

FEDERAL ELECTION COMMISSION

MUR 7308

Declaration

JOSHUA KRAKOWSKY states under the penalties of perjury, pursuant to 28 U.S.C. § 1746, as true and correct, the following:

1. I am senior counsel with the law firm Davidoff Hutcher & Citron LLP. I was previously litigation counsel for Adam Victor and various entities he controlled, and as such, I am fully familiar with the facts and circumstances described in this declaration. I submit this declaration based upon personal knowledge to submit certain evidence to the Commission to consider with respect to the complaint in the above-referenced proceedings (the "Complaint").

2. First, the Complaint was addressed to "Mr. Krakowsky" at my father's house, so he opened it and provided it to me the week after he received it. Please address any future correspondence concerning this matter to my address at: Joshua Krakowsky, Davidoff Hutcher & Citron LLP, 605 Third Avenue, New York, New York 10158; jsk@dhclegal.com; 646.428.3268.

3. The attorney client privilege, which belongs to the client Adam Victor, prohibits me from discussing any communications I may or may not have had with Mr. Victor. That privilege does not prevent me from stating what I did not do. The pro se administrative complainant, Tyler Erdman, alleges on "information and belief" that I prepared "initial drafts of fraudulent witness statements and meeting various witnesses and repeating to them Mr. Victor's threat that they would 'go to jail' if they did not sign the statements." Complaint, ¶ 12 (second bullet point). That allegation is absolutely false. Mr. Erdman also alleges "on information and belief" that I "drafted perjurious declarations that Mr. Victor's daughters refused to sign, despite

[my] efforts to intimidate them.” Complaint, ¶ 12 (second bullet point). That allegation is also absolutely false.

4. These claims made on information and belief and without any basis for that information and belief are simply part of a smear campaign by Mr. Erdman against me for previously representing Adam Victor against him in civil litigation. It also appears to be an attempt at personal revenge by Mr. Erdman against me because in representing Mr. Victor, I unsuccessfully requested that a court refer Mr. Erdman’s potential theft of Mr. Victor’s electronic files to the New York County District Attorney’s Office. Exhibit 2 hereto at 14:14-24.

5. To the extent Mr. Erdman is lobbying for a harsher sentence against Mr. Victor, it is clear that he is in the wrong forum.

6. I have reviewed the various allegations made against me personally by Mr. Erdman on information and belief. On or about February 22, 2016, the Patton Boggs firm was retained to represent Adam Victor in dealings with the FEC. I was not the attorney of record with the FEC during the time that documents were submitted to the FEC. I can say categorically that I never prepared any document that to my knowledge was false in any way and submitted to the FEC. I can say that in my years of practice, I have never prepared any draft witness statements that I knew contained false information. I do not recall ever meeting in person with any witnesses involved in this case other than Adam Victor. I never told any witness that they would “go to jail” or anything of the sort if they did not sign a false affidavit. Indeed, in every telephonic communication that I had with potential witnesses, I advised that any statements made to the FEC would be under oath and that they must be absolutely truthful.

7. Because he has no facts to support his false allegations, Mr. Erdman seeks to support his allegations by referring to a matter I was involved in with a California Court.

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Complaint, ¶ 12 (third bullet point). See also Complaint, ¶¶ 91-97. Mr. Erdman is referring to the litigation captioned TransNational Management Systems, LLC, et al. v. Pegasus Elite Aviation, Inc., et al., case no. LC100724 (Ca. Spr. Ct., County of Los Angeles) (the “California Litigation”). I will not address the facts of that case, unless specifically requested by the Commission, since they are irrelevant and have absolutely nothing to do with the FEC. I respectfully suggest that this Commission should reject Mr. Erdman’s smear tactics.

8. Mr. Erdman also alleges that I “further aided the Victor conspiracy by submitting a declaration falsely stating that Mr. Erdman’s testimony indicated that he did not have ‘personal knowledge’ of the allegations of his complaint.” Complaint, ¶ 12 (fourth bullet point). See also Complaint, ¶¶ 69-74. This Erdman claim is demonstrably false as shown below.

9. Mr. Erdman mischaracterizes what my declaration says, and does not even annex it as one of his 34 exhibits. A copy of my declaration, dated July 18, 2016, is annexed hereto as Exhibit 1. Therein, I state that:

Mr. Erdman was asked about the basis of his knowledge for alleging Mr. Victor’s **banking information** alleged in the FEC complaint in MUR 7005. Mr. Erdman testified that he obtained information necessary to allege facts concerning Mr. Victor’s **bank accounts** secondhand from an affidavit filed by another attorney in another civil litigation pending in New York State court where Mr. Erdman is being sued by Mr. Victor. Mr. Erdman did not testify that he had personal knowledge of Mr. Victor’s **banking information**.

Ex. 1, ¶ 4 (emphasis added).

10. I did not state that Mr. Erdman “lacked personal knowledge of Mr. Victor’s illegal campaign contributions” (Complaint, ¶ 73) or lacked “‘personal knowledge’ of the allegations of his complaint” (Complaint, ¶ 12, fourth bullet point) as misleadingly stated by Mr. Erdman. Instead, my statement was limited to Mr. Erdman not having personal knowledge of Mr. Victor’s “banking information.”

11. The facts are that Mr. Erdman testified in the California Litigation that his knowledge of Mr. Victor's banking information stemmed from "the record of, I believe, Yevgeniya [Khatskevich's] sexual harassment case" and from "an affidavit filed by Andrew Cost[igan]" filed in that sexual harassment case. A copy of Mr. Erdman's deposition in the California Litigation is annexed as Exhibit 16 to his Complaint. The relevant portions of Mr. Erdman's testimony that I relied on are at Exhibit 16, 139:20-140:19.

12. Moreover, Mr. Erdman states in the Complaint that the basis for his knowledge of Mr. Victor's "check numbers" was "a February 3, 2015 affidavit filed by counsel in Adam Victor's lawsuit against [] Mr. Erdman." Complaint, ¶ 86 (citing Complaint, Ex. 20 at ¶¶ 23-25). That was the same Andrew Costigan affidavit Mr. Erdman testified was the source of his knowledge of Mr. Victor's banking information in the California Litigation.

13. Therefore, Mr. Erdman was clear that he did not have "personal knowledge" of Mr. Victor's banking information, but that knowledge was instead based on filings made in other lawsuits.

14. Finally, Mr. Erdman alleges that I "attempted to collaterally attack the Commission's authority, by commencing contempt proceedings against Mr. Erdman and his counsel.... Mr. Krakowsky sought to prospectively nullify any Commission ruling by requiring Mr. Erdman and his counsel to reimburse any fines the Commission might impose and any legal fees and costs Mr. Victor might incur in responding to Mr. Erdman's complaint. The contempt motion was an obvious attempt to coerce Mr. Erdman to abandon his private citizen complaints against Adam Victor and his conduit contributors." Complaint, ¶ 12 (eleventh bullet point).

