IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

WALT DISNEY PARKS AND RESORTS U.S., INC.

Plaintiff,

vs.

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT,

Defendants.
_____/

Case No. _____

IMMEDIATE HEARING REQUESTED PURSUANT TO SECTION 119.11(1), FLA. STAT.

COMPLAINT

PRELIMINARY STATEMENT

Walt Disney Parks and Resorts U.S., Inc. ("Disney") files this Complaint seeking relief for the Central Florida Tourism Oversight District's ("CFTOD") failure to comply with Florida's public records law. Access to public records is guaranteed by the Florida Constitution, Art. I, § 24(a), Fla. Const., and enforced through Chapter 119 of the Florida Statutes ("Public Records Act"). The right of access to public records is a "cornerstone of our political culture." *Bd. of Trs., Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016). The purpose of the Public Records Act is "to open the public records to allow Florida citizens to discover the actions of their government." *Board of Trustees v. Lee*, 189 So. 3d 120, 124 (Fla. 2016). Public agencies have a mandatory duty to act in good faith and are prohibited from engaging in unjustifiable delay or imposing bureaucratic hurdles when responding to public records requests. Unfortunately, that is exactly what has happened here.

CFTOD's failure to provide the access to its records guaranteed by Florida law appears to stem from pressure put on CFTOD employees due to numerous departures since the installation

of the District's new Board of Supervisors, appointed to replace the outgoing Board of CFTOD's predecessor, the Reedy Creek Improvement District ("Reedy Creek"). CFTOD was established in late February of this year when the Florida Legislature, acting at the behest of and in concert with the Governor of the State of Florida, passed a law that dissolved the long-standing Reedy Creek, renamed it CFTOD, and then gave control of the District to the Governor himself through his hand-picked Board.

In testimony taken in pending litigation brought against Disney by CFTOD, the new Board was recently described by CFTOD's public records administrator as "very, very, very politically-motivated." That political motivation comes at a high price for the District and its employees. District employees, including those at the director level, are leaving in large numbers, with as many as 50 departures since the Governor's Board was appointed. Employees are exhausted. They want to get back to their day-to-day operation, but find it difficult every day to just continue on, lack confidence in the new Board and those it has hired, and wish they could return to the days before Reedy Creek became CFTOD.

On the public records front, this has led to delays, inadequate preservation, storage and production of public records, and improper and unsupported claims of privilege and exemption from disclosure, in violation of the Florida Constitution and Chapter 119. In this case, the delay is so extreme that CFTOD still has yet to fully respond to a public records request Disney submitted seven months ago, in May of this year. CFTOD's response to Disney's public records request has also been plagued by the District's failure to search for or retain records from CFTOD's Board and its Administrator, instead allowing them to self-select what documents they were willing to provide from personal devices, including email and text messages—if those records had even been preserved in the first place. CFTOD went so far as to acquiesce to the insistence on the part of

Board Chair Martin Garcia that only CFTOD's outside attorneys be allowed to access District-related documents stored in his personal email account and devices, outsourcing this core government function to the same lawyers who are suing Disney.

As set out in this Complaint, CFTOD has prevented Disney from discovering the actions of its government through public records requests, in violation of Florida law. The Court should grant Disney relief.

INTRODUCTION

1. On May 11, 2023, Disney, through counsel, submitted a public records request ("May 11 Request") to the District seeking various specified documents ("Requested Records").

2. The District acknowledged Disney's Request, and sent Disney an invoice for records (which Disney promptly paid), but then allowed nearly four months to elapse without producing *any* of the Requested Records or asserting any exemption from its obligation to do so.

3. Because the District did not offer any explanation for its delay in producing public records, on August 29, 2023, Disney, through counsel, sent a five-day notice letter pursuant to section 119.12, Florida Statutes.

4. After receiving the five-day notice, the District produced only some of the Requested Records, emphasized that its disclosure was not complete, and represented that technological hurdles prevented retrieval of data from personal devices.

5. Then, after nearly three weeks passed without further disclosures or communication from the District, on September 21, 2023, Disney sent an additional letter raising concerns about the District's delay, its citation to unspecified "technological hurdles" to production, its assertion of the non-valid exemption for "attorney-client privilege," and its records retention practices.

