

ORIGINAL

IN THE SUPREME COURT OF OHIO

J&C MARKETING, LLC, ET AL.,	)	Case No. 2013-1963
)	
Appellee,	)	On Appeal from the
	)	Cuyahoga County Court of Appeals
vs.	)	Eighth Judicial District
)	
TIMOTHY J. McGINTY, CUYAHOGA	)	Court of Appeals Case No. 13 CA 99676
COUNTY PROSECUTOR,)	
)	
Appellant.)	
)	

MERIT BRIEF OF APPELLANT CUYAHOGA COUNTY

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE FACTS	1
ARGUMENT	6
 <u>APPELLANT’S PROPOSITION OF LAW:</u>	
Records and information generated during the course of an open and ongoing undercover criminal investigation are not subject to disclosure based on the law enforcement investigatory privilege.	7
CONCLUSION.....	16
PROOF OF SERVICE.....	17
 APPENDIX	
Notice of Appeal to the Supreme Court of Ohio	A-001
Journal Entry and Opinion of the Cuyahoga County Court of Appeals (October 31, 2013)	A-004
Journal Entry and Opinion of the Cuyahoga County Court of Common Pleas (March 19, 2013)	A-025
Journal Entry and Opinion of the Cuyahoga County Court of Common Pleas (March 18, 2013)	A-026
Amended Privilege Log/Disclosure List.....	A-038

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>Aguillar v. Immigration and Customs Enforcement Div. of the U.S.</i> , 259 F.R.D. 51 (S.D.N.Y.2009)	9
<i>Black v. Sheraton Corp.</i> , 564 F.2d 531 (D.C.Cir.1977)	8, 11
<i>Cleveland v. Thorne</i> , 8th Dist. Nos. 98365, 98474, 98503, 98695, 98696, and 98697, 2013-Ohio-1029	1
<i>Commonwealth of Puerto Rico v. U.S.</i> , 490 F.3d 50 (1 st Cir.2007).....	8
<i>Davis v. Carmel Clay Schools</i> , 282 F.R.D. 201 (S.D.Ind.2012).....	8
<i>Dellwood Farms, Inc. v. Cargill, Inc.</i> , 128 F.3d 1122 (7 th Cir.1997).....	10-11
<i>Frankenhauser v. Rizzo</i> , 59 F.R.D. 339 (E.D.Pa.1973).....	10
<i>Henneman v. City of Toledo</i> , 35 Ohio St.3d 241, 520 N.E.2d 207 (1988)	10, 14
<i>In re City of New York</i> , 607 F.3d 923 (2 nd Cir.2010).....	9-11, 15
<i>In re Dep't. of Investigation of the City of New York</i> , 856 F.2d 481 (2 nd Cir.1988).....	8
<i>In re Marriage of Daniels</i> , 240 Ill.App.3d 314, 607 N.E.2d 1255 (1992).....	8
<i>Jones v. City of Indianapolis</i> , 216 F.R.D. 440 (S.D.Ind.2003).....	8
<i>Nat'l Congress for Puerto Rican Rights v. City of New York</i> , 194 F.R.D. 88 (S.D.N.Y.2000)	9
<i>Ohio Bur. of Workers' Compensation v. MDL Active Duration Fund, Ltd.</i> , S.D.Ohio No. 2:05-CV-0673, 2006 WL 3311514 (Nov. 13, 2006)	8
<i>United States v. Cintolo</i> , 818 F.2d 980 (1 st Cir.1987).....	16-17

TABLE OF AUTHORITIES (Cont'd)

Page

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES:

R.C. 149.43(A)(2)	7, 13
R.C. 2505.02(B)(4)	4
S.Ct.Prac.R. 7.01(A)(1).....	5
S.Ct.Prac.R. 7.01(D)(1).....	5
Ohio Civil Rule 25(D)(1).....	2
Ohio Civ.R. 26(B)(1)	14

STATEMENT OF THE FACTS

In early 2012, law enforcement officers from several different agencies were conducting an undercover criminal investigation in Cuyahoga County into so-called “Internet Cafés” that were attempting to conceal illegal gambling activities by presenting their gaming activities as supposed “sweepstakes.” For a price, usually \$20.00, a customer would purchase Internet-usage time or long-distance pre-paid telephone cards in order to receive “credits” that would enable the customer to sign on to a computer terminal programmed to stimulate a video slot machine, load the customer’s credits into the computer, and begin playing games of chance in a casino-like environment. Depending on the player’s luck, the player could win more credits that could then be redeemed for cash or more gambling time. The internet-usage and long-distance telephone cards went largely unused.¹

In the course of conducting this undercover criminal investigation, the investigating law enforcement officers prepared reports summarizing the details of their investigation, including the identities of the officers conducting the investigation; the identities of the mini-casinos visited; the techniques and procedures used to conduct the investigation; the identities of persons providing information; and other information pertinent to the investigation.

On May 30, 2012, a Cuyahoga County grand jury indicted ten (10) individuals and seven (7) companies in a 70-count indictment for operating, or working in close cooperation with, the owners of an intricate internet gambling system known as “VS2.” (See “Defendant’s Brief in Opposition to Plaintiffs’ Motion to Compel Discovery,” filed January 16, 2013 at p. 3; *id.*, Affidavit of J.D. May at para. 2.) In an exercise of prosecutorial discretion, former Prosecuting

¹ Such operations were thoroughly considered and exposed as a ruse in *Cleveland v. Thorne*, 8th Dist. Nos. 98365, 98474, 98503, 98695, 98696, and 98697, 2013-Ohio-1029, 987 N.E.2d 731.

Attorney William D. Mason decided not to seek indictments against the many other establishments that were engaged in similar activities but did not utilize the VS2 system, electing instead to send those other establishments cautionary cease-and-desist letters indicating that the establishment had been identified as operating a sweepstakes gaming system and that gambling, even under the guise of a sweepstakes café, was illegal under Ohio law. (See “Defendant’s Brief in Opposition to Plaintiffs’ Motion to Compel Discovery,” filed January 16, 2013 at p. 4; id., Affidavit of J.D. May at para. 2.) The letters cautioned the recipients that if illegal gambling activities did not discontinue voluntarily, then the pertinent facts would be presented to a grand jury for criminal prosecution and forfeiture.

Five (5) days later, plaintiff/appellee J & C Marketing, LLC, which operated establishments that did not utilize the VS2 system and received a cease-and-desist letter, filed the underlying civil action for declaratory and injunctive relief against then-defendant Mason.² In the days and weeks that followed, approximately thirty (30) more mini-casinos that had received cease-and-desist letters – including some that were or had started using the VS2 system but had not been indicted – moved to intervene in the underlying civil case. The trial court thereafter issued a series of temporary restraining orders in which the court made preliminary “findings” that the plaintiffs were sweepstakes establishments operating pursuant to Ohio law and that their business activity was not gambling and was not prohibited by Ohio law.

Having received invasive discovery requests on an accelerated schedule, the Prosecuting Attorney moved for a protective order on June 28, 2012 to prohibit discovery that would divulge the substance of the undercover criminal investigation. On July 2, 2012, the trial court denied that motion, declaring that it would not grant a comprehensive protection order and directing the

² After Appellant McGinty succeeded Mr. Mason as Prosecuting Attorney, he was substituted as the defendant pursuant to Ohio Civil Rule 25(D)(1).

parties to answer all discovery requests, noting and memorializing objections to those requests that the party reasonably believed were subject to a protective order.

The Prosecuting Attorney ultimately had to object to the vast majority of the propounded discovery requests because they sought privileged information concerning the open and ongoing undercover criminal investigation. Following motions to compel filed on behalf of several mini-casinos, the Prosecuting Attorney opposed those motions on January 16, 2013, reiterating his objections based on the confidential law enforcement investigatory privilege; the attorney work-product privilege; and the deliberative process privilege. The Prosecuting Attorney contemporaneously filed a renewed motion for a protective order.

To further substantiate the applicability of those claimed privileges to the ongoing undercover criminal investigation as attested to by appellant McGinty, documents bearing Bates stamp numbers CIV0001 to CIV0595 were delivered to the trial court under seal on January 24, 2013 for the court's in camera inspection. A notice of submission reflecting that delivery was filed with the court that same day accompanied by a privilege log. On January 28, 2013, the appellant filed an amended notice of submission for the purpose of amending the privilege log so as to identify specifically whether the document was privileged based on the law enforcement investigatory privilege (LEI); the attorney work-product privilege (AWP); and/or the deliberative process privilege (DP).³

³ For this Court's convenience, the Appendix to this merit brief includes a modified version of the amended privilege log that was filed originally in the trial court. (See Appendix at A-038 to A-045.) The modified log contained in the Appendix reflects (1) the respective Bates stamped documents, grouped together where appropriate; (2) a brief description of the document; (3) the date of the document; (4) the respective privileges, if any, that were invoked for the document; (5) the trial court's ruling as to whether disclosure was required; and (6) the Court of Appeals' subsequent ruling as to whether disclosure was required.

On March 18, 2013, the trial court issued its ruling that ordered the appellant to disclose by March 21, 2013 every one of the investigating officers' field reports, Bates stamp numbers CIV0001 through CIV0307, that described in detail the facts and circumstances of their undercover criminal investigation, including the identities of the investigating officers, the individuals providing information, and the precise manner in which the investigation was conducted. (See Appendix at A-026 through A-037.) The trial court additionally ordered the disclosure of a series of communications between lead criminal investigator Robert Boldin and then lead assistant prosecuting attorney J.D. May as they were preparing cases for criminal prosecution. With regard to information sought by interrogatory requests, the trial court ordered the Prosecuting Attorney to answer a series of such requests that would again require him to disclose facts and information about the undercover criminal investigation, even as cases were being investigated and readied for grand jury presentation. On March 19, 2013, the trial court issued an order acknowledging that its March 18, 2013 order erroneously omitted a ruling as to certain Bates stamped documents, correcting that omission by ordering the disclosure of those particular documents. (See Appendix at A-025.)

