

bringing suit. This conduct is sanctionable under Rule 11, and ERIC seeks an order imposing sanctions, including but not limited to ERIC's costs and attorney's fees in this action, on Plaintiffs and their counsel.

II. LEGAL STANDARD

2. "By presenting to the Court a pleading . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; [and] (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b).

3. As to legal contentions, a plaintiff violates Rule 11(b)(2) when the Complaint contains "frivolous or legally unreasonable arguments." *Royce v. Michael R. Needle P.C.*, 950 F.3d 939, 958 (7th Cir. 2020) (quoting *Berwick v. Grain Co. v. Ill. Dep't of Agric.*, 217 F.3d 502, 504 (7th Cir. 2000) (per curiam)).

4. As to factual contentions, Rule 11(b)(3) obligates the Plaintiff to conduct "a reasonable pre-filing investigation." *Mazurek v. Metalcraft of Mayville, Inc.*, 110 F.4th 938, 947 (7th Cir. 2024). Sanctions are appropriate where, for example, "the signor [of a pleading] acted unreasonably in signing the pleadings based upon available factual information which a reasonable inquiry could have discovered." *Bovinett v.*

HomeAdvisor, Inc., No. 17 C 06229, 2020 WL 1330407, at *4 (N.D. Ill. Mar. 23, 2020) (internal quotation marks omitted).

5. In accordance with Rule 11(c)(2), ERIC served this motion on Plaintiffs' counsel more than 21 days before filing it in the Court, to afford Plaintiffs an opportunity to withdraw or appropriately correct the Complaint.

III. SANCTIONABLE ALLEGATIONS

6. The Complaint's frivolous allegations are pervasive but fall primarily into the following categories: (a) allegations that Wisconsin is not an ERIC member and has not been a member since June 30, 2016; (b) allegations that ERIC obtains state motor vehicle department ("MVD") data for the "purpose[]" of "targeting non-citizens who are not registered to vote . . . [and] adding non-citizens to voter rolls," Compl. ¶ 169; (c) allegations that ERIC is engaged in an ongoing disclosure of MVD data from ERIC to the Center for Election Innovation and Research ("CEIR"); (d) additional misrepresentations about ERIC, and (e) allegations misstating the clear statutory language of the DPPA. For the following reasons, each of these allegations is legally or factually frivolous and therefore sanctionable under Federal Rules of Civil Procedure 11(b)(2)-(3) and 11(c).

A. ALLEGATIONS THAT WISCONSIN IS NOT AN ERIC MEMBER

7. The first set of sanctionable allegations are those that falsely assert that Wisconsin is no longer an ERIC member. *See* Compl. ¶¶ 143-157, 161. Plaintiffs contend that Wisconsin's ERIC membership terminated on June 30, 2016, when the Wisconsin Elections Commission (the "WEC") stepped into the shoes of the Wisconsin

Government Accountability Board (the “GAB”), the state agency that initially performed the duties of ERIC membership on behalf of Wisconsin. While it is true that the WEC replaced the GAB on June 30, 2016, the conclusion that Plaintiffs draw therefrom about Wisconsin’s ERIC membership status is legally and factually frivolous. That conclusion is flatly contradicted not only by basic Wisconsin contract law, but also by the language of Wisconsin’s ERIC Membership Agreement, which Plaintiffs attach to their Complaint but selectively ignore.

8. Plaintiffs advance their frivolous theory that Wisconsin is not an ERIC member through the following allegations:

- a. “[O]n May 17, 2016, the Wisconsin GAB entered into a contractual agreement with ERIC” Compl. ¶ 146. “GAB and ERIC were the only two parties to the Agreement.” *Id.* ¶ 147.
- b. “For 44 days, this Agreement remained in place until it was terminated on June 30, 2016, when GAB was eliminated by the 2015 Wisconsin Act 118,” which replaced GAB with WEC with respect to the administration of Wisconsin’s election laws. *Id.* ¶ 150 & n.29.
- c. “The only manner in which the Agreement could have remained in effect beyond June 30, 2016 was if ERIC provided GAB written consent to assign its rights and interests to another party or entity.” *Id.* ¶ 151. “ERIC never tendered such permission in writing or otherwise and there are no subsequent agreements between Wisconsin and ERIC.” *Id.* ¶ 152.

- d. “Therefore, any contractual relationship between Wisconsin and ERIC ended over eight (8) years ago on June 30, 2016.” *Id.* ¶ 153. “Despite being fully-aware that Wisconsin’s contract with ERIC ended over 3,000 days ago June 30, 2016 [sic], and Wisconsin has never re-joined ERIC since, ERIC has continued to demand Wisconsin fork out hundreds of thousands of dollars comprised of taxpayer and federal money for ‘membership dues.’” *Id.* ¶ 154. “Even worse, ERIC has demanded that Wisconsin provide it with the State’s DMV data in blatant violation of the DPPA, and ERIC has been successful in obtaining personal information from driving records.” *Id.* ¶ 155.
- e. Plaintiffs predicate their DPPA claim, at least in part, on the “fact” that Wisconsin is not an ERIC member. *See, e.g.,* Compl. ¶ 161 (“ERIC . . . knowingly obtained and used personal information from Wisconsin’s DMV database after the termination of the original membership agreement with Wisconsin on June 30, 2016. At all times relevant, Defendants were aware and otherwise knew that they lacked any legal authorization to continue accessing this data This demonstrates Defendants’ known [sic] and intentional disregard for the legal protections provided by the DPPA.”)

