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FILED
JUL 10 2019
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

| | |
|----------------------------|---|
| In the Matter of: |) Case No. SBC-19-TE-30259-YDR |
| |) |
| MICHAEL JOHN AVENATTI, |) SUPPLEMENTAL DECLARATION OF |
| No. 206929, |) GREGORY BARELA, DECLARATION OF |
| |) JOHN P. REITMAN, AND DECLARATION |
| |) OF ELI D. MORGENSTERN IN SUPPORT OF |
| |) CORRECTED APPLICATION FOR |
| |) INVOLUNTARY INACTIVE ENROLLMENT |
| |) |
| A Member of the State Bar. |) [Bus. & Prof. Code § 6007(c)(2); Rules Proc. |
| |) of the State Bar, Rule 5.225, <i>et. seq.</i>] |
| |) |
| |) Hearing Date: July 22, 2019 |
| |) |
| |) (OCTC Case No. 19-TE-16715) |

**TO THE HONORABLE YVETTE D. ROLAND, SUPERVISING HEARING
JUDGE OF THE STATE BAR COURT, RESPONDENT MICHAEL JOHN AVENATTI,
AND ELLEN ANNE PANSKY, RESPONDENT'S COUNSEL:**

The Office of Chief Trial Counsel of the State Bar of California ("State Bar"), by and through Senior Trial Counsel Eli D. Morgenstern, hereby submits, pursuant to Rules of Procedure of the State Bar of California, rule 5.230(B), the following additional, proposed evidence in support of the Corrected Application For Inactive Enrollment, which was filed

/ / /

1 against respondent Michael John Avenatti on June 5, 2019:

- 2 1. Supplemental Declaration of Gregory Barela, and Exhibit 1 attached thereto;
- 3 2. Declaration of John P. Reitman, and Exhibits 1-3 attached thereto; and
- 4 3. Declaration of Eli D. Morgenstern, and Exhibit 1 attached thereto.

5
6 Respectfully submitted,

7 THE STATE BAR OF CALIFORNIA
8 OFFICE OF CHIEF TRIAL COUNSEL

9 DATED: July 10, 2019

By: 

Eli D. Morgenstern
Senior Trial Counsel

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9 STATE BAR COURT
10 HEARING DEPARTMENT - LOS ANGELES
11

12 In the Matter of:) Case No. SBC 19-TE-30259
13 MICHAEL JOHN AVENATTI,)
14 No. 206929,) SUPPLEMENTAL DECLARATION OF
15) GREGORY BARELA
16 A Member of the State Bar.) (OCTC Case No. 19-TE-16715
17)

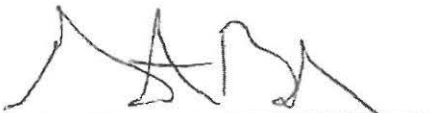
17 I, Gregory Barela, declare:

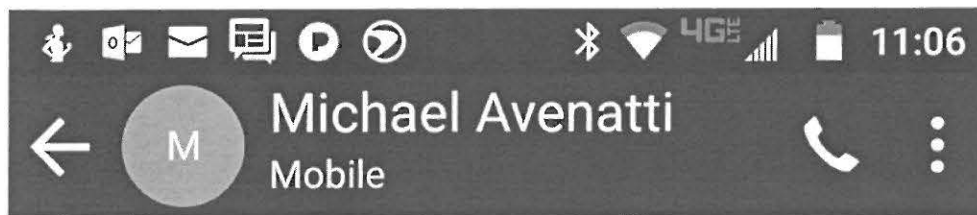
18 1. All statements made herein are true and correct and are based on my personal
19 knowledge unless indicated as based on information or belief, and as to those statements I am
20 informed and believe them to be true. If necessary, I could and would competently testify to the
21 statements made herein.

22 2. In paragraph 8, line 25 of the Declaration of Gregory Barela that I signed on May 24,
23 2019, and which I understand was attached to the Office of Chief Trial Counsel of the State
24 Bar's Corrected Application for the involuntary inactive enrollment of Michael John Avenatti
25 ("respondent"), I stated that on January 3, 2018, I requested an accounting of costs from
26 respondent, but I did not explain how I made the request. A true and correct copy of the text
27 message that I sent to respondent on January 3, 2018 requesting the accounting is attached to this

1 Supplemental Declaration as Exhibit 1.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct and that this Declaration is executed this 9th day of July, 2019, at
4 Irvine, California.

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7 Gregory Barela
8 Declarant
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12/28/17 3:41 PM

Greg - my mtg was delayed starting.
Can we make it 5? Apologies.

Yep. See you soon. Send

Thanks.

12/28/17 4:54 PM

I'm at the front door but it's locked
on the 14th floor

1/3/18 2:29 PM

Hi Michael I hope all is well. I
just wanted to follow up and see
if you had any progress on the
accounting? Thanks and talk
to you soon.

+ Type a message...



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STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

| | | |
|----------------------------|---|--------------------------------|
| In the Matter of: |) | Case No. 19-TE-30259-YDR |
| MICHAEL JOHN AVENATTI, |) | DECLARATION OF JOHN P. REITMAN |
| No. 206929, |) | |
| A Member of the State Bar. |) | OCTC Case No. 19-TE-16715 |

I, John P. Reitman, declare:

1. All statements made herein are true and correct and are based on my personal knowledge unless indicated as based on information or belief, and as to those statements after reasonable inquiry I am informed and believe them to be true. If necessary, I could and would competently testify under oath to the statements made herein.

2. I am informed by Trial Counsel with the Office of Chief Trial Counsel of the State Bar of California (the "State Bar") and based thereon believe that Michael John Avenatti ("Avenatti") is the respondent in the above-captioned disciplinary proceeding. I make this declaration in connection with that proceeding.

3. I have been a member of the State Bar since June 23, 1978. I am a limited liability partner at the law firm of Landau Gottfried & Berger LLP ("LGB"). I have represented chapter 7 and 11 trustees, creditors' committees and secured and unsecured creditors in complex

1 bankruptcy cases for more than thirty years. I also have been appointed and have acted as a
2 (non-panel) chapter 11 trustee.

3 4. On February 13, 2019, pursuant to a Joint Stipulation between judgment debtor Eagan
4 Avenatti, LLP ("EA") and Avenatti, on the one hand, and judgment creditor Jason Frank Law,
5 on the other hand, filed and the order thereon (the "EA Receivership Order") entered in *In Re*
6 *Eagan Avenatti, LLP*, Case No. 8:18-cv-01644-VAP-KES, pending in the United States District
7 Court, Central District of California (the "EA Case"), Mr. Brian Weiss ("Mr. Weiss") was
8 appointed as the Receiver of EA. Exhibit 1 to this declaration is a true and correct copy of the
9 Oath of Receiver filed by Mr. Weiss in the EA Case, to which is appended a true and correct
10 copy of the Joint Stipulation and the EA Receivership Order. On or about February 15, 2019,
11 Mr. Weiss retained LGB to represent him in his capacity as the Receiver of EA.

12 5. Pursuant to the EA Receivership Order Mr. Weiss is entitled to take possession of all
13 of EA's books and records, including all of EA's computer servers. Avenatti has on several
14 occasions stated to me that EA has six computer servers which contain all or substantially all EA
15 client files and EA business and financial records [see Joint Stipulation, EA Receivership Order,
16 ¶¶ 9, 12, 14a, l and p]. Avenatti was required to cooperate with Mr. Weiss in turning over those
17 records and computer servers and to not interfere with Mr. Weiss' activities as the Receiver [*id.*,
18 ¶ 27a, b and h and 28].

19 6. Notwithstanding his obligations as set forth in the EA Receivership Order, Avenatti
20 did not fully cooperate with Mr. Weiss. Among other things between mid-February and the end
21 of March 2019, Avenatti did not turn over EA's business and financial books, records or client
22 files or EA's computer servers to Mr. Weiss despite his and my repeated requests that Avenatti
23 do so. Those requests were made orally in telephone calls in which Mr. Weiss and I participated
24 with Avenatti and/or legal counsel retained by him and in email communications sent by me or
25 Mr. Weiss (on which I was copied) to Avenatti and/or and his counsel. Instead, Avenatti,
26 directly or through his legal counsel, represented to me and/or Mr. Weiss that he (Avenatti) was
27 working on getting Mr. Weiss a copy of documents stored on the computer servers, that he

1 (Avenatti) did not have possession of the servers because EA had sold the servers and other EA
2 personal property to a business associate (but the business associate told me that no EA computer
3 servers or other EA property had been received), and that he (Avenatti) could not access the
4 servers and did not know where the servers were located. In fact, as discussed below, I
5 subsequently learned that EA's computer servers had been moved from EA's office in Newport
6 Beach, California to a computer server maintenance and storage company called "mixinIT"
7 which also is in Orange County, California pursuant to an agreement between EA and mixinIT,
8 and that maintenance and storage costs had been paid by EA to mixinIT; EA's computer servers
9 had been at mixinIT at least since Mr. Weiss had been appointed as the Receiver, despite the fact
10 that Avenatti and/or his counsel had represented otherwise. Exhibit 2 to this declaration is a true
11 and correct copy of two of the billing invoices from mixinIT to EA and an email from EA to
12 mixinIT, which documents were provided to me by to mixinIT's legal counsel.

13 7. On April 2, 2019, I received an email from Avenatti's attorney James Bastian in
14 which Mr. Bastian states, "I have been able to get information on the location of the [EA]
15 servers." See Exhibit 3 to this declaration (described in ¶ 9 below). Shortly thereafter I received
16 a telephone call from an individual who identified herself as legal counsel for mixinIT. From
17 Mr. Bastian's email and that call, I learned that EA's six computer servers were located at
18 mixinIT's computer maintenance and storage facility in Orange County, California. The
19 attorney for mixinIT also told me that because monthly service charges had not been paid the
20 computer servers had been taken-off line but that the servers were available for turn over to Mr.
21 Weiss.

22 8. On or about April 3 or 4, 2019, I spoke with an Assistant United States Attorney
23 concerning EA's computer servers, their location and whether Mr. Weiss would agree to permit
24 the Internal Revenue Service Criminal Investigation division (the "IRS-CI") to take possession
25 of the servers and make an electronic, forensic image copy of the information stored on the
26 servers. After discussing with government representatives and Mr. Weiss terms and conditions
27 upon which Mr. Weiss might allow that to occur, Mr. Weiss agreed to allow that turn over to
28

1 take place. Accordingly, in mid-April 2019, I was told by an IRS-CI representative that the IRS-
2 CI had picked up the servers from mixinIT and was in the process of making its electronic
3 forensic copy of the contents of the servers. On April 30, 2019, the IRS-CI delivered EA's
4 computer servers and an electronic, forensic image of the servers' contents to Mr. Weiss.

5 9. Upon Mr. Weiss' receipt of the computer servers and the electronic, forensic
6 image copy of their contents, both he and I notified Avenatti and his counsel (as well as other
7 attorneys who previously worked with Avenatti on still active litigation cases) that these items
8 had been received by Mr. Weiss. Mr. Weiss and I also informed those persons that the servers
9 could not be accessed unless and until they were reactivated and that the receivership estate did
10 not have the funds or necessary facilities to do that. Accordingly, Mr. Weiss and I told Avenatti,
11 his counsel and others who wanted copies of EA documents that responsive documents, if any,
12 could be retrieved for them from the forensic copy on the following terms: (i) the person
13 requesting EA or client documents would need to reasonably identify in writing the client or
14 matter, the reason/purpose for the request and the categories of information needed for a
15 particular client, if applicable, provide written authorization from the client, and agree to pay the
16 estimated cost for the information search and retrieval in advance of the performance of that
17 work. If the estimated cost was less than the actual cost of the work, Mr. Weiss would promptly
18 return the excess deposit to the payor; if the cost of the work exceeded the deposit, the additional
19 cost would be payable prior to release of the copied information; (ii) Mr. Weiss would retain a
20 third-party forensic imaging consultant to provide an estimate of the cost to search and retrieve a
21 copy of the requested documents at the requesting party's expense or, if requested, permit a
22 qualified expert selected by the requesting party and acceptable to Mr. Weiss to make the search
23 and copy the forensic images, subject to supervision by Mr. Weiss' representative at the
24 requesting party's expense. Exhibit 3 to this declaration is a true and correct copy of two email
25 strings regarding the foregoing between me and Avenatti and his attorney, James Bastian; the
26 emails were in response to a turn over demand from Avenatti to Mr. Weiss.

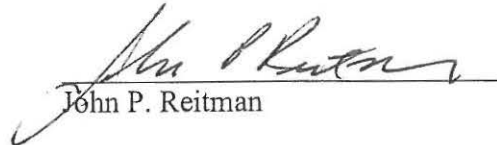
10. Additionally, Mr. Weiss and I have discussed with Avenatti, his counsel and others that the receivership estate has approximately 300-480 “banker” boxes of unlabeled and inventoried paper records of EA or its former clients at a third-party storage facility. Mr. Weiss and I have offered requesting persons access to those records subject to approval of the storage company and the availability of a Force 10 (Mr. Weiss’ accounting firm) employee to supervise the review and copying of those paper records; the cost of the supervision would be payable by the requesting party at the Force 10 employee’s customary hourly rate, and the copying service would also be at the requesting party’s expense.

