UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KONNECH, INC.,	4:22-CV-03096
	HOUSTON, TEXAS
PLAINTIFF,	OCTOBER 6, 2022
VS.	1:59 P.M.
TRUE THE VOTE, INC., GREGG PHILLIPS AND CATHERINE ENGELBRECHT,	
DEFENDANTS.	

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFF:

Constantine Z. Pamphilis
Nathan Richardson
KASOWITZ BENSON TORRES LLP
Wedge International Tower
1415 Louisiana
Suite 2100
Houston, Texas 77002

FOR THE DEFENDANTS:

Brock C. Akers
J. Mark Brewer
THE AKERS FIRM
3401 Allen Parkway
Suite 101
Houston, Texas 77019

APPEARANCES - CONTINUED

OFFICIAL COURT REPORTER:

Mayra Malone, CSR, RMR, CRR
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002
713-250-5787

Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

PROCEEDINGS

THE COURT: Gentlemen, this matter was reset from a previous setting until today. This is Cause Number 22-3096, Konnech, Inc., versus True the Vote, Incorporated, Gregg Phillips and Catherine Englebert.

13:59 Who is here on behalf of the plaintiff?

MR. PAMPHILIS: Your Honor, Dean Pamphilis and Nathan Richardson with Kasowitz Benson Torres here on behalf of plaintiff, Konnech, Inc.

13:59 THE COURT: Let me get that again. I'm sorry. Give me those names again.

MR. PAMPHILIS: Dean Pamphilis.

THE COURT: I show you on the docket sheet. And who else?

13:59 MR. PAMPHILIS: Nathan Richardson.

THE COURT: And representing the defendant True the Vote, Incorporated?

MR. AKERS: Good afternoon, Your Honor. I'm Brock Akers and Mark Brewer.

13:59 THE COURT: Who is representing Phillips?

MR. AKERS: We all are.

THE COURT: And you are also representing Engelbrecht?

MR. AKERS: Yes, Your Honor.

THE COURT: Okay. Very good.

13:59 All right, gentlemen. I need to look at or -- at

13:59 1 least have some matters presented to me. This case seems to be
2 one where the lawyers are intent on -- and other parties are
3 intent on trying the case -- or the issues in the media. And I
4 need to know what's going on.
14:00 5 So let me ask you, Mr. Pamphilis, if you would
6 bring the Court up on what was -- what you filed and what you
7 have so we can get a response from opposing counsel. I might
8 have some questions that I need to ask, as well.
9 This originally was to be a temporary injunction
14:00 10 hearing -- I mean a preliminary injunction or a temporary
11 injunction. A temporary restraining order was entered in the
12 matter, and that was reset, I believe, by agreement of the
13 parties.
14 Is that correct, Mr. Akers?
14:00 15 MR. AKERS: It was reset until today.
16 THE COURT: So those are the dates on that. So the
17 question now is: Where do we go from here and what is it that
18 you have and what is before the Court?
19 Go ahead and proceed. Pull the microphone at
14:00 20 least closer to you so you can speak directly into it, please.
21 MR. PAMPHILIS: Thank you, Your Honor.
22 So correctly you recalled, a TRO was issued in
23 this case 24 days ago, on September 12th. It was done
24 ex parte.
14:01 25 After defendants were served, they ultimately --

14:01 and the TRO was about to expire, they asked to reschedule because their witnesses were unavailable. We rescheduled --

THE COURT: What witnesses were unavailable?

MR. PAMPHILIS: I understood that Defendants Gregg
14:01 Phillips and Catherine Engelbrecht were unavailable at the time, out of state or out of country.

THE COURT: All right.

MR. PAMPHILIS: And so the parties agreed to reschedule until today. As part of that agreement, they agreed
14:01 to extend the expiration date of the TRO to the earlier of the date on which an agreed preliminary injunction was submitted to Your Honor and signed. We made efforts to have that happen. It appears now, based on the response to our motion for preliminary injunction last night, that's not going to happen.

14:02 The other date for expiration of the TRO was upon the Court's decision on our motion for preliminary injunction.

So, Your Honor, two days ago, on Tuesday, I contacted --

THE COURT: Hold on just one second. I think I left
14:02 my -- I have it here. I'm sorry. Go ahead.

MR. PAMPHILIS: Two days ago, on Tuesday, I contacted the Court to advise them that my client representative, Eugene Yu, who is the president of Konnech, was not going to be available for today's hearing. He has been detained, we
14:02 contend wrongfully, by county authorities in Michigan, and this

14:02 is something that has been all over the press.

But just to address it briefly, Your Honor, LA County is a client of Konnech, and LA County issued a directive to have Mr. Yu arrested in Michigan where he lives, claiming, 14:03 as best we can tell -- and this is only in the press -- because I have not seen an indictment. My understanding is it is sealed -- claiming that he had stolen LA County's poll worker data and placed it on a server in China.

First of all, Your Honor, Konnech has a contract 14:03 with LA County through which it would obtain this poll worker data, and Konnech insists that that was never stored outside of the United States, as stated in the affidavit that Mr. Yu submitted with our motion for TRO.

THE COURT: Let me ask you a question about that. 14:03 When you say "data," are you talking about the names and addresses, phone numbers, that kind of data? Is there anything that Konnech has received or obtained that was not a part of what was released by, let's say, LA County or wherever they might be doing business?

14:04 MR. PAMPHILIS: So LA County's DA, the very day that Mr. Yu was arrested, issued a one-page press release, as did True the Vote.

And in that release from LA County, he claimed that the data that was stolen had personal identifying 14:04 information.

14:04 THE COURT: Well, does it have personal identifying information, the information he received? That's what I'm asking.

MR. PAMPHILIS: The only information that Mr. Yu or
14:04 Konnech would have would have been received from LA County, and it would be poll worker data, like the type that we are protecting in this case, which would have information like Social Security numbers, bank account records.

Now, it's important, Your Honor, to note that the
14:04 LA County DA specifically says in his press release that he does not know of any attempt by Mr. Yu or Konnech to sell that information to anybody.

So the reason I bring it up -- and I know that they made an issue of it in their response, but it is
14:05 important, Your Honor, that what he is claiming in his press release is essentially that my client breached the contract they had with LA County which said that they were to hold that data on U.S. servers.

So without knowing anything more than what's in
14:05 the press release, it appears to me that Mr. Yu was arrested because of a breach of contract by Konnech, the company that he works for and that he's the president of.

And so at the time that I called on Tuesday, he had been detained in Michigan, and I did not believe he would
14:05 be released in time to be at today's hearing, so I contacted

14:05 1 the Court to let them know that.
2 I understand while we have been sitting here
3 waiting, that he was granted bail, but I don't know the
4 conditions of it, other than he needs to report on his own to
14:05 5 LA County to deal with this matter.
6 Now, Your Honor, I don't believe that --
7 THE COURT: Do you know when he is to report to LA
8 County?
9 MR. PAMPHILIS: I believe it's by October 14th.
14:06 10 THE COURT: That would be next week?
11 MR. PAMPHILIS: Yes, Your Honor.
12 THE COURT: Okay.
13 MR. PAMPHILIS: Your Honor, to be clear, I don't
14 believe that the wrongful arrest of Mr. Yu has anything to do
14:06 15 with this matter and this preliminary injunction. This case is
16 about the defendants' admitted hacking into Konnech's computer
17 and taking poll worker data, the very same type of poll worker
18 data that Mr. Yu ended up in jail over. The difference is that
19 Mr. Yu, being the president of Konnech, had a contractual right
14:06 20 to have that data. The defendants did not. It's sensitive
21 data. As I noted during the TRO hearing, it has very personal
22 information that, in the hands of identity thieves, could be
23 exploited, and there's no allegation by the LA County DA to
24 this point that I have seen that Mr. Yu has attempted to sell
14:07 25 it or has sold it.

