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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 BLAKE LIVELY,

4 Plaintiff,

5 v.

24 Civ. 10049 (LJL)

6 WAYFARER STUDIOS LLC, et al,

7 Defendants.

8 -----x
9 STEPHANIE JONES,
10 JONESWORKS LLC,

11 Plaintiffs,

12 v.

25 Civ. 779 (LJL)

13 JENNIFER ABEL, et al,

14 Defendants.

15 -----x
16 New York, N.Y.
17 November 24, 2025
3:00 p.m.

18 Before:

19 HON. LEWIS J. LIMAN,

20 District Judge

21 APPEARANCES

22 WILLKIE FARR & GALLAGHER LLP
23 Attorneys for Plaintiff Lively
BY: KRISTIN BENDER

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1 (The Court and all parties appearing by video
2 conference)

3 THE COURT: Good afternoon. This is Judge Liman.

4 Do I have counsel on for the Jones parties?

5 MS. TAHLER: Yes, you do, your Honor. Kristin Tahler
6 for the Jones parties.

7 THE COURT: Good afternoon.

8 Do I have counsel on for the Wayfarer parties?

9 MR. FRITZ: You do. Good afternoon, your Honor.

10 THE COURT: Mr. Fritz. Good afternoon, Mr. Fritz.

11 MR. FRITZ: Good afternoon, Judge.

12 THE COURT: Do I have any counsel on for the nonparty,
13 Katherine Case?

14 MR. BREED: Yes, you do, your Honor.

15 Maxwell Breed, Pryor Cashman LLP, for Ms. Case.

16 THE COURT: Good afternoon, Mr. Breed.

17 Ms. Tahler, I believe it is your motion to compel, so
18 let me hear from you first, and then I'll hear from Mr. Fritz.

19 MS. BENDER: Your Honor, just to interject, I wanted
20 to note my appearance.

21 Kristin Bender on behalf of the plaintiff, Blake
22 Lively.

23 THE COURT: Your appearance is noted, but it's not
24 your motion, so I'll hear from the Jones parties.

25 MS. TAHLER: Thank you very much, your Honor.

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1 Good afternoon. Kristin Tahler for the Jones parties,
2 and I'm joined by my colleagues Maaren Shah and Morgan
3 Anastacio.

4 Your Honor, before we get started today, I wanted to
5 note that the Wayfarer parties have requested that several
6 documents attached to our motion to compel, remain sealed. And
7 I am cognizant that this is a public hearing, so I wanted to
8 ask the court's guidance on how we best deal with that today.

9 THE COURT: Well, I think you can make your argument
10 in general terms. My principal concerns and questions have to
11 do with the timing of your motion, and I'll have you address in
12 general terms what it is that you are seeking and why it is
13 that you're seeking it now and not at an earlier stage.

14 If you discuss it in too general term, I may ask
15 followup questions. And if I ask followup questions, you are
16 to answer those questions without regard to whether the
17 information is sealed.

18 Mr. Fritz, is that OK with you?

19 MR. FRITZ: It is. Thank you, your Honor.

20 THE COURT: OK. Mr. Fritz, obviously, the same goes
21 for you. Although I suppose you're the one who is asking for
22 confidentiality.

23 All right. Ms. Tahler, let me hear from you.

24 MS. TAHLER: Thank you very much, your Honor.

25 Your Honor, as we've explained in our motion to

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1 compel, our motion should be granted. Your Honor, as an
2 initial matter, Ms. Case has not objected to production here.
3 Not only that, she's willing to produce and she is ready to do
4 so upon your Honor's ruling.

5 Moreover, your Honor, the requested documents are
6 critical to the Jones parties' claims. This is for two
7 reasons, your Honor. First, the derogatory websites at issue
8 here are a centerpiece of the Jones parties' claims. Secondly,
9 the requested documents go to the credibility of key witnesses
10 in this case. That is, Ms. Case, has testified that she
11 created and drafted a copy for the derogatory website related
12 to the Jones parties.