11. I understand that Mr. Gregory Barela is the complainant in this disciplinary proceeding. At no time through the date of this declaration has Avenatti or any person identifying him/herself as his attorney or other representative contacted me or Mr. Weiss (with whom I have conferred) requesting that Mr. Weiss provide Avenatti with a copy of the entire file that EA has for or on behalf of Mr. Barela. Had such a request been made, Mr. Weiss would have complied on one condition: that respondent pay all the costs associated with hiring a third-party to conduct the relevant search of the electronic, forensic images of the servers.

12. To date, neither Avenatti nor anyone purporting to act on his behalf has requested that Mr. Weiss or I provide a copy of any specific EA files to Avenatti, although a former EA associate has requested access to information relating to two litigation matters (which information has been provided on the terms set forth above). The only requests for information received by Mr. Weiss or me from or for Avenatti is that Mr. Weiss (i) identify to Avenatti active clients represented by EA, (ii) give Avenatti “access to [Avenatti’s] prior email, correspondence with clients, settlement agreements, client accountings, case files, financial records, etc. . . . in order to defend [himself] in the three criminal matters pending against [him] as well as the newly filed State Bar matter” and (iii) . . . ¶ [and] provide [Avenatti with] access to ALL of the books and records and electronic files of EA in their entirety . . . today [June 4].” See Exhibit 2. Mr. Weiss’ response to these requests was to provide the names of known active clients Avenatti and

1 his legal counsel and to request that Avenatti agree to the terms set forth in ¶¶ 9 and 10 above,
2 which request has been ignored.

3 13. I declare under penalty of perjury that the foregoing is true and correct and that
4 this Declaration is executed on July 10, 2019, at Los Angeles, California.

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7 John P. Reitman
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1 JOHN P. REITMAN (State Bar No. 80579)
jreitman@lgbfirm.com
2 LANDAU GOTTFRIED & BERGER LLP
1801 Century Park East, Suite 700
3 Los Angeles, California 90067
Telephone: (310) 557-0050
4 Facsimile: (310) 557-0056

5 Attorney for Brian Weiss, Receiver

6
7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 In re

Case No. 8:18-CV-01644-VAP-KES

10 Eagan Avenatti, LLP

OATH OF RECEIVER

11 Debtor.
12

13
14 I, BRIAN WEISS, hereby accept appointment as the Receiver in the above-
15 captioned case and swear that I will faithfully perform the duties of my office and
16 observe all instructions and orders of the above-entitled Court to the best of my
17 ability.

18 The "Joint Stipulation and Order re Appointment of Receiver and Restraining
19 Order" (the "Order") appointing me provides that pursuant to the consent and
20 agreement of Judgment Debtor Eagan Avenatti, LLP and Michael Avenatti, on the
21 one hand, and Judgment Creditor Jason Frank Law, PLC, on the other hand, I am
22 not required to file the bond required by Code of Civil Procedure section 567(b). A
23 true and correct copy of the Order is attached to this oath as Exhibit 1.

24
25 Dated: February 15, 2019

26 
Brian Weiss

EXHIBIT 1

1 Scott H. Sims, State Bar No. 234148
2 Andrew D. Stolper, State Bar No. 205462
3 FRANK SIMS & STOLPER LLP
4 19800 MacArthur Boulevard, Suite 855
5 Irvine, California 92612,
6 Telephone: (949) 201-2400
7 Facsimile: (949) 201-2401
8 astolper@lawfss.com
9 ssims@lawfss.com

10 Attorneys for Judgment Creditor
11 JASON FRANK LAW, PLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 In re
15 EAGAN AVENATTI, LLP,
16 Debtor.

Case No. 8:18-CV-01644-VAP-KES

**JOINT STIPULATION AND ORDER RE
APPOINTMENT OF RECEIVER AND
RESTRAINING ORDER**

STIPULATION

This Stipulation is entered into by and between Judgment Debtor Eagan Avenatti, LLP (“EA”) and Michael Avenatti (“Avenatti”), on the one hand, and Judgment Creditor Jason Frank Law, PLC (“JFL”), on the other hand (collectively, the “Parties”).

WHEREAS, JFL has a judgment against EA in the amount of \$10,000,000.00, plus accruing interest at \$564.38 per day (since May 22, 2018) and reasonable attorney fees and costs incurred by JFL in enforcing the judgment (the “Judgment”);

WHEREAS, on February 7, 2019, this Court ordered EA and Avenatti to appear for a judgment debtor examination on February 14, 2019 at 9:30 a.m. in Courtroom 6D of this Court (Doc. 50);

WHEREAS, on February 12, 2019, JFL filed a Motion for Appointment of Receiver and Restraining Order (“Motion”) (Doc. No. 51);

WHEREAS, EA and Avenatti have stipulated and agreed to the relief requested in the Motion and have further agreed that the Magistrate Judge Karen E. Scott shall have the jurisdiction and authority to enter the attached [Proposed] Order Appointing Receiver and Issuing Restraining Order (the “Order”); and

WHEREAS, upon entry of the Order, JFL has agreed to withdraw the Motion and all pleadings and exhibits relating thereto and consent to the rescheduling of the judgment debtor exam to March 8, 2019 at 9:30 a.m. in Courtroom 6D of this Court.

ACCORDINGLY, the Parties stipulate and agree as follows:

1. The Parties, and each of them, stipulate to the terms of the Order;
2. The Parties, and each of them consent to the jurisdiction of the Magistrate Judge Karen E. Scott to enter the Order and to supervise the Receivership;
3. Upon entry of the Order, the Motion is deemed withdrawn without prejudice; and
4. Upon entry of the Order, the judgment debtor exam of EA and Avenatti is continued to March 8, 2019 at 9:30 a.m. in Courtroom 6D of this Court, located at 411 W. 4th Street, Santa Ana, California 92701.

1 IT IS SO STIPULATED

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3 Dated: February 13, 2019

FRANK SIMS & STOLPER LLP

4

5

By: /s/ Scott H. Sims

6

Scott Sims, Esq.

7

Attorneys for Judgment Creditor

Jason Frank Law, PLC

8

9 Dated: February 13, 2019

EAGAN AVENATTI, LLP

10

11

By: _____

Managing Partner

12

Judgment Debtor Eagan Avenatti, LLP

13

14

15 Dated: February 13, 2019

MICHAEL J AVENATTI

16

17

By: _____

Michael J. Avenatti

18

In his Personal Capacity

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ORDER APPOINTING RECEIVER AND ISSUING RESTRAINING ORDER

Pursuant to the Joint Stipulation between Judgment Debtor Eagan Avenatti, LLP ("EA") and Michael Avenatti ("Avenatti"), on the one hand, and Judgment Creditor Jason Frank Law, PLC ("JFL"), on the other hand (collectively, the "Parties") and for good cause shown:

IT IS HEREBY ORDERED:

1. **The Motion.** JFL's Motion for Appointment of Receiver and Restraining Order (Doc. 51) and all pleadings and exhibits related thereto are deemed withdrawn without prejudice.
2. **Judgment Debtor Exam.** The judgment debtor exam of EA and Avenatti currently scheduled for February 14, 2019 is hereby continued to March 8, 2019 at 9:30 a.m. in Courtroom 6D of this Court, located at 411 W. 4th Street, Santa Ana, California 92701.
3. **The Amount of Indebtedness.** The principal amount of EA's indebtedness to JFL under the Judgment is \$10 million, plus accruing interest at \$564.38 per day since May 22, 2018, reasonable attorney fees and costs incurred by JFL in enforcing the judgment, as well as all costs associated with the receivership (the "Total Indebtedness to JFL").
4. **Appointment of Receiver.** It is hereby ordered that Brian Weiss is appointed as Receiver of EA pending further Order of this Court.
5. **Receiver's Oath and Bond.** The Receiver shall immediately, and before performing any duties (a) execute and file a Receiver's oath; and (b) the Receiver shall not be required to file the bond required by Code of Civil Procedure section 567(b) pursuant to consent and agreement of EA and Avenatti.
6. **Receiver's Fees.** The Receiver may charge for the Receiver's services no more than \$495.00 per hour.
7. **Management Company.** The Receiver may employ Force Ten Partners, LLC ("Force 10"), where the Receiver is employed, to assist with the Receiver's duties at the Receiver's direction, including but not limited to accounting, reporting, asset

1 investigation and other tasks. The members of Force 10, other than the Receiver, shall
2 be compensated at hourly rates ranging from \$225 to \$495 per hour.

3 8. **Disclosure.** The Receiver shall immediately disclose to all parties any financial
4 relationship between the Receiver and any company hired to assist in the management
5 of the Receivership property.

6 9. **General Duties.** After qualifying, the Receiver shall have the power to take
7 possession of and manage the business of EA and its tangible and intangible property
8 with all the usual powers, rights and duties of receivers appointed by this Court or
9 otherwise defined by statute, including but not limited to the power to operate and
10 conduct EA in the ordinary course of its business and collect fees, costs and income
11 owed to EA, except that the Receiver will not be authorized to provide legal services
12 on behalf of EA's clients.

13 10. **Inventory.** Within 45 days after qualifying, the receiver shall file an inventory of all
14 property possessed under this Order. The Receiver shall file a supplemental inventory
15 of all subsequently obtained property

16 11. **Expenditures.** The Receiver shall expend money coming into his possession to
17 operate and preserve EA's business and only for the purposes authorized in this Order.
18 Unless the Court orders otherwise, the Receiver shall to the extent practical hold the
19 balance in interest-bearing accounts in accordance with California Code of Civil
20 Procedure section 569.

21 12. **Monthly Accounting of Receiver's Income, Expenses and Fees.**

22 a. The Receiver shall each month prepare and serve on the parties, but not file, an
23 accounting of the income and expenses incurred in the administration of EA,
24 including the Receiver's fees and expenses. The monthly reports shall provide
25 a narrative of the material events, a financial report and a statement of all fees
26 paid or due to the Receiver, Force 10 and any other professionals retained,
27 showing the itemized services, broken down in 1/10th hour increments. The
28 report shall state the hourly fees and any other basis for the fees.

- 1 b. The Receiver may pay the Receiver's and Management Company's own fees
2 and expenses only by the following procedures:
3 i. By serving on all parties a notice of intent to pay to which no objection
4 is served on the Receiver within 20 days of the date the notice is
5 served.
6 ii. By serving and filing a request for interim payment, which the Court
7 then approves.
8 iii. By obtaining and filing an agreement among all the parties approving
9 the payment, which the Court then approves.
10 iv. By filing the Receiver's final accounting and report, which the Court
11 then approves.
12 c. The Receiver shall not reimburse the Receiver for the Receiver's general office
13 administration expenses or overhead without Court approval. These expenses
14 include, for example, office supplies and employee payroll, benefits and taxes.

15 **12. Management.**

- 16 a. The Receiver shall operate EA and take possession of all accounts relating to
17 EA and its property.
18 b. The Receiver may hire legal counsel, accounting and tax professionals at
19 normal and customary rates to represent the Receiver in his duties, provided
20 however, legal counsel retained to pursue fraudulent and avoidable actions
21 shall be on a contingency basis.
22 c. The Receiver may do all the things, and incur the risks and obligations,
23 ordinarily done or incurred by owners, managers and operators of businesses
24 and property similar to that possessed by the Receiver, except that the Receiver
25 shall not make any capital improvements to property without prior Court
26 approval and the Receiver shall not provide legal services to EA's clients.

27 **13. Bank Accounts.**

- 28 a. The Receiver may establish accounts at any financial institution insured by an
agency of the United States government that are not parties to this proceeding and

1 shall deposit in those accounts any funds received in connection with EA's
2 business.

- 3 b. The Receiver shall have control of, and be the sole authorized signatory for all
4 accounts of EA and client trust accounts or IOLTA accounts, including all
5 accounts at any bank, title company, escrow agent, financial institution or
6 brokerage firm which has possession, custody or control of any assets or funds of
7 EA, or which maintains accounts of the Receiver, or which maintains accounts
8 where EA's employees and agents in such capacity have signatory authority,
9 including but not limited to Michael Avenatti and Judy Regnier.
- 10 c. The Receiver is authorized to open and close bank accounts, including client trust
11 accounts or IOLTA accounts. For the avoidance of doubt, no other parties are
12 permitted to open and close bank accounts in the name of EA.

