

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

GUZEL GANIEVA,

*Plaintiff,*

v.

LEON BLACK,

*Defendant.*

Index No. 155262/2021

IAS Part 58

Hon. David B. Cohen

Mot. Seq. No. 6

**DEFENDANT'S SUR-REPLY BASED ON NEWLY DISCOVERED EVIDENCE IN  
FURTHER OPPOSITION TO PLAINTIFF'S MOTION TO QUASH SUBPOENAS TO  
WIGDOR LLP**

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Michael B. Carlinsky  
Jennifer J. Barrett  
Ryan A. Rakower  
Jacqueline M. Stykes  
51 Madison Avenue, New York, NY 10010  
(212) 849-7000

PERRY GUHA LLP  
E. Danya Perry  
Anna M. Skotko  
Peter A. Gwynne  
Alexander K. Parachini  
1740 Broadway, New York, NY 10019  
(212) 399-8330

ESTRICH GOLDIN LLP  
Susan Estrich (*pro hac vice* pending)  
699 W Exposition Boulevard  
Los Angeles, CA 90089  
(212) 399-2132

*Counsel for Defendant Leon Black*

Defendant Leon Black respectfully submits this memorandum of law seeking leave to submit a sur-reply in further opposition to Plaintiff Guzel Ganieva's motion to quash (NYSCEF Doc. No. 70) and asks that the Court accept the discussion within this submission as his sur-reply.

### PRELIMINARY STATEMENT

Documents just now produced by Ms. Ganieva—through her counsel at Wigdor LLP—have revealed that her motion papers contained outright falsehoods. After bringing her salacious and unfounded claims against Mr. Black, Ms. Ganieva has spent months trying to avoid her discovery obligations. First, Ms. Ganieva made clear that she would not provide discovery of any communications made by her agents on her behalf. In response, Mr. Black sent his discovery requests directly to Ms. Ganieva's agents—including her law firm, Wigdor LLP—seeking testimony and documents regarding, among other things, (i) Wigdor's communications with the press about Mr. Black on Ms. Ganieva's behalf, and (ii) the timing and circumstances of Ms. Ganieva's first contact with Wigdor. On December 1, 2021, Ms. Ganieva moved to quash the subpoenas to Wigdor. Mr. Black opposed the motion on December 10, 2021, and Ms. Ganieva filed her reply on December 16, 2021.

In her motion papers, Ms. Ganieva repeatedly relied on the fact that her retention letter with Wigdor was dated April 9, 2021 to argue that Wigdor would not possess relevant documents prior to April 2021. (*See, e.g.*, Amended Reply Affirmation of Jeanne M. Christensen (NYSCEF Doc. No. 98) ¶ 18 (asserting “it is impossible how Black can argue that Wigdor LLP's conduct has any bearing on the veracity of Black's April 8, 2021 statement when Wigdor LLP did not even represent Ms. Ganieva until *after Black made his statement*” (emphasis in original).) Newly produced documents from late-February 2022 show that is not true. As the new evidence now makes clear, Ms. Ganieva was communicating with Douglas Wigdor and Mr. Wigdor was

communicating with reporters about Mr. Black on her behalf and at her direction as early as October 2020, *six months before* Wigdor was engaged as her counsel.

Moreover, the new evidence further underscores the relevance of Mr. Black's requests. As Mr. Black explained in his opposition to Ms. Ganieva's motion to quash (NYSCEF Doc. No. 88), the documents and information sought in the Subpoenas are relevant to show Ms. Ganieva's true motive for bringing her claims against Mr. Black: orchestrating a media campaign against Mr. Black that would help her get the leverage she needed to extort him for millions more than she already had. The newly-produced text messages confirm that Ms. Ganieva was doing just that, with Wigdor's assistance. In light of this new evidence—which was withheld until months after Mr. Black filed his opposition to Ms. Ganieva's motion to quash and which is relevant to the Court's determination of Ms. Ganieva's motion—Mr. Black respectfully requests leave to submit a sur-reply in further opposition to Ms. Ganieva's motion and that the Court consider the discussion herein as his sur-reply.

