

CAUSE NO. DC-17-04087

TOMI LAHREN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GLENN BECK and THEBLAZE, INC.,	§	
	§	
Defendants.	§	68th JUDICIAL DISTRICT

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS
AND TO SHOW CAUSE**

Defendants TheBlaze, Inc. ("TheBlaze") and Glenn Beck ("Mr. Beck") (collectively, "Defendants") file this Response to Plaintiff's Motion for Sanctions and to Show Cause and respectfully state as follows:

**I. DEFENDANTS DID NOT ENCOURAGE
OR CONDONE THE COMMENTS MADE TO *THE DAILY CALLER***

Plaintiff Tomi Lahren's ("Ms. Lahren" or "Plaintiff") Motion for Sanctions and to Show Cause (the "Motion") asserts that Defendants willfully violated the temporary restraining order (the "Order") entered by this Court on April 17, 2017 due to the publication of critical statements regarding Ms. Lahren in an article published by *The Daily Caller* on April 20, 2017. As discussed below, Defendants dispute Ms. Lahren's attempt to attribute the statements reported in the article to TheBlaze, Mr. Beck, or any of their authorized representatives. Before turning to those arguments, Defendants want to make it clear that Defendants are deeply disappointed that anyone made these statements to the press. Canter Decl. ¶ 5.¹ The manner of the statements—under the veil of anonymity—and their tone runs contrary to Defendants' values, and Defendants

¹ In support of this Response, Defendants submit the Declaration of Michael Canter ("Canter Decl."), attached hereto as **Exhibit 1**.

condemn the making of the statements and the person or people who made them.

Defendants did not authorize the statements to be made, did not directly or indirectly encourage anyone acting under their direction or control to make the statements, and had no knowledge that *The Daily Caller* intended to publish an article regarding Ms. Lahren. Canter Decl. ¶¶ 4-5. To the contrary, all employees of TheBlaze, along with all employees of its parent company, Mercury Radio Arts, Inc., were promptly notified of the Court's Order and were directed to comply with the Order. Canter Decl. ¶ 3, Ex. A. In addition, on the same day Defendants became aware of the article, all employees were again notified that they must comply with the Court's order and not comment to anyone on the matters covered by the Order. Canter Decl. ¶ 6, Ex. B. The employees were told that if an employee is revealed to be a source for this article, they will be disciplined accordingly. *Id.*

While Defendants acknowledge that the statements reported in *The Daily Caller's* article are distasteful and disappointing, Plaintiff's attempt to rush into Court and hold Defendants in contempt or have the Court otherwise sanction Defendants is ill-conceived. There is absolutely no evidence that Defendants made or authorized anyone to make the statements reported in *The Daily Caller* article. Furthermore, the vast majority of the information that is subject of the article has been public for weeks. Finally, Defendants took all reasonable, appropriate, and necessary steps to ensure that their employees comply with the Order. In light of these facts, Plaintiff cannot prove that Defendants violated the Order, much less willfully. As a result, the Court should deny the Motion.

II. FACTS

The Court entered the Order the evening of April 17, 2017. The following day, Defendants promptly sent the more than 200 employees of TheBlaze, along with all employees of its parent company, Mercury Radio Arts, Inc., notice that they must comply with the Order,

and further requested that all employees refrain from commenting at all on the matters covered by the Order in social media or other media outlets. Canter Decl. ¶ 3, Ex. A.

On April 19, 2017, *The Daily Caller* published an article purportedly recounting issues related to Ms. Lahren’s employment at TheBlaze, as reported by anonymous sources.² Most, if not all, of the purported information in *The Daily Caller*’s article had been in the public record for weeks—long before the Court issued the Order.³ The article does not identify the sources of the comments. Nothing in the article suggests that TheBlaze or Mr. Beck made the statements, authorized the statements to be made, or were aware that the article would be published.

Although Defendants did not authorize, encourage, or condone the statements made to *The Daily Caller*, Canter Decl. ¶ 5, TheBlaze takes this issue seriously and promptly communicated to the staff that this behavior is not acceptable, and warned them that if they are found to have been an anonymous source they will be disciplined accordingly. Canter Decl. ¶ 6, Ex. B. Additionally, Defendants are investigating whether any employees provided any information regarding Ms. Lahren to *The Daily Caller* after the Court issued the Order, including a search of company email and computer systems. Canter Decl. ¶ 7.

III. ARGUMENT

A. The Legal Standard for Contempt

Plaintiff’s Motion fails to state the specific relief Plaintiff is requesting, which is problematic as Texas law recognizes both civil contempt and criminal contempt. *E.g.*, *In re*

² Peter Hasson, *The Inside Story of How Tomi Lahren Flamed Out at The Blaze*, *The Daily Caller* (Apr. 19, 2017), <http://dailycaller.com/2017/04/19/exclusive-the-inside-story-of-how-tomi-lahren-flamed-out-at-the-blaze/>.

