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PROTHONOTARY
CENTRE COUNTY, PA

N THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

BARRY J. FENCHAK

Plaintiff

v

THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES AND MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN

Defendants

Docket No.
2024-CV-l 843-Cl

Type of Case:
CIVIL ACTION – EQUITY

Type of Pleading
PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S ANSWER IN OPPOSITION TO THE DEFENDANTS' EMERGENCY MOTION FOR A PROTECTIVE ORDER

Filed on Behalf Of:
PLAINTIFF

By: */s/ Steven F. Marino*

Steven F. Marino, Esquire
PA Attorney I.D. No. 53034
Joseph Auddino, Esquire
PA Attorney I.D. No. 316752
MARINO ASSOCIATES
301 Wharton Street
Philadelphia, PA 19147
Telephone: (215) 462-3200
Telecopier: (215) 462-4763
smarino@marinoassociates.net
jauddino@marinoassociates.net

Attorneys for Plaintiff

Dated: March 30, 2026

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PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S ANSWER IN OPPOSITION TO THE DEFENDANTS' EMERGENCY MOTION FOR A PROTECTIVE ORDER

Plaintiff, by and through counsel, provides the instant submission in support of the Plaintiff's Answer in Opposition to The Defendants' Emergency Motion for A Protective Order.

I. MATTERS BEFORE THE COURT FOR DISPOSITION

1. Defendants' Emergency Motion for A Protective Order.

II. CONCISE STATEMENT OF QUESTIONS INVOLVED

1. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order within the meaning of Pa.R.Civ.P. 4012 upon a basis the Court previously held there was no dispute of fact regarding whether sanctionable conduct had occurred during the pendency of the litigation?

Proposed Answer: No.

2. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order within the meaning of Pa.R.Civ.P. 4012 upon a basis discovery will cause unreasonable annoyance, embarrassment, oppression, burden, or expense sufficient to justify a need for a protective order

Proposed Answer: No.

3. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order to protect the defendants from disclosure of privilege information within the meaning of Pa.R.Civ.P. 4012?

Proposed Answer: No.

4. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order within the meaning of Pa.R.Civ.P. 4012 upon a basis there exists no plausible basis defendant Matthew Schuyler, material witness David Kleppinger, or anyone, is in possession of any discoverable information relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503?

Proposed Answer: No.

5. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order within the meaning of Pa.R.Civ.P. 4012 upon a basis plaintiff breached an owed duty to confer with opposing counsel before issuing a subpoena commanding material witness David Kleppinger to appear for deposition?

Proposed Answer: No.

6. Whether defendants have demonstrated good cause shown which would require the issuance of a discovery order within the meaning of Pa.R.Civ.P. 4012 upon a basis it is plaintiff's intention in obtaining discovery relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503 is to subvert the Honorable United States District Court Eastern District of Pennsylvania Judge Karen Spencer Marston's December 16, 2025, bench order staying discovery in a matter proceeding in the United States District Court Eastern District of Pennsylvania captioned Barry J. Fenchak v. Pennsylvania State University, et al. no. USDCEDPA No. 2:25-cv-06313-KSM?

Proposed Answer: No.

7. Whether action taken by the trial court which makes it impossible for a party to obtain crucial evidence in support of claims or defenses is an abuse of discretion?

Proposed Answer: Yes.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The instant petition is brought pursuant to Section 2503 of the Judicial Code, 42 Pa.C.S.A. § 2503, by the plaintiff Barry Fenchack to recover reasonable attorney's fees and costs he was required to expend prosecuting the enforcement of his statutory right as a Pennsylvania State University Board of Trustee member,

guaranteed by 15 Pa.C.S.A. § 5512(a) [relating to the Pennsylvania's Nonprofit Corporation Law of 1988] to inspect and receive information regarding the assets and liabilities of the Pennsylvania State University. Serving in the capacity of a volunteer, unpaid, elected member of the Board of Trustees of the Pennsylvania State University, plaintiff requested members of the Pennsylvania State University Board of Trustees, inclusive of Chairman Matthew Schuyler, to share with him information relating to: (1) specific data and items that totaled to the aggregated figures listed on the IRS Form 990s administrative fees reported by Penn State to have been paid to professionals managing Pennsylvania State University's largest asset, the University's $4.75 billion dollar endowment; and (2) the multi-year ticketing contract the University awarded Elevate Sports Ventures, relating to the ticketing sales for Penn State football games, and other university sports. Plaintiff's request for the information was initially rebuffed and declined. On July 16, 2024, while a member of the Board of Trustees of the Pennsylvania State University, plaintiff initiated the instant action to compel the defendants to provide the plaintiff with information he had previously requested. In the month of February 2025, without order of the Court, conceding to plaintiff's requests, defendants voluntarily made available the information which is the subject matter of the litigation and requested by the plaintiff, inclusive of 510 pages of information relating to the Endowment from July 1, 2017 - June 30, 2023, and a complete,

