

CAUSE NO. CC-18-01639-E

IN RE:	§	IN THE COUNTY COURT
	§	
PETITION OF MICHELLE NEWSOME	§	
	§	
REQUESTING THE DEPOSITION BEFORE SUIT	§	AT LAW NO. _____
	§	
	§	
	§	OF DALLAS COUNTY

VERIFIED PETITION REQUESTING DEPOSITION DUCES TECUM BEFORE SUIT

TO THE HONORABLE COURT:

Petitioner, Michelle Newsome (hereinafter referred to as "Newsome" or "Petitioner") submits this Verified Petition requesting authority to take the deposition of: Mark Cuban (hereinafter referred to as "Deponent" or "Cuban"), as authorized by Texas Rule of Civil Procedure 202 (the "Deposition").

Petitioner seeks to investigate facts involving the extent of Cuban's and the Dallas Mavericks' involvement in and/or possible interference regarding the wrongful termination of Petitioner's work at the American Airlines Center (hereinafter "AAC"). Petitioner was employed by Center Operating Company/Arena Operating Company (hereinafter "AOC"). And, Petitioner seeks information regarding Cuban's knowledge of and/or passive or active encouragement of (or conspiracy regarding) sexual harassment and race discrimination that has been occurring at the AAC and adversely affecting employees, including Petitioner, who work in that environment. Petitioner seeks this information to determine whether or not Petitioner has any claims against Cuban and/or the Dallas Mavericks.

Parties and Venue

1. Petitioner is an individual who lives and resides in Dallas County, Texas.
2. Upon information and belief, Deponent works, lives, and resides in Dallas County, Texas, and Deponent's residential address for service is: 5424 Deloach Drive, Dallas, Texas 75226. Deponent's work address for service is: 2909 Taylor Street, The Pavilion, Dallas, Texas 75226.
3. The acts and omissions about which Petitioner seeks to inquire to determine whether or not Petitioner has any claims against Deponent and/or the Dallas Mavericks that occurred in Dallas County, Texas.

Background and Attempt to Investigate Without Requiring Court Involvement

4. Newsome is a former Premium Sales Executive employed by the AOC who worked in and sold suites in the AAC. Petitioner was fired without cause, and illegally fired based on her sex, and race and in retaliation for her complaints about the "animal house" culture and race discrimination by AAC and AOC management/supervisors. On January 12, 2018, Newsome filed a discrimination Charge with the EEOC and TWC against the AOC.

5. Cuban was aware of, and tried to "sweep under the rug," a blatant act of racial discrimination, suppression, and intimidation that occurred in the AAC. Petitioner was told that in February of 2011--*during Black History Month*--a PCS Productions employee, Nate Rutkowski (a white male), who was working with the broadcast crew, put a hangman's noose (hereinafter the "Hangman's Noose") in the "IT Closet" right across from Cuban's "bunker suite" located on the event level of the AAC.

6. PCS Productions was a long-time contractor hired by the AOC and the Dallas Mavericks. An African-American AOC employee who works at the AAC saw the Hangman's

Noose. Newsome and the AOC employee who found the Hangman's Noose considered it to be a threat of violence against African-Americans working in the AAC.

7. Concerned about this hate crime, this AOC employee took a photo of the Hangman's Noose. Upset by this racist act, the AOC employee also showed the photo to Newsome and other black employees who worked at the AAC.

8. Newsome was told that Cuban personally removed the Hangman's Noose and threw it away. Newsome and the African-American employee who found the Hangman's Noose alerted Human Resources about the Hangman's Noose, but no company-wide sensitivity training, no company-wide announcement, and no company-wide counseling occurred as a result of the Hangman's Noose.

9. Instead, the whole event was "swept under the rug."

10. These facts raise real questions about how seriously Cuban and the Dallas Mavericks take acts of racial discrimination and intimidation, and whether Cuban saw Newsome as a "trouble-maker" who raises uncomfortable and embarrassing questions and concerns about race discrimination and an out-of-control corporate culture that Cuban wants to ignore.

11. On or about March 7, 2018, Petitioner's attorney sent a letter to Cuban requesting relevant documents and information ("First Letter") so Petitioner can investigate Cuban's and the Dallas Mavericks' involvement with her termination, and knowledge/investigation of the Hangman's Noose and other racial discrimination occurring inside the AAC and Dallas Mavericks' organization. A true and correct copy of said letter is attached hereto as **Exhibit "A."**

12. Cuban did not respond to the First Letter. On or about March 2018, Petitioner's attorney sent a second letter to the General Counsel for the Dallas Mavericks (Robert Hart) (hereinafter the "Second Letter").

13. Robert Hart responded and copied Cuban's and the Dallas Mavericks' outside counsel. ("Cuban's Response"). A true and correct copy of Cuban's and the Dallas Mavericks' Response to the Second Letter is attached hereto as **Exhibit "B."**

14. In Cuban's Response, Cuban's counsel, in essence, states that any issues Newsome has are with the AOC and not the Dallas Mavericks or Cuban. Finally, Cuban's counsel--in Donald Trumpian fashion--bullies and implicitly threatens Newsome with litigation, should she dare to continue to ask questions and demand answers and accountability. Specifically, Cuban's Response states:

“Mr. Cuban and the Dallas Mavericks will respond with appropriate legal measures should you continue to pursue baseless claims against Mr. Cuban and the Dallas Mavericks. Please be advised that this email is without prejudice to any rights and remedies of Mr. Cuban or the Dallas Mavericks.”

Cuban's Response.

15. The threats by Cuban's lawyer are especially inappropriate as Newsome has not pursued or filed any claims at all against Cuban or the Dallas Mavericks. All she is doing is simply asking questions and seeking information and answers to *investigate* Cuban's and the Mavericks' involvement in the sexist and racist atmosphere at the AAC and whether or not they were involved in her firing.

16. Notably, Cuban has refused to provide *any* documents and refused to answer *any* questions requested in the First Letter or the Second Letter. In the Response, Cuban's counsel does *not* deny that Cuban has knowledge or involvement in Newsome's termination. If Cuban and the Dallas Mavericks have done nothing wrong, why are they trying to prevent the facts from seeing the light of day? What does Cuban have to hide?

