

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re FIRSTENERGY CORP. SECURITIES)	No. 2:20-cv-03785-ALM-KAJ
LITIGATION)	
_____)	<u>CLASS ACTION</u>
This Document Relates To:)	Judge Algenon L. Marbley
ALL ACTIONS.)	Magistrate Judge Kimberly A. Jolson
_____)	

JOINT DISCOVERY STATUS REPORT

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Pursuant to the Court’s August 19, 2022 Opinion and Order (ECF 333), the parties provide this discovery status report. There is one active discovery dispute that concerns non-parties Samuel C. Randazzo (“Randazzo”) and Sustainability Funding Alliance of Ohio Inc.’s (“SFAO”) compliance with the Court’s April 5, 2023 Order (ECF 440) (“April 5 Order”). Class Plaintiffs certify that they met and conferred and exchanged correspondence multiple times with Randazzo’s counsel, but were unable to reach an agreement.¹ The relevant parties’ positions are set forth below.

I. Class Plaintiffs’ Position

As detailed in the April 3, 2023 Joint Status Report, “Randazzo, an alleged participant in FirstEnergy’s admitted corruption scheme, is refusing to produce documents concerning the \$4,333,333 that FirstEnergy paid him on January 2, 2019, absent any legal obligation to do so, on relevance grounds.” Status Report, ECF 438 at PageID 9894. Accordingly, “Class Plaintiffs respectfully request[ed] that the Court order Randazzo to produce the requested discovery.” *Id.* at PageID 9895. Because the discovery sought was “clearly relevant,” the Court “**ORDERED** [Randazzo and SFAO] to produce any documents regarding the \$4.3 million payment within their possession, custody, or control to Class Plaintiffs.” 4/5/23 Order, ECF 440 at PageID 10059-60 (emphasis in original). Nevertheless, in the 5 weeks since then, Randazzo and SFAO have refused to comply with the April 5 Order, claiming it was limited to documents (including those by other

¹ Class Plaintiffs are Lead Plaintiff Los Angeles County Employees Retirement Association and Named Plaintiffs Amalgamated Bank, as Trustee for the LongView LargeCap 500 Index Fund, LongView Quantitative LargeCap Fund, LongView Broad Market 3000 Index Fund, LongView LargeCap 500 Index Fund VEBA, LV LargeCap 1000 Value Index Fund, LongView Quantitative MidCap Fund, LongView Quant LargeCap Equity VEBA Fund and LongView Core Plus Fixed Income Fund, City of Irving Supplemental Benefit Plan, and Wisconsin Laborers’ Pension Fund (collectively, “Class Plaintiffs”). The “Opt-Out Plaintiffs” are plaintiffs from the related actions captioned *MFS Series Trust I, et al. v. FirstEnergy Corp., et al.*, No. 2:21-cv-05839 (S.D. Ohio), and *Brighthouse Funds Trust II – MFS Value Portfolio, et al. v. FirstEnergy Corp., et al.*, No. 2:22-cv-00865 (S.D. Ohio). Opt-Out Plaintiffs join Class Plaintiffs in this request.

non-parties) sufficient to show how the \$4.3 million was disbursed. Because Randazzo and SFAO's interpretation is plainly inconsistent with the April 5 Order and the discovery sought is undeniably relevant, Class Plaintiffs request that the Court order Randazzo and SFAO, or their counsel, to execute declarations by May 29, 2023 certifying: (1) that they have made reasonable efforts to locate and produce "any documents regarding the \$4.3 million payment within their possession, custody, or control" and that all such documents of which they are aware have been produced; (2) the specific steps taken to identify responsive documents, including locations and email accounts searched, and inquiries made of others; and (3) the search methodology utilized to comply with the Court's April 5 Order.

1. Relevant Background and Argument

Documents concerning the \$4,333,333 that FirstEnergy paid Randazzo's shell company, SFAO, on January 2, 2019, absent any legal obligation to do so, are relevant to the parties' claims and defenses. 4/5/23 Order, ECF 440 at PageID 10059-60. Class Plaintiffs allege "FirstEnergy executives broadened the reach of the Bailout Scheme by buying the support of soon-to-be PUCO Chairman Randazzo with an illicit \$4 million payment." Status Report, ECF 438 at PageID 9895 (quoting ¶72).² FirstEnergy has admitted in a Deferred Prosecution Agreement that "the \$4.3 million payment to SFAO was a *quid pro quo* exchange in furtherance of the fraud scheme at the center of Class Plaintiffs' allegations." 4/5/23 Order, ECF 440 at 10059-60 (citing Status Report, ECF 438 at PageID 9894-900; ¶¶6, 72, 194, 207). Defendants Jones and Dowling were the "FirstEnergy executives" responsible for this illicit payment. Status Report, ECF 438 at PageID 9895. Nevertheless, they and other individual defendants "have denied the illicit purpose of the

