

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

CASE NO.: 2019-CA-014681
DIVISION: AG

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DAVE ARONBERG'S
AMENDED MOTION FOR ATTORNEYS' FEES**

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, (hereinafter the "State Attorney"), by and through counsel below, hereby submits the following Memorandum of Law in Support of his Amended Motion for Attorneys' Fees, filed November 9, 2020, ("Amended Motion"), and in support thereof states as follows:

TIMELINE & BACKGROUND

1. On November 14, 2019, Plaintiff filed its original Complaint that sought to create a private right of action under Fla. Stat. § 905.27, in the interest of "furthering justice", to compel disclosure of the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury, as to Jeffrey Epstein, (the "Requested Materials").
2. On November 26, 2019, the State Attorney and his office received an engagement letter and attorney-client contract from the undersigned counsel and his law firm and later executed said contract. [Def.Ex.1].

3. On December 6, 2019, the State Attorney filed his Motion to Dismiss Plaintiff's Complaint. Notably, this filing put Plaintiff on notice that "Despite Plaintiff's allegations to the contrary, Defendant Aronberg is not in custody or control of the records sought and is therefore not a proper party to this action." On December 13, 2019, the Clerk also filed a Motion to Dismiss.

4. On January 17, 2020, Plaintiff filed its First Amended Complaint, which in addition to its original claim under § 905.27 Fla. Stat., ("Count II"), added a claim for Declaratory Relief, ("Count I"), that sought an order declaring that the State Attorney and the Clerk disclose the Requested Materials so Plaintiff could use those materials for the purpose of informing the public.

5. On January 24, 2019, the State Attorney and the Clerk each filed an Answer to Count I of the First Amended Complaint and a Motion to Dismiss Count II ("Answer/Motion to Dismiss). This filing by the State Attorney again notified Plaintiff that:

It is significant to emphasize that despite Plaintiff's allegations to the contrary, Defendant Aronberg and the Office of the State Attorney for the Fifteenth Judicial Circuit are not in custody or control of the records sought herein, and therefore Defendant Aronberg is not a proper party to this action. In fact, Defendant, Sharon R. Bock, as Clerk and Comptroller of Palm Beach County, Florida, admits that it is the custodian in possession of the documents that are the subject of this action.

[See, Aronberg Answer/Motion to Dismiss Count II, p. 12]

6. On June 3, 2020, Chief Judge Marx held a hearing on the State Attorney's and Clerk's Motions to Dismiss Count II. **[Def.Ex.2].**

7. On June 8, 2020, the Court entered its Order Granting Defendants' Motions to Dismiss Count II of Plaintiff's First Amended Complaint with Prejudice ("Order"). **[Def.Ex.3].**

8. Immediately following the Court's Order, on June 8, 2020, the State Attorney, through the undersigned counsel, served Plaintiff with a demand pursuant to § 57.105 Fla. Stat., to voluntarily dismiss/withdraw the First Amended Complaint and the claims against the State Attorney, along with a Motion for Attorneys' Fees ("§ 57.105 Demand"). **[Def.Ex.4].** As a result

of the Order, only Count I of Plaintiff's First Amended Complaint remained, which sought Declaratory Relief under § 86.011, Fla. Stat.

9. In serving his § 57.105 Demand on Plaintiff, the State Attorney properly put Plaintiff on notice that he would seek sanctions by filing the § 57.105 Motion for Attorneys' Fees if Plaintiff failed to dismiss the remainder of its First Amended Complaint within 21 days of service of the § 57.105 Demand.

10. Likewise, the State Attorney's § 57.105 Demand specifically informed Plaintiff that:

First and foremost, the [First Amended] Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the Requested Materials.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

11. On June 23, 2020, Plaintiff's counsel sent a response to the § 57.105 Demand refusing to withdraw the remainder of the First Amended Complaint as to the State Attorney.

[Def.Ex.5].

12. After receiving Plaintiff's June 23, 2020, response refusing to withdraw the remainder of the First Amended Complaint and waiting the prerequisite "21 days after service of the motion" the State Attorney's § 57.105 Motion for Attorneys' Fees was filed with this Court on July 1, 2020, (hereinafter "First Motion for Attorneys' Fees"). [Def.Ex.6].

13. Thereafter, on August 18, 2020, the State Attorney filed his Motion for Summary Judgment, which included the Affidavit of the State Attorney (“Affidavit”), [Def.Ex.7], and proceeded, on October 21, 2020, to file a Motion to Set Hearing on the State Attorney’s Motion for Summary Judgment after it became clear that there would be no resolution of this matter without the Court’s intervention.

14. Nonetheless, later the same day, October 21, 2020, rather than setting and participating in a hearing on the merits as to State Attorney’s Motion for Summary Judgment, Plaintiff filed its Notice of Dropping the State Attorney from the instant case, pursuant to Rule 1.250(b), Florida Rules of Civil Procedure. [Def.Ex.8].

15. As the filing of Plaintiff’s Notice of Dropping the State Attorney operates as an adjudication on the merits as to the State Attorney, the Amended Motion for Attorneys’ Fees, (“Amended Motion”), was filed November 9, 2020 to include the entirety of the State Attorney’s legal fees up to that date. [Def.Ex.9].

MEMORANDUM OF LAW

I. LEGAL STANDARD

“The central purpose of § 57.105, Fla. Stat., is, and always has been, to deter meritless filings and thus streamline the administration and procedure of the courts. Thus, the post-1999 version of § 57.105 has expanded the circumstances where fees should be awarded and the purpose is to deter meritless filings.” *Davis v. Bailynson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019); *See Bionetics Corp. v. Kenniasty*, 69 So. 3d 943, 948 (Fla. 2011). Accordingly, § 57.105, Fla. Stat. provides the following language authorizing the award of attorneys’ fees as sanctions in actions such as the present litigation:

- (1) Upon the court’s initiative or motion of any party, *the court shall award a reasonable attorney’s fee*, including prejudgment interest, to be paid to the

prevailing party in equal amounts by the losing party and the losing party's attorney *on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:*

- (a) Was not supported by the material facts necessary to establish the claim or defense; or
- (b) Would not be supported by the application of then-existing law to those material facts.

Fla. Stat. § 57.105 (1).

Hence, in addition to a motion by any party, “Section 57.105(1) clearly and explicitly confers upon the trial court the authority to award attorney's fees to the prevailing party upon the court's initiative, if the court finds that the losing party . . . knew or should have known that a claim or defense when initially presented to the court *or at any time before trial . . . [w]as not supported by the material facts necessary to establish the claim or defense” or would not be supported by the application of then-existing law to those material facts. *Koch v. Koch*, 47 So. 3d 320, 324 (Fla. 2d DCA 2010).*

Moreover, “[u]nder [§ 57.105, Fla. Stat.] the legislature has expressed its unequivocal intent that where a party files a meritless claim, suit or appeal, the party who is wrongfully required to expend funds for attorneys' fees is entitled to recoup those fees.” *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 857 (Fla. 1st DCA 2011) (finding that “Courts are not at liberty to disregard the legislative mandate that courts shall impose sanctions in cases without foundation in material fact or law. The word “shall” in § 57.105, Fla. Stat., evidences the legislative intent to impose a mandatory penalty to discourage baseless claims, by placing a price tag on losing parties who engage in these activities. Section 57.105 expressly states courts “shall” assess attorney's fees for bringing, or failing to dismiss, baseless claims or defenses.”).

Additionally, “[s]ection 57.105 does not require a finding of frivolousness to justify sanctions, but only a finding that the claim lacked a basis in fact or law” and “does not require a party to show complete absence of a justiciable issue of fact or law.” *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 865 (Fla. 1st DCA 2011). However, “[w]here there is an arguable basis in law and fact for a party’s claim, a trial court may not sanction that party under section 57.105.” *Minto PBLH, LLC v. 1000 Friends of Florida, Inc.*, 228 So. 3d 147, 149 (Fla. 4th DCA 2017).

Finally, in determining an award of sanctions under § 57.105, *the trial court’s findings must be based on substantial competent evidence* and the trial court “must make an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after the suit was filed.” See *Trust Mortg., LLC c. Ferlanti*, 193 So. 3d 997, 1001 (Fla. 4th DCA 2016); See also *Chue v. Lehman*, 21 So. 3d 890, 891-92 (Fla. 4th DCA 2009).

II. THE STATE ATTORNEY’S AMENDED MOTION IS NEITHER IN VIOLATION OF THE 21-DAY SAFE HARBOR PROVISION IN FLA. STAT. § 57.105(4), NOR WAS THE AMENDED MOTION MOOT UPON FILING.

A. The Amended Motion does not violate the 21-day safe harbor provision because Plaintiff dropped the State Attorney from the action prior to the filing of the Amended Motion.

“Section 57.105(4), Florida Statutes creates an opportunity to avoid the sanction of attorney’s fees by creating a safe period for withdrawal or amendment of meritless allegations and claims.” *Davis v. Bailynson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019). Specifically, the relevant portion of the Statute states:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Fla. Stat. § 57.105(4). Likewise, “[t]he primary purpose of the safe harbor provision of §

57.105(4), Fla. Stat., is to provide the recipient of a motion for an award of costs and attorney's fees with notice and the opportunity to withdraw or abandon a frivolous claim before sanctions are sought." *MC Liberty Express, Inc. v. All Points Servs.*, 252 So. 3d 397, 404 (Fla. 3d DCA 2018).

Here, Plaintiff contends that the State Attorney "did not serve his Amended Motion at any time before filing it, and thus failed to comply with the 21-day notice provision...." [Def.Ex.10, p. 6]. Plaintiff claims that for this reason alone the Amended Motion should be denied and cites in support of their argument *Lago v. Kame By Design, LLC*, 120 So. 3d 73, 75 (Fla. 4th DCA 2013) (holding that "if a party files a subsequent or amended motion for sanctions under section 57.105 and raises an argument that was not raised in the original motion for section 57.105 sanctions, the subsequent motion must independently comply with the twenty-one-day 'safe harbor' provision of Section 57.105(4).").

Despite Plaintiff's assertion, the instant case is distinguishable from *Lago*, as the rule set forth therein does not apply based on the facts and timeline of this action. In *Lago*, the plaintiff served its § 57.105 demand and accompanying motion for attorneys' fees on June 30, 2011. After waiting for the requisite 21-day safe harbor period to pass, the plaintiff filed its motion for attorneys' fees with the court on July 29, 2011. The plaintiff then filed an amended motion for attorneys' fees with the court on September 20, 2011. The court entered an order granting the plaintiff's motion for § 57.105 attorneys' fees on October 25, 2011. The defendant filed a motion for rehearing and on September 5, 2012, the court reheard the argument for attorneys' fees, ultimately upholding its October 25, 2011 order. Significantly, during the September 5, 2012 rehearing, the defendant withdrew its offending motion that triggered the plaintiff's § 57.105

demand and motion for attorneys' fees. Eventually, on August 7, 2013, the trial court's order was remanded by the 4th DCA based on the rule set forth above.¹

Thus, in *Lago*, because the case was still active when the plaintiff's amended motion for attorneys' fees was filed and was not served on the defendant in compliance with the 21-day safe harbor provision before it was filed with the court, pursuant to § 57.105, the defendant was entitled to notice and an opportunity to change its position and withdraw its offending motion before being sanctioned.

The timeline of events in the instant action stands in stark contrast to that of *Lago* and accordingly necessitates a different result. Here, Plaintiff was served with the State Attorney's § 57.105 Demand and its accompanying First Motion for Attorneys' Fees on June 8, 2020. On June 23, 2020, Plaintiff's counsel sent a letter in response indicating Plaintiff's refusal to drop the Count I of the First Amended Complaint against the State Attorney. After waiting for the requisite 21-day safe harbor period to pass, the State Attorney's First Motion for Attorneys' Fees was properly filed with the Court. Over 4-months later, after settlement negotiations failed and after the State Attorney's Motion for Summary Judgment was filed, Plaintiff dropped the State Attorney as a party. [Def.Ex.8]. Significantly, only after Plaintiff dropped the State Attorney as a party, and thus had no ability to change its position, was the Amended Motion filed. Based on this fact pattern, the *Lago* rule does not apply here.

Despite Plaintiff's decision to drop the State Attorney as a party, the Florida Rules of Civil Procedure and the courts of Florida are clear. Because Rule 1.250 specifies that a party is dropped "in the manner provided for voluntary dismissal in Rule 1.420(a)(1)," dropping a party therefore

¹ Notably, the court in *Lago v. Kame By Design, LLC*, 120 So. 3d 73, 75 (Fla. 4th DCA 2013), despite finding that the plaintiff's amended motion for attorneys' fees was improper, the trial court was instructed to rule as to the plaintiff's original motion for attorneys' fees as it was properly served and filed pursuant to § 57.105, Fla. Stat.

“operates as an adjudication on the merits.” See, *Siboni v. Allen*, 52 So. 3d 779, 781 (Fla. 5th DCA 2010); Rule 1.420(a)(1) Fla. R. Civ. P. Notably, Plaintiff admits that “the entire action, which necessarily included Count I [of the First Amended Complaint], was dismissed as to [the State Attorney] on October 21, 2020. [Def.Ex.10, p.7]. Nonetheless, as a result of dropping the State Attorney from the case, Plaintiff not only effectively made an admission that its allegations against the State Attorney have no basis in fact or law, but also concluded the case as to the State Attorney and thereby became the losing party in this action.

Consequently, unlike the fact scenario and timeline in *Lago*, because Plaintiff concluded the instant litigation by dropping the State Attorney from the action before the filing of the Amended Motion, it was impossible to give Plaintiff an opportunity to respond and withdraw its Count I of the First Amended Complaint since Plaintiff had already done so, and therefore there can be no violation of the 21-day safe harbor provision set forth in Fla. Stat. § 57.105(4).

Based on the foregoing, the State Attorney’s Amended Motion does not violate the 21-day safe harbor provision because Plaintiff dropped him from the action prior to the filing of the Amended Motion, and therefore Plaintiff was not prejudiced by the filing of the Amended Motion. Accordingly, as further set forth below, Plaintiff has exposed itself to § 57.105 attorneys’ fees as sanctions for failing to drop the State Attorney as a party within the 21-day safe harbor period.

B. The State Attorney’s Amended Motion was not moot upon filing, but rather was properly filed at the conclusion of the litigation to fully incorporate the entirety of the State Attorney’s legal fees to date.

Oddly, Plaintiff also contends that because the State Attorney was dropped from the action nineteen days before the State Attorney’s Amended Motion was filed, the Amended Motion is somehow moot. [Def.Ex.10]. Not only does Plaintiff fail to provide any authority in support of this position, taking such a position lacks any logical reasoning or common sense. To be clear, the

State Attorney's First Motion for Attorneys' Fees was properly served and later filed pursuant to the statutory instructions set forth in § 57.105. When Plaintiff failed to withdraw its remaining claim against the State Attorney within the 21-day safe harbor period it exposed itself to sanctions under the Statute despite eventually dropping the State Attorney more than 4-months after the § 57.105 Demand was made. As set forth at length above, Plaintiff's dropping of the State Attorney as a party acted as an adjudication on the merits against Plaintiff. Thus, at that time the safe harbor provision of § 57.105(4) no longer applied to Plaintiff because it acquiesced to the State Attorney's demand, albeit late, no longer had any opportunity to respond, and was unable to change its position or react to the Amended Motion as the State Attorney was no longer an active party in the lawsuit.

Furthermore, the Amended Motion was not moot at the time of filing because when it was filed it incorporated the entirety of the State Attorney's fees from the time of serving the § 57.105 Demand through the time that the State Attorney was dropped from the case and the action concluded. There is nothing improper about the Amended Motion or any argument or authority offered by Plaintiff that would make the Amended Motion moot. Likewise, amended motions for attorneys' fees are filed consistently as a matter of course to include the entirety of fees in a lawsuit. Here, the State Attorney's total legal fees were able to be calculated and submitted at the time of filing the Amended Motion.

C. The State Attorney's First Motion for Attorneys' Fees is not insufficient and was properly filed in accordance with the procedures set forth in § 57.105.

Plaintiff argues that the State Attorney's First Motion for Attorneys' Fees "was insufficient under Fla. Stat. § 57.105 when filed [because] it set forth no substantive arguments as to why Count I of the Amended Complaint was [un]supportable based on material facts in the record or the application of existing law to those facts." [Def.Ex.10, p. 8]. Despite Plaintiff's contention,

Fla. Stat. § 57.105 has no such requirement regarding the contents of a motion for attorneys' fees served in conjunction with a § 57.105 demand. In fact, regarding § 57.105 motions for attorneys' fees the Statute is limited to the following language regarding the safe harbor provision:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Fla. Stat. § 57.105(4). Moreover, the State Attorney's June 8, 2020 § 57.105 Demand specifically sets forth the reasons why Count I of the First Amended Complaint had no basis in fact or law. Likewise, the State Attorney's First Motion for Attorneys' Fees specifically states that:

[O]n June 8, 2020, Plaintiff was served with a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the [First Amended] Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the [First Amended] Complaint is without support of the facts or the law.

[Def.Ex.6]. Accordingly, the State Attorney properly put Plaintiff on notice that he would seek attorneys' fees as sanctions under § 57.105 if the First Amended Complaint was not withdrawn during the 21-day safe harbor period. Hence, regardless of the length or breadth of the First Motion for Attorneys' Fees, it was filed properly within the statutory procedures set forth in § 57.105 and cannot be considered insufficient despite Plaintiff's contention.

In addition, Plaintiff asserts that “[a] motion for sanctions must be supported by the record evidence at the time it is filed” [and] “[b]ecause the First Motion was not so supported, it fails under the [S]tatute.” **[Def.Ex.10, p. 8].** In support of this argument, Plaintiff asserts that there was no record evidence supporting the State Attorney’s statement from the § 57.105 Demand that it was impossible for him to provide the Requested Materials because he has no possession, custody, or control of them.

Despite Plaintiff's argument here, Plaintiff has failed to provide any supporting authority whatsoever and there is no statutory requirement or language in § 57.105 that supporting record evidence must exist to properly serve a § 57.105 demand and motion for attorneys' fees. "The central purpose of § 57.105, Fla. Stat., is, and always has been, to deter meritless filings and thus streamline the administration and procedure of the courts." *Davis v. Bailynson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019). In this vein, a § 57.105 demand and accompanying motion for attorneys' fees can be filed at any time after a lawsuit is initiated, hence even directly in response to the filing of a complaint, regardless of whether any record evidence exists at the time in support of the § 57.105 demand. In fact, § 57.105(1) specifically states in pertinent part that:

[T]he court shall award a reasonable attorney's fee ... on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

- (a) Was not supported by the material facts necessary to establish the claim or defense; or
- (b) Would not be supported by the application of then-existing law to those material facts.

Fla. Stat. § 57.105(1).

Consequently, the foregoing indicates that the State Attorney's First Motion for Attorney's Fees, as served and filed, is sufficient under § 57.105 to seek sanctions from Plaintiff for its failure to drop the State Attorney from the instant lawsuit within the 21-day safe harbor provision after being notified why its First Amended Complaint had no basis in fact or law. Furthermore, as set forth at length above, despite Plaintiff's contention, the State Attorney had no obligation to serve his Amended Motion prior to filing it with the Court as Plaintiff had already dropped him from the case when it was filed.

III. THE COMPETENT, SUBSTANTIAL EVIDENCE ON THE RECORD SHOWS THAT THERE IS NO ARGUABLE BASIS IN LAW OR FACT FOR THE ISSUES RAISED IN PLAINTIFF'S COUNT I, WHICH NOT ONLY LACK A GOOD FAITH ARGUMENT FOR THE INTERPRETATION OF EXISTING LAW OR ESTABLISHMENT OF A NEW LAW WITH A REASONABLE EXPECTATION OF SUCCESS, BUT ALSO ARE NEITHER NOVEL OR COMPLEX.

In determining an award of sanctions under § 57.105, the trial court's findings "must be based on substantial competent evidence" and the trial court "must make an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after the suit was filed." *See Trust Mortg., LLC c. Ferlanti*, 193 So. 3d 997, 1001 (Fla. 4th DCA 2016); *See also Chue v. Lehman*, 21 So. 3d 890, 891-92 (Fla. 4th DCA 2009).

Here Plaintiff relies on § 57.105(3)(a), which sets forth a scenario where sanctions are improper under the Statute:

3) Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded:

(a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

Fla. Stat. § 57.105(3)(a).

In support of its position, Plaintiff unconvincingly relies on the court's determination in *MC Liberty Express, Inc. v. All Points Servs., Inc.*, 252 So. 3d 397, 403 (Fla. 3d DCA 2018) (finding that "[w]here a party reasonably believes the factual basis for its claim exists, it is entitled to proceed with its claims and seek to prove those facts. If attempts to prove those facts are fruitless, that is still not cause for sanctions where the party's initial belief was well founded.") Likewise, Plaintiff asserts that "even in absence of existing supportive law, if the claim at issue was presented as a good-faith argument for the extension or modification of existing law or the establishment of new law, *with a reasonable expectation of success*, the Court cannot sanction the party or its

attorney.” *See Key Biscayne Gateway Partners, Ltd. v. Village Council for Village of Key Biscayne*, 240 So. 3d 84, 87 (Fla. 3d DCA 2018).

- A. **The defense to the issuance of sanctions under § 57.105(3)(a) does not protect Plaintiff because as applied to the material facts, Plaintiff has failed to provide a good faith argument with a reasonable expectation of success.**

Notably, Plaintiff’s arguments exclude the limitation that the § 57.105(3)(a) defense only applies to demands made under § 57.105(1)(b). Accordingly, Plaintiff’s attempt to prevent an award of sanctions here only applies to whether Plaintiff or Plaintiff’s attorney “knew or should have known” that the First Amended Complaint “when initially presented to the court or at any time before trial ... (b) *would not be supported by the application of then-existing law to those material facts necessary to establish their claim.*” [See, § 57.105(1)(b)].

Despite Plaintiff’s argument that sanctions pursuant to § 57.105(1)(b) are unjustified based on the defense provided under § 57.105(3)(a), Plaintiff’s argument fails as there is no arguable basis in law that the State Attorney provide the Requested Materials. In determining an award of sanctions under § 57.105, the trial court “*must make an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after the suit was filed.*” *See Trust Mortg., LLC c. Ferlanti*, 193 So. 3d 997, 1001 (Fla. 4th DCA 2016); *See also Chue v. Lehman*, 21 So. 3d 890, 891-92 (Fla. 4th DCA 2009). Here, Plaintiff’s fact-establishment process began before either of its original Complaint or First Amended Complaint were filed. Notably, both pleadings revolved around Plaintiff’s arguments for a private right of action under Fla. Stat. § 905.27 and whether *The Palm Beach Post* had constitutional and statutory standing to overcome grand jury secrecy provisions “in furtherance of justice.”

