IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,
Plaintiff,
v.   Case No. 24-003939-CI

JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

AND

REQUEST FOR EXPEDITED SHOW CAUSE HEARING

COMES NOW, Plaintiff, John William Liccione ("Liccione"), pro se, and respectfully moves this Court to compel Defendant Julie Marcus to produce documents responsive to Plaintiff's First Request for Production of Documents. Plaintiff further requests an *expedited* show cause hearing because there is an upcoming motion to dismiss hearing on November 12th and the records sought are critical to Plaintiff's case. The court has set a deadline of 5-days prior to the November 12th hearing for Plaintiff to submit his evidence and pleadings in defense against the motion to dismiss. Thus, time is of the essence. In support of this Motion, Plaintiff states as follows:

BACKGROUND

1. On September 12, 2024, Plaintiff served a narrowly tailored First Request for Production of Documents on Defendant Julie Marcus, Pinellas County Supervisor of Elections, seeking detailed records regarding the submission of vote-by-mail ballot orders on but a single day—June 23, 2024. Specifically, Plaintiff's requests were as follows:

- **Request No. 1:** "The source IP addresses of all vote-by-mail ballot requester user sessions and submittal transactions that resulted in the successful or unsuccessful submittal of vote-by-mail ballot requests."

- **Request No. 2:** "The names and addresses of the submitters."

- **Request No. 3:** "The type of web client used to submit the requests."

- **Request No. 4:** "The date/time of submittal."

- **Request No. 5:** "The names and versions of each software application used to receive, process, store, and report out the above ballot requests, as was fielded in production on the date of June 23, 2024, and any subsequent versions the applications may have been updated to or rolled back from after June 23, 2024. (and) the SOE and contractor firewall logs which captured and recorded the above vote-by-mail ballot submittal sessions."

2. **Evidence of Routine Data Collection:** In Plaintiff's Response to Defendant Marcus' Motion to Dismiss, Plaintiff provided evidence in an attached EXHIBIT C (which Plaintiff re-attaches hereto for ease of review by the Court) that the Pinellas Supervisor of Elections' mail ballot order processing software, Voter Focus, routinely captures, stores, retains, and makes available reports that include mail ballot orders by date, time, source IP address, and voter name (and email address). This capability is documented in the Voter Focus online help manual, which is publicly available on the website of VR Systems, the software vendor. Pictures of pages and screenshots from the Voter Focus manual were provided in EXHIBIT C. On information and belief, Pinellas Supervisor of Elections internal staff are trained to operate and administer Voter Focus as part of their daily job. Based on

this information and the Voter Focus user's manual, Defendant's claim that producing the information in Request No. 1 and 4 would be overly burdensome is, therefore, baseless and rises to the level of fraudulent misrepresentation by Defendant Marcus and her attorneys as well as PSOE general counsel Matthew Smith.

3. **Defendant's Unsupported Privacy Claim:** Defendant objects to the production of IP address information, asserting privacy concerns without legal citation. Taken to its logical conclusion, Defendant appears to invoke privacy concerns over IP addresses and the date and timestamps of mail ballot orders— neither of which constitutes personally identifiable information. Defendant's objections are also baseless under established case law. In *State v. Mixton*, the court held that IP addresses and ISP subscriber information do not fall under Fourth Amendment protection, as they are voluntarily provided to third-party ISPs and are subject to the third-party doctrine. *Mixton,* along with *United States v. Hood* and *United States v. Contreras*, confirms that IP addresses, similar to dialed telephone numbers, do not reveal the substance or content of communications, rendering them non-private under the Fourth Amendment.

4. **Third-Party Doctrine and Lack of Reasonable Privacy Expectation:** In *United States v. Jean*, the court emphasized that individuals generally lack a legitimate expectation of privacy in information voluntarily turned over to third parties, such as Internet Service Providers (ISPs). IP addresses, in particular, are considered "non-content" information and do not reveal private details about the user or the user's communications, aligning with the principle that IP addresses are not subject to Fourth Amendment protection. Defendant's privacy concerns

regarding IP addresses are therefore unfounded and serve as a barrier to legitimate discovery.

