Case No. 20240827-SC

IN THE

UTAH SUPREME COURT

KELY JOHANA SUAREZ MOYA AND LUZ MIRIAM MOYA SOLANO, Plaintiff / Appellees,

v.

TIMOTHY BALLARD, Defendant / Appellant.

Appellee's Responsive Brief

On appeal from the Third Judicial District Court, Honorable Robert Faust, District Court No. 240901556

Mark L. Eisenhut Melinda Evans CALL & JENSEN, APC 610 Newport Center Drive, 700 Newport Beach, CA 92660 meisenhut@calljensen.com mevans@calljensen.com (949) 717-3000 Cherise Bacalski (15084)

LOTUS APPELLATE LAW 51 W Center Street #103 Orem, UT 84057 cherise@lotusappellatelaw.com

(385) 204-1594

Counsel for Appellants

Counsel for Appellees

ORAL ARGUMENT REQUESTED

LIST OF PARTIES

Current parties to this appeal, with their appellate counsel, are as follows:

Appellees: Kely Johana Suarez Moya and Luz Miriam Moya Solano **Represented by**: Cherise Bacalski of Lotus Appellate Law; Suzette Rasmussen of All Utah Law PLLC; and Alan W. Mortensen, Christopher J. Cheney, and Joshua S. Ostler of Mortensen & Milne

Appellants: Timothy Ballard and Katherine Ballard

Represented by: Mark L. Eisenhut and Melinda Evans of Call & Eisenhut, APC, Thomas H. Bienert, Jr., Whitney Z. Bernstein, and Alexis Paschedag Federico of Bienert Katzman Littrell Williams LLP.

Parties not participating in this appeal, with their appellate counsel are as follows:

Appellants: Alejandro Monteverde, Business Sound Of Freedom Movie, LLC, Business Angel Studios, Inc., Rod Barr

Represented by: Melanie J. Vartabedian, Lauren P. Russell, and Robert S. Gutierrez of Ballard Spahr LLP; Roger Strassburg, and Gary R. Guelker of Resnick & Louis, P.C.

Formerly, also represented by: Trinity Jordan and Jordan E. Westgate of Dentons Durham Jones & Pinegar P.C.

Appellant: Business Operation Underground Railroad

Represented by: Tyson C. Horrocks, Gregory Saylin and Sarah Anne Hafen of Holland & Hart LLP; and Jennifer C. Terry of Reed Smith LLP.

Former parties to this appeal, with their appellate counsel are as follows: **Appellant**: VAS Portal, LLC

Represented by: Matthew Steward and Nathaniel Broadhurst of Clyde Snow.

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INTRODUCTION

This is an appeal from the district court's denial of a special motion to dismiss under UPEPA, Utah's version of the Uniform Public Expression Protection Act. UPEPA was designed to protect individuals from lawsuits that are intended to harass or silence them for exercising their free speech rights on matters of public concern; it was not, however, designed to quash claims with merit.

This suit has merit.

It concerns the destruction of Kely Suarez's reputation and life after Tim Ballard filmed his television show in Colombia.

Kely was a college student studying social work when she was invited to Tim Ballard's fake trafficking party. And yet she was portrayed as a monstrous professional child trafficker and stealer of children in the film *Sound of Freedom*.

Kely's suit is not a meritless effort to harass Tim. Kely admitted evidence of Tim's general personal and professional recklessness and his false statements about her. It is her claim that those involved in the writing and promotion of *Sound of Freedom*—including Tim—were reckless in their portrayal of her and that they should have investigated the truth of their statements about her before portraying her as a monstrous professional child sex trafficker in the *Sound of Freedom* film and marketing materials.

Tim claims that any differences between Kely's life and the movie's portrayal are not false in a way that matters. But, as the pay-it-forward marketing scheme at the end of the film contends,

"the most powerful person in the world is the storyteller."

The only question before this court is whether the district court erred in concluding that Kely had made a prima facie showing on her claims. But Tim fails to marshal or even acknowledge the evidence against him. He also fails to supplement the record with multiple missing exhibits the district court was privy to. Tim further loses on the merits.

This court should deny Tim's appeal and allow Kely to proceed to discovery.

ISSUES

Issue 1: Did the district court err when it concluded Kely made a prima facie showing as to each essential element of the causes of action?

Standard of review: This court reviews prima facie determinations

for correctness. *State v. Clara*, 2024 UT 10, ¶ 30, 546 P.3d 963.

Preservation: This issue is preserved. (R.915.)

Issue 2: Did the district court err when it did not grant Tim judgment as a matter of law?

Standard of review: Tim has not alleged an exception to the preservation requirement.

Preservation: This claim is unpreserved.

Issue 3: Is Kely entitled to attorney fees and costs on appeal because Tim's appeal presents only frivolous issues?

Standard of review: n/a

Preservation: n/a

STATEMENT OF THE CASE

1. Statement of Facts

1.1. Kely Suarez, a college student, is confused for another woman and arrested

In 2014, Kely Suarez was an underprivileged Colombian college student studying social work and trying to get her modeling career off the ground. (R.1230;1225.) She had seen the way poverty impacted her mother, and she wanted to make a difference. (R.1229.) She studied social work "to help people." (R.1229.)

Tim was filming. In 2014, Tim Ballard and his film crew were filming a sting operation called "Operation Triple Take" in Colombia. (R.1230.) Tim was gathering footage for *The Abolitionists*, an unsuccessful television show where Tim would film himself appearing as though he were taking down fake child sex traffickers. (R.216;1222.) Tim had promised the Colombian government that he would not entrap or induce anyone into criminal activity while he was filming. (R.1230.)

To get footage of himself conducting a child-trafficking raid for his show, Tim hit the streets where he met "El Feugo" and "Eduardo." (R.1230.) El Fuego and Eduardo would provide the children, and Tim would provide the money. (R.1230.) Tim gave Eduardo money, and an ad on Facebook told kids they would be paid to come to a party on an island—and that they would

be paid even more if they had sex. (R.1230.) According to Colombian court records, Kely Suarez was not at that meeting. (R.1230.)

The missing woman trafficker. Two days later, Tim asked for more children and held a meeting with a person named "Samuel" and a woman named Natalie Taborda Atencio—or "Naty." (R.1231.) Naty claimed she could bring an additional fifteen high school students, and Samuel claimed that he could bring an additional 32 children, because he worked at a modeling agency. (R.1231.) Kely Suarez was one of the people Samuel solicited. (R.1232.) According to Colombian court records, Kely Suarez was also not at that meeting. (R.1231.)

Kely is solicited under false pretenses. Samuel approached Kely and told her that a rich North American would be at a party and was looking for a young black girl to help her with future projects. (R.1232.) Kely believed she would be paid to attend the party, and she decided that making this connection with a rich North American might be a way for her and her mother to get out of poverty. (R.1232.)

Kely agreed to go with Samuel to an apartment so that Samuel could show Tim that he had young black girls for the North American to meet. (R.1232.) She later attended a meeting on the beach to show them that they had "well-groomed" young women to meet the North American. (R.1232.) At that meeting, Tim began explaining that the North American wanted to have

 $\mathbf{5}$

anal sex with a young black girl. (R.1232.) Kely only discovered there that she was expected to have sex, and she was also shocked to hear them talking about others having sex with virgins. (R.1232;982.)¹

Kely attends but does not invite others. Prostitution is legal in Colombia, so Kely could legally agree to have sex with the North American. (R.1232.) Kely rode on the boat to the party with the other party attendees. (R.1233.) None of the individuals there were sex slaves or had ever been trafficked; they were all invited by Facebook, Samuel, Naty, or El Fuego; Kely invited no one. (R.1233;1473.)

On the boat, Kely met Pedro, a 17-year-old man who attended the party with his boyfriend; they had discovered the party on Facebook and had never heard of Kely Suarez. (R.1234.) Neither Pedro nor any of the kids there had been sexually trafficked. (R.1234.)

Kely is arrested in place of the other woman. When Kely got to the island, she saw Samuel and took a seat at the table next to him, because she knew him. (R.1234.) After that, Tim walked up to the table and handed

¹ In a short clip without context, Kely asked that they be delicate, because she did not want to be "violently raped." (R.1232–33; 982.) In the footage, you can see her laugh at that point because she was "horribly scared." (R.1233.) She explained that laughing is a nervous habit and that she was nervous. (R.1233.) In the video, her smile quickly disappears, and she begins nervously grooming herself. (R.982.) She does not smile after that. This clip does not show the point at which she learned the American wanted to have anal sex. (R.982.)

Samuel money, and CTI agents swarmed in and arrested Kely and the others at the table. (R.1234.) During the arrest and at her trial, the investigator confused her with the missing female who agreed to bring highschoolers. (R.1235.)

Kely is released and graduates from law school. Kely was imprisoned for eighteen months before being set free. (R.31;238,241.) She was very "confused and traumatized" by these events. (R.1234.) She has since graduated from law school. (R.404.)

1.2. Tim seeks stardom through OUR, a proselytizing organization established to increase acceptance of Mormons through filming Tim doing heroic things

Kely admitted evidence supporting a finding that Tim's sting operation in Colombia was not a legitimate enterprise and that OUR was established to create celebrity for Tim to increase a church's popularity.

The Fisher Declaration. Ryan Fisher was a close associate of Tim's during the founding of OUR. (R.1216.) Ryan began inviting Tim to appear on his local television show in 2011, and it was around that time that Elder M. Russell Ballard of The Church of Jesus Christ of Latter-day Saints discovered Tim. (R.1216–17.)

Ryan became aware that Elder Ballard planned to make Tim a household name to increase Mormonism's chances of being accepted by evangelicals. (R.1218.) Elder Ballard and Tim came up with the idea for Operation Underground Railroad (OUR), a non-profit organization that would fund the filming of media to put Tim's image and heroism front and center into American households. (R.1218.) The proselytizing origins of OUR's founding were never made known to donors or volunteers. (R.1219.)

After Tim's show *The Abolitionists*, was released, Tim's techniques were widely condemned as "reckless" and "dangerous." (R.1222;31,404.) Tim and OUR "were creating a market for child exploitation wherever they went, ... taking advantage of desperate people in desperate situations." (R.1222.)

Ryan was invited to a private meeting with Tim and Elder Ballard to receive an "unofficial calling" to make another television show with a national audience. (R.1222.) Elder Ballard gave Tim a special blessing, and Tim began calling himself "The Prophet of the American Covenant." (R.1224.) Tim believed he would become an important political figure and began seeking "wealth, fame and future political office" and suffered from "delusions of grandeur" believing he would become "God's chosen prophet" one day. (R.1226.)

Ryan attests that the Cartagena Raid was a "well-played cosplay fraud, fictional situation, performed by actors, funded by wealthy members of the Mormon Church enlisted by Elder Ballard with the primary intention to provide Tim 'a sizzle-real' or the perception of saving children so he could

gain money and fame," fulfilling Elder Ballard's vision of extending an olive branch to evangelical homes across America. (R.1225.)

He declares that Kely Suarez is an innocent bystander "lured to the island party" with others who were "scared to death," and "that they had not previously been sex trafficked." (R.1226.) Ryan also heard that Tim threatened many OUR employees to "keep them silent" during his first criminal investigation. (R.1225.)

Affidavits and exhibits from other OUR employees similarly call into question Tim's good intentions. (R.1331;1352(filed under seal);1353;1391 (filed under seal);1400.)

The Borys Declaration. Celeste Borys is Tim's former personal assistant. (R.1332.) Celeste explains that "Ballard had Colombian authorities arrest Kely Suarez because he needed a 'successful OP' in order to bring in donations and have sizzle for his films. He put her in prison in Cartagena, without any regard for her life." (R.1332.) "Tim was obsessed about Kely Suarez and how she could impact how the public viewed *The Sound of Freedom.*" (R.1336.) Borys had "read the script of *Sound of Freedom*," and the script contained "Ms. Suarez's actual name (Kelly sic), rather than Katy, ... 48 times" and that "The name 'Kelly Suarez,'... is used 2 times in the script." (R.1336.) Borys explains, "At the beginning of 2023, Ballard desperately wanted to release the movie *Sound of Freedom* through Angel Studios, but Angel Studios would not distribute it because Ballard and OUR were under criminal investigation by the Davis County Attorney's Office." (R.1336.) Borys was at meetings where Tim and others, including representatives from Angel Studios, OUR, Janet Russon, some of the Harmon brothers, and Alejandro Monteverde discussed a smear campaign against the Davis County Attorney and that "Sean Reyes would end the Davis County Investigation." (R.1337.) They also discussed Angel Studios' "pay-it-forward" marketing scheme. (R.1337.) Tim told her many people asked Angel Studios why they would partner with him. (R.1340.)

In April, OUR hired a PR consultant to begin the smear campaign. (R.1339.) That same month, a female operator accused Tim of sexual misconduct. (R.1339.) In May, Tim and Angel Studios hired a publicist to ensure that their reputations would not be hurt amid the allegations. (R.1342.) Borys attests that Tim was fired from OUR for sexual misconduct before *Sound of Freedom* was released. (R.1347.)

The Johnson Declaration. Melissa Cannon Johnson also provided an affidavit. (R.1400.) She tells a story of falsehoods associated with the Haiti operation, which she was on. (R.1401.) She calls that operation a "publicity

stunt" that "was a fraud designed only to raise money" that made her feel "disgusted." (R.1401.)

Tim told her a rich donor who gave attentions to a young girl was "sexually disturbed," but they kept him in involved because they needed his money. (R.1403–04.) She felt she needed to detach herself from Tim and OUR because they were frauds. (R.1405.)

Johnson also warned Angel Studios about Tim and the veracity of the movie before it came out. (R.1406–07.)

1.3. Sound of Freedom movie cowriters base their villain on Tim's lies about Kely Suarez and name their character "Katy Juarez"

Sometime after 2015, Tim became acquainted with Rodd Barr and Alejandro Monteverde, who were writing a movie about child sex trafficking. (R.703;714.) Mr. Barr and Mr. Monteverde are the writers of *Sound of Freedom*. (R.714.)

According to Mr. Monteverde, Tim's account of his Colombian raid inspired him to write a "gripping, expressive story," and he and Mr. Monteverde used "fictional elements to explore the ugly truth about child sex trafficking." (R.704.) Mr. Monteverde admitted that the Katy Juarez character is "inspired by what Mr. Ballard shared" about her and the 2014 CBS News Story "about an unnamed former beauty queen." (R.705.) Mr. Barr and Mr. Monteverde admitted that they read many of the articles attached to the exhibits at that time. (R.716,707.) Many of those articles maintain Kely's innocence and explain that she was released from prison. (R.800;895;883.)

Mr. Monteverde and Mr. Barr believed that having a female trafficker could be a "dramatic gimmick." (R.706.) Mr. Barr and Mr. Monteverde claim that the beauty queen's name Katy Juarez is "entirely made up." (R.706.)

1.4. Sound of Freedom is released as a docudrama based on a true story and Tim uses Kely's name to promote it

Sound of Freedom movie was released on July 4, 2023. (R.421;722.) The characters Tim Ballard and Katherine Ballard are both named after Tim Ballard and Katherine Ballard. (R.707.) The film's villain was named "Katy Juarez." (SOF.Exh.1.01:48:38:00.) Her trafficker alias was "Giselle"; however, her identity was revealed dramatically as "Katy Juarez" later on.

(SOF.Exh.1.01:48:06:00-01:49:17:00.)

At the beginning of the movie, the caption

BASED ON A TRUE STORY

appears for around 6 seconds. (SOF.Exh.1,01:00:19:17.) No other caption appears at the beginning, including the disclaimer (R.795;708) (AOB.4).

Kely Suarez's face also appears in the movie. (SOF.Exh.1,01:00:19:17.) The screen freezes on Kely Suarez's face during footage. (*Id*.02:58:58:06.) Another face is blurred out; the screen focuses on Kely.

The film then claims that human trafficking is a \$150 billion a year business. (*Id*.02:59:46:00.) The actor who portrayed Tim appears on screen and asks everyone to pull out their phones and pay for someone else's ticket in Angel Studios' "pay-it-forward" scheme. (*Id*.)

Promotional efforts. The marketing efforts associated with the film's release claimed that Kely Suarez was a real trafficker. (R.1236–37.) And Tim represented to the public repeatedly that Kely Suarez was a real trafficker. (R.1840;1843–44.)

On *Sound of Freedom* podcast, Tim says that Kely Suarez in the film is a "real person." (R.1838,40.) And Tim promoted the film saying "**Miss Cartagena, Katy Juarez in the film, real person** who was arrested" and

that

she was giving scholarships to these kids. . . . she eventually desensitizes them with . . . drugs, pornography, and pretty soon, the other part of this deal is that you have sex with these Americans who come down. . . . And boom, these kids are gone. Gone. (R.1843–44.) Tim made similar statements in Colombia on Spanish speaking television channels. (R.1840.) 2

Kely's affidavit before the court includes a screen shot alleged to be from Angel Studios saying that "Giselle" was based on "Kelly Johana Suarez" "who had 'exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade." (R.1236.)

2. Procedural background

2.1. Kely receives death threats and files a complaint against Tim, Angel Studios, SOFM, the writers of *Sound of Freedom* and others alleging defamation

Kely and her mother filed a complaint in the district court on February 23, 2024, and filed an amended complaint later alleging seven causes of action against all defendants: (1) defamation; (2) injurious falsehood; (3) intentional interference with economic relations; (4) intentional infliction of emotional distress; (5) negligent affliction of emotional distress; (6) invasion of privacy for false light; and (7) invasion of privacy for misappropriation of Kely's name and likeness. (R.435–441.)

² Neither appellant entered these exhibits into the record as evidence.

Kely integrated a wide variety of character evidence and evidence of defamation against Tim and Angel Studios into her complaint, showing false and public statements that Kely was a trafficker:

- Headlines calling Kely a beauty queen running a child prostitution ring (R.378–79;400–02);
- Marketing photo mockup of Kely Suarez next to character Katy Juarez, played by Yessica Borroto (R.385);
- A photo of Kely appearing in her neighborhood ambassador competition—not a beauty competition (R.389);
- Screen shots of texts between Jeff Harmon—owner of Angel Studios—and a former employee warning him about Tim's bad character and that the movie *Sound of Freedom* was not factual "in the least" (R.423);
- A screen shot of Angel Studios' blog stating that the "Giselle" character was based on "Kelly Johana Suarez, a former beauty pageant queen and model known as 'Miss Cartegena'... who exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking" (R.427).

Kely also attached the following evidence:

- Exhibit F: Colombian raid victim Pedro Florez Ramos declaration that he was never previously trafficked, that he had only had sexual relations with his boyfriend, who was with him on the island according to his Oct. 14, 2014 interview. (R.120.) The Facebook party said he would be paid 400,000 pesos to attend. The ad said that anyone who would have sex with the Americans would receive one million pesos. He did not know Kely Suarez before the party, and she did not invite him to the party. He receives money now from OUR for his own nonprofit organization. (R.123.)
- **Exhibit G**: CTI Agent Elkin's Spanish conviction for corruption and taking bribes. (R.160.)

- Exhibit H: Tim claims Kely is released from prison due to corrupt judges. Tim claims that Kely is selling them virgins for \$1,000. (R.213;231.)
- **Exhibit J**: Texts showing that Tim using a letter from an "AG" on government letterhead to threaten an operative in Haiti. (R.298–301.)
- **Exhibit L**: Tim's texts with female OUR Employee where Tim explains that Employee needs a Brazilian wax, sends Employee "Orgasm face" emojis, and the like. (R.327–64.)

2.2. The Special Motion litigation under UPEPA

In his Special Motion under UPEPA, Tim Ballard alleged that Kely failed to state a claim on which relief can be granted and that she could not make a prima facie showing based on the Spear Fund Joint Statement. (R.915.) <u>Tim adopted Angel Studios' arguments regarding whether Kely could</u> <u>make a prima facie showing based on *Sound of Freedom*. (R.923.) Tim also argued that she could not make a prima facie showing on each element of her tort claims. (R.921.)</u>

Kely Suarez Opposed Tim's Special Motion but did not dispute that UPEPA applied. (R.1191.) Instead, Kely argued that she had made her prima facie showing. (R.1202.) Kely attached the following exhibits to her Opposition in the district court:

• Exhibit A: The Fisher Declaration. (R.1214.)

- Exhibit B: Declaration of Kely Johana Suarez. (R.1228.) Attachment A: ***Additional declaration of Celeste Borys including private HR complaint filed under seal, not in appellate record.*** R.1396–1399); Attachment B—I.
- Exhibit C: The Borys Declaration. Exhibit A: Filed under seal; Exhibit B: Texts between female operative and Tim (R.1354).
- **Exhibit D**: Declaration of Jane Doe, filed under seal ***not in appellate record.*** (R.1391.)
- Exhibit E: Declaration of Alan Mortensen, attesting that translations of Kely's attachments are forthcoming; attesting that video clips are true and accurate versions of video clips that he either received or downloaded (R.1394). VIDEO CLIPS. Hand delivered to court, ***not in appellate record.*** (R.1395.) The Johnson Declaration: (R.1400).

2.2.1. The district court hears argument on the motions

At the hearing, Kely showed the court various clips attached as exhibits to her Opposition, arguing to the district court that she had made her prima facie showing. (R.1835–54.)

Both Angel Studios and Tim argued that any difference in the story the movie told from reality was immaterial. Tim argued "it has to be false in a way that mattered." (R.1877.) Angel Studios justified it as a "dramatic gimmick." (R.1857.)

Kely responded, "I would just point out that Kely Suarez, she's not a gimmick." (R.1868.) "In this case, it really has tremendously impacted her,

and we believe that we have presented a prima facie case of defamation. . . ." (R.1868.)

2.2.2. The district court denies Tim's Special Motion

The district court took the case under advisement and published its Memorandum Decision and Order almost a week later. (R.1734–39.) It granted Katherine Ballard's special motion to dismiss but denied Tim's motion. (R.1737–38.)

The district court restated Tim's arguments, including the argument that the court could not consider anything but the plaintiffs' complaint in making its ruling under UPEPA. (R.1737–38.) The court noted several clips that Kely forwarded in her Opposition motion and played for the court at argument. (R.1737.)

Citing UPEPA subsection 106, the court concluded that, after reading the motions and considering the evidence and arguments of counsel, the causes of action "state viable claims for relief which raise genuine issues of material fact, thus precluding a ruling as a matter of law." (R.1738.) The court next ruled that "the causes of action state a prima facie case as to each essential element, and further that the statements of Tim were made with knowledge that such was false or with reckless disregard of whether it was false or not." The court found specifically that "Tim was integral to the Colombian raid" and "was aware of the veracity of the numerous statements made." (R.1738.) The court, thus, denied Tim Ballard's motion to dismiss under UPEPA. (R.1738.)

Tim appealed. (R.1801.)

SUMMARY OF THE ARGUMENTS

Tim raises three issues on appeal. Each of the issues goes to the correctness of the district court's decision to deny Tim's UPEPA motion.

First, UPEPA applies. Kely has always agreed that UPEPA applies.

Second, Tim raises a number of issues attempting to attack the court's conclusion that Kely made a prima facie showing. A prima facie showing is enough evidence to allow the fact-trier to infer the fact at issue, based on what seems to be true on first examination. Like Angel Studios, Tim argues that Kely cannot show that *Sound of Freedom* was about her, that it was false, or that he had the requisite mental state to show actual malice.

But Tim cannot prevail, both because Kely made a prima facie showing as to each essential element, and because Tim failed to show that—under UPEPA section 106—her evidence was not admissible. He further failed to marshal the evidence against him. And he failed to supplement the record with missing evidence in support of Kely's causes of action. This alone precludes reversal.

Third, Tim's summary judgment claim is unpreserved and inadequately briefed. He cannot show that he established below that he should have prevailed—especially where he rebuts Kely's claim of falsity.

This court should affirm and allow Kely to proceed to discovery.

ARGUMENT

1. The district court correctly concluded Kely made a prima facie showing

The district court correctly denied Tim's Special Motion under UPEPA when it concluded Kely had met her prima facie burden as to each essential element of the causes of action she alleged. This court reviews prima facie determinations for correctness. *Clara*, 2024 UT 10, ¶ 30.

The district court correctly concluded that Kely met her prima facie burden on all her claims, and Tim has not shown otherwise. (R.1738.)

Tim contends that the district court could not rely on the video clips Kely admitted along with an affidavit in her Opposition. (AOB.58.) But Tim cannot show this was error because he failed to cite the controlling authority: section 106 of UPEPA and rule 56 of the Rules of Civil Procedure, adopted by UPEPA. (AOB.58.) Tim's brief altogether failed to note that the court must consider all the evidence and responses before it in making its determination under section 106. Tim has not argued that the district court abused its discretion in admitting any evidence, that the district court admitted evidence under the wrong legal standard, or that the district court's findings of fact were clearly erroneous. (AOB.48–53.) Kely's evidence was admissible.

Tim also argues that neither the Spear Fund Joint Statement nor Sound of Freedom (AOB.57) can provide a basis for Kely's defamation claim. He argues Kely cannot show that they are about her (AOB.46–47), Kely cannot show that Sound of Freedom is false, (AOB.47), and Kely cannot show actual malice. (AOB.48–53.)

Even though Tim makes a variety of arguments, Tim never attacks the district court's ruling head-on by recognizing or marshaling the evidence against him and explaining how, with all the inferences in Kely's favor, her evidence is insufficient to withstand the low prima facie standard. This alone defeats his claim.

Tim also asks this court to find that the district court erred in concluding Kely made a prima facie showing on her tort-based claims. (AOB.53–58.) *First*, Tim has failed to ensure that the record contains all evidence before the district court. Multiple exhibits are missing. There is, thus, no possible way for this court to rule in Tim's favor. *Second*, in Tim's arguments, he failed to recognize and marshal the evidence in favor of the district court's ruling. And *third*, Kely did make her prima facie showing of the elements Tim contests.

Tim asks this court to overrule the district court in a number of ways, but provides this court no way to do so. Even so, Kely will show that she made her prima facie showing.³

1.1. Tim cannot prevail on any of his prima facie claims, because he has failed to provide an adequate record on appeal

Tim asks this court to find that the district court erred in concluding Kely made a prima facie showing of defamation. (AOB.39–40.) But this claim fails at the outset, *first*, because Tim has not presented this court with an adequate record on direct review; and *second*, because absent a full record, this court will presume the missing evidence supported the trial court's decision. That is dispositive here.

³ Tim complains that Kely could not amend her complaint once a special motion was filed. (AOB.31.) But he fails to point to an amended complaint filed after either he or Angel Studios moved to dismiss under UPEPA. (AOB.31–32.) That is because such a complaint does not exist. This argument is, therefore, unnecessary for this court to consider.

Tim also makes a number of irrelevant arguments that certain character evidence is unable to provide the basis of Kely's defamation claim. (AOB.44 (trial testimony); AOB 45 (photo of Tim in armor).) But Kely never relied on that character evidence to support her causes of action—and she told Tim that in her Opposition. (R.1531–32.) Those arguments are, therefore, also unnecessary for this court to consider.

First, Tim has failed to ensure that the record contains all evidence before the district court. Multiple exhibits are missing. (*See supra* § 2.2 and fn. 2.) There is, thus, no way for this court to rule in Tim's favor. ⁴

Here, the record is missing evidence the district court could consider. It is appellant's responsibility to complete the record on appeal. *State v. Burnside*, 2016 UT App 224, ¶ 55 (noting that "the burden is on the appellant to provide an adequate record, . . . and given the presumptions that apply in the absence of a complete record, [appellant] simply cannot show that he was harmed by any error of court" (cleaned up). Indeed, "[w]hen crucial matters are not included in the record, the missing portions are presumed to support the action of the trial court." *Id*.

When an appellant argues that the evidence fails to support a prima facie showing of all essential elements of the causes of action, the appellant must ensure that all the evidence is available to the Court of Appeals for review. In such cases, the exact evidentiary picture before the court is a "crucial matter not included in the record." *See id*.

Here, a number of video clips are missing, as well as private exhibits sealed in the district court. (R.1391(exhibit filed under seal);1393(video clips);

 $^{^4}$ This also applies to Tim's ability to contest Kely's prima facie showing of her other tort-based claims. (*See infra* § 1.3.4.)

1396–1399(exhibit filed under seal).) These omissions prevent this court from ruling in favor of Tim.

And *second*, absent a full evidentiary picture, this court will presume the missing evidence supported the trial court's decision. *Id*.

Third, Tim failed to marshal the evidence in favor of the district court's

ruling against it. (See infra §§ 1.3.2, 1.3.3, 1.3.4.)

Tim's combined errors regarding the state of the evidence and

argument before this court are dispositive.

For the above reasons, Tim cannot prevail.

1.2. A prima facie showing is enough evidence to allow the fact-trier to infer the fact at issue

When a party moves for dismissal under UPEPA, the district court shall deny a special motion on "either" of three grounds:

- (1) The plaintiff fails to establish a prima facie showing as to each essential element of the cause of action; or
- (2) The defendant establishes that the plaintiff failed to state a cause of action upon which relief can be granted; or
- (3) The defendant establishes that there is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law in whole or in part.

Utah Code Ann. § 78B-25-107(1)(c)(i)–(ii) (emphases added). The burden switches at every stage. Thus, the district court here could have denied Tim's Special Motion for any one of these three reasons. And indeed, the district court cited all three independent bases for its denial:

- (1) "the causes of action state a prime facie case as to each essential" element; and
- (2) "the causes of action state viable claims for relief," and
- (3) those claims for relief "raise genuine issues of material fact, thus precluding judgment as a matter of law."

(R.1738.)

The district court correctly denied Tim's Special Motion under UPEPA when it concluded Kely had met her prima facie burden as to each essential element of the causes of action she alleged. (R.1738.) A prima facie showing is enough evidence to allow the trier of fact to infer the fact at issue, based on what seems to be true on first examination.

Under UPEPA, a district court will dismiss a complaint with prejudice if the plaintiff "fails to establish a prima facie case as to each essential element of the cause of action." Utah Code Ann. § 78B-25-107(1)(c)(i).

The Utah Supreme Court recently explained that the term "prima facie showing" is a "frequently used term of art that generally means" "sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue." *Clara*, 2024 UT 10, ¶ 33 (*citing Prima Facie* BLACK'S LAW DICTIONARY (11th ed. 2019). A party makes a prima facie when it

produces "enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." *Prima Facie Case*, BLACK'S LAW DICTIONARY (11th ed. 2019). "This standard requires a party to clear a low bar by adducing at least some evidence on each element of a claim." *Clara*, 2024 UT 10, ¶ 34.

The Court also explained that the term's meaning is informed by the procedural posture in which it arises. *Clara*, 2024 UT 10, ¶ 33; *compare Bair* v. *Axiom Design*, *L.L.C.*, 2001 UT 20, ¶ 14 (explaining standard in <u>trial</u> context), *abrogated on other grounds by A.S. v. R.S.*, 2017 UT 77, 416 P.3d 465; *with Blank v. Garff Enters. Inc.*, 2021 UT App 6, ¶ 26 (explaining standard in <u>summary judgment</u> context).

Because a special motion to dismiss under UPEPA is brought <u>before</u> <u>discovery</u>, under UPEPA, a plaintiff must present enough evidence of the essential elements to entitle her to proceed to discovery. Utah Code Ann. § 78B-25-103. Thus, the question here is whether reasonable inferences available from the evidence could support the elements of the causes of action sufficient to allow the party to proceed to discovery.

The plain language of the statute requires no more.

It is important to note that the legislature understood that UPEPA cases are First Amendment cases—and the legislature still required no more than a prima facie showing on each element. Utah Code Ann. § 78B-25-107(1)(c)(i).

The legislature notably omitted any additional burden of proof pertaining to the plaintiff's prima facie showing of *any* element. "When looking at the plain language," Utah courts "deem all omissions to be purposeful." *Colosimo v. Gateway Community Church*, 2018 UT 26, ¶ 46 (cleaned up). ⁵ Courts may not "infer substantive terms into the text that are not already there." *Berrett v. Purser & Edwards*, 876 P.2d 367, 370 (Utah 1994). The pertinent language here requires a plaintiff to "establish a prima facie case as to each essential element of the cause of action." Utah Code Ann. § 78B-25-107(1)(c)(i). Having omitted any additional burden of proof on a plaintiff's "prima facie" showing on her cause of action, the legislature left no room for courts to read one into a plaintiff's burden here.

Thus, a prima facie showing under UPEPA's plain language depends on whether a party has produced enough evidence to allow the fact-trier to infer the fact at issue, based on what seems to be true on first examination. *Clara*, 2024 UT 10, ¶ 33. "[T]his standard requires a party to clear a low bar by adducing at least some evidence on each element of a claim." *Id*. ¶ 34.

⁵ The legislature knows how to add additional burdens of proof. *But see*, *e.g.*, Utah Code Ann. § 76-2-309(3)(b) (noting that "after the defendant makes a prima facie claim of justification, the state has *the burden to prove by clear and convincing evidence* that the defendant's use . . . was not justified.") (emphasis added).

The question is thus whether the inferences available from the evidence could support the elements of the causes of action sufficient to entitle a plaintiff to proceed to discovery.

1.3. Kely made a prima facie showing of all essential elements of her claims

The district court correctly concluded "the causes of action state a prime facie case as to each essential element." (R.1738.)

"To state a claim for defamation," a plaintiff must show "at least some evidence" "that defendants published the statement concerning [her], that the statements were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault, and that their publication resulted in damage." *Keisel v. Westbrook*, 2023 UT App 163, ¶ 33, *cert. denied*, 554 P.3d 1097 (Utah 2024).

Tim contests only three of the above elements—about or "of and concerning," falsity, and degree of fault—and Kely addresses only those three here. ⁶

1.3.1. The film is about Kely Saurez

⁶ The Spear Fund statement presents a claim of defamation by implication or omission. In *Keisel v. Westbrook*, the Utah Court of Appeals recognized defamation by implication. 2023 UT App 163, ¶ 43, 542 P.3d 536, cert. denied, 554 P.3d 1097 (Utah 2024). This is not a separate cause of action, only an alternative way of proving defamation.

Tim's claims challenging the Spear Fund statement fail for the same reason as they fail challenging *Sound of Freedom*. (AOB.46–53.)

To show that the portrayal of Katy Juarez is about her, Kely must offer evidence that the "average, reasonable viewer" of *Sound of Freedom* and the average viewer of the promotional materials "would have understood it to convey a statement of fact that she is" a child sex trafficker. *De Havilland v. FX Networks, LLC*, 21 Cal. App. 5th 845, 866 (2018).

Tim argues that Kely cannot show that *Sound of Freedom* was about her. (AOB.57;46–47.)

But Tim entirely omits a host of bad facts, including the (1) female villain's name, (2) the dramatic reveal of her true identity, (3) that the disclaimer was buried at the end of the credits, (4) that Kely's face appears in the movie credits, (5) and that Kely's real name was used in their promotional efforts, along with a claim that she was a child sex trafficker in real life. Under these circumstances, Tim cannot show that the film was not about Kely.

Kely will take each in turn.

First, Tim claims the film is not about her because it "never identifies her name." (AOB.46–47.) However, his brief overlooks that "Giselle" was an alias for "Katy Juarez." (AOB.23.) And Kely's name is "Kely Suarez." And Kely's name is "Kely Suarez." The two names are similar enough to confuse them while drafting an appellate brief—repeatedly. Second, Tim overlooks that the movie dramatically reveals the true

identity of "Giselle" as "Katy Suarez." (R.665-94; SOF.Exh.1.01:48:06:00.)

VAMPIRO: That's the easy part. Meet Miss Cartagena.

- TIM: A verifiable beauty queen.
- VAMPIRO: Her name is **Katy Juarez**.... She only deals with street traffickers. People she knows. Old friends. She keeps her nails very clean. That is a tough marlin to hook.

(SOF.Exh.1.01:48:06:00-01:49:17:00.)

Third, Tim claims the disclaimer shields him. (AOB.46.) But the disclaimer was hidden from viewers and the basis "on a true story" was showcased. At the beginning of the movie, the caption

BASED ON A TRUE STORY

appears for around 6 seconds. (SOF.Exh.1.01:00:19:17.) That would have been a reasonable place to put the disclaimer that Tim claims protects him now. (AOB.57.)

When a disclaimer "passes over the screen very quickly," appears "at the end of the film," and appears "at the end of the credits," those circumstances weaken the potential influence of the disclaimer. *Thoroughbred Legends, LLC v. The Walt Disney Co.*, No. 1:07-CV-1275-BBM, 2008 WL 616253, at *13 (N.D. Ga. Feb. 12, 2008). In *Thoroughbred Legends*, the federal district court noted the above circumstances and failed to credit the disclaimer of curing any harm. *Id*.

So too here.

The disclaimer here contains the same defects mentioned above. The movie ends at 02:58:52., but the disclaimer appears at 03:07:42:09; the disclaimer passes over the screen very quickly; and it appears not only at the end of the film, but at the end of the credits. Additionally, it is shown in very small font at the beginning of two other equally difficult-to-read paragraphs, creating sans-serif, all-caps wall of text. The disclaimer is nearly impossible to catch—let alone read.



Thus, the film's disclaimer is of no moment and cures no harm especially when coupled with the caption "BASED ON A TRUE STORY." Fourth, Kely's face appears in the movie. At the end of the movie,

footage of the island raid appears along with captions explaining Tim's

version of events. (Id.01:00:19:17.) The screen freezes on Kely's face.

(Id.02:58:58:06.) Other faces in the screen are blurred out; it focuses in on

Kely's face. (*Id*.02:58:59:00.)

Fifth, Tim promoted the film saying that the film's villain was inspired by Kely and that she was a real child sex trafficker. Tim is on record making the following statements on the *Sound of Freedom* podcast saying that Kely Suarez is a "real person:"

I mean I love these filmmakers. You've got to cram so much in two hours, right? But I (inaudible) exposed on its face to the idea of hey, **Kely Suarez, real person**, right? Bring as many kids as you can until they couldn't find a one (inaudible) looking for her.

(R.1838.) Tim also said,

Right. In fact, the movie *Sound of Freedom* that's coming out, it was based on a true story where that's exactly what they used. Miss Cartagena, **Kely Suarez, in the film, real person** who was arrested. I actually—I just testified in her trial just a few months ago, because I was undercover operator. In fact, the movie—

(R.1840.) Again, Tim lied about Kely in promoting the film when he said

It looks like right from the movie *Sound of Freedom* that's coming out is based on a true story. Well, that's exactly what they used. Miss Cartagena, **Katy Juarez in the film, real person** who was arrested and actually her—I testified in her trial just a few months ago, because I was the undercover operator leading on that op, but she was a person who was famous, famous in the community. She was Miss Cartagena. She (inaudible) and she had a modeling school. And she'd give scholarships. In fact, she won Miss Cartagena on the platform that she was going to help impoverished kids of the Columbian, in the Cartagena region, and she was giving scholarships to these kids. Well, these kids would come and be—they wanted to be rich and famous like her. Well, she eventually desensitizes them with—what do they do? They use drugs, pornography, and pretty soon, the other part of the this deal is that you have sex with these Americans who come down. That's part of being famous. And boom, these kids are gone. Gone. And so yeah, it's—that's sometimes like you said, it's a slow war.

(R.1843–44.) Tim made similar statements in Colombia on Spanish speaking television channels. (R.1840.)

In ruling on a special motion to dismiss under UPEPA, the district court must consider the pleadings, the special motion, any reply or response to the motion, and "any evidence that could be considered in ruling on a motion for summary judgment under rule 56 of the Utah Rules of Civil Procedure." Utah Code Ann. § 78B-25-106. Rule 56 of the Utah Rules of Civil Procedure allows the court to admit and consider "affidavits or declarations," among other materials. Utah R. Civ. P. 56(c)(1)(A) (emphasis added).

And supporting affidavits are enough to survive dismissal and allow plaintiff to move on to discovery, even under more stringent standards—like summary judgment under the federal rules of civil procedure. *Thoroughbred Legends, LLC, supra*, at *13 (noting plaintiff's second amended complaint alleged that defendants had called them "unethical in their profession," and because plaintiffs had submitted affidavits "to this effect," "that is sufficient to warrant discovery").

Kely admitted these clips in an affidavit signed by counsel. (R.1393– 95.) Under the plain language of UPEPA, those clips were admissible evidence in an affidavit.

And even if it was not, the court could still consider "unsupported factual assertions" under rule 56 for purposes of the motion. Utah R. Civ. P. 56(e)(1)–(2). The district court could, thus, use the clips as evidence that Tim promoted the film by claiming that the film's villain was inspired by Kely in concluding that the film was about Kely.

Under these circumstances, Tim cannot show that the district court erred when it concluded that there was enough evidence to infer that Katy Juarez was a portrayal of Kely Suarez.

1.3.2. The portrayal is materially false as to Kely

The "gist" of the Katy Juarez sex trafficker villain *was not* "substantially true" if applied to Kely, and Tim has failed to carry its burden of persuasion that it is.

Truth "is an absolute defense to an action for defamation." *Breheny v. Nordstrom*, 812 P.2d 49, 57–58 (Utah 1991). Tim argues they are truth

because of the footage of Kely at the table and because she was convicted. (AOB.47–48, 57.) But the picture is much broader than that.

The question of whether "an allegedly defamatory statement is substantially true" is a "traditional question of fact." *Jensen v. Sawyers*, 2005 UT 81, ¶ 96. This court will reverse a district court's factual findings "only if they are clearly erroneous," "viewing the evidence in a light most favorable to the district court." *438 Main St. v. Easy Heat, Inc.*, 2004 UT 72, ¶ 49, ¶ 72.

Here, the district court found that Kely had met her prima facie showing of falsity when it concluded that the causes of action state a prima facie case as to each essential element—falsity being an element. (R.1738.)

At the outset, Tim has not argued that this finding is clearly erroneous in the light most favorable to the district court. (AOB.57.) And Tim has further failed to marshal the evidence in Kely's favor. (AOB.57, 46–48.) While this does not prohibit this court from reviewing this issue as it once would have, Tim cannot meet his burden of persuasion on this briefing. *State v. Nielsen*, 2014 UT 10, ¶ 41, 326 P.3d 645 (reaffirming the traditional principle of marshaling as a natural extension of an appellant's burden of persuasion). "A party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal." *Id.* ¶ 42. Omitting any evidence from Kely's affidavit of the island raid or any other affidavit she provided, Tim argues that the Spear Fund statement and *Sound of Freedom*'s portrayal of Kely are true because of the footage of her at the table and because she was convicted. (AOB.47–48.)

But he omits all of her evidence explaining who she was, and it omits a description of Katy Juarez by comparison. (AOB.47–48, 57.)

And these differences matter. Kely claims she was a college student who was invited under false pretenses, that she invited nobody else, that she agreed to sell her own sex not the sex of others, that her arrest was the result of a mistaken identity with the woman who promised to bring highschoolers, and that she was trafficked herself. And whether Kely was trafficked herself versus whether Kely was a professional trafficker is a completely different reality, not a "slight inaccurate detail." *Masson v. New York Mag.*, 501 U.S. 496, 517 (1991).

Here are just some of the facts in evidence that Tim omits.

- Kely was invited by Samuel. (R.1231–32.)
- Kely did not invite anyone to the party. (R.1233.)
- Kely was mistaken for a different woman. (R.1231.) Kely admitted evidence that the Island Raid CTI agents confused her identity with a female who had agreed to provide high schoolers. (R.1231;1471,1473.)
- Kely was a poor college student studying social work. (R.1229.)

- Samuel told Kely that a North American would be at a party and was looking for a young black girl to help her with future projects. (R.1232.) Kely believed she would be paid to attend the party, and she figured that making this connection with a rich North American might be a way for her and her mother to get out of poverty. (R.1232.)
- Kely did not know that sex would be involved until the beach meeting. (R.1232.)
- Kely was shocked to hear people talking about others having sex with virgins and was terrified. (R.1232–33.) Tim omits that Kely spoke up because she did want to be "violently raped." (R.1232–33.)
- Kely ultimately agreed to go to sell her own sex. (R.1232.)
- Prostitution is legal in Colombia, and agreeing to have sex with this American was not a crime. (R.1232.)
- None of the people there had ever been trafficked. (R.1233.) None of the others there were sex slaves; they were all invited by Facebook, Samuel, Naty, or El Fuego; Kely invited no one. (R.1233; 1473.)
- Every child and adult at the party was also aware they were attending a party where children would be paid for sex—including the underage youths—because it was advertised they would be paid a higher price for engaging in sex than they would just to attend. (R.1486.)
- Kely was sitting at the table with Samuel because he was the only person at the party that she knew. (R.1233.) Tim was not sitting at the table.
- Kely was very "confused and traumatized" by these events. (R.1234.)
- After she was released from prison, she received her law degree. (R.404.)
- Tim omits that he lied about her, telling the public she was a child sex trafficker. (R.1843–44.)

Tim takes none of this evidence at face value. Indeed, it does not even mention it at all. (AOB.46–48,57.)

Tim asks this court to believe that the portrayal of Katy Juarez in the film is no different than Kely's narrative because she attended a meeting to show "that they had a well-groomed young woman" and discovered at that meeting that the organizers were looking for virgins. (AOB.48.)

But in the film, Katy Juarez is portrayed as a top "marlin," a professional trafficker of very young children. (SOF.Exh.1). The film begins with Katy Juarez trafficking children under terrifying circumstances. She lures them into a van and sells them into cargo ships to be sold all over the world. (R.114; SOF.Exh.1.) She visits them in their homes, meets their parents, and steals them in plain sight. (SOF.Exh.1.) She does this without entrapment and of her own free will. The Katy Juarez character is a truly evil, monstrous character.

And whether Kely was trafficked herself versus whether Kely was a professional trafficker is a completely different reality, not a "slight inaccurate detail." *Masson*, 501 U.S. at 517. It would have "different effect on the mind of the" viewer. *Id.*; (AOB.25.).

And Kely's conviction is not dispositive here.

First, it was not in place at the time the district court dismissed Tim's Special Motion, and so the conviction is not relevant to this court's consideration of whether the district court determined Kely had met her prima facie showing on July 15, 2024. (R.1734–39.)

Second, merely because Kely has now been convicted does not show that the portrayal of her and the multiple false statements about her life as a trafficker were true—even if she were convicted. Kely was only convicted after undergoing a Tim-Ballard-led trial in a perhaps corrupt system without an entrapment defense. This conviction does not show that the portrayal of her life in *Sound of Freedom* bears any resemblance to impoverished-collegestudent-social-working truth of her life, or that the false statement in advertising that she was a vicious and evil child sex trafficker by trade was true. (R.1232–34.)

Third, the fact that her Colombian conviction is based entirely on the terrifying events of the Island Raid and Tim's testimony calls the veracity of the conviction into question at the outset. Tim's reputation for corruption is well documented in the record. (R.340,351,1835.) And a CTI agent involved in the Island Raid has since been convicted of corruption and taking bribes. (R.1235.) The evidence at Kely's trial shows that Kely did not traffic anyone: she did not invite anyone to the Island Raid, she did not take money for anyone else's conduct, and she agreed only to have sex with the North

American. Yet she has been portrayed as a monstrous professional child sex trafficker and stealer of children.

Fourth, this court should have little confidence in Kely's conviction in Colombia. Kely's conviction would likely not stand under the United States Constitutional protections.

Kely was found guilty in a bench trial; she was not afforded the Sixth Amendment right to a jury trial. U.S. Const. amend. XI; *Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993) (noting that the right to trial by jury is "fundamental to the American scheme of justice" and includes "the right to have a jury, rather than the judge, reach the requisite finding of 'guilty").

Her conviction would also have violated a U.S. citizen's right to a speedy trial. U.S. Const. amend. XIII; *Doggett v. United States*, 505 U.S. 647, 657–58 (U.S. 1992) (presuming prejudice where the "lag between [defendant's] indictment and arrest was eight and a half years, and he would have faced trial <u>six years</u> earlier than he did . . . indeed, we have called shorter delays 'extraordinary''). Kely was arrested October 11, 2014, but she was not tried for eight years—February of 2023—just as Tim was beginning to promote the film. (R.1236.)

Whether her Colombian conviction should be credited as providing evidence of truth is questionable at the very least. Especially where the "truth" it tells would only be a conviction—not that Kely in fact used her

reputation to gain the confidence of parents and to traffic their children, placing them into shipping containers to be sold across the world. Katy Jaurez's character did not defame Kely Suarez because she was "convicted"; it defamed her because of who she was and what she did. Thus, Kely's conviction is not the defamatory material presented to the audience in the film and should not be used against her now.

In any event, this court will determine error based upon the events as they stood when the trial court denied Tim's UPEPA motion. And her conviction was not a reality then. (AOB.17fn.7.)

Kely's truth is substantially different from the truth portrayed in the movie and promotional materials. Tim cannot, therefore, show that the district court erred in finding that Kely had some evidence that there was a material difference between her version of events and Tim's version. Having failed to marshal the evidence against him and challenge the district court's factual findings, Tim cannot meet his burden of persuasion.

1.3.3. Kely presented enough evidence to show that Tim acted with reckless disregard as to the truth of the matter

Tim argues that Kely's evidence does not support a finding of actual malice. (AOB.48–53.) Tim is wrong.

First, the district court did not conclude that Kely was a limited purpose public figure. Instead, it concluded that she had met her burden on

that point even if she was. (R.1737.) It made no conclusion about Kely's status as a limited purpose public figure.

Limited purpose public figure. In the first instance, Kely is not a limited purpose public figure.

Individuals who have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues" become public figures "for [the] limited range of issues" associated with those controversies. *Wayment v. Clear Channel Broad., Inc.*, 2005 UT 25, ¶ 22. Those people have "assumed special prominence in the resolution of public questions." *Id.*

Tim claims that she was a "inserted herself into the public controversy" surrounding child sex trafficking, because, "prior to her arrest, Kely was well known in her area as a top-performer, beauty pageant contestant, and popular leader in the neighborhoods." (AOB.51.) But Kely was not well known to anyone outside her neighborhood in 2014. (R.1229.) She was a college student. (R.1229.) She was not a beauty queen. (R.1229.) She did not even make it to the top five of her neighborhood ambassador contest. (R.1229.)

And Kely did not thrust herself into the forefront of any public controversy. Her statement in support of her candidacy for neighborhood

ambassadorship is not the forefront of a public controversy—and it is certainly not the forefront of child sex trafficking. (R.865–866.)

Statements about a "limited-purpose public figure" are subject to that heavier burden only if they are based on "a particular public controversy" in which the person "intentionally sought or obtained a position of influence." *Davidson v. Baird*, 2019 UT App 8, ¶ 39, 438 P.3d 928 (cleaned up). Kely did not seek fame or to obtain a position of influence on the issue of child sex trafficking. Tim forwards no evidence that Kely possessed any special position or could influence people involved in that controversy. *Id*.

Tim claims that Kely is a limited purpose public figure because she made a public statement upon being released from prison. (AOB.52.) But Kely's statement alleging her innocence cannot propel her into that category, especially when she was in prison as a result of Tim's self-serving accusations against her. The fourth circuit has held that "a person who has been publicly accused of committing an act or serious sexual misconduct that . . . would be punishable by imprisonment cannot be deemed a 'limited-purpose public figure' merely because he or she makes reasonable public replies to those accusations." *Foretich v. Cap Cities/ABC, Inc.*, 37 F.3d 1541, 1543 (4th Cir. 1994).

Along similar lines, Tim asks this court to recognize that Kely is a limited purpose public figure for her status as a "criminal plaintiff" under

Russell v. Thomson Newspapers, Inc., 842 P.2d 896, 903 fn. 20 (Utah 1992). There, this court noted in dicta that a "criminal plaintiff" may become a limited purpose public figure "solely by virtue of committing a crime." *Id.* Here, however, the crime is contested. And it would be against public policy for a person to be subject to a heightened evidentiary standard when the criminal charges the plaintiff faces are a result of defamation stemming from one of the defendants. "[T]hose charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979).

Kely is not a limited purpose public figure because she did not intentionally thrust herself to the forefront of the child sex trafficking controversy to influence others.

Actual malice. But even if Kely were a limited purpose public figure, the district court did not err when it concluded that Kely had shown "that the statements of Tim were made with knowledge that such was false or with reckless disregard of whether it was false." (R.1738.)

An actor acts with "actual malice" if he makes a statement "with knowledge that it was false or with reckless disregard of whether it was false or not." *Davidson*, 2019 UT App 8, ¶ 37 (cleaned up). Statements about a "limited-purpose public figure" are subject to that heavier burden only if they

are based on "a particular public controversy" in which the person "intentionally sought or obtained a position of influence." *Id.* ¶ 39.

Allegations of child sex trafficking are "not allegations a reasonable person makes without first confirming the truth of the statement." *Shanley v. Hutchings*, 716 F. Supp. 3d 1179, 1196–97 (D. Utah 2024). Even though the above statement applied to a finding of negligence under a lower standard in *Shanley*, the principle remains that even if someone "personally believed" an allegation of child sex trafficking "to be true, a reasonable person would have taken steps to confirm the veracity" of that allegation "before repeating, expanding, and professing the supposed truth of those statements" online. *Id.* Thus, "even if [Tim] personally believed that" Kely had been arrested in the Island Raid, he was reckless for not fact-checking his portrayal of her before promoting her as a villainous child sex trafficker "without confirming that it was true." *Id.*

It is easy to see that this confirmation requirement applies just as well to recklessness under *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967). Wally Butts was head football coach at the University of Georgia when an article published in the Saturday Evening post accused him of "conspiring to fix" a game. *Id.* at 135. The United States Supreme Court concluded that the post's actions showed "a reckless disregard of whether the article was false or not." *Id.* at 139. If publishing false statements about a famous football coach fixing

a football game show recklessness in the actual malice context, then publishing false statements regarding a person's history as a child sex trafficker certainly do.

Tim should have discovered the truth about Kely's life before recklessly portraying her as a child sex trafficker and promoting falsehoods about her to the media. Kely admitted affidavits providing evidence to the effect that who she was not who he said she was. (R.1228–41.) She also provided hundreds of pages of affidavits from individuals declaring in minute detail that Tim Ballard was not interested in the truth. (R.67–369,1214–1409.)

Specifically, Kely admitted evidence that Tim hired not one but two PR firms in response to the criminal allegations against him, used the Attorney General as his personal bulldog, and that the PR firms planned a smear campaign against the County Attorney who was looking into the allegations against Tim. (R.1337.) It is reasonable to infer that Tim were not interested in the truth—only burying it.

All of this supports a reasonable finding—and at the very least a reasonable inference—that Tim was reckless with the truth as it pertained the real-live villain in *Sound of Freedom* and in his promotional statements and that he should have verified the truth of his portrayal of Kely before going public with it.

The district court only needed evidence sufficient to support a prima facie showing that they were reckless with Kely's truth. *Clara*, 2024 UT 10, ¶ 33. And she provided it.

What's more, the court was allowed to consider all of Kely's evidence under UPEPA. Utah Code Ann. § 78B-25-106; Utah R. Civ. P. 56(c)(1)(A). Kely and Angel Studios provided this evidence in their affidavits and declarations.

The district court had plenty of evidence to support a prima facie showing of actual malice on this record. Because Tim failed to marshal the evidence—and indeed even failed to complete the record evidence on appeal (*supra* § 1.1)— Tim cannot show that the district court erred.

1.3.4. Tim fails to adequately challenge and support the issue of whether the district court erred in not dismissing Kely's tort-based claims against him

Tim asks this court to find that the district court erred in concluding Kely made a prima facie showing on her tort-based claims. (AOB.53–58.) But this claim fails for many of the same reasons already noted above.

First, Tim has failed to ensure that the record contains all evidence before the district court. Multiple exhibits are missing. There is, thus, no possible way for this court to rule in Tim's favor. Here, the record is missing evidence the district court could consider. That is fatal.

It is appellant's responsibility to complete the record on appeal. Burnside, 2016 UT App 224, ¶ 55 (noting that "the burden is on the appellant to provide an adequate record, . . . and given the presumptions that apply in the absence of a complete record, [appellant] simply cannot show that he was harmed by any error of court" (citation omitted)). Indeed, "[w]hen crucial matters are not included in the record, the missing portions are presumed to support the action of the trial court." Id.

When an appellant argues that the evidence fails to support a prima facie showing of all essential elements of the causes of action, the appellant must ensure that all the evidence is available to the appellate court for review. In such cases, the exact evidentiary picture before the court is a "crucial matter not included in the record." *See id*.

Here, a number of video clips are missing, as well as private exhibits sealed in the district court. (R.1391(exhibit filed under seal);1393(video clips); 1396–1399(exhibit filed under seal).) These omissions prevent this court from ruling in favor of Tim.

Second, absent a full evidentiary picture, this court will presume the missing evidence supported the trial court's decision. *Id*.

Third, Tim failed to credit and marshal the evidence in favor of the district court's ruling against him. "A party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal." *State v*. *Nielsen*, 2014 UT 10, ¶ 41. This applies with equal force to a defendant challenging the sufficiency of the evidence supporting a district court's prima facie conclusion.

Tim refuses to acknowledge Kely's evidence admitted under section 106 (AOB.58); his briefing on the tort-related claims cites only the Spear Fund Joint Statement (AOB. 53–56). He further brushes aside *Sound of Freedom* because it had a disclaimer. (AOB.57; *supra* § 1.3.1, page 31.)

Here, Tim refused to marshal Kely's evidence because he failed to acknowledge that it is admissible under UPEPA section 106. (AOB.58.) And a party who fails to marshal the evidence "will almost certainly fail to carry its burden of persuasion on appeal." *Id.* ¶ 42. Tim cannot meet his burden of persuasion on this briefing.

But even so, Tim is wrong.

NIED. Kely met her prima facie burden of showing negligent infliction of emotional distress when she admitted evidence that Tim unintentionally caused emotional distress to her and that Tim "should have realized that his conduct involved an unreasonable risk of causing the distress" because he

publicly stated that Kely Suarez was a child sex trafficker. *Candelaria v. CB Richard Ellis*, 2014 UT App 1, ¶ 9. Physical harm is not necessary if the "undertaking is one fraught with the risk of emotional harm to the plaintiff." *A.W. v. Marelli*, 2024 UT App 8, ¶ 22. Contributing to the authorship of a movie showcasing someone as a child sex trafficker and calling them a trafficker in various media outlets easily meets this test as to Kely and her mom, where "mishandling of a corpse, an erroneous announcement of a death or illness, a physician negligently diagnosing a patient with a serious disease, a hospital losing a newborn infant, an employer mistreating an employee, and a spouse mentally abusing the other spouse" have all met that test. *Id.* at ¶ 23.

False light. Kely met her prima facie burden of showing false light when she admitted evidence that Tim "acted in reckless disregard as to the falsity of" the statements he made and "the false light in which the plaintiff would be placed." *Talley v. Time, Inc.*, 923 F.3d 878 (2019); *Blankenship v. Trump*, 558 F.Supp.3d 316 (2021). Kely admitted evidence that Tim contributed to the character development of Katy Juarez (R.702–717), was obsessed with her impact on *Sound of Freedom* (R.1198), repeatedly declared her to be a child sex trafficker (R.1840;1843–44), and that it was false (R.1228; *supra* § 1.3.2).

Misappropriation. Kely met her prima facie burden of showing misappropriation of her name and likeness when she admitted evidence that Tim had used her name to promote *Sound of Freedom*. *Cox v. Hatch*, 761 P.2d 556, 564 (Utah 1988) (the plaintiffs' names or likenesses have some "intrinsic value" that was used or appropriated for the defendants' benefit); (AOB.56.) There is a reasonable inference that Tim's popularity and net worth increased after releasing a movie portraying him as a hero who took down a real villain.

HER and Injurious falsehood. Kely met her prima facie burden of showing intentional interference with economic relations when she admitted evidence that Tim's conduct was intentional, that his conduct interfered in her ability to provide for herself, that he defamed her, and that he interfered with her ability to pursue a normal life and career, because she admitted evidence that her normal life was destroyed, she received death threats, people spat at on her, she became hated by the people of her country (R.1236), and she now lives in "fear and terror" (R.1239). *See England Logistics, Inc. v. Kelle's Transp. Serv., LLC,* 2024 UT App 137, ¶ 40. Defamation can qualify as "improper means." *Overstock.com, Inc. v. SmartBargains, Inc.,* 2008 UT 55, ¶ 18. There is a strong inference that Kely and her mom suffered economic loss due Tim's claims that Kely was a trafficker.

Injurious falsehood. Kely met her prima facie burden of showing injurious falsehood when she admitted evidence that Tim's false statement harmed her reputation after her normal life was destroyed, she received death threats, people spat at on her, she became hated by the people of her country (R.1236), and she now lives in "fear and terror" (R.1239). *Pipkin v. Acumen*, 2020 UT App 111, ¶ 15 (a false statement harms an individual's reputation if it "impeaches [the] individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule").

IIED. Kely met her prima facie burden of showing intentional infliction of emotional distress when she admitted evidence that Tim, either intentionally or under circumstances where "a reasonable person would know that" emotional distress would occur, committed "outrageous and intolerable" actions that "offend against the generally accepted standards of decency and morality." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 25. Falsely accusing another person in such a public way of being a child sex trafficker easily amounts to a circumstance where a reasonable person would know that their conduct is offensive and outrageous.

Tim cannot prevail on his claim that the district court erred in failing to dismiss Kely's tort-based claims on this record and on the briefing.

2. Tim cannot show that district court erred when it denied judgment as a matter of law because it was inadequately briefed below and on appeal

Tim's issue statement asks this court to conclude that the district court erred when it refused to grant him judgment as a matter of law. (AOB.15.) But that issue is both unpreserved and inadequately briefed. And because Tim's briefing below suffers from the same infirmities that it does on appeal, he cannot show that the district court erred in finding he failed to establish that he was entitled to judgment as a matter of law.

Under UPEPA, a defendant bears the burden of showing he is entitled to judgment as a matter of law. Section 107 explains that a district court may dismiss the claims with prejudice if it determines that the defendant "established" that there is "no genuine issue of material fact and the defendant is entitled to judgment as a matter of law in whole or in part." Utah Code Ann. § 78B-25-107(1)(c)(i)-(ii)(B).

Tim's Special Motion dedicates one sentence at the end of its one-page prima facie argument on the actual malice element to asking the court for "judgment as a matter of law." (R.921.) It further mentions that Kely cannot "state a claim" or "state any claim" a couple of times combined with its prima facie argument. (R.914–15.) However, those standards never appear in its Special Motion. Tim further failed to ask for judgment as a matter of law or mention the failure to "state a claim" at the hearing. (R.1868–78,79.)

Even so, the district court ruled that Kely's "causes of action nonetheless state viable claims for relief which raise genuine issues of material fact, thus precluding judgment as a matter of law." (R.1738.) But on this record and on this briefing, Tim cannot show either that he established that he was entitled to judgment as a matter of law.

In the first instance, this issue is inadequately briefed on appeal. Tim argues that he is entitled to judgment as a matter of law in a cursory manner: a reference to judgment as a matter of law appears in his issue statement, in the last sentence of his prima facie argument, (AOB.53) in the last sentence of his NEID argument (AOB.56), and in one sentence of his IIED argument (AOB.54.)

The Utah Supreme Court has stated that "an issue is inadequately briefed if the argument merely contains bald citations to authority without development of that authority and reasoned analysis based on that authority." *Bank of Am. v. Adamson*, 2017 UT 2, ¶ 11, 391 P.3d 196. While there is no "bright-line rule determining when a brief is inadequate," "a party must cite the legal authority on which its argument is based and then provide reasoned analysis of how that authority should apply in the particular case." *Id.* ¶ 12, ¶ 13.

Here, Tim failed to even cite the authority necessary to make that argument. He only asserts that he deserves judgment as a matter of law. But

this is inadequate. Because he cites no authority and provides to reasoned analysis, there is no argument for Kely to respond to.

Tim also cannot show that the district court erred in failing to grant him judgment as a matter of law below.

2.1. Tim did not establish that he was entitled to judgment as a matter of law below

Tim cannot show that he merited judgment as a matter of law below.

For a court to grant judgment as a matter of law under rule 56, it must find two things: First, the court must find that "there is no genuine dispute as to any material fact"; and second, it must find that "the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(a); *see also Gell v. Alco Cap. Group LLC*, 2023 UT App 127, ¶ 24, 538 P.3d 1249.

A district court should not grant judgment as a matter of law when the law does not "clearly" dispose of that issue in favor of the moving party. *Lach v. Deseret Bank*, 746 P.2d 802, 804–05 (Utah Ct. App. 1987). Instead, a district court should grant judgment as a matter of law only if it is "clear from the undisputed facts that" the opposing party—Kely—"cannot prevail." *See id.*

An appellate court will affirm a grant of summary judgment "only if there are no disputed issues of material fact" and, with "all reasonable inferences viewed in the light most favorable to" the nonmoving party—here, Kely—Tim is clearly "entitled to judgment as a matter of law." Jensen ex rel. Jensen v. Cunningham, 2011 UT 17, ¶ 36.

An issue of material fact defeats summary judgment here. Tim and Kely disagree about the truth or falsity of *Sound of Freedom*'s portrayal of Kely. The question of whether "an allegedly defamatory statement is substantially true" or false is a "traditional question of fact." *Jensen v. Sawyers*, 2005 UT 81, ¶ 96. The presence of a dispute as to the truth or falsity of the portrayal creates an issues of material fact here. *Bustos v. A & E Television Networks*, 646 F.3d 762, 767 (10th Cir. 2011) (materiality of a falsehood often requires a jury). And an issue of material fact defeats judgment as a matter of law. Utah Code Ann. § 78B-25-107(1)(c)(i)–(ii)(B) (requiring defendant to show "that there is no genuine issue of material fact").

Further, Tim cannot now show that he raised the issue well enough to preserve it. *True v. Utah Dep't of Transportation*, 2018 UT App 86, ¶¶ 23–24 (explaining "we require parties to have raised and argued before the district court the issue that they raise and argue before us on appeal, and if a party does not, 'it has failed to preserve the issue'). Tim failed to mention the summary judgment standard both below and in his briefing on appeal. Indeed, he never mentioned genuine issues of material fact at all.

The district court did not err.

2.2. Tim did not establish that Kely failed to state a claim upon which relief could be granted below

Tim also cannot show that he established that Kely failed to state a claim below.

Under rule 12(b)(6), a trial court will grant a motion to dismiss "for failure to state a claim" when, "assuming the truth of the allegations" a party has made—here, Kely—and "drawing all reasonable inferences therefrom in the light most favorable to *that* party, it is clear that the party is not entitled to relief." *Calsert v. Estate of Flores*, 2020 UT App 102, ¶ 9 (cleaned up) (emphasis added); Utah R. Civ. Pro. 12(b)(6). ⁷

A rule 12(b)(6) motion is meant to quickly dispose of a case that has no legal merit, or a case whose pleadings are formally deficient in some way. *Kirkham v. Widdison*, 2019 UT App 97, ¶ 22.

⁷ Under rule 12(b)(6), a cause of action will be dismissed when the complaint fails to state a legally sufficient claim and relief cannot be granted. For example, when a claim is procedurally barred (e.g., res judicata); or when no legal remedy exists (e.g., a non-cognizable legal claim for "hurt feelings"); or when the claim is prohibited by law (e.g., enforcing a contract to sell illegal drugs); or when the claim is barred by statute (e.g., statute of limitations or sovereign immunity); or when the plaintiff does not have standing.

A cause of action may also be dismissed under rule 12(b)(6) for failure to state "[t]he elements of a prima facie case," that is, for not alleging "sufficient facts, which we view as true, to satisfy each element" of the claim. *America West Bank Members, L.C. v. State*, 2014 UT 49, ¶15, 342 P.3d 224 (quotations and citations omitted).

Thus, a defendant may make its showing that a plaintiff "failed to state a cause of action upon which relief can be granted" in one of the above ways.

Under rule 12(b)(6), a trial court will "accept the factual allegations in the complaint as true" and resolve "all reasonable inferences in favor of the non-moving party"—in this case, Kely. *Id.* (cleaned up). But "while courts must accept as true all material allegations, courts are not required to accept as true the legal conclusions contained in any given petition." *Sorensen v. Sparks*, 519 P.3d 902, 907 (Utah Ct. App. 2022) cert. denied, 525 P.3d 1267 (Utah 2023); *see Mitchell v. ReconTrust Co. NA*, 2016 UT App 88 (holding that trial courts "need not . . . accept legal conclusions in contradiction of the pleaded facts."). Tim did not argue below that he prevailed under this standard, even though—because of this standard—the court was required to accept the factual allegations in Kely's complaint but not accept his legal conclusions. (R.914–15.)

He also fails to do so now. (AOB.42–43.)

For same reasons cited above (*supra* § 1.1), Tim cannot now show that he raised this issue well enough to preserve it, that he "established" under UPEPA section 107 that Kely failed to state a claim, or that the district court erred when it did not agree.

The district court correctly ruled that the causes of action "state viable claims for relief which raise genuine issues of material fact, thus precluding judgment as a matter of law." (R.1738.)

3. Kely should receive attorney fees on appeal, because Tim's brief was frivolous

Kely does not raise this argument lightly. Tim asks for attorney fees on appeal. (AOB.59.) However, Tim's appeal presented frivolous arguments: its brief was not grounded in a full recitation of the record facts, warranted by existing law, or based on a good faith argument to overturn the facts or to extend, modify, or reverse existing law. Because it willfully omitted the standard to admit evidence under UPEPA section 106 and failed to supplement the record with missing exhibits, there was no basis upon which it could prevail. His brief, thus, qualifies as frivolous.

What shows up in a brief is a relevant consideration under rule 33. Utah R. App. P. 33(b). Rule 33(b) states that a brief is frivolous and sanctions are available if a brief "is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." *See Rose*, 2017 UT 50, ¶ 100; Utah R. App. P. 33(b).

Indeed, on the record here—that Kely made her case admitting evidence in her complaint, her response to the Special Motion, in affidavits, and in evidence admitted before the court—and under section 106 of UPEPA, "there was no legal or factual basis upon which they could reasonably expect to prevail." *Brigham City v. Mantua Town*, 754 P.2d 1230, 1237 (Utah Ct. App. 1988). Tim's brief willfully ignores UPEPA section 106, even though the district court cites section 106 it in its order and even though section controls which evidence the court must consider in ruling on a Special Motion.

Having failed to acknowledge UPEPA section 106, to credit Kely's evidentiary proffers, or acknowledge their reasonable inferences, Tim had no chance of showing that the district court erred. Indeed, Tim frivolously argued that the district court could not consider evidence admitted in Kely's affidavits attached to her Opposition when section 106 plainly states that the district court is able to consider that evidence. (AOB.58.) (*See supra* section § 1.3.1.)

In failing to credit Kely's evidence, in failing to argue or cite Utah law or UPEPA to argue that her evidence was inadmissible in Utah, and in failing to marshal the evidence supporting the district court's conclusion, Tim has not only failed to make a prima facie showing himself on appeal, but he has wasted Kely's scant resources by requiring her to respond to his frivolous arguments.

Kely's evidence is facially admissible under section 106 of UPEPA and rule 56 of the Utah rules of civil procedure. (*See supra* pgs.33–34, § 1.3.1.) But those relevant legal provisions are missing from appellant's brief.

Worse, the record is missing evidence the district court could consider. It is appellant's responsibility to complete the record on appeal. *State v*.

Burnside, 2016 UT App 224, ¶ 55. The "burden is on the appellant to provide an adequate record, and given the presumptions that apply in the absence of a complete record, [appellant] simply cannot show that he was harmed by any error of court." *Id.* (cleaned up). Indeed, "[w]hen crucial matters are not included in the record, the missing portions are presumed to support the action of the trial court." *Id.*

When appellant argues that the evidence fails to support a prima facie showing of all essential elements of the causes of action, appellant must ensure that all the evidence is available to the appellate court for review. In such cases, the exact evidentiary picture before the court is a "crucial matter not included in the record." *See id*.

Here, video clips are missing as well as private exhibits sealed in the district court. (R.1391(exhibit filed under seal);1393(video clips);1396–1399(exhibit filed under seal).) Absent this evidence, this court will "presume" the missing portions "support the action of the trial court." *Id*.

Sanctions are only available in egregious circumstances to prevent improper chilling of the right to appeal. However, sanctions should be imposed when "an appeal is obviously without any merit and has been taken with no reasonable likelihood of prevailing." *Porco v. Porco*, 752 P.2d 365, 369 (Utah Ct. App. 1988).

This is the "egregious" case where the briefing and record before this court provide no reasonable basis for appellant to prevail. This court should award Kely attorney fees and double costs on appeal. Utah R. App. P. 33(b).

CONCLUSION

Tim's brief takes issue with the court's ruling in multiple ways. But because it ignores all relevant legal standards and the evidence Kely admitted, it provides this court with no legally cognizable way to find in its favor. Tim has failed to show under Utah law how the district court's prima facie conclusion was error.

This court should affirm.

DATED: June 23, 2025.

LOTUS APPELLATE LAW

/s/ Cherise Bacalski

CHERISE BACALSKI Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R.

App. P. 24(a)(11) and 24(g)(2). This brief contains 13,844 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(1)–(2).

2. This brief complies with Utah R. App. P. 21.

DATED: June 23, 2025.

/s/ Cherise Bacalski CHERISE BACALSKI

ADDENDUM A

District Court Order

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

BACKGROUND

These matters came before the Court on July 9, 2024 for a hearing on the following: Defendants Angel Studios, Inc., Sound of Freedom Movie LLC, Rod Barr, and Alejandro Monteverde's (collectively "SOF Defendants"), Amended Special Motion to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act Code §78B-25-101, *et seq.*; Timothy Ballard's Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.*; and Katherine Ballard's Special Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.*; and Katherine Ballard's Special Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.*

Following argument, the matters were taken under advisement.

SOF DEFENDANTS' MOTION

Argument

In support of the Motion, SOF Defendants argue *The Sound of Freedom* film (the "Film") is a docudrama based on true life events of Tim Ballard, a former U.S. Homeland Security

officer who had worked undercover internationally to catch child sex traffickers. The main character in the Film is named after Ballard, but a disclaimer in the Film makes clear that incidents and characterizations were changed or created for the sake of drama.

One of the characters in the Film is a former beauty queen named Katy Giselle, who is arrested at an island party in Colombia at which several children are rescued through Ballard's undercover anti-trafficking work. Plaintiff Kely Suarez Moya ("Kely") claims this character is a literal and defamatory portrayal of her because she was arrested at an island raid in Columbia. However, according to the SOF Defendants, the Film is not a documentary, and any reasonable viewer would understand that it contains fictionalized characters and events. Also, even if the Giselle character was supposed to be a factual depiction of Kely, the depiction of the character's participation in child trafficking and her related arrest is substantially true if applied to Kely.

As a limited purpose public figure, Kely must prove by clear and convincing evidence that the SOF Defendants acted with actual malice, meaning with knowledge or reckless disregard that viewers would interpret the Giselle character as making defamatory statements of fact about Kely. It is SOF Defendants' position Kely cannot make this showing. Finally, argue the SOF defendants, Plaintiffs' other claims are rooted in the same defamation allegations and fail for the same reasons.

In opposition to the Motion, Plaintiff Kely Suarez ("Plaintiff" or "Kely") argues on October 11, 2014, on an island outside of Cartagena, Colombia, Defendants Timothy Ballard ("Ballard"), Operation Underground Railroad ("OUR") and Matthew Osborne ("Osborne") carried out a staged child sex-trafficking raid, which became a founding myth for Ballard and OUR. The "pedophile johns" were fake. The children had never actually been trafficked. And the supposed traffickers, like Kely, were not traffickers at all; they had been entrapped by Ballard and were pawns in his plan to elevate himself and his newly-founded non-profit, OUR.

According to Kely, the fake raid and the events surrounding it, were documented by a professional film crew, and with the footage, Ballard made a television series called The Abolitionist, and then a movie of the same name. Ballard subsequently produced the movie that became *Sound of Freedom*.

It is Kely's position that in producing and distributing the Film, the SOF Defendants ignored multiple red flags, including express warnings about Ballard and the veracity of his story. With reckless disregard for the truth, Keli contends the SOF Defendants promoted, marketed, and distributed the Film around the world and in doing so, represented as fact that the character "Katy Giselle" was a representation of Kely and that Kely trafficked children for sex. According to Kely, nothing could be further from the truth. Plaintiffs contend they filed this suit to clear their names and hold the Defendants to account for their reckless and defamatory lies.

Ruling

§ 78B-25-107. Dismissal of cause of action in whole or part provides:

(1) In ruling on a motion under Section 78B-25-103, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(a) the moving party establishes under Subsection 78B-25-102(2) that

this chapter applies;

- (b) the responding party fails to establish under Subsection 78B-25-102(3) that this chapter does not apply; and
- (c) either:
 - (i) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or
 - (ii) the moving party establishes that:

(A) the responding party failed to state a cause of action upon which relief can be granted; or

(B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

(2) A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under Section 78B-25-103 does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and expenses under Section 78B-25-110.

(3) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under Section 78B-25-103 establishes for the purpose of Section 78B-25-110 that the moving party prevailed on the motion.

Utah Code Ann. § 78B-25-107 (West).

After reviewing the record in this matter and considering such as appropriate, the Court is persuaded the SOF Defendants have satisfied their burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA. This said, however, after considering the memoranda, arguments of counsel and appropriate evidence, the Court further finds that the causes of action nonetheless state viable claims for relief which raise genuine issues of material fact, thus precluding a ruling as a matter of law.

Indeed, the SOF Defendants were warned multiple times regarding Tim Ballard, OUR, and *Sound of Freedom*. They participated in meetings where the criminal investigations against Ballard and OUR were discussed. They specifically hired a PR manager as a result of what had come out about Ballard and OUR. Jeff Harmon, the owner of Angel Studios, represented that "dozens of people" had expressed concerns about Ballard and *Sound of Freedom*. Jeff Harmon also represented that the SOF Defendants had done a "very very deep" dive into the allegations against Ballard and OUR.

Additionally, in promoting the Film, Defendant Angel Studios claimed as fact that the character "Giselle" was "inspired by Kelly (sic) Johana Suarez, a former beauty pageant queen

and model known as 'Miss Cartagena," and that she "exploited her reputation in a povertystricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade.

Based upon the forgoing, and when considered as appropriate on a special motion to dismiss under the Act, the Court finds the causes of action state a prima facie case as to each essential element and further that the statements of the SOF Defendants were made with knowledge that such was false or with reckless disregard of whether it was false or not. Accordingly, Defendants Angel Studios, Inc., Sound of Freedom Movie LLC, Rod Barr, and Alejandro Monteverde's Amended Special Motion to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act Code §78B-25-101, *et seq.*, is respectfully, DENIED.

TIMOTHY BALLARD'S MOTION

Argument

In support of the motion Timothy Ballard ("Tim") argues the determination of the Ballards' UPEPA Motions are based solely on the Plaintiffs' (Kely Johana Suarez Moya ("Kely") and Luz Miriam Kely Solano ("Luz") (collectively "Plaintiffs")) operative Complaint and the only allegations of defamation therein against Tim cannot survive the UPEPA motion. Specifically, Tim argues Plaintiffs' attempt to survive the motion by arguing without citing to any allegation in the FAC, that their "claims are based on the numerous false and defamatory statements made by the Ballards and others in marketing and promoting *Sound of Freedom* ["SOF"]." Opp. [DKT 153], p. 2. Tim contends there are no such statements alleged against either of the Ballards anywhere in the 72-page FAC, and to the extent any such statements are attributed to "others," that cannot form the basis of a claim against the Ballards.

As to the new "Clips" which are offered in opposition to each of the Ballards' motions, Tim asserts such are irrelevant and admissible and even if considered, they are insufficient in that: (1) they have nothing to do with any allegations in the FAC directed against either of the Ballards; (2) there is nothing indicating when the statements in the Clips were allegedly published; and (3) the Clips are wholly unauthenticated.

Finally, Tim argues Plaintiffs offer no opposition to the Ballards' arguments that each of their non-defamation claims equally fail.

Plaintiffs oppose the motion arguing the claims are not based on trial testimony or other protected statements and were provided as context and to show malice. Rather, assert Plaintiffs, their claims are based on the numerous false and defamatory statements made by the Ballards and others in marketing and promoting *Sound of Freedom*.

In support of their position Plaintiffs provided the Court with several video clips of Tim and others, which Plaintiffs contend demonstrate these individuals falsely promoting *Sound of Freedom* and disparaging Kely. The video clips include the following:

> 1. CLIP 4 – Kely Suarez is a famous person. Kely Suarez was Ms. Cartagena. Kely Suarez had a modeling school. Kely Suarez was recruiting children. Kely Suarez won Ms. Cartagena by saying she

wanted to help those children.

2. CLIP 5 – Kely Suarez is in prison. She has been sentenced to 20 years or more.

3. CLIP 6 – All of the children are real. All the pedophiles and traffickers are real in Sound of Freedom.

4. CLIP 11 – The movie *Sound of Freedom* is a true story with Ms. Cartagena, Kely Suarez. Kely Suarez was famous in the community and had a modeling school. Kely Suarez was giving scholarships to entice them into becoming famous. Kely Suarez used drugs and pornography to convince these kids to have sex with Americans because that is what famous people do.

Plaintiffs have also presented to the Court the Ballards' joint statement, affirming the truthfulness of *Sound of Freedom*.

Ruling

78B-25-106 Proof provides:

In ruling on a motion under Section 78B-25-103, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

After reviewing the record and considering such as appropriate, the Court is persuaded Tim has satisfied the burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA. This said, however, after considering the memoranda, arguments of counsel and appropriate evidence, the Court further concludes that the causes of action nonetheless state viable claims for relief which raise genuine issues of material fact, thus precluding a ruling as a matter of law.

Indeed, the Court finds the causes of action state a prima facie case as to each essential element and further that the statements of Tim were made with knowledge that such was false or with reckless disregard of whether it was false or not. Specifically, Tim was integral to Colombia raid and was aware of the veracity of the numerous statements made.

Based upon the forgoing, Timothy Ballard's Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.* is, respectfully, DENIED.

KATHERINE BALLARD'S MOTION

Argument

With this motion, Katherine Ballard ("Katherine") argues there is only one act in the complaint attributed to her, the Spear Fund Joint Statement, and such is the kind of commentary that the UPEPA is meant to protect, and no exception to the UPEPA applies.

Plaintiffs in opposition that while Katherine may have been justified in believing her husband in the first instance, by the time her statements were made, she "had obvious reason to doubt," and thus should be held liable.

Ruling

After reviewing the record and considering such as appropriate, the Court is persuaded Katherine has satisfied the burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA and further that Plaintiffs have failed to state a prima facie case as to each essential element against Katherine. Indeed, Plaintiffs fail to provide any evidence that the Spear Fund Joint Statement attributed to Katherine to support their claims was made by her with knowledge that such was false or with reckless disregard of whether it was false or not.

Based upon the forgoing, Katherine Ballard's Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.* is, GRANTED. Pursuant to Utah Code Ann. § 78B-25-110, and because Katherine has demonstrated that UPEPA applies and that Plaintiffs' claims should be dismissed, she is awarded her attorneys' fees and expenses. Counsel is asked to submit the appropriate affidavit for the Court's consideration.

ORDER

This Memorandum Decision and Order constitutes the Order regarding the matters addressed herein. No further order is required.

DATED this 15th day of July 2024.



ADDENDUM B

Kely's Opposition and Exhibits

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Suite B Draper, UT 84020 (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) Joshua S. Ostler (14277) MORTENSEN & MILNE 68 South Main Street, Suite 700 Salt Lake City, UT 84101 (801) 521-4444 amort@mortmilnelaw.com ccheney@mortmilnelaw.com jostler@mortmilnelaw.com

Attorneys for Plaintiffs

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

MEMORANDUM OPPOSING SOF DEFENDANTS' AMENDED SPECIAL MOTION TO DISMISS Case No. 240901556 Judge Robert Faust

INTRODUCTION

The SOF Defendants' Motion should be denied because the SOF Defendants defamed Plaintiff Kely Suarez ("Kely") and she can prove it. None of the conditions in Utah Code § 78B-25-107(1)(c) are met. As such, the SOF Defendants' Motion cannot be granted

On October 11, 2014, on an island outside of Cartagena, Colombia, Defendants Timothy Ballard ("Ballard"), Operation Underground Railroad ("OUR") and Matthew Osborne ("Osborne") carried out a staged child sex-trafficking raid, which became a founding myth for Ballard and OUR. The "pedophile johns" were fake. The children had never actually been trafficked. And the supposed traffickers, like Kely, were not traffickers at all; they had been entrapped by Ballard and were pawns in his plan to elevate himself and his newly-founded non-profit, OUR.

The fake raid and the events surrounding it were documented by a professional film crew. With the footage, Ballard made a television series called *The Abolitionist*, and then a movie of the same name. Both productions flopped. Undeterred, Ballard and his cohorts appealed to Hollywood and eventually produced the movie that became *Sound of Freedom* (the "Film).

In producing and distributing the Film, the SOF Defendants ignored multiple red flags, including express warnings about Ballard and the veracity of his story. With reckless disregard for the truth, the SOF Defendants promoted, marketed, and distributed the Film around the world. In doing so, the SOF Defendants represented as fact that the character "Katy Giselle" was a representation of Kely and that Kely was an evil monster who trafficked children for sex. Nothing could be further from the truth. Plaintiffs filed this suit to clear their names and hold the Defendants to account for their reckless and defamatory lies.

2

PLAINTIFFS' STATEMENT OF RELEVANT FACTS

The Fake Island Raid Was Never About Rescuing Children

1. Ryan Fisher met Ballard in 2011 at an event related to The Church of Jesus Christ of Latter-day Saints.¹

2. The two eventually formed a working relationship and became friends.²

Through his relationship with Ballard, Mr. Fisher became acquainted with Elder
 M. Russell Ballard ("Elder Ballard"), an apostle in the LDS Church.³

4. Mr. Fisher attended meetings and was privy to discussions concerning the LDS Church's efforts to use Tim Ballard and OUR to bring Mormonism into Evangelical homes in the United States.⁴

5. That was the sole purpose of the fake island raid in Cartagena: to create a "sizzle reel" and build up Tim Ballard as a savior of trafficked women and children.⁵

6. Following the fake raid, Mr. Fisher came up with a TV concept called *The Abolitionist*, which would feature Ballard and his team rescuing women and children. Ballard later stole the concept from Mr. Fisher, and his subsequent efforts to make money from the endeavor and/or shed light on human trafficking failed. If anything, the project shed light on Ballard's and OUR's reckless and counterproductive tactics.⁶

7. Eventually, Mr. Fisher was called back in to meet with Elder Ballard and come up

¹ See Declaration of Ryan Fisher at \P 2, attached hereto "Exhibit A".

² *See id.* at ¶¶ 4-13.

³ *See id*. at ¶¶ 22-23.

⁴ *See id.* at ¶¶ 22-31.

⁵ See id. at \P 84.

⁶ See id. at ¶¶ 41-55.

with a new TV show to promote Tim Ballard, again with the intent of reaching Evangelicals.⁷

8. However, Mr. Fisher's relationship with Tim Ballard deteriorated and he had no further dealings with Ballard until Ballard was under investigation by the Davis County Attorney.⁸

9. While *Sound of Freedom* was eventually produced and distributed, it was never based on a true story. It was always based on a fake, well-staged, and well-funded "raid," intended to elevate Tim Ballard in the eyes of the public as part of a larger religious endeavor.⁹

Sound of Freedom and the Defendants' Related Promotional Materials Are False

10. In promoting the Film, Defendant Angel Studios claimed as fact that the character "Giselle" was "inspired by Kelly (sic) Johana Suarez, a former beauty pageant queen and model known as 'Miss Cartagena,'" and that she "exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade."

Giselle

In the film's opening scene, a character named Giselle, inspired by Kelly Johana Soarez, a former beauty pageant queer and model known as "Miss Cartagena." deceives a young girl and ther brother. Suarez exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade.

11. Other Defendants, like OUR, echoed similar lies, claiming that "Kelly (sic)

Johana Suarez...really did recruit and traffic children using her credentials in

⁷ See id. at ¶¶ 55-59.

⁸ See id. at ¶¶ 68-82.

⁹ See id. at ¶ 84-85.

Colombia...Beneath the surface, Suarez was nothing short of a monster. She used her good standing and credibility to lure children away from their families with promises of making them successful models, but instead, she sold them into the booming sex trade."



...

"Giselle" is based on a real person: TRUE

At the start of the film, it shows a woman named "Giselle" recruiting a young girl and her brother for what the children's father believes is a modeling opportunity. The character of Giselle is loosely based on a woman named Kelly Johana Suarez, a former beauty pageant queen and professional model in her early twenties, known as "Miss Cartagena," who really did recruit and traffic children using her credentials in Colombia.

Suarez's reputation in her home of Obrero, a poor neighborhood in the South of Cartagena, made her an effective recruiter of young girls and boys for sex trafficking. Her trusted role as a leader in her impoverished community was gained through her former beauty pageant experience and social work studies.

Beneath the surface, Suarez was nothing short of a monster. She used her good standing and credibility to lure children away from their families with promises of making them successful models, but instead, she sold them into the booming sex trade.

We hope everyone can experience this powerful movie. Although none of the profits go to O.U.R., you can still make an impact. Visit our website, OURrescue.org to make a difference.

12. The depiction of Kely in Sound of Freedom, and related promotional and

marketing materials like the ones referenced above, are false.

13. Kely was born in a very small Colombian town called Fonseca-Guajira and raised

by her single mother, Plaintiff Luz Miriam Moya Solano, in Cartagena, Colombia.¹⁰

14. Kely was fortunate enough to attend University, where she obtained a degree in social work because she wanted to help people.¹¹

15. When she was 19 years old, Kely's neighbors saw her potential and enrolled her in the "Reign of Independence of Cartagena," a *local* contest that is *not* a beauty pageant; the winner is simply named a neighborhood ambassador. Kely did not win the contest. She was not even one of the five finalists. She was *never* "Miss Cartagena."¹²

16. Kely never started or operated a child-modeling agency and she has never participated in human trafficking of any kind, except for being trafficked herself.¹³

17. On October 11, 2014, Kely was arrested by Columbian federal police (the "CTI") as part of a "sting operation" based on lies by Ballard and OUR. The fake sting operation was code-named "Operation Triple Take." Kely's subsequent criminal proceedings in Colombia have revealed that the entire "sting" was a fabrication and that the Defendants' subsequent portrayals of her have no basis in fact.¹⁴

18. Following the fake raid, Kely saw her life ruined. She was hated in her community, she spent 18 long months in deplorable conditions in a jail cell. She received death threats and was spit upon.¹⁵

19. After a few years, the hatred for Kely started to dissipate and Plaintiffs believed

¹⁰ See Kely Suarez Declaration at ¶¶ 2-3, attached hereto as "Exhibit B".

¹¹ *See id.* at \P 4.

¹² See *id*. at ¶¶ 5-9.

¹³ See *id.* at ¶¶ 10-15.

¹⁴ See *id*. at ¶¶ 16-79.

¹⁵ See id. at ¶¶ 80-82.

that this horrible nightmare was behind them. But then, *Sound of Freedom* was produced and false allegations regarding Kely resurfaced.¹⁶

20. The SOF Defendants intentionally portrayed Kely as the chief villain in the Film, which is reflected in the script, where her name appears multiple times. The SOF Defendants cast an actress for the part of "Giselle" who looked remarkably like Kely. Ballard even came to Cartagena to testify against Kely in February 2023, presumably to secure her conviction before the release of *Sound of Freedom*.¹⁷

21. To this day, Kely has never been convicted of a crime and all indications are that her charges will be dropped shortly.¹⁸

22. Notwithstanding, and as explained above, the SOF Defendants and others promoted *Sound of Freedom* as if Kely was a "monster" who did in fact sell children into sex trafficking.¹⁹

23. Video clips and other evidence show the lies that the various Defendants have told regarding Kely, all to raise money and promote their movie, *Sound of Freedom*. There is nothing true about the substance of their public, "matter-of-fact" portrayals of her.²⁰

Prior to July 4, 2023, the SOF Defendants Knew that Tim Ballard Was a Fraud and His Story Was Fake

24. Celeste Borys was Tim Ballard's executive assistant leading up to the release of *Sound of Freedom*. She was a victim of Ballard's "COUPLES RUSE" scheme and is suing

¹⁶ *See id.* at ¶¶ 83-84.

¹⁷ See id. at ¶¶ 85-88; see also Declaration of Celeste Borys at ¶¶ 14-15, attached as "Exhibit C".

¹⁸ See Suarez Decl. at ¶¶ 87, 94.

¹⁹ *See id*. at ¶ 89.

²⁰ See id. at ¶¶ 95-122; see also Declaration of Alan W. Mortensen, attached as "Exhibit E".

Ballard and others in a related lawsuit, Borys v. Ballard, Case No. 230907663 (Utah 3d Dist.)²¹

25. Like Ryan Fisher, she knows that the Cartagena raid was fake and that Ballard needed a "successful OP" to build his reputation and bring in donations.²²

26. Ms. Borys saw how Ballard became obsessed with Kely and the impact she might have on the public's reception of *Sound of Freedom*, even asking the OUR "psychic", Janet Russon, for readings on the topic.²³

27. In early 2023, Angel Studios was waiting to market and distribute *Sound of Freedom* while Ballard and OUR were under criminal investigation.²⁴

28. Beginning in March 2023 and over the next several weeks, Ms. Borys attended multiple meetings in which prominent individuals, including from Angel Studios, had discussions about how to sink the criminal investigations into Ballard and OUR so that *Sound of Freedom* could be distributed and released.²⁵

29. Around this same time, a former OUR employee came forward to OUR management and reported that Ballard had used the COUPLES RUSE to deceive, groom, and manipulate her into participating in sexual acts with him.²⁶

30. In May 2023, as Ballard's lies and misdeeds were becoming well known, people began questioning Angel Studios about its decision to partner with Ballard.²⁷ One of these people was "Jane Doe."

- ²² See id. at ¶ 9.
- ²³ See id. at ¶¶ 11-12.
- ²⁴ See *id*. at ¶ 16.
- ²⁵ See id. at ¶¶ 17-32
- 26 See *id*. at ¶ 33.
- ²⁷ *See id*. at ¶ 37.

²¹ See Borys Decl. at ¶¶ 2-6.

31. Jane Doe worked as a volunteer for OUR beginning in 2016. She was originally asked to help sell the TV series referenced above, *The Abolitionist*, which portrayed the fake Cartagena raid as true.²⁸

32. In her time with OUR, Jane Doe witnessed firsthand how Ballard and other OUR employees and affiliates were shady, fraudulent, untruthful, inappropriate, and even perverted. She went on multiple OPs and saw firsthand how the OPs were fake publicity stunts meant only to raise money. After 2016, she disassociated from Ballard and OUR.²⁹

33. Jane Doe knew the owners of Angel Studios from her work in the film industry. In 2016 or 2017, when Angel Studios was considering picking up *The Abolitionist* TV series, Jane Doe warned them about working with Ballard and OUR, and Angel Studios acknowledged her concerns.³⁰

34. Years later, Jane Doe learned that Angel Studios planned to distribute *Sound of Freedom*. In March 2023, she contacted the COO of Angel Studios and then had multiple communications with the owner of Angel Studios, in which she expressed, among other things, that Ballard was a "total fraud," OUR was a bad organization, and the *Sound of Freedom* was "not factual in the least".³¹

35. The owner of Angel Studios, Jeff Harmon, told Jane Doe that "dozens of people had expressed concerns about Ballard and Angel Studios distributing *The Sound of Freedom*." Jeff Harmon acknowledged Jane Does concerns, but ultimately ignored them, claiming "[w]e

²⁸ See Declaration of Jane Doe (Filed Under Seal) at ¶¶ 3-4, attached hereto as "Exhibit D".

²⁹ *See id.* at ¶¶ 5-62.

³⁰ See id. at ¶¶ 66-68.

³¹ See id. at ¶¶ 72-79.

have gone very very deep on the allegations. We are satisfied we can go forward."³²

36. Notwithstanding knowledge that Ballard was credibly accused of sexual assault by false pretense, Angel Studios and OUR hired a public relations specialist, Matthew Faraci, to handle the Davis County investigation and ensure that Ballard's, OUR's, and Angel Studios' reputations remained intact as they "went forward" with *Sound of Freedom*.³³

37. Angel Studios and the SOF Defendants knew that OUR and Tim Ballard had been under criminal investigation prior to releasing *Sound of Freedom*. They knew that Tim Ballard had been fired for deceiving women and sexually assaulting them. They knew that Tim Ballard planned to use *Sound of Freedom* as a platform to attack Troy Rawlings, the Davis County Attorney. They ignored these red flags and proceeded to distribute *Sound of Freedom* anyways, as if Tim Ballard was not a fraud, and as if his story were true.³⁴

ARGUMENT

I. Applicable Standards of Review.

To prevail on their Motion, the SOF Defendants must show that the Uniform Public Expression Protection Act (the "Act") applies, and that either (1) Plaintiffs cannot "establish a prima facie case as to each essential element", (2) Plaintiffs' claims fail under Rule 12(b)(6) standards, or (3) Plaintiffs' claims fail under Rule 56(a) standards.³⁵ "In ruling on a motion under Section 78B-25-103, the court shall consider the pleadings, the motion, any reply or response to

³² See *id*. at ¶¶ 75-80.

³³ See Borys Decl. at ¶¶ 37-44.

³⁴ See id. at ¶¶ 45-47, 53-56, 66-67; Jane Doe Decl. at ¶¶ 81-83..

³⁵ See Utah Code § 78B-25-107(1).

the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56."³⁶

"A prima facie case for defamation must demonstrate that (1) the defendant published the statements in print or orally; (2) the statements were false; (3) the statements were not subject to privilege; (4) the statements were published with the requisite degree of fault; and (5) the statements resulted in damages."³⁷ When public statements are made that are "false and allege criminal conduct on the part of the plaintiff ... or conduct which is incongruous with the exercise of a lawful business, trade, profession, or office, " a cause of action lies for defamation per se.³⁸ Statements that challenge one's "honesty, integrity, virtue, or reputation" and thereby expose the plaintiff "to public hatred, contempt, or ridicule" are defamatory per se.³⁹

Regarding Rule 12(b)(6), it "reflects Utah's adoption of notice pleading and, therefore, relies on rule 8 of the Utah Rules of Civil Procedure."⁴⁰ "[U]nder Utah's liberal notice pleading requirements, all that is required is that the pleadings be sufficient to give fair notice of the nature and basis of the claim asserted and a general indication of the type of litigation involved."⁴¹ "[I]f there is any doubt about whether a claim should be dismissed for lack of

³⁶ See Utah Code § 78B-25-106.

³⁷ Jacob v. Bezzant, 2009 UT 37, ¶ 21, 212 P.3d 535 (internal quotations and citation omitted).

³⁸ Westmont Residential LLC v. Buttars, 2014 UT App 291, ¶ 22, 340 P.3d 183.

³⁹ *Shanley v. Hutchings*, --- F.3d ----, No. 2:22-cv-549, 2024 WL 496250, at *7 (D. Utah Feb. 8, 2024) (quoting *Jacob*, 2009 UT 37 at ¶¶ 26–27).

⁴⁰ Zisumbo v. Ogden Regional Med. Center, 2015 UT App 240, ¶ 9, 360 P.3d 758 (internal quotations and citation omitted).

⁴¹ *Id.* (internal quotations and citation omitted).

factual basis, the issue should be resolved in favor of giving the party an opportunity to present its proof."⁴²

Regarding Rule 56(a), "[s]ummary judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law."⁴³ "[A] trial court is not authorized to weigh facts in deciding a summary judgment motion, [and] is only to determine whether a dispute of material fact exists."⁴⁴ Where "a reasonable jury could decide [an] issue either way" summary judgment should be denied.⁴⁵

II. Plaintiffs Have Stated Defamation Claims and Can Prove Them.

The SOF Defendants advance three arguments in support of their Motion: (1) that *Sound of Freedom* "is not a false publication of fact about Moya"; (2) that the film's portrayal of "Katy Giselle" is "substantially true if applied to Moya"; and (3) that Plaintiffs cannot prove actual malice.⁴⁶ The SOF Defendants' arguments are incorrect, and they miss the mark for several reasons. As demonstrated more fully below, the actual malice standard does not even apply because Kely was never a "public figure." Also, the SOF Defendants' defamatory statements are not protected by disclaimers or "creative license" in the Film. Finally, there is evidence that the SOF Defendants entertained, or had reason to entertain, serious doubts regarding their public statements and public portrayal of Kely. Among other things, the SOF Defendants were

⁴² *Id.* (internal quotations and citations omitted).

⁴³ Basic Research, LLC v. Admiral Ins. Co., 2013 UT 6, ¶ 5, 297 P.3d 578.

⁴⁴ Brown v. City of Fruit Heights, 2023 UT App 39, ¶ 17, 529 P.3d 361 (quoting Pigs Gun Club, Inc. v. Sanpete County, 2002 UT 17, ¶ 24, 42 P.3d 379).

⁴⁵ Shanley, 2024 WL 496250 at *13.

⁴⁶ See Motion at 9.

specifically warned about Ballard and had reason to know that he was a fraud, but they proceeded with his story anyway. The SOF Defendants' several arguments fail.

A. The Actual Malice Standard Does Not Apply.

The SOF Defendants' actual malice arguments are irrelevant and inapplicable. There is no dispute that the "actual malice" standard only applies to public figures. Whether Kely was a public figure "is a question of fact – 'difficult and fact-specific' – not suitable for resolution under Rule 12(b)(6)."⁴⁷ For this reason, "courts regularly find that the determination of a litigant's status as a public or private figure should be deferred until summary judgment *when a full factual record can be developed*."⁴⁸ There is no "full factual record" in this case. But even so, the evidence Plaintiffs have been able to gather, and the evidence they intend to gather through traditional discovery, proves that Kely was never a "public figure."

There are two types of public figures. The first is an "all-purpose" public figure, an individual with "such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts."⁴⁹ The other is a "limited-purpose" public figure, or one who has "thrust herself to the forefront of a particular public controversy in order to influence the resolution of the issues involved."⁵⁰ The SOF Defendants claim that Kely is a "limited-purpose"

⁴⁷ See See Woods Servs., Inc. v. Disability Advocates, Inc., No. 18-296, 2018 WL 2134016, at *6 (E.D. Pa. May 9, 2018) (citing Schiavone Const. Co. v. Time, Inc., 619 F.Supp. 684, 702 (D.N.J. 1985)).

⁴⁸ *Id.* (citations omitted) (emphasis added).

⁴⁹ Wayment v. Clear Channel Broad., Inc., 2005 UT 25, ¶ 22, 116 P.3d 271 (internal quotations and citation omitted).

⁵⁰ *Id.* at ¶ 31.

public figure for no other reason than that she was arrested for sex trafficking and later "professed her innocence" at a press conference.⁵¹ The argument strains credulity.

Utah employs a two-part test to determine whether a plaintiff is a limited-purpose public figure. First, the court must isolate the specific public controversy related to the defamatory remarks. Next, the court should examine the type and extent of the plaintiff's participation in that public controversy to determine whether...[s]he has "thrust [herself] to the forefront of [the] controvers[y] in order to influence the resolution of the issues involved."⁵²

Plaintiff did not thrust herself to the forefront of any controversy. She was arrested on false criminal charges that are due to be dismissed. Almost immediately after her arrest, major news outlets had stories, with video footage, of the staged raid that led to her arrest. Even if she was "thrust to the forefront" of the child-trafficking issue (she was not), it was only at the behest of the Defendants in this case. They needed a villain and a "successful OP" and so they zeroed in on Kely.⁵³ The fact that she later "professed her innocence"⁵⁴ does not constitute "thrusting herself to the forefront" and does not make her a limited-purpose public figure. The case of *Foretich v. Capital Cities/ABC, Inc.* is instructive.

In *Foretich*, a set a grandparents were labeled "abusers" and accused of heinous behavior in relation to their granddaughter. They sued for defamation following a subsequent "ABC docudrama".⁵⁵ Like the SOF Defendants here, ABC claimed that the grandparents were

⁵¹ *See* Motion at 13-14.

⁵² SCO Grp., Inc. v. Novell, Inc., 692 F. Supp. 2d 1287, 1296 (D. Utah 2010) (internal quotations and citations omitted).

⁵³ See Borys Decl. at \P 9.

⁵⁴ Motion at 14.

⁵⁵ Foretich v. Cap. Cities/ABC, Inc., 37 F.3d 1541, 1543 (4th Cir. 1994).

limited-purpose public figures. Neither the trial court, nor the Fourth Circuit Court of Appeals

agreed. As the trial court explained:

[I]f someone is accused as these grandparents were of fairly heinous behavior, ought they be required to sit silently on pain of being declared a public figure and be limited to doing no more than say, "I didn't do it"? Shouldn't they be allowed to attack their accuser without subjecting themselves to being a public figure? ...

Ought a person such as these plaintiffs be required to limit themselves to merely denials in order not to become a public figure? ...

These plaintiffs did no more than defend themselves against fairly outrageous, even if true, accusations. And while they aggressively sought to defend themselves, I don't think they injected themselves into a point where they can be considered to have voluntarily assumed the role of prominence to the extent that this can be transformed into a public controversy in which they sought to influence the outcome.⁵⁶

On appeal, the Fourth Circuit agreed, adding the following:

We...recognize the devastation that public accusations of child sexual abuse can wreak, and we are extremely reluctant to attribute public-figure status to otherwise private persons merely because they have responded to such accusations in a reasonable attempt to vindicate their reputations.

Therefore, we hold that a person who has been publicly accused of committing an act or serious sexual misconduct that...would be punishable by imprisonment cannot be deemed a 'limited-purpose public figure' merely because he or she makes reasonable public replies to those accusations.⁵⁷

As in Foretich, applying the actual malice standard "would serve only to muffle persons who

stand falsely accused of heinous acts and to undermine the very freedom of speech in whose

name the [actual malice standard] is demanded."58 As in Foretich, there is no good reason "why

someone dragged into a controversy should be able to speak publicly only at the expense of

⁵⁶ *Id.* at 1550.

⁵⁷ *Id.* at 1558.

⁵⁸ *Id.* at 1564.

foregoing a private person's protection from defamation."⁵⁹ This case is no different. Kely is not a limited-purpose public figure by virtue of the fact that the Defendants made heinous allegations against her and she replied.⁶⁰ The actual malice standard does not apply in this case.

B. <u>The SOF Defendants' False and Defamatory Statements Are Not Protected by</u> <u>Disclaimers or Creative License in the Film</u>.

The SOF Defendants try to hide behind the fact that Kely was falsely portrayed in a docudrama with disclaimers and where viewers might understand that creative liberties were taken with respect to her character.⁶¹ The SOF Defendants cannot hide behind the Film because (1) their defamatory statements extend beyond the Film, (2) the Film's "disclaimer" is insufficient to insulate the SOF Defendants in this case, and (3) the "gist" of the Katy Giselle character is not true at all, much less "substantially true", when applied to Kely.

First, the SOF Defendants wrongly assume that Plaintiffs' claims are based solely on the portrayal of Kely in the Film. To the contrary, Plaintiffs allege, and can prove, that even outside of the Film, Defendants have per se defamed Kely, using her actual name, and claiming in public that she was a "monster" and that she "exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade."⁶² Surely the SOF Defendants cannot state <u>as a matter of fact</u> that "Suarez exploited her reputation" to sell young children into sex trafficking,⁶³ but then claim "creative license" when

⁵⁹ *Id.* (internal quotations and citation omitted).

⁶⁰ The SOF Defendants' claim that prior to her arrest, Kely was "well-known" and had a "platform and popularity" is not accurate, as demonstrated by the affidavits and evidence attached hereto. *See* Motion at 13.

⁶¹ *See* Motion at 8-12.

⁶² See First Am. Compl. at ¶¶ 306-07; see also Video Clips attached to the Declaration of Kely Suarez.

⁶³ *See id*. at ¶ 306.

that is exactly how Kely is portrayed in the Film. The Film is indeed "a false publication of fact".⁶⁴ The SOF Defendants are not only liable for publishing their false Film, but also marketing and promoting it with false statements of fact.

Second, the SOF Defendants cannot hide behind a disclaimer. While the Film may claim that "characters were invented or composited," that is not what the SOF Defendants represented to the public and in promotional materials. As already explained above, the SOF Defendants represented as fact, that like "Giselle" in the Film, Kely "exploited her reputation", deceived children, and ran a sex trafficking ring. The SOF Defendants represented that "Giselle" was real, not invented, and that her real name was Kely Johana Suarez. The disclaimer does not protect the SOF Defendants under the circumstances of this case.

In Fairstein v. Netflix, Inc., a docudrama series contained the following disclaimer:

While the motion picture is inspired by actual events and persons, certain characters, incidents, locations, dialogue and names are fictionalized for the purposes of dramatization. As to any such fictionalization, any similarity to the name or to the actual character or history of any person, living or dead, or actual incident is entirely for dramatic purposes and not intended to reflect on any actual character or history.⁶⁵

Notwithstanding, several defamatory statements were found to be actionable, in part, because the series was "marketed and promoted...as a fact-based version" of events.⁶⁶ Likewise in *Thoroughbred Legends, LLC v. The Walt Disney Co.*, the court denied a motion to dismiss a defamation claim arising from a docudrama, even though it had a disclaimer. As the court explained:

⁶⁴ Motion at 9.

⁶⁵ Fairstein v. Netflix, Inc., 553 F. Supp. 3d 48, 60 (S.D.N.Y. 2021).

⁶⁶ See id. at 60, 82.

The court's own review demonstrates that this disclaimer passes over the screen very quickly. Furthermore, the disclaimer appears not only at the end of the film, but at the end of the credits. The synopsis on the back of the DVD cover describes the film as 'the extraordinary true story of the greatest filly racehorse of all time,' without using qualifying terms such as 'based on' or 'adapted from.' In this context, the court is not now willing to hold that no one could reasonably understand the scenes as 'describing actual facts about Mr. Vasquez and Mr. Whiteley or actual events in which they participated.'⁶⁷

"The test is not whether the story is or is not characterized as 'fiction,' 'humor,' or anything else in the publication, but whether the charged portions in context could be reasonably understood as describing actual facts about the plaintiff or actual events in which she participated."⁶⁸ The Film's disclaimer does not absolve the SOF Defendants of liability. Plaintiffs have alleged, and can prove, that the SOF Defendants intended that the public understand and believe that "Giselle" is Kely and that the Film's portrayal of Kely is true and accurate. Indeed, that is exactly what the SOF Defendants represented when they promoted and marketed the Film. Plaintiffs' claims are not barred by the disclaimer.

Third, the "gist" of the Katy Giselle character is not at all true, much less "substantially true," when applied to Kely.⁶⁹ According to the SOF Defendants, because Kely was jailed and because she attended some meetings, the "gist" is substantially true.⁷⁰ The SOF Defendants are wrong. As an initial matter, the SOF Defendants are asking the Court to draw inferences in their favor, contrary to Rule 12(b)(6) and Rule 56(a) standards. The Court should not accept this

⁶⁷ *Thoroughbred Legends, LLC v. The Walt Disney Co.*, No. 1:07-cv-1275, 2008 WL 616253, at *13 (N.D. Ga. Feb. 12, 2008) (quoting *Pring v. Penthouse Int'l, Ltd.,* 695 F.2d 438, 442 (10th Cir.1982)).

⁶⁸ Pring v. Penthouse Int'l, Ltd., 695 F.2d 438, 442 (10th Cir. 1982).

⁶⁹ See Motion at 10-11.

⁷⁰ See id. at 12-13.

invitation to err. That said, the SOF Defendants' inferences are not even reasonable when compared to the evidence. Even without the benefit of traditional discovery, Plaintiffs have proven several ways in which the "gist" of Giselle and the island raid are entirely fabricated.⁷¹ The Film's portrayal of Kely and the island raid are divorced from reality. They are certainly not "substantially" similar.

Sound of Freedom is fiction portrayed as truth. The SOF Defendants saw dollar signs and they "moved forward," regardless of the facts. To sell their movie, the SOF Defendants maligned Kely as an evil, diabolical, and despicable monster. They even tried to influence her criminal proceedings, but to no avail. The SOF Defendants and their despicable actions cannot hide behind disclaimers and "creative license." *Sound of Freedom* is a false publication of fact, the SOF Defendants knew it, and Plaintiffs can prove it.

C. <u>The SOF Defendants Entertained, or Had Reason to Entertain, Serious Doubts</u> <u>Regarding their Public Statements and Portrayal of Kely Suarez</u>.

Recklessness or malice may be found "even where a defendant had an honest belief of the truth of his or her statements if the defendant's statements" "are so inherently improbable that only a reckless man would have put them into circulation" or if "there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports."⁷² Evidence of "malice" in the defamation context may include indications that the publisher "made the statements with ill will, that the statements were excessively published, or that the publisher did not reasonably believe his or her statements."⁷³ Likewise, malice may be found where a defendant publishes statements

⁷¹ See Plaintiffs' Statement of Relevant Facts at ¶¶ 9, 12-17, 21, 23, 25, *supra*.

⁷² Shanley, 2024 WL 496250 at *12.

⁷³ Wayment, 2005 UT 25 at ¶ 53; see also Combes v. Montgomery Ward & Co., 228 P.2d 272, 275 (Utah 1951) (relying on authority requiring the employer to have "an honest belief in the

recognizing that the information came from "a source that the defendant had obvious reasons to doubt, such as an unverified anonymous telephone call."⁷⁴ Even if the actual malice standard applied in this case (it does not), it is satisfied.

Notwithstanding the SOF Defendants' self-serving affidavits to the contrary, and even without the benefit of traditional discovery, Plaintiffs have adduced evidence that the SOF Defendants were warned in clear and unmistakable terms to avoid Tim Ballard, OUR, and *Sound of Freedom*.⁷⁵ They participated in meetings where the criminal investigations against Ballard and OUR were discussed. They specifically hired a PR manager due to what had come out about Ballard and OUR. Jeff Harmon represented that "dozens of people" had expressed concerns about Ballard and *Sound of Freedom*. Jeff Harmon even represented that the SOF Defendants had done a "very very deep" dive into the allegations against Ballard and OUR. They entertained serious doubts, or at least had reason to entertain serious doubts about the veracity of *Sound of Freedom*, but they produced, published, and marketed it anyways, to Plaintiffs' detriment. Under the circumstances, the actual malice standard is satisfied.

CONCLUSION

For the reasons explained above, and considering the attached affidavits and evidence, the SOF Defendants' Motion must be denied in its entirety.

truth of the statement"); *Hales v. Commercial Bank,* 197 P.2d 910, 913 (Utah 1948) ("The publisher's lack of belief in the truth of the defamatory matter published, or his lack of reasonable grounds for so believing, while immaterial to the existence of the privileged occasion, is important as constituting an abuse of the occasion which deprives him of the protection which it would otherwise afford."")

⁷⁴ *Cottrell v. NCAA*, 975 So.2d 306, 349 (Ala. 2007) (citations, internal quotation marks, and emphasis omitted).

⁷⁵ See Plainitffs' Statement of Relevant Facts at ¶¶ 27-37, *supra*.

DATE: June 6, 2024.

MORTENSEN & MILNE

/s/ Alan W. Mortensen

Alan W. Mortensen Christopher J. Cheney Joshua S. Ostler *Counsel for Plaintiffs*

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I hereby certify that the foregoing MEMORANDUM OPPOSING SOF DEFENDANTS' AMENDED SPECIAL MOTION TO DISMISS complies with the applicable word limits set forth in Utah Rule of Civil Procedure 7(q)(1). The Memorandum contains 5,262 words, excluding those portions listed in Utah R. Civ. P. 7(q)(2).

/s/ Joshua S. Ostler

Joshua S. Ostler

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2024, I filed the foregoing MEMORANDUM OPPOSING SOF DEFENDANTS' AMENDED SPECIAL MOTION TO DISMISS with the Court via electronic filing, which served electronic notification on all counsel of record in accordance with the Court's electronic-filing protocol.

/s/ Joshua S. Ostler

Joshua S. Ostler

EXHIBIT A

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Ste. B Draper, UT 84020 Tel.: (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) **MORTENSEN & MILNE** 68 South Main Street, Suite 700 Salt Lake City, UT 84101 Tel.: (801) 521-4444 amort@mortmilnelaw.com ccheney@mortmilnelaw.com.com

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO,	DECLARATION OF RYAN FISHER
Plaintiffs,	
v.	
TIMOTHY BALLARD, et al.;	
Defendants.	

I, Ryan Fisher, declare as follows:

1. I have personal knowledge of the facts stated herein.

2. I met Tim Ballard ("Ballard") at a FIRM Foundation conference in 2011, as we both were authors of Book of Mormon theories and took great interest in a view of United States history, that was referred to as a covenant land in the Book of Mormon and Ballard called it "The American Covenant" in his Book and presentation of that title.

3. Ballard was still with the Department of Homeland Security at that time, based out of El Centro, California.

4. Ballard had written a book entitled *The American Covenant*.

5. I was a freelance investigative journalist and film maker and TV producer and National Geographic photographer at the time.

6. I began investigating the "Heartland Model" of the Book of Mormon geography, which claims that the Book of Mormon occurred in the east and Midwest portions of the United States of America.

7. At the time, I had created a TV show called "Nephite Explorer" which subsequently aired on KJZZ Channel 14 in Salt Lake City every Sunday night, and it frequently discussed The American Covenant among other related topics.

8. I also had a tour business called "The American Covenant Tour," where I would take tourists to both Mormon and US History sites on the east coast and explain how the American Covenant fit into these historical stories and places.