On interlocutory appeal pursuant to R.C. 2505.02(B)(4) in which appellee J&C Marketing, LLC, was the only plaintiff that appeared as an appellee, the Eighth District Court of Appeals affirmed the trial court's order for the Prosecuting Attorney to produce virtually all of the undercover investigators' field reports, CIV0001 through CIV0307, excluding only CIV0004 and CIV0253. (See Appendix at A-004 through A-024.) *See also J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶¶ 25-27. With regard to the series of communications between the lead criminal investigator and the lead assistant prosecuting attorney, the Court of Appeals reversed in large part the trial court's order to disclose those

communications but affirmed the disclosure of CIV0373 through CIV0378; CIV0486; CIV0497; CIV0524; CIV0548; CIV0561; and CIV0595. See *J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶¶ 28-30.⁴ With regard to the interrogatory requests reviewed by the Court of Appeals, the Court of Appeals sustained for the most part the appellant's objections to J&C Marketing's amended interrogatories based on the law enforcement investigatory privilege and the attorney work-product privilege, ordering the appellant to respond to amended interrogatory Nos. 1 through 4 and 24 through 28. See *J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶¶ 31-32. The court ordered appellant to respond to Tele-Connect's interrogatory Nos. 1 through 4, 10, 11, 13, 14, 20, and 23. See *J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶ 32.

On December 16, 2013, appellant perfected this jurisdictional appeal by filing its notice of appeal in the Supreme Court of Ohio. (See Appendix at A-001 through A-003.) The Court accepted this appeal on March 26, 2014.⁵

⁴ While duly appreciative of the scrutiny that the lower courts appear to have given to these documents, appellant would note that although the trial court ordered the disclosure of CIV0459, the Court of Appeals' ruling does not appear to expressly address that document. Additionally, the trial court ordered the disclosure of CIV0594 – for which appellant had not invoked any privilege – but the Court of Appeals nevertheless ordered that that document not be disclosed.

⁵ The Court should note that following the appellant's December 16, 2013 perfection of this jurisdictional appeal pursuant to S.Ct.Prac.R. 7.01(A)(1), plaintiffs J&C Marketing, LLC, Page-Jaq, LLC, and New Heights Business Center, LLC filed in the trial court on January 3, 2014 a notice of voluntary dismissal without prejudice pursuant to Ohio Civil Rule 41(A)(1)(a). Some but not all of the other plaintiffs similarly dismissed their cases during the pendency of appellant's appeals to the Eighth District Court of Appeals and to this Court. Once a jurisdictional appeal has been perfected to the Supreme Court of Ohio, however, it is not conceivable that this Court's jurisdiction to review a challenged appellate decision could be so easily manipulated if not defeated by actions taken in the lower courts whose jurisdiction is strictly circumscribed. See S.Ct.Prac.R. 7.01(D)(1) ("After an appeal is perfected from a court of appeals to the Supreme Court, the court of appeals is divested of jurisdiction, except to take action in aid of the appeal, to rule on an application timely filed with the court of appeals pursuant to App.R. 26, or to rule on a motion to certify a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.")

ARGUMENT

Reduced to its critical essence, the fundamental issue this case presents is whether information generated during the course of an open and ongoing undercover criminal investigation, which includes information that will identify the subjects of the investigation; the law enforcement officers conducting the investigation; informants and witnesses providing information towards the investigation; and the critical facts and evidence accumulated through the investigation, must be revealed to, of all people, the very targets of the investigation – prior to indictment – just because the subjects of the investigation become *civil* plaintiffs ostensibly seeking a declaratory judgment as preemptively clever means to seek *civil* discovery, fish for any evidence that law enforcement may have collected, and effectively compromise and corrupt the investigation and any potential criminal charges.

Undercover criminal investigations cannot be conducted effectively if the confidential information and evidence gathered must be revealed prematurely. And they assuredly cannot be effective if the information must be revealed to the very targets of the investigation. Yet the Eighth District's decision in this case stands as an open invitation for this mischievous misuse of civil proceedings, establishing for the first time that the contents of such undercover criminal investigations will hereafter be subject to premature disclosure through civil discovery notwithstanding that the investigation remains *open* and *ongoing*. The discovery sought in this case, including perhaps most critically the investigating law enforcement officers' field reports, is information that should be fully protected by the law enforcement investigatory privilege.

Appellant respectfully submits that the Court of Appeals erred in affirming the trial court's ruling that the contents of this open and ongoing undercover criminal investigation was subject to disclosure in civil discovery. For the reasons that follow, appellant respectfully

requests that this Court reverse the judgment of the Eighth District Court of Appeals ordering the disclosure of documents and information that is protected by the law enforcement investigatory privilege.⁶

APPELLANT’S PROPOSITION OF LAW:

Records and information generated during the course of an open and ongoing undercover criminal investigation are not subject to disclosure based on the law enforcement investigatory privilege.

This case concerns the law enforcement investigatory privilege, a legal privilege that has been established through the common law that is intended to prevent the premature disclosure of certain law enforcement matters. The privilege has particular force when applied to open and ongoing undercover criminal investigations, since the disclosure of such matters would inevitably and irreparably compromise such investigations. The Court of Appeals’ decision acknowledged the viability of this privilege, although that court appears to have mistakenly equated it with the similarly phrased but analytically distinct exemption under Ohio’s public records law to “confidential law enforcement investigatory records,” R.C. 149.43(A)(2).

But this case is not about public records requests under R.C. 149.43 or the legal exemptions applicable thereto – at least not yet. This case is about protecting the integrity of criminal investigations – that may or may not result in criminal charges – by confirming that records and information generated during the course of an open and ongoing undercover criminal investigation are not subject to disclosure based on the law enforcement investigatory privilege. Because the lower courts in this case incorrectly ordered the appellant to produce prematurely in civil discovery records and information generated during the course of an open and ongoing

⁶ Although such records and information may additionally and alternatively be privileged under the attorney work-product privilege as was argued below, this material at its core is the essence of what investigating law enforcement agencies produce, regardless of whether legal counsel has been consulted or is otherwise involved. To vindicate that vital law enforcement interest, this appeal is confined simply to the law enforcement investigatory privilege.

undercover criminal investigation, appellant respectfully urges this Court to reverse the judgment of the Court of Appeals to the extent that it ordered such disclosures.

The law enforcement investigatory privilege is a qualified common law privilege that protects civil as well as criminal law enforcement investigatory files from civil discovery. *See Davis v. Carmel Clay Schools*, 282 F.R.D. 201, 205 (S.D.Ind.2012); *Jones v. City of Indianapolis*, 216 F.R.D. 440, 443 (S.D.Ind.2003). “Both Federal and State courts have recognized the qualified privilege for law enforcement investigatory information.” *In re Marriage of Daniels*, 240 Ill.App.3d 314, 330, 607 N.E.2d 1255 (1992), citing cases. *See also Ohio Bur. of Workers’ Compensation v. MDL Active Duration Fund, Ltd.*, S.D. Ohio No. 2:05-CV-0673, 2006 WL 3311514 (Nov. 13, 2006) at * 3 (confidential law enforcement privilege “has been recognized in both state and federal courts.”)

In *In re Dep’t. of Investigation of the City of New York*, 856 F.2d 481 (2nd Cir.1988), the Second Circuit Court of Appeals explained:

The purpose of [the law enforcement] privilege is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.

Id. at 484.

The privilege is “rooted in common sense as well as common law,” for “law enforcement operations cannot be effective if conducted in full public view and the public has an interest in minimizing disclosure of documents that would tend to reveal law enforcement investigative techniques or sources.” *Commonwealth of Puerto Rico v. U.S.*, 490 F.3d 50, 62-63 (1st Cir.2007), quoting *Black v. Sheraton Corp.*, 564 F.2d 531 (D.C.Cir.1977). *See also U.S. v. Cintolo*, 818 F.2d 980, 1002 (1st Cir.1987) (“[D]iscoverability of this kind of information will

enable criminals to frustrate future government surveillance and perhaps unduly jeopardize the security of ongoing investigations.”) “An investigation need not be ongoing for the law enforcement privilege to apply as the ability of a law enforcement agency to conduct future investigations may be seriously impaired if certain information is revealed.” *Aguillar v. Immigration and Customs Enforcement Div. of the U.S.*, 259 F.R.D. 51, 56 (S.D.N.Y.2009), quoting *Nat’l Congress for Puerto Rican Rights v. City of New York*, 194 F.R.D. 88, 95 (S.D.N.Y.2000).

In *In re City of New York*, 607 F.3d 923 (2nd Cir.2010), the Second Circuit Court of Appeals held that undercover police reports, even if redacted and subject to disclosure on “attorneys’ eyes only basis,” were not subject to civil discovery in a civil rights lawsuit contesting arrests made during a political convention, declaring:

The law enforcement privilege clearly applies to the documents at issue here. The Field Reports, even in their redacted form, contain detailed information about the undercover operations of the NYPD. This information clearly relates to “law enforcement techniques and procedures.” Moreover, providing information about the nature of the NYPD’s undercover operations will only hinder the NYPD’s ability to conduct future undercover investigations.

Additionally, even the redacted documents contain some information that could disclose the identity of an NYPD undercover officer. Pulling any individual “thread” of an undercover operation may unravel the entire “fabric” that could lead to identifying an undercover officer. This could present a risk to the safety and effectiveness of that officer and would likely provide additional information about how the NYPD infiltrates organizations, thereby impeding future investigations.

Id. at 944 (citation omitted). Because the Field Reports in that case contained information regarding law enforcement techniques and procedures and the identity of undercover officers and disclosure could undermine the safety of law enforcement personnel and would likely undermine a law enforcement agency’s ability to conduct future investigations, the reports qualified for protection under the law enforcement investigatory privilege. *Id.* at 944-945.

The Supreme Court of Ohio itself has recognized that law enforcement investigatory records, though not absolutely privileged, may be subject to a qualified privilege from civil discovery inasmuch as “the confidentiality of such information often serves a legitimate public interest, particularly in an ongoing criminal investigation.” (Emphasis added.) *Henneman v. City of Toledo*, 35 Ohio St.3d 241, 243, 520 N.E.2d 207 (1988), citing *Frankenhauser v. Rizzo*, 59 F.R.D. 339 (E.D.Pa.1973). In *Henneman*, where records and information compiled by a police department’s internal affairs division were at issue, the court noted that the following interests should be examined:

- (1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information;
- (2) the impact upon persons who have given information of having their identities disclosed;
- (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure;
- (4) whether the information sought is factual data or evaluative summary;
- (5) whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question;
- (6) whether the police investigation has been completed;
- (7) whether any intradepartmental disciplinary proceedings have arisen or may arise from the investigation;
- (8) whether the plaintiff’s suit is non-frivolous and brought in good faith;
- (9) whether the information sought is available through other discovery or from other sources;
- and (10) the importance of the information sought to the plaintiff’s case.

