

**IN THE CIRCUIT COURT OF THE CITY OF SAINT LOUIS
STATE OF MISSOURI**

TGP COMMUNICATIONS, LLC, <i>et al</i> ,)	
)	
Plaintiffs)	Cause No.: 2222-CC00025
)	
v.)	Division: 1
)	
BRANNON HOWSE, <i>et al</i> ,)	
)	
Defendants.)	

MOTION TO COMPEL AND TO STRIKE

COME NOW, Plaintiffs, by and through undersigned counsel, and for their Motion to Compel and to Strike, state as follows:

1. To date, Defendant Fanning’s¹ Answer and responses to discovery requests (including requests for admissions) have neither been filed nor served. Plaintiffs object to these failures, and ask the Court for an Order compelling Defendant Fanning to file forthwith her Answer and responses to Plaintiffs’ discovery requests. Additionally, Fanning filed an unsigned “Motion for Continuance,” on April 14, 2022, in which she requested this Court continue this case “until such time as the Court deems appropriate.” For reasons more fully explained below, Plaintiffs also ask the Court to deny and strike this improper and untimely motion.

2. This lawsuit was filed on January 5, 2022.

3. The Petition, along with Plaintiffs’ First Interrogatories, First Requests for Production, and First Requests for Admission, were each served upon Defendant Mary Fanning on February 1, 2022. **Exhibit 1** – Return & Affidavit of Service.

¹ Also known as Mary Fanning Kirchhoefer.

4. Defendant Fanning's Answer was due to be filed with the Court on or before March 3, 2022; her responses to First Interrogatories and First Requests for Production were each due to be served upon Plaintiffs on or before March 18, 2022; and Defendant's Response to Plaintiffs' First Request for Admissions was due to be served upon Plaintiffs on or before April 2, 2022. Rules 55.25(a); 57.01(c)(1); 58.01(c)(1); 59.01(a).

5. To date, Defendant Fanning has not filed and/or served her Answer or responses, respectively. Accordingly, and pursuant to Rule 61.01, Plaintiffs ask the Court to make and issue an Order compelling Defendant Fanning to Answer Plaintiffs' Petition and respond to Plaintiffs' First Interrogatories, First Requests for Production, and to declare that Fanning's failure to timely respond to Plaintiffs' First Requests for Admissions are deemed admitted.²

6. On April 14, 2022, Defendant Fanning (**or her attorney husband**) faxed a "Motion for Continuance," "affidavit," and other associated documents to the Court, directing them to the attention of clerk Matthew Swafford. **Exhibit 3** – "Motion" for Continuance, fax cover sheet and letter.

7. This **unsigned** "motion" does not comply with Missouri's Rules of Civil Procedure, and the "affidavit" was not notarized. Rule 55.25.

8. Defendant's motion requests this case be continued for some unstated period, and in support of this request, Fanning states that she is an unrepresented *pro se* litigant, and in need of additional time to obtain counsel.

9. Fanning's motion is highly misleading, improper, and groundless.

² As more fully discussed, *infra*, Defendant Fanning is not a helpless *pro se* defendant, or without resources. Fanning's husband is a partner at one of the largest law firms in the nation. Further, as required by V.A.M.R. 59.01(a), Plaintiffs' Requests for Admission included fair warning that, "a failure to timely respond to requests for admissions in compliance with Rule 59.01 shall result in each matter being admitted by you and not subject to further dispute." **Exhibit 2** – First Requests for Admission.

10. Upon information and belief, Defendant Fanning's husband is Gregg Kirchhoefer. Defendant Fanning and Mr. Kirchhoefer own a **mansion** in the Chicago area, as well as a **mansion** in Lake Geneva, Wisconsin.³ **Exhibit 4** – Property Photos. Mr. Kirchhoefer is a partner⁴ at Kirkland & Ellis LLP, the largest law firm in the world by revenue, and seventh largest by number of attorneys (over 2,700).⁵

11. According to Mr. Kirchhoefer's CV on the Kirkland & Ellis website, Mr. Kirchhoefer is not a member of the Missouri Bar.⁶ **Exhibit 5** – Kirchhoefer CV. A search of the Missouri Bar legal directory shows no one by the last name of Kirchhoefer.⁷

12. According to Defendant Fanning's filings with this Court, Defendant's faxed filings were *sent from Mr. Kirchhoefer's office at Kirkland & Ellis LLP's downtown Chicago headquarters*. **Exhibit 3**, at p. 1. Phone calls directed to one or more Plaintiffs and their attorney have come directly from Mr. Kirchhoefer's direct office line. **Exhibit 6**- Declaration of John C. Burns.

