IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

Latasha Holloway, et al., **Plaintiffs,** **v.** **City of Virginia Beach, et al.,** **Defendants**	**Civil Action No. 2:18-cv-0069**

PLAINTIFFS' OPPOSITION TO DEFENDANT GUY TOWER'S MOTION TO QUASH SUBPOENA AND PLAINTIFFS' MOTION TO COMPEL DISCOVERY

In what is now the *fourth* discovery dispute motion filed by Defendants, Defendant Guy Tower seeks to quash a Rule 45 subpoena that should have never been required in the first instance.[1] *See* Dkt. 100-101. Defendant Guy Tower is a party in this case and he is required, under Rule 26, to produce all documents in his possession "relevant to any party's claim or defense and proportional to the needs of this case." Fed. R. Civ. P. 26(b)(1). Plaintiffs have propounded several requests for production on Defendant Guy Tower and, through counsel, Defendant Guy Tower has refused to respond to those requests *at all* to the extent that they are held in his "personal" rather than "official capacity." *See* Ex. A ("Therefore, as to all Requests, Defendants intend to produce only those responsive, non-objectionable documents which are within the possession, custody and control of the City of Virginia Beach and its officers and employees in their official capacities or duties."). Defendants' counsel have insisted—despite several meet and confers— that they do not represent Defendant Guy Tower in his

[1] Defendant Tower filed his motion to quash on behalf of himself, but Councilmember Michael Berlucchi wrote a letter to the Court seeking to join the motion. *See* Dkt. 103. Although Plaintiffs' motion only mentions Defendant Tower, to the extent the Court grants Mr. Berlucchi's request, the opposition applies to both Defendant Tower and Mr. Berlucchi.

official capacity and therefore cannot facilitate the production of documents he has possession over in his "personal capacity." This is not how discovery or representation works. If a person is a proper party to a lawsuit, all relevant information in his possession is discoverable. And if an attorney represents a party in a lawsuit sued in his official capacity, his representation should extend to all forms of proper discovery in that action. In an attempt to resolve this dispute without court involvement, Plaintiffs agreed to prepare Rule 45 subpoenas on Defendants for the documents held in their personal capacity and Defendants agreed to ensure their service on Defendants. This led to the filing of Defendant Tower's motion to quash.

This attempt to split Defendants into two for purposes of discovery has caused significant issues in this case and will continue to do so. Thus, pursuant to Rule 37, Plaintiffs ask this Court to resolve this question now and issue an order compelling responses to Plaintiffs' discovery requests regardless of whether the documents are held in the Defendants' personal or official capacity.[2]

In the alternative, this Court should deny the Rule 45 motion to quash since Plaintiffs' requests meet the standard under Rule 45 as well. Defendant Tower's objections are insufficient to mar the validity of the subpoena, which is subject to the same broad discovery requirements of Rule 26. Further, Defendant Tower, who is a retired attorney, did not even attempt to resolve the discovery dispute with Plaintiffs' counsel as required by Local Civil Rule 37(E) before filing a motion to quash. For that reason

[2] Defendants' and Plaintiffs' met and conferred by phone about Plaintiffs' motion to compel on August 15, 2019. Unfortunately, the parties were unable to come to a resolution. Plaintiffs' and Defendants' counsel have met and conferred regarding the personal vs. official capacity distinction on several occasions. Although Defendants' counsel have indicated that Plaintiffs are permitted to contact Defendant Tower directly in his "personal capacity," Plaintiffs' counsel—in an abundance of caution—have not done so and instead awaited his attempt to meet and confer regarding this motion to quash. As of yet, Defendant Tower has not sought to meet and confer directly with Plaintiffs' counsel.

Plaintiffs note that all other Defendants have responded to the Rule 45 subpoenas. Thus, unless those productions are deficient, this order would only compel requests for production from Defendants Tower and Berlucchi. However, such an order would ensure that this splitting of Defendants' capacities does not continue to wreak havoc in discovery as the parties begin taking depositions this month.

alone, this Court should deny Defendant Tower's motion. Finally, Defendant Tower's desire not to search for responsive documents and his broad assertion of inapplicable First Amendment concerns do not constitute good cause for a protective order.