Henneman, 35 Ohio St.3d at 243, 520 N.E.2d 207, citing *Frankenhauser, supra*, 59 F.R.D. at 344.

Only a compelling need for the privileged materials can override the privilege. See *In re City of New York*, 607 F.3d 923, 945 (2nd Cir.2010). The courts have recognized, moreover, that there is a strong legal presumption against lifting this privilege. In *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F.3d 1122 (7th Cir.1997), the court stated:

It seems to us, however, and not only to us, that there ought to be a pretty strong presumption against lifting the privilege. *Black v. Sheraton Corp.*, 564 F.2d 531, 545-547 (D.C.Cir.1977). Otherwise the courts will be thrust too deeply into the criminal investigative process. Unlike France, Italy, and other European countries in which judicial officers control the investigation of crimes, the United States places the control of such investigations firmly in the executive branch, subject only to such limited judicial intervention as may be necessary to secure constitutional and other recognized legal rights of suspects and defendants. The plaintiffs in these civil suits, who are seeking to obtain material from the government's criminal investigation, are not criminal suspects or defendants. Thus they have no definite legal right to the fruits of the FBI's investigative endeavors conducted in confidence; and it seems to us that neither should they have a right to force the government to tip its hand to criminal suspects and defendants by disclosing the fruits of the surreptitious (but presumably lawful) surveillance that the FBI conducted.

Id. at 1125. Confirming that there should be a "strong presumption against lifting the privilege," the Second Circuit Court of Appeals similarly declared: "Determining that law enforcement materials are subject to disclosure *** intrudes into the province of the executive branch of federal, state, or local governments. We do not take making such an intrusion lightly." *In re City of New York*, *supra*, 607 F.3d at 945, fn. 22.

To rebut the presumption against lifting the privilege, the party seeking disclosure must show that (1) its suit is non-frivolous and brought in good faith; (2) the information sought is not available through other discovery or from other sources; and (3) it has a compelling need for the information. *See In re City of New York*, *supra*, 607 F.3d at 945.

In the matter at hand, the underlying discovery requests and the lower court orders directing appellant to answer them inescapably implicate the concerns that animate the law enforcement investigatory privilege. Disclosing the law enforcement officers' investigative field reports plainly would reveal the law enforcement techniques and procedures used to conduct this undercover criminal investigation, compromise the confidentiality of sources, expose the identity of witnesses and law enforcement personnel, eviscerate the privacy of individuals involved in the

investigation, and irreparably interfere with that investigation. The interrogatory requests would likewise force the appellant to disclose details concerning the investigating officers' investigatory techniques and procedures, including the subjects of the investigation, specific dates and times of the investigation, and the identification of persons or entities who may have been contacted and/or furnished information during the course of the investigation.

The information sought by these discovery requests is precisely the kind of information that the law enforcement investigatory privilege was intended to protect – namely, an ongoing undercover criminal investigation and the specific techniques and procedures utilized during the course of that investigation. The appellant received copies of investigatory reports conducted in the field by law enforcement officers, which were reviewed in connection with this undercover investigation and shared with the relevant criminal division prosecutors, as well as with former Prosecuting Attorney Mason and with Appellant McGinty. See May Affidavit at para. 6. When the contested records were submitted to the trial court for its in camera inspection, appellant McGinty confirmed that the undercover criminal investigation had not concluded and was ongoing, specifically authorizing his criminal division staff to continue investigating cases for possible presentation to the grand jury. The discovery sought thus met all of the criteria necessary for protection under the law enforcement investigatory privilege.

With the privilege indisputably applicable, the plaintiffs bore the heavy burden of establishing an overriding need to interfere with this investigation by requiring its premature disclosure. They made no such showing. Indeed, they surely knew as well as anyone how their businesses supposedly operated. The mere fact that they cleverly filed a civil lawsuit in a preemptive attempt to prevent or disrupt any future law enforcement action did not entitle them to compromise that investigation by demanding its premature disclosure, particularly when no

action had been taken against them beyond cautioning them through the May 30, 2012 cease-and-desist letters that unless illegal gambling operations were voluntarily discontinued, future law enforcement action would follow.

For its part, the Court of Appeals' decision first looked mistakenly to Ohio's public records law and the exemption for "confidential law enforcement investigatory records" under R.C. 149.43(A)(2) when addressing appellant's contention concerning the applicability of the law enforcement investigatory privilege. *See J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶¶ 11-12. Though similarly phrased, the statutory exemption for "confidential law enforcement investigatory records" applicable under Ohio's public records act is analytically distinct from the law enforcement investigatory privilege that has developed through the common law. This is not a public records case and appellant did not invoke the R.C. 149.43(A)(2) exemption for "confidential law enforcement investigatory records" when objecting to the plaintiffs' discovery requests. To the extent that the Court of Appeals relied on this public records law exemption, its attention was misdirected.

As it relates to the investigating officers' field reports, the Court of Appeals said the following:

We affirm the trial court's order to produce the police reports containing factual information gathered in the undercover investigation of the internet sweepstakes cafés within Cuyahoga County. These reports are directly relevant to the alleged conduct of the internet sweepstakes cafés involved in this case because any factual disputes regarding the nature of their business must necessarily be resolved prior to the ultimate resolution of the legal question at the heart of this declaratory judgment action.

See J&C Marketing, L.L.C. v. McGinty, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶ 25.

While the Court of Appeals thus determined that the police reports in question were *relevant*, the issue was *not* whether they were *relevant* – they most assuredly were. The issue

here was whether they were *privileged* from discovery based on the interests at the heart of the law enforcement investigatory privilege. Ohio Civil Rule 26(B)(1) recognizes that “[p]arties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action ***.” (Emphasis added.)

Deciding that the discovery sought was relevant does not make it discoverable if it is privileged. The Court of Appeals’ opinion does not explain why the relevance of these police reports trumps the law enforcement investigatory privilege that had been asserted. By declaring only that the discovery sought was relevant, the Court of Appeals decided the wrong issue.

To the extent that the Court of Appeals may have implicitly considered the factors recited in *Henneman v. City of Toledo, supra*, those factors, though articulated in the context of discovery requests for a police department’s internal affairs investigation, nevertheless confirm that the law enforcement investigatory privilege, qualified as it may be, nevertheless applied here to protect the contents of this undercover criminal investigation from civil discovery.

To begin, that case itself recognized that “the confidentiality of such information serves a legitimate public interest, *particularly in an ongoing criminal investigation.*” (Emphasis added.) *Henneman*, 35 Ohio St.3d at 243, 520 N.E.2d 207, citing *Frankenhauser v. Rizzo, supra*.

Appellant expressly confirmed below that this was an ongoing criminal investigation that was being prepared for possible presentation to a grand jury. That fact alone should have carried considerable weight in the court’s analysis.

Beyond that, additional considerations weighing in favor of the privilege include the risk that disclosure could thwart the investigation by discouraging citizens from providing information; identifying persons who had provided information could adversely impact those persons; the parties seeking this discovery were potential criminal defendants (who would be entitled to open

criminal discovery following indictment); the police investigation had not been completed; the plaintiffs' suit was presumably intended to show that the best defense is a good offense; and the information sought was available from other sources – namely, the plaintiffs' own staff.

To be blunt, the only real need the plaintiffs had for this discovery was self-created arising from their having filed the underlying civil lawsuit. If that were sufficient reason to require law enforcement officials to divulge the contents of undercover criminal investigations, then no investigation would be safe and would be open to scrutiny merely upon the filing of a civil complaint. Nothing in law or logic permits such an improper and ill-considered intrusion into criminal law enforcement.

To be sure, the Court of Appeals did attempt to contain the damage done by the premature disclosure of the investigation by ordering the trial court to redact the names of the undercover investigators from the police reports ordered to be produced. *See J&C Marketing, L.L.C. v. McGinty*, 8th Dist. No. 99676, 2013-Ohio-4805, at ¶ 27. But as the Second Circuit Court of Appeals recognized in *In re City of New York, supra*, redacting an undercover officer's name from a police report would provide little solace where the exposure of one thread can reveal the entire fabric of the investigation. Indeed, in this era of ubiquitous video surveillance, disclosing no more than the date and times that a law enforcement officer was engaged in the investigation may be more than sufficient to identify the officer by the officer's image, the identity utilized by the officer, and other pertinent identifiers. The dangers already faced by law enforcement officers daily need not be compounded by disclosing information that may jeopardize not only their investigations but indeed themselves and their families.

The Court of Appeals' decision in this case threatens undercover criminal investigations conducted throughout the State of Ohio. Unless reversed by this Court, this decision will cause

mischief by causing law enforcement agencies to effectively suspend their open and ongoing undercover criminal investigations in the event that a civil lawsuit is filed and a discovery request is served. Indeed, even secret grand jury proceedings may be compromised since the existence of the proceeding may have to be disclosed if only to resist pending civil discovery requests. Appellant respectfully submits that it need not come to that.

Records and information generated during the course of an open and ongoing undercover criminal investigation are not subject to disclosure based on the law enforcement investigatory privilege. Because the lower courts incorrectly failed to apply that legal privilege to the discovery requests propounded in this case, the judgment of the Court of Appeals ordering the disclosure of such confidential records and information should be reversed.

CONCLUSION

Appellant Timothy J. McGinty, Cuyahoga County Prosecutor, respectfully requests that the judgment of the Eighth District Court of Appeals ordering the disclosure of documents and information that is protected by the law enforcement investigatory privilege be reversed.

Respectfully submitted,

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of Cuyahoga County

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PROOF OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11, a true copy of the foregoing Merit Brief of Appellant Timothy J. McGinty, Cuyahoga County Prosecutor, was served this 4th day of June 2014 by ordinary U.S. Mail, postage pre-paid, upon:

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APPENDIX

ORIGINAL

IN THE SUPREME COURT OF OHIO

J&C MARKETING, LLC, ET AL.,

Appellee,

vs.

TIMOTHY J. McGINTY, CUYAHOGA
COUNTY PROSECUTOR,

Appellant.

Case No.

