

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION

CASE NO. 16-cv-61511-WJZ

CAROL WILDING, *et al.*, individually,
and on behalf of all those similarly
situated,

Plaintiffs,

vs.

DNC SERVICES CORPORATION, d/b/a
DEMOCRATIC NATIONAL
COMMITTEE, and DEBORAH
“DEBBIE” WASSERMAN SCHULTZ,

Defendants.

NOTICE OF FILING PLAINTIFFS’ EXHIBIT LIST FOR AUGUST 23, 2016
EVIDENTIARY HEARING

Plaintiffs respectfully provide notice of the following exhibit list regarding the August 23, 2016 Evidentiary Hearing set by this Court [Dkt. No. 25]:

Exhibit Number	Description	Format	Defendants' Objections	Plaintiffs' Response
Pls. Ex. 1	Police report regarding death of process server Shawn Lucas	Paper copy	No objections to the use of this document for the reason that it was used in Plaintiffs' Opposition to the Motion to Quash (i.e., to demonstrate unavailability). All other contextual objections reserved.	This exhibit is admissible hearsay as a "public records and reports" exception under Rule 803(8). <i>See, e.g., Bolduc v. U.S.</i> , 265 F. Supp. 2d 153, 164 (D. Mass. 2003) ("[A]s this is a civil trial, the police reports, which recorded first-hand observations of officers, are admissible under the 'public records and reports' exception to the hearsay rule.").
Pls. Ex. 2	E-mail from police confirming death of process server Shawn Lucas	Paper copy	No objections to the use of this document for the reason that it was used in Plaintiffs' Opposition to the Motion to Quash (i.e., to demonstrate unavailability). All other contextual objections reserved.	This exhibit is admissible hearsay as a "public records and reports" exception under Rule 803(8). <i>See, e.g., Bolduc v. U.S.</i> , 265 F. Supp. 2d 153, 164 (D. Mass. 2003) ("[A]s this is a

				civil trial, the police reports, which recorded first-hand observations of officers, are admissible under the ‘public records and reports’ exception to the hearsay rule.”).
Pls. Ex. 3	Video/audio of service of process event	Video format	With the understanding that this exhibit is the YouTube video and audio linked to and relied upon in Plaintiffs’ response in opposition to the motion to quash, no objections.	Because Defendants do not object, Plaintiffs do not respond. Plaintiffs will make their arguments for what is being depicted on the video after this Court receives all the evidence.
Pls. Ex. 4	Video “Serving at the DNC Edit: see video posted a few minutes later. DNC has accepted service. Tick tock. Tick tock.”	Facebook livefeed video located at: https://www.facebook.com/DNCfraudlawsuit/videos/617773348385477/	Although Defendants do not object to the admission of the recording, Defendants note their objection to the characterization of what is depicted in the video, including specifically that the “DNC has accepted service.”	Because Defendants do not object, Plaintiffs do not respond. Plaintiffs will make their arguments for what is being depicted on the video after this Court receives all the evidence.
Pls. Ex. 5	Video “Serving the Lawsuit at the DNC live”	Facebook livefeed video located at: https://www.facebook.com/DNCfraudlawsuit/videos/6177782	No objections.	Because Defendants do not object, Plaintiffs do not respond.

		31718322/		
Pls. Ex. 6	Still pictures of video of service of process event	Paper format	No objections.	Because Defendants do not object, Plaintiffs do not respond.
Pls. Ex. 7 (composite)	Pictures of Rebecca Herries from her Facebook account	Paper copy	<p>Defendants do not object to the use of the photos themselves to identify Ms. Herries as the individual to whom the process server handed the documents as shown in Pls. Exs. 4, 5, and 6, and will stipulate to that fact.</p> <p>Defendants object to the presentation of the url in the proposed exhibit and the names of persons commenting on the photos as irrelevant and out of concerns that public dissemination of the same on any of the websites that Plaintiffs' counsel maintain in relation to this website could result in Ms. Herries and her acquaintances being subject to harassment. To this end, Defendants have proposed that Plaintiffs use a</p>	<p>Plaintiffs dispute Defendants' characterization of the interface with Ms. Herries and Plaintiffs will make their arguments for what is being depicted on the video after this Court receives all the evidence. Given Defendants' stipulation that Ms. Herries is depicted on the video, Plaintiffs may not find it necessary to introduce the exhibit. To the extent that Plaintiffs will seek to introduce it, Plaintiffs will use the redacted exhibit Defendants propose.</p>

			redacted version of this exhibit.	
Pls. Ex. 8	<p>May 11, 2016 email from Rebecca Herries to HQStaff_D@dnc.org, Intern_D@dnc.org, Titled: "May All Staff Meeting Today at 2:30pm in the Wasserman Conference Room"</p>	Paper copy	<p>Defendants object to the use of this email as irrelevant, and on the ground that it was obtained from a website -- WikiLeaks -- that traffics in stolen emails. Defendants do not dispute that Ms. Herries was, on July 1, 2016, the special assistant to the CEO of the DNC, Amy Dacey, and have agreed to stipulate to that fact, further making this email cumulative and its production more prejudicial than its probative value.</p>	<p>This email is in the public domain. It is admissible as non-hearsay under Fed. R. Evid. 801(d)(2). Alternatively, it is a hearsay exception under Fed. R. Evid. 803(6). <i>See, e.g., U.S. v. Carranco</i>, 551 F.2d 1197, 1200 (10th Cir. 1977) ("allow[ing] the introduction of records made in the regular course of business if it was the regular course of business to make the record at the time of the transaction or within a reasonable time thereafter."); <i>In re Japanese Elec. Prods. Antitrust Litig.</i>, C.A.3 (Pa.) 1983, 723 F.2d 238, 289, certiorari granted in part 105 S.Ct. 1863, 471 U.S. 1002, 85 L.Ed.2d</p>