² Unless otherwise noted, all "¶" or "¶¶" citations are to the Consolidated Complaint for Violations of the Federal Securities Laws, ECF 72 at PageID 1545-674. Additionally, all citations are omitted, and emphasis is added.

payment.” 4/5/23 Order, ECF 440 at 10060.³ Also, they have tried to portray the payment as a settlement for the benefit of the Industrial Energy Users-Ohio (“IEU-Ohio”) trade group in recent depositions. Status Report, ECF 438 at PageID 9896-97.

In sum, because the documents and information produced by SFAO and Randazzo regarding FirstEnergy’s \$4.3 million payment “[would] make the respective positions of the Class Plaintiffs and Defendants more or less reasonable,” the Court ordered Randazzo and SFAO “to produce any documents regarding the \$4.3 million payment within their possession, custody, or control to Class Plaintiffs.” 4/5/23 Order, ECF 440 at PageID 10060.

On April 6, 2023, Class Plaintiffs requested that Randazzo’s counsel confirm that Randazzo and SFAO comply with the Court’s April 5 Order within 30 days. Their request was met with silence. After exchanging multiple correspondence responding to inquiries from Randazzo and SFAO’s counsel, Class Plaintiffs, Opt-Out Plaintiffs, and Randazzo’s counsel held a telephonic meet-and confer on April 27, 2023, during which Randazzo’s counsel contended that Class Plaintiffs and Opt-Out Plaintiffs had sufficient documents from non-parties already and would not describe Randazzo or SFAO’s efforts to comply with the April 5 Order, including precisely what had been done to identify responsive information.

Since then, Randazzo and SFAO have produced 9 documents; refused to produce documents concerning the \$4.3 million in their possession, custody, or control beyond those that they contend are sufficient to show “what happened to the \$4.3mm paid to Sustainability Funding Alliance of Ohio, Inc. [“SFAO”] on January 2, 2019 after it was received – how the payment was

³ See also Defendant Jones’ Answer, ECF 245 at PageID 5839, 5859 (“Jones denies that the \$4 million payment was made to an individual and denies that the payment was illicit or a bribe.”); Defendant Dowling’s Answer, ECF 236 at PageID 5086 (Dowling denying that “FirstEnergy executives broadened the reach of the Bailout Scheme by buying the support of soon-to-be PUCO Chairman Randazzo with an illicit \$4 million payment.”); Defendant Reffner’s Answer, ECF 241 at PageID 5574 (Reffner denying same).

used and disbursed”; asserted that “no search terms [were] used or needed to respond to the Court’s April 5 Order”; and refused to disclose their search efforts, including whether they searched Electronically Stored Information (“ESI”), despite their deficient production. Ex. 1 at 1 (5/10/23 R. Sugarman email).⁴

Randazzo and SFAO have failed to comply with the Court’s April 5 Order. Namely, Randazzo and SFAO’s bare contention – that the order is limited to documents, including those produced by other parties, sufficient to show how the \$4.3 was *disbursed* – is without merit. It is irreconcilable with the broader language of the Court’s order “to produce any documents regarding the \$4.3 million payment within their possession, custody, or control to Class Plaintiffs.” 4/5/23 Order, ECF 440 at PageID 10060. Moreover, as previously explained,

Class Plaintiffs are entitled to this discovery to help prove their allegation that unbeknownst to the public and FirstEnergy investors, defendants engaged in a risky scheme to corrupt the political process, including by “buying the support of soon-to-be PUCO Chairman Randazzo with an illicit \$4 million payment,” which “exposed FirstEnergy to catastrophic risks (and now the reality) of financial, regulatory, legal and reputational loss.

Status Report, ECF 438 at PageID 9899 (citing ¶¶6, 72, 135-136). Randazzo and SFAO’s narrowed scope of relevance would exclude that discovery. For example, the individual defendants’ position that it was not an illicit payment would be less reasonable if Randazzo sent an email to defendant Jones on February 1, 2019, stating: “I’m enjoying my new beach home.

