

1 **I. BACKGROUND OF RETALIATION**

2
3 There has been a long history of conflicting views between the parties regarding how the Torrey
4 Pines Gliderport should be managed in the best interests of public use and of public safety.

5
6 On July 24th, 2011, Shannon Hamby was badly injured while learning to paraglide under
7 instruction from Plaintiff's/Cross-Defendant's business (Air California Adventure or "ACA"). This
8 was just another in a series of accidents and deaths at the Torrey Pines Gliderport under "ACA".
9 Shannon Hamby eventually sought the legal services of Thorsnes, Bartolotta, McGuire ("TBM")
10 who filed a law suit against "ACA" in California Superior Court (Case # 37-2013-00052120).

11
12 Shannon Hamby's attorneys ("TBM") contacted Defendant/Cross-Complainant Kuczewski (me)
13 based on my public criticism of the operations at the Gliderport. I testified as an expert witness in
14 September of 2014 in that case (37-2013-00052120). Plaintiffs and their attorney (Mr. Saldana)
15 attended my deposition in September of 2014 which lasted the entire day. My testimony was very
16 simple. Neither Shannon Hamby nor the other person in the collision had the ratings (experience
17 level) to fly paragliders at the Torrey Pines Gliderport. Yet they were flying there anyway under the
18 control and authority of "ACA". It was ACA's gross negligence in pursuit of profit that was
19 responsible for the accident. My testimony was iron-clad, and it is my understanding that ACA's
20 insurance company settled the suit in favor of Shannon Hamby based on my "whistleblower"
21 testimony in the case. The settlement payout was the likely cause of the loss of insurance by the
22 United States Hang Gliding and Paragliding Association ("USHPA") who had failed to provide
23 proper oversight of the flight operations and instruction at Torrey Pines Gliderport.

24
25 Shortly after my testimony, and on November 9th, 2014, I was assaulted and battered by ACA's
26 Gabriel Jebb in the presence of ACA's owner Robin Marien (Complainants/Cross-Defendants).
27 During the several minutes of the assault and battery, Gabriel Jebb is captured on a video recording
28 clapping his hands and saying "Tell us about the rules, Mr. Expert" clearly referring to my expert

1 witness testimony two months earlier. That was the beginning of 5 years of legal retaliation by
2 Plaintiffs/Cross Defendants leading up to and including this case. Plaintiffs/Cross Defendants had
3 me falsely arrested 3 times from the date of my testimony until the following summer of 2015. In
4 each of those arrests, the City of San Diego declined to file any charges. In the summer of 2015, my
5 attorney Chad Morgan and I met with City Attorney Jan Goldsmith to discuss the ongoing arrests
6 where no charges had been filed. We argued that Plaintiffs/Cross-Defendants were abusing the San
7 Diego Police Department by having me arrested and jailed for periods of approximately 12 hours in
8 cases where no charges could be brought. The false arrests ceased shortly after that meeting in the
9 summer of 2015, and I have been able to visit the Torrey Pines Gliderport / City Park since that
10 time without arrest. But I have not been able to fly a hang glider or paraglider at that site due to
11 additional retaliation for my testimony.

12

13 Subsequent to the Shannon Hamby settlement in Superior Court Case 37-2013-00052120, the false
14 claims from Plaintiffs/Cross-Defendants appeared in an expulsion proceeding against me by the
15 United States Hang Gliding and Paragliding Association ("USHPA"). Selected and edited portions
16 of the video of my expert witness testimony in that case were published for all of the approximately
17 10,000 members of USHPA to view. I believe those edited segments were shown out of context,
18 although I have been denied the ability to view that video to this very day. My testimony in the
19 Hamby case was cited as the reason for my expulsion along with my public speeches to the San
20 Diego City Council seeking oversight of the Torrey Pines Gliderport. Plaintiffs/Cross-Defendants
21 have subsequently denied me the ability to fly either a hang glider or a paraglider at the Torrey
22 Pines Gliderport citing my lack of membership in "USHPA". This denial of recreational flight has
23 been an ongoing form of retaliation for my expert witness testimony and serves as a threat to
24 anyone else who might testify against Plaintiffs/Cross-Defendants in any proceeding. This ongoing
25 legal action has been another form of retaliation against me for my testimony in the Shannon
26 Hamby case and for my speeches to the San Diego City Council. The abusive conduct in this case
27 by Plaintiffs/Cross-Defendant's attorney Christopher Saldana throughout the discovery process has
28 been another avenue of retaliation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. RETALIATION AND ABUSE IN THE DISCOVERY PROCESS

