

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> ANGELA M. FORD, ESQ.,	:	
	:	CASE NO. 2015-1470
Relator,	:	
	:	
-vs-	:	ORIGINAL ACTION
	:	IN PROHIBITION
HONORABLE ROBERT P. RUEHLMAN,	:	AND MANDAMUS
	:	
Respondent.	:	

MOTION OF STANLEY M. CHESLEY AND THE LAW FIRM OF WAITE,
SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A. TO INTERVENE

VOLUME I OF V

John W. Zeiger, Esq. (0010707)
Marion H. Little, Jr., Esq. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@lito.io
little@lito.io

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co., L.P.A.*

Donald J. Rafferty, Esq. (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co., L.P.A.*

James W. Harper, Esq. (0009872)
Michael J. Friedmann, Esq. (0090999)
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3159
Fax: (513) 946-3018
Email: James.Harper@hcpros.org
Email: michael.friedmann@hcpros.org

*Attorneys for Respondent
the Honorable Robert P. Ruehlman*

Brian S. Sullivan, Esq. (0040219)
Christen M. Steimle, Esq. (0086592)
Dinsmore & Shohl, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
Email: brian.sullivan@dinsmore.com
Email: christen.steimle@dinsmore.com

Attorneys for Relator Angela M. Ford

Vincent E. Mauer, Esq. (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax: (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Proposed Intervenor
Stanley M. Chesley*

MOTION TO INTERVENE

Pursuant to Rule 24(A)(2) of the Ohio Rules of Civil Procedure (made applicable to this Original Action by S.Ct.Prac.R. 12.01), Stanley M. Chesley (“Mr. Chesley”) and Waite, Schneider, Bayless & Chesley Co., L.P.A. (the “Waite Firm”) (collectively, the “Proposed Intervenors”) move to intervene as Respondents in this case. As set forth in the attached Memorandum in Support, the Proposed Intervenors have a direct interest in the issues raised by Relator’s Complaint, the Proposed Intervenors cannot expect that their interests will necessarily be fully represented by the existing parties, and the current parties will not be prejudiced by this intervention.

Pursuant to Civil Rules 24(C) and 7(A), the Proposed Intervenors attach as Exhibit A their proposed Answer to Relator’s Complaint they will file upon this Court’s ruling. Additionally, as Exhibit B, Respondents are tendering their proposed Motion for Judgment on the Pleadings.

Respectfully submitted,

/s/ Marion H. Little, Jr.

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@litohio.com
little@litohio.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Donald J. Rafferty

Donald J. Rafferty (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Vincent E. Mauer

Vincent E. Mauer (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Proposed Intervenor
Stanley M. Chesley*

MEMORANDUM IN SUPPORT

I. LAW AND ARGUMENT

A. The Proposed Intervenors Satisfy The Requirements For Intervention As Of Right, As Set Forth In Civil Rule 24(A)(2).

Rule 24(A)(2) of the Ohio Rules of Civil Procedure states:

Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

This Court has held that Rule 24(A) must be liberally construed to permit intervention. See, e.g., State ex rel. Dep't of Admin. Services v. State Employment Relations Bd., 54 Ohio St. 3d 48, 51 (1990). This is particularly so in actions for extraordinary writs where, as here, a party seeking leave to intervene is a party to the underlying action and the relator is an opposing party seeking relief from this Court that would effectively terminate the underlying action in relator's favor. See, e.g., State ex rel. Watkins v. Eighth District Court of Appeals, 82 Ohio St. 3d 532, 534 (1998) (noting "Cleveland Clinic seeks to intervene as a respondent. Cleveland Clinic is the appellant in the underlying proceeding ...").

Ohio courts, as well as federal courts applying the similar Federal Rule 24, hold that intervention as of right must be granted upon satisfaction of four requirements derived from the text of the Rule: (1) if the application to intervene is timely; (2) if the intervenor has an interest relating to the subject matter of the main action; (3) if the intervenor's interest would be at least potentially impaired by the disposition of that action; and (4) if the intervenor's interest may not be adequately represented by one of the existing parties to the action. All four requirements are readily satisfied here.

1. This Motion To Intervene Is Timely Filed.

The Motion is Timely. Relator's Complaint was filed with this Court on September 4, 2015. Respondent has filed a brief in response to Relator's Motion for Emergency Stay, but the Court's Order of September 17 made clear that the Respondent may revise or supplement his response within the time allowed by Rule 12.04. The answer date under 12.04 is twenty-one days after service of the summons, or October 2. The instant motion is, therefore, timely filed with the answer date prescribed by both Rule 12.04 and this Court's order of September 17. Accordingly, intervention will cause no delay or prejudice to any party.

2. The Proposed Intervenors Have An Interest Relating To The Subject Of The Main Action.

The Proposed Intervenors have a direct and clear interest relating to the "property of transaction which is the subject of the action." Mr. Chesley and the Waite Firm are Plaintiffs, or Petitioners, in the underlying action, Stanley M. Chesley, et al. v. Angela M. Ford, Esq., et al., Case No. A1500067, currently pending in the Hamilton County Court of Common Pleas in the court of Respondent, the Hon. Robert P. Ruehlman (the "Hamilton County Action"). Mr. Chesley's Second Amended Verified Petition for Declaratory Judgment and Injunctive Relief spells out in detail the interests he seeks to protect in the Hamilton County Action, which would be terminated if Relator is victorious in this action.¹ In short, Mr. Chesley seeks to protect his rights under Ohio law with respect to Relator's attempts to collect on a judgment obtained in Kentucky state court in litigation styled Mildred Abbott, et al. v. Stanley M. Chesley, et al. (Boone County, Ky., Circuit Court Case No. 05-CI-00436) (the "Abbott Case"). The Hamilton

¹ Key pleadings in the Hamilton County action are attached to the Affidavit of Vincent E. Mauer, Esq., which is attached hereto as Exhibit C. Mr. Chesley's Second Amended Verified Petition is contained in Exhibit 11 to the affidavit. The court granted leave to file the Second Amended Verified Petition by an order issued August 26, 2015.

County court has recognized Mr. Chesley's interests, in part, by granting temporary injunctive relief against Relator and others.

The Waite Firm is also a party to the Hamilton County Action, having been granted leave to intervene. The Waite Firm's Complaint for Declaratory and Injunctive Relief challenges Relator's attempts to attach or otherwise interfere with its assets or operations by various activities conducted outside Ohio, which include attempting to seize assets of the Waite Firm by seeking an order in the Kentucky Case requiring it to "transfer" Mr. Chesley's beneficial interest in the Waite Firm to Relator's clients and attempts to garnish payments to the Waite Firm in a Nevada garnishment proceeding.² As its Complaint notes, the Waite Firm is an Ohio entity, all of the Waite Firm's assets are located in Ohio, the Waite Firm is not a party to the Kentucky Case, and neither Relator nor her clients have ever asserted any claims against it.

Via her Complaint for an extraordinary writ from this Court, Relator seeks to terminate the Hamilton County Action. Necessarily, then, the Proposed Intervenors have the predominant interest in this matter.

3. The Proposed Intervenors' Interests May Be Impaired By The Court's Disposition In This Action.

Rule 24(A)(2) "allows intervention as of right when the applicant claims an interest that may be impaired by the disposition of the action." *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St. 3d 245, 247 (1992). Indeed, intervention should be routinely granted where the proposed intervenor has an interest in defending against the arguments advanced by the relator. *See id.*

This requirement is easily met. If Relator succeeds in obtaining the extraordinary remedy requested from this Court, the Proposed Intervenors' claims in the Hamilton County Action will be impaired. As such, the Proposed Intervenors clearly possess a sufficient interest in this case

² A copy of the Waite Firm's Complaint for Declaratory and Injunctive Relief is attached as Exhibit 16 to the Mauer affidavit, which is attached hereto as Exhibit C.

to intervene because Relator's sole purpose in petitioning this Court is to prevent the Proposed Intervenors from acting to protect their rights in the Hamilton County Action. See, e.g., State ex rel. SuperAmerica Corp. v. Licking County Bd. of Elections, 80 Ohio St. 3d 182, 184 (1997) (holding referendum petitioner seeking to intervene has an interest in relator's attempt to prevent board of elections from placing referendum on ballot).

4. The Proposed Intervenors' Interests May Not Be Adequately Represented By The Existing Parties.

The requirement that a party must be permitted to intervene as of right if his or her interests may not be adequately represented by existing parties "should be treated as minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972). It is satisfied "if the applicant shows that representation of his interest 'may be' inadequate." Id. (citation omitted).

Obviously, Relator is an existing party whose interests are diametrically opposed to the Proposed Intervenors. As to Respondent, the issue is not whether Respondent opposes Relator's Complaint or is represented by competent counsel. Rather, the issue is whether the interests of the Proposed Intervenors are the same as Respondent's interests. Clearly, they are not the same. While Respondent has opposed Relator's Complaint, Respondent's ultimate duty, of course, is to be an impartial adjudicator of the Proposed Intervenors' rights in the Hamilton County Action. Only the Proposed Intervenors can adequately represent and advocate for their own interests in allowing the Hamilton County Action to proceed.

B. Alternatively, the Proposed Intervenors Satisfy The Requirements For Permissive Intervention Set Forth in Civil Rule 24(B)(2).

The Proposed Intervenors also readily satisfy the requirements for permissive intervention under Rule 24(B)(2), which allows intervention if timely requested and "when an applicant's claim or defense and the main action have a question of law or fact in common."

Under Rule 24(B)(2), whether existing parties may adequately represent a proposed intervenor's right is not even a consideration. The Proposed Intervenors' claims in the Hamilton County Action clearly have a "question of law or fact in common" with the issues in Relator's petition for extraordinary writ, so the Court may grant permissive intervention in the alternative.

II. CONCLUSION

For the above reasons, the Proposed Intervenors request that the Court allow them to intervene in this action.

Respectfully submitted,

/s/ Marion H. Little, Jr.

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@litohio.com
little@litohio.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Donald J. Rafferty

Donald J. Rafferty (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Proposed Intervenor
Stanley M. Chesley*

CERTIFICATE FOR SERVICE

The undersigned certifies that on this 5th day of October, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, and electronic mail pursuant to Civil Rule 5(B)(2)(c) and (f) on:

Brian S. Sullivan, Esq.
Christen M. Steimle, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Attorneys for Relator Angela M. Ford

James W. Harper, Esq.
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

*Attorneys for Respondent
the Honorable Robert P. Ruehlman*

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)

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: CASE NO. 2015-1470
Relator, :
: :
-vs- : ORIGINAL ACTION
: IN PROHIBITION
HONORABLE ROBERT P. RUEHLMAN, : AND MANDAMUS
: :
Respondent. :

ANSWER OF INTERVENING RESPONDENTS STANLEY M. CHESLEY AND THE
LAW FIRM OF WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A. TO
RELATOR ANGELA FORD'S COMPLAINT FOR WRITS OF PROHIBITION AND
MANDAMUS AND ALTERNATIVE WRIT

John W. Zeiger, Esq. (0010707)
Marion H. Little, Jr., Esq. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@lito.io
little@lito.io

*Attorneys for Intervenor
Waite, Schneider, Bayless & Chesley Co., L.P.A.*

Donald J. Rafferty, Esq. (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Intervenor
Waite, Schneider, Bayless & Chesley Co., L.P.A.*

James W. Harper, Esq. (0009872)
Michael J. Friedmann, Esq. (0090999)
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3159
Fax: (513) 946-3018
Email: James.Harper@hcpros.org
Email: michael.friedmann@hcpros.org

*Attorneys for Respondent
the Honorable Robert P. Ruehlman*

Brian S. Sullivan, Esq. (0040219)
Christen M. Steimle, Esq. (0086592)
Dinsmore & Shohl, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
Email: brian.sullivan@dinsmore.com
Email: christen.steimle@dinsmore.com

Attorneys for Relator Angela M. Ford

**EXHIBIT
A**

Vincent E. Mauer, Esq. (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax: (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Intervenor
Stanley M. Chesley*

FIRST DEFENSE

For their answer to Relator Angela Ford, Esq.'s Complaint For Writs Of Prohibition And Mandamus And Alternative Writ (the "Complaint"), Intervening Respondents Stanley M. Chesley ("Chesley") and Waite, Schneider, Bayless & Chesley Co., L.P.A. (the "Waite Firm" hereby state as follows:

The Complaint starts with a multi-page "Introduction" that is comprised of legal propositions to which no response is necessary. Intervening Respondents Chesley and the Waite Firm disagree with almost all of the statements in that Introduction. Lest there be any doubt, Chesley and the Waite Firm state that their legal positions include:

A. Chesley is not without legal rights in Ohio. Irrespective of the judgment in the Kentucky proceedings, Chesley retains substantive rights (*e.g.*, exemptions from the seizure of certain assets) and procedural rights. Ford admits that certain procedural rights are applicable. Ford and Chesley dispute, however, the applicability of certain other procedural rights. The issue presented in *Stanley M. Chesley, et al. v. Angela M. Ford, et al.*, Hamilton County Common Pleas Case No. A150067 (the "Hamilton County Litigation") is very simple: Chesley and Ford dispute the existence and application of certain procedural rights in Ohio;

B. If Chesley is correct and the judgment entered in Kentucky (the "Judgment") lacks certain characteristics required for the creation of a valid Ohio judgment, then it is appropriate to enjoin the domestication and enforcement of the Judgment in Ohio until the deficiencies are corrected;

C. Accordingly, there is a live case and controversy between Chesley and the respondents in the Hamilton County Litigation;

D. Relief against Ford is necessary given her intentional and malicious interference with Chesley and the Waite Firm's contractual and legal rights;

E. The orders issued to date by Judge Ruehlman are supported by Ohio law and within Judge Ruehlman's authority as a judge in the Hamilton County, Ohio, Court of Common Pleas;

F. The "interference" alleged in the Introduction is, in fact, Judge Ruehlman's protection of the due process rights of certain Ohioans who are not parties to the Abbott Action (as defined in the Complaint). Ohio law specifically permits the challenge of a foreign court's decisions that violate the due process rights of Ohio citizens;

G. Any delay in the handling of the Hamilton County Litigation was caused by Ford's procedural antics and motion practice. Moreover, as the person with the knowledge sought by Chesley, Ford is and always has been in control of the decision not to comply with Ohio law and proceed with the domestication of the Judgment in Ohio; and

H. Relator neither needs nor is entitled to this Court's assistance. No writ should be issued in this matter.

As for the numbered paragraphs in the Complaint, the Intervening Respondents state:

1. Paragraph 1 of the Complaint is admitted.

2. Paragraph 2 of the Complaint accurately states the relief sought by the Complaint.

Ford is not entitled to any of the relief sought in the Complaint.

3. Paragraph 3 of the Complaint accurately states the assertions made in the Complaint. All of those assertions are wrong. As a result, Ford is not entitled to any of the relief described in paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint is admitted except that Chesley and the Waite Firm deny that Chesley represented “those plaintiffs” as described in paragraph 4 or that he retained any settlement funds as described in paragraph 4.

5. Paragraph 5 of the Complaint is admitted.

6. In response to paragraph 6 of the Complaint, Chesley and the Waite Firm admit that in 2007 a judgment was awarded in the action described in the Complaint as the “Abbott Action.” That judgment was not against Chesley. In fact, the Kentucky trial court that awarded summary judgment against certain Abbott Action defendants declined to award summary judgment against Chesley. The Kentucky Supreme Court affirmed both determinations.

7. In response to paragraph 7 of the Complaint, Chesley and the Waite Firm admit that Chesley was disbarred in Kentucky.

8. Paragraph 8 of the Complaint is admitted.

9. Paragraph 9 of the Complaint is admitted.

10. Paragraph 10 of the Complaint is admitted.

11. Paragraph 11 of the Complaint is admitted. Chesley and the Waite Firm admit that Chesley asked the Kentucky court hearing the Abbott Action to correct the deficiencies in the Judgment. The Kentucky court determined that the Judgment is adequate for enforcement in Kentucky by the court that issued the Judgment. That determination is irrelevant to the action pending before Judge Ruehlman because that action applies Ohio law to a judgment created from a foreign judgment that might be enforced in Ohio. Ohio law applies to the characteristics of a domesticated foreign judgment that might be enforced in Ohio.

12. Paragraph 12 of the Complaint is admitted.

13. Paragraph 13 of the Complaint is admitted.

14. Paragraph 14 of the Complaint is admitted.

15. Paragraph 15 of the Complaint is admitted.

16. In response to paragraph 16 of the Complaint, Chesley and the Waite Firm admit that Chesley initiated litigation in Ohio against Ford and her alleged 382 judgment creditors, whom she stated are “unknown,”; in the Hamilton County Litigation, Ford admits that (a) the 2007 Kentucky judgment and its 2014 incarnation against Chesley (the “Judgment”) is in favor of the group of entities known as the “Plaintiffs” in the Abbott Action, (b) not all the approximately 463 individuals who have been named as plaintiffs in one or more pleadings filed by Ford in the Abbott Action are Chesley’s judgment creditors, and (c) the Judgment does not detail which of the 460-plus named plaintiffs are the “Plaintiffs” who are Chesley’s judgment creditors. The Waite Firm later intervened to protect its separate interests from Ford’s actions and tortious interference.

17. Paragraph 17 of the Complaint is denied. The Hamilton County Litigation seeks a declaratory judgment concerning Ohio law applicable to enforceable judgments in Ohio and an injunction requiring that any counsel, including Ford, obey Ohio law if they seek to domesticate and enforce the Judgment in Ohio. Ford’s actions and stated intent is to disobey applicable Ohio law.

18. In response to paragraph 18 of the Complaint, Chesley and the Waite Firm admit that Chesley seeks to know: (i) who are his judgment creditors, (ii) how much is currently owed to each judgment creditor, and (iii) the total amount owed – including sufficient information that Chesley may confirm the amount owed [the necessary information must permit the calculation of prejudgment and post-judgment interest that Ford assets is owed]. Chesley asserts that under

Ohio law, a judgment that does not disclose this information cannot be enforced in Ohio; Ford disputes Chesley's interpretation of Ohio law on this topic.

19. In response to paragraph 19 of the Complaint, Chesley and the Waite Firm state that Chesley raised the deficiencies in the Judgment to the Kentucky court hearing the Abbott Action. Chesley and the Waite Firm deny that the Kentucky court rejected his arguments. Rather, Ford asserted to the Kentucky court and the Kentucky court agreed that it could refer to other parts of the record in the 10-year-old Abbott Action to eliminate the deficiencies in the Judgment.¹ That ruling in Kentucky is irrelevant to the Hamilton County Litigation because: (i) it construed Kentucky law, not Ohio law, and (ii) an Ohio court (or any other foreign court enforcing the domesticated Judgment) would not have access to the huge record accumulated over the 10 years of the Abbott Action.

20. Paragraph 20 of the Complaint is denied.

21. Paragraph 21 of the Complaint requires no response as it asserts a legal proposition. Chesley and the Waite Firm agree that filing a certified copy of a foreign judgment is one of the requirements for the domestication of a foreign judgment using the Uniform Enforcement of Foreign Judgments Act (the "UEFJA").

22. In response to paragraph 22 of the Complaint, Chesley and the Waite Firm state that Chesley agrees that filing an affidavit is one of the requirements for the domestication of a foreign judgment using the UEFJA. Further answering, Chesley notes that Ford executed UEFJA affidavits in Louisiana, Nevada, and Colorado; each of those affidavits failed to: (i) reconcile the supposed 382 judgment creditors "Plaintiffs" with the 460-plus named plaintiffs in the Abbott Action; (ii) provide the complete addresses of each of the judgment creditors; (iii)

¹ For example, the record in the Abbott Action supposedly contains a grid created before 2004 that shows the amount owed to each judgment creditor. If it exists and contains the asserted data (including calculated damages that total to \$42,000,000), that grid is not part of, or referred to, in the Judgment.

state the amount owed to each judgment creditor; and (iv) state the total amount owed by Chesley, including a disclosure of how that amount was determined. Ford's actions demonstrate her intentional violation the requirements of the UEFJA.

23. Paragraph 23 of the Complaint is denied.

24. In response to paragraph 24 of the Complaint, Chesley and the Waite Firm state that Chesley agrees that a temporary stay is supposed to be one of the requirements for the domestication of a foreign judgment using the UEFJA. Further responding, Chesley notes that in Louisiana, with Ford's participation, an executable judgment was issued against him one day after the improper domestication of the Judgment that did not contain the required information.

25. Paragraph 25 of the Complaint is denied.

26. Paragraph 26 of the Complaint is denied.

27. Paragraph 27 of the Complaint is denied. Chesley agrees that the collection activities of judgment creditors and their counsel are supposed to be limited by the amount remaining on the judgment; but, that limitation is meaningless if the remaining amount owed is not disclosed to the foreign state enforcing the judgment.² Further answering, Chesley asserts that Ford has never disclosed the amount she has collected on behalf of the judgment creditors and the amount disclosed by Ford in her three UEFJA affidavits is incorrect. Chesley's factual assertions concerning the amounts collected on behalf of the judgment creditors is stated in his petition filed the Hamilton County Common Pleas Court.

28. Paragraph 28 of the Complaint requires no response as it merely quotes an Ohio statute. Further answering, Chesley and the Waite Firm deny Ford's implication that the only way to stay enforcement of a deficient foreign judgment is to follow the terms of the quoted

² The threat of over-collection is particularly egregious if assets are seized from innocent third parties as Ford has threatened to do in her effort to collect the Judgment.

statute. To the contrary, enforcement of a deficient judgment may be enjoined by a Common Pleas Court judge using the equitable powers of that office.

29. Paragraph 29 of the Complaint requires no response as it merely quotes an Ohio statute.

30. Paragraph 30 of the Complaint is denied. Further answering, Chesley and the Waite Firm assert that Ford has a pecuniary interest in the collection of the Judgment, Ford has threatened to take collection in Ohio, and that Ford has assisted the judgment creditors' efforts to domesticate the Judgment in three other states; those facts demonstrate Ford's direct personal involvement in the threatened improper domestication and enforcement of the Judgment in Ohio. Chesley has stated a cause of action for the declaration and enforcement of Ohio law. If Chesley is successful, the resulting declaration and enforcement will directly impact Ford. Moreover, Ford's actions as to the Waite Firm and its assets plainly interfere with the Waite Firm's ability to resolve and pay its own direct creditors and to otherwise wind down its affairs.

31. In response to paragraph 30 of the Complaint, Chesley and the Waite Firm admit that Judge Ruehlman entered an order on January 7, 2015.

32. In response to paragraph 32 of the Complaint, Chesley and the Waite Firm state that Judge Ruehlman's order speaks for itself and that Ford's partial quotation thereof is misleading.

33. Paragraph 33 of the Complaint is neither denied nor admitted. If Ford is unable to do a particular action as she asserts in paragraph 33, then Judge Ruehlman's order did not in fact restrain Ford from taking that action.

34. In response to paragraph 34 of the Complaint, Chesley and the Waite Firm state that Judge Ruehlman's order speaks for itself.

35. In response to paragraph 35 of the Complaint, Chesley and the Waite Firm state that Judge Ruehlman's order speaks for itself. Further answering, Chesley and the Waite Firm state that Ford sought and received asset-related discovery from multiple Ohio-based entities amongst the ten entities that received third-party subpoenas issued in Kentucky. Further, Ford sought and received in Kentucky commissions to take depositions of at least three non-party Ohioans. Despite her protestations, Ford has not been prevented from obtaining information from Ohioans concerning Chesley's assets and financial transactions.

36. Paragraph 36 of the Complaint is denied. The January 14, 2015, order was entered after a scheduled hearing. Ford had actual notice of the January 14th hearing before that date, and Ford had copies of Chesley's filings in Ohio before January 14th. Ford chose not to attend on January 14th hearing.

37. In response to paragraph 37 of the Complaint, Chesley and the Waite Firm state that Judge Ruehlman's January 14, 2015, order speaks for itself.

38. Paragraph 38 of the Complaint is denied for lack of information sufficient to form knowledge or belief.

39. Paragraph 39 of the Complaint is denied. In fact, domestication of the Judgment in Ohio has never been stayed. Domestication of the Judgment has always been an option if that domestication included compliance with Ohio law, specifically including but not limited to: (i) correctly naming the judgment creditors and why not all the named plaintiffs in the Abbott Action are "Plaintiffs" for purposes of the Judgment;³ (ii) providing the complete address of the

³ A second "who are the judgment creditors" uncertainty arises from the fact that Ford admitted that some of the Abbott Action judgment creditors have died over the past ten years. Ford's own UEFJA affidavits include certain probate estates as supposed judgment creditors. In addition, some of the Abbott Action judgment creditors' claims against Chesley were transferred by those persons' bankruptcy filings. None of those probate estates or bankruptcy estates are named as plaintiffs in the Abbott Action, so the Judgment is not in favor of any of them because the Judgment is in favor of "Plaintiffs."

judgment creditors;⁴ (iii) stating the separate amount owed to each judgment creditor; and (iv) stating the total owed by Chesley, including information required for Chesley to be able to verify that asserted amount.

40. In response to paragraph 40 of the Complaint, Chesley and the Waite Firm admit that Ford removed the Hamilton County Litigation to federal court.

41. In response to paragraph 41 of the Complaint, Chesley and the Waite Firm admit that Ford engaged in motion practice in federal court. Ford alleged the existence of diversity jurisdiction and that no Ohio court had personal jurisdiction over her despite the fact that she had several Ohio clients who are Chesley's supposed judgment creditors. Chesley and the Waite Firm also admit that Ford's motion practice in federal court required what the Complaint calls "several months," all of which delayed a hearing on Chesley's request for a permanent injunction.

42. In response to paragraph 42 of the Complaint, Chesley and the Waite Firm admit that he amended his original petition, in part, to identify some of the putative judgment creditors who reside in Ohio. Chesley discovered the addresses of those persons after extensive research. Of course, there would never have been any "unknown judgment creditors" or issues surrounding diversity if Ford had disclosed the names and addresses of Chesley's judgment creditors as Chesley previously requested.

43. Paragraph 43 of the Complaint is admitted.

44. Paragraph 44 of the Complaint is admitted.

45. Paragraph 45 of the Complaint is denied. Chesley and the Waite Firm admit that Judge Ruehlman's order remained in place, but disclosure of the required information would

⁴ In her three UEFJA filings, Ford did not provide complete addresses for the putative judgment creditors. It is nearly impossible to believe she does not know the addresses of her clients.

have met the terms of the order and permitted domestication of the Judgment in compliance with Ohio law. In other words, there would be no injunction if there was compliance with Ohio law.

46. Paragraph 46 of the Complaint is admitted.

47. In response to paragraph 47 of the Complaint, Chesley and the Waite Firm state that Judge Ruehlman's rationale and his order speak for themselves.

48. Paragraph 48 of the Complaint is denied.

49. In response to paragraph 49 of the Complaint, Chesley and the Waite Firm admit that Judge Ruehlman denied Ford's motion for the reasons Judge Ruehlman stated in open court.

50. Paragraph 50 of the Complaint is admitted to the extent that Ford did request that Chesley be required to post a bond or other security.

51. Paragraph 51 of the Complaint is admitted to the extent that Ford did request that Chesley be required to post a bond or other security.

52. In response to paragraph 52 of the Complaint, Chesley and the Waite Firm admit that Judge Ruehlman did not require him to post a bond or other security. Chesley and the Waite Firm deny that the Complaint accurately states all of the reasons a bond or other security was not required. In particular, the Complaint fails to deal with the fact that the period of time that Judge Ruehlman's orders were in force is completely within the discretion of the respondents in the Hamilton County Litigation because they always had the opportunity to comply with Ohio law.

53. Paragraph 53 of the Complaint is admitted.

54. Paragraph 54 of the Complaint is admitted.

55. Paragraph 55 of the Complaint is denied.

56. Paragraph 56 of the Complaint is admitted, except that Chesley and the Waite Firm deny the Wind-Up Agreement was never presented to Judge Ruehlman.

57. In response to paragraph 57 of the Complaint, Chesley and the Waite Firm state that the Wind-Up Agreements speaks for itself and that the Complaint's partial quotation of the Wind-Up Agreement is misleading.

58. Paragraph 58 of the Complaint is denied. The motion filed by Ford referred to in the Complaint sought the transfer of Chesley's interest in the shares of the Waite Firm. Chesley had no interest in those shares when that motion was filed in Kentucky.

59. Paragraph 59 of the Complaint is denied. The order referred to in the Complaint purports to direct that Chesley transfer Chesley's interest in the shares of the Waite Firm. Chesley had no interest in those shares when the motion was filed. The order referred to by the Complaint also purports to direct the activities of multiple entities who were not, and are not, parties to the Kentucky action.

60. Paragraph 60 of the Complaint is admitted.

61. Paragraph 61 of the Complaint is admitted.

62. Paragraph 62 of the Complaint is admitted.

63. Paragraph 63 of the Complaint is admitted.

64. Paragraph 64 of the Complaint is admitted.

65. Paragraph 65 of the Complaint is denied.

66. Paragraph 66 of the Complaint is admitted.

67. Paragraph 67 of the Complaint is admitted to the extent that it correctly states the date of the hearing and some of the topics discussed with Judge Ruehlman. The Complaint incorrectly states that the judgment creditors are or ever have been "the beneficiaries of the trust, created by the Wind-Up Agreement," The Complaint is also wrong when it states that the Waite Firm had no right to intervene in the Hamilton County Litigation.

68. Paragraph 68 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint.

69. Paragraph 69 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint.

70. Paragraph 70 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint

71. Paragraph 71 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint

72. Paragraph 72 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint.

73. Paragraph 73 of the Complaint inaccurately describes snippets of the hearing held before Judge Ruehlman and so Chesley and the Waite Firm deny that paragraph of the Complaint.

74. Paragraph 74 of the Complaint is denied. The Complaint refers to 170 days as the time during which Judge Ruehlman's orders had been in place. The Hamilton County Litigation respondents could have provided the required information and proceeded with their domestication efforts on any one of those 170 days.

75. Paragraph 75 of the Complaint is admitted.

76. Paragraph 76 of the Complaint is admitted.

77. Paragraph 77 of the Complaint is admitted.

78. Paragraph 78 of the Complaint is admitted. The Complaint somehow fails to disclose to the Court that the order tendered by the Waite Firm's counsel to Judge Ruehlman was fully consistent with the Waite Firm's motion that was argued and that Ford's counsel had a copy of the tendered order before the hearing. Ford's counsel was fully aware of what would be argued and the relief sought by the Waite Firm.

79. Paragraph 79 of the Complaint is admitted.

80. Paragraph 80 of the Complaint is admitted except that the changes to the Waite Firm's tendered order entered by Judge Ruehlman were more than minimal.

81. Paragraph 81 of the Complaint is admitted.

82. Paragraph 82 of the Complaint fails to accurately summarize the hearing and Judge Ruehlman's concerns. The Complaint fails to mention that Ford in fact received substantial documents from Clark Schaeffer & Hackett (the Waite Firm's accountant) and Fifth Third Bank (the Waite Firm's bank).

83. Paragraph 83 of the Complaint is admitted. Judge Ruehlman's order is an accurate statement of the law.

84. Paragraph 84 of the Complaint is admitted, but the statement is irrelevant. The Waite Firm never has been a party to the Abbott Action, and the Wind-Up Agreement was at issue in the Hamilton County Litigation long before it was at issue in the Abbott Action. Hence, the date that the Abbott Action was filed is irrelevant because the Hamilton County Litigation in fact had those issues under consideration before they were raised in the Abbott Action.

85. Paragraph 85 of the Complaint is denied.

86. Paragraph 86 of the Complaint is admitted, except that snippet of Judge Ruehlman's order misconstrues that order.

87. Paragraph 87 of the Complaint is admitted, but that snippet of Judge Ruehlman's order misconstrues that order. The Complaint fails to mention that, *inter alia*, Judge Ruehlman's order protected his first attached jurisdiction over the Waite Firm, the Wind-Up Agreement. Further, Judge Ruehlman's order prevented the violation of Ohio law and the improper seizure of assets from Ohioans as threatened by Ford, including non-judgment debtors (Mr. Rehme, the Waite Firm, the Waite Firm's employees, and the Waite Firm's other creditors) are all non-parties to the Abbott Action.

88. Paragraph 88 of the Complaint is denied.

89. Paragraph 89 of the Complaint is admitted, but that snippet of Judge Ruehlman's order misconstrues that order.

90. Paragraph 90 of the Complaint is admitted, but that snippet of Judge Ruehlman's order misconstrues that order.

91. Paragraph 91 of the Complaint is denied. The Complaint fails to mention that Mr. Rehme and the Waite Firm are not parties to the Abbott Action and the Kentucky court never asserted that it had jurisdiction over them. Further answering, Chesley and the Waite Firm assert that the paragraphs 82 through 91 of the Complaint demonstrate the existence of a case and controversy between (i) the Waite Firm and Mr. Rehme and (ii) Ford and the judgment creditors.

92. Paragraph 92 of the Complaint is admitted.

93. Paragraph 93 of the Complaint is denied. Ford and the judgment creditors chose not to obey Ohio law and Judge Ruehlman's order by disclosing the required information. Those

parties could have complied with Ohio law and domesticated the Judgment in Ohio in substantially less than 217 days.

94. Paragraph 94 is admitted.

95. Paragraph 95 of the Complaint is denied.

96. Paragraph 96 of the Complaint is denied in that it does not accurately reflect the hearing held by Judge Ruehlman. Further answering, Chesley and the Waite Firm state that in press interviews after the hearing, Ms. Boggs disclosed that she has filed for bankruptcy. Chesley has since discovered that Ms. Boggs filed for bankruptcy in November 2014.⁵ A review of Ms. Boggs' bankruptcy petition reveals that she failed to disclose her judgment against Chesley as an asset. As a matter of federal law, Ms. Boggs' judgment against Chesley became an asset of her bankruptcy estate;⁶ despite that fact, the three UEFJA affidavits executed by Ford in 2015 assert that Ms. Boggs and not her bankruptcy estate is one of Chesley's judgment creditors.

97. Paragraph 97 of the Complaint is admitted. Further answering, Chesley and the Waite Firm assert that: (i) Ford's counsel stated to Judge Ruehlman that they do not represent Ms. Boggs, and (ii) Ms. Boggs misled Judge Ruehlman as a matter of law by asserting that she has a claim against Chesley when that assertion is legally incorrect.

98. Paragraph 98 of the Complaint is admitted. Further answering, Chesley and the Waite Firm state that his counsel informed Judge Ruehlman and Ms. Boggs that she was named as a respondent in the Hamilton County Litigation because Ford asserted she was one of Chesley's judgment creditors.

⁵ As Boggs' counsel with respect to collection of the Judgment, Ford should have known of Boggs' bankruptcy.

⁶ See 11 U.S.C. § 522.

99. Paragraph 99 of the Complaint is admitted.

100. Paragraph 100 of the Complaint is admitted, but that snippet of Judge Ruehlman's conversations misconstrues the hearing.

101. Paragraph 101 of the Complaint is admitted, except for the assertion that the presence of several specifically named judgment creditors is fraudulent joinder, a proposition that was rejected by the federal court judge in his remand decision.

102. Paragraph 102 of the Complaint is denied. Further answering, Chesley and the Waite Firm state that his decision not seek a money judgment against the judgment creditors does not mean Chesley has abandoned his stated desire for a declaration of Ohio law and enforcement of that law as to the judgment creditors.

103. Paragraph 103 of the Complaint is denied.

104. Paragraph 104 of the Complaint is admitted.

105. Paragraph 105 of the Complaint is admitted.

106. Paragraph 106 of the Complaint is admitted. Further answering, Chesley and the Waite Firm assert that the Complaint, in total, reveals that Judge Ruehlman has promptly held several hearing to determine motions filed by all parties.⁷ The Hamilton County Litigation was pending for over eight months and a permanent injunction hearing was less than a month away when the Complaint was filed, and that hearing was delayed – again at Ford's request.

107. Paragraph 107 of the Complaint is denied. The length of any delay is completely in Ford's control since she has chosen not to obey Ohio law and domesticate the Judgment after providing the required information. Further answering, Chesley and the Waite Firm state that it was Ford's actions, including the removal to federal court and the assertion of the same motions

⁷ The Complaint does not mention at least one motion by Chesley that Judge Ruehlman heard and denied. The Complaint also ignores at least one other motion filed by Ford on which she requested a hearing before Judge Ruehlman.

in both state and federal court, that account for any delay in the scheduling of the permanent injunction hearing.

108. Paragraph 108 of the Complaint is denied.

109. Paragraph 109 of the Complaint is denied. Further answering, Chesley and the Waite Firm state that Chesley has disclosed to Ford all of his current and potential sources of future income.

110. Paragraph 110 of the Complaint is denied.

111. Paragraph 111 of the Complaint is denied.

112. Paragraph 112 of the Complaint is denied.

113. Paragraph 113 of the Complaint requires no response other than as stated above.

114. Paragraph 114 of the Complaint is admitted to the extent that it states Judge Ruehlman has exercised his judicial power. Paragraph 114 of the Complaint is denied to the extent that it asserts Judge Ruehlman's exercise of his judicial authority "violated the Full Faith and Credit Clause," or was otherwise improper. Further answering, Chesley and the Waite Firm state that all of the assertions of Judge Ruehlman's alleged improper behavior were arguments made to Judge Ruehlman by Ford's counsel in motions presented to Judge Ruehlman. At the proper time, Ford could appeal any decisions made by Judge Ruehlman that she thinks are incorrect.

115. Paragraph 115 of the Complaint is denied.

116. Paragraph 116 of the Complaint is admitted. Further answering, Chesley and the Waite Firm state that the Complaint and this Answer demonstrate the existence of two separate justiciable controversies: (i) between Chesley and the respondents in the Hamilton County Litigation; and (ii) between Mr. Rehme and the Waite Firm and Ford.

117. Paragraph 117 of the Complaint is denied. Further answering, Chesley and the Waite Firm state that there is no right to use a foreign judgment to create an Ohio judgment that lacks several of the required characteristics of an Ohio judgment.

118. Paragraph 118 of the Complaint is denied. Further answering, Chesley and the Waite Firm state that an injunction requiring compliance with Ohio law is appropriate when Chesley demonstrates the danger of irreparable harm and the other required elements for an injunction.

119. Paragraph 119 of the Complaint is denied.

120. Paragraph 120 of the Complaint is denied. Further answering, Chesley and the Waite Firm state that Ford's actions in the Kentucky court were not impeded in any way. In fact, Ford filed certain motions in Kentucky that might be construed as violating Judge Ruehlman's order, yet no action has been taken against Ford for those actions.

121. Paragraph 121 of the Complaint is denied.

122. Paragraph 122 of the Complaint is denied.

123. Paragraph 123 of the Complaint is denied.

124. Paragraph 124 of the Complaint is denied.

125. Paragraph 125 of the Complaint is denied.

126. Paragraph 126 of the Complaint is denied.

127. Paragraph 127 of the Complaint is denied.

128. Paragraph 128 of the Complaint is denied.

129. Paragraph 129 of the Complaint requires no response other than as stated above.

130. Paragraph 130 of the Complaint is denied.

131. Paragraph 131 of the Complaint is denied.

132. Paragraph 132 of the Complaint is denied.

133. Paragraph 133 of the Complaint is denied.

134. Paragraph 134 of the Complaint is admitted.

135. Paragraph 135 of the Complaint is admitted to the extent that it requires Judge Ruehlman's orders to be "lawful." Further answering, Chesley and the Waite Firm assert that all of Judge Ruehlman's orders in the Hamilton County Litigation are lawful.

136. Paragraph 136 of the Complaint is denied. Further answering, Chesley and the Waite Firm assert that Ford's assertion that the Ohio court lacks personal jurisdiction over her is patently wrong. Ford has multiple clients in Ohio with whom she has had communications and to whom she has sent money. Those actions are specifically relevant to the Hamilton County Litigation and they support personal jurisdiction over Ford in Ohio.

137. Paragraph 137 of the Complaint is denied.

138. Paragraph 138 of the Complaint is denied.

139. Paragraph 139 of the Complaint requires no response other than as stated above.

140. Paragraph 140 of the Complaint is denied.

141. Paragraph 141 of the Complaint is denied.

142. Exhibit 1 hereto is a true and accurate copy of the January 6, 2015, Verified Memorandum in Support of Motion for Injunctive Relief filed in the Hamilton County Litigation.

143. Exhibit 2 hereto is a true and accurate copy of the January 12, 2015, Affidavit of Vincent E. Mauer re: Notice to Respondent Ford filed in the Hamilton County Litigation.

144. Exhibit 3 hereto is a true and accurate copy of the February 5, 2015, Combined Verified Motion and Supporting Memorandum Seeking Amplification of Restraining Order filed in the Hamilton County Litigation.

145. Exhibit 4 hereto is a true and accurate copy of the April 13, 2015, Notice of Filing Certified Federal Court Documents Remanding this Case filed in the Hamilton County Litigation.

146. Exhibit 5 hereto is a true and accurate copy of the April 28, 2015, Notice of Filing Documents from Dismissed Federal and Boone Circuit Court Cases filed in the Hamilton County Litigation.

147. Exhibit 6 hereto is a true and accurate copy of the May 7, 2015, Opposition to Motion to Dismiss filed in the Hamilton County Litigation.

148. Exhibit 7 hereto is a true and accurate copy of the May 12, 2015, Notice of Filing Documents filed in the Hamilton County Litigation.

149. Exhibit 8 hereto is a true and accurate copy of the May 14, 2015, Motion for Leave to File Surreply filed in the Hamilton County Litigation.

150. Exhibit 9 hereto is a true and accurate copy of the May 14, 2015, Amended Memorandum in Opposition to Motion to Declare Restraining Order Dissolved or to Dissolve Them filed in the Hamilton County Litigation.

151. Exhibit 10 hereto is a true and accurate copy of the June 26, 2015, Motion of Intervenor Waite Schneider Bayless & Chesley Co., LPA, for Declaratory and Injunctive Relief filed in the Hamilton County Litigation.

152. Exhibit 11 hereto is a true and accurate copy of the July 22, 2015, Petitioners Motion for Leave to File Second Amended Verified Petition filed in the Hamilton County Litigation.

153. Exhibit 12 hereto is a true and accurate copy of the July 30, 2015, Reply to Defendant Angela M. Ford's Response in Opposition to the Motion of Intervenor Waite Schneider Bayless & Chesley Co., LPA, for Declaratory and Injunctive Relief filed in the Hamilton County Litigation.

154. Exhibit 13 hereto is a true and accurate copy of the August 18, 2015, Notice of Filing Certified Copies filed in the Hamilton County Litigation.

155. Exhibit 14 hereto is a true and accurate copy of the August 21, 2015, Motion for Leave to File Verified Statement of Supplemental Facts in Support of Petition for Permanent Injunction filed in the Hamilton County Litigation.

156. Exhibit 15 is a true and accurate copy of the August 26, 2015, Order Granting Motion of Intervenor Waite Schneider Bayless & Chesley Co., L.P.A. for Declaratory and Injunctive Relief filed in the Hamilton County Litigation.

157. Exhibit 16 hereto is a true and accurate copy of the September 4, 2015, Complaint of Intervenor Waite Schneider Bayless & Chesley Co LPA for Declaratory & Injunctive Relief filed in the Hamilton County Litigation.

158. Exhibit 17 hereto is a true and accurate copy of the September 8, 2015, Motion for Enforcement of Restraining Order filed in the Hamilton County Litigation

159. Exhibit 18 hereto is a true and accurate copy of the February 13, 2015, Motion to Remand filed in Stanley M. Chesley v. Angela M. Ford, Esq., et al., United States District Court, Southern District of Ohio Case No. 1:15-cv-83 (the "District Court Action").

160. Exhibit 19 hereto is a true and accurate copy of the February 16, 2015, Notice of Filing Affidavit of Frank Benton In Support of Petitioner's Motion for Remand filed in the District Court Action.

161. Exhibit 20 hereto is a true and accurate copy of the March 13, 2015, Reply to Response to Motion re Motion to Remand filed in the District Court Action.

162. Exhibit 21 hereto is a true and accurate copy of the March 19, 2015, Response in Opposition re Declare the Restraining Orders Dissolved or to Dissolve Them filed in the District Court Action.

163. Exhibit 22 hereto is a true and accurate copy of the April 3, 2015, Response to Motion re Motion for Leave to File First Amended Petition for Declaratory Judgment and Injunctive Relief filed in the District Court Action.

164. Exhibit 23 hereto is a true and accurate copy of the April 3, 2015, Notice by Petitioner Stanley M. Chesley re Response to Motion for Filing Supplemental Affidavit of Frank V. Benton filed in the District Court Action.