13 Conversely, Ms. Nathan has denied any --

14 Excuse me, your Honor. Ms. Case further testified
15 that she did so at the direction of and on the behest of
16 Ms. Nathan. Ms. Nathan, on the other hand, testified
17 diametrically opposite, that she nor Mr. Wallace had anything
18 to do with the creation of the derogatory website. As a result
19 of that, your Honor, both sets of testimony cannot be true. So
20 the requested documents are highly probative to the credibility
21 of these witnesses and to the jury making assessments about
22 that credibility.

23 Moreover, the documents requested long ago should have
24 been produced by the Wayfarer parties where we have requested
25 documents from them which would fall into the exact same

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1 buckets or many of the same buckets which we have asked here.
2 Your Honor, Wayfarer's objections are without merit.

3 First --

4 THE COURT: Let me ask you, it sounds to me from your
5 presentation and from the letter that you've submitted to me
6 that you had the information that Ms. Case had documents that,
7 in your words, were highly probative to this case after her
8 deposition which occurred in early September.

9 So why is it, if these documents are so critical, you
10 did not serve a subpoena in early September after the
11 deposition?

12 MS. TAHLER: Yes. Thank you, your Honor.

13 We had Ms. Case's deposition. For the first time we
14 learned that Ms. Case was responsible for the copier of the
15 websites. The pieces that we didn't have and that we were
16 required to get throughout the course of the rest of discovery
17 were Ms. Nathan and Mr. Wallace's testimony related to those
18 websites.

19 We did not know or expect that Ms. Nathan would deny
20 being a part of the creation of these websites, and we did not
21 want to burden Ms. Case with additional requests for additional
22 seeking for documents when we had these upcoming depositions on
23 September 30 and on October 10.

24 THE COURT: You didn't learn anything from Ms. Nathan
25 or Mr. Wallace about the existence of these documents, isn't

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1 that right?

2 They denied the existence of them.

3 MS. TAHLER: Correct, they did deny the existence of
4 documents and they deny their involvement at all. That was the
5 testimony that caused us to need to go back to Ms. Case to ask
6 for documents which would corroborate her testimony, which
7 would go to the credibility and to the truthfulness of the
8 later testimony that we had requested related to the websites.

9 So we did not know that that would become an issue or
10 that Mr. Wallace or Ms. Nathan would testify in the manner that
11 they did until they testified on September 30 and October 10.

12 THE COURT: So if the principal reason for which
13 you're seeking the documents is to test the credibility of
14 Mr. Wallace and Ms. Nathan, why isn't that the province of a
15 Rule 45 trial subpoena and not a Rule 45 discovery subpoena?

16 MS. TAHLER: Because there are additional documents
17 that we are seeking that would go to exactly the questions that
18 we are asking here. It is not just their trial or it's not
19 just for trial, it is for the documents that we are seeking in
20 connection with this.

21 I think the other point of that, your Honor, is the
22 fact that the Jones parties do not yet have a trial date in
23 this matter. We don't have a trial date. We don't have the
24 summary judgment dates. So the time to request these
25 documents, the time for Ms. Case to get this information to us,

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1 is now, while these documents are fresh, while they are
2 available, while everything is at the fore. To wait until it
3 gets closer to the time of the trial, I believe, would be a
4 disservice and could be very prejudicial to the Jones parties.

5 THE COURT: Do you have authority for the proposition
6 that --

7 Well, let me back up a little bit. Do you dispute
8 that the right question that I should be asking is whether
9 you've got good cause for the service and the request for
10 compulsion of a subpoena served after the close of document
11 discovery on third parties?

12 You need good cause for that, correct?

13 MS. TAHLER: As we had said in our letter, your Honor,
14 we believe that good cause would not be necessary here given
15 the circumstances of us writing correspondence to Ms. Case and
16 to her lawyers and to that subpoena that was addressed in that
17 correspondence, subsequently being accepted and consented to by
18 Ms. Case.

19 But, your Honor --

20 THE COURT: Let's assume that I reject that argument.
21 Do you have authority for the proposition that the absence of
22 prejudice is sufficient to establish the presence of good
23 cause?

24 MS. TAHLER: I have ample authority, your Honor, for
25 the fact that we pretty much meet all of the good cause

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1 standards here.