⁴ To be clear, even if Randazzo and SFAO’s interpretation of the April 5 Order was correct (it is not), their limited productions even in conjunction with other parties’ productions would be incomplete. Indeed, some of the tens of thousands of dollars withdrawn from SFAO’s account that Class Plaintiffs cited as mere examples in the April 3, 2023 Status Report remain unexplained. In addition, SFAO and Randazzo’s unilateral decision to exclude documents already produced by other parties in this action is incompatible with the Court’s Order. Moreover, Randazzo and SFAO’s exclusion of documents purportedly produced by other non-parties is particularly inappropriate here where they cannot have access to, or know of, the majority of documents produced in this Action, which have been designated Confidential pursuant to the Amended Stipulated Protective Order (ECF 411).

Thanks\$\$.” Similarly, an email from Randazzo to his wife the day after the payment, boasting, “I hit the \$4 mm jackpot with FirstEnergy” would undoubtedly strengthen Class Plaintiffs’ position and weaken defendants’ position. Because these documents are relevant to the parties’ claims and defenses, they should be produced.

Nathan v. Ohio State Univ., 2013 WL 2286969 (S.D. Ohio May 23, 2013), *objections overruled by*, 2013 WL 2948361 (S.D. Ohio June 14, 2013) is instructive. There, the court granted in part plaintiff’s motion to compel a party to produce categories of documents that she maintained the party was already compelled to produce. *Nathan*, 2013 WL 2286969, at *5. In granting the motion to compel in part, the court ordered the defendants or its counsel to produce the relevant categories of documents and “set forth, in affidavits, the steps they took to locate and produce responsive documents, including . . . the parameters of their electronic searches.” *Id.* Moreover, the Court ordered defendants’ counsel to

execute an affidavit certifying that Defendants have completed a reasonable inquiry in locating and producing responsive documents and that all responsive documents of which they are aware have been produced. Defense counsel’s affidavit must specify the steps taken in identifying departments likely to have relevant information, the substance of the requests sent to each department, and any follow-up conducted on any perceived inadequacies or in order to locate responsive documents. The affidavits must confirm that their efforts in locating responsive documents are complete. Defendants’ and Defense counsel’s full disclosure of their search methodology is necessary here given their refusal to comply with this Court’s discovery orders.

*Id.*⁵ Similarly, here, Randazzo and SFAO have failed to comply with the Court’s unambiguous April 5 Order or provide any legitimate reason for their failure to do so.⁶ Worse yet, they have

⁵ While Class Plaintiffs do not seek sanctions, the court in *Nathan* also ordered the defendant and its counsel to “pay Plaintiff her reasonable attorneys’ fees associated with bringing this Motion, as well as fees associated with pursuit of [the relevant] documents subsequent to this Court’s October 29, 2012 Discovery Order.” 2013 WL 2286969, at *5.

⁶ Randazzo’s apparent self-collection of documents, which is admittedly devoid of any search terms, is particularly troublesome here given his alleged role as a wrongdoer. Indeed, “[c]ourts view the self-collection of data with skepticism. . . . [And] this is particularly so where, as here,

unnecessarily drawn out the discovery process and consistently failed to make any showing of undue burden (nor could they) to plainly relevant discovery.

Accordingly, Class Plaintiffs respectfully request that the Court order Randazzo and SFAO, or their counsel, to execute declarations by May 29, 2023 certifying: (1) that they have made reasonable efforts to locate and produce “any documents regarding the \$4.3 million payment within their possession, custody, or control” and that all such documents of which they are aware have been produced; (2) the specific steps taken to identify responsive documents, including locations and email accounts searched, and inquiries made of others; and (3) the search methodology utilized to comply with the Court’s April 5 Order.

II. Position Statement of Non-Parties Samuel Randazzo and SFAO

Pursuant to the Court’s Order of April 5, 2023 (ECF 440), Mr. Randazzo and SFAO have produced to the Plaintiffs the documents in their possession, custody, or control “regarding how the \$4.3 million payment was used and disbursed.” Together with the information obtained by the Plaintiffs from (a) Chase Bank, (b) the accounting firm used by SFAO and Mr. Randazzo, and (c) Industrial Energy Users-Ohio, these documents provide the Plaintiffs with the answer(s) they sought when they told this Court (ECF 438 Page ID 9897): “Because what happened to this \$4.3 million payment after Randazzo received it via [SFAO] is highly relevant to both the parties’ claims and defenses in this case, *the documents necessary to follow the money are plainly discoverable.*”

The plaintiffs have the documents necessary to follow the money. The Plaintiffs have the “information from the third parties regarding how the payment was used and disbursed that will make the respective positions of the Class Plaintiffs and the Defendants more or less

the individual asked to collect responsive information is an alleged wrongdoer.” *Johnson v. J. Walter Thompson U.S.A., LLC*, 2017 U.S. Dist. LEXIS 176815, at *9 (S.D.N.Y. Oct. 25, 2017).

reasonable, and the liability of Defendants for the alleged harm to Class Plaintiffs therefore more or less likely.” (ECF 440 Page ID 10060.) Further discovery “is unreasonably cumulative or duplicative, [and has already been obtained from some other source that is more convenient, less burdensome, or less expensive[.]” Fed. R. Civ. P. 26(b)(2)(C)(i).

