IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

LARRY KLAYMAN

Plaintiff,

v.

HILLARY RODHAM CLINTON,

and

WILLIAM JEFFERSON CLINTON,

and

THE CLINTON FOUNDATION
a/k/a The William J. Clinton Foundation
a/k/a The Bill, Hillary & Chelsea Clinton Foundation
1271 Avenue of the Americas, 42nd Floor
New York, New York 10020
Service: Chairman Bruce Lindsey or Vice-Chairman
Chelsea Clinton Mezvinsky (neé Chelsea Victoria Clinton)

Defendants.

Civil Action No.: 9:15-cv-80388

TRIAL BY JURY DEMANDED

REQUEST FOR ORAL ARGUMENT[1]

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PREJUDGMENT ATTACHMENT OF COMPUTER EMAIL FILE SERVER

I. INTRODUCTION AND SUMMARY

This claim under the Racketeer Influenced and Corrupt Organization ("RICO") Act alleges that the Defendants operated a RICO criminal enterprise with the objective of enriching themselves by trading U.S. Government action, decisions, policy changes, influential statements, and favors in return for donations from persons, companies, and countries who benefit in various

[1] Plaintiff will be in Florida from April 16, 2015 to April 19, 2015 and requests a hearing at this time.

ways being channeled to a private foundation and/or speaking fees in the amount of $100,000 to $225,000 or more for one night's appearance.

In this motion, Plaintiff seeks material evidence that is in imminent danger of being lost which will document the predicate acts and major crimes. Now, the Plaintiff files this motion respectfully requesting that the Court order the preservation of that information contained on a private computer file server ("server") that then Secretary of State Defendant Hillary Clinton ("Secretary Clinton") used to conceal the U.S. Government records off-site, rather than at a U.S. Department of State facility.

Plaintiff respectfully moves the Court for an order of immediate seizure of property or attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure ("FRCP"), an expedited entry and production of tangible things pursuant to FRCP Rule 34(a)(1)(B), and Rule 34(b)(2)(A), *ex parte* temporary restraining order, and/or order of the Court's inherent authority. Plaintiff asks the Court to accelerate the time to respond for the FRCP Rule 34 discovery request attached hereto as Exhibit A.

Much as Judge Royce Lamberth ordered in the 'Filegate' case concerning missing emails, in *Alexander v. FBI, et. al,* U.S. District Court for the District of Columbia, Case No. 1:96-cv-02123, Plaintiff asks that a neutral forensic expert be ordered here, as the Court's expert, to take custody and control of the private email server and reconstruct and preserve the official U.S. Government records relating to the conduct of U.S. foreign policy during Defendant Secretary Clinton's term as Secretary of State from January 20, 2009, through February 1, 2013.

The private computer file server is an instrumentality used to facilitate unlawful activity. Like the "Special Purpose Entities" set up by ENRON to hide transactions and liabilities off the books from auditors and shareholders, the Defendants Hillary and Bill Clinton set up their own

unusual, independent, private computer email system in their personal mansion. The purpose of the private email server system was to facilitate secretive horse-trading of government actions and favors, negotiations for the sale of U.S. Government services, actions, and assets to the highest bidder, and implementation arrangements of deals struck.

Policy changes and government actions desired from the U.S. Department of State ("the Department") and from the U.S. Government generally through the Clintons' influence throughout the Obama administration would be discussed directly with Secretary Defendant Clinton over her private email system, as well as with Defendant Secretary Clinton's long-time political allies Cheryl Mills and Huma Mahmood Abedin. The very reason for setting up the highly unusual private email system was to facilitate such "off the books" discussions with those interested in and who wished to influence the Defendant Secretary of State's actions in exchange for contributions to the Defendant The Clinton Foundation. The other parties to the communication would not be U.S. Government employees, and therefore those emails would not have been archived.

For example, the Defendant Hillary Clinton's private file server would have been used to discuss, negotiate, and arrange. Hillary Clinton's granting waivers of sanctions on companies doing business with Iran in return for donations to Defendant The Clinton Foundation and disclosing Israeli military plans against Iran in return for donations from enemies of Israel and/or friends or business partners of Iran.

