

**Julian Marcus Raven**

v.

**Kim Sajet & Richard Kurin**

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**Docket # 1:17-cv-01240-TNM  
Hon. Judge McFadden**

**PLAINTIFF’S MOTION FOR ADVERSE INFERENCE AGAINST DEFENDANT  
SAJET AND THE SMITHSONIAN INSTITUTION FOR SPOILIATION OF EVIDENCE**

To the honorable Judge McFadden, Plaintiff ‘pro se’ Julian Raven motions the Court for sanctions in the form of an ‘Adverse inference’ ruling to be imposed upon Defendant Sajet for the spoliation of specific evidence relating to the instant case.

Key evidence regarding Defendant Sajet’s personal anti-Trump bias and animus was contained in the tweets Def. Sajet posted and did not post to the official Smithsonian Institution’s National Portrait Gallery Director’s twitter feed. The Kim Sajet/@NPGDirector twitter page was once the property of the Smithsonian Institution. The twitter page was named @NPGDirector, had the official Smithsonian website link [npg.si.edu](http://npg.si.edu) and the official Smithsonian Institutions legal copyright disclaimer (<https://www.si.edu/termsfuse/>) which stated: “The Smithsonian is the owner of the compilation of content that is posted on the SI Websites, which consists of text, images, audio, video, databases, design, codes and software (“Content”)...”

The tweets in question, which have been cited in Plaintiff’s amended complaint as evidence of anti-Trump bias and animus since the first filing back in December of 2016 were key examples of Def. Sajet’s anti-Trump hostility.

**OBLIGATION TO PRESERVE EVIDENCE**

These repeated references by Plaintiff at the outset of this case, to the evidentiary tweets by Defendant Sajet were sufficient notice to ensure that: “(1) the party having control over the evidence had an obligation to preserve it when it was destroyed or altered” and ““It is well-established that “[a] party has a duty to preserve potentially relevant evidence . . . once [it] anticipates litigation.” Zhi Chen v. District of Columbia, 839 F. Supp. 2d 7, 12 (D.D.C. 2011) (quoting D’Onofrio v. SFX Sports Group, Inc., 2010 WL 3324964, at \*5 (D.D.C. Aug. 24, 2010)) (internal quotation marks omitted) (omission in original).

An example of the tweet made in Defendant Sajet’s official capacity was made on January the 21<sup>st</sup>, 2017, the day after the inauguration of President Trump. Defendant Sajet attended the anti-Trump protest march called ‘Women’s March.’ and tweeted a smiling photo of herself at the anti-Trump protest with the words “Loved #WomensMarchOnWashington”. At said protest in Washington D.C., singer Madonna said she had “thought a lot about blowing up the White House”, the day after the inauguration of President Trump, Ashley Judd said that “Hitler’s moustache had been exchanged for a yellow toupe”, while Michael Moore, Gloria Steinum and organizer Linda Sarsour ranted and raved against the newly inaugurated President. The Director Of the Smithsonian National Portrait Gallery attended the protest and officially tweeted to @NPGDirector that she loved the protest!

Since this lawsuit was filed and a Hatch Act investigation by the U.S. Office of Special Counsel was opened into Defendant Sajet’s conduct, the once official Smithsonian property has been ‘given to’ or ‘acquired by’ Kim Sajet. The Hatch Act investigation documented said findings, but concluded that since Women’s March is a ‘social welfare’ organization, Defendant Sajet did not violate the Hatch Act! But they did conclude that Def. had tweeted the tweets except by then the account had been changed from @NPGDirector to @KimSajet and it now states: “All opinions are my own” and now links to [www.kimsajet.com](http://www.kimsajet.com)!

Two of the incriminating tweets have also since been completely deleted. On January 20<sup>th</sup>, 2017, the day of the inauguration of the President of the United States of America, Defendant Sajet re-tweeted an anti-Trump article from the New York Times “A Republic, if you can keep it”. And at the Women’s March protest the next day the tweet involving photos of portraits with the hashtag #portraits obviously showing that Defendant Sajet was acting in her official capacity as the National Portrait Gallery Director. (Please see attached tweets.)

### **CULPABLE STATE OF MIND REQUIREMENT**

“In *Zhi Chen*, the requirement of a culpable state of mind was satisfied where a hotel, much like the circumstances here, allowed the foreseeable overwriting of security footage that would have captured the disputed events on video. 839 F. Supp. 2d at 13-14. The court applied the doctrine of *res ipsa loquitur* because the destruction of the evidence could not have occurred absent the fault of the party in control of the evidence. *Id.* The court explained that the hotel could have either halted the automatic overwriting of the disc or made a copy. *Id.* at 14. Although only ordinary negligence is required for an adverse inference, the court found that the hotel was at least grossly negligent. *Id.*” **State of S. Carolina V. USA and Eric Holder, JR. Case No. 1:12-cv-203 (CKK, BMK, JDB)**

Clearly Def. Sajet and others knew that Def. tweets would incriminate Def. Sajet and corroborate Plaintiff’s allegations of anti Trump bias/animus so it made sense to do everything ‘they’ could to protect Def. Sajet from lawful prosecution. The culpable state of mind is clearly satisfied here.

