NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALYSSA JONES, Plaintiff-Appellant, ELLE FOSTER; et al., Appellants, v. RIOT HOSPITALITY GROUP LLC, now known as Noatoz LLC; et al., Defendants-Appellees.	No. 20-15407 D.C. No. 2:17-cv-04612-GMS MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, Chief District Judge, Presiding

Submitted February 7, 2022**
Phoenix, Arizona

Before: GRABER and MILLER, Circuit Judges, and FITZWATER,*** District Judge.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

In this appeal from a March 4, 2020 discovery order, as amended on August 10, 2020 (collectively, the "Discovery Orders"), entered in ongoing litigation, we conclude that we lack appellate jurisdiction, and we dismiss the appeal.

I

After this appeal was docketed, the clerk of this court issued a show cause order noting that "[a] review of the record suggests that this court may lack jurisdiction over the appeal because the order challenged in the appeal may not be final or appealable." The order directed that "appellant shall move for voluntary dismissal of the appeal or show cause why the appeal should not be dismissed for lack of jurisdiction." After the parties filed memoranda addressing the jurisdictional issue, a panel of this court "discharged" the clerk of court's show cause order and set a briefing schedule.

After merits briefing commenced, defendants-appellees (collectively, "Appellees") filed a motion to dismiss for lack of jurisdiction. The parties then submitted briefing on the motion, which a motions panel of this court "denied without prejudice to renewing the arguments in the answering brief." Appellees now raise the jurisdictional challenge in their answering brief. Appellants argue in reply that this court has twice rejected jurisdictional challenges and that these

rulings should stand. The parties have also submitted letter briefs on the jurisdictional question.[1]

II

1. The Discovery Orders are not appealable under 28 U.S.C. § 1292(a)(1). Section 1292(a)(1) provides that "courts of appeals shall have jurisdiction of appeals from: [i]nterlocutory orders of the district courts . . . granting, continuing, modifying, refusing or dissolving injunctions. . . ." This court has held that § 1292(a)(1) authorizes appellate jurisdiction over orders granting an injunction and orders that have the practical effect of granting an injunction. *See Orange Cnty. v. Hongkong & Shanghai Banking Corp.*, 52 F.3d 821, 825 (9th Cir. 1995); *Gon v. First State Ins. Co.*, 871 F.2d 863, 865 (9th Cir. 1989).

The Discovery Orders are not injunctions. An injunction has three elements: it is "an order that is

[1] Appellants point to the motions panel's decision to "discharge[ ]" the show cause order as supporting the conclusion that this court has appellate jurisdiction. We disagree. As a merits panel, we have a duty to assess our jurisdiction. *See Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1032 n.3 (9th Cir. 1990) (stating that, even when a motions panel has already ruled that the court has jurisdiction, a merits panel has an independent duty to determine its jurisdiction); *see also Sackett v. U.S. Envtl. Prot. Agency*, 8 F.4th 1075, 1082 n.4 (9th Cir. 2021) ("In an unpublished order, a motions panel denied the motion to dismiss without prejudice to EPA's renewing the argument in opposition. . . . That prior ruling does not eliminate the need for us to reassess this jurisdictional question."). Further, the motions panel discharged the show cause order without explicitly addressing the jurisdictional issue.

directed to a party, enforceable by contempt, and designed to accord or protect some or all of the substantive relief sought by a complaint in more than temporary fashion." *Gon*, 871 F.2d at 865. The Discovery Orders do not satisfy the third element. In the district court, plaintiff seeks relief in the form of damages for certain alleged violations of federal and state law. Unlike in *Gon*, however, the Discovery Orders plainly do not award Appellants or Appellees the substantive relief they seek. *See id.* at 865-66. Rather, as in *In re Lorillard Tobacco Co.*, 370 F.3d 982 (9th Cir. 2004), the Discovery Orders preserve data that are relevant for trial—i.e., the orders "concern[ ] the conduct of the parties . . . while awaiting trial." *Id.* at 987 (ellipsis in original) (internal quotation marks omitted).

Nor do the Discovery Orders have the practical effect of granting an injunction. To determine whether an order has this effect, the court considers the following: "(1) does the order have the practical effect of the grant or denial of an injunction; (2) does the order have serious, perhaps irreparable consequences; and (3) is the order one that can be effectively challenged only by immediate appeal?" *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1097 (9th Cir. 2008) (internal quotation marks omitted).

The Discovery Orders do not satisfy the second element. Appellants filed affidavits discussing the harms they would face from being without their cell phones for hours while the data from the phones are being downloaded. But this type of injury is insufficient to constitute irreparable injury because the harms

described may be remedied by expending money to secure an alternate way to communicate during the short period they are without their cell phones. *See United States v. El Dorado Cnty.*, 704 F.3d 1261, 1265 (9th Cir. 2013) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended . . . are not enough" to show irreparable injury (ellipsis in original) (internal quotation marks omitted)).[2]

Further, assuming *arguendo* that the Discovery Orders meet the second element, they do not satisfy the third: that the Discovery Orders are "one[s] that can be effectively challenged only by immediate appeal." *Negrete*, 523 F.3d at 1097. A party or non-party can appeal a discovery order if she refuses to comply with the order and is held in contempt. *Bank of Am. v. Nat'l Mortg. Equity Corp.*, 857 F.2d 1238, 1239 (9th Cir. 1988) (per curiam). And Appellants can take an appeal from a later, final judgment in this case. *See id.* at 1240 ("[A]ny unfair use of the information or documents