### **BACKGROUND**

Mr. Black served two non-party subpoenas on Wigdor: (i) a subpoena dated October 27, 2021, requesting the production of nine categories of documents (NYSCEF Doc. No. 73) (the "First Subpoena"); and (ii) a subpoena dated November 10, 2021, requesting the production of three additional categories of documents and the deposition of a corporate representative as to five topics (NYSCEF Doc. No. 80) (the "Second Subpoena," and together with the First Subpoena, the "Subpoenas"). On December 1, 2021, Ms. Ganieva filed her Motion to quash the Subpoenas. (NYSCEF Doc. No. 70, Mot. Seq. No. 6.) On December 10, 2021 Mr. Black filed his opposition to Ms. Ganieva's motion to quash. (NYSCEF Doc. No. 88.) On December 17, 2021, Ms. Ganieva filed her Amended Reply in further support of the motion. (NYSCEF Doc. No. 98.) On February 22, 2022, Ms. Ganieva produced—among other things—text messages regarding Mr. Black

between herself and a journalist from the New York Times dating back to October 2020. *See* Affirmation of Jennifer Barrett (“Barrett Aff”) ¶¶ 3-9.

### ARGUMENT

“[T]he Supreme Court has the authority to regulate the motion practice before it, as well as the discretion to determine whether to accept ... surreply papers for ‘good cause[.]’” *U.S. Bank Tr., N.A. v. Rudick*, 156 A.D.3d 841, 842 (2d Dep’t 2017). In determining whether to grant leave to submit a sur-reply, the court will consider whether “the issues that [the movant] says she would address on a surreply go to the issue [raised in the motion], or would affect this court’s conclusion on those points.” *Makhnevich v. Bd. of Managers of 2900 Ocean Condo.*, 149 N.Y.S.3d 889, 889 (N.Y. Sup. Ct. 2021). Here, leave to submit a sur-reply should be granted because Ms. Ganieva withheld relevant evidence that contradicts claims in her moving papers and the issues raised by the sur-reply would directly implicate the issues raised by Ms. Ganieva’s motion to quash.

#### **I. LEAVE TO SUBMIT A SUR-REPLY SHOULD BE GRANTED BECAUSE RELEVANT EVIDENCE WAS WITHHELD**

As a threshold, leave to grant a sur-reply is procedurally proper. Courts regularly permit a party to submit a sur-reply where the moving party has introduced arguments to which the non-moving party did not have an opportunity to respond. *See, e.g., Gastaldi v. Chen*, 56 A.D.3d 420, 866 N.Y.S.2d 750 (2d Dep’t 2008) (“The Supreme Court providently exercised its discretion in considering the surreply of the plaintiffs, which was in response [to an] argument raised in the defendants’ reply papers for the first time.”). Such is the case here, where Ms. Ganieva withheld relevant evidence that would contradict claims made in her motion to quash until after the briefing on the matter was complete.

Ms. Ganieva’s motion papers repeatedly claim that Ms. Ganieva formally retained Wigdor on April 9, 2021. (*See, e.g.,* Mot. ¶¶ 42 n.2.; 57, Am. Reply ¶¶ 18, 23.) Ms. Ganieva used the date

of that retention to argue that Wigdor does not have material or information that would be responsive to Mr. Black's subpoenas. (*See, e.g.*, Am. Reply ¶ 18 (asserting, "it is impossible how Black can argue that Wigdor LLP's conduct has any bearing on the veracity of Black's April 8, 2021 statement when Wigdor LLP did not even represent Ms. Ganieva until *after Black made his statement*") (emphasis in original).) But newly disclosed evidence that was withheld until after Mr. Black filed his Opposition has revealed that these claims are inaccurate.

Discovery produced on February 22, 2022, shows that Wigdor named partner Douglas Wigdor had been speaking directly with Ms. Ganieva and speaking with reporters about Mr. Black on her behalf and at her direction since as early as October 2020—nearly six months before Wigdor was retained as Ms. Ganieva's counsel. Barrett Aff. at ¶¶ 3-9. The newly produced documents demonstrate that on October 30, 2020, Ms. Ganieva sent a WhatsApp message to New York Times reporter Matthew Goldstein, stating: "Did you speak to Wigdor? He is reaching out about a reporter wanting to speak to me." *Id.* at ¶ 4. Mr. Goldstein responded less than an hour later indicating that he had been in communication with Wigdor, stating: "We are supposed to talk. But not sure if there is another reporter on this too from another publication[.]" *Id.* Mr. Goldstein soon followed up with Ms. Ganieva writing: "Tho I'm pretty certain it's me. Are you ok with him talking to me on background[.]" *Id.* On November 5, 2020, Ms. Ganieva confirmed that she intended to permit Mr. Wigdor to speak to Mr. Goldstein on her behalf stating: "P.S. I will let wigdor know that if you want to speak with him you can. Best" *Id.* at ¶ 5.

