

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

MICHAEL H. LAMBERT,

CASE NO: 2013-31402CI CI

PLAINTIFF,

JUDGE:

VS.

R.J. LARIZZA, AS STATE ATTORNEY  
FOR THE SEVENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA,

DEFENDANT.

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**RESPONSE TO MOTION FOR TEMPORARY INJUNCTION**

Defendant, State Attorney R.J. Larizza, by and through the undersigned  
Assistant State Attorney, hereby files this response to Plaintiff's Motion for Temporary  
Injunction, pursuant to Rule 9.5, Florida Rules of Civil Procedure, and states:

- 1) Plaintiff has filed a Complaint for Injunctive Relief, and to Declare State  
Statutes Unconstitutional. Subsequently, Plaintiff filed this Motion for  
Temporary Injunction as an ancillary pleading, as well as an Amended  
Complaint for Injunctive Relief and to Declare State Statutes Unconstitutional.  
Defendant's objections and responses to the Amended Complaint will be  
addressed in a responsive pleading pursuant to Chapter 11, Florida Rules of  
Civil Procedure. This Response is in reply to the Motion for Temporary  
Injunction pursuant to Rule 9.5, Florida Rules of Civil Procedure.

- 2) Florida Rules of Civil Procedure specifically provide that a conclusory allegation of irreparable injury or inadequate legal remedy will not suffice to support a Motion for Temporary Injunction. Ultimate facts must be alleged. The Motion or pleading must show that the injury sought to be avoided will occur or be aggravated if the temporary injunction is not granted. Rule 28.2, Florida Rules of Civil Procedure.
- 3) Defendant submits the following facts that are relevant to this Court's determination in this action.
- 4) Agent Sean Tucker of the Drug Enforcement Administration (DEA), along with other narcotics agents, began an investigation in regard to a drug trafficking ring operating in Central Florida as a result of fraudulent prescriptions sought by several people in Volusia County, Florida.
- 5) The fraudulent prescriptions were reported to the DEA by local pharmacies, who noticed individuals trying to fill prescriptions impersonating other customers. The pharmacies also provided the names of four (4) doctors who were determined to be the victims of prescription fraud.
- 6) Agent Tucker ran an inquiry in the Prescription Drug Monitoring Database, and he narrowed the search to the names of the four (4) doctors identified as victims of prescription fraud. Investigation revealed that the fraudulent activity occurred over the span of several years.
- 7) As part of the investigation, the DEA contacted each of the four doctors' offices whose information was fraudulently used. Upon review of the list of

names provided from the database, the respective offices identified the names of individuals who were not patients.

- 8) Pursuant to that investigation, Agent Tucker arrested six people based upon use of fraudulent prescriptions for hydrocodone and other controlled substances. Hydrocodone is an extremely addictive painkiller that has been steadily increasing in nonmedical use and overdose deaths over the past decade. The investigation is ongoing.
- 9) In addition to the six named defendants, Agent Tucker's investigation revealed sixty-three (63) fake names/fictitious identities were utilized to obtain these fraudulent prescriptions. The investigation also revealed seven (7) innocent victims, whose identities were stolen without their knowledge or consent in order to fraudulently obtain many more prescriptions.
- 10) Once the DEA identified the drug trafficking ring, they forwarded the materials obtained during the investigation (including the information obtained from the prescription database) to the State Attorney's Office.
- 11) Essentially, the trafficking ring was utilizing false identities and identity theft to procure and distribute narcotic prescription medications. The investigation revealed that thousands upon thousands of narcotic pills were being illegally distributed on the streets of our state.
- 12) Felony charges were filed on six (6) members of the drug trafficking ring identified to date. A discovery packet was sent to five (5) of the six (6) defendants' attorneys pursuant to their demand for discovery materials.

- 13) Included in the discovery materials was a disc containing the names of all the individuals provided from the prescription database query. Every page listed the following disclaimer: **"This Report contains confidential information, including patient identifiers, and is not a public record. The information should not be provided to any other persons or entity."**
- 14) Despite the disclaimer, one defense attorney who received the information in discovery in a criminal case released the entire disc to Plaintiff.
- 15) Plaintiff notified the undersigned, who immediately, in an abundance of caution, began the efforts to retrieve and secure the five discs. This effort was made in good faith to prohibit any further disclosure until the courts could give guidance as to what, if any, limitations should be placed on the release of the discovery materials.
- 16) The defense attorneys were immediately contacted and returned the discs to the State Attorney's Office. With the exception of one attorney, none of the other four (4) had reviewed the contents of the disc.
- 17) Once all five discs were secured, the Plaintiff was contacted and so informed. Plaintiff was asked to return the disc in his possession and any other copies he may have made. (See attached Exhibit "A").
- 18) The Plaintiff has not returned the disc as requested. The only remaining copy that is not secured by the State Attorney's Office remains in the possession of the Plaintiff, despite efforts by the State to retrieve it.
- 19) Since the records at issue were recovered by the State Attorneys Office, they are securely maintained and will not be distributed unless and until

released by court order. **Therefore, the Plaintiff fails to establish the necessary legal element of irreparable harm.** See Wilson v. Sandstrom, 317 So.2d 732 (Fla. 1975).

20) Moreover, **Plaintiff has an adequate remedy at law in the pending criminal cases.** Id., at 736. In fact, he has filed motions for protective order in all six (6) pending criminal cases. Plaintiff seeks to argue the same issues in different judicial forums, risking inconsistent rulings contrary to the principle of judicial economy. (See cases: 2013-300116-CFDB, 2013-300117-CFDB, 2013-300118-CFDB, 2013-300119-CFDB, 2013-300120-CFDB, 2013-300121-CFDB).

21) There is sparse, if any, legal precedent providing guidance on what limitations should be placed on the release of discovery materials to the defense under these circumstances. Essentially, the Court must balance the privacy rights of the citizens against the due process rights of the defendants.

WHEREFORE, the Defendant respectfully submits that Plaintiff's Motion for Temporary Injunction is inadequate in that it fails to allege all of the facts relevant to a determination in this matter, and Plaintiff fails to establish the necessary elements of irreparable harm and inadequate remedy at law, as required by law.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to John Tanner, Esquire, 428 N. Halifax Avenue, Daytona Beach,

FL, 32114, and to Aaron Delgado, Esquire, 227 Seabreeze Blvd, Daytona Beach, FL,  
32118, on this \_\_\_\_\_ day of June, 2013.

**Respectfully submitted:**

A handwritten signature in black ink, appearing to read 'K. Adams', written over a horizontal line.

**KAREN ADAMS FOXMAN  
ASSISTANT STATE ATTORNEY  
FL BAR NO: 0088943  
251 N. RIDGEWOOD AVENUE  
DAYTONA BEACH, FL 32114  
(386) 239-7710**

EXHIBIT

"A"

**Foxman, Karen**

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**From:** Foxman, Karen  
**Sent:** Wednesday, May 29, 2013 4:22 PM  
**To:** 'Mike Lambert'  
**Subject:** RE: me

Mike,

In regard to our earlier communication, we have now recovered all five discs that were released in discovery. The lawyers that received the discovery indicated that they had not released any information, other than the disc that you received. Please return the disc and any information you have gotten from the disc immediately, or make it available for us pick up. Further, if you did release the disc or information to anyone else, please advise immediately so that we can make efforts for the return of those copies as soon as possible.

Karen Adams Foxman  
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Assistant State Attorney  
State Attorney's Office, Seventh Judicial Circuit  
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(386)239-7710