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**This motion requires you
to respond. Please see the
Notice to Responding
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**Pro hac vice* motions pending

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**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

WW, MK, DM, HDT, and DS,

Plaintiffs,

vs.

TIMOTHY BALLARD, an individual;
OPERATION UNDERGROUND
RAILROAD, INC., a Utah non-profit
corporation; LIBERTY AND LIGHT dba
THE SPEAR FUND, a Utah non-profit
Corporation; ROCKWELL GROUP, INC., a
Utah corporation; NAZARENE FUND, INC.
dba THE NAZARENE FUND, a Utah
corporation; SLAVE STEALERS, LLC, a
Utah limited liability company; CHILDREN
NEED FAMILIES FOUNDATION, a Utah
non-profit corporation; DEACON, INC., a
Nevada corporation; JANET RUSSON, an
individual; CRAIG ANDERSON, an
individual; JULIAN ANN BLAKE, an

**DEFENDANT TIMOTHY BALLARD'S
MOTION TO (1) STRIKE PRIVILEGED
AND CONFIDENTIAL INFORMATION
IN THE FIRST AMENDED
COMPLAINT; (2) ORDER THE RETURN
OF MR. BALLARD'S STOLEN
INFORMATION; (3) ORDER THE
PLAINTIFFS TO IDENTIFY
THEMSELVES AND THEIR
ALLEGATIONS; AND (4) EXTEND MR.
BALLARD'S TIME TO RESPOND TO
THE FIRST AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

(HEARING REQUESTED)

Case No. 230907617
Honorable Chelsea Koch

individual; WES MORTENSON, an individual; BENJAMIN PACK, an individual; MARK REYNOLDS, an individual; STEPHAN FAIRBANKS, an individual; MARK BLAKE, an individual; BRAD DAMON, an individual; MATTHEW OSBORNE, an individual; MATTHEW COOPER, an individual; and JOHN and JANE DOES 1-100.

Defendants.

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MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Timothy Ballard (“Defendant” or “Mr. Ballard”) brings this Motion to (1) Strike Privileged and Confidential Information in the First Amended Complaint; (2) Order the Return of Mr. Ballard’s Stolen Information; (3) Order the Plaintiffs to Identify Themselves and Their Allegations; and (4) Extend Mr. Ballard’s Time to Respond to the First Amended Complaint (“FAC”) filed November 2, 2023. Mr. Ballard brings this motion under Utah Rules of Civil Procedure 12(f), 7(b), and 6(b)(1)(A).

I. Introduction and statement of relief requested and grounds for relief.

Four complaints, including this one, have now been filed against Mr. Ballard by the same law firms on behalf of multiple plaintiffs. Each case asserts claims against Mr. Ballard and others at Operation Underground Railroad (“OUR”), an anti-human trafficking organization that was co-founded by and employed Mr. Ballard.¹ Through lifesaving undercover operations, Mr. Ballard and OUR have rescued numerous trafficked children and brought about the apprehension and arrest of child-sex traffickers in several countries.

In this case, five anonymized plaintiffs (“Plaintiffs”) allege that Mr. Ballard engaged in sexual misconduct in connection with Plaintiffs’ voluntary participation in “ruse” training to prepare them to potentially pose as girlfriends and wives of undercover operatives during actual undercover operations in sex trafficking locations overseas where OUR could gather intel to locate and liberate sex-trafficked victims. Some Plaintiffs eventually participated in these undercover operations, and some failed out of training. The allegations vary in other respects, but Plaintiffs in large part claim that despite consenting to the “ruses” and attendant training, they were coerced into activities that were sexual in nature.

¹ Mr. Ballard requests the Court take judicial notice of the fact that Plaintiffs’ counsel has filed these other cases against Mr. Ballard and other defendants in the Third Judicial District Court in and for Salt Lake County, State of Utah: *Celeste Borys and Michael Borys v. Timothy Ballard, et al.* (Case No. 230907663 filed October 10, 2023); *Jordana Bree Righter v. Timothy Ballard, et al.* (Case No. 230908862 filed November 20, 2023); *Suzanne Whitehead v. Utah Attorney General Sean Reyes, et al.* (Case No. 230908977 filed November 27, 2023). See Declaration of Whitney Z. Bernstein (“Bernstein Decl.”) ¶¶ 2-5.

