

D-1-GN-23-006883

BENJAMIN BRODY,
Plaintiff

VS.

ELON MUSK,
Defendant

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IN DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

459th DISTRICT COURT

PLAINTIFF'S MOTION FOR SANCTIONS

Out-of-state attorney Alex Spiro brazenly engaged in unauthorized practice of law by signing and preparing Musk's pleadings, showing up unannounced to defend Musk's deposition with no authority to practice law in Texas, and drafting and serving subsequent legal demands to Plaintiff. Even worse, Spiro's behavior in deposition was astonishingly unprofessional, as he continually interrupted the deposition with commentary, gave numerous improper instructions not to answer, berated opposing counsel, insulted Plaintiff's claims, mocked counsel's questions, and generally acted in the most obnoxious manner one could contemplate without crossing into parody. In doing so, he irreparably disrupted the deposition, prevented relevant questioning relating to Plaintiff's TCPA response, and demonstrated his disrespect for the sanctity of these proceedings.

Spiro, a Madison Avenue celebrity lawyer, does not feel compelled to obey our rules.

As shown below, he has seriously overstepped his bounds, and sanctions should issue.¹

¹ Trial courts possess the "inherent power to sanction for violations of the Disciplinary Rules." *Greene v. Young*, 174 S.W.3d 291, 300 (Tex.App.-Houston [1st Dist.] 2005, pet. denied). Where "an attorney's alleged misconduct properly can be made the subject of a grievance," the trial court is not "limited to referring the matter to disciplinary authorities," but may "use its inherent power to sanction the same conduct." *Westview Drive Investments, LLC v. Landmark Am. Ins. Co.*, 522 S.W.3d 583, 616 (Tex. App.—Houston [14th Dist.] 2017, pet. denied).

LEGAL STANDARD

Plaintiff seeks sanctions under the Court's inherent powers and under Rule 215. "Texas courts have inherent judicial power that they may call upon to aid in the preservation of their independence and integrity." *Public Util. Comm'n of Texas v. Coffey*, 754 S.W.2d 121, 124 (Tex. 1988). Inherent power "exists to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process." *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 718 (Tex. 2020). Further, Rule 215 authorizes sanctions when a party "fails to comply with proper discovery requests or to obey an order to provide or permit discovery," and such sanctions can include "an order that the matters regarding which the order was made or any other designated facts shall be taken to be established." Tex. R. Civ. P. 215.2(b).

FACTUAL BACKGROUND

I. Brody's Lawsuit.

Brody alleges that Musk posted remarks on Twitter which conveyed the defamatory impression that Brody participated in a street brawl on behalf of a neo-Nazi group. (*See* Petition, p. 19-38). On June 24, 2023, two far-right extremist groups were involved in a melee during Portland's Pride festival. During the brawl, two of members of the Rose City Nationalists, a neo-Nazi group, had their masks removed. (*Id.*, p. 19-21). The following day, an anonymous social media user posted a photo of one of the unmasked brawlers alongside a photo of innocent California resident Ben Brody. This user also included a screenshot of a social media post from Brody's fraternity stating, "After graduation, Ben plans to work for the government." The user claimed Brody was engaged in a "false flag" operation. (*Id.*, p. 21-22).

By the evening of June 25th, the rumor had started to spread, and over the next two days, significant portions of the internet were debating over the potential involvement of this

college student who wanted to join the government. (*Id.*, p. 22-34). On June 25th-26th, two Twitter users showed Elon Musk the screenshots of Ben Brody along with his fraternity's social media message about Brody wanting to join the government, and Musk replied with interest to their messages about Brody. (*Id.*).

The following morning, on June 27th, Musk tweeted a reply in which he tried to correct a @zerohedge tweet that accused the brawler of being a member of law enforcement. Instead of a member of law enforcement, Musk posted his conclusion that it looked like the brawler was “a college student (who wants to join the govt)” who was engaged in “a probable false flag situation”:



Many readers of Musk's tweet, both in the general public and among Brody's personal acquaintances, immediately understood that Musk's reference about “a college student (who wants to join the govt)” was aimed at Brody. Further, there was nothing in the @zerohedge tweet or the linked article that discussed Ben Brody wanting to work for the government, so

readers understood Musk must have acquired that information elsewhere. To readers of Musk's June 27th tweet, the statement conveyed the impression that Musk had seen information which caused him to believe that the "college student (who wants to join the govt)," *i.e.*, Ben Brody, was one of the unmasked neo-Nazis, but readers could not judge the quality or nature of his information. Thus, because Musk did not disclose the factual basis for his opinion, his remarks were defamatory. Brody requested a retraction, Musk refused, and Brody brought this suit for defamation per se.

II. The Court's Discovery Order.

Musk filed a Motion to Dismiss under the Texas Citizen's Participation Act (TCPA) on January 5, 2024. Brody responded with a Motion for Discovery. The Court granted Brody's Motion for Discovery on February 21, 2024. The Court ordered Musk to answer written discovery by March 15th and to appear for deposition by April 1st on four topics, all relating to Musk's level of fault. The Court also reset the TCPA hearing for April 22nd.

III. Musk's Deposition.

Musk appeared for deposition on March 27th. Musk's testimony was devastating to his defense, which was almost certainly one of the causes of the misconduct discussed in this motion. During his deposition, Musk:

- Admitted he intended to refer to Ben Brody.²
- Admitted that he intended to communicate the idea that he had seen information supporting the allegation that Ben Brody was one of the neo-Nazi brawlers.³

² Exhibit 1, Musk Deposition, 33:11-23; 35:23-36:3. A video of the deposition will be provided to the Court.

³ *Id.* at 34:4-10.

- Admitted that he did not disclose the source or nature of his information, and that readers of his tweet would have no idea what information he was relying on for his conclusion.⁴
- Admitted that he relied solely on a pair of highly dubious tweets, and that he acquired no other information about Brody or the neo-Nazi brawler.⁵
- Admitted that his source of information showed indications of unreliability.⁶
- Admitted that he performed no investigation into the facts whatsoever.⁷
- Admitted that he made the statement with substantial doubts about whether it was true.⁸

In sum, Musk admitted to all the material allegations in Brody's Petition. Yet as damaging as it was, Musk's deposition could have gone even worse but for the obstructionist conduct of the attorney defending the deposition. In this case, Musk has been represented by two Texas attorneys -- Emiliano Delgado and John Bash. Both of these attorneys appeared on Musk's behalf at the discovery hearing. However, neither of these attorneys were present at Musk's deposition. Instead, and unbeknownst to Plaintiff's counsel, out-of-state attorney Alex Spiro showed up to the deposition with no notice. Spiro is not licensed in Texas, nor is he admitted pro hac vice. As shown below, Spiro continually interrupted the testimony,

⁴ *Id.* at 36:20-37:13.

As the Court is likely aware, these facts render the statement defamatory. *See, e.g.*, Restatement (Second) of Torts § 566 (1977) ("If the defendant expresses a derogatory opinion without disclosing the facts on which it is based, he is subject to liability if the comment creates the reasonable inference that the opinion is justified by the existence of unexpressed defamatory facts."). Thus, Musk's tweet was "issued upon a concealed set of facts which the speaker implies would confirm his opinion." *DeLuca v. New York News Inc.*, 109 Misc. 2d 341, 352, 438 N.Y.S.2d 199, 206 (Sup. Ct. 1981).

⁵ *Id.* at 20:13-21:6.

⁶ *Id.* at 79:7-11.

⁷ *Id.* at 20:5-12; 20:25-21:2.

⁸ *Id.* at 33:24-34:3.

injected his commentary in front of the witness, berated opposing counsel, gave numerous instructions not to answer relevant questions, and generally attempted to derail an obviously damaging deposition, all while Spiro was engaged in flagrant unauthorized practice of law. As a result, the Court's rules have been flouted, and Brody was prevented from a full inquiry on the issue of actual malice.⁹

ARGUMENT

I. Alex Spiro Repeatedly and Willfully Engaged in Unauthorized Practice of Law.

Under the Texas Disciplinary Rules, "a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." *See* Tex. Disciplinary R. Prof'l Conduct 5.05. Under the Government Code, a person may not practice law in Texas unless they are a member of the State Bar of Texas or meets the requirements of Supreme Court rules allowing for limited practice by attorneys licensed in another jurisdiction. *See* Tex. Gov't Code § 81.102. The Texas *pro hac vice* rule requires an application to the State Bar as well as a sworn motion for admission to the trial court which must be granted before the nonresident attorney can practice law in Texas. *See* Rule XV of the Rules Governing Admission to the Bar of Texas. In Texas, the "practice of law" is defined as "the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court, as well as a service rendered out of court." Tex. Gov't Code § 81.101(a).

Out-of-state attorneys can enter a "valid retainer agreement" before they have "been admitted *pro hac vice*," *see Shapiro, Lifschitz & Schram, P.C. v. R.E. Hazard, Jr. Ltd. Pshp.*, 24 F.

⁹ Musk alleges Brody is a public figure and must prove malice. While this is a frivolous argument, Brody must still respond to the TCPA Motion as though it were genuine.

Supp. 2d 66, 81 (D.D.C. 1998), and “[a]ctivities in contemplation of such admission are also authorized, such as investigating facts or consulting with the client within the jurisdiction prior to drafting a complaint and filing the action.” *Dorsey v. Home Depot U.S.A., Inc.*, 271 F. Supp. 2d 726, 729 (D. Md. 2003). But out-of-state attorneys can do nothing more unless they are admitted pro hac vice. Here, Spiro committed unauthorized practice in three ways: (1) He prepared and signed pleadings, (2) he showed up unannounced to defend (and disrupt) Musk’s deposition, and (3) he drafted and served subsequent legal demands on the Plaintiff.

A. Alex Spiro first committed unauthorized practice of law by preparing and signing his name on a Texas pleading.

Despite not being authorized to practice in Texas, Alex Spiro prepared and personally signed Musk’s TCPA Motion to Dismiss, and he made his first appearance before the Court in that document. Spiro obviously prepared the document, as he also signed the affidavit attesting to the exhibits in the motion. These actions were unauthorized practice of law, and this fact alone supports sanctions and denial of future pro hac vice admission in this case.

This set of facts is similar, though more egregious, than the facts of *In re Autozoners*, where in the Relator’s answer, “[f]ollowing [local counsel’s] signature block, the pleading included like information for Relator’s nonresident attorneys.” *In re Autozoners, LLC*, 649 S.W.3d 774, 776 (Tex. App.—El Paso 2022, no pet. h.). The signature blocks for the non-resident attorneys indicated they were licensed in another state and indicated that an “application for pro hac vice admission would be forthcoming.” *Id.* When that application was later heard by the trial court, it was denied due to unauthorized practice. *Id.*

The facts in *Autozoners* were less incriminating than this case. The attorney in *Autozoners* “disagreed that she had engaged in the unauthorized practice of law merely because her name appeared in the signature block below [local counsel’s] name and

signature.” *Id.* at 777. Unlike Spiro, who personally signed the motion, the attorney in *Autozoners* “stated that [local counsel] had prepared and signed the answer” with her name listed underneath. *Id.* Nonetheless, the El Paso court rejected this argument.

The El Paso court ruled that the trial court properly found that “by appearing in the signature block of information, the two nonresident attorneys had prematurely identified themselves as representing Relator in the cause even before the court had actually granted admission pro hac vice, regardless of their additional assertion of a forthcoming motion.” *Id.* at 780. Thus, the trial court was held to have properly denied the pro hac vice application based on their unauthorized practice. *Id.*

In reaching this ruling, the El Paso court noted that that the Dallas court of appeals likewise found unauthorized practice “where a nonresident attorney's information was prematurely included on a party's initial pleading before the attorneys had been properly admitted by the courts.” *Id.*, citing *In Re Pine Tree Capital, LLC*, No. 05-22-00105-CV, 2022 WL 500035, at *1 (Tex. App.-Dallas Feb. 19, 2022, orig. proceeding) (mem. op.) (denying pro hac vice due admission due to unauthorized practice, where nonresident attorney placed his signature block on a pleading along with those of a member of the Texas Bar before gaining pro hac vice admission).

The El Paso court noted that other jurisdictions with the same pro hac vice rules have reached the same conclusion. *See id.* at n. 1, citing *Isom v. Valley Forge Ins. Co.*, 716 Fed.Appx. 280, 288 (5th Cir. 2017) (finding unauthorized practice where nonresident attorney's name appeared on the complaint before being granted pro hac vice admission, noting that the denial of application was mandatory if an applicant made an appearance before securing approval); *In re Nevins*, 60 V.I. 800, 803-04 (V.I. 2014) (inclusion of nonresident attorney's

name on signature page of brief before pro hac vice petition was unauthorized practice of law, and the fact that the words "pro hac vice application pending" appeared after the nonresident attorney's name did not "render his conduct any less improper"); *In re Williamson*, 838 So.2d 226, 235 (Miss. 2002) (finding unauthorized practice where nonresident attorney's name appeared on the complaint before his pro hac vice application was granted and warning that "attorneys are hereby noticed and cautioned that a foreign attorney will be deemed to have made an appearance in a Mississippi lawsuit if the foreign attorney signs the pleadings or allows his or her name to be listed on the pleadings."). These decisions involved cases in which the attorneys' names appeared below local counsel, and in which they disclaimed any involvement in drafting, but their actions were still held to constitute unauthorized practice. In this case, Spiro personally signed the TCPA motion and gave an attestation to the exhibits.

B. Alex Spiro next committed unauthorized practice of law by defending a deposition in a Texas proceeding.

Unlike *Autozoners*, which was limited to a signature block on a pleading, Spiro's unauthorized practice is much worse. Spiro decided to show up unannounced to Musk's deposition, make an appearance as his attorney, and represent Musk during his testimony. Plaintiff's counsel were not informed Spiro would appear at the deposition, and none of Musk's Texas attorneys even attended the deposition.

As the Delaware Supreme Court observed, "one of the principal purposes of the pro hac vice rules is to assure that" either a local lawyer or a "lawyer admitted pro hac vice" will "be present at a deposition," as "an officer of the [] Court, subject to control of the Court to ensure the integrity of the proceeding." *Paramount Commc'ns v. Qvc Network*, 637 A.2d 34, 56 (Del. 1994). Importantly, pro hac vice requirements also ensure the attorney is familiar with

the state's rules, procedures, and ethical standards. As such, Musk "should have been represented at the deposition by a [Texas] lawyer or a lawyer admitted pro hac vice." *Id.* at 55. Here, Plaintiff's counsel noted that he was "very concerned" that Spiro "came to this deposition to practice law in violation of Texas law with no pro hac admission."¹⁰ As shown below, Spiro mocked these concerns.

In doing so, Spiro broke his ethical duties. "Without admission pro hac vice, out-of-state attorneys ... actively participating in pretrial proceedings such as depositions ... would be engaged in the unauthorized practice of law in this state." *In re Roswold*, 249 P.3d 1199, 1208 (Kan. 2011); *see also Forbes v. Hixson*, 145 So. 3d 1124, 1136 (Miss. 2014) ("[P]hysically appearing at ... a deposition ... or any other proceeding in which the attorney announces that he or she represents a party to the lawsuit ... require[s] a foreign attorney to be admitted pro hac vice."); *see also In re Hughes*, 833 N.E.2d 459, 460 (Ind. 2005) (violation of professional conduct rule for Indiana lawyer to permit Michigan attorney to handle depositions and mediation in Indiana case); *In re York*, 2010 MP 11, ¶ 2 n.3, 8 N. Mar. I. 476, 477 ("After the Court learned of Murray's participation in the deposition [before his pro hac vice admission], it made a finding of unauthorized practice of law and revoked Murray's recently-granted pro hac vice status."); *Smith v. Hastings Fiber Glass Prods.*, No. 11-0894, 2014 U.S. Dist. LEXIS 81125, at *11-12 (W.D. La. 2014) (Noting that attorney "could not have participated in out of court proceedings such as depositions" without "admission pro hac vice in this case ... unless he was engaged in the unauthorized practice of law."); *In re Cortigene*, 13-2022 (La. 02/14/14), 144 So. 3d 915, 918-20 (Holding that non-resident attorney "engaged in the practice of law in this state by appearing at and participating in a deposition" and that the

¹⁰ Exhibit 1, Musk Depo., 104:1-4.

“appropriate sanction for such misconduct would be a three-year suspension” when attorney “participated in the deposition of [client] taken in New Orleans by another party,” and “advised [client] ‘once or twice’ to either answer or not answer a particular question,” even though another attorney “predominantly did the questioning and the objecting.”).

Yet as later discussed in Section II, below, Spiro’s unauthorized practice of law was greatly exacerbated by his outrageous conduct throughout the deposition.

C. Alex Spiro next committed unauthorized practice of law by drafting and serving legal demands on counsel of record in a Texas proceeding.

On March 27, 2024, following his improper appearance at Musk’s deposition and his unprofessional conduct therein, Spiro sent a letter to Brody’s counsel. (Ex. 3, Spiro letter). This letter informed Brody’s counsel that an emergency motion was being prepared, and the letter made legal demands of confidentiality on Brody, his attorneys, and consulting expert. Thus, even after being confronted during the deposition about his lack of authority to practice law in Texas, Spiro continues to engage in unauthorized practice.

II. While Committing Unauthorized Practice, Alex Spiro Engaged in Abusive Litigation Conduct.

A. Spiro’s conduct in Musk’s deposition was unacceptable.

Plaintiff began the deposition with a simple question that inquired into Musk’s subjective state of mind about his fault: “Do you think you did anything wrong to Ben Brody?” In a bizarre and combative outburst, Spiro interrupted this first question, chastised Brody’s counsel, instructed his client not to answer, insisted that Brody’s counsel “just showed your cards that this case is DOA.”¹¹ Following these derisive and unnecessary remarks, Plaintiff’s counsel requested Spiro abide by Tex. R. Civ. P. 199.5. Yet Spiro refused, and almost

¹¹ *Id.* at 6:25.

immediately thereafter, Spiro decided he would interrupt questions and **answer them himself**, and then berate Plaintiff's counsel when again asked to follow the rules:

Q. Mr. Musk, I'm referring to the fact that on June 24th, 2023, as described in the plaintiff Ben Brody's lawsuit, there was a brawl in Oregon between right wing extremists. Were you aware that that was the subject matter of the lawsuit?

MR. SPIRO: I don't know that that's the subject matter of the lawsuit. I think the subject matter of the –

MR. BANKSTON: A subject matter of the lawsuit. And, Mr. Spiro, again, your objections to questions in an oral deposition under Rule 199.5 are limited to objection; leading and objection; form, or objection; nonresponsive. Those objections are waived if not stated as phrased. All other objections need not be made or recorded during the oral deposition to be raised to the court. You must not give any suggestive or argumentative or any explanations during the deposition.

MR. SPIRO: Well, then don't say things that are misleading.

MR. BANKSTON: No. That's not -- that's why you should object to the form of the question.

MR. SPIRO: No, no, it's not –

MR. BANKSTON: That's misleading. Mr. Spiro, you know -- Mr. Spiro --

MR. SPIRO: Listen, if you want to go back and forth with me and waste your time, you can. Go on to your next question.

MR. BANKSTON: Oh, we're going to get more time if you keep doing this.

MR. SPIRO: No, you're not. No, you're not. Go to the judge --

MR. BANKSTON: You're violating Rule 199, you're not even *pro hac* admitted.

MR. SPIRO: Okay. Okay. You're just giving speeches that nobody's listening to but you. You're just doing them for yourself.

MR. BANKSTON: Oh, they're for the record, Mr. Spiro, they're for the court to listen to.

MR. SPIRO: Okay. So keep --

MR. BANKSTON: And I would appreciate it -- I'm going to give you an instruction. I would appreciate it if you would abide by Rule 199.5 of the Texas Rules --

MR. SPIRO: I heard you the first three times.

MR. BANKSTON: Mr. Spiro, please do not interrupt me.

MR. SPIRO: I heard you the first three times.

MR. BANKSTON: Mr. Spiro, please do not interrupt me. I'm asking you on the record to obey Rule 199.5. If you continue to violate Rule 199.5, I will move for sanctions against you. So I please ask you to obey the rules in the remainder of this deposition.¹²

Regrettably, Spiro continued to act in a ridiculously unprofessional manner for the entirety of the deposition. In fact, during his next interruption moments later, Spiro indicated that he didn't care about following deposition rules:

MR. SPIRO: I am going to interrupt again, and I don't really care that rule you keep reading because it has nothing to do with --

MR. BANKSTON: I know you don't.

MR. SPIRO: Good.¹³

Spiro's outrageous conduct continued to grow more unprofessional as he grew angrier, and the deposition was continually interrupted by his snide and ridiculous commentary:

MR. SPIRO: **This isn't like a real case. This is just some stupid --**

MR. BANKSTON: Mr. Spiro.

MR. SPIRO: Yeah, so --

¹² *Id.* at 10:3 – 12:7.

¹³ *Id.* at 12:21-25.

MR. BANKSTON: Lawyers do not -- It is not in accordance with the Lawyer's Creed to just start making random statements about the alleged frivolity of a case to a lawyer in a deposition. You know that's not proper. You know that.