### **FACT FINDER COULD CONCLUDE LOST EVIDENCE SUPPORTED CLAIMS**

It is clear that a reasonable fact finder could conclude that the loss of evidence, now not available via subpoena, would have supported Plaintiff’s claims of anti-Trump bias/animus which is a major part of the present action against Def. Sajet et al.

## **ARGUMENT AND CITATION TO AUTHORITY**

“Spoliation refers to the destruction, failure to preserve, or significant alteration of evidence that is necessary to pending or contemplated litigation.” *Bridgestone/Firestone N. Am. Tire, LLC v. Campbell Nissan N. Am.*, 258 Ga. App. 767, 769, 574 S.E.2d 923, 926 (2002). The party bringing forth a spoliation allegation has the initial burden to produce evidence of spoliation. See *Flores v. Exprezit! Stores 98-Georgia LLC*, 314 Ga. App. 570, 574, 724 S.E.2d 870, 873 (2012). Proof of spoliation raises a rebuttable presumption against the spoliator that the evidence favored the spoliator’s opponent. *R & R Insulation Servs., Inc. v. Royal Indemnity Co.*, 307 Ga. App. 419, 436, 705 S.E.2d 223, 239 (2010). There is no doubt that Defendant Sajet and the Smithsonian Institution spoliated the twitter feed evidence.

### **DEFENDANTS SHOULD BE SANCTIONED FOR SPOILIATION OF EVIDENCE**

“It is well-established that “[a] party has a duty to preserve potentially relevant evidence . . . once [it] anticipates litigation.” *Zhi Chen v. District of Columbia*, 839 F. Supp. 2d 7, 12 (D.D.C. 2011) (quoting *D’Onofrio v. SFX Sports Group, Inc.*, 2010 WL 3324964, at \*5 (D.D.C. Aug. 24, 2010)) (internal quotation marks omitted) (omission in original). “[A] district court may impose issue-related sanctions,’ such as an adverse inference instruction, ‘whenever a preponderance of the evidence establishes that a party’s misconduct has tainted the evidentiary resolution of the issue.’” *Id.* (quoting *Shepherd v. Am. Broadcasting Cos.*, 62 F.3d 1469, 1478 (D.C. Cir. 1995)) (alteration in original). To obtain an adverse inference due to the opposing party’s failure to preserve evidence, the requesting party must show that: (1) the party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a “culpable state of mind”; and (3) the evidence that was destroyed or altered was “relevant” to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable fact finder could conclude that the lost evidence would have supported the claims or defense of the party that sought it. *Id.* at 13 (quoting *Mazloun v. D.C. Metro. Police Dep’t*, 530 F. Supp. 2d 282, 291 (D.D.C.

2008)). The “culpable state of mind” requirement is met by a showing of negligence. Zhi Chen, 839 F. Supp. 2d at 13; see also Mazloum, 530 F. Supp. 2d at 292-93.” **State of S. Carolina V. USA and Eric Holder, JR. Case No. 1:12-cv-203 (CKK, BMK, JDB)**

“Importantly, a finding of bad faith or malice is not required before a trial court may sanction a party for spoliation. See *id*; Wal-Mart Stores, Inc., 290 Ga. App. at 546, 659 S.E.2d at 909. The trial court has wide discretion in resolving spoliation issues, and the trial court’s ruling will not be overturned absent an abuse of discretion. *Kitchens v. Brusman*, 303 Ga. App. 703, 705, 694 S.E.2d 667, 669 (2010) ; *Bouve & Mohr, LLC*, 274 Ga. App. at 762, 618 Ga. App. at 654; *Riches to Rags, Inc. v. McAlexander & Assoc.*, 249 Ga. App. 649, 652, 549 S.E.2d 474, 476 (2001). Factors that Georgia courts consider when fashioning an appropriate spoliation remedy, include, but are not limited to the following:

- (1) whether the [party seeking sanctions] was prejudiced as a result of the destruction of evidence;
- (2) whether the prejudice could be cured;
- (3) the practical importance of the evidence;
- (4) whether the [party who destroyed the evidence] acted in good or bad faith; and
- (5) potential for abuse.