17. Contrary to Cuban's attorney's assertions that Cuban and the Dallas Mavericks are not involved with the AOC, a recent article in *Profile Magazine* points to the fact that Cuban and

the Mavericks have been very involved in the sales efforts of AOC employees, and in setting the terms of AOC employees' employment, including compensation:

“Cuban gave Prokos the latitude he needed. The salesman was free to hire as many people as he wanted, and Cuban suggested people with experience selling commodity items and not sports industry insiders—as long as they brought in more money than they cost.

Prokos hired people he knew were accustomed to being on the phone, overcoming objections, and working hard to close a sale....

In 2014, he and his colleagues *joined all American Airlines Center employees* in Disney's ELEVATE program, where they received training on intentional customer service. Additionally, *Cuban increased pay* for all part-time *arena employees* by 23 percent.”

Profile Magazine, “How the Dallas Mavericks Pack Its Stadium for Every Game”. A true and correct copy of the *Profile Magazine* article is attached hereto as **Exhibit "C"**, and can be found at the following web address: <https://profilemagazine.com/2017/dallas-mavericks-2/>¹.

Indeed, Robert Hart, who sent Cuban’s Response, which attempts to distance Cuban from the AAC, **sits on the AAC's board of directors on behalf of Cuban:**

Hart's duties have gradually expanded over the years. He now oversees all tax, insurance and human resource matters for Cuban Cos. He is Cuban's representative on the American Airlines Center board.

Dallas Morning News, “Mark Cuban’s Lawyer Has the Coolest, Most Challenging Job in the Legal Profession”. A true and correct copy of the Dallas Morning News article is attached hereto as **Exhibit "D"**, and can be found at the following web address: <https://www.dallasnews.com/business/business/2015/03/09/mark-cuban-s-lawyer-has-the-coolest-most-challenging-job-in-the-legal-profession.>²

¹ Newsome requests that the Court take judicial notice of this article and/or pursuant to TRE 902.

² Newsome requests that the Court take judicial notice of this article and/or pursuant to TRE 902.

Petitioner's Reasons for Investigation/Deposition

18. Petitioner seeks to investigate why Deponent took various actions or inactions against Petitioner, what actions were taken against Petitioner and exactly when such actions occurred. Petitioner does not have the knowledge of same, or to the extent Petitioner does have some knowledge, Deponent knows many more details and has greater knowledge of same. Petitioner is unable to obtain this information known by Deponent except through this Rule 202 Petition.

19. Petitioner seeks to investigate a potential claim against Deponent and the Dallas Mavericks regarding her termination from the AOC and involving torts that Petitioner may have against Deponent and/or the Dallas Mavericks, and to resolve questions and unknowns that will better enable Petitioner to assess the appropriateness of entering into settlement discussions, whether Petitioner should pursue a claim, and the appropriateness of pursuing a claim and who, if anyone, should be sued.

20. Petitioner anticipates that the Deposition will help resolve pending questions and unknowns associated with actions Deponent and/or the Dallas Mavericks took against Petitioner, acts or omissions associated with Petitioner's termination by the AOC and Deponent's involvement/knowledge of same. Petitioner anticipates Petitioner will be in a better position to determine whether or not claims should be prosecuted and/or a lawsuit should be filed against Deponent and/or the Dallas Mavericks for interfering with Petitioner's employment.

21. Permitting the requested depositions benefits all concerned because it could clear up any misunderstandings or inaccurate perceptions.

22. Petitioner understands that after Rule 202 depositions have been ordered and/or depositions have been taken and information is produced, and facts are clarified and/or revealed, misunderstandings or misimpressions are clarified and/or resolved, many disputes are often

resolved amicably. Petitioner understands that providing such documents and information helps clear up misunderstandings that can lead to lawsuits not being filed and/or settlement.

23. Petitioner seeks to depose Deponent, who may be found at: Deponent's home address at 5424 Deloach Drive, Dallas, Texas 75226 or Deponent's work address at 2909 Taylor Street, The Pavilion, Dallas, TX 75226. Deponent's telephone number is unknown.

24. As such, Petitioner intends to serve Deponent with a copy of this Petition.

Substance of Testimony

25. The substance of the testimony Petitioner expects to elicit from Deponent is set forth in **Exhibit "T"** hereto. Deponent possesses unique and superior knowledge relevant to such issues.

26. Rule 202 provides the procedure for investigating potential claims and potential defendants in the situation present in this request for 202 depositions. Although Petitioner has reason to believe that the actions, inactions and/or omissions by Deponent and/or the Dallas Mavericks were wrong and without justification, Petitioner does not wish to undertake the expense and burden of pursuing a claim or to burden the court system with a lawsuit unless Petitioner is convinced she has a valid claim.

27. The benefit of allowing the depositions and production of the documents requested outweighs the burden or expense of the procedure because Petitioner does not yet know Deponent's and the Dallas Mavericks' position and the facts supporting that position with respect to the issues and questions noted herein, and whether a lawsuit is warranted.

28. Further, Deponent has unique, if not exclusive, knowledge of the facts and circumstances regarding the issues and questions noted herein that is not obtainable from other sources. Petitioner needs to conduct an investigation prior to determining the validity of Petitioner's beliefs. Likewise, Petitioner's counsel needs to conduct an investigation for purposes

of meeting various legal and ethical duties prior to determining whether or not there is a basis for pursuing a claim and/or filing suit.

29. It is more efficient to take the requested Deposition and obtain the documents requested to determine whether or not it would be appropriate for Petitioner to pursue claims and/or a lawsuit against Deponent or the Dallas Mavericks. Since most, if not all, of the key facts are within the exclusive possession of Deponent, the Deposition needs to occur and the documents requested need to be produced.

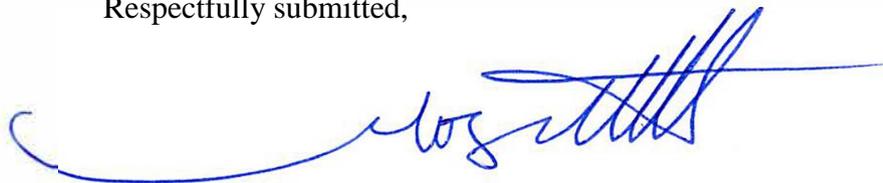
30. Request is hereby made for the Court to issue an order stating that the likely benefit of allowing the Petitioner to take the requested deposition and receive the documents requested to investigate Petitioner's potential claims outweighs the burden or expense of the procedure, and authorizing Petitioner to take the video and oral deposition of Deponent at a time and place to be determined by the Court at the conclusion of the hearing.

