IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge James A. Brogan **Plaintiffs' Opposition to Defendant Ghoubrial's Motions to Stay and Set Aside the April 26, 2019 Magistrate's Order**

Defendant Ghoubrial's respective motions to stay and set aside the April 26, 2019 Magistrate's Order are plainly contradicted by controlling precedent from the Supreme Court of Ohio, unsupported by any other law or policy, and thus should be denied.

The motions are based mostly on the fanciful notion that Ghoubrial's spousal privilege would be violated by the Court's *in camera* review of his ex-wife Julie's deposition transcript from their recent divorce proceedings. But Ohio law is clear that the mere *in camera* review of evidence by a court does not affect any substantial right of a party claiming privilege. Indeed, as the Supreme Court of Ohio has noted, *in camera* review "is precisely the mechanism available to determine whether a claim of privilege in a discovery dispute is justified." *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993). Accordingly, as the Court held in *Bell* (at 64),

> it would only be after this in camera review and a trial court order compelling disclosure that the substantial rights of appellants would be implicated. If the trial court determines that all of the requested information is privileged, any issues which may have been the subject of an appeal would be rendered moot. Conversely, if some documents are determined to be subject to disclosure, an appeal on narrowed issues would be available ... . Such an appeal need not await "final judgment" ... but merely the final determination of the rights of appellants with respect to the allegedly privileged materials.

See also Covington v. Metrohealth Sys., 150 Ohio App.3d 558, 2002-Ohio-6629, 782 N.E.2d 624, ¶ 21 (10th Dist.) ("To the extent the trial court's decision directs plaintiff to submit requested materials to an *in camera* review so the court can determine whether the documents are protected from disclosure on some alternative basis, including other bases of privilege or confidentiality, the order is not a final appealable order pursuant to R.C. 2505.02."). Thus, Defendant Ghoubrial's claims of privilege are completely irrelevant to the issue of whether Julie's transcript is subject to *in camera* review by this Court for its determination of whether the privilege claim is valid in the first place.

Defendant Ghoubrial also passingly argues (at 4–6) that the Magistrate's order (1) violates the "full faith and credit" clause of the U.S. Constitution, and/or (2) would otherwise improperly subject Julie to sanctions by the Domestic Relations Court for violating its order that the transcript be kept confidential. Neither argument finds support in law or fact.

First, as the Magistrate noted in the April 26 order (at 3), "Courts routinely compel information deemed 'confidential' for various reasons for *in camera* review when circumstances warrant." *See also Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09- 216, CA2004-09-217, 2005-Ohio-680, ¶ 11-19 ("[C]ourts, other than juvenile courts, may order disclosure of [confidential] juvenile records when pertinent to pending civil and criminal actions."); *Franklin United Methodist Home, Inc. v. Lancaster Pollard & Co.*, 909 F.Supp.2d 1037, 1044-1045 (S.D.Ind. 2012) ("[C]ourts asked to issue discovery orders in litigation pending before them have not shied away from" compelling "confidential" information, even if it would modify or circumvent a discovery order by another court, if ... such a result was considered justified." (citing cases)); *Abel v. Mylan, Inc.*, N.D.Okla. No. 09-CV-0650-CVE-PJC, 2010 U.S. Dist. LEXIS 106436, at *8-11 (Oct. 4, 2010) ("Plaintiff here should not be required to take action to seek modification of the various protective orders entered in these cases. This is a waste of time and resources."). The "full faith and credit"

clause has nothing to do with such discovery matters, as is made clear by the four thoroughly inapposite cases Defendant Ghoubrial dug up to cite on this point.[1]

Finally, there is no indication that the Domestic Relations Court, in the divorce proceedings that have since resolved, would sanction Julie for complying with this Court's lawful orders, let alone that any such sanction could be lawfully upheld on appeal. Defendant, unsurprisingly, cannot cite a single case showing that any court has ever levied a sanction under remotely comparable circumstances.

For these reasons, Defendant Ghoubrial's motions to stay and set aside the April 26 Magistrate's order should be denied. The Court should not delay its review and consideration of Julie's deposition transcript from the domestic-relations proceedings.[2] Additionally, the Court should apply its analysis of the transcript to both its ruling on class-certification (as it deems appropriate),

[1] *See* Defendant Ghoubrial's Motion to Set Aside at 5–6, citing *Chairs v. Burgess*, 143 F.3d 1432, 1438 (11th Cir. 1998) (holding that the district court erred in finding appellant in contempt for violating an injunction because it did not fully consider appellant's inability to comply with the contempt order under a "reasonable efforts" standard), *Pink v. A. A. A. Hwy. Express, Inc.*, 314 U.S. 201, 210–211, 62 S.Ct. 241, 86 L.Ed. 152 (1941) (noting that "the full faith and credit clause is not an inexorable and unqualified command" and holding that Georgia courts were entitled to adjudicate the question of whether its citizens, respondents, had contractually assented, in the case of insolvency, to be personally liable for the liabilities of the New York insurance corporation of which they were stockholders); *Davis v. Davis*, 305 U.S. 32, 43, 59 S.Ct. 3, 83 L.Ed. 26 (1938) (holding that the petitioner was entitled to have a Virginia divorce decree given effect in proceedings that petitioner had lawfully instituted in a District of Columbia Court to modify and set aside the decree), *Caterpillar Tractor Co. v. Internatl. Harvester Co.*, 120 F.2d 82, 85 (3d Cir. 1941) (holding that *res judicata* "preclude[d] the defendant in [a case in the U.S. District Court of New Jersey] from relitigating the issues already contested and settled in [an earlier action in] Nevada).

[2] Today, May 1, 2019, Julie filed her own motion to set aside the Magistrate's order in which she primarily claims (at 1) that she "has never received a copy of the transcript and clearly does not have nor has she ever possessed a copy of the transcript to produce to the Court." This is, if not an outright misrepresentation, extremely misleading, as Julie's attorney, Mr. Rosen, has confirmed that he himself has a copy of the transcript. Indeed, Plaintiffs' counsel specifically requested that Mr. Rosen bring a copy of the transcript to the March 27 hearing convened by the Domestic Relations Court on Plaintiffs' motion to intervene in those proceedings. *See* **Exhibit 1**, 03/27/2019 email from Mr. Pattakos to Mr. Rosen. Mr. Rosen confirmed by phone that he would do so, and further confirmed in a conversation with the undersigned at the March 27 hearing that he had the transcript with him and would be able to produce it immediately if ordered to. Moreover, the court reporter who recorded the proceedings would also be able to produce an additional copy if necessary.

and its ruling as to whether and to what extent Julie should be excused from testifying as to the merits of this case, with both rulings issued simultaneously so as to avoid piecemeal appeals. *See also* Plaintiffs' 05/01/2019 Motion to Stay Ruling on Certain Discovery Issues relating to Julie Ghoubrial.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com

/s/ Joshua R. Cohen
Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on May 1, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Ghoubrial hearing today re: Julie's transcript

Peter Pattakos <peter@pattakoslaw.com> Wed, Mar 27, 2019 at 11:03 AM
To: "Rosen, Gary M." <grosen@dayketterer.com>, jlemerman@dayketterer.com

Good morning Gary and Josh,

I'm writing to request that you bring a copy of Julie's deposition transcript to the hearing this afternoon so that Judge Quinn may refer to it as necessary. I hope to avoid any delays in the event he asks to review it.

Obviously, I'd bring a copy myself if I could access one, but then we wouldn't be having the hearing in the first place.

Thank you for your consideration.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

EXHIBIT 1