As described above, the theme of retaliation has carried forward into the proceedings of this case. This was most evident to the Court in the recent dispute over my own ability to record my own video deposition for my own records. Attorney Saldana attempted to prohibit my recording of my own deposition for months while he attempted to bully me into either not having my own copy or to pay an exorbitant price to obtain the official recording. As an Attorney, Mr. Saldana should have surely known that Chapter 9, section 2025.330(c) expressly provides for the recording that I requested. But Attorney Saldana continually threatened dire financial consequences ("sanctions") for me if I stood up for my rights under 2025.330(c). Indeed, the Court admonished Mr. Saldana for his conduct in an earlier hearing on the matter. Attorney Saldana's dishonesty in threatening me for asserting my rights has completely destroyed his credibility in my eyes.

But Mr. Saldana's conduct during the video recording conflict was not his first abuse of the discovery process. On December 8th, 2017, my attorney (Chad Morgan) requested 7 items for production. This was item number 7 from that 2017 discovery request:

"Request No. 7: Please produce ALL DOCUMENTS, including but not limited videos and photographs, in YOUR possession or created by YOU that show, include, feature, depict, or otherwise RELATE TO defendant's actions and/or YOUR interactions with defendant on any other date from January 1, 2013 through the date of YOUR response."

On December 13th, 2017 Plaintiffs similarly requested:

"Any and all audio and video recordings, that reference or relate in any way to Defendant's surveillance of the Plaintiffs and TORREY PINES GLIDERPORT from January 1, 2000 through the present. "

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

So while we had requested 4 years, Attorney Saldana had requested 17 years.

On June 4th, 2018, we produced 2,673 individual items totaling 317 gigabytes of storage containing audio recordings, video recordings, and still images from as early as 2005 up through March of 2018. I personally spent about 200 hours over those 6 months assembling all of that data.

On June 5th, 2018, Plaintiff's produced one (1) PDF file (named PL000001-PL000056.pdf) containing a total of 56 pages:

- Pages 1-35: Torrey Pines Lease from 1998 (already in my possession since at least 2007)
- Pages 36-48: Posts from my own US Hawks Forum (already publicly available to anyone)
- Pages 49-51: Posts from the Oz Report Forum (already publicly available to anyone)
- Pages 52-56: My own email messages to my own co-workers at the Salk Institute where I work

That has been the sum total of discovery obtained from Plaintiffs in this case. I had painstakingly and diligently spent an estimated 200 hours of time to produce 2,673 individual items totaling 317 gigabytes, and Plaintiffs produced only 56 pages of information already known to be in my possession or known to be publicly available. Plaintiff's and/or Plaintiff's attorney Christopher Saldana should be severely sanctioned for their outrageous conduct in this discovery process.

The attached photos show clear examples of the kinds of evidence that Plaintiffs/Cross-Defendants are either willfully withholding or have willfully destroyed. Those photographs show Plaintiffs/Cross-Defendants' own employees taking video of the interactions between myself and Plaintiffs/Cross-Defendants. Some of those recordings should show the actual assaults, batteries, and false arrests committed by Plaintiffs/Cross-Defendants against me. But Plaintiffs/Cross-Defendants have not produced any of them.

1 Exhibit 3(b), for example, shows one of plaintiff's employees video taping as Plaintiffs are having
2 me arrested on March 8th, 2015. Where is that video?

