IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEXOS MEDIA IP, LLC,

        Plaintiff,

vs.   Case No. 2:22-cv-2324-JAR-ADM

OVERSTOCK.COM, INC.,

        Defendant.

Response to Show Cause Order, Doc. 213

Pursuant to this Court's Order dated December 15, 2025, Doc. 213, each attorney listed on the signature blocks of the briefs filed as Docs. 193 and 194 for Plaintiff Lexos Media IP, LLC submit the attached declarations:

Exhibit 1	Declaration of Sandeep Seth
Exhibit 2	Declaration of David R. Cooper
Exhibit 3	Declaration of Michael Doell
Exhibit 4	Declaration of Kenneth P. Kula
Exhibit 5	Declaration of Christopher M. Joe

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FISHER, PATTERSON, SAYLER & SMITH, LLP

s/David R. Cooper
_____
David R. Cooper   KS #16690
3550 SW 5th Street | Topeka, Kansas 66606
Tel: (785) 232-7761 | Fax: (785) 232-6604
dcooper@fpsslaw.com
and

BUETHER JOE & COUNSELORS, LLC
Christopher M. Joe, *pro hac vice*
Chris.Joe@BJCIPLaw.com
Kenneth P. Kula, *pro hac vice*   KS #16372
Ken.Kula@BJCIPLaw.com
Michael W. Doell, *pro hac vice*
Mike.Doell@BJCIPLaw.com
1700 Pacific Avenue, Suite 4750
Dallas, Texas 75201
Tel: (214) 466-1271 | Fax: (214) 635-1827
and

SETHLAW PLLC
Sandeep Seth, *pro hac vice*
ss@sethlaw.com
700 Milam Street, Suite 1300
Houston, Texas 77002
Tel: (713) 244-5017 | Fax: (7813) 244-5018
ATTORNEYS FOR PLAINTIFF
LEXOS MEDIA IP, LLC

Certificate of Service

I hereby certify that I caused the foregoing to be electronically filed on January 5, 2026, with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record

s/David R. Cooper
_____

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEXOS MEDIA IP, LLC,

    Plaintiff,

v.

OVERSTOCK.COM, INC.,

    Defendant.

Civil Action No. 2:22-cv-02324

DECLARATION OF SANDEEP SETH

I, Sandeep Seth, declare:

1.   I am an attorney with the law firm of SethLaw PLLC ("SethLaw") and counsel for Plaintiff Lexos Media IP, LLC ("Plaintiff" or "Lexos Media").

2.   I am an attorney of record who has appeared in this case on behalf of Lexos, admitted to practice before this Court *pro hac vice*.

3.   I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

4.   On December 15, 2025 the Court Ordered each attorney for Lexos to address their respective roles in the drafting, review, and filing of Documents 193 and 194 and to show cause as to why they should not be sanctioned under Rule 11.

5.   I was primarily responsible for drafting our Opposition to Defendant's Motion to Exclude Dr. Russ ("Document 194"). I wrote an initial draft brief for Document 194 that included the majority of the document. On July 4, 2025, I added AI generated citations. I have never previously used artificial intelligence to add citations to a legal brief. The circumstances that led me to take this unprecedented shortcut were laid out in my August 11, 2024 declaration(Dkt. 211-1) and I will not repeat them here, other than to summarize that I had intended but failed to check

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the AI generated caselaw citations due to back-to-back medical emergencies involving my mother

and a close aunt, whose lives we were actively trying to save but who regrettably respectively

passed on July 19, 2025 and August 2, 2025. I attach my prior declaration hereto for the Court's

convenience as Exhibit A, as this declaration is intended to supplement that prior declaration.

6. Per the Court's December 15, 2025 Order, I will add that neither co-counsel nor

Lexos were aware of the foregoing at the time of drafting and Lexos was not billed for any of my

time in the drafting of the brief (and the portion of Document 193) containing the erroneous

citations or for any subsequent time in connection with their removal.

7. I add the following chronology as to how the defective citations and quotations in

Plaintiff's briefing came to pass:

a. On or before June 28, I wrote a first draft of the substance of the argument for

Plaintiff's Opposition to Defendant's Motion to Exclude Dr. Russ, based upon an accurate

rendition of the facts of the case. Before circulating that first draft to our litigation team, I decided

to use ChatGPT as a shortcut to find 10th circuit and Federal Circuit case law consistent with the

facts of the case. Specifically, I prompted ChatGPT the following (with misspellings corrected):

> In my patent case, my technical expert used an incomplete construction of
> the term "cursor image." The Court had originally con[s]trued the term as "a
> moveable image on a display screen whose position can be controlled through
> a user interface." Later, the Court added to that construction "and that
> indicates where user input can be received." My technical expert in his report
> indicated that he was aware of the complete construction but inadvertently
> left off the tail end of it, i.e., "and that indicates where a user input can be
> received." The other side as moved to strike his report as unreliable because
> of his use of the incomplete construction. Using Federal Circuit and Kansas
> federal court case law, fashion an argument that the report should not be
> struck here and what the appropriate remedy should be.