5. **Availability of Confidentiality Protections:** Furthermore, any arguably private information, such as voter names and addresses, can be placed under seal to maintain confidentiality. Defendant's refusal to produce the requested data under even a proposed court-imposed confidentiality agreement only further indicates obstruction. Plaintiff is open to confidentiality protections for sensitive data, with both parties subject to sanctions should confidentiality be breached. Defendant's invocation of privacy and privilege as a basis for refusal is therefore a baseless attempt to withhold relevant information.

6. **Defendant's Generalized Boilerplate Objections:** Today on October 28, 2024, on the 45-day discovery deadline, Defendant Marcus responded with broad, blanket, boilerplate objections to all five requests, claiming they are "burdensome, harassing, not reasonably limited in scope," and that they seek "privileged and confidential voter information." Defendant's response, however, did not address each individual request separately, provide specific legal grounds for each claim of privilege, nor did she offer any explanation as to why the requested information cannot be provided under seal if necessary. Further, Plaintiff's August 20th primary election was the culmination of a 15-month-long campaign, and now the general election approaches. That means that Plaintiff requested just a single day's worth of mail-ballot order source IP addresses and timestamps: *Just one day out of over a year and a half of available data*. One might wonder whether 1 hour's worth of mail ballot order IP address, or one minute, or 10 seconds would be considered equally burdensome to Defendant. Since such a mail ballot order IP

address report can be generated in a few mouse clicks by the administrator, the level of manual effort required to produce 1 hour's worth of IP addresses in a single day, is the same as that required to produce 1 day's worth of IP address records.

7. **Failure to Produce a Privilege Log:** Under Florida Rule of Civil Procedure 1.280(b)(6), a party withholding requested documents on the basis of privilege must produce a privilege log. Defendant has neither filed such a log nor provided specific legal grounds justifying her claims of privilege.

8. **Absence of Objections, Protective Order, or Motion to Stay:** Defendant has not filed any motion to stay discovery or motion for a protective order, nor has she asserted specific objections to each category of information. Her failure to comply with these procedural requirements supports a finding of willful noncompliance.

LEGAL STANDARD

9. Florida Rule of Civil Procedure 1.380(a) permits a party to compel production when the opposing party fails to respond adequately to valid discovery requests.

10. When a party refuses to comply with discovery obligations without justification, Florida Rule of Civil Procedure 1.380(b) allows the Court to impose sanctions, including compelling production, awarding expenses, and even imposing punitive measures if the noncompliance is found to be willful or obstructive.

11. In *Thompson v. Citizens Nat'l Bank of Leesburg,* 433 So. 2d 32 (Fla. 5th DCA 1983), the court emphasized the necessity of procedural compliance in discovery to ensure fairness in judicial proceedings. Unsupported or blanket objections that fail to address each specific request obstruct the discovery process and are insufficient to protect a party from disclosure obligations.

12. The requirement for a privilege log, under Florida Rule of Civil Procedure 1.280(b)(6), is designed to ensure transparency in the discovery process, allowing both the opposing party and the court to evaluate the validity of claimed privileges over requested documents.

13. In *TIG Insurance Corp. of America v. Johnson*, the court directly addressed the obligations of a party claiming privilege over documents requested in discovery, holding that a privilege log must detail the nature of withheld documents to allow assessment of the privilege claim. The TIG case also highlights that failure to produce a privilege log may result in significant procedural and substantive consequences, including waiver of the privilege itself.

ARGUMENT

I. Defendant's Failure to Comply with Discovery Obligations Justifies Expedited Compulsion

14. Plaintiff's request for production is narrowly focused on metadata, firewall logs, and software details for a single date (June 23, 2024), and is relevant to Plaintiff's allegations regarding the integrity and security of vote-by-mail ballot orders by voters or those that may have been unlawfully ordered by fraudsters, hackers, or bots. Defendant's broad objections lack factual or legal basis, failing to address each item specifically as required.

15. **Requests 1, 3, 4, and 5 Do Not Seek Personally Identifiable or Privileged Information:** In Request No. 1, Plaintiff specifically requested source IP addresses—a technical identifier, or a kind of "metadata," for mail ballot orders received on June 23rd, and only on June 23rd.