165. Exhibit 24 hereto is a true and accurate copy of the April 6, 2015, Opinion and Order Granting Motion to Remand; Granting Motion for Leave to File filed in the District Court Action.

166. Exhibit 25 hereto is a true and accurate copy of the September 16, 2015, Defendant Chesley's Opposition to Plaintiff's Motion to Execute filed in Mildred Abbott, et al. v. Stanley M. Chesley, et al., Commonwealth of Kentucky, Boone Circuit Court, Division III Case No. 05-CI-436.

SECOND DEFENSE

167. The Complaint is barred by the doctrines of laches, waiver, delay, *in pari delicto*, and unclean hands.

THIRD DEFENSE

168. The Complaint fails to state a claim upon which relief may be granted because, among other reasons, Ford possesses an adequate remedy at law.

FOURTH DEFENSE

169. This Court lacks jurisdiction to consider this original action.

FIFTH DEFENSE

170. Relator has failed to join necessary parties to this original action.

HAVING answered the Complaint, Chesley prays for dismissal of the Complaint, a lifting of the stay imposed by this Court on further actions by Judge Ruehlman in the Hamilton County Litigation and such other relief as is just and proper.

Respectfully submitted,

/s/ Marion H. Little, Jr.

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@litohio.com
little@litohio.com

*Attorneys for Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Donald J. Rafferty

Donald J. Rafferty (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Vincent E. Mauer

Vincent E. Mauer (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Intervenor
Stanley M. Chesley*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of October, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, and electronic mail pursuant to Civil Rule 5(B)(2)(c) and (f) on:

Brian S. Sullivan, Esq.
Christen M. Steimle, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Attorneys for Relator Angela M. Ford

James W. Harper, Esq.
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

*Attorneys for Respondent
the Honorable Robert P. Ruehlman*

/s/ Marion H. Little, Jr.

Marion H. Little, Jr. (0042679)



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

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January 6, 2015 02:55 PM
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Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 383362**

STANLEY M CHESLEY

A 1500067

vs.

ANGELA M FORD

FILING TYPE: MOTION

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EFR200

EXHIBIT

1

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**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Stanley M. Chesley	:	Case No. _____
	:	
Petitioner	:	Judge Ruehlman
v.	:	
	:	
Angela M. Ford, Esq. <i>et al.</i>	:	VERIFIED MEMORANDUM IN
	:	SUPPORT OF MOTION FOR
	:	INJUNCTIVE RELIEF
Respondents	:	

Petitioner Stanley M. Chesley (“Chesley”) seeks immediate preliminary relief and a subsequent permanent injunction pursuant to Ohio Rule of Civil Procedure 65(B) *et seq.* As set forth in detail below, relief is appropriate based upon the facts and circumstances that demonstrate that current form of the Chesley Judgment and Ford’s actions combine to:

- (i) violate the requirement that a non-class action money judgment be in favor of currently known person(s) in a determined amount per judgment creditor. The Abbott Case is a “mass tort action” not a class action. So, the judgment cannot be in the nature of a total owed to a group of persons;
- (ii) impede the operation of public policy in the State of Ohio and the Commonwealth of Kentucky in favor of settlement;
- (iii) impair the proper functioning of this Court and Kentucky courts because knowing the true amount of the Chesley Judgment is relevant (a) to any consideration by a Kentucky court of requirements that might be imposed if Chesley seeks a stay of enforcement of the Chesley Judgment while his Kentucky appeal is pending and (b) to limitations this Court might impose on Ford to insure that her collection efforts do not attach assets in excess of the amount truly owed on the Chesley Judgment;
- (iv) prevent Chesley from considering in the future possibly presenting reasoned settlement offers that Chesley might make to some or all of the stated beneficiaries of the Chesley Judgment, the over possibly 400 plus separate Abbott Case plaintiffs, see Exhibit A;
- (v) deprive each of the Unknown Respondents of the potential opportunity to individually receive and consider settlement offers from Chesley;

(vi) shroud in secrecy the value and disposition of the money and assets the value of which must be credited against the Chesley Judgment;

(vii) inhibit Chesley's ability to properly consider all remedies that are available to Chesley; and

(viii) endanger the financial privacy rights of third-parties, including certain Ohio citizens, residents and domiciles whose documents and information Ford seeks to obtain without using proper procedures in Ohio.

All of these rights and principles will be irreparably lost if Ford, on behalf of the Unknown Respondents, is permitted to domesticate the Chesley Judgment in the State of Ohio and then issue subpoenas and take collection action in the State of Ohio without providing to Chesley the information sought by this proceeding.

Granting the requested relief in favor of Chesley will prevent those harms and not significantly injure the Respondents since the Respondents will have the exact rights they are entitled to under applicable law after they comply with this Court's requirements imposed after the Court's granting of Chesley's Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (the "Motion").

Granting the requested relief herein benefits the public by (i) promoting the public policy in favor of settlements, (ii) smoothing and expediting future decisions by this Court or courts in Kentucky, and (iii) protecting innocent uninvolved Ohio third-parties from Ford's intrusive inquiries which should all be postponed until Ford complies with applicable law and then Ford's inquiries will be conducted using proper Ohio procedures.

FACTS RELEVANT TO FORD'S PLANNED JUDGMENT COLLECTION ACTIVITY

This case arose from the criminal activity of two former lawyers, William J. Gallion and Shirley A. Cunningham (jointly the "Criminals"). The Criminals and Melbourne Mills, Jr.

("Mills")¹ colluded to misappropriate some settlement proceeds owed their clients in a Kentucky pharmaceutical products liability action styled *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone County, Kentucky Circuit Case No. 98-CI-00795 (the "Settled Case").

Respondent Angela M. Ford, Esq. ("Ford") is a licensed Kentucky lawyer who represents an unknown number of clients in this matter. Ford is a respondent herein primarily in her capacity as agent for her clients. In 2005, Ford filed an action accusing Chesley, the Criminal Defendants² and others of mishandling a portion of the settlement proceeds generated by the Settled Case. That case is styled *Mildred Abbott, et al. v. Stanley M. Chesley, et al.* Boone Circuit Court Case No.05-CI-436 (the "Abbot Case"). In fact, Chesley did not mishandle any settlement proceeds in the Settled Case.

The Abbott Case was initially assigned to Judge Wehr of the Boone Circuit Court. In March 2006, Judge Wehr found that the Criminal Defendants breached certain contractual duties they owed to their clients who had been plaintiffs in the Settled Case by charging more in attorney fees than permitted by the Criminal Defendants' contracts with their clients. On August 1, 2007 Judge Wehr held that the Criminal Defendants owed the Abbott Case plaintiffs \$42,000,000³ plus 8% prejudgment interest -- hereinafter the "Criminal Defendants Judgment." At about that same time, Judge Wehr declined to enter a similar judgment against Chesley.

¹ Collectively, the Criminals and Mills will be referred to as the "Criminal Defendants" because all three were accused of federal crimes but only the Criminals were convicted. Chesley was never criminally charged.

² As this matter has unfolded, Chesley is in fact a victim of the Criminal Defendants since he has suffered grievously as a result of the Criminal Defendants' actions.

³ The difference between the supposedly mishandled settlement funds sought by Ford and the \$42,000,000 judgment against the Criminal Defendants arises primarily from the recovery of approximately \$20,500,000 from the Kentucky Fund For Healthy Living, a charity controlled by the Criminal Defendants funded with money from the Settled Case. In March 2006, the assets of this charity were placed into a "constructive trust" in favor of the Abbott Case plaintiffs when that money was transferred to a Qualified Settlement Fund. Ford controlled this money and this money was used to pay certain expenses. Chesley believes that Ford retained a 40% legal fee from the recovered charity funds and all monies and assets she collected against the \$42,000,000 judgment.

FORD'S COLLECTION EFFORTS AGAINST THE CRIMINAL DEFENDANTS

Ford immediately began working to collect the \$42,000,000 "Criminal Defendants Judgment." Certain collection actions taken by Ford are relevant to this Court.

The Receivership Used By Ford

Ford's seized certain race horse assets from the Criminal Defendants. Those assets were owned by Tandy LLC. After consideration of Ford's then pending motions, in a July 2, 2008 Order, the Boone Circuit Court directed an existing "interim receiver" to take control over the assets of Tandy LLC. This was done before any judgment was entered against Chesley so Chesley does not know why Ford chose not to immediately sell the seized assets and Chesley had no standing to oppose Ford's decision to put assets into a receivership.

Ford became unhappy with the receivership. In a filing on February 25, 2008 with the Boone Circuit Court, Ford said that the Abbot Case plaintiffs oppose the "use of funds entrusted to the Interim Receiver for any other purpose other than distribution to the Plaintiffs" Ford also stated to that "there are a myriad of questions related to management of assets" See Exhibit B. The Boone Circuit Court repeatedly approved payment of the Interim Receiver's expenses from the above-discussed "Kentucky Fen Phen Qualified Settlement Fund" instead of paying those expenses from cash generated by the receivership. See, for example, Exhibit C. The receivership's operation was cash flow negative.⁴

The assets of Tandy, LLC seized by Ford could have been immediately sold for the benefit of the Abbot Case plaintiffs. The proceeds of that sale would have been credited against the Criminal Defendants Judgment thus reducing the \$42,000,000 owed to the Abbott Case

⁴ Exhibit D is the "Tenth Interim Receiver's Report" filed in the Abbott Case on December 11, 2009 which shows "deposits" of \$43,624.81 against "Approved Expenses Paid" of \$271,340.25.

plaintiffs. Instead, a receivership was used and that receivership managed the assets in a fashion questioned by Ford and was cash flow insolvent.

The assets of Tandy LLC seized by Ford were finally sold for an amount that has not been specifically disclosed to Chesley. Upon information and belief, the Tandy LLC assets could have been sold sooner for a greater amount than realized by the subsequent sale.

Chesley does not know the net effect of the receivership's existence and operation. Chesley does know, however, that the total value of the assets seized by Ford should be immediately credited against the Criminal Defendants Judgment and thus now against the Chesley Judgment. The risk of loss for those funds should fall on Ford, not Chesley.

Ford Chooses Collection Co-Counsel

Ford needed help collecting the Criminal Defendants Judgment. Ford retained Seth J. Johnston, Esq. of the law firm of Miller & Wells ("Johnston"). Johnston attended hearings and drafted garnishments for the Abbott Case plaintiffs. Johnston "collected and distributed" what Ford describes as "significant sums" to be credited against the Criminal Defendants Judgment.

The relationship between Ford and Johnston deteriorated. In August 2012 Ford sued Johnston and others alleging the conversion of over \$2,000,000 in a case styled *ATI Ventures, LLC, Villa Paradisio and Angela Ford v. Johnston Legal, PSC, Seth J. Johnston, et al.* Fayette County, Kentucky Circuit Court Case No. 12-CI-3758 (the "Johnston Case"). In her second amended complaint in the Johnston Case, Ford recites how Johnston helped collect the judgment against the Criminal Defendants. Later, Ford alleges that Johnston made fraudulent transfers to third parties of funds that should have been controlled by Ford.

Chesley does not know if Ford recovered any funds in the Johnston Case. Chesley does know, however, that the credit against the Criminal Defendants Judgment should be for all of the

funds seized by Ford and Johnston regardless of the ultimate disposition of those funds. The risk of loss for those funds should fall on Ford, not Chesley.

FORD'S ROLE IN THE CRIMINAL CASE

Criminal charges were filed against the Criminals in 2007 alleging that the actions that resulted in the Criminal Defendants Judgment warranted criminal sanctions. See, *United States of America v. Gallion and Cunningham*, U.S.D.C. E.D. Ky. Criminal No. 07-39-DCR (the "Criminal Case"). The charges against the Criminals carried penalties that included asset forfeiture and restitution to the Criminals' victims.

On August 16, 2007, the federal district court appointed Ford as the Victim's Advocate in the Criminal Case under the Crime Victims' Rights Act, 18 U.S.C. Section 3771. Ford accepted that appointment and proceeded to abuse the powers granted to Ford.⁵

Restitution To The Criminal Case "Victims" Represented By Ford

The federal court convicted the Criminals in April 2009 and ordered restitution to their victims. Ford's role as the victim's legal representative initially did not include disbursement of funds collected in the Criminal Case.⁶ Ford sought to change that situation by filing the Victim's Motion For Order Appointing Victim's Representative [Ford] As Trustee For Management And Disbursal of Forfeiture And Restitution Funds. Ford wanted control over all the funds and she wanted to collect her 40% fee from all the funds.

Under pressure from the federal court, Ford transferred to the United States Marshalls Service ("USMS") funds from four bank accountants established in the Abbott Case; those accounts included, *inter alia*, funds from the Kentucky Fund For Healthy Living and funds from

⁵ Upon information and belief, Chesley asserts that Ford retained attorney fees from the forfeited and restitution funds and took advantage of the work performed by employees of the United States of America.

⁶ See page 4 of the Brief of Appellant Angela M. Ford filed in the Sixth Circuit on December 1, 2011.

the sale of assets of Tandy LLC.⁷ The USMS got control over funds that arose in the Abbott Case all of which should be credited against the Criminal Defendants Judgment and thus the Chesley Judgment. The ultimate disposition and application of those funds has not been specifically disclosed to Chesley.

When Ford accepted the role of Victim's Advocate, Ford accepted "an affirmative duty to represent the statutory rights of all 421 victims" – not just the Abbott Case plaintiffs. To meet her duty to the crime victims⁸ who are not Abbott Case plaintiffs, Ford established a separate escrow account over which Ford had control.⁹ Ford has admitted that the escrow account took money from the Abbott Case plaintiffs. On November 18, 2012 Ford wrote:

The United States is correct in stating that the 2 prior distributions made in the state court civil action [the Abbott Case] did not include the 14 Victims who are not parties to that action. . . ., the undersigned [Ford] agreed to escrow a pro rata portion of the funds then available for distribution, as though the 14 Victims were parties to the civil action, as a compromise.

See Exhibit F, Defendants' Victims' Response To United States's (sic) Pre-hearing Memorandum filed by Ford in the Criminal Case. Chesley does not know where the funds in the escrow account originated, but it seems undeniable they came from one of the Criminals and should be credited against the Criminal Defendants Judgment and the Chesley Judgment.

This discussion of funds distributed through the federal court is relevant to this Court because any restitution paid to the Abbott Case plaintiffs reduces the amount of the civil verdict. KRS § 533.030(3)(d). This reflects the general rule that "a party can have but one satisfaction for an injury resulting from a tort" *Burke Enterprises, Inc. v. Mitchell*, 700 S.W.2d 789, 794

⁷ See Defendants' Victims Motion To Distribute Funds in U.S. Marshall's Possession filed by Ford in the Criminal Case on Sept. 10, 2010.

⁸ The federal court stated that Ford represents 407 clients in the Abbott Case.

⁹ See the Motion For Partial Lift of Seal of Accounting as to United States filed on Aug. 2, 2011 in the Criminal Case and see Exhibit E, Defendants' Victims' Response To Proposed Order regarding Restitution filed by Ford in the Criminal Case on Jan. 2, 2013.

(Ky.1985). Accord, *Cohwell v. Holland Roofing of Cincinnati, Inc.*, 2003-CA-001236-MR, 2005 WL 735854, at *1 (Ky. App. Apr. 1, 2005).

Similarly, under Ohio law, “[a]ll restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.” Ohio R.C. Section 2929.18(A)(1). The total recovery in Ohio cannot exceed the victim’s actual economic loss, recovery of both civil and criminal sums for the same harm constitute an “impermissible economic windfall for the victim.” *State v. Bowman*, 181 Ohio App.3d 407, 411, 2009-Ohio-1281, 909 N.E.2d 170, 173, ¶ 12 (2nd Dist.).

The crime victim’s restitution and asset forfeiture in the Criminal Case is compensation for the same harm as was the basis of the Abbott Case. All amounts paid in the Criminal Case should be credited against the Criminal Defendants Judgment and the Chesley Judgment and the judgment reduction process is continuing. *State Farm Mut. Auto. Ins. Co. v. Hill*, Greene Co. No. 2006 CA 24, 2007-Ohio-581, ¶ 12 (2nd Dist.). Ford is required to update the amount owed on the Criminal Defendants Judgment as money is forfeited or restitution paid.¹⁰

The Federal Government Required Disclosure By Ford

In February 2011, the United States Attorney for the Eastern District of Kentucky (“USA”) acted in the Criminal Case to determine the amounts and locations of all funds collected by Ford including both amounts Ford distributed to her clients and amounts Ford retained. The USA also specifically wanted to know the location of all funds collected by Ford but not distributed to her clients. After several futile efforts to keep her secrets, Ford produced to the federal court all that information except for “the location of attorney’s fees paid to Ford by

¹⁰ The Federal Rule is the same. *United States v. Elson*, 577 F.3d 713, 734 (6th Cir.2009).

her clients.”¹¹ This did not satisfy the USA and so Ford continued her efforts to keep secrets by appealing to the United States Court of Appeals for the Sixth Circuit, Appeal Number 11-6187.

Ford eventually filed under seal a complete disclosure with the federal court, including an analysis of Ford’s attorney fees. The filing by Ford was initially for *in camera* review by the federal district court. Subsequently, the USA was granted access to Ford’s filing. Despite this development, Ford asserted to the Sixth Circuit that her appeal was not moot because Ford desperately wanted to keep her secrets.¹²

Ford’s information in the Criminal Case remains under seal. Chesley made two requests for access to that information and Ford opposed both of those efforts. Also, Ford has stonewalled traditional discovery efforts by Chesley in Kentucky to determine the information discussed in this Supporting Memo.

Reimbursement to the United States

On May 17, 2007 the USA filed a statement of interest in the Abbott Case asserting the USA’s right to subrogation for certain amounts paid to third parties on behalf of the Abbott Case plaintiffs. These amounts were generally related to health care expenses.

The Boone Circuit Court recognized the United States’ rights and certain funds were distributed to the USA instead of to the Abbott Case plaintiffs. A credit against the Chesley Judgment must be given for any amounts paid to the USA because the amounts paid to the USA were owed to the Abbott Case plaintiffs and would have been paid to those plaintiffs but for the subrogation rights asserted by the USA.

The amount distributed to the USA pursuant is not less than \$318,824.95. See the May 2, 2008 Order entered in the Abbott Case.

¹¹ Page 10 of the Brief of Appellant Angela M. Ford filed on Dec. 1, 2011 with the Sixth Circuit Court of Appeals.

¹² Supplemental Brief of Appellant Angela M. Ford Concerning the Court’s Continuing Jurisdiction filed with the Sixth Circuit on Sept. 5, 2012.

THE JUDGMENT AGAINST PETITIONER CHESLEY

After separate trips to the Kentucky Court of Appeals¹³ and the Kentucky Supreme Court, in an Order signed on July 29, 2014 Judge Schrand who replaced Judge Wehr on the Abbott Case ruled Chesley “jointly and severally liable with” the Criminal Defendants “for the existing judgment amount of \$42 million owed to Plaintiffs” – the Criminal Defendants Judgment. See Exhibit A. The Order of the Boone Circuit Court was clarified in a Second Amended Judgment entered in the Abbott Case on October 22, 2014. The Second Amended Judgment makes Chesley liable for “pre-judgment interest at the rate of 8% per annum from April 1, 2002 and post-judgment interest compounded annually at the rate of 12% per annum thereon from the date of this Judgment.” This is the Chesley Judgment.

Despite the above-discussed significant collection activity, Ford failed to provide to the Boone Circuit Court an accounting of the amounts collected on account of the Criminal Defendants Judgment. Ford’s failure is obvious from the fact that the Chesley Judgment refers to original \$42,000,000 amount despite millions collected on account of the Criminal Defendants Judgment; if Ford had provided updated information the Chesley Judgment would have started with the true amount owed then rather than repeating the seven year old \$42,000,000 amount.

A summary of Ford’s actions in the Abbott Case shows this timeline:

- (1) entry of the \$42,000,000 Criminal Defendants Judgment in August 2007;
- (2) take extensive collection action involving a receiver and other tactics;
- (3) conflate the Criminal Defendants Judgment collection efforts and proceeds with the restitution amounts owed by the Criminals while acting as the Victims Advocate and transfer funds to the USMS; and

¹³ The Boone Circuit Court initially granted summary judgment against Chesley. That judgment was reversed by the Kentucky Court of Appeals in 2011 and then reinstated in 2013 by the Supreme Court of Kentucky.

(4) entry of the Chesley Judgment in 2014. Followed promptly by discovery addressed to Chesley that is more than 50% focused on financial documents and information of third-parties including many citizens and residents of Ohio.

Chesley had no real opportunity to challenge any aspect of the manner in which the \$42,000,000 amount of the Criminal Defendants Judgment was determined or how Ford chose to collect that judgment and disburse the proceeds thereof because Chesley was not a judgment debtor when all the above-described activity occurred.

CHESLEY'S APPEAL IN KENTUCKY WILL BE SUCCESSFUL

Chesley is not asking this Court to reverse the Chesley Judgment.

Still, it is important for this Court to understand that the Chesley Judgment is seriously flawed because the high probability of reversal on the merits in Kentucky reduces any injury to Respondents imposed by a slight delay in their collection efforts against Chesley. It does not harm the Respondents if their improper efforts to collect a flawed judgment are slowed by forcing Ford to obey the law and only collect the proper amount now owed since any funds collected on the Chesley Judgment will probably be returned to Chesley or those innocent third parties from whom Ford may seize assets.

Imposition of Liability on Chesley via the Chesley Judgment Will Be Reversed

Summary judgment against the Criminal Defendants was granted in 2006.¹⁴ Contrarily, Ford's initial motion for summary judgment against Chesley was denied.¹⁵ Seven years after the Criminal Defendants Judgment and acting without any discovery after the 2013 Kentucky Supreme Court's *Abbott v. Chesley* decision, the Boone Circuit Court entered the Chesley

¹⁴ The Kentucky Supreme Court affirmed summary judgment against the Criminal Defendants stating that the Abbott Case claims' were "essentially contractual, based upon CGM's [the Criminal Defendants] breach of the attorney-client contracts." *Abbott v. Chesley*, 413 S.W.3d 589, 603 (Ky. 2013). As an alternative, the Kentucky Supreme Court held that the Criminal Defendants conduct amounted to a joint enterprise or joint venture, such that joint liability could be imposed under Kentucky partnership law. *Id.* at 604.

¹⁵ Judge Wehr of the Boone Circuit Court denied Ford's first motion for judgment against Chesley, stating, "The rationale of the previously entered partial summary judgment [against the Criminal Defendants] does not apply to" Chesley.

Judgment. The Chesley Judgment is premised solely on collateral estoppel; the Boone Circuit Court (Judge Schrand) held that Chesley was part of a “joint enterprise” with the Criminal Defendants and thus ruled Chesley jointly and severally liable for the Criminal Defendants Judgment. In so doing, Judge Schrand ignored the distinction between Chesley’s ethical conduct issues in Kentucky (Chesley was not disbarred in Ohio) and the criminal acts of the Criminal Defendants.

The Boone Circuit Court made that 2014 ruling despite the Kentucky Supreme Court specifically stating that Chesley’s situation was distinguishable from the situation of the Criminal Defendants. The Kentucky Supreme Court said:

Appellants also contend that the joint and several liability of CGM [the Criminal Defendants] should extend to Chesley because he acted in concert with CGM. We decline the invitation to do so. . . . Chesley's role in the enterprise clearly differed from that of Cunningham, Gallion, or Mills. The agreement itself seems to treat him differently.

Abbott v. Chesley, 413 S.W.3d 589, 604-5 (Ky. 2013).

The Chesley Judgment is based on the Kentucky Supreme Court’s decision that Chesley violated certain ethical obligations he owed to the Abbott Case plaintiffs. In contrast, the Criminal Defendants Judgment is based on the Criminal Defendants’ breach of contractual duties to the Abbott Case plaintiffs when the Criminal Defendants “paid themselves fees over and above the amount to which they were entitled to (sic) under their fee contracts with their clients.”¹⁶ Holding Chesley jointly liable with the Criminal Defendants is legally impermissible because Chesley’s liability is premised on violations of ethical rules while the Criminal Defendants Judgment is premised on breach of contract.

Neither the Kentucky Supreme Court’s decision nor the Chesley Judgment contains the findings of fact needed to determine that Chesley acted in collusion with the Criminal

¹⁶ August 1, 2007 Order in the Abbott Case, the Criminal Defendants Judgment.

Defendants in a manner that would permit the imposition of joint and several liability upon Chesley. The Chesley Judgment rests on shaky legal ground and will probably be reversed in the pending appeal to the Kentucky Court of Appeals.

The Maximum Overpayment to Chesley is \$6,465,621.87 making the \$42,000,000 Amount of the Chesley Judgment in Error

The Criminal Defendants Judgment amount of \$42,000,000 was determined by calculating the excess legal fees that were diverted to the Criminal Defendants by their fraud. It had no connection to Chesley.

If a judgment against Chesley is proper in the Abbott Case, the most that should be awarded against Chesley would be a judgment for fees he received in excess of the amount he should have received in the Settled Case. In analyzing that question, the Kentucky Supreme Court assumed that Chesley was entitled to 21% of the total attorney's fees that were properly paid in the Settled Case. The Kentucky Supreme Court then discussed what Chesley received compared to what he was entitled to receive in the Settled Case. The Kentucky Supreme Court's discussion leads to a maximum overpayment to Chesley of \$6,465,621.87.

Separately, the Kentucky Bar's Trial Commissioner and Board of Governors asked the Supreme Court to award an approximately \$7,500,000 restitution award against Chesley. The Kentucky Supreme Court declined to enter that award.

The \$42,000,000 judgment amount is incorrect as to Chesley.

Ford Plans To Wreak Havoc Quickly

Ford recognizes the above-discussed weakness in both the liability determination and the amount of the Chesley Judgment. For that reason, she is acting quickly to collect the Chesley Judgment while simultaneously preventing Chesley from having any opportunity to consider making rational settlement offers to the Unknown Respondents.

Ford has served extensive asset related discovery on Chesley in the Abbott Case. Chesley will respond to that intrusive discovery in Kentucky. Much of that discovery seeks information from Chesley about non-parties who are Ohio citizens, residents and domiciles.

Ford threatens worse than burdensome discovery addressed to Chesley. In a December 12, 2014 e-mail to Chesley's counsel Ford stated her plan to inflict pain on, and invade the privacy of, several innocent third parties. Ford wrote:

I'll obviously want the written discovery back from Chesley as well as documents from subpoenas I'll issue In addition, I'll want to depose his [Chesley's] wife and children and several institutions. There are other individuals that I'll want to depose but I'm not prepared to identify those just yet.

Ford's reference to issuing subpoenas is an obvious plan to seek documents from non-parties. Ford plans to create problems for (i) Chesley's wife, (ii) Chesley's two children, (iii) "several institutions", and (iv) an unknown number of other individuals. Many of Ford's targets are in Ohio. Ford must be made to strictly comply with all legal requirements for the registration or domestication of the Chesley Judgment and enforcement use of a valid Ohio judgment before she begins to invade the financial privacy of so many innocent non-parties.

THE WHO? & HOW MUCH? OF THE CHESLEY JUDGMENT

It is axiomatic as a judgment debtor Chesley is entitled to know how much he owes in total and precisely to whom that amount is now owed on an individual basis for each particular judgment creditor. The Court might wonder how Chesley got into this situation. The answer is that the above-described procedural morass prevented Chesley from taking discovery in the Abbott Case: (i) the existence of the Criminal Case and Chesley's co-defendants asserting their Fifth Amendment Rights (ii) the appeal to the Kentucky Court of Appeals; (iii) Ford's subsequent appeal to the Kentucky Supreme Court; and (iv) Chesley's disciplinary proceeding followed by the Kentucky Supreme Court's ruling on the recommendation arising from that

proceeding all combined to inhibit the normal discovery process in the Abbott Case. Chesley never deposed a single Abbott Case plaintiff¹⁷ so that he might know how much Ford asserts Chesley owes in total and precisely to whom that amount is now owed on an individual basis for each particular judgment creditor. Similarly, Chesley never deposed any of the Criminal Defendants and so never had an opportunity to demonstrate that he did not conspire with them.

Without critical information concerning the Chesley Judgment, many basic public policies will be frustrated and Chesley will forever lose important rights:

- (1) the fair and efficient operation of courts in the State of Ohio and the Commonwealth of Kentucky may be impeded because, *inter alia*, the true amount of the Chesley Judgment is relevant to (a) any consideration by a Kentucky court of requirements that might be imposed if Chesley seeks a stay of enforcement while his Kentucky appeal is pending and (b) limitations this Court might impose on Ford to insure that her collection efforts do not attach assets in excess of the amount truly owed on the Chesley Judgment;
- (2) Chesley has a right to consider all available remedies under applicable law if the Chesley Judgment renders Chesley insolvent – but, that right is not available if Chesley cannot identify his creditors as required by applicable law; and
- (3) Ohio public policy favors settlements¹⁸ but Chesley cannot consider making any rational settlement offer(s) to particular plaintiffs unless and until he knows how much is owed to each Abbott Case plaintiff.¹⁹

¹⁷ Among the unexplored questions related to Chesley's alleged liability to the Abbott Case plaintiffs is the benefits received by the Abbott Case plaintiffs in the Settled Case as a direct result of Chesley's involvement in the Settled Case. Chesley believes that his efforts in the Settled Case provided substantially more benefit to the Abbott Case plaintiffs than Ford's efforts in this litigation.

¹⁸ Ohio Rule of Professional Conduct 1.2 and the Kentucky Rule of Professional Conduct 3.130(1.2) both mandate that "[a] lawyer shall abide by a client's decision whether to settle a matter." Each state's rule governing communication between lawyers and clients, fortifies this contention. OH ST RPC Rule 1.4 and KY ST S CT RULE 3.130, RPC Rule 3.130(1.4) require that lawyers promptly inform their clients of those matters requiring the client's consent; this rule read in conjunction with Rule 1.2 mandates that all settlement negotiations be filtered through the client. Ford avoids this obligation by hiding her clients and how much is owed to each thereby preventing Chesley from considering the option of making an informed settlement offer to particular Abbott Case plaintiffs.

¹⁹ Having chosen a "mass action" instead of a class action, Ford is ethically bound to transmit any settlement offers made by Chesley to each offeree and the clients are individually entitled to decide whether to accept that client's particular offer. Ford, of course has effectively deprived her clients of their right to consider settlement offers by preventing Chesley from making any rational settlement offers.

Chesley has requested but not received from Ford (i) a calculation of the total amount now owed on the Chesley Judgment including, but not limited to, a calculation of the pre-judgment interest and (ii) a calculation of the *per diem* post-judgment interest that Ford asserts is accruing. Without those, Chesley cannot know what he owes to any particular judgment creditor (a/k/a any particular Unknown Respondent)

Who Are The 400 plus Abbott Case Plaintiffs and the Unknown Respondents

The “Plaintiffs” in the Abbott Case are the stated beneficiaries of the Chesley Judgment and real parties in interest in this matter. In a twist from the Chesley Judgment, Ford asserts that not all of the “Plaintiffs” in the Abbott Case are Chesley’s judgment creditors, the Unknown Respondents.

All of Chesley’s judgment creditors should each be a named respondent and served with the Petition and related filings filed in this matter. Chesley has asked for the current names, addresses and amounts owed to each of his judgment creditors²⁰. Ford, however, has failed or otherwise refused to identify those persons to Chesley.

Initially, the Abbott Case was pled as a class action. In her Seventh Amended Complaint Ford deleted the class action allegations. Having made that decision, Ford became obligated to maintain and when appropriate produce information to Chesley on a creditor by creditor basis. In response to Chesley’s requests, Ford routinely points to the “grid” attached to the Settlement Agreement in the Settled Case. That grid is over 10 years old and contains names that Ford asserts are not, in fact, among Chesley’s judgment creditors. It seems impossible that none of

²⁰ The amount owed each judgment creditor by Chesley starts with the amount set in the settlement grid of the Settled Case prepared over 10 years ago and makes adjustments required in that case – the source of the \$42,000,000 “baseline judgment” against the Criminal Defendants; thereafter, there must be credits for amounts (i) distributed by Ford to the Abbott Case plaintiffs, (ii) distributed to the Abbott Case plaintiffs through the Criminal Case, (iii) retained by Ford as fees and expenses, (iv) transferred to the USMS, (v) paid to the USA as subrogation, and (vi) collected by Ford but dissipated through a bad receiver and supposedly corrupt co-counsel, etc.

the persons listed on the 10 year old grid has died or filed bankruptcy -- it is true that Chesley does not know the names of his current judgment creditors.

The following table mixes filings by Ford in different courts at different times with statements by two courts before which Ford represented the Abbott Case plaintiffs. A summary of only statements in the Abbott Case (and its appeals) concerning Ford's clients is attached as Attachment 1. In total, those filings list 463 separate individuals as plaintiffs in the Abbott Case.

Both the following table and Attachment 1 show a wide variety of beliefs concerning the number of Abbott Case plaintiffs. Chesley's confusion is understandable and very troubling.²¹ Ford and others have stated that the following numbers of persons or entities (e.g. estates) are Abbott Case plaintiffs:

²¹ In *Howard et al. v. Angela M. Ford, et al.*, Fayette Circuit Court Case No. 14-CI-3988 plaintiffs allege malpractice by Ford and others. This complaint asserts that there should be over 500 plaintiffs in the Abbott Case.

DATE	DOCUMENT	NUMBER OF PLAINTIFFS
Beginning	Brief of the United States of America filed with the Sixth Circuit on Feb. 14, 2012.	The Criminals represented "440 individuals" in the Settled Case. Another source says 431. ²²
Aug. 3, 2007	Ford's Supplemental Motion For Leave To File Seventh Amended Complaint in the Abbott Case.	416, Ford "adds one new plaintiff and three plaintiffs thought to already have been added."
Aug. 14, 2007 ²³	Ford's Abbott Case Notice of Filing Revised Summary of Misappropriated Settlement Funds And Attorney Fees.	440 names on two distribution grids attached to Ford's filing. Ford claims to represent 416 persons.
May 2, 2008 court order with grid attached	Damages "distribution grid" approved by the Boone Circuit Court in the Settled Case.	414 names are on the grid. Ford asserts that some of those persons are not Chesley's creditors.
Sept. 9, 2011	Memorandum Opinion And Order in the Criminal Case	381
Sept. 9, 2011	Memorandum Opinion And Order in the Criminal Case	"Ford now represents 407 individuals", but 421 victims were identified in this criminal action
Dec. 1, 2011	Sixth Circuit Brief of Appellant Angela M. Ford	407
Nov. 13, 2014	Statement by Ford in open court in the Abbott Case	"variable", maybe 382 from a 2008 Abbott Case distribution grid ²⁴

"A judgment record or docket should afford definite and reliable information as to the parties for and against whom the judgments contained in it are rendered." 46 AM. JUR. 2D

Judgments § 126 (2014). As another treatise explains:

A judgment must designate the parties for and against whom it is rendered, or it will be void for uncertainty. The designation of the parties should be made with sufficient certainty to enable the clerk to issue execution. This may be done by

²² *Abbott v. Chesley*, 413 S.W.3d 589, 596 (Ky. 2013).

²³ This filing occurred after the Criminal Defendants Judgment was entered. Query, do new plaintiffs receive amounts already collected from the Criminal Defendants or only collections on later entered judgments, such as the Chesley Judgment?

²⁴ Selected pages from the transcript from this hearing are attached as Exhibit G. Ford's current position is essentially 'my clients are the people to whom I choose to pay money.' Ford's statement beginning on page 22 is:

MS. FORD: It's the Settlement Agreement, . . . , [from the Settled Case] that identifies who are the settling Plaintiffs, and how much they're to receive. . . . There were, in fact, additional Plaintiffs in this action [the Abbott Case], So, there are, in fact, additional Plaintiffs in this case, [p23]

THE COURT: . . . so you're saying the 414 on the grid are the ones that are to get the money?

MS. FORD: They were -- they are actually -- at the end of the day, the number on the grid I believe is 382, And then you have a whole 'nother group of Plaintiffs who didn't have money stolen from them. So, the -- the number of Plaintiffs is, in fact, variable,

naming them correctly or by describing them in such terms as will identify them with certainty.

49 C.J.S. *Judgments* § 117 (2014). *And see Montgomery v. Viers*, 130 Ky. 694, 114 S.W. 251 (1908) (“In specifying the relief granted, the parties of and for whom it is given must, of course, be sufficiently identified.”) (citation omitted).

An Accounting By Ford Is Needed and Can Be Readily Provided

Upon information and belief, Chesley asserts that by February 14, 2012, Ford had made at least three distributions to the Abbott Case plaintiffs and retained attorney fees as supposedly permitted by her agreement with those clients. All of these distributions were made before the Chesley Judgment was entered. Chesley is entitled to credit against the Chesley Judgment for all those amounts.

Public policy in the Commonwealth of Kentucky clearly favors settlement over the cost and time associated with prolonged litigation. Kentucky law specifically recognizes discovery as a means necessary to promote settlement. *LaFleur v. Shoney's, Inc.*, 83 S.W.3d 474 (Ky. 2002). Ohio law similarly favors settlement. *Krischbaum v. Dillon*, 58 Ohio St. 3d 58, 567 N.E.2d 1291 (1991).

This Court has broad discretion to promote settlement between the parties. Thus, “it is not an abuse of discretion for a trial judge to suggest a procedure or provide a process which facilitates settlement of all or part of the litigation.” *Bland v. Graves*, 99 Ohio App. 3d 123, 136, 650 N.E.2d 117, 126 (1994). The Manual for Complex Litigation, specifically discusses mass tort actions like the Abbott Case stating:

[In some] cases . . . the judge and parties prefer at the outset to discover plaintiff-specific information For example, in the Ohio asbestos litigation, special masters worked with the parties to develop standard forms *disclosing information that would be relevant to both settlement and trial*. (emphasis added)

§ [4-5.000] Manual for Complex Litigation, DOJML Comment 4-5.000, Section 22.8. Since this Court could order discovery of each victim's damages in a mass tort case, by analogy the Court can order Ford to now disclose how much is owed to each of the current Unknown Respondents. Chesley seeks only information to which he is entitled and that information is similar to that which courts regularly order plaintiffs to provide to defendants in normal discovery processes.

Because Ford decided to make the Abbott Case a "mass" action instead of a "class" action, Chesley may have 400-plus individual judgment creditors and public policy promotes settlements with as many of those creditors as possible. Settlement(s) require that the parties start with an understanding of how much is owed to each particular judgment creditor. The form of the Chesley Judgment combined with Ford's actions prevent Chesley from possibly making a rational settlement offer to any of the individual Unknown Respondents who each have the right to individually determine if they want to settle with Chesley. See *Hatahley v. U.S.*, 351 U.S. 173, 182 (1956) (in action by 30 plaintiffs for loss of horses, trial court's "lump sum" award of damages was inadequate for appellate review and case remanded for apportionment of award among the individual plaintiffs).

In 2011 Ford filed in the Criminal Case a significant disclosure including amounts collected but not distributed to the Abbott Case plaintiffs. There is no reason that disclosure could not be updated and provided to this Court and to Chesley.

REQUESTED INJUNCTIVE RELIEF

Based upon the foregoing and applicable law, Chesley respectfully requests that this Court:

1. Enjoin Ford (and any other counsel working in concert with her) from seeking to enforce the Chesley Judgment in the State of Ohio until 90 days after she provides to Chesley a

complete list of the current names, addresses and amount owed to each specific Unknown Respondent who is one of Chesley's judgment creditors. Chesley respectfully submits that this relief is necessary to protect Chesley, and innocent third-parties, from suffering any asset seizure or other negative act by Ford before Chesley has a fair opportunity to know how much he owes on the Chesley Judgment and to whom those amounts are owed so that the above-described rights are not irreparably lost. Further, this relief is necessary to smooth the operations of courts in the Commonwealth of Kentucky and the State of Ohio as they might face issues concerning the staying or limiting of Ford's collection efforts against Chesley. Finally, Chesley respectfully submits that this relief is necessary to enhance the opportunity for some settlements and will preserve the rights of the Unknown Respondents to possibly receive, consider and act on settlement offers. This relief is appropriate under the facts and circumstances before this Court and applicable law;

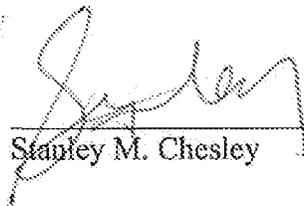
2. Given Ford's efforts to keep information from Chesley, Chesley needs injunctive relief preventing Ford and any individual or entity affiliated with her from destroying or secreting any document or electronic information that reflects any (i) collection of funds collected and/or credited against the Criminal Defendants Judgment, (ii) restitution obligations of the Criminals, (iii) forfeiture of any assets in the Criminal Case, (iv) funds Ford or any affiliated entity transferred to or from Johnston, (v) funds transferred to or for the benefit of any Criminal Case victims who are not Abbott Case plaintiffs; (vi) amounts distributed to the Abbott Case plaintiffs; (vi) operation of the Tandy LLC receivership; and (vii) funds transferred to or subsequently by the United States Marshall's Service related to the Criminal Case or the Abbott Case;

3. Direct Ford (or other counsel working in concert with her) to provide information needed to permit Service of Process on each of the Unknown Respondents or to cause the filing with this Court a notice of appearance on behalf of each Unknown Respondent; and

4. Enjoin Ford from requesting, directly or indirectly, discovery from, or related to, Ohio residents or citizens (except Chesley), or to seize Ohio assets, until 180 days after the last to occur of the steps listed in items 1 through 3, above.

VERIFICATION

Stanley M. Chesley swears or affirms as follows: (1) I am over eighteen years old and have never been declared mentally incompetent; (2) I have personal knowledge of the facts set forth in the above-written Verified Memorandum In Support Of Motion For Injunctive Relief (the Supporting Memo"); (3) I am the judgment debtor who is the subject of the Chesley Judgment described in the Supporting Memo; (4) to the best of my knowledge and belief, the facts set out in the Supporting Memo are true and correct; and (5) attached to the Supporting Memo are true, correct and, except as stated, complete copies of certain documents filed in the Abbott Case or the Criminal Case.


Stanley M. Chesley

Sworn to, and subscribed, in my presence on January 6, 2015 by Stanley M. Chesley who is known to me.


Notary public, State of Ohio
My commission expires on 8-16-2019



Mary S. Fleming
Notary Public, State of Ohio
My Commission Expires 08-16-2019

Sheryl G. Snyder
FROST BROWN TODD LLC
400 West Market Street
Suite 3200
Louisville, KY 40202
ssnyder@fbtlaw.com

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

Attachment 1 – Statements in the Abbott Case Only Regarding Ford’s Clients

DATE	DESCRIPTION
December 30, 2004	Ford files Complaint as a putative class action . The caption of the original Complaint lists 37 named Plaintiffs.
July 27, 2007	Ford files Motion to File Seventh Amended Complaint. The caption of the Seventh Amended Complaint filed with Plaintiffs’ Supplemental Motion (Aug. 3, 2007) lists 416 individuals as Plaintiffs (not including one name that appears only as “Jones”).
July 26, 2007	Ford files “Notice of Filing Revised Summary of Misappropriated Settlement Funds and Attorneys’ Fees.” The Notices states: “The update is necessary due to the addition of one Plaintiff to this lawsuit through a Seventh Amended Complaint.”
August 14, 2007	Ford files motion to file Eighth Amended Complaint. The caption of the Eighth Amended Complaint lists 418 individuals as Plaintiffs (not including one name that appears only as “Jones”).
August 14, 2007	Ford files another “Notice of Filing Revised Summary of Misappropriated Settlement Funds and Attorneys’ Fees.” The Notice states: “The update is necessary due to the addition of two Plaintiffs to this lawsuit through an Eighth Amended Complaint.” The attached “Settlement Funds Analysis” lists 416 individuals .
October 23, 2007	Ford files Notice of Cross-Appeal, which lists 444 individuals as Plaintiffs .
January 30, 2008	Ford files “Notice of Filing Distribution Plan for Judgment Funds.” Attached is a 6 page “Distribution Grid,” which lists 414 individuals (by first name and last initial).
May 2, 2008	Judge Crittenden’s Order entered approving/directing distribution of funds from the “Kentucky Fen Phen Qualified Settlement Fund” to the Plaintiffs according to an attached “Distribution Grid” that lists 414 individuals (by first name and last initial).

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COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

ENTERED
BOONE CIRCUIT/DISTRICT COURT
AUG 01 2014
DIANNE LURAY, CLERK
BY:  D.C.

MILDRED ABBOTT, et al.

PLAINTIFFS

v.

