UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NEW LINE PRODUCTIONS, INC., Plaintiff, v. TONY DEROSA-GRUND, SILVERBIRD MEDIA GROUP, LLC, EVERGREEN MEDIA GROUP, LLC, EVERGREEN MEDIA HOLDINGS, LLC, Defendants.	§ § § § § § § § § § § § § § § §	MISC. ACTION NO. 4:17-mc-02923

NOTICE OF ADDITIONAL EVIDENCE OF CONTEMPT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff New Line Productions, Inc. ("New Line") files this Notice of Additional Evidence of Contempt in support of New Line's Second Emergency Motion for Contempt and Request for Hearing (Doc. No. 10) ("Motion") as follows:

I. Summary

Over the past week, New Line has received additional documents from Gerald Brittle ("Brittle") in the underlying Eastern District of Virginia case styled *Gerald Brittle v. Time Warner, Inc., et al.* (Case No. 3:16-cv-00908) (the "Lawsuit") from which the subpoenas at issue derive, which Tony DeRosa-Grund ("DeRosa-Grund"), Evergreen Media Group, LLC ("EMG"), Evergreen Media Holdings, LLC ("EMH"), and Silverbird Media Group, LLC ("Silverbird") (collectively the "Subpoenaed Parties") failed to produce in direct violation of the Agreed Order (Doc. No. 8).

New Line has contended all along that DeRosa-Grund was the mastermind behind the Lawsuit, was controlling and directing the Lawsuit, and had attempted to enter into secret side-deals with Brittle. In the last week, New Line has received additional documents proving these points that were directly responsive to the subpoenas at issue that the Subpoenaed Parties failed to produce. These include an email from DeRosa-Grund to Brittle's lawyer stating that Brittle would be the Plaintiff of record but "we pay the bills"; a Life Rights Option Agreement and Film/Television Option Agreement re 'The Demonologist' Book signed by DeRosa-Grund on behalf of EMH and entered into with Brittle; and a multitude of text messages from DeRosa-Grund to Brittle's lawyers showing DeRosa-Grund's extensive involvement in the Lawsuit (including text messages stating how DeRosa-Grund was working on Brittle's discovery responses, and a message stating he needed to **download Lawsuit-related documents on his iPad so he could work on the documents**[1]). The documents attached to the original Motion and these new documents plainly show the Subpoenaed Parties are in contempt. But there is more. New Line attaches a declaration from Brittle establishing the way that DeRosa-Grund has sought to withhold key evidence in the Lawsuit.

II. Additional Evidence of Contempt

A. Communications and Documents Exchanged with Brittle.

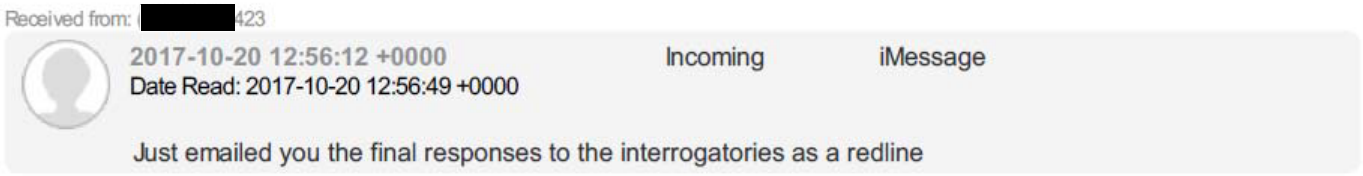
As a result of the Agreed Order, the Subpoenaed Parties were required to produce all communications and documents exchanged with Brittle (including with Brittle's attorneys). *See, e.g.*, Ex. 3 to Motion (Doc. No. 10-3) at RFP Nos. 1-8; Ex. 4 to Motion (Doc. No. 10-4) at RFP Nos. 8-14; Ex. 5 to Motion (Doc. No. 10-5) at RFP Nos. 8-14; Ex. 6 to Motion (Doc. No. 10-6) at

[1] This was despite DeRosa-Grund's attorney's representation to New Line's attorney that DeRosa-Grund had no documents on his computer.

RFP Nos. 8-14. In addition to the examples of such documents that the Subpoenaed Parties withheld that New Line attached to its Motion as Exhibit 10-13 (*see* Doc. Nos. 10-10—10-13), New Line has now received numerous additional documents that the Subpoenaed Parties should have produced but did not. *See, e.g.,* Ex. 1, Email from T. DeRosa-Grund to P. Henry (Aug. 17, 2017) (stating that "Brittle is the Plaintiff of record *and we pay the bills*") (emphasis added); Ex. 2, Email string between T. DeRosa-Grund, G. Brittle, P. Henry, and S. Lowe (Nov. 26, 2017) (DeRosa-Grund inquires about appeals of a discovery order issued by Judge Gibney in the Lawsuit, threatens Brittle's attorney with malpractice without justification, and tells Brittle's attorney "you really are full of shit"); Ex. 3, Email string between T. DeRosa-Grund, G. Brittle, and P. Henry (Sept. 27, 2017) (DeRosa-Grund reviews and provides comments on Brittle's discovery responses in the Lawsuit). The Subpoenaed Parties did not produce any of these communications despite being required to do so by the Agreed Order.