14:07 Now, I mentioned also that the defendants issued a press release the same day that Mr. Yu was arrested, claiming some responsibility for what happened in LA County.

THE COURT: Claiming responsibility or taking credit?

14:07 MR. PAMPHILIS: Taking credit, Your Honor.

THE COURT: Okay.

MR. PAMPHILIS: And they issued a press release that was carefully worded but, separately, on Truth Social, they had pictures that you would expect to see when someone has won the

14:07 lottery. They were all posing for pictures, claiming they took down Eugene Yu. Frankly, I think it's offensive. It's ludicrous, but I think as to what's important to what the Court has to decide today, it's really not relevant. And to the extent that they are going to claim it's relevant, all it does

14:07 is demonstrate the importance of the data that we're trying to protect and their culpability -- they, the defendants, who had no contractural right to have the poll worker data -- their culpability in having that data in the first place.

Your Honor, once I realized that Mr. Yu wasn't

14:08 going to be available for the hearing, we did a bit of research. And there is Fifth Circuit precedent that says that the Court can consider a preliminary injunction without live testimony so long as there is no genuine issue of material fact.

14:08 What you have before you, Your Honor, on this

14:08 1 motion for preliminary injunction is when we filed the motion
2 for TRO, we included a motion for preliminary injunction. We
3 attached Mr. Yu's affidavit. We included videos of podcasts,
4 statements made by the defendants confirming that they were
14:08 5 involved in accessing a Konnech server in China and that they
6 saw --
7 THE COURT: I'm sorry. Who was responsible? Oh,
8 that's part of what you have included in the pleading? That's
9 what you're referring to?
14:09 10 MR. PAMPHILIS: Yes, Your Honor. What I'm driving at
11 here is, the only evidence before the Court is Mr. Yu's
12 affidavit that we submitted on September 12th in support of the
13 TRO and in support of the preliminary injunction. We didn't
14 get a response to that motion for preliminary injunction until
14:09 15 late last night. There was no evidence attached. There is
16 attorney argument, but there's no evidence.
17 So my point simply there is, Your Honor, there is
18 no genuine issue of material fact. We presented evidence in
19 the form of the defendants' own statements that show that they
14:09 20 were involved in accessing and took possession of this data.
21 And so, Your Honor, I think that you can rule on
22 this on the papers, and if you are so inclined to consider it,
23 I will continue on with the argument. And I will add, if you
24 want to rule on the papers without testimony and you believe it
14:09 25 would be of benefit, we would be happy and would want to submit

14:10 1 a reply to what was filed last night.
2 THE COURT: In a sense, there are several different
3 aspects of this proceeding that are somewhat puzzling to me in
4 the sense that, generally speaking, as you know, a preliminary
14:10 5 injunction would necessitate generally some testimony or some
6 evidence. Of course, the evidence is what it is.
7 The question that I have is whether or not there
8 is -- among the papers -- and maybe that was a part of the
9 motion that I just briefly looked over a few minutes ago. I
14:10 10 said "motion," but the defendants' opposition. It may be that
11 that's where I saw some kind of indication that your client's
12 servers and other electronic matters have been seized.
13 Are you aware of any of that?
14 MR. PAMPHILIS: Yes, Your Honor. In connection with
14:11 15 the arrest of Mr. Yu, LA County had a search warrant and went
16 to Mr. Yu's home and to Konnech's office and seized electronic
17 information. However, the data that they have --
18 THE COURT: The data that they have?
19 MR. PAMPHILIS: I'm sorry. That my client has, they
14:11 20 still have it, in other words. Even though those computers
21 were seized, it resides in a manner that they can access it
22 still.
23 THE COURT: With respect as to --
24 MR. PAMPHILIS: Who seized it.
14:11 25 THE COURT: -- who seized it. My concern, however,

14:11 1 has to do primarily with how that equipment might be utilized
2 or misused. That would be my concern. And so the question of
3 them, that is LA Police Department, seizing the equipment,
4 would that be the only source of -- would that be the only -- I
14:12 5 said not the only, but would that be -- is there a way in which
6 your client now has exposure of someone taking his equipment
7 and playing the game with it of sending information someplace?
8 MR. PAMPHILIS: It's in the possession -- as I
9 understand it, it was taken into possession by -- I don't know
14:12 10 which county in Michigan but --
11 THE COURT: Where was he arrested, by the way?
12 MR. PAMPHILIS: He was arrested in Michigan where he
13 lives.
14 THE COURT: So that's where the equipment is located?
14:12 15 MR. PAMPHILIS: Yes.
16 THE COURT: And it is LA PD's arrest warrant and
17 search warrant that was executed where?
18 MR. PAMPHILIS: In Michigan, by county authorities in
19 Michigan.
14:12 20 THE COURT: At his business?
21 MR. PAMPHILIS: At his business and at his home.
22 THE COURT: Okay.
23 MR. PAMPHILIS: And my understanding, again, very
24 limited, is it would be county authorities, county officials
14:12 25 who have it, and I understand that the intent was to take what

14:12 they seized back to LA, because that is who is wanting to charge --

THE COURT: Well, who seized it?

MR. PAMPHILIS: I believe it was seized by the local

14:13 police.

THE COURT: That would be the Michigan police or sheriff or --

MR. PAMPHILIS: There were also LA County -- there was an LA County investigator with them. My understanding is that

14:13 person or his team were taking what they gathered back to LA.

THE COURT: All right. Is it your position now -- so I can get a response from opposing counsel -- is it your position now that the defendants are in violation of the temporary restraining order?

14:13 MR. PAMPHILIS: Yes, Your Honor.

THE COURT: Would you tell me in what ways you understand them to be in violation?

MR. PAMPHILIS: Absolutely, Your Honor.

So we filed a motion to show cause and finding of

14:13 contempt. This TRO has been in place since September 12th, 24 days. It was based on, you know, as I said, public statements they had made, threats to disclose information.

Even though they agreed to extend it -- and it is still in effect today -- they have repeatedly refused to comply

14:14 with it, despite our multiple attempts to get their compliance.

14:14 And specifically when you look at the TRO, Your Honor, I want
to direct the Court's attention to Subsections 5, 6 and 7.
THE COURT: Hold on just one second.
Are you talking about the small letter 5, 6,
14:14 and 7?
MR. PAMPHILIS: Yes, the romanettes.
THE COURT: Go ahead.
MR. PAMPHILIS: It is indisputable they are in
violation of these. Now, we pressed them -- obviously, the
14:15 reason we included these and asked the Court to enter them, we
wanted to know how they got the data in the first place, who
was involved and who else might have it, so that we could
continue to protect that data.
What we knew and what we attached to our motion
14:15 for TRO were the statements of the defendants where Defendant
Gregg Phillips claims that his guys -- and I say that in quotes
because that's his words -- and his analysts and his team
invited him to the Anatole Hilton Hotel in Dallas, Texas, back
in January. And he got there at midnight, and his guys then
14:15 connected to the TV monitor in that room. He said they placed
towels under the doors. It was like James Bond is what he
said, and it took them four and a half hours to get the data to
come up on the screen. He said what he was told was the data
that was coming up were from the Konnech server in China, and
14:16 that it was millions and millions of records on U.S. poll