9. I began having Ballard on my television show to discuss The American Covenant.

10. At this time, Elder M. Russell Ballard ("Elder Ballard"), an apostle and member

of the First Quorum of the Twelve of The Church of Jesus Christ of Latter-day Saints ("Mormon Church" or "LDS"), reached out to Ballard and asked for his help in locating Mardy Gardy, an LDS boy in Haiti who was kidnapped.

11. It is my understanding that Ballard arranged a search in Haiti for Mardy, based upon Elder Ballard's request.

12. The search was unsuccessful, and Mardy remains missing today.

13. Ballard and I became de facto business partners in The American Covenant Tour, and I believed that we had become friends.

14. I paid Ballard to come on my tours and Ballard would accompany me on my tours that were about the American Covenant.

15. Elder Ballard, a great-great nephew of the Mormon Church's founder, Joseph Smith, and a great-great grandson of Joseph Smith's brother Hyrum Smith, was enamored by Tim Ballard's book, *The American Covenant*.

16. At the time, both Ballard and I both shared an interest in the book *Visions of Glory* that was published in November of 2012, and I became aware that Tim Ballard was getting counsel from the author of *Visions of Glory*, Thom Harrison.

17. Ballard told me that Thom Harrison was advising him on how to prepare for the imminent destruction of society and the second coming of Jesus Christ.

18. Part of his counsel was to prepare an organization for taking in thousands of children who would be survivors after their captors were destroyed in doomsday calamities that were imminent.

19. Ballard planned on using OUR resources to prepare for this doomsday event and hired Thom Harrison to secretly make these preparations.

20. It was my understanding that Thom Harrison was officially an aftercare specialist for OUR but his real purpose was preparing for the destructions of the Last Days and the influx of refugee children who had been liberated from sex slavery when many of the wicked people were destroyed.

21. Ballard received counsel from both Thom Harrison and Elder Ballard both of whom he considered to be prophets.

22. Elder Ballard would have regular meetings with Ballard and discuss how to bring Mormonism into American Evangelical homes without Evangelicals realizing such.

23. I was in meetings with general authorities of the LDS church, including Elder Ballard and I had many discussions with Ballard in which he relayed various plans Elder Ballard and the church formulated to use Ballard and his message to infiltrate Evangelical American culture in an effort to influence their perception of the Mormon church.

24. To accomplish this, they proposed "scrubbing the internet" of Ballard's Mormon beliefs and background and publish a non-Mormon version of his book.

25. Elder Ballard and the Mormon Church also created a plan to make Tim a celebrity and American hero by helping him launch a non-profit called Operation Underground Railroad (OUR).

26. Elder Ballard issued requests to various wealthy and influential Mormon individuals and organizations asking them to fund and help launch OUR.

27. One of these contacts was Glenn Beck who was propositioned on hiring Ballard to work for his company Blaze TV full time to provide Ballard an income while he transitioned from quitting DHS and launching his own organization.

28. Elder Ballard and the Mormon Church were primarily interested in building Ballard into an American Hero so they could take advantage of the fact that later, it would reflect well on the Mormon Church and help their long term goal of being assimilated into the family of American evangelical churches.

29. The Mormon Church however has stated consistently that Elder Ballard's interest in helping Tim was a shared interest in helping vulnerable children and people around the world who have been trafficked, which was not the primary focus of Ballard's career or the Mormon Church's involvement from my perspective.

30. The primary focus was to make Ballard into a celebrity and American hero in the wider Non-Mormon American culture.

31. To accomplish this, The Mormon Church, Ballard and OUR needed Ballard to be perceived as a savior of children.

32. The purpose of all the film projects Ballard engaged in was to accomplish this perception, persuade others to donate money to Ballard's organizations, and ultimately accomplish the public relation goals of the Mormon church.

33. To my knowledge this plan was never made known to OUR's donors or to those who donated to other organizations Ballard oversaw.

34. Once Ballard was a household name in Evangelical homes, it would be revealed that he was a Mormon and he would help bring Evangelicals, who likewise believe in

American exceptionalism, into the Mormon church accepting the Mormon church as a Christian church.

35. Elder Ballard also made arrangements so that Deseret Book would market and sell Tim Ballard's book *The Lincoln Hypothesis*, and raised Ballard's royalties beyond the normal royalties paid to first time Deseret Book authors.

36. It is believed that Tim Ballard is the highest earning author in Deseret Book history.

37. Elder Ballard also planned for Tim Ballard to be featured in other Mormon media forums, including BYUTV and others.

38. Once Elder Ballard had made all the arrangements for OUR to be organized and funded, Tim Ballard left his job at DHS and moved to Utah.

39. Elder Ballard brought in Mormon Glenn Beck to help plan how to get TimBallard into Evangelical homes.

40. Glenn Beck donated significant amounts of money for Ballard to create Operation Underground Railroad and invited Tim to host one of his programs on Blaze TV.

41. I created a TV show concept called *"The Abolitionist"* in 2012 which would feature Ballard and his team setting up sting operations and saving kids

42. Ballard and I pitched National Geographic channel on the concept, and they loved it and wanted to air it through their international network distribution which reached many of the countries where human trafficking of kids is a major problem.

43. It wouldn't necessarily be aired in the United States initially.

44. Ballard's plan was to leave DHS in the near future.

45. National Geographic channel wanted to produce and air the tv series as soon as Ballard left DHS.

46. Ballard backed out of the project because he wouldn't get paid a lot of money for his participation and might not get the fame in the United States he and the Mormon Church sought.

47. It was apparent to me that while it was Elder Ballard's wish to get Ballard into Evangelical homes, Ballard's interest in making *"The Abolitionists,"* was primarily to make money and gain fame, not to save kids or combat human trafficking.

48. Ballard stole *"The Abolitionists"* show concept and made the show in an attempt to raise millions of dollars for himself through his own for-profit production company.

49. Elder Ballard's association and support was frequently discussed by Ballard to potential supporters or donors and gave him credibility whenever he was seeking support or money for his endeavors.

50. Without Elder Ballard's support, Ballard likely would not have accomplished celebrity status, and OUR likely would not have been launched or become successful.

51. Elder Ballard helped Tim Ballard in obtaining donors for this documentary TV series and OUR under the pretext that they were helping to rescue child sex slaves in Colombia.

52. However, once donors were lined up to pledge money for the production of "*The Abolitionists*," Ballard cut me out of the project and simply pocketed the money and never made anything besides a fundraising movie, which was a flop at the box office and never did anything significant to raise awareness domestically or internationally about the problems of child sex slavery and human trafficking.

53. After *The Abolitionists* movie was circulated, other reputable human trafficking organizations denounced OUR's techniques as reckless, dangerous and counterproductive because they were creating a market for child exploitation wherever they went and trying to solicit children with the promise of a big payday for participants, taking advantage of desperate people in desperate situations.

54. OUR's own employees raised concerns about these tactics as well as misappropriation of funds, but no action was taken to correct these things at the time.

55. Given the failure of *"The Abolitionists*," Elder Ballard brought in others to help get Tim Ballard into evangelical homes across the United States.

56. In 2016, Ballard invited me to a private meeting with Elder Ballard, Tim Ballard, and President of OUR, John Moreland, in Elder Ballard's private office where Ballard and I were given an assignment or an unofficial calling to make a different TV show that would reach a national audience and accomplish these goals for the church.

57. This show was to be based on Tim's research and have no Mormon references in an another attempt to be appealing to Evangelical Christians.

58. Elder Ballard issued assignments or callings to others to help in the effort to get Ballard celebrity status in the wider evangelical culture.

59. This included Ken Krogue, who was another friend of Elder Ballard's and who was in charge of the Mormon Church's social media campaigns.

60. Ballard met with Elder Ballard on a very regular basis.

61. Ballard was obsessed with feelings of guilt, questioning whether his work in child sex slavery, at DHS and at OUR made him morally "unclean".

62. As Ballard's business adviser and religious leader, Ballard went to Elder Ballard about his concerns.

63. Ballard told me that Elder Ballard had given him special blessings, which took away any concerns he had about whether he was "morally clean" and assured him that he would not be sinning or be held accountable before the Mormon Church and God for immoral things he engaged in while in the effort to save children from sex slavery.

64. Given that Ballard's concerns about his "moral cleanliness" were removed, Tim became emboldened in his approach to everyone and everything after receiving these blessings.

65. It is my belief that Ballard likely received a secret temple ordinance from Elder Ballard called "The Second Anointing."

66. Elder Ballard's great-great uncle taught that "The Second Anointing" served to ensure and guarantee salvation, guaranteed exaltation, and conferred godhood and that one could not fall from these blessings even if one sinned.

67. Elder Ballard is known to have been fond of extending this ordinance to his friends, including Tom Phillips and Elder Hans Mattsson, who like Tim Ballard, are no longer part of the Mormon Church.

68. Tim Ballard continued to author books that Church-owned Deseret Book and Covenant Book sold.

69. At this point in time, after becoming angry at OUR, Deseret Book and anyone who was profiting off of what he called "his message" and his calling as "the prophet of the American Covenant", a calling he believed came from God and was supported and echoed by

Elder Ballard, Ballard demanded that I pay him more money than what was already agreed upon for his participation in my tour business.

70. When I refused because I didn't have more money, he angrily demanded that I turn over my tour company documents under the guise that he wanted to "audit me."

71. He also angrily demanded I give him all the money I had in my bank account threatening me by saying, "you know I can find out anything I want." Implying to me that he can take me down if I don't comply with his demands.

72. Fearing his threats and anger, I turned over my tour vendor contacts, my financials, my budget and gave him all the money in my bank account including my marketing money set aside to market the next year's tour.

73. Ballard used all of this to create his own American Covenant tour by the same name, building off years of branding my company built, following the same itinerary, and took my marketing money to market his own tour behind my back.

74. During the summer of 2019, Elder Ballard accompanied Ballard and his family on the American Covenant Tour.

75. In December of 2019, Elder Ballard mentioned Ballard in his commencement address to BYUI and proclaimed Ballard to be an expert on Nephi's vision and the Pilgrims, right before Tim Ballard released his new book in May of 2020, *The Pilgrim Hypothesis*, with a foreword by Glenn Beck.

76. These actions by Elder Ballard were very upsetting to me because Ballard had stolen my company from me and an Apostle of the Church was giving Ballard credibility, of which he was undeserving.

77. I had no further dealings with Ballard, until he was under investigation from the Davis County Attorney.

78. At that point in time, Ballard contacted me and offered to send me his new book and had the audacity to act as if nothing happened between us.

79. I responded by accusing him of stealing my business to which he replied that if he took something that wasn't his, he wanted to make it right.

80. Still fearing and not trusting him I simply asked him to leave me alone.

81. I believe that Tim contacted me and tried to give me his book in hopes I would remain silent with regard to being a witness in the Davis County fraud Investigation against him and OUR.

82. I never heard from or spoke to Tim Ballard again.

83. I had been warned by multiple friends who were former OUR employees, that Ballard threatened them in an attempt to keep them silent both from publicly speaking out against him and participating in the Davis County investigation.

84. What I want this Court and jury to understand is that the raid in Cartagena was a well-staged cosplay fraud, fictional situation, performed by actors, funded by wealthy members of the Mormon Church enlisted by Elder Ballard with the primary intention to provide Tim Ballard "a sizzle reel" or the perception of saving children so he could gain money and fame so that a movie could be made and Tim Ballard would be presented into evangelical homes across the country as an American hero as envisioned by Elder M. Russel Ballard.

85. While that plan came to fruition with the release of *The Sound of Freedom*, it is my understanding that it has come at the expense of innocent bystanders like Kely Suarez, the

children who were lured to the island party and who were scared to death, not understanding what was occurring given that they had not been previously sex trafficked, and the donors across the world who thought they were trying to deter childhood sex slavery, were in fact funding Ballard's personal ambitions seeking wealth, fame and future political office along with delusions of grandeur as God's chosen prophet, in conjunction with a sophisticated, multifaceted, extensive public relations campaign for the Mormon Church.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this $\frac{4}{2}$ day of June, 2024.

N FUSHER

Bates #001226

EXHIBIT B

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Ste. B Draper, UT 84020 Tel.: (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) **MORTENSEN & MILNE** 68 South Main Street, Suite 700 Salt Lake City, UT 84101 Tel.: (801) 521-4444 <u>amort@mortmilnelaw.com</u> <u>ccheney@mortmilnelaw.com.com</u> *Attorneys for Plaintiffs*

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

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO,	
Plaintiffs,	DECLARATION OF KELY JOHANA SUAREZ MOYA
V.	
TIMOTHY BALLARD et al.	
Defendants.	

I, Kely Johana Suarez Moya, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts stated herein.

2. I was born in a very small Colombian town called Fonseca-Guajira.

3. I was raised by a single mother, Luz Miriam Moya Solano, in a very humble neighborhood of La Esperanza, in the sector of Obrero in Cartagena, Colombia.

4. I saw the difficulties my mother faced due to poverty and lack of opportunities, so I went to the University to obtain a degree in social work in order to help people.

5. When I was 19 years old, my neighbors from the neighborhood, La Esperanza, Obrero section saw potential in me, and decided to enroll me in the Reign of Independence of Cartagena, this contest is neither national nor international. It is an internal contest that takes place in the city where it commemorates, as the name indicates, the independence of the city.

6. This was not a beauty contest, but rather a competition to be the named ambassador of one's neighborhood.

7. I did not win the contest. *See* Attachment A.

8. I was not even one of the five finalists. Id.

I was never "Miss Cartagena."

10. I have never started or operated a child-modeling agency.

11. I have never participated in the trafficking of children from Honduras or any other country to Columbia.

12. Prior to events occurring on October 11, 2014, I was not well-known to anyone in Cartagena, outside of my family and friends.

13. Prior to events occurring on October 11, 2014, I have never been a "public figure."

14. Prior to events occurring on October 11, 2014, I had never been involved in the trafficking of children or adults.

15. I am not nor ever have been a child trafficker.

16. On October 11, 2014, I was arrested by Columbian federal police (the "CTI") as part of a "sting operation" with the assistance of Timothy Ballard and Operation Underground Railroad ("OUR")

17. Ballard and OUR refer to this operation as "Operation Triple Take" (the "raid").

18. From my review of the testimony and evidence in my subsequent criminal proceedings, this is the history of what happened in setting up the raid.

19. In the fall of 2014, OUR and Ballard worked with the United States and Colombian governments to hold a pedophilia sting raid on the island of Baru just off the coast of Cartagena, Colombia.

20. As part of this raid, OUR and Ballard were acting as agents of the Colombian government and promised in writing not to entrap people in the raid. *See* Attachment B.

21. Ballard claims that a man nicknamed "El Fuego", using his vast knowledge of the sex-trafficking cartel and the child trafficking network of Colombia, put Ballard in touch with another man, "Eduardo," who was going to build a child brothel hotel on the island of Baru near Cartegena.

22. On October 7, 2014, a meeting was held between Ballard, El Fuego, and Eduardo where they agreed that Ballard would pay money for children provided at the pedophile party.

23. Ballard also gave Eduardo money to make arrangements for the party.

24. It was decided that a social media invitation would go out on Facebook inviting young people to the party.

25. I was not at this meeting and had no way of knowing that it was occurring.

26. Court records verify that I was not at this meeting. See Attachment C.

27. On October 9, 2014, Eduardo called **a CTI agent ("Elkin")** and told him that he could provide more children than previously agreed and he could lower the price of each child. *See* Attachment C.

28. A meeting was held that same day wherein Ballard, Elkin, and Eduardo were present, along with a recently turned 18-year-old young man by the name of Samuel David Olave Martinez ("Samuel"), Luis Miguel Mosquera Cuesta ("Luis") and a young woman by the name of Natalie Taborda Atencio ("Naty"). *See* Attachment C.

29. Naty claimed that she could obtain about 15 children mainly from Cartagena's high schools, guaranteeing that the oldest child would be 16 years old. *See* Attachment C.

30. Samuel said he could obtain 26 female children and 6 male children, given that he worked in a modeling school.

31. I knew Samuel through modeling because he was also a model.¹

32. I was not present at the October 8, 2014, meeting and had no way of knowing that it was occurring, nor did I have knowledge of the theme of the meeting or what was discussed.

33. Court records verify that I was not at this meeting. See Attachment C.

34. On October 10, 2014, Eduardo called Elkin and confirmed that he had accumulated commitments for 28 young girls and 3 boys under the age of 10 years old. *See* Attachment C.

35. He also confirmed that Samuel had accumulated 26 girls and 8 boys.

36. I was not mentioned during this phone call. See Attachment C.

¹ My modeling work was very limited—I have been an unidentified extra in a few music videos and I made no significant income from it.

37. At some point before October 11, 2014, Samuel told me that a rich North American man **named "Pablo**" was coming to the party looking for a young-looking black girl, that could help her with her future projects.

38. At the time, I was twenty years old, but I looked much younger, so Samuel invited me to the party as one of the young girls he had committed to providing for Pablo.

39. Given my poverty, I decided to go to the party to try to meet Pablo, as it would give my mother and I a way out of our poverty if I met this rich North American.

40. I believed I would be paid to attend the party.

41. Samuel asked me to come to a meeting at Eduardo's apartment, wherein Samuel's cousin was present so that Tim Ballard could verify that Samuel and Eduardo had young girls ready for Paul Hutchinson ("Pablo").

42. **Samuel's** cousin and I were the only two "alleged" young girls at that meeting, again as bate, though Ballard claims on *The Abolitionists* that there were other children. *See* Attached Video Exhibits.

43. I also saw the party invitation on Facebook.

44. Another meeting was held between Ballard, Eduardo, Samuel, and me at a restaurant on the beach to make last-minute arrangements for the sex party.

45. I attended this meeting at the urging of Samuel to show that they had a wellgroomed young woman to meet Pablo.

46. Prostitution is not illegal in Colombia.

47. Ballard began emphasizing that Pablo wanted to have anal sex with a young black girl.

48. At that point in time, I spoke up and asked that Pablo be delicate as I did not want to be violently raped by Pablo.

49. I was horribly scared and giggled, which I often do not because I find a situation funny, but because I am scared.

50. On October 11, 2014, I went alone to the dock to go to the Island.

51. I got on the small boat with other individuals, ages 13-30, who had also accepted the invitations to go to this party.

52. Some of these individuals even paid \$5 for the boat ride.

53. None of these individuals were ever kept in shipping containers.

54. In fact, court documents demonstrate that none of the individuals were ever trafficked or were sex slaves. *See* Attachments D & E.

55. All were either invited by social media or by invitation of Samuel (as in my case), Naty, or Fuego.

56. Court documents and interviews verify that I did not invite anyone to the party. *See* Attachment D.

57. Court documents demonstrate that one of the individuals who was at the raid, Pedro Florez Ramos, ("Pedro") age 17 years old, lived at home with his parents in Cartagena, Colombia, learned of the party on Facebook. *See* Attachment E.

58. Court documents show that Pedro was never previously trafficked² and had previously only had sexual relations with his boyfriend, who according to court documents, accompanied him on this trip to the island. *See* Attachment F.

² See Declaration of Pedro Florez Ramos, attached hereto as Exhibit E.

59. Before the party on October 11, 2014, Pedro did not know me, either privately or publicly, as a beauty queen from Cartagena.

60. At no time did I invite Pedro to the party or promise him money.

61. Before October 11, 2014, Pedro had never been sexually trafficked. *See* Attachment

E.

62. Court documents demonstrate the ages of the individuals who voluntarily showed up for the promised party on the island of Baru.

a) 30 of them were adults between the ages of 18 to 30.

b) 16 of them were the age of 17.

c) 7 of them were the age of 16.

d) 2 of them were the age of 15.

e) 1 was the age of 14.

f) 1 was the age of 13. See Attachment D.

63. Court documents demonstrate that Naty did not show up for the boat trip to the island for the party, although according to the prosecutor's reports she had attended meetings prior to the party on the island. *See* Attachment C.

64. Upon arrival at the island, I saw Samuel sitting at a table with Ballard.

65. As I knew Samuel, I sat down at a table next to him.

66. Ballard pushed some money to Samuel, which immediately confused me.

67. The CTI immediately dropped in and arrested me and others.

68. The individuals that were brought to the island were very confused and traumatized by these events, as was I.

69. None of the individuals that were taken to the party had been previously trafficked, and none of the "clients" were actually pedophiles looking for sex.

70. During the arrest, I had been confused for "Naty", as I was not involved in planning the party, obtaining the young adults or children, and was not aware of the false pretense of the party until I was arrested.

71. At my trial, the investigator confused me for Naty.

72. None of the footage from the Abolitionists was provided by Ballard for presentation at my trial.

73. Ballard claims in interviews that he did not let the press know about the raid until6 months to a year later. *See* Attached Video Exhibits.

74. However, within a few days I was being presented by Tim Ballard as Ms. Cartagena, the Beauty Pageant Queen who traded her fame to traffic children, by essentially mixing the life stories of Naty and Samuel into a fraudulent narrative about me. *Id.*

75. CBS News ran a full feature with footage of the raid and hero-making interview of Ballard only three business days after the raid. *Id*.

76. I was very scared and confused as to what had just happened to me.

77. My concerns were not unwarranted, as I spent the next 18 months in jail awaiting trial until I was finally released by habeas corpus petition.

78. CTI undercover agent Elkin, who was in charge of the raid, has since been convicted of corruption and abuse of public office for taking bribes, and he is a fugitive with a warrant out for his incarceration for 129 months.³

³ See Attachment G.

79. Following the raid, I became hated by the people of Cartagena. *See* Attachment F (hate from social media).

80. I received death threats and was spit at by people. See Attachment F.

81. My normal life was destroyed.

82. I decided that I would help others who had been wrongfully accused, so I went to law school and have recently graduated.

83. After some time (approximately 2016), people quit staring at and talking about me, and I was ready to put this horrible experience behind me.

84. In 2018, the SOF Defendants, Ballard and Hutchinson set out to make a docudrama movie about this raid whereby I was the chief villain of the movie as reflected in the script whereby my name is used for the lines of Giselle.

85. The woman actor who portrayed me looked remarkably like me. See Attachment

G.

86. To this day, I have never been convicted of any crime.

87. Ballard came to Cartagena to testify against me in February 2023 which I believe was to make sure I was convicted before *The Sound of Freedom* was released.

88. Angel Studios promoted the character of Giselle as being me, using my actual name, and placing the following information about me into the public arena:

Giselle

In the film's opening scene, a character named Giselle, inspired by Kelly Johana Suarez, a former beauty pageant queen and model known as "Miss Cartagena," deceives a young girl and her brother. Suarez exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade.

89. As earlier stated, I was not a former beauty pageant queen nor was I Miss Cartagena.

90. OUR also labeled me as, "nothing short of a monster"



0 😖 57

32 comments



"Giselle" is based on a real person: TRUE

At the start of the film, it shows a woman named "Giselle" recruiting a young girl and her brother for what the children's father believes is a modeling opportunity. The character of Giselle is loosely based on a woman named Kelly Johana Suarez, a former beauty pageant queen and professional model in her early twenties, known as "Miss Cartagena," who really did recruit and traffic children using her credentials in Colombia.

...

Suarez's reputation in her home of Obrero, a poor neighborhood in the South of Cartagena, made her an effective recruiter of young girls and boys for sex trafficking. Her trusted role as a leader in her impoverished community was gained through her former beauty pageant experience and social work studies.

Beneath the surface, Suarez was nothing short of a monster. She used her good standing and credibility to lure children away from their families with promises of making them successful models, but instead, she sold them into the booming sex trade.

We hope everyone can experience this powerful movie. Although none of the profits go to O.U.R., you can still make an impact. Visit our website, OURrescue.org to make a difference.

- 91. I never recruited or trafficked children (or adults) for sex (or for anything else).
- 92. I am not a former beauty pageant queen.
- 93. I have never been Miss Cartagena.
- 94. I have not been convicted of any crime and expect to be acquitted by October 14,

2024.

95. OUR has been attempting to raise money by claiming that I am a trafficker of children.

96. On Clip One of the Video Clips being presented to this Court, OUR employee Matt Osborne, in trying to raise money for OUR through *The Sound of Freedom*, states as follows:

- a. That I am a trafficker;
- b. That I am Miss Cartagena;
- c. That I am a beauty queen;
- d. That I am evil, diabolical and despicable.

97. I live with fear and terror after having been branded a child trafficker by Tim Ballard, Matt Osborne, Janet Russon, Katherine Ballard and the SOF Defendants.

98. On Clip Two of the Video Clips being presented to this Court, Tim Ballard, attempts bolster the veracity of *The Sound of Freedom*, a movie that he made money acts in and was introduced into the lives of many well-meaning potential donors, and Argentine movie goers, by declaring as follows:

a. There were 54 survivors of the island raid;

b. That Pedro Florez was a trafficked child that Ballard rescued;

99. None of the individuals taken to the island were trafficked. See Attachment D.

100. None of the individuals taken to the island were survivors. See Attachment D.

101. Pedro has admitted that he was never trafficked and was not a human trafficking survivor. *See* Attachment E.

102. After going through the completely unnecessary trauma of the raid, he was returned that evening to his parents. *See* Attachment H.

103. On Clip Three of the Video Clips being presented to this Court, Tim Ballard, in trying to promote the movie he has a financial interest in, *The Sound of Freedom*, states that I am real, very real, that I was Miss Cartagena and a very well known in public awareness in Cartagena.

104. As earlier stated, I was not Miss Cartagena and was an unknown figure except for my close friends in my neighborhood.

105. On Clip Four of the Video Clips being presented to this Court, Tim Ballard, in trying to promote the movie he has a financial interest in, *The Sound of Freedom*, states that women are the best recruiters to traffic children.

106. He further states that I am a very famous person, that I was Miss Cartagena and that I owned a modeling school where I was recruiting children from my alleged modeling school.

107. Ballard claims that I won the title of Miss Cartagena by saying I wanted to help the children of Colombia and it appeared that is what I was trying to do to recruit children for sexual slavery.

108. All these statements are untrue and are made with the woman who portrayed me in the movie sitting next to him.

109. On Clip Five of the Video Clips being presented to this Court, Tim Ballard, in trying to promote the movie he has a financial interest in, *The Sound of Freedom*, was asked if I was in prison.

110. Ballard responded untruthfully by saying that I was in prison and that he had testified at my trial 8 months earlier and that I am going to be in prison for 20 years or more.

111. Apart from the 18 months I served in the horrible conditions of the women's prison in Cartagena awaiting trial, I am not in prison nor am I going to be spending any additional time in prison since in Colombia a trial is advanced, within which criminal liability has not yet been declared against me.

112. On Clip Six of the Video Clips being presented to this Court, Tim Ballard, in trying to promote the movie he has a financial interest in, *The Sound of Freedom*, is asked what part of the movie *The Sound of Freedom* is real and what part is fiction.

113. Ballard answers by saying all the children are real, the pedophiles are real, and the protagonists are real.

114. I am not a pedophile.

115. None of the children were real trafficked children, except by Ballard who paid to bring them to the island.

116. On Clip Seven of the Video Clips being presented to this Court, Tim Ballard, in trying to promote the movie he has a financial interest in, *The Sound of Freedom*, on his very own podcast with Utah Attorney General Sean Reyes, says that he does not create demand by claiming that he looked at catalogs of children in Cartagena that verified the children going to the island were trafficked minors, that Ballard had proof before the island that these children had been abused multiple times before Ballard showed up to Cartagena.

117. None of the youths and young adults taken to the island for the raid had ever been trafficked before.

118. Tim Ballard created a demand for people like me to fake being a minor in hopes that I could get myself and my mother out of poverty.

119. The defendants through their writing, researching, promotion and distribution of *The Sound of Freedom* clearly have led the public to believe that I am a trafficker, a former beauty queen and Miss Cartagena, all of which is false.

120. There is nothing true about the substance of the Defendants' portrayal of me in *The* Sound of Freedom movie's claim that I am a child trafficker.

121. The promotional videos and web pages I have attached to this declaration included outright lies about me being a trafficker, which is not a minor inaccuracy.

122. The promotional videos and web pages I have attached to this declaration demonstrate that the defendants wanted the pubic to view my character not as a fiction or overly dramatized in *The Sound of Freedom*, rather the defendants wanted the public to believe I was truly a child trafficker as portrayed in the film.

123. I do not speak or read English; however, I am signing this declaration with the understanding and belief that it is a fair and accurate translation of the DECLARACIÓN DE KELY JOHANA SUAREZ MOYA, attached hereto as Attachment I.

124. I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 6 day of June 2024.

uarez Moya (Jun 6, 2024 13:23 CDT) KELY JOHANA SUAREZ MOYA

KelySuarez (English)

Final Audit Report

2024-06-06

Created:	2024-06-06
By:	Chris Cheney (ccheney@mortmilnelaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_Az6J1-GgH2gWQmU36kUfBX4ur6PyW3x

"KelySuarez (English)" History

- Document created by Chris Cheney (ccheney@mortmilnelaw.com) 2024-06-06 - 5:14:34 PM GMT
- Document emailed to Kely Suarez (kellysuarezabogada@hotmail.com) for signature 2024-06-06 - 5:14:41 PM GMT
- Email viewed by Kely Suarez (kellysuarezabogada@hotmail.com) 2024-06-06 - 6:22:07 PM GMT
- Signer Kely Suarez (kellysuarezabogada@hotmail.com) entered name at signing as Kely Johana Suarez Moya 2024-06-06 - 6:23:17 PM GMT
- Document e-signed by Kely Johana Suarez Moya (kellysuarezabogada@hotmail.com) Signature Date: 2024-08-08 - 6:23:19 PM GMT - Time Source: server
- Agreement completed. 2024-06-06 - 5:23:19 PM GMT

ATTACHMENT A

16 0 ZONA ROSA

TIENEN LISTOS-

Las finalistas del Reinado de la Independencia 2013 ya saben qué le pedirán al Niño Dios y nos contaron sus deseos para el 2014.

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amarillo, me parace divertido: además, guardo un billeta en una de mis boisilios". Prophilton para of 2014: "Aprovechar to beca que

ganit en el Reinado y comencar a estudiar idioeses. Quivert también seguir en el modelaja".



ELIANA VARGAS LLERENA - Walnut

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Appendix point ristillal at research attac "Sampra recibimon al año prando en familie y también come las 12 sves Proprietors pairs to 2014; "Terminal Producción de Radio y Televición y ahora ma preparo para continuar cos la carrera da Comunitoxolde Social y mas me trave fulz. Sa tero un gran anfuarzo y voy a other cursuer encourantions"

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YENITZA GALEANO

18

Ai Nithe Dios: "Le pido felicidad para mi familia, prospectidad y bendkipres". Genue plana muchair . al reason ofter "Estar an familia y corner las 12 uves". Propt perm of 2014: Seguir con evis entudos de Contaduria piblica, voy en tercer servestre y communar a estudiar inglés. Tiendokén preparantne piana tr al Reinado Nectonel de la Ganaderia".

ATTACHMENT B



Cartagena, 27 de agosto de 2014

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Dpto	Mu	nicipi	0	Enti	dad	Unidad Receptora				Año					Consecutivo				

ACTA DE VOLUNTARIEDAD PARA ACTUACIÓN DE AGENTE ENCUBIERTO

De conformidad con la Resolución 0-6351 de 09 de Octubre de 2008, por medio de la cual se fijan los parámetros de actuación en operaciones con agente encubierto que tratan los artículos 241 y 242 de la ley 906 de 2004.

Se suscribe la presente acta de voluntariedad, libre y de espontánea aceptación expresa, de la participación del señor **ELKIN ARNULFO PEÑA BERNAL**, identificada con la Cédula de ciudadanía número **77.193.356**, como Agente Encubierto para esta investigación, previa selección y designación a cargo del suscrito jefe del grupo de policía judicial a cargo de la indagación y visto bueno del fiscal de conocimiento, ya que reúne los requisitos de preparación, experiencia e idoneidad para esta clase de diligencias judiciales.

Se le coloca de presente al Agente Encubierto que su actuación será idónea, proporcional y necesaria para los fines de la actividad investigativa y no deberá inducir a la comisión de delitos, tendrá como **FACULTADES**:

- 1. Integrar la estructura del grupo delictivo organizado.
- Participar en los actos de planeación y ejecución de las actividades primarias y secundarias de la organización, siempre y cuando asuma un rol funcional, no de liderazgo o dirección de la actividad de que se trate.
- Ingresar y participar en reuniones en el lugar de trabajo o domicilio de los miembros del grupo delictivo organizado
- 4. Realizar seguimientos y vigilancias, empleando si fuere el caso los medios tecnológicos e informáticos adecuados y pertinentes
- Realizar actos extrapenales como asumir obligaciones civiles, abrir cuentas bancarias, alquilar inmuebles, vehículos, participar en sociedades comerciales o civiles, contratar empleados y demás afines a estos siempre que resulten necesarios, racionales y proporcionales a los fines de la operación.

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SE LE PROHÍBE AL AGENTE ENCUBIERTO:

- 1. En ningún caso el Agente encubierto podrá provocar o inducir al indiciado, imputado o investigado o a cualquier miembro del grupo delictivo organizado o a un tercero ajeno a la organización a cometer una conducta punible, para lo cual no estaba predispuesto
- 2. No podrá vulnerar bienes jurídicos superiores a los de la conducta delictiva objeto de investigación
- 3. No atentar contra la vida e integridad de las personas.

TENDRÁ COMO DEBERES:

- La misión del Agente Encubierto consistirá en: recolectar información, E.M.P. y E.F, ubicar e identificar los integrantes de la misma como también su estructura orgánica y los roles de cada miembro, instrumentos y productos del delito, modus operandi, así como información que resulte de interés para los fines de la investigación penal, la cual hará allegar o dar a conocer por intermedio del agente de control o contacto, al fiscal de conocimiento y al grupo de policía judicial del caso, para que realicen las respectivas diligencias judiciales a que hallan lugar.
- 2. Dará aviso al Agente de Contacto o Control sobre novedades extraordinarias de interés para la investigación.
- Informará cuando advierta de situaciones que comprometan su seguridad o que implique la probable evasión de los indiciados o investigados.
- 4. Informará cuando se considere necesario llevar a cabo operativos para lograr captura en flagrancia de los miembros del grupo delictivo organizado o cuando se advierta que se pretende atentar contra bienes jurídicos de especial relevancia, como también dará a conocer al Agente de Control sobre hechos, coordinaciones o similares, para la recolección de E.M.P. y E.F, entre otros.
- 5. Deberá informar o advertir al Agente de Control o Contacto sobre la existencia de conductas punibles imputables a miembros del grupo delictivo organizado que no tenga conexidad con el objeto de la investigación o que sean atribuibles a un miembro o miembros de la organización en forma independientes, o a otro grupo delictivo organizado, para que se promueva el inicio de la indagación o investigación correspondiente en forma independiente.

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El Agente Encubierto estará exento de responsabilidad penal por aquellas actuaciones que sean consecuencia necesaria del desarrollo de una orden legitima emanada de una autoridad competente o en cumplimiento de un deber, siempre que esta actuación guarde la debida proporcionalidad con la finalidad de la misma y nos constituya una provocación del delito, para

lo cual la conducta debe estar acorde con las condiciones de la autorización expedida.

El término de la duración de la operación de Agente Encubierto, será el autorizado por el Director Nacional o Seccional de Fiscalías.

Leída la presente y de acuerdo a la misma se firma como constancia, en Cartagena el día 27 de agosto de 2014.

SEÑOR(A)

ELKIN ARNOLFO PEÑA BERNAL C.C. Nº 77.193.356 AGENTE ENCUBIERTO

POLICÍA JUDICIAL

FISCAL

ATTACHMENT C

FIS	CALIA		PF	ROCES	O PEI				Código: FGN-50000-F-25		
GENERA		É	ESCRI	TO DE			Versión: 02 Página 5 de 25				
Tiene asigna	do defensor?	SI	F	úblico:		Priva	do	X	LT	1	TP #
Tipo de docu	imento: C.C.		Pas.		c.e.	oti	ro	No).		
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Nombres:		-				Apelli	dos:				
				Luga	r de no	tifica	ción				
Dirección:							Barrio:				
Departament	epartamento: BOLÍVAR					Munic	tiplo:	CAR	TAGEN	A	
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3. Fundamento de la acusación (Fáctico y jurídico)

ANTE ESTA INSTITUCIÓN, EL DÍA 28 DE JULIO DEL AÑO 2014 SE TUVO INFORMACIÓN POR PARTE DEL SEÑOR TIM BALLARD -DE NACIONALIDAD NORTEAMERICANA - PRESIDENTE DE LA FUNDACIÓN OPERATIÓN UNDERGROUND RAILROAD, QUE EN MOMENTOS EN QUE SE ENCONTRABA CAMINANDO EN COMPAÑÍA DE OTRO GRUPO DE EXTRANJEROS POR LAS PLAYAS DEL CORREGIMIENTO DE BARÚ, FUE ABORDADO POR UN SUJETO CON DE LA REGIÓN, QUIEN DIJO SER CARACTERÍSTICAS DE PERSONAL NATIVO CONOCIDO EN LA ZONA COMO ALIAS "FUEGO", COMERCIALIZANDO GRUPO DE MENORES DE EDAD (NIÑOS, NIÑAS Y ADOLESCENTES) CON FINES SEXUALES A CAMBIO DE DINERO EN EFECTIVO, DE IGUAL MANERA CUALQUIER TIPO DE DROGAS (SUSTANCIAS ALUCINÓGENAS), COMO CONSECUENCIA DE LO ANTERIOR, EL SEÑOR BALLARD CONTACTÓ E INFORMÓ DE ELLO AL INVESTIGADOR DEL CUERPO TECNICO DE INVESTIGACIONES ELKIN PEÑA, QUIEN SE ENCUENTRA ADSCRITO A LA SECCION DE ANÁLISIS CRIMINAL DE LA SECCIONAL BOLÍVAR, QUIEN PARA LA VERIFICACIÓN DE LA INFORMACIÓN FUE DESIGNADO POR SU COORDINADOR INMEDIATO, TRASLADANDOSE HASTA EL CORREGIMIENTO DE BARÚ, CONFIRMANDO CON MORADORES DEL LUGAR LA REALIDAD DE LA INFORMACION RECIBIDA, YA QUE LA SOLA APARIENCIA FÍSICA DE LOS MENCIONADOS NORTEAMERICANOS PROPICIA EL ACERCAMIENTO DE PERSONAS COMO CARPEROS, VENDEDORES AMBULANTES Y GUIA TURISTICA, PARA OFRECER A LOS EXTRANJEROS SERVICIOS SEXUALES CON MENORES DE EDAD Y SUSTANCIAS ALUCINÓGENAS, EVIDENCIANDOSE DE PASO OUE LOS INDICIADOS PUEDEN PERTENECER A UNA ESTRUCTURA DE ORGANIZACIÓN CRIMINAL DEDICADA A OFRECER ACTIVIDADES DE COMERCIO SEXUAL CON MENORES DE EDAD (TIPO COITO POR EJEMPLO), ADEMÁS COMERCIO DE DROGAS ALUCINÓGENAS, ENTRE OTRAS CONDUCTAS. POR LO ANTERIOR SE HACE NECESARIO ESTABLECER DE QUÉ FORMA, ESTO ES, MEDIANTE INDUCCIÓN O COACCION AQUELLAS NNA OFRECIDAS A LOS EXTRANJEROS LLEGAN AL INTERCAMBIO SEXUAL O PROSTITUCIÓN, SE HACE NECESARIO CONOCER DE QUÉ TIPO DE SUSTANCIAS SE TRATA, QUIÉN LAS PROVEE, QUIEN LAS VENDE ENTRE OTRAS COSAS, LOGICAMENTE, TAMBIEN ESTABLECER OTROS DELITOS POR DETERMINAR IGUALMENTE CONEXOS CON ESTOS COMO LA TRATA DE PERSONAS.

TENEMOS ENTONCES, AL INTERIOR DE LA CARPETA DE LA FISCALIA, QUE LAS PERSONAS EXTRANJERAS QUE RECIBIERON LA OFERTA DE SERVICIOS SEXUALES CON MENORES DE EDAD, A CAMBIO DE DINERO Y DROGA, FUERON PROACTIVAS SIEMPRE EN LA POSIBILIDAD DE COOPERAR CON LA FISCALIA GENERAL DE LA NACION, Y ASÍ LO RATIFICARON, PARA SER AGENTES ENCUBIERTOS DENTRO DEL PRESENTE ASUNTO, TAL COMO SE APRECIA EN LOS INFORMES DE INVESTIGADOR DE CAMPO FPJ-11, DE FECHA 17-09-2014 y 25-09-2014, CAPITALIZANDO A SU

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FAVOR SU APARIENCIA FÍSICA Y SU IDIOMA QUE ACTIVA Y ESTIMULA CON SU SOLA PRESENCIA A LOS PROPONENTES DE SERVICIOS SEXUALES CON MENORES DE EDAD, A CAMBIO DE DINERO, A HACER EL OFRECIMIENTO, TENIENDO ENTONCES LA POSIBILIDAD DE OBTENER INFORMACION, RECOGER ELEMENTOS MATERIALES DE PRUEBA Y EVIDENCIA FÍSICA QUE SIRVA PARA ESTABLECER QUIÉNES (EL MAYOR NÚMERO POSIBLE) HACEN PARTE DE LA ORGANIZACIÓN CRIMINAL, SUS ROLES, LA RELACION DE ESAS ORGANIZACIONES CRIMINALES CON OTRAS, LA IDENTIDAD DEL MAYOR NUMERO DE INDICIADOS INVOLUCRADOS EN EL COMERCIO SEXUAL DE NNA EN LA CIUDAD DE CARTAGENA E ISLA DE BARÚ, LA IDENTIDAD Y LA EDAD DE LAS NNA OFRECIDAS PARA SERVICIOS SEXUALES POR LOS INDICIADOS, CÓMO SE RECLUTA A LAS NNA VINCULADAS A LA ACTIVIDAD DE EXPLOTACION SEXUAL CON MENORES DE EDAD EN LA CIUDAD DE CARTAGENA E ISLA DE BARÚ, DE QUÉ FORMA INTERVIENEN LAS NNA EN LA ACTIVIDAD DESDE EL PUNTO DE VISTA DE SU VOLUNTARIEDAD, ENTRE OTRAS COSAS, POR LO QUE SE HIZO NECESARIO CONFORME A LO PREVISTO EN EL ARTÍCULO 242 DEL C.P.P., HACER USO DE LA FIGURA DE AGENTES ENCUBIERTOS CON LA PARTICIPACIÓN TAMBIÉN DE LOS CIUDADANOS EXTRANJEROS, YA QUE ES POSIBLE INFERIR DE MANERA RAZONABLE QUE LOS INDICIADOS QUE PROPUSIERON PARA EL MES DE JUNIO DE 2014, A LOS CIUDADANOS EXTRANJEROS, RELACIONES SEXUALES CON MENORES DE EDAD, FUERON INSISTENTES EN SU OFERTA, TAL COMO SE APRECIÓ EN INFORME DE INVESTIGADOR DE CAMPO FPJ-11, DE FECHA 17-09-2014, QUIENES PERMANECIERON DESARROLLANDO ACTIVIDAD CRIMINAL (COMERCIO SEXUAL DE NNA EN CARTAGENA E ISLA DE BARÚ, COMERCIO DE SUSTANCIAS ALUCINÓGENAS Y ACTIVIDADES CONEXAS DE ORDEN ILÍCITO).

EL DIA 6 DE OCTUBRE DE 2014, LA FISCALIA SECCIONAL 21 ELEVA SOLICITUD DE AGENTE ENCUBIERTO A LA SUBDIRECCION SECCIONAL DE FISCALIAS Y SEGURIDAD CIUDADANA EN CARTAGENA, DE LO CUAL SE OBTUVO RESPUESTA POSITIVA EL DIA 7 DE OCTUBRE DEL MISMO MES Y AÑO, AUTORIZADA MEDIANTE RESOLUCIÓN No.099 DEL 07-10-2014, DESIGNANDOSE ASÍ COMO AGENTES ENCUBIERTOS A LOS SERVIDORES DE POLICIA JUDICIAL DEL C.T.I. CARTAGENA, Sres: YESID REINALDO MUÑOZ MALES, A QUIEN EN ADELANTE LLAMAREMOS "SEBASTIAN"; ELKIN ARNULFO PEÑA BERNAL "JAVIER"; JORGE ENRIQUE MARTES FAWCET "ROBERTH", Y COMO AGENTE DE CONTROL JACKELINE REYES SARMIENTO. DE IGUAL MANERA A DOS PARTICULARES DE NACIONALIDAD ESTADOUNIDENSE COMO SON: TIMOTHY BLAIN BALLARD, ALIAS "BRAYAN" Y PAUL HUTCHINSON "PABLO".

SE PLANIFICA EN RAZÓN DE LA OPERACIÓN DE AGENTE ENCUBIERTO, ORGANIZAR UNA FIESTA EN LA ISLA DE BARÚ PUNTA BLANCA CABAÑA LA COQUETA, FRENTE A LAS ISLAS DEL ROSARIO-ISLA GRANDE Y DIAGONAL A ISLA ARENA, EN DONDE SE CELEBRARÍA UNA FIESTA DE DESPEDIDA DE SOLTERO PARA UNA PERSONA DE SEXO MASCULINO, NACIONALIDAD EXTRANJERA, MULTIMILLONARIO, CON DESVIACIONES DE TIPO SEXUL Y DE PREFERENCIA CON NIÑDS, DICHO PAPEL SERÍA CARACTERIZADO POR EL AGENTE ENCUBIERTO PAUL HUTCHINSON, CON EL NOMBRE DE "PABLO", TODOS SERÌAN SUMINISTRADOS POR LOS PROXONETAS A CAMBIO DE DINERO.

LA EJECUCIÓN DE LA ACTIVIDAD DE AGENTE ENCUBIERTO EMPIEZA EL DIA 07-10-2014, Y ESE MISMO DIA A LAS 18:00 HORAS SE LLEVA CABO REUNIÓN EN EL BARRIO BOCAGRANDE, CENTRO COMERCIAL NAU, ACTIVIDAD ORGANIZADA POR ALIAS "FUEGO" EN CONVERSACION CON EL AGENTE BRAYAN, ÉSTE ULTIMO COORDINÓ CONTACTO ENTRE ALIAS "FUEGO" Y LOS AGENTES JAVIER Y ROBERTH,

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EN ESTA REUNIÓN ALIAS "FUEGO" LLEGA EN COMPAÑÍA DE ALIAS "EDUAR", QUIEN RECIBIÓ EL DINERO SOLICITADO PARA SOLVENTAR GASTOS LOGISTICOS (TRANSPORTES, COMUNICACIÓN, ETC.), EN ESA REUNIÓN SE ACORDÓ QUE CADA NIÑA COSTARÍA UN VALOR DE TRESCIENTOS MIL PESOS COLOMBIANOS, ALIAS "FUEGO" ASEGURÓ PODER UBICAR A VEINTE (20) NNA.

ALIAS "FUEGO", ES REALMENTE EL SEÑOR JUAN MANUEL OKENDO SIERRA, ES GUIA DE TURISMO Y SE DEDICA A ESA ACTIVIDAD EN LAS PLAYAS DE BARÚ Y COMBINA ESA ACTIVIDAD MANEJANDO LANCHAS Y CONTACTANDO TURISTAS EXTRANJEROS PARA BRINDARLE SERVICIOS SEXUALES CON MENORES DE EDAD, QUIEN LLEVA A LA FIESTA COMO SEGUNDO DE ALIAS "EDUARD" LA CANTIDAD DE DIECISEIS (16) PRESUNTAS NIÑAS Y TRES (3) NIÑOS, EN COMPAÑÍA TAMBIEN DE HORACIO REVOLLEDO PACHECO. FOLIO (191).

EL DIA 7 DE OCTUBRE DE 2014, A LAS 19:00 HORAS, EL SERVIDOR ENCUBIERTO DEL C.T.I., "JAVIER" RECIBIO UNA LLAMADA DE ALIAS "EDUAR", EN ESTA CONVERSACION SE ACUERDA UNA CITA PARA EL MISMO DIA A LAS 21:00 HORAS EN LA IGLESIA DE JONNY COPETE, UBICADA EN EL BARRIO LA CONSOLATA. LLEGADA LA HORA INDICADA, SE DESPLAZARON LOS AGENTES ENCUBIERTOS JAVIER, ROBERT Y BRAYAN, HASTA DICHO LUGAR, DONDE FUERON CONTACTADOS POR ALIAS "EDUAR", PARA QUE ABORDARAN UN AUTOMÓVIL MARCA CHEVROLET DE COLOR BLANCO, EN DONDE CON EL FIN DE DESORIENTAR A LOS AGENTES, DESPUES DE REALIZAR VARIOS TRAYECTOS EN EL SECTOR, FINALMENTE, LLEGARON A UNA VIVIENDA EN CUYO INTERIOR SE ENCONTRABAN APROXIMADAMENTE DOCE (12) MENORES DE EDAD, QUIENES UNA VEZ VERIFICADA VISUALMENTE LA PRESUNTA EDAD DE LAS NNA, SE FIJÓ PRECIOS ENTRE DOSCIENTOS Y TRESCIENTOS DOLLARES POR CADA UNA, ESTABLECIENDOSE NUEVA FECHA DE CONTACTO.

DE ALIAS "EDUAR", SE CONOCE QUE SU VERDADERO NOMBRE ES EDUARDO ORTEGA ISSA, QUIEN ES EL LÍDER Y ORGANIZADOR DE LOS HECHOS DELICTIVOS, LLEVANDO A LA FIESTA CON SU SEGUNDO JUAN MANUEL OKENDO SIERRA ALIAS "FUEGO", LA CANTIDAD DE DIECISEIS (16) PRESUNTAS NIÑAS Y TRES (3) NIÑOS, TAMBIEN A SU TIO HORACIO REVOLLEDO ACHECO, ENCARGADO DE LA LOGISTICA. (FOLIO 191)

EL DIA 9 DE OCTUBRE DE 2014, SIENDO LAS 11:00 AM, LOS AGENTES ENCUBIERTOS BRAYAN, ROBERT Y JAVIER, ESTABLECEN CONTACTO CON ALIAS "EDUAR"; ٩. DURANTE ESTE ENCUENTRO JAVIER ENTREGA UN ADELANTO POR VALOR DE QUINIENTOS DOLLARES AMERICANOS, CON EL ANIMO DE MANTENER EL CONTACTO Y DE ESTA FORMA PRESERVAR LA FACHADA INICIAL, FINALIZANDOSE LA REUNIÓN CON LA ENTREGA DE ESTE DINERO. EL MISMO DÍA, SIENDO LAS 20:00 HORAS, ALIAS "EDUAR" SE COMUNICÓ TELEFONICAMENTE CON JAVIER. EN ESTA CONVERSACIÓN ALIAS "EDUAR" LE HACE UN OFRECIMIENTO DE MAYOR NÚMERO DE NNA, POR UN COSTO MENOR AL TRATADO EN EL ANTERIOR CONTACTO, DURANTE LA CONVERSACIÓN SE COORDINÓ FECHA Y HORA PARA EL SIGUIENTE ENCUENTRO, REUNIÓN ESTA A LA QUE ASISTIERON TRES PERSONAS MÁS QUIENES SE IDENTIFICARON CON LOS ALIAS DE "SAMUEL", "LUIS" Y UNA JOVEN CON EL ALIAS DE "NATY", SEGUIDAMENTE LA ANTES SEÑALADA ASUMIÓ LA VOCERÍA Y EXPUSO QUE ELLA PODÍA CONSEGUIR APROXIMADAMENTE QUINCE (15) NIÑAS, COMO CARACTERÍSTICA PRINCIPAL ESTUDIANTES DE COLEGIOS DE LA CIUDAD DE CARTAGENA, GARANTIZANDO QUE LA MAYOR DE SU GRUPO TENDRÍAN DIECISEIS (16) AÑOS. DE OTRA PARTE ALIAS "SAMUEL" ASEGURA PODER CONSEGUIR DOCE (12) NIÑAS YA QUE POSEE UNA ACADEMIA DE MODELAJE CUYA RAZÓN SOCIAL ES: "STAGE MODELS CARIBE", DE ESTE GRUPO PROPORCIONARÍA NIÑAS DE DIECISEIS (16) AÑOS DE EDAD. OBTENIDA ESTA INFORMACIÓN VEMOS QUE SE INCREMENTÓ EL NÚMERO DE VICTIMAS APROXIMADAMENTE A CINCUENTA (50) NNA, A UN COSTO MAYOR.

DE ALIAS "SAMUEL", SE CONOCE QUE SU VERDADERO NOMBRE ES SAMUEL DAVID OLAVE MARTINEZ, QUIEN LABORA EN UNA ESCUELA DE MODELAJE ANTERIORMENTE CITADA, SITUACIÓN ESTA QUE LE PERMITE EL RECLUTAMIENTO DE LOS NNA Y QUIEN LLEVÓ A LA FIESTA LA CANTIDAD DE VEINTISEIS (26) PRESUNTAS NIÑAS Y SEIS (6) PRESUNTOS NIÑOS, QUIEN IBA EN COMPAÑÍA DE ALIAS "KELLY" Ó "JOHANA".-___

DE ALIAS "LUIS", TENEMOS QUE SU VERDADERO NOMBRE ES LUIS MIGUEL MOSQUERA CUESTA, QUIEN ES UNO DE LOS ENCARGADOS DE RECLUTAR A NNA Y SE PRESENTÓ A LA FIESTA CON UN GRUPO DE DIEZ (10) NIÑAS, EL CUAL NO PRESENTÓ DOCUMENTO DE IDENTIFICACION EN ENTREVISTA CON LA PSICOLOGA DOLLY ARCILA, PUDIENDOSE OBSERVAR SU PARTICIPACIÓN ACTIVA EN LA ORGANIZACIÓN AL MOMENTO DE LA NEGOCIACIÓN Y LA SERIE DE CONTRADICCIONES EN LA QUE INCURRIÓ, TODO ELLO PLASMADO EN EL VIDEO DE LAS DILIGENCIAS. ESTE JOVEN NO FUE JUDICIALIZADO

PROSIGUIENDO CON LAS ACTIVIDADES REALIZADAS POR LOS AGENTES ENCUBIERTOS DE LOS SERVIDORES DE POLICIA JUDICIAL C.T.I. DE LA FISCALIA Y DE LOS CIUDADANOS EXTRANJEROS DESTACADOS COMO AGENTES ENCUBIERTOS TAMBIEN, PERTENECIENTES A LA ONG O.U.R., SE REPORTAN LAS ACTUACIONES REALIZADAS EL DÍA 10 DE OCTUBRE DE 2014, SIENDO LAS 08:00 HORAS, LOS AGENTES ENCUBIERTO ROBERTH Y JAVIER, ATENDIENDO UN LLAMADO DE ALIAS "EDUAR" REALIZAN UNA REUNIÓN EN LA CASA DE UN PARTICULAR, EN LA CUAL INTERVIENEN ALIAS "LUIS MIGUEL", ALIAS "FUEGO" Y UNA JOVEN QUIEN SEÑALÓ REPRESENTAR A ALIAS "NATY" HEN ESTA REUNIÓN PRESENTARON A DIECISEIS (16) NIÑAS Y UN (1) NIÑO, DE LOS CUALES TRES (3) ERAN VÍRGENES. DE ACUERDO A LO MANIFESTADO POR ALIAS "EDUAR" DURANTE LA REUNIÓN MANIFESTÓ QUE SUS NIÑAS ESTABAN LISTAS PARA DISPONER DE SUS SERVICIOS SEXUALES EN EL LUGAR Y MOMENTO EN QUE FUERAN REQUERIDAS, POR LO QUE ALIAS "EDUAR" PROPONE QUE EL MOMENTO, SERÍA UNA FIESTA EN UN LUGAR PRIVADO, EN RAZÓN A LO ANTERIOR EL AGENTE ENCUBIERTO JAVIER, PREGUNTA SOBRE SI LAS ASISTENTES ESTARÍAN DISPUESTAS A ACUDIR A ESA FIESTA, RESPONDIENDO ALIAS QUE YA TODAS ESTABAN CHARLADAS Y SE DIRIGE A JAVIER "EDUAR" SOLICITANDOLE DINERO PARA COMPRARLES VESTIDOS DE BAÑO PARA QUE EN EL MOMENTO DE LA FIESTA ÉSTAS LUZCAN COMO UN "MANJAR"; SEGUIDAMENTE EL AGENTE ENCUBIERTO JAVIER LE ENTREGA A ALIAS "EDUAR" LA SUMA DE CINCUENTA MIL PESOS (\$50.000.00) A CADA UNA DE LAS NIÑAS PRESENTES. ACTO SEGUIDO, ALIAS "EDUAR" EMPEZÓ A LLAMAR TELEFONICAMENTE A SUS NIÑAS Y LLEGARON DOCE NIÑAS MÁS A QUIENES SE LES ENTREGÓ LA MISMA CANTIDAD DE DINERO PARA LA COMPRA DEL TRAJE DE BAÑO. ASÍ MISMO, ALILAS "EDUAR", SOLICITÓ LA SUMA DE UN MILLÓN DOSCIENTOS MIL PESOS (\$1.200.000.00) PARA CANCELAR EL TRANSPORTE DE LAS NIÑAS EL DIA DE LA FIESTA, TAMBIEN SOLICITAN SU RESPECTIVA PROPINA ALIAS "FUEGO", ALIAS "LUIS MIGUEL" Y ALIAS "NATY", A QUIENES SE LES ENTREGÓ LA SUMA DE CIEN MIL PESOS (\$100.000.00) A CADA UNO.

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IGUALMENTE ASISTIERON DIECISEIS (16) NINAS Y SELS (6) NINOS, EN LOIA REUNIÓN LOS AGENTES ENCUBIERTOS JAVIER Y ROBERTH CONVERSARON SOBRE SI LOS NIÑOS ESTARIAN DISPUESTOS A ASISTIR A LA FIESTA; ASÍ MISMO, ALIAS "SAMUEL" LES PRESENTA A LOS AGENTES JAVIER Y ROBERTH, COMO LOS ANFITRIONES DE LA FIESTA Y SOLICITÓ LA SUMA DE CINCUENTA MIL PESOS (50,000,00) PARA LAS NNA QUE ALLÍ SE ENCONTRABAN.

DE ALIAS "JOHANA", SE CONOCIÓ QUE SU VERDADERO NOMBRE ES KELY JOHANA SUAREZ MOYA, QUIEN FUE CANDIDATA AL REINADO POPULAR DE LAS FIESTAS DE LA INDEPENDENCIA EN CARTAGENA Y SE DEDICA AL RECLUTAMIENTO DE NNA EN LAS INSTITUCIONES EDUCATIVAS Y EN LA ACADEMIA DE MODELAJE DE RAZÓN SOCIAL STAGE MODEL CARIBE, QUIEN EN COMPAÑÍA DE ALIAS "SAMUEL" LLEVARON A LA FIESTA VEINTISEIS (26) PRESUNTAS NIÑAS Y SEIS (6) PRESUNTOS NIÑOS.

A TONO CON LO ANTERIOR RELACIONADA LA SECUENCIA DE LA INFORMACIÓN, SE CONFIRMÓ LA ASISTENCIA DE VEINTIOCHO (28) NIÑAS, TRES (3) NIÑOS, TRES (3) NIÑAS VÍRGENES Y POSIBLEMENTE TRES NIÑOS DE DIEZ (10) AÑOS, ÉSTOS ÚLTIMOS SERÍAN EL REGALO PARA EL JEFE, MANIFESTÓ ALIAS "EDUAR". EL PAPEL DE JEFE VENDRIA DESARROLLADO POR EL AGENTE ENCUBIERTO PAUL HUTCHINSON ALIAS PABLO, AL INTERIOR DE LA FIESTA QUE SE LLEVARÍA A CABO LUEGO DE QUE ALIAS "EDUAR" PRESENTARA LA IDEA DE LA FIESTA EN LA QUE REUNIRÍAN A TODOS LOS NIÑOS QUE ÉL, ALIAS "FUEGO", ALIAS "NATY" Y ALIAS "SAMUEL" CONVOCARON.ICABE ANOTAR QUE ALIAS "EDUAR" UNA VEZ HECHA LA PROPUESTA ANTERIOR, PIDIÓ PARA CERRAR EL NEGOCIO LA SUMA DE DIEZ MIL DOLLARES Y PROVEER CUALQUIER TIPO DE SUSTANCIA ALUCINÓGENA PARA VENDER EN EL LUGAR.

HOY SABEMOS, QUE ALAIS "NATY", RESPONDE AL NOMBRE DE NATALIA TABORDA ATENCIO, IDENTIFICADA CON CEDULA DE CIUDADANÍA No.1.143.379.773, ENCARGADA DE CONTACTAR NNA EN LAS DIFERENTES INSTITUCIONES ESCOLARES DE LA CIUDAD CON EL FIN DE OFRECERLES DINERO A CAMBIO DE PRESTACIÓN DE SERVICIOS SEXUALES, QUIEN A PESAR DE APORTAR UN NUMERO SIGNIFICATIVO DE NNA A LA FIESTA, ÉSTA NO SE HIZO PRESENTE.

EL MISMO 10 DE OCTUBRE DE 2014, SIENDO LAS 11:30 AM, "JAVIER" RECIBE LLAMADA DE ALIAS "EDUAR", QUIEN LE INFORMA QUE TENÍA 28 NIÑAS Y 3 NIÑOS MENORES DE 10 AÑOS DE EDAD, COORDINANDO ENTRE ELLOS COMO SITIO DE ENCUENTRO PARA ASISTIR A LA FIESTA, EL PARQUE DE MANGA UBICADO DIAGONAL AL CLUB DE PESCA, A LAS 08:30 HORAS DEL 11 DE OCTUBRE DE 2014.-SE HABLÓ IGUALMENTE, QUE ALIAS "SAMUEL" TENÍA 26 NIÑAS Y 8 NIÑOS A QUIEN SE LE INFORMÓ DEL LUGAR Y HORA DE ENCUENTRO.

EL DIA 11 DE OCTUBRE DE 2014, SIENDO LAS 07:00 DE LA MAÑANA, SE CONTACTARON ALIAS "EDUAR Y SAMUEL" CON EL AGENTE ENCUBIERTO "JAVIER" PARA ULTIMAR LA LLEGADA AL SITIO PREVIAMENTE INDICADO, LA CUAL SE REALIZÓ CON EL ARRIBO DE DOS (2) BUSES EN LOS CUALES LLEGARON LOS GRUPOS DE NNA, EN COMPANÍA DE ALIAS "EDUAR "EUEGO", "SAMUEL", LUIS MIGUEL" Y DOS (2) PERSONAS MÁS QUIENES SE LES CONOCIO CON EL ALIAS DE



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TIO Y JOHANAK, COMO SE DIJO ANTES ALIAS NATY NO LLEGO AL ENCUENTRO, DE ALLÍ LOS DOS (2) BUSES CON TODO EL GRUPO DE NNA INCLUYENDO A LOS AGENTES ENCUBIERTOS "JAVIER", "ROBERT" Y "SEBASTIAN", DESPLAZANDOSE HASTA EL PUERTO DE LA MARINA SANTA CRUZ DE MANGA, DONDE ESPERABA EL AGENTE ENCUBIERTO "BRAYAN", DONDE SE EMBARCARON EN TRES (3) LANCHASCON DESTINO A LA CABAÑA LA COOUETA UBICADA EN PUNTA BLANCA EN EL CORREGIMIENTO DE BARÚ, SITIO EN DONDE SE REALIZARÍA LA FIESTA Y EN DONDE TAMBIEN ESPERABA EL AGENTE ENCUBIERTO "PABLO", AL QUE LLEGARON APROXIMADAMENTE A LAS 11:00 HORAS TANTO LOS NNA COMO LOS INDICIADOS HOY IMPUTADOS. YA EN ESE LUGAR SE AISLARON LOS NNA DEL RESTO DE LOS ORGANIZADORES QUIENES SE REUNIERON Y SELLARON LA NEGOCIACIÓN CON LA ENTREGA DE LOS DINEROS A ALIAS "EDUAR" Y ALIAS "SAMUEL", ÉSTOS PROCEDIERON A CONTABILIZAR EL DINERO Y A GUARDARLOS JUNTO CON SUS PERTENENCIAS, ENTREGÁNDO A "EDUAR" LA SUMA DE CUATRO MILLONES OCHOCIENTOS MIL PESOS (\$4.800.000.00) Y A "SAMUEL" LA SUMA DE CUATRO MILLONES DE PESOS (\$4.000.000.00), DE ESTO SE DEJÓ REGISTRO FILMICO.

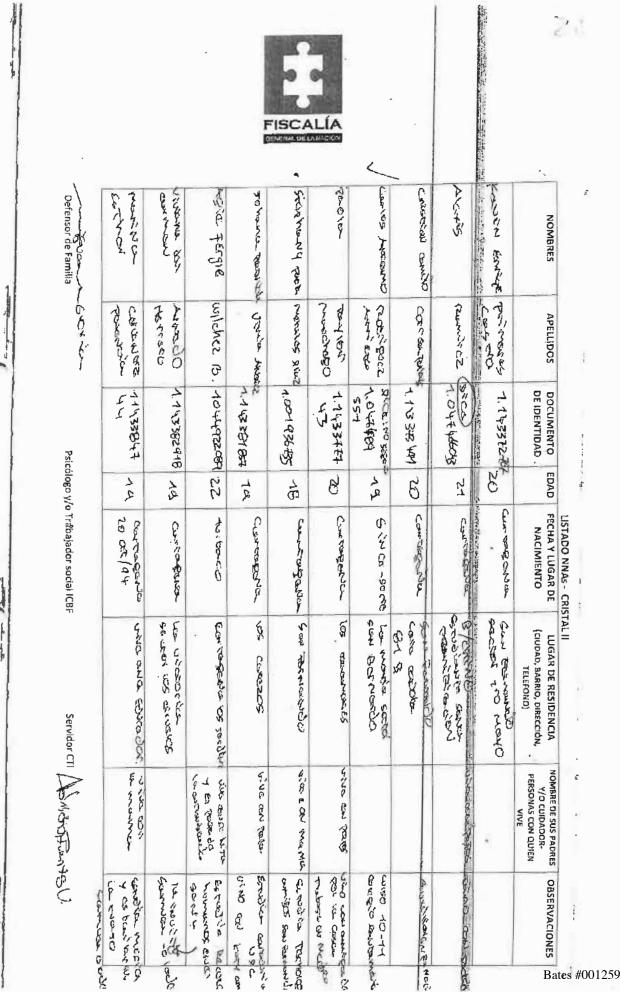
SE DEJA CONSTANCIA QUE EN ESTA OPERACIÓN PARTICIPARON EL C.T.I., ICBF, ONG RENACER, POLICIA DE INFANCIA, DEFENSOR DE MENORES, INMLYCF Y BAFIN.

DE LA FIESTA DE DESPEDIDA DE SOLTERO REALIZADA EN LA ISLA DE BARÚ, PUNTA BLANCA CABAÑA LA COQUETA, FRENTE A LAS ISLAS DEL ROSARIO-ISLA GRANDE Y DIAGONAL A ISLA ARENA, SE DEJÓ TAMBIEN REGISTRO FILMICO. REALIZADA ESTA ULTIMA ACTIVIDAD, SE DIO LA SEÑAL PARA EL INGRESO DEL GRUPO DE POLICIA JUDICIAL, DANDOSE POR TERMINADAS LAS ACTIVIDADES DE AGENTE ENCUBIERTO, RESULTANDO COMO CAPTURADOS LOS SEÑORES JUAN MANUEL OKENDO SIERRA, IDENTIFICADO CON C.C. No.1.048.437.935; HORACIO REVOLLO PACHECO, C.C. No.73.080.399; SAMUEL DAVID OLAVE MARTINEZ, C.C. No.1.143.395.851; EDUARDO ORTEGA ISSA, C.C. No.73.199.410 Y KELY JOHANA SUAREZ MOYA, C.C. No.1.047.470.796, TODOS MAYORES DE EDAD, HACIÉNDOLE SABER À LOS INDICIADOS EL MOTIVO DE SU CAPTURA LEYÉNDOLE Y GARANTIZÁNDOLE SUS DERECHOS COMO CAPTURADOS. DE INMEDIATO FUERON TRASLADADOS A LAS INSTALACIONES DE LA FISCALIA, PARA LUEGO SER PUESTOS A DISPOSICIÓN DE LA FISCALÍA SECCIONAL 21 DE CAIVAS, QUIEN LEGALIZÓ CAPTURA ANTE EL JUZGADO CUARTO PENAL MUNICIPAL CON FUNCIONES DE CONTROL DE GARANTÍAS, EL DÍA 13 DE OCTUBRE DE 2014, A LOS SEÑORES JUAN MANUEL OKENDO SIERRA, HORACIO REVOLLO PACHECO, SAMUEL DAVID OLAVE MARTINEZ, EDUARDO ORTEGA ISSA Y KELY JOHANA SUAREZ MOYA, FORMULANDOLES IMPUTACIÓN POR LOS DELITOS DE INDUCCION A LA PROSTITUCION Y PROXENETISMO CON MENOR DE EDAD, SIN ALLANARSE A CARGOS, Y SE PROFIRIÓ EN SU CONTRA DETENCIÓN PREVENTIVA INTRAMUROS.

DE CONFORMIDAD CON LOS ARTÍCULOS 336 Y SS DEL CÓDIGO DE PROCEDIMIENTO PENAL, Y CON SUSTENTO EN LOS ANTERIORES HECHOS, LA FISCALÍA GENERAL DE LA NACIÓN POR CONDUCTO DE LA FISCALÍA VEINTIUNO (21) SECCIONAL DE CAIVAS, DELEGADA ANTE LOS JUECES PENALES DEL CIRCUITO DE CARTAGENA Y ADSCRITA AL CENTRO DE ATENCIÓN E INVESTIGACIÓN INTEGRAL DE VIOLENCIA SEXUAL, ESTÁ EN CONDICIONES DE AFIRMAR CON PROBABILIDAD DE VERDAD, QUE LA CONDUCTA DELICTIVA EXISTIÓ Y POR ELLO PROCEDE A FORMULAR AUSACION CONTRA LOS IMPUTADOS: EDUARDO ORTEGA ISSA Y JUAN MANUEL OKENDO SIERRA, QUIENES LLEVAN A LA FIESTA DIECISEIS (16) PRESUNTAS NIÑAS Y TRES (3) NIÑOS, SIENDO RESPONSABLES EN CALIDAD DE AUTORES, A TITULO DE DOLO, DE LOS DELITOS

ATTACHMENT D

Invita day for					LISTADO NNAs - CRIS	STAL II		
*	NOMBRES		DOCUMENTO DE IDENTIDAD	EDAD	FECHA Y LUGAR DE NACIMIENTO	LUGAR DE RESIDENCIA (CIUDAD, BARRIO, DIRECCIÓN, TELEFONO)	NOMBRE DE SUS PADRES Y/O CUIDADOR- PERSONAS CON QUIEN VIVE	OBSERVACIONES
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	MAIRA	HUETADO DE ALBA	80,	17	CARTAGENA AGOSTO 9-1997	ZARAGOCILIA CERCA GRAN COSECHA VIVE ON LA PARTE SUPPRIO		HADLELD DE AVI
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	Viviana Moreela	Rivera Gil	1. 148.367. 803 (c. (Sin verificar)	<i>ع</i> اء	01-09-1993 Cortagena	Nuevo Busque, Mz 10 14 4. 6° etapol Contageno 3017171251	Rivera - Madre	Wendy Boxmics.
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	Jese Ignacio	Long	(sin Verificor) (artogena	19a	21-12-1994 Cartageno	San Fernando, el La Vieto ría Nº 520. Cartageno	Marrisela (Mose	Rochrig Des (Bus Ti
	· Jessien Perola	Rodriguez Rodriguez	(sin verificar) (actogeno	19a	13-08-1995 Aque chies Cesar	San ternando, cli Cordoba Nº 10A-50 Cartagena 3006833992	(Pedre) (Redre) Ledis Rochriguez (Marche)	(Sai Fernanto)
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ATTACHMENT E

Declaración de Pedro Florez Ramos

1. Mi nombre es Pedro Florez Ramos.

2. Mi fecha de nacimiento es el 8 de junio de 1997.

3. El 11 de octubre de 2014 tenia 17 años.

4. Antes del 11 de octubre de 2014, vivía con mis padres, Oscar Florez y Alejandra Ramos en Cartagena, Colombia.

6. Antes del 11 de octubre de 2014, me informaron de una fiesta en Facebook donde estarian presentes norteamericanos.

7. Este aviso en Facebook también decía que si tenías sexo con uno de los norteamericanos te pagarían un millón de pesos colombianos y que todo el transporte, paseo en bote, comida y alcohol estaría incluido.

8. Este aviso en Facebook también decía que si decidías no tener sexo con uno de los norteamericanos, te pagarían cuatrocientos mil pesos colombianos por asistir a la fiesta y que todo el transporte, paseo en bote, comida y alcohol correría estar incluido.

9. En base a esa invitación, decidi asistir a la fiesta para que me pagaran 400.000 pesos colombianos para asistir a la fiesta con transporte, paseo en bote, comida y alcohol gratis.

10. Fuimos a la fiesta sin intención de tener relaciones sexuales con nadie, incluidos nosotros mismos, ya que éramos menores de edad.

11. Antes de la fiesta del 11 de octubre de 2014, no conocía a Kely Suárez, ni en privado, ni públicamente como alguna supuesta reina de belleza de Cartagena.

12. En ningún momento Kely Suarez me invitó a la fiesta ni me prometió dinero.

13. Antes del 11 de octubre de 2014, nunca había sido objeto de trata sexual, pero fui víctima de abuso sexual por un vecino antes del 11 de octubre de 2014.

15. Sin emborgo, después de llegar a la fiesta, las mujeres nortcamericanas nos encerraron en una habitación y las cosas se volvieron muy aterradoras y traumáticas.

16. Las norteamericanas comenzaron entonces a llamarnos una a una para conocer la isla donde se celebraba la fiesta y dejar que los pedófilos nos vieran para decidir con qué niño querían tener sexo.

17. Me asusté mucho porque en ese momento me di cuenta de que yo, junto con los demás (incluidos los menores), estábamos siendo traficados con fines sexuales.

18. Finalmente, antes de que se pudiera lograr cualquier contacto sexual, los militares colombianos vinieron y nuevamente nos encerraron en una habitación, lo cual fue una experiencia muy aterradora y traumática.

19. Después de sentir los horrores de ser traficada el 11 de octubre de 2014, decidí comenzar un programa de cuidados posteriores para sobrevivientes de trata sexual que se llama Tejiendo Sueños.

20. Tejiendo Sueños ha trabajado de la mano y con el apoyo de Operation Underground Railroad.

21. Operation Underground Railroad envió subvenciones para mi programa de cuidados posteriores.

23. Me retrataron como Símba en la película Sound of Freedom (Sonido de Libertad).

____ día de febrero de 2024.

Pedro Flored Ramos

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FISCALIA	PROCESO PENAL	Código: FGN-50800-F-25
GENERAL DE LA NACIÓN	ESCRITO DE ACUSACIÓN	Versión: 02
		Página 13 de 25

NIÑAS Y LOS ADOLESCENTES (NNA). LA FAMILIA, LA SOCIEDAD Y EL ESTADO SON CORRESPONSABLES EN SU ATENCION, CUIDADO Y PROTECCION.

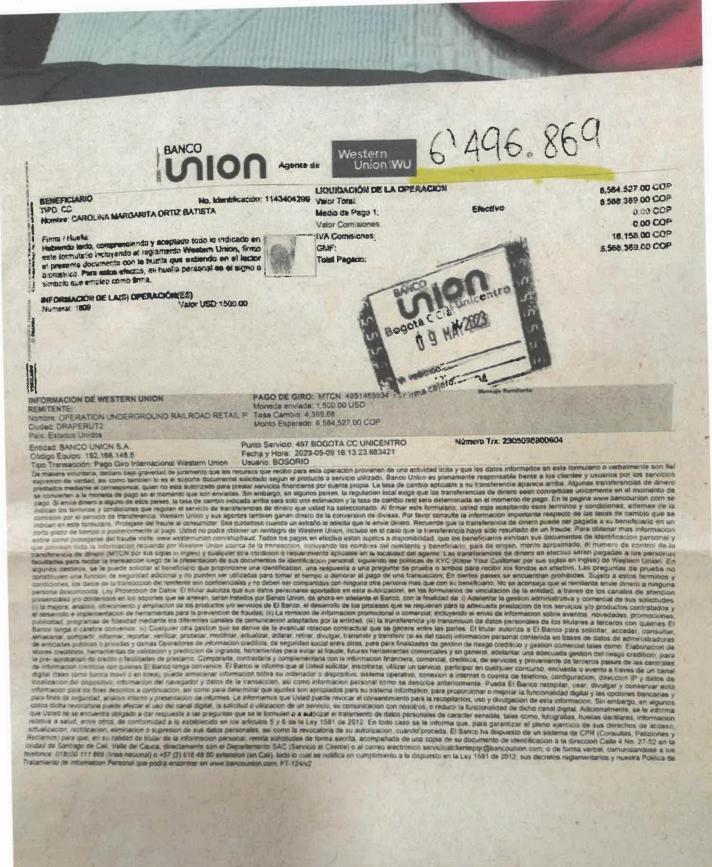
SOBRE LAS VICTIMAS TENEMOS LAS SIGUIENTES:

MARIA ALEJANDRA SARRUFF CASTRO, DE 17 AÑOS DE EDAD, MANIFIESTA QUE SU HERMANO FUE QUIEN LE DIJO SOBRE EL PASEO DEBIDO A QUE SU AMIGO SAMUEL HABIA IDO A SU CASA COMENTANDOLE DE LA EXISTENCIA DEL PASEO Y QUE COSTABA TREINTA MIL PESOS (\$30.000,00) YA QUE ESTE LE HABIA DICHO QUE LOS RECOGIA EN SU CASA Y QUE IBA A HABER BASTANTE COMIDA, AL PREGUNTARSELE SU LE HABÍAN OFRECIDO ALGO PARA IR AL PASEO ESTA CONTESTÓ QUE NO PERO QUE SI HABÍA ESCUCHADO QUE LOS GRINGOS ESTABAN OFRECIENDO CUATROCIENTOS MIL PESOS (\$400.000.00) POR ESTAR EN LA FIESTA. DICE QUE SAMUEL ES MODELO PROFESIONAL Y QUE ESE DIA SE ENCONTRABA VESTIDO CON PANTALONETA VERDE, SUETER NEGRO, QUIEN ES DE TEZ BLANCA.

CAROLINA MARGARITA ORTIZ BATISTA, DE 16 AÑOS DE EDAD, RESIDE EN EL BARRIO LA VICTORIA, SECTOR LOS CIRUELOS, CRA 71D-408, QUIEN DA A CONOCER QUE SU AMIGO SAMUEL OLAVE, A QUIEN CONOCE DESDE SU INFANCIA LA INVITÓ A LA FIESTA, DE SAMUEL DICE QUE VIVE CERCA DE ELLA Y QUE YA CUMPLIÓ LOS 18 AÑOS, ADEMÁS MANIFESTÓ QUE SAMUEL LE DIJO QUE LO HABIAN INVITADO UNOS AMIGOS A UNA FIESTA CON UNOS EMPRESARIOS DE DIFERENTES PAISES Y LE PIDIÓ QUE FUERA QUE ESO LO BENEFICIABA A ÉL EN SU AGENCIA DE MODELAJE PORQUE AL PARECER LO IBAN A PATROCINAR EN ALGO YA QUE ÉL ES MODELO. IGUALMENTE MANIFIESTA QUE CUANDO LLEGARON AL SITIO UN MUCHACHO LLAMADO EDUARDO LE DIJO A UNA DE LAS NIÑAS QUE SE HICIERA PASAR POR VIRGEN PORQUE ERA UN REGALO PARA EL JEFE. QUE CONOCIÓ A EDUARDO A TREAVÉS DE SAMUEL Y QUE EL APELLIDO DE EDUARDO PODRIA SER ORTEGA, DICE ADEMÁS QUE CON ELLA FUERON A LA FIESTA VARIAS NIÑAS QUE SON MAYORES DE EDAD, COMO: KIARA, YULI Y VIVIANA. DICE ADEMÁS QUE LAS PERSONAS QUE CONTACTARON A SAMUEL Y A EDUARDO, ANTES DE IR A LA FIESTA LE DIERON DINERO.

 KEILY GABRIELA VERGARA CUPIDAN, DE 17 AÑOS DE EDAD, DICE QUE LLEGÓ AL PASEO EN LA ISLA POR INVITACIÓN QUE LE HICIERA SU AMIGA KELY DE LA CUAL DICE QUE ES MORENA Y QUIEN LE MANIFESTÓ QUE EL PASEO COSTABA TREINTA MIL PESOS (\$30.000.00). QUE CUANDO LLEGARON A LA ISLA ESTANDO EN UNA HABITACIÓN ENTRÓ UN MUCHACHO DE BARBAS Y OTRO MORENO ALTO QUIEN LE PREGUNTÓ QUIÉN DE LAS MUCHACHAS ERAN VIRGENES Y QUE HABÍAN TRES MENORES QUE DIJERON SER VIRGENES. SOBRE KELY MANIFIESTA QUE TIENE UNA AGENCIA DE MODELAJE DE LA CUAL DESCONOCE EL NOMBRE, QUE LA CONOCE DE LOS EVENTOS A LOS QUE ELLA VA, NO SABE SUS APELLIDOS Y SEÑALA QUE ES UNA DE LAS MUCHACHAS QUE ESTÁ CAPTURADA. QUE ELLE SU PRIMA TRIANA LA QUE LA INVITÓ PERO QUE NO PUDO IR A LA FIESTA Y QUIEN LE DIJO QUE EL PASEO ERA DE KELY. QUE DE LAS PERSONAS QUE SE ENCONTRABAN EN LA FIESTA SOLO CONOCIA A KELY.

PEDRO FLOREZ RAMOS, DE 17 AÑOS, RESIDE EN EL BARRIO SAN FERNANDO, CALLE SANTANDER No.19A-05. DICE HABER SIDO INVITADO AL PASEO EN LANCHA FUERA DE LA CIUDAD CON TODO PAGO, LICOR Y DINERO. REFIERE QUE LE DIJERON QUE LES DARIAN CUATROCIENTOS MIL PESOS (\$400.000.00) Y TAMBIEN A LAS NIÑAS QUE SOSTUVIERAN RELACIONES SEXUALES LE DABAN UN MILLON DE PESOS (\$1.000.000.00).



ATTACHMENT F

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INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES DIRECCION SECCIONAL BOLIVAR

DIRECCIÓN: Calle 29 No 50-100 Barrio Zaragocilla Hospital Universitario del Caribe . CARTAGENA, BOLÍVAR TELEFONO: (5) 6698989 Telefonía IP (1) 4069944/77 extensión 3510

INFORME PERICIAL DE CLÍNICA FORENSE

No.: DSBL-DRNT-07289-2014

CARTAGENA. 11 de octubre de 2014

NÚMERO DE CASO INTERNO:	DSBL-DRNT-07156-C-2014
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CIUDAD Y FECHA:

OFICIO PETITORIO:	No 2014-10-11. Ref: Noticia criminal	13001600877920140010	05 -
AUTORIDAD SOLICITANTE:	JAKELINE REYES SARMIENTO		
	CAIVAS		
	FISCALIA GENERAL DE LA NACION		
AUTORIDAD DESTINATARIA:	JAKELINE REYES SARMIENTO		
	CAIVAS		
	FISCALIA GENERAL DE LA NACION		
	CRESPO, CALLE 66N 4-86		
	CARTAGENA, BOLÍVAR		
NOMBRE EXAMINADO:	PEDRO JOSUE FLOREZ RAMOS		
IDENTIFICACIÓN:	IND		
EDAD REFERIDA:	17 años		
ASUNTO:	Edad /		

Examinado hoy sábado 11 de octubre de 2014 a las 16:57 horas en Reconocimiento Médico Legal. Previa explicación de los procedimientos a realizar en la valoración, la importancia de los mismos para el proceso judicial o administrativo, se diligencia el consentimiento informado, se toma firma y huella dactilar del índice derecho del examinado en el oficio petitorio del indice derecho , del representante legal: cesar augusto salguedo diaz 73582510 defensor de familia, en el consentimiento informado Motivo de la peritación: la fiscalia general de la nación por medio de su unidad CAIVAS, ordena realizar a PEDRO FLOREZ RAMOS, valoracion de edad, mediante oficio fechado 11 de octubre del 2014, con NUC 130016008779201400105.

Refiere el examinado : " EN FACEBOOK HICIERON UNA PUBLICACIÓN DE UN PASEO Y YO ME ANOTE Y YO LE COMENTE TRES AMIGOS QUE HABIA UN PASEO, para que todos fueramos eran unos americanos, con el fin de divertimos y habian dicho que si ban mujeres y lenian sexo le pagan un millon de peso o mas y que los demas que fueran a la Isla aunque no tovieran sexo le ban a pagar 400 000 pesos. Nos encontramos todos en una calle del educador, eramos como 20, no fuimos en los buses hasta la sociedad portuaria de manga, y nos recogieron dos yates, llegamos a una isla y nos encerraron las gringas, y nos comenzaron a brindar dulces, mekatos, chitos, empezaron a llamarnos uno por uno, por grupos para conocer la isla y haber que muchacha le agradaba a cada proxeneta. Yo he tenido sexo con mi pareja , pero en la isla no estuve sexo con nadie pro que estaba acompañado de mi pareja que es otro menor. y si el no estuviera tampoco hubiese tenido nada. yo nunca me habia visto con esa gente jamas. de pronto como a la media hora llegaron las fuerzas aereas militares de colombia y nos encerraron para que no salieramos y ahora nos trajeron para que nos hagan edad.

ANTECEDENTES: Sociales: refiere ser gay., Familiares: ninguno. Patológicos: ninguno. Quirúrgicos: ninguno. Traumáticos: ninguno. Hospitalarios: ninguno. Psiquiatricos: ininguno. Toxicológicos: ninguno.

DATOS ANTROPOMÉTRICOS: Peso: 58 kg. Talla: 1/2-0m

CONTRERAS PASTRANA GILFRE

RITA DEL CARMEN LOPERA MENDOZA

INFURME NO.

6. Descripción clara y precisa de la forma, técnica e instrumentos utilizados

Para esta entrevista se aplicó el protocolo SATAC marca registrada de Corner House que incluye etapas de Simpatía, Identificación de anatomia, indagación de Tocamientos, escenario de Abuso y Cierre, modificados según el nivel de desarrollo del entrevistado. Inicialmente, se dieron las indicaciones para la entrevista, en relación a "lo que el NNA no entienda. No sepa o no recuerde y se aclaró la importancia de hablar solo la verdad".

La entrevista se lieva a cabo en la cámara de Gesell, programa de computación Embedded Net DVD R HIK VISION. Ubicada en las oficinas de ICBF CAIVAS Casa de Justicia de Canapote

7. Resultados de la actividad investigativa (Descripción clara y precisa de los resultados): El día 11 de octubre del 2014 se dio inició a las entrevistas de los NNAs:

71. NNA Pedro Floraz Ramos de 17 años de edad, vive en San Fernando calle Santander 19 A - 05 puede ser ubicado en lsu teléfono 3016727616. Con quien dio a conocer que el miércoles anterior a la entrevista, se stato por Facecook de una muitación de un caseu en lanche fuera de la mudad, fodos los pagos, ficor va a ver mucha hesta y va a dinero agrega que al mensaje la riegó de una conocida aclarando que no recuerda la cuenta do nombre de las en die a concer dicho paseo, afirma que e le aviso a unos amigos de él, su primo , a su pareja. Refiere que los iban a recoger en la tercera calle del educador el día de hoy lemprano, luego llegaron a la bahia los encerraron, refiere a Las a guar de merenite y aue a to flamo , suego envezaron a liamar put grupps a ver que persona es a o que persiona in fevorecia

the mill pesne v las nine que e -s was a det un mixor: de pesos. Al preguntarle sobre el punto de encuentra y cómo los reconocía menciona e un "muchachito" que era el anlace con ans gundos, se le pide que lo describa ya que afirma que no sabe el nombre de él, y afirma que es uno de los que capturaron, lo describe como un pelado ni tan blanco afirma que tiene la piel parecida a la de la entrevistadora (trigueña), que tiene el pelo

DIRECCIÓN SECCIONAL CUERPO TECNICO DE INVESTIGACIÓN – SECCIÓN INVESTIGACIÓNES CENTRO DE ATENCIÓN INTEGRAL E INVESTIGACIÓN PARA VICTIMAS DE ABUSO SEXUAL (CAIVAS) Cárragana, Barlo Todoes Secto San Pedro Carroy 51 M17.1982. Initran 656146

Pégina 2 de 6

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ATTACHMENT G

RAMA JUDICIAL REPÚBLICA DE COLOMBIA DEPARTAMENTO DE BOLIVAR



JUZGADO PRIMERO PENAL DEL CIRCUITO CON FUNCIONES DE CONOCIMIENTOS CARTAGENA

Cartagena, 2 de octubre de 2020.

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ASUNTO A TRATAR:

A continuación, una vez el Juzgado en audiencia anterior anunció el sentido del fallo condenatorio, se procede a dar lectura a la sentencia en la que se individualizará la pena a imponer al señor ELKIN ARNULFO PEÑA BERNAL, servidor de la Fiscalía General de la Nación, y acusado de los delitos de CONCUSIÓN y ABUSO DE LA FUNCIÓN PÚBLICA. La sentencia se dicta una vez se ha advertido que no concurren en el proceso nulidades que afecten o impidan tal pronunciamiento. Veamos:

FUNDAMENTOS FÁCTICOS:

El día 9 de julio de 2015, los exalcaldes de San Martín de Loba, RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR y JAIME AÍSLANT GIL, recibieron una visita inusual e inesperada en su municipio, por parte de dos servidores de la Fiscalía Seccional de Cartagena y de un particular de nombre JOSÉ. La visita era liderada por ELKIN PEÑA BERNAL, y tenía como propósito dar a conocer a los exalcaldes, una supuesta citación de la Fiscalía Especializada de Cartagena por una investigación penal por malos manejos de los recursos de Salud.

En efecto, el funcionario, ELKIN PEÑA BERNAL, en su calidad de Jefe de Seguridad de la Fiscalía Seccional de Cartagena, se desplazó hasta San Martín de Loba empleando un vehículo de la entidad y se bizo acompañar de un conductor, JUAN CARLOS MANCERA, adscrito a la Dirección Seccional de Cartagena. Con ellos, como se dijo antes, estuvo un sujeto de nombre JOSÉ y el que luego se identificaría como DEIWIN CASTILLO.

En la inusual visita se presentaron dos circunstancias muy curiosas.

Una, que la Fiscalía no había autorizado el desplazamiento de sus servidores tal como lo certificaron las directivas del ente acusador y dos, que se instrumentalizó al Comandante de Policía de San Martín de Loba, FABIAN SANCHEZ LEOPARDO pues

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se le solicitó apoyo con lo de la notificación y él policial lo prestó, convencido que se trataba de una colaboración interinstitucional.

En todo caso, se sabe que, personalmente, sólo se notificó a JAIME AISLANT GIL.

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Los exalcaldes para atender o para cumplir con la supuesta notificación, se trasladaron hasta Cartagena el día 29 de Julio de 2020 y para esos días, **PEÑA BERNAL** estuvo en contacto con ellos, a través de un abonado telefónico que el día de la visita a San Martín de Loba, le había facilitado a AISLANT GIL. El servidor de la Fiscalía **ELKIN PEÑA BERNAL** y el sujeto conocido como JOSÉ, abordaron a los exalcaldes y los constriñeron a pagar una suma equivalente a CUARENTA MILLONES (\$40.000.000.oo) DE PESOS con el fin de "colaborarles" con su proceso.

Y, como las víctimas advirtieron a los peticionarios, por un lado, que no tenían esa cantidad de dinero y, por otro, que conforme a los hechos, eran ajenos al manejo de los recursos de la salud ya que estos se giraban directamente a las EPS y que esos fondos no eran manejados por los alcaldes; los agentes de la coacción variaron su estrategia sobre la marcha y es cuando **PEÑA BERNAL** ratifica la exigencia, con la variante de que las peticiones económicas se justificaban para tratar de neutralizar a un testigo privado de la libertad que acusaba a los exalcaldes de tener vínculos con el paramilitarismo ante la justicia transicional.

En las investigaciones de la Fiscalía, tendientes a establecer la secuencia, dinámica y mecanismos empleados para hacer las exigencias económicas indebidas, se determinó desde qué líneas telefónicas se hicieron tales requerimientos. Los abonados telefónicos empleados, corresponden a los números: **319-3209006**, **350-6849093**, **317-6470663**, **312-6042202** y **301-6623375**.

En Cartagena, el día 30 de julio de 2015, si bien no hicieron entrega de los 40 millones de pesos exigidos, los exalcaldes sí entregaron a **PEÑA BERNAL**, una cantidad menor: 7 millones de pesos. La entrega se hizo al interior de un vehículo conducido por **PEÑA BERNAL**, tal como lo testimonió JAIME AISLAN GIL. Posteriormente, los exalcaldes hicieron consignaciones y giros a EFRAIN RIVEROS GONZALEZ con las entidades BANCO DE BOGOTÁ y EFECTY, tal como quedó confirmado conforme a la búsqueda selectiva en base de datos.

Las referidas consignaciones se hicieron a nombre de EFRAIN RIVERO GONZALEZ por los valores de TRES MILLONES OCHENTA Y NUEVE MIL SETENCIENTOS PESOS (\$3. 089.700.00), UN MILLÓN NOVECIENTOS DIEZ MIL TRESCIENTOS DIEZ PESOS (\$1. 910.310.00), CUATRO MILLONES NOVECIENTOS CATORCE MIL QUINIENTOS PESOS (\$4. 014.500.00) y DOS MILLONES NOVECIENTOS CUARENTA Y OCHO MIL PESOS (\$2. 948.000.00), los días 6 y 10 de agosto de 2015, respectivamente.

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En relación con las llamadas telefónicas, se logró confirmar que el flujo de llamadas entrantes y salientes, corresponde a uno de los abonados telefónicos de ELKIN PEÑA BERNAL (3193209006) y el receptor es el exalcalde JAIME AISLANT GIL en su abonado (3114072901). A su vez, del número 3214322907 -que corresponde al sujeto de nombre JOSÉ- también se confirmó comunicación con el abonado telefónico de JAIME AISLANT GIL, y se efectuaron las mismas exigencias económicas indebidas.

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En cuanto a la identificación del procesado, es bueno señalar que a **ELKIN ARNULFO PEÑA BERNAL** se le reconoció, mediante álbum fotográfico por los exalcaldes JAIME AISLANT GIL, AQUILES MIRANDA SALAZAR y el entonces Comandante de la Estación de Policía de San Martín de Loba, Intendente FABIAN SANCHEZ LEOPARDO, como la misma persona que se hizo presente en San Martín de Loba el día 9 de julio de 2015.

Identificación que concuerda con el dicho del conductor de la Fiscalía, JUAN CARLOS MANCERA, quien, bajo la gravedad del juramento, corroboró que efectivamente para el mes de julio del 2015, acompañó en calidad de conductor a su coordinador, ELKIN PEÑA BERNAL, porque se lo había solicitado y el viaje se realizó junto con un amigo de PEÑA BERNAL conocido como JOSÉ o el Dr.

Y, el testigo JUAN CARLOS MACERA, agregó que lo reconocía – a JOSÉ- porque es un sujeto que con frecuencia visita las instalaciones de la Fiscalía en Cartagena.

Por último, en el proceso también se estableció que era usual que **ELKIN PEÑA BERNAL** empleara el mismo modus operandi en cuanto a instrumentalizar a sus compañeros de trabajo para realizar citaciones a algunos comerciantes de Cartagena. Una de estas prácticas, las relató a plenitud en su jurada CESAR GABRIEL GÓMEZ OSORIO. Incluso, mostró copia del documento en el que **PEÑA BERNAL** se atribuía las calidades de servidor judicial.

IDENTIDAD DEL PROCESADO:

Se trata del ciudadano **ELKIN ARNULFO PEÑA BERNAL**, identificado con la C.C. No. 77.193.356 de Cartagena, nacido el 24 de diciembre de 1978 en Valledupar, vive en unión libre, dos hijos e hijo de ALIX BERNAL y ELKIN PEÑA, de profesión abogado y servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos, cumplía funciones de Coordinador de Seguridad.

CALIFICACION JURIDICA:

La Fiscalía General de la Nación acusó a **ELKIN ARNULFO PEÑA BERNAL** de dos punibles. Uno, CONCUSIÓN (Art. 404 del C.P.) y el otro, ABUSO DE FUNCIÓN PÚBLICA (Art. 428 del C.P.). La acción delictiva corresponde a un concurso de delitós (Art.28 del C.P.), CONCURSO HETEROGENEO SUCESIVO.

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También la Fiscalía atribuyó a **PEÑA BERNAL**, el agravante genérico previsto en el Artículo 58 del C.P. Numeral 10, esto es, la circunstancia de mayor punibilidad por haber actuado en coparticipación criminal.

ACTUACION PROCESAL

La Audiencia de Imputación: la audiencia de imputación se celebró el día 8 de marzo de 2016. Se realizó ante el Juzgado Quinto Penal Municipal con Funciones de Control de Garantías de Bogotá. Los delitos por los que se acusó a ELKIN ARNULFO PEÑA BERNAL son el de CONCUSIÓN en concurso con ABUSO DE FUNCIÓN PÚBLICA y con circunstancias de mayor punibilidad por haber obrado en coparticipación (artículo 58 numeral 10) a título de coautor modalidad dolosa.

El escrito de acusación se presentó el día 8 de mayo de 2016 y el proceso se avocó por el JUZGADO 10 PENAL DEL CIRCUITO DE CARTAGENA, el día 2 de junio de 2016.

La Audiencia de Acusación: la primera sesión se llevó a cabo el día 1º de julio de 2016. En su momento, la defensa solicitó la nulidad del acto de imputación pues a juicio del togado se violaba flagrantemente el principio del *non bis in ídem* pues se argumentaba que la CONCUSIÓN contemplaba el ABUSO DE FUNCIÓN PÚBLICA. La Defensa apeló la negativa a reconocer la supuesta irregularidad sustancial, y quedó en suspenso la audiencia mientras el Tribunal Superior de Cartagena definía la discusión jurídica.

El Tribunal Superior de Cartagena, confirmó la negativa del Juzgado a reconocer nulidad en este caso. La decisión del Tribunal data del 9 de agosto de 2016 y se advirtió que se trataba de un asunto que debía debatirse en el juicio oral por guardar relación con la responsabilidad del procesado.

La audiencia de acusación se continuó, una vez confirmado el tema de la nulidad por el Tribunal Superior de Cartagena, y la acusación se formalizó -y finalizó- el día 28 de abril de 2020.

La audiencia preparatoria: Se celebró el día 29 de mayo de 2020.

La audiencia de Juicio Oral: se celebró los días 2 de julio de 2020, 4 de septiembre de 2020 y el día 9 de septiembre de 2020.-

DE LAS PRUEBAS:

El periodo probatorio en el juicio oral, se adelantó en las audiencias del 2 de julio de 2020 y el 4 de septiembre de 2020. Por ello, se reseñarán las probanzas practicadas

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en julio y luego las de agosto. Es bueno advertir que las partes no celebraron ESTIPULACIONES PROBATORIAS. Veamos:

PRUEBAS PRACTICADAS EL 2 DE JULIO DE 2020:

Documentales:

La Fiscal, al inicio de la audiencia por tratarse de documentos auténticos, aportó los siguientes documentos públicos: Resolución de nombramiento, acta de posesión y manual de funciones del servidor, **ELKIN PEÑA BERNAL.** El Juzgado admitió estas pruebas conforme a la preceptiva del artículo 425 del C.P. P. por tratarse de documentos auténticos (Corte Suprema de Justicia, Rad. 46278 del 1º de Julio de 2017).

Testimoniales:

1.- Testimonio de JOSÉ VICENTE COGUA ROJAS.

Es bachiller, perito en dactiloscopia y servidor de la Fiscalía del Grupo de Lofoscopia con 26 años vinculado al CTI. Se encargó de verificar la identidad del procesado mediante orden de trabajo (reseña dactiloscópica, datos biográficos y cotejo).

El testigo se le encargó la misión de verificar la identidad del procesado, en cumplimiento de la orden de captura en contra de **ELKIN PEÑA BERNAL.** Su informe de investigador de laboratorio FPJ-13, data del 7 de marzo de 2016.

2.- Testimonio de JAIME AISLANT GIL.

Es administrador de empresas agropecuarias con 67 años de edad para la fecha de su jurada. Narró los hechos y en especial, lo sucedido el día 9 de julio de 2015 cuando se presentó a su residencia **ELKIN PEÑA BERNAL** en la Patrulla de la Policía a notificarlo de un proceso en su contra, acompañado del Comandante de la Policía de San Martín de Loba y con otro funcionario. La notificación se efectuó en horas del mediodía y la citación se le hizo para la Fiscalía de Cartagena, el 30 de junio de 2015. El proceso se dijo que era por malversación de los fondos de la salud.

Ese día también se notificó a otros dos exalcaldes, pero a ellos no se les notificó personalmente por no estar en sus viviendas. Luego, cuando se desplazaban a Cartagena, los llamó el amigo de **ELKIN PEÑA BERNAL**, de nombre JOSÉ y los citó en una cafetería en inmediaciones de la Fiscalía.

El día 30 de julio de 2015, los embarcaron en un vehículo y les mostraron el proceso. Sin embargo, como RODRIGO MORALES DIAZ, uno de los exalcaldes y abogado,

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advirtió que ese proceso no los vinculaba pues en su cargo no administraron fondos de salud pues los dineros les llegaban directamente a las EPS.

En ese entendido los peticionarios de dinero indebido variaron las condiciones y les aseguraron que el tema era más grave pues existía una acusación en su contra por ser auxiliadores de grupos al margen de la ley y que había un testigo que los acusaba.

El testigo AISLANT GIL hizo claridad en cuanto a que la petición inicial era por cuantía de 100 millones, pero los exalcaldes negaron tener la posibilidad de reunir ese monto de dinero. Entonces acordaron el valor de 40 MILLONES DE PESOS y el pago en la medida de sus posibilidades.

Muy a pesar de la "rebaja", les insistieron la entrega de una parte de los dineros de manera inmediata y por eso, consiguieron 7 millones de pesos junto con RODRIGO MORALES DIAZ y AQUILES MIRANDA SALAZAR. La entrega se hizo en el vehículo y estaba JOSÉ y PEÑA BERNAL, este último conducía el vehículo.

El testigo JAIME AISLANT GIL asegura que posteriormente, en el mes de AGOSTO, se vieron obligados a girar 5 millones de pesos. El dinero se le envió a EFRAIN RIVEROS y la consignación la realizó JOSE DE JESUS RAMOS. Otros 10 millones de pesos también se consignaron a nombre de EFRAIN RIVEROS

Y, cuando se le preguntó a AISLANT GIL por qué entregaron dineros justificó su comportamiento alegando que trataron de neutralizar un escándalo en contra de su hermano pues se encontraba en medio de un proceso electoral pues aspiraba a la Alcaldía de San Martín de Loba. Con la perdida de las elecciones, no los molestaron más.

El testigo se encargó de dejar en claro en su jurada que el mismo **ELKIN PEÑA BERNAL** le anotó su abonado telefónico para permanecer en contacto y él lo dejó anotado a mano en el oficio de citación como se evidenció cuando la Fiscal le puso de presente el documento (Teléfono 3193209006).

Indica que en muchas oportunidades **PEÑA BERNAL** lo llamó para recordarle el compromiso e insiste en que el proceso electoral de su hermano era su punto débil pues su temor se fundaba en que muchos inocentes han sido perjudicados por los bandidos.

A la pregunta de la Físcal de si averiguaron si en realidad tenían procesos en la Físcalía, dijo que no y agregó que nunca los citaron a ninguna audiencia. También admitió haber entregado 7 millones, 5 millones y 10 millones.

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Nos confirma que realizó reconocimientos fotográficos tanto del señor ELKIN PEÑA como del sujeto llamado JOSÉ y precisó que en tres oportunidades se encontró con el procesado personalmente.

Por último, señala que los giros realizados se hicieron por íntermedio del BANCO DE BOGOTÁ y EFECTY y lo hicieron a través de NICOLAS JOSÉ LOPERA, quien les prestó la cuenta.

3.- Testimonio de EDWIN FABIAN SANCHEZ LEOPARDO.

Es intendente de la Policía Nacional y tiene 21 años vinculado a la Policía. En la actualidad, se encuentra laborando en el Departamento del Valle, pero también trabajó en Bolívar. Señala que en el municipio de San Martín hizo las veces de Comandante de la Policía entre los años 2013 al 2015.

Recordó con exactitud los hechos relacionados con este caso pues sucedieron en junio de 2015, y por esos días lo trasladaron para el Municipio de Norosí (Bolívar). Ocurrió que unos señores se identificaron con el carnet de la Fiscalía y le solicitaron el favor de que los acompañara a entregar unas citaciones.

Dijo que se trataba de tres funcionarios. No tenían vehículo porque el acceso a San Martín de Loba se hace en lancha. Indica que sólo entabló comunicación con uno de ellos. Los acompañó a las diferentes direcciones de los exalcaldes. Él nunca se bajó del vehículo y recuerda que sólo encontraron al señor AISLANT GIL y que para esa época su hermano era aspirante a la Alcaldía.

En las otras partes que visitaron no encontraron a las personas. Agrega que a los exalcaldes los conocía y que tenía más presentes es el señor JAIME AISLANT GIL. Explicó que la persona con la que se comunicó y le solicito apoyo, dijo llamarse **ELKIN**. Señala que nunca se volvió a entrevistar o supo de él, hasta que la Fiscalía lo citó a Aguachica para una diligencia de reconocimiento o identificación fotográfica. Entonces lo reconoció como la persona que acudió ante él y que le solicitó ayuda para ir a entregar las citaciones.

Advierte que de la diligencia no hizo anotación en los libros de la entidad. Insiste en que todo le pareció normal y por eso no tomó mayor previsión.

La Defensa le preguntó sobre su reconocimiento de una persona llamada **ELKIN** y también se le preguntó sobre si el Intendente había tenido contacto con los exalcaldes. Confirmó lo de su encuentro con **ELKIN** y negó haber escuchado las conversaciones o diálogos sobre exigencias económicas. Sin embargo, la Fiscal en el contrainterrogatorio le solicitó que aclarara si babía visto la entrega de las citaciones mencionadas y el testigo se ratificó. Dijo que sí lo presenció.

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4.- Testimonio de CÉSAR GABRIEL GOMEZ OSORIO.

4

Es servidor de la Fiscalía, hace parte del grupo de protección y está vinculado al ente acusador desde el 2005. Es el encargado de la unidad de soporte canino. Es bachiller académico.

Narró en su jurada que en el año 2015 también hacía parte del grupo de protección y estaba adscrito a la unidad de soporte canino y su coordinador era **ELKIN PEÑA BERNAL**.

Explicó que, entre otras, las funciones de su coordinador, eran las encargarse de realizar los diferentes apoyos de esquemas de seguridad y los estudios de seguridad de cada sede, pero que no era su función el llevar citaciones pues ese era un asunto ajeno a su misión (no estaba entre sus deberes llevar citaciones).

Se refirió a que **ELKIN PEÑA BERNAL** en una oportunidad lo llamó a la oficina de seguridad solicitándole que le llevara una citación a un establecimiento de comercio en el Mercado de Bazurto en Cartagena. Es claro en cuanto a que su Jefe no le entregó más dato ni instrucciones.

Sigue diciendo que el cumplió con la orden de llevar la citación. Uno de los trabajadores lo atendió, pero se mostraba muy reacio a recibir. Era una citación firmada por el señor **ELKIN**. Indica que le sacó copia y guardó el recibido de la citación. De regreso en la oficina, le hizo saber que le habían recibido la citación, pero siempre quedó con sospecha pues no estaba entre sus funciones ni las de él, ese tipo de diligencias.

La Fiscal le preguntó al testigo si él había entregado esa citación a la Fiscalía y si recordaba su contenido. El testigo admitió haber entregado la citación y dijo que la citación correspondía a ALVEIRO JIMENEZ y se le pedía preguntar en el primer piso por ELKIN PEÑA BERNAL.

En la práctica del testimonio se ingresó como prueba la citación. La misma estaba firmada por **PEÑA BERNAL** y dirigida a JUAN CARLOS RAMÍREZ con fecha junio 16 de 2015. La cita era para el 18 de junio de 2020, a las 9 am. y la autoridad que citaba era el TRIBUNAL DE LA UNIDAD NACIONAL ESPECIALIZADA DE JUSTICIA TRANSICIONAL.

También se le preguntó al testigo sobre si había tenido inconvenientes con el señor ELKIN PEÑA BERNAL, se refirió a que existían rumores de que el señor PEÑA BERNAL se iba a vengar. Se dijo además de que había viajado al municipio de San Martín de Loba pues se notó su ausencia y ALEXIS AVILA había comentado que se lo había notificado verbalmente.

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Y, se refirió a una segunda citación a nombre de ALVEIRO, citación que debió llevar ALEXIS AVILA, agente se protección,

Da cuenta de que en el tiempo que estuvo como coordinador se notaba mucho las reuniones que tenía en la oficina. Las dificultades con los compañeros eran por las programaciones del día a día.

El Defensor contrainterrogó al testigo sobre la citación en el mercado de Bazurto y cuestionó al testigo pues si esa acción le pareció sospechosa por qué no se opuso. El testigo advierte que notó la sospecha al momento del recibo y de regreso de la entrega es cuando analiza la situación.

En cuanto a por qué no denunció esos hechos, dijo que no tenía la certeza ni claridad respecto a qué se trataba la citación. La defensa le pregunto entonces por si había presenciado cuando **PEÑA BERNAL** realizó exigencias dinerarias y el testigo negó haber presenciado tal conducta del señor **PEÑA BERNAL**. Mucho menos, lo de las citaciones de los comerciantes de Bazurto.

5.- Testimonio de JORGE ARRIETA BERTEL.

4

Es un servidor de la Fiscalía con unos 15 años en la institución. Labora en el área de protección (desde agosto de 2005). En el año de 2015, su Jefe Inmediato era el señor **ELKIN PEÑA BERNAL**, como Coordinador Seccional Bolívar y la Dra. MARY ELCY CAÑAS SILVA como líder regional.

Explicó que las funciones del Coordinador eran las de realizar la programación de los turnos, supervisión del personal en los puestos de trabajo y parte de los estudios de seguridad en las instalaciones. Dijo que no tenía labores judiciales ní atender a usuarios o testigos.

Sobre si había tenido conocimiento sobre hechos de corrupción, el testigo respondió negativamente. En su momento, en la Fiscalía –su sitio de trabajo- se habían hecho unos comentarios en los que se decía que **PEÑA BERNAL** había perdido unos dineros de unos políticos, pero se trataban de comentarios de pasillos.

Se refirió a que a HUMBERTO RANDIAL le había realizado consignaciones a PEÑA BERNAL.

Precisó que no ha tenido diferencias con el procesado sino discusiones normales sobre la programación o por el acompañamiento de detenidos pues esa responsabilidad no era de esa unidad y ello debía ser avalado por la coordinadora regional.

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Da cuenta que cuando se reintegró le reclamó porque no lo saludaba y él le dijo que no lo hacía porque no eran amigos ni enemigos. Narró que le ayudó a vender un vehículo y le hizo contacto con FABIAN ARNEDO.

Admitió que de los actos de corrupción que conoció en contra de **PEÑA BERNAL** todos eran cometarios de pasillo. Descartó denunciar a **PEÑA BERNAL** por los temas de su dirección que no compartía porque él era un funcionario de Dirección, pero él lo informó a la líder regional y nunca atendió esas órdenes.

Se le preguntó por RANDIAL y dijo que ELKIN PEÑA BERNAL le pidió el favor de que le consignara unos dineros. Que también conoció de los desplazamientos de PEÑA BERNAL al sur de Bolívar.

Finalmente, y en respuesta al defensor, el declarante admitió que en algunas oportunidades acompañó a **PEÑA BERNAL** en comisiones a las ciudades de Barranquilla, Magangué y Santa Marta.

6.- Testimonio de JUAN CARLOS MANCERA GUZMAN.

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Dijo laborar para la Fiscalía en el área de protección desde el año 1999. Precisó que para el año 2015, cumplía la función de escolta del Director de Fiscalía y conductor. Su Jefe Inmediato era **ELKIN PEÑA BERNAL**. Aceptó haberse desplazado a San Martín de Loba en apoyo del Jefe de Seguridad **ELKIN PEÑA BERNAL** en el año 2015 sin precisar la fecha.

Ese día, su coordinador, **ELKIN PEÑA BERNAL** lo recogió a las 4.00 am y en el vehículo venía otra persona al que le dice "el Dr.". Llegaron al Banco Magdalena y en una chalupa se trasladaron a San Martín de Loba.

Hablaron con el Vigilante porque la Fiscal de Turno no estaba en el momento. Le dijeron que era una revista de seguridad. Luego, llegaron a hablar con el Comandante de Policía y él los acompañó a repartir varias citaciones. Advierte que el Director Seccional tenía conocimiento del viaje y se desplazaron en un vehículo oficial.

El particular "El Dr." ya venía con-PEÑA BERNAL y él manejó hasta el Banco Magdalena. Llegaron al medio día a San Martín de Loba. PEÑA BERNAL le hizo saber que se iba a realizar una visita a la sede, visitas que se realiza cada tres meses. La Fiscal del lugar les tramitó el cumplido el mismo día.

Manifestó que no sabía que se iban a entregar citaciones. Llegaron a la Estación y el comandante les prestó colaboración. Al momento de la entrega de las citaciones, como estaba en la parte de atrás del vehículo, no se bajó.

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Hizo claridad que solo un exalcalde estaba y por ello, las otras citaciones se entregaron a familiares. Indica que el procesado **PEÑA BERNAL** sí se bajó y estuvieron hablando con el citado. No escuchó de que hablaron. Confirma que **PEÑA BERNAL** habló personalmente dos minutos o un minuto.

En San Martín estuvieron como dos horas y después de cuatro de la tarde salieron desde el Banco Magdalena para Cartagena. Deja en claro que el encargado de gestionar las comisiones es el Jefe y este le había dicho que no había problemas. Con todo, la Comisión no se pagó muy a pesar de llevar el cumplido pues había un desacuerdo.

Dijo que es usual que a los jefes de seguridad se les solicita apoyos para citaciones. Le pareció un procedimiento normal. Nunca ha tenido inconvenientes con **PEÑA BERNAL** y es su amigo pues es "buen jefe".

En el regreso, el testigo dijo que como se sentía cansado le entregó el timón a **ELKIN PEÑA BERNAL como** en Plato. Llegaron a Cartagena como a la 1:00 am. Niega conocer de citaciones firmadas por el Jefe de la Seguridad.

Admitió que en la Fiscalía de Cartagena se escuchaban comentarios de que había actos de corrupción, pero no la constaba que su jefe haya recibido dinero pues son solo rumores de pasillos. No tiene ningún inconveniente con su jefe.

En contrainterrogatorio confirmó que era escolta del Director Seccional VICENTE GUZMAN y que se desplazó en el vehículo de la Dirección (KGF 921) y que el director autorizó el préstamo del vehículo para ir a San Martín de Loba.

Se le preguntó por el trámite del pago de los viáticos ante el Director Administrativo, Dr. IVAN MORALES. Señala que no se pagaron, supuestamente porque la autorización correspondía a Bogotá. Explica que tal gestión no fue nada oculta (la conocía tanto el Director Administrativo como el Director Seccional).

El defensor se refirió a un oficio en el que **PEÑA BERNAL** le reclama al Director Administrativo por el no pago de los viáticos y da cuenta de que sí se informó al nivel central. Explica que por vacaciones del titular y con ocasión del encargo de la Dra. MARCELA YEPES, esta, por sus múltiples ocupaciones, sólo recibía solicitudes con tres días de anticipación.

La defensa cuestionó al testigo sobre si el desplazamiento a San Martín de Loba se había realizado a espaldas del Director Seccional y del Director Administrativo, y el declarante lo negó.

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En cuanto a por qué en su entrevista se refirió (a) El Dr. como EFRAIN RIVERO, el testigo desmiente tal situación y desconoce las razones por las que se hizo tal anotación.

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Y, se vuelve a referir a que iba en la parte de atrás del vehículo y que una de las personas visitadas era un exalcalde, pero no recuerda su nombre. De la conversación dice que duró uno o dos minutos y que no escuchó que se hiciera peticiones dinerarias.

Señala que en el recorrido casi no se habló y en especial, **PEÑA BERNAL** y (a) El Doctor no hablaron de la misión cumplida en San Martín de Loba en cuanto a las notificaciones y volvió a calificar de normal hacer notificaciones por parte del coordinador de seguridad cuando se hacen desplazamientos a otros municipios.

Descartó conocer de hechos de corrupción y dijo que lo que se escuchaba eran rumores. Sin embargo, en su entrevista se refirió a lo que se decía en contra de **PEÑA BERNAL.**

Finalmente, en cuanto al contrainterrogatorio, concluye que el Comandante de la Policía sí se bajó del automotor al momento de notificar al exalcalde y explica que se quedó a un lado. Pero aclara que el Director de Fiscalía no sabía que iban a notificar a los exalcaldes y que el Director Administrativo era el encargado de avalar las comisiones, pero él como subalterno confió en el trámite de **PEÑA BERNAL**.

