STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: December 9, 2021)

AO ALFA BANK,		
	Plaintiff,	
v.		**C.A. No. WM-2020-0361**
JOHN DOE, et al.,		
	Defendants.	

DECISION

TAFT-CARTER, J. Before this Court for decision is a Motion to Quash Subpoena and for Protective Order (Motion to Quash) filed by non-party ZETAlytics, LLC (ZETAlytics) and the objection to that motion from AO Alfa Bank (Alfa Bank). Additionally, Alfa Bank has submitted its Motion to Compel ZETAlytics to Produce Responsive Documents (Motion to Compel), to which ZETAlytics also objects. Jurisdiction is pursuant to G.L. 1956 §§ 9-18.1-3, 9-18.1-5, and 9-18.1-6, as well as Rules 45 and 26 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The pertinent facts underlying these lawsuits are outlined in this Court's decision relating to April Lorenzen's (Ms. Lorenzen) Motion to Quash Subpoena and for Protective Order and Alfa Bank's Motion to Compel Ms. Lorenzen to Produce Responsive Documents. *See AO Alfa Bank v. John Doe, et al.*, No. WM-2020-0361, 2021 WL 5492872, at *1-2 (R.I. Super. Nov. 9, 2021) (hereinafter *Alfa I*). This Court hereby incorporates by reference its recounting of the facts in its previous decision, as rendered and filed on November 9, 2021. *See id.* As such, this Court will only provide the facts it deems necessary for ruling on the instant motions.

After initiating its lawsuit, Alfa Bank has filed a voluminous number of subpoenas with the Fifteenth Judicial Circuit of Florida (the Florida Court). (ZETAlytics's Mem. Supp. Mot. Quash (MTQ Mem.) Ex. 2 (Court Docket in Matter of *AO Alfa-Bank v. John Doe*, C.A. No. 50-2020-CA-006304-XXXX-MB) (Fla. Docket).) The Florida Court issued a subpoena *duces tecum* without deposition for ZETAlytics to produce documents and a subpoena for ZETAlytics to attend a remote video conference and videotaped deposition on June 23, 2021. (Pl.'s Mem. Supp. Mot. Compel Exs. K, L.) On July 1, 2021, Alfa Bank requested that this Court domesticate and issue the subpoena *duces tecum* without deposition (Document Subpoena) and the subpoena for ZETAlytics's attendance at a remote video conference and videotaped deposition (Deposition Subpoena). *See* Letter from Trish Anzalone, Litigation Paralegal for Christopher Cavallo, to Brendan Oates, Court Clerk for Washington County Superior Court (July 1, 2021) (July Anzalone Letter). Both subpoenas were issued by the Clerk of the Washington County Superior Court on July 6, 2021. *See* MTQ Mem. Exs. 3, 4.

Following efforts by ZETAlytics and Alfa Bank to resolve discovery issues and related objections, *see* Pl.'s Mem. Opp'n Mot. Quash Exs. I-J, M, ZETAlytics filed a Motion to Quash the Deposition Subpoena on August 26, 2021. Alfa Bank filed its objection to ZETAlytics's Motion to Quash on September 28, 2021. Thereafter, Alfa Bank filed its Motion to Compel on October 7, 2021 and filed a Notice of Supplemental Authority on October 8, 2021. ZETAlytics then filed a Combined Memorandum in Opposition to the Motion to Compel and Reply in Support of the Motion to Quash Subpoena and for Protective Order on October 29, 2021.[1] The

[1] In its Opposition and Reply, ZETAlytics also adopted and incorporated the arguments raised in Ms. Lorenzen's Memorandum in support of her Motion to Quash and for Protective Order as well as her Memorandum in Opposition to Alfa Bank's Motion to Compel Ms. Lorenzen to Produce Responsive Documents. (ZETAlytics's Combined Mem. Opp'n Mot. Compel & Reply Supp. Mot.

Court heard arguments for the two motions on November 5, 2021, and now renders its Decision on both motions.

II

Standards of Review

A

Discovery

In Rhode Island, "discovery rules are liberal and have been construed to 'promote broad discovery.'" *DeCurtis v. Visconti, Boren & Campbell, Ltd*., 152 A.3d 413, 421 (R.I. 2017) (quoting *Henderson v. Newport County Regional Young Men's Christian Association*, 966 A.2d 1242, 1246 (R.I. 2009)). As a result, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" Super. R. Civ. P. 26(b)(1). Moreover, "[t]he court is bound . . . to give the concept of relevancy, as it applies to discovery purposes, a liberal application[.]" *Borland v. Dunn*, 113 R.I. 337, 341, 321 A.2d 96, 99 (1974).

While Rhode Island discovery is broad, "the imposition of an unreasonable burden is an abuse of the discovery process and will not be tolerated." *Eleazer v. Ted Reed Thermal, Inc.*, No. C.A. 87-624, 1989 WL 1110555, at *1 (R.I. Super. Jan. 27, 1989). As such, "[a] litigant may not engage in merely speculative inquiries in the guise of relevant discovery." *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1328 (Fed. Cir. 1990). Moreover, courts are not "free-standing investigative bodies whose coercive power may be brought to bear at will" against private individuals and entities. *Houston Business Journal, Inc. v. Office of Comptroller of Currency, U.S.*

Quash (ZETAlytics's Opp'n & Reply Mem.) 24 n.15.) As such, the arguments with respect to those motions are before the Court for decision as well.

Department of Treasury, 86 F.3d 1208, 1213 (D.C. Cir. 1996). Rather, they are called to "facilitate" and aid in the resolution of justiciable actions brought before them. *See id.*

The limitations placed on discovery guide a court's adjudication of discovery disputes and motions because, "[a]lthough mechanisms for effective discovery are essential to the fairness of our system of litigation, . . . they also carry significant costs[.]" *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). In addition to the general limitations placed on the use of discovery, non-parties are entitled to special protections from burdens created by the discovery process. *See Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998); *Exxon Shipping Co. v. United States Department of Interior*, 34 F.3d 774, 779 (9th Cir. 1994); *see also Ceroni v. 4Front Engineered Solutions, Inc.*, 793 F. Supp. 2d 1268, 1277 (D. Colo. 2011).

Finally, it is well settled that the trial court has broad discretion over matters of discovery. *See Martin v. Howard*, 784 A.2d 291, 296 (R.I. 2001) (citing *Colvin v. Lekas*, 731 A.2d 718 (R.I. 1999)); *see also Bashforth v. Zampini*, 576 A.2d 1197, 1201 (R.I. 1990). This discretion extends to motions to compel and quash discovery. *Colvin*, 731 A.2d at 720 (citing *Corvese v. Medco Containment Services, Inc.*, 687 A.2d 880, 881 (R.I. 1997)).

B

Third-Party Actions and Subpoenas

As an initial matter, John Doe actions are recognized under Rhode Island Law. General Laws 1956 § 9-5-20 provides that:

> "Whenever the name of any defendant or respondent is not known to the plaintiff, the summons and other process may issue against him or her by a fictitious name, or by such description as the plaintiff or complainant may select; and if duly served, it shall not be abated for that cause, but may be amended with or without terms as the court may order." Section 9-5-20.

Nevertheless, our courts have held that there is a due diligence obligation imposed on a plaintiff to identify and name the John Doe defendants, where possible, "in order to bring the real defendant into the litigation and to subject that defendant to the jurisdiction of the particular court by proper reasonable notice and diligent service." *Grossi v. Miriam Hospital*, 689 A.2d 403, 404 (R.I. 1997).

Rule 45(a)(1)(D) of the Superior Court Rules of Civil Procedure authorizes the issuance of subpoenas for the purpose of commanding non-parties to the action to "attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in the possession, custody, or control of that person[.]" Importantly, non-party subpoenas still require the application of "[t]he broad standard of relevance contained in Rule 26(b)[.]" Robert B. Kent et al., *Rhode Island Civil Procedure* § 45:4 (Updated Dec. 2020).

Rules 26(c) and 45(c) set forth protections for a non-party subject to subpoenas. Pursuant to Rule 26(b)(1) of the Superior Court Rules of Civil Procedure, "[i]t is not ground for objection [to a discovery request] that the information sought will be inadmissible at the trial[.]" Moreover, Rule 26(c) governs the issuance of protective orders and provides that, on a motion by a party "accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown," a court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" A party must provide a particularized need for protection to establish good cause. *Estate of Chen v. Lingting Ye*, 208 A.3d 1168, 1172-74 (R.I. 2019). Courts "shall" quash a subpoena "if it fails to allow reasonable time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden." Kent et al., cited *supra*, § 45:5

(citing Super. R. Civ. P. 45(c)(3)). Courts must then "balance the competing interests between a party's right to discover relevant and nonprivileged information that may be pertinent to his or her case or defense and the harm that may be caused to the deponent if such a deposition were to take place." *Estate of Chen*, 208 A.3d at 1175.