14:16 1 workers. In other words, he admitted that he was looking at
2 this data from our server in China.
3 Now, he claims that he then was provided with a
4 hard drive that contained all of that data; that he drove it
14:16 5 down to Houston to meet with Catherine Engelbrecht. What
6 happened from that in that meeting, we don't know. We haven't
7 seen any affidavits or testimony from them. We just have
8 unsworn contradictory statements about it. But they claimed
9 that they then turned it over to the FBI, and it became an FBI
14:16 10 matter, and because of that, they can't comply with your order
11 because they gave it to the FBI.
12 I told them that is unacceptable. That is
13 contempt of court. They have notified the FBI -- in a sealed
14 letter to Your Honor, they copied them and gave Your Honor, I
14:17 15 understand, the name of an individual that they claim got the
16 data in that Dallas hotel room.
17 THE COURT: You have not received the name of that
18 person?
19 MR. PAMPHILIS: No, Your Honor. I pressed for it, and
14:17 20 they have not given it to me. But I emphasize that I
21 understood what they were giving you was the name of one
22 person, but going back to my statement, the one I was quoting a
23 moment ago, is every time they referred to how they got it
24 prior to this lawsuit being filed, they referred to plural,
14:17 25 people, guys, analysts, team, the team of people. And when I

14:17 1 pressed them on it, the first thing I got back was a letter
2 from Mr. Akers saying this was an independent contractor who --
3 THE COURT: "This" meaning the fellow in Dallas?
4 MR. PAMPHILIS: Yes, Your Honor.
14:18 5 THE COURT: Or whoever it is whose name was given?
6 MR. PAMPHILIS: This independent contractor contacted
7 Mr. Phillips and told him that he had this information. Why
8 don't you come up here and see it? They make it sound like
9 they didn't know this guy, but he spent the night in a hotel
14:18 10 room with this guy in Dallas, four and a half hours, waiting
11 for this information to come up. I suspect he knew this person
12 quite well, or he is a very trusting individual. I don't know
13 which one. But my point being it is more than one person, and
14 they started out by saying it's an independent contractor. And
14:18 15 then it became, as I said in my motion, like a game of cat and
16 mouse, because initially he said, Well, what they accessed was
17 not a protected computer, as the term is used in the motion and
18 in the order.
19 THE COURT: "They" meaning the fellows in the hotel?
14:18 20 MR. PAMPHILIS: Yes.
21 THE COURT: Or whoever was doing it?
22 MR. PAMPHILIS: And they said because they were able
23 to access it using a default password. So I wrote back and I
24 said, I don't think you understand what a protected computer
14:18 25 is. You have to go back and look at our motion, but a

14:19 1 protected computer simply can mean a computer that is connected
2 to the Internet. In this case, it's much more than that. And
3 they -- in fact, by saying they used the default password, they
4 are admitting a violation of the federal anti-hacking act
14:19 5 because that shows that access was limited and that their
6 access was unauthorized. It wasn't an open website. Like if
7 you go to LinkedIn and look at a page, you need a password.
8 Your Honor, it's the same as if I accidentally
9 left the key to my house in my front door or under my mat, and
14:19 10 someone came along and found it and opened my door and came
11 into my house. That's breaking and entering. It is no
12 different if you happen to stumble on a password.
13 So, Your Honor, we don't have the name of the
14 people who accessed this data. There have been no attempts to
14:19 15 comply with Sections 6 or 7.
16 THE COURT: Let me see. Number 5 says in order to
17 identify the individuals. That's what you just addressed?
18 MR. PAMPHILIS: That's correct.
19 THE COURT: And that has not been done? Order to
14:20 20 confidentially disclose to Konnech how, when and where -- or by
21 whom, should I say, Konnech's protected computer was accessed.
22 That has not happened is what you are saying?
23 MR. PAMPHILIS: Yes, Your Honor. And, most
24 importantly, is Number 7. Who else has this information?
14:20 25 Perhaps Number 5 will tell us Number 7, but we don't know. We

14:20 1 want to know everybody who has had this information. Because
2 Mr. Phillips had in as many podcasts and after -- this is very
3 important. After he turned it over to the FBI, he
4 recognized -- he stated to his followers, I turned this over to
14:20 5 the FBI as soon as I got it, and then the FBI started
6 investigating me, meaning Defendant Phillips.
7 He then continued to say to his followers, And
8 I'm going to release this data to you. I'm going to publicly
9 disclose it.
14:20 10 That's at odds with what I think you are going to
11 hear, which is, We don't have this data anymore. We gave it
12 over to the FBI. Because of the contradictory statements --
13 and this goes really to Items 1 through 4 of the TRO -- I would
14 like to believe that they have complied, but all I have are
14:21 15 unsworn contradictory statements.
16 I asked them for an affidavit to confirm what
17 they were saying in these letters because it contradicted the
18 preceding statements. I drafted an affidavit for both
19 Defendants Phillips and Engelbrecht that followed along with
14:21 20 what their lawyer had said in his letter was the truth about
21 this and why there wasn't an issue on 1 through 4.
22 I was told at the time that they were reviewing
23 them and that they planned on signing them, and I still haven't
24 gotten any signed affidavits and I haven't received any
14:21 25 comments to the affidavits. There is no affidavit attached to

14:21 1 their response, so I can't just rely on these unsworn
2 statements. So part of what we need to ensure that the TRO has
3 been complied with is some sworn statement on Items 1
4 through 4.
14:21 5 And frankly, Your Honor, Items 5 through 8 -- I'm
6 sorry -- 5 through 7, if the defendants had complied with 5
7 through 7, that's a one-time thing. If they give us that
8 information, it's moot for purposes of the preliminary
9 injunction. We don't need it again. But we do need them to
14:22 10 continue to comply with Items 1 through 4 once they give us 5
11 through 7.
12 And frankly, I don't see why there should be an
13 issue complying with 1 through 4, because all it says is that
14 they won't try to access our protected computers. They won't
14:22 15 try to take our data, and if they come into possession of it,
16 they will give it back to us.
17 They don't have a right to do any of those
18 things, and so the fact that they won't agree to it is
19 concerning.
14:22 20 THE COURT: All right. Mr. Akers, do you want to
21 respond to the points made that your client has not complied
22 with 5 through 7 of the temporary restraining order?
23 MR. AKERS: Yes, Your Honor. And it is a fact that we
24 have not given up the name of the individual.
14:23 25 THE COURT: Why not?

14:23 1 MR. AKERS: Because at the time -- and we now know
2 there's -- he is part of the investigation.
3 THE COURT: "He" who?
4 MR. AKERS: This particular individual is part of
14:23 5 the --
6 THE COURT: What individual are you talking about?
7 There are no secrets in this courtroom. I want to know names.
8 I want to know what you are responding to and I want to know
9 what evidence you have.
14:23 10 MR. AKERS: Okay. May I back up just a little bit and
11 explain?
12 THE COURT: Sure.
13 MR. AKERS: And this has been explained to plaintiffs.
14 THE COURT: I'm the judge in this case. I want to
14:23 15 know. That's all I'm trying to find out.
16 MR. AKERS: Okay.
17 THE COURT: Thank you.
18 MR. AKERS: So the data in question was retrieved by
19 an individual who was a contractor, independent. He was not
14:24 20 part of True the Vote. It's not either Gregg Phillips or
21 Catherine Engelbrecht. That individual came to Gregg Phillips,
22 in particular, knowing of their interest in election integrity
23 matters and said, I have come across this information.
24 Mr. Phillips, in turn, saw what he had in Dallas.
14:24 25 They viewed it on their computer, recognized the serious

