UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Kellean K. Truesdell, individually and on behalf of others similarly situated,

Plaintiffs

v.

Clayton Thomas, individually; Chris Blair, individually and in his official capacity as the Marion County Sheriff; Julie L. Jones, in her official capacity as the Executive Director of the Department of Highway Safety and Motor Vehicles; Gerald M. Bailey, in his official capacity as Commissioner of the Florida Department of Law Enforcement,

Defendants.

CASE NO. 5:13-cv-00552-WTH-PRL

PLAINTIFF KELLEAN K. TRUESDELL'S REPLY TO DEFENDANT MCSO'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, Kellean K. Truesdell ("Truesdell"), by and through undersigned counsel, hereby replies to Defendant Marion County Sheriff's Office's Response in Opposition to Plaintiff's Motion to Compel [Doc. 84].

MCSO'S RESPONSE TO MOTION TO COMPEL

Plaintiff moved to compel MCSO to produce the database of DAVID searches conducted by Defendant Sgt. Clayton Thomas in electronic format [Doc. 72]. MCSO's response [Doc. 84] makes three arguments opposing the production of the database in its electronic format as follows:

1. Because Plaintiff did not specify the format in their request, MCSO has complied with the Rules of Civil Procedure by producing the information in a "reasonably useful form;"

2. Plaintiff never requested that meta-data be produced; and

3. The data related to persons other than Plaintiff are not relevant to the action now that class certification has been denied.

MCSO Did Not Produce the Data in a Reasonably Useful Form

Where a requesting party does not specify a format, Federal Rule of Civil Procedure 34(e)(ii) does permit a party to produce electronically stored information in a form in which it is ordinarily maintained or in a reasonably usable form. Accordingly, the issue becomes whether producing a paper printout of an electronic database is a reasonably useful form. "The advisory committee notes to the 2006 amendments to Rule 34 provide that the producing party's "option to produce in a reasonably usable form does not mean that a responding party is free to convert electronically stored information from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation." *White v. The Graceland College Center for Professional Development & Lifelong Learning, Inc.*, 586 F. Supp. 2d 1250, 1263 (D. Kan. 2008). The committee notes further provide that "[i]f the responding party ordinarily maintains the information it is producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or significantly degrades this feature." *Id.* In this case, MCSO converted a searchable electronic database into 1,500 printed pages, which cannot be searched. Furthermore, the Internal Affairs investigator for MCSO was able to discern exactly how Sgt. Thomas searched for specific names and genders from his review of the electronic database. Attached hereto as Exhibit A is the internal affairs report reciting the fact that the investigator could determine from the electronic database that in instances when Sgt. Thomas pulled up multiple names form a single

search, Sgt. Thomas would only view the driver's license photograph for female names rather than any male names. *See* Ex. A at MCS000003. Sgt. Thomas' motive in accessing Plaintiff's information in this case is a material issue, particularly when all of the evidence points to the conclusion that Sgt. Thomas conducted these unlawful driver's license searches out of a prurient interest in females. Plaintiff is entitled to prove this motive through the available evidence to establish her own claim, and to establish a claim for punitive damages by demonstrating that Sgt. Thomas repeatedly engaged in this behavior without any supervision or intervention by his superiors. Accordingly, there is significant useful information contained in the electronic database. Because a paper printout of the database has been stripped of all this information, it cannot be argued that a paper printout is a reasonably useful format in compliance with rule 34. Accordingly, the inquiry should end here, and the document produced in electronic format.

Plaintiff is Entitled to the Electronic Data in its Useful Format including Metadata

As stated above, a paper printout of the database is simply not a useful form, as it has been stripped of all useful meta-data and cannot be fully explored. MCSO cites to *In re Porsche Cars N. Am., Inc., Plastic Coolant Prods. Litig.*, 279 F.R.D. 447 (S.D. Ohio 2012): However, that case does not establish a general rule that courts have **only** ordered the production of metadata when it is sought in the initial document request and the producing party has not yet produced the documents in any form. That citation refers to situations when a party has completed an entire document production in a certain format, and the requesting party then seeks the entire production in another format, or seeks the production of metadata associated with the production. *Id*. Furthermore, this analysis is not implicated when MCSO unilaterally chose to produce the data in a format that is not reasonably useful. It is certainly understandable why courts would be reluctant

to burden a producing party with making a second production of documents already produced merely to respond to a belated request for the documents in a different format. However, in this instance, Plaintiff is requesting the production of a single electronic database that is already in MCSO's possession. Additionally, MCSO has not made any argument that it would be burdensome or costly to simply duplicate the database and provide it to Plaintiff. Furthermore, the case cited by MCSO, *In re Porsche,* held that "[t]his Court has expressed a preference for the production of electronically stored information in its native format. *See Superior Production Pship., d/b/a PBSI v. Gordon Auto Body Parts Co., Ltd.*, No. 2:06–cv–0916, 2008 WL 5111184, at *1, 2008 U.S. Dist. LEXIS 97535, at *3 (S.D. Ohio Dec. 2, 2008) (noting that one of the benefits of having documents produced in native format is that the receiving party can view any metadata that might be embedded in the electronic document but not visible on the hard copy)." *In re Porsche*, at 449. In this case, Plaintiff has established that the metadata is both relevant and material because the same metadata was used by MCSO's Internal Affairs investigator to discern Sgt. Thomas' motive, intent and pattern though scrutiny of his search methodology.

Plaintiff has Established that the Metadata is Relevant and Material

As set forth above, the metadata is relevant and material because it will assist Plaintiff in proving that Sgt. Thomas was using the DAVID database to search for women for his own prurient interests, just as MCSO used the data to establish the same motive and method. To establish relevance, Plaintiff need only show that the requested evidence might give clues as to the existence or location of relevant facts, or where they might be useful for purposes of impeachment or corroboration. *See, e.g., U.S. v. 50.34 Acres of Land, More or Less, in Village of East Hills, Nassau County*, N.Y., 13 F.R.D. 19 (E.D.N.Y. 1952). The test of relevance for purpose of discovery

requires only reasonable probability of materiality, and information which only leads to other relevant information can be relevant. *Scuderi v. Boston Ins. Co.*, 34 F.R.D. 463 (D.C. Del. 1964). Plaintiff has clearly met this very low standard. The information in the database will assist Plaintiff in proving Sgt. Thomas' motive in accessing her driver's license information, and it will assist Plaintiff in establishing a claim for punitive damages in that she will be able to prove that Sgt. Thomas spent hours upon hours of time searching the DAVID database to satisfy his prurient interest in women, all while his supervisors failed to detect or prevent the ongoing abuse of the DAVID system. It will also allow Plaintiff to rebut any argument by Sheriff Blair or the MCSO that Sgt. Thomas' access of Ms. Truesdell's information was an isolated incident, an innocent mistake, or something that was impossible for them to detect and prevent.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests that the Court enter an order compelling MCSO to provide the database of searches conducted by Sgt. Thomas in its native electronic format, and to award such other relief as the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail on April 1, 2015 to: **Bruce W. Jolly, Esq.**, Purdy, Jolly, Giuffreda & Barranco, P.A., bruce@purdylaw.com; **John Green, Esq.**, **Linda Winchenbach, Esq.**, John M. Green, Jr., P.A., jmgjr@mac.com, lwinchenbach@me.com.

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