

her website and through her YouTube channel. Now, despite failing to observe all the formal requirements of subpoenaing a non-party, Apex seeks to further silence, intimidate, and harass Kelly Ann from reporting on its misdeeds by placing the undue burden on her to produce documents and provide testimony—materials protected by journalistic privilege. Moreover, the requested materials are unnecessary, as they have already been provided by another party, and many of the requested documents are irrelevant to Apex’s claims or defenses.

BACKGROUND

Kelly Ann is an individual who operates a YouTube channel and other social media platforms under the name “Futures Trading with Kelly Ann”. Ex A, § 2. She provides news on the futures trading industry as well as reviews of different futures trading platforms such as Apex’s. She gathers news and information from a variety of sources including but not limited to, publicly accessible content as well as interviews with traders, employees, owners, and industry insiders. In addition to ranking proprietary trading companies that she recommends, Kelly Ann also created and independently manages a list that she refers to as the “Potential Scam Warning List.” This list is comprised of futures proprietary funding companies that she does not recommend for a variety of reasons including but not limited to multiple reports of payouts being extremely late or denied, highly unfavorable rules for traders, a history of baiting and switching as well as rule change practices. Ex. A, § 7.

Kelly Ann often receives information from insiders of proprietary trading companies. Many of her sources request to remain anonymous so they can be protected from any attempted retaliation or retribution including firing, doxing, being banned by proprietary funding companies and or having their funded accounts closed. Ex. A, § 6. On or about January 6, 2024, Leo Riot (“Riot”), an Apex founder, provided her with a copy of a Zoom video conference (the “Zoom

Video”) with John Mark Skelton (“Skelton”) COO of Apex, as well as screenshots of data discussed in this Zoom meeting. She published two videos about this information. Ex. A, § 8. Following her usual custom, she did not disclose the source of the content to the public. Ex. A, § 14.

She published the Apex content because she believed that the information, and the Zoom Video clip was important for traders to know and was of great public concern. In the video, Skelton described measures and rule changes that Apex was going to and ultimately instituted in order to “attack” their large number of payouts to users and cause psychological distress to Apex traders. She considered these changes to be potentially harmful to Apex’s users and strongly believed that her trading community and the prop trading community at large would suffer continued harm should she keep silent about the practices she witnessed in the Zoom Video. Ex. A, § 13.

On January 10, 2025, this Court conducted a hearing where the Plaintiff and Defendants were heard on Defendant Apex’s motion for an *ex parte* temporary restraining order. The contents of the motion are not available on the court’s docket and a copy was never served on Kelly Ann, but presumably Apex sought to enjoin Kelly Ann as an alleged agent, representative, co-conspirator, or other actor, from “sharing, discussing, or disclosing to anyone, either directly or indirectly through any third party, any confidential or proprietary information regarding Apex or Apex’s businesses” based on the Agreed Temporary Restraining Order (“Agreed TRO”) granted by the Court on January 14, 2025. *See* ECF No. 31. At no point did counsel for either party provide any notice to Kelly Ann of any hearings or consult her and seek her approval of the Agreed TRO. Ex. A, § 10.

For the sake of brevity, it is unnecessary to rehash the timing of Kelly Ann’s posting of the Zoom Video and when the Agreed TRO was entered. Nevertheless, in response to the publishing

of the Zoom Video, Apex filed a Motion for Contempt against Riot and Kelly Ann and sought sanctions of attorney fees and production of information. *See* ECF No. 33. Riot filed a response in opposition as well as an affidavit in support of his response. His affidavit is attached and incorporated as Exhibit B.

In his affidavit, Riot admitted that he sent a link of the Zoom Video to Kelly Ann via a Discord message and that he did not send any other videos to Kelly Ann. Ex. B, §§ 5 and 6. He also testified that the version of the Zoom Video that Kelly Ann posted was the same video that he sent to her and it did not appear edited in anyway. Ex. B, § 10.