9. For at least the following reasons, these allegations – and the conclusions Plaintiffs draw from them – are factually and legally frivolous, which a reasonable pre-filing investigation or a modicum of legal research would have revealed.

10. **First**, the written Membership Agreement between Wisconsin and ERIC that Plaintiffs attached to the Complaint expressly contemplates that the WEC – the successor agency to the GAB – would assume the duties of ERIC membership upon GAB’s dissolution. In other words, the agreement plainly provides that Wisconsin would remain a member of ERIC notwithstanding the June 30, 2016 changeover from the GAB to the WEC.

11. This is clear on the face of the agreement, *see* Compl. Ex. 1, in at least three places: (1) the Membership Agreement is signed by a Wisconsin government official on behalf of the “Wisconsin Government Accountability Board/Wisconsin Elections Commission,” *id.* at 19; (2) at the bottom of the signature page, the agreement reads: “Note: Effective June 30, 2016 the Wisconsin Government Accountability Board becomes the Wisconsin Elections Commission,” *id.*; (3) the Agreement is dated May 17, 2016, *id.* at 12, and it is a nonsensical interpretation of the agreement that Wisconsin entered into it on that date with the knowledge and intention that it would expire just weeks later on June 30, 2016.

12. **Second**, not only was it clear on the face of the Membership Agreement that Wisconsin’s ERIC membership continued past June 30, 2016, but the same result also obtained under Wisconsin statutory law. 2015 Wisconsin Act 118 – the same statute that reorganized the GAB into the WEC and another agency – also provided that “[a]ll

contracts entered into by the government accountability board that are in effect on the effective date of this subsection shall remain in effect and are transferred to the elections commission” Section 266(5), 2015 Wis. Act. 118 (2015 A.B. 388) (enacted Dec. 16, 2015).¹ In other words, through the very same statute that replaced the GAB with the WEC, the Wisconsin legislature expressly determined that any GAB contracts would remain in effect and merely be transferred to the WEC. *Id.*

13. Moreover, 2015 Wisconsin Act 118 was enacted in December 2015, just months before the May 17, 2016 date of Wisconsin’s Membership Agreement with ERIC. Indeed, 2015 Wisconsin Act 118 was enacted shortly before the Wisconsin Legislature passed legislation requiring Wisconsin to join ERIC. *See* 2015 Wis. Act 261 (2015 S.B. 295) (enacted Mar. 16, 2016). This sequence of events confirms that, at the time of contracting, Wisconsin and ERIC intended that contractual obligations assumed by the GAB would be transferred weeks later to the WEC. *See also* Electronic Registration Information Center (ERIC), Wisconsin Elections Commission (hereinafter “WEC Website”) (explaining that Wisconsin joined ERIC in 2016).²

14. **Third**, even if there were some non-frivolous argument that Wisconsin’s obligations under the Membership Agreement were not expressly vested in the WEC as

¹ The “effective date of this subsection” was June 30, 2016, *see* Section 288, 2015 Wis. Act 118. Because ERIC’s Membership Agreement with Wisconsin was entered into before that date, i.e., on May 17, 2016, WEC assumed GAB’s obligations under the contract by operation of this statute.

² The content available on the current version of the WEC website is attached as Exhibits 1-8 to this motion. *See* <https://elections.wi.gov/statistics-data/voter-list-maintenance/electronic-registration-information-center-eric-0#230548828-1709498952>.

of June 30, 2016, the law would still recognize an ongoing contract between ERIC and Wisconsin based on the parties' course of performance as pled in the Complaint. Under Wisconsin law, "[e]ven if the parties' writings do not constitute a contract, . . . the parties may nonetheless be found to have established a contract through their actions.'" *Associated Milk Producers, Inc. v. Meadow Gold Dairies, Inc.*, 27 F.3d 268, 271 (7th Cir. 1994) (citing Wis. Stat. § 402.204(1)); see also *Cal. Wine Ass'n v. Wis. Liquor Co. of Oshkosh*, 20 Wis. 2d 110, 122(1963) ("The law is well settled in Wisconsin that by the conduct and words of the parties the court can imply a contract."). Here, Plaintiffs necessarily concede that both Wisconsin and ERIC have continued to perform their duties under the Membership Agreement, i.e., Wisconsin pays dues and provides MVD data to ERIC, and in exchange receives reports from ERIC. See, e.g., Compl. ¶¶ 154-155.

15. For these reasons, Plaintiffs' allegations that Wisconsin is not an ERIC member are frivolous and sanctionable under Rule 11.

B. ALLEGATIONS THAT ERIC'S MEMBERSHIP AGREEMENT DIRECTS STATES TO PROVIDE ERIC WITH RECORDS REGARDING INDIVIDUALS INDICATED TO BE NON-CITIZENS, WHILE OMITTING THE INFORMATION ABOUT THEIR NON-CITIZENSHIP

16. Plaintiffs frivolously assert that a provision in ERIC's Membership Agreement – which plainly says that members must *not* transmit to ERIC the motor vehicle record of a person indicated to be a non-citizen of the United States – actually states that they *should* transmit the records of such persons, but only after deleting the information indicating that the person is a non-citizen. Compl. ¶¶ 97-103, 134, 169.

Based on this absurd misreading, Plaintiffs frivolously – and maliciously – allege that

ERIC is deliberately targeting non-citizens for voter registration efforts. Compl. ¶¶ 101-103, 169.