[2] To the extent Appellants contend that they will suffer irreparable harm to their Fourth Amendment privacy interests, we are unpersuaded. Litigants have made similar arguments under the collateral order doctrine, which the Supreme Court has rejected; indeed, it "routinely require[s] litigants to wait until after final judgment to vindicate valuable rights." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108-09 (2009) (attorney-client privilege); *see Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 426 (1985) (disqualification of counsel in civil case); *Flanagan v. United States*, 465 U.S. 259, 260 (1984) (disqualification of counsel in criminal case). This suggests that Appellants would not suffer irreparable harm here, even if a violation of a valuable right is assumed.

produced as a result of an improper order can be corrected on appeal from final judgment in the case.")

2. Nor are the Discovery Orders appealable under the collateral order doctrine. Collateral orders are a "small category" of decisions that are immediately appealable despite not being final judgments. *Mohawk Indus., Inc*, 558 U.S. at 106. "That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995). Discovery orders generally do not qualify under the collateral order doctrine. *See Admiral Ins. Co. v. U.S. Dist. Ct.*, 881 F.2d 1486, 1490 (9th Cir. 1989) ("Discovery orders are not final appealable orders under 28 U.S.C. § 1291, and courts have refused interlocutory review of such orders under the collateral order doctrine.").

The Discovery Orders do not satisfy the third element of a collateral order. As discussed, they are reviewable either after a final judgment or, if needed, after contempt sanctions are imposed.

DISMISSED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alyssa Jones, Plaintiff, v. Riot Hospitality Group LLC, et al., Defendants.	No. CV-17-04612-PHX-GMS **ORDER** (Filed Mar. 4, 2020)

On March 4, 2020, the Court held an informal telephonic conference with the parties on items of disputed discovery. After consultation with the parties,

IT IS HEREBY ORDERED that by close of business on **March 11, 2020** the Plaintiff will have provided the applicable cell phones of: (1) Plaintiff, (2) Elle Foster, (3) Chelsea Meyers, and (4) Shea Watson to an agreed upon third party forensic search specialist ("Specialist"). The parties will also at the same time provide the Specialist agreed upon search terms with which the databases derived from the above cell phones shall be searched. The Specialist will then search the cell phone databases and provide a list of all responsive documents from each cell phone to both parties. The actual documents will be provided to Mr. Nathanson who may then conduct an expeditious review of the documents for privilege and relevancy. Mr. Nathanson shall then promptly produce all responsive documents and provide a detailed privilege log for every document that he then withholds on the basis of

privilege or relevance. As the Court has indicated the search terms and the responsive documents would be those that relate to Plaintiff's claims against Defendants. The documents provided by Mr. Nathanson, as well as the privilege log of any documents withheld by him, shall be cross-referenced in an easily discernible fashion to the list provided to all parties by the Specialist of all the documents that are identified by the mutually agreed upon search terms.

IT IS FURTHER ORDERED that on or before **March 18, 2020** the parties shall file a joint notice with the Court indicating when the review process shall be completed, and the documents provided to Plaintiff.

Defendants shall pay the initial cost for the Specialist, but should additional documents be located in this search that are discoverable, Plaintiff shall promptly reimburse the entire cost of the Specialist to the Defendants.

IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions (Doc. 306) is stricken and Defendant's Motion to File a Response (Doc. 307) is therefore denied as moot. Plaintiff may well be correct that on January 10, 2020 the Court authorized Plaintiff to file a motion for sanctions if it wished to do so in advance of the Court setting extensive hearings to review the parties' discovery disputes. Thereafter, as Plaintiff is well aware the Court spent hours with the parties in hearings listening to and resolving their disputes. After having resolved all of those disputes, and read the

motions filed by both parties in support of that resolution, the Court will not now revisit those disputes when the Plaintiff files a Motion for Sanctions virtually two months after the fact. The Motion for Sanctions (Doc. 306) therefore is stricken, and Defendants Motion to File a Response to it (Doc. 307) is moot.

Dated this 4th day of March, 2020.

/s/ G. Murray Snow
G. Murray Snow
Chief United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alyssa Jones, Plaintiff, v. Riot Hospitality Group LLC, et al., Defendants.	No. CV-17-04612-PHX-GMS **ORDER** (Filed Aug. 10, 2020)

The following motions are pending before the Court: (1) Plaintiff Alyssa Jones' Motion to Stay this Court's March 4, I 2020 Order Pending Interlocutory Appeal (Doc. 313); (2) Plaintiff's Motion to Supplement Corrected Declarations Submitted in Support of I Motion to Stay (Doc. 314); (3) Plaintiff's Motion to Extend Time to Videotape Doctor Greenman's Trial Testimony (Doc. 3 17) ; (4) Defendants'[1] Cross-Motion to Exclude or Limit Dr. Greenman's Testimony (Doc. 320); and (5) Defendants' Motion for Contempt and/or Other Sanctions (Doc. 323).

