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June 26, 2019

Honorable Joel M. Cohen
Supreme Court, New York County
60 Centre Street, Room 222
New York, NY 10007

Re: *Eros International Plc v. Mangrove Partners et al*., Index No. 653096/2017

Dear Justice Cohen:

We represent Eros International Plc ("Eros") in the above-captioned action, and write to address certain events that have occurred since the traverse hearing on June 13, 2019 (the "Hearing"). Since the Hearing, Mr. Asensio has engaged in a pattern of frivolous and harassing conduct directed at my firm, my client, and third parties to this matter. Over the past two weeks alone, Mr. Asensio has personally contacted me, members of my firm, investigators used by my firm, executives at Eros,[1] and even Mr. Guskin himself, on multiple occasions.

Over the same period, Mr. Asensio and his counsel have also filed two separate requests for relief from the Court, neither of which has any basis in fact or law. Moreover, the Court expressly instructed Mr. Asensio to address any issues arising out of the Hearing in his opposition to the Motion for Default – not in serial and inefficient submissions.

Finally, Mr. Cantor's recently filed "Limited Notice of Appearance" is a facially improper attempt to evade Mr. Asensio's waiver of his objection to service. In short, the Court should not permit such conduct, and Eros should not be required to respond to Mr. Asensio's serial filings until its reply on the Motion for Default.

Relevant Factual Background[2]

Between June 14, 2019 – the day after the Hearing – and June 20, 2019, Mr. Asensio emailed Kasowitz at least five times. *See* Exhibits C-F. On June 17, 2019, counsel for Mr. Asensio filed a "Limited Notice of Appearance," through which Mr. Cantor purported to appear

[1] *See* Ex. A-B.

[2] Capitalized terms not herein defined shall have the meaning ascribed to them in Eros' Traverse Brief. *See* ECF 397.

"*nunc pro tunc*" to December 1, 2017 "for the limited purpose only of challenging jurisdiction." ECF No. 448.[3]

On June 19, 2019, Mr. Asensio reached out to Mr. Guskin directly, accusing Mr. Guskin of conducting ongoing business in New York, and insinuating that he was actually available to testify at the Hearing. *See* Exhibit G. Mr. Guskin responded by informing Mr. Asensio that, as demonstrated by Eros' counsel at the Hearing, he has retired and lives in Ecuador. *See* Exhibit H. Mr. Guskin also requested that Mr. Asensio not contact him again. *Id*.

Despite Mr. Guskin's request, Mr. Asensio emailed Mr. Guskin yet again on June 20, 2019. This time, Mr. Asensio told Mr. Guskin that *my firm and my client* needed Mr. Guskin to attend a hearing, either in person or via Skype – more than a week after the Hearing. *See* Exhibit I. That, of course, was false. Mr. Asensio speaks for neither Kasowitz nor Eros, and moreover, his statements to Mr. Guskin contradict the Court's determination that Mr. Guskin was, as a matter of law, unavailable to testify at the Hearing. ECF No. 455 at 93:25-94:4.

Mr. Asensio has also filed a series of baseless submissions designed to harass Eros. Specifically, on Friday, June 21, Mr. Cantor moved for an order "quashing and suppressing the two October 4, 2017 affidavits of service of Corey Guskin" (the "Motion to Quash" (ECF No. 449)), and on June 24, Mr. Cantor filed correspondence seeking an order "removing/striking Asensio & Co. Inc. and Mill Rock Advisors, Inc." from the case caption (the "Motion to Strike" (ECF No. 454)).

I. The Motion to Quash Lacks Any Basis in Fact or Law

After extensive argument, this Court ruled that Mr. Guskin was unavailable to testify at the Hearing, and therefore, that his affidavits of service were admissible into evidence as a matter of law. ECF No. 455 at 93:18-94:4. Mr. Asensio's Motion to Quash disregards the Court's determination, and is frivolous as a matter of law.

Ironically, the materials Mr. Asensio submitted in support of the Motion to Quash – *i.e.*, his emails with Mr. Guskin – only confirm Mr. Guskin's unavailability, validate the Court's ruling thereon, and underscore the absence of any factual basis for the Motion to Quash. *See* Exhibit H. Further, the Motion to Quash is devoid of legal analysis or argument,[4] and instead resorts almost exclusively to *ad hominem* attacks against my firm and Mr. Guskin.[5]

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[3] On June 26, 2019, Eros filed a notice pursuant to CPLR 2101(f) opposing this purported appearance. *See* ECF No. 457.

[4] Not surprisingly, the only legal authority Mr. Asensio cites does not support his position. *See Boudreau v. Ivanov*, 154 A.D.2d 638 (2d Dep't 1989) (addressing unavailability of process server).