2 In that, the Wayfarer parties point to diligence and
3 say that we were not diligent with regard to our prosecution of
4 this. In fact, they point to Ms. Case's document discovery,
5 which occurred in July, and say that we should have followed up
6 in that time. But, in fact, that is not the case for the
7 reasons that I've already addressed.

8 We had the upcoming depositions of Mr. Wallace and of
9 Ms. Nathan which we wanted to take and understand where their
10 testimony was. Again, we had no idea that we would deny
11 Ms. Case's sworn-under-oath testimony creating the
12 circumstances that then arose to the subpoena or to the letter
13 correspondence and subsequent subpoena which we served, you
14 know, following that exchange and that discovery.

15 So this is very --

16 THE COURT: Ms. Tahler, there is something I'm still
17 not getting. You keep on saying that Ms. Case's testimony is
18 relevant to an issue in this case, and then you say that you
19 didn't know that Wallace and Nathan would testify to the
20 contrary.

21 But if Ms. Case's substantive testimony was relevant,
22 wouldn't the documents that corroborate that testimony also be
23 equally relevant and, therefore, wouldn't it have been in your
24 interest to ask for the documents once you knew from Ms. Case
25 that they existed?

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1 That's what I seem to be missing.

2 MS. TAHLER: Your Honor, I think there are two things
3 here. One is the upcoming depositions, which I had already
4 mentioned, but two, it is the document request that we had to
5 the Wayfarer parties which would have called for many of the
6 same documents which are now being requested from Ms. Case.

7 Wayfarer was continuing to produce and, in fact, did
8 produce as of, I think, just a couple weeks ago. So there was
9 no reason at that time to go back to Ms. Case and ask for
10 additional documents, to burden a third party after she had
11 already produced, until further document productions were
12 provided and this testimony had occurred.

13 Indeed, your Honor, if they had -- if Ms. Wallace
14 or -- excuse me -- if Ms. Nathan and Mr. Wallace had admitted
15 their involvement in their deposition orders, if they had
16 provided testimony that was not inconsistent with Ms. Case's,
17 the need for the documents now would not be acute, as they are
18 following the denials that we received in both sets of
19 testimony.

20 THE COURT: OK. Anything else?

21 MS. TAHLER: Your Honor, I would just highlight, with
22 the court's indulgence, a couple of other points.

23 One, as we said in our letter, Wayfarer had the
24 subpoena to Ms. Case as of October 17. It was not until the
25 literal eve of production that they logged in their first

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1 objection. We would submit, your Honor, that this delay in
2 lodging an objection is reason enough for your Honor to deny
3 their objection and to grant our motion.

4 I would also underscore the fact that there is no
5 question that Mr. Baldoni, Wayfarer, and Ms. Abel have no
6 interest in the documents related here, even though the
7 objection is made on behalf of all of the Wayfarer parties.
8 Thus, the standing for Wayfarer would need to rise from
9 Ms. Nathan.

10 In order to have standing, a party must show
11 proprietary or personal or highly confidential interest.
12 According to Ms. Nathan's own testimony, she should have no
13 interest here, because her own testimony would disclaim the
14 existence of the very documents that we are seeking. So it's
15 hard to see how Ms. Nathan can have it both ways here.

16 How can she disclaim her involvement while at the same
17 time try to prevent Ms. Case from producing documents that
18 would, in fact, show that involvement and would further
19 Ms. Case's testimony in opposition to Ms. Nathan's.

20 THE COURT: So, Ms. Tahler, are you saying that if
21 Mr. Fritz all of a sudden decided that he wanted to serve a
22 whole bunch of Rule 45 subpoenas for documents and for
23 testimony, that you would have no ability to come to me and say
24 third-party discovery is over, Judge, you entered a scheduling
25 order, and we are entitled to certainty, that phase of this

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1 case is done.

2 MS. TAHLER: Yes, your Honor.

3 And no, I'm not saying that. I am saying that the
4 very -- I would submit almost unique, if not unique, unusual
5 circumstances here have led us to the position we are now. I
6 am not at all saying that scheduling orders and that orders of
7 the court should not be respected and should not be followed.