Mr. Goldstein then sent a message to Ms. Ganieva on November 10, 2020, confirming that he had plans to speak with Douglas Wigdor. *Id.* ¶ 6. Mr. Goldstein stated: "Hey there. Talking to Wigdor tomorrow afternoon ... He wanted to review his notes. Let's talk on Wednesday if you are free or Thursday sorta wanted to wait until I spoke to Doug[.]" *Id.* Mr. Goldstein then

continued to keep Ms. Ganieva apprised of scheduling changes for his discussions with Mr. Wigdor, sending her messages on November 11, 2020 (*id.* at ¶ 7) and November 13, 2020 (*id.* at ¶ 8). On November 16, 2020, Mr. Goldstein wrote: “Had good chat with Wigdor over the weekend. Will update you tomorrow Wednesday.” *Id.* at ¶ 9.

The messages between Mr. Goldstein and Ms. Ganieva reveal, at minimum, that Wigdor possesses documents and information concerning (i) discussions between Mr. Wigdor and Ms. Ganieva in October 2020—well before Wigdor was retained as Ms. Ganieva’s legal counsel and before Ms. Ganieva publicized her false allegations against Mr. Black on Twitter—concerning conversations with reporters (responsive to First Subpoena Request No. 4); and (ii) discussions between Mr. Wigdor and Mr. Goldstein in October and November 2020 discussing Ms. Ganieva and Mr. Black (responsive to First Subpoena Request No. 7). Because Ms. Ganieva withheld the production until after Mr. Black filed his Opposition, Mr. Black should be granted leave to submit a sur-reply to rebut, for the first time, Ms. Ganieva’s baseless and inaccurate assertions.

## **II. THE NEW INFORMATION DIRECTLY REBUTS WIGDOR’S MOTION TO QUASH AND SHOULD BE CONSIDERED**

The newly discovered communications are relevant to the Court’s adjudication of Ms. Ganieva’s motion to quash and directly demonstrate why Mr. Black should be entitled to discovery from Wigdor. As such, Mr. Black asks the Court to accept and consider the following short discussion.

First, Mr. Black’s requests for Wigdor’s communications with agents, funders, public relations consultants, and the press (First Subpoena Requests 1-8; Second Subpoena Request 1 & Topics 1, 5) are all relevant to Mr. Black’s defenses. Mr. Black has consistently maintained that Ms. Ganieva’s lawsuit was filed to publicly assassinate Mr. Black’s character, and to extort Mr. Black into paying her even more money in order to avoid her baseless but character-destroying

claims. *See* Am. Ans. (NYSCEF Doc. No. 36) at 2. This defense is further bolstered by the new documents which demonstrate that—at least six months before Wigdor formally agreed to retain Ms. Ganieva as a client and before Ms. Ganieva publicized her false allegations against Mr. Black on Twitter—Wigdor was speaking to the press on Ms. Ganieva’s behalf and only upon her approval. *See, e.g.*, Barrett Aff. ¶ 5 (Ms. Ganieva stating to Mr. Goldstein “P.S. I will let wigdor know that if you want to speak with him you can. Best”). Wigdor apparently sought to gauge the media’s appetite for Ms. Ganieva’s false claims before they were made public in March 2021.