In response, ChatGPT provided the following case cites and "quotes":

Liquid Dynamics Corp. v. Vaughan Co., Inc., 449 F.3d 1209, 1224 (Fed. Cir. 2006):

"Expert testimony should not be excluded simply because the expert applied an incorrect claim construction, so long as the expert's analysis can be understood and evaluated in light of the court's proper construction."

AVM Technologies, LLC v. Intel Corp., 927 F.3d 1364, 1370–71 (Fed. Cir. 2019):

"[T]he appropriate response to a potential flaw in an expert's methodology is cross-examination, not exclusion.

Hockett v. City of Topeka, No. 19-4037-DDC, 2020 WL 6796766, at *3 (D. Kan. Nov. 19, 2020):

"The exclusion of evidence is an extreme sanction, and courts should prefer less severe remedies, particularly where the error appears inadvertent or can be cured without prejudice."

Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985, 993 (10th Cir. 1999):

Courts consider "(1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability of the party to cure the prejudice; (3) the potential for disruption; and (4) the bad faith or willfulness involved."

i4i Ltd. Partnership v. Microsoft Corp., 598 F.3d 831, 854 (Fed. Cir. 2010), aff'd, 564 U.S. 91 (2011):

"[T]he question of whether the expert is credible or whether his theories are correct given the partial reliance on an incorrect claim construction is for the jury to decide after cross-examination."

I incorporated three of these four case cites and quotes into my draft brief and circulated it, intending to double check the citations, which I subsequently failed to do. I should not have incorporated these without checking them first.

b.   Between that first circulation on June 28, 2025 and on July 4, 2025, I wrote a second draft that substantially expanded the factual basis of our argument and our detailed arguments based upon those facts. Before circulating that draft, I again queried ChatGPT with the following prompt (misspellings corrected) to find additional case law:

> In my patent infringement case, the defendant is attempting to strike my expert's testimony as unreliable because for one claim term, "cursor image" he inadvertently only used the portion of the stipulated construction that

defined the term as "a moveable image on a display screen whose position can be controlled through a user interface." and omitted the following additional stipulated refinement to the term: "and that indicates where user input can be received." However, the Defendant does not dispute that their accused modified cursor image includes a pointer that indicates where a user input can be received. Taking the role of a judge, write an order that denies the motion to strike with caselaw support for the proposition that where the expert report is criticized for inadvertently using an immaterial incomplete claim construction, the remedy is not to strike the entire report/testimony of that expert. Use Federal Circuit case law and 10th circuit standards as a guide.

ChatGPT responded with the following "case law" based legal arguments that I incorporated into

that second draft, again failing to double check them, prior to circulating it:

"The Federal Circuit has cautioned against striking expert opinions for immaterial or correctable errors in claim construction, particularly where the overall analysis is sound and does not mislead the jury. See Flexuspine, Inc. v. Globus Med., Inc., 879 F.3d 1369, 1375 (Fed. Cir. 2018); i4i Ltd. P'ship v. Microsoft Corp., 598 F.3d 831, 856–57 (Fed. Cir. 2010), aff'd, 564 U.S. 91 (2011)."

"The Tenth Circuit recognizes that the preferred method of addressing admissibility disputes that go to weight rather than fundamental reliability is "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof," not wholesale exclusion. United States v. Rodriguez-Felix, 450 F.3d 1117, 1123 (10th Cir. 2006); Daubert, 509 U.S. at 596."

"Similarly, under Tenth Circuit standards, exclusion is a drastic remedy reserved for fundamentally unreliable expert analysis, not for technical deficiencies that can be addressed through cross-examination. Rodriguez-Felix, 450 F.3d at 1123; Goebel v. Denver & Rio Grande W. R.R. Co., 215 F.3d 1083, 1088 (10th Cir. 2000)."

"The Federal Circuit has consistently held that 'technical flaws in an expert's methodology or assumptions go to the weight of the evidence rather than its admissibility.' Apple Inc. v. Motorola, Inc., 757 F.3d 1286, 1314 (Fed. Cir. 2014); see also Liquid Dynamics Corp. v. Vaughan Co., 449 F.3d 1209, 1221 (Fed. Cir. 2006) ("[A]n alleged error in expert analysis does not justify exclusion when it does not negate the reliability of the methodology.')."

"As in i4i, where the expert's failure to reference the precise claim construction language did not warrant exclusion, the alleged flaw 'goes to the weight of the testimony, not its admissibility.' 598 F.3d at 856.

8.   Being untrained on ChatGPT, and being a novice to it, I used the prompt for

ChatGPT to "tak[e] the role of a judge …" because I thought this would help ensure ChatGPT

identify the best and most on-point additional case law that I could add to the brief consistent with our facts.

