

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

**LET’S TAKE BACK CONTROL LTD.
A/K/A FAIR VOTE PROJECT and KYLE
TAYLOR**

PLAINTIFFS

v.

CAUSE NO. G-2018-612 O/3

**BIG DATA DOLPHINS LTD. and
ELDON INSURANCE SERVICES LTD.**

DEFENDANTS

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S
MOTION FOR RELIEF FROM ORDER DISMISSING COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION**

COME NOW Plaintiffs Let’s Take Back Control Ltd. a/k/a Fair Vote Project and Kyle Taylor, by and through counsel, and file this their Motion to Alter or Amend Order Dismissing their *Complaint for Preliminary and Permanent Injunction and Discovery* pursuant to Rule 60(b) of the Mississippi Rules of Civil Procedure, and in support thereof state as follows:

I. INTRODUCTION

On April 25, 2018, promptly after Brittany Kaiser, the second whistler-blower at Cambridge Analytica (“CA”), testified before U.K. Parliament that Big Data Dolphins Ltd. was using the same CA model at the University of Mississippi using private citizen data, Plaintiffs Fair Vote Project and Mr. Kyle Taylor (collectively “Fair Vote Project” or “Fair Vote”) filed a *Complaint for Preliminary and Permanent Injunction and Discovery* in Hinds County Chancery Court against Defendants Big Data Dolphins Ltd. (“Big Data Dolphins” or “BDD”) and Eldon Insurance Services Ltd. (“Eldon” or “Eldon Insurance”), two companies owned in whole or in part by Mr. Aaron Banks, the largest financier of Brexit.

The Plaintiffs' Complaint sought to preserve and protect evidence from being destroyed by the Defendants Eldon Insurance and Big Data Dolphins.¹

The Plaintiffs' Complaint also sought to discover whether Mr. Kyle Taylor's personal data has been mined, possessed, or used by Defendants Eldon Insurance and Big Data Dolphins, as well as the private information of other United States and/or Commonwealth citizens.

On May 25, 2018, Defendants filed their Motion to Dismiss the Complaint based on a lack of personal jurisdiction. The Defendants' relationship with Ole Miss was the basis for Defendants' argument that they had not purposefully availed themselves to jurisdiction in Mississippi. Indeed, Dr. Josh Gladden from the University of Mississippi was called by Defendants to testify as to the lack of data found on University servers. See Gladden Transcript 14:28-15:5.¹ Next, Victoria Sena was called as a party representative for Defendants, at which time she was questioned by both parties about the Defendants' relationship with Mississippi. See Sena Transcript 5:7-17; 41:17-43:11. Ms. Sena conveniently failed to mention that the Defendants had been in regular communication with the National Strategic Planning & Analysis Research Center ("NSPARC") at the Mississippi State University, an entity unknown to the Plaintiffs at the time.²

After a two-day hearing before this Hinds County Chancery Court on June 6-7, 2018, with four witnesses, and the marking and introduction of numerous exhibits (and sometimes exclusion

¹ "Eldon's Insurance Broking arm [Southern Rock Insurance Company Ltd.] was founded in October 2012 under the trading style of GoSkippy Insurance (www.goskippy.com) retailing car insurance within the United Kingdom. Eldon acts as a broker placing insurance risks for customers across a panel of twenty insurers." See **Exhibit 2**, Eldon Insurance White Paper.

² Though the hearing centered on this relationship with Ole Miss, it was not until the last day of the hearing that Plaintiffs received emails attached to one of Defendants' exhibits evidencing numerous communications between Defendants and NSPARC. Even then, Plaintiffs had no knowledge of NSPARC, which is "a university research center with more than 100 diverse employees, ranging from data scientists to software architects and security experts. NSPARC supports Mississippi State University's overarching goals of research, learning, and service by collaborating within the university, through local, state, and federal agencies, and across the private sector to help society grow by discovering solutions to societal problems by using data science."

of such exhibits, after numerous evidentiary objections by Defendants), Defendants Eldon Insurance and Big Data Dolphins received a favorable judgment from this Hinds County Court with a finding that Defendants had not subjected themselves to the chancery court's jurisdiction under Mississippi's long arm-statute.