Additionally, Mr. Black has argued that his statements that he had been “extorted” by Ms. Ganieva “many years” with “threats to go public” about their relationship were not defamatory, but truthful. *See* Am. Ans. (NYSCEF Doc. No. 36) at 69. This new evidence reveals that Wigdor was communicating with Ms. Ganieva before Ms. Ganieva tweeted her false allegations against Mr. Black and before Mr. Black’s April 8, 2021 statements to Bloomberg, which constitute the basis of her defamation claims against Mr. Black. *See* Am. Compl. (NYSCEF Doc. No. 26) at ¶¶ 245-73. Because Wigdor and Ms. Ganieva were communicating—and Wigdor was communicating with the press on her behalf—Mr. Black is entitled to see what Ms. Ganieva’s attorneys were saying to the media about him on her behalf so he can prove that his statements were true: Ms. Ganieva *did* extort him with “threats to go public,” and she had her representatives contact the press with scurrilous claims about Mr. Black, just as she had threatened.

While the discovery sought undoubtably bears on the veracity of Ms. Ganieva’s claims, the truthfulness of Mr. Black’s statements to the press, and Mr. Black’s unclean hands defense, *see* Am. Ans. at 68, these communications have not been produced. Moreover, Ms. Ganieva’s own engagement letter with Wigdor demonstrates that these communications would not be privileged:

Wigdor was not formally engaged until April 2021, well before these communications occurred.<sup>1</sup> But in any event, to the extent Ms. Ganieva claims these communications are privileged, Ms. Ganieva has not even provided a privilege log setting forth the date, time, sender(s), recipient(s), subject matter, and basis for asserting privilege for each such communication that is being withheld on the basis of privilege. *See* N.Y. C.P.L.R. § 3122(b).

Finally, the newly produced messages also underscore the need for a deposition of a corporate representative of Wigdor. *See* Second Subpoena 2, Topic 5 (requesting deposition of corporate representative of Wigdor about its communications with the press regarding Ms. Ganieva or Mr. Black). Ms. Ganieva's motion papers appear to make representations and arguments on behalf of Wigdor itself. (NYSCEF Doc. Nos. 71, 98.) The new evidence demonstrates that these representations were false. While Ms. Ganieva may not have entered into a formal engagement with Wigdor until April 9, 2021, attorneys at Wigdor were communicating about Mr. Black with Ms. Ganieva and with reporters on her behalf and at her direction as early as October 2020. *See* Barrett Aff. at ¶¶ 3-9. Given Wigdor's misleading representations to the Court about when it first got involved (*See, e.g.*, Mot. ¶¶ 42 n.2.; 57, Am. Reply ¶¶ 18, 23), it is important that Mr. Black be given the opportunity to ask questions to a Wigdor corporate representative under oath to understand precisely what actions Wigdor has taken on behalf of Ms. Ganieva and when.

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<sup>1</sup> It is unclear how communications that pre-date Ms. Ganieva's retention of Wigdor can be privileged, particularly where the communications are with Douglas Wigdor, since Ms. Ganieva's counsel has represented to counsel for Mr. Black that "Doug Wigdor is not working on this case." *See* Barrett Aff. ¶ 2.

**CONCLUSION**

For the above reasons, the Court should grant Mr. Black's request for leave to submit a sur-reply in further opposition to Ms. Ganieva's motion to quash, accept the discussion within this submission as Mr. Black's sur-reply, and for the reasons above and in Mr. Black's opposition, deny Ms. Ganieva's motion to quash and compel Wigdor to comply with the Subpoenas.

Dated: New York, New York  
March 9, 2022

QUINN EMANUEL URQUHART  
& SULLIVAN, LLP

By : /s/ Jennifer J. Barrett

Michael B. Carlinsky  
Jennifer J. Barrett  
Ryan A. Rakower  
Jacqueline M. Stykes  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
t: (212) 849-7000  
michaelcarlinsky@quinnemanuel.com  
jenniferbarrett@quinnemanuel.com  
ryanrakower@quinnemanuel.com  
jacquelinestykes@quinnemanuel.com

PERRY GUHA LLP  
E. Danya Perry  
Anna M. Skotko  
Peter A. Gwynne  
Alexander K. Parachini  
1740 Broadway, 15th Floor  
New York, NY 10019  
t: (212) 399-8330  
dperry@perryguha.com  
askotko@perryguha.com  
pgwynne@perryguha.com  
aparachini@perryguha.com

ESTRICH GOLDIN LLP  
Susan Estrich (*pro hac vice* pending)  
699 W Exposition Boulevard  
Los Angeles, CA 90089  
(212) 399-2132  
susan@estrichgoldin.com

*Counsel for Defendant Leon Black*