

# Advanced Appellate Advocacy (LAW 5609)

## FALL 2022 RECORD ON APPEAL

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**DOCUMENT #1: COURT OF APPEALS  
DOCKETING LETTER**

***United States Court of Appeals  
Fifth Circuit***

**OFFICE OF THE CLERK**

**TEL. (225) 578-6635**

**600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130**

*August 16, 2022*

Law Student Appellate Practice Group  
Louisiana State University Law Center  
1 East Campus Drive  
Baton Rouge, Louisiana 70803

**No. 22-91201 – City of Belle Grande, et al. v. Mike Logan**  
USDC No. 3:21-983-ALB-GCL

Dear Law Student Appellate Practice Group:

We have docketed the appeal as shown above, and ask you to use the case number in future inquiries.

Briefing Notice: The record is complete for purposes of the appeal and is enclosed herewith. *See* FED. R. APP. P. 12. Briefs for the appellant and appellee, with supporting record excerpts, are due in accordance with the special briefing schedule agreed to by this Court and the parties.

Policy on Extensions: The court expects briefs to be filed timely and without extensions; however, extensions will be granted in accordance with the special rules agreed to by this Court and the parties.

Dismissal: The clerk may dismiss an appeal *without notice* should you fail to file on time.

Appearance Form: If you have not filed an appearance form as required by 5TH CIR. R. 46, you must do so prior to September 1, 2022. If you fail to complete this form, we will remove your name from the docket.

Governing Rules: Filings in this court are governed strictly by the Federal Rules of Appellate Procedure and the internal rules of this court. Documents not authorized by these rules will not be acknowledged or acted upon.

Sincerely,  
*Emil Skoda, Deputy Clerk*

/Enclosure

**DOCUMENT #2: DISTRICT COURT  
DOCKET SHEET**

**U.S. District Court  
Middle District of Louisiana (Baton Rouge)  
CIVIL DOCKET FOR CASE #3:21-983-ALB-GCL**

Mike Logan v. City of Belle Grande, et al.  
Assigned to: Judge Alan L. Berman  
Referred to: Magistrate Judge Grace C. Larkin  
Case in Other Court: 5th Circuit, 22-91201  
Cause: 42:1983 Civil Rights

Date Filed: 12/17/2021  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights (Other)  
Jurisdiction: Federal Question

**Plaintiff:**  
**Mike Logan**

represented by:  
**Paul Robinette**  
Antagonist & Singleton LLP  
Louisiana State University Law Center  
1 East Campus Drive  
Baton Rouge, Louisiana 70803  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

VS.

**Defendant:**  
**City of Belle Grande**

represented by:  
**Abbie Carmichael**  
Knot, Cahoot, and Compadre PLLC  
Louisiana State University Law Center  
1 East Campus Drive  
Baton Rouge, Louisiana 70803  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant:**  
**Police Officer Phil Cerreta**

represented by:  
**Abbie Carmichael**  
Knot, Cahoot, and Compadre PLLC  
Louisiana State University Law Center  
1 East Campus Drive  
Baton Rouge, Louisiana 70803  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
12/17/2021	1	COMPLAINT against All Defendants (Filing fee \$ 350 receipt number 050N-608621), filed by Mike Logan. (Attachments: # 1 Attachment Civil Cover Sheet) (Robinette, Paul) (Entered: 12/17/2021)

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
12/23/2021	2	WAIVER OF SERVICE Returned Executed by City of Belle Grande, Police Officer Phil Cerreta, waiver sent on 12/23/2021, answer due 2/23/2022. (Carmichael, Abbie) (Entered: 12/23/2021)
02/21/2022	3	First MOTION for Extension of Time to File Answer re <u>1</u> Complaint by City of Belle Grande and Police Officer Phil Cerreta. (Carmichael, Abbie) (Entered: 02/21/2022)
02/23/2022	4	ORDER granting <u>2</u> Motion for Extension of Time to Answer. Ordered by Magistrate Judge Grace C. Larkin on 02/23/2022. (Entered: 02/23/2022)
03/15/2022	5	ANSWER to <u>1</u> Complaint by City of Belle Grande, Police Officer Phil Cerreta (Carmichael, Abbie) (Entered: 03/15/2022)
03/16/2022	6	ORDER: The Court shall hold an initial conference on April 22, 2022 at 3:00 p.m. in Room 373N on the 12th floor of the United States Courthouse. Parties are advised that they must contact each other before making any request for an adjournment to the Court. So Ordered. (Ordered by Magistrate Judge Grace C. Larkin, on 3/16/2022) (Entered: 3/16/2022)
04/22/2022	7	ORDER: The Court held a status conference pursuant to Fed. R. Civ. P. 16 in this case on 4/22/2022. The Court set 11/15/2022 as the deadline for the completion of all discovery by the parties. Any request to amend the complaint, including any request to join other parties, shall be made by 8/22/2022. So Ordered. (Ordered by Magistrate Judge Grace C. Larkin, on 4/22/2022) (Entered: 4/22/2022)
06/05/2022	8	MOTION to <i>Compel Discovery from Plaintiff Mike Logan</i> by City of Belle Grande, Police Officer Phil Cerreta. (Carmichael, Abbie)
06/05/2022	9	MEMORANDUM in SUPPORT of <u>8</u> MOTION to Compel Discovery. (Carmichael, Abbie) (Attachments: # <u>1</u> – Declaration of Abbie Carmichael in Support of Motion to Compel)
06/20/2022	10	MEMORANDUM in OPPOSITION to <u>8</u> MOTION to Compel Discovery by Mike Logan. (Robinette, Paul) (Attachments: # <u>1</u> Declaration of Paul Robinette in Opposition to Motion to Compel)
06/20/2022	11	EX PARTE/CONSENT MOTION for Leave to File Under Seal Documents in Support of Memorandum in Opposition to <u>8</u> MOTION to Compel Discovery Documents. (Robinette, Paul)