15. The reality is that the contempt application brought against Mr. Erdman and his counsel was based upon what I believed was a clear violation of a confidentiality order in the

litigation between Mr. Victor and Mr. Erdman then pending in New York State Supreme Court, captioned Victor, et al. v. Khatskevich, et al., Index No. 158981/2014 (the “Victor vs. Erdman Litigation”). I would not be performing my job as a zealous advocate and attorney for Mr. Victor had I not made that contempt application.

16. In the Victor vs. Erdman Litigation, I learned that Mr. Erdman was in possession of thousands of Mr. Victor’s personal files. It was a disputed issue of fact as to whether Mr. Erdman was entitled to be in possession of those files. As a result, we moved for an order compelling Mr. Erdman to return those documents. In response to that motion, the Court ordered that Mr. Erdman’s counsel keep those documents confidential and be the sole repository for those documents. See Exhibit 2 hereto (transcript of March 16, 2015 hearing) at 8:9-13:26:

THE COURT: Would you agree to keep [the Confidential Documents] confidential?

MR. BRENNAN: Absolutely.

THE COURT: That was my next step.

MR. BRENNAN: These [Confidential Documents], we absolutely agree.

THE COURT: As an officer of the court you will keep these documents confidential?

MR. BRENNAN: I believe we can, yes, your Honor.

Id. at 9:10-19.

. . .

THE COURT: Is it simpler to have one clearinghouse where the [Confidential Documents] will reside? Can you be the custodian of the documents? Is it possible? I’d feel better.

MR. BRENNAN: I think it’s possible, but I don’t know what kind of effort it will take. I am not a computer expert.

Id. at 10:17-23.

THE COURT: I am not talking about Metadata.
Absent that, are you in possession of all the documents?

MR. BRENNAN: I cannot say with certainty.

THE COURT: Can you be the custodian of those documents?

MR. BRENNAN: Yes, your Honor.

Id. at 13:21-26.

17. Despite the confidentiality order, without seeking the permission of the Court that entered the confidentiality order, Mr. Erdman and his counsel provided details of Mr. Victor's check numbers to the FEC. Mr. Erdman and his counsel defended that action by stating the Court's confidentiality order does not "protect[] Victor from having his illegal activities revealed to law enforcement agencies, such as the FEC," and "[n]othing in the Court's order indicates that the documents cannot be used in legal proceedings against Adam Victor." Ex. 3, p 2. A copy of Mr. Erdman's counsel's letter to me dated March 3, 2016 is annexed as Exhibit 3 hereto.

18. Since the campaign contributions Mr. Erdman complained of were all "publicly available," as Mr. Erdman's counsel stated (Exhibit 3, p. 1), I believed it was malicious for Mr. Erdman and his counsel to potentially violate the confidentiality order by providing to the FEC Mr. Victor's private banking information (specifically check numbers). A copy of the brief submitted in support of that application for contempt is annexed to Mr. Erdman's Complaint as Exhibit 18.

19. The Court ended up denying that application for contempt. A transcript of that proceeding is annexed as Exhibit 21 to the Complaint. Neither Mr. Erdman, his counsel, nor the

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Court claimed that I had done anything unlawful at the time, and opposing counsel even stated "I have great regard for Mr. Krakowsky" during the hearing. Complaint, Ex. 21 at 12:3-6.

20. I have committed no violation of any laws and there is no basis in fact for Mr. Erdman's unsubstantiated claims against me. Therefore, I respectfully request that the Complaint against me be dismissed, and no action be taken against me.

I declare, verify and state under penalty of perjury that the foregoing is true and correct.

/s/ Joshua Krakowsky
Joshua Krakowsky

Date: March 16, 2018

EXHIBIT 1

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FEDERAL ELECTION COMMISSION

MURs 7005 & 7056

Declaration

JOSHUA KRAKOWSKY states under the penalties of perjury, pursuant to 28

U.S.C. § 1746, as true and correct, the following:

1. I am senior counsel with the law firm Davidoff Hutcher & Citron LLP, and act as litigation counsel for Adam Victor and various entities he is associated with, including TransNational Management Systems, LLC, and TransNational Systems II, LLC, and as such, I am fully familiar with the facts and circumstances described in this declaration. I submit this declaration based upon personal knowledge to submit certain evidence to the Commission to consider with respect to the above-referenced proceedings.
2. The Complainant, Tyler Erdman, was subpoenaed to testify as a non-party witness in a civil litigation pending in state court in California, and so testified on July 14, 2016. The case in which Mr. Erdman testified is captioned TransNational Management Systems, LLC et al. v. Pegasus Elite Aviation, Inc., Ca. Spr. Ct., L.A. County, N.W. Dist., Case No. LC100724.
3. The California litigation is unrelated to Federal Election Commission ("the "FEC") complaints filed by Mr. Erdman.
4. Nevertheless, when being examined by Mr. Victor's adversary's counsel, Mr. Erdman was asked about the basis of his knowledge for alleging Mr. Victor's banking information alleged in the FEC complaint in MUR 7005. Mr. Erdman testified that he obtained information necessary to allege facts concerning Mr. Victor's bank accounts secondhand from an affidavit filed by another attorney in another civil litigation pending in New York State court where Mr. Erdman is being sued by Mr. Victor. Mr. Erdman did not testify that he had personal knowledge of Mr. Victor's banking information.
5. Since the deposition just occurred last week, we do not yet have a copy of the transcript. I will supplement this declaration with the relevant excerpt from Mr. Erdman's deposition as soon as I receive a copy of the deposition transcript.

I declare, verify and state under penalty of perjury that the foregoing is true and correct.

/s/ Joshua Krakowsky

Joshua Krakowsky

Date: July 18, 2016

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EXHIBIT 2

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 17

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ADAM VICTOR, TRANSGAS ENERGY SYSTEMS CORPORATION,
TRANSGAS DEVELOPMENT SYSTEMS LLC, GAS ALTERNATIVE
SYSTEMS, INC., PROJECT ORANGE ASSOCIATES LLC, GAS
ORANGE DEVELOPMENT, INC., TRANSGAS ENERGY SYSTEMS
LLC and TRANSNATIONAL ENERGY LLC,

Plaintiffs,

-against-

Index No. 158981/14

YEVGENIYA KHATSKEVICH and TYLER ERDMAN,

Defendants.

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60 Centre Street
New York, New York
March 16, 2015

B E F O R E:

HONORABLE SHLOMO HAGLER,

Justice

A P P E A R A N C E S:

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Diane Kavanaugh, RPR
Senior Court Reporter

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Proceedings

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THE COURT: Good morning. Welcome back again.
I actually want to deal with this in the
reverse order, believe it or not.