7.- Testimonio de OSCAR DARIO TARQUINO BARON.

Es un servidor de la Fiscalía General de la Nación adscrito a la fecha a la Dirección Especializada contra el Narcotráfico y labora desde el 2014 con el ente acusador. Precisó que cuando laboró en la Dirección para la Seguridad Ciudadana (2014 a 2019) se desempeñó como verificador y analista.

En el año 2015 se le asignó un caso que llegó a la Coordinación de análisis criminal para apoyo a los Despacho de la Dirección de Seguridad Ciudadana y en el que, al parecer, la información daba cuenta de que nn servidor de la Fiscalía Seccional Bolívar había realizado una solicitud de dinero a unos exalcaldes de un municipio del sur de Bolívar.

Indica que el funcionario sindicado se identificó como **ELKIN PEÑA BERNAL** y su accionar lo realizaba en compañía de otro ciudadano. Como se decía que los exalcaldes les habían hecho entregas de dinero en un Banco y en la empresa EFECTY, la investigación se basó en búsqueda selectiva en base de datos abierta y búsqueda selectiva en base de datos a los diferentes operadores de telefonía celular y a las entidades de remisión de giro.

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También se desplazaron hasta el municipio de San Martín de Loba a realizar entrevistas y reconocimiento en álbum fotográfico. Reitera que la investigación empezó en septiembre u octubre de 2015. Entrevistaron a unos exalcaldes que dieron cuenta de unas situaciones irregulares en las que un servidor les realizó unas exigencias de dinero que se materializaron de manera física o por consignación o giro. La investigación abordó los análisis de la telefonía.

Los actos investigativos quedaron documentados en informes. La investigación la realizó con el compañero WILMER MENDEZ, pero él hizo las veces de investigador líder.

A partir del análisis de la fuente no formal (primer informe), la Fiscalía imparte unas ordenes de policía judicial. La orden más relevante corresponde a la entrega de información por la empresa VIRGIN de un número 319. En San Martín de Loba realizaron las entrevistas a los exalcaldes en las que se da cuenta de las exigencias económicas realizadas por el señor **ELKIN**. Afirma el testigo que los exalcaldes les aportaron los recibos de las transferencias que realizaron a través de un señor que les hacía el favor de consignar en Bancos y la entidad EFECTY.

Y, cuando se le pone de presente por la Fiscal el informe elaborado por el investigador que rinde la presente Declaración, se asegura que el señor JAIME AISLANT GIL les entregó la citación que les llevó **ELKIN PEÑA BERNAL** y dos recibos de giros realizados ante la empresa EFECTY (6 de agosto de 2015) y dos comprobantes de consignación del Banco de Bogotá (10 de agosto de 2015).

También se le puso de presente por la Fiscal, un informe donde se da cuenta de una indagación en base selectiva de datos con respecto a DEWIN abonado de la empresa CLARO y de **ELKIN PEÑA BERNAL**, cuyo teléfono era de la empresa VIRGIN.

El informe presenta dos partes, el primero, data del 21 de diciembre de 2015, expedido por la empresa de telefonía CLARO y corresponde al número 3214322907 y era el que utilizaba el señor DEWIN y desde donde llamaba al señor JAIME AISMANT. El segundo, corresponde al Número telefónico 3193209006 y se certifica que pertenece a **ELKIN ARNULFO PENAL BERNAL**.

En el informe se plasmó una relación de las llamadas entrantes y salientes. También se da cuenta de la cantidad de llamadas que se realizaron entre JAIME AISLANT GIL y **PEÑA BERNAL.**

El número del señor JAIME AISLANT GIL es 3114072701.

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En su declaración, conforme al informe de policía judicial, da cuenta de los datos de cada llamada (día, hora, duración de la llamada y cuantas se hicieron en total). Las llamadas realizadas son en total 20, conforme a la empresa VIRGIN. Los informes tenían sus anexos (respuesta de las empresas de teléfonos).

En cuanto a la empresa EFECTY y los giros que se enviaron a EFRAIN RIVEROS, los exalcaldes dijeron que para los envíos se valieron de un tercero. El Informe es de fecha 21 de enero de 2016 y lo suscribe tanto el testigo como su compañero WILMER MENDEZ. La respuesta la entregó la empresa EFECTY con relación a la información aportada por JAIME AISLANT en su entrevista.

Una vez cotejada las dos informaciones se determinó que sí se realizaron unos giros por parte del señor JOSE DE JESUS RAMOS **BERRIO** al señor EFRAIN RIVEROS GONZALEZ. Un giro por valor de \$3.089.700 y el otro giro, por \$1.910.300. Los dos giros se hicieron el 6 de agosto de 2015. El informe incluía los anexos que corresponden a los documentos de EFECTY.

Se le preguntó al testigo TARQUINO BARON por las labores de policía judicial, correspondientes a los reconocimientos fotográficos y expuso que en febrero de 2016 se trasladaron a San Martín de Loba, recibir entrevistas y realizar el reconocimiento.

Recuerda que AQUILES MIRANDA y JAIME AISLANT, lograron reconocer fotográficamente a **PEÑA BERNAL** como la persona que había realizado las exigencias económicas. El informe mencionado tiene fecha de 11 de febrero de 2016.

Por último, en cuanto a la respuesta de por qué no se reconocieron los viáticos a los servidores de la Fiscalía Seccional de Cartagena, el testigo señaló que se obtuvo una certificación expedida por JORGE EDUARDO ROJAS PINZÓN, Director Nacional de Protección, y data del 25 de enero de 2016 (vía correo electrónico). El informe de la Dirección Nacional de Protección tiene un equívoco, pero la fecha correcta es la fecha del correo. Se argumentó que había consultado a la líder nacional y ella manifestó que no había sido autorizada la comisión para los días 13 y 14 de julio de 2015.

Se preguntó por el abonado telefónico del señor AISLANT GIL que correspondía a la empresa de telefonía CLARO.

Se le hizo una pregunta complementaria sobre las diligencias de reconocimiento fotográfico y el testigo hizo claridad en cuanto a la manera cómo se realizó el procedimiento.

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8.- Testimonio de WILMER ENRIQUE MENDEZ MORENO.

Es tecnólogo en investigación Criminal. Labora para la Unidad Especial de Investigaciones. Tiene unos 8 años de labores en la Fiscalía, pero antes trabajó para el DAS. Ha sido Técnico Investigador y ha realizado actividades de Policía Judicial. Estuvo laborando en la Delegada para la Seguridad Ciudadana (año 2015).

En la Delegada para la Seguridad Ciudadana hizo las veces de verificador y conoce el porqué de la citación pues corresponde a un caso adelantado por la Delegada de Seguridad Ciudadana. Dice que se recibió una denuncia de la Seccional de Bolívar y apoyó a su compañero TARQUINO. Su labor cousistía en confirmar o desvirtuar la información recibida.

En cuanto a las actividades adelantadas da a conocer que se realizaron entrevistas, reconocimientos fotográficos, inspección a lugares y búsqueda selectiva en base de datos. Recuerda que la investigación señalaba a un funcionario de la Seccioual Bolívar. Sus actividades de Policía Judicial quedaron documentadas. El servidor de la Fiscalía investigado respondía al nombre de **ELKIN ARNULFO PEÑA BERNAL** y agrega que incluso, le correspondió realizar su captura.

Y con respecto a las labores de investigación, recuerda haber solicitado información a un Banco y para precisar, solicitó que se le mostrara el documento para refrescar memoria.

El informe data del 25 de abril de 2016, y corresponde a una búsqueda selectiva en base de datos en el Banco de Bogotá. Se determinó la existencia de un giro a nombre de EFRAIN RIVEROS por \$.4.914S00, la transacción se realizó el día 10 de agosto de 2015. El encargado de realizar el giro se identificó como JOSE NICOLAS LOPERA MONTOYA. También se realizó una búsqueda selectiva en base de datos en la Empresa de Telefonía CLARO. La búsqueda arrojó que el número de celular usado, corresponde al 321432 2907.

Otra de las actividades realizadas correspondió a un reconocimiento fotográfico. Recuerda haber adelantado un procedimiento de reconocimiento fotográfico, en el que participaron AQUILES MIRANDA, JAIME AISLANT y un funcionario de nombre JUAN MANCERA.

La Defensa preguntó sobre el reconocimiento y en especial, sobre las personas encargadas de tal reconocimiento y fue enfático en dar claridad en cuanto a que en esa diligencia no participó el investigador TARQUINO. Es más: Aclara que solo una persona realizó el reconocimiento pues a los otros, no se les consiguió.

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Terminó su jurada concluyendo que desconoce los reconocimientos adelantados por su compañero OSCAR TARQUINO pero que en su ejercicio JAIME AISLANT GIL reconoció a DEWIN CASTILLO.

PRUEBAS PRACTICADAS EL 4 DE SEPTIEMBRE DE 2020:

9.- Testimonio de SORLEY SUAREZ ARIZA.

Es investigadora de la Fiscalía. Tiene 8 años de estar vinculada a la Fiscalía y antes estuvo vinculada por 10 años al DAS. Es Ingeniera de Sistemas. Realizas actividades de análisis, regularmente de abonados telefónicos.

En el año 2015 y 2016, laboraba en Seguridad Ciudadana (laboró en esa unidad 2014-2019). Sabe el porqué de su Jurada pero no recuerda con precisión. Indica que se trató de un análisis Link.

Y, en el desarrollo de la Jurada, a la testigo se le puso de presente el informe. Reconoció su firma, contenido del documento y fecha del mismo: 23 de abril de 2016. El objetivo de la diligencia –Informe- era efectuar análisis link e ilustración de flujo de llamadas para los abonados telefónicos **3114072901**, **3214322907**, **3193209006** y **3126042202**. Estos son los resultados que se obtuvieron de esas indagaciones:

- Abonado **3114072901**, el operador reportó como propietario al señor JAIME AÍSLANT GIL de San Martín de Loba (Bolívar), con fecha de activación 29 de septiembre de 2004 y con un estado activo para la fecha. El registro de llamadas entrantes y salientes (2 archivos). Del 1 de julio de 2015 a 30 de septiembre de 2015 y del 1 de octubre de 2015 a 15 de enero de 2016.
- Abonado 3214322907, el operador no reporto datos biográficos, con un registro de llamadas entrantes (2 archivos) de 25 de mayo de 2015 y finaliza el 31 de julio de 2015 y del 1º de agosto de 2015 y finaliza el 25 de noviembre de 2015. Las llamadas salientes: del 25 de mayo de 2015 a 31 julio de 2015, y 1º de agosto de 2015 y finaliza el 25 de noviembre de 2015.
- Abonado 31932090006, propietario ELKIN ARNULFO PEÑA BERNAL, quien presentó como numero adicional 3126042202. Activación: 24 de agosto de 2014.
- Abonado 3126042202, a nombre de ELKIN ARNULFO PEÑA BERNAL, activo desde el 9 de enero de 2008. Se registra un cambio de pre-pago a pos-pago. Fecha de activación 22 de marzo de 2014. Plan sin límite. Presenta un registro

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de llamadas entrante 29 de abril y 28 de julio de 2015, y del 9 de julio al 8 de octubre de 2015. Las salientes: el 9 de mayo de 2015 y 28 de mayo de 2015.

Se detalla el flujograma o tráfico de llamadas que se presentó con el abonado telefónico de JAIME AISLANT GIL con los otros abonados telefónicos.

FLUJOGRAMA ABONADO TELEFONICO 3114072901

El análisis consta de varios números celulares, por eso se tiene que las llamadas para el **3114072901,** cuenta con 4.214 registro, con fecha de inicio 1 de julio de 2015 al 15 de enero de 2016.

El análisis con las líneas objeto de estudio **321 432 2907 y 3193209006.** Tenemos que se tiene que respecto del **3214322907** se hicieron 40 llamadas entrantes y 30 salientes, y con el número telefónico **3193209006**, se obtuvieron 21 llamadas entrantes y 4 llamadas salientes.

Después de lo anterior, se realiza una tabla donde se hace el detalle de las llamadas, y se especifica tanto el número de la línea como el tipo de llamadas, su fecha, hora, duración y receptor. Además, si se trata de llamadas entrantes o salientes y la ubicación del abonado telefónico.

El flujograma anterior, refieja y muestra el flujo de llamadas del abonado telefónico **3114072901**, quién es el receptor de las llamadas y el originador de la misma y, para este caso, la persona que llama es el **3190132019**.

La testigo, con suficiencia, explicó los flujogramas o el tráfico de llamada entre los abonados telefónicos del procesado y los de la víctima JAIME AISLANT GIL. Todo esto para concluir que el gráfico es el reflejo de que sí medio comunicación tal como lo denunció la víctima. En la tabla se muestra la fecha exacta de la comunicación, el número de las llamadas entrantes y salientes para cada uno de los abonados telefónicos analizados en particular. En el informe elaborado por la testigo se grafica muy bien el tráfico de las llamadas.

10. Testimonio de JENNY PAOLA URREA ROMERO.

Es Psicóloga. Labora en la Fiscalía desde 2012, antes estaba adscrita al DAS. La testigo se encargó de realizar el ANALISIS Y CONTROL TELEMATICO, consistente en interceptación telefónica de los abonados telefónicos **3126042202**, **319320906**, **3176470663**, **3506949903** y **301623375**, de acuerdo a orden de la Fiscalía (monitoreo, escucha y análisis).

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Reconoció el Informe puesto de presente por la Fiscal en su interrogatorio, y que corresponde al análisis de las interceptaciones. El informe data del 11 de febrero de 2016. El objeto de la tarea encargada, correspondió a la interceptación y análisis de tales comunicaciones. El resultado está contenido en 3 DVD (autenticado y parte integral de la jurada) y se elaboró una síntesis de lo más relevante en las comunicaciones.

La testigo realizó el ejercicio de confrontar las síntesis con las grabaciones de la interceptación y para tal efecto, se escuchó el audio de las interceptaciones, en la audiencia de juicio oral.

De los números monitoreados se concluye que:

- El abonado telefónico **3126042202**, de acuerdo a la interceptación, pertenece a **ELKIN ARNULFO PEÑA BERNAL**.
- El abonado telefónico **3176470663**, de acuerdo la interceptación se tiene que le pertenece a **ELKIN PEÑA BERNAL**, da a conocer que, es Jefe de Seguridad de la Seccional Bolívar.
- El abonado telefónico **319320906** de acuerdo con la interceptación pertenece a **ELKIN PEÑA BERNAL**.
- El abonado telefónico 3506949903 no se presentaron registros, ni llamadas, ni mensajes y no se presenta DVD.
- El abonado telefónico 301623375 pertenece a una empresa de minutos, no se realizan labores ilícitas, por ello no se presentó DVD.

Se concluye que las líneas que presentaron registros y que se guardaron en DVD, son: 3126042202, 319320906 y 3176470683.

En uno de los audios **ELKIN PEÑA BERNAL** se identifica como Jefe de Seguridad de la Fiscalía. En el segundo audio se hace referencía a puestos de vigilancia y de cuadrar una reunión a fin de mes.

En otro audio se habla de haber realizado contacto con esa gente, se refieren a puestos de vigilancia y de no querer quedar bien todo el mundo (se refieren a contratos de vigilancia).

También se escuchó en la audiencia un tercer audio en el que ELKIN habla con RAFAEL CARABALLO, sobre un sujeto que se fue para nn crucero por las Islas del Caribe y que se fue sin avisar. ELKIN manifiesta que él está listo y de que se está burlando y pasado de calidad. Se habla de disolución de la empresa y que por eso hay que proceder rápido de verdad.

Seguidamente se escuchó otro audio en el que se habla en lenguaje cifrado. Dicen que les van a mandar un mensajero y que después de eso es que se sabe si van a jugar el partido. **ELKIN** comenta que los manes dicen que varias veces los han invitado a jugar y la gente les ha quedado mal.

En otro audio de fecha 18 de diciembre de 2015. **ELKIN** dice, entre otras cosas, que va a una reunioncita con unos manes y que anoche les dijo un poco de vainas y lo acaban de citar en un punto.

En un nuevo audio, **ELKIN** da a conocer que se está quedando en un hotel por el Bosque, por los lados de Coca-Cola y se citan en Kokorico. En otro audio se habla de la herramienta que dio a guardar. A la vez, conversa con CAROLINA, y da a conocer que lo acaban de llamar de la oficina.

Otro audio en el que se menciona de un magistrado que llega y que hay que recogér. De un amigo de Mc Donald. De que eso es un hecbo y que el lunes hacen el desembolso de término fijo y que le dieron una cesión de derechos hereditarios o se lo endosaron. Finaliza diciendo que es mejor no hablar por aquí.

El siguiente audio corresponde a una conversación con una mujer en la que se menciona a EFRAIN, y donde promete no hacer más favores a más a nadie pues se "mamó". Hablan de la captura de un tal alias el Fito de Amberes.

Por último, **ELKIN** habla con un hombre desconocido y le da a conocer que no tiene plata. Se refiere acerca de una estrategia con respecto a un abogado y que ellos le dijeron que "eso está en el presupuesto" y se **amenaza** con mandar a todo el grupo de administración pública.

DE LOS ALEGATOS DE LAS PARTES:

DE LA FISCALÍA:

Inicia la Fiscal su intervención, concluyendo que en el proceso se probó más allá de toda duda razonable tanto la materialidad de los delitos acusados, como la responsabilidad del procesado. Expresa que **PEÑA BERNAL** ha sido plenamente identificado en este juicio por el testigo JOSÉ VICENTE COGUA y reconocida su calidad de servidor público, con los documentos que ingresaron al juicio oral y en los que se advierte que el procesado es un agente de protección adscrito a la Fiscalía General de la Nación.

- Centro Plazoleta Benkos Biohó - Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos Bioprégen& ampleioa Judicial SPA - Oficina 402 En cuanto a los delitos por los que se acusó a **PEÑA BERNAL**, indica que el delito de CONCUSIÓN se probó su realización pues abusando de su cargo y de su función como servidor de la Fiscalía, constriñó o exigió a los exalcaldes de San Martin de Loba, señores RODRIGO MORALES, AQUILES MIRANDA y JAIME AÍSLANT GIL, una suma de 40 MILLONES DE PESOS, a cambio de ayudarles a que un supuesto testigo no declarará en contra de ellos. El supuesto testigo aseguraría que los exalcaldes eran financiadores de grupos paramilitares.

En ese accionar, el procesado visitó a los exalcaldes en su residencia de San Martín de Loba, el día 9 de julio de 2015, y les entregó citaciones con el fin de comparecer en Cartagena el 30 de julio de 2015. Lo cierto es que únicamente entregó personalmente la citación a JAIME AÍSLANT GIL pues los otros exalcaldes, no estaban en sus residencias.

Las citaciones en ese caso, las dejó con terceras personas, como lo acreditó el Intendente de la Policía, FABIÁN SÁNCHEZ LEOPARDO y JUAN CARLOS MANCERA, este último viajó en calidad de conductor en compañía de un particular. El Intendente, los guió a las residencias donde se entregaron las citaciones. En su testimonio JAIME AÍSLANT GIL explica que recibió en sus manos la citación de parte del funcionario **ELKIN PEÑA BERNAL**, y anotó con un lapicero en el mismo documento, el número telefónico 319 320 9006.

El testigo JAIEM AISLANT se refirió a cómo fue objeto con sus compañeros exalcaldes de las exigencias que les hizo **ELKIN PEÑA BERNAL** y de la presión que ejercieron, él y su compañero porque necesitaba el dinero para ese mismo día. Incluso, les mostró un proceso en el cual existían irregularidades en la salud y que correspondía al municipio cuando fungían como alcaldes, pero el Dr. RODRIGO MORALES, les hizo saber que tal posibilidad era imposible porque los dineros se entregaban por giro directo y es cuando les dan a conocer la falsa versión del proceso en la justicia transicional.

Se le preguntó a AISLANT GIL si existió esa investigación y el testigo negó tal hecho, pero accedieron al chantaje en el entendido de que no era conveniente para ellos verse involucrados en un escándalo, por encontrarse en plena campaña política de uno de sus hermanos -FIRUS AÍSLAN GIL-.

La Fiscal se refirió a que el día anterior a la citación, el 29 de julio de 2020, el procesado contacto a AISLANT GIL, y ello se corroboró por el investigador OSCAR TARQUÍNO, en el registro de llamadas. Luego. por eso el 30 de julio se reunieron en una cafetería antes de llegar a la Fiscalía y abordaron un vehículo donde estaba **ELKIN PEÑA BERNAL** y la persona que se presentaba como JOSÉ e hicieron la petición o exigencia económica, y que debía realizarse la entrega ese mismo día. Las victimas accedieron, aunque les correspondió acudir a sus familiares, logrando

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recaudar 7 millones en efectivo y entregaron el dinero, ese mismo día en horas de la tarde a **ELKIN PEÑA BERNAL.**

También realizaron 4 giros, y ello se probó con el testimonio de OSCAR TARQUINO, en el mes de agosto del 2015. El señor JESÚS RAMOS giró a nombre de EFRAIN RIVEROS, las suma de \$3. 089.700 y \$1. 910. 300. Total: 5 millones de pesos.

Y, del Banco de Bogotá al señor EFRAÍN RIVEROS, en el mes de agosto de 2015 se le giraron \$4. 914. 500 y \$2.948.000, por el señor JOSÉ NICOLAS LOPERA, giros producto de las exigencias de **ELKIN PEÑA BERNAL**, peticiones que seguía realizando por llamadas telefónicas.

Después de la primera entrega, también hacía llamadas el sujeto que se identificó como J05É.

El testigo, JAIME AÍSLAN GIL, reconoció en álbum fotográfico tanto a **ELKIN PEÑA BERNAL** como a "JOSÉ", esta última persona la Fiscalía lo identificó como DEWIN CASTILLO. Están probadas las entregas de dinero, las exigencias económicas del servidor público a cambio de una ayuda en un proceso inexistente de la justicia transicional, por un total de 40 millones de pesos. Se probó que se entregó la suma de 7 millones de pesos en efectivo y giros a través de EFRAÍN RIVERO por la suma de \$12. 862. 500, para un total de \$19.862.500. Ese dinero entregado por las víctimas, entró a la esfera de **ELKIN PEÑA BERNAL**.

La Fiscalía probó que esa suma de dinero, se entregó y se cobró, por lo que gana credibilidad el testimonio de JAIME AISLANT GIL y el investigador que, en la búsqueda selectiva en base de datos de abonados telefónicos y llamadas, probó la relación telefónica existente entre **ELKIN PEÑA BERNAL** y JAIME AÍSLANT GIL.

Frente al ABUSO DE LA FUNCIÓN PÚBLICA con suficiencia de pruebas, en el juicio oral se demostró que el procesado. servidor público, abusó y se aprovechó como coordinador de seguridad de la Fiscalía en la sede Cartagena, que engañó a su compañero JUAN CARLOS MANCERA para que lo condujera a San Martín de Loba y en el lugar, entregó unas citaciones. Sin embargo, **ELKIN PEÑA BERNAL** jamás les dijo en realidad que iban a realizar esas citaciones. A la Fiscalía General de la Nación, les hizo creer que viajaría en una fecha que no lo hizo, por lo que no se hizo el pago de la comisión pues no fue autorizada por ser extemporánea, maniobras que quedaron al descubierto pues no estaba ejerciendo las funciones de su cargo si no abusando de esa función pública.

Y, no era la primera vez que el procesado hacía estas citaciones sin tener tal función como así lo declararon, CESAR GÓMEZ OSORIO y JORGE ARRIETA, quienes eran subordinados de ELKIN PEÑA BERNAL, y se demostró por parte de la Fiscalía las

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múltiples llamadas, entre "JOSÉ" y **PEÑA BERNAL** pues con la búsqueda selectiva se ratificó la veracidad de la declaración de JAIME AÍSLANT GIL, constreñido a una exigencia económica.

Las interceptaciones telefónicas realizadas por las testigos JENNY UREA y SORLEY SUAREZ, dejan entrever claramente el proceder de ELKIN PEÑA BERNAL. Además, en unas de las llamadas se hace referencia a EFRAÍN quien puede coincidir con la persona a quien se le hicieron los giros, y todo hace más probable la teoría inicial, habiendo cumplido con la promesa de alegatos de apertura se probó la existencia de los delitos de CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA y la responsabilidad del procesado. Lo que sigue es una sentencia condenatoria.

MINISTERIO PÚBLICO:

El Delegado del Ministerio Público estima que las pruebas decantas en juicio, no dan lugar a dudas ya que se ha forjado un grado de conocimiento en cuanto la responsabilidad del procesado. Está acreditada la tipicidad objetiva y subjetiva, acorde con el marco fáctico de la acusación, y examinada la prueba, no emerge duda alguna de los tópicos estructurales de la conducta. Los hechos se muestran desde la perspectiva probatoria son tan claros que no existe duda alguna. La base incriminatoria data de 2015 y, se involucra a **ELKIN PEÑA BERNAL** como servidor de la Fiscalía. En este caso, empleó tiempo, recursos y medios para desplazarse sin autorización desde Cartagena al municipio de San Martín de Loba. Luego, estando allá, contactó a exalcaldes y los abordó, manifestándoles sobre posible malos manejos de los rubros de la salud que podían dar lugar a investigación penal y la intención de un miembro de grupos armados, de declarar en su contra ante la justicia transicional. El procesado les exigió una suma de dinero, como se corrobora con la prueba documental y prueba testimonial.

En efecto, se logró acreditar que los señores JAIME AÍSLANT, RODRIGO MORALES y AQUILES MIRANDA acordaron con el procesado, a fin de satisfacer su exigencia económica y evitar que un supuesto testigo no declarara contra ellos, como colaboradores de paramilitares, les exigió la suma de 40 millones de pesos. Los hechos tienen su punto de partida el día 9 de julio de 2015, cuando el servidor público se desplazó al sur de Bolívar con recursos estatales y empleó un vehículo con la finalidad de comunicar una supuesta cita judicial, utilizada para crear situaciones que uo fueron ciertas, y se les hizo un primer desembolso por 7 millones de pesos el día 30 de julio de 2015.

Esta suma de dinero se recibido por el tercero quien la Fiscalía identifica como JOSÉ, y se realizaron otros pagos a favor de EFRAÍN RIVEROS, todo esto producto de las exigencias económicas realizadas mediante llamadas telefónicas. La prueba técnica arroja aspectos muy dicientes como el número de llamadas realizadas al señor JAIME

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AISLANT GIL, prolongadas en el tiempo y que corroboran el motivo de las exigencias económicas. Además, el tráfico de comunicaciones se presenta dentro del periodo y el contexto factico en el cual se produjo el abordaje ilegal del servidor.

Finalmente, para el delegado del Ministerio Público, en cuanto al término de prescripción señala se debe aumentar a la mitad y que, además, en el evento de proferir sentencia condenatoria y con el fin de asegurar el cobro coactivo de las penas de multa, se debe disponer remitir la primera copia a la jurisdicción coactiva de la dirección ejecutiva seccional de administración judicial de la Seccional Cartagena

EL DEFENSOR:

Solicita que la sentencia sea absolutoria por la existencia de duda razonable, muy contrario a lo manifestado por la Fiscal y Ministerio Público pues no se dan los requisitos establecidos para el fallo condenatorio. Admite que, si bien se acreditó la existencia de una conducta punible, la responsabilidad de ELKIN PEÑA BERNAL, lo circunda una duda, si se tiene en cuenta los estándares de conocimiento más allá de toda duda razonable en cuanto a una conducta punible y la responsabilidad.

En cuanto a la identidad de **PEÑA BERNAL**, estima que no se acreditó que la persona que estaba siendo procesado sea la que realizó la conducta punible. Es evidente entonces que la carga de la prueba le corresponde a la Fiscalía y en este caso, consiste en demostrar que **PEÑA BERNAL** es la misma persona que realizó las exigencias dado que en la acusación se planteó que el procesado realizó exigencia a unas personas y, sin embargo, solo se supeditó a lo dicho por el señor JAIME AISLANT.

A juicio de la Defensa, la Fiscalía tiene la carga de demostrar que **ELKIN PEÑA BERNAL** es el que realizó las exigencias económicas y no otra persona. En el juicio se demostró, que al señor JAIME AISLANT GIL, en el municipio de San Martín, se le presentó el comandante de la Policía con dos personas y una de ella se identificó con el nombre de **ELKIN** y muy a pesar que el procesado esté identificado como **ELKIN PEÑA BERNAL**, se debe demostrar que la persona que se desplazó hasta el municipio de San Martín de Loba, junto con otra persona llamada "JOSÉ".

Reitera la defensa en cuanto a que no se puede afirmar que el ELKIN que se presentó en San Martín de Loba y quien estaba en el carro cuando recibió el dinero, sea precisamente **ELKIN PEÑA BERNAL**, toda vez que el testigo no conoce al agente perpetrador y la Fiscal no puso de presente a la víctima el reconocimiento fotográfico correspondiente, y que es parte integral del testimonio del reconocedor.

- Centro Plazoleta Benkos Biohá - Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos BorhágenComBolejoaludicial SPA - Oficina 402 Insiste en que la prueba practicada en juicio no es suficiente para que se pueda demostrar que ese **ELKIN** que fue al municipio de San Martín de Loba y el que estuvo en Cartagena, es el mismo **ELKIN PEÑA BERNAL**.

Nuevamente se refirió a que **ELKIN**, puede ser cualquier persona, y es claro que el testigo JAIME AISLANT GIL no tiene una prueba fehaciente que ese **ELKIN** y ese JOSÉ sean la persona que está siendo procesada, no hay ninguna prueba que lo demuestre, porqne cuando el testigo no conoce previamente al agente, se hace un reconocimiento fotográfico. La Fiscalía hizo un reconocimiento de fotografías, pero jamás le puso de presente al testigo el acta de reconocimiento fotográfico, y ello es parte integral del testimonio del reconocedor, y no fue introducido a juicio, por lo tanto, no existe una prueba fehaciente y por lo que ese reconocimiento no es válido, porque no hubo un señalamiento directo. Con el dicho de JAIME AÍSLANT GIL sólo se corroboró que una persona realizó exigencias económicas y que para que ese **ELKIN** que tanta vez mencionó, sea **ELKIN PEÑA BERNAL**, no se hizo ningún tipo de señalamiento, y el testimonio del intendente EDWIN FABIAN SANCHEZ LEOPARDO, no es válido pues él no presenció ningún tipo de exigencias.

Este policial también dijo que una persona de nombre ELKIN se le acercó y lo llevó a varias partes, pero no se le realizó reconocimiento fotográfico.

Los Testimonio de los compañeros son impertinentes porque no tienen relación con los hechos pues esos testimonios no se refieren directa ni indirectamente a lo factico ya que el derecho penal es de acto y no de persona, no se le está juzgando por lo que es, sino por lo que realizó. El testimonio del señor MANCERA sobre el hecho punible no sirve para señalar al procesado. Se concluye entonces por el Defensor, que es válida la duda ya que el hilo conductor quedó corto -la conexión quedó corta-, entre los hechos probados entre el señor **ELKIN** y el procesado.

Existe otro hecho señalado por el señor JAIME AISLANT GIL que dice que un **ELKIN PEÑA** le hizo exigencias económicas. Pero no se puede establecer que ese **ELKIN** sea el mismo **ELKIN**, también existe omisión por parte de la Fiscalía en el análisis link, pues nunca se estableció con estándares de certeza, si esos números telefónicos eran usados por **ELKIN PEÑA BERNAL**. Las conversaciones que se pusieron de presente no corresponde al número relacionado por el señor JAIME AÍSLANT GIL, no se demostró el estándar de conocimiento más allá de toda duda. No se demostró que ese **ELKIN** mencionado sea **ELKIN PEÑA BERNAL**, Finaliza solicitando que se absuelva a su ahijado judicial con fundamento en el principio del in dubio pro reo.

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CONSIDERACIONES DEL IUZGADO:

El Artículo 381 del C.P.P. advierte que para dictar sentencia condenatoria se requiere del conocimiento más allá de toda duda, acerca del delito y de la responsabilidad penal del acusado. En este caso, se obtuvo ese conocimiento, en cuanto a que **ELKIN PEÑA BERNAL**, servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos, incurrió en **CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA.** En el mismo sentido, un precepto de las normas rectoras, el artículo 7º del C.P. P., en su Inciso 4º, consagra que para poder proferir sentencia condenatoria deberá existir convencimiento de la responsabilidad penal del acusado, más allá de toda duda.

A su vez, no puede descuidarse que el artículo 448 del C.P.P. destaca la importancia de la Congruencia. El precepto declara que el acusado no podrá ser declarado culpable por hechos que no consten en la acusación, ni por delitos por los cuales no se ha solicitado condena.

Y, siguiendo en ese orden, el artículo 372 del C.P.P. nos define que: "La prueba tiene por fin llevar al conocimiento del juez, más allá de toda duda razonable, los hechos y circunstancias materia del juicio y los de responsabilidad penal del acusado, como autor o partícipe"

En este caso, la prueba con más poder de convicción, cierta y creíble es el testimonio del exalcalde JAIME AISLANT GIL (VÍCTIMA en este asunto). Con ese solo testimonio se prueba la CONCUSIÓN atribuida a **PEÑA BERNAL** y recordemos que en providencia reciente de nuestro máximo Tribunal (Corte Suprema de Justicia, Sala Penal, Sentencia SP-16841-14 de diciembre 10 de 2014. M.P. Fernando Alberto Castro Caballero), con autoridad se expone que, si la declaración rendida no comporta contradicciones internas ni externas en relación con otros medios de convicción, puede llevar al conocimiento del juez, más allá de duda razonable sobre la responsabilidad penal.

Lo decimos pues la Defensa echa de menos que no se haya escuchado el testimonio de los otros exalcaldes. Pero, como se sabe. A(SLANT GIL no es la única prueba de cargo que exista en este asunto y las complejidades del proceso impidieron la asistencia de los burgomaestres.

Pues bien, se acusó a **ELKIN PEÑA BERNAL** de haber constreñido y solicitado dinero indebido a unos exalcaldes de San Martín de Loba, municipio del Sur de Bolívar y en el proceso, se probó precisamente que **PEÑA BERNAL** se desplazó hasta ese municipio y, entregó una citación adulterada que forzó a los señores **RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR y JAIME AÍSLAN GIL** a desplazarse hasta Cartagena.



- Gantso Plazoleta Benkos Biodrágen Compleje Judicial SPA - Oficina 402 Centro Plazoleta Benkos Biodrágen Completiva Judicial SPA - Oficina 402 Una vez las víctimas llegaron a Cartagena, **PEÑA BERNAL** concretó la petición económica a los exalcaldes la que fijó en CUARENTA MILLONES DE PESOS (\$40.000. 000.00), primero los presionó con el argumento de que existía un proceso en su contra por los manejos irregulares de los recursos de salud y luego, cuando los exalcaldes se mostraron ajenos a esa actuación, cambió la condición que motivaba la exigencia económica pues les habló de que su colaboración consistía en mediar ante un testigo que vinculaba a los exmandatarios con grupos paramilitares o al margen de la ley, y que el proceso correspondía a la Justicia Transicional.

En Cartagena, se hizo efectiva una primera entrega de dinero a finales de julio de 2015, por valor de SIETE MILLONES DE PESOS (\$7.000. 000.00). Posteriormente, por la presión de llamadas telefónicas, se hizo otras entregas a través de consignaciones bancarias y giros.

En el proceso se estableció la identidad del procesado y esa circunstancia, resulta indiscutible, muy a pesar de los cuestionamientos del defensor del procesado. La identificación resulta plena pues de manera contundente y con excelente convicción, el testigo y víctima, JAIME AISLANT GIL, lo identificó en forma directa y hasta dio a conocer -con todas las circunstancias- la manera como se presentaron los hechos. La versión de AISLANT GIL resulta concordante, coherente y coincidente con las demás pruebas técnicas y testimoniales.

Y, desde luego, PEÑA BERNAL se interesó por hacerse visible y mostrarse.

Las exigencias económicas resultaron una constante en el tiempo pues a través de consignaciones bancarias y giros por intermedio de entidades prestadoras de ese servicio, se obtuvieron otros pagos en favor de los sujetos activos. Las cantidades entregadas dan un total de \$19.862.500.-

Las testigos JENNY PAOLA URREA ROMERO y SORLEY SUAREZ ARIZA, se encargaron de verificar el flujo de llamadas o tráfico de llamadas entre el procesado y la víctima JAIME AISLANT GIL. Las testigos con suficiencia y muy bien orientados en sus informes, a partir del teléfono de la víctima, registraron las llamadas entrantes y salientes, con lo que se consigue confirmar el vínculo del procesado con la línea telefónica, no sólo porque lo certifica la empresa de comunicaciones sino porque en las interceptaciones se registra en audio cuando el procesado se presenta y da a conocer su nombre e identidad.

Los informes de estas dos investigadoras, insistimos, precisan el tráfico de llamadas entre víctima y procesado de tal manera que fortalecen lo dicho de AISLANT GIL en cuanto a que había sido constreñido a entregar dinero y no hay discusión en cuanto a la concordancia de su versión y el compromiso de **PEÑA BERNAL** con esos cargos.

Centro Plazolera Benkos Biobá ... Complejo Indicial SPA - Oficina 402 Centro Plazolera Benkos HimitágonConthelfivaJudicial SPA - Oficina 402 También es contundente la voz de los investigadores OSCAR DARIO TARQUINO BARON y WILMER ENRIQUE MENDEZ MORENO pues adelantaron la búsqueda selectiva en base de datos y otras actividades investigativas, confirmado que sí eran ciertas las consignaciones y giros realizados por los exalcaldes al procesado, por intermedio de una persona llamada EFRAIN RIVEROS.

En el aparte en el que se analiza lo dicho por los testigos de manera individual, se precisan los detalles concretos de estos hallazgos y en este aparte de las consideraciones, realizamos el análisis de las pruebas en conjunto.

Se concluye, probatoriamente, que **PEÑA BERNAL** constriñó a JAIME AISLANT GIL y a los otros exalcaldes. a entregar unos dineros de manera indebida y que se valió con respecto al punible de CONCUSIÓN, de lo que en la doctrina se conoce como *"mentus publicae potestatis"*, elemento que lleva a la víctima a rendirse a las pretensiones del agente. Recuérdese que AISLANT GIL nos dijo que su hermano aspiraba a la Alcaldía de San Martín de Loba y que no podía exponer la imagen de su colateral con ocasión a ese proceso electoral.

El medio empleado por **PEÑA BERNAL** tenía esa idoneidad y esa potencia por cuanto las victimas comprendieron fácilmente que no poseía otra alternativa diferente a ceder a las exigencias del procesado (elemento subjetivo que se predica de la víctima).

Los elementos del pumble de CONCUSIÓN, son:

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1.- El sujeto activo calificado, en este caso, se exige que sea servidor público. Está probado que **PEÑA BERNAL**, lo era. Se aportó prueba documental de su resolución de nombramiento, acta de posesión y manual de funciones del servidor. Sus compañeros de labores también lo reconocieron como servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos.

2. El Verbo rector, que se determina como "abuso" del cargo o de la función. En este caso, el desprestigio de la Fiscalía se produce con el despropósito de tal accionar pues uno de sus servidores, sin estar autorizado, trata de sacar partido a su condición de miembro del ente acusador.

3.- La ejecución de algunas de las siguientes acciones: a) Constreñir, b) Inducir y c) Solicitar. En este caso se concretó en constreñir pues existía una amenaza en contra de los exalcaldes de las consecuencias de un proceso inexistente y **PEÑA BERNAL** les hacía ver que, con su intervención, incidiría en su favor.

4.- La finalidad consistente en conseguir que alguien de o prometa dinero o alguna utilidad indebidos al mismo servidor o a un tercero. La finalidad se obtuvo pues

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personalmente AISLANT GIL les entregó dinero en Cartagena y posteriormente mediante giros o consignaciones, se enviaron más recursos como abonos a las exigencias económicas.

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5.- La existencia de relación de causalidad entre la acción de abuso de la condición o de la función por parte del servidor y el empeño por obtener una prestación que no debe quien es sujeto de la intimidación. Este requisito aparece determinado por el desplazamiento del procesado hasta el Sur de Bolívar y por contactar personalmente a AISLANT GIL y dejar notificación a los otros exalcaldes, los que impactados por la verosimilitud de la amenaza no tuvieron opción distinta a entregar sus recursos a aquel servidor público que los forzó a contribuir de manera indebida.

A su vez, el delito de ABUSO DE FUNCIÓN PÚBLICA, se encuentra tipificado en el artículo 428 del C.P. y atenta contra el bien jurídico de la ADMINISTRACIÓN PÚBLICA, y consiste en que un servidor público abuse de su cargo y realice funciones públicas diversas de las que legalmente le corresponden. En este caso, **ELKIN ARNULFO PEÑA BERNAL**, desbordó totalmente su atribución funcional pues elaboró y firmó citaciones a sabiendas que sus funciones eran muy distintas a las judiciales.

El cargo de **PEÑA BERNAL** era el de Jefe de seguridad y le correspondía, como lo dijeron en sus juradas los subalternos CESAR GABRIEL GÓMEZ OSORIO, JORGE ARRIETA BERTEL y JUAN CARLOS MACERA GUZMAN, apoyar a los esquemas de seguridad, realizar estudíos de seguridad a las instalaciones, programar turnos y de ninguna manera, atender a público.

Inexplicable entonces **PEÑA BERNAL** sufre una metamorfosis y se "transforma" en miembro de una oficina judicial y realizara citaciones, como las que dio cuenta GÓMEZ OSORIO, quien contó con sorpresa como le hizo entregar una de esas citaciones a un comerciante del Mercado de Bazurto en junio de 2015. Esta citación está documentada, como las citaciones de los exalcaldes de San Martín de Loba, y prueban con suficiencia el ABUSO DE FUNCIÓN PÚBLICA.

Este segundo delito realizado por **PEÑA BERNAL** y que concursa con el punible de CONCUSIÓN, se caracteriza porque un servidor público que no tiene competencia para hacer citaciones judiciales ni usar vehículos y personal a su cargo para tal efecto, decide hacerlo. Esto significa que el eje del punible de ABUSO DE FUNCIÓN PÚBLICA radica en el ilegal desbordamiento de la atribución funcional de **PEÑA BERNAL**.

Se sabe que, de conformidad con la Constitución, los particulares sólo son responsables ante las autoridades por infringir la Carta Política y las leyes, mientras

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que los servidores públicos lo son por las mismas causa y por omisión o extralimitación en el ejercicio de sus funciones.

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Este postulado coincide con aquel que nos enseña "no habrá empleo público que no tenga funciones detalladas en la ley o reglamento". Esta es la fundamentación de la penalización de esta conducta pues resulta impresentable que un servidor público realice funciones distintas a las legalmente asignadas en el ámbito de su competencia y con propósitos contrarios a la función pública.

Y es que los servidores públicos no deben realizar conductas que impliquen abuso de la investidura que ostentan y menos de sus funciones, ya que cualquier desvío de poder por extralimitación afecta directamente la entidad a la que representa mancillando su imagen con consecuencias graves para su credibilidad y prestigio.

El envío de citaciones a comerciantes de Bazurto en Cartagena refleja abiertamente el ABUSO DE LA FUNCIÓN PÚBLICA por parte de PEÑA BERNAL pues en forma desproporcionada, desborda arbitrariamente las funciones reglamentarias conferidas por la Fiscalía General de la Nación.

Ahora bien, en cuanto a la tipicidad subjetiva es claro que **PEÑA BERNAL** conocía que no podía realizar ese tipo de exigencias económicas ni realizar actuaciones no autorizadas en la ley. Se evidenció que su voluntad consciente estuvo dirigida a obtener esa utilidad indebida y a realizar labores muy distintas a las que por ley se le asignaron. Obsérvese que facilitó su número telefónico para crear un canal de comunicación con AISLANT GIL cuando lo notificó en su casa de San Martín de Loba. Es más: el delito de CONCUSIÓN en particular, es una delincuencia de mera conducta, es decir, se configuró cuando **PEÑA BERNAL** abusó de su cargo o de sus funciones, con el propósito de constreñir a AISLANT GIL y solicitarle dinero.

La referencia al delito de mera conducta significa que la conducta punible sólo exige que el servidor público realice un requerimiento indebido a mancra de amenaza (expresa o implícita) con perjuicio para el sujeto pasivo, y sin importar que se materialice.

El hecho de que el procesado sea abogado y labore para la Fiscalía General de la Nación, también permiten establecer que tenía conciencia que mal podría un servidor público, hacer uso del cargo de Jefe de Seguridad de la Fiscalía Seccional de Cartagena para la época de los hechos (2015), para obtener un beneficio personal pues incurría en un punible contra la Administración Pública. Sin embargo, no le importó.

Lo mismo en relación con el punible de ABUSO DE LA FUNCIÓN PÚBLICA. Máxime cuando **PEÑA BERNAL** se valía de sus subalternos, los exponía e instrumentalizaba.

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En cuanto a la antijuridicidad de la conducta punible de **PEÑA BERNAL** tenemos que señalar que está más que demostrada la lesión al bien jurídico tutelado de la administración pública pues los delitos en concurso, constituyen un típico caso de corrupción ya que se afecta el buen nombre de la administración de justicia cuya finalidad consiste en satisfacer el interés general. La administración de justicia está comprometida con importantes principios como igualdad, moralidad, eficacia, economía, celeridad, imparcialidad y publicidad.

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Sin duda, la ciudadanía espera de los servidores de la Fiscalía, transparencia y rectitud.

Recapitulando, con el comportamiento de **PEÑA BERNAL** se desprestigió y mancillo la administración pública. La imagen de la Fiscalía se deterioró, precisamente en municipios donde el Estado no hace presencia, y no hay justificación alguna.

Insistimos en que el procesado comprendía la trascendencia jurídico penal de su actuación pues como servidor público engañó y usó al Comandante de la Policía de San Martín de Loba, también al conductor de la Fiscalía. El procesado conocía que no podía abordar y constreñir a unos ciudadanos que se habían desempeñado como exalcaldes y que tenía el deber jurídico de actuar de otra manera pues defraudó la confianza depositada en él como servidor público. Resulta sumamente triste, laborar para la Fiscalía, cuya misión es precisamente la de luchar contra los delitos, y terminar como sujeto activo del punible de CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA como acto de corrupción.

Importa señalar que la Defensa insistió en que la duda estaba fortalecida en cuanto a que sólo se conoció que una persona llamada **ELKIN** realizó exigencias económicas al señor AISLANT GIL, pero no se estableció su identidad, toda vez que no ingresó como probanza complementaria de las juradas de AISLANT GIL y SANCHEZ LEOPARDO el reconocimiento fotográfico correspondiente. Tampoco admite como prueba de la identidad de **PEÑA BERNAL**, las constancias de las empresas de telecomunicaciones en cuanto al titular de la línea.

Esta argumentación no la compartimos pues como puede verse, si había alguien interesado en ser visible e identificable es el mismo **ELKIN ARNULFO PEÑA BERNAL** desde que decide presentarse en casa de los exalcaldes; se hace acompañar de un subalterno -JUAN CARLOS MANCERA GUZMAN-; se traslada en un vehículo institucional; busca apoyo en el Comandante de Policía de San Martín de Loba – EDWIN FABIAN SANCHEZ LEOPARDO-; entrega una citación adulterada y a su nombre; no contento facilita su número telefónico y lo vinculan un flujo exagerado de llamadas telefónicas (entrantes y salientes) y en Cartagena, abordó a los Exalcaldes y los coaccionó, obteniendo la entrega una cantidad importante de dinero tal como ya se indicó.

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Y, varios de los teléfonos que corresponden a las llamadas entrantes y salientes con respecto a AISLANT GIL, su titular es **PEÑA BERNAL** tal como lo certificaron las empresas de comunicaciones telefónicas.

Del reconocimiento mediante fotografías realizado por AISLANT GIL y SANCHEZ LEOPARDO, en sus juradas lo dieron a conocer como un hecho concreto. Las actas y las cartillas fotográficas son ilustrativos o complementarias del testimonio y de ello existe referencia también por los investigadores TARQUINO BARON y MENDEZ MORENO. A su vez, MACERA GUZMAN lo ilustra mejor pues no niega la visita, sino que la detalla y coincide con AISLANT GIL y en especial que su Jefe ELKIN de la Fiscalía fue el que estuvo en San Martín de Loba en los primeros días de julio de 2015.

Muy complejo que el mismo día dos **ELKIN** vinculados a la Fiscalía visitaran a AISLANT GIL.

La Defensa echa de menos que no se haya escuchado a los otros exalcaldes. Pero, como ya se dijo, ha sido tan contundente y definitiva la voz de AISLANT GIL e incluso, su dicho se contrastó con las demás pruebas admitidas y controvertidas, resultando un testimonio uniforme con lo expuesto en su denuncia, entrevista y declaración jurada.

Se concluye que están dados a plenitud los presupuestos procesales consagrados en el Art. 381 del C.P.P. para dictar sentencia condenatoria, es decir, la existencia de un conocimiento más allá de toda duda sobre la responsabilidad de **ELKIN ARNULFO PEÑA BERNAL como** autor de los delitos de CONCUSIÓN Y ABUSO DE FUNCIÓN PÚBLICA. No está demás agregar que esta sentencia condenatoria concuerda con la acusación presentada por la Fiscalía General de la Nación en los términos del artículo 448 del C.P.P.

DOSIFICACION PUNITIVA:

Una vez acreditados, como ha quedado, la estructuración de los elementos de los delitos de CONCUSIÓN y ABUSO DE LA FUNCIÓN PÚBLICA atribuidos al procesado en la acusación, corresponde ahora adelantar el respectivo procedimiento de individualización de la pena a imponer en relación con tales comportamientos delictivos.

En cuanto a los criterios para determinar la pena de prisión contemplados en el Código Penal, Ley 599 de 2000, se tiene que, para este caso, por tratarse de un concurso de conductas punibles, CONCUSION y ABUSO DE LA FUNCION PUBLICA, se

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procederá como lo impone el art. 31 del C.P., es decir que **ELKIN ARNULFO PEÑA BERNAL** quedará sometido a la pena que establezca el delito más grave, según su naturaleza, aumentada en otro tanto.

En este caso, el delito más grave corresponde al punible de CONCUSION cuyos extremos punitivos oscilan de 96 a 180 meses de prisión, multa de 66.6 a 150 S.M.L.M.V. e inhabilitación para el ejercicio de derechos y funciones públicas de 80 a 144 meses.

Para determinar la pena de prisión contemplada en el canon 404 del C.P. y conforme a los extremos punitivos (96 a 180 meses), se tiene que para este evento el ámbito de movilidad es 84 meses y cada cuarto punitivo corresponde a 21 meses.

La multa tiene como extremos 66.6 a 150 S.M.L.M.V. y el ámbito de movilidad es de ochenta y tres punto cuatro (83.4) S.M.L.M.V., por lo que cada cuarto es de 20.85 S.M.L.M.V.

La inhabilitación de funciones públicas cuenta como extremos ochenta (80) a ciento cuarenta y cuatro (144) meses, siendo el ámbito de movilidad 64 meses y cada cuarto es de 16.

En igual sentido, para el delito de ABUSO DE LA FUNCION PUBLICA, el ámbito de movilidad es de 20 y cada cuarto corresponde a 5.

Lo anterior se esquematiza de la siguiente manera para los delitos imputados

CONCUSIÓN:

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Primer Cuarto	Segundo Cuarto	Tercer Cuarto	Cuarto final	
96 a 117 meses	117 a 138 meses	138 a 159 meses	159 a 180 meses.	

ABUSO DE LA FUNCION PÚBLICA.

Primer Cuarto	Segundo Cuarto	Tercer Cuarto	Cuarto Final
16 a 21 meses 21 a 26 meses		26 a 31 meses	31 a 36 meses.

En cuanto a la individualización de la pena a imponer, se advierte que en la acusación se imputó la circunstancia de mayor punibilidad contenida en el art. 58 del C.P., numeral 10 por obrar en coparticipación criminal y en el traslado del art. 447 se reconoció la de menor punibilidad contenida en el art. 55 numeral 1, carencia de antecedentes penales, razón por la que, conforme al artículo 61 ibídem, el ámbito punitivo de movilidad es el que corresponde a los cuartos medios para la conducta punible analizada.

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Y, de conformidad con el texto del inciso 3º del artículo 61 del Código Penal, respecto a la gravedad de la conducta y el daño generado, se tiene que el procesado fungiendo como servidor público, utilizó su cargo para obtener un beneficio ilícito, ejerciendo además funciones que no le eran propias de su cargo, y de esa manera abusando de las mismas; logró constreñir a varios ex alcaldes de un municipio del Sur de Bolívar, mintiéndoles sobre la existencia de investigaciones en sus contra para, con el argumento de ayudarlos a evitar un posible encarcelamiento, obligarlos a pagarle sumas de dinero. Por lo tanto, el Despacho encuentra razonable imponer, **CIENTO DIECISIETE (117) MESES** de prisión, pena que sufre un incremento de **DOCE (12) MESES** en virtud del concurso de conductas punibles, arrojando un total de la pena a imponer de **CIENTO VEINTI NUEVE (129) MESES DE PRISION.**

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En este caso, la pena de multa con el mismo raciocinio y proporción que se dedujo en la de prisión, se tasa en ochenta y siete (87) salarios mínimos legales mensuales.

En lo que se refiere a la inhabilitación para el ejercicio de derechos y funciones públicas, prevista también como pena principal, se individualiza en noventa y seis (96) meses.

Como sanción accesoria, se impondrá al acusado la pérdida del cargo público como Jefe de Seguridad y/o el que en la actualidad se encuentra desempeñando en la Fiscalía General de la Nación, toda vez que el ejercicio y poderes discernidos por la función pública detentada tuvieron relación directa con la ejecución de la conducta punible atribuida (Ley 599 de 2000, artículos 43, núm. 2º, 45 y 52).

DE LOS SUBROGADOS PENALES:

No es procedente conceder a **ELKIN ARNULFO PEÑA BERNAL** la suspensión condicional de la ejecución de la pena, pues la sanción privativa de libertad es superior a 4 años, de manera que no se encontraría satisfecho el requisito objetivo señalado en el artículo 29 de la Ley 1709 de 2014. Además, el inciso 2 del artículo 32 de la misma legislación, que modificó el artículo 68 A de la Ley 599 de 2000 dispone que no procederá dicho subrogado penal para "quienes hayan sido condenados por delitos dolosos contra la Administración pública", como ocurre en este asunto con los delitos por los que se le ha condenado.

Tampoco es viable la prisión domiciliaria sustitutiva de la intramural por razones similares a las anteriores, pues conforme con la preceptiva del artículo 23 de la Ley 1709 de 2014 se procede por el delito de concusión cuya pena mínima es de 8 años de prisión y, además, por tratarse de comportamientos dolosos contra la Administración Pública, quien los comete se encuentra expresamente excluido de dicha sustitución, según lo dispone el inciso 2 del artículo 32 de la citada normativa.

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No se advierte la presencia de alguna de las circunstancias regladas en los numerales 2, 3, 4 y 5 del artículo 314 de la Ley 906 de 2004, referidas a que el acusado sea mayor de 65 años, se trate de una persona a la que le falten 2 meses o menos para el parto, que esté en estado grave por enfermedad, dictaminado por perito oficial; ni se ha aducido y menos demostrado, la condición de padre cabeza de familia, circunstancias que al tenor del inciso 3 del artículo 68 A, modificado por el artículo 32 de la Ley 1709 de 2014, permitirían la sustitución de la ejecución de la pena.

De tal suerte que **ELKIN ARNULFO PEÑA BERNAL** deberá purgar la pena impuesta en el establecimiento carcelario que disponga el INPEC para tales efectos. Líbrese en consecuencia la orden de captura respectiva.

En mérito de lo expuesto el Juzgado Primero Penal del Circuito con funciones de conocimiento de Cartagena de Indias, administrando justicia y por autoridad de la ley,

RESUELVE:

PRIMERO: CONDENAR a **ELKIN ARNULFO PEÑA BERNAL**, de condiciones civiles y personales ya conocidas a la pena de **CIENTO VEINTINUEVE (129) MESES DE PRISION**, como autor y responsable de las conductas punibles de CONCUSION y ABUSO DE FUNCION PUBLICA, multa de ochenta y siete (87) salarios mínimos legales mensuales, e inhabilitación para el ejercicio de derechos y funciones públicas, prevista también como pena principal, en noventa y seis (96) meses: Como sanción accesoria, se impondrá al condenado la pérdida del cargo público como Jefe de Seguridad y/o el que en la actualidad se encuentra desempeñando en la Fiscalía General de la Nación, tal como se explicó en la parte motiva de esta sentencia.

SEGUNDO: NO CONCEDER SUBROGADO PENAL ALGUNO, atendiendo la expresa prohibición del art. 68 A del C.P., y, además por no cumplirse con los requisitos objetivo para la concesión de uno u otro mecanismo sustitutivo. En consecuencia, ELKIN ARNULFO PEÑA BERNAL deberá purgar la pena impuesta en el establecimiento carcelario que determine el INPEC para tales efectos. Líbrese la correspondiente orden de captura a efectos del cumplimiento de esta condena.

TERCERO: DISPONER, a través del **CENTRO DE SERVICIOS JUDICIALES,** rendir las informaciones necesarias a los organismos de seguridad del Estado para efecto de registro y control de sentencias de conformidad con los artículos 166 y 462 del Código de Procedimiento Penal, así como enviar en su momento la carpeta al **JUZGADO DE EJECUCIÓN DE PENAS Y MEDIDAS DE SEGURIDAD** que corresponda por reparto.

Centro Plazoleta Benkos Bioho -- Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos Bortágena umperioal udicial SPA - Oficina 402 **CUARTO: CONTRA** esta sentencia procede el recurso de apelación, la cual es notificada en estrados a los comparecientes.

NOTIFÍQUESE Y CÚMPLASE

1 FREDY ANTONIO MACHADO LOPEZ

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ATTACHMENT H

	NOMBRES	APELLIDOS	DOCUMENTO DE IDENTIDAD	EDAD	LISTADO NNAS - CRI FECHA Y LUGAR DE NACIMIENTO	LUGAR DE RESIDENCIA (CIUDAD, BARRIO, DIRECCIÓN, TELEFONO)	NOMBRE DE SUS PADRES YVO CUIDADOR- PERSONAS CON QUIEN	OBSERVACIONES
	ANGIE MEUISSA	GOEZ CASTARIO	80	16	CARTAGENA DIC-18-1997	M2A? LOTE ?	FRED WOM FRED WOM WEDER COEZ	
	PEDRO	FLOREZ RANDS	UBICAR BOOL MENTACION * CAIVAS	17	CARTAGENIA - 8-JUNIO-1997		- USCAR FLOREZ NEXANOZA RAMOS	
1	WARIS EDILMA	ECHEVERRI Garcia	SD (10) MERCEREN ABAGED	17	CARTAGENA 27 NOV- 1997	105 SANTAN DERES KRA 80 B-Z L. 13 (BAJANO LA CONSOLATA)	DELFA GARCIA VICTOR SERNA	6529566
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	Defensor de Familia		Psico	siogo y/	Manney S rabajador jocial ICBF	Servidor Cl	п , , , , , , , , , , , , , , , , , , ,	

ATTACHMENT I

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Ste. B Draper, UT 84020 Tel.: (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) **MORTENSEN & MILNE** 68 South Main Street, Suite 700 Salt Lake City, UT 84101 Tel.: (801) 521-4444 <u>amort@mortmilnelaw.com</u> <u>ccheney@mortmilnelaw.com.com</u> *Attorneys for Plaintiffs*

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

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO,	
Plaintiffs,	DECLARACIÓN DE KELY JOHANA SUAREZ MOYA
V.	
TIMOTHY BALLARD et al.	
Defendants.	

Yo, Kely Johana Suarez Moya, declaro lo siguiente:

1. Yo soy mayor de 18 años y tengo conocimiento personal de los hechos indicados en esta declaración.

2. Yo nací en un pueblo Colombiano muy pequeño llamado Fonseca-Guajira.

3. Yo fui criada por una madre soltera, Luz Miriam Moya Solano, en una vecindad humilde de La Esperanza, en el sector de Obrero en Cartagena, Colombia.

4. Yo vi las dificultades que enfrentó mi madre debido a la pobreza y la falta de oportunidades, así que fui a la Universidad para obtener la licenciatura en trabajo social para poder ayudar a la gente.

5. Cuando yo tenía 19 años, mis vecinos en el barrio la esperanza sector obrero vieron un potencial en mí y decidieron inscribirme en el reinado de independencia de Cartagena, este concurso no es un reinado nacional y tampoco internacional. Es un reinado interno que se hace en la ciudad donde se conmemora como su nombre lo indica la independencia de la ciudad.

6. Esto no fue un concurso de belleza, sino una competencia para ser la embajadora nombrada de su vecindario.

7. Yo no gané el concurso. *Ve* archivo adjunto A.

8. Ni siquiera fui una de las cinco finalistas. *Id.*

9. Yo Nunca fui "Señorita Cartagena".

10. Yo nunca he empezado o operado una agencia de modelos infantiles.

11. Yo nunca he participado en el tráfico de niños desde Honduras o de cualquier otro país hacia Colombia.

12. Antes de los acontecimientos que ocurrieron el 11 de octubre de 2014, yo no era bien conocida en Cartagena, aparte de mi familia y amistades.

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Antes de los acontecimientos que ocurrieron el 11 de octubre de 2014, nunca había
 sido una "figura pública".

14. Antes de los acontecimientos que ocurrieron el 11 de octubre de 2014, yo nunca había estado involucrada en en el tráfico de niños o adultos

15. Yo no soy ni he sido nunca una traficante de niños.

16. El 11 de octubre de 2014, fui arrestado por la policía federal Colombiana (el "CTI") como parte de una "operación encubierta" con la asistencia de Timothy Ballard y Operation Underground Railroad ("OUR").

17. Ballard y OUR se refieren a esta operación como "Operación Triple Toma" (la "redada").

18. De mi revisión de los testimonios y la evidencia en mis procesos penales posteriores, esta es la historia de lo que sucedió al crear la redada.

19. En el otoño de 2014, OUR y Ballard trabajaron con los gobiernos de Estados Unidos y Colombia para realizar una redada encubierta contra la pedofilia en la isla de Barú, cerca de la costa de Cartagena, Colombia.

20. Como parte de esta redada, OUR y Ballard actuaron como agentes del gobierno colombiano y prometieron por escrito que no entramparian a personas en la redada. *Ve* archivo adjunto B.

21. Ballard afirma que un hombre apodado "El Fuego", utilizando su vasto conocimiento del cartel del tráfico sexual y la red de tráfico de niños de Colombia, puso a Ballard en contacto con otro hombre, "Eduardo", que iba construir un hotel-prostíbulo infantil en la isla de Barú, cerca de Cartagena.

22. El 7 de octubre de 2014 se llevó a cabo una reunión entre Ballard, Elkin y Eduardo donde acordaron que Ballard pagaría dinero por los niños proporcionados en la fiesta pedófila.

23. Ballard también le dio dinero a Eduardo para que hiciera los arreglos de la fiesta.

24. Se decidió que se enviaría una invitación a través de las redes sociales en Facebook invitando a los jóvenes a la fiesta.

25. Yo no estuve en esta reunión y no tenía forma de saber que estaba ocurriendo.

26. Los registros judiciales verifican que yo no estuve en esta reunión. *Ve* archivo adjunto C.

27. El 9 de octubre de 2014, Eduardo llamó a un agente de CTI ("Elkin") y le dijo que podía proporcionar más niños de los acordados previamente y que podía bajar el precio de cada niño. *Ve* archivo adjunto C.

28. Ese mismo día se llevó a cabo una reunión en la que estuvieron presentes Ballard, Elkin y Eduardo, junto con un joven que recién había cumplido 18 años de nombre Samuel David Olave Martínez ("Samuel"), Luis Miguel Mosquera Cuesta ("Luis ") y una mujer joven llamada Natalie Taborda Atencio ("Naty"). *Ve* archivo adjunto C.

29. Naty afirmó que podría conseguir unos 15 niños principalmente de los liceos de Cartagena, garantizando que el niño mayor no tendría más de 16 años. *Ve* archivo adjunto C.

30. Samuel dijo que podría tener 26 niñas y 6 niños varones, debido aque trabajaba en una escuela de modelos.

31. Yo conocía a Samuel por medio del modelaje porque el también era modelo¹

¹ Mi trabajo como modelo fue muy limitado — he sido extra sin identificación en algunos videos musicales — y no hice ingresos significativos de eso.

32. Yo no estuve presente en la reunión del 8 de octubre de 2014 y no tenía forma de saber que estaba ocurriendo, ni tenía conocimiento del tema de la reunión ni de lo que se discutió.

33. Los registros judiciales verifican que yo no estuve en esta reunión. *Ve* archivo adjunto C.

34. El 10 de octubre de 2014, Eduardo llamó a Elkin y le confirmó que tenía compromisos acumulados para 28 niñas y 3 niños menores de 10 años.

35. También confirmó que Samuel había acumulado 26 niñas y 8 niños.

36. No me mencionaron a mi durante esta llamada telefónica. Ve archivo adjunto C.

37. En algún momento antes del 11 de octubre de 2014, Samuel me dijo que un hombre norteamericano rico que se llama "Pablo" vendría a la fiesta en busca de una chica negra de aspecto joven, que podía ayudarla con sus proyectos a futuro.

38. En ese momento, yo tenía veinte años, pero parecía mucho menor, así que Samuel me invitó a la fiesta como una de las jóvenes que el había cometido ha proveer para el Sr. Pablo.

39. Debido a mi pobreza, yo decidí ir a la fiesta para intentar conocer al Sr. Pablo, ya que mi madre y yo tendríamos una salida de la pobreza si conocía a este norteamericano rico.

40. Yo creí que me pagarían por asistir a la fiesta.

41. Samuel me pidió que asistiera a una reunión en el departamento de Eduardo, donde la sobrina de Samuel estaba presente para que Tim Ballard pudiera verificar que Samuel y Eduardo tenían chicas jóvenes listas para Paul Hutchinson ("Pablo").

42. La prima de Samuel y yo éramos las únicas dos "supuestas" niñas en esa reunión, de nuevo como anzuelo, aunque Ballard afirma en *The Abolitionists* que había otros niños. *Ve* archivos en video adjuntas.

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43. Yo también vi la invitación a la fiesta en Facebook.

44. Otra reunión se llevó a cabo entre Ballard, Eduardo, Samuel y yo en un restaurante de la playa para hacer los arreglos de último momento para la fiesta sexual.

45. Yo asistí a esta reunión debido a las instancias de Samuel para demostrar que tenían una joven arreglada para conocer a pablo con Pablo.

46. La prostitución no es ilegal en Colombia.

47. Ballard comenzó enfatizando que Pablo quería tener sexo con una joven negra.

48. En ese momento hablé y le pedí a Pablo que fuera delicado porque no quería que Pablo me violara violentamente.

49. Yo me asusté terriblemente y me reí tontamente, lo que a menudo no hago porque encuentro la situación graciosa, sino porque tengo miedo.

50. El 11 de octubre de 2014 fui solo al muelle para ir a la Isla.

51. Yo me subí a un pequeño bote con otras personas, entre las edades de 13 y 30 años, que también habían aceptado las invitaciones para ir a esta fiesta.

52. Algunos de las personas incluso pagaron \$5 por el paseo del bote.

53. Ninguna de las personas fue mantenida en contenedores de envío.

54. De hecho, los documentos judiciales demuestran que ninguno de las personas fue traficado o esclavos sexuales. *Ve* archivo adjunto D & E.

55. Todos fueron invitados por redes sociales o por invitación de Samuel (como en mi caso), Naty o Fuego.

56. Documentos judiciales y entrevistas verifican que no invité a nadie a la fiesta. *Ve* archivo adjunto D.

57. Documentos judiciales demuestran que una de las personas que estuvo en la redada, Pedro Florez Ramos, ("Pedro") de 17 años, vivía en casa con sus padres en Cartagena, Colombia, se enteró de la fiesta a través de Facebook. *Ve* archivo adjunto E.

58. Los documentos judiciales muestran que Pedro nunca antes había sido víctima del tráfico² de humanos y anteriormente solo había tenido relaciones sexuales con su novio, quien, de acuerdo a los documentos judiciales, lo acompañó en este viaje a la isla. *Ve* archivo adjunto F.

59. Antes de la fiesta del 11 de octubre de 2014, Pedro no me conocía, ni en privado ni en público, como una reina de belleza cartagenera.

60. En ningún momento invité a Pedro a la fiesta ni le prometí dinero.

61. Antes del 11 de octubre del 2014, Pedro nunca había sido traficado sexualmente. *Ve* archivo adjunto E.

62. Documentos judiciales demuestran las edades de los individuos que se presentaron voluntariamente a la fiesta prometida en la isla de Barú.

a) 30 de ellos eran adultos entre las edades de 18 y 30 años.

- b) 16 de ellos tenían 17 años.
- c) 7 de ellos tenían 16 años.
- d) 2 de ellas tenían 15 años.
- e) 1 tenía 14 años.
- f) 1 tenía 13 años. Ve archivo adjunto D.

² Ve Declaración de Pedro Florez Ramos, adjunto aquí como Exhibición E.

63. Los documentos judiciales demuestran que Naty no se presentó al viaje en el barco a la isla para la fiesta, aunque según los informes de la fiscala ella había asistido a reuniones previas a la fiesta en la isla. *Ve* archivo adjunto C.

64. Al llegar a la isla, yo vi a Samuel sentado en una mesa con Ballard.

65. Como yo conocía a Samuel, me senté en una mesa junto a él.

66. Ballard le pasó algo de dinero a Samuel, lo que inmediatamente me confundió.

67. El CTI llegó inmediatamente y nos arrestó a mí y a los demás.

68. Los individuos que fueron traídos a la isla estaban muy confundidos y traumatizados por estos acontecimientos, al igual que yo.

69. Ninguno de los individuos que fueron llevados a la fiesta habían sido traficados anteriormente y ninguno de los "clientes" era en realidad pedófilos en busca de sexo.

70. Durante el arresto, me confundieron con "Naty", yo no estaba involucrada en la planificación de la fiesta, ni en la obtención de los adultos jóvenes ni de los niños, y no estaba al tanto del falso pretexto de la fiesta hasta que fui arrestada.

71. En mi juicio, el investigador me confundió con Naty.

72. Ninguno de ese metraje de las Abolitionists fue proporcionado por Ballard para presentarlo en mi juicio.

73. Ballard afirma en entrevistas que no le informó a la prensa sobre la redada hasta dentro de seis meses y un año después. *Ve* archivos en video adjuntas.

74. Sin embargo, a los pocos días, Tim Ballard me presentó como la Sra. Cartagena, la reina del concurso de belleza que cambió su fama para traficar niños, esencialmente mezclando las historias de vida de Naty y Samuel en una narrativa fraudulenta sobre mí. *Id.*

75. Las noticias de CBS publicó un artículo completo con metraje de la redada y una entrevista de Ballard como héroe solo tres días hábiles después de la redada. *Id*.

76. Yo estaba muy asustada y confundida sobre lo que me había pasado.

77. Mis preocupaciones no eran injustificadas, ya que pasé los siguientes 18 meses en celda esperando el juicio hasta que finalmente fui liberado mediante una petición de hábeas corpus.

78. Elkin, el agente encubierto del CTI, quien fue encargado de la redada, ha sido condenado por corrupción y abuso de cargo público por aceptar sobornos, y está prófugo con una orden de encarcelamiento de 129 meses.³

79. Después de la redada, fui odiado por la gente de Cartagena. Ve archivo adjunto F.

80. Yo recibí amenazas de muerte y la gente me escupió. Ve archivo adjunto F.

81. Mi vida normal fue destruida.

82. Yo decidí que ayudaría a otras personas que habían sido acusadas injustamente, así que fui a la facultad de derecho y me gradué recientemente.

83. Después de un tiempo (aproximadamente 2016), la gente dejó de mirarme y hablar de mí, y yo estaba listo para dejar atrás esta horrible experiencia.

84. En 2018, los demandados de SOF, Ballard y Hutchinson, se propusieron hacer una película docudrama sobre esta redada en la que yo era la villana principal de la película, como se refleja en el guión en el que se utiliza mi nombre para las líneas de Giselle.

85. La actriz que me interpretó se parecía muchísimo a mí. Ve archivo adjunto G.

86. Hasta el día de hoy, yo nunca he sido condenado por ningún delito.

³ Ve archivo adjunto G.

87. Ballard llego a Cartagena a testificar contra mí en febrero de 2023, lo que yo creo fue para asegurarse de que fuera condenado antes de que se estrenara Sonido De Libertad (The Sound of Freedom).

88. Angel Studios promocionó el personaje de Giselle como yo, usando mi nombre real y colocando la siguiente información sobre mí en el ámbito público:

Giselle

In the film's opening scene, a character named Giselle, inspired by Kelly Johana Suarez, a former beauty pageant queen and model known as "Miss Cartagena," deceives a young girl and her prother. Suarez exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade.

89. Como dije anteriormente, yo no fui una reina de un concurso de belleza ni fui yo

Señorita Cartagena.

90. OUR también me etiqueto como, "nada menos que un monstruo"



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32 comments



"Giselle" is based on a real person: TRUE

At the start of the film, it shows a woman named "Giselle" recruiting a young girl and her brother for what the children's father believes is a modeling opportunity. The character of Giselle is loosely based on a woman named Kelly Johana Suarez, a former beauty pageant queen and professional model in her early twenties, known as "Miss Cartagena," who really did recruit and traffic children using her credentials in Colombia.

...

Suarez's reputation in her home of Obrero, a poor neighborhood in the South of Cartagena, made her an effective recruiter of young girls and boys for sex trafficking. Her trusted role as a leader in her impoverished community was gained through her former beauty pageant experience and social work studies.

Beneath the surface, Suarez was nothing short of a monster. She used her good standing and credibility to lure children away from their families with promises of making them successful models, but instead, she sold them into the booming sex trade.

We hope everyone can experience this powerful movie. Although none of the profits go to O.U.R., you can still make an impact. Visit our website, OURrescue.org to make a difference.

91. Yo nunca recluté ni trafiqué niños (o adultos) para tener sexo (o para cualquier otra

cosa).

92. Yo no soy una ex reina de un concurso de belleza.

93. Yo nunca he sido Señorita Cartagena.

94. Yo no he sido condenada por ningún delito y espero ser absuelta antes del 14 de

octubre del 2024.

95. OUR ha estado intentando recaudar dinero afirmando que soy una traficante de niños.

96. En el primer clip de los videoclips presentados ante este tribunal, el empleado de OUR, Matt Osborne, al intentar recaudar dinero para OUR a través de Sonido de Libertad, declaró lo siguiente:

- a. Que yo soy un traficante;
- b. Que yo soy la Señorita Cartagena;
- c. Que yo soy una reina de belleza;
- d. Que yo soy malvada, diabólica y despreciable.

97. Yo vivo con miedo y terror después de haber sido titulda una traficante de niños por Tim Ballard, Matt Osborne, Janet Russon, Katherine Ballard y los acusados de las SOF.

98. En la Segunda clip de los videoclips que se presentan ante esta Corte, Tim Ballard, intenta reforzar la veracidad de Sonido de Libertad, una película en la que ganó dinero y fue introducida en la vida de muchos donantes potenciales bien intencionados, y Argentinos cinéfilos, declarando lo siguiente:

- a. Hubo 54 sobrevivientes en la redada de la isla;
- b. Que Pedro Florez fue un niño traficado que Ballard rescató;
- 99. Ninguno de los individuos llevados a la isla fue traficado. *Ve* archivo adjunto D.

100. Ninguno de los individuos llevados a la isla fueron sobrevivientes. Ve archivo adjunto D.

101. Pedro ha admitido que nunca fue víctima del tráfico de humano y que no fue un sobreviviente de la trata de personas. *Ve* archivo adjunto E.

102. Después de pasar por el trauma completamente innecesario de la redada, esa noche fue devuelto a sus padres. *Ve* archivo adjunto H.

103. En el tercer Clip de los Videoclips que se presentan ante este Tribunal, Tim Ballard, al tratar de promocionar la película en la que tiene intereses económicos, Sonido de Libertad, afirma que soy real, muy real, que fui Señorita Cartagena y que soy muy conocida en la conciencia pública cartagenera.

104. Como dije anteriormente, yo no fui Señorita Cartagena y era una figura desconocida excepto por mis amistades cercanas de mi vecindad.

105. En el cuarto Clip de los vídeos presentados ante este Tribunal, Tim Ballard, al intentar promocionar la película en la que tiene intereses financieros, Sonido de Libertad, afirma que las mujeres son las mejores reclutadoras para traficar con niños.

106. Afirma además que soy una persona muy famosa, que fui Señorita Cartagena y que era dueña de una escuela de modelos donde reclutaba niños de mi supuesta escuela de modelos.

107. Ballard afirma que gané el título de Señorita Cartagena diciendo que quería ayudar a los niños de Colombia y parecía que eso era lo que estaba tratando de hacer para reclutar niños para la esclavitud sexual.

108. Todas estas afirmaciones son falsas y están hechas con la mujer que me interpretó en la película sentada a su lado.

109. En el quinto Clip de los videoclips presentados ante este Tribunal, a Tim Ballard, al tratar de promocionar la película en la que tiene intereses financieros, Sonido de Libertad, se le preguntó si estaba yo en prisión.

110. Ballard respondió mentirosamente diciendo que yo estaba en prisión y que él había testificado en mi juicio 8 meses antes y que estaré en prisión por 20 años o más.

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111. Aparte de los 18 meses que cumplí en las horribles condiciones de la prisión de mujeres en Cartagena en espera de juicio, no estoy en prisión ni voy a pasar ningún tiempo adicional en prisión ya que en Colombia se adelanta un juicio, dentro del cual todavía no se ha declarado responsabilidad penal en mi contra.

112. En el sexto Clip de los videoclips que se presentan ante este Tribunal, a Tim Ballard, al intentar promocionar la película en la que tiene un interés financiero, Sonido de Libertad, se le pregunta qué parte de la película Sonido de Libertad es real y qué parte es ficción.

113. Ballard responde diciendo que todos los niños son reales, los pedófilos son realesy los protagonistas son reales.

114. Yo no soy una pedófila.

115. Ninguno de los niños eran realmente niños traficados, excepto Ballard, quien pagó para traerlos a la isla.

116. En el séptimo Clip de los videoclips que se presentan a este Tribunal, Tim Ballard, al tratar de promover la película en la que tiene un interés financiero, Sonido de Libertad, en su propio podcast con el Fiscal General de Utah, Sean Reyes, dice que el no crea demanda al afirmar que miró catálogos de niños en Cartagena que verificaban que los niños que iban a la isla eran menores traficados, que Ballard tenía pruebas ante la isla de que estos niños habían sido abusados varias veces antes de que Ballard apareciera en Cartagena.

117. Ninguno de los jóvenes y adultos jóvenes llevados a la isla para la redada había sido traficada anteriormente.

118. Tim Ballard creó una demanda para que personas como yo fingieran ser menores de edad con la esperanza de poder sacar a mi madre y a mí de la pobreza.

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belleza y Señorita Cartagena, todo lo cual es falso Sonido de Libertad claramente han hecho creer al público que soy una traficante, una ex reina de 119. Los acusados a través de sus escritos, investigaciones, promoción y distribución de

mí en la afirmación de la película Sonido de Libertad de que yo soy una traficante de niños 120. No hay nada cierto en la esencia de la interpretación que los demandados hacen de

incluyen mentiras descaradas acerca de que soy una traficante, lo cual no es una inexactitud menor. 121. Los vídeos promocionales y las páginas web que he adjuntado a esta declaración

altamente dramatizado en Sonido de Libertad, sino que querían que el público creyera que yo era demuestran que los acusados querían que el público viera mi personaje no como una ficción o verdaderamente una traficante de niños como se retrata en la película. 122. Los videos promocionales y las páginas web que he adjuntado a esta declaración

SUAREZ MOYA, adjunta al presente como Anexo I. la creencia de que es una traducción justa y precisa de la DECLARACIÓN DE KELY JOHANA 123. No hablo ni leo inglés; sin embargo, firmo esta declaración con el entendimiento y

correcto. 124. Yo me declaro bajo pena penal del Estado de Utah que lo anterior es verdadero y

FECHADO este 6 día de junio 2024.

KELY JOHANA SUAREZ MOYA

KelySuarez (Spanish)

Final Audit Report

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EXHIBIT C

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Ste. B Draper, UT 84020 Tel.: (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) MORTENSEN & MILNE 68 South Main Street, Suite 700 Salt Lake City, Utah 84101 Telephone: (801) 521-4444 <u>amort@mortmilnelaw.com</u> <u>ccheney@mortmilnelaw.com</u> <u>Attorneys for Plaintiffs</u>

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

.

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO,	DECLARATION OF CELESTE BORYS
Plaintiffs,	
v.	
TIMOTHY BALLARD, an individual;	
Defendants.	

I, Celeste Borys, hereby declare as follows:

1. I am over the age of 18 and reside in Utah. I am competent to testify, and I make

this declaration on my own free will and personal knowledge.

2. In May of 2022, to serve the mission of rescuing trafficked children, I applied for and was hired as an Executive Assistant ("EA") at Operation Underground Railroad.

3. In October of 2022, Ballard also designated me as an Operator who would accompany Ballard on OPS via the COUPLES RUSE.

4. Tim Ballard moved me into the position of his personal Executive Assistant in March of 2023.

5. Shortly before I resigned as Ballard's EA, I began to realize that Ballard is a habitual liar in all aspects of his life.

6. I am aware of several incidents in Ballard's past that show this fact.

7. For example, he repeatedly told me that he had Sean Reyes, the Haiti law enforcement, Mexico law enforcement, Ecuador law enforcement, Colombia law enforcement, and others in his hip pocket and that he had a graveyard of people who tried to cross him.

8. As revealed in the Davis County investigative reports, Ballard had the Haitian authorities attempt to arrest other NGO operators in Haiti (his former business partners), because he believed they were competing with his nonprofit work.

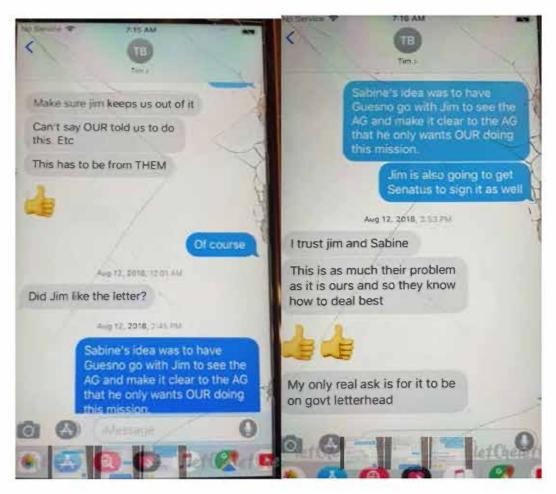
9. Ballard had Colombian authorities arrest Kely Suarez because he needed a "successful OP" in order to bring in donations and have sizzle for his films. He put her in prison in Cartagena, without any regard for her life, just as he was willing to do with Chet Thomas:

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Dave stated he found an older phone with some text messages that he was able to provide to me. Dave said at one point there was a second group of people with a different non-profit organization that was going to Haiti to look for Gardy. Tim told Dave that "these guys will destroy OUR's operational integrity." Dave said he believed Tim and so he actually helped him draft, via text, a document which they then forwarded to one of the Haitian government officials. The Letter was then drafted and sent to this American citizen and his Non-profit organization. The individual was Chet Thomas, one of the producers for the first documentary, "The Abolitionist."

Dave was able to provide me screen captures of the text messages between Tim Ballard and himself discussing the details of this and how to draft the document. They spoke of providing the draft to the "government official" and making sure it was drafted on government letterhead and then given to Chet. Dave provided me a screenshot of the document as well. It should be noted that Chet Thomas did receive this official document and provided me with a photograph of the document which has been included with the case file.





10. Ballard lied to his daughters about drinking alcohol while they were on a flight to

visit his mother. He asked me via text if there was a way to disguise the drink:



11. Ballard was obsessed about Kely Suarez and how she could impact how the public viewed *The Sound of Freedom*.

12. He asked his psychic and OUR employee, Janet Russon, for a reading about Kely Suarez and *The Sound of Freedom*.

13. I have read the script of *The Sound of Freedom*.

14. Ms. Suarez's actual name (Kelly sic), rather than Katy, is used 48 times.

15. The name "Kelly Suarez," rather than Katy Giselle, is used 2 times in the script.

16. At the beginning of 2023, Ballard desperately wanted to release the movie *The*

Sound of Freedom ("SOF") through Angel Studios, but Angel Studios would not distribute it

because Ballard and OUR were under criminal investigation by the Davis County Attorney's

Office.

17. In early March, I attended a meeting with Ballard, David Jacobs, and Sheri Dew, who was the CEO of Deseret Book, at Brent Andrewsen's office, where Ballard discussed terminating the Davis County Investigation, while pitching story ideas to Ms. Dew to help collaborate in that effort.

18. On March 7, 2023, Ballard texted me and asked to set up a meeting with Ali Serano, Brent Andrewsen, David Jacobs, Mark Blake, and myself to discuss Davis County Attorney Troy Rawlings, and suing him for what Ballard claimed was an improper investigation.

19. I set up the Meeting for March 8, 2023, and I was present at that meeting.

20. This meeting and several more were being held at the same time in parallel with Angel Studios meetings.

21. A smear campaign of Troy Rawlings was set in motion so that SOF could be distributed.

22. On March 14, 2023, there was a SOF Meeting between OUR (Timothy Ballard) and Angel Studios at Grand America to discuss distributing the movie.

23. Angel Studios was represented at the meeting by Jeff Harmon, Jordan Harmon, and Neal Harmon.

24. OUR was represented by Ballard, David Jacobs, Matt Osborne, Heidi Fransen, Janet Russon, and me.

25. Mike Illitch Jr., Thomas Hall, (donors), Jim Caviezel, and Eduardo Verastegui (from SOF) were present at this meeting (Verastegui via Zoom), with Alejandro Monteverde receiving a recap of the meeting via WhatsApp the following day.

7

26. On March 28, 2023, I went to the Salt Lake City Airport to pick up Ballard and Eduardo Verastegui, and I drove them to a meeting with Angel Studios.

27. The Harmon brothers, their executive assistant Judy Day, Ballard, Verastegui, and I were all present, and they discussed the release of SOF on July 4, 2023, as well as the "Pay It Forward" financing.

28. On March 31, 2023, another meeting was held to discuss the Troy Rawlings investigation with OUR employees Ballard, David Jacobs, Mark Evans, Emily Evans, and OUR Holland & Hart counsel Brent Andrewsen and myself present.

29. On April 11, 2023, I was present at a private meeting at "Mac's Place" with Ballard, Matt Cooper, and Sean Reyes. Prior to going into the meeting, Ballard told me that the primary objective of the meeting was to address what he needed to with Reyes so that Reyes would end the Davis County Investigation.



30. On April 24, 2023, Ballard asked Mark Blake to send me the "Letter to Troy in 2022."

31. They also discussed an upcoming meeting Ballard was going to have with Holly Olsen (a public relations volunteer) and how she was going to start her "Investigate Troy" campaign to smear Troy Rawlings.

32. On April 24, 2023, there was a meeting with Holly Olsen, Steve Olsen, Rachel Ballard, John Watson, MB, JC Holt, Ellen Wheeler (appearing via Zoom), Ballard, and his sister Emily Evans, where we discussed the Investigate Troy Rawlings campaign and started a webpage called <u>investigatetroy.com</u>.

33. In April of 2023, a female operator at OUR ("JJ") who had previously accompanied Ballard on COUPLES RUSE OPS, had come forward to OUR management and reported that Ballard had used the COUPLES RUSE to deceive, groom, and manipulate her into participating in sexual acts with him.

34. I believed Ballard when he told me that these acts were necessary to fool child traffickers and that this woman was crazy, along with other operators who he claimed had "fallen in love with him." Ballard claimed these women could not perform in the COUPLES RUSE without developing romantic feelings for him.

35. On May 11, 2023, Ballard told me the Deseret News reported that Troy Rawlings informed it that OUR was cleared from the investigation but would not go on the record because Rawlings had Attorney General Sean Reyes under investigation.

9



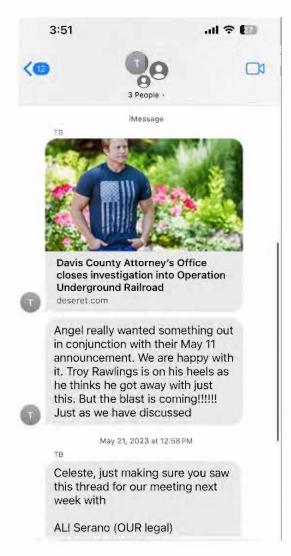
36. Ballard then said he was going to tell Attorney General Sean Reyes that Rawlings must be leaking false information to the Deseret News about Sean Reyes being under investigation.

37. On May 19, 2023, Ballard informed me that Angel Studios had been asked by many people why it would ever partner with Tim Ballard.



38. On May 20, 2023, Ballard texted me and asked to set up a meeting with Ali Serano (OUR legal), David Jacobs (OUR), Matt Faraci (OUR PR & Angel PR), Matt Shupe (Dhillon PR) Mike Columbo (Dhillon legal).

39. Despite the fact that OUR and its attorneys knew that Ballard had been sexually assaulting several women, Ballard claimed that Angel Studios wanted something out in the press regarding the Davis County Investigation being over before it would commit to distributing SOF:



40. On May 23, 2023, after it was known that Ballard had acted inappropriately sexually with JJ, Emily Evans (Ballard's sister) told me that Angel Studios/OUR, hired public relations manager Matthew Faraci for all things Troy Rawlings and SOF to assure that Ballard's reputation, OUR's reputation, and Angel Studios' reputation, was not hurt.

<12	EE 🗖
	Emily
	May 22, 2023 at 8:02 PM
	Tim Ballard: NRB 2023 Schedule docs.google.com
	May 23, 2023 at 10:40 AM
	Have we hired epic to do tims PR
	going forward
Matthew	
OUR has	
OUR has all things	/? s hired Matthew/Gideon for
OUR has all things	y? s hired Matthew/Gideon for s Troy and SOf

41. Matthew Faraci reported to Angel Studios, as reflected in this invitation to an

Angel Studios party in Orlando, Florida on May 23, 2023.



42. On May 28, 2023, Ballard chose to cancel the meeting I had set up with Serano, Jacobs, Angel Studios, and Dhillon and he asked me to reschedule it with just Dhillon and Faraci (Angel Studios).

43. On May 30, 2023, Ballard texted me that he wanted to hold off on "Striking Troy", but would wait until after the SOF movie as he built up millions of new followers/donors during the SOF tour: I had a new thought this morning

I had a new thought this morningwith ticket sales doing so well, Mabry we should not strike Troy pre-movie.

Instead we go on all the media that we were going to use to strike him, and go for the express purpose of promoting the film.

On the way out we brief the producers of a HUGE story to take place in October: the Corruption storythe movie will have about runs it's course and we will have MILLIONS of new followers / donors .

Now we go back on Glenn and Tucker and Candace and—with our now MILLIONS of new followers/ blow troy out of the water

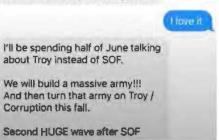
Also.....it's the natural progression because all things will be naturally unsealed by then

I'll pass it by Matthew. If he likes it, there will be no reason for a meeting

Also.....It's the natural progression because all things will be naturally unsealed by then

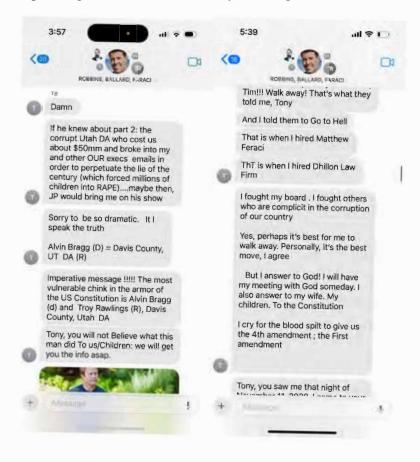
I'll pass it by Matthew. If he likes it, there will be no reason for a meeting

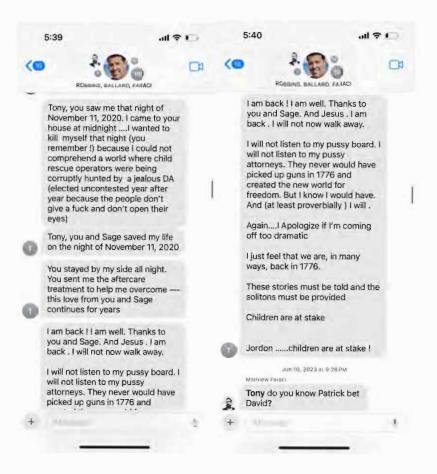
Also, I will have OUR being run by non transsexual pussies by then



44. On June 8, 2023, Ballard included me on texts to Tony Robbins and Matthew Faraci

expressing his hatred towards Troy Rawlings.





45. Given my involvement in all of the meetings with Angel Studios and the SOF defendants, Angel Studios and the SOF defendants knew that OUR and Tim Ballard had been under criminal investigation prior to releasing *The Sound of Freedom*.

46. Given my involvement in all of the meetings with Angel Studios and the SOF, defendants knew that Tim Ballard had been fired from OUR for sexual misconduct prior to releasing *The Sound of Freedom*.

47. Given my involvement in all of the meetings with Angel Studios and the SOF defendants, Angel Studios and the SOF defendants knew that Tim Ballard was going to use *The Sound of Freedom* as a platform in which to attack Troy Rawlings, the Davis County Attorney.

48. It is my understanding that Matt Osborne knew that OUR and Tim Ballard had been under criminal investigation prior to releasing *The Sound of Freedom*.

49. It is my understanding that Matt Osborne knew that Tim Ballard had been fired from OUR prior to releasing *The Sound of Freedom*, as Ballard told me that OUR fired him for "using Ops to F--- ladies. "



50. Katherine Ballard knew that OUR and Tim Ballard had been under criminal investigation prior to releasing *The Sound of Freedom*.

51. Katherine Ballard knew of JJ and made an HR complaint to OUR prior to Tim

Ballard being fired, complaining of JJ.¹

52. Katherine Ballard knew that Tim Ballard had been fired from OUR prior to

releasing The Sound of Freedom, prior to making this statement on October 11, 2023:

¹ Attached hereto as Exhibit A.

The Ballard Family and The SPEAR Fund Issue Statement on Anniversary of Historic Island Rescue in Colombia

(SALT LAKE CITY, UT October 11 2023) The SPEAR Fand an organization funcing and defending efforts to end child-trafficking in our time—is releasing a statement on behalf of Senior Advisor Tim Ballard and his wife Katherine

Th was 9 years ago today that 120 women and children were rescued from evilland conspiring traffickers on a remote Island in Colombia, as depicted in the 1st movie SOUND OF FREEDOM

53. Faraci knew that Ballard had been under investigation by the Davis County Attorney and FBI and that Ballard was forced out of OUR for having a sexual relationship with JJ.

54. I learned later that Faraci knew that Ballard had sexually assaulted several other women whom OUR paid millions of dollars to buy their silence.

55. Faraci was working with Ballard through his firing from the claimed termination of the Davis County Investigation, the Troy Rawlings attack campaign, the Mormon Church denouncement, and Ballard's excommunication from the Mormon Church.

56. Finally, I could not take the COUPLES RUSE, being away from my family, Ballard's excessive drinking and his manic personality, and I resigned on September 10, 2023.

57. I remained unaware that several women had come forward complaining of the COUPLES RUSE because I had been walled off from other employees and was still being lied to by Ballard, who told me that the only woman who had complained was JJ, and she was "crazy."

58. When I resigned I still believed Ballard when he said that everything he was doing with the COUPLES RUSE was necessary to save children, however I could no longer handle the stress of it all.

59. That did not deter Ballard from continuing to email, text, call, and use me as his EA for the next several weeks

60. When I refused to take Ballard's calls anymore, he called my teenage son's phone at midnight and told him he had to speak with me.

61. I never had an exit interview, nor was I asked to remove my access to his emails, which went to a personal email rather than an official work email.

62. Apparently, members of the media obtained copies of text messages that were presented to The Church of Jesus Christ of Latter-Day Saints (LDS Church).²

63. I terminated any further association with Ballard at that point.

64. Upon learning of the COUPLES RUSE and how Ballard used it, it is my understanding that the LDS Church excommunicated Ballard as a result of the Church Court where Ballard claimed that he did nothing wrong in acting out the COUPLES RUSE.

65. I have not been paid since leaving OUR with Ballard, nor have I been reimbursed for the thousands of dollars I put on my personal credit cards to fund Ballard's *Sound of Freedom* travels, leaving me financially devastated.

66. It was only after the five brave women came forward and Ballard was no longer manipulating me and lying to me, that I was able to see what a monster Ballard is.

67. Angel Studios and the SOF Defendants entertained serious doubts as to the truth of SOF, as everything surrounding Ballard was unraveling before July 4, 2023, when the movie was released.

² Attached hereto as Exhibit B.

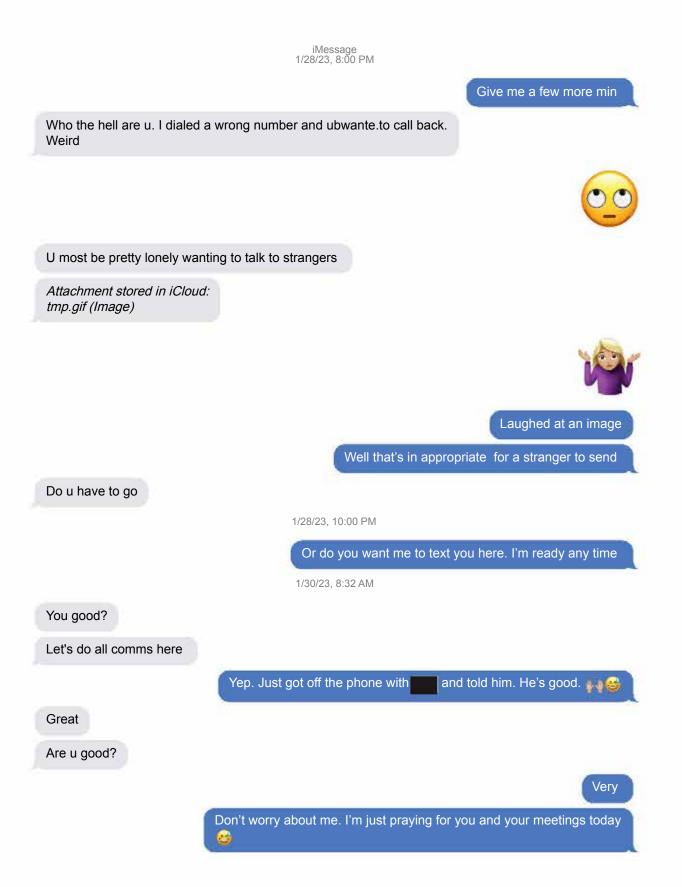
68. Given all of the meetings, press releases, public relations handlers and smear campaign against the Davis County Attorney's Office, there were obvious reasons to doubt the truth of *The Sound of Freedom*.

DATED this 5_ day of JUNC 2024.

Culeste Bonys _____

EXHIBIT A (Filed Under Seal)

EXHIBIT B



I always tell. undercover operators that it is never too late to pull out of an op of something doesn't feel right . Even seconds before beginning either trainings or real ops. Never feel pressure to not the plug on it

I promise.

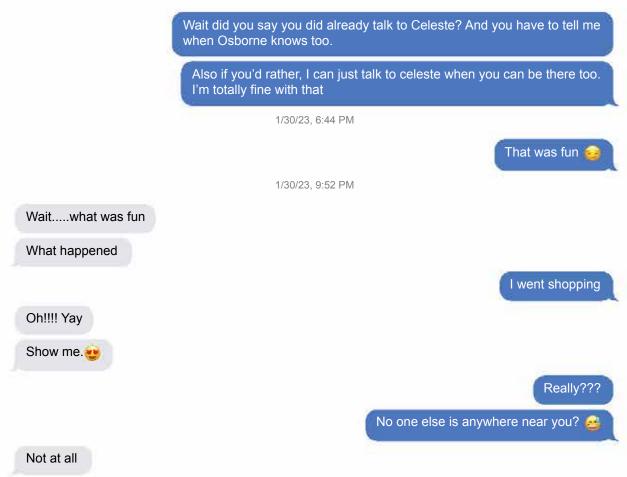
Maybe if you have a second this week though you could text and just reassure him you will take care of me. I told him about the inspiration I have gotten so he understands and is on board but I feel like it would be helpful to hear it from you too.

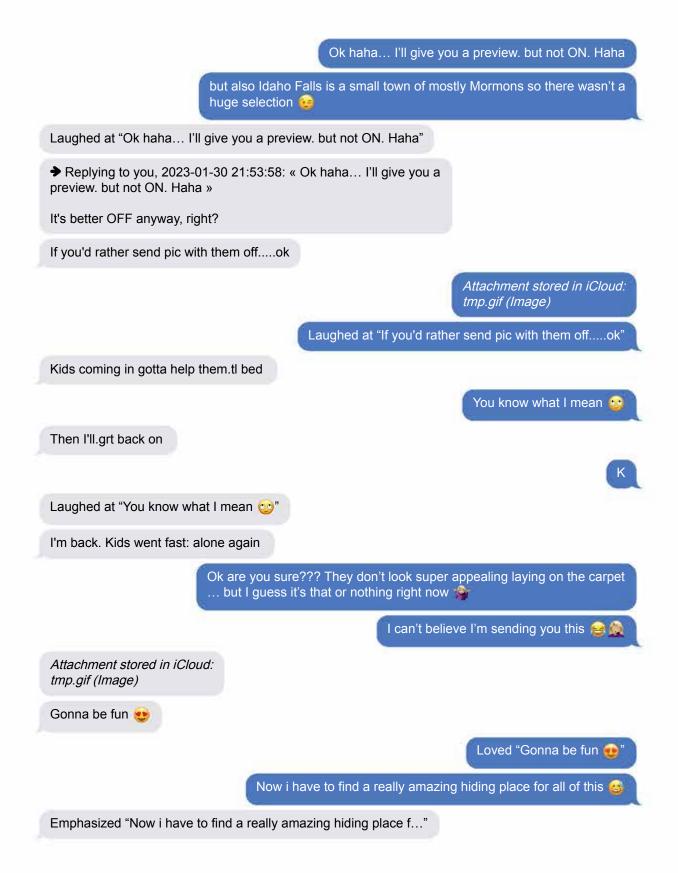


1/30/23, 12:09 PM

I just realized you called this morning sorry 🤬

1/30/23, 3:45 PM





Part of UC work is finding lots of hiding palces, Eur they aren't as funding lots of hiding palces, Eur they aren't as funding lots of hiding palces, Image: Im		Brian and Lizzia have to reach such extreme chemistry together
of UC work is finding Ic been talking to Bernie a party in the spring for m at Bernie , he is sending d chosenand he is se fucking anywayso it s daddy is an older sick ing herhelps coordian dy likes. n and Lizzie are kinky s an and Lizzie are kinky s tit get used to Brian sayo get used to Brian sayo we will fet to know his I we will fet to know his I	. I don't know if I ever really	I mean I knew what you guys do but processed it.
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of UC work is finding lots of hiding p opeen talking to Bernie all day: hes ep party in the spring for my boss, who it Bernie , he is sending my back to it chosenand he is sending his da fucking anywayso it's perfect adddy is an older sick pedo and his ng herhelps coordiante these parting herhelps coordiante these parting nand Lizzie are kinky sex tourists but it we get paid a lot to help daddy and it we get paid a lot to help daddy and it we get paid a lot to help daddy and tit we get paid a lot to help daddy and the get used to Brian sayong FUCK all to get used to Brian sayong FUCK all to		Bernie is gonna take us to all the gross sex houses to see and pick the girls
of UC work is finding lots of hiding p peen talking to Bernie all day: hes e party in the spring for my boss, who it Bernie , he is sending my back to i chosenand he is sending his da fucking anywayso it's perfect fucking anywayso it's perfect ing herhelps coordiante these parting herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his ng herhelps coordiante these parting his daddy is an older sick pedo and his his daddy is an older sick pedo and his his daddy is an older sick pedo and his his daddy is an older sick pedo and his his daddy is an older sick pedo an older sick pedo an older sick	Got it. Sounds super fun	
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Part of UC work is finding lots of hiding palces, Eut they aren't as fun Laughed at "Part of UC work is finding lots of hiding palces," I'm learning so much I've been talking to Bernie all day: hes excited to prepare a huge child sex party in the spring for my boss, who is funding it. After I told him about Bernie, he is sending my back to get details booked and kids hand chosenand he is sending his daughter Lizzie with, who i happen to be fucking anywayso it's perfect I'm learning so much Boss daddy is an older sick pedo and his daughterdid i mention Brian is fucking herhelps coordiante these parties and she knows exactly what daddy likes. Brian and Lizzie are kinky sex tourists but do not want any sex with kids		Got it!
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Part of UC work is finding lots of hiding palces, But they aren't as fun Laughed at "Part of UC work is finding lots of hiding palces," Laughed at "Part of UC work is finding lots of hiding palces," I've been talking to Bernie all day: hes excited to prepare a huge child sex party in the spring for my boss, who is funding it. After I told him about Bernie , he is sending my back to get details booked and kids hand chosenand he is sending his daughter Lizzie with, who i happen to be fucking anywayso it's perfect		Boss daddy is an older sick pedo and his daughterdid i mention Brian is fucking herhelps coordiante these parties and she knows exactly what daddy likes.
Part of UC work is finding lots of hiding palces, But they aren't as fun Laughed at "Part of UC work is finding lots of hiding palces," I'm learning so much		I've been talking to Bernie all day: hes excited to prepare a huge child sex party in the spring for my boss, who is funding it. After I told him about Bernie , he is sending my back to get details booked and kids hand chosenand he is sending his daughter Lizzie with, who i happen to be fucking anywayso it's perfect
Part of UC work is finding lots of hiding palces, But they aren't as fun Laughed at "Part of UC work is finding lots of hiding palces,"	I'm learning so much	
	nding lots of hiding palces,	Laughed at "Part of UC work is fi
Part of UC work is finding lots of hiding palces,	But they aren't as fun	
	6	Part of UC work is finding lots of hiding palces,

Part of Hyde park stuff. Tantric creates heavenly light and protection

U should study up on true tantric

Replying to you, 2023-01-30 22:20:19: « I mean I knew what you guys do but I don't know if I ever really processed it. »

Like porenta said "welcome.to the REAL OUR"

Replying to you, 2023-01-30 22:20:19: « I mean I knew what you guys do but I don't know if I ever really processed it. »

Emphasized "Like porenta said "welcome.to the REAL OUR""

Seriously....Am I going to be able to get good at all of this in two days??

Yes!!!

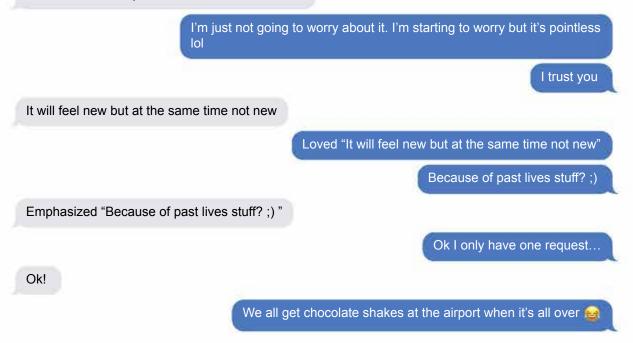
If we can feel it with each other, then yes!

Loved "If we can feel it with each other, then yes!"

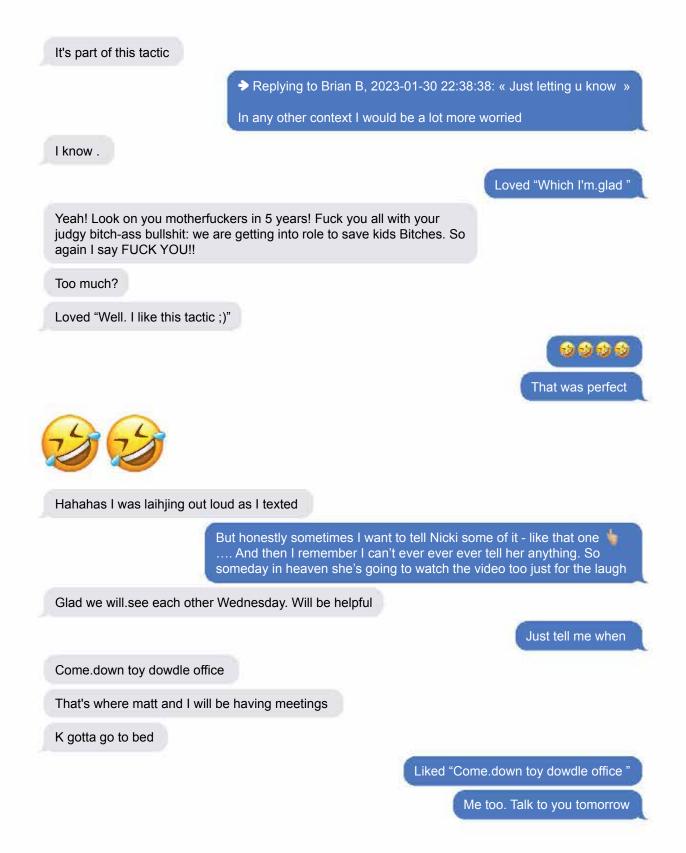
It's NOT about learning some strange kinky moves. That's not it at all. I don't have any to teach anyway

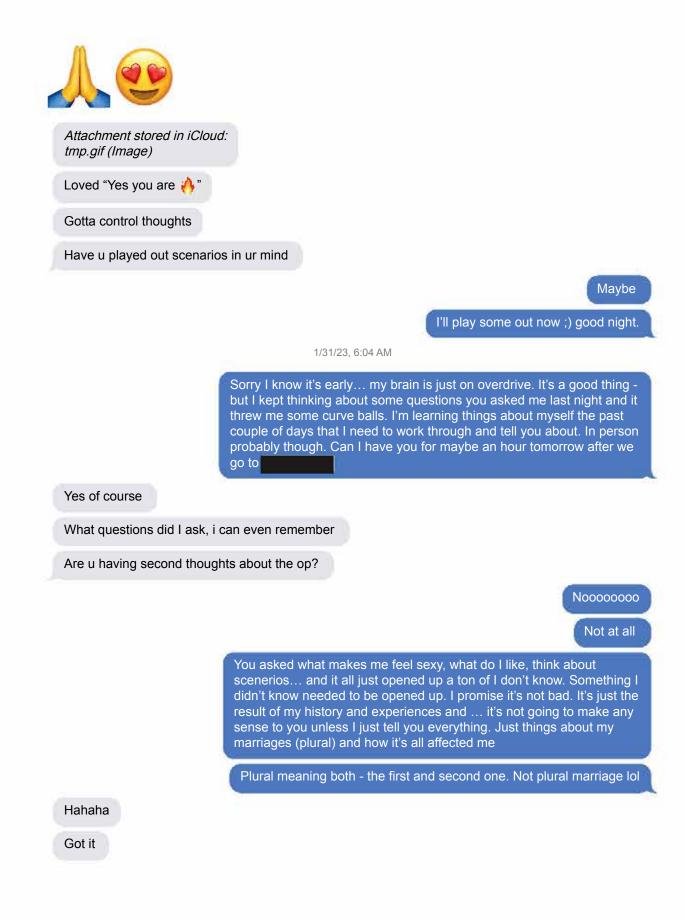
It's just about making it real and tapping into tantric /light

I think u will be surprised how FAST we connect

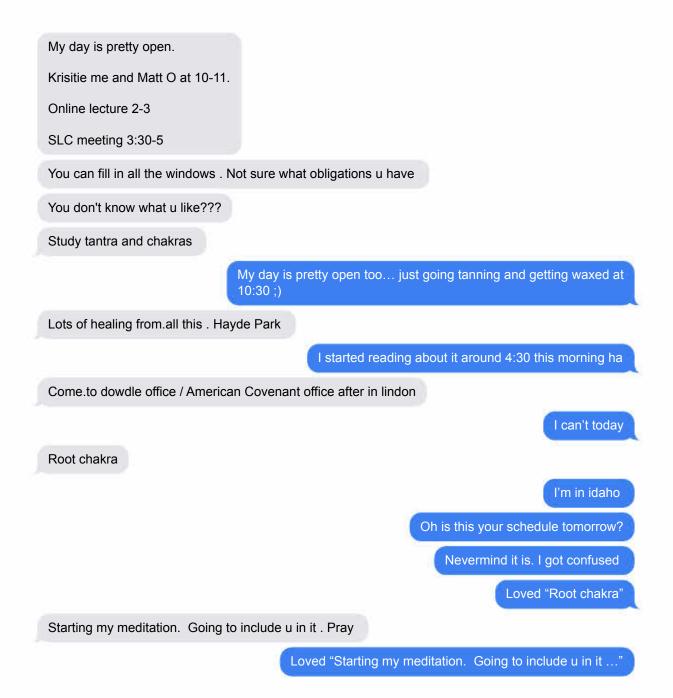












Replying to Brian B, 2023-01-31 06:37:59: « My day is pretty open.

Krisitie me and Matt O at 10-11.

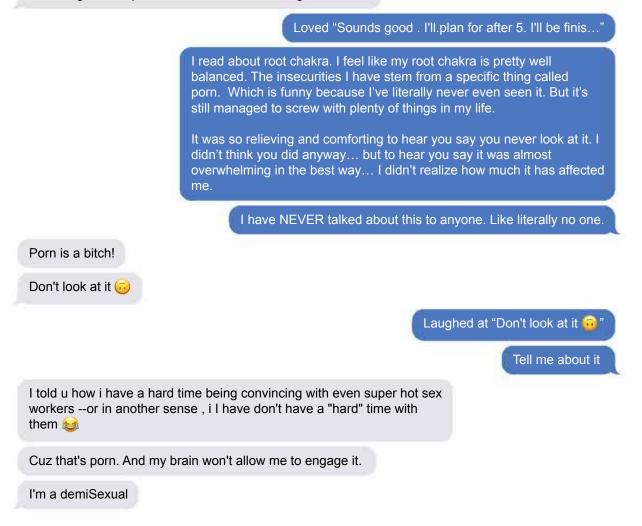
Online lecture 2-3

SLC meeting 3:30-5 »

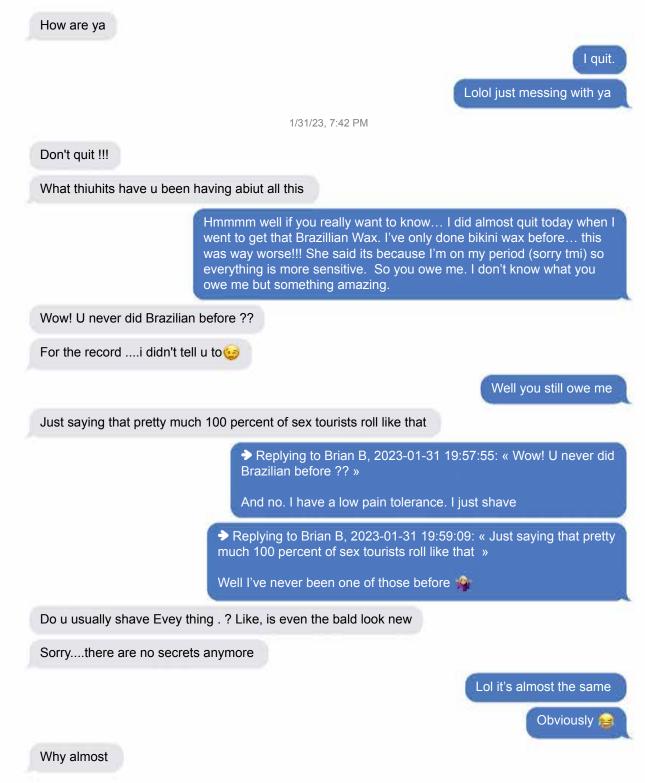
I'm busy until about 12:30 tomorrow but I could come to the office after that...Matt told me he's planning on meeting with you until 2 (probably for the simon/petey call that's on hold on your calendar?) so I'm meeting with him once you're done. Is after 5 ok?

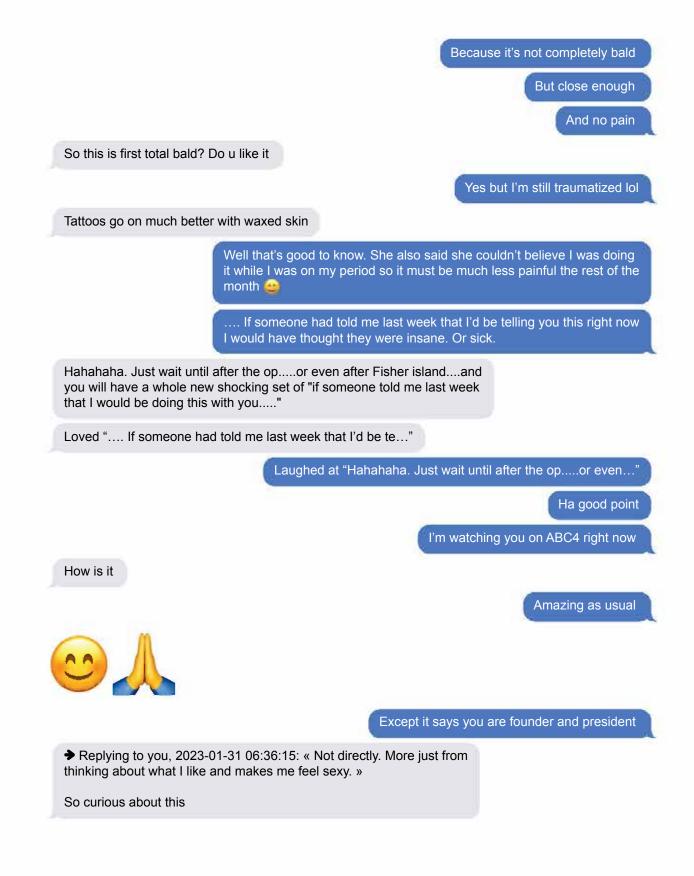
I don't know if it will work in between the other meetings. But we could go deliver things at 5 and talk then?