6. The next day, the District sent Disney additional documents and declared that the District "has now fully complied and responded to your May 11, 2023 public records request." But the District did not address many of the concerns Disney had raised in its letter about the completeness of the District's productions. Disney's concerns persisted regarding the District's improper withholding of records, and its apparent failure to reasonably search, retrieve, and retain records made or received in the conduct of District business (regardless of the device, application, or account used).

7. Disney nonetheless reviewed the District's limited document production to assess whether the production appeared to be adequate, or appeared to omit information that is likely responsive, and likely to exist. That review indicated that the production likely omits key documents that are likely to exist, including text messages, voicemails, and app-based messages.

8. Accordingly, Disney sent a letter to the District on December 1, 2023, notifying the District of the many deficits in its production, and again requesting that District both provide additional information about how it was searching, retrieving, and retaining records, and that the District remedy the problems with its production. The District never responded to Disney's letter.

9. CFTOD has failed and is failing to comply with its Public Records obligations in numerous ways, including:

a. Allowing employees and Board Members to use personal devices, personal email addresses, text messages, and messaging applications for District business, without adequate processes to ensure any public records contained therein are preserved or produced;

b. Failing to ensure that Board Members do not use auto-delete features on personal accounts used for District business;

c. Relying on Board Members or individual employees—including District Administrator Glenton Gilzean—to self-select text messages or emails responsive to public records requests on their own, without technical instruction from the District or any effort to verify compliance;

d. Relying exclusively on outside litigation counsel to collect Board Chairman Martin Garcia's public records contained in his personal email account, without any process to verify compliance; and

e. Failing to preserve data from personal devices of departing employees.

10. Accordingly, Disney brings this action and asks the Court to: (i) set an immediate hearing pursuant to Section 119.11(1) of the Florida Statutes; (ii) declare that the District's failure to provide Disney with access to all of the Requested Records is unconstitutional and a violation of the Public Records Act; (iii) review in camera any documents that the District claims are exempt from disclosure; (iv) declare that the District further violated the Public Records Act by failing to retrieve and retain public records contained on personal devices and accounts; (v) order the District to retain and preserve all public records, including those located on personal devices, in accordance with state law; (vi) order the District to immediately provide Disney all outstanding non-exempt Requested Records, including those contained on any personal devices or accounts; and (vii) grant Disney any further relief as this Court deems appropriate.

THE PARTIES

11. Walt Disney Parks and Resorts U.S., Inc. is a Florida corporation with its principal place of business in Orange County, Florida. It owns and operates Walt Disney World in Central Florida.

12. The Central Florida Tourism Oversight District is the successor entity to the Reedy Creek Improvement District, a special district established by the Florida Legislature in 1967 pursuant to H.B. 486, Chapter 67-764. The District exercises local government authority, as authorized by the Florida Legislature, over approximately 25,000 acres of land located in Orange County and Osceola County. *See* H.B. 9-B, Ch. 2023-5 (reenacting, amending, and repealing chapter 67-764).

13. The District is an "agency" subject to the Public Records Act. *See* § 119.011(2), Fla. Stat. (defining "agency").

JURISDICTION AND VENUE

14. The Court has jurisdiction over the subject matter of this action pursuant to Chapters 86 and 119 of the Florida Statutes as well as the Florida Constitution.

15. Venue is proper because the District's headquarters is located in Orange County, Florida, and the Requested Records should be located there according to section 119.021 of the Florida Statutes.

FACTUAL ALLEGATIONS

16. On May 11, 2023, Disney made the following Public Records request to the District via its online portal:

> All communications (including attachments) to, from, cc:ing, or bcc:ing martin.garcia-bos@rcid.org, michael.sasso-bos@rcid.org, brian.aungst-bos@rcid.org, ron.peri-bos@rcid.org, or bridget.ziegler-bos@rcid.org. Any special service charges expressly authorized by statute up to $10,000 are pre-authorized. All records are requested in native format. All documents and communications, including but not limited to text messages, Signal messages, and Whatsapp messages on any devices, utilizing the keyword "Disney" or "Mouse" or referencing Walt Disney Parks and Resorts, U.S., Inc. from April 1, 2023 until the present day for custodians Martin Garcia, Michael Sasso, Brian Aungst, Jr., Ron Peri, and Bridget Ziegler. Any special service charges expressly authorized by statute up to $10,000 are pre-authorized. All records are requested in native format,

where possible, or in reasonably usable electronic format with file and system metadata intact.