13 **14. Additional Powers and Duties of the Receiver.** The Receiver shall be authorized to
14 and shall perform the following duties and functions:

- 15 a. Take possession of all past and current client engagement contracts, case files,
16 books and records, electronic files, and other documents necessary to manage
17 the Receivership Assets without limitation;
- 18 b. Provide a copy of the signed receivership order to any party the Receiver
19 deems necessary in order to direct payment to the Receiver, manage the
20 Receivership Assets, and to perform investigations;
- 21 c. Be the sole signatory to any contract of EA during the receivership;
- 22 d. The ability to investigate fraudulent transfers and avoidance actions and to
23 pursue litigation;
- 24 e. The power to sell assets upon Court approval;
- 25 f. Make payments toward the Judgment upon Court approval;
- 26 g. Make all inquiries EA might have made;
- 27 h. Bring and defend actions in his own name, as Receiver;
- 28

- i. Endorse and deposit any checks, money, negotiable instruments or commercial paper through which EA is compensated in any manner whatsoever into the Receivership account;
- j. Pay all necessary costs and expenses to operate EA in order to maximize its assets;
- k. Manage the business affairs of EA, including monitoring and approving necessary expenses needed to operate the business and accepting new business contracts;
- l. Have access to and become the “administrative user” for all of EA’s software programs, servers and website;
- m. Maintain detailed accounting records of all deposits to and all expenditures from the Receiver’s bank account until the termination of the Receivership;
- n. Disburse funds to JFL and/or EA, or any creditor of EA as ordered by this Court;
- o. Conduct investigation and discovery, as may be necessary to locate and account for all of the assets of or managed by EA, including receiving, collecting and reviewing all mail addressed to EA, wherever directed;
- p. Take such action as is necessary and appropriate to preserve and take control of and to prevent the waste, dissipation, loss of value, concealment, or disposition of any assets of or managed by EA;
- q. Enter into settlements on behalf of EA with the approval of the Court; and
- r. Hire counsel to represent EA’s interests in any application for fees and costs in any case in which EA may be entitled to reimbursement of fees and costs, including but not limited to those cases in which EA attorneys or resources were provided; and
- s. Have the sole authority regarding whether to file a petition for bankruptcy.

15. Insurance.

- a. The Receiver shall determine whether there is sufficient insurance coverage.

- b. The Receiver shall notify the insurer that the Receiver is to be named as an additional insured on each insurance policy on the property.
- c. If the Receiver determines that the property does not have sufficient insurance coverage, the Receiver shall immediately notify the parties and shall procure sufficient insurance.
- d. If the Receiver does not have sufficient funds to obtain insurance, the Receiver shall seek instructions from the Court on whether to obtain insurance and how it is to be paid for.
- e. The Receiver shall not be liable for EA's failure to carry or obtain adequate insurance.

16. **Taxpayer ID Numbers.** The Receiver may use any federal taxpayer identification numbers relating to EA and its property for any lawful purpose.

17. **Court instructions.** The Receiver and the parties may at any time apply to this Court for further instructions and order and for additional powers necessary to enable the Receiver to perform his duties properly. Nothing in this order shall be deemed a waiver of or preclude any party from requesting on notice to all other parties, modification of the order and all other parties shall be entitled to oppose such request.

18. **EA Responsible for Fees and Expenses of the Receivership.** EA shall be responsible for all fees and expenses associated with the receivership and such costs will be added to the Judgment pursuant to California Code of Civil Procedure section 685.070(a)(5).

19. **Termination of the Receivership.** The receivership shall not terminate until the Total Indebtedness to JFL is fully satisfied and/or the Court has determined the receivership shall end.

20. **Notification of Termination.** JFL shall notify the Receiver in writing within 48 hours of any event within JFL's knowledge that terminates the receivership.

21. **Receiver's Final Report and Account and Discharge.**

- 1 a. *Motion required.* Discharge of the Receiver shall require a Court order upon
2 noticed motion for approval of the Receiver's final report and account and
3 exoneration of the Receiver's bond, if any.
- 4 b. *Time.* Not later than 60 days after the receivership terminates, the Receiver
5 shall file, serve and obtain a hearing date on a motion for discharge and
6 approval of the final report and account.
- 7 c. *Notice.* The Receiver shall give notice to all persons of whom the Receiver is
8 aware who have potential claims against EA.
- 9 d. *Contents of Motion.* The motion to approve the final report and account and
10 for discharge of the Receiver shall contain the following.
- 11 i. *Declaration(s).* Declaration(s) (1) stating what was done during the
12 receivership, (2) certifying the accuracy of the final accounting, (3) stating
13 the basis for the termination of the receivership, and (4) stating the basis
14 for an order for the distribution of any surplus or payment of any deficit.
- 15 ii. *Accounting summary.* A summary of the receivership accounting, which
16 shall include (1) the total revenues received, (2) the total expenditures
17 identified and enumerated by major categories, (3) the net amount of any
18 surplus or deficit and (4) evidence of necessary supporting facts.
- 19 22. **Notice to Receiver.** JFL shall promptly notify the Receiver in writing of the names,
20 addresses, and telephone numbers of all parties who appear in the action and their
21 counsel. The parties shall give notice to the Receiver of all events that affect the
22 receivership.
- 23 23. **Consent to Convert Receiver to Bankruptcy Trustee.** In the event of a bankruptcy,
24 EA, Avenatti and JFL agree and stipulate that Receiver shall serve as the Chapter 11
25 Trustee pending confirmation by the Bankruptcy Court, or as the Chapter 7 Trustee if
26 permitted by the Bankruptcy Court.
- 27 24. **Bankruptcy Receiver's Duties.** If the Receiver receives notice that an involuntary
28 bankruptcy has been filed and part of the bankruptcy estate includes property that is
the subject of this Order, the Receiver shall have the following duties:

1 a. *Turn over property if no relief from stay will be sought.* The Receiver shall
2 immediately contact the parties who stipulated to the appointment of the
3 Receiver and determine whether either party intends to move in the bankruptcy
4 court for an order for (i) relief from the automatic stay, and (ii) relief from the
5 Receiver's obligations to turn over the property (11 U.S.C. § 543). If neither
6 party intends to make such a motion, the Receiver shall immediately turn over
7 the property to the appropriate entity either to the trustee in bankruptcy if one
8 has been appointed that is not the Receiver and otherwise comply with 11
9 United States Code section 543.

10 b. *Remain in possession pending resolution.* If either of the parties who
11 stipulated to the receivership intend to seek relief immediately from both the
12 automatic stay and the Receiver's obligation to turn over the property, the
13 Receiver may remain in possession and preserve the property pending the
14 ruling on those motions (11 U.S.C. § 543(a)). The Receiver's authority to
15 preserve the property shall be limited as follows:

- 16 i. The Receiver may continue to collect rents and other income;
- 17 ii. The Receiver may make only those disbursements necessary to preserve
18 and protect the property; and
- 19 iii. The Receiver shall not execute any new leases or other long-term
20 contracts without Court approval.

21 c. *Turn over property if no motion for relief is filed within 10 days after notice of*
22 *the bankruptcy.* If the parties who stipulate to the receivership fail to file a
23 motion within 10 court days after their receipt of notice of the involuntary
24 bankruptcy filing, the Receiver shall immediately turn over the property to the
25 appropriate entity either to the trustee in bankruptcy if one has been appointed
26 or, if not, to the debtor in possession and otherwise comply with 11 United
27 States Code section 543.
28

d. *Retain bankruptcy counsel.* The Receiver may petition the Court to retain legal counsel to assist the Receiver with issues arising out of the bankruptcy proceedings that affect the receivership.

25. **Failure to Turn Over Property.** A receiver who fails to turn over property in accordance with this Order shall not be paid for time and expenses after the date the Receiver should have turned the property over.

26. **Liability of the Receiver.** Except for an act of gross negligence or intentional misconduct, the Receiver shall not be liable for any loss or damages incurred by EA, its officers, shareholders, agents, servants, partners, employees, contractors, creditors, counsel or any other persons or entities by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of his duties.

RESTRAINING ORDER / INJUNCTION

27. **The Court orders EA and Avenatti** to do the following:

a. **Turn Over Property.** Immediately turn over possession of all property of EA to the Receiver when the appointment becomes effective, including but not limited to all past and current client engagement contracts, case files, books and records, electronic files, and other documents necessary to manage the Receivership Assets and all funds in EA accounts, including client trust accounts.

b. **Access to EA's offices and computer systems.** Immediately turn over to the Receiver all keys and passwords relating to the property and grant the Receiver unfettered access to EA and all premises related thereto, and all EA computer systems.

c. **Insurance.**

i. Immediately advise the Receiver about the nature and extent of EA's insurance;

ii. Immediately name the receiver as an additional insured on each insurance policy; and

iii. DO NOT cancel, reduce or modify the insurance coverage.

1 d. **Notify Receiver of Clients and Cases.** Within 7 days after the appointment of
2 the Receiver, EA and Avenatti, and office manager Judy Regnier must meet
3 with the Receiver and JFL and disclose all current clients and cases being
4 managed by EA and all cases in which the services of an EA attorney or EA
5 resources were provided, whether the case was filed in the name of EA or
6 another law firm.

7 e. **Respond to Inquiries.** Immediately respond to all inquiries of the Receiver
8 pertaining to EA.

9 f. **Disclosure of Bank Accounts.** Immediately disclose to the Receiver all
10 accounts of EA and client trust accounts, including all accounts at any bank,
11 title company, escrow agent, financial institution or brokerage firm which has
12 possession, custody or control of any assets or funds of EA, or which
13 maintains accounts of the Receiver, or which maintains accounts where EA's
14 employees and agents in such capacity have signatory authority, including but
15 not limited to Michael Avenatti and Judy Regnier.

16 g. **Payment.** Pay all amounts due to the Receiver.

17 h. **Cooperation.** Avenatti shall fully cooperate with the Receiver for the duration
18 of the receivership, regardless of whether he is employed by or affiliated with
19 EA, including but not limited to directing Judy Regnier and any other former
20 employees of EA to likewise cooperate with the Receiver.

21 28. **Enjoinment.** EA, and its owners, partners, employees, agents, managers, attorneys
22 and all persons and entities acting in concert with EA are hereby enjoined and cannot:

23 a. Expend, disburse, remove, transfer, assign, sell, convey, devise, pledge,
24 mortgage, create a security interest in, encumber, conceal or in any manner
25 whatsoever deal in or dispose of the whole or any portion of EA's assets,
26 including but not limited to its rights to attorney fees and costs from any
27 client or in connection with any cases in which EA attorneys or resources
28 were used;

- b. Interfere in any way, directly or indirectly, with the Receiver's performance of his/her duties and responsibilities and the exercise of his/her powers and/or doing any act which may impair, defeat, divert, prevent or prejudice the preservation of EA's assets or the proceeds thereof;
- c. Commit or permit any waste of EA's assets or any portion thereof, or suffer or commit or permit any act on EA's assets or any part thereof in violation of law;
- d. Conceal or withhold from the Receiver any EA assets, including any client trust funds, real property, physical property, indirect or beneficial ownership interests, or funds;
- e. Do any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of EA's assets;
- f. Demand, collect, compromise, trade, receive or spend any portion or proceeds of EA's assets; and
- g. Fail to pay over to the Receiver any monies whenever received, presently in the possession, custody or control of EA, its owners, agents, representatives, servants, assigns and all those acting in concert therewith.

29. Nothing in this order excuses or alters any ethical duties that EA and/or EA's attorneys may have to their clients.

Dated: 2/13/2019

Karen E. Scott

U.S District Court Magistrate Judge



4533 MacArthur Blvd
Newport Beach, CA 92660
(949) 242-0193

INVOICE

INVOICE: I9500250

Date: 11/19/2018

TO:

EAGAN AVENATTI
520 Newport Center Dr., #1400
Newport Beach, CA 92660
(949) 706-7000

SHIP TO:

EAGAN AVENATTI
520 Newport Center Dr., #1400
Newport Beach, CA 92660
(949) 706-7000

| QTY | DESCRIPTION | UNIT PRICE | EXT. PRICE |
|-----|--|------------|------------|
| 1 | Setup Fee | \$1,000.00 | \$1,000.00 |
| 1 | First Month of Data Center Colocation Services - 11/19/2018 Billing cycle will occur on the 19 th of each month. Next automatic bill date - 12/19/2018. | \$1,000.00 | \$1,000.00 |

Note: Paid - Total Invoice paid via credit card on 11/19/2018 (Visa 1551)

| | |
|-----------|------------|
| SUBTOTAL | \$2,000.00 |
| *TAX | \$0.00 |
| SHIPPING | \$0.00 |
| TOTAL | \$2,000.00 |
| TOTAL DUE | \$0.00 |

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - ALL HARDWARE COMPUTER COMPONENTS PROPOSED ABOVE ARE COVERED BY A LIMITED WARRANTY, COVERING PARTS AND LABOR FOR HARDWARE ONLY AND ON A DEPOT BASIS - WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS



4533 MacArthur Blvd
Newport Beach, CA 92660
(949) 242-0193

INVOICE

INVOICE: I9500252

Date: 1/19/2019

TO:

EAGAN AVENATTI
520 Newport Center Dr., #1400
Newport Beach, CA 92660
(949) 706-7000

SHIP TO:

EAGAN AVENATTI
520 Newport Center Dr., #1400
Newport Beach, CA 92660
(949) 706-7000

| QTY | DESCRIPTION | UNIT PRICE | EXT. PRICE |
|-----|---|------------|------------|
| 1 | Monthly Data Center Colocation Services – 1/19/2019 – 2/19/2019 Payment due on or before 1/25/2019 | \$1,000.00 | \$1,000.00 |

Note: Pay invoice on or before 1/25/2019 to avoid service disruption
Easy payment method available via credit card over the phone

| | |
|-----------|------------|
| SUBTOTAL | \$1,000.00 |
| *TAX | \$0.00 |
| SHIPPING | \$0.00 |
| TOTAL | \$1,000.00 |
| TOTAL DUE | \$1,000.00 |

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - ALL HARDWARE COMPUTER COMPONENTS PROPOSED ABOVE ARE COVERED BY A LIMITED WARRANTY, COVERING PARTS AND LABOR FOR HARDWARE ONLY AND ON A DEPOT BASIS - WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS

From: lkay
To: MixnIT
Subject: Removal of Additional Employees
Date: Friday, March 15, 2019 12:08:44 PM

Frankie -

We need to have Hillary Wolett and Thomas Gray removed from the email and remote access.

