SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division - Felony Branch

UNITED STATES	:	
	:	**Case No. 2018** ████████
v.	:	
	:	**Hon. Judge** ████████
████████████	:	
	:	*Ex parte* **hearing**: *1*████

ORDER

Upon the motion of the Victim, it is hereby **ORDERED** that the attached *Ex Parte*

Victim's Unopposed Motion to Hold Defendant's Motion to Enforce Subpoena in Abeyance and

Vacate Hearing is placed **UNDER SEAL.**

_____

████████████

Superior Court of the District of Columbia

Date: _____, ████

cc: ████████████████████████
        Office o/f Special Proceedings, Criminal Clerk's Office
        Matthew Ornstein and Julia Fuld, NVRDC

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division - Felony Branch

UNITED STATES	:	
	:	**Case No. 2018** ▉
v.	:	
	:	**Hon. Judge** ▉
▉	:	
	:	*Ex parte* hearing*:* ▉

EX PARTE MOTION

VICTIM'S UNOPPOSED MOTION TO HOLD DEFENDANT'S MOTION TO ENFORCE SUBPOENA IN ABEYANCE AND VACATE HEARING

COMES NOW, ▉ ("Victim"), by and through her attorneys, Matthew Ornstein, Julia Fuld and the Network for Victim Recovery of DC, and respectfully submits Victim's Unopposed Motion to Hold Defense Motion to Enforce Subpoena in Abeyance and Vacate Hearing. Victim has supplied Defense Counsel a copy of this filing and the parties are in agreement as to the following:

1. On ▉ Defendant served a Motion to Enforce Subpoena on Victim, through counsel, pursuant to this Court's order on ▉

2. On ▉, Victim's counsel advised defense counsel that Victim's experts' current efforts to access the Victim's previously used smartphone, which is the subject of Defendant's Motion, had not and were unlikely to be successful. More specifically:

   a. Victim's counsel obtained the services of ▉ ("▉"), a cybersecurity firm that provides, *inter alia*, digital forensic services. Victim tendered the subject device to ▉ to facilitate their attempts to access and retrieve data stored on it.

b. Upon initial inspection of the subject device, ███████ determined that it is configured to use a secure startup lock screen before the typical lock screen, meaning the solid-state drive ("SSD") is encrypted and cannot be unlocked without a four-digit personal identification number ("PIN").

c. This type of security feature cannot be bypassed using external security tools, such as Cellebrite, as they are unable to interface with Victim's device while its SSD is encrypted. Tools such as Cellebrite enable data extraction, transfer and analysis for cellular phones and mobile devices.

d. Victim provided the undersigned, and ███████ with a good faith list of potential PINs, none of which have unlocked the device. In addition, ███████ attempted a variety of commonly used PINs, such as "1234" and "0000."

e. After numerous unsuccessful attempts, the device eventually indicated that the continued input of erroneous PINs (specifically, eight more incorrect guesses) will cause the device to be "wiped" automatically, meaning all data stored on the device's SSD will be erased. As such, further efforts to guess or deduce the PIN have ceased.

3. At this time, since Victim is unable to access the device, continued litigation regarding Defendant's Motion to Enforce Subpoena will not be fruitful. Victim's counsel, after speaking with Defendant's counsel on ███████████, therefore moves to hold Defendant's Motion to Enforce Subpoena in abeyance until either Victim or Defendant requests otherwise. In addition, the Victim's counsel and defense counsel have agreed that:
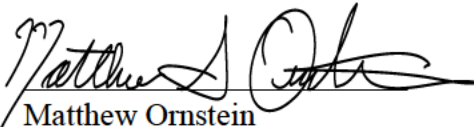
    a. Victim's counsel or ███████ will maintain physical custody and possession of the subject device and will not relinquish custody without a further order of this court; and

    b. Victim's counsel will notify Defendant's counsel if access to the subject device is later obtained.

4. Victim's counsel has discussed this matter with Defendant's counsel and Defendant does not oppose.

CONCLUSION

For the reasons set forth in Victim's Unopposed Motion to Hold Defendant's Motion to Enforce Subpoena in Abeyance, Victim respectfully request this court order:

1. That Defendant's Motion to Enforce Subpoena be held in abeyance until further request of either Defendant or Victim;

2. That Victim's counsel or Victim's designated cybersecurity expert, ███████, will maintain custody and possession of the of the subject cellular device until or unless this court orders otherwise;

3. That if Victim, her counsel, or her designated expert later gain access to the subject cellular device - Victim will immediately so-notify Defendant; and

4. That this Court vacate the *ex parte* hearing on this matter currently scheduled for ███████████.

Respectfully submitted,

Date: ███████████

Matthew Ornstein
D.C. Bar No. 1015640

matt@ nvrdc.org

Julia Fuld
D.C. Bar No. 1019217
julia@nvrdc.org

Network for Victim Recovery of DC
6856 Eastern Avenue
Washington, DC 20012
Phone: (202) 742-1727
Fax: (202) 742-1723
Counsel for Victim

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division - Felony Branch

UNITED STATES	:	
	:	**Case No. 2018** ███████
v.	:	
	:	**Hon.** ███████████
██████████████	:	
	:	*Ex parte* **hearing***:* ██████

EX PARTE ORDER

It is this ____ day of _____ 2020 that Victim's Unopposed Motion To Hold Defendant's Motion to Enforce Subpoena in Abeyance and Vacate Hearing is hereby **GRANTED**; and it is further

ORDERED, that Defendant's Motion to Enforce Subpoena is held in abeyance until or unless either the Defendant or Victim move this court to resume proceedings; and it is further

ORDERED, that Victim's counsel or Victim's designated cybersecurity expert, ███████, will maintain custody and possession of the of the subject cellular device until or unless this court orders otherwise and will not take actions or knowingly permit actions to be taken by another which would materially alter or destroy any data in the cellular device without prior leave of the court; and it is further

ORDERED, that if Victim, her counsel, or her designated expert later gain access to the subject cellular device Victim will immediately so-notify Defendant; and it is further

ORDERED, that the hearing on this matter currently set for ████████████ is hereby **VACATED.**

_____
███████████

Associate Judge
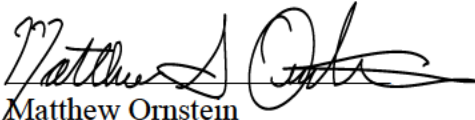*Superior Court for the District of Columbia*

cc: ██████████████████████████
Office of Special Proceedings, Criminal Clerk's Office
Matthew Ornstein and Julia Fuld, NVRDC

CERTIFICATE OF SERVICE

I certify that, on the this ███████████████ , a copy of the foregoing <u>Ex-Parte</u>

<u>Victim's Motion to Unopposed Motion to Hold Defendant's Motion to Enforce Subpoena and</u>

<u>Vacate Hearing</u> was served via CaseFileXpress on: ████████ , Counsel for Defendant.

Matthew Ornstein
D.C. Bar No. 1015640
matt@ nvrdc.org
Network for Victim Recovery of DC
6856 Eastern Avenue
Washington, DC 20012
Phone: (202) 742-1727
Fax: (202) 742-1723
Counsel for Victim