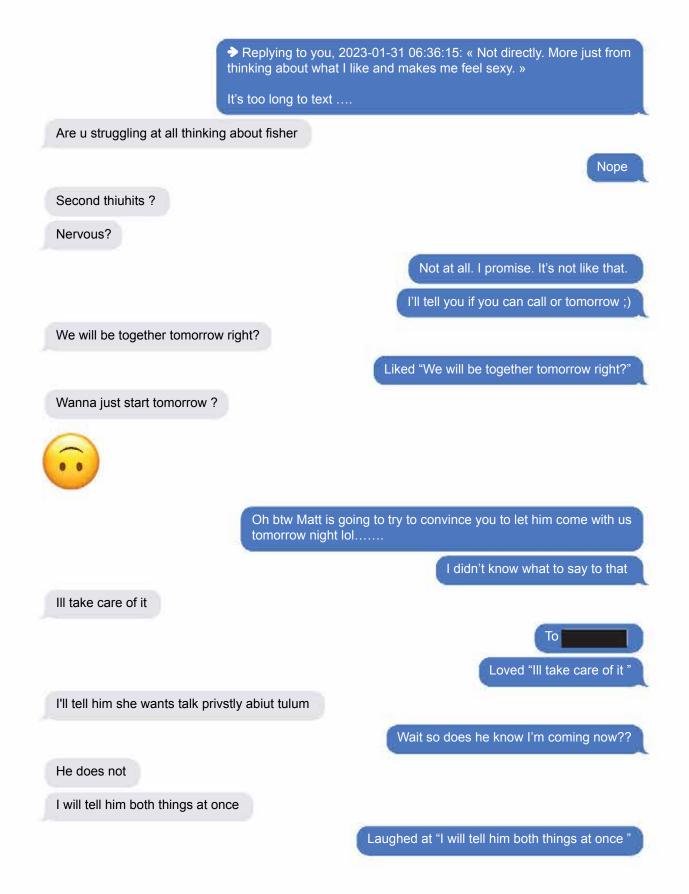
Sounds good . I'll.plan for after 5. I'll be finishing in SLC at 5

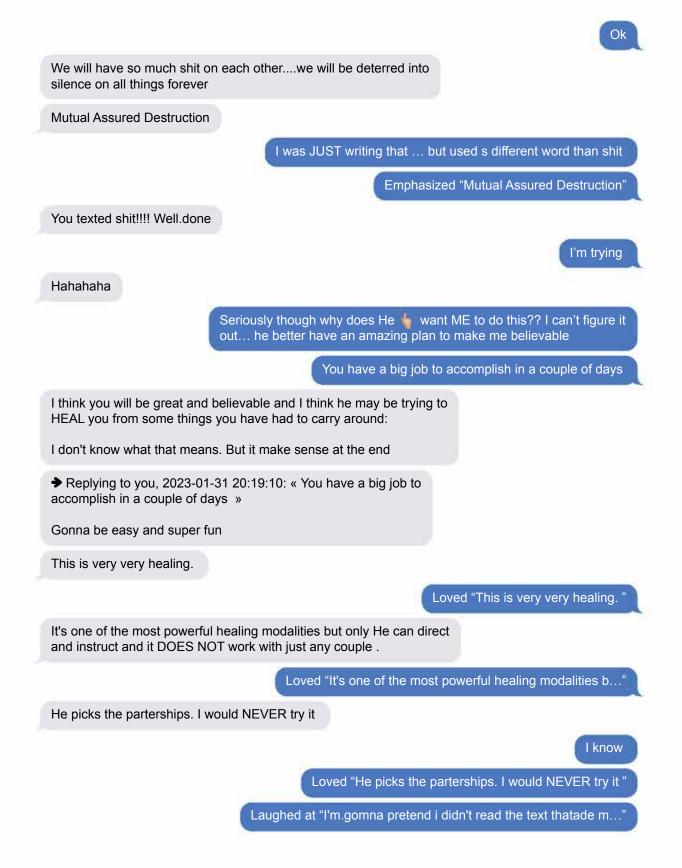


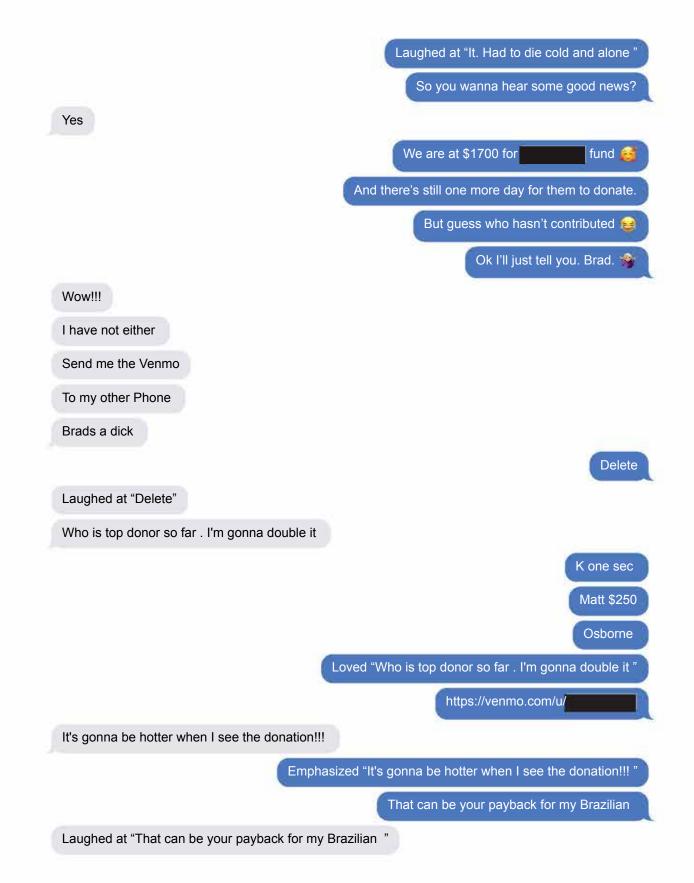
1/31/23, 5:31 PM

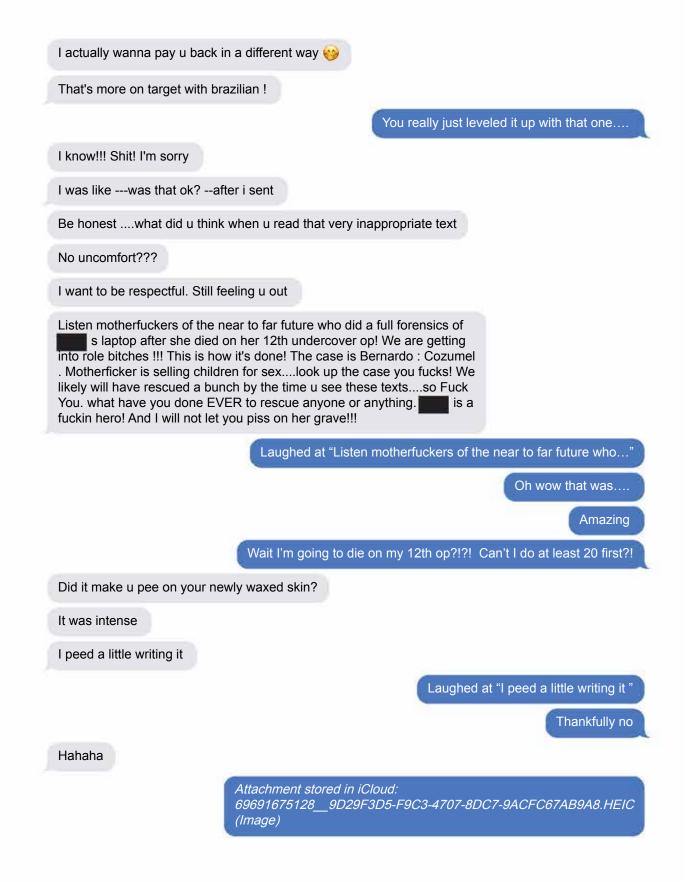


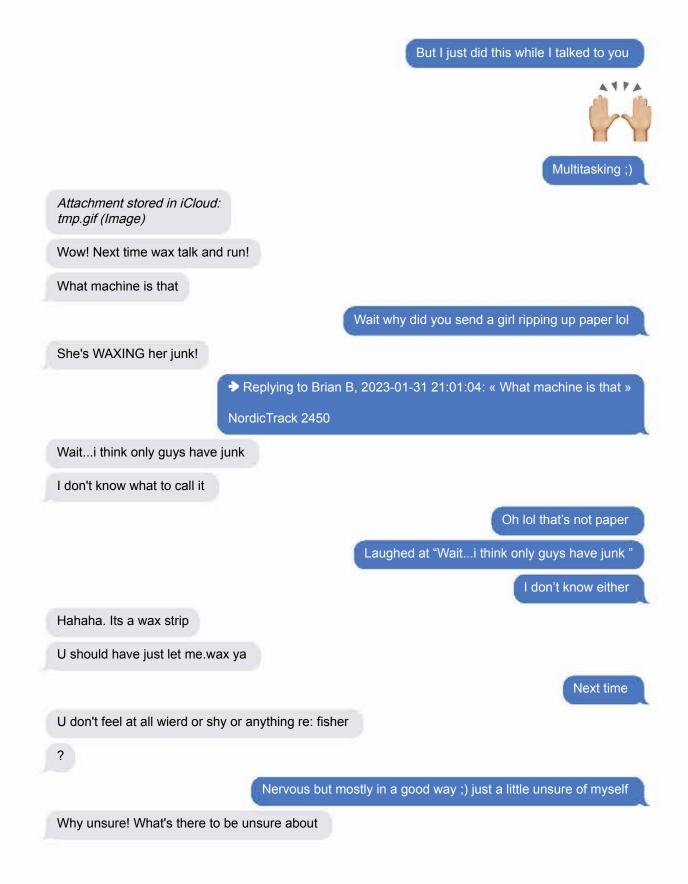


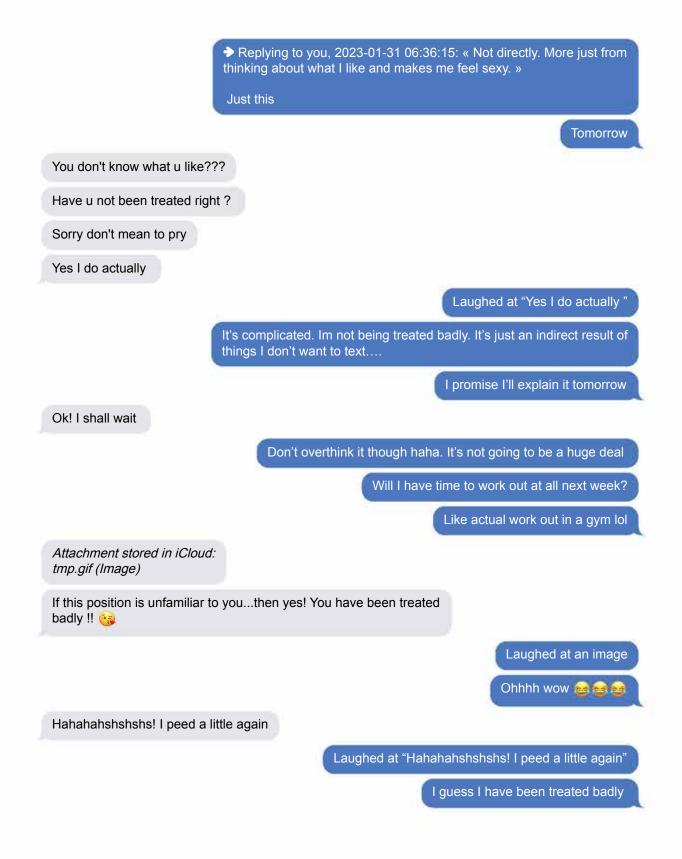












Damn it!

And to top it all off, i have treated you badly too for having just sent porn. Fuck!



You can't tell it's not You have never seen it before

In the industry, we call this hard core porn

Attachment stored in iCloud: tmp.gif (Image)



Attachment stored in iCloud: tmp.gif (Image)

Attachment stored in iCloud: tmp.gif (Image)

Are u done receiving porn?

I can keep going

Attachment stored in iCloud: tmp.gif (Image)

Last one

Actually the last one kinda turned me on.

Oh wowwwww

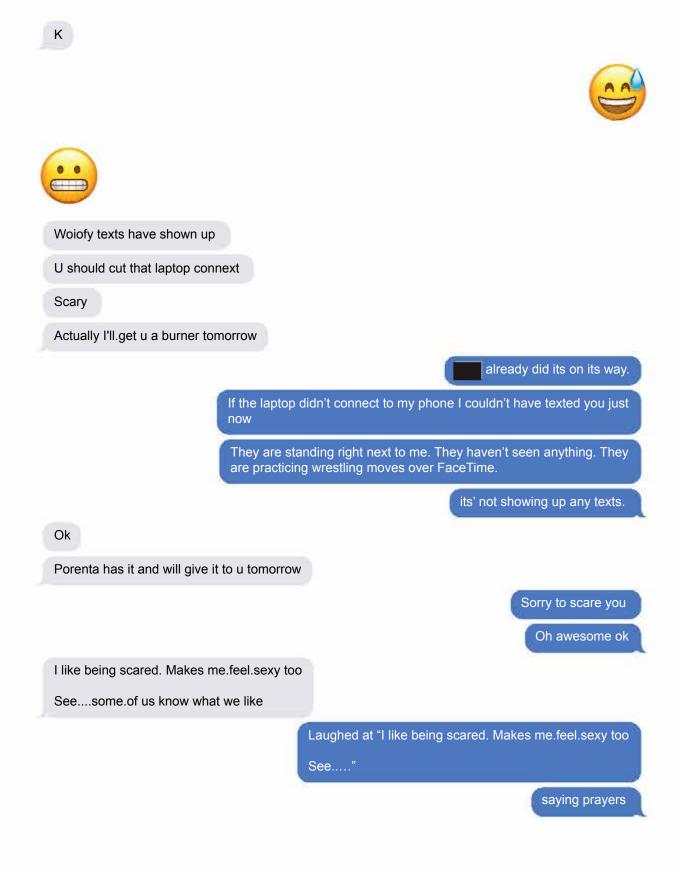
Laughed at "Are u done receiving porn? "

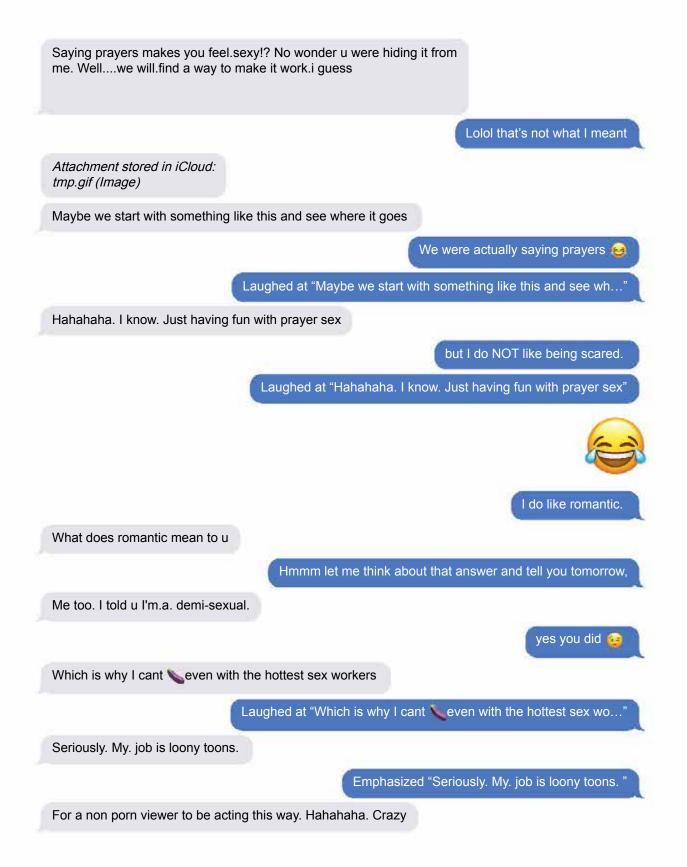
Dont send anything right now

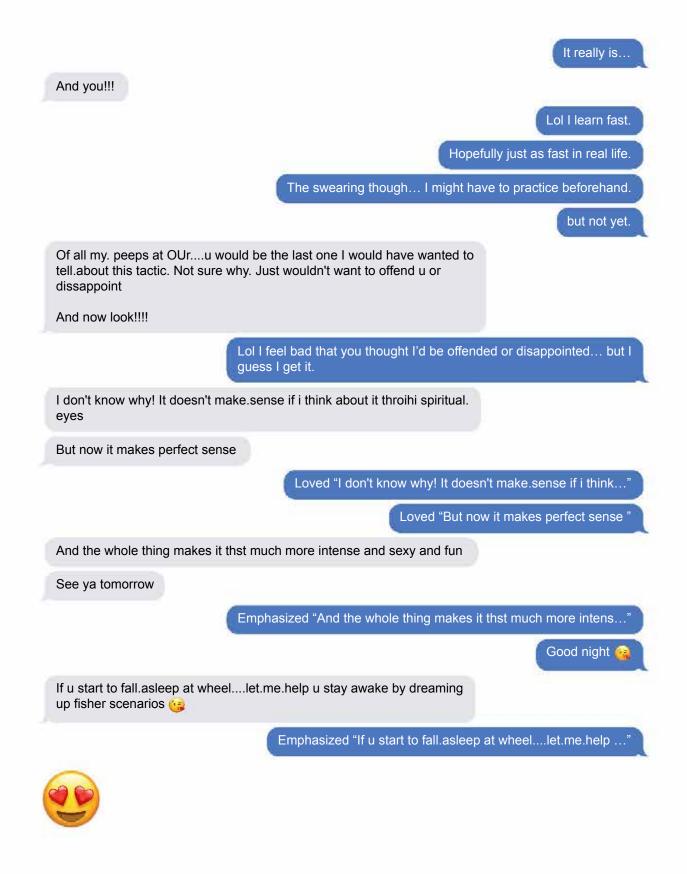
is on FaceTime with

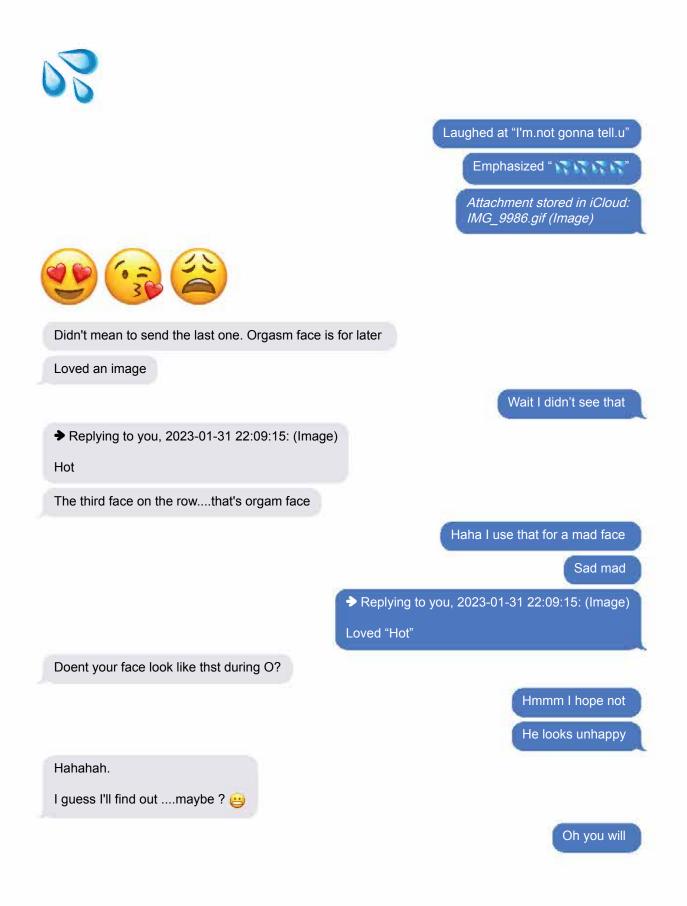
I'm texting from my computer now

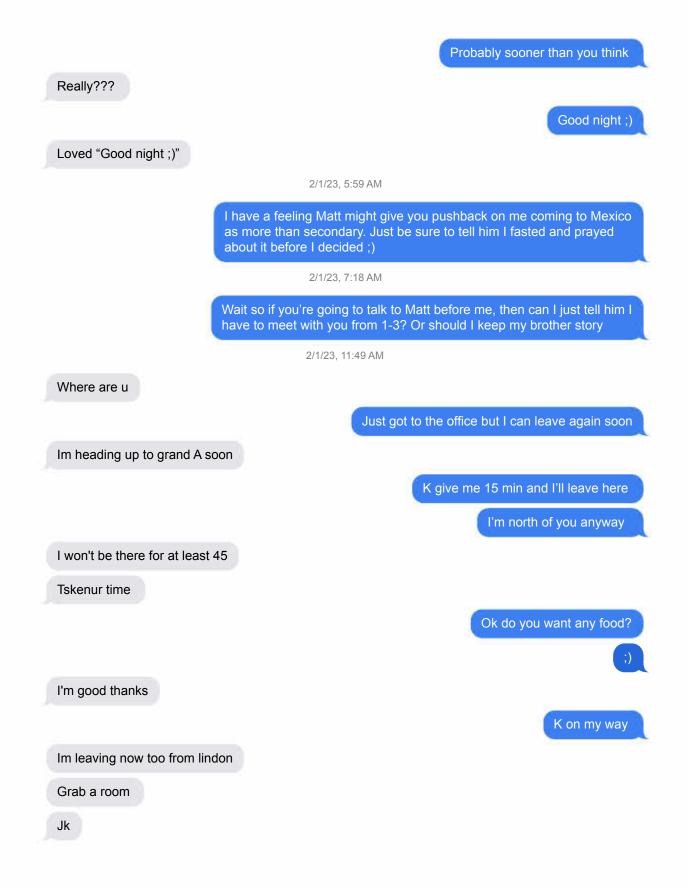
Hahaha. Why

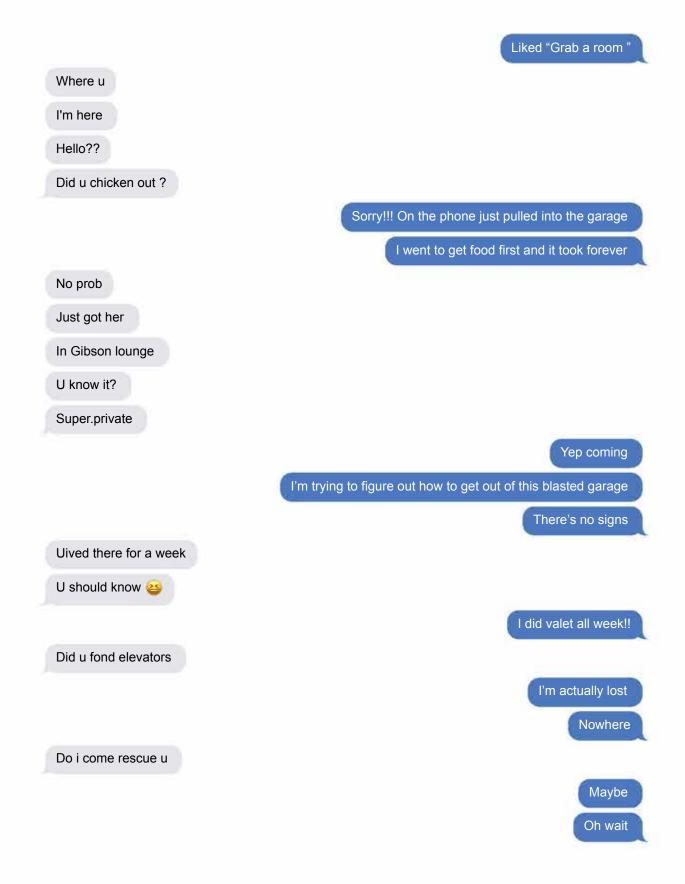


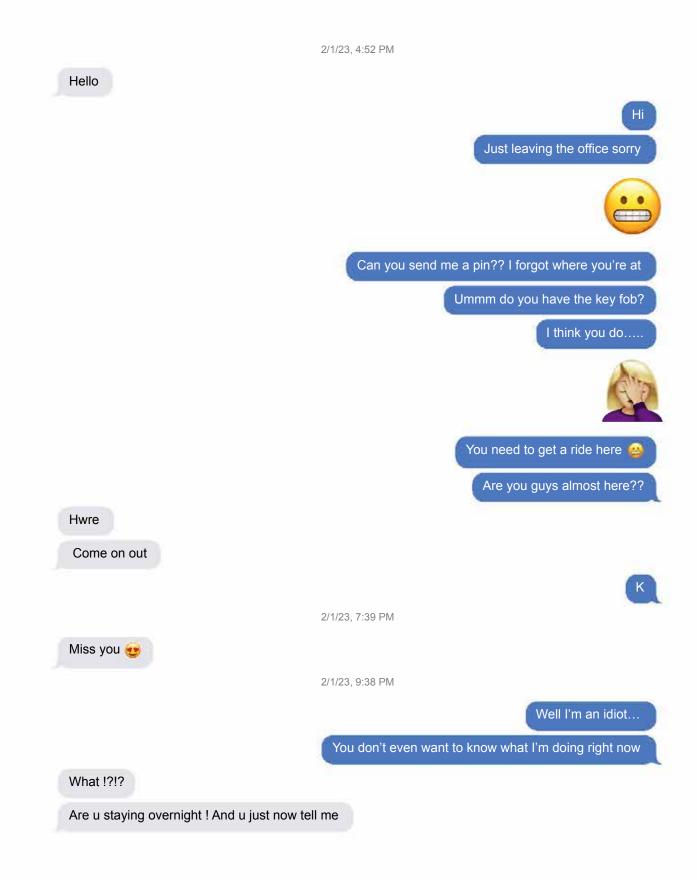


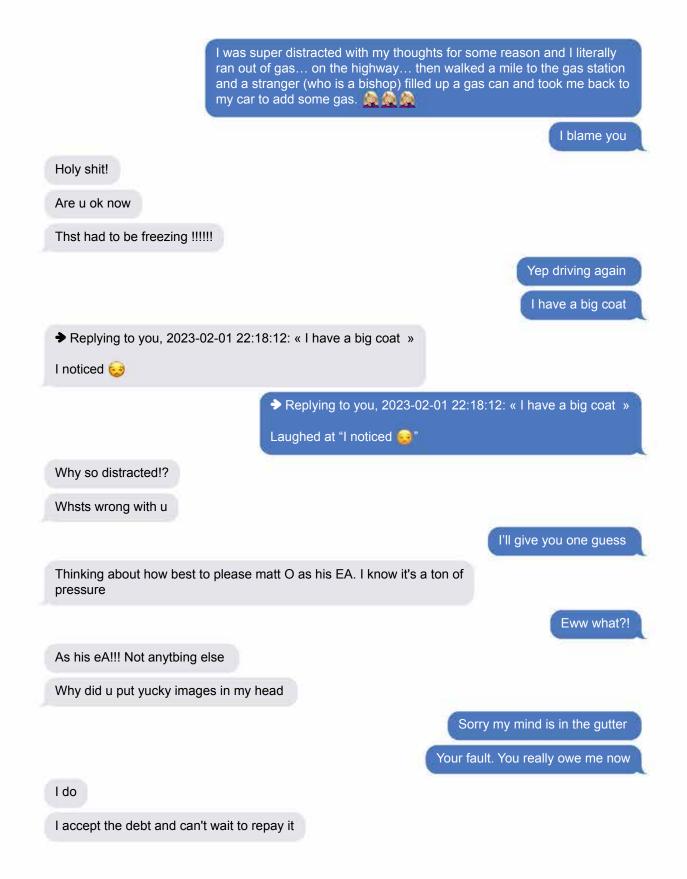


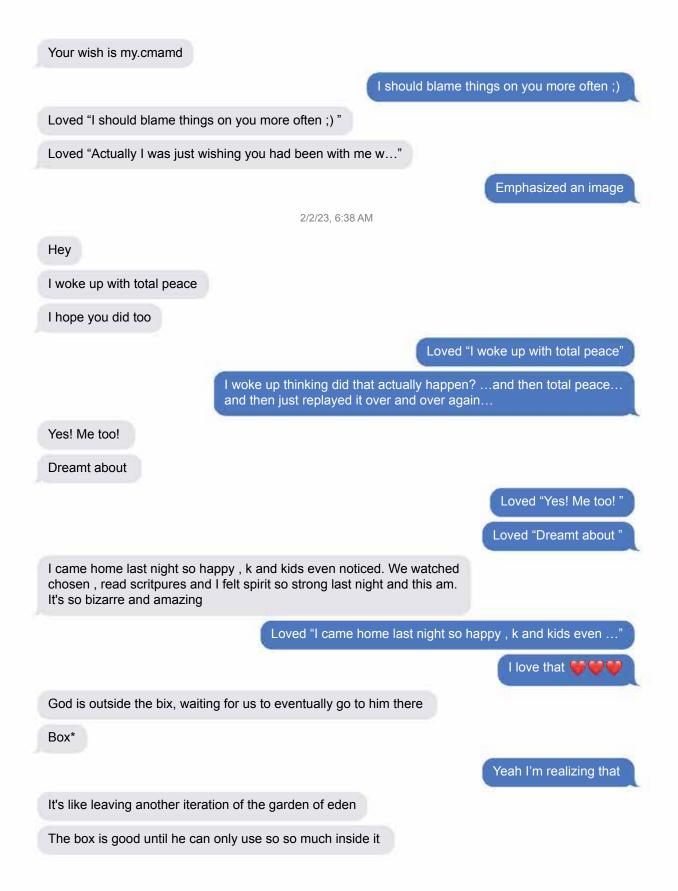


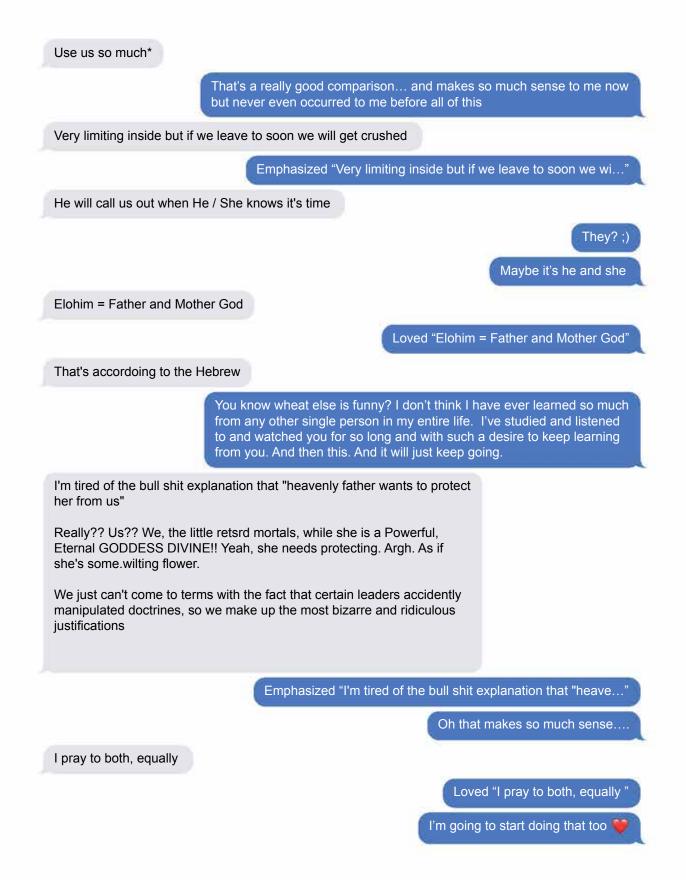


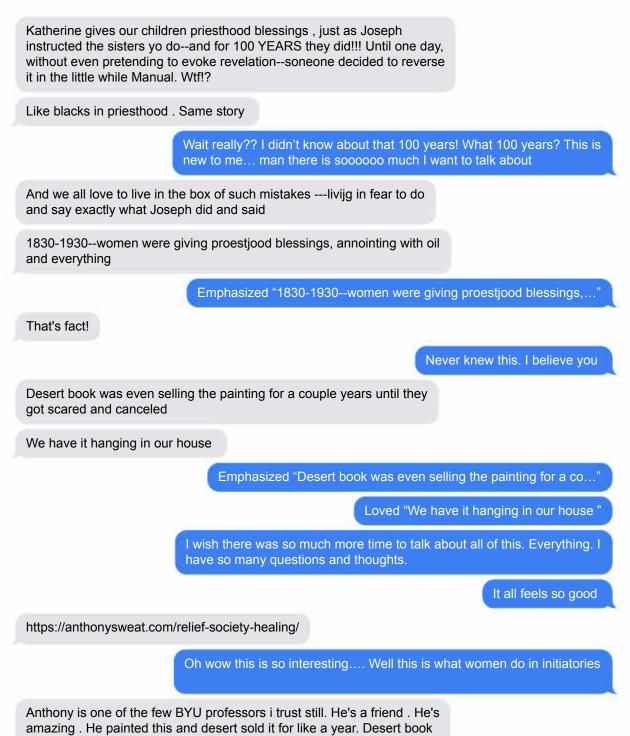




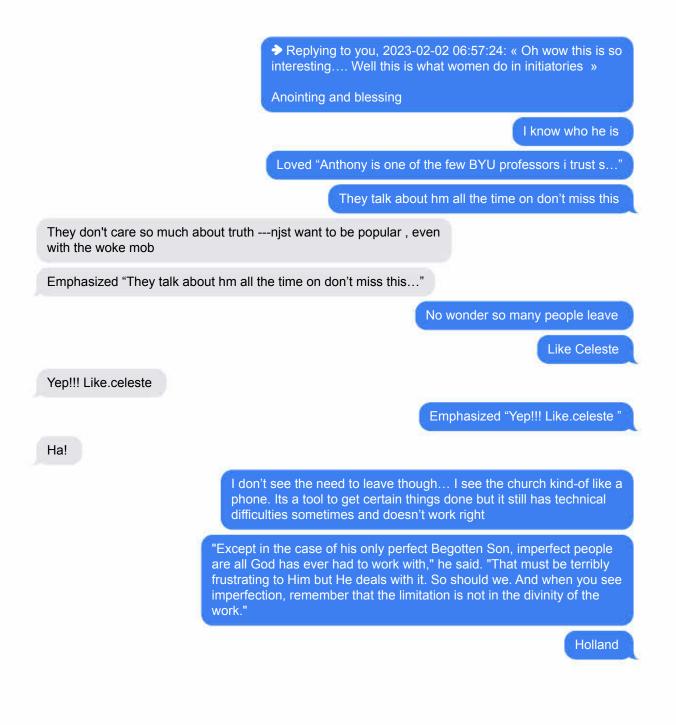


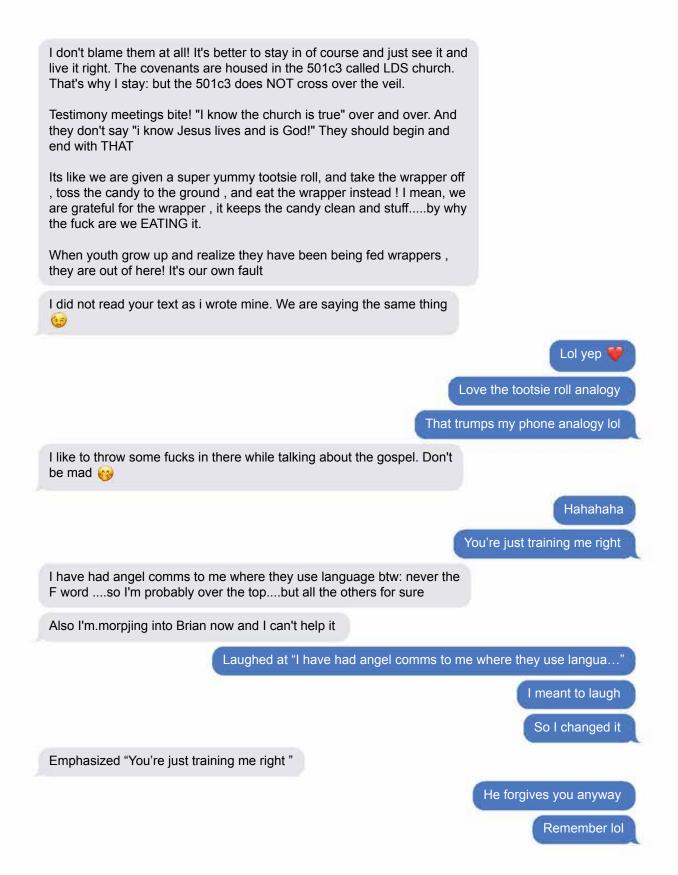


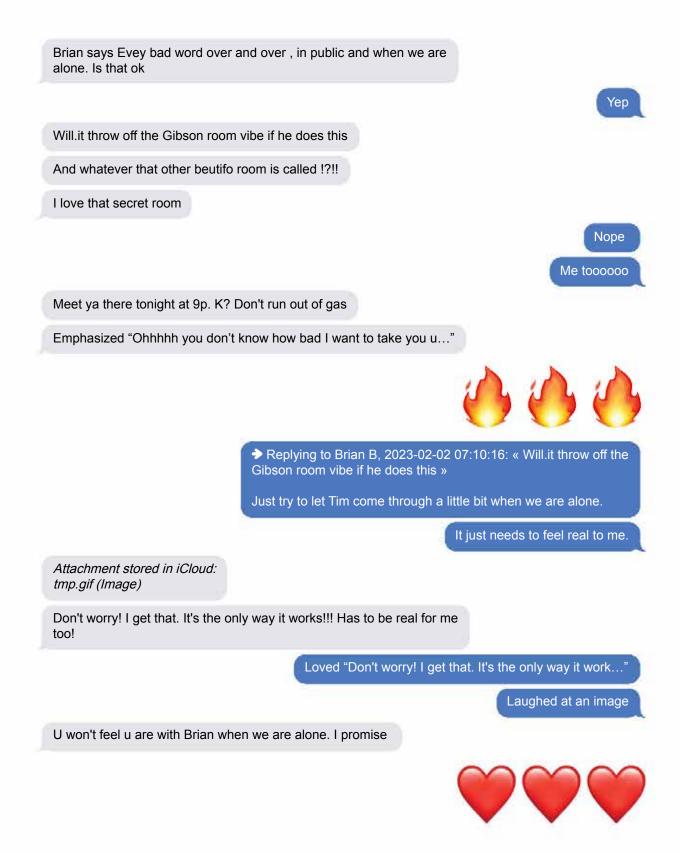


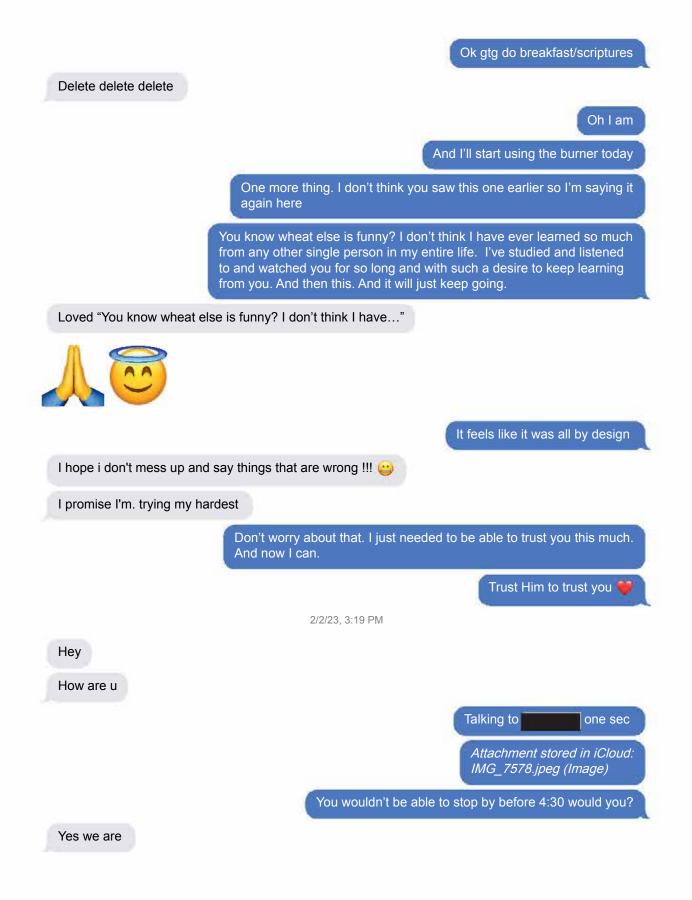


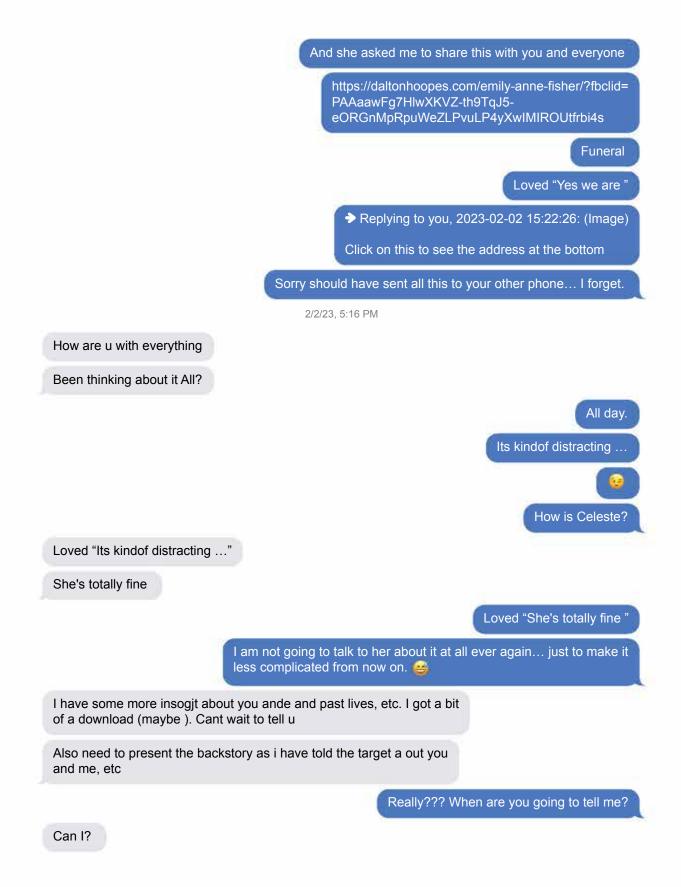
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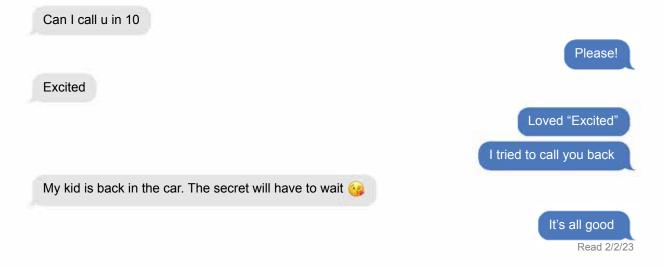


EXHIBIT D (Filed Under Seal)

EXHIBIT E

Suzette Rasmussen (15981) ALL UTAH LAW PLLC Michael K. Green (13989) GREEN LAW OFFICE PLLC 136 W. 12300 S., Ste. B Draper, UT 84020 Tel.: (801) 717-0821 suzette@allutahlaw.com mike@mikegreenlegal.com

Alan W. Mortensen (6616) Christopher J. Cheney (15572) **MORTENSEN & MILNE** 68 South Main Street, Suite 700 Salt Lake City, UT 84101 Tel.: (801) 521-4444 amort@mortmilnelaw.com ccheney@mortmilnelaw.com.com

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO, Plaintiffs,	DECLARATION OF ALAN W. MORTENSEN
V.	
TIMOTHY BALLARD, an individual;	
Defendants.	

I, Alan W. Mortensen, declare as follows:

1. I have personal knowledge of the facts stated herein.

2. I am counsel for Plaintiffs.

3. Submitted with the Declaration of Kely Suarez are several attachments, including Colombian Court documents that are written in Spanish. I have sent the Colombian Court documents to a certified translation company. Once they have been returned, we will provide English copies to the Court and opposing counsel.

4. We are submitting several video clips in connection with Plaintiffs' Memorandum Opposing SOF Defendants' Amended Special Motion to Dismiss.

5. The clips are true and accurate versions of videos that we either received or downloaded.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 6th day of June, 2024.

/s/ Alan W. Mortensen Alan W. Mortensen

VIDEO CLIPS (Hand Delivered)

Private Document

Binder Information

Document Description:	**** Private **** Filed: Exhibit A To Declaration Of C Borys (hr Complaint)	eleste
Document Name:	101398310.pdf	
DMSID:	101398310	
CMSID:	100652844	
Local:	Yes	
Document Date:	06-06-2024	

Document Description:	**** Private **** Filed: Exhibit D (declaration Of Jane	Doe)
Document Name:	101398311.pdf	
DMSID:	101398311	
CMSID:	100652845	
Local:	Yes	
Document Date:	06-06-2024	

Document Description:	**** Private **** Filed: Motion To Classify Exhibits A	s Private
Document Name:	101398312.pdf	
DMSID:	101398312	
CMSID:	100652846	
Local:	Yes	
Document Date:	06-06-2024	

Document Description:	**** Private **** Filed: Request/notice To Submit Mot Classify Exhibits As Private	ion To
Document Name:	101398313.pdf	
DMSID:	101398313	
CMSID:	100652847	
Local:	Yes	
Document Date:	06-06-2024	

Document Description:	**** Private **** Filed: Order (proposed) Granting Mo Classify Exhibits As Private	tion To
Document Name:	101398314.pdf	
DMSID:	101398314	
CMSID:	100652848	
Local:	Yes	
Document Date:	06-06-2024	

ADDENDUM C

Kely's Complaint Exhibits

EXHIBIT A

CRAIG T. PETERSON (07095) Assistant Attorney General CRAIG L. BARLOW (213) Criminal Deputy SPENCER E. AUSTIN (150) Chief Criminal Deputy 5972 S. College Dr., Suite 200 Murray, Utah 84123 Telephone: (801) 281-1200 Email: craigpeterson@agutah.gov E-mail: crbarlow@agutah.gov

Attorneys for Plaintiff

	ICT COURT STATE OF UTAH
STATE OF UTAH,	INFORMATION
Plaintiff,	(Warrant Requested)
vs.	
CANDACE ELEXZANDRIA LIERD , DOB: 08/23/1986, a.k.a. Candace E. Lierd, Candace Rivera,	Case No.:
Candace Layton, Candace E. Rivera, C. Candace Layton, 2696 W Red Robin Court,	Judge:
Lehi, UT 84043 Defendant.	

The undersigned, Special Agent James Pettis, of the Utah Attorney General's Office, states on information and belief that the defendant, CANDACE ELEXZANDRIA LIERD, either directly or as a party, committed the crimes of:

COUNT 1: PATTERN OF UNLAWFUL ACTIVITY, a Second Degree Felony, in violation of Utah Code Ann. § 76-10-1603, as follows: From September 2020 through September 2023, in

Utah County, Utah, the defendant did receive any proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the defendant has participated as a principal, and defendant did use or invest, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or the establishment or operation of, any enterprise.

COUNT 2: COMMUNICATIONS FRAUD, a Second Degree Felony, in violation of Utah Code Ann. § 76-10-1801, as follows: On or about November 2021, in Utah County, Utah, the defendant devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice and the value of the property, money, or thing obtained or sought to be obtained exceeded \$5,000, to wit: defendant used a scheme of misrepresenting her credentials to obtain a rental agreement.

COUNT 3: COMMUNICATIONS FRAUD, a Second Degree Felony, in violation of Utah Code Ann. § 76-10-1801, as follows: On or about September 2020, in Utah County, Utah, the defendant devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice and the value of the property, money, or thing obtained or sought to be obtained exceeded \$5,000, to wit: defendant used a scheme of misrepresenting her credentials to obtain a rental agreement.

COUNT 4: COMMUNICATIONS FRAUD, a Second Degree Felony, in violation of Utah Code Ann. § 76-10-1801, as follows: On or about February 2022, in Utah County, Utah, the defendant devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice and the value of the property, money, or thing obtained or sought to be obtained exceeded \$5,000, to wit: defendant used a scheme of misrepresenting her credentials to defraud an author.

COUNT 5: COMMUNICATIONS FRAUD, a Second Degree Felony, in violation of Utah Code Ann. § 76-10-1801, as follows: On or about July 2023, in Utah County, Utah, the defendant devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice and the value of the property, money, or thing obtained or sought to be obtained exceeded \$5,000, to wit: the defendant used a scheme of misrepresenting her credentials and using another's credit information to secure a credit account. **COUNT 6: THEFT**, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about August 26, 2021, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$200,000 from a company financial account.

COUNT 7: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about August 30, 2021, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$150,000 from a company financial account.

COUNT 8: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about December 7, 2021, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$43,400 from a company financial account.

COUNT 9: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about May 2, 2022, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$240,000 from a company financial account.

COUNT 10: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about April 28, 2022, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$8,000 from a company financial account.

COUNT 11: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about July 20, 2022, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$6,000 from a company financial account.

COUNT 12: THEFT, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about July 20, 2022, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$5,000, to wit: the defendant embezzled \$40,000 from a company financial account.

COUNT 13: THEFT, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about December 4, 2022, in Utah County, Utah, the defendant

obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$1500 but is less than \$5,000, to wit: the defendant embezzled \$2,500 from a company financial account.

COUNT 14: THEFT, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-404(3)(a)(i), as follows: On or about July 13, 2022, in Utah County, Utah, the defendant obtained or exercised unauthorized control over another person's property with a purpose to deprive the person of the person's property and the value of the property exceeds \$1500 but is less than \$5,000, to wit: the defendant embezzled \$2,200 from a company financial account.

COUNT 15: THEFT BY DECEPTION, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-409(2)(a), as follows: On or about January 17, 2023, in Utah County, Utah, the defendant obtained or exercised control over the property of another person by deception and with a purposed to deprive the other person of property and the value of the property is or exceeds \$5,000, to wit: the defendant used deceptive practices, misrepresentations and false statements obtaining \$8,702.55 from the alleged victim.

COUNT 16: THEFT OF SERVICE, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-409(2)(a), as follows: On or about February 17, 2023, in Utah County, Utah, the defendant by deception, threat, force or another means designed to avoid due payments, obtained a service that the actor knows is available only for compensation and the value of the service exceeds \$5,000, to wit: the defendant used deceptive practices to obtain \$32,900 in podcast production services.

COUNT 17: IDENTITY FRAUD, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-1102, as follows: On or about August 2023, in Utah County, Utah, the defendant knowingly or intentionally used, or attempted to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information, the value of which exceeds \$5,000, to wit: the defendant used the personal identifying information of an employee to obtain credit.

COUNT 18: IDENTITY FRAUD, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-1102, as follows: On or about July 9, 2020, in Utah County, Utah, the defendant knowingly or intentionally used, or attempted to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information, the value of is more than \$1,500 but less than \$5,000, to wit: the defendant used the personal identifying information of another to gain employment or any other thing of value.

COUNT 19: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about May 31, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person,

whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 6076, to herself, forging the signature of the company treasurer.

COUNT 20: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about May 31, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person, whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 6073, to herself, forging the signature of the company treasurer.

COUNT 21: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about May 31, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person, whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 6074, to herself, forging the signature of the company treasurer.

COUNT 22: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about June 15, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person, whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 155, to herself, forging the signature of the company treasurer.

COUNT 23: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about July 15, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person, whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 157, to herself, forging the signature of the company treasurer.

COUNT 24: FORGERY, a Third Degree Felony, in violation of Utah Code Ann. § 76-6-501, as follows: On or about November 10, 2022, in Utah County, Utah, the defendant did make, complete, execute, issue or utter any writing so that the writing purports to be the act of another person, whether the person is existent or nonexistent, to wit: the defendant issued a company check, no. 165, to herself, forging the signature of the company treasurer.

COUNT 25: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about July 9, 2020, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a "Registered Nurse" to facilitate an adoption service, but she was not licensed nor exempted from licensure.

COUNT 26: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about January 4, 2021, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: a nurse practitioner, but she was not licensed to do so nor exempted from licensure under Title 58 the defendant fraudulently represented herself as a "Nurse Practitioner" on a video presentation for an anti-human trafficking presentation, but she was not licensed nor exempted from licensure.

COUNT 27: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about April 2023, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a "Nurse Practitioner" to coordinate the medial transport of an orphan, but she was not licensed to do so nor exempted from licensure.

COUNT 28: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about December 2021, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a "Nurse Practitioner" to a nurse, giving the nurse and using this misrepresentation to give medical directives, but defendant was not licensed to do so nor exempted from licensure.

COUNT 29: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about January 2021, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a "Registered Nurse" who worked at will, but defendant was not licensed to do so nor exempted from licensure.

COUNT 30: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about January 2021, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a "Registered Nurse" to tribal nation leaders to solicit donations, but she was not licensed to do so nor exempted from licensure.

COUNT 31: UNLAWFUL CONDUCT, a Third Degree Felony, in violation of Utah Code Ann. §§ 58-1-501(1)(a) and 58-31b-503, as follows: On or about February 23, 2023, in Utah County, Utah, the defendant did represent herself to be practicing or engaging in, or attempting to practice or engage in, any profession requiring licensure under Title 58 of the Utah Code Ann., to wit: the defendant fraudulently represented herself as a nurse at the University of Utah hospital, but she was not licensed to do so nor exempted from licensure. THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES: Special Agent J. Pettis, Special Agent S. Hirzel, J.B., J.W., S.W.M., M.P., P.O.A., D.R., T.S., C.O., C.P., C.C., K.P., S.W., V.B., S.S., J.B., P.L., K.M., S.T., S.R., S.B., N.C.

PROBABLE CAUSE STATEMENT:

I am a Special Agent for the Utah Office of the Attorney General, assigned to the Special Investigations Unit. I am certified as a Law Enforcement Officer through Utah Peace Officer Standards and Training since my hire in October 2022. I have over 12 years of service in law enforcement, serving as a police officer, criminal investigator, and sergeant of police for the City of Racine, Wisconsin Police Department, where I was certified as a Peace Officer by the Wisconsin Law Enforcement and Standards Board in 2010, and a law enforcement instructor beginning in 2017. I earned a Bachelor of Arts degree in Political Science from Saint Xavier University in 2010 and served as an adjunct instructor of criminal justice at Gateway Technical College in Kenosha, Wisconsin. As a criminal investigator, I have served as a lead or support investigator on cases involving property crime, misappropriation and theft of private and public funds, identity theft, crimes against financial institutions, and fraud.

Pattern of Unlawful Activity:

The defendant has engaged in a pattern of unlawful activity, including, among other things, the crimes of communications fraud, theft, theft by deception, theft of services, identity fraud, forgery, and unlawful conduct, and her alleged criminal activities were referred for investigation.

On June 15, 2023, I was assigned to investigate allegations of fraudulent financial activity relating to Exitus, a Utah non-profit corporation at 3543 W 1700 N Lehi, UT and Candace E. Lierd DOB 08-23-1986, formerly known as Candace E. Rivera (referred to as Candace here forward) of 2696 W Red Robin Court Lehi, UT.

I located a web page for Exitus, *https://joinexitus.org*, as well as a website for CR House & Company, an apparent business being run by Candace, *https://crhousecompany.com*, and *https://candacerivera.com*, a site in which Candace offers paid services.

Exitus' website lists "Candace R." as the founder of an anti-human trafficking organization. Exitus is identified as a non-profit organization with an EIN of 85-2433808 listed at the bottom of the website. Exitus was soliciting donations on their website at the time of review (June 15, 2023). I also identified Facebook and Instagram pages belonging to Exitus. Both social media profiles appeared to record and request money for the organization's activities in orphan rescues in Europe.

I observed that Exitus was a registered business in Utah from August 7, 2020, until its expiration for "failure to file renewal" on December 27, 2022. The corporate filings listed Candace and J.B. as directors of Exitus.

CR House & Company is represented as a "branding house" established in 2020, by "CEO/Founder Candace Rivera." The site offers several paid services and is reported to have been featured on major networks like CNN, Fox News, and BBC among others. I observed no business filings by CR House & Company in Utah.

CR House's webpage also contained a link to a series of 8 podcasts titled "Welcome to My House with Candace Rivera." One of those Podcasts, entitled "Jon Lines," described Candace and Exitus's anti-human trafficking efforts during NBA All-Star weekend in Salt Lake City (February 17-19, 2023). During that podcast, it was revealed that Exitus became officially involved in the United States Department of Homeland Security Investigations' (HSI) antihuman trafficking taskforce as a victim service provider.

Upon review of *https://candacerivera.com*, I observed a photo of Candace on the website's main page. The site offered services for speaking, "coaching & consulting," classes, and "DE&I and Business Dev."

I compared a photo of "Candace R." and "Candace Rivera" from the *joinexitus.org*, *candacerivera.com*, and *crhousecompany.com* websites to a known UCJIS photograph of Candace Lierd and was able to confirm the identity of "Candace Rivera" and "Candace R" as Candace Lierd. I did confirm that Candace was charged with felony fraud in the Provo branch of the 4th District Court (Case no. 231401782) related to an \$8,000 fraudulent check written to a vendor for services rendered during a 2022 event hosted by Exitus.

On June 29, 2023, I was present in the 4th District Courtroom when Candace's felony fraudulent check case was called before Hon. Judge Christine Johnson. I observed Candace attend the hearing via WebEx. Candace stated that she split her time between Utah and South Carolina due to the requirements of her work and was appearing via WebEx because she was out of state. I was able to affirm the identity of the person appearing in 4th district court on the felony case and person depicted on the aforementioned websites was that of the same individual; Candace Lierd.

Utilizing open-source records, I located probable addresses for Candace in Utah, Texas, New Jersey, Alaska, and Colorado.

Queries of Utah's Department of Professional Licensing revealed no record of Candace ever being licensed as a nurse practitioner, medical doctor, or registered nurse in the State of Utah. I did observe four separate applications to become a Registered Nurse in Utah under Candace's name. All four were denied. One of the denied applications was listed as being reviewed under interstate compact. This denied application listed Candace as a graduate of Nightingale College of Nursing with an associate degree in nursing on April 24, 2015.

Upon searching equivalent licensing bodies in Texas, New Jersey, Alaska, and Colorado, I located no record of Candace being licensed as a nurse practitioner, medical doctor, or registered nurse in these states. A search of the Nursys (*ncsbn.org*) national nurse license verification database revealed no record of Candace ever holding a license as a registered nurse in any state.

During this investigation, current and former board members listed on Exitus's corporate filings were interviewed. It was discovered that no person, except Candace, had access to the Exitus Mountain American Credit Union (hereinafter MACU) or JP Morgan Chase Bank accounts.

Each Exitus board or staff member interviewed understood Exitus's mission to relate to anti-human trafficking, and/or overseas orphan rescues, and human trafficking victim services. No member recalled permitting, approving, voting for, or otherwise granting Candace authority to draw a salary from Exitus' business accounts. The board also did not approve or permit Candace to withdraw large sums of cash from Exitus accounts for any purpose other than to conduct Exitus business. No board member, either individually or as a board, ever approved or permitted Candace to use Exitus funds or Exitus bank accounts toward the purchase of her home or vehicle.

In 2019, M.P. met Candace while consulting at Operation Underground Railroad. M.P., who founded Exitus with Candace in 2020 and served as it's Chief Operating Officer, recalled being told by Candace that she was a nurse practitioner. M.P., who works as a physician assistant and studied at the University of Utah, became suspicious of Candace after noticing discrepancies with what funds Candace said the Exitus Mountain America Credit Union account should contain and what was present in the account at the time M.P. was granted access to the account. M.P. looked for Candace's credentials on DOPL and found that she was not licensed as a nurse practitioner. M.P. eventually resigned from the board of directors at Exitus.

From September 10, 2020, to date, Candace misrepresented herself as a licensed registered nurse, medical doctor, and/or nurse practitioner. Candace falsely stated that she held a position with the United Nations and was featured on BBC News. Candace also falsely asserted she was a successful business owner who has founded several multi-million-dollar companies.

Candace leveraged her fraudulent representations to gain the confidence of founding partners, board members, medical professionals, volunteers, media companies, benevolent organizations, and individual donors to establish the enterprise of Exitus as a non-profit organization and generate funds under the enterprise's name. Candace's representations of her credentials and professional positions also encouraged partnerships with law enforcement agencies and the extraordinary handling of law enforcement calls to which she was party.

Based on the misleading and fraudulent representations made by Candace, the Exitus non-profit corporation raised more than \$1,697,000 dollars in donations since its founding in 2020, between individual donors, corporate donations, international wire transfers from foreign businesses to Exitus bank accounts, unknown wire transfers to Exitus bank accounts, Venmo donations, PayPal donations, Square payment processing, and Stripe payment processing.

In addition, Candace used false representation that she was a licensed registered nurse, medical doctor, and/or nurse practitioner and her founding of Exitus as a vehicle to generate business in her private ventures, establishing the enterprise of CR House & Co., where she entered business contracts with at least two individuals, totaling \$8,702.55 in revenue and \$29,600 in unsettled payments.

Communications Fraud:

On or about November 2021, Candace contacted T.S. to solicit renting his home at 2696 W. Red Robin Ct. Lehi, Utah. Candace told T.S. that she was a nurse practitioner and founder of Exitus. T.S. remembered looking through the Exitus website and seeing Candace's name and picture, as well as the position of nurse practitioner. T.S. agreed to rent the property to Candace based on her false representations. Candace later defaulted on her rental agreement with T.S., resulting in unpaid rent of \$128,547.50.

On or about September 2020, Candace entered into a residential rental agreement with W.C. for the property he owned at 5292 N. Eagle's View Dr. Lehi, Utah. The property was managed by W.C.'s partner's 76-year-old mother, C.O. Candace requested to view and rent the property on a weekend when W.C. was out of town. W.C. recalled Candace communicating that she worked for the FBI and could not share information about her employment without a release from her supervisor. W.C. reasoned that such a release could not be obtained over the weekend and elected to rent the property to Candace at that time. W.C. was given a check for a rental deposit and first-month's rent. Both checks bounced when attempting deposit.

C.O., now 82 years of age, stated that Candace told C.O. that Candace worked for the FBI and could not reveal the details of her work because "everything she did was secret." Over her several years as a leasing agent, C.O. recalled that this was the first time she encountered a person who did "secret work" for the government, which forbade the disclosure of Candace's purported work. C.O. stated that Candace's purported employment made her qualified to rent W.C.'s home and executed a lease agreement on a weekend when W.C. was out of town.

During Candace's tenancy, which lasted until November 2021, W.C. stated that he served Candace with anywhere from 9-12 "pay or quit" notices or "notices to vacate." W.C. eventually filed an eviction case with the 4th District Court. W.C. noted that Candace effectively "squatted" at his property for about 6 months. A 4th District Court judgement resolved the issue of Candace's squatting. W.C. is owed approximately \$10,000 for damage done to the property upon Candace's eviction.

There is no record of Candace being employed by the Federal Bureau of Investigation.

On or about February 2022, Candace asked to take part as a speaker at a conference for widows hosted at Disneyland by C.P. Candace leveraged her background as a claimed human trafficking expert who had been featured on several well-known news outlets including the BBC, seat holder on "the UN Collaborative Taskforce," and "CEO and founder of 3 multi-million dollar companies" to secure a spot on a panel discussing grief. These false claims impressed C.P., who entered into a business contract with Candace. C.P.'s husband paid Candace \$8,702.55 to market C.P.'s book about the FLDS. Candace's solicitation of this business contract included authoring the foreword for C.P.'s book, marketing the book, and sales of the book.

Candace told C.P. that she works with and has known S.B., a prominent private investigator who focuses on matters of the FLDS in the Cedar City, Utah area, "for years" and

could introduce C.P. at the Holding Out Help event. Candace assured C.P. that she obtained tickets for C.P. and three guests to the March 2023 Holding Out Help event.

On March 7, 2023, C.P. attended the Holding Out Help event in Draper, Utah. Upon the arrival of C.P., her husband, son, and daughter-in-law, C.P. learned that not only had Candace not obtained tickets for C.P., but Candace had lied and did not know S.B.

Contact with S.T., HR Business Partner at BBC Studios- North America & Latin America revealed that no record of Candace or Exitus's appearance on their channels has ever been catalogued by the BBC.

Communication with S.R., Senior Policy Advisor of the Conduct and Discipline Service, Administrative Law Division, Department of Management Strategy, Policy and Compliance at the United Nations revealed that Candace is not a UN staff member.

Contact with S.B. revealed that Candace attempted to call S.B. by phone after meeting him at an Attorney General Alliance summit on anti-human trafficking in Park City, Utah between January 11 and 13, 2023. Contrary to the assertions made by Candace to C.P., S.B. has not known Candace "for years" and does not work with her.

P.O.A. has known Candace for approximately 5 years as a friend. P.O.A. began as a volunteer with Exitus in 2020 and has been an employee of Exitus and Candace's personal assistant since 2021.

On or about July 2023, P.O.A. stated that she was informed by Candace that she was denied a JP Morgan Chase Bank credit card for Exitus under Candace's own name. P.O.A. recalled this denial upsetting Candace. P.O.A. noted that she had not been paid by Exitus for several weeks during this time and was told by Candace that a credit account needed to be established in order to pay P.O.A. for her work.

On or about August 2023, Candace called P.O.A. on a three-way telephone call with a JP Morgan Chase Bank representative. P.O.A. provided her personal identifying information to the JP Morgan Chase representative to establish a credit card account for Exitus in P.O.A.'s name but noted that she did not sign any documents and did not receive a card from JP Morgan Chase. P.O.A. stated her belief that in order to receive several weeks of missed paychecks, she would need to help Candace establish a credit account for Exitus. P.O.A. believes that the Exitus JP Morgan Chase credit card in P.O.A.'s name was mailed to Candace's home address.

On September 1, 2023, P.O.A. received a telephone call from JP Morgan Chase Bank's fraud department. She was informed that a total of \$19,000 had been spent on an Exitus credit card bearing P.O.A.'s name and wanted to confirm the charges. Among the charges posted to the credit account was approximately \$7,000 to purchase a vehicle at Asay Automotive, Venmo, and various cash advances. P.O.A. stated that she did not make any of these purchases but noted that Candace recently purchased a Toyota 4-Runner for her eldest son from Asay Auto and made a social media post memorializing this purchase. P.O.A. was told by JP Morgan staff that the application for a credit card account may be fraudulent itself.

Following interviews with S.W.M., P.O.A., and a review of JP Morgan Chase Bank records for Exitus it was discovered that, Candace exerted sole control over the JP Morgan Chase Exitus account, and no Exitus board members knew or ratified Candace's sole control or withdrawals.

As of September 12, 2023, P.O.A. is owed \$4,500 from 6 missed paychecks for three total weeks of unpaid work.

Theft by Embezzlement:

On August 26, 2021, Candace withdraws \$200,000 from the Exitus Mountain American Credit Union account. A note for "wire 225,000 CB Skyshare" is attached to the withdrawal. On August 26, 2021, a wire transfer for \$225,000 is remitted from the Exitus MACU account. In total, \$425,000 was withdrawn from Exitus's MACU account on this date, with only \$225,000 used for the expressed purpose of a wire transfer to CB Skyshare. \$200,000 remains unaccounted for.

On August 30, 2021, Candace withdraws \$150,000 from the Exitus's MACU account. A note for "wire 317,493.55 CB SKYSHARE" is attached to the withdrawal. On August 30, 2021, a wire transfer for \$317,493.55 is remitted from the Exitus MACU account. In total, \$467,493.55 was withdrawn from Exitus' MACU account on this date, with only \$317,493.55 used for the expressed purpose of a wire transfer to CB Skyshare. \$150,000 remains unaccounted for.

On December 7, 2021, Candace transfers \$55,000 from Exitus' MACU account to her own MACU account, noting "capt m Kurdistan-chase 0050." Candace makes no purchases or transfers from her MACU account consistent with the note prior to or following this deposit. Candace's account balance prior to this transfer was \$1738.70.

On January 11, 2022, Candace withdraws \$6,600 from her MACU savings with note "A2A Transfer: ****4009, Nov. pro-rate/dec/jan." Between December 7, 2021, and January 11, 2022, only two credits totaling \$168.96 are posted to Candace's MACU accounts. It should be noted that Candace moved into her home at 2696 W Red Robin Ct. at the end of November 2021, according to T.S. This transaction appears consistent with a prorated rental payment for 2.5 months.

On January 17, 2022, a check is written from Candace's MACU checking account to Truly Title for \$5,000. On January 19, 2022, \$5,000 is withdrawn from Candace's MACU savings with note "earnest money." Between January 11, 2022, and January 17, 2022, only one credit totaling \$1,150.74 is posted to Candace's MACU accounts. The \$11,600 is used by Candace as earnest money and prorated rent is documented as a loss to Exitus. \$43,400 remains unaccounted for.

On May 2, 2022, Candace's MACU checking has a balance of \$3,403.31. On May 2, 2022, Candace transfers \$7,000 from the Exitus MACU account to her own MACU account with no notation. On May 2, 2022, Candace wires \$10,000 to Truly Title Inc. from her MACU

account. On May 7, 12, and 16, Candace receives transfers labeled "payroll" and "payroll catch up" from Exitus, totaling an additional \$7,000, of which \$7,000 remains unaccounted.

On April 28, 2022, T.S. intended to settle the sale of his home in Lehi, UT to the current renter, Candace Lierd. Candace defaulted on the sale contract on this date.

On May 12, 2022, a \$240,000 international wire transfer is received from Bank of Baghdad "Life Line Logistic Company" for "utility bill payments" to Exitus JP Morgan Chase account. Two wire transfers are sent from the Exitus JP Morgan Chase account to Truly Title Inc. Trust totaling \$240,000. T.S. was informed that the title company received another \$240,000 remittance via an international wire transfer, for the purchase of the home by Candace. T.S. agreed to carry out the sale of his home to Candace, with a final sale price of \$938,000. T.S. received \$461,968.14 from the title company on this date as proceeds from the sale of the home. \$240,000 was taken from Exitus and used for the purchase of the home by Candace.

On July 26, 2022, an \$8,000 cash withdrawal from Exitus' JP Morgan Chase account was made by Candace. On July 26, 2022, \$4,500 cash was deposited into Candace's MACU checking account. The \$4,500 is documented as a loss to Exitus upon being inexplicably deposited to Candace's MACU account and used to make a Capital One bill payment. \$3,500 in a cash deposit remains unaccounted for. This results in an \$8,000 total loss to Exitus.

At the start of July 20, 2022, Candace's balance in her MACU checking account was \$414.06. She retained \$1.00 in her MACU savings account. On July 20, 2022, a \$528.59 Venmo deposit from "Candace Rivera" was credited to Candace's account as was a \$5,000 check was deposited to Candace's MACU checking account from Exitus labeled "payroll" with a check number of "157" and purportedly signed by S.W.M. Candace's MACU checking account ended July 20, 2022, with a balance of \$5,895.43.

It should be noted that in an interview with S.W.M., she states to have never written or signed a check for any Exitus account. S.W.M. provided examples of her signature, two of which predate all of her purported signatures on Exitus accounts. I was able to identify the signature on the Exitus JP Morgan Chase check 157 as a forgery.

Two checks were written to C.C. on July 20, 2022, from Candace's MACU account for the purchase of a 1977 Chevrolet Corvette: a 5,000 check (133) labeled "1st car payment (1/2)" and a 10,000 check (134) labeled "2nd car payment (2/2)."

On July 22, 2022, check 133 for \$5,000 was cashed, leaving Candace's MACU checking account balance at \$700.20.

On August 16, 2022, check 134 for \$10,000 was returned as unpaid due to insufficient funds. On August 16, 2022, Candace's MACU checking account balance started the day at \$822.31. Check 134 for \$10,000 was processed and not paid, and Candace incurred a \$25 processing fee. Candace made several purchases throughout the day and incurred an additional overdraft fee, ending the day with a balance of -\$98.38. The balance continued to drop throughout August 17, 2022, until Candace made a check deposit of \$150, having some of the

overdraft fees refunded as a courtesy by MACU. Candace ended the day with a balance of \$13.93 in her MACU checking account.

On August 18, 2022, Candace's MACU checking account received a \$6,500 deposit transfer from Exitus' JP Morgan Chase account for "payroll." Also on August 18, 2022, a \$6,000 cash withdrawal was made by Candace from the Exitus JP Morgan Chase account. \$4,000 in cash was deposited into Candace's MACU checking account on this same date. Candace's MACU checking account now held \$10,513.95 after these two transactions.

On August 18, 2022, a \$10,000 cashier's check was withdrawn from Candace's MACU checking account and the payee was C.C.

On August 22, 2022, check 165 from Candace's MACU account totaling \$1,227.75 was processed by the Utah State Tax Commission for "car registration". This check was dated August 17, 2022.

Through subsequent investigation, SA Hirzel discovered that C.C. sold Candace a 1977 Chevrolet Corvette and turned the title over to Candace after clearance of the cashier's check.

At least \$4,000 is documented as a loss to Exitus, as it was used to fund the purchase of Candace's 1977 Chevrolet Corvette. \$2,000 remains unaccounted for. This equates to \$6,000 in total losses to the Exitus JP Morgan Chase account withdrawn by Candace without authorization.

On November 12, 2022, Exitus held a "Casino Royale" themed gala at the Automotive Addiction Museum within the Shops at Southtowne Mall in Sandy, Utah.

On December 4, 2022, check 167 was written from the Exitus JP Morgan Chase account to Candace for "gala donation service" in the amount of \$40,000. Check 167 was deposited on December 6, 2022, to Candace's MACU checking account and a new MACU money market account in two separate \$20,000 transactions.

It should be noted that during the month of September 2022, Candace's total expenditures from her MACU account were \$8,233.72. In the month of October 2022, Candace's total expenditures from her MACU account were \$8,248.63. During the month of November 2022, the total expenditures from Candace's MACU account were \$9,063.85. The combined expenditures from Candace's personal MACU account for the two months preceding the Exitus gala and the month of the gala itself totaled just \$25,546.20.

There appeared to be no services paid through Candace's MACU account at all consistent with or totaling \$40,000 for a "gala donation service" in the months before or following the gala and \$40,000 check deposit from the Exitus JP Morgan Chase account. \$40,000 is documented as a loss for Exitus, as \$30,000 was used to fund Candace's personal expenses during the month of December, with the remaining \$10,000 being used to fund Candace's personal expenses during January 2023.

On July 13, 2022, Candace's MACU checking account balance was \$480.88. On July 13, 2022, a \$2,500 transfer was made by Candace from the Exitus MACU account to Candace's

MACU checking account with the note "Ukraine Phase 3 contract." No transactions occurred related to travel or other Exitus business either before or after this deposit during the month of July. \$2,500 remains unaccounted for.

On July 25, 2022, the Exitus JP Morgan Chase card assigned to Candace (ending 7330) was used at "Vitalife Vitaweigh IL." According to their website, VitaLife is an Illinois based company with locations across the United States. VitaLife offers personalized fat-loss programs for customers, advertising that customers can "Lose 20-40lbs in 40 days." VitaLife sells dietary supplements, dietary food items, and make-up. In a call to VitaLife's Schaumburg, IL office, I learned that a personalized dietary plan and associated expenses can range from \$1200-2400. \$2,200 is documented as a loss to Exitus, being used to purchase a weight loss program by Candace.

Theft by Deception:

On January 17, 2023, C.P. entered into a business contract with CR House & Co. and "Candace Rivera/Lierd" for "Branding House Concierge Service" 3-month service contract which included business development, growth strategy coaching, sales funnel optimization with growth and development, full-service branding, SEO, SOS, email/SEM, and public relations for the launch and sale of her book: Devotion, Deception, Deliverance: Isaac's Story. C.P.'s husband, K.P., paid \$8,702.55 to "Candace Lierd" on February 15, 2023, for these services. C.P. understood this contract to include the sale of the book on Amazon under a sales account of which C.P. had control.

From February 15, 2023, to the date of this report, Candace asked C.P. to mail 42 copies of her book at C.P.'s own expense. Candace told C.P. that these sales were from a Shopify account which Candace retained control of. C.P. was told that Amazon rejected the sale of the novel on their platform in one instance and in another that Amazon required a written disclosure of consent from the subject of the novel before it could be listed for sale on Amazon.

Candace provided C.P. with a number of excuses as to why C.P. couldn't have access to the Shopify account through which her book was sold, including various issues with C.P.'s PayPal account as described by Candace. C.P. states that the sale of 42 copies of Devotion, Deception, Deliverance: Isaac's Story and associated mailing costs totaled \$1,100.

To date, C.P. has not received reimbursement from Candace for any mailing expenses nor has she received payment from Candace for the sale of her books through the Shopify account under Candace's control. C.P. requested that Shopify suspend the sale of her book on the account controlled by Candace due to C.P.'s ownership of the intellectual property. Shopify has since complied. C.P.'s book is now being sold on Amazon through an account under C.P.'s control.

Theft of Service:

On February 17, 2023, Candace entered into a business contract for audio engineering services for podcasts with The Pod Mill owner S.W. In total, The Pod Mill produced 12 total finished episodes for Candace, along with other features- all of which were posted to a website

owned by Candace: <u>https://crhousecompany.com/</u>. S.W. made several attempts to collect against the \$32,900 owed to him by Candace after production of these 12 episodes, remote recordings, event hosting, podcast editing costs, podcast distribution and promotion, logo artwork costs, licensing of music, consulting time, and a podcast reinstatement fees. These efforts included written notice as well as S.W.'s removal of all podcasts from the host platform.

Identity Fraud:

On or about August 2023, Candace called P.O.A. on a three-way telephone call with a JP Morgan Chase Bank representative. P.O.A. provided her personal identifying information to the JP Morgan Chase representative to establish a credit card account for Exitus in P.O.A.'s name but noted that she did not sign any documents and did not receive a card from JP Morgan Chase. P.O.A. stated her belief that to receive several weeks of missed paychecks, she would need to help Candace establish a credit account for Exitus. P.O.A. believes that the Exitus JP Morgan Chase credit card in P.O.A.'s name was mailed to Candace's home address.

On September 1, 2023, P.O.A. received a telephone call from JP Morgan Chase Bank's fraud department. She was informed that a total of \$19,000 had been spent on an Exitus credit card bearing P.O.A.'s name and wanted to confirm the charges. Among the charges posted to the credit account was approximately \$7,000 to purchase a vehicle at Asay Automotive, Venmo, and various cash advances. P.O.A. stated that she did not make any of these purchases but noted that Candace recently purchased a Toyota 4-Runner for her eldest son from Asay Auto and made a social media post memorializing this purchase. P.O.A. was told by JP Morgan staff that the application for a credit card account may be fraudulent itself.

Following interviews with S.W.M., P.O.A., and a review of JP Morgan Chase Bank records for Exitus, Candace appears to exert sole control over the JP Morgan Chase Exitus account.

In a social media post made to Candace's "ONE_FIERCE_MAMA" Instagram account on August 12, 2023, she posts a video apparently gifting a gray Toyota 4-Runner to her oldest son. The caption reads "...Our friends at @asayauto are the best!"

On or about July 9, 2020, Candace sent a screen capture photograph of a Utah Department of Professional Licensing (DOPL) web page depicting the registered nursing license of C. Candace Layton, a resident of Taylorsville, UT, with an active DOPL license number of 500524-3102 to the Winslow family. This photo was sent to Global Adoption Services, who provided them to S.S.

As observed through emails from Global Adoption Services, the Winslow family intended to adopt a medically needy child from Europe and needed to hire a registered nurse to attend to the child during transport. Candace told the family that her registered nursing license is under her prior name of "Candace Layton." Candace could not provide the agency, family, or embassy with proof of her prior name. According to S.S. and V.B., a North Carolina registered nurse who has conducted these transports in the past, nurses often volunteer their time on these transports and do not receive payment. However, in 2022, S.S. stated that Candace secured a \$1,000 payment for Exitus from Open Hearts for Orphans to help fund a registered nurse for a separate adoption transport for a medically needy child from Europe to the United States. This transport never occurred, and the funds were not refunded. Funds from Open Hearts for Orphans represent a portion of the dollar value of a registered nurses time during such a transport.

Findings in this investigation revealed no evidence that Candace used the "Layton" name prior to this communication. The subject whom Candace purported to be to the Winslow family has been identified as Crystal Candace Layton DOB 07-29-1979 of Taylorsville, UT from DOPL records.

Forgery:

S.W.M. is listed as the treasurer in Exitus's corporate filings and, as treasurer, she is an authorized signatory on the Exitus JP Morgan Chase account alongside Candace Lierd. S.W.M. states that she was never allowed access to the Exitus accounts by Candace, despite her position, and she never signed checks on any Exitus account, used a JP Morgan Chase Bank card issued under her name on the Exitus account, or conducted any other banking business on behalf of Exitus. There are multiple checks written to Candace which are purportedly signed by S.W.M.

S.W.M. provided an exemplar of her signature as well as two forms of identification predating this investigation, both of which bear her signature.

Candace issued the following checks to herself from the Exitus JP Morgan Chase account: 1) Check 6076, dated May 31, 2022, addressed to Candace Lierd for "payroll-Ukraine", totaling \$5,000; 2) Check 6073, dated May 31, 2022, addressed to Exitus for "payroll", totaling \$15,000; 3) Check 6074, dated 05/31/2022, addressed to Candace Lierd for "Ukraine operation", totaling \$7,500; 4) Check 155, dated 06/15/2022, addressed to Candace Lierd for "payroll catch up", totaling \$5,000; 5) Check 157, dated July 15, 2022; 6) Check 165, dated November 10, 2022, addressed to CommonCents Casino for "gala casino deposit", totaling \$2,055.

Each of the checks listed displays a signature purported to be S.W.M.'s. This signature does not match the exemplar from S.W.M., and S.W.M. states she did not issue the checks on behalf of Exitus to Candace, nor was she asked to do so.

Unlawful Conduct:

On or about July 9, 2020, Candace sent a photograph of a Mountainstar St. Mark's hospital ID card with the name "Candace" and a photograph depicting Candace to the W. family. A heart shaped sticker covered the area which would have listed the position held at the hospital. Candace fraudulently used this photograph as proof of her registered nurse status to the W. family. This photograph was provided to Global Adoption Services as proof of Candace's qualification to conduct a medical transport of a child from Europe to the United States.

Candace's assertion that she was a registered nurse is fraudulent, and she is not license as such in Utah or any other state, nor has Candace accomplished the educational requirements to achieve this title.

On January 4, 2021, Candace is featured on a video presentation for the BYU Anti-Human Trafficking Club video wherein Candace states she is a "Nurse Practitioner" and founder of Exitus. Candace is not licensed as a nurse practitioner in Utah or in any other state. A nurse practitioner is a license category recognized by Utah and which requires a master's degree or higher to obtain. Candace does not have the academic credentials to be a nurse practioner.

On or about April 2023, Candace solicited the assistance of Utah registered nurse S.S. to assist in coordinating the medical transport of an orphan in Ukraine to an adoptive family in the United States. Candace told S.S. that she was a nurse practitioner. Candace gave S.S. medical directives for the care of the child. Candace provided S.S. with controlled substances in a medical kit, which included Ketamine and Haldol.

S.S. later discovered that Candace was not a nurse practitioner and provided messages between S.S. and staff at Global Adoption Services relating to additional misrepresentations about Candace's license to practice nursing.

The facts of this investigation show that Candace has never held a license as a Nurse Practitioner in any state she has lived in, nor any academic credential to support the attainment of a Ph. D or master's degree.

On or about December 2021, V.B., a North Carolina registered nurse, was contacted by S.S. who introduced Candace as someone seeking V.B.'s assistance for medical transports for Exitus. Candace told V.B. that she was a nurse practitioner. In February 2022, V.B. travelled to Ukraine to assist a medically needy orphan with transport to an adoptive family in the United States. During this trip, Candace provided V.B. with questionable medical directives relating to the child's colostomy bag. According to a medical doctor consulted by V.B. after receiving the directive from Candace, performing such would have been harmful to the child.

On or about January 2021, J.B. was approached by Candace to build a webpage for Exitus and assume a seat on the Exitus board. J.B. was a coworker of Candace's at Calculated Research Group. J.B. was told by Candace that her professional background was as a registered nurse who worked as an RN "at will" to maintain her license. Candace told J.B. that she worked as an RN at either the University of Utah or the Veterans Affairs hospital in Salt Lake City. Employment records confirm that Candace was employed at the University of Utah hospital from April 25, 2011 to March 6, 2012 as a "Psychiatric Technician" and that her "termination was an involuntary dismissal." There is no record of Candace working for Veterans Affairs hospital.

E.S. worked with Candace in 2011 at the University of Utah hospital, where both served as Psychiatric Technicians. E.S. lost contact with Candace after employment at the University of Utah hospital ended but was contacted by her again on or about January 2021. Candace told E.S. that she graduated from the University of Utah, was now a registered nurse, and began a nonprofit organization called Exitus. Candace solicited E.S., who is a member of the Navajo Nation, for contacts with tribal nation leaders. Candace later met with tribal nation leaders to solicit donations for Exitus' work with a missing and murdered indigenous women effort. E.S., who became Exitus' liaison for the tribal nations, later learned that no such effort to rescue or seek justice for missing and murdered indigenous women existed within Exitus.

On or about February 2023, while attending the first day of operational briefings for the NBA All Star Weekend in Salt Lake City, Utah, N.C., a victim services coordinator overheard Candace state that she was a nurse at the University of Utah hospital.

REQUEST FOR NO BAIL HOLD:

Pursuant to Rule 6(c)(2) of the Utah Rules of Criminal Procedure, and Utah Code Ann. § 77-20-201(1), the State requests that an arrest warrant be issued, and that the defendant be held without bail until further notice in this matter. The defendant is charged with 17 Second Degree Felonies, and 13 Third Degree Felonies based upon the foregoing probable cause statement, and there is substantial evidence supporting the charges. There is clear and convincing evidence that defendant poses a likely risk to flee the jurisdiction of the court if released on bail.

Records from the United States government, as well as an assessment of publicly viewable social media content, bank records, and interviews with persons affiliated with Candace and Exitus reveal that Candace Lierd regularly travels internationally, to Mexico, Afghanistan, Romania, Dubai, Ukraine, Amsterdam, Moldova, Lebanon, and elsewhere. These trips appear to be for both business and leisure purposes.

In an interview with P.O.A., Candace's personal assistant and secretary to Exitus, P.O.A. noticed that Candace's date of birth on her driver's license differs from her date of birth on Candace's US passport. P.O.A. is also aware of a home Candace reports to own in Lebanon.

Additionally, on or about February 29, 2020, Candace filed a report with the Lehi police department in which she reported having her passport stolen from her home. On January 8, 2022, candace reported to the Draper police department that her Cadillac Escalade had been broken in to and her passport and other items had been stolen.

In her interview, S.S. was advised by Candace of her ability to obtain fraudulent passports for herself and others in different countries due to her international connections.

In an interview with P.L., ex-spouse of Candace, P.L. recalled an instance where Candace altered a check for a truck payment made from his bank account during their marriage. P.L. was contacted by the Mountain America Credit Union fraud department informing him of the discrepancy. Candace later admitted to altering the check and spent the funds intended for the payment.

In an interview with K.M., Chief Operating Officer of CR House & Co. and friend to Candace, K.M. recalled a time when Candace asked K.M. how to alter bank records using Adobe

Photoshop. In another event, Candace asked K.M. to alter a Wells Fargo bank deposit slip for a missed mortgage payment to her lender. K.M. refused.

Based upon the foregoing, it is the belief of the case agent that Candace has altered her US passport or documents supporting her identity to obtain a US passport, may have retained a passport previously reported stolen to law enforcement, and has demonstrated a willingness and ability to manufacture or obtain fraudulent documents. And she has fraudulently assumed or attempted to assume the identity of no less than two different individuals.

Candace was arrested and taken into custody September 15th, 2023 and is currently being held without bail at the Utah County Jail.

I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED: September 18, 20223

<u>/s/ James Pettis</u> SPECIAL AGENT JAMES PETTIS Utah Attorney General's Office Signed with permission by Craig T. Peterson, AAG

AUTHORIZED for presentment and filing.

<u>/s/Craig T. Peterson</u> CRAIG T. PETERSON Assistant Utah Attorney General

EXHIBIT B

11 pactio buticion an JUZGADO TRECE PENAL MUNICIPAL CARTAGENA DE INDIAS CON FUNCIONES DE CONOCIMIENTO. 121-2 - 200 1341 14 1.1 Oficio Nº 1616 A 40.403403 经营业指定 Cartagena de Indias, abril 8 de 2016 🔬 Señor: DIRECTOR ESTABLECIMIENTO PENITENCIARIO Y CARCELARIO SAN DIEGO DE CARTAGENA. je seba Debletav i dri La ciudad PUBLICA Ref. BOLETA DE LIBERTAD. RADICADO Nº 13-001-60-08779-2014-00105-00. · · with PLONE Will di 260 CON PUNCIONES Cordial saludo: 1. N. V. Comedidamente le comunico que este Despacho Judicial, declaró procedente Ja acción de Habeas Corpus instaurada a favor de la señora KELLY JOHANA SUAREZ MOYA. Por lo anterior, se ordenó la libertad inmediata de la señora KELLY JOHANA SUAREZ MOYA, dentro del proceso que en su contra se sigue ante el Juzgado 4º Penal del Circuito con Funciones de Conocimiento de Cartagena, bajo la radicación Nº 13-001-60-08779-2014-00105-00, por los punibles de Inducción a la prostitución en concurso heterogéneo y sucesivo con el delito de Proxenetismo. En razón de lo anterior, sírvase disponer la libertad del mencionado señor, siempre y cuando no exista orden de autoridad competente que impidast salida. and stand strates A SO LET A MAL BUST IS Atentamente, "Che funda Din.S A. Cal **JQE VALIENTE NEGRETE** JUEZ TRECE PENAL MUNICIPAL CON FUNCIONES DE CONOCIMIENTO DE CARTAGENA "I. routra se sigue dinte

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I hereby inform you that this J declared the action filed in favor of Mrs. KI	udicial ELLY JOHANA SUAREZ MOYA.	Office has Habeas Corpus
÷	d For the foregoing reas	cons, it was ordered that the release of
the within the process that in s	ii'.\$\$,ntíá' s "lgüe" before the Jüz	JOHANA SUAREZ MOYA, gado 4° Criminal del Circuito con
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In view of the foregoing, please there is no order from the compe	1	he undersigned, as long as
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EXHIBIT C

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ACTA DE VOLUNTARIEDAD PARA ACTUACIÓN DE AGENTE ENCUBIERTO

De conformidad con la Resolución 0-6351 de 09 de Octubre de 2008, por medio de la cual se fijan los parámetros de actuación en operaciones con agente encubierto que tratan los artículos 241 y 242 de la ley 906 de 2004.

Se suscribe la presente acta de voluntariedad, libre y de espontánea aceptación expresa, TIMOTHY BLATN participación señor(a) de la del BALLARD identificado(a) con <u>Pasaporte E.U.A</u> número 461511800 , como Agente Encubierto para esta investigación, previa selección y designación a cargo del suscrito jefe del grupo de policía judicial a cargo de la indagación y visto bueno del fiscal de conocimiento, ya que reúne los requisitos de preparación, experiencia e idoneidad para esta clase de diligencias judiciales.

Se le coloca de presente al Agente Encubierto que su actuación será idónea, proporcional y necesaria para los fines de la actividad investigativa y no deberá inducir a la comisión de delitos, tendrá como **FACULTADES**:

- 1. Integrar la estructura del grupo delictivo organizado.
- Participar en los actos de planeación y ejecución de las actividades primarias y secundarias de la organización, siempre y cuando asuma un rol funcional, no de liderazgo o dirección de la actividad de que se trate.
- Ingresar y participar en reuniones en el lugar de trabajo o domicilio de los miembros del grupo delictivo organizado
- Realizar seguimientos y vigilancias, empleando si fuere el caso los medios tecnológicos e informáticos adecuados y pertinentes
- 5. Realizar actos extrapenales como asumir obligaciones civiles, abrir cuentas bancarias, alquilar inmuebles, vehículos, participar en sociedades comerciales o civiles, contratar empleados y demás afines a estos siempre que resulten necesarios, racionales y proporcionales a los fines de la operación.

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SE LE PROHÍBE AL AGENTE ENCUBIERTO:

- 1. En ningún caso el Agente encubierto podrá provocar o inducir al indiciado, imputado o investigado o a cualquier miembro del grupo delictivo organizado o a un tercero ajeno a la organización a cometer una conducta punible, para lo cual no estaba predispuesto
- 2. No podrá vulnerar bienes jurídicos superiores a los de la conducta delictiva objeto de investigación
- 3. No atentar contra la vida e integridad de las personas.

TENDRÁ COMO DEBERES:

- 1. La misión del Agente Encubierto consistirá en: recolectar información, E.M.P. y E.F, ubicar e identificar los integrantes de la misma como también su estructura orgánica y los roles de cada miembro, instrumentos y productos del delito, modus operandi, así como información que resulte de interés para los fines de la investigación penal, la cual hará allegar o dar a conocer por intermedio del agente de control o contacto, al fiscal de conocimiento y al grupo de policía judicial del caso, para que realicen las respectivas diligencias judiciales a que hallan lugar.
- 2. Dará aviso al Agente de Contacto o Control sobre novedades extraordinarias de interés para la investigación.
- Informará cuando advierta de situaciones que comprometan su seguridad o que implique la probable evasión de los indiciados o investigados.
- 4. Informará cuando se considere necesario llevar a cabo operativos para lograr captura en flagrancia de los miembros del grupo delictivo organizado o cuando se advierta que se pretende atentar contra bienes jurídicos de especial relevancia, como también dará a conocer al Agente de Control sobre hechos, coordinaciones o similares, para la recolección de E.M.P. y E.F, entre otros.
- 5. Deberá informar o advertir al Agente de Control o Contacto sobre la existencia de conductas punibles imputables a miembros del grupo delictivo organizado que no tenga conexidad con el objeto de la investigación o que sean atribuibles a un miembro o miembros de la organización en forma independientes, o a otro grupo delictivo

organizado, para que se promueva el inicio de la indagación o investigación correspondiente en forma independiente.

El Agente Encubierto estará exento de responsabilidad penal por aquellas actuaciones que sean consecuencia necesaria del desarrollo de una orden legitima emanada de una autoridad competente o en cumplimiento de un deber, siempre que esta actuación guarde la debida proporcionalidad con la finalidad de la misma y nos constituya una provocación del delito, para

lo cual la conducta debe estar acorde con las condiciones de la autorización expedida.

El término de la duración de la operación de Agente Encubierto, será el autorizado por el Director Nacional o Seccional de Fiscalías.

Leída la presente y de acuerdo a la misma se firma como constancia, en Cartagena el día 27 - 08 - 2014.

SEÑOR(A)

Firma: BALLARD 100 Nombre: 461511800 Identificación: AGENTE ENCUBIERTO

POLIÇÍA JUDICIAL

FISCAL

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De conformidad con la Resolución 0-6351 de 09 de Octubre de 2008, por medio de la cual se fijan los parámetros de actuación en operaciones con agente encubierto que tratan los artículos 241 y 242 de la ley 906 de 2004.

Se suscribe la presente acta de voluntariedad, libre y de espontánea participación señor(a) aceptación expresa. de la del PAUL HUTCHINSON identificado(a) 505425901 , como con PASAPORTE número Agente Encubierto para esta investigación, previa selección y designación a cargo del suscrito jefe del grupo de policía judicial a cargo de la indagación y visto bueno del fiscal de conocimiento, ya que reúne los requisitos de preparación, experiencia e idoneidad para esta clase de diligencias judiciales.

Se le coloca de presente al Agente Encubierto que su actuación será idónea, proporcional y necesaria para los fines de la actividad investigativa y no deberá inducir a la comisión de delitos, tendrá como **FACULTADES**:

- 1. Integrar la estructura del grupo delictivo organizado.
- 2. Participar en los actos de planeación y ejecución de las actividades primarias y secundarias de la organización, siempre y cuando asuma un rol funcional, no de liderazgo o dirección de la actividad de que se trate.
- 3. Ingresar y participar en reuniones en el lugar de trabajo o domicilio de los miembros del grupo delictivo organizado
- 4. Realizar seguimientos y vigilancias, empleando si fuere el caso los medios tecnológicos e informáticos adecuados y pertinentes
- 5. Realizar actos extrapenales como asumir obligaciones civiles, abrir cuentas bancarias, alquilar inmuebles, vehículos, participar en sociedades comerciales o civiles, contratar empleados y demás afines a estos siempre que resulten necesarios, racionales y proporcionales a los fines de la operación.

SE LE PROHÍBE AL AGENTE ENCUBIERTO:

- 1. En ningún caso el Agente encubierto podrá provocar o inducir al indiciado, imputado o investigado o a cualquier miembro del grupo delictivo organizado o a un tercero ajeno a la organización a cometer una conducta punible, para lo cual no estaba predispuesto
- 2. No podrá vulnerar bienes jurídicos superiores a los de la conducta delictiva objeto de investigación
- 3. No atentar contra la vida e integridad de las personas.

TENDRÁ COMO DEBERES:

C

- 1. La misión del Agente Encubierto consistirá en: recolectar información, E.M.P. y E.F, ubicar e identificar los integrantes de la misma como también su estructura orgánica y los roles de cada miembro, instrumentos y productos del delito, modus operandi, así como información que resulte de interés para los fines de la investigación penal, la cual hará allegar o dar a conocer por intermedio del agente de control o contacto, al fiscal de conocimiento y al grupo de policía judicial del caso, para que realicen las respectivas diligencias judiciales a que hallan lugar.
- 2. Dará aviso al Agente de Contacto o Control sobre novedades extraordinarias de interés para la investigación.
- 3. Informará cuando advierta de situaciones que comprometan su seguridad o que implique la probable evasión de los indiciados o investigados.
- 4. Informará cuando se considere necesario llevar a cabo operativos para lograr captura en flagrancia de los miembros del grupo delictivo organizado o cuando se advierta que se pretende atentar contra bienes jurídicos de especial relevancia, como también dará a conocer al Agente de Control sobre hechos, coordinaciones o similares, para la recolección de E.M.P. y E.F, entre otros.
- 5. Deberá informar o advertir al Agente de Control o Contacto sobre la existencia de conductas punibles imputables a miembros del grupo delictivo organizado que no tenga conexidad con el objeto de la investigación o que sean atribuibles a un miembro o miembros de la organización en forma independientes, o a otro grupo delictivo

actuaciones que sean consecuencia necesaria del desarrollo de una orden legitima emanada de una autoridad competente o en cumplimiento de un deber, siempre que esta actuación guarde la debida proporcionalidad con la finalidad de la misma y nos constituya una provocación del delito, para

lo cual la conducta debe estar acorde con las condiciones de la autorización expedida.

El término de la duración de la operación de Agente Encubierto, será el autorizado por el Director Nacional o Seccional de Fiscalías.

Leída la presente y de acuerdo a la misma se firma como constancia, en Cartagena el día 27-08-2014.

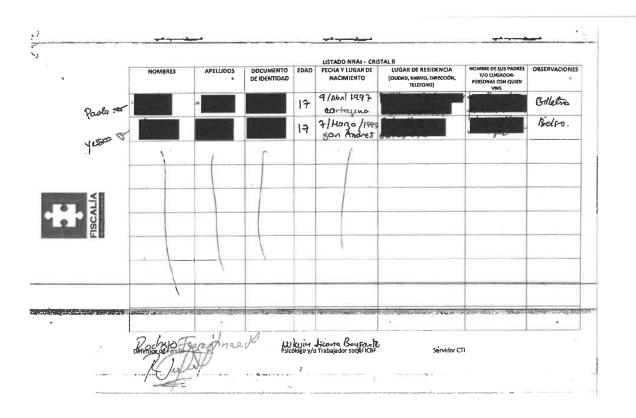
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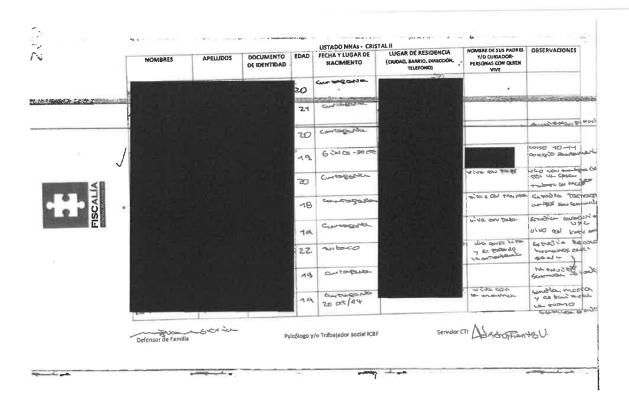
SEÑOR(A) Firma: Nombre: Identificación: **AGENTE ENCUBIERTO** POLÍCÍA JUDICIAL **FISCAL**

EXHIBIT D

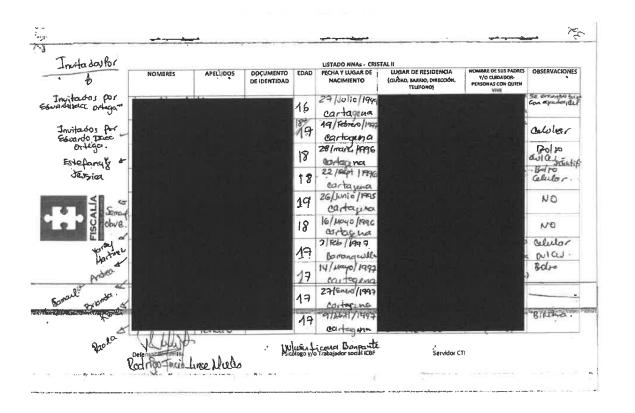
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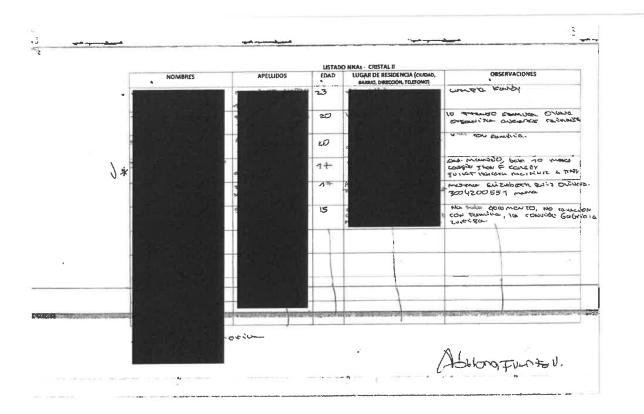










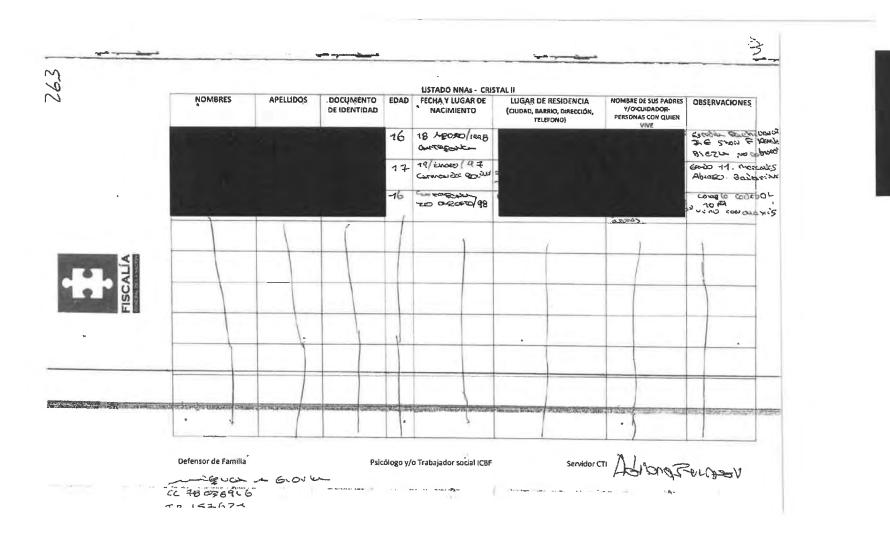


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Bates #000104

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				18a	21-08-1996 Cartogeno			Kevis Primera a Castro (2012)
				135	25-02-1991 Gan Joan Nepa			o Cristian Payona Leiner Salendo
٠				21à	01-09-1993 Cortagens			Wendy Burrios.
				Y84	26 - 10 - 1996 Cartogena			Estebany Roda Morales
				305	22-05-1984. Cartagena			Niviana' Carolina Amedo
				AB a	06-02-1996 Cartageno			Naty Beelvis
				195	21-12-1994 Cartagena			Jessier (Maturity Garding (B.: Turyma)
4				19:	13-08-1995 Cesar			Kenn Primera (ses Fence-du)
				165	0.3-11-1997			Samuel Olave.
				170	Cartageno			Wendy Kaano
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Bates #000106

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1. Destino del informe: Seccional: Dirección Seccional de Fiscalías Cartagena Jnidad: Unidad Seccional de Fiscalías CAIVAS Despacho: Fiscalía 21 Seccional Fiscal: Dra. Carmen del Rosario González Patrón D.T. No asignada el 2014 – 10 -11 DPJ o Solicitud No. SIN de fecha 2014-10-11 Conforme a lo establecido en los artículos 209, 255, 257, 261 y 275 del C.P.P me permito endir el siguiente informe. 2. Objetivo de la diligencia 2.1. Entrevistar a las NNAs victimas 3. Dirección en donde se realiza la actuación Barrio Toríces Sector Son Pedro Carrera 51 N°17 -199 – Cámara de Gesell Actuaciones realizadas 4.1. Entrevista al NNA Pedro Florez Ramos E. Toma de muestras No. De EMP y Sitio de recolección Descripción de EMP y EF 1 Casa de Justicia de CD en audio y video de los NNAS P.F.R., Y.E.E.G., G.E.Z.R. y L.M.M.C. N/A N/A N/A N/A	130016008779201400105 No. Dependence Col INVESTIGADOR DE CAMPO - PP-11- Este informe et al condo por la Polcía Judidal para spusitiza lances puntadate que no sean objeto de informe ejecutivo DEDENTAMENTO BOLIVAR Município CARTO CAMPO - PP-11- Este informe et al condo por la Polcía Judidal para spusitiza lances puntadate que no sean objeto de informe ejecutivo DEDENTAMENTO BOLIVAR Município CARTO CARTO ESC. Destino del informe el colspan="2">Componization que no sean objeto de informe ejecutivo Destino del informe el colspan="2">Cantagena JINICATION DE CARTO ESC. Dirección Seccional de Fiscalias Cartagena JINICAL DIRECCIÓN Seccional Seccional: Dirección Seccional de Fiscalias Cartagena JINICAL DIRECCIÓN Seccional Dirección Seccional de Fiscalias Cartagena JINICAL DIRECCIÓN Seccional DIRECCIÓN Seccional de Fiscalias Cartagena JINICAL DIRECCIÓN Seccional Seccional de Fiscalias Cartagena JINICAL DIRECCIÓN Seccional DIRECCIÓN Seccional Secolorial C			USO EXCLUSIVO POLICIA JUDIO
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CENTRO DE ATENCION INTEGRAL E INVESTIGACIÓN PARA VICTIMAS DE ABUSO SEXUAL (CAIVAS) Canagena, Barto Toriose Sectar San Peter Canada S1 Xº17-198. Trivase del 198	CENTRO DE ATENCION INTEGRAL E INVESTIGACIÓN PARA VICTIMAS DE ABUSO SEXUÁL (CAIVAS) Caragena, Barto Toriose Sectar San Peter Carrea S1 Xº17-198. Trivase del 118	4.1. Entrevist 4.1. Entrevist 5. Toma de mu No. De EMP y EF 1 N/A	s realizadas a al NNA Pedro Florez Ramos estras Sitio de recolección Casa de Justicia de Canapote- Cámara de Gesei N/A	S Descripción de EMP y EF ČD en audio y vídeo de los NNAs P.F.R., H Y.E.E.G., G.E.Z.R. y L.M.M.C. N/A
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Página 1 de 6	Pógina 1 de 6	4. Actuacioned 4.1. Entrevist 5. Toma de mu No. De EMP y EF 1 N/A Nota: En el evu ustodia.	s realizadas a al NNA Pedro Florez Ramos estras Sitio de recolección Casa de Justicia de Canapote- Cámara de Gese N/A ento en que se recolecten sección seccional cuerpo récnico d	Descripción de EMP y EF CD en audio y video de los NNAs P.F.R., H Y.E.E.G., G.E.Z.R. y L.M.M.C. N/A EMP o EF, inicie los registros de cadena EMP o EF, inicie los registros de cadena
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EXHIBIT E

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INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES DIRECCION SECCIONAL BOLIVAR

DIRECCIÓN: Calle 29 No 50-100 Barrio Zaragocilla Hospital Universitario del Caribe . CARTAGENA, BOLÍVAR TELEFONO: (5) 6698989 Telefonia IP (1) 4069944/77 extensión 3510

INFORME PERICIAL DE CLÍNICA FORENSE

No.: DSBL-DRNT-07289-2014

CARTAGENA. 11 de octubre de 2014

CIUDAD Y FECHA:

NÚMERO DE CASO INTERNO:	DSBL-DRNT-07156-C-2014	
OFICIO PETITORIO:	No 2014-10-11. Ref: Noticia criminal 130016008	779201400105 -
AUTORIDAD SOLICITANTE:	JAKELINE REYES SARMIENTO	
	CAIVAS	
	FISCALIA GENERAL DE LA NACION	
AUTORIDAD DESTINATARIA:	JAKELINE REYES SARMIENTO	
	CAIVAS	
	FISCALIA GENERAL DE LA NACION	
	CRESPO, CALLE 66N 4-86	
	CARTAGENA, BOLÍVAR	
NOMBRE EXAMINADO:	PEDRO JOSUE FLOREZ RAMOS	
IDENTIFICACIÓN:	IND	
EDAD REFERIDA:	17 años	
ASUNTO:	Edad /	
		Deconocimion

Examinado hoy sábado 11 de octubre de 2014 a las 16:57 horas en Reconocimiento Médico Legal. Previa explicación de los procedimientos a realizar en la valoración, la importancia de los mismos para el proceso judicial o administrativo, se diligencia el consentimiento informado, se toma firma y huella dactilar del índice derecho del examinado en el oficio petitorio del indice derecho , del representante legal: cesar augusto salguedo diaz 73582510 defensor de familia, en el consentimiento informado Motivo de la peritación: la fiscalia general de la nación por medio de su unidad CAIVAS, ordena realizar a PEDRO FLOREZ RAMOS, valoracion de edad, mediante oficio fechado 11 de octubre del 2014, con NUC 130016008779201400105.

Refiere el examinado : " EN FACEBOOK HICIERON UNA PUBLICACION DE UN PASEO Y YO ME ANOTE Y YO LE COMENTE TRES AMIGOS OUE HABIA UN PASEO, para que tedos fueramos eran unos americanos, con el fin de divertimos, y habian dicho que si iban mujeres y tenían sexo le pagan un millon de peso o mas y que los demás que fueran a la Isla aunque no tuvieran sexo le iban a pagar 400.000

pesos Nos encontramos todos en una calle del educador, eramos como 20, no fuimos en los buses hasta la sociedad portuaria de manga, y nos recogieron dos yates, llegamos a una isla y nos encerraron las gringas, y nos comenzaron a brindar dulces, mekatos, chitos, empezaron a llamarnos uno por uno, por grupos para conocer la isla y haber que muchacha le agradaba a cada proxeneta. Yo he tenido sexo con mi pareja, pero en la isla no estuve sexo con nadie pro que estaba acompañado de mi pareja que es otro menor. y si el no estuviera tampoco hubiese tenido nada. yo nunca me habia visto con esa gente jamas. de pronto como a la media hora llegaron las fuerzas aereas militares de colombia y nos encerraron para que no salieramos y ahora nos trajeron para que nos hagan edad.

ANTECEDENTES: Sociales: refiere ser gay.. Familiares: ninguno. Patológicos: ninguno. Quirúrgicos: ninguno. Traumáticos: ninguno. Hospitalarios: ninguno. Psiquiatricos: ninguno. Toxicológicos: ninguno.

DATOS ANTROPOMÉTRICOS: Peso: 58 kg. Talla: 1/2 cm

RITA DEL CARMEN LOPERA MENDOZA **CONTRERAS PASTRANA** GII FREM Pag. 1 de 2 SERVICIO FORENSE EFECTIVO 11/10/2014 17:19

INFURME NO.

329

6. Descripción clara y precisa de la forma, técnica e instrumentos utilizados

Para esta entrevista se aplicó el protocolo SATAC marca registrada de Corner House que incluye etapas de Simpatia, Identificación de anatomía, indagación de Tocamientos, escenario de Abuso y Cierre, modificados según el nivel de desarrollo del entrevistado. Inicialmente, se dieron las indicaciones para la entrevista, en relación a "lo que el NNA no entienda. No sepa o no recuerde y se aclaró la importancia de habíar solo la verdad".

La entrevista se lleva a cabo en la cámara de Gesell, programa de computación Embedded Net DVD R HIK VISION. Ubicada en las oficinas de ICBF CAIVAS Casa de Justicia de Canapote

7. Resultados de la actividad investigativa (Descripción clara y precisa de los resultados): El día 11 de octubre del 2014 se dio inició a las entrevistas de los NNAs;

7 1. NNA Pedro Flórez Ramos de 17 años de edad, vive en San Fernando calle Santander 19 A - 05 puede ser ubicado en su teléfono 3016727616. Con quien dio a conocer que el miércoles anterior a la entrevista, en lo por excención de un reservente a realizada de la cuidad, todas las pagos flotti re a rei inucra nesta y va e dinero agrega que el marsagis le siego de una conocida actarente que o no recuerda la cuenta mónombre de quien tio a conocida actarente que el relaciso e unos amigos de él su primo la su pareja. Refiere que los iban a recoger en la tercera calle del educador el día de hoy temprano, luego llegaron a la bahía los encerraron, refiere que de termo acuento acuento a su pareja. Refiere que los iban a recoger en la tercera calle del educador el día de hoy temprano, luego llegaron a la bahía los encerraron, refiere que de termo acuento acuención de parejas recipiones de recuenta de parejas de parejas

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de encuentra y cômo los reconocia menciona a un ' ucuação que cra-el anace con , se le pide que lo describa ya que afirma que no sabe el nombre de él, y afirma que es uno de los que capturaron, lo describe como un pelado ni tan blanco afirma que tiene la piel parecida a la de la entrevistadora (trigueña), que tiene el pelo

DIRECCIÓN SECCIONAL CUERPO TÉCNICO DE INVESTIGACIÓN - SECCION INVESTIGACIONES CENTRO DE ATENCIÓN INTEGRAL E INVESTIGACIÓN PARA VICTIMAS DE ABUSO SEXUAL (CAIVAS) Caragana, Barlo Tofoss Sector Sun Pardo Carrera 51 N°17 - 148, teatras atentas

Página 2 de 6

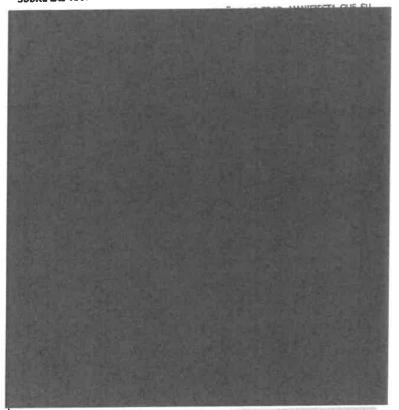
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SCRITO DE ACUSACIÓN	Versión: 02 Párias 13 de 25
	PROCESO PENAL SCRITO DE ACUSACIÓN

NIÑAS Y LOS ADOLESCENTES (NNA). LA FAMILIA, LA SOCIEDAD Y EL ESTADO SON CORRESPONSABLES EN SU ATENCION, CUIDADO Y PROTECCION.

SOBRE LAS VICTIMAS TENEMOS LAS SIGUIENTES;



PEDRO FLOREZ RAMOS, DE 17 AÑOS, RESIDE EN EL BARRIO SAM FERNANDO, CALLE SANTANDER No.19A-05. DICE HABER SIDO INVITADO AL PASEO EN LANCHA FUERA DE LA CIUDAD CON TODO PAGO, LICOR Y DINERO. REFIERE QUE LE DIJERON QUE LES DARIAN CUATROCIENTOS MIL PESOS (\$400.000.00). Y TAMBIEN A LAS NIÑAS QUE SOSTUVIERAN RELACIONES SEXUALES LE DABAN UN MILLON DE PESOS (\$1.000.000.00).