17. On May 11, 2023, the District responded by email acknowledging receipt of Disney's request and providing a reference number for tracking purposes. A copy of that email is attached as **Exhibit A**.

18. Nearly two months later, on July 6, 2023, the District's Public Records Administrator sent Disney a letter estimating the initial cost of complying with the request at $2,418.71 and demanding payment in full, noting that "[n]o work will commence until we have received the initial deposit payment." A copy of the letter is attached as **Exhibit B**.

19. Disney promptly paid the estimated cost of $2,418.71. A copy of the July 10, 2023 check submitted to the District is attached as **Exhibit C**.

20. On August 29, 2023, Disney sent a five-day demand letter in accordance with section 119.12(1)(b), Florida Statutes, informing the District that it was violating Florida law by failing to either provide records or assert valid exemptions from its obligation to do so. A copy of the five-day letter is attached as **Exhibit D**.

21. Only after receipt of Disney's five-day letter did the District produce *some* of the Requested Records on September 1, 2023. It also sent on that same day a letter about its production stating that the "records comprising of your first estimate for the request existed on the District's servers and were able to be completed to which your payment was applied." But it cautioned that it "anticipated needing to issue a secondary cost estimate," and that "the release of these records should not be construed as a comprehensive and definitive fulfillment of your request; rather it represents a partial disclosure." A copy of the District's response to the five-day letter is attached as **Exhibit E**.

22. The District's September 1 Letter also states that, "[r]egrettably," the District "encountered a series of technological hurdles in relation to the retrieval of data from personal devices." *See* Ex. E. The District did not specify what the hurdles were, the custodians or devices affected, what information was not available because of the hurdles, or whether and when it expected to overcome these hurdles and produce to Disney the admittedly responsive public records held on personal devices. *See id.* The letter invited Disney's counsel to reach out if "further clarification or assistance" were required. *Id.*

23. In the cover email transmitting the District's September 1 Letter, the District also asserted that "certain material is currently considered exempt from disclosure" and stated that "[a]ny records found falling under the following exemptions of Florida Statutes were exempted from disclosure at this time:

- 119.071(1)(d) for Pending Litigation
- 447.605 Collective Bargaining (B Unit Fire Department)
- Classified as attorney client privilege."

A copy of the transmittal email is attached hereto as **Exhibit F.**

24. After almost three additional weeks elapsed without Disney receiving any further records, Disney's counsel sent another letter to the District concerning (i) the District's potential destruction of data from personal devices; (ii) the District's improper withholding of records based upon "attorney-client privilege" rather than an express exemption; and (iii) the timing, scope, and completeness issues previously raised in Disney's five-day letter (Exhibit D). A copy of that correspondence, dated September 21, 2023, is attached hereto as **Exhibit G**.

25. In the September 21 Letter (Exhibit G), "[i]n an attempt to avoid unnecessary costs, expedite access, and avoid or narrow the scope of potential litigation," Disney requested that the District take the following steps:

> (i) Provide a spreadsheet or other document showing the results of any keyword searches, including, but not limited to, the number of records responsive to each of the search terms, tying each keyword search result to specific custodian with a listing of the custodians, and identifying the source(s) (such as the medium, device, application, or account);
>
> (ii) Provide any records withheld on the basis of "attorney-client privilege";
>
> (iii) For any record previously withheld or subsequently located that the District intends to withhold, redact any exempted portions and produce the remainder of each such record. *See* § 119.07(d), Fla. Stat. To the extent the District maintains that the entirety of a record is exempt, please provide a log identifying each such record, including its source, date, and custodian;
>
> (iv) Provide any and all District policy or policies governing the use of personal devices and accounts by District staff and Board Members;
>
> (v) Describe in detail the process utilized to determine which custodians are using or have used Signal, WhatsApp, other messaging services or apps, or personal addresses or accounts in conducting District business; and, please describe the process the District has undertaken to search and retain records responsive to our request from all such devices, apps, and accounts used by custodians in the conduct of District business;
>
> (vi) Provide a written explanation of the "technological hurdles" the District has encountered and what measures it has taken to resolve them;
>
> (vii) Provide affirmative written assurance that all messages sent or received in the conduct of official business (regardless of the device, account, or application used), that are potentially responsive to our request, are being retained in accordance with the GS1-SL retention schedules of the Division of Library and Information Services. Confirm that if reasonable minds could differ as to whether retention of such documents is required, that the District nevertheless preserve such records while we work with it to narrow issues; (viii) Specify what processes and procedures the District has or is putting in place to "offer the public a way to obtain those records" stored on private devices or accounts or created through use of applications such as Signal or WhatsApp.