9.   I have never before used ChatGPT to identify cases for me or make a legal argument to be incorporated in any filed pleading, and I never should have relied on the cases or the quotes and text I received from it in response to my prompts in my draft without checking them for accuracy. It was my intention at the time to check them prior to any filing with the Court, but I failed to do so either because I thought I had already done so, or just because of my scrambled state of mind.

10.   As I previously declared, not by way of excuse, but by way of explanation, personal circumstances had a profound effect on my mental state at the time of this error that left me distraught and somewhat distracted. Both my aunt and mother were hospitalized in the process of dying during that time and both died shortly thereafter. I can honestly say that these circumstances contributed to my failure to choose to find case law on my own, pursuant to my normal practice, and to instead use ChatGPT as a short cut. I do believe these circumstances also led to my failure to double-check for accuracy the ChatGPT generated case cites and quotes because my focus and time was largely spent in hospitals and dealing with my aunt and mother's respective significant health situations.

11.   I cannot express how sorry I am for this set of mistakes. I should not have relied upon ChatGPT to identify caselaw and generate quotes attributable to case law for me no matter what my personal circumstances were at the time. I should never have included that in a draft without checking it first. I should never have failed to check its accuracy. All these mistakes are mine and mine alone. My co-counsel was not aware that I had used AI as a short cut to add case law and legal argument to the brief. Nor would they have had reason to know of this because my

use of AI in this manner was unprecedented in this case or any other. I have come to understand the limits of ChatGPT and it will be my practice going forward to never use AI to identify case law or quotes attributed to case law from AI. We are a small firm, essentially comprising myself and my paralegal who also acts as our office manager. My paralegal has never used AI to identify caselaw but has nonetheless been instructed never to do so in the future. Any future employees or independent contractors will be advised of the same.

12.   For over thirty years I have practiced law with integrity. I am licensed in Texas and California and registered to practice before the United States Patent & Trademark office, as well as admitted to practice before a host of federal courts and the Court of Appeals for the Federal Circuit. I have never been sanctioned or even accused of misstating any case law nor would ever deliberately consider doing so as even a possibility. My professional practice has been to always err on the side of caution when stating facts and case law. Over my career, I have been a fierce proponent of the principle that zealous representation of our clients is necessary for us to fulfill our roles in our legal system, but that such advocacy must always be accompanied by strict and faithful adherence to the facts and law, or a good faith argument for modification of the law. Notwithstanding my mistake here, I have always made it a practice to cite facts and cases consistent with that principle.

13.   My reputation and earnestness to represent clients before tribunals to highest of ethical standards is ingrained in my nature. I treat fidelity to law equally with fidelity to fact and would never deliberately mislead a tribunal on either fact or law. That I made such a blunder here is something that I will not forgive myself for having done. My practice largely involves co-counseling with other firms. To have on public record this blunder will significantly impact on my practice because firms will be less likely to want to use my co-counseling services. I state this

only to emphasize that I did not and would not have deliberately cited incorrect case law or legal argument, not only for the sake of reputation, but because I would never deliberately do anything that could impact my ability to financially support my family and firm.

14.   Despite my failure to double check the AI generated citations, I intended the results of my specific query to provide accurate case citations to bolster my arguments and provide additional corroboration to the approximately 95% of humanly generated brief and substantive arguments contained therein I personally drafted based upon the facts in this case and not any AI output. However, I now know that the citations resulting from my two queries were in fact from non-existent cases or contained non-existent quotes. I now am fully aware of "AI hallucinations" and take full and sole responsibility for the resulting misinformation to this Court. I have never before, and even in this instance have not, intended to mislead the Court or members of the Bar in any way. I appreciate my duty to the Court and the public and acknowledge having fallen short in this particular instance of the high standard that I set for myself and what is expected of me as a practitioner.

15.   I would respectfully request that if this Court is determined to administer any sanction, that any such action be borne by me, and me alone.

16.   I must again apologize to the Court, to Overstock, to Lexos, to my opposing counsel and to my co-counsel for the impact on them of my failure set forth above. Had I realized there was any inaccuracy in any of the statements I incorporated, I would have immediately corrected it and avoided all of the impact on you all. This experience has been personally and professionally shameful and embarrassing and one I can guarantee I will never repeat.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed by me on January 4, 2026, in Houston, TX.
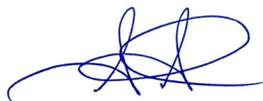
Sandeep Seth

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LEXOS MEDIA IP, LLC,

Plaintiff,

v.

OVERSTOCK.COM, INC.,

Defendant.

Case No. 2:22-cv-02324

PATENT CASE

JURY TRIAL DEMANDED

**DECLARATION OF SANDEEP SETH IN SUPPORT OF PLAINTIFF'S
REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR
LEAVE TO FILE CORRECTED OPPOSITION TO DEFENDANT'S
MOTION TO EXCLUDE THE TESTIMONY OF SAMUEL RUSS, Ph.D.**

I, Sandeep Seth, declare as follows:

1.   I am an attorney admitted to practice before this Court and serve as counsel for

Plaintiff in the above-captioned matter. I make this declaration in support of Plaintiff's Motion for

Leave to File Corrected Opposition to Defendant's Motion to Exclude the Testimony of Samuel

Russ, Ph.D.

