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2 San Mateo, CA 94402
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3 +1 (415) 261-8527
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5 Pro Se
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8 UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
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12 Andrew G. Watters,
13 Plaintiff,
14 v.
15 Superior Court of the State of
California for the County of
16 San Mateo; Does 1-10,
17 Defendants.
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Case no. 3:21-cv-05601

**PLAINTIFF'S EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
REGARDING PRELIMINARY INJUNCTION**

Date: TBD
Time: TBD
Place: TBD

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1 I, Andrew G. Watters, declare:

2 1. I am over the age of eighteen years and have personal
3 knowledge of the matters stated herein. If called as a witness,
4 I would competently attest to same.

5 2. I am the Plaintiff in this matter.

6 3. As part of my law practice, I have a website located at
7 <https://www.andrewwatters.com/law/>

8 4. This is a subsection of my website andrewwatters.com.

9 5. I use my website as a public journal in which I
10 document interesting developments I have been a part of or that
11 I am aware of. For example, I have published several articles on
12 my site about technical subjects of public interest:

13 a. A Casual Network Investigation of the Russian
14 Ministry of Defense <https://www.andrewwatters.com/syn/>

15 b. Introduction to Microexpressions
16 <https://www.andrewwatters.com/face/>

17 c. An Informal Proof of Plato's Theory of Forms
18 <https://www.andrewwatters.com/forms/>

19 6. I also have published web pages about lawsuits. One
20 such web page, about my Oracle cases involving two clients,
21 criticizes Oracle Corp. for trying to suppress my freedom of
22 speech in connection with the work-related death of a client:
23 <https://www.andrewwatters.com/law/oracle/>

24 7. My articles are somewhat popular, having received tens
25 of thousands of views each over the last few months. The Network
26 Investigation page, for example, has received over 50,000 views,
27 and the Oracle case page over 40,000 views as of this filing.

28 8. I intended to publish the deposition video I took of

1 Ms. Acosta on a web page devoted to this case, where I was going
2 to comment on the issues and my views as to the progress of the
3 matter. The web page is in progress, but I have not completed
4 it yet due to a recent illness. A key component of the web page
5 is annotated video, where I comment on Ms. Acosta's deposition
6 video and portions thereof, using motion graphics and live video
7 annotation tools.

8 9. In this case, the parties made a stipulation at the
9 beginning of Ms. Acosta's deposition, a copy of which I attach
10 here as *Exhibit A*. The stipulation was not honored by Ms. Acosta
11 or her counsel, in that they substantially delayed the filing
12 of the motion, and did not file it as an ex parte as we had
13 agreed. Despite this, I still held off on publishing the video
14 as a professional courtesy. I also, as a courtesy, provided
15 Petitioner's counsel a hard drive with the raw deposition video
16 on it, so that they would have exactly what I have.

17 10. I had no idea the deposition video would be such a hot-
18 button issue for Ms. Acosta. I have a side venture as a digital
19 cinema filmmaker/videographer, and initially I was just going to
20 be trying out my equipment to see how it looked. But now that
21 this has turned into a free speech issue, I must insist on the
22 affirmation of my and my client's right to freedom of speech.
23 I pointed out the free speech issue to Petitioner's counsel
24 multiple times in emails, copies of which are attached as *Exhibit*
25 *B*. Their response was to unlawfully threaten me with a State
26 Bar referral, which was itself a violation of Rule 5-100. I
27 have done nothing illegal or unethical here in planning to post,
28 annotate, and/or comment on the deposition video that I took with

1 my own equipment, and that I hold the copyright on.

2 11. Obviously, I am a lawyer so I have to comply with the
3 state court's order unless and until it is enjoined or declared
4 unconstitutional. That is why my freedom of speech is being
5 suppressed. I have no other remedy than in this Court.

6 I declare under penalty of perjury under the laws of the
7 State of California that the foregoing is true and correct.

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9 Dated: JULY 21, 2021

Andrew G. Watters

Andrew G. Watters

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Exhibit A

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

---oOo---

IN RE THE MATTER OF

JENNIFER ACOSTA,

Petitioner, No. 20-FAM-01243-A

and

ERIC ACOSTA,

Respondent.

_____ /

VIDEOTAPED REMOTE DEPOSITION OF

JENNIFER JOY ACOSTA

Volume I (Pages 1 to 166)

Thursday, June 24, 2021

Reported by: Susan D. Yip
CSR No. 5038

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I N D E X

Deposition of JENNIFER JOY ACOSTA

	Page
Examination by Mr. Watters	5
MORNING SESSION:	5
AFTERNOON SESSION:	83

No exhibits marked.

