

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT  
No. D-202-CV-2020-04051

STATE OF NEW MEXICO ex rel. RAÚL  
TORREZ, District Attorney, Second Judicial  
District,

Plaintiff,

v.

NEW MEXICO CIVIL GUARD, BRYCE L.  
SPANGLER (a/k/a Bryce Provance, a/k/a  
Jason Bjorn), JOHN C. BURKS, ORYAN  
MIKALE PETTY, JONATHAN MICHAEL  
VERA, MICHAEL LYN HARRIS,  
THOMAS W. GILLESPIE, DAVID BERNIE  
ROSE, CRAIG PORTER FITZGERALD,  
NICOLAS LOMAS, DAVID S. RICE,  
DEVON MICHAEL BAY, WESSLEY AVIS  
RODGERS, WALTER EUGENE  
RODRIGUEZ, and DANIEL MATTHEW  
ESPINOSA,

Defendants.

**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT  
AGAINST DEFENDANT NEW MEXICO CIVIL GUARD (NMCG),  
FOR ORDER TO SHOW CAUSE WHY NMCG SHOULD NOT BE  
HELD IN CONTEMPT, AND FOR SPOILIATION SANCTIONS AGAINST  
NMCG AND DEFENDANT BRYCE LEROY SPANGLER PROVANCE**

## **INTRODUCTION**

For over a year, the State has sought basic information concerning Defendant New Mexico Civil Guard (NMCG), its members, and its activities. And for over a year, NMCG has repeatedly flouted its discovery obligations. NMCG's delinquency reached new levels last month during the State's deposition, pursuant to Rule 1-030(B)(6) NMRA, of NMCG's designated representative. NMCG previously moved for a protective order shielding itself from being deposed, but this Court denied that motion, leaving NMCG responsible for producing a witness prepared to testify on all topics the State designated. Rather than obey the Court's Order, NMCG designated as a representative Defendant Bryce Leroy Spangler Provance (referred to in this motion as "Provance"), who initially refused even to identify himself during the deposition, let alone respond to the State's questions regarding the matters described in the deposition notice. Provance ended the deposition after only 12 minutes, and much of that time was spent discussing an obscene and threatening drawing that Provance had made for the occasion. Provance also admitted during the deposition that he previously had control over all documentation in NMCG's possession, but that he had intentionally destroyed every piece of it, including by pouring bleach on his hard drive and then burning it.

This Court should put an end to NMCG's misconduct. NMCG has already been ordered to pay monetary sanctions under Rule 1-037(D) NMRA for its prior discovery abuses (which remain outstanding), and Provance's behavior at the Rule 1-030(B)(6) deposition makes clear that NMCG remains undeterred. The State accordingly moves under Rule 1-037(B)(2) for an order: (1) requiring NMCG to show cause why it should not be held in contempt for failing to comply with a Court-ordered deposition; (2) rendering a judgment by default against NMCG; and (3) directing both NMCG and its attorney to pay the State's reasonable expenses, including

attorney's fees. The State also moves for spoliation sanctions against NMCG and Provance, up to and including a default judgment.

### **BACKGROUND**

On January 8, 2021, the State served Requests for Admission (RFAs) and Requests for Production (RFPs) on NMCG in conjunction with service of process. Under Rules 1-034(B) and 1-036(A) NMRA, NMCG was required to respond to these requests by February 22. NMCG failed to meet this deadline, claiming that it had never received the requests. The State confirmed that the requests had in fact been served on NMCG in January, but it nevertheless gave NMCG an extension through April 28. Notwithstanding this extension, NMCG ultimately responded to the State's RFAs with the same boilerplate set of objections to every RFA, along with blanket denials. NMCG did not produce any documents in response to the State's RFPs.

The State subsequently requested a meet and confer concerning NMCG's wholesale refusal to participate in discovery, but NMCG failed to respond to that request as well. Accordingly, the State moved on May 17 for an order deeming admitted its RFAs and compelling production of documents responsive to its RFPs. NMCG opposed that motion, and on May 20 it filed its own motion for a protective order to shield itself from being deposed. This motion was filed in response to a notice of deposition of the designated representative of NMCG that the State had filed on May 10 pursuant to Rule 1-030(B)(6).

On December 13, this Court held a hearing on the State's motion to compel and on NMCG's motion for a protective order. In an Order issued on January 3, 2022, the Court granted the State's motion, and it also ordered NMCG to pay the State reasonable expenses, including

attorney's fees, under Rule 1-037(D).<sup>1</sup> In addition, the Court denied NMCG's motion for a protective order, noting that, "[t]o the extent necessary, the New Mexico Civil Guard may designate membership information 'confidential' pursuant to the protective order the Court will enter on that issue." Order at 2 (Jan. 3, 2022). Following the Court's Order, the State again noticed a Rule 1-030(B)(6) deposition of NMCG. NMCG designated Provance, the founder of NMCG and a defendant in this case, to testify on the entity's behalf.

The deposition lasted only 12 minutes and comprises only 9 pages of testimony. *See* Provance Dep. (Ex. 1, 2<sup>2</sup>). When asked at the outset to identify himself, Provance declined to comment, claiming instead to invoke his Fifth Amendment rights. *See id.* at 5:6–14. Provance then produced a stick-figure drawing, which he had made for the occasion. *See* Drawing (Ex. 3). The drawing appears to contain two vignettes. In the first, a figure labeled "Me" (i.e., Provance) appears to be performing a sex act on a figure labeled "Your Mom." The Provance figure is uttering an expletive, and the other figure is thanking Provance. The second vignette is more difficult to decipher. It seems to depict the devil, engulfed in flames, using strings to control three standing figures, as if they were marionettes. They surround a fourth figure, which is on its knees and is labeled "Georgetown Law."<sup>3</sup> The standing figures appear to be engaged either in a sex act or some form of violent behavior directed to the fourth figure. When asked

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<sup>1</sup> On December 23, 2021, the State submitted declarations in support of the Court's award of reasonable expenses. On January 7, 2022, NMCG filed objections to the State's fee declarations, which in essence sought to relitigate the Court's award. On January 14, 2022, the State filed a response to NMCG's objections. The matter is currently pending before the Court.

<sup>2</sup> Exhibit 2 is the video recording of the deposition and is being submitted to the Court and served on opposing counsel separately on digital media.

<sup>3</sup> The State is represented by several attorneys, including undersigned Attorneys McCord and Gifford, from the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center.

about the drawing, Provance said that “[i]t was supposed to make me laugh,” Provance Dep. 6:6, and “[i]t was to make me smile while I had to look at you,” *id.* at 6:22–23.