BACKGROUND

Defendants have repeatedly attempted to stifle Plaintiffs' discovery requests. On May 15, 2019 and July 3, 2019, Defendants filed a motion and a supplemental motion for a protective order. Plaintiffs contested both motions. On July 19, 2019, this Court denied Defendants' motions. *See* Dkt. 95. Throughout the discovery phase of this litigation, Defendants' counsel have insisted that they only represent the Councilmember-Defendants in their official capacities and thus will not respond to Rule 26 discovery requests to the extent they seek documents in Defendants' possession but held in their "personal capacity." *See, e.g.*, Ex. B (email from opposing counsel outlining their personal vs. official capacity position). In an attempt to resolve this dispute without involvement of the Court, Plaintiffs agreed to prepare Rule 45 subpoenas to Councilmember-Defendants—which Defendants agreed to serve on their clients—to obtain documents in their "personal" possession, custody, or control, even though Councilmember-Defendants are *parties* to this case. Those Rule 45 subpoenas are largely identical to the requests for production that Plaintiffs have served on Defendants. *Compare* Exs. A, C, and D (Plaintiffs' First and Second Request for Production and the Rule 45 subpoena respectively). Plaintiffs' counsel explained that the Rule 45 subpoenas were superfluous given Defendants' responsibilities to respond to the served RFPs but agreed to serve Rule 45 subpoenas with the expectation that Councilmember-Defendants would not then seek to quash the subpoenas.

In April 2019, Guy Tower was appointed to the Beach District seat on the Virginia Beach City Council. On July 26, 2019, Plaintiffs' counsel served—via Defendants' counsel—Guy Tower with a subpoena seeking documents held in his "personal capacity" per the above agreement

On August 8, 2019, without conferring with Plaintiffs' counsel, Defendant Tower filed the instant motions seeking to have the subpoena quashed or, in the alternative, to have a protective order put in place. On August 15, 2019, Plaintiffs' counsel conferred with Defendants' counsel in good faith regarding Defendant Tower's motion. The parties could not reach an agreement.

ARGUMENT

I. Plaintiffs' Motion to Compel Should Be Granted Because He is a Party Required to Respond to Rule 26 Discovery.

Every request for documents in the Rule 45 subpoena that Defendant Tower seeks to quash is included in Plaintiffs' Rule 34 requests for production served on all Defendants. *Compare* Exs. A, C, and D). Thus, the Court can resolve this matter by holding that the responsibility of parties to respond to discovery in this case does not end at the City Council door and compelling Defendants' responses to discovery. At that point, Defendants' and Plaintiffs' counsel would be able to discuss and hopefully resolve issues related to the scope of the requests in the ordinary course of discovery.

Plaintiffs did not have to serve Defendant Tower with a subpoena in order to obligate him to produce documents. He is a Defendant in this case and has been since his appointment in April 2019.[3] *See Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 582 (D. Md. 2010) ("[A] subpoena certainly is not required to . . . obligate a party to produce documents, for which a Rule 34 production request suffices."). A party may serve on any other party a request to produce any designated documents or electronically stored information in the responding party's possession, custody, or control. Fed. R. Civ. P. 34(a)(1)(A). "'Control' is defined as the legal right, authority or ability to obtain documents upon demand." *U.S. Int'l Trade Comm'n v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005); *see also Shell*

[3] Fed. R. Civ. P. 25(d) provides that "An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party…The court may order substitution at any time, but the absence of such an order does not affect the substitution."

Glob. Sols. (US) Inc. v. RMS Eng'g, Inc., No. 4:09-CV-3778, 2011 WL 3418396, at *2 (S.D. Tex. Aug. 3, 2011) ("'Control' does not require that a party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party's control for discovery purposes when that party has the . . . *practical ability to obtain the documents from a nonparty to the suit*.") (emphasis added).

There is no question that Defendant Tower has the ability to obtain documents from himself upon demand, nor is there any question that he is a party to this lawsuit. Plaintiffs' counsel only served the Rule 45 subpoena to Defendant Tower in his "personal" capacity—at the request of and through Defendants' counsel—in an attempt to avoid imposing a motion to compel upon this Court. *See* Local Civil Rule 37(G).

