



C L A R E L O C K E

L L P

THOMAS A. CLARE, P.C.

tom@clarelocke.com

(202) 628-7401

10 Prince Street
Alexandria, Virginia 22314

(202) 628-7400

www.clarelocke.com

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By U.S. Mail & Electronic Mail

Matt Rivitz

REDACTED

***Re: Legal Hold Notice: Obligation to Preserve Evidence of
Tortious Acts***

Dear Mr. Rivitz:

I write on behalf of my client, Breitbart News Network, LLC. As you of course know, Breitbart has been the target of a months-long smear campaign by the online activist group “Sleeping Giants.” It has recently been revealed that you are a founder and leader of this group. My client is considering potential legal action against you, and we therefore demand that you preserve and retain certain documents in your possession that may be relevant to potential civil claims.

These include potential claims concerning unfair, fraudulent, and deceptive practices intended to cause Breitbart economic harm. We believe that Sleeping Giants has sought to deceive the public and, in particular, purchasers of online advertising, by making false, deceptive, and disparaging claims about Breitbart and the news content it publishes – including, among other things, accusing Breitbart of distributing “anti-Semitic” propaganda, of promoting “white supremacy,” and of being a “neo-Nazi propaganda” website.¹ Sleeping Giants has directed these and similar deceptive and misleading statements to companies that purportedly purchase advertisements appearing on Breitbart’s website – and has encouraged its members and others to do the same² – in

¹The official Twitter and Facebook sites for Sleeping Giants have continued to publish these and similar statements about Breitbart on a near-daily basis since late 2016. See, e.g., <https://www.facebook.com/slpnggiants/photos/a.1801761530066488.1073741828.1799342366975071/2093314200911218/?type=3&theater>.

² These efforts include providing a script for members and followers to use to contact companies and demand that they cease advertising on Breitbart.com.



an effort to drive advertising revenue away from Breitbart, and to solicit donations³ and sell Sleeping Giants' branded merchandise.⁴

As you well know, Breitbart News is none of those things. It is the 48th most trafficked website in the United States (according to Amazon-owned Alexa), the 3rd most trafficked news site, and the 15th highest engagement Facebook publisher in the World (according to NewsWhip). According to NPR, it is read every morning by the White House Chief of Staff. It is, in short, an influential, conservative-leaning news outlet that is read by millions of Americans every day. But Sleeping Giants' campaign has never truly been about purported anti-Semitism or neo-Nazism, which Breitbart has always and will always continue to condemn; rather, it is about Sleeping Giants' desire to stifle speech that does not adhere to its narrow liberal politics. The oft-repeated accusation that Breitbart is "anti-Semitic" is particularly revealing and farcical, given that Breitbart is a demonstrably and staunchly pro-Israel website that was *founded by two Jewish men*. Moreover, according to a 2017 New York Times Magazine piece, Breitbart's masthead is notably diverse and international, and Breitbart has a strong record of promoting women and minorities – including its lead defense correspondent, the national security editor and the copy chief, all of whom are women of color, as well as the editor of its entertainment coverage, who is an African American man.

Unlike Breitbart, which has always been open and transparent about its political point of view because it has nothing to hide, Sleeping Giants has falsely portrayed itself as an apolitical grassroots movement of citizen-consumers that is simply trying to provide information to companies that advertise online. But the claim to be apolitical is belied by the facts that Sleeping Giants only targets conservative media, and that it was created in direct response to the Republican successes in the 2016 elections. In reality, Sleeping Giants is a highly-orchestrated, partisan campaign whose organizers have proven willing to use deception and harassment to achieve their goals. This campaign appears to include the development and utilization of software applications that created a master list of companies whose ads may or may not have appeared on Breitbart and encouragement of activists to target them. Many of these lists were apparently compiled through the use of automation software and bot accounts, designed to mimic human browsing behavior and trick advertisers to unwittingly serve online ads to a bot. These bots were also designed to screenshot each ad that was served to them. This deceptive practice enabled Sleeping Giants and its activists to misrepresent themselves as customers of a company and members of an advertising audience. After tricking companies into serving ads to a bot, Sleeping Giants pre-packaged these screenshots into tweets that its activists could then send to companies along with a complaint about that company's ads appearing on Breitbart. Given that most internet advertising is designed to target individual consumers rather than specific websites, companies perceived these tweets as customer feedback – even though in many, if not most, cases the activist sending the tweet never actually saw that ad on the Breitbart website. As if these deceptive practice were not enough, Sleeping Giants and its supporters then decided to accelerate their illicit activity by developing an "automated" approach through which, at the click of a button, an individual could automatically have up to ten of these software-generated messages appear on their Facebook or Twitter account daily – each directed to a

³ https://twitter.com/slpng_giants/status/867033146625146881.