26. The District responded by letter dated September 22, 2023, representing that "[t]he remaining public records responsive to your records request from May 11, 2023 have been released

and produced by the District to you through the portal," and that the District "has now fully complied and responded to your May 11, 2023 public records request." A copy of the District's letter is attached hereto as **Exhibit H**.

27. The September 22 Letter (Exhibit H) further stated that certain records were withheld based on the statutory exemption under section 119.071(1)(d) and "[t]o the extent the term attorney-client privilege was referenced in any previous correspondence from the District to you relating to a response to a public records request, such was a generalized statement indicating records falling within the exemption of Section 119.071(1)(d), Florida Statutes and did not intend to indicate a standalone basis for exemption." *See id.*

28. Though the District previously invited Disney to reach out if Disney required further clarification or assistance, when Disney did so, the District refused to provide the information Disney reasonably requested to confirm that the production was accurate and complete—concerns amplified given the delayed production and issues that the District itself identified with completing the production, such as unspecified "hurdles." Specifically:

a. The District provided no response or explanation regarding the "technological hurdles" that had purportedly limited its production, *see* Ex. E;

b. The District failed to describe any efforts it made to reasonably search for or retain records (especially those stored on personal devices or in personal accounts);

c. The District provided no response to Disney's inquiry about its policies and procedures to ensure retention as required by law;

d. The District failed to respond to Disney's request for confirmation that all messages sent or received in the conduct of official business (regardless of the

device, account, or application used), that are potentially responsive to the Request, were being retained in accordance with the GS1-SL retention schedules of the Division of Library and Information Services;

e. The District failed to address Disney's questions relating to use of message-deleting applications such as Signal and WhatsApp; and

f. The District also refused to respond to Disney's request that it redact any exempted portions and produce the remainder of each such record, as required by section 119.07(1)(d), Florida Statutes, or to provide a list or log of documents it is withholding on the basis of an asserted exemption.

29. The dearth of records—in particular, the near absence of text messages, and total absence of other chat messages—suggests that the District failed to provide a complete response to the Request, including by failing to retrieve responsive data from personal devices. For example:

a. The District did not produce any text messages for Martin Garcia, Ron Peri, Bridget Ziegler, or Michael Sasso, nor did it confirm that it appropriately searched for such documents but did not locate any.

b. The District produced only four text messages from Brian Aungst, Jr., and they were each attached to emails.

c. The District did not produce standalone text messages from any Board Member.

d. The District did not produce any voicemails from Martin Garcia, Ron Peri, or Bridget Ziegler.

e. The District produced four voicemails from Michael Sasso and 18 from Brian Aungst, Jr., but they were all attached to emails.

f. The District did not produce any standalone voicemails for any Board Member.

g. Among the records produced for Ron Peri, there were only two documents from March 20, 2023 to March 27, 2023 and only six documents from April 1, 2023 to April 11, 2023, which is on its face an improbably low volume of documents for a public official with a publicly listed email address.

h. The District did not (i) produce Signal, WhatsApp, Snapchat, or any other App-based messages for any Board Member, nor (ii) confirm that it appropriately searched for such documents but did not locate any.

i. The District did not (i) produce any documents that appear to be from any Board Member's personal email or other messaging accounts, nor (ii) confirm that it appropriately searched for such documents but did not locate any.

30. Disney sent a letter to the District on December 1, 2023, (i) notifying the District that Disney "disagrees with the District's assertion that the District 'has now fully complied and responded to'" Disney's request; (ii) reiterating the many deficits in its production; and (iii) again requesting that District both provide additional information about how it was searching, retrieving, and retaining records, and that the District remedy the problems with its production. A copy of Disney's letter is attached as **Exhibit I.** The District never responded to Disney's December 1 letter.

31. Concerned that even the modest May 11 Request was consuming months of delay and negotiation, Disney, through counsel, issued additional requests about other public records held by CFTOD on November 30 and December 6, 2023, attached as **Exhibit J** and **Exhibit K**, respectively. Disney has not received any response to these requests.