Provance also brought to the deposition the cover of a book titled “Behold a Pale Horse” by Milton William Cooper,<sup>4</sup> and a partial copy of the Declaration of Independence. When asked to describe the former document and identify the latter, Provance declined to comment, again claiming to invoke his Fifth Amendment rights. *See id.* at 7:2–25. Provance then agreed to spell his last name, but he refused to comment on any other names by which he had been known. He then explained, unprompted, that as the founder of NMCG, he had had control over all documentation in the organization’s possession. He claimed that he had “destroyed all documentation,” “shredded and burned all membership files,” “shredded and burned anything regarding the structure of the New Mexico Civil Guard,” and “poured bleach on the hard drive of my laptop and then burned it.” *Id.* at 9:21–25. Following this admission, Provance stated that “all of my answers from here on out are going to be ‘No comment.’” *Id.* at 10:15–16. Although he proceeded to offer a few additional details regarding his destruction of evidence, *see id.* at 10:18–11:12, Provance soon reverted to his position that he would not comment further, and he refused to continue with the deposition and walked out, *see id.* at 12:2–13:4.

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<sup>4</sup> Cooper’s book has been tied to the QAnon movement, and it incorporates the “Protocols of the Learned Elders of Zion,” which “purports to outline a secret plan by Jews to take over the world.” Richard Ruelas & Rob O’Dell, *How William Cooper and His Book “Behold a Pale Horse” Planted Seeds of QAnon Conspiracy Theory*, *azcentral* (Oct. 1, 2020, 9:08 AM), <https://www.azcentral.com/in-depth/news/local/arizona-investigations/2020/10/01/behold-pale-horse-how-william-cooper-planted-seeds-qanon-theory/3488115001/>.

## ARGUMENT

### I. THIS COURT SHOULD ORDER NMCG TO SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT FOR FAILING TO COMPLY WITH A COURT-ORDERED DEPOSITION

Under Rule 1-037(B)(2), if “a person designated under Rule 1-030 NMRA . . . to testify on behalf of a party fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just.” “[S]uch orders” may include “an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence,” *id.*, “an order . . . rendering a judgment by default against the disobedient party,” *id.*, and—except in circumstances not relevant here—“an order treating as a contempt of court the failure to obey any orders,” *id.* Furthermore, “[i]n lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” *Id.*

Under a straightforward application of these rules, NMCG should be required to show cause why it should not be held in contempt of this court’s January 3 Order denying NMCG’s motion for a protective order. “The elements necessary for a finding of civil contempt are: (1) knowledge of the court’s order, and (2) an ability to comply.” *In re Hooker*, 1980-NMSC-109, ¶ 4, 94 N.M. 798. Without question, NMCG knew of the Court’s Order requiring it to designate a representative to be deposed pursuant to Rule 1-030(B)(6). Indeed, NMCG expressly tried to relitigate that Order when it filed objections to the State’s fee declarations on January 7. NMCG also undoubtedly had an ability to comply with the Order. There is an identifiable group of

NMCG leaders, any one of whom could properly have been prepared to speak on the limited topics on which the State sought testimony. Rather than designate these individuals (or any others) as representatives, NMCG designated Provance, who declined even to confirm his own name. That Provance appeared at the deposition for a brief period of time to openly mock the Court's Order and the State rather than meaningfully respond to questions plainly violates the Court's Order. *See Allred by Allred v. Bd. of Regents of the Univ. of New Mexico*, 1997-NMCA-070, ¶ 19, 123 N.M. 545 ("sanctions under Rule 1-037" may be justified by "the refusal to answer questions on matters ruled discoverable during a deposition").

In addition to ordering NMCG to show cause why it should not be held in contempt, this Court should enter a default judgment against NMCG pursuant to Rule 1-037(B)(2)(c). NMCG's conduct during the discovery process has been disqualifying. As discussed above and in the State's prior filings, NMCG has repeatedly obstructed the State's efforts to obtain basic information about the organization. To date, NMCG has produced only 14 pages in response to the State's requests for production, and even these pages are materially identical to documents already produced by Defendant Nicolas Lomas. NMCG's other discovery responses have also been vague and dissembling. To give just one example, after this Court ordered NMCG to fully and in good faith respond to the State's RFAs or have those RFAs deemed admitted, NMCG produced supplemental responses in which it appeared, for the first time, to draw a purported distinction between entities that it referred to as "NMCG" and "Facebook NMCG." NMCG then appeared to admit information about one of these purportedly distinct entities, while denying the same information about the other. *See, e.g.*, Excerpt from Defendant New Mexico Civil Guard's First Supplemental Answers to the State's First Requests for Admission (Jan. 3, 2022) (denying that Defendant John Burks was a member of "NMCG," but admitting that he was a member of

“Facebook NMCG”) (Ex. 4). To the extent that NMCG is attempting to invent a distinction—well over a year into this litigation—between entities that it refers to as “NMCG” and “Facebook NMCG,” such an attempt is almost certainly another effort to muddy the waters and prevent the State from learning about the organization, its members, and its activities.

Provance’s spectacle during the March 3 deposition was just the culmination of NMCG’s record of obstruction. The State has tried repeatedly and in good faith to obtain the discovery to which it is entitled, but NMCG has thrown up obstacles at every turn. If the Court does not enter a default judgment against NMCG, the State will be seriously hampered in its ability to prove its case, and the other Defendants will be emboldened in flouting their discovery obligations. *See United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 395, 96 N.M. 155 (“The most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” (internal quotation marks and alteration omitted)). It is true that default sanctions should “be imposed only in extreme cases and only upon a clear showing of willfulness or bad faith.” *Id.* ¶ 396. But NMCG’s misconduct has been nothing if not extreme. It is not every day that a Rule 1-030(B)(6) deponent invokes the Fifth Amendment when asked to identify himself, before producing obscene handmade drawings that, at best, convey open hostility to the law and court process, and, at worst, a threat to representatives of the State and its counsel. “In discovery, as well as in other aspects of this litigation, [NMCG’s] efforts have been marked by an extraordinary lack of diligence that cannot be characterized as accidental, unintentional, or involuntary.” *Id.* ¶ 443. Furthermore, NMCG has claimed to be indigent in response to the Court’s last award of discovery sanctions, thereby underscoring the need for non-



monetary sanctions at this juncture. *See* Objections to Plaintiff’s Fee Declarations ¶ 2 (Jan. 7, 2022) (Ex. 5). Even if the Court declines to enter a default judgment, it should at a minimum enter an order, pursuant to Rule 1-037(B)(2)(b), refusing to allow NMCG to oppose any claims against it, and prohibiting NMCG from introducing any evidence at trial. The State should not be required to play both offense and defense with its arms tied behind its back.