3

4 Exhibit 4 (a) shows one of Plaintiff's employees video taping the actual assault and battery by both
5 Defendants Gabriel Jebb and Robin Marien against me on June 14th, 2015. That was after this
6 current lawsuit had been filed by Plaintiffs/Cross-Defendants. Where is that video?

7

8 Exhibits 5(b), 6(a), 6(b) show another of Plaintiff's employees video taping yet another assault and
9 battery by Plaintiff/Cross-Defendant Gabriel Jebb against me on July 12th, 2015. Exhibit 6(a)
10 shows Gabriel Jebb (foreground), Robin Marien (background in cart), and an employee of Air
11 California Adventure in the yellow shirt holding a video camera. Exhibit 6(b) shows Gabriel Jebb
12 stepping over the guard rail that he had just pushed me over backwards. I was filming as I was
13 falling to the ground with my video camera to obtain these still shots. But holding my own camera
14 could not capture the violent assault as clearly as the camera held by the Air California Adventure
15 employee. Where is that video? Why was that video never produced? Robin Marien has explicitly
16 told the police that he has lots of video recorded of my actions at the Gliderport as if to imply that I
17 had a history of negative actions. Where is all of that video evidence?

18

19 Most importantly, all of the video recorded after this case was filed in early 2015 should clearly
20 have been preserved by Plaintiffs/Cross-Defendants in order to prove the case that they themselves
21 had filed. Where is that evidence? Is it at all believable that Plaintiffs would simply discard video of
22 what they claim were my actions leading to my arrests AFTER they had filed this case?

23

24 No. It is not believable at all. The fact is that Plaintiffs have intentionally either withheld or outright
25 destroyed evidence in this case AFTER this case was already under way. Attorney Saldana must
26 already know this to be the case because he has known of all of this evidence from the series of
27 restraining order trials over the last 5 years. So again, Attorney Saldana has clearly demonstrated
28 that he (and his clients) cannot be trusted in this discovery process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CIRCUMSTANCES SURROUNDING T-MOBILE SUBPOENA

As Mr. Saldana has surely noted in his lengthy briefs, Plaintiffs/Cross-Defendants have made additional discovery requests related to Defendant/Cross-Complainant's recent deposition.

Under penalty of perjury, I attest that I thought that all of those lengthy discovery requests were repeats of the requests originally presented in Plaintiff's/Cross-Defendant's original December 13th, 2017 request when I had been represented by Mr. Chad Morgan. So when I attended the deposition, I did not know that I needed to bring anything with me. I believe that is apparent from the record.

However, at the deposition, Mr. Saldana informed me that additional requests had indeed been added, and I felt pressured to comply with those requests at that time. So I did agree to produce the documents without considering the validity of Mr. Saldana's requests. At that time, I did not know how to get text messages from my phone, and at that time, I also did not know the law with regard to what was proper or improper for Mr. Saldana to obtain via subpoena. So I agreed to allow Mr. Saldana to obtain them via subpoena. I was completely unaware of the "NOTICE TO CONSUMER OR EMPLOYEE" which must be included with any such request until I received the actual subpoena and read it carefully. The notice clearly states that if I am a party to the action, and I object to the production, then I must file a motion to quash or modify the subpoena. That is what I have done because I do object to the subpoena as being overly broad.

IV. MOTION TO QUASH T-MOBILE TEXT MESSAGES

As mentioned in the previous paragraph, I have simply followed the instructions on the NOTICE TO CONSUMER OR EMPLOYEE under section 2. a. which clearly states "IF YOU OBJECT to the production of these records YOU MUST ... file a motion pursuant to Code of Civil Procedure

1 section 1987.1 to quash or modify the subpoena ...". That is exactly what I have done to obtain
2 today's hearing. The specific wording of the subpoena requests:

3
4 All text, SMS, MMS, iMessage, or other similar data transfer protocol, sent to or received
5 by phone number (858) 204-7499 from January 1, 2000 through the present. (Please provide
6 electronically on thumb drive or other electronic means).