As Plaintiff researched § 905, Fla. Stat. it would seem reasonable that Plaintiff would have encountered § 905.17, Fla. Stat. during its fact-establishment process. Notably, regarding the disclosure of grand jury materials, § 905.17(1) states:

The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution *and shall be released by the clerk only* on request by a grand jury for use by the grand jury or *on order of the court* pursuant to s. 905.27.

Accordingly, based on the clear, unambiguous statutory language set forth in § 57.105.17(1), only the Clerk, not the State Attorney, may release grand jury materials pursuant to an order of the court. Thus, it is apparent that the State Attorney and his office lack the legal authority to obtain and deliver the Requested Materials demanded by Plaintiff in Count I of the First Amended Complaint.

Regardless of whether Plaintiff actually knew of the controlling provision set forth in § 905.17(1) during its fact-establishment process, Plaintiff was not only on constructive notice of said statutory provision, Plaintiff was specifically informed of this provision in several instances prior to the State Attorney being dropped as a party. Nonetheless, based on Plaintiff's own research, statutory constructive notice, the State Attorney's affidavit, all of the pleadings and correspondence in this matter as well as through the State Attorney's office press release and social media accounts, and Chief Judge Marx's statements during the June 3, 2020 hearing, Plaintiff should have known that Count I of the Amended Complaint "would not be supported by the application of then-existing law to [the] material facts" in this action. *See* § 57.105(1)(b).

B. Sanctions against Plaintiff are appropriate under § 57.105(1)(a) as Plaintiff knew or should have known that Count I was not supported by the material facts necessary to establish the claim or defense.

Even if Plaintiff were somehow successful in defending against sanctions based on a good faith argument for a reasonable expectation of success pursuant to § 57.105(1)(b), sanctions would

still be appropriate against Plaintiff pursuant to § 57.105(a) regardless of Plaintiff's alleged "good faith belief" or "reasonable expectation of success." Section 57.105(1)(a) states that "the court shall award a reasonable attorney's fee ... on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial ... (a) *was not supported by the material facts necessary to establish the claim or defense.*"

As to § 57.105(1)(a), the material facts showing that Plaintiff's claim has no reasonable expectation of success have been open, obvious, and apparent to everyone involved in this matter from the start. Specifically, the State Attorney's position has been consistent: neither he nor his office has possession, custody, or control of the Requested Materials and therefore the declaratory relief sought by Plaintiff seeks materials that are impossible for the State Attorney or his office to produce and he is not a proper party to this action. [Def.Ex.7, ¶¶ 3-4]. Again, these material facts negating Plaintiff's claim against the State Attorney were not only set forth in the June 8, 2020, § 57.105 Demand Letter, but have been the basis for the State Attorney's defense in every pleading, filing, and/or correspondence in this matter.

Plaintiff should have known from the initiation of the case that the First Amended Complaint was not supported by the material facts necessary to establish their claim for declaratory relief; and, at the very least, Plaintiff should have known that its First Amended Complaint was not supported by the material facts after Judge Marx's statements during the June 3, 2020 hearing on Defendant's Motion to Dismiss Plaintiff's Count II. During that hearing, Chief Judge Marx drew a bright line as to when Plaintiff knew or should have known that Count I of the Amended Complaint had no basis in fact or law since the relief sought thereby is impossible for the State

Attorney to perform. Specifically, Chief Judge Marx made the following statements putting Plaintiff on notice if they weren't already:

"I must look at the four corners of the motion, which alleges that the State Attorney, Dave Aronberg, and the clerk and comptroller, Sharon Bock, actually have custody and control of these grand jury proceeding. Whether that is true or not is not for this court to determine because I'm looking simply at the four corners of the complaint. But, not for nothing, I think we all know that they don't have control and custody of the records." [June 8, 2020 Hearing Transcript, p. 3:18 – 4:1].

"I think we can all agree ... that the state attorney doesn't have these records." [June 8, 2020 Hearing Transcript, p. 5:17-19].

"I'm asking you, how are the clerk and the state attorney the proper defendants?" [June 8, 2020 Hearing Transcript, p. 8:4-6].

"I'm puzzled by the procedural posturing of this case naming the state attorney. And, you know, I'm further stymied by the fact that you allege in your complaint that they have – particularly David Aronberg the State Attorney – that he has these records." [June 8, 2020 Hearing Transcript, p. 8:8-14].

"[O]kay, let's run this all the way out. Let's say you win and you get a judgment against the State Attorney Dave Aronberg. What's he supposed to do with it? He can't release the grand jury testimony. He has no authority whatsoever to do that." [June 8, 2020 Hearing Transcript, p. 8:18-22].

"And the only thing we're here today about is why should the clerk and the state attorney have to defend a civil action when it's a [im]possibility of performance? They – even if you were to win and get a judgment against them, they cannot give you what they don't have." [June 8, 2020 Hearing Transcript, p. 10:21 – 11:1].

"I'm simply saying why should these two entities have to defend this lawsuit when even down the road if [you] win they can't give you what they don't have?" [June 8, 2020 Hearing Transcript, p. 11:12-15].

"And, you know, really, I want you to boil it down for me as to this – let's take it all the way down the road. You win. You get a judgment against the clerk and the state attorney. I know there's other reasons why you might have filed it this way. But I'm just simply puzzled because I do hear what the clerk and the state attorney are saying, and that is, performance is impossible. They don't have the records and cannot – absolutely. There's not even an inch of wiggle room – that they could release the records even if you got a judgment. It is solely a determination for the court. I, frankly, think, you know, there's ways to get to your records. There's ways to get confidential records. But it isn't by suing the state attorney and the clerk." [June 8, 2020 Hearing Transcript, p. 16:12 – 17:3].

“Even assuming arguendo that they have the records – we know they don’t – you were to get a judgment against them, how would you expect them to perform?” [June 8, 2020 Hearing Transcript, p. 17:6-9].

“What do you mean? What do you mean? They’re not trying to block it. They’re saying that despite the fact – let’s just talk about the clerk, because we all know the state attorney doesn’t have it.” [June 8, 2020 Hearing Transcript, p. 17:23 – 18:2].

In fact, during the Motion to Dismiss hearing, Plaintiff’s counsel, Ms. Boyagian, acknowledged on the record the State Attorney’s assertion that he does not have possession, custody, or control of the Requested Materials:

“My understanding is that the state attorney has asserted that he does not have possession. It’s not my understanding that the clerk has taken that position. So the clerk may indeed be the – someone who does have possession, custody, and control.” [June 8, 2020 Hearing Transcript, p. 9:1-6].

“Two points, your Honor: One is that, again, the clerk did not assert in her papers that she does not have control. That is a position that the State Attorney’s Office has asserted.” [June 8, 2020 Hearing Transcript, p. 17:10 - 13].

Consequently, following the June 3, 2020 Motion to Dismiss Hearing, at the very least, Plaintiff knew or should have known under § 57.105(1)(a) that Count I of the Amended Complaint “was not supported by the material facts necessary” to establish their claim. *See Fla. Stat. § 57.105(1)(a)*. In fact, later the same day that Chief Judge Marx entered her Order Granting Defendants’ Motions to Dismiss Count II with Prejudice, the State Attorney’s § 57.105 Demand and accompanying First Motion for Attorneys’ Fees was served on Plaintiff explaining the impossibility of the State Attorney being able to provide the Requested Materials. Accordingly, the foregoing not only shows that § 57.105 sanctions are justified against Plaintiff, but also that there is no arguable basis in fact that the State Attorney provide the Requested Materials.

C. Plaintiff’s Count I is neither novel nor complex as it merely seeks declaratory relief and because the State Attorney’s lack of possession, custody, or control of the Requested Materials creates an impossibility of performance.

Plaintiff also argues that “Where an issue is novel and complex, sanctions under Section

57.105(a) may not be imposed.” *Grove Key Marina, LLC v. Casamayor*, 166 So. 3d 879 (Fla. 3d DCA 2015). However, despite Plaintiff’s reliance on *Casamayor*, there is nothing in the court’s opinion that stands for the proposition that Plaintiff asserts. Nonetheless, the First District Court of Appeal in Martin County Conservation Alliance v. Martin County, 73 So. 3d 856, 864 (Fla. 1st DCA 2011), stated that “[w]ere we to determine that complex cases are immune from *sanctions* under *section 57.105*, we would be abdicating our duty and violating *Article II, section 3 of the Florida Constitution.*” Moreover, while Plaintiff’s Count II may fall into the category of being “novel” since it sought a private right of action under § 905.27; however, Plaintiff’s Count I does not rise to such a level as it merely seeks declaratory relief. Regardless, Plaintiff’s arguments in support of Count I have no good faith basis or reasonable expectation of success as further set forth below.

Here, it is apparent that Plaintiff’s Count I for declaratory relief is neither novel or complex. All of the available facts since the initiation of the case and thereafter have stood in stark contrast to Plaintiff’s alleged “well-founded belief” and “good faith” argument in support of Count I. Oddly, in arguing for novelty and complexity, Plaintiff heavily relies on its Count II for a private right of action under § 905.27, Fla. Stat. and whether *The Palm Beach Post* had constitutional and statutory standing to overcome grand jury secrecy provisions “in furtherance of justice.” See, § 905.27.² Notably, Chief Judge Marx’s June 8, 2020 Order Dismissing Count II with Prejudice already dispensed of any further argument on this matter, but nonetheless Plaintiff seems compelled to continually attempt to raise the issue. Nonetheless, based on the dismissal with

² Although Plaintiff makes an attempt to continually argue Count II after it was dismissed with prejudice it is significant to note that ““if an action asserts a theory of liability using more than one, but separate, factual scenarios in support of the theory, and one of the factual scenarios meets the criteria for a 57.105(1) fee sanction because it is not supported by law, the sanction must be ordered.” *Davis v. Bailyson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019).

prejudice of Count II, the only matter remaining before the Court is Plaintiff's Count I for declaratory relief.

Here, Plaintiff's argument for novelty and complexity fails as to Count I, regardless of Plaintiff's reliance on "Constitutional provisions and interpretive case law, along with Fla. Stat. § 905.27" ... "to propose a good faith interpretation of existing law in support of its declaratory relief claim in Count I." [Def.Ex.10, p. 10]. The simple fact of the matter is that Count I is neither novel or complex because Count I merely seeks declaratory relief and the State Attorney's lack of possession, custody, or control creates an impossibility of performance as to Count I, which greatly simplifies the determination of whether the State Attorney is liable here.

Additionally, Plaintiff was on notice and should have known that the State Attorney had no possession, custody, or control of the Requested Materials as of November 26, 2019, at the earliest, when the State Attorney's Motion to Dismiss was filed in response to Plaintiff's original Complaint. That filing specifically stated that "despite Plaintiff's allegations to the contrary, Defendant Aronberg is not in custody or control of the records sought and is therefore not a proper party to this action." Beyond this initial notice, as set forth above, based on Plaintiff's own research, statutory constructive notice, the State Attorney's affidavit, all the pleadings and correspondence in this matter as well as through the State Attorney's office press release and social media accounts, and Chief Judge Marx's extremely significant statements, Plaintiff should have known that Count I of the Amended Complaint "(a) was not supported by the material facts necessary to establish the claim or defense; and/or (b) would not be supported by the application of then-existing law to those material facts." *See* § 57.105(1)(a) and (b). Finally, it is important to note that in Plaintiff's Count I for declaratory relief, the court's role is not to create an "extension, modification, or reversal of existing law or the establishment of a new law," but rather

is to provide an interpretation of existing law that clears up any ambiguity. Here, § 905.17(1) is abundantly clear that only the Clerk can release grand jury materials pursuant to a court order; and, it is likewise clear that not only has the State Attorney never had possession, custody, or control of the Requested Materials, but he also lacks any legal authority to obtain and deliver the Requested Materials.

Furthermore, as set forth in detail above and despite Plaintiff's contentions, there is no arguable "good faith" basis in law and/or fact, under § 57.105(1)(a) or (b), or any reasonable expectation of success as to Plaintiff's Count I; and therefore, sanctions against Plaintiff are appropriate under § 57.105. *See, Minto PBLH, LLC v. 1000 Friends of Florida, Inc.*, 228 So. 3d 147, 149 (Fla. 4th DCA 2017). Moreover, under no set of facts did Plaintiff have a reasonable expectation of success against the State Attorney in obtaining the sought after documents because at no time did the State Attorney have possession, custody, or control over said documents. In fact, Plaintiff acknowledged, admitted, and acquiesced to the impossibility of the State Attorney providing the Requested Materials when Plaintiff dropped the State Attorney from the action on October 21, 2020.

IV. THE RECORD EVIDENCE INDICATES THAT PLAINTIFF KNEW OR SHOULD HAVE KNOWN THE STATE ATTORNEY WAS NOT A PROPER PARTY, THAT THERE WAS NO BASIS IN FACT OR LAW AS TO COUNT I, AND THAT THERE WAS NO REASONABLE EXPECTATION OF SUCCESS.

Based on the foregoing arguments and record evidence set forth at length above, it is apparent that at no time did the State Attorney have possession, custody, or control of the Requested Materials and has no legal authority to produce or disclose the Requested Materials. These facts were constantly and continually communicated to Plaintiff via the State Attorney and even through Chief Judge Marx. Further, there is no rule or authority mandating that record evidence exist in support of a § 57.105 demand when it is made. Thus, the State Attorney is

rendered an improper party in this action based on the foregoing and the impossibility of the State Attorney producing or having the legal authority to produce the Requested Materials.

CONCLUSION

As set forth at length above, Defendant, Dave Aronberg, as State Attorney of Palm Beach County, Florida, respectfully requests that the Court enter an order granting the State Attorney's Amended Motion for Attorneys' Fees in its entirety and grant such other and further relief as the Court deems necessary or proper.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

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Attorneys for Defendant, Dave Aronberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 2021, a copy of the foregoing has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

/s/ Douglas A. Wyler

Def.Ex.#1

NOT A CERTIFIED COPY

Def.Ex.#1

JACOBS SCHOLZ & WYLER, LLC.
A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

THE LAW OFFICES OF
JACOBS & ASSOCIATES, P.A.
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RICHARD J. SCHOLZ, P.A.
RICHARD J. SCHOLZ

DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

November 26, 2019

Office of the State Attorney
15th Judicial Circuit
Attn: Jeanne Howard
401 North Dixie Highway
West Palm Beach, FL 33401

Re: **CA Florida Holdings, LLC v. Dave Aronberg et al.**
Case No.: 2019-CA-014681

Dear Mrs. Howard:

The purpose of this letter is to confirm that Jacobs Scholz & Wyler, LLC will represent you regarding the above-referenced matter.

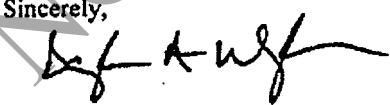
Our fees will be contingent upon our success in this matter. You will not be liable or required to pay any monies to our office unless we are successful in our representation of you regarding the above-referenced litigation and receive a court order awarding attorneys' fees.

Accordingly, should we be successful in this matter, you agree to be billed for the time incurred in defending this action at our current hourly rates. At this time, our current hourly rates are: \$475.00/hour for senior partners, \$425.00/hour for other partners, \$375.00/hour for associate attorneys, and \$125.00/hour for paralegal time.

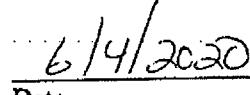
Furthermore, the attorneys' fees paid to our firm shall be calculated by the above listed hourly rates multiplied by the number of hours expended in defending this action or the total fee mandated and awarded by the court order herein, whichever is greater.

By signing below, you agree to the terms as set forth above. Please return a signed and dated copy of this letter to our office. If you have any questions or concerns, please contact our office. On behalf of the firm, we are proud to represent you in this matter.

Sincerely,


Douglas A. Wyler, Esq.
For the Firm


Client


Date

Def.Ex.#2

NOT A CERTIFIED COPY

Def.Ex.#2

.....

COPY

In the Matter Of:

CA FLORIDA HOLDINGS vs DAVE ARONBERG

50-2019-CA-014681

HEARING

June 03, 2020



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HEARING
CA FLORIDA HOLDINGS vs DAVE ARONBERG

June 03, 2020

1

IN THE CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2019-CA-014681
CIRCUIT CIVIL DIVISION: "AG"

CA FLORIDA HOLDINGS LLC PUBLISHER
OF THE PALM BEACH POST,

Plaintiff/Petitioner

-vs-

DAVE ARONBERG,
SHARON R. BOCK,

Defendant/Respondents.

HEARING BEFORE THE HONORABLE KRISTA MARX

(ZOOM CONFERENCE)

Wednesday, June 3, 2020
10:08 a.m. - 10:28 a.m.

REMOTE ZOOM CONFERENCE
Port Saint Lucie, Florida

Stenographically Reported By:
SONJA M. REED
Court Reporter



800.211.DEPO (3376)
EsquireSolutions.com

June 03, 2020

2

1 APPEARANCES:

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7 310.586.7700
8 boyajian@gtlaw.com
9 BY: NINA D. BOYAJIAN, ESQUIRE

10 On behalf of the Defendant/Respondent:

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13 Suite 2011
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15 904.261.3693
16 doug.wyler@comcast.net
17 BY: DOUGLAS A. WYLER, ESQUIRE

18 On behalf of the Defendant/Respondent:

19 CLERK & COMPTROLLER, PALM BEACH COUNTY
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21 West Palm Beach, Florida 33401
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23 nfingerhut@mypalmbeachclerk.com
24 BY: NICOLE R. FINGERHUT, ESQUIRE

1 PROCEEDINGS

2 *****

3 THE COURT: We are here today for a very
4 limited purpose. I'm sure the attorneys are aware of
5 that, but I just don't want there to be any
6 confusion. We are here on Defendant Dave Aronberg
7 and Defendant Sharon Bock for the Comptroller and the
8 State Attorney's motion to dismiss Count II.

9 You're all acutely aware as the lawyers that
10 this is a question of law. So we're not going to be
11 diving into facts and the Court will not be deciding
12 the merits of this motion this morning. We are
13 simply here for the sole purpose of that motion to
14 dismiss. So I just wanted to make sure that we all
15 stay on track and we're all on that same page.

16 So, Ms. Boyagian, I'll send it to you first,
17 Ma'am. I -- of course, we all know that the Law 101,
18 I must look at the four corners of the motion, which
19 alleges that the State Attorney, David Aronberg, and
20 the clerk and comptroller, Sharon Bock, actually have
21 custody and control of these grand jury proceeding.

22 Whether that is true or not is not for this
23 court to determine because I'm looking simply at the
24 four corners of the complaint. But, not for nothing,
25 I think we all know that they don't have control and

1 custody of the records. But I'm going to assume that
2 it's correct because that's what has been alleged.

3 So what I first want to hear from is the
4 attorney for Florida Holdings with regard to,
5 assuming arguendo, that Florida Statute 905.27 does
6 create a cause of action, what relief is it that
7 you're seeking from -- in Count II, specifically.
8 Not the dec action. We're not here on that today --
9 what is it you hope to get, a judgment?

10 MS. BOYAGIAN: Thank you, your Honor. Good
11 morning, and thank you for the privilege of appearing
12 before this court.

13 The relief we are seeking is disclosure of the
14 grand jury records, pursuant to the Furtherance of
15 Justice Exception to 905.27. And under the First
16 Amendment.

17 The press, as your Honor is aware, has a right
18 of access under the First Amendment as a surrogate of
19 the public --

20 THE COURT: Let me just stop you for a minute.
21 I'd like you to answer my specific question.

22 So I am not particularly convinced -- and I'd
23 like for you to address that. So we're not going to
24 dive into facts or the press's standing because
25 that's not something we're here to discuss today.

1 And I have read the voluminous paperwork --
2 I've received paperwork as -- and -- five-minute ago
3 from some of the other parties. But I deeply
4 appreciate the fact that you sent this to me so much
5 in advance and I have been able to spend some time
6 with, as I said, the voluminous paperwork that was
7 provided.

8 But as you know, Ma'am, we are here for such an
9 extremely limited issue today, and that their motion
10 to dismiss where they state "you're suing the wrong
11 people"; that the court has these records.

12 And so, more importantly, I want you to address
13 whether Section 905.27 gives you a private cause of
14 action against the state attorney and the clerk.

15 Again, I'm going to assume the facts are true
16 that are asserted in the motion. Whether they are or
17 not -- because I think we can all agree we're not for
18 sure if they ever -- that the state attorney doesn't
19 have these records. So what is it you're seeking in
20 Count II -- not the dec action. I know you want the
21 records. I've got that. But in Count II,
22 specifically, what do you -- what's the relief you're
23 seeking and, more importantly, how under this statute
24 do you get to assert a private action -- a private
25 cause of action against the state attorney and the

1 clerk?

2 MS. BOYAGIAN: Your Honor, we are aware, of
3 course, that there is no expressed private right of
4 action, 905.27. But that does not end the inquiry.

5 As the Florida Supreme Court stated:

6 "Where a statute like 905.27
7 forbids an act which is to Plaintiff's
8 injury, the party injured should have
9 an action."

10 And that's the Smith Piezo case in the volume
11 of materials that we sent you.

12 There's no question here that the denial of the
13 FIRST AMENDMENT right to the press is an injury which
14 gives rise to a right of action.

15 Stated another way, looking at the analysis
16 that the Fischer Metcalf Court looked at, there are
17 three factors in determining whether there is a
18 private right of action where a statute does not
19 expressly provide for one.

20 One is whether the Plaintiff is part of the
21 class for which the statute is intended to protect;
22 second is a legislative history; and the third is the
23 underlying purposes of the statutory scheme.

24 The first factor I already addressed, that the
25 press is part of the class that the statute is

1 intended to benefit, being the surrogate of the
2 public and exercising its first amendment right.

3 The second issue of legislative history and the
4 purpose -- statutory purpose are somewhat related.
5 We were unable to find much legislative history on
6 this issue of a private right of action under the
7 statute.

8 There is nothing that says we intend to create
9 a private action, but there's certainly nothing that
10 says we do not want to create a private right of
11 action.