unredacted copy of the Elevate Contract. In addition to his already existing fiduciary duty owed to the University and his duty to act in the best interest of the University, plaintiff agreed to a requirement of confidentiality upon receipt of the information. On November 4, 2025, the defendants filed a Motion for Summary Judgment. Defendants' previous concession, providing the plaintiff with the information the plaintiff had requested, rendered Section 5512(a) liability issues earlier in dispute resolved and moot. On January 6, 2026, the court denied plaintiff's claim for an award of reasonable attorney's fees pursuant to 15 Pa.C.S.A. § 5512(e) and 15 Pa.C.S.A. § 5973 and entered summary judgment in favor of the defendants. On January 29, 2026, plaintiff filed a Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503. On February 10, 2026, without entering a Rule to Show Cause, the Court entered a scheduling order setting plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503 for evidentiary hearing to convene June 30, 2026. On March 25, 2026, defendant was served with Defendants' Emergency Motion for a Protective Order. Plaintiff's instance response in opposition follows.

IV. ARGUMENT PRESENTED

A. BURDEN OF PROOF AND STANDARD OF REVIEW

The trial court is responsible for overseeing discovery between the parties and granted discretion to determine the appropriate measures to insure adequate and

prompt discovery of matters allowed by the Rules of Civil Procedure.[1] A party or person may seek a protective order pursuant to Rule 4012 of the Pennsylvania Rules of Civil Procedure.[2] A protective order may only be issued pursuant to Pa.R.Civ.P. 4012 upon showing of good cause that it is necessary to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense.[3] The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order.[4] Pa.R.Civ.P. 4012 does not empower a trial court to issue protective orders carte blanche, and places on the party seeking the protective order and to prevent discovery the burden of showing good cause.[5] Establishing good cause requires a party seeking a protective order to, at the very least, present some evidence of substance addressing the harm risked by disclosure which supports a finding that protection from disclosure is necessary.[6]

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1 Rohm and Haas Co., v. Lin, 2010 PA Super 26, 992 A.2d 132, 143 (Pa. Super. 2010), cert. denied, 132 S. Ct. 852, 181 L. Ed. 2d 550 (U.S. 2011)
2 Pa.R.Civ.P. 4012(a)
3 Cohen v. Pelagatti, 342 Pa. Super. 626, 634, 493 A.2d 767, 771 (Pa. Super 1985)
4 Mark West Liberty Midstream & Res., LLC v. Clean Air Council, 71 A.3d 337, 343 n.14 (Pa. Cmwlth. 2013)
5 Shearer v. Hafer, 644 Pa. 571, 577, 177 A.3d 850, 854 (Pa. 2018); William Penn Sch. Dist. v. Pa. Dep't of Educ., 243 A.3d 252, 263 (Pa. Cmwlth. 2020)
6 Estate of Ashley Nichole Bouher v. Giftwares Co., 134 A.3d 106 (Pa. Super. Ct. 2015)

In a shotgun and redundant approach the defendants move for a protective order, essentially, upon a basis: **(1)** the court previously held there was no dispute of fact regarding whether sanctionable conduct had occurred during the pendency of the litigation; **(2)** plaintiff's discovery would cause the defendants to suffer from unreasonable annoyance, embarrassment, oppression, burden, or expense; **(3)** information sought to be discovered by plaintiff is privileged; **(4)** there exists no plausible basis defendant Matthew Schuyler, material witness David Kleppinger, or anyone, is in possession of any discoverable information relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503; **(5)** plaintiff breached owed a duty to confer with opposing counsel before issuing a subpoena commanding material witness David Kleppinger to appear for deposition; and **(6)** plaintiff's intention in obtaining discovery relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503 is to subvert the Honorable United States District Court Eastern District of Pennsylvania Judge Karen Spencer Marston's December 16, 2025, bench order staying discovery in a matter proceeding in the United States District Court Eastern District of Pennsylvania captioned Barry J. Fenchak v. Pennsylvania State University, et al. no. USDCEDPA No. 2:25-cv-06313-KSM. Plantiff will address each of the defendants arguments in kind.

B. DEFENDANTS FAIL TO COMPETENTLY DEMONSTRATE AN EXISTING COURT ORDER, RULE OF COURT, STATUTE, OR LAW PROHIBITS THE PLAINTIFF FROM UNDERTAKING DISCOVERY RELEVANT TO FACTUAL ISSUES RAISED IN PLAINTIFF'S PETITION TO SANCTION THE DEFENDANTS PURSUANT TO 42 PA.C.S.A. § 2503

As a threshold matter, there exists no court order, rule, statute, or law prohibiting plaintiff from properly undertaking discovery pursuant to Pa.R.Civ.P. 4003.1 relevant to factual issues raised in plaintiff's petition to sanction the defendants pursuant to 42 Pa.C.S.A. § 2503. Nor do the defendants point the court to such authority. In support of the argument their argument this Court should protect the defendants from discovery, defendants cite a series of court cases, inclusive of: In re Application By Nonprofit Corp. Trs. to Compel Inspection of Corp. Info., 2015 Pa. Dist. & Cnty Dec. LEXIS 20702; Wade, Goldstein, Landau, and Abruzzo, P.C. v. Clark, 2019 WL 5212435 (Pa. Super. Ct. Oct. 16, 2019); Frankenberry v. Ferguson, 2017 Pa. Commw. Unpub. LEXIS 496 *, 173 A.3d 1263, 2017 WL 2960380 (Pa. Cmwlth. 2017); Fullman v. Kurtz, 2013 Pa. Commw. Unpub. LEXIS 121, 2013 WL 3948873, 63 A.3d 501 (Pa. Commw. Unpub. 2013). Independent review of each of the cases cited by defendants reveals the decision of the opinions cited were overturned on appeal, are unpublished non-precedential non-binding opinions, or distinguishable upon facts and law and do not support the proposition the defendants are protected from plaintiff's discovery.