13. Pursuant to Missouri Supreme Court Rules Governing the Missouri Bar and the Judiciary, Rules of Professional Conduct Rule 9.01(b), "Attorneys who are not members of the Missouri Bar shall not practice law or do a law business in this state except as provided in Rules 4-5.5, 9.03, and 9.04."

14. Rule 4-5.5(a) states that "[a] lawyer shall not practice law in a jurisdiction in violation of the legal profession in that jurisdiction or assist another in doing so."

³ In her unsigned motion, Fanning lists her address as N1770 West Valley Park Road, Lake Geneva, WI 60093. This is the same address at which Plaintiffs personally served her. See **Exhibit 3**.

⁴ "Gregg Kirchhoefer," Kirkland and Ellis, <https://www.kirkland.com/lawyers/k/kirchhoefer-gregg-pc> (last accessed April 21, 2022).

⁵ "Kirkland & Ellis," Wikipedia, https://en.wikipedia.org/wiki/Kirkland_%26_Ellis (last accessed April 21, 2022).

⁶ See note 4, *supra*.

⁷ The Official Missouri Directory of Lawyers, The Missouri Bar, https://mobar.org/site/For_the_Public/Official_Directory_of_Lawyers/site/content/For-the-Public/Lawyer_Directory.aspx?hkey=d9593678-8c25-4893-8268-d869c1aa01c2 (last searched on April 21, 2022).

15. Rule 9.03 requires out of state lawyers wishing to participate in litigation to, *inter alia*, liaise with a duly licensed Missouri Bar member, file an entry of appearance, and formally agree to comply with Missouri's Rules of Professional Conduct as set forth in Rule 4.

16. Despite apparently improperly *ghost-filing* pleadings with this Court on his wife's behalf, Mr. Kirchhoefer has not filed an entry of appearance, nor sought leave of Court to appear *pro hac vice*. No local counsel has entered an appearance on behalf of Defendant Fanning.

17. Defendant Fanning's Motion for Continuance is improper because it is untimely, unsigned, legally ineffective, and without merit. In an undated document filed on April 14, Fanning argues she only "recently" received a copy of the Petition in this matter. However, the service affidavit plainly states that she was served on February 1, 2022. See Exhibit 1.

18. Moreover, Fanning's arguments that she is *pro se* and that she needs additional time to find a lawyer, are totally unavailing. Fanning's husband is a skilled practitioner of law and a longtime partner at one of the most powerful law firms on earth, and he appears to have been covertly representing her in this case. Moreover, Mr. Kirchhoefer was also present at the couple's Lake Geneva mansion when Fanning was served with the Petition. Exhibit 1. Upon information and belief, Mr. Kirchhoefer advised the process server to "get the fuck out of here." *Id.*

19. Defendant Fanning also improperly asserts in the April 14, 2022 filings that Plaintiffs' suit is frivolous and that Plaintiff Joe Hoft expressed to her an intention to dismiss the instant suit. See Exhibit 3. Her characterization of Plaintiffs' suit attacks their motives is scandalous and impertinent, and should be struck. Her allegations that any Plaintiff to this suit have communicated any intention of dismissing Fanning from the case are completely false, and should be similarly struck.


20. Defendant Fanning provides the Court with no reasonable basis for granting any manner of continuance. Fanning and her husband are not unsavvy paupers. They have resources and deep knowledge of the law. However, Fanning and her husband have chosen to play games with Plaintiffs and this Court. Because Fanning lacks good cause for this matter to be continued in any way, her “motion” should be denied and/or struck, and she should be compelled to file and serve her outstanding Answer and discovery responses, respectively.

WHEREFORE, for the foregoing reasons, Plaintiffs pray the Court makes and enters and Order denying and/or striking Defendant Fanning’s motion and other documents filed with this Court on April 14, 2022, compelling Defendant to file her Answer, compelling Defendant to serve her discovery responses to Plaintiffs’ First Interrogatories and Requests for Production of Documents, and finding that Defendant failed to timely respond to Plaintiffs’ First Request for Admissions, that all such requests for admission contained therein are deemed admitted, granting any such further relief deemed necessary pursuant to Rule 61.01, striking Defendant’s filings as requested in paragraph 19 above, and granting all such other and further relief as the Court deems just and proper.

Date: April 22, 2022

Respectfully submitted,

/s/ John C. Burns

A large black rectangular redaction box covers the signature and name of the attorney. A horizontal line is drawn across the top of the redacted area, extending from the right edge of the signature text to the right edge of the page.

*Attorneys for Yaacov Apelbaum, XRVision Ltd.,
Joseph Hoft, and TGP Communications, LLC*

CERTIFICATE OF SERVICE

The undersigned certifies that on April 22, 2022, a full copy of the foregoing with exhibits was served upon all parties of record through the Court's electronic filing system, and also by electronic mail to Defendant Mary Fanning at email address maryfanning27@gmail.com.

/s/ John C. Burns