8 What I am saying is the circumstances here, in light
9 of Ms. Case's testimony followed by Ms. Nathan's and by
10 Mr. Wallace's, Ms. Case's subsequent, almost immediate, you
11 know, receipt of our correspondence, and then willingness to
12 produce the very targeted limited selection of documents that
13 is requested in the subpoena creates a very unusual
14 circumstance where that -- strike that -- unusual where this
15 should arise.

16 It is not just a party should be able to go and serve
17 any number of subpoenas, as you posited, your Honor. It is
18 these circumstances here where Ms. Case has consented, where
19 three documents are important, and where good cause is met. It
20 is not only that we've been diligent.

21 The other factors that this Circuit looks at in
22 connection with good cause are all amply met. Trial date is
23 not imminent. Wayfarer has objected, but their objections
24 should be given less merit for the reasons I have already said
25 related to their delay, their lack of standing, and the fact

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1 that the documents themselves. We could not have foreseen the
2 need for these documents prior to the deposition testimony that
3 I've already referred to and discussed and that occurred at the
4 end of the discovery cutoff here.

5 And there is absolutely no burden on the Wayfarer
6 parties here. There is no cost. They are not producing the
7 documents. There are no trial dates that are going to be
8 impacted. There is not a summary judgment date that is going
9 to be impacted. It is difficult to see what possible prejudice
10 could ensue by the limited documents that are being requested.

11 Finally, an important factor is the factor of what
12 exactly the documents are. This isn't a fishing expedition.
13 This isn't seeking documents which we've known about for a long
14 time and just decided to do it well after the fact, which are
15 reasons that good cause is routinely not to occur.

16 Here, we realize that these documents may be possible
17 following the deposition testimony that I've referred to. We
18 promptly asked for them, and these documents could be critical
19 to the case. Put another way, denying the Jones parties the
20 request for these documents and the ability to get these
21 documents could be highly, highly unfair and prejudicial and
22 problematic to the Jones parties in pursuit of their claims.

23 THE COURT: Refresh me. When did you first reach out
24 to Ms. Case after her deposition to request the documents
25 informally from her?

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1 MS. TAHLER: We sent the letter that I referred to,
2 your Honor, on October 15.

3 THE COURT: All right. Mr. Fritz, let me hear from
4 you.

5 MR. FRITZ: Thank you, your Honor.

6 I think the first place to start is that this subpoena
7 is undoubtedly untimely. In your order dated October 4, 2025,
8 which is Docket 100, your Honor made clear something that was
9 already clear, and that's that the deadline for the completion
10 of all document discovery by nonparties is August 15 and that
11 any motions to compel should be filed by no later than
12 August 22.

13 I think everyone on this call will agree that counsel
14 knows how to move to compel additional documents when they want
15 to. And certainly there's been no shortages of motions to
16 compel using the arguments that, Hey, Judge, we need all these
17 documents before the deposition.

18 So if these documents were so critical to Ms. Jones'
19 claims, then Quinn Emanuel knew how to meet and confer, to make
20 a motion to compel, before they deposed Ms. Case. So the
21 subpoena is unquestionably late. And if you look at the letter
22 dated on the 17th from Ms. Case's counsel, Mr. Breed objected,
23 among other grounds, on the fact that fact discovery had
24 closed.

25 One other point I would note, your Honor, is that

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1 under Rule 45(a)(4), you have to give notice to the parties
2 before you serve a subpoena. Ms. Tahler sent the subpoena to
3 Case's counsel on October 15, as reflected in Exhibit J, asking
4 them to accept service, and then two days later gave the
5 Wayfarer parties notice of the subpoena.

6 So for that reason alone, the subpoena could be
7 quashed.

8 THE COURT: Because that particular argument is one
9 that, where if there's been no prejudice to the opposing party,
10 the court sometimes excuses the party noticing it. So I might
11 focus on some of your other points.

12 MR. FRITZ: I understand. Thank you, your Honor.

13 With respect to this notion that Ms. Tahler or Quinn
14 Emanuel or Jonesworks didn't know until September 30 that
15 Ms. Nathan was going to deny involvement in these other alleged
16 smear campaigns, Ms. Nathan filed an answer in March denying
17 that.

18 And if her testimony was so critical, they wouldn't
19 have waited to schedule her deposition until essentially the
20 last day of fact discovery, as your Honor pointed out.