7
8 I object on the basis that the request is overly broad, over-reaching, and an abusive violation of
9 many privacy rights and protections. Among these rights and protections is the client-attorney
10 privilege which would be violated with regard to my communications with Attorney Michael
11 Malowney, Attorney Chad Morgan, Attorney Craig Sherman, and other attorneys with whom I have
12 consulted during this nearly 5 year trial.

13
14 Such a broad subpoena "fishing net" would also include communications with others who fear
15 retaliation similar to what I have experienced in the past 5 years since my testimony in the Shannon
16 Hamby case.

17
18 I have tried to negotiate with Mr. Saldana in good faith, but he has been unwilling to be reasonable
19 in his requests. This is consistent with Mr. Saldana's behavior throughout this case as noted above.
20 The most glaring example that has come before the Court was Mr. Saldana's bullying and threats of
21 sanctions in direct defiance of California Code 2025.330(c) which clearly permits the video
22 recording of depositions as was subsequently granted by the Court in this case.

23
24 More specifically, during our discovery negotiations of October 24th, 2019 (meet and confer), Mr.
25 Saldana tried to get me to agree to a scheme where I would withdraw my motion to quash and then
26 allow Advanced Attorney Services to fill the subpoena. Mr. Saldana's scheme is provided in his
27 own handwriting in Exhibit 7. In Mr. Saldana's scheme, I would then examine the records produced
28 and establish a "privilege log" for those messages which I felt were indeed "privileged". So I

1 contacted Advanced Attorney Services on that same day (October 24th, 2019) and I spent a total of
2 31 minutes speaking with Mr. David Shilling about how to do exactly what Attorney Saldana had
3 suggested. Mr. Shilling assured me that Mr. Saldana's scheme would not work because Advanced
4 Attorney Services was REQUIRED to deliver the production of documents to BOTH parties in the
5 action. Mr. Shilling assured me that I would NOT be able to inspect them independently or remove
6 privileged messages without Mr. Saldana ALSO getting to see ALL of the messages (both
7 privileged and unprivileged). Mr. Shilling said that Advanced Attorney Services could ONLY allow
8 such a preview to one party under a specific order of the court.

9
10 I subsequently relayed that to Mr. Saldana the next morning on October 25th, 2019 at 6:42am:

11
12 Mr. Saldana,

13
14 Subsequent to the hearing yesterday, we met and conferred regarding how to handle your
15 request for production of my T-Mobile text messages. I have attached a photo of the process
16 that you had outlined whereby I would review the production at Advanced Attorney
17 Services and create a privilege log to remove such messages from the production.

18
19 Your suggested process would require Advanced Attorney Services to allow me to view
20 those messages without them being released to you (see your step 3 in the attached photo) so
21 that I might create a "privilege log". Then I would filter out those privileged messages and
22 pass along the remaining unprivileged messages to you.

23
24 While I appreciate your effort to resolve the matter with this approach, I feel it is far too
25 complicated and far too likely to produce a violation of privilege (either intentionally or
26 accidentally). Furthermore, I recently spoke with David Schilling at Advanced Attorney
27 Services, and he stated that the records could NOT be turned over to one party without also
28 being turned over to the other party (without a judge's ruling).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

At this point, I believe my Motion to Quash is still in effect and on the Court's calendar for February 21st, 2020. I would like us to resolve the matter some other way, but if we can not then I am confident that your request for all of my messages from 2000 to present will be seen as overly broad, burdensome, and a violation of several privacy rights.

In the interest of efficiency, I think the best way forward would be for you to abandon (drop) the existing subpoena(s) as overly broad and violating attorney-client privilege (etc). You might seek voluntary production of specific requests or draft your subpoena(s) more narrowly to avoid these objections. I would be happy to meet and confer on those options.

Sincerely,
Bob Kuczewski

cc Craig Sherman
<20191024_Saldana.jpg>

Mr. Saldana replied on October 25th, 2019 at 1:51pm:

Mr. Kuczewski:

Your recollection of yesterday's events is incorrect. As you heard yesterday, and as I restated to you several times yesterday following the hearing, the documents have been ordered to be produced. Period. I am to have them one way or the other.