As an initial matter, the five Plaintiffs in this case filed their suit anonymously and have refused to provide their identities, despite Mr. Ballard's repeated requests so that he may know who has alleged what against him. Bernstein Decl. ¶¶ 12-13. Mr. Ballard should not have to respond to the FAC until he learns this information.

More importantly, the anonymous Plaintiffs have included in their FAC privileged and confidential information that Mr. Ballard's former Executive Assistant, Celeste Borys, appears to have stolen from his private email. Declaration of Timothy Ballard ("Ballard Decl.") ¶¶ 4, 9. Ms. Borys is also represented by Plaintiffs' counsel and is herself a plaintiff in a related matter. Bernstein Decl. ¶ 2 (*Celeste Borys and Michael Borys v. Timothy Ballard, et al.* (Case No. 230907663)). Plaintiffs' counsel came into possession of this information, some of which is clearly marked on its face as privileged, and instead of returning it, used it in this litigation and published it in the FAC. Plaintiffs' counsel refuses to return this information and remove it from the public file, despite repeated demands. Bernstein Decl. ¶¶ 9-13.

Even if these exhibits were not wrongly obtained, privileged material cannot be disclosed without Mr. Ballard's express consent, nor can it be used as evidence. It should thus be stricken from the pleading. Further, the time for Mr. Ballard to respond to the FAC should be tolled until this information has been removed and returned and until after Plaintiffs have provided their identities.

In this and/or in Ms. Borys' matter, Mr. Ballard will be filing a motion seeking early discovery, including a deposition of Ms. Borys to determine, among other things, the provenance of the exhibits, how the privileged information came into Plaintiffs' counsels' possession, and what other privileged and confidential information Plaintiffs may wrongfully possess. Pending the outcome of that discovery, Mr. Ballard anticipates filing further requests for relief to try to remedy the harms caused by Plaintiffs, Ms. Borys, and their counsel.

II. Relevant facts.

Mr. Ballard is an activist, speaker, and author who founded OUR, an anti-sex trafficking organization, and served as its CEO. Mr. Ballard has dedicated much of his adult life to combating human sex trafficking, particularly trafficking of children. He has gone undercover in various countries and has liberated children across the globe from sexual exploitation. Mr. Ballard was appointed to the White House Public-Private Partnership Advisory Council to End Human Trafficking and has testified before Congress's House Foreign Affairs Subcommittee on Global Human Rights. One of the most successful independent films in history, *Sound of Freedom*, was based on Mr. Ballard's work and released on July 4, 2023.

A few months after the film's release, and within days after news leaked that Mr. Ballard may consider a run for United States Senate, Plaintiffs WW, MK, DM, HDT and DS ("Plaintiffs") filed their anonymized Complaint against Mr. Ballard and eighteen (18) other defendants on October 9, 2023. Other plaintiffs also filed their complaints against Mr. Ballard, using the same law firms and counsel as this Complaint. These complaints were filed separately, some within days of each other, and others within weeks, as noted in footnote one above. There was no rhyme or reason why some plaintiffs were grouped together in one lawsuit, while others were not.

The handling of these complaints seemed more aimed at smearing Mr. Ballard in the press than about prosecuting the lawsuits. Rather than file them all together, the complaints were dribbled out and amended over several weeks, filing them on October 9 and 10, November 2, 20, and 27, and December 6. *See* Bernstein Decl. ¶¶ 2-5 (discussing other cases). Remarkably, Mr. Ballard and other defendants were not served the suits. Instead, plaintiffs and their counsel engaged in a press campaign with articles, statements, snippets, and press conferences attacking Mr. Ballard while choosing not to take the basic step of service to move the cases forward. Plaintiffs orchestrated negative press about Mr. Ballard on September 28, October 10 and 11, November 16 and 21, all without serving their complaints. *See* Bernstein Decl. ¶ 14. Mr. Ballard

was not served with the FAC until November 24, 2023, only after Mr. Ballard retained counsel who publicly noted that the various plaintiffs had yet to serve the lawsuits. Based on the docket, to date, it still does not appear Plaintiffs in this case have served any other defendants.

