

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FOURTH DISTRICT**

CASE NO.: 4D2024-1564  
L.T. No.: 2004-CA-005889

ALI JAFERI,

Appellant,

v.

PETROLEUM REALTY I LLC, PETROLEUM REALTY II, LLC, AND  
PETROLEUM REALTY V, LLC,

Appellees.

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**APPELLEES' ANSWER BRIEF**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

STATEMENT OF THE CASE ..... 1

STATEMENT OF FACTS ..... 3

SUMMARY OF THE ARGUMENT ..... 10

STANDARD OF REVIEW ..... 11

ARGUMENT ..... 13

    A. Introduction .....13

    B. Appellant Has Not and Will Not Suffer Irreparable Harm.....15

        i. Sufficient Safeguards in the Order Compelling  
           Production Negate the Potential for Irreparable Harm... 15

        ii. The Special Magistrate Recognized that Third Party  
           Production Did Not Weigh Against or Otherwise  
           Undercut the Need to Sanction Appellant for His  
           Continued Non-Compliance with Appellees’ First  
           Request for Production..... 18

    C. The Lower Court Did Not Depart From the Essential  
       Requirements of the Law.....21

        i. The Forensic Imaging of a Party’s Electronic Devices  
           is an Appropriate Discovery Sanction Under Florida  
           Law as Supported by the Special Magistrate’s  
           Factual Findings Based Upon the Record Evidence ..... 21

CONCLUSION ..... 24

CERTIFICATE OF SERVICE ..... 26

CERTIFICATE OF COMPLIANCE ..... 26

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Bloom v. Bloom*,  
414 So. 2d 1153 (Fla. 3d DCA 1982) .....21

*Cotton States Mut. Ins. v. D’Alto*,  
879 So. 2d 67 (Fla. 1st DCA 2004) ..... 12

*De Clements v. De Clements*,  
662 So. 2d 1276 (Fla. 3d DCA 1995) .....22

*Fassy v. Crowley*,  
884 So. 2d 359 (Fla. 2d DCA 2004) ..... 12

*Fla. Peninsula Ins. Co. v. Deporter*,  
275 So. 3d 628 (Fla. 4th DCA 2019) ..... 12, 13

*In re FordMotor Co.*,  
345 F.3d 1315 (11th Cir. 2003) ..... 23, 24

*Fuller v. Carollo*,  
Case No. 1:18-cv-24190-RS, 2024 WL 3838521  
(S.D. Fla. April 12, 2024)..... 15

*Gache v. First Union Nat’l Bank of Fla.*,  
625 So. 2d 86 (Fla. 4th DCA 1993) ..... 11

*Gincley v. State*,  
267 So. 3d 444 (Fla. 4th DCA 2019) ..... 12

*Goodfriend v. Druck*,  
321 So. 2d 120 (Fla. 4th DCA 1975) ..... 16

*Haines City Community Development v. Heggs*,  
658 So. 2d 523 (Fla. 1995) .....21

*Hargrett v. Toyota Motor Sales U.S.A., Inc.*,  
705 So. 2d 1009 (Fla. 4th DCA 1998) ..... 13

*Jim Appley’s Tru-Arc, Inc. v. Liquid Extraction Systems Ltd. Partnership*,  
526 So. 2d 177 (Fla. 2d DCA 1988) ..... 15,16

*Jones v. State*,  
477 So. 2d 566 (Fla. 1985) (Boyd, C.J., concurring specially).....21

*La Ley Sports Complex at City of Homestead, LLC v. City of Homestead*,  
255 So. 3d 468 (Fla. 3d DCA 2018) .....22

*Martin–Johnson, Inc. v. Savage*,  
509 So. 2d 1097 (Fla.1987) ..... 12

*Maynard Corp v. Littler*,  
425 So. 2d 222 (Fla. 2d DCA 1983) .....17

*Scottsdale Ins. Co. v. Fla. Med. Clinic, P.A.*,  
804 So. 2d 1280 (Fla. 2d DCA 2002) ..... 13