On June 21, 2018, this Hinds County Court dismissed the Complaint and denied the relief sought based on a lack of personal jurisdiction. As this Hinds County Chancery Court's June 21, 2018 Order made clear: "The main issue that this court address[ed was] the issue of jurisdiction." See Order and Opinion, Doc. 35 at 4. As this Court correctly stated, "[u]nder Rule 12(b)(2) of the Mississippi Rules of Civil Procedure, the plaintiff bears the burden of establishing that the trial court has personal jurisdiction over a nonresident defendant." *Id.*, citing *Hogrobrooks v. Progressive Direct*, 858 So. 2d 913, 919 (Miss. 2003).

II. MATERIAL DEVELOPMENTS

Since this Hinds County Chancery Court's Order, there have now been six major developments that weigh in favor of this Court's reconsideration of dismissal of the Plaintiffs' Complaint on jurisdictional grounds.

a. Eldon Insurance and Big Data Dolphins filed suit in Lafayette County Chancery Court.

Just *three months* after this Hinds County Chancery Court issued its ruling, Defendants unexpectedly undermined and nullified this Court's findings and order by then filing their own law suit against the University of Mississippi *in Lafayette County*—in *Chancery Court*. Specifically, in Lafayette County, these same Defendants—Eldon Insurance and Big Data Dolphins—seek to conceal documents in the possession of the University of Mississippi that speak to the same nucleus of operative fact previously referenced in this case: Eldon Insurance's and Big

Data Dolphins's relationship with Mississippi, and the business structure and data analytical strategy that Eldon Insurance and Big Data Dolphins have employed.

Indeed, despite adamantly protesting in this Hinds County Chancery Court the existence of personal jurisdiction in Mississippi, and after having achieved success in this Hinds County Chancery Court at not being "haled into court" in Hinds County, Mississippi, Defendants Eldon Insurance and Big Data Dolphins promptly and *affirmatively* subjected themselves to litigation in Mississippi by utilizing the courts of this state to their own benefit—on this very subject matter.³

To that end, on September 18, 2018, Defendants Eldon Insurance and Big Data Dolphins filed a Petition for Protective Order against the University of Mississippi in the Chancery Court of *Lafayette County*, Mississippi. Some of the exact same issues are presented in that case. The only logical explanation is not a valid one: *forum shopping*.

b. Eldon Insurance and Big Data Dolphins have failed and refused to disclose what personal data they possess.

In compliance with this Hinds County Chancery Court's Order, Kyle Taylor submitted a Subject Access Request ("SAR")⁴ to Eldon Insurance, and submitted a SAR to Big Data Dolphins. Unsurprisingly, each response by Eldon Insurance and Big Data Dolphins is non-responsive. Not only have Eldon Insurance and Big Data Dolphins not correctly replied to Mr. Taylor's SAR, but each have failed to reply to Mr. Taylor's follow-up requests.

³ Indeed, well prior to the hearing, the Plaintiffs had already sent their Open Records Act requests to Ole Miss; then Ole Miss communicated the request to Defendants, giving them a deadline to object; then the Defendants decided not to object. Some of that production from Ole Miss was introduced at the hearing, including the Eldon Insurance White Paper. After the Hinds County Chancery Court had dismissed Defendants, and when Ole Miss was about to supplement its production to Plaintiffs, Defendants then promptly filed suit against the University of Mississippi to prevent disclosure.

⁴ See U.K. Data Protection Act of 1998.

First, Eldon Insurance and Big Data Dolphins claim certain exemptions apply, but then do not state which exemptions they are claiming.

Second, Eldon Insurance and Big Data Dolphins do not expressly state whether or not they possess *any* of Mr. Kyle Taylor's personal data. Do they, or do they not? We still do not know.

Third, Eldon Insurance and Big Data Dolphins claim to lack the ability to disclose any of Kyle Taylor's personal data to him, if they have any. In relevant part, Eldon Insurance's response was: "Eldon Insurance Services Limited has no personal data relating to that requested by you in your SAR that may be disclosed to you in line [sic] our obligations under the Act." Big Data Dolphins' response was identical: "Big Data Dolphins has no personal data relating to that requested by you in your SAR that may be disclosed to you in line [sic] our obligations under the Act." The responses are cut-and-pasted from each other.