For purposes of Rule 26 discovery, it does not matter whether documents, communications, or other materials are in Defendant Tower's or any other party-Defendants' possession, custody, or control in a "personal" or "official" capacity, as long as the requests comply with Fed. R. Civ. P. 26(b)(1). *See, e.g, Hake v. Carroll Cty., Md.*, No. CIV. WDQ-13-1312, 2014 WL 3974173, at *5 (D. Md. Aug. 14, 2014) ("Defendants argue to the Court that, given that the present suit names the Commissioners in their official capacities only, requests for discovery are not attributable to Carroll County as a municipality should be denied…Defendants further argue that the requests are 'self-evidently irrelevant…' Given discovery's broad scope, I disagree.") (ordering production of Facebook messages and other personal materials). Fed. R. Civ. P. 26(b)(1) entitles a party to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." To date, Defendants' counsel has not provided Plaintiffs with any authority for their position that discovery can be limited in the manner they propose.

There is no question that Defendant Tower may possess documents in his personal electronic accounts, communications, or documents that are responsive to Plaintiffs' requests and relevant to Plaintiffs' claims in this case, and neither Defendant Tower nor Defendants' counsel argue otherwise.[4] After all, this is a case largely about candidates, campaigns, and elections. Yet Defendant Tower seeks to shield himself from all discovery into his campaign, candidacy, appointment, or future election. *See* Motion to Quash at 3-4.

As a party to the case, Defendant Tower was obligated to respond to Plaintiffs' discovery requests, and no subpoena was necessary. Thus, Defendant Tower's sundry procedural objections to the Rule 45 subpoena—e.g. the signature or 100-mile rule—are legally irrelevant to his responsibility to respond to Plaintiffs' requests for production. Likewise, his attempt to shift production costs to Plaintiffs is particularly unpersuasive given his status as a party to the case (and his failure to specify the costs he would incur in responding to the requests). "[T]he presumption is that the responding party must bear the expense of complying with discovery requests." *Country Vintner of N. Carolina, LLC v. E. & J. Gallo Winery, Inc.*, 718 F.3d 249, 261 (4th Cir. 2013) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358 (1978)).

Finally, Defendant Tower's objections to the due date for discovery responses are similarly misplaced. Most of the requests for production in the Rule 45 subpoena were served on Defendant Tower on May 1, 2019 and the remainder were served on July 25, 2019. Plaintiffs simply ask that Defendant Tower comply with the timelines set by the Federal Rules of Civil Procedure. Plaintiffs have already been prejudiced by the Defendants delay and obfuscation regarding a fictitious distinction for

[4] As a result of the limitation imposed by Defendants' capacity, it is clear that Defendants have not even searched their personal email for documents that actually were sent in their "official capacity." Plaintiffs are aware of at least one other City Council member who has sent emails to other City officials using his personal email account, demonstrating the necessity of Plaintiffs' document requests. See Ex. E.

purposes of discovery in Defendants' "personal" or "official" possession, custody, or control. Defendant Tower's attempt to extend the deadline for response to December 1—well after the deadline for all summary judgment briefing in this case and days before pretrial disclosures—is plainly unworkable.

II. Defendant Tower's Motion to Quash Should Be Denied.

Even assuming a Rule 45 subpoena was necessary to reach these discoverable materials (although it was not), the "scope of discovery that can be requested through a subpoena is the same as the scope under Rule 34, *which is governed by Rule 26*." *Hukman v. Sw. Airlines Co.*, No. 18CV1204-GPC (RBB), 2019 WL 2289390, at *2 (S.D. Cal. May 28, 2019) (emphasis added); *see also* Fed. R. Civ. P. 45 advisory committee note to 1970 Amendment ("[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and other discovery rules."); Fed. R. Civ. P. 34(a) ("A party may serve on any other party a request within the scope of Rule 26(b)."). In other words, Defendant Tower's substantive obligations to respond under Rule 45 are identical to his Rule 34 obligations.

1. Defendant Tower Failed to Meet and Confer with Plaintiffs' Counsel.

As an initial matter, Defendant Tower's failed to meet and confer with Plaintiffs' counsel regarding his various objections to Plaintiffs' discovery requests. While Rule 45 does not always require a movant to confer prior to filing a motion to quash, Defendant Tower is not a third party in this case and therefore should have conferred with Plaintiffs' counsel. Defendant Tower's motion is the equivalent of a motion for protective order, which requires the moving party to certify "that it has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." Fed. R. Civ. P. 26(c)(1). Courts require a certification such as an affidavit affirming the attempt. L. R. Civ. 37(a)(1). This Court will not "consider any motion concerning

discovery matters unless the motion is accompanied by a statement . . . that a good faith effort has been made . . . to resolve the discovery matters at issue." L. R. Civ. 37(E).