31. Petitioner requests that Deponent be required to produce for inspection and copying the documents and items under Deponent's care, custody, constructive possession or control that are listed in **Exhibit "Z"** hereto ("Documents").

PRAYER

WHEREFORE, prayer is made that this Court set a date for hearing on this Petition and, after the hearing, find and issue an order stating, that the likely benefit of allowing the requested deposition and ordering production of the requested Documents to investigate potential claims outweighs the burden or expense of the request of this procedure, and grant such other and further relief, general or special, at law or in equity to which Petitioner is justly entitled.

Respectfully submitted,



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TEXAS BD. OF LEGAL SPECIALIZATION:
* CIVIL TRIAL LAW
* LABOR & EMPLOYMENT LAW

WRITER'S DIRECT DIAL: (214) 220-0077

WRITER'S E-MAIL: dunn@righttowork.com

March 7, 2018

Mark Cuban

- VIA OVERNIGHT
- VIA FAX:
- VIA FIRST CLASS MAIL
- VIA CERTIFIED MAIL/RRR

VIA EMAIL:
MARK.CUBBAN@MARKCUBANCOMPANIES.COM

Re: **Our File No. 0594-77777**
Our File Name: Newsome/Cuban

Dear Mr. Cuban:

Clouse Dunn LLP and I have been retained to represent Michelle Newsome (hereinafter the "Client" or "Newsome") to investigate whether or not the Client has potential claims against the Dallas Mavericks (hereinafter the "Company") and/or Mark Cuban personally (hereinafter "You" or "Your"). This letter is written to give You an opportunity to provide information and Documents so we can learn the facts.

Please do not contact the Client. Send all communications regarding this matter directly to me.



BACKGROUND

The Client was a long-term, productive and loyal employee of Arena Operating Company (hereinafter the "AOC"). Newsome was fired from her job as a Sales executive after 13 years as a leading performer--compared to similarly situated white males.

In February of 2009 or February of 2010--*during black history month*--a PCS Productions employee, Nate Rutkowski (a white male), who was working with the broadcast crew, put a hangman's noose (hereinafter "Hangman's Noose") in a private and dedicated "IT closet" right across from Mark Cuban's bunker suite located on the event level of the American Airlines Center. PCS Productions is a long-time contractor hired by AOC and the Dallas Mavericks. Mark Cuban is the person who removed the Hangman's Noose and took possession of same.

INFORMATION AND DOCUMENTS WE NEED

When an individual approaches me regarding claims they believe they may have against another person or entity, it is my standard practice to investigate the validity of what they tell me. I hope such an investigation will enable me to determine whether or not the individual's story makes sense, whether or not they have valid legal claims and whether or not they have suffered any damages.

DOCUMENTS REQUESTED

As part of that investigation, I need to obtain Documents, ESI and information. Unless specified otherwise, the applicable dates for the Documents and ESI requested are the time period the Client worked for the AOC. I need all Documents, ESI and information from You concerning several topics, specifically:

1. All emails, reports, memos, ESI and similar Documents regarding the placement, discovery, removal, final disposition of the Hangman's Noose and the investigation of these issues conducted by the AOC, the Dallas Mavericks and/or You;
2. All emails, reports, memos, ESI and similar Documents regarding Mark Cuban's reaction to and instructions about handling the Hangman's Noose placed in the IT broadcast closet right across from Mark Cuban's bunker suite in the American Airlines Center;
3. All photos, videos or images of the Hangman's Noose;
4. All emails, reports, memos, ESI and similar Documents regarding what coaching and/or discipline the AOC, the Dallas Mavericks and You considered taking and/or did take against Nate Rutkowski regarding the Hangman's Noose;

5. All lists (or Documents sufficient to show the persons who attended) of the persons who attended the AOC's Board of Director Meetings during the time the Client worked for the AOC;
6. All agendas for meetings of the AOC's Board of Directors during the time the Client worked for the AOC;
7. All emails, reports, memos, ESI and similar Documents regarding conversations You had with Terdema Ussery regarding the Hangman's Noose and whether Mark Cuban and Ussery discussed or agreed to "sweep the facts" regarding the Hangman's Noose "under the rug" and keep it confidential;
8. All emails, reports, memos, ESI and similar Documents regarding Mark Cuban's intervention and instructions to any AOC or the Dallas Mavericks' employees to lease an event level bunker suite for which the Client had already obtained a down payment and a signed a letter of intent from ISN Network; and, instead lease the bunker suite to Richard Malouf;
9. All emails, reports, memos, instructions, ESI and similar Documents regarding Mark Cuban's involvement with the control, management and/or operation of the AOC and the American Airlines Center;
10. All emails, reports, memos, ESI and similar Documents regarding Mark Cuban's communications with any AOC employees regarding not giving Hillwood a \$20,000 discount on the lease of the Hillwood Flagship suite which the Client had arranged to lease to Hillwood;
11. All emails, reports, memos, ESI and similar Documents regarding the Client's notification to any person employed by the AOC, the Dallas Mavericks and/or Mark Cuban regarding the Client's complaint to HR about the Hangman's Noose and other discrimination occurring in the American Airlines Center;
12. All emails, texts, instant messages, ESI and similar Documents regarding the communications (whether from personal or business devices) sent to or received by Mark Cuban regarding minorities or the Hangman's Noose;
13. All emails, texts, instant messages, ESI and similar Documents (whether from personal or business devices) from any employees or partners of the AOC or the Dallas Mavericks that contain negative comments regarding African Americans;
14. All emails, reports, memos, ESI and similar Documents regarding the EEO policies and procedures for the Dallas Mavericks;
15. All emails, reports, memos, ESI and similar Documents regarding all complaints from 2008 through the present regarding sexual harassment or groping of women; or age, race and/or gender discrimination committed by the Dallas Mavericks and/or Mark Cuban.