³ See *SOURCES: More Than One Host May Be Leaving Blaze TV*, RedState (Mar. 18, 2017), http://www.redstate.com/rs_insider/2017/03/18/sources-one-host-may-leaving-blaze-tv/ (reporting, *inter alia*, “[s]tories of [Lahren] yelling at the makeup team, screaming at an employee for not ‘heating up her butt warmer’ before air, and a general ‘disdain’ and indifference towards her staff”).

Reece, 341 S.W.3d 360, 365 (Tex. 2011). “[T]he distinction between criminal and civil contempt does not turn on whether the underlying litigation is civil or criminal, but rather on the nature of the court’s punishment.” *Id.* “[C]ivil contempt is ‘remedial and coercive in nature’—the contemnor carries the keys to the jail cell in his or her pocket since the confinement is conditioned on obedience with the court’s order, while criminal contempt is punitive in nature—‘the contemnor is being punished for some completed act which affronted the dignity and authority of the court.’” *Id.* (footnote and citation omitted).

As Plaintiff appears to request only that the Court penalize Defendants for past conduct, Plaintiff appears to be seeking an order of criminal contempt. Plaintiff faces a high bar to prove her right to relief. “Contempt is not to be presumed, but on the contrary is presumed not to exist.” *Deramus v. Thornton*, 333 S.W.2d 824, 830 (Tex. 1960). “A criminal contempt conviction for disobedience to a court order requires proof *beyond a reasonable doubt* of: (1) a reasonably specific order; (2) a violation of the order; and (3) the *willful intent* to violate the order.” *Ex parte Chambers*, 898 S.W.2d 257, 259 (Tex. 1995) (emphasis added). As described herein, Plaintiff cannot satisfy that burden.

B. There Is No Evidence that Defendants Violated the Order

Notwithstanding Plaintiff’s assertion to the contrary, there is no evidence that TheBlaze or Mr. Beck made or authorized the making of the statements reported in *The Daily Caller* article. In fact, while the article refers to inside sources, it is not clear that *The Daily Caller*’s sources were current employees of TheBlaze or Mr. Beck, past employees of TheBlaze or Mr. Beck, or if the anonymous sources who spoke to *The Daily Caller* made their comments after the Court filed the Order. In addition, several of the statements that appeared in the article were

reported in an article on the *RedState* blog on March 18, 2017.⁴ Since the acts attributed to Ms. Lahren in the article were publicly disclosed long before this Court entered the Order, it is entirely possible that *The Daily Caller* obtained the allegedly disparaging information about Ms. Lahren from (a) former employees of TheBlaze, (b) other parties who are not employees of TheBlaze, or (c) current employees (though not authorized to speak for Defendants) before the Order was entered.

In short, there is simply no evidence to support Plaintiff's attempt to smear Defendants by attributing the statements in the article to them. The Motion fails to demonstrate that either Defendant made the statements in question or that they were made with Defendants' knowledge or consent. As a result, Plaintiff has fallen well-short of proving beyond a reasonable doubt the Defendants violated the Court's Order.

C. There Is No Evidence that Defendants Willfully Violated the Order

Plaintiff also lacks evidence to carry her burden to show that Defendants willfully violated the Order. To the contrary, the evidence demonstrates that Defendants have acted in good faith to comply with the Order.

To begin, TheBlaze and its management have taken reasonable steps to ensure that employees follow the Order. The more than 200 people employed by TheBlaze or Glenn Beck were instructed to follow the Order shortly after it was issued, *see* Canter Decl. ¶ 3, Ex. A, and received a follow-up directive after publication of *The Daily Caller* article, *see* Canter Decl. ¶ 6, Ex. B. Further, although TheBlaze has no reason to believe that any of its employees violated the Order and the directive to follow it, TheBlaze is seeking out whether any employees provided any information about Lahren to *The Daily Caller* after the Court issued the Order, including a

⁴ RedState, *supra* note 3.

search of computer and email systems. Canter Decl. ¶ 7. TheBlaze has not identified any employee that provided information to date. Canter Decl. ¶ 8. Insofar as TheBlaze determines that any of its employees violated the Order, however, TheBlaze will discipline those responsible in accordance with its ordinary disciplinary policies. Canter Decl. ¶ 9. Under these circumstances, there is no basis to conclude that TheBlaze willfully violated the Order.

