

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN THE MATTER OF
THE SEARCH OF UDF
1301 MUNICIPAL WAY
GRAPEVINE, TEXAS 76051

Case No. 3:21-mc-284-B

NOTICE OF PARTIES AGREED TIME FOR HEARING

By minute order dated October 5, 2021 (DE 16) counsel for UDF has conferred with AUSA Doug Brasher and have agreed that we are available for an evidentiary hearing on UDF's Rule 41(g) motion on Tuesday, October 26 at 9 a.m. and for the remainder of that day (recognizing the Court's unavailability between 11 a.m. and 1 p.m.). UDF and the government are also available, as may be necessitated by the duration of the evidentiary hearing, on the afternoon of Wednesday, October 27 after 1 p.m.

CERTIFICATE OF CONFERENCE WITH THE GOVERNMENT

1. Though the USAO NDTX has agreed to these dates for a hearing, they oppose an evidentiary hearing on UDF's motion and have requested we include the statement below in this meet and confer report.

The government respectfully suggests that an evidentiary hearing is neither necessary nor appropriate in this case. The parties have fully briefed their positions and the government believes that the waiver issue can and should be resolved on the uncontested facts set forth in the pleadings and it is not opposed to a non-evidentiary hearing on that topic. Moreover, because UDF has not asserted its privilege on a document-by-document basis, any evidentiary hearing would necessarily be futile – government witnesses from the filter team cannot meaningfully testify as to whether any privileged documents have been passed to the prosecution team when UDF refuses to tell the filter team which documents, if any, it claims are privileged. Lastly, because Rule 41(g) does not provide a basis to compel the government to respond to interrogatory-type questions (see Response Brief at 18), the government believes that UDF's request for an evidentiary hearing

is an improper attempt to obtain information under the guise of witness testimony to which it is not entitled under the law.

2. In brief response to the government's statement, the need for an evidentiary hearing is addressed in UDF's motion and reply. An evidentiary hearing is the only practical method wherein this Court can examine the concerns expressed by the Fifth Circuit Court of Appeals in *Harbor Healthcare System, L.P. v. United States*, 5 F. 4th 493 (5th Cir. 2021). There is no dispute that the Government, more than 5 ½ years post-search, has not returned all originals and copies of UDF's privileged documents and continues to maintain possession of documents the government knows are privileged. Furthermore, the government has offered no evidence of a court approved protocol for reviewing the seized documents and neither this Court, nor UDF, have any way to know whether any of the seized materials have been promoted to the prosecution team.

Dated: October 8, 2021

Respectfully submitted,

/s/ Stewart H. Thomas

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**ATTORNEYS FOR UNITED
DEVELOPMENT FUNDING**

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2021, I filed this document with the Clerk's Office. I further provided an electronic copy of this document on counsel, as listed below, *via* electronic mail:

United States Attorney's Office	Assistant U.S. Attorney Doug Brasher	doug.brasher@usdoj.gov
United States Attorney's Office	Assistant U.S. Attorney Steve Fahey, Criminal Chief	steve.p.fahey@usdoj.gov

/s/ Stewart H. Thomas

Stewart H. Thomas