21 THE COURT: Mr. Fritz, do you have a paragraph
22 referenced on the answer?

23 MR. FRITZ: It's document 37. I will pull up a
24 paragraph number, your Honor.

25 With respect to good cause standard, as your Honor

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1 raised, again, if you look at -- if you look at the subpoena,
2 this asked for a wide range of documents. There has already
3 been motion practice involving Ms. Case. A motion to compel
4 was filed in the summer. Your Honor issued an order on
5 October 4. That order directed Ms. Case to produce certain
6 documents, which she did on October 30. And no further motion
7 to compel was made until, as Ms. Tahler acknowledges, the one
8 that brings us here today.

9 I think it's also important to note the overbreadth of
10 the subpoena, your Honor. It asks for all documents and
11 communications with Ms. Melissa Nathan, Jed Wallace, Bryan
12 Freedman, Rosa Kalenteri, or anyone else -- I'm going to skip a
13 few words -- relating to any other negative or derogatory
14 website or social media account or post about any other
15 individual or entity for a year-long period, February 2024 to
16 January of 2025.

17 Nowhere in the motion or during today's conference has
18 that Ms. Tahler explained why any of that is relevant to the
19 Jones' current claims. They are essentially asking for any
20 communication about any social media post about anyone.

21 THE COURT: Mr. Fritz, with respect to the documents
22 regarding the website, what prejudice would your client suffer
23 if I permitted Ms. Tahler to get the documents that Mr. Breed's
24 client is willing to turn over pursuant to subpoena?

25 There is no summary judgment deadline. There is no

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1 trial deadline. It doesn't seem like your client is suffering
2 prejudice.

3 MR. FRITZ: Well, your Honor may recall that in
4 connection with our request to depose a certain high-level
5 musician or very popular musician, where that musician's
6 attorney had even agreed that we could conduct a deposition of
7 that musician remotely after the fact discovery deadline upon a
8 motion by the Lively parties, or Ms. Lively, excuse me.

9 That deposition was shut down without any showing of
10 prejudice to Ms. Lively, and the rationale was simply that
11 there was no finding as to why the deposition could not have
12 been conducted earlier.

13 Here, Ms. Tahler has not made any showing as to why
14 the documents that she's now seeking couldn't have been sought
15 earlier. In fact, she made a motion to compel. It was
16 resolved. Subpoena were issued --

17 THE COURT: Your argument is that prejudice is not a
18 component of the good cause standard?

19 MR. FRITZ: That's right. That's right. And also,
20 your Honor, I believe that would be consistent with prior
21 rulings of the court.

22 As your Honor pointed out, you can imagine, if I
23 started issuing subpoenas to nonparties, we would probably very
24 quickly see motions to compel and probably for sanctions for
25 serving subpoenas without leave of court.

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1 One thing to keep in mind, your Honor, they didn't,
2 Ms. Tahler didn't come to you and say, please amend the
3 scheduling order. She just violated it and issued the subpoena
4 and now, after the fact, is asking your Honor to open up
5 discovery again.

6 That's not how scheduling orders work.

7 THE COURT: Mr. Fritz, I thought I heard from
8 Ms. Tahler some reference to these documents would have fallen
9 within the document request to the Wayfarer parties, and the
10 Wayfarer parties' production is still going on. We didn't want
11 to burden the third party before we knew that Wayfarer parties
12 were not going to produce these.

13 She didn't quite express it in so many words, but I
14 thought I heard her say something like that.

15 MR. FRITZ: Your Honor, I did hear that also.

16 I don't believe Ms. Tahler was referring to any
17 documents that pertained to any of these websites that she is
18 now referring to. I think what she's saying is, well, the
19 Wayfarer parties still continue to produce some documents.

20 So, Judge, therefore, you should determine that it was
21 justified for her firm to wait and see what we produced, to
22 then come to the court to ask to compel a subpoena issued to
23 Ms. Case.

24 If Ms. Tahler thought that there were documents in our
25 possession regarding these so-called other websites, again, she

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1 knew how to move to compel them and, in fact, they have moved
2 to compel other types of documents, your Honor.

