlement agreement provided that Mr. Smith
13 No - It absolutely did not. Lawyer is lying or totally misinformed.
would exit the ISO industry as you referenced earlier yet he
14 continues to market himself and maintain a presence in the
15 ISO industry.

16 Today we are seeking contempt of court of Mr.
17 Smith for posting sealed documents on the internet. Actual
18 damages in the amount of \$200, sanctions in the amount of
19 \$5000 for his failure to comply with two court orders, the
20 joint stipulation on injunction and the endorsed order
21 directing Document 60 to be sealed.

22 And an award of our reasonable attorney's fees as
23 provided in paragraph six of the mediation settlement
24 agreement, as well as an order that would allow us to -- that
25 we could present to certain websites to have them take down

1 information that has been posted, reposted for Mr. Smith.

2 And I'd like to call Mr. Paris to the stand.

3 THE COURT: All right. Mr. Paris, come forward
4 and be sworn in, please, sir.

5 COURTROOM DEPUTY: Raise your right hand.

6 Do you solemnly swear or affirm that the
7 testimony you shall give in this cause shall be the truth,
8 the whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 CHRISTOPHER MARK PARIS,
11 a witness, having been duly sworn to tell the truth, the
12 whole truth and nothing but the truth, was examined and
13 testified as follows:

14 MS. BOONE: I have an exhibit binder that
15 I'd like to present to the witness.

16 THE COURT: All right.

17 Mr. Smith, before you begin, tell us your full
18 name, please, and where you reside.

19 THE WITNESS: I'm sorry, I'm Mr. Paris.

20 THE COURT: Excuse me, Mr. Paris. Go ahead.

21 THE WITNESS: Christopher Mark Paris. I live in
22 Winter Haven, Florida.

23 DIRECT EXAMINATION

24 BY MS. BOONE:

25 Q. Good morning, Mr. Paris. Has Mr. Smith complied with

1 the requirements of the joint stipulation and injunction or
2 the mediation settlement agreement?

3 A. No, he has not.

4 Q. And that -- I believe that both the mediation
5 settlement agreement and now the joint stipulation and
6 injunction have been unsealed and they're in the record as
7 exhibits?

8 A. Yes.

9 Q. Thank you. Mr. Paris, can you walk us through a time
10 line of the pattern of those breaches? Anything you need
11 assistance -- Exhibit 6 might be helpful.

12 A. Sure. To preface it, if I may, we have to understand
13 that the motivation or the -- during the mediated settlement
14 agreement was that in lieu of Mr. Smith claiming he did not
15 have adequate funds to pay any kind of damages of any sort,
16 we would settle for a very low figure amount of \$8,000.

Not true. My attorney was authorized to offer up to US\$20,000. He wanted to "bargain" by starting low at approximately US\$12,000

17 In exchange he would close his website down and allow
18 me to open up a site to try to fill that space, potentially
19 monetize it so then it would be my responsibility to try to
20 earn back some money that I might have lost over this 15,
21 16-year period of the defamation -- alleged defamation.

22 We have to understand that. But unfortunately while
23 that was what we signed, that isn't exactly what happened.
24 He was given 30 days to shut the site down. And 30 days was
25 also for me to ramp up -- time for me to ramp my site up at

None of
this was
discussed.

1 | the same time.

2 | And during that 30 days he used that to -- I like to
3 | say -- pollute the waters my posting on his website ongoing
4 | -- a big banner ad, a giant banner ad at the top of every
5 | page of his site that announced the site was being shut down
6 | because of this lawsuit.

7 | It improperly summarized the case, but it made the
8 | argument to the public and to his 2000 plus users that I was
9 | shutting the site down out of spite or some other reason.

It did NOT say that.

10 | If we look at -- can we look at exhibits?

11 | Q. Certainly, you can look at --

12 | A. For example, in Exhibit 6 there's a copy of the banner
13 | ad there that says -- I think we're missing the graphic which
14 | said "rest in peace Elsmar.com" attempting to elicit sympathy
15 | as if the site was a human being.

16 | But then he said, sorry, folks, over -- after over
17 | 19 years continuously on line, Elsmar.com is now permanently
18 | closed due to federal civil case, et cetera, et cetera.

It referenced the case for 2 days when the reference was removed.

19 | That pointed people, of course, to the case and they
20 | would see my name Oxebridge and everything. That
21 | announcement did not adequately summarize both the spirit and
22 | the letter of the mediation agreement, which was again that
23 | **I totally disagree. Elsmar was closed. Details in my rebuttal.**
24 | he was shutting the site down and he had already -- in fact,
25 | he had telegraphed that he was going to shut the site down a
year before there was any lawsuit any way.

**This was
AFTER
Elsmar
closed on 30
June 2015 at
10PM.**

1 So the site was being shut down anyway, but that he
2 going to shut the site down and give me the space to open up
3 another site of my own in lieu of him having to pay a
4 significant amount of damages. **Again, this was not discussed during**
5 **the meeting.**

6 THE COURT: You would concede that the mediation
7 settlement agreement doesn't say that; correct?

8 THE WITNESS: I think -- yeah.

9 THE COURT: It does not reference his low income
10 and lack of ability to pay.

11 THE WITNESS: Yeah, I would concede that.

12 THE COURT: And that being the motivation.
13 That's not set forth in the agreement.

14 THE WITNESS: Right.

15 Then shortly after that -- just to give a sense,
16 that post in one iteration or another, remained on the site
17 up to 30 days after the site had been ordered to be shut down
18 by the Court, which I believe was August 7th or so when the
19 July 20th 2015
20 site was finally removed. He is claiming now on some files
21 **Site Closed "Door Sign"**
22 that are going to be presented today that this is the
23 equivalent of a door sign hanging on the front of a store.

24 I don't know if the Court really recognizes that,
25 but -- so it not only remained up for most of the month of
26 July while he was shutting the site down; it remained up
27 **Elsmar.com closed on 30 June 2015. No "content" was available after that time.**
28 about 30 days after the Court had ordered him to shut the
29 site down. It took a tremendous amount of effort on our part

So - Chris
Paris was
lying under
oath (see
above).

1 between me and my lawyers to communicate with him increasing
2 my legal fees even more to just try to get that announcement
3 taken down.

4 If we look at B -- and I'm going to go through
5 this quickly. I recognize the Court's time is important. So
6 I'm not going to go through this in great detail.

7 But I'll just point out a couple highlights.

8 THE COURT: Let me say this is your one
9 opportunity to convince me of the violations here, so you
10 take as much time as you need.

11 THE WITNESS: Very good. I appreciate that.
12 Thank you very much.

13 So on 23 June he then posted on the Elsmar site
14 **It was agreed that I had until 5 July to comply in closing Elsmar.com**
15 again that hadn't been shut down yet, but that he was -- a
16 lawsuit settlement was the rationale for his shutting down,
17 which I am not allowed to discuss. Essentially I have to
18 close down Elsmar. In short, I have to burn the library,
19 which is how I look at it.

20 Certainly there was nothing in the agreement that
21 said anything about that. You can see a response there of
22 people chiming in.

23 Mike S chimed in, in sympathy, kind of
24 denigrating the lawsuit, et cetera. That is just a small
25 example of the probably I would say at least a hundred or so
hate mails, messages, that I've gotten that are derogatory

1 against me as a result.

2 After the site closed though, in what I would say
3 is a fairly extraordinary move, he gave an interview on the
4 closure of the site. After he had been ordered not to
5 discuss it, he went and gave an interview on a site called --
6 I think the site is called Document Forum or something.

7 But it's Standardsforum.com. And he gave an
8 interview with the owner of that, and in that article which
9 I'm going to ask my attorney which --

10 Q. I believe it's Exhibit 3.

11 THE COURT: Exhibit 3.

12 THE WITNESS: -- is a copy of that Elsmar's
13 closed, in which the article discusses that it was shut down
14 because of a lawsuit. Let's see here.

15 As noted on the website's home page, his website,
16 only page, it has been closed as part of a settlement that
17 stems from a civil lawsuit filed in Florida, which is not
18 true.

19 He had already telegraphed he was shutting the
20 site down a year before any lawsuit was announced. In
21 addition, this exhibit 3 does not indicate it, but the
22 original draft of this or the original publication of this
23 article included a link to a page on reddit.com.

24 And if the Court doesn't know what Reddit is,
25 I'll explain briefly. Reddit.com is a massive international

1 website, millions and millions and millions of users, and
2 it's unfortunately notorious for doing some pretty shady
3 things. It's where people go to kind of post nasty stuff.

4 Unfortunately, once something gets on Reddit, it
5 immediately winds up in your search results. So I had
6 contacted the woman who run this article, and I did get her
7 to remove the link to the Reddit site so that's why it
8 doesn't appear in the exhibit. But she wouldn't remove the
9 post itself. I didn't pressure her on it --

10 Q. There were no grounds for Mr. Paris to do so.
Mr. Paris --

11 A. -- because she's allowed to blog if she likes.

12 Q. Precisely. Correct.
-- Mr. Paris, before you turn away from Exhibit 3,
13 who found that posting? Who found that posting? Did you
14 find that posting? **Relevance?**

15 A. I found the posting, yes.

16 Q. And do you recall when you found it?

17 A. It must have been fairly soon when it was published.

18 Q. Okay.

19 A. I don't remember.

20 MS. BOONE: Your Honor, I now move for Exhibit 3
21 to be admitted into evidence.

22 THE COURT: Mr. Clark, is there -- excuse me,
23 Mr. Smith. I'll get this right eventually. Is there any
24 objection to any of the exhibits that you have been shown
25 being introduced here?

1 MR. SMITH: I have a number of -- there are a
2 number of things that Mr. Paris is saying --

3 THE COURT: I am not asking for your counter
4 argument; I'm simply asking do you object to the exhibits
5 that he's showing the --

6 MR. SMITH: No.

7 THE COURT: -- being introduced? Okay. So far
8 he's identified 3 and 6.

9 MS. BOONE: Okay. And 1 and 2 you acknowledged
10 for the mediation settlement agreement and the joint
11 stipulation.

12 THE COURT: Okay. And then 4 and 5 would be
13 what? Four, five and six would be --

14 MS. BOONE: I believe Mr. Paris is going to get
15 to that soon.

16 THE COURT: Well, tell me what they are.

17 MS. BOONE: Other websites that posted on
18 Mr. Smith's material.

19 THE COURT: Okay.

20 All the exhibits will be -- will be introduced.
21 Let me back up and ask with regards to Exhibit 3, the posting
22 on that was when?

23 That article that you referenced which you say
24 was on -- that ended up on or had the link to Reddit, that
25 article was posted when?

1 THE WITNESS: Looks like the date is July 7,
2 2015.

3 THE COURT: July 7th?

4 THE WITNESS: Uh-huh.

5 THE COURT: Okay. Thank you.

6 THE WITNESS: And as I recall that is the
7 accurate date.

8 THE COURT: Okay.

9 All right. Go ahead.

10 BY MS. BOONE:

11 Q. Go ahead, Mr. Paris.

12 A. And if we look at Exhibit 4, that's the copy --
13 that's just a copy of the front page of the Reddit site, but
14 it shows on the right some of the material -- well, I guess
15 the point I want to make is that when I clicked on the Reddit
16 site after I saw the link, I found that nearly the entire
17 Elsmar site had been cloned, copied. **Totally FALSE. None of Elsmar.com**
18 was "cloned" anywhere.

18 It appears now -- we can go to it right now on
19 Reddit.com. So the site was not shut down; it was merely
20 moved to Reddit. So we see an example.

21 **No, it wasn't.** This is -- Reddit is a forum. But we see the Elsmar
22 Cove logo on the top. We see search the Elsmar Cove. We see
23 Which was a "screen shot" graphic which could NOT search Elsmar.
24 the eulogy. All of this material was literally copied and
25 pasted from the site which had been removed and moved to
Reddit. **By who? I (SMITH) had no control over what someone else did.**

More perjury -
Chris Paris 1
has never 2
done website 3
development 4
professionally. 5

Now, I know a little bit about web development,
and I've done it professionally for a little bit. And I know
there's only two possible ways that happens. Someone either
without Marc's knowledge scraped the site -- they call it
scraping which they take all the graphics and everything and
they repost it. However, typically you lose a lot of
formatting, and it wouldn't look exactly the way it did
before. **It does when someone takes a "screen**
shot" and it becomes a graphic (picture)

The other alternative, of course, is that someone
gained the original raw files from Marc himself, and granted
permission to have this posted. In my opinion, it looks like
the latter is true because of the exact nature of the way the
Elsmar site was completely cloned.

