IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US DOMINION, INC., et al., *Plaintiffs/Counter-Defendants*, v. SIDNEY POWELL, et al., *Defendants/Counter-Plaintiffs*.	Civil Action No. 1:21-cv-00040 (CJN)
US DOMINION, INC., et al., *Plaintiffs*, v. RUDOLPH W. GIULIANI, *Defendant*.	Civil Action No. 1:21-cv-00213 (CJN)
US DOMINION, INC., et al., *Plaintiffs/Counter-Defendants*, v. MY PILLOW, INC., et al., *Defendants/ Counter- and Third-Party Plaintiffs*, v. SMARTMATIC USA CORP., et al., *Third-Party Defendants.*	Civil Action No. 1:21-cv-00445 (CJN)

US DOMINION, INC., et al., *Plaintiffs*, v. PATRICK BYRNE, *Defendant*.	Civil Action No. 1:21-cv-02131 (CJN)
US DOMINION, INC., *et al.,* *Plaintiffs/Counter-Defendants*, v. HERRING NETWORKS, INC. *et al.,* *Defendants/ Counter- and Third-Party Plaintiffs*, v. AT&T SERVICES, *et al.,* *Third-Party Defendants.*	Civil Action No. 1:21-cv-02130 (CJN)

AMENDED JOINT STATUS REPORT

Pursuant to Magistrate Judge Moxila A. Upadhyaya's March 6, 2024 Minute Order (the "March 6 Order"), Plaintiffs U.S. Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation ("Plaintiffs") and Defendants Sidney Powell, Sidney Powell, P.C., Defending the Republic, My Pillow, Inc., Michael J. Lindell, Patrick Byrne, Herring Networks, Inc. d/b/a One America News Network, Charles Herring, Robert Herring, Sr., Chanel Rion, and

Christina Bobb ("Defendants") (herein collectively "the Parties"), hereby submit this Joint Status Report.[1] Mr. Giuliani is not participating in the submission of this report.

Following the March 6 Order, the Parties met and conferred by email and by Zoom, and they submit in this Joint Status Report (1) the current list of cases that are consolidated or voluntarily coordinated for discovery and (2) a chart detailing all ripe disputes in these cases using the guidance the Court emailed to counsel for the Parties. The chart is submitted herewith as **Exhibit A**.

1. The Current List of Consolidated or Voluntarily Coordinated Cases

Below is the current list of cases that are consolidated by Judge Nichols or voluntarily coordinated for discovery in this litigation, including the date on which consolidation occurred, where relevant. If a case was previously consolidated or voluntarily coordinated but is now stayed or dismissed, the list includes that information, as well.

- *U.S. Dominion, Inc. et al. v. Sidney Powell et al.*, 1:21-cv-00040 (D.D.C.)
    - **Consolidation**: Scheduling Order, Powell ECF 65, March 1, 2022
- *U.S. Dominion, Inc. et al. v. My Pillow, Inc. et al.*, 1:21-cv-00445 (D.D.C.)
    - **Consolidation**: Scheduling Order, Lindell ECF 121, March 1, 2022
- *U.S. Dominion, Inc. et al. v. Rudolph W. Giuliani*, 1:21-cv-00213 (D.D.C.)
    - **Consolidation**: Scheduling Order, Giuliani ECF 47, March 1, 2022
    - **Stay**: *In re Rudolph W. Giuliani*, 1:23-12055 (Bankr. S.D.N.Y)
        - Chapter 11 Voluntary Petition for Individual, ECF 1, December 21, 2023

[1] Per the Court's instruction, the Parties submit this Joint Status Report on the docket of each case that is consolidated or voluntarily coordinated for discovery related to this litigation.

- Under 11 U.S.C. § 362(a), the Voluntary Petition stayed the continued prosecution of Dominion's litigation against Mr. Giuliani, absent relief from that stay.

- Order Approving Stipulation Concerning the Scope of the Automatic Stay of 11 U.S.C. § 362(a) with Respect to Certain Non-Bankruptcy Litigation Matters, ECF 125, February 2020, 2024, **Exhibit B** (Giuliani Bankruptcy ECF 125).
    - Under this order, the Bankruptcy Court clarified that the above-mentioned stay does not (i) preclude prosecution of Dominion's claims against the defendants in the Powell case, the Lindell case, the Byrne case, and the OAN case; (ii) preclude pursuit of discovery by parties in those cases; or (iii) preclude discovery of Giuliani by any of the parties in the Powell case, the Lindell case, the Byrne case, and the OAN case in those cases.

- *U.S. Dominion, Inc. et al. v. Patrick Byrne*, 1:21-cv-02131 (D.D.C.)
    - **Coordination**: Mr. Byrne is voluntarily coordinating for the purposes of discovery.
- *U.S. Dominion, Inc. et al. v. Herring Networks, Inc. d/b/a One America News Network, et al.*, 1:21-cv-02130 (D.D.C.)
    - **Consolidation**: Order Granting Motion to Consolidate and Entering Scheduling Order, ECF 134, July 24, 2023

2. Disputes and Pending Motions Chart

The following chart available at **Exhibit A** includes all ripe disputes raised with Judge Nichols or Magistrate Judge Upadhyaya to date. At a high level the disputes are as follows:

The first item the parties bring to the Court's attention is an urgent matter regarding breach of the June 16, 2023, Amended Protective Order, attached hereto as **Exhibit C**, by counsel for Mr. Byrne. *See* Byrne Dkt. 46; *see also* Powell Dkt. 82; Lindell Dkt. 165; Giuliani Dkt. 55. Counsel for Dominion raised the issue to Judge Nichols and Judge Upadhyaya on March 12, 2024, by the email attached hereto as **Exhibit D.**

The second and third issues involve deposition and discovery motions before the Court. The motions arise in the context of a September 21, 2023, telephonic hearing before Judge Nichols, in which Plaintiffs and Defendants appeared and discussed the potential for coordinating orderly management of discovery across the cases. *See* **Exhibit E** (9/21/2023 Transcript). Judge Nichols' September 21, 2023, minute entry ordered the parties to meet and confer concerning a proposed discovery protocol and a proposed deposition protocol, with the goal of reaching an agreed proposed order or submitting any outstanding issues for judicial resolution. *See* Lindell Minute Entry 8/21/2023. With respect to both protocols, the parties resolved most but not all issues and submitted competing proposed orders with briefing.

The fourth discovery item before the Court is Defendants' request to extend the discovery deadline in all coordinated and consolidated cases.

The fifth discovery item before the Court pertains to issues specific to the *Dominion v. Herring Networks* case.

Various other discovery disputes exist between Dominion and specific defendants in the consolidated or voluntarily coordinated cases. For some of those disputes, the meet and confer process is complete, and the parties will follow Judge Upadhyaya's guidance as to the proper procedure for raising them. Other disputes remain in the meet and confer process and will be raised with the Court, as necessary, once the ongoing processes are complete.

The Parties propose that on March 18, 2024, Judge Upadhyaya take up each of the issues in the order that they appear in the attached chart. *See* **Exhibit A**.

Dated: March 13, 2024

Respectfully submitted,

/s/ Davida Brook

Laranda Walker (D.C. Bar No. TX0028)
Mary K. Sammons (D.C. Bar No. TX0030)
Jonathan Ross (D.C. Bar No. TX0027)
Elizabeth Hadaway (*Admitted pro hac vice)*
SUSMAN GODFREY L.L.P.
1000 Louisiana St., Suite 5100
Houston, TX 77002
Tel: (713) 651-9366
Fax: (713) 654-6666
lwalker@susmangodfrey.com
ksammons@susmangodfrey.com
jross@susmangodfrey.com
ehadaway@susmangodfrey.com

Stephen Shackelford, Jr.
(D.C. Bar No. NY0443)
Eve Levin (D.C. Bar No. 1672808)
Mark Hatch-Miller (*Admitted pro hac vice*)
Christina Dieckmann (*Admitted pro hac vice*)
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Fl. New York, NY 10019
Tel: (212) 336-8330
sshackelford@susmangodfrey.com
elevin@susmangodfrey.com
mhatch-miller@susmangodfrey.com
cdieckmann@susmangodfrey.com

Davida Brook (D.C. Bar No. CA00117)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 789-3100
dbrook@susmangodfrey.com

Edgar Sargent (*Admitted pro hac vice*)
Katherine Peaslee (*Admitted pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Tel: (206) 516-3880
esargent@susmangodfrey.com
kpeaslee@susmangodfrey.com

Attorneys for Plaintiffs

/s/ Charles L. Babcock
Charles L. Babcock
Jonathan D. Neerman
JACKSON WALKER, LLP
1401 McKinney Street, Suite 1900
Houston, TX 77010
Tel: (713) 752-4319
Fax: (713) 308-4117
cbabcock@jw.com
jneerman@jw.com

/s/ Gregory M. Singer
John F. Lauro, Esq.
D.C. Bar No. 392830
jlauro@laurosinger.com
Gregory M. Singer, Esq. (PHV)
gsinger@laurosinger.com
LAURO & SINGER
400 N. Tampa St., 15th Floor
Tampa, FL 33602
(813) 222-8990
Counsel for Defendant Christina Bobb

/s/ R. Trent McCotter
BOYDEN GRAY PLLC
R. Trent McCotter
D.C. BAR NO. 1011329
801 17th St NW, #350
Washington, DC 20006
(202) 706-5488
tmccotter@boydengray.com

Counsel for Defendants
Herring Networks, Inc., Charles Herring,
Robert Herring, Sr., and Chanel Rion

/s/ Marc Eisenstein
Marc Eisenstein
DC Bar No.1007208
Coburn, Greenbaum & Eisenstein, PLLC
1710 Rhode Island Avenue, N.W.
Second Floor
Washington, DC 20036
Tel: 202-470-2695
Fax: 1-866-561-9712
marc@coburngreenbaum.com
Counsel for Defendant Defending the Republic, Inc.

/s/ Stefanie Lambert
STEFANIE LAMBERT, PLLC
Stefanie Lambert

400 RENAISSANCE CTR
FLOOR 26
Detroit, MI
48243-1502
(313) 410-6872
attorneylambert@protonmail.com
Counsel for Defendant Patrick Byrne

*Permission to sign for other Defendants was not expressly given by the time of filing.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 2024, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system in *U.S. Dominion, Inc. et al. v. Sidney Powell et al.*, 1:21-cv-00040 (D.D.C.), *U.S. Dominion, Inc. et al. v. My Pillow, Inc. et al.*, 1:21-cv-00445 (D.D.C.), *U.S. Dominion, Inc. et al. v. Rudolph W. Giuliani*, 1:21-cv-00213 (D.D.C.), *U.S. Dominion, Inc. et al. v. Patrick Byrne*, 1:21-cv-02131 (D.D.C.), *U.S. Dominion, Inc. et al. v. Herring Networks, Inc. d/b/a One America News Network, et al.*, 1:21-cv-02130 (D.D.C.), which I understand to have served counsel for the parties.

/s/ Davida Brook
Davida Brook, Esq.
SUSMAN GODFREY LLP

Exhibit A

Dispute Chart

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
#1 Breach of Amended Protective Order		Dominion and Patrick Byrne	Violation of the June 16, 2024, Amended Protective Order [Byrne Dkt. 46]	ROUND 1	Raised in March 12, 2024, email to Judge Upadhyaya and Judge Nichols.
#2 Deposition Protocol *Dominion v. Herring Networks* (21-cv-2130) *Dominion v. My Pillow, Inc.* (21-cv-445) *Dominion v. Giuliani* (21-cv-0213) *Dominion v. Powell* (21-cv-040) *Dominion v. Byrne* (21-cv-2131)	Dominion's Motion (as to all defendants) is filed at Powell ECF 114, 114-1 (brief), 114-2 (proposed order) • OAN Response (Herring ECF 156) • Bobb Response (Herring ECF 155) • Powell Response (Powell ECF 115) OAN's Motion (Herring ECF 152 (brief), 152-1 (proposed protocol)) • Dominion Response (Herring ECF 154)	Dominion and all defendants in the consolidated or voluntarily coordinated cases*	Deposition Protocol The sole disputed issue concerns remote depositions.	ROUND 1 Awaiting argument or decision, as Court determines appropriate.	Disputed issue briefed following 9/21/2023 hearing.

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
	• OAN Reply (Herring ECF 157) Bobb's Motion (Herring ECF 153) • Dominion Response (Herring ECF 154) Powell's Motion (Powell ECF 113 (brief), 113-3 (proposed protocol)) • Dominion Response (Powell ECF 116) Byrne's Motion (Byrne ECF 69 (brief), 69-1 (proposed protocol)) • Dominion Response (Byrne ECF 70) Lindell's Notice of Joinder (Lindell ECF 201)				

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
	• Dominion Response (Lindell ECF 202)				
#3 Discovery Protocol *Dominion v. Herring Networks* (21-cv-2130) *Dominion v. My Pillow, Inc.* (21-cv-445) *Dominion v. Giuliani* (21-cv-0213) *Dominion v. Powell* (21-cv-040) *Dominion v. Byrne* (21-cv-2131)	<u>Dominion's Motion</u> (as to all defendants) is filed at Powell ECF 107, 107-1 (brief), 107-2 (proposed order) • OAN Response (Herring ECF 145) • Bobb Response (Herring ECF 147) • Powell Response (Powell ECF 110) • DTR Response (Powell ECF 111) • Byrne Response (Byrne ECF 67) <u>OAN's Motion</u> (Herring ECF 142 (brief), 142-1 (proposed protocol)) • Dominion Response	Dominion and all defendants in the consolidated or voluntarily coordinated cases*	Discovery Protocol **<u>Disputed issues:</u>** **(1) Custodian interview process** (Dom: §3(b), Ex.4, Ex.5, §3(c); Def: §4(b)) • Scope of individuals interviewed • Whether must ask about topics (Ex.4), apps (Ex.5) • Whether limited to "work habits" and work devices • Scope of searches based on interviews **(2) Responsiveness & Relevance Review** (Def §6) **(3) Organization of Documents** (Dom: §8(a), Def §8(a)	ROUND 1 Awaiting argument or decision, as Court determines appropriate.	Disputed issue briefed following 09/21/2023 hearing.

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
	(Herring ECF 146) • OAN Reply (Herring ECF 150) <u>Bobb's Motion</u> (Herring ECF 143) • Dominion Response (Herring ECF 146) <u>Powell's Motion</u> (Powell ECF 106, 106-1 (brief), 106-4 (proposed protocol)) • Dominion Response (Powell ECF 112) <u>Byrne's Motion</u> (Byrne ECF 66, 66-1 (brief), 66-2 (proposed protocol)) • Dominion Response (Byrne ECF 68)		**(4) Hit Reports** (Dom: §5) **(5) Text Messages** (Dom: §7, Def: §7) • Whether 24-hour portions of text messages that hit on search terms may be redacted for relevance or responsiveness **(6) Date Ranges for Searches** (Dom: §6, Def: §3(a) • Which proposed date ranges govern custodial and noncustodial and mobile data production, absent party agreement or court order **(7) List of Custodians** (Dom: §3(a) & Ex.3; Def: §4(a) & Ex.3): provision language is agreed; contents of Ex.3 are disputed **(8) Search Methodology** (Dom: §4, Ex.6, Def: §5) • Whether using search terms, custodians, and timeframes is an		

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
	Lindell's Notice of Joinder (Lindell ECF 199) • Dominion Response (Powell ECF 112)		acceptable search methodology • Whether to enter the parties' agreed search terms as part of the court's order (Ex.6) **(9) Privilege Log** (§9) • Whether to refer to Ex.1 (the parties' agreed ESI protocol which governs privilege logs) or to the Federal Rules **(10) 30(b)(6) Depositions** (Dom: §10) • Whether to authorize parties to complete a first 30(b)(6) deposition on discovery topics before a deposition on other topics[2]		

[2] The other issues in the proposed discovery protocol are agreed: **Protocol for Production of Electronically Stored Information and Paper Documents** (Dom & Def: §1 & Ex. 1); **Stipulation Regarding Expert Discovery** (Dom & Def: §2 & Ex. 2); **Rolling & Supplemental Productions** (Dom & Def: §8(b), (c)); **Substantial Completion Date** (Def §8(d)) [parties now agree]; and **Relief & Modification of this Order** (Def §10) [parties now agree].