12 What we do have is that in 1994, the same time
13 that 905.27 was reenacted, a statute that pertains to
14 the secrecy of State Grand Jury -- statewide grand
15 juries was also enacted. That provision, which is
16 905.395, has no exceptions for -- for revealing these
17 records. By contrast, the legislature intentionally
18 enacted 905.27 with the Furtherance of Justice
19 Exception.

20 If the public through the press can't bring a
21 private right of action to enforce that exception or
22 to seek relief under that exception, that
23 intentionally placed exception of furthering justice
24 is essentially rendered hollow --

25(Speaking simultaneously.).....

1 THE COURT: Okay. Pause for a minute.

2 I don't think anybody is saying that there
3 isn't a cause of action or that the press doesn't
4 have standing. That's not what I'm asking you. I'm
5 asking you, how are the clerk and the state attorney
6 the proper defendants?

7 So, you know, nowhere have I said there isn't a
8 cause of action. Clearly there is. I'm puzzled by
9 the procedural posturing of this case naming the
10 state attorney.

11 And, you know, I'm further stymied by the fact
12 that you allege in your complaint that they have --
13 particularly David Aronberg the State Attorney --
14 that he has these records.

15 But I'm going to assume that's true. So I'm
16 not telling you, you don't have a cause of action.
17 I'm just saying, okay, let's run this all the way
18 out. Let's say you win and you get a judgment
19 against the State Attorney Dave Aronberg.

20 What's he supposed to do with it? He can't
21 release the grand jury testimony. He has no
22 authority whatsoever to do that.

23 MS. BOYAGIAN: Well, your Honor, as you stated,
24 this is a motion to dismiss stage, and we are
25 entitled to discovery on the issue of possession,

1 custody, and control. My understanding is that the
2 state attorney has asserted that he does not have
3 possession. It's not my understanding that the clerk
4 has taken that position. So the clerk may indeed be
5 the -- someone who does have possession, custody, and
6 control.

7 In any event, we would submit that the state
8 attorney, even it does not have actual possession at
9 this time, it might be able to have the power to
10 control or direct the entity or persons who do have
11 control and possession to release those -- to effect
12 the judgment.

13 THE COURT: So let me ask you this: So the
14 clerk is the keeper of the record. But even if you
15 got a judgment against her -- let's say you asserted
16 this cause of action and let's say you win and you
17 get a judgment against the clerk. The clerk cannot
18 release grand jury testimony to you. Only the court
19 can.

20 So really -- all I'm saying to you is I do not
21 understand the way this case was filed or why these
22 are the defendants because it's impossible for them
23 to perform.

24 I mean, I'm going to assume, based on your
25 motion, again, that they do have the records. But we

1 all know -- everyone in the room knows they do not --
2 that only the court -- they're -- they're with a
3 court interpreting. And only the court can release
4 the records.

5 So if you get a judgment against either the
6 state attorney or the clerk, they cannot -- I mean, I
7 guess what you're saying to me is, well, we want to
8 do discovery and we want them to say unequivocally "I
9 have these records" or "I don't have them."

10 And -- I mean, the law is abundantly clear.
11 You cannot do it without a court determining whether,
12 in the furtherance of justice, the release is
13 appropriate.

14 MS. BOYAGIAN: And that is a determination
15 we're asking your Honor to make, and we're asking for
16 an order from your court.

17 THE COURT: When we get to the merits of the
18 case, sure it is. But, again, you're asking me to
19 make that determination and for me to make a
20 determination of whether the grand jury records
21 should be released. And the only thing we're here
22 today about is why should the clerk and the state
23 attorney have to defend a civil action when it's a
24 possibility of performance? They -- even if you were
25 to win and get a judgment against them, they cannot

1 give you what they don't have.

2 So -- I mean, it's as simply as this: Are
3 you -- you just want to engage in some discovery for
4 them to absolutely assert, particularly, the state
5 attorney, "I don't have these records"; look to the
6 rules that say the moment the grand jury's over,
7 they're sealed and they're turned over and they
8 cannot be released without court order?

9 So I'm not addressing the merits or whether you
10 have an exception or you're able to argue that
11 there's an exception in the furtherance of justice.
12 We're not getting there today. I'm simply saying why
13 should these two entities have to defend this lawsuit
14 when even down the road if they win they can't give
15 you what they don't have?

16 MS. BOYAGIAN: As your Honor stated, I'm not
17 sure that's the case with the clerk. That was not in
18 their -- that issue was not stated in their papers.

19 THE COURT: Let me ask you this, then: Do you
20 think, if you got a judgment and I or the court
21 doesn't make the determination that the grand jury
22 records should be released, that the clerk would be
23 able to perform?

24 Would they be able to say "here you go"? I
25 mean, could the clerk just make that unilateral

1 decision "I'm going to release the records, sealed
2 confidential records"?

3 Does she have any authority to do that?

4 MS. BOYAGIAN: My understanding, your Honor, is
5 that 905.27 requires a court order before the records
6 are unsealed.

7 THE COURT: Exactly. Exactly.

8 All right. Let me hear from Mr. Aronberg's
9 attorney, Mr. Wyler.

10 MR. WYLER: Thank you, your Honor. May it
11 please the Court --

12 THE COURT: Good morning, Sir.

13 MR. WYLER: Good morning.

14 Your Honor, I just wanted to let you know that
15 I spoke with counsel for the clerk, Ms. Fingerhut, a
16 couple of days before this hearing, and we decided
17 that I would just make the presentation for both of
18 of us, being that our arguments overlap except for
19 the fact of who this claim -- whether they have the
20 records or not, which, of course, we've said we don't
21 have custody of the records.

22 But, nonetheless, our arguments overlap. The
23 Plaintiff is attempting to assert a cause of action
24 under Section 905.27. That statute settled testimony
25 not to be disclosed exceptions. So it's just . . .

1 explaining exceptions to the disclosure of the grand
2 jury testimony.

3 Our position is that it doesn't set forth a
4 cause of action and that it's impossible for us to
5 perform what they're asking.

6 I know you said you didn't really want to get
7 into the Furthering Justice Exception, but I know
8 that's what they're using as their basis to get to
9 these. But it's our position that the clear
10 unambiguous statutory language, it shows that this
11 disclosure only applies to a civil or criminal case,
12 and that within that civil or criminal --

13 (Speaking simultaneously.)

14 THE COURT: Again, sir -- I'm sorry. As I told
15 Plaintiff's counsel --

16 MR. WYLER: -- can only be used in the defense
17 for --

18 THE COURT: Okay. We're not there. We're not
19 discussing the merits of the case, and -- I'm not
20 ready to cross that bridge. I'm here for a very,
21 very limited hearing today.

22 So just as I stopped Plaintiff's counsel from
23 arguing the merits of the case and whether or not the
24 Furtherance of Justice Exception will apply in this
25 instance, we're not even there yet.

1 I'm only here for the purpose of determining
2 whether or not the clerk and state attorney should be
3 dismissed. And I am bound by the four corners of the
4 document, which assert that you do have control and
5 custody over it.

6 So if you'll fashion your argument with regard
7 to that limited purpose, I would appreciate it.

8 MR. WYLER: No problem, your Honor. I
9 apologize.

10 Within the four corners of their complaint, our
11 position is that they failed to state a cause of
12 action under 905.27. It does not provide for -- it
13 doesn't list that there's no element that they have
14 adequately pled to assert a cause of action under
15 that. There's -- and the only thing they're asking
16 for is records that we don't have.

17 There's really not much more to it, your Honor.
18 And we would ask that you would grant our motion to
19 dismiss for failure to state a cause of action.

20 THE COURT: Okay. Ms. Fingerhut, are you still
21 on the phone?

22 MS. FINGERHUT: Yes, your Honor.

23 THE COURT: Is there anything you wish to add?

24 MS. FINGERHUT: We agree with the state

1 attorney's position, and we also agree with what the
2 Court has said, that the plain language of the
3 statute, a cause of action doesn't exist. And we
4 really cannot -- we'll be defending something without
5 the four corners. We're simply involved in this
6 action because the clerk is the custodian of the
7 records.

8 THE COURT: Okay. Thank you, Ma'am.

9 Ms. Boyagian, back to you.

10 MS. BOYAGIAN: Your Honor, I'd like to note
11 that in the Butterworth case in which the Supreme
12 Court limited the application 905.27 by saying that a
13 witness can reveal her own testimony and prohibiting
14 that they violate the First Amendment --

15 THE COURT: Say that again, please.

16 MS. BOYAGIAN: In the Supreme Court case, the
17 Butterworth case, in which the Supreme Court ruled
18 that 905.27 can't restrict a Grand Jury witness from
19 revealing her own testimony, that would be a
20 violation of First Amendment, in that case, the state
21 attorney was, in fact, a party.

22 THE COURT: Well, I assume the state attorney
23 that was present -- I mean, I don't find that that's
24 close to what we're talking about here, and that's
25 whether or not -- I mean, as we know, this was in

1 2006. Certainly Dave Aronberg wasn't even the state
2 attorney then. But this is about the release of
3 records.

4 I want to give you ample opportunity -- and
5 again, I sincerely appreciate that all of the case
6 law and the way that it was presented to the Court in
7 such a timely fashion. I really do. And I did spend
8 some time with it. But I want to give you whatever
9 opportunity you want to take to convince me that it
10 is in -- as to Count 2, again. Not the dec action --
11 whether these would be the appropriate defendants.

12 And, you know, really, I want you to boil it
13 down for me as to this -- let's take it all the way
14 down the road. You win. You get a judgment against
15 the clerk and the state attorney.

16 I know there's other reasons why you might have
17 filed it this way. But I'm just simply puzzled
18 because I do hear what the clerk and the state
19 attorney are saying, and that is, performance is
20 impossible. They don't have the records and
21 cannot -- absolutely. There's not even an inch of
22 wiggle room -- that they could release the records
23 even if you got a judgment. It is solely a
24 determination for the court.

25I, frankly, think, you know, there's ways to

1 get to your records. There's ways to get
2 confidential records. But it isn't by suing the
3 state attorney and the clerk.

4 So I just want to hear your last final argument
5 on how Count II, the appropriate defendants are the
6 clerk and the state attorney. Even assuming arguendo
7 they have the records -- we know they don't -- you
8 were to get a judgment against them, how would you
9 expect them to perform?

10 MS. BOYAGIAN: Two points, your Honor: One is
11 that, again, the clerk did not assert in her papers
12 that she does not have control. That is a position
13 that the State Attorney's Office has asserted. It is
14 our allegation, and as your Honor noted, allegations
15 must be accepted as true -- as true at this stage of
16 the proceedings.

17 Second, it is also our understanding that the
18 state attorney and the clerk intend to block access
19 to these records. So our allegation is that they do
20 have possession, custody, or control, which the clerk
21 has not denied; and second, that they are trying to
22 block access to the records --

23 THE COURT: What do you mean? What do you
24 mean? They're not trying to block it. They're
25 saying that despite the fact -- let's just talk about

1 the clerk, because we all know the state attorney
2 doesn't have it.

3 So the clerk is the custodian of records.

4 That's her main job. There's no doubt about it. We
5 all know that. But we also know, unequivocally --
6 unequivocally, only the court can make the
7 determination of whether the moving party has
8 satisfied that there is an exception that these
9 should be released.

10 So, again, I ask you -- she is, in fact, the
11 custodian of the records -- is it your opinion that
12 if you got a judgment saying clerk and comptroller
13 gets a judgment against them, that she can release
14 the records without the court -- without the court
15 weighing in, without the court making that
16 determination as required by law?

17 MS. BOYAGIAN: No, your Honor. We are asking
18 your Honor to order the clerk to do that under your
19 discretion.

20 THE COURT: All right.

21 Mr. -- Ms. Fingerhut, you wish to be heard on
22 that?

23 MS. FINGERHUT: Your Honor, our position is
24 that we're not trying to block access to the
25 records --

1 (Speaking simultaneously.)

2 THE COURT: Can you hear? Can the attorneys
3 hear?

4 MS. FINGERHUT: -- custodian the records and
5 that he cannot release the records without court --

6 THE COURT: Exactly.

7 Okay. All right. Anything further, Mr. Wyler?

8 MR. WYLER: No, your Honor. I concur with the
9 attorneys for the clerk's office that it's impossible
10 for us to release these records. There's no intent
11 to hide them or block anything from the Plaintiff.

12 THE COURT: Okay. Anything further,
13 Ms. Fingerhut?

14 MS. FINGERHUT: No, your Honor.

15 THE COURT: And, Ms. Boyagian, anything
16 further, Ma'am?

17 MS. BOYAGIAN: Nothing further, your Honor.

18 THE COURT: Okay. I will get an order out
19 quickly. Thank you, folks so much. And I'll see you
20 on the next round. Thanks a lot.

21 MS. BOYAGIAN: Thank you, your Honor.

22 MR. WYLER: Thank you, your Honor.

23 (The proceedings concluded at 10:28 a.m.)

24

25

1 CERTIFICATE OF REPORTER
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8

I, Sonja M. Reed, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript, pages 1 through 19, is a true and complete record of my stenographic notes.

9

10

11

Dated this 3rd day of June, 2020.

12

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17 Sonja M. Reed
18 Court Reporter
19
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21
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24
25

Def.Ex.#3

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.....

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AG
CASE NO. 50-2019-CA-014681-XXXX-MB

CA FLORIDA HOLDINGS LLC PUBLISHER OF THE PALM BEACH POST,
Plaintiff/Petitioner
vs.
DAVE ARONBERG,
SHARON R BOCK,
Defendant/Respondents.

**ORDER GRANTING DEFENDANTS MOTIONS TO DISMISS COUNT II OF
PLAINTIFF'S FIRST AMENDED COMPLAINT WITH PREJUDICE**

THIS CAUSE came before the Court on Dave Aronberg, as State Attorney of Palm Beach County's ("State Attorney") and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County's, ("Clerk") respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post's ("The Post") First Amended Complaint (DE## 22, 24). This case is assigned to Division AG, which is currently presided over by the Honorable Donald Hafele. However, the undersigned, as Chief Judge of the Fifteenth Judicial Circuit, presided over the June 3, 2020 hearing on the State Attorney and Clerk's Motions as the Motions implicate records of the Palm Beach County grand jury, over which the Chief Judge presides. *See § 905.01, Fla. Stat. (2019).* After careful consideration of the pleadings and the arguments presented at the hearing, the Court grants the Motions for the following reasons.

Background

The Post is a media outlet which has heavily reported on the 2006 Palm Beach County criminal prosecution of Jeffrey Epstein. Through the instant civil lawsuit, The Post seeks "immediate access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" in Mr. Epstein's case and alleges that both the State Attorney and Clerk are "in possession and/or control of [those] documents." (DE # 17, First Amended Complaint at ¶¶ 3,4, and 77). Specifically, The Post seeks declaratory judgment as to its rights to obtain the grand jury testimony in Mr. Epstein's case from the State Attorney and Clerk (Count I) as well as

judgment against the State Attorney and the Clerk pursuant to section 905.27, Florida Statutes, which sets forth the parameters of grand jury secrecy in Florida. (Count II). Both the State Attorney and the Clerk move to dismiss Count II of The Post's First Amended Complaint, arguing that that section 905.27 does not create a private cause of action. (DE## 22, 24). The Court agrees.

Analysis

"In reviewing a motion to dismiss for failure to state a cause of action, the court must accept the allegations of the complaint as true and construe them in the light most favorable to the plaintiff." *Almarante v. Art Institute of Fort Lauderdale, Inc.*, 921 So. 2d 703, 704-05 (Fla. 4th DCA 2006). The motion should only be granted if the moving party demonstrates that the plaintiff cannot provide any facts that would support a cause of action. *Id.* It follows that if the cause of action alleged is nonexistent under Florida law, dismissal is warranted. *Cummings v. Dawson*, 444 So. 2d 565, 566 (Fla. 1st DCA 1984) (affirming dismissal of cause of action not recognized by Florida law).

Section 905.27, Florida Statutes (2019), is titled "Testimony not to be disclosed, exceptions," and states:

(1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

- a. Ascertaining whether it is consistent with the testimony given by the witness before the court;
- b. Determining whether the witness is guilty of perjury; or
- c. Furthering justice.

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's

attorney, and by the latter to his or her legal associates and employees. When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

(3) Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) Persons convicted of violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding \$5,000, or both.

(5) A violation of this section shall constitute criminal contempt of court.

§ 905.27, Fla. Stat. (2019).

As the State Attorney and Clerk argue and The Post concedes, section 905.27 makes no express provision for a civil suit or civil liability. Nonetheless, The Post maintains that it is entitled to seek the grand jury records via a private cause of action pursuant to the “furthering justice” exception to grand jury secrecy contained in subsection 905.27(1)(c). Therefore, the limited question for this Court’s consideration is whether a cause of action under section 905.27 should be judicially implied. *See Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 985 (Fla. 1994).

In advocating that it may maintain a cause of action against the State Attorney and Clerk under section 905.27, The Post urges the Court to examine three factors “(1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any indication, either explicit or implicit, of a legislative intent to create or deny such a remedy; and (3) whether judicial implication is consistent with the underlying purposes of the legislative scheme.” (Plaintiff’s Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida’s Motion to Dismiss Count II of the First Amended Complaint at page 13 (citing *Fischer v. Metcalf*, 543 So. 2d 785 (Fla. 3d DCA 1989)). Within these three factors, The Post recognizes that there is no indication of legislative intent to create a cause of action, but leans heavily on the benefit factor, arguing that the “furthering justice” exception to

grand jury secrecy outlined in section 905.27(1)(c) was meant to benefit the public at large, for which the press acts as a surrogate. The Post's arguments are unpersuasive as to the discrete issue of whether a private cause of action lies in section 905.27.

To begin with, The Post's reliance on the benefit factor is misplaced. Per the Florida Supreme Court's 1994 opinion in *Murthy*, "the question of whether a statute establishes a duty to take precautions to protect or benefit a particular class of persons is no longer determinative on the question of whether a cause of action should be recognized." *Sorenson v. Prof'l Compounding Pharmacists of W. Pa., Inc.*, 191 So. 3d 929 (Fla. 2d DCA 2016) (citing *Murthy*, 644 So. 2d at 985). Instead, "whether a statutory cause of action should be judicially implied is a question of legislative intent." *Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 182 (Fla. 2007). See also *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 551 (Fla. 2012) ("Since *Murthy*, we have reaffirmed the principle that whether a statutory cause of action should be judicially implied is a question of legislative intent."); *Universal Prop. & Cas. Ins. Co. v. Loftus*, 276 So. 3d 849, 851 (Fla. 4th DCA 2019).

As is always the case when a court undertakes a legislative intent analysis, the plain language of the statute is the starting, and often ending, point. See *Horowitz*, 959 So. 2d at 182. "When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Loftus*, 276 So. 3d at 851 (Fla. 4th DCA 2019)) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)). "However, a single part of a statute should not be read in isolation." *Id.* "Instead, 'all parts of a statute must be read together in order to achieve a consistent whole.'" *Id.* (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)).

As The Post acknowledges, "there is a dearth of legislative history surrounding Section 905.27 and the *The Palm Beach Post* was unable to locate any documents capturing any legislative intent regarding the possibility of a private right of action." (Plaintiff's Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida's Motion to Dismiss Count II of the First Amended Complaint at page 14). While the lack of any legislative

history indicating an intent to create a private right of action is telling, it is not dispositive as the plain language of the section 905.27 is clear and unambiguous and, therefore, controls. *Horowitz*, 959 So. 2d at 182.

Examining the plain language of section 905.27 in its entirety, which requires the Court to look at more than just the “furthering justice” provision of section 905.27(1)(c) relied on by The Post, it is clear that the intent of the Legislature in passing section 905.27 was to limit, not facilitate, disclosure of grand jury records. In no uncertain terms, the Legislature provided that no “person appearing before the grand jury” may “disclose” testimony or evidence presented except when “required by a court” under certain limited circumstances. § 905.27(1), Fla. Stat. In solidifying that its intent was to prohibit disclosure without court permission, the Legislature provided that disclosure without a court order is a criminal offense. § 905.27(4), Fla. Stat. Therefore, to the extent section 905.27 could be read as imposing a duty on the State Attorney and Clerk, the duty imposed is one of secrecy, not disclosure.

In sum, there is nothing in the text of section 905.27 from which one can deduce that the Legislature contemplated a member of the media, or anyone else for that matter, having a private cause of action to compel the State Attorney and Clerk to disclose grand jury records. Indeed, to the contrary, section 905.27 prohibits the State Attorney and the Clerk (assuming that, as pleaded by The Post, they have the documents) from disclosing the documents without first being ordered to do so by the court.^[1] Reading section 905.27 as creating a private cause of action against the State Attorney and Clerk is, therefore, not only unsupported by the language of section 905.27, but is actually paradoxical to its plain language of the statute. As such, this Court lacks the power to construe the unambiguous language of section 905.27 in a way that would extend its express terms and create a cause of action where none exists. “To do so would be an abrogation of legislative power.” *Horowitz*, 959 So. 2d 176, 182 (*quoting Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

Conclusion

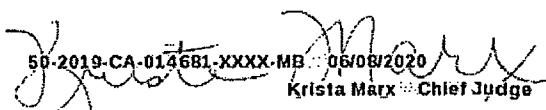
Based on the foregoing, the Court finds Count II of The Post’s First Amended Complaint must be dismissed with prejudice as it pursues a nonexistent cause of action under section

905.27. In arriving at this conclusion, the Court does not suggest The Post has no available mechanism to obtain a court order granting it access to the grand jury proceedings. The Court also does not render any opinion as to whether releasing these records is appropriate for the purpose of "furthering justice" within the meaning of section 905.27. Rather, the Court's dismissal of Count II is necessitated by precedent and the simple fact that a civil lawsuit against the State Attorney and Clerk under section 905.27 is not the proper mechanism for The Post to pursue its goal.

Therefore, it is hereby

ORDERED AND ADJUDGED that Dave Aronberg, as State Attorney of Palm Beach County's and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County's, respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post's First Amended Complaint are **GRANTED** and Count II of Plaintiff's first Amended Complaint is hereby **DISMISSED** with prejudice.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 8th day of June, 2020.



50-2019-CA-014681-XXXX-MB 06/08/2020
Krista Marx Chief Judge

50-2019-CA-014681-XXXX-MB 06/08/2020
Krista Marx
Chief Judge

[1] The Court notes that, if there was a court order directing the State Attorney or the Clerk to disclose records and the State Attorney or the Clerk refused, the remedy for disobeying a court order is contempt or, in some instances, a mandamus proceeding – not a civil lawsuit.