Elsmar.com was NOT "cloned" - Paris keeps bringing this up and it simply isn't true.

So right now the Elsmar site that we ordered
down, exists on Reddit nearly in its entirety. But the new
Again.... Totally FALSE! This is an outright LIE!
forum -- and the forum is live so we don't have it here to
look at, but that forum is filled with new defamatory content
against me. **What forum is he speaking of? It wasn't Elsmar.com and I**
(Smith) had nothing to do with it, what ever it was.

The problem with Reddit is that it's entirely
anonymous. Anybody can post anything they want, in utter
anonymity, and yet it's not going to reveal who's those
people are. **Paris finally admits - He can not get content**
removed from Reddit any more than Smith can.

BY MS. BOONE:

Q. Mr. Paris, looking at Exhibit 4, were you the one who
found that posting?

1 A. I'm sorry? Can you repeat the question?

2 Q. Did you find that website?

3 A. Yes. As a result of the interview he gave which
4 originally had a link to the Reddit site. That's how I found
5 it.

6 MS. BOONE: I move Exhibit 4 into evidence.

7 THE COURT: All the exhibits have been
8 introduced. You can have your witness talk about them.

9 (EXHIBIT Nos. 1, 2, 3, 4, 5, 6 ADMITTED INTO
10 EVIDENCE.)

11 MS. BOONE: Okay. Thank you.

12 Please continue, Mr. Paris.

13 THE WITNESS: I probably made the point, but
14 anything that gets posted on Reddit automatically then gets
15 cloned to another site called Reacttant. Not Reacttant I
16 only learned of recently, and I can't answer too many
17 questions as to what it is. I don't know.

18 But that means that everything that is appearing
19 -- so now there's a second clone of the Elsmar site on
20 **Again, there is NO "CLONE" of Elsmar.com anywhere.**
Reacttant. As near as I can tell, Reacttant is done
21 automatically. There's not people behind it. It just copies
22 everything posted on Reddit. But it basically doubles the
23 exposure. So it's problematic.

24 We then found out that Mr. Smith granted
25 permission to a gentleman by the name of Andre Bardaden

1 (phonetic spelling), who lives in Russia, to open up a new
2 forum in the ISO space with the name Elsmarforum.com. We see
3 below an email that I received from Andre. I asked him how
4 did you open this site up and, B, are you aware that you may
5 not have permission to use the name Elsmar, and he wrote --
6 I'm afraid I don't have the date.

7 MS. BOONE: Back on exhibit --

8 MR. SMITH: Which exhibit is this?

9 MS. BOONE: It's Exhibit 6.

10 THE WITNESS: Exhibit 6.F.

11 MR. SMITH: Exhibit 6?

12 THE WITNESS: And Mr. Bardaden wrote, hello,
13 Chris. I contacted Mr. Smith and asked him if I could use
14 the word Elsmar in my project. He said that I could use it.
15 See print screen. **This was explained in my previous response to the**
Court. I have no copyright or other mark on the word
16 **Elsmar in a domain name or otherwise.**

17 And he included a copy of the e-mail that Marc
18 sent to him. And he says, I do not own a mark on Elsmar. I
assume you can use it if you want to. Good luck.

19 I want to point out that I believe that one of
20 the exhibits that Mr. Smith is going to be entering today
21 indicates that he has never -- he does not know who Andre
22 Bardaden is, **I did not remember the email exchange at the time of the hearing.**
and this e-mail will disprove that in advance.

23 I would also like to point out in the mediated
24 settlement agreement, which is Exhibit --

25 MS. BOONE: One.

True. I found the email exchange on my return and provided a copy to the court.

1 THE WITNESS: -- one. Paragraph -- looks like
2 paragraph 2D, it says the defendant shall retain all
3 ownership and rights relating to www.Elsmar.com, which would
4 seem to contradict what he's saying here that he can use the
5 word "Elsmar" however he likes. Mr. Smith had the
6 **Smith can. It is not prohibited in the MSA or elsewhere.**
7 opportunity then to decline, deny the usage of this. And he
8 did not. **He asked to use the WORD "elsmar" - Bardaden was not**
9 **given permission or rights to a domain name of**

10 **"elsmar.com"**
11 **Now we have another Elsmar forum in the quality**
12 **Which is totally unrelated to www.elsmar.com (aka Elsmar.com)**
13 ISO business, profession, operating out of the jurisdiction
14 of this Court in Russia, which is not something anybody in
15 this room I think can take back.

16 He then began -- throughout the period of July
17 and thereafter presumably -- I should note that until
18 recently posts on LinkedIn -- LinkedIn is the largest, of
19 course, professional social network in the world equivalent
20 to Facebook, but for professionals. Until recently you were
21 able to see posts made by anybody on LinkedIn. They changed
22 their policy recently.

23 But these were taken at a time when we could see,
24 so I'm not able to see what Marc may be posting now. But on
25 **Just as Marc is unable to see what Paris is posting now on various LinkedIn "groups".**
26 July 7th immediately on the same day he gave the interview,
27 he then went on LinkedIn and posted a link to the document
28 center interview where he says, FYI, word is getting around.

29 **He begins to make the case, too, that I am**
30 **telling people that this is a criminal lawsuit, and I have**
31 **Paris did, in fact, use the word "criminal" on Twitter and on his own website.**

1 never made a public statement about that. I never said
 2 **More perjury by Paris.** anything about this being a criminal lawsuit. In which he
 3 **I have screen shots showing Paris did starting in the fall of 2014 on "Twitter" and on his own website** says don't be mislead. I'm seeing people in another group --
 4 again, maybe someone else; I don't know -- who says it was a
 5 criminal lawsuit. It wasn't. It was a federal civil lawsuit
 6 **Due to Paris' use of the word "criminal" on his own website,**
 7 **in Florida. LinkedIn and Twitter, Smith had to address Paris' use of the word**
 8 **criminal, and did so appropriately.** But at the end he says, it is a civil lawsuit who
 9 its outcome was criminal. That I agree with.
 10 **So does Smith. The lawsuit is totally frivolous and was meant to defame Smith and to frighten others** So he's denigrating the Court's decision in that
 11 public post, which may as far as I know still be up there.
 12 We don't know. Then on July 25th he went even further. He
 13 said Elsmar was an internet icon. There was no LinkedIn when
 14 it started in January of 1996, no Google, no Facebook, or
 15 anything like that.
 16 Taking Elsmar down was burning down the library
 17 by a person who cannot stand criticism and is ordered to
 18 taking 19 years of centralized information, opinions,
 19 interpretations, friendship, et cetera, off the Internet.
 20 I think that fairly well contradicts the letter
 21 if not the spirit of the settlement agreement.
 22 I wanted to point out Exhibit 5, which is a copy
 23 of the home page of the Russian site Elsmarforum, which also
 24 includes the tag phrase, people helping people, which is
 25 **Quite a few forums are using that phrase, as are many charities. It is not a unique phrase - Google it.** something Marc used on his Elsmar site. That's in Exhibit 5.

Now, what happened next is a little bit strange.

It does not contradict the text of the agreement. The "spirit" is no more than an opinion and is thus irrelevant.

Quite a few forums are using that phrase, as are many charities. It is not a unique phrase - Google it.

All of the documents are publicly available on PACER.

I believe Paris himself posted these to implicate me just as he "hacked" his own website to defame me.

1 We found -- there's a website called Scribd.com where people
2 can post pretty much any document they want. So it happens
3 to be a little bit of a clearinghouse for people who want to
4 post things that are in violation of somebody's trademark.

5 **This is total bull. Scribd is totally NOT like that.**
6 So if I pay for a document, I can post a
7 document. Now everybody else in the world can download it
8 for free, and there's no harm in that.

9 We found that a user by the name of Paris
10 Oxebridge posted on November 17th some of the documents -- I
11 believe six in total -- documents from the Court which have
12 then been under seal.

13 **As is now evident, NO sealed documents were posted on Scribd, and Paris knew it.**
14 MS. BOONE: That's Exhibit 8.

15 THE WITNESS: If we look at Exhibit 8, and this
16 is an example of the copy of a document posted to Scribd.com
17 by a user by the name of Paris Oxebridge. Now, I want to
18 comment on that making sure that the Court knows it's my
19 opinion, the name Paris Oxebridge is something that Marc has
20 used throughout the 15-year-history we're talking about where
21 **Not true - Perjury - I only started using that within the past year.**
22 he refers to me as a single entity called Paris Oxebridge.

23 So I think two things are here, is that, one,
24 that name is not accidental if this is a way Marc refers to
25 **Or if Paris wants to "frame"/implicate Smith.**
me. In fact, in his recent document I think he filed with
the Court he refers to me as Paris Oxebridge.

But also there seems to be an attempt to make it
look like I posted these documents. But the six documents in

They were publicly available court documents available to the public on PACER and elsewhere.

1 questions are all derogatory and defamatory of me so there
Paris is correct - **The lawsuit court documents are defamatory and derogatory to Smith**
2 would be so reason. And I wanted to state under oath that I

3 did not post these documents to this website. In fact, I
4 hadn't even known this website existed.

5 BY MS. BOONE:

6 Q. Before you move away from Exhibit 8, uhm, is that a
7 correct copy of Document 6 in the docket?

8 A. No. So this is a copy of Document 6 originally filed
9 -- docket six for this case, but it includes handwritten
10 annotations by Marc, which is something I want to talk about
11 because they include additional defamatory material
12 indicating to me that we just can't seem to stop the flood of
13 this stuff.

14 Q. So I understand you to say that those handwritten
15 notes are not on Document 6 in the record?

16 A. No.

17 Q. Is there another document that does have them that is
18 in the record that --

19 A. I believe it was subsequently filed under one of the
20 -- docket 60. And maybe you can check that. But he since
21 filed this, I believe, on two occasions as his official
22 filings with the Court using the marked up copy.

23 Q. And I believe Exhibit 7?

24 A. Exhibit 7, yes.

25 Q. Do you recall if this document was sealed at any time?

1 A. Yes. The document would have been sealed some time
2 around October. Again, if I can, it's worth pointing out
3 looking at Exhibit 7, just some of the information that was
4 submitted to the Court, and again linked onto the Internet
5 which includes his handwritten notes. And if we look at --

6 MR. SMITH: Objection, Your Honor. We have
7 reached the point here where he's listing all sorts of things
8 here, and he's ascribing to me -- I mean, he's trying to
9 point to me as the cause. Now, I thought this was --

10 THE COURT: You are going to get -- you're going
11 to get your opportunity to respond. This is his version and
12 his beliefs and I consider it as such. So you will get your
13 opportunity to respond. If you have a specific objection
14 beyond the fact that he's rendering opinions here, I'll
15 listen. But I'm going to allow --

16 MR. SMITH: This is all opinion, Your Honor.

17 THE COURT: I hear you. And we'll see where it
18 goes. Go ahead, sir.

19 THE WITNESS: I want to make sure the Court
20 understands I know the difference between opinion and
21 defamation, and I'm not challenging Marc on his opinions.
22 But I am challenging him on what I believe, and I believe the
23 Court would agree, is defamation.

24 So I would point to exhibit --

25 THE COURT: The issue in the case is whether or

1 not it's the defendant who is posting these matters. You are
2 assuming in your testimony here that with regard to these
3 last two exhibits, which apparently reflect on court
4 documents 6 and 7, that he was the one that edited them with
5 the handwritten notes and posted them. That's one of the
6 fundamental questions we're going to have to resolve here.

7 THE WITNESS: He has submitted this, Your Honor.
8 He has submitted this under his name as an official document.
9 We would need to check which recent document, but I believe
10 it's somewhere around 60 or so he has submitted this
11 handwritten document under his name, and he acknowledges that
12 he's written these handwritten notes.

13 THE COURT: All right. So this is already an
14 official record.

15 MS. BOONE: 61. Document under seal where he has
16 posted these handwritten comments that were previously
17 written on Document 6. **Document 6 was the summons.**

18 MR. SMITH: They were in the Court record. They
19 were submitted to the Court. They are in your system. Why
20 would I refuse it?

21 THE COURT: You'll get your opportunity here. Go
22 ahead, Mr. Paris.

23 THE WITNESS: Looking at Exhibit 7, just for
24 example, if we look at -- looks like it's page five, I'm not
25 sure but on the bottom it's page five, paragraph 27. There's

1 an indication there that says Smith has falsely claimed Paris
2 has threatened him and he writes, he has.

