

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


-----X	:	
AUDIOEYE, INC.,	:	
	:	
Plaintiff,	:	Index No. 803054-2023
	:	
- against -	:	Justice Craig D. Hannah
	:	Part 31
ADRIAN ROSELLI,	:	
	:	PLAINTIFF’S FIRST
	:	REQUEST FOR THE
	:	PRODUCTION OF
	:	DOCUMENTS TO
	:	DEFENDANT
Defendant.	:	
-----X	:	

PLEASE TAKE NOTICE that, in accordance with Civil Practice Law and Rules 3120, and all other applicable rules and the Definitions and Instructions set forth below, Plaintiff AudioEye, Inc. (“**AudioEye**” or “**Plaintiff**”), by its undersigned counsel, hereby requests that Defendant Adrian Roselli (“**Roselli**” or “**Defendant**”) produce for inspection and copying the documents, communications, and other information requested in Appendix A (the “**Requests**”) by delivering all such responsive materials to the undersigned counsel on or before September 11, 2023.

Dated: Buffalo, New York
August 21, 2023

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By: _____


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APPENDIX A

DEFINITIONS

1. The terms “*all*,” “*any*,” and “*each*” shall each be construed as encompassing any and all of these terms.

2. The connectives “*and*” and “*or*” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a Request all Documents, Communications, or responses that might otherwise be construed to be outside of its scope.

3. The term “*AudioEye*” refers to Plaintiff AudioEye, Inc., its former or current agents, successors, assigns, heirs, accountants, personal or legal representatives, employees, officers, and attorneys, as applicable.

4. The term “*Communication*” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise). For the avoidance of doubt, this may encompass any oral, written, or electronic transmission of information without limitation, including meetings, discussions, conversations, telephone calls, email messages, text messages, chat messages, Instant social media messages (e.g., Facebook, Twitter), WhatsApp chat messages, GroupMe chat messages, or other messaging platforms, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, conferences, seminars, messages, notes, video tapes, photographs, microfilm, microfiche, magnetic disks, or other media of any kind.

5. The term “*concerning*” means relating to (however remotely), referring to, describing, evidencing, or constituting.

6. The term “*Document*” is used in its most comprehensive sense and includes but is not limited to all writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and other data or data compilations. This includes documents

stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, including but not limited to emails, texts, chats, spreadsheets, and PowerPoint presentations. A draft or non-identical copy is a separate document within the meaning of this term.

7. The term “***including***” means “including, but not limited to.”

8. The term “***J.D. Power***” means the data analytics, software, and consumer intelligence company by the name of J.D. Power.

9. The term “***Orange County***” refers to Orange County, California.

10. The term “***Overlay Fact Sheet***” refers to <https://overlayfactsheet.com>.

11. The term “***Person***” means any natural person or any legal entity, unincorporated association, or group of individuals or legal entities, whether formally or informally established.

12. The term “***Tweet***” means any post made or message sent on twitter.com or x.com, including but not limited to replies, comments, and direct messages.

13. The terms “***You,***” “***Your,***” or “***Yours***” refer to the party to whom these Requests are directed, their former or current agents, successors, assigns, heirs, accountants, personal or legal representatives, and attorneys, as applicable.

14. The definitions described above shall apply regardless of whether such term is capitalized or not capitalized.

15. Any references to a Person shall be deemed to include such Person’s agents, accountants, advisors, employees, attorneys and other professionals, officers, directors, direct or indirect shareholders, members, representatives, affiliates, subsidiaries, predecessors, successors, assigns, or any other individual or entity acting or purporting to act on behalf of such Person.

16. The use of any singular noun shall be construed to include the plural, and vice versa, and a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. These Requests shall be deemed to seek Documents and Communications in Your possession, custody, or control as of the date hereof, and shall be deemed to be continuing, so that if at any time after compliance with these Requests, You or Your agents shall acquire possession, custody, or control of any additional Documents or Communications within the scope of these Requests, You shall notify attorneys for Plaintiff immediately and shall furnish such Documents or Communications to attorneys for Plaintiff immediately.

2. If the requested Documents and Communications are known to You to exist, but are not in Your or Your agents' possession, it is requested that You so indicate and produce Documents and Communications that show the name of the Person or entity in whose custody such Documents and Communications reside.

3. If You are aware of any Documents or Communications responsive to these Requests that formerly were in Your possession but that have been lost, mislaid, destroyed, or that You are otherwise unable to produce, state the date of, if any, the type of, subject matter of, and the names of all Persons authorizing or receiving the Documents or Communications, to the best of Your knowledge and identify the last custodian thereof, and the circumstances of their loss, destruction, or unavailability.

4. For each Document and Communication requested, produce the entire Document or Communication, including all attachments, envelopes, explanatory notes, appendices, and exhibits. All non-identical copies of a Document or Communication are to be produced.

5. Where only a portion of a Document or Communication relates to or refers to the subject matter indicated, the entire Document or Communication, along with all attachments, appendices, and/or exhibits, must be produced.

6. Pursuant to CPLR § 3122(c), the Documents and Communications produced for inspection shall be produced as they were kept in the usual course of business or shall be organized and labeled to correspond with the paragraphs set forth below.

7. All Documents shall be produced with metadata in TIFF format with OCR images, provided, however, that documents in Excel format shall be provided in native format. All Documents shall be produced with metadata, including but not limited to the date and time created/sent, author, recipients, cc-copies, bcc-blind copies, family member information, MD-5 hash, subject line and title, and whether the document contains redactions.

