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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Plaintiffs' Motion for Hearing and Ruling on whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoubrial is Protected by Privilege, Motion for Reconsideration or Clarification of the Court's Orders relating to the Transcript, and Response in Opposition to Defendant Ghoubrial's Motion for Civil Contempt and to Show Cause**

Plaintiffs respectfully submit that recent events and Court orders regarding the Court's inadvertent publication on February 12, 2024 of the transcript of Julie Ghoubrial's October 12, 2018 deposition—a document that has been subject to extensive motion practice and multiple hearings in this case and two related cases since December of 2018, and which was submitted to this Court for *in camera* review in March of 2020 to determine whether its disclosure to Plaintiffs would be barred by the spousal privilege—demonstrate the urgency that this Court finally hold a hearing and issue a ruling as to whether disclosure of this transcript is in fact prohibited by any privilege.

Since its February 12 publication of this transcript, this Court has issued a destruction order (Feb. 20), a sealing order (Feb. 21), and a gag order (Mar. 4) which, Plaintiffs must respectfully maintain are, on the whole, vague, confusing, unworkable, unenforceable, unconstitutional, and highly prejudicial to Plaintiffs' position in this lawsuit. Additionally, Defendant Ghoubrial has filed a contempt and show cause motion by which he apparently seeks to exploit the confusion created by these orders and ensure the continued concealment of this transcript, which, as Plaintiffs have

maintained in this litigation for more than five years and counting, contains evidence of Defendants' fraud—including evidence of a cash-kickback scheme between the Defendants that was integral to their scheme, which Julie disclosed directly to Plaintiffs in September of 2018 before her deposition was ever taken, in communications that Plaintiffs have disclosed to this Court since 2019—that is highly relevant to the class-action claims at issue in this case, including the issue of certification of the Class A claims that has been pending for nearly five years and is now on its third appeal.

While it is apparent from the March 4 order that the Court is frustrated by Plaintiffs' position on the practical, constitutional, and other legal consequences of the Court's inadvertent publication of this transcript, Plaintiffs must also maintain that they should not be subject to expressions of contempt by the Court in response to their advocacy relating to this transcript, which, as this Court has recognized, "is highly relevant, probative, and subject to discovery in this case." *See* Feb. 5, 2019 order. *See also, Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera,* 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 375, ¶ 56 (Franklin C.P.) ("[I]t is clear in Ohio that a lawyer is not entitled to retain a legal fee otherwise due for work that included theft or some other clear and serious violation of a duty owed to a client."), citing *State v. Silverman,* 10th Dist. Franklin Nos. 05AP-837, 05AP-838, 05AP-839, 2006-Ohio-3826, ¶ 159-160; *Pivonka v. Sears,* 8th Dist. Cuyahoga No. 106749, 2018-Ohio-4866, ¶ 56 (When "named plaintiffs can prove for themselves" that they are "entitled to the disgorgement of every dime paid, then they can prove it for the whole class."), Section II, *infra.*

Plaintiffs must further maintain that they should not be unfairly restrained in their efforts to bring the evidence contained in this transcript to bear on their claims in this litigation—which have been pending for nearly eight years and counting with no resolution in sight. Nor should Plaintiffs be forced to litigate these issues with one hand tied behind their back, or in the dark, with the proceedings cloaked from public scrutiny.

Thus, Plaintiffs respectfully submit that the Court—to the extent it intends to continue to maintain that its inadvertent publication of the transcript is a bell that can be unrung, a genie that can be put back in the bottle, toothpaste that can be put back in the tube, etc., which U.S. courts have uniformly recognized in similar circumstances as impossible and unconstitutional—can and should eliminate the need to engage in further proceedings relating to the confidentiality of this transcript or the constitutionality or enforceability of the Court's orders relating thereto by following the well-established body of Ohio law relating to inadvertent disclosures of allegedly privileged material. This law requires an immediate hearing and determination of whether the material is actually protected by privilege, and provides that considerations of fairness dictate that no privilege can apply when the inadvertently disclosed material is relevant to the claims at issue, or where the party claiming the privilege does not immediately object to the inadvertent publication. Indeed, in its January 8, 2020 order denying Defendants' motion to stay trial court proceedings pending its first appeal on class certification, this Court specifically noted that "there [was] presently a writ action pending in the Ninth District Court of Appeals (Case No. 29458, filed June 25, 2019)," and stated that "as soon as that matter concludes, the matters at issue in this Court [pertaining to the transcript] shall proceed."

Additionally, for the reasons discussed further below, the Court should deny Defendant Ghoubrial's motion for contempt and to show cause. And to the extent the Court intends to deny Plaintiff's request for a hearing and determination of whether the transcript is protected by privilege, Plaintiffs request that it clarify its previous orders to ensure they are clear and do not unlawfully infringe on Plaintiffs' rights to litigate and appeal issues relating to the relevancy of this transcript to the certification of Class A that has been pending for far too long to the great and increasing prejudice of Plaintiffs.

I. **The Court's orders pertaining to its February 12 publication of Julie's deposition transcript are vague, confusing, unworkable, unenforceable, and unconstitutional because they conflate the distinction between orders to the Clerk of Courts and orders to the parties, they conflate the distinctions between "sealed," "privileged" and "confidential" documents, they invert the burden that applies to parties asserting that evidence is privileged, they do not (and cannot) account for the lapse in time between the orders or the continued publication of the transcript on the clerk's public docket for 22 days, they do not (and cannot) account for the untold individuals who may have accessed the transcript, and they do not (and cannot) comply with well-established constitutional standards for gag and sealing orders pertaining to court records. U.S. courts have uniformly held that the inadvertent publication of allegedly confidential information under such circumstances is a bell that cannot be unrung.**

This Court has recently issued a series of orders—dated February 12, February 20, February 21, and March 4, 2024 (attached as **Exhibit 1**)—by which it first published the transcript of Julie Ghoubrial's October 12, 2018 deposition to the docket of this case and has since clarified that this publication was "inadvertent," barring the parties and their attorneys first from possessing this transcript (Feb. 20 order), then from speaking about its contents on the public docket of this case (Feb. 21 order), and then from speaking about this transcript at all (Mar. 4 order).

Plaintiffs maintain, as they have in this litigation for more than five years and counting, that this transcript contains evidence of Defendants' fraud—including evidence of a cash-kickback scheme between the Defendants—that is highly relevant to the class-action claims at issue in this case, including the issue of class-certification of the Class A claims that has been pending for five years and is now on its third appeal. *See* Mar. 8, 2024 Affidavit of Peter Pattakos, attached as **Exhibit 2**, referencing and attaching July 11, 2019 Affidavit of Peter Pattakos as **Exhibit 2-A**. The Court has also repeatedly recognized that this transcript "is highly relevant, probative, and subject to discovery in this case." Feb. 5, 2019 order; *See also* June 18, 2019, Dec. Jan. 20, 2020 orders. Plaintiffs specifically alleged at paragraph 113 of their Fifth Amended Complaint, dated November 28, 2018, that "Not only did the KNR Defendants seek to profit from inflated attorneys' fees resulting from Ghoubrial's inflated medical bills, Defendants Nestico and Floros also received direct cash

kickbacks from Dr. Ghoubrial in the form of cash kickbacks that the parties referred to in code as 'olives.'" Additionally, Plaintiffs' December 21, 2018 motion to compel discovery stated that, "Plaintiffs' investigation has revealed that Attorney David Best, who represents the KNR Defendants in this lawsuit, appeared at Julie's deposition in the divorce case to ask her questions about Plaintiffs' allegations [in this lawsuit], the truth of which was confirmed by Julie in response to Best's questions." And at an April 23, 2019 telephonic hearing in this case, Plaintffs' counsel disclosed directly to this Court that,

> "I have been in a room with Julie Ghoubrial and two of her attorneys where she sat down and told me that she has reviewed our Complaint and told me that the allegations regarding her ex-husband, Dr. Ghoubrial, were true and there was more. She told me about direct cash kickbacks that Dr. Ghoubrial would pay to defendants."

See Apr.18, 2019 Hearing Tr., attached as **Exhibit 3**, at 11:13–12:8.

Defendant Ghoubrial has been so desperate to keep Plaintiffs from accessing this transcript that in 2019 he filed for a writ of prohibition in the Ninth District Court of Appeals against this Court's order of June 18, 2019 that the transcript be produced to this Court for *in camera* review. In these proceedings (CA-29458) Plaintiffs' counsel again disclosed details about their meeting with Julie, which took place on September 6, 2018, in which Julie "provided detailed information to [Plaintiffs' counsel], based on her personal knowledge, that supported both Plaintiffs' claims in the Fourth Amended Complaint and additional claims that Plaintiffs shortly asserted in their Fifth Amended Complaint. **Ex. 2–A.** This affidavit also affirms and attaches subsequent communications with Julie's attorney, including in October of 2018, wherein her attorney disclosed that Defendant Ghoubrial had noticed Julie's deposition in the divorce action, which took place on October 12, 2018, that Attorney Best appeared at that deposition and questioned Julie for approximately one hour about the allegations asserted by the Plaintiffs in this lawsuit, and that Julie confirmed the truth

of those allegations based on her personal knowledge. *Id. See also* emails between Julie's counsel and Plaintiffs' counsel, attached as **Exhibit 2–A–1**.

On January 8, 2020, this Court issued an order in response to Defendants' motion to stay the proceedings in the trial court while Defendants' first appeal of class-certification issues was pending. In this order, the Court recognized that "discovery rulings" pertaining to the "production" of the Julie Ghoubrial deposition transcript "can and should proceed" during the appeal. *See* January 8, 2020 order, attached as **Exhibit 4**. In this order, the Court again noted that Julie's transcript "has already found to be relevant and discoverable in this case." *Id.* citing June 18, 2019 order. And the Court specifically noted that "there [was] presently a writ action pending in the Ninth District Court of Appeals (Case No. 29458, filed June 25, 2019)," and stated that "as soon as that matter concludes, the matters at issue in this Court [pertaining to the transcript] shall proceed." *Id.*

The Ninth District likewise denied Defendant's request for a stay of the trial court's proceedings on this and other issues in its order of March 6, 2020 in CA Nos. 29630 and 29636 (attached as **Exhibit 5**), which it "conclude[d] that it is without authority in the context of an appeal to stay trial court proceedings or to otherwise prohibit trial court action." *See also In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 9 ("The trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm the judgment appealed from."). By then, the Ninth District had also dismissed Ghoubrial's writ action on the pleadings on February 12, 2020, and the transcript was finally produced to this Court for *in camera* review on March 23, 2020.

As of today, nearly four years later, this Court has, inexplicably, still not issued any rulings on this *in camera* review.

On February 12, 2024 at 3:05 PM, a link to this transcript was published directly by the Clerk of Courts' email system to the parties, their attorneys, and numerous non-parties to this case. *See*

Feb. 12 email distribution, with distribution list, attached as **Exhibit 6**. The Court's February 12 publication of the transcript to was accompanied by a Court order of the same date (**Ex. 1**) that was by its terms directed only to the Clerk of Courts, "ORDER[ING the transcript] to be filed by the Summit County Clerk of Courts under seal until further order of this Court should it have any relevance to this litigation." (emphasis in original).

Counsel for Defendant Ghoubrial has admitted that he became aware of the Court's publication of the transcript on February 12 "shortly after" the publication occurred, and called the Clerk's office that afternoon to inquire about why the Court had made the transcript available through a public link to the Clerk's website. *See* February 14, 2024 email from Defendant Ghoubrial's counsel to the Court, attached as **Exhibit 7**. Yet, despite knowing as of the afternoon of February 12 that the transcript was "accessible to all counsel" and presumably anyone else who had access to an internet connection, Ghoubrial's attorney did not utter a word to Plaintiffs' counsel or the Court about this publication, or about his position that the document should remain confidential, until more than two days later, at 5:37 PM on February 14; and only did so after he had discovered that Plaintiffs' counsel had communicated about its contents with counsel for the KNR Defendants. *Id.*

The next day, February 15, the Court held a telephonic hearing in which it confirmed that its publication of the transcript was inadvertent, and heard argument from the parties about the legal consequences of this inadvertent publication.

A day later, on February 16, Plaintiffs sent the Court a letter setting forth authority supporting their position that the information contained in the transcript was neither confidential nor privileged, and that any orders purporting to maintain the confidentiality of this transcript would violate the First Amendment rights of Plaintiffs, their attorneys, and the public. Later that same day,

the Defendants filed a motion requesting an order that the parties and their attorneys refrain from transmitting copies of the transcript and destroy all copies of the transcript in their possession.

On February 19, the Plaintiffs filed a response in opposition to Defendants' February 16 motion for the destruction order in which Plaintiffs reiterated their position set forth in their February 16 letter, and further argued that Defendants' requested order would "prohibit meaningful review and application of this this highly relevant and probative evidence to the pending claims and pending appeal on class-certification."

After its February 12 publication of the transcript the Court did not issue any orders for another eight days when, on February 20, it granted Defendants' request for an order that all parties and their counsel refrain from transmitting copies of the transcript and to destroy all copies in their possession. **Ex. 1.** Later that day, at 1:18 PM, the presiding Judge placed a phone call to Plaintiffs' counsel wherein the undersigned attorney and the Judge had a conversation that lasted approximately 30 minutes. During this conversation, the undersigned referred to the Court's order issued earlier that day as a "gag order." In response, the Judge bristled at counsel's description of the order as a "gag order," and emphasized that the order was not a "gag order." The Judge took issue with the fact that Plaintiffs February 19 opposition brief contained references to the contents of the deposition transcript at issue, and specifically stated, "You beat me to the courthouse." **Ex. 2** (Pattakos Affidavit), ¶ 8.

The next day, February 21, the Court, *sua sponte*, ordered that "all references to the deposition transcript of Julie Ghoubrial," contained in Plaintiff's Feb. 19 opposition brief (which did not attach any portion of the transcript nor quote from it), that "all representations of the deposition testimony" contained in that brief are "ordered stricken from the record," and that the Feb. 19 opposition brief be "placed under seal to ensure compliance" with the Court's February 12th order. **Ex. 1.** This Feb. 21 sealing order did not contain any of the necessary findings for sealing Court

records required by the First Amendments to the U.S. Constitution, the Ohio Constitution and rules and statutes established by Ohio law that implement these requirements. *See, e.g., State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 2012-Ohio-3328, ¶¶ 32–37 (applying Sup.R. 45(A)) ("Court records are presumed open to public access," which may not be restricted absent a finding "by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest.").

On February 22, 2024, Plaintiffs filed a motion for clarification of the Court's Feb. 21 sealing order in which Plaintiffs expressed their confusion about the Court orders pertaining to the transcript and the Judge's statements to Plaintiffs' counsel about same. This motion asked, in part, that if "Plaintiffs are not barred from speaking about the transcript by any Court order," which, according to the terms of the Court's pending orders and the Court's Feb. 20 statements to Plaintiffs' counsel about same they were not, "why would they be barred from having spoken about the transcript as they did in the now-sealed February 19 response brief, which was nothing more and nothing less than public speech about the transcript?"

In response to Plaintiffs' motion for clarification, the Court issued its March 4 order, which is the first in this series of orders that contains the term "confidential," and the first of these orders to directly convey that the Court expects at least some people who received copies of the transcript when it was made public by the Court on February 12 to maintain confidentiality as to its contents. Like the February 21 order, the March 4 order was likewise devoid of the constitutionally required findings for imposing gag orders on parties to litigation and their attorneys. *See, e.g., State ex rel. National Broadcasting Co. v. Court of Common Pleas of Lake County*, 52 Ohio St. 3d 104, 108, 556 N.E.2d 1120 (1990) ("[A] gag order cannot issue unless 'specific, on the record findings' are made demonstrating that a gag order is 'essential to preserve higher values and is narrowly tailored to serve that interest.'"), quoting *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 509-510, 104

S.Ct. 819, 78 L.Ed.2d 629 (1984).

This March 4 order also repeatedly states that the Court is "upset" with Plaintiffs' counsel about counsel's advocacy pertaining to this transcript, further states that "'prior restraint' issues generally involve freedom of the press only," and concludes with a seemingly sarcastic flourish by stating, "I hope that this 'clarifies' the Court's February 21, 2024 sealing order." *Cf. Citizens United v. FEC*, 558 U.S. 310, 352, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) ("We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers."); *Snyder v. Phelps*, 580 F.3d 206, 220 (4th Cir. 2009), *aff'd*, 562 U.S. 443 FN13, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011) ("Any effort to justify a media/nonmedia distinction rests on unstable ground, given the difficulty of defining with precision who belongs to the 'media.' And, more importantly, the Supreme Court has concluded that the 'inherent worth of speech ... does not depend upon the identity of its source, whether corporation, association, union, or individual.'"), quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 777, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978).

One may infer from the March 4 order that the Court wishes for this litigation to proceed as if the publication of Julie's transcript on February 12 had never happened, and as if the knowledge formed by Plaintiffs, their attorneys, and untold others about the contents of this transcript could somehow be erased from these peoples' memories, and erased from history. Put another way, one may infer from the March 4 order that the Court wishes to deny the practical, constitutional, and other legal consequences of this mistaken publication, thereby forcing Plaintiffs to bear the entirety of the burden for that mistake. Not only does this invert the "heavy burden" imposed on parties seeking to maintain confidentiality and sealing orders (*Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305–06 (6th Cir. 2016)), it also includes the burden of un-ringing the bell, putting the genie back in the bottle, the toothpaste back in the tube, etc., that U.S. courts have uniformly recognized in similar circumstances as impossible and unconstitutional. *See, e.g., In re N.H.*,

63 Ohio Misc. 2d 285, 297, 626 N.E.2d 697, 705 (Cuyahoga C.P. 1992), *citing Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) ("An order which was ineffective in preventing the harm at issue would not meet the United States Supreme Court's mandate that it be narrowly drawn."); *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143–44 (2d Cir. 2004) ("[H]owever confidential it may have been beforehand, subsequent to publication it was confidential no longer. ... The genie is out of the bottle, albeit because of what we consider to be the district court's error. We have not the means to put the genie back."); *SmithKline Beecham Corp. v. Pentech Pharms., Inc.*, 261 F.Supp.2d 1002, 1008 (N.D.Ill.2003) (Posner, J.) (denying a motion to seal portions of an agreement containing confidential information as to redacted aspects of the agreement already disclosed in the court's opinion); *Bartnicki v. Vopper*, 532 U.S. 514, 527–545, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) ("[P]rivacy concerns give way when balanced against the interest in publishing matters of public importance. ... A stranger's illegal conduct [would] not suffice to remove the First Amendment shield from speech about a matter of public concern. ... As a general matter, state action to punish the publication of truthful information seldom can satisfy constitutional standards. More specficially, this Court has repeatedly held that 'if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order."); *Florida Star v. B.J.F.*, 491 U.S. 524, 538, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) (The First Amendment protected a newspaper's right to publish the name of a rape victim that was inadvertently disclosed by police in violation of a statute ensuring the confidentiality of such victims.); *United States v. Dougherty (In re Dougherty)*, E.D.Pa. No. 07-CR-0361-1, 2014 U.S. Dist. LEXIS 101872, *12–*13 (July 23, 2014) (where "a secret FBI Affidavit" of probable cause was inadvertently made public by a governmental administrative error, "the interests ... of the Government," and the subject's "privacy and presumption of innocence" could not outweigh "First Amendment principles," thus, the court could

not "enter an order barring parties in possession of the [affidavit] from passing [it] onto other parties"). See also *Citizens United, supra,* 558 U.S. 310, 352 ("We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers."); *Snyder, supra,* 580 F.3d 206, 220 ("Any effort to justify a media/nonmedia distinction rests on unstable ground ... [T]he Supreme Court has concluded that the 'inherent worth of speech ... does not depend upon the identity of its source, whether corporation, association, union, or individual.'").