32. The District's records retention, search, and retrieval processes are deficient in numerous respects, including but not limited to:

a. Departing Employees

i. In the last year, close to 50 employees have departed District employment.

ii. The District has not retained an image or other record of the personal device used by any District employee who departed the District in the last year.

b. Use of Personal Accounts and Devices

i. District Board Members and the District Administrator use personal email accounts for District business. No District policy forbids this practice.

ii. The District is not aware of which employees or Board Members are using personal cellular devices for District business, even though it acknowledges that most employees use a personal phone for District business *even if* that employee has a District-provided phone.

iii. The district has no audit policy for personal devices.

iv. The District does not prohibit employees or Board Members from using text messages or personal devices for District work, even though the District is aware that most people use these methods of communication, allows salaried employees to access District email on their personal devices, and does not require employees or Board

Members to disable automatic deletion for messaging conducted on their personal devices.

v. The District does not know and has not taken any steps to determine whether the Board Members' personal accounts used for District business automatically delete content. It does not inquire and has not inquired about deletion and storage policies for text messages nor provided instruction to turn off automatic deletion functions for such messages.

c. Document Retrieval from Personal Devices and Accounts

i. When the District responded to Disney's May 11 Request, the only guidance it provided to Board Members on production of responsive text messages from their personal device was to provide the text of the request and rely on the Board Members to self-identify any responsive material. The District did not provide any technical aid to doing so, did not image the devices, or use any kind of software in this effort.

ii. Other than Chairman Garcia, discussed below, Board Members and the District Administrator simply "self-select" whether or not they have responsive information held in private accounts or devices that should be produced in response to a public records request.

iii. The District has not taken steps to image the personal devices of District employees or current Board Members—even though it *did*

image the phone of former RCID Board Chair Larry Hames when he departed that position.

iv. Although one Board Member voluntarily sent screenshots of a handful of text messages to the District for preservation, the District has not required other Board Members to do so. The images that are sent by that lone Board Member are not searchable. Voicemail records from personal devices sent as images are likewise not searchable.

v. The District does not instruct Board Members or the District Administrator in how to search their cell phones for content responsive to a public records request, nor did it inquire about how they did so.

vi. The District does not instruct Board Members on accessing their personal iCloud accounts to respond to public records requests, instead instructing them to send screenshots of messages.

d. District Administrator Glenton Gilzean

i. The District does not require the District Administrator to disclose all personal accounts that he uses for District business and cannot identify all accounts he may use for District business.

ii. The District is not aware whether or not the District Administrator's personal accounts contain an automatic deletion function. The District has not instructed the District Administrator to disable

automatic deletion from his personal accounts that he uses for District business.

iii. The District relies entirely on the District Administrator to identify and self-report any content on his personal accounts that may be responsive to a public records request.

iv. Although the District agrees its District Administrator likely uses his personal cell phone to text relating to District business, it does not know the deletion settings for that phone, and has not undertaken any effort to discover them.

v. The District has not provided any guidance to the District Administrator in preserving phone content, including messages, if he obtains a new personal cell phone.

e. Messaging

i. The District cannot access text or messaging app content if it is held on the personal device of a Board Member or employee.

ii. The District has taken no steps to determine whether text messages related to District business and held by the District Administrator or a Board Member may have been deleted.

iii. The District does not know whether any Board Member or the District Administrator uses any communication platforms or apps that contain auto-destruction features, and has not undertaken any steps to learn that information.

iv. The District does not instruct Board Members of employees on the use of outside messaging apps that contain automatic deletion features.

v. The District does not instruct Board Members or the District Administrator on how to adjust settings so that their messages are retained on cloud accounts.

f. Use of Outside Litigation Counsel to Respond to Public Records Requests

i. District Board Chairman Martin Garcia refuses to provide public records held in his personal accounts by working with District Staff, instead insisting that he only provide access to public records contained in his personal email or on personal devices to the private counsel representing the District in litigation against Disney when a records request implicating his emails is received.

ii. That same outside litigation counsel determines whether Chairman Garcia has any records responsive to the request, then informs District staff of its determination.

iii. The District does not audit that determination in any way and would not be aware of whether or not the records provided by outside counsel are missing any responsive content from Chairman Garcia's accounts or devices.