Plaintiff's Motion to Supplement is granted. Plaintiff's Motion to Stay and Motion to Extend Time to Videotape Doctor Greenman's Trial Testimony are denied. Defendants' Cross-Motion to Exclude or Limit

[1] Riot Hospitality Group, LLC, RHG Ventures, LLC, 4425 Saddlebag, LLC, 4425 Saddlebag 2, LLC, Rooke, LLC, Ryan Hibbert, and Milo Companies, LLC (collectively "Defendants").

Dr. Greenman's Testimony is granted in part and denied in part and Defendants' Motion for Contempt and/or Other Sanctions is taken under advisement.

BACKGROUND

The pending motions concern two discovery disputes that have persisted throughout this litigation. The first concerns the production of communications between Plaintiff and three non-party witnesses; the second concerns the deposition of Plaintiff's treating physician Dr. Greenman.

A. Plaintiff's Communications with Non-Party Witnesses

On January 10, 2020 the Court held an in-person hearing to address various discovery disputes between the parties. One of the disputes concerned the production of recent[2] text messages and "direct messages" between Plaintiff and her three fact witnesses—Chelsea Meyers, Elle Foster, and Shea Watson—whom Defendants claim are also represented by Plaintiff's counsel. Despite Plaintiff's counsel's claim that his representation of the fact witnesses was limited to their depositions, he agreed to produce the documents. During a

[2] Plaintiff's production of communications with these witnesses is only current through fall of 2018. According to Defendants, during their depositions, each witness testified to engaging in more recent communications about the case and their involvement. These more recent communications that post-date those already produced are at issue.

subsequent hearing, Plaintiff's counsel recanted his agreement to produce these documents, claiming that he thought he was referring to a different production dispute. Finding the record from January 10 hearing clear, the Court ordered Plaintiff's counsel to produce the documents, as he agreed, to the extent he possessed them. Plaintiff produced a PDF of undated screenshots of text messages that were not responsive to Defendants' request or compliant with the parties' ESI protocol. Defendants again raised Plaintiff's failure to comply with the Court's orders during the March 4 teleconference, at which point the Court ordered Plaintiff and her three fact witnesses to produce their cell phones to a third-party forensic search specialist for forensic imaging. In lieu of complying with the Order, Plaintiff filed a notice of appeal and moved to stay the Order's enforcement pending the appeal. Despite not yet being granted a stay, Plaintiff and the three witnesses still refused to comply with the Order. Defendants now move that Plaintiff and Plaintiff's counsel be held in contempt and that additional appropriate sanctions be ordered for Plaintiff's persistent failure to produce the communications.

B. Dr. Greenman Deposition

Plaintiff disclosed Dr. Greenman as her witness that would render "expert medical opinions arising out of his treatment of Plaintiff." (Doc. 317 at 2.) Before Dr. Greenman could be deposed, he closed his Arizona practice and moved to Washington. The Court granted Plaintiff her first extension to depose Dr. Greenman on

November 5. The issue was raised again at the January 31 hearing. By this time, Plaintiff had still not noticed the deposition. The delay was due, in part, to Defendants' counsel's unavailability and unwillingness to meet Dr. Greenman's limitations of a two-hour deposition outside of normal business hours. During the January 31 hearing, the Court again extended the discovery deadline to obtain Dr. Greenman's deposition until March 20. The Court also advised Plaintiff's counsel that if he wanted to compel Dr. Greenman to sit for a deposition with appropriate time constraints, he would need to apply to the federal court in the district in which Dr. Greenman lives. Plaintiff chose not to apply to the appropriate court and again failed to timely depose Dr. Greenman. Plaintiff now requests a third extension, or in the alternative to exclude Defendants from cross examining Dr. Greenman should he testify at trial. Defendants, on the other hand, move to exclude Dr. Greenman's testimony altogether or limit his trial testimony to authenticating the medical records heretofore produced.

DISCUSSION

I. Plaintiff's Motion to Stay

Plaintiff requests a stay from enforcement of the March 4 Order pending the resolution of her appeal to the Ninth Circuit Court of Appeals.[3] In considering

[3] Preceding this Order, the Ninth Circuit requested that Plaintiff (Appellee) show cause as to why her appeal should not be dismissed for lack of jurisdiction. Plaintiff and Defendants filed

whether to grant a stay pending appeal, the Court considers the following four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). However, "a stay is not a matter of right, even if 1 irreparable injury might result." *Id.* at 433. "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34.

A. Likelihood of Success on the Merits

Plaintiff asserts that her appeal is likely to succeed because the March 4 Order is, or has the practical effect of, a mandatory injunction that was entered as an abuse of discretion. However, despite Plaintiff's mischaracterization of the March 4 Order as a *sua sponte* expansion of Defendants' original request for tailored communications to a global production of Plaintiff and the witnesses' phones, the March 4 Order is nothing more than a discovery order deemed necessary by Plaintiff's consistent failure to comply with this Court's prior orders. Discovery orders are interlocutory and non-appealable before a final judgment. *See*

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briefing on the issue. As of the date of this Order, the parties are waiting for the Circuit Court's response.