*R.A. Siegel Co.*, 246 Ga. App. at 180, 539 S.E.2d at 877 (quoting *Chapman v. Auto Owners Ins. Co.*, 220 Ga. App. 539, 542, 469 S.E.2d 783, 785 (1996)) (brackets in original) (internal citations omitted). An analysis of each of these factors leads to the conclusion that sanctions are necessary to lessen the undue prejudice suffered by Plaintiff, punish Defendants, and deter other trucking companies from similar conduct.” **Spencer v. Roto-Rooter cv-14A52248- GA**

**THIS COURT SHOULD IMPOSE AN ADVERSE INTERFERENCE AGAINST  
DEFENDANT SAJET**

“[I]t is settled beyond all question that at common law the destruction, alteration, or failure to preserve evidence in pending or reasonably foreseeable litigation warrants the finder of fact inferring that the destroyed evidence would have been favorable to the opposing party.” Jones v. Hawley, 255 F.R.D. 51, 52-53 (D.D.C. 2009) (quoting Ashford v. E. Coast Express Eviction, 2008 WL 4517177, at \*2 (D.D.C. Oct. 8, 2008)) (internal quotation marks omitted); see also Gerlich v. U.S. Dep’t of Justice, 828 F. Supp. 2d 284, 297 (D.D.C. 2011) (recognizing an “evidentiary presumption that the destroyed documents contained favorable evidence for the party prejudiced by their destruction” (quoting Talavera v. Shah, 638 F.3d 303, 311 (D.C. Cir. 2011)) (internal quotation marks omitted)); Zhi Chen, 839 F. Supp. 2d at 16 (permitting jury to “infer that the evidence would have been unfavorable to the defendant” where defendant allowed security footage to be foreseeably overwritten); Rice v. United States, 917 F. Supp. 17, 17 Case 1:12-cv-00203-CKK-BMK-JDB Document 169 Filed 08/15/12 Page 9 of 13 -10- (D.D.C. 1996) (granting adverse inference where defendant consumed entire sample of tainted blood during testing rather than preserving some of the sample for likely litigation).” **State of S. Carolina V. USA and Eric Holder, JR. Case No. 1:12-cv-203 (CKK, BMK, JDB)**

**DEFENDANTS’ MOTION TO DISMISS SHOULD BE DENIED TO ALLOW FOR  
DISCOVERY OF CONSPIRACY TO SPOLIATE EVIDENCE**

Defendant’s Motion to Dismiss should be denied to allow for discovery of who, when and how this spoliation of evidence transpired. The twitter feed was an official ‘website’ belonging to the Smithsonian Institution, being the property of the United States, being property of the People, the beneficiaries of James Smithson.

1. Who authorized the transfer of title of the property from belonging to the Smithsonian Institution to then belonging to a private individual and non-U.S. Citizen?
2. Someone must have agreed with or directed Def. Sajat to change the ownership legal property claims, knowing that they prejudiced Def. Sajat in this legal action and also the Special Counsel's investigation.
3. If Def. Sajat has changed the ownership and title herself without permission from the Smithsonian Institution then it is theft of property once legally belonging to the Smithsonian Institution.

**Smithsonian Institution Standards of Conduct, Directive 103:**

“15. USE OF SMITHSONIAN PROPERTY (a) Prohibition on Private Uses Employees shall not directly or indirectly make use of or permit the use of Smithsonian property of any kind for other than officially approved activities. Smithsonian property includes all Smithsonian assets, tangible and intangible, such as funds, facilities, equipment, supplies, staff time and services, intellectual property rights, and information that is unavailable to the general public. Incidental and occasional personal use of Smithsonian computer and communications systems is permitted, provided that such use does not interfere with the conduct of Smithsonian business and is consistent with Smithsonian policies on the use of such systems. See SD 931, Use of Computers. Telecommunications Devices and Networks, which is available on Prism, for more information on this policy. “

**(b) Ownership of Data and Materials Prepared by the Institution**

“All work products, including manuscripts, lectures, photographs, and all other materials prepared by employees within the scope of their employment, are the property of the Smithsonian. See **17 U.S.C. §§ 101, 105, and 201**. Employees should seek the advice of an Ethics Counselor before engaging in any outside activity, including agreeing to author as a private individual any publication that substantially

draws on materials prepared in the course of carrying out their Smithsonian responsibilities. See also Section 8, Outside Activities, of this directive.”

Discovery will allow Plaintiff to gather any communication between Def. Sajat and other Smithsonian officials who would have participated in this conspiracy to spoliage evidence. Discovery will allow Plaintiff to depose any and all individuals involved in this unlawful scheme to violate the laws of the United States regarding property, copyright and evidence in their attempts to prejudice Plaintiff’s case by eliminating critical evidence of Defendant Sajat’s state of mind.

Plaintiff requests the Court to order the Inspector General at the Smithsonian Institution to investigate the matter.

Sincerely,

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I hereby certify that on June 6<sup>th</sup>, 2018, a copy of this motion has been mailed to Attorney Braswell at the Department of Justice.