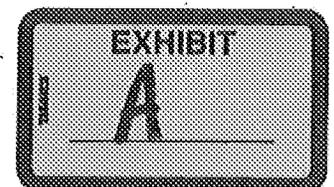
STANLEY M. CHESLEY, et al.

DEFENDANTS

ORDER

This Court conducted a hearing in this matter on July 15, 2014 on Plaintiffs' Motion for Partial Summary Judgment as to Defendant Stanley M. Chesley ("Chesley"). The Plaintiffs were represented by Hon. Angela Ford. The Defendants were represented by Hon. Sheryl G. Snyder and Hon. Frank V. Benton, IV. The Court having reviewed Plaintiffs' Motion, Chesley's Response, Plaintiffs' Reply, having heard argument from counsel, and being in all ways sufficiently advised, finds as follows:

This Court, by the March 8, 2006 Order of Senior Status Judge William Wehr, previously granted summary judgment against Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. on Plaintiffs' breach of fiduciary duty claims in their representation of Plaintiffs in the *Doris Guard, et al. v. A.H. Robbins Company, et al.* lawsuit which involved injuries Plaintiffs suffered as a result of ingesting the "fen-phen" diet drug. The Court awarded damages in the amount of \$42 million (by Order of August 1, 2007) and ruled the Defendants were jointly and severally liable to the Plaintiffs. The Supreme Court of Kentucky affirmed the partial summary judgment against Gallion, Cunningham and Mills, including that each was jointly and severally liable for the amounts owed. Plaintiffs now ask this Court to order summary judgment on their breach of fiduciary claims against Chesley, that Chesley be jointly and



severally liable with Gallion, Cunningham and Mills for the amounts owed to Plaintiffs, and that Chesley disgorge all fees he collected in the *Guard* matter.

The Kentucky Bar Association instituted disciplinary proceedings relating to Chesley's actions in the *Guard* matter in *Kentucky Bar Association v. Chesley*, KBA File 13785. The Trial Commissioner conducted a hearing and found that Chesley had violated eight (8) different ethics rules. The Trial Commissioner recommended that Chesley be permanently disbarred from the practice of law in Kentucky, and that he pay \$7,555,000.00 in restitution to the *Guard* case clients. The Board of Governors of Kentucky adopted the Trial Commissioner's Report. The Supreme Court of Kentucky found Chesley guilty of violations of eight provisions of SCR 3.130 and followed the Board's recommendation that Chesley be permanently disbarred. The Supreme Court did not order that Chesley pay restitution. *Kentucky Bar Ass'n v. Chesley*, 393 S.W.3d 584 (Ky. 2013).

Plaintiffs argue that summary judgment is appropriate as to their breach of fiduciary duty claims through the doctrine of issue preclusion or collateral estoppel. Issue preclusion would bind Chesley to the factual and legal determinations made in the disciplinary proceedings before the Trial Commissioner, the Board of Governors, and the Supreme Court of Kentucky regarding the settlement of the *Guard* matter that resulted in his disbarment. Chesley disagrees.

The Trial Commissioner found, and the Supreme Court ratified, that Chesley violated the following specific provisions of SCR 3.130:

SCR 3.130-1.5(a) by accepting over \$20 million in attorney's fees, which exceeded the amount established by client contracts and contracts with co-counsel, and which were otherwise unreasonable.

SCR 3.130-1.5(c) by failing to provide clients with a written statement of the outcome of the matter, as well as the remittance to the client and the method of its determination. The contractual contingency fee contracts for the clients were either for 30% or 33 1/3% plus expenses of up to 3%. A 49% contingency fee was actually charged to the clients. Chesley's contractual agreement with class counsel was for 21% of fees upon successful settlement of the case, which should have been \$12,941,638.46 and not the \$20 million plus he received. He was paid \$7,555,000 in excess of his proper fee.

SCR 3.130-1.5(e)(2) by dividing fees without consent of clients.

SCR 3.130-5.1(c)(1) by knowingly ratifying specific misconduct of other lawyers.

SCR 3.130-1.8(g) by representing two or more clients in making an aggregate settlement of the claims without consent of the clients or disclosure to them of the existence and nature of all claims. Chesley was class counsel pursuant to his agreement with Gallion, Cunningham and Mills and therefore had the same duties as them with regarding the requirements of SCR 3.130-1.8(g).

SCR 3.130-3.3(a) by making a false statement of material fact to the tribunal.

SCR 3.130-3.1(a) by making a false statement of material fact in connection with a disciplinary matter.

SCR 3.130-8.3(c) (now SCR 3.130-8.4(c)) by engaging in conduct involving dishonesty; fraud, deceit or misrepresentation.

Issue preclusion, also known as collateral estoppel, "allows the use of an earlier judgment by one not a party to the original action to preclude relitigation of matters litigated in the earlier action." *Miller v. Admin. Office of Courts*, 361 S.W.3d 867 (Ky. 2011). A non-party in the former action may assert *res judicata*, a close cousin to issue preclusion, against a party to the former

action as long as the party against whom *res judicata* is pleaded had a realistically full and fair opportunity to present his case. *Id.* (quoting *Mowe v Commonwealth*, 94 S.W.2d 317 (Ky. 1997). Additionally, the Supreme Court has addressed whether administrative agencies acting in a judicial capacity are entitled to the same *res judicata* effect as judgments of a court, finding that they do. *Ky. Bar Ass'n v. Harris*, 269 S.W.3d 414 (Ky. 2008).

Chesley's hearing before the Trial Commissioner was held November 5-6 and 12-13, 2009 before Judge Rod Messer and continued to September 13-15 and 20-24, 2010 before Judge William L. Graham. Chesley was represented at various times by Kent Westberry, Esq., James Gary, Esq., Frank Benton, IV, Esq., Scott Cox, Esq., Mark Miller, Esq., Sheryl Snyder, Esq. and Hon. Susan Dlott. Prior to the hearing, the testimony of five out of state witnesses was provided by video depositions, including 44 exhibits. During the several days the hearing was held, a total of 43 witnesses gave testimony either in person or by deposition, with the Trial Commissioner considering 124 exhibits. Additionally, the Trial Commissioner allowed time for the parties to submit briefs at the conclusion of the Hearing. The Court finds Chesley had a realistically full and fair opportunity to present his case before the Trial Commissioner.

Certain elements must be met for issue preclusion to operate as a bar to further litigation: "(1) at least one party to be bound in the second case must have been a party in the first case; (2) the issue in the second case must be the same issue as the first case; (3) the issue must have been actually litigated; (4) the issue was actually decided in that action; and (5) the decision on the issue in the prior action must have been necessary to the court's judgment and adverse to the party to be bound." *Id.* quoting *Yeoman v. Commonwealth Health Policy Bd.* 983 S.W.2d 459 (Ky. 1998).

The Court finds these elements have been met with regard to Plaintiffs' Motion in this matter and the findings in *KBA v. Chesley*. Chesley was a party bound by the KBA matter. The facts and circumstances at issue in the instant Motion were those at issue in the KBA matter. The facts and circumstances were litigated in the KBA matter before the Trial Commissioner at a hearing held November 5-6 and 12-13, 2009 and September 13-15 and 20-24, 2010, and reviewed by the Board of Governors and the Supreme Court of Kentucky. The Trial Commissioner made factual findings and legal conclusions, which were adverse to Chesley, and which were affirmed by the Board of Governors and the Supreme Court of Kentucky, said facts being those at issue in the instant Motion. The factual findings and legal conclusions by the Trial Commissioner, the Board of Governors and the Supreme Court of Kentucky were necessary for the outcome of the KBA matter.

This Court finds Chesley is bound by the factual findings and legal conclusions in the KBA matter. The Supreme Court found that by entering into an agreement with Gallion, Cunningham and Mills, Chesley signed on as co-counsel and was one of the attorneys representing the Plaintiffs in the *Guard* matter. He, therefore, assumed the same ethical responsibilities as Gallion, Cunningham and Mills, and the same responsibilities he would have with any other client. *Kentucky Bar Ass'n v. Chesley*. Chesley had the duty to know his fee responsibilities to his clients, specifically that he was to receive no more than 21% of one-third of the \$200,450,000.00 settlement, \$14,031,500.00. *Id.* Chesley received \$20,497,121.81. *Id.* The Supreme Court found that Chesley knowingly participated in a scheme to skim millions of dollars in excess attorney's fees from unknowing clients, and that he received and retained fees that he knew were improperly taken. *Id.* The Supreme Court further found that he purposefully attempted to avoid conversation and correspondence that would expose his knowledge of the

nefarious schemes of his co-counsel. *Id.* This Court finds that no genuine issues of material fact exist, and summary judgment is appropriate on Plaintiffs' Breach of Fiduciary claims. Chesley entered into an attorney-client relationship with the Plaintiffs in *Guard*. He breached his duty by accepting excess fees in the amount of \$6,465,621.81. Chesley's conduct caused Plaintiffs to receive only a portion of the settlement monies they were entitled to.

Plaintiffs also asks the Court to order that Chesley is jointly and severally liable with Gallion, Cunningham and Mills for the monies owed to Plaintiffs. The Supreme Court of Kentucky affirmed Judge Wehr's finding in this matter that Gallion, Cunningham and Mills were jointly and severally liable to Plaintiffs. The Supreme Court found that Gallion, Cunningham and Mills breached attorney-client contracts and therefore joint and several liability is not precluded by KRS 411.182. The Supreme also found that by the manner in which Gallion, Cunningham and Mills combined their efforts in the Fen-Phen litigation, they engaged in a joint enterprise, or joint adventure, an informal partnership existing for a limited purpose and duration, for which joint and several liability is properly assessed under KRS 362.220. *Abbott v. Chesley*, 413 S.W.3d 589 (Ky. 2013).

The Supreme Court enumerated the essential elements of a joint enterprise: (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise. *Id.* citing *Huff v. Rosenberg*, Ky., 496 S.W.2d 352 (1973). The Supreme Court adopted the findings of the Trial Commissioner in *KBA v. Chesley*, and this Court found above that issue preclusion bars the further litigation of Plaintiffs' breach of fiduciary duty claims against Chesley.

This Court now finds that no genuine issues of material fact exists, and as a matter of law Chesley is jointly and severally liable with Gallion, Cunningham and Mills for the \$42 million in damages awarded the Plaintiffs against Gallion, Cunningham and Mills by this Court's Order of August 7, 2007. Chesley signed on as co-counsel representing the Plaintiffs in the *Guard* matter when he entered into his fee-division contract with Gallion, Cunningham and Mills. Chesley shared the common purpose to be carried with Gallion, Cunningham and Mills. They agreed on how they would share the work and how they would share the profits. Chesley maintained a voice in the managerial control of the enterprise. The Court therefore finds that pursuant to KRS 362.220, Chesley is jointly and severally with Gallion, Cunningham and Mills for the damages the Plaintiffs suffered.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment is **GRANTED** as to Plaintiffs' Breach of Fiduciary claims against Stanley M. Chesley.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Stanley M. Chesley is jointly and severally liable with Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. for the existing judgment amount of \$42 million owed to Plaintiffs.

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment as to disgorgement is **DENIED**.

DATED this 29th day of JULY, 2014.



JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO:

ALL ATTORNEYS OF RECORD

I, DIANNE MURRAY, Clerk of the District Court, hereby certify that I have placed this notice on the foregoing order and notice to all parties by email at their last known addresses or their counsel of record.
This 1 day of AUGUST, 2014
DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT
Kathleen D.C.

BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT

Case No. 05-CI-436

MILDRED ABBOTT, et al.,

PLAINTIFFS

v.

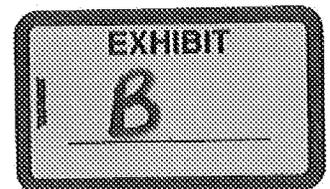
PLAINTIFFS' RESPONSE TO INTERIM
RECEIVER'S REPORT AND REQUEST
FOR DISTRIBUTION OF FUNDS TO PLAINTIFFS

STANLEY M. CHESLEY, et al.,

DEFENDANTS

Plaintiffs are again opposed to the use of funds entrusted to the Interim Receiver for any purpose other than for a distribution to the Plaintiffs on the same grounds set forth in the Plaintiffs Response to Interim Receivers Report of February 1, 2008 which Plaintiffs incorporate as if fully set forth herein. Additionally, Plaintiffs rely on the garnishment served upon counsel for Tandy and Plaintiffs' Petition to Attach Judgment Debtors' Assets in Possession of Attorneys.

Plaintiffs note that while the Interim Receiver is now fulfilling the service of bill review, there are a myriad of questions related to the management of assets that are unanswered, including whether or not Curlin is properly licensed to be raced by Tandy d/b/a Midnight Cry in the upcoming races in Dubai or whether Tandy is even required to obtain such a license in order to share in any purse winnings.



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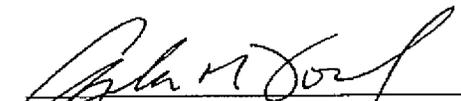
James A. Shuffett, Esq.
271 West Short Street, Suite 400
Lexington, Kentucky 40507

C. Alex Rose, Esq.
471 West Main Street
Suite 400
Louisville, KY 40202

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

Byron E. Leet, Esq.
Wyatt, Tarrant & Combs, LLP
500 West Jefferson Street
Suite 2800
Louisville, Kentucky 40202

J. Stephen Smith
Graydon Head & Ritchey, LLP
2400 Chamber Center Drive
Suite 300
Ft. Mitchell, KY41017


COUNSEL FOR PLAINTIFFS

COMMONWEALTH OF KENTUCKY
BOONE COUNTY CIRCUIT COURT
CASE NO. 05-CI-00436

BOONE CIRCUIT/DISTRICT COURT
OCT 10 2008
DIANNE MURRAY, CLERK
BY RS DC

MILDRED ABBOTT, ET AL.

PLAINTIFF

V.

STAN M. CHESLEY, ET AL.

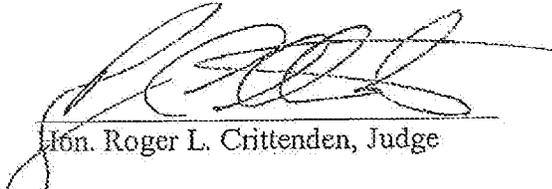
DEFENDANT

ORDER

Pursuant to good cause shown, the Court hereby Orders as follows:

1. Matthew L. Garretson of The Garretson Law Firm withdraw \$32,762.30 from the Kentucky Fen Phen Qualified Settlement Fund to pay The Garretson Law Firm's outstanding fees for settlement/disbursement administrations incurred through August, 2008, for services rendered in this matter as more particularly described in the attached invoice.

Signed this 9th day of October, 2008.


Hon. Roger L. Crittenden, Judge

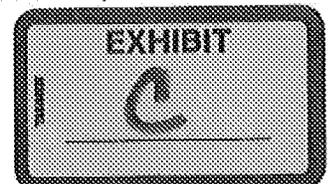
CERTIFICATE

I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record.

This 10th day of October, 2008

DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT
Dianne Murray D.C.

RECEIVED OCT 14 2008



COMMONWEALTH OF KENTUCKY
BOONE COUNTY CIRCUIT COURT
54th JUDICIAL DISTRICT
CASE NO. 05-CI-00436

MILDRED ABBOT, et al

PLAINTIFF

V.

STANLEY M. CHESLEY, et al

DEFENDANT

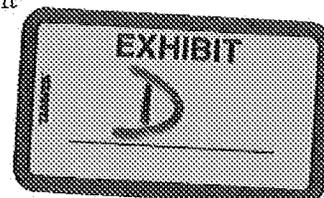
TENTH INTERIM RECEIVER'S REPORT

Interim Receiver ("IR") of the KYFP Receivership, Matthew L. Garretson, and Sylvius H. von Saucken, received this Court's Order entered on April 13, 2009, asking IR to oversee all future payments made and income received by Tandy, LLC ("Tandy"). IR has received the following deposits listed in Chart 1 below.

Chart 1

Name	Amount	Date Notice Filed	Reason
Ellis Park Race Course	\$5,121.10	8/11/2009	Race earnings from Golden Thief and Others
Horsemen's Bookkeeper	\$6,848.71	7/15/2009	Race earnings from Glit Out A Baghdad and Others
Louisiana Horsemen's	\$2,000.00	7/15/2009	Race earnings from English Teacher
Horseman's Guarantee	\$29,100.00	9/3/2009	Race earnings from Einstein and Golden Thief
Ellis Park Race Course	\$555.00	9/3/2009	Race earnings from Golden Thief and Others
Total	\$43,624.81		

Since the filing of the Ninth Interim Receiver's Report, and its Supplement, this Court's August 7, 2009 Order, instructed its IR to directly pay for any subsequent



invoices relating to Tandy's horses identified by IR as ordinary and necessary to maintain, protect and preserve Tandy's assets without further order from this Court, thereby precluding the necessity for Tandy's Operations Manager, Patricia Cunningham, to make any such payments from Tandy accounts and permitting prompt payment by IR. Following that Order, IR prepared letters to each such vendor, identifying a list of horses known by IR to be Tandy horses and requesting each vendor to directly bill IR for services authorized by Tandy horse trainers and/or stable manager, Mr. Terrazas. Accordingly, IR has reviewed invoices sent to IR by the vendors. IR used an objective ordinary and necessary business expense test; duly taking into account this Court's restriction of use of funds held by IR to preclude reimbursement for expenses that would personally benefit Tandy's owners or their family members, and to preclude application of receivership funds to pay for private aircraft use. Accordingly, IR reports as follows with respect to the modified ninth set of expenses, per the August 7, 2009, Order (Chart 2) and the tenth set of expenses received by IR (Chart 3), copies of which are attached to this Report.

FUND BALANCE

As of September 11, 2009, the KYFP Receivership's fund balance is \$400,667.79, including accrued interest (since the filing of IR's Ninth Report) of \$4.12. This balance includes all of the approved expenses paid in charts 2, 3 and 4.

APPROVED EXPENSES PAID

IR approved the wire transfer of funds from the KYFP Receivership to the Tandy, LLC account to pay the following expenses listed in Chart 2 below totaling \$14,957.66. These expenses are related to corporate assets shown to be owned by Tandy through documents submitted to IR and are necessary to preserve and protect Tandy's assets, including but not limited to its interests in the stallion Curlin, the thoroughbred Einstein, and Tandy's twenty-six other horses.

Chart 2

Expenses	Amount	Purpose
Trainer Total	\$7,200.00	Reimbursement of Ackerman Invoice to P. Cunningham
Employee Expense	\$7,757.66	Salary for employees
Grand Total:	\$14,957.66	

APPROVED EXPENSES PAID (Modified Ninth)

IR approved and directly paid the expenses listed in Chart 3 below totaling \$161,218.68, a breakdown for and copies of which are attached as Exhibit A. These expenses are related to corporate assets shown to be owned by Tandy through documents submitted to IR.

Chart 3

Expense Description	Amount	Reason for Payment
Trainer Total	\$116,705.19	Equine training
Veterinarian Total	\$19,175.70	Equine vets
Transportation Total	\$5,414.07	Transportation of horses and jockeys
Receiver's Fee Total	\$11,402.50	Payment per Court order for services rendered (from 12-1-08 to 5-31-09)
Hillcrest Farm	\$1,792.72	Feed for horses

Miscellaneous Expense	\$6,728.50	Accountant expense and Horse consulting expense
Total	\$161,218.68	

APPROVED EXPENSES PAID (Tenth Report)

IR has also approved and directly paid the expenses listed in Chart 4 below totaling \$95,163.91, a breakdown for and copies of which are attached as Exhibit B. These expenses are related to corporate assets shown to be owned by Tandy through documents submitted to IR.

Chart 4

Expense Description	Amount	Reason for Payment
Trainer Total	\$18,965.50	Equine training
Transportation Total	\$12,386.50	Transportation of horses and jockeys
Veterinarian Total	\$7,225.23	Equine vets
Breeding Total	\$15,520.00	Horse breeding
Farrier Service	\$660.00	Farrier service to horses
Receiver Fees	\$10,510.00	Court Approved Receiver fees (June and July, 2009)
Attorney Fees	\$15,284.90	Approved Attorney Fees, A. Regard, per 8-7-2009 Court Order
Stallion Expense	\$10,959.07	Stallion expenses
Horse Sales Expenses	\$1,800.00	Mare/foal entry fees for Oct. and Nov. breed stock sales
Real Estate	\$757.87	Expense for 1332 Strawberry Lane property
Racing Fees	\$100.00	Entry Fees (Churchill Downs)
Hillcrest Farm	\$994.84	Feed for the horses
Total	\$95,163.91	

Under this Court's April 13th and August 7th (2009) Orders, IR has developed a streamlined process with which to pay third party vendors. IR has also sold three horses, per this Court's orders, creating a sub-account held in the KYFP Receivership to hold sale proceeds. In subsequent Reports, IR will report the account balances for the general and newly created "Equine Sales" account. IR intends to use the Equine Sales sub-account to pay for applicable sales and income taxes, but otherwise, to treat this account as a payment account of last resort.

IR has also entered Tandy's broodmares, along with their foals and any 2008 or 2009 foals in either the Fasig-Tipton Select sale, or the Keeneland Breedstock sale, to take place in October and November, 2009, respectively. To the extent Tandy's Tier III horses remain who have shown any ability to race, IR is actively seeking private purchasers, including having its expert contact the trainers to identify options to sell. To the extent IR cannot sell a Tier III horse before year's end, and with the knowledge and consent of counsel, this Court and following its expert's recommendations, IR may be left with little choice but to give those horses away if suitable homes can be found for those horses.

Given the current proceedings in this Court, and in the United States District Court, E.D. Kentucky, N. Division, Covington (Criminal Case No. 07-39-DCR)(the "Federal Court"), IR has also been working with counsel, as well as the United States Attorneys and United States Marshals Service to ensure that an integrated approach to protecting and preserving assets under the supervision of IR is developed, and subject to further Court order, IR continues to proceed in an orderly fashion to sell off Tandy assets in a manner which best protects Tandy beneficiaries, taking into account the Forfeiture Order issued by the Federal Court .

To that end, IR continues to address matters relating to the forfeiture of the private aircraft that this Court identified as lacking any valid business purpose, and as such, rejected payment by IR of expenses associated with that airplane (2003 Cirrus). On August 13, 2009, the Fayette County Circuit Court issued a Default Judgment against Tandy based on a failure to file an Answer to a Complaint filed by First National Bank Midwest ("First National") in an action to recover funds which IR understands arises from Tandy's failure to pay an outstanding balance due on the airplane based on a mortgage note executed and personally guaranteed by the Defendants Mr. Gallion and Mr. Cunningham. As this Court is well aware, IR was precluded from paying the monthly mortgage amount due for the airplane based on this Court's finding that no business purpose existed. Accordingly, the mortgage became in default, the Defendants did not make further payments, and the Default Judgment ensued. On August 17, 2009, the Fayette County Circuit Court issued an Order of Garnishment, received by IR on August 19, 2009. On September 8, 2009, IR filed an Answer with that Court and counsel for First National Bank Midwest. Following its Answer, IR also discussed this matter with such counsel. IR understands efforts will be taken to sell the airplane, at which point in time, counsel will communicate with IR about the next steps to take.

In addition to the airplane issue, IR continues to communicate with counsel and the United States Attorneys office concerning the Kenneth McPeck matter, which may be removed to the Federal Court.

Respectfully submitted,



Matthew L. Garretson, Int. Receiver
KYFP Receivership
7775 Cooper Road
Cincinnati, OH 45242
(513) 794-0400
mlg@garretsonfirm.com

Submitted:

Hon. Sylvius H. von Saucken
The Garretson Firm LLC
7775 Cooper Road, Suite 139
Cincinnati, OH 45242
ph 513.794.0400 x 106
fx 513.936.5186
Email: sys@garretsonfirm.com

CERTIFICATE OF SERVICE

A copy of the foregoing Report was e-mailed and/or mailed, postage prepaid, on this the 11 day of Sept., 2009, to the following:

Hon. Seth J. Johnston
Miller & Wells, PLLC
300 E. Main Street, Suite 360
Lexington, KY 40507
sjohnston@millerwells.com

Hon. Angela M. Ford
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
amford@alltel.net

Hon. William T. Ramsey
Neal & Harwell, PLC
150 Fourth Avenue North, Suite 2000
Nashville, Tennessee 37219
ramseywt@nealharwell.com

Hon. Jeffrey J. Harmon
Cors & Bassett, LLC
537 East Pete Rose Way, Suite 400
Cincinnati, Ohio 45202-3578
jjh@corsbassett.com

Hon. Mary E. Meade-McKenzie
3290 Blazer Parkway, Suite 150
Lexington, Kentucky 40509
mary.meade-mckenzie@hotmail.com

Hon. Frank Benton, IV
PO Box 72218
Newport, Kentucky 41072

Hon. C. Alex Rose
471 West Main Street
Suite 400
Louisville, Kentucky 40202

Hon. James A. Shuffett
271 West Short Street, Suite 400
Lexington, Kentucky 40507
shuffettlaw@aol.com

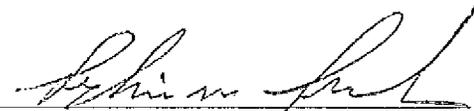
Hon. Calvin R. Fulkerson
Lynn, Fulkerson, Nichols & Kinkel
267 West Short Street
Lexington, Kentucky 40507
cfulkerson@lfnk.com

Hon. Andre F. Regard
269 West Main Street
Lexington, KY 40507
aregard@aol.com

Hon. John D. Cox
Lynch Cox Gilman & Mahan PSC
500 West Jefferson Street, Suite 2100
Louisville, KY 40202

James A. Zerhusen
United States Attorney
c/o Asst U.S. Atty. Wade Thomas Napier
260 W. Vine Street, Suite 300
Lexington, KY 40507
Wade.Napier@usdoj.gov

Hon. Danny C. Reeves
U.S. District Court for E.D. Kentucky
330 W. Broadway, Suite 354
Frankfort, KY 40601



Hon. Sylvius H. von Saucken
for Matthew L. Garretson,
Int. Receiver, KYFP Receivership

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

CRIMINAL ACTION NO. 07-CR-39-DCR

ELECTRONICALLY FILED

UNITED STATES OF AMERICA

PLAINTIFF

V.

DEFENDANTS' VICTIMS' RESPONSE
TO PROPOSED ORDER REGARDING RESTITUTION

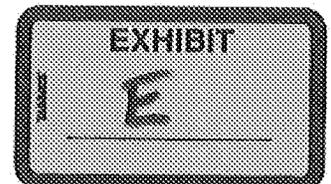
WILLIAM J. GALLION, ET AL.

DEFENDANTS

In response to the Court's Order requiring counsel to submit a proposed order of distribution to the Victims for the Court's consideration, the United States has submitted a Notice of Filing Proposed Order Regarding Restitution. The United States recommends a current distribution of funds collected for restitution to the 14 Victims who are not Plaintiffs in the state court action in order to allow those Victims to be brought into payment parity with the remaining Victims. The United States has also raised issues related to the payment of attorneys fees.

The Victims Advocate recommends a distribution to all Victims from the funds available for restitution. The Victims agree with the United States that payments received pursuant to the state court judgment must be deducted from restitution amounts Ordered by this Court and that all Victims are entitled to a pro rata portion of funds distributed as restitution by this Court.

The Court's Restitution Order sets forth the amount of restitution for each individual Victim and is based upon what the Defendants stole from the Victim's settlement amount plus the contractual fee each victim would have been obligated to pay had no criminal offense been



committed. Those amounts differ among Victims, even among Victims whose settlement amounts were identical. The Court's distribution calculations will presumably include a mathematical formula that adjusts restitution payments by factoring in amounts already recovered by the state court Victims.

The total amount collected by the state court Victims is as follows:

May 2008 (Judgment funds from the KFHL, Inc.)	\$23,500,000.00
February 2010	\$12,800,000.00
October 2010	\$ 4,500,000.00
Escrowed funds	\$ 257,021.00
Escrowed funds, 14 Non-Party Victims	\$ 33,664.00

The amounts distributed to the Victims in the state court action total \$40,799,988.32.

Attached hereto are the total individual distribution amounts that are necessary for the Court to calculate deductions from the total restitution due these Victims. Exhibit 1.

Attorneys Fees

The United States recognizes that the majority of Victims have fee contracts with the undersigned who has represented them in multiple actions based upon the same basic facts and evidence. However, the United States suggests that it may be necessary for the Court to determine "whether and to what extent a fee has been earned from the assets collected by the United States" and points out that certain assets are exempt from execution in the state civil action. The United States also suggests that the Court may need to notify the victims of issues related to such fees and its' proposed Order provides for restitution payments to be made directly to the Victims, without deduction for attorney fees pursuant to the Victims' Attorney's lien.

The payment of the Victim's attorney's fees has been previously discussed in this action, initially at the Sentencing Hearing on August 17, 2009 and on several occasions thereafter.

Whether an attorney's fee is owed by the Victims, as the United States has noted, is a contractual issue but it is also a component of the Court's Restitution Judgment Order as the attorney's fee is part of the restitution owed by the Defendants. The pertinent terms of the fee contract were set forth in Defendants' Victims' Response to the United States Pre-Hearing Memorandum. Doc. 1367. The terms of that contract extend to the Victims representation in all actions.

The Victim's attorney's lien arises from contract, Kentucky statute and at equity. Kentucky's attorney's lien statute provides: "Each attorney shall have a lien upon all claims....upon which suit has been instituted, for the amount of any fee agreed upon by the parties....If the action is prosecuted to a recovery of money or property, the attorney shall have a lien upon the judgment recovered....for his fee." KRS 367.460. The state court action against Gallion and Cunningham was prosecuted "to a recovery of money or property". An attorney's lien is superior to the government's restitution lien. *USA v. Brosseau*, 446 F. Supp. 2d 659, 661 (N.D. Tex. 2006) An attorney also has an "equitable lien" on amounts recovered in a state proceeding. *USA v. Kamieniecki*, 261 F. Supp. 683 (D.N.H. 1966) In *Kamieniecki*, the district court found that equitable principles supported an award of attorney's fees to the lawyer who had obtained a judgment for his client (the defendant in a civil IRS proceeding) in state court. The court found that because the attorney's efforts led to the creation of the fund in question, which would not have existed but for the lawyers efforts - equitable principles entitled the lawyer to his fee.

While this Court may find that the restitution judgment in this action has priority if the Kentucky Supreme Court were to overturn the trial court judgment, such a finding should not

alter a determination of whether or not a fee is owed by the majority of Victims to their lawyer.¹ Regardless, at present, the state court judgment remains in force until the Kentucky Supreme Court were to overturn the trial court judgment, (Kentucky Civil Rule 76.30 and Kohler v. Transportation Cabinet, 944 S.W. 2d 146,147 (Ky. App. 1997)).

Finally, the United States has raised the issue of whether the Victim's attorney's fee should extend to funds derived from assets that may be exempt from execution in state court, an issue that has not been addressed previously. During the sentencing hearing, the Court indicated, and the United States agreed, that the amount of restitution should be calculated to include the Victim's paying a single attorneys fee to their current attorney while the Defendants were entitled to no fee. The Court reasoned, and the United States agreed, that the Victims were obligated to pay at least one fee. The Restitution Judgment includes the contractual fee the Victim's were forced to incur to recover the settlement funds that were taken from them.² While the United States has pointed out an interesting issue, it has indicated that it is not taking a position on the ultimate disposition of the fee issue. The undersigned believes this issue would create another accounting factor that unnecessarily complicates future distributions and interferes with collaborative efforts on collection of the restitution judgment for the benefit of the Victims. As to the present funds, the majority of funds currently available for restitution are derived from assets the Victims in the state court had prior liens on, as discussed in previous filings. The Gallion retirement fund, however, was unquestionably referred to the United States during state

¹ Importantly, the future prosecution of the civil case would be affected if the Victims attorney's lien is not honored. If the United States could always claim that the restitution judgment has priority over any additional recovery under the existing judgment and any future judgment on the remaining claim for punitive damages and claims against other lawyers, the civil case would end. Without a means to pay their lawyer, the Victims who chose to pursue a civil case would effectively be denied their right to pursue those claims.

² The United States argued that attorneys' fees incurred to uncover and litigate the defendants' fraud were reasonable and foreseeable costs and that the victims "had no other alternative but to retain the services of a civil attorney for purposes of seeking recovery of their settlement money the defendants fraudulently took from them." (Sentencing Memorandum, R. 914, pp. 9-12)

court collection discovery as a collaborative effort. If the Court were to determine that the Victim's attorney's fee is limited to assets that are not exempt from execution in state court, a list of those assets would be required along with the funds derived from their liquidation.

The Victim's Advocate recommends that all Victims be included in the distribution of funds available for restitution. The Victims' Attorney's lien should be honored and paid as a part of the restitution payments distributed.

Respectfully submitted,

/s/ Angela M. Ford

ANGELA M. FORD, ESQ.
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
(859) 268-9141 (facsimile)
amford@windstream.net

VICTIMS' LEGAL REPRESENTATIVE

CERTIFICATE OF SERVICE

On January 2, 2013, a copy of the foregoing was served electronically on all parties of record in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order.

/s/ Angela M. Ford

VICTIMS' LEGAL REPRESENTATIVE

	B	AM
1		
2		
4	Last Name	Total Gross Disbursements
5		
6	Abbott	22,704.13
7	Abney, c/o Carol Barnes on b	29,104.33
8	Abraham	23,646.39
9	Adams	23,646.39
10	Adams	23,646.39
11	Adams	23,646.39
12	Adams, c/o Gloria Little	53,556.90
13	Adamson	23,646.39
14	Adkins	51,362.53
15	Akers	23,646.39
16	Alsip	50,198.45
17	Alton	50,198.45
18	Aivey	57,761.73
19	Applegate	23,646.39
20	Armstrong-Kemp	23,646.39
21	Arvin	23,646.39
22	Atkinson	23,646.39
23	Back	48,162.93
24	Bailey	6,706.14
25	Bailey	1,139,681.20
26	Bailey	23,646.39
27	Baker	23,646.39
28	Baldwin	810,595.19
29	Barnes	23,646.39
30	Bartley, Jr.	50,198.45
31	Baumgardner	57,761.73
32	Bays-Plybon	23,646.39
33	Beggs	23,646.39
34	Belcher	23,646.39
35	Belding	23,646.39
36	Berry	22,704.13
37	Berry	22,704.13
38	Bingham	25,903.73
39	Black	23,646.39
40	Blair	23,646.39
41	Blair	53,556.90
42	Boggs	23,646.39
43	Boone	60,272.81
44	Botkins	23,646.39
45	Bowling	24,593.39
46	Bowman	22,704.13
47	Braden	46,840.99
48	Brame	22,704.13
49	Branham	23,646.39
50	Branham	24,956.73
51	Branham	25,903.73

	B	AM
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2		
4	Last Name	Total Gross Disbursements
5		
52	Brewer	23,646.39
53	Brock C/O Amy Glodo, Admin	25,903.73
54	Brock-Powell	23,646.39
55	Brown	235,120.36
56	Brown	23,646.39
57	Brown	53,556.90
58	Browning, c/o Sarah Balenovic	28,707.34
59	Brumfield, c/o Nathaniel Brum	50,198.45
60	Brumley	23,646.39
61	Brumley-Bradford	23,646.39
62	Brummett	23,646.39
63	Bruner	23,646.39
64	Bryant	23,646.39
65	Bullock-Pennington	50,198.45
66	Burgess	25,903.73
67	Burton	23,646.39
68	Bush	23,646.39
69	Butler	57,761.73
70	Campbell	23,646.39
71	Canada	23,646.39
72	Cantrell	50,198.45
73	Carman-Staton	1,139,681.20
74	Carter	16,304.93
75	Carter	23,646.39
76	Cason	53,556.90
77	Caudill	23,646.39
78	Centers	607,946.14
79	Childress	23,646.39
80	Clark	23,646.39
81	Clark	23,646.39
82	Click	53,556.90
83	Ciift	166,402.88
84	Coker	50,198.45
85	Coleman	23,646.39
86	Coleman	57,761.73
87	Collier	23,646.39
88	Collier	23,646.39
89	Colvin	25,903.73
90	Combs	22,704.13
91	Cook	6,856.12
92	Cornn	23,646.39
93	Cotton-Gilley	20,287.94
94	Couch	23,646.39
95	Cowley	23,646.39
96	Cox	43,482.54
97	Crain	29,104.33

	B	AM
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4	Last Name	Total Gross Disbursements
5		
98	Creech	53,556.90
99	Criswell	23,646.39
100	Crowe	23,646.39
101	Curtis	57,761.73
102	Dabney	53,556.90
103	Daughtery	53,556.90
104	Davidson-Gibson	23,646.39
105	Davis	23,646.39
106	Davis	23,646.39
107	Dawson	15,204.00
108	Dean	23,646.39
109	Delaney	57,761.73
110	DeSpain	23,646.39
111	Dile	23,646.39
112	Doser	23,646.39
113	Dotson	23,646.39
114	Duff	57,761.73
115	Dunaway	114,317.62
116	Edwards-Engle	23,646.39
117	Edwards-Wood	23,646.39
118	Elliot	23,646.39
119	Erp	23,646.39
120	Estep	57,761.73
121	Estes	23,646.39
122	Ezell	53,556.90
123	Faye-Beamon	23,646.39
124	Fentress	23,646.39
125	Fitch, c/o Jason Fitch, Admini	1,086,789.65
126	Flannery	48,162.93
127	Flynn	16,929.49
128	Foster-Gifford	25,903.73
129	Franklin	23,646.39
130	Franklin	22,704.13
131	Frizzell	23,646.39
132	Fugate	51,362.53
133	Fulks, c/o James E. Story, Esq	6,706.14
134	Gaunce	975,138.70
135	Gay	57,761.73
136	Gayheart	23,646.39
137	Gibson	23,646.39
138	Gibson, c/o R. Dean Steward,	53,556.90
139	Gilbert	23,646.39
140	Gist	50,198.45
141	Godbey	1,139,681.20
142	Godby-Simons	23,646.39
143	Goff-Wells	10,213.58

	B	AM
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4	Last Name	Total Gross Disbursements
5		
144	Goode-Cruz	23,646.39
145	Gordon	36,767.63
146	Grant	48,162.93
147	Gray	46,840.99
148	Green	23,646.39
149	Green	53,556.90
150	Hall	777,007.71
151	Hall	23,646.39
152	Hall	897,449.53
153	Hampton	53,556.90
154	Hancock	22,704.13
155	Handley	53,556.90
156	Hanley	1,249,376.88
157	Harris	50,198.45
158	Harrison	23,646.39
159	Hassler	23,646.39
160	Hayden	23,646.39
161	Heizer	23,646.39
162	Hellmueller	50,198.45
163	Helton	23,646.39
164	Hendrickson, c/o Louise Duva	443,403.63
165	Henry	29,104.33
166	Highley	50,198.45
167	Hill	50,198.45
168	Hillard	23,646.39
169	Hilton	51,362.53
170	Hinkle	53,556.90
171	Hocker	23,646.39
172	Hood	23,646.39
173	Hood	23,646.39
174	Hoover	22,704.13
175	Hopkins	1,139,681.20
176	Horn	23,646.39
177	Horning	23,646.39
178	Hoskins	16,929.49
179	Hoskins	25,903.73
180	Howard	16,929.49
181	Howard	57,761.73
182	Howser (Nakagama)	23,646.39
183	Hughes	20,287.94
184	Hughes-Harness	23,646.39
185	Hulse	1,304,224.71
186	Humphreys	50,198.45
187	Hunt	22,704.13
188	Hunter	26,692.27
189	Hutchcraft	22,704.13

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4	Last Name	Total Gross Disbursements
5		
190	Hutcherson	23,646.39
191	Hutchison	16,929.49
192	Ison	53,556.90
193	Jackson	23,646.39
194	Jackson	23,646.39
195	Jackson	50,198.45
196	Jackson, c/o Betty Davidson, E	772,489.65
197	James	607,946.14
198	Jeffrey	22,704.13
199	Johnson	23,646.39
200	Johnstone	50,198.45
201	Jones	16,929.49
202	Jones	23,646.39
203	Jones	23,646.39
204	Jones	23,646.39
205	Jones	23,646.39
206	Jones	50,198.45
207	Jordan	22,704.13
208	Kelly	41,763.73
209	Keltner-Nuxoll	25,903.73
210	Kennedy	15,204.46
211	King	23,646.02
212	King	23,646.02
213	Kitts	25,903.89
214	Kluck	53,557.33
215	Krey	1,468,767.87
216	Larkins	22,704.30
217	Lewis	25,903.89
218	Lewis, c/o Joy Perry., Estate d	53,557.33
219	Lewis-Mullinix	57,761.39
220	Littleton	53,557.33
221	Long	53,557.33
222	Long, c/o Angela J. Shacklefo	25,764.54
223	Lovan-Day	22,704.30
224	Lovell, c/o Pam Sullivan & Sh	1,191,593.03
225	Lush	23,646.02
226	Malone-McGowan	25,903.89
227	Mann	25,903.89
228	Marlowe	23,646.02
229	Marro	14,089.72
230	Martin	50,198.71
231	Martin	53,557.33
232	Martin	53,557.33
233	Mason	23,646.02
234	McClanahan	23,646.02
235	McDaniel	51,362.22

	B	AM
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4	Last Name	Total Gross Disbursements
5		
236	McGirr	810,595.11
237	McGuire	23,646.02
238	McGuire	23,646.02
239	McMurtry	25,764.54
240	Meece	53,557.33
241	Metzger	50,198.71
242	Miller	33,408.62
243	Miller	23,646.02
244	Miller	23,646.02
245	Miller	17,769.94
246	Miller	22,704.30
247	Miller	50,198.71
248	Minton	25,764.54
249	Miracle, c/o William Miracle of	926,987.63
250	Mitchell	23,646.02
251	Montgomery	23,646.02
252	Moore	23,646.02
253	Moore	22,704.30
254	Morris	23,646.02
255	Muddimann-Cornish	50,198.71
256	Napier	20,288.41
257	Neace	53,557.33
258	Neal	6,855.93
259	Nevels	23,646.02
260	Newlin (Riddle)	53,557.33
261	Noe	6,855.93
262	Nolan-Dinsmore	6,706.38
263	Pace	25,903.89
264	Parks	53,557.33
265	Parris	50,198.71
266	Peck	46,841.09
267	Peek	1,468,767.87
268	Pennington	23,646.02
269	Perkins	21,631.32
270	Perkins	46,840.99
271	(Perkins) Spencer	50,198.45
272	Perkins	53,557.33
273	Phelps	23,646.02
274	Pickett	25,764.54
275	Pickett	57,761.39
276	Powell	23,646.02
277	P'Pool	22,704.30
278	Preston	57,761.39
279	Price	23,646.02
280	Proffitt-Norman	21,798.02
281	Pursel	12,276.38

	B	AM
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4	Last Name	Total Gross Disbursements
5		
282	Rainwater	54,039.39
283	Reese	29,646.02
284	Rentas, c/o Brenda Rentas or	72,635.65
285	Rhodes	23,646.02
286	Rhodes	57,761.39
287	Riley	23,646.02
288	Rivera	60,272.57
289	Roaden	21,631.05
290	Roberts	975,138.81
291	Roberts	25,903.89
292	Roberts	57,761.39
293	Robinson	50,198.71
294	Robinson	57,761.39
295	Rogers	23,646.02
296	Rose	23,646.02
297	Rose	22,704.30
298	Roseberry, Sr., c/o Larry Rose	23,646.02
299	Sams	23,646.02
300	Sands	23,646.02
301	Sapp	16,656.20
302	Scharold	50,198.71
303	Seals	57,761.39
304	Seals-Gibson	57,761.39
305	Sexton	25,903.89
306	Sexton	53,557.33
307	Sharon	23,646.02
308	Sharpe-Roberts	1,633,310.56
309	Short	23,646.02
310	Short, c/o Linda G. Caudill, Ex	53,557.33
311	Sidwell	53,557.33
312	Sizemore	25,903.89
313	Slatten-Jones	23,646.02
314	Slone	23,646.02
315	Smith	43,482.48
316	Smith	23,646.02
317	Smith	23,646.02
318	Smith, c/o James Wesley Sm	1,202,817.67
319	Snowden	16,656.20
320	Spears	25,903.89
321	Stapleton	22,704.30
322	Stauffer	50,198.71
323	Stearns	1,091,701.51
324	Stephens	23,646.02
325	Stephens	50,198.71
326	Stevenson	38,109.88
327	Stewart	25,903.89

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4	Last Name	Total Gross Disbursements
5		
328	Stidham, c/o Marlene K. Jone	22,064.18
329	Stone	23,646.02
330	Stout	50,198.71
331	Stromowsky	50,198.71
332	Sturgill	50,198.71
333	Sudduth, c/o Shirley Sudduth	23,646.02
334	Swiger	1,183,194.31
335	Tackett	53,557.33
336	Tafolla c/o Marcella Hays, Exe	36,767.24
337	Tapley	23,646.02
338	Taylor	23,646.02
339	Taylor	50,198.71
340	Taylor	57,761.39
341	Thomas	20,288.41
342	Thompson	23,646.02
343	Thompson-McClain	22,704.30
344	Thurman	23,646.02
345	Toler, c/o Marguerite Toler, Ad	53,557.33
346	Toler, c/o Steve Toler on beha	926,987.63
347	Trent	23,646.02
348	Trimble	23,646.02
349	Tucker	57,761.39
350	Turner	278,860.95
351	Turner	16,930.11
352	Turner	22,704.30
353	Turner	25,903.89
354	Vance	25,903.89
355	Vannarsdall-Collins	23,646.02
356	Vogt-Schneider	23,646.02
357	Walker,	53,557.33
358	Walker, c/o Charlotte Baker, C	50,198.71
359	Wallen	23,646.02
360	Walters	23,646.02
361	Ward, c/o Betty Ward, Admini	36,767.24
362	Washburn	23,646.02
363	Watkins	51,362.22
364	Watson	23,646.02
365	Whitaker	21,631.05
366	White	23,646.02
367	White	23,646.02
368	White	897,449.67
369	Whitlock	57,761.39
370	Whitt	23,646.02
371	Widner	810,595.11
372	Williams, c/o Todd Williams o	20,288.41
373	Willinger	25,903.89

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4	Last Name	Total Gross Disbursements
5		
374	Wilson	57,761.39
375	Winer	23,646.02
376	Wolfe	23,646.02
377	Wombles	23,646.02
378	Woods	22,704.30
379	Wooten	23,646.02
380	Wright	23,646.02
381	Wright	23,646.02
382	Wright	22,704.30
383	Wright	57,761.39
384	Wright	57,761.39
385	Yates	57,761.39
386	Young	6,706.38
387	Zeman	58,794.36
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389		40,799,988.32
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4	Last Name	Total Gross Disbursements
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

CRIMINAL ACTION NO. 07-CR-39-DCR

ELECTRONICALLY FILED

UNITED STATES OF AMERICA

PLAINTIFF

DEFENDANTS' VICTIMS' RESPONSE TO
UNITED STATES'S PRE-HEARING MEMORANDUM

V.