(1) In re Application By Nonprofit Corp. Trs. To Compel Inspection Of Corp. Info., 2015 Pa. Dist. & Cnty Dec. LEXIS 20702

In July 2012, Louis Freeh, by Freeh Sporkin & Sullivan, LP and Freeh Group International Solutions, LLC released a "Report of Special Investigative Counsel Regarding the Actions of the University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky" (The Freeh Report). The Pennsylvania State University of the Board of Trustees commissioned the report. Seven (7) members of the Pennsylvania State University Board of Trustees, Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelier, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey, and Alice Pope (collectively Trustees) requested Keith E. Masser, Chairman of the Board of Trustees and Eric J. Baron, President of the University to access the source materials gathered and relied upon by the authors of the Freeh Report to create the Freeh Report (the Freeh Source Materials). Under the cover of letter dated April 17, 2015, through counsel, Chairman of the Board of Trustees and Eric J. Baron, President of the University, denied the request of the Trustees to review the Freeh Source Materials upon a basis the Trustees had no right to review the Freeh Source Materials because the Freeh Source Materials were not relevant to any matter pending before the Board of Trustees. On April 20, 2015, the Trustees initiated a Petition to Compel against the University in the Centre County Court of Common Pleas pursuant to 15 Pa.C.S.A. § 5512(a) [relating to the Pennsylvania's Nonprofit Corporation Law of 1988] seeking to compel the

University to produce the Freeh Source Materials for inspection. The matter proceeding in the Centre County Court of Common Pleas under the caption In re Application By Nonprofit Corp. Trs. To Compel Inspection Of Corp. Info no. 1593 for 2015. The University opposed the Trustees' action upon grounds: (1) the Freeh Source Materials were not reasonably related to the performance of Trustees' duties; and (2) the Trustees were likely to use the Freeh Source Materials in a way that would violate the fiduciary duty the Trustees owed to the University. Seven (7) months later, on November 19, 2015, the trial court granted the Trustees' Petition to Compel and ordered the University to produce the Freeh Source Materials to the Trustees. The trial court construed Section 5512(a) the Pennsylvania's Nonprofit Corporation Law of 1988, as imposing a statutory duty upon the University to provide information requested by the Trustees which was reasonably and fairly related to Trustees' duties and which was intended to be used by the Trustees in a manner consistent with the duties which they owed to the University. The trial court concluded, to properly deny the Trustees access to the Freeh Source Materials the University bore the burden of establishing the Freeh Source Materials were not reasonably related to Trustees' performance of their duties or the Trustees intended to use the Freeh Source Materials in a manner inconsistent with their duties owed to the University. Finding no evidence to support the University's contentions, ruling in favor of the Trustees, the trial court held: (1) the Freeh Source Materials were

related to matter of the University business and the University was required to furnish them upon request of the Trustees pursuant to Section 5512(a) the Pennsylvania's Nonprofit Corporation Law of 1988, and the University failed to prove otherwise; (2) the was no evidence to suggest the Trustees would use the information contrary to the duties they owed to the University, especially upon the trial court's consideration that in addition to their already existing fiduciary duties and duties to act in the best interest of the University, the Trustees agreed to a requirement of confidentiality. The trial court denied the Trustees a request to be reimbursed the reasonable attorney's fees and costs incurred by the Trustees prosecuting the Petition to Compel. The Trustees appealed the trial court's holding to the Commonwealth Court of Pennsylvania on the limited issue of the denial of reasonable attorney's fees and costs. The matter proceeded in the Commonwealth Court under the caption In Re: Application by Nonprofit Corporation Trustees to Compel Inspection of Corporate Information, Appeal of: Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey, and Alice Pope, No., 721 C.D. 2016 (Cmwlth December 15, 2016). The Commonwealth Court reversed the trial court's denial of attorney's fees and remanded the case to the trial court for calculation of the attorney's fees and costs incurred by the Trustees prosecuting the Petition to Compel and the appeal in the Commonwealth Court. The holding of trial court that the Freeh Source Materials

were related to matter of the University business and the University was required to furnish them upon request of the Trustees pursuant to Section 5512(a) of the Pennsylvania's Nonprofit Corporation Law of 1988, and its rejection of the University's claim the Trustees would use the information contrary to the duties they owed to the University was unchallenged by the University and is the law of Pennsylvania. The dispute involved In re Application By Nonprofit Corp. Trs. To Compel Inspection of Corp. Info was not whether the Freeh Report was related to matter of the University business and must have been turned over to the Trustees, but rather whether the Freeh Source Materials used to prepare the report were related to matter of University business and must have been turned over to the Trustees. The holding is overwhelmingly favorable to the plaintiff's position that University's losing defense in this case turned a simple summary proceeding over the production of corporate records into an unnecessarily protracted proceeding. Upon sober analysis of the ruling of In re Application By Nonprofit Corp. Trs. To Compel Inspection of Corp. Info, it is incomprehensible that the University could possibly, maintain a legal posture, in good faith and with probable cause, that it was not required to furnish the plaintiff the information he requested pursuant to Section 5512(a) the Pennsylvania's Nonprofit Corporation Law of 1988, or that he would use the information contrary to his trustee duties.