13-1963

On Appeal from the
Cuyahoga County Court of Appeals
Eighth Judicial District

Court of Appeals Case No. 13 CA 99676

**NOTICE OF APPEAL OF APPELLANT
TIMOTHY J. McGINTY, CUYAHOGA COUNTY PROSECUTOR**

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RECEIVED
DEC 18 2013
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SUPREME COURT OF OHIO

FILED
DEC 16 2013
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

J&C MARKETING, LLC, ET AL.,	)	Case No.
)	
Appellee,	)	On Appeal from the
	)	Cuyahoga County Court of Appeals
vs.	)	Eighth Judicial District
)	
TIMOTHY J. MCGINTY, CUYAHOGA	)	Court of Appeals Case No. 13 CA 99676
COUNTY PROSECUTOR,)	
)	
Appellant.	)	<u>NOTICE OF APPEAL OF APPELLANT</u>
	)	<u>TIMOTHY J. MCGINTY, CUYAHOGA</u>
	)	<u>COUNTY PROSECUTOR</u>

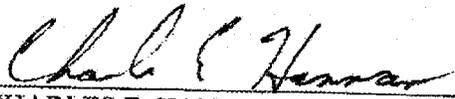
Appellant Timothy J. McGinty, Cuyahoga County Prosecutor, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Judicial District, entered on October 31, 2013 in the matter of J&C Marketing, L.L.C. v. McGinty, Cuyahoga Court of Appeals Case No. 09 CA 99676.

This case is one of public or great general interest.

Respectfully submitted,

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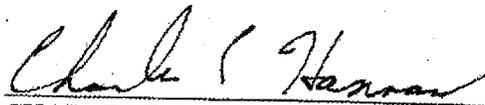
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PROOF OF SERVICE

A true copy of the foregoing Notice of Appeal of Appellant Timothy J. McGinty, Cuyahoga County Prosecutor was served this 13TH day of December 2013 by regular U.S. Mail, postage prepaid, upon:

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OCT 31 2013

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99676

J&C MARKETING, L.L.C.

PLAINTIFF-APPELLEE

vs.

**TIMOTHY J. McGINTY,
CUYAHOGA COUNTY PROSECUTOR**

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART
AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-784234 and CV-785188

BEFORE: E.A. Gallagher, P.J., Kilbane, J., and McCormack, J.

RELEASED AND JOURNALIZED: October 31, 2013



-i-

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FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 31 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By SMH Deputy

EILEEN A. GALLAGHER, P.J.:

{¶1} Appellant Timothy J. McGinty, Cuyahoga County Prosecutor, appeals from the decision of the Cuyahoga County Court of Common Pleas that ordered the prosecutor's office to turn over certain materials and answer interrogatories in a declaratory judgment action. For the following reasons, we affirm, in part, and reverse, in part, and remand.

{¶2} This interlocutory appeal is taken from a declaratory judgment action brought by numerous businesses operating internet sweepstakes cafés within Cuyahoga County. Appellee J&C Marketing, L.L.C. is one such party who owns internet sweepstakes cafés within the county. Appellee, among others, received a cease and desist letter from the Cuyahoga County prosecutor on May 30, 2012, asserting that such cafés were operating in violation of several Ohio gambling laws, including R.C. 2915.02, 2915.03 and 2915.04. The letter directed the businesses to cease operation and threatened criminal prosecution for failing to comply.

{¶3} On June 4, 2012, appellee filed a declaratory judgment action against the prosecutor seeking a declaration that internet sweepstakes cafés are not subject to prosecution under R.C. Chapter 2915 et seq., and further seeking

temporary, preliminary and permanent injunctive relief.¹

{¶4} The question presently before this court is not the legality of internet sweepstakes cafés in Cuyahoga County. Recently in *Cleveland v. Thorne*, 8th Dist. Cuyahoga Nos. 98365, 98474, 98503, 98695, 98696, and 98697, 2013-Ohio-1029, 987 N.E.2d 731, this court upheld the convictions of certain proprietors of "cyber cafés" or "internet cafés" for sweepstakes ventures that this court found to constitute gambling in violation of Cleveland Codified Ordinances ("CCO") 611.02(a)(2), 611.05 (operating a gambling house) and 625.08 (possession of criminal tools).

{¶5} Our role in the present appeal is not to judge the outcome of this case. Instead we are faced with a unique discovery dispute. The principal question posed by this appeal is the extent to which information and records compiled by law enforcement and a county prosecutor's office are subject to discovery in a civil action. We are mindful of the sweeping implications of this case. The prosecutor asserts that appellee and other targets of the internet sweepstakes cafés possess a mischievous purpose in bringing the present declaratory judgment action. From the prosecutor's point of view, this action is merely a thinly veiled attempt by targets of an ongoing criminal investigation

¹Numerous other internet sweepstakes café businesses operating within Cuyahoga County intervened as plaintiffs in appellee's declaratory judgment action.

to preemptively obtain, through civil discovery, investigatory materials compiled by law enforcement and internal discussions of the prosecutor's office towards the purpose of stymying such investigation and hampering any criminal prosecution. Appellee asserts that pursuant to *Peltz v. S. Euclid*, 11 Ohio St.2d 128, 228 N.E.2d 320 (1967), a declaratory judgment action is the appropriate vehicle for testing the application of Ohio's gambling laws to its business and that the requested discovery of appellant's investigatory results is necessary to proceed with this civil action.

{¶6} Appellee and other sweepstakes cafés who have joined in this action have sought, through discovery, materials relating to the ongoing law enforcement investigation against the internet sweepstakes cafés in Cuyahoga County including investigative reports compiled by undercover police officers, email exchanges between the prosecutor's office and lead investigators and the identities of parties involved in the investigation, including experts.

{¶7} Appellant objected to such discovery and, in his three assignments of error, asserts that the trial court erred in ordering him to produce certain materials and answer certain interrogatories. Appellant argues that the trial court's discovery order violates the law enforcement investigatory privilege, the attorney work-product doctrine and the deliberative-process privilege. Because appellant's three assignments of error each apply in varying and overlapping parts to the discovery sought, we address them together for ease of discussion.

{¶8} Civ.R. 26(B) provides that parties may obtain discovery on any unprivileged matter that is relevant to the subject matter involved in the pending action. Although the information sought need not itself be admissible at trial, it should appear “reasonably calculated to lead to the discovery of admissible evidence.”

{¶9} Prior to delving into the specific discovery materials sought, we must appropriately define the law enforcement investigatory privilege, the attorney work-product doctrine and the deliberative-process privilege within the context of this unique case. We note that when a discovery issue involves an alleged privilege, it is a question of law that we review de novo. *Ward v. Summa Health Sys.*, 128 Ohio St.3d 212, 2010-Ohio-6275, 943 N.E.2d 514, ¶ 13.

I. The Law Enforcement Investigatory Privilege

{¶10} The prosecutor contends that discovery of nearly all of the contested material is protected by the law enforcement investigatory privilege. The prosecutor primarily relies upon cases establishing the law enforcement investigatory privilege under federal law and laws of other states. We find reliance on these cases unnecessary. To understand this privilege under Ohio law, we must first consider R.C. 149.43 that, although not applicable in the present instance, provides important context to our understanding of the claimed privilege.

{¶11} R.C. 149.43 excludes confidential law enforcement investigatory

records from the definition of "public records" that must be made available for inspection. R.C. 149.43(A)(2) provides:

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

{¶12} Although records that qualify as confidential law enforcement investigatory records under R.C. 149.43(A)(2) are not subject to public disclosure pursuant to the statute, the Ohio Supreme Court, in *Henneman v. Toledo*, 35 Ohio St.3d 241, 520 N.E.2d 207 (1988), held that R.C. 149.43 operates only to exempt confidential law enforcement investigatory records from the requirement of availability to the general public and does not protect such records from a proper discovery request in the course of civil litigation, provided that such records are otherwise discoverable.

{¶13} In *Henneman*, the Ohio Supreme Court recognized that a qualified privilege exists for information that was compiled in the course of a police internal affairs investigation in the context of civil discovery. The court stated:

[W]e recognize that the public has an important interest in the confidentiality of information compiled in the course of police internal investigations. In many instances, disclosure of such information may work to undermine investigatory processes by discouraging persons with knowledge from coming forward or by revealing the identities of confidential sources. There may very well be an overriding need in particular cases for protecting the identities of members of the police force or of the general public who come forward with information about alleged police abuses. * * * Another equally important interest may exist in some cases: the need for concealing the identities of informants or citizens who participate in internal investigations.

Id. at 245-246.

{¶14} The *Henneman* court concluded that:

[R]ecords and information compiled by an internal affairs division of a police department are subject to discovery in civil litigation arising out of alleged police misconduct if, upon an in camera inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information. Of course, the request for such information is still subject to the normal standards of discovery. For example, if the files contain privileged medical records or if the request is vague or burdensome, a properly delineated protective order may be issued upon motion. But we reject the notion that an absolute privilege automatically protects internal investigation reports from a legitimate request for discovery.

Id. at 246.

{¶15} Since the *Henneman* decision, the rule established in that case has been extended to apply the *Henneman* balancing test to a school board's claim

that its discussions held in executive session were privileged from discovery. *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. Pub. School Emp., Local 530*, 106 Ohio App.3d 855, 869-870, 667 N.E.2d 458 (9th Dist.1995), and the confidentiality of information about applicants and recipients of Medicaid. *Wessell Generations, Inc. v. Bonnifield*, 193 Ohio App.3d 1, 2011-Ohio-1294, 950 N.E.2d 989 (9th Dist.).

{¶16} Furthermore, in *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 549 N.E.2d 167 (1990), the Ohio Supreme Court held that *Henneman* extended beyond protecting internal affairs documents but was applicable to “determine whether a litigant’s right to discovery outweighs the public interest in nondisclosure of an ongoing investigation.” *Id.* at 41. The court stated that the factors recognized in the leading federal case on the investigatory privilege, *Frankenhauser v. Rizzo*, 59 F.R.D. 339 (E.D.Pa.1973), had been adopted as part of the *Henneman* test. *Id.* at 41. The *Frankenhauser* factors include:

- (1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information;
- (2) the impact upon persons who have given information of having their identities disclosed;
- (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure;
- (4) whether the information sought is factual data or evaluative summary;
- (5) whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question;
- (6) whether the police investigation has been completed;
- (7) whether any intradepartmental disciplinary proceedings have arisen or may

arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff's case.