3 That I've -- I'm claiming here in this filing
4 that Smith has falsely claimed Paris has harassed him. He
5 says, he has. I'm arguing it's untrue. I have proof, including a witness!

6 He then accuses me of deceptive advertising. But
7 That is my opinion - First Ammendment.

8 I say Smith has falsely accused Oxbridge of deceptive
9 advertising. Yes. 40-day wonder. The term "40-day wonder"
10 is critical because it's a term that he coined first in 2000,
11 and has maintained ever since then, now 16 years. He calls

12 Where, since 2001, has Smith used the phrase?
me the 40-day wonder because I implemented a certain ISO
standard and I can do the work over a period of 40 days.

13 More perjury. And he has alleged that this is impossible. And
14 I have never said it is "impossible".

15 yet I have 15 years' experience doing it. But he calls me
16 the 40-day wonder to make that a derogatory comment. He
17 again makes the 40-day wonder comment in paragraph 68 of that
18 same exhibit where it says he was only familiar with -- only
19 his 40-day wonder, so again he's using these court filings to
20 actually defame me further. He indicates in here again --

Christopher Paris filed a lawsuit - Did Paris expect love and kisses from Smith?
there's an interesting one here.

21 Paragraph 42 of the document F. The finding --
22 the official document says, the false and misleading conduct
23 that strained Paris's relationship with industry
24 professionals, and he writes --

25 COURT REPORTER: I have to write what you're

He is
whining
...

1 reading. Please slow down.

2 MR. PARIS: I'm sorry.

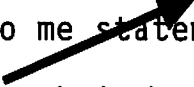
3 The false and misleading content has strained
4 Paris's relationship with industry professionals. And he
5 writes in the margin here, many people simply do not like
6 Chris Paris. **Which is true and I have a lot of evidence proving it, most of**
7 **which is from people Paris has threatened or defamed publically.**

8 BY MS. BOONE:

9 Q. Can you just reiterate this was filed with the Court
10 as document --

11 A. In paragraph 57 where we indicate that Smith raised
12 the offer -- you have to understand he was attempting to say
13 that if I bought his website for what eventually became a
14 figure of five million dollars, that was the only way I could
15 get him to stop posting this stuff, which I argue is
16 **Not true - I have submitted the email exchange to the court.**
17 extortion.

18 But he indicated -- we indicated here on May 3, Smith
19 raised the offer to sell Elsmar.com to Paris at that point to
20 \$750,000. And he indicates in the margin, I raised my price
21 to him because he is an ass. **An opinion, not a "statement of fact".**

22 These are to me  statements made by him as if they're
23 statements of fact. And they were published in the Court
24 documents. Then he points to people openly on his website to
25 the Pacer files and, of course, we find these additional
documents being posted under the pseudonym Paris Oxebridge,
which we don't know if it was him or not. But it does

1 include this additional defamatory information.

2 At some point in addition the same document appears on
3 a law blog.

4 THE COURT: Which same document?

5 THE WITNESS: This handwritten version that had
6 been uploaded to --

7 MS. BOONE: Exhibit 9.

8 THE WITNESS: -- Scribd.com.

9 Yeah, we're on Exhibit 9 -- was also uploaded to
10 Scribd.com by a user Catherine Rubino, and she then wrote a
11 defamatory -- well, not defamatory, but a very highly
12 spirited blog article which praised Marc Smith and made some
13 derogatory comments against me in a somewhat humorous
14 fashion, praising him for his aggressive pro se actions.

15 But in the end that was another negative comment
16 from a complete third party that came out of the blue. I
17 don't know.

18 We have in document number 6, Exhibit 6, my
19 paragraph -- let's see. Roman numeral III. Just a list of
20 some other -- just to show how this is spreading. We don't
21 have to go into these in any detail, but it shows a list of
22 these blogs are now copying this material, for example, the
23 first list there, the first URL from a website called Three
24 Boxes of BS, copies and pastes the RIP, Elsmar RIP notice
25 saying it was shut down because of a lawsuit, etc.

1 So it just shows the Court that this is spreading
2 like wild fire, and there may be no containing it. Whereas,
3 prior to the mediated settlement I really believed at the
4 time that the settlement agreement was going to be able to
5 stop this. We came up with a fair deal. He didn't have to
6 pay a tremendous amount of money, and I might have the
7 ability to try to over time repair my reputation on line.

8 But since the minute he posted that banner ad on
9 his site announcing that it was shut down to the website, it
10 opened this torrent, which now may be beyond the ability of
11 anyone to stop. There remain multiple Linkedin posts, but we
12 can't see them anymore on Linkedin because of the change in
13 their policy. **It wasn't a policy change - Paris was banned from**
several Linkedin groups.

14 Then there's two others in my Roman Numeral V and
15 VI. These are old posts that still remain from Google groups
16 from Quality One Stop, which were subject to the take-down
17 order, the original take-down order under the joint
18 stipulation. But they still reside today showing that Mr.
19 Smith has failed and refused to do so.

20 And I want to comment that it is entirely within
21 Mr. Smith's ability to take these down. And in fact Google
22 and Quality One -- Google, anyway, offers a simple page. You
23 click one link. You submit a list of the URLs and you

24 indicate a reason for why you need to take them down, and
25 **This is only available to take specific website pages**
out of the Google index for DMCA issues. It does NOT
remove the website pages.

This was discussed in the Meditation meeting. They agreed to provide a letter for me to sign.

Now they come back and want me to do it, which they know, as was discussed, that I can not do.

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At this point, however, I would I think we're going to request the Court to be given an order to do that, because we cannot rely on Mr. Smith to do it. So that just shows additional breaches of the joint stipulation.

I think that's all I've got.

BY MS. BOONE:

Q. Did you uncover any -- did you have any Google searches that you have done recently?

A. Yes. Thanks. I forgot. If we look to Exhibit 10, and Exhibit 11 -- we'll start with 10 -- you can see the damage. Now, I need to make it clear that the number one source of sales and referrals from my business and my company is through Google searches. **A very risky business model.**

That's how I generate business. But more importantly when I obtain a potential client and I begin to talk to them, and it looks like they're getting ready to sign a contract, they usually will go through a process of vetting me to find out if I'm legitimate or not.

One of the ways that everybody does that, you can go to Google. So if -- the first exhibit 10 shows Google results filtered for everything prior to 2013, and 2013 was when Mr. Smith was ramping things up, and we were starting to **In what way??? In 2013 there were only email exchanges.** look like we were getting into a lawsuit and got obviously into a lawsuit. Prior to that, the first page of search results for the term "Paris Oxebidge" shows no negative

1 material whatsoever.

2 There are a few off topic things about Halloween here
3 or something, but all of the material that has to do with me
4 is either neutral or positive.

5 If we look at Exhibit 11, these are the search results
6 just of March 12th, so just the other day. Now the search
7 for the same term shows up 50 percent of the negative
8 material. Fifty percent of the first page results are
9 negative defamatory material. **Proof? I seriously doubt that was the case.**

10 And all of them, every single one of those, includes
11 material that was derived either from Marc Smith or posted by
12 Marc Smith or copied and pasted from Marc Smith. So the
13 first one, the Ripoff Report includes entire sections of
14 content taken from the Elsmar site.

15 The second one, Chris Paris rides again, the full
16 thread is where will the next sucker come from is from 2004.
17 **It obviously was not hurting his business over the 10 years it was there.**
18 One of the Google group postings that he has refused to take
19 down, and it's still showing up as of March 12th.

20 You see the Scribd.com documents posted by this
21 anonymous person Paris Oxebidge. We see additional stuff
22 from Reddit.com and other places copied and pasted. This did
23 not exist prior to this. The bulk of this has appeared since
24 the settlement agreement.

24 Q. Mr. Paris, finally how have you been harmed and can
25 you repair this damage or -- from this?

1 A. Uhm, I kind of can't emphasize the harm without
2 sounding hyperbolic, and I don't want to sound hyperbolic.

3 But the damage has been unbelievable. Now, understand
4 this began in 2000 -- literally in January of 2000. So we
5 were already dealing with 15 years of this. Even at that
6 point prior to the breaches that we're discussing today, it
7 was reparable. It was probably reparable because there
8 wasn't that big of an impact on Google the way it is as of
9 today.

10 But after these breaches, and specifically after
11 posting that on his website saying this is being shut down
12 because of Oxebridge, and making the posts and the interview
13 and Reddit site and all that, I do not understand now how
14 this can be put back in. And the results have been
15 disastrous.

16 For the first time in my 16-year career of working
17 this, sales have dropped to zero. There are no sales coming
18 in at all. I'm not being requested. No one is asking me for
19 quotes. We had a couple -- I had a couple people contact me
20 a few months ago. Those did not turn into contracts.
21 There's no work coming in at all. You can directly correlate
22 the decline in my ability to do business with the increase in
23 this negative material showing up on Google.

24 Then, of course, is -- I can probably go on at length
25 of all the personal impact on this, the impact on everything,

1 the stress it's put on my wife who has to deal with this. My
2 child. The fact that our income has dropped now. We have to
3 consider changing schools for my daughter. The impact has
4 been phenomenal. **As it has been for Smith, who has had to deal with Paris' lawsuit.**

5 And I don't know now what could happen to put it back
6 in. But we had an opportunity, we had a golden opportunity.
7 It wasn't an ideal arrangement. Everybody walked out of the
8 mediated agreement equally displeased, which I think
9 indicates usually you reached a good agreement, when everyone
10 is equally unhappy.

11 But had it worked, we wouldn't be sitting here now.
12 Now I do not know. The problems are worse than that even if
13 I were to quit the business, my name follows me. And this
14 has been successful in targeting my name, so if I were to
15 open up a gas station tomorrow, one of the people involved
16 with Marc Smith and all the people that have been infected by
17 this information on the Internet, will one day figure out
18 that that gas station is owned by Chris Paris. And then the
19 whole thing comes down again. And now the gas station is
20 gone.

21 So my professional career is over. And I don't know
22 how to recover from it.

23 MS. BOONE: Thank you, Mr. Paris. That concludes
24 my questioning.

25 THE COURT: Mr. Smith, you have the right to

1 cross-examine, which is to question Mr. Paris, if you wish.

2 MR. SMITH: Your Honor, this -- this has been so
3 wandering, the only way I could cross-examine him -- he's
4 made so many misstatements. He attributes everything that's
5 happening to me --

6 THE COURT: Do you wish to cross-examine him or
7 not?

8 MR. SMITH: You know, I'm one little guy. He
9 goes through and, for example --

10 THE COURT: Do you wish to cross-examine him?

11 MR. SMITH: I'm sorry?

12 THE COURT: Do you wish to question him or not?

13 This is your opportunity to question him. You are going to
14 have the opportunity to take the stand and tell your side of
15 the story in a bit. But right now we're at the point where
16 you have the right to question him, to cross-examine his
17 testimony.

18 The question is: Do you wish to do that? It's
19 up to you.

20 MR. SMITH: Okay.

21 CROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. I guess we'll start off with -- Exhibit 11. And he
24 talks about the Ripoff Report.

25 Are you aware that I contacted Reddit and requested

1 them to take that information down? I think two discussion
2 threads?

3 And are you also aware that -- I think it was your
4 attorney -- was copied on this, and Reddit wrote me back and
5 said hey, no. And your attorney was copied on that? I can't
6 do anything about Reddit.

7 THE COURT: All right. That's a question.

8 MR. SMITH: And what --

9 THE COURT: Mr. Smith? Mr. Smith?

10 MR. SMITH: -- do you --

11 THE COURT: Mr. Smith. You get to ask questions
12 now. He gets to answer the question. So stop.

13 (The Court and Mr. Smith speaking
14 simultaneously).

15 THE COURT: Mr. Smith, Mr. Smith. Listen to me.
16 When I'm talking, you will be quiet. Do you understand that?

17 MR. SMITH: Yes, sir.

18 THE COURT: Okay. He's asking you a question.
19 What's the answer to that question?

20 THE WITNESS: No. I'm not aware.

21 THE COURT: Your lawyer never shared to you the
22 responses by Reddit or his request for a take down?

23 **This speaks** THE WITNESS: No, I have not seen it.
24 **for its self.**

25 THE COURT: Okay. All right. So he's not aware.
What's your next question?

1 BY MR. SMITH:

2 Q. What evidence do you have, or -- that points to me
3 having anything to do with Reddit?

4 A. Uhm, again, your copyrighted material is on the site.
5 **I have no copyrighted material - Everything on Elsmar.com was "Copy-Free"**
6 I have been in contact with Reddit separately, and they have
7 confirmed with me that if you file a Digital Millennium
8 Copyright Act, DMCA, notice, they'll honor those.

