

CAUSE NO. 067-270669-14

JAMES MCGIBNEY, and	§	IN THE 67th JUDICIAL
VIAVIEW, INC.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	DISTRICT COURT
	§	
THOMAS RETZLAFF, LORA	§	
LUSHER, JENNIFER	§	
D'ALLESANDRO, NEAL RAUHAUSER,	§	
MISSANNONEWS AND DOES 1 - 5	§	
	§	
Defendants.	§	TARRANT COUNTY, TEXAS

**MOTION TO QUASH DEPOSITION OF JAMES MCGIBNEY
AND MOTION FOR PROTECTIVE ORDER**

Plaintiff James McGibney comes now to ask the Court to quash the deposition just issued in his name because the discovery period is surely over, the location is no longer available, and Defendant has no valid reason for requesting the deposition. The only remaining issue is the Defendant's potential award for attorney's fees. Plaintiff McGibney does not and cannot possibly have any information in his possession that is germane to the decision of a fee award for Defendant. If anything, the only purpose of this deposition **is to increase those fees.**

I. INTRODUCTION

1. Plaintiff James McGibney sued Defendants for defamation in February of 2014.
2. Discovery in this suit was initially requested to be governed by a Level 3 discovery-control plan.
3. The case is set for a final hearing on September 17, 2020 at 9:30am.

II. BACKGROUND

4. This case has been sitting dormant since October of last year. Then in June of this year former Defendant Thomas Retzlaff decided to serve a barrage of discovery requests on Plaintiff James McGibney *through two other courts*. Retzlaff served some of these on his own, and some through attorney Jeffrey Dorrell, **the same attorney representing Neal Rauhauser in the instant case**. In the requests, Retzlaff commanded McGibney to produce his correspondence with FBI Special Agent Walker Wicevich.

5. McGibney has corresponded with Wicevich and other law enforcement officers regarding Retzlaff and Rauhauser's activities. Agent Wicevich's investigations yielded enough initial evidence to give probable cause for the FBI to obtain a search warrant for Retzlaff's home. **Agent Wicevich executed this search warrant and "seized numerous pieces of evidence" from Retzlaff's home.**¹ When the U.S. Attorney's Office became aware that Retzlaff was seeking McGibney's correspondence with the FBI, it filed motions to quash the discovery in both courts. **The United States' motions to quash the trial subpoenas and deposition subpoenas for McGibney were granted.**² McGibney was also granted a protective order against future discovery attempts.³ McGibney's vindication in this turn of events should not be lost on this Court, for McGibney has *repeatedly* detailed to the Court the unlawful and despicable acts of Thomas Retzlaff, and his cohort, Neal Rauhauser. Now, James McGibney is a key witness for the FBI and is deserving of the protections that should come with this role. Further evidence that Rauhauser and Retzlaff are working in concert can be plainly seen in Retzlaff's withdrawal of his request for a bench warrant in the 431st District Court in Denton

¹ Record – Compiled Exhibits from June 24, 2020 filing, pg. 49, Declaration of Walker Wicevich

² Exhibit H (pg. QUASH058), Exhibit I (pg. QUASH060) and Exhibit J (pg. QUASH067)

³ Exhibit K (pg. QUASH069)

County. In this withdrawal notice, Retzlaff states “the matter is moot because McGibney, and his attorney Evan Stone, have been served with a deposition notice for Friday, June 26, 2020, here in Denton.”⁴ This is a reference to Rauhauser’s prior deposition notice in the instant case.

6. Below is a list of all recent discovery requests served on James McGibney and his wife, along with the orders quashing said discovery and protecting James McGibney from further discovery attempts:

Deposition Subpoena for James McGibney	Western District of Texas	June 9, 2020
Deposition Subpoena for James McGibney	Western District of Texas	June 18, 2020
Trial Subpoena for Christina McGibney	431 st District Court	June 22, 2020
Trial Subpoena for James McGibney	431 st District Court	June 22, 2020
Request for Bench Warrant for James McGibney	431 st District Court	June 22, 2020
Notice of Deposition for James McGibney	67 th District Court	June 22, 2020
Withdrawal of Request for Bench Warrant	431 st District Court	June 23, 2020
Order Quashing Trial Subpoenas	431 st District Court	June 24, 2020
Order Quashing Deposition Subpoena	Western District of Texas	July 1, 2020
Order Quashing Deposition Subpoena	431 st District Court	July 13, 2020
Protective Order Granted for James McGibney	431 st District Court	July 13, 2020
Notice of Deposition for James McGibney	67 th District Court	July 29, 2020
Motion to Compel Deposition of James McGibney	Eastern District of Texas	July 31, 2020

III. ARGUMENT

7. The Court should quash the deposition because the time for the deposition is entirely unreasonable. Tex. R. Civ. P. 199.4 In the six-year history of this case, Retzlaff/Rauhauser have had more than ample opportunity to depose James McGibney. Additionally, the proposed location of the deposition is no longer available. This location, the Stoke Co-Working space of Denton, Texas, is now restricted to members and will not currently rent conference rooms to non-members. Neither James McGibney, nor his attorney Evan Stone, are members of Stoke.

⁴ Exhibit G – pg. QUASH052

Additionally, this location does not conform to suitable locations listed in Rule 199.2(b)(2) of the Texas Rules of Civil Procedure.

8. Additionally, Plaintiff notes that Mr. McGibney is covered by a protective order issued by the 431st District Court, which states, “**No further subpoenas, either for trial or discovery by either party, may be issued for James McGibney** (or his spouse, Christina McGibney) except by further order of this Court.” Plaintiff acknowledges that the instant deposition notice is in Rauhauser’s name, rather than Retzlaff’s. Plaintiff further acknowledges that this is a different case and court entirely. Despite this, Plaintiff believes he has demonstrated that Retzlaff and Rauhauser are once again acting in concert. Allowing these individuals to make an end-run around these other court rulings would be a severe miscarriage of justice.

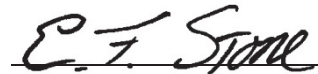
9. The Court should also quash the deposition because the discovery sought is extremely unlikely to produce any relevant information. *In re Univar USA, Inc.*, 311 S.W.3d 186 (Tex. App.—Beaumont 2010, orig. proceeding) At this point in the case, the Court is to determine only one thing: the amount of attorney’s fees to be awarded to Defendant Rauhauser *in defending against* McGibney’s defamation suit. All relevant evidence on this issue is either on the record or within the personal knowledge of Rauhauser and Dorrell.

10. Finally, it should be clear that Retzlaff/Rauhauser have no good faith basis for this deposition. They are simply doing what they do best: trolling the people who stand up to them. This time by trying to gain insight into McGibney’s cooperation with the FBI in the FBI’s ongoing investigation of Thomas Retzlaff and others.

IV. PRAYER

11. Plaintiff implores the Court to quash the deposition in the instant case and grant a protective order similar to that of the 431st District Court, prohibiting Rauhauser from issuing any further discovery requests in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 3, 2020, a true copy of this notice was electronically served on Defendant by email at jdorrell@hanszenlaporte.com



CERTIFICATE OF CONFERENCE

I certify that on July 29, 2020 I corresponded with Mr. Dorrell by email. Mr. Dorrell stated that his email should be construed as his certificate of conference, should he ultimately file

a motion to compel the deposition of James McGibney. Plaintiff McGibney likewise considers that email to be a conference for purposes of this Motion to Quash.

E. F. Stone