Despite Mr. Ballard's requests, two Plaintiffs in this case have refused to reveal their identities. Three Plaintiffs revealed their identities only after counsel's request but have refused to correlate their anonymized initials with their names, which would improperly require Mr. Ballard to speculate about which identified person correlates to which allegations. Bernstein Decl. ¶ 12.

The FAC alleges a plethora of baseless claims against Mr. Ballard and others that strain credibility—allegations which Mr. Ballard vehemently disputes. In an effort to bolster their meritless accusations, Plaintiffs larded up their FAC with salacious and irrelevant accusations against Mr. Ballard and others, including non-profit anti-trafficking organizations and their employees and board members, Utah elected officials, and even Mr. Ballard's church. Numerous irrelevant and sensitive stolen documents were attached as exhibits to the publicly filed FAC, for no apparent reason other than to further this smear campaign.

As soon as defense counsel became aware of the private and privileged materials attached to and referenced in the FAC, they contacted Plaintiffs' counsel to demand that the documents be stricken from the Complaint and immediately returned to defense counsel or destroyed. Bernstein Decl. ¶ 9. Defense counsel also asked what other privileged and/or highly sensitive documents are currently in Ms. Borys' and/or Plaintiffs and Plaintiffs' counsel's possession. *Id.* Plaintiffs' counsel refused to cooperate with any of these requests for information and have refused to remove the documents from the public record or return this information. *Id.* ¶¶ 11, 13.

The FAC contains the following information that appears to have been stolen from Mr. Ballard:²

² Because Plaintiffs' counsel has not returned or identified the stolen information, Mr. Ballard does not know the full scope of stolen information. Therefore, the above list is not all-inclusive.

1. **Exhibit J** is a February 14, 2023 memorandum from Brent Andrewsen of Holland & Hart, LLP, outside counsel to OUR, concerning an investigation into OUR by Davis County Attorney Roy Trawling (Ballard Decl. ¶ 10);
2. **Exhibit K**: An attorney-client privileged email from OUR's outside counsel, Brent Andrewsen of Holland & Hart, LLP, to Mr. Ballard, attaching a draft attorney-client privileged and work product letter to Utah Attorney General Sean Reyes, drafted on OUR's and Tim Ballard's behalf (*id.*);
3. **Exhibit M**: Attorney-client privileged emails between Mr. Ballard and OUR's in-house counsel, Alessandra Serano, wherein Ms. Serano provides legal advice to Mr. Ballard regarding a Mexico "operation" when Mr. Ballard was employed by OUR (*id.* ¶ 12);
4. **Exhibit N**: A private religious communication to Mr. Ballard by a priest of the Church of Jesus Christ of Latter-Day Saints (*id.* ¶ 14);
5. **Exhibit O**: A private religious communication to Mr. Ballard by a priest of the Church of Jesus Christ of Latter-Day Saints (*id.*);
6. **Exhibit P**: An attorney-drafted unsigned severance agreement between Mr. Ballard and OUR (*id.* ¶ 11);
7. **Exhibit Q**: An attorney-client privileged draft letter sent to Mr. Ballard by his personal attorney, Alex Spiro of the Quinn Emmanuel law firm (*id.*);
8. **Exhibits I and L**, and FAC ¶ 79: Other private and sensitive documents stolen from Mr. Ballard's email account, including emails between Mr. Ballard and high-profile individuals, such as public officials and media personalities (*id.* ¶ 9); and
9. Paragraphs in the FAC that cite directly to the above exhibits (*see, e.g.*, FAC ¶¶ 57, 58, 63, 65, 66, 79, 143, 147, 148).