As a final matter, the Court should order NMCG and its attorney to pay reasonable expenses, including attorney’s fees, caused by its failure to comply with this Court’s January 3 Order. Rule 1-037(B)(2) provides that, where a party fails to obey a discovery order, “the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” This language is mandatory, and neither of the enumerated exceptions applies. *See Marchman v. NCNB Texas Nat. Bank*, 1995-NMSC-041, ¶ 54, 120 N.M. 74 (“The court thus must award reasonable expenses to the affected party when the other party has failed to comply with a discovery order. The only exceptions to a mandatory award of expenses for failure to comply with a discovery order occur when the failure to comply was ‘substantially justified’ or if ‘other circumstances make an award of expenses unjust.’”). The State’s attorneys spent significant time preparing for the March 3 deposition, and NMCG—under the advice of its attorney—failed to designate a responsive witness. Even assuming the Court agrees with the State that a default judgment against NMCG is appropriate, the State will still need to depose another Rule 1-030(B)(6) representative to obtain information from NMCG relevant to the State’s case against the remaining Defendants. The State should not be required to incur the

costs of preparation twice. Those costs should instead be borne by those responsible for imposing them: NMCG and its counsel.

## **II. THIS COURT SHOULD IMPOSE SPOILIATION SANCTIONS ON NMCG AND PROVANCE**

Under New Mexico law, “both trial and appellate courts must have inherent power to impose a variety of sanctions on both litigants and attorneys in order to regulate their docket, promote judicial efficiency, and deter frivolous filings.” *State ex rel. New Mexico State Highway & Transp. Dep’t v. Baca*, 1995-NMSC-033, ¶ 11, 120 N.M. 1 (internal quotation marks omitted). This inherent power includes the authority to impose sanctions for the spoliation of evidence, defined as “the destruction or significant alteration of evidence, or the failure to preserve property for another’s use as evidence, in pending or future litigation.” *Rest. Mgmt. Co. v. Kidde-Fenwal, Inc.*, 1999-NMCA-101, 127 N.M. 708 (internal quotation marks omitted). “[I]n determining whether to impose sanctions for the destruction of evidence, courts should consider the following: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.” *Segura v. K-Mart Corp.*, 2003-NMCA-013, ¶ 9, 133 N.M. 192 (internal quotation marks omitted). Spoliation sanctions can range from an award of attorney’s fees, *see Aduz Healthcare Servs., P.C. v. Ojiaku*, A-1-CA-32555, mem op. ¶¶ 28–30 (N.M. Ct. App. Apr. 1, 2014) (nonprecedential), to “an instruction to the jury that it may consider that the lost evidence would be unfavorable to the spoliating party,” *Rest. Mgmt. Co.*, 1999-NMCA-101, ¶ 18 (internal quotation marks and alterations omitted), to a default judgment against the spoliating party, *see Segura*, 2003-NMCA-013, ¶ 13.

Some spoliation cases are close calls. This one is not. During the March 3 deposition, Provance admitted that “as founder of” NMCG, he “retained all documents.” Provance Dep. 9:14–16; *id.* at 10:4–5 (“Nobody else had those documents except for me . . .”) (Ex. 1). And he admitted that he “destroyed all documentation, shredded and burned all membership files . . . shredded and burned anything regarding the structure of the New Mexico Civil Guard . . . [and] poured bleach on the hard drive of my laptop and then burned it.” *Id.* at 9:21–25. Provance did not recall the exact date on which he destroyed all of NMCG’s documents, but he testified that it was “about a month” before he “was served with the documentation regarding the preservation of the documents,” *id.* at 10:1–3, and it was “between Florida and Tennessee,” *id.* at 10:20–21.

Even accepting Provance’s proffered timeline as true, he destroyed NMCG’s documents well after he was aware of this lawsuit. Provance was served with the summons and complaint in this case on October 1, 2020, while he was located in Tennessee.<sup>5</sup> Assuming that he destroyed NMCG’s documents “about a month” before that, *id.* at 10:1, while he was “between Florida and Tennessee,” *id.* at 10:20–21, the spoliation would have taken place in late August or early September. This lawsuit was filed over a month earlier, on July 13. And public reporting makes clear that Provance was aware of the lawsuit at the time it was filed, notwithstanding his deposition testimony to the contrary. Provance testified during the March 3 deposition that he did not become aware of this lawsuit until he received service of process. *See* Provance Dep. 9:16–19 (“[S]ince I was the last individual, I reckon, to be served with this lawsuit, I did not know about the provisions to retain any of the documentation.”); *id.* at 10:3–4 (“So up until that point, I did not know.”); *id.* at 11:17–19 (“I did not feel that I needed to retain [NMCG’s documents], because I did not know of the lawsuit.”); *id.* at 11:22 (“Until I was served, I had no

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<sup>5</sup> A copy of the service return is attached as Exhibit 6.

idea.”). But Provance’s statements to multiple news outlets contradict this. In an article first published on July 13—the same day this lawsuit was filed—KOB 4 reported on the lawsuit, and the news station interviewed Provance on the subject.<sup>6</sup> Provance told KOB 4 that the lawsuit was an effort to shift blame away from law enforcement over their handling of the June 15, 2020, protest at the statue of Juan de Oñate in Albuquerque, and that public officials were “going to deflect and try and charge us and sue us whatever they are going to do.”<sup>7</sup> The following week, the Albuquerque Journal reported on the lawsuit as well, and they also successfully reached Provance for comment.<sup>8</sup> In that interview, Provance suggested that NMCG might change its tactics in response to the lawsuit, telling the Journal: “Maybe instead of carrying an AR15 and a bullet proof vest we go in with freaking just a uniform and sidearms.”<sup>9</sup> And the following month, in an interview with the publication New Mexico In Depth, Provance said that he left New Mexico after this lawsuit was filed.<sup>10</sup>

There is no question, then, that Provance knew of this lawsuit when he destroyed all evidence in NMCG’s possession. Given his flagrant spoliation, the severest sanction of default is warranted, both against him and against NMCG.<sup>11</sup> As noted above, New Mexico courts

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<sup>6</sup> See Ryan Laughlin & Megan Abundis, *District Attorney Files Lawsuit Against NM Civil Guard*, KOB 4 (July 13, 2020, 4:21 PM), <https://www.kob.com/albuquerque-news/district-attorney-files-lawsuit-against-nm-civil-guard/5790971/>.