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
#4 Scheduling Order – Extension of Discovery	No docket entry.	Dominion and all defendants in the consolidated or voluntarily coordinated cases*	Defendants' request for an extension of discovery deadlines.	ROUND 1 Meet and confer will be complete before hearing.	No briefing to date.
#5 OAN-Specific Disputes *Dominion v. Herring Networks* (21-cv-2130)	No docket entry. Request to raise discovery disputes sent to Judge Nichols on January 31, 2024, and Judge Upadhyaya on February 2, 2024, after Judge Nichols' order referring discovery disputes.	Dominion and all defendants in *Herring Networks*, except Bobb.	Disputes raised by OAN Defendants: • Dominion's objections to certain RFPs served by OAN, Robert Herring, Charles Herring, and Chanel Rion ("the OAN Defendants") • Dominion's responses to certain interrogatories served by the OAN Defendants • Date range applicable to RFPs served by the OAN Defendants for Dominion searches • Certain of the OAN Defendants' proposed search terms	ROUND 2 All issues are ripe for argument or briefing, at the Court's discretion, following unsuccessful extensive meet and confer discussions.	No briefing has been permitted to date.

Case Number	Docket Number	Parties to the Dispute	Issue	Resolution Status	Briefing Status
			Disputes raised by Dominion: • Dominion's request for certain financial information from the OAN Defendants		

*Defendants by case:

- *Dominion v. Herring Networks* (21-cv-2130): Herring Networks, Inc. d/b/a One America News Network, Charles Herring, Robert Herring, Sr., Chanel Rion, Christina Bobb
- *Dominion v. My Pillow, Inc.* (21-cv-445): Michael J. Lindell, My Pillow, Inc.
- *Dominion v. Giuliani* (21-cv-0213): Rudolph w. Giuliani
- *Dominion v. Powell* (21-cv-040): Sidney Powell, Sidney Powell, P.C., Defending the Republic
- *Dominion v. Byrne* (21-cv-2131): Patrick Byrne

Note that all claims against Rudolph Giuliani are currently subject to the automatic stay as a result of *In re Rudolph W. Giuliani a/k/a Rudolph William Giuliani*, No. 1:23-cv-12055 (Bankr. S.D.N.Y.). Following briefing from the parties at Docket Nos. 49, 58, and 102, the Bankruptcy Court entered an Order Approving Stipulation Concerning the Scope of the Automatic Stay of 11 U.S.C. § 362(a) with Respect to Certain Non-Bankruptcy Litigation Matters ("the Bankruptcy Order"). *See* **Exhibit B** (Giuliani Bankruptcy ECF 125). The Bankruptcy Order stays Dominion's continued prosecution of its claims against Debtor in *Dominion v. Giuliani* (21-cv-0213). It expressly provides that the § 362(a) stay does not apply to the remaining consolidated and coordinated cases. Pursuant to the Bankruptcy Order, discovery served in the remaining cases must also be served in *Giuliani*, and service does not violate the stay. A copy of the Bankruptcy Order is being provided for the Judge's convenience at **Exhibit B**.

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re RUDOLPH W. GIULIANI a/k/a RUDOLPH WILLIAM GIULIANI, Debtor.	**Re: Docket Nos. 49, 58, 102** Case No. 23-12055 Chapter 11

ORDER APPROVING STIPULATION CONCERNING THE SCOPE OF THE AUTOMATIC STAY OF 11 U.S.C. § 362(a) WITH RESPECT TO CERTAIN NON-BANKRUPTCY LITIGATION MATTERS

The Court having reviewed and considered (i) the *Stipulation Concerning the Scope of the Automatic Stay of 11 U.S.C. § 362(a) with Respect to Certain Non-Bankruptcy Litigation Matters* [Docket No. 102] (the "Stipulation") entered into effective as of February 6, 2024 by and among the Dominion Parties[1] and the Herring Parties, (ii) the *Motion and Memorandum of Law in Support of The Herring Parties' Motion for Entry of Order Clarifying Whether the Automatic Stay Applies to Stay Discovery in Consolidated Litigation* [Docket No. 49] (the "Stay Motion"), (iii) the *Limited Opposition of the Dominion Parties to The Herring Parties' Notice of Presentment of Proposed Order Setting Status Conference on Motion for Entry of Order Regarding the Automatic Stay and Underlying Motion Regarding the Automatic Stay* [Docket No. 58] (the "Dominion Opposition"), and (iv) the record in this Bankruptcy Case, and finding that notice of the Stipulation was proper, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Stipulation is approved and shall be binding and effective in accordance with its terms, as modified herein.

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

2. The automatic stay of section 362(a) arising in this Bankruptcy Case stays the continued prosecution of the Dominion Parties' claims against the Debtor in the Giuliani Case, absent relief from such stay.

3. The automatic stay of section 362(a) arising in this Bankruptcy Case does not:

a. preclude or otherwise stay the continued prosecution of the Dominion Parties' claims against each of the defendants in the Powell Case, the My Pillow Case, the OAN Case, or the Byrne Case;

b. preclude or otherwise stay the pursuit of discovery under the Consolidation Order by each of the parties in the Powell Case, the My Pillow Case, the OAN Case, or the Byrne Case; or

c. preclude or otherwise stay the taking of discovery of the Debtor under the Consolidation Order by any of the parties in the Powell Case, the My Pillow Case, the OAN Case, or the Byrne Case solely to the extent that such discovery is not for the purpose of the pursuit or further prosecution of any claims against the Debtor.

4. Copies of all discovery served pursuant to paragraph 3 of this Stipulation shall be served on the Debtor, and the service of such discovery shall not be deemed to violate the automatic stay.

5. To the extent that the Debtor believes that any such discovery permitted under Paragraph 3.c. hereof constitutes a violation of the automatic stay of section 362(a), the Debtor may obtain a hearing on shortened time respecting such violation with such hearing to occur not less than seven (7) court days from the date that the Debtor raises such alleged violation, unless a shorter period is ordered by the Court. Any opposition shall be filed no less than three (3) court days from the date of such hearing, unless a shorter period is ordered by the Court.

6. Nothing herein shall affect the rights of the Official Committee of Unsecured Creditors (the "Committee") to seek relief from the Court in the event the Committee believes any

discovery permitted pursuant to Paragraph 3.c. hereof has become unduly burdensome on the Debtor and his estate.

Dated: February 20, 2024

/s/ Sean H. Lane
United States Bankruptcy Judge

Exhibit C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

U.S. DOMINION, INC., et al.,

Plaintiffs,

v.

MY PILLOW INC., et al.,

Defendants.

Civil Action No. 1:21-cv-445 (CJN)

v.

SMARTMATIC USA CORP., SMARTMATIC INT'L HOLDING B.V., SGO CORPORATION LIMITED, and HAMILTON PLACE STRATEGIES, LLC,

Third-Party Defendants.

U.S. DOMINION, INC., et al.,

Plaintiffs,

v.

RUDOPLH W. GIULIANI,

Defendant.

Civil Action No. 1:21-cv-213 (CJN)

U.S. DOMINION, INC., et al., *Plaintiffs*, v. SIDNEY POWELL, et al., *Defendants*.	Civil Action No. 1:21-cv-40 (CJN)
US DOMINION, INC., et al., *Plaintiffs/Counter-Defendants*, v. PATRICK BYRNE. *Defendant.*	Civil Action No. 1:21-cv-02131 (CJN)

AMENDED PROTECTIVE ORDER GOVERNING THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION

Plaintiffs US Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation (collectively, "Dominion"), Third-Party Defendant Hamilton Place Strategies, and Defendants Michael J. Lindell, MyPillow, Inc., Rudolph W. Giuliani, Sidney Powell, Sidney Powell, P.C., Defending the Republic, Inc., and Patrick Byrne ("Parties") are engaged in discovery proceedings, which include, among other things, taking depositions, answering interrogatories, and producing documents. The Parties believe that certain

information they have produced or will produce may contain information that is proprietary, commercially sensitive, or non-public. Under Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, this Order Governing the Production and Exchange of Confidential Information (the "Order") will govern the handling of documents, testimony (in any form whether by affidavit, declaration, or deposition), exhibits, transcripts, written discovery requests, interrogatory responses, responses to requests for admission, responses to requests for documents, and any other information or material produced, given, or exchanged, including any information contained therein or derived therefrom ("Discovery Material"), by or among any Party or non-Party providing Discovery Material (each a "Producing Party") in the Litigation[1] to the party receiving the Discovery Material ("Receiving Party"). It is **HEREBY ORDERED THAT**:

1. Any Discovery Material produced in the Litigation will be used, except by the Producing Party, solely for purposes of this Litigation and no Receiving Party will provide Discovery Material to any person or entity (including for any other litigation) or make any Discovery Material public except as permitted by this Order and in this Litigation. Notwithstanding the limitations in the preceding sentence, (i) any Party may use Discovery

[1] "Litigation" refers to the four related actions: *US Dominion Inc., et al. v. My Pillow, Inc., et al.*, No. 1:21-cv-00445-CJN (D.D.C.), *US Dominion, Inc., et al. v. Powell, et al.*, No. 1:21-cv-00040-CJN (D.D.C.), *US Dominion, Inc., et al. v. Giuliani*, No. 1:21-cv-00213-CJN (D.D.C.), and *US Dominion Inc., et al v. Byrne*, No. 1:21-cv-02131-CJN (D.D.C.). This Order does not cover Third-Party Defendants Smartmatic USA Corp., Smartmatic International Holding B.V., or SGO Corporation Ltd.

The parties reserve the right to move the Court to expand this Order to include the parties in *US Dominion, Inc., et al. v. Herring Networks, et al.*, No 1:21-cv-02130-CJN (D.D.C.), if the Court orders the parties in the *Herring* case to coordinate for discovery purposes with the parties in the Litigation.

Material lawfully obtained independently of this Litigation for any purpose consistent with any other limitations placed on that Discovery Material; (ii) Dominion may produce Defendants' Discovery Material in *US Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corp. v. Fox News Network, LLC*, Case No. N21C-03-257 EMD, pending in the Superior Court of the State of Delaware, *US Dominion, Inc. v. Fox Corporation,* Case No. N21C-11-082 EMD, pending in the Superior Court of the State of Delaware, and *US Dominion, Inc. v. Newsmax Media Inc.,* Case No. N21C-08-063 EMD, pending in the Superior Court of the State of Delaware, in response to third-party subpoenas lawfully issued and served on Defendants in those cases; and (iii) Sidney Powell may produce Discovery Material in the Texas Bar case brought against her, *Commission for Lawyer Discipline v. Sidney Powell*, No. DC-22- 02562 (Dist. Ct., Dallas County, TX), but if such Discovery Material is designated "Confidential" or "Attorneys' Eyes Only," then Powell must notify the Court that she intends to produce such Discovery Material and certify in writing that she will not use or produce the Discovery Material for any other purpose.

2. Any Producing Party may designate any Discovery Material as "Confidential Discovery Material" under the terms of this Order where such Party in good faith believes that such Discovery Material contains Confidential Discovery Material. Confidential Discovery Material is defined as material that consists of non-public customer information or information that is proprietary or otherwise commercially sensitive.

3. Any Producing Party may designate any Discovery Material as "Attorneys' Eyes Only Discovery Material" under the terms of this Order where such Party in good faith believes that such Discovery Material contains Attorneys' Eyes Only Discovery Material. Attorneys' Eyes Only Discovery Material is defined as material that contains extremely Confidential information such that disclosure other than as permitted under Paragraph 9 of this

Order is likely to cause substantial injury to the Producing Party. The Attorneys' Eyes Only designation includes, but is not limited to, the following categories of information: (i) non-public damages- related and financial information, including confidential pricing, customer, profit, sales, or other financial information; (ii) confidential business, marketing, or strategic plans, including business, marketing, and technical information regarding the future provision of services; and (iii) confidential and commercially sensitive trade secrets or technical information. To the extent source code is determined to be relevant and discoverable, the Parties will agree to terms and entry of a separate protective order for the source code before any is produced.

4. Notwithstanding any other provision of this Agreement, no Receiving Party may provide Discovery Material designated as Confidential Material or Attorneys Eyes Only Material to any person or entity involved in the Litigation unless and until that person or entity confirms their understanding of, and agreement to, abide by the terms of this Order.

5. The designation of Discovery Material as Confidential Discovery Material or Attorneys' Eyes Only Discovery Material will be made in the following manner:

a. In the case of documents or other written materials, including affidavits and declarations but not pre-trial deposition or other pre-trial testimony: (i) by affixing the legend "Confidential" or "Attorneys' Eyes Only" to each page containing any Confidential or Attorneys' Eyes Only Discovery Material; or (ii) in the case of electronically stored information produced in native format by affixing the legend "Confidential" or "Attorneys' Eyes Only" to the media containing the Discovery Material (e.g., CD, DVD, thumb drive, external hard drive, or secure file transfer).

b. In the case of testimony: (i) by a statement on the record, by counsel, at the time of such disclosure or, in the case of a deposition or other pre-trial oral testimony,

before the conclusion of the deposition or pre-trial testimony; or (ii) by written notice, sent to all Parties within 15 business days of receipt of the final deposition transcript or other pre-trial testimony; provided that only those portions of the transcript designated as Confidential or Attorneys' Eyes Only Discovery Material will be deemed Confidential or Attorneys' Eyes Only Discovery Material. Each deposition will be deemed to be Attorneys' Eyes Only Discovery Material until 15 business days after counsel receive a copy of the final transcript, after which the deposition will be treated in accordance with its confidentiality designation, if any. The Parties may modify this procedure for any particular deposition, through agreement in writing before, or on the record at, such deposition, without further order of the Court.

c. In the case of any other Discovery Material, by written notice that the Discovery Material constitutes Confidential or Attorneys' Eyes Only Discovery Material.

6. The designation of Discovery Material as Confidential or Attorneys' Eyes Only Discovery Material will constitute a representation that such Discovery Material has been reviewed by an attorney representing the Party making the designation, and that there is a good faith basis for such designation.

7. Inadvertent failure to designate Discovery Material as Confidential or Attorneys' Eyes Only Discovery Material does not constitute a waiver of such claim and may be corrected. A Producing Party may designate as Confidential or Attorneys' Eyes Only any Discovery Material that has already been produced, including Discovery Material that the Producing Party inadvertently failed to designate as Confidential or Attorneys' Eyes Only, (i) by notifying in writing the Receiving Party to whom the production has been made that the

Discovery Material constitutes Confidential or Attorneys' Eyes Only Discovery Material, and (ii) providing a replacement copy of the Discovery Material marked in a manner consistent with Paragraph 5. After receiving such supplemental notice, the Parties will treat the Discovery Material so designated as Confidential or Attorneys' Eyes Only Discovery Material, and such Discovery Material will be fully subject to this Order from the date of such supplemental notice forward. The Party receiving such notice will make a reasonable, good-faith effort to ensure that any analyses, memoranda, notes, or other such materials generated that include or are based upon such newly designated information are immediately treated as containing Confidential or Attorneys' Eyes Only Discovery Material. In addition, after receiving such supplemental written notice, any receiving Party that disclosed the Discovery Material before its designation as "Confidential" or "Attorneys' Eyes Only" will exercise its best efforts to ensure (i) the return or destruction of such Discovery Material, if it was disclosed to anyone not authorized to receive it under Paragraph 8 or Paragraph 9 of this Order, (ii) that any documents or other materials derived from such Discovery Material are treated as if the Discovery Material had been designated as "Confidential" or "Attorneys' Eyes Only" when originally produced, (iii) that such Discovery Material is not further disclosed except in accordance with the terms of this Order, and (iv) that any such Discovery Material, and any information derived therefrom, is used solely in accordance with this Order.