Additionally, a court "may" quash a subpoena if the "subpoena requires the recipient to disclose trade secrets, other confidential research, development, or commercial information, or an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party[.]" Kent et al., cited *supra*, § 45:5 (citing Super. R. Civ. P. 45(c)(3)). However, "if the inquiring party can show a substantial need for the testimony or material that otherwise cannot be met without undue hardship[,]" then the court may choose not to quash the subpoena. *Id.*

III

Analysis

A

Procedural Issues

1

Governing Procedural Law

ZETAlytics argues for the application of Florida procedural law, asserting that Alfa Bank's efforts to conduct discovery across the country are improper under the Florida Rules of Civil Procedure due to Alfa Bank's failure to effect service of its Complaint on any defendants pursuant

to Rule 1.310 and failure to formally seek leave of the Florida Court pursuant to Rule 1.290. (MTQ Mem. 8-10; ZETAlytics's Opp'n & Reply Mem. 5-12.)

In response, Alfa Bank first argues that ZETAlytics lacks standing to challenge the validity of the underlying lawsuit as a non-party to the action. (Pl.'s Mem. Opp'n Mot. Quash 14.) Further, Alfa Bank maintains ZETAlytics's procedural arguments create an improper request for this Court "to reach down into the Florida action and override the Florida court's decision about how to apply Florida procedural law to Florida claims pending in a Florida courtroom[.]" (Hr'g Tr. 22:13-17, Nov. 5, 2021.)

Beyond those arguments, Alfa Bank refutes ZETAlytics's procedural contentions entirely, arguing that John Doe actions are permitted under Florida law. (Pl.'s Mem. Opp'n Mot. Quash 16 (citing *Penton v. Intercredit Bank, N.A.*, 943 So. 2d 863, 864-65 (Fla. Dist. Ct. App. 2006); *Murphy-Hoffman v. Doe*, No. CA 05-61, 2005 WL 6570176 (Fla. Cir. Ct. Jan. 31, 2005); *Straske v. McGillicuddy*, 388 So. 2d 1334 (Fla. Dist. Ct. App. 1980)).) Alfa Bank asserts that John Doe complaints constitute a well-known and long-standing procedural mechanism and that ZETAlytics's arguments "would undermine John Doe lawsuits initiated both in sister states and within Rhode Island." *Id.* at 17.

a

Application of Rhode Island Law and Procedural Rules

Under the Rhode Island Uniform Interstate Depositions and Discovery Act (the UIDDA), "[w]hen a party submits a foreign subpoena to a clerk of the superior court in this state, the clerk, in accordance with the court's procedure, shall promptly issue a subpoena for service on the person to which the foreign subpoena is directed." Section 9-18.1-3(b). In addition, a foreign subpoena must:

> "(1) Incorporate the terms used in the foreign subpoena;
>
> "(2) Contain or be accompanied by the names, addresses, telephone numbers, and email addresses of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel; and
>
> "(3) Otherwise be in a form that complies with the laws of this state." Section 9-18.1-3(c).

If these requirements are met, then the Rhode Island Superior Court Rules of Civil Procedure govern the subpoena. *See* § 9-18.1-5. Further, an application for a protective order or to quash such a subpoena must "comply with the rules or statutes of this state[.]" Section 9-18.1-6.

Here, Alfa Bank filed the foreign subpoenas on July 1, 2021. (July Anzalone Letter.) The Court Clerk then promptly issued foreign subpoenas on July 6, 2021, which contained the proper information, incorporated the terms of the foreign subpoenas, and otherwise complied with the aforementioned sections. As such, the Rhode Island Superior Court Rules of Civil Procedure and the laws of the State of Rhode Island govern the subject subpoenas and associated motions. *See* §§ 9-18.1-5, 9-18.1-6.

b

Propriety of John Doe Lawsuits

Contrary to ZETAlytics's contentions, John Doe lawsuits are permitted under Florida law, allowing plaintiffs to file a complaint that uses placeholders for unidentified defendants they plan to name at a later time and subsequently effect service of process upon. *See, e.g.*, *Grantham v. Blount, Inc.*, 683 So. 2d 538, 540 (Fla. Dist. Ct. App. 1996) ("[A] 'John Doe' pleading is occasionally used in Florida as a method to indicate that the plaintiff intends to add another party to the action in the future[.]"); *Murphy-Hoffman*, 2005 WL 6570176, at *1. Moreover, the cases

cited by ZETAlytics on this particular issue are inapposite to the general proposition that such actions are permitted under Florida law.[2]

In any event, this Court's powers in ruling on the instant motions does not extend to the determination of the validity of the underlying litigation or compliance with the Florida Rules of Civil Procedure. *See De Lage Landen Financial Services, Inc. v. Spinal Technologies, LLC*, No. N21M-01-040, 2021 WL 3520629, at *1 (Del. Super. Ct. Aug. 10, 2021) ("As the underlying litigation is currently before the issuing Texas trial court, this Court's only involvement relates to the discovery requested of a Delaware corporate citizen."). Instead, the Rhode Island General Assembly authorized this Court to domesticate foreign subpoenas and adjudicate discovery motions arising therefrom in accordance with Rhode Island law and the Superior Court Rules of Civil Procedure. *See* §§ 9-18.1-3, 9-18.1-4, 9-18.1-5.

In sum, ZETAlytics's arguments that Alfa Bank improperly commenced its lawsuit and subsequently failed to comply with the Florida Rules of Civil Procedure do not constitute good

[2] First, *Grantham*, 683 So. 2d 538, dealt with the issue of whether John Doe actions are permitted as a method of extending a statute of limitations period without a substantive or remedial statute on point. *See Grantham*, 683 So. 2d at 540.

Second, *Gilliam v. Smart*, 809 So. 2d 905 (Fla. Dist. Ct. App. 2002), grappled with the issue of whether John Doe complaints "were insufficient to *commence* an action against [Defendant] Gilliam and to confer personal jurisdiction over him[.]" *See Gilliam*, 809 So. 2d at 906 (emphasis added).

Finally, *Liebman v. Miami-Dade County Code Compliance Office*, 54 So. 3d 1043 (Fla. Dist. Ct. App. 2011), dealt with the issue of whether the lower court properly granted "the motion to quash service of process as to defendant Krieger-Martin (one of the 'unknown John Does')." *See Liebman*, 54 So. 3d at 1044. The court held that "[t]he complaint failed to give [Krieger-Martin] actual notice that a lawsuit was being commenced against her[,]" thus providing grounds to affirm the grant of her motion to quash service of process. *Id.*

Simply put, these decisions do not conflict with the general rule that John Doe actions are permitted in Florida as a method to identify actual defendants, name them as such, and subsequently execute service of process upon them.

cause for quashing the Deposition Subpoena. ZETAlytics's objection to the Document Subpoena on those grounds is also hereby overruled.

2

Venue

ZETAlytics argues that the subpoenas are void for failure to comply with § 9-18.1-1 because the subpoena was improperly domesticated and issued in Washington County, Rhode Island, instead of Kent County, Rhode Island, where ZETAlytics has its principal place of business. (MTQ Mem. 1 n.1; Hr'g Tr. 6-7, Nov. 5, 2021.) In particular, ZETAlytics relies on the requirement that foreign subpoenas issued pursuant to the UIDDA must be filed "in the county in which discovery is sought to be conducted in this state[.]" Section 9-18.1-3(a)(1).

In response, Alfa Bank first argues that "[g]iven the short shrift ZETAlytics devotes to this assertion"—based on ZETAlytics's use of a footnote to lodge its venue challenge—"it is waived and does not warrant this Court's review." (Pl.'s Mem. Opp'n Mot. Quash 17 n.10 (citing *City of Cranston v. International Brotherhood of Police Officers, Local 301*, 230 A.3d 564, 574-75 (R.I. 2020), *as corrected* (June 23, 2020); *Gmuer v. St. Joseph Health Services of Rhode Island*, No. 09-628 S, 2011 WL 13244288, at *1 n.2 (D.R.I. Mar. 14, 2011)).) Alfa Bank also asserts that to the extent this Court considers ZETAlytics's footnote argument, that "ZETAlytics has forfeited any objection to the Court's jurisdiction by filing a full-scale motion to quash instead of entering a limited appearance solely to contest . . . jurisdiction[.]" *Id.* Finally, Alfa Bank maintains that Washington County is the appropriate venue in the interest of judicial economy given the closely

related discovery motions stemming from the subpoenas issued upon Ms. Lorenzen and this Court's familiarity with the matter. *Id.* at 17-18 n.10.

There are two types of appearances a party can make in a case: general and special.[3] 4 Am. Jur. 2d *Appearance* § 2. "A general appearance is made by a party who comes into court and appears in the case in any manner except specially for the specific purpose of challenging the jurisdiction of the court[.]" *Id.* Moreover, nonparties submit to a court's personal jurisdiction "by seeking affirmative relief or opposing a motion on the merits." *Id.* In Rhode Island, making a general appearance submits a party to the jurisdiction of the court such that a subsequent challenge on that ground is waived. *See Mack Construction Co. v. Quonset Real Estate Corp.*, 84 R.I. 190, 194, 122 A.2d 163, 164 (1956) (citing *Industrial Trust Co. v. Rabinowitz*, 65 R.I. 20, 22, 13 A.2d 259, 261 (1940)).