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/21/2022	12	ORDER granting Plaintiff Mike Logan's <u>11</u> Motion for Leave to File Under Seal Documents in Support of Memorandum in Opposition. Signed by Magistrate Judge Grace C. Larkin. (Entered: 06/21/2022)
07/01/2022	13	REPLY MEMORANDUM in Further Support of <u>8</u> MOTION to Compel Discovery. (Carmichael, Abbie)
07/01/2022	14	ORDER setting Oral Argument on <u>8</u> MOTION to Compel Discovery for July 8, 2022 at 10:00 am in Room 373N on the 12th floor of the United States Courthouse. So Ordered. (Ordered by Magistrate Judge Grace C. Larkin, on 07/01/2022) (Entered: 07/01/2022)
07/08/2022	15	Minute Entry. Oral Argument held before Magistrate Judge Grace C. Larkin regarding <u>8</u> MOTION to Compel Discovery. All parties in attendance. (Entered: 07/08/2022)
07/11/2022	16	ORDER regarding <u>8</u> MOTION to Compel Discovery. ORDERED that: (1) Mike Logan's assertion of the marital privilege is DENIED; (2) defendants' motion to compel production of the email communications is GRANTED. So Ordered. (Ordered by Magistrate Judge Grace C. Larkin, on 07/11/2022) (Entered: 07/11/2022)
07/14/2022	17	OBJECTION to Magistrate Judge's <u>16</u> ORDER granting Motion to Compel pursuant to Fed. R. Civ. P. 72(a) and Local Rule 74 by Mike Logan. (Attachments: # <u>1</u> – Memorandum in Support; # <u>2</u> – Declaration of Paul Robinette in Support) (Robinette, Paul)
07/19/2022	18	MEMORANDUM in OPPOSITION to <u>17</u> OBJECTION by City of Belle Grande, Police Officer Phil Cerreta. (Carmichael, Abbie) (Attachments: # <u>1</u> Declaration of Abbie Carmichael in Opposition to Motion to Compel)
07/22/2022	19	REPLY MEMORANDUM in SUPPORT of <u>17</u> OBJECTION by Mike Logan (Robinette, Paul)
08/03/2022	20	ORDER regarding <u>17</u> OBJECTION to Magistrate Judge Larkin's <u>16</u> Order Granting Motion to Compel Production. ORDERED that: Plaintiff's objection is granted; however, interlocutory appeal certified pursuant to 28 U.S.C. §1292(b). So Ordered. (Entered by Judge Alan L. Berman.) (Entered: 08/03/2022)
08/05/2022	21	NOTICE OF APPEAL of <u>20</u> ORDER regarding Objection to <u>16</u> Order Granting Motion to Compel Production. (For Statistical Purposes Only)

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
		by USCA5 Clerk's Office. The Motion for Interlocutory Appeal was filed with USCA5).
08/14/2022	22	ORDER of USCA5: Leave to appeal from <u>20</u> Interlocutory Order of the USDC of the LAMD entered on 08/03/2022, is GRANTED (USCA5 Clerk's Office) (Entered: 08/14/2022)

DOCUMENT #3: ORDER OF UNITED STATES  
MAGISTRATE JUDGE GRACE C. LARKIN DATED  
JULY 11, 2022 IN *LOGAN V. CITY OF BELLE  
GRANDE*

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MIKE LOGAN

VERSUS

CIVIL ACTION

CITY OF BELLE GRANDE AND  
POLICE OFFICER PHIL CERRETA

NUMBER 3:21-983-ALB-GCL

**ORDER**

[Regarding Marital Privilege Asserted by Plaintiff Mike Logan]

This matter is before the court on the motion of defendants City of Belle Grande and Police Officer Phil Cerreta to compel production of requested discovery pursuant to Federal Rule of Civil Procedure 37 in the above-referenced action. Oral argument on defendants' motion was held before the undersigned on July 8, 2022. For the reasons set forth below, defendants' motion to compel is **GRANTED**.