8. Except as otherwise provided in this Order, Confidential Discovery Material may be disclosed, summarized, described, characterized, or otherwise communicated, orally or in writing, or made available in whole or in part, only to the following persons for use in connection with the Litigation and in accordance with this Order:

a. The Parties' current employees who are assisting with or making decisions

concerning this Litigation, to the extent deemed reasonably necessary by counsel of record for the purpose of assisting in the prosecution or defense of the Litigation;

b. Counsel for the Parties in the Litigation (including in-house counsel), and the partners, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors of such counsel (including outside copying and litigation support services) who are assisting with the Litigation;

c. Subject to Paragraph 4, experts, consultants, or independent litigation support services assisting counsel for the Parties, and partners, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors of such experts or consultants (including outside copying services and outside support services) who are assisting with the Litigation;

d. As to persons not otherwise covered by Subparagraphs 8(a)–(c), a party may disclose material designated as "Confidential" to persons (1) who appear as an author or recipient on the face of the document to be disclosed; or (2) for which a good faith basis exists to believe the potential witness or deponent has knowledge of the contents of a document;

e. Subject to Paragraph 4, witnesses or deponents, and their counsel, but only to the extent necessary to conduct or prepare for depositions or testimony in the Litigation;

f. The Court, persons employed by the Court, translators, and videographers and court reporters who are recording and transcribing any hearing, trial, or deposition in the Litigation or any appeal therefrom; and

g. Any other person only upon (i) order of the Court entered upon notice to the Parties, or (ii) written stipulation or statement on the record of agreement by the Producing Party who provided the Discovery Material being disclosed, provided that such person signs an undertaking in the form attached as Exhibit A hereto.

h. Any videographer, translator, court reporter, or transcriber who reports, tapes, translates, or transcribes testimony in this Litigation at a deposition will agree by a statement on the record, before recording or transcribing any such testimony constituting Confidential Discovery Materials, that all such testimony and information revealed at the deposition is and will remain confidential and will not be disclosed by such translator, videographer, reporter, or transcriber except to the attorneys for each Party and any other person who is present while such testimony is being given, and that copies of any transcript, reporter's notes or any other transcription records of any such testimony will be retained in confidentiality and safekeeping by such videographer, translator, reporter, or transcriber or will be delivered to the undersigned attorneys.

9. Except as otherwise provided in this Order, Attorneys' Eyes Only Discovery Material may be disclosed, summarized, described, characterized, or otherwise communicated, orally or in writing, or made available in whole or in part, only to the following persons for use in connection with the Litigation and in accordance with this Order:

a. Counsel for the Parties in the Litigation (including in-house counsel), and the partners, associates, paralegals, secretaries, clerical, regular and temporary employees of counsel ("Counsel");

b. Service vendors of Counsel for the Parties (including outside copying and

litigation support services) who are assisting with the Litigation;

c. No more than five corporate designees for the Receiving Party;

d. Subject to Paragraph 4, experts, consultants, or independent litigation support services assisting counsel for the Parties, and partners, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors of such experts or consultants (including outside copying services and outside support services) who are assisting with the Litigation;

e. Subject to Paragraph 4, witnesses or deponents, and their counsel, but only to the extent necessary to conduct or prepare for depositions or testimony in the Litigation;

f. Any person indicated on the face of a document or accompanying covering letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document, or, in the case of meeting minutes and presentations, anyone identified on the document as an attendee of the meeting;

g. The Court, including any clerk, translator, stenographer, videographer, or other person having access to Attorney's Eyes Only Information by virtue of his or her position with the Court, and including the jury at trial or as exhibits to motions; and

h. Any other person only upon (i) order of the Court entered upon notice to the Parties, or (ii) written stipulation or statement on the record of agreement by the Producing Party who provided the Attorneys' Eyes Only Discovery Material being disclosed, and provided that such person signs an undertaking in the form attached as Exhibit A hereto.

i. Any videographer, translator, court reporter, or transcriber who reports, tapes, translates, or transcribes testimony in this Litigation at a deposition will agree by a statement on the record, before recording or transcribing any such testimony constituting Attorneys' Eyes Only Discovery Materials, that all such testimony and information revealed at the deposition is and will remain confidential and will not be disclosed by such translator, videographer, reporter, or transcriber except to the attorneys for each Party and any other person who is present while such testimony is being given, and that copies of any transcript, reporter's notes or any other transcription records of any such testimony will be retained in confidentiality and safekeeping by such videographer, translator, reporter, or transcriber or will be delivered to the undersigned attorneys.

10. Confidential Discovery Material may be provided to persons listed in Paragraph 8(c) and Attorneys' Eyes Only Discovery Material may be provided to persons listed in Paragraph 9(d) only to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the Litigation, provided that such expert or consultant (i) is not a current or former employee of Dominion subject to a non-disclosure agreement, (ii) is not a current competitor of Dominion, an employee of a current competitor of Dominion, or advising or discussing employment with, or a consultant to, a current competitor of Dominion, (iii) agrees to use, and does use, the Discovery Material solely in connection with the Litigation and (iv) agrees to be bound by the terms of this Order by signing an undertaking in the form attached as Exhibit A hereto. Subparagraph (i) above does not apply to any expert or consultant of Dominion. Counsel for the Party showing, providing, or disclosing Confidential or Attorneys' Eyes Only Discovery Material to any person required to execute an undertaking under

this Paragraph will be responsible for obtaining such signed undertaking and retaining the original, executed copy thereof. "Competitors" are persons or entities endeavoring to engage in the same or similar lines of business, who provide the same or similar services, who sell the same or similar products, or who operate in the same markets, as well as any persons who are engaged in any of these activities.

11. Every person to whom Confidential or Attorneys' Eyes Only Discovery Material is disclosed, summarized, described, characterized, or otherwise communicated or made available, orally or in writing, in whole or in part, will be advised that the information is being disclosed subject to the terms of this Order and may not be disclosed or used for purposes other than those permitted hereunder. Each such person will maintain the Confidential or Attorneys' Eyes Only Discovery Material, or information derived therefrom, in a manner reasonably calculated to prevent unauthorized disclosure. Any Party issuing a subpoena to a non-Party will enclose a copy of this Order and notify the non-Party that the protections of this Order will apply to Discovery Materials of such non-Party.

12. Any pleading, brief, memorandum, motion, letter, affidavit, declaration, or other document filed with the Court that discloses, summarizes, describes, characterizes, or otherwise communicates Confidential or Attorneys' Eyes Only Discovery Materials (a "Confidential Filing") must be filed with the Court under seal in accordance with Local Rule 5.1(h), along with a cover page bearing the caption of the Litigation and the title of the Confidential Filing and stating:

YOU ARE IN POSSESSION OF A DOCUMENT FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THAT IS CONFIDENTIAL AND FILED UNDER SEAL.

If you are not authorized by Court Order to view or retrieve this document read no

further than this page. You should contact the following person:

[Filing Attorney's or Party's Name]
[Filing Attorney's Law Firm Name]
[Filing Attorney's or Party's Address]
[Filing Attorney's or Party's Telephone Number]

No other information should appear on the cover page. Every page of a Confidential Filing will have a footer stating "THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL. REVIEW AND ACCESS TO THIS DOCUMENT IS PROHIBITED EXCEPT BY PRIOR COURT ORDER." A Party may omit this footer for voluminous exhibits.

13. A Party making a Confidential Filing must file a copy of the Confidential Filing for public inspection that omits only the information that the Party has good cause to believe should continue to be sealed. Notwithstanding the foregoing, the Parties have no obligation to file public versions of any exhibits or attachments to a Confidential Filing, unless otherwise ordered by the Court.

14. All materials filed pursuant to Paragraph 13 will be released from confidential treatment only upon further order of this Court, either on its own motion or pursuant to the procedure set forth in Paragraph 15 below. The provisions of this paragraph may be waived only with the written consent of the Producing Party.

15. Any Party who objects to the continued restriction on public access to any Confidential or Attorneys' Eyes Only Filing, or any portion thereof, will give written notice of the objection to the Party that designated the Discovery Material as Confidential or Attorneys' Eyes Only ("the Designating Party"). To the extent that the Designating Party seeks to continue the restriction on public access to the Confidential or Attorneys' Eyes Only Filing, or any portion thereof, the Designating Party will file an application with the Court within seven (7) days for a judicial determination as to whether good cause exists for continued restricted access to the

Confidential Filing, or any portion thereof.

16. If a Party objects to the designation of Discovery Material as Confidential or Attorneys' Eyes Only Discovery Material, that Party ("the Objecting Party") will send written notice to the Designating Party that includes a date and time for a meet and confer to discuss the disputed designation. The Objecting Party and the Designating Party will thereafter meet and confer either at the suggested date and time or, to the extent the Designating Party is unavailable at the suggested date and time, at some other agreed date and time. If the meet and confer procedure does not resolve the dispute, the Objecting Party will, within twenty-one (21) days of the meet and confer, file a motion with the Court to strike the designation. The Producing Party will, within fourteen (14) days, file a response, and the Objecting Party will file a reply within seven (7) days, after which the matter will be fully briefed and ripe for the Court to resolve the dispute. A hearing may be held at the discretion of the Court. While such an application is pending, the Discovery Material or testimony in question will be treated as Confidential or Attorneys' Eyes Only Discovery Material pursuant to this Order. The burden of establishing that any Discovery Material was properly designated as Confidential or Attorneys' Eyes Only Discovery Material is on the Designating Party. If an Objecting Party seeking to challenge any designation of Discovery Material or testimony as Confidential or Attorneys' Eyes Only fails to object and propose a meet and confer as described in Paragraph 16, then the Objecting Party will be deemed to have permanently waived its right to challenge the designation of the disputed Discovery Material as Confidential or Attorneys' Eyes Only.

17. The Parties reserve the right to apply, under Rules 5.2(e) and 26 of the Federal Rules of Civil Procedure and Local Rule 5.1(h), for an order seeking additional safeguards with respect to the use and handling of Discovery Material or to modify the terms of this Order.

18. Entering into this Order, or agreeing to or producing or receiving Discovery Material or otherwise complying with the terms of this Order, will not:

a. prejudice in any way the rights of any Party to (i) seek production of any documents or information in discovery, or (ii) object to the production of any documents or information on the ground that it is not subject to discovery;

b. operate as an admission by any Party that any particular Discovery Material constitutes Confidential or Attorneys' Eyes Only Discovery Material or contains or reflects trade secrets or any other type of confidential information;

c. prejudice in any way the rights of any Party to (i) petition the Court for a further protective order relating to any purportedly Confidential or Attorneys' Eyes Only Discovery Material, or (ii) seek a determination by the Court whether any Discovery Material or Confidential or Attorneys' Eyes Only Discovery Material should be subject to the terms of this Order;

d. prevent any Producing Party from agreeing in writing to alter or waive the provisions or protections provided herein with respect to their designation of any particular Discovery Material;

e. prejudice in any way the rights of any Party to object to the relevance, authenticity, use, or admissibility into evidence of any document, testimony, or other evidence subject to this Order;

f. preclude any Party from objecting to discovery that it believes to be otherwise improper; or

g. operate as a waiver of any attorney-client, work product, business strategy, trade secret or other privilege.

19. This Order has no effect upon, and will not apply to, a Producing Party's use or

disclosure of its own Discovery Material for any purpose. Nothing herein will prevent a Producing Party from disclosing its own Discovery Material.

20. If Discovery Material that is subject to a claim of attorney-client privilege, attorney work product, or any other applicable privilege or ground on which production of that information should not be made to any Party ("Inadvertent Production Material") is inadvertently produced by a Producing Party or Parties, such inadvertent production will in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, work product, or other applicable privilege.

a. A claim of inadvertent production will constitute a representation by the Party claiming inadvertent production that the Inadvertent Production Material has been reviewed by an attorney for the Party claiming inadvertent production and that there is a good faith basis for the claim of inadvertent production.

b. If a claim of inadvertent production is made under this Order, with respect to Discovery Material then in the custody of another Party, the Party possessing the Inadvertent Production Material will: (i) refrain from any further examination or disclosure of the claimed Inadvertent Production Material; and (ii) if requested, promptly make a good faith effort to destroy all such claimed Inadvertent Production Material (including summaries and excerpts) and all copies thereof, and certify in writing to that fact. Once a claim of inadvertent production is made, no Party may use the Inadvertent Production Material for any purpose until further order of the Court.

c. The Party claiming inadvertent production and a Receiving Party will follow the same procedure set forth in Paragraphs 15 and 16 for challenging the designation

of Inadvertent Production Material; while any motion relating to the Inadvertent Production Material is pending, the Inadvertent Production Material in question will be treated in accordance with Paragraph 7. A Receiving Party may not assert as a ground for challenging privilege the fact of the inadvertent production, nor may it include or otherwise disclose in any filing relating to the challenge, as an attachment, exhibit, or otherwise, the Inadvertent Production Material (or any portion thereof).

21. Nothing herein will be deemed to waive any applicable common law or statutory privilege or work product protection.

22. In the event additional Parties join or are joined in the Litigation, they will not have access to Confidential or Attorneys' Eyes Only Discovery Material until the newly joined Party by its counsel has executed this Order and filed with the Court its agreement to be fully bound by it.

23. Subject to the requirements of Rules 5.2(e) and 26 of the Federal Rules of Civil Procedure and Local Rule 5.1(h), the provisions of this Order will, absent written permission of the Designating Party or further order of the Court, continue to be binding throughout and after the conclusion of the Litigation, including, without limitation, any appeals therefrom, except as provided in Paragraph 24.

24. In the event that any Confidential or Attorneys' Eyes Only Discovery Material is used in open court during any court proceeding or filed, marked, or lodged as a trial exhibit, the material will lose its confidential status and become part of the public record, unless the Designating Party applies for and obtains an order from this Court specifically maintaining the confidential status of particular material. Before any court proceeding in which Confidential or

Attorneys' Eyes Only Discovery Material is to be used, counsel will confer in good faith on such procedures that may be necessary or advisable to protect the confidentiality of any such Discovery Material.

25. Within 60 days after receiving notice of the entry of an order, judgment, or decree finally disposing of the Litigation, or any other proceeding in which Confidential or Attorneys' Eyes Only Discovery Material is permitted to be used, including the exhaustion of all possible appeals, and upon the written request of the Designating or Producing Party, all persons having received Confidential or Attorneys' Eyes Only Discovery Material will either (i) make a good-faith and reasonable effort to return such material and all copies thereof (including summaries, excerpts, and derivative works) to counsel for the Producing Party; or (ii) make a good-faith and reasonable effort to destroy all such Confidential or Attorneys' Eyes Only Discovery Material, and certify to that fact in writing to counsel for the Designating or Producing Party. However, counsel for the Parties will be entitled to retain court papers, trial transcripts, and attorney work product containing Confidential or Attorneys' Eyes Only Discovery Material, provided that such counsel, and employees of such counsel, will maintain the confidentiality thereof and will not disclose such court papers, trial transcripts, or attorney work product containing Confidential or Attorneys' Eyes Only Discovery Material to any person except under a court order or agreement by the Designating and Producing Party or except as otherwise required by law. All materials returned to the Parties or their counsel by the Court likewise will be disposed of in accordance with this paragraph.