9 **Nothing on Elsmar.com was copyrighted so I had no standing to do so.**
10 And DMCA notices can only be filed by the owner of the
11 copyrighted and trademarked material. Since he owns the site
12 for Elsmar, all he needed to do according to the
13 communication I had with Reddit, is to file the DMCA
14 take-down notice, and they would honor that.

15 Now, Reddit, I asked them to take it down, but they
16 said you are not the copyright owner so they would not honor
17 it for me. Which is why I am here requesting the Court order
18 Reddit to take it down. So that is the understanding I have.

**Smith does
not object
to that. Try
it and see
what
happens.**

19 You are the copyright owner, and it is your material.
20 **Smith holds no copyright on anything on Elsmar.com**
21 I believe the only way they could have gotten it is if you
22 gave it to them. And you certainly have the ability to take
23 it down if you chose to.

24 THE COURT: Next question.

25 BY MR. SMITH:

Q. Okay. I'll repeat the question I had before. Are you
aware that I did that, and I copied your attorney on it? Are
you aware that --

1 MS. BOONE: Objection. Asked and asked.

2 BY MR. SMITH:

3 Q. -- and they told me no, they would not take it down?

4 THE COURT: Mr. Smith, you asked the question.

5 Your answer is no.

6 THE WITNESS: My answer remains no.

7 THE COURT: Next question.

8 BY MR. SMITH:

9 Q. Okay. Let's see. You talked about Scribd. You
10 attributed to that -- other than conjecture on your part
11 everything that is going on here and everything that is being
12 posted and everything that is being done, is I have something
13 to do with it.

14 Do you have any evidence -- do you have -- I mean,
15 have you communicated with Scribd? They keep log files.
16 They keep IPs. They keep e-mail addresses. Do you have any
17 evidence that I have anything to do with any of this?

18 THE COURT: Okay. Good question.

19 Now, you be quiet. What's the answer?

20 THE WITNESS: No. As I made clear during my
21 testimony earlier, I said I believe, but I do not have proof,
22 that the user Paris Oxebridge is Marc Smith. I made that
23 very clear in my testimony. It is only my opinion and
24 conjecture.

25 MS. BOONE: May I ask Mr. Paris a question?

1 THE COURT: You will get a chance to redirect.
2 Not right now. Do you have another question?

3 BY MR. SMITH:

4 Q. I guess we could go on to example two. They have
5 presented these exhibits, six. On this exhibit -- Exhibit 6
6 he talks about, for example, I gave permission to launch a
7 new ISO related forum under the name of Elsmar in Russia.

8 Over the years a number of people have contacted --

9 THE COURT: I don't want to hear your version.

10 MR. SMITH: Okay. I'm sorry.

11 BY MR. SMITH:

12 Q. I think what my problem is that's so meandering that
13 I'm not even sure where to start --

14 THE COURT: Do you have a --

15 MR. SMITH: -- except that, you know, I just wish
16 these proceedings were such that when he starts stating
17 stuff, that there would have to be some evidence rather than
18 throwing mud against the wall.

19 I can't -- I'm not a lawyer. I didn't sit back
20 -- I did go through line item by line item, Your Honor, and
21 refuted this.

22 I just -- my only question to Mr. Paris why is
23 it that I can think of at this point -- why is it that
24 everything that anybody else does -- I mean, Elsmar had a lot
25 of people, I'll grant you that.

1 But you are telling the Court that I -- and you
2 believe, you honestly believe, honestly believe that I, a
3 single guy that got out the ISO business back in 2000, ran a
4 relatively small forum --

5 THE COURT: Is that a question?

6 MR. SMITH: -- that you believe that I'm that
7 powerful, and that all of this is happening to you is
8 happening to you because of me? Do you really believe that?

9 THE WITNESS: The question is phrased with a
10 series of absolutes and superlatives that I don't even know
11 how I could answer.

12 THE COURT: Is it your belief that he's
13 responsible for this? Let's talk about the Russian site.
14 That's where we start.

15 MR. SMITH: I literally confirmed it with the
16 Russian himself. I don't know how much more evidence I could
17 have. Again, I can bring a computer in and show the e-mail,
18 et cetera. I don't know if we need to go down that. Yes, I
19 believe.

20 I believe that I have not made claims that
21 Mr. Smith is responsible for every ill thing that ever
22 happened to me in my life. I wouldn't make that claim. I
23 made very specific claims. I think they're well documented.
24 They're not meandering. And I would stand by the claims we
25 make.

Something
is missing
here or
something.
Mr. Smith
did not say
some of
this stuff.

Transcript
problem?

1 THE COURT: Another question, sir.

2 MR. SMITH: No. I have made -- my only question
3 was is the significance-- what -- like I say, I can't
4 believe that he believes that this is all because people
5 found out that -- I mean, that Elsmar was shut down.

6 THE COURT: I'll hear your version. I'll hear
7 your version, I guess, in a bit here.

8 Miss Boone, do you have any redirect?

9 MS. BOONE: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. BOONE:

12 Q. Would you please turn to Exhibit 8. Do you have the
13 Scribd listing from November 17?

14 A. Yeah. Okay.

15 Q. Again, there is markings -- do you -- do you believe
16 that those are the markings of a certain individuals on those
17 documents?

18 A. Yeah, those markings are made by Marc Smith, and I
19 believe earlier in the morning before on the record he
20 admitted that these are his, and that he filed these under
21 docket -- he said he took Document 6, he marked it up by
22 hand, and then filed it as the document, I believe, 60-1.

23 Q. Do you know how someone's markings on the document
24 after it has been filed with the Court could have gotten in
25 the hands of someone else?

1 A. Yes. The person who marked them would have to send
2 them to that person. **It was sent to the court and was publically available**
3 Q. Thank you. **on PACER for at least 7 days before it was ordered**
sealed in court docket document 63.

4 MS. BOONE: That's all.

5 THE COURT: Mr. Smith, on the -- on the point of
6 you being the author of the handwritten additions to
7 documents that were filed in the Court, did you concede that
8 you were the one that added those handwritten notes?

9 MR. SMITH: I -- yes, I did, Your Honor. And --

10 THE COURT: That's all I want to know. Thank
11 you. You'll get a chance to explain it down the road.

12 But we identified the author, so that's good.
13 What else, Miss Boone? Anything?

14 MS. BOONE: That's it.

15 MR. SMITH: I submitted that to the Court.

16 THE COURT: I understand. It may be entirely
17 appropriate. I don't now. I just confirmed that you're the
18 author. That eliminates one factual dispute that we might
19 have had here.

20 Miss Boone, let me ask you to clarify for me
21 unless you are going to use someone else to do this, this
22 claim that you want damages arising from this proceeding. I
23 understand he says that the company has been harmed because
24 there are no sales coming in at present.

25 I understand he claims emotional distress to

1 himself and his family. Your motion articulated some
2 specific damages. What is it that you are seeking here by
3 way of damages? As one remedy to the alleged breaches here.

4 MS. BOONE: We're seeking temporary damages to
5 compensate him for his lack of business that he's received
6 due to Mr. Smith's actions, enough to compensate him to
7 hopefully create a new business for himself that won't -- the
8 defamation will not follow him.

9 THE COURT: But -- and how is -- how is the
10 Court to calculate the losses?

11 MS. BOONE: We could propose what his salary is
12 -- is yearly profits --

13 THE COURT: This is your opportunity here to
14 request relief from the Court to establish the violations. I
15 read reference to a \$200 figure. I read reference to --

16 MS. BOONE: The 200 --

17 THE COURT: -- five thousand dollar figure. I
18 read references to attorney fees. And then we seem to be
19 straying into areas of compensatory damages. I am just
20 questioning what it you are asking the Court to do by way of
21 monetary damages, if any.

22 MS. BOONE: Today we would like to ask for a
23 certain amount of compensatory damages. I believe if I can
24 consult with my client for one second. But he's on the
25 witness stand. Can I for one second?

1 THE COURT: Why don't you just ask the question.
2 Start with economic damages. Is there a claim of economic
3 damages? That's what I understood your motion to set out.

4 MS. BOONE: Yes. I believe so. Economic damages
5 to cover the amount of time it might take Mr. Paris to
6 recover from this devastating loss to his business.

7 THE WITNESS: Can I comment?

8 BY MS. BOONE:

9 Q. Certainly.

10 A. My understanding of the 5,000 figure was that it was
11 some sort of -- and again I'm not a lawyer so I don't
12 understand. But I thought it was some kind of relatively
13 routine or a punitive -- penalty, rather, in lieu of
14 Mr. Smith being incarcerated. That's the way I understood
15 it.

16 Clearly, the damage that I have experienced can't be
17 calculated by \$5,000. I don't know if -- maybe I'm
18 mishearing --

19 Q. The 5,000 you believe to be punitive. The 200 was
20 actual for repair of the website and once it was hacked, I
21 believe?

22 A. Yes, but I thought it was a range of 200 to 5,000.
23 I'm willing to ignore the 200.

24 Q. I understand.

25 THE COURT: Are you still blaming Mr. Smith with

1 hacking your website?

2 THE WITNESS: No. In fact, I don't believe I
3 ever did blame him, but I think it was a supporter of his.
4 **Paris inferred it.**
5 But we have done an internal investigation. We actually know
6 it was a sympathizer. But no. I would say on the record it
7 **And we come to find out Paris "hacked" his own website.**
8 was not Mr. Smith who hacked that website.

9 THE COURT: All right. Miss Boone, anything
10 else?

11 MS. BOONE: No, thank you.

12 THE COURT: All right. Mr. Paris, you can step
13 down, sir.

14 You have another witness?

15 MS. BOONE: I'd like to call Mr. Smith to the
16 stand.

17 THE COURT: All right, Mr. Smith. If you will
18 come forward and be sworn in, please.

19 MR. SMITH: May I bring my material with me?

20 THE COURT: Why don't leave it there for the time
21 being. If she's got exhibits she'll show them to you. If
22 you need material, I'll allow that. Let's see what she says
23 first.

24 Do you solemnly swear or affirm that the
25 testimony you shall give in this cause shall be the truth,
the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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MARC SMITH,

a witness, having been duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE WITNESS: I would like to remind the Court that I don't hear very well.

THE COURT: Everybody speak into the microphone, you'll be okay. Tell us your full name and where you live, sir.

THE WITNESS: My name is Marc Smith, and I live in West Chester, Ohio.

THE COURT: Miss Boone.

DIRECT EXAMINATION

BY MS. BOONE:

Q. Good morning, Mr. Smith. Thank you for coming today. Now, did you attend the mediation between yourself and Mr. Paris on June 5th, 2015?

A. Did I have what?

Q. Did you attend a mediation with yourself and Mr. Paris on June 5th?

A. Yes, I did.

Q. What was your motivation for -- first of all, was there a settlement reached at that mediation?

A. Yes.

Q. What was your motivation for settling?

1 A. Make this all go away. Make this lawsuit go away.

2 Q. Can you elaborate any further as to any details.

3 A. Other than that it was a very flawed mediation
4 agreement.

5 Q. Okay. But you agree that you reached that agreement
6 and that you signed that agreement, and it was of your own
7 free will; is that correct?

8 A. With the understanding that that ended everything,
9 yes.

10 Q. Thank you. Can you now turn to Plaintiff's Exhibit 1.
11 It should be in that binder -- did you take the binder?

12 MR. PARIS: I'm sorry. ????

13 MS. BOONE: I'll present to the witness
14 plaintiff's exhibit 1.

15 THE WITNESS: Yes, that's the mediation
16 settlement agreement.

17 BY MS. BOONE:

18 Q. And have you complied with those provisions?

19 A. I believe I have.

20 Q. How about 2D? Can you read 2D?

21 A. Which one?

22 Q. 2D.

23 A. Two B as in baby?

24 Q. D as in dog?

25 A. 2D as in dog? Yes, I believe I shut down Elsmar.com

1 as per this agreement.