<sup>7</sup> *Id.*

<sup>8</sup> See Elise Kaplan, *Suit Against Militia Follows in the Footsteps of Virginia Case*, Albuquerque J. (July 18, 2020, 10:04 PM), <https://www.abqjournal.com/1477313/suit-against-militia-follows-in-the-footsteps-of-virginia-case.html>.

<sup>9</sup> *Id.*

<sup>10</sup> See Stan Alcorn, *The Founder of New Mexico’s New Militia Was a Neo-Nazi Skinhead*, N.M. In Depth (Aug. 20, 2020), <https://nminddepth.com/2020/08/20/the-founder-of-new-mexicos-new-militia-was-a-neo-nazi-skinhead/>.

<sup>11</sup> Spoliation thus provides an independent basis for this Court to enter a judgment of default against NMCG, in addition to NMCG’s failure to comply with a Court-ordered deposition.

consider three factors when imposing spoliation sanctions: “(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.” *Segura*, 2003-NMCA-013, ¶ 9 (internal quotation marks omitted). The first factor could not weigh more heavily against Provance and NMCG. Provance knew that NMCG was a party to this lawsuit, and according to his deposition testimony he nevertheless destroyed all evidence in NMCG’s possession. When asked to explain his actions, Provance said only that: “I was no longer a member. I did not feel that I needed to retain them, because I did not know of the lawsuit.” Provance Dep. 11:17–19 (Ex. 1). As just discussed, Provance did know about the lawsuit, and any personal feelings he had regarding NMCG were insufficient to justify destroying all relevant evidence in NMCG’s possession.

Moving to the second factor, “the degree of prejudice suffered by the opposing party” is significant. *Segura*, 2003-NMCA-013, ¶ 9 (internal quotation marks omitted). As discussed, the State has been trying for over a year to confirm basic information about NMCG and its activities. Such confirmation may now be impossible. With regard to NMCG’s leadership structure and membership lists, for example, Provance may have destroyed the only remaining documentation in *anyone’s* possession. The destruction of all relevant evidence would be prejudicial in any case, but it is particularly harmful here, given that NMCG has repeatedly refused to comply with its other discovery obligations. Absent a judgment of default against NMCG and Provance, the State will be substantially hampered in its ability to prove its claims. And the harm to the State’s claims against other Defendants (and others who properly should be Defendants whose identities have been concealed) likely cannot be effectively remedied.

Finally, there is no “lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.” *Id.* (internal quotation marks omitted). NMCG and the other Defendants in this case have disregarded their discovery obligations. Even after this Court awarded monetary sanctions in its January 3 Order, Provance and NMCG felt emboldened to make a mockery of the March 3 deposition. And as noted above, NMCG has claimed to be indigent. If the Court does not send a clear message that further abuses will be met with the severest sanctions, NMCG and the other Defendants will continue their pattern of obstruction, and the State will be required to prove its case by relying on public reporting and the meager discovery it has received to date.

In the event the Court disagrees that the sanction of default is appropriate, the State asks at a minimum for “an instruction to the jury that it may consider that the lost evidence would be unfavorable to the spoliating party,” *Rest. Mgmt. Co.*, 1999-NMCA-101, ¶ 18 (internal quotation marks and alterations omitted). “Where the actions of the spoliator fail to rise to the level of malicious conduct”—and, to be clear, the State believes Provance’s and NMCG’s actions do rise to that level—“a more appropriate remedy would be a permissible adverse evidentiary inference by the jury in the underlying claim.” *Torres v. El Paso Elec. Co.*, 1999-NMSC-029, ¶ 53, 127 N.M. 729, *overruled on other grounds by Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 53, 134 N.M. 43. “Trial courts, in determining whether to give this instruction, should consider whether the spoliation was intentional, whether the spoliator knew of the reasonable possibility of a lawsuit involving the spoliated object, whether the party requesting the instruction acted with due diligence with respect to the spoliated evidence, and whether the evidence would have been relevant to a material issue in the case.” *Id.* (internal quotation marks omitted).

Each of these factors weighs in favor of an adverse inference instruction against NMCG and Provance (assuming, again, that the Court chooses not to enter a sanction of default). First, there is no question that the spoliation was intentional—Provance testified that he “shredded and burned all membership files . . . shredded and burned anything regarding the structure of the New Mexico Civil Guard . . . [and] poured bleach on the hard drive of my laptop and then burned it.” Provance Dep. 9:21–25 (Ex. 1). Second, Provance was aware of the possibility of litigation, and in fact knew that this lawsuit had been filed at the time he destroyed the evidence. Third, the State acted with due diligence, both by issuing preservation notices at the beginning of this litigation, and by serving RFAs and RFPs shortly thereafter on NMCG and the other Defendants. Fourth, the destroyed evidence would have been relevant to several material issues in the case. The State of course cannot know the content of the documents that Provance destroyed. At a minimum, however, the documents concerning NMCG’s structure and membership would have borne on the State’s allegations that NMCG organized itself as an unlawful military unit whose members falsely assumed law enforcement functions. Absent a judgment of default against NMCG and Provance, the State is entitled to an adverse inference instruction with respect to each element of its claims against these Defendants.

Finally, in addition to any other spoliation sanctions it deems appropriate, the Court should require NMCG and Provance to pay attorney’s fees and costs to the State. *See Aduz Healthcare Servs.*, A-1-CA-32555, mem. op. ¶¶ 12–19, 28–30 (affirming district court order awarding both adverse inference and attorney’s fees and costs as spoliation sanctions). “A sanction awarding attorney fees has both a punitive and compensatory aspect,” and courts have been particularly generous in awarding such sanctions where they “related to an affront to the court and the judicial process.” *Id.* ¶ 31. Provance’s and NMCG’s wanton destruction of

evidence is nothing if not “an affront to the court and the judicial process,” and the State will be required to expend additional resources to prove its case as a result of this misconduct.

Regardless of whether the Court agrees that further sanctions are appropriate, it should award the State attorney’s fees and costs against Provance and NMCG for their spoliation of evidence.

### **CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Court enter an order, pursuant to Rule 1-037(B)(2): (1) requiring NMCG to show cause why it should not be held in contempt for failing to comply with a Court-ordered deposition; (2) rendering a judgment by default against NMCG; and (3) directing both NMCG and its attorney to pay the State’s reasonable expenses, including attorney’s fees, that were incurred in preparation for the deposition. The State also requests that the Court issue spoliation sanctions against NMCG and Provance, up to and including a default judgment.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11th day of April, 2022, I caused the foregoing to be filed through the Court's Odyssey File and Serve System, which caused all parties and/or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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Burks, Fitzgerald, Harris, Espinosa, Lomas, Petty,  
Rice, Rodgers, Rodriguez, Spangler, Bay, and Vera*

I also certify that a copy of the foregoing was served via first-class mail to the following:

David Bernie Rose  
811 E. 3rd Avenue, Lot 8  
Truth or Consequences, NM 87901  
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*Pro Se Defendant*

CHIEF DEPUTY DISTRICT ATTORNEY

By: /s/ James Grayson  
James Grayson

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

NO. D-202-CV-2020-04051

STATE OF NEW MEXICO ex rel. RAUL  
TORREZ, District Attorney, Second Judicial District,

Plaintiff,

vs.