Thank you.

Judy

John Reitman

From: Brian Weiss <bweiss@force10partners.com>
Sent: Wednesday, April 3, 2019 5:56 PM
To: John Reitman
Subject: Fwd: EA servers

----- Forwarded message -----

From: Jim Bastian <JBastian@shbllp.com>
Date: Tue, Apr 2, 2019, 5:37 PM
Subject: Re: EA servers
To: John Reitman <jreitman@lgbfirm.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>, Jack Reitman <jareitman@lgbfirm.com>

Further to this, I am advised that the servers were moved well before the firm moved from the NB offices.

On Apr 2, 2019, at 5:23 PM, Jim Bastian <JBastian@shbllp.com> wrote:

John:

As I believe Brian is well aware, the servers were moved from the law firm's Newport Beach office after those offices closed and well before Brian was appointed. I also understand that Brian met with Michael at the firm's LA offices after his appointment and was referred to X Law Group in connection with this. Your email suggested something was done recently in violation of the receivership order. This has not occurred. Nothing has been done or will be done in connection with the servers to interfere with Brian's duties as receiver. Again, we are trying to work with you on this.

Michael has not been able to access his email or any data and the servers appear to be down. We had thought that they were in the control of the authorities, but that is apparently not the case. We then thought they might be within the receiver's control, but that appears not to be the case. At this point, we have no idea why the servers are down and have not been able to get any information whatsoever.

We are happy to work with you towards a common goal of accessing the servers and more importantly the data and information stored on them. Again, Michael reserves all rights as indicated previously.

I find it ironic that you separately emailed what appears to be an important document related to a very important case, indicating that Michael is still counsel of record, which clearly supports the idea that some cooperation is required here in order to preserve and maximize estate assets. Yet in a separate email you are seeking to prohibit Michael from accessing information that may be necessary to properly represent his clients and preserve estate assets.

Let me know how you want to proceed.

Jim

On Apr 2, 2019, at 4:00 PM, John Reitman <jreitman@lgbfirm.com> wrote:

Thank you for the information. Who had the business card, who removed the servers from EA's office and who gave the servers to the vendor? Please inform Mr. Avenatti that (1) he is not to contact the vendor without Mr. Weiss' written authorization or do anything else that might interfere with the Receiver's efforts to recover the servers and (2) any such direct or indirect action by him will result in Mr. Weiss filing an OSC for violating the Receivership Order.

John Reitman
Attorney

Landau Gottfried & Berger LLP
1801 Century Park East, Suite 700
Los Angeles, CA 90067
Main: 310-557-0050
Direct: 310-691-7377
Fax: 310-557-0056
E-mail: jreitman@lgbfirm.com
Web: www.lgbfirm.com

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From: Jim Bastian <JBastian@shbllp.com>
Sent: Tuesday, April 2, 2019 3:22 PM
To: John Reitman <jreitman@lgbfirm.com>
Cc: 'Brian Weiss (bweiss@force10partners.com)' <bweiss@force10partners.com>; Jack Reitman <jareitman@lgbfirm.com>
Subject: RE: EA case list
Importance: High

Gentlemen:

I have been able to get information on the location of the servers. See attached image of a business card we located. The servers are housed with a third party data storage vendor apparently located in Newport Beach called mixiniT. We have attempted to

contact this entity by telephone and in person but the phone number provided goes to an anonymous google voice mail (my messages have gone unreturned) and the physical location for the address on this card is a mail box.

I have conferred with Judy Regnier and this is the only information she has on this as all her other information was stored on her phone or computers which were seized by Federal agents.

If you are able to get access to or control over the servers, please let me know immediately so we can make arrangements for Michael to get access to information he needs and which is critical to his ability to earn a living, mount a defense to the criminal charges against him, practice law and communicate with his clients. Michael reserves all rights with respect to these servers, including to preserve and access information stored on these servers and to maintain the confidentiality of private and client related information, communications and material. We trust you will respect those rights to the extent you are able to access the servers and that you will cooperate with us to the extent necessary.

If you need anything further or assistance from me or Michael with this, let me know.

Thanks.

Jim

James C. Bastian, Jr.
Partner
jbastian@shbllp.com
<http://www.shbllp.com>

<image001.jpg>

Orange County - 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618, Phone: 949-340-3400 Fax: 949-340-3000

Inland Empire – 3550 Vine Street, Suite 210, Riverside, CA 92507, Phone: 951-275-9300 Fax: 951-275-9303

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From: Jim Bastian
Sent: Tuesday, April 2, 2019 10:57 AM
To: John Reitman <jreitman@lgbfirm.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jareitman@lgbfirm.com>
Subject: RE: EA case list
Importance: High

Gentlemen:

We have been working on getting access to the servers and have discovered that the servers are offline and not accessible by Michael. We had thought that the servers had been seized by the authorities related to the criminal proceedings, but have learned that this is not the case. This leads us to believe that perhaps you have taken control of the servers? Can you confirm if this is the case? This is critically important as Michael needs access to the servers in order to address cases in which he is counsel and also cases in which EA has an interest. If you have not taken control of the servers, then something else has occurred and we need to figure out how to obtain access.

Next, with respect to the case list, Michael advises that the list you have provided is not complete and does not reflect the more extensive case list discussed between Michael and Brian, and which was apparently memorialized in some fashion through an Excel spread sheet. Can you provide the complete list?

With respect to the list you have provided, I have reviewed this with Michael and in connection with the cases listed, Michael's position is as follows:

[REDACTED] - you can reassign.

[REDACTED] - Michael's position is that he is lead counsel and that EA has a fee interest. Since you have filed a motion on this, the courts will decide this it appears but to be clear, it is Michael's position that you are not permitted to tamper with the case or client. If Brian has any evidence that EA is lead counsel as opposed to Michael individually, he has yet to see it even though he has been asking for it. That all being said, again, it appears the courts will resolve this. I say "courts" because I am frankly not sure which court will ultimately decide the issue as there appears to be some conflict between the court presiding over the receivership and that court handling the underlying case.

[REDACTED] - you can reassign. Michael believes that EA is probably only entitled to 50% of the fees presently because of referring counsel (see email Michael sent to Brian the weekend before last). As such, EA will likely get a very small percentage at best once cases are reassigned.

[REDACTED] - action; you can reassign

[REDACTED] - action; you can reassign

[REDACTED] - abandoned by the client so no action needed

[REDACTED] - case is over due to ruling from [REDACTED] Court

[REDACTED] - Michael will remain as counsel

[REDACTED] - Michael will remain as counsel

[REDACTED] - Michael will remain counsel

[REDACTED] - as you are aware, client has terminated the firm and Michael. Now entitled only to QM, and likely has little value.

[REDACTED] - you can reassign; case likely only worth \$150k in fees at most

[REDACTED] - arbitration; Michael will remain counsel

[REDACTED] - Michael will remain counsel

[REDACTED] - Michael will remain counsel

[REDACTED] - abandoned by client

[REDACTED] - class action; you can reassign

Again, if you can provide the full list, we can provide answers on other cases.

Finally, with respect to the remaining open items on the spreadsheet (copy attached again for your easy reference), Michael's responses to open items are in the MJA Notes section in red font (scroll over to the far right of the spread sheet), which responses were provided to Brian before my involvement. As we have advised, due to the criminal matter and authorities seizing of documents and computers, Michael presently has no access to the books and records and other documentation and data bases, including that which was under the control of Judy Regnier.

And if you can let me know about the servers asap, this is of critical importance. If you do not have control over the servers than something else is going on and we need to dig deeper. Thanks.

Jim

James C. Bastian, Jr.
Partner
jbastian@shbllp.com
<http://www.shbllp.com>

<image001.jpg>

Orange County - 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618, Phone: 949-340-3400 Fax: 949-340-3000

Inland Empire - 3550 Vine Street, Suite 210, Riverside, CA 92507, Phone: 951-275-9300 Fax: 951-275-9303

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From: John Reitman <jreitman@lgbfirm.com>
Sent: Friday, March 29, 2019 11:49 AM
To: Jim Bastian <JBastian@shbllp.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jreitman@lgbfirm.com>
Subject: RE: EA case list

Jim, Brian Weiss has asked that I respond to your email. His view of Mr. Avenatti's degree of cooperation is verified by the still "open" requests on the list attached to your email. The requests were made more than or nearly a month ago (except the one requesting an explanation of the name change). Mr. Weiss also sent multiple copies of the list to Mr. Avenatti and repeatedly asked for the information and the status of efforts to provide it. We also provided the list to you on March 18 and you replied on the following day that "I am working with my client on all this and expect to have things moving on this later this week." Finally, the requests also were made at a time (from mid-February through my email to you) when Mr. Avenatti had unfettered access to the information sought. Nevertheless, Mr. Avenatti represented to Mr. Weiss that he did not the EA servers and also that the business and financial information on the servers was being copied for Mr. Weiss when it now appears that those representations were not accurate. From Mr. Weiss' perspective, Mr. Avenatti's cooperation to date has been far less than that required by the Receivership Order and far from sufficient to enable Mr. Weiss to fully perform his tasks as the receiver. Mr. Weiss is duty bound to and will so inform the Court.

If Mr. Avenatti want a conference call simply to update us on his efforts to complete the open items on the request, it would be more helpful for him to do so in writing. If there are other subjects that he wants to cover in the call, please let me know what they are. I will then let you know how Mr. Weiss would like to proceed.

John Reitman
Attorney

Landau Gottfried & Berger LLP
1801 Century Park East, Suite 700
Los Angeles, CA 90067
Main: 310-557-0050
Direct: 310-691-7377
Fax: 310-557-0056
E-mail: jreitman@lgbfirm.com
Web: www.lgbfirm.com

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From: Jim Bastian <JBastian@shbllp.com>
Sent: Friday, March 29, 2019 10:47 AM
To: John Reitman <jreitman@lgbfirm.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jreitman@lgbfirm.com>
Subject: RE: EA case list

John:

Michael is happy to get on a call and review the spread sheet of open items (which is attached). He has cooperated and will continue to cooperate with Brian. As you will recall, we requested a call last weekend for this purpose but never got a response. I am involved in a meditation today at my office but expect to have frequent long breaks to have a call.

Also, beyond all the back and forth emailing, are you going to provide a copy of the case list? This will help make our discussion most productive. Thanks.

Jim

James C. Bastian, Jr.
Partner
jbastian@shbllp.com
<http://www.shbllp.com>

<image001.jpg>

Orange County - 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618, Phone: 949-340-3400 Fax: 949-340-3000

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From: John Reitman <jreitman@lgbfirm.com>
Sent: Thursday, March 28, 2019 3:44 PM
To: Jim Bastian <JBastian@shbllp.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jreitman@lgbfirm.com>
Subject: RE: EA case list

As a starting point, my email neither misstates or distorts the facts.

Second, my email references paragraph 29 of the Receivership Order so that you and Mr. Avenatti would understand that we are not criticizing his decision to file the withdrawal of counsel. Our criticism is directed to his failure to immediately advise Brian of the client's request. This fully responds to three paragraphs of your email.

Third, we are not "missing the point" as it relates to the request for Mr. Weiss' list of EA cases and clients. Instead, you have ignored our concern which is reasonable given your client's lack of performance of his obligations under the Receivership Order. Because you did not attend the proceeding, I did not address Mr. Avenatti's equally faulty memory at the EA judgment debtor examination.

The rest of your comments are gratuitously insulting, serve only to exacerbate a difficult situation and do not rate a response.

Mr. Weiss has made diligent efforts to help resolve the disputes between Mr. Avenatti and Mr. Frank and to perform his obligations as the receiver. Mr. Weiss still would welcome Mr. Avenatti's cooperation but that requires Mr. Avenatti's prompt, truthful and direct responses to Mr. Weiss' requests.

John Reitman
Attorney

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From: Jim Bastian <JBastian@shbllp.com>
Sent: Thursday, March 28, 2019 2:44 PM
To: John Reitman <jreitman@lgbfirm.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jareitman@lgbfirm.com>
Subject: RE: EA case list

John:

This is not productive. I have told you several times I am trying to help you guys here. Sending me a self-serving long email that I now have to respond to because it

misstates facts and distorts others only increases costs and causes further delay, but since this is apparently the way you want to play this, I guess I have no choice.

As Michael advised Brian, general counsel to [REDACTED] contacted Michael that they wanted him to IMMEDIATELY withdraw from the case and have local counsel take over. (I can send you the text if you want). The request was urgent apparently in light of an upcoming deadline or hearing. That is the client's right and Michael had no option but to agree. It appears to be your position that Michael must obtain Brian's consent to take any action requested by his clients. It appears to me that there is a real conflict here given an attorneys' ethical duties and the apparent duties of the Receiver. However, the Order appointing Brian has language in the last paragraph 29 that provides guidance: **"Nothing in this order excuses or alters any ethical duties that EA and/or EA's attorneys may have to their clients."**

In this instance [REDACTED] advised Michael that it wished to terminate his services and Michael had an absolute duty to comply and withdraw. (See ABA Model Rule 1.16(a)(3); *Fracasse v. Brent*, 6 Cal. 3d 784, 790 (1972).) A client can even terminate counsel in the middle of a trial, though the court may refuse to grant a continuance to secure new representation. (See *Berger v. Mantle*, 18 Cal. App. 2d 245, 248-294 (1936).)