MR. SPIRO: Do you give these lectures in all of your depositions?¹⁴

Spiro continued to express his indifference to the rules, and throughout the deposition, Spiro continued to interrupt with sarcasm and mocking remarks:

- "I'm surprised you don't know they're not proper questions."¹⁵
- "Maybe just ask proper questions."¹⁶
- "There's nothing about me saying that that changes what he's going to answer. That's not how witness coaching works. I'm surprised you don't know that."¹⁷
- "Any judge reviewing this will tell you it's not a proper question."¹⁸

During yet another interruption, when Plaintiff's counsel again expressed his alarm that the deposition wasn't being defended by a Texas lawyer, Spiro stated, "**You keep filing these silly frivolous shakedown cases, I'll -- I'll keep trying to think of Texas lawyers to bring to your deposition.**"¹⁹ Plaintiff's counsel is not sure what the second part of this comment meant exactly, but it was clear Spiro was engaged in scorn, as well as accusing Plaintiff's counsel of a fraudulent and potentially illegal "shakedown." Spiro continued these attempts at ridicule throughout the deposition, stating, for example:

- "You're running out of time. I know this is your big day in the sun. You're running out of time."²⁰

¹⁴ *Id.* at 14:5-15.

¹⁵ *Id.* at 38:15.

¹⁶ *Id.* at 38:22.

¹⁷ *Id.* at 38:23-39:1.

¹⁸ *Id.* at 39:3-5.

¹⁹ *Id.* at 43:12-15.

²⁰ *Id.* at 43:23-44:2.

- “I think this is nonsense and you know it.”²¹
- “This isn’t – this isn’t productive.”²²
- “I don’t understand why you’re doing this. You’re just wasting everybody’s time.”²³

At the end of Musk’s extraordinarily damning testimony, Spiro demanded the testimony be treated as confidential despite the absence of any protective order. When informed that there was no protective order in place and that parties must seek protection under Rule 192.6 **before** discovery is produced, Spiro repeated his baseless confidentiality demand and angrily abandoned the Zoom call before the parties concluded the record and before the court reporter could ask if Musk would choose to read and sign the transcript.²⁴ Following the deposition, Spiro wrote declarations in support of multiple “emergency motions” attempting to keep the deposition confidential, despite the lack of a protective order or any confidential information in the deposition. These motions were frivolous. Spiro simply did not want damaging testimony to become public knowledge.

B. Spiro’s conduct merits sanctions under Texas law.

An identical situation was discussed by the San Antonio court in *Harvest Communities*. In that case, an attorney engaged in almost identical deposition misconduct. First, the offending attorney was “not shy to put on the record what he thought about the ability of [opposing] counsel to ask questions.” *In re Harvest Communities of Houston, Inc.*, 88 S.W.3d 343, 346 (Tex. App.—San Antonio 2002). That attorney characterized deposition questions as “incredible,” “nonsense,” “an incredible waste of time,” “preposterous,” and “absurd,” as

²¹ *Id.* at 104:15.

²² *Id.* at 7:18-19.

²³ *Id.* at 106:4-5.

²⁴ *Id.* at 107:13-108:20.

well as stating that “counsel had asked ‘the most preposterous questions I’ve seen in nearly—in 39 years of practicing law, I’ve never seen anybody like you.’” *Id.* As the court rightly noted, “[s]uch comments clearly are not in keeping with a lawyer’s responsibilities under the Texas Disciplinary Rules of Professional Conduct.” *Id.* Further, the questioning attorney in *Harvest Communities* was “repeatedly interrupted by long, argumentative objections.” *Id.* Also, just like here, “[r]eminders by [opposing] counsel to [the offending attorney] regarding the applicable Rules of Civil Procedure and efforts to ensure that [the offending attorney] complied with the rules were given short shrift.” *Id.* Like in this case, “[i]n a typical exchange during the deposition, [opposing] counsel complained of [the offending attorney’s] speech-making and reminded [him], ‘You’re entitled to make the objection as to form — and then you are to stop.’ Counsel’s reminder was a fair restatement of Rule 199.5(e), but [the offending attorney’s] response was: ‘You’re not going to tell me a thing. You just keep your mouth shut. We’re through.’” *Id.*

Every attorney, whether authorized to practice in Texas or not, should be aware of how to behave at a deposition. “[I]t is to be conducted in a manner that simulates the dignified and serious atmosphere of the courtroom.” *Soule v. RSC Equip. Rental, Inc.*, No. 11–2022, 2012 WL 5060059, *2 (E.D. La. Oct. 18, 2012). Emotions may run high, voices might be raised, but reputable attorneys do not ridicule, demean, and disrupt, all while mocking the rules. Deviating from these standards cannot be allowed, as the D.C. federal court explained:

Behavior of the type this record reveals demeans the participants, demeans the witnesses and demeans the very system and essence of justice itself. It simply cannot be tolerated. A deposition is an extension of a judicial proceeding. It should be attended and conducted with the same sense of solemnity and the same rules of etiquette that would be required were the parties in the courtroom itself.

Alexander v. F.B.I., 186 F.R.D. 21, 52 (D.D.C. 1998).

As noted by the San Antonio court when faced with identical misconduct, “[t]he trial court was well within his discretion to assess sanctions in this case, including harsh sanctions. Such attorney misbehavior demeans the entire profession, and should be punished.” *In re Harvest Communities*, 88 S.W.3d at 347; *see also Paramount Commc’ns*, 637 A.2d at 52 (Chastising the “lack of professionalism” and “misconduct during a deposition” involving celebrity attorney Joe Jamail, who appeared at deposition though “not admitted pro hac vice” while “improperly direct[ing] the witness not to answer certain questions” and acting in a “rude, uncivil, and vulgar” manner, which the Delaware Supreme Court called “a lesson of conduct not to be tolerated” which “cries out for relief under the trial court’s rules.”).

III. While Engaged in Unauthorized Practice, Alex Spiro Improperly Instructed Musk Not to Answer Relevant, Non-Privileged Questions.

A. Spiro prevented relevant questioning about Musk’s prior denial of neo-Nazi violence and any warnings he received.

To show actual malice, Plaintiff would need to show that when Musk made the accusation that the neo-Nazi street brawl was a false flag psy-op, Musk consciously disregarded a substantial risk. Plaintiff alleges that Musk was consciously aware of the risk his conduct posed because one month prior, Musk received significant attention for another a reckless series of statements in which he wrongly claimed that an act of neo-Nazi violence was actually a false flag psy-op, just like this case.

On May 6, 2023, a neo-Nazi mass shooter murdered shoppers at an outlet mall in Allen, Texas. The shooter had multiple Nazi tattoos and engaged with neo-Nazi materials online. Just like in this case, Musk spent the days after the shooting bantering with rightwing extremists while claiming that the event was a false flag psy-op and denying that the shooter was actually a neo-Nazi. And just like in this case, Musk relied on baseless information from

unverified social media accounts to make an absurd accusation. Plaintiff's counsel tried to question Musk about this experience and its impact on his state of mind a month later when denying another act of neo-Nazi violence as a psy-op based on ridiculous rumors from rightwing extremists. Unfortunately, Spiro shut down any inquiry before it could even begin:

Q. Do you remember just a couple of weeks before this meme in the -- when the Allen, Texas, neo-Nazi shooting happened, about you using the term psyop for that event?

MR. SPIRO: I think this is outside the court order, so I'm not going to allow you to answer this question. You can keep going.

MR. BANKSTON: So you're going to instruct him not to answer it?

MR. SPIRO: You heard me the first time.²⁵

Later in the deposition, Plaintiff's counsel revisited the topic, hoping its relevance had become apparent over the course of the deposition. Plaintiff's counsel told Musk:

I want to talk about if in your mind you were aware or considering any warnings you had been given say in the past few months about the level of care you were showing in your tweets ... And during that time, I want to ask you about some situations if people have ever voiced concern about the level of care you were showing when tweeting about factual events.²⁶

During this questioning, Plaintiff's counsel again asked about the neo-Nazi mass shooting on which Musk commented in the month prior to defaming Plaintiff. However, Spiro again cut off any questioning before it could even begin:

Q. A month before the events of this case was the neo-Nazi mass shooting in Allen, Texas?

MR. SPIRO: Look, I'm going to object again. I was going to let you do a couple of these because it's not worth necessarily arguing about each and every one even though I don't think it's relevant, but you're not backdooring all this stuff in through the fourth category that the judge

²⁵ *Id.* at 17:20-18:4.

²⁶ *Id.* at 69:6-19.

proposed when in the judge's instructions they very much limit the tweets in question in this case. And so we're not going to do any more on it. So I'm instructing Mr. Musk not to answer any more questions about any other tweets in this case for the rest of this deposition. You can go to the judge if you don't like that instruction.

MR. BANKSTON: Let's put it on the record that your statement is just incorrect. The order does not limit me to the tweets in this case --

MR. SPIRO: We disagree. We disagree whether -- whether the judge is sitting here -- we would disagree whether if the judge was sitting here would allow you to go through each and every tweet so.

MR. BANKSTON: Okay. I'm going to start over before you interrupted me and I am going to go ahead and state what I said I need to put on the record. Again, this is not for you; this is for the judge, right? I am now being told that there are events that I want to talk to him about about whether he's been given warnings about his level of care. These are not about tweets in the case. These are about the topic of his state of mind at the time the alleged defamatory statement was allegedly published, and warnings he may have received in advance of that tweet about the level of care that he was habitually showing are clearly relevant. I've now been told I'm not going to be allowed to ask any more questions about that.²⁷

When questioning Musk about his state of mind on the day he falsely denied a violent neo-Nazi event based on flimsy social rumors, Plaintiff should have been able to question Musk about the impact of his experience one month prior in which he was widely chastised for falsely denying the reality of a violent neo-Nazi event based on flimsy social rumors. Yet this was hardly the only subject in which Plaintiff's counsel was prevented from inquiring.

B. Spiro prevented relevant questioning about Musk's use of Twitter posts as a news source.

On the same day as Musk's defamatory tweet, Musk also made a comment about the difference between consuming news on Twitter versus the traditional media. Musk stated,

²⁷ *Id.* at 75:16-77:3.

"The thing about traditional news is by the time they actually publish anything, it's not news anymore."²⁸ Plaintiff's counsel initiated a line of inquiry about this statement:

Q. Traditional news takes time to publish things whereas on Twitter, you're reading about events before the news can even cover it. Is that right?

MR. SPIRO: What's the relevance of this question to the fourth --

MR. BANKSTON: His state of mind upon the information he relied on it and why he relied on it.

MR. SPIRO: No, I don't see that. I don't see the relevancy of that question. Don't answer that.²⁹

Plaintiff's counsel would have questioned Musk about the difference between traditional news and Twitter, including that Musk was aware of the substantial risk of false information from real-time anonymous sources on Twitter, and that Musk consciously disregarded that risk in favor of "pro-free speech" views he maintains about the Twitter platform. In sum, an exploration of Musk's remarks about traditional news versus Twitter would have revealed his conscious choice to value speed over accuracy despite his subjective awareness of the risk. Musk's tweet, which occurred on the same day as the defamatory tweet, was a subject reasonably calculated to lead to admissible evidence about Musk's state of mind at the time of the defamation. Spiro's improper instruction foreclosed any possible inquiry in this area.

C. Spiro prevented relevant questioning about Musk's sources for the defamatory statement.

"[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Warner Bros. Entm't, Inc. v. Jones*, 538 S.W.3d

²⁸ *Id.* at 62:9-11.

²⁹ *Id.* at 63:6-15.

781, 809 (Tex. App.—Austin 2017), aff'd, 611 S.W.3d 1 (Tex. 2020). It does not matter if the publisher claims to be ignorant of the source's unreliability at the time of the statement. For instance, in *Warner Bros*, the court found evidence of malice when the defendants did not "dispute that no one investigated Watson to determine whether he was a credible source," though information suggesting his potential unreliability was publicly available. *Id.* at 807. The combination of an objectively unreliable source and a subjective failure to assess credibility creates circumstantial evidence that the truth was avoided. *See id.*

Here, Plaintiff sought to question Musk about his two sources, a pair of Twitter accounts named "DrFrensor" and "MattWallace888." As noted above, Musk acknowledged these two Twitter accounts were his only source of information about Ben Brody. Plaintiff's counsel asked Musk if he had looked at the profiles of DrFrensor or MattWallace888 or seen any of their tweets in the prior days. Musk testified that he did not know if he did or not.³⁰ Plaintiff's counsel began questioning Musk about the tweets present on DrFrensor's profile page on the day of the incident and whether he had seen them or found them to indicate unreliability. Yet Musk's attorney shut down this questioning.

Spiro instructed Musk not to answer even though Spiro understood the relevance of the questioning, stating, "I understand your point that if he had checked he could have seen these things."³¹ Nonetheless, Spiro stated, "We're not going to do any more hypothetical, if you had seen these tweets," and wouldn't allow any more questions about these users' profiles.³² Spiro insisted that, "The point has been made," and he instructed Musk, "We're not

³⁰ *Id.* at 25:24-26:14.

³¹ *Id.* at 81:3.

³² *Id.* at 80:25.

doing any more questions on this.”³³ Following Spiro’s instruction, Plaintiff’s counsel made a record of why he was asking these questions:

I'm going to go ahead and make this record again for the Court because once again I've been shut down in the relevance area. I am facing a situation where I must prove certain facts which may have triggered different duties in this case. One of those is not a subjective analysis of whether the source is reliable, but an objective analysis of the source is reliable. And if that source is unreliable, there is arguable basis that a defendant will have to exercise greater care and that that could reflect more actual malice if the person purposefully avoided any investigation into the credibility of an unreliable person. I would like to establish (a) whether he has seen these tweets as though he has already said he does not know and cannot tell me what tweets from these people he has seen. And (2) I would like to establish these people are unreliable. I understand that you're instructing the witness not to answer it and so I will have to add that to whatever relief we're going to seek from the court.³⁴

Questions about the reliability of Musk’s sources, and whether information about those sources would have triggered reliability concerns, were appropriate inquiries relating to malice as described by the Austin court in *Warner Bros.*

D. Spiro prevented relevant questioning about the circumstances of Musk’s refusal to retract his statement.

Plaintiff’s counsel raised the issue of Musk’s refusal to issue a retraction. Plaintiff’s counsel asked Musk, “Knowing right now Ben is really upset that this tweet is still up and that he wanted there to be a retraction, how do you feel about that?”³⁵ Spiro would not allow Musk to answer:

MR. SPIRO: Now to the four deposition topics, we're on I guess topic four. We've addressed one through three. How is that relevant to four?

MR. BANKSTON: Because in *Gonzalez vs. Hearst Corp.*, 930 S.W.2nd 275, “a refusal to print a retraction is evidence of an action after the

³³ *Id.* at 81:4-6.

³⁴ *Id.* at 81:25-82:22.

³⁵ *Id.* at 42:6-8.

publication but it can lend support to a claim that reckless disregard or knowledge existed at the time of publication.” Similarly, in *New Times vs. Issacks*, Texas Supreme Court, 2004, 146 S.W.3rd 144, “refusal to retract an exposed error tends to support a finding of actual malice and conversely a readiness to retract, tends to negate actual malice.” So again I'm pose my question --

MR. SPIRO: Yeah, I'll look at those cases but he's not answering that right now. I don't see the relevance. I don't think those cases -- I'm pretty confident those cases are not directly on point so I'll review the cases so we can respond further.³⁶

Contrary to Spiro's remarks, the cases are on-point, and they are consistent with other authority regarding a defendant's refusal to retract. “Refusal to retract an exposed error tends to support a finding of actual malice.” *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071 (5th Cir. 1987); *MMAR Grp. v. Dow Jones & Co.*, 987 F. Supp. 535, 548 (S.D. Tex. 1997) (“Under certain circumstances, however, evidence of a refusal by a publisher to retract a statement after it has been demonstrated to him to be both false and defamatory might be relevant in showing recklessness at the time the statement was published.”). This line of cases originates from the Restatement of Torts on actual malice. *See* Restat 2d of Torts, § 580A, cmt. d (noting that “the defendant's refusal to retract a statement after it has been demonstrated to him to be both false and defamatory ... might be relevant in showing recklessness at the time the statement was published.”). However, not all refusals to retract are equally probative of actual malice. As the Restatement and Texas cases emphasize, it is only “under certain circumstances” that a refusal to retract can suggest actual malice. Some refusals to retract are driven by ill will, spite, or disregard. Other refusals to retract are driven by a genuine

³⁶ *Id.* at 42:13-43:7.

belief in the truth of the statement. Plaintiff was denied the opportunity to fully question Musk about those circumstances.³⁷

IV. Spiro Continually Disrupted the Deposition with Interruptions and Speaking Objections.

In Texas, an attorney must limit “objections to questions during [an] oral deposition to ‘Objection, leading’ and ‘Objection, form.’” *In re Harvest Communities*, 88 S.W.3d at 346. An attorney who consistently makes “long, argumentative objections” is not only in violation of Rule 199.5 but also the Texas Disciplinary Rules of Professional conduct. *Id.* at 346-47.

Here, Spiro’s obstructionist tactics, speaking objections, and interruptions all disrupted the free flow of the deposition and influenced the answers given by the deponent. This kind of conduct was examined in the oft-cited *Abbott Labs* opinion, which exhaustively discussed the problem of deposition interruptions and speaking objections, noting they “are an independent reason to impose sanctions.” *Sec. Nat’l Bank of Sioux City, Iowa v. Abbott Labs*, 299 F.R.D. 595, 609 (N.D. Iowa 2014). In *Abbott Labs*, “Counsel’s interruptions while defending depositions were grossly excessive,” given that “[c]ounsel’s name appears at least 92 times in the transcript of the Barrett–Reis deposition (about once per page).” *Id.* In *Phillips v. Manuf. Hanover Trust*, 1994 WL 116078 (S.D.N.Y. Mar. 29, 1994), a lawyer was sanctioned

³⁷ Another troubling issue should be noted for context. During his deposition, Musk was asked about a Twitter account called @ermnmusk that he was rumored to use. (*Id.* at 44:11-12; *see also* Ex. 2, @ermnmusk account). Musk testified that he used the account during the summer of 2023, which means he viewed and interacted with tweets on this account around the time when Brody was defamed. (*Id.* at 45:17). Thus, information Musk interacted with on this account near the time of the defamation could be relevant to Brody’s claims. However, when Plaintiff’s counsel checked the account after the deposition, they discovered it had been deleted. According to @BigTechAlert, an automated bot that tracks Twitter activity, it appears the @ermnmusk account was deleted on or about February 21, 2024: <https://twitter.com/BigTechAlert/status/1762064280961110198>

This deletion is alarming because February 21, 2024 is the date of the Court’s discovery order. In other words, after almost a year of inactivity on the account and with no recent public discussion about it, it appears Musk chose to delete the account on the day the Court ordered discovery to go forward, which is either intentional spoliation or an extraordinary longshot coincidence.

when he “objected or otherwise interjected during [the examiner's] questioning of the deponent at least 49 times though the deposition lasted only an hour and a half” in which “approximately 60 percent of the pages of the transcript contain such interruptions.” In *Bordelon Marine, Inc. v. F/V Kenny Boy*, 2011 WL 164636, 14, 999 (E.D. La. Jan. 19, 2011), sanctioned counsel “objected or provided commentary...on 170 pages of the 360–page transcript.”

Here, Spiro’s name appears on the transcript 170 times in a 110-page deposition, and his numerous interruptions frequently contained commentary that coached the witness. Through his constant interruptions and commentary, Spiro “completely shut down many segments of the deposition, issued several instructions not to answer that were wholly inappropriate, completely interrupted, and made objections outside of Rule 199.5.”³⁸ This strategy “frustrated the free flow of the deposition[] Counsel defended,” and it likewise amounts to sanctionable discovery abuse. *Abbott Labs*, 299 F.R.D. at 606.

CONCLUSION

Due to his sense of entitlement, Spiro brazenly engaged in unauthorized practice of law. That same sense of entitlement led to Spiro’s unprofessional behavior in deposition, as he continually interrupted the deposition with commentary, gave numerous improper instructions not to answer, berated opposing counsel, insulted plaintiff’s claims, mocked counsel’s questions, and attempted to derail damaging testimony. In doing so, he disrupted the deposition, prevented relevant questioning relating to Plaintiff’s TCPA response, and demonstrated his disrespect for these proceedings. As such, Plaintiff asks the Court to enter remedial sanctions under its inherent powers and Rule 215.

³⁸ *Id.* at 109:9-13.

Respectfully submitted,
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CERTIFICATE OF CONFERENCE

I hereby certify that before filing this motion, I conferred with counsel of record, but Defendant is opposed to the relief sought.



MARK D. BANKSTON

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2024, the forgoing brief was served upon all counsel of record via electronic service.



MARK D. BANKSTON

Plaintiff's
Proposed
Order

D-1-GN-23-006883

BENJAMIN BRODY,
Plaintiff

VS.

ELON MUSK,
Defendant

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§
§
§

IN DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

459th DISTRICT COURT

ORDER ON PLAINTIFF'S MOTION FOR SANCTIONS

On this day, the Court considered Plaintiff's April 8, 2024 Motion for Sanctions. The Court finds that out-of-state attorney Alex Spiro engaged in unauthorized practice of law by signing Musk's pleadings, showing up unannounced to defend Musk's deposition, and drafting and serving subsequent legal demands to Plaintiff in this case.