I. Facts

This action is a civil rights action brought pursuant to 42 U.S.C. §1983 by plaintiff Mike Logan alleging violations of his civil rights by the defendants City of Belle Grande and Police Officer Phil Cerreta. Plaintiff alleges that on November 3, 2021, he was wrongfully detained and arrested by defendant Police Officer Phil Cerreta following a traffic stop on Highway 139 in the City of Belle Grande. Plaintiff was arrested by Officer Cerreta and

charged with one count of running a red light<sup>1</sup>, one count of possession of a controlled dangerous substance<sup>2</sup> [here, allegedly heroin], and one count of possession of marijuana<sup>3</sup>. All criminal charges against plaintiff were dismissed on December 5, 2021. Plaintiff claims that defendant Officer Cerreta lacked probable cause to arrest him, that defendant City of Belle Grande was negligent in its hiring and training of Officer Cerreta, and that both defendants subjected him to malicious prosecution. The merits of the parties' claims and defenses are not currently before the court.

At issue today is defendants' motion to compel production of certain discovery from plaintiff Logan. In accordance with this court's entry of the required Fed. R. Civ. P. 16 discovery order, after a Fed. R. Civ. P. 26 initial conference on April 22, 2022, defendants served requests for production of documents and a notice of plaintiff's deposition on April 22, 2022 (the "Document Requests"). Included in the Document Requests was Document Request #8, which requested:

All documents, communications, and/or written information evidencing, referring to, or relating to the factual basis for any and all claims being asserted by the Plaintiff.

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<sup>1</sup> See Louisiana Rev. Stat. § 32:231.

<sup>2</sup> See Louisiana Rev. Stat. § 40:966(C).

<sup>3</sup> See Louisiana Rev. Stat. § 40:966(C), (E).

See Exhibit A to June 5, 2022 Declaration of Abbie Carmichael filed in Support of Motion to Compel ("Carmichael Decl."). On May 2, 2022, plaintiff Logan served his responses to defendants' Document Requests and asserted the so-called "marital privilege" to prevent disclosure of certain communications between plaintiff and his spouse. See Carmichael Decl., Exh. B. With his responses to the Document Requests, plaintiff included a privilege log in accordance with Fed. R. Civ. P. 26(b)(5). See id. The privilege log details twelve emails plaintiff sent to a "Ninacassadylogan@yahoo.com" via the "G-mail" electronic mail service between the dates of November 1 and November 5, 2022.<sup>4</sup> Pursuant to the notice of deposition included with the Document Requests, Mr. Logan's deposition was scheduled for and was held on May 13, 2022.

At his deposition, Mr. Logan was asked by defense counsel about the twelve emails referenced in his responses to his document requests. See Carmichael Decl., Exh. C. Mr. Logan identified the recipient of the emails as his wife, Nina Logan, and his counsel again asserted the marital privilege. See Carmichael Decl., Exh. C, at p. 36-38. Counsel then terminated the deposition, with leave to reopen, to seek discovery of the twelve emails.

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<sup>4</sup> The court was provided the twelve emails under seal for *in camera* review pursuant to its order dated June 21, 2021.

Following the deposition, defense counsel then served a subpoena *duces tecum* on River Flow Management LLC via Fed. R. Civ. P. 45, and received from them a copy of its employee email policy. See Carmichael Decl., Exh. D. River Flow Management also produced to defense counsel a print-out of a “pop-up” message that appears randomly when an employee attempts to log on to their company-provided work computer. See Carmichael Decl., Exh. E. River Flow Management LLC also provided an affidavit from Mr. Julian Beck, the Director of Information Technology for River Flow. See Carmichael Decl., Exh. F.

The River Flow Management written email policy is provided to all employees, and Mr. Logan concedes that he was provided the policy when he started his employment with the company in 2008. See Affidavit of Mike Logan at ¶4, annexed as Exhibit 1 to the Declaration of Paul Robinette in Opposition to the Motion to Compel (“Robinette Decl.”). Mr. Logan also states that he saw the “pop-up” screen every time he logged on to his work account, but that he understood the “pop-up” screen and the written policy to only cover emails he sent from his work email address (“mike\_logan@rfm-llc.com”). See id. at ¶5-¶6. The privilege log and this court’s *in camera* review of the twelve emails indicates that all twelve emails at issue were sent from Mr. Logan’s personal email address, “misterbig77@gmail.com”.

## II. Analysis

In Wolfle v. United States, the Supreme Court held that:

The basis of the immunity given to communications between husband and wife is the protection of marital confidences, regarded as so essential to the preservation of the marriage relationship as to outweigh the disadvantages to the administration of justice which the privilege entails. Communications between the spouses, privately made, are generally assumed to have been intended to be confidential, and hence they are privileged; but wherever a communication, because of its nature or the circumstances under which it was made, was obviously not intended to be confidential it is not a privileged communication. And, when made in the presence of a third party, such communications are usually regarded as not privileged because [they are] not made in confidence.

291 U.S. 7, 14 (1934) (citations and formatting omitted).<sup>5</sup>

Defendants concede as an initial matter, as they must, that plaintiff Logan has properly invoked the privilege at every turn through its objections, its production of a privilege log, and its instructions not to answer at Logan's deposition. See generally Fed. R. Civ. P. 26(b)(5)(A).