16. For the court's consideration "IP Addresses" come in two types: IPv4 and IPv6, and they they look like this:

- Example of IPv4 address: **18.204.100.122**

- Example of IPv6 address: **2600:1006:b05c:2389:d586:878f:29aa:2d74**

17. State of Florida ballot order count records for June 23ʳᵈ clocked over 219,000 mail ballot orders received on what was a Sunday. It was an unprecedented, massive, singular spike in Pinellas County mail ballot orders not seen in the State of Florida. Looking at the IP addresss above, one can see that the IP addresses do not contain personally identifiable information about individual voters. Nor does the web client information in request 3, nor does the date/timestamps of the ballot orders in Request 4. Nor do the firewall logs requested in Request 5.

18. **Case Precedent on the Privacy of Internet Protocol (IP) Address.** Courts have consistently held that IP addresses lack Fourth Amendment protection. In **State v. Mixton**, 250 Ariz. 282, 478 P.3d 1226 (2021)., for example, the Court affirmed Defendant's convictions, holding that neither the United States nor the Arizona Constitution requires a search warrant or court order for a law enforcement officer to obtain either a user's Internet Protocol (IP) address or subscriber information the user voluntarily provides to an Internet Service Provider (ISP) as a condition or attribute of service. IP addresses and ISP subscriber information were found to fall outside Fourth Amendment protections, as they are voluntarily provided to third-party ISPs and subject to the third-party doctrine. **United States v. Jean**, 207 F. Supp. 3d 920 (W.D. Ark. 2016). similarly confirms that individuals do not have a reasonable expectation of privacy in their IP addresses and other information turned over to ISPs.

19. **Proof of Routine IP Address Data Collection and Retention via Voter Focus Software:** Defendant's claim that producing the information requested, would be overly burdensome is directly contradicted by evidence already in the case record in Plaintiff's Response to Defendant's Motion to Dismiss, **Exhibit C,** which is also attached hereto. The VR Systems Voter Focus software used by the Supervisor of Elections captures, stores, retains, and makes available user-generated reports that are easily produced by administrators, and those reports contain metadata and voter data for mail ballot orders by date, time, source IP address, voter name. These capabilities are documented in the Voter Focus online help manual, published by VR Systems, the software vendor. Defendant's claim of undue burden is thus a sham, as the requested information is already accessible and routinely stored by Defendant and its contractor VR Systems, and Defendant's and VR Systems employees are trained on its use.

20. **Defendant's Unsupported Privacy Claims and Availability of Confidentiality Protections:** Defendant's privacy concerns are unfounded given the established case law regarding IP addresses as non-content information under the third-party doctrine. Furthermore, any arguably private information, such as voter names and addresses, can be placed under seal to maintain confidentiality, or even the IP address information can be placed under seal: Plaintiff has no objection to redacting voter names and address. Defendant's refusal to produce these records appears to be an attempt to withhold information critical to Plaintiff's case without legitimate grounds.

21. **Failure to Produce a Privilege Log:** Defendant's broad and unsupported objections constitute willful noncompliance, especially in the absence of a privilege

log as required under Florida Rule of Civil Procedure 1.280(b)(6). As highlighted in TIG Insurance Corp. of America v. Johnson, a party claiming privilege must provide a privilege log that allows for evaluation of the privilege claim. Without such a log, Defendant's privilege claim is procedurally deficient and obstructive.

II. Defendant's Evasive and Obstructive Conduct may be Sanctionable

22. Defendant's refusal to comply with these requests, failure to submit a privilege log, and general evasion in addressing each item requested demonstrate willful noncompliance with Florida's discovery rules. Under Florida Rule of Civil Procedure 1.380(b), the Court may impose sanctions for such conduct, including costs, fees, and additional punitive measures if warranted.

23. The U.S. Supreme Court has held in Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980), that sanctions serve to deter parties from ignoring procedural obligations, which is essential to maintaining judicial integrity. Here, Defendant's lack of compliance, failure to provide specific objections, and absence of a privilege log rise to the level of sanctionable obstruction.