*Sitomer v. Sitomer*,  
397 So. 2d 373 (Fla. 4th DCA 1981) .....22

*Wynmoor Community Council, Inc. v. QBE Inc., Corp.*,  
280 FRD 681 (S.D. Fla. 2012) .....22, 23

**Rules**

Florida Rule of Appellate Procedure 9.130 ..... 11, 12

Florida Rule of Appellate Procedure 9.200(f) .....3

## **STATEMENT OF THE CASE**

This appeal arises from Appellees' efforts to collect on unsatisfied judgments in excess of \$30 million (principal and interest) entered against Defendants, Boca Petroco, Inc., Ali Jaferi, USAG Oil & Gas Inc., USAG Petro, LLC, Trico Petroleum V, Inc., Trico Petroleum VII, Inc., USA Grocers Group, Inc., and JAF Investment Group in the matter styled *Petroleum Realty I, LLC, et al. v. Boca Petroco, Inc., et al.*, Case No.: 50 2004 CA 005889 (AD) (the "2004 Litigation"), pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Lower Court").

For nearly two decades, Appellees (Judgment Creditors in the underlying proceeding supplementary) have engaged in diligent efforts to collect their judgments. Appellant, Ali Jaferi (Judgment Debtor in the underlying proceeding supplementary) has used family members, including his wife, Ather Jaferi, his son, Abbas Jaferi, and several business entities to shuffle his money out of the reach of Appellees and has consistently and systematically impeded, delayed, and frustrated Appellees' efforts to collect the judgments. Appellant's efforts to prevent Appellees' collection efforts including filing two bankruptcies, both of which failed to earn him relief from the

judgments. Appellant was denied discharge of the debt because the Bankruptcy Court found he knowingly and fraudulently made a material false oath relating to his interest in accounts in Pakistan. This appeal seeks only to further stall Appellees' collection efforts.

More specifically, Appellant has avoided compliance with Appellees' First Request for Production in Aid of Execution since December 8, 2020. Appellant was provided several opportunities, through the Lower Court's orders approving the Second, Eighth, Sixteenth, and Eighteenth Reports and Recommendations, to cure his noncompliance with Appellees' First Request for Production. After a three-hour evidentiary hearing before the Special Magistrate on January 10 2024, the Special Magistrate issued the Twenty Second Report and Recommendation recommending the forensic imaging of Appellant's electronic devices as an appropriate discovery sanction. Appellant now appeals the Lower Court's order ratifying and approving the Twenty Second Report and Recommendation.

For the reasons set forth more fully below, the Lower Court's order ratifying and approving the Twenty Second Report and Recommendation should be affirmed.

## **STATEMENT OF FACTS**

1. On December 8, 2020, Appellees served Appellant with their First Request for Production in Aid of Execution (“First Request for Production”). R78-85.<sup>1</sup>

2. On February 10, 2021, the Lower Court ordered production pursuant to the First Request for Production by March 1, 2021. R88-89.

3. On September 30, 2021, Appellees filed a Corrected Motion for Contempt Proceedings against Appellant for his failure to comply with the February 10, 2021 production order. R204-293.

4. On October 1, 2021, the Lower Court entered an Order to Show Cause scheduling an evidentiary, show-cause hearing on October 7, 2021 on Appellees’ Corrected Motion for Contempt Proceedings. App. 005.<sup>2</sup> Although this evidentiary hearing was

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<sup>1</sup> Citations to “R\_\_\_” herein refer to the Record on Appeal [Filing # 207449643].

<sup>2</sup> Pursuant to Florida Rule of Appellate Procedure 9.200(f), the parties filed a Joint Stipulation to Supplement the Record on Appeal (“Stipulation”) [Filing # 209133253] as a result of the Lower Court’s omission in the Record on Appeal of certain items which the parties agreed should have been included for this Court’s review. The appendix citations herein (“App. \_\_\_”) refer to the Appendix to the Parties’ Joint Stipulation to Supplement the Record on Appeal [Filing

commenced on October 7th, it was ultimately continued by the Lower Court.