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JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

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DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

TELEPHONE (904) 261-3693
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June 8, 2020

VIA ELECTRONIC & U.S. MAIL

Stephen A. Mendelsohn, Esq.
Greenburg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

**RE: CA Florida Holdings, LLC v. Dave Aronberg et al.
Palm Beach County, Case No.: 2019-CA-014681**

Dear Mr. Mendelsohn:

As you are aware our firm represents the interests of Dave Aronberg, as State Attorney of Palm Beach County, Florida, in the above referenced matter. The purpose of this letter is to demand the voluntary dismissal of your First Amended Complaint, (the "Complaint"), dated January 17, 2020. This demand is made pursuant to section 57.105, Florida Statutes.

As you know, Section 57.105 provides:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - a. Was not supported by the material facts necessary to establish the claim or defense; or
 - b. Would not be supported by the application of then-existing law to those material facts.

Today, Judge Marx granted, with prejudice, Defendant Aronberg's Motion to Dismiss Count II of the Plaintiff's Complaint. Pursuant to the Court's ruling, the Plaintiff's only remaining cause of action consists of Count I, for Declaratory Relief. Accordingly, we believe that the Complaint filed herein and its sole remaining Count for Declaratory Relief is not supported by the material facts necessary to establish the claims asserted, and that your claims are not supported by the application of current law to said material facts.

First and foremost, the Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff, seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the requested materials.

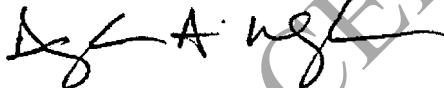
In addition to the foregoing material facts that negate the claims asserted in the Complaint, your claims are also not supported by the application of current law. Specifically, your action for declaratory relief fails based on the clear, unambiguous statutory language found in Section 905.27(2), Florida Statutes, which states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

Based on the foregoing, if the Complaint is not dismissed within 21 days of the service of this letter, the enclosed Motion for Attorney's Fees will be filed and we will seek as sanctions, from your client and your firm, recovery of the legal expenses incurred in defending this frivolous action.

Please govern yourself accordingly,



Douglas A. Wyler, Esq.
For the Firm

Encl.: Defendant's Motion for Attorneys' Fees

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day _____, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

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.....

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June 23, 2020

Douglas A. Wyler
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Fernandina Beach, FL 32034

Re: *CA Florida Holdings, LLC v. Dave Aronberg et al.*
Case No. 2019-CA-014681

Dear Mr. Wyler:

We are in receipt of your letter of June 8, 2020 with your proposed Fla. Stat. section 57.105 motion. In your letter and your proposed motion, you assert that CA Florida Holdings, LLC and the law firm of Greenberg Traurig, P.A. should be liable for the attorneys' fees to be incurred by State Attorney Aronberg after the date of your letter. Your letter cites to Fla. Stat. sections 57.105(1) (a) and (b) for support. As shown below, there is no basis for a Fla. Stat. section 57.105 motion, and we expect that if the State Attorney were to make such a motion, the court should deny it.

Your letter omits a citation to section 57.105(3). Subsection 57.105(3)(a) provides that sanctions may not be awarded where there is a "good faith argument for the extension, modification or reversal of existing law or the establishment of new law, as it is applied to the material facts, with a reasonable expectation of success." We have such a good faith argument.

Contrary to your analysis of Fla. Stat. section 905.27, there are actually three instances where a court may order the release of grand jury materials. As we argue, the court may order release "in furtherance of justice." There are few cases in Florida reviewing this provision and its scope. It is an open and valid question as to whether the court may order release of grand jury transcripts to the media, under both the statute and the First Amendment to the US Constitution in furtherance of justice. The statutory language you cite refers to instances where a person is seeking grand jury materials for use in a civil or in a criminal case. In these limited situations, the statute allows for such uses and for no other reason. However, the statute does not state, as you assert, that where the media seeks grand jury materials based upon its constitutional standing, which the Circuit Court acknowledged at the June 2, 2020 hearing includes The Palm Beach Post, that the statutory

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Correspondence to Douglas A. Wyler
June 23, 2020
Page 2

use limitation you cite applies. No reported Florida case has addressed this issue and there is a good faith basis for our view of Fla. Stat. section 905.27

Your letter also argues that sanctions are applicable because the State Attorney has alleged that it does not possess the Jeffrey Epstein grand jury transcripts. This allegation is also contained in the State Attorney's Answer. Assuming that the State Attorney does not currently have physical possession of the Epstein grand jury materials, which has yet to be demonstrated, this does not end the matter. The State Attorney was named as a party not simply as a custodian of grand jury records. The State Attorney was named in his official capacity as his office has "as its *primary* interest the protection of its grand jury system." [Italics in original.] *In re Grand Jury Proceedings*, 832 F. 3d 554, 559 (11th Circuit 1987). In that case, the US petitioned a state judge to order the State Attorney to turn over grand jury transcripts. The State Attorney argued against their release citing to Fla. Stat. section 905.27. Later, a federal grand jury subpoenaed the Broward County State Attorney for delivery of state grand jury testimony. The Broward State Attorney advised the federal court that it would produce the transcripts, thereby demonstrating that while it may not have physical possession of the materials, he had legal authority to obtain and deliver them. It should also be noted that the State Attorney moved to quash the subpoena arguing that it was unlawful under Florida law and Fla. Stat. section 905.27. This case indicates that where one seeks grand jury materials, the relevant State Attorney is a necessary party in order to protect the grand jury that the Office of State Attorney supervised and to make arguments, if need be, against release of the grand jury materials. These are some of the same reasons why the State Attorney was named in this case.

Also, assuming the State Attorney does not have physical possession of the grand jury materials, there is nothing in Florida law that prohibits the State Attorney from requesting that the Clerk provide copies to the State Attorney. Chapter 905, Fla. Stats. does not contain a prohibition against a State Attorney demand that the Clerk grant his office access to grand jury materials, even after a criminal case has concluded. Upon information and belief, the Clerk's office maintains a log that tracks release of grand jury materials to the State Attorney upon its request. Please confirm whether the State Attorney has accessed grand jury materials from the Clerk's office in other instances or that it has never done so. If the Clerk has such a log, then its contents should be discoverable, or subject to Florida Public records laws.

Correspondence to Douglas A. Wyler
June 23, 2020
Page 3

For these reasons, we decline your Fla. Stat. section 57.105 demand that the case be dismissed against the Office of the State Attorney. We expect that your demand will be withdrawn.

Thank you,

Very truly yours,

/s/Stephen Mendelsohn

Stephen Mendelsohn

SAM:ls

ACTIVE 51081659v1

Def.Ex.#6

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Def.Ex.#6

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

/

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day July, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
Fla. Bar No.: 108249
Richard J. Scholz, Esquire
Fla. Bar No.: 0021261
Douglas A. Wyler, Esquire
Fla. Bar No.: 119979
961687 Gateway Blvd., Suite 201-I
Fernandina Beach, Florida 32034
(904) 261-3693
(904) 261-7879
jacobsscholzlaw@comcast.net

Attorneys for Defendant, Dave Aronberg

Def.Ex.#7

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Def.Ex.#7

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

AFFIDAVIT OF DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority personally appeared DAVID ARONBERG, being first duly sworn, states:

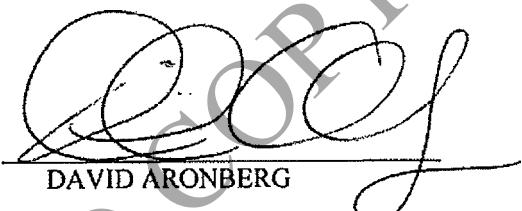
1. My name is David (Dave) Aronberg, and I am the State Attorney for the Fifteenth Judicial Circuit/Palm Beach County, Florida, since 2013, and a Defendant in the above-captioned matter.
2. Plaintiff is seeking declaratory relief, pursuant to Fla. Stat. 905.21(1)(c) and the Court's inherent authority, allowing Plaintiff access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury, (the "Requested Materials"), and to use those materials for the purpose of informing the public.
3. Despite Plaintiff's above-described action for declaratory relief, neither myself nor the Office of the State Attorney for the Fifteenth Judicial Circuit, ("SAO"), is in control, custody, or possession of the Requested Materials.
4. As such, the declaratory relief sought by the Plaintiff seeks materials that are impossible for me or my office to produce.
5. To be clear, neither myself nor the SAO has the legal authority to obtain and deliver the Requested Materials.
6. I have repeatedly made these facts evident to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and my public social media accounts.

7. Despite the contentions of Plaintiff, neither myself nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded.

8. Moreover, during my administration, neither myself nor my office has accessed grand jury materials from the Clerk's office in this or any other instance.

9. As provided in section 905.17(1), Florida Statutes (2020), the Clerk has sole custody and possession of the Requested Materials, which can only be released by the Clerk pursuant to an order of the Court.

FURTHER AFFIANT SAYETH NAUGHT.

By: 
DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to and subscribed before me this 30th day of July, 2020, by DAVID ARONBERG, who is personally known to me or has shown _____ as personal identification.


Latosha Lowe-Goode
Notary Public
Notary's Stamp or Seal

LATOSHA LOWE-GOODE
Commission # GG 987813
Expires May 28, 2024
Bonded Thru Budget Notary Services

Def.Ex.#8

NOT A CERTIFIED COPY

Def.Ex.#8

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,
Plaintiff,

CASE NO.: 50-2019-CA-014681-XXXX-MB
DIVISION: AG

v.

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida,

Defendants:

**PLAINTIFF CA HOLDINGS, LLC'S
NOTICE OF DROPPING STATE ATTORNEY, DAVE ARONBERG**

Plaintiff, CA HOLDINGS, LLC, pursuant to Fla. R. Civ. P. 1250(b), hereby notifies the parties that it has dropped State Attorney, Dave Aronberg from the above case.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
*Attorneys for CA Florida Holdings, LLC, Publisher
of The Palm Beach Post*

Stephen A. Mendelsohn, Esq.
401 East Las Olas Boulevard Suite 2000
Boca Raton, Florida 33486
Telephone: (561) 955-7629
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By: /s/ Stephen A. Mendelsohn
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riveraal@gtlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2020, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein

/s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSON

Def.Ex.#9

NOT A CERTIFIED COPY

Def.Ex.#9

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

/

DEFENDANT DAVE ARONBERG'S AMENDED MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned counsel, hereby moves this Honorable Court, pursuant to Rule 1.525, Fla. R. Civ. P. to enter an award of attorneys' fees in his favor against Plaintiff, CA FLORIDA HOLDINGS, LLC, publisher of the PALM BEACH POST, and in support thereof states the following:

BASIS FOR AWARDING ATTORNEYS' FEES

1. On November 14, 2019, CA FLORIDA HOLDINGS, LLC, publisher of the PALM BEACH POST ("Plaintiff") filed a complaint against DAVE ARONBERG, as State Attorney of Palm Beach County, Florida (the "State Attorney" or "Defendant Aronberg") and SHARON R. BOCK, as Clerk and Comptroller of Palm Beach County, Florida (the "Clerk"). The basis of the action was asking the Court to order the State Attorney and the Clerk to disclose the 2006 Jeffrey Epstein grand jury materials, (the "Requested Materials"), pursuant to § 905.27(1) Fla. Stat.

2. On December 6, 2019, the State Attorney filed his Motion to Dismiss, then on December 13, 2019, the Clerk also filed a Motion to Dismiss. In response, Plaintiff filed its First Amended Complaint on January 17, 2020, which in addition to its original claim under § 905.27 Fla. Stat. (Count II) added a claim for Declaratory Relief (Count I) that sought an order declaring that the State Attorney and the Clerk disclose the Requested Materials to Plaintiff for the purpose of informing the public.

3. On January 24, 2019, both the State Attorney and the Clerk filed their Answer to the First Amended Complaint and Motion to Dismiss Count II (“Answer/Motion to Dismiss). Notably, the State Attorney’s Answer/Motion to Dismiss asserted its right to attorneys’ fees for defending the action and requested such relief from the Court.

4. On June 8, 2020, the Court entered its Order Granting Defendants Motions to Dismiss Count II of Plaintiff’s First Amended Complaint with Prejudice (“Order”).

5. Immediately following the Court’s Order, on June 8, 2020, the State Attorney, through the undersigned counsel, served Plaintiff with a demand pursuant to § 57.105 Fla. Stat., to voluntary dismiss/withdraw the First Amended Complaint and the claims against the State Attorney, along with a Motion for Attorneys’ Fees (“57.105 Demand”). *See, Exhibit “A”.* Specifically, because of the Court’s Order only Count I of Plaintiff’s Amended Complaint remained, which sought Declaratory Relief under § 86.011, Fla. Stat.

6. Here, in properly serving his 57.105 Demand on Plaintiff, the State Attorney also properly put Plaintiff on notice that he would seek sanctions by filing the 57.105 Motion for Attorneys’ Fees if Plaintiff failed to dismiss the remainder of its First Amended Complaint within 21 days of service of the 57.105 Demand and Motion for Attorneys’ Fees.

7. On June 23, 2020, Plaintiff's counsel sent a response to the 57.105 Demand refusing to withdraw the remainder of the First Amended Complaint. *See, Exhibit "B".*

8. § 57.105, Florida Statutes states the following:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

9. Accordingly, after receiving Plaintiff's June 23, 2020, response refusing to withdraw the remainder of the First Amended Complaint and waiting the prerequisite "21 days after service of the motion" the State Attorney's Motion for Attorneys' Fees was filed with this Court on July 1, 2020. *See, Exhibit "C".*

10. Thereafter, on August 18, 2020, the State Attorney filed his Motion for Summary Judgment ("Motion") and proceeded, on October 21, 2020, to file a Motion to Set Hearing on the State Attorney's Motion ("Motion to Set") after it became clear that there would be no resolution of this matter without the Court's intervention.

11. Nonetheless, later the same day, rather than setting and participating in a hearing on the merits as to State Attorney's Motion, Plaintiff filed its Notice of Dropping the State Attorney ("Notice") from the instant case. *See, Exhibit "D".* As a consequence of filing its Notice, Plaintiff has effectively made an admission that its allegations against the State Attorney have no basis in fact or law.

12. "An essential distinction between a notice of dropping a party and a voluntary dismissal is that the former concludes the action as to the dropped party while the latter is generally utilized to conclude the action in its entirety." *Carter v. Lake County*, 840 So. 2d 1153, 1155 (Fla. 5th DCA 2003).

13. Specifically, Plaintiff's Notice states: "Plaintiff, [sic], pursuant to Fla. R. Civ. P. 1.250(b), hereby notifies the parties that it has dropped State Attorney, Dave Aronberg from the above case."

14. Rule 1.250(b), Fla. R. Civ. P. states:

(b) Dropping Parties. *Parties may be dropped by an adverse party in the manner provided for voluntary dismissal in rule 1.420(a)(1)* subject to the exception stated in that rule. If notice of lis pendens has been filed in the action against a party so dropped, the notice of dismissal shall be recorded and cancels the notice of lis pendens without the necessity of a court order. Parties may be dropped by order of court on its own initiative or the motion of any party at any stage of the action on such terms as are just.

15. Rule 1.420(a)(1), Fla. R. Civ. P., Voluntary Dismissal states:

(1) By Parties. Except in actions in which property has been seized or is in the custody of the court, an action, a claim, or any part of an action or claim may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all current parties to the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that *a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim*.

16. Notably, "[R]ule 1.250(b) expressly incorporates the procedural aspects of Florida Rule of Civil Procedure 1.420(a)(1) governing voluntary dismissal by providing that parties may be dropped 'in the manner provided for voluntary dismissal in rule 1.420(a)(1) subject to the exception stated in that rule.'" *Siboni v. Allen*, 52 So. 3d 779, 780 (Fla. 5th DCA 2010).

17. Likewise, because Rule 1.250(b) specifies that a party is dropped "in the manner provided for voluntary dismissal in Rule 1.420(a)(1), the *Siboni* court concluded that "the manner" includes the same entitlement to costs and attorney's fees which would have been enjoyed had the dismissal occurred entirely under Rule 1.420(a)(1). *Id. at 781*.

18. Accordingly, the *Siboni* court held that a “party dropped from litigation under rule 1.250(b) is subject to the time limitation contained in rule 1.525 governing service of a motion seeking a judgment for costs and attorney’s fees.” *Id.*

19. Although Plaintiff filed its Notice the claims asserted by Plaintiff have been, since the filing of its initial complaint, completely without support of the facts or the law. At their very core, all of Plaintiff’s claims are based on the presumption that the State Attorney has the authority to disclose the Requested Materials. Nonetheless, Section 905.17(1), Florida Statutes makes clear that Plaintiff’s Requested Materials can only be released by the Clerk pursuant to a court order.

The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. *The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.*

Section 905.17(1), Florida Statutes (2020).

20. The State Attorney has no objection to the Clerk producing and disclosing the Requested Materials should the Court grant an order to that effect, however, it is impossible for the State Attorney to comply with the relief sought by Plaintiff in its remaining claim for declaratory relief as he does not possess or control the Requested Materials and is statutorily barred from any disclosure.

21. Although the State Attorney was prepared to make his argument to the Court, Plaintiff decided instead to drop him as a party. Despite Plaintiff’s decision, the Florida Rules of Civil Procedure and the above authorities make clear that because Rule 1.250 specifies that a party is dropped “in the manner provided for voluntary dismissal in Rule 1.420(a)(1),” it therefore “operates as an adjudication on the merits.” See, *Siboni v. Allen*, 52 So. 3d 779, 781 (Fla. 5th DCA 2010); Rule 1.420(a)(1) Fla. R. Civ. P.

22. Consequently, the filing of Plaintiff's Notice triggered Rule 1.525, Fla. R. Civ. P. and therefore:

Under [§ 57.105], the legislature has expressed its unequivocal intent that where a party files a meritless claim, suit or appeal, the party who is wrongfully required to expend funds for attorneys' fees is entitled to recoup those fees.

Martin County Conservation Alliance v. Martin County, 73 So. 3d 856, 857 (Fla. 1st DCA 2011) (finding that "Courts are not at liberty to disregard the legislative mandate that courts shall impose *sanctions* in cases without foundation in material fact or law. The word "shall" in § 57.105, Fla. Stat., evidences the legislative intent to impose a mandatory penalty to discourage baseless claims, by placing a price tag on losing parties who engage in these activities. Section 57.105 expressly states courts "shall" assess attorney's fees for bringing, or failing to dismiss, baseless claims or defenses.").

23. In fact, "Section 57.105(1) clearly and explicitly confers upon the trial court the authority to award attorney's fees to the prevailing party upon the court's initiative, if 'the court finds that the losing party . . . knew or should have known that a claim or defense when initially presented to the court *or at any time before trial* . . . [w]as not supported by the material facts necessary to establish the claim or defense.'" *Koch v. Koch*, 47 So. 3d 320, 324 (Fla. 2d DCA 2010).

24. The simple fact of the matter is that Plaintiff failed to withdraw its Amended Complaint against the State Attorney within the 21-day period provided for in section 57.105(4), and therefore the State Attorney was permitted to file his 57.105 Motion for Attorneys' Fees as sanctions.

25. Furthermore, based on the impossible nature of Plaintiff's demand of the State Attorney, it was proper to demand withdrawal of Plaintiff's remaining claim for declaratory relief

and serve the 57.105 Motion for Attorneys' Fees due to Plaintiff's claim lacking any basis in fact or law. Again, neither the State Attorney nor his office has possession, custody or control of the Requested Materials. Likewise, the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff, as disclosure of the Requested Materials sought by Plaintiff lies solely within the providence of the Clerk pursuant to an order of the Court.

26. Consequently, the State Attorney is entitled to recover all of his reasonable attorneys' fees in defending this suit by virtue of 57.105, Florida Statutes.

REASONABLENESS AND AMOUNT OF ATTORNEYS' FEES

27. From the service of the 57.105 Demand to the date of this motion, the attorneys for the State Attorney have rendered 42.2 hours of legal services for a total amount of \$18,275.00 in defending this action. See time sheets detailing: the amount of hours by each timekeeper, the timekeeper's hourly rate, and a description of the tasks done during those times, on attached *Exhibit "E"*. Of that amount, the undersigned has been paid \$0.00 as the engagement with the State Attorney is on a pure contingency fee basis. The undersigned expects to incur an additional 4.0 hours at \$425.00 an hour in preparing for and attending the hearing on attorneys' fees. Thus, the total amount of hourly attorneys' fees the State Attorney is seeking is 46.2 hours for a total of \$19,975.00. As further set forth below, the State Attorney also seeks a multiplier of 2.0, which when applied makes the grand total attorneys' fees as sanctions sought herein \$39,950.00.

28. An Affidavit of Attorneys' Fees is attached hereto as *Exhibit "F"*, which details and breaks down the attorneys' fees sought herein.

29. The State Attorney would offer the following facts and arguments as they relate to the factors promulgated in Rule 4-1.5 of the Rules Regulating the Florida Bar and *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985):

Factor	Facts and Arguments
(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly	The time involved by counsel was substantial, consuming nearly 75 hours of legal work. Moreover, the issues in controversy were novel and complex in that Plaintiff sought to create a new private statutory cause of action under Florida Statute § 905.27, implicated several 1st Amendment issues, and further sought declaratory relief pursuant to said Statute. Finally, this litigation has been ongoing for nearly a year and required skill and knowledge in these areas of the law.
(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer	Because of the amount of time involved in this litigation and considering the relative small size of the firm representing the State Attorney, the undersigned attorneys were forced to turn away or delay representing other clients especially during critical stages of the litigation, due to time required in the instant matter.
(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature	The base fees consisting of \$425.00/hour for Mr. Wyler's services and \$475.00/hour for Mr. Jacobs' services are reasonable for lawyers in their respective communities possessing equal experience and skill.
(D) the significance of, or amount involved in, the subject matter of the representation, and the results obtained	The outcome of this case is of great public significance to the State of Florida as it pertains to the disclosure of grand jury records and the role of the State Attorney concerning such disclosure. Here, the results obtained were the maximum sought by Defendant Aronberg as he was dismissed from the case, albeit not within the time constraints of the safe-harbor provision within § 57.105, Fla. Stat.
(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client	There were not any extraordinary limitations imposed by the client, however, Defendant Aronberg expected and received zealous representation, with the desire that the case be dispensed of quickly and efficiently.
(F) the nature and length of the professional relationship with the client	As general counsel for the FPAA the undersigned counsel has represented Defendant Aronberg since the beginning of his tenure as State Attorney in civil matters throughout the State of Florida as well as matters before the Florida Legislature.