NEW MEXICO CIVIL GUARD, BRYCE L.  
SPANGLER (a/k/a Bryce Provance, a/k/a Jason Bjorn),  
JOHN C. BURKS, ORYAN MIKALE PETTY,  
JONATHAN MICHAEL VERA, MICHAEL LYN  
HARRIS, THOMAS W. GILLESPIE, DAVID BERNIE  
ROSE, CRAIG PORTER FITZGERALD, NICOLAS  
LOMAS, DAVID S. RICE, DEVON MICHAEL BAY,  
WESSLEY AVIS RODGERS, WALTER EUGENE  
RODRIGUEZ, and DANIEL MATTHEW  
ESPINOSA,

Defendants.

DEPOSITION OF BRYCE LEROY SPANGLER PROVANCE  
March 3, 2022  
10:00 a.m.

At the Offices of Peifer Hanson Mullins & Baker PA  
20 First Plaza Court, Northwest  
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE this deposition was:

TAKEN BY: MARK T. BAKER  
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: KAREN RODRIGUEZ, CCR #55  
Albuquerque Court Reporting Service, LLC  
3150 Carlisle Blvd., NE  
Albuquerque, New Mexico 87110

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A P P E A R A N C E S

For the Plaintiff:

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(505) 842-8662  
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Also Present:

DEVON BAY  
DAVID RICE  
CRAIG FITZGERALD

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I N D E X

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are now on the record.

Today is Thursday, March 3rd, 2022. The time is 10:02 a.m. the videographer is Alex Poli with Moir Litigation Video, located in Albuquerque, New Mexico. The court reporter is Karen Rodriguez of Albuquerque Court Reporting Service.

We are here for the 30(b)(6) deposition of the New Mexico Civil Guard in the case of the State of New Mexico versus New Mexico Civil Guard, et al., filed in the State of New Mexico, County of Bernalillo, Second Judicial District, Case Number D-202-CV-2020-04051.

This deposition is being held at the offices of Peifer, Hanson, Mullins & Baker, PA, 20 First Plaza Center, Suite 725, Albuquerque, New Mexico.

Counsel will please state their appearances.

MR. BAKER: Mark Baker for the State of New Mexico.

MR. KENNEDY: Paul Kennedy for the defendants.

THE VIDEOGRAPHER: The court reporter will now please swear in the witness.

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BRYCE LEROY SPANGLER PROVANCE

after having been first duly sworn,

testified as follows:

EXAMINATION

BY MR. BAKER:

Q. Good morning, sir. Would you please first just say your full name and spell your last name for the record.

A. No comment.

Q. You're declining to identify yourself on the record?

A. Yes.

Q. On what basis?

A. 5th Amendment right.

Q. I understand your name is Mr. Provance. Have you brought with you documents today, sir?

A. Yes.

Q. And can you identify those for me?

A. Personal documents.

Q. What are they?

A. Personal documents.

Q. Can I inspect them, please?

A. Yes.

Q. So one is a torn piece of what looks like maybe a paper bag that has a picture of what looks like the

1 devil and then "Georgetown Law" over it, with people  
2 inside in flames. Is that right?

3 A. No. The devil is in flames.

4 Q. Okay. And then the other one is you, with a word  
5 bubble that says "Fuckin Weirdos."

6 A. Huh-huh.

7 Q. And it looks like you have your penis out, and it  
8 says "Your Mom" --

9 A. Yes.

10 Q. -- and someone is bent over. And who is that  
11 directed to?

12 A. It's just a drawing.

13 Q. Whose mom is it?

14 A. It's a personal document.

15 Q. Whose mom?

16 A. It was supposed to make me laugh.

17 Q. And is the "Your Mom" directed at any of the  
18 parties in this case?

19 A. I don't think so.

20 Q. What relevance does this have to the deposition  
21 today?

22 A. It was to make me smile while I had to look at  
23 you.

24 MR. BAKER: Okay. I'll mark that as  
25 Exhibit 1 to the deposition.



1 (Exhibit 1 identified.)

2 Q. (By Mr. Baker) And then next I have a torn piece  
3 of paper with what looks like the cover of a book. It  
4 says "William Cooper" on the cover, and the first page  
5 says "Behold a Pale Horse" by Milton William Cooper.  
6 What is that?

7 A. It's a book cover. I like it.

8 Q. And have you read "Behold a Pale Horse" before?

9 A. Yes.

10 Q. What is the subject matter of the book?

11 A. No comment.

12 Q. Based on what?

13 A. Fifth Amendment right.

14 Q. And then it looks like a copy of the Declaration  
15 of Independence, or at least portions of it. Is that  
16 correct?

17 A. No comment.

18 Q. On what basis?

19 A. My Fifth Amendment right.

20 Q. So is it your testimony, since you identified for  
21 me before we went on the record as Mr. Provance, that it  
22 would incriminate you or pose the possibility of  
23 incriminating you to identify the Declaration of  
24 Independence as being that document?

25 A. No comment.

1 MR. BAKER: So Mr. Kennedy, you have an  
2 obligation to produce a 30(b)(6) deponent who will  
3 testify on the subjects under in the Court's order. If  
4 he is going to invoke the Fifth today, then we're going  
5 to have to reconvene and have a hearing with the judge,  
6 because I don't think you can present a witness who will  
7 not testify.

8 THE WITNESS: I'll testify to the questions  
9 that were posed in the motion that you guys sent to us.

10 MR. KENNEDY: He means in the notice.

11 Q. (By Mr. Baker) Okay. But you're refusing to  
12 identify who you are?

13 A. Well, I think I'm pretty well identified, but I  
14 am a free man under the Constitution.

15 Q. And are you --

16 A. I identify as a free man.

17 Q. -- willing to give your name?

18 A. Yes, Bryce.

19 Q. And what is your last name?

20 A. Provance.

21 MR. BAKER: I'm going to mark the book cover  
22 from William Cooper, "Behold a Pale Horse," as Exhibit 2  
23 and the Declaration of Independence portion there as  
24 Exhibit 3.

25 (Exhibits 2 and 3 identified.)