We have two motions, sequence number 2, a
motion to dismiss and/or strike various causes of
action. And then I have a partial summary judgment on
the replevin cause of action. I want to deal with the
easier one first, the partial summary judgment.

I don't even really need argument on it. It's
quite simple. As far as I know, the first motion was a
3211 motion prior to -- a pre-answer motion to dismiss;
is that correct?

MR. BRENNAN: Correct.

THE COURT: You can't have summary judgment
until the issue is joined, until an answer is interposed
in this action. So how can you have relief for summary
judgment without an answer being interposed?

MR. KRAKOWSKY: Good morning, your Honor. Josh
Krakowsky. You are absolutely correct. The Court does
have discretion under 3211(c) to treat a motion to
dismiss.

THE COURT: I choose not to do so. Your
motion is denied.

MR. KRAKOWSKY: Fine.

There is also, under an Article 71, we moved

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2 for provisional remedy to turn over the documents that
3 were stolen.

4 THE COURT: Let me look. One second. We will
5 deal with the second prong of the motion now.

6 MR. KRAKOWSKY: There are certain items that
7 CPLR 7102(c) enumerates in order to achieve a
8 provisional remedy seizure. The affidavit of Adam
9 Victor, we pled each one of those factors in that the
10 Plaintiff, Plaintiffs are entitled to their own
11 confidential financial business records. There is no
12 dispute that those records are being held by the
13 Defendants. We have commenced an action to recover the
14 chattel. We have alleged what the value of the chattel
15 are, which is not controverted by the Defendants.

16 We are not seeking to get the sheriff involved
17 because there is an order from the Court saying that
18 counsel for the Defendants will keep all of the
19 information in their possession. There is no -- as of
20 now, we don't expect the sheriff to break into an
21 attorney's office.

22 There is no known defense other than the
23 Defendants say this is really a request for discovery
24 that will come in due course.

25 We shouldn't have to wait that long because we
26 have a confidentiality agreement with various business

Proceedings

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2 partners. We want to know the scope of the breach. We
3 don't even know what they stole yet. All they have
4 given us was some Medidata on not all of the documents
5 they stole, some.

6 All we are asking for is a provisional seizure,
7 and/or directing the Defendants to give back all of the
8 documents that they took from us.

9 The only real defense they have raised is that
10 they say the documents are relevant to their claims of
11 sexual harassment. If the documents are relevant to
12 their claim of sexual harassment, they can keep a copy
13 of whatever they think is relevant. But to steal a
14 business' entire records, all their business records,
15 banking records, tax records, what does this have to do
16 with sexual harassment? They took everything. They
17 took over 2500 records from our computer at least. All
18 we are asking is there is an order asking them to return
19 the records and keep whatever is relevant to their claim
20 of sexual harassment.

21 THE COURT: Before we hear opposition, I have
22 a few questions. Normally I deal with provisional
23 remedy when you have artwork that was being threatened
24 to be taken out of the country and you want to make sure
25 it's not outside the Court's jurisdiction, a piece of
26 property, movable property, a car that is in possession.

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2 and they are foreclosing on it. And then you put up a
3 bond during the period of time. I have never seen a
4 provisional remedy for documents before.

5 Is there any case law that backs up your
6 position that Article 71 of the CPLR applies to
7 documents?

8 MR. KRAKOWSKY: Marvel Entertainment Group,
9 169 A.D.2d 473, it is a First Department case from 1991,
10 granting summary judgment on a replevin claim to
11 research materials.

12 THE COURT: I didn't say that. That's a
13 replevin. I have never seen a seizure of documents
14 before. I guess it is similar. I just never had a
15 case. I never saw a case where the Court authorized the
16 provisional remedy under Article 71 dealing with
17 documents rather than personal property, tangible
18 property, physical property. I guess a document could
19 be physical property. That was the qualm that I had
20 when I read your motion. And had you found any cases
21 dealing with provisional remedy for the order of a
22 seizure for documents?

23 MR. KRAKOWSKY: I have not, your Honor. But I
24 also never found one for animals. I mean, there is no
25 reason that the statute can't apply to property which
26 includes documents.

Proceedings

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2 THE COURT: I am not saying it does or does
3 not. I am just curious if you did that research and did
4 you come across any case that supports the proposition
5 that you seek in this motion?

6 MR. KRAKOWSKY: I can't say that none exists,
7 but I can say that I didn't cite any in my papers.

8 THE COURT: Opposition.

9 MR. BRENNAN: I would like to point out a few
10 things. One, Mr. Krakowsky pointed out that Plaintiff
11 gets to possess his own documents.

12 THE COURT: I couldn't hear you.

13 MR. BRENNAN: The Plaintiff is allowed to
14 possess his own documents. There's no doubt he does.
15 He's got them. He's got copies of them. My client at
16 best took copies of their documents.

17 THE COURT: Let me make this clear.

18 This is actually a point that will be raised in
19 the motion to dismiss. I am familiar with the facts.

20 My question is, are you asserting by
21 implication, I don't want implication, that your client
22 did not delete any of the documents that were in the
23 electronic form?

24 MR. BRENNAN: Yes, your Honor, that's what we
25 are saying.

26 THE COURT: Continue.

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MR. BRENNAN: They have to post a bond on this. They have to put a value on it. They said they are worth --

THE COURT: They said \$25,000.

MR. BRENNAN: No. They said we could lose hundreds of millions.

THE COURT: I think they said the value was at least \$25,000.

MR. BRENNAN: At least.

THE COURT: There is no requirement under the law that you have to give the exact amount. When you post a bond, it is an estimate. Later on there will be damages that will accrue if there is a trial.

MR. BRENNAN: I am not arguing with you to be precise to the penny. What I am saying is they said it's worth at least \$25,000. If these get out we could lose hundreds of millions of dollars. Well, if that kind of range is in play, I don't know how you set a bond. It is impossible. Unless you want to set it at \$500 million, something like that.

The other thing is, if these documents potentially could cause that kind of loss to a business, by the way, Mr. Krakowsky well overstates that these are all the documents relating to his business. They are not even a tiny fraction of all the documents. But,

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2 nonetheless, if that kind of value range is in play, how
3 come we haven't seen one description of one single
4 document in this case? We haven't even seen the
5 privilege law style description you might give a
6 document, that it was a trade secret or nothing. Not
7 one document has been identified. On that basis alone,
8 your Honor, this motion should be denied.

9 THE COURT: Let me ask you one question with
10 regard to this. I know there was a stipulation that the
11 parties entered into when there was an order to show
12 cause that was brought previously. Did that stipulation
13 provide for confidentiality?

14 MR. BRENNAN: It provided, your Honor, that our
15 client, my client, was not permitted to use these
16 documents commercially, and she hasn't.