17. The specific allegations falling into this category include the following:
 - a. “Perhaps the greatest indicator that ERIC does **not** want to improve voter roll accuracy is the fact that its membership agreement expressly prohibits states from providing it with any information concerning the citizenship of its residents. More specifically, ERIC’s membership agreement states: ‘Under no circumstances shall the Member transmit an individual’s record where the record contains documentation or other information **indicating that the individual is a non-citizen of the United States.**’” Compl. ¶ 97 (emphasis in original).
 - b. “In closely reading the aforesaid provision, it is clear that ERIC does not prohibit member states from sending it information about illegal aliens; it just requires the states to remove the evidence demonstrating that the names of all illegal aliens living in the member state is [sic] extracted prior to transmitting the data.” *Id.* ¶ 100.
 - c. “In other words, ERIC simply does not want to get caught with evidence in its possession that proves ERIC knew or should have known that it was adding illegal aliens to our nation’s voter rolls in

direct violation of the Article I citizenship requirement.” *Id.* ¶ 101 (footnote omitted).

- d. “ERIC does not want citizenship-related information because it is a crime to vote as an illegal alien, and ERIC facilitates the commission of these crimes.” *Id.* ¶ 102.
- e. “You may be asking, ‘Why does ERIC want data concerning illegal aliens anyways?’ If so, you are not alone.” *Id.* ¶ 103.
- f. “Knowing that the personal information was sourced from motor vehicle records, ERIC then used the personal information for one or more purpose(s) not permitted by the statute, including, without limitation . . . targeting non-citizens who are not registered to vote, bloating voter rolls, [and] adding non-citizens to voter rolls.” *Id.* ¶ 169.

18. These allegations are frivolous and sanctionable under Rule 11.

19. **First**, the provision of ERIC’s Membership Agreement that Plaintiffs cite plainly does not say what Plaintiffs claim it does. The Membership Agreement states: “Under no circumstances shall the Member transmit an individual’s record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States.” Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13. The only reasonable reading of this provision is that states shall not transmit to ERIC the motor vehicle record of a person who is indicated in that record to be a non-citizen of the United States. Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13. In other words,

where a person's MVD record indicates that that person is a non-citizen, the member state must not transmit to ERIC any MVD information about that person. The mandate not to "transmit an individual's *record*" plainly refers to the MVD record about a particular non-citizen individual, *see id.* (referring to "all licensing or identification records contained in the motor vehicles database"). The language of this provision expressly contradicts Plaintiffs' supposed reading, which is that the state *should* transmit to ERIC the motor vehicle records of non-citizens, but only after scrubbing the information fields indicating that the person is a non-citizen.

20. Nothing in the Membership Agreement lends any support to Plaintiffs' repeated allegations that ERIC is deliberately targeting non-citizens, including illegal immigrants, for voter registration efforts. *See, e.g.,* Compl. ¶¶ 101-103, 169. Yet the *only* factual support for these allegations cited in the Complaint is the provision of the Membership Agreement discussed above. The current version of the Membership Agreement contains the same language, which renders Plaintiffs' allegations frivolous for the same reasons as above. Membership Agreement ¶ 2(b), Hamlin Decl. Ex. G ("Under no circumstances shall the Member transmit an individual's record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States.").

21. **Second**, confirming the baselessness of Plaintiffs' allegations, there is ample and readily available public information demonstrating that ERIC does *not* seek records about non-citizens from its member states. A reasonable pre-filing investigation—or even just a reasonably careful and honest reading of the Membership

Agreement that Plaintiffs attached to their Complaint – would have revealed the following information:

- a. Exhibit B to the Membership Agreement attached to Plaintiffs' Complaint undermines Plaintiffs' reading of the same document. That Membership Agreement lists the fields of MVD data that Wisconsin was requested to include when sharing MVD records with ERIC. Among those fields are "[a]ffirmative documentation of citizenship" and "[t]he title/type of affirmative documentation of citizenship presented." Exhibit B to Membership Agreement, Compl. Ex. 1 at 20.
- b. Confirming that ERIC has no interest in targeting non-citizens for voter registration efforts, Wisconsin's Membership Agreement provides: "When the Member receives ERIC data regarding eligible or possibly *eligible citizens* who are not registered to vote, the Member shall, at a minimum, initiate contact with each and every eligible or possibly *eligible citizen* and inform them how to register to vote." Membership Agreement ¶ 5(a), Compl. Ex. 1 at 15 (emphasis added).
- c. Additionally, the "Frequently Asked Questions" section of ERIC's website explains: "ERIC's mission is to assist states in improving the accuracy of America's voter rolls and increasing access to voter

registration for all *eligible citizens*.”³ Hamlin Decl. Ex. B, Question A(1) (emphasis added). That answer is consistent with ERIC’s mission, as stated on the homepage of its website, which is “to help states improve the accuracy of America’s voter rolls, increase access to voter registration for all *eligible citizens*, reduce election costs, and increase efficiencies in elections.”⁴ Hamlin Decl. Ex. A (emphasis added).