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INFURME NO.

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6. Descripción clara y precisa de la forma, técnica e instrumentos utilizados

Para esta entrevista se aplicó el protocolo SATAC marca registrada de Corner House que incluye etapas de Simpatia, Identificación de anatomía, indagación de Tocamientos, escenario de Abuso y Cierre, modificados según el nivel de desarrollo del entrevistado. Inicialmente, se dieron las indicaciones para la entrevista, en relación a "lo que el NNA no entienda. No sepa o no recuerde y se aclaró la Importancia de hablar solo la verdad".

La entrevista se lleva a cabo en la cámara de Gesell, programa de computación Eribedded Net DVD R HIK VISION. Ubicada en las oficinas de ICBF CAIVAS Casa de Justicia de Canapote

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7 1 NNA Pedro Flórez Ramos de 17 años de edad, vive en San Fernando calle Santander 19 A - 05 puede ser ubicado en su teláfono 3016727616. Con quien dio a conocer que el miércoles anterior a la entrevista, se intello por Facebook de una invitación de un preco en lancha fuera de la ciudad, todos los pagos, livor va a ver mucha fiesta y va a un dinero agrega que el mensaje le llego de una conocida aclarando que no recuerda la cuenta y/o nombre de quien dio a conocer dicho paseo, afirma que él le aviso a unos amigos de él, so primo y a su pareja. Refiere que los iban a recoger en la tercera calle del educador el día de hoy temprano, luego llegaron a la bahía los encerraron, refiere que tra aterior que el día de hoy temprano, luego llegaron a la bahía los encerraron, refiere que tra aterior que no recuerta de la cuenta y luego empezaron el lamar por grupos el ver que persona les guerara o que persona le favorecita

Service que la construcción de la construcción de pesos. Al preguntarle sobre el punto de encuentra y cómo los reconocia menciona a un "incunación que era el enlace con los punços, se le pide que lo describa ya que afirma que no sabe el nombre de él, y afirma que es uno de los que capturaron, lo describe como un pelado ni tan blanco afirma que tiene la piel parecida a la de la entrevistadora (trigueña), que tiene el pelo

DIRECCIÓN SECCIONAL CUERPO TÉCNICO DE INVESTIGACIÓN - SECCION INVESTIGACIÓNES CENTRO DE ATENCIÓN INTEGRAL E INVESTIGACIÓN PARA VICTURAS DE ABUSO SEXUAL (CAIVAS) Cristigues, Barto Tatos Exerti San Perso Caives San Ma

Página 2 de 6

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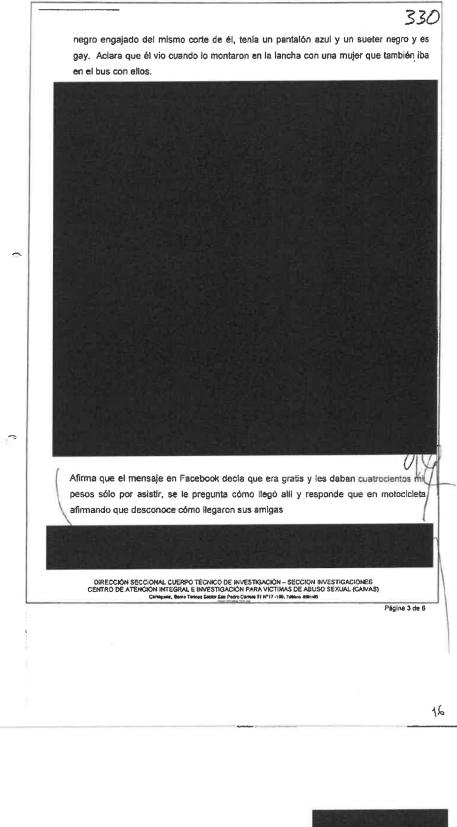
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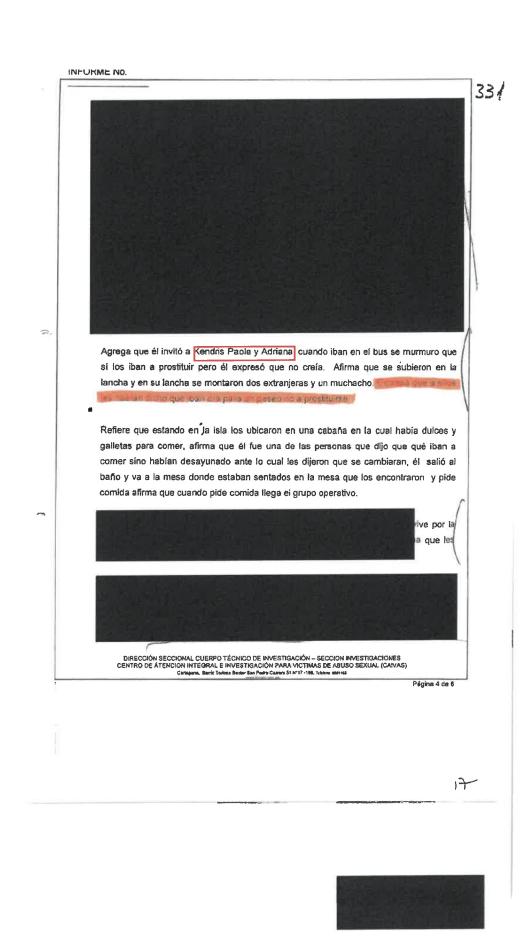




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Como quiera que al inicio de la entrevista el NNA había de que **service**s una persona diferente a su hermana, se le indaga qué quiso decir que Wendy era una compañera que iba en el bus con él, afirma que él a ella no la conocía y no sabe por qué iba en el bus

Afirma que Eduardo les dijo que para el paseo se embarcaran en los buses en el Estadio y cuando él llegó habían dos buses afirma que Eduardo no estaba ahí, luego fueron detrás del SAO que habían otros muchacho entre ellos Wendy y linda y de allí salieron para manga.

Afirma que Eduardo llegó posteriormente, así mismo refiere que Eduardo fue quien invitó a la otras.

Observación: Debido a fallas técnicas por las cuales no quedo registrada la entrevista tiel NNA desde el momento que se relaciona en la misma, se vuelve a Indagar sobre lo que se habió con el NNA que no había quedado registrado, previo aval del defensor de familia.

Nota: La entrevista en audio y video realizada es entregada con cadena de custodia a la Sección Criminalistica del CTI. Así mismo, según lo acordado con la Fiscalia se adjunta CD de esta en el informe

Un folio ei	n original de	eo de entrevista a los NNAs consentimiento informado P	F.R.	a j martina de
		acta cámara de gesell P.F.F		
		constancia del defensor de		
Un folio er	n original de	consentimiento informado Y	EEG	
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		consentimiento informado G		
Un folio er	n original de	acta cámara de gesell G.E.Z	Z.R	
Un folio er	n original de	constancia del defensor de	familia G.E.Z.R	
Un folio er	n original de	consentimiento informado L	M.M.C.	
Un folio er	n original de	acta cámara de gesell L.M.M	Л.С.	
Un folio er	n original de	constancia del defensor de	familia L.M.M.C.	
9. Servi Entidad	Código DiRECCIÓN	CIA Judicial: Grupo de PJ SECCIONAL CUERTO TÉCNICO DE INV	Servidor ESTIGACIÓN - SECCION INVESTIGA	CIONES
	Código DiRECCIÓN	Grupo de P)	ESTIGACIÓN - SECCION INVESTIGA PARA VICTIMAS DE ABUSO SEXUAI	CIONES L (CAIVAS)
	Código DiRECCIÓN	Grupo de PJ SECCIONAL CUBRPO TÉCNICO DE IMV TENCION INTEGRAL E INVESTIGACIÓN	ESTIGACIÓN - SECCION INVESTIGA PARA VICTIMAS DE ABUSO SEXUAI	Identificación CIONES (CATVAS) Pégina 5 de 6
	Código DiRECCIÓN	Grupo de PJ SECCIONAL CUBRPO TÉCNICO DE IMV TENCION INTEGRAL E INVESTIGACIÓN	ESTIGACIÓN - SECCION INVESTIGA PARA VICTIMAS DE ABUSO SEXUAI	CIONES L (CAIVAS)

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INFURME NO. 33: CAIVAS Sección Investigaciones 4277 FOLLY STELLA ARCILA VASQUEZ | 51923849 СП fichleg -Firma, Sulur . 18 -DIRECCIÓN SECCIONAL CUERPO TÉCNICO DE INVESTIGACIÓN - SECCION INVESTIGACIONES CENTRO DE ATENCION INTEGRAL E INVESTIGACIÓN PARA VICTIMAS DE ABUSO SEXUAL (CAIVAS) Cartagona, Berro Totase Sever Sa Podo Carros SI Nº17-188, Teclose Metalet Página 6 de 8 19



NATIONAL INSTITUTE OF FORENSIC MEDICINE AND FORENSIC SCIENCES BOLIVAR SECTIONAL DIRECTORATE

ADDRESS: Calle 29 No 50-100 Barrio Zaragocilla Hospital Universitario del Caribe . CARTAGENA. 80LIVAR TELEPHONE: (5) 6698989 IP Telephony (1) 4069944/77 extension 3510

FORENSIC CLINIC EXPERT REPORT No.: DSBL-DRNT-07289-2014

CADTACENA October 11 201

CITY AND DATE:	CARTAGENA. October 11, 2014
INTERNAL CASE NUMBER:	DSBL-DRNT-07156-C-2014
OFFICE REQUEST:	No 2014-10-11. Ref: Criminal Notice 130016008779201400105 -
REQUESTING AUTHORITY:	JAKELINE REYES SARMIENTO
	CAIVAS
	ATTORNEY GENERAL'S OFFICE
AUTHORITY:	JAKELINE REYES SARMIENTO
	CAIVAS
	ATTORNEY GENERAL'S OFFICE OF
	THE NATION CRESPO, CALLE 66N 4-
	86 CARTAGENA, BOLIVAR
NAME UNDER REVIEW:	PEDRO JOSUE FLOREZ RAMOS
IDENTIFICATION:	IND
AGE REFERRED:	17 years old
SUBJECT:	Age /

Examined today Saturday, October 11, 20'14 at 16:57 hours in Forensic Medical Examination. After explanation of the procedures to be performed in the assessment, the importance of the same for the judicial or administrative process, the informed consent, signature and fingerprint of the right index fingerprint of the examinee is taken in the requesting office of the right index fingerprint, of the legal representative: cesar augusto salguedo diaz 73582510 family defender, in the informed consent Reason for the expertise: the attorney general's office of the nation through its unit CAIVAS, orders to perform to PEDRO FLOREZ RAMOS, valuation of age, by official letter dated October 11, 2014, with NUC 130016008779201400105. Refers the eKaminado : "

- We all met in a street of the educator, we were about 20, we did not go in the buses to the port society of manga, and we were picked up by two yachts, we arrived at an island and the gringas locked us up, and they began to give us sweets, mekatos, chitos, they began to call us one by one, by groups to know the island and to know which girl each pimp liked. I have had sex with my partner, but on the island I did not have sex with anyone because I was accompanied by my partner who is another minor, and if he was not there I would not have had anything either. I had never seen myself with those people ever. Suddenly about half an hour later the Colombian military air forces arrived and locked us up so that we would not go out and now they brought us here to make us old.

BACKGROUND: Social: refers to being gay. Family: none. Pathological: none.

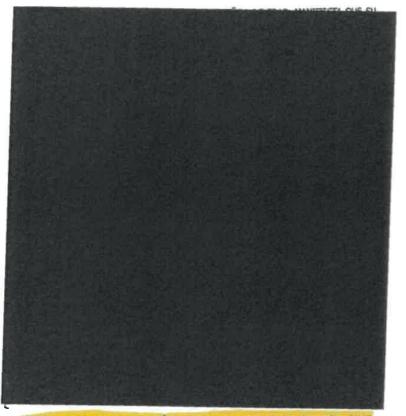
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	хg	i os'		1	1 Pallet
ANTH	ROROBOD	DATEAR TRICOS	: Weight: 581kg.15izem	14. n/	000/01
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11/10/201	4 17:19	EFFEC	TIVE FORENSIC SERVICE	Р	age 1 of 2



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j'ttñAS Y LOS AçjQLEgCgNTES (NyA). THE FAf41LIA, SOCIETY AND THE STATE ARE CORRESPONSIBLE FOR THEIR ATTENTION, SUPPORT AND PROTECTION.

ABOUT UICŸINAS 7ENEÎ4OS SAS StGUIEMT€S:



PEDRO FLOREZ RAMOS, DE 17 ANOS, PESIDE EN EL SARRIO SUI FERNANDO, CALLE SANTANDER No. 19A-OS. DIŒ HABER SIDO INVITADO AL PASEO EN LANŒA RIERA OE LA C/UDAD CON TDDO PAGO, UOOR Y DTNERO. REFIERE QUE LE DUERDN QUE MS OARIAN CUATRODENTOS NIL PŒŒ (S400.000.œ) Y TANBÏEN A LAS NIÑas ¢}JJE SOSTUVŒRAN RZLADONZS SEXUALES LE 0AB4H UN MILLOK DE PESOS ' 1.000.000. }.

EXHIBIT F

Declaración de Pedro Florez Ramos

1. Mi nombre es Pedro Florez Ramos.

2. Mi fecha de nacimiento es el 8 de junio de 1997.

3. El 11 de octubre de 2014 tenia 17 años.

4. Antes del 11 de octubre de 2014, vivía con mis padres, Oscar Florez y Alejandra Ramos en Cartagena, Colombia.

6. Antes del 11 de octubre de 2014, me informaron de una fiesta en Facebook donde estarían presentes norteamericanos.

7. Este aviso en Facebook también decía que si tenías sexo con uno de los norteamericanos te pagarían un millón de pesos colombianos y que todo el transporte, paseo en bote, comida y atcohol estaría incluido.

8. Este aviso en Facebook también decía que si decidías no tener sexo con uno de los norteamericanos, te pagarían cuatrocientos mil pesos colombianos por asistir a la fiesta y que todo el transporte, paseo en bote, comida y alcohol correría estar incluido.

9. En base a esa invitación, decidi asistir a la fiesta para que me pagaran 400.000 pesos colombianos para asistir a la fiesta con transporte, paseo en bote, comida y alcohol gratis.

10. Fuimos a la fiesta sin intención de tener relaciones sexuales con nadie, incluidos nosotros mismos, ya que éramos menores de edad.

11. Antes de la fiesta del 11 de octubre de 2014, no conocía a Kely Suárez, ni en privado, ni públicamente como alguna supuesta reina de belleza de Cartagena.

12. En ningún momento Kely Suarez me invitó a la fiesta ni me prometió dinero.

13. Antes del 11 de octubre de 2014, nunca había sido objeto de trata sexual, pero fui víctima de abuso sexual por un vecino antes del 11 de octubre de 2014.

15. Sin embargo, después de llegar a la fiesta, las mujeres norteamericanas nos encerraron en una habitación y las cosas se volvieron muy aterradoras y traumáticas.

16. Las norteamericanas comenzaron entonces a llamarnos una a una para conocer la isla donde se celebraba la fiesta y dejar que los pedófilos nos vieran para decidir con qué niño querían tener sexo.

17. Me asusté mucho porque en ese momento me di cuenta de que yo, junto con los demás (incluidos los menores), estábamos siendo traficados con fines sexuales.

18. Finalmente, antes de que se pudiera lograr cualquier contacto sexual, los militares colombianos vinieron y nuevamente nos encerraron en una habitación, lo cual fue una experiencia muy aterradora y traumática.

19. Después de sentir los horrores de ser traficada el 11 de octubre de 2014, decidí comenzar un programa de cuidados posteriores para sobrevivientes de trata sexual que se llama Tejiendo Sueños.

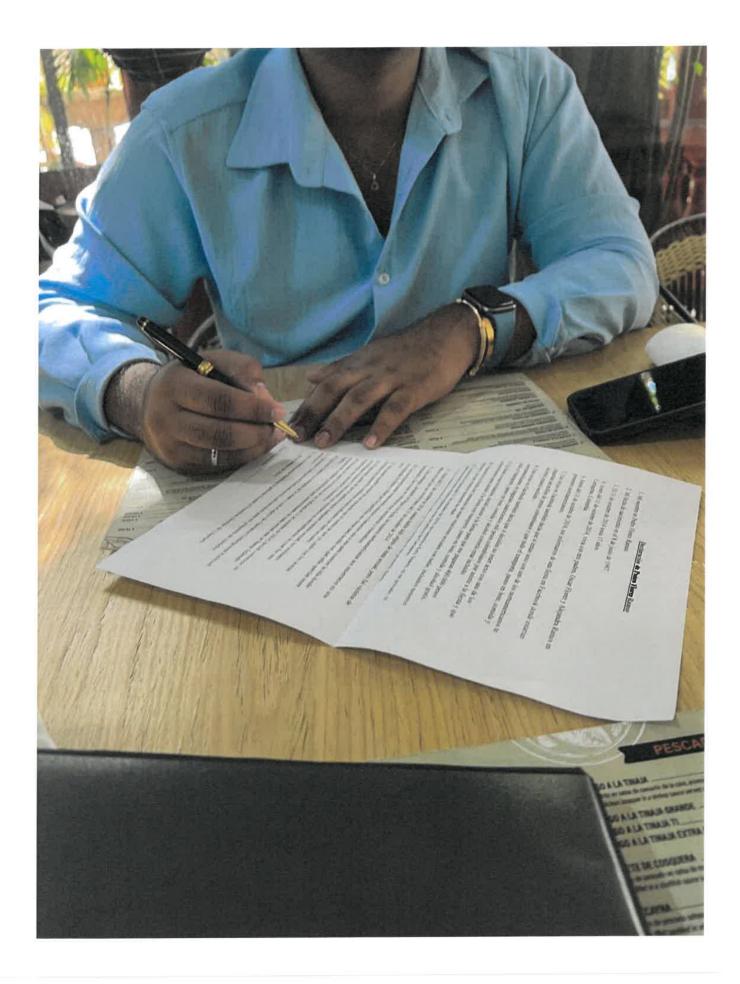
20. Tejiendo Sueños ha trabajado de la mano y con el apoyo de Operation Underground Railroad.

21. Operation Underground Railroad envió subvenciones para mi programa de cuidados posteriores.

23. Me retrataron como Simba en la película Sound of Freedom (Sonido de Libertad).

día de febrero de 2024.

Pedro Flore Ramos



Statement of Pedro Florez Ramos

1. My name is Pedro Florez Ramos.

2. My deposit date is June 8, 1997.

3. On October 11, 2014 I was 17 years old.

4. Prior to October 11, 2014, I lived with my parents, Oscar Floiez and Alejandm Ramos in Cartagena, Colombia.

6. Prior to October 11, 2014, I was informed of a Facebook party where North Americans would be present.

7. This Facebook adalso said that if you had sex with one of the Americans you would be paid one million Colombian pesos and that all transportation, boat ride, food and alcohol would be included.

8. This Facebook ad also said that if you decided not to have sex with one of the Americans, you would be paid four hundred thousand Colombian pesosto attend the party and that all transportation, boat rides, food and alcohol would be included.

9. Based on that invitation, I decided to attend the party to be paid 400,000 pesos. Colombians to attend the party with free transportation, boat ride, food and alcohol.

10. We went to the party with no intention of having sex with anyone, including ourselves, as we were underage.

11.Before the party on October 11, 2014, I did not know Kely Suärez, neither privately nor publicly as some supposed beauty queen of Cartagena.

12. At no time did Kely Suarez invite me to the party or promise me money.

13.Prior to October 11, 2014, she had never been sexually trafficked, but fur victim of sexual abuse by a neighbor prior to October 11, 2014.

15. However, a fler we arrived at the party, the American women locked us in a room and things became very frightening and traumatic.

16. The Americans then began to call usone by one to get to know the island where the party was being held and let the pedophiles see us to decide with whom they wanted to have sex.

17.I was very scared because at that moment I realized that l, along with the others (including minors), were being trafficked for sexual purposes.

18. Finally, before any sexual contact could be achieved, the Colombian militants came and again locked us in a room, which was a very frightening and traumatic experience.

19. After feeling the horrors of being trafficked on October 11, 2014, I decided to start an aftercare program for sex trafficking survivors called Weaving Dreams.

20. Tejiendo Sueños has worked hand in hand with and with the support of Operation Underground Railroad.

21. Operation Underground Raikoad sent grants for my care programs postenores.

23. Merchanaron as Simba in the movie Sound of Freedom. ero 2024.

díayde feb

A MANATAR Sar.

EXHIBIT G

RAMA JUDICIAL REPÚBLICA DE COLOMBIA DEPARTAMENTO DE BOLIVAR



JUZGADO PRIMERO PENAL DEL CIRCUITO CON FUNCIONES DE CONOCIMIENTOS CARTAGENA

Cartagena, 2 de octubre de 2020.

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ASUNTO A TRATAR:

A continuación, una vez el Juzgado en audiencia anterior anunció el sentido del fallo condenatorio, se procede a dar lectura a la sentencia en la que se individualizará la pena a imponer al señor ELKIN ARNULFO PEÑA BERNAL, servidor de la Fiscalía General de la Nación, y acusado de los delitos de CONCUSIÓN y ABUSO DE LA FUNCIÓN PÚBLICA. La sentencia se dicta una vez se ha advertido que no concurren en el proceso nulidades que afecten o impidan tal pronunciamiento. Veamos:

FUNDAMENTOS FÁCTICOS:

El día 9 de julio de 2015, los exalcaldes de San Martín de Loba, RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR y JAIME AÍSLANT GIL, recibieron una visita inusual e inesperada en su municipio, por parte de dos servidores de la Fiscalía Seccional de Cartagena y de un particular de nombre JOSÉ. La visita era liderada por ELKIN PEÑA BERNAL, y tenía como propósito dar a conocer a los exalcaldes, una supuesta citación de la Fiscalía Especializada de Cartagena por una investigación penal por malos manejos de los recursos de Salud.

En efecto, el funcionario, **ELKIN PEÑA BERNAL**, en su calidad de Jefe de Seguridad de la Fiscalía Seccional de Cartagena, se desplazó hasta San Martín de Loba empleando un vehículo de la entidad y se hizo acompañar de un conductor, JUAN CARLOS MANCERA, adscrito a la Dirección Seccional de Cartagena. Con ellos, como se dijo antes, estuvo un sujeto de nombre JOSÉ y el que luego se identificaría como DEIWIN CASTILLO.

En la inusual vísita se presentaron dos circunstancias muy curiosas.

Una, que la Fiscalía no había autorizado el desplazamiento de sus servidores tal como lo certificaron las directivas del ente acusador y dos, que se instrumentalizó al Comandante de Policía de San Martín de Loba, FABIAN SANCHEZ LEOPARDO pues

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se le solicitó apoyo con lo de la notificación y él policial lo prestó, convencido que se trataba de una colaboración interinstitucional.

En todo caso, se sabe que, personalmente, sólo se notificó a JAIME AISLANT GIL.

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Los exalcaldes para atender o para cumplir con la supuesta notificación, se trasladaron hasta Cartagena el día 29 de Julio de 2020 y para esos días, **PEÑA BERNAL** estuvo en contacto con ellos, a través de un abonado telefónico que el día de la visita a San Martín de Loba, le había facilitado a AISLANT GIL. El servidor de la Fiscalía **ELKIN PEÑA BERNAL** y el sujeto conocido como JOSÉ, abordaron a los exalcaldes y los constriñeron a pagar una suma equivalente a CUARENTA MILLONES (\$40.000.000.00) DE PESOS con el fin de "colaborarles" con su proceso.

Y, como las víctimas advirtieron a los peticionarios, por un lado, que no tenían esa cantidad de dinero y, por otro, que conforme a los hechos, eran ajenos al manejo de los recursos de la salud ya que estos se giraban directamente a las EPS y que esos fondos no eran manejados por los alcaldes; los agentes de la coacción variaron su estrategia sobre la marcha y es cuando **PEÑA BERNAL** ratifica la exigencia, con la variante de que las peticiones económicas se justificaban para tratar de neutralizar a un testigo privado de la libertad que acusaba a los exalcaldes de tener vínculos con el paramilitarismo ante la justicia transicional.

En las investigaciones de la Fiscalía, tendientes a establecer la secuencia, dinámica y mecanismos empleados para hacer las exigencias económicas indebidas, se determinó desde qué líneas telefónicas se hicieron tales requerimientos. Los abonados telefónicos empleados, corresponden a los números: **319-3209006**, **350-6849093**, **317-6470663**, **312-6042202** y **301-6623375**.

En Cartagena, el día 30 de julio de 2015, si bien no hicieron entrega de los 40 millones de pesos exigidos, los exalcaldes sí entregaron a **PEÑA BERNAL**, una cantidad menor: 7 millones de pesos. La entrega se hizo al interior de un vehículo conducido por **PEÑA BERNAL**, tal como lo testimonió JAIME AISLAN GIL. Posteriormente, los exalcaldes hicieron consignaciones y giros a EFRAIN RIVEROS GONZALEZ con las entidades BANCO DE BOGOTÁ y EFECTY, tal como quedó confirmado conforme a la búsqueda selectiva en base de datos.

Las referidas consignaciones se hicieron a nombre de EFRAIN RIVERO GONZALEZ por los valores de TRES MILLONES OCHENTA Y NUEVE MIL SETENCIENTOS PESOS (\$3. 089.700.00), UN MILLÓN NOVECIENTOS DIEZ MIL TRESCIENTOS DIEZ PESOS (\$1. 910.310.00), CUATRO MILLONES NOVECIENTOS CATORCE MIL QUINIENTOS PESOS (\$4. 014.500.00) y DOS MILLONES NOVECIENTOS CUARENTA Y OCHO MIL PESOS (\$2. 948.000.00), los días 6 y 10 de agosto de 2015, respectivamente.

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En relación con las llamadas telefónicas, se logró confirmar que el flujo de llamadas entrantes y salientes, corresponde a uno de los abonados telefónicos de **ELKIN PEÑA BERNAL (3193209006)** y el receptor es el exalcalde JAIME AISLANT GIL en su abonado (3114072901). A su vez, del número 3214322907 -que corresponde al sujeto de nombre JOSÉ- también se confirmó comunicación con el abonado telefónico de JAIME AISLANT GIL, y se efectuaron las mismas exigencias económicas indebidas.

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En cuanto a la identificación del procesado, es bueno señalar que a **ELKIN ARNULFO PEÑA BERNAL** se le reconoció, mediante álbum fotográfico por los exalcaldes JAIME AISLANT GIL, AQUILES MIRANDA SALAZAR y el entonces Comandante de la Estación de Policía de San Martín de Loba, Intendente FABIAN SANCHEZ LEOPARDO, como la misma persona que se hizo presente en San Martín de Loba el día 9 de julio de 2015.

Identificación que concuerda con el dicho del conductor de la Fiscalía, JUAN CARLOS MANCERA, quien, bajo la gravedad del juramento, corroboró que efectivamente para el mes de julio del 2015, acompañó en calidad de conductor a su coordinador, ELKIN PEÑA BERNAL, porque se lo había solicitado y el viaje se realizó junto con un amigo de PEÑA BERNAL conocido como JOSÉ o el Dr.

Y, el testigo JUAN CARLOS MACERA, agregó que lo reconocía – a JOSÉ- porque es un sujeto que con frecuencia visita las instalaciones de la Fiscalía en Cartagena.

Por último, en el proceso también se estableció que era usual que **ELKIN PEÑA BERNAL** empleara el mismo modus operandi en cuanto a instrumentalizar a sus compañeros de trabajo para realizar citaciones a algunos comerciantes de Cartagena. Una de estas prácticas, las relató a plenitud en su jurada CESAR GABRIEL GÓMEZ OSORIO. Incluso, mostró copia del documento en el que **PEÑA BERNAL** se atribuía las calidades de servidor judicial.

IDENTIDAD DEL PROCESADO:

Se trata del ciudadano **ELKIN ARNULFO PEÑA BERNAL**, identificado con la C.C. No. 77.193.356 de Cartagena, nacido el 24 de diciembre de 1978 en Valledupar, vive en unión libre, dos hijos e hijo de ALIX BERNAL y ELKIN PEÑA, de profesión abogado y servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos, cumplía funciones de Coordinador de Seguridad.

CALIFICACION JURIDICA:

La Fiscalía General de la Nación acusó a **ELKIN ARNULFO PEÑA BERNAL** de dos punibles. Uno, CONCUSIÓN (Art. 404 del C.P.) y el otro, ABUSO DE FUNCIÓN PÚBLICA (Art. 428 del C.P.). La acción delictiva corresponde a un concurso de delitos (Art.28 del C.P.), CONCURSO HETEROGENEO SUCESIVO.

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También la Fiscalía atribuyó a **PEÑA BERNAL**, el agravante genérico previsto en el Artículo 58 del C.P. Numeral 10, esto es, la circunstancia de mayor punibilidad por haber actuado en coparticipación criminal.

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ACTUACION PROCESAL

La Audiencia de Imputación: la audiencia de imputación se celebró el día 8 de marzo de 2016. Se realizó ante el Juzgado Quinto Penal Municipal con Funciones de Control de Garantías de Bogotá. Los delitos por los que se acusó a ELKIN ARNULFO PEÑA BERNAL son el de CONCUSIÓN en concurso con ABUSO DE FUNCIÓN PÚBLICA y con circunstancias de mayor punibilidad por haber obrado en coparticipación (artículo 58 numeral 10) a título de coautor modalidad dolosa.

El escrito de acusación se presentó el día 8 de mayo de 2016 y el proceso se avocó por el JUZGADO 10 PENAL DEL CIRCUITO DE CARTAGENA, el día 2 de junio de 2016.

La Audiencia de Acusación: la primera sesión se llevó a cabo el día 1º de julio de 2016. En su momento, la defensa solicitó la nulidad del acto de imputación pues a juicio del togado se violaba flagrantemente el principio del *non bis in ídem* pues se argumentaba que la CONCUSIÓN contemplaba el ABUSO DE FUNCIÓN PÚBLICA. La Defensa apeló la negativa a reconocer la supuesta irregularidad sustancial, y quedó en suspenso la audiencia mientras el Tribunal Superior de Cartagena definía la discusión jurídica.

El Tribunal Superior de Cartagena, confirmó la negativa del Juzgado a reconocer nulidad en este caso. La decisión del Tribunal data del 9 de agosto de 2016 y se advirtió que se trataba de un asunto que debía debatirse en el juicio oral por guardar relación con la responsabilidad del procesado.

La audiencia de acusación se continuó, una vez confirmado el tema de la nulidad por el Tribunal Superior de Cartagena, y la acusación se formalizó -y finalizó- el día 28 de abril de 2020.

La audiencia preparatoria: Se celebró el día 29 de mayo de 2020.

La audiencia de Juicio Oral: se celebró los días 2 de julio de 2020, 4 de septiembre de 2020 y el día 9 de septiembre de 2020.-

DE LAS PRUEBAS:

El periodo probatorio en el juicio oral, se adelantó en las audiencias del 2 de julio de 2020 y el 4 de septiembre de 2020. Por ello, se reseñarán las probanzas practicadas

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en julio y luego las de agosto. Es bueno advertir que las partes no celebraron ESTIPULACIONES PROBATORIAS. Veamos:

PRUEBAS PRACTICADAS EL 2 DE JULIO DE 2020:

Documentales:

La Fiscal, al inicio de la audiencia por tratarse de documentos auténticos, aportó los siguientes documentos públicos: Resolución de nombramiento, acta de posesión y manual de funciones del servidor, **ELKIN PEÑA BERNAL.** El Juzgado admitió estas pruebas conforme a la preceptiva del artículo 425 del C.P. P. por tratarse de documentos auténticos (Corte Suprema de Justicia, Rad. 46278 del 1º de Julio de 2017).

Testimoniales:

1.- Testimonio de JOSÉ VICENTE COGUA ROJAS.

Es bachiller, perito en dactiloscopia y servidor de la Fiscalía del Grupo de Lofoscopia con 26 años vinculado al CTI. Se encargó de verificar la identidad del procesado mediante orden de trabajo (reseña dactiloscópica, datos biográficos y cotejo).

El testigo se le encargó la misión de verificar la identidad del procesado, en cumplimiento de la orden de captura en contra de **ELKIN PEÑA BERNAL**. Su informe de investigador de laboratorio FPJ-13, data del 7 de marzo de 2016.

2.- Testimonio de JAIME AISLANT GIL.

Es administrador de empresas agropecuarias con 67 años de edad para la fecha de su jurada. Narró los hechos y en especial, lo sucedido el día 9 de julio de 2015 cuando se presentó a su residencia **ELKIN PEÑA BERNAL** en la Patrulla de la Policía a notificarlo de un proceso en su contra, acompañado del Comandante de la Policía de San Martín de Loba y con otro funcionario. La notificación se efectuó en horas del mediodía y la citación se le hizo para la Fiscalía de Cartagena, el 30 de junio de 2015. El proceso se dijo que era por malversación de los fondos de la salud.

Ese día también se notificó a otros dos exalcaldes, pero a ellos no se les notificó personalmente por no estar en sus viviendas. Luego, cuando se desplazaban a Cartagena, los llamó el amigo de **ELKIN PEÑA BERNAL**, de nombre JOSÉ y los citó en una cafetería en inmediaciones de la Fiscalía.

El día 30 de julio de 2015, los embarcaron en un vehículo y les mostraron el proceso. Sin embargo, como RODRIGO MORALES DIAZ, uno de los exalcaldes y abogado,

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advirtió que ese proceso no los vinculaba pues en su cargo no administraron fondos de salud pues los dineros les llegaban directamente a las EPS.

En ese entendido los peticionarios de dinero indebido variaron las condiciones y les aseguraron que el tema era más grave pues existía una acusación en su contra por ser auxiliadores de grupos al margen de la ley y que había un testigo que los acusaba.

El testigo AISLANT GIL hizo claridad en cuanto a que la petición inicial era por cuantía de 100 millones, pero los exalcaldes negaron tener la posibilidad de reunir ese monto de dinero. Entonces acordaron el valor de 40 MILLONES DE PESOS y el pago en la medida de sus posibilidades.

Muy a pesar de la "rebaja", les insistieron la entrega de una parte de los dineros de manera inmediata y por eso, consiguieron 7 millones de pesos junto con RODRIGO MORALES DIAZ y AQUILES MIRANDA SALAZAR. La entrega se hizo en el vehículo y estaba JOSÉ y **PEÑA BERNAL**, este último conducía el vehículo.

El testigo JAIME AISLANT GIL asegura que posteriormente, en el mes de AGOSTO, se vieron obligados a girar 5 millones de pesos. El dinero se le envió a EFRAIN RIVEROS y la consignación la realizó JOSE DE JESUS RAMOS. Otros 10 millones de pesos también se consignaron a nombre de EFRAIN RIVEROS

Y, cuando se le preguntó a AISLANT GIL por qué entregaron dineros justificó su comportamiento alegando que trataron de neutralizar un escándalo en contra de su hermano pues se encontraba en medio de un proceso electoral pues aspiraba a la Alcaldía de San Martín de Loba. Con la perdida de las elecciones, no los molestaron más.

El testigo se encargó de dejar en claro en su jurada que el mismo ELKIN PEÑA BERNAL le anotó su abonado telefónico para permanecer en contacto y él lo dejó anotado a mano en el oficio de citación como se evidenció cuando la Fiscal le puso de presente el documento (Teléfono 3193209006).

Indica que en muchas oportunidades **PEÑA BERNAL** lo llamó para recordarle el compromiso e insiste en que el proceso electoral de su hermano era su punto débil pues su temor se fundaba en que muchos inocentes han sido perjudicados por los bandidos.

A la pregunta de la Fiscal de si averiguaron si en realidad tenían procesos en la Fiscalía, dijo que no y agregó que nunca los citaron a ninguna audiencia. También admitió haber entregado 7 millones, 5 millones y 10 millones.

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Nos confirma que realizó reconocimientos fotográficos tanto del señor **ELKIN PEÑA** como del sujeto llamado JOSÉ y precisó que en tres oportunidades se encontró con el procesado personalmente.

Por último, señala que los giros realizados se hicieron por intermedio del BANCO DE BOGOTÁ y EFECTY y lo hicieron a través de NICOLAS JOSÉ LOPERA, quien les prestó la cuenta.

3.- Testimonio de EDWIN FABIAN SANCHEZ LEOPARDO.

Es intendente de la Policía Nacional y tiene 21 años vinculado a la Policía. En la actualidad, se encuentra laborando en el Departamento del Valle, pero también trabajó en Bolívar. Señala que en el municipio de San Martín hizo las veces de Comandante de la Policía entre los años 2013 al 2015.

Recordó con exactitud los hechos relacionados con este caso pues sucedieron en junio de 2015, y por esos días lo trasladaron para el Municipio de Norosí (Bolívar). Ocurrió que unos señores se identificaron con el carnet de la Fiscalía y le solicitaron el favor de que los acompañara a entregar unas citaciones.

Dijo que se trataba de tres funcionarios. No tenían vehículo porque el acceso a San Martín de Loba se hace en lancha. Indica que sólo entabló comunicación con uno de ellos. Los acompañó a las diferentes direcciones de los exalcaldes. Él nunca se bajó del vehículo y recuerda que sólo encontraron al señor AISLANT GIL y que para esa época su hermano era aspirante a la Alcaldía.

En las otras partes que visitaron no encontraron a las personas. Agrega que a los exalcaldes los conocía y que tenía más presentes es el señor JAIME AISLANT GIL. Explicó que la persona con la que se comunicó y le solicito apoyo, dijo llamarse **ELKIN**. Señala que nunca se volvió a entrevistar o supo de él, hasta que la Fiscalía lo citó a Aguachica para una diligencia de reconocimiento o identificación fotográfica. Entonces lo reconoció como la persona que acudió ante él y que le solicitó ayuda para ir a entregar las citaciones.

Advierte que de la diligencia no hizo anotación en los libros de la entidad. Insiste en que todo le pareció normal y por eso no tomó mayor previsión.

La Defensa le preguntó sobre su reconocimiento de una persona llamada **ELKIN** y también se le preguntó sobre si el Intendente había tenido contacto con los exalcaldes. Confirmó lo de su encuentro con **ELKIN** y negó haber escuchado las conversaciones o diálogos sobre exigencias económicas. Sin embargo, la Fiscal en el contrainterrogatorio le solicitó que aclarara si había visto la entrega de las citaciones mencionadas y el testigo se ratificó. Dijo que sí lo presenció.

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4.- Testimonio de CÉSAR GABRIEL GOMEZ OSORIO.

Es servidor de la Fiscalía, hace parte del grupo de protección y está vinculado al ente acusador desde el 2005. Es el encargado de la unidad de soporte canino. Es bachiller académico.

Narró en su jurada que en el año 2015 también hacía parte del grupo de protección y estaba adscrito a la unidad de soporte canino y su coordinador era ELKIN PEÑA BERNAL.

Explicó que, entre otras, las funciones de su coordinador, eran las encargarse de realizar los diferentes apoyos de esquemas de seguridad y los estudios de seguridad de cada sede, pero que no era su función el llevar citaciones pues ese era un asunto ajeno a su misión (no estaba entre sus deberes llevar citaciones).

Se refirió a que **ELKIN PEÑA BERNAL** en una oportunidad lo llamó a la oficina de seguridad solicitándole que le llevara una citación a un establecimiento de comercio en el Mercado de Bazurto en Cartagena. Es claro en cuanto a que su Jefe no le entregó más dato ni instrucciones.

Sigue diciendo que el cumplió con la orden de llevar la citación. Uno de los trabajadores lo atendió, pero se mostraba muy reacio a recibir. Era una citación firmada por el señor **ELKIN**. Indica que le sacó copia y guardó el recibido de la citación. De regreso en la oficina, le hizo saber que le habían recibido la citación, pero siempre quedó con sospecha pues no estaba entre sus funciones ni las de él, ese tipo de diligencias.

La Fiscal le preguntó al testigo si él había entregado esa citación a la Fiscalía y si recordaba su contenido. El testigo admitió haber entregado la citación y dijo que la citación correspondía a ALVEIRO JIMENEZ y se le pedía preguntar en el primer piso por **ELKIN PEÑA BERNAL**.

En la práctica del testimonio se ingresó como prueba la citación. La misma estaba firmada por **PEÑA BERNAL** y dirigida a JUAN CARLOS RAMÍREZ con fecha junio 16 de 2015. La cita era para el 18 de junio de 2020, a las 9 am. y la autoridad que citaba era el TRIBUNAL DE LA UNIDAD NACIONAL ESPECIALIZADA DE JUSTICIA TRANSICIONAL.

También se le preguntó al testigo sobre si había tenido inconvenientes con el señor ELKIN PEÑA BERNAL, se refirió a que existían rumores de que el señor PEÑA BERNAL se iba a vengar. Se dijo además de que había viajado al municipio de San Martín de Loba pues se notó su ausencia y ALEXIS AVILA había comentado que se lo había notificado verbalmente.

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Y, se refirió a una segunda citación a nombre de ALVEIRO, citación que debió llevar ALEXIS AVILA, agente se protección,

Da cuenta de que en el tiempo que estuvo como coordinador se notaba mucho las reuniones que tenía en la oficina. Las dificultades con los compañeros eran por las programaciones del día a día.

El Defensor contrainterrogó al testigo sobre la citación en el mercado de Bazurto y cuestionó al testigo pues si esa acción le pareció sospechosa por qué no se opuso. El testigo advierte que notó la sospecha al momento del recibo y de regreso de la entrega es cuando analiza la situación.

En cuanto a por qué no denunció esos hechos, dijo que no tenía la certeza ni claridad respecto a qué se trataba la citación. La defensa le pregunto entonces por si había presenciado cuando **PEÑA BERNAL** realizó exigencias dinerarias y el testigo negó haber presenciado tal conducta del señor **PEÑA BERNAL**. Mucho menos, lo de las citaciones de los comerciantes de Bazurto.

5.- Testimonio de JORGE ARRIETA BERTEL.

Es un servidor de la Fiscalía con unos 15 años en la institución. Labora en el área de protección (desde agosto de 2005). En el año de 2015, su Jefe Inmediato era el señor **ELKIN PEÑA BERNAL**, como Coordinador Seccional Bolívar y la Dra. MARY ELCY CAÑAS SILVA como líder regional.

Explicó que las funciones del Coordinador eran las de realizar la programación de los turnos, supervisión del personal en los puestos de trabajo y parte de los estudios de seguridad en las instalaciones. Dijo que no tenía labores judiciales ni atender a usuarios o testigos.

Sobre si había tenido conocimiento sobre hechos de corrupción, el testigo respondió negativamente. En su momento, en la Fiscalía –su sitio de trabajo- se habían hecho unos comentarios en los que se decía que **PEÑA BERNAL** había perdido unos dineros de unos políticos, pero se trataban de comentarios de pasillos.

Se refirió a que a HUMBERTO RANDIAL le había realizado consignaciones a **PEÑA** BERNAL.

Precisó que no ha tenido diferencias con el procesado sino discusiones normales sobre la programación o por el acompañamiento de detenidos pues esa responsabilidad no era de esa unidad y ello debía ser avalado por la coordinadora regional.

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Da cuenta que cuando se reintegró le reclamó porque no lo saludaba y él le dijo que no lo hacía porque no eran amigos ni enemigos. Narró que le ayudó a vender un vehículo y le hizo contacto con FABIAN ARNEDO.

Admitió que de los actos de corrupción que conoció en contra de **PEÑA BERNAL** todos eran cometarios de pasillo. Descartó denunciar a **PEÑA BERNAL** por los temas de su dirección que no compartía porque él era un funcionario de Dirección, pero él lo informó a la líder regional y nunca atendió esas órdenes.

Se le preguntó por RANDIAL y dijo que **ELKIN PEÑA BERNAL** le pidió el favor de que le consignara unos dineros. Que también conoció de los desplazamientos de **PEÑA BERNAL** al sur de Bolívar.

Finalmente, y en respuesta al defensor, el declarante admitió que en algunas oportunidades acompañó a **PEÑA BERNAL** en comisiones a las ciudades de Barranquilla, Magangué y Santa Marta.

6.- Testimonio de JUAN CARLOS MANCERA GUZMAN.

Dijo laborar para la Fiscalía en el área de protección desde el año 1999. Precisó que para el año 2015, cumplía la función de escolta del Director de Fiscalía y conductor. Su Jefe Inmediato era **ELKIN PEÑA BERNAL**. Aceptó haberse desplazado a San Martín de Loba en apoyo del Jefe de Seguridad **ELKIN PEÑA BERNAL** en el año 2015 sin precisar la fecha.

Ese día, su coordinador, **ELKIN PEÑA BERNAL** lo recogió a las 4.00 am y en el vehículo venía otra persona al que le dice "el Dr.". Llegaron al Banco Magdalena y en una chalupa se trasladaron a San Martín de Loba.

Hablaron con el Vigilante porque la Fiscal de Turno no estaba en el momento. Le dijeron que era una revista de seguridad. Luego, llegaron a hablar con el Comandante de Policía y él los acompañó a repartir varias citaciones. Advierte que el Director Seccional tenía conocimiento del viaje y se desplazaron en un vehículo oficial.

El particular "El Dr." ya venía con **PEÑA BERNAL** y él manejó hasta el Banco Magdalena. Llegaron al medio día a San Martín de Loba. **PEÑA BERNAL** le hizo saber que se iba a realizar una visita a la sede, visitas que se realiza cada tres meses. La Fiscal del lugar les tramitó el cumplido el mismo día.

Manifestó que no sabía que se iban a entregar citaciones. Llegaron a la Estación y el comandante les prestó colaboración. Al momento de la entrega de las citaciones, como estaba en la parte de atrás del vehículo, no se bajó.

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Hizo claridad que solo un exalcalde estaba y por ello, las otras citaciones se entregaron a familiares. Indica que el procesado **PEÑA BERNAL** sí se bajó y estuvieron hablando con el citado. No escuchó de que hablaron. Confirma que **PEÑA BERNAL** habló personalmente dos minutos o un minuto.

En San Martín estuvieron como dos horas y después de cuatro de la tarde salieron desde el Banco Magdalena para Cartagena. Deja en claro que el encargado de gestionar las comisiones es el Jefe y este le había dicho que no había problemas. Con todo, la Comisión no se pagó muy a pesar de llevar el cumplido pues había un desacuerdo.

Dijo que es usual que a los jefes de seguridad se les solicita apoyos para citaciones. Le pareció un procedimiento normal. Nunca ha tenido inconvenientes con **PEÑA BERNAL** y es su amigo pues es "buen jefe".

En el regreso, el testigo dijo que como se sentía cansado le entregó el timón a **ELKIN PEÑA BERNAL** como en Plato. Llegaron a Cartagena como a la 1:00 am. Niega conocer de citaciones firmadas por el Jefe de la Seguridad.

Admitió que en la Fiscalía de Cartagena se escuchaban comentarios de que había actos de corrupción, pero no la constaba que su jefe haya recibido dinero pues son solo rumores de pasillos. No tiene ningún inconveniente con su jefe.

En contrainterrogatorio confirmó que era escolta del Director Seccional VICENTE GUZMAN y que se desplazó en el vehículo de la Dirección (KGF 921) y que el director autorizó el préstamo del vehículo para ir a San Martín de Loba.

Se le preguntó por el trámite del pago de los viáticos ante el Director Administrativo, Dr. IVAN MORALES. Señala que no se pagaron, supuestamente porque la autorización correspondía a Bogotá. Explica que tal gestión no fue nada oculta (la conocía tanto el Director Administrativo como el Director Seccional).

El defensor se refirió a un oficio en el que **PEÑA BERNAL** le reclama al Director Administrativo por el no pago de los viáticos y da cuenta de que sí se informó al nivel central. Explica que por vacaciones del titular y con ocasión del encargo de la Dra. MARCELA YEPES, esta, por sus múltiples ocupaciones, sólo recibía solicitudes con tres días de anticipación.

La defensa cuestionó al testigo sobre si el desplazamiento a San Martín de Loba se había realizado a espaldas del Director Seccional y del Director Administrativo, y el declarante lo negó.

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En cuanto a por qué en su entrevista se refirió (a) El Dr. como EFRAIN RIVERO, el testigo desmiente tal situación y desconoce las razones por las que se hizo tal anotación.

Y, se vuelve a referir a que iba en la parte de atrás del vehículo y que una de las personas visitadas era un exalcalde, pero no recuerda su nombre. De la conversación dice que duró uno o dos minutos y que no escuchó que se hiciera peticiones dinerarias.

Señala que en el recorrido casi no se habló y en especial, **PEÑA BERNAL** y (a) El Doctor no hablaron de la misión cumplida en San Martín de Loba en cuanto a las notificaciones y volvió a calificar de normal hacer notificaciones por parte del coordinador de seguridad cuando se hacen desplazamientos a otros municipios.

Descartó conocer de hechos de corrupción y dijo que lo que se escuchaba eran rumores. Sin embargo, en su entrevista se refirió a lo que se decía en contra de **PEÑA BERNAL**.

Finalmente, en cuanto al contrainterrogatorio, concluye que el Comandante de la Policía sí se bajó del automotor al momento de notificar al exalcalde y explica que se quedó a un lado. Pero aclara que el Director de Fiscalía no sabía que iban a notificar a los exalcaldes y que el Director Administrativo era el encargado de avalar las comisiones, pero él como subalterno confió en el trámite de **PEÑA BERNAL**.

7.- Testimonio de OSCAR DARIO TARQUINO BARON.

Es un servidor de la Fiscalía General de la Nación adscrito a la fecha a la Dirección Especializada contra el Narcotráfico y labora desde el 2014 con el ente acusador. Precisó que cuando laboró en la Dirección para la Seguridad Ciudadana (2014 a 2019) se desempeñó como verificador y analista.

En el año 2015 se le asignó un caso que llegó a la Coordinación de análisis criminal para apoyo a los Despacho de la Dirección de Seguridad Ciudadana y en el que, al parecer, la información daba cuenta de que un servidor de la Fiscalía Seccional Bolívar había realizado una solicitud de dinero a unos exalcaldes de un municipio del sur de Bolívar.

Indica que el funcionario sindicado se identificó como **ELKIN PEÑA BERNAL** y su accionar lo realizaba en compañía de otro ciudadano. Como se decía que los exalcaldes les habían hecho entregas de dinero en un Banco y en la empresa EFECTY, la investigación se basó en búsqueda selectiva en base de datos abierta y búsqueda selectiva en base de datos a los diferentes operadores de telefonía celular y a las entidades de remisión de giro.

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También se desplazaron hasta el municipio de San Martín de Loba a realizar entrevistas y reconocimiento en álbum fotográfico. Reitera que la investigación empezó en septiembre u octubre de 2015. Entrevistaron a unos exalcaldes que dieron cuenta de unas situaciones irregulares en las que un servidor les realizó unas exigencias de dinero que se materializaron de manera física o por consignación o giro. La investigación abordó los análisis de la telefonía.

Los actos investigativos quedaron documentados en informes. La investigación la realizó con el compañero WILMER MENDEZ, pero él hizo las veces de investigador líder.

A partir del análisis de la fuente no formal (primer informe), la Fiscalía imparte unas ordenes de policía judicial. La orden más relevante corresponde a la entrega de información por la empresa VIRGIN de un número 319. En San Martín de Loba realizaron las entrevistas a los exalcaldes en las que se da cuenta de las exigencias económicas realizadas por el señor **ELKIN**. Afirma el testigo que los exalcaldes les aportaron los recibos de las transferencias que realizaron a través de un señor que les hacía el favor de consignar en Bancos y la entidad EFECTY.

Y, cuando se le pone de presente por la Fiscal el informe elaborado por el investigador que rinde la presente Declaración, se asegura que el señor JAIME AISLANT GIL les entregó la citación que les llevó **ELKIN PEÑA BERNAL** y dos recibos de giros realizados ante la empresa EFECTY (6 de agosto de 2015) y dos comprobantes de consignación del Banco de Bogotá (10 de agosto de 2015).

También se le puso de presente por la Fiscal, un informe donde se da cuenta de una indagación en base selectiva de datos con respecto a DEWIN abonado de la empresa CLARO y de **ELKIN PEÑA BERNAL**, cuyo teléfono era de la empresa VIRGIN.

El informe presenta dos partes, el primero, data del 21 de diciembre de 2015, expedido por la empresa de telefonía CLARO y corresponde al número 3214322907 y era el que utilizaba el señor DEWIN y desde donde llamaba al señor JAIME AISMANT. El segundo, corresponde al Número telefónico 3193209006 y se certifica que pertenece a **ELKIN ARNULFO PENAL BERNAL**.

En el informe se plasmó una relación de las llamadas entrantes y salientes. También se da cuenta de la cantidad de llamadas que se realizaron entre JAIME AISLANT GIL y **PEÑA BERNAL.**

El número del señor JAIME AISLANT GIL es 3114072701.

Contro Plazoleta Bentos Biché - Complejo Indicial SPA - Oficina 402 Centro Plazoleta Benkos BighágenganBdfigaJudicial SPA - Oficina 402 En su declaración, conforme al informe de policía judicial, da cuenta de los datos de cada llamada (día, hora, duración de la llamada y cuantas se hicieron en total). Las llamadas realizadas son en total 20, conforme a la empresa VIRGIN. Los informes tenían sus anexos (respuesta de las empresas de teléfonos).

En cuanto a la empresa EFECTY y los giros que se enviaron a EFRAIN RIVEROS, los exalcaldes dijeron que para los envíos se valieron de un tercero. El Informe es de fecha 21 de enero de 2016 y lo suscribe tanto el testigo como su compañero WILMER MENDEZ. La respuesta la entregó la empresa EFECTY con relación a la información aportada por JAIME AISLANT en su entrevista.

Una vez cotejada las dos informaciones se determinó que sí se realizaron unos giros por parte del señor JOSE DE JESUS RAMOS BERRIO al señor EFRAIN RIVEROS GONZALEZ. Un giro por valor de \$3.089.700 y el otro giro, por \$1.910.300. Los dos giros se hicieron el 6 de agosto de 2015. El informe incluía los anexos que corresponden a los documentos de EFECTY.

Se le preguntó al testigo TARQUINO BARON por las labores de policía judicial, correspondientes a los reconocimientos fotográficos y expuso que en febrero de 2016 se trasladaron a San Martín de Loba, recibir entrevistas y realizar el reconocimiento.

Recuerda que AQUILES MIRANDA y JAIME AISLANT, lograron reconocer fotográficamente a **PEÑA BERNAL** como la persona que había realizado las exigencias económicas. El informe mencionado tiene fecha de 11 de febrero de 2016.

Por último, en cuanto a la respuesta de por qué no se reconocieron los viáticos a los servidores de la Fiscalía Seccional de Cartagena, el testigo señaló que se obtuvo una certificación expedida por JORGE EDUARDO ROJAS PINZÓN, Director Nacional de Protección, y data del 25 de enero de 2016 (vía correo electrónico). El informe de la Dirección Nacional de Protección tiene un equívoco, pero la fecha correcta es la fecha del correo. Se argumentó que había consultado a la líder nacional y ella manifestó que no había sido autorizada la comisión para los días 13 y 14 de julio de 2015.

Se preguntó por el abonado telefónico del señor AISLANT GIL que correspondía a la empresa de telefonía CLARO.

Se le hizo una pregunta complementaria sobre las diligencias de reconocimiento fotográfico y el testigo hizo claridad en cuanto a la manera cómo se realizó el procedimiento.

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8.- Testimonio de WILMER ENRIQUE MENDEZ MORENO.

Es tecnólogo en investigación Criminal. Labora para la Unidad Especial de Investigaciones. Tiene unos 8 años de labores en la Fiscalía, pero antes trabajó para el DAS. Ha sido Técnico Investigador y ha realizado actividades de Policía Judicial. Estuvo laborando en la Delegada para la Seguridad Ciudadana (año 2015).

En la Delegada para la Seguridad Ciudadana hizo las veces de verificador y conoce el porqué de la citación pues corresponde a un caso adelantado por la Delegada de Seguridad Ciudadana. Dice que se recibió una denuncia de la Seccional de Bolívar y apoyó a su compañero TARQUINO. Su labor consistía en confirmar o desvirtuar la información recibida.

En cuanto a las actividades adelantadas da a conocer que se realizaron entrevistas, reconocimientos fotográficos, inspección a lugares y búsqueda selectiva en base de datos. Recuerda que la investigación señalaba a un funcionario de la Seccional Bolívar. Sus actividades de Policía Judicial quedaron documentadas. El servidor de la Fiscalía investigado respondía al nombre de **ELKIN ARNULFO PEÑA BERNAL** y agrega que incluso, le correspondió realizar su captura.

Y con respecto a las labores de investigación, recuerda haber solicitado información a un Banco y para precisar, solicitó que se le mostrara el documento para refrescar memoria.

El informe data del 25 de abril de 2016, y corresponde a una búsqueda selectiva en base de datos en el Banco de Bogotá. Se determinó la existencia de un giro a nombre de EFRAIN RIVEROS por \$.4.914500, la transacción se realizó el día 10 de agosto de 2015. El encargado de realizar el giro se identificó como JOSE NICOLAS LOPERA MONTOYA. También se realizó una búsqueda selectiva en base de datos en la Empresa de Telefonía CLARO. La búsqueda arrojó que el número de celular usado, corresponde al 321432 2907.

Otra de las actividades realizadas correspondió a un reconocimiento fotográfico. Recuerda haber adelantado un procedimiento de reconocimiento fotográfico, en el que participaron AQUILES MIRANDA, JAIME AISLANT y un funcionario de nombre JUAN MANCERA.

La Defensa preguntó sobre el reconocimiento y en especial, sobre las personas encargadas de tal reconocimiento y fue enfático en dar claridad en cuanto a que en esa diligencia no participó el investigador TARQUINO. Es más: Aclara que solo una persona realizó el reconocimiento pues a los otros, no se les consiguió.

Centro Placeleta Benkos Bioho - Compleje Judicial SPA - Oficina 402 Centro Plazoleta Benkos Biohtágengampdesea Judicial SPA - Oficina 402 Terminó su jurada concluyendo que desconoce los reconocimientos adelantados por su compañero OSCAR TARQUINO pero que en su ejercicio JAIME AISLANT GIL reconoció a DEWIN CASTILLO.

PRUEBAS PRACTICADAS EL 4 DE SEPTIEMBRE DE 2020:

9.- Testimonio de SORLEY SUAREZ ARIZA.

Es investigadora de la Fiscalía. Tiene 8 años de estar vinculada a la Fiscalía y antes estuvo vinculada por 10 años al DAS. Es Ingeniera de Sistemas. Realizas actividades de análisis, regularmente de abonados telefónicos.

En el año 2015 y 2016, laboraba en Seguridad Ciudadana (laboró en esa unidad 2014-2019). Sabe el porqué de su Jurada pero no recuerda con precisión. Indica que se trató de un análisis Link.

Y, en el desarrollo de la Jurada, a la testigo se le puso de presente el informe. Reconoció su firma, contenido del documento y fecha del mismo: 23 de abril de 2016. El objetivo de la diligencia –Informe- era efectuar análisis link e ilustración de flujo de llamadas para los abonados telefónicos **3114072901**, **3214322907**, **3193209006 y 3126042202**. Estos son los resultados que se obtuvieron de esas indagaciones:

- Abonado **3114072901**, el operador reportó como propietario al señor JAIME AÍSLANT GIL de San Martín de Loba (Bolívar), con fecha de activación 29 de septiembre de 2004 y con un estado activo para la fecha. El registro de llamadas entrantes y salientes (2 archivos). Del 1 de julio de 2015 a 30 de septiembre de 2015 y del 1 de octubre de 2015 a 15 de enero de 2016.
- Abonado **3214322907**, el operador no reporto datos biográficos, con un registro de llamadas entrantes (2 archivos) de 25 de mayo de 2015 y finaliza el 31 de julio de 2015 y del 1º de agosto de 2015 y finaliza el 25 de noviembre de 2015. Las llamadas salientes: del 25 de mayo de 2015 a 31 julio de 2015, y 1º de agosto de 2015 y finaliza el 25 de noviembre de 2015.
- Abonado 31932090006, propietario ELKIN ARNULFO PEÑA BERNAL, quien presentó como numero adicional 3126042202. Activación: 24 de agosto de 2014.
- Abonado 3126042202, a nombre de ELKIN ARNULFO PEÑA BERNAL, activo desde el 9 de enero de 2008. Se registra un cambio de pre-pago a pos-pago. Fecha de activación 22 de marzo de 2014. Plan sin límite. Presenta un registro

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de llamadas entrante 29 de abril y 28 de julio de 2015, y del 9 de julio al 8 de octubre de 2015. Las salientes: el 9 de mayo de 2015 y 28 de mayo de 2015.

Se detalla el flujograma o tráfico de llamadas que se presentó con el abonado telefónico de JAIME AISLANT GIL con los otros abonados telefónicos.

FLUJOGRAMA ABONADO TELEFONICO 3114072901

El análisis consta de varios números celulares, por eso se tiene que las llamadas para el **3114072901,** cuenta con 4.214 registro, con fecha de inicio 1 de julio de 2015 al 15 de enero de 2016.

El análisis con las líneas objeto de estudio **321 432 2907 y 3193209006.** Tenemos que se tiene que respecto del **3214322907** se hicieron 40 llamadas entrantes y 30 salientes, y con el número telefónico **3193209006**, se obtuvieron 21 llamadas entrantes y 4 llamadas salientes.

Después de lo anterior, se realiza una tabla donde se hace el detalle de las llamadas, y se especifica tanto el número de la línea como el tipo de llamadas, su fecha, hora, duración y receptor. Además, si se trata de llamadas entrantes o salientes y la ubicación del abonado telefónico.

El flujograma anterior, refleja y muestra el flujo de llamadas del abonado telefónico **3114072901**, quién es el receptor de las llamadas y el originador de la misma y, para este caso, la persona que llama es el **3190132019**.

La testigo, con suficiencia, explicó los flujogramas o el tráfico de llamada entre los abonados telefónicos del procesado y los de la víctima JAIME AISLANT GIL. Todo esto para concluir que el gráfico es el reflejo de que sí medio comunicación tal como lo denunció la víctima. En la tabla se muestra la fecha exacta de la comunicación, el número de las llamadas entrantes y salientes para cada uno de los abonados telefónicos analizados en particular. En el informe elaborado por la testigo se grafica muy bien el tráfico de las llamadas.

10. Testimonio de JENNY PAOLA URREA ROMERO.

Es Psicóloga. Labora en la Fiscalía desde 2012, antes estaba adscrita al DAS. La testigo se encargó de realizar el ANALISIS Y CONTROL TELEMATICO, consistente en interceptación telefónica de los abonados telefónicos **3126042202**, **319320906**, **3176470663**, **3506949903** y **301623375**, de acuerdo a orden de la Fiscalía (monitoreo, escucha y análisis).

-Contro Plazoleta Benkos Bioló - Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos Biortágen Compoitára Judicial SPA - Oficina 402 Reconoció el Informe puesto de presente por la Fiscal en su interrogatorio, y que corresponde al análisis de las interceptaciones. El informe data del 11 de febrero de 2016. El objeto de la tarea encargada, correspondió a la interceptación y análisis de tales comunicaciones. El resultado está contenido en 3 DVD (autenticado y parte integral de la jurada) y se elaboró una síntesis de lo más relevante en las comunicaciones.

La testigo realizó el ejercicio de confrontar las síntesis con las grabaciones de la interceptación y para tal efecto, se escuchó el audio de las interceptaciones, en la audiencia de juicio oral.

De los números monitoreados se concluye que:

- El abonado telefónico 3126042202, de acuerdo a la interceptación, pertenece a ELKIN ARNULFO PEÑA BERNAL.
- El abonado telefónico **3176470663**, de acuerdo la interceptación se tiene que le pertenece a **ELKIN PEÑA BERNAL**, da a conocer que, es Jefe de Seguridad de la Seccional Bolívar.
- El abonado telefónico **319320906** de acuerdo con la interceptación pertenece a **ELKIN PEÑA BERNAL**.
- El abonado telefónico 3506949903 no se presentaron registros, ni llamadas, ni mensajes y no se presenta DVD.
- El abonado telefónico 301623375 pertenece a una empresa de minutos, no se realizan labores ilícitas, por ello no se presentó DVD.

Se concluye que las líneas que presentaron registros y que se guardaron en DVD, son: 3126042202, 319320906 y 3176470683.

En uno de los audios **ELKIN PEÑA BERNAL** se identifica como Jefe de Seguridad de la Fiscalía. En el segundo audio se hace referencia a puestos de vigilancia y de cuadrar una reunión a fin de mes.

En otro audio se habla de haber realizado contacto con esa gente, se refieren a puestos de vigilancia y de no querer quedar bien todo el mundo (se refieren a contratos de vigilancia).

También se escuchó en la audiencia un tercer audio en el que **ELKIN** habla con RAFAEL CARABALLO, sobre un sujeto que se fue para un crucero por las Islas del Caribe y que se fue sin avisar. **ELKIN** manifiesta que él está listo y de que se está burlando y pasado de calidad. Se habla de disolución de la empresa y que por eso hay que proceder rápido de verdad.

Seguidamente se escuchó otro audio en el que se habla en lenguaje cifrado. Dicen que les van a mandar un mensajero y que después de eso es que se sabe si van a jugar el partido. ELKIN comenta que los manes dicen que varias veces los han invitado a jugar y la gente les ha quedado mal.

En otro audio de fecha 18 de diciembre de 2015. **ELKIN** dice, entre otras cosas, que va a una reunioncita con unos manes y que anoche les dijo un poco de vainas y lo acaban de citar en un punto.

En un nuevo audio, **ELKIN** da a conocer que se está quedando en un hotel por el Bosque, por los lados de Coca-Cola y se citan en Kokorico. En otro audio se habla de la herramienta que dio a guardar. A la vez, conversa con CAROLINA, y da a conocer que lo acaban de llamar de la oficina.

Otro audio en el que se menciona de un magistrado que llega y que hay que recoger. De un amigo de Mc Donald. De que eso es un hecho y que el lunes hacen el desembolso de término fijo y que le dieron una cesión de derechos hereditarios o se lo endosaron. Finaliza diciendo que es mejor no hablar por aquí.

El siguiente audio corresponde a una conversación con una mujer en la que se menciona a EFRAIN, y donde promete no hacer más favores a más a nadie pues se "mamó". Hablan de la captura de un tal alias el Fito de Amberes.

Por último, **ELKIN** habla con un hombre desconocido y le da a conocer que no tiene plata. Se refiere acerca de una estrategia con respecto a un abogado y que ellos le dijeron que "eso está en el presupuesto" y se amenaza con mandar a todo el grupo de administración pública.

DE LOS ALEGATOS DE LAS PARTES;

DE LA FISCALÍA:

Inicia la Fiscal su intervención, concluyendo que en el proceso se probó más allá de toda duda razonable tanto la materialidad de los delitos acusados, como la responsabilidad del procesado. Expresa que **PEÑA BERNAL** ha sido plenamente identificado en este juicio por el testigo JOSÉ VICENTE COGUA y reconocida su calidad de servidor público, con los documentos que ingresaron al juicio oral y en los que se advierte que el procesado es un agente de protección adscrito a la Fiscalía General de la Nación.

Contro Plazoleta Benkos Biohó - Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos Biontágen Competing Judicial SPA - Oficina 402 En cuanto a los delitos por los que se acusó a **PEÑA BERNAL**, indica que el delito de CONCUSIÓN se probó su realización pues abusando de su cargo y de su función como servidor de la Fiscalía, constriñó o exigió a los exalcaldes de San Martin de Loba, señores RODRIGO MORALES, AQUILES MIRANDA y JAIME AÍSLANT GIL, una suma de 40 MILLONES DE PESOS, a cambio de ayudarles a que un supuesto testigo no declarará en contra de ellos. El supuesto testigo aseguraría que los exalcaldes eran financiadores de grupos paramilitares.

En ese accionar, el procesado visitó a los exalcaldes en su residencia de San Martín de Loba, el día 9 de julio de 2015, y les entregó citaciones con el fin de comparecer en Cartagena el 30 de julio de 2015. Lo cierto es que únicamente entregó personalmente la citación a JAIME AÍSLANT GIL pues los otros exalcaldes, no estaban en sus residencias.

Las citaciones en ese caso, las dejó con terceras personas, como lo acreditó el Intendente de la Policía, FABIÁN SÁNCHEZ LEOPARDO y JUAN CARLOS MANCERA, este último viajó en calidad de conductor en compañía de un particular. El Intendente, los guió a las residencias donde se entregaron las citaciones. En su testimonio JAIME AÍSLANT GIL explica que recibió en sus manos la citación de parte del funcionario **ELKIN PEÑA BERNAL**, y anotó con un lapicero en el mismo documento, el número telefónico 319 320 9006.

El testigo JAIEM AISLANT se refirió a cómo fue objeto con sus compañeros exalcaldes de las exigencias que les hizo **ELKIN PEÑA BERNAL** y de la presión que ejercieron, él y su compañero porque necesitaba el dinero para ese mismo día. Incluso, les mostró un proceso en el cual existían irregularidades en la salud y que correspondía al municipio cuando fungían como alcaldes, pero el Dr. RODRIGO MORALES, les hizo saber que tal posibilidad era imposible porque los dineros se entregaban por giro directo y es cuando les dan a conocer la falsa versión del proceso en la justicia transicional.

Se le preguntó a AISLANT GIL si existió esa investigación y el testigo negó tal hecho, pero accedieron al chantaje en el entendido de que no era conveniente para ellos verse involucrados en un escándalo, por encontrarse en plena campaña política de uno de sus hermanos -FIRUS AÍSLAN GIL-.

La Fiscal se refirió a que el día anterior a la citación, el 29 de julio de 2020, el procesado contacto a AISLANT GIL, y ello se corroboró por el investigador OSCAR TARQUÍNO, en el registro de llamadas. Luego. por eso el 30 de julio se reunieron en una cafetería antes de llegar a la Fiscalía y abordaron un vehículo donde estaba **ELKIN PEÑA BERNAL** y la persona que se presentaba como JOSÉ e hicieron la petición o exigencia económica, y que debía realizarse la entrega ese mismo día. Las victimas accedieron, aunque les correspondió acudir a sus familiares, logrando

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recaudar 7 millones en efectivo y entregaron el dinero, ese mismo día en horas de la tarde a ELKIN PEÑA BERNAL.

También realizaron 4 giros, y ello se probó con el testimonio de OSCAR TARQUINO, en el mes de agosto del 2015. El señor JESÚS RAMOS giró a nombre de EFRAIN RIVEROS, las suma de \$3. 089.700 y \$1. 910. 300. Total: 5 millones de pesos.

Y, del Banco de Bogotá al señor EFRAÍN RIVEROS, en el mes de agosto de 2015 se le giraron \$4. 914. 500 y \$2.948.000, por el señor JOSÉ NICOLAS LOPERA, giros producto de las exigencias de **ELKIN PEÑA BERNAL**, peticiones que seguía realizando por llamadas telefónicas.

Después de la primera entrega, también hacía llamadas el sujeto que se identificó como JOSÉ.

El testigo, JAIME AÍSLAN GIL, reconoció en álbum fotográfico tanto a **ELKIN PEÑA BERNAL** como a "JOSÉ", esta última persona la Fiscalía lo identificó como DEWIN CASTILLO. Están probadas las entregas de dinero, las exigencias económicas del servidor público a cambio de una ayuda en un proceso inexistente de la justicia transicional, por un total de 40 millones de pesos. Se probó que se entregó la suma de 7 millones de pesos en efectivo y giros a través de EFRAÍN RIVERO por la suma de \$12. 862. 500, para un total de \$19.862.500. Ese dinero entregado por las víctimas, entró a la esfera de **ELKIN PEÑA BERNAL**.

La Fiscalía probó que esa suma de dinero, se entregó y se cobró, por lo que gana credibilidad el testimonio de JAIME AISLANT GIL y el investigador que, en la búsqueda selectiva en base de datos de abonados telefónicos y llamadas, probó la relación telefónica existente entre **ELKIN PEÑA BERNAL** y JAIME AÍSLANT GIL.

Frente al ABUSO DE LA FUNCIÓN PÚBLICA con suficiencia de pruebas, en el juicio oral se demostró que el procesado. servidor público, abusó y se aprovechó como coordinador de seguridad de la Fiscalía en la sede Cartagena, que engañó a su compañero JUAN CARLOS MANCERA para que lo condujera a San Martín de Loba y en el lugar, entregó unas citaciones. Sin embargo, ELKIN PEÑA BERNAL jamás les dijo en realidad que iban a realizar esas citaciones. A la Fiscalía General de la Nación, les hizo creer que viajaría en una fecha que no lo hizo, por lo que no se hizo el pago de la comisión pues no fue autorizada por ser extemporánea, maniobras que quedaron al descubierto pues no estaba ejerciendo las funciones de su cargo si no abusando de esa función pública.

Y, no era la primera vez que el procesado hacía estas citaciones sin tener tal función como así lo declararon, CESAR GÓMEZ OSORIO y JORGE ARRIETA, quienes eran subordinados de ELKIN PEÑA BERNAL, y se demostró por parte de la Fiscalía las

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múltiples llamadas, entre "JOSÉ" y **PEÑA BERNAL** pues con la búsqueda selectiva se ratificó la veracidad de la declaración de JAIME AÍSLANT GIL, constreñido a una exigencia económica.

Las interceptaciones telefónicas realizadas por las testigos JENNY UREA y SORLEY SUAREZ, dejan entrever claramente el proceder de **ELKIN PEÑA BERNAL**. Además, en unas de las llamadas se hace referencia a EFRAÍN quien puede coincidir con la persona a quien se le hicieron los giros, y todo hace más probable la teoría inicial, habiendo cumplido con la promesa de alegatos de apertura se probó la existencia de los delitos de CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA y la responsabilidad del procesado. Lo que sigue es una sentencia condenatoria.

MINISTERIO PÚBLICO:

El Delegado del Ministerio Público estima que las pruebas decantas en juicio, no dan lugar a dudas ya que se ha forjado un grado de conocimiento en cuanto la responsabilidad del procesado. Está acreditada la tipicidad objetiva y subjetiva, acorde con el marco fáctico de la acusación, y examinada la prueba, no emerge duda alguna de los tópicos estructurales de la conducta. Los hechos se muestran desde la perspectiva probatoria son tan claros que no existe duda alguna. La base incriminatoria data de 2015 y, se involucra a **ELKIN PEÑA BERNAL** como servidor de la Fiscalía. En este caso, empleó tiempo, recursos y medios para desplazarse sin autorización desde Cartagena al municipio de San Martín de Loba. Luego, estando allá, contactó a exalcaldes y los abordó, manifestándoles sobre posible malos manejos de los rubros de la salud que podían dar lugar a investigación penal y la intención de un miembro de grupos armados, de declarar en su contra ante la justicia transicional. El procesado les exigió una suma de dinero, como se corrobora con la prueba documental y prueba testimonial.

En efecto, se logró acreditar que los señores JAIME AÍSLANT, RODRIGO MORALES y AQUILES MIRANDA acordaron con el procesado, a fin de satisfacer su exigencia económica y evitar que un supuesto testigo no declarara contra ellos, como colaboradores de paramilitares, les exigió la suma de 40 millones de pesos. Los hechos tienen su punto de partida el día 9 de julio de 2015, cuando el servidor público se desplazó al sur de Bolívar con recursos estatales y empleó un vehículo con la finalidad de comunicar una supuesta cita judicial, utilizada para crear situaciones que no fueron ciertas, y se les hizo un primer desembolso por 7 millones de pesos el día 30 de julio de 2015.

Esta suma de dinero se recibido por el tercero quien la Fiscalía identifica como JOSÉ, y se realizaron otros pagos a favor de EFRAÍN RIVEROS, todo esto producto de las exigencias económicas realizadas mediante llamadas telefónicas. La prueba técnica arroja aspectos muy dicientes como el número de llamadas realizadas al señor JAIME

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AISLANT GIL, prolongadas en el tiempo y que corroboran el motivo de las exigencias económicas. Además, el tráfico de comunicaciones se presenta dentro del periodo y el contexto factico en el cual se produjo el abordaje ilegal del servidor.

Finalmente, para el delegado del Ministerio Público, en cuanto al término de prescripción señala se debe aumentar a la mitad y que, además, en el evento de proferir sentencia condenatoria y con el fin de asegurar el cobro coactivo de las penas de multa, se debe disponer remitir la primera copia a la jurisdicción coactiva de la dirección ejecutiva seccional de administración judicial de la Seccional Cartagena

EL DEFENSOR:

Solicita que la sentencia sea absolutoria por la existencia de duda razonable, muy contrario a lo manifestado por la Fiscal y Ministerio Público pues no se dan los requisitos establecidos para el fallo condenatorio. Admite que, si bien se acreditó la existencia de una conducta punible, la responsabilidad de **ELKIN PEÑA BERNAL**, lo circunda una duda, si se tiene en cuenta los estándares de conocimiento más allá de toda duda razonable en cuanto a una conducta punible y la responsabilidad.

En cuanto a la identidad de **PEÑA BERNAL**, estima que no se acreditó que la persona que estaba siendo procesado sea la que realizó la conducta punible. Es evidente entonces que la carga de la prueba le corresponde a la Fiscalía y en este caso, consiste en demostrar que **PEÑA BERNAL** es la misma persona que realizó las exigencias dado que en la acusación se planteó que el procesado realizó exigencia a unas personas y, sin embargo, solo se supeditó a lo dicho por el señor JAIME AISLANT.

A juicio de la Defensa, la Fiscalía tiene la carga de demostrar que **ELKIN PEÑA BERNAL** es el que realizó las exigencias económicas y no otra persona. En el juicio se demostró, que al señor JAIME AISLANT GIL, en el municipio de San Martín, se le presentó el comandante de la Policía con dos personas y una de ella se identificó con el nombre de **ELKIN** y muy a pesar que el procesado esté identificado como **ELKIN PEÑA BERNAL**, se debe demostrar que la persona que se desplazó hasta el municipio de San Martín de Loba, junto con otra persona llamada "JOSÉ".

Reitera la defensa en cuanto a que no se puede afirmar que el ELKIN que se presentó en San Martín de Loba y quien estaba en el carro cuando recibió el dinero, sea precisamente **ELKIN PEÑA BERNAL**, toda vez que el testigo no conoce al agente perpetrador y la Fiscal no puso de presente a la víctima el reconocimiento fotográfico correspondiente, y que es parte integral del testimonio del reconocedor.

Centro Plazoleta Benkos Biohó - Complejo Judicial SPA - Oficina 402 Centro Plazoleta Benkos Biohtágen Con Boltiona Judicial SPA - Oficina 402 Insiste en que la prueba practicada en juicio no es suficiente para que se pueda demostrar que ese **ELKIN** que fue al municipio de San Martín de Loba y el que estuvo en Cartagena, es el mismo **ELKIN PEÑA BERNAL**.

Nuevamente se refirió a que **ELKIN**, puede ser cualquier persona, y es claro que el testigo JAIME AISLANT GIL no tiene una prueba fehaciente que ese **ELKIN** y ese JOSÉ sean la persona que está siendo procesada, no hay ninguna prueba que lo demuestre, porque cuando el testigo no conoce previamente al agente, se hace un reconocimiento fotográfico. La Fiscalía hizo un reconocimiento de fotográfico, y ello es parte integral del testimonio del reconocedor, y no fue introducido a juicio, por lo tanto, no existe una prueba fehaciente y por lo que ese reconocimiento no es válido, porque no hubo un señalamiento directo. Con el dicho de JAIME AÍSLANT GIL sólo se corroboró que una persona realizó exigencias económicas y que para que ese **ELKIN** que tanta vez mencionó, sea **ELKIN PEÑA BERNAL**, no se hizo ningún tipo de señalamiento, y el testimonio del intendente EDWIN FABIAN SANCHEZ LEOPARDO, no es válido pues él no presenció ningún tipo de exigencias.

Este policial también dijo que una persona de nombre ELKIN se le acercó y lo llevó a varias partes, pero no se le realizó reconocimiento fotográfico.

Los Testimonio de los compañeros son impertinentes porque no tienen relación con los hechos pues esos testimonios no se refieren directa ni indirectamente a lo factico ya que el derecho penal es de acto y no de persona, no se le está juzgando por lo que es, sino por lo que realizó. El testimonio del señor MANCERA sobre el hecho punible no sirve para señalar al procesado. Se concluye entonces por el Defensor, que es válida la duda ya que el hilo conductor quedó corto -la conexión quedó corta-, entre los hechos probados entre el señor **ELKIN** y el procesado.

Existe otro hecho señalado por el señor JAIME AISLANT GIL que dice que un **ELKIN PEÑA** le hizo exigencias económicas. Pero no se puede establecer que ese **ELKIN** sea el mismo **ELKIN**, también existe omisión por parte de la Fiscalía en el análisis link, pues nunca se estableció con estándares de certeza, si esos números telefónicos eran usados por **ELKIN PEÑA BERNAL**. Las conversaciones que se pusieron de presente no corresponde al número relacionado por el señor JAIME AÍSLANT GIL, no se demostró el estándar de conocimiento más allá de toda duda. No se demostró que ese **ELKIN** mencionado sea **ELKIN PEÑA BERNAL**, Finaliza solicitando que se absuelva a su ahijado judicial con fundamento en el principio del in dubio pro reo.

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CONSIDERACIONES DEL JUZGADO:

El Artículo 381 del C.P.P. advierte que para dictar sentencia condenatoria se requiere del conocimiento más allá de toda duda, acerca del delito y de la responsabilidad penal del acusado. En este caso, se obtuvo ese conocimiento, en cuanto a que **ELKIN PEÑA BERNAL**, servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos, incurrió en **CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA.** En el mismo sentido, un precepto de las normas rectoras, el artículo 7º del C.P. P., en su Inciso 4º, consagra que para poder proferir sentencia condenatoria deberá existir convencimiento de la responsabilidad penal del acusado, más allá de toda duda.

A su vez, no puede descuidarse que el artículo 448 del C.P.P. destaca la importancia de la Congruencia. El precepto declara que el acusado no podrá ser declarado culpable por hechos que no consten en la acusación, ni por delitos por los cuales no se ha solicitado condena.

Y, siguiendo en ese orden, el artículo 372 del C.P.P. nos define que: "La prueba tiene por fin llevar al conocimiento del juez, más allá de toda duda razonable, los hechos y circunstancias materia del juicio y los de responsabilidad penal del acusado, como autor o partícipe"

En este caso, la prueba con más poder de convicción, cierta y creíble es el testimonio del exalcalde JAIME AISLANT GIL (VÍCTIMA en este asunto). Con ese solo testimonio se prueba la CONCUSIÓN atribuida a **PEÑA BERNAL** y recordemos que en providencia reciente de nuestro máximo Tribunal (Corte Suprema de Justicia, Sala Penal, Sentencia SP-16841-14 de diciembre 10 de 2014. M.P. Fernando Alberto Castro Caballero), con autoridad se expone que, si la declaración rendida no comporta contradicciones internas ni externas en relación con otros medios de convicción, puede llevar al conocimiento del juez, más allá de duda razonable sobre la responsabilidad penal.

Lo decimos pues la Defensa echa de menos que no se haya escuchado el testimonio de los otros exalcaldes. Pero, como se sabe. AISLANT GIL no es la única prueba de cargo que exista en este asunto y las complejidades del proceso impidieron la asistencia de los burgomaestres.

Pues bien, se acusó a **ELKIN PEÑA BERNAL** de haber constreñido y solicitado dinero indebido a unos exalcaldes de San Martín de Loba, municipio del Sur de Bolívar y en el proceso, se probó precisamente que **PEÑA BERNAL** se desplazó hasta ese municipio y, entregó una citación adulterada que forzó a los señores **RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR y JAIME AÍSLAN GIL** a desplazarse hasta Cartagena.

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Centro Plazoleta Benkos Bichó - Compleje Judicial SPA - Oficina 402 Centro Plazoleta Benkos Bightágen Compdens Judicial SPA - Oficina 402 Una vez las víctimas llegaron a Cartagena, **PEÑA BERNAL** concretó la petición económica a los exalcaldes la que fijó en CUARENTA MILLONES DE PESOS (\$40.000. 000.00), primero los presionó con el argumento de que existía un proceso en su contra por los manejos irregulares de los recursos de salud y luego, cuando los exalcaldes se mostraron ajenos a esa actuación, cambió la condición que motivaba la exigencia económica pues les habló de que su colaboración consistía en mediar ante un testigo que vinculaba a los exmandatarios con grupos paramilitares o al margen de la ley, y que el proceso correspondía a la Justicia Transicional.

En Cartagena, se hizo efectiva una primera entrega de dinero a finales de julio de 2015, por valor de SIETE MILLONES DE PESOS (\$7.000. 000.00). Posteriormente, por la presión de llamadas telefónicas, se hizo otras entregas a través de consignaciones bancarias y giros.

En el proceso se estableció la identidad del procesado y esa circunstancia, resulta indiscutible, muy a pesar de los cuestionamientos del defensor del procesado. La identificación resulta plena pues de manera contundente y con excelente convicción, el testigo y víctima, JAIME AISLANT GIL, lo identificó en forma directa y hasta dio a conocer –con todas las circunstancias- la manera como se presentaron los hechos. La versión de AISLANT GIL resulta concordante, coherente y coincidente con las demás pruebas técnicas y testimoniales.

Y, desde luego, PEÑA BERNAL se interesó por hacerse visible y mostrarse.

Las exigencias económicas resultaron una constante en el tiempo pues a través de consignaciones bancarias y giros por intermedio de entidades prestadoras de ese servicio, se obtuvieron otros pagos en favor de los sujetos activos. Las cantidades entregadas dan un total de \$19.862.500.-

Las testigos JENNY PAOLA URREA ROMERO y SORLEY SUAREZ ARIZA, se encargaron de verificar el flujo de llamadas o tráfico de llamadas entre el procesado y la víctima JAIME AISLANT GIL. Las testigos con suficiencia y muy bien orientados en sus informes, a partir del teléfono de la víctima, registraron las llamadas entrantes y salientes, con lo que se consigue confirmar el vínculo del procesado con la línea telefónica, no sólo porque lo certifica la empresa de comunicaciones sino porque en las interceptaciones se registra en audio cuando el procesado se presenta y da a conocer su nombre e identidad.

Los informes de estas dos investigadoras, insistimos, precisan el tráfico de llamadas entre víctima y procesado de tal manera que fortalecen lo dicho de AlSLANT GIL en cuanto a que había sido constreñido a entregar dinero y no hay discusión en cuanto a la concordancia de su versión y el compromiso de **PEÑA BERNAL** con esos cargos.

Contro Plazoletz Benkos Biohá ... Complejo Judicial SPA ... Oficina 402 Centro Plazoleta Benkos KiadtágenComBolkývajudicial SPA - Oficina 402 También es contundente la voz de los investigadores OSCAR DARIO TARQUINO BARON y WILMER ENRIQUE MENDEZ MORENO pues adelantaron la búsqueda selectiva en base de datos y otras actividades investigativas, confirmado que sí eran ciertas las consignaciones y giros realizados por los exalcaldes al procesado, por intermedio de una persona llamada EFRAIN RIVEROS.

En el aparte en el que se analiza lo dicho por los testigos de manera individual, se precisan los detalles concretos de estos hallazgos y en este aparte de las consideraciones, realizamos el análisis de las pruebas en conjunto.

Se concluye, probatoriamente, que **PEÑA BERNAL** constriñó a JAIME AISLANT GIL y a los otros exalcaldes. a entregar unos dineros de manera indebida y que se valió con respecto al punible de CONCUSIÓN, de lo que en la doctrina se conoce como *"mentus publicae potestatis"*, elemento que lleva a la víctima a rendirse a las pretensiones del agente. Recuérdese que AISLANT GIL nos dijo que su hermano aspiraba a la Alcaldía de San Martín de Loba y que no podía exponer la imagen de su colateral con ocasión a ese proceso electoral.

El medio empleado por **PEÑA BERNAL** tenía esa idoneidad y esa potencia por cuanto las victimas comprendieron fácilmente que no poseía otra alternativa diferente a ceder a las exigencias del procesado (elemento subjetivo que se predica de la víctima).

Los elementos del punible de CONCUSIÓN, son:

1.- El sujeto activo calificado, en este caso, se exige que sea servidor público. Está probado que **PEÑA BERNAL**, lo era. Se aportó prueba documental de su resolución de nombramiento, acta de posesión y manual de funciones del servidor. Sus compañeros de labores también lo reconocieron como servidor de la Fiscalía Seccional de Cartagena para la fecha de los hechos.

2. El Verbo rector, que se determina como "abuso" del cargo o de la función. En este caso, el desprestigio de la Fiscalía se produce con el despropósito de tal accionar pues uno de sus servidores, sin estar autorizado, trata de sacar partido a su condición de miembro del ente acusador.

3.- La ejecución de algunas de las siguientes acciones: a) Constreñir, b) Inducir y c) Solicitar. En este caso se concretó en constreñir pues existía una amenaza en contra de los exalcaldes de las consecuencias de un proceso inexistente y **PEÑA BERNAL** les hacía ver que, con su intervención, incidiría en su favor.

4.- La finalidad consistente en conseguir que alguien de o prometa dinero o alguna utilidad indebidos al mismo servidor o a un tercero. La finalidad se obtuvo pues

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personalmente AISLANT GIL les entregó dinero en Cartagena y posteriormente mediante giros o consignaciones, se enviaron más recursos como abonos a las exigencias económicas.

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5.- La existencia de relación de causalidad entre la acción de abuso de la condición o de la función por parte del servidor y el empeño por obtener una prestación que no debe quien es sujeto de la intimidación. Este requisito aparece determinado por el desplazamiento del procesado hasta el Sur de Bolívar y por contactar personalmente a AISLANT GIL y dejar notificación a los otros exalcaldes, los que impactados por la verosimilitud de la amenaza no tuvieron opción distinta a entregar sus recursos a aquel servidor público que los forzó a contribuir de manera indebida.

A su vez, el delito de ABUSO DE FUNCIÓN PÚBLICA, se encuentra tipificado en el artículo 428 del C.P. y atenta contra el bien jurídico de la ADMINISTRACIÓN PÚBLICA, y consiste en que un servidor público abuse de su cargo y realice funciones públicas diversas de las que legalmente le corresponden. En este caso, **ELKIN ARNULFO PEÑA BERNAL**, desbordó totalmente su atribución funcional pues elaboró y firmó citaciones a sabiendas que sus funciones eran muy distintas a las judiciales.

El cargo de **PEÑA BERNAL** era el de Jefe de seguridad y le correspondía, como lo dijeron en sus juradas los subalternos CESAR GABRIEL GÓMEZ OSORIO, JORGE ARRIETA BERTEL y JUAN CARLOS MACERA GUZMAN, apoyar a los esquemas de seguridad, realizar estudios de seguridad a las instalaciones, programar turnos y de ninguna manera, atender a público.

Inexplicable entonces **PEÑA BERNAL** sufre una metamorfosis y se "transforma" en miembro de una oficina judicial y realizara citaciones, como las que dio cuenta GÓMEZ OSORIO, quien contó con sorpresa como le hizo entregar una de esas citaciones a un comerciante del Mercado de Bazurto en junio de 2015. Esta citación está documentada, como las citaciones de los exalcaldes de San Martín de Loba, y prueban con suficiencia el ABUSO DE FUNCIÓN PÚBLICA.

Este segundo delito realizado por **PEÑA BERNAL** y que concursa con el punible de CONCUSIÓN, se caracteriza porque un servidor público que no tiene competencia para hacer citaciones judiciales ni usar vehículos y personal a su cargo para tal efecto, decide hacerlo. Esto significa que el eje del punible de ABUSO DE FUNCIÓN PÚBLICA radica en el ilegal desbordamiento de la atribución funcional de **PEÑA BERNAL**.

Se sabe que, de conformidad con la Constitución, los particulares sólo son responsables ante las autoridades por infringir la Carta Política y las leyes, mientras

<u>Centro Plazoleta Benkos Biohó - Compleio Indicial SPA - Ofic</u>ina 402 Centro Plazoleta Benkos Kindtágon & on Bolt for judicial SPA - Oficina 402 que los servidores públicos lo son por las mismas causa y por omisión o extralimitación en el ejercicio de sus funciones.

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Este postulado coincide con aquel que nos enseña "no habrá empleo público que no tenga funciones detalladas en la ley o reglamento". Esta es la fundamentación de la penalízación de esta conducta pues resulta impresentable que un servidor público realice funciones distintas a las legalmente asignadas en el ámbito de su competencia y con propósitos contrarios a la función pública.

Y es que los servidores públicos no deben realizar conductas que impliquen abuso de la investidura que ostentan y menos de sus funciones, ya que cualquier desvío de poder por extralimitación afecta directamente la entidad a la que representa mancillando su imagen con consecuencias graves para su credibilidad y prestigio.

El envío de citaciones a comerciantes de Bazurto en Cartagena refleja abiertamente el ABUSO DE LA FUNCIÓN PÚBLICA por parte de PEÑA BERNAL pues en forma desproporcionada, desborda arbitrariamente las funciones reglamentarias conferidas por la Fiscalía General de la Nación.

Ahora bien, en cuanto a la tipicidad subjetiva es claro que **PEÑA BERNAL** conocía que no podía realizar ese tipo de exigencias económicas ni realizar actuaciones no autorizadas en la ley. Se evidenció que su voluntad consciente estuvo dirigida a obtener esa utilidad indebida y a realizar labores muy distintas a las que por ley se le asignaron. Obsérvese que facilitó su número telefónico para crear un canal de comunicación con AISLANT GIL cuando lo notificó en su casa de San Martín de Loba. Es más: el delito de CONCUSIÓN en particular, es una delincuencia de mera conducta, es decir, se configuró cuando **PEÑA BERNAL** abusó de su cargo o de sus funciones, con el propósito de constreñir a AISLANT GIL y solicitarle dinero.

La referencia al delito de mera conducta significa que la conducta punible sólo exige que el servidor público realice un requerimiento indebido a manera de amenaza (expresa o implícita) con perjuicio para el sujeto pasivo, y sin importar que se materialice.

El hecho de que el procesado sea abogado y labore para la Fiscalía General de la Nación, también permiten establecer que tenía conciencia que mal podría un servidor público, hacer uso del cargo de Jefe de Seguridad de la Fiscalía Seccional de Cartagena para la época de los hechos (2015), para obtener un beneficio personal pues incurría en un punible contra la Administración Pública. Sin embargo, no le importó.

Lo mismo en relación con el punible de ABUSO DE LA FUNCIÓN PÚBLICA. Máxime cuando **PEÑA BERNAL** se valía de sus subalternos, los exponía e instrumentalizaba.

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En cuanto a la antijuridicidad de la conducta punible de **PEÑA BERNAL** tenemos que señalar que está más que demostrada la lesión al bien jurídico tutelado de la administración pública pues los delitos en concurso, constituyen un típico caso de corrupción ya que se afecta el buen nombre de la administración de justicia cuya finalidad consiste en satisfacer el interés general. La administración de justicia está comprometida con importantes principios como igualdad, moralidad, eficacia, economía, celeridad, imparcialidad y publicidad.

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Sin duda, la ciudadanía espera de los servidores de la Fiscalía, transparencia y rectitud.

Recapitulando, con el comportamiento de **PEÑA BERNAL** se desprestigió y mancillo la administración pública. La imagen de la Fiscalía se deterioró, precisamente en municipios donde el Estado no hace presencia, y no hay justificación alguna.

Insistimos en que el procesado comprendía la trascendencia jurídico penal de su actuación pues como servidor público engañó y usó al Comandante de la Policía de San Martín de Loba, también al conductor de la Fiscalía. El procesado conocía que no podía abordar y constreñir a unos ciudadanos que se habían desempeñado como exalcaldes y que tenía el deber jurídico de actuar de otra manera pues defraudó la confianza depositada en él como servidor público. Resulta sumamente triste, laborar para la Fiscalía, cuya misión es precisamente la de luchar contra los delitos, y terminar como sujeto activo del punible de CONCUSIÓN y ABUSO DE FUNCIÓN PÚBLICA como acto de corrupción.

Importa señalar que la Defensa insistió en que la duda estaba fortalecida en cuanto a que sólo se conoció que una persona llamada **ELKIN** realizó exigencias económicas al señor AISLANT GIL, pero no se estableció su identidad, toda vez que no ingresó como probanza complementaria de las juradas de AISLANT GIL y SANCHEZ LEOPARDO el reconocimiento fotográfico correspondiente. Tampoco admite como prueba de la identidad de **PEÑA BERNAL**, las constancias de las empresas de telecomunicaciones en cuanto al titular de la línea.

Esta argumentación no la compartimos pues como puede verse, si había alguien interesado en ser visible e identificable es el mismo **ELKIN ARNULFO PEÑA BERNAL** desde que decide presentarse en casa de los exalcaldes; se hace acompañar de un subalterno -JUAN CARLOS MANCERA GUZMAN-; se traslada en un vehículo institucional; busca apoyo en el Comandante de Policía de San Martín de Loba – EDWIN FABIAN SANCHEZ LEOPARDO-; entrega una citación adulterada y a su nombre; no contento facilita su número telefónico y lo vinculan un flujo exagerado de llamadas telefónicas (entrantes y salientes) y en Cartagena, abordó a los

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Exalcaldes y los coaccionó, obteniendo la entrega una cantidad importante de dinero tal como ya se indicó.

Y, varios de los teléfonos que corresponden a las llamadas entrantes y salientes con respecto a AISLANT GIL, su titular es **PEÑA BERNAL** tal como lo certificaron las empresas de comunicaciones telefónicas.

Del reconocimiento mediante fotografías realizado por AISLANT GIL y SANCHEZ LEOPARDO, en sus juradas lo dieron a conocer como un hecho concreto. Las actas y las cartillas fotográficas son ilustrativos o complementarias del testimonio y de ello existe referencia también por los investigadores TARQUINO BARON y MENDEZ MORENO. A su vez, MACERA GUZMAN lo ilustra mejor pues no niega la visita, sino que la detalla y coincide con AISLANT GIL y en especial que su Jefe ELKIN de la Fiscalía fue el que estuvo en San Martín de Loba en los primeros días de julio de 2015.

Muy complejo que el mismo día dos **ELKIN** vinculados a la Fiscalía visitaran a AISLANT GIL.

La Defensa echa de menos que no se haya escuchado a los otros exalcaldes. Pero, como ya se dijo, ha sido tan contundente y definitiva la voz de AISLANT GL e incluso, su dicho se contrastó con las demás pruebas admitidas y controvertidas, resultando un testimonio uniforme con lo expuesto en su denuncia, entrevista y declaración jurada.

Se concluye que están dados a plenitud los presupuestos procesales consagrados en el Art. 381 del C.P.P. para dictar sentencia condenatoria, es decir, la existencia de un conocimiento más allá de toda duda sobre la responsabilidad de **ELKIN ARNULFO PEÑA BERNAL** como autor de los delitos de CONCUSIÓN Y ABUSO DE FUNCIÓN PÚBLICA. No está demás agregar que esta sentencia condenatoria concuerda con la acusación presentada por la Fiscalía General de la Nación en los términos del artículo 448 del C.P.P.

DOSIFICACION PUNITIVA:

Una vez acreditados, como ha quedado, la estructuración de los elementos de los delitos de CONCUSIÓN y ABUSO DE LA FUNCIÓN PÚBLICA atribuidos al procesado en la acusación, corresponde ahora adelantar el respectivo procedimiento de individualización de la pena a imponer en relación con tales comportamientos delictivos.

En cuanto a los criterios para determinar la pena de prisión contemplados en el Código Penal, Ley 599 de 2000, se tiene que, para este caso, por tratarse de un concurso de conductas punibles, CONCUSION y ABUSO DE LA FUNCION PUBLICA, se

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procederá como lo impone el art. 31 del C.P., es decir que **ELKIN ARNULFO PEÑA BERNAL** quedará sometido a la pena que establezca el delito más grave, según su naturaleza, aumentada en otro tanto.

En este caso, el delito más grave corresponde al punible de CONCUSION cuyos extremos punitivos oscilan de 96 a 180 meses de prisión, multa de 66.6 a 150 S.M.L.M.V. e inhabilitación para el ejercicio de derechos y funciones públicas de 80 a 144 meses.

Para determinar la pena de prisión contemplada en el canon 404 del C.P. y conforme a los extremos punitivos (96 a 180 meses), se tiene que para este evento el ámbito de movilidad es 84 meses y cada cuarto punitivo corresponde a 21 meses.

La multa tiene como extremos 66.6 a 150 S.M.L.M.V. y el ámbito de movilidad es de ochenta y tres punto cuatro (83.4) S.M.L.M.V., por lo que cada cuarto es de 20.85 S.M.L.M.V.

La inhabilitación de funciones públicas cuenta como extremos ochenta (80) a ciento cuarenta y cuatro (144) meses, siendo el ámbito de movilidad 64 meses y cada cuarto es de 16.

En igual sentido, para el delito de ABUSO DE LA FUNCION PUBLICA, el ámbito de movilidad es de 20 y cada cuarto corresponde a 5.

Lo anterior se esquematiza de la siguiente manera para los delitos imputados

CONCUSIÓN:

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Primer Cuarto	Segundo Cuarto	Tercer Cuarto	Cuarto final
96 a 117 meses	117 a 138 meses	138 a 159 meses	159 a 180 meses.

ABUSO DE LA FUNCIÓN PÚBLICA.

Primer Cuarto	Segundo Cuarto	Tercer Cuarto	Cuarto Final
16 a 21 meses	21 a 26 meses	26 a 31 meses	31 a 36 meses.

En cuanto a la individualización de la pena a imponer, se advierte que en la acusación se imputó la circunstancia de mayor punibilidad contenida en el art. 58 del C.P., numeral 10 por obrar en coparticipación criminal y en el traslado del art. 447 se reconoció la de menor punibilidad contenida en el art. 55 numeral 1, carencia de antecedentes penales, razón por la que, conforme al artículo 61 ibídem, el ámbito punitivo de movilidad es el que corresponde a los cuartos medios para la conducta punible analizada.

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Y, de conformidad con el texto del inciso 3º del artículo 61 del Código Penal, respecto a la gravedad de la conducta y el daño generado, se tiene que el procesado fungiendo como servidor público, utilizó su cargo para obtener un beneficio ilícito, ejerciendo además funciones que no le eran propias de su cargo, y de esa manera abusando de las mismas; logró constreñir a varios ex alcaldes de un municipio del Sur de Bolívar, mintiéndoles sobre la existencia de investigaciones en sus contra para, con el argumento de ayudarlos a evitar un posible encarcelamiento, obligarlos a pagarle sumas de dinero. Por lo tanto, el Despacho encuentra razonable imponer, CIENTO DIECISIETE (117) MESES de prisión, pena que sufre un incremento de DOCE (12) MESES en virtud del concurso de conductas punibles, arrojando un total de la pena a imponer de CIENTO VEINTI NUEVE (129) MESES DE PRISION.

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En este caso, la pena de multa con el mismo raciocinio y proporción que se dedujo en la de prisión, se tasa en ochenta y siete (87) salarios mínimos legales mensuales.

En lo que se refiere a la inhabilitación para el ejercicio de derechos y funciones públicas, prevista también como pena principal, se individualiza en noventa y seis (96) meses.

Como sanción accesoria, se impondrá al acusado la pérdida del cargo público como Jefe de Seguridad y/o el que en la actualidad se encuentra desempeñando en la Fiscalía General de la Nación, toda vez que el ejercicio y poderes discernidos por la función pública detentada tuvieron relación directa con la ejecución de la conducta punible atribuida (Ley 599 de 2000, artículos 43, núm. 2º, 45 y 52).

DE LOS SUBROGADOS PENALES:

No es procedente conceder a **ELKIN ARNULFO PEÑA BERNAL** la suspensión condicional de la ejecución de la pena, pues la sanción privativa de libertad es superior a 4 años, de manera que no se encontraría satisfecho el requisito objetivo señalado en el artículo 29 de la Ley 1709 de 2014. Además, el inciso 2 del artículo 32 de la misma legislación, que modificó el artículo 68 A de la Ley 599 de 2000 dispone que no procederá dicho subrogado penal para "quienes hayan sido condenados por delítos dolosos contra la Administración pública", como ocurre en este asunto con los delitos por los que se le ha condenado.

Tampoco es viable la prisión domiciliaria sustitutiva de la intramural por razones similares a las anteriores, pues conforme con la preceptiva del artículo 23 de la Ley 1709 de 2014 se procede por el delito de concusión cuya pena mínima es de 8 años de prisión y, además, por tratarse de comportamientos dolosos contra la Administración Pública, quien los comete se encuentra expresamente excluido de dicha sustitución, según lo dispone el inciso 2 del artículo 32 de la citada normativa.

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No se advierte la presencia de alguna de las circunstancias regladas en los numerales 2, 3, 4 y 5 del artículo 314 de la Ley 906 de 2004, referidas a que el acusado sea mayor de 65 años, se trate de una persona a la que le falten 2 meses o menos para el parto, que esté en estado grave por enfermedad, dictaminado por perito oficial; ni se ha aducido y menos demostrado, la condición de padre cabeza de familia, circunstancias que al tenor del inciso 3 del artículo 68 A, modificado por el artículo 32 de la Ley 1709 de 2014, permitirían la sustitución de la ejecución de la pena.

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De tal suerte que **ELKIN ARNULFO PEÑA BERNAL** deberá purgar la pena impuesta en el establecimiento carcelario que disponga el INPEC para tales efectos. Líbrese en consecuencia la orden de captura respectiva.

En mérito de lo expuesto el Juzgado Primero Penal del Circuito con funciones de conocimiento de Cartagena de Indias, administrando justicia y por autoridad de la ley,

RESUELVE:

PRIMERO: CONDENAR a **ELKIN ARNULFO PEÑA BERNAL**, de condiciones civiles y personales ya conocidas a la pena de **CIENTO VEINTINUEVE (129) MESES DE PRISION**, como autor y responsable de las conductas punibles de CONCUSION y ABUSO DE FUNCION PUBLICA, multa de ochenta y siete (87) salarios mínimos legales mensuales, e inhabilitación para el ejercicio de derechos y funciones públicas, prevista también como pena principal, en noventa y seis (96) meses. Como sanción accesoria, se impondrá al condenado la pérdida del cargo público como Jefe de Seguridad y/o el que en la actualidad se encuentra desempeñando en la Fiscalía General de la Nación, tal como se explicó en la parte motiva de esta sentencia.

SEGUNDO: NO CONCEDER SUBROGADO PENAL ALGUNO, atendiendo la expresa prohibición del art. 68 A del C.P., y, además por no cumplirse con los requisitos objetivo para la concesión de uno u otro mecanismo sustitutivo; En consecuencia, ELKIN ARNULFO PEÑA BERNAL deberá purgar la pena impuesta en el establecimiento carcelario que determine el INPEC para tales efectos. Líbrese la correspondiente orden de captura a efectos del cumplimiento de esta condena.

TERCERO: DISPONER, a través del **CENTRO DE SERVICIOS JUDICIALES**, rendir las informaciones necesarias a los organismos de seguridad del Estado para efecto de registro y control de sentencias de conformidad con los artículos 166 y 462 del Código de Procedimiento Penal, así como enviar en su momento la carpeta al **JUZGADO DE EJECUCIÓN DE PENAS Y MEDIDAS DE SEGURIDAD** que corresponda por reparto.

Centro Plazoleta Benkos Bighá Complejo Indicial SPA Oficina 402 Centro Plazoleta Benkos Dophágens amportea udicial SPA - Oficina 402 **CUARTO: CONTRA** esta sentencia procede el recurso de apelación, la cual es notificada en estrados a los comparecientes.

NOTIFÍQUESE Y CÚMPLASE Thenton FREDY ANTONIO MACHADO LOPEZ JUEZ

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JUDICIAL BRANCH REPUBLIC OF COLOMBIA DEPARTMENT OF BOLIVAR



1ST CRIMINAL COURT OF THE CIRCUIT WITH KNOWLEDGE FUNCTIONS CARTAGENA

Cartagena, October 2, 2020.

MATTER TO BE DEALT WITH:

Next, once the Court in the previous hearing announced the sense of the conviction, the sentence is read, in which the penalty to be imposed on Mr. ELKIN ARNULFO PEÑA BERNAL, servant of the Attorney General's Office, and accused of the crimes of CONCUSION and ABUSE OF THE PUBLIC SERVICE is individualized. The sentence is dictated once it has been noticed that there are no nullities in the process that affect or prevent such pronouncement. Let us see:

FACTUAL BASIS:

On July 9, 2015, the former mayors of San Martín de Loba, RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR and JAIME AISLANT GIL, received an unusual and unexpected visit in their municipality, by two servants of the Sectional Prosecutor's Office of Cartagena and a private individual named JOSÉ. The visit was led by **ELKIN PEÑA BERNAL**, and its purpose was to inform the former mayors of an alleged summons from the Specialized Prosecutor's Office of Cartagena for a criminal investigation for mismanagement of health r e s o u r c e s.

In effect, the official, ELKIN PEÑA BERNAL, in his capacity as Chief of Security of the Sectional Prosecutor's Office of Cartagena, traveled to San Martín de Loba using a vehicle of the entity and was accompanied by a driver, JUAN CARLOS MANCERA, assigned to the Sectional Directorate of Cartagena. With them, as mentioned before, was a subject named JOSÉ and the one who would later be identified as DEIWIN CASTILLO.

Two very curious circumstances arose during the unusual visit.

One, that the Prosecutor's Office had not authorized the displacement of its servants as certified by the directives of the accusing entity and two, that the Police Commander of San Martin depLoba, FABIAN SANCHEZ LEOPARDO, was instrumentalized since He was asked for support with the notification and the police officer provided it, convinced that it was an inter-institutional collaboration.

In any case, it is known that only JAIME AISLANT GIL was personally notified.

The ex-mayors to attend or to comply with the supposed notification, moved to Cartagena on July 29, 2020 and for those days, PEÑA **BERNAL** was in contact with them, through a telephone number that the day of the visit to San Martin de Loba, he had given to AISLANT GIL. The servant of the Prosecutor's Office **ELKIN PEÑA BERNAL** and the subject known as JOSÉ, approached the former mayors and forced them to pay a sum equivalent to FORTY MILLION (\$40.000.000.000.00) PESOS in order to "collaborate" with their process.

And, as the victims warned the petitioners, on the one hand, that they did not have that amount of money and, on the other hand, that according to the facts, they were not involved in the management of the health resources since they were transferred directly to the EPS and that those funds were not managed by the mayors; The agents of coercion changed their strategy as they went along and that is when **PEÑA BERNAL** ratified the demand, with the variant that the economic requests were justified in order to try to neutralize an imprisoned tesfigo who accused the ex-mayors of having links with paramilitarism before the transitional justice system.

In the investigations of the Prosecutor's Office, aimed at establishing the sequence, dynamics and mechanisms used to make the undue economic demands, it was determined from which telephone lines such requests were made. The telephone numbers used are: **319-3209006**, **350- 6849093**, **317-6470663**, **312-6042202** and **301-6623375**.

In Cartagena, on July 30, 2015, although they did not deliver the 40 million pesos demanded, the former mayors did deliver to **PEÑA BERNAL**, a smaller amount: 7 million pesos. The delivery was made inside a vehicle driven by **PEÑA BERNAL**, as testified by JAIME AISLAN GIL. Subsequently, the former mayors made consignments and drafts to EFRAIN RNEROS GONZALEZ with the entities BANCO DE BOGOTÁ and EFECTY, as was confirmed according to the selective database search.

The referred consignments were made in the name of EFRAIN RIVERO GONZALEZ for the amounts of THREE MILLION EIGHTY-NINE THOUSAND SEVEN HUNDRED PESOS (\$3. 089.700.00), ONE MILLION NINE HUNDRED NINETY TEN THOUSAND THREE HUNDRED TEN PESOS (\$1. 910,310.00), FOUR MILLION NINE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED PESOS (\$4. 014,500.00) and TWO MILLION NINE HUNDRED FORTY-EIGHT THOUSAND PESOS (\$2. 048,000.00) on August 6 and 10. 2015, respectively.

PESOS (\$2. 948.000.00), on August 6 and 10, 2015, respectively.

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In relation to the telephone calls, it was confirmed that the flow of incoming and outgoing calls corresponds to one of the telephone subscribers of **ELKIN PEÑA BERNAL (3193209006) and** the receiver is the former mayor JAIME AISLANT GIL in his subscriber (**3114072901**). In turn, from the number **3214322907** -which corresponds to the subject named JOSÉ- communication was also confirmed with the telephone subscriber of JAIME AISLANT GIL, and the same undue economic demands were made.

Regarding the identification of the defendant, it is good to point out that **ELKIN ARNULFO PEÑA BERNAL** was recognized, through a photographic album by former mayors JAIME AISLANT GIL, AQUILES MIRANDA SALAZAR and the then Commander of the Police Station of San Martin de Loba, Intendant FABIAN SANCHEZ LEOPARDO, as the same person who was present in San Martin de Loba on July 9, 2015.

Identification that agrees with the statement of the driver of the Prosecutor's Office, JUAN CARLOS MANCERA, who, under oath, corroborated that indeed for the month of July 2015, he accompanied as a driver his coordinator, ELKIN PEÑA BERNAL, because he had requested it and the trip was made together with a friend of PEÑA BERNAL known as JOSÉ or Dr.

And, witness JUAN CARLOS MACERA, added that he recognized him - JOSÉ - because he is a subject who frequently visits the facilities of the Prosecutor's Office in Cartagena.

Finally, in the process it was also established that it was usual for fiLKIN PEÑA BERNAL to use the same modus operandi in terms of instrumentalizing his coworkers to make summons to some merchants in Cartagena. CESAR GABRIEL GÓMEZ OSORIO gave a full account of one of these practices in his affidavit, and even showed a copy of the document in which PEÑA BERNAL claimed to be a judicial servant.

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It is about the citizen ELKIN ARNULFO PEÑA BERNAL, identified with the C.C. No. 77.193.356 of Cartagena, born December 24, 1978 in Valledupar, lives in a commonlaw marriage, has two children and is the son of ALIX BERNAL and ELKIN PEÑA, a lawyer and employee of the Sectional Prosecutor's Office of Cartagena at the time of the facts, he worked as a Security Coordinator.

JUDICIAL QUALIFICATION:

The Attorney General's Office charged **ELKIN ARNULFO PEÑA BERNAL** with two punishable offenses. One, CONCUSION (Art. 404 of the Criminal Code) and the other, ABUSE OF PUBLIC OFFICE (Art. 428 of the Criminal Code). The criminal action

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corresponds to a concurrence of crimes (Art. 28 of the Criminal Code), SUCCESSIVE HETEROGENEOUS CONCURSION.

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The Prosecutor's Office also attributed to **PEÑA BERNAL** the generic aggravating circumstance provided for in Article 58 of the Criminal Code, paragraph 10, that is, the circumstance of greater punishability for having acted in criminal co-perpetration.

PROCEDURAL ACTIONS

<u>The indictment hearing:</u> The indictment hearing was held on March 8, 2016. It was held before the Fifth Municipal Criminal Court of Bogota. The crimes for which **ELKIN ARNULFO PEÑA BERNAL** was charged are CONCUSION in concurrence with ABUSE OF PUBLIC OFFICE and with circumstances of greater punishability for having acted in co-participation (article 58 numeral 10) as co-perpetrator in the fraudulent modality.

The indictment was filed on May 8, 2016 and the proceedings were heard by the 1st CRIMINAL COURT OF THE CIRCUIT OF CARTAGENA on June 2, 2016.

<u>The Indictment Hearing</u>: the first session was held on July 1, 2016. At the time, the defense requested the nullity of the act of indictment because in the opinion of the judge the principle of *non bis in idem* was flagrantly violated since it was argued that the CONVICTION contemplated ABUSE OF PUBLIC OFFICE. The Defense appealed the refusal to recognize the alleged substantial irregularity, and the hearing was suspended while the Superior Court of Cartagena defined the legal discussion.

The Superior Court of Cartagena confirmed the Court's refusal to recognize nullity in this case. The Court's decision dates from August 9, 2016 and it was warned that this was a matter that should be discussed in the oral trial because it was related to the defendant's responsibility.

The indictment hearing was continued, once the issue of nullity was confirmed by the Superior Court of Cartagena, and the indictment was formalized - and finalized - on April 28, 2020.

ca a iasaeoWas held on May 29, 2020.

cie asoe0 September 4, 2020. and on September 9, 2020. was held on July 2, 2020, September 4, 2020 and

DEIASPRESENTATIVES:

The evidentiary period in the oral trial was advanced in the hearings of July 2 4e, 2020 and September 4, 2020. For this reason, the following is a summary of the

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evidence

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in July and then those of August. It is good to note that the parties did not enter into PROBATORY STIPULATIONS. Let us see:

EVIDENCE TAKEN ON JULY 2, 2020:

Documentaries:

The Prosecutor, at the beginning of the hearing for being authentic documents, provided the following public documents: Resolution of appointment, minutes of possession and manual of functions of the server, **ELKIN PEÑA BERNAL**. The Court admitted this evidence in accordance with the precepts of article 425 of the C.P.P. for being authentic documents (Supreme Court of Justice, Rad. 46278 of July 1, 2017).

Testirooniales:

I.- Testimony of JOSÉ VICENTE COGUA ROJAS.

He has a bachelor's degree, is an expert in dactyloscopy and has worked for the Prosecutor's Office in the Lofoscopia Group for 26 years with the CTI. He was in charge of verifying the identity of the defendant by means of a work order (dactyloscopic review, biographic data and matching).