Gon v. First State Ins. Co., 871 F.2d 863, 865-66 (9th Cir. 1989) (orders that regulate the course of litigation, such as discovery orders, are not immediately appealable as injunctions); *see also Bank of Am. v. Nat'l Mortg. Equity Corp.*, 857 F.2d 1238, 1240 (9th Cir. 1988) (order compelling discovery, whether issued against party or non-party to proceedings, is not immediately appealable by party); *David v. Hooker, Ltd*., 560 F.2d 412, 415-16 (9th Cir. 1977) (order compelling discovery issued against non-party is not appealable by non-party, immediately or otherwise). Because Plaintiff's appeal lacks appellate jurisdiction it is not likely to succeed.

B. Irreparable Injury

Plaintiff and the three witnesses provided declarations detailing their concerns about being away from their cell phones. Their concerns include needing to stay in contact with kids or sick family members, needing to be responsive for work, and personal safety. While the Court sympathizes with the fear of being without one's cell phone for a few hours, Plaintiff has not explained how these concerns constitute irreparable harm. *See Nken*, 566 U.S. at 434-35 (explaining that simply showing some possibility of irreparable injury is not enough to satisfy the second stay factor). Moreover, to the extent Plaintiff argues that the production of irrelevant private communications is irreparable, this Circuit disagrees. *See In re Nat. Mortgage Equity Corp.*, 857 F.2d at 1240 ("[A]ny unfair use of the information or documents produced as a result of an

improper order can be corrected on appeal from final judgment in the case.") It is also worth reminding the parties that the March 4 Order clearly instructed Plaintiff's counsel to review the communications recovered by the neutral third party before any communications are produced to Defendants. Thus, Plaintiff has failed to establish irreparable harm will result absent a stay.

C. Prejudice to Other Parties

While no substantial harm will occur to Defendants if the March 4 Order is first subject to appellate review before its enforcement, this action has been consistently delayed by the parties' failure to cooperate throughout discovery. This factor may not go against granting the stay, but it does not support a stay either.

D. Public Interest

Plaintiff cites the privacy interests unique to cell phones recognized by the Supreme Court in *Riley v. California*, 573 U.S. 373 (2014), to suggest that the public interest supports staying enforcement of the March 4 Order. However, *Riley* concerned the search of a cell phone incident to a lawful arrest; it has little application to the rights of parties or non-parties involved in a civil action where only those communications that are relevant to the action need be produced after review by Plaintiff's counsel. The public's interests in fair play and efficient resolution of litigation are

more pertinent to this matter; these interests would be served by denying the stay.

Because Plaintiff has failed to show that the circumstances of this case warrant a stay of the March 4 Order pending her appeal, her request for a stay is denied.

II. Defendants' Motion for Contempt and Other Sanctions

"[A]ll orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." *Maness v. Meyers*, 419 U.S. 449, 458 (1975); *see also Nascimento v. Dummer*, 508 F.3d 905, 910 (9th Cir. 2007) ("No stay of the district court proceedings pending resolution of the appeal had been sought or granted, and so [the plaintiff] remained under an obligation to comply with the district court's orders and pretrial timetable notwithstanding his appeal. His failure to comply with court orders was properly sanctionable . . . "). Plaintiff claims her notice of appeal and motion for stay relieved her of her obligation to comply with this Court's March 4 Order. Plaintiff's argument, however, is not supported by the law of this Circuit.

Nonetheless, based on the parties' briefing, the Court concludes some clarification and amendment of the March 4 Order is warranted before contempt or

other sanctions are appropriate.[4] Plaintiff is, and has been, under an obligation to produce her cell phone to a third-party forensic search specialist ("Specialist"). Any communications recovered from Plaintiff's phone will first be provided to Plaintiff's counsel for review; Plaintiff's counsel may make detailed objections at that time. If Plaintiff's counsel determines that he is going C to withhold documents that result from the search terms, he must provide Defendants a complete privilege log indicating the specific document withheld, who it was to and from, the date of the communication, its general topic to the extent not otherwise privileged, and the basis for the invocation of privilege. Plaintiff, however, should be keenly aware by this point that any recent[5] communications between herself and the three witnesses regarding this action or the witnesses' involvement in this action are discoverable. In turn, Defendants would be wise to amend their search terms accordingly. With respect to the fact witnesses, the March 4 Order was issued with the understanding that they are also represented by Plaintiff's counsel in connection with this action. If they are not so

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[4] The pending appeal does not divest this Court of its jurisdiction to modify the March 4 Order. *See Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007) ("When a Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the appeal does not apply.") (citing *Ruby v. Secretary of the United States Navy*, 365 F.2d 385, 389 (9th Cir. 1966)); *Estate of Conners by Meredith v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993) (same).

[5] *See supra* n.2.

represented, the Court agrees that Plaintiff is not responsible for their refusal to produce their cell phones or communications. The Court will, however, grant Defendants leave to issue subpoenas to obtain the communications from the witnesses' phones. The only communications Defendants may seek to obtain from the fact witnesses are similarly limited to those recent communications relating to this action or the witnesses' involvement in this action. If Defendants choose to pursue this discovery they will do so entirely at their own expense.