5. On August 17, 2022, the Lower Court appointed Special Magistrate David Crow (the “Special Magistrate”) to preside over the underlying proceeding supplementary. App. 009.

6. On February 24, 2023, a continuation of the October 7, 2021 evidentiary hearing on Appellees’ Corrected Motion for Contempt Proceedings proceeded before the Special Magistrate.

7. On May 30, 2023, the Special Magistrate issued his Eighth Report and Recommendation on the February 24, 2023 evidentiary hearing. R417-424. Therein, the Special Magistrate determined that “there does appear there are documents responsive that may exist and [are] obtainable and/or may be under the care, custody and control of Mr. Jaferi that have not been provided.”<sup>3</sup> R422.

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# 209133253]. *See also* the Court’s October 22, 2024 Order granting the Stipulation.

<sup>3</sup> Appellees raised Appellant’s non-compliance with their First Request for Production in several motions and hearings before the Lower Court, the lengthy and detailed history of which is explained in the Special Magistrate’s Eighth Report and Recommendation.

8. The Lower Court ratified and approved the Eighth Report and Recommendation via Agreed Order on June 19, 2023. R294-295.

9. The Eighth Report and Recommendation declined to hold Appellant in contempt “at this time,” and granted the Appellant’s requested motion for extension of time on the following conditions:

3. Within 30 days of confirmation of this Report, the Judgment Creditors shall provide and serve upon Ali M. Jaferi and the undersigned a numbered and detailed list of all discovery responses they contend have either not been responded to or are incomplete. This list shall identify the specific date and number of the Request. This list shall also identify, if possible, the document or documents claimed to have not been provided. The list shall also identify if the document has been obtained by the Judgment Creditors from another source.

4. Within 60 days of receiving the list required under paragraph 3, Ali M. Jaferi shall file a Supplementary Response. Before a response, Ali M. Jaferi shall conduct a diligent search and inquiry, including but not limited to any electronic devices where data or documents may be stored to obtain any documents. This would also include contacting other parties or non-parties in an attempt to obtain the document. Any response shall be specific and all documents Bate stamped. To the extent the document is unavailable or does not exist, Ali M. Jaferi shall state in detail what efforts he has undertaken to obtain the documentation. To the extent Ali M. Jaferi contends that any documents requested are not in his “care,

custody or control”, he shall so state and detail the basis of that assertion. The fact that a document may have been produced by others does not obviate Ali M. Jaferi’s obligation to produce the documents himself. To the extent Ali M. Jaferi contends he has already produced the documentation, he shall identify with specificity when and how the documents were produced sufficient for the undersigned and the Judgment Creditors to locate the Response. This Supplementary Response shall be signed and filed under oath by Mr. Jaferi and shall state he has made a diligent search and inquiry for all requested documentation and the responses to the best of his knowledge are true, accurate and complete.

...

6. Subsequent to the Response required under paragraph 4, the undersigned may entertain a motion for sanctions against Ali M. Jaferi, if the Response is not complete, including, if appropriate, civil contempt. Civil contempt is to coerce compliance. However, it is doubtful a fine with a purge provision would be coercive given this is a post judgment action and Ali M. Jaferi already has multimillion dollar judgments against him. Other coercive sanctions might be entertained for failure to comply, including the most severe sanction allowed by Florida law. The undersigned might also consider access to electronic files of Ali M. Jaferi by a third party expert.

7. All objections to the Requests are hereby overruled or waived, including privilege objections that have not previously been raised.

R422-423.

10. On July 14, 2023, Appellees served Appellant with the detailed list of Appellant’s incomplete discovery responses pursuant to the Eighth Report and Recommendation ¶ 3. R296-301.

11. Appellant failed to file or serve the Supplementary Response by September 12, 2023, as required by the Eighth Report and Recommendation ¶ 4. R422-423.