To Mr. Ballard's knowledge, neither Mr. Ballard, nor any of the entities or law firms mentioned above, have disclosed these materials outside of the privilege. Ballard Decl. ¶ 13. Instead, these materials appear to have been obtained from Mr. Ballard's personal email account

without authorization. Mr. Ballard's email account is password-protected and can be accessed only by those who know (i) his personal email address; and (ii) his password. Ballard Decl. ¶ 2.

Plaintiffs' counsel also represent Ms. Borys, who on October 10, 2023, filed her own lawsuit against Mr. Ballard and others: *Celeste Borys and Michael Borys v. Timothy Ballard, et al.* (Case No. 230907663). Ms. Borys worked as Mr. Ballard's executive assistant while he worked at OUR and thereafter. *Id.* ¶¶ 3, 7. As Mr. Ballard's assistant, Ms. Borys by her own admission "handled" all of Mr. Ballard's activities, including arranging a marketing tour for the motion picture *Sound of Freedom* and scheduling Mr. Ballard's speaking activities. *Id.* ¶ 4. During this time, Mr. Ballard provided his email login credentials to Ms. Borys so that she could perform her duties. *Id.* ¶¶ 3-4. He did not authorize her to access his email account for any purpose other than for her work as his executive assistant. *Id.*

Ms. Borys discontinued her work with Mr. Ballard in early October 2023, only days before she sued him. Ballard Decl. ¶ 7. In transferring her duties to Mr. Ballard's new executive assistant, on or about October 2, 2023, Ms. Borys provided the new executive assistant with Mr. Ballard's email passwords, confirming that she had access to Mr. Ballard's email at least up until that date. *Id.* Although Mr. Ballard's new executive assistant changed all the passwords to Mr. Ballard's accounts shortly thereafter (*id.*), Ms. Borys had access to Mr. Ballard's email, and the privileged and/or confidential materials within, almost until the day she and Plaintiffs sued him. *Id.* ¶¶ 7-8.

On December 4, 2023, Mr. Ballard's counsel informed Plaintiffs' counsel by letter that the FAC appeared to have privileged and confidential documents attached as exhibits and requested that the documents be immediately removed from the pleading. Bernstein Decl. ¶ 9. Mr. Ballard's counsel further asked for an immediate deposition of Ms. Borys to determine the provenance of the privileged exhibits and other sensitive documents attached to the FAC. *Id.* Finally, Mr. Ballard's counsel asked for an extension of time to respond to the FAC due to the need to investigate and remedy the inclusion of privileged and confidential materials in the FAC

and because Plaintiffs' counsel had not yet provided the Plaintiffs' identities, making it impossible for Mr. Ballard to respond to the allegations. Bernstein Decl. ¶ 10.

Plaintiffs' counsel did not deny that Ms. Borys was the source of the stolen documents. *Id.* ¶ 11. Plaintiffs' counsel further refused to return the unlawfully obtained materials, refused to remove the complained-of exhibits from the publicly filed FAC, refused to make Ms. Borys available for early deposition, and refused to grant more than a three business-day extension to respond to the FAC. *Id.* While Plaintiffs' counsel provided the identities of three of the anonymous Plaintiffs, they did not correlate the Plaintiffs' anonymized initials with their identities and have not provided the identities of the other two, despite counsel's follow up on these points. *Id.* ¶¶ 12-13.

III. The Court should strike the stolen information from the pleadings and order its return to Mr. Ballard.

A. Legal standard.

Under Utah Rule of Civil Procedure 12(f), this Court may strike from a pleading any “redundant, immaterial, impertinent, or scandalous matter.” Utah R. Civ. P. 12(f); *see also id.* R. 10 (stating that a court may strike or disregard all or any part of a pleading that contains “redundant, immaterial, impertinent or scandalous matter”).