Is it any surprise that Eldon Insurance and Big Data Dolphins have failed and refused to disclose what they possess and what they have used of Mr. Kyle Taylor's data, since that would be a tacit admission of violating European Union data privacy laws? The fox is still guarding the henhouse.

c. The U.K. Information Commissioner's Office fined Eldon Insurance for its misuse of sensitive personal data, and started an ICO audit in November 2018.

In further developments, in November 2018, the U.K. Information Commissioner's Office ("ICO") announced that it was fining Defendant Eldon Insurance and Leave.EU (the referendum campaign of British businessman Arron Banks fronted by Nigel Farage) with "ineffective" systems for segregating the data of insurance customers from that of political subscribers. Specifically, Eldon Insurance was fined £60,000 for sending an Eldon Insurance marketing campaign to Leave.EU political subscribers. Leave.EU was fined £45,000 for its part in same, and an additional

£15,000 for using Eldon Insurance customers' details unlawfully to send almost 300,000 political marketing messages.

This is where the rubber hits the road. Eldon Insurance is part of an aggregator site scheme where potential customers input data into an aggregator site (to help get a good ideal on insurance, for example). That data is then shared with all companies that use the site, even if the customer does not buy from them. The findings of the ICO suggest that Eldon Insurance's large data set was then merged with the electoral roll (all registered voters) to build complex and rich data profiles about every customer, and every voter. Mr. Kyle Taylor is on the electoral roll *and* has used an aggregator site, so it is almost a certainty that Eldon Insurance and Big Data Dolphins have Mr. Taylor's data.

Additionally, Mr. Taylor is not the only one at risk here. The data possessed in Mississippi by Defendants is crucial both to Plaintiff Taylor's ability to bring suit on behalf of himself, and Plaintiff Fair Vote's ability to advocate for and potentially bring suit on behalf of its supporters, in the U.K. Eldon Insurance and Big Data Dolphins very well could have off-shored the entire electoral roll with all the overlaid insurance data in Mississippi without any consent at all; all in violation of European Union data laws. If the testimonies of Andy Wigmore and Brittany Kaiser are to be believed, that is exactly what they did.

The ICO has recently announced it has launched an audit into Eldon Insurance and Leave.EU, after fining the organizations a total of £120,000 for data protection violations during the European Union referendum campaign. Specifically, the ICO will begin a full audit of Eldon Insurance and Leave.EU's joint offices, staff and records, looking for evidence of whether or not the two companies followed data protection guidelines in processing personal information, how

they trained staff, and what policies and procedures they had in place.⁵ The ICO noted “it is a criminal offence to obstruct an ICO audit or destroy information covered by it”. If Plaintiffs are successful, their Complaint will help discover and preserve this information for themselves, as well as U.K. authorities

d. The U.K. National Crime Agency started investigating Eldon Insurance, its owner Arron Banks, and Elizabeth Bilney, in November 2018.

Also in November 2018, the U.K. National Crime Agency began an investigation into a multimillion-pound donation the Electoral Commission believes came from Rock Holdings, one of Arron Banks’s companies that is based in the Isle of Man, and thus not legally allowed to participate in U.K. elections. A “number of criminal offences may have been committed”, the U.K. Electoral Commission said in a statement, saying there were reasonable grounds to suspect Mr. Banks was “not the true source” of £8m in funding to the Leave.EU campaign. The U.K. Electoral Commission said the cases involve Mr. Banks, Ms. Elizabeth Bilney,⁶ one of his key associates; Leave.EU; the company used to finance it; and “other associated companies and individuals”—i.e., including Eldon Insurance.

e. The U.K. Parliament’s House of Commons released *Disinformation and ‘fake news’: Final Report*, a report that detailed the “porous relationship” between Eldon Insurance and Leave.EU

On February 14, 2019, the House of Commons in the U.K. published its findings regarding its investigation into Eldon Insurance, Arron Banks, and Leave.EU making two clear findings: (1)

⁵ Elizabeth Denham, the ICO commissioner, said: “It is deeply concerning that sensitive personal data gathered for political purposes was later used for insurance purposes, and vice versa. It should never have happened.”