14:24 1 national security concerns and immediately contacted the FBI.
2 Did not one thing with that data at all on his own, but instead
3 introduced this individual to the FBI. And the FBI commenced
4 an investigation.
14:25 5 THE COURT: How do you know that?
6 MR. AKERS: Because my clients were told by the FBI
7 that there was --
8 THE COURT: You have no personal knowledge?
9 MR. AKERS: Not personally, no.
14:25 10 THE COURT: Right. And no FBI agent has contacted
11 you?
12 MR. AKERS: No. No FBI agent has contacted me.
13 THE COURT: No Assistant United States Attorney?
14 Nobody from the Department of Justice?
14:25 15 MR. AKERS: Correct.
16 THE COURT: And this occurred when? How long ago did
17 this, quote, release to the FBI occur, as best you recall?
18 MR. AKERS: January of '21.
19 THE COURT: So it's been over a year, almost two years
14:25 20 when this information, quote, was provided according to your
21 client -- and I guess this is Phillips, right?
22 MR. AKERS: Yes.
23 THE COURT: -- provided it to the FBI and there has
24 been no contact by the FBI to you. And you, I gather, have
14:25 25 been representing him or at some point began representing him

14:25 1 to indicate that there was any investigation?
2 MR. AKERS: I do not know this individual. I do not
3 represent this individual.
4 THE COURT: Which individual are you talking about?
14:26 5 MR. AKERS: The individual who actually has the data
6 who then turned it over to the FBI.
7 THE COURT: No. But, I mean -- when Phillips claimed
8 that he turned it over to the FBI, he had to have possession of
9 it at the time in order to turn it over?
14:26 10 MR. AKERS: Actually, yes. It was kind of a
11 combination of the two of them getting together and, Here it
12 is.
13 THE COURT: Well, I don't know what they did, and I
14 don't think you know either, but you know Phillips was involved
14:26 15 in the turning over?
16 MR. AKERS: Yes.
17 THE COURT: All right. So here's my question that I'm
18 trying to get answered, and that is this: What evidence do you
19 have or what reason do you believe that Mr. Phillips verified
14:26 20 that any of this data was coming from China?
21 MR. AKERS: On the basis of what -- what Mr. Phillips
22 himself saw.
23 THE COURT: What he told you he saw. Have you seen
24 it?
14:27 25 MR. AKERS: No.

14:27 THE COURT: Okay. So this is what Mr. Phillips told you he saw?

MR. AKERS: Yes.

THE COURT: And you don't have any verified statement
14:27 from Mr. Phillips saying -- or swearing that he has verified that the person he was in contact with in Dallas was, in fact, a person he could vouch for?

In other words, I can walk out of here and walk on the street and someone can tell me, Look, I have got this
14:27 data, this information. I want you to see it.

And so I follow them someplace, and I look at it. How do I know that the person that I'm following is worthy of my intention?

So you don't have that kind of verification from
14:27 Mr. Phillips that the man that he was dealing with is a man who verified to him that this information had come from China.

MR. AKERS: I cannot recite that. I have no verification.

THE COURT: Okay. So Mr. Phillips apparently meets at
14:28 the hotel. And why is it that Mr. Phillips -- or is it you that don't want to release the name of the individual to plaintiff's counsel?

MR. AKERS: It's all of us because we fear for the safety -- on behalf of my clients, we do not want to release
14:28 the name for fear of the safety of this individual.

14:28 THE COURT: From who? I mean, he has already been sued by Konnech. Who else does he need to be protected from? From the individual that helped him -- that shared the information with him?

14:28 MR. AKERS: From those forces of the Chinese Communist Party that might be interested.

THE COURT: There are no Chinese in here doing anything. All we are talking about now is data that was not on a Chinese -- that individual's name that you gave to me was not

14:29 a typical -- or even appeared to be a name of a Chinese individual. Agreed?

MR. AKERS: Correct.

THE COURT: Right. So the information came from an individual who had either hacked into a Chinese computer. Or

14:29 he was lying and he had done the hacking. And he set it up over in the China computer so he could then retrieve it as though it was coming from China.

We don't know, do we?

MR. AKERS: I cannot recite to you how this was

14:29 acquired.

THE COURT: Well, I understand that, but I'm trying to find out where the security issue is. If this is a national security issue, I'm in it all the way as a federal judge. I have a need to know and there can't be any secrets. And I'm

14:29 sitting on them, waiting for hell to break loose somewhere out

14:29 there and then for them to say, Well, you know, the judge
withheld this information from whatever. I mean, don't you
think that if the FBI -- let me ask it this way: Did
Mr. Phillips tell the FBI that he has been sued by Konnech? Or
14:30 do you know?
MR. AKERS: Would you ask that question again?
THE COURT: Oh, I'm sorry. Did Mr. Phillips -- or has
Mr. Phillips or Ms. Engelburt -- Engelbrecht -- I'm sorry --
told the FBI that they have been sued about this and that they
14:30 need to be -- need to have the backing of the FBI to stand in
the position they are standing in?
MR. AKERS: Yes, we have.
THE COURT: They have told them that?
MR. AKERS: Yes.
14:30 THE COURT: You did that?
MR. AKERS: Yes.
THE COURT: And what was the response from the FBI?
MR. AKERS: I was told by a different office --
THE COURT: What do you mean "different office"? The
14:30 people you reported it to was one place. The response came
from a different place. Is that what you mean?
MR. AKERS: Yes.
THE COURT: Okay. Go ahead.
MR. AKERS: That they were not interested in the
14:30 protection of this information.

14:30 THE COURT: Or individual, for that matter. So you are going to release that name to counsel today.

MR. AKERS: Judge, before you order me to do that --

THE COURT: I have already ordered you to do it. There can be no secrets in this courtroom where it appears as though the problem associated with this case is the source, and your client, Mr. Phillips, has not appeared in court, has not filed an affidavit and apparently -- or Ms. Engelbrecht -- and apparently refuses to do so, saying that he received this from a particular individual.

All I have is a letter, which is an ex parte communication from you, giving me a name, which is really -- I don't have any need for any ex parte communication.

By the way, on that matter, gentlemen, neither of you, nobody on either side in this case, should ever call my case manager on the telephone again. Not for any reason. If you want to know the status of your case, you come down here or you go online and you figure it out.

If you want to communicate with her, you email her and copy the other side. That's the way it has to be done. Otherwise, you are entangling me in your communication. We don't talk by telephone. This isn't the way lawyers handle business.

I mean, what would have happened 50 years ago had that happened? It just didn't happen. No further calls to

14:32 this office about any matter. I mean, if you are looking for a date or an event that's coming up, that's fine. You can get that from the clerk. Nathan's office will give you that information, or somebody down there. But don't call my case
14:32 manager about anything because that's my case manager. She is an arm of the Court and she can't talk to you ex parte unless both counsel are on the line. And both of you should be on the telephone calling at the same time. Okay?

So, having said that, let me just find out. What
14:32 is it that your client expects you to do with this? What do they expect me to do with it?

MR. AKERS: Judge, this is an extraordinary thing that I have never asked of a judge ever. Before you further order me --

14:33 THE COURT: Okay.

MR. AKERS: I wanted to say it right.

THE COURT: Go ahead. That's fine.

MR. AKERS: I beg that you call the district attorney in --

14:33 THE COURT: I can't talk to them. They are not in this case. You know what? They may be obstructing justice by what they have done. We might find that out.

On the verge of this proceeding going to a hearing, suddenly the plaintiff gets arrested so he can't show
14:33 up in my court, and then there's -- according to the papers,

14:33 there is this extradition question going. Apparently, the judge there decided he wasn't going to hold him like he was a foreigner. He's an American citizen. And I would hate to think that just because he has a Chinese name, that that makes
14:34 him less of a citizen than anybody else in this courtroom.

MR. AKERS: Of course.

THE COURT: So the point is that he was released on a bond and to show up at a show cause hearing, which I suspect he will have lawyers to deal with that. But it has interfered
14:34 with the proceedings in this Court on what you and your client have described as a national security issue. That's top-of-the-line kind of problem. It's not, Somebody cut my yard and they won't stop cutting it and I want an injunction. That's not what this is. This is a very serious issue, either
14:34 because it is true or because it is a made-up, themed proceeding designed to simply produce some kind of popularity or publicity stunt. And I want to get to the bottom of it. That's all.