iv. The District does not know whether Chairman Garcia uses multiple personal accounts for District business, and whether or not any such

account has an automatic deletion feature wherein emails are automatically deleted after a set period of time.

v. The series of "technical hurdles" the District referenced as preventing it from retrieving records in response to Disney's records request actually referred to Chairman Garcia's inability or unwillingness to produce records from his personal accounts or devices directly to the District.

vi. The District does not know what prevented Mr. Garcia from retrieving the records on his own or what its outside counsel did to assess and produce responsive records. The District did no work to audit or assess what outside litigation counsel did to produce documents on behalf of Chairman Garcia.

vii. The District admitted that it had outsourced the governmental function of responding to public records requests to an outside law firm. Chairman Garcia continues to produce records in response to public records requests from personal device only through outside litigation counsel.

33. By failing to reasonably retain, search for, or produce records (including those stored on personal devices or in personal accounts), and by unjustifiably delaying disclosure of records, the District has violated Florida's constitution and Public Records Act.

COUNT I
VIOLATION OF CHAPTER 119 FOR UNJUSTIFIED DELAY
AND FAILURE TO PRODUCE RECORDS

34. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein.

35. The Florida Constitution and the Public Records Act protect the right of all citizens to access public records. Art. I, § 24(a), Fla. Const.; Ch. 119, Fla. Stat.

36. The Requested Records are "public records" as defined by the Public Records Act, which include "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." § 119.011(12), Fla. Stat.

37. Records custodians are required to furnish public records for inspection and copying "by any person desiring to do so." § 119.07(1)(a), Fla. Stat. (2023). The motivation of the person seeking the records does not impact the requestor's right to see them under the Public Records Act, and the requestor's reasons for seeking access are immaterial.

38. Delay in making public records available is permissible only under very limited circumstances—to determine whether the records exist; if the custodian believes that some or all of the record is exempt; or if the requesting party fails to remit appropriate fees. § 119.01(1)(c)-(e), (4), Fla Stat. Otherwise, the only delay in producing records permitted under Chapter 119 "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014). Unjustified delay in making non-exempt public records available violates Florida's public records laws.

39. There is no valid exemption from disclosure under Florida's public records laws for "attorney client privilege."

40. To the extent ongoing litigation between the District and Disney in state and federal court gives rise to an exemption from the Public Records Act, only the temporary and limited

exemption under section 119.071(1)(d)(1), Florida Statutes could apply, and only to a narrow category of records.

41. The District has violated the Public Records Act to the extent it has exempted records from disclosure pursuant to "attorney client privilege" rather than the more limited exemption under section 119.071(1)(d)(1), Florida Statutes.

42. The District has violated the Public Records Act to the extent it has refused to provide a log or other identification of records that it asserts are exempt from disclosure, and to the extent that it has refused to redact and produce nonexempt portions of records.

43. The District has violated the Public Records Act by failing to make all non-exempt records available, including but not limited to:

a. Failing to locate or access all responsive records held on personal devices;

b. Failing to ensure Board Members and employees collect all responsive public records held in private accounts or devices;

c. Failing to search text messages, and

d. Failing to instruct Board Members or employees on how to preserve, identify, and produce records responsive to public records requests that exist in personal accounts or on personal devices.

44. The District admitted that public records responsive to Disney's Request exist on personal devices, claimed it "[r]egrettably" "encountered a series of technological hurdles in relation to the retrieval of data from personal devices," then purported to release all remaining responsive records within a day of Disney's follow-up letter asking for elaboration on the "technological hurdles" and efforts used to locate and retrieve the documents. *See* Exs. E, G.

45. Months later, the District admitted that the series of "technical hurdles" that prevented it from retrieving records in response to Disney's records request referred to Chairman Garcia's "preference" to only produce records from his personal devices or accounts through the District's outside litigation counsel for CFTOD in a case against Disney.

46. The District failed to confirm how Mr. Garcia and the District's outside litigation counsel ultimately retrieved information from Mr. Garcia's accounts and/or devices, and has not taken any steps to validate or audit their determinations, instead delegating Mr. Garcia's public records obligations entirely to outside litigation counsel.

47. The District has violated the Public Records Act by unjustifiably delaying in responding to Disney's Request, including by taking months to produce any records in response to the Request, by delaying in its subsequent productions and responses to Disney's communications regarding its Request, by failing to produce all responsive documents, and by delegating its public records duties to outside litigation counsel.