26. If any person in possession of Confidential or Attorneys' Eyes Only Discovery Material receives a subpoena or other compulsory process seeking the production or other disclosure of Confidential or Attorneys' Eyes Only Discovery Material the person neither

produced nor designated (collectively, a "Demand"), the person will give written notice (by hand, email, or facsimile transmission) to counsel for the Designating and Producing Parties within three business days of receipt of such Demand (or if a response to the Demand is due in less than three business days, at least 24 hours prior to the deadline for a response to the Demand), identifying the Confidential or Attorneys' Eyes Only Discovery Material sought and enclosing a copy of the Demand, and must object to the production of the Confidential or Attorneys' Eyes Only Discovery Material on the grounds of the existence of this Order. The burden of opposing the enforcement of the Demand will fall on the Designating Party. Nothing herein will be construed as requiring the person receiving the Demand or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential or Attorneys' Eyes Only Discovery Material covered by this Order, or to subject itself to any penalties for noncompliance with any legal process or order, or to seek any relief from this Court or any other court. Compliance by the person receiving the Demand with any court order directing production under a Demand of any Confidential or Attorneys' Eyes Only Discovery Material will not constitute a violation of this Order.

27. Absent court order, no person who is not a party to the Litigation who receives Confidential or Attorneys' Eyes Only Discovery Material as permitted under the terms of this Order ("a Non-Party") will reveal any Confidential or Attorneys' Eyes Only Discovery Material, or the information contained therein, to anyone not entitled to receive such Confidential or Attorneys' Eyes Only Discovery Material under the terms of this Order. In the event that Confidential or Attorneys' Eyes Only Discovery Material is disclosed to any person other than in the manner authorized by this Order, or that any information comes to the Non-Party's attention that may indicate there was or is likely to be a loss of confidentiality of any

Confidential or Attorneys' Eyes Only Discovery Material, the Non-Party responsible for the disclosure or loss of confidentiality will immediately inform the Designating and Producing Party of all pertinent facts relating to the disclosure or loss of confidentiality, including, if known, the name, address, and employer of each person to whom the disclosure was made. The Non-Party responsible for the disclosure or loss of confidentiality will also make reasonable efforts to prevent disclosure of Confidential or Attorneys' Eyes Only Discovery Material by each unauthorized person who receives the information.

28. The Parties agree that the production of any Discovery Material by any non-Party is subject to and governed by the terms of this Order.

29. If a Party violates this Order by releasing, leaking, or otherwise disclosing Confidential or Attorneys' Eyes Only Discovery Material to persons or entities not entitled to such Discovery Material under this Order, the Court will have authority to impose sanctions under Rule 37(b)(2)(A)(i)-(vi).

30. This Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

IT IS SO ORDERED.

DATE: June 16, 2023

CARL J. NICHOLS
United States District Judge

Exhibit A to Protective Order

***U.S. Dominion, Inc., et al. v. Powell, et al.*, No. 1:21-cv-00040 (CJN)**
***U.S. Dominion, Inc., et al. v. Giuliani*, No. 1:21-cv-00213 (CJN)**
***U.S. Dominion, Inc., et al. v. Lindell, et al.*, No. 1:21-cv-00445 (CJN)**
***US Dominion Inc., et al v. Byrne*, No. 1:21-cv-02131 (CJN)**

UNDERTAKING

I have read the Protective Order of _____, ___, 2023, in this action (the "Order") and undertake to access and use Discovery Material, Confidential Material, and Attorneys Eyes Only Material only as the Order permits.

Signed this _____ day of _____, 2023.

_____
[Name]

Exhibit D

From: Elizabeth Hadaway
To: Nichols[redacted]@dcd.uscourts.gov; Courtney Moore; Upadhyaya Chambers; Hope Kashatus
Cc: AttorneyLambert; Alfred D. Carry; Robert N. Discoll; Davida Brook; Stephen Shackelford; Amanda Oliver; Andrew D. Parker; Bethany Pickett Shah; blades@parkerdk.com; Carl C. Butzer; Charles L. Babcock; Chris Kachouroff ; Christina Vitale ; Christopher Grecian; Daniel Marvin; Daniel T. Plunkett; David C. Tobin; David Myers; Elizabeth S. Wright; Gregory M. Singer; Jill Thorvig; Joel R. Glover; John F. Lauro; John K. Edwards; Jonathan D. Neerman; Joseph A. Pull; Joseph D. Sibley; Joshua Mooney; Lori Johnson; Marc J. Eisenstein; Marc S. Casarino; Minoo S. Blaesche; Nancy W. Hamilton; Nathaniel R. Greene; Robert Cynkar ; Roxanne A. Russell; Teresa Cinnamond; Trent McCotter ; Dominion ListserveSusmanGodfrey
Subject: 1:21-cv-02131 - US Dominion Inc. et al. v. Patrick Byrne
Date: Tuesday, March 12, 2024 9:01:16 PM
Attachments: Attachment 1 - Byrne Dkt Protective Order.pdf
Attachment 2 - 2024-03-11 Email from R Driscoll to Dominion Counsel re Breach of PO.pdf
Attachment 3 - 2024-03-11 Email from D Brook to R Driscoll re Breach of PO.pdf
Attachment 4 - 2024-03-12 Email from E Hadaway to Def Counsel re Email Court re Breach of PO.pdf
Attachment 5 - 2024-03-12 Email from S Lambert to E Hadaway re Substitution of Counsel.pdf

---

Dear Judge Nichols, Judge Upadhyaya, and Chambers:

Dominion brings to the attention of Your Honors an urgent matter regarding breach of the June 16, 2023, Amended Protective Order, attached hereto. *See* **Attachment 1** (Byrne Dkt. 46); *see also* Powell Dkt. 82; Lindell Dkt. 165; Giuliani Dkt. 55. We submit this matter to Your Honors concurrently given that the Protective Order was signed by Judge Nichols, but discovery disputes have been referred to Judge Upadhyaya.

On March 11, 2024, Mr. Robert Driscoll, counsel for Mr. Patrick Byrne, alerted counsel for Dominion to the fact of the breach of the Amended Protective Order, in an email with attachments, included herewith as **Attachment 2** (Mar. 11 Driscoll Email) stating:

> It has recently come to our attention that Confidential Discovery Material produced by Dominion in this case has been disclosed in a public filing in Michigan by Stefanie Lambert. Ms. Lambert had access to Confidential Discovery Material as an attorney for Patrick Byrne who was assisting in this litigation. Prior to her gaining access to any Confidential Discovery Material, she signed an Undertaking in which she agreed to use all Discovery Material only as permitted by the Protective Order. Attached is a copy of her signed Undertaking.
>
> Dominion's Confidential Discovery Material appears to have been shared with a non-party (i.e., Sheriff Dar Leaf of Barry County, Michigan) by Stefanie Lambert and publicly disclosed by her as part of a filing she made in the criminal case styled People of the

> State of Michigan vs. Stefanie Lynn Lambert Junttila, which is currently pending before the Sixth Circuit Court in Oakland County, Michigan as Case Number 2023-285759-FH….

The same day, Dominion's Co-Lead Counsel Ms. Davida Brook responded and requested more information about the scope and extent of the breach and about counsel's remedial efforts. A copy of Ms. Brook's email is attached hereto as **Attachment 3** (Mar. 11 Brook Email). Ms. Brook also communicated Dominion's intent to raise the issue on the following day's previously scheduled meet and confer concerning the parties' Joint Status Report and at the upcoming March 18, 2024 hearing. *Id.*

The next day, today, March 12, 2024, the Parties met by Zoom to discuss the Joint Status Report. During that conference, Ms. Brook raised the need to add the breach to the parties' Joint Status Report and alert the Court at the March 18 Hearing, and Mr. Driscoll agreed.

Then, earlier this afternoon, Ms. Stefanie Lambert, the attorney who has violated the Amended Protective Order, filed a Notice of Appearance on behalf of Mr. Byrne. Subsequently, Mr. Byrne's longtime counsel of record, the McGlinchey lawyers, purported to withdraw as counsel. Dominion has to date received no assurance from Mr. Byrne's counsel as to whether Ms. Lambert continues to retain Dominion confidential information or whether she has stopped violating the protective order or intends to take any remedial measures to cabin and remedy this breach.

Dominion notified Defendants of its intent to raise this matter with the Court in the attached email. *See* **Attachment 4** (Mar. 12 Hadaway Email). Ms. Lambert responded with the email attached hereto as **Attachment 5** (Mar. 12 Lambert Email). Needless to say, her statements about counsel are false. But Ms. Lambert did affirmatively confirm in her email that it was her client, Mr. Byrne, who directed violation of the protective order, and her statements and conduct indicate every apparent intention of continuing to violate it.

Dominion urgently seeks the Court's assistance to address and contain the breach caused by Mr. Byrne's counsel. We ask for the Court to permit an

emergency hearing before Judge Nichols or Judge Upadhyaya, or for permission to raise this issue at the March 18 hearing.

Respectfully submitted,

Elizabeth Hadaway | Susman Godfrey LLP
o. 713.653.7856 | c. 512.431.7965
ehadaway@susmangodfrey.com
1000 Louisiana St. | Suite 5100 | Houston, Texas 77002
HOUSTON • LOS ANGELES • SEATTLE • NEW YORK

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. Dominion, Inc., et al.,	)	Civil Action
	)	No. 21-cv-445
Plaintiffs,	)	
	)	Telephonic Status
vs.	)	Conference
	)	
My Pillow, Inc., et al.,	)	Washington, DC
	)	September 21, 2023
Defendants.	)	Time: 11:00 a.m.

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE
THE HONORABLE JUDGE CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For Plaintiffs: Davida Brook
Susman Godfrey LLP
1900 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
(310) 789-3100
Email: Dbrook@susmangodfrey.com

Stephen Shackelford, Jr.
Susman Godfrey LLP
1301 Avenue of the Americas
32nd Floor
New York, NY 10019
(212) 729-2012

Mary Kathryn Sammons
Susman Godfrey LLP
1000 Louisiana Street
Suite 5100
Houston, TX 77002
(713) 653-7864
Email: Ksammons@susmangodfrey.com

For Defendant My Pillow & Lindell	Andrew Parker Joseph Pull Parker Daniels Kibort LLC 123 North 3rd Street Suite 888 Minneapolis, MN 55401 (612) 355-4101 Email: Parker@parkerdk.com Email: Pull@parkerdk.com
For Defendant Powell	Teresa Cinnamond Daniel Marvin Kennedy CMK LLP 120 Mountainview Boulevard Basking Ridge, NJ 07920 (908) 848-6307 Email: Teresa.cinnamond@kennedyslaw.com Email: Daniel.marving@kennedyslaw.com
For Defendant DTR	Marc Eisenstein Coburn & Greenbaum PLLC 1710 Rhode Island Avenue, NW Second Floor Washington, DC 20036 (202) 470-2695 Email: Marc@coburngreenbaum.com
For Defendant Herring	Charles L. Babcock Trenton McCotter Jonathan Neerman Minoo Blaesche Jackson Walker LLP 1401 McKinney Suite 1900 Houston, TX 77010 (713) 752-2410 Email: Cbabcock@jw.com
Court Reporter:	Janice E. Dickman, RMR, CRR, CRC Official Court Reporter United States Courthouse, Room 6523 333 Constitution Avenue, NW Washington, DC 20001 202-354-3267

* * * * * * *P R O C E E D I N G S* * * * * * *

THE COURT: Good morning. This is Judge Nichols joining. Could you please call the case.

THE COURTROOM DEPUTY: Yes. This is civil matter 21-445, Dominion, Incorporated, et al. versus My Pillow, Incorporated, et al.

Will counsel please state your appearance for the record, beginning with the plaintiff.

MS. BROOK: Good morning, Your Honor. This is Davida Brook of Susman Godfrey on behalf of the Dominion plaintiffs. And with me today are my partners Stephen Shackelford, Katie Sammons, and Jonathan Ross, all of Susman Godfrey, on behalf of the Dominion plaintiffs.

THE COURT: Good morning, everyone.

Why don't we start with the Powell parties.

Anyone on representing any of the Powell parties?

MS. CINNAMOND: Good morning, Your Honor. This is Teresa Cinnamond, I'm a partner with the law firm Kennedys, and we represent Ms. Powell and Powell, P.C. And I have with me my partner, Dan Marvin.

THE COURT: Good morning, Counsel.

Is anyone on for Defending the Republic?

MR. EISENSTEIN: Yes, Your Honor. Good morning. This is Mark Eisenstein, counsel for Defending the Republic.

THE COURT: Good morning, Mr. Eisenstein. Anyone

else on for any Powell or DTR entities?

All right. Anyone on for Mr. Giuliani?

Anyone on for Mr. Giuliani? Okay.

(No response.)

THE COURT: Anyone on for My Pillow or Lindell?

MR. PARKER: Yes, Your Honor. This is Andrew Parker, representing My Pillow and Mike Lindell. With me is my partner Joe Pull.

THE COURT: Good morning, Counsel.

MR. PARKER: Good morning, Your Honor.

THE COURT: And then turning to the OAN Herring defendants, is anyone on?

MR. BABCOCK: Yes, Your Honor. This is Charles Babcock. I go by Chip. I'm in the law firm of Jackson Walker. Trenton McCotter is also with us and my partners Jonathan Neerman and Minoo Blaesche, and perhaps others, but there at least those.

THE COURT: Good morning, Mr. Babcock. I probably won't be referring to you as Chip.

MR. BABCOCK: You're welcome to if you want, Your Honor. I will defer to Your Honor.

THE COURT: That all sounds fine to me. Is anyone else on from the -- from your side, Mr. Babcock, your team?

MR. BABCOCK: I did not hear anybody else announce, but somebody might have come in late, I don't know.

THE COURT: Okay. Thank you all. Let's get going.

MR. SINGER: So, Your Honor, this is Greg Singer. I'm also in this litigation, the Herring litigation, but representing Christina Bobb, the individual case.

THE COURT: My apologies. I think we spoke over one another. Can you just say your name again?

MR. SINGER: Gregory Singer, representing Christina Bobb.

THE COURT: Oh, yes. Good morning, Mr. Singer.

MR. CARRY: I'm sorry. Good morning, Judge. This is Alfred Carry. I'm here on behalf of Patrick Byrne. That matter has not formally been consolidated, although we have agreed to voluntarily coordinate with the consolidated cases, which has been working well.

The particular discovery dispute before the Court today also does not involve Mr. Byrne. That said, because we were voluntarily coordinating with the consolidated cases, and because we were on the email distribution, it was unclear whether or not Your Honor had a preference for someone from the Patrick Byrne matter to participate today. But I know when I'm not invited and happy to show myself to the door, if Your Honor wishes. So, I would defer to you.

THE COURT: No, no, I think you should stick around, Mr. Carry. Thank you for that. I understand that there are different cases and different parties and different procedural

postures. There may be at least notionally some issues that could be broad enough that could have some effect on Mr. Byrne, so it makes sense for you to stick around.

As everyone I hope knows, this is a call -- I'm going to go through in a second what I've reviewed in preparation for this matter. This is a call to -- as required by my standing order, to discuss issues and to get permission as appropriate before the filing of discovery motions.

And to prepare for this call, I have reviewed various emails submitted to chambers by Dominion and other parties, of course, defendants who submitted emails. And then also, I've reviewed the Dominion-proposed stipulation regarding discovery matters, it was an attachment to an email, as well as the Dominion September 13th, 2023 letter to various counsel regarding deposition coordination.

It seems to me that there are some bigger issues and then some small and relativity discrete discovery questions that may or may not be resolved if and when we resolve the bigger questions.