So I want to know, if anything, whether or not
14:34 Mr. Phillips is going to make an affidavit. If he's not, it really doesn't matter. I'm ordering you right now to give the name to him. I want him in the lawsuit. Whoever it is, I want him in the lawsuit. And I want all of them in the lawsuit, because it's a national security issue.

14:35 And if Mr. Yu -- is it Y-U?

14:35 1 MR. PAMPHILIS: Yes, Your Honor.
2 THE COURT: How do you pronounce it?
3 MR. PAMPHILIS: "You."
4 THE COURT: If Mr. Yu is violating federal law, I want
14:35 5 to know that. If Mr. Phillips and Ms. Engelbrecht is violating
6 federal law, I want to know that. If this man whose name you
7 have sent to me is violating federal law and interfering with
8 international affairs, I want to know that because I do not
9 want somebody in the United States interfering with Chinese
14:35 10 business and then laying it off on somebody else as having done
11 it. It just doesn't make sense to me. There's enough going on
12 in this world without us helping them. We shouldn't be
13 throwing gasoline on any of these fires.
14 So I'm ordering you to give it to them. Now, if
14:36 15 you want to call your client and talk to them about it, feel
16 free to do that. But you are going to do that before we leave
17 the courthouse today. All right?
18 You can't give it to me and then want me to do it
19 for you. You are going to do it. Okay, Counsel?
14:36 20 MR. AKERS: Well, my --
21 THE COURT: All right.
22 MR. AKERS: Judge, I'm not going to argue with you.
23 It's a -- the concern is over the --
24 THE COURT: I'm concerned about my own safety, and you
14:36 25 all should be concerned too. According to Mr. Yu, he's the one

14:36 that ran away from home with his family to try to protect himself, and now he has been arrested. That's according to the pleadings, I gather. Nobody else has had to hide.

MR. AKERS: That's not right at all.

14:36 THE COURT: Oh, it's not? Tell me about it.

MR. AKERS: Both Ms. Engelbrecht and Mr. Phillips have received death threats.

THE COURT: From?

MR. AKERS: They are anonymous, of course. She has

14:37 drones flying over her house.

THE COURT: Well, let me say it like this: If you are looking at somebody else's business, whether it is shown to you by some person that you don't want to tell the name of, or whether it's because you are just nosy -- not you personally --

14:37 or in somebody else's business, you should expect that if you are looking in somebody else's business, somebody is going to look for you. I mean, if you go break into the courthouse, into our records here in the court in this federal building, don't you think somebody in the FBI's office and other people

14:37 are going to be looking to see why you are doing this? That makes sense. I mean -- so what is your client -- your client has not, as I understand it -- although ordered, he has not provided the identity of any individuals or organizations involved in this case to the plaintiffs?

14:38 MR. AKERS: That's true.

14:38 1 THE COURT: And as far as I understand, whatever the
2 confidentiality disclosed -- let me see. Order to
3 confidentially disclose to Konnech how, when and by whom
4 Konnech's protected computers were accessed. That has not been
14:38 5 stated or that information has not been given?
6 MR. AKERS: It has not.
7 THE COURT: And what I believe I heard you say,
8 perhaps in papers, was that your client denies that they did
9 it. That's part of --
14:38 10 MR. AKERS: That's part of it. And there is
11 additional information that I would like to bring to the
12 Court's attention that calls into grave question the veracity
13 of the pleadings to begin with.
14 THE COURT: What pleadings? The plaintiff's
14:38 15 pleadings?
16 MR. AKERS: The plaintiff's pleadings.
17 THE COURT: How can you bring something to my
18 attention that is not evidentiary?
19 MR. AKERS: Well, it is evidentiary. We submitted it
14:38 20 in our response last night.
21 THE COURT: Let me get that response.
22 *(Pause)*
23 THE COURT: I have it here. I just need to put my
24 hands on it so I can follow you as you are telling me about it.
14:39 25 I believe that was Document Number 24,

14:39 1 defendants' motion to plaintiff's -- defendants' opposition to
2 plaintiff's motion for preliminary injunction?
3 MR. AKERS: Yes, sir.
4 THE COURT: Go ahead. Where are you pointing to?
14:39 5 MR. AKERS: The most significant matter is that we
6 have been accused of hacking and getting information that we
7 were not entitled to get when, two days before this lawsuit was
8 filed, Konnech issued on their website, and then as a press
9 release to various press interests, a document that is attached
14:39 10 called "The Truth about Konnech."
11 This very document has since been taken off of
12 their website, scrubbed, but significantly and importantly --
13 THE COURT: Pages 1 through 3 is what is attached?
14 MR. AKERS: Yes, sir.
14:40 15 THE COURT: Okay.
16 MR. AKERS: The accusation -- if you look at the
17 bottom portion of page 1 --
18 THE COURT: I'm looking.
19 MR. AKERS: "True the Vote claims to have downloaded
14:40 20 personal data on 1.8 million poll workers early in 2021 from an
21 unsecured Konnech server in Wuhan, China."
22 "Truth: Konnech thoroughly investigated True the
23 Vote's claims and found no evidence whatsoever of any breach of
24 our systems or Konnech data anywhere in the world."
14:40 25 We were accused of hacking. Two days before this

14:40 1 lawsuit was filed, they are saying they were not hacked.
2 Nothing happened in those two days.
3 THE COURT: I don't know that that's what that says.
4 In the face of your client's own admission, I don't know that
14:41 5 that is what is being said. I don't need to decide that issue
6 though.
7 MR. AKERS: We don't have admissions from my client
8 that says that they have improperly gotten into their
9 computers.
14:41 10 THE COURT: You know, if I walked out on the street
11 and some guy says, I have got three brand new suits in the
12 trunk of my car. I will let you have them for $100 apiece.
13 And I walk over and I look at them. And I said, Tell you what,
14 I will give you $75 apiece for them. He says, Fine. I give
14:41 15 him the money. Walk away with the three suits.
16 Am I a thief or not? What does the law say about
17 me buying stolen goods?
18 MR. AKERS: As it relates to computer data, the U.S.
19 Supreme Court has issued a case in 2021 called Van Buren versus
14:42 20 the United States which dramatically narrows what would be
21 considered hacking.
22 THE COURT: I didn't say anything about hacking. I'm
23 giving you an example of having access and taking data that
24 someone else has taken or come into and saying, Well, I didn't
14:42 25 do it. That's what the guy says: I didn't steal anything. I

14:42 1 just got these from the guy down the street who gave them to me
2 and I'm selling them.
3 And what I'm asking you is: Does it make sense
4 for me and my defense to be, I didn't hack into your computer
14:42 5 but I got the data anyway?
6 MR. AKERS: Well, we are talking about where the Ninth
7 Circuit has said that getting access to data that is otherwise
8 publicly available, that that cannot be theft per se.
9 THE COURT: But it ain't publicly available yet,
14:43 10 apparently.
11 MR. AKERS: It was not acquired -- Judge --
12 THE COURT: Somebody has got to swear, and you can't
13 do it.
14 MR. AKERS: No.
14:43 15 THE COURT: It's not public data if someone takes me
16 into a room and says, Don't tell anybody where you got this
17 from. I want to show you something.
18 That's not public data. That's not the public
19 domain, and the fact that a person who steals something, puts
14:43 20 it on the public domain, doesn't necessarily mean that other
21 people who come along and grab it are not going to be liable in
22 some respect. They might not have hacked it. They might not
23 have stolen it, but they have access to it. And there is some
24 liability as it relates to the person who did the hacking,
14:43 25 theoretically.