However, Logan does not and cannot prevail upon his invocation of the marital privilege, as he has no expectation of privacy in the messages he sent from his G-Mail email address because he sent them from his work computer. As the Court in Wolfle noted, where marital communications are "made in the presence of a third party, such communications are usually regarded as not privileged because [they are] not made in confidence." Wolfle, 291 U.S. at 14.

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<sup>5</sup> To the court's knowledge, the United States Court of Appeals for the Fifth Circuit has not directly addressed whether a private person may assert the marital privilege in these circumstances.

Here, Logan cannot be considered to have intended for his email exchange with his wife to be confidential because the written email policy and “pop-up” warnings expressly notified him that his emails were subject to review by a third person. Plaintiff’s claim that he actually believed that the twelve emails to his wife would remain confidential therefore is entirely unreasonable. Therefore, the Court holds that the email communications at issue are not subject to the marital communications privilege because they were not a confidential communication.

Accordingly, for the reasons set forth herein, defendants’ motion to compel production of the twelve emails is **GRANTED** and plaintiff’s assertion of the marital privilege as to production of the twelve emails and any related testimony on the emails at his continued deposition is **DENIED**. **SO ORDERED**.

Baton Rouge, Louisiana, this 11<sup>th</sup> day of July, 2022.

*Grace Larkin*

Grace C. Larkin  
United States Magistrate Judge

*Clerk to serve copies on all counsel.*

DOCUMENT #4: ORDER OF UNITED STATES  
DISTRICT JUDGE ALAN L. BERMAN DATED  
AUGUST 3, 2022 IN *LOGAN V. CITY OF BELLE  
GRANDE*

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

No. 3:21-983 (ALB) (GCL)

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MIKE LOGAN,  
*Plaintiff*

*versus*

CITY OF BELLE GRANDE AND POLICE OFFICER PHIL CERRETA,  
*Defendants.*

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**MEMORANDUM AND ORDER**

August 3, 2022

ALAN L. BERMAN, UNITED STATES DISTRICT JUDGE:

Plaintiff Mike Logan brings the instant motion before the court in this §1983 civil rights action for review of a discovery order entered on July 11, 2022 in the above-captioned action by the Hon. Grace C. Larkin, United States Magistrate Judge.<sup>1</sup> Plaintiff filed a timely objection to Magistrate Judge Larkin's order pursuant to Fed. R. Civ. P. 72(a) and Local Rule 74 of the United States District Court for the Middle District of Louisiana. Rule 72(a) requires that this court set aside a non-dispositive order of a United States Magistrate Judge only where it is "clearly erroneous or is contrary to law". A discovery order is the quintessential example of a non-dispositive order for purposes of a Rule 72(a) objection. While this is a high standard of review, this Court is persuaded that plaintiff has satisfied its burden, and therefore reverses Magistrate Judge Larkin's order.

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<sup>1</sup> This action was assigned to Magistrate Judge Larkin for management of discovery and pre-trial motion practice by this Court pursuant to 28 U.S.C. §636(b).

This court adopts the factual findings of Magistrate Judge Larkin and assumes the parties' familiarity with those findings, but differs markedly from her interpretation of controlling caselaw. The defendants fail utterly to establish that plaintiff lacked a privacy interest in his private emails simply because they were sent from a work computer. The documents produced by River Flow Management do not establish that plaintiff was unreasonable in expecting that his private emails would not be screened, in fact, the Beck affidavit states that they do quite the opposite. Plaintiff properly asserted the marital privilege, and defendants have failed to make the requisite showing to overcome that privilege.

However, this court is of the opinion that there exists substantial ground for disagreement on the nature of the controlling law, especially given the lack of definitive guidance by the Circuit. As such, this Court feels that an interlocutory appeal of this issue is in order. See 28 U.S.C. §1292(b). While interlocutory appeals of non-final judgments are disfavored, they are expressly permitted in circumstances such as this, where there is a genuine doubt as to the correct legal standard to be applied, which can arise if “the circuits are in dispute on the question and the Court of Appeals of the circuit [encompassing the district court] has not spoken on the point...or if novel and difficult questions of first impression are presented.” Ryan v. Flowserve Corp., 444 F. Supp. 2d 718, 723-24 (N.D. Tex. 2006) (internal citation omitted). While interlocutory appeals in such a circumstance are to be granted by the district court only in “exceptional cases”, United States v. Garner, 749 F.2d 281, 284-85 (5th Cir. 1985), this Court is persuaded that the issue at bar presents just such an exceptional case.

Accordingly, plaintiff's objection to Magistrate Judge Larkin's July 11, 2022 is sustained and the order is herein **REVERSED**. However, the Court finds that the instant matter “involves a controlling question of law as to which there is substantial ground for difference of opinion and

that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. §1292(b). As such, this order is certified for immediate interlocutory appeal to the United States Court of Appeals for the Fifth Circuit.