Moreover, although TheBlaze's employees may be bound by a temporary restraining order issued against TheBlaze, *e.g.*, *Chambers*, 898 S.W.2d at 260, it does not follow that TheBlaze is vicariously liable for every violation of the Order by its agents. "The general rule is that an employer is liable for its employee's tort only when the tortious act falls within the scope of the employee's general authority in furtherance of the employer's business and for the accomplishment of the object for which the employee was hired." *Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002). "To be within the scope of employment the conduct must be of the same general nature as that authorized or incidental to the conduct authorized." *Smith v. M Sys. Food Stores, Inc.*, 297 S.W.2d 112, 114 (1957) (internal quotation marks omitted). "In other words, if an employee deviates from the performance of his duties for his own purposes, the employer is not responsible for what occurs during that deviation." *Minyard Food Stores*, 80 S.W.3d at 577. There is a crucial difference between speaking *about* an employer and speaking *for* an employer. *See id.* at 579 ("There is a critical distinction between defaming someone to one's employer and defaming someone for one's employer." (collecting cases)).

Here, there is no evidence that any of the employees authorized by TheBlaze to speak on its behalf spoke to *The Daily Caller*. And, in fact, if any employee did speak to *The Daily Caller*, they were not authorized to do so and will be disciplined if their identity is discovered.

Similarly, Mr. Beck did not make the statements in question and had absolutely no knowledge that anyone was speaking to *The Daily Caller* or that *The Daily Caller* intended to publish an article regarding Ms. Lahren.⁵ As a result, despite the accusations that Plaintiff has leveled at Mr. Beck personally, there is absolutely no evidence that he violated the Order. Accordingly, there is no basis to hold Mr. Beck in contempt. In actuality, when Mr. Beck learned of the article, he was disgusted by it. He further asked TheBlaze's management to investigate it and to ensure that employees understand that they are not to comment both because of the Order and because it is against the company's ethos.

D. The Order Is Not Effective in the First Place Because Lahren Has Not Posted a Bond

Defendants did not violate the Court's Order. In addition, there was no entry on the Court's docket as of April 21, 2017 that Plaintiff paid the requisite bond, obtained the necessary writs, and served them on Defendants. As a result, in addition to the lack of evidence to substantiate Plaintiff's serious allegations, Plaintiff's Motion is procedurally defective and should be denied for this reason as well. *See* Tex. R. Civ. P. 684.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the Motion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

⁵ In fact, only one employee of Mr. Beck is authorized to speak to the media or to authorize others to speak to the media, and he is willing to swear under oath that he never spoke to or authorized others to speak to *The Daily Caller*.

Dated: April 24, 2017

Respectfully submitted,

/s/ Eliot T. Burriss

Eliot T. Burriss

Texas State Bar No. 24040611

McDermott Will & Emery LLP

2501 North Harwood Street, Suite 1900

Dallas, Texas 75201

(214) 295-8053 (telephone)

(972) 920-3117 (facsimile)

eburriss@mwe.com

ATTORNEY FOR DEFENDANTS

GLENN BECK AND THEBLAZE, INC.

CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2017, a true and correct copy of the foregoing document was served upon the attorney(s) of record in this matter in accordance with Rule 21a of the Texas Rules of Civil Procedure.

/s/ Eliot T. Burriss
Eliot T. Burriss

DM_US 81380569

EXHIBIT 1

Declaration of Michael Canter

CAUSE NO. DC-17-04087

TOMI LAHREN,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GLENN BECK and THEBLAZE, INC.,	§	
Defendants.	§	68th JUDICIAL DISTRICT

DECLARATION OF MICHAEL CANTER

I, Michael Canter, am over 18 years of age, fully competent to make this Declaration, and hereby declare as follows:

1. I am the Vice President of Human Resources of TheBlaze, Inc. ("TheBlaze"). I submit this Declaration in support of Defendants' Response to Plaintiff's Motion for Sanctions and to Show Cause (the "Response"). Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge. If I were called upon as a witness, I could and would competently testify to the facts set forth below on that basis.

2. Through the performance of my duties as Vice President of Human Resources, I am familiar with the lawsuit filed by Plaintiff Tomi Lahren against TheBlaze and Mr. Glenn Beck. I have knowledge of communications sent to personnel regarding the lawsuit and the Court's orders entered in the case, as well as statements that have been made regarding the lawsuit and the parties.

3. On April 18, 2017, TheBlaze sent the email attached as **Exhibit A** to all employees. The number of recipients of the email exceeded 200. The email requested that all employees refrain from commenting on the matters covered by the Court's April 17, 2017 temporary restraining order (the "Order") in social media and other media outlets.