Defendant Tower did not confer with Plaintiffs' counsel prior to filing this motion to quash. Plaintiffs are more than willing to discuss with Defendant Tower—ideally through counsel—ways in which the requests can be narrowed to reduce the "undue burden" he alleges or a potential protective order to shield any confidential information from public disclosure. Unfortunately, Defendant Tower brought this dispute to the Court before first seeking to resolve it between the parties.

2. Defendant Tower's procedural objections to the subpoena are insufficient grounds for a motion to quash.

Defendant Tower raises three procedural objections in his motion to quash: (1) Washington, D.C. is more than 100 miles from Virginia Beach, Virginia; (2) Plaintiffs did not give him an adequate amount of time to comply; and (3) the subpoena does not have a signature from this Court or Counsel. None of those objections is compelling here.

First, consider Defendant Tower's objection that Washington, D.C. is more than 100 miles from Virginia Beach. Plaintiffs are not asking Defendant Tower to travel to Washington, D.C. to sit for a deposition; they are asking for the production of documents *electronically*.[5] As Defendant Tower himself notes, he has "conducted the vast bulk of written communications digitally." Mot. To Quash at 2. In addition, any paper documents or communications he may have can be scanned and sent to Plaintiffs' counsel electronically. This is in line with the practice of other Councilmember-Defendants, the remainder of whom have provided discoverable documents electronically. Thus, Defendant Tower's concerns about producing documents at a location more than 100 miles from Virginia Beach are practically irrelevant and overly formalistic. *See Cen Com Inc. v. Numerex Corp*., No. C17-0560

[5] All Defendants have, thus far, provided all responsive documents electronically.

RSM, 2018 WL 1737943, at *1 (W.D. Wash. Apr. 11, 2018) (denying a motion to quash, in part, because the non-party would not have to travel more than 100 miles where a subpoena requested the responsive documents be provided electronically).

Next, Defendant Tower claims that the subpoena does not give him an adequate amount of time to comply, and requests that the Court extend the subpoena response time to December 1, 2019. This request is unworkable and prejudicial to Plaintiffs. By December 1, 2019, discovery will be closed, depositions will be complete, dispositive motions will have been filed, and the trial will start shortly after. Indeed, pretrial disclosures are due just days after the proposed December 1 deadline. Plaintiffs provided Defendant Tower 30 days to comply with the subpoena. *See* Ex. F. Although Rule 45 does not stipulate what constitutes a reasonable time, Rule 34 requires a 30-day period to respond to requests for the production of documents. Defendant Tower cites no authority for the proposition that Rule 45 subpoenas require *more* time for response than Rule 34 requests. In fact, "courts have found that fourteen days from the date of service is presumptively reasonable." *Tri Investments, Inc. v. Aiken Cost Consultants, Inc.*, No. 2:11CV4, 2011 WL 5330295, at *1 (W.D.N.C. Nov. 7, 2011) (citing *In re Rule 45 Subpoena Issued to Cablevision Sys. Corp.*, No. Misc. 08–347, 2010 WL 2219343, at *5 (E.D.N.Y. Feb. 5, 2010) (collecting cases) and *Brown v. Hendler*, No. 09civ4486, 2011 WL 321139, at *2 (S.D.N.Y. Jan. 31, 2011)). And, as noted above, Defendant Tower has had many of these requests in his possession since May 2019.

Just like Defendant Tower, all other Councilmember-Defendants are currently serving on the City Council, yet they were able to comply with Plaintiffs' subpoenas in a reasonable period.[6] Plaintiffs

[6] The response to these subpoenas was delayed by about two weeks, since the Defendants were waiting for a decision on the pending motion for protective order and supplemental motion for protective order.

believe that 30 days is a reasonable time to respond to the subpoena, especially because Defendant Tower likely has already gotten himself an extension by filing his motion to quash.[7]