Despite these Court orders relating to this transcript, a link to the transcript remained accessible on the Clerk's self-described "public site" for 22 days, until March 5, 2024. *See* Mar. 5–6 correspondence between counsel and the Court, attached as **Exhibit 8**. To date, none of the Court's orders are directed to the conduct of anyone else who received this transcript after its February 12 publication apart from the Clerk, the parties to this case, and their lawyers. There is no practicable way to determine who has received or reviewed this transcript since it was published by the Court on February 12.

Thus, Plaintiffs and their attorneys (among other interested members of the public), while remaining respectful of the Court and its orders, are fully within their rights to oppose any notion that their knowledge of this transcript's contents could or should be erased from their memories, that its publication could or should be erased from history, or that they should not be permitted to continue to possess this transcript, transmit it, and otherwise speak freely about it.

This is especially so given that, "[i]t is axiomatic that a court speaks through its docket and journals." *Oney v. Allen,* 39 Ohio St.3d 103, 107, 529 N.E.2d 471 (1988). Consideration of what this Court has actually spoken through its docket and journals about this transcript leaves no doubt as to the inconsistent, confusing, and unenforceable nature of these orders. For example:

- The Court's initial order on Feb. 12 was by its terms directed only to the Clerk of Courts, "ORDER[ING the transcript] to be filed by the [Clerk] under seal, until further order of this Court should it have any relevance to this litigation." This order contained no additional direction to the Clerk or anyone else, and did not contain any language to clarify the commonly understood distinction between an order that a document be kept confidential from a party versus an order that a document be filed under seal—the latter of which typically implies, at very least, that counsel and the parties would have access to the document. Sup.R. 45; N.D. Ohio Local Civil Rules, Appendix L (model protective order); *Owens v. Liberty Life Assur. Co.*, W.D.Ky. No. 4:15-CV-00071-JHM-HBB, 2016 U.S. Dist. LEXIS 172540, at *3 (Dec. 14, 2016) ("Despite this Court's recent explanation of the marked distinction between an order issued to ensure the confidentiality of certain documents as compared with an order sealing the court's docket, Owens has again conflated these independent concepts."); *Rudd Equip. Co. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593 (6th Cir.2016) ("We recently clarified the 'stark difference' between court orders entered to preserve the secrecy of proprietary information while the parties trade discovery, and the sealing of the court's docket and filings: 'The line between these two stages . . . is crossed when the parties place material in the court record," and in this latter stage, 'very different considerations apply.'") (internal citations omitted). This order further did not state or otherwise suggest that the document was intended to remain *in camera*, and indeed no order would have been necessary for the Court to have kept this transcript *in camera*, as that is precisely where it had been for the last four years since it was first produced to the Court for its *in camera* review. Additionally, immediately after the Court issued this order to the Clerk, a separate docket entry

posted by which a public link to the transcript was delivered to counsel for the parties, their counsel, and several non-parties, including entire law firms who are not party to or counsel of record for any party to this case. **Ex. 6**. This link was made available on the Clerk's public site to anyone who possessed it, where it remained for 22 days. **Ex. 8**. No evidence has been introduced as to how long that link was available directly from the Clerk's online docket. Thus, anyone who received the transcript as a result of its February 12 publication by the Court may have reasonably inferred that the transcript was meant to be published by the Court. Indeed, with reference only to what Plaintiffs have known and represented to the Court about the contents of this transcript since long before the Court made it available on Feb. 12 (*See* **Ex. 2; Ex. 2-A**), one may have reasonably inferred that the Court, after certifying Class A for a third time in five years only to see the certification issue go back up to the Court of Appeals for yet a third time, realized how much it had prejudiced the Plaintiffs and putative class-members by keeping Julie's transcript concealed from them for so long, and decided to remedy that prejudice by finally making it available so that Plaintiffs could finally re-raise their arguments about "it[s] ... relevance to this litigation." **Ex. 1**, Feb. 12 order.

- Further illustrating the absurdity of the notion that the recipients of the Court's publication of this transcript should have known that they were not supposed to receive it is the fact that no one said a word about it—certainly not to the Plaintiffs (who, significantly, are the parties "most interested in receiving it"[1]), and certainly

[1] *See Draus v. Healthtrust, Inc.*, 172 F.R.D. 384, 389 (S.D.Ind.1997), Section V, *infra* ("Here the disclosure involved only one document, but the disclosure of that document was utterly complete, and it was made to the opposing party most interested in the contents of the document. This is not a case where the inadvertent disclosure at issue was made to a third party. Nor is this a case where the

not on the Court's docket—for more than two days, after business hours on February 14, when Defendant Ghoubrial's counsel emailed the Court and counsel for the parties to both (A) admit that he knew of the transcript's publication on the afternoon of February 12, and (B) that he only bothered to say anything to anyone about it because he discovered that Plaintiffs' counsel had reached out to the KNR Defendants' attorneys to discuss the relevance of the transcript to the claims at issue in the case. *See* **Ex. 7**, February 14, 2024 email. The legal consequences of Ghoubrial's strategic and apparently underhanded decision to remain silent about the transcript's publication are discussed further in Section V. below.

- Additionally, it was not until the afternoon of February 15, three full days after the transcript was published to the docket, that the Court confirmed for the parties that its publication of the transcript was inadvertent. This was on a phone call between the presiding Judge and counsel for the parties that was scheduled by email, wherein the Judge disclosed that his publication of the transcript to the docket was "prompted" by the fact that he's "getting to be 85 (years old) pretty soon," and "was not wanting to make any more trips to Akron, so [he's] going to try in the next couple of months to leave this case to [a newly assigned judge]." *See* **Exhibit 9**, excerpt from Feb. 15 telephonic hearing, 2:7–25. The Judge further explained on this call that "what I was trying to do was take this from the status of *in camera*, whatever that means, it is in the Court's hands, and get it filed of record, under seal, so that

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disclosure was minimal or constructive, as when someone might glance in an open file or designate a document for copying before reading it. In this case the letter was produced to opposing counsel who read it before defendants demanded its return. The disclosure of the Dickerson letter is a bell that has already been rung. The court cannot unring it by ordering that copies be returned to defendants.").

first of all, the deposition would be available to the next judge that had it." *Id.*, 24:17–22 (emphasis added). This was apparently the first time this information about the Judge's imminent resignation from this case had been disclosed to any party to this case, and certainly the Plaintiffs. The Judge's explicit acknowledgment of his confusion over "whatever [it] means" for a document to be held by a court *in camera*—where, by all rights to the parties in expeditious resolution of lawsuits, it should only remain for a relatively short period of time—only amplifies the fact that there was no reason for anyone who received this transcript on Feb. 12 to know both that the Judge intended to retire, and that he would for some reason deem it necessary to post the transcript to the docket to pass it on to his prospective successor judge as opposed to simply transmitting the document to the next judge by some other means (such as email, mail, or courier) to preserve its *in camera* status.

- After its February 12 order and publication of the transcript, the Court did not issue another order for another eight days, until it issued its February 20 order. Between the issuance of those two orders and since, there has been no effort by the Court to account for the untold number of people who have since received the transcript since it was published by the Court on February 12, nor could any such accounting practicably be completed, or any related confidentiality orders practicably be enforced. *See In re Scaldini*, 8th Dist. Cuyahoga No. 90889, 2008-Ohio-6154, ¶ 20 ("We also believe that the trial court judge intended the order to have a broader scope; however, the court's mandate must be clearly expressed rather than implied."); *Goffstein v. Goffstein*, 1st Dist. Hamilton No. C-140010, 2014-Ohio-5060, ¶ 12 ("'Nunc pro tunc entries are limited in proper use to reflecting what the court actually decided, not what the court might have decided or what the court intended

to decide.' ... When a nunc pro tunc entry reflects a substantive change in the judgment, it is inappropriate."), citing *Miller v. Watkins*, 1st Dist. Hamilton No. C-030065, 2004-Ohio-3132, ¶ 7–8, quoting *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995 Ohio 278, 656 N.E.2d 1288 (1995).

- Additionally, by its terms, an order that the Clerk of Courts publish a document under seal is factually and legally distinct from an order that the parties may only file this document under seal; and both such orders are factually and legally distinct from an order a document be kept completely confidential by one or more persons who possess it. *Owens, supra,* (noting "the marked distinction between an order issued to ensure the confidentiality of certain documents as compared with an order sealing the court's docket," and the importance of not "conflat[ing] these independent concepts."); And with respect to documents made part of a Court record, each type of order (a gag order, or a sealing order) requires specific on-record findings to ensure that the order does not violate the First Amendment's guarantee of open courts. *See, e.g., Rudd Equip. Co.*, 834 F.3d 589, 593 (discussing the "'stark difference' between court orders entered to preserve the secrecy of proprietary information while the parties trade discovery, and the sealing of the court's docket and filings, ... and [that] in this latter stage, 'very different considerations apply.'") (internal citations omitted); *State ex rel. National Broadcasting Co., Vindicator Printing Co., supra;* Sup.R. 45; N.D. Ohio Local Civil Rules, Appendix L (model protective order).
- Moreoever, an order that a person is barred from disseminating or possessing copies of a document (like the Court's February 20 order), is by its terms different and legally distinct from an order barring a person from speaking of what they know about that document's contents, whether in Court records (Feb. 21 order) or

otherwise (Mar. 4 order). Likewise, whether a document is privileged and whether it is confidential are two separate questions. Just because a document is privileged, and therefore not admissible as evidence, does not mean it is confidential, especially when it has already been made public to third parties. *See, e.g., Clark v. Phoenix Homes, Inc.*, M.D.Tenn. No. 3:09-cv-00116, 2010 U.S. Dist. LEXIS 163559, at *13 (July 23, 2010) ("Plaintiffs correctly argue that privilege and confidentiality are two separate and distinct concepts."); *Klaine v. S. Illinois Hosp. Servs.*, 2016 IL 118217, 400 Ill.Dec. 1, 47 N.E.3d 966, ¶ 18 ("[C]onfidentiality, discoverability, and admissibility are distinct concepts. [And there is] a distinction between information which is 'confidential' and information which is 'privileged' and, therefore, nondiscoverable and inadmissible. Further ... there is no general principle under Illinois law that provides that information that is otherwise discoverable is privileged because it is confidential.'").

- Finally, again, it is practically impossible, unworkable, and therefore unconstitutional for a court to impose obligations of confidentiality on individuals as to information that has already been made public, and which untold members of the public already freely possess. *In re N.H.*, 63 Ohio Misc. 2d 285, 297, *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14, *supra.*

Plaintiffs therefore should not be subject to expressions of contempt or frustration by this Court in response to their advocacy relating to this transcript, which, as this Court has recognized, "is highly relevant, probative, and subject to discovery in this case." *See* Feb. 5, 2019 order. And Plaintiffs must further maintain that they should not be unfairly restrained in their efforts to bring the evidence contained in this transcript to bear on their claims in this litigation—which have been pending for nearly eight years and counting with no resolution in sight. Nor should Plaintiffs be

forced to litigate these issues with one hand tied behind their back, or in the dark, with the proceedings cloaked from public scrutiny.

All of these concerns can and should be avoided, as discussed further below, by either lifting the gag and sealing orders at issue, or promptly scheduling a hearing and issuing a determination as to whether the relevant parts of this transcript are in fact subject to protection by privilege, as Ohio law requires with respect to allegedly privileged material that is inadvertently disclosed.

II. The Court's orders pertaining to its February 12 publication of Julie's deposition transcript wrongly prejudice Plaintiffs' rights to litigate over the relevance of this transcript—which Plaintiffs have long maintained, and the Court has already ruled is "is highly relevant, probative, and subject to discovery in this case"—to the issue of class-certification that has been pending for nearly five years and counting and is now on its third appeal. This only compounds the Court's error in delaying its in camera review of this transcript for nearly four years, and concealing it from Plaintiffs for the duration of the first two appeals of the class-certification issue. Plaintiffs should not be required to litigate these issues with one hand tied behind their back, or in the dark, with the proceedings cloaked from public scrutiny.

Plaintiffs have maintained for more than five years and counting that this transcript contains evidence of Defendants' fraud that is highly relevant to the class-action claims at issue in this case. In fact, Plaintiffs have, for more than five years and counting, known this to be true based on their direct communications with Julie and her attorney—wherein Julie described to Plaintiffs' counsel a scheme whereby Defendant Ghoubrial paid cash kickbacks to Defendant Nestico, Defendant Floros, and other parties involved in the price-gouging scheme at issue in this case, and her attorney disclosed to Plaintiffs' counsel that Julie testified about these kickbacks at her deposition—which in themselves constitute a waiver of any conceivable privilege relating to the portions of this transcript that may pertain to these kickbacks, as discussed in Section IV below. *See* **Ex. 2**; **Ex. 2-A** (March 7, 2024 and July 11, 2019 Pattakos Affidavits). This is why Plaintiffs specifically alleged at paragraph 113 of their Fifth Amended Complaint, filed on November 28, 2018, that "Not only did the KNR Defendants seek to profit from inflated attorneys' fees resulting from Ghoubrial's inflated medical

bills, Defendants Nestico and Floros also received direct cash kickbacks from Dr. Ghoubrial in the form of cash kickbacks that the parties referred to in code as 'olives.'" It is also why Plaintiffs' December 21, 2018 motion to compel discovery stated that, "Plaintiffs' investigation has revealed that Attorney David Best, who represents the KNR Defendants in this lawsuit, appeared at Julie's deposition in the divorce case to ask her questions about Plaintiffs' allegations [in this lawsuit], the truth of which was confirmed by Julie in response to Best's questions." And it is why Plaintiffs' counsel disclosed to the Court and defense counsel at an April 18, 2019 telephonic hearing that, "I have been in a room with Julie Ghoubrial and two of her attorneys where she sat down and told me that she has reviewed our Complaint and told me that the allegations regarding her ex-husband, Dr. Ghoubrial, were true and there was more. She told me about direct cash kickbacks that Dr. Ghoubrial would pay to defendants." **Ex. 3**, Apr.18, 2019 Hearing Tr., 11:13–12:8. These cash kickbacks from Ghoubrial to Nestico and Floros not only allowed Defendants to conceal the true nature of the quid pro quo relationships alleged by Plaintiffs, the kickbacks also allowed the KNR Defendants to collect an additional share of Ghoubrial's inflated medical bills in excess of what they disclosed to their clients, and in excess of what would or could be considered a "reasonable" fee under Ohio Rule of Professional Conduct No. 1.5.

Despite the high relevance and probative value of Julie's deposition testimony about kickbacks to the claims of the price-gouging class, which this Court has repeatedly recognized, including to the remedy of disgorgement and its pertinence to the issue of class-certification (which is discussed further below), this Court has inexplicably delayed its *in camera* review of this transcript for nearly four years and counting since the document was first submitted to the Court, and has not, to date, ruled on Defendant Ghoubrial's patently meritless claims of privilege over it. *See* Feb. 5, 2019 order ("Under the circumstances, and upon Plaintiffs' representation that Julie Ghoubrial was in fact questioned about allegations in this lawsuit, the Court finds the information inquired into

during Julie Ghoubrial's deposition testimony is highly relevant, probative, and subject to discovery in this case.").

While the Court has equivocated about the relevance of this testimony to the issue of class-certification (**Ex. 9**, Feb. 15, 2024 Tr. 26:6–17), it is Plaintiffs' position—even based solely on what they knew to be true about this transcript prior to its Feb. 12 publication by the Court—that it would be absurd to maintain that evidence of contemporaneous cash kickbacks paid among parties to a quid pro quo price-gouging scheme involving doctors, chiropractors, and lawyers, against thousands of their unwitting clients, would not be highly relevant and even determinative of the issue of class-certification given the rest of the evidence that has been presented by Plaintiffs to date. This is especially so given the availability of disgorgement as a remedy under such circumstances, and the appropriateness of class-certification where disgorgement is an available remedy. *See Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 375, ¶ 56 (Franklin C.P.) ("[I]t is clear in Ohio that a lawyer is not entitled to retain a legal fee otherwise due for work that included theft or some other clear and serious violation of a duty owed to a client."), quoting *State v. Silverman*, 10th Dist. Franklin Nos. 05AP-837, 05AP-838, 05AP-839, 2006-Ohio-3826, ¶ 159-160 (affirming inclusion of agreed attorneys' fees as part of restitution order for attorney's theft from client); *In re Estate of Fraelich*, 11th Dist. Trumbull No. 2000-T-0016, 2004-Ohio-4538, ¶ 23 ("[Attorney's] fraudulent conduct in this case required a fee forfeiture."), quoting Restatement of Law Governing Lawyers 3d, Section 37 ("A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter ... Even if a fee is otherwise reasonable, a fee may still be subject to forfeiture."); *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 38, 47, 57, 57, 27 N.E.2d 939 (1940) (holding that disgorgement is a proper remedy against a self-dealing fiduciary "notwithstanding there may be no causal relation between [the defendants'] self-dealing and the loss or deprecation

incurred," as matter of "public policy" to deter "self-dealing . . . [in] relation[s] which demand[] strict fidelity to others," and to deter the natural "temptation to wrong-doing" that fiduciary relations create); Restatement (Second) of Agency, § 469 (1958) (an attorney "is entitled to no compensation for conduct which is disobedient or which is a breach of his duty of loyalty; if such conduct constitutes a willful and deliberate breach of his contract of service, he is not entitled to compensation even for properly performed services for which no compensation is apportioned"); *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) ("An agent's breach of fiduciary duty should be deterred even when the principal is not damaged. We therefore conclude that a client need not prove actual damages in order to obtain forfeiture of an attorney's fee for the attorney's breach of fiduciary duty to the client."); *Hendry v. Pelland*, 73 F.3d 397, 402 (D.C. Cir. 1996) (holding that self-dealing attorneys face liability for forfeiture or disgorgement regardless of any proof of consequential injury); *King v. White* (Kan.1998), 265 Kan. 627, 642, 962 P.2d 475, quoting 7 Am.Jur.2d, Attorneys at Law Section 279, Fidelity and professional competence ("'An attorney who is guilty of actual fraud or bad faith toward a client ... is not entitled to any compensation for his or her services.'"); *United States v. Shah*, 84 F.4th 190, 252 (5th Cir.2023) ("But for that illegal conduct of conspiring to send the patients to Forest Park under a handshake deal for a kickback, the surgeons would not have received their proceeds. As above, the bribe money did not differentiate between federal patients or private patients—the agreement and reimbursement were the same for both. The surgeons' conduct falls squarely within the realm of forfeiture."); *United States v. Betro*, E.D.Mich. No. 17-20465, 2022 U.S. Dist. LEXIS 117731, at *12 (July 5, 2022) ("[E]ven if [defendant doctors] provided some legitimate services during the health care fraud conspiracy, that does not alter the calculation of the appropriate money judgment," which was "the total amount of money brought in through the fraudulent activity, with no costs deducted or set-offs applied."), citing *United States v. Poulin*, 461 F.App'x 272, 288 (4th Cir.2012) ("[T]he district court did not err in ordering forfeiture of the entire