2.   I respectfully and fully acknowledge that the filed Opposition to Defendant's

Motion to Exclude the Testimony Of Samuel Russ, Ph.D. contained legal citations and quotes

derived from research generated in part using artificial intelligence (AI) tools, which were not

independently verified prior to submission. This included fictitious cases and inaccurate

quotations. I take full responsibility for these errors.

3.   While I authored the majority of the document, the portions derived from AI-

generated text should have been thoroughly checked and corroborated before filing. That they were

not is inexcusable. It reflects a lapse in judgment on my part, and I offer my sincere and unqualified

apology to this Court, to my co-counsel, to opposing counsel, to Defendant Overstock.com, Inc.,

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and to my client because it gave the incorrect appearance that we have not taken these proceedings before this Court the seriousness that they deserve.

4.   I do not offer the following as an excuse, but solely as context to explain the extraordinary personal circumstances under which this occurred. During the period of drafting and filing, I was serving as a family advisor and caregiver for two close family members who were at the time in acute medical crisis.

5.   My maternal aunt, with whom I have been very close since 1982 for reasons beyond the scope of this declaration, was hospitalized for addressing the effects of a severe heart attack. I was actively assisting in efforts to secure her candidacy for a heart transplant and, when that was not possible, for the insertion of a Left Ventricular Assist Device (LVAD). I was present at the hospital with her for many days during this period. Despite the success of the procedure itself, she tragically passed away following the procedure on July 19, 2025.

6.   At the same time, my mother was undergoing repeated ailments and hospitalizations due to complications from rapidly progressing dementia. As her eldest son and primary support, I was deeply involved in her care and end-of-life decisions. She blessedly passed away on August 2, 2025, from renal failure one week after my aunt's funeral. Her funeral is August 8, 2025.

7.   These overlapping personal situations weighed heavily on my time, attention and emotional state during the time of original filing. I was unable to speak about it when we filed the Motion for Leave to File Corrected Opposition to Defendant's Motion to Exclude the Testimony of Samuel Russ, Ph.D.

8.   I fully acknowledge that, regardless of circumstance, this does not excuse submitting material to the Court that failed to meet the standards of verification and accuracy the

profession requires and which this Court, our client and the opposing party—and the justice system—deserves. Importantly, this error was unprecedented and does not reflect the seriousness of the approach that Lexos Media has otherwise taken throughout these proceedings. I did not intend to file the citations unreviewed but in my distraction I failed to have my office do so.

9.   I deeply regret the oversight and, while I cannot image these circumstances happening again, wherein we are now cremating my mother two weeks after my aunt, I am committed to ensuring that such a lapse does not occur again. I have already instituted stricter internal review procedures to ensure that all future filings are fully sourced, accurate, and independently verified.

10.   I respectfully submit this declaration to accompany a corrected filing and to affirm my commitment to the integrity of these proceedings. The error was mine alone and should not reflect upon my co-counsel, opposing counsel, and the parties in this case.

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

Executed on August 8, 2025 at Houston, Texas

_____
Sandeep Seth
Counsel for Plaintiff

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LEXOS MEDIA IP, LLC,

                Plaintiff,

    vs.   Case No. 2:22-cv-2324-JAR-ADM

OVERSTOCK.COM, INC.,

                Defendant.

Declaration of David R. Cooper

I, David R. Cooper, declare:

1.   I am over the age of eighteen and have personal knowledge of the facts set forth in this Declaration. I am competent to testify as to all matters stated, and I am not under any legal disability that would in any way preclude me from testifying.

2.   This declaration is submitted in response to this Court's Order, Doc. 213.

3.   I am admitted to practice law in this Court and in the State of Kansas, the Tenth Circuit Court of Appeals, and the United States Supreme Court.

4.   I am a partner at Fisher, Patterson, Sayler & Smith, LLP.

5.   I am an attorney of record who has appeared in this case as local counsel on behalf of Plaintiff Lexos Media, IP, LLC (Lexos), in the above-captioned case.

6.   I agreed to be local counsel and sponsor the *pro hac vice* admission of the attorneys for Buether Joe & Counselors, LLC (BJC) and Sandeep Seth. I understood the attorneys at BJC and Mr. Seth had extensive experience and expertise in patent litigation.

7.   I am aware that D.Kan. Rules 5.4.1(b)(3) and 83.5.4(b) require meaningful

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participation by local counsel and require local counsel to sign all pleadings and other papers filed.

Role in the drafting, review, and filing of Docs. 193 and 194 and whether the process used for researching, cite-checking, and filing these documents differed from other filings in this case, and, if so, why.

8.   I cannot address the process of researching other documents filed in this case as I have not been the drafter of any of the documents.