Lastly, while Plaintiffs' counsel acknowledges the technical error that the subpoena does not have Plaintiffs' counsel's signature, the numerous equitable considerations—including Plaintiffs' cooperation with Defendants' counsel's fiction that documents in Defendants' personal possession, custody, or control require a subpoena in the first place—mitigate that error. There is no question of the authenticity of the Rule 45 subpoena, particularly given that it was served on Defendant Tower by his own counsel. Moreover, Defendant Tower waived this objection by accepting service and conveying acceptance of service to Plaintiffs through counsel. *See* Ex. F (email from Defendants' counsel indicating acceptance of service); *Atlantic Inv. Mgmt. LLC v. Millennium Fund I,* 212 F.R.D. 395, 397 (N.D. Ill. 2012) ("[W]hen Mr. Koch responded in writing to the subpoena, he did not object to this deficiency but to the contrary, stated that the subpoena was accept. Thus, we believe this defect is waived.") (also holding that lack of signature was a "mere oversight" that can be cured).

III. Defendant Tower's undue burden and First Amendment claims are without merit.

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim." Fed. R. Civ. P. 26(b)(1). "The purpose of discovery is to allow a broad search for facts . . . or any other matters which may aid a party in preparation or presentation of his case." *Crisp v. Allied Interstate Collection Agency*, No. 1:15CV303, 2016 WL 2760363, at *4 (M.D.N.C. May 12, 2016) (quoting Fed. R. Civ. P. 26 advisory committee's notes, 1946 Amendment Subdivision (b)). Courts, of course, have broad discretion in controlling the timing and scope of discovery. *Hinkle v. City of*

[7] Defendant Tower made no attempt to confer with Plaintiffs' counsel about an extension of time to comply with the subpoena. If he had, Plaintiffs likely would have considered a short extension, provided they received the documents in time to review before Defendant Tower's deposition (which will take place sometime in September in accordance with the updated scheduling order).

Clarksburg, W.Va., 81 F.3d 416, 426 (4th Cir. 1996) ("District courts enjoy nearly unfettered discretion to control the timing and scope of discovery."). And parties may also object to discovery requests, but those objections must be specifically stated. "General objections are not useful to the Court ruling on a discovery motion," and bare objections do not meet the standard for a successful objection. *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 58 (D.D.C. 1984). Defendant Tower provides no persuasive arguments as to why he, as a named Defendant in the case, should be subject to unique discovery rules in this case.

Federal Rule 26(c) states that "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." In order to prevail on a motion for protective order, "[t]he party seeking a protective order has the burden of establishing 'good cause' by demonstrating that 'specific prejudice or harm will result if no protective order is granted.'" *United States ex rel. Davis v. Prince*, 753 F.Supp. 2d 561, 565 (E.D.Va. 2010). "Simply providing conclusory or speculative statements about the need for a protective order and the harm which would be suffered without one is insufficient." *Jarrell v. Kroger Ltd. P'ship I*, No. 2:14CV57, 2014 WL 12770216, at *3 (E.D. Va. July 17, 2014) (internal quotation omitted).

Defendant Tower has not established any "specific prejudice or harm" that warrants the relief he seeks. Defendant Tower argues this Court should quash the subpoena because he should not be required to look for responsive documents. This is an insufficient reason. The mere fact that responding to a discovery request will require the objecting party "to expend considerable time, effort, and expense consulting, reviewing and analyzing 'huge volumes of documents and information' is an insufficient basis to object" to permissible discovery requests. *Burns v. Imagine Films Entm't, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y. 1996) (quoting *Roesberg v. Johns–Manville Corp.*, 85 F.R.D. 292, 296–97 (E.D. Pa.1980). Moreover, it is hard to believe that complying with the subpoena results is an undue burden—

or even takes as much effort as Defendant Tower alleges—given that every other Councilmember-Defendant (besides Mr. Berlucchi) has conducted such a search without objection.

Defendant Tower argues that the subpoena "mandates him to audit decades of data having virtually no chance of contain any responsive material." Mot. to Quash at 1. That is, of course, not true. The fact that Defendant Tower has only been on the City Council for 107 days likely means this subpoena is less burdensome for him than others. Defendant Tower is not required to search for documents in places where there is virtually no chance of containing any responsive material. Moreover, even if a few requests are overbroad or burdensome, the remedy is not to quash the subpoena in its entirety. Once again, Plaintiffs are willing to work cooperatively with all Defendants to ensure that their requests are tailored to avoid *undue* burden.