The Court also finds that Spiro's behavior in deposition was unprofessional, that he repeatedly interrupted the deposition with commentary, that he gave numerous improper instructions not to answer, that he berated opposing counsel, that he insulted Plaintiff's claims, and that he mocked counsel's questions.

The Court finds this misconduct disrupted the deposition, prevented relevant questioning relating to Plaintiff's TCPA response, and demonstrated disrespect for the sanctity of these proceedings.

Accordingly, the Court finds that Plaintiff's Motion should be GRANTED, and that sanctions be assessed under Rule 215(b) and the Court's inherent powers.

The Court therefore ORDERS that:

1. Plaintiffs are awarded the reasonable value of legal services and expenses in connection with taking the deposition of Elon Musk and bringing their Motion for Sanctions.

2. Plaintiffs are also awarded conditional appellate fees should this order be unsuccessfully appealed. Any post-judgment interest on appellate attorney's fees shall not begin until the appellate court's judgment is final.

3. Pursuant to Rule 215(b), the following designated facts shall be taken to be established for the purposes of Defendant's TCPA Motion: _____

_____.

4. The Court enters the following other remedies: _____

_____.

5. The Court finds that these sanctions are reasonably limited to what is sufficient to accomplish their purpose, including securing compliance with the relevant rules of civil procedure, punishing violators, deterring other similarly situated attorneys from misconduct, and remedying the prejudice to Plaintiff's in responding to Defendant's TCPA Motion to Dismiss.

6. The Court DENIES the pending application of Alex Spiro for *pro hac vice* admission.

Dated _____, 2024.

Presiding Judge

Exhibit 1

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CAUSE NO. D-1-GN-23-006883

BENJAMIN BRODY,) IN THE DISTRICT COURT OF
Plaintiff)
VS.) TRAVIS COUNTY, TEXAS
ELON MUSK,)
Defendant) 459TH DISTRICT COURT

ORAL AND VIDEOTAPED DEPOSITION OF

ELON MUSK

(VIA ZOOM VIDEOCONFERENCE)

MARCH 27TH, 2024

ORAL AND VIDEOTAPED DEPOSITION OF ELON MUSK,
produced as a witness at the instance of the plaintiff,
and duly sworn, was taken in the above styled and
numbered cause on MARCH 27TH, 2024, from 1:05 p.m. to
3:19 p.m., before Deborah Tidwell, Certified Shorthand
Reporter in and for the State of Texas, reported by Zoom
Videoconference, and stenographic means pursuant to the
Texas Rules of Civil Procedure and the provisions stated
on the record or attached hereto.

1 A P P E A R A N C E S

2

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12

13 ALSO PRESENT:

14 A.J. Grant, Farrar & Ball, LLP

15

16 VIDEOGRAPHER:

17 Robie Rowley

18

19

20

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1 THE VIDEOGRAPHER: We are on the record.
2 Today's date is March 27th, 2024, and the time is 1:05
3 p.m. This is the remote video-recorded deposition of
4 Elon Musk. This deposition is being conducted remotely
5 with the witness and all parties in their preferred
6 respective locations. It is agreed and stipulated that
7 all parties waive any objection to the physical location
8 of the presiding officer at the time the oath is
9 administered.

10 At this time will all attorneys in attendance please
11 state their appearance and who they represent for the
12 record, beginning with the attorney taking this
13 deposition.

14 MR. BANKSTON: Mark Bankston, Farrar &
15 Ball, representing the plaintiff, Ben Brody.

16 MR. SPIRO: And I guess that's then to me,
17 Alex Spiro on behalf of Mr. Musk.

18 THE VIDEOGRAPHER: Will the court reporter
19 please swear in the witness.

20

21

22

23

24

25

1 ELON MUSK,
2 having first been duly sworn to testify the truth, the
3 whole truth and nothing but the truth, testified as
4 follows:

5 DIRECT EXAMINATION

6 MR. BANKSTON:

7 Q. Hi, Mr. Musk. Can you hear me okay?

8 A. I can.

9 Q. Okay. Do you think you did anything wrong to
10 Ben Brody?

11 MR. SPIRO: Okay. This isn't a question
12 you're allowed to ask by the Court, so we're not going
13 to do this, Mark, or this deposition is going to be over
14 before it starts.

15 MR. BANKSTON: I'm asking about his state
16 of mind.

17 MR. SPIRO: No, no, no.

18 MR. BANKSTON: Yes, I am.

19 MR. SPIRO: No. You're not going to ask --
20 you're not going to ask questions like that. It doesn't
21 have --

22 MR. BANKSTON: I'm going to ask --

23 MR. SPIRO: No, you're not or you can go
24 see the judge.

25 MR. BANKSTON: Let me read something for

1 the record, all right. As you know, as the Court told
2 you in Unsworth vs. Musk, the defendant's subsequent
3 conduct can be relevant to his state of mind at the time
4 of the alleged defamation.

5 And as they say in Warner Brothers, actual
6 malice may be inferred from the defendant's acts, words
7 before, at, or after the defamation.

8 And if he's sitting here today and he has
9 opinions about whether he did something wrong, that is
10 relevant to the state of mind at the time that he made
11 the statements. Of course I can ask him do you think
12 you committed actual malice, do you think you were
13 reckless. Of course I can ask those questions. And,
14 yeah, we'll go to the Court over that.

15 MR. SPIRO: You didn't ask if he committed
16 actual malice. Obviously --

17 MR. BANKSTON: I didn't. I asked something
18 that was very relevant to that. I'd like to get him
19 talking about things that he did wrong --

20 MR. SPIRO: But that's the point. That's
21 not what you're allowed to do in this deposition. You
22 can't just get him talking.

23 MR. BANKSTON: I disagree --

24 MR. SPIRO: You just showed your cards that
25 this case is DOA and you can't just get him talking as

1 you just put it.

2 So you've got four bullets --

3 MR. BANKSTON: Yes, I can. Alex -- Alex --

4 MR. SPIRO: -- one, two, three, and four.

5 MR. BANKSTON: Alex --

6 MR. SPIRO: You've got one, two, three and

7 four --

8 MR. BANKSTON: All right. Hold on a

9 second.

10 MR. SPIRO: -- so if you want to ask him

11 those bullets, you can go through those bullets and ask

12 him.

13 THE REPORTER: One at a time, please.

14 MR. BANKSTON: Yeah, let's go ahead and

15 take a breath, Alex. First of all, I know you're not a

16 Texas attorney. I know you don't know Rule 199.5,

17 right? I know you're not even pro hac in this case --

18 MR. SPIRO: This isn't -- this isn't

19 productive. You want to go ask another question, go ask

20 another question. You're lecturing --

21 MR. BANKSTON: Are you instructing him not

22 to answer?

23 MR. SPIRO: You can try to ask the question

24 again and I'll listen to it again.

25 MR. BANKSTON: Are you going to instruct

1 him not to answer?

2 MR. SPIRO: I don't know. I'll hear the
3 question and tell you.

4 MR. BANKSTON: Okay. Mr. Musk, do you
5 think you did anything wrong to Ben Brody?

6 MR. SPIRO: Did anything wrong to Ben
7 Brody? Okay. You can ask that question.

8 A. I don't know Ben Body.

9 Q. (BY MR. BANKSTON) You're aware Ben Brody is
10 somebody who's sued you, right?

11 A. I -- I think you're the one suing.

12 Q. Actually, Mr. Musk, I'm an attorney. Did you
13 know that? I'm an attorney representing Mr. Brody.

14 A. Yes, but many times I found that the actual
15 plaintiff is the attorney.

16 Q. Okay. But that's just an assumption you're
17 making, right? Like you don't know anything about Ben
18 Brody?

19 A. I don't.

20 Q. Okay. You understand Ben Brody has filed a
21 lawsuit against you?

22 A. I -- in my opinion, you're the one filing the
23 lawsuit.

24 Q. Okay. You understand -- let's try to make this
25 an easier way.

1 You understand that there's a piece of
2 paper on which there's a lawsuit written. And at the
3 top of the lawsuit it says Ben Brody, plaintiff, versus
4 Elon Musk, defendant; do you understand that?

5 A. I understand that but I view many cases and
6 probably this one too that the real plaintiff is the
7 lawyer seeking money like you.

8 Q. Okay. I'd like to know though, are you aware
9 that there's a piece of paper that has a lawsuit on it
10 that says Ben Brody vs. Elon Musk? That's actually what
11 I'm wanting to know.

12 A. Yes.

13 Q. Okay.

14 A. Technically.

15 Q. Do you feel like you have an understanding of
16 what that lawsuit alleges you did wrong?

17 A. I -- I have a limited understanding of that --
18 of what the lawsuit is about.

19 Q. Okay. Let's start --

20 A. My -- what I want to think it's really about is
21 about you getting a lot of money.

22 Q. Okay. All right. Let's start with the
23 incident that this lawsuit is based on. You understand
24 that this case involves a brawl in Oregon between some
25 right-wing extremists?

1 A. I -- I don't know much about -- you're
2 referring to a handful of posts on the X platform?

3 Q. No. Actually, Mr. Musk, I'm referring to the
4 fact that on June 24th, 2023, as described in plaintiff,
5 Ben Brody's lawsuit, there was a brawl in Oregon between
6 right-wing extremists. Were you aware that that was the
7 subject matter of the lawsuit?

8 MR. SPIRO: I don't know if that's the
9 subject matter of the lawsuit. I think the subject
10 matter of the --

11 MR. BANKSTON: A subject matter of the
12 lawsuit. And, Mr. Spiro, again, your objections to
13 questions in an oral deposition under Rule 195 are
14 limited to objection; leading and objection; form, or
15 objection; nonresponsive.

16 Those objections are waived if not stated
17 as phrased. All other objections need not be made or
18 recorded during the oral deposition to be raised to the
19 Court. You must not give any suggestive or
20 argumentative or any explanations during the deposition.

21 MR. SPIRO: Well, then don't say things
22 that are misleading and I won't --

23 MR. BANKSTON: No. That's not -- that's
24 why you should object to the form of the question.

25 MR. SPIRO: No, no, it's not --

1 MR. BANKSTON: That's misleading. Mr.

2 Spiro, you know -- Mr. Spiro --

3 MR. SPIRO: Listen, if you want to go back
4 and forth with me and waste your time, you can. Go on
5 to your next question.

6 MR. BANKSTON: Oh, we're going to get more
7 time if you keep doing this.

8 MR. SPIRO: No, you're not. No, you're
9 not. Go to the judge --

10 MR. BANKSTON: You're violating Rule 199,
11 you're not even pro hac admitted.

12 MR. SPIRO: Okay. Okay. You're just
13 giving speeches that nobody's listening to but you.
14 You're just doing them for yourself.

15 MR. BANKSTON: Oh, they're for the record.
16 Mr. Spiro, they're for the Court to listen to.

17 MR. SPIRO: Okay. So keep --

18 MR. BANKSTON: And I would appreciate it --
19 I'm going to give you an instruction. I would
20 appreciate it if you would abide by Rule 199.5 of the
21 Texas Rules --

22 MR. SPIRO: I heard you the first three
23 times.

24 MR. BANKSTON: Mr. Spiro, please do not
25 interrupt me.

1 MR. SPIRO: I heard you the first three
2 times.

3 MR. BANKSTON: Mr. Spiro, please do not
4 interrupt me. I'm asking you on the record to obey Rule
5 199.5. If you continue to violate Rule 199.5, I will
6 move for sanctions against you. So I please ask you to
7 obey the rules in the remainder of this deposition.

8 (EXHIBIT 1 ENTERED INTO THE RECORD)

9 Q. (BY MR. BANKSTON) Mr. Musk, I want to show you
10 a tweet that you posted on the day of the brawl, which
11 is June 24th, 2023. Can we bring up Tab A?

12 We're going to mark this as Exhibit 1. Mr.
13 Musk, this is a meme that you shared about psyops,
14 correct?

15 A. Yes. It's a joke.

16 Q. A psyop is a psychological operation, right?

17 A. It's -- yes, I believe that is what it refers
18 to, yes.

19 Q. Okay. And this meme jokes that there are
20 almost daily psyops --

21 MR. SPIRO: I am going to interrupt again,
22 and I don't really care that rule that you keep reading
23 because it has nothing to do with --

24 MR. BANKSTON: I know you don't --

25 MR. SPIRO: Good. The Court --

1 THE WITNESS: -- to the judge.

2 MR. SPIRO: How is this relevant to the
3 court order?

4 MR. BANKSTON: Because I'm getting to --

5 MR. SPIRO: This isn't a regular deposition
6 --

7 MR. BANKSTON: Mr. Spiro --

8 MR. SPIRO: Now I'm talking so don't
9 interrupt me. How is -- this is a deposition governed
10 by a limited court order --

11 MR. BANKSTON: Correct.

12 MR. SPIRO: -- because he gave you a
13 limited court order on this case, so I have every right
14 to ask and to stop -- I'm not going to just let you do
15 two hours about Mr. Musk's upbringing.

16 How is this tweet that is nothing -- that
17 is not a tweet in this case, how is this relevant under
18 the Court's order?

19 MR. BANKSTON: This is very much -- Mr.
20 Spiro, I don't know if you were listening to me. This
21 is what he posted on the day of the brawl, and this case
22 is about whether this brawl was being accused to be a
23 psyop. This is absolutely relevant to his state of mind
24 on -- when he calls this brawl a psyop.

25 I'm really -- Mr. Spiro, I really have to

1 ask you to please get yourself up to speed on the facts
2 of this case. I'm definitely going to ask him --

3 MR. SPIRO: Again, this isn't a real -- you
4 keep lecturing me like get up to speed on the facts of
5 this case. This isn't like a real case. This is just
6 some stupid --

7 MR. BANKSTON: Mr. Spiro.

8 MR. SPIRO: Yeah, so --

9 MR. BANKSTON: Lawyers do not -- it is not
10 in accordance with the lawyer's creed to just start
11 making random statements about the alleged frivolity of
12 a case to another lawyer in a deposition. You know
13 that's not proper. You know that.

14 MR. SPIRO: Do you give these lectures at
15 all of your depositions?

16 MR. BANKSTON: I do and you can watch them.

17 MR. SPIRO: In any event, this is not --
18 this is not a tweet that's alleged -- if you're alleging
19 that this tweet is directly related to the brawl, ask --

20 MR. BANKSTON: That's what I'm asking him,
21 Mr. Spiro.

22 MR. SPIRO: Oh, okay. Is there some code
23 in Texas that you don't yell and raise your voice in
24 depositions?

25 THE WITNESS: Why are you yelling? Calm

1 yourself.

2 MR. SPIRO: Yeah, why are you yelling?

3 THE WITNESS: Calm yourself. Calm

4 yourself.

5 MR. BANKSTON: I'm very, very disturbed by

6 what you're doing.

7 THE WITNESS: You're yelling at everyone.

8 MR. BANKSTON: I'm very disturbed that

9 you're instructing the witness --

10 THE WITNESS: I mean, show some decorum.

11 MR. SPIRO: I'm not instructing the

12 witness. I'm not instructing the question. Ask your

13 question.

14 MR. BANKSTON: Okay. Now that I've got you

15 up to speed, I can ask my question?

16 MR. SPIRO: Yeah, I asked you for the

17 relevance of how this relates to the court order. You

18 gave me an answer. I'm not preventing him from

19 answering, so ask your question.

20 MR. BANKSTON: All right. Let's keep

21 moving.

22 Mr. Musk, this meme -- the question that I

23 had, was this meme jokes that there are almost daily

24 psyops, correct?

25 A. This is a joke about psyops.

1 Q. (BY MR. BANKSTON) Okay. But psyops for you are
2 not always a laughing matter, right?

3 A. I mean, I don't -- I don't think there are
4 actually daily psyops. This is --

5 Q. No, I get that. I understand --

6 A. -- a tin foil hat --

7 Q. Right. I get this is a joke. I understand
8 that.

9 A. It's a joke obviously --

10 Q. What I'm asking though --

11 A. -- if somebody puts -- may I finish?

12 Q. Sure.

13 A. Do you feel you need to yell again?

14 Q. I might.

15 A. Yeah. I've rarely met a lawyer with less
16 decorum than you, if you could be called a lawyer.

17 So this is a joke. Obviously --

18 Q. Right.

19 A. -- this is just a kitten with a tin foil hat.

20 Q. Uh-huh.

21 A. And, in fact, it is making fun of the fact that
22 there are -- people claim psyops when often there is not
23 a psyop.

24 Q. Okay. But what I want to ask you about is for
25 you, this is a joke, but there are other times in which

1 for you, psyops are not a joke?

2 A. I think the vast majority of time people think
3 there's a psyop and there is not a psyop.

4 Q. Okay. That's -- okay. But let's talk about --
5 let's talk about that tin foil hat for a second. I want
6 to try to get to the symbolism of that, all right?

7 And if I'm -- tell me if I'm summarizing
8 this joke correctly: That the idea of something being a
9 psyop might be -- sound a little crazy, but sometimes
10 you see evidence or facts that make you think there is a
11 psyop. And, wow, that makes you want to put on a tin
12 foil hat like the conspiracy people do. That's kind of
13 the joke there? Am I interpreting that correctly?

14 A. No.

15 Q. Okay. So let me pull it back a little bit.
16 Would you agree with me that the idea that any given
17 event is a psyop is something that is improbable but not
18 impossible?

19 A. Yes.

20 Q. Okay. Do you remember just a couple of weeks
21 before this meme in the -- when the Allen, Texas,
22 neo-Nazi shooting happened, about you using the term
23 "psyop" for that event?

24 MR. SPIRO: I'm -- I think this is outside
25 the court order, so I'm not going to allow you to answer

1 this question. You can keep going.

2 MR. BANKSTON: So you're going to instruct

3 him not to answer it?

4 MR. SPIRO: You heard me the first time.

5 MR. BANKSTON: I didn't -- I'm not sure

6 what that meant actually.

7 MR. SPIRO: He's -- he's not answering that

8 question. You're on I think what the judge -- the judge

9 would maybe let you ask some of the questions you're

10 asking, maybe. There's no chance in my view that the

11 judge would have let you go back two weeks to some other

12 incident. I don't think that's what the judge intended.

13 MR. BANKSTON: Mr. Spiro, I just need your

14 instruction. I don't need your comments.

15 MR. SPIRO: Yeah, I gave my instruction and

16 then you started talking so I'm responding.

17 MR. BANKSTON: Okay. All I said is --

18 MR. SPIRO: And I'll make whatever record I

19 want to make, okay?

20 MR. BANKSTON: Please do.

21 Mr. Musk, are you going to obey -- you're

22 going to abide by your counsel's instruction not to

23 answer that question?

24 A. It sounds like it's outside the judge's

25 instructions.

1 Q. (BY MR. BANKSTON) So "yes"?

2 A. Yes.

3 Q. Okay. A false flag, that's a type of psyop?

4 A. I'm no expert on psyops, but, yes, that would
5 be a type of psyop I believe.

6 Q. Okay. Now, a false flag, for people who may
7 not understand that term, that's a form of deception,
8 right?

9 A. Yes.

10 Q. In other words, a false flag requires
11 dishonesty, you're falsely portraying something?

12 A. I believe it's in the name. If it's not a true
13 flag, it would be a false flag.

14 Q. Correct. Okay. Thank you, Mr. Musk. Let's
15 talk a little bit about your tweets about the brawl.

16 So, okay, as far as what your understanding
17 of this suit is, do you understand that this lawsuit
18 takes issue with a tweet that you posted on June 27th?

19 A. I don't quote exactly, but that sounds correct.

20 Q. Can I ask you, have you read the lawsuit?

21 A. I've read a summary of the lawsuit.

22 Q. A summary of the lawsuit?

23 A. Yes.

24 Q. Okay. All right. Let's see what we can do
25 here. You do understand that on the previous two dates,

1 June 25th and June 26th, you interacted with two tweets
2 about one of the unmasked brawlers in that brawl?

3 A. That is -- that is what I have read in the
4 lawsuit, yeah.

5 Q. Okay. We're going to talk about those tweets,
6 but first I want to verify: You were ordered to answer
7 some discovery, and it appears from your answers that
8 before your tweet on June 27th, you did not do any
9 searches on Twitter or any web searches like on a search
10 engine for information about the identity of this
11 unmasked brawler; is that correct?

12 A. That's correct.

13 Q. Okay. Would it be fair for me to say that
14 other than the tweets that you interacted with, you did
15 not secure other information about this unmasked
16 brawler?

17 A. I don't recall securing other information.

18 Q. In other words, you didn't get any information
19 by text or email or any other sort of communication with
20 anybody else about the brawler?

21 A. I don't recall. Not that I -- not that I
22 recall, no.

23 Q. Okay. And did you ask anybody to go get you --
24 let me start that again.

25 Did you ask anyone to go get you any

1 information on this unmasked brawler?

2 A. No.

3 Q. Okay. So it'd be fair to say that the

4 information that you acquired about the brawler was from

5 the tweets that you interacted with?