Here, ZETAlytics seeks relief via its request for this Court to quash the Deposition Subpoena and has submitted lengthy papers opposing Alfa Bank's Motion to Compel on the merits. *See generally* MTQ Mem.; *see also generally* ZETAlytics's Opp'n & Reply Mem. ZETAlytics has also—through counsel—argued the instant motions at an in-person hearing instead of entering a special appearance to specifically challenge the jurisdiction of this Court to issue the foreign subpoenas at issue and adjudicate the instant motions. As such, by making its general appearance, ZETAlytics has waived the ability to challenge the jurisdiction of this Court to issue both the Document Subpoena and the Deposition Subpoena on the basis of improper venue. *See Mack Construction Co.*, 84 R.I. at 194, 122 A.2d at 164. Therefore, this Court need not reach the

[3] A special appearance occurs when a party "appears for the purpose of objecting to the jurisdiction of the court over [their] person, and confines the appearance solely to that question of jurisdiction[.]" 4 Am. Jur. 2d *Appearance* § 2.

substantive issues of the parties' arguments based on this finding of waiver. Consequently, this objection is overruled.

B

Objections and Good Cause Bases Incorporated by Reference

As mentioned above, ZETAlytics has incorporated the same arguments and objections asserted by Ms. Lorenzen in connection with the distinct yet very similar motions addressed by this Court in *Alfa I*. (ZETAlytics's Opp'n & Reply Mem. 24 n.15.) Based on the similarity between the arguments there and those raised here, the Court hereby incorporates *Alfa I* into this Decision. In particular, the Court hereby incorporates its analysis and conclusions with respect to the following objections addressed in its previous decision in this matter:

> (1) that Alfa Bank has had ample opportunity to obtain information from other sources pursuant to Rule 26(b)(1)(A) of the Superior Court Rules of Civil Procedure (*Alfa I*, 2021 WL 5492872, at *11-12 (objection sustained));
>
> (2) that Alfa Bank seeks discovery of information and documents protected by the attorney-client privilege and attorney work product doctrines, *id.* at *13-14 (reserving on issue until time when issue arises pursuant to relevant procedures); and
>
> (3) that Alfa Bank seeks the opinion of an unretained expert witness, *id.* at *14-15 (objection sustained).

On the basis of this reasoning, which is applicable to ZETAlytics's objections in this matter as well, this Court finds, as it did in *Alfa I*, that Alfa Bank has had ample opportunity to obtain information from other sources pursuant to Rule 26(b)(1)(A). Furthermore, as in *Alfa I*, the Court reserves on the objections predicated upon attorney-client privilege and the work product doctrine because the instant motions must be decided before the procedural requirements provided under

Rule 45(d)(2) of the Superior Court Rules of Civil Procedure would be implicated. Finally, the Court sustains ZETAlytics's objection—made pursuant Rule 45(c)(3)(B)(ii)—that Alfa Bank inappropriately seeks the opinion of an unretained expert witness for the same reasons provided in *Alfa I*. To the extent that there are additional objections or different arguments than those asserted in *Alfa I* in connection with the instant motions, they are detailed below.

C

Relevancy and Abuse of Discovery Mechanisms

Pretrial discovery mechanisms, including depositions, are important procedures because they serve various functions to advance legal actions toward final resolution. *See Hickman v. Taylor*, 329 U.S. 495, 500-01 (1947). That said, "discovery may be denied where, in the court's judgment, the inquiry lies in a *speculative* area." *Micro Motion, Inc.*, 894 F.2d at 1326 (emphasis added). Such a denial is appropriate when a party fails to satisfy the relevancy requirement set forth in Rule 26(b)(1), which is not satisfied when the inquiry is predicated merely on a party's suspicion or speculation. *Id.* (citing *Mahoney v. United States*, 223 Ct. Cl. 713, 717-19 (1980); *Missouri Pacific Railroad Co. v. United States*, 338 F.2d 668, 671-72 (Ct. Cl. 1964)).

With respect to both motions, Alfa Bank contends that its topics for testimony and requests for production of documents are entirely appropriate because they are narrowly tailored and seek information that is highly relevant to its Florida lawsuit. (Pl.'s Mem. Opp'n Mot. Quash 2, 15, 24; Pl.'s Mem. Supp. Mot. to Compel (MTC Mem.) 15-16.) Alfa Bank thus maintains that its discovery demands are reasonably calculated to lead to the discovery of the John Doe Defendants and information that is relevant to the Florida lawsuit. (Pl.'s Mem. Opp'n Mot. Quash 28; MTC Mem. 16.)

In opposition, ZETAlytics—incorporating Ms. Lorenzen's arguments by reference—asserts that Alfa Bank's discovery demands constitute an abuse of Rhode Island discovery mechanisms and an inappropriate fishing expedition. *See* ZETAlytics's Opp'n & Reply Mem. 24 n.15; *see also Alfa I*, 2021 WL 5492872, at *4 (stating substance of Ms. Lorenzen's arguments).[4]

1

Objection to Deposition Subpoena

It is undisputed that ZETAlytics is not a named defendant in the Florida action. Furthermore, it is not alleged in the Complaint that ZETAlytics was an accomplice to the cyberattacks. *See generally* MTQ Mem. Ex. 1 (Florida Complaint) (Fla. Compl.).) Unlike the deposition subpoena issued for Ms. Lorenzen, the Deposition Subpoena at issue here lists the topics of testimony pursuant to the requirements of Rule 30(b)(6) of the Superior Court Rules of Civil Procedure because Alfa Bank seeks to depose a corporate entity through an appointed representative. *See* MTQ Mem. Ex. 4 (Deposition Subpoena) (listing relevant procedural rule on page two of foreign subpoena form). Yet, as was the case for the deposition subpoena in *Alfa I*, *see* 2021 WL 5492872, *5-6, the desired discovery sought via the Deposition Subpoena for ZETAlytics lacks the requisite narrow tailoring. For instance, the first topic of testimony is described in the Deposition Subpoena as follows:

> "[ZETAlytics's] *documents*, *communications*, or *computer data concerning* allegations of secret communications between Alfa Bank and the Trump Organization. This includes information

[4] In addition to those arguments, ZETAlytics also objects to the Deposition Subpoena as unduly burdensome because "the potential identification of, and service upon, actual defendants in Alfa Bank's action would almost certainly result in such defendants seeking to re-depose ZETAlytics given Alfa Bank's prior deposition of ZETAlytics in the defendants' absence." (MTQ Mem. 2.) However, that objection is not properly presented, as this Court "may not dispense with the traditional rules prohibiting [it] from rendering advisory opinions or adjudicating hypothetical issues." *Millet v. Hoisting Engineers' Licensing Division of Department of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977) (citing *Lamb v. Perry*, 101 R.I. 538, 225 A.2d 521 (1967)).

> relating to (i) the Trump Organization server or domains; (ii) Alfa Bank's servers or domains; and/or (iii) analysis of computer data related to either the Trump Organization or Alfa Bank." (MTQ Mem. Ex. 4 (Deposition Subpoena), at 12 (emphasis added).)

This topic—and all others posed by Alfa Bank—must be examined through the lens of the definitions provided in the Deposition Subpoena. For example, some of the definitions listed in Exhibit A of the Deposition Subpoena are as follows:

> "2. 'Communication' *is used in the broadest sense and includes, without limitation*, any oral or written utterance, notation or statement of any nature whatsoever, by and to whomever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, or a document made for the purpose of recording a communication, idea, statement, opinion, or belief.
>
> "3. 'Concerning' means directly or indirectly mentioning, describing, evidencing, constituting, referring to, *or relating to*.[5]
>
> "4. 'Document' is at least as expansive as the usage of this term in Rule 1.350(a) of the Florida Rules of Civil Procedure, and *shall include any tangible thing upon which information is or has been stored, recorded, or communicated in whatever medium information can be obtained, including, without limitation,* originals, copies or drafts of records, letters, notes, summaries, communications, correspondence, contracts or agreements, memoranda, diaries, calendars, telephone logs, messages (*e.g.*, text messages, SMS/MMS messages, or messages transmitted over encrypted messaging applications such as Signal, SpiderOak Semaphor, or Wickr), drawings, graphs, charts, presentations, tapes, audio recordings, electronically stored information, electronic mail (*i.e.*, email), photographs or pictures, internal ticketing system software, any data, data compilations or other graphic symbol, and recorded or written materials of any kind whatsoever. The definition also covers and includes those items which did exist but have since been destroyed or lost. Non-identical copies, drafts, and identical copies with handwriting are separate 'documents' within the meaning of this term. All documents stored or maintained in electronic form must be produced in the same electronic form in which they are

[5] Words such as "relate" and derivations thereof serve to make these requests even more expansive in nature. *See, e.g.*, MTQ Mem. Ex. 4 (Deposition Subpoena), at 11.

> stored or maintained in the regular course of business." (MTQ Mem. Ex. 4 (Deposition Subpoena), at Ex. A (emphasis added).)

Clearly, the lack of narrow tailoring in these requests demonstrates that Alfa Bank seeks to use this Court as a "free-standing investigative bod[y] whose coercive power[s] may be brought to bear at will" through discovery. *See Houston Business Journal, Inc.*, 86 F.3d at 1213. That is not the proper function of this Court or of our discovery process. The purpose of discovery is to "secure the just, speedy, and inexpensive determination of every action." Super. R. Civ. P. 1(a). Discovery mechanisms have been said to serve several distinct purposes:

> "(1) to narrow the issues and to focus upon the true areas of dispute; as such discovery is an adjunct to the system of simplified pleading contemplated by Rules 7 and 8;
> "(2) to obtain evidence for use at the trial and to disclose where and how evidence may be obtained;
> "(3) to expose fraudulent or groundless claims;
> "(4) to eliminate unfair surprise;
> "(5) to further the use of the expanded summary judgment procedure (Rule 56) through the development of facts which are truly not in dispute; and
> "(6) to facilitate settlement by exposing the strength of the adversary's case and by furnishing factual data as to its value." Kent et al., cited *supra*, § 26:1 at 259.