How I would like to proceed here is I would like to start with Dominion. I would like Dominion to walk me through its position on all of the issues that it believes are ripe or becoming ripe in the near future, and then -- and I want to do that just to be efficient here. I don't want to go issue by issue with the number of counsel that we have on the call.

Then I want to, once we categorize those questions, I will then go to defense counsel and ask for whatever you would like to mention in the most efficient way. Hopefully we can have clarity around the specific topics we're discussing, and then defense counsel can talk about Topic Three or whatever, so we know what we're talking about.

Let's go start with Dominion. Ms. Brook, will you be taking the lead?

MS. BROOK: Yes, Your Honor, I will.

THE COURT: So can you walk me through all of the issues, from Dominion's perspective, that are ripe or soon to be ripe, or you would like either my thoughts or permission to file a motion.

MS. BROOK: Thank you, Your Honor. And thank you for making the time to hear us this morning. The first issue that Dominion would like to raise is the larger issue that Your Honor already referenced in his opening remarks. We would like a process by which to efficiently coordinate discovery between these cases.

As far back as, I believe, November of 2021, this Court indicated its desire that the first three filed cases, those were the ones against Guiliani, Lindell and My Pillow, and the Powell defendants, be consolidated for purposes of discovery, given the many overlapping issues and witnesses. And Dominion got to work trying to do just that, and spent the

better part of the year trying to negotiate really very basic discovery protocols, such has hit counts and search terms and custodians and the like.

Unfortunately, Your Honor, that process proved very difficult, including because the various defendants, including defendants within the same case, would at times not all be willing to respond to emails or join the same calls. And there also was a pattern that, unfortunately, has only gotten worse, of refusing to commit positions to writing, and when Dominion took it upon itself to do so for defendants, saying that we had gotten it wrong.

So Dominion first sought, sort of, this hearing and the circumstance really coming to the Court with dozens of small, little discovery disputes, and tried to come up with a way to avoid that.

And our solution for how to avoid that was back in June of this year, to send the draft discovery stipulation that Your Honor mentioned he took the time to review -- and again, we thank you for that -- which covered, we thought, a very wide range of discovery issues that could be resolved across all the cases once and for all.

We sent that to the defendants who were then consolidated, which included the original three that I mentioned before, and asked them to review it, agree where they could, disagree where they couldn't. But simply return a red

line of that document with their positions in writing so we could clearly see where everyone stood and know what issues, if any, we needed to further meet and confer on. And to the extent we couldn't resolve them, request input from the Court.

Some of the defendants rejected the notion of the discovery stipulation outright, others emailed us their positions as to some issues but not others. But no one would provide us with the red line of the stipulations.

A few weeks later we asked these same defendants to meet and confer with us about the proposed discovery stipulation. We walked through the entire document, point by point, trying to understand each party's position. But even after all that, we still couldn't get clear positions on many of these issues, let alone in writing.

So, we've made some progress, Your Honor, but there's still much to be done on these cases. And we're here today principally because we would like the Court's help to put in place a clear process to move things forward fairly and efficiently for all. And we think the most fair and efficient process is the discovery protocol that we've suggested. And by that I mean, we've already sent that discovery stipulation months ago to three of the parties. All of the parties now have it by virtue of the notice to this Court.

We would like to put a date certain on the calendar by which all of the defendants are given an opportunity to

respond to that discovery protocol, in writing, with their positions. We obviously understand everyone is not going to agree with us on all places. There can then be a set period of time, a week or so, for us to meet and confer and negotiate to try to reduce the number of issues in dispute as much as possible, and then a set date again to bring this issue back to the Court and have any remaining disputes presented to the Court in one simple document that's just a red line; here's what Dominion thinks should happen, here's what any of the other defendants think should happen, and have a hearing where we can march through any of the remaining issues, to the extent there are any.

That's the first and the biggest issue that we think, Your Honor, would take care of a lot of the more specific issues that we highlighted in our email.

Unless the Court has any questions on that point, I will now, pursuant to the Court's instructions, move through to discuss the specific issues that we laid out.

THE COURT: Well, let me -- do you think that the same process is ripe yet with respect to a deposition protocol? I just don't recall whether the proposed stipulation that you've been referring to, the one that you sent to the defendant, or at least certain defendants, back in June covers the same deposition topics as the letter? Or do you think that the proposed stipulation should be on an earlier track because

it will primarily, if not entirely, deal with documents and document production and the like, and then when we get to depositions we deal with the deposition protocol, if any?

MS. BROOK: Thank you, Your Honor. I think -- they are two separate stipulations, in answer to Your Honor's question.

THE COURT: Agreed. Okay.

MS. BROOK: The discovery stipulation that I am referring to did not relate to deposition issues; those issues are contained in a separate deposition stipulation. But we do believe that both are ripe for this similar process. So, we think that a similar process as a set period of time in which everyone can weigh-in on what I'll call the deposition stipulation also makes sense, if that trails the document one by a week or two, just so that folks can be focused on one or the other. I can see that being a good sequence.

But both of them, I think, are ready to go. We've made huge productions already in these cases and there's no reason why depositions can't start to be noticed under the Court's order. We would like to start doing that and, indeed, some of the defendants have already started noticing third-party depositions. And I think it would make sense to all be on the same page there as well, sooner rather than later.

THE COURT: Very well. Okay. Thank you. So let's

turn now to the specific -- the more concrete, or not -- or, perhaps, more limited discovery issues that have been teed up by either party.

MS. BROOK: Thank you, Your Honor. And just a global comment while I go through these more specific issues. What I don't want to do is give the Court the wrong impression. What I mean by that is this -- so, the first one I'm talking about is the dispute regarding Dominion's proposed search terms and custodians with regard to My Pillow and Mike Lindell.

But just because we're only talking about My Pillow and Lindell here, doesn't mean that there aren't outstanding disputes as to search terms and custodians with other of the defendants at issue. The problem is we don't yet have clarity from all of the defendants on what their positions are, so we couldn't tee it up for this hearing, which, again, gets us back to why I think the global process makes sense, because I believe the global process covers every single one of the specific disputes that I'm about to go through. So with that --

THE COURT: Yes, I understood that. Thank you.

MS. BROOK: Great. Thank you, Your Honor. Then the first one is the dispute regarding Dominion's proposed search terms and custodians that relates specifically to the My Pillow and Lindell defendants. At bottom, they are not agreeing to use the search terms and custodians that we sent to them.

Instead of coming back to us and saying: We'll agree to these but not those, or these custodians but not those, they simply ran their own searches. I believe it was just six or seven strings across a handful of custodians that they selected. No communication, no negotiation with that whatsoever of what those search terms should be or who those custodians should be, and then produced.

We don't think that's the proper process. We're asking the Court to order that our search terms and custodians, which again are attached to the global stipulation, be run and used.

A larger issue looming here seems to be My Pillow's belief -- and this affects a variety of the disputes with My Pillow -- that the Dominion's fight is just with Lindell and My Pillow shouldn't have to produce much discovery. Respectfully, Dominion believes that's really just a regurgitation of My Pillow's motion to dismiss which, of course, this Court denied, and it is part of these cases and needs to be prepared to produce documents accordingly.

THE COURT: And here --

MS. BROOK: Second --

THE COURT: Let me just pause you here. If there wasn't this effort perhaps to have a, you know, a stipulation for all discovery matters, if we just had this issue, it seems to me that I would have a discussion with My Pillow about their

position, but the net of this call would be to authorize, assuming I think it's the right thing, a motion to compel by you that would have me potentially order My Pillow/Lindell to take further steps.

Just to be very clear, I'm not -- I'm very unlikely, at the end of this call, to order anyone to do anything. This would only be to authorize the filing of the motion to compel.

MS. BROOK: Correct, Your Honor. We stand ready to file a motion to compel. But we understood the Court's procedures that we could not bring that motion to compel without first going through this process.

THE COURT: Fantastic. Thank you. Okay. Topic two.

MS. BROOK: I would say, on the first global one, we would request, if it's the way the Court wants to do it, permission to file a motion to put that in place, too.

THE COURT: Motion granted.

MS. BROOK: Specific topic No. 2 is the dispute, Your Honor, regarding hit counts. We know that at least Powell and Powell, P.C., are refusing to provide hit counts. I read counsel for Powell's response to our email to the Court. I did not see any explanation for why they will not provide the simple hit counts that is customary and common to exchange in civil discovery.

We would simply like to confirm that they have indeed done what they said they were going to do, which is produce all

of the documents that hit on our search terms and custodians. And since they say that they've agreed to produce literally all of the documents that hit on our search terms and custodians, we don't understand why this would be at all burdensome or objectionable.

And, again, there are other defendants who are refusing to provide hit counts, whether they have agreed to produce everything or not, and we think this is a pretty standard ask. We, of course, are happy to do the same. And it should be ordered as part of a global stipulation or, specifically, we should be given leave to move to compel for hit counts.

THE COURT: Got it. Topic three.

MS. BROOK: Topic three is the dispute regarding custodian interviews and production of texts and related messages. This one relates to DTR, as well as My Pillow and Lindell defendants. As part of the negotiations, Your Honor, over what should be done in these cases, we tried to engage in a conversation about how the defendants were going about interviewing their custodians to make sure that they were search collecting and searching all of the relevant sources of information, whether it be company email or text messages or Signal messages or whatever it is that the various individuals used to communicate about the information relevant to these cases.

And, again, we're just being -- we're finding a wall with defendants being willing to conduct those custodial interviews, give us transparency into how they are doing those custodian interviews, and then, of course, agreeing to collect, search, and produce from the sources of information that the custodians have indicated they did use to communicate about information relevant to this case.

It is another one of the issues that is taken up in the global order, but the more specific request would be for leave to file a motion to compel against the Powell defendants and the My Pillow and Lindell defendants to take on this work.

And then separately, Your Honor, with My Pillow and Lindell specifically -- this doesn't apply to the Powell defendants -- there are several other entities where we've just asked for clarity as to whether or not they control them or whether or not we should be issuing individual subpoenas, and we can't get that clarity. That, for example, is Lindell Management and Lindell, PD. And so we ask for, simply, clarity as to how we should be going about getting discovery from those entities.

THE COURT: Understood. Okay.

MS. BROOK: Great. The next one is dispute regarding the interim substantial completion deadlines. Again, this is one that we specifically teed up with the Defending the Republic defendants. I'm sure it applies to others as well, to

the extent we knew everyone's position. And that is simply -- a lot of the discovery requests in this case, Your Honor, from both sides, from defendants and from plaintiffs, as you can imagine were served many, many moons ago.

And what we said -- and, again, in order to try to ensure an orderly process in these cases -- is just let us know, let's agree to an interim deadline by which the requests that were served a while back, we're all going to finish our production, substantially complete our production. We understand there are always straggler documents that come in here and there.

We had proposed a variety of different dates, all of which have come and passed. So with DTR, in particular, we've been unable to get them to agree to a date certain or to provide an alternative date certain for the ones that we've been proposing.

And here I'll just pause to highlight a conversation I had with DTR over email yesterday that, again, I think still just highlights the problem. As the Court knows, DTR originally felt like it didn't have notice of this proceeding. We pointed out that they were included. They then privately reached out to us to say: We think we can further narrow the issues in dispute. We responded right away to say: Great, tell us your positions in writing and let us know where we're wrong, where we're seeing past each other, what's the

difference? And instead, they responded with a request to have a phone call next week.

It has just become untenable to keep on having these phone calls without written positions that indicate what the parties are or are not willing to do. So that's that one, Your Honor.

THE COURT: Thank you.

MS. BROOK: The last specific issue that we raised in our email is the -- some request for production. We did even include the request for production disputes in our discovery stipulation. So I will admit they are a little bit of a different kind, but here there are three requests relating to My Pillow and two requests -- excuse me -- I'm on week three of this cough -- that relate to Mr. Lindell where we've been able to, through negotiations and back and forth, get on the same page as the defendants on many of the other requests that have been served. But we still think that there are some that they should be required to produce in response to these five requests, and we would be requesting permission from the Court to move to compel on those.

And I will say, to the extent Your Honor has more specific questions about those RPs, I will call on my partner, Mr. Schackelford, to provide more color there.

THE COURT: Sure. I reviewed the topics here. I think it's fair to say I can both imagine why Dominion believed

these are discoverable topics, and I can imagine the arguments that the My Pillow and Lindell defendants would have as to why they shouldn't be.

Although, I suppose it would probably be helpful just for the -- staying specific with the order, Mr. Schackelford, could you just walk me through briefly on each topic what Dominion's view of the relevant/discoverability of each topic is, just so I don't have to come back to you.

MR. SCHACKELFORD: Absolutely.

THE COURT: Thank you.

MR. SCHACKELFORD: Absolutely, Your Honor. Good morning. So two of the five topics concern joint defense agreements. Obviously, they're going to be -- there are privilege claims, every party is going to withhold some documents on privilege claims, including some documents they claim to be from the joint defense privilege.

As Your Honor well knows, that sometimes defense agreements are privileged, considered work product, and sometimes they're not. For the most part, what we want to ensure is that everyone's joint defense agreements are treated the same. So here we would request to compel production. We expect the defendants to rely on joint defense agreements to withhold certain communications they've had with each other. Whatever the outcome of that is, obviously, the outcome of that will affect all of the parties who are asserting joint defense

agreements, depending on the circumstances.

We're also seeking documents and communications with or concerning a gentleman named Kurt Olsen. Mr. Olsen is an attorney. He first came into the limelight when his name was cc'd on some documents that Mr. Lindell was carrying into the White House in January of 2021. He has been reported that he's been -- he's deeply involved in some of the efforts to figure out ways to overturn the election results.

I believe Mr. Lindell is claiming Mr. Olson at some point became an attorney for him. If there are legitimate privilege claims, we would expect them to be asserted in a privilege log so we can evaluate both the time and nature of those claims. But we also believe from what we've seen publicly that Mr. Olsen had some involvement before he was an attorney for Mr. Lindell or My Pillow, and those documents go to the heart of the defamatory statements Mr. Lindell is making and continued to make after January of 2021. So we would ask for those to be produced or logged.

There is a request for My Pillow's revenue each week from January of 2018 to the present. We -- to our knowledge, there's not a significant -- there's not a significant burden, if My Pillow tracks their revenue and can produce that on a weekly basis.

The relevance of it is to show the impact that Mr. Lindell, as he was identifying himself as My Pillow CEO

while making his defamatory statements, and he was using promotion codes on My Pillow to promote his defamatory campaign at the same time he's promoting My Pillow products. We think the impacts that Mr. Lindell's defamatory statements had on My Pillow's revenue over that time period, including specifically in connection with the timing of specific statements, we think that's relevant to our claims.

And we also understand that Mr. Lindell is likely to claim that he's been hurt by -- he's admitted that he was hurt by the responses to his defamatory campaign. But this is exactly the kind of evidence that will show one way or the other the impact that the defamatory statements had on My Pillow's revenues.

And the last -- the last request is a request seeking documents and communications concerning Mike Lindell's removal from social media accounts. As Your Honor may remember, Mr. Lindell was removed from some social media accounts because of his defamatory statements. So his communications about those removals go directly to the issues in this case, including Mr. Lindell's responses to the removal and any requests to make the change -- to retract the statements or to remain on social media accounts and so forth. This is directly related to the claims at issue in our case against Mr. Lindell.

THE COURT: Thank you for that, Mr. Schackelford. I wanted to make sure -- I know these are all issues we've just

gone through, the general ones and the specific ones that Dominion raised, but while I have Dominion starting here, it seems to me that there's at least one issue that's raised by My Pillow, which is the production of discovery materials from the Delaware litigation against Fox.

Could we start -- rather than joining with My Pillow, just staying with Dominion on this question. Ms. Brook, will you be addressing that?

MS. BROOK: No, Your Honor, it will be Mr. Schackelford.