1 BE IT REMEMBERED that, pursuant to Notice of
2 Taking Deposition, and on Thursday, June 24, 2021,
3 commencing at the hour of 10:22 a.m, thereof, at the
4 offices of the Viola Law Firm, 441 First Avenue, San
5 Mateo, California, before me, SUSAN D. YIP, a Certified
6 Shorthand Reporter (reporter appeared remotely via Zoom)
7 in and for the State of California, personally appeared
8
9 JENNIFER JOY ACOSTA
10 called as a witness by Respondent, who, being by me
11 first duly sworn, was thereupon examined and testified
12 as hereinafter set forth.

13 ---oOo---

14 (The following proceedings were held via
15 videoconference with the court reporter in a remote
16 location, separate and apart from the attorneys and the
17 witness.)

18 The proceedings were transcribed to the best
19 of the ability of the court reporter to hear and
20 understand the proceedings.)
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APPEARANCES:

For the Petitioner:

Viola Law Firm
441 First Avenue
San Mateo, California 94401
(650) 343-6400
avalim@violaw.com

BY: ANDREA VALIM, Attorney at Law
(with witness at Viola Law Firm)

For the Respondent:

Law Offices of Andrew G. Watters
118 South Boulevard
San Mateo, California 94402
(415) 261-8527
andrew@andrewwatters.com

BY: ANDREW G. WATTERS, Attorney at Law
(appearing at Viola Law Firm)

Reporter appeared remotely via Zoom

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JENNIFER JOY ACOSTA

being first duly sworn, testified as follows:

MORNING SESSION:

EXAMINATION BY MR. WATTERS:

MR. WATTERS: Thank you to the reporter.

Q Good morning, Ms. Acosta. My name is Andrew Watters. I'm an attorney, and I represent your ex-husband Eric Acosta.

A We're not ex yet.

Q Your soon to be ex-husband, Eric Acosta. Do you understand that?

A Yes, sir.

Q Have you ever given a deposition before?

A No.

Q Have you ever testified as a witness in any trial?

A No.

MS. VALIM: I'm sorry to interrupt but were we going to read that stipulation?

MR. WATTERS: Sorry, I have it in my email. I didn't print it out.

MS. VALIM: Do you want me to print it out? We will take a quick break. Sorry.

MR. WATTERS: Off the record.

THE REPORTER: Off the record at 10:23.

1 (Pause.)

2 THE REPORTER: Going back on the record at
3 10:25. Please begin.

4 MR. WATTERS: We have a stipulation prior to
5 the deposition concerning use of the recordings.

6 This deposition is being video and audio
7 recorded so I'm going to read a stipulation and then both
8 parties will agree and I'll proceed under those
9 conditions. Okay?

10 MS. VALIM: Yes.

11 MR. WATTERS: The parties stipulate that the
12 video and audio recordings of today's deposition shall be
13 temporarily restricted in distribution and viewing to the
14 parties and counsel and any expert witnesses of any party
15 pending Ms. Acosta's anticipated filing of an ex parte
16 application for protective order.

17 The ex parte application shall be presented no
18 later than July 9, 2021. Ms. Acosta's intention is to
19 restrict the dissemination of the recordings so that the
20 minor children do not see the video.

21 Although Mr. Acosta disagrees with this goal on
22 legal and moral grounds, he agrees to let Ms. Acosta file
23 an ex parte application and will hold the recordings
24 confidentially pending the decision on the ex parte.

25 If the ex parte application is granted, the

1 recordings shall be deemed confidential until the
2 eventual hearing with an opportunity for both parties to
3 argue their reasons for the availability or
4 non-availability of the recordings.

5 If the ex parte is denied, either upon
6 presentment or after a hearing, there shall be no
7 restrictions on the video.

8 MS. VALIM: I'm sorry. You know what, and
9 that's fine. If we can go off the record for a moment.

10 THE REPORTER: Off the record at 10:27.

11 (Pause.)

12 THE REPORTER: On the record at 10:27.

13 MR. WATTERS: Is the stipulation accepted?

14 MS. VALIM: Yes, it is.

15 MR. WATTERS: Great. Thank you.

16 Q So Ms. Acosta, we're proceeding under the
17 agreement we just made.

18 A Yes, sir.

19 Q And I'll go ahead and just start again so it's
20 all clear what we're agreeing to and everything, okay?

21 A Um-hm.

22 Q Have you ever given a deposition before?

23 A No.

24 Q Have you ever testified as a witness in any
25 trial?

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CERTIFICATE OF WITNESS

I, JENNIFER JOY ACOSTA, hereby declare that I have read the foregoing testimony, and the same is true and a correct transcription of my said testimony except as I have corrected.

Signature

Date

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CERTIFICATE OF DEPOSITION OFFICER

I, SUSAN D. YIP, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me and thereafter transcribed by me or under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

I further certify that I am not of counsel nor attorney for either or any of the parties to said deposition and caption named, nor in any way interested in the outcome of cause named in said caption.