14:43 So all I asked was whether or not your client -- you are reading that as saying that your client has to hack into something, and that's not what it is that the order ordered. The order orders the disclosure of the persons from
14:44 whom this data was received, when and where and who it was. That's what this -- your client can say, I have no idea who they are. I never had access to anything. Or, I know who they are, and I won't tell you, whatever that circumstance might be.

So there has been no turning over at this point,
14:44 as I understand it?

MR. AKERS: Right. And we believe, Your Honor, that this ex parte order of yours was issued on the basis of this false information and ought to be revisited.

THE COURT: Well, I can't revisit it because I don't
14:44 have any evidence to the contrary. The way I can modify anything is to have the opposite come in here and swear under the pains and penalties of perjury of giving false testimony, that it ain't so, Ken. It ain't so.

So I understand that, that the answer is no, he
14:45 has not. And I gather that would also apply to Number 7. The Court ordered the identity of all persons and entities in defendants' knowledge who have had possession, custody or control.

We don't even know the FBI agent's name, do we?

14:45 MR. AKERS: What?

14:45 1 THE COURT: We don't know the FBI agent's name that
2 your client turned this data over to?
3 MR. AKERS: I don't know the name, but they do.
4 THE COURT: That's the name that we want. That's the
14:45 5 name that they have asked for. They want to know who the FBI
6 agent is. None of us are above the law. We all have to
7 comply, and you can't turn something over to a federal agency
8 and say, I'm not going to tell you who I talked to, especially
9 when the allegation is that you have it, or had it, and either
14:45 10 you disposed of it or you destroyed your computers. You have
11 done whatever you need to do to hide your position. But based
12 on what I'm hearing here, Mr. Phillips is still making
13 representations in the public domain about what he saw and
14 whatever it is that he had, or has. There's nothing to
14:46 15 indicate that he doesn't have that data right now on his own
16 hard drive.
17 MR. BREWER: Your Honor?
18 THE COURT: Yes, sir? I'm sorry. What's your name?
19 MR. BREWER: Mark Brewer.
14:46 20 Your Honor, if I can just answer that last
21 question, the problem is that if you look at the complaint and
22 you look at the TRO --
23 THE COURT: I'm not going to argue the complaint or
24 the TRO. I want to know whether or not there has been
14:46 25 compliance, and I want to know from your client whether or not

14:46 there's anything that's in the complaint that's in error. And
I can't take that from you. I mean, you meaning the lawyers.
MR. BREWER: I'm just trying to answer your question.
And the answer is that my clients -- our clients do not have
14:47 the data so they don't have anything --
THE COURT: How do you know?
MR. BREWER: Because, first of all, the allegation --
THE COURT: How do you know they don't have the data?
MR. BREWER: We don't even know what data we are
14:47 talking about. That's the point.
(Simultaneous crosstalk)
THE COURT: I'm sorry. One at a time.
How do you know your client doesn't have the data
that they are now saying that Konnech has sent to, quote,
14:47 China?
MR. BREWER: Because Konnech said so. Konnech said
that nobody got their data.
THE COURT: No. That's not the point.
MR. BREWER: Well, how --
14:47 THE COURT: Because your client showed up in a hotel
room and said he saw it, didn't he? That's in your pleadings.
MR. BREWER: Your Honor, seeing it and possessing it
are two different things.
THE COURT: Well, it may not be and it may be.
14:47 MR. BREWER: It is interesting to point out that this

14:47 1 data we're talking about, nowhere is it said to be Konnech.
2 They are only allegations.
3 THE COURT: Let me ask you this: How could your
4 client turn anything over to the FBI that he and she did not
14:48 5 have? And I'm not asking you to answer that. I'm posing that
6 as a question. Where your client is going to claim that
7 something has been turned over to the FBI and said, I don't
8 have it, is it because he turned it over to the FBI? Then who
9 in the FBI has it? I need to know, and I need to know whether
14:48 10 or not it is this national security issue. I need to know
11 whether or not the Department of Justice is involved in this in
12 some way. They have got thousands of lawyers all over this
13 country. Surely somebody could have contacted the Court by
14 now.
14:48 15 So I don't think the answer is, Well, there is
16 something wrong with their pleadings. I think the answer is,
17 We are not having a hearing because his client has been
18 arrested by people who are intent on flipping the script. He
19 has rights to the documentation. That's undisputed. He has
14:49 20 rights to the data that he had. And the allegation that the
21 data was somehow sent to China, that's not in his pleadings.
22 His pleadings are, We sent different data. So there is no
23 allegation in his pleading that he sent the data that he
24 received from clerks and county officials or whoever in the
14:49 25 United States.

14:49 The pleadings had to do with sending some different kind of data or something made up to test, or whatever. Whatever the circumstances are, certainly we can find out.

14:49 But for your client to say, I turned it over to the FBI, we need to know what was turned over. Surely the FBI would want to know his source.

MR. BREWER: Your Honor, could I offer into evidence, please, the attachments to our response yesterday?

14:50 THE COURT: Not as evidence.

MR. BREWER: Excuse me?

THE COURT: Not as evidence.

MR. BREWER: I would offer, Your Honor, as an admission against interest in the hearsay rule, it's the

14:50 defendants' -- plaintiff's own statement. The plaintiff's own statement said their computers were never hacked. They did a thorough investigation. There was no hacking, and their affidavit says the same thing. Mr. Yu's affidavit says the same thing. So the whole premise on which the suit and the TRO

14:50 were brought doesn't stand.

According to the statute, you can't have a hacking by saying, I claimed to have the data. That does not constitute a breach of the computer, and the plaintiff says --

THE COURT: But your client is all over the Internet

14:50 talking about what he has seen and what it is that Konnech has.

14:50 1 MR. BREWER: And none of it says Konnech. None of it
2 is Konnech's information.
3 THE COURT: It says that it was secured inferentially
4 from Konnech, as I understand it, and it says that this came
14:51 5 off -- well, where would they get the data from? Why don't
6 they just come in and say, Somebody stole the data from
7 somebody else, not Konnech? I mean, that would be easy, and I
8 would dismiss Konnech's suit. I would be able to dismiss this
9 suit because his suit is about data that he had on his hard
14:51 10 drive that he secured from Harris County, Texas, from
11 Los Angeles County, from Michigan somewhere County, whatever
12 those counties are. And he got it under circumstances that
13 require him to secure it.
14 When and if that data by, let's say, Phillips is
14:51 15 being released or put into the space, airways, wherever -- when
16 it is put out there in the Internet, it's coming from
17 somewhere. Whether they hacked into Harris County, "they"
18 meaning whoever those folk are, or they hacked into Los Angeles
19 County, whether they did that or not, that's fine. That Harris
14:52 20 County and Los Angeles's problem.
21 MR. BREWER: The problem, Your Honor, is that none of
22 us really know what we are talking about. His client said they
23 don't even have computers in China. The district attorney's
24 own press release of Tuesday says, We found as part of our
14:52 25 investigation that they are maintaining their servers --

14:52 THE COURT: I don't want to hear -- listen, I really don't care what the district attorney is saying. That's not my case. They will win it or lose it based on their evidence.

MR. BREWER: And they don't have any evidence. That's
14:52 what I'm saying, Your Honor.

THE COURT: Then they shouldn't have arrested him.

MR. BREWER: I'm saying the plaintiff doesn't have any evidence.

THE COURT: If the plaintiff doesn't have any
14:52 evidence, then they shouldn't have arrested him.

MR. BREWER: Then they should not have?

(Simultaneous crosstalk)

THE COURT: But apparently your client has something that was turned over to them, and it's on that basis, in part,
14:52 that he was arrested. Somebody turned something over to the district attorney in Los Angeles, true or false, and on that basis, Los Angeles decides to arrest him.

MR. BREWER: My understanding was it was a grand jury indictment. That's what the press release says.

14:53 THE COURT: Well, you know, somebody had to go before the grand jury, didn't they? The DA or some witnesses had to go before the grand jury and convince them that a crime had been committed by the plaintiff. And in order for them to do that, they would have to have secured that information from
14:53 someone else.

14:53 1 MR. BREWER: Sure.
2 THE COURT: That's all I'm saying.
3 I have a couple more questions. The question is:
4 Do you oppose -- are you opposing the plaintiff's request that
14:53 5 the Court consider the documents and evidence on file and
6 proceed to preliminary injunction?
7 MR. BREWER: Yes, we are, Your Honor.
8 THE COURT: I thought I got word that you wanted me to
9 go ahead and proceed. Didn't you send a letter -- no. Didn't
14:53 10 you send a letter, Counsel, indicating that you wanted the
11 Court to proceed on the documents?
12 MR. AKERS: No.
13 THE COURT: You did not?
14 You did not either?
14:54 15 MR. BREWER: No, sir. We asked the Court to vacate
16 the TRO. That's in our response yesterday.
17 THE COURT: Well, I'm talking about all this ex parte
18 communication. We have gotten letters from you all, haven't
19 we? Was that your letter?
14:54 20 MR. BREWER: But they don't say that.
21 THE COURT: Was that your letter saying that you want
22 the Court to proceed?
23 MR. BREWER: No, Your Honor.
24 To be fair, I don't think either side said that,
14:54 25 Your Honor.

14:54 THE COURT: Maybe I misread it. I apologize. Apparently, I misread the letter or the communication.

There was a motion for show cause having to do with the motion for contempt. How am I to proceed on that? Your clients are going to have to be here.

MR. BREWER: Okay.

THE COURT: So I can enter an order ordering them to be here. We can have a hearing and decide at that point whether or not -- maybe plaintiff has got this all wrong.

14:55 MR. BREWER: Your Honor, respectfully, we don't need a show cause order. If you want to set a hearing, an evidentiary hearing --

THE COURT: They need a show cause hearing. I need a show cause hearing. When they made allegations that someone has violated my order, it is incumbent upon the Court to move to bring the parties together to figure out if there's merit to what the claim is, what the motion is.

MR. BREWER: Just to be clear, Your Honor, at no time were we ever asked to bring any witnesses today. I just wanted you to know, we are not -- we would have brought them, but we didn't know that that was even an issue. We thought we were here on the TRO.

THE COURT: Why didn't you bring your clients and disprove their case then? They would have been able to get on the witness stand and say, It ain't so, Judge. It ain't so.

14:55 1 MR. BREWER: Well, I guess because, Your Honor, it's
2 not our burden, and they said to the Court in the letter you
3 referred to that they don't have witnesses and wanted to pass
4 the hearing.
14:56 5 So we understood this would not be an evidentiary
6 hearing, and we understood that the purpose of this hearing
7 would be the vacatur of the TRO because it's expired as a
8 matter of time. The extension granted -- extended it until
9 either you had this hearing or the parties agree. We agreed to
14:56 10 everything except turning over the name. That wasn't good
11 enough, so we didn't have an agreement, and so that's why we
12 are here today.
13 MR. PAMPHILIS: Your Honor, he has misstated what the
14 agreement on the extension of the TRO is. Explicitly what it
14:56 15 is -- and I know he wasn't involved and may not be as familiar
16 with it as Mr. Akers -- it was either the parties agree to a
17 preliminary injunction and it's signed -- it's submitted and
18 signed by the Court, or the Court rules on the motion for
19 preliminary injunction, not just has a hearing on it. But, in
14:56 20 other words, the TRO stays in effect. And the fact that they
21 filed --
22 MR. BREWER: I won't argue with that.
23 MR. PAMPHILIS: The fact that they filed this response
24 last night with a motion -- it's not titled a motion to
14:57 25 dissolve the TRO. There are like a few words in there that

14:57 1 state that. I think that has been waived. They agreed to
2 extend this based on that agreement or proceeding.
3 If you look at Rule 65, you'll see if you want to
4 dissolve a TRO -- and I don't think they still can -- you have
14:57 5 to give at least two days' notice. So I don't know why they
6 thought they could do that here today without giving us any
7 notice that they intended to do it.
8 I will say, if I could briefly respond to the
9 Truth about Konnech document, Your Honor, because I think it's
14:57 10 important. They keep saying that somehow we hid something from
11 the Court when we came down to get the TRO, and that is not
12 true. And I do take great offense to that. Obviously, they
13 weren't here to hear it, but our affidavit is clear. Right?
14 We specifically cited as a basis for the TRO the defendants'
14:58 15 statements. We attached those actual statements. The Court
16 had the transcripts of those statements on which to base the
17 TRO.
18 At no point did Mr. Yu proclaim that he knew that
19 they actually took it, and the fact that they -- the point of
14:58 20 the Truth about Konnech document, if you look at the first
21 paragraph of that document, you will see there is a reference
22 to these defendants. They are the ones who sparked this
23 document because they were out there spewing all of this
24 misinformation about my client. Customers were getting
14:58 25 concerned, and the client, Konnech, wanted a place where its

14:58 1 customers could go and get answers to the questions they might
2 have.
3 And so, on their main argument, which is that the
4 Truth about Konnech document says we looked into it and we
14:58 5 can't find a data breach. That doesn't mean that it didn't
6 happen. It doesn't mean that if I left my key in the front
7 door and some careful criminal comes along, opens the door,
8 goes inside, takes picture of things, but doesn't take anything
9 that I can tell is missing, that there wasn't breaking and
14:59 10 entering.
11 The fact that the person who was victimized can't
12 prove from his own he wasn't an eyewitness to it doesn't mean
13 that it didn't happen. They have proven it with their own
14 words. They have proven it in their response to the motion for
14:59 15 preliminary injunction. I think the Court has all the evidence
16 it needs to grant that motion.
17 THE COURT: All right. I will consider that.
18 Anything else from you or from the defense?
19 MR. PAMPHILIS: Your Honor, I would just ask, given
14:59 20 Your Honor's orders, that they disclose the information to us
21 in paragraph 5 in particular; that that be done on the record
22 here before we leave this courtroom.
23 THE COURT: Paragraph 5 has to do with -- you are
24 talking about the name, the one name? Is that correct?
14:59 25 MR. PAMPHILIS: Yes, Your Honor.

14:59 1 THE COURT: Oh, okay. All right. I have ordered them
2 to do that, and I indicated that's to be done before we leave
3 the courtroom.
4 MR. AKERS: May I ask the Court that we do that under
15:00 5 a protective order such that --
6 THE COURT: I don't know what I'm protecting and who
7 I'm protecting.
8 MR. AKERS: The identity of this person who --
9 THE COURT: Well, why should that person be protected
15:00 10 if your client is claiming that he is the one from whom he
11 received this data?
12 MR. AKERS: Because we fear for his safety.
13 THE COURT: Why wouldn't he come in here and tell me
14 that? It's easier said.
15:00 15 MR. PAMPHILIS: Your Honor, we object to a protective
16 order.
17 THE COURT: I'm not going to enter a protective order
18 to protect anybody. This is a matter of serious concern. Let
19 me tell you why. First of all, if anybody has a million or
15:00 20 200,000 individual names, their home addresses, telephone
21 numbers, Social Security numbers, I can read -- I will see that
22 in the newspaper at some point because that data can be sold.
23 And the next thing you know, every one of these person's credit
24 has been wrecked at the very least. It would be wrecked
15:01 25 because there would be credit cards all over the place in

15:01 1 people's names. Their credit would be ruined, and there would
2 be a reason why some people should be afraid for their safety
3 and security. And I'm not concerned about this man's safety or
4 security. So I'm not going to do it. You are going to do it
15:01 5 because you had no right to submit this to me under seal.
6 There is no affidavit or information giving me
7 anything that says that this man is worthy of protection or
8 that Mr. Phillips or Ms. Engelbrecht is worthy of any
9 protection or should be concerned about anything.
15:02 10 After all, the plaintiff is in jail, or maybe
11 he's out now. I don't know. If he's afraid of his source,
12 then that's something that he has to deal with because, I mean,
13 you have to consider the company you keep.
14 All right. Are you going to give it to him now?
15:02 15 Or are you going to give it to him now?
16 MR. AKERS: May I have a minute to call my client? I
17 intend to comply with the Court's order, but I prefer to tell
18 him.
19 THE COURT: You can't leave the courtroom. Certainly,
15:02 20 you can step off to the side and call your client, but you
21 can't leave the courtroom. I don't want to play the game that
22 seems to be in play here. I'm on the sideline. I'm calling
23 plays, not in the game.
24 MR. AKERS: Judge, among my fears, as a guy who has
15:03 25 been in the Bar for a few years, is that you would think that I

15:03 1 am trying to play a game.
2 THE COURT: Not you. I'm thinking you may be played.
3 MR. AKERS: I think I'm am a better judge of character
4 than that.
15:03 5 THE COURT: You would have thought that of the
6 President or a lot of lawyers who have been disbarred or who
7 are being now sanctioned. I have no reason to believe those
8 weren't good lawyers, but they were played.
9 MR. AKERS: For what it's worth, I'm confident that I
15:03 10 have not been played and that the work that they have done is
11 worthy.
12 THE COURT: The work that who has done?
13 MR. AKERS: The work that my client True the Vote in
14 order to accomplish election integrity overall --
15:04 15 THE COURT: I don't really have any confidence in any
16 of these folk who claim they are doing that. We did pretty
17 good until about three or four years ago, five or six years
18 ago. The only people that I know of who have done something
19 wrong are people who have been either caught or who have been
15:04 20 charged and mistreated.
21 Do errors get made? Yeah. Do people cheat?
22 Perhaps. But all of this fuss and hustle and bustle about the
23 integrity of a process and the way you fix that process is you
24 tear it apart? That's not integrity. That's destruction.
15:04 25 So I want it done now. You can get on the phone

15:04 1 and call him, and I'm going to sit right here until I know it's
2 done.
3 MR. AKERS: I have the name.
4 THE COURT: I'm sorry?
15:05 5 MR. AKERS: I said I have the name.
6 THE COURT: Well, then deliver it.
7 MR. AKERS: I need to look it up.
8 THE COURT: And if there are any other names --
9 *(Simultaneous crosstalk)*
15:05 10 THE COURT: Let me just finish. If there are any
11 other names associated with this Dallas group, those names are
12 to be turned over. And I understand that I'm hearing you say
13 there is only one name that you have.
14 *(Mr. Akers hands Mr. Pamphilis a piece of paper)*
15:06 15 MR. AKERS: For the record, I just handed him the
16 name.
17 THE COURT: All right.
18 MR. PAMPHILIS: Your Honor, I would prefer that the
19 name be read by him into the record so that there is no dispute
15:06 20 about the name that I was given.
21 THE COURT: I don't think I have my copy here.
22 MR. AKERS: I have mine electronically.
23 THE COURT: Say what?
24 MR. AKERS: I have a copy of my letter electronically.
15:06 25 THE COURT: You need to read it for the record then.

15:06 Is that the name?
Read it for the record so the record is clear.
MR. AKERS: His name is Mike Hasson.
THE COURT: Is that the name you have?
15:07 MR. PAMPHILIS: Is it Hasson or Casson?
(Mr. Akers nods his head)
MR. PAMPHILIS: Yeah. Hasson.
THE COURT: Anything else, gentlemen?
MR. PAMPHILIS: Your Honor, we had also asked for the
15:07 information that supports 6 and 7 of the TRO.
THE COURT: And I think that's a part of your motion,
and so what you will need to do is prepare an order indicating
that these matters have not been delivered and, accordingly,
you are seeking -- I think you did that in the form of a
15:07 motion. Did you not?
MR. PAMPHILIS: Yes, Your Honor.
THE COURT: And that's your show cause request, right?
MR. PAMPHILIS: Yes, Your Honor.
THE COURT: So when do you think your client is going
15:07 to be available? I don't know that he would need to be
available, but the point is that I can enter an order on that,
and I will, to show cause why these matters have not been
complied with. And the question is whether or not you want me
to proceed forward on the preliminary injunction or do you want
15:08 to hold off on it?

15:08 MR. PAMPHILIS: I would be happy to proceed forward on the preliminary injunction.

THE COURT: On the papers?

MR. PAMPHILIS: Yes, Your Honor.

15:08 THE COURT: On the papers themselves?

MR. PAMPHILIS: And if he wants to do it on the papers, we would just ask --

THE COURT: No. I'm asking you, because it's your motion.

15:08 MR. PAMPHILIS: I would like to proceed. I would like the opportunity to reply to what we got last night, if it would be helpful to the Court, because we just got it, you know, less than 24 hours before the hearing. And if you are going to rule on the papers, I think it would be nice for you to have the

15:08 complete record so that we respond --

THE COURT: I am not choosing to do either. I'm telling you as counsel for the plaintiff, it's your choice. I don't decide which way I should go. I decide whether or not -- I simply accept your determination, let's say.

15:09 MR. PAMPHILIS: I understand. I'm sorry for the confusion. We would like to proceed on the papers.

THE COURT: Okay. That's what I wanted to know. So I will get you a response. And I should get that when?

MR. PAMPHILIS: Would Tuesday be acceptable, Your

15:09 Honor?

15:09 THE COURT: It's up to you.

MR. PAMPHILIS: Tuesday would give us enough time --

THE COURT: I think Monday is a holiday anyway so we would -- it doesn't prevent you from filing documents, but 15:09 Monday is a holiday, so Tuesday, or whatever day is appropriate, that's fine.

MR. PAMPHILIS: We will have it by Tuesday to you, Your Honor.

THE COURT: All right. Anything else, gentlemen?

15:09 MR. AKERS: No, sir.

MR. PAMPHILIS: No, Your Honor.

MR. BREWER: Your Honor?

THE COURT: Yes, sir?

MR. BREWER: Could we have an opportunity to respond 15:09 to any additional evidence that they are going to put in?

THE COURT: I don't expect them to be putting evidence in, but they might. I don't know if they will have a sworn statement or whether they are simply going to respond to you. If it is not a sworn statement, I'm not going to be taking a 15:10 reply. I'm not going to be waiting on a reply. That doesn't mean you can't file it. It just simply means that I will not be giving you a date by which you are to reply.

MR. PAMPHILIS: I can represent we are not putting a sworn statement in with our reply. I fully appreciate that's 15:10 not how replies are done. I'm going to respond to what they

15:10 submitted.

THE COURT: All right. I will not stand in the way of lawyers filing responses or replies. He's filing a response. You would be filing a reply to the response, and I'm saying

15:10 that I will not delay considering this matter waiting on a reply. If you want to file it, that's fine.

MR. AKERS: Understood.

THE COURT: Thank you, gentlemen.

MR. PAMPHILIS: Thank you, Your Honor.

(Court adjourned at 3:10 PM)

* * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause.

Date: October 8, 2022

/s/ Mayra Malone

Mayra Malone, CSR, RMR, CRR
Official Court Reporter

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MR. PAMPHILIS: [61]
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