amount [defendant doctor] received through fraudulent billing without applying a set-off for the amount he would have received had he billed properly for services actually rendered."); *Miller v. Cloud*, 7th Dist., No. 15 CO 0018, 2016-Ohio-5063, ¶ 92 ("[W]hen a party is a wrongdoer, disgorgement is an option."); *United States v. Nicolo*, 597 F.Supp.2d 342, 350 (W.D.N.Y.2009) ("[T]he appropriate measure of forfeiture ... is the defendant's gross proceeds."), citing *United States v. Genova*, 333 F.3d 750, 761 (7th Cir.2003) (attorney and mayor were "jointly and severally liable for the forfeitable proceeds of their activities" involving kickback scheme); *Castro v. United States*, 248 F.Supp.2d 1170, 1173 (S.D.Fla.2003) (attorney subject to "forfeiture of $ 77,204.00, reflecting the amount of attorney fees [he was] paid ... as a result of the kickback scheme"); *United States SEC v. Thorn*, S.D.Ohio No. 2:01-CV-290, 2002 U.S. Dist. LEXIS 21508, at *9-10 (Sep. 30, 2002) ("[T]he remedy is equitable, and ... precision of calculation will often be impossible."); *United States v. United Technologies Corp.*, 190 F. Supp. 3d 752, 759 (S.D. Ohio 2016) ("[R]estitution ... concentrates on the defendant—preventing unjust enrichment, disgorging wrongfully held gains, and restoring them to the plaintiff. ... A party seeking disgorgement is not required 'to produce data to measure the precise amount of the ill-gotten gains."); *In re Smith*, 365 B.R. 770, 789 (Bankr. S.D.Ohio 2007), fn 8 (same); SEC v. Wyly, 56 F. Supp. 3d 394, 426 (S.D.N.Y.2014) ("[C]ourts commonly order defendants to disgorge not only the proceeds of a fraud or the profits of an unlawful trade, but also salary and bonuses earned during the period of a fraud."); *In re Infant Formula Antitrust Litigation*, N.D.Fla. MDL No. 878, 1992 U.S. Dist. LEXIS 21981, at *8–*9, *16 (Jan. 13, 1992) ("[Class-action plaintiffs] succeed in proving classwide impact by showing that the minimum baseline for beginning negotiations, or the range of prices which resulted from negotiation, was artificially raised by the collusive ... actions of the defendants. ... Contentions of infinite diversity of product, marketing practices, and pricing have been made in numerous cases and rejected. Courts have consistently found the conspiracy issue the overriding, predominant question."); *Pivonka v. Sears*, 8th Dist.

Cuyahoga No. 106749, 2018-Ohio-4866, ¶ 56 (When "named plaintiffs can prove for themselves" that they are "entitled to the disgorgement of every dime paid, then they can prove it for the whole class."); *Cope v. Metro. Life Ins. Co.*, 82 Ohio St.3d 426, 430, 1998 Ohio 405, 696 N.E.2d 1001 (1998) ("When a common fraud is perpetrated on a class of persons, those persons should be able to pursue an avenue of proof that does not focus on questions affecting only individual members.") (collecting cases); *Elkins v. Equitable Life Ins. Co.*, M.D.Fla. No. 96-296-CIV-T-17B, 1998 U.S. Dist. LEXIS 1557, at *46-48 (Jan. 27, 1998) ("The appropriateness of equitable relief likewise ensures predominance.").

Given the relevance of this transcript to the remedy of disgorgement and the consequent appropriateness of class-certification given the availability of that remedy, and that the Court's certification of the price-gouging class is now on its *third* appeal since December of 2019, with the Court having "pared down" the class with each of its successive certification orders (**Ex. 9**, Feb. 15, 2024 Tr.), and with briefing on this third appeal yet to commence, Plaintiffs are well within their rights to maintain that the Court abused its discretion in having kept Julie's transcript under wraps for so long. Again, this is so even based only on what Plaintiffs knew about the transcript *before* the Court published it on February 12. *See* 03/23/2020 Magistrate's notice confirming counsel's delivery of the transcript to the Court for in camera review.

And now that the transcript has been published to the Plaintiffs, who have since read and processed the information it contains, it would, at very least, compound the Court's error in having kept this transcript from the Plaintiffs for so long if it were to now restrain Plaintiffs from speaking about this transcript or raising arguments about its evidentiary value to the Court of Appeals. *See, e.g., Draus*, 172 F.R.D. 384, 389, *supra* ("Here the disclosure involved only one document, but the disclosure of that document was utterly complete, and it was made to the opposing party most interested in the contents of the document. ... In this case the letter was produced to opposing

counsel who read it before defendants demanded its return. The disclosure of the [letter] is a bell that has already been rung. The court cannot unring it by ordering that copies be returned to defendants.").

These considerations underscore the urgency that the Court—instead of seeking to enforce vague, confusing, unenforceable, and constitutionally suspect gag and sealing orders against the Plaintiffs—immediately rule on the issue of whether the relevant portions of this transcript are legitimately protected by any privilege. Indeed, as noted above and discussed further below, this is precisely what Ohio law requires when allegedly privileged material is inadvertently disclosed even as only between the parties (as opposed to where, as here, the inadvertent disclosure was made by the Court to the public). A contrary result is not only completely unnecessary and unwarranted under the circumstances, it would be deeply prejudicial to Plaintiffs, as it would force them to litigate these critical issues in the Court of Appeals and otherwise with one hand tied behind their back, and in the dark, with the proceedings cloaked from public scrutiny, in violation of the First Amendment's guarantee of open courts. *See, e.g., State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994) ("What transpires in the courtroom is public property," and "[a]ttendance at a public trial" and access to the docket in litigation proceedings "promotes fairness and enhances public confidence in the judicial system.").

III. If the Court intends to continue to maintain that its inadvertent publication of the transcript does not, under the circumstances, destroy any claim of confidentiality as to its contents, it can and should avoid questions about the constitutionality of its orders and any further prejudice to Plaintiffs by following the well-established body of Ohio law relating to inadvertent disclosures of allegedly privileged material, which requires an immediate hearing and determination of whether the material is actually protected by privilege, and which provides that no privilege applies when the inadvertently disclosed material is relevant to the claims at issue, or where the party claiming the privilege does not immediately object to the inadvertent publication.

Even if the Court intends to maintain that this transcript, which has already been made public by the Court's own actions, can somehow lawfully be considered confidential, and that parties

and their counsel (or anyone else) can lawfully be subject to gag and sealing orders with respect to its contents, there is a well-established body of Ohio law providing that where allegedly privileged material is inadvertently disclosed—even where (unlike here) that disclosure only between the parties or their attorneys (as opposed to between the court and the public, as here)—courts are required to promptly hold a hearing to determine whether that material is actually protected by privilege and whether any such privilege has been waived. *See v. Haugh*, 8th Dist. Cuyahoga No. 101380, 2014-Ohio-5290, ¶ 29-30, citing *Miles-McClellan Constr. Co. v. Bd. of Edn. Westerville City Sch. Bd.*, 10th Dist. Franklin Nos. 05AP-1112, 05AP-1113, 05AP-1114, 05AP-1115, 2006-Ohio-3439 ("[C]ourts have applied a balancing test in which the court will weigh (1) the reasonableness of the precautions taken by the party asserting privilege to prevent the disclosure, (2) the time taken to rectify the inadvertent error, (3) the scope and nature of the discovery proceedings, (4) the extent of the disclosure in relation to a role in discovery proceedings, and (5) the overriding issue of fairness. ... This approach has been adopted by numerous other appellate courts in Ohio.").

Additionally, multiple Ohio appellate courts have found that "where inadvertently disclosed documents are found to be relevant to the receiving party, fairness dictates waiver should be found." *Tucker v. Compudyne Corp.*, 2014-Ohio-3818, 18 N.E.3d 836, ¶ 18 (8th Dist.), quoting *Air-Ride, Inc. v. DHL Express (USA), Inc.*, 12th Dist. Clinton No. CA2008-01-001, 2008-Ohio-5669, ¶ 28. *See also Evans v. Gardner*, 2023-Ohio-558, 209 N.E.3d 787, ¶ 24 (12th Dist.) ("The simple fact is that the information in Document 58 is discoverable. It is relevant, and the trial court has determined that the attorney-client privilege that would otherwise protect the information has been waived. To hold that Document 58 should be protected simply because Gardner inadvertently disclosed it would risk creating perverse incentives and unduly exalts form over substance."); *See also Draus v. Healthtrust, Inc.*, 172 F.R.D. 384, 389 (S.D.Ind.1997) ("Here the disclosure involved only one document, but the disclosure of that document was utterly complete, and it was made to the opposing party most

interested in the contents of the document. This is not a case where the inadvertent disclosure at issue was made to a third party. Nor is this a case where the disclosure was minimal or constructive, as when someone might glance in an open file or designate a document for copying before reading it. In this case the letter was produced to opposing counsel who read it before defendants demanded its return. The disclosure of the Dickerson letter is a bell that has already been rung. The court cannot unring it by ordering that copies be returned to defendants.").

Here, while considerations of fairness would dictate that waiver be found as to any privilege applying to this transcript, especially given its relevance (as discussed above) and the fact that Ghoubrial strategically delayed his efforts to rectify the inadvertent disclosure (as discussed in Section V below), there is no need for the Court to reach the waiver issue because the portions of the transcript applicable to this lawsuit are plainly not covered by any privilege. As noted above and as discussed in Section VII below, this Court has already recognized that "discovery rulings" pertaining to the "production" of the Julie Ghoubrial deposition transcript as an issue that "can and should proceed" during Defendants' appeals of class-certification issues. *See* **Ex. 4**, January 8, 2020 order. And the Ninth District has agreed, having expressly denied Defendant's request for a stay in its order of March 6, 2020 in CA Nos. 29630 and 29636, which it "conclude[d] that it is without authority in the context of an appeal to stay trial court proceedings or to otherwise prohibit trial court action." *See also In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 9 ("The trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm the judgment appealed from.").

IV. Based on information known to Plaintiffs and which Plaintiffs disclosed to this Court long before the Court's Feb. 12 publication of the transcript, it is plain that no privilege applies to this transcript, including because it evidences wrongdoing that was committed with and in the presence of third parties, and because the relevant information contained therein is not "confidential" in any sense of the term, as Julie had already disclosed the relevant information contained in the transcript at a September 2018 meeting with Plaintiffs' counsel, and at her deposition wherein her testimony was solicited by an attorney for a corporation that was not party to Julie's marriage with Defendant Ghoubrial, who was also representing the KNR Defendants in this lawsuit.

The need for this Court to issue a ruling on whether Julie's transcript is in fact protected by privilege is further supported by the fact that the information known to Plaintiffs about the contents of Julie's testimony, and which Plaintiffs disclosed to this Court long before the Court's Feb. 12 publication of the transcript (*See* **Ex. 2, Ex. 2-A, Ex. 3**, Sections I and II, *supra*), makes clear in itself that the portions of this transcript relating to this lawsuit could not possibly be protected by privilege.

First, any portion of Julie's testimony wherein she discussed the cash kickbacks paid by Defendant Ghoubrial to Defendants Nestico and Floros, described as "olives" by the Defendants and Julie, would not be privileged because that testimony pertains to acts done in the presence of third parties. "Two Ohio statutes address the spousal communication privilege. R.C. 2945.42 governs issues of privilege is criminal cases, while R.C. 2317.02 controls in civil cases." *Reo v. Univ. Hosps.* Health Sys., 2019-Ohio-1411, 131 N.E.3d 986, ¶ 41-43 (11th Dist.). The protections of R.C. 2317.02 expressly do not apply to "communication[s] ... made, or act[s] done, in the known presence or hearing of a third person competent to be a witness." *Id.* quoting R.C. 2317.02(D). Because the alleged kickbacks at issue involved payments to third parties who are competent witnesses, and were further observed by other competent third-party witnesses like former KNR attorney Robert Horton (**Ex. 2,** ¶ 41), any portions of Julie's testimony pertaining to these kickbacks could not possibly be privileged.

Additionally, "[t]o be privileged, the communication at issue must be 'confidential.'" *Reo*, ¶ 43, quoting *State v. Rahman*, 23 Ohio St.3d 146, 149, 23 Ohio B. 315, 492 N.E.2d 401 (1986). And the Supreme Court of Ohio "has explained that the spousal-privilege statute [is] generally understood not to provide protection to spousal communications that had been disclosed to a third party." *State v. Jones*, 135 Ohio St.3d 10, 2012-Ohio-5677, 984 N.E.2d 948, ¶ 129-130. Furthermore, in *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104 the Supreme Court of Ohio held that spousal privilege did not apply to evidence introduced through a third party, and further clarified that the privilege is waived "if either [party to the marriage] divulge[s allegedly privileged communications] to another, or if that communication is disclosed by a robbery of the mails, or otherwise, and it gets into the hands of a third person, and the issue be raised, it is clear that that third person may, if he be a witness in the case, offer that communication." *Jones*, ¶ 125-128, quoting *Perez*. These principles are all "in accord with the fundamental principle of construing privileges narrowly," as "they impede the search for truth and contravene the principle that the public has a right to everyone's evidence." *Jones* at ¶ 125 quoting *Perez* at ¶ 121.

Thus it is plain that none of Julie's deposition testimony pertaining to the allegations at issue in this case can be considered privileged not only because it pertains to acts done in the presence of third parties, but also because none of it is confidential, and all of it has been disclosed to third parties. Not only did Julie specifically disclose information about Defendants' "olives" kickback program at a September 2018 meeting with Plaintiffs' counsel prior to her deposition having even taken place (*See* **Ex. 2, Ex. 2-A, Ex. 3**, Sections I and II, *supra*), her deposition testimony pertaining to this case was elicited by and disclosed Attorney David Best, who appeared at the deposition on behalf of several third-party corporations who claimed to have an interest in the divorce between Julie and Defendant Ghoubrial, an adversarial proceeding. *See* **Ex. 2-A, Ex. 2–A–1, Ex. 3.** Incredibly, at the same time he showed up to question Julie at this deposition to question her on

behalf of these corporations, he was counsel of record for the KNR Defendants in *this* case. *See* April 16, 2018 Notice of Appearance by Mr. Best. The very fact of Attorney Best having questioned Julie about Plaintiffs' allegations in this case, as Plaintiffs have maintained in this case and in the related writ action since 2018 and 2019, makes clear that the whole point of these questions was to determine the extent of what Plaintiffs' knew about Defendants' fraudulent practices, and the identity of Plaintiffs' sources. To hold that any privilege could apply to Julie's answers to these questions would be absurd, and to the extent there is any doubt about this, the Court can and should hold a hearing to confirm the same.

V. Even were it otherwise possible for Ghoubrial to support a claim that the relevant information contained in this transcript is privileged, any such privilege has been waived due to the conduct of Ghoubrial's own attorney, who, for strategic and underhanded reasons, intentionally delayed for days in ensuring that the inadvertently disclosed transcript would remain confidential.

Moreover, "there is ample authority for the proposition that where, as here, a party fails to take immediate steps to request that publicly filed materials be sealed, its request to redact or seal may be denied for that reason." *Fischman v. Mitsubishi Chem. Holdings Am., Inc.*, S.D.N.Y. No. 18-CV-8188 (JMF), 2019 U.S. Dist. LEXIS 115616, at *6 (July 11, 2019) (collecting cases). Here, counsel for Defendant Ghoubrial has admitted that he became aware of the Court's publication of the transcript on February 12 "shortly after" the publication occurred at 3:05 PM, and called the Clerk's office that afternoon (presumably before 4:00 PM, when the Clerk's office closes) to inquire about why the Court had made the transcript available through a public link to the Clerk's website. **Ex. 7.** Yet, despite knowing as of the afternoon of February 12 that the transcript was "accessible to all counsel" and presumably anyone else who had access to an internet connection, Ghoubrial's attorney did not utter a word to Plaintiffs' counsel or the Court about this publication, or about his position that the document should remain confidential, until more than two days later, at 5:37 PM

on February 14; and only did so after he had discovered that Plaintiffs' counsel had communicated about its contents with counsel for the KNR Defendants. *Id.*

From these facts it may be readily inferred that Ghoubrial was aware that his meritless claims of privilege and continued secrecy over this transcript could not withstand scrutiny, so he rolled the dice in hopes that no one from Plaintiffs' side would see the transcript or gather that it had been made public. By this strategic decision, Defendant Ghoubrial ensured that more than two days would pass before even Plaintiffs' counsel would be informed of his position the Court's publication of the transcript was inadvertent. And the untold number of other recipients of the Court's February 12 email containing a link to the transcript, and others who accessed the transcript upon its publication that day or in any of the 22 days it remained available on the Clerk's "public site," would not have been made aware of Defendant Ghoubrial's position on the confidentiality of this document for at least another six days, and only in the event that they reviewed the Court's February 20 order. These facts alone confirm that Ghoubrial has waived any claim of privilege regarding this transcript, even if any such claims were valid (which, as discussed above, they are not).

VI. To the extent the Court does not intend to lift its gag and sealing orders relating to the transcript, and intends to continue to indefinitely delay a ruling on whether the transcript is protected by privilege, it should at least clarify its orders so that Plaintiffs have clear guidelines in what it may disclose, and how, in arguing about the relevancy of this transcript to the class-certification issue both in this Court and in the courts of appeals.

In the event that the Court intends to continue to indefinitely delay a ruling on the privilege issue and keep Plaintiffs subject to gag and sealing orders regarding the transcript and its contents, Plaintiffs' need to raise these issues with the courts of appeals—including as to the transcript's relevancy to the issue of class-certification—further amplifies the need for this Court to clarify its orders relating to the transcript. In such event, the parties and the public must understand the extent to which this Court intends to restrain Plaintiffs' arguments to the Court of Appeals about these

issues, as well as Plaintiffs' and others' public speech about these issues, and the public's First Amendment right to open and transparent litigation of these issues.

"[I]t is well established that Section 16, Article 1 of the Ohio Constitution guarantees the public's right to open courts" and "[t]his right of access found in both the federal and state Constitutions includes records and transcripts that document the proceedings." *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, ¶ 8. "What transpires in the courtroom is public property," and "[a]ttendance at a public trial" and access to the docket in litigation proceedings "promotes fairness and enhances public confidence in the judicial system." *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994) citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569–73, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). "The principle that justice cannot survive behind walls of silence has long been reflected in the Anglo-American distrust for secret trials." *Lias* quoting *Richmond Newspapers*. Thus, "the guarantee of a public trial is a cornerstone of our democracy which should not be circumvented unless there are extreme overriding circumstances." *Lias* quoting *State v. Lane* (1979), 60 Ohio St.2d 112, 119, 14 O.O.3d 342, 397 N.E.2d 1338. And "the underpinnings justifying public access to criminal trials apply with equal force to civil trials." *Lias* quoting *Richmond Newspapers*, 448 U.S. 555 at 567.