The witness was entrusted with the mission of verifying the identity of the defendant, in compliance with the arrest warrant against **ELKIN PEÑA BERNAL**. His laboratory investigator report FPJ-13, dated March 7, 2016.

Testimony of JAIME AISLANT GIL.

He is an agricultural business administrator, 67 years old at the date of his sworn statement. He narrated the facts and in particular, what happened on July 9, 2015 when **ELKIN PEÑA BERNAL** showed up at his residence in the Police Patrol to notify him of a process against him, accompanied by the Commander of the Police of San Martin de Loba and another official. The notification was made in the noon hours and the summons was made to the Prosecutor's Office of Cartagena, on June 30, 2015. The process was said to be for embezzlement of health funds.

That day two other former mayors were also notified, but they were not notified personally because they were not at their homes. Later, when they were on their way to Cartagena, **ELKIN PEÑA BERNAL**'s friend, n a m ed JOSÉ, called them and summoned them to a cafeteria in the vicinity of the Prosecutor's Office.

On July 30, 2015, they were loaded into a vehicle and shown the process. However, as RODRIGO MORALES DIAZ, one of the former mayors and lawyer,

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warned that they were not involved in this process because in their position they did not administer health funds, as the money came directly to the EPS.

On that understanding, the petitioners of the undue money changed the conditions and assured them that the matter was more serious because there was an accusation against them for being collaborators of illegal groups and that there was a witness accusing them.

Witness AISLANT GIL made it clear that the initial request was for the amount of 100 million, but the former mayors denied having the possibility of collecting that amount of money. Then they agreed on the amount of 40 MILLION PESOS and the payment to the extent of their possibilities.

In spite of the "discount", they insisted on the immediate delivery of part of the money and therefore, they got 7 million pesos together with RODRIGO MORALES DIAZ and AQUILES MIRANDA SALAZAR. The delivery was made in the vehicle and JOSE **and PEÑA BERNAL** were there, **the** latter was driving the vehicle.

Witness JAIME AISLANT GIL assures that later, in the month of AUGUST, they were forced to wire 5 million pesos. The money was sent to EFRAIN RIVEROS and the consignment was made by JOSE DE JESUS RAMOS. Another 10 million pesos were also consigned in the name of EFRAIN RIVEROS.

And, when AISLANT GIL was asked why they gave money, he justified his behavior alleging that they tried to neutralize a scandal against his brother because he was in the middle of an electoral process since he was aspiring to the mayoralty of San Martin de Loba. With the loss of the elections, they did not bother them anymore.

The witness made it clear in his affidavit that **ELKIN PEÑA BERNAL** himself wrote down his telephone number to stay in contact and he left it written down by hand in the subpoena as evidenced when the Prosecutor presented the document to him (Telephone 3193209006).

He indicates that on many occasions **PEÑA BERNAL** called him to remind him of the commitment and insists that his brother's electoral process was his weak point because his fear was based on the fact that many innocent people have been harmed by the bandits.

When asked by the Prosecutor if they found out if they actually had proceedings in the Prosecutor's Office, he said no and added that they were never summoned to any hearing. He also admitted having delivered 7 million, 5 million and 1 million.

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He confirms that he made photographic recognitions of both Mr. **ELKIN PEÑA** and the subject named JOSÉ and specified that on three occasions he met the defendant personally.

Finally, he states that the transfers were made through BANCO DE BOGOTÁ and EFECTY and were made through NICOLAS JOSÉ LOPERA, who lent them the account.

3.- Testimony of EDWIN FABIAN SAfiiCHEZ LEOPARDO.

He is a quartermaster of the National Police and has been with the police for 21 years. He is currently working in the Department of Valle, but he also worked in Bolivar. He points out that in the municipality of San Martin he served as Police Commander from 2013 to 2015.

He remembered exactly the facts related to this case because they happened in June 2015, and at that time he was transferred to the Municipality of Norosí (Bolívar). It happened that some gentlemen identified themselves with the Fiscalía's ID card and asked him the favor of accompanying them to deliver some summons.

He said that there were three officials. They did not have a vehicle because access to San Martin de Loba is by boat. He indicated that he only communicated with one of them. He accompanied them to the different addresses of the former mayors. He never got out of the vehicle and remembers that they only met Mr. AISLANT GIL and that at that time his brother was an aspirant to the Mayor's Office.

In the other places they visited they did not find the people. He added that he knew the former mayors and that the one he had the most present was Mr. JAIME AISLANT GIL. He explained that the person he contacted and asked for support, said his name was **ELKIN**. He pointed out that he never interviewed or heard from him again, until the Prosecutor's Office summoned him to Aguachica for a recognition or photographic identification diligence. Then he recognized him as the person who came to him and asked him for help to go to deliver the subpoenas.

He warns that he did not make any note of the diligence in the entity's books. He insists that everything seemed normal to him and that is why he did not take any further precautions.

The Defense asked him about his recognition of a person named **ELKIN** and was also asked about whether the Intendente had had contact with the former mayors. He confirmed his meeting with **ELION** and denied having listened to conversations or dialogues about economic demands. However, the Prosecutor in the cross-examination asked him to clarify if he had seen the delivery of the aforementioned summons and the witness ratified it. He said that he did witness it.

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4.- Testimony of CÉSAR GABRIEL GOMEZ OSORIO.

He is a servant of the Prosecutor's Office, is part of the protection group and has been linked to the prosecutor's office since 2005. He is in charge of the canine support unit. He has a bachelor's degree.

He stated in his sworn statement that in 2015 he was also part of the protection group and was attached to the canine support unit and its coordinator was ELKIN PEÑA BERNAL.

He explained that, among others, the functions of his coordinator were to be in charge of carrying out the different security scheme supports and security studies of each headquarters, but that it was not his function to carry out subpoenas since that was a matter outside his mission (it was not among his duties to carry out subpoenas).

He referred to the fact that **ELKIN PEÑA BERNAL** once called him at the security office asking him to take a summons to a commercial establishment in the Bazurto Market in Cartagena. He is clear that his boss did not give him any further information or instructions.

He goes on to say that he complied with the order to bring the subpoena. One of the workers served it, but was very reluctant to receive it. It was a summons signed by Mr. **ELKIN.** He indicated that he took a copy and kept the receipt of the subpoena. When he returned to the office, he let him know that he had received the subpoena, but he always remained suspicious, since it was not among his functions or his, that type of proceedings.

The Prosecutor asked the witness if he had delivered the subpoena to the Prosecutor's Office and if he remembered its content. The witness admitted having delivered the subpoena and said that the subpoena corresponded to ALVEIRO JIMENEZ and he was asked to ask on the second floor for **ELKIN PEÑA BERNAL**.

In the practice of the testimony, the subpoena was entered as evidence. The same was signed by **PEÑA BERNAL and** addressed to JUAN CARLOS RAMÍREZ dated June 16, 2015. The summons was for June 18, 2020, at 9 am. and the summoning authority was the COURT OF THE NATIONAL SPECIALIZED TRANSITIONAL JUSTICE SPECIALIZED UNIT.

The witness was also asked if he had had any problems with Mr. ELKIN PEÑA BERNAL, he referred to rumors that Mr. PEÑA BERNAL was going to take revenge. It was also said that he had traveled to the municipality of San Martin de Loba since his absence was noticed and ALEXIS AVILA had commented that he had notified him verbally.

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And, he referred to a second subpoena in the name of ALVEIRO, a subpoena that should have been carried by ALEXIS AVILA, a protection agent,

He says that during his time as coordinator, the meetings he had in the office were very noticeable. The difficulties with colleagues were due to the day-to-day schedules.

The defense counsel cross-examined the witness about the summons in the Bazurto market and questioned the witness because if this action seemed suspicious to him why he did not object. The witness warned that he noticed the suspicion at the time of receipt and upon returning from the delivery is when he analyzed the situation.

As to why he did not denounce these facts, he said that he was not certain or clear as to what the summons was about. The defense then asked him if he had witnessed when **PEÑA BERNAL** made monetary demands and the witness denied having witnessed such conduct by Mr. **PEÑA BERNAL**. Much less, about the summons of the Bazurto merchants.

S.- Testimony of JORGE ARRIETA BERTEL.

He is an employee of the Public Prosecutor's Office with about 15 years in the institution. He works in the protection area (since August 2005). In 2015, his immediate boss was Mr. ELKIN PEÑA BERNAL, as Sectional Coordinator Bolivar and Dr. MARY ELCY CAÑAS SILVA as regional leader.

He explained that the Coordinator's functions were to carry out the scheduling of shifts, supervision of personnel at work stations and part of the security studies at the facilities. He said that he did not have judicial duties or attend to users or witnesses.

As to whether he had had knowledge of corruption, the witness answered in the negative. At the time, in the Prosecutor's Office -his place of work- there had been some comments in which it was said that **PEÑA BERNAL** had lost some money from some politicians, but these were only corridor comments.

He referred to the fact that HUMBERTO RANDIAL had made consignments to PEÑA BERNAL.

He specified that he has not had any differences with the defendant, but only normal discussions about the scheduling or the accompaniment of detainees, since this was not the responsibility of this unit and should have been approved by the regional coordinator.

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He said that when he returned he complained because he did not greet him and he told him that he did not do it because they were not friends or enemies. He said that he helped him sell a vehicle and made contact with FABIAN ARNEDO.

He admitted that the acts of corruption he knew about against **PEÑA BERNAL** were all corridor comments. He ruled out denouncing **PEÑA BERNAL** for the issues of his management that he did not share because he was a management official, but he informed the regional leader and she never followed those orders.

He was asked about RANDIAL and said that **ELKIN PEÑA BERNAL** asked him to deposit some money. That he also knew about **PEŃA BERNAL**'s displacements to the south of Bolívar.

Finally, and in response to the defense attorney, the declarant admitted that on some occasions he accompanied **PEÑA BERNAL** on commissions to the cities of Barranquilla, Magangué and Santa Marta.

6.- Testimony of JUAN CARLOS MANCERA GUZMAhí.

He stated that he has been working for the Prosecutor's Office in the protection area since 1999. He stated that in 2015, he was the escort of the Director of the Prosecutor's Office and driver. His immediate boss was **ELKIN PEÑA BERNAL**. He accepted to have traveled to San Martin de Loba in support of the Chief of Security **ELKIN PEÑA BERNAL** in 2015 without specifying the date.

That day, his coordinator, **ELKIN PEÑA BERNAL** picked him up at 4:00 a.m. and in the vehicle was another person he called "el Dr.". They arrived at Banco Magdalena and in a chalupa they went to San Martin de Loba.

They spoke to the security guard because the prosecutor on duty was not there at the time. They told him that it was a security review. Then, they arrived to talk to the Police Commander and he accompanied them to hand out several summons. He warned that the Sectional Director was aware of the trip and they traveled in an official vehicle.

The particular "Dr." had already come with **PEÑA BERNAL** and he drove to the Magdalena Bank. They arrived at noon in San Martin de Lobæ **PEÑA BERNAL** let him know that a visit was going to be made to the headquarters, visits that are made every three months. The Prosecutor of the place processed them the compliment the same day.

He stated that he did not know that subpoenas were going to be served. They arrived at the station and the commander assisted them. When the subpoenas were served, as he was in the back of the vehicle, he did not get out.

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He made it clear that only one former mayor was present and therefore, the other summons were delivered to family members. He indicated that the defendant **PEÑA BERNAL** did go down and they were talking to the summoned person. He did not hear what they talked about. He confirms that **PEÑA** BERNAL personally spoke for two minutes or one minute.

They spent about two hours in San Martin and after four in the afternoon they left Banco Magdalena for Cartagena. He made it clear that the Chief was in charge of managing the commissions and he had told him that there were no problems. However, the Commission was not paid in spite of the fact that there was a disagreement.

He said that it is usual for security chiefs to be asked for subpoena support. It seemed to him to be a normal procedure. He has never had any problems with PEñA **BERNAL** and is a friend of his because he is a "good boss".

On the way back, the witness said that as he felt tired he handed over the helm to ELKIN PEÑA BERNAL as in Plato. They arrived in Cartagena at about 1:00 am. He denies knowing of citations signed by the head of security.

She admitted that in the Cartagena Prosecutor's Office there were comments that there were acts of corruption, but she was not aware that her boss had received money because they were only rumors in the corridors. She has no problem with her boss.

In cross-examination he confirmed that he was an escort of the Sectional Director VICENTE GUZMAN and that he traveled in the Directorate's vehicle (KGF 9Z1) and that the director authorized the loan of the vehicle to go to San Martin de Loba.

He was asked about the procedure for the payment of the per diems before the Administrative Director, Dr. IVAN MORALES. He states that they were not paid, supposedly because the authorization corresponded to Bogotá. He explains that this procedure was not hidden at all (it was known to both the Administrative Director and the Sectional Director).

The ombudsman referred to a letter in which **PEÑA BERNAL** complained to the Administrative Director for the non-payment of per diems and stated that the central level had been informed. He explained that due to the vacations of the incumbent and the assignment of Dr. MARCELA YEPES, the latter, due to her multiple occupations, only received requests three days in advance.

The defense questioned the witness as to whether the trip to San Martin de Loba had been made behind the back of the Sectional Director and the Administrative Director, and the witness denied this. As to why in his interview he referred to Dr. as EFRAIN RIVERO, the witness denies such situation and does not know the reasons why such an annotation was made.

And, he refers again to the fact that he was in the back of the vehicle and that one of the persons visited was a former mayor, but he does not remember his name. Of the conversation, he says that it lasted one or two minutes and that he did not hear any requests for money.

He points out that in the tour almost no one spoke and in particular, **PEÑA BERNAL and** (a) El Doctor did not talk about the mission accomplished in San Martin de Loba regarding the notifications and he again described as normal to make notifications by the security coordinator when traveling to other municipalities.

He denied any knowledge of corruption and said that what was heard were rumors. However, in his interview he referred to what was said against PEÑA BERNAL.

Finally, regarding the cross-examination, he concludes that the Police Commander did get out of the car at the moment of notifying the former mayor and explains that he stood aside. But he clarifies that the Director of the Prosecutor's Office did not know that they were going to notify the former mayors and that the Administrative Director was in charge of endorsing the commissions, but he, as a subordinate, trusted in **PEÑA BERNAL's** procedure.

7.- Testimony of OSCAR DARIO TARQUINO BARON.

He is a servant of the Attorney General's Office assigned to date to the Specialized Directorate against Drug Trafficking and has been working since 2014 with the prosecutor's office. He specified that when he worked in the Directorate for Citizen Security (2014 to 2019) he worked as a verifier and analyst.

In 2015 he was assigned a case that arrived at the Coordination of Criminal Analysis to support the Offices of the Directorate of Citizen Security and in which, apparently, the information reported that a server of the Bolivar Sectional Prosecutor's Office had made a request for money to some former mayors of a municipality in southem Bolivar.

It indicates that the official identified himself as ELKIN PEÑA BERNAL and his actions were carried out in the company of another citizen. As it was said that the former mayors had made money deliveries to them in a bank and in the company EFECTY, the investigation was based on a selective search in an open database and a selective search in a database of the different cellular telephone operators and money

remittance entities.

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They also traveled to the municipality of San Martin de Loba to conduct interviews and photographic album reconnaissance. He reiterates that the investigation began in September or October 2015. They interviewed some former mayors who reported irregular situations in which a servant made some demands for money that materialized physically or by consignment or transfer. The investigation addressed the analysis of telephony.

The investigative acts were documented in reports. The investigation was carried out with comrade WILMER MENDEZ, but he acted as lead investigator.

Based on the analysis of the non-formal source (first report), the Prosecutor's Office issued judicial police orders. The most relevant order corresponds to the delivery of information by the company VIRGIN of a number 319. In San Martin de Loba they conducted the interviews with the former mayors in which the economic demands made by Mr. **ELKIN** are reported. The witness affirms that the former mayors provided them with the receipts of the transfers made through a gentleman who did them the favor of consigning in Banks and the entity EFECTY.

And, when the Prosecutor presents the report prepared by the investigator who renders this Statement, it is assured that Mr. JAIME AISLANT GIL gave them the summons that **ELKIN PEÑA BERNAL** brought them **and** two receipts of drafts made before the company EFECTY (August 6, 2015) and two proofs of consignment from the Bank of Bogota (August 10, 2015).

The Prosecutor also presented her with a report on a selective data base inquiry regarding DEWIN, a subscriber of CLARO and **ELKIN PEÑA BERNAL**, whose telephone belonged to VIRGIN.

The report presents two parts, the first, dated December 21, 2015, issued by the telephone company CLARO and corresponds to the number 3214322907 and was the one used by Mr. DEWIN and from where he called Mr. JAIME AISMANT. The second one, corresponds to the telephone number 3193209006 and it is certified that it **belongs to ELKIN ARNULFO PENAL BERNAL**.

The report included a list of incoming and outgoing calls. It also shows the number of calls made between JAIME AISLANT GIL and PEÑA BERNAL.

Mr. JAIME AISLANT GIL's number is 3114072701.

ina 402 Centro Plazoleta Benkosi{id',ltgggpÇo.i çj}udicial SPA - Officina 402 2 In his statement, according to the judicial police report, he gives the details of each call (day, time, duration of the call and how many calls were made in total). A total of 20 calls were made, according to the VIRGIN company. The reports had their annexes (response from the telephone companies).

Regarding the EFECTY company and the money transfers sent to EFRAIN RIVEROS, the former mayors said that they used a third party for the transfers. The Report is dated January 21, 2016 and is signed by both the witness and his partner WILMER MENDEZ. The response was delivered by the EFECTY company in relation to the information provided by JAIME AISLANT in his interview.

Once the two pieces of information were compared, it was determined that two transfers were made by Mr. JOSE DE JESUS RAMOS BERRIO to Mr. EFRAIN RIVEROS GONZALEZ. One transfer for \$3,0r0,700 and the other for \$1,910,300. The two drafts were made on August 6, 2015. The report included the attachments that correspond to the EFECTY documents.

The witness TARQUINO BARON was asked about the judicial police work, corresponding to the photographic recognitions and exposed that in February 2016 they moved to San Martin de Loba, receive interviews and perform the recognition.

He recalls that AQUILES MIRANDA and JAIME AISLANT, managed to photographically recognize **PEÑA BERNAL** as the person who had made the economic demands. The aforementioned report is dated February 11, 2016.

Finally, regarding the answer as to why the per diems were not recognized to the servants of the Sectional Prosecutor's Office of Cartagena, the witness pointed out that a certification issued by JORGE EDUARDO ROJAS PINZÓN, National Director of Protection, was obtained and dated January 25, 2016 (via email). The report of the National Protection Directorate has an equivocation, but the correct date is the date of the mail. It was argued that I had consulted the national leader and she stated that the commission had not been authorized for July 13 and 14, 2015.

The telephone subscriber of Mr. AISLANT GIL was inquired about and corresponded to the CLARO telephone company.

A supplementary question was asked about the photographic recognition procedures and the witness clarified the manner in which the procedure was carried out.

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8.- Testimony of WILMER ENRIQUE MENDEZ MORENO.

He is a technologist in Criminal Investigation. He works for the Special Investigation Unit. He has been working in the Prosecutor's Office for about 8 years, but before that he worked for the DAS. He has been a Technical Investigator and has performed Judicial Police activities. He was working in the Delegate for Citizen Security (year 2015).

In the Delegate for Citizen Security he acted as a verifier and knows the reason for the summons since it corresponds to a case advanced by the Delegate for Citizen Security. He says that a complaint was received from the Sectional of Bolivar and he supported his colleague TARQUINO. His work consisted in confirming or denying the information received.

Regarding the activities carried out, he reports that interviews, photographic reconnaissance, inspection of places and selective search in the database were conducted. He recalls that the investigation pointed to an officer of the Bolivar Sectional. His Judicial Police activities were documented. The investigated employee of the Prosecutor's Office responded to the name of ELKIN ARNULFO PEÑA BERNAL and adds that he was even responsible for his capture.

And with respect to the investigation work, he recalls having requested information from a bank and, in order to clarify, he asked to be shown the document to refresh his memory.

The report dates from April 25, 2016, and corresponds to a selective database search at Banco de Bogotá. It was determined the existence of a wire transfer in the name of EFRAIN RIVEROS for \$.4,914500, the transaction was made on August 10, 2015. The person in charge of making the transfer was identified as JOSE NICOLAS LOPERA MONTOYA. A selective database search was also performed in the CLARO Telephone Company. The search showed that the cell phone number used corresponds to 321432 2907.

Another of the activities carried out was a photographic reconnaissance. He recalls having carried out a photographic reconnaissance procedure, in which AQUILES MIRANDA, JAIME AISLANT and an official named JUAN MANCERA participated.

The Defense asked about the reconnaissance and especially about the persons in charge of such reconnaissance and was emphatic in clarifying that the investigator TARQUINO did not participate in this diligence. Furthermore, he clarified that only one person carried out the reconnaissance since the others were not found.

Qi na 402 Centro Plazoleta Benkos Jd'll gen Ço.rr§pd pjJ udicial SPA - O t'icina 402 He ended his swom statement by concluding that he does not know the acknowledgments made by his colleague OSCAR TARQUINO but that in his exercise JAIME AISLANT GIL acknowledged DEWIN CASTILLO.

EVIDENCE TAKEN ON SEPTEMBER 4, 2020:

Testimony of SORLEY SUAREZ ARIZA.

She is an investigator for the Attorney General's Office. She has been linked to the Prosecutor's Office for 8 years and was previously linked to the DAS for 10 years. She is a Systems Engineer. She regularly performs analysis activities of telephone subscribers.

In 2015 and 2016, he worked in Seguridad Ciudadana (he worked in that unit 2014-2019). He knows the reason for his sworn statement but does not remember precisely. He indicates that it was a Link analysis.

And, in the development of the Swearing, the witness was presented with the report. She acknowledged her signature, the content of the document and its date: April 23, 2016. The purpose of the diligence -Report- was to perform link analysis and illustration of call flow for telephone subscribers **3114072901**, **3Z14322907**, **3193209006** and **3126042Z0Z**. These are the results obtained from these inquiries:

- Subscriber **3114072901**, the operator reported as owner Mr. JAIME AISLANT GIL from San Martin de Loba (Bolívar), with activation date September 29, 2004 and with an active status for that date. The record of incoming and outgoing calls (2 files). From July 1, 2015 to September 30, 2015 and from October 1, 2015 to January 15, 2016.
- Subscriber 3214322907, the operator did not report biographical data, with a record of incoming calls (2 files) from May 25, 2015 and ends July 31, 2015 and August 1, 2015 and ends November 25, 2015. Outgoing calls: from May 25, 2015 to July 31, 2015, and August 1°-, 2015 and ends on November 25, 2015.
- Subscriber **31932090006**, owner **ELKIN ARNULFO PEÑA BERNAL**, who presented as additional number **312604ZZ02**. Activation: August 24, 2014.
- Subscriber 3 **126042202**, in the name of **ELKIN ARNULFO PEÑA BERNAL**, active since January 9, 2008. There is a change from prepaid to postpaid. Activation date March 22, 2014. Unlimited plan. Submits a registration

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Incoming calls: April 29 and July 28, 2015, and from July 9 to October 8, 2015. Outgoing calls: May 9, 2015 and May 28, 2015.

The flowchart or call traffic that was presented with the telephone subscriber JAIME AISLANT GIL with the other telephone subscribers is detailed.

FLOWCHART TELEPHONE SUBSCRIBER 3114072901

The analysis consists of several cellular numbers, so we have that the calls for **31140729D1**, has 4,214 records, with start date July 1, 2015 to January 15, 2016.

The analysis with the lines under study 321 432 2907 and 3193209006. We have that with respect to 321432Z907 there were 40 incoming calls and 30 outgoing calls, and with the telephone number 3193209006, there were 21 incoming calls and 4 outgoing calls.

After the above, a table is made where the detail of the calls is made, and both the number of the line and the type of calls, their date, time, duration and receiver are specified. In addition, whether they are incoming or outgoing calls and the location of the telephone subscriber.

The above flowchart reflects and shows the call flow of the telephone subscriber **3114072901**, who is the receiver of the calls and the originator of the call and, in this case, the caller is **3190132019**.

The witness sufficiently explained the flow charts or call traffic between the telephone subscribers of the defendant and those of the victim JAIME AISLANT GIL. All this to conclude that the graph is the reflection of the fact that there was communication as denounced by the victim. The chart shows the exact date of the communication, the number of incoming and outgoing calls for each of the telephone subscribers analyzed in particular. In the report prepared by the witness, the traffic of the calls is very well graphed.

10. Testimony of JENiFY PAOLA URREA ROMERO.

She is a psychologist. She has been working for the Prosecutor's Office since 2012, previously she was assigned to the DAS. The witness was in charge of carrying out the TELEMATIC ANALYSIS AND CONTROL, consisting of telephone interception of telephone subscribers 3126042202, 319320906, 3176470663, 3506949903 and 301623375, according to the order of the Prosecutor's Office (monitoring, listening and analysis).

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He acknowledged the report presented by the Prosecutor in her interrogation, which corresponds to the analysis of the interceptions. The report dates from February 11, 2016. The object of the commissioned task, corresponded to the interception and analysis of such communications. The result is contained in 3 DVDs (authenticated and integral part of the affidavit) and a synthesis of the most relevant aspects of the communications was prepared.

The witness carried out the exercise of comparing the summaries with the interception recordings and for this purpose, the audio of the interceptions was listened to at the oral trial hearing.

From the numbers monitored we conclude that:

- The telephone subscriber **3126042202**, according to the interception, belongs to to ELKIN ARNULFO PEÑA BERNAL.
- The telephone subscriber 3176470663, according to the interception, belongs to ELKIN PEÑA BERNAL, who states that he is the Chief of Security of the Bolivar Sectional.
- The telephone subscriber 319320906 according to the interception belongs to to ELKIN PEÑA BERNAL.
- The telephone subscriber 3506949903 no records, no calls, no messages and no DVDs were presented.
- The telephone subscriber 30162337S belongs to a minute company, no illegal work is carried out, therefore no DVD was presented.

It is concluded that the lines that presented records and that were saved on DVD are: 3126042202, 319320906 and 3176470683.

In one of the audios **ELKIN PEÑA BER** IAL identifies himself as the Chief of Security of the Prosecutor's Office. In the second audio he refers to surveillance posts and to schedule a meeting at the end of the month.

In another audio they speak of having made contact with these people, they refer to surveillance posts and of not wanting to make everyone look good (they refer to surveillance contracts).

A third audio was also heard in the hearing in which **ELKIN** talks to RAFAEL CARABALLO, about a guy who left for a cruise to the Caribbean Islands and who left without warning. **ELKIN** states that he is ready and that he is leaving without warning.

mockery and quality. There is talk of dissolution of the company and that is why it is really necessary to proceed quickly.

Then another audio was heard in which they speak in coded language. They say that they are going to send a messenger and that after that they will know if they are going to play the game. **ELKIN** comments that the manes say that several times they have been invited to play and the people have not liked them.

In another audio dated December 18, 2015. **ELKIH** says, among other things, that he is going to a little meeting with some guys and that last night he told them some things and they just quoted him at one point.

In a new audio, **ELKIN** reveals that he is staying in a hotel in the Bosque, near Coca-Cola and they meet in Kokorico. In another audio, he talks about the tool he gave to save. At the same time, he talks to CAROLINA, and informs that he has just been called from the office.

Another audio in which mention is made of a magistrate arriving and to be picked up. From a friend of McDonald. That this is a fact and that on Monday they make the disbursement of fixed term and that they gave him an assignment of inheritance rights or they endorsed it to him. He ends by saying that it is better not to talk here.

The following audio corresponds to a conversation with a woman in which EFRAIN is mentioned, and where he promises not to do any more favors to anyone else because he "sucked". They talk about the capture of a certain alias "El Fito de Amberes".

Finally, **ELKIN** talks to an unknown man and lets him know that he has no money. He refers to a strategy regarding a lawyer and that they told him that "it is in the budget" and threatens to send the entire public administration group.

OF THE PARTIES OF THE PARTIES:

OF THE PROSECUTOR'S OFFICE:

The Prosecutor begins her intervention, concluding that in the process it was proven beyond reasonable doubt both the materiality of the accused crimes, as well as the responsibility of the defendant. She expresses that **PEÑA BERNAL** has been fully identified in this trial by the witness JOSÉ VICENTE COGUA and his quality of public servant has been recognized, with the documents that entered the oral trial and in which it is stated that the defendant is a protection agent assigned to the Attorney General's Office of the Nation.

ina402 CentroPlazoletaBenkos igppÇ0- gjdudicialSPA-Officina40 2 As for the crimes for which **PEÑA BERNAL** was accused, he indicates that the crime of CONCUSION was proven to have been committed because, abusing his position and his function as a servant of the Attorney General's Office, he constrained or demanded from the former mayors of San Martin de Loba, Messrs. RODRIGO MORALES, AQUILES MIRANDA and JAIME AISLANT GIL, a sum of money for the following crimes

40 MILLION PESOS, in exchange for helping them to keep an alleged witness from testifying against them. The alleged witness claimed that the former mayors were financiers of paramilitary groups.

In this action, the defendant visited the former mayors at their residence in San Martin de Loba, on July 9, 2015, and gave them summons to appear in Cartagena on July 30, 2015. The truth is that he only personally delivered the summons to JAIME AISLANT GIL since the other former mayors were not at their residences.

The subpoenas in this case were left with third parties, as accredited by the Police Intendant, FABIÁN SÁNCHEZ LEOPARDO and JUAN CARLOS MANCERA, the latter traveled as a driver in the company of a private individual. The Intendant guided them to the residences where the subpoenas were delivered. In his testimony JAIME AISLANT GIL explains that he received the summons in his hands from the official **ELKIN PEÑA BERNAL, and** wrote down with a pencil on the same document, the telephone number 319 320 9006.

Witness JAIEM AISLANT referred to how he and his fellow former mayors were subjected to the demands made by ELKIFí PEÑA BERNAL and the pressure they exerted, he and his partner because he needed the money for that same day. He even showed them a process in which there were irregularities in health and that corresponded to the municipality when they served as mayors, but Dr. RODRIGO MORALES, let them know that such a possibility was impossible because the money was delivered by direct transfer and that is when they are given to know the false version of the process in the transitional justice.

AISLANT GIL was asked if such investigation existed and the witness denied such fact, but they agreed to the blackmail on the understanding that it was not convenient for them to be involved in a scandal, since they were in the middle of the political campaign of one of their brothers -FIRUS AISLAN GIL-.

The Prosecutor referred that the day before the summons, on July 29, 2020, the defendant contacted AISLANT GIL, and this was corroborated by the investigator OSCAR TARQUINO, in the call log. Then, on July 30, they met in a cafeteria before arriving at the Prosecutor's Office and boarded a vehicle where **ELKIN PEÑA BERNAL and** the person who introduced himself as JOSÉ were present and made the request or economic demand, and that the delivery should be made that same day. The victims agreed, although it was up to their relatives to go to them, achieving

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7 million in cash and delivered the money that same day in the afternoon to ELKIN PEÑA BERNAL.

They also made 4 drafts, and this was proven with the testimony of OSCAR TARQUINO, in the month of August 2015. Mr. JESÚS RAMOS drew on behalf of EFRAIN RIVEROS, the sum of \$3. 089.700 and \$1. 910. 300. Total: 5 million pesos.

And, from Banco de Bogotá to Mr. EFRAÍN RIVEROS, in the month of August 2015, \$4. 914. 500 and \$2.948.000 were drawn on him, by Mr. JOSÉ NICOLAS LOPERA, drawings as a result of **ELKIN PEñA BERNAL**'s demands, requests that he continued to make by telephone calls.

After the first delivery, the subject who identified himself as JOSE also made calls.

The witness, JAIME AismN GIL, recognized in a photographic album both **ELKIN PEÑA BERNAL** and "JOSÉ", this last person the Prosecutor's Office identified as DEWIN CASTILLO. The money deliveries are proven, the economic demands of the public servant in exchange for help in a non-existent process of transitional justice, for a total of 40 million pesos. It was proven that the sum of 7 million pesos was delivered in cash and drafts through EFRAÍN RIVERO for the sum of \$12,862,500, for a total of \$19,862,500. That money delivered by the victims, entered the sphere of **ELKIN PEÑA BERNAL**.

The Prosecutor's Office proved that this sum of money was delivered and collected, so the testimony of JAIME AISLANT GIL and the investigator who, in the selective search in the database of telephone subscribers and calls, proved the existing telephone relationship between **ELKIN PEÑA BERNAL and** JAIME AISLANT GIL, gains credibility.

Regarding the ABUSE OF PUBLIC OFFICE with sufficient evidence, in the oral trial it was demonstrated that the defendant, public servant, abused and took advantage as security coordinator of the Prosecutor's Office in Cartagena, who deceived his partner JUAN CARLOS MANCERA to drive him to San Martin de Loba and in the place, he delivered some summons. However, **ELKIN PEÑA BERNAL** never actually told them that they were going to serve these subpoenas. He made the Attorney General's Office believe that he would travel on a date that he did not, so the payment of the commission was not made because it was not authorized for being extemporaneous, maneuvers that were uncovered because he was not exercising the functions of his position but abusing that public function.

And, it was not the first time that the defendant made these citations without having such a function as declared by CESAR GÓMEZ OSORIO and JORGE ARRIETA, who were subordinates of ELKIN PEÑA BERNAL, and it was demonstrated by the Prosecutor's Office the

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multiple calls between "JOSÉ" and PEÑA BERNAL because the selective search confirmed the veracity of JAIME AISLANT GIL's statement, constrained by an economic requirement.

The telephone interceptions made by the tesfigos JENNY UREA and SORLEY SUAREZ, clearly show the actions of **ELKIN PEÑA BERNAL**. In addition, in one of the calls reference is made to EFRAÍN who may coincide with the person to whom the money transfers were made, and everything makes the initial theory more probable, having fulfilled the promise of opening arguments the existence of the crimes of CONCUSION and ABUSE OF PUBLIC FUNCTION and the responsibility of the defendant was proven. What follows is a guilty verdict.

PUBLIC MINISTRY:

The Delegate of the Public Prosecutor's Office considers that the evidence presented at trial does not give rise to doubts, since a degree of knowledge has been forged as to the defendant's responsibility. The objective and subjective typicity is accredited, in accordance with the factual framework of the accusation, and after examining the evidence, there is no doubt about the structural topics of the conduct. The facts are so clear from the evidentiary perspective that there is no doubt whatsoever. The incriminating basis dates back to 2015 and, **ELKIN PEÑA BERNAL** is involved as a servant of the Prosecutor's Office. In this case, he used time, resources and means to travel without authorization from Cartagena to the municipality of San Martin de Loba. Then, while there, he contacted former mayors and approached them, telling them about possible mismanagement of health funds that could lead to criminal investigation and the intention of a member of armed groups to testify against them before the transitional justice system. The defendant demanded a sum of money, as corroborated by documentary and testimonial evidence.

In effect, it was accredited that Messrs. JAIME AISLANT, RODRIGO MORALES and AQUILES MIRANDA agreed with the defendant, in order to satisfy their economic demand and prevent an alleged witness from not testifying against them, as paramilitary collaborators, he demanded them the sum of 40 million pesos. The facts have their starting point on July 9, 2015, when the public servant went to the south of Bolivar with state resources and used a vehicle with the purpose of communicating a supposed judicial appointment, used to create situations that were not true, and a first disbursement for 7 million pesos was made to them on July 30, 2015.

This sum of money was received by the third party whom the Prosecutor's Office identifies as JOSÉ, and other payments were made in favor of EFRAÍN RIVEROS, all of this as a result of the economic demands made through telephone calls. The technical evidence shows very revealing aspects such as the number of calls made to Mr. JAIME

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AISLANT GIL, prolonged in time and that corroborate the motive of the economic demands. In addition, the communications traffic is presented within the period and the factual context in which the illegal boarding of the server took place.

Finally, the delegate of the Public Prosecutor's Office stated that the statute of limitations should be increased by half and that, in the event of a conviction and in order to ensure the coercive collection of the fine penalties, the first copy should be sent to the coercive jurisdiction of the Cartagena Sectional Judicial Administration Department.

THE DEFENDER:

He requests that the sentence be acquitted due to the existence of reasonable doubt, contrary to what was stated by the Prosecutor and the Public Prosecutor's Office, since the requirements established for a conviction are not met. He admits that, although the existence of a punishable conduct and the responsibility of ELKIN **PEÑA BERHAL** was accredited, he is surrounded by doubt, if the standards of knowledge beyond reasonable doubt regarding a punishable conduct and responsibility are taken into account.

As for the identity of **PEÑA BERNAL**, he considers that it was not proven that the person being prosecuted is the one who carried out the punishable conduct. It is evident then that the burden of proof corresponds to the Prosecutor's Office and in this case, it consists of demonstrating that **PEÑA BERNAL** is the same person who made the demands given that in the accusation it was stated that the defendant made demands to some persons and, however, it was only subordinated to what was said by Mr. JAIME AISLANT.

According to the defense, the prosecution has the burden of demonstrating that **ELKIN PEÑA** BERNAL is the one who made the economic demands and not another person. In the trial it was demonstrated that Mr. JAIME AISLANT GIL, in the municipality of San Martin, was presented by the Police Commander with two people and one of them identified himself with the name of ELKTN and even though the defendant is identified as **ELKIN PEÑA BERNAL**, it must be demonstrated that the person who went to the municipality of San Martin de Loba, together with another person called "JOSÉ".

The defense reiterates that it cannot be affirmed that the ELKIN who showed up in San Martin de Loba and who was in the car when he received the money, is precisely **ELKIN PEÑA BERNAL**, since the witness does not know the perpetrator and the Prosecutor did not present the victim with the corresponding photographic recognition, which is an integral part of the testimony of the recognizer.

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He insists that the evidence practiced in the trial is not sufficient to prove that the **ELKIN** who went to the municipality of San Martin de Loba and the one who was in Cartagena, is the same **ELKIN PEÑA BERNAL**.

Again he referred to the fact that **ELKIN** could be any person, and it is clear that the witness JAIME AISLANT GIL has no reliable proof that **ELKIN** and JOSE are the person being prosecuted, there is no evidence to prove it, because when the witness does not previously know the agent, a photographic recognition is made. The Prosecutor's Office made a photographic recognition, but never presented the witness with the photographic recognition record, and this is an integral part of the testimony of the recognizer, and it was not introduced in the trial, therefore, there is no reliable evidence and therefore this recognition is not valid, because there was no direct accusation. With the statement of JAIME AISLANT GIL it was only corroborated that a person made economic demands and that for that **ELKIN** that he mentioned so many times, to be **ELKIN PEÑA BERNAL**, no type of pointing was made, and the testimony of the intendant EDWIN FABIAN SANCHEZ LEOPARDO, is not valid because he did not witness any type of demands.

This police officer also said that a person by the name of ELKIN approached him and took him to various places, but he was not photographically recognized.

The testimonies of the companions are irrelevant because they have no relation with the facts since these testimonies do not refer directly or indirectly to the factual, since the criminal law is of act and not of person, he is not being judged for what he is, but for what he did. Mr. MANCERA's testimony on the punishable act does not serve to point out the defendant. The defense attorney concludes then that the doubt is valid since the connecting thread was short - the connection was short - between the proven facts between Mr. **ELKIN** and the defendant.

There is another fact indicated by Mr. JAIME AISLANT GIL who says that an **ELKIN PEÑA** made economic demands. But it cannot be established that this **ELKIN** is the same **ELKIN**, there is also an omission on the part of the Prosecutor's Office in the link analysis, since it was never established with certainty standards, if these telephone numbers were used by **ELKIN PEÑA BERNAL**. The conversations that were presented do not correspond to the number related by Mr. JAIME AISLANT GIL, the standard of knowledge beyond any doubt was not demonstrated. It was not demonstrated that the **ELKIN** mentioned is **ELKIN PEÑA BERNAL**. He concludes requesting the acquittal of his legal godson based on the principle of in dubio pro reo.

CONSIDERATIONS OF THE JU/GADO:

Article 381 of the C.P.P. warns that in order to issue a conviction, it is necessary to have knowledge beyond any doubt about the crime and the criminal responsibility of the accused. In this case, this knowledge was obtained, in that ELKIN PEÑA BERNAL, employee of the Sectional Prosecutor's Office of Cartagena on the date of the facts, incurred in CONCUSION and ABUSE OF PUBLIC OFFICE. In the same sense, a precept of the governing norms, Article 7 of the C.P.P., in its 4th paragraph, establishes that in order to issue a conviction there must be conviction of the criminal responsibility of the accused, beyond any doubt.

In turn, it cannot be overlooked that article 448 of the C.P.P. highlights the importance of consistency. The precept states that the accused may not be found guilty for facts that do not appear in the indictment, nor for crimes for which conviction has not been requested.

And, following in this order, Article 372 of the C.P.P. defines that: "The purpose of the evidence is to bring to the judge's knowledge, beyond all reasonable doubt, the facts and circumstances of the trial and the criminal responsibility of the accused, as perpetrator or participant".

In this case, the most convincing, certain and credible evidence is the testimony of former Mayor JAIME AISLANT GIL (VICTIM in this case). With that testimony alone the CONCUSSION attributed to **PEÑA BERNAL** is proven **and** let us remember that in recent providence of our highest Court (Supreme Court of Justice, Criminal Chamber, Sentence SP-16841-14 of December 10, 2014. M.P. Fernando Alberto Castro Caballero), authoritatively states that, if the statement given does not involve internal or external contradictions in relation to other means of conviction, it may lead the judge to know, beyond reasonable doubt about criminal liability.

We say this because the defense misses the fact that the testimony of the other former mayors has not been heard. But, as it is known. AISLANT GIL is not the only evidence in this matter and the complexities of the process prevented the attendance of the burgomasters.

Well, ELKIN PEÑA BERNAL was accused of having forced and requested undue money from some former mayors of San Martín de Loba, a municipality in the south of Bolívar, and in the process, it was precisely proven that **PEÑA BERNAL** went to that municipality and delivered an adulterated summons that forced **RODRIGO MORALES DÍAZ, AQUILES MIRANDA SALAZAR and JAIME AISLAN GIL to** go to San Martín de Loba, a municipality in the south of Bolívar, and that the former mayors were **forced to** go to San Martín de Loba. to Cartagena.

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Once the victims arrived in Cartagena, **PEÑA BERNAL** made the financial request to the former mayors, which he set at FORTY MILLION PESOS (\$40,000,000.00). The health care system has been affected by the irregular management of health care resources and then, when the

The former mayors were unaware of this action, the condition that motivated the economic demand changed, as he told them that their collaboration consisted of mediating before a witness who linked the former mayors to paramilitary groups or groups outside the law, and that the process corresponded to the Transitional Justice.

In Caytagena, a first installment of money was made effective at the end of July 2015, amounting to SEVEN MILLION PESOS (\$7.000.000.00). Subsequently, by the pressure of telephone calls, other deliveries were made to bank through consignations and wire transfers.

In the process the identity of the defendant was established and this circumstance is indisputable, in spite of the questions raised by the defendant's defense counsel. The identification is complete because in a convincing manner and with excellent conviction, the defendant and victim, JAIME AISLANT GIL, identified him directly and even made known - with all the circumstances - the way in which the facts were presented. AISLANT GIL's version is concordant, coherent and coincident with the other technical and testimonial evidence.

And, of course, **PEÑA** BERNAL was interested in making himself visible and showing himself.

The economic demands were a constant over time, since through bank consi ation**gn**and drafts through entities providing this service, other payments were obtained in favor of the active subjects. The amounts delivered give a total of \$19,862,500.

JENNY PAOLA URREA ROMERO and SORLEY SUAREZ ARIZA, were

They **b**were in charge of verifying the flow of calls or call traffic between the defendant and the victim JAIME AISLANT GIL. The witnesses with sufficiency and very well oriented in their reports, from the victim's telephone, registered the incoming and outgoing calls, with which it is possible to confirm the link of the defendant with the telephone line, not only because it is certified by the communications company but also because in the interceptions it is registered in audio when the defendant presents himself and makes his name and identity known.

The reports of these two investigators, we insist, specify the traffic of calls between the victim and the defendant in such a way that they strengthen AISLANT GIL's statement that he had been forced to deliver money and there is $\frac{1}{1000}$

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no dispute as to the consistency of his version and **PEñA BERNAL**'s commitment to these charges.

ina 402 CentroPlazoleta BenkosiDa'dtú ganG'>uQxl£\$viaiu dicialSPA - Officina 40 The voice of the investigators OSCAR DARIO TARQUINO BARON and WILMER ENRIQUE MENDEZ MORENO is also convincing, since they carried out a selective search in a database and other investigative activities, confirming that the consignments and transfers made by the former mayors to the defendant, through a person named EFRAIN RIVEROS, were indeed true.

In the section that analyzes what was said by the witnesses individually, the specific details of these findings are specified, and in this section of the considerations, we analyze the evidence as a whole.

It is concluded, evidentially, that **PEÑA BERNAL** constrained JAIME AISLANT GIL and the other former mayors to deliver some money in an undue manner and that he made use of what is known in the doctrine as "menWs" with respect to the crime of CONCUSION.

publicae RO>statis", an element that leads the victim to surrender to the claims of the agent. Recall that AISLANT GIL told us that his brother aspired to the mayoralty of San Martin de Loba and that he could not expose the image of his collateral on the occasion of

to this electoral process.

The means used by **PEñA BERNAL** had this suitability and power because the victims easily understood that they had no alternative but to give in to the defendant's demands (subjective element that is predicated on the victim).

The elements of the punishable offense of CONCUSSION are:

1.- The qualified active subject, in this case, is required to be a public servant. It is proven that **PEÑA BERNAL** was one. Documentary evidence was provided of his appointment resolution, possession certificate and the servant's manual of functions. His coworkers also recognized him as a public servant of the Sectional Prosecutor's Office of Cartagena on the date of the facts.

2. The governing verb, which is determined as "abuse' of the position or function. In this case, the disrepute of the Prosecutor's Office is produced with the absurdity of such action, since one of its servants, without being authorized, tries to take advantage of his condition as a member of the accusing entity.

The execution of some of the following actions: a) To constrain, b) To induce and c) To request. In this case, it was specific in constraining because there was a threat against the former mayors of the consequences of a non-existent process **and PEÑA BERNAL** made them see that, with his intervention, he would influence in their favor.

4.- The purpose consisting of getting someone to give or promise money or some Centro Plazoleta Benkos Biohó - SPA Judicial Complex - Office 402 undue advantage to the same server or to a third party. The purpose was obtained because

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AISLANT GIL personally delivered money to them in Cartagena and later, by means of money orders or consignments, more funds were sent as payment for the economic demands.

5.- The existence of a causal relationship between the action of abuse of the condition or function by the servant and the effort to obtain a benefit that is not owed by the one who is the subject of the intimidation. This requirement appears determined by the displacement of the defendant to the South of Bolivar and for personally contacting AISLANT GIL and leaving notification to the other former mayors, who, impacted by the verisimilitude of the threat, had no other option but to deliver their resources to the public servant who forced them to contribute in an undue manner.

In turn, the crime of ABUSE OF PUBLIC FUNCTION, is typified in article 428 of the Criminal Code and attempts against the legal good of PUBLIC ADMINISTRATION, and consists in that a public servant abuses his position and performs public functions different from those that legally correspond to him. In this case, **ELKIN ARNULFO PEÑA BERNAL**, totally exceeded his functional attribution since he elaborated and signed citations knowing that his functions were very different from the judicial ones.

PEÑA BERNAL's position was that of Chief of Security and it was his responsibility, as stated in his sworn statements by his subordinates CESAR GABRIEL GÓMEZ OSORIO, JORGE ARRIETA BERTEL and JUAN CARLOS MACERA GUZMAN, to support the security schemes, carry out security studies of the facilities, program shifts and in no way, attend to the public.

Inexplicable then **PEÑA BERNAL** undergoes a metamorphosis and is "transformed" into a member of a judicial office and made subpoenas, such as those reported by GÓMEZ OSORIO, who told with surprise how he made him deliver one of those subpoenas to a merchant of the Bazurto Market in June 2015. This subpoena is documented, as the subpoenas of the former mayors of San Martin de Loba, and sufficiently prove the ABUSE OF PUBLIC OFFICE.

This second crime carried out by **PEÑA BERNAL and** that concurs with the crime of CONCUSION, is characterized because a public servant who has no competence to issue judicial summons nor to use vehicles and personnel under his charge for that purpose, decides to do so. This means that the axis of the crime of ABUSE OF PUBLIC OFFICE lies in the illegal overflow of PEÑA **BERNAL**'s functional attribution.

It is known that, in accordance with the Constitution, individuals are only liable before the authorities for violating the Political Charter and the laws, as long as

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The public servants are so for the same causes and for omission or excess in the exercise of their functions.

This postulate coincides with the one that teaches us "there shall be no public employment that does not have functions detailed in the law or regulation". This is the basis for the criminalization of this conduct, since it is unconscionable that a public servant performs functions other than those legally assigned within the scope of his competence and for purposes contrary to the public function.

Public servants should not engage in conduct that implies abuse of the office they hold and even less of their functions, since any misuse of power by overreaching directly affects the entity they represent, tarnishing its image with serious consequences for its credibility and prestige.

The sending of subpoenas to merchants of Bazurto in Cartagena openly reflects the ABUSE OF THE PUBLIC FUNCTION by PEñA BERNAL because in a disproportionate manner, he arbitrarily exceeds the regulatory functions conferred by the Attorney General's Office of the Nation.

Now, with regard to the subjective typicity, it is clear that **PEÑA BERNAL** knew that he could not make this type of economic demands or carry out actions not authorized by law. It was evidenced that his conscious will was directed to obtain that undue profit and to perform tasks very different from those assigned to him by law. Note that he provided his telephone number to create a communication channel with AISLANT GIL when he notified him at his house in San Martin de Loba. Moreover, the crime of CONCUSION in particular, is a crime of mere conduct, that is to say, it was configured when **PEñA BERNAL** abused his position or functions, with the purpose of constraining AISLANT GIL and requesting money from him.

The reference to the crime of mere conduct means that the punishable conduct only requires that the public servant makes an undue requirement by way of a threat (express or implied) with prejudice to the passive subject, and regardless of whether it materializes.

The fact that the defendant is a lawyer and works for the Attorney General's Office of the Nation, also allows to establish that he was aware that a public servant could not make use of the position of Chief of Security of the Sectional Prosecutor's Office of Cartagena at the time of the facts (2015), to obtain a personal benefit because he incurred in a crime against the Public Administration. However, he did not care.

The same in relation to the punishable offense of ABUSE OF PUBLIC OFFICE, especially when **PEÑA BERNAL** made use of his subordinates, exposing and instrumentalizing them.

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Regarding the unlawfulness of **PEÑA BERNAL**'s punishable conduct, we must point out that the injury to the protected legal right of public administration is more than demonstrated, since the crimes in competition constitute a typical case of corruption, since the good name of the administration of justice, whose purpose is to satisfy the general interest, is affected. The administration of justice is committed to important principles such as equality, morality, efficiency, economy, celerity, impartiality and publicity.

Undoubtedly, the public expects transparency and rectitude from the public servants of the Public Prosecutor's Office.

To recapitulate, **PEÑA BERNAL**'s behavior discredited and tarnished the public administration. The image of the Prosecutor's Office deteriorated, precisely in municipalities where the State has no presence, and there is no justification whatsoever.

We insist that the defendant understood the criminal legal transcendence of his actions because as a public servant he deceived and used the Police Commander of San Martin de Loba, as well as the driver of the Prosecutor's Office. The defendant knew that he could not approach and constrain citizens who had served as former mayors and that he had the legal duty to act otherwise since he defrauded the trust placed in him as a public servant. It is extremely sad to work for the Prosecutor's Office, whose mission is precisely to fight against crimes, and end up as an active subject of the crime of CONCUSION and ABUSE OF PUBLIC OFFICE as an act of corruption.

It is important to point out that the defense insisted that the doubt was strengthened inasmuch as it was only known that a person named **ELKIN** made economic demands to Mr. AISLANT GIL, but his identity was not established, since the corresponding photographic recognition was not submitted as complementary evidence to the affidavits of AISLANT GIL and SANCHEZ LEOPARDO. Nor does it admit as proof of the identity of **PEÑA BERNAL**, the records of the telecommunication companies as to the owner of the line.

We do not agree with this argument because, as can be seen, if there was someone interested in being visible and identifiable, it is **ELKIN ARNULFO PEÑA BERNAL** himself since he decides to show up at the former mayors' house; he is accompanied by a subordinate -JUAN CARLOS MANCERA GUZMAN-; he travels in an institutional vehicle; he seeks support from the Police Commander of San Martin de Loba -EDWIN FABIAN SANCHEZ LEOPARDO-; he hands over an adulterated subpoena in his own name; not content with providing his telephone number, he gives his name to the police; seeks support from the Police Commander of San Martin de Loba -EDWIN FABIAN SANCHEZ LEOPARDO-; delivers an adulterated subpoena

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in his name; not content with providing his telephone number, he is linked to an exaggerated flow of telephone calls (incoming and outgoing) and in Cartagena, he approached the former mayors.

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Ex-mayors and coerced them, obtaining the delivery of a significant amount of money as indicated above.

And, several of the telephones that correspond to incoming and outgoing calls with respect to AISLANT GIL, its owner is **PEÑA BERNAL** as certified by the telephone communications companies.

The recognition by means of photographs carried out by AISLANT GIL and SANCHEZ LEOPARDO, in their affidavits, made it known as a concrete fact. The minutes and the photographic charts are illustrative or complementary to the testimony and of it there is reference also by the investigators TARQUINO BARON and MENDEZ MORENO. In turn, MACERA GUZMAN illustrates it better since he does not deny the visit, but details it and agrees with AISLANT GIL and especially that his Chief ELKIN from the Prosecutor's Office was the one who was in San Martin de Loba in the first days of July 2015.

Very complex that on the same day two **ELKIN** linked to the Prosecutor's Office visited AISLANT GIL.

The Defense misses the fact that the other former mayors were not heard. But, as already stated, the voice of AISLANT GIL has been so forceful and definitive, and even his statement was contrasted with the other evidence admitted and controverted, resulting in a uniform testimony with what was stated in his complaint, interview and affidavit.

It is concluded that the procedural assumptions enshrined in Article 381 of the C.P.P. are fully met in order to issue a conviction, that is, the existence of knowledge beyond any doubt about the responsibility of **ELKIN ARNULFO PEÑA BERNAL** as the author of the crimes of CONCUSION AND ABUSE OF PUBLIC OFFICE. It is not superfluous to add that this conviction is consistent with the indictment filed by the Attorney General's Office under the terms of Article 448 of the Criminal Code.

PUNITIVE DOSAGE:

Once the elements of the crimes of CONCUSION and ABUSE OF PUBLIC OFFENSE attributed to the defendant in the indictment have been established, it is now necessary to proceed with the respective procedure for the individualization of the sentence to be imposed in relation to such criminal behaviors.

Regarding the criteria for determining the prison sentence contemplated in the Criminal Code, Law 599 of 2000, it is held that, in this case, since it is a concurrence of punishable conducts, CONCUSION and ABUSE OF PUBLIC OFFICE, the following is applicable

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The sentence shall proceed as imposed by Article 31 of the Criminal Code, that is to say that **ELKIN ARNULFO PEÑA BERNAL** shall be subject to the penalty established for the most serious crime, according to its nature, increased by another amount.

In this case, the most serious crime corresponds to the punishable offense of CONCUSSION, the punitive extremes of which range from 96 to 180 months of imprisonment, a fine of 66.6 to 150

S.M.L.M.V. and disqualification from the exercise of public rights and functions from 80 to 144 months.

In order to determine the prison sentence contemplated in canon 404 of the Penal Code and in accordance with the punitive extremes (96 to 180 months), for this event the range of mobility is 84 months and each punitive quarter corresponds to 21 months.

The fine has as extremes 66.6 to 150 S.M.M.L.M.V. and the range of mobility is eighty-three point four (83.4) S.M.L.M.V., so each quarter is Z0.85 S.M.L.M.V.

Disqualification from public functions counts as extremes eighty (80) to one hundred and forty-four (144) months, being the scope of mobility 64 months and each quarter is 16.

Similarly, for the crime of ABUSE OF PUBLIC OFFICE, the range of mobility is 20 and each quarter corresponds to 5.

The above is schematized as follows for the crimes charged

CONCUSSION:

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First Quarter	Second Quarter	Third Quarter	Final quarter
96 to 117 months	117 to 138 months	138 to 159 months	159 to 180 months.

ABUSE OF PUBLIC FUNCTION.

First Quarter	1 Second Quarter	Third Quarter	Final Quarter
16 to 21 months	21 to 26 months	26 to 31 months	31 to 36 months.

Regarding the individualization of the penalty to be imposed, it is noted that in the indictment the circumstance of greater punishability contained in Article 58 of the Criminal Code, numeral 10 for acting in criminal co-participation was imputed and in the transfer of Article 447 the circumstance of lesser punishability contained in Article 55 numeral 1, lack of criminal record, was recognized, reason for which, according to Article 61 of the Criminal Code, the punitive scope of CentroPlazoletaBenkosBioho-Comple.joJudicialSPA-Officina402

mobility is that which corresponds to the middle quarters for the punishable conduct analyzed.

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And, in accordance with the text of paragraph 3 of Article 61 of the Criminal Code, with respect to the seriousness of the conduct and the damage generated, the defendant, acting as a public servant, used his position to obtain an illicit benefit, also exercising functions that were not proper to his position, and thus a busing them; He managed to coerce several former mayors of a municipality in the South of Bolivar, lying to them about the existence of investigations against them in order to, with the argument of helping them to avoid a possible imprisonment, force them to pay him sums of money. Therefore, the Office finds it reasonable to impose **ONE HUNDRED SIXTEEN (117) MONTHS** of imprisonment, a penalty that suffers an increase of **TWELVE (12) MONTHS** by virtue of the concurrence of punishable conducts, resulting in a total penalty of **ONE HUNDRED TWENTY-NINE (129) MONTHS OF PRISON**.

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In this case, the fine penalty with the same reasoning and proportion that was deducted in the imprisonment penalty, is set at eighty-seven (87) legal monthly minimum wages.

With regard to the disqualification from the exercise of public rights and functions, also provided for as the main penalty, it is individualized at ninety-six (96) months.

As an accessory sanction, the accused shall be sentenced to the loss of his public position as Chief of Security and/or the position he is currently holding in the Office of the Attorney General of the Nation, since the exercise of his public function was directly related to the execution of the punishable conduct attributed (Law 599 of 2000, articles 43, no. 2, 45 and 52).

OF CRIMINAL SUBROGATION:

It is not appropriate to grant ELKIN ARNULFO PENA BERNAL the conditional suspension of the execution of the sentence, since the custodial sentence is greater than 4 years, so that the objective requirement indicated in Article 29 of Law 1709 of 2014 would not be satisfied. In addition, subsection 2 of Article 32 of the same legislation, which amended Article 68 A of Law 599 of 2000 provides that such criminal subrogation shall not proceed for "those who have been convicted for fraudulent crimes against the Public Administration", as is the case in this matter with the crimes for which he has been convicted.

Nor is it feasible to substitute house arrest for intramural imprisonment for reasons similar to the above, since in accordance with the precepts of Article Z3 of Law 1709 of 2014, it is applicable for the crime of extortion whose minimum penalty is 8 years of imprisonment and, in addition, since they are fraudulent behaviors against the Public Administration, whoever commits them is expressly excluded

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from such substitution, as provided in paragraph 2 of Article 32 of the aforementioned regulation.

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There is no evidence of the presence of any of the circumstances regulated in paragraphs 2, 3, 4 and 5 of article 314 of Law 906 of 2004, referring to the accused being older than 65 years old, being a person who is 2 months or less away from giving birth, being in a serious condition due to illness, as determined by an official expert; nor has the condition of father head of household been alleged and even less demonstrated, circumstances that according to paragraph 3 of article 68 A, modified by article 32 of Law 1709 of 2014, would allow the substitution of the execution of the sentence.

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Therefore, **ELKIN ARNULFO PEÑA BERNAL** shall serve the sentence imposed in the prison establishment provided by INPEC for such purposes. Consequently, issue the respective arrest warrant.

In merit of the foregoing, the First Criminal Circuit Court of Cartagena de Indias, administering justice and by authority of the law,

RESUELVE:

FIRST: CONDEMN ELKIN ARNULFO PEÑA BERNAL, of civil and personal conditions already known, to the penalty of ONE HUNDRED AND TWENTY-NINE (129) MONTHS IN PRISON, as author and responsible for the punishable conducts of CONCUSION and ABUSE OF PUBLIC OFFICE, a fine of eighty-seven (87) legal monthly minimum wages, and disqualification for the exercise of public rights and functions, also foreseen as main penalty, in ninety-six (96) months. As an accessory sanction, the loss of the public position as Chief of Security and/or the one he is currently holding in the Attorney General's Office shall be imposed on the convicted person, as explained in the motivating part of this sentence.

SECOND: NOT TO GRANT ANY CRIMINAL SUBROGATE, taking into account the express prohibition of art. 68 A of the C.P., and, in addition for not complying with the objective requirements for the concession of one or another substitutive mechanism: Consequently, ELKIN ARNULFO PEÑA BERNAL shall serve the sentence imposed in the prison establishment determined by the INPEC for such purposes. Release the corresponding arrest warrant for the enforcement of this sentence.

THIRD: TO PROVIDE, through the CENTER OF JUDICIAL SERVICES, to render the necessary information to the State security agencies for the purpose of registration and control of sentences in accordance with Articles 166 and 462 of the Code of Criminal Procedure, as well as sending the file to the COURT FOR THE EXECUTION OF PENALTIES AND SECURITY MEASURES that The Company's share of the proceeds will be allocated on a pro rata basis.

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FOURTH: CORTRA this sentence proceeds with the appeal, which is notified to the appellants.

NOTÍFY AND CÓMPLY. FREDY ANTONIO MACHADO LOPEZ JUEZ

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EXHIBIT H

Operation Underground Railroad in Colombia: Episode 1

Working Title: Operation Underground Railroad in Colombia Producer: Nick Nanton Director: Nick Nanton Writer: Katie Tschopp Two 44-minute episodes

Segment One

INTRODUCTION

Intercut the following interviews with footage:

—OUR team in Colombia- talking to traffickers on the beach, praying before an operation, beginning to head in for a raid.

-Scenes from Colombia: the cities of Cartagena, Medellin and Armenia and the surrounding beaches off Cartagena's coast

-Tim testifying before congress

TIM BALLARD SPEAKING BEFORE CONGRESS: Clip of Tim testifying before Congress about the American man, Dennis de Jesus who was caught up in a sting in Colombia, pleaded guilty and was sentenced to 15 years. Tim sharing why the U.S. working with Colombia is important- that's how they caught this U.S. citizen who had been regularly traveling to Colombia to have sex with young girls. And they've caught many more Americans. Also, the Colombian authorities have learned from what OUR is doing and now operate on their own to save children from the sex trade.

TIM BALLARD: Colombia has a long history of internal

conflict and violence, but the government there is working to create a peaceful country and OUR is working more and more there. Sex trafficking happens everywhere, but the Colombian authorities are doing something to fight back. It's a special country to me- it was one of the sparks for creating Operation Underground Railroad.

KATHERINE BALLARD/ FRIEND OF TIM'S: Tells us about the time back when Tim was working for the government... how he wanted to help people in every country, but was bound by US government restrictions.

TIM BALLARD: When I was working with Homeland Security, I went to Colombia for a training mission. We actually found several people who were downloading child porn and I made a promise to authorities there. I told them we could come back and execute this plan to rescue kids in Cartagena, but of course I didn't have the power to do that as a government agent. I went back to Washington and could not get approval to take action in the way I wanted. This was a huge factor in my decision to start Operation Underground Railroad, a private organization to rescue kids from sex trafficking in other countries.

MATT OSBORNE: Tim's the kind of guy who doesn't like things that are just for training purposes and not actually accomplishing anything. So while he was in Colombia he said, why don't we turn on these software programs and instead of telling you how to hunt child predators in your country, let's actually do it. We talk a lot about Haiti and the search for Gardy Mardy being the inspiration for OUR — and that's true. But Colombia was the straw that broke the camel's back. This country was very much an inspiration for what Tim created with OUR.

Segment Two

THE START OF O.U.R. WORK IN COLOMBIA

Intercut the following interviews with footage: —OUR team in Cartagena- talking to traffickers on the beach

—Tim with Fuego on the beach

-Scenes from Colombia: the city of Cartagena the surrounding beaches off Cartagena's coast -Tim meeting with undercover Colombian authorities about expanding to other areas like Medellin etc -Footage from Isla Baru and interacting with traffickers

SOMEONE FROM INITIAL COLOMBIA MISSION (It

should be no problem to locate someone from the initial Colombia mission. When you are ready, I can put you in touch with some individuals to interview. Most are in the Salt Lake City area, so you could combine those interviews with others you would want to do there): We went to Colombia for the first time for a mission in March of 2014 and we were ultimately successful, after failing the first time [this is an interesting story that was covered in the May 2016 documentary The Abolitionists]. We worked with the Colombian government in Cartagena and rescued 32 victims, most of them children, from sex slavery. Five traffickers were arrested. It was the first mission of its kind <u>ever to be prosecuted in that region of Colombia.</u>

they asked us to come back and to work with local prosecutors to find more leads and more traffickers and more kids to rescue. They saw that we knew what we were doing.

TIM BALLARD: Officials in Colombia asked us to come back to carry out a mission on the islands and beaches off the coast of Cartagena. The prosecutors told us they had information that children were being sold for sex about an hour off the coast of Cartagena, on Isla Baru. We worked extensively with the Cuerpo Técnico de Investigación, or



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JAKIE REYES (lead CTI case agent at the time): Tells us about working with Tim and OUR-why the Colombian authorities trusted OUR to work with them on these dangerous missions. Tells us about sex trafficking on the islands off the coast of Cartagena, how big a problem it is and why they needed OUR's help. [Jakie can speak decent English but probably would prefer to speak in Spanish on camera. She would be a great interview-if she agrees to it. In the past she has shown reluctance and said that her bosses did not want to have her face and identity made public. If she does not want to do these interviews on camera, we might be able to convince the former head of CTI-a man named Ricaurte who is no longer in that position-to sit for the interview. Another possibility is a CTI agent named Jorge Martes, who has supported HSI in the past and who worked this Cartagena operation.]

TIM BALLARD: Within 30 minutes of getting on the beach at Isla Baru, I was approached by a man named Fuego. He offered to set us up with a man named Edward who was making plans to build a hotel for sex tourism.

JAKIE REYES (lead CTI case agent): Tim gave a report on what he found to police in Cartagena and they discussed how best to move forward. We were impressed with how quickly the OUR team found leads and wondered if they could do the same in other parts of the country.

TIM BALLARD: We met with Colombian officials and discussed other places where we could potentially help. Medellin was top of the list.

Segment Three

EXPANDING THE WORK IN COLOMBIA

Intercut the following interviews with footage:

—OUR teams in Cartagena, Medellin and Armenia- talking to traffickers, working with CTI and setting up the sex parties.

-CTI agent in Cartagena talking to Edward on the phone.. planning for tomorrow, how many girls etc

-Batman in Medellin

-OUR team training in Salt Lake City- gun range, Krav Maga etc [I am not sure how much footage we have of this training... did you find any on the Google Drive of raw footage? If not, I can reach out to some of the former Abolitionist camera crew to locate footage of past OUR trainings.]

TIM BALLARD: We decided with CTI to start another operation in Medellin. I sent an undercover operative code named Batman to lead the work from our side. He's one of our best operators and I've worked with him for years. He manages to rescue children from the most difficult network of traffickers.

BATMAN [Batman (real name is Steve) would be absolutely fantastic for these interviews, but gaining his consent might be a bit tricky. If Batman even agrees to appear on camera, his face will need to be blurred, as he still works undercover operations in Central America. A second issue is that he has been in poor health of late, and I'm not sure if he would have the stamina to do the necessary on-camera interviews. I am happy to make the "ask" of Batman when you are ready. To help me do this, please let me know approximately how many days you would need him, where the interviews would be (near him in Central America or would we bring him back to the States, etc) and any other particulars that he can think of. We can also consider making a donation to his ministry, based on proceeds from the episodes.] : Four million people live in Medellin and it's the second largest city in

Colombia. It's modern and urban and a popular city that unfortunately is also a hotbed of trafficking and cartel activity. We were hopeful that a successful operation here would deter trafficking in the future.

JAKIE REYES (lead CTI case agent)[Jakie was lead CTI agent for the Cartagena/Isla Baru operation, but I am not sure if she had full knowledge of what was going on in Medellin. Tim and I could try to track down the CTI agent for Medellin, or perhaps we could put you in touch with HSI special agent Steve Munson (now in Washington State), who was intimately involved in the Medellin operation]: Tells us what was going on from the Colombian side at this point—as they were planning the operations in the summer of 2014 in Cartagena and in Medellin. What other places were on their radar? Can this person tell us Armenia was a place they needed OUR to be working in as well?

TIM BALLARD: I met with CTI agents in Cartagena to discuss plans for moving forward with Edward- the man I'd learned about from the guy on the beach. Turns out CTI learned that Edward worked with two other traffickers and was planning to build a hotel, that would really be a child brothel.

TIM BALLARD: Meanwhile, Batman found a target in Medellin- a North American sex pervert named Jeffrey who lives there specifically because of the girls.

BATMAN: I met Jeffrey while posing as a pedophile on Facebook. He coached me on how to get minors in Medellin, sent me pictures of girls. Said this one was lunch. Just sick.

TIM BALLARD: Tells us what the OUR team was like at this point—it was still a new organization and they needed

more help. Tells us about Matt Osborne, a friend from his CIA days who he knew would be the perfect addition to their team.

MATT OSBORNE: Tim had been trying to get me to leave the government to join him at OUR. I was kind of like, you want me to leave a good government job where I get health care and a pension for a job where I only get paid if the donations come in? Tim was like yes. I thought about it and prayed on it a lot and ultimately decide to resign from the CIA in 2014 to join Tim. People thought I was crazy.

TIM BALLARD: Tells us what it meant to have Matt join their team—what he brought to OUR from day one. They met in graduate school and both worked at the CIA. Tim worked to recruit Matt for months and months, but it was a huge decision for him to leave his government job and pension and come work for a nonprofit.

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MATT OSBORNE: Right after I joined OUR, Tim told me they already had a mission for me. Colombian officials had told Tim that they had a source in the city of Armenia who said a man named Martin was making porn and trafficking kids there. The Colombian officials came to OUR to ask for help.

TIM BALLARD: Armenia is a little agricultural city south of Medellin, and CTI told us they located a child pornographer and they asked us to go in and help investigate him. When I was an agent, I worked child pornography cases frequently, and we usually only found the end-users; the Americans who were downloading child porn. It's very difficult to find the producers of child porn, because they keep themselves walled off. I put Matt in charge of the new mission in Armenia. All of a sudden we had three operations underway in Colombia. MATT OSBORNE: We brought our jump teams to Salt Lake City in September to train. We did Krav Maga, gun range training and Tim was showing everyone these awful photos of what was being done to young and vulnerable girls in Colombia. We were all ready to take action and bring down these people doing these evil things to children.

SOMEONE ELSE FROM OUR: Tells us about training for all three operations at this time- still as a relatively young organization. What were the concerns or fears or any issues that had to be overcome?

TIM BALLARD: Tells us any concern he had at this point with the planning of all three missions.

MATT OSBORNE: By October, we were ready. We went in with our three respective teams, Tim leading in Cartagena, Batman leading in Medellin and me leading in Armenia.

Segment Four

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TRIPLE TAKE IN COLOMBIA

Intercut the following interviews with footage:

—Tim with CTI and OUR in Cartagena- Tim and agents arriving at Edward's house. Meeting the girls who tell their ages. Meeting Kelly Johana Suarez and Samuel- two other traffickers. Tim in the cab learning what Edward wants. —Pictures and video of beauty queen/trafficker Kelly

Johana Suarez

-Batman with CTI, HSI in Medellin- meeting with Jeffrey and him saying how young of girls he can get- price etc.

-Matt with CTI and OUR in Armenia- meeting with authorities and with Martin about party

—All three working with traffickers to set up the sex parties, prepping the missions

TIM BALLARD: When we go in somewhere to rescue sex slaves, we pose as businessmen planning sex parties for our entourage. This cover works with traffickers because it's what they're used to and it gives our team some protection and allows us to ask for even more girls. The sad fact that this cover story works every time, is because this type of illicit activity happens for real every day and in every corner of the globe. We meet with traffickers several times to establish trust and go over the details of the party. This gives us time to get evidence against them, to set up wiretaps and ensure they are legitimate targets who regularly traffick kids. We communicate with the prosecutors throughout to make sure we are following their laws and guidelines. There is plenty of time for the traffickers to get spooked and drop away, but we try to gain their confidence so this does not happen.

MATT OSBORNE: Tells us what it's like to have to pretend to be friends with the traffickers and into what they are selling, especially because he has two daughters who are the same age as the "merchandise" he is bargaining for. Tells us how it's difficult, but worth it to be able to see the children they rescue.

Video of Tim at Edward's house, meeting some of the girls and them saying their ages. Video of him acting suspicious of a new guy who shows up.

TIM BALLARD: In Cartagena- we arranged to meet at Edward's house. This was the guy who said he wanted to build a hotel to be a child brothel. We pretended to be real estate investors to get into the business side of things. He also brought some kids to his house to show us what he had. And we met Samuel- one of the two traffickers Edward works with.

TIM BALLARD: While we head to meet Edward, I have to

prepare myself to pretend to be a child pedophile. Edward will look at me looking at these kids, and he needs to see lust and to trust I am who I told him I am.

TIM BALLARD: Tells us why he acted suspicious of a new guy who showed up at this meeting at Edward's house. He asked if was with the police and patted him down for wires—he does this to avoid suspicion himself... because he is actually wearing a wire!

TIM BALLARD: Tells us how they did all they could in the initial meeting with Edward to make him trust him and hopefully open up more about his business plans.

Video of Tim meeting with the CTI agents, learning what Edward called to offer

TIM BALLARD: Tells us that Edward eventually calls him and says he wants their help building his hotel and he will help them build a modeling agency.

TIM BALLARD: At this time, we were learning more about Samuel and a woman named Kelly Johana Suarez who works with Edward. They run a modeling agency that brings the kids to Edward. Kelly Johana Suarez is a former beauty queen from Cartagena who's also been in popular music videos. She goes to schools and tricks parents into handing over their kids, telling them their kids could be models too. She lends legitimacy to the modeling agency and they trick these families into handing over their kids to this phony modeling agency when they are really grooming them to be sex slaves.

Video of Batman in Medellin meeting with Jeffrey and him talking about the young girls he can get

BATMAN: Meanwhile in Medellin, I set up a meeting with

Jeffrey to find out how involved he is with trafficking children. He told me he wanted to bring 10 minor girls to the party and sell them to me. He also gave contact info for other minors he and other people had sex with. And I found dozens of North Americans on social media who planned to come here to have sex with kids. I worked with the US Embassy to try and find out who these people are so US authorizes could arrest them. UPDATES ON THIS? Homeland Security Investigations used the name "Operation Clear Hope" for the three rescues that OUR calls "Triple Take." Clear Hope was voted case of the year in 2015, and HSI received a lot of great publicity for it. There might be news reports about this case, which should include the updates and follow-on you are looking for. If not, we probably could locate one or more of the HSI officials who were involved in the case back then.

Video of Batman in cab after meeting with Jeffrey

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BATMAN: Tells us why he was worried about the Cartagena mission at this time, after speaking with Jeffrey. He was concerned about word getting out and putting his mission in danger.

Video of Matt in Armenia meeting with Martin

MATT OSBORNE: In Armenia, I'm working to find out if it's true that Martin makes child porn and that he is selling children for sex too. We never ask specifically for children, we let traffickers bring it up- because that allows us to prove that is their intent. It gives the prosecution the greatest chance of success possible.

Video of Martin admitting he does make child porn

MATT OSBORNE: Tells us how Martin talked about the girls he could get and their ages and he admitted to making

child porn. Martin also showed Matt pictures on his phone, in which the girls were being forced to perform sex acts on him. We captured audio of him saying this, which will help with prosecution down the line. At this point I also ask Martin if he could help setup a sex party with children for us. He commits to bringing 40 minors.

TIM BALLARD: Martin would be very high profile catch for us- because getting the producer of child porn stops the flow of this crime and you're able to rescue victims... rather than getting the end result, the consumers of child porn. This would be a huge deal for us.

TIM BALLARD: We now have promising leads in three cities. In Cartagena- Edward and his partners are regularly selling children. In Medellin, Batman believes Jeffrey is having sex with kids and can lead us to other traffickers and pedophiles. In Armenia, with CTI and Matt- they have a great lead with Martin who they believe sells children and makes child pornography. We have to figure out how to manage these three missions so one doesn't ruin the other. We don't want word to get out about one mission and spook another and then put our operators and the kids in danger.

JAKIE REYES (lead CTI case agent): We decided to move forward and told Tim we wanted to do all three ops at the same time- within an hour or so of each other to avoid one operation ruining the other by word getting out. I don't think that Jakie was the one who made the call for CTI to do all three ops at once, but perhaps she would feel comfortable speaking for CTI? If not, we would need to find another CTI officials who was involved back in the day.

TIM BALLARD: It was turning into the largest rescue operation that anyone had ever heard of—possibly the

largest in history- **Can this be confirmed?** Utah AG Sean Reyes was looking into this, and I think he might have contacted Guinness to see if it was a world record. We can check with AG Reyes to see if he ever received confirmation on this. It was so important for us to logistically plan everything so it all happens at the same time and everyone gets arrested at the same time and everyone gets rescued at the same time. Tells us the concern with making all three operations going down on the same day, within an hour or so of each other.

Video of Batman meeting with Laura

BATMAN: Tells us about meeting Laura, a 17-year-old girl who's been having sex with tourists for years, when he was planning the sex party with Jeffrey. Laura has sex for money but also pimps out other girls. We weren't sure if she was being used by someone- a boyfriend maybe. Also we thought she could potentially be turned into an informant for us. We felt she was definitely a good person who needed help, not jail time. She'd been abused since she was young, knew no other life and was in need of rehabilitation. She agreed to work with us, to inform on traffickers and pedophiles. I also hoped she would come with me after and leave the industry and get rehabilitation.

BATMAN: At this point, things were going well on this operation. Jeffrey confirmed he'd be coming to the party, with 10 children.

Video of Tim in cab with CTI going to meet with Edward and the other traffickers. Video of Tim meeting Johana for first time and discussing plans for the party with the traffickers.

TIM BALLARD: We had a second meeting at Edward's house—this is when I met Kelly Johana Suarez for the first

time. They told me they had 12-year-old virgins and talked about cost. He committed to bring 40 children between the ages of 11 and 16 to our sex party, including a 12-year-old virgin who Johana is going to groom specifically for our boss.

Video of Matt meeting with Martin in a bar; him showing him the girls he has

MATT OSBORNE: I met a second time with Martin- he told me he had 31 minor girls and 6 minor boys. He took out his phone and showed me graphic images of young girls. He told me how he is 30 and he got into this when he was 22. A girlfriend got him into pornography... watching it and then he saw the money that could be made from actually producing it. He told me he had a porn studio. We gave that info to CTI and they began talking about raiding his porn studio at the same time as the sex party sting. CTI also had enough information to set up a wire tap on Martin. Video of Batman meeting with Jeffrey talking about it being too risky

BATMAN: I meet with Jeffrey a second time to finalize the party plans.. Jeffrey seems nervous like something is not quite right. He winds up backing out, feeling like it's too risky.

TIM BALLARD: Jeffrey backing out was a huge loss for us and it put the whole three-city operation at risk. We told CTI about the Medellin operation being at risk. We needed to replace Jeffrey to continue on with the sting.

Video of CTI agent speaking about Armenia being in trouble too- saying Martin is not bringing minors anymore, only adults.

MATT OSBORNE: Meanwhile, in Armenia, Martin was

heard on a wiretap saying he didn't want to sell minors and was going to back out. There was possibly an information leak that led Martin to believe we were setting a trap for him. The news of Martin backing out on bringing minors was heartbreaking... we know he makes child porn and fully believe he trafficks children and we wanted to catch him for it and put him away.

TIM BALLARD: We always run the risk of the traffickers getting spooked and backing out. But to be so close on three major missions, and for all three to be on the edge of falling apart now because of the traffickers getting cold feet in Armenia and Medellin just made my stomach drop. It's the worst feeling to be so close to taking these guys down and possibly have to call it all off.

Operation Underground Railroad in Colombia: Episode 2

Working Title: Operation Underground Railroad in Colombia Episode 2 Producer: Nick Nanton Director: Nick Nanton Writer: Katie Tschopp Two 44 minute episodes

Segment One

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INTRODUCTION & RECAP

Intercut the following interviews with footage:

-Colombia scenes from episode 1 as Tim recaps what happened

—Batman with Jeffrey and in the cab with new trafficker, Alex. Batman talking to traffickers on Facebook with his fake profile. Batman talking with the girls about the sick stuff Dennis does

-Matt talking to CTI about Martin and what they need to still get him even without the minors

—Tim and traffickers meeting for lunch to discuss the plans and how many girls can come. Their ages, what they will do. Telling Tim these are innocent girls.

TIM BALLARD: We had a successful operation with the Colombian government in Cartagena—the first of its kind in this country- and rescued 32 victims, most of them children, from sex slavery and arrested 5 traffickers. It was so successful that child trafficking in the area appeared to halt... so the government invited us back to help carry out more missions. We branched out to three areas—me in Cartagena, Batman in Medellin and Matt in Armenia.

MATT OSBORNE: With solid leads we were ready to move forward on all three operations on the same day. But then, Jeffrey backed out on Batman in Medellin. We believe he became suspicious of Batman. And then, CTI told us Armenia was in trouble too due to an information leak. The traffickers there think a trap is being laid and are not going to bring kids anymore. They tell us we may have to cancel it all.

Video of Batman with Alex, talking about the girls, exchanging money

BATMAN: When Jeffrey backed out, I immediately started working to find new leads of more trafficking in Medellin and also a new target. I did not want to give up. I met a taxi driver in a red-light zone of Medellin named Alex who claimed to have kids for sale. He said he could get 20 to 40 girls, all minors and he seemed well-practiced in selling minors.

Video of Matt meeting with CTI agents/ prosecutors about

Martin

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MATT OSBORNE: I spoke with CTI agents and the Colombian prosecutor to see if they had enough to still take down Martin, despite him saying he didn't want to bring children anymore. They'd been bugging Martin's phone and I asked them even if he doesn't bring kids to the party, what do you need to arrest him. They said we'd need him to bring girls from different parts of the country and accept money for them. So that became the new goal and we decided to still move ahead so at the very least we could raid his house and take down his child porn studio.

Video of Batman in Medellin/ on his laptop using social media to find people

BATMAN: I kept working to find other traffickers and child pedophiles aside from Alex. I was able to find people on social media, including many Americans, who come to Colombia for sex with kids. One was Dennis DeJesus who travelled regularly to Medellin from Florida to have sex with kids. I worked with Homeland Security to get this guy on social media. I had never used Facebook before to make a case against someone. I created a fake Facebook account, added 10 friends- girls and guys- and it mushroomed, had like 300 friends in 40 hours. I communicated with these people and most of the Americans were toned down, didn't want to talk about it. But Dennis DeJesus came at me hardhe told me the minors he had sex with, he contacted the minors and told them I was coming to town. I then went to Colombia and talked to these girls he connected me with.

Video of Batman meeting with these young girls Dennis connected him with

BATMAN: The girls told me the things Dennis did to them, to other girls, they showed me pictures. I invited these girls and others to the party, where the Colombian authorities would take them into custody and try to help them out of the industry.

Video of Batman meeting with Alex in cab with the girls

BATMAN: I met with Alex again and he brought three of the girls with him—he told me he has 20 girls total, one just 13-years-old who will be sold as a virgin for \$2500. We knew we had to take this guy down.

Video of Tim and traffickers meeting for lunch to discuss the plans and how many girls can come. Their ages, what they will do. Traffickers telling Tim these are innocent girls.

TIM BALLARD: Now that the operations in Medellin and Armenia were back on, we were able to continue working in Cartagena. We met with Edward, Samuel and Johana at a beach restaurant. They showed us pictures of two of the girls- just 12 and 13 years old. They said both are virgins and would cost us \$1,000 each. They talked about how innocent the girls are and how we need to be delicate with them. They told me things I've never heard traffickers say... to say these girls are innocent, be soft with them. It was unlike anything I'd ever heard.

Segment Two

TRIPLE TAKE MISSION IS BACK ON

Intercut the following interviews with footage: —Party houses being set up in Armenia, Cartagena and Medellin —Team meeting/praying before Cartagena operation —CTI raids taking place in all three locations

—Boat with Child Protective Services being delayed in Cartagena

TIM BALLARD: All three missions are back on. We believe there are 50 victims in Cartagena, mostly kids. In Armenia- the main target is Martin's house which we think is his porn studio and in Medellin- we've pinpointed Alex as the new trafficker and we're ready to move forward.

TIM BALLARD: We have to pick houses for our sting locations based on how easy it will be to control where the traffickers and girls are. We want the girls kept away from the traffickers and the negotiation area to have few exits so the traffickers cannot escape.

MATT OSBORNE: The location in Armenia for the party was perfect- easily able to close it off. And as the sex party happens, a second CTI team will raid Martin's house which we believe is a porn studio.

BATMAN: Medellin is more tricky- the home is totally secluded which is good for trapping the traffickers, but it makes it more difficult to get to us if we need help. Medellin has a cartel presence so this was the most dangerous of the three missions. Because of this, the U.S. Embassy was highly involved. They had Marine helicopters on standby in case we needed to be evacuated quickly. My wife flew in as well to be with the girls and stay with them from the moment they arrived until they are taken by bus to rehabilitation specialists in Bogota. She has been through this and is able to comfort and calm the girls.

TIM BALLARD: The logistics in Cartagena are different from anything we've ever done. The sting location is a beach house about 40 miles from the city by boat. The police will make a beach landing by boat and military personnel will be hidden in trees along the property as a precaution. We also have Krista Rykert, a nurse who comes on operation to stay with the boys and girls and keep them calm. Utah Attorney General Sean Reyes also joined us for

this operation, he played a bodyguard.

SEAN REYES: Tells us why it's important to him to work with Tim and OUR in other countries fighting sex slavery. What does he say to people who think he should stay in Utah, working on only problems in the U.S.

TIM BALLARD: We have to say the most awful, dirty things to these traffickers to get them to say terrible stuff---because that's the kind of thing that gets them put behind bars for a long, long time. The traffickers are expecting to see a certain type of person at these sex parties, so it's crucial that we play the role of a pedophile to perfection... even though it makes us sick. We make sure the kids don't ever hear us speak. We set up hidden cameras on operation day to get video of the traffickers. This is essential in the court cases against the traffickers and ensures they go away for a long time. It also ensures the traffickers go to prison without the children involved having to testify.

BATMAN: As we were preparing for our mission, I got word that authorities had found pictures, videos and masks owned by Dennis de Jesus— they got him on production of child porn. He was sentenced to 15 years in prison. It's a start, but one is not enough. I have dozens more just like him and I want them all taken down.

TIM BALLARD: Our teams gather for a moment of prayer before each operation. We believe God loves each of these kids and is with us, helping us save them. [I know we have video of a prayer I led in Armenia right before the operation, and hopefully there is footage of the teams praying in Medellin and Cartagena, as that is pretty powerful.]

Video of operation in Armenia; Matt talking to Martin about why he didn't bring minors, Martin telling Matt he MATT OSBORNE: A new contact named Irvin shows up at the party with Lina Maria, Martin's "girlfriend." [Martin introduces her as his "girlfriend," but she is actually his groomer/recruiter. It is a sad story that Lina Maria used to be one of his trafficking victims, but then she cleverly realized that if she proved herself to Martin and was able to recruit young girls for him, then she would not have to be raped and abused by any more clients. Similar to the story of Laura from Medellin, Lina Maria was first a victim and now a trafficker. I would be happy to briefly discuss that context on camera, if it ends up fitting in the script.] They helped Martin bring 20 girls. Some looked very young so we knew it was possible we did have some minors here after all.

MATT OSBORNE: I talk with Martin and he tells me the only reason he didn't bring minors is because his competitors learned about the deal and were going to rat him out to the police. He admits he brought women in from cities all over Colombia to have sex with us, and he accepts money for the girls he brought to the party. We now have what we need to arrest him for pimping and trafficking.

Video of police coming in on Martin and then of CTI raiding his home and porn studio

MATT OSBORNE: After Martin and his team are in custody—female officers from Bienestar y Familia (the equivalent of our Child Protective Services) arrive on scene to help the girls. We rescued 20 victims and three people were arrested. CTI moved in on Martin's house after he was arrested and they found used condoms, masks and costumes and other evidence of child pornography. That was a huge success, as the Colombian authorities had no idea that Martin was running a child porn studio out of his house.

Video of operation/negotiation in Medellin

BATMAN: In Medellin, the girls and traffickers begin to arrive. Kenia takes the girls to the holding area and separates the traffickers from the victims. It's very important to separate the girls from the traffickers because it makes the arrests safer and is less stressful for the minors.

BATMAN: Negotiation goes as planned.. all the traffickers are in one room with limited exits. They tell me the youngest is 13 and we pay.

Video of police moving in after CTI agent sends text

BATMAN: After the arrests are made, we are taken away with an armed guard in case the cartel or someone retaliates. We rescued 49 victims and arrested 7 traffickers.

Video of operation in Cartagena; girls arriving by boat/ Fuego talking/ traffickers posing for pictures

TIM BALLARD: In Cartagena we get everyone on boats to head out to the island house. The boys and girls are taken as far as possible from the negotiation table, to keep them separated from the police when they arrive. Our goal is to get the traffickers to restate very clearly the terms of the deal... this will help eventually with prosecution.

TIM BALLARD: Edward and his team tell me the ages of everyone they brought plus the virgins they brought to have sex with our boss. I tell them I want to see the virgins, so Edward goes to get them.. I followed and found them, crying, scared to death.. it broke my heart. I told Edward nevermind, we don't need to show them to the bosses, but he didn't care. It's so hard playing a pedophile, looking into these girls' eyes and having them believe we are going to use them as sex objects.. it's so hard but we can't break character because the traffickers are looking out for anything out of place.

SOMEONE COLOMBIAN SIDE OF CARTAGENA OP: [This could be Jakie, or perhaps Jorge Martes from CTI Colombia] This was one of the more stressful operations, because one of the boats with Colombian Child Protective Services [Bienestar y Familia] on it didn't launch in time. There was an hour delay where the cops were ready and the military was ready, but we could not launch the raid because the aftercare for the girls wasn't ready.

TIM BALLARD: Our jump team had to improvise and delay the traffickers. They really thought on their feet and told the traffickers that they didn't want this to be a one night thing, but wanted it to be an ongoing thing. So they all sat down to plan out how to expand it and stalled for 45 minutes until the military and police could arrive.

Video of Tim asking how they can make sure cops don't find out... and traffickers talking about the modeling agency and how it works. Video of cops moving in.

TIM BALLARD: Seeing Edward in handcuffs was so satisfying. To know his child sex hotel would never be built. We rescued 54 victims and arrested five traffickers.

TIM BALLARD: In these operations, we get arrested too so it doesn't look suspicious... We usually leave sting operations in handcuffs with the girls believing we are evil predators. This time was different, somehow the kids find out we were working with police and we were the good guys. They came running up to us, cheering and singing and saying thank you. My friend said to me, this is the sound of freedom. Segment Three

AFTERMATH AND AFTERCARE

Intercut the following interviews with footage:

News clips of the arrests in all three cities; particularly of Kelly Johana Suarez

Batman meeting with Laura- her talking about how she got into this

---Video of girls in aftercare centers; particularly at the one Batman and his wife run[This might be tricky to obtain, but I could also see Batman agreeing to allow you to film at his ministry in Guatemala.]

MATT OSBORNE: These three operations in Colombia led to a total of 123 victims rescued- 55 of them minors- and 15 traffickers arrested. We believe it is the largest human trafficking operation takedown in history. **Can this be confirmed?**

SEAN REYES: Tells us about being on this mission what it meant to be a part of something like this. Tells us about trying to get the mission certified by Guinness World Records. **Update on this?**

BATMAN: In Medellin, the American man, Dennis DeJesus was prosecuted. One cool thing that came out of this operation, is news stories ran about our mission and the people who were arrested... and the mayor of Medellin was so embarrassed by what was going on in his city that he took action too. He planned raids at brothels in the area and arrested another 20 or so. [I think I have a link to that news story and can get you the final tally of brothels taken down.]

Someone with Homeland Security could tell us where people involved in the Medellin mission are today.

[I'm not sure how much HSI will want to talk about this case, even if they have the details, but we can certainly ask a couple of the HSI agents who were involved if they would be willing to help us out.]

MATT OSBORNE: In Armenia- we saved 20 sex trafficking victims. We had a great aftercare program there. Three people were arrested. Martin and his girlfriend, who was really his original recruit. Her name was Lina Maria and then the third guy Irvin was arrested too. Martin and Lina served time in prison after taking plea deals, and Irvin is still fighting the charges in court. We raided Martin's porn studio at the same time he was being arrested at the party house- we found toys and costumes, it was just disgusting.

CTI Agents could tell us more on where these guys from Armenia are now.[I am not sure how easy it would be to track down the CTI agents involved in this case, or how much they could/would want to share, but I will certainly make a good effort to get them involved.]

TIM BALLARD: In Cartagena, five traffickers were arrested including Edward, Samuel and the former Miss Colombia, Kelly Johana Suarez. These five people were in jail for a bit but then a corrupt municipal judge let them out. I'm testifying against these people this year. Update on this? [Tim is still likely to testify against them in a Colombian court this fall.]

CTI Agents – check up on the girls rescued in Cartagena/ give an update on them. [Our partner rehab organization down there is called Renacer. We maintain a good relationship with Renacer leadership, and they should be able to fill in some of the aftercare aftermath details.]

TIM BALLARD: Using our model, the Colombian authorities now run their own operations, rescuing kids on

their own. This is what we wanted, for them to continue rescuing kids long after we're gone.

TIM BALLARD: Tells us how children get involved in this- some are kidnapped from their homes, or they grow up in abusive homes and have to escape any way they can. Tells us there is such a high demand for sex with children that traffickers prey on kids like this.

BATMAN: Tells us about meeting Laura when he was planning the sex party with Jeffrey. Laura has sex for money but also pimps out other girls. We weren't sure if she was being used by someone, a boyfriend maybe. Also we thought she could potentially be turned into an informant for us.

BATMAN: Laura told me she started working with her mom when she was 13... was getting no sleep, fell behind in school. Her mom beat her and almost killed her. She ran away from home and stayed with friends for awhile, stayed with a cousin who tried to abuse her. She was willing to work for the equivalent for \$6 a day, but couldn't find work. She told me she regretted the situation she was in, bringing young girls for sex. I did not want Laura to be arrested. She'd been abused since she was a child...I hoped she would come back with me to my ministry to be rehabilitated and get the healing she needs. UPDATE ON THIS? DID SHE GO TO THE REHABILITATION CENTER?

TIM BALLARD: At OUR we want to cut the evil off at the root and stop it from continuing. Arresting traffickers is a huge part of this, but we also want to rehabilitate the young women and girls who have been brought into the trafficking side of things through life circumstances.

BATMAN: My wife, Kenia, and I operate the 'Princess

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Program' in Latin America- it's a Rehabilitation Ministry that focuses on rescuing girls from the sex trade and giving them an education and skills to rebuild their life with Biblical teachings as the foundation. We've helped hundreds of girls rebuild their lives. And we are able to connect with the girls in a unique way. Kenia went through this too. She was victimized and rehabilitated through our program.

KENIA: Tells her story, of coming to Castle for rehabilitation, meeting Batman and falling in love with him.

BATMAN: Tells us about falling in love with Kenia.. their proposal story. She came to his office one day and said she knew he had a ring. He did, but wasn't sure he was ready yet. She said I'm not leaving without the ring.

TIM BALLARD: Tells us about the importance of aftercare for the kids they rescue. The importance of places like the rehabilitation center that Batman and Kenia run together.

SOMEONE RESCUED FROM ONE OF THE MISSIONS: Tells us about her life now/ what it's like since being rescued by OUR and taken to an aftercare center.[It may ultimately not be possible to find one of the children who was rescued during that mission, but we will put out a bunch of fishing lines and see if we can't round somebody up. If not, we can put you in touch with any number of former trafficking victims who can speak to what the girls went through during their ordeal.]

TIM BALLARD: Tells us why it's important that OUR keep working in places like Colombia.

POSSIBLE ADDITIONS:

New story line to follow up on: Kelly Johana Suarez - Her

and 4 others were in jail for a bit but then corrupt judges let them out, just like Haiti. Tim is testifying against these people this year.. is there another mission planned that we could go on and film?[Depending on timing of our operations, we might be able to bring you down to cover one in Mexico, Haiti or elsewhere.]

Potential other story line to follow up on: Laura who Batman spoke with in Medellin- she helped recruit girls to be trafficked, but had been a victim herself. He wanted to try and rescue her- bring her to his rehabilitation center. Did that happen? Could we follow up on where she is today?

Or a follow up on where the girls rescued are today?[We have a contact down in Cartagena named Elkyn Castaño. Elkyn is an attorney and anti-trafficking activist who supported the organization Renacer after this operation. He is a true hero who helped provide assistance to the girls and help strengthen the legal case against the traffickers, despite receiving death threats on a weekly basis. We are still in contact with him, and if he were to agree to give an interview on camera, he could tell a powerful story about the affect that OUR's work has had in Cartagena, how some of the girls fared in the aftermath of the rescue, how they are doing today, etc. Just a thought. J

EXHIBIT I

RESCUED FROM DARKNESS

A Personal Odyssey from a Life

Battling Human Trafficking

By

Tim Ballard

Dear Editor

My name is Tim Ballard and I am different things to different people.

To some I am a hero and humanitarian. To others I'm a religious zealot and a con artist. To some I am a saint fighting human trafficking. To others I'm a glory-seeking wannabe Rambo. To some I'm a patriot. To others I'm an ideological propagandist.

Truthfully, I may be all and none of those things. Over the past few years, I have experienced a profound wake-up call that has fundamentally altered how even I perceive myself. Simply put, I crashed and burned.

It was the best thing that ever happened to me.

Twenty-two years ago, in the wake of 9/11, I began my career as a CIA agent specializing in terrorism and weapons of mass destruction before carving out a niche for myself at the Department of Homeland Security fighting human trafficking and crimes against children. After leaving the government in 2013, I founded OPERATION UNDERGROUND RAILROAD (O.U.R.), a non-political, non-profit organization working in partnership with law enforcement agencies around the globe dedicated

to fighting the child sex trade. I am a public spokesperson in this ongoing effort and in 2019 I was appointed Co-Chairman of the White House Public-Private Partnership Advisory Council to End Human Trafficking.

I am proud of these accomplishments, but there is a dysfunctional reality that provides necessary context to understanding who I am, what I do, and my purpose in this world. I'm not what people think I am. Sometimes I'm not sure I know myself.

In November 2020 I experienced a mental and emotional breakdown.

The events leading up to this breakdown, which I intend to chronicle in this book, were a perfect storm of personal and professional disasters. In addition to the crushing responsibilities of fighting an ongoing war against human trafficking, in 2020 I became the target of a corporate coup attempt within O.U.R. targeting me personally. I have since learned that some of the plotters were people I had known and trusted for years – people I considered to be family. These events triggered an avalanche of emotional baggage and mental health struggles that left me so impaired that my wife, Katherine, felt as if her husband had died. Most of all, I attribute my breakdown to eighteen years of untreated emotional trauma from bearing witness to thousands of horrific acts of violence against children. I ignored self-care for decades. I was raised to believe my faith and my strength of character would be enough to see me through even the darkest moments.

I was wrong. I was arrogant. And I paid the price.

In the wake of these events, I have traveled a long road to recovery. It's a cautionary tale I now want to share with others as an advocate for mental health. In this book I intend to share my origin story; growing up in La Cañada, California as one of six children in a large and close LDS family. I'll illustrate my passion from an early age to be a protector - to be Superman – and channel that passion into acts of service. I'll chronicle my education and my Mormon mission to Chile as a young man where I first recognized how easily the powerful can abuse the weak. I'll present a timeline of my entry into the CIA and my subsequent pursuit of terrorists on the Mexico border where some of the 9/11 hijackers entered the country. These events were only a prologue, however, to my life's work fighting on behalf of children that has helped improve thousands of lives. In these stories, I intend to build a portrait of who I thought I was before my bubble burst. These are exciting stories of action, danger, and idealism, to be sure, but they also concealed the looming personal danger I never saw coming. The road to Hell, as they say, is paved with good intentions. It's a journey that has stripped away the façade of what I once believed to be true about myself. Sometimes it is the rescuer needs to be rescued.

Ironically, it's this breakdown that has enabled me to emerge as a stronger and more capable person to face some of my biggest challenges yet, including a harrowing mission in 2022 to war-torn Ukraine and the capture of one of Europe's most notorious child sex traffickers.

What I have gone through is painful and transformative, but I am not unique. I am normal. I have spent my career fighting human demons in the real world, but this is a book mostly about the demons inside ALL of us. In this book, I intend to tell you who I really am: my human side, warts and all. In doing so, I hope to empower others to come a little closer to discovering their truth as well.

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BIOGRAPHY

I am the founder and CEO of OPERATION UNDERGROUND RAILROAD (O.U.R.), a non-profit organization dedicated to fighting and ending human trafficking and child sexual exploitation. In addition to developing software to aid Internet investigations of child sex rings, O.U.R. works with national and international partners in law enforcement to train officers, provide physical resources, and, when needed, participate in joint operations under local jurisdiction to free victims and bring the traffickers to justice. O.U.R's missions encompass the entire world, including recent rescue missions in Ukraine.

After beginning my career at the CIA focusing on terrorism and weapons of mass destruction, I spent a decade working with the Department of Homeland Security in Homeland Security Investigations (HSI). At HSI, I was a member of the Internet Crimes Against Children Task Force and I spent the majority of my career investigating sex trafficking, child sexual tourism, and child pornography. I left public service in 2013 to found O.U.R. and in 2019 I was invited to be Co-Chair of the White House Public-Private Partnership Advisory Council to End Human Trafficking.

I currently live in Utah with my wife, Katherine, and our nine children – two of whom were children rescued from a trafficking network in Haiti.

BOOKS

The following is a list of my previous books. To date, these have been aimed primarily at an LDS audience, but my hope now is to reach a broader audience unfamiliar with my life and work.

THE COVENANT, ONE NATION UNDER GOD (2012)

THE COVENANT VOL 1: ONE NATION UNDER GOD: DISCOVERY THROUGH REVOLUTION (2011)

THE COVENANT VOL 2: THE CONSTITUTION, THE CIVIL WAR, AND OUR FIGHT TO PRESERVE THE COVENANT TODAY (2014)

THE COVENANT, LINCOLN, AND THE WAR (2012)

THE LINCOLN HYPOTHESIS (2016)

THE PILGRIM HYPOTHESIS (2020)

THE WASHINGTON HYPOTHESIS (2016)

SLAVE STEALERS: TRUE ACCOUNTS OF SLAVE RESCUES - THEN AND NOW (2018)

OPERATION TOUSSAINT with Russell Brunson and Nick Nanton (2019)

RESCUED FROM DARKNESS

OUTLINE

PREFACE - Superman Calling (SEE SAMPLE CHAPTER)

As a young boy, I'd dreamed of being Superman. A protector. A hero. My parents, however, had concerns and it required a phone call from the Man of Steel himself to set me straight.

1 - "He Doesn't Want to be Here."

My desire to be a protector came from my insecurities from childhood. My parents, Dennis and Melody, raised our large LDS family in suburban La Cañada, California. When I was born, my mom told people, "He doesn't want to be here." She believed I had unfinished business in Heaven but God had something special for me to do here on Earth. My mother was intense – far too intense. She set high expectations for us that were difficult, perhaps impossible, to achieve. I became the rule enforcer. I was the self-appointed guardian who drove my siblings nuts keeping them in line and safe in a dangerous world. I grew up in the era of L.A.'s "Night Stalker" serial killer and the McMartin Pre-School Scandal when the term "stranger danger" was first coined. I personally faced this danger on my seventh birthday when my older brother and I were almost abducted off a street corner in broad daylight. If something like that could happen to me, it could happen to anyone – and it could've easily been far worse. I learned from my parents to not compromise about the things I considered right and wrong. Even so, when I later told them I wanted to become an FBI agent, they did everything they could to discourage me. Our entire family is in real estate and construction, and it was assumed my siblings and I would all follow suit. My mom had plans for me and I was expected to tow the line.

2 – Educating Tim

Throughout my childhood, my siblings and I lived in fear of any kind of academic failure that would earn our mother's wrath. Despite mostly good grades, I still was barely accepted at BYU. I thrived in my freshman year in college, but I also knew I would pause my schooling for an education of a different kind.

3 - Sense of Mission

After my freshman year at college, I left school to go on my Mormon mission. Missions serve many purposes, but it's mostly about service and learning to be selfless. My Mission took me to Chile where I quickly learned how easily governments can treat people like collateral damage. This was driven home by my friendship with a blind war veteran named Eduardo who simply wanted someone to read the Scripture to him and to pray. One day, Eduardo just disappeared. His loss led to an epiphany about the injustices of politics, ineffective government, and tyranny in people's lives. That instinct from my childhood – that instinct to protect the innocent – really kicked in. What my mission taught me was that I could go to the darkest corners of the world and make a difference. I returned home and told my parents, "I'm going to be a special agent for the U.S. government." They responded, "Are you nuts?! You're going to get killed!"

4 -- Return to BYU

I returned to BYU with a sense of idealism and purpose. I majored in Spanish and minored in politics. I became fluent in Spanish to the point where now even native speakers have no idea I am a gringo. At the time, I considered getting a graduate degree in history or politics, but I also knew from my Mormon mission that I wanted to be wherever there was injustice. I decided to pursue a career in international law enforcement. Really, that was my childhood dream: to have a badge, to carry a gun, and to kick ass. So from that point on, that was my mission. Then fate stepped in. I met someone. She quickly gave me an even stronger sense of purpose.

5 - One Thousand Times a Better Person

I met Katherine at BYU and we quickly became inseparable. I recognized from the beginning that she had a beautiful soul and that we shared a similar idealism about life. We immediately started planning out the shape of our life together. We decided very quickly to get married and Katherine made it clear that her goal in life was to be a wife and mother. It was the only career she was interested in and I respected that. She came from a family of six and so did I, so our plan was to have six kids. Since I was a virgin, I was happy to know I would at least get to have sex six times!

When my mother learned about the engagement, and specifically about Katherine's decision to drop out of BYU to focus on having kids,

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my mom told me, "Get the ring back!" My mom had dropped out of college when she met my father, but she eventually went back and got her degree. My mom thought Katherine was selling herself short. My mom's sense of order and perfectionism – her drive for control, honestly – wouldn't allow her to see things any other way. It was like World War III between my mom and Katherine, but it didn't stop our plans. Katherine and I got married in 1999 and within a year we'd started a family. Katherine had a vision for us and she has never waivered from it – even when I did my best to fail her and distort that vision.

6 -- Faith

It's impossible to understand my journey without understanding the role religion has played in my life. My intention in this book, however, is not to proselytize or to preach to the choir. My faith has defined my experiences and motivated my choices. In understanding what religion means to me, it illustrates how I came to be me and how despite my faith I still have fallen short in fundamental ways. I have specific views about God and country, and I believe I have had moments of connection with God that I can't deny.

7 - Ready for Action

After getting married and graduating from BYU, I met with a professor at UC Irvine about my interest in history and foreign policy. He told me, "Dude, you're no academic. You want to be a practitioner." He directed me to the Monterey School of International Studies where they teach you how to execute policy on the ground. "You're ready for action," he said. In 2000, I began a two-year program in international policy with an emphasis in "Terrorism and Weapons of Mass Destruction." At the institute, I first heard the name Osama bin Laden. In my second year at the institute, CIA rep Richard Johnson arrived to interview me and offer a full time job. I spent the summer of 2001 at CIA headquarters in Langley, Virginia training as an analyst and while there I visited lower Manhattan and the World Trade Center. In September, I returned to Monterey to resume classes just before the terrorist attacks on September 11th. The next day I received a call from Richard saying, "Get your ass back here."

CHAPTER 8 - Manning the Border

In the chaotic days following 9/11, I finished school preparing to join the front lines in the War on Terror. Upon learning that some of the 9/11 hijackers entered the country through the border crossing at El Centro, California, I told my bosses, "I speak Spanish. I want to get on the border." For me, the front lines were on the Southern border.

I quit the CIA and joined U.S. Customs. After spending a few months training at the academy, I was stationed in El Centro working on drug cases, smuggling, and looking for connections between drug cartels and al Qaeda. I was nine months into the job when my supervisor, Larry Frost, revealed he was starting a Child Crimes and Trafficking Unit and wanted me to come aboard. Up to this point, child trafficking was not on my radar and I'd focused almost exclusively on terrorism. Larry said he approached me, however, because I was a man of faith and he knew it would take people of extraordinary personal conviction to deal with "the darkest things you can imagine." I was apprehensive about taking the offer and Katherine was even more reluctant. By then, we had three kids and Katherine was settling into our new home. She worried that I could be endangering our family by going after traffickers and cartels. I understood her concern and began practicing my speech to Larry about turning down the job.

9 -- "You Need to Do This."

Before I could give my answer to Larry Frost, Katherine came to me in tears. She had been afraid for our children, but after prayer and reflection she began to think about the other children – the ones being kidnapped, sold, and forced into unspeakable acts – and what their lives must be like. She felt something change inside her and said to me, "You need to do this." We both knew she was agreeing to a huge sacrifice, however, and she told me, "I have full veto power. If I see the light dim in your eyes, you're out." Little did she know that light wouldn't dim for another eighteen years.

10 -- "I Don't Belong Here."

The pivotal event that led to creating O.U.R. happened in 2006 while I was working for the Child Crimes and Trafficking Unit. My fellow agents arrested a predator named Earl Buchanan as he was returning from Mexicali, Mexico, with a 5-year-old boy named "Jose" in his van. Federal agents raided Buchanan's business in San Bernardino and discovered twelve undocumented children being held captive to perform sex acts for Buchanan's video cameras. Hundreds of hours of pornography were recovered, but for the first time we had rescued the victims from the place where this material was being produced. I was assigned to review the videos to gather evidence – with some videos showing children as young as three years old being raped and sodomized. I was sickened enough to consider quitting. Everything changed for me, however, when I visited Jose at the agency safe facility where he'd been moved. When I arrived, Jose wrapped his tiny arms around me and said to me in English, "I don't belong here." Jose's words made me realize that I couldn't abandon kids like Jose to the monsters of the world. Katherine agreed. She told me, "It's better not to survive than to shrink." Instead of quitting, I threw myself into my work. I would never look back.

11 - Stay Out

Over the next six years I became totally committed to investigating cases of child sexual exploitation and human trafficking. Then in 2012, a boy named Gardy Marti, who was born a U.S. citizen to Haitian parents, was kidnapped outside his church in Port Au Prince. Gardy's father had turned to the LDS church for help and they contacted me as an expert in human trafficking cases. I began consulting on the case even though it was legally outside my HSI jurisdiction. Eventually, the search for Gardy took me all over Haiti and into Colombia where I helped train Federal police investigating child abduction cases. When my superiors found out what I was doing, however, they ordered me off the case and to stay out of Haiti and Colombia. I was frustrated with how little I could legally do to combat trafficking abroad as an employee of the U.S. government. By this time, Katherine and I had moved our family to Utah and we were both increasingly aware that there was more we could do to help trafficking victims around the world. My lack of jurisdiction was a barrier to doing what we both knew was right.

12 - Going Underground

I was writing my book "Slave Stealers," and thinking a lot about my hero, Harriet Jacobs, when my frustrations with HSI came to a head. Jacobs was an African-American slave in Edenton, North Carolina in the mid-1800s who, like Harriet Tubman, helped former slaves escape to the North at great risk to her personal safety. Inspired by her courage, I began working on a blueprint for a private group that would rescue child victims overseas where HSI would not. Then in 2013 I heard political commentator Glenn Beck on his radio show discussing an Ohio kidnapper arrested for having imprisoned three women for years in his basement. Beck was outraged that more wasn't being done to stop human trafficking. I immediately sent Beck an email saying, "I have a blueprint for exactly this kind of private group." To my surprise, Beck read the email on the air and the following week I pitched a more specific plan to Beck in person. Beck made a commitment to donate one million dollars. He then went on the radio and raised another million from his listeners in a matter of hours. The project suddenly became viable and real - and I faced a decision: "Do I leave the government?" Katherine made the final call. She told me, "I will not let you jeopardize my salvation by not doing this!" The next morning, I quit my job at HSI.

13 -- Coalition of the Willing

Thanks to Beck's seed money, O.U.R. began operation as a nonprofit and I immediately gathered a team of ex-CIA and former DHS agents who shared my commitment to rescuing children from traffickers. We started by jumped back into the Gardy Marti case, but that soon led us to Colombia where federal law enforcement asked for our help setting up a sting operation in Cartagena, one of the world's biggest hubs for sex tourism. Going undercover posing as high-rolling American pedophiles, we held a party where the traffickers agreed to deliver a dozen girls and young women. When the traffickers arrived with the victims, the Colombian police sprung their trap and the traffickers were arrested. The CBS Evening News documented the sting operation and it proved O.U.R. could deliver results. The company was off and running, with more people offering to help and more donations coming in from across the world.

14 -- The Orphanage

Though the hunt for Gardy Marti had grown cold, I had not given up the search and remained determined to find him. That search led me to an "orphanage" in Port-au-Prince that was really a staging area for traffickers selling children. Posing as a potential buyer, I went into the orphanage hoping to find evidence that Gardy was either there or had been there. Instead, I encountered two children - siblings Colin, who was five, and Coline, who was seven. I felt an incredible bond with these two kids and struggled to stay in character as I negotiated with the orphanage owners. It broke my heart that I couldn't arrange to take Colin and Coline with me that day, and I later called Katherine. She told me to keep an eye on the two siblings and to not let anything bad happen to them. Katherine eventually flew to Haiti personally to meet the kids and together we made the decision to adopt them. Even with our influence and connections, however, it still took three years to get the kids out legally. When Colin and Coline finally came home with us to Utah, our entire family greeted them at the airport. I gave Colin a gift: a Superman cape. From this experience, Katherine formed her own organization called Children Need Families (CNF). CNF provides aftercare services and helps to facilitate homes for children rescued from abuse or harmful situations.

15 -- Losing Craig Again

As kids, I was overprotective of my younger brother Craig. It was my job to keep him safe. After I went off to college, however, we drifted apart, as siblings tend to do. Years later, by the time I'd founded O.U.R., Craig had become a successful and wealthy businessman and I was still a lowly government employee. An unhealthy competition developed between us that, frankly, was as much my fault as his. Oddly, when I started O.U.R., and the company became wildly successful, our estrangement only seemed to grow. When he learned filmmakers were preparing to shoot a movie about me, for example, instead of congratulating me he scoffed at the film's relatively small budget. There were incidents between us that tested my loyalty to a sibling who had once been my sweet little brother. This estrangement broke my heart and was part of a slow build-up of unresolved personal and professional traumas chipping away at my emotional stability.

16 - "The Floor is Yours."

During the years of O.U.R.'s explosive growth, I was often invited on cable news shows to discuss the topic of child sex trafficking and efforts to stop it. After one such appearance in 2018, a senior official at the White House called and invited me to a meeting the following morning. When I arrived at the White House the next day, I was escorted to the Cabinet Room with no idea why I had been summoned. Larry Frost, my old boss at HSI was there in his new capacity as head of DHS. He had no idea what was happening either. The next thing I knew, the doors opened and Ivanka Trump entered the room followed by her father, the President of the United States. Before I really realized what was happening, the President told everyone assembled that I was there to give a presentation on human trafficking. As I sat in the chair next to the President, he turned to me and said, "Tim, the floor is yours."

Luckily, I knew the subject of human trafficking better than my own name. I spoke for about an hour, with the President asking periodic questions, until finally the meeting ended and the President left the room. A short time later, I'd been named the co-chair of the White House Anti-Trafficking Council, a bipartisan post I served in for two years. The President's interest definitely helped with O.U.R.'s fundraising efforts. My appointment also undeniably raised my public profile in ways both good and bad. To the President's supporters, I was a savior and saint. To the President's detractors, I was serving the Devil. I understood the politics. At the time, I felt the political minefield I had walked into was worth it if it meant helping and saving more children. That feeling was soon tested in ways I couldn't possibly imagine.

17 -- Directing Traffic

By late 2019, O.U.R. had taken off like a rocket. We ran rescue ops around the world and our staff grew exponentially. I was the fundraising face of O.U.R. in addition to participating in jump teams and sting operations. It was a never-ending process that left almost no time for Katherine or the kids. At the same time, O.U.R.'s lawyers wanted to reduce the "overlap" between my work for O.U.R. and my personal projects, such as the books I'd written on American history. I reluctantly agreed with their suggestion that I step down as CEO so that my personal "brand" (as they called it) could be separate from O.U.R. It seemed like a reasonable move. I had placed many good people in leadership positions at O.U.R. – people whom I considered family – and I felt confident in their abilities. Even though I was stepping down, I wasn't really leaving O.U.R. I still participated in ops and would continue to promote the company in TV appearances. To me, everyone was winning. I was very wrong.