2 Q. Would you please turn to exhibit --

3 A. Exhibit what?

4 Q. Three?

5 A. Three.

6 Q. Three.

7 A. Yes.

8 Q. Did you do this interview?

9 A. Yes, I did.

10 Q. And was this -- do you consider this being out of the
11 ISO industry? Do you consider this being out of the ISO
12 industry which is what is required by --

13 A. Your question makes no sense to me because there is
14 nothing in the mediation agreement that says that I will get
15 out of the ISO industry.

16 Q. Would you please turn back to the mediation Exhibit 1?

17 A. Yes.

18 Q. And read for the Court, please, 1D that you were just
19 looking at?

20 THE COURT: You don't need to read it. I have it
21 right here in front me.

22 MS. BOONE: I'll read it the Court then.

23 THE COURT: I don't need you to read it either.

24 Ask him a question if you have a question.

25 BY MS. BOONE:

1 Q. It clearly says here that you will not operate any
2 similar website in the ISO industry in the future.
3 Specifically, to the website as well -- going to the Elsmar,
4 however, shall retain all ownership as to Elsmar.com.

5 Then in Exhibit 6 -- sorry for flipping around here.

6 A. Okay. Now, you're jumping around here. We went back.
7 We now know that the question you asked me was do I consider
8 myself out of the ISO industry.

9 Now, you have come back to the mediation agreement and
10 say that it doesn't say that. All it says is, it says that I
11 will not operate another, quote, ISO website. Okay. So now
12 where are you jumping to and what is your question?

13 THE COURT: Mr. Smith, she gets to ask the
14 questions. You can answer them. I can read the language
15 here. The question was, do you consider -- the original
16 question was, was this interview connected with the ISO
17 industry. That's a yes or no. Was it or not?

18 THE WITNESS: No, it was not.

19 THE COURT: Okay. You also don't think it's a
20 violation of 2D, I understand that. What's the next
21 question?

22 BY MS. BOONE:

23 Q. The next question is in Exhibit 6 at the bottom. In
24 an e-mail you said that you did not have the right to
25 Elsmar.com or the name Elsmar, I believe? Did you see that?

1 A. Yes. In the mediation agreement it says that -- I
2 believe --

3 THE COURT: It says you shall retain all
4 ownership and rights relating to www.Elsmar.com. Now, what's
5 the question here?

6 THE WITNESS: Okay. What's the question?

7 BY MS. BOONE:

8 Q. The question is why did you tell -- this email --
9 assuming you agreed that this email is correct -- to Arju
10 Bardaden (phonetic spelling); this is on Exhibit 6F, as in
11 Frank -- that, I do not own a mark on Elsmar. I assume you
12 can use it if you want.

13 A. I don't own the copyright or whatever on Elsmar.
14 Anyone who has contacted me over the years and said, hey, may
15 I use Elsmar to do whatever? Yes, use it.

16 Q. Do you believe that in the spirit of the mediation
17 agreement that term was meant to be the use of Elsmar in
18 general, that you would not be able to use that name?

19 A. I don't even recall this Andre Bardaden.

20 Q. You don't recall this e-mail?

21 A. I don't recall it. I can't say that -- ma'am, over
22 the years I have had a lot of people who wanted to use Elsmar
23 in different ways. And I have always -- it's been the same
24 thing. You want to use it, I don't claim the copyright on
25 it.

1 THE COURT: You kept that same attitude since the
2 mediation settlement agreement? If they contact you and say
3 they want to use it, you say fine, for whatever purposes they
4 want to use it?

5 THE WITNESS: Your Honor, any time anyone
6 contacted me about using Elsmar -- if I had wanted to protect
7 it, I guess I could have done -- I don't know what it is, a
8 copyright or register it or whatever.

9 I -- Your Honor, Elsmar was a word that I found
10 -- well, I didn't find. It was a street I grew up on in
11 Fort Thomas, Kentucky, and I chose that as a domain name
12 because I had never seen the word anywhere else. But I
13 didn't copyright it. Elsmar, my website, was not -- in fact,
14 it started as a hobby.

15 THE COURT: Did you in response to this inquiry
16 from the gentleman apparently from Russia, did you give him
17 permission to use the Elsmar site? **NO - To use the word/name "elsmar"**
18 **In a domain name or otherwise. NOT**
19 **the elsmar.com site.**

20 THE WITNESS: I don't even recall, but -- I
21 would say probably yes. Now, again, Your Honor, if we go
22 back to the mediation settlement agreement, it only talks
23 about www.Elsmar.com. Okay. And it says that I retain the
24 rights to that.

25 Now, this other one it says in Exhibit 6, it says
hello, Chris, I contacted Mr. Smith and asked him if I could
use the word Elsmar in my project. He said I can use it.

1 See print screen.

2 Like I say, I don't recall, but as I said my
3 policy has been if someone wants to try and start a competing
4 forum, or they have whatever in this -- it says project, but
5 I don't specifically recall this, but I will say that if --
6 if he did contact me or she -- I'm sure I said yes.

7 THE COURT: What was the project? Excuse me.
8 What was his project?

9 THE WITNESS: What was -- this person talking
10 about?

11 THE COURT: Yeah, his project. That's the term
12 you used.

13 THE WITNESS: It's a term that I'm seeing here in
14 this exhibit. I have no recollection of this specific
15 e-mail. Or this specific person.

16 BY MS. BOONE:

17 Q. Do I understand you are freely giving the name Elsmar
18 to anybody who requested to use it? **How could I refuse? I do not own a**
trademark on the word/name
19 A. I'm sorry? **"elsmar".**

20 Q. Is it my understanding that your testimony today is
21 that you have freely given the name Elsmar to anyone who has
22 requested to use it?

23 A. Yes.

24 Q. Did Mr. Paris request -- my client did request at
25 mediation that he be able to use the name Elsmar?

1 A. I don't recall that in the mediation, and there's
2 nothing in the mediation agreement that refers to that.

3 Q. So you do not recall denying my client to be able to
4 use the name Elsmar as a part of this mediation?

5 A. The only thing that I denied during that mediation
6 agreement was to turn over the website to him. Now, it
7 started out as a 1 to 2-hour mediation agreement supposedly,
8 which stretched out to something like seven hours.

9 The two lawyers sat down and scratched out -- they
10 just wanted to get home for dinner -- scratched out what I
11 **Not to mention the mediator...** considered a -- there it is. It's right there. So, yes, I
12 denied -- I wouldn't have given this man Elsmar.com or --
13 for love nor money.

14 Q. So --

15 A. Even that for him to buy it. At one point I gave him
16 an opportunity to buy it lock, stock, and barrel for
17 \$450,000. He turned it down. And after that I kept raising
18 the price because he kept bothering me so much.

19 Now, he calls it extortion, but he had -- I have the
20 e-mails to prove it. He could have bought it for \$450,000.
21 But by the time the mediation agreement came around that
22 meeting no, huh-uh.

23 Q. So I understand it's your testimony --

24 THE COURT: You don't need to have him repeat it.

25 I understand. What's your next question?

1 BY MS. BOONE:

2 Q. All right. My next question is turning to Exhibit 8.
3 Have you seen the document that is shown on this website
4 before?

5 A. You want to know what the purpose of this document is?
6 Is that what you're asking?

7 Q. First I want to know if you've seen it before?

8 A. I wrote it.

9 Q. You wrote it.

10 A. Well, I marked it up. This document right here when I
11 was first served with the lawsuit, this document right here
12 was the first thing that I did was I went through and marked
13 it up.

14 And then finally I got to the point where I believe it
15 is court docket document number 17. I took my marked up
16 comments, put it all into my answer to the Court.

17 When I filed it with the Court again, it was out of
18 frustration being with the judge to consider the original
19 lawsuit because I considered it frivolous and totally
20 maliciously filed.

21 Q. Do you know who posted this? This Paris Oxebridge?

22 A. I have no idea, and I knew nothing about what was
23 posted on Scribd until recently, and I think it was during
24 the telephone conversation that we had with the judge, and I
25 believe you all came up and made a statement, Your Honor, we

1 found documents on Scribd. So you people were the first one
2 that brought it to my attention.

3 Q. My question --

4 A. That it was posted. Now, after reviewing that and
5 after the phone call, I went and, yes, I saw someone had
6 posted the original lawsuit, if I remember. And the exhibits
7 maybe and maybe my answer -- I can't remember what -- I
8 went, okay. But it's there. But again, I -- you let me
9 know it was there.

10 Q. How could somebody have gotten ahold of this document
11 with your handwritten annotations on it?

12 A. Because it was submitted. I can't -- I can't
13 remember, but I think I submitted it to the Court, and it was
14 probably document number 61 or something where I was pleading
15 with the Court.

16 Q. Thank you for bringing up number 61.

17 A. I'd have to look -- again, I not being a lawyer, I
18 don't have my stuff here.

19 Q. If you look at exhibit --

20 A. I could look it up. I filed a motion with the Court
21 to please review -- and I can't remember my exact words, but
22 I think I was saying, will you please re review this lawsuit
23 and -- I mean, and I had that -- that thing handy, scanned
24 it and submitted it the Court.

25 THE COURT: Okay. Wait for her question.

1 BY MS. BOONE:

2 Q. Please turn to Exhibit 7, which I believe is
3 Document 61, exhibit A in the Court record, which is
4 presently --

5 A. Seven, yes.

6 Q. Which is presently under seal.

7 A. Did what?

8 Q. It's presently under seal this Document 61. I'm
9 telling you it is. I know that it is.

10 A. Is it --

11 Q. Do you verify this is Document 61? And that those are
12 your handwritten marks?

13 A. Okay. Notice at the top of this -- it gives the case
14 number, but it has two documents filed by the Court. It has
15 Document 1, which is entered -- the -- January --

16 THE COURT: Have you got --

17 THE WITNESS: -- and this is --

18 THE COURT: Mr. Smith, don't ramble here. Okay?
19 What's your question, ma'am?

20 BY MS. BOONE:

21 Q. My question that I was getting to -- I first wanted to
22 know if he verified this was the document. Has he reposted
23 this sealed document somewhere on line? Have you reposted
24 this document somewhere on line?

25 A. Reposted it?

1 Q. Anywhere. Posted it, shared it?

2 A. I sent it to the Court.

3 Q. Okay.

4 A. I submitted it to the Court.

5 Q. So it is your testimony that you have not shared this
6 document that's under seal with anyone?

7 A. I haven't shared documents with anyone.

8 Q. This particular document.

9 A. No.

10 Q. Do you have any idea how Karen Rubino (phonetic) in
11 Exhibit 9 -- sorry to jump around again, but -- could have
12 gotten ahold of that document?

13 A. Do I have any idea how what now?

14 Q. How this -- if you look, it says Catherine Rubino.
15 Do you have any idea how she would have gotten ahold of this
16 sealed document?

17 A. How she --

18 Q. Would have received a copy of that sealed document and
19 then for it to be posted on line?

20 A. Well, I'm sorry you have me confused here. We are
21 starting at Exhibit 7. Okay.

22 Q. Uh-huh, yes.

23 A. Okay. Now, that was submitted to the Court. Okay?

24 THE COURT: Mr. Smith, let me jump in. The
25 document number 61 is a sealed document, correct, the one you

1 are looking at there? Docket 61 indicates sealed?

2 THE WITNESS: I -- if I remember from Pacer, it
3 did -- it didn't specifically mention docket 61.

4 THE COURT: Let's assume -- let's assume 61,
5 which is your marked up version which you submitted to the
6 Court, let's assume it was filed under seal. Meaning it was
7 **It was NOT filed under seal. It was available in PACER to the public for at least 7 days.**
-- it was put into the private record of the court.

8 The question is, if that's the case, can you
9 explain how this woman who authored Exhibit 9 would have been
10 able to obtain that sealed document?

11 THE WITNESS: A woman on Exhibit 9. I see
12 Scribd. And exhibit A.

13 And I don't know who Catherine Rubino is. I see
14 this was from October 13th, and I have no idea how any -- I
15 mean, I did not release any documents to anyone.

16 BY MS. BOONE:

17 Q. Thank you, Mr. Smith.

18 A. Now, whether it came in and was not originally filed
19 under seal and then was filed under seal and someone got it
20 off of Pacer, I don't know. I did see -- I remember one
21 entry where I went in, and it was a listing of documents on
22 Pacer.