(*Frankenhauser* at 344.

{¶17} Although the Supreme Court has not addressed a case postured precisely as the present case, we find the privilege established in *Henneman* to be applicable because the same concerns leading to the adoption of the privilege in that case exist in this case. We, therefore, apply the balancing test of *Henneman* to the materials the appellant claims are protected from discovery by the law enforcement investigatory privilege.²

II. The Attorney Work-product Privilege

{¶18} Attorney work product in Ohio is governed by Civ.R. 26(B)(3), which provides in relevant part: "a party may obtain discovery or documents and tangible things prepared in anticipation of litigation or for trial by or for another party or that party's representative * * * only upon a showing of good cause therefor * * *"

{¶19} The Ohio Supreme Court has addressed the standard of disclosure of work product. "Attorney work product, including but not limited to mental impressions, theories, and legal conclusions, may be discovered upon a showing

²We apply the *Henneman* balancing test with guidance from the *Frankenhauser* factors that we find useful to the *Henneman* analysis.

of good cause if it is directly at issue in the case, the need for the information is compelling, and the evidence cannot be obtained elsewhere.” *Squire, Sanders & Dempsey v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, 987 N.E.2d 533, paragraph two of the syllabus. The protection for intangible work product exists because “[o]therwise, attorneys’ files would be protected from discovery, but attorneys themselves would have no work product objection to depositions.” *Id.* at ¶ 58, quoting *In re Seagate Technology, L.L.C.*, 497 F.3d 1360 (Fed.Cir. 2007).

{¶20} The Ohio Supreme Court has explained that “the determination of whether materials are protected by the work-product doctrine and the determination of ‘good cause’ under Civ.R. 26(B)(3), are ‘discretionary determinations to be made by the trial court.’” *Sutton v. Stevens Painton Corp.*, 192 Ohio App.3d 68, 2011-Ohio-841, 951 N.E.2d 91, ¶ 12 (8th Dist.), quoting *State ex rel. Greater Cleveland Regional Transit Auth. v. Guzzo*, 6 Ohio St.3d 270, 271, 452 N.E.2d 1314 (1983). Discretionary decisions are reviewed under an abuse of discretion standard of review. *Id.* It is an abuse of discretion if the court’s ruling is “unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

III. The Deliberative-Process Privilege

{¶21} Finally, the prosecutor asserts that the trial court’s discovery orders

intrude improperly into internal deliberations and prosecutorial discretion and, as such, violate the deliberative-process privilege.

{¶22} In *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, the Ohio Supreme Court described the deliberative-process privilege as follows:

[I]t allows the government to withhold documents and other materials that would reveal "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." Predecisional and deliberative materials are protected, but documents that merely state or explain a decision that has already been made or contain purely factual information are not. The privilege extends beyond the chief executive officer of a governmental unit such as a president or governor. This category of executive privilege is grounded in judicial recognition of a "valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties."

(Citations omitted.) *Id.* at ¶ 34

{¶23} The deliberative-process privilege has been rarely recognized under Ohio law, and we are unaware of any case in Ohio applying the privilege to a county prosecutor. We note that most, if not all, of the materials the privilege would conceivably protect in this case would already be protected under the law enforcement investigatory privilege and the attorney work-product doctrine, rendering reliance on the deliberative-process somewhat redundant and unnecessary. Nonetheless, appellee asserts that the materials they seek in discovery are purely factual in nature rendering the deliberative-process

privilege inapplicable.

{¶24} Having established the various privileges and doctrines that appellant has invoked, we proceed to examine their application to the contested materials sought in discovery. We begin with the list of documents that the trial court marked "Y," standing for "yes, the document is to be produced."

{¶25} We affirm the trial court's order to produce the police reports containing factual information gathered in the undercover investigation of the internet sweepstakes cafés within Cuyahoga County. These reports are directly relevant to the alleged conduct of the internet sweepstakes cafés involved in this case because any factual disputes regarding the nature of their business must necessarily be resolved prior to the ultimate resolution of the legal question at the heart of this declaratory judgment action. Specifically items with the following "bates" numbers are to be produced: #001-003, #005-252 and #254-307.

{¶26} The trial court's order to produce items #004 and #253 is reversed. These materials contain primarily internal communications or investigative decisions and lack the factual content that the other reports contain. We find these materials lacking in relevant information to this civil action and, as such, are precluded from discovery pursuant to the law enforcement investigatory privilege.

{¶27} The trial court shall redact the names of the undercover

investigators from the police reports ordered to be produced. However, to the extent that appellant intends to rely on facts in any particular report or a factual account of a particular investigator, the appellant is obligated to disclose such investigator's name consistent with our holding on appellee's interrogatories regarding witnesses appellant intends to call at trial. *See, e.g., State v. Bragg*, 8th Dist. Cuyahoga No. 58859, 1991 Ohio App. LEXIS 3162 (June 27, 1991).

{¶28} We next consider a series of emails between the Cuyahoga County prosecutor involved with the investigation and a lead investigator on the case. These emails contain investigatory decisions, procedural discussions and exchanges of legal research and opinion. For the most part, the emails can be described as internal communications regarding how to proceed with the investigation. We are considerably reluctant to recognize a legal proposition whereby an individual or business involved in a criminal investigation could acquire the internal email discussions of a prosecutor by way of discovery in a preemptive civil action. Appellee argues that it is entitled to the thought process and legal theories of appellant in regards to the alleged illegality of internet sweepstakes cafés within Cuyahoga County. We are not aware of any authority for the proposition that appellant is obligated to conduct appellee's legal research for it. To the extent that appellee seeks a legal analysis applying a gambling law to an internet sweepstakes café, we direct appellee to our

decision in *Thorne*.

{¶29} We find that the vast majority of the emails are protected by the law enforcement investigatory privilege, and because they are completely lacking in factual content relevant to the present dispute, we hold that they are not subject to discovery. Even if such emails were not protected by the law enforcement investigatory privilege, we note that a significant number of such emails would also qualify as attorney work product.

{¶30} We reverse the trial court's order to produce the email items with the following "bates" numbers: 308, 315, 316, 318-324, 326, 330-332, 335-342, 344, 345, 347-354, 356-359, 361-363, 365-367, 369, 370, 379-382, 392-394, 419, 428, 434, 439, 442, 450, 451, 456-458, 461, 462, 467, 468, 473, 474, 477, 478, 484, 487-491, 493, 496, 498, 499, 504, 506, 507, 511-513, 520-522, 532, 534, 535, 539, 540, 559, 569, and 591-594. We affirm the trial court's order to produce the emails with the following "bates" numbers: 373-378, 486, 497, 524, 548, 561, 595.

{¶31} Finally, with regard to the interrogatories that the trial court ordered appellant to answer, we find that a significant number pose questions that are not relevant to the underlying declaratory action and unnecessarily intrude upon the investigative process. Some confusion exists as to the precise interrogatories the trial court's order compelled the appellant to answer. The order references both interrogatories and amended interrogatories. Both of the motions to compel filed by appellee and plaintiffs, Cyber Oasis, Page-Jaq and

New Heights, provide only amended interrogatories as attachments. To eliminate any confusion, we confine our review to appellee's amended set of interrogatories and the interrogatories of Tel-Connect. To the extent that any other interrogatories remain, the trial court shall order appellant to answer them consistent with the holding of this opinion.

{¶32} Regarding the amended interrogatories of appellee, the trial court's order is affirmed as to interrogatories 1 through 4 and 24 through 28. The trial court's order is reversed as to interrogatories 5 through 24 that we find protected pursuant to the law enforcement investigatory privilege and the attorney work-product doctrine. In regards to the Tel-Connect interrogatories, the trial court's order is affirmed as to interrogatories 1 through 4, 10, 11, 13, 14, 20 and 23. The trial court's order is reversed as to interrogatories 5 through 8, 12, 15 through 19 and 21.

{¶33} Appellant's assignments of error are sustained, in part, and overruled, in part.

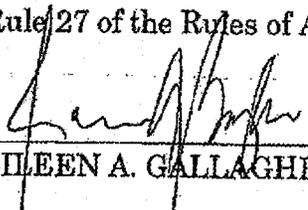
{¶34} The judgment of the trial court is affirmed, in part, reversed, in part, and the case is remanded for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


EILEEN A. GALLAGHER, PRESIDING JUDGE

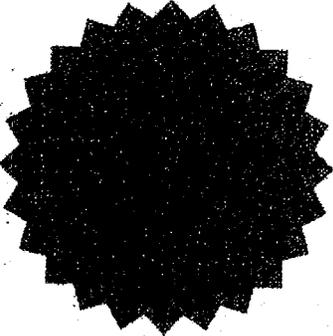
MARY EILEEN KILBANE, J., and
TIM McCORMACK, J., CONCUR

The State of Ohio, }
Cuyahoga County. } ss.

I, ANDREA F. ROCCO, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 10/31/13 CA 94076

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 10/31/13 CA 94076 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 31 day of October A.D. 20 13

ANDREA F. ROCCO, Clerk of Courts

By _____ Deputy Clerk



78560494

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

J&C MARKETING LLC
Plaintiff

WILLIAM D MASON
Defendant

Case No: CV-12-784234

Judge: NANCY MARGARET RUSSO

JOURNAL ENTRY

THE COURT ADVISES COUNSEL THAT SEVERAL DOCUMENT NUMBERS WERE ERRONEOUSLY OMITTED FROM THE OSJ ISSUED ON 3/18/13; THE FOLLOWING SUPPLEMENTAL DOCKET ENTRY ADDRESSES THOSE OMISSIONS: REGARDING PRODUCTION OF DOCUMENTS SUBMITTED IN CAMERA BY THE DEFENDANT, PRODUCTION AS FOLLOWS:

CIV0362: Y; CIV0363: Y; CIV0365-0367: Y; CIV0369: Y; CIV0379: Y.

Judge Signature

03/19/2013

03/19/2013

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By: CLPAL
ANDREA F. ROCCO, CLERK

A-025

Page 1 of 1

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

J&C Marketing, LLC, et al.,

)

Case Number: 784234

Plaintiffs,

)

vs.

)

Judge Nancy Margaret Russo

Timothy McGinty

Cuyahoga County Prosecutor,

)

Defendant.