As such, Michael was ethically bound to withdraw and the Receiver order protects the fulfillment of that ethical duty. With respect to the language from the order you cite, I am not sure how Michael's action could possibly be violative of the order given paragraph 29. If the client wants to change counsel, Brian cannot do anything about that and in fact, your position infers that Brian has the right to deny a client its absolute right to terminate as noted above. This cannot be your position.

With respect to the names of the clients issue you note, you are clearly missing my point (and misstating what I said to you). I merely want a copy of the list Michael provided (and apparently which Michael and Brian spent several hours reviewing) so that I was "singing from the same sheet of music" you guys were — again in my effort to help you maximize the value of this estate. This was because Michael has no access to any data or emails as all of his computers have been seized and the servers apparently have as well.

As far as Michael's recollection and your implication that he is hiding information or cases from Brian, give me a break. I have 50-60 pending client matters and I rely heavily on a list my assistant maintains. I can remember most of the cases but not all. I want to eliminate the guess work and room for error by simply having the data you have, again so I can help you! Michael and I have gone over some of the cases but he cannot remember all of them.

I am not going to engage in these games. Demanding that I send you a list of what Michael remembers is just plain silly. As I have told you, my goal is to develop a comprehensive list (to the extent not already developed among Michael and Brian) through a review of what has been developed to date and then reviewing it with Michael to make sure there are no others. Then if there are cases that he is working on that are not EA related, we can identify those so there is no question as to the estate's interest. Again, I am trying to help you guys here.

Please just send me the list. I see no harm in this. All you are doing I driving up costs and now basically taking an adversarial approach that is not going to help.

I also would suggest that you do not need two attorneys on this file at all times. I note that every call, hearing and email is involving you and Jack. This is not necessary and wasteful.

To be clear – the request for this list is not Michael's request – it is my request. I do not have this document and have no way of obtaining it. I plan to work with Michael on the list but again, my purpose is so that I can help you guys here.

Let's get beyond this stuff. Thanks.

Jim

James C. Bastian, Jr.
Partner
jbastian@shbllp.com
<http://www.shbllp.com>

<image001.jpg>

Orange County - 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618, Phone: 949-340-3400 Fax: 949-340-3000

Inland Empire — 3550 Vine Street, Suite 210, Riverside, CA 92507, Phone: 951-275-9300 Fax: 951-275-9303

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From: John Reitman <jreitman@lgbfirm.com>
Sent: Thursday, March 28, 2019 1:02 PM
To: Jim Bastian <JBastian@shbllp.com>
Cc: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Jack Reitman <jareitman@lgbfirm.com>
Subject: RE: EA case list

Jim, as Brian and I expressed to you during our last phone conversation, Mr. Avenatti had control over the servers for approximately six weeks after Brian was appointed but withheld access to the information stored on those servers in violation of the Receivership Order. More recently, we learned without advance warning that Mr. Avenatti had withdrawn as counsel for [REDACTED]. Please inform Mr. Avenatti that he should more carefully read the Receivership Order by which he is bound. By way of example only, Mr. Avenatti has violated the following Receivership Order requirements: paragraphs 27 a, b and h; and 28 a, b and e. His conduct has directly negatively affected Brian's ability to "take such action as is necessary and appropriate to preserve and take control of and to prevent the waste, dissipation, loss of value, concealment, or disposition of any assets of or managed by EA" (paragraph 14. p).

In our last phone conversation, you also asserted that Mr. Avenatti needed the names of his own clients and the cases in which he represents them because he was unable to remember all of them. In response, we told you that Mr. Avenatti had previously provided a case and client list to Brian, and that additional information has been derived from other sources. To again ask for a list of all of the cases now known to the Receiver causes us to question whether Mr. Avenatti was fully forthcoming in his earlier disclosure. In the circumstances, let's start with Mr. Avenatti providing a list of the cases he recalls and is willing to transfer to other counsel and which cases he is not willing to transfer; for example, what about Kimberly Clark and the children's dentist cases? We can then re-address Mr. Avenatti's request.

John Reitman
Attorney

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From: Jim Bastian <JBastian@shbllp.com>
Sent: Thursday, March 28, 2019 11:40 AM
To: John Reitman <jreitman@lgbfirm.com>; Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>
Subject: EA case list

Guys:

Following our call yesterday, I would appreciate it if you could please send me the case list. I do not have it and Michael cannot access any records as all servers and computers have been seized by the authorities. I am working with him to go through the list and

confirm the cases he is willing to release any interest in and sign substitutions of attorney to the extent necessary. There are a few cases he wants to keep but the majority it appears he is happy to transition to new counsel. I need the list to assist in this process. Thanks.

Jim

James C. Bastian, Jr.
Partner
jbastian@shblp.com
<http://www.shblp.com>

<image001.jpg>

Orange County - 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618, Phone: 949-340-3400 Fax: 949-340-3000

Inland Empire - 3550 Vine Street, Suite 210, Riverside, CA 92507, Phone: 951-275-9300 Fax: 951-275-9303

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John Reitman

From: John Reitman
Sent: Tuesday, June 4, 2019 12:14 PM
To: Jim Bastian
Cc: Jack Reitman; Michael Avenatti
Subject: FW: Urgent: EA Servers and Documents

Jim, as previously requested, all communications from your client (see the following email from Mr. Avenatti) should be made through you.

As to Mr. Avenatti's request:

1. Pursuant to an Order to Deliver Specific Property filed in the Family Law Court on April 4, 2019, filed in Avenatti v. Lisa Storie-Avenatti, Orange County Superior Court Case No. 17D00930, Mr. Avenatti was required to immediately turnover, among other things, 100% of his personal ownership interest in EA (para. 1) and 100% of the shares of A&A (para. 2) to be applied toward satisfaction of Ms. Storie's judgment against him. Accordingly, on what basis does Mr. Avenatti still claim to "own" EA?
2. Mr. Avenatti is not entitled the broad range of documents he has requested. As to client documents, they are owned by the clients. Subject to para. 4 below, the Receiver will make client documents available to those clients who request them in a signed, verifiable writing delivered to the Receiver. With such request, the Receiver will require a reasonable description of the requested files/documents and where they may be found before undertaking any work. As you know, there are voluminous electronically stored documents and approximately 480 un-inventoried boxes of paper documents stored at Affiliated Storage (that entity also is owed storage fees which may need to be paid before it will release documents).
3. As for non-client documents, subject to para. 4 below, the Receiver will make a copy of non-client EA documents available to Mr. Avenatti that are necessary or reasonably appropriate for him to continue his representation of identified, existing clients or for his defense of the criminal charges. Accordingly, the Receiver will require a written reasonable description of the files/documents requested and a written reasonable explanation of why those files/documents are necessary or appropriate for those purposes before undertaking any work. The Receiver also reserves the right to require a fully signed confidentiality agreement (on terms acceptable to him) covering requested EA documents.
4. When Mr. Avenatti executed the Joint Stipulation and Order re Appointment of Receiver and Restraining Order, he had in front of him all the information he needed to determine the consequences of that action for EA's clients and himself. The Restraining Order made clear that the Receiver would, among other things, "[14.a] [t]ake possession of all past and current client engagement contracts, case files, books and records, electronic files, and other documents necessary to manage the Receivership Assets . . ." and "[14.l] [h]ave access to and become the "administrative user" for all of EA's software . . ." Instead of giving the Receiver access to EA's servers, Mr. Avenatti at various times represented to the Receiver that (1) he (Avenatti) had access to the servers; (2) he didn't have such access; (3) he didn't know where the servers were; and (4) EA had sold the servers to X-Law Group. In fact, however, Mr. Avenatti had caused EA's computer servers to be moved from EA's Newport office to a third-party vendor, to store and maintain, and EA paid the vendor for that service. Mr. Avenatti continued that deception until April 2, approximately 75 days after the Receiver was appointed by the District Court. Throughout that 75-day period, Mr. Avenatti continued to have what amounts to exclusive control over all EA information then necessary for him to continue his representation of its clients or to permit the clients to transfer their matters to substitute counsel. During that entire time, Mr. Avenatti could have but apparently chose not to inform EA's clients of the status of their respective files or to make those files available

to them. Instead, he stopped EA from paying for the maintenance and storage of the servers. He also made sure that EA had no cash to enable it to operate. At this time, the receivership estate still has no funds.

The Receiver is not obligated to and will not, at his own expense, make documents available to EA's former clients or to Mr. Avenatti. Upon receipt of a proper request for documents (as outlined above) or a court order requiring the production of documents, the Receiver will make a good faith estimate of the cost (supervision and labor, at the customary hourly rates for persons employed by Force 10 Partners) and out of pocket expenses to produce the requested documents. The Receiver also will require, in advance of doing any work on the production, pre-payment of the estimated cost of the production. If the estimated cost of the production at any time exceeds the deposit, the Receiver may require the deposit of additional funds. The Receiver will return any deposited funds not used for a production and will not release any requested documents until all costs of a production have been paid.

The Receiver may permit outside IT specialists or other vendors to do document retrieval, imaging and copying work on terms acceptable to him to ensure that electronically stored or imaged information and paper documents are not altered or damaged and at no cost to the Receiver or the receivership estate. The Receiver will not permit the review or production of documents unless it is supervised by a Force 10 representative or other person acceptable to him (which supervision shall be at the expense of the requesting party).

John Reitman
Attorney

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From: Michael Avenatti <m@thefight.us>
Sent: Tuesday, June 4, 2019 4:42 AM
To: Brian Weiss (bweiss@force10partners.com) <bweiss@force10partners.com>; Dean Steward <deansteward7777@gmail.com>; Ellen Pansky <epansky@panskymarkle.com>; Jack Reitman <jareitman@lgbfirm.com>; Jim Bastian <JBastian@shbllp.com>; John Reitman <jreitman@lgbfirm.com>; Jose M. Quifion <jquinon@quinonlaw.com>; Scott Srebnick <scott@srebnicklaw.com>
Subject: Urgent: EA Servers and Documents

Brian:

As you know, for over two months now, I have been trying to gain access to the EA servers and related documents. Despite multiple requests and the fact that I own 100 percent of the law firm, you have refused to provide me any access.

To be clear, since March 26 I have not had access to my prior email, correspondence with clients, settlement agreements, client accountings, case files, financial records, etc. I need access to this information in order to continue to service clients and attend to their matters. I also urgently need access in order to defend myself in the three criminal matters pending against me as well as the newly filed State Bar matter.

Demand is once again made that you provide me access to ALL of the books and records and electronic files of EA in their entirety and that it be done by the close of business today. Time is of the essence and there is no legitimate reason as to why you should continue to refuse to provide me unfettered access to this information.

Please inform me as to when today I can begin accessing the information.

Thank you.

Michael

Michael J. Avenatti

1 STATE BAR OF CALIFORNIA
2 OFFICE OF CHIEF TRIAL COUNSEL
3 MELANIE J. LAWRENCE, No. 230102
4 INTERIM CHIEF TRIAL COUNSEL
5 ANTHONY J. GARCIA, No. 171419
6 ASSISTANT CHIEF TRIAL COUNSEL
7 ANAND KUMAR, No. 261592
8 SUPERVISING ATTORNEY
9 ELI D. MORGENSTERN, No. 190560
10 SENIOR TRIAL COUNSEL
11 845 South Figueroa Street
12 Los Angeles, California 90017-2515
13 Telephone: (213) 765-1334

8
9 STATE BAR COURT
10 HEARING DEPARTMENT - LOS ANGELES
11

12 In the Matter of:) Case No. 19-TE-30259-YDR
13 MICHAEL JOHN AVENATTI,)
14 No. 206929,) DECLARATION OF ELI D. MORGENSTERN
15 A Member of the State Bar.)
16) (OCTC Case No. 19-TE-16715)

17 I, Eli D. Morgenstern, declare:

18 1. All statements made herein are true and correct and are based on my personal
19 knowledge unless indicated as based on information or belief, and as to those statements I am
20 informed and believe them to be true. If necessary, I could and would competently testify to the
21 statements made herein.

22 2. I am an attorney admitted to all courts of the State of California. I am a Senior Trial
23 Counsel in the Office of Chief Trial Counsel of the State Bar ("State Bar").

24 3. I am the Trial Counsel assigned to prosecute the instant matter.

25 4. On June 5, 2019, the State Bar filed its Corrected Application For Involuntary
26 Inactive Enrollment ("Corrected Application") in connection with these disciplinary proceedings
27 against respondent Michael John Avenatti ("respondent"). In the Corrected Application, the
28

1 State Bar attached evidence demonstrating, among other serious ethical violations, that
2 respondent misappropriated nearly \$840,000 from Mr. Gregory Barela, respondent's former
3 client, and concealed the misappropriation through numerous acts of deceit and dishonesty.

4 5. On June 20, 2019, respondent Michael John Avenatti ("respondent"), the respondent
5 in these proceedings, filed, through his counsel, his verified Opposition to the State Bar's
6 Corrected Application ("Opposition"). Respondent did not attach any evidence to the
7 Opposition.