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services	This representation required experience in a field available to few lawyers, which included defending the State Attorney from claims of a media entity and lawyers from multiple states regarding the release of information with a nationwide interest. Accordingly, the undersigned counsel conducted the representation with skill and efficiency wherein Defendant Aronberg was dismissed from the action prior to any hearing on the merits before the court.
(H) whether the fee is fixed or contingent, and, if fixed as to the amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.	The fee arrangement herein was entirely contingent, wherein obtaining a fee was conditioned upon prevailing and obtaining an order awarding fees.

JUSTIFICATION FOR MULTIPLIER

30. Defendant Aronberg was able to proceed with this litigation only if counsel would receive a court order awarding contingency based attorneys' fees upon achievement of a successful outcome in this case. *See, Exhibit "G".* Given this and the fact that counsel risked a total of 74.8 hours of work for no pay, of which 39.4 hours is subject to the 57.105 Demand, Defendant Aronberg submits that multiplier of 2.0 would be appropriate in this case. Based upon the hours expended, the hourly rates and a 2.0 multiplier, Defendant Aronberg respectfully requests an award of attorneys' fees as sanctions as stated herein.

31. With regard to the application of a multiplier, the court must analyze the three factors set forth in *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990):

- (1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in Rowe are applicable, especially the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client.

See, Citizens Prop. Ins. Corp. v. Pulloquinga, 183 So. 3d 1134 (Fla. 3d DCA 2015).

32. Here, as to the first factor there was no other counsel in the relevant market who would agree to represent Defendant Aronberg under the contingency fee agreement needed due to the financial situation of the Office of the State Attorney as a public entity funded entirely by the taxpayers of the State of Florida. Although “Risk Mitigation” within the Florida Department of Financial Services and the Office of the Attorney General indeed represent the State Attorney in some instances, this case was not picked up by either and Defendant Aronberg was left needing representation by other, private counsel. Although the undersigned counsel and his law firm are General Counsel for the Florida Prosecuting Attorneys’ Association, Inc., (“FPAA”) the instant matter did not fall within the scope of representation for the FPAA and required a separate engagement between Defendant Aronberg and the undersigned counsel. Accordingly, the undersigned counsel and his law firm agreed to represent Defendant Aronberg on a contingency fee basis and to try the case to final judgment considering that there was no other counsel willing to represent Defendant Aronberg on such terms.

33. With respect to the other factors to be considered in applying a multiplier as set forth in *Quanstrom*, here Defendant Aronberg was unable to mitigate against non-payment of fees because as a purely taxpayer funded entity, the Office of State Attorney had no other means by which to pay the undersigned counsel. Additionally, Defendant Aronberg meets each of the individual *Rowe* factors as set forth in the table located above on pages 8-9. Accordingly, based on the foregoing the application of a multiplier herein is proper. In this vein, the *Rowe* court set guidelines for the size of a multiplier, as follows:

Based on our review of the decisions of other jurisdictions and commentaries on the subject, we conclude that in contingent fee cases, the lodestar figure calculated by the court is entitled to enhancement by an appropriate contingency risk multiplier in the range from 1.5 to 3. When the trial court determines that success was more likely than not at the outset, the multiplier should be 1.5; when the likelihood of success was approximately even at the outset, the multiplier should

be 2; and, when success was unlikely at the time the case was initiated, the multiplier should be in the range of 2.5 to 3.

Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

34. Additionally, the *Quanstrom* court confirmed and modified the *Rowe* approach, as follows:

However, we find that the multiplier in *Rowe* should be modified as follows: If the trial court determines that success was more likely than not at the outset, it may apply a multiplier of 1 to 1.5; if the trial court determines that the likelihood of success was approximately even at the outset, the trial judge may apply a multiplier of 1.5 to 2.0; and if the trial court determines that success was unlikely at the outset of the case, it may apply a multiplier of 2.0 to 2.5. Accordingly, our *Rowe* decision is modified to allow a multiplier from 1 to 2.5.

Standard Guaranty Insurance Co. v. Quanstrom, 555 So. 2d 828, 834 (Fla. 1990). Thus, based upon all of the foregoing factors, Defendant Aronberg respectfully submits that a multiplier of 2.0 is appropriate for this representation.

CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE

The undersigned certifies that a good faith effort was made to resolve the issues raised in this motion by agreement of the parties. The parties were unable to resolve by agreement the issues of entitlement to fees or the amount of fees.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, prays that this Honorable Court will enter an Order awarding Defendant Aronberg his reasonable attorneys' fees with a multiplier of 2.0 against the Plaintiff, CA FLORIDA HOLDINGS, LLC, publisher of the PALM BEACH POST, in the amount of \$39,950.00.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2020, a copy of the foregoing Defendant, Dave Aronberg's Amended Motion for Attorneys' Fees has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esq.
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Richard J. Scholz, Esq.
Fla. Bar No.: 0021261
Douglas A. Wyler, Esq.
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(904) 261-7879 Fax
Primary: jacobsscholzlaw@comcast.net

Attorneys for Defendant, Dave Aronberg

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EXHIBIT “A”

NOT A CERTIFIED COPY

EXHIBIT “A”

Subject: SERVICE OF COURT DOCUMENT; CASE NO. 2019-CA-014681; CA FLORIDA HOLDINGS, LLC V.
DAVE ARONBERG ET AL.

Date: Monday, June 8, 2020 at 3:58:58 PM Eastern Daylight Time

From: Douglas Wyler

To: 'mendelsohns@gtlaw.com', smithl@gtlaw.com, flservice@gtlaw.com, BoyajianN@gtlaw.com,
riveraal@gtlaw.com, GRYGIELM@gtlaw.com

Attachments: 2020-06-08 Aronberg 57.105 Demand and Motion for Attorneys' Fees.pdf

Please see attached and below in this matter.

Court:	Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida
Case No:	Case No. 2020-CA-014681
Plaintiff:	CA Florida Holdings, LLC
Defendant:	Dave Aronberg
Title of Documents Served:	<ul style="list-style-type: none">• Fla. Stat. § 57.105 Demand Letter• Defendant, Dave Aronberg's Motion for Attorneys' Fees
Sender's Name and Telephone Number:	Douglas Wyler (904) 261-3693

Sincerely,

Doug Wyler, Esq.
Jacobs, Scholz & Wyler, LLC
961687 Gateway Blvd., STE 201-I
Fernandina Beach, FL 32034
904-261-3693
904-261-7879 (fax)
doug.wyler@comcast.net

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JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

THE LAW OFFICES OF
JACOBS & ASSOCIATES, P.A.
ARTHUR I. JACOBS

ATTORNEYS AT LAW
GATEWAY TO AMELIA
961687 GATEWAY BLVD., SUITE 201-I
FERNANDINA BEACH, FLORIDA 32034

RICHARD J. SCHOLZ, P.A.
RICHARD J. SCHOLZ

DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

TELEPHONE (904) 261-3693
FAX NO. (904) 261-7879

June 8, 2020

VIA ELECTRONIC & U.S. MAIL

Stephen A. Mendelsohn, Esq.
Greenburg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

**RE: CA Florida Holdings, LLC v. Dave Aronberg et al.
Palm Beach County, Case No.: 2019-CA-014681**

Dear Mr. Mendelsohn:

As you are aware our firm represents the interests of Dave Aronberg, as State Attorney of Palm Beach County, Florida, in the above referenced matter. The purpose of this letter is to demand the voluntary dismissal of your First Amended Complaint, (the "Complaint"), dated January 17, 2020. This demand is made pursuant to section 57.105, Florida Statutes.

As you know, Section 57.105 provides:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - a. Was not supported by the material facts necessary to establish the claim or defense; or
 - b. Would not be supported by the application of then-existing law to those material facts.

Today, Judge Marx granted, with prejudice, Defendant Aronberg's Motion to Dismiss Count II of the Plaintiff's Complaint. Pursuant to the Court's ruling, the Plaintiff's only remaining cause of action consists of Count I, for Declaratory Relief. Accordingly, we believe that the Complaint filed herein and its sole remaining Count for Declaratory Relief is not supported by the material facts necessary to establish the claims asserted, and that your claims are not supported by the application of current law to said material facts.

First and foremost, the Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff, seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the requested materials.

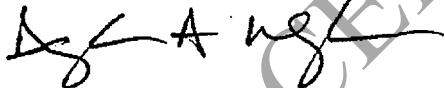
In addition to the foregoing material facts that negate the claims asserted in the Complaint, your claims are also not supported by the application of current law. Specifically, your action for declaratory relief fails based on the clear, unambiguous statutory language found in Section 905.27(2), Florida Statutes, which states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

Based on the foregoing, if the Complaint is not dismissed within 21 days of the service of this letter, the enclosed Motion for Attorney's Fees will be filed and we will seek as sanctions, from your client and your firm, recovery of the legal expenses incurred in defending this frivolous action.

Please govern yourself accordingly,



Douglas A. Wyler, Esq.
For the Firm

Encl.: Defendant's Motion for Attorneys' Fees

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-O14681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day _____, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
Fla. Bar No.: 108249
Richard J. Scholz, Esquire
Fla. Bar No.: 0021261
Douglas A. Wyler, Esquire
Fla. Bar No.: 119979
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Fernandina Beach, Florida 32034
(904) 261-3693
(904) 261-7879
jacobsscholzlaw@comcast.net

Attorneys for Defendant

EXHIBIT “B”

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EXHIBIT “B”



Stephen A. Mendelsohn
Tel 561.955.7629
Fax 561.659.9119
mendelsohn@gtlaw.com

June 23, 2020

Douglas A. Wyler
Jacob Scholz & Wyler, LLC
961687 Gateway Blvd.
Suite 201-I
Fernandina Beach, FL 32034

Re: *CA Florida Holdings, LLC v. Dave Aronberg et al.*
Case No. 2019-CA-014681

Dear Mr. Wyler:

We are in receipt of your letter of June 8, 2020 with your proposed Fla. Stat. section 57.105 motion. In your letter and your proposed motion, you assert that CA Florida Holdings, LLC and the law firm of Greenberg Traurig, P.A. should be liable for the attorneys' fees to be incurred by State Attorney Aronberg after the date of your letter. Your letter cites to Fla. Stat. sections 57.105(1) (a) and (b) for support. As shown below, there is no basis for a Fla. Stat. section 57.105 motion, and we expect that if the State Attorney were to make such a motion, the court should deny it.

Your letter omits a citation to section 57.105(3). Subsection 57.105(3)(a) provides that sanctions may not be awarded where there is a "good faith argument for the extension, modification or reversal of existing law or the establishment of new law, as it is applied to the material facts, with a reasonable expectation of success." We have such a good faith argument.

Contrary to your analysis of Fla. Stat. section 905.27, there are actually three instances where a court may order the release of grand jury materials. As we argue, the court may order release "in furtherance of justice." There are few cases in Florida reviewing this provision and its scope. It is an open and valid question as to whether the court may order release of grand jury transcripts to the media, under both the statute and the First Amendment to the US Constitution in furtherance of justice. The statutory language you cite refers to instances where a person is seeking grand jury materials for use in a civil or in a criminal case. In these limited situations, the statute allows for such uses and for no other reason. However, the statute does not state, as you assert, that where the media seeks grand jury materials based upon its constitutional standing, which the Circuit Court acknowledged at the June 2, 2020 hearing includes The Palm Beach Post, that the statutory

Greenberg Traurig, P.A. | Attorneys at Law

5100 Town Center Circle | Suite 400 | Boca Raton, Florida 33486 | T +1 561.955.7600 | F +1 561.338.7099

Albany. Amsterdam. Atlanta. Austin. Berlin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Las Vegas. London. Los Angeles. Mexico City. Miami. Milan. Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. Tokyo. Warsaw. Washington, D.C. West Palm Beach. Westchester County.

Qualified in: ¹Greenberg Traurig Company, LLP. ²A separate U.S. registered legal entity. ³Greenberg Traurig S.C. ⁴Greenberg Traurig China N.V. ⁵Greenberg Traurig LLP Foreign Legal Consultant Office, a branch of Greenberg Traurig, P.A., Florida USA. ⁶GT Tokyo Matsui Jidosha. ⁷Greenberg Traurig Brazil S.A.

www.gtlaw.com

use limitation you cite applies. No reported Florida case has addressed this issue and there is a good faith basis for our view of Fla. Stat. section 905.27

Your letter also argues that sanctions are applicable because the State Attorney has alleged that it does not possess the Jeffrey Epstein grand jury transcripts. This allegation is also contained in the State Attorney's Answer. Assuming that the State Attorney does not currently have physical possession of the Epstein grand jury materials, which has yet to be demonstrated, this does not end the matter. The State Attorney was named as a party not simply as a custodian of grand jury records. The State Attorney was named in his official capacity as his office has "as its *primary* interest the protection of its grand jury system." [Italics in original.] In re Grand Jury Proceedings, 832 F. 3d 554, 559 (11th Circuit 1987). In that case, the US petitioned a state judge to order the State Attorney to turn over grand jury transcripts. The State Attorney argued against their release citing to Fla. Stat. section 905.27. Later, a federal grand jury subpoenaed the Broward County State Attorney for delivery of state grand jury testimony. The Broward State Attorney advised the federal court that it would produce the transcripts, thereby demonstrating that while it may not have physical possession of the materials, he had legal authority to obtain and deliver them. It should also be noted that the State Attorney moved to quash the subpoena arguing that it was unlawful under Florida law and Fla. Stat. section 905.27. This case indicates that where one seeks grand jury materials, the relevant State Attorney is a necessary party in order to protect the grand jury that the Office of State Attorney supervised and to make arguments, if need be, against release of the grand jury materials. These are some of the same reasons why the State Attorney was named in this case.

Also, assuming the State Attorney does not have physical possession of the grand jury materials, there is nothing in Florida law that prohibits the State Attorney from requesting that the Clerk provide copies to the State Attorney. Chapter 905, Fla. Stats. does not contain a prohibition against a State Attorney demand that the Clerk grant his office access to grand jury materials, even after a criminal case has concluded. Upon information and belief, the Clerk's office maintains a log that tracks release of grand jury materials to the State Attorney upon its request. Please confirm whether the State Attorney has accessed grand jury materials from the Clerk's office in other instances or that it has never done so. If the Clerk has such a log, then its contents should be discoverable, or subject to Florida Public records laws.

Correspondence to Douglas A. Wyler
June 23, 2020
Page 3

For these reasons, we decline your Fla. Stat. section 57.105 demand that the case be dismissed against the Office of the State Attorney. We expect that your demand will be withdrawn.

Thank you,

Very truly yours,

/s/Stephen Mendelsohn

Stephen Mendelsohn

SAM:ls

ACTIVE 51081659v1

EXHIBIT “C”

NOT A CERTIFIED COPY

EXHIBIT “C”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

/

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day July, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
Fla. Bar No.: 108249
Richard J. Scholz, Esquire
Fla. Bar No.: 0021261
Douglas A. Wyler, Esquire
Fla. Bar No.: 119979
961687 Gateway Blvd., Suite 201-I
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(904) 261-3693
(904) 261-7879
jacobsscholzlaw@comcast.net

Attorneys for Defendant, Dave Aronberg

EXHIBIT “D”

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EXHIBIT “D”

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida,

Defendants.

**PLAINTIFF CA HOLDINGS, LLC'S
NOTICE OF DROPPING STATE ATTORNEY, DAVE ARONBERG**

Plaintiff, CA HOLDINGS, LLC, pursuant to Fla. R. Civ. P. 1250(b), hereby notifies the parties that
it has dropped State Attorney, Dave Aronberg from the above case.

Respectfully submitted,

GREENBERG TRAURIG, P.A.

*Attorneys for CA Florida Holdings, LLC, Publisher
of The Palm Beach Post*

Stephen A. Mendelsohn, Esq.
401 East Las Olas Boulevard Suite 2000
Boca Raton, Florida 33486
Telephone: (561) 955-7629
Facsimile: (561) 338-7099

By: /s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSON
Florida Bar No. 849324
mendelsohns@gtlaw.com
smithl@gtlaw.com
FLService@gtlaw.com

By: /s/ Michael J Grygiel
MICHAEL J GRYGIEL
(Admitted *Pro Hac Vice*)
54 State St., 6th Floor
Albany, New York 12207
Telephone: (518) 689-1400
Facsimile: (518) 689-1499
grygielm@gtlaw.com

By: /s/ Nina D. Boyajian
NINA D. BOYAJIAN
(Admitted *Pro Hac Vice*)
1840 Century Park East, Suite 1900
Los Angeles California 90067
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
boyajiann@gtlaw.com
riveraal@gtlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2020, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein

/s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSON

ACTIVE 53317341v1

EXHIBIT “E”

NOT A CERTIFIED COPY

EXHIBIT “E”

Jacobs Scholz & Wyler, LLC
961687 Gateway Blvd., Suite 2011
Fernandina Beach, FL 32034
United States
904-261-3693

Jacobs Scholz & Wyler, LLC

Dave Aronberg

Balance \$32,440.00
Invoice # 00307
Invoice Date November 6, 2020
Payment Terms
Due Date

Aronberg (SAO15) adv. CA Florida Holdings, LLC

Time Entries

Date	EE	Activity	Description	Rate	Hours	Line Total
11/26/2019	DW	Review	Initial review of summons and complaint.	\$425.00	1.5	\$637.50
11/26/2019	DW	Review	Reviewed motion for pro hac vice and Judge Hafele' order granting	\$425.00	0.2	\$85.00
11/26/2019	DW	Teleconference	Teleconference w/ Client, re: response to lawsuit	\$425.00	0.5	\$212.50
11/26/2019	DW	Draft	Drafted engagement letter and sent to client	\$425.00	0.3	\$127.50
11/26/2019	DW	Review	Reviewed 15th circuit local rules	\$425.00	1.0	\$425.00
11/26/2019	AIJ	Review	Initial review of complaint	\$475.00	1.0	\$475.00
11/26/2019	AIJ	Meeting	Meeting w/ DAW to discuss lawsuit and strategy	\$475.00	0.5	\$237.50
11/26/2019	DW	Meeting	Meeting w/ AIJ to discuss lawsuit and strategy	\$425.00	0.5	\$212.50
11/26/2019	AIJ	Teleconference	Teleconference w/ Client, re: response to lawsuit	\$475.00	0.5	\$237.50
12/02/2019	DW	Research & Preparation	Research and prep for Motion to dismiss	\$425.00	2.0	\$850.00
12/02/2019	DW	Draft	1st Draft motion to dismiss	\$425.00	1.0	\$425.00
12/02/2019	DW	Teleconference	Teleconference w/ Client, re: draft motion to dismiss	\$425.00	0.5	\$212.50
12/02/2019	AIJ	Review	Reviewed 1st Draft MTDismiss	\$475.00	0.3	\$142.50
12/02/2019	AIJ	Teleconference	Teleconference w/ client, re: draft motion to dismiss	\$475.00	0.5	\$237.50
12/03/2019	AIJ	Meeting	Meeting w/ DAW, re: motion to dismiss	\$475.00	0.2	\$95.00
12/03/2019	DW	Meeting	Meeting w/ AIJ, re: MTDismiss	\$425.00	0.2	\$85.00
12/06/2019	DW	Draft	Completed final draft of motion to dismiss; filed with Court	\$425.00	0.7	\$297.50
12/06/2019	DW	Teleconference	Spoke w/ client, re: final draft of motion to dismiss	\$425.00	0.5	\$212.50

12/06/2019	DW	Teleconference	Spoke with Clerk's attorney, re: response	\$425.00	0.5	\$212.50
12/06/2019	AIJ	Review	Reviewed final draft MTDdismiss	\$475.00	0.2	\$95.00
12/06/2019	AIJ	Review	Reviewed Clerk's MTDdismiss	\$475.00	0.2	\$95.00
12/13/2019	DW	Review	Reviewed Clerk's Motion to Dismiss	\$425.00	0.5	\$212.50
01/16/2020	DW	Review	Reviewed Order Setting Hearing on Defendants' MTDdismiss	\$425.00	0.1	\$42.50
01/16/2020	DW	Review	Reviewed motion for pro hac vice	\$425.00	0.1	\$42.50
01/17/2020	DW	Review	Reviewed PI's Amended Complaint	\$425.00	1.0	\$425.00
01/17/2020	DW	Teleconference	Spoke with client, re: Amended Complaint	\$425.00	0.5	\$212.50
01/17/2020	DW	Review	Reviewed PI's notice of filing	\$425.00	0.1	\$42.50
01/20/2020	AIJ	Review	Reviewed PI's Am. Compl	\$475.00	0.3	\$142.50
01/21/2020	DW	Review	Reviewed Judge Marx's Order Cancelling MTDdismiss Hearing	\$425.00	0.1	\$42.50
01/21/2020	DW	Review	Reviewed PI's Objection to Defendants' MTDdismiss	\$425.00	0.2	\$85.00
01/21/2020	DW	Teleconference	Spoke with client, re: Amended complaint	\$425.00	0.5	\$212.50
01/21/2020	AIJ	Meeting	Meeting w/ DAW, re: response to Am. Compl.	\$475.00	0.2	\$95.00
01/21/2020	DW	Meeting	Meeting w/ AIJ, re: response to Am. Compl.	\$425.00	0.2	\$85.00
01/22/2020	DW	Review	Reviewed Order granting pro hac vice admission	\$425.00	0.1	\$42.50
01/22/2020	DW	Research & Draft	Researched and drafted response to Amended Complaint	\$425.00	1.0	\$425.00
01/23/2020	DW	Teleconference	Spoke with Clerk's attorney, re: response to amended complaint	\$425.00	0.2	\$85.00
01/24/2020	DW	Various	Completed Answer/MTDismiss Amended Complaint; filed with Court; sent copy to Client	\$425.00	1.0	\$425.00
01/24/2020	DW	Draft	Drafted and filed Notice of Unavailability	\$425.00	0.4	\$170.00
01/24/2020	AIJ	Review	Reviewed final Answer/MTDismiss	\$475.00	0.2	\$95.00
01/27/2020	DW	Review	Reviewed Clerk's Answer/MTDismiss	\$425.00	0.3	\$127.50
02/03/2020	DW	Review	Reviewed Order setting hearing on Defs' MTDdismiss	\$425.00	0.1	\$42.50
02/03/2020	DW	Teleconference	Spoke w/ client, re: order setting MTDdismiss hearing for March 24, 2020	\$425.00	0.5	\$212.50
03/13/2020	DW	Review	Reviewed PI's Opposition to Aronberg MTDdismiss & Clerk's MTDdismiss	\$425.00	1.5	\$637.50
03/13/2020	AIJ	Review	Reviewed PI's Opposition to Aronberg MTDdismiss & Clerk's MTDdismiss	\$475.00	0.7	\$332.50
03/18/2020	DW	Teleconference	Reviewed email from PI's counsel, re: motion to continue hearing	\$425.00	0.1	\$42.50
03/18/2020	DW	Review	Reviewed PI's unopposed motion for continuance	\$425.00	0.1	\$42.50
03/18/2020	DW	E-mail	Emails w/ Clerk's counsel, re: PI's request to continue hearing	\$425.00	0.2	\$85.00
03/19/2020	DW	E-mail	Reviewed email from PI, re: agreed order & responded	\$425.00	0.1	\$42.50
03/20/2020	DW	Review	Reviewed Court's agreed order continuing hearing	\$425.00	0.1	\$42.50