12. On September 19, 2023, Appellees filed a Motion for Order to Show Cause Against Appellant. App. 011.

13. On October 12, 2023, the Special Magistrate issued the Sixteenth Report and Recommendation granting the Appellees’ Motion for Order to Show Cause, in part, and granting an extension for Appellant to file the Supplemental Response by October 10, 2023.<sup>4</sup> R457-458. The Special Magistrate noted that Appellant’s “[f]ailure to do so will result in the forensic imaging of all Judgment Debtor’s personal and business electronic devices by an independent expert retained by Judgment Creditors, who must agree to be bound

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<sup>4</sup> Although the Sixteenth Report and Recommendation was issued after the date for compliance, the Special Magistrate’s ruling was made on the record on September 29, 2023, and the parties acted accordingly.

by the Confidentiality Order entered in this case, including, but not limited to, phones, tablets, laptops, or computers.” R458.

14. The Sixteenth Report and Recommendation was approved by agreed order of the Lower Court Order on October 13, 2023. R403-404.

15. On October 10, 2023, Appellant filed and served his Sworn Supplemental Response. R442-448. Contemporaneously, Appellant produced a few documents, 177 pages of which had been produced previously. R450.

16. On October 19, 2023, Appellees filed yet another Motion for Order to Show Cause against Appellant. R405-450. In the Motion for Order to Show Cause, Appellees requested that upon a failure of Appellant to show cause an order be entered (i) requiring a forensic imaging of all Appellant’s electronic devices, including, but not limited to, his phones, tablets, laptops, and computers found at the Appellant’s place of business, the offices of the Impleaded Parties, (ii) awarding Appellees all fees and costs associated with compelling Appellant’s compliance with the Request for Production through successive motions, and (iii) such other relief as the Court deems just and proper. R413-414.

17. An Order to Show Cause was issued by the Eighteenth Report and Recommendation [R463-464], ratified and approved by the Lower Court on November 28, 2023 [R451-452], and a three-hour evidentiary hearing was held on January 10, 2024 [R465], wherein evidence was presented, testimony was given by Appellant, and the resulting Twenty Second Report and Recommendation was issued on March 15, 2024. R486-495.

18. The Twenty-Second Report and Recommendation (“22<sup>nd</sup> R&R”), recommended the forensic imaging of Appellant’s electronic devices as an appropriate discovery sanction after finding that discovery was incomplete and Appellant lacked the technological sophistication and willingness to take the steps necessary to produce relevant electronically stored information. R493-495.

19. Appellant filed Exceptions to Special Magistrate’s Twenty Second Report and Recommendation (“Exceptions”) on March 25, 2024. R496-499.

20. On May 29, 2024, following a special set hearing on Appellant’s Exceptions, the Lower Court entered the disputed Order Denying Judgment Debtor’s Exceptions to Special Magistrate’s

Twenty Second Report and Recommendation (the “Order Compelling Production”). R1216-1218.

21. This appeal followed. R1219.

### **SUMMARY OF THE ARGUMENT**

The Lower Court correctly concluded that a forensic imaging of Appellant’s electronic devices is warranted as a discovery sanction for Appellant’s continued non-compliance with Appellees’ First Request for Production, issued more than three years ago on December 8, 2020, and Appellant’s admitted inability and unwillingness to search his own electronic records.

Appellant has not shown (nor can he show) that the underlying Order Compelling Production departs from the essential requirements of the law, resulting in a material injury to Appellant that cannot be corrected on appeal. Appellant’s argument that the Lower Court “violated Appellant’s constitutional right to privacy” is nothing more than a red herring designed to distract this Court from the fact that Appellant has violated multiple court orders pertaining to the First Request for Production, concealed his assets to defraud his creditors, including Appellees and currently owes Appellees more than \$30 million on the outstanding judgments.