6 A. Correct.

7 (EXHIBIT 2 ENTERED INTO THE RECORD)

8 Q. (BY MR. BANKSTON) Okay. I want to talk about

9 those tweets right now. So we're going to pull up Tab B

10 and we'll mark this as Exhibit 2.

11 All right. Mr. Musk, on your screen, are

12 you able to read that or do I need to zoom in a little

13 bit?

14 A. It's small, but I'm able to read it.

15 Q. Okay. So you'll see -- I'm going to kind of go

16 through it and we'll go through it tweet by tweet so

17 that we can read it together. You'll see the first is a

18 post from a suspended account so we can't see it, right?

19 A. Correct.

20 Q. And then the second is your tweet and you asked

21 who were the unmasked individuals, right?

22 A. Yes.

23 Q. And then an account called AcceptDoge tells you

24 -- and I think there's a typo, but it's "here's one of

25 them"?

1 A. Yes.

2 Q. Does that look right to you?

3 A. Yes.

4 Q. Okay. And then there's a tweet from a Dr.

5 Frensor, and it says, "OMFG, they are so busted. A

6 member of Patriot Front is actually a political science

7 student at a liberal school on a career path towards the

8 feds"; do you see that?

9 A. Yes.

10 Q. Okay. And then you'll see that there are two

11 images from the brawl in Portland that day along with

12 two screenshots from Ben Brody's social media

13 information. Do you see their pictures of Ben Brody and

14 the information about him?

15 A. You need to zoom in, I think.

16 MR. BANKSTON: A.J., can you zoom in on the

17 part there with the Ben Brody pictures?

18 THE WITNESS: Yeah, I see it.

19 Q. (BY MR. BANKSTON) Okay. So you now see that we

20 have pictures from the brawl as well as pictures showing

21 and describing Ben Brody, correct?

22 A. Yes.

23 Q. Okay. And then scroll down, your response to

24 that we have -- it just says, "very odd," correct?

25 A. Yes.

1 Q. Okay. This was the first time you became aware
2 of this allegation about Ben Brody?

3 A. I think so.

4 Q. Okay. On the quote tweet of Dr. Frensor -- can
5 you scroll up just a little bit? Okay. On this quote
6 tweet, do you see how it says -- we can see that it's
7 part of a thread because it says, "Replying to Dr.
8 Frensor." Do you see where that is?

9 A. Yes.

10 Q. Okay. And then do you see below the text it
11 says "Show more," right?

12 A. Yes.

13 Q. Do you know if you clicked on the Dr. Frensor
14 tweet and read any of the other tweets in that thread?

15 A. I -- I don't recall doing so.

16 Q. And do you know if you clicked on Dr. Frensor's
17 profile to bring up their timeline and bio?

18 A. Not that I recall.

19 Q. Okay. And if you didn't do that, there was no
20 way for you to assess this person's credibility, right?

21 A. I wasn't trying to assess their credibility.

22 Q. I'm not asking if you were trying to. I
23 actually don't think you were at all. But I'm asking
24 you, the only method that you had in front of you right
25 here to assess credibility to learn anything about this

1 person was to click on their profile, right? There was
2 no information about them in this tweet?

3 A. I don't think clicking on someone's profile is
4 an effective way of assessing their credibility.

5 Q. Well, couldn't you click on their profile and
6 take a quick look at their timeline and see if the
7 things that they had been saying were things that might
8 give red flags about reliability? Isn't that something
9 you could do?

10 A. Possibly, and that's sort of not a very
11 reliable way.

12 Q. Sure. But I'm asking that is something you
13 could do. If, for instance, let's say you clicked on
14 Dr. Frenson's account and you saw that they were
15 tweeting a bunch of really wacky, obviously false
16 things. That might give someone pause about whether
17 this person was reliable, correct?

18 A. Yeah, you'd say that perhaps that would affect
19 things.

20 Q. Do you know --

21 A. It is possible for people who are -- nobody's
22 right all the time. Nobody's wrong all the time --

23 Q. Sure.

24 A. -- so it's possible for some people to -- you
25 know, like once in a while, a conspiracy theorist is

1 going to be right.

2 Q. Yeah, yeah, somebody who's really, really
3 unreliable most of the time could be right some of the
4 time, right?

5 A. Yes. And people who are -- and people who are
6 reliable, could be wrong some of the time.

7 Q. And so, in other words, somebody who's
8 unreliable, if you did some homework and checking, you
9 might actually discover, hey, this unreliable person is
10 correct, right?

11 MR. SPIRO: Objection to form.

12 A. I think everyone is wrong to some degree and
13 everyone is right -- usually right to some degree.

14 Q. (BY MR. BANKSTON) Do you know --

15 MR. SPIRO: Mark, Mark, you've got to let
16 him answer the questions. You're cutting him off at the
17 end of every -- every answer.

18 MR. BANKSTON: Mr. Musk, do you have
19 anything else you want to add?

20 A. I was saying that even if somebody is wrong
21 most of the time, they will still be right some of the
22 time, and if somebody is right most of the time, they
23 will be wrong some of the time.

24 Q. (BY MR. BANKSTON) Agreed. Do you know if you
25 saw any other tweets from Dr. Frenson that day or in the

1 few days before that?

2 A. I don't know Dr. Frenson or that account.

3 Q. Do you -- I'm saying so you don't know if you
4 saw tweets from them or not either that day or in the
5 days prior?

6 A. I don't think I did.

7 Q. Okay. I mean, I'm asking you have you -- do
8 you know? Did you go and check, do you know, or is that
9 still an open question?

10 A. I don't -- I don't recall looking at Dr.
11 Frenson's account.

12 Q. There is a possibility you have seen tweets
13 from Dr. Frenson before?

14 A. It's possible, yeah.

15 (EXHIBIT 3 ENTERED INTO THE RECORD)

16 Q. (BY MR. BANKSTON) Okay. Let's talk about the
17 second tweet that you interacted with, okay? So let's
18 go ahead and bring up Tab C and we'll mark this as
19 Exhibit 3.

20 So here we see, this is the following day,
21 June 26th, and as you see, your tweet at the bottom was
22 at 5:34 a.m., okay? So we're now on the second day,
23 June 26th. You'll see at the top there's a tweet from
24 Matt Wallace 888, okay? And that tweet reads, "Remember
25 when they called us conspiracy theorists for saying the

1 feds were planting fake Nazis at rallies?" And then it

2 has a crying laughing emoji; do you see that?

3 A. Uh-huh.

4 Q. Okay. And then in the tweet we see the same

5 pictures that we saw in the Dr. Frenson tweet, correct?

6 A. They look like the same pictures.

7 Q. Yeah, it's the same set of images that Dr.

8 Frenson had attached to their tweet, right?

9 A. They look like the same images.

10 Q. And then you replied, "Always remove their

11 masks," correct?

12 A. Yes, I think we want to shine a light on

13 whoever's doing these things.

14 Q. Okay. All right. So I want to move past these

15 two tweets that you saw on June 25th and June 26th. And

16 now I want to move to June 27th, which this is the date

17 that the lawsuit focuses on, the tweet that it takes

18 issue with, all right?

19 So on June 27th, you understood there was

20 an existing allegation you had seen on Twitter about

21 this Ben Brody person, the college student who wanted to

22 join the government?

23 A. I'm sorry. Are you going to show this --

24 Q. No. I'm asking you a question actually so

25 listen again and I'll ask it again, okay?

1 On June 27th, you understood there was an
2 existing allegation you had seen on Twitter about this
3 Ben Brody person, this college student who wanted to
4 join the government, correct?

5 A. I guess I would have been aware at the time
6 that there were some posts the prior day. I mean, I'm
7 on the platform a lot, so there are -- I mean, I see
8 sometimes several thousand posts per day.

9 Q. Sure. But what I'm saying is -- all I'm saying
10 is now that we're on June 27th, we know that in the
11 prior two days, you had become aware that there was this
12 existing allegation about Ben Brody?

13 A. Yes, I'm not -- it would not have been top of
14 mind, but certainly I think I probably would have
15 vaguely recalled it, yeah.

16 (EXHIBIT 4 ENTERED INTO THE RECORD)

17 Q. (BY MR. BANKSTON) Okay. Well, let's talk about
18 that morning. Let's bring up Tab D. All right. This
19 is going to be Exhibit 4. This is the exchange that the
20 lawsuit takes issue with, okay?

21 A. Uh-huh.

22 Q. And we see here at the top is Zero Hedge; do
23 you see that?

24 A. Yes.

25 Q. Okay. You know Zero Hedge is a blog with

1 anonymous contributors, right?

2 A. Yes.

3 Q. Okay. At this time, did you -- were you -- did
4 you -- did you -- were you aware of Zero Hedge before
5 you responded to this tweet?

6 A. I've seen posts from Zero Hedge before.

7 Q. Okay. Do you feel like they're a media
8 organization that you're familiar with, or is this
9 something you just every now and then see tweets from?
10 And could you describe for me your level of familiarity
11 with them?

12 A. I see a lot of their posts. I don't know the
13 people behind it.

14 Q. Okay. Got you. Now, in this tweet, Zero Hedge
15 says, "Patriot Front white supremacist unmasked as
16 suspected fed"; do you see that?

17 A. Yes.

18 Q. Okay. Now, based on what you'd seen at this
19 time, you did not contend that this unmasked person was
20 a federal law enforcement member, but instead was that
21 it was a college student; is that right?

22 A. My post simply says, "Looks like one is a
23 college student who wants to join the government and
24 another is maybe an Antifa member but it's a probable
25 false flag situation." I also put @community notes,

1 which is the fact-checking system on the X Twitter
2 platform. So the reason I put @community notes there is
3 so that Community Notes can assess the accuracy of the
4 statement.

5 MR. BANKSTON: Okay. Objection;
6 nonresponsive.

7 Q. (BY MR. BANKSTON) Do you remember what my
8 question was, Mr. Musk?

9 A. Please restate.

10 Q. Okay. I'll do it again. All right. What I'm
11 trying to understand is, based on what you had seen at
12 this point before you posted this tweet, like when you
13 see the Zero Hedge tweet, based on what you had already
14 seen, you did not contend that this unmasked person was
15 a member of federal law enforcement and instead
16 contended that they were a college student; is that
17 correct?

18 MR. SPIRO: Objection to form.

19 A. I mean, I think my post speaks for itself.

20 Q. (BY MR. BANKSTON) No. Actually that's kind of
21 why I have to ask you is because I really would like an
22 answer.

23 A. I think my post is being very -- very literal.

24 Q. Okay. What I'm trying to figure out is it
25 seems to me that the Zero Hedge tweet is essentially

1 floating the idea that this unmasked person is a member
2 of federal law enforcement. And I just want to get to
3 the idea of that's not what you were contending.

4 MR. SPIRO: Objection to form. I can't
5 understand you.

6 A. I don't understand what you're --

7 Q. (BY MR. BANKSTON) Let's try it this way: Were
8 you contending he was a member of federal law
9 enforcement?

10 MR. SPIRO: Objection to form.

11 A. No, because I say he looks like someone who
12 wants to join the government --

13 Q. (BY MR. BANKSTON) Thank you.

14 A. -- based on the prior things -- the prior post
15 and -- and another may be -- you know, a probable false
16 flag situation. (Internet disruption)

17 And the reason I put @community notes is so
18 that Community Notes is the fact-checking system on the
19 platform and they can -- I'm calling on them to
20 fact-check the situation.

21 Q. Sure. We're going to talk about that too. In
22 fact, let's talk about that. You tagged Community
23 notes, which, okay, not everybody I think understands
24 what Community Notes is so let me try to see if I can
25 summarize it fairly.

1 By tagging Community Notes, Community
2 Notes, through a system of voting, had the ability to
3 add a note correcting the Zero Hedge tweet; is that
4 right?

5 A. That's not how Community Notes works.

6 Q. I thought there was a voting system that notes
7 are voted on, and if they get enough votes from people
8 of differing political beliefs and backgrounds, that it
9 can be displayed on a tweet. Is that not how it works?

10 A. That is -- the latter part of your explanation
11 is correct. The --

12 Q. Okay.

13 A. -- a Community Note to be surfaced, people who
14 have historically disagreed must agree in order for a
15 note to be displayed.

16 Q. Okay. So let's make it really simple so people
17 can understand what Community Notes is. Community Notes
18 is a system where notes are proposed by Twitter users,
19 and if those notes get enough votes by members of the
20 Community Notes community, they can be displayed on
21 tweets to correct them?

22 A. Yes.

23 Q. Okay.

24 A. It requires people who historically have
25 disagreed to agree. It's not simply a popularity

1 contest.

2 Q. And so if -- if a consensus among those folks
3 developed that said, you know what, Mr. Musk is right,
4 Zero Hedge is wrong, this isn't a law enforcement
5 person. Community Notes, if a consensus developed, had
6 the ability to put a note on Zero Hedge's tweet?

7 MR. SPIRO: Objection to form.

8 A. Or mine.

9 Q. (BY MR. BANKSTON) Or yours or anyone's, right?

10 A. Correct.

11 Q. Okay. When you said looks like one is a
12 college student who wants to join the government, you
13 were referring to the person in the screenshots we saw
14 earlier in the tweets from Dr. Frenson and Matt Wallace
15 888, correct?

16 A. I assume so. Those were -- I think there were
17 two people I referred to previously and that's what I'm
18 referring to here. And I'm speculating here and saying
19 it looks like one is a college student and maybe another
20 is an Antifa member, and it's a probable but not certain
21 false flag situation. And I'm requesting Community
22 Notes to dig into this and assess the veracity of the
23 situation.

24 Q. When you posted your tweet, you weren't certain
25 that this college student was actually one of the

1 brawlers?

2 A. That's why -- I'm not certain, that's why I say

3 it looks like instead of it -- you know --

4 Q. And, in fact, so when you said looks like, your

5 message was not to tell everybody, hey, I'm sure he's

6 one of the brawlers, but just that you had seen

7 information suggesting that he was one of the brawlers;

8 is that fair?

9 A. Yeah, "it looks like" means that he may be a

10 college student --

11 Q. And that would be -- excuse me. Keep going.

12 A. That's just -- just a literal sort of statement

13 of -- of my impression, which is --

14 Q. Right.

15 A. -- that it looks like just -- you know, if I

16 said something looks like a donut, and it doesn't mean

17 it is a donut; it could be a bagel.

18 Q. Let me try to give you an example: If you said

19 looks like a donut, that would mean that you had seen

20 information or in some way gathered data that would

21 support the idea that maybe that's a donut; is that

22 fair?

23 MR. SPIRO: Objection to form.

24 A. I think it's -- this is a very simple post and

25 just, you know, if you said someone -- that person looks

1 like my brother, doesn't mean that they are your
2 brother.

3 Q. (BY MR. BANKSTON) Right. But you're saying
4 looks like one is a college student. What I would take
5 to mean that you -- from what we'd seen before from
6 these tweets, you had seen information that suggested
7 that this college student was the brawler, but you
8 weren't sure of that?

9 MR. SPIRO: Objection as to form.

10 A. I'm just literally saying this looks like. I
11 mean, I can see a picture of my brother and say that
12 looks like my brother but it might not be my brother.

13 Q. (BY MR. BANKSTON) Right. But you had been
14 given information in the previous days that -- you know,
15 we saw tweets from Dr. Frenson and from Matt Wallace
16 saying it was this person. You weren't saying that,
17 right? You were just saying you had seen information;
18 not that you were sure? Am I fair about that?

19 A. I'm literally just saying that it looks like
20 one is a college student and maybe another is an Antifa
21 member, and I'm asking Community Notes to sort of
22 fact-check this.

23 Q. Let me try it this way: The reason -- the
24 reason that you're saying that it looks like one is a
25 college student is because of the posts that we had just

1 talked about, because you had seen those posts. That's
2 why you're saying this tweet, right?

3 A. That's probably why I'm saying this.

4 Q. Okay. You knew when posting your tweet that
5 readers would not know what information you saw to reach
6 this conclusion, right?

7 MR. SPIRO: Objection to form.

8 A. Well, not necessarily because what tends to
9 happen is there will be a sequence of replies where --
10 even in the absence of Community Notes, if something is
11 inaccurate on the system or it's a debatable issue,
12 there will be a series of replies that argue about the
13 substance of a post.

14 Q. (BY MR. BANKSTON) Okay. But let's assume I'm
15 the first person to read this tweet. Let's assume --
16 you see how here it says it was posted 30 minutes from
17 when the screenshot was taken and there were already 384
18 replies; do you see that?

19 A. Yes.

20 Q. Let's assume I'm reply number one. Let's
21 assume I saw your post one second after it was posted.
22 You understood when posting that tweet that if I'm that
23 number one reply, I would not know what information you
24 saw to reach your conclusion; do you agree with that?

25 MR. SPIRO: Objection; form.

1 A. Or you may.

2 Q. (BY MR. BANKSTON) Or may not, right?

3 A. If you're the very first one, no.

4 MR. SPIRO: Objection to form.

5 Q. (BY MR. BANKSTON) Right. And so what I guess

6 I'm saying here is there's nothing in the text of your

7 tweet that would tell me what information you relied on

8 to say that it looks like one is a college student; do

9 you agree with that?

10 A. In my -- in my text?

11 Q. Yes.

12 A. It does not have -- it does not have that

13 context.

14 Q. Okay. So if I'm the first reader of this

15 tweet, I wouldn't know if you saw something from Dr.

16 Frenson or Matt Wallace or somebody else? I wouldn't

17 know, would I?

18 MR. SPIRO: Objection to form. It's not a

19 proper question.

20 A. I guess I decline to answer on advice of

21 counsel.

22 MR. BANKSTON: Are you instructing him not

23 to answer?

24 MR. SPIRO: No. I mean, if he understands

25 the question, he can answer it. It's not a proper

1 question -- (Internet interruption.)

2 MR. BANKSTON: Look, there's no need for
3 the commentary about if questions are proper or if
4 they're not. That's not necessary. You know it's not
5 necessary. You know the only reason to do it would be
6 to influence the witness.

7 So if you have an instruction not to
8 answer, go ahead and give it. If you have an objection,
9 go ahead and give it, but as far as commentary to the
10 witness, it's not necessary.

11 MR. SPIRO: No, sir. It's not -- I just
12 told the witness he can answer. There's nothing about
13 me commenting that all of these hypothetical what if I
14 saw this, what if I saw that questions are not proper
15 questions. I'm surprised you don't know they're not
16 proper questions so --

17 MR. BANKSTON: Everything you're saying --

18 MR. SPIRO: Can I finish? I'm making my
19 record. So the reason I'm making that comment is to
20 sort of try to signal to you that if you ask nine out of
21 10 improper questions, eventually you're going to get an
22 objection from me, and maybe just ask proper questions.

23 There's nothing about me saying that that
24 changes what he's going to answer. That's not how
25 witness coaching works. I'm surprised you don't know

1 that.

2 So in any event, all I said was that's not
3 a proper question. It's not a proper question. Any
4 judge reviewing this will tell you it's not a proper
5 question, and if he can answer, he can answer.

6 MR. BANKSTON: All right. Again, I'm going
7 to ask you again to obey Rule 199.5 because nothing
8 about what you're doing is proper and you know that.

9 So I'm going to ask him the question again
10 --

11 MR. SPIRO: We disagree.

12 MR. BANKSTON: -- and if he can understand
13 it, then he'll answer it, okay?

14 You knew that a reader of your tweet when
15 posting your tweet, your state of mind when posting this
16 tweet, you knew that a reader of this tweet would not
17 know from your tweet whether you saw information from
18 Dr. Frenson or Matt Wallace or anybody else? They
19 wouldn't know, right?

20 A. They may not know immediately, but they would
21 know it soon after. And they would also know that there
22 would be many future comments -- and there would
23 probably be a Community Note to figure out the veracity
24 of what I'm saying or the probable accuracy of what I'm
25 saying. Anyone who uses the system would know that

1 there's going to be a vigorous debate about something
2 like this, and they would know that they could look at a
3 Community Note in the future to understand the -- what
4 -- whether this is accurate or not accurate.

5 And I think -- I think I really did this in
6 good faith, because I would not ask for a fact-check,
7 which is what I do by adding Community Notes. That's
8 asking for a fact-check on my own -- on my own post.

9 Q. Well, you're asking for it on Zero Hedge's
10 post, aren't you?

11 A. No. I'm asking it on my post and his post.

12 Q. Okay.

13 A. People who've used the system know if you
14 @communitynotes, this is requesting fact-check Community
15 Notes, that's what it means, and people know that.

16 Q. All right. So let's say again that I'm the
17 first person who reads this. You're saying that if I'm
18 a sophisticated user, I would know to come back at some
19 later time and see how the debate has developed; is that
20 right?

21 A. No. I think that's any user who's on the
22 system for any period of time.

23 Q. Well, I don't do that. I mean, I'm a casual
24 user of Twitter, right --

25 A. That's how it works though.

1 Q. -- and so you would agree with me that if I was
2 the first person who saw this tweet and then I saw it
3 and I digested it and then I never cared to come back
4 and look again, I wouldn't see any of that information,
5 right?

6 MR. SPIRO: Objection to form.

7 A. I think that is -- that is basically no one on
8 the -- on the system, and I don't think -- I think
9 you're being disingenuous about what you're saying. I
10 don't think that's how you use the system.