⁴ <https://cottonbureau.com/people/sleeping-giants>.



different company and accompanied by the false claim that the individual tweeting or posting the message was a potential customer who saw that company's ad on Breitbart's website and was outraged by it. Sleeping Giants and its co-conspirators utilized these fraudulent practices with the intention of harassing companies that purchase online advertising with tweets and Facebook messages regarding Breitbart in order to intimidate those companies into "blacklisting" Breitbart from their online ad buys – even though, in many cases, the persons sending the tweets were simply blasting out auto-generated tweets and messages and had never even seen that company's ads on Breitbart.com.

We also suspect that the leaders behind the Sleeping Giants group have committed these fraudulent and deceptive acts in conjunction and coordination with other members of the advertising and ad tech worlds for an additional, improper commercial purpose. Namely, we suspect that communications in your possession will show that Sleeping Giants and its secret network of supporters have sought to promote their shared business interests by tarring Breitbart as a white supremacist and hate speech website, while simultaneously seeking to promote their own online advertising marketplaces that claim to better promote "brand safety" by "blacklisting" Breitbart from online ad buys, thus helping advertisers to avoid unwittingly becoming the target of a Twitter mob outraged by the websites on which a company's ads appear.

Although, as stated above, the group and its organizers have long attempted to conduct these tortious actions behind a veil of anonymity, a recently-published article identified you, Matt Rivitz, as the founder of Sleeping Giants and the acknowledged proprietor of its social media accounts.⁵ That same article noted that you have long worked in online marketing and advertising. Notably, after your identity was involuntarily disclosed through investigative reporting, you claimed that you hid your identity and role with Sleeping Giants as an act of humility in order to "keep this about the mission rather than the individuals involved." But your past, conflicting explanations for hiding your identity tell a different story. For example, in January 2017, an individual identified only as a Sleeping Giants "founder" – who cited biographical details specific to you – told the *New York Times* that Sleeping Giants was conducting its campaign targeting Breitbart's advertisers anonymously because "some members of the group work in the digital-media industry."⁶ Similarly, in March 2018, a Sleeping Giants "spokesman" acknowledged to GQ that "the people behind Sleeping Giants" elected to remain anonymous because they "work in marketing-related fields" and their targeting of online advertisers "might be perceived as creating some kind of conflict of interest."⁷ These frank admissions, made at a time when you and your supporters in the ad tech world expected their identities to remain a secret, are extremely revealing and hint at a hidden and improper commercial motivation behind Sleeping Giants' deceptive practices targeting Breitbart. It appears that the reason you and your backers did not want their identities known was because it would have revealed their shared economic interests and deceptive practices.

⁵ <http://dailycaller.com/2018/07/16/sleeping-giants-founder-rivitz/>.

⁶ <https://www.nytimes.com/2017/01/07/opinion/sunday/how-to-destroy-the-business-model-of-breitbart-and-fake-news.html>.

⁷ <https://www.gq.com/story/sleeping-giants-breitbart-nra-interview>.



These unfair, fraudulent, and deceptive practices may give rise to civil liability both for you and the members of the online advertising and ad tech worlds that you coordinated with. These potential claims include, but certainly are not limited to, claims relating to violation of California's Unfair Competition Law (Business and Professions Code Sections 17200, et seq.), fraud, violation of the Lanham Act, tortious interference with contract, and tortious interference with prospective economic advantage.

In light of the above, this firm has reason to believe that you have in your possession materials that would constitute discoverable evidence in potential litigation. Accordingly, you are hereby directed to preserve – and not to destroy, conceal or alter – any paper or electronic files, other electronically stored information or data generated by and/or stored on your computer systems, portable electronic devices (e.g., Blackberrys, iPhones, Android devices, tablets, etc.) and storage media (e.g. cloud accounts, hard disks, USB drives, CDs, DVDs, floppy disks, backup tapes, etc.), relating in any way to the Sleeping Giants organization, its social media accounts, its servers, its web domains, its actions and statements with respect to Breitbart, its fundraising, merchandise sales, and expenditures, and its communications with members, supporters, and other third parties.