The Order Compelling Production soundly and reasonably confirmed that the Special Magistrate’s findings in the 22<sup>nd</sup> R&R were “supported by substantial competent evidence,” the discovery sanction (i.e., the forensic imaging) “is appropriate and permitted under the law based on the circumstances and the findings,” and that the “Report and Recommendation contains sufficient safeguards” in the form of a privilege log. R1216-1217. Indeed, the Order Compelling Production appropriately balances Appellant’s interest in preserving his and other non-parties’ “privacy” with the Appellees’ right to post-judgment discovery. The Order Compelling Production should be affirmed.

### **STANDARD OF REVIEW**

The jurisdiction of this Court to review the Order Compelling Production must be invoked through the filing a petition for writ of *certiorari*. As Appellees previously pointed out in their Motion to Dismiss [Filing # 204518044], the Order Compelling Production is not a final order and is not one of the immediately appealable non-final orders enumerated in Florida Rule of Appellate Procedure 9.130. See *Gache v. First Union Nat’l Bank of Fla.*, 625 So. 2d 86 (Fla. 4th DCA 1993) (holding that a post-judgment discovery order is not a

“non-final” order appealable under Rule 9.130(a)(4)). The appropriate “form” of appeal, here, is for *certiorari* review, for which Appellant has failed to properly petition the Court. *Id.*

“[C]ommon law *certiorari* is an extraordinary remedy and should not be used to circumvent the interlocutory appeal rule, which authorizes appeals from only a few types of non-final orders.” *Cotton States Mut. Ins. v. D’Alto*, 879 So. 2d 67, 71 (Fla. 1st DCA 2004) (quoting *Martin–Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla.1987)). A petition for writ of *certiorari* must satisfy three requirements before a district court can grant relief from an erroneous interlocutory order. “A petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal.” *Fla. Peninsula Ins. Co. v. Deporter*, 275 So. 3d 628, 629–30 (Fla. 4th DCA 2019) (quoting *Fassy v. Crowley*, 884 So. 2d 359, 363 (Fla. 2d DCA 2004)). “[T]he final two prongs of the test are jurisdictional.” *Id.*; *see also Gincley v. State*, 267 So. 3d 444, 446 (Fla. 4th DCA 2019) (“[I]rreparable harm is a jurisdictional prerequisite for *certiorari* review.”). If the order on review does not cause irreparable harm, “the court lacks jurisdiction

and will dismiss the petition.” *Scottsdale Ins. Co. v. Fla. Med. Clinic, P.A.*, 804 So. 2d 1280, 1281 (Fla. 2d DCA 2002); *see also Deporter*, 275 So. 3d at 630 (quoting *Hargrett v. Toyota Motor Sales U.S.A., Inc.*, 705 So. 2d 1009, 1009 (Fla. 4th DCA 1998) (“[T]he threshold consideration for this Court is ‘whether the order is capable of causing irreparable harm which cannot be cured on final appeal.’”)).

Appellant, although failing to correctly petition the Court for a writ of *certiorari*, agrees that the cited elements comprise the appropriate standard of review. *See* Amended Initial Brief, pp. 10-11, citing to caselaw that recites the necessary elements for the requested *certiorari* relief. However, as detailed below, Appellant’s Amended Initial Brief fails to meet this burden.

## **ARGUMENT**

### **A. Introduction**

Since December of 2020, Appellees have sought the disclosure of potentially highly relevant evidence from Appellant. Three years and ten months later, Appellant still refuses to produce the requested documents.

This “appeal” is simply part of Appellant’s ongoing and continuous efforts to delay the full disclosure of the requested

evidence, defraud Appellees, and hinder and delay Appellees' collection efforts. Indeed, Appellant has and continues to flout five trial court orders (including the Order Compelling Production) requiring his compliance with Appellees' First Request for Production, served back on December 8, 2020. Enough is enough.