9.   I had no role in researching or drafting Docs. 193 and 194.

10.   I received the drafts that were eventually filed as Docs. 193 and 194 from BJC's legal assistant on July 7, 2025.

11.   I read the drafts of Docs. 193 and 194 in their entirety after receiving them. I generally understood the arguments contained therein (with respect to the offending portions of the documents) were that defendant's attacks on Dr. Russ's opinions went to the weight, not the admissibility of his opinions.

12.   I approved affixing my signature to Docs. 193 and 194 and their filing via the court's electronic filing system.

13.   During my review of the documents, none of the quotes or citations drew my attention, so I did not cite check either document. I instead relied upon Mr. Doell and Mr. Seth, whom I understood to be the drafters of the documents, for the accuracy and authenticity of the citations in the documents.

14.   The process described in ¶ 13, *supra*, differs from the review and approval of at least one earlier filing where I had noticed an incomplete citation in a draft before filing. I found the original case and corrected the citation before filing the document. This also differs from my process for cite-checking any further documents since Docs. 193 and 194 were filed. Since that time, I have either personally checked each citation in any document and/or used Westlaw's Quick Check Overview to compare quotations and citations against the source material.

15.   My practice as local counsel since the filing of Docs. 193 and 194 differs from my practice used when filing those documents because I learned of the use of an AI platform by Mr. Seth.

16.   As of the date of this Declaration, I still have no knowledge of the process, if any, used by Mr. Seth or Mr. Doell for cite-checking Docs. 193 and 194 before the documents were sent to me to file.

17.   I had no knowledge at the time of filing of the documents at issue that any AI platform was used in the drafting of the briefs.

18.   I first learned that Mr. Seth had used an unspecified AI platform to prepare parts of Docs. 193 and 194 on July 28, 2025.

19.   The motion for leave to file a corrected brief, Doc. 207, was filed July 29, 2025.

20.   I have no knowledge whether Lexos was advised of or approved of Mr. Seth's use of generative AI in this matter.

21.   I have been informed that Lexos was provided a copy of this Court's Show Cause Order, Doc. 213.

22.   My firm bills BJC directly for my services as local counsel and my firm is paid directly by BJC. I understand that BJC is handling this case for Lexos on a full contingent-fee basis and that Lexos was not billed for any work by me with respect to Docs. 193 and 194, the motion to correct, or the responses to the Order to Show Cause entered by this Court, Doc. 213.

Why I should not be sanctioned under Rule 11 and referred to the disciplinary panel of this Court and to disciplinary administrators in the jurisdictions where I am licensed

23.   I have, personally, never used Generative Artificial Intelligence to draft any portion of a legal brief.

24.   I acknowledge and understand that affixing my signature and filing a document with this court carries with it the following representations and certifications under Rule 11(b):

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(b) … to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

25.   I believe my reliance upon Messrs. Doell and Seth for the accuracy and authenticity of the citations in the documents to have been reasonable under the circumstances.

26.   Whether my reliance was reasonable or not, I acknowledge that I affixed my signature to documents which contained nonexistent quotations, nonexistent and incorrect citations, and misrepresentations about cited authority. For that, I apologize to the Court and to opposing counsel.

27.   I also acknowledge that that my subjective belief in the merit of the arguments is, in and of itself, not enough. Rather, that belief must be "in accord with what a reasonable, competent attorney would believe under the circumstances." *White v. Gen. Motors Corp.*, 908 F.2d 675, 680 (10th Cir. 1990).

28.   Rule 11 provides that upon a finding of a Rule 11(b) violation, "the court may impose an appropriate sanction on any" responsible attorney, law firm, or party and that the sanction "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed.R.Civ.P. 11(c)(1), (4).

29.   I am appalled to have filed a brief that employed hallucinated quotes and cites. The

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Topeka Capital Journal published an article regarding this Court's Show Cause order including both my name and that of my firm.[1]

30.   I submit to the Court that its Show Cause Order (without regard to the accompanying publicity) most certainly suffices to deter repetition by me. Without regard to whether this Court finds I did or didn't violate Rule 11(b), I won't sign another brief provided by another firm (whether as local counsel or as co-counsel on joint briefs) without fully cite-checking the brief.

31.   My firm has taken steps to avoid similar missteps. My firm generally did not permit the use of Generative Artificial Intelligence (GenAI) in drafting briefs and pleadings. Since this occurrence, my firm adopted a formal policy that prohibits the use of GenAI platforms without the consent of the client and the express permission of the responsible partner and, if different, the overseeing attorney. Permission must be for the specific task assigned, and not a general grant of permission. Further, all documents produced using GenAI must be independently verified by the author as being true and accurate.

32.   My firm will further develop and adopt a policy that extends the foregoing requirements to all instances where an attorney in the firm is local counsel and sponsors other attorneys as *pro hac vice* will require (1) that outside counsel disclose the use of GenAI to both my firm and the client, and (2) that local counsel shall independently cite-check and verify the accuracy and authenticity of citations.