Accordingly, the Ohio Supreme Court has held that gag and orders cannot issue unless (1) "specific, on the record findings are made demonstrating that [the] order is essential" to preserve values higher than litigants' and the public's First Amendment right to open-court proceedings; and (2) the order is "narrowly tailored" to accomplish its intended purpose. *State ex rel. National Broadcasting Co. v. Court of Common Pleas of Lake County*, 52 Ohio St. 3d 104, 108, 556 N.E.2d 1120 (1990).

Likewise, the Court has affirmed that, under Sup.R. 45(A), "[c]ourt records are presumed open to public access," which may not be restricted absent a finding "by clear and convincing

evidence that the presumption of allowing public access is outweighed by a higher interest." *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 2012-Ohio-3328, ¶¶ 32–37. And "to find [that] the presumption of public access has ... been overcome by the requisite clear and convincing evidence of a higher interest," a court must consider each of the following factors: (a) Whether public policy is served by restricting public access; (b) Whether any state, federal, or common law exempts the document or information from public access; and (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process. *Id.*, quoting Sup.R. 45(A).

Finally, "prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights," as they "are simply repugnant to the basic values of an open society" in that they "tend to encourage indiscriminate censorship in a way that subsequent punishments do not." *State ex rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, 926 N.E.2d 634, ¶ 21, quoting *Tory v. Cochran* (2005), 544 U.S. 734, 738, 125 S.Ct. 2108, 161 L.Ed.2d 1042 and *Nebraska Press Assn. v. Stuart* (1976), 427 U.S. 539, 559, 96 S.Ct. 2791, 49 L.Ed.2d 683. Any prior restraint bears "a heavy presumption against its constitutional validity" and imposes a "heavy burden" on its proponent to justify the prior restraing by considerations more weighty than the foundational rights protected by the First Amendment. *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, 161 N.E.3d 529, ¶ 26, ¶ 42. For example, regarding "prior restraints in which the defendant's request for a fair trial is asserted as the basis for the order," it must "appear[] clearly in the record that a defendant's right to a fair trial will be jeopardized and that there is no other recourse within the power of the court to protect that right or minimize the danger to it." *State ex rel. Toledo Blade Co.*, 2010-Ohio-1533, ¶ 27-30 Additionally, "[b]efore issuing any such order not to publish, it is obligatory upon the court to hold a hearing and make a finding

that all other measures within the power of the court to insure a fair trial," including "the traditional methods of voir dire, continuances, changes of venue, jury instructions or sequestration of the jury," "have been found unavailing and deficient." *Id.* Any proponent of a prior restraint must show that it "not burden substantially more speech than is necessary," but rather that it only "target[s] and eliminate[s] only the source of harm it seeks to remedy." *Mahoning Edn. Assn. of Dev. Disabilities v. State Emp. Rels. Bd.*, 137 Ohio St.3d 257, 2013-Ohio-4654, 998 N.E.2d 1124, ¶ 29. *See also Lias*, 503-504, quoting *Lane* ("[T]he exclusion of the public" from court proceedings "should be applied sparingly," and "only on a rare occasion after a determination that in no other way can justice be served."); *Citizens United, supra,* 558 U.S. 310, 352 ("We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers."); *Snyder, supra,* 580 F.3d 206, 220 ("Any effort to justify a media/nonmedia distinction rests on unstable ground ... [T]he Supreme Court has concluded that the 'inherent worth of speech ... does not depend upon the identity of its source, whether corporation, association, union, or individual.'"); *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶ 90 ("Attorneys and their clients retain a panoply of First Amendment rights and are free to speak to the public about their claims and defenses provided that they do not exceed the contours of protected speech and ethical rules that impose reasonable and necessary limitations on attorneys' extrajudicial statements."), quoting Prof.Cond.R. 3.6 ("A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.").

Given that the Court's orders to date about this transcript, the extraordinary factual circumstances at issue regarding its inadvertent publication to the Clerk of Courts' website after an indefinitely (and, Plaintiffs must maintain, wrongly) delayed *in camera* review, and Plaintiffs' apparent

need to raise these issues with the courts of appeals, it is plain that these orders at very least implicate the First Amendment. It is well recognized that "vague statutes [and court orders] that abut[] upon sensitive areas of basic First Amendment freedoms ... operate[] to inhibit the exercise of those freedoms." *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). "Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Id.*

Thus, should the Court not lift the gag and sealing orders at issue in this case, or issue a long overdue ruling on its in camera review of Julie's deposition transcript, it should at least give Plaintiffs and the public clear guidance as to the conduct it purports to prohibit by these orders, especially given Plaintiffs' need to litigate issues over this transcript in the courts of appeals.

VII. The Court should deny Defendant Ghoubrial's motion for contempt and to show cause; If anyone should be held in contempt it should be Defendants for their egregious misrepresentations about this transcript.

The facts and law set forth above also warrant denial of Defendant Ghoubrial's motion for contempt dated February 23, 2024. Ghoubrial bases this motion on his contention that Plaintiffs' Feb. 19 opposition brief—which references and describes the contents of Julie's deposition transcript relevant to this lawsuit, but does not quote from or attach a copy of any portion of the transcript—was in contempt of the Court's February 12 order that accompanied its publication of the transcript, and which stated, in full, as follows:

> The original deposition of Julie A. Ghoubrial, given on the 12th day of October, 2018 in another matter, is hereby ORDERED to be filed by the Summit County Clerk of Courts under seal until further order of this Court should it have any relevance to this litigation. IT IS SO ORDERED.

(emphasis in original). Ghoubrial also claims, in a "Supplement" to his contempt motion filed on March 4, 2024, that certain social media posts made by Plaintiffs' counsel about this case constitute "continued knowing and intentional violations of this Court's February 12, 2024 Order filing the

deposition transcript of Julie Ghoubrial under seal, and the February 20, 2024 Nunc Pro Tunc Order barring the possession, use, or distribution of that deposition transcript."

"It is well settled that for a person to be held in contempt of a court order, the court order must contain the specificity necessary for the person to 'readily know exactly what duties or obligations are imposed upon him.'" *In re Scaldini*, 8th Dist. Cuyahoga No. 90889, 2008-Ohio-6154, ¶ 18, quoting *Highland Square Mgt., Inc. v. Willis & Linnen Co.*, L.P.A., 9th Dist. Summit Nos. 21234, 21243, 2003-Ohio-2630, ¶ 13. "In other words, the prohibited conduct which forms the basis of the contempt cannot be impermissibly vague." *In re Gardner*, 12th Dist. Butler CASE NO. CA92-02-026, 1992 Ohio App. LEXIS 5786, at *6 (Nov. 16, 1992). "Judicial contempt power is a potent weapon and should not be used to enforce a decree which does not give notice to the parties what is expected from them." *Geiss v. Geiss*, 5th Dist. Delaware Case No. 96CAF05023, 1997 Ohio App. LEXIS 3326, at *4, *6 (July 1, 1997) (denying contempt motion for alleged violation of court order that conflated the meaning of a "term of art" because the order was "vague and unenforceable."). *See also State ex rel. Fraternal Order of Police, Captain John C. Post Lodge No. 44 v. Dayton*, 49 Ohio St.2d 219, 223, 361 N.E.2d 428 (1977), fn. 4 ("The most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension.").

Thus, for the same reasons set forth in detail in Section I above, Plaintiffs submit that the Court's February 12 and February 20 orders are too vague, confusing, unworkable, and unenforceable for any of Plaintiffs' conduct pertaining the transcript to warrant a finding of contempt. This is especially so given the Court's publication of the document to the parties, counsel, non-parties on the Clerk's docket distribution list, and untold others on Feb. 12, Defendant Ghoubrial's strategic decision to delay raising anyone's attention to this inadvertent publication for more than two days, the fact that a total of eight days passed before the Court issued any orders addressing the consequences of the inadvertent publication.

As noted above, "[i]t is axiomatic that a court speaks through its docket and journals." *Oney*, 39 Ohio St.3d 103, 107.

And as detailed above in Section I, the Court's February 12 and February 20 orders conflate the distinction between orders to the Clerk of Courts and orders to the parties; they conflate the distinctions between "sealed," "privileged" and "confidential" documents; they invert the burden that applies to parties asserting that evidence is privileged; they do not (and cannot) account for the lapse in time between the orders or the continued publication of the transcript on the clerk's public docket for 22 days; they do not (and cannot) account for the untold individuals who may have accessed the transcript; and they do not (and cannot) comply with well-established constitutional standards for gag and sealing orders pertaining to court records.

More specifically, the February 12 order to the Clerk of Courts directing it to file a particular document to the docket and place it under seal until further order of the Court is, by its terms, not an order that is directed to anyone else. Moreover, an order that a clerk of courts keep a document under seal is, by its terms, not a gag order that bars anyone from speaking about what they know about its contents, which is all that Plaintiffs are alleged to have done here in their February 19 opposition brief. *See, inter alia,* Sup.R. 45; N.D. Ohio Local Civil Rules, Appendix L (model protective order); *Owens*, 2016 U.S. Dist. LEXIS 172540, at *3 ("Despite this Court's recent explanation of the marked distinction between an order issued to ensure the confidentiality of certain documents as compared with an order sealing the court's docket, Owens has again conflated these independent concepts."); *Rudd Equip. Co.*, 834 F.3d 589, 593 ("We recently clarified the 'stark difference' between court orders entered to preserve the secrecy of proprietary information while the parties trade discovery, and the sealing of the court's docket and filings: 'The line between these two stages . . . is crossed when the parties place material in the court record," and in this latter stage, 'very different considerations apply.'") (internal citations omitted).

Additionally, the fact that this document, simultaneously with the publication of the February 12 order to the Clerk, was made public by the Court—whether temporarily, inadvertently, or otherwise—further amplifies the vague and confusing nature of any orders purporting to impose confidentiality obligations on its recipients. *See, e.g., In re N.H.*, 626 N.E.2d 697, 705, *citing Press-Enterprise Co.*, 478 U.S. 1, 14 ("An order which was ineffective in preventing the harm at issue would not meet the United States Supreme Court's mandate that it be narrowly drawn."); *Gambale*, 377 F.3d 133, 143–44 ("[H]owever confidential it may have been beforehand, subsequent to publication it was confidential no longer. ... The genie is out of the bottle, albeit because of what we consider to be the district court's error. We have not the means to put the genie back."). While the Court did clarify to the parties and their counsel that its February 12 publication of the transcript was inadvertent, it only did so three days after the publication, and did not issue any orders pertaining to the consequences of that inadvertent publication until February 20, the day after Plaintiffs filed the opposition brief at issue. *See In re Scaldini*, ¶ 20 ("We also believe that the trial court judge intended the order to have a broader scope; however, the court's mandate must be clearly expressed rather than implied."); *Goffstein v. Goffstein*, 1st Dist. Hamilton No. C-140010, 2014-Ohio-5060, ¶ 12 ("'Nunc pro tunc entries are limited in proper use to reflecting what the court actually decided, not what the court might have decided or what the court intended to decide.' ... When a nunc pro tunc entry reflects a substantive change in the judgment, it is inappropriate."), citing *Miller v. Watkins*, 1st Dist. Hamilton No. C-030065, 2004-Ohio-3132, ¶ 7–8, quoting *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995 Ohio 278, 656 N.E.2d 1288 (1995). Notably, Plaintiffs' February 19 opposition brief (which again did not quote from or attach any portions of the transcript) hardly contained any more detail about the contents of this transcript than what Plaintiffs had already repeatedly disclosed to this Court about what they knew this transcript contained. *See, e.g.*, **Ex. 2, Ex. 2–A, Ex. 3**, Sections I, II, *supra.* And none of the Court's orders pertaining to this transcript have included the "specific,

on record findings" required by the First Amendment for imposing gag orders or sealing orders to cloak material contained in court records in secrecy. *E.g., State ex rel. National Broadcasting Co.*, 52 Ohio St. 3d 104, 108, ("[A] gag order cannot issue unless 'specific, on the record findings' are made demonstrating that a gag order is 'essential to preserve higher values and is narrowly tailored to serve that interest.'"); *State ex rel. Vindicator Printing Co.*, 2012-Ohio-3328, ¶¶ 32–37 (applying Sup.R. 45(A)) ("Court records are presumed open to public access," which may not be restricted absent a finding "by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest."); *Rudd Equip. Co. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593-594 (6th Cir.2016) ("Shielding material in court records, then, should be done only if there is a 'compelling reason why certain documents or portions thereof should be sealed.' Even in such cases, 'the seal itself must be narrowly tailored to serve that reason,' and should 'analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.'") (citations omitted).

Furthermore, as the Court pointed out in its March 4 order, citing *Walker v. Birmingham*, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967), even if these orders were not otherwise vague and confusing and therefore not subject to a contempt finding, Plaintiffs would also be excused from a contempt finding in the event that the orders were "patently unconstitutional." Plaintiffs therefore also submit that to the extent it could be found that these orders were not too vague to warrant a contempt finding against Plaintiffs under the circumstances (*e.g., Scaldini, Highland Square Mgt., Inc., In re Gardner, Geiss, State ex rel. Fraternal Order of Police, Captain John C. Post Lodge No. 44, supra*), that the orders are in fact patently unconstitutional given that they do not contain the "specific, on record findings" required by the First Amendment for imposing gag orders or sealing orders to cloak material contained in court records in secrecy, nor, under the circumstances, could they. *E.g., State ex rel. National Broadcasting Co., State ex rel. Vindicator Printing Co., Rudd Equip. Co., supra.* Indeed, courts have clarified that "the clear import" of *Walker's* holding regarding "patently unconstitutional" or

"transparently invalid orders" "is that a different result, or at a minimum a different analysis, would have been required had the *Walker* order restrained pure speech," particularly given that, unlike in this case, *Walker* involved a public demonstration on city streets and therefore implicated "the strong interest of state and local governments in regulating the use of their streets and other public places." *Matter of Providence J. Co.*, 820 F.2d 1342, 1346–49 (1st Cir. 1986), *opinion modified on reh'g*, 820 F.2d 1354 (1st Cir. 1987). These courts have observed that "[i]n its nearly two centuries of existence, the Supreme Court has never upheld a prior restraint on pure speech," and that since *Walker* was decided, the Court has since articulated a test for prior restraints on speech pertaining to court proceedings, "requir[ing] proof to be established 'with the degree of certainty our cases on prior restraint require,' that (1) the nature and extent of pretrial publicity would impair the defendant's right to a fair trial; (2) there were no alternative measures which could mitigate the effects of the publicity; and (3) a prior restraint would effectively prevent the harm." *Id.*, *quoting Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976). Again, for the reasons amply set forth above, no such findings could possibly be made here.

The same analysis applies to the social-media posts of which Ghoubrial complains in his March 4 "Supplement" to his contempt motion, in which he submits that these posts "continued knowing and intentional violations of this Court's February 12, 2024 Order filing the deposition transcript of Julie Ghoubrial under seal, and the February 20, 2024 Nunc Pro Tunc Order barring the possession, use, or distribution of that deposition transcript." This contention by Ghoubrial only highlights the danger of "vague statutes [and court orders] that abut[ ] upon sensitive areas of basic First Amendment freedoms ... operate[ ] to inhibit the exercise of those freedoms." *Grayned*, 408 U.S. 104, 108-109. Not only does this contention demonstrate that "uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked" (*Id.*), it is plain that the chilling of Plaintiffs' lawful speech about this transcript

is, for obvious reasons, exactly what Defendant Ghoubrial desires. This is further made clear by consideration of these allegedly "contemptuous" social-media posts, which is simply a press release about this case that Ghoubrial does not attach to his motion, and which Plaintiffs attach as **Exhibit 10,** here, to show that its publication does not violate any Court orders, and that it in fact discloses substantially less information about the contents of the deposition transcript at issue than Plaintiffs have already disclosed to this Court years ago, and long before the Court's Feb. 12 publication of same. *See, e.g.*, **Ex. 2, Ex. 2–A, Ex. 3,** Sections I, II, *supra.*

Finally, Plaintiffs submit that if anyone should be held in contempt or otherwise sanctioned for their conduct relating to this transcript, it is the Defendants, and Defendant Ghoubrial in particular, for their repeated misrepresentations to this Court about this transcript and its contents. *See, e.g.*, Def. Ghoubrial's Jan. 31, 2019 Motion for leave to file sur-reply, Ex. A, p. 1, p. 6 ("Attorney Pattakos' narcissism and omnipotence are not sufficient to trump the orders of a judge presiding over an unrelated divorce case that has nothing to do with this case. ... Attorney Pattakos' unsupported assertion Julie Ghoubrial's testimony in the divorce case is somehow relevant to his clients' claims does not make his assertions true. Dr. Ghoubrial's divorce is in no way relevant to this class action. The only reason attorney Pattakos is trying so hard to drag Dr. Ghoubrial's divorce into this matter is to embarrass and harass in an effort to gain an unfair advantage.") (emphasis added); Def. Ghoubrial's Apr. 17, 2019 Motion to quash and motion for protective order, p. 1 ("Plaintiffs seek testimony from Ms. Ghoubrial that is wholly unrelated to issues regarding class certification."); **Ex. 3,** Apr. 18, 2019 Hearing Tr., 24:15–25:13 ("[Mr. Barmen]: ... One of the issues I've raised multiple times, how would [Mr. Pattakos] know what she testified to in the divorce ... that was confidential? ... Whether he's grasping at straws or he's already violated another court's order. ... [Mr. Best]: She has nothing to say about the class certification issues. He's making it up. He just makes up evidence.") (emphasis added).

And if the Court nevertheless does decide to issue a contempt finding against Plaintiffs' counsel, or hold a hearing to show cause, Plaintiffs submit that the Court should also address the issues that the Court discussed in its January 8, 2020 order (**Ex. 4**) pertaining to Defendants' "unprofessional gamesmanship and obstruction [that] result[ed] in significant delays and subsequently non-production of relevant and discoverable materials," that "this Court held in abeyance pending [its] ruling on class certification." This includes Plaintiffs' Mar. 6, 2019 motion for sanctions against the KNR Defendants based on the frivolous counterclaims they filed against the Named Plaintiffs, and Plaintiffs' April 18, 2019 motion for sanctions and to show cause regarding Defendant Floros's "improper communications with represented third parties." *Id.*

Ironically, as noted above, this January 8, 2020 order also lists "discovery rulings compelling production" of the Julie Ghoubrial deposition transcript as one of the issues that "can and should proceed" during Defendants' appeal of the initial order by this Court certifying Class A and Class C. *Id.* In this order, the Court again noted that Julie's transcript "has already found to be relevant and discoverable in this case." *Id.* citing June 18, 2019 order. And the Court specifically noted that "there [was] presently a writ action pending in the Ninth District Court of Appeals (Case No. 29458, filed June 25, 2019)," and stated that "as soon as that matter concludes, the matters at issue in this Court [pertaining to the transcript] shall proceed." *Id.* And yet a fourth issue identified by the Court in this January 8, 2020 order as one that "can and should proceed" during Defendants' interlocutory appeal of class certification was Plaintiffs' May 1, 2019 motion for discovery of Defendants' assets and net worth.