The standard for a motion to strike under the Utah Rules of Civil Procedure is identical to that under the Federal Rules of Civil Procedure. *Compare* Utah R. Civ. P. 12(f), *with* Fed. R. Civ. P. 12(f) (court may, *sua sponte* or upon motion, “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”).³ In considering a motion to strike under Federal Rule of Civil Procedure 12(f), federal courts have interpreted ““immaterial””

³ “Because the Utah Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure, where there is little Utah law interpreting a specific rule, we may [also] look to the Federal Rules of Civil Procedure for guidance.” *2010-1 RADC/CADC Venture, LLC v. Dos Lagos, LLC*, 2017 UT 29, ¶ 18 n.4, 408 P.3d 313 (quoting *Drew v. Lee*, 2011 UT 15, ¶ 16, 250 P.3d 48).

matter as “that which has no essential or important relationship to the claim for relief,” and “‘impertinent’” material as “statements that do not pertain to, and are not necessary to resolve, the disputed issues.” *Brady v. Basic Rsch., L.L.C.*, 101 F. Supp. 3d 217, 225 (E.D.N.Y. 2015); *see also* 5C Wright & Miller, Federal Practice and Procedure, § 1382 (3d ed.) (noting “considerable overlap between the concepts of ‘impertinent’ and ‘immaterial’ matter” in the context of a motion to strike).

Where material is privileged and therefore inadmissible, by definition, it is both impertinent and immaterial and should be stricken. *See Rosenfield v. GlobalTranz Enters., Inc.*, No. CV 11-02327-PHX-NVW, 2012 WL 12538606, at *1 (D. Ariz. Jan. 27, 2012) (ordering paragraphs containing attorney-client privileged information stricken from complaint as inadmissible and therefore immaterial under Rule 12(f)); *see also* 5C Wright & Miller, Federal Practice and Procedure, § 1382 (“One test that has been advanced for determining whether an allegation in a pleading is immaterial and impertinent within the meaning of Rule 12(f) is whether proof concerning it could be received at trial; if it could not, then the matter is immaterial and impertinent.”); *see also Mayorga v. Ronaldo*, 606 F. Supp. 3d 1003, 1014 (D. Nev. 2022), *aff’d*, No. 22-16009, 2023 WL 8047781 (9th Cir. Nov. 21, 2023) (striking privileged documents from briefs and imposing case-terminating sanctions for continued litigation use of wrongly obtained privileged material); *Sackman v. Liggett Grp., Inc.*, 173 F.R.D. 358, 365 (E.D.N.Y. 1997) (granting motion to strike deposition testimony based on privileged document stolen by paralegal from corporation).

Further, Courts have broad discretion to order relief for a wide range of litigation misconduct that abuses the judicial process, including striking all or part of a pleading. *See gen. Xyngular Corp. v. Schenkel*, 200 F. Supp. 3d 1273, 1300-01 (D. Utah 2016), *aff’d sub nom. Xyngular v. Schenkel*, 890 F.3d 868 (10th Cir. 2018). A “court may sanction a party for wrongfully obtaining the property or confidential information of an opposing party.” *Id.* at 1316 (citation omitted).

B. The stolen privileged information is inadmissible and irrelevant.

1. Most documents are privileged and attorney work product and are therefore inadmissible.

There can be no doubt that the Exhibits J, K, M, P, and Q described in Section II, *supra*, are attorney-client privileged materials and that at least Exhibits K, P, and Q are attorney work product. Three of the four documents are privileged on their face, and two of them are prominently marked as attorney-client privileged materials.

- **Exhibit J** is a February 14, 2023 memorandum from Brent Andrewsen of Holland & Hart, LLP, outside counsel to OUR, concerning an investigation into OUR by Davis County Attorney Roy Trawling (Ballard Decl. ¶ 10);
- **Exhibit K** consists of an email with an attached document. The cover email is dated February 23, 2023, and is also from Mr. Andrewsen (the “February 23 email”). Ballard Decl. ¶ 10. Just below the February 23 email is another email in which Mr. Andrewsen’s signature block identifies him as an attorney at Holland & Hart.⁴ The document attached to the February 23 email is a draft redlined letter from OUR counsel to Utah Attorney General Sean Reyes and has the text “**DRAFT – ATTORNEY CLIENT PRIVILEGED**” emblazoned across the top in all capitals and bolded (*id.* ¶ 10);
- **Exhibit M** is an email thread discussing a Mexico operation conducted by OUR involving Alessandra Serano, Chief Legal Officer of International Operations of OUR, and Mr. Ballard and other OUR employees. Ms. Serano’s June 19, 2022 email starting the thread includes her signature block which identifies her as in-house counsel for OUR. Ms. Serano’s email includes her mental impressions and