Apex served Kelly Ann, who does not reside in Texas, with a Subpoena to Produce Documents (“Document Subpoena”) and Subpoena to Testify (“Depo Subpoena”) (collectively the “Subpoenas”), attached and incorporated respectively as Exhibits C and D, through her counsel. No witness fee was provided. The Subpoenas call for Kelly Ann to appear to testify on February 20, 2025 and produce documents at Apex’s counsel’s office in Dallas, Texas by February 13, 2025. *See* Exs. C and D. Apex’s counsel did offer to either conduct the deposition by Zoom or in a location more convenient (*i.e.* in the Federal District where she resides). The documents she is requested to produce are:

- (1) all documents and communications between Riot and Kelly Ann;
- (2) all documents and communications between any other Apex affiliate or source regarding Apex or any Apex officer or employee;
- (3) all recordings, documents, data, or information provided by Riot to Kelly Ann; and
- (4) any recordings, documents, data, or information about Apex or any Apex officer or employee by any other source.

As Riot acknowledged in his affidavit, he did not provide Kelly Ann with any additional

videos concerning Apex. Ex. B, §§ 6, 17. Kelly Ann is not a party to the underlying matter; rather, Apex may be subpoenaing her in an apparent attempt to retaliate against her for her prior reporting, which ranked Apex as the number one entity on the "Scam List." This subpoena serves only to harass, intimidate, and silence her from any further reporting. In addition to not being able to overcome the reporter's privilege, Apex's subpoenas place an undue burden on Kelly Ann, and are fatally defective.

ARGUMENT

I. Kelly Ann is Entitled to the Reporter's Privilege Under the First Amendment

The United States Supreme Court has long recognized that the First Amendment provides protection for newsgathering, as established in *Branzburg v. Hayes*, 408 U.S. 665 (1972). Following this precedent, the Fifth Circuit has consistently held that journalists enjoy a qualified privilege against compelled disclosure of confidential sources. *In re Selcraig*, 705 F.2d 789, 792 (5th Cir. 1983). This privilege serves to safeguard the press from undue governmental interference, ensuring that journalists can obtain and report on matters of public concern without fear of retribution or coercion.

Kelly Ann qualifies as a journalist under this standard. She operates *Futures Trading with Kelly Ann*, a platform dedicated to news and analysis on proprietary trading firms, including Apex. Her work is based on publicly available information, industry insider interviews, and other investigative means. As part of her reporting, she has independently compiled a "Potential Scam Warning List," ranking trading firms based on their transparency and business practices. Ex. A, § 7.

The subpoenas issued by Apex seek to compel Kelly Ann to disclose confidential sources and materials related to her reporting on Apex. However, the Fifth Circuit imposes a stringent

three-part test before a court can compel such disclosure. Under *Miller v. Transamerican Press*, 621 F.2d 721, 726 (5th Cir.), a reporter's privilege may only be overcome if the party seeking disclosure demonstrates that the information is: (1) Highly material and relevant; (2) Necessary or critical to the maintenance of the claim or defense; and (3) Not obtainable from other sources. If any one of those elements are not met, the privilege applies.

The burden is on Apex to prove by **substantial evidence** that all three factors are met. *In re Selcraig*, 705 F.2d at 792, *Miller*, 621 F.2d at 726. Apex cannot meet this burden.

II. Apex Fails to Satisfy the Three-Part Test to Overcome the Reporter's Privilege

A. The Information Sought is Not Highly Material or Relevant

Apex cannot demonstrate that the requested information is highly material or relevant to any legitimate legal claim. Apex seeks all communications and documents between Kelly Ann and Riot, as well as any documents regarding Apex from any other source. See Exs. C & D. However, Riot has already provided an affidavit confirming that he sent Kelly Ann only one video and that the version she published was identical to what he provided. Ex. B, §§ 5-6, 10. Riot has also provided the full extent of his communications with Kelly Ann in ECF No. 59-1 and 59-2. Apex's broad and intrusive request for all communications and documents about Apex from any other source extends far beyond the scope of any legitimate claim or defense that Apex has presented and is a classic example of a fishing expedition. Apex cannot demonstrate any relevance for those requests or the need for testimony from Kelly Ann on that subject.

B. The Information is Not Necessary or Critical to Apex's Claims

Apex cannot establish that documents provided by Riot as well as documents from other sources are **necessary or critical** to its claims. The Fifth Circuit requires that the requested information be of such importance that the case could not proceed without it. *Miller*, 621 F.2d at

726. Here, Apex's claims do not hinge on Kelly Ann's testimony or documents—particularly given that Riot, an actual party to the case, has already provided an affidavit addressing the key facts. Riot has already provided enough evidence to Apex through his affidavits to show that he provided information to Kelly Ann. Apex cannot show why it cannot litigate its claims based on Riot's sworn testimony and publicly available materials. Furthermore, testimony about or documents provided by other sources are not necessary or critical to any of their claims against Riot or any other party. They are not even relevant.