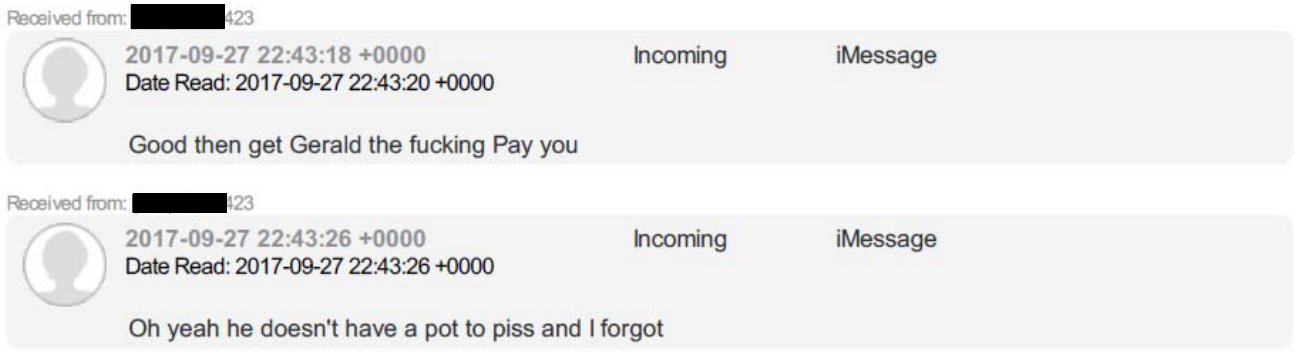
In fact, in one of DeRosa-Grund's emails, DeRosa-Grund forwarded to Brittle's attorney an email from New Line's counsel's regarding New Line's First Motion for Contempt. *See* Ex. 4, Email from T. DeRosa-Grund to P. Henry and S. Lowe (Nov. 21, 2017) (asking Brittle's attorneys "[d]id you lose today or win?" and stating "[New Line] doubling down in Texas"). This email, which was sent before the Agreed Order, should have been produced as it was a communication from DeRosa-Grund with Brittle or his attorneys regarding the Lawsuit.

The Subpoenaed Parties also withheld numerous text messages, which Brittle produced over the last week but the Subpoenaed Parties never produced. For example, in one text message from October 20, 2017, DeRosa-Grund tells Brittle's lawyer that he has marked up interrogatory responses in the Lawsuit and emailed them to Brittle's lawyer:



Ex. 5. This is directly responsive to the Agreed Order and subpoenas, which as noted request communications and documents exchanged with Brittle or his lawyers.

In another text message, DeRosa-Grund attempted to fire Brittle's attorneys because DeRosa-Grund had demanded to see all transmissions of information before they were sent. Specifically, DeRosa-Grund stated "I told you time and time again not to send stuff from Mr. Bruno [sic] without me seeing it first you're fired." Ex. 6. After Brittle's attorneys informed DeRosa-Grund that Brittle was the client in the Lawsuit, not DeRosa-Grund, DeRosa-Grund disparaged Brittle:

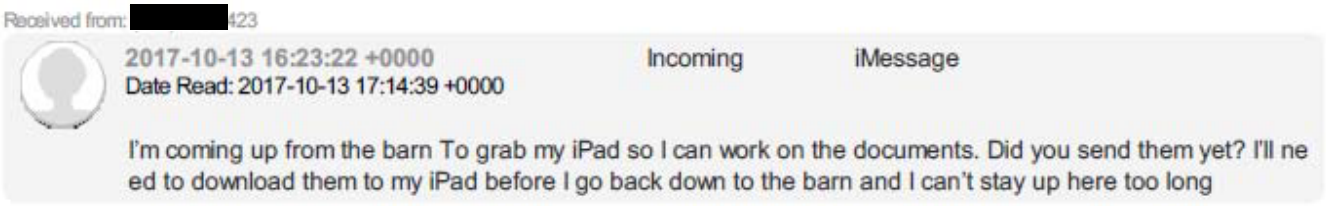


Ex. 7. Again, these were communications between DeRosa-Grund and Brittle's attorneys concerning the Lawsuit that were directly responsive to the subpoenas and yet were not produced.