- d. The “How Does It Work” page on ERIC’s website also contains information about ERIC’s Eligible but Unregistered (“EBU”) Report, which contains names of individuals in a particular member jurisdiction who are potentially eligible to register to vote. Under the Membership Agreement, these are the individuals whom the states contact to inform them how to register to vote. The How Does It Work page explains: “Members must use the list maintenance reports to assist in maintaining accurate voter rolls. They must use the Eligible but Unregistered Report to provide basic voter registration information to unregistered individuals, including the legal requirements to register. Finally, members must

³ The current version of the Frequently Asked Questions, updated since the date Plaintiffs filed their Complaint, is available at <https://ericstates.org/faq/>. See Hamlin Dec. Ex. DD.

⁴ See <https://ericstates.org>.

review all possible cases of illegal voting identified in the Voter Participation Report and refer credible cases to law enforcement. Members must act on all these reports in accordance with . . . applicable state and federal laws regarding voter registration and voter list maintenance.” Hamlin Decl. Ex. D;⁵ *see also* Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(3) (explaining that the EBU Report “helps increase access to voter registration for all *eligible citizens*” (emphasis added) and that, before initiating contact with the individuals listed in the EBU report, ERIC members “use other state data sources to filter out individuals they believe are not eligible to vote,” including “known noncitizens”); *id.* (explaining that the mailers sent by each member jurisdiction to potentially eligible voters “clearly identify the state’s voter eligibility requirements, as determined by law, including that the applicante [sic] must be a U.S. Citizen to register”).

- e. The current version of the Frequently Asked Questions on ERIC’s website contains additional information about the EBU Report and further confirms that ERIC does not target non-citizens. *See generally* Frequently Asked Questions, Questions C(1)-C(10).⁶

⁵ <https://eristates.org/how-does-it-work/>.

⁶ *See supra* note 3.

22. For all of these reasons, Plaintiffs' allegations that ERIC targets non-citizens for voter registration efforts violate Rule 11.

C. ALLEGATIONS OF AN ONGOING DISCLOSURE OF MVD DATA FROM ERIC TO CEIR

23. The third group of sanctionable allegations asserts an ongoing disclosure of member state MVD data from ERIC to CEIR, as part of a purported continuing conspiracy between ERIC and CEIR to influence elections. Compl. ¶¶ 45, 55, 121, 176. These allegations are factually frivolous and baseless. In fact, CEIR only received data from ERIC, at the request of participating members, on two occasions, in 2018 and 2020, both pursuant to research studies assessing whether outreach to eligible-but-unregistered individuals would increase voter registration.⁷ These facts are readily ascertainable based on publicly available information; Plaintiffs have no basis to allege otherwise; and the Complaint evinces the lack of a reasonable pre-filing investigation on this point.

24. The specific sanctionable allegations in this category include the following:

- a. "At its core, ERIC exists for two reasons: serve as a vehicle to (1) bloat America's voter rolls, and (2) grant [David] Becker [i.e., the founder of CEIR] access to sensitive, personal data and information

⁷ Certain ERIC members – *not including* Wisconsin – voluntarily participated in these studies, and asked ERIC to securely pass through their data to CEIR, using ERIC's established secure data-transmission protocols. *See generally* CEIR Report, Ex. 1 to Kipp Decl. in Supp. of CEIR's Mot. to Dismiss, ECF No. 12-1 (Dec. 5, 2024); *see also* Frequently Asked Questions, Hamlin Decl. Ex. B, Question C(6).

that he could not have otherwise obtained but-for entering into a contractual agreement with member-states that compelled them to hand it over to Becker.” Compl. ¶ 44.

- b. “Thus, in order to make it appear as though ERIC was fully-compliant with these legal parameters, [Becker] created a second nonprofit organization [i.e., CEIR] through which he could use the data to influence American elections.” *Id.* ¶ 55.
- c. “ERIC receives and collects state resident data ERIC then transmits the data it receives from the states to CEIR, which, in turn, creates mailing lists and consolidates the data into a format conducive to outreach efforts and sends back to ERIC, which, in turn returns the data to its member states, complete with new EBU’s and a handful of ineligible voter labels affixed thereto. CEIR then begins contacting the voters and pushing for them to register as voters, and ERIC appears as though it produced data that helps its member states identify ineligible voters for removal in addition to providing labels that identify which voters are EBUs in the state.” *Id.* ¶ 121.⁸

⁸ See also Compl. Introduction at 3 (“In short, Becker, by and through ERIC, uses a trojan-horse-contract-veiled-as-a-membership-agreement to obtain personal information from the driving records stored in our nation’s statewide DMV databases. Once ERIC obtains this personal information, Becker then ‘switches hats’ and steps into the shoes of CEIR’s Executive Director, where he weaponizes the personal information unlawfully disclosed to him/ERIC by WisDOT.”); *id.* at 5 (“In sum, Defendants ERIC

25. In other words, the Complaint alleges an ongoing data-sharing relationship between ERIC and CEIR, as part of a supposed malign effort “to influence American elections,” *id.* ¶ 55. But even a cursory pre-filing investigation would have demonstrated the baselessness of these assertions:

- a. First, Plaintiffs ignore the report prepared by CEIR about the 2020 research study. *See* Ex. 1 to Kipp Decl. in Supp. of CEIR’s Mot. to Dismiss, ECF No. 12-1 (Dec. 5, 2024) (hereinafter “CEIR Report”). Published in February 2022, this report makes clear that the data-sharing between ERIC and CEIR in connection with the 2020 research study was a discrete event and not part of an ongoing disclosure. *See id.* at 4 (“ERIC, a nonprofit organization working to improve U.S. voter roll accuracy and increase access to voter registration for all eligible citizens, identifies EBUs through a process that involves matching voter registration rolls with lists of driver licenses and state identification cards. ERIC then provides lists of EBUs to its member states, which contact EBUs through mailers to educate them on how to register and encourage them to do so. . . . During the fall of 2020, we worked with election officials

and CEIR, vis a vis and lead by their respective founder, Defendant David Becker, along with the WisDOT have knowingly engaged in and will continue to knowingly and intentionally engage in a coordinated effort to obtain, use, and disclose sensitive, protected personal information of Wisconsin residence [sic] from driving records obtained through the Wisconsin DMV in violation of federal law, and with the intent to compromise and undermine the right to vote of millions of Wisconsin voters.”).

in eight states to examine the extent to which government outreach to EBUs impacts registration rates.”). The report also makes clear that Wisconsin was *not* a participant in the study. *See id.* at 6, 11-15 (identifying participants as Colorado, Florida, Georgia, Kentucky, Michigan, Nevada, Rhode Island, and Utah).

- b. Second, Plaintiffs ignore publicly available information on ERIC’s website that confirms the information in the CEIR Report. *See* Frequently Asked Questions, Hamlin Decl. Ex. B, Question C(6) (“In 2018 and 2020 individual members voluntarily participated in third-party research projects to evaluate the effectiveness of the members’ eligible but unregistered mailings. All members were invited to participate in these voluntary research projects, which were conducted in compliance with applicable federal data handling laws and IRS regulations governing 501(c)(3) organizations. ERIC acted as a secure pass-through for the data used in these projects, facilitating the secure transit of members’ data at the members’ request.”).
- c. Third, the evidence cited in Plaintiffs’ Complaint undermines, rather than supports, the allegations of an ongoing data-sharing relationship. For example, the Complaint cites an email from Jenny Lovell at CEIR to various state officials, with subject line “EBU Randomization Complete.” Compl. ¶ 124. But this email is dated

September 4, 2020, and provides no support for the notion that there was sharing of data between ERIC and CEIR after that date. Moreover, Ms. Lovell's email plainly refers to a discrete research study, *i.e.*, the 2020 study mentioned above, as the email describes the randomization of each state's EBU list into a "treatment group" and a "control group." This description tracks the one in CEIR's publicly available report on the research study. *See, e.g.*, CEIR Report at 6 ("For each partner state, we randomly assigned EBUs to a treatment or control group . . .").

- d. Fourth, the WEC Website clearly explains what ERIC actually does with MVD data from Wisconsin and other member jurisdictions: "ERIC's technical staff uses sophisticated data matching software to compare Member Data from all member states, sometimes with data from other sources, to create [its] four 'list maintenance' reports. . . . Simply put, ERIC compares a member's voter records to other members' voter records, MVD records, and to federal deceased data and national change of address data, for the purposes of flagging differences that indicate a member's voter record may be out of date or inaccurate." WEC Website, Exs. 1-8 hereto. This true account of what ERIC does undermines Plaintiffs' notion that ERIC is funneling such data to CEIR on an ongoing basis.

26. For these reasons, Plaintiffs' allegations of an ongoing data-sharing relationship between ERIC and CEIR – and the allegation that ERIC *ever* disclosed Wisconsin data to CEIR – are frivolous and sanctionable under Rule 11.

D. ALLEGATIONS ASSERTING ADDITIONAL MISREPRESENTATIONS ABOUT ERIC

27. The fourth set of sanctionable allegations comprise a host of misstatements about ERIC's purpose, functions, and activities. The allegations in this category are numerous; indeed, the Complaint as a whole falsely represents what ERIC is and does. These allegations fall into at least the following categories.⁹

28. Allegations about ERIC's Mission: The Complaint alleges "ERIC's mission and stated exempt purpose is 'a membership organization consisting of state election officials working together to improve the accuracy of state voter registration lists,'" purporting to quote ERIC's IRS Form 990 for the 2021 Fiscal Year. Compl. ¶ 18; *see also id.* ¶¶ 19, 92, 95, 105, 117, 130 & 133. But Plaintiffs' quotation from that sentence of the document is incomplete. The sentence reads in full: "ERIC is a membership organization consisting of state election officials working together to improve the accuracy of state voter registration lists *and educate eligible citizens on how to register to vote.*" ERIC FY 2021 Form 990, Hamlin Decl. Ex. J (emphasis added); *see also, e.g.,* ERIC

⁹ In addition to the list below, ERIC also incorporates by reference Paragraphs 16-22 of the Complaint (alleging that ERIC supposedly targets non-citizens for voter registration efforts) and Paragraphs 23-26 of the Complaint (alleging that ERIC supposedly shares data with CEIR on an ongoing basis).

FYs 2023, 2022 & 2020 Form 990s, Hamlin Decl. Exs. H, I & K (same).¹⁰ The quote in the Complaint misleadingly leaves out the language from the 990 about “eligible citizens” – a highly material (and almost certainly intentional) omission given the particular conspiracy theories that animate the Complaint.

29. Allegations that David Becker Controls ERIC: The Complaint alleges in several places that David Becker “retain[s] control over ERIC while working at CEIR.” Compl. ¶ 59; *see also id.* (“Becker could be a non-voting board member of ERIC while still dictating and controlling the manner in which ERIC operates and what activities it engages in.”); *id.* ¶ 60 (Becker “maintained and exhibited control over ERIC’s activities and objectives.”); *id.* ¶¶ 57, 58, 61-67.