C. The Information is Obtainable from Other Sources

Finally, Apex cannot demonstrate that the information sought is unobtainable from other sources. Moreover, any relevant materials regarding the Zoom video and Riot's communications with Kelly Ann have already been addressed through Riot's affidavit. Ex. B. The Fifth Circuit has made clear that a subpoena cannot be used to compel a journalist to disclose confidential sources when the same information is available elsewhere. *In re Selcraig*, 705 F.2d at 792-793. Apex can depose and seek further information about what Riot disclosed from Riot himself. There is no justification for burdening a non-party with this duty.

III. The Subpoenas Impose an Undue Burden on Kelly Ann

Under Federal Rule of Civil Procedure 45(d)(3)(A), a court must quash or modify a subpoena that subjects a non-party to undue burden. The Fifth Circuit considers several factors in determining undue burden, including whether the requested information is available from other sources, the relevance of the information sought, and the non-party's interest in avoiding unnecessary intrusion. *See Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

The Fifth Circuit has made clear that a subpoena cannot be used to compel a journalist to disclose information that is available from another source. *In re Selcraig*, 705 F.2d at 792-793.

Again, the very information Apex seeks from Kelly Ann is already available from a named party to the action—Leo Riot.

Riot, an Apex founder and a party to the litigation, has admitted in his affidavit that he provided the Zoom Video and screenshots to Kelly Ann. *See* Ex. B, §§ 5-6, 10. Riot’s affidavit confirms that Kelly Ann did not receive any additional videos from him beyond what has already been disclosed. Given that Apex has direct access to Riot, there is no justification for burdening Kelly Ann—a non-party—with broad and intrusive discovery demands.

Even if Apex could justify seeking some discovery from Kelly Ann, its subpoenas go far beyond any reasonable scope. Rule 26(b)(1) limits discovery to matters that are relevant and proportional to the needs of the case. Here, several requests in the document subpoena are facially irrelevant, including:

- Request for all communications between Kelly Ann and "any Apex affiliate or source regarding Apex" (Ex. C, Request No. 2).
- Request for all documents, data, and information from “any source” about Apex or its officers or employees (Ex. C, Request No. 4).

These demands are not only overbroad but also untethered to any specific claim or defense in the litigation and should be quashed.

IV. The Subpoenas Are Procedurally Defective and Must be Quashed

Apex’s subpoenas to Kelly Ann are procedurally defective under Fed. R. Civ. P. 45(c)(2)(A) and 45(b)(1) because they demand Kelly Ann to produce documents more than 100 miles from where she resides and because no witness fee was tendered. Each of these defects independently warrants quashing the subpoenas.

Fed. R. Civ. P. 45(c)(2)(A) states that a subpoena cannot compel a non-party to produce documents in person beyond a 100-mile radius. Kelly Ann does not reside in Texas, yet Apex's document subpoena commands her to produce documents in Dallas, Texas—a location far beyond the 100-mile limit. *See* Ex. C.

Under Fed. R. Civ. P 45(b)(1), a subpoena requiring a witness to appear for a deposition must be accompanied by a witness fee and mileage reimbursement at the time of service. This requirement is further outlined in 28 U.S.C. § 1821(b), which mandates:

- A \$40 per day witness attendance fee.
- Mileage reimbursement for the round-trip travel to the deposition location.

Here, Apex failed to provide Kelly Ann with the required witness fee and mileage reimbursement when serving the deposition subpoena. *See* Ex. D.

Because Apex did not comply with mandatory procedural requirements, the subpoenas are invalid and unenforceable.

V. The Subpoena is an Abuse of Process Intended to Retaliate Against Kelly Ann

Even if Apex could satisfy the *Miller* test (which it cannot) and they did not place an undue burden on Kelly Ann, the subpoenas would still be improper because they serve no legitimate legal purpose. *Herbert*, 441 U.S. at 177. The circumstances strongly suggest that Apex is using the legal process to harass and intimidate Kelly Ann for her critical reporting.