The 32,000 emails which she declares "private" will show, if they can still be recovered, the predicate acts of the illegal RICO enterprise. The purpose of the Defendants – reportedly – having wiped the file server clean and having destroyed 32,000 emails that Secretary Defendant

Clinton declares unilaterally to be "private" – if that is actually true and assuming it was actually effective – is to conceal evidence of the Defendants committing these alleged crimes.

The documents were under Congressional subpoena, FOIA requests, and litigation in federal court at least as early as September 20, 2012. Therefore, if the contents of the 32,000 emails purportedly deleted were known, the damage would have to be worse than the legal jeopardy of Secretary Defendant Clinton violating Congressional subpoenas and, admittedly, committing obstruction of justice. The contents of those emails have to be worse, if revealed, than the public relations damage of admitting that Defendant Hillary Clinton destroyed evidence that Congress had subpoenaed.

As a result, the documents which the Plaintiff seeks on the computer file server will show the RICO enterprise maintained by the Defendants including misappropriation, mail fraud and wire fraud, bribery, attempted bribery, theft of honest services, violations of the Travel Act in aid of racketeering under 18 U.S.C. § 1952 and conspiracy. The information that this motion now asks the Court to preserve is the communications which Defendants wrongfully concealed, removed, stole, and withheld from the Plaintiff, U.S. Government, and public.

The Defendants have already admitted in public, as admissions by party opponents admissible under Fed.R.Evid. 801(d)(2), to actions that constitute concealing, rendering unavailable, and destroying U.S. Government records in violation of 18 U.S. Code § 2071; 18 U.S.C. § 1519; 18 U.S.C. § 1505 and 18 U.S.C. § 793(f). Defendants have also admitted to actions which are contempt of Congress, spoliation of evidence, and obstruction of justice of on-going lawsuits and Congressional oversight investigations.

Furthermore, the circumstances also indicate that Defendant Hillary Clinton committed perjury in swearing falsely on U.S. Department of State Form 109 upon departing the

Department. The circumstances also indicate that Defendant Hillary Clinton and others not currently named as Defendants lied in violation of 18 U.S.C. § 1001 to Congressional investigators, in response to FOIA requests, and in response to federal litigation. The circumstances further indicate that the entire arrangement was designed and implemented to facilitate negotiation and agreements about the exchange of U.S. Government favors for donations to Defendant The Clinton Foundation from persons, governments, and companies with business before or affected by the U.S. Department of State.

Now, there is an imminent danger that the records will be permanently lost, if they are not lost already, if the file server hard drive containing the admitted 62,490 emails and probably other responsive records is not preserved by order of this Court.

II. STATEMENT OF FACTS

As a U.S. Government official, Secretary Defendant Clinton took home (in effect) from a U.S. Government facility 30,490 U.S. Government records plus over 32,000 records of disputed status and stored the approximately 62,490 records at her home in Chappaqua, New York. Out of the 62,490 total of emails, the 30,490 admittedly-official U.S. Government records were concealed, secreted, and withheld from Departmental authorities responsible for records management, responding to FOIA requests, and historical archiving during Secretary Defendant Clinton's tenure as Secretary of State since January 2009 plus an additional two years after Secretary Defendant Clinton left office as Secretary of State on or about February 1, 2013, up through March 2015.

Secretary Defendant Clinton kept those 62,490 records at her home where The Department personnel could not access those records until two years after she had separated from the Department. Secretary Defendant Clinton admits that 30,490 of those records were U.S.

Government property and records, which the Department could not access during her time as Secretary of State and for an additional two years after she left the Department. She returned 30,490 records to the Department's custody and control only in March 2015 after departing on February 1, 2013.

The records that Plaintiff and the public are entitled to were stored on a computer file server that Secretary Clinton set up at her home, rather than using the computer systems established by the U.S. Department of State housed at secure U.S. Government facilities under the supervision of U.S. Government security experts.