⁶ Elizabeth Bilney is one of two Directors of Big Data Dolphins. She is also a Director at Better For The Country Limited, along with Arron Banks. Eldon Insurance, Big Data Dolphins, Leave.EU, and Better For The Country Limited are all registered at Lysander House (Catbrain Lane, Cribbs Causeway, Bristol BS10 7TQ), among others.

“it is clear that a *porous relationship* existed between Eldon Insurance and Leave.EU, with staff and data from one organization augmenting the work of the other; and (2) “it is now evident that [Arron Banks and Andy Wigmore] gave misleading evidence to [the House of Commons], too, about the working relationship between Eldon Insurance and Leave.EU. They are individuals, clearly, who have less than a passing regard for the truth.”

On the first finding, the House of Commons relied on the finding of the ICO and the Electoral Commission and determined that the “porous relationship” between Eldon Insurance and Leave.EU led to staff and data being transferred between the two companies. This “porous relationship” is precisely the type of activity that has always concerned Plaintiffs. As the ICO report indicated, at the very least, the nature of the relationship between the companies was so fluid that Leave.EU sent customers in its database emails promoting GoSkippy, Eldon’s alter ego. Additionally, the ICO found that Leave.EU’s privacy policy advises that subscribers’ data “may be used by Leave.EU or ‘third parties’ to provide information about goods or services which may be of interest.”

Just as Eldon used Leave.EU to promote its own agenda, and likely used Leave.EU’s data to inform desirable customers of the services Eldon provides, Eldon also may have used the data collected by Big Data Dolphins at the University of Mississippi for this purpose, in clear contravention of European data laws. Specifically, the House of Commons found, between Eldon and Leave.EU, “[t]here was no attempt to create a strict division between the two organizations, in breach of current laws.” Certainly, it would be naïve to believe that Eldon would not share this same “porous relationship” with Big Data Dolphins, a company Liz Bilney’s emails indicated was created for the very purpose of mining data.

Finally, as the House of Commons's second finding explained, Arron Banks and Andy Wigmore have little, if any, regard for the truth or the legal process. In their interview with Parliament on June 12, 2008, on which were considered by the House of Commons's in compiling its report, when asked about Big Data Dolphins, Arron Banks confirmed that "Eldon is an insurance broker, BDD is a company set up to do AI and analytics in the insurance industry. The plan was to hire graduates and people like that to work on our insurance big data project." Yet, Banks denied that any information made its way to Mississippi. Likewise, when asked if Eldon worked on campaigning for Leave.EU, Banks responded, emphatically, that allegations to that effect were "a flat lie." Given now that that the House of Commons has determined that Banks and Wigmore "are individuals, clearly, who have less than a passing regard for the truth," it is woefully difficult to believe that data never made its way to Mississippi.

In making these findings, the House of Commons specifically noted that it "looks forward to the findings of the ICO's audits into [Eldon and Leave.EU]. Certainly, the House of Commons would also be particularly interested in the evidence Plaintiff now seeks—proof that Eldon, through Big Data Dolphins or otherwise, transferred and accessed data of U.K. citizens in Mississippi.

- f. Big Data Dolphins and Eldon Insurance have a relationship with data scientist Dr. Domenico Mimmo Parisi, the founder and head of National Strategic Planning & Analysis Research Center's at Mississippi State University, who recently accepted a position with the Five Star Movement, a right-wing political party in Italy.**

Though Plaintiffs' prior discussion of the National Strategic Planning & Analysis Research Center's founder and director Dr. Mimmo Parisi was limited, Dr. Parisi has become a significant player in this data saga because of his previously unknown connections with Defendants, and his previously unknown connections with right-wing European political parties. Dr. Parisi's

connections with Defendants was discovered almost accidentally through emails produced at the hearing—specifically through the Defendants’ introduction of a .pdf version of an email as an exhibit (without attachments), wherein Plaintiffs did not object so long as the original format was produced. Defendants agreed to full production. That original email was produced the following day—the last day of the hearing—with its attachments—which were other emails, some of which had their own attachments. Several of those emails were by and between Defendants and NSPARC.

Plaintiffs later discovered who NSPARC is, what its role is in storing and analyzing big data—at least to the extent that can be found on public information, and the role of Dr. Mimmo Parisi as the lead data scientist at Mississippi State University; as one of the most-well known data scientists in the world and; now, as the lead data scientist for a right-wing Italian political party.