8 6. In the Opposition, respondent stated,

9 "Due to the pending criminal proceedings referenced in
10 the State Bar's Application, Respondent's files, records,
11 computers, mobile devices and electronic data were seized
12 by law enforcement. Despite multiple requests for access,
13 Respondent has not been permitted access to his files and
14 records sufficient to presently permit him to respond with
15 particularity to most of the State Bar's factual allegations.
16 Thus, Respondent's herein responses to the allegations in
17 the Application are based on limited current recollection
18 and will be augmented once he is permitted access to his
19 relevant files and records, including text messages, e-mails,
20 client accounting documents, etc." (Opposition, p. 1:15-21.)

21 7. One of the criminal proceedings referenced in the Corrected Application, as noted by
22 respondent in his Opposition, is the matter titled *United States of America v. Michael John*
23 *Avenatti*, United States District Court For The Central District of California (Southern Division),
24 SA CR. No. 19-00061-JVS ("criminal matter").

25 8. A true and correct copy of the Indictment in the criminal matter is attached as
26 Exhibit 7 to the Declaration of State Bar Investigator Jon Nunley, which is attached to the State
27 Bar's Corrected Application.

28 9. On pages 14, line 3, through 16, line 10, the Indictment describes the facts
surrounding respondent's "Embezzlement of Client 3's Funds."

10. Mr. Steven Bledsoe, the attorney for Mr. Barela, has authorized the State Bar to
disclose in these proceedings that Mr. Barela is "Client 3" referenced in the Indictment.

11. On July 2, 2019, Ms. Nunley, while I was at her cubicle and at my request,

1 downloaded from PACER the pleading captioned, "Joint Report," which was filed on July 1,
2 2019 in connection with the criminal matter. A true and correct copy of the Joint Report
3 downloaded from PACER by Ms. Nunley is attached to this Declaration as Exhibit 1.

4 12. The information provided by the United States Attorney's Office for the Central
5 District of California ("USAO") in the Joint Report contradicts respondent's representations in
6 the Opposition that he has not been "permitted access to his relevant files and records, including
7 text messages, e-mails, client accounting documents, etc."

8 13. For instance, the USAO reported that on May 22, 2019, it produced approximately
9 113,000 pages of discovery materials, including, but not limited to financial records, including
10 bank records reflecting the financial transactions set forth in the Indictment, and emails and text
11 messages reflecting communications between respondent and the victim-clients identified in the
12 Indictment. (Joint Report, p. 2:8-16.)

13 14. With respect to Mr. Barela in particular, the USAO reported that it has produced to
14 respondent "a copy of the cellphone extraction reports for [Mr. Barela's] cellphone, as well as
15 approximately 103 emails involving [respondent] that were extracted from [Mr. Barela's]
16 computer." (Joint Report, p. 3, fn. 2.)

17 15. The USAO reported that on June 10, 2019, the USAO produced to respondent
18 complete forensic copies of the accessible digital devices, including those that were seized:
19 (i) from respondent's residence; and (ii) during respondent's arrest. (Joint Report, p. 3:14-19.)

20 16. The USAO reported that the government would produce to respondent
21 forensic copies of four digital devices seized from respondent's home, which are currently
22 inaccessible because they are password-protected, once respondent provided the government
23 with the passwords for these devices so that the government could create forensic images of
24 them. But, to date, respondent has not provided the government with the passwords for any of
25 the inaccessible devices.

26 / / /

27 / / /

1 17. Specifically, the USAO reported that:

2 “IRS-CI [Internal Revenue Service-Criminal Investigation] is
3 currently in possession of an Apple desktop computer seized from
4 [respondent’s] residence, which is password protected and has not
5 yet been accessed. The USAO understands that the United State’s
6 Attorney’s Office for the Southern District of New York (“SDNY USAO”)
7 is also in possession of an iPhone, an iPad, and an Apple laptop
8 computer, which are password protected and have not yet been
9 accessed. The USAO will produce to [respondent] forensic copies
10 of these devices if and when the USAO is able to access the
11 devices. The government, including the SNDY USAO, has
12 advised [respondent] that if [respondent] wishes to immediately
obtain forensic copies of these digital devices or access
materials on these devices [respondent] will need to provide the
government with the passwords for these devices so that the
government can create forensic images of the devices. To date,
[respondent] has not provided the USAO or the SDNY USAO with
the passwords for any of the inaccessible devices.”
(See Joint Report, p. 8:3-15.)

13 I declare under penalty of perjury that the foregoing is true and correct and that this
14 Declaration is executed this 10th day of July, 2019, at Los Angeles, California.

15 
16 _____
17 Eli D. Morgenstern
18 Declarant
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1 NICOLA T. HANNA
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2 BRANDON D. FOX
Assistant United States Attorney
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13 Attorneys for Plaintiff
UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 MICHAEL JOHN AVENATTI,

20 Defendant.

SA CR No. 19-061-JVS

21 JOINT REPORT

Hearing Date: July 8, 2019

Hearing Time: 9:00 a.m.

Location: Courtroom of the
Hon. James V. Selna

22
23 Pursuant to the Court's June 19, 2019, Minute Order (CR 43),
24 plaintiff United States of America, by and through its counsel of
25 record, the United States Attorney for the Central District of
26 California and Assistant United States Attorneys Julian L. André and

27 ///

28 ///

1 Brett A. Sagel, and defendant MICHAEL JOHN AVENATTI, by and through
2 his counsel of record, H. Dean Steward, hereby files their Joint
3 Report.

4
5 Dated: July 1, 2019

Respectfully submitted,

6 NICOLA T. HANNA
United States Attorney

7
8 BRANDON D. FOX
Assistant United States Attorney
Chief, Criminal Division

9
10 /s/ Julian L. André
JULIAN L. ANDRÉ
11 BRETT A. SAGEL
Assistant United States Attorneys

12
13 Attorneys for Plaintiff
UNITED STATES OF AMERICA

14 Dated: July 1, 2019

15 /s/ via email authorization
H. DEAN STEWARD

16 Attorney for Defendant
17 MICHAEL JOHN AVENATTI
18
19
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28

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JOINT REPORT

I. THE COURT'S JUNE 19, 2019, MINUTE ORDER

On June 19, 2019, the Court issued a minute order (CR 43) requiring the United States Attorney's Office for the Central District of California (the "USAO") and defendant MICHAEL JOHN AVENATTI ("defendant") to file a joint report addressing the following:

1. Government discovery disclosures to date.
2. Remaining government discovery disclosures and a timetable for completion.
3. A proposed schedule, including at least:
 - a. Trial date.
 - b. Final pretrial conference date.
 - c. Government witness list disclosure date.
 - d. Government exhibit disclosure date.
 - e. Expert witness disclosure date.
 - f. Last date for filing and hearing motions, including motions *in limine*.
 - g. Date for disclosure of Jencks Act materials and witness statements.
 - h. Dates(s) for interim status conference(s).
4. Any logistical or other potential problems affecting the proposed schedule.
5. Anticipated length of trial.
6. Use of a jury pool pre-screened for time.
7. Any other matters the parties wish to discuss at the status conference.

1 The parties' respective positions regarding these issues are set
2 forth below.

3 **II. GOVERNMENT'S DISCOVERY DISCLOSURES TO DATE**

4 **A. USAO's Statement**

5 1. Documents and Interview Reports

6 To date, the USAO has made the following discovery disclosures
7 to defendant:

8 1. On May 22, 2019, the USAO produced approximately 113,000
9 pages of discovery materials, including, but not limited, the
10 following materials:

11 a. Financial records, including bank records reflecting
12 the financial transactions set forth in the indictment;

13 b. Documents obtained from third-parties, including
14 various business records, and emails and text messages reflecting
15 communications between defendant and the victim-clients identified in
16 the indictment, employees of defendant's coffee company Global
17 Baristas U.S. LLC ("GBUS"), and other third-parties;

18 c. Internal Revenue Service ("IRS") tax records; and

19 d. Transcripts of defendant's prior testimony in various
20 legal proceedings.

21 2. On June 5, 2019, the USAO produced approximately 9,000
22 pages of additional discovery materials, primarily consisting of
23 additional documents obtained from third-parties, including emails
24 and other records obtained from defendant's former certified public
25 accountant ("CPA").

26 3. On June 28, 2019, the USAO produced approximately 16,000
27 pages of additional discovery materials, including additional
28 documents obtained from third-parties, and memoranda summarizing

1 interviews with most of the potential government witnesses, including
2 the victim-clients identified in the Indictment. The USAO has
3 voluntarily produced these witness statements at an early date in an
4 effort to ensure that defendant is prepared to proceed to trial as
5 soon as possible.

6 To date, the USAO has produced, subject to the Court's May 20,
7 2019, Protective Order (CR 36), a total of approximately 138,903
8 pages of discovery materials.

9 2. Digital Search Warrant Evidence

10 During the course of its investigation, the Internal Revenue
11 Service - Criminal Investigation ("IRS-CI") obtained a number of
12 digital devices from various sources, including pursuant to
13 judicially-authorized search warrants.

14 On June 10, 2019, the USAO's Privilege Review Team Assistant
15 United States Attorney ("PRTAUSA") produced to defendant, subject to
16 the Court's May 20, 2019, Protective Order (CR 36), complete forensic
17 copies of the accessible¹ digital devices that were: (1) seized from
18 defendant's residence; (2) seized during defendant's arrest; and
19 (3) obtained from former employees of GBUS.²

20 _____
21 ¹ As discussed further below, the USAO and another U.S.
22 Attorney's Office has possession of approximately four digital
23 devices seized from defendant or his residence, which are currently
24 inaccessible because they are password-protected. The government
25 will continue to attempt to gain access to these devices, but cannot
provide a forensic image of the devices to defendant until they have
been accessed. To date, defendant has declined to provide the
password(s) for these devices, which would expedite providing him
with the contents of the devices.

26 ² The PRTAUSA also produced to defendant a copy of the cell-
27 phone extraction report for Client 3's cellphone, as well as
28 approximately 103 emails involving defendant that were extracted from
Client 3's computer. Because Client 3 executed a limited waiver of
the attorney-client privilege, these documents have already been
provided to the investigation team and will not be subject to a
further privilege review.

1 As discussed further below, the USAO has not provided defendant
2 with forensic copies of the following digital devices: (1) the
3 computer server belonging to defendant's former law firm, Eagan
4 Avenatti LLP ("EA LLP"); (2) devices seized from the residence of EA
5 LLP's former office manager ("EA Employee 1"), which belong to EA
6 LLP; (3) devices seized from another law firm with which defendant
7 had a business relationship ("Law Firm 1"); and (4) the inaccessible
8 digital devices seized from defendant and defendant's residence.

9 To date, defendant has produced no discovery.

10 **B. Defendant's Statement**

11 The government's production to date has been woefully
12 inadequate. While it may appear from the page counts and alleged
13 descriptions referenced above that the government has produced
14 significant amounts of information, on a percentage basis, the
15 information produced to date is far less than five percent (5%) of
16 what is required.

17 After charging Defendant with 36 counts in a lengthy "speaking"
18 indictment months ago, which purportedly followed a three-year
19 investigation, the government now refuses to produce millions of
20 pages of documents and huge amounts of electronic data (likely well
21 over 20 terabytes) that Defendant needs to defend himself—including
22 potential *Brady* and *Giglio* material. The government has had this
23 information in its possession for months—perhaps years--and yet still
24 has not produced it (while continuing to grandstand and argue for an
25 early trial date). The government's refusal to produce this
26 information is even more egregious and inexplicable considering that
27 Defendant had unlimited access to nearly all of this information
28 until the morning of his arrest on March 25, 2019, yet the government

1 now refuses to return even a copy to Defendant, while continuing to
2 access the same data in its own preparation for trial. Simply put,
3 there is no reason why Defendant should not be afforded access to
4 this vast amount of information in connection with preparing his
5 defense, not to mention the fact that he requires this information in
6 order to meet his obligations as a practicing attorney who continues
7 to represent clients.³

8 The government has taken this course of action despite repeated
9 requests for this information from defense counsel and *this Court's*
10 *clear directives at the last status conference, during which the*
11 *Court directed the government to promptly return seized items to the*
12 *Defendant and also expressed skepticism as to why a "privilege*
13 *review" would have to be done before returning/producing the items to*
14 *Defendant (an attorney) when the documents were previously in his*
15 *possession or control.*

16 As this Court is aware, the indictment charges the Defendant
17 with conduct relating to multiple clients of Defendant, as well as
18 conduct concerning business interests of the Defendant. Despite
19 this, the government has essentially refused to provide Defendant
20 with the entirety of his business files that existed prior to the
21 date of his arrest on March 25, including emails, time records,
22 accounting records, pleadings reflecting work done for clients,
23 documents demonstrating client consent, correspondence with clients,
24 etc. To be clear, the government has refused to provide the
25 following, among other things:

27 ³ In prior communications, the government has been overt in its
28 attempts to interfere with Defendant's attempts to continue to make a
living through the practice of law.

- a. Defendant's correspondence and emails with his clients, including the clients referenced in the indictment.
- b. Defendant's client files, including for those clients referenced in the indictment.
- c. Defendant's accounting, tax and cost records, including for those clients referenced in the indictment.
- d. Defendant's time records, including for those clients referenced in the indictment.
- e. Defendant's settlement communications and documentation, including for those clients referenced in the indictment.
- f. Defendant's emails relating to the charges in the indictment.
- g. Defendant's emails with his tax professionals and others relating to his taxes.

