

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

PEN AMERICAN CENTER, INC., ET AL., PLAINTIFFS, VS. ESCAMBIA COUNTY SCHOOL BOARD, DEFENDANT.	CASE NO.: 3:23-CV-10385-TKW- ZCB
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PLAINTIFFS' RESPONSE TO
NOTICE OF SUPPLEMENTAL INFORMATION
REGARDING PLAINTIFFS' MOTION FOR SANCTIONS

Pursuant to the Court's Order dated September 2, 2025 ("Order") (Dkt. 222), Plaintiffs hereby file their response to Defendant's Notice of Supplemental Information Regarding Plaintiffs' Motion for Sanctions ("Notice") (Dkt. 220). Plaintiffs respectfully suggest that the Motion for Sanctions should be held in abeyance pending the production of documents and additional information by Defendant, as described below. At that time, as Defendant suggests, the parties can provide additional information to the Court about the factual developments and their impact on the pending Motion for Sanctions. *See* Notice at 3.

At this juncture, Plaintiffs have no way of assessing whether, and to what extent, the recovery of data has obviated the underlying spoliation or to assess Defendant's good faith effort to have negated the need for a motion for sanctions in the first instance.

Defendant's Notice is notable for what it does not say:

- Whether all of the responsive information has been recovered from Mr. Adams' cell phone? The Notice refers only to "relevant data" being recovered. Notice at 1.
- Who recovered the "relevant data" that was recovered (the ESI vendor? Ms. Duquette? Someone else?)? The Notice states only, in the passive voice, that "relevant data was able to be recovered." Notice at 1-2.
- How was the "relevant data" recovered? The Notice explains that the attempted forensic collection of the data was unsuccessful but says nothing about how "relevant data" was "uploaded to a Google drive." Notice at 1-2.
- Why had the Board not taken any of these steps nearly a year ago, when they first allegedly learned about the submerged cell phone? *See* Dkt. 148 at 6 (Board learned of submerged cellphone in October 2024).
- What other steps, if any, has the Board taken to ascertain whether the data on the phone could be recovered? *See* Dkt. 148 at 6 ("the data from his old cell

phone has not been able to be recovered”); Dkt. 196 at 4 (same); Dkt. 148-1, ¶¶ 5-6 (describing two inquiries by Mr. Adams regarding recovering data).

Defendant should be directed to answer the above questions setting forth the who, what, where, when, and how of the data recovery to enable Plaintiffs and the Court to better assess the impact of the data recovery on the pending Motion for Sanctions. Specifically, Defendant should be directed to explain (i) whether all data was recovered from the submerged phone; if so, how Defendant knows that; and if not, what was the scope of data recovered; (ii) how the data was recovered; (iii) by whom the data was recovered; and (iv) what steps, if any, Defendant took to ascertain the recoverability of the data other than the two inquiries described in Mr. Adams’ declaration (Dkt. 148-1). Defendant should be required to provide this information under oath, by means of declarations from relevant individuals with personal knowledge of the facts at issue, rather than the characterizations of counsel included in the Notice.

With the answers to these questions, and with the supposed forthcoming production of additional documents from Mr. Adams’ phone, Plaintiffs will be in a more informed position to respond to the Court’s inquiry as to the impact of these developments on the Motion for Sanctions. *See* Order (Plaintiffs to “advise what impact, if any, it has on their motion for sanctions”).

For the above reasons, Plaintiffs request that the Motion for Sanctions be held in abeyance and that the parties be provided an opportunity to further respond to the Court's Order after Defendant produces the documents recovered from Mr. Adams' phone and the information requested above.

Respectfully submitted,

Dated: September 4, 2025

/s/ Ori Lev

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