However, Defendant Secretary Clinton apparently then destroyed official records of the U.S. Government and obstructed justice. Late on Friday, March 27, 2015, Congressman Trey Gowdy, acting as Chairman of the Select Committee on Benghazi organized under the authority of the U.S. House of Representatives investigating the September 11, 2012, terrorist attacks on the U.S. Consulate in Benghazi, Libya, announced that (*See* Exhibits B and C, attached):

> We learned today, from her attorney, Secretary Clinton unilaterally decided to wipe her server clean and permanently delete all emails from her personal server. While it is not clear precisely when Secretary Clinton decided to permanently delete all emails from her server, it appears she made the decision after October 28, 2014, when the Department of State for the first time asked the Secretary to return her public record to the Department.

These actions of concealing and deleting documents violate 18 U.S. Code § 2071; 18 U.S.C. § 1519; 18 U.S.C. § 1505 and 18 U.S.C. § 793(f). The Plaintiff is able to bring a civil cause of action under RICO. As the prerequisites necessary to support a civil cause of action under RICO, the Defendants' actions constitute a pattern of related predicate acts, each of which are potentially punishable by more than a year, committed within the last ten years.

Defendant Secretary Clinton was obligated to preserve all records as of September 20, 2012, including the 32,000 records whose responsiveness is disputed. On September 20, 2012, nine days after the September 11, 2012, terrorist attacks on the U.S. Consulate in Benghazi, Libya, Rep. Jason Chaffetz, Chairman of the House Subcommittee on National Security, Homeland Defense, and Foreign Operations, which is part of the larger Committee on Oversight and Government Reform, sent a document request to then-Secretary of State Secretary Clinton. The request was for all information the Department has about the attack, specifically including electronic mail (e-mail) or other communication. State Department officials would understand that the request covered Secretary Clinton's email. The Chaffetz letter also told Defendant Clinton, "In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf." Yet no documents were produced to the U.S. Congress. Secretary Defendant Clinton did not turn over any emails from her private email server to the Department until March 2015. *See*, letter from the U.S. House of Representatives Committee on Oversight and Government Reform by Congressmen Darrell Issa and Jason Chaffetz to Secretary Hillary Clinton, November 16, 2012, attached as Exhibit D, and letter from the U.S. House of Representatives Committee on Oversight and Government Reform by Congressmen Darrell Issa and Jason Chaffetz to Secretary Hillary Clinton, October 2, 2012, attached as Exhibit E.

Secretary Defendant Clinton also was obligated to preserve all the records, including those she claimed to be private, under dozens of FOIA requests. *See*, Exhibits F, G, and H, attached.

Plaintiff filed a FOIA request to The Department on May 21, 2012, asking in the public interest for:

> Any and all documents that refer or relate in any way to the final decisions to grant waivers to all countries and other interests doing business with the Islamic Republic of Iran pursuant to the Comprehensive Iran Sanctions, Accountability, and Divestment Act, 22 U.S.C. § 8501, *et. seq.* or Executive Order 13533.

These sanctions were established by Congress to hinder Iran's development of nuclear weapons capable of doing massive damage to cities in the United States and Israel and other western allies by limiting financial transfers to Iran and Iranian interests and to discourage Iran's military build-up and march to nuclear weapons of mass destruction.

However, in response to the Plaintiff's FOIA requests, the U.S. Department of State produced no documents at all, not a single sheet of paper, in response to one FOIA request involving the granting of waivers from sanctions on Iran, even though then Secretary Defendant Clinton held press conferences and issued press releases concerning many such waivers. As the Secretary of State must make those decisions under the law and by the diplomatic importance of the decision, correspondence on this topic to or from Secretary Defendant Clinton is the most likely to exist and of the greatest significance and importance in the public and historic understanding of the decisions.