It is also notable that the January 8, 2020 order was issued in response to the Defendants' motion to stay this Court's proceedings during the appeal, and not only did this Court rule that it was not inclined to grant any such stay, the Ninth District also denied Defendant's request for a stay in its order of March 6, 2020 (**Ex. 5**), in which it "conclude[d] that it is without authority in the

context of an appeal to stay trial court proceedings or to otherwise prohibit trial court action." *See also In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 9 ("The trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm the judgment appealed from.").

Yet despite that Ninth District denied Defendants' motion to stay on March 6, 2020, and also dismissed Defendant Ghoubrial's writ of prohibition action on February 12, 2020, and despite this Court's recognition in its January 8, 2020 order that rulings on these issues "can and should proceed" immediately even despite Defendants' pending appeal on class-certification, the Court has let these issues wither on the vine ever since to the prejudice of Plaintiffs and the putative class members. Not only is the prejudice resulting from the Court's four-year delay of its *in camera* review of Julie's transcript apparent, as set forth in detail above, the Court's delay in ruling on Plaintiffs' motion for discovery on Defendants' assets and net worth have also had an especially prejudicial impact on Plaintiffs, not least because Defendant Ghoubrial has since had his license to practice medicine permanently revoked by the State Medical Board. *See* August 18, 2023 ruling by State Medical Board of Ohio, a link to which is available here: https://pattakoslaw.com/wp-content/uploads/2023/10/Sam-Ghoubrial-MD-license-permanently-revoked-by-Ohio-State-Medical-Board-for-gross-sexual-imposition-against-nurse.pdf

VIII. Conclusion

The fact that the Court expressed its intent in January of 2020 to promptly address Defendant Ghoubrial's claim of privilege pertaining to Julie's deposition transcript "as soon as [Ghoubrial's related writ of prohibition] matter concludes," and yet, four years later, has not yet done so, underscores the import that the Court finally address this issue. Plaintiffs certainly respect the presiding Judge's intent to fully retire and resign from his duties over this case at the age of 85, and are also mindful of the impact that Magistrate Patricia Himelrigh's untimely passing in May of

2020 has likely had on the administration of this case. This, Plaintiffs respectfully submit in addition to all of the foregoing, is all the more reason for the Court to avoid all of the constitutional issues and other difficulties inherent in the imposition of any gag and sealing orders pertaining to this transcript by simply and finally issuing a ruling on whether this transcript is, in fact, protected by privilege. An immediate determination of the validity of any privilege claims is in fact exactly what Ohio law requires when allegedly privileged information is inadvertently disclosed. On the record submitted to date there is no need for the Court to take further evidence to find that the portions of this transcript that are relevant to this case are not, in fact, protected by any privilege, but to the extent the Court has any doubts about this, it can and should hold a hearing wherein any such doubt would be eliminated.

Respectfully submitted,

/s/ Peter Pattakos
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Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on March 11, 2024, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

TAVIA GALONSKI

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

2024 FEB 12 AM 11:25

MEMBER WILLIAMS, et al. Plaintiffs -vs- KISLING NESTICO & REDICK LLC, et al. Defendants	)	CASE NO.: CV-2016-09-3928 JUDGE JAMES A. BROGAN **ORDER**

SUMMIT COUNTY CLERK OF COURTS

The original deposition of Julie A. Ghoubrial, given on the 12th day of October, 2018 in another matter, is hereby ORDERED to be filed by the Summit County Clerk of Courts under seal until further order of this Court should it have any relevance to this litigation.

IT IS SO ORDERED.

James A Brogan

JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: Counsel of Record

EXHIBIT 1

TAVIA GALONSKI
2024 FEB 20 AM 11:38
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

NUNC PRO TUNC ORDER

The Court, having been made aware of a clerical error relative to its February 12, 2024, Order directing that the deposition transcript of Julie Ghoubrial be filed under seal in this matter, enters this Order, Nunc Pro Tunc, to correct the record and to ensure the full compliance of all Parties relative to the Court's February 12, 2024 Order.

Wherefore, when the Court issued its February 12, 2024, Order directing that the deposition transcript of Julie Ghoubrial be filed under seal, it intended that the transcript remain private and not available to the public, the Parties, and/or their counsel.

Wherefore, when the deposition of Julie Ghoubrial was filed on the docket on February 12, 2024, pursuant to this Court's Order to file it under seal, the Notice of Filing sent to counsel made the transcript available for download, by inadvertence or mistake, for a period of approximately thirty (30) minutes, until the issue was brought to the attention of the Clerk and the Court. Once the Clerk and the Court were made aware that the deposition transcript was accessible to counsel in contravention of the intention of the Court when it issued its February 12, 2024. Order directing that the transcript be filed under seal and not be available to anyone, including counsel, the Notice was corrected so that the transcript could no longer be accessed by anyone.

Wherefore, during the limited time the deposition transcript was accessible to counsel through the Notice of Filing, in contravention of the Court's intent when it issued its February 12,

2024. Order to file the transcript under seal. counsel for Plaintiffs obtained a copy of the deposition transcript. Lead counsel for Plaintiffs confirmed that he is possession of. and has reviewed, the deposition transcript of Julie Ghoubrial during a telephone hearing on February 15. 2024.

Wherefore. to ensure compliance with the Court's February 12. 2024. Order that the deposition transcript of Julie Ghoubrial be filed under seal and not available or accessible to anyone. including counsel. until further Order of the Court. all counsel are directed to refrain from distributing any copy or copies of the deposition transcript of Julie Ghoubrial to any person or entity. All counsel are further directed to destroy any and all copies of the deposition transcript currently in their possession. as well as any copies in the possession of their partners. associates. agents. employees. or assigns. This Order applies to any and all electronic copies of the deposition transcript saved. downloaded. or emailed. which are to be deleted.

Wherefore. to ensure compliance with this Nunc Pro Tunc Order. as well as this Court's February 12. 2024. Order. lead counsel for all Parties are directed to submit an affidavit to Court. no later than 3 pm est. on Wednesday. February 21. 2024. certifying that all copies of the deposition transcript of Julie Ghoubrial. including all electronic copies. have been destroyed and/or deleted.

IT IS SO ORDERED.

James A. Brogan

JUDGE JAMES BROGAN

Copies to Counsel of Record

TAVIA GALONSK
2024 FEB 21 AM 9:2
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al., Defendant.	Case No.: 2016-09-3928 Judge: James Brogan **ORDER**

The Court, having now reviewed Plaintiffs' Response in Opposition to Defendants' Joint Motion to Redact Transcript of Feb. 15 Hearing, and Plaintiffs' Objection to Defendants' Proposed "Nunc Pro Tunc" Order ("Plaintiffs' Opposition"), filed February 20, 2024., the Court, *Sua Sponte*, enters the following Order:

All references to the deposition transcript of Julie Ghoubrial in Plaintiffs' Opposition are ordered stricken from the record. All representations of the deposition testimony of Julie Ghoubrial are ordered stricken from the record.

Further, Plaintiffs' Opposition is to be placed under seal to ensure compliance with this Court's February 12, 2024, Order that directed that Julie Ghoubrial's deposition transcript be filed under seal until further Order of this Court.

IT IS SO ORDERED.

James A Brogan
JUDGE JAMES BROGAN

TAVIA GALONSKI
IN THE COURT OF COMMON PLEAS
2024 MAR -4 PM 3:29 COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.	)	CASE NO.: CV-2016-09-3928
Plaintiffs	) SUMMIT COUNTY CLERK OF COURTS)	JUDGE JAMES A. BROGAN
-vs-	)	
KISLING NESTICO & REDICK LLC, et al.	)	**ORDER**
Defendants	)	

On February 22, 2024, counsel for the Plaintiffs, Peter Pattakos, filed a Motion for Clarification of this Court's nunc pro tunc Sealing Order entered on February 21, 2024. This Court had initially filed a Sealing Order on February 12, 2024 of Julie Ghoubrial's deposition given in a separate divorce proceeding. That Order was meant to apply to all members of the public, including counsel for the parties.

Unfortunately, the Clerk of Courts did not think it applied to counsel, and Mr. Pattakos was able to access the deposition. He then distributed copies of the deposition to opposing counsel with hopes of settling the underlying litigation. On February 15, 2024, this Court conducted a telephone hearing on the record with all counsel, and this Court stated that the Clerk should not have released the deposition to counsel, and the Court considered the online release to be an "inadvertent disclosure."

The next day on February 15, 2024, Mr. Pattakos sent this Court a letter which he copied all counsel arguing that the proposed "nunc pro tunc order" would be an unconstitutional "gag order." He also indicated that if he sent copies of the deposition to the press, they could not be restrained from publishing the contents of the deposition because it would be a prior restraint prohibited in the famous *Pentagon Papers* case.

Mr. Pattakos also argued that Julie Ghoubrial's deposition was not covered by the spousal privilege because they were "separated" at the time of the deposition. *State v. Mowery*, 1 Ohio St. 3d 192.

On February 19, 2024, Mr. Pattakos filed a Motion in Opposition to the Defendants' proposed nunc pro tunc entry again referring to such order as a "gag order." In the motion, Mr. Pattakos made extensive references to Julie Ghoubrial's deposition knowing that this Court considered that testimony to be confidential.

On February 20, 2024, this Court's nunc pro tunc order stated that all counsel refrain from distributing any copies of the deposition transcript of Julie Ghoubrial to any person or entity. Counsel were also directed to destroy all copies of the deposition transcript currently in their possession and were directed to submit affidavits of compliance by February 21, 2024 by 3:00 p.m.

On February 20, 2024, because this Judge was so upset that Mr. Pattakos would refer to portions of the confidential deposition in a pleading, I called Bradley Barmen who represents Defendant Samuel Ghoubrial to arrange another on the record telephone conference. I suggested 3:00 p.m. that day would be an appropriate time for me.

I contacted Mr. Pattakos to see if the 3:00 p.m. phone conference would fit his schedule, and he indicated he would not participate because he intended to appeal the Court's order to destroy the Ghoubrial deposition copies.

I told Mr. Pattakos how upset I was that he would refer extensivley to the contents of Julie Ghoubrial's deposition in the February 19, 2024 pleading. I also indicated that his reference to *State v. Mowery* was misplaced because it involved privileged communication in a criminal case and involved an interpretation of R.C. 2945.42 regarding a communication during

coverture. I also told him the appropriate privilege statute is R.C 2317.02(D) and the rule foreclosing communication applies even if the marital relation has ceased to exist.

I never told Mr. Pattakos that the Court's February 20, 2024 destruction order was not intended to bar him from speaking about the contents of Julie Ghoubrial's deposition testimony. I told him "prior restraint" issues generally involve freedom of the press only. In fact, I told him he was obligated to obey this Court's order unless it was "patently unconstitutional." *Walker v. City of Birmingham*, 383 U.S. 307 (1967)

I hope that this "clarifies" this Court's February 21, 2024 Sealing Order.

IT IS SO ORDERED.

James A Brogan

JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: Counsel of Record

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Peter Pattakos**

I, Peter Pattakos, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am an attorney who represents the Plaintiffs in the above-captioned litigation.

2. I have personal knowledge of the facts set forth in *Plaintiffs' Motion for a Hearing and Ruling on whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoubrial is Protected by Privilege, Motion for Reconsideration or Clarification of the Court's Orders relating to the Transcript, and Response in Opposition to Defendant Ghoubrial's Motion for Civil Contempt and to Show Cause.* I hereby affirm that the representations of fact contained in these documents are true and accurate based on my personal knowledge.

3. In particular, I hereby affirm that the document attached to this Affidavit as **Exhibit 2-A** is a true and accurate copy of my affidavit dated July 11, 2019 that I executed and filed in Case No. CA-28642, the action in which Defendant Ghoubrial sought a writ of prohibition against the presiding Judge's order in the above-captioned case that the transcript of Julie Ghoubrial's deposition of October 12, 2018 in Case No. DR-2018-04-

EXHIBIT 2

1027 be produced for his *in camera* review for an assessment of its relevance to this case and whether any privilege would apply to bar its production to the Plaintiffs.

4. This July 11, 2019 affidavit details my communications with Julie and her attorneys in September and October of 2018, and attaches documentation of same (marked here as **Exhibit 2-A-1**). This includes details of my September 6, 2018 meeting with Julie and her attorneys, wherein she provided detailed information to me, based on her personal knowledge, that supported Plaintiffs' claims in the Fourth Amended Complaint filed in this case, and additional claims that I shortly asserted on behalf of Plaintiffs in their Fifth Amended Complaint. This information provided to me by Julie at this meeting includes that specifically set forth at paragraph 113 of the Fifth Amended Complaint that, "Not only did the KNR Defendants seek to profit from inflated attorneys' fees resulting from Ghoubrial's inflated medical bills, Defendants Nestico and Floros also received direct cash kickbacks from Dr. Ghoubrial in the form of cash kickbacks that the parties referred to in code as 'olives.'" Julie made clear to me that this information was based on her own personal knowledge and observations.

5. I disclosed that Julie was Plaintiffs' source of this information about Defendants' "olives" kickback program directly to the Court and defense counsel in this case at an April 18, 2019 telephonic hearing on Defendants' efforts to quash a subpoena I had served for Julie's deposition. Specifically, I disclosed at this hearing that "I have been in a room with Julie Ghoubrial and two of her attorneys where she sat down and told me that she has reviewed our Complaint and told me that the allegations regarding her ex-husband, Dr. Ghoubrial, were true and there was more. She told me about direct cash kickbacks that Dr. Ghoubrial would pay to defendants." *See* Apr. 18, 2019 Hearing Tr., 11:22–12:8.

6. Also at this September 16, 2018 meeting with Julie and her attorneys, she affirmed the bulk of what Dr. Richard Gunning had disclosed to me, which he later confirmed at his deposition in this case, about the fraudulent nature of Ghoubrial's administration of trigger-point injections to KNR's clients, and the quid pro quo nature of the Defendants' relationships.

7. Prior to my September 16, 2018 meeting with Julie and her attorneys, other witnesses had disclosed to me their awareness that Ghoubrial and Defendant Rob Nestico exchanged cash kickbacks. This includes Attorney Robert Horton who was formerly employed at KNR, and had disclosed to me that the exchange of envelopes full of cash between Ghoubrial and Nestico was commonly observed at KNR's Fairlawn office, including by Horton himself.

8. Additionally, I further specifically affirm that on the afternoon of February 20, 2024, the presiding Judge in the above-captioned case, James A. Brogan, placed a phone call to my office and requested to speak with me, wherein we proceeded to have a conversation that lasted approximately 30 minutes. On this call, Judge Brogan informed me that he wished to schedule a conference call with the attorneys for the parties about issues relating to the Court's inadvertent disclosure of the deposition of Julie Ghoubrial's deposition transcript eight days earlier, on February 12, 2024. I told the Judge that I did not want to participate on any such conference call, and that I intended to immediately appeal the order he had issued earlier that day, February 20, whereby he required me to destroy any copies of the transcript in my possession. In speaking with the Judge on this call, I referred to his February 20 order as a "gag order." In response, the Judge bristled at my description of the February 20 order as a "gag order," and emphasized that the order was not a "gag order." Judge Brogan also specifically stated to me on this phone call, regarding the February 19, 2024 opposition brief that I had filed in this case, which the Judge has since ordered stricken from the record:

"You beat me to the courthouse." Immediately after this phone call with Judge Brogan, I disclosed these statements to my colleague Zoran Balac, who was present with me at our office for the entirety of this phone call and overheard most of what I said to the Judge.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 3/8/2024
Date

State of Ohio
County of Summit

Sworn to and subscribed before me on March 8, 2024

at Fairlawn, Summit County, Ohio.

Notary Public

Gregory B. Gipson
Attorney at Law
NOTARY PUBLIC
STATE OF OHIO
Sec 147.03 O.R.C.

IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO

State, ex rel. SAM N. GHOUBRIAL, M.D., *et al.*, Relator, v. SUMMIT COUNTY COURT OF COMMON PLEAS, *et al.*, Respondents.	Case No. CA-28642 **Affidavit of Peter Pattakos**

I, Peter Pattakos, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am an attorney licensed to practice in the State of Ohio (Ohio Bar No. 0082884), and represent the plaintiffs, Member Williams, Thera Reid, Monique Norris, and Richard Harbour (the "Plaintiffs") in a putative class-action lawsuit pending in the Summit County Court of Common Pleas (No. 2016-09-3928, "the lawsuit") against the Kisling Nestico & Redick personal-injury law firm ("KNR"), its owners, and certain health-care providers, including Relator Sam N. Ghoubrial, M.D. ("Defendant Ghoubrial"), with whom KNR allegedly conspired to defraud the firm's clients.

2. Defendant Ghoubrial, specifically, is alleged to have conspired with the KNR Defendants to subject the firm's clients to a price-gouging scheme by which the client's were duped into accepting exorbitant rates for healthcare administered by Ghoubrial, including, primarily, "trigger point injections" that he serially administered despite that these injections are not only medically unnecessary but actually contraindicated for injuries resulting from auto accidents.

3. In early September of 2018, as I was preparing to first assert claims on my clients' behalf against Defendant Ghoubrial in the lawsuit via a Fourth Amended Complaint, which I sought leave

EXHIBIT 2-A

to file on my clients' behalf on September 6, 2018, Ghoubrial's now ex-wife, Julie Ghoubrial, contacted me through her attorney, Gary Rosen, to set up an in-person meeting.

4. At this meeting, which also took place on September 6, 2018, Julie—accompanied by Mr. Rosen and Attorney Josh Lemerman, who represented Julie in her then-pending divorce proceedings against Defendant Ghoubrial (Summit C.P. No. DR-2018-04-1027)— provided detailed information to me, based on her personal knowledge, that supported both Plaintiffs' claims in the Fourth Amended Complaint and additional claims that Plaintiffs shortly asserted in their Fifth Amended Complaint.

5. Shortly after my meeting with Julie and her attorneys, I was also contacted by additional witnesses who provided additional detailed information about Defendant Ghoubrial's fraudulent conduct against KNR clients. This included Plaintiff Richard Harbour as well as Defendant Ghoubrial's employee, Richard Gunning, M.D., who contacted me on October 2, 2018 and spoke on the phone for two hours about Defendant Ghoubrial's unlawful conduct.

6. On September 27, 2018 while Plaintiffs' motion for leave to file the Fourth Amended Complaint was still pending, Judge James A. Brogan, who is presiding over the lawsuit, conducted a telephonic status conference during which I first indicated to defense counsel and the court that Plaintiffs were in receipt of new information that supported new claims against the Defendants that were not asserted in the proposed Fourth Amended Complaint.

7. On October 4, 2018, I sought leave to supplement Plaintiffs' proposed Fourth Amended Complaint with new claims supported by highly specific allegations based on information that was provided, in part, by Julie Ghoubrial, Mr. Harbour, and Dr. Gunning.