(2) Wade, Goldstein, Landau, and Abruzzo, P.C. v. Clark,2019 WL 5212435 (Pa. Super. Unpu. Ct. Oct. 16, 2019)

Wade, Goldstein, Landau, and Abruzzo, P.C. v. Clark is an unpublished Pennsylvania Superior Court opinion which is non-binding, has no nonprecedential value, and of no benefit to this Court. In Wade the plaintiff filed a malicious prosecution claim against multiple defendants. Lengthy litigation ensured. Upon the plaintiff's filing a Praecipe to discontinue claims against defendant Clark, defendant Clark file a petition for sanctions against the plaintiff pursuant to 42 PA.C.S.A. § 2503(7) and (9). The trial court denied the petition for sanctions. Defendant Clark appealed the trial court's denial of his petition for sanctions against plaintiff Wade contending the trial court abused its discretion prohibiting defendant Clark from making a record to support his petition for sanctions. Denying defendant Clark's petition for sanctions, the trial court reasoned facts plead in defendant Clark's petition for sanctions, upon which he relied for relief pursuant to 42 PA.C.S.A. § 2503(7) and (9), did no more than recount the procedural history of the proceedings before the court and there was not a need for the creation of an additional record for the trial court to evaluate the legal claims presented in defendant Clark's petition for sanctions. The appellate court affirmed. Such is not the case in the instant matter. Plaintiff Barry Fenchak's Petition For Sanctions does not simply recount the procedural history of the case. Rather, Plaintiff Barry Fenchak's Petition to Sanction Defendants pleads facts not of record, facts never

before presented to the court, which if proven, favor this Court granting of the Petition to Sanction Defendants and entry of an award of reasonable attorney's fees and litigation costs in favor of the plaintiff and against the defendants.

(3) Frankenberry v. Ferguson, 2017 Pa. Commw. Unpub. LEXIS 496 *, 173 A.3d 1263, 2017 WL 2960380 (Pa. Cmwlth. 2017)

Frankenberry v. Ferguson is an unpublished Pennsylvania Commonwealth Court opinion which is non-binding, has no nonprecedential value, and of no benefit to this Court. Frankenberry involves pro se prison litigation. In Frankenberry, plaintiff, life sentenced inmate Joseph Frankenberry, filed a pro se action against prison supervisors and medical providers in the form of a Complaint seeking monetary damages, accompanied by a Petition for Temporary Restraining Order to enjoin the defendants from removing his single cell classification. Inmate Joseph Frankenberry contended the defendants' removal of his single cell classification and requiring he be paired with an inmate roommate violated his right to equal protection guaranteed by the Fourteenth Amendment of the United States Constitution, and his right to be free from cruel and unusual punishment guaranteed by the Eighth Amendment of the United States Constitution. The defendants filed preliminary objections in the form of demurrer to pro se plaintiff Joseph Frankenberry's pleadings, accompanied by a Motion for Protective Order to stay discovery. Pro se plaintiff Joseph Frankenberry filed objections to the defendants' preliminary objections in the form of demurrer and opposed the stay of discovery.

The trial court granted the defendants' preliminary objections in the form of demurrer, the defendants' Motion for Protective Order to stay discovery, and dismissed pro se plaintiff Joseph Frankenberry's claims with prejudice. Pro se plaintiff Joseph Frankenberry's appeal to the Commonwealth Court followed. The Commonwealth Court affirmed the trial court's decision to dismiss plaintiff Joseph Frankenberry's claims with prejudice and to stay discovery pursuant to a protective order. The Commonwealth Court ruled the trial court was authorized pursuant to Pa.R.Civ.P. 4007.3 to stay discovery. The University defendants' Emergency Motion for a Protective Order and Stay of Discovery does not seek relief under the authority of Pa.R.Civ.P. 4007.3. To the contrary, the University defendants' Emergency Motion for a Protective Order and Stay of Discovery filed with this Court seeks relief pursuant to only Pa.R.Civ.P. 4012.