[5] *See, e.g.*, ECF No. 450 ¶5 ("A lawyer who cannot maintain a working relationship with a process server cannot in turn be allowed to use that process server's affidavit to overcome three live witnesses who appeared in court ready, willing and able to testify that the affidavit is false."); ¶14 ("There is clearly hostility between the

The Motion to Quash is also improper because, as the Court clearly stated, Mr. Asensio is free to address these issues in his opposition to the Motion for Default. *See* ECF No. 455 at 181:1-5. Rather than hewing to the Court's instructions, however, Mr. Asensio has filed a procedurally improper motion lacking any basis in fact or law. Moreover, we find it highly inappropriate that, contrary to Mr. Asensio's claim that he spends over 120 hours a week on an unrelated litigation, and thus needed 60 days to submit his post traverse brief, he is using this prolonged briefing period to advance specious "arguments" in piecemeal fashion. ECF No. 455 at 183:21-184:7.[6]

Thus, the Court should deny the Motion to Quash out of hand, or, at a minimum, allow Eros to oppose the Motion to Quash in its reply on the Motion for Default, due on September 22, 2019.

II. The Motion to Strike Lacks Any Basis in Fact or Law

For the second time in less than three months, Mr. Asensio has filed a demand that the Court remove the two corporate defendants who have already been defaulted. *Compare* ECF No. 376, *with* ECF No. 454.

As detailed in Eros' April 15, 2019 letter to the Court, however, this request is meritless. ECF No. 377. The New York Department of State website shows that, ***as of the date of this letter***, Mill Rock Advisors, Inc. remains an active corporation. *See* Exhibit J. Further, service was properly effectuated on Asensio & Company, Inc. through the New York Secretary of State, pursuant to the DOS Process information maintained by the Department of State. *See* Exhibit K. Mr. Asensio has never addressed, much less refuted these facts.[7] The Court should thus deny the Motion to Strike.

III. Mr. Cantor's "Limited Appearance" Is Invalid

Mr. Cantor's "limited appearance" is an attempt by Mr. Asensio to evade the inconvenient fact that he has waived his objection to service. Mr. Cantor, however, has no authority to unilaterally backdate his appearance "nunc pro tunc," much less to alter it from a general appearance to a limited appearance. Further, even if such a retroactive submission were appropriate – and it is not – New York courts have long since rejected the doctrine of limited

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process server and plaintiff's law firm. That hostility, however, does not constitute a reason under CPLR Section 4531 to fail to engage in reasonable due diligence to compel Mr. Guskin to testify.").

[6] If Mr. Asensio's bad faith were not sufficiently clear based on the foregoing, Mr. Asensio set the return date on his Motion to Quash for July 12, 2019, making the opposition due on July 5 – the Friday after Independence Day.

[7] In any event, "[i]t is well settled that personal jurisdiction over a dissolved corporation 'may be obtained through service upon the Secretary of State.'" *Bruce Supply Corp. v. New Wave Mech., Inc.*, 4 A.D.3d 444, 445 (2d Dep't 2004); *see also* BCL § 1006(4)(a) (dissolved corporation "may sue or be sued . . . in its corporate name, and process may be served by or upon it").

appearances for the purpose of challenging jurisdiction.[8] Accordingly, the Court should grant Eros' opposition to this appearance. *See* ECF No. 457.

IV. Eros Should be Granted Leave to Address Mr. Asensio's Post-Traverse Requests for Relief in the Omnibus Briefing Ordered by the Court

Mr. Asensio's conduct does not occur in a vacuum, and unfortunately, its egregious nature does not absolve my firm of its ethical obligation to zealously protect Eros' interests. As a result, Eros has had to expend significant time, money, and other resources to address Mr. Asensio's incessant misconduct.

Accordingly, Eros respectfully requests that the Court issue an order granting Eros leave to respond to the Motion to Quash, the Motion to Strike, the Limited Appearance, and any future submissions from Mr. Asensio (up to and including his opposition to the Default Motion) as part of Eros' omnibus reply on the Motion for Default, which is due September 22, 2019.

Eros further requests that the Court admonish Mr. Asensio from engaging in any further inappropriate communications with my firm or my clients, particularly while he is represented by counsel. Eros also requests that the Court instruct Mr. Asensio to raise any other issues exclusively in his post-traverse brief due August 23, 2019, rather than continuing to submit them in piecemeal fashion. Lastly, Eros requests the Court consider any other relief, including sanctions, that it deems just and proper given Mr. Asensio's efforts to continuously flout the Court's orders and directives.

We thank the Court for its prompt attention to this matter.

Respectfully submitted,

Stephen W. Tountas

cc: Mitchell Cantor
Terry Brostowin

[8] *See* CPLR 320 Legislative Reports ("The special appearance has been abolished, and an objection to jurisdiction over the person is to be raised either by motion under rule 3211(a) or in the answer"); *Magwitch, L.L.C. v. Pusser's Inc.*, 84 A.D.3d 529, 531 (1st Dep't 2011) ("a special appearance was used by the defendant for the sole purpose of objecting to the court's jurisdiction of his person but the CPLR abolished the special appearance").