8. On October 12, 2018, I received an email from Gary Rosen stating as follows: "My client [Julie] is being deposed today in the divorce case. I suspect that [Attorney] David Best will ask her numerous questions about our meeting. FYI." A true and accurate copy of this email is attached to

Sandra Kurt, Summit County Clerk of Courts

this Affidavit as **Exhibit 1.**

9. David Best is Defendant Ghoubrial's longtime personal attorney who represents the KNR Defendants in the putative class-action lawsuit.

10. Within a few days of receiving Mr. Rosen's October 12 email, Mr. Rosen and I spoke by telephone and Mr. Rosen informed me that Mr. Best did in fact appear at Julie's October deposition on Defendant Ghoubrial's behalf, and questioned her for approximately one hour about the claims at issue in the underlying lawsuit. While Mr. Rosen did not inform me about the specific contents of Julie's testimony, he did state that Julie told the truth in response to Mr. Best's questions, thus suggesting that Julie confirmed the truth of Plaintiffs' allegations based on her personal knowledge.

11. Upon receiving this confirmation from Mr. Rosen that Julie's deposition testimony contained information relevant to Plaintiffs' claims in the lawsuit, I served discovery requests to Defendant Ghoubrial for a copy of the transcript as well as information as to how a copy of the transcript could otherwise be obtained. After Defendant Ghoubrial refused to produce the transcript or any of the requested information pertaining to it, I filed a motion to compel its production on December 21. Additionally, I served a subpoena on Julie on October 3, 2018 for her deposition in the civil case, and, on April 3, 2019, served another subpoena on Julie that specifically requested production of the deposition transcript from the domestic relations proceedings.

12. All of the facts set forth in the Motion to Intervene to which this Affidavit is attached, as well as the Exhibits to the Motion to Intervene, including the Intervening Parties' Answer, are true and accurate to the best of my knowledge.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Sandra Kurt, Summit County Clerk of Courts

7-11-19

Signature of Affiant Date

Sworn to and subscribed before me on JULY 11, 2019

at SOUTH DENNIS, MA.

Janet A. Boudreau

(Signature of Notary Public)

JANET A. BOUDREAU
COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE COUNTY
MY COMMISSION EXPIRES: 01/13/2023

Sandra Kurt, Summit County Clerk of Courts

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Rosen, Gary M. <grosen@dayketterer.com> Fri, Oct 12, 2018 at 10:38 AM
To: Peter Pattakos <peter@pattakoslaw.com>

My client is being deposed today in the divorce case. I suspect that David Best will ask her numerous questions about our meeting. FYI.

Gary M. Rosen

Attorney

DAY KETTERER
MODERN LAW SINCE 1852

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11 South Forge Street • Akron, OH 44304

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From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Wednesday, October 3, 2018 11:35 AM
To: Rosen, Gary M. <grosen@dayketterer.com>; Rosen, Gary M. <grosen@dayketterer.com>
Subject: Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Mr. Rosen,

Please advise as to whether your client Julie Ghoubrial will accept service of the attached subpoena by this email to you or whether it will be necessary for us to serve her by other means.

EXHIBIT 2A1

Thank you.

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

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

1

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs- CASE NO. CV-2016-09-3928

KISLING, NESTICO & REDICK, LLC, et al.,

Defendants.

- - - -

Attempted deposition of JULIE GHOUBRIAL, taken as if upon examination before Brian A. Kuebler, a Notary Public within and for the State of Ohio, at The Pattakos Law Firm, LLC, 101 Ghent Road, Fairlawn, Ohio, at 10:31 a.m. on Thursday, April 18, 2019, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs.

- - - -

JK COURT REPORTING
55 PUBLIC SQUARE
SUITE 1332
CLEVELAND, OHIO 44113
(216) 664-0541

www.jarkub.com

2

APPEARANCES:

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On behalf of the Defendants, Kisling, Nestico & Redick, LLC;

Brad J. Barmen, Esq. (Via phone)
Lewis Brisbois
1375 East 9th Street, Suite 2250
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(216) 344-9467

On behalf of the Defendants, Sam N. Ghoubrial, MD;

3

David M. Best, Esq. (Via phone)
David M. Best Co., LPA
4900 West Bath Road
Akron, Ohio 44333
(330) 665-1855
dmbest@dmbestlaw.com

On behalf of the Defendants, Kisling Nestico & Redick, LLC and Ghoubrial, Inc.

Gary M. Rosen, Esq. (Via phone)
Day Ketterer
200 Market Avenue N
Suite 300
Canton, Ohio 44702
(330) 455-0173,

On behalf of Julie Ghoubrial.

ALSO PRESENT:

Peter Graves - videographer

4

- - - -

(Thereupon, a conference call was made.)

- - - -

UNIDENTIFIED VOICE: Hello.

MR. PATTAKOS: Hello. This is Peter Pattakos. Who's on the call?

MR. MANNION: Tom Mannion here --

MR. BARMEN: Brad Barmen here.

MR. MANNION: -- and Dave Best from this end.

MR. ROSEN: Gary Rosen.

MR. PATTAKOS: Okay. Well, I think --

MR. MANNION: Brad, you on the call?

MR. PATTAKOS: Pardon?

MR. BARMEN: I am here. Brad is here.

MR. PATTAKOS: Okay. I think that's everyone. I'm going to go ahead and call the Judge -- dial the Judge in.

THE JUDGE: Hello.

MR. PATTAKOS: Good morning, Judge Brogan, this is -- Judge Brogan, this is Attorney Peter Pattakos. I believe I have

Sandra Kurt, Summit County Clerk of Courts

EXHIBIT 3

5

you on the line with counsel for all the parties and the witness, Julie Ghoubrial.
THE JUDGE: Okay.
MR. PATTAKOS: Is everyone else there?
MR. MANNION: Tom Mannion, I'm here. Good morning, Your Honor.
THE JUDGE: Good morning.
MR. PATTAKOS: How about everyone --
MR. BARMEN: Good morning, Judge.
THE JUDGE: Good morning.
MR. PATTAKOS: How about everyone just go around and identify themselves. Again, I'm Peter Pattakos, for the Plaintiffs and I'm here with my co-counsel, Rachel Hazelet.
THE JUDGE: Okay.
MR. BARMEN: Judge, this is Brad Barmen. I represent Dr. Sam Ghoubrial.
THE JUDGE: Okay.
MR. POPSON: Jim Popson on behalf of KNR, Defendant.
MR. BEST: David Best.
THE JUDGE: Okay.

6

MR. ROSEN: Judge, I'm Gary Rosen. I represent the deponent, Julie Ghoubrial.
THE JUDGE: Okay.
MR. MANNION: I would just say this, several deponents we're here to talk about, not just the one Gary represents, the witness.
THE JUDGE: Okay. I'm in a car driving to Xenia right now, but I'll -- I can handle it, so...
MR. PATTAKOS: Okay. Judge Brogan, I'm here with a court reporter that was here to conduct Julie's deposition. Do you mind if we record these proceedings?
THE JUDGE: Okay.
MR. PATTAKOS: Thank you. So all should note that this is being recorded by the court reporter and the videographer that is here for Julie's deposition.
Your Honor, I don't know if you have had a chance to review any of the e-mails about this issue or the briefs that the parties have submitted?
THE JUDGE: No, I haven't.
MR. PATTAKOS: Okay. Well --

7

THE JUDGE: I assume this is over husband/wife privilege or something.
MR. PATTAKOS: Well, that was the third -- that was the third --
UNIDENTIFIED VOICE: (Unintelligible) Your Honor --
MR. PATTAKOS: Your Honor, that was the third issue.
MR. MANNION: (Unintelligible).
MR. PATTAKOS: Go ahead.
MR. MANNION: Tom Mannion, Your Honor. As far as Julie Ghoubrial, there's a number of different issues, but there's also issues with respect to three other deponents as well, but with Julie that's one of the issues but I'd certainly let Dr. Ghoubrial's attorney talk to that.
THE JUDGE: Okay.
MR. BARMEN: Yeah. Your Honor, there are several different issues -- this is Brad Barmen again so you know who's talking --
THE JUDGE: Okay.
MR. BARMEN: -- if you'd like me to address those, I'm happy to do that now.

8

If you want me to address them in a response to Mr. Pattakos, you tell me.
THE JUDGE: No. The only thing I would say is clearly even if there's a privilege issue, under 104 -- Evidence Rule 104, it's for the Court to decide and it would seem to me you could proceed with the deposition, she can answer the questions. Preserved -- at the beginning or some point during the deposition preserve your objection on privilege and simply file it under seal for purposes of an in-camera inspection and I'll decide whether, in fact, it's covered.
There's a number of things, exceptions to husband/wife privilege and that has to do with the presence of a third party, did the parties intend the conversation to be privileged and so on and so forth.
By the way, was privilege raised by the lawyer for Julie at the divorce?
MR. ROSEN: That's me, Your Honor. This is Gary Rosen speaking. I'm --
THE JUDGE: Okay.

9

MR. ROSEN: -- Ms. Ghoubrial's counsel and I was her counsel at the divorce.
THE JUDGE: Okay. Did --
MR. ROSEN: As you may know, we had a deposition of her during the divorce --
THE JUDGE: Right.
MR. ROSEN: -- because the context of the divorce privilege is rarely, if ever, exercised --
THE JUDGE: Right.
MR. ROSEN: -- we did not utilize that privilege there. I mean, I do understand the arguments back and forth, you know, that there's a different context, and I would tend to agree with that. We rarely, if ever, raise it in the context of a divorce.
THE JUDGE: Okay.
MR. PATTAKOS: Your Honor --
THE JUDGE: But she discuss apparently at some point her husband's activity; is that correct?
MR. BEST: Well, Judge, this is

10

David Best. I don't think it's even appropriate for us to disclose anything about that. I represented the corporation.
That deposition was taken under an order of Judge Quinn that everything was confidential --
THE JUDGE: Uh-huh.
MR. BEST: -- so there's no basis -- and that order is still in place --
THE JUDGE: Okay.
MR. BEST: -- and there's no basis for us to disclose that, even to you, with all due respect, Your Honor -- -
THE JUDGE: Right.
MR. BEST: -- (unintelligible) --
THE JUDGE: Has anybody filed --
Has anybody filed --
MR. BEST: -- and there are restrictions in that hearing that prohibit any disclosure to anyone under any circumstances --
THE JUDGE: Yeah. Has anybody --
MR. BEST: -- that there are private matters that we can't even discuss because they're confidential about the

11

scope of that, so none of that --
THE JUDGE: Okay. Has anybody filed an open --
MR. BEST: -- is discoverable and it's not (unintelligible).
THE JUDGE: Has anybody filed an open record's action against Judge Quinn to open that proceeding?
MR. PATTAKOS: No, Your Honor. And --
MR. BARMEN: Your Honor, this is Brad --
MR. PATTAKOS: -- Your Honor, this is Peter Pattakos. I think -- no one -- I think the bigger issue here is that our subpoena for Julie's deposition was issued last October, six months ago, and these parties all had every opportunity to file objections, to move to quash, to move for a protective order, they did not.
There has been multiple court orders recognizing the relevancy of this testimony and I need to disclose right now, Your Honor, that I have been in a room with Julie Ghoubrial and two of her attorneys

12

where she sat down and told me that she has reviewed our Complaint and told me that the allegations regarding her ex-husband, Dr. Ghoubrial, were true and there was more. She told me about direct cash kickbacks --
THE JUDGE: All right. Let's --
MR. PATTAKOS: -- that Dr. Ghoubrial would pay to defendants --
THE JUDGE: -- let's don't get into all of that right now. There's a vehicle for handling this and you need to profer whatever you're going to profer at the deposition. Her deposition will take place. It will be filed with -- under seal, pursuant to the protection order.
There's a federal case, which I'm coming to a traffic light, I can probably pull it out for you. This says this is the proper procedure to be done in a case of a privilege issue.
And it is filed for an in-camera inspection so that you make your objections at the deposition and then I later rule on its admissibility.
But Julie's deposition will take

13

place and then I will -- you shall file it under the protection order for an in-camera inspection by me -- and if you give me a second I can give you the federal court -- I realize it's a federal rule, it has to do with the crime/fraud exception which may be here in this case, too. I don't know.

But it has to do with the vehicle of the judge dealing with privileged communications from a deposed witness. And if --

MR. BARMEN: Your Honor --

THE JUDGE: Yeah.

MR. BARMEN: Your Honor, this is Brad Barmen --

THE JUDGE: Yeah.

MR. BARMEN: -- respectfully we had an issue with Dr. Gunning's deposition where you instructed that he waive his doctor/patient privilege and ended up testifying about his own medical testimony. You know, respectfully, the privilege is the privilege.

THE JUDGE: I don't care.

MR. BARMEN: If this is a

14

situation where I think if you're going to instruct that the witness appear and essentially Dr. Ghoubrial himself has to waive the privilege that he would have as well as Julie Ghoubrial waiving the privilege that she clearly has, this is something we have to file a mandamus on. I think, respectfully, that order --

THE JUDGE: Okay.

MR. BARMEN: -- is improper.

THE JUDGE: All right. The case is 491US554. It's a Supreme Court of the United States case, US versus Zolin, that deals exactly with this situation.

Presumably Dr. Ghoubrial objects, I know that or you wouldn't be objecting, and Julie apparently doesn't object. She's there. So what --

UNIDENTIFIED VOICE: That's not accurate, Your Honor.

THE JUDGE: All right. Either way. They both object -- if they both object, they can still take the deposition subject to my in-camera review.

MR. MANNION: Your Honor, this is

15

Tom Mannion. If I may, we're not here just to talk about Julie Ghoubrial's deposition --

THE JUDGE: Okay.

MR. MANNION: -- we had properly noticed the Plaintiff's for the 12th, for Friday, they didn't show, that was a date suggested by Mr. Pattakos. On at least one of them he agreed for months he would produce, they didn't show, they didn't --

THE JUDGE: Yeah, and I agree on that one -- I agree on that one. That -- what's her name? Was suppose to appear for a deposition or provide material? What's her name?

MR. MANNION: Reid, Holsey and Norris, all three.

THE JUDGE: Right. All three of them should comply and I will put an order to that effect.

MR. MANNION: Thank you. And we still don't have answers to those contention interrogatories which you ordered, he should get 21 days --

THE JUDGE: Well, you haven't

16

filed anything with me on that, so I don't -- I ordered it --

MR. MANNION: (Unintelligible).

THE JUDGE: Yeah, but you haven't filed anything in --

MR. MANNION: Yeah, there was a motion to compel you granted 21 days ago for him to produce those --

THE JUDGE: I understand.

MR. MANNION: -- he's promising he'll send them, but he still hasn't.

THE JUDGE: All right. He should do that.

MR. PATTAKOS: Your Honor, we're -- Your Honor, we're working on that.

THE JUDGE: I'm sitting in a car right now -- I'm sitting in a car --

MR. PATTAKOS: Okay.

THE JUDGE: -- I can journalize this later, but you are to comply with the contention interrogatories. These people who need to be deposed -- need to be deposed or I will use sanctions.

Now, as far as the method of dealing with this privileged communication,

17

you can file your mandamus, you can do whatever you want, but this is the procedure the United States Supreme Court thought was appropriate with privileged material that dealt with the possibility of a crime/fraud exception.

The Court had to examine it to determine at some point something wasn't privileged. And that's for the Court to decide in-camera. That's what the US Supreme Court said.

Now, I realize you're probably going to (unintelligible) federal rule, but don't make me look stupid because I somehow am doing something that's out of bounds. It's clearly not out of bounds, so --

MR. MANNION: Your Honor, we respectfully --

MR. BARMEN: Go ahead, Tom.

MR. MANNION: This is Tom Mannion and I wouldn't file a mandamus on this because the issue involves Ghoubrial, not us, but what I'd like to say is perhaps, you know, if we're going to have these depositions, we need dates certain and

18

perhaps --

THE JUDGE: I thought you were there for -- I thought you were there for the deposition. That's what --

MR. MANNION: Well --

THE JUDGE: -- the lady said last night when she called me at 9:00 last night to tell me you were going to have a deposition this morning.

MR. MANNION: My point is Ms. Holsey is not there and she was subpoenaed as well.

MR. PATTAKOS: Your Honor, that subpoena was just issued on Friday -- that subpoena was just issued on Friday. They did not negotiate any reasonable dates with this witness who is a third-party who has a full-time job --

MR. MANNION: It wasn't Friday, but --

MR. PATTAKOS: Sorry, it was Thursday.

THE JUDGE: Let me tell you this, Mr. Pattakos, Holsey will be deposed. Now, get a date with -- soon. I don't know if

19

any of this is necessary to resolve the class action issue.

I'm going to continue the class action request for an additional 15 days. I'm trying to tell you the rulings I'm going to do, but right now I'm sitting in a car outside of the Green County Courthouse, this deposition of Ghoubrial will take place, the depositions of the three people that KNR want to depose, will take place or you'll be held in contempt. And let's get these depositions scheduled. And the contention interrogatories will be answered or you'll be held in contempt.

Now, let's get to work and do the things you're suppose to do. And the appropriateness of my ordering this Ghoubrial deposition -- I don't know what you're going to file, a writ of prohibition, I have jurisdiction to make my order -- mandamus, I don't know what the hell you're talking about -- but I have discretion to make this order that distinctly the United States thought was appropriate on a federal case, so you can

20

do what you want to do.

MR. PATTAKOS: Your Honor, if I may clarify that --

MR. MANNION: Your Honor --

MR. PATTAKOS: -- Your Honor, this is Peter Pattakos, if I may clarify, the Julie Ghoubrial's attorney has notified the Court, he sent a letter this morning that Julie is available to be deposed today and that she can be at my office for the deposition within 30 minutes.

Is this an order that this deposition, in fact, get done today since the witness is ready and all defendants have been on notice and should also be available and we have the court reporters here and I can get this done by the end of the day today easily?

THE JUDGE: Yeah, that's fine with me.