- Kelly Ann is not a party to the underlying litigation.
- Apex's subpoena demands information that is either already available or irrelevant.
- Apex has offered no evidence that Kelly Ann played any role in the alleged misconduct.
- The subpoena seeks to expose confidential sources, which could deter future whistleblowers from coming forward.

The Supreme Court has long held that legal process cannot be used as a tool to suppress free expression. *Branzburg*, 408 U.S. at 681. Given these facts, Apex's subpoenas should be quashed as an abuse of process that violates the First Amendment.

CONCLUSION

For the foregoing reasons, Kelly Ann [REDACTED] requests that the Court grant her Motion to Quash Apex's Subpoena for Production of Documents and Subpoena for Testimony.

Dated: February 14, 2025

Respectfully submitted,

BROPHY & BLAND, PLLC

By: /s/ Sean D. Johnson

Joseph F. Brophy

SBN 00787146

Joe@bdlawpllc.com

Charles T. Bland

SBN 24127021

Charlie@bdlawpllc.com

Sean D. Johnson

SBN 24055746

Sean@bdlawpllc.com

The Overlook at Barton Creek

317 Grace Lane, Suite 210

Austin, Texas 78746

Tel. 512.910.7776

Fax. 512.597.3374

ATTORNEYS FOR KELLY ANN [REDACTED]

CERTIFICATE OF CONFERENCE

I hereby certify that I, counsel for the moving party, conferred with counsel for Apex Trader Funding, Inc. in a good faith effort to resolve the issues raised by this motion. The parties were unable to resolve the issues raised in this motion because Apex Trader Funding, Inc. opposes the relief requested in this motion.

/s/ Sean D. Johnson

Sean D. Johnson

EXHIBIT A

@jmutrades

4. On my website, I rank proprietary trading companies and provide detailed information about each company's rules, and share information about which futures trading proprietary funding companies I am personally trading with.

5. I alone operate and manage my website, Discord community server and YouTube channel and decide what content to publish.

6. I often receive information from insiders of proprietary trading companies. Many of my sources request to remain anonymous so they can be protected from any attempt of retaliation or retribution including firing, doxing, being banned by proprietary funding companies and or having their funded accounts closed.

7. In addition to ranking proprietary trading companies, I also created and independently manage a list of proprietary funding companies that I do not recommend. I refer to this list as the "Potential Scam Warning List." This list is comprised of futures proprietary funding companies that I do not recommend for a variety of reasons including but not limited to multiple reports of payouts being extremely late or denied, highly unfavorable rules for traders, and or a history of bait and switch rule change practices. In May 2024, a large number of my Discord and YouTube community members reported denied payouts by Apex Trader Funding ("Apex"). Apex implemented retractive rule changes on their funded accounts resulting in many traders being placed on a probation status. In May of 2024, I began publishing content about these events and created the "Potential Scam Warning List" where Apex was ranked as number one and it currently remains.

8. On or about January 6, 2024, Leo Riot, an Apex founder, provided me a copy of a Zoom video conference (the "Zoom Video") with John Mark Skelton ("Skelton") of Apex, as well as screenshots of data discussed in this Zoom meeting. I published two videos about this

@jmutrades

information. The first video I published sharing the information from the Apex Zoom meeting clip was on January 9, 2024. The second video I published sharing additional information about the Zoom meeting was on January 10, 2024, at approximately 4:00PM, Central time. I also published the Zoom video clip on my website on January 10, 2024, at approximately 3:00PM Central time.

9. I regularly monitor court filings of known cases involving futures proprietary funding companies. I was monitoring the filings in this case and saw that there was an emergency motion for a TRO filed against Riot by Apex after I published my content. I was unaware that there was a telephonic hearing conducted on January 10th or that any party intended to enjoin me from publishing content about Apex.

10. I was not provided with any notice of the conference by any of the parties. I was never consulted or made aware by anyone that Riot's counsel had agreed to a temporary restraining order (the "Agreed TRO"), listing me as Riot's agent, representative, co-conspirator, or other actor and restricting me from publishing any confidential information about Apex.

11. I have not communicated with Riot's counsel, nor does Riot's counsel represent me in any form or capacity. None of the parties had authorization to act on my behalf or agree to enjoin me in any way.

12. Because I was not noticed to attend the conference and did not do so, I was unaware that the Court had orally granted the Agreed TRO. Also, none of the parties or their counsel bothered to inform me that the Agreed TRO had been orally granted.