				<p>157, reversed on other grounds 106 S.Ct. 1348, 475 U.S. 574, 89 L.Ed.2d 538, on remand 807 F.2d 44 (“Thus, for example, it may well be that a record of a single meeting satisfied the regular practice requirement if the business in question routinely records other important meetings.”).</p> <p>The email not only shows that Ms. Herries was the special assistant to the former CEO of the DNC, it also shows that Ms. Herries, who is organizing DNC-wide conferences in the “Wasserman” conference room is precisely the type of person with actual and apparent authority to accept service of process for Defendants.</p>
Pls. Ex. 9	Shawn Lucas’	Paper copy; URL located at	Defendants object to this document as	This exhibit shows and will

	<p>Facebook profile</p>	<p>https://www.facebook.com/TheMCSL?ref=ts</p>	<p>irrelevant, but may withdraw that objection depending on the purpose for its introduction.</p>	<p>allow Plaintiffs’ witnesses to testify that Shawn Lucas, the deceased process server, is the person on the video of the service of process event. The identification can be made by Plaintiffs’ witnesses. <i>See, e.g., Dixon v. U.S.</i>, No. 14–CV–960 (KMK), 2015 WL 851794, at *9 (S.D.N.Y. Feb. 27, 2015) (“With respect to expert analysis of the surveillance video and photos, the Court agrees with Judge Briant that expert testimony is not ordinarily necessary to supplement the jury’s identification of a defendant based on a picture.”); <i>Darco v. United States</i>, No. 04–CV–1378, 2005 WL 1804475, at *5 (E.D.N.Y. July 28, 2005) (“[T]he</p>
--	-------------------------	--	---	--

				<p>comparison of photographs is something that can be done by a jury without the aid of experts.”); <i>see also United States v. Dorsey</i>, 45 F.3d 809, 815 (4th Cir.1995) (“[T]he comparison of photographs is something that can sufficiently be done by the jury without help from an expert ...”); <i>United States v. Brewer</i>, 783 F.2d 841, 842 (9th Cir.1986) (same).</p> <p>The identification can be based on the Facebook pages. <i>See, e.g., Bullman v. State</i>, 2016 WL 1469592, at *7 (Tex. Ct. App. Apr. 13, 2016) (“[W]e conclude that there was sufficient evidence such that a reasonable jury could have found that the Facebook messages at issue in this case were created by</p>
--	--	--	--	---

				<p>Bullman.”); <i>State v. Inkton</i>, --- N.E.3d ---, No. 102706, 2016 WL 762580, at *15 (Ohio Ct. App. Feb. 25, 2016) (“[T]here is neither evidence that a fictitious individual created the account under appellant's name nor that the information on appellant's page was fabricated or tampered with. Assuming, arguendo, that an unrelated individual created the account under appellant's name, appellant has made no effort to report the incident to the Facebook Help Center. Furthermore, assuming, arguendo, that the posting was the product of fabrication or tampering, appellant has neither made an effort to remove the posting from his Facebook page nor</p>
--	--	--	--	--

				<p>modified his privacy settings to limit the public's access to the posting.”); accord <i>State v. Buhl</i>, 321 Conn. 688, 701-702 n.12 (Conn. 2016) (“We simply hold that expert testimony was not required in the present case, beyond M's testimony as a Facebook user, to establish that the posts were publicly exhibited.”); compare, e.g., <i>U.S. v. Vayner</i>, 769 F.3d 125, 133 (2d Cir. 2014) (“Evidence may be authenticated in many ways, and as with any piece of evidence whose authenticity is in question, the “type and quantum” of evidence necessary to authenticate a web page will always depend on context.”).</p>
--	--	--	--	--

Plaintiffs reserve the right to amend this list.

~signature page follows~

DATED: August 19, 2016

/s/ Cullin O'Brien

By: Cullin O'Brien

CULLIN O'BRIEN LAW, P.A.
CULLIN O'BRIEN
Florida Bar No. 597341
6541 NE 21st Way
Fort Lauderdale, Florida 33308
Telephone: (561) 676-6370
Facsimile: (561) 320-0285
cullin@cullinobrienlaw.com

BECK & LEE TRIAL LAWYERS
JARED H. BECK
Florida Bar No. 20695
ELIZABETH LEE BECK
Florida Bar No. 20697
Corporate Park at Kendall
12485 SW 137th Ave., Suite 205
Miami, Florida 33186
Telephone: (305) 234-2060
Facsimile: (786) 664-3334
jared@beckandlee.com
elizabeth@beckandlee.com

ANTONINO G. HERNANDEZ P.A.
ANTONINO G. HERNANDEZ
Florida Bar No. 164828
4 SE 1st Street, 2nd Floor
Miami, Florida 33131
Telephone: (305) 282 3698
Facsimile: (786) 513 7748
Hern8491@bellsouth.net

Counsel for Plaintiffs and the Proposed Classes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument, with Exhibits 1, 2, 6 (redacted), 7, 8 and 9, was e-filed with the Clerk of the Court using CM/ECF, this 19th day of August 2016 and served by e-mail on all counsel of record.

By: /s/ Cullin O'Brien
CULLIN O'BRIEN