04/21/2020	DW	Review	Reviewed order rescheduling hearing on Defs' MTDismiss	\$425.00	0.1	\$42.50
04/21/2020	DW	Teleconference	Spoke w/ client, re: order rescheduling MTDismiss hearing for June 3, 2020	\$425.00	0.3	\$127.50
04/21/2020	AJ	Review	Reviewed Order rescheduling MTDismiss hearing	\$475.00	0.1	\$47.50
05/22/2020	DW	Review	Reviewed order setting Zoom hearing, re: MTDismiss	\$425.00	0.1	\$42.50
05/22/2020	DW	Teleconference	Spoke w/ client, re: hearing will be via Zoom	\$425.00	0.2	\$85.00
05/27/2020	DW	Review	Reviewed Clerk's filing: change of atty of record	\$425.00	0.1	\$42.50
05/27/2020	DW	Teleconference	Spoke with Clerk's new counsel, Nicole Fingerhut	\$425.00	0.2	\$85.00
05/28/2020	DW	E-mail	Reviewed PI's email, re: cases and authorities for MTDismiss hearing; responded	\$425.00	0.1	\$42.50
05/29/2020	DW	Preparation	Began oral argument prep for 6/8 MTDismiss hearing	\$425.00	1.0	\$425.00
06/01/2020	DW	E-mail	Reviewed email from Judge Marx's JA and responded	\$425.00	0.1	\$42.50
06/02/2020	DW	Various	Reviewed PI's 500+ page binder, re: MTDismiss & prepped for hearing	\$425.00	3.0	\$1,275.00
06/02/2020	DW	E-mail	Drafted and sent email to client, re: MTD hearing tomorrow	\$425.00	0.1	\$42.50
06/03/2020	DW	Attend Hearing	Prepped for and attended MTDismiss hearing via Zoom	\$425.00	1.5	\$637.50
06/03/2020	DW	Teleconference	Spoke w/ Client, re: debrief MTDismiss hearing	\$425.00	0.5	\$212.50
06/03/2020	DW	E-mail	Emailed courtesy copies of Aronberg's Answer and MTDismiss to Judge Marx	\$425.00	0.1	\$42.50
06/03/2020	DW	E-mail	Reviewed response from Client and replied	\$425.00	0.1	\$42.50
06/03/2020	AJ	Attend Hearing	Attended MTDismiss hearing via Zoom	\$475.00	1.0	\$475.00
06/03/2020	AJ	Review	Reviewed order granting MTDismiss w/ prejudice	\$475.00	0.3	\$142.50
06/08/2020	DW	Review	Reviewed Court's Order Granting Defendants MTDismiss Count II w/ Prejudice	\$425.00	0.5	\$212.50
06/08/2020	DW	Various	Shared order w/ Client and spoke w/, re: result and plan going forward, re: 57.105	\$425.00	0.5	\$212.50
06/08/2020	DW	Various	Researched § 57.105 Fla. Stat.; drafted 57.105 demand letter and proposed motion for attorneys' fees/sanctions; Served PI's counsel with demand letter and proposed motion.	\$425.00	2.0	\$850.00
06/08/2020	AJ	Meeting	Meeting w/ DAW, re: Order & 57.105	\$475.00	0.3	\$142.50
06/08/2020	DW	Meeting	Meeting w/ AJ, re: Order & 57.105	\$425.00	0.3	\$127.50
06/08/2020	AJ	Review	Reviewed 57.105 demand and proposed motion for sanction	\$475.00	0.2	\$95.00
06/10/2020	DW	Various	Reviewed notice of change of attorney, re: Clerk; called and spoke w/ new counsel Cynthia Guerra	\$425.00	0.3	\$127.50
06/23/2020	DW	Various	Reviewed PI's letter refusing to voluntarily dismiss amended complaint despite 57.105 demand; called and spoke w/ client, re: PI's refusal & next steps	\$425.00	1.0	\$425.00

06/23/2020	DW	E-mail	Sent client copy of PI's letter refusing to dismiss complaint	\$425.00	0.1	\$42.50
06/23/2020	AIJ	Review	Reviewed PI's letter refusing to dismiss Count I/Am. Compl.	\$475.00	0.1	\$47.50
07/01/2020	DW	Various	Spoke w/ client, re: filing of 57.105 motion for fees/sanctions; filed motion for attorneys' fees based on PI's failure to voluntarily dismiss amended complaint count 1	\$425.00	0.5	\$212.50
07/02/2020	DW	E-mail	Email to client, re: affidavit and summary judgment	\$425.00	0.1	\$42.50
07/08/2020	DW	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ evidence	\$425.00	0.7	\$297.50
07/08/2020	AIJ	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ evidence	\$475.00	0.7	\$332.50
07/10/2020	DW	Draft	Created 1st draft of Aronberg Affidavit; shared w/ client	\$425.00	1.0	\$425.00
07/10/2020	AIJ	Various	Reviewed draft affidavit and discussed w/ DAW	\$475.00	0.3	\$142.50
07/10/2020	DW	Meeting	Discussed draft affidavit w/ AIJ	\$425.00	0.2	\$85.00
07/13/2020	DW	Review	Reviewed PI's Request to Produce, re: Clerk	\$425.00	0.1	\$42.50
07/13/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Request to Produce	\$425.00	0.2	\$85.00
07/27/2020	DW	Review	Reviewed PI's Amended Request to Produce, re: Clerk	\$425.00	0.1	\$42.50
07/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Amended Request to Produce	\$425.00	0.1	\$42.50
07/28/2020	DW	Draft	Revised Aronberg affidavit	\$425.00	0.5	\$212.50
07/29/2020	DW	Draft	Finalized Aronberg Affidavit and sent to client	\$425.00	0.5	\$212.50
07/29/2020	DW	Research & Preparation	Research and prep for Motion for Summary Judgment	\$425.00	1.0	\$425.00
07/30/2020	DW	Various	Received executed Aronberg Affidavit	\$425.00	0.1	\$42.50
07/30/2020	DW	Draft	Began drafting Motion for Summary Judgment	\$425.00	2.0	\$850.00
08/05/2020	DW	Draft	Continued drafting Motion for Summary Judgment	\$425.00	1.0	\$425.00
08/07/2020	DW	Review	Reviewed email from Plaintiff attempting to set hearing on 57.105 motion for fees/sanctions	\$425.00	0.1	\$42.50
08/10/2020	DW	E-mail	Sent responsive email to PI's counsel	\$425.00	0.1	\$42.50
08/17/2020	DW	Meeting	Discussed draft MSJ w/ AIJ	\$425.00	0.2	\$85.00
08/17/2020	AIJ	Various	Reviewed draft MSJ and met w/ DAW to discuss	\$475.00	0.5	\$237.50
08/18/2020	DW	Draft	Finalized Motion for Summary Judgment; filed w/ court along with Aronberg affidavit	\$425.00	2.0	\$850.00
08/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: request to produce	\$425.00	0.1	\$42.50
09/01/2020	DW	Various	Reviewed PI's email and accepted conference call invite for 9/2/20	\$425.00	0.1	\$42.50
09/02/2020	DW	Review	Reviewed Clerk's response to request for production	\$425.00	0.2	\$85.00
09/02/2020	DW	Teleconference	Spoke w/ PI's counsel, re: dispute as to whether MSJ should be heard before 57.105 fee motion or vis versa - call was unsuccessful	\$425.00	0.5	\$212.50

09/02/2020	AIJ	Meeting	Discussed w/ DAW phone call w/ PI's counsel	\$475.00	0.2	\$95.00
09/02/2020	DW	Meeting	Discussed w/ AIJ phone call w/ PI's counsel	\$425.00	0.2	\$85.00
09/16/2020	DW	E-mail	Reviewed email from PI's counsel requested Aronberg to withdraw sanctions motion w/o prejudice	\$425.00	0.1	\$42.50
09/17/2020	DW	Meeting	Discussed w/ AIJ filing motion for CMC	\$425.00	0.1	\$42.50
09/17/2020	AIJ	Meeting	Discussed w/ DAW filing motion for CMC	\$475.00	0.1	\$47.50
09/18/2020	DW	Various	Drafted and filed motion to set case management conference; re: MSJ 1st or Fee hearing 1st	\$425.00	0.5	\$212.50
09/18/2020	DW	E-mail	Responded to PI's 9/16/20 email and refused to withdraw 57.105 motion; provided copy of motion to set CMC and available dates for hearing	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Reviewed PI's email insisting that 57.105 motion be withdrawn	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Replied to PI's counsel that the 57.105 motion for sanctions will not be withdrawn and asking for response, re: CMC	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Sent client copy of email exchange w/ PI's counsel; called and spoke w/ Client	\$425.00	0.5	\$212.50
09/22/2020	DW	Various	Drafted and filed Notice of Hearing on 10/15/20; set up Court Call; spoke w/ client, re: hearing date	\$425.00	0.7	\$297.50
10/02/2020	DW	Review	Reviewed PI's Memo of Law opposing Aronberg's 57.105 motion for fees/sanctions.	\$425.00	0.7	\$297.50
10/02/2020	DW	Review	Reviewed PI's Response to Aronberg's request to schedule 57.105 motion for fees after MSJ	\$425.00	0.5	\$212.50
10/02/2020	AIJ	Review	Reviewed PI's Memo of Law opposing 57.105 motion	\$475.00	0.5	\$237.50
10/02/2020	AIJ	Review	Reviewed PI's Response to Aronberg's request to schedule 57.105 motion after MSJ	\$475.00	0.4	\$190.00
10/12/2020	DW	Research	Research caselaw & statutes, re: response to PI's Memo of Law	\$425.00	1.0	\$425.00
10/13/2020	DW	Research & Analyze	Continued researching caselaw, re: response to PI's memo of law	\$425.00	1.0	\$425.00
10/13/2020	DW	Draft	Created 1st draft of Response to PI's Memo of Law and shared w/ Client	\$425.00	4.0	\$1,700.00
10/13/2020	DW	Meeting	Discussed w/ AIJ caselaw and draft response to memo	\$425.00	0.5	\$212.50
10/13/2020	AIJ	Various	Reviewed draft MSJ, discussed draft w/ DAW and caselaw	\$475.00	0.7	\$332.50
10/14/2020	DW	Draft	Finalized and filed Response to PI's Memo of Law	\$425.00	1.0	\$425.00
10/14/2020	DW	Telephone	Spoke w/ client, re: memo of law	\$425.00	0.2	\$85.00
10/14/2020	DW	Telephone	Spoke w/ client again, re: response to memo of law	\$425.00	0.1	\$42.50
10/15/2020	DW	Attend Hearing	Attended hearing, re: Motion to Set CMC; called client to discuss	\$425.00	1.5	\$637.50
10/15/2020	DW	Various	Reviewed email and letter from PI, re: settlement. Sent copy to Client and called to discuss.	\$425.00	0.5	\$212.50

10/15/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/15/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.2	\$85.00
10/15/2020	AIJ	Various	Attended hearing, re: motion to set CMC; discussed w/ client	\$475.00	1.0	\$475.00
10/15/2020	AIJ	Various	Discussed PI's settlement proposal w/ DAW and then w/ Client	\$475.00	0.4	\$190.00
10/15/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/16/2020	DW	Various	Drafted and shared proposed order w/ PI's counsel	\$425.00	0.5	\$212.50
10/16/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.2	\$85.00
10/16/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.5	\$212.50
10/16/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/16/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/19/2020	DW	Various	Uploaded proposed order, re: CMC for Judge Hafele	\$425.00	0.1	\$42.50
10/19/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.2	\$85.00
10/19/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/19/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/19/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/20/2020	DW	Various	Reviewed email from PI, re: settlement; sent copy to Client and called to discuss	\$425.00	0.5	\$212.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	\$425.00	0.4	\$170.00
10/20/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	\$425.00	0.1	\$42.50
10/20/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/20/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/21/2020	DW	Various	Drafted and filed Motion to Set Hearing on Aronberg MSJ; drafted proposed order granting motion to set; checked court availability; emailed PI's counsel, re: choose date for hearing	\$425.00	1.0	\$425.00
10/21/2020	DW	Review	Reviewed Order, re: CMC unnecessary	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.2	\$85.00
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	E-mail	Sent email w/ Aronberg statement to media	\$425.00	0.1	\$42.50
10/21/2020	AIJ	Meeting	Discussed media response w/ DAW	\$475.00	0.3	\$142.50
10/21/2020	DW	Meeting	Discussed media response w/ AIJ	\$425.00	0.3	\$127.50
10/22/2020	DW	Various	Reviewed PI's Notice of Dropping Aronberg as party; spoke w/ Client and AIJ, re: notice and next steps	\$425.00	0.5	\$212.50

10/22/2020	AIJ	Various	Reviewed PI's Notice of Dropping Aronberg as party; spoke w/ Client and DAW, re: notice and next steps	\$475.00	0.5	\$237.50
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Totals: 74.8 \$32,440.00

Time Entry Sub-Total:	\$32,440.00
Sub-Total:	\$32,440.00
Total:	\$32,440.00
Amount Paid:	\$0.00
Balance Due:	\$32,440.00

NOT A CERTIFIED COPY

EXHIBIT “F”

NOT A CERTIFIED COPY

EXHIBIT “F”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

AFFIDAVIT OF ATTORNEYS' FEES

STATE OF FLORIDA
COUNTY OF NASSAU

BEFORE ME, the undersigned authority appeared Douglas A. Wyler, Esq., who, after being first duly sworn, deposes and says:

1. Affiant is a partner of JACOBS, SCHOLZ & WYLER, LLC, counsel for Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, ("Aronberg"), as well as general counsel to the Florida Prosecuting Attorneys Association, ("FPAA"), and makes this Affidavit of his own personal knowledge.
2. Affiant is licensed to practice law in the State of Florida, is an active member of the Florida Bar in good standing and has engaged in the practice of law in the State of Florida since 2015.
3. As detailed herein, the services rendered by Affiant and his firm pertain to Affiant's demand letter and motion for attorneys' fees sent to Plaintiff's counsel pursuant to § 57.105, Florida Statutes, on June 8, 2020, in defending against Count I of Plaintiff's Amended Complaint

and Plaintiff's October 21, 2020 Notice of Dropping State Attorney, Dave Aronberg from the above-captioned lawsuit. *See, Exhibits "A" and "B" attached hereto.*

4. The total time Affiant's law firm has expended services rendered to date is 74.8 hours, however, from the date of Defendant Aronberg's 57.105 demand, Affiant's law firm has expended a total of 42.2 hours. Of the 42.2 hours expended since Defendant Aronberg's 57.105 demand was served, the Affiant

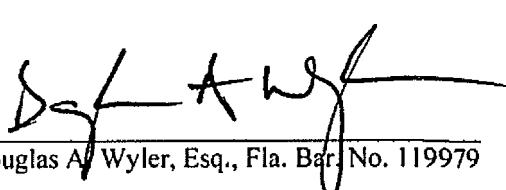
5. Of the 42.2 hours expended since Defendant Aronberg's 57.105 demand was served, the total time Affiant has expended services rendered to date is 35.4 hours at the rate of \$425.00 per hour. Likewise, the total time Affiant's law partner, Arthur I. Jacobs, has expended services rendered to date is 6.8 hours at the rate of \$475.00 per hour.

6. Accordingly, since Defendant Aronberg's 57.105 demand was served, Defendant Aronberg's counsel, JACOBS, SCHOLZ & WYLER, LLC, has rendered services in the amount of \$18,275.00, in conjunction with the defense of the instant action pursuant to § 57.105, Florida Statutes. *See, Exhibit "C" attached hereto.*

7. Affiant expects to incur an additional 4.0 hours at \$425.00 an hour in preparing for and attending the hearing on attorneys' fees. Thus, the total amount of hourly attorneys' fees the State Attorney is seeking is 46.2 hours for a total of \$19,975.00. Additionally, the State Attorney seeks a multiplier of 2.0, which when applied makes the grand total attorneys' fees sought herein \$39,950.00.

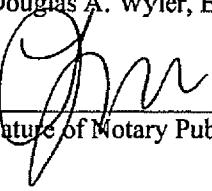
Dated this 9th day of November, 2020.

FURTHER AFFIANT SAYETH NOT.

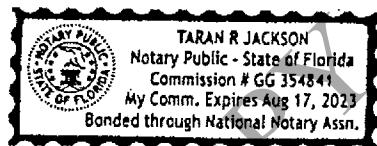

Douglas A. Wyler, Esq., Fla. Bar. No. 119979

STATE OF FLORIDA
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 9th day of November, 2020,
by Douglas A. Wyler, Esquire, who is personally known to me and who did take an oath.


Signature of Notary Public - State of Florida

Taran R. Jackson
Name typed, printed or stamped



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2020, a copy of the foregoing has
been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ *Douglas A. Wyler*

Arthur I. Jacobs, Esq.
Fla. Bar No.: 10249
Richard J. Scholz, Esq.
Fla. Bar No.: 0021261
Douglas A. Wyler, Esq.
Fla. Bar No.: 119979
961687 Gateway Blvd., Suite 201-I
Fernandina Beach, Florida 32034
(904) 261-3693
(904) 261-7879 Fax
Primary: jacobsscholzlaw@comcast.net

Attorneys for Defendant, Dave Aronberg

EXHIBIT “A”

NOT A CERTIFIED COPY

EXHIBIT “A”

Friday, September 18, 2020 at 11:09:24 Eastern Daylight Time

Subject: SERVICE OF COURT DOCUMENT; CASE NO. 2019-CA-014681; CA FLORIDA HOLDINGS, LLC V.
DAVE ARONBERG ET AL.

Date: Monday, June 8, 2020 at 3:58:58 PM Eastern Daylight Time

From: Douglas Wyler

To: 'mendelsohns@gtlaw.com', smithl@gtlaw.com, flservice@gtlaw.com, BoyajianN@gtlaw.com,
riveraal@gtlaw.com, GRYGIELM@gtlaw.com

Attachments: 2020-06-08 Aronberg 57.105 Demand and Motion for Attorneys' Fees.pdf

Court: Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County,
Florida

Case No: Case No. 2020-CA-014681

Plaintiff: CA Florida Holdings, LLC

Defendant: Dave Aronberg

Title of Documents • Fla. Stat. § 57.105 Demand Letter
Served: • Defendant, Dave Aronberg's Motion for Attorneys' Fees

Sender's Name and
Telephone Number: Douglas Wyler
(904) 261-3693

Sincerely,

Doug Wyler, Esq.
Jacobs, Scholz & Wyler, LLC
961687 Gateway Blvd., STE 201-I
Fernandina Beach, FL 32034
904-261-3693
904-261-7879 (fax)

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

THE LAW OFFICES OF
JACOBS & ASSOCIATES, P.A.
ARTHUR I. JACOBS

ATTORNEYS AT LAW
GATEWAY TO AMELIA
961687 GATEWAY BLVD., SUITE 201-1
FERNANDINA BEACH, FLORIDA 32034

RICHARD J. SCHOLZ, P.A.
RICHARD J. SCHOLZ

DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

TELEPHONE (904) 261-3693
FAX NO. (904) 261-7879

June 8, 2020

VIA ELECTRONIC & U.S. MAIL

Stephen A. Mendelsohn, Esq.
Greenburg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

**RE: CA Florida Holdings, LLC v. Dave Aronberg et al.
Palm Beach County, Case No.: 2019-CA-014681**

Dear Mr. Mendelsohn:

As you are aware our firm represents the interests of Dave Aronberg, as State Attorney of Palm Beach County, Florida, in the above referenced matter. The purpose of this letter is to demand the voluntary dismissal of your First Amended Complaint, (the "Complaint"), dated January 17, 2020. This demand is made pursuant to section 57.105, Florida Statutes.

As you know, Section 57.105 provides:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - a. Was not supported by the material facts necessary to establish the claim or defense; or
 - b. Would not be supported by the application of then-existing law to those material facts.

Today, Judge Marx granted, with prejudice, Defendant Aronberg's Motion to Dismiss Count II of the Plaintiff's Complaint. Pursuant to the Court's ruling, the Plaintiff's only remaining cause of action consists of Count I, for Declaratory Relief. Accordingly, we believe that the Complaint filed herein and its sole remaining Count for Declaratory Relief is not supported by the material facts necessary to establish the claims asserted, and that your claims are not supported by the application of current law to said material facts.

First and foremost, the Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff, seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the requested materials.

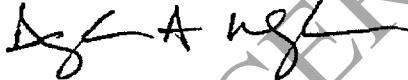
In addition to the foregoing material facts that negate the claims asserted in the Complaint, your claims are also not supported by the application of current law. Specifically, your action for declaratory relief fails based on the clear, unambiguous statutory language found in Section 905.27(2), Florida Statutes, which states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

Based on the foregoing, if the Complaint is not dismissed within 21 days of the service of this letter, the enclosed Motion for Attorney's Fees will be filed and we will seek as sanctions, from your client and your firm, recovery of the legal expenses incurred in defending this frivolous action.

Please govern yourself accordingly,



Douglas A. Wyler, Esq.
For the Firm

Encl.: Defendant's Motion for Attorneys' Fees

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day _____, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
Fla. Bar No.: 108249
Richard J. Scholz, Esquire
Fla. Bar No.: 0021261
Douglas A. Wyler, Esquire
Fla. Bar No.: 119979
961687 Gateway Blvd., Suite 201-I
Fernandina Beach, Florida 32034
(904) 261-3693
(904) 261-7879
jacobsscholzlaw@comcast.net

Attorneys for Defendant

EXHIBIT “B”

NOT A CERTIFIED COPY

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida,

Defendants.