Alfa Bank's purposes in requesting the Deposition Subpoena are in excess of the role of discovery. Therefore, ZETAlytics's objection is sustained.

2

Objection to Document Subpoena

Clearly, requests for the identification of John Doe defendants to provide the name, addresses, and contact information of the defendants is permitted. *See, e.g., Berlin Media Art E.K. v. Does 1 through 146*, No. S-11-2039 KJM GGH, 2011 WL 4056167, at *2 (E.D. Cal. Sept. 12, 2011) (granting leave to conduct expedited discovery through use of Rule 45 subpoenas seeking "information sufficient to identify each Doe defendant by name, current and permanent address,

telephone number, and e-mail address"); *UMG Recordings, Inc. v. Doe*, No. C 08-1193 SBA, 2008 WL 4104214, at *4-5 (N.D. Cal. Sept. 3, 2008) (granting leave to conduct expedited discovery in the form of Rule 45 subpoenas seeking documents including the name, current and permanent address, telephone number, e-mail address, and Media Access Control addresses to identify the defendant); *Arista Records LLC v. Does 1–43*, No. 07cv2357–LAB (POR), 2007 WL 4538697, at *1–2 (S.D. Cal. Dec. 20, 2007) (granting leave to conduct expedited discovery in the form of Rule 45 subpoenas seeking documents that would reveal each Doe defendant's "true name, current and permanent addresses and telephone numbers, e-mail addresses, and Media Access Control addresses"). *But see Hard Drive Productions, Inc. v. Does 1–90*, No. C 11-03825 HRL, 2012 WL 1094653, at *7 (N.D. Cal. Mar. 30, 2012) (stating that "the court will not assist a plaintiff who seems to have no desire to actually litigate but instead seems to be using the courts to pursue an extrajudicial business plan against possible infringers (and innocent others caught up in the [Internet Service Provider] net)").

Third-party subpoenas issued upon Internet Service Providers (ISP) to specifically reveal the identity and contact information of the John Doe Defendants are permissible as long as they are "limited to the name, [Internet Protocol] address, and physical address of the John Doe Defendants currently identifiable only by IP address." *Strike 3 Holdings, LLC v. Doe*, No. 4:21-CV-243-SDJ, 2021 WL 2258737, at *4 (E.D. Tex. June 3, 2021); *see also Ensor v. Does 1–15*, No. A-19-CV-00625-LY, 2019 WL 4648486, at *4 (W.D. Tex. Sept. 23, 2019) (explaining that the discovery sought from website operators was "narrowly tailored to the extent that it [sought] the anonymous Internet user's name, physical address, and IP address" but that the plaintiff's request for "any other information" relating to each anonymous user was not narrowly

tailored but was acceptable "only to the extent it [sought] other contact information, i.e., the user's email address").

Here, based on the definitions set out in the Document Subpoena, *see* ZETAlytics's Opp'n & Reply Mem. Ex. 6, Alfa Bank has exceeded an appropriate and narrowly tailored request seeking the identification of a John Doe defendant. *See, e.g.*, *Strike 3 Holdings*, 2021 WL 2258737, at *4. The Document Subpoena includes forty-five paragraphs of definitions, twelve paragraphs of instructions, and nine requests for production. (MTQ Mem. Ex. 3 (Document Subpoena), at Schedule A.) These items are broad and voluminous, with far-reaching definitions and requests that are designed to uncover privileged materials. Thus, Alfa Bank has requested significantly more than the name, address, and contact information of the John Doe Defendants. Therefore, these requests are broad, excessive, and greater than Alfa Bank's needs. *See Giannini v. Nationwide Insurance Co.*, No. 89-5833, 1991 WL 789882, at *2 (R.I. Super. Sept. 17, 1991); *see also, e.g.*, *Ensor*, 2019 WL 4648486, at *4.

This Court cannot conclude that Alfa Bank's request would reasonably lead to the identification of the John Doe Defendants. Furthermore, the vastness of the requests places this Court in the position of acting as a free-standing investigative body, which is not its proper role. *See Houston Business Journal, Inc.*, 86 F.3d at 1213. Therefore, ZETAlytics's objection to the Document Subpoena is sustained.

D

Undue Burden

When a party objects that a discovery request is unduly burdensome, the party must assert that claim with specificity. *See Estate of Chen*, 208 A.3d at 1176-78. The party also bears the burden of supporting their objections. *Berrios v. Jevic Transportation, Inc.*, No. PC 2004-2390,

2012 WL 2648201, at *2 (R.I. Super. June 29, 2012) (citing *Vazquez-Fernández v. Cambridge College, Inc.*, 269 F.R.D. 150, 155-56 (D.P.R. 2010)).

ZETAlytics argues that both the deposition and document discovery requested under the subpoenas would constitute an undue burden. (MTQ Mem. 10-18; ZETAlytics's Mem. Opp'n Mot. Compel 17-21.) It points to a number of specific topics for testimony and document requests that it maintains would impose an undue burden. (MTQ Mem. 13-14; ZETAlytics's Opp'n & Reply Mem. 17-19.) Alfa Bank argues to the contrary, asserting its requests are highly relevant, narrowly tailored, and reasonably calculated to uncover information pertaining to the alleged John Doe Defendants. (Pl.'s Mem. Opp'n Mot. Quash 26-29; MTC Mem. 15-17.) In addition, Alfa Bank maintains its requests for production of responsive documents are not unreasonably cumulative, duplicative, or obtainable from another source. (MTC Mem. 17-19.)

1

Deposition Subpoena

The Deposition Subpoena contains no time limitation and lists fifteen topics for testimony which contain additional subtopics as well. (MTQ Mem. Ex. 4 (Deposition Subpoena), at 12-14.) Further, the topics listed cast an extremely wide net of potential subjects for Alfa Bank to probe. *See, e.g.*, *id.* at 12 (Topic Number Six, which entails "[r]esearch and related analysis, including searches of domain names, hostnames, and domain name systems . . . queries" regarding ten different entities); *id.* at 13 (Topic Number Eight, which entails eight separate subtopics for testimony related to Domain Name System (DNS) data and cybersecurity); *id.* (Topic Number Ten, which entails ZETAlytics's "communications with political organizations, including but not limited to the Trump Campaign, the Clinton Campaign, and members of Congress, concerning allegations of secret communications between Alfa Bank and the Trump Organization").

If required to comply with the Deposition Subpoena, ZETAlytics would have to designate a representative to sit for deposition pursuant to Rule 30(b)(6). ZETAlytics would then have to prepare that individual to testify on the extremely broad list of topics and subtopics listed in the Deposition Subpoena, all the while maintaining its non-party status in relation to Alfa Bank's Florida lawsuit. Contrary to Alfa Bank's assertion, *see* MTC Mem. 16, ZETAlytics's status as a non-party to the Florida lawsuit is highly relevant and heightens the strength of ZETAlytics's objection. *See Cusumano*, 162 F.3d at 717; *Exxon Shipping Co.*, 34 F.3d at 779; *see also Ceroni*, 793 F. Supp. 2d at 1277. Moreover, given the highly speculative nature of Alfa Bank's lawsuit, use of abusive discovery tactics, and ZETAlytics's assertion of this objection with specificity, the Court finds that enforcing the Deposition Subpoena would impose an undue burden on ZETAlytics and demonstrates good cause for granting its Motion to Quash. *See Estate of Chen*, 208 A.3d at 1176-78.

2

Document Subpoena

On the other hand, the Document Subpoena is limited in terms of a time frame—i.e., from 2016 to present, *see* MTQ Mem. Ex. 3 (Document Subpoena), at 12—but it also casts an extremely wide net that is unreasonably duplicative in nature. Take, for example, Alfa Bank's requests for ZETAlytics to produce documents regarding the following:

> "l. Communications, documents, and computer data regarding allegations of secret communications between the Trump Organization and Alfa Bank. This includes information relating to (i) the Trump Organization server or domains; (ii) Alfa Bank's servers or domains; and (iii) analysis of computer data related to either the Trump Organization or Alfa Bank.
>
> ". . .

> "3. Communications, documents, and computer data regarding the Trump Organization server or domains or the Alfa Bank servers or domain from DNS databases, including but not limited to, ZETAlytics'[s] DNS databases, the ZoneCruncher tool, or any other apparatus, tool, instrument, or operation affiliated with ZETAlytics.
>
> ". . .
>
> "6. Communications, documents, computer data, and identifying information, including but not limited to IP addresses or account names, relating to individuals or entities that queried, accessed, or otherwise performed analyses regarding the Trump Organization or Alfa Bank servers or domains, including any DNS queries or other DNS activity." (MTQ Mem. Ex. 3 (Document Subpoena), at 12-13.)