ORDER

The Court, having conducted an in camera inspection of documents sought by the plaintiffs from the defendants, issues the attached Log OSJ, indicating documents to be produced, from those actually produced to the Court for in camera inspection.

The Court further notes that the production of documents by the Defendant does not appear to be complete or fully responsive, based upon the pleadings propounded, detailing those documents sought by the Plaintiffs. Therefore, the Court orders that if the Defendants have not fully satisfied the Court's Order and turned over all documents as sought by plaintiffs, any remaining documents are to be provided to the Court, with a Log, on or before March 20, 2013.

The Court also has reviewed all the propounded Interrogatories, and contained within this Order, is the Court's Order for which Interrogatories are to be answered by Defendant.

Attached to this Order is a Log, said Log having been prepared by the Defendants, and provided to the Court, along with the in camera documents. The Court has noted next to each line item a directive, Y means "Yes, the document is to be produced to Defendants"; N means "No, the document does fall under an asserted privilege and is not to be produced."

All documents ordered produced, in this Order, are to be produced to the Plaintiffs on or before noon on March 21, 2013. In the event there is a supplemental production to the Court of additional documents by March 20, 2013, then and in that event, all documents contained in the attached Log, still remain due to Plaintiffs on or before noon on March 21, 2013.

The parties have filed a Joint Motion to Extend the Expert Report Deadline. Based upon this Order, the Court grants that motion and extends the Plaintiffs Report deadline to April 15, 2013, and the Defendants Report deadline to April 29, 2013.

The Court also notes that at the hearing of this date, March 18, 2013, the Court has provided to the Court Reporter, all documents provided to the Court for In Camera inspection, and the Court has provided the Court Reporter with the documents as produced to the Court, in both hard-copy and disk format, all to be transmitted under Seal, should an appeal be filed.

Regarding the Motion to Compel Responses to the Interrogatories, the Court issues the following Orders:

Per the Motion to Compel filed January 14, 2013 by Plaintiffs J&C, Cyber Oasis, Page-Jaq and New Heights Business Center, the Defendant is ordered to respond as follows:

Defendant to answer the following Interrogatory Numbers: 1, 2, 3, 4, 5, 6, 7, 9, 11, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28;

Defendant to provide the following Documents: 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.

Per the Motion to Compel filed January 14, 2013 by Plaintiffs J&C, Cyber Oasis, Page-Jaq and New Heights referencing Amended Interrogatories & Production of Documents:

Defendant to answer the following Amended Interrogatories: 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.

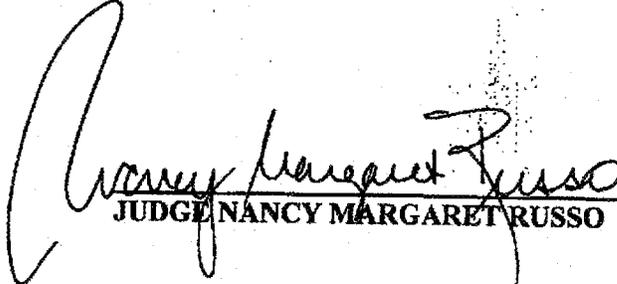
Defendant to provide the following Documents requested in the Amended Request: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26.

Per the Motion to Compel filed by Tel-Connect on January 14, 2013:

Defendant to answer the following Interrogatories: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 23.

Defendant to provide the following Documents as requested: 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38.

SO ORDERED, this 18th day of March, 2013.


JUDGE NANCY MARGARET RUSSO

RECEIVED FOR FILING

MAR 18 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By  Deputy

<u>Name of Document</u>	<u>Dates Stamp Numbers</u>	<u>Date</u>	<u>Privilege</u>
Investigative Report	CIV0001-CIV0006	4/30/2012	LEI/AWP
Investigative Report	CIV007-CIV0008	5/4/2011	LEI/AWP
Application for Device & Report	CIV0009-CIV0011	4/22/2012	LEI/AWP
Investigative Report	CIV0012-CIV0013	4/26/2012	LEI/AWP
Envelope re: Police Report	CIV0014-CIV0015	5/4/2011	LEI/AWP
Investigative Report	CIV0016-CIV0025	4/24/2012	LEI/AWP
Police Evidence tag	CIV0026-CIV0027	4/25/2012	LEI/AWP
Application for Device & Report	CIV0028-CIV0031	5/4/2012	LEI/AWP
Investigative Report-Request for Assistance	CIV0032-CIV0038	4/26/2012	LEI/AWP
Investigative Report	CIV0039-CIV0041	5/2/2012	LEI/AWP
Investigative Report	CIV0042-CIV0075	4/24/2012	LEI/AWP
Investigative Report	CIV0076-CIV0106	4/30/2012	LEI/AWP
Investigative Report	CIV0107-CIV0175	4/24/2012	LEI/AWP
Investigative Report	CIV0176-CIV0246	4/25/2012	LEI/AWP
Investigative Report	CIV0247-CIV0307	4/24/2012	LEI/AWP
Email from J. May to Agent Boldin	CIV0308	2/1/2012	LEI/AWP
Email from J. May to Agent Boldin	CIV0309	2/6/2012	LEI/AWP
Email from J. May to Agent Boldin	CIV0310	2/10/2013	LE/AWP
Email from J. May to Agent Boldin	CIV0311	2/10/2013	LEI/AWP
Email from J. May to Agent Boldin	CIV0312	2/29/2012	LEI/AWP
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11/22/2012