THE COURT: Mr. Schackelford, can you briefly tell me what the current dispute is on that question?

MR. SCHACKELFORD: Yes, Your Honor. The request is a very broad request for all materials from that litigation. We've already produced all Dominion -- all depositions of Dominion people from that -- from that litigation. We've produced, I think -- I believe we've made the same productions from the Fox case, productions from the Fox case and the consolidated cases.

And the additional source of materials that I understand My Pillow to be seeking include depositions of Fox people which have been marked confidential by Fox. We have no problem producing those. Obviously, Fox has an interest in keeping those confidential about producing those in another litigation. So we think if that's something -- if that's going

to be pressed by My Pillow, Fox needs to have a say in whether those are produced; whether they're relevant, whether they're produced, the conditions under which they are produced.

I think there's also been some discussion of expert reports. A number of our expert reports, again, address Fox confidential and AEO information, so those would have to be handled with Fox's input. Fox should have a seat at the table if they generally want to have production of reports that address Fox confidential material, for instance.

That, I believe, is the gist of the disputes. Again, documents in our own depositions I think we produced. There's been some request for things like exhibit lists, and I think we're perfectly willing to do things like produce exhibit lists and so forth, or exhibits that weren't publicly filed on the docket as long as My Pillow, Mr. Lindell, and others in the defense group are willing to do the same for the election-related litigation that they're involved with.

But we think they should do the same for their deposition transcripts that they're involved with -- other cases they're involved with. But we've gone ahead and produced all our Dominion deposition transcripts from the Fox case anyway.

If there are other issues that I'm unaware of, I'm sure Mr. Lindell and My Pillow's counsel will raise them.

THE COURT: Yes. We'll pick it up then. Thank you

very much.

Any other topics that Dominion is aware of that may be discussed today? I know there are some that My Pillow indicated that aren't quite ripe. I want to put those to the side for now.

Any other topics Dominion wants to raise before I turn it to the defendants?

MS. BROOK: This is Davida Brook on behalf of Dominion. In short, Your Honor, no. Just to briefly reiterate, we would request the ability, in whatever form Your Honor sees most prudent, to bring some sort of joint sense to the Court's attention so that we can get a global discovery process in order, whether that would be as sort of a red line filing that Dominion contemplated after meet and confer, or some other form of filing that the Court would prefer. And then after the specific issues, we request leave to move to compel on them to the extent the Court does not plan on taking those up as part of the global documents.

THE COURT: Thank you very much. So let's go back now to the defendants and go through these issues. Who wants to first address the question of whether there should be a discovery protocol along the lines of that proposed by Dominion back in June and/or whether I should order at least a process for teeing up and adjudicating whether there should be such an order? Because, really, that's -- it seems to me that's the

primary question here.

I'm not, of course -- I'm not forcing anyone to agree to a discovery protocol, but I do want to ensure that we have a process for deciding whether there's going to be one and what it might say.

So who wants to speak first from the defense side on this question?

MR. PARKER: Your Honor, Andrew Parker, My Pillow and Lindell. We don't have a problem and we were responsive, I think, right away to Dominion on this. We believe that federal rules cover most, if not all of the issues that have been raised, but we do not have a problem with a protocol to streamline the practical issues that are faced when so many different cases are coming together in discovery.

One thing that I just want to comment on very briefly is this notion that My Pillow and Lindell have not been responsive to discovery stipulation. If that was directed at My Pillow and Lindell, the discovery stipulation was issued in June of 2023, and within ten days we provided a lengthy written response with our position regarding the discovery stipulation, responding point-by-point to each provision and agreeing to many of the provisions.

So, you know, I think throughout this discovery process we have attempted, and I think succeeded, in being extremely responsive to Dominion. You know, I don't want to

get into a tit for tat, the Court doesn't need to hear that, but we certainly do not feel we have received the same responsiveness from Dominion.

But in terms of the discovery stipulation, we certainly have laid out our position on it and are prepared to, you know, go through a process, if the Court thinks that would be helpful. I think it should be grounded in the foundation of it all in the federal rules.

THE COURT: Very well. Mr. Parker, since we have you, why don't we walk through all of the issues that Dominion raised that touch on My Pillow questions. So I can hear from you and then I can go to the other defendants to ask their positions in the same way.

Is your position the same with respect to a deposition stipulation? That is to say, that it makes sense to at least attempt to figure out a way to have a protocol to streamline the somewhat potentially complicated issues in a coordinated case like this?

MR. PARKER: You know, I think as it relates to depositions, I would say, first, that Dominion decided to sue out the case in the manner that they did, that is, with five or six different cases completely separate. And so long as defendants are not prejudiced in their ability to do discovery in their own individual single case in a manner consistent with the federal rules, I don't have a problem with a deposition

stipulation either.

THE COURT: Okay. Shall we then turn to the -- and I realize -- Dominion's position, of course, is that some or all of these more specific issues could be resolved potentially through negotiation around the discovery protocol and the like. But since they teed them up, I thought it would be helpful to discuss them today.

What is your response on the search term custodian issues that Dominion raised? I'll call that specific topic 1.

MR. PARKER: Yes. Thank you, Your Honor. We went back and reviewed the history as it relates to search terms because I know, having been personally involved, but other counsel in our office even more directly so, that we have spent an extraordinary amount of time on trying to coordinate search terms with Dominion.

It is true that we did not agree to all of the search terms, many of which have absolutely no relation to this case. But we did agree with many of them. Just for a bit of background, the requests for production were in early 2022 and it wasn't until June of '23 that Dominion made its first list of proposed search terms request on us.

And within the same month, we had discussions back and forth and we informed Dominion that we were going to go through a process. I don't think that we have had or been in the middle of difficulties with Dominion in terms of getting

back to them and coordinating. Certainly on hit counts, we have been very responsive. We do have a disagreement as it relates to search terms.

We have made a long list of search terms and we have done a search in regard to that. And just some of the search terms -- not many, but some of the search terms that Dominion had we just thought were, you know, not related to the case, noting that we have hits on these search terms; not just turning it over to Dominion, we need to go through and review all of them. It was in the millions because these search terms were so broad.

But through the months leading up to June, even before we received the search terms from Dominion, we had made a number of passes with about 60, 70 different keywords, search terms, as we weren't going to continue to wait to get search terms from Dominion, and we went over those with Dominion. Again, there is some disagreement as it relates to that.

Just to quote -- I sent a letter in April of 2023, and stated that: Dominion stated in its correspondence that it believed the search terms used by My Pillow and Lindell were inadequate and that Dominion will propose search terms. I responded: We are willing to consider running additional search terms that you provide, let us know what those are.

And that's when we got, on June 2nd, those search terms from Dominion. And on June 5th we immediate responded

and started to engage in the discussions. Later in the summer we gave them hit counts, which were well in excess of a million documents. And until very recently, days, we did not know whether they wanted us to produce all of those documents based upon the search terms.

I think it was on the 12th of September when they brought this issue to the Court, and the issue was listed there, but they did so without contacting us and coordinating.

So it may well be possible that we can resolve the issue of search terms and hit counts. I don't think the hit count issue is really a significant one, for us at least; maybe for other defendants. We may be able to resolve it, but there may be some search terms that we're not able to resolve and would need to go to the Court.

In terms of custodial interviews, we have done extensive work on this. Dominion requested dozens of people be interviewed. We have been working over the last several weeks to do that. We are just about completed with that. We thought that Dominion was aware of the fact that we were doing that.

We don't know why this is an issue, other than the fact that Dominion gave us a script that they wanted us to ask of these custodial witnesses, and we used our own script because we're following the federal rules as to our obligations and requirements. And the script that Dominion gave us was somewhat of a deposition set of questions of each person. And

so I think that we certainly are meeting our obligation and then some, and we're nearly completed with that process.

THE COURT: Let's turn to the -- either the materials from the Delaware litigation questions or the specific requests for production identified by Dominion.

MR. PARKER: Okay. Certainly, Your Honor. I'll start with the request for production, just to complete the Dominion demands.

Counsel for Dominion accurately identified the joint defense agreement response, the privileged nature of that request, and the same with respect to Kurt Olsen. And so we -- you know, we believe that both of those requests are seeking privileged information and will assert defenses related to that.

In terms of revenue, we have been talking to Dominion about this. The objection here, really, is the broad nature of the request, and we thought that we were working to narrow that request. And if we're able to achieve that, I think there shouldn't be a problem getting that information over.

Lastly, in terms of the social media accounts, we just believe that is beyond any relevance related to this case, which is the basis for our objection there.

THE COURT: The Delaware litigation.

MR. PARKER: Yes. We had requested a hearing like this in June on the -- when this issue came to a head, and we

did not have any of -- we -- you know, we were -- it was a brick wall in terms of getting the documents here. I understand the various objections referenced, but we had a disagreement on that.

It was said that we now have the Dominion depositions from that case, and we did just get them, I believe, on Tuesday, two days ago. So we have, you know, begun going through that. I can't say that I know personally what all is included in the production that we now have. But we will certainly look at that. I know that it's not fully responsive to the request, which we believe we have a right to, and it may well be necessary, due to protective orders, that this issue be brought to the Court.

THE COURT: Okay. Thank you, Counsel. Let's go back to the top, so to speak, on the question about the discovery protocol. Would either someone for the Powell defendants or the OAN defendants like to address this?

MR. MARVIN: Your Honor, this is -- I'm sorry, this is Daniel Marvin, for the Powell defendants. May I start?

THE COURT: Mr. Marvin, please.

MR. MARVIN: Yeah. So we don't have any general issues with trying to work through a protocol, but we think there is an inherent issue underlying the protocol which is important for the Court to decide, and it's an issue we've raised with Dominion for the better part of a year.

Dominion has been producing documents and running search terms -- I'm sorry, running search terms and then producing documents without doing any sort of relevancy review as required by Rule 26.

Conversely, Dominion is taking the position that any documents that hit on their search terms proposed to Powell must be produced and that they are entitled to them. We've gone back to Dominion and said: That's not what Rule 26 requires. We'll run your search terms, we'll then do our own review within the confines of Rule 26 and then produce those documents with our responses.

One of the issues we put in our email reflects how Dominion's proposal leads to absurd results. We know that just one of probably thousands of examples were legal briefs in Ms. Powell's emails in 2018. There's a case citation where the surname of the plaintiff is Fox. Clearly, not only doesn't this matter, but under Dominion's theory of relevance in this case, Powell is required to produce those documents.

So what we think makes sense is for the Court to determine if Dominion's suggested way of proceeding in just running search terms and haphazardly producing the documents is an efficient way to proceed. What we've been faced with are essentially Dominion producing volumes upon volumes upon volumes of documents to us without having performed a relevance review. And that's compounded with the fact that the manner in

which these documents are being produced aren't delineating, A, whether or not they're being produced in response to Powell's demands or other defendants' demands; and, B, which of the Powell demands the documents relate to.

So essentially the Powell defendants are faced with millions of documents with no reasonable way to determine what specific demands they relate to, and whether or not they're even relevant to this case.

So, before we would agree to enter into a protocol, we want Dominion to only produce documents to Powell that are relevant within Rule 26 -- relevant within Rule 26, which is not what they have been doing. So that's really an overarching, core issue that we face with Dominion.

And I've also -- when we first got -- when we first got the demands back in early '22, which Mr. Parker just mentioned that date, we reviewed Dominion's demands, we understood them, we developed a procedure to review and produce responsive documents. We hired a massive team of outside attorneys to undertake that process. Then a year later, when we were wrapping up that process, Dominion gave us these search terms.

Ultimately, it was just so frustrating dealing with Dominion with these search terms that, A, many of them were irrelevant to this case; but, B, were also yielding documents that had no relevance to this case. We basically acquiesced

and said: If you want all of these documents, subject to a privilege review, we'll give them to you.

So out of the 152 search strings that were initially provided, Dominion withdrew one, and we agreed to produce documents related to the 151 that remained. And that still wasn't good enough for Dominion. And they came back, well, now we want to know your head counts. So I don't know what basis Dominion believed that the Powell defendants are not complying with their obligations under the federal rules or counsel, its attorneys, aren't complying with their ethical obligations to produce responsive documents. But we are essentially giving Dominion everything it asked for, with the exception of, obviously, privileged documents.

And, by the way, our privilege log now is going to contain entries for privileged documents that aren't even linked to this case because Ms. Powell, as you all know, is an attorney. But within her documents -- they may be documents that hit on the term "Fox" or hit on the term "Trump" or any of the other 152 search strings which aren't related to this case but are still privileged.

Again, under Dominion's theory of relevancy, if it hits on a search term, they get it. If it hits on a search term, they produce it. That really is an essential issue that needs to be decided. But notwithstanding that, we certainly agree that if we can come up with a protocol to streamline

discovery, it makes sense.

THE COURT: Let me just pause -- Mr. Marvin, can I pause you there? It seems to me that the parties could agree on a process whereby a party produces all documents that hit on particular search terms, whether or not they would otherwise be viewed as responsive in the sense contemplated by the federal rules. Parties sometimes do that to relieve themselves from the obligation of doing a further responsiveness review for cost or other purposes.

I take it what you're saying here is that no such agreement has been reached between, at least, the Powell defendants and Dominion, and that absent such an agreement -- on the one hand, you have your own, either obligation or entitlement, to conduct your responsiveness review consistent with your ethical obligations and only produce documents that are actually responsive, to not include a brief that's actually unrelated in this case, on the one hand. And on the other, but Dominion, in your view, has to comply with its obligations to not simply produce documents that hit on search terms, but that are actually responsive to your requests. All fair?

MR. MARVIN: That is fair. I know Mr. Parker and his clients have undertaken a responsiveness review. The Powell defendants have undertaken a responsiveness review. It's not even so much that Dominion has not undertaken that review, they represent that they don't think they have to under Rule 26,

it's not a requirement, notwithstanding they could agree -- the parties could agree to waive that requirement. But Dominion doesn't think -- at least they represented to us on more than one occasion, they don't think they have that obligation under Rule 26.

THE COURT: Okay. So can we just now -- we've, obviously, been at this for almost an hour. Let's go through the rest of the issues that at least uniquely relate to Ms. Powell and are related to kind of -- although, I suppose -- let me just get your view on deposition protocol. At least notionally do you agree it would be a good thing here to have some rules around how depositions will work?

MR. MARVIN: Absolutely. You know, as long as it doesn't prejudice any particular defendant's right to complete their questioning of any particular witness, it certainly makes sense, as in most cases, to do what we can to streamline the process and not burden the parties or witnesses.

THE COURT: And then, obviously, you addressed the hit counts. It seems to me that you probably addressed all of the issues that are most ripe. But is there anything else you would like to address this morning?

MR. MARVIN: Not from my end, no. Thank you.

THE COURT: Okay. Thank you very much. Should we go back up to the top again, I suppose, Mr. Babcock?

MR. BABCOCK: Yes, Your Honor. Can you hear me all

right?

THE COURT: I can hear you well.

MR. BABCOCK: Thank you very much. As the Court knows, we've only been involved in this since July 24th, when we were consolidated. But we haven't dealt with Ms. Brook, who I know is the lead counsel, but one of her more junior partners, Mr. Ross. And I think we've made a lot of progress on a lot of the issues that are encompassed in the discovery protocol that is proposed, and we're in favor of a discovery protocol.

In the email to the Court Ms. Brook suggested that there be a deadline of eight days. That may be a little aggressive, given all of the lawyers involved in this, but if that's what the Court thinks is appropriate, then that's what we will do.

We also think that a deposition protocol is appropriate. We don't particularly think the initial proposal, which we received midweek last week, as proposed by Dominion, is terribly fair. They get seven hours per witness and we get 1.4, and then for other very important witnesses they get ten hours and we get two. But that's a matter of the mechanics and we'll work that out with them.

