

GARRETT ZIEGLER DONE IN BY HIS CHATEAU MARMONT FIELD TRIP

Judge Hernán Vera has denied Garrett Ziegler's motion to dismiss Hunter Biden's lawsuit against him.

I had thought that Ziegler's defense against the hacking claims, which argued that because Hunter Biden never owned *the hard drive* on which Ziegler received all Hunter's data (including the iPhone protected by a password), might pose some interesting legal arguments.

I'm sure we'll see the argument return, but for this stage of proceedings, Judge Vera agreed with Hunter's argument that the relevant hacking laws focus on data, not devices.

Defendants assert that "[n]either the CFAA nor the CCDAFA authorizes a party whose data has been copied to assert a civil action over any computer, device or system not in their possession." Motion at 5. But Defendants fail to point to language in these statutes that require possession of the physical device. Neither the CFAA nor the CCDAFA contain any requirement that Plaintiff must "own," "possess," or "control" the physical device or computer that Defendants accessed. The statute concerns the ownership of the data accessed. Both statutes allow Plaintiff to assert claims based on the facts asserted. See 18 U.S.C. § 1030(g) (extending civil remedy to "any person" who suffers damage or loss); Cal. Pen. Code § 502(e)(1) (extending civil remedy to owners of "data" who suffer damage or loss). In fact, Defendants' ownership-and-control argument has been rejected by the Ninth Circuit. See *Theofel v. Farey-Jones*, 359 F.3d 1066, 1078 (9th

Cir. 2004) (reversing “district court [that] erred by reading ownership or control requirement into the [CFAA] . . . Individuals other than the computer’s owner may be proximately harmed by unauthorized access, particularly if they have rights to data stored on it.”).

The next time some tabloid journalist makes big news about Hunter’s spouse calling Ziegler a Nazi, she can state with confidence that this is a lawsuit about hacking, not about merely disseminating data.

The means by which Vera dismissed Ziegler’s claim that there was no personal jurisdiction over his activities in California are a bit more fun.

Among the evidence that Ziegler’s activity included a focus on California cited by Vera was the picture Ziegler posted to Instragram showing himself posing outside the Chateau Marmont in LA, holding a copy of his report.



Vera also noted that Ziegler's sales of the report rely on Stripe and its CA-based servers.

Defendant Ziegler notes that the report Defendants prepared using Plaintiff's data is available at the website www.bidenreport.com. Ziegler Decl. ¶ 8 & n.1. On this website, a "Purchase" button is prominently displayed, allowing users to spend \$50.00 for a hardcopy of the Biden report. Declaration of Gregory A. Ellis ("Ellis Decl.") ¶ 6, Ex. A [Dkt. No. 30-2]. Clicking the purchase button then links to a purchase page operated by Stripe.com, a California-based entity whose purchase terms are governed by California law.⁷

⁷ See www.stripe.com/legal/consumer, Section 12.

And Vera noted that Ziegler had sent copies of the report to CA residents like Elvis Chan (the FBI Agent at the center of right wing conspiracy theories about Twitter briefings) and Hunter's criminal defense attorney, Angela Machala.

For example, he sent copies to multiple California residents to verify Plaintiff's information. Ziegler said in interviews that his team talked with each person named in the report. Ellis Decl. Exs. C at 12 ("I took the time to call each and every person that is in this report") [Dkt. No. 30-5]; D at 8 ("we've sent the dossier to all 4,000 contacts on Hunter's laptop) [Dkt. No. 30-6]. He even includes a table of alleged Plaintiff family crimes with California area codes, many listing "where (venue)" as C.D. Cal. Ellis Decl. Ex. E at 233-35, 400-01. Other California residents include an FBI agent in the San Francisco field office, Ellis Decl. Ex. E at 22. And Ziegler even sent the Report to the personal

residence of one of Plaintiff's
California-based attorneys. Ellis Decl.
¶ 12.

Vera's ruling opens the way for discovery of the specific means and personnel involved in the exploitation of the hard drive, including the chain of custody via which Ziegler obtained it. Among the issues ripe for discovery cited in Hunter's response include how Ziegler obtained the data, who funded his efforts, and who helped Ziegler exploit the data.

Defendants will have to explain how many copies of Plaintiff's data they received and from whom, as well as the precise data they came to possess, during discovery in this case.

[snip]

Ziegler's assertions about Defendants' website views and support from California also demonstrate that the Court should exercise its discretion to allow jurisdictional discovery, should it still have questions about jurisdiction even after reviewing Plaintiff's evidence. See, e.g., *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 672-73 (S.D. Cal. 2001) (noting that courts have broad discretion in allowing jurisdictional discovery, citing multiple authorities). Here, discovery would be appropriate to address the following issues, at a minimum: the total number of Defendants' financial supporters based in California; the percentage of their total financial supporters based in California; the total amount of money donated from California; the percentage of Defendants' monetary donations emanating from California; the total number of unique website viewers from California; the percentage of unique website viewers from California; the

number and percentages of website purchases of hardcopies of the Report emanating from California locations; and the number of California residents Ziegler sent hardcopies of the Report to in his “carpet-bombing” campaign, discussed infra.

[snip]

4 It is unclear whether the “team” of individuals who assisted Defendants with their data-related activities includes any California residents. In his declaration, Ziegler attests he has “hired no employees or independent contractors [sic] to conduct business in California, nor do any of Marco Polo’s board members reside in California.” (Ziegler Decl. ¶ 13.) But this careful wording leaves open many potential California connections, including the possibility that some aspects of Defendants’ unlawful data-related activities occurred in California and/or were perpetrated by California residents who were assisting Defendants in a capacity other than as “employees or independent contractors.” The location of Defendants’ “team” members is another appropriate topic for jurisdictional discovery.

The frothy right made a big deal about the fact that Hunter and Robert Costello put the lawsuit against Costello and Rudy Giuliani on hold pending Rudy’s bankruptcy. But discovery on this lawsuit will get to some of the very same issues.