11 Q. (BY MR. BANKSTON) Okay. You understand that
12 Ben wanted --

13 A. I'm very clear here and people understand that
14 when you @communitynotes, you're literally asking for
15 please check the accuracy of this statement, and would
16 include the -- the post that I'm replying to.

17 Q. Did they?

18 A. I don't know.

19 Q. You understand that Ben wanted you to delete
20 your tweet and make a retraction?

21 A. I don't recall that.

22 Q. You don't recall that? That's interesting.

23 Okay. Well, I was going to ask you why you refused
24 that, but if you're not -- you're not aware that a
25 request was made to apologize and delete this and make a

1 retraction?

2 MR. SPIRO: Objection; asked and answered,
3 form.

4 A. I don't recall that, no.

5 Q. (BY MR. BANKSTON) Okay. If you knew right now
6 -- knowing right now Ben is really upset that this tweet
7 is still up and that he wanted there to be a retraction,
8 how do you feel about that?

9 MR. SPIRO: Objection to form. How you
10 feel about it? How is that -- how you feel about it,
11 how is that relevant --

12 MR. BANKSTON: Mr. Spiro --

13 MR. SPIRO: -- now to the four deposition
14 topics? We're on, I guess, topic four. We've addressed
15 one through three. How is that relevant to four?

16 MR. BANKSTON: Because in Gonzalez vs.
17 Hearst Corp., 930 S.W.2nd 275, a refusal to print a
18 retraction is evidence of an action after the
19 publication, but it can lend support to a claim that
20 reckless disregard or knowledge existed at the time of
21 publication.

22 Similarly, in New Times vs. Issacks, Texas
23 Supreme Court 2004, 146 S.W.3rd 144, refusal to retract
24 an exposed error tends to support a finding of actual
25 malice, and conversely, a readiness to retract tends to

1 negate actual malice.

2 So again, I'll pose my question --

3 MR. SPIRO: Yeah, I'll look at those cases
4 but he's not answering that right now. I don't see the
5 relevance. I don't think those cases -- I'm pretty
6 confident those cases are not directly on point so I'll
7 review the cases so we can respond further.

8 MR. BANKSTON: All right. Next time I'd
9 appreciate it if you showed up in a deposition with a
10 Texas lawyer who had an understanding of Texas law of
11 actual malice.

12 MR. SPIRO: Okay. You keep filing these
13 silly, frivolous shake-down cases, I'll -- I'll keep
14 trying to think of Texas lawyers to bring to your
15 depositions.

16 MR. BANKSTON: Mr. Musk, I will tell you
17 I'm trying to be as civil as I can in this deposition
18 with you and your attorney. I'd appreciate it -- these
19 random, insulting, professionally demeaning really have
20 no place here.

21 MR. SPIRO: You just did the same thing and
22 I responded in kind, so keep moving with the deposition.
23 You're running out of time.

24 MR. BANKSTON: You think that's what
25 happened here.

1 MR. SPIRO: I know this is your big day in
2 the sun. You're running out of time.

3 MR. BANKSTON: Talk about big days in the
4 sun, Mr. Musk, I want to talk about how you browse and
5 see information on Twitter. You have an account called
6 @elonmusk where you browse and interact on Twitter,
7 correct?

8 A. Yes.

9 Q. Can we bring up Tab E. All right. Is this
10 another account that you use to see tweets on Twitter?

11 A. I don't use that account. I think I briefly
12 had it as a test account.

13 Q. Well, that's what I'm asking. In the summer of
14 2023, right, which is when I'm seeing this post on here,
15 was this an account that you would use where you would
16 see tweets on Twitter?

17 A. No, I would not use this account. It was just
18 used for -- for testing.

19 Q. I mean, look, there's a tweet I see. There's
20 more tweets on this account, right? Were you -- like
21 you were posting and viewing tweets with this account.

22 MR. SPIRO: Objection; asked and answered.
23 I don't see the relevance to the fourth question. Move
24 on.

25 MR. BANKSTON: I need to know what --

1 MR. SPIRO: He's not answering -- he just
2 answered you twice. He's not answering any more
3 questions about this account.

4 MR. BANKSTON: Well, I'm going to put on
5 the record why I'm asking this question in case I need
6 to put it in a motion, which is I need to know all the
7 accounts that you've used to view tweets on Twitter
8 during this time period so that I can tell what else
9 you've interacted with on Twitter.

10 MR. SPIRO: Well, he just told you he
11 didn't use this account. He already answered that
12 question.

13 MR. BANKSTON: Right. And I was asking a
14 follow-up about that. Because the tweet has posts on it
15 does not mean that you used it and used it to view
16 tweets at this time or am I wrong about that?

17 A. I briefly used this account as a test account.
18 There are only two accounts that I use on a regular
19 basis. One is my main account and the other is baby
20 smoke 9,000.

21 Q. Okay. And then you said on a regular basis.
22 Are there any other alt accounts that you were using to
23 view tweets in the summer of 2023?

24 A. No.

25 Q. Okay. I was looking at the Twitter rules you

1 had in effect in the summer of 2023, and it looked like
2 Twitter employed people who enforced platform integrity
3 and authenticity, including things like crisis
4 misinformation; is that correct?

5 MR. SPIRO: I'm going to object and I'd
6 like an explanation as to the relevance of this.

7 MR. BANKSTON: Because I need to know what
8 kind of information he had access to. I need to know at
9 that time what investigations he could have had capable
10 and which ones he might have ignored deliberately.

11 MR. SPIRO: I don't see the relevance, but
12 I'll let you ask the question.

13 A. I mean, we have a team in this regard. I don't
14 delve into what the team does.

15 Q. (BY MR. BANKSTON) Well, all I'm asking at this
16 point is there are people employed at Twitter who
17 enforce things like platform integrity and authenticity?
18 That exists?

19 A. There is -- there is -- by "authenticity," that
20 means essentially people who -- who do impersonation so
21 it's stopping people from impersonating public figures.

22 Q. Sure.

23 A. There is a sort of enforcement of the law, so
24 if somebody's posting something illegal, that needs to
25 be taken down. That would be -- if something is illegal

1 or, you know, in some form essentially, then that team
2 would take it down.

3 Q. I noticed there was a note for crisis
4 misinformation. I imagine if there's a huge public
5 crisis, a storm, a bomb, and somebody's spreading
6 information that could get people hurt, that's something
7 that is meant by crisis misinformation?

8 A. The primary system we rely on is Community
9 Notes, which we found to be far better than the
10 so-called misinformation experts.

11 Q. Okay. But as Elon Musk, are you allowed at
12 Twitter to just grab one of these employees who is
13 involved in platform integrity, and say, hey, can you
14 help me figure out if something I saw is legit? Are you
15 allowed to do that or is that misappropriating the
16 company's property?

17 A. That is in theory something that I could do,
18 but I don't. I rely upon Community Notes for
19 fact-checking. I find it to be the best system on the
20 internet.

21 Q. Right. What I'm just saying is are you allowed
22 to do that? If you were to grab an employee at Twitter
23 and say, hey, could you help me figure something out?
24 Are you going to get in trouble? Is somebody going to
25 come tell you, Elon Musk, you are not allowed to do

1 that?

2 MR. SPIRO: Objection to form.

3 A. I mean, I could ask someone --

4 Q. Okay.

5 A. -- but this is -- but the nature of our

6 enforcement is to enforce what is in accordance with the

7 law.

8 Q. (BY MR. BANKSTON) These people who are doing

9 their jobs, do they have access to internal Twitter

10 tools to help them do their job?

11 A. Yes.

12 MR. SPIRO: Object to form.

13 Q. (BY MR. BANKSTON) The data they have access to,

14 are you allowed to have access to it?

15 A. In theory, yes, but I've never requested access

16 to it.

17 Q. Is there anyone with the authority to say about

18 a piece of data at Twitter, to say to you, no, Mr. Musk,

19 you can't have that or you can't share that with anyone?

20 MR. SPIRO: Objection to form. And, again,

21 I'm going to ask again, what is the possible relevance

22 of this to the single tweet that we're here on in a

23 defamation case? Can you just explain that to me?

24 MR. BANKSTON: Sure. Because when he was

25 confronted with -- again, this is kind of bizarre that

1 I'm explaining this in front of your witness, but if he
2 was confronted with information that made him maybe want
3 to go suggest that, hey, maybe this college student was
4 involved in this brawl, if he had access to people who
5 were able to tell him or give him more data about this
6 and he has that authority, I need to know what --

7 MR. SPIRO: You're saying that if he --
8 your point is that he had other avenues to investigate
9 this?

10 MR. BANKSTON: That he deliberately
11 ignored, correct.

12 MR. SPIRO: I think it's an objectionable
13 question, but I'll let him answer it.

14 MR. BANKSTON: Thank you. Is there -- let
15 me repeat the question for you just because there was a
16 long objection so I want to make sure you understand the
17 question.

18 Is there anyone with the authority to say
19 about a piece of data at Twitter, no, Mr. Musk, you
20 cannot see that or you cannot share that with anyone?

21 A. I mean, I regard privacy as being very
22 important so I've never asked for the private
23 information of any -- any user. And as you saw in that
24 post, I requested Community Notes to investigate.
25 Community Notes I find is far better than the so-called

1 professional misinformation experts, and that has been
2 proven time and again.

3 Q. Well, I'm confused by your answer because I
4 still don't know if there's anyone with the authority at
5 Twitter to tell you about a piece of data at Twitter
6 that you cannot have access to it or you cannot share
7 it.

8 Is there anybody who can do that or like
9 with the Twitter files, you're pretty much allowed to do
10 what you want?

11 A. I think there would be --

12 MR. SPIRO: Objection to the form.

13 THE WITNESS: -- it would be illegal for me
14 to access private information of individuals.

15 Q. (BY MR. BANKSTON) Okay. Well, I'm not talking
16 necessarily about private information about individuals,
17 but I'm talking about anything that is used by the
18 platform integrity team about data from the platform
19 itself. How they analyze the public data on the
20 platform. Are you allowed to see that?

21 A. The platform integrity is simply trying to
22 assess if something that is posted is illegal or not.

23 MR. BANKSTON: Madam Court Reporter, do you
24 have a count for me on how long we've been on the
25 record?

1 THE VIDEOGRAPHER: This is Robie. We've
2 been on the record for 47 and a half minutes.

3 MR. BANKSTON: Okay. We're going to go
4 just a little bit and then we'll take a quick break.

5 Q. (BY MR. BANKSTON) All right. I want to talk to
6 you about just a couple of weeks before the tweet, okay?
7 You had given an interview on CNBC talking about your
8 sort of state of mind and feeling about the way you
9 tweet; do you remember giving --

10 MR. SPIRO: No. I didn't hear -- Mark, I
11 didn't hear about the last word. I couldn't catch it.

12 MR. BANKSTON: Well, let me try it again
13 because I'm not sure what my last word was.

14 But I was describing to you how in a couple
15 of weeks before you made the tweet in this case, you had
16 given an interview on CNBC where you were talking about
17 your state of mind and your tweeting, about how you
18 approach your tweeting with an interview with David
19 Faber. Do you remember giving that interview?

20 A. I don't remember everything about that
21 interview, but I remember there was such an interview.

22 Q. Okay. Ben Brody's lawsuit has a quote from
23 that interview and I wanted to get your reaction to it
24 to see if this is a genuine thing how you felt, right?

25 Mr. Faber was asking you about whether you

1 felt the need to restrain yourself tweeting. And the
2 comment that's quoted in Ben Brody's lawsuit is, "I'll
3 say what I want to say and if the consequences of that
4 is losing money, so be it." Do you feel that that
5 statement is a true assessment of your opinions in the
6 summer of 2023?

7 A. Well, what I'm saying is that sometimes I'll
8 say things that I believe to be accurate in exercising
9 of my freedom of speech rights, and if that means we
10 lose advertisers as a result, then so be it.

11 Q. Okay. I want to ask you about another
12 statement. I want to ask you about some statements that
13 are quoted to you or attributed to you in Walter
14 Issacson's book because I want to make sure that they're
15 accurately attributed to you. And so I want to take a
16 look at a couple of things that were said in Issacson's
17 book. Can we bring up Tab W?

18 MR. SPIRO: Yeah, I'm -- again, I'm going
19 to not allow this. This is -- how this has to do with
20 state of mind on June 27th, 2023, I'm not going to allow
21 this.

22 MR. BANKSTON: Mr. Spiro --

23 MR. WALTERS: Move on to another subject.

24 MR. BANKSTON: -- it's literally him
25 describing his state of mind for how he approaches these

1 tweets. I don't understand why this quote that we have
2 here in front of us --

3 MR. SPIRO: Okay. You want to ask him if
4 he said this?

5 MR. BANKSTON: Yes, that's all I'm asking.
6 Yea, that's it. I mean, I'm not -- it's about his state
7 of mind in tweeting.

8 MR. SPIRO: Well, I'm not so sure. The
9 state of mind cases, I don't know in every count in
10 Texas, but typically do not allow things that happen
11 nontemporarily.

12 MR. BANKSTON: I mean, I just quoted you
13 the law that says that's not true and you can
14 absolutely --

15 MR. SPIRO: Okay. Ask him the question.

16 MR. BANKSTON: Yeah, let's just go --

17 THE VIDEOGRAPHER: Excuse me. Mr. Musk
18 just logged off or got kicked off or something. He's no
19 longer on the Zoom.

20 MR. BANKSTON: Do you want to take a break
21 real quick and see if we can get him back on?

22 MR. SPIRO: Yeah, Mark. That's fine.

23 MR. BANKSTON: I was going to take a break
24 in an hour but I figured we can just take a break right
25 now if you want to do that. Do you want to take 20

1 minutes?

2 MR. SPIRO: No. I mean, I don't think we
3 need 20 minutes, Mark. I mean, we're almost done.

4 MR. BANKSTON: The problem is I'm not
5 trying to be difficult here. I'm really not. The water
6 main broke in our building today so to go use the
7 restroom, I have to walk down the street.

8 MR. SPIRO: Well, okay. That's a real
9 thing. We'll be back in 10. Hopefully you're back in
10 10. If you are back in 13, no one's going to be
11 alarmed, but I'm going to try to make it a 10 minute
12 break.

13 MR. BANKSTON: I understand. You don't
14 need to keep communicating your feelings on the
15 ridiculousness of the endeavor I'm currently engaged in.

16 MR. SPIRO: Well, it's also a short
17 deposition so whether even needing a break is -- I don't
18 know it's necessary but okay, let's do it. 10 minutes.

19 MR. BANKSTON: Okay.

20 MR. SPIRO: Thanks.

21 THE VIDEOGRAPHER: Going off the record at
22 1:56 p.m.

23 (OFF RECORD)

24 THE VIDEOGRAPHER: We're back on the record
25 at 2:14 p.m.

1 (EXHIBIT 5 ENTERED INTO THE RECORD)

2 MR. BANKSTON: All right. Let's go ahead
3 and put up Tab W. What exhibit number are we on?

4 MR. GRANT: Mark, we're on Exhibit 5 would
5 be our next one.

6 MR. BANKSTON: Okay. Let's go -- we'll go
7 ahead and mark this as 5.

8 Q. (BY MR. BANKSTON) All right. What I want to
9 ask you about, Mr. Musk, is some quotes from
10 Mr. Isaacson's book. And what we have here in front of
11 us is "I've shot myself in the foot so often, I ought to
12 buy some Kevlar boots," Musk joked. Perhaps he
13 ruminated Twitter should have an impulse delay button.

14 Did Mr. Isaacson -- was that an accurate
15 representation he made of an exchange that y'all had?

16 A. I don't recall that exact exchange.

17 Q. Okay. Do you feel like this statement is a
18 genuine reflection of your feelings back in the summer
19 of 2023 when you were participating with Mr. Isaacson?

20 A. I certainly -- I would say that I -- you know,
21 I'm guilty of many self-inflicted wounds.

22 Q. Okay. Would you say that as of last summer
23 that you knew that you had had some difficulties
24 restraining your impulses on Twitter?

25 A. No, I wouldn't say that.

1 Q. Can I -- I'm sorry.

2 A. I do believe that the bedrock of democracy is
3 freedom of speech and that people should have -- we
4 should have freedom of speech if we are to have a
5 functioning democracy and that, you know, actions that
6 result -- that have a chilling effect on freedom of
7 speech, like this lawsuit, I think are contrary to the
8 public good.

9 Q. I'm wondering if you didn't think that you were
10 having difficulties restraining your impulses on
11 Twitter, why did you believe that maybe Twitter should
12 have an impulse control delay button?

13 MR. SPIRO: Objection to form.

14 A. That's what I said. I think that's Isaacson's
15 -- those -- that's not a quote. That's Isaacson --
16 those are Isaacson's words; not a quote.

17 Q. (BY MR. BANKSTON) Okay. Well, what I was going
18 to -- I was asking you about that, maybe you
19 misunderstood my question is was this statement that we
20 see here on the screen, is that consistent with what
21 your feelings were in 2023?

22 I'm sorry. Hold on. Before we go on,
23 there's something here in the background.

24 A. Let me take my -- my son just came into the
25 room.

1 (CONVERSATION WITH REPORTER)

2 THE VIDEOGRAPHER: Mark, do you want to go
3 off the record?

4 MR. BANKSTON: Do we need to? I guess just
5 for a minute, yeah.

6 THE VIDEOGRAPHER: Going off the record at
7 2:17 p.m.

8 (OFF RECORD)

9 THE VIDEOGRAPHER: We are back on the
10 record at 2:18 p.m.

11 Q. (BY MR. BANKSTON) My question to you, Mr. Musk,
12 was -- in this statement that we see on the screen was
13 whether the entire thing reflected your feelings back in
14 2023. And from what I think I understand from your
15 answer about the second half being Isaacson, is that
16 that second statement does not -- that's not an accurate
17 reflection of your beliefs in 2023?

18 A. Well, it doesn't -- it doesn't make sense
19 because we actually do have the ability to edit tweets
20 and put a time delay on tweets.

21 Q. Okay. So this is something Isaacson may have
22 gotten wrong?

23 A. That's -- that's just Isaacson's impression.
24 I'm simply saying that I -- I am -- you know, I've
25 certainly done a lot of things that are self-inflicted

1 wounds.

2 (EXHIBIT 6 ENTERED INTO THE RECORD)

3 MR. BANKSTON: All right. Let's go ahead
4 and put up Tab X. We'll mark that as Exhibit 6.

5 Q. (BY MR. BANKSTON) And I want to ask you about
6 this quote. It says, "When asked why he doesn't
7 restrain himself, Musk merrily admits that he too often
8 shoots himself in the foot or digs his own grave, but
9 'life needs to be interesting and edgy' he says, and
10 then he quotes his favorite line from the 2000 movie
11 Gladiator, 'Are you not entertained? Is that not why
12 you are here?'"

13 In this quote, did Isaacson accurately
14 relay the things that you were saying?

15 A. I -- you have to -- I've not read the Isaacson
16 book. In fact, I asked Isaacson if I should read it and
17 he recommended that I not. Any biography is going to be
18 not the actual person but the actual person as viewed
19 through the lens of the biographer. So I wouldn't say
20 this accurately represents me.

21 Q. Okay. Have you used that quote before from the
22 2000 movie Gladiator, the "Are you not entertained? Is
23 that not why you are here" to describe your tweeting?

24 A. In a joking way, but not in a serious way.

25 Q. Sure. Because the line here, "Are you not

1 entertained? Is that not why you're here," am I correct
2 that that describes the entertainment value of the
3 controversy that tweets can sometimes create?

4 MR. SPIRO: Objection to form.

5 A. Well, I think the -- you know, any medium which
6 is not informative or entertaining or just does not
7 capture the interest of the audience will fail to --
8 people will not tune in.

9 (EXHIBIT 7 ENTERED INTO THE RECORD)

10 MR. BANKSTON: Sure. Let's move to Tab Y.

11 All right. We're going to mark this as
12 Exhibit 7.

13 Q. (BY MR. BANKSTON) And this quote says from the
14 Isaacson book, "My tweets are like Niagara Falls
15 sometimes and they come too fast," Musk says. "Just dip
16 a cup in there and try to avoid the random turds." Do
17 you think that's an accurate quotation from you?

18 A. That is actually not -- not accurate. What I'm
19 referring to is that the things that I see on Twitter,
20 not the -- not the posts that I make, are like Niagara
21 Falls. Like -- meaning like it's the -- if you look at
22 the sheer number of comments, likes, interactions of
23 various kinds, my account is the most interacted with in
24 the world I believe.

25 It is physically impossible for, you know,

1 any one person to see all of the interactions that
2 happen. So the only way I can really gauge the
3 interactions is by sampling them essentially.

4 Q. Got you. So would it be fair to say that
5 Isaacson made a mistake here and that what this really
6 should say is not my tweets are like Niagara Falls, but
7 everyone else's tweets are like Niagara Falls?

8 A. Not exactly. It means all of the -- all of the
9 -- all of what I see when I use the X app are -- all the
10 posts that I see and all of the interactions that happen
11 with those posts are far too numerous to -- for any
12 human being to consume.

13 Q. Okay. So when this quote talks about the
14 random turds, those aren't your random turds; those are
15 other people's random turds?