We do think that Ms. Brook's proposal about taking the -- both the discovery protocol and the deposition protocol, and marking what we agree and then having each side's position

where we disagree is an efficient way for the Court to deal with these issues. So I hate to be in agreement, but there we are.

I will also agree, strenuously, with Mr. Marvin's comments about hit reports and search terms and everything he just said. I think that that is an issue that, at least for my clients, you're going to have to deal with because, as Ms. Brook said, it's fairly commonplace for the parties to exchange search terms, and in some cases, although not very many, frankly, hit reports. But that was because they were being put to a laudatory purpose.

They were allowing a party, typically a corporate defendant that had reams of information, to give a term that would cull that relevant information and responsive information out of this whole large morass of documents, principally electronically stored information.

But that laudatory thing for search terms has now been turned into a weapon. And now, on the offensive side, a party like Dominion will dump 3 million or 4 million or 5 million documents on us. They're not responsive. And they're quite up front about, hey, we're not checking for responsiveness, we're giving you everything on your search terms. And that requires a, frankly, smaller company like ours to devote massive research trying to find the needle in that haystack of millions of documents.

There is case law that says that these documents are not an appropriate tactic under the rules. So when it's being used offensively that way, it's -- we don't think it's appropriate. When it's being used a second offensive way, when they demand that we produce everything responsive to their -- to the search terms, of course that's not contemplated by Rule 26. But then they take the hit counts, the hit report counts, and they say -- let's say a search term hit on a million documents and we reviewed it and we produced 10,000 documents. Then they say: Oh, something is wrong here. You hit a million but you only gave us 10,000.

So the motion to compel is -- give us all million, even though, you know, many of them don't have a thing to do with anything in the case. So I foreshadow that as an issue that is undoubtedly going to be presented to the Court.

Is there any other specific things that the Court is interested in? Of course, I can respond.

I will say one thing about the Delaware litigation. For our part, we don't need to see the Fox depositions. But on the expert reports, it is certainly true that the experts that Dominion hired to inquire into Fox's business and their practices and their revenues, whatever it may have been, we don't want that and we don't need that.

However, Fox had experts that reviewed Dominion's financial situation and its technical -- its technology and its

system -- electronic voting systems, and we think that would be appropriate to be provided in this case.

So that's everything I have to say about everything that has been said so far, Your Honor. Thank you for the time.

THE COURT: Thank you, Mr. Babcock, very much.

Who would like to speak next? I just want to make sure I give every defense counsel an opportunity to comment on any issues we've addressed.

MR. SINGER: Yes, Your Honor, this is Greg Singer on behalf of Christina Bobb individually.

THE COURT: Yes.

MR. SINGER: I would just like to indicate, first of all, that I echo what Mr. Babcock said. And in particular with respect to Ms. Bobb, unlike some of the other cases, we had not seen the proposed discovery stipulations until yesterday when, actually, Mr. Babcock's firm forwarded it to us. It was not sent to us directly.

So, although I don't have any disagreement regarding the concept of a discovery and deposition protocol in a general sense, in terms of timing, we're going to be pretty hard-pressed to look at that, provide comments, and confer with Dominion to determine what we would potentially agree to and what we wouldn't.

Kind of emphasizing that point, Your Honor, we've had very little contact with Dominion. So a lot of these issues

that have been raised in terms of efforts to confer aren't directed between Dominion's counsel and our firm representing Ms. Bobb. So I just wanted to make that clear.

And then additionally, Your Honor, I think we're largely in agreement with what Mr. Babcock said regarding search terms and the process by which those would be implemented. I think that with respect to an individual defendant with limited resources, it's not reasonable to dump large volumes of documents on us or expect that we'll be able to look through millions of potentially irrelevant documents.

For that reason, we anticipate serving a pretty narrow request for production that concerns Ms. Bobb individually. And we think, consistent with Rule 26, the production would not just be all of the documents that might be responsive to what you've asked for are contained within these millions of documents, but, rather, that Dominion would produce the documents that actually are responsive to the requests that we serve.

And, likewise, Your Honor, I echo Mr. Babcock's thought that I don't believe that we have an interest in seeing the deposition transcripts of Fox witnesses discussing Fox and their particular issues. But to the extent that there are depositions from Fox's experts that concern Dominion's financial situation, Dominion's technology, its systems and so forth, those would be, I think, relevant to this case and,

therefore, should be produced.

THE COURT: Very well. Thank you. Would -- Mr. Carry, would you like to address any of these issues?

MR. CARY: Yes. Thank you. Good afternoon to you now.

Regarding the discovery protocol and listening to Ms. Brook, I had two -- in broad strokes -- two reactions. One is proportionality. Patrick Byrne is an individual. The discovery protocol that was shared with us is a 14-page document that references nine different exhibits, one of which is a complicated, technical ESI protocol, another is a document regarding how we would handle expert discovery.

While I could think and certainly envision a scenario where those kinds of multilayered documents would be appropriate with mega publicly-traded companies or billion-dollar privately held companies, I want to be mindful that some of the defendants in this case are just individuals and don't have the resources to be able to navigate those kinds of voluminous discovery protocols.

But in large part, I share the view that all of my other brothers and sisters have mentioned today, that having some sort of system would make sense. In the same breath, I also want to be mindful that I don't want to create a "solution," and I'm putting that word in quotes, to a problem that may not exist.

I think that the Federal Rules of Civil Procedure do a really good job at how -- at telling us how do we handle these discovery disputes when they come up. And at least in the case with Patrick Byrne, Dominion requested that we send them head count reports; we sent them. They asked us to use their search terms; we used their search terms and explained how we used them.

They gave us a list of names of custodians that they wanted us to apply those search terms to; we did that. They asked us to give them a narrative on how we went about getting everything so they can ensure that we are -- that we are reaching the end of the bottom of the barrel, if you will, the universe of documents that may exist; we gave them that narrative.

So if you were to ask me, do I think that it's an appropriate time for the Court to perhaps direct the parties to submit what their positions would be on a discovery protocol, I suppose that Your Honor certainly could do that, and maybe now is the time for us to do that. But in the same breath, I don't know if you necessarily have to because as it relates to, at least Patrick Byrne, we don't have that many disputes.

On the question of a deposition protocol, this is something that I've been thinking about myself, and I'm pleased that Ms. Walker, who represents Dominion, took some time to put pen to paper in getting her ideas out there for us to consider.

She just sent that letter to us last week, and I haven't quite fully formed my thoughts to the point where I can materialize them in writing. But I do intend to send a red line of her comments to that letter.

But if you were to ask me: Should the Court do anything or take that issue up at this time? My response would be: No. After all, Dominion's letter was just sent last week. I think it raises more questions than answers, at least for now.

For instance, does this apply to nonparty, nonexpert depositions, or does it only apply to -- or does it apply to all depositions? Are we talking about common witness depositions or, again, all of them? And then Rule 30 sets a presumptive limit of ten depositions. Is it Dominion's position that all defendants, including Guiliani, Powell, Byrne, Herring, are going to be confined as a group to ten depositions total? Or will each set of defendants have the ability to notice ten nonparty, nonexpert depositions?

And then as far as the duration of a deposition, I share Mr. Babcock's view that I don't think that the current proposal is particularly fair. But that kind of gets into the mechanics of it. I think maybe we just need more time among ourselves to kind of figure out what we think would be appropriate.

THE COURT: Thank you for that. Anything else?

MR. SINGER: That's all I had to share. Oh, I guess one other point. I do share the same view of the Powell defense counsel, Herring's defense counsel about issues with finding needles in haystacks.

THE COURT: Yes. Understood. Thank you.

Anyone else want to say anything? I guess, counsel for Defending the Republic.

MR. EISENSTEIN: Yes, Your Honor. Thank you. Mark Eisenstein, counsel for Defending the Republic. With respect to the issue of a potential discovery protocol or deposition protocol, we agree and are happy to discuss that and tee up any issues that can't be resolved between the parties. DTR has no issue with that protocol.

With respect to the larger issues that were raised, I believe in the email to the Court and just now, I'm having a hard time understanding why Dominion seeks at this point to seek permission from the Court to file a motion to compel, for a number of reasons.

One, I believe it's premature. I've never met Ms. Brook until -- via email until a few days ago. I've been working with her colleagues, Ms. Walker and Ms. Sammons, about issues that were raised in her email and other issues, and I thought we were productively moving forward. Unfortunately, sometimes I get an email with a two-day turnaround, which, unfortunately, given other obligations, I'm unable to respond

to. But we've been engaged and trying to work with them on issues related to custodians and search terms and a number of matters. So I think it's premature and I don't think we need to burden the Court with that at this juncture.

And, two, as the Court has been listening to these issues for the last -- more than 60 minutes, there's a lot of uncertainty and a lot of questions that hopefully can be resolved by the parties, but, unfortunately, may require intervention of the Court. So I believe Dominion's asking the Court to set a deadline in less than two weeks of a substantial completion by Defending the Republic of discovery when issues about whether we can do a relevance review is still subject to questions. So, I don't believe at this juncture it would be -- this is the right time for the Court to entertain any potential motions to compel.

With respect to the custodian -- I believe they raised two issues. One is the substantial completion deadline that they are seeking potentially permission from the Court to seek a motion to compel; and, two, with respect to something related to the custodians.

With respect to the substantial completion, as I just mentioned, there's a number of issues that have not been resolved -- relevance, ESI protocols, search terms -- there's a number of things that are still up in the air and uncertain. So I believe if the Court were to allow them to seek a motion

to compel, or even if we agreed to a substantial completion deadline of 30 days, I believe there's just too much uncertainty that wouldn't mean anything, it would just be a waste of the resources of the parties because we would have to redo everything once an agreement is reached.

And a particular issue -- I know this issue has come up in terms of search terms and custodians. We're hoping and waiting to hear back from Dominion about the search terms. I believe one of the search terms Dominion proposed to Defending the Republic was "Defending the Republic." We complied, we ran the search terms on the email accounts that we have for Defending the Republic employees. As you can imagine, there are a substantial number of hits.

We were waiting to and we were hoping to talk to Dominion about trying to resolve the search term issues with respect to that and others. So we're happy to do that, and I think I -- as Ms. Brook mentioned, we proposed a call with Dominion to try to resolve that and other issues, and we're open to do that whenever they're available.

With respect to the custodians, I think they proposed -- I think about 15 custodians. I think one of them being, initially, Mr. Byrne, who is now a defendant. And we identified and we responded with nine proposed custodians. I don't think we received an answer about whether those custodians were appropriate.

We also understood that we were going to receive a script that it sounds like Dominion provided or some criteria that Dominion provided to other defendants, I believe Mr. Parker said they received information or a proposal for them to use with their proposed custodians. We're waiting to receive that guidance or those suggestions from Dominion, and we were going to talk to the nine custodians that we identified.

In the interim, Dominion decided to issue a subpoena to three, I believe, of our proposed custodians. I just say that to say that there's a lot more negotiations and there's a lot more progress that can be made.

We believe granting their request for a motion to compel at this point would be premature. And we're happy to work with Dominion to try to resolve these issues and other issues.

We have -- and I believe -- I think I mentioned this, we did provide a hit count and we were continuing to discuss that. I think one issue that can be discussed off line with Dominion, I think in terms of the volume, we don't have -- Defending the Republic doesn't have the volume of material that maybe Dominion thinks it has. So that's, hopefully, something that can -- hopefully be resolved and discussed among the parties.

But for all those reasons, we would ask the Court to

deny the request for Dominion to be granted leave to file a motion to compel for the reasons I just stated.

THE COURT: Thank you very much. What I want to do is I want to just go back very briefly to Ms. Brook. I want to understand Dominion's position with respect to the use of search terms. So, in its own review by gathering, review, and production of documents, and then what it expects defendants to be doing. So, Ms. Brook, can you just give me Dominion's view of how this should be working?

MS. BROOK: Yes, Your Honor. Thank you for the opportunity to respond. I'll start by saying, it's particularly confusing to have Dominion's approach of doing a relevance review by virtue of applying search terms, custodians, and timeframe to just -- this is just for ESI, Your Honor, for emails and such where there are necessarily going to be a large number of documents.

It's confusing to have that process be objected to in the first instance by the Powell defendants, Your Honor, and that's for this simple reason: The Powell defendants, like some of the other defendants, issued the following RFP, it's RFP No. 1 in their second request for production, and it asks for all of the documents that Dominion has produced in these related cases and in the Fox case. And, so, on the one hand, Your Honor, they sent us formal --

THE COURT: Wait. Hold on. Just hold on a second.

What's the inconsistency there? Those documents may have been responsive in a more specific and particularized way than documents that just hit on certain search terms for certain custodians and certain dates?

MS. BROOK: So I guess the confusion, Your Honor, is the background of what happened in Fox, which is where I wanted to go to next. I believe the Court is aware of this, but to the extent it is not, so Mr. Babcock and his team from Jackson Walker were originally counsel for Fox in the Dominion case. We had the exact two disputes that we're having now, apparently, about whether or not Dominion needed to do an additional relevance review on top of applying search terms, custodians, and timeframes to ESI. We also had the dispute around hit counts, as he sort of referenced in his remarks.

And the way those disputes worked out were as follows, Your Honor: We brought them to not just the special master in that case, but to Judge Davis, because it was Fox's position, as related by the same counsel they now have representing OAN, was what they just told us. It was that Dominion should have to go -- after applying the very broad search terms that OAN demanded -- that Fox, now OAN, demanded that Dominion run, and after serving very broad RFPs on Dominion in a case where Judge Davis rightfully recognized the bulk of the discovery should really be coming from defendants and not Dominion, so having made those choices, having

served -- having demanded lots of search terms, having served lots of RFPs, they can't now complain that Dominion is producing those documents when the Court found --

THE COURT: Hold on a second. It is not persuasive to me at all to try to equate a lawyer with a party who is not here. I don't think -- I have no idea what Fox -- what its interest in the Fox litigation was for advocating for a particular reason.

I don't think that Mr. Babcock, having represented that party there, is somehow bound or stopped from taking a different position for a different party here. That is not persuasive to me.

MS. BROOK: Understood, Your Honor. And my apologies, that was not what I was trying to convey. What I was trying to convey is this: That counsel in these cases have served collectively more than 600 requests for production on Dominion at this stage of the litigation alone; more than 600.

OAN alone has served 245 requests for production at this stage of the litigation, including very, very broad requests that essentially ask for anything Dominion does. For example, one of the requests is, quote, Documents and communications relating to any Dominion entity's involvement in the U.S. 2020 local, state, and federal election.

THE COURT: All right. Hold on a second. Let's speed this up. So there's very broad discovery requests, I get

it. Dominion's view here is that when it's responding to those discovery requests, at least the broad ones, it is either entitled or obligated to do what? Run search terms that it believes are appropriate and then just produce the records? That's what I'm trying to get to.

MS. BROOK: Understood, Your Honor. For ESI, for emails, Dominion's view is that it should run negotiated search terms with the other side, agreed to by the other side, or ordered by order of this Court on the custodians, again, agreed to with the other side or by order of this Court over the timeframe, again, agreed to with the other side or by order of this Court on some ESI documents and can then produce them.

And then under the federal rules, at that point, frankly, any of the defendants are in a better position to determine what exactly is responsive to their request than Dominion is. That is what Dominion believes for ESI. Separate and apart from that, Dominion has an additional burden, which it is undertaking in these cases to search for, and specifically identify and review and produce, noncustodial documents, Your Honor.

So we've gone through and looked for the contracts they've asked for, or damages spreadsheets they've asked for, et cetera, et cetera. So for ESI, I think where the parties really have this dispute, Dominion's position is that under the federal rules it is complying with them to the full extent that

it needs to by running the agreed-to or Court-ordered search terms, custodians, and timeframes over the ESI requested and making those productions.