3 THE COURT: Do you have a paragraph number?

4 And then I'll hear anything else that you want to me
5 to know. But the paragraph number from the answer.

6 MR. FRITZ: Your Honor, after you hear from Mr. Breed,
7 I will have that paragraph number for you.

8 THE COURT: OK. Anything else from you, Mr. Fritz?

9 MR. FRITZ: No. Thank you, your Honor.

10 THE COURT: I have actually one or two questions for
11 you, Mr. Fritz.

12 So do you have a position with respect to whether the
13 documents that Ms. Tahler is seeking could properly be the
14 subject of a Rule 45 trial subpoena, which commonly is used for
15 materials sought for impeachment purposes?

16 MR. FRITZ: Your Honor, if there was an opportunity to
17 obtain these documents in the course of this discovery, which
18 there were, then I would not think it appropriate to
19 necessarily seek those documents. Though, you know, a time
20 will come for the issuance of such subpoenas, but it's not now.

21 And I would fear that if allowing that type of
22 discovery to proceed now, again, as your Honor correctly
23 highlighted when you were questioning Ms. Tahler was, we'll
24 have a whole host of subpoenas now, even though no trial has
25 been set.

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1 THE COURT: I suspect you might want to, at trial, for
2 trial, issue a bunch of subpoenas for documents that you might
3 have been able to get in that time period. But trial has a way
4 of crystalizing the issues and sharpening the mind.

5 MR. FRITZ: Understood, your Honor.

6 THE COURT: Do you disagree with that?

7 MR. FRITZ: No, I don't disagree with that.

8 THE COURT: I guess the other question for you, I
9 could have asked Ms. Tahler this, is in your mind, is there
10 anything that, the Federal Rules of Civil Procedure, that
11 prevents informal cooperation and turning over of documents?

12 MR. FRITZ: I don't think there's anything that
13 prevents informal cooperation of turning over documents, but I
14 think you have seen a robust objection from Ms. Case's counsel
15 here. So I don't think Ms. Tahler is 100 percent accurate when
16 she says that Ms. Case is just standing by with documents in
17 her hand ready to turn them over, especially under the threat
18 of being named as a defendant in that action, your Honor.

19 THE COURT: Anything else from you, Mr. Fritz, before
20 I turn to Mr. Breed?

21 MR. FRITZ: No. Thank you for your time.

22 THE COURT: Mr. Breed, do you wish to be heard?

23 MR. BREED: Your Honor, only to note that we are
24 prepared to abide by whatever instructions the court has for
25 us. And in saying that, I do -- I will note that we do take

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1 issue with the suggestion not made by the Jones parties that
2 documents were withheld from previous productions. That is
3 counter factual and that ought not play any role in these
4 discussions here.

5 If your Honor has any questions for me, I'm glad to
6 answer them.

7 THE COURT: Is that your dog barking in the
8 background?

9 MR. BREED: Yes, it is. Right at the wrong time.

10 THE COURT: You may put yourself on mute.

11 Mr. Fritz, paragraph number?

12 MR. FRITZ: 92, your Honor.

13 THE COURT: OK. Ms. Tahler, any final words from you?

14 MS. TAHLER: Yes, your Honor. If I may, a few things.

15 One, Mr. Fritz spoke about an August 15 deadline. I
16 would note that none of the depositions at issue had occurred
17 before that deadline. So being able to seek the documents that
18 we're requesting here could not have happened as of that
19 deadline.

20 Two, Mr. Fritz spent a lot of time talking about
21 Ms. Nathan's denial and what she said in her answer. This was
22 in March, credited, but what we didn't know was, we didn't know
23 that after Ms. Case's sworn-under-oath testimony that
24 Ms. Nathan would take the same posture. Nor in her answer did
25 she deny not only participation in the Jonesworks derogatory

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1 website, but in participation in any other websites.

2 It was only in her testimony where she denied
3 participation with Jonesworks as well as participation in any
4 smear campaign as well as even a know-how of how to do such
5 websites. It was that testimony that also furthered our
6 request here and that we did not know until her testimony on
7 March -- excuse me -- on September 30.