⁴ Even if Exhibit K itself did not identify Mr. Andrewsen as OUR counsel (it does), Plaintiff and her counsel are clearly aware that Mr. Andrewsen and his firm were serving as that capacity as evident from their allegations. *See* FAC ¶ 140 (acknowledging Holland & Hart was OUR’s law firm).

legal advice regarding the methodologies employed by OUR operatives during the Mexico operation (Ballard Decl. ¶ 12);

- **Exhibit P** is an attorney drafted unsigned severance agreement between Mr. Ballard and OUR that is unaccompanied by a transmittal email (*id.* 11); and
- **Exhibit Q** is an unsigned draft letter from attorney Alex Spiro of the Quinn Emmanuel law firm dated June 14, 2023, addressed to Mr. Andrewsen and Gregory Saylin of the Holland & Hart firm in their capacity as OUR counsel. Mr. Spiro represented Mr. Ballard regarding his separation from the OUR organization in the summer of 2023. The draft letter concerns negotiations between Mr. Ballard and OUR regarding the separation, including sensitive financial and other arrangements. The draft letter features the text **“DRAFT,” “ATTORNEY WORK PRODUCT,” and “ATTORNEY-CLIENT COMMUNICATION,”** in all capitals and red font (*id.* ¶ 11).

Each of these documents represents either an attorney-client communication or attorney work product shared between attorney and client. Regarding Exhibits J, K, and M, Mr. Andrewsen and Ms. Serano were acting as counsel for OUR (outside and in-house, respectively) at the times that they communicated with Mr. Ballard, and Mr. Ballard was at that time employed by, and held various high-level positions at, OUR and therefore among the intended recipients for any privileged advice regarding OUR or its methodologies. Ballard Decl. ¶ 10. Further, Exhibit K plainly states that it was drafted on behalf of OUR *and* Mr. Ballard. Exhibits K, P, and Q constitute attorney work product (draft letters and a draft severance agreement) and Exhibits P and Q were sent to Mr. Ballard for his review by his personal counsel when he was in the process of negotiating his separation from OUR. *Id.* ¶ 11.

Nor can there be any question of waiver of the privilege. All parties involved clearly intended for the communications to be confidential; the emails and attachments were sent directly by counsel to Mr. Ballard’s individual email, which all involved reasonably assumed to

be private and confidential, and shared with no one else. Ballard Decl. ¶ 13. The letters in Exhibits K and Q were also marked as “**DRAFT – ATTORNEY CLIENT PRIVILEGED,**” and “**ATTORNEY-CLIENT COMMUNICATION,**” further demonstrating the parties’ intent to keep their contents confidential.

Likewise, Exhibits N and O are confidential religious blessings bestowed on Mr. Ballard. *Id.* ¶ 14. These are irrelevant, very private materials which are also subject to the clergy privilege and should be stricken. Utah R. Evid. 503(b). The other private information contained in the FAC is also irrelevant (and stolen) and should be stricken (Exs. I and L), as should the references to all information discussed above.

Mr. Ballard did not provide the credentials necessary to obtain these documents to any person other than Ms. Borys, and it appears that Plaintiffs and their counsel have the documents because their client Ms. Borys improperly took them. Ms. Borys was not authorized to access Mr. Ballard’s private and confidential emails for any other purpose than performing her job duties. Ballard Decl. ¶¶ 3-4. Mr. Ballard’s intent to keep his email account confidential is demonstrated by the fact that his email is password protected with two-factor authentication, and that his new executive assistant changed the email passwords. *Id.* ¶¶ 2, 7. Ms. Borys’s improper actions in taking the documents and Plaintiffs’ counsels’ improper use of the documents do not create a waiver. *See U.S. ex rel. Mayman v. Martin Marietta Corp.*, 886 F. Supp. 1243, 1246 (D. Md. 1995) (no waiver occurred when former employee obtained document without authorization).