Plaintiff has seven days from the date of this Order to produce her cell phone to the previously agreed upon Specialist. Once the recovered communications are provided to Plaintiff, she will have seven days to review them and produce the relevant communications to Defendants. As stated in the March 4 Order, Defendants shall pay the initial cost for the Specialist, but should additional documents be located in this search that are discoverable, Plaintiff shall promptly reimburse the entire cost of the Specialist to the Defendants. Defendants, if they choose to do so, similarly have seven days from the date of this order to issue subpoenas to Elle Foster, Chelsea Meyers, and/or Shea Watson for the limited scope discussed in this Order.

Defendants' Motion for Contempt and Other Sanctions is taken under advisement until the parties are given an opportunity to comply with the above.

III. Dr. Greenman

Plaintiff fails to demonstrate good cause warranting a third extension to obtain the deposition of her own witness. *See* Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent."). When this Court granted the most recent extension, it explained, "I am going to leave it up to you [Plaintiff's counsel] to either obtain through cooperation the limited deposition of Dr. Greenman or to apply to the court, the appropriate court, in a miscellaneous matter, to obtain the deposition of Dr. Greenman. And you have until March 20th to do so. And I will not, absent the most unusual circumstances in the world, extend discovery for any other purpose and for any other length." (Doc. 313-7 at 56; Doc. 320-1 at 34.) While the Court agrees that Defendants' counsel may have been uncooperative in scheduling the deposition, this Court advised Plaintiff to take further action in the appropriate court and Plaintiff made no effort to do so. Plaintiff attempts to blame the global pandemic for this failure. However, Plaintiff had ample time to at least file a miscellaneous action seeking Dr. Greenman's deposition in the appropriate court and she simply chose not to do so. As a result, Plaintiff's request for a third extension is denied. Plaintiff similarly fails to provide any basis to prevent Defendants from cross examining Dr. Greenman in the event he testifies at trial. Consequently, that request is also denied.

With respect to Defendants' cross motion, in the event Dr. Greenman testifies at trial, his testimony will

be subject to the Federal Rules of Evidence and Civil Procedure. While his testimony will not be excluded, Dr. Greenman will not be permitted to testify about any information or documents that have not been produced in this action. *See* Fed. R. Civ. P. 37(c)(1) ("If a party fails to provide information . . . the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at a trail unless the failure was substantially justified or harmless.").

CONCLUSION

The Court, one last time, urges the parties to be reasonable and act professionally to resolve these disputes.

IT IS HEREBY ORDERED that:

1. Plaintiff Alyssa Jones' Motion to Stay this Court's March 4, 2020 Order Pending Interlocutory Appeal (Doc. 313) is **DENIED**.

2. Plaintiff's Motion to Supplement Corrected Declarations Submitted in Support of Motion to Stay (Doc. 314) is **GRANTED**.

3. Plaintiff's Motion to Extend Time to Videotape Doctor Greenman's Trial Testimony (Doc. 317) is **DENIED**.

4. Defendants' Cross-Motion to Exclude or Limit Dr. Greenman's Testimony I (Doc. 320) is **GRANTED** in part and **DENIED** in part.

5. Defendants' Motion for Contempt and/or Other Sanctions (Doc. 323) is taken under advisement. Defendants are **GRANTED** leave to subpoena Chelsea Meyers, Elle Foster, and Shea Watson to produce their recent communications regarding Plaintiff's claims at Defendants' expense. Any such subpoena must be issued within **seven days** of the date of this order.

IT IS FURTHER ORDERED that:

1. Plaintiff shall produce her cell phone to the previously agreed upon Specialist for imaging no later than **August 17, 2020**.

2. The Specialist shall provide any recovered communications to Plaintiff for review and Plaintiff will produce the relevant communications, if any, to Defendants within **seven days** of receiving the recovered data from the Specialist. If Plaintiff withholds any communications from Defendants, she will provide a complete privilege log as detailed in this Order. (the privilege log should be produced at the same time as any communications)

IT IS FURTHER ORDERED that Defendants shall pay the initial cost for the Specialist, but should additional documents be located in this search that are discoverable, Plaintiff shall promptly reimburse the entire cost of the Specialist to the Defendants.

IT IS FURTHER ORDERED that the March 4 Order (Doc. 308) is amended by this Order as indicated and/or modified above.

IT IS FURTHER ORDERED that the deadlines set forth in the December 14, 2018 Case Management Order (Doc. 62), as modified by the Court's June 24, 2019, September 10, 2019, October 1, 2019, January 31, 2020, and April 29, 2020 Orders (Docs. 126, 158, 176, 296, 332) amending certain deadlines are extended as follows:

1. The deadline for the parties to file their respective two-page letters regarding anticipated summary judgment motions shall be **September 11, 2020**, and the parties shall call the Court the same day to schedule a time for a pre-motion conference.

2. The deadline for filing of dispositive motions shall be **October 9, 2020**. These extensions apply only to Plaintiff, and 4425 Saddlebag, LLC, 4425 Saddlebag 2, LLC, Milo Companies, LLC, RHG Ventures, LLC, Riot Hospitality Group, LLC, Rooke, LLC, and Ryan Hibbert. JW Bar, LLC and MRM Hospitality, LLC remain authorized to file a motion for summary judgment as established during the June 16, 2020 Status Conference.

Dated this 10th day of August, 2020.