16 A. I mean, I suppose I -- I could be guilty of a
17 random turd too, but it's -- what I'm really referring
18 to is that the only way for me to actually get an
19 understanding of what is happening on the system is to
20 sample it.

21 Like try to do -- just like in statistics,
22 you don't -- you do -- try to do -- you sample a
23 distribution in order to understand what's going on, but
24 you cannot look at every single data point.

25 Q. Okay. I just want to make sure that you're

1 testifying under oath that this quote was misattributed
2 and that you weren't talking about your own tweets and
3 your own tweets being random turds?

4 A. Correct.

5 Q. Okay.

6 A. This is -- this is -- this is not accurate.

7 MR. BANKSTON: Okay. You can take that
8 down.

9 Q. (BY MR. BANKSTON) In general, when thinking
10 about -- well, let's start this way: You use your
11 Twitter account to talk about news and current events,
12 right?

13 A. Yeah.

14 Q. And --

15 A. Among other things.

16 Q. And in doing that, you are thus a consumer of
17 news information, a person -- like as a person, you
18 consume news information, right?

19 A. I contribute content and I consume content on
20 the X platform.

21 Q. Now, when consuming news content, you believe
22 that Twitter is a better source of information than say
23 traditional news, right?

24 A. I do.

25 Q. Okay. You think one problem with traditional

1 news is they're too slow, correct?

2 A. Their latency, yes, they will often take
3 several days to write an article and then still be
4 incorrect in what they write.

5 Q. Okay. Let's look at Tab G. I want to show you
6 this tweet from the day of the brawl, okay? And you
7 will see that there's someone complaining about using
8 Google News and their complaints about it. And your
9 response is "The thing about traditional news is by the
10 time they actually publish anything, it's not news
11 anymore." That's consistent with what we've just been
12 talking about, right?

13 A. The -- yes, the -- the traditional -- the
14 legacy news industry is slow to publish and nonetheless
15 wrong in what they publish and with no one to correct
16 them. Whereas when things are published on Twitter,
17 they may be incorrect but they are swiftly corrected.

18 Q. Well, for instance, this tweet about Ben Brody,
19 it wasn't swiftly corrected, was it?

20 A. I suspect that in the comment -- comments that
21 followed there were -- while I did not see them, there
22 were many rebuttals to what I said.

23 Q. Right. But isn't it --

24 A. And there may be a Community Note -- since I
25 asked -- since I did tag Community Notes to assess the

1 accuracy of the post, that there may be a Community Note
2 on that as well.

3 Q. But you don't know that, right?

4 A. I don't know that.

5 Q. Right. I mean, there's not, I can tell you,
6 but -- let me try it this way: Traditional news takes
7 time to publish things whereas on Twitter, you're
8 reading about events before the news can even cover
9 them. Is that right?

10 MR. SPIRO: What's the relevance of this
11 question to the fourth --

12 MR. BANKSTON: His state of mind upon the
13 information he relied on it and why he relied on it.

14 MR. SPIRO: No, I don't see that. I don't
15 see the relevance of this question. Don't answer that.

16 MR. BANKSTON: I need you to give him an
17 instruction.

18 MR. SPIRO: I'm instructing you not to --
19 not to answer.

20 MR. BANKSTON: Mr. Musk, are you going to
21 obey that instruction from your attorney?

22 A. I think I should listen to what my attorney
23 says.

24 Q. (BY MR. BANKSTON) Okay. You've called yourself
25 a citizen journalist, right?

1 A. I encourage everyone to be a citizen

2 journalist.

3 Q. Right. And, in fact, you advocate getting

4 information about news and events from anonymous people

5 on Twitter.

6 A. I think it's important to allow people to be

7 anonymous so that they are able to report things

8 accurately and not face repercussions from their

9 employer or from others.

10 Q. Okay. You can and do use your Twitter account

11 to promote the company's interest, the company being X

12 Corp?

13 A. Yes.

14 Q. The engagement -- well, let's talk about it

15 this way: Before you ever purchased Twitter, you were a

16 popular user on the platform, right?

17 A. Yeah, I believe I -- I may have been -- I think

18 I was either the first or second most interacted with

19 account on the platform before the acquisition.

20 Q. Now, before the acquisition, Twitter was

21 getting a free benefit from the user engagement that you

22 created, correct?

23 A. Essentially, yes.

24 Q. And then now after the acquisition, that's no

25 longer true; you personally benefit from the engagement

1 you create because it's your company, right?

2 MR. SPIRO: Objection. Instruct you not to
3 answer. You can tell me the relevance of -- of these
4 questions --

5 MR. BANKSTON: I need to -- I need to
6 establish the level of care that he was required to have
7 and I need to determine whether this is purely a
8 personal Twitter account or whether this Twitter account
9 is intended to do something else.

10 MR. SPIRO: I don't see the relevance of
11 the question. I'm going to instruct him --

12 MR. BANKSTON: Well, it's going to affect
13 his level of care.

14 MR. SPIRO: Yeah, I disagree so I'm going
15 to instruct him not to answer.

16 MR. BANKSTON: Okay. So I'm just going to
17 make it clear for the record, that in order to establish
18 under scripts the requisite level of care that I'll need
19 to be proving in this case, I've been unable to ask
20 questions that will help me ascertain --

21 MR. SPIRO: Well, what question are you
22 trying to ask that goes to level of care as in the case
23 law?

24 MR. BANKSTON: I'm trying -- because the
25 level of care will depend on the purpose of the speech

1 itself, whether it has a commercial or noncommercial
2 basis, whether it is a purely private communication,
3 whether it is a communication made by one who is engaged
4 in spreading media for profit. All of these things and
5 whether it has a commercial character is all relevant --

6 MR. SPIRO: But you -- but it's in the
7 record, he owns Twitter. He owns X.

8 A. I think I can answer this question --

9 MR. BANKSTON: Hold on. You may be right.
10 Hold on. Mr. Musk, hold on. There's no question to
11 you.

12 Alex, you may be right about that. If
13 you're willing to just go ahead and stipulate he is the
14 owner of Twitter, that is not a purely personal account,
15 that account also advances the interest of the company,
16 we're done and I won't have to ask any more questions.

17 MR. SPIRO: Well, Mr. Musk said he wants to
18 -- I'll let him answer the question if you want to
19 rephrase it.

20 MR. BANKSTON: Sure.

21 Q. (BY MR. BANKSTON) Okay. So let's go back to
22 the question that we had, which was now that you've
23 acquired the company, Twitter is no longer getting a
24 free benefit. I mean, this benefits you as well, your
25 engagement that you create for the company; is that

1 correct?

2 A. Not necessarily. So I -- I believe my posting
3 has really remained unchanged before and after the
4 acquisition.

5 The -- and going back to the sort of
6 self-inflicted wounds, the Kevlar shoes, I think there's
7 -- I've probably done -- I may have done more to
8 financially impair the company than to help it, but
9 certainly I -- I do not guide my posts by what is
10 financially beneficial but what I believe is interesting
11 or important or entertaining to the public.

12 So that's, you know, if -- in this specific
13 case, if I wanted to have it be -- receive a lot of
14 distribution, I would have made it a primary tweet or a
15 quoted tweet, which I did not. It was simply a reply.
16 The replies get 100 times less attention than a primary
17 tweet. So this was certainly not any attempt to
18 generate advertising revenue. In fact, generally
19 advertisers will not want to advertise with content that
20 is contentious.

21 Q. Well, I understand you said that this was a
22 reply and that less people saw it but --

23 A. By 100, yes.

24 Q. You do understand that the amount of people who
25 saw this, who have viewed this tweet is equivalent to

1 all 30 major league baseball stadiums filled to
2 capacity? You wouldn't dispute that? I mean, we're
3 talking over a million people.

4 MR. SPIRO: Objection to form.

5 A. Yeah, that's actually -- that may seem like a
6 large number, but it is not compared to the fact -- I
7 believe there are something on the order of five to
8 eight trillion views per year so a million is really --

9 Q. Not a big deal?

10 A. -- hit or miss, yeah.

11 Q. Not a big deal that this went out to that many
12 people?

13 A. Correct. And more of a -- this is the kind of
14 thing where advertisers, when it's contentious, will not
15 advertise, which means we do not get revenue from it.

16 Q. After you took over the company, have you ever
17 given any instructions or taken any steps to have users
18 see your tweets in particular more often?

19 A. No. There was an error at one point that
20 caused for one day people to see my posts, but the rules
21 apply to me otherwise as they do to everyone else.

22 There are no special rules for me.

23 Q. Okay. I want to talk about --

24 A. I should mention that our algorithm is open
25 source as is the -- meaning anyone can see the code for

1 the recommendation algorithm. They can see that there's
2 nothing special for me, and the Community Notes, which
3 is I think the best fact-checking system on the internet
4 also is open source as is all the data.

5 Q. Okay. I want to talk about on the day you had
6 this tweet, on June 27th, I want to talk about if in
7 your mind you were aware or considering any warnings you
8 had been given say in the past few months about the
9 level of care you were showing in your tweets.

10 So I want to ask you some specific things
11 about that, okay? And so the time period I want you to
12 concentrate on is the approximately six months leading
13 up to this tweet, okay? So the end of 2022 up to mid
14 2023.

15 A. Yes.

16 Q. And during that time, I want to ask you about
17 some situations, if people have ever voiced concern
18 about the level of care you were showing when tweeting
19 about factual events.

20 And the first one I want to ask you about
21 is do you remember tweeting a conspiracy theory about
22 the attack on Paul Pelosi?

23 A. I do remember replying, again, not -- a reply
24 is -- if you want something to get attention, you do it
25 as a primary post. A reply will get actually somewhere

1 between 100 and 1,000 times less attention. And I -- I
2 read an article in a newspaper or what claimed to be a
3 newspaper which seemed to be odd, and I did that as a
4 reply, which is a low visibility post.

5 Q. Okay. All I just need to know is if you
6 remembered that event happening, because my question to
7 you is --

8 A. Yes.

9 Q. -- do you remember, was there anybody in your
10 life -- and let me preface this, not your lawyers. I
11 don't want to know if your lawyers talked to you about
12 anything. Any conversations you had with your lawyers
13 are totally private, okay?

14 But are there any conversations you had
15 with anybody in your life where they warned you about
16 the level of care you were showing when tweeting about
17 factual events relating to that Pelosi tweet?

18 A. I don't recall anything relating -- anyone
19 saying anything related to that Pelosi post. But that
20 was -- that was the reply post I think just wondering if
21 there's more to this picture than met the eye. And
22 based on a -- what I thought was I think the Santa
23 Monica Times or something like that. That turned out to
24 be somewhat of a bogus publication and I deleted the
25 post shortly thereafter, like within a few hours.

1 (EXHIBIT 8 ENTERED INTO THE RECORD)

2 MR. BANKSTON: All right. Can we bring up
3 Tab Z. We're going to be marking this -- I believe this
4 is Exhibit 8. This is another quote from Mr. Isaacson's
5 book I want to ask you about, and it's referring to the
6 Pelosi tweet.

7 And it states Musk's tweet showed his
8 growing tendency like his father to read wacky fake news
9 sites purveying conspiracy theories, a problem that
10 Twitter had writ large. He quickly deleted the tweet,
11 apologized, and later said privately it was one of his
12 dumbest mistakes. It was also a costly one.

13 Now, I understand some of this is
14 Mr. Isaacson's opinion, but in terms of the facts he
15 described, I believe you've already confirmed for me
16 this is correct, that you deleted the tweet and
17 apologized for it; is that right?

18 A. I don't think I have a growing tendency to read
19 fake news sites. I aspire to read the most accurate
20 information possible.

21 Q. Sure. I'm just asking you about these -- I
22 understand that Isaacson's going to characterize it and
23 other people are going to have their opinions too. What
24 I'm asking is the factual information in this tweet,
25 that you deleted it and you apologized, that's correct?

1 A. That is correct.

2 Q. Did you later say privately it was one of your
3 dumbest mistakes?

4 A. I don't recall -- I've made some pretty dumb
5 mistakes. I'm not sure this would qualify as one of the
6 dumbest.

7 Q. Okay. Would you say it's a mistake?

8 A. Yes, that's why I deleted it --

9 Q. Okay.

10 A. -- and apologized.

11 Q. Okay. If -- you can take that down.

12 If tweeting of false conspiracy theories
13 about the Pelosis, who are public figures, is a mistake,
14 isn't tweeting a false conspiracy theory about a
15 noncelebrity, powerless guy like Ben Brody, isn't that
16 even worse?

17 MR. SPIRO: Objection. And can you explain
18 to me what the relevance of that is?

19 MR. BANKSTON: Yeah, because he's going to
20 give me an answer which is really relevant to his
21 feelings on actual malice.

22 A. Well, the post that you're referring where I
23 actually asked for it to be fact-checked, you know, I
24 think that is -- I don't -- I don't -- I actually don't
25 state that anything is anything, but simply that -- you

1 know, from that post that it looks like it could be.

2 And then I request Community Notes to fact-check.

3 Q. But wait, in your Pelosi tweet, didn't you say

4 there's a tiny possibility that this could be more than

5 it seems and that was a mistake, so why isn't it a

6 mistake to say this is probably the case with this kid?

7 Why is that different?

8 MR. SPIRO: Objection; improper question.

9 A. Well, I asked for it to be fact-checked by

10 Community Notes.

11 Q. (BY MR. BANKSTON) Right. So I mean basically

12 your thesis is that -- you're depending on someone to

13 come along after the fact and determine whether you said

14 is true or false; is that right?

15 A. I'm asking to be corrected.

16 Q. Right. After the fact. After it's already

17 been said and out to the world, right?

18 A. Well, how are you supposed to be corrected if

19 it's not already said?

20 Q. Thank you, Mr. Musk. I think you already

21 answered this, but let me make sure I -- I heard you

22 correctly.

23 Did you recognize in the summer of 2023

24 that you had a tendency to read wacky fake news?

25 A. I don't think -- I have a tendency to try to

1 find -- I aspire to be as truthful and accurate as
2 possible and -- and to that -- that is actually the goal
3 of the X, formerly known as Twitter system, is to be the
4 most accurate and timely source of information on the
5 internet. That's why we put so much effort into
6 Community Notes, which I'm confident is the best
7 fact-checking system on the internet.

8 Q. Did you have anybody in your life who
9 approached you to give you any warnings about the level
10 of care you were showing while tweeting about factual
11 events concerning the tweets that you were making about
12 Yoel Roth?

13 A. No, I don't recall that.

14 Q. Nobody talked to you about that?

15 A. Not that I recall.

16 Q. Okay. What about -- same question --

17 A. Is there something specific about Yoel Roth
18 that you want -- you want to ask about?

19 Q. Yes, very specific.

20 A. Okay.

21 Q. Very specifically, were there people in your
22 life -- in your life at all who approached you to warn
23 you about the level of care you were showing when
24 tweeting about Yoel Roth?

25 A. I don't recall anyone doing that.

1 Q. Okay. Same question for Haraldur Thorleifsson.

2 Do you remember who that is?

3 A. Yes.

4 Q. Okay. Did anybody warn you about your tweets

5 about him and the level of care you were showing?

6 A. Well, he -- he actually responded to me

7 directly and I corrected myself, and I would say that at

8 this point he and I are friends.

9 Q. Okay. Apart from Mr. Thorleifsson, did anybody

10 bring their concerns to you about those tweets?

11 A. Not that I recall. I mean, if there were -- I

12 think there was some people that replied that they

13 thought he was a great guy, and I was like, okay, I'll

14 take that under consideration, and I think he is a great

15 guy.

16 Q. A month before the events of this case with the

17 neo-Nazi mass shooting in Allen, Texas --

18 MR. SPIRO: Look, I'm going to object

19 again. I was going to let you do a couple of these

20 because it's not worth necessarily arguing about each

21 and every one, even though I don't think it's relevant.

22 But you're now backdooring all this stuff in through the

23 fourth category that the judge proposed when in the

24 judge's instructions they very much limit the tweets in

25 question in this case. And so we're not going to do any

1 more on it.

2 So I'm instructing him not to answer any
3 more questions about any other tweets in this case for
4 the rest of this deposition. You can go to the judge if
5 you don't like that instruction.

6 MR. BANKSTON: Let's put it on the record
7 that your statement is just incorrect. The order does
8 not limit me to the tweets in this case --

9 MR. SPIRO: We disagree. We disagree
10 whether -- whether the judge is sitting here -- we
11 disagree whether if the judge was sitting here would
12 allow you to go through each and every tweet so.

13 MR. BANKSTON: Okay. I'm going to start
14 over before you interrupted me, and I am going to go
15 ahead and state what I said I need to put on the record.
16 Again, this is not for you; this is for the judge,
17 right?

18 I am now being told that there are events
19 that I want to talk to him about about whether he's been
20 given warnings about his level of care. These are not
21 about tweets in the case. These are about the topic on
22 his state of mind at the time the alleged defamatory
23 statement was allegedly published, and warnings he may
24 have received in advance of that tweet about the level
25 of care that he was habitually showing are clearly

1 relevant.

2 I've now been told I'm not going to be
3 allowed to ask any more questions about that, so I'm
4 going to have to move on.

5 Madam Court Reporter, can you let me know
6 where we are on time -- or videographer?

7 THE VIDEOGRAPHER: Yes. You're at one hour
8 and 20 minutes exactly.

9 Q. (BY MR. BANKSTON) All right. So one thing I
10 want to talk to you about is that we had mentioned
11 before these tweets from Dr. Frenson and Matt Wallace
12 888. Do you remember talking about those?

13 A. Yes.

14 Q. Okay. I know that we're not sure -- like I
15 know that you don't have knowledge sitting here today
16 whether or not you saw additional tweets from these
17 people, whether you saw their profiles, so I know that's
18 not something you have personal knowledge of today.

19 But what I wanted to do -- well, first let
20 me start this way: When you click a user's profile, a
21 timeline comes up and it loads the first several tweets
22 that they have on their page, correct?

23 A. Yes.

24 Q. Okay. And then you can either scroll down and
25 you can just keep going on their tweets, right?

1 A. You -- yes.

2 Q. Okay. But when you first load it up, it just
3 loads the first several from, you know, the past several
4 that they've had, right?

5 A. The most recent, yes.

6 Q. In chronologic order, right. Okay. So what I
7 want to do is I know you don't know -- I want to show
8 you some tweets from that -- from that timeline and you
9 can tell me if you've seen these tweets or not. Does
10 that sound okay? Are we able to do that?

11 A. Yeah.

12 (EXHIBIT 9 ENTERED INTO THE RECORD)

13 Q. (BY MR. BANKSTON) All right. So first I want
14 to talk about Dr. Frenson, okay? And so I want to show
15 you the tweets that are on the timeline on the date that
16 you saw the tweet.

17 So can we first bring up Tab M. Okay. Mr.
18 Musk, this as you see is a tweet from June 25th, 2023,
19 at 12:06 p.m., okay?

20 A. Okay.

21 Q. And here it says at the top, "Is this meme
22 insensitive to Jewish persons?" And then there's a meme
23 of the United Nations' logo that says, "Founded in 1945
24 to end all wars, the United Nations. The world has been
25 at war ever since." Do you know if you saw this?

1 A. I have not seen this.

2 Q. Okay. Would this have triggered a red flag as
3 to this person's credibility?

4 MR. SPIRO: Objection to form.

5 A. I mean, I think it's a dubious post, but it
6 suggests anti-Semitism.

7 Q. (BY MR. BANKSTON) Correct. So what I'm asking
8 you though, not whether -- I think we all know it
9 reflects anti-Semitism. I'm asking does this trigger
10 red flags as to this person's reliability?

11 A. I would say, yes, it probably does.

12 Q. Let's go ahead and look at Tab M.

13 A. But if you're suggesting that in order to reply
14 to anyone, you have to scroll through all of their
15 posts, that would make it impossible to use the system.

16 Q. All right. We're looking now at Tab M. We're
17 going to mark this as -- I'm sorry. I don't believe we
18 marked that last exhibit. So Tab M, the meme we just
19 looked at, that would be Exhibit 9, correct?

20 MR. GRANT: Correct.

21 (EXHIBIT 10 ENTERED INTO THE RECORD)

22 MR. BANKSTON: Correct. There we go. So
23 this Tab N we're going to mark as Exhibit 10. This is a
24 picture of a photoshopped meme of the president and
25 former first lady Obama where it has a shirt that was --

1 on Michelle Obama's shirt it says, I come in peace, and
2 the Barack Obama T-shirt says I'm peace.

3 You would agree with me this is a joke
4 based on the lie that Michelle Obama is transgender?

5 A. I'm not sure I'd read that much into it, but
6 it's -- it's clearly -- this account is not a fan of
7 Barack Obama.

8 Q. Would you have taken -- if you had seen --
9 first of all, have you seen this tweet? Did you see
10 this tweet?

11 A. No.

12 Q. Okay. Would you have -- would this have
13 triggered a red flag as to this person's reliability?

14 A. It would've simply I think indicated that they
15 are a -- probably not a supporter of Barack Obama.

16 Q. Right. But would you think that they're a
17 reasonable person who is reliable? Would that trigger
18 any flags for you?