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Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0001-CIV0006	Investigative Report	4/30/2012	LEI/AWP	Yes	Yes except for CIV0004
CIV0007-CIV0008	Investigative Report	5/4/2011	LEI/AWP	Yes	Yes
CIV0009-CIV0011	Application for Device & Report	4/22/2012	LEI/AWP	Yes	Yes
CIV0012-CIV0013	Investigative Report	4/26/2012	LEI/AWP	Yes	Yes
CIV0014-CIV0015	Envelope re: Police Report	5/4/2011	LEI/AWP	Yes	Yes
CIV0016-CIV0025	Investigative Report	4/24/2012	LEI/AWP	Yes	Yes
CIV0026-CIV0027	Police Evidence tag	4/25/2012	LEI/AWP	Yes	Yes
CIV0028-CIV0031	Application for Device & Report	5/4/2012	LEI/AWP	Yes	Yes
CIV0032-CIV0038	Investiative Report-Request for Assistance	4/26/2012	LEI/AWP	Yes	Yes
CIV0039-CIV0041	Investigative Report	5/2/2012	LEI/AWP	Yes	Yes
CIV0042-CIV0075	Investigative Report	4/24/2012	LEI/AWP	Yes	Yes
CIV0076-CIV0106	Investigative Report	4/30/2012	LEI/AWP	Yes	Yes
CIV0107-CIV0175	Investigative Report	4/24/2012	LEI/AWP	Yes	Yes
CIV0176-CIV0246	Investigative Report	4/25/2012	LEI/AWP	Yes	Yes
CIV0247-CIV0307	Investigative Report	4/24/2012	LEI/AWP	Yes	Yes except for CIV0253
CIV0308	Email from J. May to Agent Boldin	2/1/2012	LEI/AWP	Yes	No
CIV0309	Email from J. May to Agent Boldin	2/6/2012	LEI/AWP	No	No
CIV0310	Email from J. May to Agent Boldin	2/10/2013	LEI/AWP	No	No
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CIV0319	Email from J. May to Agent Boldin	3/21/2012	LEI/AWP	Yes	No
CIV0320	Email from J. May to Agent Boldin	3/21/2012	LEI/AWP	Yes	No
CIV0321	Email from J. May to Agent Boldin	3/21/2012	LEI/AWP	Yes	No
CIV0322	Email from J. May to Agent Boldin	3/29/2012	LEI/AWP	Yes	No
CIV0323	Email from J. May to Agent Boldin	4/5/2012	LEI/AWP	Yes	No
CIV0324	Email from J. May to Agent Boldin	4/5/2012	LEI/AWP	Yes	No
CIV0325	Email from J. May to Agent Boldin	4/11/2012	LEI/AWP/DP	No	No
CIV0326	Email from J. May to Agent Boldin	4/12/2012	LEI/AWP	Yes	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0327	Email from J. May to Agent Boldin	4/12/2012	LEI/AWP	No	No
CIV0328	Email from J. May to Agent Boldin	4/12/2012	LEI/AWP	No	No
CIV0329	Email from J. May to Agent Boldin	4/13/2012	LEI/AWP	No	No
CIV0330	Email from J. May to Agent Boldin	4/13/2012	LEI/AWP	Yes	No
CIV0331	Email from J. May to Agent Boldin	4/18/2012	LEI/AWP	Yes	No
CIV0332	Email from J. May to Agent Boldin	4/23/2012	LEI/AWP	Yes	No
CIV0333	Email from J. May to Agent Boldin	4/24/2012	LEI/AWP/DP	No	No
CIV0334	Email from J. May to Agent Boldin	4/24/2012	LEI/AWP/DP	No	No
CIV0335	Email from J. May to Agent Boldin	4/24/2012	LEI/AWP	Yes	No
CIV0336	Email from J. May to Agent Boldin	4/24/2012	LEI/AWP	Yes	No
CIV0337	Email from J. May to Agent Boldin	5/4/2012	LEI/AWP	Yes	No
CIV0338	Email from J. May to Agent Boldin	5/7/2012	LEI/AWP	Yes	No
CIV0339	Email from J. May to Agent Boldin	5/16/2012	LEI/AWP	Yes	No
CIV0340	Email from J. May to Agent Boldin	5/16/2012	LEI/AWP	Yes	No
CIV0341	Email from J. May to Agent Boldin	5/16/2012	LEI/AWP	Yes	No
CIV0342	Email from J. May to Agent Boldin	5/21/2012	LEI/AWP	Yes	No
CIV0343	Email from J. May to Agent Boldin	5/21/2012	LEI/AWP	No	No
CIV0344	Email from J. May to Agent Boldin	5/27/2012	LEI/AWP	Yes	No
CIV0345	Email from J. May to Agent Boldin	5/30/2012	LEI/AWP	Yes	No
CIV0346	Email from J. May to Agent Boldin	6/1/2012	LEI/AWP/DP	No	No
CIV0347	Email from J. May to Agent Boldin	6/6/2012	LEI/AWP	Yes	No
CIV0348	Email from J. May to Agent Boldin	6/6/2012	LEI/AWP	Yes	No
CIV0349	Email from J. May to Agent Boldin	6/6/2012	LEI/AWP	Yes	No
CIV0350	Email from J. May to Agent Boldin	6/7/2012	LEI/AWP	Yes	No
CIV0351	Email from J. May to Agent Boldin	6/7/2012	LEI/AWP	Yes	No
CIV0352	Email from J. May to Agent Boldin	6/11/2012	LEI/AWP	Yes	No
CIV0353	Email from J. May to Agent Boldin	6/11/2012	LEI/AWP	Yes	No
CIV0354	Email from J. May to Agent Boldin	6/12/2012	LEI/AWP	Yes	No
CIV0355	Email from J. May to Agent Boldin	6/12/2012	LEI/AWP/DP	No	No
CIV0356	Email from J. May to Agent Boldin	6/26/2012	LEI/AWP	Yes	No
CIV0357	Email from J. May to Agent Boldin	7/5/2012	LEI/AWP	Yes	No
CIV0358	Email from J. May to Agent Boldin	7/6/2012	LEI/AWP	Yes	No
CIV0359	Email from J. May to Agent Boldin	7/11/2012	LEI/AWP	Yes	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0360	Email from J. May to Agent Boldin	7/13/2012	LEI/AWP	No	No
CIV0361	Email from J. May to Agent Boldin	7/15/2012	LEI/AWP	Yes	No
CIV0362	Email from J. May to Agent Boldin	7/16/2012	LEI/AWP	Yes	No
CIV0363	Email from J. May to Agent Boldin	7/16/2012	LEI/AWP	Yes	No
CIV0364	Email from J. May to Agent Boldin	7/23/2012	LEI/AWP	No	No
CIV0365	Email from J. May to Agent Boldin	8/7/2012	LEI/AWP	Yes	No
CIV0366	Email from J. May to Agent Boldin	8/7/2012	LEI/AWP	Yes	No
CIV0367	Email from J. May to Agent Boldin	8/15/2012	LEI/AWP	Yes	No
CIV0368	Email from J. May to Agent Boldin	10/10/2012	LEI/AWP	No	No
CIV0369	Email from J. May to Agent Boldin	11/1/2012	LEI/AWP	Yes	No
CIV0370	Email from J. May to Agent Boldin	11/20/2012	LEI/AWP	Yes	No
CIV0371	Email from J. May to Agent Boldin	12/3/2012	LEI/AWP	No	No
CIV0372	Email from J. May to Agent Boldin	12/3/2012	LEI/AWP	No	No
CIV0373	Email from J. May to Agent Boldin	12/10/2012		Yes	Yes
CIV0374	Email from J. May to Agent Boldin	12/10/2012		Yes	Yes
CIV0375-CIV0376	Email from R. Triozzi to J. May	12/10/2012		Yes	Yes
CIV0377	Revised Committee Notice -Ohio Senate	12/10/2012		Yes	Yes
CIV0378	Email from R. Triozzi to J. May	12/10/2012		Yes	Yes
CIV 0379	Email from Agent Boldin to J. May	2/1/2012	LEI/AWP	Yes	No
CIV0380	Email from Agent Boldin to J. May	2/1/2012	LEI/AWP	Yes	No
CIV0381	Email from Agent Boldin to J. May	2/1/2012	LEI/AWP	Yes	No
CIV0382	Email from Agent Boldin to J. May	2/3/2012	LEI/AWP	Yes	No
CIV0383	Email from Agent Boldin to J. May	2/6/2012	LEI/AWP	No	No
CIV0384	Email from Agent Boldin to J. May	2/9/2012	LEI/AWP	No	No
CIV0385	Email from Agent Boldin to J. May	2/10/2012	LEI/AWP	No	No
CIV0386	Email from Agent Boldin to J. May	2/10/2012	LEI/AWP	No	No
CIV0387	Email from Agent Boldin to J. May	2/22/2012	LEI/AWP	No	No
CIV0388-CIV0389	Email from Agent Boldin to J. May	2/22/2012	LEI/AWP	No	No
CIV0390	Email from Agent Boldin to J. May	2/24/2012	LEI/AWP	No	No
CIV0391	Email from Agent Boldin to J. May	2/25/2012	LEI/AWP	No	No
CIV0392	Email from Agent Boldin to J. May	2/27/2012	LEI/AWP	Yes	No
CIV0393-CIV0394	Email from Agent Boldin to J. May	2/28/2012	LEI/AWP	Yes	No
CIV0395	Email from Agent Boldin to J. May	2/29/2012	LEI/AWP	No	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0396	Email from Agent Boldin to J. May	2/29/2012	LEI/AWP	No	No
CIV0397	Email from Agent Boldin to J. May	2/29/2012	LEI/AWP	No	No
CIV0398	Email from Agent Boldin to J. May	2/29/2012	LEI/AWP	No	No
CIV0399-CIV0400	Email from Agent Boldin to J. May	2/29/2012	LEI/AWP	No	No
CIV0401	Email from Agent Boldin to J. May	3/1/2012	LEI/AWP	No	No
CIV0402	Email from Agent Boldin to J. May	3/1/2012	LEI/AWP	No	No
CIV0403	Email from Agent Boldin to J. May	3/2/2012	LEI/AWP	No	No
CIV0404	Email from Agent Boldin to J. May	3/6/2012	LEI/AWP	No	No
CIV0405	Email from Agent Boldin to J. May	3/7/2012	LEI/AWP	No	No
CIV0406-CIV0407	Email from Agent Boldin to J. May	3/13/2012	LEI/AWP	No	No
CIV0408	Email from Agent Boldin to J. May	3/19/2012	LEI/AWP	No	No
CIV0409	Email from Agent Boldin to J. May	3/21/2012	LEI/AWP	No	No
CIV0410	Email from Agent Boldin to J. May	3/21/2012	LEI/AWP	No	No
CIV0411	Email from Agent Boldin to J. May	3/21/2012	LEI/AWP	No	No
CIV0412	Email from Agent Boldin to J. May	3/21/2012	LEI/AWP	No	No
CIV0413	Email from Agent Boldin to J. May	3/21/2012	LEI/AWP	No	No
CIV0414	Email from Agent Boldin to J. May	3/22/2012	LEI/AWP	No	No
CIV0415	Email from Agent Boldin to J. May	3/23/2012	LEI/AWP	No	No
CIV0416	Email from Agent Boldin to J. May	3/28/2012	LEI/AWP	No	No
CIV0417-CIV0418	Email from Agent Boldin to J. May	3/30/2012	LEI/AWP	No	No
CIV0419	Email from Agent Boldin to J. May	4/4/2012	LEI/AWP	Yes	No
CIV0420	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0421	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0422	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0423	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0424-CIV0426	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0427	Email from Agent Boldin to J. May	4/5/2012	LEI/AWP	No	No
CIV0428	Email from Agent Boldin to J. May	4/11/2012	LEI/AWP	No	No
CIV0429-CIV0430	Email from Agent Boldin to J. May	4/11/2012	LEI/AWP	Yes	No
CIV0431-CIV0432	Email from Agent Boldin to J. May	4/11/2012	LEI/AWP/DP	No	No
CIV0433	Email from Agent Boldin to J. May	4/11/2012	LEI/AWP/DP	No	No
CIV0434	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP/DP	No	No
CIV0435	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	Yes	No
		4/12/2012	LEI/AWP	No	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0436	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	No	No
CIV0437	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	No	No
CIV0438	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	No	No
CIV0439	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	Yes	No
CIV0440	Email from Agent Boldin to J. May	4/12/2012	LEI/AWP	No	No
CIV0441	Email from Agent Boldin to J. May	4/13/2012	LEI/AWP	No	No
CIV0442	Email from Agent Boldin to J. May	4/13/2012	LEI/AWP	Yes	No
CIV0443	Email from Agent Boldin to J. May	4/13/2012	LEI/AWP	No	No
CIV0444-CIV0445	Email from Agent Boldin to J. May	4/16/2012	LEI/AWP/DP	No	No
CIV0446	Email from Agent Boldin to J. May	4/17/2012	LEI/AWP	No	No
CIV0447	Email from Agent Boldin to J. May	4/18/2012	LEI/AWP	No	No
CIV0448	Email from Agent Boldin to J. May	4/18/2012	LEI/AWP	No	No
CIV0449	Email from Agent Boldin to J. May	4/18/2012	LEI/AWP	No	No
CIV0450	Email from Agent Boldin to J. May	4/18/2012	LEI/AWP	Yes	No
CIV0451	Email from Agent Boldin to J. May	4/19/2012	LEI/AWP	Yes	No
CIV0452	Email from Agent Boldin to J. May	4/19/2012	LEI/AWP	No	No
CIV0453	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	No	No
CIV0454-CIV0455	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	No	No
CIV0456	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	Yes	No
CIV0457	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	Yes	No
CIV0458	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	Yes	No
CIV0459	Email from Agent Boldin to J. May	4/20/2012	LEI/AWP	Yes	No
CIV0460	Email from Agent Boldin to J. May	4/23/2012	LEI/AWP	No	No
CIV0461	Email from Agent Boldin to J. May	4/23/2012	LEI/AW[	Yes	No
CIV0462	Email from Agent Boldin to J. May	4/23/2012	LEI/AWP	Yes	No
CIV0463	Email from Agent Boldin to J. May	4/23/2012	LEI/AWP	No	No
CIV0464	Email from Agent Boldin to J. May	4/23/2012	LEI/AWP	No	No
CIV0465-CIV0466	Email from Agent Boldin to J. May	4/23/2012	LEI/AWP	No	No
CIV0467	Email from Agent Boldin to J. May	4/24/2012	LEI/AWP/DP	No	No
CIV0468	Email from Agent Boldin to J. May	4/24/2012	LEI/AWP	Yes	No
CIV0469	Email from Agent Boldin to J. May	4/26/2012	LEI/AWP	Yes	No
CIV0470-CIV0471	Email from Agent Boldin to J. May	4/27/2012	LEI/AWP	No	No
CIV0472	Email from Agent Boldin to J. May	5/3/2012	LEI/AWP	No	No
		5/4/2012	LEI/AWP	No	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0473	Email from Agent Boldin to J. May	5/7/2012	LEI/AWP	Yes	No
CIV0474	Email from Agent Boldin to J. May	5/7/2012	LEI/AWP	Yes	No
CIV0475-CIV0476	Email from Agent Boldin to J. May	5/10/2012	LEI/AWP	No	No
CIV0477	Email from Agent Boldin to J. May	5/16/2012	LEI/AWP	Yes	No
CIV0478	Email from Agent Boldin to J. May	5/16/2012	LEI/AWP	Yes	No
CIV0479	Email from Agent Boldin to J. May	5/16/2012	LEI/AWP	No	No
CIV0480	Email from Agent Boldin to J. May	5/21/2012	LEI/AWP	No	No
CIV0481	Email from Agent Boldin to J. May	5/21/2012	LEI/AWP	No	No
CIV0482	Email from Agent Boldin to J. May	5/21/2012	LEI/AWP	No	No
CIV0483	Email from Agent Boldin to J. May	5/23/2012	LEI/AWP	No	No
CIV0484	Email from Agent Boldin to J. May	5/24/2012	LEI/AWP	Yes	No
CIV0485	Email from Agent Boldin to J. May	5/25/2012	LEI/AWP	No	No
CIV0486	Email from Agent Boldin to J. May	5/29/2012	LEI/AWP	Yes	Yes
CIV0487-CIV0488	Email from Agent Boldin to J. May	5/31/2012	LEI/AWP/DP	Yes	No
CIV0489-CIV0490	Email from Agent Boldin to J. May	6/1/2012	LEI/AWP/DP	Yes	No
CIV0491	Email from Agent Boldin to J. May	6/1/2012	LEI/AWP/DP	Yes	No
CIV0492	Email from Agent Boldin to J. May	6/2/2012	LEI/AWP	No	No
CIV0493	Email from Agent Boldin to J. May	6/4/2012	LEI/AWP	Yes	No
CIV0494	Email from Agent Boldin to J. May	6/5/2012	LEI/AWP	No	No
CIV0495	Email from Agent Boldin to J. May	6/6/2012	LEI/AWP	No	No
CIV0496	Email from Agent Boldin to J. May	6/6/2012	LEI/AWP	Yes	No
CIV0497	Email from Agent Boldin to J. May	6/6/2012	LEI/AWP	Yes	Yes
CIV0498	Email from Agent Boldin to J. May	6/6/2012	LEI/AWP	Yes	No
CIV0499	Email from Agent Boldin to J. May	6/6/2012	LEI/AWP	Yes	No
CIV500-CIV502	Email from Agent Boldin to J. May	6/7/2012	LEI/AWP	No	No
CIV503	Email from Agent Boldin to J. May	6/7/2012	LEI/AWP	No	No
CIV504	Email from Agent Boldin to J. May	6/9/2012	LEI/AWP	Yes	No
CIV505	Email from Agent Boldin to J. May	6/11/2012	LEI/AWP	No	No
CIV506-CIV507	Email from Agent Boldin to J. May	6/12/2012	LEI/AWP	Yes	No
CIV508-CIV509	Email from Agent Boldin to J. May	6/13/2012	LEI/AWP/DP	No	No
CIV510	Email from Agent Boldin to J. May	6/14/2012	LEI/AWP	No	No
CIV511	Email from Agent Boldin to J. May	6/15/2012	LEI/AWP	Yes	No
CIV512	Email from Agent Boldin to J. May	6/15/2012	LEI/AWP	Yes	No