13. I published the Apex content because I believed that the information, and the Zoom Video clip was important for traders to know and was of great public concern. In the video, Skelton described measures and rule changes that Apex was going to and did ultimately institute in order to "attack" their large number of payouts and cause psychological distress to Apex traders. I

considered these changes to be potentially harmful to Apex's users and strongly believed that my trading community and the prop trading community at large would suffer continued harm should I keep silent about my knowledge of the intent and practices I witnessed in the Apex video clip.

14. When Riot provided the video, he requested that I not publish it. I informed him that it was unconscionable for me to remain silent having seen the content, and that I would be publishing the video within a few days once I had created the content. I did not disclose the source of the content to the public as I keep all sources confidential.

15. I received a copy of the signed Agreed TRO from Riot's counsel on January 14th.

16. I removed the Zoom video from my website as soon as I was able to do so after receiving a copy of the signed Agreed TRO on January 14th.

17. I am not domiciled in Texas and I do not purposely direct my content at Texas residents.

18. I do not have a personal relationship with Riot. Riot had no control over what I posted on my website or social media sites and he did not ask me to post the Zoom Video. He specifically asked me not to post it.

19. I have never been asked by Riot to make any specific content about Apex. If I had similar information about Riot or his site, Daytraders, then I would not hesitate to publish the material if I thought it was in the best interest of the traders.

20. My rankings of Daytraders did not improve after being provided the Zoom Video. In fact, I have ranked them lower due to the ongoing technology dispute with Apex in the Texas courts. They are currently ranked at number 17 of the 25 proprietary trading firms I have listed.

21. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.”



EXECUTED on February 7, 2025

Kelly Ann [REDACTED]

Kelly Ann [REDACTED]

Signature: Kelly Martin
Kelly Martin (Feb 7, 2025 16:54 EST)

Email: [REDACTED]@gmail.com

@jmutrades

EXHIBIT B

@jmutrades

seeing that she had run stories on Apex. According to her videos, she had experienced problems with her trading account at Apex. I reached out because I had left Apex due to some of its recent business practices with which I disagreed.

8. “The Skelton Video is of a Zoom call I had with John Skelton that was held on or about March 21, 2024. It is a two (2) minute and nine (9) second clip of a longer conversation. The clip is a continuous, unaltered span of time.

9. “I did not edit the Skelton Video in any way.

10. “The Skelton Video that Kelly Ann posted is the same video that I sent to her and after viewing it on her website, it does not appear to have been edited in anyway.

11. “The video clip that I provided to Kelly Ann does not contain confidential or proprietary information regarding Apex’s business.

12. “The screenshots of data shown in Kelly Ann’s video are taken from the third-party click recording software I installed to monitor usage of my Software by Apex. This is not Apex information.

13. “When I heard from my attorneys on January 9 that Kelly Ann was teasing the video, I contacted her on through Discord on that same day and asked that she not release the video. She did not do as I asked.

14. “After January 9, I resolved not to have further contact with Kelly Ann and I did not contact her until I was asked to by my attorney a few days later.

15. “On that same date, January 9, I deleted the video from the file that was shared in the link that I provided to Kelly Ann.

16. “On January 11, 2025, at the insistence of Apex’s attorney, my attorney Elizabeth Revere asked that I send an email to Kelly Ann asking her to remove the Skelton Video from her website. She did not remove the Skelton Video.

17. “If Kelly Ann has additional video information related to Apex, it did not come from me.

18. “I do not have any control over what Kelly Ann posts on her website or any social media. I did not ask that she post any information, video or otherwise, on her social media. In fact, I specifically asked that she not post the video on the same day that I sent it to her.

19. “I have no association with Kelly Ann other than as noted above.

20. “I did not work in concert with Kelly Ann regarding posting of the Skelton Video. I have not worked in concert with her related to any other matter.

21. “I was aware of the Court’s ruling regarding the TRO on Friday afternoon, January 10, 2025. I have fully complied with the order of the Court. I have not shared nor disseminated any Apex confidential or proprietary information.

22. “I intend to litigate this matter before the Court, which is why I brought the lawsuit. I respect the Court’s authority and have not violated its orders.”