19 A. Well, I think one has to give some allowance
20 for a sense of humor and satire and parody.

21 Q. Is that what this is to you or is this just
22 bigotry?

23 MR. SPIRO: Objection. This has nothing to
24 do with this case. And we're not going to do any more
25 hypothetical, if you had seen these tweets, what would

1 your reaction have been, or if you had seen this, what
2 would in this hypothetical world.

3 I understand your point that if he had
4 checked, he could have seen these things. The point has
5 been made. It's clear. We're not doing any more
6 questions on this.

7 MR. BANKSTON: So you're going to instruct
8 him not to answer on something that you think the point
9 is clear and is relevant? That's your --

10 MR. SPIRO: No, no, I don't think any of
11 this is relevant at all.

12 MR. BANKSTON: Okay. So let's go ahead --

13 MR. SPIRO: In fact, I know it's not -- I
14 know it's not relevant and I know it's not -- and it
15 violates the Court's order. So no, I let you answer --
16 ask a couple of questions on it simply because I know
17 that you want to and I'm not trying to interrupt this
18 and get this over with.

19 But at the same time, you're just harassing
20 him about unrelated things and you're doing it on
21 purpose and it has nothing to do with anything --

22 MR. BANKSTON: No, I'm not.

23 MR. SPIRO: -- so we're doing -- we're done
24 on that.

25 MR. BANKSTON: Here's the thing. I'm going

1 to go ahead and make this record again for the Court
2 because, once again, I've been shut down in the relevant
3 topic area.

4 I am facing a situation where I must prove
5 certain facts which may have triggered different duties
6 in this case. One of those is not a subjective analysis
7 of whether the source is reliable, but an objective
8 analysis of the source is reliable.

9 And if that source is unreliable, there is
10 an arguable basis that a defendant will have to exercise
11 greater care, and that that could reflect more actual
12 malice if the person purposefully avoided any
13 investigation into the credibility of an unreliable
14 person.

15 I would like to establish (a) whether he
16 has seen these tweets as though he has already said he
17 does not know and cannot tell me what tweets from these
18 people he has seen. And (2) I would like to establish
19 these people are unreliable.

20 I understand that you're instructing the
21 witness not to answer it, and so I will have to add that
22 to whatever relief we're going to seek from the Court.

23 All right, Mr. Musk, let's go ahead and
24 take that down.

25 You would agree with me that even after

1 this suit, you're still promoting the idea that there
2 may be a conspiracy or false flag behind neo-Nazi
3 demonstrators that we're seeing in the streets?

4 A. I think we have to consider that that is a
5 possibility. Do I think it is likely? No. But do I
6 think it is impossible? I think it's also not
7 impossible.

8 MR. BANKSTON: Okay. Let's take a look at
9 Tab I. I believe we will be marking this as Exhibit 9.

10 MR. GRANT: 11, Mark.

11 MR. BANKSTON: Wow, we're getting up there.

12 (EXHIBIT 11 ENTERED INTO THE RECORD)

13 Q. (BY MR. BANKSTON) This is Exhibit 11. Let's go
14 ahead and scroll out of this so you can see the whole
15 tweet. We might need to be a little more than that.
16 Yeah, we're going to have to go up from top to down.

17 So I want to ask you first, do you remember
18 in January that there was another event, another white
19 supremacist demonstration that involved masked white
20 supremacist protestors; do you remember that?

21 A. I vaguely remember that -- something like that.

22 Q. Okay. So I want to go down these tweets really
23 quick. We have first embedded in the quote tweet, I'm
24 going to start there, with Ian Miles Cheong. All right.
25 He says "What's the deal with these Patriot Front guys'

1 vehicles? Their license plates are completely blank."

2 And then we have an account called Wall
3 Street Silver who quotes that tweet and says, "The fact
4 that the legacy media shows zero curiosity about
5 unmasking these guys tells us 100 percent these are
6 federal agents or paid stooges of one of the agencies.
7 The media has been instructed by the FBI to just report
8 that Patriot Front exists, white supremacy group, and
9 don't dig any deeper." Let's go ahead and scroll down.

10 A. Yeah, I wouldn't agree with that statement.

11 Q. The next tweet from Wall Street Silver says,
12 "If Patriot Front was actually a real organic white
13 supremacy group, the media would be all over this story
14 to expose every member and ruin their lives. The fact
15 that this is not happening confirms they are feds."

16 Then there's a response to these tweets from
17 you, and it says, "Seems like they should be followed
18 and unmasked. Why doesn't the media or government care
19 about their identities," correct?

20 A. Yes.

21 Q. Okay. So this I think again is reflecting the
22 concern that you were stating earlier that you think it
23 is a possibility, though unlikely, that these people
24 could be involved in some sort of false flag?

25 A. Yes, and I believe -- I mean the FBI has

1 testified that there have been FBI agents in some of
2 these -- some of these demonstrations but he would not
3 speak to the number -- which specific demonstrations and
4 how many there were. So the FBI director is on record
5 as saying that there are at least some FBI agents that
6 are embedded in these organizations.

7 Q. I'm wondering -- having you brought that up,
8 are you aware of, sitting here today -- or actually let
9 me rephrase that.

10 Were you aware of any information as of
11 June 27th, 2023, similar information that would suggest
12 that it has been confirmed that college students or
13 Antifa members were impersonating white supremacist
14 members?

15 A. I don't know confirmed, but I think this is
16 certainly a possibility. I mean, and my post there I
17 think is quite reasonable, which is that we should try
18 to find out -- we should try to get to the bottom of
19 this and we should try to figure out who these people
20 are, and if they are neo-Nazis, we should know who they
21 are.

22 Q. Right.

23 A. And there should be greater curiosity about
24 tracking them down and understanding, you know, the role
25 of the government here. As I mentioned, the director of

1 the FBI has testified that there have been FBI members
2 in a number of these events, but he will not say -- he
3 refused to answer to what degree -- how many were there.
4 Was it one -- was it one percent? Five percent? 10
5 percent? It's uncertain.

6 So I think we want to get to the bottom of
7 this, because I think if we get to the bottom of this,
8 we can actually -- if it turns out everything -- you
9 know, that there aren't any FBI members or other
10 government members, then we can do away with this
11 conspiracy theory. And -- but if there are an unusual
12 number of government members present, then that bears
13 further questioning of why there were, you know, a large
14 number of government employees of one kind or another
15 present at these gatherings.

16 Q. And if the government and the media were
17 uninterested in finding out who these people were, that
18 would be concerning, wouldn't it?

19 A. Yes, it does seem odd that the media would not
20 want to track down who these people are.

21 (EXHIBIT 12 ENTERED INTO THE RECORD)

22 MR. BANKSTON: Definitely. It seems very
23 odd. Can we bring up Tab J. All right. This is going
24 to be Exhibit 12.

25 Q. (BY MR. BANKSTON) All right. I want to show

1 you another tweet --

2 MR. SPIRO: Is this another unrelated to
3 the tweet in the case?

4 MR. BANKSTON: It's not unrelated at all.
5 It's not the same --

6 MR. SPIRO: We're not -- we're not doing
7 this. He's not answering this question. We're not
8 talking about this. You're exceeding the judge's
9 orders.

10 MR. BANKSTON: You can just give your
11 instruction. All you've got to do is give your
12 instruction. That's all you've got to do.

13 MR. SPIRO: He's not answering this
14 question.

15 MR. BANKSTON: All right. So here we
16 are --

17 MR. SPIRO: -- asked about every tweet.

18 A. I mean, it may make sense --

19 Q. (BY MR. BANKSTON) Mr. Musk, there's not a
20 question posed to you right now.

21 A. Okay.

22 MR. BANKSTON: There's no question posed to
23 you right now.

24 I'm going to go ahead and make a record on
25 this document because what we are looking at is a -- the

1 exact same type of event that was in this case: A group
2 of Patriot Front white supremacists who have been
3 rounded up and are in masks. The exact MO of the people
4 engaged in this tweet accusing these people of not being
5 real, of accusing the media of not removing their masks,
6 we have Community Notes both on the tweet and Mr. Musk's
7 tweet that say their masks actually were removed after
8 arrest. Their names and faces --

9 MR. SPIRO: Can you blow this up? We can't
10 know what you're making a record of because we can't see
11 it.

12 MR. BANKSTON: Sure. A.J., why don't you
13 --

14 THE WITNESS: I can see it.

15 MR. BANKSTON: Mr. Musk can see it and I
16 can see it.

17 MR. SPIRO: But I'm the lawyer and I can't
18 see it.

19 MR. BANKSTON: Mr. Musk, there's not any
20 question to you. Go ahead and zoom it in because
21 Mr. Spiro is having some trouble seeing it --

22 MR. SPIRO: It's just not big enough for me
23 to see it.

24 MR. BANKSTON: -- and you might want to
25 scroll it over so he can see it very well.

1 THE WITNESS: This is a clear example of
2 Community Notes --

3 MR. BANKSTON: Mr. Musk, there is not a
4 question --

5 THE WITNESS: Please don't interrupt me.
6 Please don't interrupt me.

7 MR. BANKSTON: I am going to interrupt you,
8 Mr. Musk, because there's not a question on the --

9 MR. SPIRO: You shouldn't interrupt him,
10 Mark. He's --

11 MR. BANKSTON: There's not a question,
12 Alex.

13 MR. SPIRO: Okay. He's talking so you
14 shouldn't interrupt him --

15 MR. BANKSTON: But he's not -- that's not
16 responding -- witnesses cannot just start talking in
17 court.

18 MR. SPIRO: If you're going to yell -- if
19 you're going to yell, Mark, we're going to cut off the
20 deposition. Mr. Musk, you can continue finishing your
21 --

22 MR. BANKSTON: He actually can't, Alex. He
23 has no question posed to him.

24 MR. SPIRO: Actually he can. I told him he
25 can.

1 MR. BANKSTON: All right. So Mr. Spiro has
2 just instructed the witness --

3 MR. SPIRO: I can't see the date on this --
4 what is the date on this document? I still can't -- I
5 can't see the picture.

6 MR. BANKSTON: Scroll down, scroll down,
7 scroll down.

8 THE WITNESS: What is your question?

9 MR. BANKSTON: February 20th, 2024, just
10 like we've been talking about, this event that happened
11 in January 2024.

12 Again, I know you're not going to ask him
13 -- let him answer these questions so please just let me
14 make my record on this document.

15 I'm asking him about these documents for
16 the reasons stated above that as we have discussed, with
17 the exact same type of event with the exact same
18 allegations with Mr. Musk promoting the exact same types
19 of ideas except we have Community Notes here showing
20 that their masks were removed and the media were
21 actually interested in their identities.

22 We believe that these tweets and inquiry
23 about them is extremely relevant to the exact type of
24 state of mind when he made the exact type of same
25 statements about the exact same type of event.

1 Obviously we're being told that we're not
2 going to be able to ask these questions. We do not feel
3 that is proper. We will move on to the next topic.

4 THE WITNESS: Ask your question.

5 MR. BANKSTON: No, Mr. Musk. Your attorney
6 gets to decide --

7 MR. SPIRO: No. Mr. Musk wants to answer
8 your question. Ask your question.

9 Q. (BY MR. BANKSTON) Okay. So let's zoom back out
10 so we can ask you about this.

11 Okay. Now, let's go back up to the top
12 tweet. And go ahead and zoom in a little bit on that
13 top tweet so everybody can see it.

14 And what we have here is a person named
15 Champagne Joshi -- Joshi maybe. And let me move my
16 window so I can see that.

17 He says, "Fed front. How many times have
18 you seen a group of masked men dressed exactly the same,
19 handcuffed where not one mask pulled off to reveal their
20 identity."

21 You see in the picture below we have a
22 bunch of masked individuals and none of them have their
23 masks removed. Do you see that, Mr. Musk?

24 A. Yes.

25 Q. Okay. And now below there's a Community Note

1 that says their masks were removed in public and their
2 names and faces from arrest records are here. And it
3 has a link to a news story in Spokesman.com.

4 Now, below that is a tweet from you. And I
5 am going to assume I'm correct when I make this
6 assumption that when you made this tweet, the Community
7 Note had not yet been applied to the tweet above your
8 tweet?

9 A. That's correct.

10 Q. Okay. And so after you tweeted, then Community
11 Notes came along and corrected both you and the person
12 who were tweeting in this case, correct?

13 A. Yes, which is exactly what Community Notes --
14 please let me finish my answer.

15 This is exactly what Community Notes is
16 intended to do. And I'm -- I am the one who has pushed
17 Community Notes heavily on this system. It was a tiny
18 backorder thing called Bird Watch. And I said Community
19 Notes seems to me to have the potential to be the best
20 fact-checking system on the internet.

21 And I insist that anyone be fact-checked,
22 including myself. So there are no limits on who gets
23 fact-checked, whether they are presidents of countries,
24 whether they are advertisers -- in fact, this has caused
25 us to lose advertising revenue because advertisers have

1 been community noted. I have been community noted, and
2 the Community Notes code is all open source and the data
3 is open source, so any third party can confirm exactly
4 how Community Notes works.

5 So this is a very good example of Community
6 Notes correcting something that -- that is incorrect.

7 Q. Now --

8 A. And this is an example of the system working
9 well.

10 Q. Now, you would agree with me that everybody who
11 saw these tweets before the notes were added, each of
12 those people may have been provided incorrect
13 information?

14 MR. SPIRO: Objection to form.

15 A. There would have been, absent initial
16 misimpression, however Community Notes also goes and any
17 interaction with -- if you interact at all with the post
18 that is community noted, you're subsequently informed
19 that a Community Note was placed on that post and you're
20 notified about the community note.

21 Q. (BY MR. BANKSTON) You mean if I viewed the
22 tweet, I'm given a notice?

23 A. If you have any interaction with the tweet.

24 Q. What does an interaction mean?

25 A. Comment like a bookmark, a favorite, any kind

1 of interaction.

2 Q. So if I saw these tweets before the Community
3 Notes and I did not like, bookmark them, or physically
4 interact with them in some way, I'm not notified when
5 they're corrected?

6 A. Not -- not in that case, but we also -- we also
7 post -- all Community Notes are publically available so
8 -- and we have a -- helpful notes so helpful notes have
9 surfaced.

10 Q. But I'd have to go look for that though, right?

11 A. You -- yes, if you care about the truth, you
12 would need to go look about it, yeah.

13 Q. That's an interesting point. If you care about
14 the truth, you need to go look for the truth, right?
15 You need to make an effort; would you agree with that?

16 A. Not much of an effort.

17 Q. Not much of an effort? I got you.

18 A. It is also the case that all the people that
19 viewed this post, probably the vast majority of them did
20 in fact see the note.

21 Q. How are you able to say that? What data are
22 you relying on to say that?

23 A. The note is applied within a few hours,
24 sometimes less than that --

25 Q. How do you know that?

1 A. That is how the notes work.

2 Q. Wait, wait, wait. You're saying that -- you're
3 testifying that these notes appeared on these tweets
4 within hours?

5 A. That is -- sometimes less than that.

6 Q. And sometimes a lot more, sometimes days,
7 right?

8 A. Days, no. That's --

9 Q. No? I'm wrong about that?

10 A. Yes.

11 Q. Okay. All right, Mr. Musk. You can take that
12 down. Through your businesses, I presume you are
13 familiar with the concept of due diligence?

14 A. Yes.

15 Q. Okay. Before making a major decision in your
16 businesses that could affect a lot of people, you
17 practice due diligence as a matter of principle?

18 MR. SPIRO: Objection to form.

19 A. In acquiring a company? What are you talking
20 about here?

21 Q. (BY MR. BANKSTON) No, no, no, not acquiring a
22 company, no. I'm talking about before making a major
23 decision in your businesses that could affect a lot of
24 people, you practice due diligence as a matter of
25 principle?

1 A. Due diligence is a legal term. If -- I'm not
2 sure I understand your question, because you've
3 conflated a legal term with something that is in the
4 common vernacular.

5 Q. Let's take out the legal term then. I think we
6 can make it easier if we just take out the legal term.

7 Before making a major decision in your
8 business that could affect a lot of people, you take
9 care before making those decisions. You put a lot of
10 care into your business decisions; is that right?

11 A. I aspire to apply the amount of care -- I mean,
12 there's only so many hours in the day. One cannot do
13 everything, so -- I'm only human. So I aspire to be
14 diligent and accurate --

15 Q. Okay.

16 A. -- to the best of my ability.

17 Q. Okay. And because I think you understand that
18 when you make major decisions in your businesses, that
19 could affect a lot of people, right?

20 A. Of course.

21 Q. And it's important to be very careful in
22 decisions that affect a lot of people?

23 A. Yes.

24 Q. Okay. You understood in the summer of 2023
25 that any time you say something on Twitter, a very large

1 number of people will see it?

2 A. That number varies tremendously.

3 Q. But it's always very large?

4 A. It depends on what your definition of "very
5 large" is.

6 Q. Would you agree me with me that say over half a
7 million people is a pretty big group of people?

8 A. Yes.

9 Q. And pretty much any time you press tweet, it's
10 going to be more than half a million people?

11 MR. SPIRO: Mark, you're interrupting him

12 --

13 A. No, that's not true.

14 MR. SPIRO: Mark, you're interrupting him
15 at the end of his answers again so please don't do it.

16 Q. (BY MR. BANKSTON) So you don't think -- you
17 think there may have been times where you tweeted and
18 half a million people -- there weren't half a million
19 views on that?

20 A. You can look at my feed and see that that is
21 obviously true.

22 Q. Okay. But you would agree with me that the
23 vast majority of the time your tweets are going to be
24 seen by more than half a million people?

25 A. Only if it's a primary -- if I do a primary

1 post, meaning not a reply, then certainly more than half
2 a million people will see it.

3 Q. A lot --

4 A. -- but as a reply, sometimes it may be 10 or
5 20,000. And that doesn't necessarily mean that people
6 read it; it just means it got -- it was sent to their
7 device or their computer.

8 Q. All right. Let's put it this way: You know
9 that every time you press tweet, there is a reasonable
10 possibility that a very large number of people could see
11 it?

12 A. Yes.

13 Q. And you understood in the summer of 2023 that
14 as a general concept, false information can be damaging
15 to people and their lives?

16 A. There is -- it is certainly -- it is possible
17 for false information to be damaging to people and their
18 lives, yes.

19 Q. So you also knew in the summer of 2023 that any
20 time you tweeted and that tweet contained false
21 information about a specific individual, that there was
22 the chance that that tweet could damage or harm them?
23 You knew that?

24 A. If there's -- I do my best to be as accurate
25 and truthful as possible and to seek Community Notes or

1 other fact-checking when publishing something.

2 It is also true that there -- that

3 newspapers print things that are false or misleading or

4 that they fail to print things that are, in fact, true.

5 Q. Definitely. That's a big part of my business.

6 Absolutely you're right 1,000 percent. And I think you

7 would agree that newspapers often don't meet their

8 responsibilities, do they? They're not as diligent as

9 they could be, are they?

10 A. Newspapers I think have a fundamental flaw

11 relative to a system like the X platform where there's

12 not an easy way for people to rebut a statement, where

13 there's -- it's extremely easy to rebut any statement,

14 even in the absence of Community Notes, simply by

15 replying.

16 Q. Sure. Let's go back to my foundation here that

17 I want to ask you about, which is that in June 2023, you

18 knew that if you pressed tweet on a tweet and it

19 contained false information about a specific individual,

20 that it was very likely, a reasonable possibility that a

21 lot of people would see it and therefore there would be

22 harm done to the person with false information. You

23 knew that was a risk anytime you pressed tweet, correct?

24 A. There's some risk that what I say is incorrect,

25 but one has to balance that against having a chilling

1 effect on free speech in general, which would undermine
2 the entire foundation of our democracy.

3 Q. Got you. So --

4 A. And if I were to take issue with you, Mr.

5 Bankston, that would be my concern about you.

6 Q. Okay. I know you do. I know we have very
7 opposite concerns that are very much in each other's
8 face, and I understand.

9 What I want to know is did you think -- did
10 you think in your state of mind on June 27th, 2023, that
11 it was allowable, it was okay for you to take a risk
12 with false information because the alternative means
13 restraining yourself and doing damage to the concept of
14 free speech? Is that what you thought?

15 A. I believe it's important to try to find the
16 truth of things --

17 Q. I do too.

18 A. -- and sometimes when I -- in questioning
19 things, one -- I'm simply trying to find what is true at
20 any given point in time.

21 Q. Do you think you owed it to Ben Brody to be
22 accurate as you could?

23 MR. SPIRO: Objection.

24 A. I aspire to be accurate no matter who the
25 person is.

1 Q. (BY MR. BANKSTON) Do you think you lived up to
2 that duty to Ben Brody or do you think you failed him?

3 A. I don't think -- I don't think -- I don't think
4 he has been meaningfully harmed by this.

5 MR. BANKSTON: Wow. Okay. Let's put up
6 Tab L. Hold on. Actually take that down for a second.

7 Q. (BY MR. BANKSTON) Why don't you think Ben Brody
8 has been meaningfully harmed by this?

9 MR. SPIRO: Yeah, the harm to Ben Brody,
10 how is that relevant to --

11 MR. BANKSTON: No. He might have some
12 really malicious ideas coming out from him right now
13 about this. I need to know what his feelings about Ben
14 Brody are.