23 THE COURT: I don't need it. I don't need it.
24 What's the next question?

25 BY MS. BOONE:

1 Q. You mentioned earlier about the joint stipulation.
2 Can you please turn to Exhibit 2. That is a copy of the
3 joint stipulation and read for me paragraph --

4 A. Exhibit 2?

5 Q. Yes. Paragraph ten. Do you agree with that
6 paragraph?

7 A. Yes.

8 Q. And that is your signature at the end of that joint
9 stipulation?

10 A. You what?

11 Q. That is your signature at the end of the joint
12 stipulation?

13 A. Yes, it is.

14 Q. Thank you.

15 Let me consult with my client.

16 A. It's not a pen and ink signature. What it is is a
17 photograph that was posted into a PDF file. This is a
18 document that --

19 Q. But that is your signature?

20 A. -- was submitted prior to it being revised, section
21 six, when Mr. Wohlsifer and I were on the telephone. Section
22 6 was supposed to reflect the exact same thing as section 5
23 with the aspects of moderating posts on the Elsmar.com forum,
24 which did he not do.

25 He submitted that document differently, and I have

1 explained that in my response to you all in this joint
2 stipulation.

3 THE COURT: Mr. Smith, the exhibit 2 is in fact
4 the agreement that you executed; right? You claim there was
5 some other agreement, but this is in fact the agreement that
6 you executed? You're not denying that; correct?

7 THE WITNESS: I'm not denying that this is the
8 agreement that he submitted to the Court.

9 THE COURT: How does it differ from the written
10 agreement that you signed?

11 THE WITNESS: I never literally signed the
12 agreement. Mr. Wohlsifer and I --

13 THE COURT: Page four of four, Marc Smith,
14 signature above, Marc Smith, individually, and doing business
15 as Cayman Business Systems, that's your signature?

16 THE WITNESS: I'm sorry?

17 THE COURT: Page four, is that your signature?

18 THE WITNESS: It's a copy of my signature, yes.

19 THE COURT: You signed the original; correct?

20 THE WITNESS: No.

21 THE COURT: You did not? Who signed your name to
22 this, sir?

23 THE WITNESS: This is a picture of my signature.
24 It was pasted into the document.

25 THE COURT: By whom?

1 THE WITNESS: Me.

2 THE COURT: Okay. So it's your signature.
3 Intended to be your signature; correct?

4 THE WITNESS: If I understand it, this is a
5 contract that we made up that was submitted to the Court and
6 that legally it's not a binding contract.

7 THE COURT: You can -- as I said, you can argue
8 that later with Judge Kovachevich, but that is your -- it
9 was added to this document by you to recognize your part of
10 the agreement; correct?

11 THE WITNESS: With the understanding that Mr.
12 Wohlsifer was going to be revising the PDF per our
13 conversation, which he did not do.

14 THE COURT: Okay. I understand your argument
15 there. All right. Any other questions, Miss Boone?

16 MS. BOONE: Yes. Just two more.

17 BY MS. BOONE:

18 Q. What's the date on this joint stipulation? Does it
19 say March 18th? Is the active date -- effective date
20 March 18, 2015, for the joint stipulation on injunction?

21 A. Okay. We're back to the joint stipulation.

22 Q. Yes. Exhibit 2. You have it in front of you already.

23 A. Yeah, Exhibit 2.

24 Q. The last page. What is the date of signature?

25 A. The date of the signature?

1 Q. Yes.

2 A. The date on page four is March 18th of 2015.

3 Q. Does that appear to be accurate? Does that sound
4 accurate to you?

5 A. I assume it is, yes.

6 Q. Thank you. Will you please turn to Exhibit 6 again on
7 the second page? It's G, as in good, is the subsection,
8 second page?

9 A. Which one?

10 Q. Exhibit 6.

11 A. Yes.

12 Q. Second page, G as in good. You'll see there is a box
13 from LinkedIn?

14 A. What I wrote on LinkedIn on July 25th? Is that what
15 you're asking about?

16 Q. July 7th.

17 A. Was there a what?

18 Q. Yes. July 7th.

19 A. Oh, on July 7th on LinkedIn?

20 Q. Yes.

21 A. Yes, I posted that.

22 Q. Do you believe that that's in violation of what the
23 joint stipulation required?

24 A. That's not my interpretation.

25 Q. And --

1 A. Please link it to the joint stipulation paragraph or
2 subparagraph or whatever.

3 Q. Certainly. One second. It's 5C from the joint
4 stipulation, Exhibit 5C. Smith will not publish any new
5 content about Oxebridge or Paris on the Elsmar.com internet
6 forum or any other website, social network, or any other
7 manner of technology or communication. And it goes on.

8 However, on July 7th it appears that you again were
9 commenting about Oxebridge and Paris, and specifically about
10 this specific lawsuit. To me that appears to be a direct
11 violation of that joint stipulation. This occurred in July.
12 The stipulation was signed in March.

13 A. The stipulation, the joint stipulation, only says --
14 are you referring to section five, subsection D?

15 Q. C?

16 A. C as in Charles? Okay. It says, Smith will not
17 publish any new content about Oxebridge or Paris on
18 Elsmar.com, internet forum or any other websites, social
19 network, et cetera et cetera.

20 Whether under his real name, anonymously or ^{???}sue them
21 anonymously or through collaboration with a third party.
22 This statement here, Smith will not publish any new content
23 about Oxebridge or Paris. Okay. What's -- going back to
24 Exhibit 6, what's your question on that?

25 THE COURT: Is it a statement of new content in

1 violation of the joint stipulation? That's the question.

2 THE WITNESS: My question is I don't believe I
3 violated it.

4 THE COURT: Why not?

5 THE WITNESS: I don't mention Chris Paris or
6 Oxebridge. And for Mr. Paris to even begin to say anything
7 about, well, you can't mention the lawsuit for over five
8 months, he had posted on his website all about the lawsuit,
9 among other information and paranoid things like I was
10 collaborating with underwriters laboratories, DMV, all sorts
11 of -- supposedly I was some big ring leader involved with all
12 these other companies as large as underwriters laboratory.
13 I'm sorry. To me he has paranoid delusions.

14 BY MS. BOONE:

15 Q. Who are you referring to in these postings if it's not
16 Oxebridge and Paris?

17 A. I'm sorry?

18 Q. Who are you referring to in these postings if it's
19 not --

20 A. Are you talking about July 7th?

21 Q. Yes.

22 A. Okay. I made two comments, and I made them for a
23 specific reason. It says, if you look here, don't be misled.
24 This was a civil suit, not a criminal lawsuit. I made that
25 statement because Mr. -- starting in the fall of 2014,

1 Mr. Paris was posting on Twitter, and I have the evidence for
2 it, and on I think LinkedIn that he was preparing for a major
3 extortion lawsuit, a criminal lawsuit.

4 He had a page on his website for over five months that
5 was talking about a criminal lawsuit. **Actually, over 6 months.** He wasn't saying
6 civil. He was maliciously citing it as a criminal lawsuit.
7 So I felt it was in my, okay, shoot me, send me to jail. He
8 kept calling a criminal lawsuit. It was a civil lawsuit. He
9 was doing it maliciously.

10 So I said, do not be mislead. This is not a criminal
11 lawsuit; this is a civil lawsuit.

12 Q. Thank you, Mr. Smith.

13 A. And everybody knew about the lawsuit from his website.
14 Everybody knew about the lawsuit, not only from his website
15 but from when he started on Twitter in the Fall of 2014
16 talking about, how, boy, he's going to get me. He's got --
17 **(Marc Smith)**
law enforcement is engaged now. I have screen shots.

18 Q. Mr. Smith?

19 A. He started this thing.

20 THE COURT: Mr. Smith. You got another question,
21 ma'am?

22 BY MS. BOONE:

23 Q. Basically the same --

24 THE COURT: No, I don't need it. He explained
25 why he posted it. It is what it is. What else?

1 MS. BOONE: Just one second.

2 BY MS. BOONE:

3 Q. And you acknowledge as well on the July 25th posting,
4 the one just below that exhibit, where it says Marc Smith.
5 Again, you are talking about Oxebriidge and Paris?

6 A. Which one now?

7 Q. The one directly below, the image directly below
8 July 7th. Now it's July 25. Marc Timothy Smith. Elsmar was
9 an Internet icon. There was no LinkedIn. You are talking
10 about Oxebriidge and Paris when you made that posting?

11 A. I did not use the word Oxebriidge, and I did not use
12 the word Paris.

13 Q. It is your testimony to the Court that because you did
14 not use the words Oxebriidge and Paris, that you believe you
15 could say whatever you want as long as you didn't say those
16 words?

17 A. I believe that everyone knew that Chris Paris was
18 suing me. I don't doubt --

19 Q. How did they know?
20 **Paris had been bragging about it since Fall 2014, and then on his website.**

21 A. No. I believe that I was following the letter of what
22 it said. I'm not mentioning Chris Paris or Oxebriidge, and I
23 didn't. I mentioned the lawsuit that he had been advertising
24 for how long.

24 Q. Thank you, Mr. Smith. That's all.

25 THE COURT: Okay. Let's take about a ten-minute

1 break here. Mr. Smith, when we come back you'll have the
2 opportunity to give any additional testimony you want to
3 give. Okay? So we'll take a break for ten minutes.

4 COURT SECURITY OFFICER: All rise.

5 (RECESS IN PROCEEDING).

6 THE COURT: Mr. Smith, you wish to testify?

7 MR. SMITH: I would like to --

8 THE COURT: Simple question: Do you want to
9 testify? If that's true, if you are -- get up to the
10 witness stand again.

11 You remain under oath. Pull up close to that mic
12 and speak directly into it.

13 MR. SMITH: My name is Marc Smith. I'm from Olde
14 West Chester, Ohio.

15 First off, I'd like to start off and say that
16 when Mr. Paris was testifying he said that one of the aspects
17 of the mediation settlement agreement was that so we would
18 settle quickly so he could start his own forum, what he
19 called the O'forum (phonetic).

20 The only time the O'forum that he's talking about
21 came up was after the mediation settlement agreement. That
22 wasn't discussed there.

23 What he wanted was Elsmar.com. So I'm sorry. He
24 is just outright lying. That never came up in the mediation
25 agreement. **Aka Perjury**

1 THE COURT: Let me tell both parties, I'm going
2 to look at the mediation settlement agreement and the joint
3 stipulation in the plain terms of those, so this discussion
4 about things being omitted or intentions frankly are up for
5 another day.

6 In order to gauge whether or not I think there's
7 a violation, I am looking at those documents as worded.

8 MR. SMITH: Great. Because trying to fight some
9 of this is very, very weird. In their complaint -- I'll go
10 through line item by line item is how I'll identify what I'm
11 referring to.

12 THE COURT: Let me -- let me -- I do not need
13 you to read your response to me. I've read your response as
14 you go point by point.

15 MR. SMITH: The only testimony that I have to
16 give is what -- again, I assume that from what I was hearing
17 earlier that you guys received it. It's in your system. I
18 don't know what docket document number.

19 THE COURT: What is that you are holding up, sir?

20 MR. SMITH: This one here?

21 THE COURT: What were you just holding up?

22 MR. SMITH: It's a document that I submitted last
23 week, and I don't know whether it's in Pacer yet.

24 MS. BOONE: Your Honor, it's sealed document 69.

25 THE COURT: 69?

1 MR. SMITH: Those would have been in the 70s.

2 MS. BOONE: I apologize. 76.

3 THE COURT: 76? I have the full version of 76.

4 MR. SMITH: If you have the full version of 76,
5 plus you have what looks like this complaint. One exhibit's
6 annotated.

7 THE COURT: If you filed it with Document 76, I
8 have got it.

9 MR. SMITH: Then that's the only thing that I
10 want to testify as long as this is in the system. I went
11 through each of the exhibits, and I went through line item by
12 line item and made my ~~representations~~
13 **responses** there. If you have
14 them, I guess I shouldn't say this, but I just -- I hope
15 that you're going to read them.

16 THE COURT: Okay. You are accused basically of
17 three violations here. Okay? You are accused of violating
18 the provision that said you would remove any on line
19 commentary regarding Oxbridge or Paris authored by you on
20 any website, social network, or other manner of technology or
21 communication.

22 There was reference to a considerable amount of
23 information, negative information, from their standpoint
24 still up on Google. What have you done to take down that
25 information? Which originally comes from your website, as I
understand it, or comments made regarding your website.

1 MR. SMITH: I -- if you -- for example, let me
2 find my main complaint or maybe it was in the exhibits. Are
3 you referring to the Google groups listing where from 2004 --
4 I know -- I believe it was in Chris Paris's, one of his
5 responses, exhibits he lists, put in a big long list of
6 websites, and the majority of them were a Gmail group.