Plaintiff also filed another FOIA request on May 21, 2013, to several agencies including the U.S. Department of State, asking in the public interest for:

> Any and all information that refers or relates to The New York Times article entitled "Obama Order Sped Up Wave of Cyber attacks Against Iran" by David E. Sanger on Friday, June 1, 2012, and which information was provided and leaked to Mr. Sanger and The New York Times;
>
> Any and all information that refers or relates in any way to information released to David E. Sanger and/or made available to

him;

The names of the persons, employers and job titles, and addresses of those who "leaked" the above information to David E. Sanger;

Communications with The White House and/or Office of the President and/or Vice President that refer or relate in any way to the "leaked" information and/or the reasons for "leaking" the information;

Any and all information that refer or relate to the decision to "leak" the above previously classified information;

Any and all information that refers or relates to government agencies deciding to investigate who "leaked" the above previously classified information.

Reporter David Sanger published information in The New York Times clearly leaked from the U.S. Government, mainly Secretary Defendant Clinton, that included information about Israeli and U.S. programs and efforts to sabotage Iran's nuclear weapons development programs and facilities. *See* Exhibit I, attached.

Communications and correspondence directly to and from the Secretary of State are the most relevant and most important records responsive to Plaintiff's FOIA requests. Those between Secretary Clinton and journalist David Sanger would be of the greatest relevance and significance to the FOIA request.

The U.S. Department of State produced only a few heavily-redacted documents, already more than an inadequate response, in response to the other FOIA request concerning a leak of Israel's military plans to stop Iran from developing a nuclear bomb to reporter David Sanger. The documents document direct meetings between David Sanger and Secretary Defendant Clinton but clearly imply other, missing documents.

These requests were made well before emails on the file server were admittedly deleted. The server was still in operation when Hillary Clinton left The Department on February 1, 2013.

Federal lawsuits were filed to enforce Plaintiff's FOIA's on June 1, 2012, (for David Sanger) and January 23, 2012, (for sanctions waivers), respectively. The institution of Federal litigation triggers and creates an additional reason for the legal obligation of Defendant Secretary Clinton to preserve all the records. Therefore, Defendant Secretary Clinton admittedly violated the law by deleting emails on her private computer file server at any time after January 23, 2012.

III. STANDARD OF REVIEW

Federal Rules of Civil Procedure ("FRCP") Rule 34 requires of the parties:

> (a) IN GENERAL. A party may serve on any other party a request within the scope of Rule 26(b):
>
> (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:
>
> * * *
>
> (B) ***any designated tangible things***; or
>
> (2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property ***or any designated object or operation on it***.

(Emphasis added.)

FRCP Rule 34 further requires of the parties:

> (b) PROCEDURE.
>
> * * *
>
> (2) *Responses and Objections.*
>
> (A) *Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served. ***A shorter or longer time may be*** stipulated to under Rule 29 or be ***ordered by the court***.

Pursuant to FRCP Rule 64: "Seizing a Person or Property"

> (a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

> (b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:
>
> - arrest;
> - attachment;
> - garnishment;
> - replevin;
> - sequestration; and
> - other corresponding or equivalent remedies.

Florida law provides that a judge may issue a writ of attachment "when the debtor (1) Is actually removing the property out of the state; (2) Is fraudulently disposing of the property to avoid the payment of his or her debts; [or] (3) Is fraudulently secreting the property to avoid payment of his or her debts." Fla. Stat. § 76.05, 76.03 (2012). The plaintiff must show grounds for attachment "by a verified complaint or a separate affidavit." Fla. Stat. § 76.08. A bond equal to double the value of the attached property is required. Fla. Stat. § 76.12.

A defendant "by motion may obtain the dissolution of a writ of attachment unless the plaintiff proves the grounds upon which the writ was issued and a reasonable probability that the final judgment in the underlying action will be rendered in the plaintiff's favor. The court shall set down such motion for an immediate hearing." Id. § 76.24.