17 THE COURT: She was not able to use the
18 documents what?

19 MR. BRENNAN: Commercially. She couldn't sell
20 them, put them on the market.

21 THE COURT: But did it have a confidentiality
22 agreement? Can you go to the press or can you leak it
23 out there without any competing, let's say?

24 MR. BRENNAN: There was no confidentiality
25 provision specifically in the stip, your Honor.
26 However, given that, my client has no interest in going

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2 to the press with these documents. These documents
3 would be worthless to the press. Nobody wants to read
4 about it.

5 THE COURT: That's besides the point.

6 Let's say you want to put it on the Internet,
7 anyone who wants it can have it.

8 MR. BRENNAN: I suppose we could. We have no
9 intention of doing so.

10 THE COURT: Would you agree to keep it
11 confidential?

12 MR. BRENNAN: Absolutely.

13 THE COURT: That was my next step.

14 MR. BRENNAN: These documents, we absolutely
15 agree.

16 THE COURT: As an officer of the court you will
17 keep these documents confidential?

18 MR. BRENNAN: I believe we can, yes, your
19 Honor.

20 THE COURT: And who has these documents?

21 MR. BRENNAN: They would be split up among
22 several people, myself, Mr. Costigan, Mr. Krakowsky
23 probably has them.

24 THE COURT: I am asking what is in your
25 possession? I don't need to know what is in Plaintiff's
26 counsel's possession.

Proceedings

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2 MR. BRENNAN: I believe some would be in
3 Miss Khatskevich's possession or Mr. Erdman, some, but I
4 am not sure what fraction.

5 THE COURT: Counsel, last word.

6 MR. KRAKOWSKY: Your Honor, I'm fine taking
7 counsel's representation, I trust them, they are not
8 going to leak this on the Internet, but I don't trust
9 their clients.

10 I would like to get a sworn statement from
11 their clients that they have not used any of the stolen
12 documents for commercial purposes and have not leaked
13 them to anyone. If I get that, I'm satisfied.

14 MR. BRENNAN: Mr. Krakowsky has a stipulation
15 that Miss Khatskevich will not use them for commercial
16 purposes. I don't know what is better than that.

17 THE COURT: Is it simpler to have one
18 clearinghouse where the documents will reside? Can you
19 be the custodian of the documents? Is it possible?
20 I'd feel better.

21 MR. BRENNAN: I think it's possible, but I
22 don't know what kind of effort it will take. I am not a
23 computer expert.

24 THE COURT: Me too.

25 MR. BRENNAN: And my understanding is that the
26 documents, if you access a document, you are making

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2 another document that says you accessed the documents.
3 Copies tend to generate themselves. I don't know that
4 it's possible to get every single thing in one place.

5 THE COURT: Whatever you can do. Can you be
6 the clearinghouse or the custodian of those documents?
7 I thought that was the stipulation, you would be
8 holding-- I know, for instance, the flash drives.

9 MR. BRENNAN: Correct.

10 THE COURT: There were, if I remember
11 correctly, there were six or eight flash drives at issue
12 and a hard drive. I believe your client put in an
13 affidavit stating that five are in your possession; is
14 that correct?

15 MR. BRENNAN: Five are in counsel's possession.

16 THE COURT: That's your possession. And the
17 sixth one, I don't recall where that is. I recall the
18 sixth one being someplace. Do you recall?

19 MR. KRAKOWSKY: They only conceded they had
20 five.

21 THE COURT: I thought there was a sixth one
22 they conceded as well.

23 MR. KRAKOWSKY: Not that I am aware of, Judge.

24 THE COURT: There are only five?

25 MR. BRENNAN: I think.

26 MR. KRAKOWSKY: I am impressed with your

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memory, your Honor.

THE COURT: My recollection is there was one more, oh, one they could not find, I believe. I think you have five and there was a sixth one, if I remember correctly. I read it over the weekend.

MR. BRENNAN: That could not be found. I believe that's correct.

THE COURT: And that's still not found?

MR. BRENNAN: No.

THE COURT: So only five exist at this juncture?

MR. BRENNAN: Yes.

THE COURT: Where else would the documents be? Aren't they on those flash drives?

MR. BRENNAN: If you plug the flash drive in your computer to look at the document, your computer now has a record of that document.

THE COURT: I am not asking -- you are talking about Medidata.

MR. BRENNAN: That's how a computer, as I understand it, reads what's on the thumb drive.

THE COURT: Only if you copy it from the flash drive to your computer is there a hard copy that's maintained on your drive. It may not be in the Medidata, I agree with that. She couldn't figure it out

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2 herself anyhow.

3 MR. BRENNAN: No.

4 THE COURT: I am not so concerned about the
5 Medidata. I'm concerned with the flash drives.

6 MR. BRENNAN: That's the primary location of
7 all the documents.

8 MR. KRAKOWSKY: Mr. Brennan just conceded that
9 the documents were in possession of not only counsel but
10 also Miss Khatskevich and her boyfriend, Mr. Erdman, who
11 is the IT expert, who used to be our computer guy.

12 THE COURT: I didn't hear that. You just made
13 that up?

14 MR. KRAKOWSKY: No.

15 MR. BRENNAN: I said counsel has most of these
16 documents, if not all of them. Some of the documents
17 may still reside with Mr. Erdman and Miss Khatskevich.
18 I don't know what proportion. And it's because
19 computers make copies of what you look at on flash
20 drives.

21 THE COURT: I am not talking about Medidata.
22 Absent that, are you in possession of all the documents?

23 MR. BRENNAN: I cannot say with certainty.

24 THE COURT: Can you be the custodian of those
25 documents?

26 MR. BRENNAN: Yes, your Honor.

CONFIDENTIAL

Proceedings

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2 MR. KRAKOWSKY: I would like to get a
3 representation from the actual parties they have not
4 done anything improper with the documents they stole.

5 MR. BRENNAN: I will represent that right now
6 on the record.

7 THE COURT: Given the representation on the
8 record, I believe the application pursuant to Article 71
9 of the CPLR is moot. There is no necessity for a
10 provisional order of seizure. It's being held by
11 counsel. I trust counsel will maintain it and keep it
12 confidential. And, therefore, this Court is denying
13 your application as moot.

14 MR. KRAKOWSKY: What about the portion of our
15 application to refer this to the district attorney?

16 THE COURT: The only time this Court is
17 required to get the district attorney is if a crime
18 occurs in front of the Court. Other than that, this
19 Court chooses not to get involved in criminal matters.
20 If you wish to make a complaint, you may do so. Do not
21 involve the Court. There is no necessity for this Court
22 to get involved. I am denying that application.