30. A reasonable pre-filing investigation would have revealed to Plaintiffs that this is flatly untrue. Mr. Becker is not an officer of ERIC, a fact that Plaintiffs should have known because ERIC’s IRS Form 990s list all its officers, and no 990 names Mr. Becker as an officer.¹¹ That Mr. Becker previously held a non-voting seat on ERIC’s Board does not come close to supporting Plaintiffs’ conspiratorial allegations. As to who founded and controls ERIC, ERIC’s Frequently Asked Questions explain that “[a] bipartisan group of chief election officials from seven states formed ERIC in 2012, with

¹⁰ Similarly, the mission statement on ERIC’s homepage reads: “ERIC’s mission is to help states improve the accuracy of America’s voter rolls, increase access to voter registration for all eligible citizens, reduce election costs, and increase efficiencies in elections. Hamlin Decl. Ex. A. *See* <https://ericstates.org>.

¹¹ All ERIC’s IRS Form 990s dating back to Fiscal Year 2013 are available at <https://projects.propublica.org/nonprofits/organizations/455389681>. *See* Hamlin Decl. Exs. H-R.

assistance from The Pew Charitable Trusts.” Hamlin Decl. Ex. B, Question A(2). The Frequently Asked Questions also make clear that “[t]he members” control ERIC. *Id.*, Question A(4); *see also* WEC Website, Exs. 1-8 hereto (“The Electronic Registration Information Center (ERIC) is a nonprofit, nonpartisan membership organization created by and comprised of state election officials from around the United States. Founded in 2012, ERIC is funded and governed by states that choose to join.”).

31. As is evident on ERIC’s website and in its Form 990s, Shane Hamlin has served as ERIC’s Executive Director since 2017. The meeting minutes for each board meeting since February 19, 2023, available on ERIC’s website,¹² demonstrate that Mr. Hamlin actively participated in these meetings in his role as Executive Director. *See* Board Meeting Minutes, Hamlin Decl. Exs. S-CC. This publicly accessible information belies Plaintiffs’ frivolous allegations that Mr. Becker is, or has been, in control of ERIC, and that it is “questionable as to the extent of involvement Hamlin has in running the organization.” Compl. ¶ 66.

32. ERIC’s governing documents – its Bylaws and Membership Agreement – confirm that ERIC is controlled by its members, with the members having engaged Executive Director Shane Hamlin to manage the day-to-day operations of the organization. *See, e.g.*, Bylaws Art. II, Sec. 1, Hamlin Decl. Ex. G (“The members of the Corporation shall consist solely of state, territorial governmental units, or the District of Columbia. Each member shall be represented by the chief election official or a chief

¹² *See* <https://ericstates.org/corporate-transparency/>.

election official's designee to act on the member's behalf for all purposes related to the Corporation, including service on the Board of Directors or as an Officer (the 'Member Representative')."); *id.* Art. III, Sec. 2 ("All members of the Corporation have a right to appoint their Member Representative to serve as a director on the Board of Directors."); *id.* Art. IV, Secs. 6 & 7 (membership of key committees comprises certain directors, Immediate Past Chair of Board of Directors, and Executive Director (i.e., Mr. Hamlin)); *id.* Art. V, Sec. 2 (all officers are current members of Board of Directors except for Executive Director (i.e., Mr. Hamlin) and Immediate Past Chair of Board of Directors); *id.* Art. V, Sec. 4 ("The Board of Directors shall hire an Executive Director who shall serve as the chief executive officer of the Corporation. The Executive Director shall have day-to-day responsibility for the management of the staff and programs of the Corporation, including carrying out the Corporation's goals and Board-approved policies."); *id.* Art. VI, Sec. 5 (members have authority to amend governing documents). As these and other provisions demonstrate, ERIC's governance structure reflects – and effectuates – the membership's control of the organization. Plaintiffs' allegations about David Becker's purported control of ERIC are frivolous.

33. Allegations that ERIC has "Unfettered Access" to State MVD Data and Voter Rolls: The Complaint falsely alleges that ERIC has "unfettered access" to its member state MVD data. Compl. ¶ 49 (ERIC has "unfettered access to data otherwise unavailable to any other non-public person or entity"); *id.* ¶ 46 (alleging member jurisdictions "grant ERIC access to hyper-sensitive, state-controlled databases that include personal information and details about each and every one of the state's

residents”); *see also id.* ¶ 96 (“ERIC *does not want to improve voter roll accuracy*. It just wants access to its member states’ data, and ‘improving voter roll accuracy’ is the pretextual justification it relies upon to obtain it.”) (emphasis in original).¹³ Similarly, the Complaint falsely alleges in various places that ERIC has direct access to its member jurisdiction’s voter rolls, or the ability to add names to those voter rolls. Compl. ¶ 48 (“Becker . . . had control over the voter registration lists that dictate 65.8% of all votes cast in the United States of America.”) (emphasis in original); *id.* ¶ 101 (“ERIC knew or should have known that it was adding illegal aliens to our nation’s voter rolls . . .”).¹⁴

34. These allegations are frivolously false. In fact, ERIC has no direct access at all to its member jurisdictions’ MVD databases. Rather, at least every 60 days, ERIC’s member jurisdictions submit data from their MVD databases to ERIC. Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(1); *see also* Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13. ERIC then uses that data, as well as voter registration data submitted by member jurisdictions, to generate its list maintenance and EBU reports using sophisticated data-matching software. Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(1). But the distinction is important: Although its member jurisdictions provide ERIC with data periodically transmitted from the jurisdictions’ MVD and voter registration databases, ERIC has no direct access to those databases ever. Indeed, if

¹³ *See also* Compl. Introduction at 2 (referring to ERIC’s “unfettered access to its [member states’] DMV databases”).