/s/ G. Murray Snow
G. Murray Snow
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alyssa Jones, Plaintiff, v. Riot Hospitality Group LLC, et al., Defendants.	No. CV-17-04612-PHX-GMS **ORDER** (Filed Sep. 23, 2020)

The parties attended a telephonic pre-motion conference on September 22, 2020 to discuss proposed summary judgment motions and discovery disputes. Based on the hearing, Defendants have agreed to withdraw their Motion for Order to Show Cause (Doc. 357) and Renewed Motion for Sanctions. (Doc. 361.)

IT IS HEREBY ORDERED that the relevant documents and accompanying privilege logs from the cell phones belonging to Plaintiff Alyssa Jones, and witnesses Chelsea Myers and Shea Watson must be produced to Defendants by **October 22, 2020**.

IT IS FURTHER ORDERED that witness Elle Foster's phone must be produced by **September 25, 2020** to forensic neutral KJ Kuchta, and if recovered, the relevant documents and accompanying privilege log from the phone must be produced to Defendants by **October 22, 2020**.

IT IS FURTHER ORDERED that if Plaintiff Alyssa Jones, or witnesses Chelsea Myers, Shea

Watson, or Elle Foster do not comply with this order, they will be precluded from testifying at trial.

IT IS FURTHER ORDERED that the deadlines set forth in the December 14, 2018 Case Management Order (Doc. 62), as modified by the Court's June 24, 2019, September 10, 2019, October 1, 2019, January 31, 2020, April 29, 2020 and August 10, 2020 Orders (Docs. 126, 158, 176, 296, 332, 350) amending certain deadlines, are extended as follows:

1. The deadline for filing of dispositive motions shall be **December 22, 2020**. Defendants' deadline to file a motion for summary judgment is extended to **December 22, 2020** in accordance with the above dates.

Dated this 23rd day of September, 2020.

/s/ G. Murray Snow
G. Murray Snow
Chief United States District Judge

Philip J. Nathanson (Arizona State Bar #013624)
THE NATHANSON LAW FIRM
8326 E. Hartford Dr., Suite 101
Scottsdale, AZ 85255
Phone Number: (480) 419-2578
philipj@nathansonlawfirm.com

Attorneys for Plaintiff and
Certain Non-Party Witnesses

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ALYSSA JONES, Plaintiff, vs. RIOT HOSPITALITY GROUP, LLC, *et al.*, Defendants.	Case No. 2:17-CV-04612-PHX-GMS **DECLARATION OF:** **ALYSSA JONES** Assigned to Judge G. Murray Snow

ALYSSA JONES, declares and certifies, under the penalty of perjury, that the statements set forth below are true and correct to the best of her knowledge and belief:

1. I am the Plaintiff named in Judge Snow's March 4th Order.

2. About one year ago, the Defendants requested during discovery that I produce certain text messages. I in fact produced thousands of text messages from the phone I had at the time. I did not produce the entire contents of my cell phone. I permitted my lawyers to use that phone so they could produce the requested

text messages. Because I was working at that time, I simply purchased a new cell phone so my old phone could be used for discovery purposes. I am not working now so I cannot give up my cell phone for any period of time for the purpose of Defendants copying the whole phone so the Defendants can rummage around in it.

3. Philip Nathanson texted me a copy of Judge Snow's March 4, 2020, Order and I strongly object to handing over my cell phone to someone else to perform an invasive search of my cell phone. Before, a year ago, we produced text messages, not my entire cell phone and all information in it. I believe this Order is a major and serious invasion of my privacy. I don't believe I should be subjected to giving up possession of my cell phone for any period of time so that it can be searched by the Defendants.

4. My concerns now regarding giving up possession of my cell phone relate to my own personal safety and communication issues with my eight-year old son. Indeed, I need to have my cell phone (i) because I have an eight-year old son and I have to be available to him if he needs to reach me; and (ii) I need to have my cell phone in case I need to call the police for my own safety, or if there is a medical emergency. At this point in my life, I would not feel safe if I didn't have my cell phone. I have been threatened and harassed because of me being the Plaintiff in this case. There are too many circumstances where giving up possession of my cell phone would put me in harm's way if there were to be an emergency. I would essentially be helpless.

FURTHER DECLARANT SAITH NOT on this 9th day of March, 2020.

/s/ Alyssa Jones
ALYSSA JONES

I hereby certify that on March 10, 2020, I electronically transmitted the attached document to the Clerk's office using CM/ECF System for filing, and transmitted a Notice of Service of Electronic Filing to the following CM/ECF registrants:

Christopher Thomas Curran, Esq. (ccurran@clarkhill.com)
Darrel Eugene Davis, Esq. (ddavis@clarkhill.com)
David I Weissman, Esq. (dweissman@clarkhill.com)
Sean Michael Carroll, Esq. (scarroll@clarkhill.com)
Tracy Miller, Esq. (tracy.miller@ogletree.com)

By: /s/ *Philip Nathanson*

Philip J. Nathanson (Arizona State Bar #013624)
THE NATHANSON LAW FIRM
8326 E. Hartford Dr., Suite 101
Scottsdale, AZ 85255
Phone Number: (480) 419-2578
philipj@nathansonlawfirm.com