The Order Compelling Production correctly adopted and ratified the Special Magistrate's 22<sup>nd</sup> R&R, which ordered a forensic imaging of Appellant's electronic devices as a discovery sanction for his continued non-compliance with Appellees' First Request for Production and Appellant's admitted inability and unwillingness to search his own electronic records. R493-495. The Special Magistrate warned Appellant in the Sixteenth Report and Recommendation, as ratified and approved by the Lower Court on October 13, 2023, that if Appellant failed to comply with the First Request for Production he would order the forensic imaging of Appellant's electronic devices [R458]; Appellant ignored the Special Magistrate's warning, said sanction was entered, and this appeal ensued.

**B. Appellant Has Not and Will Not Suffer Irreparable Harm**

**i. Sufficient Safeguards in the Order Compelling Production Negate the Potential for Irreparable Harm**

Appellant contends that he will suffer irreparable harm because the Order Compelling Production “invad[es his] privacy by forcing him to turn over access to all of his personal electronic devices” which “will most certainly result in the dissemination of names and address[es sic] and personal information of nonparties to the lawsuit below . . . .” See Amended Initial Brief, p. 14. This argument, however, is nothing more than a red herring designed to distract this Court from Appellant’s ongoing and continuous efforts to delay the full disclosure of potentially highly relevant evidence, defraud Appellees, and hinder and delay Appellees’ collection efforts.

Appellant is a judgment debtor; whatever privacy rights he had in the requested financial information, he lost upon becoming a judgment debtor. *Fuller v. Carollo*, Case No. 1:18-cv-24190-RS, 2024 WL 3838521 at \*2 (S.D. Fla. April 12, 2024) (“The scope of post-judgment discovery is broad; the judgment creditor must be given the freedom to make a broad inquiry to discovery [sic] hidden or concealed assets of the judgment debtor.”) (citation omitted); *Jim*

*Appley's Tru-Arc, Inc. v. Liquid Extraction Systems Ltd. Partnership*, 526 So. 2d 177, 179 (Fla. 2d DCA 1988) (“A judgment creditor should be allowed broad discovery into the debtor’s finances, . . . even if the discovery concerns property jointly owned with others.”) (citations omitted); *Goodfriend v. Druck*, 321 So. 2d 120 (Fla. 4th DCA 1975) (affirming trial court’s requirement for a judgment debtor to answer interrogatories concerning property held by debtor’s spouse and/or children as not being privileged). In fact, this Court previously addressed Appellant’s very same non-party privacy concerns in the underlying case, denying (then) non-parties’, Abbas Jaferi, Boca Gas Company Holdings, LLC, Boca Gas Company Holdings 2, LLC, and Boca Gas Co, Inc., petition for writ of *certiorari* which sought the review of the Lower Court’s denial of their motion for protective order pertaining to the production of their personal and private information. See *Abbas Jaferi et. al. v. Petroleum Realty I, LLC et. al.*, Case No. 4D21-1314, in the District Court of Appeal of Florida Fourth District. Additionally, the case law to which Appellant cites to support his claim for “irreparable harm” based upon “privacy concerns” is wholly distinguishable from the case-at-hand: not only do Appellant’s cases address pre-judgment as opposed to post-judgment financial

discovery, but the cases also fail to speak to privacy concerns in the wake of a discovery sanction.

Appellant’s arguments notwithstanding, the Lower Court, in confirming the 22<sup>nd</sup> R&R, *did* consider and address Appellant’s purported privacy concerns in the Order Compelling Production, finding, in pertinent part, that:

The Report and Recommendation contains sufficient safeguards, including “[t]hat the information extracted [from Judgment Debtor’s electronic devices] is going to be provided to the Judgment Debtor, who will then have 30 days to produce a privilege log in accordance with the Florida Rules of Civil Procedure.”

R1222.

Such “safeguards” – *i.e.*, Appellant’s ability to review the forensically imaged information *first* and then create a privilege log *before* turning any documents or information over to Appellees – adequately address and negate the potential for any “irreparable harm.”<sup>5</sup> *See, e.g., Maynard Corp v. Littler*, 425 So. 2d 222, 223 (Fla.