¹⁴ *See also* Compl. Introduction at 2 (“ERIC will contact ninety-five percent (95%) of the names it puts on the states’ eligible but unregistered’ lists . . .”).

ERIC could directly access its members' MVD databases, then it would be nonsensical for ERIC to require its member jurisdictions to transmit MVD data to ERIC.

35. Similarly, ERIC has no direct access to its member jurisdictions' voter rolls. This fact is stated on the "Technology & Security Overview" page on ERIC's website,¹⁵ and Plaintiffs could easily have learned these facts through a reasonable pre-filing investigation. Technology & Security Overview, Hamlin Decl. Ex. E ("ERIC servers are never connected to any state's voter registration system."); *see also* Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13 (member must share voter registration data at least once every sixty days);¹⁶ WEC Website, Exs. 1-8 hereto (displaying "ERIC Calendar" listing when and how Wisconsin shares data with ERIC). Additionally, ERIC itself does not contact individuals appearing on a member jurisdiction's EBU report. *Contra* Compl. Introduction at 2 ("ERIC will contact ninety-five percent (95%) of the names it puts on the state's 'eligible but unregistered' lists . . ."). It is up to the member jurisdiction to do that, as Plaintiffs could easily have ascertained. Membership Agreement ¶ 5(a), Compl. Ex. 1 at 15 ("[T]he *Member* shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote." (emphasis added)). *See also* Open Letter from ERIC's Executive Director, Hamlin Decl. Ex. F ("ERIC is never connected to any state's

¹⁵ The current version of the Technology & Security Overview is available at <http://ericstates.org/security/>.

¹⁶ The current version of ERIC's Membership Agreement has similar language requiring members to share MVD and voter registration data at least every sixty days. Membership Agreement ¶ 2(b), Hamlin Decl. Ex. G.

voter registration system. Members retain complete control over their voter rolls and they use the reports we provide in ways that comply with federal and state laws.”)

36. Allegations that ERIC Engages in Lobbying, Grantmaking, and Partisan Activity: The Complaint repeatedly and falsely alleges that ERIC engages in lobbying and partisan activities with respect to voter registration. Compl. ¶ 107 (“ERIC and CEIR’s virtually indistinguishable efforts go so far as to pressure state legislatures to pass legislation that changes how citizens register to vote.”); *id.* ¶ 110 (“Under the policy ERIC sought to have implemented in Michigan, **those who did nothing would automatically be registered**, and only those who took affirmative action and declined to register would be omitted from state voter rolls, *even if you had already affirmatively declined to register at the DMV.*” (emphasis in original)); *id.* ¶ 117 (“Not only are 501(c)(3) approved organizations like ERIC prohibited from engaging in this type of extensive lobbying, even if this lobbying were permissible, ERIC is not acting within the scope of its stated purpose of ‘increasing access’ to voter registration.”); *id.* ¶ 121 (referring to “ERIC’s partisanship and lobbying activity”); *id.* ¶ 122 (“[T]he initiatives and agenda ERIC/CEIR [sic] . . . were the inflation of voter roll registrations and legislative amendments that make it easy to add more voters to county voter rolls.”).¹⁷ Along the same lines, the Complaint alleges that ERIC made a \$12 million grant to Michigan in 2020. *Id.* ¶ 18.

¹⁷ See also Compl. Introduction at 3 (“With [state MVD] data in hand, Becker and his two not-for-profits engage in campaign and political activities, including, without limitation, partisan voter outreach, text messaging, and registration solicitation.”).

37. These allegations are baseless. As a 501(c)(3) non-profit corporation, ERIC does not engage in an impermissible amount of lobbying or political campaign activities. ERIC is required to report its lobbying expenditures on its annual IRS Form 990s. ERIC's Form 990s show that in each year of its existence, it has engaged in either no lobbying or only small amounts of lobbying, in any event well below legally permissible limits. ERIC's 990s show that it engaged in no lobbying whatsoever between FY 2013 and FY 2018 (the year the Complaint says Michigan passed its automatic voter registration law it alleges ERIC "sought to have implemented," Compl. ¶ 110). *See* Hamlin Decl. Exs. M-R. In FY 2019, ERIC spent \$195 on efforts to enable states to become members of ERIC. Hamlin Decl. Ex. L. ERIC's IRS Form 990s for subsequent fiscal years also show small amounts of lobbying, well below the lobbying caps applicable to ERIC as set forth in the 990s. *See* ERIC FYs 2020-2023 Form 990s, Hamlin Decl. Exs. H-K (FY 2020: no lobbying; FY 2021: \$818 of lobbying; FY 2022: \$46 of lobbying; FY 2023: \$62,679 of lobbying).

38. Finally, the allegation that ERIC made a \$12 million grant to Michigan is false, and this falsity is demonstrated by ERIC's publicly available Form 990s, which show that (a) ERIC does not make grants, *see, e.g.*, ERIC FY 2020 Form 990, Hamlin Decl. Ex. K, Part I, Line 13, Part IV Line 21 & Part IX, Lines 1-3; ERIC FYs 2021-2023 Form 990s, Hamlin Decl. Exs. H-J (same); and (b) the organization's annual revenue has never come anywhere close to \$12 million, and its finances render it impossible for ERIC to have made a grant of that amount, *see infra* Paragraph 39.