8. Identify every Document or Communication in these Requests that is withheld on any claim of privilege, work product, or other immunity from production. After each such Document or Communication, state the following:

- (a) The specific basis on which that Document or Communication is withheld;
- (b) The names of any and all Persons who have seen the Document or Communication;
- (c) The date and subject matter of the Document or Communication;
- (d) The location of the Document or Communication;
- (e) The custodian of the Document or Communication;
- (f) The author(s) or preparer(s) of the Document or Communication;
- (g) The recipient(s) of the Document or Communication; and

(h) All Persons who were furnished copies of the Document or Communication.

9. To the extent that You allege that any single Request or portion thereof is objectionable, You remain obligated to respond to those non-objectionable Requests or portions of such and state fully the basis for Your objection.

10. Unless otherwise agreed in writing acknowledged by undersigned counsel, any failure by You to provide full and complete responses to the Requests set forth herein within the time frame allowed under CPLR § 3120 will be deemed an express and unequivocal waiver of any and all objections You may possess to the Requests set forth herein.

11. Pursuant to 22 New York Codes, Rules and Regulations § 202.20-c(c), at the end of Your responses include an affidavit in which You state for each Request:

(a) Whether the production of Documents and Communications in Your possession, custody, or control that are responsive to the Request is complete; or

(b) That there are no Documents or Communications in Your possession, custody, or control that are responsive to the Request.

12. Each paragraph shall operate and be construed independently, and unless otherwise indicated, no paragraph limits the scope of any other paragraph.

13. Unless otherwise specified, each Request contained herein refers to, relates to, and requests information for the time period of January 1, 2021, to the present.

14. By serving these Requests, Plaintiff reserves all rights, does not waive any of its rights, and expressly reserves the right to amend, to modify, or otherwise to supplement these Requests.

REQUESTS FOR PRODUCTION

1. Documents sufficient to identify any employment, titles, roles, positions, or jobs You hold or have held in the digital-accessibility industry. The time period for this Request is not limited.

2. Documents sufficient to identify Your sources of income. The time period for this Request is not limited.

3. Documents sufficient to show the amount of income You have received in exchange for providing consulting services related to digital accessibility. The time period for this Request is not limited.

4. Documents sufficient to show the proportion of Your income that is derived from providing consulting services related to digital accessibility. The time period for this Request is not limited.

5. Documents sufficient to demonstrate Your education or experience in the digital-accessibility industry. The time period for this Request is not limited.

6. All Documents and Communications concerning Your involvement in and decision to sign the Overlay Fact Sheet. The time period for this Request is not limited.

7. Documents sufficient to identify any websites, blogs, or social-media profiles currently or previously maintained, used, operated, or owned by You.

8. Documents sufficient to identify any and all statements ever authored by You concerning AudioEye, directly, or indirectly, including but not limited to any statements made on any websites or social-media profiles identified in response to Request No. 7. The time period for this Request is not limited.

9. All Documents and Communications concerning the cease-and-desist letters sent to You by AudioEye on or about April 1, 2022, and April 13, 2022, including but not limited to all Documents and Communications concerning Your response to the cease-and-desist letters that was sent on or about April 15, 2022.

10. All Documents and Communications concerning any research You have conducted concerning AudioEye, directly or indirectly, including but not limited to research concerning AudioEye's business model, products, services, customers, clients, advertisements, sales, and any lawsuits involving AudioEye. The time period for this Request is not limited.

11. All Documents and Communications concerning the efficacy of any of AudioEye's products or services. The time period for this Request is not limited.

12. All Documents and Communications concerning Your statement on or around March 29, 2022, that "AudioEye also engages in deceptive marketing practices."

13. All Documents and Communications concerning AudioEye in connection with *LightHouse v. ADP, Inc.*, No. 4:20-cv-09020 (N.D. Cal.), including but not limited to the settlement agreement reached therein.

14. All Communications between You and Karl Groves concerning the digital-accessibility industry, including but not limited to Communications concerning AudioEye, directly or indirectly. The time period for this Request is not limited.

15. All Communications between You and Laney Feingold concerning the digital-accessibility industry, including but not limited to Communications concerning AudioEye, directly or indirectly. The time period for this Request is not limited.

16. All Documents and Communications concerning AudioEye with any Persons known or believed by You or any Persons with whom You communicated to be current, former, or

potential customers or clients of AudioEye, including but not limited to J.D. Power and Orange County.

17. All Documents and Communications concerning any contract or potential contract between AudioEye and Orange County.

18. All Documents and Communications concerning the *Tech Times* article by a “David Thompson,” posted on or about December 27, 2021.

19. All Documents and Communications with *Tech Times*, including any current or former agents, employees, contractors, professionals, or other Persons ever affiliated with *Tech Times*.

20. All Documents and Communications concerning the creation, purpose, and use of the videos embedded in Your Tweets concerning AudioEye published on or about May 30, 2022, and May 31, 2022.

21. All Communications with any of the individuals listed below, including but not limited to Communications concerning AudioEye’s business, business model, products, services, customers, clients, advertisements, sales, and any lawsuits involving AudioEye:

- (a) Ian Hamilton;
- (b) Steven Faulkner;
- (c) Léonie Watson;
- (d) Adriana Mariëtte Johanna Rietveld; and
- (e) Norbert Rum.

22. All Documents and Communications concerning or supporting any assertions made in Your Statement of Material Facts [NYSCEF Doc. No. 10] and/or the Affidavit of Adrian Roselli [NYSCEF Doc. No. 14].