WILLIAM J. GALLION, ET AL.

DEFENDANTS

The Victims undersigned legal representative, designated by the Court's Order of August 16, 2007 [DN 54], states the following in Response to issues raised in the United States's Pre-Hearing Memorandum.

The United States is correct in stating that the 2 prior distributions made in the state court civil action did not include the 14 Victims who are not parties to that action. Based upon issues raised by the government as to those individuals in 2010, the undersigned agreed to escrow a pro rata portion of the funds then available for distribution, as though the 14 Victims were parties to the civil action, as a compromise. The undersigned, however, did not agree to distribute those funds to the 14. That issue was left for the Court to decide. DN 1270 In short, the issue for the Court is whether funds collected for the judgment creditors in the civil action may be paid to the 14 Victims who are not parties. Paying judgment funds to nonparties is problematic but the real issue of payment parity for the 14 Victims is not. When this issue was initially raised, it was pointed out that a single Vanguard retirement account of Defendant Gallion that was referred by the undersigned to the United States is in excess of the amount needed to bring the 14 Victims up



to pro rata parity with the civil plaintiff Victims. Exhibit A. Thus, the Court may allow funds held in escrow in the civil case to be paid to the civil action Victims while also insuring that the 14 Victims who are not plaintiffs receive the same payments under the restitution judgment of this Court. Under the calculations established by this Court for restitution payments, the 14 Victims are automatically brought up to payment parity with the victims in the civil action when this Court orders a distribution of funds.

Attorney Fees

The United States has raised the issue of whether the fee agreement of the Victims in the civil case extends to distributions in this action. The fee agreement, available to the Court if requested, states:

1. Representation of Client by Attorney. The Attorney hereby agrees to represent the Client in all claims that may arise from an investigation into the distribution of funds for charitable or other unknown purposes from settlement funds paid by the Defendants in the class action filed in Boone Circuit Court....

7. Lien on Proceeds. The Client hereby expressly grants the Attorney a first and prior lien on any proceeds of any litigation in which the Attorney represents the Client to secure the payment of any and all fees or other amounts due under the terms of this Agreement.

Substantial work was performed in this action. Post-judgment, information related to all assets discovered in the civil case, including the Vanguard accounts and Sanibel properties, was provided to the United States after the restitution judgment was entered. The Vanguard accounts were the subject of a civil action filed in Pennsylvania as Vanguard is registered as a Pennsylvania company. While not necessarily important here, the Victims who obtained private

counsel do believe they are entitled to collect restitution under the MVRA, and obtained and filed Abstracts of Judgment beginning in September 2009. (Exhibit B). As a result of attempts to cooperate on the sale of assets and requests by the United States for state court actions to be dismissed, held in abeyance or for no new actions to be filed, at some point additional action related to the same assets was put on hold. Regardless, substantial discovery and assistance was provided to the United States and the fee agreement extends to all litigation in which the clients were represented.

Correspondence

The United States attached correspondence provided in response to an email exchange with the undersigned. Exhibit C. The issue related to the correspondence, other than the fact that it was sent, is not clear. Correspondence to plaintiffs in the state civil action is a regular event. All such correspondence is clearly privileged but this letter was provided in good faith as the attached email exchange suggests and was redacted with encouragement by the United States. Neither the letter nor inadvertent attachment of client expenses was provided for publication. As to the sharing of information related to funds collected and distributed in the state civil action, there is complete agreement. Those amounts must be deducted from restitution distributed by this Court.

As to correspondence the United States sends via the victim notification system, the Victims Representative was not on the service list and has been consistent in her requests to be copied on the correspondence. Exhibit C.

Escrow Account Litigation

Litigation was filed by Defendant Gallion's ex-wife against the undersigned's escrow account, as referenced by the United States. A motion to dismiss is pending. Dr. Gallion waited

many years after her divorce decree to claim any entitlement to annuity payments being made to her ex-husband, despite her knowledge of the annuity and, later, her knowledge of the existence of the garnishment against the annuity in the civil action. Neither the annuity company nor Dr. Gallion raised any issue as to Dr. Gallion's claim in its response to the civil garnishment. Dr. Gallion's claim to half of the annuity payments may well be valid. The claim may also be subject to a set off from transfers made to Dr. Gallion by Defendant Gallion after the civil action was filed. Any input from the United States on the litigation, their appearance or their substitution as counsel, is welcome.

Respectfully submitted,

/s/ Angela M. Ford

ANGELA M. FORD
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
(859) 268-9141 (facsimile)
amford@windstream.net

VICTIMS' LEGAL REPRESENTATIVE

CERTIFICATE OF SERVICE

On November 18, 2012, a copy of the foregoing was served electronically on all parties of record in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order.

/s/ Angela M. Ford

VICTIMS' LEGAL REPRESENTATIVE

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CIVIL ACTION NO. 05-CI-436

MILDRED ABBOTT, et al,

PLAINTIFFS

vs

STANLEY CHESLEY, et al,

DEFENDANTS

*** **

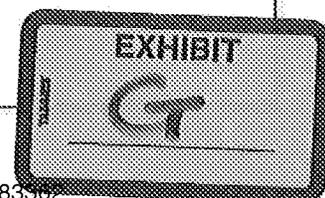
TRANSCRIPT OF PROCEEDINGS

November 13, 2014

Heard before the Honorable Judge James R.
Schrand, 54th Judicial Circuit Court, 6025 Rogers
Lane, Burlington, Boone County, Kentucky on November
13, 2014, at approximately 11:00 a.m.

*** **

REPORTER: KIMBERLEY ANN KEENE
Registered Professional Reporter



A P P E A R A N C E S

FOR THE PLAINTIFF: ANGELA FORD, Esquire
836 East Euclid Avenue
Lexington, Kentucky 40502

FOR THE DEFENDANT: FROST BROWN TODD
Sheryl Snyder, Esquire
Kendricek Wells, IV, Esquire
32nd Floor
400 West Market Street
Louisville, Kentucky 40202

Frank Benton, IV, Esquire

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1 will be.

2 So, I would like to just throw that out there
3 because that was not an issue then, and I don't think
4 it's an issue now.

5 MR. SNYDER: Your Honor, I think what occurs
6 in the settlement conference is confidential.

7 MS. FORD: I think you brought it up --

8 MR. SNYDER: No, I talked about --

9 MS. FORD: -- as to the --

10 MR. SNYDER: I talked about --

11 MS. FORD: -- releases.

12 MR. SNYDER: -- I talked about me exploring
13 settlement. I didn't talk about any conversation with
14 you.

15 I think for her to characterize prior
16 mediations is inappropriate.

17 THE COURT: Let's address --

18 MS. FORD: The Plaintiffs -- let me see,
19 the -- who the Plaintiffs are, are all over the record
20 in this case, and what the damages are, are also very
21 clear. And it starts with Defendants' own documents.
22 It's the Settlement Agreement, who's identified in the
23 attachment to the Settlement Agreement, the exhibit
24 that identifies who are the settling Plaintiffs, and
25 how much they're to receive. Those are absolute clear

1 numbers.

2 They were -- plaintiff A was to receive X
3 amount, and the judgment is based on what was taken
4 from their settlement funds that the Defendants
5 weren't entitled to. It's a very simple calculation.
6 Judge Ware refers to it in his original order. He
7 refers to the calculations that were utilized.

8 The distribution grids follow that
9 calculation because that's what drives the whole
10 process. In our response, we relied upon the very
11 first distribution grid, because there was an argument
12 made that there wasn't any rhyme or reason to it.

13 Well, it's a very simple calculation. There
14 was a third party administrator that went over the
15 methodology and the reason for the methodology, and
16 there was an order entered by Judge Crittenden
17 approving it. And that exact methodology has been
18 used in every distribution in the case made since that
19 time.

20 There were, in fact, additional Plaintiffs in
21 this action, and as discovery proceeded, it was a year
22 before the Settlement Agreement was produced in this
23 case. It was discovered that there were Plaintiffs in
24 the case who were not on the Settlement Agreement.
25 Their cases were either settled prior to the big

1 settlement, or they were transferred to another state
2 to be settled in another action, down in Mississippi
3 and Alabama.

4 So, there are, in fact, additional Plaintiffs
5 in this case, but they did not receive part of the
6 judgment. So, if they're on the Settlement Agreement
7 and Judge Ware relied on the calculations based on the
8 Settlement Agreement, those are the judgment
9 Plaintiffs.

10 That's the whole basis of the case, and
11 that's the whole basis of the judgment award.

12 THE COURT: But they're not individuals that
13 are on the grid, then?

14 MS. FORD: Yes. Anybody -- that -- right.
15 If they did not have a judgment award because they had
16 nothing stolen from them, they will not be on the
17 distribution grid, nor will they be on the -- they may
18 be on the Settlement Agreement, but some of those -- a
19 few of those individuals -- I don't know how many
20 today -- but a few of those individuals didn't
21 actually have money stolen from them, usually because
22 they were -- they were the squeaky wheels that
23 complained about their settlement amount, and so the
24 lawyers would dole out additional money to them as
25 they complained to keep them quiet.

1 So, again, those people might be on the
2 settlement, or would be on the settlement Agreement,
3 but they didn't have money stolen from them. So, it's
4 the people who have money stolen from them that are
5 part of the judgment. And it's all driven by the
6 Settlement Agreement.

7 THE COURT: So, those are the names of -- I
8 guess Mr. Snyder was saying that the name -- the
9 numbers went from 414 to 453, so you're saying the 414
10 on the grid are the ones that are to get the money?

11 MS. FORD: They were -- they are actually --
12 at the end of the day, the number on the grid I
13 believe is 382, because you had -- you have some
14 Plaintiffs who would be entitled to disgorgement.
15 Didn't have any money stolen from them, but if the
16 Court were ever to enter a disgorgement award, they
17 would be entitled to that perhaps. And then you have
18 a whole 'nother group of Plaintiffs who didn't have
19 money stolen from them.

20 So, the -- the number of Plaintiffs is, in
21 fact, variable, but what's not variable at all, and
22 has always been clear, and is part of the record, is
23 the number of Plaintiffs who had money stolen from
24 them, because it's a simple calculation. What was
25 their settlement amount, and what did they receive?

1 And the difference, if anything, is what was stolen.

2 THE COURT: And your position is having the
3 grid is enough to -- that you don't need to --

4 MS. FORD: It's going back in history to
5 create confusion as to what happened and how -- as to
6 what happened with those calculations and those
7 various documents. But at the end of the day, it's
8 very clear from the record.

9 And I know there -- Mr. Chesley has had six
10 different law firms. Mr. Snyder did come to the party
11 a little late, but he was in the case as -- at least
12 four or five years ago, whenever the case was still in
13 front of Judge Morris and went up on appeal.

14 So, all of those law firms were very much
15 aware of the calculations, and so was Judge Ware.
16 That is the whole basis for his judgment award. And
17 his judgment order is very clear. I'm relying on
18 those calculations. The calculations are in the
19 record, and it is -- I don't know what could be
20 clearer.

21 To me, it's sort of an inane conversation at
22 this point, but -- because you had not been in the
23 case prior to that time. It can sound very confusing,
24 but it was the Defendants' own method of handling the
25 case that caused discrepancies in numbers over time,



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
January 12, 2015 02:21 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 384618**

STANLEY M CHESLEY

A 1500067

vs.

ANGELA M FORD

FILING TYPE: AFFIDAVIT

PAGES FILED: 7

EFR200

EXHIBIT

2

exhibitsticker.com

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Stanley M. Chesley,	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruchlman
v.	:	
	:	AFFIDAVIT OF VINCENT E.
Angela M. Ford, Esq. <i>et al.</i>	:	MAUER RE NOTICE TO
	:	RESPONDENT FORD
Respondents.	:	

The undersigned swears and affirms as follows:

1. I am over 18 years of age and have never been declared mentally incompetent. I have personal knowledge of the facts set forth herein. I am one of the counsel representing the Petitioner in this matter. This affidavit is made for use in the above-captioned case.

2. On January 7, 2015 I caused the mailing of a true and complete file stamped copy of the (i) Verified Petition For Declaratory Judgment And Injunctive Relief (the "Petition"), (ii) Petitioner's Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (the "Motion") and (iii) Petitioner's Verified Memorandum in Support of Motion for Injunctive Relief (the "Supporting Memo") to Respondent Angela M. Ford ("Ford") by first class United States mail, postage prepaid. See Exhibit A.

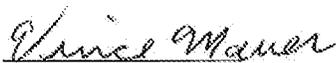
3. Also on January 7, 2014, I e-mailed to respondent Ford a copy of the Court's *EX PARTE* TEMPORARY RESTRAINING ORDER AGAINST CERTAIN ACTIONS BY RESPONDENTS AND ORDER SETTING HEARING (the "Temporary Restraining Order"). See Exhibit B. I know that Ford received this e-mail because she responded to it, see Exhibit B. A copy of the Temporary Restraining Order was also mailed to Ford by first class United States mail, postage prepaid. Ford has actual knowledge of the hearing set for January 14, 2015 in the above-captioned matter.

4. In response to Ford's e-mail, Exhibit B, I prepared a proposed agreed order. That proposed order was e-mailed to Ford on January 9, 2015. See Exhibit C. Ford responded to that e-mail on January 10, 2015, see Exhibit C.

5. I responded to Ford's e-mail on January 11, 2015 in that response, I offered to send Ford any documents she had not yet received, see Exhibit D.

6. Further Affiant sayeth naught.

The above affidavit is true and correct to the best of my knowledge and belief.


Vincent E. Mauer

Sworn and subscribed in my presence on January 12, 2015 by Vincent E. Mauer who is known to me.




Notary public, State of Ohio
Melissa A. Zahn, my commission expires on 11/01/19
Notary Public, State of Ohio
My Commission Expires November 1, 2019

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on Angela M. Ford, Esq., Chevy Chase Plaza, 836 Euclid Avenue, Suite 311, Lexington, KY 40502 by first class United States mail, postage prepaid, on January 12, 2015.

/s/ Vincent E. Mauer
Vincent E. Mauer, Esq.
Counsel for petitioner

0118087.0619701 4816-4323-2289v1

Vincent E. Mauer
Member
513.651.6785 (t)
513.651.6981 (f)
vmauer@fbtlaw.com

January 7, 2015

Angela M. Ford, Esq.
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502

Re: *Stanley M. Chesley v. Angela M. Ford, et al.*
Hamilton County, Ohio Case No. A1500067

Dear Ms. Ford:

Enclosed please find copies of three pleadings I filed on behalf of Stanley M. Chesley in the Hamilton County, Ohio Court of Common Pleas yesterday.

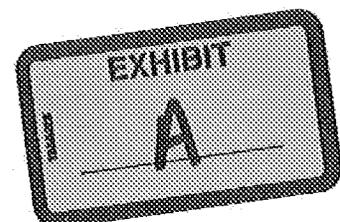
Sincerely,



Vincent E. Mauer

Enclosures

0118087.0619701 4829-1639-2993v1



Mauer, Vincent E.

From: Angela Ford [amford@windstream.net]
Sent: Thursday, January 08, 2015 4:50 PM
To: Mauer, Vincent E.
Cc: Snyder, Sheryl; 'Rafferty, Donald'
Subject: RE: Chesley v. Ford -- Ohio TRO in case A1500067

I'll accept the judge's invitation to adjourn his hearing to February. I'll give you available dates tomorrow.

Angela M. Ford, Esq.
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
859 268 2923
859 268 9141 fax

From: Mauer, Vincent E. [mailto:VMauer@fbtlaw.com]
Sent: Wednesday, January 07, 2015 1:21 PM
To: amford@windstream.net
Cc: Snyder, Sheryl; Rafferty, Donald
Subject: FW: Chesley v. Ford -- Ohio TRO in case A1500067

Ms. Ford, attached please find an order entered in response to the pleadings I e-mailed to you earlier today. As you can see, a hearing has been set for January 14, 2015 at 9:00 AM before Judge Ruehlman.

The judge will be on vacation the last two weeks in January. He directed us to tell that fact to you and to invite an adjournment of the hearing into February if you so choose so that you would have time to react to our filings. If you want to move the hearing into February, please let me know and give me some dates convenient for you and any Ohio counsel you retain – I will then address the change with the Court's staff.

Please let me know if you have any questions. Vince Mauer

Vincent E. Mauer
Attorney at Law | Frost Brown Todd LLC

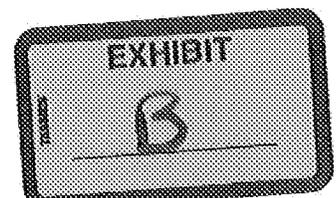
3306 Great American Tower | 301 East Fourth Street | Cincinnati, OH 45202
513.651.6785 Direct | 513.651.6890 Main | 513.509.2398 Mobile | 513.651.6391 Fax
vmauer@fbtlaw.com | www.frostbrowntodd.com

From: Rafferty, Donald [mailto:DRafferty@ctks.com]
Sent: Wednesday, January 07, 2015 10:07 AM
To: Mauer, Vincent E.
Cc: Stan Chesley (stanchesley@wsbclaw.com); Nelson, Richard
Subject: Chesley v. Ford -- Ohio TRO [IWOV-CTKSDMS.FID243001]

Vince

Attached is a copy of the TRO entered by Judge Ruehlman this morning. Please forward it to Angela Ford. Please also let me know how the communication with Angela goes, particularly whether she is willing to agree to continue the next hearing until sometime after the Judge returns from his trip.

Don



Donald J. Rafferty
COHEN TODD KITE & STANFORD, LLC
250 E. Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Direct: (513) 333-5243
Mobile: (513) 703-2462

NOTICE: This electronic mail transmission is for the use of the named individual or entity to which it is directed and may contain information that is privileged or confidential. It is not to be transmitted to or received by anyone other than the named addressee (or a person authorized to deliver it to the named addressee). It is not to be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via email or by calling Frost Brown Todd LLC at (513) 651-6800 (collect), so that our address record can be corrected.

Mauer, Vincent E.

From: Angela Ford [amford@windstream.net]
Sent: Saturday, January 10, 2015 4:25 PM
To: Mauer, Vincent E.
Cc: Snyder, Sheryl
Subject: Re: DRAFT of Agreed Order setting hearing in Feb.

I have not been properly served with your petition and no effort was made to provide any notice prior to the hearing, as your civil rules require. Since I am not yet a party and have not retained counsel I will not agree to any orders.

Sent from my iPhone

On Jan 9, 2015, at 3:24 PM, "Mauer, Vincent E." <VMauer@fbtlaw.com> wrote:

Ms. Ford, attached please find a DRAFT for your review of a limited Agreed Order extending the restrictions in the TRO and setting the hearing in Feb. 2015. I have not yet contacted the court to actually reset the hearing because I have not yet received your list of preferred dates.

This DRAFT has not yet been approved by the client so I may have minor adjustments, but given the need to track the TRO, I do not expect any significant issues.

Please review this and give me your thoughts. Also, please send ASAP dates for the hearing in February as we want to get on the judge's calendar soon -- he will be busy after returning from vacation.

NOTICE: This electronic mail transmission is for the use of the named individual or entity to which it is directed and may contain information that is privileged or confidential. It is not to be transmitted to or received by anyone other than the named addressee (or a person authorized to deliver it to the named addressee). It is not to be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via email or by calling Frost Brown Todd LLC at (513) 651-6800 (collect), so that our address record can be corrected.

<Agreed Order delaying hearing on TRO - 4820-7858-2305.1.docx>



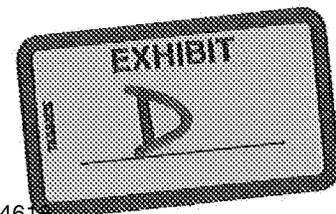
Mauer, Vincent E.

From: Mauer, Vincent E.
Sent: Friday, January 09, 2015 3:25 PM
To: 'Angela Ford'
Cc: Snyder, Sheryl
Subject: DRAFT of Agreed Order setting hearing in Feb.
Attachments: Agreed Order delaying hearing on TRO - 4820-7858-2305.1.docx

Ms. Ford, attached please find a DRAFT for your review of a limited Agreed Order extending the restrictions in the TRO and setting the hearing in Feb. 2015. I have not yet contacted the court to actually reset the hearing because I have not yet received your list of preferred dates.

This DRAFT has not yet been approved by the client so I may have minor adjustments, but given the need to track the TRO, I do not expect any significant issues.

Please review this and give my your thoughts. Also, please send ASAP dates for the haring in February as we want to get on the judge's calendar soon -- he will be busy after returning from vacation.





**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
February 5, 2015 04:43 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 390543**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: MOTION

PAGES FILED: 34

EFR200

EXHIBIT

3

exhibitsticker.com

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Stanley M. Chesley,	:	Case No. A1500067
	:	Judge Ruchlman
Petitioner	:	
	:	
v.	:	COMBINED (1) VERIFIED
	:	MOTION AND (2) SUPPORTING
	:	MEMORANDUM SEEKING
Angela M. Ford, Esq. <i>et al.</i>	:	AMPLIFICATION OF
	:	RESTRAINING ORDER
Respondents.	:	
	:	

MOTION SEEKING AMPLIFICATION OF RESTRAINING ORDER

Petitioner Stanley M. Chesley (“Chesley”) moves that the Court grant this Verified Motion Seeking Amplification of Restraining Order (the “Motion”).¹ The Motion is supported by the following Supporting Memorandum Seeking Amplification of Restraining Order. The Motion and its supporting memorandum are combined into this one filing.

The proposed Amplifying Order is needed because Respondent Angela M. Ford (“Ford”) has misread or purposefully misrepresented the content of:

1. The three documents Petitioner filed to initiate this matter – (a) Verified Petition For Declaratory Judgment And Injunctive Relief (the “Petition”), (b) Petitioner’s Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (the “Petitioner’s Motion”), and (c) Petitioner’s Verified Memorandum in Support of Motion for Injunctive Relief (the “Verified Supporting Memo”). These three documents are collectively “Chesley’s Filings”;
2. The Court’s January 7, 2015 initial temporary restraining order (the “Temporary Restraining Order”). Ford had actual notice of this order the day it was entered and did not object to this order while it was effective; and
3. The Court’s now operative January 14, 2015 Restraining Order Against Certain Actions By Respondents And Setting Hearing (the “Restraining Order”). The Restraining Order was entered after a hearing of which Ford had seven days

¹ This Motion is verified by Chesley’s counsel so that certain Kentucky court filings attached hereto can be used as evidence by this Court.

actual notice but in which she chose not to participate in any way. The Temporary Restraining Order and Restraining Order will jointly be referred to as the "Orders" herein.

Instead of appearing in this Court and responding to the Orders by addressing the issues raised in the Petition, Ford chose to act in the Abbott Case.² After entry of the Restraining Order, Ford:

1. filed Plaintiffs' Motion For Order Compelling Defendant Chesley And His Counsel To Withdraw All Efforts To Stay The Judgment Against Defendant Chesley That Does Not Comply With CR 62, 73.04 And 73.06 ("Ford's Motion").³ Ford's Motion asserts that Chesley's Filings in this case must be withdrawn and failure to do so should risk a finding that Chesley and his counsel are in contempt of the Boone Circuit Court;

2. filed her Memorandum of Law In Support of Motion For Order Compelling Defendant Chesley And His Counsel To Withdraw All Efforts To Stay The Judgment Against Defendant Chesley That Does Not Comply With CR 62, 73.04 And 73.06 ("Ford's Memorandum");⁴

3. after Chesley responded to Ford's Motion and Ford's Memorandum, Ford filed her Plaintiffs' Reply In Support Of Their Motion For Order Compelling Defendant Chesley And His Counsel To Withdraw All Efforts To Stay The Judgment Against Defendant Chesley That Do Not Comply With CR 62, 73.04 And 73.06 ("Ford's Reply");⁵ and

4. belatedly, provided to the Boone Circuit Court a proposed order granting Ford's Motion.⁶

Ford's Filings purposely, repeatedly and grossly misrepresent the nature of Chesley's Filings in this case. More importantly, Ford's Filings misrepresent the Orders and constitute an attempt by Ford to deprive this Court of the right and opportunity to exercise its inherent and explicit powers as an Ohio court, applying Ohio law with respect to Ohio citizens and property

² Capitalized terms not defined herein have the meaning set out in the Petition.

³ A true and correct copy of Ford's Motion is attached hereto as Exhibit A.

⁴ A true and correct copy of Ford's Memorandum (without exhibits) is attached hereto as Exhibit B. The exhibits are not attached because all the exhibits are already part of this Court's record.

⁵ A true and correct copy of Ford's Reply (without exhibits) is attached hereto as Exhibit C. The exhibits are not attached because all the exhibits are already part of this Court's record.

⁶ A true and correct copy of Ford's proposed order is attached hereto as Exhibit D. Ford's Motion, Ford's Memorandum, Ford's Reply and Ford's proposed order are collectively "Ford's Filings."

located in Ohio. The distortion in Ford's Filings and the subterfuge she has employed are outrageous.

In essence, Ford's Filings ask the Boone Circuit Court to declare that the awarding of a money judgment against Chesley (the "Chesley Judgment") has the bizarre, unprecedented and unstated additional effect of voiding certain Ohio laws and protections as they may apply to Chesley, his family, and others citizens, residents and domiciliaries of Ohio and therefore Chesley (and his counsel) must dismiss this litigation.

Because of Ford's gross misrepresentations detailed below, Petitioner asks this Court to grant this Motion and enter an Amplifying Order to correct Ford's misstatements. It is Petitioner's intent to present a certified copy of the Amplifying Order to Judge Schrand of the Boone Circuit Court so that the record in the Abbott Case is accurate.

**MEMORANDUM SUPPORTING MOTION
SEEKING AMPLIFICATION OF RESTRAINING ORDER**

Chesley will address, in order: applicable law; what he in fact seeks from this Court; and Ford's misrepresentation thereof.

Applicable Law

Ford has threatened to domesticate the Chesley Judgment in Ohio. Chesley's Filings are an effort to be certain that Ford complies with Ohio law when Ford ultimately (as she must) acts to register or domesticate the Chesley Judgment in Ohio and thereafter attempts to use the now Ohio judgment to issue discovery and seize assets in Ohio. Chesley's position in that regard is exactly what Ohio law requires.

There are two means of domesticating a foreign judgment in Ohio: (i) use the *Uniform Enforcement of Foreign Judgments Act* ("UEFJA"), Ohio Rev. Code Section 2329.021, *et seq.*; or (ii) through the commencement of a new lawsuit in Ohio in which the plaintiff asks the court

to domesticate the foreign judgment in Ohio. Both procedures require that Ford identify all the current judgment creditors – she will be forced to list them and their addresses in the caption of the complaint or if Ford chooses to use Ohio’s version of the UEFJA, she must file an Affidavit listing all the names and addresses of the judgment creditors. See O.R.C. section 2329.023(A).

Those rules implement for foreign judgments the requirement routinely applied to Ohio judgments, to wit: a judgment must be in favor of known judgment creditors. *See*, Ohio Rule of Civil Procedure 17(A) construed in *West Clermont Education Assn. v. West Clermont Local Board of Education*, 67 Ohio App. 2d 160 (Clermont Cty. 1980) (“A ‘**real party in interest**’ is **one who** has a real interest in the subject matter of the litigation, and not merely an interest in the action itself, i. e., **one who is directly benefitted** or injured by the outcome of the case.” emphasis added).

It is not surprising that, when domesticated, the Chesley Judgment must meet Ohio law because:

. . . . The clerk shall treat the foreign judgment in the same manner as a judgment of a court of common pleas. **A foreign judgment filed pursuant to this section has the same effect and is subject to the same procedures**, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas. (emphasis added).

Ohio’s version of the UFJEA, O.R.C. section 2329.022.

These rules are enforced in cases that give full faith and credit to the foreign judgment but apply Ohio law to the use or collection of that judgment. *See Salyer v. Eplion*, 2009 WL 891797 (Lawrence Cty. App. Mar. 31, 2009) (discussing the use of a Kentucky judgment in Ohio, the Ohio appellate court said: “Rather, Appellee would have been required to obtain an Ohio certificate of judgment pursuant to his domesticated foreign judgment before his judgment would constitute a valid judgment lien capable of being foreclosed upon.”). *Accord*, when a

Kentucky judgment was brought to Ohio using a new lawsuit instead of the UEFJA in *First Am. Bank of Ashland v. Stonehenge Computer*, 1990 WL 71918 (Lawrence Cty. App. May 25, 1990).

The decision in *Rion v. Mom and Dad's Equipment Sales and Rentals*, 116 Ohio App 3d. 161 (Mercer Cty. App. 1996) provides a clear example of how Ohio courts implement Ohio procedural rules and insist on compliance with those rules in the context of enforcing foreign judgments. In *Rion*, the Ohio court allowed the domestication in Ohio of a 19 year old Florida judgment that was still enforceable in Florida but then denied execution against any Ohio property because Ohio's 15 year statute of limitations applied. Addressing the very issues raised in Ford's Filings, the court said:

The "full faith and credit" language has also been codified in Section 1738, Title 28, U.S. Code. In essence, this constitutional provision requires the courts of this state to honor judgments from other states without re-examining the merits of their claims However, as stated by the Ohio Supreme Court "Full faith and credit does *not* mean that a judgment of a court in one state is automatically entitled to *enforcement* in another state." . . . (emphasis original)

In this case, the validity of the foreign judgment is not questioned, only its enforceability. Thus, defendant has raised a defense under Ohio law, applicable to UEFJA proceedings by way of R.C. 2329.022. This defense is also valid. . . . Since plaintiffs brought their judgment to Ohio beyond the statutorily stated time period, enforcement is barred. (citations omitted)

The *Rion* case supports exactly what the Chesley's Filings seek in from this Court – assurance that Ford's use of the Chesley Judgment complies with applicable Ohio law before the Chesley Judgment is enforced in Ohio and that Ohio judgment enforcement procedures be followed if and when enforcement does occur.⁷

⁷ Other states (e.g. Arizona, Kansas, and Maryland) have the same rule: foreign judgments can be domesticated (some states say "registered" or "enrolled"), but local law applies to determining when, if and how that judgment can be enforced. *Bank v. Yoo*, 2005 WL 3817602 (Md. Circuit Court, Dec. 28, 2005) (applying the forum state's statute of limitations does not violate the full faith and credit clause of the Constitution of the United States of America).

Page 5 of Ford's Memorandum, Exhibit B, notes that the full faith and credit clause of the Constitution of the United States of America "precludes an inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." In fact, Chesley's Filings make none of the prohibited assertions and none of the Court's Orders include any such inquiries.

Relief Actually Requested By Chesley In This Action

Contrary to the gross misstatements in Ford's Filings and based on the above-discussed accurate understanding of Ohio law, Chesley's Filings include:

1. In paragraph A of the prayer for relief in the Verified Petition, Chesley asks for relief "**before** Respondents take any action in the State of Ohio to enforce the Chesley Judgment." (bold added).
2. Similarly, paragraph C of the prayer for relief in the Verified Petition asks the Court to delay "any action to collect the Chesley Judgment in the State of Ohio" **until** Ford complies with Ohio law concerning valid judgments. (bold added).
3. Petitioner's Motion asks that the Court to delay Ford's "taking any action to enforce the Chesley Judgment in the State of Ohio **until** 90 days after" (bold added).
4. Finally Chesley's Verified Supporting Memo states the following in a standalone paragraph "Chesley is not asking this Court to reverse the Chesley Judgment." (underline original).

Use of the words "before" and "until" clearly show that Chesley recognizes that once Ford meets the requirements of Ohio law, she may be able to domesticate the Chesley Judgment, unless Chesley's appeal in Kentucky is successful.

The whole point of the Chesley Filings is to ensure that Ford complies with Ohio law before she proceeds in Ohio.

Ford Misstates the Facts and Chesley's Requests

There is an old saying to this effect: repeat a big lie often enough and people will start to believe it⁸ and that seems to be the main tactic in Ford's Filings.

Chesley Does Not Seek A Stay Pending Appeal. Ford's biggest oft repeated misstatement is that Chesley seeks a "stay" of enforcement of the Chesley Judgment pending appeal without posting a supersedeas bond in Kentucky. That lie starts in the title of Ford's Motion which refers to Kentucky Rules of Civil Procedure 62 "Stay of Proceedings to Enforce a Judgment," 73.04 "Supersedeas bond" and 73.06 "Failure to file or insufficiency of supersedeas bond" all of which relate to stay of execution of a judgment during appeal. That big lie continues all the way to page 1 of Ford's proposed order.

Sadly for Ford, as shown above, Chesley is not seeking a stay of enforcement of the Chesley Judgment until Chesley's Kentucky appeal is resolved. Rather, all Chesley asks is that Ford be required to follow Ohio law.

Ford Whines About Delay. Closely related to the false assertion that Chesley seeks, and the Orders grant, a stay of execution pending appeal is Ford's complaint that the Orders delay her execution of the Chesley Judgment. Ford's Filings incorrectly contend that this action has somehow prejudiced Ford and is unduly delaying her efforts to collect on the Chesley Judgment. The deceptive nature of this argument is easily demonstrated.

First, Ford obtained the Chesley Judgment in August 2014. Six months have passed and she has done nothing to even attempt to domesticate the Chesley Judgment in Ohio. Nearly 5 of those months passed before Ford made the threats that prompted this case to be filed. Given that

⁸ The actual quotation varies and has been attributed to Vladimir Lenin or Joseph Goebbels.

timeline, it is absurd for Ford to suggest that the Orders stalled her actions and that she needs immediate relief from the Kentucky court to avoid irreparable harm.

Second, Ford's argument completely ignores the fact that this action is solely an attempt to ensure that Ohio law is properly followed and correctly applied in the context of any attempt by Ford to domesticate and enforce the Chesley Judgment in Ohio. Surely there is no undue prejudice that results from requiring Ford to comply with Ohio law when attempting to enforce a foreign judgment in Ohio.

Ford Asks For An Outrageous Legal Remedy. There is a third outrageous assertion in Ford's Filing: the legal assertion that a Kentucky state court judge can and should prohibit this Court, an Ohio Judge, from interpreting and applying Ohio law to protect the rights of citizens, residents and domiciliaries of Ohio.

Even more, Ford wants to force Chesley and his counsel to dismiss this litigation or potentially face a finding of contempt in the Abbott Case. Specifically, Ford's Motion asks that the Boone Circuit Court order Chesley's counsel to withdraw the Chesley Filings and dismiss this action within 5 days or face a hearing in the Abbott Case (to which Chesley's Ohio counsel is not a party) and possibly be held in contempt by the Boone Circuit Court.

Ford Misrepresents Chesley's Actions. Ford's Filings also falsely assert that Chesley has made a "collateral attack on [the Boone Circuit Court]'s judgment in violation of the full faith and credit clause . . ." See page 1 of Ford's Motion. Similarly, Ford's Memorandum asserts on page 3 that Chesley is "trying to relitigate" the Boone Circuit Court's granting of the Chesley Judgment. For good measure, Ford's Reply repeats these claims saying ". . . all he [Chesley] does in the Ohio action is ask that court [this Common Pleas Court] to re-examine the merits of the Judgment [the Chesley Judgment] in Ohio." Page 3 of Ford's Reply.

Ford makes those assertions while pointing to the fact that Chesley's Filings discuss the merits of his Kentucky appeal. Chesley's Filings do discuss the merits of the Chesley Judgment; but, that discussion is only in the context of demonstrating that Chesley has a significant chance of success on his appeal of the Chesley Judgment in the Kentucky Court of Appeals. Chesley included that discussion as the required demonstration of possible success on the merits which is relevant to this Court's decision on whether to grant Chesley's request for a injunctive relief. Ford misrepresents the clearly stated reason why Chesley's Filings discuss the merits of the Chesley Judgment and Chesley's appeal thereof.

All of Ford's claims about the content of Chesley's Filings and the Orders are demonstrably false.

Conclusion

By their terms, the Orders apply only to protect citizens, residents and domiciliaries of Ohio (except Chesley) or property in Ohio by requiring that Ford comply with the applicable Ohio law in the context of any effort to domesticate and enforce the Chesley Judgment in Ohio. Nothing in the Orders impinges on or undermines the Boone Circuit Court's authority.

Chesley is not asking this Court to enter a stay of execution pending appeal to the Kentucky Court of Appeals. This action does not impact the pending appeal now pending in the Kentucky Court of Appeals.

Chesley is not seeking in Ohio an opportunity to relitigate the Abbott Case or question the merits of the Chesley Judgment, and neither of the Orders provides any such opportunity.

Chesley understands that the Court is not in the practice of amplifying its orders by explicitly stating what is not in those orders. But, since Ford does not seem to understand the Orders, Chesley believes the entry of an Amplifying Order is appropriate.

Respectfully submitted:

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

VERIFICATION

I, Vincent E. Mauer, swear or affirm that (i) I am over 18 years of age and have never been declared mentally incompetent, and (ii) I have personal knowledge of the fact that the attached copies of Ford's Filings are true and complete except as described in this document.

Vincent E. Mauer

Subscribed in my presence on February 5, 2015 by Vincent E. Mauer who is known to me.

Melissa A. Zahn

Notary Public, State of Ohio
My commission expires on 11/01/19

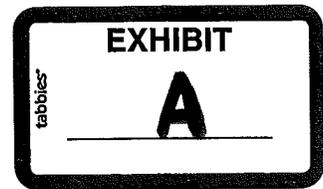


Melissa A. Zahn
Notary Public, State of Ohio
My Commission Expires November 1, 2019

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on (i) Angela M. Ford, Esq., Chevy Chase Plaza, 836 Euclid Avenue, Suite 311, Lexington, KY 40502 and (ii) William T. Ramsey, Esq., Neal & Harwell PLC, 150 Fourth Avenue North, Suite 2000, Nashville, TN 37219 by first class United States mail, postage prepaid, on February 5, 2015.

/s/ Vincent E. Mauer
Vincent E. Mauer, Esq



**BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436**

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

**PLAINTIFFS' MOTION FOR ORDER COMPELLING DEFENDANT CHESLEY AND HIS
COUNSEL TO WITHDRAW ALL EFFORTS TO STAY THE JUDGMENT AGAINST
DEFENDANT CHESLEY THAT DOES NOT COMPLY WITH CR 62, 73.04 AND 73.06**

Plaintiffs, pursuant to CR 62, 73.04 and 73.06 and the inherent powers of this Court to administer justice in this case, respectfully request that this Court enter an Order compelling Defendant Chesley and his counsel ("Defendants") to withdraw all efforts to stay this Court's judgment against Defendant Chesley that do not comply with CR 62, 73.04 and 73.06. As grounds for this Motion, Plaintiffs would show that Defendant Chesley, an Ohio resident, filed a Verified Petition for Declaratory Judgment and Injunctive Relief in the Court of Common Pleas for Hamilton County, Ohio and a Motion for an Order Restraining Registration and Enforcement of this Court's Judgment against him ("the Ohio Action"). Defendants obtained an Ex Parte Temporary Restraining Order in the Ohio Action, which the Ohio Court then extended until a hearing set for March 4, 2015. Defendant Chesley's purported grounds for that Petition and Motion are that he disagrees with this Court's rulings and believes this Court will be reversed on appeal. Defendants conduct is nothing more than a collateral attack on this Court's judgment in violation of the Full Faith and Credit Clause of the Constitution of the United States, Art. IV § 1, and an effort to stay execution of this Court's Judgment without giving a supersedeas bond as required under CR 62 and 73.04 to stay enforcement of the judgment on appeal.

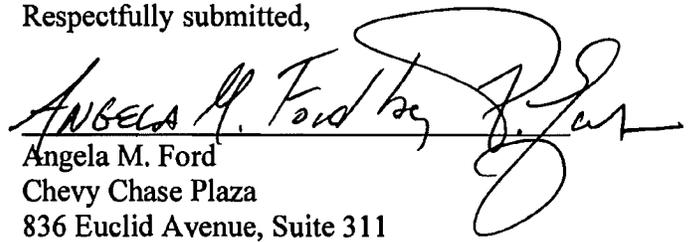
Plaintiffs therefore respectfully request that this Court enter an Order compelling Defendants to withdraw their Motion requesting a restraining order and dismiss the Ohio Action within five (5) days of this Court's entry of such an Order or show cause why they should not be held in contempt of this Court if they do not comply. A Memorandum of Law in support of this Motion is filed herewith, along with a Supplemental Index containing the pleadings filed in the Ohio Action.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order compelling Defendants to withdraw their Motion requesting a restraining order and dismiss the Ohio Action within five (5) days of this Court's entry of such an Order or show cause why they should not be held in contempt of this Court if they do not comply.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT THIS MATTER SHALL COME ON FOR HEARING ON JANUARY 20, 2015 AT 9:00 A.M. IN THE BOONE CIRCUIT COURT, OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD.

Respectfully submitted,


Angela M. Ford
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@windstream.net

William T. Ramsey
NEAL & HARWELL, PLC
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
bramsey@nealharwell.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic and U.S. Mail this the 15th day of January, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

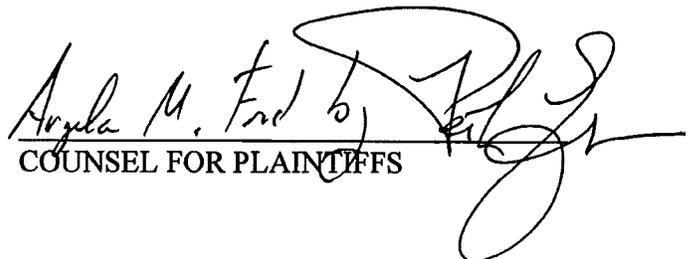
Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

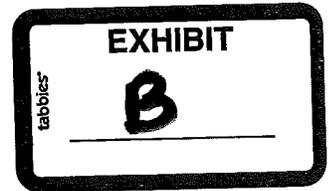
Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689


COUNSEL FOR PLAINTIFFS



**BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436**

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR ORDER COMPELLING DEFENDANT CHESLEY AND HIS COUNSEL TO
WITHDRAW ALL EFFORTS TO STAY THE JUDGMENT AGAINST DEFENDANT
CHESLEY THAT DOES NOT COMPLY WITH CR 62, 73.04 AND 73.06**

Plaintiffs, in support of their Motion for Order Compelling Defendant Chesley and his counsel to Withdraw all Efforts to Stay the Judgment Against Defendant Chesley that Do Not Comply with CR 62, 73.04 and 73.06, state as follows:

STATEMENT OF THE CASE

This Court entered judgment against Defendant Chesley on August 1, 2014 on Plaintiffs' breach of fiduciary duty claims, holding him jointly and severally liable as a matter of law for the \$42 million in damages previously awarded to Plaintiffs against Defendants Gallion, Cunningham and Mills. See Order (Aug. 1, 2014). This Court then ruled on multiple post-judgment motions which resulted in this Court making the Judgment final pursuant to CR 54.02 and awarding prejudgment and post-judgment interest against Defendant Chesley. See Order (Sept. 19, 2014); Amended Order (Sept. 19, 2014); Order (Oct. 22, 2014); Second Amended Judgment (Oct. 22, 2014).