You feigned a "different understanding" of the court's order. I tried to reason with you and you said you intended to confer with Mr. Sherman how you might proceed with your incorrect recollection of the Court's order providing the basis for your plan moving forward.

1 I suggested that since you say your are receiving legal advice from Mr. Sherman that you
2 hire him and you stated you might.

3
4 My writing that you attach to your email was one of three ways we could have accomplished
5 the goal with minimal effort and cost to you. The other two were identified in our opposition
6 to your ex parte. The Court explicitly adopted those approaches yesterday. You have
7 apparently now refused (once again) to comply with the Court's order.

8
9 I will have no choice but to again schedule a hearing to again address your unreasonable
10 failure to comply with the court's explicit orders.

11
12 We will notify you in writing of the date of that hearing.

13
14 Christopher C. Saldaña, Esq.
15 Shewry & Saldaña, LLP
16 402 West Broadway, Suite 950 • San Diego • CA • 92101
17 Office: 619.233.8824
18 Fax: 619.233.1002
19 Email: chris@shewrysaldanalaw.com
20 Web: <http://www.shewrysaldanalaw.com>

21
22 Mr. Saldana's tone in his reply was both insulting and abusive. While I had kindly suggested simply
23 redrafting the subpoena or allowing me to produce the requested documents voluntarily, Mr.
24 Saldana's reply was both demanding and abrupt:

25
26 ... the documents have been ordered to be produced. Period.

27 I am to have them one way or the other.

28

1 That very short segment of Mr. Saldana's message highlights the problems that I have been
2 encountering in defending myself in this lawsuit. Mr. Saldana disregards all of the protections of the
3 law and all of the good intentions to "meet and confer" honestly. Instead Mr. Saldana simply makes
4 proclamations such as "I am to have them one way or the other. " and "Period.". These are the kinds
5 of statements that Mr. Saldana has used to intimidate me at the deposition, and they are the reasons
6 that I am seeking protection from the Court against these continued abuses of our justice system.

7
8 **V. PERJURIOUS MISREPRESENTATION BY MR. SALDANA**
9

10 Mr. Saldana has been extremely dishonest in his filings with the Court to the point of perjury. In
11 Mr. Saldana's filing of November 4th, 2019, titled "EX-PARTE APPLICATION TO ENSURE
12 COMPLIANCE ...", Mr Saldana quotes almost all of my email message from October 25th, 2019
13 included above (see page 9, line 3 of Mr. Saldana's filing). But Mr. Saldana leaves out the most
14 important part of that entire email message which was the last paragraph where I had written:

15
16 In the interest of efficiency, I think the best way forward would be for you to abandon (drop)
17 the existing subpoena(s) as overly broad and violating attorney-client privilege (etc). You
18 might seek voluntary production of specific requests or draft your subpoena(s) more
19 narrowly to avoid these objections. I would be happy to meet and confer on those options.

20
21 That was on October 25th, 2019 at 6:42am. That was less than 24 hours after the Ex-Parte hearing
22 on October 24th. Why did Mr. Saldana leave that entire paragraph out of his November 5th, 2019
23 filing? See page 9, line 3 of Mr. Saldana's filing. Yet in Mr. Saldana's filing, Page 7, line 22, he
24 makes the following claim:

25
26 2. Plaintiff's counsel even offered to withdraw the subpoena altogether if Mr. Kuczewski
27 would stipulate to seek the documents himself from T-Mobile (as was required by the
28

1 Plaintiff's request for production anyway) and produce only what he felt was not privileged,
2 producing a privilege log for the balance

3

4 Yet that is exactly what I had suggested in writing on October 25th, 2019. That is exactly what I had
5 suggested in the paragraph that Mr. Saldana **intentionally** left out of his filing. By leaving that out,
6 Mr. Saldana justifies his claims that I have refused to comply with the Court's explicit orders (Mr.
7 Saldana's filing Page 10, line 8):

8

9 In short, Mr. Kuczewski has again, deliberately, and without any reasonable excuse, refused
10 to comply with this Court's explicit orders.