23 MR. BRENNAN: Thank you.

24 MR. KRAKOWSKY: Thank you, your Honor.

25 THE COURT: Give me one minute.

26 We worked backwards. Now let's go to sequence

Proceedings

1
2, motion to dismiss.

3 Counsel, let's deal with them in the order that
4 you had them in your papers. Let's deal with unfair
5 competition first. Rather than going through all of
6 your arguments, I would rather stop at the issue.

7 Let's say unfair competition is one of the
8 causes of action. I want to hear opposition. I don't
9 want to go back and forth. I want one issue resolved
10 and then go to the second. It works better.

11 Continue.

12 MR. BRENNAN: Thank you, your Honor.

13 On the unfair competition, we move to dismiss.
14 The standard is well known. The Plaintiffs have to
15 plead something more than just a recitation of the
16 elements of the causes of action.

17 In this case they have failed to prove to
18 unfair -- or to plead, excuse me, unfair competition,
19 because they haven't pled any competition.

20 We bring that up in our opening papers. Their
21 response to the opposition is paragraph 25 of our
22 complaint, which states, "The Defendants are engaged in
23 a form of unfair competition." That's sufficient to
24 plead competition.

25 It requires more. There has to be some facts
26 to support -- that is just -- that's the title of it.

Proceedings

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2 They repeated the title of the claim and they claim
3 that's stating unfair competition. There are no facts.
4 There is not one fact in this complaint suggesting that
5 Miss Khatskevich or Mr. Erdman are in any way
6 competition with Mr. Victor. A couple of points on
7 that.

8 If their style of pleading is, okay, if just
9 paragraph 25 is okay, we can all start slapping captions
10 on page one, signature boxes on the last page, throw in
11 a couple of jurisdictional paragraphs, and then say, oh,
12 by the way, the Defendant breached the contract and
13 that's going to be a sufficient complaint. It's not.

14 Discovery can't save this. You don't go into
15 discovery to get the facts that make up the claim. You
16 go into discovery to bolster the facts you have already
17 pled.

18 This thing can't be saved. You can't save it
19 by looking at other allegations in the complaint saying
20 if she ever decided to go into competition or if this
21 information ever got out we would be in real trouble
22 commercially. Nobody has done that yet. They haven't
23 alleged we have done that yet.

24 A big point to take away, this will come back
25 in all three of these related claims, Adam Victor, you
26 can't compete with him because his companies are a sham.

Proceedings

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2 This is an elaborate strongman routine set up to augment
3 his aura as a big business dealer and to also help him
4 procure women.

5 This whole corporate setup is for him to
6 further his sexual harassment schemes. That's what it
7 is. And they may say no. But this is not unfair
8 competition at this stage of the game, your Honor. They
9 have to do more.

10 THE COURT: Counsel, opposition.

11 MR. KRAKOWSKY: I certainly hope that counsel
12 is telling the truth, they haven't competed and haven't
13 sold our confidential documents to anyone. If that's
14 the case, he is right, we have no claim.

15 But at this point, the motion to dismiss stage,
16 I don't think what counsel is saying is sufficient to
17 win a motion. He's basically saying take my word for
18 it, I never did anything.

19 MR. BRENNAN: If I may.

20 THE COURT: Yes.

21 Did you finish?

22 MR. KRAKOWSKY: Yes.

23 MR. BRENNAN: We don't have to do anything at
24 this stage. They have to plead their competition.
25 Mr. Krakowsky just acknowledged without that pleading,
26 without that allegation, there is no claim.

Proceedings

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2 THE COURT: It's actually more than that. You
3 actually missed a couple of words. It's more than just
4 pleading unfair competition. You have to plead unfair
5 competition for commercial benefit. It's not pled.
6 There has to be a benefit. Not unfair competition.

7 Your motion is granted to the extent dismissing
8 without prejudice.

9 If you believe and find out that there has been
10 some unfair competition for commercial benefit, then you
11 can reinstate the complaint. It would accrue from the
12 time that it occurred. It didn't accrue yet.

13 Let's move on.

14 MR. BRENNAN: Conversion. There are two types
15 of property alleged to be converted here. The property
16 is the electronic information, the documents we have
17 been discussing. The second category is a computer and
18 an I Phone.

19 As to the documents, all they have alleged is
20 copying the documents. That's all their complaint
21 lists. We have cited cases in our briefs, our opening
22 and reply, copies is not enough as a matter of law. It
23 just doesn't cut it.

24 On that basis alone, with respect to the
25 electronic information, as it is called, it should be
26 dismissed. As to the phone and the computer, we are

Proceedings

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2 willing to dismiss that conversion claim against
3 Mr. Erdman, not Miss Khatskevich.

4 Miss Khatskevich put in an affidavit saying she
5 gave the computer back to Mr. Erdman sometime in 2013,
6 and that Mr. Victor allowed her to use the phone while
7 she was in America and said she could use it.

8 THE COURT: Are you going to moot this out by
9 giving back the phone?

10 MR. BRENNAN: I don't believe we would, your
11 Honor. I think that's discoverable information. But in
12 any event --

13 THE COURT: You know you can download the
14 information from the phone and then give back the phone?

15 MR. BRENNAN: Yes.

16 THE COURT: My daughter can do it for you if
17 you want.

18 MR. BRENNAN: I understand completely, your
19 Honor. I think the history of this case has shown that
20 will just cause more motion practice.

21 THE COURT: Fine. Keep the conversion as to
22 the Defendant.

23 MR. BRENNAN: In any event, there is no
24 mention, complaint, affidavits, otherwise, their
25 opposition, as to how Mr. Erdman might even possibly
26 have it. Nothing. They don't allege he has them. They

Proceedings

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2 don't say he took it from Miss Khatskevich, nothing.
3 There is not one word implicating him in the conversion
4 of these physical items. Therefore, the conversion
5 claim against him as to those two items should be
6 dismissed.

7 THE COURT: Opposition.

8 MR. KRAKOWSKY: Mr. Brennan is right, if all
9 they did was copy documents, that's not conversion. We
10 conceded that. We don't know if they copied them.

11 THE COURT: Are you withdrawing your
12 conversion claim as to the copying of documents?

13 MR. KRAKOWSKY: To the extent they are copied,
14 yes. I don't know that's the case. That's what we said
15 in our opposition. If all they did is copy, there's no
16 claim. But what they did was they took over 2500
17 documents. I don't know if they just copied them on the
18 flash drives or if they removed them from the computer.
19 It's two different things you can do.

20 I don't trust them that they say all we did was
21 copy them. They could have removed them. I don't know.
22 I think at this stage discovery is warranted to
23 determine what documents, if any, were actually removed
24 from the hard drives.

25 As to the computer, Miss Khatskevich says she
26 returned it. We never received it. We think

Proceedings

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2 Miss Khatskevich or Mr. Erdman has it. That's what we
3 pled. One of them has the computer. This is a fact
4 issue.