39. Allegations that ERIC Collects “Millions” of Dollars: The Complaint exaggerates the amount of funding received by ERIC. Compl. ¶ 48 (“Becker received millions of dollars’ worth of revenue comprised exclusively of state funds”).¹⁸ In fact, ERIC’s Form 990s indicate that it has never received even \$2 million of revenue in one fiscal year. *See, e.g.*, ERIC FYs 2021-2023 Form 990s, Hamlin Decl. Exs. H-J (FY 2023: total revenue of \$1,544,943; FY 2022: total revenue of \$1,059,752; FY 2021: total revenue of \$971,244).¹⁹ Additionally, ERIC does not engage in fundraising. *See, e.g.*, Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(5) (Q. “How is ERIC Funded?” A. “Members fund ERIC.”); WEC Website, Exs. 1-8 hereto (similar); Bylaws Art. II, Sec. 5, Hamlin Decl. Ex. G (“Each member shall pay annual Membership Dues. Each year, the Membership shall approve the annual dues (the ‘Dues Schedule’), which shall form the basis of the Corporation’s budget to be set annually by the Board of Directors.”); Membership Agreement ¶ 1, Hamlin Decl. Ex. G (“The Member shall pay annual dues to ERIC as determined by the ERIC Membership, pursuant to Article II, Section 5 of ERIC’s Bylaws.”).

40. Allegation that ERIC has No Staff or Servers: Finally, the Complaint alleges that ERIC “has no staff . . . let alone data servers to store the massive amount of

¹⁸ *See also* Compl. Introduction at 2 (ERIC member jurisdictions pay “hundreds of thousands in annual dues.”).

¹⁹ The statement in the Complaint’s introduction that members pay “hundreds of thousands in annual dues” is misleading at best because it could be read to suggest that each member pays “hundreds of thousands” in dues, which is not the case. Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(5) (noting that member state dues for the 2023-2024 fiscal year ranged from about \$37,000 to \$174,000).

information it obtains from its member-states.” Compl. ¶ 50. To the contrary, as a reasonable investigation would have revealed, ERIC does (of course) have staff, who work remotely. *See, e.g.,* Who We Are, Hamlin Decl. Ex. C (listing three full-time staff); ERIC FYs 2020-23 Form 990s, Hamlin Decl. Exs. H-K (naming two employees: Shane Hamlin, Executive Director and Ericka Haas, Systems Engineer & Technical Liaison). ERIC also has data servers that are housed in a managed, secure data center in the United States. Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(6).

41. For these reasons, Plaintiffs’ allegations mischaracterizing what ERIC is and does are frivolous and sanctionable under Rule 11.

E. ALLEGATIONS MISSTATING THE CLEAR STATUTORY LANGUAGE OF THE DPPA

42. The final set of sanctionable allegations are those that misstate the language of the DPPA relating to “highly restricted personal information.” Compl. ¶¶ 164, 165.

43. According to Plaintiffs:

- a. “The DPPA further protects ‘Highly Restricted Information’ (HRI) [sic], which includes names, addresses, social security numbers, driver’s license numbers, phone numbers, photographs, dates of birth, and vehicle registration information.” Compl. ¶ 164.
- b. “Defendants knowingly obtained and disclosed Ms. McKinney’s personal information or HRI without authorization, in direct violation of 18 U.S.C. § 2721(a) and 18 U.S.C. § 2725(4). This

unauthorized use of HRI exacerbated the harm to Plaintiffs, increasing the risk of identity theft, privacy invasion, and unauthorized political targeting.”

44. The DPPA defines two categories of information from motor vehicle records: “personal information,” which is subject to certain protections, and “highly restricted personal information,” which is subject to greater protections. *See* 18 U.S.C. § 2721(a)(1)-(2); *see also* 18 U.S.C. § 2725(3)-(4) (definitions of “personal information” and “highly restricted personal information”). However, the definition of highly restricted personal information, i.e., “HRI,” that Plaintiffs set forth in paragraph 164 of the Complaint is wrong. Per the statute, “highly restricted personal information” includes *only* “an individual’s photograph or image, social security number, [and] medical or disability information.” 18 U.S.C. § 2725(4). The Complaint’s allegation that highly restricted personal information also includes names, addresses, driver’s license numbers, phone numbers, dates of birth, and vehicle registration information is legally frivolous. Accordingly, the misuse of Plaintiff McKinney’s highly restricted personal information that the Complaint alleges in paragraph 165 is also legally and factually frivolous because it is premised on the faulty definition alleged in paragraph 164 and is otherwise without basis.

45. For these reasons, Plaintiffs’ allegations about the DPPA’s definition of highly restricted personal information are frivolous and sanctionable under Rule 11.

IV. CONCLUSION

For the foregoing reasons, ERIC respectfully requests that the Court grant this motion and issue an Order imposing sanctions on Plaintiffs 1789 Foundation, Inc. d/b/a/ Citizen AG and Jennifer McKinney, and their attorneys, pursuant to Federal Rule of Civil Procedure 11, including, without limitation, requiring Plaintiffs and their attorneys to reimburse ERIC for the attorneys' fees and costs incurred in litigating this action.

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