(4) Fullman v. Kurtz, 2013 Pa. Commw. Unpub. LEXIS 121, 2013 WL 3948873, 63 A.3d 501 (Pa. Commw. Unpub. 2013)

Fullman v. Kurtz is an unpublished Pennsylvania Commonwealth Court opinion which is non-binding, has no nonprecedential value, and of no benefit to this Court. Fullman involves pro se prison litigation. In 1996, then inmate pro se plaintiff Andrew Fullman, serving a term of incarceration in SCI Smithfield, filed a medical malpractice action in Philadelphia County Court of Common Pleas against the Pennsylvania Department of Corrections David Ruso, MD claiming David Ruso,

MD had provided him negligent medical care while he was incarcerated as an inmate SCI Smithfield (hereinafter *Fullman I*). Venue of Fullman I was transferred to the Court of Common Pleas of Huntingdon County. David Ruso, MD filed a Motion to Dismiss for Non-Pros. On November 3, 2003, the trial court granted Dr. Ruso's Motion to Dismiss for Non-Pros and dismissed the *Fullman I* matter with prejudice. The trial court denied inmate plaintiff Andrew Fullman's Motion for Reconsideration. Pro se plaintiff Andrew Fullman's appeal of *Fullman I* to the Commonwealth Court followed. The Commonwealth Court affirmed the trial court's decision in *Fullman I.* The Pennsylvania Supreme Court denied review.[7] Thereafter, Andrew Fullman attempted to both appeal the Commonwealth Court's disposition of *Fullman I*, as well as assert several constitutional claims by filing an action in federal court. Fullman's federal complaint was dismissed for a failure to state a claim upon which relief could be granted, and for untimeliness.[8] On March 25, 2008, Andrew Fullman filed a Petition to Open the Judgment of Non Pros in the Court of Common Pleas of Huntingdon County (hereinafter *Fullman II*) again requesting the trial court to open the judgment of non pros it had entered November 3, 2003. The trial denied the Petition to Open the Judgment of Non Pros filed in

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7 Fullman v. Pennsylvania Department of Corrections, 590 Pa. 680, 912 A.2d 1294 (2006)

8 Fullman v. Pa. Dep't of Corr., Civil Action No. 4:07CV-000079, 2007 U.S. Dist. LEXIS 5316 M.D. Pa. Jan. 25, 2007), appeal dismissed, Fullman v. Pa. Dep't of Corr., 265 F. App'x 44 (3d Cir. 2008)

Fullman II, declined to enter an order enjoining or precluding pro se plaintiff Fullman from making further claims against Dr. Russo, the trial court warned, *"we caution Fullman, in the strongest possible terms, against pursuing this matter in the duplicative manner, bereft of any legal merit whatsoever, in which he has presented the instant appeal."*

On May 12, 2010, pro se plaintiff Andrew Fullman filed an action against the Honorable Judge Stewart L. Kurtz; Deborah J. Higgins, the administrator of the trial court; and Kimberly K. Gresko, Esquire, the attorney for Dr. Russo previously sued by Fullman. The judicial defendants filed Preliminary Objections pleading sovereign immunity, judicial immunity on the part of Judge Kurtz, quasi-judicial immunity on the part of Ms. Higgins, and a lack of jurisdiction on the basis of the doctrine of coordinate jurisdiction. On June 16, 2010, the judicial defendants filed a Motion for a Protective Order and Stay of Discovery requesting that the trial court not require them to answer Fullman's interrogatories until after disposing of their Preliminary Objections. Fullman objected to this motion and subsequently, on September 21, 2010, filed Plaintiff's Praecipe to Compel Discovery. On July 6, 2010, Fullman filed a Praecipe to Enter Default Judgment against Ms. Gresko, which the trial court entered on the same date. On July 8, 2010, Ms. Gresko filed Preliminary Objections pleading that the punitive damages sought by Fullman's Complaint were improper where the claims asserted therein did not constitute

reckless or otherwise egregious conduct on the part of Ms. Gresko. On July 13, 2010, Ms. Gresko filed a Petition to Open Default Judgment, along with an Answer and New Matter. In the New Matter, Ms. Gresko asserted that the doctrines of collateral estoppel and res judicata were applicable to Fullman's claims against her. On March 10, 2011, Fullman filed a Motion to Amend Complaint, seeking to amend his Complaint to include averments regarding a Motion for Consideration Nunc Pro Tunc he attempted to file in his original medical malpractice case on August 6, 2010.

By Order dated April 13, 2012, the trial court sustained the Preliminary Objections of the Judicial Defendants on the basis of judicial immunity and quasi-judicial immunity and dismissed any outstanding motions or petitions not addressed by the trial court's April 13, 2012, Orders (including, apparently, Fullman's Praecipe to Compel Discovery) as moot. By separate Order, also dated April 13, 2012, the trial court granted Ms. Gresko's Petition to Open Default Judgment, opened and vacated the default judgment, and dismissed the Complaint as to Ms. Gresko on the grounds of collateral estoppel. By a third Order, the trial court dismissed, as moot, Fullman's Motion to Amend Complaint. Fullman's appeal to the Commonwealth Court followed. On appeal to the Commonwealth Court, Fullman contended the trial court abused its discretion denying Fullman an opportunity to compel discovery. The Commonwealth Court affirmed the trial court's decision finding the trial court did not abuse its discretion in staying discovery until after disposition of preliminary

objections. Ms. Gresko filed a Petition for Sanctions in Commonwealth Court against Fullman pursuant to Pa.R.A.P. 2744 to prevent any further frivolous litigation arising out of these matters. The Commonwealth Court granted Ms. Gresko's Petition for Sanctions. The University defendants' Emergency Motion for a Protective Order and Stay of Discovery does not seek relief under the authority of Pa.R.A.P. 2744. Pa.R.A.P. 2744 and its interpretation is not before this Court. To the contrary, the University defendants' Emergency Motion for a Protective Order and Stay of Discovery filed with this Court seeks relief pursuant to only Pa.R.Civ.P. 4012.