The government's excuse that some of this information belongs to "Eagan Avenatti, LLP" is without merit and is a red herring. Defendant founded EA in 2007 with two other partners. He was the Managing Partner of EA at all relevant times (since 2011) and remains in that role to this day. He presently owns 100% of the law firm and has owned a controlling interest in the firm since 2011. Finally, at all relevant times, all clients of EA were clients of Defendant. Indeed, at all relevant times, no client could become a client of EA without Defendant's knowledge and consent.

Without the return and/or production of the information, it is literally impossible for the Defendant to mount a defense in this case, let alone continue to represent his clients or properly transition those clients to other attorneys.

1 **III. OUTSTANDING DISCOVERY ISSUES**

2 **A. USAO's Statement**

3 1. Non-Search Warrant Evidence

4 The vast majority of documentary evidence and interview reports
5 relating to the charges in the indictment case have already been
6 produced to defendant. The USAO, however, is still processing
7 additional documents and records it obtained from third-parties, as
8 well as additional interview reports. The USAO and IRS-CI are also
9 still conducting additional witness interviews and collecting
10 evidence from additional sources. The USAO will produce any newly
11 obtained documents and records on a rolling basis going forward. The
12 USAO does not believe that this evidence will be particularly
13 voluminous.

14 Additionally, the USAO is scanning additional hard-copy records,
15 including two boxes of records obtained from the IRS Revenue Officer
16 who handled the GBUS payroll tax collection action between October
17 2016 and March 2018, and three boxes of records obtained from
18 defendant's CPA. The USAO offered to make these records available
19 for defendant's counsel to review at the USAO or IRS-CI's offices,
20 but defense counsel indicated that he would prefer that the USAO just
21 produce the scanned copies. Due to the nature of the hard-copy
22 records and how they were stored, the USAO anticipates it could take
23 approximately one month to finish scanning these documents.

24 Finally, the USAO is in possession of approximately two boxes of
25 mail relating to GBUS. The USAO has advised defense counsel that it
26 will not be scanning these documents because they are unlikely to
27 contain any relevant information. The USAO will, however, make them
28

1 available for defense counsel to review at the USAO or IRS-CI's
2 offices at a mutually convenient time.

3 2. Digital Search Warrant Evidence

4 a. *The USAO's Review of the Digital Devices*

5 During the course of its investigation, IRS-CI obtained the
6 following digital devices or forensic copies thereof: (1) the
7 computer server belonging to EA LLP; (2) digital devices seized
8 during defendant's arrest on March 25, 2019; (3) digital devices
9 seized from defendant's residence; (4) digital devices seized from
10 the residence of EA Employee 1; (5) digital devices seized from Law
11 Firm 1; and (6) digital devices obtained from former GBUS employees.
12 The USAO and IRS-CI obtained warrants to search each of these devices
13 for evidence relating to the investigation and defendant's
14 prosecution. Undersigned government counsel understands that the
15 devices contain a total of approximately 20 TB of data.

16 The USAO and IRS-CI is reviewing the contents of each of these
17 devices, pursuant to the privilege review and other search protocols
18 set forth in the search warrants. The USAO's Privilege Review Team,
19 which is overseeing the initial scope review and subsequent privilege
20 review, has made substantial progress and expects to complete the
21 privilege review within the next three months.⁴ The USAO will
22 produce any non-privileged documents falling within the scope of the
23 search warrants to the defense on a rolling basis.

24
25
26
27 ⁴ Because the victim-clients named in the Indictment and the
28 court-appointed bankruptcy trustee for GBUS have already executed
limited waivers of the attorney-client privilege, the USAO believes
privilege disputes, if any, would be quite limited.

b. *Production of Forensic Copies of the Digital Devices to Defendant*

At this time, the USAO has not provided defendant with forensic copies of the following digital devices: (1) the EA LLP computer server; (2) digital devices seized from the residence of EA Employee 1; and (3) digital devices seized from Law Firm 1.

With respect to the EA LLP computer server and the digital devices seized from EA Employee 1's residence (collectively, the "EA Devices"), the USAO understands that the EA Devices belong to EA LLP, which is currently controlled by a court-appointed receiver (the "EA Receiver"), and are not defendant's personal property. The USAO also understands that the EA devices likely contain substantial amounts of attorney-client privileged information relating to third-parties, which defendant is not entitled to access. Accordingly, on May 24, 2019, the USAO informed defendant that it did not believe it would be appropriate for the USAO to provide defendant with complete forensic copies of the EA Devices without obtaining consent from the EA Receiver.⁵ The EA Receiver has advised the USAO that it will not consent to the USAO producing complete forensic copies of the EA Devices to defendant.

With respect to the digital devices seized from Law Firm 1, the USAO understands that these devices belong solely to Law Firm 1 and are likely to contain substantial amounts of attorney-client

⁵ To the extent defendant needs to access any of the materials on the EA Devices in order to represent his remaining legal clients, the USAO has advised defendant that he should address this issue with the EA Receiver or seek relief from the Honorable Karen E. Scott, United States Magistrate Judge, or the Honorable Virginia A. Phillips, United States District Judge, who are overseeing the receivership in In re Eagan Avenatti LLP, No. CV 18-1644-VAP (C.D. Cal.).

1 privileged and confidential information relating to Law Firm 1's
2 clients. Accordingly, on May 24, 2019, the USAO informed defendant
3 that it did not believe it would be appropriate for the USAO to
4 provide defendant with complete forensic copies of these digital
5 devices without obtaining consent from Law Firm 1. Counsel for Law
6 Firm 1 has advised the USAO that Law Firm 1 will not consent to the
7 USAO producing complete forensic copies of Law Firm 1's digital
8 devices to defendant.

9 Although the USAO has not produced forensic copies of the
10 digital devices referenced above to defendant, on May 24, 2019, and
11 again during a meet-and-confer on June 26, 2019, the USAO offered to
12 discuss alternative procedures designed to ensure that defendant can
13 access any materials on the EA Devices that may be relevant to his
14 defense. For example, the USAO requested that defendant's counsel
15 consider whether providing defendant with the results of a broader
16 search for potentially relevant materials on the EA Devices, having
17 defendant and his counsel work with the Privilege Review Team to
18 identify and produce relevant materials on the EA Devices directly to
19 defendant, or allowing defendant's counsel to review the complete
20 forensic copy of the EA Devices at IRS-CI's offices would be
21 sufficient to address defendant's concerns.

22 To the extent defendant does not believe any alternative
23 procedures would be sufficient to address defendant's concerns and
24 that defendant should be provided with complete forensic copies of
25 the EA Devices or Law Firm 1's devices, the USAO requests that the
26 Court set an expedited briefing schedule so that this issue can be
27 resolved as soon as possible. The USAO would also request that any
28

1 such briefing schedule provide an opportunity for the EA Receiver and
2 Law Firm 1 to be heard regarding defendant's request.

3 *c. Inaccessible Digital Devices*

4 IRS-CI is currently in possession of an Apple desktop computer
5 seized from defendant's residence, which is password protected and
6 has not yet been accessed. The USAO understands that the United
7 States Attorney's Office for the Southern District of New York (the
8 "SDNY USAO") is also in possession of an iPhone, an iPad, and an
9 Apple laptop computer, which are password protected and have not yet
10 been accessed. The USAO will produce to defendant forensic copies of
11 these devices if and when the USAO is able to access the devices.
12 The government, including the SDNY USAO, has advised defendant that
13 if defendant wishes to immediately obtain forensic copies of these
14 digital devices or access materials on these devices defendant will
15 need to provide the government with the passwords for these devices
16 so that the government can create forensic images of the devices. To
17 date, defendant has not provided the USAO or the SDNY USAO with the
18 passwords for any of the inaccessible devices.

19 3. Hard-Copy Search Warrant Evidence

20 During the execution of search warrants at defendant's
21 residence, EA Employee 1's residence, and Law Firm 1, IRS-CI seized
22 approximately 15 to 20 boxes of hard copy materials. These records
23 are currently being reviewed by the Privilege Review Team to ensure
24 that they do not contain any privileged materials. The USAO will
25 produce scanned copies of these documents to defendant as soon as
26 they are available, likely within the next three weeks.

1 4. Reciprocal Discovery from Defendant

2 The USAO has requested that defendant produce reciprocal
3 discovery under Federal Rule of Criminal Procedure 16. Although
4 defendant has indicated, including through posting numerous messages
5 on Twitter.com, that he is in possession of various documents he
6 intends to use in his defense, including two documents purportedly
7 signed by "Client 1" in the indictment, defendant has not yet
8 produced any reciprocal discovery to the USAO. The USAO therefore
9 requests that the Court order defendant to produce any known
10 reciprocal discovery within two weeks of the status conference, and
11 set a final deadline for defendant to produce reciprocal discovery
12 approximately two months before trial.

13 **B. Defendant's Statement**

14 1. Non-Search Warrant Evidence

15 The Defendant requests that the Court order the government to
16 produce all information referenced above under "Non-Search Warrant
17 Evidence" within two weeks of the status conference.

18 2. Digital Search Warrant Evidence

19 As stated above, the government has refused, without an adequate
20 basis, to return and/or produce significant amounts of critical data
21 and information to the Defendant, without justification. This
22 includes: (1) the computer server belonging to EA LLP; (2) digital
23 devices seized during defendant's arrest on March 25, 2019; (3)
24 digital devices seized from defendant's residence; (4) digital
25 devices seized from the residence of EA Employee 1; (5) digital
26 devices obtained from former GBUS employees. According to the
27 government, these devices contain a total of approximately 20 TB of
28 data. More importantly, this information constitutes nearly all of

1 the business files of Defendants for the last decade, including close
2 to 100 percent of the information relating to the work performed by
3 Defendant for the clients referenced in the indictment. Defendant
4 cannot defend this case without full and complete access to this
5 information.

6 To be clear, there can be no privilege issues relating to
7 producing any of this information to Defendant because Defendant is
8 an attorney who was--and in some cases still is, as his
9 representation of those clients is ongoing-- entitled to full access
10 to this information at all relevant times. Moreover, even if
11 Defendant has since been discharged, Defendant would still be
12 entitled to keep a copy of the information for his records and use,
13 including in connection with defending any civil claim by any client.

14 a. *Production of Forensic Copies of the Digital*
15 *Devices to Defendant*

16 With respect to the EA LLP computer server and the digital
17 devices seized from EA Employee 1's residence (collectively, the "EA
18 Devices"), the government's position lacks all merit. Defendant
19 founded EA in 2007 with two other founding partners. He was the
20 Managing Partner of EA at all relevant times (since 2011) and remains
21 the Managing Partner to this day. He presently owns 100% of the law
22 firm and has owned a controlling interest in the firm since 2011.
23 Further, at all relevant times, all clients of EA were clients of
24 Defendant. Indeed, at all relevant times, no client could become a
25 client of EA without Defendant's knowledge and consent.

26 In addition, up until his arrest on March 25, 2019, Defendant
27 had virtually unlimited access to the information he now demands be
28 returned/produced. Accordingly, there can be no legitimate argument

1 that he should not be afforded access now, especially seeing as he
2 has a constitutionally guaranteed right to prepare a defense.

3 *Moreover, the EA Receiver is not an attorney, cannot service or*
4 *represent clients, has no right to access attorney-client information*
5 *on the servers or in EA's files, and has no ownership interest in the*
6 *firm. More importantly, the Defendant needs full and complete access*
7 *to the totality of this information immediately. Indeed, it is quite*
8 *frankly shocking that the Receiver and the government, both of whom*
9 *have limited, if any, right to this information, presently enjoy*
10 *unfettered access while denying Defendant access so he can prepare a*
11 *defense to these serious criminal charges.*

12 Further, the alleged "alternative" production methods proposed
13 by the government are unworkable and unrealistic, and would result in
14 this case being delayed for years because of the amount of data
15 involved. Defendant should not have to telegraph his defense by
16 revealing which documents he is interested in reviewing, nor should
17 the Defendant and his counsel be required to review over 20 terabytes
18 of data at the offices of the government.

19 The government must be required to produce complete forensic
20 copies of the EA Devices to Defendant within thirty (30) days of the
21 status conference. Following this production and the review of the
22 discovery produced to date, Defendant will further meet and confer
23 with the government as to Law Firm 1's devices.

24 *b. Inaccessible Digital Devices*

25 The warrants permitting the government to access the four
26 inaccessible devices expired long ago. And Defendant is under no
27 obligation to now provide the passwords in exchange for a forensic
28 image of the devices or their return. Defendant requests the return

1 of the four devices within three (3) court days of the status
2 conference so that he may prepare his defense.

3 3. Hard-Copy Search Warrant Evidence

4 The entirety of the documents seized from defendant's residence
5 and EA Employee 1's residence should be produced immediately as no
6 possible privilege issues exist as to this information for the
7 reasons previously discussed. The government has been in possession
8 of this information for 14 weeks and it should have been produced
9 long ago as Defendant needs this information for his defense.

10 As for the materials seized from Law Firm 1, Defense counsel
11 will further meet and confer with the government following review of
12 the documents to be produced.

13 4. Reciprocal Discovery from Defendant

14 Defendant maintains that it is entirely premature for any order
15 of reciprocal discovery, especially considering the lack of timely
16 discovery provided by the government.