After entry of the Second Amended Judgment on October 22, 2014, the Court heard Defendant Chesley's Motion to Clarify Judgment with Respect to Identification of Plaintiffs and Amount Awarded to Each Plaintiff and his Motion to Vacate Judgment Pursuant to CR 60.02.

As part of those Motions, Defendant Chesley argued that this Court's Judgment against him was void because it does not specifically name each individual Plaintiff and the amount he or she is owed. See Mot. Clarify Judgment (filed by Def. Chesley) and Motion to Vacate Judgment Pursuant to CR 60.02. This Court considered those arguments and denied both motions. See Order (Nov. 24, 2014).

Defendant Chesley appealed this Court's rulings to the Court of Appeals and those appeals remain pending. See Court of Appeals of Kentucky, Case Nos. 2014-CA-001725, 2014-CA-001900 and 2014-CA-001984. Defendant Chesley did not stay enforcement of the Judgment by giving a supersedeas bond pursuant to CR 62.03 and 73.04.

Rather than staying enforcement of the Judgment in accordance with the Kentucky Rules of Civil Procedure, on January 6, 2015, Defendant Chesley filed a Verified Petition for Declaratory Judgment and Injunctive Relief in the Court of Common Pleas for Hamilton County, Ohio against the undersigned counsel for Plaintiffs and Unknown Respondents, *i.e.*, Plaintiffs who are his judgment creditors in this Court (hereinafter referred to as "the Ohio Action"). A copy of Defendant Chesley's Petition is included in the Supplemental Index filed with this Motion and Memorandum. At the same time, Defendant Chesley and his counsel filed a Motion for an Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction in the Ohio Action. Copies of that Motion and its supporting Memorandum are included in the Supplemental Index.

As a result of his motion in the Ohio Action, Defendant Chesley and his counsel obtained an *ex parte* Temporary Restraining Order on January 7, 2015 (the day after he filed the Ohio Action) that purports to prohibit Plaintiffs' undersigned counsel from taking any action to enforce this Court's Judgment in Ohio. A copy of the *Ex Parte* Temporary Restraining Order is

included in the Supplemental Index. It is clear from a review of Defendants filings in the Ohio Action that Defendant Chesley is trying to relitigate this Court's Judgment and its Orders in the Ohio Action despite the fact that this Court, which has personal jurisdiction over Defendant Chesley and subject matter jurisdiction over this action, is entitled to have its Judgment given full faith and credit in Ohio and all other states pursuant to the Full Faith and Credit Clause of the Constitution of the United States, Art. IV § 1.

Defendants actions in filing the Ohio Action are in complete defiance of this Court, its Judgment and its Orders regarding its Judgment. They are merely making a collateral attack on this Court's judgment and its Orders, which the Full Faith and Credit Clause prohibits.

Additionally, Defendants are attempting to get a stay of enforcement of the Judgment without having to comply with Kentucky law, which requires a supersedeas bond so as to stay enforcement of the Judgment on appeal. Defendant Chesley has not given a supersedeas bond and claims that he is unable to do so. See Verified Petition at ¶ 27. He is trying to obtain a stay through the Ohio Action without complying with Kentucky's requirements to obtain a stay on appeal.¹

Plaintiffs request that the Court prohibit Defendants blatant circumvention of this Court's Judgment against Defendant Chesley, its Orders and the requirements of Kentucky law by issuing an Order compelling Defendant Chesley and his counsel to withdraw their efforts to stay this Court's Judgment against Defendant Chesley and to dismiss the Ohio Action.

¹ Defendant Chesley is likewise trying to avoid Ohio law, which requires security for satisfaction of the foreign judgment to stay execution while the appeal is taken from the foreign judgment. See O.R.C. § 2329.024.

ARGUMENT

I. THIS COURT HAS THE AUTHORITY TO COMPEL DEFENDANT CHESLEY TO REFRAIN FROM INTERFERING WITH THE ENFORCEMENT OF THE JUDGMENT AGAINST HIM.

Once the Judgment against Defendant Chesley became final and the statutory period provided in KRS 426.030 passed, Plaintiffs were free to begin execution on the judgment. Defendant Chesley's appeal of the Judgment does not stay its enforcement unless he gives a supersedeas bond to secure the Judgment. See CR 62.03, 73.04. This Court retains jurisdiction during the appeal for purposes of determining all matters related to the right to file a supersedeas bond, its amount and sufficiency and the surety upon it. CR 73.06.

In addition to this Court's powers under the Rules of Civil Procedure, once this Court obtains jurisdiction of a cause of action, it also has the "inherent power to do all things reasonably necessary to the administration of justice in the case before it." Smothers v. Lewis, 672 S.W.2d 62, 64 (Ky. 1984); see also Beshear v. Haydon Bridge Co., 416 S.W.3d 280, 297 (Ky. 2013).

II. In this case, rather than following Kentucky law and procedure by staying enforcement of the Judgment by giving a supersedeas bond, Defendant Chesley and his counsel blatantly circumvented this Court's jurisdiction over enforcement of its Judgment and is attempting to obtain a stay of the Judgment pending appeal without complying with the Kentucky Rules of Civil Procedure. This Court has the authority to make orders reasonably necessary to the administration of justice in this case. That authority includes the authority to order Defendant Chesley, who is properly before this Court and over whom this Court has personal jurisdiction, to cease his attempts to circumvent this Court's authority over its valid judgment against him by dismissing the Ohio Action. That authority also includes the authority to order Defendant Chesley's counsel to respect and honor the judgment of this Court. The administration of justice in this case dictates that this Court should exercise its inherent authority to prevent Defendant Chesley and his counsel's improper attempts to interfere with Plaintiffs' enforcement of the Judgment against him. **THE OHIO ACTION IS AN IMPROPER COLLATERAL ATTACK ON THIS COURT'S JUDGMENT.**

The Full Faith and Credit Clause of the Constitution of the United States provides that each State must give full faith and credit to the judicial proceedings of every other State. U.S. Const., Art. IV § 1. If the state rendering a judgment has jurisdiction over the defendant and the subject matter of the controversy, then the Full Faith and Credit Clause “precludes an inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.” Milliken v. Meyer, 311 U.S. 457, 462 (1940).

In this case, this Court unquestionably has personal jurisdiction over Defendant Chesley and the subject matter of this case and Defendant Chesley has not claimed otherwise. Accordingly, the Ohio state court in the Ohio Action is without authority to consider the merits of the Judgment or the validity of the legal principles on which it is based, as Defendant Chesley has asked it to do. This Court’s Judgment is entitled to full faith and credit in the State of Ohio. Defendant Chesley’s purported basis for the Ohio Action is nothing more than an attempt to relitigate the merits of the judgment and obtain a stay of enforcement of the judgment without complying with CR 62.03 and 73.04. His complaints in the Ohio Action about the form of the Judgment were already addressed by this Court in his Motion to Clarify Judgment with Respect to Identification of Plaintiffs and Amount Awarded to Each Plaintiff. As this Court ruled when it denied that Motion, the Judgment complies with Kentucky law in this regard. See Bell v. Twyford, 284 Ky. 481, 145 S.W.2d 55, 55 (1940); Oglesby v. Prudential Ins. Co. of Am., 259 Ky. 620, 82 S.W.2d 824, 826 (1935). The Full Faith and Credit Clause prohibits Defendant Chesley from relitigating that issue in the Ohio Action.

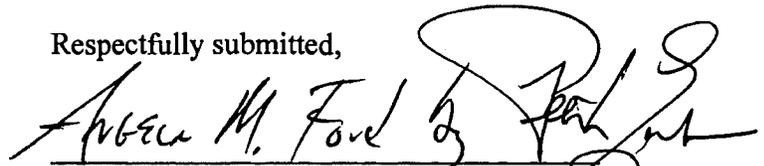
Given Defendant Chesley and his counsel’s improper attempt to circumvent this Court’s Judgment and Kentucky law regarding obtaining a stay of enforcement of the Judgment, this

Court should enter an Order compelling Defendants to withdraw their efforts to interfere with enforcement of this Court's Judgment and to dismiss the Ohio Action within five days of the entry of such an Order. Such an Order is reasonably necessary for the administration of justice in this case given Defendants attempts to circumvent this Court's authority and to interfere with a judgment that is entitled to full faith and credit in every other state in the country. If Defendants do not comply with such an Order, then this Court should find them in civil contempt. See Meyers v. Petrie, 233 S.W.3d 212, 215-16 (Ky. Ct. App. 2007) (holding that an individual who refused to abide by a court's order has committed civil contempt).²

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order compelling Defendant Chesley and his counsel to refrain from interfering with enforcement of this Court's Judgment against him and to dismiss the Ohio Action within five days of the entry of such an Order. If they fail to comply with such an Order, Plaintiffs request that this Court sanction them by holding them in contempt.

Respectfully submitted,



Angela M. Ford
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@windstream.net

² Defendant Chesley's conduct arguably constitutes criminal contempt by demonstrating disrespect for this Court and degrading its authority. Meyers, 233 S.W.3d at 216.

William T. Ramsey
NEAL & HARWELL, PLC
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
bramsey@nealharwell.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic and U.S. Mail this the 15th day of January, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

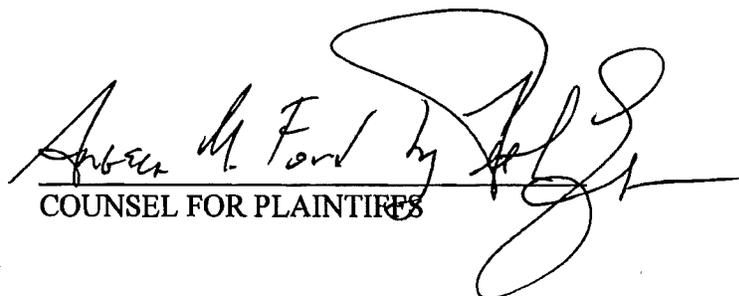
Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689


COUNSEL FOR PLAINTIFFS

**BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436**

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

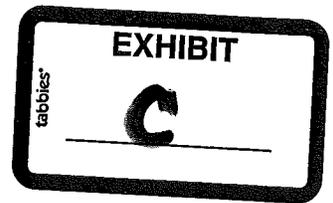
v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

**SUPPLEMENTAL INDEX TO PLAINTIFFS MOTION
AND MEMORANDUM OF LAW COMPELLING
DEFENDANT CHESLEY AND HIS COUNSEL TO WITHDRAW
ALL EFFORTS TO STAY JUDGMENT AGAINST HIM
THAT DOES NOT COMPLY WITH CR 62, 73.04 AND 73.06**

1. Verified Petition for Declaratory Judgment and Injunctive Relief;
2. Motion for an Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction;
3. Verified Memorandum in Support of Motion for Injunctive Relief;
4. *Ex Parte* Temporary Restraining Order Against Certain Actions by Respondents and Order Setting Hearing; and,
5. Email regarding extension of TRO (Order has not yet been received).



BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR
ORDER COMPELLING DEFENDANT CHESLEY AND HIS COUNSEL
TO WITHDRAW ALL EFFORTS TO STAY THE JUDGMENT AGAINST
DEFENDANT CHESLEY THAT DO NOT COMPLY WITH CR 62, 73.04 AND 73.06**

While Plaintiffs would certainly agree that there is a distinction between re-examining the merits of a foreign judgment and applying a state's procedures for execution of a foreign judgment upon property in that state, that distinction is clearly lost upon Defendant Chesley despite his lip service to it. Ohio courts are obligated pursuant to the Full Faith and Credit Clause to enforce this Court's Judgment. Ohio does not get to determine whether the Judgment is enforceable; rather, it only gets to determine how it is enforced as to property in Ohio. Defendant Chesley's entire briefing in the Ohio Action consists of nothing but a rehash of the arguments he made to this Court in his motions after this Court entered judgment against him. See Verified Mem. in Ohio Action (attached to previously filed Supplemental Index at Tab 3). Defendant Chesley is trying to block execution of this Court's Judgment in Ohio by collaterally attacking the Judgment. It is clear that he is doing so to obtain a stay of enforcement of the Judgment without providing for the security required both by Kentucky law and by Ohio law. See CR 62, 73.04; O.R.C. § 2329.024.

As Plaintiffs noted in their initial supporting Memorandum and at the hearing on this Motion, time is of the essence, as Defendant Chesley obtained an *ex parte* restraining order that

purports to prohibit Plaintiffs, their undersigned counsel and any other attorney from even filing to domesticate this Court's Judgment in Ohio. The court in Ohio has set a hearing on March 4, 2015. See Restraining Order Against Certain Actions by Respondents and Setting Hearing (Jan. 14, 2015) at ¶ 1 (copy attached).¹

I. This Court has the authority to take action to protect its Judgment.

Defendant Chesley's suggestion that this Court has no power to take action to protect and enforce its Judgment against him is without merit. He bases his argument on the fact that the cases cited by Plaintiffs are not factually identical to this case. That, of course, is not the way the application of precedent works and the legal principles set forth in those cases remain: this Court has the "inherent power to do all things reasonably necessary to the administration of justice in the case before it." Smothers v. Lewis, 672 S.W.2d 62, 64 (Ky. 1984).

The Ohio Action is not, as Defendant Chesley terms it, merely a "parallel proceeding." It is a direct affront to this Court's Judgment and its authority and a collateral attack on the Judgment. Defendant Chesley's argument in the Ohio Action is completely premised on his expressed belief that the Judgment will be reversed. See Mem. in Ohio Action (Supplemental Index at Tab 3). He boldly states that his "appeal in Kentucky will be successful," that "imposition of liability on Chesley via the Chesley judgment will be reversed" and that the judgment amount is "incorrect as to Chesley." Id. at 11-13. None of those issues is for an Ohio court to decide. This Court has personal jurisdiction over Defendant Chesley, which both makes the Judgment subject to full faith and credit in Ohio and gives this Court the authority to compel Defendant Chesley to act so as to protect its Judgment.

¹ When Plaintiffs filed this Motion, their undersigned counsel had received an electronic mail about the Ohio court's subsequent restraining order, but had not yet obtained a copy of the order. See Email regarding extension of TRO (attached to previously filed Supplemental Index at Tab 5). Counsel for Plaintiffs subsequently received the order extending the TRO and attach it to this Reply.

II. Defendant Chesley is the one ignoring the distinction between the Judgment's validity and its enforcement.

Defendant Chesley really makes Plaintiffs' point for them by citing the distinction between re-examining the merits of a judgment (which the Full Faith and Credit Clause prohibits) and proscribing the procedure for executing on that judgment. However, Defendant Chesley ignores the fact that all he does in the Ohio Action is to ask that court to re-examine the merits of this Court's Judgment. He is not attacking the procedure by which Plaintiffs executed on the Judgment in Ohio. Plaintiffs did not file too late in Ohio, as in Rion v. Mom and Dad's Equipment Sales and Rentals, Inc., 687 N.E.2d 311 (Ohio Ct. App. 1996), cited by Defendant Chesley. They did not fail to comply with an applicable Ohio statute to create a lien on real property, as in Dressler v. Bowling, 492 N.E. 2d 446 (Ohio 1986). Indeed, Plaintiffs had not done anything in Ohio to execute on the Judgment when Defendant Chesley filed the Ohio Action. Any suggestion that Plaintiffs or their attorneys would act in violation of Ohio procedural law regarding enforcement of foreign judgments is pure speculation.

Defendant Chesley's complaints about the form of the Judgment were addressed by this Court when it denied his Motion to Clarify Judgment with Respect to Identification of Plaintiffs and Amount Awarded to Each Plaintiff. Order (Nov. 24, 2014). All he is trying to do in the Ohio Action is to get an Ohio court to tell this Court it is wrong about the application of Kentucky law on an issue it unequivocally decided. There is no indication that Defendant Chesley even told the Ohio court that this Court already decided that issue against him. See Mem. in Ohio Action (Supplemental Index at Tab 3) at 14-19. In any event, the Full Faith and Credit Clause bars an Ohio court from re-examining this Court's decisions regarding the validity of its Judgment. See Milliken v. Meyer, 311 U.S. 457, 462 (1940).

III. Defendant Chesley's claim that the Ohio TRO only "preserves the status quo" is false.

Defendant Chesley's claim that the temporary restraining order in the Ohio Action has no impact on this Court and that it merely "preserve[s] the status quo ante" is false. The TRO in the Ohio Action purports to prohibit Plaintiffs from taking any action to enforce the Judgment against Defendant Chesley in Ohio, even if that action is otherwise permitted under Ohio procedural law. That most decidedly changes the status quo, under which Plaintiffs would have every right to take appropriate action to enforce their judgment. Prohibiting a party from doing something that he or she would normally have a legal right to do is not "preserving the status quo."

Moreover, Defendant Chesley is not required to maintain the status quo, as the TRO does not prohibit him from doing anything at all. During this time when Plaintiffs are purportedly prohibited from taking any action, he is free to dissipate and conceal assets that would otherwise be available to satisfy the Judgment. Even assuming that an Ohio court will at some point give appropriate full faith and credit to this Court's Judgment, Defendant Chesley will have had additional time to make assets unreachable or at least much harder to locate and obtain.

IV. No rule of comity prevents this Court from acting to protect its Judgment.

Defendant Chesley's claim that Plaintiffs are requesting an improper "anti-suit injunction" actually supports this Court taking the action requested by Plaintiffs. It is difficult to imagine a more "extreme and extraordinary" circumstance than the one presented here – where a judgment debtor files a complaint for declaratory judgment and injunctive relief seeking to invalidate a judgment from another state where that state had personal jurisdiction over the defendant and subject matter jurisdiction over the case. As the Court recognized in Keisker v. Bush, 210 Ky. 718, 276 S.W. 815, 816 (1925), such action is warranted when the other

proceeding “was instituted for the purpose of securing to the plaintiff therein some unfair or unconscionable advantage.”

That is exactly what Defendant Chesley is trying to do. This Court’s Judgment is entitled to full faith and credit in all other states, including Ohio, and its validity cannot be questioned by those courts. As part of the post-Judgment motions filed by Defendant Chesley, this Court ruled on his claim that the Judgment was somehow deficient under Kentucky law because it did not specifically list the exact amount due to each individual Plaintiff. That ruling is correct under Kentucky law. See Bell v. Twyford, 284, Ky. 481, 145 S.W.2d 55, 55 (1940); Oglesby v. Prudential Ins. Co. of Am., 259 Ky. 620, 82 S.W.2d 824, 826 (1935).

Even if that ruling were wrong, the Full Faith and Credit Clause prohibits Defendant Chesley from relitigating the question in Ohio. But, that is exactly what he is attempting to do. Moreover, in the process of doing so, he has obtained a stay on enforcement of the Judgment without providing the security required under both Kentucky and Ohio law. CR 62.03, 73.04; O.R.C. § 2329.024. He is seeking an unconscionable advantage by doing so and Kentucky law permits this Court to compel him to dismiss the Ohio Action.

V. Plaintiffs have not requested a temporary injunction.

Contrary to Defendant Chesley’s claims, Plaintiffs have not requested a temporary injunction. They have merely requested that this Court act within its inherent powers as is reasonably necessary to the administration of justice in this case. A temporary injunction is granted pending a final judgment. Plaintiffs already have a final judgment.

However, even if this request were properly considered a request for a temporary injunction, the request clearly meets the requirements of CR 65.04. Plaintiffs’ right to enforce a judgment in their favor is unquestionably violated by Defendant Chesley filing the Ohio Action

and obtaining a temporary restraining order and an extension of that order until at least March 4, 2015. Moreover, they have already suffered and will continue to suffer irreparable injury by being prohibited from enforcing their judgment in the state in which Defendant Chesley admits his assets are located for months if the Ohio trial court enters an injunction. Meanwhile, Defendant Chesley is not restraining from dissipating or concealing assets and making them unreachable or considerably more difficult to reach by Plaintiffs to satisfy the Judgment. The irreparable harm to Plaintiffs is evident.

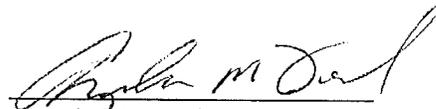
If Defendant Chesley is unwilling or unable to give a supersedeas bond to secure the Judgment, then Plaintiffs are entitled to take action to enforce the Judgment. Defendant Chesley's filing of the Ohio Action unquestionably interferes with that right and deprives Plaintiffs of assets to satisfy the Judgment.²

CONCLUSION

For the foregoing reasons and the reasons set forth in Plaintiffs' initial memorandum of law and at the hearing on this Motion, Plaintiffs respectfully request that this Court enter an Order compelling Defendant Chesley and his counsel to refrain from interfering with enforcement of this Court's Judgment against him and to dismiss the Ohio Action within five days of the entry of such an Order. If they fail to comply with such an Order, Plaintiffs request that this Court sanction them by holding them in contempt.

² Plaintiffs recognize that if this Court were to treat their request as one for a temporary injunction, the Court would be required to set forth findings of fact and conclusions of law constituting the grounds for the injunction. CR 65.04(5). The facts and law necessary for such findings are contained in Plaintiffs' filings on this Motion and the filings from the Ohio Action filed with this Motion. The filings from the Ohio Action also constitute "other evidence" clearly showing the violation of Plaintiffs' rights. CR 65.04(1).

Respectfully submitted,



Angela M. Ford
KBA No. 81510
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@windstream.net

William T. Ramsey
NEAL & HARWELL, PLC
TBA No. 9248
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
bramsey@nealharwell.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic, if known, and U.S. Mail this the 29 day of January, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street

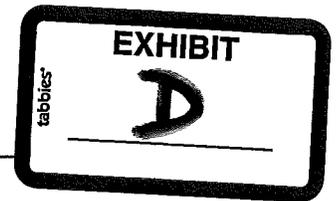
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689


COUNSEL FOR PLAINTIFFS

ANGELA M. FORD, PSC
ATTORNEY



Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
Email: amford@windstream.net

Tel: 859.268.2923
Fax: 859.268.9141

January 30, 2015

Judge James R. Schrand
6025 Rogers Lane
Burlington, KY 41005

Dear Judge Schrand:

Enclosed is a proposed Order that we intended to include with Plaintiff's Reply In Support Of Their Motion For Order Compelling Defendant Chesley And His Counsel To Withdraw All Efforts To Stay The Judgment Against Defendant Chesley That Do Not Comply With CR 62, 73.04 AND 73.06.

Sincerely,

Angela M. Ford

cc: Sheryl Snyder
Frank Benton

**BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436**

MILDRED ABBOTT, et al.,

PLAINTIFFS

v.

STANLEY M. CHESLEY, et al.,

DEFENDANTS

ORDER

This matter is before the Court on Plaintiffs' Motion for Order Compelling Defendant Chesley and his Counsel to Withdraw All Efforts to Stay the Judgment Against Defendant Chesley that Do Not Comply with CR 62, 73.04 and 73.06. The Court having reviewed the Motion and pleadings filed by the parties, and having heard from counsel, and being in all ways sufficiently advised;

IT IS ORDERED AND ADJUDGED that Plaintiffs' Motion for Order Compelling Defendant Chesley and his Counsel to Withdraw All Efforts to Stay the Judgment Against Defendant Chesley that Do Not Comply with CR 62, 73.04 and 73.06 is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Stanley M. Chesley and his counsel of record in this matter are hereby **ORDERED** to cease all efforts to stay the Judgment against Defendant Chesley that do not comply with the requirements of the Kentucky Rules of Civil Procedure, including but not limited the rules requiring the giving of a supersedeas bond to stay enforcement of the Judgment on appeal.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Stanley M. Chesley and his counsel of record in this matter are hereby **ORDERED** to dismiss the action filed by him in the State of Ohio against Counsel for Plaintiff and Unknown Respondents, styled Stanley M.

RECEIVED
7-27-15
SLS

Chesley v. Angela M. Ford, et al., Case No. A1500067 in the Court of Common Pleas, Hamilton County, Ohio.

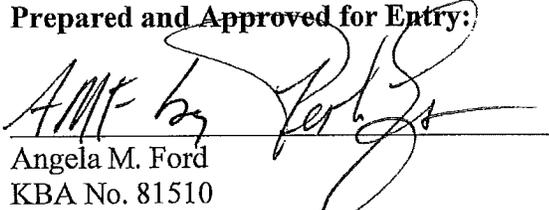
IT IS FURTHER ORDERED AND ADJUDGED that Defendant Stanley M. Chesley and his counsel of record in this matter shall comply with the terms of this Order within five (5) days of its entry or come before the Court to show why they should not be held in contempt for their failure to comply.

Dated this _____ day of _____, 2015.

JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO: ALL ATTORNEYS AND PARTIES OF RECORD

Prepared and Approved for Entry:



Angela M. Ford
KBA No. 81510
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
amford@windstream.net

William T. Ramsey
NEAL & HARWELL, PLC
TBA No. 9248
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
bramsey@nealharwell.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing (as proposed) was served via electronic and U.S. Mail this the 30 day of January, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689


COUNSEL FOR PLAINTIFFS

CLOSED, REMAND-STATE

A15-67

**U.S. District Court
Southern District of Ohio (Cincinnati)
CIVIL DOCKET FOR CASE #: 1:15-cv-00083-PCE
Internal Use Only**

Chesley v. Ford
Assigned to: Senior Judge Peter C. Economus
Demand: \$75,000
Case in other court: Court of Common Pleas, Hamilton
County, Ohio, A1500067
Cause: 28:1441 Petition for Removal

Date Filed: 02/05/2015
Date Terminated: 04/06/2015
Jury Demand: None
Nature of Suit: 150 Contract:
Recovery/Enforcement
Jurisdiction: Diversity

Petitioner

Stanley M Chesley

represented by **Vincent E Mauer**
Frost Brown & Todd - 1
2200 PNC Center
201 East 5th Street
Cincinnati, OH 45202
513-651-6800
Email: vmauer@fbtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE ON 2/5/2015
Richard W. Nagel, Clerk of Court
By: [Signature]
Deputy Clerk
Date: 4/7/2015

Morgan Lindsay Adams
Frost Brown Todd, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202
513-651-6193
Fax: 513-651-6800
Email: madams@fbtlaw.com

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2015 APR 13 A 10:31
FILED

V.

Respondent

Angela M Ford

represented by **Christen M. Steimle**
Dinsmore & Shohl
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
513-977-8384



Email: christen.steimle@dinsmore.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian Scott Sullivan
 Dinsmore & Shohl - 1
 1900 Chemed Center
 255 E 5th Street
 Cincinnati, OH 45202
 513-977-8200
 Fax: 513-977-8200
 Email: brian.sullivan@dinsmore.com
ATTORNEY TO BE NOTICED

Respondent

Jayne Adams

Respondent

Carol Boggs

Respondent

Linda Brumley

Respondent

Patricia Kennedy

Respondent

Judith Peck Wageman

Respondent

Betty Kelly (Deceased)

Date Filed	#	Docket Text
02/05/2015	<u>1</u>	NOTICE OF REMOVAL (Filing fee \$ 400 paid - receipt number: 0648-4915949), filed by Angela M Ford. (Attachments: # <u>1</u> Exhibit A-State Court Case, # <u>2</u> Civil Cover Sheet) (Sullivan, Brian) Modified docket text on 2/6/2015 (eh1). (Entered: 02/05/2015)
02/06/2015		If this case is referred, it will be to Magistrate Judge Karen L. Litkovitz. (eh1) (Entered: 02/06/2015)
02/06/2015	<u>2</u>	Verified PETITION for Declaratory Judgment and Injunctive Relief originally filed 1/6/2015 in Hamilton County Court of Common Pleas (Case no. A1500067) by Stanley M Chesley against Angela M Ford. (eh1) (Entered: 02/06/2015)

		02/06/2015)
02/06/2015	<u>3</u>	NOTICE of Appearance by Christen M. Steimle for Respondent Angela M Ford (Steimle, Christen) (Entered: 02/06/2015)
02/06/2015	<u>4</u>	NOTICE by Respondent Angela M Ford re <u>1</u> Notice of Removal <i>Supplemental Civil Cover Sheet</i> (Sullivan, Brian) (Entered: 02/06/2015)
02/06/2015	<u>5</u>	NOTICE by Respondent Angela M Ford re <u>1</u> Notice of Removal (<i>of Filing Additional Documents Filed in the State Court Record</i>) (Sullivan, Brian) (Entered: 02/06/2015)
02/06/2015	<u>6</u>	NOTICE of Appearance by Vincent E Mauer for Petitioner Stanley M Chesley (Mauer, Vincent) (Entered: 02/06/2015)
02/10/2015		NOTICE re <u>6</u> Notice of Appearance was filed without a certificate of service which is required pursuant to S.D. Ohio Civ. R. 5.2. To correct the filing use the Certificate of Service event found under Civil Events-Initial Pleadings and Service-Service of Process and link the event to the <u>6</u> when prompted. (jlw1) (Entered: 02/10/2015)
02/10/2015	<u>7</u>	CERTIFICATE OF SERVICE by Respondent Angela M Ford re <u>3</u> Notice of Appearance (Steimle, Christen) (Entered: 02/10/2015)
02/11/2015	<u>8</u>	CERTIFICATE OF SERVICE by Petitioner Stanley M Chesley re <u>6</u> Notice of Appearance (Mauer, Vincent) (Entered: 02/11/2015)
02/12/2015	<u>9</u>	MOTION to Dismiss for Lack of Jurisdiction by Respondent Angela M Ford. Responses due by 3/9/2015 (Attachments: # <u>1</u> Exhibit A - Ky Sup. Ct. Decision, # <u>2</u> Exhibit B - Chesley Motion to Reconsider, # <u>3</u> Exhibit C - Chesley Motion to Clarify Judgment, # <u>4</u> Exhibit D - Chesley Motion to Vacate, # <u>5</u> Exhibit E - Orders, # <u>6</u> Exhibit F - Second Amd. Judgment, # <u>7</u> Text of Proposed Order Proposed Order) (Sullivan, Brian) (Entered: 02/12/2015)
02/13/2015	<u>10</u>	MOTION to Remand <i>because complete diversity does not exist to support subject matter jurisdiction or motion for extension of time to amend pleading if needed</i> by Petitioner Stanley M Chesley. (Mauer, Vincent) (Entered: 02/13/2015)
02/16/2015	<u>11</u>	NOTICE of Filing Affidavit Of Frank Benton In Support Of <u>10</u> Petitioner's Motion For Remand (Attachments: # <u>1</u> Affidavit of Frank Benton) (Mauer, Vincent) Modified to clarify docket text on 2/18/2015 (jlw1). (Entered: 02/16/2015)
02/20/2015	<u>12</u>	ORDER REASSIGNING CASE. Case reassigned to Senior Judge Peter C. Economus for all further proceedings. Judge Michael R. Barrett no longer assigned to case. Signed by Chief Judge Edmund A Sargus on 02/20/2015. (dh1) (Entered: 02/20/2015)

02/26/2015	<u>13</u>	MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them</i> by Respondent Angela M Ford. (Attachments: # <u>1</u> Exhibit A- Notice of Filing Notice of Removal, # <u>2</u> Text of Proposed Order Proposed Order) (Sullivan, Brian) (Entered: 02/26/2015)
02/27/2015	<u>14</u>	MOTION for Extension of Time New date requested 3/20/2015. <i>to respond to Respondent's Motion to Dismiss</i> by Petitioner Stanley M Chesley. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Affidavit) (Mauer, Vincent) (Entered: 02/27/2015)
02/27/2015	<u>15</u>	RESPONSE in Opposition re <u>10</u> MOTION to Remand <i>because complete diversity does not exist to support subject matter jurisdiction or motion for extension of time to amend pleading if needed</i> filed by Respondent Angela M Ford. (Sullivan, Brian) (Entered: 02/27/2015)
03/03/2015	<u>16</u>	ORDER granting <u>14</u> Motion for Extension of Time. Signed by Senior Judge Peter C. Economus on 3/3/2015. (ds) (Entered: 03/03/2015)
03/03/2015	<u>17</u>	AMENDED COMPLAINT <i>for Declaratory Judgment and Injunctive Relief</i> against Angela M Ford, Jayne Adams, Carol Boggs, Linda Brumley, Patricia Kennedy, Judith Peck Wageman, Betty Kelly (Deceased), filed by Stanley M Chesley. (Mauer, Vincent) (Entered: 03/03/2015)
03/04/2015	<u>18</u>	ORDER - re <u>17</u> Amended Complaint filed by Stanley M Chesley. Signed by Senior Judge Peter C. Economus on 3/4/2015. (ds) (Entered: 03/04/2015)
03/06/2015	<u>19</u>	MOTION for Leave to File <i>to File First Amended Petition for Declaratory Judgment and Injunctive Relief</i> by Petitioner Stanley M Chesley. (Attachments: # <u>1</u> Exhibit A - First Amended Petition for Declaratory Judgment and Injunctive Relief) (Mauer, Vincent) (Entered: 03/06/2015)
03/12/2015	<u>20</u>	MOTION for Hearing <i>on Ford's Motion to Declare the Restraining Orders Dissolved or to Dissolve Them</i> by Respondent Angela M Ford. (Attachments: # <u>1</u> Text of Proposed Order) (Sullivan, Brian) (Entered: 03/12/2015)
03/13/2015	<u>21</u>	REPLY to Response to Motion re <u>10</u> MOTION to Remand <i>because complete diversity does not exist to support subject matter jurisdiction or motion for extension of time to amend pleading if needed</i> filed by Petitioner Stanley M Chesley. (Mauer, Vincent) (Entered: 03/13/2015)
03/13/2015	<u>22</u>	RESPONSE in Opposition re <u>20</u> MOTION for Hearing <i>on Ford's Motion to Declare the Restraining Orders Dissolved or to Dissolve Them</i> filed by Petitioner Stanley M Chesley. (Mauer, Vincent) (Entered: 03/13/2015)
03/18/2015	<u>23</u>	MOTION for Extension of Time to File Response/Reply as to <u>13</u> MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them</i> New date requested 4/8/2015. by Petitioner Stanley M Chesley. (Adams, Morgan) (Entered: 03/18/2015)

03/19/2015	<u>24</u>	ORDER - Signed by Senior Judge Peter C. Economus on 3/19/2015. (ds) (Entered: 03/19/2015)
03/19/2015	<u>25</u>	RESPONSE in Opposition re <u>13</u> MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them</i> filed by Petitioner Stanley M Chesley. (Adams, Morgan) (Entered: 03/19/2015)
03/27/2015	<u>26</u>	RESPONSE in Opposition re <u>19</u> MOTION for Leave to File <i>to File First Amended Petition for Declaratory Judgment and Injunctive Relief</i> filed by Respondent Angela M Ford. (Attachments: # <u>1</u> Exhibit A--Fen Phen Settlement Agreement, # <u>2</u> Exhibit B--August 1, 2007 Order, # <u>3</u> Exhibit C--2010 Distribution Grid, # <u>4</u> Exhibit D--Email Correspondence) (Sullivan, Brian) (Entered: 03/27/2015)
04/02/2015	<u>27</u>	REPLY to <u>25</u> Response to <u>13</u> MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them (Reply in Further Support of Motion)</i> filed by Respondent Angela M Ford. (Sullivan, Brian) Modified text and added link on 4/2/2015 (er1). (Entered: 04/02/2015)
04/03/2015	<u>28</u>	RESPONSE to Motion re <u>19</u> MOTION for Leave to File <i>to File First Amended Petition for Declaratory Judgment and Injunctive Relief</i> filed by Petitioner Stanley M Chesley. (Mauer, Vincent) (Entered: 04/03/2015)
04/03/2015	<u>29</u>	NOTICE by Petitioner Stanley M Chesley re <u>28</u> Response to Motion of <i>Filing Supplemental Affidavit of Frank V. Benton, IV</i> (Attachments: # <u>1</u> Affidavit Supplemental Affidavit) (Mauer, Vincent) (Entered: 04/03/2015)
04/06/2015	<u>30</u>	OPINION AND ORDER granting <u>10</u> Motion to Remand; granting <u>19</u> Motion for Leave to File. Signed by Judge Peter C. Economus on 4/6/2015. (ds) (Entered: 04/06/2015)
04/06/2015	<u>31</u>	JUDGMENT. Case Terminated. (ds) (Entered: 04/06/2015)
04/06/2015		(Court only) ***Motions terminated: <u>13</u> MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them</i> filed by Angela M Ford, <u>23</u> MOTION for Extension of Time to File Response/Reply as to <u>13</u> MOTION for Order to <i>Declare the Restraining Orders Dissolved or to Dissolve Them</i> New date requested 4/8/2015. filed by Stanley M Chesley, <u>20</u> MOTION for Hearing on <i>Ford's Motion to Declare the Restraining Orders Dissolved or to Dissolve Them</i> filed by Angela M Ford, <u>9</u> MOTION to Dismiss for Lack of Jurisdiction filed by Angela M Ford. (ds) (Entered: 04/06/2015)



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
April 28, 2015 02:32 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 407701**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: NOTICE

PAGES FILED: 74

EFR200

EXHIBIT

5

exhibitsticker.com

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruehlman
	:	
v.	:	NOTICE OF FILING
	:	DOCUMENTS FROM
Angela M. Ford, Esq, et al.	:	DISMISSED FEDERAL CASE
	:	AND BOONE CIRCUIT COURT
Respondents.	:	CASE

The undersigned, Vincent E. Mauer, who is over 18 years of age and has personal knowledge of the facts herein swears or affirms that attached hereto are true and correct copies of the following documents. The copies were taken from the stated sources.

1. The Affidavit of Frank V. Benton, IV and any attachments referenced therein filed on February 13, 2015 in the federal case started by Respondent Angela Ford's ("Ford") removal of this matter to federal court;

2. The Supplemental Affidavit of Frank V. Benton, IV and any attachments referenced therein filed on April 3, 2015 in the federal case;

3. A true and correct copy of Plaintiffs' Motion To Amend Agreed Protective Order filed by Ford on April 21, 2015 in *Abbott et al v. Chesley, et al.*, Boone County, Kentucky Circuit Court Case No. 05-CI-436. In this motion, Ford seeks to eliminate most of the limitations on her dissemination of financial information regarding Chesley and several Ohio entities who are not judgment debtors;

4. A true and correct copy of a subpoena that respondent Angela Ford caused to be drafted and served on Clark Schaeffer & Hackett ("CSH") on April 20, 2015. This subpoena seeks private financial information on several Ohio entities whose accounting work Ford knows was performed by CSH. This subpoena was served by Ford after she had actual knowledge of

this Court's January 14, 2015 Restraining Order Against Certain Actions By Respondents And Setting Hearing and after Ford's motion to dissolve this Court's injunction was "terminated" by the federal court;¹ and

5. A true and correct copy of CSH's objection to the above-discussed subpoena in the form of correspondence from CSH's counsel to Ford.

Vincent E. Mauer
Vincent E. Mauer

Sworn and subscribed by Vincent E. Mauer who is known to me in my presence on this 27th day of April, 2015.

Melissa A. Zahn
Notary Public, State of Ohio
My commission expires on 11/01/19



Melissa A. Zahn
Notary Public, State of Ohio
My Commission Expires November 1, 2019

¹ See the Civil Docket For Case 1:15-cv-00083-PCE (the federal case started by Ford's removal of this litigation. That civil docket sheet was filed herein on April 13, 2015.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

Sheryl G. Snyder, Esq.
FROST BROWN TODD LLC
400 West Market Street
Suite 3200
Louisville, KY 40202
ssnyder@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2015, a copy of the foregoing was served by regular U.S. Mail, postage prepaid, upon:

Christen M. Steimle, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Thomas Pyper, Esq.
Pyper & Nordstrum, LLC
7601 Paragon Road, Suite 301
Dayton, Ohio 45459

Donald J. Rafferty, Esq.
Cohen Todd Kite & Stanford LLC
250 East Fifth Street, Suite 1200
Cincinnati, Ohio 45202

/s/ Vincent E. Mauer

0118087.0619701 4852-6888-0931v1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Michael Barrett
	:	
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

**NOTICE OF FILING THE AFFIDAVIT OF FRANK BENTON IN SUPPORT OF
PETITIONER'S MOTION FOR REMAND BECAUSE COMPLETE DIVERSITY DOES
NOT EXIST TO SUPPORT SUBJECT MATTER JURISDICTION**

Attached hereto is the Affidavit of Frank V. Benton IV, Esq. in support of Petitioner's motion for remand filed on February 13, 2015.

Respectfully submitted,

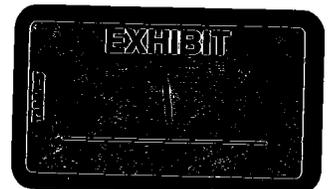
/s/ Vincent E. Mauer
 Vincent E. Mauer (0038997)
 FROST BROWN TODD LLC
 Suite 3300 Great American Tower
 301 E. Fourth Street
 Cincinnati, Ohio 45202
 513-651-6785
 Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

0118087.0619701 4825-2295-8882v1



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Michael Barrett
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

AFFIDAVIT OF FRANK V. BENTON, IV

1. Affiant, Frank V. Benton, IV, states under oath that he is an attorney licensed to practice law in the Commonwealth of Kentucky and has been engaged in the practice of law for 36 years. Affiant is an attorney of record in the *Mildred Abbott, et al. v. Stanley M. Chesley, et al.*, Case No.05-CI-436 (the "Abbott case") which is pending in the Boone Circuit Court. Affiant has represented Stanley M. Chesley, petitioner herein, since the inception of the *Abbott* case in 2005.

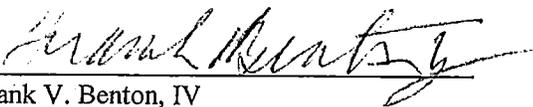
2. The genesis of the *Abbott* case results from a mass tort case against A.H. Robbins Company, Dr. Rex Duff and Bariatrics, Inc. over injury caused by the use of the diet drug known as Fen-Phen; *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone Circuit Case No. 98-CI-00795. A.H. Robbins Company was the manufacturer and Dr. Duff and Bariatrics, Inc. were distributors of the diet drug. The *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* case (also known as *Guard, et al. v. A. H. Robbins Company, et al.*) was based on personal injury due to ingestion of the diet drug combination Fen Phen leading to heart valve damage of varying degrees.

3. The basic allegation in the *Abbott* case involves the misappropriation of settlement funds in the *Moore/Guard* case. During the discovery stage in the *Abbott* case, affiant learned that

William Gallion, Melbourne Mills and Shirley Cunningham, the attorneys representing the *Moore/Guard* plaintiffs, developed a settlement grid that was prepared for A.H. Robbins Company which showed the names and addresses of the individual plaintiffs and the settlement amount each plaintiff was to receive. The individual settlement amount for each plaintiff was based on the severity of the injury to each plaintiff. Each plaintiff was required by A.H. Robbins Company to sign a release before the settlement funds would be paid to Gallion, Mills and Cunningham to be distributed to each plaintiff.

4. Attorney Angela Ford filed the *Abbott* case on behalf of many of the plaintiffs in the *Moore/Guard* case, former clients of Gallion, Mills and Cunningham. Recently, affiant compared the most recent *Abbott* case complaint (Eighth Amended Complaint) filed by Ford to the settlement grid prepared by Gallion, Mills and Cunningham. The caption for the Eighth Amended Complaint is attached hereto. There are five Ohio citizens listed in both the settlement grid and the 8th Amended Complaint: Judith Peck (now Wageman) at 2166 Eastern Ave., Cincinnati, Ohio; Carol Boggs at 3415 County Road, Ironton, Ohio; Linda Brimley at 415 W. Mulberry Street, West Union, Ohio; Patricia Kennedy at 7574 Brookstone Drive, West Chester, Ohio; and Betty Kelly at 117 W. Parkwood, Fairborn, Ohio. Affiant utilized the current Cincinnati Bell telephone book and a Google search and determined that these particular clients of Ford (now judgment creditors) are presently citizens of Ohio. One of the Ohio citizens has passed away (Betty Kelly) on December 14, 2014 but was a citizen of Ohio at the time of her death.