I was unaware that a storm was brewing over the horizon at O.U.R. Months after I had stepped down as CEO, I heard alarming but vague rumors from O.U.R. employees that things at the company weren't as rosy as they seemed. Whenever I inquired about these rumors with those in charge, I was assured that everything was fine. I accepted their excuses. I had no reason to be concerned.

Unfortunately, things continued to deteriorate behind the scene while I was distracted participating in overseas operations. This only led to more tension and strain. I was trying to direct traffic in my personal and professional life, but the traffic was speeding toward me from all directions. The stress led me to self-medicate the resulting anxiety and sleep disorders with Xanax and Ambien – a cocktail of prescription drugs that soon led to dependency. Eventually, the problems at O.U.R. that I'd ignored grew bad enough that even my sister Emily, O.U.R.'s Director of Communications, confided to me, "Tim, the ship is sinking." Emily's panic was a hard wake up call that prompted me to recruit my businessman uncle, Craig Anderson, to take over O.U.R.'s Board of Directors. While Craig and the board investigated the problems, I escaped into my work. It was what I did best.

Then it all fell apart.

18 -- Collapse (SEE SAMPLE CHAPTER)

I was in Florida training for an upcoming rescue operation when I received the call from Uncle Craig reporting the board's findings. He delivered bombshell news about a conspiracy brewing within O.U.R. that threatened not only the company, but also me personally. The shocking revelations triggered an emotional collapse that had been brewing for years and caused me to literally pass out. I was found semiconscious in a parking lot and taken to the nearby home of my friend, motivational speaker Tony Robbins.

19 - "Who are you?!" (SEE SAMPLE CHAPTER)

Tony and his wife, Sage, took care of me and flew me to Baltimore in Tony's private jet to see his personal physician. I was given medication for anxiety, but I felt as if my entire world was falling apart. By the time Katherine and Craig flew to Baltimore to collect me, I was in such a depressed, zombie-like state that Katherine could barely recognize me as the man she'd married. The event changed everything I had ever believed about myself.

20 -- Rebuilding OUR, Rebuilding Myself

I spent the next couple months in mental health counseling and weaning myself off the drugs. I was diagnosed with OCD, PTSD, and Betrayal Trauma. I was numb all of the time and I don't even remember most of my daily activities. I was home again with Katherine, but she spent almost all her time wondering, "What happened to my husband?" It was like I got hit by a car and I needed to recover. I was damaged. Through it all, however, I thought to myself, "I can figure this out." Strangely, my public speaking ability was better than it was before this crisis. Reconciling with Katherine – that was harder. We were fighting nearly every day and after one particularly stupid miscommunication on my part she literally passed out from the stress. I knew Katherine felt like the loneliest person on the planet, but she was too proud and independent to ask for help. Katherine doesn't open up to anyone. I was her only support and I was failing miserably at it. I became hopeless, suicidal, and I would pray to God, "Please, take me." What stopped me from doing it was knowing what it would do to Katherine and the kids. I didn't want them to pay for my failures for the rest of their lives.

21 - One step forward...

My uncle and the board restructured the company and soon O.U.R. was again on a solid foundation. Despite the chaos and the controversy, our fundraising had actually gone up. Due to my anxiety, I was still routinely waking up in tears, but I was slowly starting to function again. This progress soon became threatened when a showboating prosecutor in Utah decided to investigate O.U.R. and me personally. This political investigation, initiated in direct response to the lies and accusations from former employees, once again destabilized my mental health just as I was making progress. It was as if I was trapped in a nightmare with no end in sight.

22 - Harvest Time in Ukraine [SEE SAMPLE CHAPTER]

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A different kind of Hell was unfolding in February 2022 when Russia invaded Ukraine and created a new wave of refugees and orphaned children. Predators descended on the war-torn country taking advantage of the chaos to find new victims to exploit. Ukrainian women and children ensnared in trafficking networks were soon turning up in places like the Caribbean and Mexico. It was Katherine, however, who convinced me that O.U.R. needed boots on the ground in Ukraine to stop the predators before more victims were harmed. This meant for the first time racing into an active war zone risking everything to confront the worst humanity has to offer.

23 - "I know you're not a cop."

The mission to Ukraine pays an unexpected benefit when it leads to the discovery of the whereabouts of one of Europe's most notorious criminal pedophiles, Nelson Maatman. Tracking Maatman to Mexico City, I saw an opportunity to finally capture this elusive criminal using a young Ukrainian woman who had joined our O.U.R. team to be used as bait. A massive sting operation was set in motion in conjunction with the Mexican authorities. I personally went undercover in disguise to meet Maatman and spring the trap to ensure this time Maatman wouldn't escape justice.

24 - Overdue resolutions

The long legal nightmare involving the Utah prosecutor's unjustified accusations comes to a close with no charges ever being filed against O.U.R or me. In fact, it is the prosecutor who now faces discipline for an unwarranted attack that state authorities agree should never have happened. These victories relieve the burden that has been overshadowing my life for years, but the battles have left scars that may never heal. Today, I still wake up most days in tears, but I'm slowly functioning again. I have two therapists and feel that I have achieved a state of humility that was long overdue. I have come to understand that depression and anxiety lie to you. The view of the world they present doesn't match reality. My mental health is by far the greatest challenge I have ever faced – greater than any terrorist or criminal. It's a demon that nearly destroyed me – and still could. My image of myself that I had built in my head since childhood – the Superman myth -- has been stripped away and I have no idea what kind of man is really underneath. I hope he is a good one. I have reconnected with family and even reconciled with my younger brother, Craig. We are now closer than ever.

Epilogue - Magic wands

My personal reckoning reinforced my conviction that God does not wave magic wands. I will occasionally catch myself asking why He allowed this to happen to me, but I remember that God knows what we can handle and what we can't. He won't fix things for us. We have to fix ourselves. I'm a different person now. I'm still figuring out who that person is. I know I will continue to be tested.

SAMPLE CHAPTERS

PREFACE

Superman Calling

"Timmy, Superman is on the phone."

I must've fallen asleep. My room was dark. I remember playing only moments earlier – or was it minutes? Hours? I had been pretending I was fighting the bad guys. Which bad guys? The generic kind that live in the mind of a five-year-old boy.

Squinting, I saw my mother's silhouette across the room standing in the open doorway. I struggled to form coherent thoughts.

"Superman. He's... on the phone?"

My mom nodded her head and her face betrayed a sense of delight that, had I been older, I would've understood to be a suppressed laugh. She was giving a performance. I was buying every second of it.

"Yes. He said it's urgent and he needs to talk to you right away."

I don't remember my muscles moving, but they must have because suddenly my cape was in my hands. Yes, a cape -- an authentic red vinyl Superman cape complete with iconic "S" logo. It was still tightly fastened around my neck where it had been for weeks. I had been wearing it day and night ever since my dad bought it for me at the toy store. It was symbolic. It represented everything I ever wanted to be:

A hero.

I flew from the bunk in a single bound and hit the ugly shag carpeting hard. I too was a Man of Steel – or at least a Boy of Steel. I was impervious to pain and rational thought. I raced past Mom to the kitchen where Dad was sitting at the table, an amused smile on his face. He was the picture of calm and stability. He gestured to the corded phone on the wall. I nervously put the receiver to my ear.

"H-Hello. T-Timothy Ballard... speaking."

"Timmy? It's Superman! I'm calling from my Fortress of Solitude."

That deep and powerful voice! It was really him! I was talking to a real superhero! I needed to say something profound.

"Hi--"

I'm pretty sure my brain had blown a fuse.

"Timmy? Your parents tell me you're my biggest fan."

How did my parents know Superman??? Dad was in real estate and mom taught piano. Was there a secret superhero hotline hidden somewhere in the house? What was happening?!

"I also hear that you've been wearing my cape. Is that true? Are you wearing my cape. Timmy?"

A jolt of fear shot through me. Oh no! Did Superman think I stole his cape??? I'd never stolen anything in my life! Stealing was a sin -and Ballards don't sin! We were expected to follow the rules! "It's not yours! It's a pretend cape from the store. I didn't steal it!"

This was terrible! Superman believed I was a criminal!

" Calm down, Timmy. I know you didn't steal it. It's okay."

Relief flooded through me. It was my first brush with a false allegation. I wish it had been my last.

"Timmy, I understand you've been wearing that cape a lot. In fact, you wear it *all* the time. Is that right?"

"It's plastic. I even take baths in it!"

I heard a muffled laugh. Was... Superman laughing at me?

"Well, baths are probably okay, Timmy, but I also hear you've been sleeping in your cape, is that right?"

"Yes, sir! I never take it off and I never will!"

"Well, Timmy, sleeping in a cape is dangerous, especially in a bunk bed. You could get hurt."

Superman knew where I slept? He really WAS watching!

"Timmy, I think it's okay for you to take off the cape at bedtime and let it recharge. Do you think you could do that, Timmy? Do you think you could start taking off your cape at bedtime?"

It was a simple request, but I was uncertain. That cape was important. That cape was my identity. That cape made me a protector.

"Yes. I guess I can take it off at bedtime."

"You're a good boy, Timmy. Now go back to bed."

When I hung up the phone, for the first time in weeks I untied my cape. In my bedroom, I draped it on the bedpost within grabbing distance should an emergency demand quick action. I would be prepared, just in case. I went to sleep with the Man of Steel's validation echoing in my head: I was a good boy.

Of course, it was years later my parents finally confessed the truth. "Superman" had really been a family friend, Gale Robinson, who had a naturally deep voice. My parents were afraid I was going to strangle myself with that cape in my sleep and they concocted the call from "Superman" to save my life. They probably did.

But I believed.

I always believed, for as long as I can remember, that I was a protector, even without a cape. I was the self-appointed family guardian against the terrors of the world. I was a force of good. It was up to me to keep the evil away.

I didn't need a cape. I didn't need superpowers.

I simply believed.

I was Superman.

CHAPTER 18

Collapse

Gravel and sharp bits of asphalt were embedded into the side of my face where I'd impacted the ground. I was likely bleeding. It hurt like hell but it was the only sensation I felt. The rest of my body was numb.

Where am I?

Who am I?

I cracked open my eye – the one not flattened against the surface of the parking lot. Uneven waves of asphalt highlighted cracks and imperfections otherwise unnoticed. Falling flat on your face is a painful way to get a new perspective on the world. The sky was dark, but the air was still thick with moisture from the steamy Florida heat.

How'd I get outside?

Had I been shot?

What happened to my shirt?

My eye focused on a nearby rectangular object resting about six feet away: My cell phone.

In an instant, a lifetime of thoughts came crashing back to me – my memories, my identity -- the nightmare revelations that led me to literally collapse. I was hit again with the profound realization that the world as I had known it had been utterly ripped apart.

And it was my fault.

I heard the slam of a nearby door and a voice urgently calling my name. Help was coming. Thank God. I needed help.

I didn't deserve it.

* * * *

Ten minutes earlier, I had been in my room putting the finishing touches on my disguise. The bathroom in this particular Airbnb was cramped, but the location was chosen for its proximity to the airport, not comfort. I'd applied a series of fake tattoos. My way-too-shaggy hair was dyed brown and my beard had grown sufficiently enough in the past two weeks that I'm not sure even Katherine or the kids would recognize me. I chuckled at my reflection in the bathroom mirror. These moments always feel a little like Halloween.

Being someone you're not takes commitment.

The past two weeks of training in West Palm Beach had involved plenty of role-playing in preparation for the op we were about to stage in Mexico. I would be going undercover along with two other O.U.R. operatives to infiltrate a known cartel suspected of trafficking young girls along with drugs. It had actually felt good, in many ways, to play a criminal scumbag during our training exercises, if for no other reason than to not be myself for a few hours. There were times, if I'm being honest, when the weight of being Tim Ballard felt like a role.

Had I become lost being someone I was not?

Role-playing had felt liberating in a way. There was comfort, as strange as it sounds, in knowing that the person you are pretending to be isn't real; that it's okay to be fooling people as long as fooling people serves a noble purpose. When you're being an imaginary person, you can forget – at least for a few moments -- about the ongoing burden of being an imaginary you.

I'd decided to add one more tattoo. I'd practically given myself a full inked sleeve on my left arm, but for some reason I kept going. Just one more, I thought. Maybe I was creating busy work for myself to keep my mind off the previous few months – and the fact that Katherine was back home in Utah caring for the kids while I... was not.

Katherine.

I tried to stuff down the thought that haunted me: that I was running. There are so many things we tell ourselves to avoid admitting the terrible truths we don't want to confess to others – or to ourselves. I had even convinced myself there was something honorable, even patriotic, about being away for weeks or months at a time immersed in the distractions of work. I had thought often about one of my heroes, Teddy Roosevelt, who, like Lincoln, suffered from paralyzing thoughts of inadequacy and self-doubt at some of the most defining moments of his life. For Roosevelt, he called it the "black care" and I related at some fundamental level to his innate desire to escape whatever unseen demons were chasing him. I'd battled many demons in my career – too many demons to count – but, in that moment staring at the stranger looking back at me in the bathroom mirror, I hadn't yet recognized that the worst demons were inside me.

That the demon was me.

All I knew was to run and to keep busy.

To lose myself in the role.

Like most things in my life to that point, it had begun with a plan. Two years earlier, I'd decided to step down as the CEO of O.U.R. to focus on speaking and writing. I'd been the principle face of O.U.R. since it's founding – to most people I *was* O.U.R. – and it was my face and my narrative that drove the fundraising.

The fundraising was going amazingly well.

Every time I appeared on TV or I released a new video on YouTube, our donations skyrocketed. I would get calls from the office in California saying, "Do you believe this?! Can you believe the money coming in?!" The company was crushing it and all that cash was being put to good use saving children around the world. We had assembled an amazing team of talented and dedicated people I trusted implicitly to run things. I felt confident that I could safely step out of the management/executive role I'd been in since 2013 and allow O.U.R. to be its own thing while I spent some long overdue time focusing on other things, like growing my brand. I know it must sound narcissistic that I had a desire to grow my brand. It probably was.

It definitely was.

It was also the truth.

It was really no different than what I had been doing in building O.U.R. The company was an extension of me. It had come from my imagination and was an idea forged from the harrowing events I had witnessed in my years in law enforcement. I had convinced many people to open their eyes and to finally see the problem of child sex trafficking as I had seen it -- as I had felt it. The passion that drove O.U.R. had come from me. It was an investment I made in the organization and that investment was paying off far beyond my wildest dreams. The company could now exist independently and I could now (or so I'd hoped) make an investment in myself. I knew that I'd never be able to distance myself from O.U.R. completely (nor did I want to) but if I was ever going to make opportunities for myself beyond O.U.R. – opportunities that would more directly benefit Katherine, the children, and our family – then I had to make a move. I had other goals. I had other responsibilities. O.U.R.'s lawyer had also recommended I leave the company to separate O.U.R. from my private ventures. I was getting ready to publish a book and he convinced me it was "an optics thing." He said, "We wouldn't want anyone to think your products overlap." It sounded so corporate, but they were the experts. I'd learned over the years to hand over responsibilities to people you hope are better and smarter than you – people who have your back. So I agreed to step down and to not take a salary. The timing seemed right. Creating O.U.R. had raised my public profile, but if I didn't create an identity for myself outside of O.U.R. I would become a prisoner of it.

That's what I told myself.

At the same time, I had become too emotionally invested in O.U.R. and the work we were doing to leave completely. The reason for creating O.U.R. in the first place was to save women and children around the world from modern slavery. Even though I didn't want to run O.U.R. directly in an executive capacity anymore, I couldn't abandon those victims either. I felt a responsibility to do what I could either as an unofficial spokesman for O.U.R. or in taking part in actual ops to keep O.U.R.'s mission growing. Being on ops is also what I loved, despite the danger. In fact, looking back the danger was its greatest appeal. So often our intel guys would tell us during mission prep, "Don't go into that place. That place is run by the cartel," or, "If you go into that place, you might not come out." And my response was always the same:

"I'm going in."

Katherine hated the danger, but she never stopped me. She hadn't voiced a single objection, in fact, since the night in El Centro back in '06 when she told me, "You have to do this." She had never used the veto I agreed to give her allowing her to pull the plug on all of it. I had known since the day I met her that Katherine was the stronger of the two of us. I was just trying to keep up. Katherine had been hopeful that in stepping away from O.U.R.'s day-to-day operation I would have more time for her and the kids and more time to be a husband and a father.

It didn't work out that way.

I was busier than ever. If I wasn't away on an op, I was prepping for one. If I wasn't giving a speech raising awareness about the need to end child sex trafficking, I was appearing on FOX News or MSNBC trying to do the same. I couldn't turn it off.

I didn't want to. I liked it. I needed it.

Even if I wasn't running O.U.R., I was helping O.U.R., helping the kids, doing God's work, and helping myself. What's wrong with that? Katherine didn't always see it that way, especially after Colin and Coline were adopted. She believed in me and in what I was doing. She believed in O.U.R. She wouldn't stop me from doing what I needed to do because she knew all too well what it would mean if I stopped. At the same time, however, Katherine needed a husband.

And for some reason, I couldn't be one.

There had been tensions. Katherine had always been one to carry her own weight. She didn't ask me or anyone else for permission before she did what *she* felt needed to be done. In this way, we understood each other completely. But just as time and distance can heel wounds, they also can create them. Little by little by little. I didn't understand or recognize it happening. Maybe I didn't want to. Something inside me was pushing me – and it was pushing me away from her. It's not that I stopped loving her. I loved her very much. It's not that I was indifferent to the kids. They were everything to me. It was something else. I was... important.

I was important in ways that, honestly, didn't include them.

I was regularly on TV. I was hanging out with celebrities and world leaders. I was consulted on issues of national and international importance. I was literally sitting at the right hand of the President of the United States. I was famous and getting more so by the day. It was a fame that had formed a cocoon of self-denial around the horrors that were lurking just below the surface.

* * * *

I had applied the final tattoo and was leaving my room to meet my operational coordinator and right-hand man, Matt Cooper, for the drive to the temporary training center when my cell phone rang. It was my uncle, Craig Anderson, who had agreed to take over O.U.R.'s board as we cleaned up the mess from the company's recent staff changes. I considered Uncle Craig to be one of my best friends, really a second father, and so I trusted him even more than I trusted myself. Craig and I had been speaking regularly as he and the board investigated what had been going on at O.U.R. in the time I was away. What had been going on could be charitably described as "a shit show."

I knew there were problems within a few months of leaving. My younger sister, Emily, O.U.R.'s Communications Director, had been whispering warnings to me that something wasn't right at the company almost from the moment I left: rumors, harsh gossip, talking behind people's backs, etc. As my sister and someone obviously my ally, she was intentionally excluded from whatever was being talked about, but she couldn't help but hear things. At one point she had told me, "Tim, they're keeping me out of the loop, but they're talking mad shit about you every day." Though I didn't ask her for specifics at the time – because, honestly, I didn't want to know – the "they" to which she referred where the people I'd left in charge. The people I trusted.

The people I considered family.

Emily's warnings grew increasingly pointed and even desperate in the months that followed. "You've gotta come back," she eventually insisted, "The ship is sinking." I didn't know any of the details of what was going on, but I knew that the new CEO I had left in charge, Jerry Gowen, wasn't being as responsive in addressing problems as I'd hoped. In fact, every time I spoke to Jerry and asked specifically about some of the warnings Emily and others had been raising, Jerry either dismissed the idea or claimed ignorance. Whether it was indifference or pure denial, as far as Jerry could see, everything at O.U.R. was perfectly fine.

It wasn't until I looked into the matter a bit more closely that I discovered that, aside from the ops I was involved in, O.U.R. had not been conducting other missions around the world. Rescuing children was *why* O.U.R. existed, and if they weren't doing that, then what were they doing? I had just finished our Haiti operation when the board convinced me to come back as voluntary CEO. I felt it was telling that Jerry immediately agreed to a demotion to Executive Director without a complaint. Jerry had been a friend, but he didn't turn out to be the leader I'd hoped he would be. He certainly wasn't the leader O.U.R. needed.

Since I was still unaware of exactly what had been going on within the company, and since I was still committed to the ongoing operations I'd been working on, I asked Craig to come in and head the board. Craig was an experienced businessman and problem solver. He immediately got to work fixing O.U.R. and identifying the problems. Those problems, sadly, turned out to be the very people I had naively assumed would run O.U.R. as I had wanted. Almost immediately Craig recommended removing those people, but I resisted. These were people I personally recruited to join O.U.R. because they believed in O.U.R.'s mission and I believed in them. Craig quickly pointed out that even assuming these people had the best of intentions (which is my default assumption) there was a level of unprofessionalism involved, perhaps even incompetence, that could not be ignored. For the good of O.U.R. and the people we served, they needed to go. I reluctantly agreed with Craig and those people were dismissed.

While Craig and the board continued to investigate the damage left behind, I threw myself into my ops. I was probably guilty of being just as much in denial as Jerry, but I had truly hoped that removing the individuals involved would be the end of the problems.

As it turned out, it was only the beginning.

* * * *

I had just stepped into the parking lot, the phone still at my ear. Matt was running late and his SUV was nowhere to be seen. Craig jumped abruptly into the purpose of his call. I scanned the darkness for sign of headlights. There was nothing but an eerie calm, as if the world was put on pause.

"Tim, we just put together what's been going on. You... won't believe what's happening. It's deeper than you think -- much deeper. This was a mass betrayal." Whether it was the heat and humidity that had hit me as I left the airconditioned Airbnb or the gravity of my uncle's words, I felt the atmosphere shift around me. Craig wasn't prone to exaggeration or conflating problems. As I heard Craig start to describe the discoveries he and the board had made – using words like "conspiracy" and "collusion" – I felt my stomach tighten. Before leaving the room, I had taken a Xanax, but it wasn't close to kicking in. I wasn't sure it would do any good when it did. I had been relying more and more on meds to keep me on an even keel in recent months, but had hoped to wean myself off them once the Mexico op was finished. My heart started to race.

"Tim... They were gunning for you."

I have always been a person of faith, but there were things I simply didn't want to believe in. I had been raised to believe - and I had seen with my own eyes - that there were good and evil people in the world. I knew countless good people and, really, I counted myself among them. I also had confronted people who committed unspeakable evil. My mistake was drawing too clear of a line between the two. I didn't even consider that good people were capable of being evil - of doing evil acts or, conversely, that evil people were capable of doing good. It was a black and white worldview I'm certain I learned from my mom. She raised me to believe in right and wrong/good vs. evil, and there was no room for ambiguity or second-guessing between the two. Evil was something you fought, not something you coddled or tried to understand. You destroyed it. At the same time, however, I wasn't a child. Part of growing up is coming to realize the world is more complex and nuanced than that. You can start out in life believing in good and evil, but eventually reality shows you a different perspective.

If you choose to see it.

So as Craig began to outline the depths of betrayal that had been growing within O.U.R. right under my nose, there was part of me that wasn't surprised. I didn't know the details, and I didn't know the players, but on some level I think I had always suspected and I just shut that side of my brain off. No one wants to think the worst of people. I certainly don't. In that moment, the crushing weight of that denial manifested itself as something I realize now had been haunting me for years:

Guilt.

I was not responsible for what these people I loved had done -they had the freedom to make their own choices -- but I was responsible for O.U.R. and for putting them in positions of power. I was responsible for setting the conditions that allowed this conspiracy cancer to grow and metastasize. And I had ignored the warning signs that, I realize now, were all too obvious. As Craig continued, the scope of the betrayal kept growing bigger and bigger, and my shame grew with it.

"Oh my God," I thought, "I did this." I didn't commit these acts directly, obviously, but this was nevertheless all on me. "How could I have been so stupid? So fucking blind?" The air felt thick and unbreathable, but it wasn't the heat that caused me to rip off my shirt. I would've ripped off my skin if it were possible. I was a feral animal caught in a trap desperate to escape.

And I felt something inside me... collapse.

Things had been building up for years, unseen and undiagnosed. For eighteen years I had been witness to some of the most horrific acts humans can inflict on each other. Many of those acts were committed by the powerful against the weak – against the most innocent and vulnerable – against children. I had literally seen videos of three-year olds being sodomized. Babies being raped. Hundreds of videos and thousands of photos. When I was recruited to join the Internet Crimes Against Children Task Force, my boss at the time chose me specifically because of my strong religious faith. He felt my religious background would protect me. I had believed it too.

We were both wrong.

In that moment, I felt a kind of terror I'd never experienced before. It wasn't fear from physical danger. It was the terror of my own failures. The terror of realizing I was spiritually and intellectually impotent. I hadn't been strong enough. I had failed everyone. I had failed Katherine. I had failed the kids. I had failed my family. I had failed O.U.R. I had failed the victims I swore to protect. It was ALL falling apart.

I had failed... everything.

And I collapsed.

Literally.

* * * *

I don't remember falling.

I don't remember my phone dropping from my hand.

I don't remember my body hitting the ground, muscles disconnected from the electrical impulses of my brain. My body was a sack of useless flesh severed from consciousness. I don't remember my face impacting the asphalt – the force embedding grains of debris into my skin.

I don't remember the blackness.

There was just...

nothing.

* * * *

I then heard footsteps racing toward me.

"Mr. Ballard?! Mr. Ballard?! Are you okay?"

I slowly realized it was the manager of the Airbnb. He had his cell phone to his ear and a look of fear and desperation on his face.

"No, I see him. He's in the parking lot. He's on the ground. I don't know..."

What followed I remember only in fragments. I felt the sensation of the manager leaning down. I remember squinting into the sudden glare as headlights washed over me. A car door slammed. I heard Matt's voice, confused and panicked. I felt hands on me, checking me for damage. What had Craig been saying? The specifics of our conversation were still a jumble in my mind, but I felt the sharp sting of horror, of betrayal, as an afterimage burned into my consciousness – like how a flashbulb imprints a distorted image on the retina that lingers, painful and grotesque.

I didn't know it until later, but Craig had called the Airbnb manager ordering him to find me in the parking lot. Matt had arrived seconds later and together they picked me up and loaded me into Matt's SUV. I don't remember any of it. I can imagine there was a desperate conversation between Matt, a combat vet, and Craig as they assessed my condition and shifted into crisis response mode. It was part of our training and I have no doubt Matt's professionalism kicked in.

I was floating in a world of non-existence. There are times I wish I'd stayed there.

The next thing I remember, I was waking up on Tony Robbins' couch.

CHAPTER 19

"Who are you?!"

It's an odd thing to be close friends with some of the most famous and influential people on the planet. It's just-weird. On the one hand, it's impossible not to be in awe of the power and charisma many of these people have in abundance. These are some of the smartest and most talented people I have ever met. On the other hand, however, being around such people makes one realize pretty quickly that they are really just people. They have all the same strengths and flaws as anyone else. Many of the celebrities and powerful politicians I've met are as humble as you or me in real life. Most (but not all) are all too aware that they are fortunate to be in the positions they're in. There's certainly hubris and arrogance occasionally as well, but that's true of all of us. Tony certainly fell within this broad continuum of personal achievement and genuine humility. I'd met Tony through my fundraising efforts at O.U.R. and he quickly became one of our biggest supporters. He also became a personal friend and we shared a similar outlook on life. We were both guys who wore our hearts on our sleeves and we both had a strong belief in faith and country. On a personal level, Tony was simply kind and funny - and for a guy like me who routinely stared into the abyss of human misery and violence, those were greatly appreciated gifts.

Tony and his wife, Sage, had a house in West Palm Beach and I had spent several evenings there recently socializing while taking a break from training. The proximity to Tony's estate wasn't the reason we were in West Palm Beach, but it was a nice perk. The evening of my

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collapse, I was fortunate that he and Sage were still at home. Tony has an insanely busy schedule and he more often than not is jetting off somewhere around the world running his business. While I drifted in and out of consciousness in the backseat of Matt's SUV, Matt and Craig had contacted Sage and arranged for me to be taken to the Robbins' house. Sage was a gentle soul and a natural caregiver. The decision was made not to take me to the hospital and instead give me a chance to regain my bearings out of the public eye. It was a wise decision. In his call, Craig had outlined some of the emerging threads of connection between O.U.R's recently fired staffers and a rash of smear news articles about O.U.R. and me personally that had come out in recent weeks. One "journalist" in particular seemed to have made it his mission in life to paint me as either a complete incompetent phony or the second coming of Al Capone. The dismissed staffers found all too willing conduits to air their alleged grievances. We didn't need to give such irresponsible people more fodder for their online tabloids.

Matt quickly got me inside the gates of Tony's mansion and he and Tony carried me to the couch in the living room. As I started to wake up, Tony was sitting next to me, his eyes closed and his hands folded in prayer. It was well after midnight and he and Sage were still in their pajamas. Sage stood nearby as Matt paced back and forth in the nearby hallway on the phone. Sage saw my eyes open and alerted Tony. Tony stopped his ministering and helped me slowly sit up. Sage retrieved a glass of water she had standing by, but as she handed it to me I asked if she had a Xanax. Sage disappeared to get the pill while Tony helped me sip the water. I sat like a zombie for a few moments as Tony asked how I was feeling. I was still in a daze, but the full weight of my collapse was still bearing down on me. My thoughts were scrambled, but even the disjointed bursts of synaptic energy in my brain throbbed with the sensations of terror, guilt, and grief. Sage returned with the Xanax and I slammed it down with a gulp of water. I only wanted to stabilize. Finally, Tony asked the inevitable question.

"Tim, what's going?"

During the earlier flurry of phone calls between Matt, Craig, and Sage as Matt drove me to the house, some of the details of Craig's phone call had been revealed. Tony was also aware, in a general sense, of some of my complaints about what was happening back at O.U.R. from our conversations in the preceding days. As one of our biggest donors, I had naturally filled him in on the staff shake-ups and some of the negative press, but neither he nor I were fully aware of everything that was weighing down on me. Sitting in his living room, however, Tony wasn't interested in what was going on with O.U.R. Not in that moment. What he cared about was me. Critics always assume the worst of wealthy and famous people, and Tony certainly had his critics, but Tony has gotten where he is in life because he has a huge heart and he truly cares about people as individuals. His friendship with me is based on a genuine caring about me as a person and not just as a business partner.

I struggled to articulate what had happened, but I imagine it sounded like disconnected gibberish. How does one accurately express the kind of emotions so powerful that they knock you unconscious? It was then that Matt returned from his phone call.

"We're all set. Craig and Katherine will meet us in Maryland."

Maryland? Katherine? I struggled to make sense of the world.

Tony and Matt then revealed the plan that they had set in motion even before I arrived at the Robhins' house. Tony had a private physician in Baltimore who was an expert on anxiety and panic disorders. In fact, this doctor had an experimental shot he insisted was practically a magical elixir to stabilize me and start me on a path to wellness – or so everyone hoped. Tony volunteered his private jet to fly me there immediately. As I listened to this plan unfold, Tony looked me in the eye.

"Trust me. I know what this is."

Tony is good at connecting with people because more often than not he has shared their struggles. He has faced his own demons and at times in his life fallen short. He has *been there*. So when Tony told me, "Trust me," I felt a glimmer of relief that no medication would ever equal. Even without me explaining myself, he understood. Perhaps even more than that, I felt a sense of hope knowing Katherine and Craig were at that moment getting on a plane in Utah to rendezvous with us in Baltimore so they could take me home. At that moment, knowing that the people I loved were stepping up to help me was the only thing keeping me alive.

* * * *

The drive to the airport, the quick flight to Baltimore, and even the stop at the clinic to see Tony's doctor were all more or less a blur to me. I remember overhearing that the experimental shot the doctor had given me cost \$10,000, but that Tony had paid for it out of his pocket. While we waited for Katherine and Craig to arrive, I asked Matt to take me to a hotel to get cleaned up and try to compose myself before I had to face them. I was still ridiculously dressed in the disguise for the mission and I wanted to be me again – assuming I even knew what "me" meant anymore. Matt got me to my room and gave me a crappy disposable razor he bought at a convenience store. I knew Katherine would hate the beard and I wanted it off before she saw me. I imagined her seeing me and thinking I was an impostor.

She wouldn't have been wrong.

My face was already scraped from where I'd hit the pavement, but I sliced it even more hacking off the beard. I tried scrubbing off the temporary tattoos in the shower, but even after scrubbing my arms raw there were still bits of the images remaining. It looked worse than if I'd simply waited to take them off properly. Once out of the shower, I started to get dressed in some clean clothes Matt provided, but my eyes drifted to the window that looked out into the dark and cold Baltimore night. I remember staring into that blackness – partially naked and my face still bleeding -- and feeling as if I stood on the precipice of Hell.

There was nothing in front of me. Only blackness.

Just like I clawed my way out of my shirt, I suddenly ripped the bedding off the mattress and threw it all on the floor. I fell onto the bed and burst into tears, my clenched fists turning my knuckles white as I drove them into my eye sockets. I don't remember screaming, but if I had I wouldn't be surprised. The world was unraveling -- I was unraveling -- and there was nothing I could do to stop it.

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By the time Matt knocked on my door a short time later, I had composed myself enough to finish getting dressed. I opened the door and he told me Katherine and Craig had landed and would be pulling up downstairs in minutes. It probably would've been wiser to wait for them in the room out of public view, but I wanted to see Katherine as soon as possible and start heading home. Part of me just couldn't be still. I had to move. I had to run. This time, I wanted to run into Katherine's arms.

It was such an overwhelming sensation that I pushed past Matt into the hotel hallway and immediately fell flat on my face again. I couldn't even walk. Matt helped me up and got me into the elevator. He held onto my arm to keep me from tilting over as we rode the elevator down to the lobby.

Craig and Katherine were pulling up in their rental just as we reached the lobby. I saw Katherine stepping out of the car and the look of utter worry and fear on her face was devastating to me.

"I did that to her," I thought. "That pain on her face, that's all because of me. My failures. My selfishness."

What kind of man was I that my wife had to leave her children in the middle of the night and fly halfway across the country because her husband was losing his shit? I felt completely defeated and unworthy. I staggered toward her. Katherine finally saw me just an instant before I collapsed into her arms. In that instant when our eyes met, I saw something that still haunts me to this day. It was a look on her face of total surprise and non-recognition, like a complete stranger was hurling toward her. She didn't say it – I don't remember her saying anything – but what registered on her face was clear:

"Who are you?"

From the time I was a boy and I first put on that Superman cape, I believed I knew who I was. I believed I knew my identity. And through a lifetime of studying and training and serving – through eighteen years of fighting child crimes and not dealing with the emotional fallout – I thought I knew who Tim Ballard was. But the truth now was crushing me:

I was an impostor.

I thought I was a hero. I thought I could save people.

I can't save anyone. I can't even save myself.

I'm not Superman.

I'm am...

nothing.

CHAPTER 22

Harvest Time in Ukraine

Our sprinter van was shaking itself apart as we raced through what felt like an off-road obstacle course but was in fact an actual road - or it used to be. Driving at dusk, our driver did his best to avoid the Swiss cheese of potholes on the roadway, but it was an impossible task. Each pothole, of course, was the result of the periodic hailstorms of mortars and missiles that have pounded Ukraine since Russian President Vladimir Putin ordered his military to invade only a few months earlier. The world reacted in horror and anger to Putin's unprovoked attack, but for the moment western military aid was still only trickling into the country. For the most part, the Ukrainian people have been defending their country alone. Bravery has been high but so too has the destruction and the casualties. Lacking a sufficient invasion strategy, Putin had instead ordered his troops to target civilian population centers - apartment buildings, homes, and hospitals -- to force the Ukrainians to submit and surrender through sheer terror – a tactic the rest of the world more commonly refers to as a war crime.

And now I was in the middle of it.

Outside the van's darkened windows I was seeing destruction unlike I'd ever witnessed, even in the aftermath of earthquakes and other natural disasters. In addition to pockmarked buildings and piles of rubble that used to be homes, massive craters turned the ground into a moonscape. Our driver's insistence on staying close to the center of the road quickly proved justified as we passed an unexploded missile protruding from the ground only ten meters away. I tried not to think about the fact that we'd still be driving all night, passing through dozens of armed checkpoints, before we reached our destination in Kyiv. I had been thinking recently that my mental health was improving. Racing in the dead of night through an active war zone, however, seems like a good argument to the contrary.

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Weeks earlier on February 24, the day of the invasion, I was in O.U.R.'s staging headquarters in California with my team of operators prepping for an upcoming undercover operation in the Dominican Republic. We were prepping our disguises and discussing the op's logistics when news reports broke about Ukraine on TV. Since 2019, O.U.R. had been supporting a group of orphans in Ukraine in hopes of preventing them from falling into the hands of traffickers. My thought immediately turned to those orphans and their fate, but we were wheels up within hours and our Caribbean op was already in progress. Checking up on Ukraine would have to wait.

After flying to the D.R., however, one of our contacts confirmed that there were young Ukrainian women starting to show up at local brothels. This news hit me like a sledgehammer because I instantly understood the ramifications. As had happened in 2010 during the earthquake in Haiti – the same earthquake that fatefully led to my so far fruitless search for Gardy Marti – natural disasters become an opportunity for traffickers to obtain new "product." Ukraine was a manmade disaster, but the chaos and destruction of war is no different than that of an earthquake or a hurricane. Relatives get killed, families become separated, and innocent children are left vulnerable. As our operation got underway targeting a Mexican national we'll call Marco, we went undercover to an Oceanside sex club where I was introduced to Marco's "secret weapon": a motherly woman from Ukraine who, according to Marco, was already in contact with suppliers on the ground looking for more women trying to escape the war. Marco then used the sinister words that will haunt me for the rest of my life:

"It's harvest time."

The young Ukrainian women now showing up in the local brothels were no doubt spirited out of their country on promises of help and compassion only to become prisoners and slaves. I struggled to stay composed as a sick feeling rose in my stomach. The business of buying and selling of human beings was about to get fresh inventory. The world is a surprisingly small place. What happens in places like Ukraine will inevitably be felt everywhere else. There was no escaping it. There was no ignoring it.

It was then that fate stepped in once again from an unexpected source: actor Mel Gibson. Mel had become an O.U.R. supporter and personal friend who has also generously supported orphanages in Ukraine. It was midnight in the D.R. when Mel called my personal phone saying he was in Budapest shooting a movie and was worried about the invasion. Mel asked what can be done to get the orphans out, but I was honest and said I didn't know. The Russians had taken over many of the border towns and simply getting into the country could be a suicide mission. Still, the questions of what could be happening to those innocent children and women clawed at my mind. Doing something seemed impossible, but doing nothing seemed unconscionable. After Mel's call and hearing Marco's boast about his plans for the "harvest," I contacted my friend and colleague Jeremy Locke, a former Green Beret who, along with his wife Britney, run an organization called Aerial Recovery Group (ARG). ARG recruits military veterans to work as skilled contractors in relief efforts and security roles in the aftermath of natural disasters. I was relieved, but not entirely surprised, to learn from Jeremy that ARG already had boots on the ground in Ukraine working to help move refugees to safety. I told him about the orphans we knew were in danger and told him O.U.R. would support him in any way possible.

It's at this point when Katherine once again proved to be the pivotal voice in what would happen next. In the months following my breakdown, I had been giving Katherine her space – partly out of guilt for what I was putting her through and partly because she needed room to heal. Katherine now suffers from PTSD and it's almost entirely due to my mental and emotional instability of the previous few years. In addition to running CNF and raising our nine children almost entirely alone, Katherine faced the very real possibility that her husband may never become the man he once was. Even the strongest people have their breaking points. Yet despite this – despite the challenges to her own emotional security – Katherine still found a way to think outside herself. I saw her name pop up on my phone.

"Hey honey, how are-"

"Tim, you need to do something about Ukraine."

One of Katherine's great strengths is her ability to stay calm. She did *not* sound calm. I quickly told her that I agreed the situation was terrible and that I'd already made contacts to arrange help for the Ukrainian refugees, but Katherine interrupted. "No, Tim, I don't think you understand. You need to *do* something about the orphans we have been caring for in Ukraine. They need to be protected."

I was silent for a moment as the implications of her statement sunk in. This was not about making phone calls or sending money.

"Are you asking me to go to Ukraine with my team?"

"Yes."

No pause, no hesitation, and no uncertainty in her voice. Typical Katherine. Two things immediately came to my mind. First, Katherine's PTSD may be worse than I thought and she may have lost her mind or, more likely, she had finally found a solution to get rid of me so she wouldn't have to deal with *my* insanity anymore. Both seemed plausible. The truth was that her request didn't surprise me. I have always relied on guidance from *witnesses* – people or experiences I believe are messengers of Divine purpose – to help steer me on the right path. Katherine's request felt like part of the eternal progression that had taken me to the lowest points in my life and allowed me to climb back up. If I was going to rescue others – and rescue myself – it seemed only fitting that I pass through the impenetrable darkness in Ukraine.

* * * *

I returned briefly to our home in Utah to see Katherine and the kids before leaving for Ukraine and to say goodbye. Though I had gone off on dangerous missions plenty of times in the past, this time saying goodbye felt different – somehow with an extra awareness of the gravity of the situation. Katherine was crying as Matt and I loaded up the SUV and climbed inside. Before we could leave, however, Matt received a text message – from Katherine asking him to come back inside the house. Since it was obvious Katherine needed to say something to Matt in private, I waited in the car. What Katherine told him was this:

"Don't' let Tim go into any place where bombs are dropping."

* * * *

I arrived with the O.U.R. team at Krakow International Airport in Poland on April 13th, 2022 and we immediately loaded the two sprinter vans waiting for us. Our first stop after crossing the Ukrainian border was the city of Lviv where we'd established out Tactical Operations Center (TOC) hidden in a nondescript apartment complex. Since first contacting ARG over a month earlier, they'd managed to rescue 669 orphans and 288 refugees. Our mission over the next few days was to locate and evacuate a group of twenty-four refugees who have been hiding for the last month in bombed out homes in the city of Chernihiv. Jeremy Locke led the mission briefing and outlined our overnight drive to Kyiv to assess the situation with the refugees in Chernihiv. To add to the sense of urgency, intelligence reports indicated that missile strikes would be targeting Chernihiv in the next few days. I had been in many dangerous situations in my years in government service and at O.U.R., but this was the first time there was a real possibility I could become a casualty of war. Locke made it clear the mission would take volunteers only, but I was determined to be one of them. I was going in.

After racing down the bombed out roads and highways between Lviv and Kyiv, the sprinter vans arrived in Chernihiv after crossing a makeshift bridge made only of two creaking metal slats just wide enough to fit the tires. Once safely on the other side – much to our relief – we spotted a large bus parked in the distance that we assumed must he a humanitarian group working in the area. I immediately became suspicious since we'd been told in our mission briefing that no legal humanitarian groups were known to be working in the area. Marco's words "Harvest time" echoed ominously in my mind.

We decided to investigate and approached the driver, who turned out to be a Dutchman who claimed he had come out by himself from the Netherlands to help out in the refugee crisis. Such an independent operator in a war zone set off all kinds of red flags and we immediately passed along the man's name to O.U.R.'s partner anti-trafficking organization in the Netherlands called Free A Girl. When Free A Girl's database of known sex offenders and traffickers failed to find the man's name, we wished him good luck and continued on our mission. It was a decision I soon came to regret.

We reached the contact point where we were to meet the twentyfour refugees only to find a single family – six refugees – still hiding in a basement. When we asked, "Where are the others?" the family told us that the Dutchman with the bus had shown up earlier claiming he was there to pick up the entire group. The refugees sensed something was off about the man just as we had and refused to go. After the Dutchman left, eighteen of the frightened refugees left to go find help elsewhere, leaving the family behind. Knowing it was likely that missiles would start raining down on the city at any moment, we convinced the refugee family to come back with us to safety. I felt a sense of discouragement knowing we could not spend more time looking for the remaining refugees, but we had to think of the safety of the entire group. I also felt a sense of frustration that we could not pursue and further question the mysterious Dutchman to find out his real motivations. Over the years, I've developed a sixth sense about predators and the Dutchman had set off all kinds of alarms in my head.

As we loaded up the family -- a mom, one daughter, two sons, and a grandmother -- the father told us he was staying behind to join the

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war effort as Ukrainian President Zelensky had mandated. As the father hugged and kissed his family goodbye, I couldn't help but think about Katherine and the kids. I'll confess I felt a sense of regret over my selfishness of the past few years. The emotional turmoil I went through, and that I put my family through, seemed to pale in comparison to the anguish of a father leaving his family to fight in a war where he would likely die. Once again I'd found a painful way to get a new perspective on the world.

As our vans raced back to Kyiv, I ended up sitting next to the seven-year-old boy in hopes of making him feel more comfortable and safe. The boy spoke no English, but his teenage sister spoke enough that we could communicate. I asked her to tell her brother that my name was Tim. She relayed the message followed by my request to know his name. The sister then told me something that left me stunned and speechless.

"His name is Gardy."

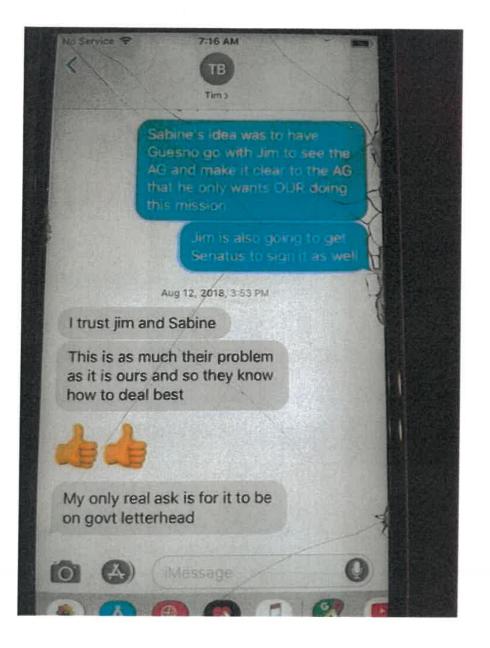
At first I couldn't believe I'd heard correctly, so I asked again. Again, she clearly replied that his name was Gardy. I immediately pulled out my phone to record the boy saying his name because I knew no one would believe me. It was too much of a coincidence. It was too farfetched. I asked the sister if Gardy was a common boy's name in Ukraine and she replied that as far as she knew she'd never heard of anyone else with that name. I couldn't stop thinking, "How could this be?" To have searched for years halfway around the world for Gardy Marti only to rescue another lost boy of the same name in the unlikeliest of places... it just seemed too implausible. Yet it was real. HE was real. And he was safe.

And for a brief time, the darkness lifted...

And gave us both hope.

EXHIBIT J





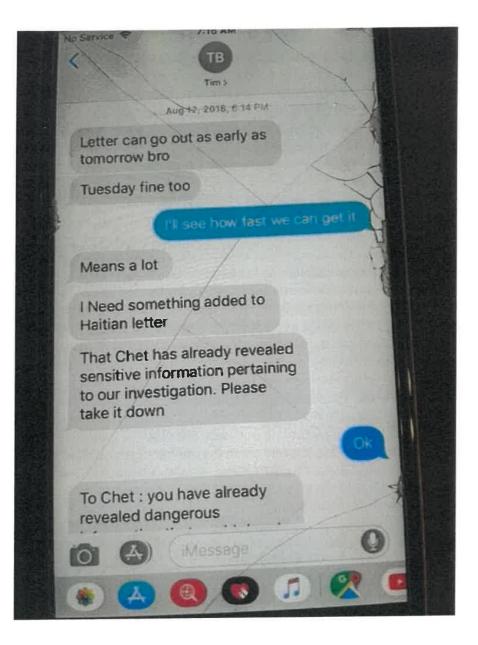


EXHIBIT K

	Case 3:21-cv-05258-BHS Document 1	L-1 Filed 04/08/21 Page 1 of 22
1 2 3 4 5	EXPEDITE Hearing is set: Date: Time: Judge/Calendar:	E-FILED THURSTON COUNTY, WA SUPERIOR COURT 02/16/2021 12:33:53 PM Linda Myhre Enlow Thurston County Clerk
6 7	IN THE SUPERIOR COURT OF THE IN AND FOR THURST	
8 9	QUENTIN M. PARKER and KATHERINE R. PARKER, husband and wife and the marital community thereof,	
10	Plaintiffs,	Case No: 21-2-00214-34
11	VS.	0450 110.
12	THE STATE OF WASHINGTON; WASHINGTON STATE PATROL; CARLOS	COMPLAINT FOR DAMAGES
13	RODRIGUEZ, in his individual and official capacities; KRISTI POHL, in her individual and	
14	official capacities; DARRELL NOYES, in his	
15	individual and official capacities; TRAVIS CALTON, in his individual and official	
16	capacities; MAURICE RINCON, in his individual and official capacities; WILLIAM STEEN, in his	
17	individual and official capacities; JAMES	
18	TAYLOR, in his individual and official capacities; CITY OF OLYMPIA, a municipality,	
19	AARON FICEK, in his individual and official capacities; OPERATION UNDERGROUND	
20	RAILROUND, INC., a foreign non-profit	
21	corporation, THURSTON COUNTY, a municipality and subdivision of the State of	
22	Washington, and SHAWN HORLACHER, former Thurston County Deputy Prosecutor, in his	
	individual and official capacities; JOHN DOE	
23	AND JANE DOE 1-10, et.al.	
24	Defendants.	
25		
26	Complaint for Damages 1	Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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1					
2	COMES NOW the plaintiff, QUENTIN M. PARKER AND KATHERINE R. PARKER,				
3	husband and wife and the marital community composed thereof, by and through their attorney,				
4	HAROLD KARLSVIK, Attorney at Law, and for federal and state claims against the defendants,				
5	allege and complain as follows:				
6	I. INTRODUCTION				
7	1.1 Quentin M. Parker is a 32-year-old man who enlisted in the United States Army				
8	on/or about July 1, 2015. Mr. Parker's intent was to establish a lifelong career serving and				
9	protecting his country. At the time of these alleged cause of actions, Mr. Parker was an active-				
10					
11	Parker, his wife is his sole dependent.				
12 13	1.2 The State of Washington allowed Washington State Patrol Detective(s) Carlos				
14	Rodriguez, Kristi Pohl, Darrell Noyes, Travis Calton, Maurice Rincon, William Steen, James, Taylor and other enforcement personnel to conduct rogue "Net Nanny" sting operations				
15					
16	throughout the state under the Missing and Exploited Children's Task Force, hereafter (MECTF).				
17	1.3 The Washington State Patrol task force (MECTF) partnered with Operation				
18	Underground Railroad, Inc., a private non-profit group anchored out of the State of Utah,				
19	conducting business throughout 25 states including Washington and the state of California.				
20 1.4 Detective Sergeant Carlos Rodriguez, on the behalf of the Washington State					
21	Patrol and his (MECTF) team partnered with the Operation Underground Railroad, and other law				
22 23	enforcement agencies to run an unfettered operation of entrapping, arresting and maliciously				
24	prosecuting men, specifically Mr. Parker, throughout the state of Washington.				
25					
26	Complaint for Damages 2 Harold Karlsvik. P.S. P.O. Box 292				
	South Bend, WA 98586 1 (360) 942-4612				

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1.5 Once these men were arrested, the Washington State Patrol, Detective Sergeant 1 Rodriguez and the Operation Underground Railroad went on a public campaign to discredit and 2 3 slander the accused by calling them "Dangerous Sexual Predators who targeted Children" prior 4 to any convictions of the alleged crimes that were created in the minds of law enforcement. 5 The Washington State Patrol and the Operation Underground Railroad continued 1.6 6 to post and/or leave slanderous statements posted about defendants even after several defendants 7 were acquitted or cases were dismissed by county prosecutors. 8 Due to the actions of the defendants, Mr. Parker was arrested, charged, and 1.7 9 maliciously prosecuted in Thurston County, Washington for seeking and responding to a social 10 media ad offering the legal activity of (DDLG) a form of KINK, an acceptable alternative 11 12 lifestyle among consenting adults. 13 All defendants knew or should have known that by allowing the Net Nanny Sting 1.8 14 Operation to cast such a wide unchecked, unfettered "net" that innocent citizens of the State of 15 Washington could and would be entrapped in their haste to boost the taskforce arrest numbers. 16 These bolstered arrest numbers were utilized for the benefit of the Washington 1.9 17 State Patrol and their taskforce partners the Operation Underground Railroad, Inc., claiming to 18 have saved children, in efforts to increase donor support and increase donor contributions. 19 Innocent citizens of the State of Washington have been misled by the effort of 1.10 20 defendants to utilize the sound bite of "raping children" as a method to eliminate any fairness to 21 the victims that were maliciously prosecuted, and their lives destroyed by the actions of all 22 23 defendants. 24 // 25 Harold Karlsvik, P.S. 26 Complaint for Damages 3 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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1	1.11 Mr. Parker was incarcerated in the Thurston County Jail, had his name posted in				
2	news releases, Washington State Patrol press release, Operation Underground Railroads' press				
3	release and online social media postings. His life and future are forever tainted and destroyed by				
4	the actions of all defendants.				
5	II. JURISDICTION				
б	Plaintiffs realleges 1.1 through 1.11 and incorporates them herein by this reference.				
7	2.1 The court has jurisdiction pursuant to RCW 2.08.010 because the plaintiff's demand				
8					
9	exceeds \$300.00. 2.2 The acts and omission given rise to the cause of action occurred in Thurston County,				
10					
11	Washington.				
12	2.3 Plaintiffs have filed the required tort claim for damages with defendant State of				
13	Washington, defendant Thurston County, and defendant City of Olympia.				
14	2.4 Sixty, (60) days have elapsed since the plaintiff's filing of the above indicated claim				
15	notices in 2.3.				
16 17	2.5 The jurisdiction of this Court over claims arising under 42 USC §1983 is based on				
18	Sintra, Inc. v. City of Seattle, 119 Wn.2d 1, 11, 829 P.2d 765 (2009) (Washington Courts have				
19	concurrent jurisdiction with federal courts to hear 42 USC \$1983 claims).				
20	III. PARTIES				
21	Plaintiffs realleges 1.1 through 2.5 and incorporates them herein by this reference.				
22	3.1 Plaintiffs, Quentin M. Parker, and KatherineR. Parker are husband and wife, and				
23	reside within Pierce County, Washington.				
24	//				
25					
26	Complaint for Damages 4 Harold Karlsvik. P.S.				
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3.2 Defendant State of Washington is responsible for enforcing and defending the laws of
 the State of Washington including the Washington Constitution.

3.3 Defendant Carlos Rodriquez was at all times material to this Complaint an employee
of the Washington State Patrol and resided in the State of Washington.

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 3.4 Defendant Kristi Pohl was at all times material to this Complaint an employee of the
 Washington State Patrol and resided in the State of Washington.

3.5 Defendant Darrell Noyes was at all times material to this Complaint an employee of
 the Washington State Patrol and resided in the State of Washington.

3.6 Defendant Travis Calton was at all times material to this Complaint an employee of
the Washington State Patrol and resided in the State of Washington.

3.7 Defendant Maurice Rincon was at all times material to this Complaint an employee of
 the Washington State Patrol and resided in the State of Washington.

3.8 Defendant William Steen was at all times material to this Complaint an employee of
the Washington State Patrol and resided in the State of Washington.

Beneficial and the Washington State Patrol and resided in the State of Washington.

3.10 Defendant Operation Underground Railroad, Inc. dba: Operation Underground
 Railroad at all times material to this Complaint partnered with the Washington State Patrol while
 conducting business as a Foreign Non-Profit in the State of Washington even after the required
 registration with the Washington Secretary of State had terminated. UBI No. 603-587-353 was
 inactive as of April 13, 2017.

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26 Complaint for Damages 5

Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612 Case 3:21-cv-05258-BHS Document 1-1 Filed 04/08/21 Page 6 of 22

3.11 Defendant Operation Underground Railroad, Inc. dba: Operation Underground
 Railroad all times material to this Complaint registered with the California Secretary of State
 under Entity No. C3790974 as a Foreign Non-Profit listing its headquarters and principal office
 in the state of California.

3.12 Defendant Operation Underground Railroad, Inc. dba: "Underground Railroad
Project, The" at all times material to this Complaint registered with the Utah Secretary of State
under Entity No. 8791496-0140 as a Domestic Non-Profit.

3.13 At all times material to this Complaint, Defendant Operation Underground Railroad,
 et.al, its employees and/or agents were acting within the scope of their employment and for the
 benefit of the non-profit Operation Underground Railroad, Inc., Underground Railroad, and
 Underground Railroad Project, The.

¹³ 3.14 Defendant Thurston County is a municipal corporation and subdivision of the State of
 ¹⁴ Washington located. At all times material to this Complaint, defendant Shawn Horlacher was an
 ¹⁵ employee and/or agent of Thurston County acting within the scope of his employment as a
 ¹⁶ Thurston County Deputy Prosecutor.

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3.15 Defendant City of Olympia is a municipal corporation located in the Thurston
County, Washington State. At all times material to this Complaint, defendant Officer Aaron
Ficek was an employee and/or agent of defendant City of Olympia, acting within the scope of his
employment as a City of Olympia police officer.

3.16 Plaintiff alleges that at all times material to this Complaint, defendant State of
 Washington, defendant Thurston County, defendant Operation Underground, etal, and defendant
 City of Olympia, are vicariously liable for each of their employees.

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26 Complaint for Damages 6

Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

1	3.17 All acts alleged and complained of occurred in THURSTON COUNTY, within the					
2	Western District of Washington.					
3		IV. FACTS				
4	Plainti	ffs realleges 1.1 through 3.17 and incorporates them herein by this reference.				
5	4.1	Washington State Patrol Detective Sergeant (Sgt.) Carlos Rodriquez was the				
6	supervising detective of the Missing and Exploited Children's Task Force (MECTF).					
8	4.2	The MECTF task force was created to provide back-up assistance to law enforcement				
9	agencies investigating sexual exploitation crimes against children.					
10	4.3	Under the MECTF unit Detective Sergeant (Sgt.) Carlos Rodriquez created the Net				
11	Nanny Sting Operation with its first sting conducted in 2015 termed Net Nanny 1.					
12	4.4	The Net Nanny sting operation utilized Washington State Patrol Detectives, Troopers				
13	and enlisted other law enforcement personnel from federal and local jurisdictions.					
14	4,5	The undercover scheme was to create ads in adult social media websites by creating				
15	profiles of adult women to include their age and photographs to meet the terms and conditions of					
16	the social	medial website.				
17 18	4.6	The MECTF team would utilize creative trained techniques to evade the rules and				
19	walk a tig	ht line between a ruse and all-out entrapment by luring unsuspecting men off the social				
20	media platform to private text messaging with an undercover officer.					
21	4,7	This luring allowed the MECTF team to talk dirty and use suggestive language in				
22	effort to entrap men into saying and doing things that they might not otherwise say or do.					
23	4.8	The primary focus was to increase arrest numbers under the selling "sound-bite" that				
24	the MECTF proactive sting operations were "saving children from being raped", but the reality					
25		Harold Karlsvik. P.S.				
26	Complaint f	or Damages 7 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612	14			

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1	was that the Washington State Patrol and their partnership with the Operation Underground				
2	Railroad, Inc. et.al was increasing over-time income for law enforcement and playing on the tear				
3	strings of Operation Underground Railroad, Inc's donors.				
4	4.9	4.9 After each Net Nanny Sting Operation, the Washington State Patrol and Operation			
5	Underground Railroad Inc., et.al would grab the airways and broadcast to the public and donors				
6	about what a good job they had done arresting these men and saving these "fictious children" to				
7 8	increase donations and fund more overtime for all involved law enforcement personnel.				
9	4.10	In February 2019, Detective Sgt. Carlos Rodriquez, MECTF, and C	ity of Olympia		
10	Officer Aaron Ficek conducted Operation Net Nanny 15 utilizing the SKOUT social media				
11	platform.				
12	4.11	Detective Sgt. Rodriquez created a fictitious profile account under t	he username		
13	"Rowdy Rhonda720". The profile advertisement indicated that she was interested in "men and				
14	women."				
15	4.12	The ad stated the following:			
16		"New in town. Single mom. I have three girls to share.			
17	Looking for like-minded people that are into ddlg/incest/young taboo. No curious wanted, Only				
18		serious. Young fun. Taboo".			
20	4.13	According to the Urban Dictionary, "dd/lg" is defined as "Daddy D	om / Little Girl.		
21	DDLG, or dd/lg, is a relationship in which one person is the caregiver or "daddy" and the other is				
22	childlike. It is NOT a relationship between an actual father and daughter or any minor				
23	child.				
24	//				
25			-19 -12		
26	Complaint f	for Damages 8	Harold Karlsvik, P.S. P.O. Box 292		
			South Bend, WA 98586 1 (360) 942-4612		

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DDLG is a sub-form of BDSM and KINK relationships that may or may not involve 4.14 1 sex, but often involves play with child-like things, such as stuffed animals, bed-time stories, and 2 spankings. The "lg" part of the relationship is often called the "little". A simple and quick 3 4 internet search demonstrates that this is the preeminent definition of DDLG. 5 It is widely known in the DDLG, BDSM and KINK community that DDLG does not 4.15 6 mean "daddy daughter little girl" and has absolutely nothing to do with sexual exploitation of 7 children. DDLG stands for "daddy Dom little girl", which is a known role-playing experience 8 among consenting adults. 9 4.16 Detective Sgt. Carlos Rodriguez was aware of this definition and alternative lifestyle 10 prior to placing the "Rowdy Rhonda720" ad. He was aware that DDLG was a term used for 11 lawful activity of DDLG within the KINK community in the State of Washington. 12 Detective Sgt. Carlos Rodriguez and Detective Kristi Pohl in an under compacity 13 4.17 14 communicated with Mr. Parker in the SKOUT platform and private test messages utilizing terms 15 and scenarios consistent with DDLG role play. Both Detectives had utilized similarly language 16 in previous Net Nanny Sting Operations and knew that a person responding to the undercover ad 17 may have a different understanding then the crime created in the mind of law enforcement. 18 During the State vs. Quentin Parker defense interview of Detective Sgt. Rodriguez 4.18 19 stated and confirmed that he knew DDLG was legal in the state of Washington and did 20 absolutely no follow-up to protect Mr. Parker from being wrongfully arrested and maliciously 21 prosecuted. 22 On February 17, 2019, Defendant Quentin M. Parker responded to the SKOUT social 23 4.19 24 media profile seeking to learn more about DDLG role playing between consenting adults. Mr. 25 Harold Karlsvik. P.S. 26 Complaint for Damages 9 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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Parker responded to the ad created and posted by Detective Sgt. Carlos Rodriguez. Mr. Parker's
 SKOUT profile page states that he is interested in "women" and he was looking for "friends,
 flirting, fun and chat." Mr. Parker continued to text with Detective Kristi Pohl.

4 4.20 Detective Sgt. Rodriguez admitted that he had erased all but the last SKOUT
5 messages between himself and Mr. Parker during an active criminal investigation. He did not
6 include this information in his written report in State vs. Quentin Parker.

4.21 Detective Sgt. Rodriguez claimed to have no recollection of the substance of the
missing conversations. He further stated that he had told Detective Pohl that he had deleted the
messages, but when Detective Pohl was interviewed, she made no such assertion.

4.22 Detective Sgt. Rodriguez stated that Mr. Parker's criminal case was not the only Net
Nanny Sting Operation case where he had deleted text message communications.

4.23 Mr. Parker agreed to meet with RowdyRhonda 720, who he believed to be engaging
in DDLG with an adult female and other adult female in a role playing and safe environment.

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4.25 Mr. Parker was arrested and taken to a Washington State Patrol office and
interrogated for almost (3) hours by Washington State Patrol Detective Darrell Noyes, and City
of Olympia Officer Aaron Ficek.

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26 Complaint for Damages 10

Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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4.26 During the audio and video recorded interrogation, Mr. Parker repeatedly told both
 Detective Noyes and Officer Ficek that he was responding to an advertisement profile for DDLG
 and that it pertained to all consenting adult role playing a form of age regression and no actual
 children were involved.

4.27 Mr. Parker even was able to get both Detective Noyes and Officer Ficek to look up
the term DDLG and they confirmed that the "urban dictionary" was consistent with what Mr.
Parker had been telling them throughout out the entire interrogation.

4.28 Detective Noyes and Officer Ficek knew that they did not have probable cause to
arrest Mr. Parker, and they did absolutely nothing to protect Mr. Parker from being falsely
arrested and maliciously prosecuted. They knew he was innocent but did nothing to make sure
that Mr. Parker was not wrongfully caught within the wide Net Nanny Net cast by the
Washington State Patrol, Detective Sgt. Carlos Rodriguez, and MECTF.

4.29 Mr. Parker was arrested and charged in Thurston County Superior court with
 Attempted Rape of a Child in the First Degree (2 counts) and one count of attempted Rape of a
 Child in the Second Degree.

4.30 The Washington State Patrol investigative reports presented to the Thurston County
 Prosecutor's office were untruthful, excluded exculpatory evidence and violated Washington
 State Patrol written policy.

4.31 Former Thurston County Deputy Prosecutor Shawn Horlacher declared under penalty
 of perjury in the probable cause statement that he personally had read all of the police reports
 regarding the alleged charges against Mr. Parker.

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26 Complaint for Damages 11

Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

Deputy Prosecutor Shawn Horlacher had a duty and obligation to make an 4.32 1 independent judgment based upon the case facts. 2

Deputy Prosecutor Shawn Horlacher either was untruthful and did not read the police 3 4.33 4 reports prior to charging Mr. Parker, or he intentional or negligently failed to investigate into the 5 fact that the Washington State Patrol advertised DDLG which is legal in Washington State 6 and Mr. Parker responded and showed up for DDLG among consenting adults and therefore no 7 probable cause existed to charge Mr. Parker with any crime.

Once Mr. Parker was arrested, the Washington State Patrol, Detective Sergeant 4.34 q Rodriguez and the Operation Underground Railroad went on a public campaign to discredit and 10 slander his name by calling Mr. Parker a "Dangerous Sexual Predators who targeted Children" 11 prior to Mr. Parker being adjudicated through the courts with a conviction. 12

The Washington State Patrol and the Operation Underground Railroad continue to as 13 4.35 14 of the date of the filing of this Complaint have slanderous statements posted about Mr. Parker 15 being a Dangerous Sexual Predator who targeted Children even though all charges against him 16 were later dismissed by the Thurston County Prosecuting Attorney's Office.

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FIRST CLAIM FOR RELIEF Ŷ.

(42 U.S.C. § 1983--Illegal Seizure and Arrest and Monell claims)

19 Plaintiffs realleges 1.1 through 4.35 and incorporates them herein by this reference. 20 Plaintiff Quentin Parker has been deprived of his right to be free from illegal searches 5.1. and seizures, in violation of the Fourth Amendment of the United States Constitution, under color of state law, in violation of 42 U.S.C. § 1983. The Defendants Carlos Rodriguez, Kristi

Pohl, Darrell Noyes, Travis Calton, Maurice Ricon, William Steen, James Taylor, and Aaron 24

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26 Complaint for Damages 12

Harold Karlsvik, P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

Ficek actions toward Mr. Quentin Parker violated Mr. Parker's constitutional rights guaranteed 1 against state incursion by the Fourth and Fourteenth Amendments of the United States 2 Constitution due to the unreasonable seizure of his person.

The misconduct described in this Count was objectively unreasonable and undertaken 5.2 with willfulness and reckless indifference to the rights of others for which an award of punitive damages is warranted.

At all times herein mentioned, the City of Olympia had a mandatory duty of care to 5.3 8 hire properly and adequately, train, retain, supervise, and discipline officer Aaron Ficek so as to 9 avoid unreasonable risk of harm to its citizens. With deliberate indifference, the City of Olympia 10 failed to take necessary, proper, or adequate measures in order to prevent the violation of 11 Plaintiff's rights. Officer Ficek, whose conduct is described above did not know what constitutes 12 13 probable cause to arrest a citizen because of inadequate training.

14 5.4 By virtue of the facts set forth above, and as a result of its policies, practices, customs. 15 and usages, the city of Olympia caused Mr. Parker to be deprived of rights guaranteed by the 16 Fourth and Fourteenth Amendments to the United States Constitution, specifically the rights to 17 be free from unreasonable seizures of his person and excessive force.

VI. SECOND CLAIM FOR RELIEF

(42 United States Code \$1983 -- Unnecessary Force)

Plaintiffs realleges 1.1 through 5.4 and incorporates them herein by this reference.

The actions of defendants Washington State Patrol Troopers Travis Calton, Maurice 6.1 Rincon, William Steen and James Taylor and each of them in pointing their guns at Plaintiff Quentin Parker and in threatening to shoot Mr. Parker deprived him of his constitutional right to

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26 Complaint for Damages 13

Harold Karlsvik, P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612 Case 3:21-cv-05258-BHS Document 1-1 Filed 04/08/21 Page 14 of 22

- be free from summary punishment and excessive force and deprived him of his Fourth
 Amendment rights, under color of state law and in violation of 42 USC \$1983.
- ³
 6.2 Defendants and each of them subjected Plaintiff Quentin Parker to such deprivations
 ⁴
 by malice and/or a reckless and conscious disregard of plaintiffs' statutory and constitutional
 ⁵
 rights for which an award of punitive damages is warranted.
- 6 6.3 The direct and proximate result of each defendants' acts is that plaintiff has been 7 forced to endure physical pain and suffering, mental suffering, and emotional distress, and has 9 had to incur medical and legal expenses. The conduct of each individually named and/or 10 unidentified officer was done in reckless and conscious disregard of the pain and suffering it was 11 bound to inflict upon Plaintiffs for which an award of punitive damages is mandated against each 12 individual officer.
- 13

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VII. THIRD CLAIM FOR RELIEF

(42 United States Code \$1983 -- Failure to Prevent Civil Rights Violation)

Plaintiffs realleges 1.1 through 6.3 and incorporates them herein by this reference.

¹⁶
7.1 The actions of defendant Washington State Patrol Troopers Travis Calton, Maurice
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Rincon, William Steen and James Taylor and each of them in watching their fellow officers use
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7.2 Defendants and each of them, subjected Plaintiff to such deprivation by malice and/or
a reckless and conscious disregard of his rights.

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26 || Complaint for Damages 14

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The direct and proximate result of each defendant's acts is that Plaintiff has been 7.3 1 forced to endure physical pain and suffering, mental suffering and emotional distress, and was 2 deprived of his physical liberty and has had to incur medical and legal expenses. The conduct of 3 defendant officers, and each of them, was done in reckless and conscious disregard of the pain 5 and suffering their fellow officers were inflicting upon plaintiff, for which an award of punitive 6 damages is mandated against each individually named officer.

VIII. FOURTH CLAIM FOR RELIEF

(42 United States Code 81983 -- Judicial Deception)

Plaintiffs realleges 1.1 through 7.3 and incorporates them herein by this reference.

Defendants Detective Sgt. Carlos Rodriguez, Detective Kristi Pohl, Trooper Travis 8.1 Calton, Maurice Rincon, William Steen and James Taylor made deliberate falsehoods and acted with disregard for the truth in submitting official sworn reports to the Thurston County Prosecuting Attorney.

8.2 Detective Sgt. Carlos Rodriguez, Detective Kristi Pohl, Trooper Travis Calton, Maurice 15 Rincon, William Steen and James Taylor acts establish that, but for the dishonesty and omissions 16 in their reports, the criminal charges against Plaintiff Quentin Parker would not have occurred. 17

Detective Sgt. Carlos Rodriguez, Detective Kristi Pohl, Trooper Travis Calton, 18 8.3 19 Maurice Rincon, William Steen and James Taylor acts violated Quentin Parker's rights protected 20 by United States Constitution, acting under color of state law and in violation of 42 USC \$1983.

21 As a direct and proximate result of the acts of defendants as complained of herein, 8.4 22 Plaintiff suffered great and grievous emotional anguish and loss of freedom and liberty and 23 continues to suffer emotional anguish. Plaintiffs incurred legal expenses in defending against the 24 prosecution and in obtaining his freedom in amount to be proven at trial.

Complaint for Damages 15 26

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Harold Karlsvik, P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

IX. FIFTH CLAIM FOR RELIEF

(State Law Claim -- Malicious Prosecution)

Plaintiffs realleges 1.1 through 8.4 and incorporates them herein by this reference.

9.1 Said prosecution of the Plaintiff Quentin Parker was instituted by defendants without
probable cause for the institution or continuation of the proceedings. The facts observed by
defendants prior to arresting Plaintiff and the matters known to defendants before the instituting
of the aforementioned prosecution would not have warranted a reasonable person to believe that
any criminal offense had been committed by Plaintiff.

9
9.2 The proceedings were instituted and continued through malice and were abandoned
10
by the State.

9.3 Detective Sgt. Carlos Rodriguez, Detective Kristi Pohl, Trooper Travis Calton, Maurice Rincon, William Steen and James Taylor acted with malice in drafting and false joint certifying official police reports which they knew to be false, incomplete and containing misleading information. All defendants acted with implied malice by arresting Plaintiff without probable cause.

9.4 By reason of the above, Plaintiffs have been brought into public scandal, disrepute and
disgrace, and their ability to function properly has been greatly hindered, causing them to suffer
emotional trauma and harm.

9.5 As a direct and proximate result of the acts of defendants as complained of herein, Plaintiff suffered great and grievous emotional anguish and loss of freedom and liberty and continues to suffer emotional anguish. Plaintiffs incurred legal expenses in defending against the prosecution and in obtaining his freedom in amount to be proven at trial.

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Complaint for Damages 16

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X. SIXTH CLAIM FOR RELIEF 1 (State Law Claim -- Intentional Infliction of Emotional Distress (Outrage)) 2 Plaintiffs realleges 1.1 through 9.5 and incorporates them herein by this reference. 3 The defendants' conduct was intentional, extreme, and outrageous, and caused 4 10.1. 5 Plaintiffs severe emotional distress. 6 10.2 Defendants' actions and material omissions intentionally and recklessly inflicted 7 distress on Plaintiffs, and caused severe emotional distress. 8 Defendants' conduct was extreme and outrageous, and the distress inflicted upon 10.3 9 plaintiffs was so severe that no reasonable person could be expected to endure it. 10 10.4 Defendants' behavior was so outrageous in character, and so extreme in degree, as to 11 go beyond all possible bounds of decency, and is atrocious and utterly intolerable in a civilized 12 society. 13 10.5 As a direct and proximate result of the acts of defendants as complained of herein, 14 Plaintiff suffered great and grievous emotional anguish and loss of freedom and liberty and 15 16 continues to suffer emotional anguish. Plaintiffs incurred legal expenses in defending against the 17 prosecution and in obtaining his freedom in amount to be proven at trial. 18 XI. SEVENTH CLAIM FOR RELIEF 19 (State Law Claim - Negligent Infliction of Emotional Distress) 20 Plaintiffs realleges 1.1 through 10.5 and incorporates them herein by this reference. 21 11.1. Defendants negligently inflicted emotional distress upon Plaintiffs by breaching duties 22 owed to Plaintiffs, and such breaches proximately causing Plaintiffs harm and injury in the form 23 of emotional distress. 24 25 Harold Karlsvik, P.S. 26 Complaint for Damages 17 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612 Case 3:21-cv-05258-BHS Document 1-1 Filed 04/08/21 Page 18 of 22

11.2. The emotional distress proximately caused by Defendants and suffered by Plaintiffs is
 within the scope of foreseeable harm of Defendants' negligent conduct.

³ 11.3. The distress suffered by Plaintiffs is a reasonable reaction given the circumstances
⁴ presented herein.

11.4 Plaintiffs has manifested objective symptomology of the emotional distress suffered as a proximate result of the conduct, actions, and material omissions by Defendants.

11.5 As a direct and proximate result of the acts of defendants as complained of herein,
 Plaintiff suffered great and grievous emotional anguish and loss of freedom and liberty and
 continues to suffer emotional anguish. Plaintiffs incurred legal expenses in defending against the
 prosecution and in obtaining his freedom in amount to be proven at trial.

XII. EIGHT CLAIM FOR RELIEF

(State Law Claim -- False Arrest)

Plaintiffs realleges 1.1 through 11.5 and incorporates them herein by this reference.

12.1 Defendants caused Mr. Parker to be unlawfully restrained and imprisoned.

12.2. Defendants unlawfully violated Mr. Parker's right of personal liberty.

17 12.3 Mr. Parker was restrained, imprisoned, and deprived of his liberty and freedom to
18 remain in the place of his lawful choice.

19 12.4 Defendants participated in the unlawful arrest. Defendants procured and instigated the
 unlawful arrest and detention of Mr. Parker and did so by taking an active part in bringing about
 the unlawful arrest and detention of Mr. Parker by affirmative direction, persuasion, request, and
 voluntary participation.

12.5 The actions and material omissions by Defendants, and each of them, directly and
 proximately caused injury and damages to Mr. Parker in an amount to be proved at trial.

26 Complaint for Damages 18

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Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

1	XIII. NINTH CLAIM FOR RELIEF
2	(State Law Claim Negligence)
3	Plaintiffs realleges 1.1 through 12.5 and incorporates them herein by this reference.
4	13.1 Defendants had a duty to ensure that Mr. Parker's constitutional rights were not violated
5	and that he was not injured by their investigation and prosecution efforts, and any reports or
6	other discovery was valid, did not contain false information, and did not omit material
7	information, to include potential exculpatory evidence.
8	13.2 Defendants had a duty to ensure that the police reports being executed were valid, did
10	not contain false information, and did not omit material information.
11	13.3 Defendant's breached their duties owed to plaintiffs.
12	13.4 The actions and material omissions by Defendants, and each of them, directly and
13	proximately caused injury and damages to plaintiffs in an amount to be proved at trial.
14	XIV. TENTH CLAIM FOR RELIEF
15	(State Law Claim Defamation)
16	Plaintiffs realleges 1.1 through 13.4 and incorporates them herein by this reference.
17	14.1 Defendants Washington State Patrol, Detective Sgt. Rodriguez, and Defendant
18	Operation Underground Railroad, et.al., posted press releases on their individual web pages. The
19	press releases listed Plaintiff Quentin Parker by name and referred to him as a "Dangerous
20	Sexual Predators who targeted Children".
21	14.2. The press release at issue contained false statements, was an unprivileged
22	communication, was the fault of Defendant's Washington State Patrol, Rodriguez and Operation
23 24	Underground Railroad, et.al., and was the proximate cause of plaintiffs' damages.
25	
26	Complaint for Damages 19 Harold Karlsvik, P.S. P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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1	14.3 The slanderous press releases by Defendants Washington State Patrol and Operation
2	Underground Railroad was seen by staff at the Madigan Army Medical Center causing Dr. Ryan
3	Heitman, DO to suspend the fertility treatments that plaintiffs were undergoing.
4	14.4 The slanderous press release and public posting by Defendants Washington State
5	Patrol and Operation Underground Railroad was seen by Jessica Benedetto who in returned on
6	February 21, 2019 at 8:41 pm sent a hateful and harassing Facebook message to plaintiff
7 8	Katherine Parker.
9	14.5 As a proximate cause of defendants' actions Plaintiffs' reputation has been destroyed
10	by the press releases and has caused emotional distress in an amount to prove at trial.
11	XV. ELEVENTH CLAIM FOR RELIEF
12	(State Law Claim – Abuse of Process)
13	Plaintiffs realleges 1.1 through 14.5 and incorporates them herein by this reference.
14	15.1 Defendants, and each of them, misused and misapplied a legal process for an end
15	which the process was not designed to accomplish.
16	15.2 Defendants' misuse and misapplication of legal processes was done maliciously and
17	for a collateral objective, and with an ulterior purpose to cause the unlawful and unreasonable
18	arrest, imprisonment and prosecution of Mr. Parker, and to violate his constitutional rights.
19	15.3 Defendants had an ulterior purpose to accomplish an object not within the proper
20	scope of legal process and committed acts and material omissions in the use of legal process not
21	proper in the regular prosecution of the proceedings.
22	15.4 Defendants misused the judicial system's process to achieve an inappropriate end
23	
24	causing harm and injury to Mr. Parker, and violate his federal rights, to include unreasonable and
25	unlawful arrest and imprisonment, harassment and coercion.
26	Complaint for Damages 20 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

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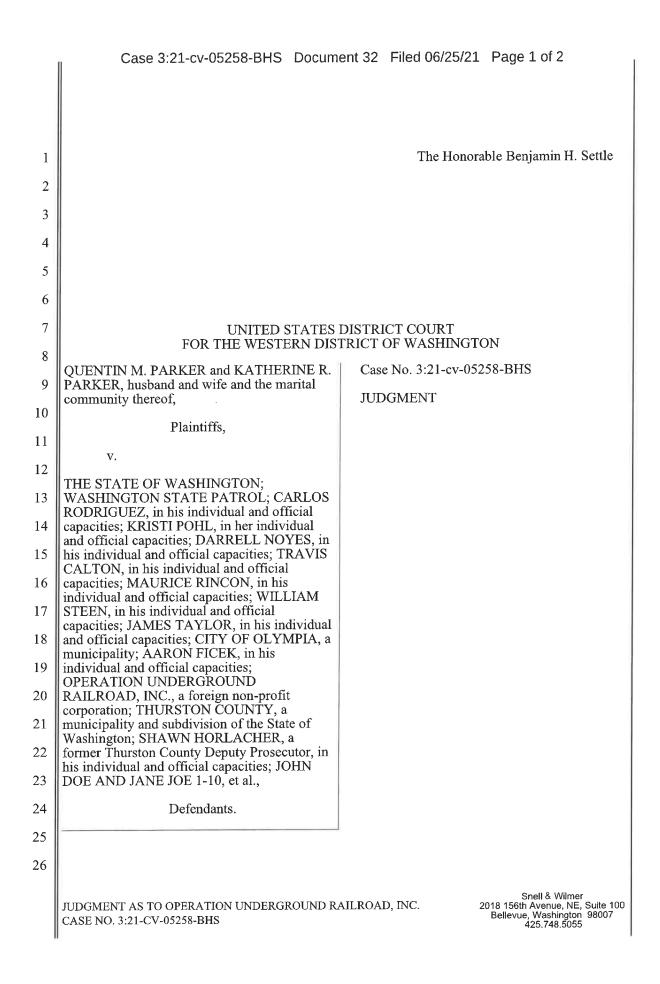
	Case 3:21-cv-05258-BHS Document 1-1 Filed 04/08/21 Page 21 of 22
1	15.5 The actions and material omissions by Defendants, and each of them, directly and
2	proximately caused injury and damages to Mr. Parker in an amount to be proved at the time of
3	trial.
4	XVII. PRAYER FOR RELIEF
5	WHEREFORE, plaintiff prays that the Court:
6	1. Compensatory damages;
7	2. Punitive damages from the individual defendants on Plaintiffs' claims under 42 U.S.C.
8	section 1983;
9	3. Costs, including reasonable attorneys' fees under 42 U.S.C. section 988 and to the extent
10	otherwise permitted by law;
11	4. Such other relief as may be just and equitable.
12	5. Award actual, special, compensatory, and general damages to plaintiffs;
13	6. Order punitive damages against the individual defendants, all of whom are being sued in
14	
15 16	their individual capacities as well as their official capacities;
17	7. Award attorney's fees and costs to the prevailing plaintiff; and
18	For such other and further relief as is just and equitable.
19	DATED this $\frac{15}{15}$ day of <u>February</u> , 2021.
20	HAROLD KARLSVIK, WSBA # 23026
21	Attorney for Plaintiff
22	
23	
24	
25	
26	Complaint for Damages 21 P.O. Box 292 South Bend, WA 98586 1 (360) 942-4612

Bates #000323

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	Case 3:21-cv-05258-BHS Document 1-1 Filed 04/08/21 Page 22 of 22
1	VERIFICATION
2	T. Owner the M. Dark on the indifficult on a new of the international states on College
3	I, Quentin M. Parker plaintiff above named, being duly sworn, say as follows:I have read the foregoing complaint and know the contents thereof, and the same is true
4	of my own knowledge.
5	DATED this 5 day of February 2021.
6	DATED this D day of February 2021.
7	Ht C
8	Quentin M. Parker
9	
10	
11	
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13	
14	
15	
16	VERIFICATION
17	I, Katherine R. Parker plaintiff above named, being duly sworn, say as follows:
18	I have read the foregoing complaint and know the contents thereof, and the same is true
19	of my own knowledge.
20	DATED this 15 day of February 2021.
21	
22	Kattorion that the second
23	Katherine R. Parker
24	
25	
26	Complaint for Damages 22 Harold Karlsvik. P.S. P.O. Box 292 South Bend, WA 98586
	1 (360) 942-4612





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1	The Court, having reviewed the Offer of Judgment by Defendant Operation Underground
2	Railroad, Inc. (ECF No. 28), and Plaintiffs' Notice of Acceptance of Offer of Judgment against
3	Defendant Operation Underground Railroad, Inc. (ECF No. 29), hereby enters JUDGMENT
4	against defendant Operation Underground Railroad as follows:
5	1. Plaintiffs and their marital community are awarded \$100,000.
6	2. The judgment amount includes all costs and reasonable attorney fees. No further
7	costs or attorney fees shall be awarded as between Plaintiffs and Operation
8	Underground Railroad, Inc.
9	3. Pursuant to the accepted Offer of Judgment, this Judgment is of no claim-
10	preclusive or issue-preclusive effect.
11	
12	Dated this 25 day of June, 2021.
13	1 nc
14	(BYA) XAVILE
15	BENJAMIN H. SETTLE
16	United States District Judge
17	
18	
19	Presented by:
20	SNELL & WILMER L.L.P.
21	By: <u>s/ Clifford S. Davidson</u> Clifford S. Davidson, WSBA 48313
22	Attorneys for Operation Underground Railroad, Inc.
23	
24	4830-1730-6346
25	
26	· · · · · · · · · · · · · · · · · · ·
	JUDGMENT AS TO OPERATION UNDERGROUND RAILROAD, INC 1 CASE NO. 3:21-CV-05258-BHS Source (March 2018) Snell & Wilmer 2018 156th Avenue, NE, Suite 100 Bellevue, Washington 98007 425.748.5055

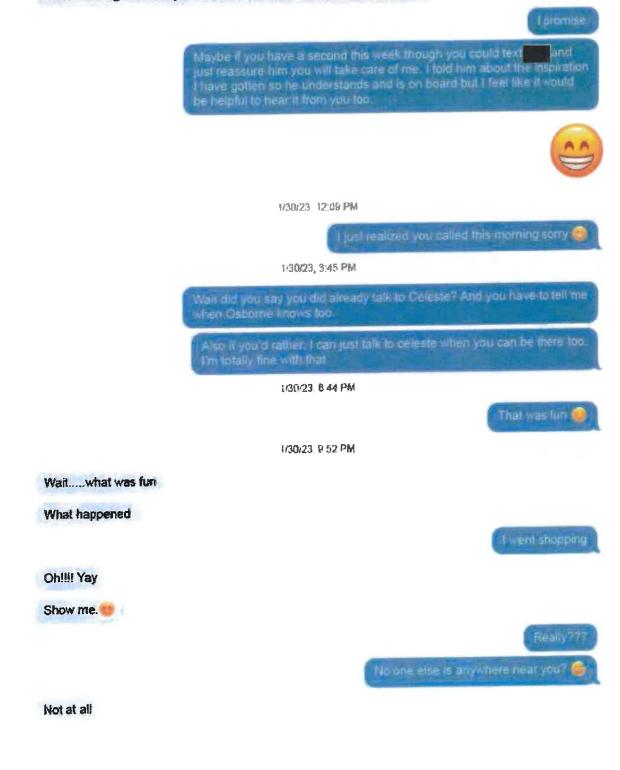
EXHIBIT L

Message 1/28/23_8 (0 PM Who the hell are u. I dialed a wrong number and ubwante to call back. Weird U most be pretty lonely wanting to talk to strangers Attachment stored in iCloud: tmp.gif (Image) Laughed at an image Do u have to go 1/28/23 10:00 PM Or do you want me to text you here. I'm ready any time 1/30/23, 8 32 AM You good? Let's do all comms here and told him. He's good 🚯 rep. Just gal of the phone with Great Are u good? on t worry about me. I'm just praying for you and your meetings today

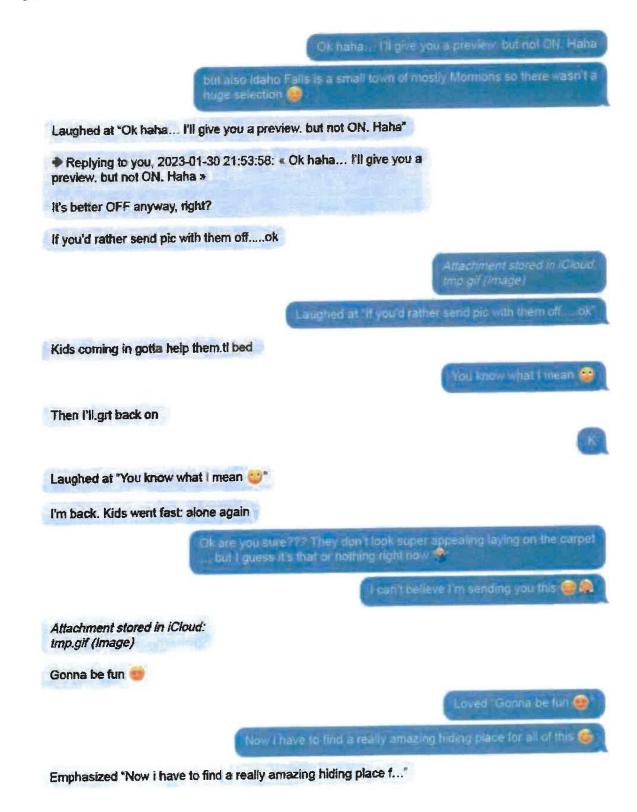
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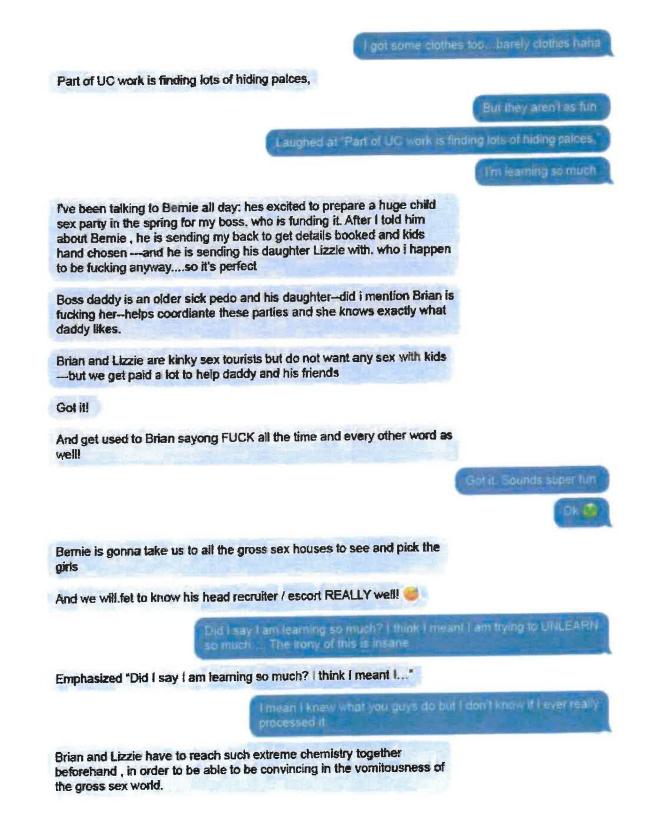
I always tell. undercover operators that it is never too late to pull out of an op of something doesn't feel right. Even seconds before beginning either trainings or real ops. Never feel pressure to not the plug on it



Exported from extracted 6/2



Exported from extracted 8/21



Exported from extracted 8/21

Part of Hyde park stuff. Tantric creates heavenly light and protection

U should study up on true tantric

Replying to you, 2023-01-30 22:20:19: « I mean I knew what you guys do but I don't know if I ever really processed it. »

Like porenta said "welcome to the REAL OUR"

Replying to you, 2023-01-30 22:20:19. I mean I knew what you guys do but I don't know if I ever really processed it.
Emphasized "Like porenta said "welcome to the REAL OUR"

Seriously Am I going to be able to get good at all of this in two days??

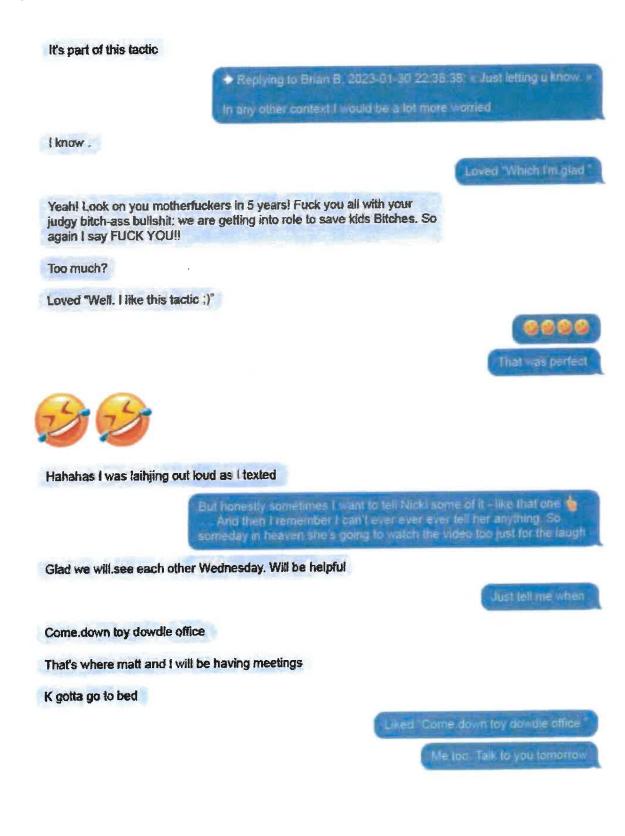
Yes!!!
If we can feel it with each other, then yes!
Loved "If we can feel it with each other, then yes"
It's NOT about learning some strange kinky moves. That's not it at all. I
don't have any to teach anyway
It's just about making it real and tapping into tantric /light
I think u will be surprised how FAST we connect
I'm just not going to worry about it. I'm starling to worry but it's pointless
I'm just not going to worry about it. I'm starling to worry but it's pointless
I'm just not going to worry about it. I'm starling to worry but it's pointless
I'm just not going to worry about it. I'm starling to worry but it's pointless
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I'm just not going to worry about it's pointless
I'm just not going to worry about it. I'm starling to worry but it's pointless
I'm just not going

) on 8/21/23 10 59 AM with Mazing by DigiDNA. Database data when

Page 5 of 37

Hahaha, Ok!! Done You thought I was going to say something else didn't you Yes! I thought u were going to forbid the touching of some body part 🨅 Lol no it's not my body remember In that case, you should request i do stuff u like to you . U need to telle what that is Loved "So you have free reign " Maybe on the airplane if no one else can hear Nobody will hear On another note I want to hear the Eliza story one day too Ok. I will tell you Loved Nobody will hear Also--not that anyone would do a forensic exam of your laptop, but if they did, these texts will be there for as my years . Computers have crazy cashed memory . Just fyi Like of to a forensic analyst even in like 5 years. He would have them all in a day. . Il just trust god on that one Not that worried Just letting u know These texts are getting hot Which I'm.glad

Messages Brian B



on 6/21/20 10 59 AM with Mozing by DigiDNA Database date when

Page 7 of 37

Messages - Buan B



Have u played out scenarios in ur mind



(il play some out now ;) good night

1/31/23_0.04 AM

Sorry I know it's early. my brain is just on overdrive. It's a good thingbut I kept thinking about some questions you asked me last night and it threw me some curve balls. I'm learning things about myself the past couple of days that I need to work through and tell you about in person probably though. Can I have you for maybe an hour tomorrow after we go to Savannahs?

Yes of course

What questions did I ask, I can even remember

Are u having second thoughts about the op?

Noscococo Not al: all

You asked what makes me feel sexy, what do I like, think about scenerios, and it all just opened up a for of I don't know. Something I didn't know needed to be opened up. I promise it s not bad. It's just the result of my history and experiences and ... It's not going to make any sense to you unless I just tell you everything. Just things about my marriages (plural) and how it's all affected me

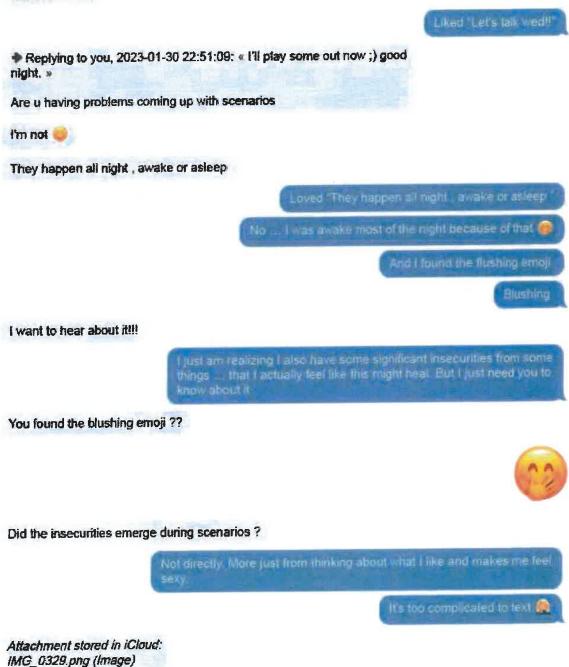
Plural meaning both - the first and second one. Not plural marriage to

Hahaha

Got it

Messages Brian B

Let's talk wed!!



Messages Brian B

My day is pretty open.

Krisitie me and Matt O at 10-11.

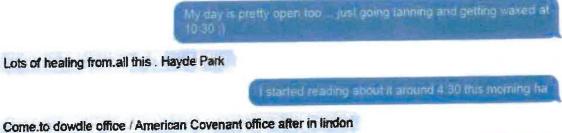
Online lecture 2-3

SLC meeting 3:30-5

You can fill in all the windows . Not sure what obligations u have

You don't know what u like???

Study tantra and chakras



Root chakra

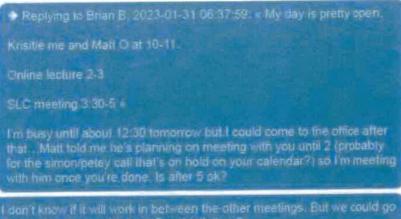
Oh is this your schedule tomorrow

Starting my meditation. Going to include u in it . Pray

Loved "Starting my meditation. Going to include u in it

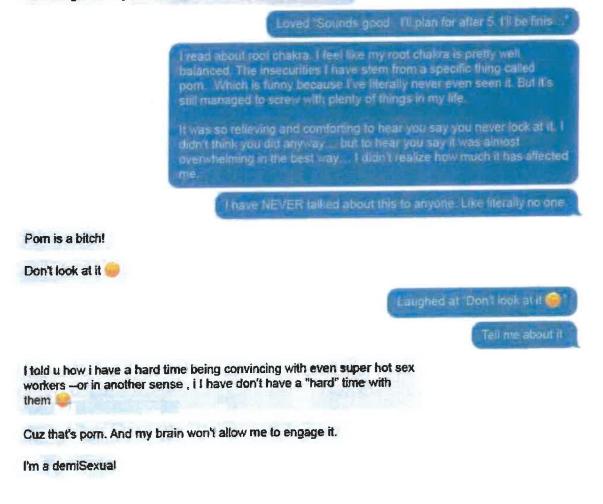
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Messages Boen B



I don't know it it will work in between the other meetings, but we could g deliver Savannahs things at 5 and talk then?

Sounds good . I'll.plan for after 5. I'll be finishing in SLC at 5



1/31/23, 5/31 PM

How are ya



1/31/23, 7.42 PM

Don't quit !!!

What thiuhits have u been having abiut all this

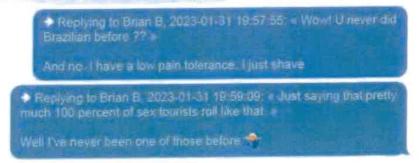
Hmmmm well if you really want to know ... I did almost our today when I went to get that Brazilian Wax. I've only done bikini wax before ... this was way worsel!! She said its because I'm on my period (sorry thil) so everything is more sensitive. So you owe me. I don't know what you owe me but something amazing

Wow! U never did Brazilian before ??

For the record i didn't tell u to

Well you still owe me

Just saying that pretty much 100 percent of sex tourists roll like that



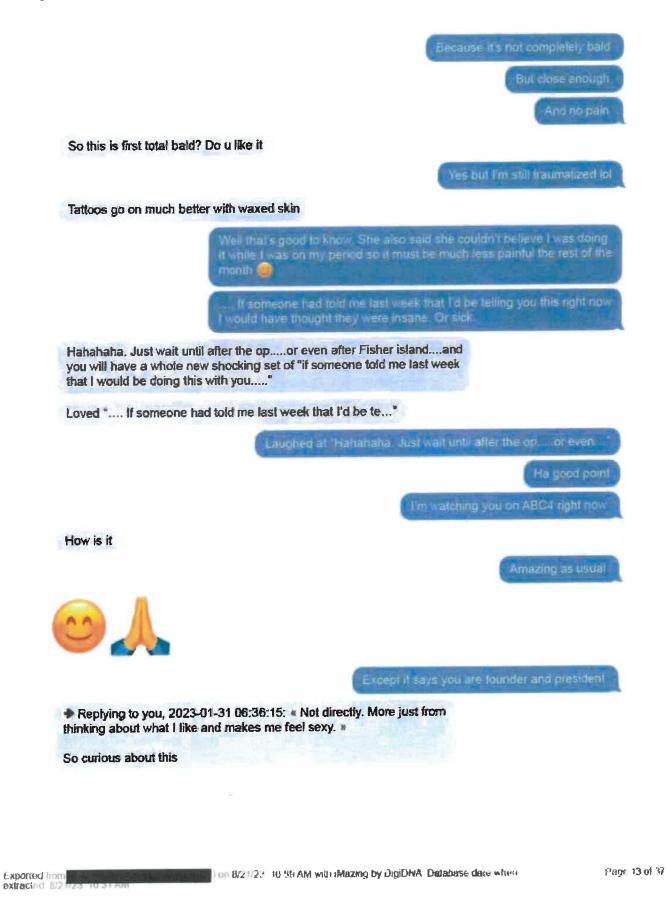
Do u usually shave Evey thing . ? Like, is even the baid look new

Sorry....there are no secrets anymore

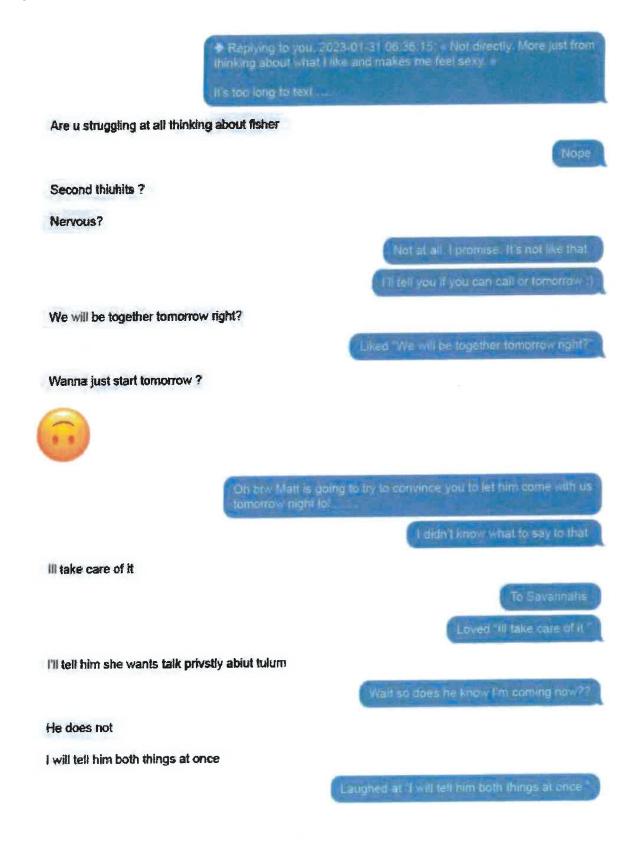


Why almost

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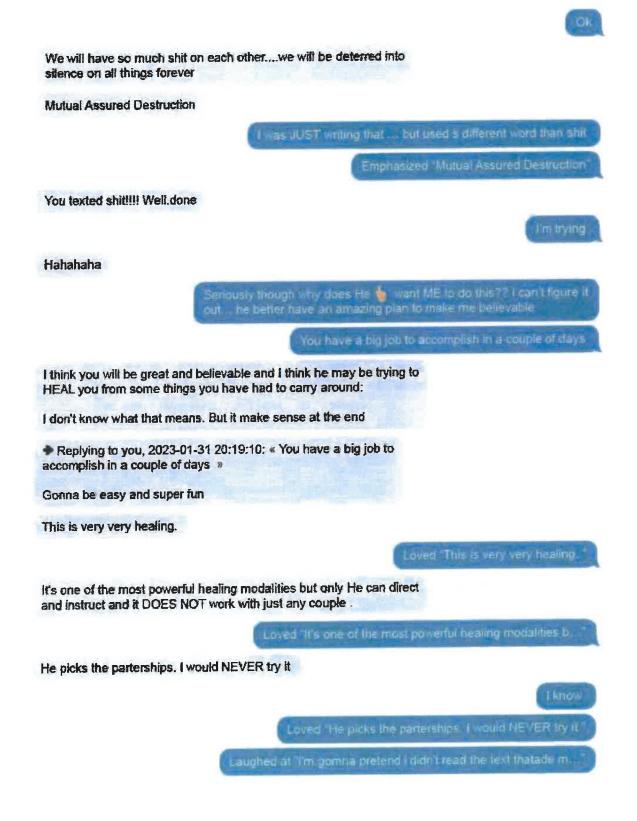


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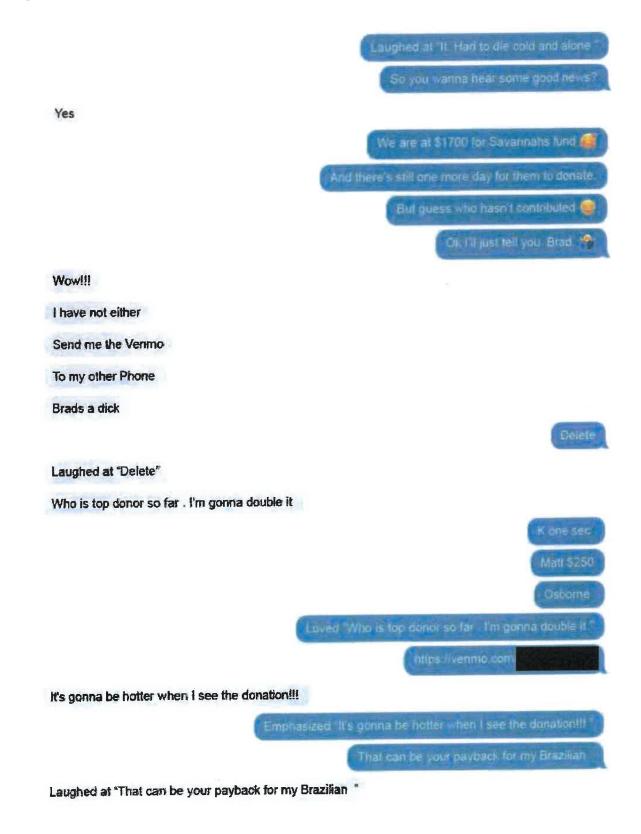
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Messages Brian B

I actually wanna pay u back in a different way 😁

That's more on target with brazilian !

You really just leveled it up with that one ...

I knowt!! Shit! I'm sorry

I was like --- was that ok? -- after i sent

Be honest what did u think when u read that very inappropriate text

No uncomfort???

I want to be respectful. Still feeling u out

Listen motherfuckers of the near to far future who did a full forensics of into role bitches !!! This is how it's done! The case is Bernardo : Cozumel . Motherficker is selling children for sex...look up the case you fucks! We likely will have rescued a bunch by the time u see these texts...so Fuck You, what have you done EVER to rescue anyone or anything.

Laughed at "Listen motherfuckers of the near to far future who

Oh wow that was

Antazing

Thankfully no

Wait I'm going to die on my 12th op?!?! Can't I do at least 20 first?!

Did it make u pee on your newly waxed skin?

It was intense

I peed a little writing it

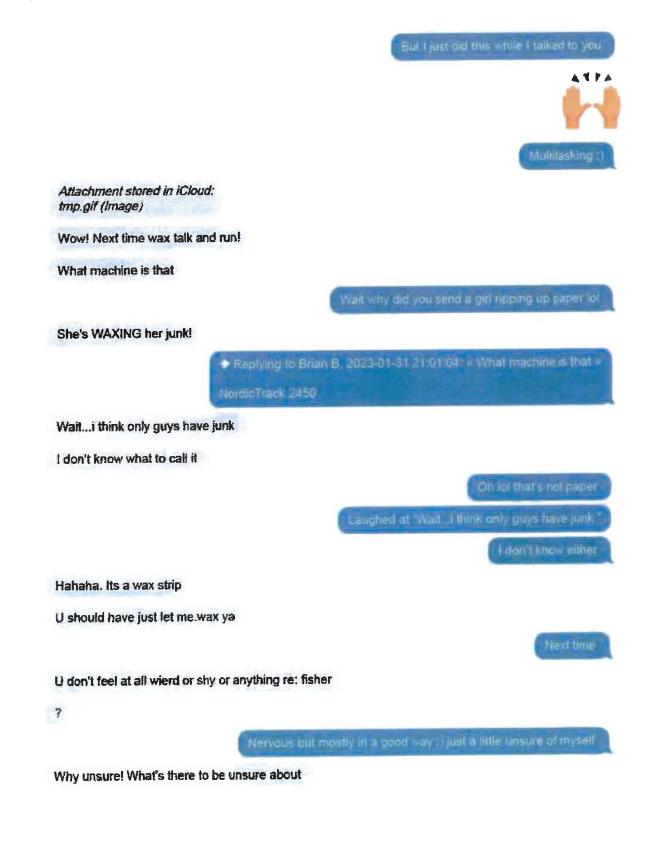
Laughed at 1 peed a little writing it

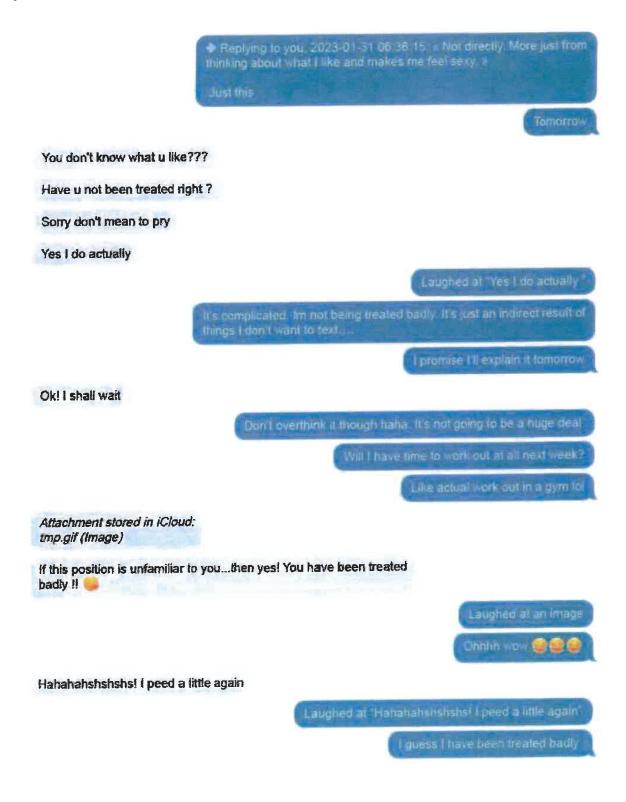
Hahaha

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Damn it!

And to top it all off, I have treated you badly too for having just sent porn. Fuck!



You can't tell it's not ... You have never seen it before

In the industry, we call this hard core pom

Attachment stored in iCloud: tmp.gif (Image)



Attachment stored in iCloud: tmp.gif (Image)

Attachment stored in iCloud: tmp.gif (Image)

Are u done receiving porn?

I can keep going

Attachment stored in iCloud: tmp.gif (Image)

Last one

Actually the last one kinda turned me on.

Oh wowwwww Laughed at "Are u done receiving porn?" Dont send anything right now is on FaceTime with I'm lexting from my computer now

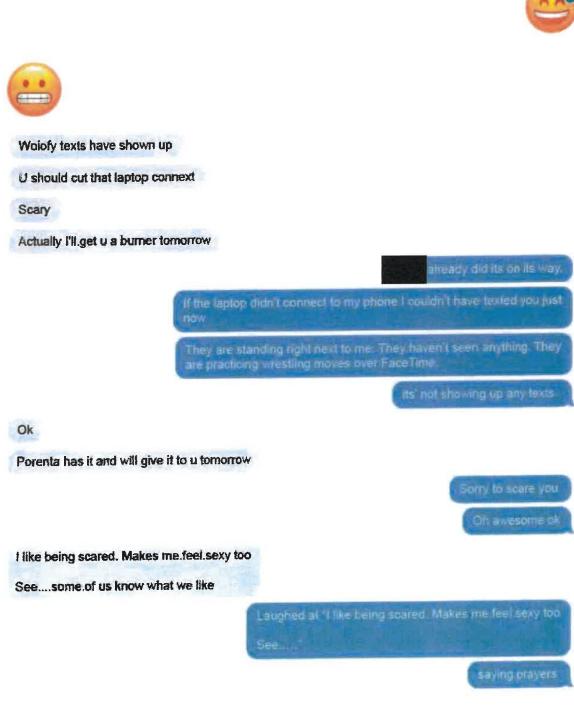
Hahaha. Why

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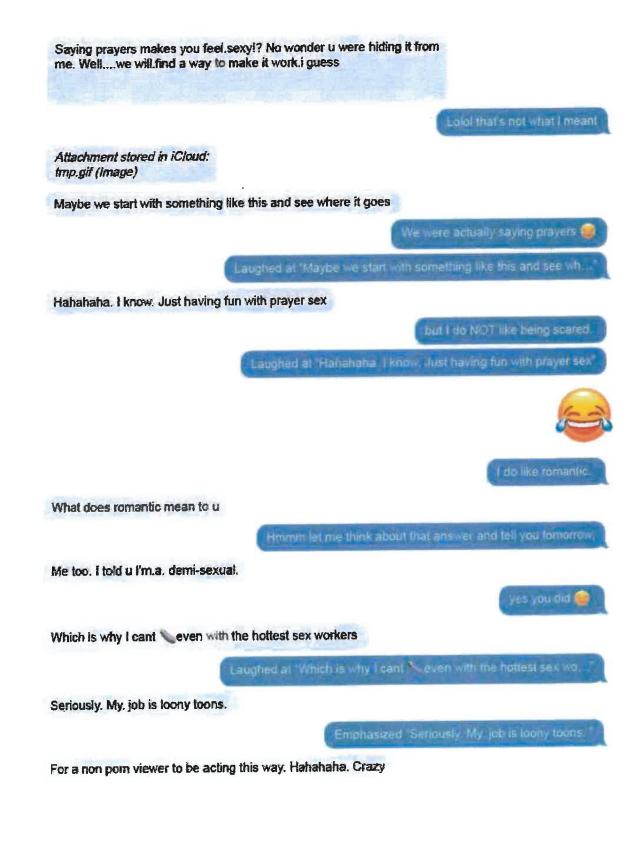
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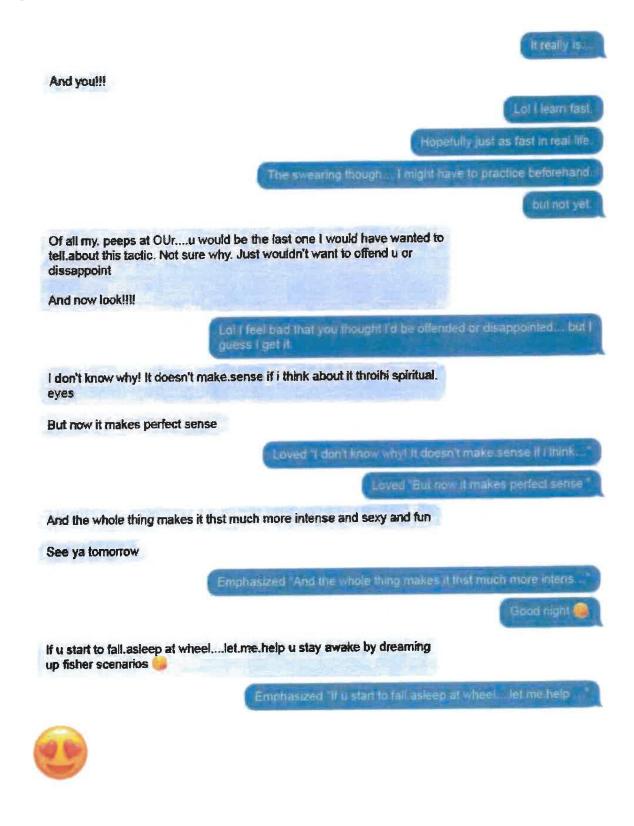


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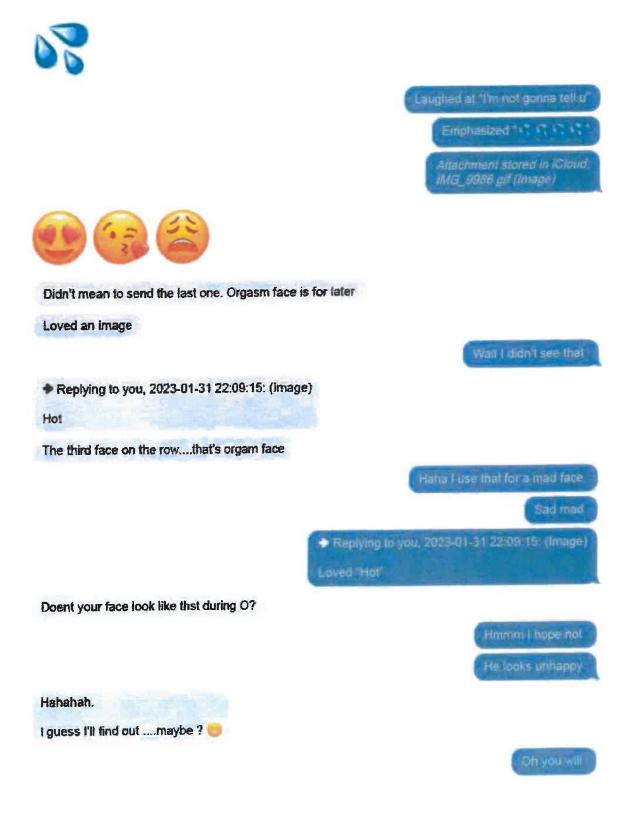


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Messages - Boen B

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Page 24 of 37

Probably sooner than you think

Really???

