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May 6, 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 Plaintiff Eros International Plc (“Eros”) in the above-captioned matter, and write in response to Mr. Cantor’s letter to the Court dated May 6, 2019 (the “May 6 letter”). In the May 6 letter, Mr. Cantor insinuates that Eros has been uncooperative in promptly scheduling a traverse hearing in this matter. The reality, as shown below, is that Mr. Asensio’s counsel has either ignored or rebuffed virtually all of Eros’ requests for potential hearing dates, and has precluded Eros from securing potential hearing dates per the Court’s directive.

**1. Mr. Asensio Has Failed To Cooperate With The Court’s Directive And Has Precluded Eros From Promptly Rescheduling The Traverse Hearing**

By way of background, on Wednesday April 10, 2019, the day before Mr. Asensio’s scheduled traverse hearing, the Court held a telephonic conference with counsel, joined by Mr. Asensio. During that teleconference, Mr. Asensio represented to the Court that he needed additional time to locate “co-counsel” due to a purported “conflict of interest” with his longstanding counsel of record, Mitchell Cantor. Accordingly, Your Honor adjourned the April 11 traverse hearing, and directed Mr. Asensio to promptly address his representation and propose new dates for a traverse hearing by no later than Friday, April 12, 2019.

Approximately three hours later, at 5:18 PM, Mr. Asensio emailed me directly, demanding certain discovery, and suggested that he could now go forward with a traverse hearing on April 11 at 2:30 PM – the exact date and time for which Mr. Asensio had just requested (and received) an adjournment. *See Ex. 1.*

Approximately an hour later, at 6:24 PM, Mr. Asensio sent another email to me directly, in which he again claimed he wanted to proceed with the traverse hearing “as originally scheduled.” *See Ex. 2.* In response, I informed Mr. Asensio that, due to his ongoing harassing

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and vexatious conduct, I would not respond to him directly, and requested that he formalize his new representation so that I could communicate with his counsel. I also requested that he work with his counsel to propose dates for the traverse hearing by the end of the week, in accordance with the Court's directive. *See Ex. 1.*

The next day, on Thursday April 11, at 12:15 PM, Mr. Asensio again emailed me directly to demand "discovery," and asserted that, contrary to his representation to the Court a day earlier, he was "now Pro Se in the traverse hearing." *See Ex. 3.* At 1:22 PM, I requested that he formalize his *pro se* appearance by filing the appropriate papers, or to otherwise work with his counsel to provide dates for the traverse hearing by the end of the week. *Id.*

Later that afternoon, at 4:47 PM, Mr. Asensio once again emailed me directly and refused to provide any dates for the traverse hearing until Eros provides "discovery." *Id.* In response, once again, I requested that Mr. Asensio formally address the status of his representation, and reiterated my request that he work with counsel to propose dates for a traverse hearing. *Id.*

Later that night, at 10:24 PM, Mr. Asensio emailed me again directly, stating "[p]lease consider the existing motion [to vacate] withdrawn for the two corporate clients and me." *See Ex. 4.* Again, Mr. Asensio ignored my request to formalize his representation, and did not propose any dates for a traverse hearing.

On Friday April 12, at 9:18 AM, Mr. Asensio emailed Mr. Naram a purported "progress report" regarding "Justice Cohen's directives and goals," and claimed he was withdrawing his pending motion to vacate. In response, Mr. Naram informed Mr. Asensio that he needed to (i) address the status of his legal representation, (ii) file appropriate papers to formally withdraw his pending motion, and (iii) work with Eros's counsel to find available dates for a traverse hearing.

That evening, at 7:13 PM, Mr. Cantor sent me an email purporting to be a "request pursuant to CPLR 3101(a)," seeking discovery pertaining to the traverse hearing, but did not propose any potential dates for the hearing. *See Ex. 5.* Yet again, I requested some proposed dates, to which we finally received a possible hearing date of April 17 or 18, contingent upon Mr. Asensio's confirmation, and "pending receipt of the discovery." Thereafter, we did not receive any further confirmation from Mr. Cantor (or anyone else) regarding Mr. Asensio's availability.