11

12 That is an outright lie. Mr. Saldana had to **intentionally** omit the most important part of my email
13 message to him in order to taint the Court's view and support the claim on Page 10, line 8.

14

15 Mr. Saldana then goes on to state:

16

17 Mr. Kuczewski must be sanctioned monetarily or evidentiarily, or by the termination of the
18 main case and cross-complaint in favor of the Plaintiffs. It seems overwhelmingly clear that
19 short of such action, Mr. Kuczewski's disregard of the Civil Discovery Act, and the time and
20 resources of the Court and Plaintiffs will simply continue unabated.

21

22 None of that is true. In order to support that claim, Mr. Saldana needed to **intentionally** leave out
23 the most important statement in my communication which was:

24

25 In the interest of efficiency, I think the best way forward would be for you to abandon (drop)
26 the existing subpoena(s) as overly broad and violating attorney-client privilege (etc). You
27 might seek voluntary production of specific requests or draft your subpoena(s) more
28 narrowly to avoid these objections. I would be happy to meet and confer on those options.

1
2 Mr. Saldana must be sanctioned monetarily or evidentiarily, or by the termination of the main case
3 and cross-complaint in favor of Defendant/Cross-Complainant Kuczewski. He should also be barred
4 from practicing law in the State of California or any other state for such blatant misrepresentation
5 to the Court.

6
7 **VI. CONCLUSION**
8

9 I do apologize to the Court for my lack of legal training. I come to the Court as a citizen seeking
10 justice in a situation where my opponent's primary goal is to punish me any way they can. They
11 have had me arrested and jailed for charges that could not even be brought to court. They have
12 dragged innocent friends such as Ms. Holland into their process of intimidation. They have created
13 fear of speaking out among members of the hang gliding community. They have sought sanctions
14 against me for simply invoking my right to record my own deposition as provided by law. They
15 have issued subpoena's that they surely know will violate attorney-client privilege. They have made
16 unreasonably broad discovery demands while producing nothing in return. They have intentionally
17 withheld or destroyed evidence in this case after this case had already been underway. It is my
18 belief that Mr. Saldana realizes that he will lose this case if it ever goes to trial. As a consequence,
19 he is trying to get the case thrown out procedurally by continually pushing me to react to his
20 unreasonable requests. That explains both Saldana's objection to my video taping and his
21 unreasonable demands during discovery, and his gross mischaracterization of our communications
22 as noted above.

23
24 While I may lack legal training, I have sought help from many resources. I have shown or discussed
25 Mr. Saldana's subpoena with at least 3 different attorneys. They have all agreed that Mr. Saldana's
26 subpoena is too broad and they all agreed that it clearly violates the attorney-client privilege and
27 other privacy protections. Without Mr. Saldana's cooperation, I have had no option but to file this
28 Motion to Quash and see it through to a hearing. Mr. Saldana and his clients should be sanctioned

1 monetarily or evidentially, or by the termination of the main case and cross-complaint in favor of
2 Defendant Kuczewski for their actions.

3

4 In the narrow matter of this T-Mobile subpoena, I have already suggested either:

5

6 1. Mr. Saldana withdraw his overly broad subpoena and issue another.

7

8 2. Mr. Saldana request my voluntary production of specific and reasonable items. I have
9 already demonstrated a willingness to produce 2,673 image and video files, and I am willing
10 to be responsive to reasonable requests.

10

11 As an alternative, I would not be opposed to Mr. Saldana's recommended procedure **with the**
12 **addition** of an order from the court allowing me to examine the production and remove privileged
13 items **before** they are turned over to Mr. Saldana.

14

15

16

17

18 DATED: November 21, 2019

18

19

ROBERT M. KUCZEWSKI
In Pro Per

20

21

22

23

24

25

26

27

28