Once again, these requests must be read with due consideration of the very expansive terms and modifiers Alfa Bank provides in both subpoenas, as discussed *supra*. Furthermore, the instructions detailed in the Document Subpoena would further increase ZETAlytics's burden as well, providing in pertinent part as follows:

> "1. These requests shall be deemed to be a request for all documents, whether prepared by you or by any other party or any other person, which are in your physical custody, possession, or control; or that you own in whole or in part; or that you have a right by contract, statute, or otherwise to use, access, inspect, examine, or copy on any terms; or that you have, as a practical matter, the ability to use, access, inspect, examine, or copy on any terms.
>
> "2. Documents produced in response to these requests are to be either produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in this request for production, including, but not limited to, all associated file labels, file headings, and file folders together with the responsive documents from each file, and the owner or custodian of each produced item should be identified. To the extent that the documents are in any computerized, electronic, or digital format or any other medium of communication or storage, the documents shall be downloaded to a hard-drive or [Digital Versatile Disc] without further processing by you, containing all significant material contained in the electronic records including, without limitation, the creation date for the file and the date it was last modified.

> "3. Electronically stored information ('ESI') should be produced in its native format, except that ESI may be produced in a reasonably usable form, *i.e.*, single page [Tagged Image File Format] that are searchable by electronic means. In addition, ESI should be produced in a logically unitized format. Logical unitization of documents requires the producing party to ensure, among other things, that a particular document captures all of its respective pages and that document relationships, such as a 'parent' document (*e.g.*, a fax cover sheet) and 'children' attachments (*e.g.*, a faxed letter and attachment to the letter), are preserved.
>
> "4. With respect to any documents you produce, each original is to be produced, and each copy is to be produced if it in any way varies from the original by addition or subtraction of marginalia, notations, text or any other information. . . . In addition, each and every draft of any responsive document is to be produced." (MTQ Mem. Ex. 3 (Document Subpoena), at 9-10.)

Due to the magnitude of the requests, definitions, and instructions contained in the Document Subpoena, ZETAlytics would be forced to search for and identify identical documents multiple times, determine whether to produce them relative to each request, and thereafter go through the extensive process of ensuring compliance with the subpoena at issue. Therefore, the requests for production of documents are unreasonably cumulative and broad such that ZETAlytics would suffer an undue burden if it were forced to comply. *See Chudasama*, 123 F.3d at 1367. ZETAlytics has appropriately asserted an undue burden objection with respect to the Document Subpoena as well, and the objection is therefore sustained. *See Estate of Chen*, 208 A.3d at 1176-78.

E

Grand Jury Secrecy

ZETAlytics argues that Alfa Bank improperly demands disclosure of information protected by the veil of grand jury secrecy, given Alfa Bank's knowledge of Special Counsel John Durham's (Special Counsel Durham) investigation into Russian interference with the 2016 United States

presidential election, which is "proceeding primarily through use of a federal grand jury."[6] (MTQ Mem. 14-18; ZETAlytics's Opp'n & Reply Mem. 22 (citing Pl.'s Notice Suppl. Auth. (Sept. 17, 2021) (discussing indictment of Michael Sussmann)).) As such, ZETAlytics contends Alfa Bank "cannot credibly claim anything other than that the Subpoenas demand information from ZETAlytics about its possible 'responses' to 'inquiries' from the Special Counsel's grand jury." (ZETAlytics's Opp'n & Reply Mem. 22.) ZETAlytics thus argues for the application of case law stemming from Rule 6(e) of both the Superior Court and Federal Rules of Criminal Procedure—given their substantial similarity.[7] (MTQ Mem. 15-18.) The specific objections ZETAlytics makes are with respect to Topic Seven of the Deposition Subpoena and Request Number Four of the Document Subpoena. (MTQ Mem. 14; ZETAlytics's Opp'n & Reply Mem. 21.)

In response, Alfa Bank asserts that the Deposition Subpoena should not be quashed and ZETAlytics should be required to produce responsive documents because ZETAlytics's objections only cover one topic in the Deposition Subpoena and a "lone request" in the Document Subpoena. (Pl.'s Mem. Opp'n Mot. Quash 21; MTC Mem. 28.) Regarding the Deposition Subpoena, Alfa Bank argues that ZETAlytics can object on the record at deposition to the extent any questions

[6] The Court will hereinafter refer to the indictment of Michael Sussmann as "the Sussmann Indictment" and to the grand jury proceedings that led to his indictment as "the Sussmann Grand Jury Proceedings."

[7] It is a well-settled matter of Rhode Island law that "where the federal rule and our state rule of procedure are substantially similar, we will look to the federal courts for guidance or interpretation of our own rule." *Smith v. Johns-Manville Corp.*, 489 A.2d 336, 339 (R.I. 1985) (citing *Nocera v. Lembo*, 111 R.I. 17, 20, 298 A.2d 800, 803 (1973); *Giarrusso v. Corrigan*, 108 R.I. 471, 472, 276 A.2d 750, 750 (1971)). Rule 6(e) of the Superior Court Rules of Criminal Procedure and its counterpart in the Federal Rules of Criminal Procedure are "substantially similar," meaning precedent from the Federal courts is instructive. *Compare* Fed. R. Crim. P. 6(e), *with* Super. R. Crim. P. 6(e). *See also State v. Cianci*, No. 83-1275, 1983 WL 486865, at *3 (R.I. Super. Dec. 13, 1983) ("Our Federal District Court has observed that the secrecy provisions of *Federal Criminal Rule 6(e)*, . . . is substantially similar to our own rule governing grand jury proceedings[.]").

implicate information related to grand jury proceedings. (Pl.'s Mem. Opp'n Mot. Quash 21.) Alfa Bank also maintains that neither subpoena seeks to obtain information regarding the "inner workings of the grand jury." *Id.* at 22-23; MTC Mem. 29-31. Instead, Alfa Bank surmises its discovery demands only implicate information regarding the DNS server allegations that are central to the Florida lawsuit. (Pl.'s Mem. Opp'n Mot. Quash 23; MTC Mem. 30.)

Grand juries have always occupied an important place in our system of criminal law, acting as an instrument of justice that serves the dual function of determining whether probable cause exists to believe a crime has been committed and protecting citizens against baseless criminal prosecutions. *In re Doe*, 717 A.2d 1129, 1134 (R.I. 1998) (quoting *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 423 (1983)). Further, "[t]he ancient principle of grand jury secrecy . . . serves to protect the identity and testimony of grand jury witnesses so as to permit them to speak freely and so as to prevent witness tampering and retribution." *S.E.C. v. Oakford Corp.*, 141 F. Supp. 2d 435, 437 (S.D.N.Y. 2001) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681-82 n.6 (1958); *United States v. Sobotka*, 623 F.2d 764, 767 n.1 (2d Cir. 1980); Marvin E. Frankel & Gary P. Naftalis, *The Grand Jury* (1977)). "While, except where otherwise provided by statute, a witness is free to voluntarily disclose his testimony before a grand jury, he may not be compelled to do so by another person; and even a court may not overcome the presumption of grand jury secrecy *absent a strong showing of necessity*[.]" *Oakford Corp.*, 141 F. Supp. 2d at 437 (citing *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979); *Arlington Glass Co. v. Pittsburgh Plate Glass Co.*, 24 F.R.D. 50 (N.D. Ill. 1959)) (emphasis added).

Rule 6(e)(2) of the Superior Court Rules of Criminal Procedure—which governs the secrecy of grand jury proceedings in Rhode Island—provides in pertinent part as follows:

> "A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the State, or any person to whom disclosure is made under subdivision (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. A knowing violation of Rule 6 may be punished as a contempt of court."

That said, grand jury secrecy is not a *per se* rule against disclosure and Rule 6(e)(3)(C)(i) provides an exception to the general rule against disclosure when a court directs disclosure "preliminarily to or in connection with a judicial proceeding[.]" The touchstone of the presumption against disclosure is whether revealing such information would tend to unveil secret aspects stemming from the inner workings of a grand jury's investigation—e.g., the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of jurors, and similar information. *In re Doe*, 717 A.2d at 1135; *see also Senate of the Commonwealth of Puerto Rico on Behalf of Judiciary Committee v. United States Department of Justice*, 823 F.2d 574, 582 (D.C. Cir. 1987) (hereinafter *Senate of the Commonwealth*).

i

Applicability of Grand Jury Secrecy

Through use of the Deposition Subpoena, Alfa Bank intends to question ZETAlytics's designated representative regarding the following:

> "Your response to law enforcement inquiries, intelligence agency inquiries, and other governmental inquiries concerning allegations of secret communications between Alfa Bank and the Trump Organization. *This includes*, but is not limited to, non-privileged *information related to U.S. Attorney and Special Counsel John Durham's investigation of the FBI's inquiry into Russian interference with the 2016 election*." (MTQ Mem. Ex. 4 (Deposition Subpoena), at 13 (emphasis added).)

In addition, the Document Subpoena asks for the following under Request Number Four:

> "Communications, documents, and computer data that were

> produced in response to subpoenas, discovery requests, informal document requests, or government inquiries and that relate to (i) allegations of secret communications between the Trump Organization and Alfa Bank; (ii) the Trump Organization server or domains; (iii) Alfa Bank; (iv) analysis of computer data related to either the Trump Organization or Alfa Bank; or (v) the John Doe Defendants or the Anonymous Researchers." (MTQ Mem. Ex. 3 (Document Subpoena), at 13.)

