

**Medvin & Elberg**  
ATTORNEYS AT LAW

PHILIP ELBERG\*  
ALAN Y. MEDVIN\*\*

ONE GATEWAY CENTER  
NEWARK, NJ 07102  
(973) 642-1300

FAX NO. (973) 642-8613

—  
\*Member N.Y., N.J. Bar  
\*\*Certified by the Supreme Court of  
New Jersey as a Civil Trial Attorney

April 28, 2011

Honorable Mark Falk, U.S.M.J.  
United States District Court  
U.S. Post Office and Courthouse, Room 457  
One Federal Square  
Newark, New Jersey 07102

RE: NXIVM v. The Ross Institute, et al.  
Docket No. 06-cv-01051 (DMC) (MF)

Dear Judge Falk:

Please accept this letter in lieu of a more formal submission in response to Your Honor's order of April 19, 2011 with respect to Ms. Bouchey's telephone records. I have reviewed the transcript of the colloquy with the court at the conclusion of Ms. Bouchey's deposition on April 18, 2011 as well as the transcript of the case management conference you conducted on March 8, 2011 and my notes of the telephone conference during the prior week.

On the basis of my review of those documents, it is clear to me that Your Honor views as potentially relevant within the meaning of Fed. R. Civ. P. 26 calls to or from parties in this case and their lawyers in that they at least have the potential to lead to the discovery of admissible evidence but that contacts with others, particularly former NXIVM members and critics is not relevant and would not be consistent with Fed. R. Civ. P. 26C (iii) because the burden or expense of the proposed discovery outweighs its likely benefit,

considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues.

The Rule 26 considerations are particularly significant here where my review indicates that there are more than 27,000 separate entries in Ms. Bouchey's phone records and the only issues before the court involve whether trade secrets were improperly taken, whether copyrights have been infringed and whether there was interference with a contract in 2002 or 2003 when all of the complaint related events occurred.

Against that background I am satisfied that Your Honor's order that permitted me to "redact the phone records to reflect communications with a limited number of individuals" is intended to be limited to relevant communications and individuals, which in practice means only parties and their lawyers. I am referencing now all such contacts without regard to whether they are in fact related to issues in this case because I do not know how to make that distinction. In order to move this along I have instructed Ms. Bouchey to make those redactions and we will be prepared to produce those redacted records promptly.

Ms. Bouchey has also asked me to request that Your Honor reconsider your directive that her deposition can be continued for an additional four hours. We ask that you reconsider for the following reasons.

(a) We now have a transcript of her latest deposition taken on April 18. I respectfully request that Your Honor review it since when

agreeing to supervise the continuation of this deposition, you indicated that you reviewed the transcript of the first day of her deposition. The transcript demonstrates that plaintiffs' did far more than just "cover the waterfront" as Mr. Crockett sarcastically indicated. What it will show is that during an all day deposition my client was asked few questions that have anything to do with the issues being litigated or that relate in any way to the questions asked on the first day of her deposition with respect to NXIVM's practices and record keeping. Rather, counsel spent the day asking Ms. Bouchey about her tax filings which they have somehow obtained and made conspicuous at her deposition, telephone conferences she had with others who were formerly associated with NXIVM -- pointedly letting her know through their questions that they had somehow learned of conversations that occurred on specific days and times in the last year -- and questions about Ms. Bouchey's personal life. The intended message to her was clear. Even when Mr. Crockett did ask about NXIVM's practices with respect to what they claim is confidential, he asked the questions and used a tone of voice that was clearly intended to try to trick the witness, and I use the word "trick" in its most pejorative sense. If there is any question about this, I am certain Your Honor can obtain access to the videotape of the deposition.

(b) A comparison of the deposition of the two days demonstrates that the plaintiff and defendants spent roughly the same amount of time deposing the witness when breaks and lengthy objections are subtracted out. If your Honor's goal was to level the playing field that has been accomplished and more. I will quickly submit a calculation showing how much time each side spent if the Court wishes to see it.

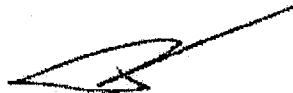
(c) Mr. Crockett, who represents only Ms. Keefe, asked questions in great detail about NXIVM and Mr. Ranieri, and clearly on behalf of those parties. Few of his questions were about issues that involve Ms. Keefe. Subjecting her to renewed questioning on behalf of NXIVM and Ranieri would be both inappropriate, unreasonable and unfair.

(d) The record demonstrates that the deposition tactics used against Ms. Bouchey, including the side trip to Federal Court in Albany, by the NXIVM side of this case has been motivated not by an effort to demonstrate her bias to a jury but rather by an effort to demonstrate to Ms. Bouchey the extent of the litigants bias against her and their goal of using litigation tactics to scare her into silence. The best and most recent proof of that is not just their making sure she saw, while testifying, that the 3 NXIVM "observers" in the courtroom were reviewing her personal tax returns while Mr. Crockett asked questions about them. Even worse from my perspective is a

series of emails that Mr. Crockett somehow felt compelled to send me taunting Ms. Bouchey within minutes after receiving a verdict in his California case. I have never seen anything like it. The exchange is attached as Exhibit A.

Respectfully submitted

MEDVIN & ELBERG

A handwritten signature in black ink, appearing to be "Philip Elberg", written over a horizontal line.

BY: PHILIP ELBERG

PE:pl  
cc: All Counsel