1 Q. (By Mr. Baker) So you've identified your first  
2 name as Bryce. What is your last name?

3 A. Provance, P-r-o-v-a-n-c-e.

4 Q. And what other names have you gone by,  
5 Mr. Provance?

6 A. Free man under the Constitution.

7 Q. Have you gone by Jason Bjorn?

8 A. No comment.

9 Q. Based on what?

10 A. These questions weren't in the deposition -- or  
11 the motion that you filed. The questions that you  
12 requested that I answer were about documentation  
13 regarding the New Mexico Civil Guard.

14 And as founder of the organization, the Facebook  
15 organization or gentlemen's club, whatever you would  
16 like to call it, I retained all documents. And since I  
17 was the last individual, I reckon, to be served with  
18 this lawsuit, I did not know about the provisions to  
19 retain any of the documentation. So when I was forced  
20 from the New Mexico Civil Guard based on my past, I  
21 destroyed all documentation, shredded and burned all  
22 membership files. I shredded and burned anything  
23 regarding the structure of the New Mexico Civil Guard.  
24 I also poured bleach on the hard drive of my laptop and  
25 then burned it.

1           And then, afterwards, I think about a month  
2 afterwards, I was served with the documentation  
3 regarding the preservation of the documents. So up  
4 until that point, I did not know. Nobody else had those  
5 documents except for me, as founder and organizer of the  
6 Facebook group and the association.

7           MR. BAKER: Okay. I'm going to reserve  
8 objections on the refusal to identify the witness who is  
9 testifying on behalf of the entity, but --

10           THE WITNESS: Any further --

11           MR. KENNEDY: He did identify himself.

12           THE WITNESS: Yes.

13           Q. (By Mr. Baker) What is your current address and  
14 phone number?

15           A. No comment. Actually, all of my answers from  
16 here on out are going to be "No comment," since I gave  
17 you what you needed from your court filing.

18           Q. On what date did you destroy the documents you  
19 have described shredding and --

20           A. I don't recall. It was in between Florida and  
21 Tennessee.

22           Q. And that was after there had been media coverage  
23 regarding the New Mexico Civil Guard?

24           A. At that time, I had no devices, no contact. I  
25 had disconnected myself from everything that was going

1 on due to the intense heartfelt -- you know, just I felt  
2 bad after getting removed from the New Mexico Civil  
3 Guard, due to my past, after forming the organization.  
4 So I disconnected from the world, and I actually lived  
5 in a camper for a while.

6 Other than that, every question henceforth is  
7 going to be "No comment."

8 Q. On what basis did you --

9 A. No comment.

10 Q. Well, you're going to have to let me -- I've got  
11 to make a record for the judge. So I'm going to ask my  
12 question. And you can invoke the Fifth if you believe  
13 that is appropriate, and we'll deal with that  
14 accordingly.

15 But for what purpose did you destroy, shred and  
16 burn the documents you've described destroying?

17 A. I was no longer a member. I did not feel that I  
18 needed to retain them, because I did not know of the  
19 lawsuit.

20 Q. So you deny any knowledge that a lawsuit had been  
21 filed?

22 A. Yeah. Until I was served, I had no idea.

23 Q. And as of the time you destroyed the documents  
24 you've described destroying, do you deny that you  
25 understood that there was a likelihood that legal

1 proceedings would follow?

2 A. No comment.

3 Q. Based on what?

4 A. I do not feel like commenting. I'm a free man  
5 under the Constitution. I'm not under your rules, the  
6 Bar Association's rules, and I have no knowledge of  
7 them.

8 Q. Any other basis for refusing to answer that  
9 question?

10 A. I don't understand legalese. So I have no  
11 comment.

12 Q. Did you not realize that there could be either  
13 criminal charges or a lawsuit filed --

14 A. No comment.

15 Q. -- as related to the Civil Guard? What is your  
16 basis for not commenting?

17 A. The same as before. We should just keep that on  
18 record, is that is going to be my blanket for all of  
19 your questions. It's the same as before. I don't feel  
20 like repeating myself over and over.

21 Q. I'm sorry, but you're going to need to, or you're  
22 going to have to refuse to continue with the deposition,  
23 but I'm going to ask the questions, and I'm going to  
24 need you to answer them.

25 A. I answered your questions. I refuse to continue

1 the deposition.

2 Q. You refuse to continue the deposition and you're  
3 stepping out?

4 A. Yes. Have a lovely day, Mr. Mark. Oh, here.

5 Q. Yeah, don't walk out with the microphone.

6 A. Sorry about that. Have a lovely day.

7 Q. I like your rings. Have a good one.

8 MR. BAKER: Note that the 30(b)(6)  
9 deposition has been terminated by the witness designated  
10 by the New Mexico Civil Guard.

11 THE VIDEOGRAPHER: We are now off the  
12 record. The time is 10:12 a.m.

13 (Proceedings concluded.)

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1 State of New Mexico v. New Mexico Civil Guard, et al.

2 DEPONENT SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to  
4 your deposition, indicate them below.

5 PAGE LINE

6 \_\_\_\_\_ Change to \_\_\_\_\_

7 \_\_\_\_\_ Change to \_\_\_\_\_

8 \_\_\_\_\_ Change to \_\_\_\_\_

9 \_\_\_\_\_ Change to \_\_\_\_\_

10 Any other changes to your deposition are to  
11 be listed below with a statement as to the  
reason for such change.

12 PAGE LINE CORRECTION REASON FOR CHANGE

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20 I, BRYCE LEROY SPANGLER PROVANCE, do hereby certify  
21 that I have read the foregoing transcript of my  
22 testimony as transcribed on March 7, 2022 and that it is  
a true and correct record of my testimony given at that  
time, except as to any corrections submitted.

23 \_\_\_\_\_  
24 Date Signed

\_\_\_\_\_  
BRYCE LEROY SPANGLER PROVANCE

25



1 SECOND JUDICIAL DISTRICT COURT  
2 COUNTY OF BERNALILLO  
3 STATE OF NEW MEXICO

4 NO. D-202-CV-2020-04051

5 STATE OF NEW MEXICO ex rel. RAUL  
6 TORREZ, District Attorney, Second Judicial District,

7 Plaintiff,

8 vs.