Under Florida law, the elements of negligent destruction of evidence (as a cause of action for liability) are "(1) existence of a potential civil action, (2) a legal or contractual duty to preserve evidence which is relevant to the potential civil action, (3) destruction of that evidence, (4) significant impairment in the ability to prove the lawsuit, (5) a causal relationship between the evidence destruction and the inability to prove the lawsuit, and (6) damages." *Continental Ins. Co. v. Herman*, 576 So.2d 313, 315 (Fla. 3d DCA 1990), rev. denied, 598 So.2d 76 (Fla.1991).

Under Florida law,[4] "injunctive relief [is] appropriate to protect the *res* in a claim for a constructive trust." *Blecher v. Dreyfus Brokerage Servs., Inc.,* 770 So. 2d 1276, 1277 (Fla. Dist. Ct. App. 2000); *Ga. Banking Co. v. GMC Lending & Mortgage Servs., Corp.,* 923 So. 2d 1224, 1225 (Fla. Dist. Ct. App. 2006) ("Injunctive relief is appropriate to prevent dissipation of . . . specific, identifiable trust funds."). Unlike these cases—which involve constructive trusts over specific funds—neither the First Amendment to Purchase and Sale Agreement ("Amendment"), Noventa's complaint, nor its motion for a preliminary injunction identifies specific funds.

Moreover, pursuant to FRCP Rule 65 “Injunctions and Restraining Orders”

* * *

(b) TEMPORARY RESTRAINING ORDER.

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At

> the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.
>
> (4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.
>
> (c) SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.
>
> (d) CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.
>
> (1) *Contents.* Every order granting an injunction and every restraining order must:
>
> (A) state the reasons why it issued;
>
> (B) state its terms specifically; and
>
> (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.
>
> (2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:
>
> (A) the parties;
>
> (B) the parties' officers, agents, servants, employees, and attorneys; and
>
> (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).
>
> * * *

IV. ARGUMENT

A. Relief Requested

1. Plaintiff respectfully moves the Court for an order of immediate seizure of property or attachment pursuant to Rule 64 of the FRCP, an expedited entry and production of tangible things pursuant to FRCP Rule 34(a)(1)(B) and Rule 34(b)(2)(A), *ex parte* temporary restraining order, and/or order of the Court's inherent authority, to take

custody of the computer file server ("server") used by Secretary Clinton for sending and receiving electronic messages ("emails"), including through the email address (also known as a domain name) "@clintonemail.com," including during her tenure as Secretary of State.

2. Plaintiff requests that the "hard drive" or "hard drives" (main data storage disks) of the server be taken into custody in the presence of representatives of the parties, under the Court's authority. A copy of Plaintiff's discovery request under Rule 34, which the Court is asked to expedite, is attached as Exhibit A, hereto.
3. It appears from David Kendall's letter, attached as Exhibit B, that the server and email system is no longer in use. However, the server could be returned immediately to normal operation by installing a new hard drive (disk storage unit) or other appropriate means.
4. Because of the *de minimis* disruption, Plaintiff requests that no bond be required to be posted for a few hours' of "down time" in the use of the server.
5. In spite of David Kendall's representation that the server's data has been deleted, if there is any chance that modern computer forensic experts can recover any of the official records that may still be buried within the server's data storage, the people deserve to have the attempt made.
6. The conduct of U.S. foreign policy and the actions of the nation's government are the property of the people and Secretary Defendant Clinton owes these records and the chronicle of events to the people and to history.
7. It should not be assumed that no data can be recovered, particularly where the meaning of computer concepts and terminology can be imperfectly understood and discussed by lay person's lacking computer forensics expertise.

8. A lay person may honestly believe that data cannot be recovered which an appropriate expert *can* retrieve. Therefore, the letter from David Kendall aimed at discouraging action should not stop the attempt now to recover data.

B. Immediate Action Needed to Prevent Loss of Official Records

9. Immediate action is required to preserve the email sent and received during the course of Secretary Defendant Clinton's official tenure as Secretary of State, which include official U.S. Government business, activity and historical records that belong to the people of the United States of America and to posterity.

10. The announcement of Secretary Defendant Clinton's lawyer that she has already wiped the file server clean is a likelihood if not a fact indicating a high probability that if there is any remaining data that might be recoverable by a computer forensic expert that the Defendants are acting to destroy any remaining records from the server.