WHEREFORE, Disney respectfully requests this Court enter judgment enforcing the provisions of Chapter 119 and grant the following relief:

i. Set an immediate hearing pursuant to section 119.11(1) of the Florida Statutes;

ii. Declare that the District's failure to provide Disney with access to the Requested Records without justifiable delay is unconstitutional and unlawful under the Public Records Act;

iii. Declare that the District's withholding of responsive records without a valid exemption for each record is unconstitutional and unlawful under the Public Records Act,

iv. Require the District to identify the documents it claims are exempt from disclosure, and review those documents in camera to determine the validity of each claimed exemption

v. Grant Disney any further relief this Court deems appropriate.

COUNT II
VIOLATION OF PUBLIC RECORDS ACT BY FAILURE TO RETAIN RECORDS

48. Plaintiff re-alleges paragraphs 1 through 33 as if fully set forth herein.

49. The Florida Constitution and the Public Records Act protect the right of all citizens to access public records. Art. I, § 24(a), Fla. Const.; Ch. 119, Fla. Stat.

50. The Requested Records are "public records" as defined by the Public Records Act, which include "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." § 119.011(12), Fla. Stat.

51. Records custodians are required to furnish public records for inspection and copying "by any person desiring to do so." § 119.07(1)(a), Fla. Stat. The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act, and the reasons for seeking access are immaterial.

52. The District has failed to retain public records on personal devices and accounts of its Board Members and employees.

53. Additionally, the District produced no text messages for most of the Board Members, and no Signal, WhatsApp, Snapchat, or other messaging system records for any Board Member. Nor did the District confirm that it appropriately sought such records but determined they did not exist.

54. The Florida Department of State's Division of Library and Information Services sets forth retention schedules for various types of documents.[1] It classifies agency

[1] *See General Records Schedule GS1-SL for State and Local Government Agencies*, FLA. DEPT. OF STATE: DIV. OF LIBRARY & INFO. SERVS. 10-11 (June 2023), https://files floridados.gov/media/706717/gs1-sl-june-2023.pdf.

"correspondence and memoranda" into two groups: (i) "Administrative" (subject to a three-year retention requirement); and (ii) "Program and Policy Development" (subject to a five-year retention requirement). *Id.*

55. "A public record may be destroyed or otherwise disposed of only in accordance with" the Division of Library and Information Services retention schedules. *See* §§ 257.36(6), 119.021, Fla. Stat.

56. Records retention schedules apply to records regardless of the format in which they reside. Records created or maintained in electronic format must be retained in accordance with the minimum retention requirements presented in the division's schedules.

57. Records created by public officials conducting official business are public records, even if they are created or stored on personal devices or accounts.

58. Public records that cannot be produced because they were created, received, stored, or processed in a manner that makes them technologically inaccessible have not been retained as required by law.

59. The District has failed to investigate which employees use personal devices for District business such that records on those devices can be preserved, and the District has taken no steps to image personal devices of employees or Board Members.

60. The District has failed to investigate whether Board Members or employees use for District business any communication platforms or applications that contain auto-destruction features.

61. The District has failed to prohibit Board Members or employees from using auto-destruction features on communication platforms or applications used to conduct District business.

62. The District has failed to inform Board Members and employees on how to adjust settings on applications such that records are retained, or to instruct them to do so.

63. The District has failed to retain records from the personal devices used by any District employee who departed the District in the last year.

64. The District's failure to adequately retain public records, including any stored on privately-owned devices or accounts, violates the Public Records Act and the public's right of access to public records guaranteed by the Florida Constitution, Chapter 119, and Section 257.36(6), Florida Statutes.

65. The District violated the Public Records Act each time a record stored on a personal device or account was not retained in accordance with the district's records retention schedule. § 119.021(2)(b), Fla. Stat.

66. An evidentiary hearing is necessary to determine the extent to which the District failed to retain responsive public records from personal devices or accounts in violation of the Public Records Act.