There is no discovery dispute, yet Plaintiffs persist. The Court should require that they provide the Court their representation that this claimed dispute is not being presented for any improper purpose, such as to harass Mr. Randazzo or SFAO, or cause needless increase in their cost of responding to discovery, and that this claimed dispute has evidentiary support. “Insofar as non-parties such as Mr. Randazzo and SFAO are subject to special consideration in discovery, it is primarily that issuing parties “must take reasonable steps to avoid imposing undue burden” on them. Fed. R. Civ. P. 45(d)(1).” (ECF 378 Page ID 9008)

1. Background and Events Since April 5, 2023

The Plaintiffs (Class and Opt-out) advised the Court in their Discovery Status Report of April 3, 2023 (ECF 438), of their position that “what happened to the \$4.3mm paid to Sustainability Funding Alliance of Ohio, Inc. [“SFAO”] on January 2, 2019, after it was received is highly relevant to both parties’ claims and defenses in this case.” The Plaintiffs described for the Court that “both parties claims and defenses in this case” were as follows (*id.*):

1. FE executives broadened the reach of the Bailout Scheme by buying the support of soon-to-be PUCO Chairman Randazzo with an illicit \$4mm payment. (Complaint ¶72, etc.) (ECF 438 Page ID 9895)
2. First Energy admitted in its Deferred Prosecution Agreement FirstEnergy a *quid pro quo* purpose behind the \$4.3mm payment. (*Id.*)
3. Defendants Jones, Dowling and Reffner have explicitly **denied** that the \$4.3mm was an illicit payment to Randazzo in their Answers to the Complaint. (*Id.*, Page ID 9896)
4. These 3 defendants have tried to portray the payment as a settlement for the benefit of the Industrial Energy Users-Ohio (IEU-Ohio) trade group. (*Id.*)
5. At least these 3 defendants have expressly denied that the \$4.3mm payment was a bribe and are actively trying to portray it as a legitimate settlement payment. (*Id.*, Page ID 9898-9899)

This Court's April 5th Order (ECF 440) stated that "Information from the third parties regarding how the payment was used and disbursed will make the respective position of the Class Plaintiffs and the Defendants more or less reasonable and the liability of Defendants for the alleged harm ... more or less likely." Mr. Randazzo and SFAO were "ordered to produce any documents regarding the \$4.3 million payment within their possession, custody, or control to Class Plaintiffs." (*Id.*) Pursuant to the Court's Order, Mr. Randazzo and SFAO have produced to the Plaintiffs the documents in their possession, custody, or control "regarding how the \$4.3 million payment was used and disbursed." Indeed, the documents now in the Plaintiffs' possession as a result of Mr. Randazzo's and SFAO's production show all receipts and disbursements by each.

Since April 5, the Plaintiffs have also obtained documents from third parties Chase Bank, Mr. Randazzo's and SFAO's outside accounting firm, and Industrial Energy Users-Ohio. These documents now in the possession of the Plaintiffs include:

1. Bank Statements for the SFAO Chase Checking Account showing all receipts and disbursements and copies of checks, issued for the period *June 1, 2011-August 31, 2021*. The account was closed by Chase during August 2021.
2. SFAO General Ledger- Separate Debits and Credits for the period *January 1, 2019- December 31, 2021, prepared annually by SFAO's outside accounting firm.*
3. SFAO Trial Balance for 2022, prepared by SFAO's outside accounting firm.
4. Bank Statements for Mr. Randazzo's Chase Checking Account showing all receipts and disbursements, and copies of checks issued, during the period *December 11, 2018-September 9, 2021.*
5. Bank Statements for the Industrial Energy Users-Ohio Chase Checking Accounts and copies of checks issued for the period *June 1, 2011- October 29, 2021*. The account was closed by Chase during October 2021.
6. Chase Bank Statements and General Ledger-Separate Debits and Credits for IEU-Ohio Administration, LLC *prepared by its outside accounting firm* for the period *January 1, 2019-December 31, 2020.*