5 THE COURT: Let me stop you. You are saying
6 you did not receive back the Mac laptop?

7 MR. KRAKOWSKY: Right.

8 THE COURT: As of this date it is still not in
9 your possession?

10 MR. KRAKOWSKY: Correct.

11 THE COURT: You are saying you never received
12 it back?

13 MR. KRAKOWSKY: Correct.

14 THE COURT: Let me ask you a question.

15 MR. KRAKOWSKY: Sure.

16 THE COURT: I actually read the case law you
17 both cited. You did a good job in citing the applicable
18 law. I didn't really have to go beyond the papers in
19 this case, like in other cases that I have.

20 The case law is clear that if it's mere
21 copying, then that does not give rise to conversion.
22 However, if it was removed from the Plaintiff's
23 possession, deleted, and then saved for yourself, that
24 would be a conversion.

25 MR. BRENNAN: Your Honor, I would agree with
26 you. The problem here is it is not what happened here

Proceedings

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that's at issue.

THE COURT: It is a motion to dismiss.

MR. BRENNAN: It's what they have pled.

THE COURT: They pled you stole it.

MR. BRENNAN: No. They pled that we copied it and extracted it. Extracting is plugging in a zip drive, copying it, and taking the zip drive with you. We haven't removed the documents. If they think we have, they can go hire their computer experts and come up with a claim by searching their own computer system and comparing it to the lists of Medidata we have given them pursuant to the stipulation we have. They can do that.

If they come up with a claim that we took a document and deprived them of it, of their possession, we didn't just copy it, bring a claim for conversion. But until that day, it shouldn't be.

THE COURT: Let's deal with the Mac laptop.

Counsel states that one of your Defendants have the laptop. Why isn't that enough to survive the motion to dismiss?

MR. BRENNAN: No. Counsel stated, if I can respectfully disagree, that one of them may have it. We don't even know which one. I may have it. The court officer may have it.

Proceedings

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2 THE COURT: I have to take that as true in the
3 pleading. It is a 3211 motion.

4 MR. BRENNAN: One of them may.

5 THE COURT: Yes.

6 MR. BRENNAN: Saying may doesn't cut it. You
7 have to say they have it. They can't say they have it
8 because they did get it back. I would suggest
9 Mr. Victor check with maybe some other people who worked
10 in his office.

11 THE COURT: Let me just deal with the copying
12 versus maintaining. Does your client state -- strike
13 that. Let's read your complaint. The motion to dismiss
14 is based upon the complaint itself.

15 MR. BRENNAN: Can I raise one more point? We
16 are not moving to dismiss the conversion claim against
17 Miss Khatskevich for the computer.

18 THE COURT: I know that.

19 MR. BRENNAN: Okay.

20 THE COURT: I am not dealing with the
21 computer. I am dealing with the electronic information.
22 Then I will deal with the laptop with regard to
23 Mr. Erdman. I am doing it in a hopefully sequential
24 order so I can rule properly. I don't want to deal with
25 two things at once. One issue at a time. That's why I
26 broke it up. It is too complicated to deal with these

Proceedings

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2 issues in a haphazard manner. Let's deal with the
3 first, electronic information.

4 In the complaint it says Plaintiffs are the
5 owners of and have the legal right to sole possession of
6 the electronic information stolen by the Defendants.
7 Paragraph 29. I didn't read the whole thing. I only
8 dealt with the electronic information. 30, Defendants
9 intentionally refused to return the stolen electronic
10 information.

11 I want to look back at the facts.

12 MR. KRAKOWSKY: Paragraph 14, your Honor.

13 THE COURT: Paragraph 14, that forensic
14 examination revealed that either Khatskevich or Erdman
15 or both of them extracted information from Khatskevich's
16 work computer to an external device, usually a flash
17 drive, at least 18 times, and three times in the last
18 four days Khatskevich provided services.

19 14 means what to you? Does that mean -- it
20 says--

21 MR. KRAKOWSKY: Judge, to me 14 says --

22 THE COURT: Extracted.. What does that mean?

23 MR. KRAKOWSKY: Extracted means removed. To
24 me-- I looked it up on my phone. Extract, move or take
25 out especially by effort or force. That's the
26 dictionary definition of extraction.

Proceedings

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2 MR. BRENNAN: Your Honor, if I may. Let's also
3 not forget Miss Khatskevich worked for Mr. Victor and
4 his companies for about a year. Mr. Erdman, during the
5 period noted in paragraph 14, worked as an IT specialist
6 at Mr. Victor's company and with Mr. Victor.

7 Part of their job was to plug thumb drives into
8 computers, copy things off, and move them elsewhere. If
9 Mr. Erdman didn't put external devices on computers at
10 Mr. Victor's offices, he would not be doing the work he
11 was hired for.

12 THE COURT: What I am going to do is I am
13 going to grant the motion to dismiss without prejudice
14 to refile the complaint. I don't like the word extract.

15 The case law is clear that if it's mere copying
16 of the electronic information, then that would not be
17 sufficient to survive a motion to dismiss a conversion
18 claim. It would fail to state a cause of action.

19 However, if there is an allegation in the
20 complaint which states that it was taken and removed and
21 now it's in the inclusive possession of the Defendants,
22 that may state the cause of action. If you can do so,
23 then you can refile.

24 Right now I am not sure what that word extract
25 means. The case law is very clear that mere copying is
26 insufficient. It must be an exclusion of the proper

Proceedings

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2 ownership of those documents for it to state a cause of
3 action.

4 It does not state a cause of action at this
5 juncture. You have 30 days to replead, if you can
6 replead, if those facts give rise to those
7 circumstances.

8 MR. KRAKOWSKY: Just 30 days? If we discovered
9 in the course of discovery --

10 THE COURT: Then you will move to amend the
11 complaint. Right now it is dismissed unless you do it
12 within 30 days. If you find throughout the course of
13 discovery, move to amend.

14 MR. KRAKOWSKY: That's fine, your Honor. Thank
15 you.

16 THE COURT: Let's move on.

17 MR. BRENNAN: Breach of fiduciary duty as to
18 Miss Khatskevich --

19 THE COURT: I apologize. I didn't deal with
20 the laptop.

21 MR. BRENNAN: Sure.

22 THE COURT: I apologize. The laptop.

23 Right now there is an allegation that
24 Mr. Erdman has the laptop. I will allow that to
25 survive. I have nothing -- there is no conclusive
26 evidence that Mr. Erdman doesn't have it. Here it says

Proceedings

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2 he owns it. Strike that. Here the complaint says the
3 Plaintiffs are the owners of the laptop and that
4 Defendants refused to return the laptop. He has it. I
5 think that's enough to survive a motion for dismissal,
6 not summary judgment, with regard to the laptop. And is
7 there an allegation that the I Phone is in possession of
8 Mr. Erdman?