5. Based on the above information, it is clear that diversity does not exist in the within matter as at least four individuals and most likely the personal representative of the Betty Kelly estate are currently Ohio respondents.


Frank V. Benton, IV

Commonwealth of Kentucky
County of Campbell

Subscribed and sworn to before me by Frank V. Benton, IV, this 16th day of February, 2015.


Notary Public
My Commission Expires: 3/21/16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Economou
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

**NOTICE OF FILING THE
SUPPLEMENTAL AFFIDAVIT OF FRANK V. BENTON, IV REFERENCED IN
REPLY IN SUPPORT OF PETITIONER'S MOTION FOR LEAVE TO FILE FIRST
AMENDED VERIFIED PETITION FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Attached hereto is the Supplemental Affidavit of Frank V. Benton IV, Esq.

Respectfully submitted,

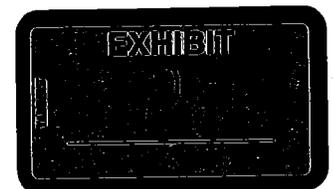
/s/ Vincent E. Mauer
 Vincent E. Mauer (0038997)
 FROST BROWN TODD LLC
 Suite 3300 Great American Tower
 301 E. Fourth Street
 Cincinnati, Ohio 45202
 513-651-6785
 Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

0118087.0619701 4825-2295-8882v2



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Peter C. Economus
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

SUPPLEMENTAL AFFIDAVIT OF FRANK V. BENTON, IV

Affiant, Frank V. Benton, IV, states under oath as follows:

1. That he is an attorney licensed to practice law in the Commonwealth of Kentucky and has been engaged in the practice of law for 36 years. Affiant is an attorney of record in the *Mildred Abbott, et al. v. Stanley M. Chesley, et al.*, Case No.05-CI-436 (the "Abbott case") which is pending in the Boone Circuit Court. Affiant has represented Stanley M. Chesley, petitioner herein, since the inception of the *Abbott* case in 2005.

2. The genesis of the *Abbott* case results from a mass tort case against A.H. Robbins Company, Dr. Rex Duff and Bariatrics, Inc. over injury caused by the use of the diet drug known as Fen-Phen; *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone Circuit Case No. 98-CI-00795. A.H. Robbins Company was the manufacturer and Dr. Duff and Bariatrics, Inc. were distributors of the diet drug. The *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* case (also known as *Guard, et al. v. A. H. Robbins Company, et al.*) was based on personal injury due to ingestion of the diet drug combination Fen Phen leading to heart valve damage of varying degrees.

3. The purpose of this Affidavit is to clarify the role of Stanley M. Chesley in the *Moore/Guard* case. In the spring of 2000, Stanley M. Chesley entered into a contract with the attorneys representing the plaintiffs in the *Moore/Guard* case. Pursuant to this contract Mr. Chesley agreed to attempt to negotiate a settlement in the *Moore/Guard* case. The contract called for Mr. Chesley to receive a percentage of the gross attorney's fees obtained if the case was successfully negotiated. If there was no settlement, Mr.

Chesley was not to get a fee. Additionally, if the case was tried and a verdict obtained, Mr. Chesley's fee was reduced significantly. The reason for this fee reduction was because Mr. Chesley was not going to play a role in the trial of the case and his role was strictly limited to negotiating a settlement.

4. On April 30, 2001 and May 1, 2001 the *Guard* case was mediated and eventually settled for \$200 million. At that point, Mr. Chesley's role and involvement in the *Moore/Guard* case was complete. Subsequent to this mediation and settlement, Mr. Chesley played absolutely no role in the distribution or accounting of the settlement proceeds. In fact, Mr. Chesley never had any contact with any of the plaintiffs in the *Moore/Guard* case. In the settlement documents generated, the settling attorneys are the attorneys who represented the plaintiffs in the *Moore/Guard* case. Each of these attorneys signed off on the settlement documents as a "settling attorney." Mr. Chesley's signature does not appear in those documents. This is so because Mr. Chesley's sole role was as the negotiator.

5. I have reviewed the Response in Opposition of Plaintiff Chesley's Motion for Leave to File First Amended Verified Petition (Doc #26) filed by Attorney Ford. At the bottom of page 2 and top of page 3, Attorney Ford refers to the settlement grid as being part of the Settlement Agreement. This is referred to as Exhibit A in Attorney Ford's response. Contrary to the assertion contained therein, Mr. Chesley did not receive a copy of the settlement grid that identified the individual claimants. The Settlement Agreement, which was not signed by Mr. Chesley, indicates that he did receive a copy of the Settlement Agreement. However, paragraph 5 (B) of the Settlement Agreement indicates that subsequent to the signing of the Settlement Agreement, the allocation of settlement amounts (settlement grid) for each settling claimant will be prepared on or before the first batch of Releases was to be submitted to American Home Products. These Releases were to be supplied by September 1, 2001. The settlement grid was prepared by the settling attorneys (Gallion, Mills and Cunningham) subsequent to the signing of the Settlement Agreement. As previously indicated, Mr. Chesley did not participate in any fashion in the allocation of the settlement funds. The way that Exhibit A has been filed by Attorney Ford makes it appear as though the settlement grid was part and parcel to the Settlement Agreement prior to the side letter of May 29, 2001 (which follows the settlement grid in Exhibit A). This may have been intentional or inadvertent. Regardless, it is misleading in the sense that this settlement grid document was prepared by Gallion, Mills and Cunningham after the May 29, 2001 side letter. Mr. Chesley did not receive a copy of this settlement grid in 2001.

6. Mr. Chesley did not know the identities of the plaintiffs (some of whom are now judgment creditors), nor did he have reason to know the identities of the plaintiffs in the *Moore/Guard* case. Mr. Chesley's employment contract was with the attorneys Gallion, Mills and Cunningham. He did not have

any employment/fee contracts with any of the plaintiffs. Several of the plaintiffs were deposed in the proceedings relative to the Kentucky Bar Association. This was born out by the depositions in that none of them knew that Mr. Chesley had been involved in their case. The settlement grid that was utilized by the plaintiffs' attorneys in the *Moore/Guard* case was not generated by Mr. Chesley nor did he contribute to its genesis. This settlement grid was prepared in 2001 and is now fourteen (14) years old. It does not contain the current judgment creditors nor their current addresses. There have been no documents generated by Attorney Ford in over seven (7) years that identify the judgment creditors or their addresses in the *Abbott* case. Plaintiffs' Response in Opposition of Plaintiff's Chesley Motion for Leave to File First Amended Verified Petition, Exhibit C, purports to identify the plaintiff/judgment creditors. However, this document only contains a last initial rather than last name of the individuals listed thereon. Attorney Ford may be able to identify those individuals but with only a last initial to work with, this proves quite futile for anyone else. Even this document was generated approximately five (5) years ago and does not contain any addresses.

7. Affiant has reviewed the Fourth Amended Complaint (attached) served by Attorney Ford in the *Mildred Abbott, et al. vs. Stanley M. Chesley, et al.* case. In that Fourth Amended Complaint, at page 14, Attorney Ford states that in addition to Kentucky residents, there are plaintiffs residing in Cincinnati, Ohio; Dayton, Ohio; Fairborn, Ohio; Ironton, Ohio; Miamisburg, Ohio; and West Union, Ohio. Attorney Ford did not identify which plaintiffs reside in which cities. There are no street addresses contained therein either. This Amended Complaint was served on December 1, 2006. The Motion to File the Fourth Amended Complaint (attached) indicates that there are 456 plaintiffs.

8. In the *Abbott* case, Affiant and co-counsel, on behalf of Mr. Chesley, made multiple efforts to obtain both an accounting of the funds collected and distributed, and the identities of the plaintiffs (now judgment creditors). Motions were filed in the *Abbott* case, before the Kentucky Supreme Court as part of the Kentucky disciplinary process and the Federal District Court for the Eastern District of Kentucky in the criminal proceedings against attorneys Gallion, Mills and Cunningham. All efforts were opposed by Attorney Ford. All efforts to obtain this information were denied. Recently, additional requests have been made to Attorney Ford to identify the judgment creditors. These requests have gone unanswered.

9. In the last several days, Affiant has received a copy of a Subpoena *Duces Tecum* issued by Angela Ford dated March 26, 2015. This Subpoena is directed to Clark Schaefer Hackett. This Subpoena directs Clark Schaefer Hackett to produce records, work papers, including federal and state income tax returns and financial statements related to Stanley M. Chesley and the firm of Waite, Schneider, Bayless and Chesley from the years of 2005 to present. This Subpoena is issued in the *Abbott, et al. vs. Stanley*

M. Chesley, et al. case. This Subpoena is issued as part of Ford's collection efforts in the Commonwealth of Kentucky against Mr. Chesley. Therefore, the Ohio injunction is not impeding Attorney Ford's discovery efforts in the *Abbott* action.

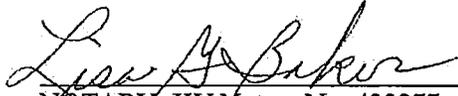
FURTHER, AFFIANT SAYETH NAUGHT.



Frank V. Benton, IV

**Commonwealth of Kentucky
County of Campbell**

Subscribed and sworn to before me, a Notary Public, by Frank V. Benton, IV on this 2 day of April, 2015.



NOTARY -KY Notary No: 433277
My Commission Expires: 01/13/2019

12 1 06

**BOONE CIRCUIT COURT
54th JUDICIAL DISTRICT
Case No. 05-CI- 436**

MILDRED ABBOTT et al.

PLAINTIFFS

v.

**PLAINTIFFS' MOTION TO FILE
FOURTH AMENDED COMPLAINT**

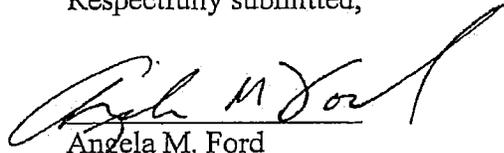
STANLEY M. CHESLEY, et al.

DEFENDANTS

* * * * *

Plaintiffs, through counsel, request leave of the Court to file a Fourth Amended Complaint pursuant to CR 15.01. The Amended Complaint names an additional 19 Plaintiffs bringing the total number to 456 Plaintiffs, including the 44 Plaintiffs who were represented by J. Brent Austin. The proposed Fourth Amended Complaint is attached hereto.

Respectfully submitted,



Angela M. Ford
KBA No. 81510
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@alltel.net

William T. Ramsey
NEAL & HARWELL, PLC
TBA No. 9248
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713

COUNSEL FOR PLAINTIFFS

NOTICE

The parties will hereby take notice that the foregoing Motion shall be heard on December 11, 2006 at 9:30 a.m. or at a time scheduled by the Court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served on December 1, 2006 by U. S. mail to:

William E. Johnson, Esq.
Johnson, True & Guarnieri, LLP
326 W. Main Street
Frankfort, KY 40601

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

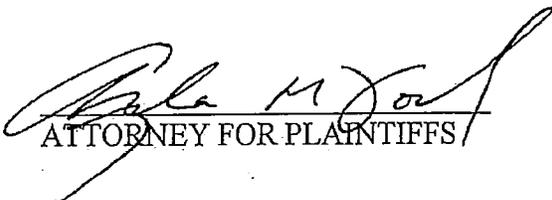
Elizabeth R. Seif, Esq.
Barrister Hall
163 East Main Street
Suite 401
Lexington, KY 40507

Mary E. Meade-Mckenzie, Esq.
2901 Richmond Road
Suite 130-161
Lexington, KY 40507

James E. Shuffett, Esq.
271 West Short Street
Suite 400
Lexington, KY 40507

Calvin R. Fulkerson, Esq.
Lynn, Fulkerson, Nichols & Kinkel
267 West Short Street
Lexington, KY 40507

Alex C. Rose, Esq.
400 West Market Street
Louisville, KY 40202


ATTORNEY FOR PLAINTIFFS

BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT

Case No. 05-CI-436

MILDRED ABBOTT, ELIZABETH ABNEY,
LISA ABRAHAM, JUANITA ALTON, JOANN ALVEY,
CINDY ARMSTRONG, LINDA BACK, JODY
BALDRIDGE, CARLA BALDWIN, LEE
BARTLEY, JR., PATRICIA BELCHER, LEISA
BELDING, ELEANOR BERRY, MARGIE
BERRY, EASTER BISHOP, CAROL BOGGS,
ANGIE BOWMAN, JAMES BRANHAM, KATHY
BRANHAM, VICKI BREWER, NORMA BREWER,
KAREN BROWN, DEBORAH BROWNING,
NATHANIEL BRUMFIELD, ON BEHALF OF THE
ESTATE OF WATHALEE BRUMFIELD, PATRICIA
BRYANT, CHRISTINA BUCHER, LESLIE BULLOCK,
TONY CHILDRESS, WILLIAM CLARK, ROSEMARY
CLICK, CAROLYN CONLEY, SANDRA COTTON
GILLEY, BARBARA CRAIN, PAMELA CROWE,
JUDY DILE, TERESA DUFF, LINDA DUNAWAY,
SUSAN EZELL, RHONDA FRANKLIN, TIMOTHY
FRANKLIN, MARY FRAZIER, FREDA FRIZZELL,
BEULAH FUGATE, PATRICIA GAUNCE, KEN
GAYHEART, TARA GIFFORD, DEBRA GOODE,
RHONDA HANCOCK, BARBARA HELLMUELLER,
REVA HELTON, VIKKI HENLEY, LORA HOOVER,
LORENE HUTCHERSON, KATHERINE HUTCHISON,
BETTY DAVIDSON, ON BEHALF OF THE ESTATE
OF EVELYN JACKSON, GARNET JOHNSON, APRIL
SLATTEN JONES, GERRY JONES, LINDA JONES,
BETTY JORDON, KATHERINE KING, JUNE
MCPHEARSON, JONIN MCCLANAHAN, MARY
MARTIN, THELMA MERIDA, LINDA MILLER, LINDA
L. MILLER, NELLIE MILLER, ORENE MILLER,
LESLIE MINTON, WILMA NOE, RAYMOND
PARKER, JESSIE PARSONS, LISA PEEK,
SUZANNE PRICE, SHARON RAINWATER,
MICHELLE SHARPE ROBERTS, DEBBIE VOGT
SCHNEIDER, BARBARA SMITH, PEGGY SPEARS,
JOE ANN PERKINS SPENCER, CORA STAPLETON,
DEBBIE STATON, SHIRLEY SUDDUTH ON
BEHALF OF THE ESTATE OF MARJORIE
SUDDUTH, MILDRED SWANSON, ELLA TAYLOR,
LINDA TAYLOR, BETTY WARD, ON BEHALF OF
THE ESTATE OF MARTIN WARD, BETTY WIDNER,
CONNIE WOLFE, BILL WOMBLES, BARBARA
ABEL, PAMELA ABRAMS, ELIZABETH ADAMS,

88
PLAINTIFFS
12/4/06

12/10/06

KATHY ADAMS, PHYLLIS ADAMS, RUBY ADAMS,
RUBY ADAMSON, SUSAN ADKINS, CLANTHA
AKERS, EFFIE ALSIP, PHYLLIS APPLGATE,
SUSAN ARVIN, CLARA ATKINSON, KAREN
AUSTIN, JAMIE BAILEY, MARY ANN BAILEY,
VICKIE BAILEY, CHARLOTTE BAKER AND DAVID
WALKER, ON BEHALF OF THE ESTATE OF LANE
WALKER, CAROL BARNES, ON BEHALF OF THE
ESTATE OF DANNY ABNEY, MARILYN BARNES,
TERESA BAUMGARDENER, MELISSA FAYE
BEAMON, LINDA BEGGS, MARGARET BINGHAM,
EMMA BLACK, JANICE BLAIR, SHARON BLAIR,
LORI BOONE, JOIE BOTKINS, KATHY BOWLING,
VIRGINIA BRADEN, LADONNA BRAME, RUBY
BRANHAM, BRENDA BRAY, ALMA BROCK,
PEGGY BROUGHTON, BARBARA BROWN, JOYCE
BROWN, SHARON BROWN, KIMBERLY
BRUMMETT, SARAH BALENOVICH ON BEHALF OF
THE ESTATE OF EDITH BROWNING, BILLIE
BRUMLEY, LINDA BRUMLEY, TERESA BRUNER,
JUDY BUNDY, WARREN BURGESS, JANICE
BURTON, TINA BUSH, SHERRIE BUTLER, DONNA
CAMPBELL, LORETTA CANADA, BUEL
CANTRELL, LINDA CARR, TONYA CARTER,
WALLACE CARTER, CHARLOTTE CASON, LISA
CAUDILL, CONNIE SUE CENTERS, GLORIA
CLARK, PAMELA CLIFT, DANIELLE CLORE,
ALLEN COKER, JUDY COLEMAN, SHIRLEY
COLEMAN, TARA COLEMAN, DEBRA COLLIER,
MARGARET COLLIER, LINDA VARNARSDALL-
COLLINS, OPAL COLLINS, LINDA COLVIN,
PHYLLIS COMBS, JAMES COOK, RONNIE COOK,
GEORGIA COOTS, DONNA MUDDIMAN-CORNISH,
MARK CORNN, NADINE COUCH, JO ANN COX,
DORIS CREECH, DELORIS CRISWELL, TRACY
CURTIS, DORIS DABNEY, DARBY DANIELS, MARY
DAUGHTERY, ELIZABETH DAVIS, SANDRA DAVIS,
KATHY LOVAN-DAY, KAREN DEAN, BOBBIE
DEATON, JAN DELANEY, REGINA DESPAIN,
GERRY DIXON, BELVA DOTSON, YNETTA
ECKERT, MARTHA ELLIOT, TAMI EDWARDS-
ENGLE, SAUNDRA ERP, CHARLOTTE ESTEPP,
SARAH ESTES, ELIZABETH FANNIN, JANET
FENTRESS, HAYWOOD FERGUSON ON BEHALF
OF THE ESTATE OF ALMA FERGUSON, WILLIAM
FITCH, ON BEHALF OF THE ESTATE OF SHEILA
FITCH, VICKIE FLANNERY, PAUL FLOYD,
BERNITA FLYNN, BERENDA FORD, ESSIE
FREDRICK, CLARA FULKS, BARBARA GAY,

MELISSA GAYHART, CRYSTAL SEALS-GIBSON,
GINGER DAVIDSON-GIBSON, JAMES GIBSON, ON
BEHALF OF THE ESTATE OF JESSIE GIBSON;
JONI GIBSON, GLADYS GILBERT, STEPHANIE
GIST, RUBY GODBEY, EDDIE GOLDEN, JOYCE
GORDON, PATRICK GRAHAM, TAMMIE GRANT,
AMY GRAY, DONNA GREEN, SHERRY GREEN,
JANET COONS-GREENE, PEGGY GRIGSBY, ALLIE
HALL, NORMA HALL, RENEE HALL, SHANNON
HALL, BARBARA HAMPTON, LEONA GAIL
HANDLEY, JOYCE HANLEY, REBECCA HARRIS,
DEBRA HARRISON, DIANE HARRISON, JOY
HASSLER, YOLANDA HAYDEN, BARBARA HEIZER,
WANDA HELTON, BONNIE HENDERSON, GARY
HENDRICKSON, VICKIE HENRY, MARCUS
HIGHLEY, KAREN HILLARD, JANICE HILTON,
LINDA HINKLE, JACQUELINE HOCKER, GWEN
HOLT, TAMI HOLT, MYRA HOOD, VICKY HOOD,
EVELYN HOPKINS, CHARLENE HORN, MARY
HORNING, CLOYD HOSKINS, LINDA HOSKINS,
MARY HOWARD, MARILYN HOWARD, TOLORIA
HOWARD, DONNA HOWSER, CHARLOTTE
HUGHES, MARCIA HUGHES, SHEILA HUMPREYS,
MARGARET HUNT, WANDA HUNTER, BRENDA
HUTCHCRAFT, JAMES INGRAM, EMMA ISON,
DELLA JACKSON, KATINA JACKSON, MARY
JACKSON, LINDA JAMES, LYNN JEFCOAT,
DEBBIE JEFFREY, ERNESTINE LESLIE
JOHNSTONE, FRANKLIN JONES, JUDY JONES,
KATHY JONES, MARLENE JONES ON BEHALF OF
THE ESTATE OF LORETTA EMOND STIDHAM,
TROY JONES, BETTY KELLY, GERALD KING,
PATTIE KITTS, BETTY KLUCK, LUCILLE KREY,
BILL LADY, ON BEHALF OF THE ESTATE OF
MARY LADY, LINDA LARKINS, EMILY LEWIS,
BEVERLY LITTLE, SANDRA DEE LITTLETON, LOIS
LOCKARD, ON BEHALF OF THE ESTATE OF
LLOYD LOCKARD, LINDA LONG, SHERRY LONG,
NONA LUCAS, CHARLOTTE LUSH, PAULA MANN,
PAMELA MARLOWE, ARLENE MARSHALL,
BOBBIE MARTIN, LINDA MARTIN, CONNIE
MASON, KAREN THOMPSON MCCLAIN, LAVONNA
MCDANIEL, CONNIE MCGIRR, LINDA MALONE
MCGOWAN, ROBERTA MCGUIRE, TAMMY
MCGUIRE, JACQUELYN MCMURTRY, SHEILA
LYNN MEECE, ANDREA MESSAMORE, WANDA
METZGER, DELORIS MILLER, BELINDA MILLION,
WILLIAM MIRACLE ON BEHALF OF THE ESTATE
OF KATHY MIRACLE, BEVERLY MITCHELL,

EUDORA MONTGOMERY, ELLA MOORE, ON BEHALF OF THE ESTATE OF JONETTA MOORE, MARGARET MOORE, RHONDA MOORE, APRIL MORRIS, LOUISA MOSS, ANGELA LEWIS-MULLINNIX, AILEEN MULLINS, MARY NAPIER, WANDA FAYE NEACE, ELIZABETH NEAL, LINDA NEVELS, DIANA NEWLIN, RITA PROFITT-NORMAN, APRIL KELTNER NUXOLL, RHONDA FLYNN OSBURN, GLENORA PACE, BERTHA PACK, LOUVERNA PARKS, MYRTLE PARRIS, ANGELA PEACE, JUDITH PECK WAGEMAN, RECIE PENNINGTON, HELEN PERKINS, JEFF PERKINS, STACY PERKINS, JOY PERRY, ON BEHALF OF THE ESTATE OF MILTON LEWIS, DORIS PHELPS, NORMA PICKETT, SONJA PICKETT, DEBRA BAYS-PLYBON, KATHY POLLITTE, BRIAN POWELL, GLENNA BROCK-POWELL, MARY P'POOL, TRENA PRESTON, LYNNE PURSEL, BILLIE REESE, BRENDA RENTAS, ON BEHALF OF THE ESTATE OF ANTHONY RENTAS, ARLIE RHODES, EVELYN RHODES, RAYMOND RILEY, LEVETTA RIVERA, ODENA ROADEN, BILLIE JUNE ROBERTS, DYAN ROBERTS, PATRICIA ROBERTS, RENEE ROBERTS, PATRICIA ROBINSON, FETINA ROBISON, CAROL ROGERS, CATHY ROSE, VINA ROSE, LARRY ROSEBERRY, JR. ON BEHALF OF THE ESTATE OF LARRY ROSEBERRY, SR., BOBBY SALLEE, MARY SAMS, KATHY SANDS, JUSTUS SCHAROLD, MAXINE SEALS, MONICA SEXTON, TERRY SHANKS, MARGARET SHARON, CLAUDIA SEBASTIAN-SHEPARD, DEBRA SHEPHERD, JANET SHORT, LINDA CAUDILL, ON BEHALF OF THE ESTATE OF LAUREDA SHORT, MONICA SHUFFETT, LORETTA SIDWELL, ADA SIZEMORE, CAROLE SLONE, ELAINE SMITH, FRED A SMITH, WESLEY SMITH ON BEHALF OF THE ESTATE OF SHARON SMITH, PAUL STAUFFER, CONNIE STEPHENS, NANCY STEPHENS, KATHY DANIELS-STEPHENSON, IVA STEVENS, SHARON STEVENSON, MARLENE STEWART JONES, BETTY STONE, DONNA STROMOWSKY, CONNIE STURGILL, PAM SULLIVAN AND SHARON STEPHENS, ON BEHALF OF THE ESTATE OF REBECCA LOVELL, ELLA TACKETT, PATTY TACKETT, PRISCILLA TAFOLLA, CHARLES TAPLEY, JEANNE THOMAS, NANCY THOMPSON, LISA GRANT THURMAN, STEVE TOLER ON BEHALF OF THE ESTATE OF LINDA TOLER, ROY TOLER, ELIZABETH TRENT,

JENNY TRIMBLE, JOETTA TUCKER, DEBORAH TURNER, DRUCILLA TURNER, MARIE TURNER, PATRICIA TURNER, VALORIE TURNER, LINDA VANCE, BOBBIE WALKER, LORAIN WALKER, CINDY WALTERS, ELIZABETH THOMPSON-WASHBURN, WANDA WATKINS, CHERYL WATSON, IRENE WELLS, JOYCE GOFF WELLS, JUDY WHITAKER, KIM WHITE, MARY WHITE, PATRICIA WHITE, CATHERINE WHITLOCK, JOYCE WHITT, PETER WILDS, CAROL QUISENBERRY WILLIAMS, TODD WILLIAMS ON BEHALF OF THE ESTATE OF GLORIA WILLIAMS, BETHANY WILLINGER, GENEVA WILSON, ROBERT WILSON, MELODY WINER, AMANDA EDWARDS WOOD, ARTIE WOODS, FERN WOOTEN, DEBORA WRIGHT, EDWINA WRIGHT, ROGER WRIGHT, SANDRA WRIGHT, TAMMY WRIGHT, DOYLE YANCY, SHEILA YATES, AND SANDRA ZEMAN

VS. FOURTH AMENDED COMPLAINT

STANLEY M. CHESLEY,
SHIRLEY A. CUNNINGHAM, JR. ,
WILLIAM J. GALLION,
MELBOURNE MILLS, JR.
and
THE KENTUCKY FUND FOR HEALTHY LIVING, INC.

DEFENDANTS

* * * * *

Plaintiffs, through counsel, on behalf of themselves and all others similarly situated, for their Fourth Amended Complaint against the Defendants Stanley M. Chesley, Shirley A. Cunningham Jr., William J. Gallion, Melbourne Mills, Jr. and The Kentucky Fund for Healthy Living, Inc., state as follows:

NATURE OF ACTION

1. This is an action brought on behalf of plaintiffs who were prescribed the diet drug Fen-Phen in Kentucky and were participants in an action filed in Boone County, Kentucky styled

Johnetta Moore, et. al, v. A. H. Robins, et. al., 98-CI-795. All cases in that action were settled pursuant to an agreement in May 2001.

2. Plaintiffs brought this lawsuit based on Defendants' failure to discuss or disclose all information related to the settlement funds they received in settlement of Plaintiffs' cases to the Plaintiffs herein. Specifically, Defendants failed to inform their clients about the material terms of the settlement, the extent to which other plaintiffs participated in the settlement, the amount of funds deducted from settlement proceeds for attorneys' fees and expenses, the amount of funds that were not distributed to Plaintiffs, the fact that they established a corporation with settlement funds and the amount of settlement funds transferred to that corporation.

PARTIES

3. Plaintiff Mildred Abbott is a resident of Cawood, Kentucky and was a plaintiff in the *Moore* action.

4. Plaintiff Elizabeth Abney is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

5. Plaintiff Juanita Alton is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

6. Plaintiff JoAnn Alvey is a resident of Louisville, Kentucky and was a plaintiff in the *Moore* action.

7. Plaintiff Cindy Armstrong is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

8. Plaintiff Jody Baldridge is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

9. Plaintiff Lee Bartley, Jr. is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

10. Plaintiff Eleanor Berry is a resident of Ashland, Kentucky and was a plaintiff in the *Moore* action.
11. Plaintiff Margie Berry is a resident of McKee, Kentucky and was a plaintiff in the *Moore* action.
12. Plaintiff Easter Bishop is a resident of London, Kentucky and was a plaintiff in the *Moore* action.
13. Plaintiff Carol Boggs is a resident of Ironton, Kentucky and was a plaintiff in the *Moore* action.
14. Plaintiff Angie Bowman is a resident of Williamstown, Kentucky and was a plaintiff in the *Moore* action.
15. Plaintiff James Branham is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.
16. Plaintiff Kathy Branham is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.
17. Plaintiff Vicki Brewer is a resident of Kenvir, Kentucky and was a plaintiff in the *Moore* action.
18. Plaintiff Karen Brown is a resident of Lawrenceburg, Kentucky and was a plaintiff in the *Moore* action.
19. Plaintiff Deborah Browning is a resident of Barbourville, Kentucky and was a plaintiff in the *Moore* action.
20. Plaintiff Christina Bucher is a resident of Richmond, Kentucky and was a plaintiff in the *Moore* action.
21. Plaintiff Leslie Bullock is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

22. Plaintiff Judy Dile is a resident of Campbellsville, Kentucky and was a plaintiff in the *Moore* action.

23. Plaintiff Teresa Duff is a resident of Hazard, Kentucky was a plaintiff in the *Moore* action.

24. Plaintiff Susan Ezell is a resident of Carlisle, Kentucky and was a plaintiff in the *Moore* action.

25. Plaintiff Rhonda Franklin is a resident of Ashland, Kentucky and was a plaintiff in the *Moore* action.

26. Plaintiff Mary Frazier is a resident of Summer Shade, Kentucky and was a plaintiff in the *Moore* action.

27. Plaintiff Freda Frizzell a resident of Salt Lick, Kentucky and was a plaintiff in the *Moore* action.

28. Plaintiff Rhonda Hancock is a resident of Cadiz, Kentucky and was a plaintiff in the *Moore* action.

29. Plaintiff Barbara Hellmueller is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

30. Plaintiff Reva Helton is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

31. Plaintiff Lora Hoover is a resident of Williamstown, Kentucky and was a plaintiff in the *Moore* action.

32. Plaintiff Lorene Hutcherson is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

33. Plaintiff Gerry Jones is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

34. Plaintiff Betty Jordan is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

35. Plaintiff Katherine King is a resident of Richmond, Kentucky and was a plaintiff in the *Moore* action.

36. Plaintiff June McPhearson is a resident of Winchester, Kentucky and was a plaintiff in the *Moore* action.

37. Plaintiff Thelma Merida is a resident of Bimble, Kentucky and was a plaintiff in the *Moore* action.

38. Plaintiff Linda Miller is a resident of Maysville, Kentucky and was a plaintiff in the *Moore* action.

39. Plaintiff Nellie Miller is a resident of Paducah, Kentucky and was a plaintiff in the *Moore* action.

40. Plaintiff Leslie Minton is a resident of Cromwell, Kentucky and was a plaintiff in the *Moore* action.

41. Plaintiff Raymond Parker is a resident of Flatwoods, Kentucky and was a plaintiff in the *Moore* action.

42. Plaintiff Jessie Parsons is a resident of London, Kentucky and was a plaintiff in the *Moore* action.

43. Plaintiff Peggy Spears is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

44. Plaintiff Marjorie Sudduth is a resident of Frankfort, Kentucky and was a plaintiff in the *Moore* action.

45. Plaintiff Mildred Swanson is a resident of Cawood, Kentucky and was a plaintiff in the *Moore* action.

46. Plaintiffs Barbara Abel, Lisa Abraham, Pamela Abrams, Elizabeth Adams, Kathy Adams, Phyllis Adams, Ruby Adams, Ruby Adamson, Susan Adkins, Clantha Akers, Effie Alsip, Phyllis Applegate, Susan Arvin, Clara Atkinson, Karen Austin, Linda Back, Carla Baldwin, Jamie Bailey, Mary Ann Bailey, Vickie Bailey, Charlotte Baker and David Walker on behalf of The Estate of Lane Walker, Carol Barnes, on behalf of the Estate of Danny Abney Marilyn Barnes, Teresa Baumgardener, Melissa Faye Beamon, Linda Beggs, Patricia Belcher, Leisa Belding, Margaret Bingham, Emma Black, Janice Blair, Sharon Blair, Lori Boone, Kathy Bowling, Joie Botkins, Virginia Braden, LaDonna Brame, Ruby Branham, Brenda Bray, Norma Brewer, Alma Brock, Peggy Broughton, Barbara Brown, Joyce Brown, Sharon Brown, Sarah Balenovich on behalf of The Estate of Edith Browning, Billie Brumley, Nathaniel Brumfield, on behalf of the Estate of Wathalee Brumfield, Linda Brumley, Kimberly Brummett, Teresa Bruner, Patricia Bryant, Judy Bundy, Warren Burgess, Janice Burton, Tina Bush, Sherrie Butler, Donna Campbell, Loretta Canada, Buel Cantrell, Linda Carr, Tonya Carter, Wallace Carter, Charlotte Cason, Lisa Caudill, Connie Sue Centers, Tony Childress, Gloria Clark, William Clark, Rosemary Click, Pamela Clift, Danielle Clore, Allen Coker, Judy Coleman, Shirley Coleman, Tara Coleman, Debra Collier, Margaret Collier, Linda Collins, Opal Collins, Linda Colvin, Phyllis Combs, Carolyn Conley, James Cook, Ronnie Cook, Georgia Coots, Donna Muddiman-Cornish, Mark Cornn, Sandra Cotton, Nadine Couch, Joseph Cowley, Jo Ann Cox, Barbara Crain, Doris Creech, Deloris Criswell, Pamela Crowe, Tracy Curtis, Doris Dabney, Darby Daniels, Mary Daughterty, Elizabeth Davis, Sandra Davis, Kathy Lovan-Day, Karen Dean, Bobbie Deaton, Jan Delaney, Regina DeSpain, Gerry Dixon, Al Doser, Belva Dotson, Linda Dunaway, Ynetta Eckert, Martha Elliot, Tami Edwards-Engle, Sandra Erp, Charlotte Estep, Sarah Estes, Elizabeth Fannin, Janet Fentress, Haywood Ferguson on behalf of The Estate of Alma Ferguson, William Fitch, on behalf of the Estate of Sheila Fitch, Vickie Flannery, Paul Floyd, Bernita Flynn, Berenda Ford, Timothy Franklin, Essie Fredrick, Beulah Fugate, Clara Fulks, Patricia

Gaunce, Barbara Gay, Melissa Gayheart, Ken Gayheart, Crystal Seals-Gibson, Ginger Davidson-Gibson, James Gibson, on behalf of the Estate of Jessie Gibson, Joni Gibson, Tara Gifford, Gladys Gilbert, Stephanie Gist, Ruby Godbey, Eddie Golden, Debra Goode, Joyce Gordon, Patrick Graham, Tammie Grant, Amy Gray, Donna Green, Sherry Green, Janet Coons-Greene, Peggy Grigsby, Allie Hall, Norma Hall, Renee Hall, Shannon Hall, Barbara Hampton, Leona Gail Handley, Joyce Hanley, Rebecca Harris, Debra Harrison, Diane Harrison, Joy Hassler, Yolanda Hayden, Vikki Henley, Barbara Heizer, Wanda Helton, Bonnie Henderson, Gary Hendrickson, Vickie Henry, Marcus Highley, Charlene Hill, Karen Hillard, Janice Hilton, Linda Hinkle, Jacqueline Hocker, Gwen Holt, Tami Holt, Myra Hood, Vicky Hood, Evelyn Hopkins, Charlene Horn, Mary Horning, Cloyd Hoskins, Linda Hoskins, Mary Howard, Marilyn Howard, Toloria Howard, Donna Howser, Charlotte Hughes, Marcia Hughes, Margie Hulse, Sheila Humphreys, Margaret Hunt, Wanda Hunter, Brenda Hutchcraft, Katherine Hutchison, James Ingram, Emma Ison, Della Jackson, Betty Davidson, on behalf of the Estate of Evelyn Jackson, Katina Jackson, Mary Jackson, Linda James, Lynn Jefcoat, Debbie Jeffrey, Garnet Johnson, Ernestine Johnstone, April Slatten Jones, Franklin Jones, Judy Jones, Kathy Jones, Linda Jones, Marlene Jones on behalf of the Estate of Loretta Emond-Stidham, Troy Jones, Betty Kelly, Gerald King, Pattie Kitts, Betty Kluck, Lucille Krey, Bill Lady, on behalf of the Estate of Mary Lady, Linda Larkins, Emily Lewis, Beverly Little, Sandra Dee Littleton, Lois Lockard, on behalf of the Estate of Lloyd Lockard, Linda Long, Sherry Long, Nona Lucas, Charlotte Lush, Paula Mann, Pamela Marlowe, Arlene Marshall, Bobbie Martin, Linda Martin, Mary Martin, Connie Mason, Joni McClanahan, Karen Thompson McClain, Lavonna McDaniel, Connie McGirr, Linda Malone McGowan, Roberta McGuire, Tammy McGuire, Jacquelyn McMurty, Sheila Lynn Meece, Andrea Messamore, Wanda Metzger, Deloris Miller, Linda L. Miller, Orene Miller, Belinda Million, William Miracle on behalf of The Estate of Kathy Miracle, Beverly Mitchell, Eudora Montgomery, Ella Moore, on behalf of the Estate of Jonetta Moore, Margaret Moore, Rhonda

Moore, April Morris, Louisa Moss, Angela Lewis Mullinix, Aileen Mullins, Mary Napier, Wanda Faye Neace, Elizabeth Neal, Linda Nevels, Diana Newlin, Wilma Noe, Kathy Nolan, Sheila Nolan, Rita Profitt Norman, April Keltner Nuxoll, Rhonda Osburn, Glenora Pace, Bertha Pack, Louverna Parks, Myrtle Parris, Angela Peace, Judith Peck Wageman, Lisa Peek, Recie Pennington, Helen Perkins, Jeff Perkins, Stacy Perkins, Joy Perry, on behalf of the Estate of Milton Lewis, Doris Phelps, Norma Pickett, Sonja Pickett, Debra Bays-Plybon, Kathy Pollitte, Brian Powell, Glenna Brock-Powell, Mary P'Pool, Trena Preston, Suzanne Price, Lynne Pursel, Sharon Rainwater, Billie Reese, Brenda Rentas, on behalf of the Estate of Anthony Rentas, Arlie Rhodes, Evelyn Rhodes, Raymond Riley, Levetta Rivera, Odena Roaden, Billie June Roberts, Dyan Roberts, Michelle Sharpe Roberts, Patricia Roberts, Renee Roberts, Patricia Robinson, Fetina Robison, Carol Rogers, Cathy Rose, Vina Rose, Larry Roseberry, Jr. on behalf of the Estate of Larry Roseberry, Sr., Bobby Sallee, Mary Sams, Kathy Sands, Justus Scharold, Debbie Vogt Schneider, Maxine Seals, Monica Sexton, Terry Shanks, Margaret Sharon, Claudia Sebastian-Shepard, Debra Shepherd, Janet Short, Linda Caudill, on behalf of the Estate of Laureda Short, Monica Shuffett, Loretta Sidwell, Rosemary Godby-Simmons, Ada Sizemore, Carole Slone, Barbara Smith, Elaine Smith, Freda Smith, Wesley Smith on behalf of The Estate of Sharon Smith, Joe Ann Perkins Spencer, Cora Stapleton, Debbie Staton, Paul Stauffer, Corina Stearns, Connie Stephens, Nancy Stephens, Kathy Daniels-Stephenson, Iva Stevens, Sharon Stevenson, Marlene Stewart, Betty Stone, Lesta Irene Stout, Donna Stromowsky, Connie Sturgill, Shirley Sudduth, on behalf of the Estate of Marjorie Sudduth, Pam Sullivan and Sharon Stephens, on behalf of the Estate of Rebecca Lovell, Lisa Swiger, Ella Tackett, Patty Tackett, Priscilla Tafolla, Charles Tapley, Ella Taylor, Linda Taylor, Mary Taylor, Jeanne Thomas, Nancy Thompson, Lisa Thurman, Steve Toler on behalf of The Estate of Linda Toler, Roy Toler, Elizabeth Trent, Jenny Trimble, Joetta Tucker, Deborah Turner, Drucilla Turner, Marie Turner, Patricia Turner, Valorie Turner, Linda Vance, Bobbie Walker, Loraine Wallen, Cindy

Walters, Berry Ward, on behalf of the Estate of Martin Ward, Elizabeth Thompson-Washburn, Wanda Watkins, Cheryl Watson, Irene Wells, Joyce Goff Wells, Judy Whitaker, Kim White, Mary White, Patricia White, Catherine Whitlock, Joyce Whitt, Betty Widener, Peter Wilds, Carol Quisenberry-Williams, Todd Williams on behalf of The Estate of Gloria Williams, Bethany Willinger, Geneva Wilson, Robert Wilson, Melody Winer, Connie Wolfe, Bill Wombles, Amanda Edwards Wood, Artie Woods, Fern Wooten, Debora Wright, Edwina Wright, Roger Wright, Sandra Wright, Tammy Wright, Doyle Yancy, Sheila Yates and Sandra Zeman were Plaintiffs in the *Moore* action and are from the following cities in Kentucky: Argillite, Ary, Asher, Ashland, Bagdad, Beatyville, Beaver Dam, Berea, Big Stone Gap, Bledsoe, Bonnyman, Brooksville, Bulan, Burlington, Burnside, Busy, Butler, Campbellsville, Cave City, Caywood, Central City, Clay City, Coldiron, Columbia, Corbin, Corinth, Crab Orchard, Cumberland, Cynthiana, Danville, Eubank, Edyville, Elkhorn City, Emmalena, Eubank, Evarts, Ewing, Feds Creek, Flat Lick, Flatwoods, Flemingsburg, Florence, Fort Mitchell, Fort Wright, Frankfort, Fredonia, Garrett, Georgetown, Grand Rivers, Greenup, Hanson, Harlan, Harold, Harrodsburg, Hazard, Heidrick, Hopkinsville, Hudson, Hyden, Independence, Irvine, Jamestown, Jeffersonville, Jenkins, Kings Mountain, Kuttawa, LaGrange, Lancaster, Lawrenceburg, Lebanon, Lexington, Lily, Littcarr, London, Lost Creek, Louisa, Louisville, Lynch, Manchester, Mayfield, Maysville, Midway, Monticello, Morehead, Mount Edna, Mount Sterling, Mount Vernon, Mt. Washington, Mousie, Nancy, New Haven, Nicholasville, Nortonville, Olive Hill, Owensboro, Owingsville, Paducah, Paint Lick, Paris, Partridge, Pennington Gap, Pikeville, Pineville, Prestonsburg, Princeton, Quincy, Raceland, Richmond, Rush, Russell Springs, Salyersville, Science Hill, Smith, South Williamson, Somerset, Stamping Ground, Stanford, Stanton, Thealka, Thornton, Tompkinsville, Versailles, Virgie, Wallingford, Wallins Creek, West Liberty, White Plains, Whitesburg, Whitley City, Williamstown, Winchester, Wingo, Woodbine and Wooten. In addition to the Kentucky residents, there are Plaintiffs residing in Fayetteville, Arizona,

Fort Meyers, Florida, Largo, Florida, Ocala, Florida, Palm Bay, Florida, Zephyrhills, Florida, Douglasville, Georgia, Centralia, Illinois, Chicago, Illinois, Effingham, Illinois, Macedonia, Illinois, Olney, Illinois, Maple Grove, Minnesota, Las Vegas, Nevada, Kernersville, North Carolina, Cincinnati, Ohio, Dayton, Ohio, Fairborn, Ohio, Ironton, Ohio, Miamisburg, Ohio, West Union, Ohio, Maine, Miami, Oklahoma, Leesville, South Carolina, Collierville, Tennessee, New Tazewell, Tennessee, Red Boil Springs, Tennessee, St. Charles, Virginia, Pound, Virginia, Rose Hill, Virginia, New Haven, West Virginia and Pineville, West Virginia.

47. Defendant Stanley M. Chesley (“Defendant Chesley”) is an attorney licensed in the Commonwealth of Kentucky with his principal place of business located at 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, Ohio, 45202.

48. Defendant Shirley A. Cunningham, Jr. (“Defendant Cunningham”) is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at the Law Offices of Shirley Allen Cunningham, Jr., 3101 Richmond Road, Lexington, Kentucky 40509.

49. Defendant William J. Gallion (“Defendant Gallion”) is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at Barrister Hall, Gallion & Associates, 163 Main Street, Lexington, Kentucky 40507.

50. Defendant Melbourne Mills, Jr. (“Defendant Mills”) is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at Barrister Hall, 163 East Main Street, Lexington, Kentucky 40507.