9 NEW MEXICO CIVIL GUARD, BRYCE L.  
10 SPANGLER (a/k/a Bryce Provance, a/k/a Jason Bjorn),  
11 JOHN C. BURKS, ORYAN MIKALE PETTY,  
12 JONATHAN MICHAEL VERA, MICHAEL LYN  
13 HARRIS, THOMAS W. GILLESPIE, DAVID BERNIE  
14 ROSE, CRAIG PORTER FITZGERALD, NICOLAS  
15 LOMAS, DAVID S. RICE, DEVON MICHAEL BAY,  
16 WESSLEY AVIS RODGERS, WALTER EUGENE  
17 RODRIGUEZ, and DANIEL MATTHEW  
18 ESPINOSA,

19 Defendants.

20 REPORTER'S CERTIFICATE

21 I, Karen Rodriguez, CCR #55, DO HEREBY CERTIFY that  
22 on March 3, 2022, the deposition of BRYCE LEROY SPANGLER  
23 PROVANCE was taken before me at the request of MARK T.  
24 BAKER, Esq., and sealed original thereof retained by:

25 MARK T. BAKER  
Attorney for the Plaintiff  
20 First Plaza Court, Northwest  
Albuquerque, New Mexico 87102  
(505) 247-4800

I FURTHER CERTIFY that copies of this certificate  
have been mailed or delivered to all counsel, and  
parties to the proceedings not represented by counsel,  
appearing at the taking of the deposition.

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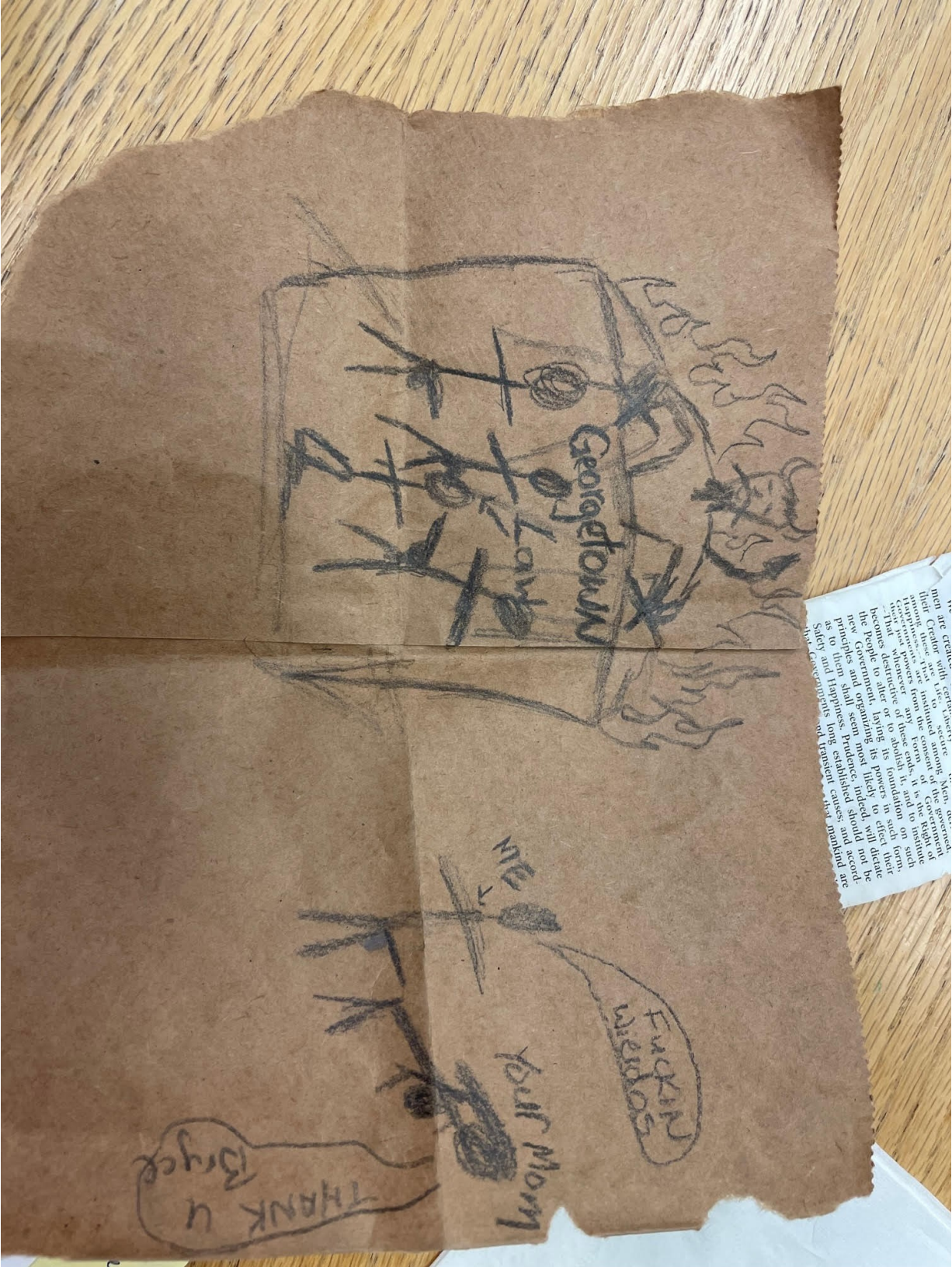
I FURTHER CERTIFY that examination of this transcript and signature of the witness was requested. On March 7, 2022, a letter was mailed or delivered to Mr. Kennedy regarding obtaining signature of the witness, and corrections, if any, were appended to the original and each copy of the deposition.

I FURTHER CERTIFY that I did administer the oath to the witness herein prior to the taking of this deposition; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this deposition to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless exempted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

---

KAREN RODRIGUEZ, CCR  
Certified Reporter #55  
License Expires 12/31/22



Georgetown  
Lamp

THANK U  
Bryce

Your Mom

FUCKIN  
MURKOS

men are created with certain... secure... Men... government... their... are... of... Government... of... from the... It... institute... are... on... power... and... on... structure... such... to... their... lay... to... their... the... will... be... new... should... accord... and... are... Safety...

**First Supplemental Response:** Deny. NMCG had a company that operated in Curry County.

10. Admit that Defendant John Burks has been a member of NMCG and the Captain of NMCG's Bernalillo company, as indicated in the article attached as Exhibit D (also available at <https://www.abqjournal.com/1472698/the-world-is-a-scary-place.html>).

**Response:** Defendant NMCG objects to this and all the "Requests for Admission" on the grounds they are improper and grossly supernumerary interrogatories, and that in their excess they are unduly burdensome and designed to harass. Rule 1-033(A) NMRA; Fed. R. Civ. P. 33 advisory committee notes (1993 Amendments) ("[B]ecause the device can be costly and may be used as a means of harassment, it is desirable to subject its use to the control of the court consistent with the principles stated in Rule 26(b)(2)"); *Allahverdi v. Regents of Univ. of N.M.*, 228 F.R.D. 696, 698 (D.N.M. 2005) (requiring objection to all requests if too many are propounded). It further objects that preliminary materials in a set of discovery requests cannot be used to "define" one party such that it incurs obligations to respond on behalf of separate and distinct third parties, including those whose constitutional rights may be implicated by the requests. *See In re Rael*, 753 F. App'x 649, 658 (10th Cir. 2018) ("[A] party responding to RFAs is not required to obtain responsive information from third parties to satisfy the reasonable-inquiry requirement."); *see also NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449 (1958). It further incorporates the objections and arguments made in the Motion for Stay and Reply in support thereof, filed Jan. 29, 2021 and Mar. 3, 2021, respectively. To whatever extent as may be required, this request is denied.