As a recent NSPARC publication explains,

NSPARC is based on founder Dr. Mimmo Parisi’s distinct perspective on data. While the mainstream typically sees data as a byproduct of activities, Parisi views data as an asset that can play a critical role in business operations. NSPARC has always been driven by a question: how can you make data valuable to an organization or society at large?

The answer to that question is data science, a field that examines how data can be utilized. During NSPARC’s infancy, data science mainly focused on predictive analytics, which is a way to look at patterns and trends in order to make decisions.

This information sets out some context to some of the very first evidence that Plaintiffs obtained and the reasons Plaintiffs looked for data in Mississippi in the first place—statements made by Andy Wigmore to Dr. Emma L. Briant in September of 2017. As Dr. Briant explained in her supplementary written evidence to Parliament, Andy Wigmore had been working with “the most extraordinary data scientist” in Mississippi. Wigmore explained:

So we’ve started an operation in Ole Miss University in Mississippi which is the centre for artificial intelligence in the world, who knew? [...] And, and, and the guy

that runs it, he's like the most extraordinary data scientist. So when we explained all our sorta, d'you know what, you should have a chat with him. When we explained what we did- [...] He thought we were completely nuts. He said, how on earth did you create? This is how we created it. He couldn't get his head around it. But, if you took the application of what we learned in, you know, learned, self-learning, you know, with the ads that we did, what worked, what didn't, who responded, how they responded, et cetera. Et cetera. And you apply that kind of learning to-

He went on:

'imagine if you had the ability to say, this person is absolutely brilliant. We know as an insurer, it's worth giving them a good price because we know they're unlikely to make a claim, they're solid, they've got a good job, um, you know, they've got a family life, blah, blah, blah, blah, blah. So that in artificial intelligence terms is the holy grail in insurance. So that was a by-product of what we discovered, brilliantly. And that's all about data. That is all about data. So um, that was- that was the upshot. So we've set this up in Mississippi. It's been going for nine months, we've been testing for twelve months now, testing all the insurance against it and it's extraordinary.

What Plaintiffs previously could not have understood is that, while Eldon intended to set up shop at Insight Park at Ole Miss, the real target of their operations was the data knowledge (and the data scientist) located at MSU's NSPARC. If Mr. Wigmore was telling the truth, it would make sense that no data was housed at the University of Mississippi—because the data analysis being conducted prior to “setting up shop” there, would have occurred “at the centre for artificial intelligence in the world,” a claim touted by MSU and NSPARC, not Ole Miss.

To that end, NSPARC boasts that it “has a proven track record of quality work with more than 200 national, state, and local entities.” Additionally, NSPARC has a “multimillion-dollar state-of-the-art cyber infrastructure” with 54.1 terabytes of data moving through NSPARC annually and a 400 terabyte data center capacity—enough room to store 570,000 full length movies. Moreover, providing data to prospective Mississippi companies is not uncommon to NSPARC's operations. As NSPARC's publications explain, “Mississippi has the ability to connect specific individuals to potential jobs through real-time education and workforce training data

generated by NSPARC . . . With this model, Mississippi has convinced several top manufacturers, including Nissan, Toyota, Yokohama, and Continental, to build plants in the state.” Likely, Mississippi was attractive to Eldon for the same reason—the data analysis that NSPARC can provide.

Now, likely after learning everything Eldon and Leave.EU know about applying data to politics, Dr. Mimmo Parisi has accepted a position with the Five Star Movement in Italy, conducting the very same data analyses that have benefited Mississippi and that Eldon and Leave.EU desperately want to employ in their assessment of risks on their own customers. In fact, Mr. Arron Banks has expressed his affinity for the Five Star Movement—according to the New York Times, Mr. Banks has considered creating and funding a new citizens’ movement, based on Italy’s Five Star Movement. Such connections are too close for comfort.

Accordingly, this new information regarding Dr. Parisi’s European political connections sheds light on the true nature of Eldon’s relationship with Mississippi—these new facts lead Plaintiffs to believe that while Eldon’s physical location may have been intended to be housed at the University of Mississippi, the home of Eldon’s data, prior to having a physical location here, was at Mississippi State University and with Dr. Mimmo Parisi.