11. The entire design of the Defendants' operations is set up to allow for the then Secretary of State's emails to be easily deleted without a copy of these records being preserved.

12. It is more than probable and much more than a likelihood that from the design of these arrangements, the risk of imminent destruction of these records is very high.

C. Actions Admitted of Destroying Records Are Crimes

13. Immediate action is justified because the admitted destruction of records and likely future destruction of records represent crimes relating to the concealment and destruction of official U.S. Government records.

14. The statements made by Secretary Defendant Clinton's attorney on her behalf to the Select Committee on Benghazi of the U.S. House of Representatives concerning

Secretary Clinton deleting records from her file server are statements made by her through her agent under the law of agency.

15. The statements made by Secretary Defendant Clinton's attorney concerning Secretary Clinton deleting records from her file server are admissible evidence as admissions by a party-opponent. Fed.R.Evid. 801(d)(2).

16. The records including emails and/or other data deleted by Secretary Defendant Clinton were subject to active litigation by multiple parties under the Freedom of Information Act (FOIA) and Congressional subpoenas.

17. Secretary Defendant Clinton's admitted deletion of records from her file server hard drive is a violation of 18 U.S.C. § 1519, which requires that:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18. Secretary Defendant Clinton's admitted deletion of records from her file server hard drive is a violation of 18 U.S.C. § 1505 (obstruction of proceedings before departments, agencies, and committees)

> * * *
>
> Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

> Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both

19. Secretary Defendant Clinton's admitted deletion of records from her file server hard drive is a violation of 18 U.S. Code § 2071, which requires that:

> (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.
>
> (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

20. "Furthermore, regardless of whether she signed the form, Secretary Defendant Clinton was nevertheless required to return official records upon her separation from service at the The Department. Pursuant to 18 U.S. Code § 2071(b) (emphasis added): "

> Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, *shall be fined under this title or imprisoned not more than three years*, or both; and shall forfeit his office and be disqualified from holding any office under the United States . . .

Complaint ¶ 82 *(Emphasis added to the statute in the quoted Complaint paragraph.)*

21. Secretary Clinton's admitted deletion of records from her file server hard drive is a violation of 18 U.S.C. § 793(f):

> (f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

22. Moreover, 18 U.S.C. § 793(g) provides:

> (g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

23. The Complaint further relates the analysis of Professor Rotunda: "As renowned ethics professor Ronald D. Rotunda writes, 'By her own admission, Mrs. Clinton destroyed more than 30,000 emails once the subpoenas started coming in. She claims that she only destroyed personal records.'[2] " Complaint ¶ 67.

24. "Thus, in her own words, as an admission by a party-opponent, Defendant Secretary Clinton announced her reasons for avoiding traditional email as being to avoid providing information to official, government, judicial or Congressional investigations under the nation's rule of law. This places her actions of setting up a private 'off the books' email system parallel to the The Department's own computer system in the light of her

[2] Accessible at: http://www.wsj.com/articles/ronald-d-rotunda-hillarys-emails-and-the-law-1426547356.

announced intentions to avoid providing information to lawful requests for information. ”

Complaint ¶ 70.

25. Explains Daniel Metcalfe, who was the most-senior FOIA official in the Executive Branch for over a quarter-century. It was his job to help four administrations — including the Clinton White House — interpret FOIA and to testify before Congress on their behalf:

> You can't have the secretary of state do that; that's just a prescription for the circumvention of the FOIA. Plus, fundamentally, there's no way the people at the archives should permit that if you tell them over there.
>
> He said he knows from working under the Clintons that Hillary — secretary of state, senator, 2016 presidential hopeful and lawyer — understands the Freedom of Information Act.

“Hillary Clinton email excuses 'laughable,' says top freedom-of-information official: News conference 'grossly misleading,'” Alexander Panetta, The Canada Press, March 11, 2015.