Attorneys for Plaintiff and
Certain Non-Party Witnesses

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ALYSSA JONES, Plaintiff, vs. RIOT HOSPITALITY GROUP, LLC, *et al.*, Defendants.	Case No. 2:17-CV-04612-PHX-GMS **DECLARATION OF:** **CHELSEA MEYERS** Assigned to Judge G. Murray Snow

CHELSEA MEYERS, declares and certifies, under the penalty of perjury, that the statements set forth below are true and correct to the best of her knowledge and belief:

1. I am the CHELSEA MEYERS named in Judge Snow's March 4th Order.

2. I asked Kate Sokolova at The Nathanson Law Firm to represent me at my deposition. I was not represented by The Nathanson Law Firm prior to the defense request for my deposition. And I was represented by The Nathanson Law Firm at my deposition. And since my deposition, the only contact I have had with

The Nathanson Law Firm is in connection with this issue of producing text messages from my cell phone.

3. Philip Nathanson texted me a copy of Judge Snow's March 4, 2020, Order and I strongly object to handing over my cell phone to someone else to perform an invasive search of my cell phone. I believe this is a major and serious invasion of my privacy. I am not a party to this case and did not file a case of my own. I don't believe I should be subjected to giving up possession of my cell phone for any period of time so that it can be searched by the Defendants.

4. My cell phone is my work phone and I will not be able to answer calls and complete my daily job functions helping clients. I will lose my job if I can't answer these calls.

5. I have authorized Philip Nathanson to pursue an appeal on my behalf as a non-party witness if he is permitted to do so.

FURTHER DECLARANT SAITH NOT on this 9th day of March, 2020.

/s/ Chelsea Meyers
CHELSEA MEYERS

I hereby certify that on March 10, 2020, I electronically transmitted the attached document to the Clerk's office using CM/ECF System for filing, and transmitted a Notice of Service of Electronic Filing to the following CM/ECF registrants:

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(ccurran@clarkhill.com)

Darrel Eugene Davis, Esq. (ddavis@clarkhill.com)
David I Weissman, Esq. (dweissman@clarkhill.com)
Sean Michael Carroll, Esq. (scarroll@clarkhill.com)
Tracy Miller, Esq. (tracy.miller@ogletree.com)

By: /s/ *Philip Nathanson*

Philip J. Nathanson (Arizona State Bar #013624)
THE NATHANSON LAW FIRM
8326 E. Hartford Dr., Suite 101
Scottsdale, AZ 85255
Phone Number: (480) 419-2578
philipj@nathansonlawfirm.com

Attorneys for Plaintiff and
Certain Non-Party Witnesses

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ALYSSA JONES, Plaintiff, vs. RIOT HOSPITALITY GROUP, LLC, *et al.*, Defendants.	Case No. 2:17-CV-04612-PHX-GMS **DECLARATION OF:** **ELLE FOSTER** Assigned to Judge G. Murray Snow

ELLE FOSTER, declares and certifies, under the penalty of perjury, that the statements set forth below are true and correct to the best of her knowledge and belief:

1. I am the ELLE FOSTER named in Judge Snow's March 4th Order.

2. I asked Kate Sokolova at The Nathanson Law Firm to represent me at my deposition the night before the deposition. Prior to that, when I injured my hand and had to reschedule the deposition date, I did so on my own with Defendants' counsel. Kate and The Nathanson Law Firm agreed to represent me at the

deposition at the last minute, and Kate and Philip met with me the day of the deposition to prepare. Prior to asking them to represent me, I was not represented by The Nathanson Law Firm. I was represented by The Nathanson Law Firm at my deposition. And since my deposition, the only contact I have had with The Nathanson Law Firm is in connection with this issue of producing text messages from my cell phone. Philip Nathanson did text me a copy of Judge Snow's March 4, 2020, Order

3. I strongly object to the Order to hand over my private and personal cell phone. I am not a party in this case nor did I bring on a case of my own. I was not involved in the case up until my deposition request from Mr. Hibbert's defense. I simply have performed my civic duty by attempting to aid in the prevailing of justice in this case by answering questions under oath during a deposition by the defense. My involvement is only at the level of a witness who has provided statements about my personal knowledge and experience regarding my time working at Riot Hospitality Group under Ryan Hibbert. I believe this Order is an infringement on my Fourth Amendment right to unreasonable search and seizures by the government. I ask that you review my direct involvement in this case and kindly consider my objection to this inconceivable request to violate my personal right to privacy. They're not going to find something in my text messages that's relevant to the facts in this case and anything said to the contrary by the Defense is completely not true. I have gotten a new phone within the last few months.

4. I am responsible and employed for my Great Grandmother who has Dementia. I cannot responsibly care for her without the means of my cell phone to communicate and ensure her safety in times of an emergency where something, goes wrong. She has no technology in her house; not even a landline phone. Having no way to contact to the outside world in case of emergency is absolutely not acceptable and does not align with the job criteria. I will not risk the safety of an 87-year-old woman by failing to complete my performance tasks. This is an employed job. I receive biweekly pay checks and am overseen by her Financial Conservator.

5. I have authorized Philip Nathanson to pursue an appeal on my behalf as a non-party witness if he is permitted to do so.

FURTHER DECLARANT SAITH NOT on this 9th day of March, 2020.