Good night...)

Loved "Good night :)"

2/1/23 5.59 AM

I have a feeling Matt might give you pushback on me coming to Mexico as more than secondary. Just be sure to tell him I fasted and prayed about it before I decided .)

2/1/23 7 18 AM

Wait so if you're going to talk to Matt before me, then can I just tell him I have to meet with you from 1-37 Or should I keep my brother story

2/1/23, 14 49 AM

Where are u

Im heading up to grand A soon

K give me 15 min and I'll leave here

Just get to the office but I can leave again soon

I'm nonn of you anyway

Ok do you want any food?

I won't be there for at least 45

Tskenur time

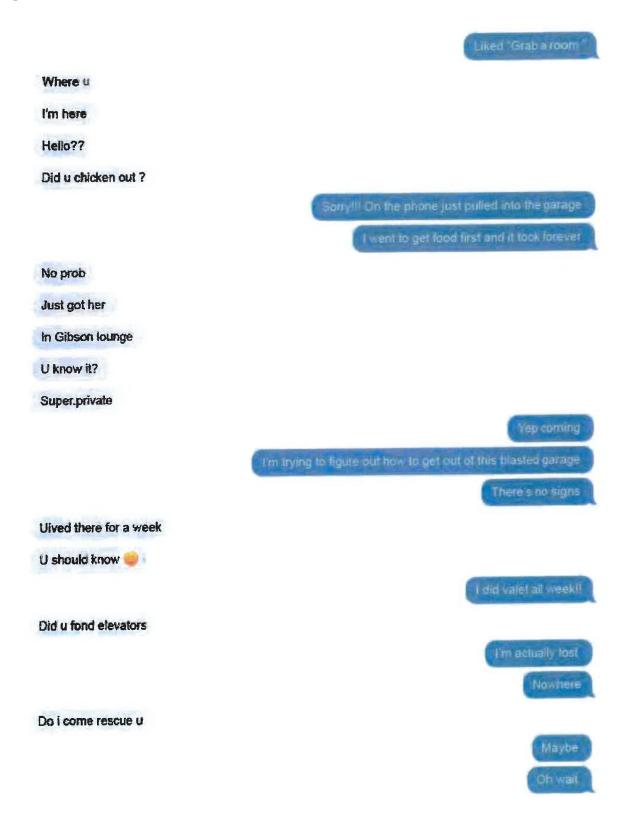
I'm good thanks

Im leaving now too from lindon

Grab a room

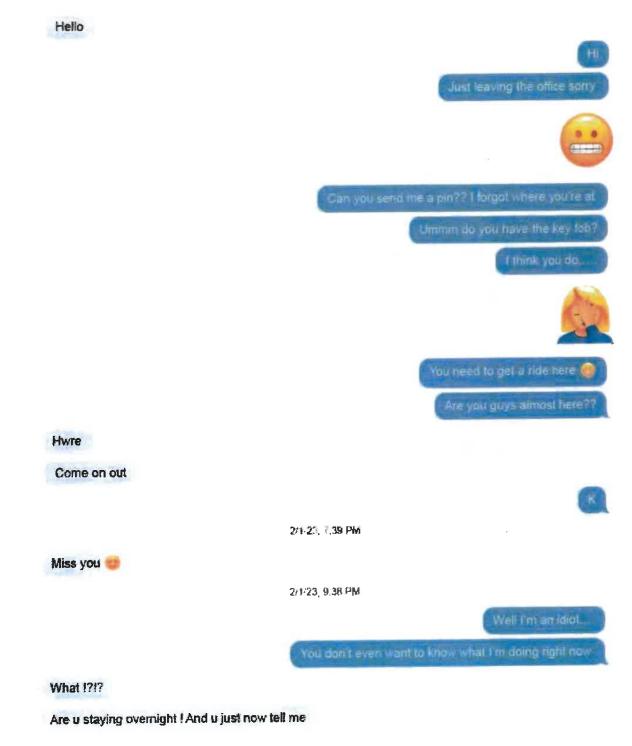
Jk

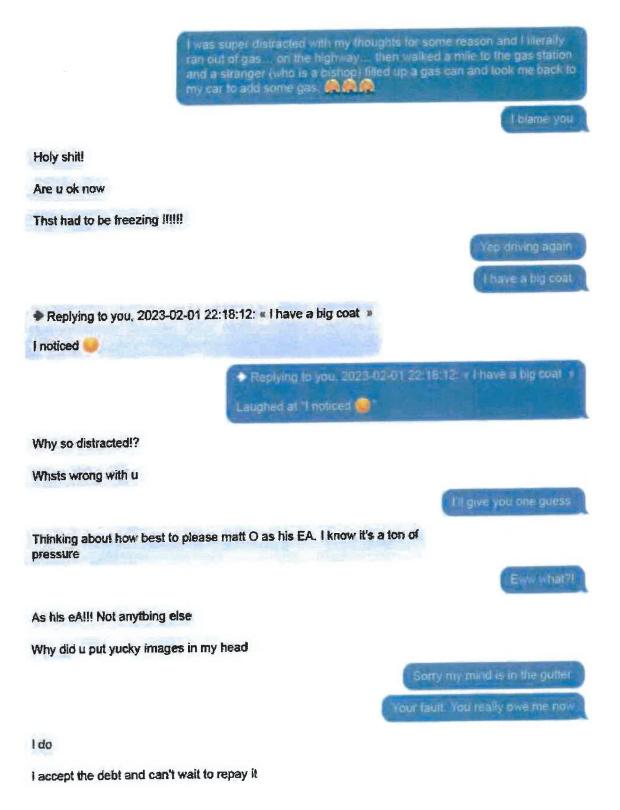
Exported from extracted 8/2 //23, m Messages Brown B



Page 28 of 37

2/1/23, 4 52 PM

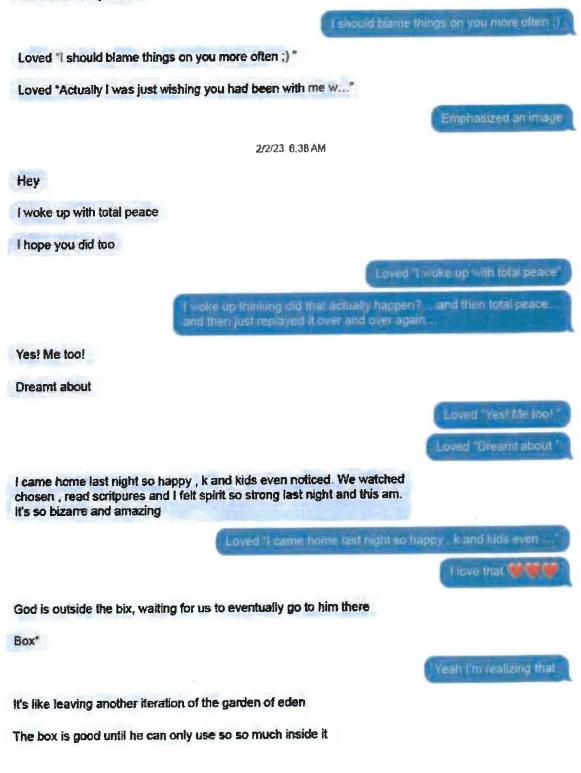




Massages Brian B

Experted from extracted 8/2

Your wish is my.cmamd



Use us so much*

That's a really good comparison... and makes so much sense to me now but never even occurred to me before all of this

Very limiting inside but if we leave to soon we will get crushed

Emphasized "Very limiting inside but if we leave to soon we wi..."

He will call us out when He / She knows it's time



Elohim = Father and Mother God

Loved Flohim = Father and Mother God

That's accordoing to the Hebrew

You know wheat else is funny? I don't think I have ever learned so much from any other single person in my entire life. I've studied and listened to and watched you for so long and with such a desire to keep learning from you. And then this. And it will just keep going

I'm tired of the bull shit explanation that "heavenly father wants to protect her from us"

Really?? Us?? We, the little retsrd mortals, while she is a Powerful, Eternal GODDESS DIVINE!! Yeah, she needs protecting. Argh. As if she's some.wilting flower.

We just can't come to terms with the fact that certain leaders accidently manipulated doctrines, so we make up the most bizarre and ridiculous justifications

Emphasized 11m lired of the bull shit explanation that meaves

Oh that makes so much sense.

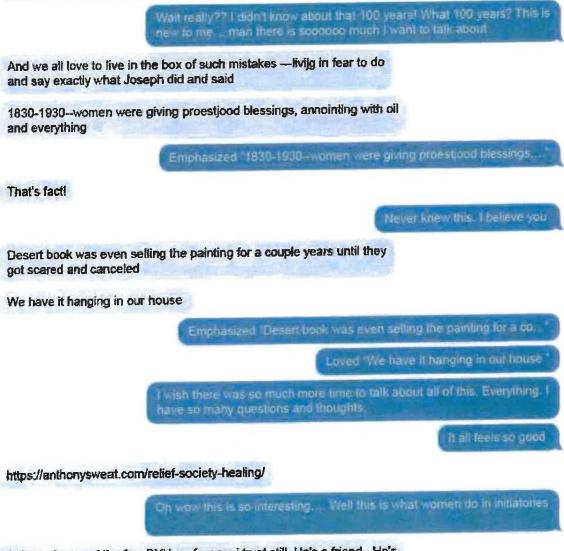
I pray to both, equally

Loved "I pray to both, equally "

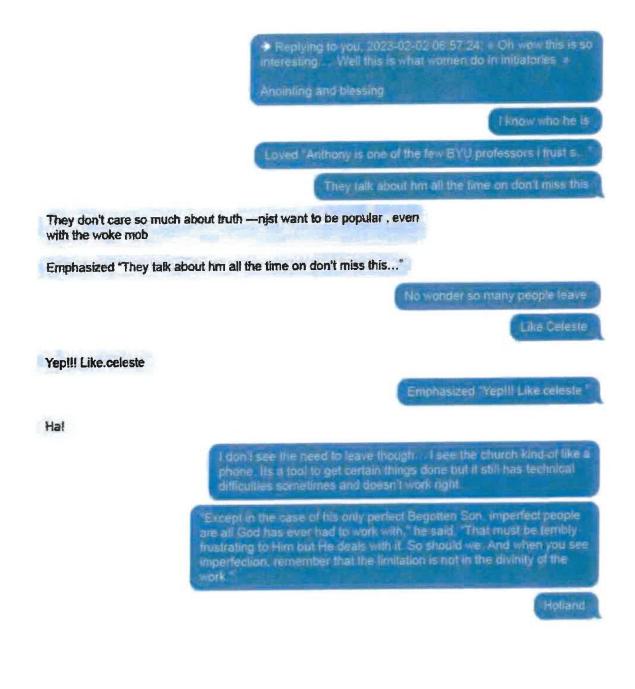
I m going to start doing that too 👹

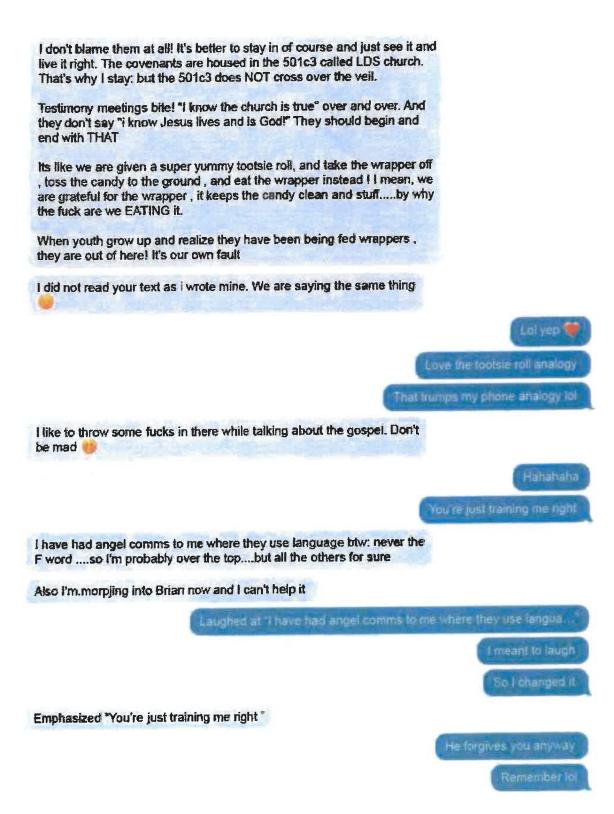
Katherine gives our children priesthood blessings, just as Joseph instructed the sisters yo do-and for 100 YEARS they did!!! Until one day, without even pretending to evoke revelation-soneone decided to reverse it in the little while Manual. Wif!?

Like blacks in priesthood . Same story



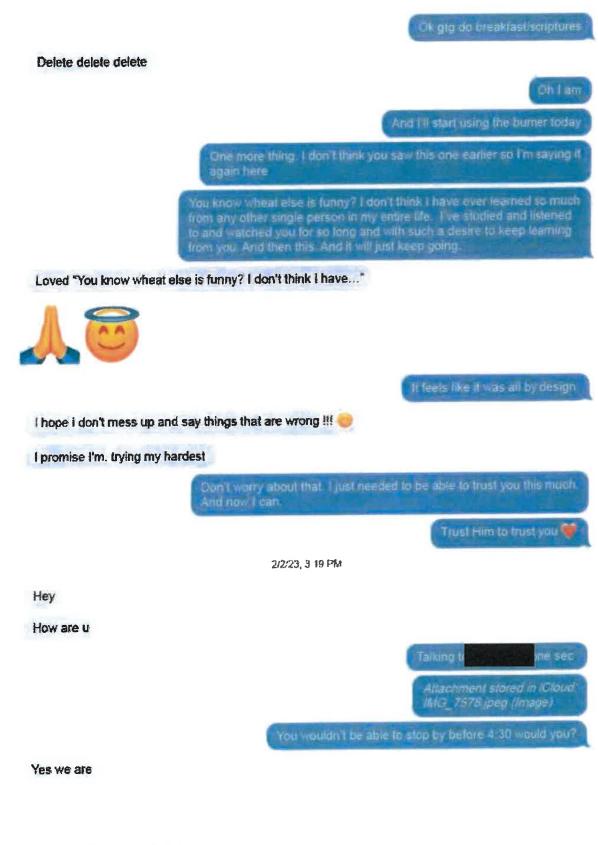
Anthony is one of the few BYU professors i trust still. He's a friend . He's amazing . He painted this and desert sold it for like a year. Desert book sucks . I can tell u stories.

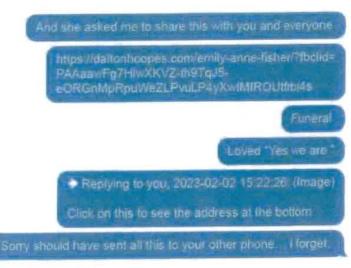




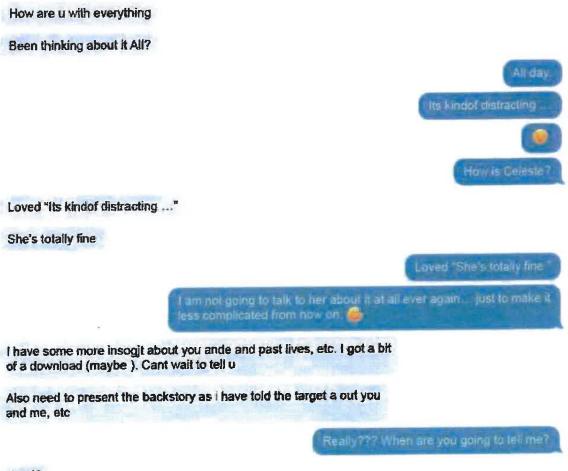


Exported home









Can I?

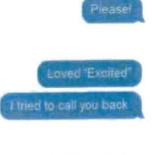
Exported from extracted 8/2 frz on 8/21/23 10:59 AM with iMozing by DigiDNA. Detabase date when

Massages Bran &

Can I call u in 10

Excited

.



Read 2/2/23

My kid is back in the car. The secret will have to wait

EXHIBIT M

SIM GILL, Bar No. 6389 District Attorney for Salt Lake County ANNA L ROSSI ANDERSON, Bar No. 14099 Deputy District Attorney 35 East 500 South Salt Lake City, UT 84111 Telephone: 385-468-7600

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH Plaintiff,	Screened by: ANNA L ROSSI ANDERSON Assigned to: INFORMATION
vs.	
ROCIO ISABEL SMITH DOB: 09/21/1979	DAO # 21020883
2042 E. Hidden Village Cr.	NO BAIL
Sandy, UT 84094 SID# NONE	Warrant/Release: NON JAIL
Defendant.	Case No.

The undersigned Marcelo Rapela - SANDY CITY POLICE DEPARTMENT, Agency Case No. SY21-53678, upon a written declaration states on information and belief that the defendant, ROCIO ISABEL SMITH, committed the crime(s) of:

COUNT 1

FORCIBLE SEXUAL ABUSE, 76-5-404 UCA, a Second Degree Felony, as follows: That on or about October 11, 2021, in Salt Lake County, State of Utah, the defendant did, where the victim was 14 years of age or older, touch the anus, buttocks, pubic area, or any part of the genitals of another, or touch the breasts of a female, or otherwise took indecent liberties with another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desires of any person, without the consent of the other, regardless of the sex of any participant.

STATE vs ROCIO ISABEL SMITH DAO # 21020883 Page 2

COUNT 2

FORCIBLE SEXUAL ABUSE, 76-5-404 UCA, a Second Degree Felony, as follows: That on or about October 11, 2021, in Salt Lake County, State of Utah, the defendant did, where the victim was 14 years of age or older, touch the anus, buttocks, pubic area, or any part of the genitals of another, or touch the breasts of a female, or otherwise took indecent liberties with another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desires of any person, without the consent of the other, regardless of the sex of any participant.

COUNT 3

ENDANGERMENT OF CHILD OR VULNERABLE ADULT THIRD DEGREE, 76-5-112.5(2)(a) UCA, a Third Degree Felony, as follows: That on or about October 11, 2021, in Salt Lake County, State of Utah, the defendant did knowingly or intentionally cause or permit a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

Marcelo Rapela, K. P., M. R., and S. R.

DECLARATION OF PROBABLE CAUSE:

Your affiant bases probable cause on information and evidence collected by Sandy City Police Department, Case No. SY2021-53678 and the following:

The statement of Officer Nystrom of the Sandy City Police Department that on or about October 12, 2021, they were dispatched to a child molestation in Salt Lake County. Stephanie Rider reported her child, whose given name is M.R. and preferred name is D.R. (14 years old), was at a friend's house on October 11, 2021. While at the friend's house, D.R. was sitting on the couch with his friend's mother, defendant ROCIO ISABEL SMITH, when she started rubbing his leg with her hand, under a blanket. SMITH then tried to undo his belt buckle while in her bedroom. When D.R. told SMITH "no", SMITH punched him in the chest. SMITH and D.R. went back to the couch and while sitting on the couch, SMITH began touching him again. D.R. sent SMITH a text message telling her to stop. D.R. then contacted his brother to pick him up. As D.R. was leaving, SMITH gave him a small piece of chocolate to eat. D.R. stated he saw the chocolate come out of a wrapper that had the word "infused" on it and felt it could be a drug. SMITH continued to text D.R. and told him to delete his text messages.

On November 4, 2021, a forensic interview was conducted by Katelyn Peterson at the South Valley Children's Justice Center. D.R. stated he was at his friend's house talking to his

STATE vs ROCIO ISABEL SMITH DAO # 21020883 Page 3

friend's mother and identified her as "Rocio". While D.R. was talking with SMITH, she slid her hand under his shirt, which made him uncomfortable. SMITH asked D.R. how old he was and when he told her he was 14, her hand went further up his chest. D.R. stopped her and told her "no". D.R. told SMITH that she was his best friends' mother, he was 14, she was an adult, and he "didn't want to do this". D.R. stated he observed SMITH "pacing" between her bedroom and living room and wanted to check on her. D.R. walked into her room to and he asked if she was okay, SMITH turned off the light and shut and locked the door. D.R. stated SMITH began "tugging on his belt" and he pushed her away and told her "no" approximately seven times. SMITH then "hit" D.R.'s chest and it "started to hurt". D.R. stated they sat on the couch to watch a movie together and SMITH sat next to him, which made him have a "slight bit of panic". SMITH asked for a blanket and placed the blanket over both of them. D.R. tried to move the blanket off him, however SMITH grabbed his hand and squeezed, digging her nails into his skin. SMITH attempted to guide his hands and would push his hand down with her hand. SMITH attempted to pull D.R.'s hand down towards her vagina and pulled her shorts to the side, exposing her vagina. SMITH was holding his hand and pushed his hand near her vagina, then pushed down on the top of his knuckle to make his hand go "where he didn't want it to go". D.R. stated that while on the couch, SMITH's hands would wander over to him and at one point undid his belt, attempted to unto the button on his pants and unzip the zipper however D.R. stopped her. D.R. stated SMITH made some contact outside the pants and he would move her hand away. D.R. clarified that SMITH was rubbing the "male genitalia" with her hand. D.R. was able to pull his hand away. D.R. received a phone call from his brother and while on the phone SMITH sent him a text message telling him he was in her room and to come in when he was done. D.R.'s brother picked him up and SMITH continued to text him, asking when he would be able to come back and offered to come pick him up.

On November 6, 2021, Officer Young responded to D.R.'s residence and picked up the suspected cannabis edible, which was field tested and reacted positive THC. Lab results received on December 16, 2021 confirmed the piece of chocolate contained THC, a schedule I controlled substance.

MOTION FOR NO BAIL HOLD:

Pursuant to Utah Code 77-20-201(1) the State requests that Defendant be held without bail until further notice in this matter on the following grounds:

The defendant is charged with a Second-Degree felony, and based upon the above probable cause statement, there is substantial evidence supporting the charges and clear and convincing evidence that the defendant would constitute a substantial danger to any other individual or to the community or is likely to flee the jurisdiction of the court, if released on bail. STATE vs ROCIO ISABEL SMITH DAO # 21020883 Page 4

The defendant attempted to force the victim, who was a friend of her minor sons, to use his fingers to penetrate her vagina, while watching a movie. The defendant then used her hand to rub the gentiles of the victim, over his clothes. Before the victim left the home, the defendant gave him an edible, telling him to eat it. After the victim left, the defendant continued to contact the victim to come over and was willing to pick him up if he could sneak out of the house. The defendant than sent text messages the next day apologizing for her behavior and asked the victim to delete their messages. The defendant took advantage of the victim after repeatedly telling her no and used her position as a trusted adult to pretty upon the victim. Due to the serious nature of the allegations, the defendant should be held without bail.

Pursuant to Utah Code Annotated § 78B-18a-106 (2018) I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 16 day of Au(u)

Marcelo Rapela

Declarant

Authorized for presentment and filing

SIM GILL, District Attorney

Deputy District Attorney 16th day of August, 2022 ADW / ET / DAO # 21020883

ADDENDUM D

Hearing on Motions

1	IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH		
2	OF SALL LAKE COUNTL, STATE OF UTAM		
3			
4	KELY JOHANA SUAREZ MOYA,) et al,)		
5	Plaintiff,))		
6	vs.) Case No. 240901556 MI)		
7	TIMOTHY BALLARD, et al,)		
8	Defendant.))		
9)		
10	Hearing		
11	Electronically Recorded on July 9, 2024		
12			
13	BEFORE: THE HONORABLE ROBERT FAUST THIRD DISTRICT COURT JUDGE		
14			
15			
16			
17			
18			
19			
20			
21			
22	Transcribed by: Natalie Lake, CVR		
	8020 West 3500 North		
23	Hinckley, UT 84635		
24			
25			

1		A P P E A R A N C E S
2		
3	For the Plaintiff:	Alan Mortensen Christopher Cheney
4		<u>Joshua Ostler</u> MORTENSEN & MILNE 68 South Main Street
5		Floor 7
6		Salt Lake City, UT 84101 Telephone: (801) 521-4444
7		Suzette Rasmussen ALL UTAH LAW PLLC
8		1032 East Deer Heights Court Draper, UT 84020
9		Telephone: (801) 717-0821
10		
11	For the Defendant:	<u>Robert S. Gutierrez</u> Melanie Vartabedian
12		BALLARD SPAHR, LLC 201 South Main Street
13		Suite 800
14		Salt Lake City, UT 84111 Telephone: (801) 661-7605
15		Marila Diagoniant
16		<u>Mark Eisenhut</u> CALL & JENSEN 610 Newport Center Drive
17		Suite 700
18		Newport Beach, CA 92660 Telephone: (949) 717-3000
19		Tripitu Jordon
20		<u>Trinity Jordan</u> DENTONS DURHAM JONES PINEGAR P.C.
21		111 South Main Street Suite 2400
22		Salt Lake City, UT 84111
23		Telephone: (801) 415-3000
24		
25		

1	PROCEEDINGS	
2	(Electronically recorded on July 9, 2024)	
3	THE COURT: All right. Let's formally go ahead and go	
4	on the record in case No. 240901556. Counsel, if you'll go	
5	ahead and formally make your appearances for the record,	
6	starting with the plaintiff's side and then going to defendants.	
7	I am also at this time going to ask any individuals	
8	who are appearing by WebEx, except for my law clerk, to turn on	
9	their computer screens so they can be seen and documented as	
10	attending and/or observing the hearing as it is a public	
11	courtroom, and everybody is entitled to know who is appearing,	
12	attending, and/or participating. Okay? So if you would do	
13	that.	
14	We'll now go to appearances. Counsel?	
15	MR. MORTENSEN: Alan Mortensen on behalf of the	
16	plaintiffs.	
17	THE COURT: Thank you.	
18	MR. CHENEY: Chris Cheney on behalf of the plaintiffs.	
19	THE COURT: Thank you. And tell me who you have here	
20	with you today.	
21	MS. RASMUSSEN: Suzette Rasmussen on behalf of the	
22	plaintiffs, your Honor.	
23	THE COURT: Thank you.	
24	MR. OSTLER: Joshua Ostler as well	
25	THE COURT: Thank you. Please?	

1 MR. GUTIERREZ: Good morning, your Honor. Robert Gutierrez from Ballard Spahr on behalf of the SOF defendants, 2 and they are defendants Angel Studios, Inc., Sound of Freedom 3 movie, LLC, Rod Barr, and Alejandro Monteverde. 4 5 THE COURT: Thank you. 6 MS. VARTABEDIAN: Melanie Vartabedian appearing as local Counsel for Ballard Spahr for the same defendants. 7 THE COURT: Okay. Thank you. 8 9 MR. EISENHUT: Mark Eisenhut, your Honor, here on behalf of Tim Ballard and Katherine Ballard. 10 11 THE COURT: Thank you. 12 MR. JORDAN: Trinity Jordan on behalf of Tim and 13 Katherine Ballard. 14 THE COURT: All right. Thank you. Now today we had 15 set the defendant SOF's, et al motion to dismiss. There is also 16 that has been pending and just recently yesterday a request to 17 submit filed, defendant Ballard's same motion was also filed by 18 agreement and stipulation of Counsel off of the record prior to 19 this hearing. It has been agreed to go ahead and have that 20 motion heard and addressed today at the same time as this 21 hearing. Is that correct, Counsel? 22 MR. GUTIERREZ: Yes, your Honor. 23 THE COURT: Okay. Just so we document the things that 24 we're doing. All right. Now Counsel, we'll go ahead and go to 25 I'll give you just a few minutes, say 10, 15 minutes or so you.

to go through the motion, but I want you to focus on, okay, the things I'm interested in. And I have been -- I have reviewed everything several times, as well as my law clerk. I admit that I was not familiar with this particular statute, and I looked it up and read it myself because I had never come across this before.

So I am somewhat familiar with it, but I would like you to focus in on on some of the steps of these elements as we're going through the step one, step two, step three process is for you and the plaintiffs really -- I don't think we really need to focus in on phase 1. You know, that -- it fits within the statute. But really focus in on your prima fascia elements.

And if you want to address both at the same time while you have the floor for both defendant Ballard's motion and this motion, you can. Or if you want, you can wait and we can come back around and deal with the defendant Ballard's motion again second, but it's up to you, whatever you think would be best for your presentation.

I am also interested in you guys addressing what you think the standard is. I know the defense have put forth that they argue it has to be shown by clear and convincing evidence. I'm curious to know the basis and the foundation for that, why that needs to be at that level, number one.

24 Number two, I don't know that that level applies to 25 this particular type of motion. In other words, on a motion to

dismiss or a motion for summary judgment, I don't know that it 1 changes the standard of proof that needs to be shown. 2 That may -- what needs to be shown at trial that they have clear and 3 convincing evidence, okay, that they knew the information was 4 5 false in order for you to prevail -- for them to prevail on the claim as you assert or something different. So I want you to 6 touch on that, if you can. Okay. 7 Mr. Mortensen, anything else before we go forward? 8 9 MR. MORTENSEN: I don't believe so, your Honor. 10 THE COURT: Okay. 11 MR. MORTENSEN: Do you want plaintiffs to go first? 12 THE COURT: Yes. 13 MR. MORTENSEN: Okay. 14 THE COURT: Simply because in a way logically that 15 hits the step you've got to show a prima facie case. There's no 16 sense just starting with them and then shifting to you. 17 MR. MORTENSEN: Sure. 18 THE COURT: If that's okay. 19 MR. MORTENSEN: Thank you, your Honor. 20 THE COURT: So tell me why these causes of action 21 state a prima facie case against these particular defendants. 22 MR. MORTENSEN: Sure. And we've put together a 23 PowerPoint to try to make our point, so I'll go ahead and start 24 with that. 25 THE COURT: Let's see if we can get it up on our

1 screens so that everybody can see it.

2

(Video equipment set up in court.)

MR. MORTENSEN: Your Honor, addressing your first question on the standard, we believe for purposes of today we need to show a prima facie case of defamation. Whether we can prove that to a jury, that's a jury issue, whether they find that we've met clear and convincing, so we believe that for today it's do we have evidence of a prima fascia case, and we believe that we do.

But if the Court were to have to weigh that, we believe that our evidence is clear and convincing also. So we think that under either standard we should prevail, and this motion should be defeated, and we should proceed into discovery.

First of all, I'm going off of MUJI2d 1602, which the prima fascia case of defamation is that the Sound of Freedom defendants and the Ballard defendants published statements about Kely Suarez; the statements were defamatory; the statements were not privileged; and the statements were published with a required degree of false; and the statements caused damage to Kely Suarez.

The Sound of Freedom defendants are claiming that the movie is not about Kely Suarez. They've submitted affidavits that state that, and that they had -- that she was a fictional character. Again, the test that's set forth by the Tenth Circuit in Pring v. Penthouse is the test is not whether the story is or is not characterized as fiction, humor, or anything else in the publication, but whether the charged portions and context could reasonably be understood as describing actual facts about the plaintiff or actual events in which she participated.

6 Which brings us to our first element that we need to 7 show to the Court, and that's a prima fascia showing that Katy 8 Juarez is intended to portray Kely Suarez.

9 One thing that was overlooked by the defendants in 10 this case is that here in the movie when they look at the 11 computer screen, it says Katy Juarez, reigna de Cartagena, Katy 12 Juarez, Queen of Cartagena. They were using the name Katy 13 Juarez. They used it also in the movie.

(Video played in open court.)

14

15 MALE: L.A. And yes, I do know a young 16 attractive woman who matches your Giselle. Major 17 operator. Runs 10, 15 kids. Sources her children out 18 of Central America, so she doesn't have to deal with 19 the Colombian cops. Lures them in with her looks, 20 promises the sun, the moon. A month later, they're 21 turning five, six tricks a night. 22 MALE: You got a photo? 23 That's the easy part. Meet Miss MALE: 24 Cartagena. 25 MALE: A verifiable beauty queen.

1 MALE: Her name is Katy Juarez. She's clean, not even a parking ticket in the Columbia area. 2 (Video recording stopped.) 3 MR. MORTENSEN: So even there they say her name is 4 5 Katy Juarez, which is remarkably close to Kely Suarez. 6 We put before the Court a screenshot of Angel Studio's web page -- this has since been taken down -- where they 7 identify the actor or the character Giselle when they say in the 8 9 opening scene, a character named Giselle, inspired by Kely 10 Johana Suarez, a former beauty queen, pageant queen, and known 11 as Miss Cartagena deceives a young girl and her brother. Suarez 12 extorted her reputation in the poverty-stricken neighborhood to 13 recruit children for sex trafficking, betraying their trust, by 14 selling them into trade. 15 So again, I'm going to be -- these points or this 16 evidence goes to two points. One, that the movie was intended 17 to portray Kely Suarez, but also it is defamatory. 18 THE COURT: You said it was on the studio's web page? 19 MR. MORTENSEN: Right. 20 THE COURT: For how long? Immediately put up and 21 immediately taken down? Was it up for months? Do we know? Or 22 does it not matter? 23 MR. MORTENSEN: For purposes of today, it doesn't 24 matter, because it's a prima facie showing, and in discovery we'll find out all that information. 25

1 The actor that they chose looked remarkably similar to Kely Suarez 10 years ago. As a matter of fact, they used these 2 two pictures in promoting the movie down in Columbia. 3 The script for Sound of Freedom has Kely's name rather 4 5 than Katy's name. It's used 48 times. Kely Suarez rather than 6 Katy Giselle is used two times in the script. On the Sound of 7 Freedom's podcast, they represent again that this is based upon Kely Suarez down in Columbia. 8 9 (Video played in open court.) 10 MALE: Kids as you can, and you're just like get 11 me every kid you can. 12 TIM: Oh, yeah. 13 MALE: That's what you didn't feel accurate. Is 14 that right? 15 TIM: Yeah, that bothered me. That bothered me 16 deeply. It's so hard. I mean these guys were --17 MALE: This was quotas released Tim was telling 18 me about, but go ahead, Tim. 19 Yeah. I mean I love these filmmakers. TIM: 20 You've got to cram so much in two hours, right? But I 21 (inaudible) exposed on its face to the idea of hey, 22 Kely Suarez, real person, right? Bring as many kids 23 as you can until they couldn't find a one (inaudible) 24 looking for her. 25 (Video recording stopped.)

1 MR. MORTENSEN: Kely Suarez, a real person. Alejandro Monteverde, the author of and the writer and producer of the 2 movie, he states that this thing started out, this project 3 started out as a fiction, and because of Tim Ballard it turned 4 5 into a story based on true events. 6 (Video played in open court.) (Inaudible) on this (inaudible) story, and 7 MALE: I (inaudible) him and I saw or read as much as I could 8 9 in the internet about Tim Ballard, and I was like this 10 is the movie. It's based on a true story. I've got 11 to (inaudible) one. 12 (Video recording stopped.) 13 MR. MORTENSEN: Again, Alejandro Monteverde in another 14 podcast states the same. 15 (Video played in open court.) 16 MALE: Next thing you know, I'm in front of 17 (inaudible) and I realize a true story was better than 18 fiction. And here we are years later. And you know, 19 it was a hit. 20 (Video recording stopped.) 21 MR. MORTENSEN: We talked about this at the last 22 There's a second reading from psychic Janet Russon hearing. 23 that was given to Tim Ballard about Sound of Freedom and Kely 24 We believe that that shows that Tim Ballard was nervous Suarez. 25 that Sound of Freedom was coming out, that it was about Kely

Suarez, and he knew that she really hadn't done what he was claiming that she did, and so he wanted a psychic reading to get some peace, because that's what -- every time he has an anxiety attack, that's what he does. And we believe that we'll be able to show that in discovery. We want to get the actual reading, find out what was said to Mr. Ballard.

Again, Mr. Ballard in this clip.

(Video played in open court.)

7

8

9 TIM: Right. In fact, The movie Sound of Freedom 10 that's coming out, it was based on a true story where 11 that's exactly what they used. Miss Cartagena, Kely 12 Suarez, in the film, real person who was arrested. I 13 actually -- I just testified in her trial just a few 14 months ago, because I was undercover operator. In 15 fact, the movie --

16 (Video recording stopped.)

MR. MORTENSEN: Down in Columbia they talked a lotabout Kely Suarez in the publicity for the movie.

19 (Video played in open court. Video is in Spanish and20 was not transcribed.)

21 MR. MORTENSEN: So there again, we believe we have 22 presented evidence -- prima facie evidence that Sound of Freedom 23 was intended to portray Kely Suarez.

I want to make a point, though. Even if the Court
were to rule that it doesn't, clearly the promotional materials

1 are defamatory to Kely. And that will become clear as we go on. Which is the next point, we have to prove that the 2 statements are defamatory to her, that they're false. 3 When public statements are made that are false and allege criminal 4 5 conduct, and part of the plaintiff, a cause of action lies for 6 defamation per se, and that again is important when it comes to the damages element. 7 The statement is defamatory if it calls into question 8 a person's honesty, integrity, virtue, or reputation, and 9

11 ridicule in the eyes of the person to whom it was published or 12 if published to more than one person.

thereby exposes that person to public hatred, contempt, or

10

Again, Kely Suarez's life, as we presented in our papers, has been horrible since this movie came out, because people -- she has been subject to ridicule because people think it's her. They promoted it as her.

False means that the statement is either directly untrue or that it implies a fact that is untrue. A statement is materially false if it's false in a way that matters, and in this case it does matter, if they're calling her a trafficker of young kids. A beauty queen, Miss Cartagena, who uses her fame to sell kids into child trafficking.

The argument was made the gist of Kely Suarez in Sound of Freedom is defamatory and false. Well, excuse me. The gist that Kely Suarez in the Sound of Freedom is defamatory and

false. The movie portrays Kely as a child trafficker, portrays 1 Kely as a criminal, using drugs to train minors to have sex with 2 pedophiles. It portrays her as Miss Cartagena. It portrays her 3 as owning a modeling agency to recruit children. It portrays 4 5 Kely as being wealthy and popular, portrays her as traveling to 6 foreign countries to recruit children. It portrays her bringing 7 children to the island raid, and it portrays her being paid to attend the island raid. And it also portrays the children at 8 9 the island raid as being trafficked before the island raid and 10 rescued from trafficking.

11 Again, coming back, the Angel Studio's promotional 12 materials are defamatory. Suarez exploited her reputation in a 13 poverty-stricken neighborhood to recruit children for sex 14 trafficking.

15

(Video played in open court.) 16 I say this because people make this false TIM: 17 claim like oh, you're creating demand. You know, it's true (inaudible) Sound of Freedom, and you're kind of 18 thinking hard like wait a minute, you just asked for 19 20 50 kids. We're going around and kidnaping kids. That doesn't happen. We know how to stave that off. 21 We 22 look at catalogs. They show us the kids on phones. 23 We don't have to bring new kids. These are kids we 24 have proof have already been abused multiple times 25 before we even show up. These are kids that need

rescuing. We're not going to risk not rescuing them to appease some critic who doesn't really care other than just try to poke us. So quit it. It's not true. We are very good at what we do, and we do not create demand. We rescue children who are already in trafficking and being trafficked. Okay. (New video portion played in open court.)

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It looks like right from the movie Sound TIM: 8 9 of Freedom that's coming out is based on a true story. 10 Well, that's exactly what they used. Miss Cartagena, 11 Katy Juarez in the film, real person who was arrested 12 and actually her -- I testified in her trial just a 13 few months ago, because I was the undercover operator 14 leading on that op, but she was a person who was 15 famous, famous in the community. She was Miss 16 Cartagena. She (inaudible) and she had a modeling 17 school. And she'd give scholarships. In fact, she won Miss Cartagena on the platform that she was going 18 19 to help impoverished kids of the Columbian, in the 20 Cartagena region, and she was giving scholarships to 21 these kids. Well, these kids would come and be --22 they wanted to be rich and famous like her. Well, she 23 eventually desensitizes them with -- what do they do? 24 They use drugs, pornography, and pretty soon, the 25 other part of the this deal is that you have sex with

1 these Americans who come down. That's part of being 2 famous. And boom, these kids are gone. Gone. And so yeah, it's -- that's sometimes like you said, it's a 3 slow war. 4 5 (Video recording stopped.) 6 MR. MORTENSEN: The only thing that was true in that clip was that her name is Kely Suarez. None of that is true. 7 (Video played in open court. Video is in Spanish and 8 9 was not transcribed.) MR. MORTENSEN: So there again, he falsely portrays 10 11 He's asking (inaudible). her. 12 (Video played in open court. Video is in Spanish and 13 was not transcribed.) MR. MORTENSEN: That intimates right there that she's 14 15 in prison, that she's going to be there for 20 years. That intimates a conviction. There has been no conviction. 16 17 Here's again from the podcast. 18 (Video played in open court.) 19 And the red flag is well, wait a minute. TIM: 20 You just told this woman to find as many kids as 21 possible and bring them in --22 MALE: And pay them the top money? 23 Aren't you inducing the crime? Aren't TIM: 24 you -- isn't -- don't we run the risk here of 25 these kids being -- the children being taken

1 (inaudible)? And the truth is, you know, we've been doing this for a very long time, and it even feels 2 (inaudible) we have been doing this for a very long 3 time, and we're actually not that stupid. So we 4 5 work -- there's lots of ways to determine -- to 6 make sure they're only having kids who were already being trafficked. These people are business people. 7 I hate using that term because it almost legitimizes 8 9 them, but they're trying to make money. So any child in their control for selling, just like you would sell 10 11 a product of some kind, you advertise that. All these 12 kids (inaudible) in their cell phones, some -- I've 13 seen printouts even of children, here's their age, 14 here's their sex acts they perform and so forth. And 15 there would be a lot of ways to ensure that a child 16 who hasn't been already taken is not taken. These kids who are stuck in it already. Already, right? 17 MALE: Uh-huh. 18 So, you know, on the off chance I've never 19 TIM: 20 seen it happen, Jeff. We talked about this. 21 (Video recording stopped.) 22 MR. MORTENSEN: Anyway, again, they're portraying Kely 23 Suarez as running this trafficking ring with kids that are being 24 trafficked, attempting to -- at least intimate that they're --25 you know, they're somehow held against their will.

We've presented evidence from Ms. Suarez in her affidavit -- in her declaration, again attaching court documents that show that none of the individuals taken to the island had been trafficked before. None of the individuals taken to the island were survivors.

6 Pedro, who is portrayed as Simba in the movie, he admitted that he's never been trafficked and he's not a human 7 trafficking survivor, in his declaration that we submitted to 8 9 the Court. And everyone after going through all the unnecessary 10 trauma of the raid, all of those kids were home by that night. 11 This was a fake party that was set up to get good footage that 12 they were going to make a documentary called the Abolitionist 13 out of. When that fails, they morphed into trying to make a Hollywood movie out of it. So none of these kids were 14 15 trafficked like the movie portrays.

I've gone through Pedro Ramirez and his declaration. He says on this podcast that he had not been kidnapped, that he -- he said he was abused when he was 8 years old by a neighbor or an uncle, but that wasn't trafficking. And the first time that he had ever been trafficked was when Ballard and the others paid for him to go out to the island for this island raid.

There's been an argument that Kely is a public -- Kely Suarez is a public figure. And the reason that that's relevant is if she's not a public figure, what we have to provide is prima facie evidence of negligence in publishing the false
 statements.

If she is a public figure, we have to show actual 3 malice. But again, we believe that we've set forth prima facie 4 5 elements of both. We don't believe it's fair to Kely that she 6 as a humble woman of color who is trying to make her life better ends up in prison for 18 months, and then (inaudible) press --7 not by any of her doing -- and celebrates the day that she gets 8 9 out. We don't believe that that makes her a public figure. But 10 even if it does, we meet the burden of showing the prima facie case of actual malice. 11

We've presented again the declaration of Pedro Flores where he states that he never knew Kely, had no idea who she was. And then we've submitted Kely Suarez's affidavit saying that she didn't -- when Miss Cartagena -- Miss Cartagena isn't even a beauty pageant. She wasn't even one of the five finalists. And we set forth the newspaper ad from that date showing the five finalists of Miss Cartagena.

She never operated a child modeling agency. She never participated in trafficking of children from Honduras or anywhere. And prior to October 11th of 2014 she wasn't well known to anybody outside of her family and friends.

In the Shanley v. Hutchings, which just barely came out from the Utah District -- Federal District Court, it sets forth the standards of when you call someone a child molester or being participating in human trafficking, and if you can show or you can present prima facie evidence that these are not allegations that a reasonable person makes without confirming the truth of the statement -- and again, we've set forth evidence of that.

We've also set forth evidence of actual malice on
behalf of the Sound of Freedom and Mr. Ballard's part of it.
Just the fact of his testimony where he's blatantly lying about
her and he knows it shows actual malice.

When it comes to again from the Shanley v. Hutchings case says recklessness or malice may be found even where a defendant had an honest belief of the truth of his statement -his or her statements, that the defendant's statements are so inherently improbable that only a reckless man would put them into circulation, or there is obvious reasons to doubt the veracity of informant or the accuracy of his reports.

Again, in this case there was a lot of evidence that we've submitted to the Court that Angel -- the Sound of Freedom defendants should not have relied on what Tim Ballard was telling them, and they should have verified from other sources what was actually going on.

Disney had this movie. They didn't publish it or distribute it. And again, we want to find out why in discovery, but clearly there was something going on here that they should not have relied on Tim Ballard and his honesty in reporting what 1 actually had happened.

We submitted a text that Tim Ballard sent to his executive assistant where he said before -- in May before this movie was ever distributed. It says Angel Studios told me so many people called them and said why would you partner with Tim Ballard?

7 We submitted a declaration of Jane Doe. She's been identified by the defendants as Melissa Cannon Johnson where she 8 9 tried to warn Angel Studios back in 2017 -- 2016 or 2017 about 10 showing the Abolitionist, which was the documentary that Ballard 11 made about this raid. And she warned them then, she warned the 12 Harmon brothers that Tim and his organization were messy and 13 that they should be careful. And that they told her that they 14 were and they had heard the same.

When she found out that Angel Studios was going to distribute the Sound of Freedom, she texted the CEO -- the CEO of Angel Studios telling her that she had heard that they were distributing the Sound of Freedom movie, and Jeff Harmon wanted to -- the owner of Angel Studios wanted to have a Zoom meeting with her.

21 She had the Zoom meeting, and she expressed several 22 concerns that Mr. Ballard was a complete fraud, and that OUR was 23 a bad organization. And then we backed that up with texts that 24 she sent where she was texting saying to Angel Studios, I'm 25 really not sure about releasing the film. Sounds like you're already moving forward. I didn't find it to be factual in the least, and those pieces that were -- maybe some amounts of truth were so exaggerated it is sad to see how it painted Tim as a superman. I think he's a total fraud and misguided. I've heard that there will be accusations soon, possibly from another country.

7 And then Angel Studios texted back and says I understand the concerns. We've gone very, very deep on the 8 9 allegations. We are satisfied we can go forward. Jeff Harmon 10 texted her -- Ms. Johnson back when the criminal investigation 11 against Mr. Ballard was dropped, showing again that Angel 12 Studios was concerned, and they just used an arbitrary line of 13 demarcation of whether the criminal investigation against 14 Mr. Ballard was dropped by Davis County Attorney without any 15 insight as to why or how.

Again, Melissa has testified that no reasonable movie studio would have distributed a movie claiming to be based upon a true story about Tim Ballard, knowing what Angel Studios knew about Tim Ballard.

We've presented an affidavit from Celeste Borys that shows that Ballard was under investigation by the Davis County Attorney's Office and Angel Studios knew it, that there was a smear campaign that was being set in motion so that Troy Rawlings would drop it, drop the criminal investigation so that Sound of Freedom could be distributed, and there were meetings held where Jim Caviezel was there, and the other makers and
 producers of the -- of Sound of Freedom.

We know that the Sound of Freedom defendants knew that Ballard was under criminal investigation. Angel Studios really wanted something out in conjunction with their May 11th announcement when they announced that they were going to distribute Sound of Freedom. They said they're very happy with it. Troy Rawlings is on his heels as he thinks he got away with just this, but the blast is coming, just as we discussed.

Again, we've showed that Angel Studios hired a PR firm for Mr. Ballard because of all of the issues that were surrounding him. That's Mr. Ferrachi, and he's listed here as a PR partner on the movie at the very end under Matthew Ferrachi in the second column.

In this Borys' declaration, she verifies that the Sound of Freedom defendants knew that OUR and Tim Ballard had been under criminal investigation, and that the defendants knew that Tim had -- that Mr. Ballard had been fired from OUR for sexual misconduct prior to the releasing of the Sound of Freedom.

There's been some claim that the Sound of Freedom defendants at least should not be responsible because they relied on a CBS news program that came out four days after. And in this when it came out, much of it had been pre-shot, and so -- and again, you take that and then you couple it with Tim

Ballard saying hey, we didn't let anybody know what was going 1 on. We didn't tell the press about this until six months after. 2 So he's blatantly lying about the press being involved. 3 He had the press ready to go before this ever 4 5 happened. And again, we believe that discovery will vet that out and show even more malice on behalf of Tim Ballard because 6 he was -- we believe that he set up the media to report this, 7 and the CBS newscast is proof of that. 8 (Video played in open court.) 9 MALE: And again, we weren't doing that. No one 10 knew about it. Media found out later, like months. 11 12 MALE: I'd say almost a year. 13 MALE: Later yeah. And then it broke. 14 MALE: Yeah. 15 MALE: Because that really was a model. All of 16 the attention and the credit you gave to the local --17 MALE: Oh, yeah. 18 MALE: -- law enforcement, and they've got --19 This is the CBS evening news with Scott TV: 20 Pelley. 21 Dozens of children were saved from slavery MALE: 22 when agents rushed in to break up a sex trafficking 23 ring. Last weekend, police broke up a major sex 24 trafficking ring in Columbia, which has become a 25 destination for tourists looking for sex with boys and

1 girls. The police had help from an American who went undercover to rescue the children, and Elaine Quijano 2 met him. 3 Tim Ballard has one mission, track down ELAINE: 4 5 child traffickers. 6 (Video recording stopped.) MR. MORTENSEN: This was always about Tim Ballard and 7 getting publicity for him. So again, we believe that we've met 8 9 the elements of showing that the Sound of Freedom was about Kely 10 Suarez, and they defamed her both in the movie and in the 11 publicity for the movie, because it's defamation per se because 12 they were calling her a child trafficker. 13 You know, we set forth -- the general damages would be 14 the remedy under the defamation per se. But again, in the 15 complaint we've set forth that Kely's life was turned upside 16 down. People began calling her names and sending her hate mail 17 and shunning her. 18 And again, the defamation per se permits recovery of 19 general damages naturally and necessarily result from the harm 20 done, and that's a jury determination for what those damages 21 are. 22 Anyway, so what we're left with is Kely Suarez now in 23 perpetuity is having to face things like this.

24 25 (Video played in open court.)

FEMALE: The (inaudible) Tim Ballard has stated

that the featured (inaudible) in the movie are all 1 drawn from criminals he's encountered in his career, 2 including the aforementioned Suarez. 3 (Video recording stopped.) 4 5 MR. MORTENSEN: So based upon that, your Honor, we 6 submit that we have set forth a prima facie case enough to get 7 into discovery and to move forward with this case on all defendants. 8 9 There is one last point. I'm sorry. As it relates to 10 Katherine Ballard, our defamation claim is based upon a statement that she issued on October 11, 2023, on behalf of Tim 11 12 Ballard and his wife Katherine. It says it was nine years ago 13 today that 120 women and children were rescued from evil and conspiring traffickers on a remote island in Columbia as 14 15 depicted in the hit movie Sound of Freedom. 16 So again, Sound of Freedom was intended to show Kely 17 Suarez, and it's defamatory to call her an evil and conspiring

19 Court. Thank you, your Honor.

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THE COURT: Thank you.

Counsel?

22 MR. GUTIERREZ: Thank you, your Honor. It's clear to 23 me why plaintiff's Counsel wanted the Ballard defendants' motion 24 to be heard in conjunction with the SOF defendant's motion. We 25 just heard a majority of Mr. Mortensen's discussion about Tim

trafficker. So based upon that, we would submit it to the

Ballard. They clearly want to taint the SOF defendants -- my clients -- with what they believe Tim Ballard did or didn't do that they think was improper.

I want to confine my remarks to what's relevant to my client's motion, and I respect the Court's instruction about what you are most interested in, and I'll address those issues as well. But I want to start out by emphasizing this is a case of libel and fiction. It's a docudrama. There is abundant case law by judges that respect the reasonable viewer's appreciation for what a docudrama is and what it is not.

11 They are not documentaries. They do not consist of 12 interviews with real persons and their associates. They in 13 fact -- docudramas are reenactments that are based on inspired 14 by real-life incidents, and take artistic license, dramatic 15 liberties to tell a compelling story.

You've heard nothing from Mr. Mortensen about the docudrama nature of the Sound of Freedom. You've heard nothing about the fact that there was a disclaimer, but it was always clear that the movie was based on a true story. It was not a true story.

It was clear in the disclaimer that while it was based on a true story, characters, locations, dialogue, incidents were invented. Characters were invented or composites, and that no relation to real persons was intended, other than to be loosely based on, inspired by, to take something that was in the news 1 and go in their own direction with it to tell a compelling
2 story.

That is critical here. If you are not allowed to use artistic license to tell your story that's loosely based on something that had happened, it would have a very deleterious impact on the movie industry. Not every movie is based on something, but many, if not most of them, are. There are very few original ideas.

9 Now, there has been some new evidence that was shown 10 to the Court today that is improper, should not be considered. 11 Part of the movie where they claim that the plaintiff's name was 12 used on the screen, you don't ambush opposing Counsel at a 13 hearing. You are required to comply with the rules and present 14 your evidence in your pleadings.

Even if that's the case, however, the best they can show is that they refer to her by the same last name. That's not enough. And it wasn't the Giselle character anyway.

And it's very important to realize that if my clients wanted to make a movie about a character that was intended to be a portrayal of their client, Kely Suarez, they would have named her Kely Suarez. They named the main protagonist Tim Ballard because it was based on his experiences, but artistic license clearly they did not use her name.

24 They changed her attributes. They claim that she
25 bears a striking resemblance to their client, the actor that

played her, Yessica Perryman. Personally, I don't see the
 resemblance, other than the fact that they're both attractive
 black women. I think that's where it stops -- starts and stops.

You have the writers themselves, particularly
Alejandro Monteverde, who is also the director who addressed why
they cast that actress. They wanted a composite character who
exuded attributes of a female antagonist who would be a
compelling dramatic gimmick for the movie.

9 He thought and his cowriter Rod Barr thought that most 10 viewers would expect child traffickers to be men, and they thought this gave it a different direction that would be 11 12 compelling to an audience. They wanted a character who exuded 13 loyalty, who would demand respect, who had stereotypical beauty 14 pageant looks, and they found a character in the actors they 15 portrayed. And again, they did not use her name for a reason. 16 They did not want the public to believe that in fact she was 17 intended to be a depiction of their client, their young client.

18 Going back to my comment about libel and fiction, it's 19 important because I'm going now to the actual malice issue. You 20 asked why actual malice is the standard at this particular 21 juncture. And the reason is very simple. It's required by the First Amendment. It's the New York Times v. Sullivan seminal 22 23 case that establishes that in an action brought by a public 24 figure on a defamation case, they must prove actual malice by 25 clear and convincing evidence. It does not matter at what stage 1 and what form the pleading is brought. It's required by the 2 actual -- by the First Amendment.

And there's a Utah case, Wayment v. Clear Channel Broadcasting, 2005 UT 25, that quotes New York Times vs. Sullivan for that same principle, that a public figure moving on a defamation claim must prove actual malice by clear and convincing evidence. It's required by the First Amendment. It's really that simple.

9 We've heard a lot of discussion about the Angel 10 Studios web page. They don't authenticate it. They attach what 11 they claim is a screenshot. Where is the declaration attesting 12 to the authenticity? Where is it from? When was it taken? All 13 that's missing. That is not admissible evidence.

And even on a prima facie case where that's what you're attempting to prove, you need evidence that's admissible. You don't just say A, B, and C without admissible evidence to support it and expect it to carry the day for you. That is not how it's done.

19 Going to the issue of public figure status, you don't 20 hear anything about the plaintiff's real life past, what in fact 21 she admits to doing. She admits that she knowingly went to an 22 island with under age children knowing that they were going to 23 be sexually exploited. There's a video of her -- they don't 24 dispute this -- showing her laughing, telling the people at the 25 bed she's sitting on to be delicate, and a discussion about the

type of sex that the pedophiles want to have with these minors. 1 She's claiming the depiction is false. It needs to be 2 materially false. What does that mean? It means that a viewer 3 has to think less of her based on what they claimed the movie 4 5 portrayed her as than what the actual truth is, that they would 6 think better of her because she only willingly went to a party, 7 agreed to sell herself for money to someone who thought she was a minor, went on about with other children -- other minors --8 9 knowing that they were going to be sexually exploited. She was an ambassador in her local neighborhood. 10 She 11 wanted to be -- in published reports she is quoted as saying she 12 wanted to be the Naomi Campbell of Cartagena. She was 13 respected. She used her popularity to make a name for herself. 14 She appeared in videos, and she wanted to be a big star. 15 When she ran for ambassador of her neighborhood, there 16 is some quibble about whether or not it's a beauty pageant. 17 That's really not terribly relevant. When she was interviewed, 18 she told the judges that she was concerned about at-risk youth 19 in her community. Really? How does that square with what you 20 admit in your declaration you did? It doesn't add up. 21 She in fact is a limited purpose public figure. As a 22 result, she must demonstrate actual malice. Because this is a 23 libel and fiction case, the actual malice inquiry is a little 24 different. They need to demonstrate -- the plaintiff's need to

demonstrate that my clients, the SOF defendants, intended for

1 the public to believe that the Katy Giselle character was a 2 depiction of fact about their client, plaintiff Kely Moya. They 3 can't do that.

It's a docudrama, different character name, a
disclaimer, and it really does require that we respect
reasonable viewers who know the difference between a documentary
and a docudrama.

8 Case law requires that we respect the distinction 9 between the two. It requires that we respect the use of a 10 disclaimer. It requires that we respect the presence of words, 11 like based on, inspired by, as opposed to this is a true story.

12 They do cite some cases that try -- in their briefing 13 they claim defeat our argument that the case is not entitled to 14 be dismissed because the docudrama nature isn't enough.

15 Their cases are very distinguishable. In their cases, 16 the plaintiff's actual names were used. That's a different 17 situation than what we have here. Their plaintiff's name, their 18 client's name was not used.

In one of those two cases, it was described as 100 percent truth, the real story. That's not how the Sound of Freedom was ever advertised.

Going back to the web page issue as to Angel Studios, even if they had been able to authenticate that, again it says it's loosely inspired by the plaintiff. They don't say it's intended to be her.

People that actually knew the plaintiff would know that there are differences between her and the Katy Giselle character. They would know this can't be her because they're claiming she was never a beauty queen. Oh, then it can't be her.

6 Oddly, they claim that it's defamatory because they describe her as being wealthy and popular. That's not 7 defamatory. My point being their cases do not demonstrate 8 9 anything other than the fact that a docudrama with a disclaimer 10 with different character's names that don't match names of 11 real-life persons are entitled to First Amendment protection and 12 do not -- they don't satisfy the other concerning element that 13 is essential as one of the core elements of a defamation claim.

And even if Angel Studios was determined with admissible evidence, which they don't have, to have published some statement for some period of time making an attribution between the two, between Katy Giselle and the plaintiff, that's not something that is attributable to any of the other SOF defendants.

And as if more importantly, all the evidence your Honor heard about Tim Ballard is entirely irrelevant to this motion. The declarations they provided of Celeste Borys and Jane Doe, again irrelevant.

24It doesn't matter if the SOF defendants knew that25Mr. Ballard was under criminal investigation. Who cares? What

does that have to do with whether or not my client thought that a reasonable viewer would believe that Katy Giselle was intended to be a depiction of fact -- a statement of fact about their client, Kely Moya? There's a complete disconnect. They may claim it's relevant to other defendant's UPEPA motions. It's just not relevant to my client's motion, your Honor.

If your Honor has other questions, I'm happy to 7 address them, but I do think it's important that we make a clear 8 9 distinction between evidence that's relevant to my client's 10 motion and evidence and arguments. The motions, I respectfully 11 disagree, that the two motions are identical, they're not. 12 There are different allegations against my clients, different 13 evidence of what my clients did and what they didn't do compared to Mr. Ballard and Katherine Ballard. 14

So the two cases deserve different, separate, and independent consideration. Unless the Court has -- well, let me address one other thing. What the plaintiffs conveniently do is pretend that my clients relied exclusively on Tim Ballard.
Well, the two (inaudible) did meet with him. They determined that what he had to say would make for interesting fodder, gave them ideas.

They changed direction from a fictional story about child trafficking to one that was loosely based on what he told them, but you have Rod Barr in his declaration saying Tim Ballard shared with us details that were so disturbing that they could not possibly make a movie based on what actually happened
 as told by Tim Ballard.

It wouldn't be an R-rated movie. It would be very hard for an audience to watch that kind of a movie. It's important Alejandro Monteverde in his declaration says the movie was a piece of fiction telling the ugly truth, the ugly truth being child trafficking.

8 The fact that it was based on Tim Ballard's undercover 9 work doesn't affect my client's right to be dismissed from the 10 case in the context of a docudrama with a disclaimer, a 11 different character's name, and reliance upon sources other than 12 Tim Ballard.

Numerous news reports corroborated the statement of fact that in fact Ms. Moya was arrested. She spent 18 months in prison. There's no evidence that my clients had any reason to believe that any of those scores of articles were false. They supported what Tim Ballard said. Everything is (inaudible).

18 The case law supports reliance on reputable sources is 19 demonstrating a lack of actual malice. That's what this case is 20 as well, your Honor. Unless you have further questions?

21 THE COURT: Yeah. The case is similar in the sense
22 that both of you are relying on the statute --

23 MR. GUTIERREZ: Yes, your Honor.
24 THE COURT: -- to be dismissed. I get that. I didn't
25 intend to say or mean that factual situations between

Mr. Ballard and your clients are the same, because they're not.
 I understand that.

I want to go back to your standard of clear and 3 convincing evidence. As you know, motions to dismiss have a 4 5 certain standard in implication the factual pleadings being 6 interpreted in the light of the plaintiff, et cetera. The 7 motion for standard -- motion for summary judgment has a different standard. And nobody is disputing that clear and 8 9 convincing evidence is needed to be proven against a public 10 figure. 11 But I am still not connecting how you're basing that high level of clear and convincing standard is applicable in 12 13 this motion to dismiss. I didn't see it in the statute. Т 14 don't know where you're making that connection. Can you help me 15 there? 16 MR. GUTIERREZ: Sure, your Honor. The very purpose of 17 UPEPA is to give expedited relief to defendants who are sued for 18 exercising the right of free speech on a matter of public 19 concern. 20 If the plaintiff makes a prima facie case, the 21 defendant is still entitled to be dismissed if they fail to show 22 under either Rule 12(b)(6) standard or summary judgment that 23 there is no material issue of fact here. 24 And a motion for summary judgment, there's no question 25 that the clear and convincing evidence standard would apply,

even in a motion to dismiss 12(b)(6) it would apply given the 1 defense that's used here. I mean it's First Amendment is the 2 connector here, your Honor. First Amendment free-speech, there 3 were scores of frivolous lawsuits brought against usually land 4 5 developers who would sue protesters for objecting to their 6 planned development, and they would sue these protesters for 7 defamation. They were frivolous lawsuits, but they had the tendency to either bankrupt the defendants or dis-incentivize 8 9 them to protest in the future.

10 The courts came together and now more states than not 11 have the statute that requires we respect the First Amendment in 12 that context, and when the First Amendment applies, and there's 13 a public figure, it's actual malice, and actual malice has never 14 had anything other than a clear and convincing evidence 15 standard.

16 The summary judgment standard applies in a UPEPA 17 They put forth the evidence demonstrating why Ms. Moya context. 18 is a limited purpose public figure. We put forth the evidence 19 why the plaintiffs cannot demonstrate actual malice as to either 20 the issue of whether or not the Katy Giselle character was 21 intended to be a publication of fact about plaintiff Kely Moya 22 or as to whether or not they believed that she had in fact been 23 arrested. She had been. There's no doubt about that.

24So there have been -- I've had the privilege of25defending dozens -- I hope I'm not exaggerating -- many, many,

many anti-SLAPP cases. Every case involving a public figure 1 requires that actual malice be demonstrated on that motion at 2 the very outset. It's not an open question, your Honor. 3 4 THE COURT: I mean argument and research showed that 5 the statute has really only been adopted by four states. 6 MR. GUTIERREZ: UPEPA is based on recognition by more and more states that the anti-SLAPP statute that has been in 7 dozens of states for years needs to be expanded across the 8 9 country. So while there are fewer states that have the actual 10 UPEPA motion, they're all based on California, primarily, California's strong anti-SLAPP statute that has been on the 11 12 books for many, many years now. 13 The commentary to Utah's UPEPA statute makes clear 14 that they look to California for guidance. They're not running 15 away from California's statute. They're realizing we need to 16 look to California. They've had this on the books for many 17 years. They provide the instruction in these contexts. 18 THE COURT: Thank you. 19 MR. MORTENSEN: Can I respond first so that I don't 20 get --21 THE COURT: Sure. 22 MR. MORTENSEN: -- discombobulated? 23 THE COURT: And that's easier for you. 24 Yes. First of all, I just want to MR. MORTENSEN: 25 point out I didn't ambush anybody. That was taken from -- that 1 first clip was taken from -- or the clip of Katy Juarez was 2 taken from the exhibit that the Sound of Freedom defendants 3 submitted. I just clipped that part out.

I believe defense Counsel said that the actual malice standard requires that Sound of Freedom -- that the required -requires that the Sound of Freedom defendants intended for the public to believe that it was a portrayal of Kely Suarez. They made all sorts of efforts to have the public try to believe that this -- that this Giselle was based upon Kely Suarez. They went on a tour.

And one of the things that we do need to discover that's become apparent here is Tim Ballard was acting on behalf of the Sound of Freedom defendants. I mean there's posters in the background, there is the movie promotional things. The Sound of Freedom defendants want to run from Tim Ballard, but they sure used him to promote their movie that made \$250 million worldwide on this.

18 So I don't think that they are allowed, or at least 19 with the clips that we've shown today, there's clearly issues of 20 fact as to whether or not Tim Ballard was an agent of Sound of 21 Freedom.

We haven't seen any of the contracts. I'm sure there's promotional contracts where Tim Ballard is getting paid to go across the world and promote this movie. We know that his -- that at least his travel was paid for by Angel Studios. Angel Studios had paid for the attorney general to travel to make it more credible. There are several issues that we do need discovery on, but again, the issue for today is have we presented a prima facie case, and we believe that we have.

5 I just refer you back to Mr. -- the C -- the owner of 6 Angel Studios, that he said he did a deep dive in that text. So 7 again, we've shown evidence that they -- if they did a deep 8 dive, they would have discovered this.

9 And I would just -- again, I would just point out that 10 Kely Suarez, she's not a gimmick. To make a movie -- you know, 11 the -- the attitude is it's okay to make a movie about a poor 12 black woman in Cartagena, Columbia because nothing's ever going 13 to happen.

In this case, it really has tremendously impacted her, and we believe that we have presented a prima facie case of defamation against the Sound of Freedom defendants, and that they're not entitled to run from Tim Ballard. Thank you.

18

THE COURT: Thank you.

MR. EISENHUT: Thank you, your Honor. As I indicated earlier, I represent Tim Ballard and Katherine Ballard. And as Counsel has suggested, indeed our motion is significantly different than the other motion other than the similarities that you have already identified.

And what blatantly stands out from our perspective in our motion, your Honor, is the analysis that the Court goes

1 through for this question of whether or not a prima facie case
2 has been made out as against either Tim Ballard or Katherine
3 Ballard is what is in the pleadings.

So Mr. Gutierrez indicated he's handled lots of these
anti-SLAPP or UPEPA motions. I have practiced both in
California and in Utah and have had a lot of the California
UPEPA -- it's not UPEPA there, but it's anti-SLAPP.
Nonetheless, and as Mr. Gutierrez indicated, the UPEPA is based
largely on the California law.

And we have cases in our pleadings, and I can share them with you now, but the first thing is what is actually in the complaint against Mr. Ballard or against Mrs. Ballard. And from there, is there evidence supporting a prima facie case against them based only and solely on those allegations.

Now, we made our motion based specifically on the exact allegations that were in the complaint against Mr. Ballard. And Mrs. Ballard was identified only in one, and plaintiff's Counsel identified for the Court what that one was. It's a --

20

THE COURT: A statement that was made.

21 MR. EISENHUT: Yeah, a joint statement. In their 22 opposition, as I read it, at least, I understood that they were 23 backing away from that and the other bases that they claimed in 24 their complaint and saying well, that statement, although it was 25 defamatory, it's not what our case is based on. That's what I 1 understood their opposition to say, but nonetheless, I'll 2 address it assuming they're still standing by that as a proposed 3 basis for defamation.

So let's start there, and then I'll get into what isn't in the complaint, which is important. So as far as the Spear Fund joint statement, it's a statement that says nothing whatsoever about the plaintiff. It -- and what it says is undisputedly true.

9 It says that 10 years ago back in 2014, there was a 10 raid in which children were rescued and in which traffickers 11 were arrested. That is absolutely true. That was announced at 12 the time by the Department of Homeland Security, by ICE. That's 13 in our evidence.

It was followed up by law enforcement, who believed 14 15 there was probable cause, who then turned it over to 16 prosecutors, and prosecutors then prosecuted, and in fact 17 put some of those traffickers -- now, apparently, including 18 Ms. Suarez -- in jail. But the statement itself has nothing 19 specifically to do with Ms. Suarez or with any particular 20 victim. It just says that that incident occurred, and it absolutely did. 21

22 So there's nothing about it that identifies 23 Ms. Suarez. There's nothing about it that is untrue that could 24 possibly be defamatory of Ms. Suarez, and you can't twist it 25 into a statement about her by saying well, it references Sound 1 of Freedom, and somehow Sound of Freedom somehow twists into 2 referencing Ms. Suarez. That's just -- it doesn't work for 3 purposes of this motion.

Backing up for a second, and Mr. Gutierrez touched on this, the whole purpose of this statutory scheme and the reason why Utah and other states have come on board with it is it is important that citizens in the United States be able to exercise their free speech rights. It is important that Mr. Ballard and Mrs. Ballard and any other defendant in this case can always freely speak their mind when they want to.

11 Now, if they fit within the narrow definitions of 12 doing something wrong vis-à-vis defamation, okay, fine, but the 13 case law says because lawsuits against public participation 14 against free speech and other forms of public participation are 15 concerning, and they impact the defendants' constitutional 16 rights, and they may bankrupt the defendants before they can 17 actually defend those constitutional rights, we're going to give 18 the defendants an opportunity up front to say hey, plaintiff, 19 you better make sure you plead your complaint accurately and 20 clearly and concisely.

They've had two chances in this case, knowing that these motions were coming. And we're on our first amended complaint with them. They knew the motions were coming and they pleaded them as they chose to plead them.

25

The case law is clear that the plaintiffs are the

1 masters of their own complaint. We cited the Utah Stream Access 2 Coalition case. We cited the Barton Woods case, and others that 3 say you define your own complaint.

And now the UPEPA says once we bring our motion, your complaint and everything else in the case is frozen in time. So you can't now in your opposition attempt to in essence amend or attempt to in essence defend a different case that you wish you had brought. You have to only present a prima facie case of the actual case you brought.

And so in their opposition, as I understand it, plaintiffs say no, we're actually not suing Mr. Ballard because of testimony he gave down in Columbia, as they have to acknowledge, because you can't sue for that. They have it in their complaint, and so we put it in our motion. We said that's ridiculous. It's absolutely privileged. It's immune from a defamation claim.

And they said well, we're not suing him for his social media posts. There was a picture, apparently, of him in the courtroom that said nothing about anybody. They said those are just for background.

And they said even though the joint statement we think was defamatory, that was just for background too. What we're really suing for is statements that Mr. and allegedly Mrs. Ballard made in connection with promotion and marketing of Sound of Freedom. That's what they say in their opposition. 1 Now, when they say that in their opposition, which paragraphs of their complaint did they cite to? Nothing. 2 Ι have scoured in preparing the reply and preparing to address 3 your Honor today the 72 page 384 paragraph complaint, which is 4 5 rife with many, many, many factual allegations, many conclusory 6 allegations, many legal assertions. There is not one allegation 7 that could be twisted or turned or construed into their suing Mr. Ballard because of statements he made in connection with 8 9 Sound of Freedom promotional marketing. Not one.

10 If they're suing another defendant for that, that's between them and another defendant. Mr. Ballard has not been 11 12 sued for that. They don't cite a single paragraph where they 13 allege that. And by the way, they don't ever allege that Mr. Ballard is the alter ego of Sound of Freedom. 14 I heard them 15 argue that he was speaking on their behalf. That's up to them 16 to argue as between them and Sound of Freedom defendants, but 17 certainly allegations they made against Sound of Freedom have 18 nothing to do with allegations against Mr. Ballard.

19 So they're left with their opposition arguing that 20 Mr. Ballard is liable because of these clips that they showed 21 when there is no allegation whatsoever in their complaint which 22 is now frozen in time alleging that he is liable for that. And 23 therefore, we had no opportunity to bring our motion, which is 24 allowed to be brought at the outset, to address those assertions 25 which are brand-new now against him in their opposition. Those

are no -- those are not valid allegations against him. 1 They are not in the complaint. If I can get a sip real quick. 2 And in order to -- if they want to try and argue that 3 somehow someway they could twist five or six or 10 or 20 4 5 paragraphs into somehow they alleged this against Mr. Ballard, 6 which I tried. I couldn't find any paragraphs that could be 7 twisted into that. But to the extent they were to argue that, they also have a wrong statement of the law in their opposition 8 9 in which they say it's just notice pleading state. 10 Well, that's true, in general. But it is absolutely 11 not true as to a defamation claim. Again, defamation infringes 12 on somebody's free speech rights, and it needs to be pled with 13 specificity. It needs -- the Williams v. State Farm case that we cite says you have to set forth the actual language 14 15 complained of in words or words to that effect. 16 And then they are quoting from Bennett v. Smith, which 17 is another Utah case, which says it is almost axiomatic that in 18 defamation cases, a certain degree of specificity is an 19 essential in pleadings. That the language complained of must be 20 set forth in words or words to that effect, and that the 21 defendant should not be required to resort to the ofttimes 22 expensive discovery process to drag from a litigant what he 23 really intends to do to his adversary by a vehicle shrouded in 24 mystery. So that is the quote from Bennett v. Smith. 25 And then also we cited Zoumadakis, I believe, is the

name, another Utah case where it contains nothing more than
 general conclusory allegations of defamation, the complaint must
 be dismissed.

So again, to the extent they're going to stand up here 4 5 and try and twist and turn and say yeah, somewhere, somehow vaguely in that complaint Mr. Ballard is accused of doing what 6 7 these clips show, and that he is liable for defamation for those clips, they can't do it. It's not in the complaint anywhere, 8 9 and they are the masters of their own complaint, their second 10 one now, and they have to live and die by what they mastered, including, as the cases that we've cited and quoted in our 11 12 papers, including if they have given up rights to pursue those.

To the extent the Court were to look at those clips with the concern about whether or not Mr. Ballard committed some form of defamation, again there's no basis to go there because we don't have a complaint that puts us there.

But if we did, there is not a single shred of attempt to authenticate any of those clips. And why is that important? First of all, we don't know when they were made. The defamation statute has a one year limitations period. They have to have been made within the statute of limitations.

They made no attempt to put any date on them or anything authenticating, you know, what these are, where they're from, who said them. And even if they found them published on the internet somewhere, they have to find when was it first published, because it's the first date of the publication that would count as to statute of limitations. So they've done none of that work, and made no attempt to do it.

And they also for the Spanish-speaking ones made no attempt to have any certified translation to actually put into a usable form in this court as to what the English words are officially when they're spoken in Spanish. So for those reasons, none of those clips are relevant because they don't address anything that Mr. Ballard has been accused of doing.

And as to the one potentially remaining actual allegation in the complaint, this joint statement by the Spear Fund, it can't possibly be a basis of defamation because it has nothing specifically to do with anybody other than an actual event that actually did occur 10 years ago.

As far as actual malice, I did want to just address that briefly, because your Honor has asked about it. And if it becomes a crutch issue, I would suggest that you may want a little more briefing on it, but I'm familiar with what the rule is, just so I can put it in context.

You're asking about how can I possibly sit here today and have to find clear and convincing evidence of malice? In my understanding, and again, I can't cite you to a specific case, so I'll just tell you my understanding, and then if it makes a difference, we can submit authorities afterwards, but is that you do it from the prism of in essence a summary judgment

standard where you say okay, has there been enough evidence presented that a jury, based on admissible evidence before me today, could reasonably find by clear and convincing evidence that the actual malice standard has been met.

5 And in this case, there is almost no way that a 6 reasonable jury could find by clear and convincing evidence actual malice for at least two fairly obvious reasons. One is 7 we have the government, the Department of Homeland Security --8 9 ICE -- who themselves announced publicly that these things 10 happened, that there was a raid, that there were traffickers 11 arrested, and specifically in their announcement that one of 12 those traffickers arrested was Ms. Suarez.

13 So they identified her. Nobody in this courtroom 14 identified her. They identified her. And it's been a public 15 proceeding that she's being prosecuted for trafficking those 16 children. To this day she is still being prosecuted. So 17 clearly, any defendant in this case could have said 100 percent 18 accurately almost exactly what they have said. Ms. Suarez is a 19 trafficker, according to the Department of Homeland Security. 20 Ms. Suarez is a trafficker, according to the prosecutors in 21 Columbia.

So but for those missing words, it would be the same exact thing. And as plaintiffs themselves said, it has to be false in a way that matters. It's not false in a way that matters if we -- we could have been saying all along -- any

1 defendant in this courtroom could have been saying all along 2 exactly what Department of Homeland Security said, exactly what the prosecutors were saying, exactly what she's being prosecuted 3 4 for. 5 And so if they have said those same things in 6 different words, it can't be false in any way that matters. And 7 as Mr. Gutierrez pointed out, Ms. Suarez has already admitted that much of what has been portrayed about her is actually true. 8 9 She actually was there to participate in activities involving 10 underaged people being subjected to sex acts by adult men. I 11 don't have anything further, unless you have questions, your 12 Honor. 13 THE COURT: No. Thank you. 14 MR. EISENHUT: Thank you. 15 THE COURT: Counsel? 16 MR. MORTENSEN: Your Honor, this was -- Mr. Ballard 17 and Mrs. Ballard's motion was -- it was entitled special motion 18 under UPEPA. 19 Under UPEPA, when they file a motion to dismiss, if 20 you look at Rule 78B-25-107(1)(c)(i) it says in the ruling on a 21 motion under Section 78B-25-103, the court shall dismiss without 22 prejudice a cause of action -- a part of a cause of action if a 23 moving party establishes under Section 78-25 that this chapter 24 applies. It says the responding party fails to establish under 25

Section 78B-25-102 that this chapter does not apply, and then it says either the responding party fails to establish prima facie case as to each essential element of the cause of action.

We believe that it is prop -- that we are entitled to 4 5 go outside the pleadings at this juncture. And that's contemplated in 78-25-106 where it says in a ruling on a 6 7 motion -- on a motion under Section 78B-25-103, the court shall consider the pleadings, the motion, any reply or response to the 8 9 motion, and any evidence that could be considered in ruling on a 10 motion for summary judgment under Utah Rules of Civil Procedure 56, while giving the responding party all of the inferences 11 12 under Utah Rules of Civil Procedure Rule 12(b)(6). So not only 13 do we get -- are we entitled to present evidence, but we get all of the inferences under Rule 12(b)(6). 14

15 There's been some comment that we haven't 16 authenticated these statements. Again, it's a little bit 17 troubling because we filed a motion to do discovery to 18 authenticate. They opposed it, and now here we are. We 19 presented a prima facie case. Now we should be entitled to go 20 and authenticate these documents so that we can present them to 21 a jury.

Also, one of the issues that has come up is the ICE releasing that statement. We believe that discovery is going to show that Tim Ballard was responsible for that. I mean he had CBS already lined up.

1 The agent that he was working with -- and this is in our pleadings, in our briefing -- the agent that he was working 2 with has been convicted of corruption and is on the lam. 3 Clearly, we believe we're going to be able to show 4 5 that these media releases were part of -- were part of the plan 6 from Tim Ballard from the beginning. On that, we would submit 7 that the motion should be denied and we should proceed into discovery. 8 9 THE COURT: Thank you. MR. EISENHUT: May I briefly respond? 10 THE COURT: Sure. 11 12 Thank you. I just point out that I --MR. EISENHUT: 13 as far as I understand, they're admitting that what they're 14 arguing as far as prima facie evidence is outside the pleadings, 15 and is not in their complaint, and indeed they have to because 16 it is true. 17 I just want to make sure the Court is clear that the 18 statutes that accessory language that was just read does not 19 contradict what the cases say. This is from the Utah Stream 20 Access Coalition case. A tenant of our judicial system, a 21 tenant rooted in a core premise of our adversary system under 22 which parties plead and judges judge is that plaintiffs are the 23 masters of their complaint. Courts lack the power to 24 second-quess a party's pleading choices, and may not reinstate 25 rights that are forfeited because of those choices. Claims must

be restricted to the grounds set forth in the complaint. 1 That's from the Barton Woods Homeowner Association case. 2 And then UPEPA in the 104 section, so it's 3 75B-24-104(1)(a) says that everything is frozen in time once 4 5 this motion is made. Even though the Court would consider 6 evidence as is true, it's -- and can give inferences to evidence 7 as to whether or not it meets the appropriate standards or could meet the appropriate standards for a jury ultimately, it still 8 9 has to do so within the confines of what was alleged in the 10 complaint, not some imaginary reformation of the complaint, 11 which is clearly barred by the UPEPA anti-SLAPP statute. Thank 12 you. 13 THE COURT: Okay. Anything else? 14 MR. MORTENSEN: No, your Honor. 15 THE COURT: Thank you, everyone. I appreciate it. 16 We'll go ahead and go in recess. Obviously, I've got to give 17 you something in writing. I have to read the briefing on this 18 last motion that we just heard argued today. So thank you, and 19 we'll go ahead and be in recess. 20 MR. MORTENSEN: Thank you, your Honor. 21 MR. GUTIERREZ: Thank you, your Honor. 22 MR. EISENHUT: Thank you, your Honor.

(Proceedings concluded at 1:15:12.)

24 25

23

REPORTER'S CERTIFICATE

STATE OF UTAH)) COUNTY OF MILLARD)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That the foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers.

I further certify that this Reporter's Record of the proceeding truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof or offered into evidence.

I further certify that I am not interested in the outcome thereof.

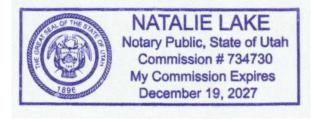
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 9th day of August, 2024.

My commission expires: December 19, 2027

Natalie Lake

Natalie Lake, CVR NOTARY PUBLIC Residing in Millard County



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ADDENDUM E

District Court Special Motion

Brennan H. Moss (10267) ARMSTRONG TEASDALE LLP 222 South Main Street, Ste. 1830 Salt Lake City, Utah 84101 Telephone: (801) 401-1600 Email: bmoss@atllp.com

This motion requires you to respond. Please see the Notice to Responding Party.

Thomas H. Bienert, Jr. (Cal. Bar No. 135311, Tn. Bar No. 040002)* Whitney Z. Bernstein (Cal. Bar No. 304917)* Alexis Paschedag Federico (Cal. Bar. No. 313392)* **BIENERT KATZMAN LITTRELL WILLIAMS LLP** 903 Calle Amanecer, Suite 350 San Clemente, CA 92673-6253 Telephone: (949) 369-3700 Facsimile: (949) 369-3701 tbienert@bklwlaw.com * *Pro Hac Vice to be filed*

Attorneys for Defendants Timothy Ballard and Katherine Ballard

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

KELY JOHANA SUAREZ MOYA, an individual; and LUZ MIRIAM MOYA SOLANO,

Plaintiffs,

VS.

TIMOTHY BALLARD, an individual; KATHERINE BALLARD, an individual; et al.,

Defendants.

TIMOTHY BALLARD'S SPECIAL MOTION FOR EXPEDITED RELIEF TO DISMISS THE FIRST AMENDED COMPLAINT UNDER UTAH'S UNIFORM PUBLIC EXPRESSION PROTECTION ACT ("UPEPA") CODE § 78B-25-101, ET SEQ. AND REQUEST FOR HEARING

Case No.: 240901556

Judge Robert Faust

MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Tim Ballard ("Mr. Ballard") moves pursuant to Utah's anti-SLAPP law, known as the Uniform Public Expression Protection Act, Utah Code Ann. § 78B-25-101, et seq. ("UPEPA") for dismissal of Plaintiffs' (Kely Johana Suarez Moya ("Kely") and Luz Miriam Kely Solano ("Solano")) First Amended Complaint ("FAC") with prejudice. Mr. Ballard also moves for his attorneys' fees, costs, and expenses related to this motion. *Id.* § 78B-25-110. Mr. Ballard further requests an expedited hearing within sixty (60) days as required under UPEPA, § 78B-25-101.

INTRODUCTION

On October 13, 2014, the U.S. Immigration and Customs Enforcement Agency publicly announced: "An international undercover law enforcement operation culminated Saturday with the arrests of 12 individuals involved in sex trafficking and the rescue of 55 sex trafficking victims, all minors." *See T. Ballard* Decl., ¶ 4, Ex. A ("ICE Press Release"). "Victims were as young as 11 years old." *Id.* The announcement confirms Plaintiff Kely was one of the arrestees, and that she and others "face charges for human trafficking of minors, pimping and pandering." *Id.* Importantly, the announcement further recites as follows:

"It's unconscionable that people engage in the sexual trafficking of innocent children," said HSI Colombia Attaché Luis Sierra. "Through this successful bilateral operation, the U.S. and Colombia are sending a clear message that we will go to any length to identify and catch the monsters that exploit our vulnerable children."

Id. Mr. Ballard participated in that operation. (E.g., FAC ¶¶ 114, 118-131, 145-46, 148). Plaintiff Kely, an adult, admits: she "got on the small boat" to go to the party where the arrests occurred, with children as young as 13 (whom disingenuously she refers to as "young adults") (FAC ¶ 152); she was present with the children at the party when the raid occurred (FAC ¶¶ 178-79); she attended multiple pre-party planning meetings (FAC ¶¶ 145, 148-149); and at one of these meetings, Kely asked undercover agents posing as sex tourists to "be delicate with" a young girl (FAC ¶ 151). While Kely attempts to re-cast what she was doing at those meetings (purportedly merely offering herself for prostitution and not trafficking kids (FAC ¶ 143)), her "be delicate" statement is

captured on video and is damning: it clearly shows her laughing along with other traffickers, telling the undercover agents to be "delicate" when having sex with the little girls. T. Ballard Decl., \P 9. Kely's 2014 arrest, incarceration, and prosecution has been widely publicized by various news agencies. FAC \P 42.

In the FAC, Kely and her mother, Plaintiff Solano, have sued Tim Ballard for defamation and related causes of action. Although Plaintiffs use 378 numbered paragraphs to make false, salacious, and wholly irrelevant allegations involving Mr. Ballard, ultimately, their claims against Mr. Ballard are based on the following inactionable conduct:

- Mr. Ballard's in-court testimony against Plaintiff Kely (which is privileged and subject to absolute immunity) (FAC, ¶ 80);
- A photo of Mr. Ballard at Kely's trial he allegedly posted on social media that does not show or mention Plaintiff Kely (FAC ¶ 81);
- 3. Mr. Ballard was somehow responsible for her alleged portrayal in Sound of Freedom (*SOF*) which defamed her by portraying her as a sex trafficker (*see, e.g.*, FAC ¶ 314);
- 4. Mr. Ballard's 2023 joint statement (the "Spear Fund Joint Statement")—made almost a decade *after* Kely's arrest for child sex trafficking—that mentions children rescued from "evil and conspiring traffickers" but does not name Kely (FAC ¶ 322).

The UPEPA protects against meritless, strategic lawsuits against public participation ("SLAPP") like this one designed to dissuade citizens from speaking on matters of public concern. As more thoroughly discussed below, Plaintiffs' claims are meritless SLAPPs which must be dismissed with prejudice, and costs and fees awarded, pursuant to the UPEPA.

ARGUMENT

I. Utah's UPEPA is a newly enacted and broadly constructed anti-SLAPP statute.

On May 3, 2023, the Utah Legislature formally adopted the UPEPA, via Utah Code § 78B-25-101 *et seq*. It is to "be broadly construed and applied to protect the exercise of the right of freedom of speech" *Id*. § 78B-25-111. UPEPA requires a three-step process. *First*, once the moving party establishes that UPEPA applies to the action, the responding party must establish a statutory exception applies. *See* Utah Code §§ 78B-25-102(2)-(3), 107(1)(a)-(b). *Second*, if a statutory exception does not apply, the responding party must "establish a prima facie case as to each essential element of the cause of action." *See* Utah Code §§ 78B-25-107(1)(c)(i). To do so, the responding party must provide evidence that, if taken as true, would sustain a judgment in favor of the responding party. *See* National Conference of Commissioners on Uniform State Laws, Uniform Public Expression Protection Act, October 2, 2020 Report, "Uniform Public Expression Protection Act," attached as Ex. A to Moss Decl. (hereafter "UPEPA Report"), § 7, Cmt. 4. If the responding party fails to meet its burden, the court must dismiss the respective causes of action with prejudice. Utah Code §§ 78B-25-107(1)(i); *see also Dimension Townhouses*, 2024 WL 226768, at *5. *Third*, if the responding party meets its burden, the burden shifts back to the moving party to establish the claim is not legally viable—*i.e.*, responding party has failed to state a cause of action or the moving party is entitled to judgment as a matter of law. Utah Code §§ 78B-25-107(1)(i); *see also* UPEPA Report § 7, Cmt. 5.

II. Utah's UPEPA applies to all claims against Mr. Ballard.

Mr. Ballard easily meets his initial burden of showing that the UPEPA applies. The UPEPA "applies to a cause of action asserted against a person based on the person's. . . exercise of the right of freedom of the speech . . . on a matter of public concern." *See* Utah Code § 78B-25-102(2)(c). Mr. Ballard need not prove that Plaintiffs have violated his constitutional rights or that his statements were protected by the First Amendment—*only that Plaintiffs' suit arises from Mr. Ballard's exercise of free speech rights on a matter of public concern. See Mullen v. Meredith Corp.*, 271 Or. App. 698, 705–06 (2015); UPEPA Report § 7, Cmt. 2. Plaintiffs' claims against Mr. Ballard are based entirely on alleged conduct protected by the UPEPA.

A matter is of "public concern" when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," or "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011); *Keisel v. Westbrook*, 2023 UT App 163, ¶ 36, 542 P.3d 536 (same); *DeHart*

v. Tofte, 326 Or. App. 720, 742, 533 P.3d 829, 843, *review denied*, 371 Or. 715, 539 P.3d 787 (2023) (finding discussions involving people in the public eye and topics "having received local, statewide, and national media attention" were of public interest); *Wayment v. Clear Channel Broad., Inc.*, 2005 UT 25, ¶ 36, 116 P.3d 271. Sexual misconduct allegations are issues of public concern. *See, e.g., Wahab v. Wahab*, 2023 WL 5035662, at *7 (D. Or. Aug. 8, 2023); *Smith v. Compton*, 2023 WL 4291672, at *8 (C.D. Cal. Feb. 15, 2023).

As set forth above, the only conduct Mr. Ballard directed towards Kely were his alleged defamatory statements, taking the form of trial testimony, a picture posted on social media, a film, and a press release—each of which Kely claims harmed her by mentioning her involvement in child trafficking.

There can be no dispute that these statements involved a matter of public concern because child trafficking itself and Ms. Kely's involvement in particular are "of general interest and of value and concern to the public." Snyder v. Phelps, 562 U.S. 443, 453 (2011). Anti-child trafficking is, of course, a matter of public concern generally and particularly with respect to Plaintiff Kely, Plaintiffs admit that after her arrest "[t]he worldwide press went crazy with the news" (FAC ¶ 42). Indeed, the FAC is rife with citations to new articles discussing Kely's arrest and involvement in child trafficking leaving no doubt these are quintessential issues of public concern. See FAC ¶ 43 (citing news article); May 3, 2024 SOF Defendants Special Motion, Declaration of Robert S. Gutierrez ("Gutierrez Decl.") Ex. 6 ("One of the arrested people is a public figure: Kelly Johana Suárez Moya, popular sovereign of La Heroica. The press on the Caribbean coast knew her well"); Gutierrez Decl. Ex. 8 ("The former beauty queen of Cartagena, Kelly Johana Suárez Moya ... contacted minors to offer them sexually to foreigners through the modeling agency called Stage Models."); Gutierrez Decl. Ex. 9 ("Sources from the Prosecutor's Office reported that Kelly Johana Suarez Moya . . . took advantage of her status as a popular leader in the neighborhoods, as well as her profession as a model to recruit girls and boys who were then sexually exploited."); FAC ¶¶ 44, 184 (images of additional articles). See Snyder, 562 U.S. at 453; DeHart, 326 Or. App. at 742.

Mr. Ballard's statement is exactly the kind of commentary about a subject of general interest and public value that the UPEPA is meant to protect, and no exception to the UPEPA applies. *See* Utah Code § 78B-25-102(3). Plaintiffs, therefore, must "establish a prima facie case as to each essential element of the cause of action." *Dimension Townhouses*, 2024 WL 226768, at *5; *see also* Utah Code § 78B-25-107(1). They cannot do so.

III. Plaintiffs fail to state any claim against Mr. Ballard.

A. Mr. Ballard's testimony is absolutely privileged and outside Utah's one-year statute of limitations.

Mr. Ballard's testimony is privileged and cannot serve as a basis for any claim against him. "[F]alse and defamatory statements are not actionable if they are protected by a legal privilege. A number of legal privileges are recognized in circumstances where communication must be wholly open, frank, and unchilled by the possibility of a defamation action. This is so even though the reputation of a person may be harmed by such statements" *DeBry v. Godbe*, 1999 UT 111, ¶ 10, 992 P.2d 979. Mr. Ballard's testimony provided at Kely's ongoing criminal trial is absolutely privileged. A witness enjoys absolute immunity against defamation for statements made in a judicial proceeding, as long as the statements reference the subject matter of the proceeding. *Pratt v. Nelson*, 2007 UT 41, ¶ 28, 164 P.3d 366, 376.

In order to establish absolute immunity under the judicial proceeding privilege, the "statements must be (1) 'made during or in the course of a judicial proceeding'; (2) 'have some reference to the subject matter of the proceeding'; and (3) be 'made by someone acting in the capacity of judge, juror, witness, litigant, or coursel."

Id., (quoting *DeBry*, ¶ 11, and *Price v. Armour*, 949 P.2d 1251, 1256 (Utah 1997)). Plaintiffs' allegations establish these elements as to Mr. Ballard's testimony, *i.e.*, he was a witness who testified in court "about Plaintiff [Kely's] alleged trafficking activities in order to have Plaintiff [Kely] convicted." FAC ¶ 80.

Further, the statute of limitations for defamation is one year (Utah Code § 78B-2-302), which "begins to run when the defamatory statement 'is known or is reasonably discoverable by the plaintiff." *Pliuskaitis v. USA Swimming, Inc.*, 243 F. Supp. 3d 1217, 1228 (D. Utah 2017)

(quoting *Allen v. Ortez*, 802 P.2d 1307, 1314 (Utah 1990)). Thus, even if Mr. Ballard's testimony was not privileged, Plaintiffs cannot recover based on testimony prior to February 23, 2023. They have failed to identify any defamatory statements Mr. Ballard made in Court within the statute of limitations (or at any time whatsoever); nor have they attempted to explain why they think that any specific statement Mr. Ballard made is untrue. *See* Ballard Decl., \P 6.

B. Mr. Ballard's alleged photo was posted outside of the statue of limitations.

As discussed below, a "statement" that is not directed at a plaintiff is not defamatory as a matter of law and cannot serve as a basis for a speech-related tort claim. The photo showing Mr. Ballard at Kely's trial does not show or mention Plaintiff Kely and thus cannot defame her; nor have Plaintiffs identified any false statement attributable to the photo. *See* FAC ¶ 81 (showing that Mr. Ballard is indeed wearing a bullet proof vest as the photo allegedly claims). The photo was also posted over a year ago, and is thus barred by the statute of limitations. T. Ballard Decl., ¶ 7.

C. Plaintiffs fail to state a claim and will not establish a prima facie case for defamation based on the Spear Fund Joint Statement.

The Constitutions of the United States and Utah broadly protect an individual's right to free speech. *See* U.S. Const. Amend. I (applicable to state governments via the Fourteenth Amendment (*see id.* Amend. XIV)); Utah Const. art. I, §§ 1, 15. State law cannot permit plaintiffs to bring causes of action that impair state or federal constitutional freedom of expression. *West v. Thomson Newspapers*, 872 P.2d 999, 1004 (Utah 1994). Accordingly, defamation and other speech-based tort claims must meet First Amendment strictures. *Keisel*, 2023 UT App 163, ¶ 70.

To establish a prima facie case for defamation, the plaintiff must show that (1) the defendant published statements, (2) the statements were false, (3) the statements were not subject to a privilege, (4) the defendant published the statements with the required degree of fault, and (5) the statements caused damages. *Jacob v. Bezzant*, 2009 UT 37, ¶ 21, 212 P.3d 535, 543–44. The Court can determine as a matter of law whether a statement is defamatory considering the context in which it was made. *Spencer v. Glover*, 2017 UT App 69, ¶ 5, 397 P.3d 780 (whether a statement is defamatory is a legal question).

1. Mr. Ballard did not publish actionable statements.

Plaintiffs cannot state a claim based on the Spear Fund Joint Statement, because it does not identify Kely or any other trafficker. To the extent Kely identifies as one of the "evil and conspiring traffickers" nothing about this statement singles out Kely from the group. *See Pratt v. Nelson*, 2007 UT 41, ¶ 54, 164 P.3d 366 (finding no liability when the statements "merely referred generally to large groups of people [such as] 'the Kingston Polygamist Family,' 'leaders of the Kingston Organization,' and 'the people we are bringing this lawsuit against'"). Kely was one of over ten people arrested in connection with the rescue operation in Colombia, some of whom she admits are child traffickers. *See* FAC ¶ 41; ICE Press Release.

Additionally, the film *Sound of Freedom* ("*SOF*"), which was mentioned in the Spear Fund's Joint Statement, never identifies a real-life trafficker or mentions Kely's name. *See* Monteverde Declaration, submitted with SOF Defendants' Motion, ¶¶ 6, 9. *SOF* is a "fictional story based on Mr. Ballard's work to combat child traffickers." *Id.* Had Monteverde intended for *SOF* to portray the actual truth, he would have written a documentary. *Id.* ¶ 7. No allegation in the FAC suggests Mr. Ballard ever used Kely's name or did anything to connect the alleged statement with Kely specifically. Nor did the writers of *SOF* intend for a character in *SOF* to portray Kely. *Id.* ¶ 12. Because Kely cannot show the Spear Fund Joint Statement was directed at her, she cannot state a legal claim based on it. *See CVB, Inc. v. Corsicana Mattress Co.*, 604 F. Supp. 3d 1264, 1304-06 (D. Utah 2022), *appeal dismissed sub nom. CVB, Inc. v. Elite Comfort Sols., Inc.*, 2023 WL 9023333 (10th Cir. July 19, 2023)(applying Utah law)(defamatory statements did not mention defendant or "make it plausible that the statement[s]" referred to defendant).

2. Mr. Ballard did not make false statements.

Plaintiff Kely points the finger at a third party, alleging she "had been confused for 'Naty'," and it was "Naty" rather than Plaintiff Kely who was "involve[d] in planning the party, [and] obtaining the young adults" (refusing, even in her FAC, to acknowledge that children as young as 11 years old were victimized). FAC ¶ 181. Whether or not Kely was one of the "evil and conspiring traffickers," Kely does not attempt to refute what the U.S. Government itself announced in 2014

when the sting operation occurred: "An international undercover law enforcement operation culminated Saturday with the arrests of 12 individuals involved in sex trafficking *and the rescue of 55 sex trafficking victims, all minors... Victims were as young as 11 years old.*" *See* ICE Press Release (emphasis added). Mr. Ballard's statement that "children were rescued from evil and conspiring traffickers" is therefore true as a matter of law.

Moreover, while Kely alleges she "has never been convicted of anything," she fails to acknowledge that she is a defendant in an ongoing trial in Cartegena, Colombia whereby she is accused of "Induction into Prostitution, Pimping with a Minor." Moss Decl., ¶ 4, Ex. B. This is the same proceeding in which Kely claims Mr. Ballard offered testimony against her. FAC ¶ 80.

This trial is still ongoing and there have been multiple evidentiary hearings (including testimony by Mr. Ballard, as Kely notes), spaced months apart, with the most recent having occurred on February 22, 2024, and the next sessions scheduled to occur on June 25, June 27, and July 2, 2024. *Id.* In the most-recent proceeding, video of which is available publicly at the footnote link,¹ video evidence was displayed showing Plaintiff Kely's participation in a meeting whereby she offered minors for sexual exploitation, resulting in her arrest. Moss Decl., ¶ 4; T. Ballard Decl., ¶ 5, and *see* video starting at 13:20 via Fn. 2 link. She can be seen in another video disusing the planned sexual abuse of little girls, with Kely eating, laughing, and enticing the undercover agents by suggesting they need to be "delicate" with the young girls. T. Ballard Decl., ¶ 9.

3. Mr. Ballard did not make statements with actual malice.²

a. <u>Kely is a Limited Purpose Public Figure in this controversy.</u>

Kely inserted herself into the public controversy surrounding child sex trafficking and safety of underage youth. Prior to her arrest, Kely was well-known in her area as a performer, beauty pageant contestant, and "a popular leader in the neighborhoods." Gutierrez Decl. (Dkt. 79) Ex. 9. With her local fame and popularity, she publicly addressed issues facing children and youth

 $^{1\} https://playback.lifesize.com/\#/publicvideo/c1836a35-48d7-4931-84e3-ffb2be776fdc?vcpubtoken=5ee037a5-4597-4809-8f02-b10eecede9af$

² Kely's Invasion of Privacy for False Light claim also requires a "highly offensive" or defamatory statement made with actual malice. *Stien v. Marriott Ownership Resorts, Inc.*, 944 P.2d 374, 380 (Utah Ct. App. 1997).

in her community. During a 2013 pageant, she publicly stated, "I care about at-risk youth in my community and I plan to work on campaigns to raise awareness." *Id.*, Ex. 4. In an interview with Al Día newspaper in 2013, she expressed worry about "the high rates of young people at risk and the increase in pregnant teenagers" in Cartagena. *Id.*, Ex. 5. With her pre-existing public status, popularity, and claimed desire to help the youth in her area, her arrest for child sex trafficking garnered national attention. Multiple news articles were written about her alleged involvement in the child sex trafficking ring. *See id.*, Exs. 4-12.

Additionally, when she was later released from prison (pending the outcome of her ongoing criminal trial), Kely immediately gave a press conference to discuss the allegations. Multiple news outlets published articles detailing Kely's statements about her innocence, information about the sting operation that resulted in her arrest, and her future dreams and career aspirations. *Id.*, Ex. 7, 11, 12. Kely then continued to use her platform to connect with and inspire youth in her community. In one article published after her release, Kely is quoted as saying, "My advice to all those girls is to believe in them[selves] and to fight for their dreams, not to get carried away by all the bad things that may be happening to them[.]" *Id.*, Ex. 10.

Limited purpose public figures ("LPPFs") are "individuals who have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved [and] become public figures for the limited range of issues associated with those controversies." *Wayment*, 2005 UT 25, ¶ 22 (internal quotes and citations omitted). To determine whether an individual is an LPPF, Utah courts first "isolate the specific public controversy related to the defamatory remarks." *World Wide Ass 'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1137 (10th Cir. 2006). Second, courts determine whether the plaintiff has thrust herself to the forefront of said controversy "in order to influence the resolution of the issues involved." *Id.*

Pursuant to this test, a plaintiff who "intentionally sought or obtained a position of influence with respect to th[e] controversy" is elevated from a private citizen to an LPPF. *Davidson v. Baird*, 2019 UT App 8, ¶¶ 40-41, 438 P.3d 928. A party may also become an LPPF by virtue of their participation in, or connection to, criminal activity. *See Russell v. Thomson Newspapers*, 842 P.2d

896, 903, n.20 (Utah 1992) ("[C]ircumstances do exist that warrant imposition of limited public figure status upon a "criminal plaintiff," such as whether the crime committed is a public controversy and whether the nature and extent of the plaintiff's participation in the controversy was enough to cause him or her to become a public figure.").

Additionally, one may become an LPPF by making public statements about the controversy at issue. In *SCO Group, Inc. v. Novell, Inc.*, the plaintiff was an LPPF in the public controversy concerning the ownership of the operating system UNIX because plaintiff "made a number of public statements, through press releases and other means, and actively sought media coverage to air its position on these issues." 692 F. Supp. 2d 1287, 1296 (D. Utah 2010). Similarly, in *World Wide Association of Specialty Programs*, an association that promoted schools for troubled teens was "a limited purpose public figure with respect to the public controversy of 'how to deal with troubled teens" because it had given dozens of media interviews on the issue, and had promoted behavior modification techniques by affiliated schools. 450 F.3d 1132, 1136-37 (10th Cir. 2006).

Kely is an LPPF in the public controversy surrounding child sex trafficking. First, the specific public controversy related to the purported defamatory remarks is "sex trafficking," and how governments, organizations, and individuals should deal with the problem.³ This multi-faceted controversy includes debates regarding the "causes of and solutions to human trafficking, the effectiveness and impact of anti-trafficking laws, and anti-trafficking discourses—the ways the issues get framed and talked about."⁴

Second, before and after her arrest, Kely has thrust herself into the forefront of this controversy. She used her public popularity to address these very issues, including in 2013 addressing concerns about "at-risk youth" and wanting "to raise awareness" about such issues. And post-arrest, as in *SCO Group, Inc.*, and *World Wide*, Kely's press conference and other media interviews where she proclaimed her innocence and addressed the sex-trafficking sting operation,

³ See, e.g., Carrie N. Baker, An Examination of Some Central Debates on Sex Trafficking in Research and Public Policy in the United States, SMITH SCHOLARWORKS 3, (2015) https://scholarworks.smith.edu/cgi/viewcontent.cgi?article=1008&context=swg_facpubs.

 $^{^4}$ Id. at 3.

establish that she intentionally thrust herself into the controversy surrounding her arrest for child sex trafficking. Likewise, as in *Davidson*, Kely's pre-arrest actions (traveling with underage youth to a party where she knew they would be sexually exploited) and the controversy surrounding the sex party are more than sufficient to establish that Kely is an LPPF in the controversy regarding child sex trafficking. *See also Russell*, 842 P.2d at 903 n.20 (concluding that a plaintiff may become a public figure for their alleged participation in a crime). Kely is an LPPF.

b. <u>Kely cannot establish "Actual Malice."</u>

As an LPPF, Kely must (but cannot) establish, by clear and convincing evidence, that Mr. Ballard published purportedly defamatory statements about her with "actual malice"— i.e., "with knowledge that [the statements were] false or with reckless disregard of whether [they] were false or not." *Wayment*, 2005 UT 25, ¶ 19 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 282 (1964)) "Reckless disregard" for the truth means "that the defendant actually had a high degree of awareness of probable falsity." *Revell v. Hoffman*, 309 F.3d 1228, 1233 (10th Cir. 2002) (quoting *Harte-Hanks Commc 'ns v. Connaughton*, 491 U.S. 657, 688 (1989)). "[M]ere failure to investigate cannot establish reckless disregard for the truth." *Id*. Rather, there must be "sufficient evidence to permit the conclusion that the defendant in fact *entertained serious doubts* as to the truth of his publication." *Davidson*, 2019 UT App 8, ¶ 42 (cleaned up) (emphasis added)).

In the FAC, none of the allegations meets the requirements that Mr. Ballard "in fact *entertained serious doubts* as to the truth" of their alleged publications." *Davidson*, 2019 UT App 8 at ¶ 42. To the contrary, Mr. Ballard only made statements about Kely that he was convinced were true. T. Ballard Decl., ¶ 7. Mr. Ballard was actually involved in the investigation; attended meetings in which Kely and others offered to pimp children for sex; viewed recordings of Kely participating in such meetings; and was present on the island during the 2014 raid when Kely was arrested for child sex trafficking. T. Ballard Decl., ¶¶ 2-5. Mr. Ballard had no reason to believe anything other than what still to this day is likely true: that Kely was arrested on the island because she participated in sexual trafficking of minors. T. Ballard Decl., ¶ 7. At the very least, Mr. Ballard made his statements with a good-faith belief in their accuracy—and "[a] statement made with a

good-faith belief in its accuracy is not a statement made with actual malice." *Davidson*, 2019 UT App at ¶ 51, 438 P.3d at 944. Plaintiffs cannot point to any evidence to the contrary because no such evidence exists. Because Plaintiffs cannot make a prima facie showing of actual malice, their defamation claim fails as a matter of law. *See id.* at ¶ 51, 438 P.3d at 944.

D. Plaintiffs' other speech-based torts are also barred and independently fail.

1. All other torts fail because Mr. Ballard's statements are not defamatory.

Because Mr. Ballard's statements are not defamatory, they cannot serve as the basis for other torts. No matter how they are styled, claims that are speech-based and seek defamation-type damages are subject to First Amendment requirements. *Keisel*, 2023 UT App 163 ¶ 70. "A plaintiff may not attempt an end-run around First Amendment strictures protecting speech by instead suing for defamation-type damages under non-reputational tort claims." *Id.* ¶ 70 (citing *Allen v. Beirich*, 2019 WL 5962676, at *5 (D. Md. Nov. 13, 2019).

Each of Plaintiffs' remaining causes of action is necessarily based on the same nonactionable statements by Mr. Ballard that form the basis of the defamation claim *because these are the only acts Mr. Ballard allegedly directed at Kely. See, e.g.*, FAC ¶¶ 356 & 362 (emotionaldistress claims based on "conduct of the Defendants, as set forth herein"); ¶¶ 367-68 (false-light claim based on "publicity . . . as set forth herein").

As disused above, Mr. Ballard's statements are not defamatory and therefore the Court must dismiss the other speech-based claims against him—which is every cause of action.

2. Plaintiffs' IIED claim fails for additional reasons.

First, as discussed above, Plaintiffs fail to plead any facts showing Mr. Ballard intentionally directed any outrageous conduct towards either of them. *See Keisel*, 2023 UT App 163, ¶ 73. The FAC also fails to include any allegations that Mr. Ballard made his statements "for the of *purpose* inflicting emotional distress." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 27, 21 P.3d 198, *partially abrogated on other grounds*, 2021 UT 18, ¶ 27, 491 P.3d 852 (emphasis in original). And there are no allegations that Mr. Ballard intended his statements to

inflict injury to Kely's mother and therefore she cannot recover on her IIED claim which is premised solely on Mr. Ballard's alleged statements about her daughter. *Hatch v. Davis*, 2006 UT 44, ¶ 27, 147 P.3d 383.

Second, Mr. Ballard's statement was not outrageous as a matter of law. Porter v. Staples the Off. Superstore, LLC, 521 F. Supp. 3d 1154, 1161 (D. Utah 2021). Even if conduct is tortious, injurious, or malicious (none of which are the case here), it must be more to be "outrageous." *Id.* Even if the Spear Fund Joint Statement referred to Kely, liability "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Merriam v. Peak Rest. Partners*, 2016 WL 11812621, at *2 (D. Utah May 6, 2016) (citing Restatement (Second) of Torts § 46 cmt. D (1965). Calling a party on trial for child sex-trafficking "evil" is not outrageous.

Third, Plaintiffs fail to allege causation or damages arising from the Spear Fund Joint Statement. The 2023 statement did not cause Kely's 2014 incarceration, her ongoing criminal prosecution, or her associated legal fees. *Cf.* FAC ¶¶ 357-358; 363-364. Nor has either Plaintiff sufficiently alleged severe emotional distress. *Mower v. Baird*, 2018 UT 29, ¶ 57, 422 P.3d 837. Bare allegations of stress, anxiety, and depression are not enough—the experience must be "the sort that leaves the average person unable to cope with daily life." *Snow v. Chartway Fed. Credit Union*, 2013 UT App 175, ¶ 15, 306 P.3d 868. Neither Plaintiff has alleged severe emotional distress, much less distress attributable to Mr. Ballard.

3. Plaintiffs' NIED claims fail for additional reasons.

An NIED claim has similar elements to an IIED claim. *See Keisel*, 2023 UT App 163, ¶ 74. The allegedly offending conduct must have caused severe emotional distress, and while Plaintiffs need not allege outrageous conduct, they must still allege that the misconduct is "severe; [and] it must be such that a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case." *Id.* ¶ 74 (citing *Mower*, 2018 UT 29 ¶ 57). As discussed above, Plaintiffs cannot make this showing.

Moreover, a person is not liable for the negligent infliction of emotional distress, unless the injured party suffered accompanying physical injury (not the case here) or the injured party was in the physical "zone of danger" (also not the case here). *Mower*, 2018 UT 29, ¶¶ 75–85. None of the "very limited" exceptions to this rule exist and thus Plaintiffs' claims fail as a matter of law. *See A.W. v. Marelli*, 2024 UT App 8, ¶ 20, 543 P.3d 786.

4. Mr. Ballard's statement does not use Kely's name or likeness.

Likewise, the seventh claim for "misappropriation of Plaintiff Kely's Name and Likeness" (FAC ¶ 374), cannot stand as to Mr. Ballard. Nothing in the Spear Fund Joint Statement uses Kely's name or likeness. Moreover, "the value of the plaintiff's name is not appropriated by mere mention of it, or by reference to it in connection with legitimate mention of [her] public activities." *Cox v. Hatch*, 761 P.2d 556, 565 (Utah 1988).

5. *Mr. Ballard's statement did not slander Kely's title to anything.*

A claim for "injurious falsehood" is actually one for slander of title. *Jack B. Parson Companies v. Nield*, 751 P.2d 1131, 1134 (Utah 1988). Plaintiffs do not make any allegations that Mr. Ballard published "untrue material that is disparaging to [Plaintiffs'] title." *See id.* Rather, it's simply a retread of the defamation claim. *See* FAC ¶ 341 ("Defendants have published statements about the Plaintiff [Kely] which were false and defamatory.").

E. Allegations relating to *Sound of Freedom*.

Finally, many of Plaintiffs' allegations refer to the SOF film directly. To the extent the FAC somehow seeks to impute the film to Mr. Ballard, he adopts and incorporates by reference the arguments made by the "SOF Defendants" in their May 3, 2024 Special Motion. Moreover, for the reasons stated in Section III.D., *SOF* likewise cannot serve as the basis for any speech based tort.

IV. Mr. Ballard is entitled to his attorneys' fees and costs.

When the moving party prevails on a special motion, UPEPA requires that the Court dismiss the cause of action with prejudice and award attorneys' fees and expenses. Utah Code Ann.

§ 78B-25-110. Because Mr. Ballard has demonstrated that UPEPA applies and that Plaintiffs' claims should be dismissed, she is entitled to an award of her attorneys' fees and expenses.

CONCLUSION

For the above reasons, Mr. Ballard respectfully requests that the Court dismiss all claims against him with prejudice and award him attorneys' fees and costs related to this motion.

DATED this 15th day of May, 2024.

ARMSTRONG TEASDALE LLP

<u>/s/ Brennan H. Moss</u> Brennan H. Moss

BIENERT KATZMAN LITTRELL WILLIAMS LLP

Thomas H. Bienert, Jr. Whitney Z. Bernstein Alexis Paschedag Federico

Attorneys for Defendants Timothy Ballard and Katherine Ballard

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2024, I caused a copy of the foregoing to be served on all counsel of record via the Court's Electronic Filing System.

/s/ Shelby Irvin

Notice to responding party

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

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

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

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

See the court's Motions page for more information about the motions process, deadlines and forms: utcourts.gov/motions



Finding help

The court's Finding Legal Help web page (utcourts.gov/help) provides information about the ways you can get legal



help, including the Self-Help Center, reducedfee attorneys, limited legal help and free legal clinics.

Aviso para la parte que responde

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

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

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

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

Vea la página del tribunal sobre Mociones para

encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios:



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tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.