> What she did was contrary to both the letter and the spirit of the law,” says Metcalfe, the founding director of the Justice Department's Office of Information and Privacy, which advised the rest of the administration on how to comply with the law. Metcalfe ran the office from 1981 to 2007.
>
> There is no doubt that the scheme she established was a blatant circumvention of the Freedom of Information Act, atop the Federal Records Act.
>
> Metcalfe says he doesn't have any partisan axe to grind. He's a registered Democrat, though steadfastly non-partisan. He says he was embarrassed to work for George W. Bush and his attorney general, and left government for American University, where he now teaches government information law and policy.

Id.

D. Inference That Records Destroyed Were Incriminating

26. Secretary Defendant Clinton's admission, by her attorney David Kendall, that she has deleted all the data on her file server hard drive raises an inference under the law of spoliation of evidence that the evidence destroyed would have been incriminating. *See*, for example:

> The trial court found that Bernhardt was entitled to summary final judgment due to the spoliation of the evidence and entered judgment accordingly.
>
> Spoliation is defined as "[t]he intentional destruction of evidence and when it is established, fact finder may draw inference that evidence destroyed was unfavorable to party responsible for its spoliation.... The destruction, or the significant and meaningful alteration of a document or instrument." Black's Law Dictionary 1401 (6th ed.1990) (citations omitted). While the intentional destruction of evidence is usually met with the most severe sanction, *Metropolitan Dade County v. Bermudez*, 648 So.2d 197 (Fla. 1st DCA 1994), the inadvertent destruction of evidence generally calls for a lesser sanction, unless the opposing party demonstrates that its case is fatally prejudiced by its inability to examine the lost evidence. *Sponco Mfg., Inc. v. Alcover*, 656 So.2d 629 (Fla. 3d DCA 1995), rev. dismissed, 679 So.2d 771 (Fla.1996)

In *Sponco Manufacturing, Inc.*, the court set forth the following test:

> What sanctions are appropriate when a party fails to preserve evidence in its custody depends on the willfulness or bad faith, if any, of the party responsible for the loss of the evidence, the extent of prejudice suffered by the other party or parties, and what is required to cure the prejudice.

Id. at 630 (citations omitted).

Aldrich v. Roche Biomedical Lab., Inc., 737 So. 2d 1124, 1125 (Fla. App. 1999) (finding in that case that the evidence was inconclusive as to the party responsible for medical slides apparently lost in shipping); Cf. *Bambu v. E.I. Dupont De Nemours & Co. Inc.*, 881 So.2d 565 (Fla. App., 2004) (adverse inference from destruction of test results that probably occurred was proper for closing argument but not for jury instruction, as invading province of the jury).

27. The destruction of these records must bear upon any evaluation by the Court of a likelihood of success on the merits to support a temporary restraining order.

28. The fact that Secretary Defendant Clinton's deletion of the records on her file server would obviously create a very negative public relations impression and negative news stories, it must be inferred that the evidence being concealed by spoliation and destruction would have been so damaging as to be worth the negative consequences of openly and publicly deleting the records.

29. Both the creation of a previously-secret private email system and the deletion of records gives rise to the inference that Secretary Defendant Clinton intentionally deleted records that should have been available for review by the The Department and the Archivist of the United States because they would have been seriously incriminating.

E. FRCP Rule 64 Seizure of Property (Attachment)

30. Pursuant to FRCP Rule 64, this Court may seize and/or make a prejudgment attachment of the file server hard drive.

31. The Plaintiff hereby requests that the Court issue an order attaching the file server and preventing its destruction or alteration.

F. Issuance of a Temporary Restraining Order Under Rule 65(b)

32. Pursuant to FRCP Rule 65(b), the Plaintiff requests that the Court issue a temporary restraining order, which may be *ex parte*, although Plaintiff will make every attempt to provide actual notice to the Defendants.

33. Plaintiff requests that the Court issue a temporary restraining order attaching and preserving the computer file server hard drive under the authority of the Court.