WHEREFORE, Disney respectfully requests this Court enter judgment enforcing the provisions of Chapter 119 by finding that the District violated the Public Records Act by failing to retain public records on personal devices or in personal accounts, and grant the following relief:

i. Set an immediate hearing pursuant to section 119.11(1) of the Florida Statutes;

ii. Declare that the District violated the Public Records Act by failing to retrieve, retain, and produce public records contained on personal devices and in personal accounts;

iii. Order the District to retain and preserve all public records, including those located on personal devices and in personal accounts, in accordance with state law;

iv. Order the District to immediately provide Disney all outstanding non-exempt

Requested Records, including those contained on any personal devices or accounts;

v. Grant Disney any further relief this Court deems appropriate.

COUNT III
VIOLATION OF PUBLIC RECORDS ACT BY
FAILURE TO RETRIEVE RECORDS

67. Plaintiff re-alleges paragraphs 1 through 33 as if fully set forth herein.

68. The Florida Constitution and the Public Records Act protect the right of all citizens to access public records. Art. I, § 24(a), Fla. Const.; Ch. 119, Fla. Stat.

69. The Requested Records are "public records" as defined by the Public Records Act, which include "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." § 119.011(12), Fla. Stat.

70. Records custodians are required to furnish public records for inspection and copying "by any person desiring to do so." § 119.07(1)(a), Fla. Stat. The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act, and the reasons for seeking access are immaterial.

71. In the nearly four months between Disney's Request and its five-day letter, Disney promptly paid the District's cost estimates, but the District failed to retrieve or produce records on personal devices and accounts of its Board Members and employees.

72. The District provided no notice to Disney of any difficulty retrieving the records it requested, nor did it provide any other update about its response—until after Disney's five-day letter, when the District responded that it "encountered a series of technological hurdles in relation to the retrieval of data from personal devices." Ex. E.

73. The District did not provide any information about what data was not retrieved or whether the "technological hurdles" were permanent; rather it made a paltry additional release of records that included a mere handful of text messages (as part of emails, not as standalone files) and simply declared that it had fully fulfilled Disney's Request.

74. The District has since confirmed under oath that the so-called "series of technological hurdles" were simply one Board Member's refusal to produce documents from personal devices without the involvement of outside litigation counsel. *See supra* at ¶ 32.

75. The District has since confirmed under oath that it allows custodians to conduct their own searches and "self-select" documents that they believe are responsive to public records requests, that it does not provide instructions to custodians regarding how they should search their cell phones for documents responsive to public records requests, that it does not require custodians to send text messages to the public records administrator for retention, and that it has not taken steps to image personal devices of District employees or Board members, even though it did image the phone of a former Board member when he departed. *Id.*

76. The Public Records Act requires an agency's records custodian to respond in "good faith" to records requests, which includes "making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed." § 119.07(1)(c), Fla. Stat.

77. When requested records are on personal accounts or devices, an agency is obligated to conduct a reasonable search that includes asking individual employees or officials to provide any public records stored in their personal accounts that are responsive to a proper request.

78. The District has not confirmed it conducted any such search, has confirmed under oath that its only searches were broad directives to custodians to self-identify responsive

documents, and ultimately produced almost no personal-device files (like text messages or other chat messages), indicating these insufficient searches in fact failed to retrieve responsive records.

79. The District violated the Public Records Act each time a record created by District members or employees using personal devices or accounts was not retrieved in good faith. § 119.021(2)(b), Fla. Stat.

80. An evidentiary hearing is required to determine whether the District complied with its good faith obligations under the Public Records Act.

WHEREFORE, Disney respectfully requests this Court enter judgment enforcing the provisions of Chapter 119 and grant the following relief:

i. Declare that the District violated the Public Records Act by failing to conduct a good-faith search for, and retrieval of, records, including records on personal devices and accounts;

ii. Order the District to retain and preserve all public records, including those located on personal devices and in personal accounts, in accordance with state law;

iii. Order the District to immediately provide Disney all outstanding non-exempt Requested Records, including those contained on any personal devices or accounts;

iv. Grant Disney any further relief this Court deems appropriate.

REQUEST FOR IMMEDIATE HEARING

81. Section 119.11(1) of the Florida Statutes provides that courts shall "set an immediate hearing, giving the case priority over other pending cases" whenever an action is filed to enforce Chapter 119. The availability of an accelerated civil action "plays a critical role in the enforcement of the Public Records Act." *Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016).

82. Disney requests an immediate hearing (telephonic or otherwise) during the week of January 2, 2024, and that this case be given priority over other pending cases.

Dated: December 22, 2023.

Respectfully submitted,

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