**PLAINTIFF CA HOLDINGS, LLC'S
NOTICE OF DROPPING STATE ATTORNEY, DAVE ARONBERG**

Plaintiff, CA HOLDINGS, LLC, pursuant to Fla. R. Civ. P. 120(b), hereby notifies the parties that
it has dropped State Attorney, Dave Aronberg from the above case.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
*Attorneys for CA Florida Holdings, LLC, Publisher
of The Palm Beach Post*

Stephen A. Mendelsohn, Esq.
401 East Las Olas Boulevard Suite 2000
Boca Raton, Florida 33486
Telephone: (561) 955-7629
Facsimile: (561) 338-7099

By: /s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSON
Florida Bar No. 849324
mendelsohns@gtlaw.com
smithl@gtlaw.com
FLService@gtlaw.com

By: /s/ Michael J Grygiel

MICHAEL J GRYGIEL
(Admitted *Pro Hac Vice*)
54 State St., 6th Floor
Albany, New York 12207
Telephone: (518) 689-1400
Facsimile: (518) 689-1499
grygielm@gtlaw.com

By: /s/ Nina D. Boyajian

NINA D. BOYAJIAN
(Admitted *Pro Hac Vice*)
1840 Century Park East, Suite 1900
Los Angeles California 90067
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
bovajiann@gtlaw.com
riveraal@gtlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2020, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein.

/s/ Stephen A. Mendelsohn

STEPHEN A. MENDELSON

ACTIVE 53317341v1

EXHIBIT “C”

NOT A CERTIFIED COPY

EXHIBIT “C”

Jacobs Scholz & Wyler, LLC
961687 Gateway Blvd., Suite 2011
Fernandina Beach, FL 32034
United States
904-261-3693

Jacobs Scholz & Wyler, LLC

Dave Aronberg

Balance \$32,440.00
Invoice # 00307
Invoice Date November 6, 2020
Payment Terms
Due Date

Aronberg (SAO15) adv. CA Florida Holdings, LLC

Time Entries

Date	EE	Activity	Description	Rate	Hours	Line Total
11/26/2019	DW	Review	Initial review of summons and complaint.	\$425.00	1.5	\$637.50
11/26/2019	DW	Review	Reviewed motion for pro hac vice and Judge Hafeli's order granting	\$425.00	0.2	\$85.00
11/26/2019	DW	Teleconference	Teleconference w/ Client, re: response to lawsuit	\$425.00	0.5	\$212.50
11/26/2019	DW	Draft	Drafted engagement letter and sent to client	\$425.00	0.3	\$127.50
11/26/2019	DW	Review	Reviewed 15th circuit local rules	\$425.00	1.0	\$425.00
11/26/2019	AIJ	Review	Initial review of complaint	\$475.00	1.0	\$475.00
11/26/2019	AIJ	Meeting	Meeting w/ DAW to discuss lawsuit and strategy	\$475.00	0.5	\$237.50
11/26/2019	DW	Meeting	Meeting w/ AIJ to discuss lawsuit and strategy	\$425.00	0.5	\$212.50
11/26/2019	AIJ	Teleconference	Teleconference w/ Client, re: response to lawsuit	\$475.00	0.5	\$237.50
12/02/2019	DW	Research & Preparation	Research and prep for Motion to dismiss	\$425.00	2.0	\$850.00
12/02/2019	DW	Draft	1st Draft motion to dismiss	\$425.00	1.0	\$425.00
12/02/2019	DW	Teleconference	Teleconference w/ Client, re: draft motion to dismiss	\$425.00	0.5	\$212.50
12/02/2019	AIJ	Review	Reviewed 1st Draft MTDmiss	\$475.00	0.3	\$142.50
12/02/2019	AIJ	Teleconference	Teleconference w/ client, re: draft motion to dismiss	\$475.00	0.5	\$237.50
12/03/2019	AIJ	Meeting	Meeting w/ DAW, re: motion to dismiss	\$475.00	0.2	\$95.00
12/03/2019	DW	Meeting	Meeting w/ AIJ, re: MTDmiss	\$425.00	0.2	\$85.00
12/06/2019	DW	Draft	Completed final draft of motion to dismiss; filed with Court	\$425.00	0.7	\$297.50
12/06/2019	DW	Teleconference	Spoke w/ client, re: final draft of motion to dismiss	\$425.00	0.5	\$212.50

12/06/2019	DW	Teleconference	Spoke with Clerk's attorney, re: response	\$425.00	0.5	\$212.50
12/06/2019	AIJ	Review	Reviewed final draft MTDdismiss	\$475.00	0.2	\$95.00
12/06/2019	AIJ	Review	Reviewed Clerk's MTDdismiss	\$475.00	0.2	\$95.00
12/13/2019	DW	Review	Reviewed Clerk's Motion to Dismiss	\$425.00	0.5	\$212.50
01/16/2020	DW	Review	Reviewed Order Setting Hearing on Defendants' MTDdismiss	\$425.00	0.1	\$42.50
01/16/2020	DW	Review	Reviewed motion for pro hac vice	\$425.00	0.1	\$42.50
01/17/2020	DW	Review	Reviewed PI's Amended Complaint	\$425.00	1.0	\$425.00
01/17/2020	DW	Teleconference	Spoke with client, re: Amended Complaint	\$425.00	0.5	\$212.50
01/17/2020	DW	Review	Reviewed PI's notice of filing	\$425.00	0.1	\$42.50
01/20/2020	AIJ	Review	Reviewed PI's Am. Compl	\$475.00	0.3	\$142.50
01/21/2020	DW	Review	Reviewed Judge Marx's Order Cancelling MTDdismiss Hearing	\$425.00	0.1	\$42.50
01/21/2020	DW	Review	Reviewed PI's Objection to Defendants' MTDdismiss	\$425.00	0.2	\$85.00
01/21/2020	DW	Teleconference	Spoke with client, re: Amended complaint	\$425.00	0.5	\$212.50
01/21/2020	AIJ	Meeting	Meeting w/ DAW, re: response to Am. Compl.	\$475.00	0.2	\$95.00
01/21/2020	DW	Meeting	Meeting w/ AIJ, re: response to Am. Compl.	\$425.00	0.2	\$85.00
01/22/2020	DW	Review	Reviewed Order granting pro hac vice admission	\$425.00	0.1	\$42.50
01/22/2020	DW	Research & Draft	Researched and drafted response to Amended Complaint	\$425.00	1.0	\$425.00
01/23/2020	DW	Teleconference	Spoke with Clerk's attorney, re: response to amended complaint	\$425.00	0.2	\$85.00
01/24/2020	DW	Various	Completed Answer/MTDismiss Amended Complaint; filed with Court; sent copy to Client	\$425.00	1.0	\$425.00
01/24/2020	DW	Draft	Drafted and filed Notice of Unavailability	\$425.00	0.4	\$170.00
01/24/2020	AIJ	Review	Reviewed final Answer/MTDismiss	\$475.00	0.2	\$95.00
01/27/2020	DW	Review	Reviewed Clerk's Answer/MTDismiss	\$425.00	0.3	\$127.50
02/03/2020	DW	Review	Reviewed Order setting hearing on Defs' MTDdismiss	\$425.00	0.1	\$42.50
02/03/2020	DW	Teleconference	Spoke w/ client, re: order setting MTDdismiss hearing for March 24, 2020	\$425.00	0.5	\$212.50
03/13/2020	DW	Review	Reviewed PI's Opposition to Aronberg MTDdismiss & Clerk's MTDdismiss	\$425.00	1.5	\$637.50
03/13/2020	AIJ	Review	Reviewed PI's Opposition to Aronberg MTDdismiss & Clerk's MTDdismiss	\$475.00	0.7	\$332.50
03/18/2020	DW	Teleconference	Reviewed email from PI's counsel, re: motion to continue hearing	\$425.00	0.1	\$42.50
03/18/2020	DW	Review	Reviewed PI's unopposed motion for continuance	\$425.00	0.1	\$42.50
03/18/2020	DW	E-mail	Emails w/ Clerk's counsel, re: PI's request to continue hearing	\$425.00	0.2	\$85.00
03/19/2020	DW	E-mail	Reviewed email from PI, re: agreed order & responded	\$425.00	0.1	\$42.50
03/20/2020	DW	Review	Reviewed Court's agreed order continuing hearing	\$425.00	0.1	\$42.50

04/21/2020	DW	Review	Reviewed order rescheduling hearing on Defs' MTDDismiss	\$425.00	0.1	\$42.50
04/21/2020	DW	Teleconference	Spoke w/ client, re: order rescheduling MTDDismiss hearing for June 3, 2020	\$425.00	0.3	\$127.50
04/21/2020	AIJ	Review	Reviewed Order rescheduling MTDDismiss hearing	\$475.00	0.1	\$47.50
05/22/2020	DW	Review	Reviewed order setting Zoom hearing, re: MTDDismiss	\$425.00	0.1	\$42.50
05/22/2020	DW	Teleconference	Spoke w/ client, re: hearing will be via Zoom	\$425.00	0.2	\$85.00
05/27/2020	DW	Review	Reviewed Clerk's filing; change of atty of record	\$425.00	0.1	\$42.50
05/27/2020	DW	Teleconference	Spoke with Clerk's new counsel, Nicole Fingerhut	\$425.00	0.2	\$85.00
05/28/2020	DW	E-mail	Reviewed PI's email, re: cases and authorities for MTDDismiss hearing; responded	\$425.00	0.1	\$42.50
05/29/2020	DW	Preparation	Began oral argument prep for 6/8 MTDDismiss hearing	\$425.00	1.0	\$425.00
06/01/2020	DW	E-mail	Reviewed email from Judge Marx's JA and responded	\$425.00	0.1	\$42.50
06/02/2020	DW	Various	Reviewed PI's 500+ page binder, re: MTDDismiss & prepped for hearing	\$425.00	3.0	\$1,275.00
06/02/2020	DW	E-mail	Drafted and sent email to client, re: MTD hearing tomorrow	\$425.00	0.1	\$42.50
06/03/2020	DW	Attend Hearing	Prepped for and attended MTDDismiss hearing via Zoom	\$425.00	1.5	\$637.50
06/03/2020	DW	Teleconference	Spoke w/ Client, re: debrief MTDDismiss hearing	\$425.00	0.5	\$212.50
06/03/2020	DW	E-mail	Emailed courtesy copies of Aronberg's Answer and MTDDismiss to Judge Marx	\$425.00	0.1	\$42.50
06/03/2020	DW	E-mail	Reviewed response from Client and replied	\$425.00	0.1	\$42.50
06/03/2020	AIJ	Attend Hearing	Attended MTDDismiss hearing via Zoom	\$475.00	1.0	\$475.00
06/03/2020	AIJ	Review	Reviewed order granting MTDDismiss w/ prejudice	\$475.00	0.3	\$142.50
06/08/2020	DW	Review	Reviewed Court's Order Granting Defendants MTDDismiss Count II w/ Prejudice	\$425.00	0.5	\$212.50
06/08/2020	DW	Various	Shared order w/ Client and spoke w/, re: result and plan going forward, re: 57.105	\$425.00	0.5	\$212.50
06/08/2020	DW	Various	Researched § 57.105 Fla. Stat.; drafted 57.105 demand letter and proposed motion for attorneys' fees/sanctions; Served PI's counsel with demand letter and proposed motion.	\$425.00	2.0	\$850.00
06/08/2020	AIJ	Meeting	Meeting w/ DAW, re: Order & 57.105	\$475.00	0.3	\$142.50
06/08/2020	DW	Meeting	Meeting w/ AIJ, re: Order & 57.105	\$425.00	0.3	\$127.50
06/08/2020	AIJ	Review	Reviewed 57.105 demand and proposed motion for sanction	\$475.00	0.2	\$95.00
06/10/2020	DW	Various	Reviewed notice of change of attorney, re: Clerk; called and spoke w/ new counsel Cynthia Guerra	\$425.00	0.3	\$127.50
06/23/2020	DW	Various	Reviewed PI's letter refusing to voluntarily dismiss amended complaint despite 57.105 demand; called and spoke w/ client, re: PI's refusal & next steps	\$425.00	1.0	\$425.00

06/23/2020	DW	E-mail	Sent client copy of PI's letter refusing to dismiss complaint	\$425.00	0.1	\$42.50
06/23/2020	AIJ	Review	Reviewed PI's letter refusing to dismiss Count I/Am. Compl.	\$475.00	0.1	\$47.50
07/01/2020	DW	Various	Spoke w/ client, re: filing of 57.105 motion for fees/sanctions; filed motion for attorneys' fees based on PI's failure to voluntarily dismiss amended complaint count 1	\$425.00	0.5	\$212.50
07/02/2020	DW	E-mail	Email to client, re: affidavit and summary judgment	\$425.00	0.1	\$42.50
07/08/2020	DW	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ evidence	\$425.00	0.7	\$297.50
07/08/2020	AIJ	Teleconference	Discussed w/ Client drafting and filing Motion for Summary Judgment and MSJ evidence	\$475.00	0.7	\$332.50
07/10/2020	DW	Draft	Created 1st draft of Aronberg Affidavit; shared w/ client	\$425.00	1.0	\$425.00
07/10/2020	AIJ	Various	Reviewed draft affidavit and discussed w/ DAW	\$475.00	0.3	\$142.50
07/10/2020	DW	Meeting	Discussed draft affidavit w/ AIJ	\$425.00	0.2	\$85.00
07/13/2020	DW	Review	Reviewed PI's Request to Produce, re: Clerk	\$425.00	0.1	\$42.50
07/13/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Request to Produce	\$425.00	0.2	\$85.00
07/27/2020	DW	Review	Reviewed PI's Amended Request to Produce, re: Clerk	\$425.00	0.1	\$42.50
07/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: Amended Request to Produce	\$425.00	0.1	\$42.50
07/28/2020	DW	Draft	Revised Aronberg affidavit	\$425.00	0.5	\$212.50
07/29/2020	DW	Draft	Finalized Aronberg Affidavit and sent to client	\$425.00	0.5	\$212.50
07/29/2020	DW	Research & Preparation	Research and prep for Motion for Summary Judgment	\$425.00	1.0	\$425.00
07/30/2020	DW	Various	Received executed Aronberg Affidavit	\$425.00	0.1	\$42.50
07/30/2020	DW	Draft	Began drafting Motion for Summary Judgment	\$425.00	2.0	\$850.00
08/05/2020	DW	Draft	Continued drafting Motion for Summary Judgment	\$425.00	1.0	\$425.00
08/07/2020	DW	Review	Reviewed email from Plaintiff attempting to set hearing on 57.105 motion for fees/sanctions	\$425.00	0.1	\$42.50
08/10/2020	DW	E-mail	Sent responsive email to PI's counsel	\$425.00	0.1	\$42.50
08/17/2020	DW	Meeting	Discussed draft MSJ w/ AIJ	\$425.00	0.2	\$85.00
08/17/2020	AIJ	Various	Reviewed draft MSJ and met w/ DAW to discuss	\$475.00	0.5	\$237.50
08/18/2020	DW	Draft	Finalized Motion for Summary Judgment; filed w/ court along with Aronberg affidavit	\$425.00	2.0	\$850.00
08/27/2020	DW	Teleconference	Spoke w/ Clerk's counsel, re: request to produce	\$425.00	0.1	\$42.50
09/01/2020	DW	Various	Reviewed PI's email and accepted conference call invite for 9/2/20	\$425.00	0.1	\$42.50
09/02/2020	DW	Review	Reviewed Clerk's response to request for production	\$425.00	0.2	\$85.00
09/02/2020	DW	Teleconference	Spoke w/ PI's counsel, re: dispute as to whether MSJ should be heard before 57.105 fee motion or vis versa - call was unsuccessful	\$425.00	0.5	\$212.50

09/02/2020	AIJ	Meeting	Discussed w/ DAW phone call w/ PI's counsel	\$475.00	0.2	\$95.00
09/02/2020	DW	Meeting	Discussed w/ AIJ phone call w/ PI's counsel	\$425.00	0.2	\$85.00
09/16/2020	DW	E-mail	Reviewed email from PI's counsel requested Aronberg to withdraw sanctions motion w/o prejudice	\$425.00	0.1	\$42.50
09/17/2020	DW	Meeting	Discussed w/ AIJ filing motion for CMC	\$425.00	0.1	\$42.50
09/17/2020	AIJ	Meeting	Discussed w/ DAW filing motion for CMC	\$475.00	0.1	\$47.50
09/18/2020	DW	Various	Drafted and filed motion to set case management conference; re: MSJ 1st or Fee hearing 1st	\$425.00	0.5	\$212.50
09/18/2020	DW	E-mail	Responded to PI's 9/16/20 email and refused to withdraw 57.105 motion; provided copy of motion to set CMC and available dates for hearing	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Reviewed PI's email insisting that 57.105 motion be withdrawn	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Replied to PI's counsel that the 57.105 motion for sanctions will not be withdrawn and asking for response, re: CMC	\$425.00	0.1	\$42.50
09/18/2020	DW	E-mail	Sent client copy of email exchange w/ PI's counsel; called and spoke w/ Client	\$425.00	0.5	\$212.50
09/22/2020	DW	Various	Drafted and filed Notice of Hearing on 10/15/20; set up Court Call; spoke w/ client, re: hearing date	\$425.00	0.7	\$297.50
10/02/2020	DW	Review	Reviewed PI's Memo of Law opposing Aronberg's 57.105 motion for fees/sanctions	\$425.00	0.7	\$297.50
10/02/2020	DW	Review	Reviewed PI's Response to Aronberg's request to schedule 57.105 motion for fees after MSJ	\$425.00	0.5	\$212.50
10/02/2020	AIJ	Review	Reviewed PI's Memo of Law opposing 57.105 motion	\$475.00	0.5	\$237.50
10/02/2020	AIJ	Review	Reviewed PI's Response to Aronberg's request to schedule 57.105 motion after MSJ	\$475.00	0.4	\$190.00
10/12/2020	DW	Research	Research caselaw & statutes, re: response to PI's Memo of Law	\$425.00	1.0	\$425.00
10/13/2020	DW	Research & Analyze	Continued researching caselaw, re: response to PI's memo of law	\$425.00	1.0	\$425.00
10/13/2020	DW	Draft	Created 1st draft of Response to PI's Memo of Law and shared w/ Client	\$425.00	4.0	\$1,700.00
10/13/2020	DW	Meeting	Discussed w/ AIJ caselaw and draft response to memo	\$425.00	0.5	\$212.50
10/13/2020	AIJ	Various	Reviewed draft MSJ, discussed draft w/ DAW and caselaw	\$475.00	0.7	\$332.50
10/14/2020	DW	Draft	Finalized and filed Response to PI's Memo of Law	\$425.00	1.0	\$425.00
10/14/2020	DW	Telephone	Spoke w/ client, re: memo of law	\$425.00	0.2	\$85.00
10/14/2020	DW	Telephone	Spoke w/ client again, re: response to memo of law	\$425.00	0.1	\$42.50
10/15/2020	DW	Attend Hearing	Attended hearing, re: Motion to Set CMC; called client to discuss	\$425.00	1.5	\$637.50
10/15/2020	DW	Various	Reviewed email and letter from PI, re: settlement. Sent copy to Client and called to discuss.	\$425.00	0.5	\$212.50

10/15/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/15/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.2	\$85.00
10/15/2020	AIJ	Various	Attended hearing, re: motion to set CMC; discussed w/ client	\$475.00	1.0	\$475.00
10/15/2020	AIJ	Various	Discussed PI's settlement proposal w/ DAW and then w/ Client	\$475.00	0.4	\$190.00
10/15/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/16/2020	DW	Various	Drafted and shared proposed order w/ PI's counsel	\$425.00	0.5	\$212.50
10/16/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.2	\$85.00
10/16/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.5	\$212.50
10/16/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/16/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/19/2020	DW	Various	Uploaded proposed order, re: CMC for Judge Hafele	\$425.00	0.1	\$42.50
10/19/2020	DW	Telephone	Spoke w/ client, re: PI's settlement proposal	\$425.00	0.2	\$85.00
10/19/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/19/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/19/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/20/2020	DW	Various	Reviewed email from PI, re: settlement; sent copy to Client and called to discuss	\$425.00	0.5	\$212.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	\$425.00	0.4	\$170.00
10/20/2020	DW	Telephone	Spoke w/ PI's counsel, re: settlement	\$425.00	0.1	\$42.50
10/20/2020	DW	Telephone	Spoke w/ client, re: settlement	\$425.00	0.1	\$42.50
10/20/2020	DW	Meeting	Discussed PI's settlement proposal w/ AIJ	\$425.00	0.2	\$85.00
10/20/2020	AIJ	Meeting	Discussed PI's settlement proposal w/ DAW	\$475.00	0.2	\$95.00
10/21/2020	DW	Various	Drafted and filed Motion to Set Hearing on Aronberg MSJ; drafted proposed order granting motion to set; checked court availability; emailed PI's counsel, re: choose date for hearing	\$425.00	1.0	\$425.00
10/21/2020	DW	Review	Reviewed Order, re: CMC unnecessary	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.2	\$85.00
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	Telephone	Spoke w/ client, re: media response	\$425.00	0.1	\$42.50
10/21/2020	DW	E-mail	Sent email w/ Aronberg statement to media	\$425.00	0.1	\$42.50
10/21/2020	AIJ	Meeting	Discussed media response w/ DAW	\$475.00	0.3	\$142.50
10/21/2020	DW	Meeting	Discussed media response w/ AIJ	\$425.00	0.3	\$127.50
10/22/2020	DW	Various	Reviewed PI's Notice of Dropping Aronberg as party; spoke w/ Client and AIJ, re: notice and next steps	\$425.00	0.5	\$212.50

10/22/2020	AIJ	Various	Reviewed PI's Notice of Dropping Aronberg as party; spoke w/ Client and DAW, re: notice and next steps	\$475.00	0.5	\$237.50
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Totals: 74.8 \$32,440.00

Time Entry Sub-Total:	\$32,440.00
Sub-Total:	\$32,440.00
Total:	\$32,440.00
Amount Paid:	\$0.00
Balance Due:	\$32,440.00

NOT A CERTIFIED COPY

EXHIBIT “G”

NOT A CERTIFIED COPY

EXHIBIT “G”

JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

THE LAW OFFICES OF
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November 26, 2019

Office of the State Attorney
15th Judicial Circuit
Attn: Jeanne Howard
401 North Dixie Highway
West Palm Beach, FL 33401

Re: CA Florida Holdings, LLC v. Dave Aronberg et al.
Case No.: 2019-CA-014681

Dear Mrs. Howard:

The purpose of this letter is to confirm that Jacobs Scholz & Wyler, LLC will represent you regarding the above-referenced matter.