7 And here it is. Exhibit I from his complaint
8 that I violated the joint stipulations.

9 There are -- if you look at my marked up copy of
10 the exhibits, I address each one of these. Reddit.com as I
11 said earlier. I copied his lawyer on trying to get that
12 removed -- get that stuff removed from Reddit.

13 I have the e-mails. They got copies of them. I
14 also copied them on the e-mails Reddit sent to me which
15 basically said, yeah, go ahead and try to sue us or something
16 because it ain't happening. They even had a special page.
17 There was such and such a website.

18 THE COURT: I asked you about Google.

19 MR. SMITH: The Google thing was discussed as I
20 say in my marked up exhibit. That was -- that was -- it's
21 actually in the mediation agreement, section one, subsection
22 1C. Okay. We discussed that, getting rid of those, and I
23 said I can't. And Mr. Paris's lawyer said no problem. All
24 we have to do is get you a letter. You sign the letter, and
25 we'll get that stuff taken right off. I never received such

I did not! It was
in the MSA that
Paris' lawyer
would take care
of it.

1 a letter to sign.

2 THE COURT: You said earlier in your commentary
3 that you had attempted to get Google to take it down. I
4 asked you what did you do to take down negative information
5 about plaintiffs on the Google site.

6 MR. SMITH: On the Google site there's nothing I
7 can do to get them to take it down because if you look at
8 these, what Google did -- and I don't remember much about the
9 group. We're going back to 2004, Your Honor. They -- what
10 they would do is they would go in and scrape --

11 THE COURT: I don't need to go back to 2004. In
12 the mediation settlement agreement as you just pointed out
13 specifically references Google.com.

14 And it says, sign a letter to be prepared by
15 plaintiffs' counsel, consenting to removal of Elsmar.com
16 Which they still have not done.
postings referencing plaintiffs from the Google.com website.

17 You early on mentioned that you attempted to get Google to do
18 this, and you were unsuccessful. I'm asking you what did you
19 do to take down the information that obviously was discussed
20 at the mediation on the Google site.

21 MR. SMITH: It's getting confusing here because
22 again --

23 THE COURT: I don't think it's confusing at all.
24 Okay? The specific reference to information on Google.
25 Let's start this way. Did you ever get a letter from

1 plaintiffs' counsel that they composed requesting Google to
2 take anything down? **Not as of 3 August 2016.**

3 MR. SMITH: No.

4 THE COURT: Okay. What did you do separate and
5 apart to try to get Google to take the information that
6 originally came from Elsmar.com down from Google?

7 MR. SMITH: I couldn't do anything.

8 THE COURT: Why not?

9 MR. SMITH: Your Honor, have you ever tried to
10 contact Google? There is no phone call. There is no e-mail
11 address that you can e-mail. It takes a court order. That's
12 why it was discussed.

13 THE COURT: Let me back up. I got my questions
14 out of order. First question is did you attempt to do
15 anything to take it down, the information that Google gives
16 you?

17 MR. SMITH: My understanding leaving the
18 mediation settlement agreement was that they would sign --
19 that the lawyers -- their lawyer would put together a letter
20 so I personally -- no, there was nothing. I was waiting --

21 THE COURT: The joint stipulation, 5B, you will
22 remove any online commentary regarding Oxbridge or Paris
23 authored by you on any other website. My question is in
24 regards to that particular agreed provision, did you do
25 anything to take information down from Google?

1 MR. SMITH: There was -- we're into the realm of
2 impossibility at this point.

3 THE COURT: I'm just asking you what you did to
4 attempt it. I'm not asking if it was successful. What did
5 you do to take the information down, to try to take the
6 information down?

7 MR. SMITH: There was nothing I could do. I did
8 nothing.

9 THE COURT: Is that a way of saying you did not
10 do anything to try to take the Google information down?

11 MR. SMITH: Yes.

12 THE COURT: Okay. And as of this day that
13 information that was originally on the Elsmar site remains.
14 **None of it was originally on Elsmar.com - It was from USENET.**
15 If I go on Google and do the right search, it will pull up
and I can read it?

16 MR. SMITH: I assume so.

17 THE COURT: Okay. All right.

18 MR. SMITH: Again, Your Honor, this was discussed
19 at the mediation settlement agreement meeting, and they said
20 they would get me a letter because they knew it was
21 impossible. It says so right in the mediation settlement
22 agreement.

23 THE COURT: To the contrary the suggestion that
24 they would propose a letter suggests to me it is possible.

25 MR. SMITH: They can do it through a court order.

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No - It was on USENET. and there is no way for me to ask/make Google take it down.

THE COURT: And Mr. Paris says there's some particular form that Google allows you as the author or source of the information to complete that they will honor, and they will take down information. Do you agree with that?

MR. SMITH: I'm sorry. Run that past me again.

THE COURT: Mr. Paris says that Google uses a particular form whereby the author or source of information that they post can be taken down. You fill out the form. You send it into them, and they'll respond by taking it down.

Do you agree there is such a procedure with Google?

MR. SMITH: No, not from this -- not from Google groups.

THE COURT: Why do you say that?

MR. SMITH: Because there isn't.

THE COURT: And when you use the term "Google group," what does that mean?

MR. SMITH: It's a Google thing. Again, this was from 2004. Basically it's been abandoned. There are a lot of abandoned websites, web pages, and stuff that are still on the Internet. Again, this is from 2004.

THE COURT: Let me ask you an even broader question here.

In the joint stipulation which was the first agreed upon document, you agreed that you would remove any

1 online commentary regarding Oxebriidge or Paris which you
2 authored.

3 Can you point to anything that you did after
4 entering the joint stipulation to attempt to remove or take
5 down online commentary from any website?

6 MR. SMITH: The -- yes. For example, uhm, uhm,
7 there is a website that has been up for a long time which
8 indexes or does what they call scrape websites. I went
9 through and wrote them, and they had caches of my website
10 going back quite a few years. I believe they called it the
11 Internet archive. I had to prove to them I was the one who
12 owned the website.

13 After I did that, they took all the information
14 down. Took it completely away. Ripoff Report, again, I, you
15 know, wrote them. His lawyer was copied on it. Ripoff
16 Report, they're not going to -- I have no -- he says they'll
17 do it if you file a DMCA. Sir, I respectfully -- no. The
18 reply I got from them was so sue us.

19 THE COURT: Where are these replies? Where are
20 these letters that you claim that exist to prove up what you
21 are saying about your efforts?

22 MR. SMITH: Again, I -- my understanding is no
23 electronic devices.

24 THE COURT: We're not going to use that in here.
25 We're not going to use that as an excuse. I told you at the

1 outset if you need these things, we'll make arrangements to
2 get them. Okay?

3 We're not going to have that as an excuse down
4 the road that you didn't have an opportunity to present this
5 stuff. We have had this hearing set for what, about 2 months
6 3 months? If you need time to go get them, we'll give you
7 time to go get them. But we're not going to use that as an
8 excuse here. Understand?

How was I to know I would need all this information?

9 MR. SMITH: I understand.

10 THE COURT: You want time to go get them?

11 MR. SMITH: By the time I get everything up here
12 and try to get prepared, it would be tomorrow.

13 THE COURT: Maybe. Maybe. I got all afternoon.

14 MR. SMITH: May I respectfully request that --
15 that we -- if you want evidence --

16 THE COURT: Listen, what I'm telling you is
17 you're not going to be able to complain down the road that
18 you weren't given the opportunity to present evidence. It is
19 your choice what you present. And we're not going to say,
20 well, they don't let you in with your computer here. That's
21 not going to be an excuse because I'm telling you we'll get
22 your computer in.

23 We're going to break for lunch here before long,
24 and you can -- you can retrieve whatever you want, and we'll
25 re visit it.

1 Let me ask you, in regards to this removal
2 provision, which is in the joint stipulation, subsequent to
3 that joint stipulation, there's allegations that you didn't
4 comply with it.

5 And that's what leads to the mediated settlement
6 agreement; correct? As I understand the order of things
7 here? Is that correct?

8 MR. SMITH: (Shrugs shoulders.)

9 THE COURT: After the joint stipulation there was
10 -- they complained you didn't comply with it, and so that
11 ultimately was resolved by way of the mediated -- the
12 mediation settlement agreement. Is that the order of things?

13 MR. SMITH: I guess.

14 THE COURT: Well, the one is -- that you
15 indicated dated in March and the mediated settlement
16 agreement is when? June.

17 So after the mediation settlement agreement,
18 which as we pointed out specifically mentions Google, what
19 actions did you take to take down negative information that
20 originally was sourced by you that was on either Google,
21 Reddit -- you've explained those two.

22 You basically said you tried but unsuccessfully.
23 Did you take any other actions to take down any of the
24 information that was agreed to in the joint stipulation -- as
25 agreed to in the joint stipulation?

1 MR. SMITH: I took what actions I could take.

2 THE COURT: All right. The 5C provision in the
3 joint -- says that you will not publish any new content
4 about Oxebidge or Paris on Elsmar or any other website,
5 social network, or other manner of communication. Pretty
6 broadly worded.

7 You did after the agreement -- I think I've heard
8 you say today you did after the agreement give interviews and
9 were responsible for postings that related if nothing else to
10 the lawsuit, which is -- if I understand your testimony, you
11 believe you could -- no?

12 MR. SMITH: Your Honor, a girl from Document
13 Center called me and asked me what was going on, and I told
14 her I could not discuss anything about the lawsuit, that
15 there had been a settlement. That was it. I did not give
16 her or talk to her, or disclose to her any content of the
17 mediation settlement agreement.

18 And they have in their exhibits -- I didn't bring
19 it up with me, the entire interview. It was basically an
20 interview of, okay, now that Elsmar's gone, what are you
21 going to go and do now. She was writing it just as, for
22 example, I'm sure people have interviewed you. And they have
23 come out with certain things that, you know --

24 THE COURT: Let me get specific here. Their
25 exhibit A on November 17, 2015, posting of summons and

1 complaint on Scribd with handwritten commentary. You agree
2 you are the one that wrote those handwritten comments on the
3 complaint, which was a matter of public record.

4 Do you not think that that is a violation of the
5 5C where it says you will not publish any new content?

6 MR. SMITH: I have no idea how that document got
7 out. Because --

8 THE COURT: I thought you --

9 MR. SMITH: All I thought --

10 THE COURT: Listen to me. November 17th, you got
11 the exhibit book up there? Look at Exhibit 8. My
12 understanding is that you authored that and you acknowledged
13 that --

14 MR. SMITH: I'm sorry, which --

15 THE COURT: Eight. Eight. What was your -- let
16 me ask it this way:

17 MR. SMITH: Pardon?

18 THE COURT: How did that get on Scribd? You
19 acknowledged that the edited version there of the complaint
20 is what it is and you added the editing. How did it get on
21 Scribd? Already extensively discussed herein and elsewhere.

22 MR. SMITH: I marked that up in the last week of
23 January, first week of February. I see that it was filed as
24 Document 6 on 1/9/15. That document right there as far as I
25 can tell was way before anything was sealed.

Were this
true, I could
not submit
any document
to the court.

1 THE COURT: Exhibit 8, a November 17, 2015,
2 posting of summons and complaint on Scribd. It has your
3 handwritten commentary. This is after the joint stipulation.
4 This is after the mediation settlement agreement this gets
5 posted on Scribd.

6 MR. SMITH: I don't know, Your Honor. I can tell
7 you that I believe there was something going on in Pacer
8 because this was also -- if I remember -- in fact, Mr. Paris
9 brought it up in his lawsuit. There was a law site that
10 cited it and was going on about, well, if -- you know, if
11 you can only file a -- a rebuttal or an answer to a lawsuit
12 or something like that.

13 THE COURT: How did Scribd get this document with
14 your handwritten notes on it?

15 MR. SMITH: I don't know.

16 THE COURT: Okay. Why would someone send it --
17 other than you -- why would someone send it to Scribd? What
18 might be the motive there? **Chris paris has many enemies, or maybe Chris**
19 **paris posted it himself to be able to accuse me**
just as he defaced his own website.

20 MR. SMITH: With your logic anybody who's an
21 enemy of him, I don't think you understand how many people
22 really don't like him.