**SO ORDERED.**

Baton Rouge, Louisiana  
August 3, 2022

*Alan L. Berman*

Alan L. Berman  
United States District Judge

**DOCUMENT #5: DECLARATION OF ABBIE  
CARMICHAEL (FILED IN SUPPORT OF  
DEFENDANTS' MOTION TO COMPEL)**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

-----X

MIKE LOGAN,

Plaintiff

**DECLARATION OF  
ABBIE CARMICHAEL**

- versus -

No. 3:21-983 (ALB) (GCL)

CITY OF BELLE GRANDE AND POLICE  
OFFICER PHIL CERRETA,

Defendants.

-----X

Abbie Carmichael, an attorney duly admitted to practice in the United States District Court for the Middle District of Louisiana, declares under penalty of perjury and pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am an associate in the law firm of Knot, Cahoot, and Compadre PLLC, attorney for defendants City of Belle Grande and Police Officer Phil Cerreta.
2. I am familiar with the facts and circumstances stated herein based upon personal knowledge and the books and records of defendants. I submit this declaration in support of defendants' motion to compel production of requested discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. This declaration is also to place the pertinent records before this Court.
3. Annexed hereto as Exhibit "A" is a true and correct copy of Document Request #8, served by defendants upon plaintiff Mike Logan on April 25, 2022.
4. Annexed hereto as Exhibit "B" is a true and correct copy of plaintiff Mike Logan's May 1, 2022 objections and responses to defendants' April 25, 2022 Document Request #8, including a copy of the privilege log produced by plaintiff.

5. Annexed hereto as Exhibit “C” are true and correct copies of relevant excerpts from plaintiff Mike Logan’s May 13, 2022 deposition.
6. Annexed hereto as Exhibit “D” is a true and correct copy of the employee email policy produced by non-party River Flow Management, LLC, which was produced to defendants in response to a subpoena *duces tecum* served on non-party River Flow Management, LLC pursuant to Fed. R. Civ. P. 45.
7. Annexed hereto as Exhibit “E” is a true and correct copy of a print-out of a “pop-up” computer message produced by non-party River Flow Management, LLC, which was produced to defendants in response to a subpoena *duces tecum* served on non-party River Flow Management, LLC pursuant to Fed. R. Civ. P. 45.
8. Annexed hereto as Exhibit “F” is a true and correct copy of an affidavit of non-party Julian Beck, the Director of Information Technology for River Flow Management, LLC, which was produced to defendants in response to a subpoena *duces tecum* served on non-party River Flow Management, LLC pursuant to Fed. R. Civ. P. 45.

Dated: June 5, 2022  
Baton Rouge, Louisiana

*Abbie Carmichael*

Abbie Carmichael  
Knot, Cahoot, and Compadre PLLC

# **Carmichael Declaration Exhibit A**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

-----X

MIKE LOGAN,

Plaintiff

**REQUEST FOR  
PRODUCTION OF  
DOCUMENTS**

- versus -

CITY OF BELLE GRANDE AND POLICE  
OFFICER PHIL CERRETA,

No. 3:21-983 (ALB) (GCL)

Defendants.

-----X

**DOCUMENT REQUEST NUMBER EIGHT**

Defendants City of Belle Grande and Police Officer Cerreta make the following request pursuant to Rule 34 of the Federal Rules of Civil Procedure. Under Rule 34(b)(2), you are required to serve a written response to this request, indicating whether you will comply with each request listed below, no later than 30 days after the date this request was served on you.

**DOCUMENTS REQUESTED:**

You are requested to produce the following categories of documents for inspection and copying: *All documents, communications, and/or written information evidencing, referring to, or relating to the factual basis for any and all claims being asserted by the Plaintiff.*

To the extent that any request encompasses privileged matters or material, it is not the intention of defendants to request production of privileged matter. If any materials requested are claimed to be privileged, Rules 26(b)(5) and 34(b) of the Federal Rules of Civil Procedure require the objecting party to list the following information for each item claimed to be privileged:

1. A brief description of the nature and contents of the matter claimed to be privileged;
2. The name, occupation, and capacity of the individual from whom the privileged matter emanated;
3. The name, occupation, and capacity of the individual to whom the allegedly privileged matter was directed; and
4. The privilege claimed.

Dated: April 23, 2022  
Baton Rouge, Louisiana

Knot, Cahoot, and Compadre PLLC  
*Attorneys for Defendants*  
By: Abbie Carmichael, Associate  
1 East Campus Drive  
Baton Rouge, Louisiana 70803

# **Carmichael Declaration Exhibit B**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

---

MIKE LOGAN,

Plaintiff,

No. 3:21-983 (ALB) (GCL)

vs.

CITY OF BELLE GRANDE AND POLICE  
OFFICER PHIL CERRETA,

Defendants.

---

**PLAINTIFF LOGAN'S RESPONSES AND OBJECTIONS TO DOCUMENT REQUEST #8**

Plaintiff Mike Logan, by his undersigned counsel, herein objects to defendants' Document Request Number 8 pursuant to Federal Rule of Civil Procedure 34.

Plaintiff objects to Document Request #8 as it is overbroad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to Document Request #8 to the extent that it calls for production of documents protected from disclosure by the marital privilege.

