

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

RICHARD LOWERY,

*Plaintiff,*

v.

LILLIAN MILLS, *et al.*,

*Defendants.*

Case No. 1:23-cv-00129-DAE

**PLAINTIFF'S UNOPPOSED SUPPLEMENTAL MOTION TO SUBMIT ADDITIONAL  
EVIDENCE RELEVANT TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND**

**RULE CV-7(G) STATEMENT**

Plaintiff conferred with counsel for Defendants via email and Zoom on February 29, 2024 and provided a copy of this motion prior to filing. Counsel for Defendants indicated that this motion would be unopposed.

**INTRODUCTION**

Plaintiff Richard Lowery requests this Court grant him leave to submit into evidence Defendants' Third Amended Privilege Log. This log is relevant to Plaintiff's pending Motion for Leave to Amend and to Add Jay Hartzell as Defendant and should be considered by this Court. However, the log is not presently before the Court because the Third Amended Log was produced to Plaintiff on February 27, 2024—four days after the Motion for Leave to Amend was fully briefed. Therefore, Lowery now moves unopposed for leave to submit this log into evidence.

## FACTS AND ARGUMENT

Plaintiff's Motion for Leave to Amend and to Add Jay Hartzell as Defendant is currently pending before this court. *See* Dkt. 94. Although oral argument has not occurred, this motion has been fully brief since February 23, 2024. Dkt. 115 at 12; *see also* Dkt. 113 at 10. UT President Jay Hartzell's involvement in the events giving rise to this case is disputed by the parties. *See* Dkt. 115 4-6; Dkt. 113 at 5-6; Dkt. 94 at 8-9. Lowery included UT's Second Amended Privilege Log as one of the exhibits to his reply brief, but has since received an updated log, containing new information. Dkt. 115-2.

On February 27, UT provided Plaintiff with its Third Amended Privilege Log, in accordance with this Court's February 13 order. *See* Dkt. 110 at 2; *see also* Ex. A (Third Amended Log - attached). Entry No. 16 describes multiple phone conversations "regarding First Amendment issues" that Jay Hartzell and his deputy Nancy Brazzil had with UT General Counsel Amanda Cochran-McCall sometime between June 1 and June 10. Ex. A at 10, 13.

This Court has the discretionary authority to allow Lowery to submit additional evidence relevant to a pending motion. *See, e.g., A. A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678, 684 (5th Cir. 2020); *Stoeber v. Tech USA*, 386 F. App'x 492, 492 (5th Cir. 2010). This evidence was not available to Plaintiff until after briefing was complete and, in fairness, should be considered by the Court. As a result, this Court should permit Lowery to place the Third Amended Privilege Log into the record.

## CONCLUSION

This Court should grant Lowery leave to submit UT's Third Amendment Privilege Log as supplemental evidence relevant to Lowery's pending motion for leave to amend.

Respectfully submitted,

Dated: March 1, 2024

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