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<sup>5</sup> The Lower Court also denied Appellant’s (original) Motion to Stay, explicitly finding that Appellant “will not be irreparably harmed absent the entry of a stay of the Court’s May 29, 2024 Order Denying Judgment Debtor’s Exceptions to Special Magistrate’s Twenty Second Report & Recommendation [] pending Judgment Debtor’s appeal of the Order.” App. 036.

2d DCA 1983) (holding that petitioners were not entitled to writ of certiorari where underlying order determined that documents were discoverable, subject to any exemptions such as work product and attorney-client privilege, and compelled petitioners to produce all requested documents and submit them to trial court for purposes of in-camera inspection, purpose of which would be to determine the privileges, exemptions, or immunities, if any, pertaining to the documents as claimed by petitioners).

**ii. The Special Magistrate Recognized that Third Party Production Did Not Weigh Against or Otherwise Undercut the Need to Sanction Appellant for His Continued Non-Compliance with Appellees' First Request for Production**

The Special Magistrate also considered and directly addressed Appellant's additional complaint of duplicative third-party production in the 22<sup>nd</sup> R&R. Notably, this case has a history of Appellant concealing information from Appellees (such conduct resulted in Appellant's non-discharge in bankruptcy). The Special Magistrate found that while the production of certain third-party documents was a factor that weighed against holding Appellant in contempt for his discovery failures, said production did not weigh against or otherwise undercut the need to sanction Appellant for his

continued non-compliance with Appellees' First Request for Production. The Special Magistrate duly recognized (the sentiments of which he has since echoed at several subsequent discovery hearings in this matter) that:

Judgment Creditor's counsel, from the undersigned's personal observation and knowledge, is too thorough, competent, and capable to accept any production from the Judgment Debtor without verifying the legitimacy from third parties. In other words, counsel would have undoubtedly obtained those documents from third parties regardless of the production from Ali M. Jaferi. No different than any competent and capable personal injury attorney not accepting a claim of lost wages without verification through employment records, IRS records, etc.

R478.

Appellant has delayed and hindered Appellees' attempts to obtain the requested financial discovery for nearly four years. The instant "appeal" underscores this delay. Appellant's gamesmanship has necessitated the notable volume of third-party discovery propounded – discovery to obtain documents Appellant should have otherwise produced. This resulted in additional motions to compel having to be filed, argument made at contested hearings, and the ensuing exorbitant number of reports and recommendations and

order ratifying and approving same in the Lower Court. Appellant cannot now complain about conduct that his actions caused.

In any event, as the Special Magistrate found and the Lower Court confirmed, Appellees are entitled to seek *the same discovery* from both Appellant and third parties. Thus, Appellant’s argument that it is improper to “invad[e] Ali’s privacy by forcing him to turn over access to all of his personal electronic devices[] just to allow [Appellees] to possibly obtain from him what it [sic] has very likely obtained from third-parties” is of no moment. Amended Initial Brief, p. 13. Importantly, the Eighth Report and Recommendation, as ratified and approved by the Lower Court on June 19, 2023, ruled that “[t]he fact that a document may have been produced by others does not obviate Ali M. Jaferi’s obligation to produce the documents himself.” R423.

**C. The Lower Court Did Not Depart From the Essential Requirements of the Law**

**i. The Forensic Imaging of a Party's Electronic Devices is an Appropriate Discovery Sanction Under Florida Law as Supported by the Special Magistrate's Factual Findings Based Upon the Record Evidence**

Further, the Order Compelling Production does not depart from the essential requirements of the law (nor does Appellant argue any such departure):

The required “departure from the essential requirements of law” means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

*Haines City Community Development v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) (quoting *Jones v. State*, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially).