On January 6, 2026, this Court entered a carefully crafted order which provides precisely:

> *Simply put, there appears to be no reasonable basis for either party to claim that the other acted so vexatiously during the pendency of this matter that this Court should award attorney's fees based on the current state of the record in this matter.*

The Court's January 6, 2026, order properly recognizes an absence of evidence of record relative to the issue of whether the defendants' decision to decline to share information with the plaintiff relating to: (1) specific data and items that totaled to the aggregated figures listed on the IRS Form 990s administrative fees reported by Penn State to have been paid to professionals managing Pennsylvania State University's largest asset, the University's $4.75 billion dollar endowment;

and (2) the multi-year ticketing contract the University awarded Elevate Sports Ventures, relating to the ticketing sales for Penn State football games, and other university sports was based upon a good faith basis and whether the defense of the ensuing action defended without probable cause or a good faith basis. The petition filed by the plaintiff properly calls into question the motive and behavior of the defendants before and during the pendency of the action. The absence of evidence of record explaining the basis of the decision of the defendants to decline to share information with the plaintiff, compelling that he bring an action, in the face of the concession of the defendants, as recognized by the Court, calls for and contemplates the exercise of discovery. The Court's January 6, 2026, order does not represent a holding there exists no dispute of fact regarding whether sanctionable conduct had occurred during the pendency of the litigation. The Court's February 10, 2026, scheduling order setting plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503 for evidentiary hearing, announces the contrary, and simply defies the defendants' contention this Court has entered a prior final order upon issues raised by Plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503. Any other suggestion is a fiction. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis the defendants have failed to competently demonstrate an existing court order, rule of court, statute, or law prohibits the plaintiff from undertaking discovery relevant to

factual issues raised in plaintiff's petition to sanction the defendants pursuant to 42 PA.C.S.A. § 2503.

C. DEFENDANTS FAIL TO CARRY THE BURDEN OF SHOWING THE PRACTCE OF DISCOVERY WILL CAUSE UNREASONABLE ANNOYANCE, EMBARRASSMENT, OPPRESSION, BURDEN, OR EXPENSE SUFFICIENT TO JUSTIFY A NEED FOR A PROTECTIVE ORDER

Defendants contend the court should enter protective order prohibiting plaintiff from exercising discovery to gather evidence relevant to issues to be presented during an evidentiary hearing to convene June 30, 2026, upon a basis practice of discovery will cause unreasonable annoyance, embarrassment, oppression, burden, or expense. The burden of justifying the prevention of discovery remains on the party seeking the protective order. The defendants produce no evidence, let alone a minimum standard of evidence, demonstrating any harm risked to be suffered by the defendants arising as a result of plaintiff's exercise of discovery. The defendants make no showing, demonstrated by competent evidence, they will suffer from unreasonable annoyance, embarrassment, oppression, burden, or expense upon plaintiff undertaking the prosecution of the depositions of named defendant Matthew Schuyler and material witness David Kleppinger which would entitle them to a protective order within the meaning of Pa.R.Civ.P. 4012. Upon consideration of the motion before it, and the absence of proofs presented by the defendants, this Court cannot even begin to undertake the balancing approach

necessary to determine if good cause exists sufficient for the entry of a protective order upon a basis the exercise of discovery or the disclosure of information would give rise to unreasonable annoyance, embarrassment, oppression, burden, or expense. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis the defendants failed to carry their burden of proof in support of their contention discovery would give rise to unreasonable annoyance, embarrassment, oppression, burden, or expense for failure of the defendants to carry their burden of proof justifying the prevention of discovery within the meaning of Pa.R.Civ.P. 4012.

D. THE DEFENDANTS FAIL TO CARRY THE BURDEN OF SHOWING THE DISCOVERY SOUGHT IS PROTECTED FROM DISCLOSURE BY PRIVILEGE SUFFICIENT TO JUSTIFY A NEED FOR A PROTECTIVE ORDER

Defendants claim the Court should enter protective order prohibiting plaintiff from exercising discovery to gather evidence relevant to issues to be presented to the during an evidentiary hearing to convene June 30, 2026, upon a basis all of the potential discovery is protected from disclosure by privilege. Pursuant to Pa.R.Civ.P. 4003.1 the plaintiff is entitled to discovery of any matter not privileged which is relevant to the subject matter in the action. A party asserting a privilege has the initial burden of proving a privilege is properly invoked, and the party seeking to overcome the privilege has the burden of proving an applicable exception

to the privilege.[9] The defendants do not plead, nor prove facts sufficient to show that a privilege has been properly invoked and the information sought by the plaintiff is subject to nondisclosure upon the basis of that privilege. Nor, do the defendants identify or list, in any way, or in any form, the information they suggest is confidential or protected by the attorney-client privilege which would entitle them to a protective order within the meaning of Pa.R.Civ.P. 4012. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis the defendants failed to carry their burden of proof in support of their contention the discovery sought is protected from disclosure by privilege for failure of the defendants to carry their burden of proof justifying the prevention of discovery within the meaning of Pa.R.Civ.P. 4012.