23 THE COURT: How about Exhibit 9? I want you to
24 be very careful on this one. Okay? This is an October 13,
25 2015, post on Scribd. Has handwritten commentary on it.
Now, that document was, when filed with the Court, filed

1 under seal, and apparently is still under seal. So how would
2 **As stated earlier it WAS NOT filed under seal.**
3 it be that this woman, assuming it was a woman, would have
4 access to that sealed document to upload it to or post it on
5 Scribd?

6 MR. SMITH: I cannot explain that. As I said the
7 only thing that I can say is that considering Pacer it was
8 leaked through Pacer. I didn't leak any documents unless
9 someone hacked into my computer.

10 (Pause).

11 THE COURT: Now, if I understand what was
12 testified to earlier, on at least two occasions you have
13 allowed others -- since these agreements, you have allowed
14 others to use Elsmar. You consented apparently to this
15 **Clarification - Use of the WORD elsmar.**
16 person in Russia to use www.Elsmar.com. Although I'm not
17 **As discussed earlier, I did NOT!**
18 sure that's the way they do it over there. RU usually is
19 added somewhere.

20 Did you consent to that person using the website?

21 MR. SMITH: I consented to two main things with
22 regard to Elsmar. Number one, it's one of the few or was one
23 of the few websites with no copyright restrictions, was
24 copied free. That meant you could copy anything from it. I
25 won't complain.

I made it plain to all the posters that if you
post something, you can't claim copyright on it. If someone
wants to copy it or paste something from Elsmar, they can do

1 it elsewhere. I used the same standard with regard to the
2 use of the name Elsmar.

3 If someone contacted me and said, I wanted to --
4 you know, I would like to use the word "Elsmar" in my
5 website, my whatever, fine.

6 THE COURT: I have heard about two instances
7 today where apparently you did that. One involves somebody
8 in Russia wanting to use the www.Elsmar.com, and you agreed?
9 **I didn't. He would need me to transfer the domain name to him.**

10 MR. SMITH: Mr. Paris, I would give him
11 permission right now if he wanted --

12 THE COURT: Just answer my question. I don't
13 want -- I want you to answer my question. Did you give this
person from Russia permission to use the website? **Discussed - NO.**

14 MR. SMITH: I don't doubt that I did. But I
15 don't specifically recall. **The judge was hammering me so hard**
at this point that I was totally confused.

16 THE COURT: And then there was apparently
17 somebody wanted to use Elsmar in connection with a project, I
18 think you said.

19 MR. SMITH: I believe you are referring to the
20 same one. That's that person in Russia.

21 THE COURT: Okay.

22 MR. SMITH: But I don't --

23 THE COURT: What was his project?

24 MR. SMITH: Sir?

25 THE COURT: What was his project?

1 MR. SMITH: I don't recall.

2 THE COURT: Was it an ISO related project?

3 MR. SMITH: I have no idea. I don't recall.

4 THE COURT: Have you ever checked to see how he
5 is using www.Elsmar.com in Russia?

6 MR. SMITH: Have I ever --

7 THE COURT: Checked to see how he is using that
8 website in Russia? **He wasn't using www.elsmar.com! He wanted to start**
9 **his own website, which he did, which is www.elsmar-**
10 **forum.com - It's none of my business how he uses it.**

11 MR. SMITH: Abused --

12 THE COURT: Using it. How he is using it.
13 **Now that I look, it's a general Quality Assurance website.**

14 MR. SMITH: I'm totally mystified. The only
15 thing that I had with Elsmar is Elsmar.com, www.Elsmar.com.

16 THE COURT: Which you apparently -- let's assume
17 this is accurate -- you allowed somebody from Russia to use
18 that? **"Communist" Dog Whistle Comment...**

19 MR. SMITH: No.

20 THE COURT: Have you since followed up and seen
21 how he is using that in Russia? **No - I have not.**

22 MR. SMITH: Anyone who asked me whether or not
23 they could use the word "Elsmar," I say no problem, use it.
24 I have no copyright on it. I have no claim it to or on it.
25 If you want to use Elsmar -- and a lot of people did over the
years because they felt they could set up a website and get a
lot of traffic by getting searches on Elsmar.

THE COURT: Now you want to answer my question?
I did!

1 After you granted permission, and let's assume this is
2 accurate. Let's assume you granted this individual, whoever
3 it is, permission to use www.Elsmar.com for his own purposes.
4 Did you ever follow-up on that and see how that person was
5 using it?

6 MR. SMITH: No. I've never followed up on any of
7 that stuff.

8 THE COURT: Okay. We're going to break till
9 1:30. I'm going to give you the opportunity to go to your
10 car. We're going to notify the front desk that you may bring
11 in a computer and your cell phone.

12 MR. SMITH: Sir, before I came down here I
13 checked. It said no computers, no stuff. If I was going to
14 go through and start trying to get stuff, e-mails and
15 everything, they're all up in Cincinnati on my big computer.
16 I have mainly some court documents and stuff like that on my
17 computer here.

18 The only thing that I could ask of you would be
19 that if you want some sort of proof or something, that you
20 put this thing into continuance, tell me what proof you want,
21 I'll send it to you. If not, I am at the point now, to be
22 honest with you -- I'm no lawyer. You know that.

23 THE COURT: Are you basically -- are you telling
24 me you don't have anything in your car, and I should not take
25 a break --

1 MR. SMITH: No. I have an old Compaq computer.
2 It's a portable that I bought probably in 2006, and I don't
3 keep e-mails on -- my e-mails and stuff on it.

4 THE COURT: You don't have anything useful on
5 this computer that you brought down. Is that what you're
6 saying?

7 MR. SMITH: Other than court documents and stuff
8 which I put on a USB stick.

9 THE COURT: Okay. All right.

10 MR. SMITH: I thought I had answered what was
11 necessary by going through the complaint line item by line
12 item telling my story by annotating the exhibits that they
13 put in there.

14 THE COURT: For instance, if you had proof today
15 that you attempted to contact Reddit in writing, and did so
16 **The evidence was submitted to PARIS/OXEBRIDGE many months ago.**
in writing --

17 MR. SMITH: I'm sorry?

18 THE COURT: If you had proof today, either
19 through e-mail or written correspondence, that you attempted
20 to get Reddit to take down information, that would be useful
21 to your position. Surely you should have recognized that.

22 Similarly, if you had any such requests of
23 Google, which I heard you to say earlier you did make the
24 request of Google but to know avail, those would support your
25 position, you know. And so I am mystified that you would not
That was all submitted long ago in documents to the court.

1 bring those with you to corroborate your position.

2 Because when we talked about this case earlier,
3 we noted that you could proceed by way of testimony,
4 affidavits, exhibits. And I required that the exhibits be
5 exchanged, I think, five days prior to hearing or whatever it
6 was. So I'm mystified that you wouldn't have put that
7 together.

8 They accuse you of not taking steps to take
9 information down. You are telling me you would have proof
10 that you did. Where is the proof is my inquiry right now.

11 Because apparently Reddit hasn't taken anything
12 down. Apparently Google hasn't taken anything down. Maybe
13 in part it's their fault because they didn't send you a
14 letter to sign off on. But these are the allegations I'm
15 looking at. That's the concern that I have.

16 This hearing's been sent for months as we talked
17 about it, and yet you're complaining, well, you left them in
18 Ohio.

19 MR. SMITH: Well, sir -- I --

20 THE COURT: We're not making progress having this
21 little tête-à-tête. What else do you want to testify about?

22 MR. SMITH: It sounds to me like you made your
23 judgment.

24 THE COURT: I haven't made a judgment on
25 anything. I am concerned about the fact that you haven't

1 taking the opportunity to perhaps bolster your case by
2 bringing evidence that would back up your testimony. I'm
3 mystified that you didn't since you knew what this was about.

4 The effort here is to hold you in contempt and to
5 remedy it with some punitive measures. So let's go back to
6 your testimony. What else would you like to say in the face
7 of their allegations? If anything.

8 MR. SMITH: There have been so many
9 mischaracterizations and lies that as far as I'm concerned at
10 this point, as I say, I didn't bring a bunch of stuff. I
11 thought what I submitted to the Court would be sufficient.

12 If you want to come down to it, when I was going
13 through this back when I briefly had a lawyer, and I even
14 marked up, for example, I got back from the mediation
15 agreement -- mediation agreement on Sunday. I started going
16 down and line item by line item, put the date on it of what I
17 did, and the date I did it.

18 I don't know if I have that with me or not. I
19 sent a copy to my lawyer to show him I was doing things.
20 There was some things that were hard to get off of a couple
21 of websites, for example, I think Twitter was one.

22 What I started doing was I have a capture program
23 on my home computer, so I would start from capture and it
24 would make a movie. And I have, I don't know, four or five
25 of them where I went through and you can see me going in and

1 going through the steps of deleting it.

2 Now, I didn't think this hearing was going to be
3 that broad a deal. I thought what I submitted to you, to the
4 court, was submission -- was sufficient to -- for what was
5 going to happen.

6 THE COURT: Miss Boone, let me ask you, after the
7 mediation settlement agreement, did your firm submit a letter
8 of request directed toward Google consistent with -- what is
9 it -- exchange of consideration, subparagraph C?

10 MS. BOONE: I do not recall, Your Honor. But I
11 could find the answer for you quickly.

12 THE COURT: What?

13 MS. BOONE: I do not recall, Your Honor. As I
14 was not the counsel on the case at that time. But I could
15 find out quickly.

16 Would you like me to find evidence of that
17 letter?

18 THE COURT: Yes. If you requested that he do so,
19 he was obligated to sign off on the letter. And then I
20 assume once he did so, you would have submitted it to Google,
21 and we wouldn't be concerned about what's still up on Google.

22 MS. BOONE: I request a break at some point that
23 I can seek that evidence.

24 THE COURT: Okay. Mr. Smith, anything else you
25 wish to testify about?

1 MR. SMITH: No, other than I think you should go
2 ahead and make a decision, charge me with whatever, let me
3 get back to Ohio. I can see this is going to go nowhere.

4 THE COURT: When are you planning on returning to
5 Ohio?

6 MR. SMITH: As soon as I get out of here, unless
7 you send me to jail.

8 THE COURT: Okay. Well, you are not going to
9 jail today, sir.

10 I'm going to allow you seven days to submit to
11 the Court any proof that you have written proof of efforts to
12 have Reddit or Google take down information that shouldn't
13 have been there. Which I did.

14 MR. SMITH: How do you want videos? Do you want
15 them on DVD or can they be sent by USB sticks or --

16 THE COURT: I assume that we're talking about
17 written communication. I want to see copies of the written
18 communication. That's what I understood you to say that you
19 did.

20 MR. SMITH: I have written communication, but,
21 sir, like I said, I went through and took screen caption
22 movies.

23 THE COURT: I'm mainly interested in right now in
24 Google and Reddit. You claimed that you've made efforts. I
25 want to see proof of those efforts.

1 Miss Boone, I'm going to direct that you check
2 your files and see if in fact they reflect a letter as
3 referenced in the mediation settlement agreement was ever
4 prepared by your firm and submitted to this gentleman for his
5 signature.

6 MS. BOONE: Thank you.

7 THE COURT: And if so, what happened thereafter?

8 MS. BOONE: Thank you. We also request that we
9 be given the same opportunity to present evidence that we
10 have that Mr. Smith did not take steps with Reddit and Google
11 to remove.

12 THE COURT: What might that look like?

13 MS. BOONE: I believe we have correspondence
14 between Mr. Paris and Google and Reddit.

15 THE COURT: You can submit that as well. Copies
16 of that as well.

17 MS. BOONE: Thank you.

18 THE COURT: That's it.

19 MR. SMITH: I have one last question. How can I
20 obtain a transcript of this hearing?

21 THE COURT: Talk to the court reporter.

22 MR. SMITH: I'm sorry?

23 THE COURT: You can talk to the court reporter.
24 This nice young lady will give you a price, and you arrange
25 to pay her that, and she'll get you a copy of the transcript.

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All right. That's it. Thank you. We'll await for this additional information, and you have to do this on an R & R basis. You should not expect to see anything before April. We've got a number of things ahead of you on our docket that we need to get out of here. But we'll get it to you as soon as we can.

MS. BOONE: Thank you, Your Honor.

(Proceeding adjourned.)

I CERTIFY that the foregoing is a true and accurate transcription of my stenographic notes.

Dated: 03/26/2016.

_____/s/ Sandra K. Provenzano_____
SANDRA K. PROVENZANO, RPR
Official Court Reporter