In yet another text-message, DeRosa-Grund attempted to scold Brittle's lawyer regarding the decision of Brittle's other lawyer not to serve a deposition notice in the Lawsuit on a particular witness that DeRosa-Grund wanted served. Simultaneously, DeRosa-Grund scoffed at the idea that Brittle should attend a motion hearing in the Lawsuit (which DeRosa-Grund, who is extremely vexatious, notes *even he* does not normally attend in his "cases"): "Oh I shouldn't be pissed off I

asked [Brittle's lawyer] to serve the notice of deposition on Judy Penny two months ago. Never follow through on. . . . And why in gods name would [Brittle's lawyer] be telling Gerald to show up at motion practice tomorrow. I don't even show up to motion practices in my cases. Nothing good can come of Gerald being there." Ex. 8. Again, this is a communication between DeRosa-Grund and Brittle's attorneys concerning the Lawsuit and hence should have been produced.

DeRosa-Grund also informed Brittle's attorney, in the context of discussing the Lawsuit, that he needed to download documents on his iPad so he could "work on the documents":



Ex. 9. The foregoing are just some of the examples of responsive text messages (sixty-seven pages worth) that New Line received over the last week from Brittle that the Subpoenaed Parties should have produced but did not.

B. Agreements.

The Subpoenaed Parties also failed to produce key documents purporting to be agreements between the Subpoenaed Parties and Brittle. *See* Ex. 10, "Gerald Brittle Life Rights Option Agreement" (signed by DeRosa-Grund and Brittle); Ex. 11, "Film/Television Option Agreement re 'The Demonologist' Book (signed by DeRosa-Grund and Brittle). These documents were directly responsive to the subpoenas[2] yet were not produced. Additionally, New Line has obtained

[2] *E.g.*, Ex. 3 to Motion (Doc. No. 10-3) at RFP No. 28 (requesting documents and communications "related to any contractual agreements involving YOU and BRITTLE"); Ex. 4 to Motion (Doc. No. 10-4) at RFP No. 32 (requesting documents and communications "related to any contractual negotiations and agreements involving YOU and BRITTLE"); Ex. 5 to Motion (Doc. No. 10-5) at RFP No. 32 (same); Ex. 6 at RFP No. 32 (same).

a declaration from Brittle, which is attached hereto as Exhibit 12. Brittle testified that DeRosa-Grund likely has agreements that Brittle does not have. *See* Ex. 12, Brittle Decl. ¶ 7.

C. Other Evidence of DeRosa-Grund's Extreme Misconduct: the Brittle Declaration.

As noted, New Line has obtained (just yesterday) the Brittle Declaration. Brittle confirms that DeRosa-Grund has impeded discovery in the Lawsuit and *even instructed Brittle not to share certain documents with his own attorneys*. *See* Ex. 12, Brittle Decl. ¶ 5. When one of Brittle's attorneys informed DeRosa-Grund that a certain document had to be turned over, DeRosa-Grund texted him, threatened to have him fired, and stated, "If you hadn't fucked that up you would still be on everything and I would still be continuing my trajectory of getting everybody right side up, but you just don't listen to me." *Id.* ¶ 4. Numerous other acts of DeRosa-Grund are detailed in the Brittle Declaration, all of which simply bolster the already-established fact that DeRosa-Grund has absolutely no respect for Court orders, discovery obligations, or the law in general.[3]

Respectfully Submitted,

JACKSON WALKER L.L.P.

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[3] Little more than a month ago, DeRosa-Grund was held in civil contempt by Bankruptcy Judge Jeff Bohm, where, after an extensive evidentiary hearing, the court found there was "clear and convincing" and "overwhelming" evidence of DeRosa-Grund's civil contempt in "[c]ausing the [Subpoenaed Parties] to contend (falsely) that Mr. DeRosa-Grund conveyed the Treatment to EMG in February 2009 and that EMG owned the Treatment . . . ." *In re Tony DeRosa-Grund*, No. 4:09-bk-33264 (Doc. No. 452) (Bankr. S.D. Tex. Oct. 31, 2017) at 3-5. The court found that DeRosa-Grund "used the [Subpoenaed Parties], and their counsel (David N. Lake), as proxies to violate the 2016 Order," and that "DeRosa-Grund orchestrated and executed this scheme in bad faith." *Id.* at 5.

/s/ Charles L. Babcock
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CERTIFICATE OF SERVICE

This is to certify that on the 8th day of December, 2017, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

By: */s/ William Stowe*
William J. Stowe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NEW LINE PRODUCTIONS, INC.,	§	
Plaintiff,	§	
v.	§	MISC. ACTION NO. 4:17-mc-02923
TONY DEROSA-GRUND, SILVERBIRD MEDIA GROUP, LLC, EVERGREEN MEDIA GROUP, LLC, EVERGREEN MEDIA HOLDINGS, LLC,	§	
Defendants.	§	

DECLARATION OF GERALD BRITTLE

I, Gerald D. Brittle, declare and state:

1. I have personal knowledge of the matters set forth in this declaration, and if called to testify thereto, I could and would do so competently.