**First Supplemental Response:** Deny. Mr. Burks had been a member of the Facebook NMCG and the captain of the Facebook NMCG Bernalillo Company.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel.  
RAÚL TORREZ, District Attorney,  
Second Judicial District,

Plaintiff,

v.

No. D-202-CV-2020-04051

NEW MEXICO CIVIL GUARD, et al.,

Defendants.

**OBJECTIONS TO PLAINTIFF'S FEE DECLARATIONS**

Defendant New Mexico Civil Guard, through its counsel of record, Kennedy, Hernandez & Associates, P.C., hereby submits objections to Plaintiff's fee declarations. *See* Plaintiff's Notice of Submission of Declarations in Support of the Court's Award of Reasonable Fees and Costs Awarded under Rule 1-037(D) NMRA, filed December 23, 2021 ("Fee Declarations"); Order Granting Plaintiff's Motion to Deem Admitted Requests for Admission and to Compel Production of Documents, Denying Defendant New Mexico Guard's Motion for Protective Order, Providing for a Limited Confidentiality Order and Awarding Costs and Fees ¶ 3, at 2, filed January 3, 2022 ("Order") (stating that Defendant New Mexico Civil Guard fifteen days to object to Plaintiff's fee requests). Defendant New Mexico Civil Guard ("NMCG") objects as follows:

1. It is NMCG's counsel's understanding that Plaintiff's attorneys are representing Plaintiff in this matter pro bono. However, Plaintiff's counsel's declarations imply that they are in fact charging Plaintiff for those hours and rates. For example, the Fee Declarations include a billing statement that appears as though Mr. Baker is billing Plaintiff at \$350 an hour, plus New Mexico's gross receipts tax, for his work on this case. Given that Plaintiff has not paid anything to its counsel

in this matter, the Court should not award Plaintiff any expenses for the purpose of compensating Plaintiff.

2. Ordering NMCG to pay any amount would be unjust, because NMCG, as a Facebook group, no longer exists, and is indigent. *See* Rule 1–037(D) (stating that a court shall award reasonable expenses “unless the court finds that . . . other circumstances make an award of expenses unjust”).

3. The Court should not award fees for Plaintiff’s time spent on briefing matters relating to NMCG’s answers to Plaintiff’s requests for admission. The Court awarded Plaintiff its reasonable expenses pursuant to Rule 1–037(D) NMRA. *See* Order ¶ 3, at 2. Plaintiff seeks fees pursuant to Rule 1–037(D). *See* Fee Declarations at 1; Declaration of Mark T. Baker ¶ 2, at 2. Rule 1–037(D) authorizes a court to award reasonable expenses for a party’s complete failure to do one of three things: appear for a deposition, answer interrogatories, or respond to requests for production. *See* Rule 1–037(D)(1)–(3). It does not authorize a court to award reasonable expenses arising from a party’s failure to answer *requests for admission*. Plaintiff’s reasonable expenses should be reduced to exclude time spent on matters to which Rule 1–037(D) does not apply. (The Fee Declarations, however, present block billing, thereby failing to distinguish between time spent on specific discovery issues.)

4. The Court should not award fees for Plaintiff’s time spent on briefing matters relating to NMCG’s responses to Plaintiff’s requests for production. Rule 1–037(D) authorizes a court to award reasonable expenses caused by a party’s complete failure to “serve a written response to a request for inspection.” Rule 1–037(D)(3). In its Order, the Court did not determine that NMCG completely failed to respond to Plaintiff’s requests for production. Nor should the Court make that determination. NMCG did in fact serve written responses to Plaintiff’s requests

for inspections, asserting good-faith objections that, *e.g.*, responding to those requests would impermissibly violate NMCG's First Amended rights, under *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). Although the Court ultimately overruled those objections, the objections were justified, and the parties argued over those objections in briefings. *See* Defendant NMCG's Response to Plaintiff's Motion to Deem Admitted Requests for Admission and to Compel Production of Documents at 2–3, filed June 2, 2021. Plaintiff's Reply in Support of its Motion to Deem Admitted Requests for Admission and to Compel Production of Documents at 3–5, filed June 21, 2021. Plaintiff's reasonable expenses should be reduced to exclude time spent on matters to which Rule 1–037(D) does not apply.

5. The Court should not award fees for Plaintiff's time spend on responding to NMCG's motion for protective order. Rule 1–037(D) authorizes a court to award reasonable expenses caused “caused” by a party's failure to appear for a deposition, answer interrogatories, or respond to requests for production. *See* Rule 1–037(D). As mentioned, NMCG did in fact respond to Plaintiff's requests for production. Even if NMCG did fail to respond, NMCG's filing of a motion for protective order was not “caused” by that failure; rather, NMCG made a subsequent and independent choice to file that motion. Plaintiff's reasonable expenses should be reduced to exclude time spent on matters to which Rule 1–037(D) does not apply.

Respectfully Submitted,

KENNEDY, HERNANDEZ & ASSOCIATES, P.C.

/s/ Paul J. Kennedy  
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*Attorneys for Defendants New Mexico Civil Guard,  
Burks, Fitzgerald, Harris, Espinosa, Lomas, Petty,  
Rice, Rodgers, Rodriguez, Spangler, Bay, and Vera*



I hereby certify that a copy of the foregoing  
was served the following counsel of record  
via email on January 7, 2022:

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*Attorneys for Plaintiff State of New Mexico*

*/s/ Paul Kennedy*

RETURN<sup>1</sup>

STATE OF NEW MEXICO )  
 )ss Cause No. D-202-CV-2020-04051  
COUNTY OF Bernalillo )

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Jefferson (TN) county on the 1st day of October, 2020, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

to the defendant Bryce L Spangler (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint.

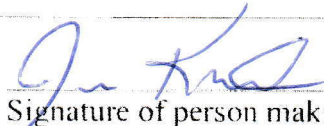
to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address).

to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).

to \_\_\_\_\_ (name of person), \_\_\_\_\_ (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \_\_\_\_\_

  
Signature of person making service