And Dominion understands, in turn, that defendants may adopt the same approach and, therefore, provide documents to Dominion in that same way.

THE COURT: Agreed. So now here's my question: For Dominion, does it have negotiated and agreed-upon or Court-ordered search terms that it is running with respect to each of the defendants that we're talking about?

MS. BROOK: For some of the defendants there has been an agreement as to search terms, for others of the defendants there are ongoing negotiations, some of which are the specific requests that were teed up for the Court today. If you go back to that joint stipulation, Your Honor, we attached to that joint stipulation unique specified search terms for each of the defendants that were then involved in the process.

We have since sent the same idea, unique set of search terms to OAN for negotiation with them, as well as a unique set of custodians to them for negotiation with them. So we are somewhere in that process, Your Honor, with all of the defendants.

THE COURT: All right. And so --

MR. MARVIN: Your Honor, I hate to jump in. This is Daniel Marvin for --

THE COURT: Hold on a second. No, no, not yet.

MR. MARVIN: Oh, sorry, I apologize. I apologize.

THE COURT: Not yet. So, Ms. Brook, let me just flip it. And then, obviously -- so, in an ideal world, at least from Dominion's perspective, I take it -- I should say, I don't have a problem with it. I want to make sure I understand it.

In Dominion's view, at least ideally, there would be for each defendant -- and it might be the same, of course, but for each defendant there would be a negotiated set of search terms, custodians, date ranges (audio interruption) here as to Dominion's responses to the discovery requests. And then the flip would be true, that for each individualized defendant's ESI review, there would be a bespoke set of custodians, date ranges, and search terms. And then, assuming that those are agreed upon or assuming that I order a particular outcome with respect to a particular defendant, and whether we're talking about Dominion productions or defense productions, that when those are nailed down, that there need not be additional responsiveness review because that would basically be defining the universe of responsive documents through the ESI protocol. Fair?

MS. BROOK: Yes, Your Honor, that is very fair. I think there is one additional point I would make there, but you more or less hit the nail on the head, which is Dominion's view would be -- while Lindell might provide Dominion with a set of

bespoke search terms, which it has and which we have run, Your Honor, and produced, and Powell might provide a different -- our obligation is to produce to all of the defendants in these consolidated cases the documents we are producing to any of the defendants. They, of course, can run their search terms on the documents if they want to narrow them in some way further.

When we make those productions on all the defendants, Your Honor, which is what we are doing, we are providing them with a written notice like: This is what we're producing in this set.

THE COURT: Do you agree that if, say, Ms. Bobb or Mr. Byrne had a very, very discrete document request or set of document requests, that either there should be negotiated a very, very targeted and bespoke protocol for producing ESI or, at a minimum, an identification by Dominion of the subset of already produced documents that would be responsive to the narrowed -- again, in my hypothetical, very narrow document request?

MS. BROOK: We have been doing that, Your Honor, in the sense that when we've been making those productions, we will say: These are documents responsive to Mr. Lindell's search terms, or what have you. But what I go back to, Your Honor, and why this is very -- why it's a little confusing, what the defendant is arguing, nobody has issued a very narrow set of discovery requests.

While it's true that the Powell defendants issued far fewer RFPs than the OAN defendants -- I think it's a difference of like 25 to 245 to date -- they requested all of the documents produced to everybody else, as well as all of the documents produced in Fox. I'm sorry, again, if I got down the wrong path. The reason that was significant is because this is how we did it in Fox, exactly as the Court just said. So that's what they asked for and so that's what we gave them.

But, yes, we basically think that everyone should negotiate search terms and custodians -- that's what we've been trying to do for months, if not years -- and we should run those terms and we should produce those documents. And the receiving party, including Dominion, right, who is going to be getting productions from all sorts of different defendants, has the power on -- you know, via basic ESI tools, to then say: Well, I was most interested in the documents that hit on my search terms, so I'm going to, after loading those documents onto my platform, just focus on the ones that hit on my search terms. And that's something that can easily be done with basic document hosting platforms.

THE COURT: Understood. Now, one last question before I turn to Mr. Marvin. From your perspective, does Dominion have agreed-upon ESI protocols, search term custodian date ranges with Powell defendants represented by Mr. Marvin?

MS. BROOK: No, we do not, Your Honor. I believe

that we sent them -- I know we sent them our proposed search terms and custodians. And my colleagues will correct me if I'm wrong, but I believe what happened there is there was just sort of a period of nonresponsiveness. And they -- and then -- and that's why we're here.

On the proposed search terms for Dominion, despite repeated offers from Dominion to consider a set of narrow search terms from Powell, they've refused to provide us with that. They've said we are not going to provide you with search terms. And, again, my colleague will correct me if I have that wrong, but I don't believe I do. But, instead, said: Dominion, we gave you our RFPs, it's your job to determine what is responsive, not our job to provide you with search terms.

THE COURT: Thank you. Mr. Marvin?

MR. MARVIN: Judge, I was just going to essentially just say what Ms. Brook and Your Honor just highlighted. We didn't provide search terms. We did just ask that responsive documents be produced. And part of our concern was that search terms wouldn't necessarily capture all responsive documents, which is why when the Powell defendants did our review, we used our internal processes and search terms, we produced those documents. And now we're willing to use Dominion's search terms that they believe will yield responsive results.

We're just asking for that same process to be undertaken by Dominion, which we believe is what Rule 26

requires. And as Your Honor alluded to earlier, there was no agreement by anyone to sort of waive any of the requirements under Rule 26 and replace it with a substitute protocol amongst the parties. That's all I wanted to add at this point.

THE COURT: It sounds to me that -- I think Dominion was very clear that responsive -- quote, unquote, responsiveness review can be done or substituted with an ESI protocol that reflects an agreed-upon set of search terms and custodians, date ranges, or a Court-ordered set of search terms, custodians, and date ranges. Potentially it is not a unilaterally chosen set of custodians, date ranges, and search terms because that could either be way over or way under inclusive and would not be consistent with counsel's obligations under Rule 26.

But be that as it may, I know we've been at this for a long time, but this has been very helpful for me to understand the respective positions and also the state of play. I'm going to walk through my views on what should happen.

I remain very much of the view that these matters should be coordinated in an efficient way to the maximum extent possible. It seems to me that there is enough agreement that a discovery protocol of the kind contained in the draft that Dominion circulated to at least some parties in June makes sense. In any event, I think something like that makes sense.

That -- what I'm going to order as to that

document -- again, this is the proposed stipulation regarding discovery matters. I am ordering the parties to meet and confer and to see if they can reach agreement on the matters or some of the matters contained therein within two weeks. So, by October -- well, I'll just call it October 6th, which is a Friday; 15 days.

To the extent that there are areas of disagreement, any party is free, as a result of this call, to file a motion for the entry of its preferred paragraph, protocol, whatever, just whatever issue they would like -- the party would like to address that is not resolved through the negotiation over that protocol.

I think it is very important, given the discussion we just had, that the parties try to reach agreement. And I recognize, as Dominion said, that this is embedded in some of the subsidiary documents here, or at least could be. The parties should reach agreement around the ESI protocols that will apply to each defendant's request to Dominion, on the one hand, and Dominion's request to the individual defendants, recognizing, I think, that one size does not fit all as it relates to ESI.

It seems to me that ESI protocol for My Pillow may be very different protocol than for Christine Bobb. But I'm not going to resolve that question here. I just think that needs to be part of the parties' discussions. So, I don't know

whether there has to be an exchange of red lines, as counsel are suggesting. I leave that all to you.

But in the first instance, I'm ordering the parties to meet and confer and conclude those discussions by October 6th. After which, again, any party that wishes to move for a particular result, either Dominion saying this proposal should include this paragraph that people don't agree on, someone saying, no, it should not, whatever, the parties are then free to -- any party is free to move thereafter for a particular outcome.

What I would ask is that those motions, if any, be filed no later than October 17th. And then depending on the nature of the motions, and after I've reviewed them, I may set a briefing schedule. I may hold another hearing soon thereafter, I'll decide -- depending on whether there are any lingering disputes and the like -- how to deal with them after October 17th.

If, of course, there are no disputes and the parties have reached full agreement after October 6th, what I would expect is a filing of a joint submission/stipulation that would be full agreement, and I would just enter it thereafter, assuming it otherwise looks good to me.

That's the broad discovery coordination point.

Again, we've had a lot of discussion about ESI protocols. A note on that, it seems to me clear, or at least I

would be willing to hold that it is an appropriate methodology here for the parties to agree, of course, on a set of custodians, search terms, and dates; or, if not that, to come to me through a motion asking for the entry of a particular ESI -- excuse me, particular search terms, custodian, and date ranges. And if I bless that motion, then that would govern.

Absent those two things, it seems to me that the parties have the background principles of the Federal Rules of Civil Procedure, and that needs to govern their conduct of discovery. I would hope, in the first instance, that agreement could be reached. And again, if there's a strenuous desire to have me resolve disputes over custodians and/or search terms, I will do that because I think that could be more efficient than having future disputes over parties' somewhat unilateral efforts to comply with their discovery obligations.

Again, I think this topic, this broad topic should be, ideally, folded into the parties' efforts to reach agreement by October 6th, and if not agreement, to tee up the issues thereafter.

As to the deposition protocol, it seems to me that that also makes very good sense. I don't hear anybody object to the entry of a protocol. I get that there will be issues that may arise where there are disagreements. On this, especially because the deadline to serve document requests isn't until October 26th, which means that in theory these

depositions could wait some period of time.

I think the proper schedule here is to have the deposition protocol discussion happen in parallel, to some extent, but slightly later than the -- I'll call this document protocol -- but I would like for the parties to meet and confer and to see if agreement can be reached by October 20th on the deposition questions.

If so, an agreement is reached, then please propose a stipulation to me. If not, again, whatever party would like to file a motion with respect to depositions, do so. And I would like those motions, if any, to be filed by November 1st, and I will treat them the same way. That is to say, that once I receive the motions, I'll determine whether I want to have a hearing or perhaps ask for responses and the like.

What I'm hoping is that those negotiations, submissions, and motions will obviate many, if not all, of the next level down in terms of specificity disputes that we've been discussing.

But there are a couple as to which I would like to state my view. It seems to me that on the requests for production from Lindell and My Pillow that we discussed relating to the defense agreement, communications with Olsen, revenue questions, and Lindell removal from social media, that those are really not likely to be covered by the broader protocols we're talking about.

What I want to have happen on those is for the parties -- and again, this is really something Lindell, on the one hand, and My Pillow on the other -- to discuss whether there are any areas around revenue where they can reach agreement. Failing that, for Dominion to file, October 13th, any motion to compel it wishes to file.

And since I think we're likely to be briefing that motion in any event, the Lindell and My Pillow oppositions to that motion or those motions should be filed October 27th.

Again, if for whatever reason the parties can reach agreement, obviating some or all of that motion to compel, terrific. But I'm assuming that that's unlikely, given the positions I heard today. But Dominion is authorized, consistent with my standing order, to file a motion to those issues now.

Finally, on the materials from the Delaware litigation, it seems to me that the Fox expert report about Dominion -- I'm just going to put it that way, in the most general sense -- are very likely discoverable here. I can see why they would be relevant to the issues in this litigation. But, they at least potentially raise protective order issues in the Fox case that should be worked through.

A document created by an expert for a party that's not a party here and produced pursuant to a protective order in a case that's not mine seems to me, in the first instance, that

the parties should be bringing Fox into the conversation to see whether Fox would agree that those materials can be produced here by Dominion. Absent Fox's agreement to that, or a -- perhaps a negotiation around the protective order in Delaware, the parties can come back to me on that question.

But in the first instance, I think more needs to be done in a -- at least a three-way, multi -- at least three-way negotiation around protective questions there. I'm not authorizing a motion to compel yet. I am telling the parties that my view is that that seems like the kind of thing that should be worked out, that requires parties beyond the parties on this call, and perhaps a judicial officer beyond this one to work through those issues.

I think -- just going back through my notes, the question around the search terms and custodians with My Pillow and Mr. Lindell that was Subtopic One, I hope gets folded into the negotiations around the discovery protocol. The Topic Two about the hit counts for the Powell defendants, same thing.

The third question around custodial interviews, productions of texts and messages, and I guess even personal phones, again, could be folded into that, if there's agreement reached on the custodians or the way in which the review will occur.

As to the interim substantial completion deadline, I agree with DTR that we're not quite there yet. Ideally, we

will have either an agreement or, very soon, even if there is an agreement entered on discovery protocol, so to speak, and that will then -- that needs to happen before I'm ready to enter an interim substantial deadline for completion of production.

But, as with all things, if the parties can agree on such a date in connection with their negotiation around that document, all the better.

From my perspective, those are either the reactions I had or the prophecies I would like the parties to follow from here.

Why don't we start with Dominion? I don't want to go over any of the issues that we either haven't physically addressed or arguments, but, Ms. Brook, do you have any questions about where I want the parties to be heading?

MS. BROOK: Just one, Your Honor. Thank you again for all of this guidance, it's incredibly helpful. The one question I had, and it relates to the procedure Your Honor set forth for the two stipulations, both discovery and depositions. It seems to me that in the event the parties arrive at a situation where they agree on nine issues but not on one, it would make sense for the parties to, in conjunction with bringing any motions that either side decide to bring on the October 17th or -- I believe it was October 31st date, file the joint stipulation as to the pieces we agree to already, so that

the Court has that as well. But I wanted to --

THE COURT: Yes.

MS. BROOK: -- get clarity from the Court there.

THE COURT: I agree with that, so as long as, I suppose, everyone agrees that perhaps those items are agreed upon, regardless of my resolution of the unagreed-upon portions.

MS. BROOK: Correct. Understood, Your Honor.

THE COURT: Yes, I agree with that wholeheartedly. Thank you for noting that. That was implicit in my view.

MS. BROOK: Great.

THE COURT: Would any defense counsel like to raise a question, or is this at least sufficiently clear for present purposes?

MR. BABCOCK: Your Honor, this is Charles Babcock -- it feels funny to call myself Charles; people are going to ask for my father.

But in any event, Chip Babcock for OAN. Is it -- should we go into these negotiations thinking that if the custodian, date, and search term is either agreed or ordered, that will be a substitute for a responsiveness or relevance review?

In other words, the parties would be relieved from that obligation and, in fact, required to produce documents that met a search term, date, and custodian?

THE COURT: Well, let me put it this way: If the parties agree on that, then yes. The parties, in my view, can essentially agree on anything. The parties could agree on search terms, custodians, and dates, and agree that there will be further responsiveness review.

I'm hearing, at least Dominion and some of the other defendants, to suggest that they wouldn't want that second part, but the parties can agree on whatever they want, from my perspective, as long as it is -- so either of those two options, it seems to me, would be fine.

If, on the other hand, the parties don't agree and Dominion, for example, comes to the Court and says: We think you should enter the following search terms, custodian, and dates, and that defendants take the position that I shouldn't do that for whatever reason, including because there should be further responsiveness review, then I will address that question in my order resolving the case.

So I don't think you should assume that I will necessarily order an outcome over the defendant's objection that doesn't include responsiveness review on the back end, if the defendants make a good case for it.

MR. BABCOCK: Thank you, Your Honor. That is very helpful and clears up my question. Thank you, sir.

THE COURT: Okay. Very well. Any other questions from any defendants?

(Pause.)

THE COURT: Okay. Hearing none, thank you all for your time. I know this has been a long call, and at least clarifies some issues for me and we now have a way forward.

I look forward to what I hope is a full agreement on all issues. I know that hope springs eternal, so we'll see. Thank you all.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 4th day of November, 2023

_____

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001