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7 Attorney for Plaintiff

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DENNIS MONTGOMERY,
11 Plaintiff,
12 v.
13 JAMES RISEN, ET. AL.
14 Defendant.

Case No. : 3:15-cv-02035-AJB-JLB

[Pending in the Southern District of
Florida, Case 15-20782-CIV]

NOTICE OF MOTION AND EXPEDITED
MOTION TO COMPEL COMPLIANCE
WITH SUBPOENA TO MICHAEL FLYNN

Hearing Date:
Time:
Judge:
Courtroom:

21 NOTICE is hereby given of the filing of this motion by Plaintiff Dennis Montgomery
22 ("Plaintiff"), pursuant to Rule 45, Fed.R.Civ.P. This motion seeks to compel third party Michael
23 Flynn ("Flynn") to appear for deposition and produce documents requested in the Subpoena to
24 Testify at a Deposition In a Civil Action issued on August 26, 2015. Plaintiff respectfully
25 requests that this motion be transferred to the Southern District of Florida pursuant to
26 Fed.R.Civ.P Rule 45. Plaintiff further respectfully requests that Flynn be ordered to sit for a
27
28

1 deposition and to produce the requested documents within five days from the Court's order.
2 Plaintiff also requests that he be awarded his reasonable attorneys' fees and costs incurred in
3 connection with this Motion in the amount of at least \$2,000.00.
4

5 This motion is made following the conference of counsel pursuant to Local Rule 7-3.
6 Plaintiff's counsel sought to contact deponent Flynn and telephoned him multiple times, however
7 Plaintiff's counsel has not received any responses from Mr. Flynn.

8 **Plaintiff respectfully requests expedited handling of this motion as there is a**
9 **discovery cut-off in the subject Florida litigation of November 19, 2015.**
10

11
12 Dated: October 13, 2015

13 Respectfully submitted,

14
15 */s/ Naveed Mahboobian*

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1 **MEMORANDUM IN SUPPORT OF EXPEDITED MOTION TO COMPEL**

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3 This is a case brought on because of defamatory statements made by Defendants against
4 Plaintiff Dennis Montgomery. See Exhibit 1 – Complaint. Defendants published a physical book
5 “Pay Any Price: Greed, Power and Endless War” (referred to as “the Book” or “Book”) by
6 author Defendant James Risen, Copyright (c) 2014 by Defendant James Risen, designated by the
7 Library of Congress by its index system as ISBN 978-0-544-34141-8 (hardback edition).
8

9 The Book blames U.S. Government leaders and officials for mishandling the “war on
10 terror” and over-reacting. Defendant Risen portrays the global threats as far smaller, less real,
11 and less imminent than national leaders during the Bush Administration.
12

13 Yet in Chapter 2, Defendants abruptly shift the blame to a private individual, Dennis
14 Montgomery. Defendant Risen swerves out of his lane to sideswipe Montgomery, so to speak,
15 much too far to be accidental or a result of fair reporting.
16

17 At the heart of the case, the main (though not the only) defamation by the Defendants
18 destructive of the Plaintiff’s reputation and business prospects is their nationwide announcement
19 of the Plaintiff as a fraud whose work, including software and technology, is a hoax.
20

21 Since the defamation has come out, the Plaintiff has not been able to get work, contracts,
22 or business opportunities. The harm to the Plaintiff involves his loss of current and future
23 employment, contract, and business opportunities. The relevant test is not where the Plaintiff has
24 earned income in the past, as the Defendants mistakenly assume, but whether the defamation
25 prevents him from earning income currently and in the future.
26

27 Defendants reported nationwide that Plaintiff Dennis Montgomery is a con-artist, a fraud,
28 a hoax, and dishonest. Among other accusations, Defendants state that Plaintiff Montgomery

1 defrauded CIA Director George Tenet and the U.S. Government generally with regard to
2 contracts with the Government, which published and accused Plaintiff Montgomery of having
3 committed crimes under the False Claims Act, 31 U.S.C. §§ 3729 – 3733, and also common law
4 and statutory fraud. The Defendants further accuse Dennis Montgomery of lying to the
5 government which is a criminal violation of 18 U.S.C. § 1001. This is defamation *Per Se*.
6

7 Plaintiff filed suit against Defendants within the U.S. District Court for the Southern
8 District of Florida. *Montgomery v. Risen*, No. 15-cv-20782 (S.D. Fla.).

