

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Maxwell V. Pritt (SBN 253155) Boies Schiller Flexner LLP 44 Montgomery Street, 41st Floor, San Francisco, CA 94104 TELEPHONE NO.: 415-293-6800 FAX NO. (Optional): 415-293-6899 E-MAIL ADDRESS: mpritt@bsflp.com ATTORNEY FOR (Name): Petitioner Robert F. Kennedy, Jr.	FOR COURT USE ONLY
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY, STATE AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Oakland - René C. Davidson Courthouse	
Court in which action is pending: Name of Court: SUPREME COURT OF THE STATE OF NEW YORK, WESTCHESTER COUNTY STREET ADDRESS: 111 Dr. Martin Luther King Jr Blvd MAILING ADDRESS: CITY, STATE AND ZIP CODE: White Plains, NY 10601 COUNTRY: USA	
PLAINTIFF/PETITIONER: Petition of ROBERT F. KENNEDY, JR. DEFENDANT/RESPONDENT: KOS MEDIA, LLC, d/b/a, DAILY KOS	CALIFORNIA CASE NUMBER (if any assigned by court):
SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): 65319/2020

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Kos Media, LLC c/o Markos Moulitsas (agent of service), 436 14th Street, Suite 1500, Oakland, CA 94612

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Nationwide Legal Service On (date): June 30, 2021 At (time): 10:00 a.m. Location (address): 859 Harrison Street Suite A, San Francisco, CA	
Do not release the requested records to the deposition officer prior to the date and time stated above.	

- a. ☒ by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. ☐ by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. ☐ by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*
3. *The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):*
 See Attachment 3
- ☒ Continued on Attachment 3 (use form MC-025).
4. *Attorneys of record in this action or parties without attorneys are (name, address, telephone number, and name of party represented):* **Maxwell V. Pritt, 44 Montgomery St., 41st Fl, San Francisco, CA 94104, 415-293-6800; Craig Wenner & Peter Skinner, 55 Hudson Yards, 20th Fl, New York, NY 10001, 212-446-2300 Attorney for Robert F. Kennedy, Jr.**

☐ Continued on Attachment 4 (use form MC-025).

PLAINTIFF/PETITIONER: Petition of ROBERT F. KENNEDY, JR.
 DEFENDANT/RESPONDENT: KOS MEDIA, LLC, d/b/a, DAILY KOS

CASE NUMBER (of action pending outside California):
 65319/2020

5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

6. ☐ Other terms or provisions from out-of-state subpoena, if any (specify):


☐ Continued on Attachment 6 (use form MC-025).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: June 7, 2021

Maxwell V. Pritt

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON ISSUING SUBPOENA)

Counsel for Petitioner ROBERT F. KENNEDY, JR.

(TITLE)

**PROOF OF SERVICE OF SUBPOENA FOR
 PRODUCTION OF BUSINESS RECORDS**

1. I served this *Subpoena for Production of Business Records In Action Pending Outside California* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1) ☐ were paid. Amount: \$ _____

(2) ☐ were not paid.

(3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. ☐ I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

a. ☐ Not a registered California process server

b. ☐ California sheriff or marshal

c. ☐ Registered California process server

d. ☐ Employee or independent contractor of a registered California process server

e. ☐ Exempt from registration under Business and Professions Code section 22350(b)

f. ☐ Registered professional photocopier

g. ☐ Exempt from registration under Business and Professions Code section 22451

h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)
 I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

SHORT TITLE: Petition of : ROBERT F. KENNEDY, JR.	CASE NUMBER: 65319/2020
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ATTACHMENT (Number): 3

(This Attachment may be used with any Judicial Council form.)

SCHEDULE OF DOCUMENTS REQUESTED

1. All documents in your possession, custody or control evidencing the identity of the person(s) who use or have created, posted, or authored content under the pseudonym DowneastDem on the website Daily Kos (<https://www.dailykos.com/>).¹ This request includes, but is not limited to, their contact information, name, address, telephone number, electronic email address(es), Internet Protocol ("IP") address(es), Media Access Control (MAC), internet connection or activity logs, account history including date and time of account creation, and alternative pseudonyms, and any other identifying information.

1 E.g., DowneastDem, Anti-Vaxxer RFK JR. joins neo-Nazis in massive Berlin 'Anti-Corona' Protest, DAILY KOS (August 29, 2020), available at <https://www.dailykos.com/stories/2020/08/29/1973395/-Anti-Vaxxer-RFK-JR-joins-neo-Nazis-in-massive-Berlin-Anti-Corona-Protest>.

SEE ALSO, EXHIBIT A, ORDER GRANTING PRE-ACTION DISCLOSURE

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page _____ of _____
(Add pages as required)

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Petition of
ROBERT F. KENNEDY, JR.,

Petitioner,

For an Order pursuant to Section 3102(c) of the
Civil Practice Law and Rules to compel pre-action
disclosure from:

KOS MEDIA, LLC, d/b/a, DAILY KOS,

Respondent,

of the identity of the defendants JOHN DOE(s)
being unknown to the Petitioner, in an action to be
commenced.