2. The SFAO Bank Records and General Ledgers

The above-described document categories (1) and (2) show the sources of all funds deposited into SFAO's bank account and show when the \$4.3mm payment was disbursed and to

whom disbursed. The disbursements by SFAO are also individually charted and categorized in the SFAO “General Ledger-Separate Debits and Credits” (“GL”) for the years 2019, 2020 and 2021, and in the 2019 W-2 and Earnings Summary. The GLs show when the \$4.3mm payment from FirstEnergy was disbursed and to whom funds were disbursed during 2019, 2020, and 2021. The GLs were prepared annually by SFAO’s outside accounting firm and reflect, *inter alia*, the following debits and credits each year:

- Sustainability-Checking-Chase
- Notes Receivable
- Payroll Liabilities
- Capital Stock
- Accum Adjust Acct
- Shareholder Distributions
- Retained Earnings
- Agency Fee Income
- Advertising and Promotion
- Rental Income
- Accounting fees
- Bad Debt Expense
- Credit Card Payment
- Dues & Subscriptions
- Office Expense
- Depreciation Expense
- Insurance Expense
- Payroll Expenses
- Telephone Expense
- Utilities
- Taxes-Real Estate
- Taxes- CAT
- Payroll Taxes
- Professional Fees

3. The IEU-Ohio Bank Records

IEU-Ohio is referred to in the Joint Discovery Status Report as the trade group portrayed by certain of the Defendants as having received the \$4.3mm payment in settlement for its benefit. The IEU-Ohio Bank Statements (and copies of checks) described above (category 5) show the sources of the funds deposited into IEU-Ohio’s accounts, including from SFAO or Mr. Randazzo,

and also show the disbursements that were made by IEU-Ohio during a ten (10) year period, the time period scrutinized here.

The IEU-Ohio Bank records address the defenses of the Defendants that the payment was a settlement for the benefit of the IEU-Ohio trade group.

4. Mr. Randazzo's Bank Records

The Bank Statements (and copies of checks) for Mr. Randazzo's personal checking account described above (category 4) show the receipt and deposit of funds, including those from SFAO, and how and to whom those funds were disbursed. The checks and electronic withdrawals noted on the bank statements and the SFAO General Ledger entries show the amount of those payments and to whom they were made. Beyond the documents he has produced, and as the Plaintiffs have previously been advised, Mr. Randazzo does not have receipts for federal, state, and local taxes, credit card bills, utility bills, water and sewage, HOA fees, household expenses, clothing, groceries, gas, etc. or other personal or daily expenditures during 2019, 2020 or 2021, including the use of funds disbursed to Mr. Randazzo's spouse, Ms. Farmer in his possession or custody.

5. Mr. Randazzo's Supplemental Document Production

Pursuant to the Court's Order, *Mr. Randazzo and SFAO made a supplemental production* of documents regarding the use of the \$4.3 million payment which, among other things, reflect:

1. Mr. Randazzo's electronic payment on July 15, 2020, of \$1,412,774 to the US Treasury. [SB1422139-F1, p. 307]
2. Mr. Randazzo's *estimated tax payments to the US Treasury* during 2019 in the amount of \$78,532, and the remaining 2019 payments of \$20,000 and \$40,000 per the vouchers.
3. *Mortgage Payments* made by Mr. Randazzo *in excess of \$1.4mm* made to Synovus Bank during 2019, including \$723,326.44 [SB1422139-F1, p.148-149] and online payments made during May 2019 [SB1422139-F1, p.184] and during July 2019.
4. Promissory Note evidencing a loan made to Ambrose & Eve, a restaurant operated by Mr. Randazzo's daughter, to which he loaned an additional \$100,000 during 2019.

Mr. Randazzo has produced to the Plaintiffs the documents in his possession, custody, or control “regarding how the \$4.3 million payment was used and disbursed ... that make the respective position of the Class Plaintiffs and the Defendants more or less reasonable and the liability of Defendants for the alleged harm ... more or less likely.” Please note that he has not reproduced or duplicated the documents produced to and received by the Plaintiffs from third parties.

There is no legitimate dispute that plaintiffs possess the documents to determine how the \$4.3 million payment was used and disbursed. The Court’s April 5th Order has been satisfied by Mr. Randazzo and SFAO. Unless the Plaintiffs have changed their Position presented to the Court in their April 3, 2023, Joint Discovery Status Report as the reasons for the relevance of their discovery requests, there is no need for any further action by this Court.