E. DISCOVERABLE INFORMATION RELEVANT TO ISSUES RAISED IN PLAINTIFF'S PETITION TO SANCTION THE DEFENDANTS PURSUANT TO 42 PA.C.S.A. § 2503 AWAITS TO BE REVEALED

Defendants seem to claim the Court should enter protective order prohibiting plaintiff from exercising discovery to gather evidence relevant to issues to be presented to the during an evidentiary hearing to convene June 30, 2026, upon a

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9 Nationwide Mut. Ins. Co. v. Fleming, 2007 PA Super 145, 924 A.2d 1259, 1265-1266 (Pa. Super. 2007), appeal granted 594 Pa. 311, 935 A.2d 1270 (2007); Law Office of Douglas T. Harris v. Phila. Waterfront Partners, LP, 2008 PA Super 222, ¶ 18 n.6, 957 A.2d 1223, 1231 (Pa. Super. 2007); Joyner v. SEPTA, 736 A.2d 35 (Pa.Cmwlth.1999)

basis there exist not facts relevant to be discovered. Centre County Civil Local Rule 206.4 [relating to Issuance of Rule to Show Cause] adopts the procedure set forth in Pa.R.Civ.P. 206.6. Pa.R.Civ.P. 206.6 requires a Rule To Show Cause to be issued as of course directing: (1) the respondents show cause why the petitioner is not entitled to the relief requested, (2) an answer to the petition is to be filed by the respondents to the petition within twenty (20) days after service of the petition on the respondent, (3) the petition shall be decided under Pa.R.Civ.P. 206.7; (4) depositions shall be completed within date specified; and (5) the date of hearing on the date of hearing on the matter.[10] It appears, as a result of the Court having not issued a Rule To Show Cause as of course, the University defendants have yet answer the plaintiff's petition, and admit or deny facts plead which are not of record. Discovery of the identity of persons, whomever they may be, participating in the decision making process to deny the plaintiff information he requested, prior to the initiation of any litigation, the motives of those persons, if any, and the basis for the denials is unknown and not of record. Discovery of the identity of the persons, whomever they may be, participating in the decision making process to instigate the plaintiff's removal as a candidate as a Trustee, which paralleled the litigation, and the basis for its instigation, is unknown and not of record. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis

10 Centre County Civil Local Rule 206.4 ; Pa.R.Civ.P 206.6

the defendants failed to carry their burden of proof in support of their contention there exists no plausible basis defendant Matthew Schuyler, material witness David Kleppinger, or anyone, is in possession of any discoverable information relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503.

F. PLAINTIFF OWES NO DUTY TO CONFER WITH OPPOSING COUNSEL BEFORE ISSUING A SUBPOENA COMMANDING MATERIAL WITNESS DAVID KLEPPINGER TO APPEAR FOR DEPOSITION

Defendants seem to claim the Court should enter protective order prohibiting plaintiff from exercising discovery to gather evidence relevant to issues to be presented to the during an evidentiary hearing to convene June 30, 2026, upon a basis plaintiff violated a duty to confer with opposing counsel before issuing a subpoena commanding material witness David Kleppinger to appear for deposition. No court order, rule of court, statute, or law imposes a duty upon the plaintiff to confer with opposing counsel before issuing a subpoena commanding a third-party material witness to appear for deposition. Pa.R.Civ.P. 4009.21 imposes a duty upon a party seeking production of documents and things from a person not a party to the action No such duty is imposed upon a party seeking to compel the appearance of a non-party at deposition, nor do the defendants cite to the court such a duty. To the extent the defendants maintain the posture material witness David Kleppinger is a

party defendant, that the Notice of Deposition directed to David Kleppinger was served upon them renders their argument meritless. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis the plaintiff violated a duty to confer with opposing counsel before issuing a subpoena commanding material witness David Kleppinger to appear for deposition.

G. DEFENDANTS DEMONSTRATE NO FACTS TO SUPPORT THE BALD ASSERTION IT IS PLAINTIFF'S INTENTION IN OBTAINING DISCOVERY RELEVANT TO ISSUES RAISED IN PLAINTIFF'S PETITION TO SANCTION THE DEFENDANTS PURSUANT TO 42 PA.C.S.A. § 2503 TO SUBVERT THE HONORABLE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA JUDGE KAREN SPENCER MARSTON'S DECEMBER 16, 2025, BENCH ORDER STAYING DISCOVERY IN A MATTER PROCEEDING IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA CAPTIONED BARRY J. FENCHAK V. PENNSYLVANIA STATE UNIVERSITY, ET AL. NO. USDCEDPA NO. 2:25-CV-06313-KSM

In Paragraph 22 of the defendants' Motion For Protective Order, defendants contend the Court should enter protective order prohibiting plaintiff from exercising discovery to gather evidence relevant to issues to be presented to the during an evidentiary hearing to convene June 30, 2026, upon a basis it is plaintiff's intention in obtaining discovery relevant to issues raised in plaintiff's petition to sanction the defendants pursuant to 42 Pa.C.S.A. § 2503 is to subvert the Honorable United States