“Documents” shall mean As used herein, the term "Documents" is used in the broadest sense of that term and includes the original and all non-identical copies, whether different from the original by reason of notations made on such copies or otherwise, and all drafts of: letters, telegrams, memorandum, reports of telephone conversations, ledgers, journals, invoices, bills, sales orders, call reports, financial and business records, receipts, contracts, reports, studies, calendar entries, diary entries, maps, pamphlets, notes, charts, forms, tabulations, analyses, statistical or informational accumulations, summaries or abstracts, any kind of records of meetings or conversations, firm impressions, sound or mechanical reproductions, rules, regulations, opinions, orders, interpretations, exceptions, position papers, guidelines, publications, instructions, transparencies, handbooks, manuals, operating procedures, appointment calendars, call slips, file jackets, course materials, training materials, minutes, testimony, photographs, videotapes, films, press releases, speeches, surveys, graphs, statistics, tables, printed or typewritten forms, (whether of visits, telephone calls, or otherwise) indices, agreements, canceled checks, correspondence, memos, data on computer storage, data on computer disks, data stored on computer backup, telephone message slips, sketches, notes of conversations, and all other written, printed, typed or other reported matter (including electronic or magnetic recordings), photographs, or other data compilations in which information can be obtained, which are in the possession, custody, or control of You, Your attorneys, agents, consultants, physicians, directors, officers, partners, affiliates, subsidiaries, servants, or employees.

“Document(s)” encompasses all discoverable information within the scope of FRCP 34(a), including “all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained.” The term “document(s)” is used in the broadest sense and includes, but is not limited to, ESI, originals and any non-identical copies or reproductions of any written or recorded matter, whether printed, reproduced by any other mechanical or electronic process, or handwritten, including, but not limited to, drafts of any documents, revisions of drafts of any Documents, and original or preliminary notes concerning drafts of any documents, books, accounts, journals, correspondence, memorandum, letters, reports, agreements, communications (including inter- and intra-office and inter- and intra-company communications), e-mails, Internet communications, telegrams, telexes, cables, indices, pictures, blueprints, sketches, plans, drawings, diagrams, projections, bulletins, advertising literature, brochures, pamphlets, circulars, codes as well as other devices to decipher abbreviations or other notations, computer printouts, analytical records, memoranda, summaries, diaries, forecasts, photographs, photocopies, recordings, tape recordings, motion picture films, graphs, note charts, notebooks, charts, minutes, notes or recordings of meetings, documents distributed at, generated for or as a result of meetings, lists of Persons attending meetings, records, notes, reports and/or summaries of interviews, conversations, telephone calls, conferences, investigations or negotiations, opinions or reports of consultants, appraisals, press releases, newspaper articles, mailing lists, contracts, agreements, drafts, notes, marginal comments appearing on or affixed to any document, calendars, day-timers, datebooks, messages, letters of credit, financial statements, invoices, statements of account, receipts, promissory notes, security agreements, deeds of trust, instruments purporting to grant or evidencing any security interest or lien, loan agreements, credit and debit memoranda, cancelled checks and drafts (both front and back), check stubs, securities ledgers, and any other papers or writings of any character or description, including, but

not limited to, any information contained in any computer or information retrieval device, and electronically stored data.

MARK CUBAN'S INTERVIEW REQUESTED

In the next 10 days I would like to take a 3 ½ hour tape recorded interview of You under oath. We will do so at a time, date and place that is convenient for You. We are also willing to do so at a discrete location.

DEMAND FOR PRESERVATION OF EVIDENCE

We hereby request and demand that You, the AOC and the Dallas Mavericks to preserve--and not alter in any way--any Documents, ESI or evidence regarding the Client's employment with the AOC, and commission agreements and commission payouts to the Client and all similarly situated AOC employees. the decision of whether or not to fire the Client, the AOC's, the Dallas Mavericks' and Your efforts to ensure all employees working in the American Airlines Center have EEO, and the Dallas Mavericks' and Your efforts to prevent sex and race discrimination in the workplace, what actions You and the Dallas Mavericks took regarding the Hangman's Noose.

Also, preserve all evidence regarding who attended the AOC Board meetings and the agendas for those meetings.

This request for preservation of evidence includes, but is not limited to, preserving all photographs, voice mails, e-mails, videotapes, memos, meeting agendas and notes, investigations, incident reports, security tapes, logs, in/out records, local and long distance telephone records, bills, statements, expense reports, notes, reports and interviews.

We also demand that You preserve all ESI regarding the topics and issues described herein, including anyone involved in reviewing, investigating or evaluating the Hangman's Noose. Be advised that we consider ESI to be a valuable and irreplaceable source of discoverable information. As You may know, ESI is subject to discovery in litigation and is admissible at trial.

ESI includes, but is not limited to, originals and all copies of all electronically stored documents, data and/or information, including, but not limited to, electronic mail ("e-mail"); attachments to e-mail, tweets, texts, instant messaging, computer programs (whether private, commercial or a work-in-progress); metadata, programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines; operating systems; source codes of all types, PDF files; batch files; ASCII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. ESI also includes, but is not limited to, any

and all documents, data and/or information stored on hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips, including, but not limited to, files, folder tabs, containers or labels appended to any storage device containing ESI. ESI shall also mean any electronically stored information or Data on magnetic or optical storage media (*e.g.*, hard drives or disks, backup tapes, CD-ROMS, DVD-ROMS, JAX and Zip drives, and floppy disks) as an "active" file or files (*i.e.*, readily readable by one or more Computer applications or forensic software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (*i.e.*, files that have been deleted and partially overwritten with new data); and "slack" (*i.e.*, data fragments stored randomly from random access memory on said media during the normal operation of a Computer (RAM slacks) or residual data left on said media after new data has overwritten some but not all of previously stored data). ESI shall also mean any documents, information or data ever placed into or stored on any Storage Devices and/or Cloud Storage Accounts.

Storage Devices includes, but is not limited to, all computers, laptops, servers, hard drives, HDD, external hard drives, thumb drives, including, but not limited to, flash drives, work stations, microchips, microcomputers (also known as personal computers), laptop computers, tablets, portable computers, notebook computers, Blackberries, Blackberry Play Books, cell phones, Kindles, Nooks, E-Readers, Joo Joo, HP Slate; Dell Streak, Archos 9s, iPods, iPads, iPhones, Treos, Palms, laptop computers, personal digital assistants, PDA's, mobile telephones with internet capabilities, minicomputers and mainframe computers, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips, magnetic or optical storage media.