Dated: May 15, 2023

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically on May 15, 2023. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Joseph F. Murray

Joseph F. Murray (0063373)

Mailing Information for a Case 2:20-cv-03785-ALM-KAJ Owens v. FirstEnergy Corp. et al

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- (No manual recipients)

EXHIBIT 1

From: [Roger P. Sugarman](#)
To: [Rachel Cocalis](#)
Cc: [Ting Liu](#); [Jason Forge](#); "[Nicolaou, John T.](#)"; [Joe Murray](#); [Matthew L. Fornshell](#)
Subject: FirstEnergy Securities Litigation - April 5, 2023 Order
Date: Wednesday, May 10, 2023 9:58:51 AM

EXTERNAL SENDER

Rachel,

Per my email below:

“Mr. Randazzo has produced to the Plaintiffs the documents in his possession, custody, or control “regarding how the \$4.3 million payment was used and disbursed .. that make the respective position of the Class Plaintiffs and the Defendants more or less reasonable and the liability of Defendants for the alleged harm ... more or less likely.” Mr. Randazzo has not reproduced or duplicated the documents produced to and received by the plaintiffs from third parties.

There were no search terms used or needed to respond to the Court’s April 5 Order. The documents produced by Mr. Randazzo, Chase Bank, Mr. Mott and IEU-Ohio show what happened to the \$4.3mm paid to Sustainability Funding Alliance of Ohio, Inc. [“SFAO”] on January 2, 2019 after it was received- how the payment was used and disbursed.

Roger

Roger P. Sugarman
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From: Rachel Cocalis <RCocalis@rgrdlaw.com>
Date: Tuesday, May 9, 2023 at 7:17 PM
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Cc: Ting Liu <TLiu@rgrdlaw.com>, Jason Forge <JForge@rgrdlaw.com>, 'Nicolaou, John T.' <jnicolaou@lchb.com>, Joe Murray <murray@mmb.com>, Matthew L. Fornshell <matthew.fornshell@icemiller.com>
Subject: RE: FirstEnergy Securities Litigation - April 5, 2023 Order

Roger,

We will review and respond later to all your points below. Given the approaching May 15 Status Report deadline, however, I would like to confirm as soon as possible that it is in fact Mr. Randazzo and SFAO's position that they have complied with the Court's April 5 Order that they "produce any documents regarding the \$4.3 million payment within [SFAO and Randazzo's] possession, custody, or control." ECF 440 at 2.

Since the Order, Mr. Randazzo has produced nine documents, only one of which was a scanned email, and declined Plaintiffs' alternative compromise that Mr. Randazzo provide a declaration. Given that Plaintiffs believe there are far more emails within Mr. Randazzo and SFAO's possession,

custody and control regarding the \$4.3 million payment, please confirm that you have searched Mr. Randazzo and SFAO's email and other electronically stored information for documents responsive to the April 5 Order. In addition, to the extent applicable, please provide the search terms utilized as Plaintiffs are now compelled to request input on the terms, given the apparent lack of hits. In addition, given the small number of documents purportedly within their possession, custody, and control, please identify Mr. Randazzo and SFAO's search efforts to identify documents responsive to the April 5 Order, including precisely what had been done to run searches on potentially responsive electronically stored information, or to identify responsive hardcopy materials as initially requested during the April 27 meet-and-confer.

Thanks,
Rachel

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Subject: Re: FirstEnergy Securities Litigation - April 5, 2023 Order

EXTERNAL SENDER
Rachel,

As you know, the plaintiffs (Class and Opt-out) advised the Court in the Joint Discovery Status Report of April 3, 2023 (ECF 438), that “what happened to the \$4.3mm paid to Sustainability Funding Alliance of Ohio, Inc. [“SFAO”] on January 2, 2019 after it was received is highly relevant to both parties’ claims and defenses in this case.” The plaintiffs described to the Court “both parties claims and defenses in this case ” to be:

1. FE executives broadened the reach of the Bailout Scheme by buying the support of soon-to-be PUCO Chairman Randazzo with an illicit \$4mm payment. (Complaint ¶72, etc.)
2. First Energy admitted in its Deferred Prosecution Agreement FirstEnergy a *quid pro quo* purpose behind the \$4.3mm payment. (ECF 3 Page ID 93)
3. Defendants Jones, Dowling and Reffner have explicitly denied that the \$4.3mm was an illicit payment to Randazzo in their Answers to the Complaint.
4. These 3 defendants have tried to portray the payment as a settlement for the benefit of the Industrial Energy Users-Ohio (IEU-Ohio) trade group.
5. At least these 3 defendants have expressly denied that the \$4.3mm payment was a bribe and are actively trying to portray it as a legitimate settlement payment.