33.   The Court has ordered the offending document, Doc. 194, stricken. A corrected response that omits the offending material, Doc. 216, has been filed at the Court's direction.

34.   I offer my apology to both the Court and to Lexos for the necessity of expending

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[1]   *See*   https://www.cjonline.com/story/news/politics/courts/2025/12/18/ai-fabricated-legal-citations-attorneys-could-be-sanctioned-in-kansas/87796076007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z116154p117650c117650d00----v116154d--36--&gca-ft=234&gca-ds=sophi.

time to address this matter.

35.   Without regard to whether the Court imposes any sanction upon me I will voluntarily refrain, in new matters, from serving as a sponsoring or local counsel for any *pro hac vice* attorney for a period of twelve (12) months.

36.   Based on the above facts, I submit that I should not be sanctioned under Rule 11.

37.   If, however, the Court determines any sanction is warranted I would suggest a formal public reprimand through this Court's Order is appropriate. *See, e.g.. Mattox v. Prod. Innovations Rsch., LLC*, No. 6:24-CV-235-JAR, 2025 WL 3012828, at *9 (E.D. Okla. Oct. 22, 2025) (imposing sanction on local counsel of formal public reprimand through order and twelve-month restriction on sponsoring *pro hac vice*).

38.   Based on the above facts, I also submit that I should not be referred to the disciplinary panel of this Court or to the disciplinary administrators in the jurisdictions where I am licensed.

I declare under penalty of perjury that the foregoing is true and correct and that I have signed this declaration in Topeka, Kansas on December 31, 2025.
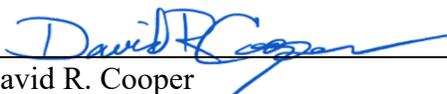
David R. Cooper   KS #16690
3550 SW 5th Street | Topeka, Kansas 66606
Tel: (785) 232-7761 | Fax: (785) 232-6604
dcooper@fpsslaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LEXOS MEDIA IP, LLC,

     Plaintiff,

v.

OVERSTOCK.COM, INC.,

     Defendant.

Civil Action No. 2:22-cv-02324

DECLARATION OF MICHAEL DOELL

I, Michael W, Doell, declare:

1.   I am an Associate Attorney with the law firm of Buether Joe & Counselors, LLC ("BJC") and counsel for Plaintiff Lexos Media IP, LLC ("Plaintiff" or "Lexos Media"). I have personal knowledge of the matters set forth below and, if called to testify to them, could do so competently.

2.   I am an attorney of record who has appeared in this case on behalf of Lexos, admitted to practice before this Court *pro hac vice*.

3.   I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

4.   On December 15, 2025, the Court Ordered each attorney for Lexos to address his respective role in the drafting, review, and filing of Documents 193 and 194 and to show cause as to why he should not be sanctioned under Rule 11.

5.   I was primarily responsible for the initial drafting of some sections of our Response to Overstock's Motion for Summary Judgment ("Document 193"). This did not include Section (III)(D), "The Claim Construction Order does not Preclude Lexos Media's Infringement Theory," which would eventually contain AI-generated citations. Our co-counsel Sandy Seth would be

DECLARATION OF MICHAEL DOELL

responsible for drafting our Opposition to Defendant's Motion to Exclude Dr. Russ ("Document 194"). As portions of Document 193 would necessarily concern the Russ Report, I expected and understood that some of Mr. Seth's arguments would be utilized and incorporated in the final version of Document 193.

6.   I circulated the initial draft of our Document 193 on June 30, 2025. My initial draft did not include any AI generated caselaw. It did not include any legal citations, AI generated or otherwise, within the relevant Argument section (Section (III)(D), "The Claim Construction Order does not Preclude Lexos Media's Infringement Theory").

7.   My June 30, 2025, initial draft then was reviewed and edited by Mr. Seth, which I both understood and expected as an Associate Attorney. Mr. Seth reviewed and edited the initial draft and, as reflected in the tracked changes function of Microsoft Word, on July 4, 2025, added arguments from his Document 194. Unbeknownst to me, these added arguments contained AI generated citations.

8.   I have never used artificial intelligence to draft any portion of a legal brief. My firm does not allow the use of AI platforms for drafting, writing, or creating documents to be filed with the courts. I was unaware and uninformed that artificial intelligence was used to draft at least a portion of Document 194. I was unaware and uniformed that the portion of Document 194 that was copied into the initial Document 193 draft contained citations created via artificial intelligence. I am unaware of any previous use of artificial intelligence by Mr. Seth to draft any portions of a legal brief. Mr. Seth has never previously given me a reason to question the authenticity of his work product, and he never before informed me that he had utilized AI platforms in connection with writing, drafting, or creating documents to be filed with any court, including in this case.

9.   I am unaware, and have no knowledge of the process, if any, used by Mr. Seth for cite-checking his legal citations.

10.   I collected the exhibits for Document 193, as reflected in my July 7, 2025, declaration which was attached to Document 193. I understand that local counsel filed Document 193.