Cloud Storage Accounts includes, but is not limited to, any internet or web-based service for storing electronic files, data, or information (*e.g.* Dropbox, Google Docs, Amazon Cloud Drive, *etc.*).

Until You fully and completely backup all of Your ESI regarding the Incident, we request and demand that You not:

1. Initiate any procedures that would alter any active, deleted or fragmented electronic data. Such procedures may include, but are not necessarily limited to, deleting or attempting to delete any electronic information, saving newly created files to disks that already contain information, loading new software on such disks or running data compression or de-fragmentation (optimization) routines on them;
2. Rotate, alter or destroy any media that stores electronic data where such activity could result in the alteration or loss of any electronic data;
3. Dispose of any media that contains electronic data; and
4. "Write over" any electronic data.

If You will not or cannot comply with this request, please notify me in writing, of Your refusal and explain why You are refusing.

WE ARE WILLING TO MEDIATE TO DISCOVERY THE FACTS

We are willing to enter into "fast track" discussions or participate in a voluntary mediation so we can discuss what happened in a confidential forum.

More than five members of the media have contacted the Client and asked her what she knows about Mark Cuban and the Dallas Mavericks. In all cases she responded with no comment.

Mediation would enable the Parties to meet with an independent mediator and voluntarily exchange documents and information, so we can understand the facts better.

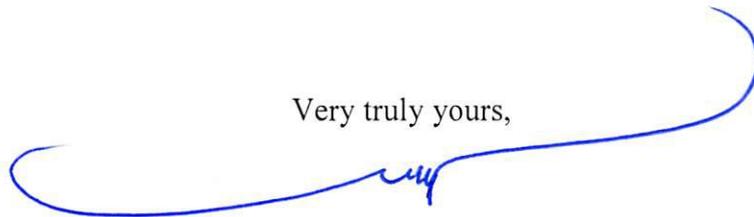
Mediation provides the perfect forum for a full, frank and confidential discussions and meaningful exchange of evidence and information. Through this process we can promptly discover if the Client is mistaken in the Client's beliefs or misunderstood the motive for or the actions taken by Mark Cuban and employees working in the American Airlines Center.

If we have to take other actions instead of mediation to discover all the facts and obtain relevant documents, given the nature of the actions taken by You and the Dallas Maverick's management, such action will necessarily generate publicity once the facts become a matter of public record.

DEADLINE FOR A RESPONSE

If You wish to provide information to assist us in our investigation, please call me this week. If by **March 14, 2018**, You do not provide the information or Documents requested, or this matter is not scheduled for mediation, we will take appropriate action to discover the facts.

Very truly yours,



Rogge Dunn

RRD:ljp

cc: w/enc. w/o enc. no enc. Josh Iacuone, Esq (Our Office)

cc: w/enc. w/o enc. no enc. Tina Vanderburg, Sr. Paralegal (Our Office)

cc: w/enc. w/o enc. no enc. RRD's Work Files

From: Robert Hart <robert.hart@markcubancompanies.com>
Sent: Thursday, March 22, 2018 9:44 AM
To: Rogge Dunn
Cc: Tina Vanderburg; 'Melsheimer, Tom (TMelsheimer@winston.com)'; Thomas, Scott C. (SCThomas@winston.com)
Subject: RE: Newsome/Cuban

Mr. Dunn,

You misrepresent our conversation in several material ways. For example, I never told you that Mr. Arellano was in possession of documents and information pertaining to Mr. Cuban. I advised you that Ms. Newsome's alleged issues are with her former employer who operates the American Airlines Center, I do not represent her former employer, and that you should speak to Mr. Arellano, the general counsel for Ms. Newsome's former employer. Further, I never advised you that Mr. Arellano was in possession of documents pertaining to Mr. Cuban.

Your allegations against Mr. Cuban and the Dallas Mavericks are without merit. Mr. Cuban and the Dallas Mavericks will respond with appropriate legal measures should you continue to pursue baseless claims against Mr. Cuban and the Dallas Mavericks. Please be advised that this email is without prejudice to any rights and remedies of Mr. Cuban or the Dallas Mavericks.

Sincerely,

Robert Hart

General Counsel

Mark Cuban Companies



(<https://profilemagazine.com/>)

How the Dallas Mavericks Pack Its Stadium for Every Game

2
Shares

1 For years, the Dallas Mavericks struggled to draw crowds. Then Mark Cuban bought the team, and George Prokos turned American Airlines Center into the place to be for basketball fans.

BY ZACH BALIVA
([HTTPS://PROFILEMAGAZINE.COM/ARTICLE_AUTHOR/ZACH-BALIVA/](https://profilemagazine.com/article_author/zach-baliva/))

In 2001, the Dallas Mavericks were playing their best basketball in years. After missing the playoffs for a decade, the team traded for Juwan Howard and watched Michael Finley play in the NBA All-Star Game. Dallas finished the regular season with fifty-three wins and drew Utah as a first-round playoff opponent. After four games, the five-game series was tied, and the Mavericks were heading back to Utah.

After Dallas's game four victory, George Prokos and his staff went into hyperdrive. "We had about thirty hours to create energy around a game five in Utah," the team's senior vice president of ticket sales and services recalls. Prokos, along with the team's new owner, Mark Cuban, wanted to make a splash at game five. They assembled a ragtag team of employees and season ticket holders dedicated to one common vision: to fill Utah's Delta Center with as many Dallas fans as possible.

The problem was that Utah enforced a four-ticket limit. However, after hours of hold music and redials, the Dallas group had landed about 400 tickets, and Cuban announced a deal: he would give the tickets away for free to any Mavs fan willing and able to make the 1,200-mile pilgrimage. Next, the team set up a makeshift headquarters in a Utah hotel, where fans could receive free tickets if they agreed to have their face painted and wear a bright orange Mavericks shirt.