8 Those denials were not in her answer or anywhere else.
9 The date of the deposition of Ms. Nathan, frankly, your Honor,
10 is a red herring. Scheduling depositions was very challenging
11 here given the number of parties and schedules that we were
12 trying to coordinate, and September 30 became the date for
13 Ms. Nathan's testimony that was offered by Wayfarer. That was
14 not an attempt by us to push back or to wait until the last
15 possible minute to take her deposition.

16 Indeed, your Honor, the point about Wayfarer
17 continuing to produce documents was -- documents have continued
18 to be produced to this day, so the notion that the scheduling
19 order is somehow sacrosanct for them and that they have stopped
20 doing things -- that they got everything done before the
21 scheduling order is just not -- before the end of discovery --
22 is just not true in light of their productions which are
23 happening today.

24 My point about the fact that documents that we've now
25 requested are covered in the document requests that we had to

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1 the Wayfarer parties, but have now been produced, is also
2 further to the spoliation motion that we have also filed, which
3 is before your Honor today.

4 We're very concerned about spoliation in this case and
5 by the failures to produce on the side of the Wayfarer parties.
6 The fact that the documents that we have requested now are
7 absent from their production only underscores our concerns
8 about spoliation and is yet another reason to produce the
9 documents.

10 THE COURT: So I think you filed the spoliation motion
11 some time ago, didn't you?

12 MS. TAHLER: I confess, your Honor, I don't have that
13 exact date in front of me. It was within the past couple of
14 weeks, I believe.

15 THE COURT: I mean, you know, I think it was before
16 the motion was -- this motion was filed to compel compliance
17 with this subpoena.

18 MS. TAHLER: Before the --
19 I apologize. I don't have that date in front of me.
20 I know that the spoliation motion was very recent, too. And it
21 was -- it certainly wasn't before we had sent Ms. Case the
22 letter, before the subpoena was issued here, and before the
23 Wayfarer parties had the subpoena and had ample objection to --
24 excuse me -- had ample opportunity to object to it.

25 And I would also underscore, your Honor, where

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1 spoliation is an issue and where there have been questions
2 related to document productions and the like, and whereas, I've
3 mentioned we did not have a trial date, we do not have a motion
4 for summary judgment teed up, there is simply no reason to wait
5 until a later time.

6 THE COURT: Yeah, but, Ms. Tahler, there may have been
7 a reason if you -- if Ms. Case had testified at the beginning
8 of September to the existence of some documents that you had
9 not gotten from the Wayfarer parties that were really important
10 to this case, that you would have raised the issue with the
11 Wayfarer parties, Where are these documents? And if they had
12 not been -- you had not gotten a satisfactory answer, you would
13 have filed with me a motion to compel the production from the
14 Wayfarer parties.

15 What you're seeking to do now is -- well, I don't know
16 why, if the problem was the Wayfarer parties didn't produce the
17 documents, the solution wouldn't have been to ask the Wayfarer
18 parties for the documents and then to make a motion against
19 them.

20 MS. TAHLER: Your Honor, we have been asking the
21 Wayfarer parties for additional documents, or were asking them.
22 But given, as I've mentioned, in fact, in light of the
23 spoliation concerns and the like, we're concerned about the
24 absence from their production where Ms. Case is willing to and
25 ready to produce documents related to the websites at issue

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1 here. Where Ms. Nathan has, again, denied any involvement in
2 any website. Those two positions are irreconcilable, and it is
3 not --

4 THE COURT: I think I've got the argument.

5 MS. TAHLER: Yes.

6 THE COURT: Mr. Fritz, any -- I think I understand the
7 issues -- anything further from you?

8 MR. FRITZ: Yes.

9 Just with respect to the spoliation motions,
10 Jonesworks filed that in the Lively case in connection with its
11 position as a third-party defendant and seeking a ruling that
12 somehow Ms. Abel's public relations work was not within the
13 scope of her employment.

14 So not only was it not filed in this case, it had
15 nothing to do with these so-called smear websites.

16 THE COURT: All right. The court will take this under
17 advisement. Thank you all for making yourselves available on
18 such short notice.

19 Thank you.

20 MS. TAHLER: Thank you, your Honor.

21 MR. FRITZ: Thank you, your Honor.

22 (Adjourned)
23
24
25