4. On April 20, 2017, I learned that *The Daily Caller* published an article purportedly recounting issues related to Ms. Lahren's employment at TheBlaze, as reported by anonymous sources. I had no advance knowledge that *The Daily Caller* intended to publish an article regarding Ms. Lahren.

5. TheBlaze did not authorize the statements about Ms. Lahren reported in *The Daily Caller* article to be made and did not directly or indirectly encourage anyone acting under TheBlaze's direction or control to make those statements. To the contrary, TheBlaze was deeply disappointed that anyone made these statements to the press.

6. On April 20, 2017, TheBlaze sent the email attached as Exhibit B to the same list of employees that received the April 18, 2017 notice. That email again notified all employees that they must comply with the Order. It also advised that if an employee is revealed to be a source for the article, they will be disciplined accordingly.

7. TheBlaze is investigating whether any employees provided any information about Ms. Lahren to *The Daily Caller* after the Court issued the Order, including a search of company computer and email systems.

8. TheBlaze has not yet identified any employee that provided information to *The Daily Caller* on or after April 17, 2017.

9. Insofar as TheBlaze determines that any of its employees violated the Order, TheBlaze will discipline those responsible in accordance with its ordinary disciplinary policies.

My name is Michael Canter, my date of birth is May 14, 1983, and my current address is 4472 FAIRWAY DR CARROLLTON, TX 75010. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, Texas on the 24th day of April, 2017.



Michael Canter

EXHIBIT A

April 18, 2017 Email

From: Human Resources/Talent Team <HR@theblaze.com>
Sent: Tuesday, April 18, 2017 10:48 PM
Cc: Canter, Mike; Roberts, Ashley
Subject: Important Notice

Importance: High

To all Employees:

As you may have heard, TheBlaze agreed to a court order issued yesterday in the matter of Tomi Lahren v TheBlaze regarding mutual non-disparagement.

While we have not been made aware of any specific conduct that would create any issues under the order, out of an abundance of caution, it is important that you (an employee or affiliate of TheBlaze and/or Glenn) receive this notice and comply with non-disparagement terms. Specifically, we are restrained and enjoined from:

- 1) issuing any public statements or press releases relating to Lahren's employment by TheBlaze;
- 2) disparaging, criticizing, ridiculing, or making any negative comments about Lahren

We request that you refrain from commenting on social media or any other media outlet as noted above. We appreciate your compliance in this matter. If you have any questions or concerns, please contact me at hr@theblaze.com.

Best regards,
Mike

Mike Canter
VP – Human Resources
Mercury Radio Arts | TheBlaze
mcanter@glennbeck.com



EXHIBIT B

April 20, 2017 Email

From: Human Resources/Talent Team <HR@theblaze.com>
Sent: Thursday, April 20, 2017 10:34 PM
Cc: Canter, Mike
Subject: Important Notice

To all Employees:

On Tuesday night, we sent an email (pasted below) informing all of you of the non-disparagement order in Lahren vs. TheBlaze and asking everyone to please respect the courts instructions and the process. Unfortunately, an article came out this morning on the Daily Caller that sites 'anonymous sources' that was nothing more than a hit piece. We do not know, obviously, who the anonymous sources are that are referenced in the Daily Caller, but **if** it was an employee that shared information after specifically being requested not to and subsequently also breaching the company NDA; that employee will be dealt with accordingly.

On a go forward basis, this is not a request, but rather a legal obligation; please talk to no one about this matter. Maybe more importantly, beyond the legal obligation, we all should aspire to be better than this. Regardless of your opinion of the circumstances, it is very important to live our values and treat people as we would like to be treated. Obviously, speaking to a member of the press and trashing a colleague is not something we would want aimed at us. This is especially true when it is being done off the record under the veil of anonymity.

Thank you for your attention and discretion.

To all Employees:

As you may have heard, TheBlaze agreed to a court order issued yesterday in the matter of Tomi Lahren v TheBlaze regarding mutual non-disparagement.

While we have not been made aware of any specific conduct that would create any issues under the order, out of an abundance of caution, it is important that you (an employee or affiliate of TheBlaze and/or Glenn) receive this notice and comply with non-disparagement terms. Specifically, we are restrained and enjoined from:

- 1) issuing any public statements or press releases relating to Lahren's employment by TheBlaze;
- 2) disparaging, criticizing, ridiculing, or making any negative comments about Lahren

We request that you refrain from commenting on social media or any other media outlet as noted above. We appreciate your compliance in this matter. If you have any questions or concerns, please contact me at hr@theblaze.com.

Best Regards,
Mike

Mike Canter
VP – Human Resources
Mercury Radio Arts | TheBlaze

6301 Riverside Dr. Bld. 1 | Irving, TX 75039

mcanter@glennbeck.com