Although Prokos is sure his staff painted the faces of a few disguised Jazz fans, the unusual strategy seemed to have worked. Dallas pulled away in the fourth quarter, and with less than ten seconds left, Calvin Booth made a put-back shot to give the Mavericks their first playoff series win of the Mark Cuban era. The hundreds of painted fans rushed the floor and later went to a local bar to celebrate with players and executives.

The anecdote illustrates what Prokos has experienced during his nearly two decades with Mark Cuban and the Dallas Mavericks. He moved to Texas in 1981, worked in the automotive aftermarket, and met Cuban through mutual friends. At a New Year's Eve party in 1999, Cuban announced he had signed a letter of intent to buy the Mavericks. A few weeks later, Cuban e-mailed Prokos. He wanted a trusted friend to shake up the underperforming sales department. Prokos was Cuban's pick to be his first director of new revenue.

When Cuban announced his intent to purchase the Mavericks, plans were already underway to move the team to the future American Airlines Center. The stadium would house the city's NBA and NHL teams, and Prokos would need to get a seat at the table if he was to successfully transfer 10,000 existing season ticket holders to the new stadium without incident. To do so, he started what has become a hallmark strategy for the Dallas Mavericks. "We built stronger relationships with our season ticket holders, and we still do that today," Prokos explains. "They are so critical to what we are doing. Previous owner Ross Perot ran his organization as a real estate holding. For Mark Cuban, it's all about entertainment."



“WE WENT FROM SELLING BASKETBALL TO SELLING MEMORIES AND EXPERIENCE. WE TRANSFORMED THE FAN EXPERIENCE IN DALLAS.”

The important shift in tone has paid off. Prokos helped Dallas move a record number of tickets. Games started selling out, and in less than a year, his team enjoyed repeat sellouts. On December 15, 2001, Dallas started a string of consecutive home sellouts that remains unbroken.

How did they do it? Prokos goes back to Cuban’s core philosophical change. “We wanted to remove barriers to entry,” he says. “We wanted to keep processing fees low and ticket prices reasonable. We wanted to make American Airlines Center the place to be. We didn’t want the most money per ticket; we wanted to fill the arena.” Cuban gave Prokos the latitude he needed. The salesman was free to hire as many people as he wanted, and Cuban suggested people with experience selling commodity items and not sports industry insiders—as long as they brought in more money than they cost.

Prokos hired people he knew were accustomed to being on the phone, overcoming objections, and working hard to close a sale. He commandeered a conference room, filled it with six phones and a stack of phone books, and asked his new employees to make calls. At the same time, his counterparts at the Mavs were changing perceptions in the city and beyond. “We went from selling basketball to selling memories and experience,” he says. “We transformed the fan experience in Dallas.”

The Mavericks’ sellout streak

The Dallas Mavericks are in the midst of one of the most impressive feats in the world of sports. The NBA team has sold out every home game since December 15, 2001.

The team’s stadium— American Airlines Center—holds roughly 20,000 fans. During that span, the Mavs have filled the arena for 596 regular season and 67 playoff games.

Cuban signed renowned bad boy Dennis Rodman to generate excitement.

Prokos started giving free tickets to fans willing to paint themselves and sit in a special section. The company expanded its sales force, devised creative ticket packages, and embraced alternative pricing. Prokos and his team created more special events for season ticket holders and included customers who purchased miniplans. As Dallas built upon its Utah playoff win, Dirk Nowitzki, Steve Nash, and Michael Finley emerged as franchise stars.

After several years of sellout crowds, Prokos turned his attention to sustaining his early success. “The key is keeping season ticket sales high,” he says. About 75 percent of capacity goes to season ticket holders, but even a 90 percent renewal rate means Prokos’s team has to sell plenty of new season tickets each year to stay at capacity. There’s no particular sales season; they sell year-round, prorated plans, and continue selling until inventory is gone. Scattered leftover tickets find homes with the help of software designed to harness data collected at various points of sale.

While sellouts are always Prokos’s number one goal, he says his real mission is to ensure Dallas fans have a complete experience whenever they attend a Mavs game. “We hope our fans leave feeling they were part of two and a half hours of fun and excitement for a great value,” he says. “And we want them to come back.” In 2014, he and his colleagues joined all American Airlines Center employees in Disney’s ELEVATE program, where they received training on intentional customer service. Additionally, Cuban increased pay for all part-time arena employees by 23 percent.

While Prokos and his team are driving results, they aren’t doing anything in secret. “We share best practices with other teams,” he says. “We don’t see others as competition, but we’re different because of our underlying philosophy.” Others focus on revenue even if it means they have 1,500 empty seats at each game. Dallas is focused on putting butts in the seats. When the seats are filled, the revenue follows. Since day one, they’ve focused on making the Mavs game the place to be—and they’ve created one of the longest-running parties in sports.

Mark Cuban's lawyer has the coolest, most challenging job in the legal profession

BUSINESS MAR 20185

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Written by

Mark Curriden



Mark Cuban arrives at the courthouse as bidders arrive for the Texas Rangers baseball team ownership auction in Fort Worth on Wednesday August 4, 2010.

(LOUIS DeLUCA/Staff Photographer)

Robert Hart received a frantic call in 2002 from his 78-year-old mother in Rhode Island.

“Are you OK? Do you still have a job?” she asked.

Hart asked what she was talking about.

“I just saw on the news that Mark is now working at Dairy Queen,” she said. “What happened?”

Hart assured his mom that his boss, billionaire entrepreneur Mark Cuban, was indeed working at Dairy Queen — not because he had lost all his money, but as a publicity stunt.

“My job is safe, Mom,” he said. “And Mark is doing OK, too.”

Hart has one of the coolest — and most challenging — jobs in the legal profession. For 15 years, he has been general counsel and executive vice president of Mark Cuban Cos., which comprises more than 100 business entities.



One day, he's handling the legal paperwork from Cuban's \$41 million purchase of an airplane on the Internet — still believed to be the largest business transaction ever made over the Web — and negotiating contract terms with Mavericks coach Rick Carlisle. The next day, he's doing the transactional work to help Cuban buy a movie theater chain, acquire an oil and gas services company or start a cable TV network.

On the litigation side, Hart hired and managed the outside legal teams that beat back allegations of mismanagement of the Mavericks by Ross Perot Jr. and defended Cuban from Securities and Exchange Commission accusations that he committed insider trading.

And don't forget *Shark Tank*.