Magistrate Judge Jolson’s Order (ECF 440- April 5, 2023) stated that “Information from the third parties regarding how the payment was used and disbursed will make the respective position of the Class Plaintiffs and the Defendants more or less reasonable and the liability of Defendants for the alleged harm ... more or less likely.” Mr. Randazzo and SFAO were “ordered to produce any documents regarding the \$4.3 million payment within their possession, custody, or control to Class Plaintiffs.” (*Id.*)

After Judge Jolson issued her Order, the plaintiffs obtained the following documents subpoenaed from third parties Chase Bank, SFAO’s outside accounting firm, and Industrial

Energy Users-Ohio: (1) Bank Statements for the SFAO Chase Checking Account and copies of checks issued for the period June 1, 2011-August 31, 2021. The account was closed by Chase during August 2021.; (2) SFAO General Ledger- Separate Debits and Credits for the period January 1, 2019- December 31, 2021; (3) SFAO 2022 Trial Balance; (4) Bank Statements for Mr. Randazzo's Chase Checking Account and copies of checks issued during the period December 11, 2018-September 9, 2021; (5) Bank Statements for the Industrial Energy Users-Ohio Chase Checking Accounts and copies of checks issued for the period June 1, 2011- October 29, 2021. The account was closed by Chase during October 2021; and (6) Bank Statements and General Ledger-Separate Debits and Credits for IEU-Ohio Administration, LLC for the period January 1, 2019-December 31, 2020.

A. The SFAO Bank Records and General Ledgers

Described above (1) and (2), they show the sources of all funds deposited into SFAO's bank account and show how the \$4.3mm payment was used and to whom disbursed. Disbursements of SFAO are also individually charted and categorized in the SFAO "General Ledger-Separate Debits and Credits" for the years 2019, 2020 and 2021, and in the 2019 W-2 and Earnings Summary. The GLs show how the \$4.3mm payment from FirstEnergy was used and to whom funds were disbursed during 2019, 2020, and 2021. The GLs were prepared by SFAO's outside accounting firm and reflect, *inter alia*, the following debits and credits each year:

- Sustainability-Checking-Chase
- Notes Receivable
- Payroll Liabilities
- Capital Stock
- Accum Adjust Acct
- Shareholder Distributions
- Retained Earnings
- Agency Fee Income
- Advertising and Promotion
- Rental Income
- Accounting fees
- Bad Debt Expense
- Credit Card Payment
- Dues & Subscriptions
- Office Expense
- Depreciation Expense
- Insurance Expense
- Payroll Expenses
- Telephone Expense
- Utilities
- Taxes-Real Estate
- Taxes- CAT
- Payroll Taxes
- Professional Fees

B. The IEU-Ohio Bank Records

IEU-Ohio is referred to in the Joint Discovery Status Report as the trade group

portrayed by certain of the defendants as having received the \$4.3mm payment in settlement for its benefit. Its Bank Statements (and copies of checks) described above (5) show the sources of the funds deposited into those accounts, including from SFAO or Mr. Randazzo, and the disbursements that were made during a ten (10) year period.

C. Mr. Randazzo's Bank Records

The Bank Statements (and copies of checks) for Mr. Randazzo's personal checking account described above (4) show the receipt and deposit of funds, including those from SFAO, and how and to whom those funds were disbursed. The checks and electronic withdrawals noted on the bank statements and the SFAO General Ledger entries evidence the amount of those payments and to whom they were made. Beyond the documents he has produced, Mr. Randazzo does not have receipts for federal, state, and local taxes, credit card bills, utility bills, water and sewage, HOA fees, household expenses, clothing, groceries, gas, etc. or other personal or daily expenditures during 2019, 2020 or 2021, including the use of funds disbursed to Mr. Randazzo's spouse, Ms. Farmer.