MR. PATTAKOS: Okay. Then we'll see everyone at my office as soon as everyone can get here --

MR. BEST: Wait a minute --

MR. PATTAKOS: Can we say everyone

21

--
MR. MANNION: Wait a minute, wait a minute. Attorney Best was saying something and you cut him off, Peter.
MR. BEST: We don't even have the lawyers here, we're in different cities right now, so Pattakos you think you're the judge, but you're not, the judge --
THE JUDGE: Yeah, I heard that --
MR. BEST: -- said (unintelligible) 15 days, so we'll get a date that works for everybody.
THE JUDGE: Okay. I agree with Attorney Best on that. Okay. So get that settled. If you're in two different cities -- I thought you were all sitting pretty close -- you were close, but I realize you're some distance away, so get that set up appropriately for all of you, okay? On the Ghoubrial deposition.
MR. MANNION: Thank you, Your Honor.
THE JUDGE: And all these other orders I'll put on, but right now I'm not in a position to do that. And the lady

22

that's helping up in Akron, will put those orders on pursuant to my decision.
Let's get these depositions done that KNR wants done, no more delays, let's get the Ghoubrial deposition done, file it under seal for my in-camera inspection and I'll put an order on to that effect, okay?
MR. PATTAKOS: Thank you, Your Honor.
MR. MANNION: Thank you, Your Honor.
MR. BEST: Judge, you know, one of the problems we have here is Mr. Pattakos doesn't care about confidentiality orders. He puts stuff on his website, he puts it out in the public, he gives it to reporters. If he would ever get that confidential information -- and I was involved in a separate capacity during the divorce for the corporate defendants --
THE JUDGE: Uh-huh.
MR. BEST: -- I know Mr. Pattakos will not care about your order and he will violate it --
THE JUDGE: Well --

23

MR. BEST: -- and so that's the position you're putting these people in, he has no integrity about confidentiality. And while it may be sealed and it may be only theoretically for your eyes, that's not the way it works in the real world, he has no integrity.
THE JUDGE: Well, then you move to hold him in contempt, okay?
MR. BEST: Yeah, well, then the cat's out of the bag and then this is already in the press and then these peoples' businesses destroyed potentially because he makes stuff up, so that's the world we live in unfortunately, Judge --
THE JUDGE: Doesn't the affidavit or the Complaint itself, which is -- which is not protected under the protective order, have all these details in it already?
MR. PATTAKOS: It does, Your Honor.
MR. BARMEN: They're allegations, Your Honor. And much like -- this is Brad Barmen -- much like Mr. Pattakos in the

24

motions he filed and what he's represented to the Court about you previously ordering that Julie Ghoubrial's testimony is highly relevant, your order says based on Pattakos' representation --
THE JUDGE: That's right, that's right.
MR. BARMEN: -- and his allegations are the same. You have not held that any of this stuff is true. There's been no ruling that these allegations have merit, they're just allegations --
THE JUDGE: I understand that.
MR. BARMEN: -- and it's the same thing with his representations about what Julie Ghoubrial allegedly testified to. One of the issues I've raised multiple times, how would he know what she testified to in the divorce --
MR. PATTAKOS: Because --
MR. BARMEN: -- that was confidential?
MR. PATTAKOS: -- because she --
MR. BARMEN: Whether he's grasping

25

at straws or he's already violated another court's order --
MR. PATTAKOS: Or I've spoken with the witness herself, okay?
MR. BEST: She has nothing to say about the class certification issues. He's making it up. He just makes up evidence. Virtually every plaintiff who has testified during their sworn testimony when we asked them how do you know this is true, they look at Pattakos, they point to him and they say, he told me. And we say give us a document --
MR. PATTAKOS: Your Honor --
MR. BEST: -- something, some other evidence and they all turn to him and say he told me.
MR. PATTAKOS: Your Honor, I'm not going to address these misrepresentations that are not based on anything, any documents, any actual testimony. I'm not going to engage in this. I'm just going to say this is unfair and it's untrue and this can all be decided on the record as appropriate. I'm not going to engage these

26

ridiculous insults.
THE JUDGE: Okay. All right. Listen, I made some orders here which are oral orders, I will try and get them done when Patty Himmelright [phonetic] gets back in the office. She's out sick today.
I'll try and put them on effective tomorrow. You set up the Ghoubrial deposition at a convenient time and you'll file it under seal and I do not expect to see any of that information from the Ghoubrial deposition in the public sphere until I make a ruling. And if it ends up that way, we'll have to find out how it got there. So if those fears are real, then take that to heart, Mr. Pattakos.
And I'm ordering those depositions and I see no reason not to follow the method of doing this pursuant to the protection order.
Now, one thing is pretty clear, in Summit County they tend to close divorce proceedings because they think something is embarrassing. They do not do that anywhere in the state that I know of. Divorce

27

proceedings are open. And they do not get closed by courts because somebody thinks some information is going to be embarrassing even to a doctor or a doctor's company. They don't do it. So you've got the order from Judge Quinn and nobody has challenged it under the open records law so we'll see where that goes.
All right. Thank you, bye.
MR. PATTAKOS: Thank you.
MR. MANNION: You guys all want to stay on the line to get dates?
MR. ROSEN: I'm still on. This is Gary Rosen.
MR. PATTAKOS: Yeah, sure.
MR. MANNION: Peter, you still on?
MR. PATTAKOS: Yeah.
MR. MANNION: Let's talk about some dates.
MR. PATTAKOS: Okay. When is Julie available?
MR. MANNION: Well, (unintelligible) we can talk Julie's date first.
MR. PATTAKOS: Yep.

28

MR. ROSEN: Why don't you do that then you can talk about other stuff after I leave the call.
MR. PATTAKOS: How about --
MR. BEST: Well, Brad, I think you need to decide how much time do you need to address what you're going to do about this judge's order, if anything. Because there's no point in -- if he's going to put an order on tomorrow or Monday claiming that the privilege is waived --
MR. MANNION: Well, let's get a date on.
MR. BEST: I'm just trying to say don't set a date for tomorrow --
MR. MANNION: No, no --
MR. BARMEN: I understand what David is saying and I agree, we should be looking at least a week out for Julie. The Judge said 15 days because I will have to file something.
MR. PATTAKOS: That's fine. What about the 25th?
MR. ROSEN: 25th, that's okay with me.

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29

MR. MANNION: (Unintelligible).
MR. BARMEN: 25th and 26th do not work for me.
MR. MANNION: What about the 24th?
MR. ROSEN: It's okay so long as we're not too late in the day. I have to teach class at the end of the day.
MR. PATTAKOS: That's fine.
MR. MANNION: How are you, Brad?
MR. BARMEN: I can make the 24th work.
MR. MANNION: Okay.
MR. BARMEN: Peter?
MR. PATTAKOS: Yep, that works for me.
MR. BARMEN: 10:00 a.m.
MR. MANNION: That's good for me.
MR. PATTAKOS: Let's start at -- if Gary has to leave early, let's start at 9:00.
MR. ROSEN: I mean, I don't know how long you anticipate going --
MR. PATTAKOS: Well, you know, I always -- I only take a few hours and then the defendants go around in circles for

30

hours and hours, so I think we better take the full day.
MR. MANNION: Peter, that's an outright lie.
MR. BEST: You are so full of crap, Pattakos. You can't even say the truth if God was looking at you in the eye.
MR. ROSEN: I can start at 9:00, 9:30.
MR. PATTAKOS: Let's start at 9:00 a.m. on Wednesday.
MR. MANNION: Okay. And what dates for your witnesses, Peter?
MR. PATTAKOS: Well, why don't you let me know some dates that work for you guys --
MR. ROSEN: Okay. I'm leaving the call. Thank you.
MR. PATTAKOS: Yep, thanks, Gary.
UNIDENTIFIED VOICE: Thank you, Gary.
MR. PATTAKOS: Why don't you fellows let me know some dates that work for you. I'm obviously going to have to get on the phone.

31

MR. MANNION: No, no, wait, wait a minute --
MR. BEST: We're doing dates right now, Pattakos.
MR. MANNION: Yeah, yeah.
MR. PATTAKOS: That's fine, I have to confer with my clients, so --
MR. BARMEN: What the 23rd?
MR. PATTAKOS: Does that work for you guys?
MR. BARMEN: Well, I suggested it because it works for me.
MR. MANNION: That doesn't work for me. I have a deposition that day in -- that might go all day. We're okay with -- I can do -- well, Holsey is only good, best on Mondays, right?
MR. PATTAKOS: Well, she got a new job so I need to check with her. She got transferred to a new Post Office I think.
MR. BEST: No, there's no checking, the Judge orders that, Pattakos. She's showing up.
MR. MANNION: The 29th for her?
MR. PATTAKOS: I'll talk to her.

32

Just give me some dates that work and I'll -- then I'll see what I can make work with the witnesses.
MR. BEST: No, that's not what the Judge ordered. You're going to make a commitment now.
MR. PATTAKOS: No, David, I'm not going to make a commitment before I talk to my client --
MR. MANNION: Well, then we're not committing to Julie's --
MR. BEST: Julie is not taking place --
MR. MANNION: Yeah.
MR. BEST: -- fine.
MR. MANNION: Okay. Is that how you want it?
MR. PATTAKOS: Hey, you guys are on the record, you know? Hey, hey, you guys are still on the record, I'll have you know. If you're going to act like this, you should at least like rein it in a little bit. I obviously have a right to confer --
MR. BEST: I'm glad we're on the

33

record because you are unwilling to follow the Judge's order. The Judge's order was get the dates. You're saying I'll get back to you about the dates --
MR. MANNION: And that's what you've been doing for months on these.
MR. BEST: -- so you are not an honorable man who tells the truth.
MR. MANNION: We're not going to do the carrot dangling anymore, Peter. We want dates.
MR. PATTAKOS: Give me some dates that work --
MR. MANNION: (Unintelligible) --
MR. PATTAKOS: -- give --
MR. MANNION: -- you've lied to the Court, you've lied to us, you've lied to other people, you've lied to the press and we're sick of it.
MR. PATTAKOS: Okay. Tom, I know you have your opinions. Let's --
MR. MANNION: Those aren't really opinions --
MR. BEST: Those are facts.
MR. PATTAKOS: Give me some dates

34

that work and I will work with my clients to see I can make those work for them.
MR. MANNION: No, no, no. We're going to get these now and they're going to show.
MR. PATTAKOS: All right. We can end this call then and do the rest of this by e-mail because this is ridiculous.
MR. MANNION: No, we can't --
MR. BEST: Nope, we're not.
MR. MANNION: -- no, we're not agreeing to Julie Ghoubrial's deposition if we don't have dates for the others. Are you going to specifically and expressly go against what Judge Brogan just said?
MR. PATTAKOS: No, I'm not. We're going to go with Julie on the 24th because everybody is available and then I will confer with my clients --
MR. MANNION: No, no, no, unless we have other dates, we're not doing that.
MR. BEST: No, all four depos are going to get set right now.
MR. PATTAKOS: You guys can stay on hold. If you want to give me dates and

35

I can call my clients and then I can get back on the line with you, how about that?
MR. MANNION: No, we're going to set the dates now and you'll tell your clients when to show.
MR. PATTAKOS: That's not how this -- that's not how this --
MR. MANNION: They're under court order --
MR. PATTAKOS: -- no, that's not what the Court ordered. That's not -- the Court did not order that my clients have to comply with whatever dates we come up with. My clients have to -- my clients work, my clients have lives, okay? So --
MR. MANNION: What are we? So does other people --
MR. PATTAKOS: Right, that's why I'm asking you to tell me what days work for you.
MR. MANNION: -- (unintelligible) that's just the way it works.
MR. PATTAKOS: Yeah. Okay. If you're not going to tell me what dates work for you then --

36

MR. MANNION: (Unintelligible).
MR. PATTAKOS: Yeah, okay. Good one, Tom. Listen, if you guys aren't going to provide me with some dates to take to my clients, I guess this call is over.
MR. MANNION: Well, we've got the 29th. I have the 22nd in the morning we can do one of them. Which one do you want to put on there?
MR. PATTAKOS: The 22nd in the morning. What time?
MR. MANNION: I can do 9:00.
MR. PATTAKOS: 9:00. Okay. What else is available? Someone said the 29th.
MR. MANNION: The 29th and -- yeah, 29th. And --
MR. PATTAKOS: I have the 29th open so I will try for that. And then, you know, Ms. Holsey I think -- Ms. Holsey might have to appear on a Saturday because of her job, so --
MR. MANNION: I'll just subpoena her then if we can't get a date, I mean --
MR. PATTAKOS: Well, look, I've got to talk to her, so the 22nd and 29th.

So if we have the full day on the 29th and the morning of the 22nd, we can get these three done, right?

MR. MANNION: Maybe. What about --

UNIDENTIFIED VOICE: May 2.

MR. MANNION: I can't do May 2.

UNIDENTIFIED VOICE: May 2 is out.

MR. MANNION: Well, yeah, I can because it's not til -- I can probably do May 2 in the morning, too -- no, I have a deposition in Mentor. Let's do the 22nd and the 29th and see if we can get them done.

MR. PATTAKOS: Can you give me one more day just so I can see, just in case these dates can't work? Just give me one more day. How about -- what's the next week look like?

MR. BARMEN: How's May 3rd?

MR. PATTAKOS: Friday? I can do May 3rd.

MR. MANNION: I can too. That's good too.

MR. PATTAKOS: Okay. So I've got

4/22, 4/29 and 5/3. I will do my best to make those -- I will do my best to confirm those with Reid, Norris and Holsey. And I'm just concerned that Holsey might --

MR. MANNION: If we don't hear back from you by the end of the day we're just going to subpoena and notice everybody, so --

MR. PATTAKOS: Well, okay.

MR. MANNION: -- get back with us by the end of the day.

MR. PATTAKOS: Okay. Well, I will get back to you as soon as I can. Hopefully by the end of the day today. I'm a little worried that Holsey might need a Saturday, but hopefully not so I'll keep you posted.

All right. Thanks, guys.

- - - -

(Thereupon, the phone call ended.)

- - - -

CERTIFICATE

I, Brian A. Kuebler, a Notary Public within and for the State of Ohio, do hereby certify that I attended the taking of the foregoing statement in its entirety; that I wrote the same in stenotypy, and that this is a true and correct transcript of my computer-aided notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____ A.D. 20 ____.

Brian A. Kuebler, Notary Public, State of Ohio
55 Public Square, Suite 1332
Cleveland, Ohio 44115
My commission expires June 12, 2022

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.	)	CASE NO.: CV-2016-09-3928
	)	
Plaintiffs	)	JUDGE JAMES A. BROGAN
-vs-	)	(Sitting by Assignment)
	)	
KISLING NESTICO & REDICK LLC, et al.	)	**ORDER**
	)	
Defendants	)	

- - -

This matter comes before the Court upon the KNR Defendants' Motion to Stay Pending Appeal.

On December 17, 2019, this Court issued a final and appealable order resolving Plaintiffs' Motion for Class Certification and Appointment of Counsel pursuant to Civ.R. 23. That Order however does not dispose of all matters at issue in this litigation and there are four specific issues this Court held in abeyance pending the ruling on class certification:

1. Plaintiffs' Motion for Sanctions against the KNR Defendants based on the KNR Defendants' previously filed counterclaims (See March 19, 2019 Order, ¶3);
2. Discovery rulings compelling production of an existing deposition transcript and providing separately for an *in camera* review of non-party Julie Ghoubrial's deposition transcript. These discovery orders and rulings were made far in advance of class certification and the discovery sought has already been found to be relevant and discoverable in this case. (See June 18, 2019 Order to produce document). There is presently a writ action pending in the Ninth District Court of Appeals (Case No. 29458, filed June 25, 2019). The Court has held in abeyance any further action on the order compelling production and *in camera* review pending the resolution of the writ action in the Ninth District Court. However, as soon as that matter concludes, the matters at issue in this Court shall proceed;
3. Plaintiffs' Motion for Sanctions/Show Cause Hearing with Tijuan Carter and Defendant Floros for improper communications with represented third parties (see July 29, 2019 Magistrate's Order); and,

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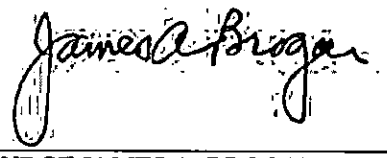
4. Plaintiffs Motion for discovery of Defendants' assets and net worth (See June 7, 2019 Order, ¶2).

The majority of the above issues are discovery-related and it is the Court's opinion that discovery of certain topics can and should proceed. The discovery process in this litigation was plagued by unprofessional gamesmanship and obstruction resulting in significant delays and subsequently non-production of relevant and discoverable materials. No party should benefit from such behavior and further delay will not serve the interests of justice in this litigation. Due to all of these pending issues and the potential for a considerably lengthy stay of these proceedings, this Court is not inclined to stay this case pending appeal.

Defendants remain free to seek a stay in the Court of Appeals upon the posting of an adequate supersedeas bond.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

The Clerk of Courts shall serve all parties/counsel of record.

Sandra Kurt, Summit County Clerk of Courts

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MEMBER WILLIAMS, ET AL.

Appellees

v.

KISLING, NESTICO & REDICK, LLC., ET AL.

Appellants

C.A. No. 29630
29636

JOURNAL ENTRY

Appellants have moved this Court to stay "any further proceedings in this matter pending appeal." Appellee has responded in opposition.

Upon review, the motion is denied. App.R. 7(A) authorizes this Court to issue a stay of the "judgment or order of a trial court pending appeal." Furthermore, Civ.R. 62 addresses only stays of execution and stays of enforcement proceedings. Although it is well settled that once a case has been appealed the trial court loses jurisdiction except to take action in aid of the appeal, *In re S.J.*, 106 Ohio St. 3d 11, 2005-Ohio-3215, at ¶ 9, neither rule authorizes this Court to stay or enjoin a trial court from further proceedings. Therefore, the Court concludes that it is without authority in the context of an appeal to stay trial court proceedings or to otherwise prohibit trial court action. *See State ex rel. Blanchard Valley Health Assn. v. Bates*, 6th Dist. No. L-9-06-1165, 2006-Ohio-2621.

Lynne S. Callahan
Judge

EXHIBIT 5

Peter Pattakos <peter@pattakoslaw.com>

Notice of Over the Counter Filing -CV-2016-09-3928

DoNotReplySCCOC@summitoh.net <DoNotReplySCCOC@summitoh.net>
To: peter@pattakoslaw.com

TAVIA GALONS
SUMMIT COUNTY CLERK OF COURTS

Notice of Over the Counter Filing

The Summit County Clerk of Courts has docketed an over the counter filing. The details of the filing are listed below:

Case Details

Caption:	MEMBER WILLIAMS vs KISLING NESTICO & REDICK LLC
Case Number:	CV-2016-09-3928
Assigned Judge:	KATHRYN MICHAEL
Filed By:	MEMBER WILLIAMS
Filed On Behalf Of:	MEMBER WILLIAMS
File Date:	02/12/2024

Case Parties

A copy of this E-mail was sent to the e-mail addresses listed below. If an e-mail address is not listed, no e-mail was sent to that party.

Party Type	Party Name	E-Mail Address
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Defendant	NESTICO, ALBERTO R	
Defendant	KISLING LEGAL GROUP LLC	
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Plaintiff	JOHNSON, MATTHEW	
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Plaintiff	NORRIS, MONIQUE	
Plaintiff	HARBOUR, RICHARD	
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EXHIBIT 6

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Documents Filed

Document ID	Document Name	Document Title
14724621	DEPOSITION FILED	View Image

If you have any questions, please contact the Summit County Clerk of Courts at 330-643-2211. Please have your case number handy.

Peter Pattakos <peter@pattakoslaw.com>

Williams. v KNR et al CV-2016-09-3928

Barmen, Brad <Brad.Barmen@lewisbrisbois.com> Wed, Feb 14, 2024 at 5:37 PM
To: LeAnn Backer <LCBacker@cpcourt.summitoh.net>, "peter@pattakoslaw.com" <peter@pattakoslaw.com>
Cc: "James M. Popson (jpopson@sutter-law.com)" <jpopson@sutter-law.com>, "ekennedy@weismanlaw.com" <EKennedy@weismanlaw.com>, "dgoetz@weismanlaw.com" <dgoetz@weismanlaw.com>, "JCOHEN@CRKLAW.COM" <jcohen@crklaw.com>, Zoran Balac <zbalac@pattakoslaw.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Ms. Backer:

As you know, I represent Dr. Sam Ghoubrial in this matter. A serious issue has arisen that warrants immediate attention. I am requesting a phone conference with Judge Brogan at the earliest possible time. I have included who I believe to be all current counsel of record on this email.