/s/ Elle Foster
ELLE FOSTER

Philip J. Nathanson (Arizona State Bar #013624)
THE NATHANSON LAW FIRM
8326 E. Hartford Dr., Suite 101
Scottsdale, AZ 85255
Phone Number: (480) 419-2578
philipj@nathansonlawfirm.com

Attorneys for Plaintiff and
Certain Non-Party Witnesses

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ALYSSA JONES, Plaintiff, vs. RIOT HOSPITALITY GROUP, LLC, *et al.*, Defendants.	Case No. 2:17-CV-04612-PHX-GMS **DECLARATION OF:** **SHEA WATSON** Assigned to Judge G. Murray Snow

SHEA WATSON, declares and certifies, under the penalty of perjury, that the statements set forth below are true and correct to the best of her knowledge and belief:

1. I am the SHEA WATSON named in Judge Snow's March 4th Order.

2. I asked Kate Sokolova at The Nathanson Law Firm to represent me when I first received a subpoena from the Defendants. Kate and The Nathanson Law Firm agreed to represent me regarding the discovery subpoena, which was quashed. Prior to receiving that subpoena I was not represented by The Nathanson

Law Firm. I was represented by The Nathanson Law Firm at my deposition. And since my deposition, the only contact I have had with The Nathanson Law Firm is in connection with this issue of producing text messages from my cell phone.

3. Philip Nathanson texted me a copy of Judge Snow's March 4, 2020, Order and I strongly object to handing over my cell phone to someone else to perform an invasive search of my cell phone. I believe this is a major and serious invasion of my privacy. I am not a party to this case and did not file a case of my own. I don't believe I should be subjected to giving up possession of my cell phone for any period of time so that it can be searched by the Defendants.

4. My cell phone is my business phone so I will not be able to work with client scheduling/run my business and I will lose money and not be able to pay my bills if I have to give up possession of my cell phone.

5. I have authorized Philip Nathanson to pursue an appeal on my behalf as a non-party witness if he is permitted to do so.

FURTHER DECLARANT SAITH NOT on this 9th day of March, 2020.

/s/ Shea Watson
SHEA WATSON

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transmitted a Notice of Service of Electronic Filing to the following CM/ECF registrants:

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Sean Michael Carroll, Esq. (scarroll@clarkhill.com)
Tracy Miller, Esq. (tracy.miller@ogletree.com)

By: /s/ *Philip Nathanson*

Tags	Sender	Recipient(s)	Message Date	Message Time	Message	Type	Attachments
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16082066777	5/27/2019	4:44:30 PM	Pax would love it too! He had so much fun playing big brother on Christmas I'll start looking into some things we could do and I'll keep in touch about dates!	iMessage	
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16082066777	5/27/2019	4:41:03 PM	Thank you for having us! I can fully appreciate all the thought you put into this that party! If you ever need a break we are more than happy to take them and Pax to do some fun activities	iMessage	
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16027721169	7/13/2019	8:49:07 PM	That would look pretty! They have a bunch of different stain colors at Home Depot last time we went	iMessage	
Not Relevant	+16027721169	+17033501707, Local User <Alyssa Jones iPhone 11>	7/13/2019	8:40:09 PM	[OBJ] Having you guys at my table motivated me to remedy the situation. I found this on OfferUp for $20. Super sturdy and high quality. Just needs sanding and repaint. Thanks guys	iMessage	~/Library/SMS/Attachments/b6/06/at_0_2039F0A2-D7CE-4820-9389-002A3BD591C9/IMG_7728.jpeg
Not Relevant	+17033501707	+16028859880, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	9:04:53 AM	Xavier and his girlfriend	iMessage	
Not Relevant	+14802913097	+17033501707, +16028859880, Local User <Alyssa Jones iPhone 11>	7/14/2019	9:02:43 AM	Do you want to come to my house	iMessage	
Not Relevant	+17033501707	+16028859880, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:56:03 AM	Share our album with Elle	iMessage	
Not Relevant	+16028859880	+17033501707, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:55:46 AM	No that was the first one I went to ;(	iMessage	
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16028859880, +14802913097	7/14/2019	8:54:36 AM	Where did you go	iMessage	
Not Relevant	+16028859880	+17033501707, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:53:53 AM	No we want weird	iMessage	
Not Relevant	+16028859880	+17033501707, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:53:43 AM	Anything	iMessage	

Not Relevant	+16028859880	+17033501707, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:51:14 AM	We need some music	iMessage	
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16028859880, +14802913097	7/14/2019	8:47:09 AM	Come pls to me	iMessage	
Not Relevant	+17033501707	+16028859880, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:46:22 AM	Elllllllleeeeee	iMessage	
Not Relevant	+17033501707	+16028859880, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	5:52:59 PM	Were we there	iMessage	
Not Relevant	+17033501707	+16028859880, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:34:37 AM	Where	iMessage	
Not Relevant	Local User <Alyssa Jones iPhone 11>	+17033501707, +16028859880, +14802913097	7/14/2019	10:14:21 AM	Just waiting for a friend to let us in!!	iMessage	
Not Relevant	+16028859880	+17033501707, +14802913097, Local User <Alyssa Jones iPhone 11>	7/14/2019	8:34:20 AM	No we text in this	iMessage	