"Yes, there is *Shark Tank*," Hart said, revealing his New England accent with the silent "r."

"There was a time when I would tell people I work for Mark Cuban and they would think Mavericks basketball right away," he said. "Not anymore. It's all *Shark Tank*. Even little old ladies and young kids love Mark on *Shark Tank*."

Hart said the TV series generates so much legal work that he had to hire a full-time lawyer just to supervise the transactions and investments.

"Robert has just about every business lawyer's dream job," said Tom Melsheimer, partner at Fish & Richardson. "He is Mark's right-hand man and one of his most trusted advisers. Robert is in the middle of so many of Mark's fascinating ventures in sports, entertainment, technology and venture capital investments."

'Always thinking'

Hart, a graduate of Southern Methodist University's law school, said he learns something new just about every day working with Cuban because the billionaire is always venturing into something new and different.

"Mark goes at a very fast pace," he said. "He's out there everywhere. He's very active in many of his businesses. Mark is always evolving, always thinking."

"When I was a little kid, my parents complained I took on too many tasks and had too many irons in the fire," he said. "I've always been a multitasker, and that has been a great strength in working for Mark."

Hart said his job is part lawyer, part businessman and part adviser.

"My job is to be his backstop," Hart said. "I fill in the holes behind him. I'm here to help Mark do what he does best but to make sure that he avoids legal pitfalls. I'm there to provide caution but also solutions. My job is not always just saying no."

To that point, Cuban laughed.

“It sure as hell feels sometimes like all Robert does is tell me no,” Cuban said. “Robert does a great job. We’ve been good friends forever. We’ve come to learn each other. He’s at my house as much as I am, maybe more.

“His job is to be super conservative ... but also to protect me,” he said. “A lot of things would be a lot more difficult for me if not for Robert.”

Could it be ... Satan?

Cuban admits that he doesn’t always make it easy for Hart.

“Do I like dealing with lawyers? No. I hate it,” Cuban said. “I absolutely hate it. We’ve become such a litigious society that it is a huge drain on productivity.

“Lawyers may be Satan, but Robert is my Satan, and I trust him completely. He’s not only a trusted adviser, he’s a good friend.”

Hart said Cuban particularly hates patent litigation because he believes it infringes on technological advancements and entrepreneurialism.

“But the great thing about Mark is that he is willing to stand on principle and fight, even though taking a stand is often very expensive,” Hart said.

Hart’s relationship with Cuban goes back three decades. He was an associate at Bracewell & Giuliani when he met Cuban at a party in 1987. The future billionaire said he needed legal assistance.

“Mark wanted to buy a house, but he wanted to rent first with the right to purchase later at a predetermined price,” Hart said. “Mark was already learning to hedge in his finances back then.

“I realized then that Mark was a thinker,” he said. “He was clearly very smart.”

Radio on the Net

Hart next saw Cuban in 1995. The Internet entrepreneur told Hart his plan to put sporting events on the radio from across the country on the Internet.

“Mark talked about clicks and eyeballs, which I had never heard before,” he said. “I didn’t think the concept had much merit, but I had complete faith Mark would turn it into something successful.

Cuban did. He and his partner ended up selling Broadcast.com to Yahoo for more than \$5 billion.

Over the next few years, Hart helped Cuban invest in real estate and worked on a few other transactions, basically becoming Cuban’s personal outside counsel.

Hart's first major business assignment from Cuban came in 1999, when the Mavericks owner called to say that he had just purchased a Gulfstream V private jet over the Internet for \$41 million.

"There was no hand-signed contract. It was a transaction done completely over the Internet," Hart said. "Mark had already wired the money, and I was trying to catch up. It was very scary buying the plane over the Internet because that big of a financial transaction had never happened before."

In fact, the \$41 million purchase is still the largest Internet transaction ever, according to *Guinness World Records*.

"None of Mark's early deals were simple," Hart said. "I had to learn a lot very quickly."

Surprise, you're hired

A year later, in 2000, Hart attended a Dallas Cowboys game in Cuban's personal suite at Texas Stadium. When Hart entered the room, Cuban bellowed out, "Here's our new general counsel."

"I was more surprised by the announcement than anyone," he said. "We didn't talk compensation or anything. Everyone just clapped."

Hart's duties have gradually expanded over the years. He now oversees all tax, insurance and human resource matters for Cuban Cos. He is Cuban's representative on the American Airlines Center board.

"My position is very entrepreneurial," he said. "Mark gave me a long rope, and I didn't hang myself."

EXHIBIT "T"

Expected Subjects of Testimony

1. The Hangman's Noose Incident and response thereto, including, but not limited to, the disposal of the Hangman's Noose and cleanup of the IT closet after the Hangman's Noose was discovered;
2. Cuban's or the Companies' involvement/relationship with the Arena Operating Company ("AOC");
3. Corporate structure of companies Cuban owns, in whole or in part, related to the Dallas Mavericks, the American Airlines Center ("AAC"), or the AOC (the "Companies");
4. Cuban's involvement and knowledge of Newsome's work performance, termination and/or discipline;
5. Cuban's knowledge of and response to Newsome's complaints about discrimination and retaliation;
6. Cuban's involvement in ticket and suite selling strategies, both for the Dallas Mavericks and AOC or AAC employees;
7. Allegations of race, age, or sex discrimination or harassment against the AOC, Cuban and/or the Dallas Mavericks;
8. Communications, whether written, oral, or electronic, with any employee, attorney, or representative of the AAC or AOC related to Newsome's counsel's investigation letter(s) to Cuban and/or his attorney(s);
9. Any of the Companies' board meetings referencing or discussing Newsome's complaints and/or the Hangman's Noose incident;

EXHIBIT "Z"

INSTRUCTIONS

1. Unless otherwise provided, the time-frame for the following Document requests are January 1, 2009 to the present.
2. Each request also is requesting versions and copies of the Document maintained as electronic data, on computer disk or hard drive, cloud storage or on any other device which stores or compiles data or information (collectively referred to as "Document(s)").
3. You are commanded to serve responses and produce responsive documents (actually delivered and received by Newsome's counsel) no later than three business days before Your deposition, or the response deadline set by the Court, if any.
4. Please preserve all Documents and data compilations relating to our regarding the subject matters described in this Rule 202 Petition, and cease any process of Document destruction involving such Documents.