11.   With respect to Document 194, I was not responsible for, or otherwise involved with, the drafting of Plaintiff's Opposition to Defendant's Motion to Exclude Dr. Russ. I understood Mr. Seth was responsible for the drafting of Document 194. I did provide minor edits to Mr. Seth, which were exclusively to add the exhibits and a few stylistic/grammatical suggestions. I did not provide, nor intended to provide, nor was expected to provide a substantive review of the caselaw or arguments in Mr. Seth's draft of Document 194.

12.   I collected and organized the exhibits to Document 194 and drafted the declaration concerning those exhibits. I understand that local counsel filed Document 194.

13.   While I do not have personal knowledge of the representation agreement with client Lexos Media, I understand that our firm is handling this case on a full contingent-fee basis, and that client Lexos was not billed for any work involved in Mr. Seth's drafting of the defective citations, the motion to correct, or the responses to the Court's Order entered December 15, 2025.

14.   I certify that a copy of the Court's Order entered December 15, 2025, has been provided to client Lexos.

15.   Based on the above facts, I submit that I should not be sanctioned under Rule 11 or referred to the disciplinary panel of this Court or to the disciplinary administrators in the jurisdictions where I am licensed, which is Missouri and Texas.

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct and that this declaration was executed by me on December 29, 2025,

in Dallas, TX.

Michael W. Doell

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

LEXOS MEDIA IP, LLC,

    Plaintiff,

v.

OVERSTOCK.COM, INC.,

    Defendant.

Civil Action No. 2:22-cv-02324

DECLARATION OF KENNETH P. KULA

I, Kenneth P. Kula, declare the following under penalty of perjury:

1.   I am over the age of eighteen and have personal knowledge of the facts set forth in this Declaration. I am competent to testify as to all matters stated, and I am not under any legal disability that would in any way preclude me from testifying.

2.   I am Senior Counsel at Buether Joe & Counselors, LLC ("BJC"), which represents Plaintiff Lexos Media IP, LLC ("Lexos") in the instant case.

3.   I am an attorney of record who has appeared in this case on behalf of Lexos, admitted to practice before this Court *pro hac vice*.

4.   The signature pages on Plaintiff's recently filed briefs responding to summary judgment and motions to exclude its experts include my name. *See* (Doc. 193 at Page 46 of 47 on filed .pdf; Doc. 194 at Page 15 of 16 on filed .pdf).

5.   I played no role in submitting the defective citations in Plaintiff's briefs.

6.   In particular, I had no role or involvement in the researching, drafting, reviewing, editing, cite-checking, finalizing or filing either document at issue. I never reviewed either document at issue prior to them being filed with the Court.

KULA DECLARATION   Page 1

7.   "I am the attorney responsible for the damages aspect of this case [and] . . . work

closely with Plaintiff's damages expert, Justin Blok," (Doc. 148-7 ¶ 3 at Page 2 of 4 on filed .pdf);

thus, I was assigned the task of researching, drafting, reviewing, finalizing and ensuring the proper

filing of Plaintiff's Response to Defendant's *Daubert* Motion to Exclude the Testimony of Justin

Blok (Doc. 190)—a document **not** at issue.

8.   I completed my draft of Doc. 190 at approximately 7:00 p.m. on Thursday, July 3,

2025, and sent it to my paralegal, stating in part "[i]t must be filed Monday, and I will be in Ireland

so my ability to review and respond will be minimal on Monday."

9.   At approximately 7:11 p.m. on Thursday, July 3, 2025, I began my 10-day vacation

from BJC to take my wife to Ireland.

10.   Later on Thursday, July 3, 2025, my wife and I left on American Airline flight AA

132 to fly to Dublin, Ireland, and we did not return to the United States until Thursday, July 10,

2025.

11.   I understood that Sandeep Seth had overall responsibility to research, draft, review,

finalize, and ensure the proper filing of both documents at issue.

12.   I understood that BJC's Associate, Michael Doell, was primarily responsible for

the initial drafting of certain limited sections of only Plaintiff's Response to Overstock's Motion

for Summary Judgment ("Document 193").

13.   I had no knowledge at the time of filing of the documents at issue that any AI

platform was used in the drafting of the briefs.

14.   As of the date of this Declaration, I still have no knowledge of the process, if any,

used by Mr. Seth for cite-checking the documents at issue before filing them.

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15.   BJC does not allow the use of AI platforms by firm personnel or attorneys for writing, drafting, or creating documents to be filed with any court.

16.   Based on my subsequent conversations with all other attorneys involved with this case, it is my understanding that no other filings in this case used any AI platforms for drafting, creating, or filing any documents in this case other than the two documents at issue.

17.   Because my firm does not allow the use of AI platforms for writing, drafting, or creating documents to be filed with a court, and because I had no knowledge prior to the filing of the documents at issue that Mr. Seth had used any AI platform for any purpose related to the creation of the documents at issue, it is my understanding that Lexos was not advised of Mr. Seth's use of generative AI in this matter prior to the filing of the documents at issue.