51. Defendant The Kentucky Fund for Healthy Living, Inc., is a Kentucky corporation, whose officers and directors include Defendants Cunningham, Gallion and Mills, with its principal place of business located at 130 Dudley Road, Edgewood, Kentucky 41017. Its

agent for service of process at is J. Whitney Wallingford, 3141 Beaumont Centre Circle, Suite 302, Lexington, Kentucky 40513.

JURISDICTION AND VENUE

52. Defendants Gallion and Mills reside in Fayette County, Kentucky. During the relevant time period, Defendants Cunningham, Gallion, and Mills all practiced law through professional business entities located in Fayette County, Kentucky. Defendant Chesley was co-counsel in the *Moore* action and represented plaintiffs, many of whom resided or still reside in Fayette County, Kentucky. The Kentucky Fund for Healthy Living, Inc.'s principal place of business was in Fayette County, Kentucky.

53. The damages that are the subject matter of this Complaint exceed the jurisdictional minimum of this Court.

THE BOONE COUNTY ACTION

54. American Home Products Corporation, through two of its divisions, Wyeth-Ayerst Laboratories and A.H. Robins Company, manufactured and distributed the diet drug combination popularly known as Fen-Phen.

55. Fen-Phen was prescribed by physicians and distributed to thousands of Kentuckians during the mid-1990's until the product was discovered to cause heart damage and was removed from the market by the Food and Drug Administration in September 1997.

56. All of the plaintiffs were prescribed Fen-Phen, and upon information and belief, were required to undergo medical testing to prove physical injury.

57. The heart damage sustained by plaintiffs as a direct result of ingesting the prescription drug Fen-Phen varies and includes heart valve disease with aortic, tricuspid and mitral insufficiency, atrial enlargement, ventricular hypertrophy, pulmonic insufficiency, cardiomyopathy, diastolic dysfunction and death.

58. In July 1998, Defendants Cunningham, Gallion and Mills filed a class action on behalf of five individuals against American Home Products Corporation for past and future medical expenses, physical injuries, pain and suffering and economic loss and punitive damage sustained as a result of illness from ingesting the diet drug Fen-Phen. Defendants' class action complaint asserted claims for medical monitoring, bodily injury, strict products liability, negligence, breach of express warranty by the distributing Defendants Duff & Bariatrics, breach of implied warranty by the distributing Defendants Duff & Bariatrics, fraud, active concealment and non-disclosure, violation of the Kentucky Consumer Protection Act and medical malpractice by Bariatrics, Inc. of Kentucky and Dr. Rex Duff.

59. Upon information and belief, the action was certified as a class on May 5, 1999.

60. Upon information and belief another similar action filed in Boone County by Defendant Chesley on July 30, 1999, styled Courtney, et al. v. American Home Products Corporation, et al., Civil Action No. 99-CI-84 and was consolidated with the *Moore* action on December 8, 1999 upon Motion by Defendant Chesley.

61. Upon information and belief, lawsuits filed in federal courts from around the country were transferred to an MDL court in the Eastern District of Pennsylvania and, on or about November 18, 1999 a National Class Action Settlement Agreement was entered into and approved by the presiding judge, on or about August 28, 2000.

62. According to court records, Defendants Chesley, Cunningham, Gallion, and Mills (hereinafter referred to collectively as "the Attorney Defendants") continued to represent individuals who remained members of the national class action while also representing the plaintiffs in the *Moore* action who opted out of the national class action.

THE SETTLEMENT, DISMISSAL AND DECERTIFICATION

63. The Boone County action was mediated on April 30 and May 1, 2001 and the mediation resulted in an agreed-upon settlement for 440 plaintiffs.

64. By Order entered May 16, 2001, a copy of which is attached as Exhibit A to this Complaint, the Court dismissed the *Moore* Action and also decertified the class.

65. Upon information and belief, settlement funds were distributed to the plaintiffs over the course of several months following the mediation date.

SETTLEMENT FUNDS MISAPPROPRIATED

66. Nearly a year later, in a June 6, 2002 Order, a copy of which is attached as Exhibit B to this Complaint, the Court states that it retained jurisdiction over the action to “oversee the handling and distribution of settlement funds” and ordered the Clerk of the Court to seal all further orders and to provide copies only to an amended service list of five attorneys that included the Attorney Defendants.

67. In another Order entered June 6, 2002 (signed February 15, 2002), a copy of which is attached as Exhibit C to this Complaint, the Court stated that the Final Settlement and Dismissal authorized the Attorney Defendants to allocate funds to individuals and to retain funds for any “anticipated and unanticipated contingencies and liabilities,” approved an accounting of settlement proceeds, including attorneys’ fees and expenses; Ordered that 50% of the remaining funds be distributed to Plaintiffs on a pro rata basis and 50% be retained by the Attorney Defendants for “indemnification or contingent liabilities.”

68. No statement or accounting of settlement funds or attorneys’ fees and expenses, pursuant to the Court’s June 6, 2002 Order, appears in the record and no “indemnification or

contingent liabilities” have ever been identified by the defendants.

69. On or about March 2002, plaintiffs received a second settlement check.

70. In an Order dated July 31, 2002, a copy of which is attached as Exhibit D to this Complaint, the Court stated that it had again received an accounting of funds and was **“advised of the consent of the individual plaintiffs who received settlements for use of the remaining funds for charitable purposes”** (emphasis added) and Ordered that **“Ten percent (10%) of the remaining funds shall be set aside to pay all outstanding litigation and administrative expenses”** and defendants are to be reimbursed for **“claims or suits”** brought within the time frame referred to in the Final Settlement and Dismissal and **“side letter.”**

71. The record of the *Moore* Action does not contain a statement or accounting of the outstanding expenses as of July 31, 2002 or a statement or accounting of any claims or suits paid by defendants pursuant to the terms of the Final Settlement and Dismissal and **“side letter.”**

The **“side letter”** does not appear in the public record.

THE TRUST/NON PROFIT CORPORATION

72. In its July 31, 2002 Order, the Court further ordered that all remaining settlement funds be placed in a trust and further stated that 5% of the assets may be used for the expense of establishing the trust and up to **“30% of the assets available for distribution on an annual basis shall be used to pay fees and expenses incurred by the trustees.”** (emphasis added).

73. On or about January 13, 2003, the Court entered an Amended Order, a copy of which is attached as Exhibit E to this Complaint, that authorized the transfer of remaining settlement funds to a trust or nonprofit corporation and listed all of the appointed members of the Board of Directors: Defendants Cunningham, Gallion, and Mills and another individual, Mark Modlin.

74. Upon information and belief, Mr. Modlin is a trial consultant retained by the Attorney Defendants and a personal friend of the presiding Judge in the *Moore* Action.

75. On or about January 23, 2003 a non profit corporation, The Kentucky Fund for Healthy Living, Inc. was registered with the Secretary of State by the Defendants as a 501(c)(3) corporation.

76. On or about December 19, 2003, Defendants Cunningham, Gallion, and Mills filed a Motion requesting that the Court relinquish its jurisdiction over the non profit corporation, The Kentucky Fund for Healthy Living, Inc.. By Order entered on December 30, 2003, a copy of which is attached as Exhibit F to this Complaint, the Court granted the Motion.

77. The record of the *Moore* Action does not contain a statement of the amount of funds transferred to The Kentucky Fund for Healthy Living, Inc., or a statement or accounting of the use of funds, and none was provided to the Plaintiffs.

78. Upon information and belief, approximately **\$20 million remained** in The Kentucky Fund for Healthy Living at the time the initial Complaint was filed in this case.

GENERAL FACTUAL ALLEGATIONS

79. The Attorney Defendants negotiated an aggregate-lump sum Settlement Agreement with American Home Products on behalf of Plaintiffs and then, in accordance with the terms of the settlement agreement, allocated the aggregate Settlement Amount among Plaintiffs in fixed dollar amounts as reflected in Exhibit 3 to the Settlement Agreement.

80. Without informing Plaintiffs of the terms of the Settlement Agreement, their allocation of the aggregate Settlement Amount, the allocation to any of the other Plaintiffs, or the manner in which Plaintiffs' individual "settlement offers" were calculated, and, in many cases after

affirmatively misrepresenting the terms of the Settlement Agreement, e.g., by informing Plaintiffs that a given amount, which was only a fraction of the actual allocated amount, was the best result that they could obtain, The Attorney Defendants “negotiated” settlements with Plaintiffs that were substantially smaller than the previous allocations.

81. Upon information and belief, the Attorney Defendants, personally or through their agents, made additional affirmative misrepresentations by informing many Plaintiffs that they could go to jail, or could be fined and forced to return their settlement funds, if they discussed the fact or terms of their settlement with anyone, including spouses and adult children.

82. Plaintiffs received \$71,165,015.13 of the total Settlement Proceeds.

83. The record of the Boone County Action does not contain an accounting of the attorneys’ fees and expenses, and the Attorney Defendants failed to provide individual Plaintiffs with such an accounting.

84. Each of the Attorney Defendants personally received and/or exercised dominion and control over Settlement Proceeds in amounts in excess of his contracted-for fee.

85. Plaintiffs did not give informed consent to the creation of a non-profit corporation with settlement funds and were never advised of the amount of funds transferred to The Kentucky Fund for Healthy Living which was created, managed and controlled by the Attorney Defendants.

CLASS ACTION ALLEGATIONS

86. This action is brought pursuant to CR 23 on behalf of all individuals who were members of the settlement class action styled Johnetta Moore, et. al, v. A. H. Robins, et. al., 98-CI-795. Plaintiffs seek, among other things, disclosure of all settlement terms, disclosure of all settlement funds received by the Defendants and the uses of those funds, for themselves and on

behalf of all individuals who were members of that class action.

87. The named Plaintiffs, including those who would serve as representative Plaintiffs, are members of the settlement class they seek to represent. The members of the class are so numerous that joinder is impractical as it would involve over 440 individual litigants.

88. The class should be certified pursuant to CR 23 of the Kentucky Rules of Civil Procedure because the claims herein are common to all members of the class in this action and because individual complaints may result in inconsistent or varying adjudications. The named Plaintiffs, including those who would serve as representative Plaintiffs, have been subject to the same or similar settlement and post-settlement practices that affect each class member. The claims of the named Plaintiffs are typical of those of the class which they seek to represent. The class representatives who are designated will fairly and adequately represent the class and will be dedicated to recovering, for all Plaintiffs, any settlement funds that were utilized for any unauthorized purpose. Those Plaintiffs will vigorously prosecute the claims of all class members and pursue the interests of the class members as a whole.

89. There are questions of fact and law common to the class which predominate over any questions affecting only individual members. These predominating questions include, but are not limited to:

Whether or not the settlement information provided to all plaintiffs was accurate and complete.

Whether the Defendants breached their ethical, fiduciary and professional duties to the Plaintiffs.

Whether the Plaintiffs are entitled to a complete accounting of all settlement funds, including fees and expenses paid to the Defendants and copies of all settlement documents.

Whether the Plaintiffs are entitled to recover settlement funds diverted for improper or unauthorized purposes.

Whether the formation of The Kentucky Fund for Healthy Living and the handling of

funds placed with the corporation was appropriate or in the best interest of the Defendants former clients.

Whether the plaintiffs are entitled to an accounting of the settlement funds transferred to the non profit corporation, The Kentucky Fund for Healthy Living, owned and operated by the defendants.

90. The claims of the named Plaintiffs, including those who would serve as representative Plaintiffs, are typical of the claims of the class members in that all of the members of the class are entitled to an accounting of the settlement funds, information related to the settlement process and negotiations and recovery of all funds improperly and unlawfully diverted for unauthorized purposes.

91. A class action is a superior and an appropriate method for the fair and efficient adjudication of the claims asserted in this Complaint. Upon certification and designation of class representatives, named Plaintiffs who are not class representatives would participate in the action only as members of the class certified rather than with any individual rights or responsibilities.

SPECIFIC ALLEGATIONS

92. Plaintiff Mildred Abbott was not informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Abbott was informed that there may be “some money left, not enough to go around” and that those funds were “going to be put in charity.” Ms. Abbott received two settlement checks although she was never told to expect a second check. Ms. Abbott was not asked to consent to funds being donated to charity and was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Abbott was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Abbott was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Abbott was warned that

she could not discuss the fact that she had settled her case or the amount of her settlement. She was not advised that any expenses were deducted from her settlement funds.

93. Plaintiff Elizabeth Abney never met or talked with an attorney. After responding to an advertisement and becoming a plaintiff in the *Moore* Action, she did not hear anything from her attorney's office for two years unless she initiated a phone call. She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Abney was not asked to consent to funds being set aside for charitable or any other purpose. She was never informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Abney was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Abney was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Abney was warned that she could not discuss the fact that she had settled her case or the amount of her settlement. In September 2004, Ms. Abney requested a copy of her settlement agreement and she was told that it was a confidential document and that it could not be released and that she could lose her settlement funds if it was disclosed to anyone. Ms. Abney received one settlement check. She was not advised that any expenses were deducted from her settlement funds.

94. Plaintiff Juanita Alton never met with or talked to an attorney. She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Alton was told by an assistant

from her attorney's office at the time she was presented with settlement papers that the settlement was confidential and that she "could not talk about it or tell anyone she got a settlement." She was told the settlement was confidential "because it would ruin the company's name and they did not want anyone to know they had been sued." She was not told that there would be a second distribution of settlement funds but received a call and was told to come to Lexington and that it would be "well worth a trip." At that time, she was presented with a second settlement check and was told "this is the end of the settlement money" and that the attorneys had a "little bit" of money left over that would be donated to a charity of their choice since it was too small an amount to distribute. She was not asked to consent to any settlement funds being donated to charity. She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Alton was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Alton was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Alton received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

95. Plaintiff JoAnn Alvey never met with an attorney. She was never told to expect a second check after receiving her first settlement check but received a phone call and was asked to come to an office in downtown Lexington. She was told that the attorneys were "going through their books again and found some more money." She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had

a right to opt out of the settlement. She was very surprised at the small amount of her settlement since it barely covered her accumulated medical expenses at the time. The person she was meeting with told her he had a full time job and was working for the attorneys on the side. Ms. Alvey was told by that person that there were funds remaining that amounted to a "pittance" that would be given to a "charity of their choice." She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Alvey was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Alvey was not given a copy of her settlement agreement. She was told "never to discuss what she received" and that "this is our secret." Ms. Alvey received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

96. Plaintiff Cindy Armstrong was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was told that there may be a "very little" amount of settlement funds left over and she agreed to donate the funds, assuming it was "less than \$100.00." She was never informed that a nonprofit corporation was established by the Defendants with settlement funds and would not have agreed to a larger donation to charity. She was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Armstrong was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Armstrong received one settlement check. She was not advised that any expenses were deducted from her funds.

97. Plaintiff Jody Baldrige was never informed of the manner in which his settlement amount was decided upon and was never informed that he had a right to opt out of the settlement. His settlement meeting lasted five minutes and he recalls being surprised that they did not even check his identification before giving him a check. He does not recall anything being mentioned about additional funds or any settlement funds being donated to charity or used for any other purpose. He was never informed that a nonprofit corporation was established by the Defendants with settlement funds. He was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Baldrige was not given a copy of his settlement agreement and the terms were not reviewed with him. Mr. Baldrige received one settlement check. He was not advised that any expenses were deducted from his settlement funds.

98. Plaintiff Lee Bartley never met or talked with an attorney. The only Correspondence he received was for a release of his medical records and a request for him to get a physicians' evaluation. He was never informed of the manner in which his settlement amount was decided upon and was never informed that he had a right to opt out of the settlement. At the time he picked up a second check he was told that there was a small amount of money left over and that the attorneys were "asking that you contribute what was left over to charity". He was led to believe that the amount was very small. Afterward, Mr. Bartley thought it strange that an attorney would ask a client to donate funds to charity and that he was never told how much money was involved or to which charity it would be donated. He was never informed that

a nonprofit corporation was established by the defendants with settlement funds. He was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Bartley was not given a copy of his settlement agreement and the terms were not reviewed with him. Mr. Bartley received two settlement checks. He was not advised that and expenses were deducted from his settlement funds.

99. Plaintiff Margie Berry was too afraid to comment on her settlement experience saying she had been "scared to death". Later, she wanted to talk to an attorney because her "fear had weighed on her" for too long and because she believes her attorneys' conduct "harmed her health" by threatening her with going to jail. At the time she settled her case she was told she could not say anything about her settlement, even to her family. She was told that she could go to jail and would be fined if she told anyone. Ms. Berry developed serious heart problems from taking the diet drug and did not believe she was well compensated and felt her attorneys were "blackmailing her" when she settled her case. Nothing was mentioned to her about funds being donated to charity. She was never informed that a nonprofit corporation was established by the defendants with settlement funds. She was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. She was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Berry received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

100. Plaintiff Eleanor Berry was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was informed that there may be a "small amount of money left over", maybe

"\$25.00", that may be donated to charity. Ms. Berry was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Berry was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Berry was not given a copy of her settlement agreement and the terms were not reviewed with her, except that she was "warned not to tell anyone" and if she did she was told she "may have to forfeit" what she got. She received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

101. Plaintiff Easter Bishop was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Bishop was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Bishop was not given a copy of her settlement agreement and the terms were not reviewed with her. She received one settlement check. She was not advised that any expenses were deducted from her settlement funds.

102. Plaintiff Carol Boggs was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. There was "no discussion of how much the overall settlement was and how it was divided". She was told that she got "less than others because of her age, since she would have less time to enjoy it". Ms. Boggs was told that things were "under a gag order" and that she could "be fined and would have to give the money back if she talked about the settlement". She

was told that the drug companies required it because "if they ever sold their company they did not want the bad publicity". She was told that if she discussed the settlement, she could be 'fined and forced to repay the settlement or go to jail". She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Boggs was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Boggs was not given a copy of her settlement agreement and the terms were not reviewed with her. She received two settlement checks. She was not expecting a second check but received a call asking her to meet her at a mall in Ashland by the Information Center. The caller would not tell her the reason for the meeting but said it "wasn't anything bad but that it could not be discussed on the phone because of the gag order. Ms. Boggs was not advised that any expenses were deducted from her settlement funds.

103. Plaintiff Angie Lynn Bowman was never told to expect a second check after receiving her first settlement check but received a phone call and was asked to come to an office in downtown Lexington. Her sister was also a plaintiff and was told, when they came together, that she could not accompany her when she signed her settlement agreement. She specifically asked what amount of money the pharmaceutical companies had agreed to pay in the overall case and how many people were involved in the case and was told she was not entitled to know that information because it was confidential. She recalls being told money would be set aside for future claims but does not recall the reason and was told that, if any was left, it would be distributed. She was not told that any funds would be donated to charity. She was never

informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Bowman was not given a copy of her settlement agreement. She was not advised that any expenses were deducted from her settlement funds.

104. Plaintiff James Branham was not informed of the manner in which his settlement amount was decided upon and was not informed that he had a right to opt out of the settlement. He was not given a copy of his settlement agreement and the terms were not reviewed with him although he was warned not to discuss the settlement. He has a vague recollection that he was told that there may be some settlement funds left over that may be given to charity but he was not asked to approve any donation. In April 2004, he was contacted by an investigator for the Kentucky Bar Association about the case. He was never informed that a nonprofit corporation was established by the defendants with settlement funds and was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Branham received two settlement checks. He was not advised that any expenses were deducted from his settlement funds.

105. Plaintiff Kathy Branham was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was not given a copy of her settlement agreement and the terms were not reviewed with her. She was never informed that a nonprofit corporation was established by the defendants with settlement funds and was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Branham received two

settlement checks. She was not advised that any expenses were deducted from her settlement funds.

106. Plaintiff Christina Bucher was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Bucher does not recall anything being said about a donation to charity and did not approve any. She was not provided with a copy of her settlement agreement and was not advised that any expenses were deducted from her settlement funds. She received one settlement check.

107. Plaintiff Leslie Bullock was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Bullock was not asked to approve any donation to charity does not recall anything being said about a donation to charity. She was not provided with a copy of her settlement agreement and was not advised that any expenses were deducted from her settlement funds. She received two settlement checks.

108. Plaintiff Judy Dile was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. The terms of her settlement agreement were not reviewed with her except she was warned not to discuss the terms of her settlement agreement. Nothing about money being donated to charity was mentioned to her. Ms. Dile was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Dile received two settlement checks. She was not informed that any expenses

were deducted from her settlement funds.

109. Plaintiff Susan Ezell never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. When she signed her settlement agreement, she asked for a copy but her request was denied. She was told there could be "no paper trail" and no one could know about the settlement. She wanted her son in the room with her to review her settlement agreement and her request was refused. A donation to charity was never discussed with her and she would "absolutely not" have agreed to that suggestion. She received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

110. Plaintiff Rhoda Franklin was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. A donation to charity was mentioned but Ms. Franklin indicated that a donation would be acceptable only if it was a small amount. The terms of her settlement agreement were not reviewed with her except she was warned not to discuss the settlement. She was not given a copy of her settlement agreement. Ms. Franklin was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Franklin received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

111. Plaintiff Mary Frazier never met with an attorney. She was not informed of the

manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. A donation to charity was never discussed with her. The terms of her settlement agreement were not reviewed with her. Ms. Frazier was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Frazier received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

112. Plaintiff Freda Frizzell never met with an attorney. When her case was settled she asked to have her son with her because she is 72 years old and on medication. She was told he could not be with her unless he had a power of attorney. When she said she would give him a power of attorney right then, he was allowed in the room with her. She was not informed of the manner in which her settlement amount was decided upon. She was not asked to approve a donation to charity but vaguely recalls being told that if "a few hundred dollars" was left over it would be given to charity. The terms of her settlement agreement were not reviewed with her, other than being warned not to discuss the settlement and she was not given a copy of the agreement. Ms. Frizzell was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Frizzell received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

113. Plaintiff Rhonda Hancock never met with an attorney. She was not informed of

the manner in which her settlement amount was decided upon. She was informed that "there may be additional money and that they may want to donate it to charity". She asked how much they were talking about and informed them she "would want to know if it was over \$100.00." She was told she would be called but never was. The terms of her settlement agreement were not reviewed with her and she was not given a copy. Ms. Hancock was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hancock received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

114. Plaintiff Barbara Hellmueller never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being donated to charity but recalls being told that some funds were being donated to charity. Ms. Hellmueller was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hellmueller received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

115. Plaintiff Reva Helton never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement

agreement. She was not asked and did not consent to any funds being donated to charity. Ms. Helton was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Helton received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

116. Plaintiff Lora Hoover was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being donated to charity. Ms. Hoover was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hoover received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

117. Plaintiff Lorene Hutcherson was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being used for charitable purposes although she was told that if there were any funds remaining they may be donated to charity. Ms. Hutcherson was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hutcherson received two settlement checks. She was not informed that any expenses were deducted from her settlement

funds.

118. Plaintiff Gerry Jones never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her, other than being warned that she could be fined for disclosing the fact that she got a settlement or the amount. She was told "not to even answer if they called by saying anything but yes or no" because "the phones might be bugged". When she later received a phone call to come to a meeting, she was told they could not tell her the reason for the meeting over the phone but that she "would be happy". When she arrived at the meeting, she was given a second check. She was not given a copy of her settlement agreement. Ms. Jones was not asked and did not consent to any funds being donated to charity although she recalls something being said about that possibility. Ms. Jones was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Jones received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

119. Plaintiff Betty Jordon was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was told that if funds were left over they may be donated to charity. Ms. Jordon refused to consent to a donation saying she "would not consent to any funds going to anyone" but herself. She called many times over the course of a year asking if there were additional funds to distribute and was told nothing was

known. Ms. Jordon was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Jordon received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

120. Plaintiff Katherine King was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not informed of any settlement funds being donated for charity. Ms. King was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. King received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

121. Plaintiff June McPhearson turned down the settlement amount initially offered to him. When a paralegal mentioned the possibility of settlement funds being donated to charity he responded "I have my own charities" and refused for any of his funds to be donated by counsel. Mr. McPhearson was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. McPhearson received two settlement checks. He was not informed that any expenses were deducted from his settlement funds. Mr. McPhearson was contacted by an investigator for the Kentucky Bar Association about the case months ago.

122. Plaintiff Linda Miller was not informed of the manner in which her settlement

amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She did not authorize any donation to charity but recalls being told that if the attorneys decided to do that they would "send something in the mail". She was never contacted. Ms. Miller was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Miller received two settlement checks. She was not informed that any expenses deducted from her settlement funds.

123. Plaintiff Jessie Parsons was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not told of any donation to charity. Ms. Parsons was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Parsons received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

124. Plaintiff Peggy Spears was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her, except for the need to keep everything confidential. She was not given a copy of her settlement agreement. She was told that there may be a small amount of funds left over and she consented to a donation if it was "under \$10.00 to \$15.00". Ms. Spears was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Spears received two settlement checks. She

was not informed that any expenses were deducted from her settlement funds.

125. Plaintiff Marjorie Sudduth was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. When she received a call to come to a meeting after receiving the first check, the caller would not tell her the reason for the meeting. She was not asked to consent to a donation to charity but was told that if there were any additional funds it would be "a very small amount and would be donated to charity. Ms Sudduth was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Sudduth received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

126. Plaintiff Thelma Merida never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon and rejected the first settlement offer. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. Nothing about settlement funds being donated to charity was discussed with her. Ms. Merida was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Merida received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

127. Mildred Swanson was not informed of the manner in which her settlement amount

was decided upon. The terms of her settlement agreement were not reviewed with her and when she asked for a copy, her request was denied. She was not asked to donate funds to charity but was told that the judge approved a donation. She was not informed of the total amount of the settlement with the pharmaceutical companies and was not informed of the creation of a trust or nonprofit corporation. Ms. Swanson received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

128. Plaintiff Vickie Brewer was never asked to assist with, approve or comment on any issues related to the *Moore* Action and was never informed of any responsibilities as a class representative. Ms. Brewer was told she could not discuss her settlement with anyone and was not provided with a copy of her settlement records. Ms. Brewer was never informed that any settlement funds would be donated to charity and never approved the establishment of a trust or nonprofit corporation for charitable or other purposes. Ms. Brewer was never informed of the total amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action, was never involved in the negotiations related to her settlement or informed of the manner in which her settlement amount was decided upon and was never informed of her right to reject the settlement offer. Ms. Brewer did not have an adequate opportunity to review her settlement agreement and the terms were not reviewed with her by counsel. Ms. Brewer received one settlement check. She was not advised of any expenses deducted from her settlement funds.

129. Plaintiff Karen Brown never met with an attorney, was never informed of the manner in which her settlement amount was decided upon and was never informed that she had

a right to opt out of the settlement. Ms. Brown was informed that there may be some "additional funds" amounting to "a couple of dollars" that may be donated to charity. Ms. Brown was not asked to consent to funds being donated to charity and was never informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Brown was never informed of the amount of settlement funds paid by the pharmaceutical companies in the Moore Action. Ms. Brown was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Brown was warned that she could not discuss the fact that she had settled her case or the amount of her settlement. Ms. Brown received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

130. Plaintiff Deborah Browning was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Browning refused the settlement offer initially presented to her. The day she received her second settlement check, Ms. Browning was told that the attorneys involved in the case may want to donate settlement funds to charity. Ms. Browning informed the representative she met with that she preferred to donate funds to her own charities. Ms. Browning was not advised that any expenses were deducted from her settlement funds.

131. Plaintiff Teresa Duff was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. She was warned not to discuss her settlement and was told she could go to jail if she did. Ms. Duff did not consent to any settlement funds being donated to charity.

Ms. Duff was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Duff received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

132. Plaintiff Leslie Minton was never informed of the manner in which her settlement amount was decided upon and flatly rejected the initial offer she was presented with and refused to sign the settlement agreement presented to her. Ms. Minton was never informed she could opt out of the settlement and proceed to trial. She was told that "left over" funds may be donated to charity but her approval was not requested. Ms. Minton received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

133. Plaintiff Raymond Parker was not informed of the manner in which his settlement amount was decided upon and refused to accept the settlement amount initially offered. He received a second settlement check after being told that "additional funds had become available". Mr. Parker requested a better explanation of how those funds were acquired but was none was provided. Mr. Parker requested a copy of his settlement agreement but his request was denied on the ground that the document was confidential. Mr. Parker was informed that there may be a minor amount of settlement funds left over and that the attorneys may want to donate those funds to charity. Mr. Parker was not asked to approve any donation to charity. Mr. Parker was never informed that a trust or nonprofit corporation was created by the defendants. Mr. Parker was not informed of the amount of the overall settlement, the manner in which his

settlement amount was decided upon or the amount of settlement funds transferred to the nonprofit corporation. He was not advised that any expenses were deducted from his settlement funds.

134. The Plaintiffs in Paragraph 46 had settlement experiences that are similar to those of the specific Plaintiffs named above. Approximately one-hundred and three (103) of these Plaintiffs were told that they could go to jail or prison if they discussed their settlement with anyone and the others were told that they could be sued, fined and/or required to pay their settlement money back. Many of these Plaintiffs have felt threatened and distraught because they were warned not to disclose the amount of their settlement to their spouses or children. Some were told not to deposit their settlement check in the bank where they regularly do business and others were directed to specific financial brokerage firms to deposit their check. All of these Plaintiffs were told, if anything, that their attorney may donate funds to charity if there were any left over but that the amount would be small, or "odd cents", "1.00", "\$10.00", "no more than \$25.00", an amount "not worth the postage" to send, or "not worth the drive" to pick up, or "an amount so small that it would cost more to distribute".

COUNT I

(Breach of Fiduciary Duty)

135. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-134 as if fully set forth herein.

136. An attorney-client fiduciary relationship existed between each of the Plaintiffs and each of the Attorney Defendants as Attorney Defendants knowingly and willingly placed themselves

in a unique position of trust and confidence with respect to the Plaintiffs and the Plaintiffs placed their complete trust and confidence in the Attorney Defendants and in their ability to faithfully and honestly perform their duties.

137. The Attorney Defendants were at all times obligated to act faithfully and honestly and to refrain from misrepresenting or failing to disclose material information concerning the settlement and the handling, distribution and administration of the settlement funds.

138. As detailed previously, the Attorney Defendants breached their fiduciary duties to Plaintiffs, e.g., by failing to provide Plaintiffs with necessary and legally-required information regarding the Settlement Agreement's terms and by misappropriating for their own use and/or otherwise exercising dominion and control over Settlement Proceeds that belonged to the Plaintiffs, and/or aided and abetted each others' breaches of fiduciary duty to Plaintiffs by failing to call attention to the other Attorney Defendants' actions.

139. As a result of the Attorney Defendants' breaches of their fiduciary duties, Plaintiffs were damaged in an amount in excess of the jurisdictional limits of the Court and Plaintiffs are entitled to remedies including but not limited to a compensatory damages award, disgorgement or forfeiture of all attorneys' fees – contracted-for and otherwise – taken by the Attorney Defendants from the Settlement Proceeds.

140. The Attorney Defendants' breaches of fiduciary duties were committed in bad faith and with malice, oppression and with reckless indifference to the rights of the Plaintiffs for which Plaintiffs are entitled to recover punitive damages in addition to compensatory damages.

BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

PLAINTIFFS' MOTION TO AMEND AGREED PROTECTIVE ORDER

Plaintiffs, by and through counsel, respectfully request that the Court amend the Agreed Protective Order (Jan. 30. 2015) in this case to reflect that only the information contained in CR 7.03(1) shall be redacted from documents produced prior to them being filed, with no other information or documents being confidential or filed under seal without further agreement of the parties or Order of the Court. As grounds for this Motion, Plaintiffs would show that since Defendant Chesley is the party seeking to designate documents as confidential and to have them filed under seal, he bears the burden of showing at a hearing that there is good cause for the designation and to have the documents sealed. There is a strong presumption of public access to court records and Defendant Chesley has not shown an interest that outweighs that presumption of disclosure. A Memorandum of Law in support of this Motion is filed herewith.

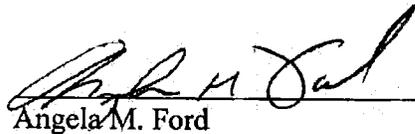
WHEREFORE, Plaintiffs respectfully request that the Court amend the Agreed Protective Order (Jan. 30. 2015) in this case to reflect that only the information contained in CR 7.03(1) shall be redacted from documents produced prior to them being filed, with no other information or documents being confidential or filed under seal without further agreement of the parties or Order of the Court.



NOTICE OF HEARING

THIS MATTER SHALL COME ON FOR HEARING ON APRIL 28, 2015 AT 9:00 A.M. IN THE BOONE CIRCUIT COURT, OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD.

Respectfully submitted,



Angela M. Ford
KBA No. 81510
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@windstream.net

William T. Ramsey
NEAL & HARWELL, PLC
TBA No. 9248
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
Email: bramsey@nealharwell.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic and U.S. Mail this the 21 day of April, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

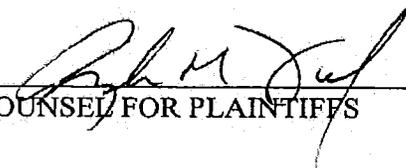
Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689



COUNSEL FOR PLAINTIFFS

BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436

MILDRED ABBOTT, *et al.*,

PLAINTIFFS

v.

STANLEY M. CHESLEY, *et al.*,

DEFENDANTS

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION TO AMEND AGREED PROTECTIVE ORDER**

Plaintiffs, in support of their Motion to Amend Agreed Protective Order, state as follows:

STATEMENT OF THE CASE

This Court entered judgment against Defendant Chesley on August 1, 2014. See Order (Aug. 1, 2014). Subsequent Orders of this Court made the Judgment final and awarded pre-judgment and post-judgment interest against him. See Order (Sept. 19, 2014); Amended Order (Sept. 19, 2014); Order (Oct. 22, 2014); Second Amended Judgment (Oct. 22, 2014). Defendant Chesley has appealed this Court's rulings to the Court of Appeals. See Court of Appeals of Kentucky, Case Nos. 2014-CA-001725, 2014-CA-001900 and 2014-CA-001984. Defendant Chesley did not stay enforcement of the Judgment by giving a supersedeas bond pursuant to CR 62.03 and 73.04.

Plaintiffs served interrogatories and requests for production of documents regarding Defendant Chesley's assets that may be available for satisfaction of the Judgment. Prior to producing any asset information or documents, counsel for Defendant Chesley insisted on a protective order maintaining the confidentiality of documents the producing party designated as "confidential" and requiring any pleadings with confidential information or attaching confidential documents to be filed under seal. Counsel for Plaintiffs agreed to a protective order

in good faith, as discussed in a hearing before this Court, to avoid further delay on the production of documents and to avoid a hearing on a protective order for documents not yet produced and confidentiality claims not yet made. Plaintiffs specifically reserved the right to request the modification of the order. This Court entered the Agreed Protective Order on January 30, 2015. See Agreed Protective Order (Jan. 30, 2015).

As this Court is aware, Defendant Chesley's discovery responses and production of documents have already been the subject of a motion to compel and a motion for contempt. See Order (Feb. 13, 2015); Order (Mar. 27, 2015). As Defendant Chesley has begun to trickle out document production over the last few months, his confidentiality designations have not been made in good faith. He has designated all discovery documents as "Confidential," without regard as to whether redaction of a portion of a document would be more appropriate than the wholesale designation of documents as "confidential."

This Court has already seen the procedural difficulty in allowing Defendant Chesley to unilaterally designate any document he wishes as "Confidential." In filings before this Court on the motions to compel and for contempt, it was necessary to file items under seal, which creates an additional administrative burden upon the Court, the Clerk's office and Plaintiffs. If Defendant Chesley and other witnesses are deposed, under the existing Protective Order, Defendant Chesley will designate some or all of the depositions as "Confidential," creating another procedural burden based upon the many anticipated exhibits to the depositions.

Moreover, Plaintiffs' initial tracking of Defendant Chesley's disposition and transfer of his assets since this action was filed has already established the likely need to file fraudulent conveyance actions to recover assets. Once again, documents remaining confidential and required to be filed under seal in courts in other states in actions against third parties will present

procedural burdens and obvious problems. The other court may view the alleged confidential nature of the documents differently and may conflict with the existing protective order. The defendant or defendants in the fraudulent conveyance actions would obviously have to receive the documents and those persons may not be subject to this Court's Orders.

If the all-encompassing protective order that is currently in place remains in place, Plaintiffs will be forced to bring a motion before this Court every time they have a document that needs to have its confidential designation removed. Each such motion will be contested, as shown by Defendant Chesley's steadfast failure to pay the judgment against him and his affirmative conduct in attempting to block enforcement of the judgment by filing a declaratory judgment action in Ohio seeking a declaration that this Court's Judgment does not comply with Ohio law.

CR 7.03 Sets Forth the Information Generally Considered To Be Confidential

Without a specific showing that a document or portion of a document contains confidential information, CR 7.03 already provides appropriate privacy protection for filings made with the Court. That rule requires that in this case, any party filing a document with the Court must redact portions of social security and taxpayer identification numbers, the month and date of a person's birth and financial account numbers. CR 7.03(1). Any additional redaction or limitation on access requires a showing of good cause. CR 7.03(4).¹

Counsel for Plaintiffs has already redacted the items listed in CR 7.03(1). Defendant Chesley bears the burden of showing a right to confidentiality that exceeds CR 7.03(1) and the

¹ The Supreme Court of Kentucky enacted CR 7.03 in 2009. See Supreme Court of Kentucky Order 2009-01 (entered Feb. 11, 2009, effective Apr. 1, 2009). There have been minor amendments to the rule that are not relevant to this matter. See Order 2010-09 (amending rule to exempt domestic violence matters from subsection (1)); Order 2013-12 (amending rule to redact all but last four digits of social security and taxpayer identification numbers instead of the entire number).

public's presumptive right of access. No other portion of the documents he has produced or may produce in the future should be considered confidential or be required to be filed under seal.

Chesley's designation of all asset discovery documents and many of his written discovery answers as confidential is nothing more than an attempt to shield from public view the actions he took to shield his assets from his creditors and avoid payment of the judgment entered by this Court. Chesley's refusal to pay the judgment of this Court is his decision, his desire to circumvent the Kentucky Rules of Civil Procedure, delay these proceedings and his creditors' execution efforts are not.

ARGUMENT

I. This Court May Amend the Agreed Protective Order.

This Court, of course, has the authority to revise or reconsider an interlocutory order. JPMorgan Chase Bank, N.A. v. Bluegrass Powerboats, 424 S.W.3d 902, 909 (Ky. 2014). In this case, the need to revise the existing order was discussed prior to the entry of the order. Indeed, the Agreed Protective Order itself recognizes this Court's ability to modify its terms, the only provision of the Order insisted upon by Plaintiffs' counsel. See Agreed Protective Order (Jan. 30, 2015) at ¶ 15. Plaintiff's counsel agreed to the order in good faith to avoid the need to litigate the language in the order prior to documents being produced and claims of confidentiality asserted. Chesley did not demonstrate good faith in his claims of confidentiality. The Agreed Protective Order is an interlocutory order because, although there is a final judgment against Defendant Chesley, this Court has authority to enter orders to enforce its judgment. Akers v. Stephenson, 469 S.W.2d 704, 706 (Ky. 1970).

II. Defendant Chesley Cannot Show an Interest in Non-Disclosure that Outweighs the Presumptive Right of Access to Court Records.

Although a trial court has a right to control access to its own records and files, that right “is constrained by a general, common-law right to ‘inspect and copy public records and documents, including judicial records and documents.’” Roman Catholic Diocese of Lexington v. Noble, 92 S.W.3d 724, 730, 731 (Ky. 2002) (quoting Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978)). Indeed, judicial documents are presumptively available to the public. Id. at 731; see also Maclean v. Middleton, 419 S.W.3d 755, 761 (Ky. Ct. App. 2014) (stating that “there is a strong presumption in favor of public access to court records”). As the Court of Appeals stated in Maclean, “court records should not be sealed as a matter of routine practice simply at the request of the parties.” 419 S.W.3d at 761. That directive is encompassed in CR 7.03(4)’s requirement of good cause for redaction or sealing beyond the privacy information delineated in subsection (1). The party seeking to seal any part of a trial court record bears the burden of proving that sealing the record is necessary at a hearing before the trial court. Cline v. Spectrum Care Academy, Inc., 316 S.W.3d 320, 325 (Ky. Ct. App. 2010); see also Courier-Journal and Louisville Times Co. v. Peers, 747 S.W.2d 125, 129 (Ky. 1988) (holding that a hearing must be held prior to ordering a hearing closed or the record sealed); Lexington Herald-Leader Co. v. Meigs, 660 S.W.2d 658, 663 (Ky. 1983) (same). The trial court must also consider less restrictive alternatives to sealing the record. See Meigs, 660 S.W.2d at 663. The party seeking to seal the record must identify less onerous alternatives and show that the interest he seeks to protect cannot be protected by less restrictive means. Id. at 664; Cline, 316 S.W.3d at 325.

The Supreme Court of Kentucky holds that trial courts must apply a balancing test between the court’s right to control access and the public’s presumptive right of access. Noble, 92 S.W.3d at 731. That balancing test adopted by the Court utilizes a “sliding scale,” which

gives great weight to records “that play an important role in determining the litigants’ substantive rights.” Id. at 732. Such records can only be sealed for “the most compelling reasons.” Id. (quoting United States v. Beckham, 789 F.2d 401, 413 (6th Cir. 1986)). Conversely, “documents and records that play only a minor or negligible role in adjudicating the rights of the litigants are afforded little weight.” Id. For records that fall between these two extremes, the trial court is to exercise its judgment and discretion in determining which documents, if any, should be sealed. Id.

In this case, to the extent asset discovery materials are filed with this Court (or other courts in fraudulent conveyance actions or other actions to enforce this Court’s Judgment), they are relevant to and play a role in determining Plaintiffs’ ability to collect on their judgment against Defendant Chesley. These are important substantive rights and Defendant Chesley must provide compelling reasons to justify excluding from public review the documents and testimony that will decide them. It is not enough that he wants to keep the information private and his transactions secret. He bears the burden of showing that particular documents should be sealed. Moreover, the Court should consider whether some less onerous alternatives, such as redaction, would satisfy whatever interest Defendant Chesley can show in the privacy of documents he wishes to keep confidential. Cline, 316 S.W.3d at 325. Aside from the information required to be redacted under CR 7.03(1), Defendant Chesley has made no such showing.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court amend the Agreed Protective Order (Jan. 30, 2015) to provide that the information set forth in CR 7.03(1) shall be redacted from documents produced prior to them being filed, with no other information

or documents being confidential or filed under seal without further agreement of the parties or order of the Court.

Respectfully submitted,



Angela M. Ford
KBA No. 81510
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859) 268-2923
Email: amford@windstream.net

William T. Ramsey
NEAL & HARWELL, PLC
TBA No. 9248
150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713
Email: bramsey@nealharwell.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic and U.S. Mail this the 21 day of April, 2015, to the following:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

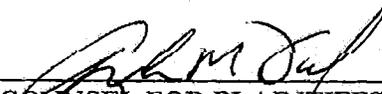
Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689



COUNSEL FOR PLAINTIFFS

AOC-025.1 Doc. Code: RS
Rev. 3-09
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 45; RCr 7.02



SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 05-CI-0436
Court CIRCUIT
County Boone
Date April 16, 2007

MILDRED ABBOTT, et al.

PLAINTIFF

VS

STANLEY M. CHESLEY, et al.

DEFENDANT

The Commonwealth of Kentucky to:

Name Custodian of Records - Clark Schaefer Hackett
Address 300 Buttermild Pike, Suite 101
Fort Mitchell, KY 41017

You are commanded to appear before: (select one of three choices)

_____ Court The Grand Jury of _____ County
 Other Angela M. Ford & Court Reporter

You are to appear at: Office of Angela M. Ford, PSC, Attorney, Chevy Chase Plaza, 836 Euclid Ave., Suite 311, KY 40502, or provide prior to April 28, 2015, the documents requested in Exhibit A

on the 28 day of April, 2015 at 10:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of _____
 To produce Documents described in Exhibit A attached

To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): See attached Exhibit A

on the 28 day of April, 2015 at 10:00 a.m. OR p.m. Eastern Central Time
at the following address: 836 Euclid Ave., Suite 311, Lexington, KY 40502

Issuing Officer/Attorney Licensed in Kentucky
By: [Signature]

Angela M. Ford
Name of Requesting Attorney
Phone# (859) 268-2923

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: Brian Todd
This 20 day of April, 2015 By: [Signature]

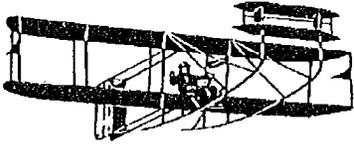


EXHIBIT "A"

All communications and records in all forms, including but not limited to, federal and state income tax returns, gift tax returns, financial statements and work papers, related to Stanley Chesley, the firm Waite, Schneider, Bayless, Chesley and any entity in which Stanley Chesley or Waite, Schneider, Bayless, Chesley has held in interest from 2005 to present. Public companies are not included in this request.