D. Mr. Randazzo's Supplemental Document Production

Pursuant to the Court's Order, *Mr. Randazzo made a supplemental production* of documents regarding the use of the \$4.3 million payment, which reflect:

1. Mr. Randazzo's electronic payment on July 15, 2020, of \$1,412,774 to the *US Treasury*. [SB1422139-F1, p. 307]
2. Mr. Randazzo's *estimated tax payments to the US Treasury* during 2019 in the amount of \$78,532, and the remaining 2019 payments of \$20,000 and \$40,000 per the vouchers.
3. *Mortgage Payments* made by Mr. Randazzo *in excess of \$1.4mm* made to Synovus Bank during 2019, including \$723,326.44 [SB1422139-F1, p.148-149] and online payments made during May 2019 [SB1422139-F1, p.184] and during July 2019.
4. Promissory Note evidencing a loan made to Ambrose & Eve, a restaurant operated by Mr. Randazzo's daughter, to which he loaned an additional \$100,000 during 2019.

Mr. Randazzo has produced to the Plaintiffs the documents in his possession, custody, or control "regarding how the \$4.3 million payment was used and disbursed .. that make the respective position of the Class Plaintiffs and the Defendants more or less reasonable and the liability of Defendants for the alleged harm ... more or less likely." Please note that he has not reproduced or duplicated the documents produced to and received by the plaintiffs from third parties.

Plaintiffs possess the documents to determine how the \$4.3 million payment was used and disbursed, making the proposed Declaration accompanying your email unnecessary. The Court's April 5th Order has been met by Mr. Randazzo and SFAO, and unless the plaintiffs have since changed their Position as presented to the Court in their April 3, 2023 Joint Discovery Status Report, no further response to your May 4th email is needed.

Regards,

Roger

Roger P. Sugarman
rogerpsugarman@gmail.com
614.578.6456

From: Rachel Cocalis <RCocalis@rgrdlaw.com>
Date: Thursday, May 4, 2023 at 10:43 PM
To: 'Roger P. Sugarman' <rogerpsugarman@gmail.com>
Cc: Ting Liu <TLiu@rgrdlaw.com>, Jason Forge <JForge@rgrdlaw.com>, 'Nicolaou, John T.' <jnicolaou@lchb.com>
Subject: FirstEnergy Securities Litigation - April 5, 2023 Order

Roger,

As you know, the Court rejected SFAO and Randazzo's objections to producing documents showing how Mr. Randazzo used or disbursed the \$4.3 million and ordered them to "produce **any** documents regarding the \$4.3 million payment within their possession, custody, or control." ECF 440 at 2 (emphasis added); *id.* ("information from the third parties regarding how the payment was used and disbursed will make the respective positions of the Class Plaintiffs and the Defendants more or less reasonable, and the liability of Defendants for the alleged harm to Class Plaintiffs therefore more or less likely. This tendency is the cornerstone of relevance."). Nearly a month has passed, and SFAO and Mr. Randazzo have not yet completed the Court ordered production. On April 27, 2023, Plaintiffs asked you to describe Mr. Randazzo's efforts to comply with the Court's Order, including precisely what had been done to run searches on potentially responsive electronically stored information, or to identify responsive hardcopy materials. No efforts were described. Absent "produc[ing] **any** documents regarding the \$4.3 million payment within their possession, custody, or control," this is insufficient.

During our meet-and-confer, you also requested that Plaintiffs identify information concerning the use of the \$4.3 million that is missing from productions made by other third parties. This question has nothing to do with SFAO and Mr. Randazzo's compliance with the April 5 Order, and Plaintiffs already provided examples in their April 3 position statement. Nevertheless, we provided several examples concerning documentation regarding payments to Synovus Bank, Ambrose & Eve, American Express, Auto Image, the U.S. Treasury, and Carol Farmer. Since then, Mr. Randazzo has produced a handful of documents. These examples, however, were illustrative and do not relieve Mr. Randazzo of complying with the Court's Order to "produce **any** documents regarding the \$4.3 million payment within their possession, custody, or control."

As a good faith compromise, Plaintiffs are willing to consider a declaration, with corresponding exhibits, in lieu of a more substantive document production. To be clear, however, to comply with the Court's April 5th Order, Mr. Randazzo's declaration must account for the \$4.3 million. For your convenience, Plaintiffs have provided draft declarations for the Class Action and the Direct Action cases. Lastly, to be clear, Mr. Randazzo's

provision of the declarations will not impact Plaintiffs' decision to seek Mr. Randazzo's testimony at deposition or at trial. **By May 9, 2023**, please produce "any documents regarding the \$4.3 million payment" or confirm that Mr. Randazzo will provide the declarations. Given that the Court ordered Mr. Randazzo and SFAO to produce these documents on April 5th, this should be easy. Plaintiffs will update the Court on SFAO and Mr. Randazzo's compliance with its April 5 Order in the May 15 Joint Discovery Status Report.

Best,
Rachel

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