This past Monday, at 3:05 pm, I received notice of an Order from Judge Brogan ordering that the 10/12/18 transcript of the deposition of Julie Ghoubrial be filed under seal until further order of the court. Recall there was significant motion practice in the spring of 2020 relating to this deposition of Dr. Ghoubrial's wife during their divorce proceedings, and plaintiffs' attempts to obtain the transcript. Judge Brogan did not provide the transcripts to Plaintiffs, and it remained under seal and not part of the record (See Order from 3/23/20).

Shortly after receiving notice of Judge Brogan's Order on Monday, I received a second notice showing that Julie Ghoubrial's transcript had been filed. However, and despite still being under seal, the transcript was accessible on the notice by clicking on the image. Due to the fact that Judge Brogan had refused to distribute the transcript previously, and because his Order from Monday indicated the transcript was to filed under seal, I assumed it being available on the notice was a mistake. I then called the Clerk's office to inquire.

The individual I spoke with in the Clerk's office made the image on the notice private upon being made aware of the situation. She also indicated this would be temporary until she could talk to Judge Brogan Tuesday morning to see if the transcript should be visible on the notice. She further indicated she would get back to me after she spoke with the Judge. As promised, she called me back Tuesday morning and let me know that the image of the transcript on the notice would remain private because the Judge never intended the transcript to be available to counsel.

While the transcript is now unavailable, it was accessible to all counsel through the notice for roughly 25 minutes Monday afternoon. This afternoon I was made aware that Mr. Pattakos accessed and printed the transcript during the short window it was available on the notice. I was also made aware he intends to transmit it to the Court of Appeals and potentially elsewhere, despite the fact that the transcript is not part of the record on appeal and despite the fact that the transcript is still under seal per Judge Brogan's recent Order.

Based on this, it is necessary to have a conference with Judge Brogan at the earliest possible time to ensure there is no confusion and that his Order is followed by all Parties.

Your prompt attention to this matter is greatly appreciated.

Regards

Brad Barmen

EXHIBIT 7

LEWIS BRISBOIS

Brad J. Barmen
Partner
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Peter Pattakos <peter@pattakoslaw.com>

Order on Williams v. KNR

Peter Pattakos <peter@pattakoslaw.com> Wed, Mar 6, 2024 at 7:34 AM
To: "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>
Cc: LeAnn Backer <LCBacker@cpcourt.summitoh.net>, James Brogan <jbrogan39@yahoo.com>, "ekennedy@weismanlaw.com" <ekennedy@weismanlaw.com>, "dgoetz@weismanlaw.com" <dgoetz@weismanlaw.com>, "James M. Popson (jpopson@sutter-law.com)" <jpopson@sutter-law.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "jcohen@crklaw.com" <jcohen@crklaw.com>, Zoran Balac <zbalac@pattakoslaw.com>, Gregory Gipson <ggipson@pattakoslaw.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

Brad and all,

There is no mystery here. The link to the transcript that was active as of yesterday is the same link that was created by the clerk of courts when the transcript was first posted to the docket. It was contained in the file name of the transcript that was published by the clerk, which was "vola00000002000076B8.pdf." All anyone had to do to access that transcript, from Feb. 12 until yesterday, was to type in that file name after the clerk's standard format for its public docket, which is: https://clerkweb.summitoh.net/PublicSite/Documents/

For example, the file name for the Court's order originally ordering the transcript to be posted to the docket is "vola00000002000076B6.pdf". You can access that document by following the same format:

https://clerkweb.summitoh.net/PublicSite/Documents/vola00000002000076B6.pdf

The link was finally de-activated last evening, so someone must have contacted the clerk about it yesterday. Anyway, the fact remains that this document was published and available on the clerk's public site for 22 days, which only compounds the problems with any orders purporting to keep it a secret.

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On Tue, Mar 5, 2024 at 5:47 PM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

> Peter:
>
> I appreciate you making us all aware of this. I will contact the clerk's office tomorrow. Please let me know where on you docket Mr. Balac found this and was able to access it. I spent over an hour on docket after receiving your email and was unable to find access to the transcript.
>
> Everyone understands the judge's order so we need to ensure compliance.
>
> Your attention to this matter is appreciated.
>
> Thanks
> Brad
> Sent from my iPhone

LEWIS BRISBOIS
Brad J. Barmen
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EXHIBIT 8

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On Mar 5, 2024, at 4:21 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

All:

Please be advised that Mr. Balac discovered this afternoon that the Julie Ghoubrial deposition transcript is still available to the public on the Clerk of Courts website, as you can confirm for yourself at this link: https://clerkweb.summitoh.net/PublicSite/Documents/vola00000002000076B8.pdf

Thank you,

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On Mon, Mar 4, 2024 at 3:42 PM LeAnn Backer <LCBacker@cpcourt.summitoh.net> wrote:

> Judge Brogan filed the attached order today. If I left anyone off, please forward. Thank you.
>
> LeAnn Backer
> 330-643-2288

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs,	)	CASE NO. CV-2016-09-3928
	)	JUDGE JAMES BROGAN
vs.	)	TRANSCRIPT OF PROCEEDINGS
KISLING NESTICO & REDICK, LLC, et al., Defendants.	)	VOLUME 1 (Of 1 Volume)
	)	*NO EXHIBITS*

- - -

APPEARANCES:

PETER PATTAKOS, Attorney at Law,
GREGORY GIPSON, Attorney at Law
On behalf of the Plaintiffs.

BRADLEY BARMAN, Attorney at Law,
JAMES POPSON, Attorney at Law,
GEORGE JONSON, Attorney at Law,
DANIEL GEOTZ, Attorney at Law,
CHRISTOPHER VAN BLARGAN, Attorney at Law
On behalf of the Defendants.

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas, Summit County, Ohio, before THE HONORABLE JAMES BROGAN, Judge Presiding, commencing on February 15, 2024, the following proceedings were had, being a Transcript of Proceedings:

(Conference Call)

LENA DUNCAN
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308

EXHIBIT 9

*****Thursday, February 15, 2024

P R O C E E D I N G S

- - -

THE BAILIFF: We are here today on CV-2016-09-3928, Member Williams versus KNR conference call with all parties.

THE COURT: Just for starters, I guess this was all prompted by an order that I put on to the clerk's office to have Julie Ghoubrial's deposition placed under seal.

Her deposition was taken in regard to another case and there was an original action of prohibition that we'll talk about later relative to her deposition being available for use in the KNR litigation.

So what prompted this, of course, was my order placing this deposition under seal. What prompted it was simply that I'm getting to be 85 here pretty soon, so I was not wanting to make any more trips to Akron, so I'm going to try in the next few months to leave this case to someone else.

I know that there will probably be some delays anyway. While I have not been notified, but I guess if I go on the docket, I'd see that maybe there's already been appeals taken of my last order relative to the remand from the Ninth District Court of Appeals on this matter.

Now, the Ghoubrial divorce, of course, is a completely separate thing. There was an attempt, at some point during the discovery process, the Plaintiffs in the KNR case wanted access to her deposition and I thought that I had on an earlier occasion ordered it under seal. But apparently it never actually was carried out.

And now that it is under seal, apparently when counsel, Mr. Pattakos, was notified of it, apparently he got access to the deposition, and apparently tried to speak to defense counsel, I believe, Mr. Kennedy. And so what we have here is a misunderstanding of the effect of a seal.

In Montgomery County, if a judge

of the case by this summer, so that somebody else can familiarize themselves with the record and take it over.

Mr. Pattakos now knows, and I think everybody along the way had to know, that

[REDACTED]

. That is inescapable that people thought that that was what that was all about.

Brad, you raised two issues of relevancy, which I think are not as strong as perhaps privilege, and I'm not sure about privilege.

But any event, it's clear what I was trying to do was take this from the status of in camera, whatever that means, it is in the Court's hands, and get it filed of record, under seal, so that first of all, the deposition would be available to the next judge that had it.

Now, Peter wants to go to the Court of Appeals, and I guess maybe -- has there

of privilege and relevancy would have to get decided before it could be made part of the appellate record on the decision of whether to certify the class. There is a number of things here.

Now, does what Peter now knows make a difference? I don't know. It's always going there, but the question is, is the class action going to be there? I don't see how the relevance of her testimony has anything to do with whether class is appropriate, but Peter seems to think so.

I don't know. I mean, there is a lot of relevance to issues of whether something should be certified as a class. I don't know if an individual's testimony has anything to do with that.

But because the question is, who was injured by the alleged conduct of KNR and Dr. Ghoubrial? That's the issue. And can you place it in a suitable class under Civil Rule 23? That's the heart of the issue.

I've pared it down so far now that if they don't certify the class at that

OUR CASES IN THE NEWS, PRESS RELEASES | FEBRUARY 22, 2024

New developments re: cash-kickback scheme in class-action fraud case against KNR law firm and former doctor Sam Ghoubrial

There have been some explosive new developments in **our class-action fraud case against the KNR law firm and certain of its affiliated doctors and chiropractors** that warrant the public's attention.

EXHIBIT 10

While **the courts of appeals have affirmed class-action status for the tens of thousands of KNR clients who were charged a fraudulent "investigation fee" that the trial judge aptly**

described as "an ambulance-chasing fee," we are still waiting for the appeals courts to resolve another key issue in this case: That is, whether the thousands of KNR clients who were defrauded by the firm into being overcharged for fraudulent medical care (including medically contraindicated trigger-point injections ("TPIs")) by former doctor Sam Ghoubrial, who would fly around the state in a private plane (incredibly, called "TPI airways") that he co-owned with KNR name-partner Rob Nestico, to "treat" the firm's clients who were herded en masse for their injections (which Ghoubrial, according to testimony we received from his own employees in this case, would callously refer to as "afro-puncture" and "n-gg-r-point injections," referring to the large percentage of black clients who fell victim to these practices) by chiropractors who were in on the scheme (at his deposition, Ghoubrial testified that it was OK for him to use these terms because he was of Egyptian ancestry, and therefore was "African American"). We had received tips supporting our allegations that Ghoubrial, after collecting the overcharges from the clients' settlements, would pay cash kickbacks to Nestico and the referring chiropractors. This would allow the lawyers, doctor, and chiropractors to further conceal the fraudulent nature of their self-dealing relationships with one another, as well as the overcharges, and would also allow KNR to collect additional fees in excess of what the ethical rules governing lawyers permit.

Back in November of 2018, we filed our fifth amended complaint first setting forth these allegations about defendant's fraudulent injection mill and the related cash kickbacks, which defendants referred to as "olives." The information contained in this amended complaint had come to us from various witnesses, including from Ghoubrial's now ex-wife Julie, who had reached out to us and specifically described the cash kickback scheme to us. After we filed this amended complaint, the defendants were apparently in a panic to discover our sources so that they could do what they could to suppress this evidence. Thus, they noticed a deposition in the then-pending divorce case between Ghoubrial and Julie, and according to another tip we received, they sent a lawyer to that deposition who was representing KNR in our class-action fraud case, that lawyer asked Julie specific questions about her conversations with the attorneys from our office and what she had disclosed to us, and Julie told the truth in affirming same.

Thus, we immediately moved the trial court for an order requiring the defendants to provide us with a copy of Julie's deposition transcript, as her testimony was highly

relevant and probative to our clients' and the class-members' fraud claims. From there, the defendants filed approximately two dozen briefs in three different courts to keep us from accessing this explosive evidence. They even went so far as to sue the trial judge for a writ of prohibition in the Ninth District Court of Appeals, claiming that he didn't have jurisdiction to order them to produce the transcript to him for in camera review so that he could determine whether it was relevant and appropriate to produce to us in this case. Defendants' efforts to keep the judge from reviewing the transcript eventually failed, and on March 23, 2020, a year and a half after we first moved for its disclosure, defendants finally produced it to the court for the judge's in camera review.

By this time, the court had already granted class-action status to both classes of claims in this case, the "investigation fee" and the fraudulent medical fees, and that ruling was under appeal with the Ninth District. While we knew that Julie's recorded testimony was highly relevant to our case, we therefore did not believe it was necessary for us to have access to it until the case came back to the trial court to adjudicate the class-action claims on the merits. Since then, however, now nearly four years later, however, the case has gone back up to the appeals court two more times on class-certification for the medical-fraud claims, including on the defendants' third appeal of the issue that was filed only three weeks ago and has not yet been briefed.

That is more or less the background for the recent developments, which were set off last Monday, February 12, when the trial court issued an order stating that "The original deposition of Julie A. Ghoubrial, given on the 12th day of October, 2018 in another matter, is hereby ordered to be filed by the Summit County Clerk of Courts under seal until further order of this Court should it have any relevance to this litigation." On the same day, the referenced transcript of Julie's deposition was posted to the docket pursuant to the court's order, and email notice was sent by the court's electronic filing system, that was sent to approximately 50 parties, affiliated non-parties, corporations, and attorneys in total, including individuals, law firms, and attorneys who have no current involvement in the case. From the link provided in that email notice, anyone with access to the email could access and download a copy of the transcript. Therefore we did so, believing that the recipients of this notice would not have received access to the transcript had the judge not intended for such access to be granted, and were finally able to review the transcript's

contents to confirm whether the tips we had received were solid (which we never had reason to doubt).

As for what this transcript contains, in our professional judgment we believe it best for now to refrain from saying, which is where things get even more interesting:

After having received and reviewed the transcript, we followed up with a call to KNR's lead attorney two days later, Weds. Feb. 14, to discuss its relevance to the parties' relative positions in the lawsuit. A professional conversation ensued wherein KNR's attorney advised that he would confer with his clients and get back to us in a few days. Within an hour and a half, however, Ghoubrial's lead attorney emailed the Court to complain that we had access to the transcript, and to initiate proceedings to bar our continued possession of same.

The next day, Thurs. Feb. 15, a conference call was scheduled by the judge in which he confirmed that he did not intend for the transcript to be published to the recipients of the email notification. We argued to the judge that because we were lawfully granted access to this transcript, among many other people, including numerous non-parties to the litigation, and numerous attorneys who are not counsel of record for any of the parties to the litigation, that it would be both practically impossible and violative of our First Amendment rights to require us to destroy our copies of this transcript or otherwise pretend we did not receive it and do not know what it contains. We also urged the judge that now that we know the true evidentiary value of this transcript, that it was our right and duty to make all lawful efforts to bring it to bear on the pending claims for the benefit of the thousands of defrauded KNR clients who are putative class-members in this case. The defendants, on the other hand, urged the judge to order us to destroy our copies of the transcript, and submit affidavits to the court confirming that we had destroyed all available copies to our knowledge. Nothing was said let alone determined of the countless other persons who had access to this transcript who were not on the call, the parties argued nearly two hours about the legal issues implicated by the transcript's release, and the call concluded.

The next day, Fri. Feb. 16, we submitted a letter to the judge citing voluminous legal authority supporting our position that the order defendants had requested on the previous

day's call would violate the First Amendment rights of Plaintiffs, their attorneys, and the public.

Later that same day, the defendants emailed the judge a proposed order and filed a motion attaching that order in which they argued that they are entitled to "prevent public dissemination" of the transcript, which, according to defendants, contains "arguably privileged and confidential information." By their proposed order, defendants requested the following:

(1) that this transcript be "not available or accessible to anyone, including counsel;"

(2) that "all counsel are directed to refrain from distributing any copy or copies of the deposition transcript of Julie Ghoubrial to any person or entity;"

(3) that "all counsel are further directed to destroy any and all copies of the deposition transcript currently in their possession, as well as any copies in the possession of their partners, associates, agents, employees, or assigns;"

and (4) that "lead counsel for all Parties are directed to submit an affidavit to Court, no later than 3 pm est. on Wednesday, February 21, 2024, certifying that all copies of the deposition transcript of Julie Ghoubrial, including all electronic copies, have been destroyed and/or deleted."

This Monday, Feb. 19, we filed a response in opposition to defendants' motion in which we reiterated our position as to the unlawfulness and unconstitutionality of the order defendants had requested, attaching our Feb. 16 letter for the court record.

The next day, Feb. 20, the judge granted defendants' requested order requiring us to destroy the transcript, and later that day placed a phone call to our office, inquiring as to whether we intended to appeal his destruction order, and informed us that if we did not intend to appeal the order that he would like to schedule another conference call with counsel for all parties about same. We then confirmed our intent to immediately appeal the order, which we did yesterday, and in doing so described it as a "gag order." In response to this description, the judge stated that he was not barring us from speaking about the transcript by his Feb. 20 order, but that he was only barring us from possessing or disseminating the transcript, which is consistent with the plain language of the order as

summarized above. Yet despite the plain language of this order and the confirmation by the judge that he was not barring us from speaking about the transcript, the next day (yesterday, Feb. 21) the judge issued another order stating that "all references to the deposition transcript of Julie Ghoubrial," and "all representations of the deposition testimony" are "ordered stricken from the record," and that plaintiff's opposition brief filed on Feb. 19 be "placed under seal to ensure compliance" with the Court's February 12th order which did nothing but place the transcript on the record under seal in the first place.

Thus, at this point we are unclear as to the extent to which the trial judge intends to impose restraints on our rights to speak about what we lawfully know about this transcript and this contents, the bulk of which we knew from independent sources, years ago, before the transcript was published last week and before the court had entered any of the above-referenced orders about it.

Regardless, it remains our position that any orders barring our speech about or possession and dissemination of this transcript—which was made a public record in this case last week due to its accidental publication to the docket, and which, as we have argued since December of 2018, is highly relevant evidence of defendants' egregious fraud against their clients, and is in no way protected from disclosure by "privilege" or any other legal doctrine— are in violation our First Amendment rights, as well as our clients,' the thousands of putative class members, and all members of the public who have an interest in this case, and are therefore unlawful. The public has a right to this information, and our clients and the putative class-members have a right to make use of this evidence in addressing the fraud that was committed against them by lawyers, doctors, and chiropractors who abused their position of privilege and influence over them.

It is also our position that the contradictions and confusion inherent in the court's recent orders and statements about this transcript further demonstrates both the impracticability and unconstitutionality of any orders purporting to keep this evidence a secret – of any efforts to put the toothpaste back in the tube, the cat back in the bag, the horse back in the barn, or the genie back in the bottle as various courts have stated in cases involving similar issues. We have already appealed the destruction order as of yesterday, and will continue to pursue all available means to ensure that this evidence is brought fully to bear in remedying the widespread fraud at issue here, which diminishes the entirety of the legal

and medical professions in this state the longer it goes unaddressed. While progress may be slow in this regard we remain confident that it will bend toward justice.

Finally, it is also noteworthy that Ghoubrial has recently had his license to practice medicine permanently revoked by the Ohio State Medical Board due to findings of egregious sexual misconduct and assault that he committed against a nurse at a Hudson nursing home. A link to a copy of the Board's report and recommendation revoking Ghoubrial's medical license in the comments is available **here**, and a link to redacted copies of our response brief and letter to the judge referenced above is available **here**.

As always, stay tuned to this page for updates on further developments and feel free to contact us (peter [at] pattakoslaw [dot com]) (330.836.8533) with any information about this case, including about the alleged cash kickback scheme at issue.

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330-836-8533