In accordance with Federal Rules of Civil Procedure 28 and 34, annexed hereto please find a privilege log detailing those documents plaintiff deems otherwise responsive to Document Request #8.

Dated: May 2, 2022  
Baton Rouge, Louisiana

Antagonist & Singleton LLP  
*Attorneys for Plaintiff*  
By: Paul Robinette, Partner  
1 East Campus Drive  
Baton Rouge, Louisiana 70803

**PRIVILEGE LOG**  
**CASE: Logan v. City of Belle Grande, et al.**  
**CREATED: May 2, 2022**  
**CREATED BY: Robinette, Paul**

BATES NO.	DATE & TIME	DOC TYPE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
P-1	11/1/21 9:53 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: weekend plans	Marital
P-2	11/1/21 10:02 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: accommodations booked for weekend plans	Marital
P-3	11/1/21 3:56 pm	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: activities planned for weekend trip	Marital
P-4	11/2/21 9:03 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: visiting friend in central Baton Rouge for supplies for weekend trip	Marital
P-5	11/2/21 10:55 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: withdrawals from personal checking account	Marital
P-6	11/2/21 4:20 pm	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: successful purchase of supplies from friend in central Baton Rouge	Marital
P-7	11/3/21 10:42 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: storage of supplies for weekend trip	Marital
P-7	11/5/21 8:45 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: release from Belle Grande Police Department	Marital
P-8	11/5/21 10:03 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: location of car	Marital

BATES NO.	DATE & TIME	DOC TYPE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
P-9	11/5/21 11:53 am	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: need to immediately retrieve car from police impound lot	Marital
P-10	11/5/21 2:47 pm	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: need to notify friend of car impound	Marital
P-11	11/5/21 3:15 pm	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: successful phone call to friend	Marital
P-12	11/5/21 6:17 pm	Email	MisterBig77@gmail.com	Ninacassadylogan@yahoo.com	Email from Mike Logan to wife Nina Logan re: personal property in vehicle	Marital

# **Carmichael Declaration Exhibit C**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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MIKE LOGAN, )  
                  Plaintiff, )  
vs. )           No. 3:21-983  
                                  )           (ALB) (GCL)  
CITY OF BELLE GRANDE AND POLICE )  
OFFICER PHIL CERRETA, )  
                  Defendants. )  
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**DEPOSITION OF MIKE LOGAN**

**Friday, May 13, 2022**

1           THE DEPOSITION OF MIKE LOGAN was taken as a plaintiff  
2 and witness on behalf of the Defendants, pursuant to the  
3 Federal Rules of Civil Procedure, at 10:12 a.m. on Friday,  
4 the 13th day of May 2022, at the law offices of Knot, Cahoot,  
5 and Compadre PLLC, in the City of Baton Rouge, Parish of East  
6 Baton Rouge, State of Louisiana, before Donald Cragen, Notary  
7 Public and Certified Real-Time Stenographer and Shorthand  
8 Specialist.

9  
10 APPEARANCES:

11  
12           KNOT, CAHOOT, AND COMPADRE PLLC  
13           ABBIE CARMICHAEL, ESQ.  
14           Appearing on behalf of Defendants.

15  
16           ANTAGONIST & SINGLETON LLP  
17           PAUL ROBINETTE, ESQ.  
18           Appearing on behalf of Plaintiffs

19  
20  
21 REPORTER: DONALD CRAGEN

1 Whereupon,

2 **MIKE LOGAN,**

3 having been first duly sworn by the reporter, testified

4 as follows:

5 DIRECT EXAMINATION

6 BY: ABBIE CARMICHAEL

7 **Q.** Good morning, Mister Logan. My name is Abbie Carmichael,  
8 and I represent defendants the City of Belle Grande and Police  
9 Officer Phil Cerreta. Could you please state your full name  
10 for the record?

11 **A.** Mike Logan.

12 **Q.** And Mr. Logan, what is your current address?

13 **A.** Well, I live at 100 Centre Street, Belle Grande,  
14 Louisiana, zip code 70100.

15 **Q.** Mr. Logan, you understand that you are here because of a  
16 lawsuit that you filed in the United States District Court  
17 for the Middle District of Louisiana on...

18 **A.** [interrupting] Yeah, the lawsuit I filed because I got  
19 arrested by Officer Cerreta for nothing.

**[PAGES 2-35 REDACTED AS IRRELEVANT TO MOTION]**

1 [Whereupon the parties returned from a brief recess.]

2 **Q:** All right, we are back on the record. Mr. Logan, I am  
3 referring you now to the Response #8 that your attorney made  
4 to Defendants' Interrogatories. Are you aware of any emails  
5 that you sent to anyone that refer to your arrest?

6 **A:** Yes.

7 **Q:** Who did you send those emails to?

8 **A:** My wife, Nina. See, she and I, well, we'd be having some  
9 problems and she was staying at her mom's house at the time,  
10 so I had been sending her emails a lot.

11 **Q:** I'm sorry to hear that. What did you tell Nina about your  
12 arrest?

13 **Mr. Robinette:** Objection. I instruct my client not to  
14 answer that question. As he just said, the emails were sent  
15 to his wife and are privileged.

16 **Ms. Carmichael:** Paul, you just heard him say that they were  
17 split up. He loses the privilege.

18 **Mr. Robinette:** He's not answering the question. He's not...

19 [discussion occurs off the record]

1 **Ms. Carmichael:** Fine, fine, Paul, I'll take it up with the  
2 judge later. Let me ask a couple more questions and I'll wrap  
3 this up so we can take this up with the court.

4 **Q.** Mr. Logan, I'm referring you now to the privilege log  
5 your counsel produced as part of your responses. When did you  
6 send the emails that are listed on this log?

7 **A.** Well, I sent them right before I got arrested, and I sent  
8 a couple of them after I got arrested.

9 **Q.** Okay. Where were you when you sent these emails? Did  
10 anyone else receive them?

11 **Mr. Robinette:** Objection to form.

12 **A.** No, Nina was the only person I was emailing. Our problems  
13 were really weighing on me and affecting my work, so I emailed  
14 her a lot, you know, from my work to try to fix this stuff.

15 **Q.** Your work? Where were you working at the time, again?

16 **Mr. Robinette:** Objection. Asked and answered.

17 **A.** I'm an environmental engineer with River Flow Management  
18 LLC, at its Belle Grande office.

1 Q. You said you sent these emails while you were at work?

2 A. Yeah. I'm sure I did. My computer died back in August  
3 and I couldn't afford a new one, so I was emailing Nina from  
4 work.

5 Q. Mister Logan, what is your email address?

6 A. MisterBig77 at G mail dot com.

7 Q. And Mister Logan, do you know whose email address Nina  
8 Cassady Logan at Yahoo dot com is?

9 A. That's my wife Nina's email address, yeah.

10 Q. Mr. Logan, do you have any other email addresses?

11 A. Well, I have my work email, which is Mike underscore  
12 Logan at RFM dash LLC dot com.

**[REMAINDER OF DEPOSITION REDACTED AS IRRELEVANT TO MOTION]**

## **Carmichael Declaration Exhibit D**

# 💧 RIVER FLOW MANAGEMENT LLC 💧

## Employee Computer Use and Email Policy

1. All employee office computer use shall be in compliance with these computer use procedures.
2. Computer use for non-company and/or personal business is authorized only if kept to a reasonable duration and frequency. Computer use for non-company and/or personal business must not interfere with programs and assigned projects.
3. River Flow Management company computers shall not be used to harass or embarrass any person. Intentional access of another user's account is prohibited.
4. Personal data and information stored on company computers or other electronic media such as company-issued hand-held devices may not be private. Records of your electronic communications from company-issued email accounts may be made and used for a variety of reasons, and may be subject to monitoring or auditing at any time without notice. All emails sent via your River Flow Management LLC company email account may be subject to compulsory disclosure in the event River Flow Management LLC is served with a subpoena.
5. Despite user deletion, files may remain available in "cloud" storage. Personal data and files stored directly on the system may be subject to removal at any time.
6. Installation of any software by users is prohibited unless specifically authorized. Software purchased for use by this office may not be copied for personal use.

*Last updated January 2019*

## **Carmichael Declaration Exhibit E**

💧 RIVER FLOW MANAGEMENT LLC 💧

To: Ms. Abbie Carmichael  
Knot, Cahoot, and Compadre PLLC  
Louisiana State University Law Center  
1 East Campus Drive  
Baton Rouge, Louisiana 70803

From: Mr. Julian Beck, Director of Information Technology  
River Flow Management LLC

RE: Response to Subpoena *Duces Tecum* for Email Policies

Date: May 28, 2022

In addition to the written email policy I understand you were provided by our corporate office, any user of a River Flow Management LLC-owned computer may encounter the following prompt when logging on using their RFM-LLC username and password. This prompt appears to an individual user following approximately one out of every 10 (ten) log-on attempts. In order to continue logging on, a user must click an “OK” button located below the notice and may click “Cancel” if they choose not to accept. Clicking “Cancel” will take the user back to the initial log-in screen.

Notice: Electronic communications and documents drafted on this computer may be subject to monitoring to ensure compliance with internal River Flow Management LLC policies, in accordance with applicable federal and state privacy laws.

# **Carmichael Declaration Exhibit F**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

-----X

In re Subpoena Duces Tecum dated May 24, 2022.