17 **IV. PROPOSED TRIAL SCHEDULE**

18 **A. USAO's Proposed Trial Schedule**

19 The USAO proposes the following trial schedule and other
20 relevant dates:

21 1. Trial Date - January 28, 2020.

22 2. Final Pretrial Conference - January 7-11, 2020 (any date
23 that week convenient for the Court).

24 3. Government Witness List Disclosure - December 30, 2019
25 (i.e., approximately one month before trial).

26 4. Government Exhibit Disclosure - January 21, 2020 (i.e.,
27 approximately one week before trial).

1 5. Expert Witness Disclosures - November 4, 2019 (i.e.,
2 approximately two weeks before pretrial motions are to be filed).

3 6. Proposed Pretrial Motions Schedule

4 a. Motions Due - November 18, 2019.

5 b. Oppositions Due - December 2, 2019.

6 c. Replies Due - December 9, 2019.

7 d. Motions Hearing - December 23, 2019 (or any date
8 during the week of December 16-20, 2019, that is convenient for the
9 Court).

10 7. Disclosure of Jencks Act Materials and Witness Statements -
11 December 30, 2019 (i.e., approximately one month before trial).⁶

12 8. Interim Status Conferences - August 5, 2019; September 9,
13 2019; October 7, 2019; and November 4, 2019.⁷

14 The USAO believes that this schedule is appropriate and will
15 provide defendant and his counsel sufficient time to prepare for
16 trial.

17 **B. Defendant's Proposed Trial Schedule**

18 Defendant maintains that it is far too premature for the Court
19 to set a trial date in this matter, let alone in January, for the
20 following reasons:

21 1. Significant Discovery Has Yet to Be Produced

22 As set forth above, the government has yet to produce well over
23 95% of the information and data necessary for the defense in this
24

25 ⁶ The USAO will agree to produce summaries of any additional
26 witness statements it obtains during trial preparations on a rolling
basis thereafter.

27 ⁷ The interim status conferences will provide the parties an
28 opportunity to address any issues and/or foreseeable issues with the
Court. If the parties agree in advance of one or more of the status
conferences that such a hearing is unnecessary, the parties will
inform the Court in advance to vacate the hearing(s).

1 case, including over 20 terabytes of data. Until this information
2 and data are produced and reviewed, together with the yet to be
3 produced 302s, it is impossible for the defense to adequately
4 determine the total amount of time necessary to prepare for trial,
5 the likely motions and experts required, etc.

6 2. The Government May Supersede the Indictment

7 The Defense has recently learned that the government is
8 eliciting testimony and evidence concerning Defendant before the
9 Grand Jury. Defendant's counsel has inquired as to whether this will
10 result in further charges and the government has refused to answer.
11 Obviously, any further charges would result in further discovery and
12 the need for more time for proper defense preparation. Defendant
13 should be permitted to know the entirety of the charges against him
14 before committing to a trial date.

15 3. Other Cases Pending Against the Defendant Will Delay
16 this Case

17 As the Court is aware and as discussed more fully below, rather
18 than charge the Defendant in one case, in one jurisdiction, the
19 Department of Justice made the decision to charge him in three
20 separate cases on two coasts. As a result of this strategic
21 decision, significant delay will result. This delay is not the fault
22 of the defense - it stems directly from the government's approach to
23 charging the Defendant. Accordingly, the Defendant should not be
24 prejudiced in his ability to adequately prepare a defense.

25 As further discussed below, the Defendant is already scheduled
26 to be tried in New York on November 12, 2019, in the Southern
27 District of New York in United States v. Avenatti, No. 1:19-CR-373
28 (the "SDNY Extortion Case" or "Nike Case"), a trial that is expected

1 to last two weeks at a minimum. Defendant is represented in that case
2 by separate counsel, whom he is presently assisting in preparing his
3 defense.

4 It is anticipated that the government will soon be asking the
5 court in the Southern District of New York to set a trial in the
6 third case - United States v. Avenatti, No. 1:19-CR-374 (the "SDNY
7 Fraud Case") for trial immediately following the Nike Case. A status
8 conference is scheduled in New York for July 23, 2019. As noted
9 below, the Defendant will be moving to transfer and likely
10 consolidate the SDNY Fraud Case with this matter.

11 4. The Existing Trial Schedule of Defense Counsel

12 Even leaving aside a possible trial date in the SDNY Fraud Case,
13 defense counsel's trial schedule does not permit a trial in this case
14 in January as demanded by the government. Presently, that 2019
15 schedule is as follows:

16
17 ► **September 17-** *U.S. v. Noori* SA-CR-17-112-DMG (client is very
18 ill- unclear whether he will be well enough for trial in September,
19 which may result in delay)- 2 week bank fraud trial in Los Angeles

20 ► **October 22-** *U.S. v. Michaels et. al.* SA-CR-16-76-JVS (client
21 is Jonathan Brightman)- 3-4 week multiple defendant telemarketing
22 fraud trial - Santa Ana

23 ► **November 26-** *U.S. v. Le* SA-CR-18-119-AG - 3 week multiple
24 defendant health care fraud trial- Santa Ana

25 ► **December 3-** *U.S. v. Garcia* (District of Nevada - Las Vegas;
26 conflicts with *U.S. v. Le* therefore likely be continued to January or
27 February, 2020) - 2-3 week multiple defendant mortgage fraud trial.

1 In addition, following the trial in the *Garcia* matter in Las
2 Vegas in January or February 2020, Defendant's counsel would need at
3 least sixty (60) days to prepare for the trial in this matter, at a
4 minimum, assuming that all of the discovery demanded above is
5 produced immediately (thus allowing for immediate review).

6 As a result of the above and the need for clarity as to which
7 charges Defendant will face and the content of the discovery,
8 Defendant requests a further status conference on November 8, 2019.

9 **V. LOGISTICAL ISSUES**

10 **A. The SDNY Extortion Case**

11 Defendant is charged in a four-count indictment in the Southern
12 District of New York with offenses relating to an alleged scheme to
13 extort Nike Inc. United States v. Avenatti, No. 1:19-CR-373 (the
14 "SDNY Extortion Case"). The SDNY extortion case is set for trial on
15 November 12, 2019. Defendant is represented by separate counsel in
16 the SDNY Extortion Case.

17 1. Defendant's Statement

18 The Nike case will result in significant delay of this case.
19 Defendant is actively involved in preparing for the trial in the Nike
20 matter, including by regularly meeting with his counsel (located in
21 Miami), reviewing discovery, and researching various issues. He is
22 highly involved on a daily basis as the case is set for trial in
23 November. The government is seeking a loss amount of over one
24 billion dollars in connection with the Nike case, which is far
25 greater than the amount here, and may result in significant
26 incarceration if Defendant is found guilty. Accordingly, until that
27 case is tried to completion, Defendant will be unable to assist in
28 the defense in this case in any meaningful way. There can be little

1 question that this will result in significant delay. Again, this
2 results not from any strategic choice by the Defendant, but rather
3 from the choices made by the government.

4 The government has been investigating this case and seizing and
5 otherwise obtaining massive amounts of data for three years, yet
6 wants to push defendant to trial in 10 months. This is based in part
7 on a general assertion from the government that it will get the
8 discovery it wants to produce, but only that discovery, to the
9 defendant in the next several months. It is apparent that the
10 government is attempting to exert pressure on and disadvantage the
11 Defendant, by failing to produce massive amounts of discovery in a
12 timely manner in this case, proceeding to trial in the Nike case,
13 moving forward on the other case in the SDNY, and pushing to have
14 this case proceed to trial shortly after the Nike case. This is
15 fundamentally unfair, and prejudicial.

16 2. Government's Statement

17 The USAO does not believe that the SDNY Extortion Case should
18 delay the trial in this case. The SDNY Extortion Case is being
19 handled by separate defense attorneys, is based on separate conduct,
20 primarily involves different evidence and witnesses, and presents
21 separate legal issues. The trial in the SDNY Extortion Case should
22 therefore have no impact on defendant's ability to proceed to trial
23 in this case in a timely manner (other than defendant's presence in
24 SDNY during his trial). Accordingly, the USAO has proposed that this
25 case proceed to trial as soon after the SDNY Extortion Case as
26 possible.

1 **B. The SDNY Fraud Case**

2 Defendant is also charged in a two-count indictment with wire
3 fraud and aggravated identity in the Southern District of New York in
4 United States v. Avenatti, No. 1:19-CR-374 (the "SDNY Fraud Case").
5 A trial date has not yet been set for the SDNY Fraud Case. A status
6 conference is currently scheduled for July 23, 2019. Defendant is
7 represented by Mr. Steward in the SDNY Fraud Case.

8 1. Defendant's Statement

9 Defendant anticipates filing a motion to transfer venue and/or
10 consolidate as it relates to the SDNY Fraud Case because Defendant
11 believes the case should have been charged in this district.
12 Depending on the outcome of those motions, this case may involve more
13 charges. In the alternative, Defendant will request that the SDNY
14 Fraud Case be tried after the Nike case as it involves fewer
15 witnesses, far less discovery, and can be tried to conclusion long
16 before this case will be ready for trial.

17 2. USAO's Statement

18 The resolution of defendant's anticipated motion to transfer the
19 SDNY Fraud Case to this district should have no impact on the trial
20 date in this case. If such a motion is granted, the government would
21 be prepared to try the charges pending in the SDNY Fraud Case either
22 in a consolidated proceeding with the current charges or immediately
23 after the trial in this case. If such a motion is denied, the USAO
24 believes that this case should proceed to trial prior to the SDNY
25 Fraud Case because this case involves broader alleged criminal
26 conduct and multiple victims, including five of defendant's former
27 clients, who suffered total financial losses of approximately \$9
28

1 million, and the IRS, which is owed at least \$3.2 million in unpaid
2 taxes.

3 **VI. ESTIMATED LENGTH OF TRIAL**

4 **A. USAO's Estimate**

5 The USAO estimates that the trial, including any defense case,
6 can be completed in three to four weeks.

7 **B. Defendant's Estimate**

8 Defendant estimates that the trial, including the defense case,
9 can be completed in six weeks. This estimate is a rough estimate and
10 is largely dependent on the remaining discovery to be produced, as
11 well as the outcome in the motions to transfer venue/consolidate.

12 **VII. NEED FOR A TIME-QUALIFIED JURY**

13 **A. USAO's Position**

14 The USAO believes that a time-qualified jury is likely
15 necessary.

16 **B. Defendant's Position**

17 Defendant objects to the request for a time-qualified jury. In
18 counsel's experience, time qualified jurors tend to favor the
19 prosecution.

20 **VIII. ADDITIONAL ISSUES TO ADDRESS AT STATUS CONFERENCE**

21 **A. Defendant's Position**

22 Defendant anticipates raising two additional issues at the
23 Status Conference: (1) a deadline by which the government must
24 supersede the indictment and (2) the immediate production of any
25 purported waivers of the attorney-client privilege by any of the
26 clients of Defendant.

1 **B. USAO's Position**

2 The parties met-and-conferred telephonically regarding the
3 instant Joint Report on June 26, 2019. Defendant's portion of the
4 Joint Report, which the USAO did not receive until approximately 3:30
5 pm on July 1, 2019 (the day it was due to be filed), raises a number
6 of issues or arguments regarding discovery and other matters for the
7 very first time. Defendant has also taken positions in the Joint
8 Report that are inconsistent with the positions defendant's counsel
9 took during the June 26 meet-and-confer. Because there is
10 insufficient time to respond to these issues prior to filing the
11 Joint Report, the government will be prepared to address all of the
12 issues raised in the Joint Report at the July 8, 2019, status
13 conference.

14 With respect to the specific additional issues defendant
15 identifies above, the USAO cannot comment on grand jury proceedings
16 under Federal Rule of Criminal Procedure 6(e) and believes any
17 deadline regarding the potential filing of a superseding indictment
18 would be inappropriate at this time. As for the attorney-client
19 privilege waivers, defendant is raising this issue for the first time
20 in this Joint Report. Although redacted copies of such waivers were
21 attached as exhibits to the search warrant applications and therefore
22 have already been produced to defendant, the government will gladly
23 reproduce the waivers to defendant on July 2, 2019.

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **SBC-19-TE-30259 – YDR**

(OCTC Case No. 19-TE-16715)

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

SUPPLEMENTAL DECLARATION OF GREGORY BARELA, DECLARATION OF JOHN P. REITMAN, AND DECLARATION OF ELI D. MORGENSTERN IN SUPPORT OF CORRECTED APPLICATION FOR INVOLUNTARY INACTIVE ENROLLMENT



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service (UPS).



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: _____ at Los Angeles, addressed to: *(see below)*



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: _____ addressed to: *(see below)*

| Person Served | Business-Residential Address | Fax Number | |
|---|---|--------------------|--|
| Ellen A. Pansky PANSKY MARKLE Attorneys at Law | 1010 Sycamore Ave., Unit 308 South Pasadena, CA 91030-6139 | | |
| | | Electronic Address | |
| Thomas D. Warren PIERCE BAINBRIDGE BECK PRICE & HECHT LLP | 355 S. Grand Ave., Suite 4400 Los Angeles, CA 90071-3106 | | |

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: July 10, 2019

SIGNED: _____

Kathi Palacios
Declarant