Because Exhibits J, K, M, N, O, P, and Q are unquestionably privileged, they are not admissible for any purpose in this litigation. Accordingly, they should be stricken under Utah Rule of Civil Procedure 12(f) as immaterial and impertinent. *See Mayorga*, 606 F. Supp. 3d at 1014; *Rosenfield*, 2012 WL 12538606, at *1; Utah R. Civ. P. 12(f); *see also id.* R. 10(h).

2. The privileged documents are irrelevant to the subject matter of this litigation.

The fact that the documents are unlawfully obtained privileged documents is enough to justify striking them. *See Mayorga*, 606 F. Supp. 3d at 1014; *Rosenfield*, 2012 WL 12538606, at *1. However, the documents are also immaterial for the independent reason that they have *nothing to do* with Plaintiffs' claims, the gravamen of which is that Mr. Ballard allegedly sexually assaulted them personally or supposedly somehow allowed them to be sexually assaulted.

None of the exhibits described above contain any mention of Plaintiffs or their allegations; indeed, they do not discuss any topic that could be considered remotely related to Plaintiffs' claims. Accordingly, they are immaterial and should be stricken from the pleading. *See Utah R. Civ. P. 12(f)*; *see also id. R. 10(h)*; *Holladay Coal Co. v. Kirker*, 57 P. 882, 883 (1899) (affirming trial court's striking as immaterial allegation regarding exact date of notice to surrender premises in detainer action).

C. Stealing confidential information, privileged or not, is sanctionable conduct and it should be immediately stricken and returned.

“[I]t is an improper litigation tactic to use a disgruntled employee to secretly obtain non-public internal business documents from an opposing party.” *Xyngular Corp.*, 200 F. Supp. 3d at 1316 (alteration in original) (citation omitted). Thus, a “court may sanction a party for wrongfully obtaining the property or confidential information of an opposing party.” *Id.* (citation omitted).

In *Xyngular Corp.*, the plaintiff acquired hundreds of documents from an employee with access to his employer's servers, including documents belonging to parties that were potential adversaries in the plaintiff's anticipated litigation. *Id.* at 1317. In holding that terminating sanctions were appropriate, the district court noted that by doing so, the plaintiff had “usurped for his own purposes” the normal discovery process, and that “it is improper to surreptitiously acquire an opposing party's property outside of the discovery process.” *Id.* The court concluded:

Parties anticipating litigation may not engage in self-help by improperly gathering a potential adversary's property. This conduct is an affront to the established rules of engagement and fair play in lawsuits. It amounts to an end-run around the Federal Rules of Civil Procedure, including the rules governing discovery and the orderly exchange of information relevant to disputes presented for resolution in our courts. This conduct undermines the confidence of both litigants and the public in the fairness of judicial proceedings. [Plaintiff's] actions demonstrate willfulness, bad faith, and fault that abuses the judicial process and impugns the integrity of these proceedings. Serious sanctions are warranted.

Xyngular Corp., 200 F. Supp. 3d at 1317. Similarly, in *Glynn v. EDO Corp.*, the court sanctioned the plaintiff, a former employee for the defendant, for obtaining from a current employee before and during the litigation non-public, internal documents and other information belonging to the defendant. No. JFM-07-01660, 2010 WL 3294347, at *9 (D. Md. Aug. 20, 2010). The court noted that "it was inappropriate for [the plaintiff and his lawyers] to surreptitiously acquire these internal [] documents outside of the normal discovery channels." *Id.* at *5. It was also inappropriate for the plaintiff and his lawyers to unilaterally decide whether the documents were proprietary, confidential, or privileged, where "those decisions are best resolved through the formal discovery process." *Id.*

Here, Ms. Borys apparently stole confidential or privileged documents from Mr. Ballard's email account that belonged to Mr. Ballard and OUR, which she has since used. This was improper, and this impropriety was perpetuated and compounded by Plaintiffs and their counsel using those wrongfully attained documents in litigation and public filings. *See Xyngular Corp.*, 200 F. Supp. 3d at 1316-17; *Glynn*, 2010 WL 3294347 at *5.