18.   I understand that Lexos was not billed for any work involved in Mr. Seth's drafting of the documents at issue that contain defective citations, the motion to correct, or the ensuing responses to the Order to Show Cause that was entered by this Court on December 15, 2025.

19.   I certify that a copy of the Court's Order to Show Cause, Doc. 213, has been provided to Lexos.

20.   Based on the above facts, I submit that I should not be sanctioned under Rule 11 or referred to the disciplinary panel of this Court or to the disciplinary administrators in the jurisdictions where I am licensed, which includes Kansas, Nebraska, Missouri, New York, and Texas.

I declare under penalty of perjury that the foregoing is true and correct and that I have signed this declaration in Dallas, Texas on December 30, 2025.

_____
Kenneth P. Kula

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

LEXOS MEDIA IP, LLC,

    Plaintiff,

v.

OVERSTOCK.COM, INC.,

    Defendant.

Civil Action No. 2:22-cv-02324

<u>DECLARATION OF CHRISTOPHER M. JOE</u>

I, Christopher M. Joe, declare the following under penalty of perjury:

1.   I am over the age of eighteen and have personal knowledge of the facts set forth in this Declaration. I am competent to testify as to all matters stated, and I am not under any legal disability that would in any way preclude me from testifying.

2.   I am the Managing Member at Buether Joe & Counselors, LLC, who represents Plaintiff Lexos Media IP, LLC ("Lexos") in the instant case.

3.   I am an attorney of record who has appeared in this case on behalf of Lexos, admitted to practice before this Court *pro hac vice*.

4.   In October 2024, the lead attorney in charge in this case Eric Buether (and my law partner) passed away. I took his place as the lead attorney in charge of this case after his passing.

5.   The signature pages on Plaintiff's recently filed briefs responding to summary judgment and motions to exclude its experts include my name. *See* (Doc. 193 at Page 46 of 47 on filed .pdf; Doc. 194 at Page 15 of 16 on filed .pdf).

6.   I played no role in submitting the defective citations in Plaintiff's briefs.

7.   In particular, I had no role or involvement in the drafting, review, editing, cite checking, researching, or filing of either document at issue. I never reviewed or looked at the documents at issue prior to their filing with the Court.

8.   Sandeep Seth with the law firm of Seth Law, serving as co-counsel for Plaintiff, was assigned the ultimate responsibility to draft, review, finalize, and ensure proper filing of both documents at issue.

9.   I had no knowledge at the time of filing that any AI platform was used by Mr. Seth in the drafting of the briefs. The first time I was aware of the use of any AI platform in connection with Mr. Seth's drafting of the briefs was after Overstock raised the issue in its response brief and my team of attorneys at Buether Joe & Counselors brought it to my attention.

10.   As such, I did not have any knowledge of the process, if any, used by Mr. Seth for cite-checking these documents before filing.

11.   As the Managing Member of Buether Joe & Counselors, LLC, I do not allow, and have never allowed, the use of AI platforms by firm personnel or attorneys for writing, drafting, or creating documents to be filed with any court. Our firm's policy regarding AI is to prohibit the use of AI platforms for writing, drafting, or creating documents to be filed with any court.

12.   Based on my subsequent conversations with Mr. Seth and the lawyers at Buether Joe & Counselors, it is my understanding that no other filings in this case used any AI platforms for writing, drafting, creating or filing documents in this case.

13.   Because my firm does not allow the use of AI platforms for writing, drafting, or creating documents to be filed with a court and because I had no knowledge prior to the filing of the documents at issue that Mr. Seth had used any AI platform for writing, drafting, or creating the documents at issue, no one at Buether Joe & Counselors had any reasons to advise Lexos of Mr.
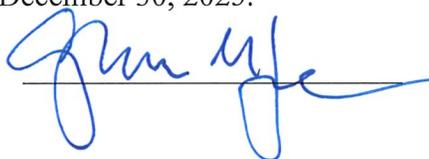
Seth's use of generative AI in this matter, and thus no such advice was provided to Lexos by anyone at Buether Joe & Counselors.

14.   My firm is handling this case for Lexos on a full contingent-fee basis, thus Lexos was not billed for any work by Buether Joe & Counselors with respect to Mr. Seth's drafting of the documents containing defective citations, the motion to correct, or the ensuing responses to the Order to Show Cause entered by this Court on December 15, 2025.

15.   I certify that a copy of the Court's Order to Show Cause, Doc. 213 has been provided to Lexos.

16.   Based on the above facts, I submit that I should not be sanctioned under Rule 11 or referred to the disciplinary panel of this Court or to the disciplinary administrators in the jurisdictions where I am licensed.

I declare under penalty of perjury that the foregoing is true and correct and that I have signed this declaration in Dallas, Texas, on December 30, 2025.