34. As stated above, the Defendants have ***admitted*** to the commission of the criminal acts and predicate acts alleged in the Complaint involving the concealment and destruction of official U.S. Government records and obstruction of justice in relation to records under subpoena, involved in active federal litigation, and the subject of FOIA requests.

35. Because the Defendants have ***admitted*** the violation of the predicate acts, the Plaintiff has shown a substantial likelihood of prevailing on the merits.

36. The arrangement by the Secretary Defendant Clinton of maintaining a secret, private email system used in the course of her official work as the Secretary of State on behalf of the American people and the subsequent mass deletion of email records from her private fileserver used to conduct official business creates the inferences that the Defendant Secretary Clinton is indeed complicit in the conspiracy alleged by the Plaintiff.

37. There is an imminent danger of the loss, destruction, and disappearance of the data which likely contains official records of the United States.

38. Although the Defendants seek to avoid disclosure of the contents of the records, the law cannot recognize any burden to the Defendants from public release of official records which the law requires to be publicly released, nor from the inability to conceal crimes.

39. Taking control of the file server hard drive is strongly in the public interest in assuring the public that public officials are subject to the rule of law and that information about government activities are preserved for governmental use and for history.

G. FRCP Rule 34 Entry onto Land to Inspect – Immediate

40. FRCP Rule 34 authorizes the Court to shorten the time within which a party is required to respond.

41. The Plaintiff asks the Court to shorten the time to allow immediate entry onto land and the production of the computer file server hard drive to allow for immediate entry, inspection, and production or copying.

42. Through her attorney, Secretary Defendant Clinton was already advised over three weeks ago by the Select Committee on Benghazi of the U.S. House of Representatives to turn over the file server hard drive. She has had advance notice.

43. Rule 34 authorizes a party to demand entry onto land or other premises to inspect, test or sample any designated object or operation thereon.

44. The Plaintiff is simultaneously serving under FRCP Rule 34 such a demand to enter the premises where the server is located under the supervision of appropriate authority as the Court may direct, such as a U.S. Marshall, with the opportunity for the parties' representatives to observe and monitor, and to take custody of the file server hard drive(s).

45. Accordingly, the Plaintiff asks that the Court approve and shorten the time for that request to inspect and copy the file server on-site.

V. CONCLUSION

WHEREFORE, Plaintiff asks the Court to issue one or more of the following:

I. Shorten the time under Rule 34 to allow for immediate entry onto land to inspect, test, and copy the file server hard drive as a tangible object.

II. Issue an order attaching the file server hard drive pursuant to Rule 64.

III. Issue injunctive relief that a forensic computer expert take immediate possession of the server (computer file server) maintained by Secretary Clinton, possibly together with her husband Bill Clinton used for operating her electronic message (email) account, address, and/or communications, believed to be housed (based on its published IP electronic address) in Chappaqua, New York.

IV. In equity, for fairness to all parties, and to minimize plausible objections, the Court should order a forensic expert to serve as the Court's expert, at the Defendants' expense, answerable to the Court as a neutral actor.

V. Issue injunctive relief that a forensic computer expert inspect and review the server and its contents, including possibly-recoverable deleted emails, to locate any and all email messages which may be relevant as evidence in this case responsive to the Plaintiff's Freedom of Information Act requests and/or qualify as official records, official business, or documents that should be the property of State, and also for further injunctive relief that any email messages which are truly private (according to the Court's understanding not by the Defendants' self-serving definition) be maintained as confidential and be returned to the Clintons.

Dated: April 9, 2015

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this April 9, 2015 a true and correct copy of the foregoing was served by first-class U.S. mail, postage prepaid, the Defendant having not yet entered an appearance on the Court's ECF system, upon the following:

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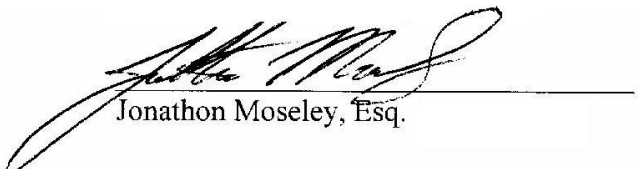

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