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**AFFIDAVIT OF JULIAN BECK**

I, Julian Beck, do state and declare that:

1. I am the Director of Information Technology for River Flow Management LLC. I have held this position with River Flow Management since July of 2014. I am submitting this affidavit in conjunction with River Flow Management LLC’s response to a subpoena served on the corporation on May 24, 2022. Unless otherwise stated herein, I have personal knowledge of the facts stated in this declaration and if called upon by a court of law to do so, I could and would testify competently to them.
2. Every employee of River Flow Management is assigned a personalized company email address that consists of their first name, last name, and the “RFM-LLC.com” address, as well as a personal private password. There are over seventy-five unique RFM-LLC.com usernames in the system currently.
3. A River Flow Management employee may use their company email address and password to log on to any River Flow Management-owned computer in any RFM business location.
4. In January of 2019, at the request of RFM’s CEO and chief counsel, I drafted a computer and email usage policy, which would apply to every employee of the company. That policy is provided to every employee on their first day of employment, and is still in effect today.
5. Upon information and belief, Mr. Mike Logan joined River Flow Management as an employee in the spring of 2020 and has been consistently employed by River Flow Management to date. Upon Mr. Logan joining the company, I personally provided Mr. Logan with his company email address, password, and a copy of the River Flow Management LLC computer and email use policy.
6. Due to budget constraints, the company has an unwritten policy of not monitoring employees’ personal and non-work-related Internet activity on their computers. In fact, we lack the necessary software to track that activity. We do, however, store all emails that are sent by employees using their @rfm-llc.com accounts for one year.
7. In my opinion, it is common knowledge at RFM that the company doesn’t actually track employee Internet usage. Everyone knows that I am the only person on the IT staff and I don’t have the time or the energy.

8. There is a “pop-up” prompt that sometimes appears when a user attempts to log on to the system. It pops up about once every ten times an employee logs on. It essentially reiterates the email policy, and it requires that an employee accept the terms of the policy before they can continue to log on. It is theoretically possible, however, for an employee to cancel out of the “pop-up” window and attempt to re-log on without accepting the pop-up window prompt.
9. RFM does not keep records as to whether an individual employee accepts or does not accept the prompt.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the forgoing is true and correct.

*Julian Beck*

Executed this 28th day of May, 2022  
Belle Grande, Louisiana

DOCUMENT #6: DECLARATION OF PAUL  
ROBINETTE (FILED IN OPPOSITION TO  
MOTION TO COMPEL)

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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MIKE LOGAN,

Plaintiff,

**DECLARATION OF  
PAUL ROBINETTE**

vs.

No. 3:21-983 (ALB) (GCL)

CITY OF BELLE GRANDE AND POLICE  
OFFICER PHIL CERRETA,

Defendants.

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Paul Robinette, an attorney duly admitted to practice in the United States District Court for the Middle District of Louisiana, declares under penalty of perjury and pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am a partner in the law firm of Antagonist & Singleton LLP, attorney for plaintiff Mike Logan.
2. I am familiar with the facts and circumstances stated herein based upon personal knowledge and the books and records of defendants. I submit this declaration in opposition to defendants' motion to compel production of requested discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. This declaration is also to place pertinent records before this Court.
3. Annexed hereto as Exhibit "1" is a true and correct copy of an affidavit submitted by plaintiff Mike Logan dated June 19, 2022.

Dated: June 20, 2022  
Baton Rouge, Louisiana

*Paul Robinette*  

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Paul Robinette  
Antagonist & Singleton LLP

# **Robinette Declaration Exhibit 1**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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MIKE LOGAN,

Plaintiff,

vs.

No. 3:21-983 (ALB) (GCL)

CITY OF BELLE GRANDE AND POLICE  
OFFICER PHIL CERRETA,

Defendants.

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### **AFFIDAVIT OF MIKE LOGAN**

I, Mike Logan, a citizen of the State of Louisiana, do state, under penalty of perjury, that the following is true and correct:

1. Unless otherwise stated herein, I have personal knowledge of the facts stated in this declaration and if called upon by a court of law to do so, I could and would testify competently to them.
2. I am a licensed environmental engineer, and I have been an employee of River Flow Management LLC since 2020, in the Belle Grande office. I supervise the Flood Control section, which has a staff of eight people.
3. When I started working for River Flow Management, I was given my company email address, which is mike\_logan@rfm-llc.com, and a private password. I also have a private email account on Google Mail, or G-Mail, and that email address is MisterBig77@gmail.com.
4. On my first day of work for River Flow Management, I received a copy of the corporate employee email policy, which I reviewed, read, and signed. Upon information and belief, I have never seen an updated email policy since that day. I have also never looked at the email policy since my first day of work.
5. I understand that there is a “pop-up” screen about email privacy that sometimes appears on my computer when I log in. It doesn’t come up very often, but when it does I always click the “OK” button to accept it. To my knowledge, the email policy only covers work emails.
6. To my knowledge, everyone in the Belle Grande office of River Flow knows that the company never actually monitors what we do online. People go on Facebook and LinkedIn and news sites and their personal email accounts all the time, and to my

knowledge no one has ever been reprimanded. I have never reprimanded a member of my staff in the Flood Control section for using the Internet at work.

7. I only use my mike\_logan@rfm-llc.com email address for work-related emails, and I only use my MisterBig77@gmail.com email account for personal emails.
8. I have been married to my wife, Nina Cassady Logan, since 2014. We got married at her parents' strawberry farm in Ponchatoula. We briefly separated in late October of 2021, but we reconciled in December 2021 on New Year's Eve. We never filed for divorce, and we both always knew that we would get back together.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the forgoing is true and correct.

Mike Logan

Dated: June 19, 2022  
Baton Rouge, Louisiana