FURTHER AFFIANT SAYETH NOT

Leo Riot

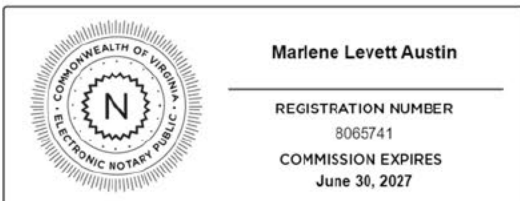
Leo Riot

SUBSCRIBED AND SWORN TO BEFORE ME, on this 30th day of January 2025.

Marlene Levett Austin

Notary Public, State of Virginia

Virginia
Chesterfield



Notarized remotely online using communication technology via Proof.

EXHIBIT C

@jmutrades

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**LEO RIOT, AS TRUSTEE AND TRUST
ADMINISTRATOR, ON BEHALF OF
QUASAR SPENDTHRIFT TRUST,**

**Plaintiff, Counterclaim
Defendant**

v.

**APEX TRADER FUNDING INC., ET
AL.,**

**Defendants, Counterclaim
Plaintiff.**

v.

**DAYTRADERS.COM, AND MKNET,
LLC**

Third-Party Defendants.

Civil Action No. 1:24-CV-1557-DII

JURY TRIAL DEMANDED

NOTICE OF SUBPOENA TO PRODUCE DOCUMENTS

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 45, Defendant and Counterclaim Plaintiff Apex Trader Funding, Inc. (“Apex”), by and through its undersigned counsel, will serve a document-production subpoena on Kelly Ann [REDACTED]. The documents will be ordered produced by February 13, 2025, or on another date to be agreed to by Apex, at the offices of McKool Smith PC, 300 Crescent Court #1500, Dallas, Texas 75201. A true and correct copy of the subpoena is attached hereto, as are copies of the Amended Complaint (Exhibit A) and the Answer, Affirmative Defenses, Counterclaims, and Third-Party Claims (Exhibit B), which will be served with the subpoena. Apex anticipates that the Court will enter a protective order; a true and correct copy of that document, if entered, will be separately served.

Date: January 24, 2025

Respectfully submitted,

MCKOOL SMITH, P.C.

/s/ Travis DeArman

Robert M. Manley

Texas State Bar No. 00787955

rmanley@mckoolsmith.com

Travis E. DeArman

Texas State Bar No. 24074117

tdearman@mckoolsmith.com

Gary Cruciani

Texas State Bar No. 05177300

gcruciani@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1200

Dallas, TX 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Robert W. Morris

Rmorris@morris-lawgroup.com

MORRIS LAW GROUP

35 Longvue Avenue

New Rochelle, NY 10804

Telephone: (914) 216-1398

**ATTORNEYS FOR APEX TRADER
FUNDING, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via electronic mail on January 24, 2025.

/s/ Travis DeArman
Travis DeArman

DEFINITIONS

1. “Apex” refers to Defendant Apex Trader Funding, Inc., and expressly includes its officers, directors, partners, associates, employees, staff members, agents, and representatives acting on its behalf, including but not limited to Darrell Roland Martin, Anthony Todd Johnson, Bryan Wirth, and John Mark Skelton.

2. “Communication” means, without limitation, any transmission, conveyance or exchange of a word, statement, fact, thing, idea, document, instruction, information, demand or question by any medium, whether by written, oral or other means, including but not limited to, electronic communications and electronic mail; electronic communications and electronic mail includes, but is not limited to, e-mail, WhatsApp, FaceTime, Signal, Telegram, WeChat, Facebook Messenger, Instagram Messenger, Skype, Zoom, TikTok, Twitter, Truth Social, Bluesky, Tumblr, Reddit, Teams, Slack, Flock, Google Chat, WebEx, and all other electronic platforms and methods of communication.

3. “Document” includes, without limitation, all written, graphic, or otherwise recorded material, and expressly includes microfilms or other film records or impressions, electronically stored information (regardless of the form of storage medium), tape recordings or computer cards, floppy disks, printouts, papers, photographs, films, recordings, things, memoranda, books, records, accounts, Communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, emails, notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies

of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing specifically includes information stored in a computer database that is capable of being generated in documentary form, such as electronic email.

4. “Person” means any individual, proprietorship, partnership, firm, company, corporation, association, governmental agency, or other entity.