Our fees will be contingent upon our success in this matter. You will not be liable or required to pay any monies to our office unless we are successful in our representation of you regarding the above-referenced litigation and receive a court order awarding attorneys' fees.

Accordingly, should we be successful in this matter, you agree to be billed for the time incurred in defending this action at our current hourly rates. At this time, our current hourly rates are: \$475.00/hour for senior partners, \$425.00/hour for other partners, \$375.00/hour for associate attorneys, and \$125.00/hour for paralegal time.

Furthermore, the attorneys' fees paid to our firm shall be calculated by the above listed hourly rates multiplied by the number of hours expended in defending this action or the total fee mandated and awarded by the court order herein, whichever is greater.

By signing below, you agree to the terms as set forth above. Please return a signed and dated copy of this letter to our office. If you have any questions or concerns, please contact our office. On behalf of the firm, we are proud to represent you in this matter.

Sincerely,

Douglas A. Wyler, Esq.
For the Firm


Client

6/4/2020
Date

Def.Ex.#10

NOT A CERTIFIED COPY

Def.Ex.#10

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,
Plaintiff,

CASE NO.: 50-2019-CA-014681-XXXX-MB
DIVISION: AG

v.

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida,

Defendants.

**RESPONSE AND MEMORANDUM OF LAW OF PLAINTIFF CA HOLDINGS, LLC IN
OPPOSITION TO STATE ATTORNEY DAVE ARONBERG'S AMENDED MOTION
FOR ATTORNEYS' FEES UNDER FLA. STAT. § 57.105**

Plaintiff, CA Florida Holdings, LLC ("Plaintiff"), publisher of *The Palm Beach Post*, submits this Response and Memorandum of Law in Opposition to State Attorney Dave Aronberg's ("Aronberg") November 9, 2020 Amended Motion for Attorneys' Fees under Fla. Stat. § 57.105 [DE 50] ("Amended Motion").¹ For the reasons set forth below, the Amended Motion should be denied, with prejudice.

INTRODUCTION

Aronberg's Amended Motion for sanctions is legally and factually insufficient to meet the strict standards of Fla. Stat. § 57.105. First, the Amended Motion fails as a matter of law because Aronberg did not comply with the required 21-day notice period (safe harbor provision) set forth

¹ While the Amended Motion references Fla. R. Civ. P. 1.525 in the introductory paragraph, that Rule sets forth a deadline by which "[a]ny party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion[,] but does not itself provide grounds to those fees or costs. Rather, the Amended Motion is based upon, and seeks relief of sanctions under, Fla. Stat. § 57.105.

in Fla. Stat. § 57.105(4) prior to filing his November 9, 2020 Amended Motion, which was materially different than, and raised new arguments and cited record evidence not included in his first Motion for Attorneys' Fees ("First Motion") served on June 8, 2020 and filed on July 1, 2020 [DE 35]. Unlike his First Motion, which was served via email upon Plaintiff's counsel 21 days before filing, Aronberg's Amended Motion was never served via any method of delivery before it was filed on November 9, 2020. Thus, Aronberg precluded Plaintiff from taking advantage of the statutory 21-day safe harbor provision to voluntarily dismiss its then-pending claim as to Aronberg before filing his Amended Motion seeking sanctions. Moreover, Aronberg filed his November 9, 2020 Amended Motion nineteen days *after* Plaintiff *had already dismissed him from the action* by filing a notice dropping Aronberg as a party on October 21, 2020 [DE 48]. Thus, at the time the Amended Motion was filed, it was moot.

As to the merits, the Amended Motion fails under Fla. Stat. § 57.105 because the claim at issue, Count I of Plaintiff's First Amended Complaint, is exactly the type of claim specifically excepted from sanctions under Section 57.105(3)(a), as the Plaintiff's claim was presented to the Court as a good faith argument for the interpretation of existing law or, at least, the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

Further, Aronberg, in his official capacity as the State Attorney, was a proper party defendant. Sanctions are inappropriate under Fla. Stat. § 57.105.

BACKGROUND

On January 17, 2020, Plaintiff filed a First Amended Complaint [DE 17] ("Complaint") against the State Attorney, Aronberg, and the Clerk of Court, Sharon Bock (now Joseph Abruzzo), for declaratory relief (Count I) and relief under Fla. Stat. § 905.27 (Count II), seeking to obtain

access to records from the grand jury proceeding and criminal prosecution of the late Jeffrey Epstein, a convicted sex offender, by former State Attorney Barry Krischer.²

On January 24, 2020, Aronberg filed an Answer to Count I and a Motion to Dismiss Count II [DE 22]. The Clerk of Court also filed an Answer to Count I and Motion to Dismiss Count II [DE 24]. In his Answer to Count I of the Complaint, Aronberg admitted that Plaintiff *The Palm Beach Post* sought but Defendants “have refused to provide access to testimony, minutes, and other evidence presented in 2006” in the grand jury proceeding. Aronberg Answer, ¶ 72 [DE 22].

On June 8, 2020, the Court entered an Order Granting the Defendants’ Motions to Dismiss Count II of Plaintiff’s First Amended Complaint With Prejudice [DE 33]. The Order specifically did not address the merits of Count I.

On July 1, 2020, Aronberg filed his First Motion seeking sanctions against Plaintiff under Fla. Stat. § 57.105. On June 8, 2020, prior to filing his First Motion, Aronberg’s attorney (Douglas A. Wyler, Esq.) served via email to Plaintiff’s counsel an unfiled copy of the First Motion with an enclosure letter. The enclosure letter was not filed along with the First Motion [DE 35], which has no exhibits.³ The enclosure letter accompanying the First Motion (but not the First Motion itself) alleged in conclusory fashion that Aronberg did not have possession, custody, or control of the grand jury documents sought by Plaintiff. See [DE 45] at Ex. A. Importantly, however, there was no evidence in the record to confirm this allegation, and the First Motion did not refute or even

² While much of the Epstein saga is a matter of public record, the public still does not know how former State Attorney Krischer used the grand jury process – and the secrecy that comes with it – to shield Epstein and his equally powerful and corrupt accomplices from the public and to justify Epstein’s lenient treatment. Access to the Epstein grand jury materials will reveal how the instrumentality of the grand jury was used in this case, which directly implicates the integrity of this State’s criminal justice process and is unquestionably a matter of vital public concern.

³ Aronberg later attached the June 8, 2020 enclosure letter as Exhibit A to his October 14, 2020 Response to Plaintiff’s Memorandum of Law in Opposition to the State Attorney’s Fla. Stat. Section 57.105 Motion (“Aronberg’s October 14, 2020 Reply”) [DE 45].

address the State Attorney’s ability to object to or impede attempts by the Plaintiff (or any other third party) to seek grand jury documents, whether through the Clerk of Court or other means.

At the time of Aronberg’s First Motion for sanctions, which he expressly admitted was a “place-marker” motion to the extent he ultimately prevailed on the merits,⁴ no motions for summary judgment had been filed and Aronberg had not served any affidavit(s) or identified any evidence relating to this matter or any allegations in the Complaint.

On or about August 18, 2020, Aronberg filed a Motion for Summary Judgment [DE 38] and an affidavit by Aronberg [DE 39] averring that he did not have possession or control over the Epstein grand jury materials and had no authority to demand that the Clerk of Court provide access to the materials. This was the first record evidence relating to Aronberg’s lack of possession or control of the grand jury materials sought by *The Palm Beach Post*. Notably, Aronberg’s affidavit still did not refute or address the State Attorney’s ability to object to or otherwise impede an attempt by Plaintiff to seek grand jury documents.

On October 21, 2020, Aronberg filed a motion to set a hearing on his Motion for Summary Judgment [DE 47]. On that same date, Plaintiff filed a Notice of Dropping Party as to Aronberg, dismissing him from the case [DE 48].

On November 9, 2020, Aronberg filed his Amended Motion for Attorneys’ Fees [DE 50], seeking sanctions under Fla. Stat. § 57.105 against Plaintiff relating to all fees and costs incurred by Aronberg after June 8, 2020. The Amended Motion, unlike his First “place-marker” Motion filed on July 1, referenced Aronberg’s August 18 Motion for Summary Judgment and exhibits. Importantly, neither Aronberg nor his attorney served a copy of the Amended Motion upon Plaintiff or its counsel at any time prior to filing the Amended Motion on November 9.

⁴ See Aronberg’s October 14, 2020 Reply [DE 45], at 5, 13.

The evidentiary hearing on Aronberg's Amended Motion for sanctions is set on the Court's ten-week docket between July 26 and October 1, 2021 [DE 56].

MEMORANDUM OF LAW

I. LEGAL STANDARD

Under Section 57.105, Florida Statutes, the Court may award reasonable attorneys' fees only if it finds that a party or its attorney knew or should have known that a claim or defense when initially presented to the Court or at any time before trial was not supported by material facts necessary to establish the claim or defense, or would not be supported by the application of then-existing law to those material facts. To award sanctions, "the trial court must find that there were no justiciable issues of law or fact and that the losing party's attorney did not act in good faith based on the representations of his or her client." *Siegel v. Rowe*, 71 So. 3d 205, 211 (Fla. 2d DCA 2011) (quotation omitted).

Indeed, "[w]here there is an *arguable basis* in law and fact for a party's claim, a trial court may not sanction that party under section 57.105." *Minto PBLH, LLC v. 1000 Friends of Florida, Inc.*, 228 So. 3d 147, 149 (Fla. 4th DCA 2017) (citing *Kowallek v. Rehm*, 189 So.3d 262, 263–64 (Fla. 4th DCA 2016)) (emphasis added). Courts must apply Section 57.105 "with restraint to ensure that it serves its intended purpose of discouraging baseless claims without casting a chilling effect on use of the courts." *MacAlister v. Bevis Constr., Inc.*, 164 So.3d 773, 776 (Fla. 2d DCA 2015).

Taking into account the amendments that broadened the statute after 1999, "Florida courts have continued to caution that section 57.105 must be carefully applied to ensure that it serves the purpose for which it was intended – to deter frivolous pleadings." *MC Liberty Express, Inc. v. All Points Servs., Inc.*, 252 So. 3d 397, 403 (Fla. 3d DCA 2018) ("Thus, an award of fees under section 57.105 requires more than the moving party succeeding in obtaining a dismissal of the action or

the entry of a summary judgment in its favor, . . . and a party does not need to have conclusive evidence to prove its case at the time of filing in order to avoid sanctions. Where a party reasonably believes the factual basis for its claim exists, it is entitled to proceed with its claims and seek to prove those facts. If attempts to prove those facts are fruitless, that is still not cause for sanctions where the party's initial belief was well-founded.") (internal citations omitted). Thus, a voluntary dismissal does not automatically equate to sanctionable conduct.

Before awarding sanctions, the trial court must make "explicit findings" that "the action was 'frivolous or so devoid of merit both on the facts and the law as to be completely untenable.' . . . This burden is a heavy one." *Id.* (internal citations omitted) (emphasis added). Additionally, the trial court's findings "must be based on substantial competent evidence presented to the court at the hearing on attorney's fees or otherwise before the court and in the trial court record." *Trust Mortg., LLC v. Ferlanti*, 193 So. 3d 997, 1001 (Fla. 4th DCA 2016). The trial court "must make an inquiry into what the losing party knew or should have known during the fact-establishment process, both before and after suit was filed." See *Chue v. Lehman*, 21 So. 3d 890, 891-92 (Fla. 4th DCA 2009).

II. ARONBERG'S AMENDED MOTION MUST BE DENIED FOR FAILURE TO COMPLY WITH THE 21-DAY SAFE HARBOR PROVISION IN FLA. STAT. § 57.105(4) AND BECAUSE THE AMENDED MOTION WAS MOOT WHEN IT WAS FILED

A. ARONBERG FAILED TO SERVE 21 DAYS PRIOR TO FILING THE AMENDED MOTION ASSERTING NEW ARGUMENTS, IN VIOLATION OF FLA. STAT. § 57.105(4).

Aronberg did not serve his Amended Motion at any time before filing it, and thus failed to comply with the 21-day notice provision set forth in Fla. Stat. § 57.105(4). The Amended Motion must be denied outright for that reason alone. Because Aronberg's Amended Motion raised arguments not raised in his First Motion, and cited evidence not in the record at the time the First

Motion was filed, Aronberg was required to independently comply with the 21-day safe harbor provision of Section 57.105(4). *Lago v. Kame By Design, LLC*, 120 So. 3d 73, 75 (Fla. 4th DCA 2013) (“We hold that if a party files a subsequent or amended motion for sanctions under section 57.105 and raises an argument that was not raised in the original motion for section 57.105 sanctions, the subsequent motion must independently comply with the twenty-one-day ‘safe harbor’ provision of section 57.105(4).”). His failure to do so requires denial of the Amended Motion. *See id.*

As the Fourth District Court of Appeal noted in *Lago*, “[t]o hold otherwise would allow a party to raise a new ground for sanctions in a subsequent motion under section 57.105 without giving the other side the opportunity to withdraw the offending claim or defense within twenty-one days after receiving notice of the new ground for sanctions.” *Id.* Because Aronberg’s barebones First Motion did not include the substantive arguments or cite any evidence now raised in the Amended Motion, Aronberg was required to serve the Amended Motion at least 21 days before filing same, in order to give *The Palm Beach Post* the opportunity to withdraw the count that remained against Aronberg (Count I). The Amended Motion was filed in violation of Fla. Stat. § 57.105(4) and must be denied.

B. THE AMENDED MOTION WAS MOOT UPON FILING.

On November 9, 2020, Aronberg filed the Amended Motion seeking sanctions against Plaintiff relating to Count I of the Complaint against him. However, the entire action, which necessarily included Count I, was dismissed as to Aronberg on October 21, 2020, *nineteen days before* Aronberg filed his Amended Motion. The Amended Motion was therefore moot at the time it was filed on November 9, 2020 and must be denied.

C. **ARONBERG'S SELF-DESCRIBED "PLACE-MARKER" FIRST MOTION FOR SANCTIONS WAS INSUFFICIENT AND DID NOT ABSOLVE ARONBERG OF THE REQUIREMENT TO SERVE THE AMENDED MOTION PRIOR TO FILING.**

Aronberg specifically admitted that his First Motion for sanctions under Fla. Stat. § 57.105 was filed as a “place-marker” to “notify Plaintiff of the State Attorney’s intention to seek sanctions should he prevail on the merits at a future substantive hearing.” See Aronberg’s October 14, 2020 Reply [DE 45], at 5, 13 (“The 57.105 Motion was filed . . . to further put the Plaintiff on notice that the State Attorney would seek sanctions should he prevail on the merits of the lawsuit.”).

The First Motion for sanctions was insufficient under Fla. Stat. § 57.105 when filed – it set forth no substantive arguments as to why Count I of the Amended Complaint was insupportable based on material facts in the record or the application of existing law to those facts. Rather, at the time the First Motion was filed, there was no evidence in the record supporting the statement by Aronberg’s counsel that it was impossible for him or the State Attorney’s Office to provide the documents sought in the Complaint.

Essentially, what Aronberg argued in his “place-marker” First Motion is that if he prevailed in defending the lawsuit, his attorneys’ fees should be awarded as sanctions against Plaintiff in his favor.⁵ There is no such mechanism as a “place-marker” motion for sanctions. Otherwise, any defendant could file a threadbare and conclusory “place-marker” notice of his intent to seek fees if he ultimately prevails, and then seek fees based on *later-filed* evidence and arguments..A motion for sanctions must be supported by the record evidence at the time it is filed. Because the First Motion was not so supported, it fails under the statute. Further, as explained above, service of the First Motion did not absolve Aronberg of his obligation to serve the Amended Motion on Plaintiff

⁵ Aronberg’s “place-marker” First Motion appeared to be based erroneously on a prevailing party standard (see Reply, at 5, 13), which is not the applicable standard for imposing sanctions expressly set forth in Fla. Stat. § 57.105.

through counsel prior to filing the Amended Motion. The First Motion cannot be a “place-marker” for the mandated service of the Amended Motion.

III. THE ISSUES RAISED IN COUNT I OF THE COMPLAINT WERE NOVEL AND COMPLEX AND PRESENTED A GOOD FAITH ARGUMENT FOR THE INTERPRETATION OF EXISTING LAW OR ESTABLISHMENT OF NEW LAW

Both counts of the Complaint raised novel and complex issues and were presented to the Court as a good faith argument for the interpretation of existing law, or at the very least, the establishment of new law, based on the material facts.

Where an issue is novel and complex, sanctions under Section 57.105(a) may not be imposed. *Grove Key Marina, LLC v. Casamayor*, 166 So. 3d 879 (Fla. 3d DCA 2015). Sanctions are plainly inappropriate under the statute where, as here, a good faith basis exists for a proposed interpretation of the law applied to the material facts. See Fla. Stat. § 57.105(1). Moreover, even in the absence of existing supportive law, if the claim at issue was presented as a good-faith argument for the extension or modification of existing law or the establishment of new law, with a reasonable expectation of success, the Court cannot sanction the party or its attorney. See *Key Biscayne Gateway Partners, Ltd. v. Village Council for Village of Key Biscayne*, 240 So. 3d 84, 87 (Fla. 3d DCA 2018) (reversing order of sanctions under 57.105 as good faith argument was presented for extension of existing law with reasonable expectation of success).

Indeed, Fla. Stat. § 57.105(3)(a) mandates that monetary sanctions shall not be awarded if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success. [Emphasis added.]

The claims in the Complaint presented a case of first impression. Indeed, in the motions and orders in this action, neither this Court nor the State Attorney or the Clerk cited to any case that previously resolved the issues presented relating to the media’s implied private right of action under Fla. Stat.

§ 905.27 (as alleged in Count II) or for declaratory relief to obtain grand jury materials (as alleged in Count I).⁶ The November 9, 2020 Amended Motion appears to relate only to Count I of the Complaint (although, as set forth above, no count was pending against Aronberg as of October 21, 2020). While Count II alleged that *The Palm Beach Post* has constitutional and statutory standing to overcome grand jury secrecy provisions “in furtherance of justice,” Count I, in contrast, did not allege a Section 905.27 private right of action. Instead, Count I sought declaratory relief under the U.S. Constitution’s First Amendment and the Florida Constitution’s analogous provisions.

The Constitutional provisions and interpretive case law, along with Fla. Stat. § 905.27, provided ample grounds for this Court to direct the release of the Epstein grand jury materials to *The Palm Beach Post* as a surrogate for the public, or require the Court to conduct an *in camera* examination of the same, to balance the public’s right to know through a free media with Florida’s qualified statutory interest in grand jury secrecy, as sought in Count I. Plaintiff relied upon such authorities in its prior filings and arguments in this matter to propose a good faith interpretation of existing law in support of its declaratory relief claim in Count I. See, e.g., First Amended Complaint [DE 17], at 15-19; Plaintiff’s Opposition to Aronberg’s Motion to Dismiss Count II of the First Amended Complaint [DE 26], at 10-20; Plaintiff’s Memorandum of Law in Opposition to Aronberg’s First Motion [DE 43], at 5-7. At the very least, Plaintiff provided a good-faith argument for the extension or modification of existing law or the establishment of new law, and thus sanctions are not appropriate under Fla. Stat. § 57.105(3)(a).

⁶ As to Count II, Plaintiff presented various reasoned arguments why Section 905.27 creates a private right of action in favor of the media on both constitutional and statutory grounds. See Plaintiff’s Opposition to Aronberg’s Motion to Dismiss Count II of the First Amended Complaint, at pp. 10-15.

Moreover, the material facts in the record at all times supported Plaintiff's claim against Aronberg. When Count I was filed, and throughout the litigation prior to Aronberg's dismissal, Plaintiff had a good faith basis for understanding that the State Attorney's Office had either access to, control over, or the ability to impinge, prevent, or thwart Plaintiff's attempts to obtain public access to the Epstein grand jury materials. *See, e.g., Ferlanti*, 193 So. 3d at 1000 (reversing trial court's award of 57.105 fees for naming husband as defendant in mortgage foreclosure proceeding, even though husband was never a signatory to mortgage or note and plaintiff made no such allegations, but there was at least some triable set of facts under which defendant could have been liable). The Amended Motion for sanctions should be denied based on the explicit provisions of Fla. Stat. §§ 57.105(1)(a)-(b) and (3).

IV. STATE ATTORNEY ARONBERG WAS A PROPER PARTY

While Aronberg alleged in the enclosure letter to his First Motion that his office did not have physical possession of the Epstein grand jury materials, he nevertheless argued in that same letter, relying on Section 905.27, that the Clerk should not produce them. By taking a position against disclosure, Aronberg, in effect, asserted his right to the secrecy of the Epstein grand jury materials. Stated another way, Aronberg claimed the statutory right for the State Attorney's Office to *prevent* access to the Epstein grand jury materials, a position which actually supported the propriety of naming him, in his official capacity, as a party defendant in this action.

As State Attorney, Aronberg was not named in this action solely as a custodian of the grand jury records. Rather, he was a defendant in his official capacity as his office has "as its *primary* interest the protection of its grand jury system." *In re Grand Jury Proceedings*, 832 F. 2d 554, 559 (11th Cir. 1987) (italics in original). In that case, the federal government petitioned a Florida State Attorney to turn over state grand jury transcripts. In opposition, the Broward State Attorney argued against their release, citing to Section 905.27. Later, a federal grand jury served a subpoena upon

the same State Attorney seeking grand jury transcripts. The State Attorney advised the federal court that he would produce the transcripts, thereby demonstrating that irrespective of physical possession, he had legal authority to obtain and deliver them pursuant to the subpoena. For these same reasons, State Attorney Aronberg, in his official capacity, was a necessary party, at the very least as a nominal defendant.

Further, even assuming the State Attorney did not have physical possession, Florida law does not prohibit his office from requesting the Epstein grand jury materials from the Clerk. Indeed, as the State Attorney is well aware, Florida Statutes Chapter 905 does not bar any State Attorney from accessing grand jury materials, even after a defendant has been convicted and sentenced.

CONCLUSION

Based on the foregoing, Plaintiff, CA Florida Holdings, LLC, respectfully requests that the Court deny State Attorney Dave Aronberg's Amended Motion for Attorneys' Fees in its entirety, and grant such other and further relief as the Court deems necessary or proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2021, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein.

/s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSON