

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELM 3DS INNOVATIONS, LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

C.A. No. 14-cv-1430-LPS

JURY TRIAL DEMANDED

**EMERGENCY MOTION REGARDING RON EPSTEIN'S DEPOSITION
TO START ON OCTOBER 4, 2021**

Plaintiff Elm 3DS Innovations, LLC respectfully requests that the Court order that the deposition of Ron Epstein proceed on Monday, October 4 as contemplated by this Court's order on September 24, 2021. As Your Honor knows, Samsung requested four days for Ron Epstein's deposition, split into two separate two-day blocks. Elm opposed Samsung's request to split Mr. Epstein's deposition into non-consecutive days. In briefing that issue to the Court, Samsung confirmed that it was prepared to proceed with the deposition on October 4 as the parties had previously agreed:

In light of the asymmetry in protections the parties have against potential discovery abuse, ***Samsung is willing to proceed with a consecutive four-day deposition of Epstein beginning October 4***

(D.I. 433 at 11 (emphasis added).)

A week ago, on September 24, 2021, this Court denied Samsung's request that the deposition occur on non-consecutive days. (D.I. 434.) Given this Court's order, Elm continued preparing Mr. Epstein for the deposition that was scheduled to occur a week later, expending significant time and resources.

At 7:38 p.m. ET on Thursday night before Mr. Epstein's deposition was to begin on Monday, Samsung's counsel attempted to unilaterally postpone the deposition. (*See* Ex. 1 at 3.)

Samsung claimed that it needed to move the deposition to afford it time to review any additional documents the Court orders Elm to produce from what it submitted *in camera* earlier this week. (*Id.*) To alleviate that concern, Elm's counsel offered to proceed with three of the four days of Mr. Epstein's deposition on Monday, October 4 as planned but reserve the fourth day for a later, mutually convenient date in the event it is necessary based on the Court's ruling related to the *in camera* documents. (*Id.* at 1.) The next morning, on October 1, Samsung's counsel refused that offer, claiming that the deposition could not proceed because Samsung never agreed to proceed on October 4 despite its statement to the Court otherwise.

Both Mr. Epstein and Elm's counsel have now spent significant time preparing for the deposition and have blocked off nearly an entire week for this deposition. Allowing Samsung to delay this long-planned deposition will burden both the witness and Elm's counsel who all have other significant time commitments that make finding nearly a week for a deposition difficult. Therefore, Elm respectfully requests that the Court issue an order requiring Samsung to depose Mr. Epstein beginning on October 4 for four consecutive days as previously planned and ordered. Elm is available for an emergency teleconference at the Court's convenience today if necessary.

October 1, 2021

Respectfully submitted,

/s/ Brian E. Farnan

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