

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.](https://www.dallasnews.com/business/business/2015/03/09/mark-cuban-s-lawyer-has-the-coolest-most-challenging-job-in-the-legal-profession.2)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.

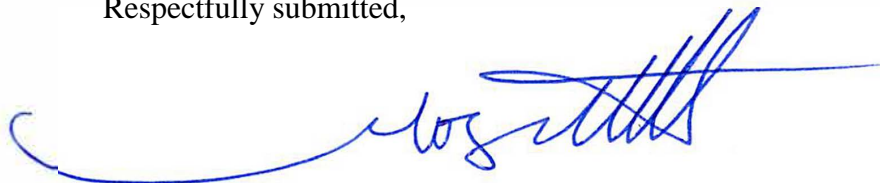
30. Request is hereby made for the Court to issue an order stating that the likely benefit of allowing the Petitioner to take the requested deposition and receive the documents requested to investigate Petitioner's potential claims outweighs the burden or expense of the procedure, and authorizing Petitioner 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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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.

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

Mr. Dunn,

You misrepresent our conversation in several material respects, including your possession of documents and information pertaining to the American Airline, which you should speak to Mr. Arellano, the general counsel of the American Airline, you that Mr. Arellano was in possession of documents

Your allegations against Mr. Cuban and the Dallas Mavericks should respond with appropriate legal measures should you contact the Dallas Mavericks. Please be advised that this email is confidential and intended only for the Dallas Mavericks.

Sincerely,

Robert Hart

General Counsel

Mark Cuban Companies

One of the Internet's most successful entrepreneurs is still believed to be the largest business transaction ever made over the Web and negotiating contract terms with Mavericks coach Rick Carlisle. 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.

Shark Tank.

Shark Tank

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.

-hand man and one of his most trusted advisers. Robert is in

just about every day working with Cuban because the billionaire is always venturing into something new and different.

of his businesses. Mark is always evolving, always thinking.

asker, and that has been a great strength in

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

do what he does best but

To that point, Cuban laughed.

a

as much as I am, maybe more.

a lot more difficult for me if no

?

such a litigious society that it is a huge drain on productivity.

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

Giuliani when he met Cuban at a party in 1987. The future billionaire said he needed legal assistance.

&

ing to hedge in his finances back then.

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.

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 outside counsel.

called to say that he had just purchased a Gulfstream V private jet over the Internet for \$41 million.

-signed contract. It was a tra

buying the plane over the Internet because that big of a financial transaction had never happened

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

d

Center board.

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.