Civil Division
DISCLOSURES LIST

Bates Stamp Numbers	Document Name	Date	Privilege	Disclosure per trial court	Disclosure per Court of Appeals
CIV0513	Email from Agent Boldin to J. May	6/20/2012	LEI/AWP	Yes	No
CIV0514	Email from Agent Boldin to J. May	6/21/2012	LEI/AWP	No	No
CIV0515	Email from Agent Boldin to J. May	6/27/2012	LEI/AWP	No	No
CIV0516	Email from Agent Boldin to J. May	6/29/2012	LEI/AWP	No	No
CIV0517-CIV0518	Email from Agent Boldin to J. May	6/29/2012	LEI/AWP	No	No
CIV0519	Email from Agent Boldin to J. May	7/5/2012	LEI/AWP	No	No
CIV0520	Email from Agent Boldin to J. May	7/5/2012	LEI/AWP	Yes	No
CIV0521	Email from Agent Boldin to J. May	7/6/2012	LEI/AWP	Yes	No
CIV0522	Email from Agent Boldin to J. May	7/6/2012	LEI/AWP	Yes	No
CIV0523	Email from Agent Boldin to J. May	7/11/2012	LEI/AWP	No	No
CIV0524	Email from Agent Boldin to J. May	7/11/2012	LEI/AWP	Yes	Yes
CIV0525	Email from Agent Boldin to J. May	7/12/2012	LEI/AWP	No	No
CIV0526-CIV0527	Email from Agent Boldin to J. May	7/12/2012	LEI/AWP	No	No
CIV0528	Email from Agent Boldin to J. May	7/13/2012	LEI/AWP	No	No
CIV0529-CIV0530	Email from Agent Boldin to J. May	7/13/2012	LEI/AWP	No	No
CIV0531	Email from Agent Boldin to J. May	7/13/2012	LEI/AWP	No	No
CIV0532	Email from Agent Boldin to J. May	7/13/2012	LEI/AWP	Yes	No
CIV0533	Email from Agent Boldin to J. May	7/16/2012	LEI/AWP	No	No
CIV0534	Email from Agent Boldin to J. May	7/17/2012	LEI/AWP	Yes	No
CIV0535	Email from Agent Boldin to J. May	7/19/2012	LEI/AWP	Yes	No
CIV0536-CIV0537	Email from Agent Boldin to J. May	7/21/2012	LEI/AWP	No	No
CIV0538	Email from Agent Boldin to J. May	7/26/2012	LEI/AWP	No	No
CIV0539-CIV0540	Email from Agent Boldin to J. May	8/2/2012	LEI/AWP	Yes	No
CIV0541-CIV0542	Email from Agent Boldin to J. May	8/7/2012	LEI/AWP	No	No
CIV0543-CIV0544	Email from Agent Boldin to J. May	8/7/2012	LEI/AWP	No	No
CIV0545	Email from Agent Boldin to J. May	8/8/2012	LEI/AWP	No	No
CIV0546	Email from Agent Boldin to J. May	8/8/2012	LEI/AWP	No	No
CIV0547	Email from Agent Boldin to J. May	8/16/2012	LEI/AWP	No	No
CIV0548	Email from Agent Boldin to J. May	8/17/2012	LEI/AWP	Yes	Yes
CIV0549	Email from Agent Boldin to J. May	8/17/2012	LEI/AWP	No	No
CIV0550	Email from Agent Boldin to J. May	8/21/2012	LEI/AWP	No	No
CIV0551	Email from Agent Boldin to J. May	8/29/2012	LEI/AWP	No	No
CIV0552	Email from Agent Boldin to J. May	8/29/2012	LEI/AWP	No	No

DISCLOSURES LIST

<u>Bates Stamp Numbers</u>	<u>Document Name</u>	<u>Date</u>	<u>Privilege</u>	<u>Disclosure per trial court</u>	<u>Disclosure per Court of Appeals</u>
CIV0553	Email from Agent Boldin to J. May	9/6/2012	LEI/AWP	No	No
CIV0554	Email from Agent Boldin to J. May	9/7/2012	LEI/AWP	No	No
CIV0555	Email from Agent Boldin to J. May	10/10/2012	LEI/AWP	No	No
CIV0556	Email from Agent Boldin to J. May	10/10/2012	LEI/AWP	No	No
CIV0557-CIV0558	Email from Agent Boldin to J. May	10/11/2012	LEI/AWP	No	No
CIV0559	Email from Agent Boldin to J. May	10/12/2012	LEI/AWP	Yes	No
CIV0560	Email from Agent Boldin to J. May	10/16/2012	LEI/AWP	No	No
CIV0561	Email from Agent Boldin to J. May	10/18/2012	LEI/AWP	Yes	Yes
CIV0562	Email from Agent Boldin to J. May	10/23/2012	LEI/AWP	No	No
CIV0563-CIV0564	Email from Agent Boldin to J. May	10/24/2012	LEI/AWP	No	No
CIV0565	Email from Agent Boldin to J. May	10/27/2012	LEI/AWP	No	No
CIV0566	Email from Agent Boldin to J. May	11/1/2012	LEI/AWP	No	No
CIV0567	Email from Agent Boldin to J. May	11/1/2012	LEI/AWP	No	No
CIV0568	Email from Agent Boldin to J. May	11/7/2012	LEI/AWP	No	No
CIV0569	Email from Agent Boldin to J. May	11/8/2012	LEI/AWP	Yes	No
CIV0570-CIV0573	Email from Agent Boldin to J. May	11/15/2012	LEI/AWP/DP	No	No
CIV0574	Email from Agent Boldin to J. May	11/15/2012	LEI/AWP	No	No
CIV0575-CIV0576	Email from Agent Boldin to J. May	11/15/2012	LEI/AWP/DP	No	No
CIV0577	Email from Agent Boldin to J. May	11/20/2012	LEI/AWP	No	No
CIV0578	Email from Agent Boldin to J. May	11/20/2012	LEI/AWP	No	No
CIV0579	Email from Agent Boldin to J. May	11/20/2012	LEI/AWP	No	No
CIV0580-CIV0582	Email from Agent Boldin to J. May	11/23/2012	LEI/AWP/DP	No	No
CIV0583-CIV0584	Email from Agent Boldin to J. May	11/24/2012	LEI/AWP/DP	No	No
CIV0585	Email from Agent Boldin to J. May	12/1/2012	LEI/AWP	No	No
CIV0586-CIV0587	Email from Agent Boldin to J. May	12/3/2012	LEI/AWP	No	No
CIV0588	Email from Agent Boldin to J. May	12/3/2012	LEI/AWP	No	No
CIV0589	Email from Agent Boldin to J. May	12/4/2012	LEI/AWP	No	No
CIV0590	Email from Agent Boldin to J. May	12/5/2012	LEI/AWP	No	No
CIV0591-CIV0593	Email from Agent Boldin to J. May	12/6/2012	LEI/AWP	Yes	No
CIV0594	Email from Agent Boldin to J. May	12/10/2012	LEI/AWP	Yes	No
CIV0595	Email from Agent Boldin to J. May	12/17/2012	LEI/AWP	Yes	Yes