III. ARGUMENT

Under Mississippi law, the Defendants Eldon Insurance and Big Data Dolphins have waived their challenge to personal jurisdiction. Defendants did not just consent to chancery court jurisdiction in Mississippi—they affirmatively asserted personal jurisdiction in Mississippi. This consensual basis for jurisdiction is an independent avenue of jurisdiction—meaning that the long arm-statute does not have to be satisfied.

1. Rule 60(b) Standard

Under either Mississippi Rule of Civil Procedure 60(b)(5), or 60(b)(6), this Court may alter its final judgment dismissing the complaint for discovery based on the Defendants’ waiver of personal jurisdiction and the judicial system’s interest in adjudicating this issue on the merits.

Among other circumstances, under Mississippi Rule of Civil Procedure 60(b), relief from a judgment or order may be granted under these circumstances:

- (1) fraud, misrepresentation, or other misconduct of an adverse party;
- (2) accident or mistake;
- (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (6) any other reason justifying relief from the judgment.

Miss. Rule Civ. P. 60(b). Using its sound discretion in determining whether the judgment should be altered, the Court must strike a balance “between granting a litigant a hearing on the merits [and] the need and desire to achieve finality in litigation.” *Stringfellow v. Stringfellow*, 451 So. 2d 219, 221 (Miss. 1984).

Under Rule 60(b)(5), this Court's judgment should no longer have prospective application because the reason for granting the motion to dismiss is no longer factually true. As Defendants have now attempted to use the courts of this State for their own personal gain, they have chosen to make themselves amenable to suit here, at least on these grounds. Accordingly, equity requires this Court to consider the Plaintiffs' claims and requests on their merits.

Additionally, under Rule 60(b)(6), this Court should find that the exceptional, compelling circumstances of this set of circumstances justifies setting aside its previous order. Pursuant to Rule 60(b)(6), a party "must demonstrate 'extraordinary circumstances which prevented or rendered him unable to prosecute [his case].' Further, the 'party must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with the prosecution or defense of the action in a proper fashion.'" *Regan v. S. Cent. Reg'l Med. Ctr.*, 47 So. 3d 651, 654 (Miss. 2010)(*quotations omitted*). Further, the following factors are relevant:

(1) That final judgments should not lightly be disturbed; (2) that the Rule 60(b) motion is not to be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was made within a reasonable time; (5) [relevant only to default judgments]; (6) whether if the judgment was rendered after a trial on the merits-the movant had a fair opportunity to present his claim or defense; (7) whether there are intervening equities that would make it inequitable to grant relief; and (8) any other factors relevant to the justice of the judgment under attack.

Carpenter v. Berry, 58 So. 3d 1158, 1162 (Miss. 2011). Each of these factors point distinctly towards setting aside the judgment. To the first factor, there is no final judgment to disturb in this case because the merits of this case were never actually litigated. As this Complaint here was dismissed on jurisdictional issues, there is no interest in "finality" because Plaintiffs could simply file this action again now that jurisdiction has been waived.

Second, this motion is not being used in lieu of appeal. These new actions could not even be considered by an appellate court because they are outside the record of this proceeding. Third,

substantial justice can only be done by hearing this matter on the merits, now that Defendants Eldon Insurance and Big Data Dolphins have consented to jurisdiction. Fourth, this motion comes within a “reasonable time.” To the sixth factor, again, the merits of this action have not been fairly considered by the Court because of the jurisdictional issue and Plaintiffs are entitled to at least having their claims heard.

Next, there are no intervening inequities that would prevent this Court from granting this relief—in fact, the equitable way to resolve this issue is to hear the claims on their merits. Finally, the reason that personal jurisdiction is a bar to recovery is because defendants must be given proper notice that their actions may cause them to be haled into court in the forum state on a particular matter. Here, that basis for denying relief is no longer applicable. Because Defendants Eldon Insurance and Big Data Dolphins have now attempted to use the courts of this State to their own advantage on this very subject matter, they cannot claim that they had no fair warning that they might be called to defend themselves here on these issues.