Finally, Defendant Tower claims that Plaintiffs' subpoena is an "impingement" on his First Amendment rights. Not so. Being solicitous of the potential First Amendment concerns implicated by the discovery process does not compel wholesale exemption from discovery. In the First Amendment context, courts asked to intervene to protect associational activities during discovery have done so *only* upon a clear showing of likely intimidation, threat, or reprisals. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (finding proof of chilling effect given "uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility"); *Perry v. Schwarzenegger*, 591 F.3d at 1143 (9th Cir. 2009) (quoting from one of multiple declarations from members of a ballot measure group attesting: "I can unequivocally state that if the personal, non-public communications I have had regarding this ballot initiative . . . are ordered to be disclosed through discovery . . . I will be less willing to engage in such communications . . . [and] would have to seriously consider whether to even become an official proponent again."); *New York*

State Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1355 (2d Cir. 1989) ("Absent a more specific explanation of the consequences of compliance with discovery, [such as showing that disclosure "would discourage potential members from joining the organization for fear of government retaliation"], defendants failed to make the required initial showing of potential First Amendment infringement."). Even the sole case that Defendant Tower relies upon—*Black Panther Party v. Smith*, 661 F.2d 1243 (D.C. Cir. 1981), a case that has been vacated by the Supreme Court, 458 U.S. 1118—states that the movant must show "there is some probability that disclosure will lead to reprisal or harassment." *Id.* at 1265. Defendant Tower has not attempted to make that showing here.

Defendant Tower does not assert that the discovery Plaintiffs seek is not relevant to their claims. Nor could he given that this is a case about candidates and elections and he seeks to shield all documents about his candidacy for City Council. At the very most, Defendant Tower's objections could be accommodated by a protective order marking the "highly confidential" documents he purportedly has as confidential.[8] Defendant has not met his burden of showing good cause for the extraordinary relief of he seeks.

CONCLUSION

Defendant Tower is a party to this case, failed to confer with Plaintiffs' counsel, has insufficient objections to Plaintiffs' subpoena, and cannot establish good cause for his demand for a protective order. Therefore, this Court should deny Defendant Tower's motions.

[8] Plaintiffs' counsel have no indication that any of the documents or materials that Defendant Tower possesses are highly confidential or would somehow help his opponent in a political campaign. For example, Defendant Tower believes that he might have to reveal "lists of supporters," but individuals that make contributions to a campaign usually must disclose their names, the amount of the donation, and other information as required by state or federal laws.

Plaintiffs ask this Court to grant their motion to compel discovery from Defendants notwithstanding any distinction between documents held in their personal or official capacity. In particular, Plaintiffs ask the Court to compel Defendant Tower and Defendant Berlucchi's production of responsive documents no later than September 3, 2019. Plaintiffs also ask this Court—after providing Defendants with an opportunity to be heard, grant Plaintiffs' attorney's fees and costs with respect to this motion. *See* Rule 37(a)(5)(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 22, 2019, I sent a copy of the foregoing PLAINTIFFS' OPPOSITION TO DEFENDANT GUY TOWER'S MOTION TO QUASH SUBPOENA, OR IN THE ALTERNATIVE MOTION FOR ENTRY OF A PROTECTIVE ORDER by email to the following:

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

Latasha Holloway, et al., **Plaintiffs,** **v.** **City of Virginia Beach, et al.,** **Defendants**	**Civil Action No. 2:18-cv-0069**

I, Christopher Lamar, after being duly sworn, make the following affidavit:

1. I am one of the attorneys representing Plaintiffs in the above-captioned action. I make this Affidavit on personal knowledge of the facts and circumstances set forth herein.
2. On August 8, 2019, Plaintiffs were served with Defendant Guy Tower's motion to quash subpoena and a motion for protective order. Doc. 101.
3. On August 9, 2019, Councilmember-Defendant Berlucchi filed a letter with this Court seeking to join Councilmember-Defendant Tower's motion.
4. On August 15, 2019, my colleague and another attorney representing Plaintiffs in the above-captioned case, Danielle Lang, met and conferred with opposing counsel in good faith regarding Defendant Tower's motion.
5. After making our position known multiple times that we did not believe a Rule 45 subpoena was needed to request the documents from Defendant Tower or Mr. Berlucchi, the parties ultimately agreed that Plaintiffs would need to file a motion to compel.

Dated this 22nd day of August, 2019.

/s/ Christopher D. Lamar
Christopher Lamar