2. I am an author residing in Richmond, Virginia, and I have known Tony DeRosa-Grund for approximately six years. I am the plaintiff and counter-defendant in a lawsuit against New Line Productions, Inc. and Warner Bros. Entertainment Inc. in the Eastern District of Virginia. *Brittle v. Time Warner Inc., et al.*, 3:16-cv-00908 (E.D. Va.) (the "Lawsuit").

3. Mr. DeRosa-Grund has been controlling this Litigation from the start. I understand that Mr. DeRosa-Grund was actively involved in all matters of the case, including obtaining counsel, funding the Litigation, drafting and/or assisting in the complaints, opposing New Line's motion to dismiss (and other motions), responding to discovery that was sent to me (which I ultimately approved), and even instructing my attorneys not to produce documents

between Mr. DeRosa-Grund and myself. Based on a review of text messages between Mr. DeRosa-Grund and my attorney, I understand that he even threatened my attorneys that if they sent information from me without him seeing it first they would be fired. When my attorney informed Mr. DeRosa-Grund that I was the client, and needed to approve discovery responses, Mr. DeRosa-Grund responded: "Good, then get Gerald the [sic] fucking Pay you" and then stated "Oh yeah he doesn't have a pot to piss [sic] and I forgot." Mr. DeRosa-Grund then expressed his frustration about my attorney having me approve discovery responses by saying "I told you how things need to be done I told you the and [sic] and you repeatedly choose to ignore the protocol." Mr. DeRosa-Grund did not include me on such communications.

4. It is also my understanding that Mr. DeRosa-Grund tried to instruct my attorneys not to produce documents that they believed were not privileged. For example, when one of my attorneys informed Mr. DeRosa-Grund on November 21 that a certain document had to be turned over, Mr. DeRosa-Grund texted him, threatened to have him fired, and stated, "If you hadn't fucked that up you would still be on everything and I would still be continuing my trajectory of getting everybody right side up, but you just don't listen to me. It does not have to be produced for many reasons including those enumerated in my text." In another instance, I have learned from my attorney, Mr. DeRosa-Grund told my attorneys as he was editing New Line's requests for production that our side was "Not producing emails TDG to GB at this time," and then stated that he had spoken to my other attorney and they were going to argue that the documents did not have to be produced because of a common interest/joint defense privilege.

5. During the pendency of the Litigation, Mr. DeRosa-Grund and I also had conversations regarding documents and communications which I should or should not produce. During those conversations, Mr. DeRosa-Grund told me that certain email communications and

documents were to stay confidential and not be revealed to anyone, even to my attorneys. He further told me that if certain communications and documents were revealed, I would face serious repercussions, including being sued by him or others. It was my understanding that Mr. DeRosa-Grund was instructing me not to produce certain documents and communications to anyone, including my attorneys in the Litigation. For example, Mr. DeRosa-Grund often instructed me that some of my business agreements with him and those he introduced me to, including the Agreement of Irrevocable Option for Transfer of Copyright, Irrevocable Authority to Settle Claims and Irrevocable Option for Assignment of Claims and the Durable Power of Attorney for Litigation Management were to remain private along with all communications between Mr. DeRosa-Grund and myself. I know that New Line had requested all of these sorts of documents from me, and so had my attorneys, but based on my conversations with Mr. DeRosa-Grund, I withheld them. Such communications were only recently produced to my attorneys.

6. On November 21, 2017, the court in the Litigation found that Mr. DeRosa-Grund and I do not have a common interest privilege and warned me to fully comply with my discovery obligations or face sanctions. The Court instructed me and my attorneys to produce all relevant documents and communications, including those between Mr. DeRosa-Grund and myself. Since that order, in an attempt to be entirely candid and work with New Line, I agreed to waive my attorney-client privilege and authorized my attorneys to produce all documents and communications. To the extent that Mr. DeRosa-Grund claims that we have a common interest privilege in Texas (despite the court's ruling in the Litigation), I further agree to waive that privilege.

7. Lastly, in complying with the court order in my Litigation, I informed my attorney and New Line that there may be some documents that I do not have in my possession, but Mr. DeRosa-Grund may have. For example, Mr. DeRosa-Grund did not always provide me with fully-executed agreements that I signed. In short, Mr. DeRosa-Grund may likely have documents and communications relevant to this litigation that I do not have in my possession.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and recollection and that this declaration is executed on the 7th day of December 2017 at Richmond, Virginia.

Gerald Brittle

COMMONWEALTH OF VIRGINIA

COUNTY OF HENRICO

Subscribed and sworn before me, a Notary Public in and for the County and Commonwealth aforesaid, this 7th day of December 2017.

Notary Public

My Commission Expires: 7-31-21