

EXHIBIT

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“Jane Does”¹ against State Attorney Dave Aronberg personally, alleging they were innocent Spa patrons and were recorded unclothed. *John Doe v. Town of Jupiter, et al.*, Case No. 9:19-cf-80513-RAR.

3. The State believes it is simply a matter of time until the federal lawsuit will eventually be dismissed on the bases of absolute prosecutorial immunity, qualified immunity, and the failure to state a claim. Nonetheless, the surveillance videos originating at the Spa in Jupiter, Florida are material to that current litigation. The Office of the State Attorney cannot legally or ethically agree to the destruction of evidence relevant to this known, pending litigation, or to reasonably foreseeable future litigation. *See League of Women Voters of Florida v. Detzner*, 172 So.3d 363, 391 (Fla. 2015) (stating that Florida courts have found a “duty” to preserve evidence in circumstances when a party should reasonably foresee litigation). Even in the absence of a legal duty to preserve the records, the trial court in the federal case certainly could question why the Office of the State Attorney would agree to destroy relevant evidence given the pendency of that lawsuit. *Id.*²

¹ Plaintiffs’ counsel in the federal case have not disclosed in that proceeding the names and numbers of the individuals comprising the class action plaintiffs, although an attorney purporting to represent the plaintiffs, Joseph Tacopina, claimed before a nationally televised audience in 2019 that he represented 31 anonymous “John Does” and “Jane Does”.

² The parties in the federal case have discussed potential settlement and the destruction of the videos in the federal court forum. But given the jurisdictional impediments inevitably arising from a federal court order requiring the destruction of evidence held by a non-party state agency and associated with state court cases, not to mention the refusal of the anonymous plaintiffs to identify themselves as parties able to be bound by a settlement agreement, it is the State courts which have the jurisdiction and authority to address the disposition of the State’s evidence.

4. *To be abundantly clear, the Office of the State Attorney has no interest in maintaining possession of, or releasing to the public, any of the surveillance videos garnered through these prosecutions post litigation, and never has been so inclined. The State will not release any videos through public records requests or otherwise absent a court order overriding this Honorable Court's Order Granting, in Part, Defendant's Motion for Protective Order rendered on April 23, 2019, and the Honorable Joseph Marx's Order Granting Defendants' Motions for Protective Order rendered on May 8, 2020.*

5. However, *at this time*, due to the pendency of the federal, civil litigation, the State objects to the Motion to Destroy and Secure Suppressed Video Evidence. Any such evidence in the State's possession is secured and will continue to be so. The State will withdraw its objection to the defense Motion upon the defense's filing with this Court a final order of dismissal with prejudice, or any other final, non-appealable order disposing of the matter of *John Doe v. Town of Jupiter, et al.*, Case No. 9:19-cf-80513-RAR. Until then, the request for destruction of the videos is premature.

6. Simultaneously with this Response, the State is filing in Case No. 50-2019-CF-001606 a Motion Requesting Court Order Providing Guidance to the State for the Continued Handling of Protected Evidence. (As of this date, the defendants in that case have not filed a motion to destroy the evidence, as has the defendant in the present case.)

WHEREFORE, the State of Florida respectfully requests this Honorable Court to enter an Order requiring the State to continue holding all video evidence

arising from the investigation into the Orchids of Asia Day Spa securely and confidentially until further order of the Court, and providing that, upon the filing with the Clerk of a court order showing the cessation of litigation in the federal lawsuit of *John Doe v. Town of Jupiter, et al.*, Case No. 9:19-cf-80513-RAR, the State will withdraw its objection and the Court will by separate order require the State to destroy all such evidence in its possession.

Respectfully submitted,

DAVID ARONBERG
State Attorney



BY: ALAN S. JOHNSON
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Florida Bar No. 223352

St v Robert Kraft
 Case No. 2019MM002346, 2019MM002348
 Page 4. State’s Response to Motion to Destroy
 and Secure Suppressed Video Evidence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2020, a true and correct copy of the foregoing has been e-filed via the Florida Court’s E-Filing Portal, which will, in turn, send a notice of electronic filing to all parties and counsel of record:

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