Topic Number Seven of the Deposition Subpoena and Request Number Four of the Document Subpoena clearly seek to uncover information stemming from the inner workings of the Sussmann Grand Jury Proceedings, contrary to Alfa Bank's contentions.[8] This much is evident in light of the definitions utilized for key terms in both subpoenas—as discussed *supra*—that make these requests extremely broad and far-reaching as well.

First, Alfa Bank seeks the identity of at least one witness appearing before the grand jury—i.e., ZETAlytics—because compelling it to turn over documents it provided in connection with the Sussmann Grand Jury Proceedings or to testify regarding its involvement therewith would certainly result in lifting the veil of secrecy. What is more, Alfa Bank also seeks the substance of testimony presented by ZETAlytics by asking for the following:

> "[ZETAlytics's] response to law enforcement inquiries, intelligence agency inquiries, and other governmental inquiries concerning allegations of secret communications between Alfa Bank and the Trump Organization. *This includes, but is not limited to, non-privileged information related to U.S. Attorney and Special Counsel John Durham's investigation of the FBI's inquiry into Russian interference with the 2016 election.*" (MTQ Mem. Ex. 4 (Deposition Subpoena), at 13 (emphasis added).)

Hence, Alfa Bank makes no effort to conceal the fact that it seeks that information in connection

[8] To be sure, there is nothing in the record definitively indicating that ZETAlytics or any of its employees acting on its behalf have been involved with the grand jury indictment led by Special Counsel Durham. Nor would this Court expect there to be, absent a particularized need for disclosure pursuant to Rule 6(e).

with the Sussmann Grand Jury Proceedings. *See id.*; *see also* Hr'g Tr. 40:3-8, Nov. 5, 2021 ("[T]he Special Counsel's investigation where this grand jury is impaneled overlaps substantially with Alfa-Bank's underlying allegations. So it's not surprising that Alfa-Bank would be interested in obtaining information produced to the Special Counsel, given the overlap between the two subject matters.").

The same is true of Request Number Four from the Document Subpoena, though Alfa Bank's attempt to lift the veil of secrecy there is perhaps less blatant. The Document Subpoena asks for "[c]ommunications, documents, and computer data that were produced in response to subpoenas, discovery requests, informal document requests, or government inquiries" with respect to the underlying subject of the Sussmann Grand Jury Proceedings—i.e., the 2016 presidential election cycle and the alleged relationship between Alfa Bank and the Trump Organization. *See* MTQ Mem. Ex. 3 (Document Subpoena), at 13; *see also* Hr'g Tr. 40-41, Nov. 5, 2021. Furthermore, attaining access to such information is sure to reveal—at least in part—the direction of the grand jury investigation and the strategy employed by Special Counsel Durham. Therefore, Alfa Bank's desired discovery implicates the "inner workings" of grand jury proceedings and this Court must examine the propriety of ordering disclosure of that information. *See In re Doe*, 717 A.2d at 1135; *see also Senate of the Commonwealth*, 823 F.2d at 582.

ii

Policy Considerations

In construing Rule 6(e), this Court "begin[s] with the 'fundamental policy of grand jury secrecy[]'" and "examine[s] not only the need for and the character of the material sought but also the effect such disclosure would have on policies underlying grand jury secrecy." *In re Doe*, 717 A.2d at 1134 (internal quotation omitted). The relevant policy considerations are as follows:

> "(1) preventing the escape of those whose indictment may be contemplated, (2) ensuring the grand jurors the utmost freedom in their deliberations and preventing a defendant or target of an investigation from importuning them, (3) preventing the subornation of perjury and other witness tampering, (4) encouraging the free and untrammeled disclosure of relevant information [with respect to the commission of crimes], and (5) protecting the innocent defendant or target exonerated by the investigation from public disclosure of the fact that he or she was under investigation." *Id.* (citing *In re Grand Jury Investigation*, 642 F.2d 1184, 1191 (9th Cir. 1981); *State v. Carillo*, 112 R.I. 6, 11-12 n.4, 307 A.2d 773, 776 n.4 (1973)).

With respect to the first, second, third, and fifth considerations, the Court does not find them to be problematic because the Sussmann Grand Jury Proceedings are now complete, resulting in the Sussmann Indictment. *See generally* Pl.'s Mem. Opp'n Mot. Quash Ex. B (Sussmann Indictment).

However, the Court has serious concerns with respect to the fourth consideration. The Sussmann Indictment and Grand Jury Proceedings are of substantial importance not only to Alfa Bank's lawsuit, but to the United States as a whole. *See Republican Party of Pennsylvania v. Degraffenreid*, 141 S.Ct. 732, 734 (2021) (discussing importance of confidence in American elections as a principle of self-governance). The Sussmann Grand Jury Proceedings examined allegedly false statements Mr. Sussmann made to the Federal Bureau of Investigation concerning the capacity in which he shared information about the purported secret line of communication between Alfa Bank and the Trump Organization during the 2016 presidential election cycle. (Pl.'s Mem. Opp'n Mot. Quash Ex. B (Sussmann Indictment) ¶¶ 1-4.)

Given the axiomatic importance of maintaining American citizens' confidence in our electoral processes, the Sussmann Grand Jury Proceedings and resulting indictment represent a significant effort to ensure that confidence remains warranted. *See Degraffenreid*, 141 S.Ct. at 734. In addition, the Sussmann Grand Jury Proceedings were held to ensure that Mr. Sussmann and

other potential targets of investigation—to the extent they existed at the time of the Sussmann Grand Jury Proceedings—received due process. *See* U.S. Const. amend. V ("No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury[.]"). As such, encouraging the untrammeled disclosure of information relevant to the commission of alleged crimes is of the utmost importance for grand jury proceedings in general. *See id.*; *see also In re Doe*, 717 A.2d at 1134. That consideration is of even greater importance here, due to the highly significant nature of the Sussmann Grand Jury Proceedings and the Sussmann Indictment. *See In re Doe*, 717 A.2d at 1134; *see also Degraffenreid*, 141 S.Ct. at 734.

iii

Particularized Need Requirement

A party seeking disclosure of information stemming from a grand jury investigation must demonstrate a "particularized need" to attain the information that outweighs the public interest in secrecy. *United States v. Norian Corp.*, 709 F. App'x 138, 140 (3d Cir. 2017) (quoting *United States v. McDowell*, 888 F.2d 285, 289 (3d Cir. 1989)). To satisfy this requirement, the party seeking to remove the veil of grand jury secrecy must "demonstrate that (1) the material they seek is needed to avoid a possible injustice in another judicial proceeding; (2) the need for disclosure is greater than the need for secrecy; and (3) their request is structured to cover only the materials so needed." *Norian Corp.*, 709 F. App'x at 142 (quoting *Douglas Oil*, 441 U.S. at 222) (internal quotations omitted).

Alfa Bank has not satisfied the first requirement as it has not provided this Court with any information indicating that the requested discovery is designed to avoid an injustice in another judicial proceeding. Further, the need for disclosure is not greater than the need for secrecy, as

discussed *supra*, in light of the fact that Alfa Bank's discovery requests are based on speculation and constitute an abuse of discovery mechanisms. Finally, the requests do not cover only the materials so needed because they lack the requisite levels of relevance and narrow tailoring for discovery requests in general. *See Norian Corp.*, 709 F. App'x at 142; *see also Micro Motion, Inc.*, 894 F.2d at 1326; *see also Giannini*, 1991 WL 789882, at *2.

In sum, the public interest in maintaining the secrecy of the Sussmann Grand Jury Proceedings far outweighs Alfa Bank's needs for discovery of information here. Therefore, ZETAlytics's objection that Alfa Bank's requests seek to impermissibly invade the province of grand jury proceedings is sustained.

F

Confidential and Competitively Sensitive Business Information

ZETAlytics argues that the Deposition Subpoena "calls for testimony that strikes at the very heart of how ZETAlytics performs its work[]" and that disclosure of its DNS related methodologies would be damaging to its ability to compete in the cybersecurity market. (MTQ Mem. 11-13; *see also* ZETAlytics's Opp'n & Reply Mem. 14-17 (arguing the same).) As such, ZETAlytics's confidentiality objection is made pursuant to Rule 45(c)(3)(A), (B)(i) of the Superior Court Rules of Civil Procedure, which provides that the Court "shall quash or modify the subpoena" if it "requires disclosure of a trade secret or other confidential research, development, or commercial information[.]"

In response, Alfa Bank argues that even if the Deposition Subpoena requires testimony that will reveal privileged or sensitive business information, that does not justify quashing the subpoena. (Pl.'s Mem. Opp'n Mot. Quash 24-29.) Further, Alfa Bank contends ZETAlytics fails to otherwise meet its burden to establish that the Deposition Subpoena would impose an undue

burden. *Id.* With respect to requests that may implicate confidential business information, Alfa Bank argues that ZETAlytics can object on the record at deposition to those requests and that these concerns are obviated by its willingness to enter into the proposed confidentiality agreement provided to ZETAlytics on August 19, 2021. (Pl.'s Mem. Opp'n Mot. Quash 25-26; *see also* ZETAlytics's Opp'n & Reply Mem. Ex. 11 (Aug. 19, 2021 Confidentiality Agreement E-mail).) In support of its argument that ZETAlytics has failed to meet its burden, Alfa Bank asserts that its requests are highly relevant and designed to lead to the discovery of the John Doe Defendants, that Ms. Lorenzen's cancer diagnosis does not justify quashing the subpoena due to a lack of evidence to support specific and extraordinary harm that a deposition would cause, and that the time and expense ZETAlytics would expend preparing a deponent is not sufficient in and of itself to justify quashing the Deposition Subpoena (also due to a lack of evidence). (Pl.'s Mem. Opp'n Mot. Quash 27-29.)