July 2, 2021

/s/ Susan D. Yip

SUSAN D. YIP, CSR #5038

Exhibit B

Subject: Re: Acosta – RFO re deposition video
From: Andrew Watters <andrew@andrewwatters.com>
Date: 7/20/21, 10:01 AM
To: Lawrence Viola <LViola@violaw.com>
CC: Andrea Valim <avalim@violaw.com>, Liz Levine <llevine@violaw.com>
BCC: esaconstruction@comcast.net

I appreciate your views, Larry, but I disagree.

I carefully reviewed Civil Code sec. 47 well in advance, and I might as well show my cards here if it will prevent a baseless State Bar complaint. Please see, inter alia, 47(d)(1):

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=47.&lawCode=CIV

The web page will be privileged and I cannot honor your requests. There are tons of cases affirming the right to speak about and comment on lawsuits and case materials. Though you may believe it may cause some harm to your client, I disagree, and in any event, free speech isn't always positive. In any case, if your client was truthful in her deposition, then she has nothing to worry about.

Thanks,

Andrew

Sent from my iPhone

On Jul 20, 2021, at 9:47 AM, Lawrence Viola <LViola@violaw.com> wrote:

Even if you can, it doesn't mean you should. As an attorney, you ought to know better and you ought to advise your client accordingly.

Lawrence S. Viola
T 650.343.6400 | F 650.342.6854

441 FIRST AVENUE
P.O BOX 1290
SAN MATEO, CALIFORNIA, 94401

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-----Original Message-----

From: Andrew Watters <andrew@andrewwatters.com>
Sent: Tuesday, July 20, 2021 9:41 AM
To: Lawrence Viola <LViola@violaw.com>
Cc: Andrea Valim <avalim@violaw.com>; Liz Levine <llevine@violaw.com>
Subject: Re: Acosta - RFO re deposition video

Thanks for your comments, but unless you can point to a law or rule that I would be breaking, I can't possibly honor your demands. I also don't appreciate the threat of a referral to the State Bar when there is nothing illegal or unethical going on here. I took the video with my own equipment pursuant to valid notice, and I hold the copyright. This is not a trade secret or national security case. If your client is overly emotional, that is not my problem, and I'm not going to refrain from editorializing about this case in order to accommodate her. I again invite you to point me to any statute, case, or rule prohibiting the distribution of a deposition video. You cannot do so because there is no such authority for a prior restraint on my and my client's freedom of speech.

Best,

Andrew Watters

Sent from my iPhone

On Jul 20, 2021, at 9:22 AM, Lawrence Viola <LViola@violaw.com> wrote:

Andrew:

Also, be aware that in posting this deposition, you are inflaming an already high conflict case. Jennifer Acosta is already quite emotional and your threat to post the deposition video has only exacerbated her distress. Furthermore, to the extent that your client is either directing you or providing permission for you to post the deposition video, he is underscoring his abusiveness towards his wife and children. Be advised, should you proceed, we will refer this to the State Bar. This shall also serve as our notice that we will seek sanctions pursuant to Family Code section 271.

Regards,

Lawrence S. Viola

T 650.343.6400 | F 650.342.6854

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-----Original Message-----

From: Andrew G. Watters <andrew@andrewwatters.com>

Sent: Tuesday, July 20, 2021 9:09 AM

To: Andrea Valim <avalim@violaw.com>; Liz Levine <llevine@violaw.com>

Cc: Lawrence Viola <LViola@violaw.com>

Subject: Re: Acosta - RFO re deposition video

Hi Andrea,

Thanks for your call following up on your email. Sorry I didn't respond on Friday, but I have been sick since last Wednesday the 14th (not COVID), and it's been rough.

I have not posted the web page yet, but I intend to do so in the near future. So you should file your ex parte.

Please be advised that if I somehow get enjoined from posting this on my website, I will be taking this to the Court of Appeal immediately as a free speech issue.

Best,

Andrew G. Watters

andrew@andrewwatters.com

+1 (415) 261-8527

<https://www.andrewwatters.com>

On 7/16/21 4:01 PM, Andrea Valim wrote:

Andrew:

It was inadvertently filed as a regular RFO. There was no ill will behind it. We have an upcoming MSC in early August, why don't we just ask the judge to rule on it earlier or at the time of trial?

Is your need to post it on your website immediately more importantly than the best interests of the parties' children? I am shocked that you would even consider such a thing. I believe the court will agree.

I also sent you an email prior to my filing asking that we agree to keep costs down

and agree to argue it before the court in September. You failed to respond.

If you force me to re-file as an ex-parte on Monday, we will request sanctions. I don't think the judge will have much sympathy for your need to post it on your website.

I thought we could move forward after the deposition but apparently that is not the case. This is a family in turmoil and my client is a victim of domestic violence. Apparently your client doesn't care and your main concern is somehow adding content to your website.

What's the status of the repair to the heat in for Jennifer and the children?

Finally, you have still yet to propose an alternative family therapist. We have been unable to find anyone available.

Andrea

Andrea J. Valim

T 650.343.6400 | F 650.342.6854

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[snip]