9 MR. KRAKOWSKY: Miss Khatskevich --

10 THE COURT: Counsel is very clear that they
11 are not seeking to move to dismiss your conversion claim
12 as to Miss Khatskevich with regard to the Mac laptop and
13 I Phone.

14 I am asking only as to Mr. Erdman, is there an
15 allegation that the I Phone is in the possession of
16 Mr. Erdman?

17 MR. KRAKOWSKY: No.

18 THE COURT: That's dismissed as to Mr. Erdman.
19 Let's move on.

20 MR. BRENNAN: Breach of fiduciary duty as
21 against Miss Khatskevich and aiding and abetting as
22 breach against Mr. Erdman.

23 There are eight Plaintiffs in this case. Seven
24 of them don't even allege that they employed
25 Miss Khatskevich at any point in time. Seven of them
26 admit to saying they never employed her. Therefore,

Proceedings

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2 there is no basis. She doesn't owe them any fiduciary
3 duty.

4 There is no basis pled in this complaint as to
5 those seven Defendants -- or Plaintiffs, excuse me. She
6 was an intern from January until October 1st of 2013.
7 Then October 1st to October 18th, she was an employee
8 then. And they don't plead anything about how did her
9 duties change, how did her pay change, what were the new
10 responsibilities as an employee, what was the basis for
11 placing Mr. Victor's trust in this woman after October
12 18th or October 1st if they are saying such terrible
13 things about her now? What was the basis at that
14 point? They don't plead that and they sure as heck
15 don't plead with particularity as they have to under
16 3016(b).

17 The complaint as to breach of fiduciary duty
18 should be dismissed on that basis alone. They have --
19 one way to look at what is a kind of mush this is on
20 fiduciary duty, all eight of these Plaintiffs are
21 claiming or will apparently claim per their opposition
22 memorandum they are going to go after her salary that
23 they paid her, which, by the way, was zero, but, anyway,
24 they are going to go after her for a salary she earned
25 under the faithless employee doctrine.

26 Well, how could seven of them who didn't employ

Proceedings

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2 her and one who didn't pay her get any money from her?
3 It's the ultimate example of the ineffectual way --

4 THE COURT: Let me stop you. I like the first
5 one the best so far. Let me stop you. Let me turn to
6 opposition. I am reading the complaint now. It says
7 that only Adam Victor employed the Defendant
8 Khatskevich.

9 And with regard to the other Plaintiffs, it
10 just says that those Plaintiff companies are companies
11 that are owned by Adam Victor. Where does it say that
12 Plaintiff employed the Defendant Khatskevich in your
13 complaint?

14 MR. KRAKOWSKY: Judge, they never did.

15 THE COURT: How can it be breach of fiduciary
16 duty if they are not employed?

17 MR. KRAKOWSKY: Because--

18 THE COURT: You don't even claim it.

19 MR. KRAKOWSKY: Here is why, Judge. These
20 claims really should be counterclaims in the main
21 action. They were asserted --

22 THE COURT: I don't care about the other
23 action, quite frankly. You have not pled they are
24 employees.

25 MR. KRAKOWSKY: That's right. But in the --

26 THE COURT: It can't be a breach of fiduciary

Proceedings

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2 duty unless you plead it. You can't have it both ways.
3 Either they are employees or -- strike that. Either
4 those companies employed the Defendant Khatskevich or
5 not.

6 I know what the allegations are in the related
7 action. Let's call it that. I have been intimately
8 involved with that. Pardon the pun. There is no
9 judicial estoppel at this juncture. You still have to
10 plead it. If there is no pleading, then it doesn't
11 state a cause of action.

12 MR. KRAKOWSKY: We moved to dismiss the causes
13 of action the Plaintiff asserted in a related action
14 because in the related action we said these other
15 entities, these same entities, did not employ the
16 Defendant.

17 THE COURT: And what did I do?

18 MR. KRAKOWSKY: And you said you can't do that
19 on a motion to dismiss. She says she was employed,
20 that's fine.

21 THE COURT: That's exactly right. A 3211
22 motion I must accept as true unless there is sufficient
23 evidence that she was not employed. That's the
24 standard. It has to be conclusive evidence.

25 MR. KRAKOWSKY: Though she is saying she is
26 employed for purposes asserting claims against my

Proceedings

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client--

THE COURT: But you didn't plead that.

MR. KRAKOWSKY: Because it's not true.

THE COURT: Then you have a breach of fiduciary duty. You can't have it both ways.

MR. KRAKOWSKY: I think Miss Khatskevich is the one having it both ways.

THE COURT: Defendant's motion to dismiss the breach of fiduciary duty with regard to the non Adam Victor -- strike that, all other companies or Defendants not Adam Victor is dismissed. You must plead that there was an employment relationship in order to have a breach of fiduciary duty. It does not state a cause of action. You may use it in a related action as maybe judicial estoppel. That's an argument for the related action. It's not an argument for here. You must plead and prove your claims in order to survive your motion to dismiss.

Let's deal with Adam Victor. How does he bear into this breach of fiduciary duty claim? I didn't hear opposition as to Adam Victor. I didn't deal with Adam Victor at all.

MR. BRENNAN: Regardless of the paragraph you read in the complaint that says about Adam Victor, I believe it's actually pled elsewhere in the complaint that the Plaintiff, TransGas Energy Systems, TGES, was

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her employer.

THE COURT: Where is that? I don't see it.

MR. KRAKOWSKY: Mr. Brennan is right.

THE COURT: I apologize. I didn't read it correctly then.

MR. KRAKOWSKY: Paragraph 1.

THE COURT: Paragraph 1?

MR. KRAKOWSKY: Yes.

THE COURT: I apologize. I am not dismissing as to TGES. You are correct. I just missed that paragraph. If you do things quickly, that's what happens.

MR. BRENNAN: As to TGES, I would say they plead this 18-day period which she was an employee, from October 1st to October 18, 2013.

There is absolutely no specificity as to what she did different than what she was doing before. There is no specificity as to any of that claim, your Honor, for breach of fiduciary duty. And because of this, it should be dismissed under 3016(b); which clearly requires the level of specificity that you have --

THE COURT: Let me understand. The reason that you allege there is a breach of fiduciary duty is as a result of the taking of the electronic equipment, electronic information, is that the basis?

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MR. KRAKOWSKY: Yes.

THE COURT: Didn't I dismiss that?

MR. BRENNAN: Yes.

THE COURT: If I dismissed that, then there is no foundation for the breach of fiduciary duty. You can replead it if you haven't.

MR. KRAKOWSKY: When did you dismiss it?

THE COURT: Didn't I dismiss the complaint as it related to the conversion of the electronic information?