"[ZETAlytics] is a noteworthy niche threat intelligence company[.]" (Pl.'s Mem. Opp'n Mot. Quash Ex. B (Introduction to [ZETAlytics]), at 1.) ZETAlytics markets itself as a company offering "data and tools you won't find anywhere else" due to its "unrivalled geographic diversity and exclusive global network visibility in searchable datasets for use by cyber security analysts" and threat intel feeds that "are unlike any other[.]" *See ZETAlytics Passive DNS – Tools & Training for Cyber Security Analysts*, https://zetalytics.com (last visited Dec. 6, 2021) (navigable home page with information on ZETAlytics). As the Chief Data Scientist at ZETAlytics, Ms. Lorenzen is "known as a respected data scientist with decades of technical leadership in distinguished communities" and is "the primary architect of ZoneCruncher, a popular tactical suite of analyst tools used by law enforcement, Internet security firms, and malware and academic researchers." (Pl.'s Mem. Opp'n. Mot. Quash Ex. B (Introduction to [ZETAlytics]), at 1.) Moreover,

ZETAlytics's security feeds "provide a unique, customizable, and proactive layer of protection" based on an "ultra high-confidence algorithm, fueled by [ZETAlytics's] exclusive globally-sourced passive DNS data stream." *Id.* at 2. Hence, it is evident that ZETAlytics is a respected cybersecurity firm that relies on sensitive and highly-valuable proprietary internal information (i.e., its business operations and specialized services), as well as information which it gathers from its clientele while providing them with various services.

There are several testimony topics listed in the Deposition Subpoena that seek to encroach on ZETAlytics's highly valuable, confidential, and sensitive proprietary business information. For example, Topic Eight calls for testimony regarding information concerning ZETAlytics's "[s]ources of DNS data," including the "origin and source of DNS data such as the processing, manipulation, and enrichment of said data provided by ZETAlytics services[.]" (MTQ Mem. Ex. 4 (Deposition Subpoena), at 13.) The Deposition Subpoena also calls for DNS data via "[s]pecific categories and data types included in the DNS records you have access to, process, and/or retain[,]" in addition to the "[p]rocesses and methodology [ZETAlytics] use[s] to ingest, process, categorize, and manipulate data prior to it being searchable by an end user for each ZETAlytics service related to DNS data." *Id.* Moreover, Topic Fourteen calls for information regarding ZETAlytics's "ownership, structural organization, business model, and funding." *Id.* at 14.

The requests in the Document Subpoena also seek to encroach on ZETAlytics's highly valuable, confidential, and sensitive proprietary business information. For example, request Number Nine asks for "[c]ommunications and documents *relating to* ZETAlytics'[s] organizational structure, ownership, business model, and funding." *Id.* Ex. 3 (Document Subpoena), at 14. Importantly, terms in the Document Subpoena like "relating to" and "concerning" are defined the same way as in the Deposition Subpoena, as discussed *supra*.

Compare id. at 1, 11, *with* MTQ Mem. Ex. 4 (Deposition Subpoena), at 1, 9. Applying those terms and definitions to request Number Nine demonstrates that Alfa Bank effectively asks for production of an extremely wide range of documents, many of which will likely have no relevance to Alfa Bank's lawsuit and its quest to identify the alleged John Does.

If permitted to proceed with its discovery requests through the subpoenas at issue, Alfa Bank would undoubtedly probe confidential proprietary business information ZETAlytics utilizes to remain competitive in the cybersecurity marketplace and to serve its clients that rely on it to protect their private, confidential information. What is more, Alfa Bank's requests far exceed their stated purpose—i.e., seeking to identify the John Doe Defendants to fill the placeholders it established in its Complaint.

Additionally, the Court is not satisfied that the proposed confidentiality agreement would adequately address these confidentiality concerns raised by ZETAlytics. For instance, under the proposed agreement, the following types of individuals would have access to documents and information designated as confidential:

> "(i) counsel for Alfa Bank and employees of counsel for Alfa Bank who are engaged in assisting in the litigation or have responsibility for the preparation and trial of the lawsuit; (ii) Alfa Bank and its employees; (iii) consultants, investigators, or experts employed by Alfa Bank or counsel for Alfa Bank to assist in the preparation and trial of the lawsuit; (iv) outside service-providers and consultants regarding document and ESI processing, hosting, review, and production, including any e-Discovery consultants and trial consultants; (v) witnesses and attorneys for witnesses to whom disclosure is reasonably necessary during depositions or pre-trial proceedings; and (vi) other persons only upon consent of Zetalytics and on such conditions as are agreed to." (ZETAlytics's Opp'n & Reply Mem. Ex. 11 (Aug. 19, 2021 Confidentiality Agreement e-mail), ¶ 4.)

Potentially providing access to such a long list of individuals would not adequately protect ZETAlytics's proprietary business information, which it must rely upon to remain competitive in

the cybersecurity market and serve its clientele. Therefore, ZETAlytics has raised valid arguments regarding the potential confidentiality implications stemming from the topics for testimony and the requests for document production. As such, its confidentiality objection is sustained with respect to both subpoenas.

G

First Amendment Rights of Third Parties

The Court now turns to ZETAlytics's First Amendment objection—which incorporates by reference both Ms. Lorenzen's Motion to Quash and for Protective Order and her Objection to Alfa Bank's Motion to Compel. (ZETAlytics's Opp'n & Reply Mem. 24 n.15). Therefore, ZETAlytics argues that the subpoenas improperly seek to unmask anonymous speakers—i.e., those who researched and compiled information on the purported secret communications between Alfa Bank and the Trump Organization (the Anonymous Researchers).

1

Anonymous Speech

First Amendment protection for anonymous speech was first articulated by the United States Supreme Court in *Talley v. California*, 362 U.S. 60 (1960). *Talley*, 362 U.S. at 64-65. Anonymous speech has "played an important role in the progress of mankind[,]" providing an opportunity for speech for those "motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-42 (1995). Moreover, the decision to remain anonymous "is an aspect of the freedom of speech protected by the First Amendment." *Id.* at 342. Based on this well-established First Amendment right to remain anonymous, ZETAlytics asserts that forced compliance with the subpoenas will cause future harm through the invasion of

a legally protected interest on behalf of third parties—i.e., the Anonymous Researchers. *See United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (discussing forms of unprotected speech); *see Talley*, 362 U.S. at 64-65 (establishing protection for anonymous speech); *see McIntyre*, 514 U.S. at 341-42 (discussing right to remain anonymous).

Alfa Bank claims that ZETAlytics lacks standing to assert the First Amendment right to remain anonymous on behalf of the Researchers. (MTC Mem. 19-25.) Specifically, Alfa Bank argues that ZETAlytics cannot satisfy three requirements: (a) that it has or will suffer an injury-in-fact; (b) that it has a sufficiently close relation to the Anonymous Researchers or John Doe Defendants; and (c) that there is a sufficient hindrance to the Anonymous Researchers' or John Doe Defendants' ability to protect their interests. (MTC Mem. 20-23.)[9] Alfa Bank further maintains that First Amendment rights are not implicated here as the instant motions do not stem from a claim that seeks to punish speech—e.g., a defamation claim—and because the Anonymous Researchers have forgone their right to remain anonymous to the extent they voluntarily disclosed their identities to Ms. Lorenzen. (Pl.'s Mem. Opp'n Mot. Quash 23, 25; Pl.'s Mem. Supp. Mot. Compel 22-24.)

Given that Alfa Bank's argument that the Anonymous Researchers waived their right to remain anonymous is identical to the same argument raised in *Alfa I*, the Court hereby incorporates its rejection of that argument by reference. *See Alfa I*, 2021 WL 5492872, at *16.

[9] Neither ZETAlytics nor Ms. Lorenzen raise the issue of the John Doe Defendants' First Amendment rights anywhere in their papers and therefore that issue is not up for consideration by this Court even though Alfa Bank lodges arguments to that effect. *See* MTC Mem. 24-25 (arguing against protection of alleged John Doe Defendants' activities because "Alfa Bank's lawsuit raises Florida RICO claims against Defendants stemming from their criminal cyberattacks against Alfa Bank, unlawful conduct that manifestly is not speech and does not fall within the purview of the First Amendment"). To be sure, Ms. Lorenzen—and ZETAlytics by virtue of its incorporation of her arguments—only argues for the First Amendment rights of the Anonymous Researchers, not those of the alleged John Doe Defendants.