Therefore, pending a full investigation and possible further sanctions pending the outcome of that investigation, this Court is justified in immediately ordering all confidential and privileged information stricken from the FAC and all filings and returned to Mr. Ballard immediately.

IV. Mr. Ballard is entitled to an extension of time to answer the complaint.

A court should grant a motion for extension of time to answer upon “good cause.” Utah R. Civ. P. 6(b)(1)(A). “This rule should be liberally construed to advance the goal of trying each case on the merits.” *Vilela v. Off. of Recovery Servs.*, 2023 WL 130502, at *3 (D. Utah Jan. 9, 2023) (quoting *Rachel v. Troutt*, 820 F.3d 390, 394 (10th Cir. 2016)). Good cause exists here.

First, the FAC is anonymized. Mr. Ballard cannot respond to the allegations without knowing who has alleged what factual allegations against him. Mr. Ballard is not obliged to try to make an educated guess, which is especially difficult given that the allegations have been created out of whole cloth and he would face the risk of an unintentional judicial admission to which he would later be bound in the litigation. Defense counsel has repeatedly asked Plaintiffs’ counsel to identify the Plaintiffs, and Plaintiffs’ counsel has refused. Bernstein Decl. ¶¶ 10-13.

Second, Mr. Ballard and the other defendants are entitled to use the discovery process to investigate how Plaintiffs came into possession of the stolen documents and to what extent they are relying upon these wrongfully obtained materials in the litigation, including the drafting of the FAC. Depending on what the investigation reveals, Mr. Ballard may pursue sanctions in this case or move to disqualify Plaintiffs’ counsel based on their possession and use of his stolen information and their refusal to return it.

Third, assuming the stolen information is removed from the record (as it should be) and a second amended complaint filed, the amended pleading will inevitably change from the previous version. Neither Mr. Ballard nor any Defendant should have to file a responsive pleading until Plaintiffs file their second amended complaint.

No prejudice will result, as, according to the docket, Plaintiffs do not appear to have served the 18 other defendants in this case.

Mr. Ballard therefore respectfully requests this Court to order that his deadline to respond to the FAC is tolled until the later of: (i) thirty (30) days after the ruling on this motion (or after a second amended complaint is filed), and (ii) thirty (30) days after Plaintiffs’ counsel reveals the

unidentified Plaintiffs and which anonymized initials correlate with which Plaintiffs' identities; or (iii) such other deadline as the Court deems appropriate based on the above and its ultimate rulings. *See Caudell v. Rose*, 378 F. Supp. 2d 725, 729 (W.D. Va. 2005) (granting thirty-day extension to respond where defendants required time to obtain additional affidavits and formulate a response to plaintiff's complaint).

V. Conclusion.

For the above stated reasons, Mr. Ballard respectfully requests that the Court grant this motion and strike all information stolen from Mr. Ballard from all filings in this case, including the FAC, order the information returned to Mr. Ballard, order the Plaintiffs to identify themselves and their allegations, and toll any responsive pleading deadlines as the Court deems appropriate under the above facts.

Dated: December 20, 2023

ARMSTRONG TEASDALE, LLP

/s/ Trinity Jordan

Brennan H. Moss

Trinity Jordan

BIENERT KATZMAN LITRELL WILLIAMS LLP

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Alexis Paschedag Federico

Attorneys for Timothy Ballard

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2023, I caused a copy of the foregoing to be served on all counsel of record via the Court's Electronic Filing System. A copy of the bilingual notification has also been provided and attached to this filing.

/s/ Shelby Irvin

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

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Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

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