DEFINITIONS

1. "Client" or "Newsome" shall mean Michelle Newsome.
2. "Communications" shall mean shall mean any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons and transfer or exchange between two or more persons of any information, whether through an intermediary or by written, electronic, Computer or oral means, including, but not limited to, personal conversations, meetings, telephone calls, correspondence, e-mails, Internet communications, telegrams, telexes, cables, memoranda, and any other understandings between two or more people.
3. "Computer" shall mean and include, but is not limited to, microchips, microcomputers (also known as Personal Computers), laptop Computers, portable Computers, notebook Computers, Blackberries, Blackberry Play Books, Kindles, Nooks, E-Readers, Joo Joo, HP Slate; Dell Streak, Archos 9s, iPods, iPads, Treos, Palms, laptop Computers (also known as personal digital assistants or PDA's), mobile telephones with internet capabilities, minicomputers and mainframe computers.
4. "Deponent" shall mean Mark Cuban.
5. "Documents" shall mean the definition in the Texas Rules of Civil Procedure.
6. "E-mail" and "E-mails" shall mean electronic communications such as e-mails, tweets, texts and instant messaging.

7. "ESI" shall mean any electronically stored information or Data on magnetic, optical or any type of storage media (e.g., hard drives or disks, backup tapes, CD-ROMs, DVD-ROMs, JAZ and Zip drives, clouds and floppy disks) as an "active" file or files (i.e., readily readable by one or more Computer applications or forensic software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (i.e., files that have been deleted and partially overwritten with new data); and "slack" (i.e., data fragments stored randomly from random access memory on said media during the normal operation of a Computer (RAM slacks) or residual data left on said media after new data has overwritten some but not all of previously stored data) ESI shall also mean any data ever placed into or stored on any storage devices and/or cloud storage accounts, Documents, or information. Cloud storage accounts include, but not limited to, any data, information (e.g. Amazon Cloud Drive, Dropbox, Google Docs, etc.), internet or web-based service for storing electronic files.

8. "Work For," "Works For," "Worked For" and "Working For" shall mean providing any products, services, time, labor, advice or any other type of service to any person or entity regardless if the person providing said services is an employee, agent, joint venturer, partner, limited partner, owner, consultant, independent contractor or has no contractual relationship with the person or entity to whom services are provided.

9. "You," "Your" and "Yours" shall mean Mark Cuban.

10. "Your Affiliates," "Affiliated With" and "Affiliates" shall mean any company, corporation, syndication, group or entity in which You or Your Associates own over 10% of the combined voting power of the entity's outstanding securities ordinarily having the right to vote in the election of directors, in which You or Your Associates are the beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934), or in which You or Your Associates own gross assets of the entity that have an aggregate fair market value greater than or equal to over 50% of the fair market value of all of the gross assets of the entity. It shall also mean Your Partner's, joint venturers and parent and subsidiary entities.

PLEASE PRODUCE THE FOLLOWING DOCUMENTS AND ESI

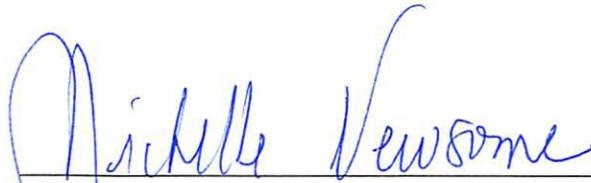
1. Any Correspondence, E-mails, text messages, notes, calendars and meeting minutes (in paper or electronic form) relating to Petitioner, Petitioner's investigation letter to You, or other adverse actions concerning Petitioner's employment;
2. Any Correspondence, E-mails, text messages, notes, calendars and meeting minutes (in paper or electronic form) between Your attorneys, including, but not limited to Tom Melsheimer and/or Robert Hart, and any attorneys, agents, or employees for the Arena Operating Company ("AOC") referencing or relating to the Client;
3. Any Documents reflecting or referring to conversations or meetings concerning Petitioner's alleged behavior and conduct, and/or any adverse action relating to same;

4. All emails, text messages, reports, memos, ESI and similar Documents regarding the placement, discovery, removal, final disposition of the Hangman's Noose and the investigation of these issues conducted by the AOC, the Dallas Mavericks and/or You;
5. All emails, text messages, reports, memos, ESI and similar Documents regarding Mark Cuban's reaction to and instructions about handling the Hangman's Noose placed in the IT broadcast closet right across from Your bunker suite in the American Airlines Center;
6. All photos, videos or images of the Hangman's Noose;
7. All emails, text messages, reports, memos, ESI and similar Documents regarding what coaching and/or discipline the AOC, the Dallas Mavericks and You considered taking and/or did take regarding the Hangman's Noose;
8. All agendas for meetings of the AOC's Board of Directors during the time the Client worked for the AOC;
9. All Documents, emails, text messages, reports, memos, instructions, ESI and similar Documents regarding Your involvement with the control, management and/or operation of the AOC and the American Airlines Center;
10. All emails, text messages, reports, memos, ESI and similar Documents regarding the Client's notification to any person employed by the AOC, the Dallas Mavericks and/or You regarding the Client's complaint to HR any complaints about the Hangman's Noose and other discrimination occurring in the American Airlines Center; and
11. All emails, text messages, instant messages, ESI and similar Documents regarding any Communications (whether from personal or business devices) sent to or received by You regarding minorities or the Hangman's Noose.

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Michelle Newsome (hereinafter "Affiant"), who is over the age of 21 and of sound mind and body, who being by me duly sworn, on her oath deposed and said that she has read the foregoing Petition Requesting Deposition Before Suit and that the statements of fact contained therein are within Affiant's personal knowledge and are true and correct. Further, Affiant stated that Affiant has this personal knowledge because of Affiant's relationship and interactions described in particularity in the foregoing Petition.



Michelle Newsome

SUBSCRIBED AND SWORN TO BEFORE ME on this 25th day of March,
2018, to certify which witness my hand and official seal.

My Commission Expires: 5/18/19



Notary Public, State of Texas



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Handwritten signature or name, possibly "W. J. ...".

Handwritten text, possibly a date or reference number, starting with "10/10/...".