2

Third-Party Standing

The Court will now consider Alfa Bank's challenge to ZETAlytics's standing. *See* MTC Mem. 20-23.[10]

In *Powers v. Ohio*, 499 U.S. 400 (1991), the United States Supreme Court adopted a test to determine whether someone can assert the rights of third parties on their behalf, as an exception to the general rule that an individual "must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." *Powers*, 499 U.S. at 410. The three prongs of that test are as follows:

> "The litigant must have suffered an 'injury in fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute, . . . the litigant must have a close relation to the third party, . . . and there must exist some hindrance to the third party's ability to protect his or her own interests." *Id.* at 410-11 (citing *Singleton v. Wulff*, 428 U.S. 106, 112-16 (1976) (citations omitted)).

a

Injury in Fact

In Rhode Island, the injury-in-fact requirement requires a showing that one has suffered "'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.'" *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). When a person asserting injury does so with respect to future harm, the "threatened injury must be certainly

[10] Due to the presentation of nearly the exact same arguments, the Court hereby incorporates its discussion of the applicable case law and requirements from *Alfa I* on this particular issue, providing relevant rules of law and supplementary analysis where appropriate to ensure proper context and to avoid unnecessary repetition of the same information. *See generally Alfa I*, 2021 WL 5492872, at *1-2.

impending[,]" and allegations of possible future injury are not sufficient. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (internal quotations omitted). Furthermore, our Supreme Court has made it clear that "'[t]he line is not between a substantial injury and an insubstantial injury[,]'" but instead "'between injury and no injury.'" *Pontbriand*, 699 A.2d at 862 (quoting *Matunuck Beach Hotel, Inc. v. Sheldon*, 121 R.I. 386, 396, 399 A.2d 489, 494 (1979)).

It is alleged that the John Doe Defendants engaged in a variety of actions as a "Disinformation Enterprise," subjecting them to liability under Florida's Racketeer Influenced and Corrupt Organizations (RICO) statute. *See generally* Fla. Compl. ¶¶ 67-82. Alfa Bank's lawsuit is thus grounded in Section 772.104 of the Florida Statutes, a provision that provides a cause of action against those "[e]mployed by, or *associated with*, any enterprise to conduct or participate, directly *or indirectly*, in such enterprise through a pattern of criminal activity[.]" Fla. Stat. §§ 772.104(1), 772.103(3) (1986) (emphasis added).[11] Notably, Section 772.102(4) defines a "[p]attern of criminal activity" as "engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents[.]"

In its Complaint, Alfa Bank alleges the purported John Doe Defendants "willfully, knowingly, and without authorization or exceeding authorization *accessed or caused to be*

[11] Florida—the forum state for the instant action—takes a somewhat broad approach to defining the term "enterprise" for purposes of RICO actions. *See Gross v. State*, 765 So.2d 39, 45, 47 (Fla. 2000). In fact, Florida's jury instruction for this key term defines an "enterprise" as follows:

> "*[A]ny individual*, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, *or group of individuals associated in fact although not a legal entity*; and it *includes illicit as well as licit enterprises* and governmental, *as well as other, entities*." *Id.* at 47 (quoting Fla. Stat. § 895.02(3) (1993) (emphasis added)).

accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner of use exceeds authorization[.]" (Fla. Compl. ¶ 71 (emphasis added).) Given that the Florida RICO statute only requires an association with an enterprise engaged in a pattern of criminal activity, Alfa Bank's assertions demonstrate the information it seeks to obtain from ZETAlytics would implicate the company's right to remain anonymous, in addition to its rights as a potential defendant accused of criminal activity. *See generally id.* ¶¶ 69-71, 73, 77-79, 81 (stating, in very broad terms, the nature, general composition, and alleged activities of the "Disinformation Enterprise," to which the John Doe Defendants purportedly belong); *see* MTC Mem. 9 ("Alfa Bank has reason to believe that some of the relevant DNS data to which Tea Leaves[12] had access was sourced from ZETAlytics."); *see id.* at 15 ("[T]he DNS data at the heart of Alfa Bank's lawsuit likely originated from ZETAlytics and its platforms."); *see also* Hr'g Tr. 28:21-25, Nov. 5, 2021 ("The reasons ZETAlytics is relevant is because we have reason to believe that ZETAlytics'[s] databases sourced the DNS data that ultimately was used to propagate these server allegations[.]"); *see also id.* at 29:17-20 ("Our understanding . . . is that it was the ZETAlytics database alone from which this DNS data was sourced.").

ZETAlytics's First Amendment rights are clearly at stake and Alfa Bank's quest to attain information that could implicate it in a criminal enterprise means the company faces a certainly impending injury-in-fact if forced to comply with either subpoena. *See Whitmore*, 495 U.S. at 158. In short, Alfa Bank's contentions that ZETAlytics does not have standing because it will not suffer

[12] "Tea Leaves" is one of the Anonymous Researchers of great importance to Alfa Bank because, according to Alfa Bank, they are one of the Researchers' key leaders. *See* Fla. Compl. ¶¶ 43, 50.

injury is contrary to the facts presented. Consequently, ZETAlytics satisfies the first requirement for third-party standing.

b

Close Relationship

To grant standing to assert the rights of third parties, the *Powers* test also requires a close relationship between the person asserting the right and the third-party, "such that the former is fully, or very nearly, as effective a proponent of the right as the latter." *Singleton*, 428 U.S. at 114-15.

Alfa Bank makes allegations that are self-defeating for purposes of determining whether ZETAlytics has a sufficiently close relationship with the Anonymous Researchers because its allegations cast ZETAlytics as a likely member of the group of Anonymous Researchers. *Compare* Fla. Compl. ¶¶ 42-43 (describing group of Anonymous Researchers as a group including "both academics and professionals, some of whom reportedly worked at cybersecurity firms with close ties to federal agencies and accordingly had unparalleled access to 'nearly comprehensive logs of communications between servers'") (citation omitted), *with* MTC Mem. 9 ("ZETAlytics played a significant role in facilitating the Anonymous Researchers' review, analysis, and research of the server allegations."). Alfa Bank also maintains that Ms. Lorenzen—who is the Chief Data Scientist at ZETAlytics and its founder—is one of the Anonymous Researchers. *See* MTC Mem. 3 (stating that "[b]ased on available evidence and public-source information, Lorenzen likely is connected to cybersecurity researchers who obtained, reviewed, and analyzed the DNS data at the heart of the cyberattacks" and that she "likely herself obtained, reviewed, and analyzed the same DNS data; and potentially was the target of outreach from the unknown John Doe defendants"); *see also* Hr'g Tr. 27:8-17, Nov. 5, 2021 (argument by Alfa Bank's counsel "highlight[ing] a few

allegations, . . . supported by e-mails cited and quoted in the [Sussmann] indictment" purportedly "reveal[ing] that Miss Lorenzen, who, obviously, *is intimately associated with ZETAlytics*, was the first person to obtain the DNS data that served as the backbone of these allegations that Alfa-Bank was maintaining a secret communications channel with the Trump Organization, which is the very subject of Alfa-Bank's suit")[13] (emphasis added).

To conclude ZETAlytics lacks a sufficiently close relationship with the Anonymous Researchers to assert their First Amendment rights would be contrary to both the facts presented and Alfa Bank's own averments. Therefore, the Court finds that ZETAlytics has a sufficiently close relationship with the Anonymous Researchers to satisfy that requirement of third-party standing. *Singleton*, 428 U.S. at 114-15.

c

Hindrance to Self-Assertion

The requirement that there exist some hindrance for a third party to assert their own rights does not require any separate factual analysis or application of law, and the Court hereby incorporates its analysis on that point from *Alfa I*. *See Alfa I*, 2021 WL 5492872, at *18-19. As such, that requirement is met. *See id.*

Given that all three prongs of the *Powers* test are satisfied, ZETAlytics appropriately asserts the First Amendment rights of the Anonymous Researchers with respect to both subpoenas. *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So.2d 936, 941 (Fla. 2002) (quoting *Powers*, 499 U.S. at 410).

[13] The Court has reviewed the Sussmann Indictment in full and does not arrive at the same definitive conclusion that counsel for Alfa Bank does here—i.e., that the Sussmann Indictment identifies Ms. Lorenzen as the first individual to obtain the DNS data at issue in the Florida lawsuit. Nonetheless, Alfa Bank's contentions in this respect are self-defeating all the same.

3

First Amendment Objection

Because ZETAlytics has properly asserted a First Amendment objection on behalf of the Anonymous Researchers, the Court hereby incorporates its analysis of that issue and its adoption of a summary judgment standard from *Alfa I*. *See Alfa I*, 2021 WL 5492872, at *19-22. As stated in that decision, fairness requires that the parties have a full opportunity to address this additional aspect of the standing analysis, given the adoption of the two-part summary judgment test. Therefore, the Court reserves its ruling on ZETAlytics's First Amendment objection pending additional submissions and argument from the parties relative to that standard. *See id.* at *22.

IV

Conclusion

For the reasons stated above, this Court grants ZETAlytics's Motion to Quash the Deposition Subpoena and denies Alfa Bank's Motion to Compel the production of responsive documents. Counsel shall enter the appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**AO Alfa Bank v. John Doe, et al.**
CASE NO:	**WM-2020-0361**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**December 9, 2021**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Carl Fumarola, Esq.**
For Defendant:	**Gerald J. Petros, Esq.; Ryan M. Gainor, Esq.; Steven J. Boyajian, Esq.; William M. Daley, Esq.; Daniel F. Sullivan, Esq.**