~~PROPOSED~~
**ORDER GRANTING
PRE-ACTION DISCLOSURE**

Index No. 65319/2020

Hon. Mary H. Smith

-----X
WHEREAS, on November 30, 2020, Petitioner, Robert F. Kennedy, Jr., filed the petition pursuant to CPLR § 3102(c), compelling Respondent, Daily Kos, to provide pre-action discovery identifying the person(s) who use or have created, posted, or authored content under the pseudonym DowneastDem on the website Daily Kos (<https://www.dailykos.com/>).

WHEREAS, on December 1, 2020, the Court issued an order to show cause, why the petition should not be granted which Petitioner served on Respondent on December 2, 2020.

WHEREAS, on January 19, 2021, Respondent opposed the petition, moved for sanctions and a protective order, and filed an answer with cross-claims.

WHEREAS, on March 5, 2021, the briefing on the petition was completed and the petition fully submitted.

WHEREAS, on March 29, 2021, Petitioner moved for a stay of discovery and/or a protective order with respect to discovery demands served by Respondent.

WHEREAS, on April 16, 2021, the Court issued a decision and order granting the petition for pre-action disclosure pursuant to CPLR § 3102(c), finding that “the petition alleges sufficient facts, which fairly indicate that [Petitioner] has a claim for defamation and is thus entitled to pre-action discovery limited to obtaining the identity of prospective defendants.” The court denied the other motions as moot.

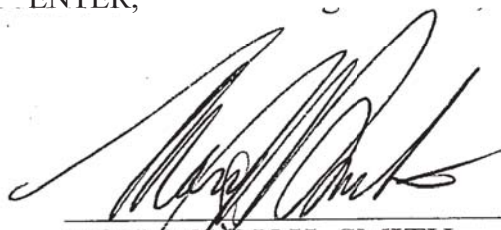
Wherefore, it is hereby

ORDERED that a subpoena *duces tecum* shall issue in the form of Exhibit A attached to this Order compelling pre-action disclosure by Respondent of documents relevant to identifying the person(s) who use or have created, posted, or authored content under the pseudonym DowneastDem on the website Daily Kos. Said subpoena shall be served within 30 days of the date of entry of the Order.

June 7, 2021

DATED: ~~May-----, 2021--~~
White Plains, NY

ENTER,



HON. MARY H. SMITH
Justice of the Supreme Court

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Petition of
ROBERT F. KENNEDY, JR.,

Petitioner,

For an Order pursuant to Section 3102(c) of the
Civil Practice Law and Rules to compel pre-action
disclosure from:

KOS MEDIA, LLC, d/b/a, DAILY KOS,

Respondent,

of the identity of the defendants JOHN DOE(s)
being unknown to the Petitioner, in an action to be
commenced.

SUBPOENA DUCES TECUM

Index No. 65319/2020

Hon. Mary H. Smith

TO: Kos Media, LLC
c/o Markos Moulitsas (registered agent for service of process)
436 14th Street, Suite 1500
Oakland, CA 94612

YOU ARE HEREBY COMMANDED, all business and excuses being laid aside, to
make available for inspection and copying or otherwise deliver accurate copies of the documents
set forth in the attached Schedule to the offices of Boies Schiller Flexner, LLP, 55 Hudson
Yards, 20th Floor, New York, New York 10001 within 20 days of the date of service of this
subpoena.

This disclosure is sought from you pursuant to Rule 3102(c) of the New York Civil
Practice Law and Rules (“CPLR”) because it is necessary for Petitioner Robert F. Kennedy, Jr. to
initiate civil proceedings against the person(s) using the pseudonym DowneastDem on the
website Daily Kos (<https://www.dailykos.com/>).

Pursuant to CPLR § 3122(a), business records produced pursuant to this subpoena *duces tecum* shall be accompanied by a certification, sworn in the form of an affidavit and subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records, attesting to the items set forth in CPLR § 3122-a(a)(1)-(4).

TAKE NOTICE THAT, failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred fifty dollars and all damages sustained by reason of your failure to comply.


DATED: May 3, 2021
White Plains, New York

By: /s/ Craig Wenner
Craig Wenner (cwenner@bsfllp.com)
Peter Skinner (pskinner@bsfllp.com)
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Tel: (212) 446-2300
Fax: (212) 446-2350

Attorneys for Petitioner Robert F. Kennedy, Jr.

SO ORDERED:

ENTE



HON. MARY H. SMITH
Justice of the Supreme Court

SCHEDULE OF DOCUMENTS REQUESTED

1. All documents in your possession, custody or control evidencing the identity of the person(s) who use or have created, posted, or authored content under the pseudonym DowneastDem on the website Daily Kos (<https://www.dailykos.com/>).¹ This request includes, but is not limited to, their contact information, name, address, telephone number, electronic email address(es), Internet Protocol (“IP”) address(es), Media Access Control (MAC), internet connection or activity logs, account history including date and time of account creation, and alternative pseudonyms, and any other identifying information.

¹ E.g., DowneastDem, *Anti-Vaxxer RFK JR. joins neo-Nazis in massive Berlin 'Anti-Corona' Protest*, DAILY KOS (August 29, 2020), available at <https://www.dailykos.com/stories/2020/08/29/1973395/-Anti-Vaxxer-RFK-JR-joins-neo-Nazis-in-massive-Berlin-Anti-Corona-Protest>.