15 Why do you think Ben Brody --

16 MR. SPIRO: What is your -- which category
17 is this under and how is this relevant?

18 MR. BANKSTON: His state of mind. Does he
19 have ill will towards Ben Brody.

20 MR. SPIRO: You can answer that. Do you
21 have any ill will toward Ben Brody? You can answer that
22 question.

23 MR. BANKSTON: Well, then I think -- no, I
24 want him to answer my question.

25 A. I have -- I have no ill will to Ben Brody. I

1 don't know Ben Brody --

2 Q. (BY MR. BANKSTON) Okay.

3 A. -- and I have no ill will to him. I do seek to
4 -- I mean, my goal is simply to have the X platform be
5 the best source of truth on the internet. And when you
6 try to figure out the truth of things, you -- there's a
7 debate. That debate, you know, goes one way or the
8 other, but it is a vigorous debate.

9 There is -- there are a number of replies
10 to -- you make a statement, people will reply and reply
11 immediately. This is the advantage -- fundamental
12 advantage relative to the legacy newspapers where -- you
13 can say whatever you want but -- and people can
14 immediately rebut that and then Community Notes can
15 attach a correction to your original post.

16 I think this is what enables the X platform
17 to have the potential to be -- and I think is the -- the
18 most accurate, timely, and truthful place on the
19 internet.

20 Q. Tell me why you said you don't think Ben Brody
21 was harmed.

22 MR. SPIRO: No, no, no. Why -- whether he
23 was ultimately harmed or not or what his damages are and
24 things like that is not relevant. He's not going to get
25 into that. You can move on. I'm instructing him not to

1 answer.

2 MR. BANKSTON: Okay. So, again, I want to
3 know, Mr. Musk seems to have personal feelings about Ben
4 Brody and whether he's been harmed or not. And in fact,
5 seems to have the affirmative belief that he has not
6 been meaningfully harmed, which tells me that Mr. Musk
7 may know something more about Ben Brody than I think he
8 does, because I don't think he knows anything about Ben
9 Brody. And so I want to ask him why do you not think he
10 has been meaningfully harmed.

11 MR. SPIRO: Yeah. Again --

12 MR. BANKSTON: If he possesses that
13 information, I'm definitely entitled to know.

14 MR. SPIRO: Okay. Well, I definitely think
15 you're wrong and you're trying to backdoor everything
16 and you know that and so you can move on.

17 MR. BANKSTON: Okay. You're not going to
18 answer that, Mr. Musk? Are you going to --

19 MR. SPIRO: He's not answering that. He's
20 not --

21 MR. BANKSTON: I didn't ask you anything.

22 MR. SPIRO: You know that he doesn't know
23 anything about Ben Brody and he already told you he
24 doesn't think he's been harmed.

25 MR. BANKSTON: I don't know that. Wait,

1 hold on --

2 MR. SPIRO: You teased him -- you just said
3 it into the record. You teased out the fact that he
4 doesn't have any ill will towards him. That's that.

5 MR. BANKSTON: No. I'm at an impasse
6 because I have two contradictory answers. I have Mr.
7 Musk saying he doesn't know anything about Ben Brody,
8 and I have Mr. Musk testifying under oath that Ben Brody
9 was not meaningfully harmed. Those two things don't go
10 together so I've got to figure out --

11 MR. SPIRO: We disagree, but if Mr. Musk
12 wants to explain why they're not inconsistent if you
13 don't -- if you genuinely don't understand that, he can
14 explain why those aren't inconsistent. I don't think --
15 I think this is nonsense and you know it, but that's
16 fine.

17 A. People are attacked all the time in the media,
18 online media, social media, but it is rare that that
19 actually has a meaningful negative impact on their life.

20 MR. BANKSTON: Okay. Let's go to Tab L.

21 Q. (BY MR. BANKSTON) I want to show you another
22 tweet that you tweeted on June 27th, all right, just
23 after you tweeted about Ben Brody. And this tweet has
24 somebody who is named -- hold on -- this is a tweet from
25 somebody named Ava Fox Claudis Nero's Legion. That says

1 a quote from Dale Carnegie, 99 times out of 100, people
2 don't criticize themselves for anything, no matter how
3 wrong it might be maybe.

4 And then you replied "Always err on the
5 side of internalizing --" "always err on the side of
6 internalizing responsibility." Do you see that?

7 A. Yes.

8 Q. All right. Is that -- would you consider that
9 you were being truthful here in terms of that being
10 something you believe; is that right?

11 A. Yes, I think one should err on the side of
12 internalizing responsibility.

13 Q. All right. So to bring it back to Ben Brody,
14 do you think that maybe you acted recklessly and should
15 acknowledge responsibility for that?

16 A. Are you referring to -- which post are you
17 referring to?

18 Q. To the post you made about Ben Brody. When you
19 said based off of Dr. Frenson and Matt Wallace, when you
20 said "It looks like one of the college students who
21 wants to join the government." Do you think you have
22 any sense of acting recklessly or need to take
23 responsibility for that?

24 MR. SPIRO: Objection. He already answered
25 -- he already answered this question. You can't

1 backdoor it through some unrelated tweet when the judge
2 told you which tweets were at issue.

3 MR. BANKSTON: Wait. Where does the --

4 MR. SPIRO: I don't understand why you're
5 doing this. You're just wasting everybody's time.

6 MR. BANKSTON: I'm sorry. Where is this --
7 if you have it, please send it to me. Do you have a
8 list of the tweets that I'm allowed to talk about?

9 MR. SPIRO: Yes, there -- it's in the
10 order -- the order said -- that it refers to tweets on a
11 certain day and a certain time. It's not -- if the
12 order --

13 THE REPORTER: Mr. Spiro, your internet is
14 cutting in and out.

15 MR. SPIRO: Can you hear me now?

16 THE REPORTER: Yes, sir.

17 MR. SPIRO: Okay. Yes, the order does
18 refer to certain tweets within a time frame relating to
19 -- this is in topic two, so the way I read the order and
20 the spirit of this was not for you to have a
21 free-for-all into every tweet Mr. Musk made or saw.
22 Your case is based on one tweet where he says "looks
23 like."

24 MR. BANKSTON: Right. So here I am asking
25 about another tweet on the same day about Mr. Musk's

1 state of mind on that very day.

2 And your state of mind, Mr. Musk, on that
3 very day was that a person should always err on the side
4 of internalizing responsibility. That was your state of
5 mind on June 27th, 2023?

6 A. That is a general principle that I believe in.

7 MR. BANKSTON: All right. Mr. Musk, I
8 don't have anything more for you today.

9 MR. SPIRO: Okay. Thank you.

10 THE REPORTER: Mr. Spiro, I need to have
11 you say on the record whether you want a copy of the
12 transcript.

13 MR. SPIRO: Yes, and please mark it
14 confidential.

15 MR. BANKSTON: I'm sorry. What? There's
16 no PO in this case.

17 MR. SPIRO: We're asking for it to be
18 deemed marked confidential until we address --

19 MR. BANKSTON: Under what authority? No.
20 There's no PO.

21 MR. SPIRO: Well, that's what I'm asking
22 for. You want to release it --

23 MR. BANKSTON: Then you need to move -- you
24 need to move for a PO. I don't -- no --

25 MR. SPIRO: Okay. Then we will move for a

1 PO.

2 MR. BANKSTON: Right. Over discovery
3 that's already happened?

4 MR. SPIRO: Yeah. Okay.

5 MR. BANKSTON: I'm absolutely positive
6 there's not --

7 MR. SPIRO: I'm asking -- Mark, don't
8 interrupt me, okay? Mark, don't interrupt me.

9 MR. BANKSTON: All right.

10 MR. SPIRO: I'm asking that this transcript
11 be marked as confidential. That's what I'm asking for,
12 okay?

13 MR. BANKSTON: I don't agree.

14 THE REPORTER: Mr. Spiro --

15 MR. BANKSTON: Yeah, he jumped off the
16 record, but we're not off the record yet.

17 THE REPORTER: I need to find out if Mr.
18 Musk wanted to read and sign his transcript.

19 MR. BANKSTON: Well, we're not going to
20 find that out either because he just left.

21 I do need to make a record on what just
22 happened for the Court. Parties must obviously move for
23 a protective order over discovery before it occurs. I
24 am in no way bound to treat anything confidential.
25 There is no confidential order in place. There is a

1 method in which to do that.

2 Attorneys from Quinn Emanuel should know
3 very well how to do that. In fact, even Alex Jones'
4 attorneys knew how to do that. Apart from that, there's
5 not a single trade secret or anything confidential ever
6 mentioned anywhere throughout this deposition. I'm very
7 concerned that Mr. Spiro, a non-Texas lawyer who is --
8 came to this deposition to practice law in violation of
9 Texas law with no pro hac admission completely shut down
10 many segments of the deposition, issued several
11 instructions not to answer that were wholly
12 inappropriate, completely interrupted and made
13 objections outside of Rule 199.5. And then at the end
14 of the deposition demands that it be treated
15 confidential.

16 Mr. Spiro is clearly not following any of
17 the procedures that would need to happen here. Given
18 what he's said, we will not discuss what happened here
19 in this deposition with third parties until we talk to
20 the Court about it obviously. But we will make sure for
21 the record -- we do not see any method on which to
22 designate things as confidential, so we don't -- we
23 don't recognize that request as anything valid.

24 If they want to pursue a Rule 76 at a
25 future time, I mean, I guess they're welcome to try to

1 do that. But, again, just to state for the record, we
2 are not -- we are not under protective order. We have
3 no obligation to abide by any confidentiality, and we
4 reject wholeheartedly Mr. Spiro's unilateral attempts to
5 place us under some sort of legal obligation. We do not
6 recognize it whatsoever. And with that, we conclude the
7 deposition today.

8 THE VIDEOGRAPHER: This concludes the
9 deposition at 3:19 p.m.

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1 DEPONENT CORRECTION SHEET

2 WITNESS'S NAME: ELON MUSK

3 DATE OF DEPOSITION: MARCH 27TH, 2024

4 PAGE LINE REASON FOR CHANGE

5 _____

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1 CERTIFICATE OF DEPONENT

2 I, ELON MUSK, do hereby certify that I

3 have read the foregoing transcript of my testimony and

4 hereby affix my signature that same is true except as

5 noted above.

6 _____
ELON MUSK

7

8 The State of _____

9 County of _____

10 Before me, _____, on this day

11 personally appeared ELON MUSK, known to me or proved to

12 me on the oath of _____ or through

13 _____ (description of identity card or

14 other document) to be the person whose name is

15 subscribed to the foregoing instrument and acknowledged

16 to me that he/she executed the same for the purpose and

17 consideration therein expressed.

18 Given under my hand and seal of office on this

19 _____ day of _____, _____.

20

21 _____

22 Notary Public in and for

23 The State of Texas

24

25 My Commission Expires: _____

1 CAUSE NO. D-1-GN-23-006883

2

3 BENJAMIN BRODY,) IN THE DISTRICT COURT OF
 Plaintiff)
 4)
 VS.) TRAVIS COUNTY, TEXAS
 5)
 ELON MUSK,)
 6 Defendant) 459TH DISTRICT COURT

7

8 REPORTER'S CERTIFICATE

9 VIDEO-CONFERENCED DEPOSITION OF

10 ELON MUSK

11 MARCH 27TH, 2024

12 I, Deborah Tidwell, Certified Shorthand

13 Reporter in and for the State of Texas, hereby certify

14 to the following:

15 That the witness, ELON MUSK, was duly sworn

16 and that the transcript of the deposition is a true

17 record of the testimony given by the witness.

18 That the deposition transcript was duly

19 submitted on _____ to the witness or to the

20 attorney for the witness for examination, signature, and

21 return to me by _____.

22 That pursuant to information given to the

23 deposition officer at the time said testimony was taken,

24 the following includes all parties of record and the

25 amount of time used by each party at the time of the

1 deposition:

2 Mark D. Bankston, Esquire (01hr55m)
Attorney for the plaintiff

3
4 Alex Sprio, Esquire (00hr00m)
Attorney for the Defendant

5 That a copy of this certificate was served on
6 all parties shown herein on _____ and filed
7 with the clerk.

8 I further certify that I am neither counsel
9 for, related to, nor employed by any of the parties in
10 the action in which this proceeding was taken, and
11 further that I am not financially or otherwise
12 interested in the outcome of this action.

13 Further certification requirements pursuant to
14 Rule 203 of the Texas Code of Civil Procedures will be
15 complied with after they have occurred.

16 Certified to by me on this _____ day of April
17 2024.

18 _____
19 Deborah Tidwell, TX CSR 11126
Expiration: 04/30/2025
20 Res Ipsa Litigation Support
501 Congress Avenue, Suite 150
21 Austin, TX 78701
Telephone: 512.334.6777
22
23
24
25

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2 The original deposition was/was not returned
3 to the deposition officer on _____.

4 If returned, the attached Changes and Signature page(s)
5 contain(s) any changes and the reasons therefor.

6 If returned, the original deposition was delivered to
7 Mark D. Bankston, Custodial Attorney.

8 \$_____ is the deposition officer's charges to the
9 plaintiff for preparing the original deposition and any
10 copies of exhibits;

11 The deposition was delivered in accordance
12 with Rule 203.3, and a copy of this certificate, served
13 on all parties shown herein, was filed with the Clerk.

14 Certified to by me on this _____ day of April 2024.

15

16

17

18

19 Deborah Tidwell, TX CSR 11126
20 Expiration: 04/30/25
21 Res Ipsa Litigation Support
22 501 Congress Avenue, Suite 150
23 Austin, TX 78701
24 Telephone: 512.334.6777

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Here we go again



Elon Musk

@elonmusk

I wake up



there is another
PSYOP

12:25 PM · Nov 28, 2022

15.3K Retweets 1,231 Quotes 154.7K Likes 723 Bookmarks

9:34 PM · Jun 24, 2023 · 51.9M Views

16K

49K

365K

2.1K



EXHIBIT

1



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Elon Musk Verified @elonmusk · Jun 25

Who were the unmasked individuals?

3.5K 2.9K 37K 9.1M



AcceptDoge Paid @DogeAccept · Jun 25

Here's on of them



Dr Frensor @drfrensor · Jun 25

Replying to @drfrensor

OMFG they are sooo busted.

A member of patriot front is ACTUALLY a political science student at a liberal school on a career path towards the feds.

...
[Show more](#)



★Senior Spotlight: Brother Ben Brody★

Ben Brody is a 4th year political science major from the San Fernando Valley. He has held positions such as Brother At Large and Art Chair. Ben enjoys hanging out with friends, going snowboarding and mountain bike riding. After Graduation he plans to work for the government.

[View all 31 comments](#)

Encino California MARCH 19

187 1.1K 6.5K 806K



Elon Musk Verified @elonmusk

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Very odd

8:52 PM · Jun 25, 2023 · 560.9K Views

EXHIBIT
2

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Tweet

Matt Wallace Verified @MattWallace888 · Jun 25
 Remember When They Called Us Conspiracy Theorists For Saying The Feds Were Planting Fake Nazis at Rallies? 🤔



Senior Spotlight: Brother Ben Brody

brodyben3
 Follow
 Hello, my name is Ben Brody. a PolySci major at UCR!!

Ben Brody is a 4th year political science major from the San Fernando Valley. He has held positions such as Brother At Large and Art Chair. Ben enjoys hanging out with friends, going snowboarding and mountain bike riding. After Graduation he plans to work for the government.

2,253 replies · 19.2K retweets · 76.1K likes · 7.7M views

Elon Musk Verified @elonmusk Subscribe

Always remove their masks

5:34 AM · Jun 26, 2023 · 2.1M Views

5,884 Retweets · 186 Quotes · 56K Likes · 170 Bookmarks



EXHIBIT
3



zerohedge @zerohedge · 38m

Patriot Front 'White Supremacist' Unmasked As Suspected Fed



[zerohedge.com](https://www.zerohedge.com)

Patriot Front 'White Supremacist' Unmasked As Suspected Fed

153 858 3,399 370K



Elon Musk @elonmusk · 30m

Looks like one is a college student (who wants to join the govt) and another is maybe an Antifa member, but nonetheless a probable false flag situation

[@CommunityNotes](https://twitter.com/CommunityNotes)

384 865 7,300 279K

EXHIBIT

4

“I’ve shot myself in the foot so often I ought to buy some Kevlar boots,’ [Musk] joked. Perhaps, he ruminated, Twitter should have an impulse-control delay button.

EXHIBIT

5

“When asked why he doesn’t restrain himself, [Musk] merrily admits that he too often ‘shoots himself in the foot’ or ‘digs his own grave.’ But life needs to be interesting and edgy, he says, then quotes his favorite line from the 2000 movie Gladiator: ‘Are you not entertained? Is that not why you are here?’”

EXHIBIT

6

“My tweets are like Niagara Falls sometimes and they come too fast,’ [Musk] says. ‘Just dip a cup in there and try to avoid the random turds.’”

EXHIBIT

7

Musk's tweet showed his growing tendency (like his father) to read wacky fake-news sites purveying conspiracy theories, a problem that Twitter had writ large. He quickly deleted the tweet, apologized, and later said privately it was one of his dumbest mistakes. It was also a costly one.



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Dr Frensor \$ Paid

@drfrensor

Is this meme insensitive to Jewish persons?



12:06 PM · Jun 25, 2023 · 2,869 Views

14

24

119

3



EXHIBIT

9



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Dr Frensor
@drfrensor



12:00 PM · Jun 25, 2023 · 1,092 Views



5



2



26



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10



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Wall Street Silver Verified
@WallStreetSilv

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The fact that the legacy media shows zero curiosity about unmasking these guys, tells us 100% that these are federal agents or paid stooges of one of the agencies.

The media has been instructed by the FBI to just report that Patriot Front exists, white supremacy group, and don't dig any deeper.



Ilan Miles Cheong Verified @stillgray · Jan 20

What's the deal with these Patriot Front guys' vehicles? Their license plates are completely blank.



1:18

3:22 PM · Jan 20, 2024 · 2.2M Views



1.9K



7.5K



29K



1K



Post your reply

Reply



Wall Street Silver Verified @WallStreetSilv · Jan 20

If Patriot Front was actually a real organic white supremacy group, the media would be all over this story to expose every member and ruin their lives.

The fact that this is NOT happening confirms they are Feds.

122

585

4.4K

77K



Elon Musk Verified @elonmusk · 11h

Seems like they should be followed and unmasked. Why doesn't the media or government care about their identities?

998

1.4K

11K

991K

EXHIBIT

11



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Champagne Joshi Paid @JoshWalkos · Jan 20

Fed Front. How many times have you seen a group of masked men dressed exactly the same, handcuffed with not one masked pulled off to reveal their identity? This is aimed at gullible libtards who want to believe these are "white nationalists" bc it affirms their worldview and it's...

Show more



Readers added context they thought people might want to know

The masks were removed in public & their names/ faces from arrest records are here: spokesman.com/stories/2022/j...
This photo is also from 2022 in Coeur d'Alene, Idaho

Do you find this helpful?

Rate it

Context is written by people who use X, and appears when rated helpful by others. Find out more.

773

1.9K

10K

529K



Elon Musk Verified
@elonmusk

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This does seem odd. Why no mask removal after arrest?

Readers added context they thought people might want to know

The masks were removed after arrest and their names and faces are here: spokesman.com/stories/2022/j...

Do you find this helpful?

Rate it

Context is written by people who use X, and appears when rated helpful by others. Find out more.

2:32 PM · Jan 20, 2024 · 510.2K Views

EXHIBIT

12

Exhibit 2



Elon Test

23 posts



Follow

Elon Test

@ErnmMusk

Joined November 2022

33 Following 49.3K Followers

Followed by Shayan Sardarizadeh

Posts

Replies

Media

Likes



Elon Test @ErnmMusk · Apr 24, 2023



I will finally turn 3 on May 4th!

2.1K

1.1K

7K

3.4M



Exhibit 3

March 27, 2024

VIA E-MAIL
MARK@FBTRIAL.COM

Mark Bankston
FARRAR & BALL, LLP
1117 Herkimer
Houston, TX 77008
(713) 221-8300

Re: Brody vs. Musk, D-1-GN-23-006883 - Notice of Emergency Motion for a Protective Order

Dear Mark:

I am writing to inform you that Defendant Elon Musk is preparing to file an emergency motion for a protective order pursuant to Texas Rule of Civil Procedure 192.6(b)(5).

Accordingly, I respectfully request that you refrain from disclosing, publicizing, discussing, or transmitting to any third party¹ the substance of the March 27, 2024 deposition until such time as the Court may rule on the forthcoming motion. Further, the transcript of the March 27, 2024, deposition shall also be kept confidential pending resolution of the forthcoming motion.

The proposed protective order is attached hereto. Pursuant to Local Rule 2.2 (*effective* May 1, 2023), please inform me if you are opposed to the requested relief.

Respectfully,

QUINN EMANUEL URQUHART & SULLIVAN, LLP



Alex Spiro

¹ For the avoidance of doubt, the substance of the deposition should not be divulged to any individual pending resolution of the forthcoming motion, except your client and your client's counsel of record.