The next business day, on Monday April 15, 2019, we provided Mr. Cantor with Responses and Objections to Mr. Asensio's "request pursuant to CPLR 3101(a)," *see Ex. 6,* and notified him that, by no later than April 18, 2019, we would serve him with copies of affidavits of the witnesses we intend to call at the traverse hearing, accompanied by the evidence on which we intend to rely. Yet again, we requested that Mr. Cantor work with his client to propose some confirmed dates for the traverse hearing. We did not receive a response, let alone any confirmed dates.

On April 18, 2019, we provided Mr. Cantor with two witness affidavits attaching the evidence on which Eros intends to rely, thereby providing Mr. Asensio with everything he claimed to need in order to propose dates for the traverse hearing. *See Ex. 7.*

On April 24, I received an email from Mr. Asensio in which he claimed to have retained Mr. Brostowin as his counsel for the traverse hearing. *See* Ex. 8. However, when we contacted Mr. Brostowin that afternoon, he informed us that he did not yet represent Mr. Asensio. *Id.*

On April 30, Mr. Asensio again directly emailed Mr. Naram to inform him that he had “retained Terry A. Brostowin as special-counsel to Mr. Cantor.” *See* Ex. 9. After receiving this email, we once again reached out to Mr. Brostowin to confirm his representation and, directly contrary to what Mr. Asensio had just told the Court, Mr. Brostowin again informed us that he had not yet been retained. *See* Ex. 10.

On Wednesday, May 1, nearly two full weeks since discovery was provided and exactly three weeks since the court instructed Asensio to provide dates, Mr. Brostowin emailed us with three proposed dates: May 15, May 23 and June 13. *See* Ex. 11. Of the three dates proposed, two of those dates (May 15 and May 23) conflicted with the professional obligations of counsel in other matters. Therefore, we accepted *Mr. Brostowin’s proposed date* of June 13. *See id.*

After accepting Mr. Brostowin’s proposal of June 13, we heard nothing further from Mr. Brostowin or Mr. Cantor. Counsel never proposed alternative dates in May, never even confirmed June 13 in response, and certainly never objected to Eros acceptance of their proposed date. In short, Eros has never had any reason to believe that accepting one of the three dates proposed by Mr. Brostowin was problematic.

**2. The May 6 Letter Misstates The Record**

This afternoon, Mr. Cantor filed the May 6 letter, which insinuates that Eros has prevented the timely rescheduling of Mr. Asensio’s traverse hearing. Tellingly, the May 6 letter identifies three potential dates for a traverse hearing, two of which were *never even proposed* to Eros. Shortly after Mr. Cantor filed the May 6 letter, Mr. Asensio once again emailed me directly, claiming that he and his counsel have “kindly and repeatedly attempt [sic] to get [our] cooperation.” *See* Ex. 12. To the contrary, Eros has bent over backwards to reschedule the traverse hearing, but, as detailed above, has been met repeatedly with silence, recalcitrance, and outright gamesmanship.

**3. The Court Should Calendar The Traverse Hearing For June 13, 2019 And Permit Eros To Submit Supplemental Briefing**

Eros has already agreed to proceed with a traverse hearing on June 13, 2019, as proposed by Mr. Brostowin. We remain available on that date, subject to the Court’s availability, and also remain open to negotiating other dates to the extent they are more convenient for the Court

Additionally, given that Mr. Asensio has injected the record with numerous false accusations regarding the evidence that Eros intends to submit at the traverse hearing, Eros respectfully requests leave to submit a short brief that will crystalize the issues (and supporting

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evidence) that it intends to present at the traverse hearing. Eros is prepared to complete this briefing on an expedited basis.

Finally, during the parties' teleconference on April 10, the Court directed the parties to promptly reschedule the traverse hearing and clearly stated that, if this hearing was not promptly placed on the calendar, the Court would entertain a motion to strike the defense of improper service. As demonstrated above, Mr. Asensio has resorted to pure gamesmanship to avoid a traverse hearing. Eros believes these actions amply support a motion to strike, and we would welcome the opportunity to submit that motion in lieu of traverse briefing, at the Court's request.

We appreciate the Court's ongoing attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen W. Tountas", written in a cursive style.

Stephen W. Tountas

cc: All Counsel of Record (via ECF)