Without limitation, these materials include communications by and among, you, Sleeping Giants and/or anyone acting on behalf of you or Sleeping Giants, and the following persons and entities:

- Any and all advertising agencies
- Any and all advertising networks
- Any and all advertisers
- Any and all reporters
- Any and all industry publications, e.g., AdAge, AdWeek, Digiday, et al.,
- AdStrike
- 500 Startups
- Reboot Democracy
- Meghan Larson (**REDACTED**)
- Rob Leathern (formerly CEO of Optimal and presently, Director of Product at Facebook)
- Brian O'Kelley (CEO of App Nexus)
- Mark Perlson
- Josh Dorf
- Blythe Lang
- Lawrence "Larry" Rivitz
- Jan Rivitz
- Tyler Magnusson
- Melinda Magnusson



- Britton Taylor
- Media Matters for America
- Democratic Coalition
- Center for American Progress
- Think Progress
- Southern Poverty Law Center
- Facebook, Inc.
- Twitter Inc.
- Google LLC
- Amazon.com, Inc
- Angelo Carusone
- Any and all George Soros-backed persons or organizations
- Marketing Initiative LLC
- Open Society Institute-Baltimore
- Open Society Foundation
- Bet on Baltimore
- Green Street Academy
- Dent Education
- Center for Urban Families
- Jennifer Rosenberg (**REDACTED**)
- James Kelly (Partner, Ketchum Public Relations) (**REDACTED**)
- Kevin O'Connot (**REDACTED**)
- Joseph Savitz (**REDACTED**)
- Deb Simonds (**REDACTED**)
- Clare Lochary (**REDACTED**)
- Josh Dietz
- Dr. Caroline Heldman
- Shannon Coulter
- Scott Dworkin
- Devin Sharkey
- Craig Mangan
- Mike Sweeney
- Andrew Rasiej
- Lionel Carreon



- Crystal English Sacca
- Steve Silberman
- Nicholas Reville
- Jeff Jarvis
- Professor David Carroll
- Justin Hendrix
- Craig Silverman
- Anil Dash
- Pagan Kennedy
- Nathan Phillips
- John Gruber
- Phil Kaplan
- @supermisha
- Mikhail Rutman
- Elisabeth Sylvan
- @barret_williams
- @changetheconvos
- @stopfundinghate

The types of documents and communications to be preserved include, without limitation, paper documents; email and other electronic communications; word processing documents; spreadsheets; presentation slides; databases; calendars and calendar entries; diaries; meeting notes; telephone logs; Internet usage files; social media posts, accounts, and direct messages, offline storage for information stored on removable media; information contained on laptops or other portable devices; and network access information.

You must preserve all documents, data, and electronically stored information relating in any way to the topics set forth above. Electronic documents and storage media on which they reside contain relevant, discoverable information beyond what may be found in printed documents. Therefore, even where a paper copy exists, you must retain and preserve all documents in their electronic form along with metadata or information about those documents contained on the media. You must also preserve paper printouts of only those documents that contain unique information created after they were printed (e.g. paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.

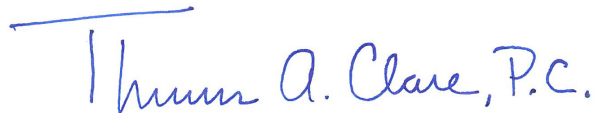
The laws and rules prohibiting destruction of evidence apply to electronically-stored information in the same manner that they apply to other evidence. Due to its format, electronic information is easily deleted, modified or corrupted. Accordingly, you must take every reasonable



step to preserve this information. This may include, but would not be limited to, an obligation to discontinue all data destruction and backup tape recycling policies and procedures.

Failure to abide by this request could result in penalties against you and could form the basis of legal claims for spoliation. You are instructed to forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter. Because we have reason to believe that you have conducted activities relating to the above topics using electronic devices and accounts under the custody and control of your employer, you are further instructed to forward a copy of this letter to the individual at your place(s) of employment with custodial responsibility for your employer's electronically-stored information.

Very truly yours,



Thomas A. Clare, P.C.

Addresses and personal identifying information have been redacted from this letter.