The law in Florida is well-settled that the trial court cannot set aside the findings of fact and recommendations of a special magistrate “unless clearly erroneous, or it appears that the master has misconceived the legal effect of the evidence.” *Bloom v. Bloom*,

414 So. 2d 1153, 1155 (Fla. 3d DCA 1982) (citations omitted); *see also De Clements v. De Clements*, 662 So. 2d 1276, 1282 (Fla. 3d DCA 1995) (“[A] Master’s findings of fact and conclusions of law in a report and recommendation come to the trial court clothed with a presumption of correctness, and the trial court may only reject these findings and conclusions if they are clearly erroneous or if the Master has misconceived the legal effect of the evidence presented.”); *Sitomer v. Sitomer*, 397 So. 2d 373, 374 (Fla. 4th DCA 1981) (same). Under the clear error standard, a finding of fact “will not be disturbed unless it is totally unsupported by competent and substantial evidence[or] it is clearly against the weight of the evidence.” *La Ley Sports Complex at City of Homestead, LLC v. City of Homestead*, 255 So. 3d 468, 469 (Fla. 3d DCA 2018).

Here, the Lower Court, in the Order Compelling Production, specifically found that “[t]he discovery sanction recommended by the [Special] Magistrate is appropriate and permitted under the law based on the circumstances and the findings set forth by the Special Magistrate in the R&R. The case of *Wynmoor Community Council, Inc. v. QBE Inc., Corp.*, 280 FRD 681, 687 (S.D. Fla. 2012), supports the discovery sanction recommended by the Special Magistrate.” R1217;

*Wynmoor*, 280 F.R.D at 687 (“The Court should consider ‘whether the responding party has withheld requested information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests.’”) (citation omitted); *In re FordMotor Co.*, 345 F.3d 1315, 1317 (11th Cir. 2003) (finding a litigant is entitled to a forensic imaging upon a factual finding of some noncompliance with discovery rules).

As detailed in the 22<sup>nd</sup> R&R, the Special Magistrate found Appellant to be “combative” during the January 10, 2024 evidentiary hearing, noting that Appellant “often made mistakes, demonstrated a poor memory, was often corrected in his testimony and often changed his testimony after being shown exhibits.” R527. The Special Magistrate found Appellant to have “a paucity of technical knowledge of electronic or digital devices” and that “[m]ore likely than not the [discovery] failures were the result of poor memory, ineptness, lack of technical knowledge, inadvertence, and simple negligence.” *Id.* In connection with this, the Special Magistrate concluded that “*there are documents responsive to the Request that have not been produced, most of which are likely available on the Judgment Debtor’s*

electronic devices.” *Id.* Accordingly, the Lower Court correctly confirmed the Special Magistrate’s finding “that a forensic imaging of Judgment Debtor’s electronic devices is warranted *as a discovery sanction*, including any of Judgment Debtor’s company devices, online accounts, or cloud storage platforms.” *Id.* (emphasis added).

Because the Lower Court ruled in accordance with the appropriate legal standard in affirming the 22<sup>nd</sup> R&R, there can be no departure from the essential requirements of the law.

### **CONCLUSION**

In sum, Appellant has not met the heavy burden for *certiorari* relief. Appellees have been and continue to be prejudiced by the extensive expense and delay of this case as a result of Appellant’s failure to comply with his discovery obligations. This “appeal” is no different. The Order Compelling Production correctly adopted and ratified the Special Magistrate’s 22<sup>nd</sup> R&R, and confirms that the Special Magistrate’s findings were “supported by substantial competent evidence,” the discovery sanction “is appropriate and permitted under the law based on the circumstances and the findings,” and that the “Report and Recommendation contains

sufficient safeguards.” Accordingly, the Order Compelling Production should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 23rd day of October, 2024, a copy of the foregoing was served electronically through the Florida Court’s E-Filing Portal, which will send a notice of electronic filing to all counsel of record.

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**CERTIFICATE OF COMPLIANCE**

**I FURTHER CERTIFY** that this brief complies with the font requirements and word limitations of Florida Rules of Appellate Procedure 9.045(b) and 9.100(g)

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