9 Plaintiff's counsel issued a Subpoena to Testify at a Deposition In a Civil Action
10 ("Subpoena") to Mr. Michael Flynn on August 26, 2015. Exhibit 2. This Subpoena was
11 personally served on Mr. Flynn that same day, on August 26, 2015. Exhibit 3.
12

13 Undersigned counsel and his colleagues were privy to a telephone conversation on
14 September 4, 2015, which constituted a meet and confer conference on trying to find deposition
15 dates and were told by opposing counsel that Mr. Flynn has told opposing counsel that he had
16 not been served with the Subpoena.
17

18 Plaintiff's counsel has attempted to call Mr. Flynn at his office telephone and has not
19 received any return call even after leaving voicemail messages for Mr. Flynn. Plaintiff's counsel
20 had called to arrange convenient deposition times and in order to tell Mr. Flynn not to dispute
21 service of process as he was properly served.
22

23 Further, on September 10, 2015, during a telephonic conference between the parties,
24 Defendants' counsel advised Plaintiff's counsel that when they spoke with Mr. Flynn he told
25 Defendants' counsel that he would be traveling. It is therefore clear that Mr. Flynn is seeking to
26 avoid having to testify at the deposition and is going to great lengths to avoid it.
27

28 Not coincidentally, Mr. Flynn was an attorney for Plaintiff Montgomery, and was the one

1 who released 20,00 pages of documents which included attorney-client privileged documents and
2 attorney work product documents to Defendant Risen. It is therefore not surprising that Mr.
3 Flynn does not have the propensity to act ethically and truthfully.
4

5
6 This Motion Should Respectfully Be Transferred to the Southern District of Florida

7 FRCP Rule 45 allows for this subpoena-related motion to be transferred. Specifically,
8 Rule 45(f) provides:

9 Transferring a Subpoena-Related Motion. When the court where compliance is
10 required did not issue the subpoena, it may transfer a motion under this rule to the
11 issuing court if the person subject to the subpoena consents or if the court finds
12 exceptional circumstances. Then, if the attorney for a person subject to a
13 subpoena is authorized to practice in the court where the motion was made, the
14 attorney may file papers and appear on the motion as an officer of the issuing
court. To enforce its order, the issuing court may transfer the order to the court
where the motion was made.

15 FRCP 45(f); *See also FTC v. A+ Fin. Ctr., LLC*, 2013 U.S. Dist. LEXIS 172472 (S.D. Ohio Dec.
16 5, 2013)("Rule 45, as amended, provides an explicit mechanism for transferring such motions to
17 other courts when warranted by the circumstances.")

18 This motion arises out of a lawsuit pending before the U.S. District Court for the
19 Southern District of Florida. Plaintiff is a citizen of Florida, and the Defendant has an office
20 located in Florida and has already hired Florida counsel who is representing it in these
21 proceedings.
22

23 WHEREFORE, Plaintiff respectfully requests that Deponent Michael Flynn be ordered to
24 appear at the deposition as set forth in the attached Subpoena. Plaintiff further respectfully
25 requests that this motion be transferred to the U.S. District Court for the Southern District of
26 Florida, where this case originated.
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28 Dated: October 13, 2015

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Respectfully Submitted,

/s/ Naveed Mahboobian

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Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2015, a true and correct copy of the foregoing was served via U.S. Mail upon the following:

Michael Flynn
6125 El Tordo
Rancho Sante Fe, CA 92067

/s/ Naveed Mahboobian
Naveed Mahboobian