III. Defendant Marcus is attempting to prejudice Plaintiff's defense against her Motion to Dismiss by delaying production until after the Motion to Dismiss hearing on November 12th

24. Defendant Julie Marcus's actions reveal an apparent strategy to evade discovery obligations by delaying responses and prejudice Plaintiff's case until after the currently scheduled motion to dismiss hearing on November 12, 2024, at 3:00 PM in front of Judge Muscarella. Plaintiff must submit all pleadings and evidence by November 7, 2024. The suspicious timing of Defendant's obstructive response suggests an attempt to extend the discovery delivery date until after the hearing on her motion to dismiss. This hearing will address her and two other defendants'

motions to dismiss, and Defendant Marcus's current delay tactics hinder Plaintiff's ability to obtain relevant discovery essential to defending against dismissal.

25. Delay Tactics and the 45-Day Response Window: Plaintiff served Defendant Marcus with discovery requests on September 12, 2024 with the Summons and Complaint, providing her 45 days to respond.

26. At the end of today, the 45-day response period will have expired, leaving Plaintiff without *any* of the requested discovery materials. Not a single IP address with date/timestamp for even a single mail ballot order submitted on June 23 2024. This delay appears to be a calculated effort by Defendant Marcus to circumvent her discovery obligations in a bad-faith effort to deprive Plaintiff of critical information before the motion to dismiss hearing.

27. **Discovery's Impact on the Motion to Dismiss**: Defendant's delay tactics are especially prejudicial given that the requested discovery materials are directly relevant to the issues in Plaintiff's claims of election fraud that are being challenged in Marcus' (and Defendant Griffith's) motions to dismiss. Plaintiff's discovery requests pertain to IP addresses, firewall logs, and metadata directly relevant to allegations involving Defendant Marcus's handling of vote-by-mail ballot ordering and processing data. Access to this information is critical for Plaintiff to present a complete factual record in opposition to Defendant's motion to dismiss. The absence of this discovery will deprive Plaintiff of essential evidence, while Defendant benefits from an incomplete evidentiary record at the hearing by way of obstruction and obfuscation.

28. **Bad Faith in Evading Discovery Obligations**: Defendant's actions amount to a willful attempt to evade court-ordered discovery obligations. Defendant has

neither provided timely responses, sought a protective order, nor filed a motion to stay discovery, which suggests bad faith in complying with discovery protocols. Under Florida Rule of Civil Procedure 1.380(b), such evasive conduct warrants sanctions, as it compromises the integrity of the judicial process by undermining Plaintiff's right to access relevant information before the hearing.

29. **Court Intervention is Required to Prevent Prejudice to Plaintiff**: Given the pending motion to dismiss hearing is in 15 days, Plaintiff respectfully requests that the Court intervene to compel the immediate production of all responsive documents within 5 days. Additionally, an expedited Show Cause hearing is requested to ensure that Defendant is held accountable for her discovery obligations and that no further delays will prejudice Plaintiff's case preparation for the upcoming motion to dismiss hearing.

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REQUEST FOR RELIEF

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WHEREFORE, Plaintiff respectfully requests that this Court:

A. Compel Defendant Julie Marcus to produce all documents responsive to Plaintiff's First Request for Production of Documents, served on September 12, 2024, within five days of the Court's Order on this Motion;

B. In the alternative, that the Court, as an absolute minimum, order Defendant to produce the mail ballot requestor IP addresses (Request 1) with their date/timestamps (Request 4) for all the mail ballot orders received on June 23, 2024, for all elections;

C. Schedule an expedited Show Cause Hearing for Defendant to explain her failure to comply with Plaintiff's discovery request;

D. Postpone the November 12th Motion to Dismiss hearing until at least two weeks after Defendant Marcus has produced the requested records.

E. Grant any other relief this Court deems just and proper.

REQUEST FOR EXPEDITED SHOW CAUSE HEARING

Plaintiff requests an expedited show cause hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John W Liccione, HEREBY CERTIFY that on this 28th day of October 2024, the foregoing Motion to Compel Discovery was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to Kirby Kreider, attorney for Julie Marcus, George A.D. Thurlow, Esq., Attorney for Defendant Jennifer Griffith, James B. Lake, Esq., Attorney for Defendant Cathy Salustri Loper, and via postage pre-paid first-class mail to Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.

John W Liccione