MR. KRAKOWSKY: Yes.

THE COURT: If the basis for the breach of fiduciary duty rests upon the assertion or the allegation that the breach of fiduciary duty occurred as a result of that conversion, it's axiomatic that if the electronic information issue is resolved and it's dismissed, there is nothing to hold up to support the breach of fiduciary duty. Is there anything else to hold up that complaint?

MR. KRAKOWSKY: Yes.

THE COURT: What?

MR. KRAKOWSKY: It's wrongful to steal confidential information from your employer.

THE COURT: But I dismissed that portion.

MR. KRAKOWSKY: Just the conversion. I can

Proceedings

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2 very well plead the cause of action for trespass to
3 chattels, which is --

4 THE COURT: But you didn't plead it.

5 MR. KRAKOWSKY: If I plead trespass to
6 chattels --

7 THE COURT: I am dismissing your cause of
8 action breach of fiduciary duty without prejudice to
9 replead again because one goes hand in hand.

10 If the breach of fiduciary duty -- strike that.
11 If the conversion for electronic information or some
12 other, I am not allowing you to amend the complaint, to
13 add -- I had it on another case where someone said I
14 allowed them to replead, it doesn't mean you can add
15 cause of actions. It just means you can replead the one
16 that you asserted. And it was not asserted correctly.

17 As a matter of fact, the Appellate Division
18 affirmed me on that when I said you can't do that. It
19 just came out last week. It's the Pezhman decision.
20 You can ask my chambers. It is this month. I think it
21 was the 15th of March.

22 MR. BRENNAN: Your Honor, if I may, the last,
23 aiding and abetting.

24 THE COURT: If there is no breach of fiduciary
25 duty, there can't be any aiding and abetting. I am
26 dismissing that without prejudice to replead. It all

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Proceedings

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2 hinges on the conversion.

3 MR. KRAKOWSKY: Judge, I respectfully request
4 permission to move to amend my complaint to assert a
5 claim for trespass to chattels. I don't understand why
6 I can't at this point.

7 THE COURT: I don't do anything on the record.
8 You have to put it on notice. I didn't do the research.
9 You have to look at --

10 MR. KRAKOWSKY: 3025.

11 THE COURT: 3025(a) and (g). If there is no
12 answer that was interposed, you may have a right to do
13 it anyway. You have to do it within the time of the
14 motion to dismiss. You have to do the research. I am
15 not doing it orally. If you believe that the case law
16 permits you to amend, do so. If you believe it is
17 pursuant to the B section, which requires permission of
18 the Court -- are you consenting to it?

19 MR. BRENNAN: No.

20 THE COURT: Therefore, you must move
21 appropriately and put them on notice for the reasons for
22 the amendment.

23 Is there anything left?

24 MR. BRENNAN: I believe that is it.

25 THE COURT: The motion is granted as set forth
26 on the record today.

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Proceedings

Please order the record.

MR. KRAKOWSKY: Thank you.

MR. BRENNAN: Thank you.

* * * *

Certified to be a true and accurate transcript
of the stenographic minutes taken within.

Diane Kavanaugh
Diane Kavanaugh, RPR
Senior Court Reporter

10034545001

EXHIBIT 3

100444141-101

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March 3, 2016

VIA E-MAIL

Joshua Krakowsky, Esq.
Davidoff Hutcher & Citron LLP
605 Third Avenue
New York, New York 10158

Re: *Erdman v. Victor*, FEC MUR 7005
Khatskevich v. Victor, et al., Index No. 151658/2014

Dear Josh:

I refer to your February 25, 2016 letter. As you know, I represent Mr. Erdman in this matter. Accordingly, your correspondence should be directed to me, not my client. Your suggestion that you communicate directly with Mr. Erdman is improper, particularly as your own letter acknowledges that you are seeking information that would invade the attorney-client privilege and violate the work product doctrine.

Your letter makes repeated reference to "stolen" documents. No documents were stolen. Your claim to the contrary is inconsistent with your previous concession that Ms. Khatskevich was entitled under the New York City Human Rights Law to copy documents relevant to her claims as a "protected activity." You and Mr. Victor already tried and failed to solicit police and prosecutors to instigate criminal charges against Ms. Khatskevich and Mr. Erdman. You and Mr. Victor also tried and failed to convince the Court to refer the matter to the district attorney's office. The Court has already dismissed your claim that the documents were "converted." Indeed, you and Mr. Victor even failed to convince the Court that the documents should be turned over to you. Accordingly, your claim that the documents have been "stolen" is simply false.

You indicate your "confusion" about the source of the allegations in Mr. Erdman's FEC Complaint. Those sources include publicly available information as well as Mr. Erdman's first-hand

Joshua Krakowsky, Esq.

March 3, 2016

Page 2

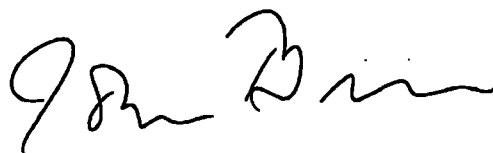
knowledge of Adam Victor's violations of U.S.C. §30122 and 11 C.F.R. §110.4(b)(1). Mr. Victor solicited Mr. Erdman to conspire with him to make illegal campaign donations. Mr. Erdman refused. As the FEC Complaint itself alleges, Mr. Erdman became aware of Mr. Victor's various criminal activities while he was employed by him. *Id.* at ¶ 5. In addition to Mr. Erdman's knowledge, sources for the FEC Complaint include publicly filed documents in the above-captioned matter, the related case, *Khatskevich v. Victor*, as well as documents available on the FEC's website. Adam Victor's illegal campaign contributions are hardly a secret. Indeed, I recall you complaining about them on several occasions when we were in court. The suggestion that any confidential information was disclosed in the FEC Complaint is false.

Adam Victor conspired with several others to make illegal political donations. It is not surprising that he is disappointed that he got caught doing so. Your letter, however, seems to imply that the Court's March 15, 2015 order protects Victor from having his illegal activities revealed to law enforcement agencies, such as the FEC. It does not. Nothing in the Court's order indicates that the documents cannot be used in legal proceedings against Adam Victor.

You and Mr. Victor have already commenced actions in New York and Delaware in retaliation for Mr. Erdman's efforts to vindicate his rights, and those of others, under the New York City Human Rights Law. I caution you and Mr. Victor to avoid additional retaliatory motion practice or other litigation.

Finally, in re-reviewing the FEC Complaint, I note that there is a typographical error in ¶30. The reference to "check number 1139" should read "check number 1439." I trust this typo did not cause you or your client any unnecessary confusion."

Very truly yours,



John T. Brennan

cc: Andrew J. Costigan
Tyler Erdman
Jeffrey S. Shapiro