5. “Recording” means any visual, audio, or audiovisual representation or documentation of information, events, or activities, including but not limited to photographs, video recordings, audio recordings, screen captures (commonly referred to as “screenshots”), screen recordings, or any data or information captured through software or technological means. This definition expressly includes but is not limited to any information captured, stored, or otherwise preserved via tools or platforms such as Hotjar or any similar software that records user interactions, session activity, or other data in any medium or format, whether physical or electronic.

6. “Regarding” means relating to, referring to, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate.

7. “Riot” means Plaintiff LEO RIOT, trustee and trust administrator of Quasar Spendthrift Trust, and his counsel, agents, employees, representative, and any other Person acting on his behalf.

8. “You” and “Your” means KELLY ANN [REDACTED] and her counsel, agents, representatives, and any other Person acting on her behalf.

INSTRUCTIONS

1. This subpoena seeks Documents or things in existence as of the date of service thereof and to the full extent permitted by the Federal Rules of Civil Procedure.

2. This subpoena shall apply to all Documents or things in Your possession, custody or control as of the date of service hereof or coming into Your possession, custody, or control before the date of the production.

3. If any portion of a Document or thing is responsive to a request, the entire Document or thing shall be produced, redacting only privileged material, if any.

4. You are to produce the original and each non-identical copy of all Documents or things requested herein that are in Your possession, custody or control.

5. Documents produced pursuant to these Document-Subpoena Requests (“Requests”) shall be produced in the original files and shall not be shuffled or otherwise rearranged. Documents which were stapled, clipped, or otherwise fastened together shall be produced in that form.

6. Things produced pursuant to these requests shall be produced in their present form and shall not be changed or modified in any way.

7. In the event that any Documents or things called for by these Requests is to be withheld on the basis of a claim of privilege or immunity from discovery, that Document or thing is to be identified by stating:

- (a) the author(s), addressee(s) and any indicated or blind copies(s);
- (b) the Document’s or thing’s date, number of pages and attachments or appendices;
- (c) the subject matter(s) of the Document or thing;
- (d) the nature of the privilege or immunity asserted; and
- (e) any additional facts upon which you would base your claim of privilege or immunity.

9. If You do not control or possess Documents or things responsive to a particular Request, You are to state that no responsive Documents or things exist.

10. Where appropriate, the singular form of a word should be interpreted in the plural and vice versa, to acquire the broadest possible meaning.

11. The words “or” and “and” shall be read in the conjunctive and in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of these Requests for Production.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

REQUESTS FOR PRODUCTION

1. All Documents and Communications between you and Riot concerning or regarding Apex or any Apex officer or employee (including without limitation Darrell Martin, John Skelton, Anthony Todd Johnson, or Bryan Wirth).

2. All Documents and Communications between you and any other Apex affiliate or other source concerning or regarding Apex or any Apex officer or employee (including without limitation Darrell Martin, John Skelton, Anthony Todd Johnson, or Bryan Wirth).

3. All Recordings, screen-captures, or other Documents, data, or information regarding Apex or any Apex officer or employee (including without limitation Darrell Martin, John Skelton, Anthony Todd Johnson, or Bryan Wirth) provided to you by Riot.

4. All Recordings, screen-captures, or other Documents, data, or information regarding Apex or any Apex officer or employee (including without limitation Darrell Martin, John Skelton, Anthony Todd Johnson, or Bryan Wirth) provided to you by any source other than Riot.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Leo Riot, on behalf of Quasar Spendthrift Trust,

Plaintiff

v.

Apex Trader Funding Inc. et al.,

Defendant

Civil Action No. 1:24-CV-1557-DII

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Kelly Ann [redacted] C/O: Sean David Johnson (Brophy & Bland PLLC), 317 Grace Lane, Suite 210, Austin, TX 78746

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attached

Table with 2 columns: Place (McKool Smith PC, 300 Crescent Court, Suite 1200, Dallas, TX 75201) and Date and Time (02/13/2025 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/24/2025

CLERK OF COURT

OR

Signature lines for Clerk of Court and Attorney Travis DeArman

The name, address, e-mail, and telephone number of the attorney representing (name of party) Apex Trader Funding Inc., who issues or requests this subpoena, are:

Travis DeArman, 300 Crescent Court, Suite 1200, Dallas, TX 75201, email: tdearman@mckoolsmith.com; phone (214) 978-4000



Civil Action No. 1:24-CV-1557-DII

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.**(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).