District Court Eastern District Of Pennsylvania Judge Karen Spencer Marston's December 16, 2025, bench order staying discovery in a matter proceeding in the United States District Court Eastern District Of Pennsylvania captioned Barry J. Fenchak V. Pennsylvania State University, et al. no. USDCEDPA NO. 2:25-CV-06313-KSM. The exist no evidentiary support for the factual allegation appearing in Paragraph 22 of the defendants' Motion for Protective Order. Defendants' bald assertions which appear in paragraph 22 of the defendants' Motion for Protective Order which baselessly attribute improper motive and conduct to plaintiff, and for that matter, indirectly his counsel, represent a personal attack and violate Pa.R.Civ.P. 1023.1(c). Defendant's paragraph 22 assertions are uncivil, disrespectful, acrimonious, and disparaging, and failed to adhere to Pennsylvania's Code of Civility, Art. II, ¶¶ 2, 5, 6.[11] The allegations which appear in Paragraph 22 of the defendants' motion for protective order, perhaps are representative of the behavior attributable to the defendants defending the initial action without a factual, legal, or good faith competent basis. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order upon the basis plaintiff intends to subvert the Honorable United States District Court Eastern District Of Pennsylvania Judge Karen Spencer Marston's December 16, 2025, bench order staying discovery in a matter proceeding in the United States District Court Eastern District Of

11 Pa. Code of Civility, Art. II, ¶¶ 2, 5, 6

Pennsylvania Captioned Barry J. Fenchak V. Pennsylvania State University, Et Al. No. Usdcedpa No. 2:25-Cv-06313-KSM.

H. THE TRIAL COURT WOULD ABUSE ITS DISCRETION PRECLUDING PLAINTIFF FROM EXERCISING ANY AND ALL DISCOVERY RELEVANT TO ISSUES RAISED IN PLAINTIFF'S PETITION TO SANCTION THE DEFENDANTS PURSUANT TO 42 PA.C.S.A. § 2503

It is well settled in in Pennsylvania jurisprudence that an action taken by the trial court which makes it impossible for a party to obtain crucial evidence in support of claims or defenses is an abuse of discretion.[12] An entry of blanket order of this Court which would have the effect of precluding plaintiff from exercising any and all discovery relevant to issues raised in plaintiff's Petition to Sanction the Defendants pursuant to 42 Pa.C.S.A. § 2503, as the defendants suggest, will result in the this Court abuse its discretion. Accordingly, the Court should properly deny the defendants' Motion for a Protective Order.

V. CONCLUSION

For the foregoing reasons and any others which may arise pending a hearing on this matter, plaintiff respectfully requests that this Honorable Court enter an order denying the defendants' Motion for a Protective Order pursuant to Pa.R.Civ.P. 4012.

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12 In re Fine Paper Antitrust Litig., 685 F.2d 810, 818 (3d Cir. 1982)

Respectfully submitted,

By: */s/ Steven F. Marino*

Steven F. Marino, Esquire
PA Attorney I.D. No. 53034
Joseph Auddino, Esquire
PA Attorney I.D. No. 316752
MARINO ASSOCIATES
301 Wharton Street
Philadelphia, PA 19147
Telephone: (215) 462-3200
Telecopier: (215) 462-4763
smarino@marinoassociates.net
jauddino@marinoassociates.net

Attorneys for Plaintiff

Dated: March 30, 2026

MARINO ASSOCIATES
BY: STEVEN F. MARINO, ESQUIRE
ATTORNEY I.D. #53034
JOSEPH AUDDINO, ESQUIRE
ATTORNEY I.D. #316752
301 WHARTON STREET
PHILADELPHIA, PA 19147
(215) 462-3200

Attorneys for Plaintiff

BARRY J. FENCHAK, Plaintiff v THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN Defendants	:	IN THE COURT OF COMMON PLEAS CENTRE COUNTY - CIVIL ACTION AT LAW No. 2024-CV-1843-Cl

CERTIFICATE OF SERVICE

I certify that on the below listed date a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Plaintiff's Petition to Sanction Defendants and supporting papers was electronically filed with the Court using the Prothonotary/Clerk of Court's Electronic Filing System (prothonotary/clerkofcourts-orders@centrecountypa.gov), and served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.Civ.P. Nos. 205.4(g) and 440 and Centre County Local Civil Rule 205.4.

Electronic Mailing:
Christopher J. Conrad. Esquire
MARSHALL DENNEHEY
200 Corporate Center Dr., Ste. 300
Camp Hill. PA 170ll
CJConrad@mdwcg.com
[Counsel for Defendants]

Andrew R. Stanton, Esquire
Susan E. Kessler, Esquire
Nathaniel G. Ecker, Esquire
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, Pa 15219.2514
astanton@jonesday.com
skessler@jonesday.com
necker@jonesday.com
[Counsel for Defendants]

MARINO ASSOCIATES

By: */s/ Steven F. Marino*
STEVEN F. MARINO, ESQUIRE

Dated: March 30, 2026