Certainly, the circumstances here were well beyond the Plaintiffs’ control. At every turn, Defendants Eldon Insurance and Big Data Dolphins contested jurisdiction. Plaintiffs did not waive jurisdiction until September 18, 2018, well after this Court’s Order granting dismissal. Plaintiffs could not have known that Defendants would waive the jurisdictional issue, after having vehemently fought and won on that exact issue. Accordingly, because these circumstances are exceptional, it would serve the interests of justice to allow Plaintiffs to fully litigate these issues.

2. Waiver of Personal Jurisdiction

Under, Mississippi law, a defendant has waived the issue of personal jurisdiction “by suing the plaintiff in the objectionable forum in a second suit involving the same facts.” *Pekin Ins. Co. v. Hinton*, 192 So. 3d 966, 971–72 (Miss. 2016), reh’g denied (June 23, 2016). In *Hinton*, the

Mississippi Supreme Court explained that like under federal precedent, under Mississippi law, filing a new case in the same state and on the same subject matter equates to consent. *Id.* The Court went on to explain that this consensual basis for jurisdiction was an independent avenue, meaning that the long arm-statute does not have to be satisfied; consent alone is a sufficient basis.

Here, the facts at issue in the case newly instigated by Defendants in Lafayette County arise from exacting the same subject matter as Plaintiffs' Complaint in Hinds County. Throughout each motion and hearing, Plaintiffs' have repeatedly made clear that the subject of this suit was to ascertain the Defendants' relationships with and in Mississippi, as well as how Defendants Eldon Insurance and Big Data Dolphins collect data, and how collected data would be used. The Defendants' relationship to the University, and, by their own admission, their "proprietary information" is precisely the subject matter of the Lafayette County suit. Accordingly, because Defendants have waived their challenge to personal jurisdiction, this judgment should be set aside and the case should be heard on its merits.

Finally, Defendants have cleverly tried to disguise their Lafayette County action as a "special appearance" to contest whether these documents should be turned over to Plaintiffs. But this argument simply does not work. According to the Mississippi Supreme Court, "Mississippi does not recognize 'special appearances' except where a party appears solely to object to the court's jurisdiction over her person on grounds that she is not amenable to process. *Isom v. Jernigan*, 840 So. 2d 104, 107 (Miss. 2003) *citing Mladinich v. Kohn*, 164 So.2d 785, 791 (1964). In short, the scope of a "special appearance" is purely one that challenges jurisdiction. Defendants cannot "specially appear" to contest whether their documents should be produced to the public unless they forfeit jurisdiction. To that end, because the Defendants Eldon Insurance and Big Data Dolphins have voluntarily subjected themselves to the courts of this state on the same subject

matter sought in this case, the challenge to personal jurisdiction has been waived and the judgment should be set aside in the interest of justice.

V. CONCLUSION

As the foregoing illustrates, not only have the Defendants Big Data Dolphins Ltd. and Eldon Insurance Services, Ltd. directed activities toward Mississippi, they have now consented to litigate the very issue they hotly contested just a few months ago. Now that the issue has been waived, it would serve the interests of judgment to have this court's prior judgment set aside in order to litigate these issues on the merits.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Let's Take Back Control Ltd. a/k/a Fair Vote Project and Kyle Taylor respectfully move the Court to grant its Motion to Alter or Amend Order Denying Complaint for Preliminary and Permanent Injunction and Discovery pursuant to Rule 60(b) of the Mississippi Rules of Civil Procedure,

Respectfully submitted, this the 10th day of April 2019.

/s/Dorsey R. Carson, Jr.

Dorsey R. Carson, Jr., MSB #10493
David S. Humphreys, MSB #100085
Julie C. Noone, MSB #101591
COUNSEL FOR PLAINTIFFS

OF COUNSEL:

CARSON LAW GROUP, PLLC
125 South Congress Street, Suite 1336
Jackson, Mississippi 39201
Telephone: (601) 351-9831
Facsimile: (601) 510-9056
dcarson@thecarsonlawgroup.com
dhumphreys@thecarsonlawgroup.com
jnoone@thecarsonlawgroup.com

CERTIFICATE OF SERVICE

The undersigned counsel of record hereby certifies that a true and correct copy of the above response was served upon the following via the MEC system, which constitutes service to all counsel of record.

This the 10th day of April 2019.

/s/Dorsey R. Carson, Jr. _____
OF COUNSEL