All documents related to Trusts created by Stanley Chesley or to which Stanley Chesley has transferred assets of any kind.

PYPER & NORDSTROM, LLC



COUNSELORS AT LAW

REASONED ADVICE. AGGRESSIVE ADVOCACY.

tpyper@panlawyers.com

April 28, 2015

VIA TELECOPY TO
(859) 268-9141

Angela M. Ford, Esq.
Chevy Chase Plaza
836 Euclid Ave., Suite 311
Lexington, KY 40502

Re: Mildred Abbott, et al. v. Stanley M. Chesley, et al.
Case No. 05-CI-0436, Boone County Circuit Court
Subpoena to "Custodian of Records- Clark Schaefer Hackett"

Dear Ms. Ford:

Please be advised that the undersigned represents the professional accounting firm of Clark, Schaefer, Hackett & Co. ("CSH"). For the purposes of this letter, CSH is presumed to be the entity to whom you directed a subpoena duces tecum that was served on April 20, 2015 that purports to emanate from the above-captioned case. Please consider this letter as raising objections to said subpoena.

CSH is constrained to object to the production of documents and information pursuant to your subpoena upon various grounds. A non-exclusive list of reasons why CSH objects includes:

1. The subpoena fails to give CSH reasonable time to comply.
2. Complying with the subpoena would entail undue burden and expense to CSH, especially given the breadth and vagueness of the requests set forth on the subpoena's Exhibit A. It would appear appropriate that the costs and expenses attendant to any response by CSH to your subpoena be advanced by you as I understand Kentucky Rule 45.02 permits. Additionally, it certainly appears improper under Rule 45.04(3) that the subpoena appears to demand compliance be had in Lexington.

7601 Paragon Road, Suite 301 - Dayton, OH 45459 - Telephone: (937) 610-1990 - Facsimile: (937) 610-1991



PYPER & NORDSTROM, LLC

Angela M. Ford

April 28, 2015

Page Two

3. The subpoena is in many respects vague and ambiguous as to what is sought, and the request is capable of varying and inconsistent interpretations. Taken as a whole, the subpoena arguably requests every iota of information CSH might possess as to the persons or entities named or referenced by it, rendering it overbroad in the extreme. CSH has no obligation to poll each and every person affiliated with it to ascertain whether any or all such persons possess responsive materials. I am also unaware of any obligation to determine whether an entity is a "public company". Moreover, many of the terms used in the subpoena, such as "public companies" are themselves vague, and none are defined by you.
4. Complying with the subpoena unquestionably places CSH at risk of criminal penalties, a fact that a reasonable inquiry by you would have disclosed. I call your attention to the provisions of 28 U.S.C. § 7216 which proscribes any person engaging in the business of preparing tax returns from, *inter alia*, knowingly disclosing any information furnished in connection with the preparation of tax returns. Pursuant to that statute's regulations, CSH is a tax return preparer that is not permitted to disclose tax returns and tax return information, which includes information furnished in connection with the preparation of tax returns. While a client may consent to the disclosure of tax returns and tax return information no such consent has been provided to CSH. Thus, CSH simply cannot comply with your subpoena without potentially exposing itself to criminal penalties.
5. The subpoena to CSH appears to violate the terms of an injunction entered by the Common Pleas Court of Hamilton County, Ohio. In investigating this matter, I became aware of the case of Stanley M. Chesley v. Angela M. Ford, Esq., et al., being Case No. A1500067 on the docket of said Court and, more particularly, injunctive relief entered by Judge Ruehlman in that case on January 14, 2015. Aspects of that Court's January 14th Order appear implicated here as it appears that Court enjoined you from serving any Chesley asset related discovery on any Ohio person or entity, and CSH is an Ohio corporation. Indeed, that Order appears to have enjoined you from issuing any subpoena seeking documents from any Ohio entity. While CSH is obviously not a party to that action, especially given the potential criminal penalties outlined herein CSH should not be placed in the unenviable position of complying with a subpoena that arguably violates an injunction stopping its very issuance.

7601 Paragon Road, Suite 301 - Dayton, OH 45459 - Telephone: (937) 610-1990 - Facsimile: (937) 610-1991

PYPER & NORDSTROM, LLC

Angela M. Ford
April 28, 2015
Page Three

6. It is my understanding that your subpoena arises from efforts to collect upon a judgment entered against Stanley Chesley. I am unaware of any effort by you to give notice of your subpoena to Mr. Chesley and/or his counsel and I understand such notice is required under Rule 45.03(3) of Kentucky's Rules of Civil Procedure. Equally problematic if not more so, however, is that your subpoena unquestionably implicates the interests of others against whom or which no judgment has been entered and indeed may not be parties to your case, and I am unaware of any effort by you to give notice to such persons or entities. By way of example, I note your subpoena seeks tax returns and other information relative to "the firm Waite, Schneider, Bayless, Chesley". It is my understanding that said entity is not a party to your case and that there is no judgment against that entity and yet your subpoena, without notice, seeks information of unquestionable sensitivity, which appears improper. This argument applies with equal force to any unnamed "entity" that would or may fall within your description.

For all the foregoing reasons, CSH objects to producing whatever documents or electronically stored information it possesses that is arguably called for by the subpoena. Should you have any questions concerning any aspect of the foregoing, you may feel free to contact me.

Very truly yours,

PYPER & NORDSTROM, LLC



Thomas H. Pyper

THP/laa

7601 Paragon Road, Suite 301 - Dayton, OH 45459 - Telephone: (937) 610-1990 - Facsimile: (937) 610-1991



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
May 7, 2015 03:20 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 409921**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: REPLY

PAGES FILED: 11

EFR200

EXHIBIT

6

exhibitsticker.com

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Stanley M. Chesley,	:	Case No. A1500067
Petitioner	:	
v.	:	
	:	Judge Ruchlman
Angela M. Ford, Esq., et al.	:	
Respondents.	:	

**PETITIONER’S OPPOSITION TO RESPONDENT ANGELA FORD’S MOTION TO
DISMISS SUPPORTED BY THE AFFIDAVITS OF FRANK V. BENTON, IV OR,
ALTERNATIVELY, MOTION FOR AN ORDER DIRECTING THE LIMITED
DEPOSITION OF RESPONDENT ANGELA FORD**

Petitioner Stanley M. Chesley (“Chesley”) opposes Defendant Angela Ford’s Motion To Dismiss The Complaint (the “Motion”) because the Motion is contrary to applicable law and ignores several important and relevant facts.¹ The Motion is not supported by any evidence.

The Motion asserts three baseless arguments: (1) lack of personal jurisdiction over Respondent Angela Ford (“Ford”) under Ohio’s statute and constitutional rules; (2) lack of a case and controversy subject to judicial review; and (3) violation of the constitutional full faith and credit requirement of the United States constitution. Chesley will refute these three arguments in order thus demonstrating that the Motion should be denied.

BACKGROUND FACTS

Chesley’s discussion of the facts herein will be limited to correcting only Ford’s most egregious misstatements or omissions and providing important facts that demonstrate why the Motion must be denied.

Ohio Facts. Chesley filed: (a) his First Amended And Supplemental Verified Petition For Declaratory Judgment And Injunctive Relief (the “Verified Petition”); (b) Petitioner’s

¹ The Motion was first filed in the federal court and was “terminated” by Judge Economus after he remanded this matter to the Court because Ford’s assertion of complete diversity was simply not true – Ford has clients in Ohio, the Ohio Respondents.

Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction ("Petitioner's Motion"); (c) Petitioner's Verified Memorandum in Support of Motion for Injunctive Relief (the "Verified Supporting Memo"); and (d) his Combined (1) Verified Motion and (2) Supporting Memorandum Seeking Amplification of Restraining Order ("Amplification Motion")² because Ford acted in Kentucky and threatened actions in Ohio against Ohio citizens, residents, domiciliaries and property.

Chesley's Filings include a thorough discussion of Ohio related facts including Ford's threats to subpoena, depose and attempt to seize assets from non-party Ohio citizens. Ford's attacks in Kentucky on nonparty Ohioans have already begun via subpoenas that seek private financial information of several Ohioans.

Ford is also trying to seize assets from Chesley all of which are located in Ohio. Ford filed a motion in federal court seeking to dissolve the Court's January 14, 2015 injunction in which she argued that, pursuant to the injunction, Chesley's creditors are "prohibited from enforcing the [Chesley Judgment], at some point in the future, if and when they come to Ohio to domesticate their judgment against Chesley." (See page 3). The Chesley Filings and Ford's own words make it clear that Ford intends to take collection action in Ohio.³ She should not be permitted to take those actions until she complies with Ohio law.

The Chesley Filings reveal that the Motion distorts the nature and purpose of Chesley's Filings. Chesley is not seeking and did not receive a stay of Ford's collection action while

² Collectively, those four filings are "Chesley's Filings." Three of the filings are verified so that the facts stated therein and the documents attached thereto are evidence that this Court may consider. Also available as evidence is the two Affidavits of Frank V. Benton, IV filed herein on April 28, 2015.

³ This, as the Motion admits, would require her to supply the requested information thus coming into compliance with Ohio law and meeting Chesley's request to provide the requested information. See page 14 of the Motion's discussion of Ohio Revised Code 2329.023(A).

Chesley's appeal of the Chesley Judgment⁴ is pending in Kentucky. Since this case was filed, Chesley has produced over 5,000 pages of documents to Ford and he agreed to be deposed by Ford, all while this Court's prohibition order was in place. Chesley is not behaving like a man who sought or obtained a stay pending appeal.

On April 20, 2015 Ford served a subpoena on Clark, Schaeffer & Hackett ("CSH"), Chesley's accountant, seeking production of a wide range of confidential financial information relating to several Ohio citizens. Ford is now harming Ohioans by seeking to obtain and publicize their private financial information.⁵

Chesley asks the Court to apply Ohio procedural law to protect Ohio citizens, residents, domiciliaries and property before Ford can use the Chesley Judgment in Ohio. Among those Ohio procedural laws are requirements that Ford list the names and addresses of Chesley's judgment creditors and that Ford disclose the amount owed on the Chesley Judgment.⁶

Kentucky Facts. After nearly ten years and two Kentucky Supreme Court decisions, Ford obtained for her clients in the Abbott Case a summary judgment holding Chesley jointly liable for a seven year old \$42,000,000 judgment entered against the Criminal Defendants.

Ford's post-judgment discovery in Kentucky includes

- (i) service on Chesley of two sets of interrogatories that exceed permissible limits under Kentucky's civil rules,
- (ii) receipt of Chesley's interrogatory answers that exceed 45 pages in length,
- (iii) receipt of over 5,000 pages of financial documents from Chesley,
- (iv) a subpoena to CSH that violates this Court's January 14, 2015 order by seeking information on at least ten Ohioans,

⁴ Capitalized terms not defined herein have the same meaning as in Chesley's Filings. Ford admits that she has "succeeded at satisfying a significant portion of the" Chesley Judgment.

⁵ As shown in the record, Ford seeks to eviscerate the existing Kentucky protective order so that Ford can publicize the private financial information she seeks from CSH, Chesley, Fifth Third Bank and US Bank. As discussed in Chesley's other filings, Ford continues to abuse Kentucky's discovery processes and ignore this Court's order. Ford's actions – removal, subpoenas in Kentucky to an Ohio entity seeking information on Ohioans, a subpoena in Kentucky to a bank based in Ohio and the Motion all reveal Ford's effort to avoid Ohio and the requirements of Ohio law.

⁶ Ford does not deny that this is required. See Motion page 14.

(v) a subpoena to Fifth Third Bank,
(vi) a subpoena to US Bank, and
(vii) a pending motion to eviscerate a protective order that prohibits the publication of confidential financial information – Ford agreed to this order to induce Chesley to produce information but she now wants to publish the private financial information of Chesley and other Ohioans.⁷

As demonstrated in the First Benton Affidavit, several of Chesley’s judgment creditors were and remain Ohio citizens (the “Ohio Respondents”). Ford’s filings in Kentucky include the following concerning those Ohioans:

1. In a July 7, 2011 filing in the Federal Case, Ford stated that the Chesley Judgment “is “in favor of the Abbott plaintiffs.”⁸ Ford also stated that “with respect to each of the Abbott plaintiffs,” Ford provided to in the Federal Case “a detailed breakdown of the gross distribution amount, the amount paid in attorney fees, the pro-rata portion of the total expenses, the pro-rata portion of total expenses,” (emphasis added)
2. In a July 7, 2011 filing in the Federal Case, Ford states that her fees in the Abbott Case then were over \$13,000,000 and that said amount is “precisely 33 percent of the \$40,233,987 gross amount distributed to Ford’s 382 clients,” the persons who are Chesley’s judgment creditors;⁹ and
3. “The total amounts distributed to the Victims in the state court action [the Abbott Case] total over \$40,799,988.32. Attached hereto are the total individual distribution amounts” See page 2 of Defendants’ Victims Response To Proposed Order Regarding Restitution filed by Ford on January 1, 2013, Exhibit E to Chesley’s Filings. The Ohio citizens identified in the First Benton Affidavit are listed as persons to whom Ford has distributed funds.

Ford collected money owed to Ohioans and charged those Ohioans for attorney fees and various expenses pursuant to contracts she has with Ohioans. Undoubtedly, Ford directed many communications to her clients in Ohio over the 10 years the Abbott Case has been pending.

⁷ One thing Ford has not done is depose Chesley. Ford cancelled an agreed deposition date and has not sought to reschedule that event.

⁸ Emphasis added. See page 3 of the Benton Affidavit filed herein on April 28, 2015. That affidavit was also filed in the federal court but is now part of the record in this Court.

⁹ See page 3 Exhibit 2 that is verified by the Second Benton, Aff.

APPLICABLE LAW

The law applicable to the Motion is fairly well settled. Chesley will address applicable law only to the extent needed to correct the inaccuracies in Ford's Motion.

Personal Jurisdiction. Ohio uses a two-step inquiry for determining whether a court can exercise personal jurisdiction over a defendant: (1) whether Ohio's long arm statute is satisfied, and (2) whether the defendant has had "minimum contacts" with Ohio, such that exercising jurisdiction is consistent with due process. See, *Kauffman Racing Equip., L.L.C. v. Roberts*, 930 N.E.3d, 784, 792 (2010).

One relevant provision of Ohio's long arm statute, R.C. 2307.382(A)(1), is "very broadly worded and permit[s] jurisdiction over nonresident defendants who are transacting any business in Ohio." *Manufacturing Co. v. Quality Rubber Prods., Inc.*, 82 Ohio App.3d 369, 373-374, (6th Dist. 1992) (emphasis added). The Ohio Supreme Court has found that an individual transacts business when he or she creates obligations in Ohio through business dealings or carries out business negotiations in Ohio. *Kentucky Oaks*, 53 Ohio St.3d at 74. Here, Ford certainly has contracts with each of her Ohio clients, and those contracts certainly create Ford's continuing obligations to Ohio residents. Furthermore, the contracts themselves satisfy the long arm statute. See R.C. 2307.382(A)(2). Thus, the first prong of the analysis is doubly-satisfied.

As for the due process prong, personal jurisdiction can be general, based on Ford's lifetime accumulated contacts with Ohio, or specific, based on fewer contacts with Ohio but contacts specifically related to this essence of this litigation, the Chesley Judgment. *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St.3d 81, 88, (2010). While it seems unlikely that a long-time professional and Lexington resident has not travelled to Ohio enough times to support general jurisdiction, this Court can clearly exercise specific jurisdiction over Ford as she has

ample contacts with Ohio that specifically relate to the Abbott Case that resulted in the Chesley Judgment to which this case is directly related. Under Ohio law, if a “defendant has deliberately engaged in significant activities within state [sic] or created continuing obligations between himself and residents of the forum, he has availed himself of the privilege of conducting business in the forum state, his activities are shielded by the benefits and protections of the forum state’s laws, and it is not unreasonable to require such a defendant to submit to the burdens of litigation in the forum state.” *Ricker v. Fraza/Forklifts of Detroit*, 160 Ohio App.3d 634, 641, (10th Dist.) citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-476, (1985).

Knowingly entering into a contract with a resident of the forum state constitutes purposeful availment of that forum and submission to court jurisdiction there. *Schnippel Const., Inc. v. Kreps*, 3rd Dist Shelby No. 17-01-16, 2002 WL 235443, at *5 (Feb. 15, 2002); see also *Information Leasing Corp. v. Baxter*, 1st Dist. Hamilton No. C-020029, 2002 WL 1769453, at *3. Chesley’s judgment creditors are Ford’s clients, and several of them, including the Ohio Respondents, are Ohioans. Ford asserts that she has a contract with each of those persons. She has collected money owed to those Ohio residents, she sent money to them and she withheld from their distributions several amounts that she herself calculated and controlled. Ford has purposefully availed herself of the opportunity to work in Ohio.¹⁰

Ford’s many contacts with multiple Ohioans (contracts, communications and the sending of money) arise specifically from the Abbott Case that resulted in the Chesley Judgment and have a substantial connection with this case. The requirements of due process are met. Jurisdiction over Ford can be exercised in Ohio.

A Justicable Controversy. Ford asserts that neither the Verified Petition nor the other filings in this matter constitute a live case or controversy. This is untrue.

¹⁰ All these facts were known to Ford, yet she still removed this case asserting that complete diversity existed.

As an initial matter, declaratory judgment statutes should be interpreted liberally, in order to allow for the swift and conclusive disposition of disputed obligations. *Mid-Am. Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 136, 2007-Ohio-1248, 863 N.E.2d 142, 145, ¶ 8 (2007).

The Motion cites *MedImmune, Inc.* but provides the Court with an incomplete quotation. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). The Supreme Court actually said:

Aetna and the cases following it do not draw the brightest of lines between those declaratory-judgment actions that satisfy the case-or-controversy requirement and those that do not. Our decisions have required that the dispute be “**definite and concrete, touching the legal relations of parties having adverse legal interests**”; and that it be “real and substantial” and “**admi[t] of specific relief through a decree of a conclusive character**, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *Id.* (emphasis added).

Similarly, the Ohio Supreme Court has clearly stated that “[f]or a real controversy to exist it is not necessary that the plaintiffs violate the [law], as long as there is a controversy ‘between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment’” (emphasis added). *Burger Brewing Co. v. Liquor Control Commission, Dept. of Liquor Control*, 34 Ohio St.2d 93, 97 (1973). The key tension to be resolved is whether the threat to the plaintiff’s position is “actual and genuine” as opposed to “possible or remote.” *Mid-Am. Fire & Cas. Co.*, 113 Ohio St.3d 133 at 136, quoting *League for Preservation of Civil Rights v. Cincinnati*, 64 Ohio App. 195, 197, 28 N.E.2d 600 (1st Dist.1940)

Ford cites *Mid-Am. Fire & Cas. Co.* wherein the Ohio Supreme Court held there was no justiciable controversy where an insurer faced threatened litigation from an insured. *Id.* at 135. In this case, the insured had voluntarily dismissed his previous claim for coverage because a Supreme Court ruling extinguished his claim for relief. *Id.* at 135. Thereafter, the insurer sought a declaration that the company was not required to cover the insured’s claim. *Id.* The trial court

dismissed the action, because any future action pursued by the insured would have been frivolous unless the Supreme Court's decision was overruled. *Id.* at 137. Such a possibility was simply too remote to sustain a declaratory judgment action.

The present case is significantly different from *Mid-Am. Fire & Cas. Co.* because here: (a) Chesley asked for very concrete relief that directly impacts the legal relations between the parties; (b) Chesley and Ford are adverse and that Ford has taken action adverse to Chesley; (c) Ford's subpoena to a CSH, an Ohio entity, and her request for the private financial information of at least ten Ohio entities demonstrates the reality and urgency of this litigation¹¹; (d) Ford's subpoenas to two banks seeking information on transactions that occurred in Ohio and Ford's threats to domesticate the Chesley Judgment also prove sufficient immediacy; and (e) this is not a case where an effort to domesticate the action in Ohio would be frivolous as Chesley's assets are in Ohio.

Ford's recent actions in the Kentucky litigation only highlight that there is a real controversy. Ford now openly and explicitly seeks information about Ohio assets and non-party Ohioans and she intends to publish this private financial information.

Despite Ford's bluster, there are only two reasons for a court to dismiss a declaratory judgment without hearing its merits: (1) if there is neither a justiciable issue nor an actual controversy between the parties requiring speedy relief; or (2) if the declaratory judgment would not terminate the uncertainty or controversy. *Cincinnati Cent. Credit Union v. Benson*, 130 Ohio App.3d 755, 762, 721 N.E.2d 410, 415 (1st Dist.1998). For the reasons outlined above, neither of those bases is applicable here.

¹¹ Ford has also issued a second set of asset related interrogatories targeting information concerning Ohio entities. Ford's purposeful use of four Kentucky subpoenas and document requests to Chesley to seek information on Ohio entities is an attempt by Ford to skirt Ohio law and this Court's existing order.

The Full Faith and Credit Requirement. Ford tries to manufacture a constitutional argument by continuing to misconstrue Chesley's actions. Chesley has not asked the Court to overturn the Chesley Judgment or asked to enter a stay pending appeal, two false statements that Ford uses to assert that Chesley seeks to violate the Full Faith and Credit requirement.

Chesley addressed Ford's two false assertions directly in prior filings. See Chesley's Verified Motion Seeking Amplification of Restraining Order filed on February 5, 2015 which is incorporated herein. That filing discusses Ohio's procedural requirements for the registration and enforcement of foreign judgments.¹²

In *Rion v. Mom and Dad's Equipment Sales and Rentals*, 116 Ohio App. 3d. 161 (3d Dist.1996) the court addressed the very issues raised in the Motion. The court said:

However, as stated by the Ohio Supreme Court "Full faith and credit does *not* mean that a judgment of a court in one state is automatically entitled to *enforcement* in another state." . . . (emphasis original)

In this case, the validity of the foreign judgment is not questioned, only its enforceability. Thus, defendant has raised a defense under Ohio law, applicable to UEFJA proceedings by way of R.C. 2329.022. This defense is also valid. . . . Since plaintiffs brought their judgment to Ohio beyond the statutorily stated time period, enforcement is barred. (citations omitted)

The *Rion* case supports exactly what the Chesley's Filings seek: assurance that the Chesley Judgment and Ford's actions comply with applicable Ohio law before the judgment is enforced in Ohio.¹³

¹² Ohio may enforce its procedural requirements consistent with the requirements of full faith and credit. See *Salyer v. Eplion*, 4th Dist. Lawrence No. 08CA18, 2009 WL 891797 (Mar. 31, 2009) (discussing the use of a Kentucky judgment in Ohio the court said, "Rather, Appellee would have been required to obtain an Ohio certificate of judgment pursuant to his domesticated foreign judgment before his judgment would constitute a valid judgment lien capable of being foreclosed upon."). Accord, *First Am. Bank of Ashland v. Stonehenge Computer*, 4th Dist. Lawrence No. 1905, 1990 WL 71918 (May 25, 1990) (Kentucky judgment brought to Ohio using new lawsuit in lieu of UEFJA).

¹³ Other states (e.g. Arizona, Kansas, and Maryland) have the same rule: foreign judgments can be domesticated, but local law applies to determining when, if and how that judgment can be enforced. *Bank v. Yoo*, 2005 WL 3817602 (Md. Circuit Court, Dec. 28, 2005) (holding that applying the forum state's statute of limitations does not violate the full faith and credit clause of the Constitution of the United States of America).

DISMISSAL CANNOT BE GRANTED NOW

If the Court is still inclined to consider dismissing this matter, the following applicable rules require that the Court not yet take that action.

Chesley's Assertions Are Unrefuted. Chesley asserted in the Verified Petition that Ford is subject to personal jurisdiction in Ohio and that there exists a true case and controversy. In fact, those factual assertions are verified by Chesley.

Conversely, the Motion is not verified and is not supported by an affidavit or any other evidence. As a result, the burden to prove jurisdiction at this early stage does not require Chesley to do more than generally plead that jurisdiction exists. See Wilkerson Shoe Co. v. Natl. Super Markets, Inc., 10th Dist. Franklin No. 94APE01-116, 1994 WL 386097, *2 (July 26, 1994). The Court should accept Chesley's Verified Petition as true and deny the Motion.

Discovery Should Be Taken, if Needed. If the Court is inclined to consider granting the Motion, that decision should be delayed and Petitioner should be granted time to take discovery to determine the relevant facts, including Ford's contacts with Ohio. Heritage Plastics Inc. v. Rohm & Haas Co., C.P. No. 03 CV 0113, 2004 WL 1725784, *1 (July 27, 2004).

If needed, the Court should consider permitting Chesley to take the limited deposition of Ford to investigate Ford's (i) contacts with Ohio, (ii) the threats Ford has made to subpoena, depose and attempt to seize assets from Ohioans, and (iii) plans to seize property located in Ohio.

CONCLUSION

Ford's motion seeking dismissal of the Verified Petition should be denied.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
Suite 3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that on May 7, 2015 a copy of the foregoing was served by first class United States mail, postage prepaid on Christen Steimle, Esq. Dinsmore & Shohl, 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202.

/s/ Vincent E. Mauer

C:\Users\maz\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\GS7QXN2\SMC opp to Ford mtn to dismiss in fed court - 4828-6951-4274 3.docx



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
May 12, 2015 03:30 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 410765**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: NOTICE

PAGES FILED: 22

EFR200

EXHIBIT

7

exhibitsticker.com

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruehlman
	:	
v.	:	NOTICE OF FILING
	:	DOCUMENTS
Angela M. Ford, Esq, et al.	:	
	:	
Respondents.	:	

The undersigned, Vincent E. Mauer, who is over 18 years of age and has personal knowledge of the facts herein swears or affirms that attached hereto are true and correct copies of the following documents. The copies were taken from the stated sources.

1. A true and correct copy of the Second Set Of Asset Discovery Interrogatories And Requests For Production Of Documents To Stanley Chesley, dated May 1, 2015. These interrogatories and requests for production of documents related to several nonparties who are Ohioans;

2. A true and correct copy of a subpoena that respondent Angela Ford served on the Custodian of Records for Fifth Third Bank on May 4, 2015. Fifth Third Bank and First Financial Bank are both headquartered in Ohio. The subpoena seeks documents generated in Ohio concerning the Banks and Petitioner, an Ohioan;

3. A true and correct copy of a subpoena that respondent Angela Ford served on the Custodian of Records for U. S. Bank Investment Accounts, on May 6, 2015. That subpoena seeks documents generated in Ohio concerning the Bank and Petitioner, an Ohioan; and

4. A true and correct copy of a subpoena that respondent Angela Ford served on the Custodian of Records for U. S. Bank Mortgage Loans, on May 7, 2015. That subpoena seeks documents generated in Ohio concerning the Bank and Petitioner, an Ohioan; and

Vincent E. Mauer
Vincent E. Mauer

Sworn and subscribed by Vincent E. Mauer who is known to me in my presence on this 12th day of May, 2015.



Mary S. Fleming
Notary Public, State of Ohio
My Commission Expires 08-16-2019

Mary S. Fleming
Notary Public, State of Ohio
My commission expires on 8-16-2019

Sheryl G. Snyder, Esq.
FROST BROWN TODD LLC
400 West Market Street
Suite 3200
Louisville, KY 40202
ssnyder@fbtlaw.com

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a on this 12th day of May, 2015, a copy of the foregoing was served by ordinary U.S. Mail upon:

Christen M. Steimle, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

/s/ Vincent E. Mauer

0118087.0619701 4835-8187-2931v1

EXHIBIT 1

**BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT
Case No. 05-CI-436**

MILDRED ABBOTT, et al.,

PLAINTIFFS

v.

**SECOND SET OF ASSET DISCOVERY INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO STANLEY CHESLEY**

STANLEY M. CHESLEY, et al.,

DEFENDANTS

*** **

Pursuant to CR 33 and 34 of the Kentucky Rules of Civil Procedure, Plaintiffs propound the following Interrogatories and Requests for Production of Documents ("Discovery") to Defendant Stanley Chesley to be answered under oath and otherwise in accordance with the Kentucky Rules of Civil Procedure. You are to serve your answers and all responsive documents to these Discovery requests electronically and by U.S. Mail within 30 days from the date of service upon your counsel herein.

These Interrogatories and Requests for Production are to be considered continuing in nature and are to be supplemented, as necessary, in according with the Kentucky Rules of Civil Procedure if further information is obtained by you or your counsel subsequent to the service of your Responses.

DEFINITIONS

1. For the purposes of this Discovery the following definitions shall apply:
2. "Person" or "Individual" or "Entity" shall mean any individual, association, firm, corporation, member, shareholder, partner or partnership, sole proprietorship, joint venture, trust or trustee, association, and any other legal, business, regulatory or governmental entity.

3. "You" or "your" or "Defendant" shall refer to Stanley Chesley and his principals, agents, attorneys, employees, and any other person, acting or purporting to act on his behalf including those persons and individuals set forth in Definition Number 1.
4. "Document" means any written, or other graphic, and is used in the broadest possible sense, including but not limited to: (1) every writing of every type or description that was or has been under your control, including agreements, contracts, correspondence, emails, notes, summaries, charts, invoices, checks, statements, reports, records, worksheets, or any other writing that exists or has been transmitted or stored, photographed, including any such matter maintained or stored on computer hard drives and /or servers, and any audio or video recordings in your possession, custody or control at any time or known by you to exist or to have existed. All copies that contain any alterations or annotations or that differ in any other way from the originals or copies referred to in the preceding sentence are deemed separate documents from the originals or copies.

INSTRUCTIONS

1. "Identify" used in reference to an individual person means to state (a) the person's full name and present or last known address; (b) the person's present or last known position and business affiliation, and (c) the person's position and business affiliation at the time in question. "Identify" used in reference to any other person means to state (a) the person's full name and present or last known address, (b) type of entity, and (c) the names of the individual persons who are or were principals, agents, or employees and who have knowledge of relevant facts.
2. "Identify" used in reference to a document shall mean to state (a) the date, (b) the author or addressor, (c) the addressee and recipients of all copies, (d) type of document (e.g., letter, memorandum, telegram, chart, photograph or brochure), or some other means of identifying it, and (e) its present location or custodian. If any document was,

but no longer is in your possession or subject to your control, state what disposition was made of it and the identity of the person you reasonably believe to be the present custodian. Instead of the identification, you may furnish the documents for inspection and copying at the time you serve answers to these Interrogatories.

3. If you rely on specific documents as a response to Interrogatories, identify the documents by bates stamp number.
4. With respect to any document or communication for which you claim a privilege, identify the document or communication as required above, including the general subject matter, but not the substance, state the privilege involved, and state, in as much detail as possible, the factual and legal basis of the privilege.
5. If any documents have been lost or destroyed, provide in lieu of a true and correct copy thereof, a list of the documents lost or destroyed together with the following information:
 - (a) The date the document left your possession or control;
 - (b) A brief description of the document and its contents;
 - (c) The author of the document;
 - (d) The date upon which the document was lost or destroyed; and
 - (e) A statement of the manner in which the document was lost or destroyed.
6. If you do object to a part of any request respond to all parts for which you do not have an appropriate objection.

INTERROGATORIES

Interrogatory No. 1: Provide a list of all assets and funds transferred between WSBC and Stanley Chesley and/or any entity at his direction since 2009.

Interrogatory No. 2: State whether you or any entity in which you hold or have held an interest has received any income from any source from the use of any airplane in the last 6 years.

Interrogatory No. 3: Provide the name and physical address of the current owner of Milford One, LLC, Agra Enterprises, LLC, Chesley Family Partners, LLC, and WSBC and the physical address and telephone number for any Trustee. Provide a list of all the assets owned by these entities in each of the last 7 years.

Interrogatory No. 4: Provide the physical address, mailing address and telephone number for Lucky Paws, the entity to which numerous monthly payments were sent.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request No. 1: Provide all documents related to the Chesley Family Partners, LLC.

Request No. 2: On your personal financial statement for 2013 prepared by your accountant from documents you supplied, the Note on the last page states: "Additional amounts of \$32 million have been advanced to the firm to complete cases outstanding as the company winds down, which are not collectible unless certain cases and fees are successfully completed." "Case revenues of the company are pledged to the Fifth Third debt and as such are not available for reimbursement to Stan if collected, until that debt is settled." In addition, other Note payables are listed in the financial statements. In connection with that financial statement:

- Provide the fee agreements for the cases referred to.
- Provide all loan documents, security and other related documents not previously produced.
- Produce the list of personal property that comprises the \$2million valuation of personal property on your December 2013 financial statement.

Request No. 3: On your personal financial statement for 2009, 2010, 2011 and 2012 personal property is listed and valued at \$5million.

- Provide a list of all personal property that comprises the \$5 million;
- Provide all documents related to the transfer of the personal property to individuals or entities since 2008.
- Provide all documents related to the current ownership of that property and all

insurance policies that insured the property since 2008, including all riders, amendments, assignments or other related documents.

Request No. 4: Produce the loan and all documents related to the \$12 million loan to Chesley Family Partners, LLC.

Request No. 5: Produce the loan documents and all related documents associated with loans between you and Susan Dlott or any entity in which you have held an interest since 2005, including the \$2.7 million loan to Agra in 2011.

Request No. 6: Provide copies of all insurance and/or annuity policies that you or any entity you have held an interest in since 2005 contributed money or assets to, including funds for premium payments.

- Your response shall include all riders and changes or additions to the policies including a complete list of what was insured for the list of insurance payments appearing as SMC . **Attachment A.**
- Your response shall include but not be limited to policies for which payments were made related to documents SMC 03102-03118 and SMC 04994-05007.
- Your response shall also include all documents related to policies transferred, assigned, gifted or changed in any way to benefit any person or entity since 2005.

Request No. 7: Produce the books and records related to all WSBC financial statements since 2009.

Request No. 8: Produce all personal financial statements for 2005-2013 and 2014.

Request No. 9: Produce copies of all checks corresponding with the list of payments over \$5,000 listed on SMC 03102-03118 and SMC 04994-05007

Request No. 10: Produce all organizational documents, operating agreements and other corporate records for Milford One, LLC and Aventura Properties, LLC, Agra Enterprises, LLC, SMC South Beach Enterprises, LLC and Chesley Family Partnership, LLC including all documents conveying or transferring ownership interests in the entity or the assets owned by the

entities since 2005. Also provide a list of assets owned by the entities in each year since 2005. Finally, produce all insurance policies insuring any asset of these entities since their creation.

Request No. 11: Produce the flight log(s) for the planes that you have utilized since 2008.

Request No. 12: Produce the purchase contract, sales contract, settlement and closing statements and all insurance policy records for property in Miami sold since 2009 that was owned by you or any entity that you held an ownership interest in, including SMC South Beach Enterprises, LLC.

VERIFICATION

All Responses to these Interrogatories and Requests for Documents are true and correct to the best of my knowledge and based upon the records available to me.

STANLEY CHESLEY

STATE OF _____

)

COUNTY _____)

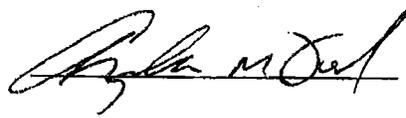
Before me, a Notary Public in and for the County and State aforesaid, personally appeared Stanley Chesley, who, upon oath, acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, this the _____ day of January, 2015.

Notary Public

My Commission Expires:

Respectfully submitted,



Angela M. Ford, Esq.
Chevy Chase Plaza
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502
(859)268 2923

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served on May 1, 2015 electronically for counsel for Defendant Chesley and by U.S. Mail, postage prepaid, to:

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

Mary E. Meade-McKenzie, Esq.
105 Seahawk Drive
Midway, KY 40347

Mitzy L. Evans
Evans Law Office
177 South Main Street
P.O. Box 608
Versailles, KY 40383

Luther C. Conner, Jr., Esq.
103 Cross Street
Albany, KY 42602

Sheryl G. Snyder, Esq.

Griffin Terry Sumner, Esq.
Frost Brown Todd LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Michael R. Dowling, Esq.
P.O. Box 1689
Ashland, KY 41105-1689


Counsel for Plaintiffs

Extracted from SMC 03106-03118 & SMC04994-05007

Stanley M. Chesley Bill Payments for all Vendors and Transactions

2014	CIC Agency, Inc.	25036	10/9/2014	\$ 13,653.00
	Progressive Specialty Ins.	15584	1/13/2014	\$ 6,197.00
				\$ 19,850.00

2013	CIC Agency, Inc.	15442	11/12/2013	\$ 9,810.00
	CIC Agency, Inc.	15399	10/9/2013	\$ 14,242.00
				\$ 24,052.00

2012	CIC Agency, Inc.	14800	11/19/2012	\$ 16,848.25
	CIC Agency, Inc.	14714	10/9/2012	\$ 16,849.00
	CIC Agency, Inc.	14505	7/5/2012	\$ 7,578.00
				\$ 41,275.25

2011	CIC Agency, Inc.	13717	8/31/2011	\$ 68,302.00
	CIC Agency, Inc.	13492	6/24/2011	\$ 5,816.00
	CIC Agency, Inc.	13175	3/28/2011	\$ 5,399.00
	CIC Agency, Inc.	13113	3/8/2011	\$ 36,003.00
				\$ 115,520.00

2010	CIC Agency, Inc.	12572	9/8/2010	\$ 70,754.00
	CIC Agency, Inc.	12471	8/3/2010	\$ 7,799.00
	CIC Agency, Inc.	12276	6/8/2010	\$ 5,324.00
	CIC Agency, Inc.	12044	3/31/2010	\$ 5,028.69
	CIC Agency, Inc.	11874	2/3/2010	\$ 35,915.00
				\$ 124,820.69

2009	CIC Agency, Inc.	11330	9/2/2009	\$ 74,219.00
	CIC Agency, Inc.	11196	7/29/2009	\$ 8,327.00
	CIC Agency, Inc.	10980	6/1/2009	\$ 5,229.00
	CIC Agency, Inc.	10585	1/29/2009	\$ 33,976.00
	Dietrich Equine Ins. Srv.	10524	1/2/2009	\$ 37,766.00
	Dietrich Equine Ins. Srv.	10524	1/2/2009	\$ 63,810.00
				\$ 223,327.00

2008	CIC Agency, Inc.	10058	8/21/2008	\$ 79,098.00
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Attachment A

EXHIBIT 2

AOC-025.1 Doc. Code: RS
Rev. 3-09
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 45; RCr 7.02



SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 05-CI-0436
Court CIRCUIT
County Boone
Date MAY 4, 2015

MILDRED ABBOTT, et al.

PLAINTIFF

VS

STANLEY M.. CHESLEY, et al.

DEFENDANT

The Commonwealth of Kentucky to:

Name Custodian of the Records - Fifth Third Bank
Address 250 West Main Street, #100
Lexington, KY 40507

You are commanded to appear before: (select one of three choices)

_____ Court The Grand Jury of _____ County
 Other Angela M. Ford & Court Reporter

You are to appear at: Office of Angela M. Ford, PSC, Chevy Chase Plaza, 836 Euclid Ave., Ste. 311, Lexington, KY 40502, OR ALTERNATIVELY - PROVIDE PRIOR TO MAY 19, 2015, documents requested in Exhibit "A"

on the 19 day of May, 2015 at 11:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of _____
 To produce Documents described in Exhibit "A" attached

To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): See attached Exhibit "A"

on the 19 day of May, 2015 at 10:00 a.m. OR p.m. Eastern Central Time
at the following address: 836 Euclid Ave., Suite 311, Lexington, KY 40502

[Signature]
Issuing Officer/Attorney Licensed in Kentucky
By: _____

Angela M. Ford
Name of Requesting Attorney
Phone# (859) 582-8118

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: _____
This _____ day of _____, 2____ By: _____
_____ Title

EXHIBIT "A"

1. All loan documents including Pledge Agreement between Stanley M. Chesley and Fifth Third Bank for Loan #0905806212 including historical record of all amounts due and owing and all amounts paid.
2. For Stanley M. Chesley's Fifth Third Bank Investment Account # 01-01-000-9390154 – provide the following documents:
 - a. Wire transfer dated 4/27/11 from First Financial Bank to Fifth Third Bank for \$102,048.46.
 - b. Wire transfer dated 4/27/11 from First Financial Bank to Fifth Third Bank for \$1,000,581.41.
 - c. Pledge/control agreement dated 4/29/11 for promissory note dated 3/31/11.
 - d. Wire transfer dated 7/18/11 from Wells Fargo to Fifth Third Bank in the amount of \$648,958.84.
 - e. The Fifth Third Bank Investment Agreement dated 3/17/11.
 - f. Wire transfer dated 10/17/11 from Wells Fargo to Fifth Third Bank in the amount of \$648,175.18.
 - g. Wire transfer dated 1/3/12 from Wells Fargo Bank to Fifth Third Bank in the amount of \$646,205.38.

EXHIBIT 3

AOC-025.1 Doc. Code: RS
Rev. 3-09
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 45; RCr 7.02



SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 05-CI-0436
Court CIRCUIT
County Boone
Date May 6, 2015

MILDRED ABBOTT, et al.

PLAINTIFF

VS

STANLEY M. CHESLEY, et al.

DEFENDANT

The Commonwealth of Kentucky to:

Name Custodian of Records - U.S. Bank
Address 2563 Richmond Road
Lexington, KY 40509

You are commanded to appear before: (select one of three choices)

_____ Court The Grand Jury of _____ County
 Other Angela M. Ford & Court Reporter

You are to appear at: Office of Angela M. Ford, PSC, Chevy Chase Plaza, 836 Euclid Avenue, Suite 311, Lexington, KY 40502 - OR ALTERNATIVELY - provide prior to May 21, 2015, documents requested in Exhibit "A"

on the 21 day of May, 2015 at 10:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of _____
 To produce Documents described in Exhibit "A" attached

To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): See attached Exhibit "A"

on the 21 day of May, 2015 at 10:00 a.m. OR p.m. Eastern Central Time
at the following address: 836 Euclid Ave., Suite 311, Lexington, KY 40502

[Signature]
Issuing Officer/Attorney Licensed in Kentucky
By: _____

Angela M. Ford
Name of Requesting Attorney
Phone# (859) 268-2923

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: _____

This _____ day of _____, 20____ By: _____

Title _____

EXHIBIT "A"

Any and all documents related to any and all investment accounts administered, overseen, or facilitated on behalf of Stanley M. Chesley, SSN #270-30-3041 from January 1, 2005 to present.

EXHIBIT 4

AOC-025.1 Doc. Code: RS
Rev. 3-09
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 45; RCr 7.02



SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 05-CI-0436
Court CIRCUIT
County Boone
Date May 7, 2015

MILDRED ABBOTT, et al. PLAINTIFF
VS
STANLEY M. CHESLEY, et al. DEFENDANT

The Commonwealth of Kentucky to:

Name Custodian of Records - U.S. Bank
Address 2563 Richmond Road
Lexington, KY 40509

You are commanded to appear before: (select one of three choices)
 _____ Court The Grand Jury of _____ County
 Other Angela M. Ford & Court Reporter

You are to appear at: Office of Angela M. Ford, PSC, Chevy Chase Plaza, 836 Euclid Avenue, Suite 311,
Lexington, KY 40502 - OR ALTERNATIVELY - provide prior to May 21, 2015, documents requested in Exhibit "A"

on the 22 day of May, 2015 at 10:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of _____
 To produce Documents described in Exhibit "A" attached

To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): See attached Exhibit "A"

on the 22 day of May, 2015 at 10:00 a.m. OR p.m. Eastern Central Time
at the following address: 836 Euclid Ave., Suite 311, Lexington, KY 40502

[Signature]
Issuing Officer/Attorney Licensed in Kentucky
By: _____

Angela M. Ford
Name of Requesting Attorney
Phone# (859) 268-2923

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: _____
This _____ day of _____, 2____ By: _____
Title _____

EXHIBIT "A"

Any and all documents related to any and all mortgage loans and/or lines of credit from US Bank to Stanley M. Chesley, SSN #270-30-3041 on the property located at 9005 Camargo Road, Cincinnati, Ohio 45243.



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
May 14, 2015 09:33 AM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 411288**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: MOTION

PAGES FILED: 6

EFR200

EXHIBIT

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exhibitsticker.com

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruchlman
	:	
v.	:	MOTION FOR LEAVE TO
	:	FILE SURREPLY
Angela M. Ford, Esq, et al.	:	
	:	A proposed order is attached
Respondents.	:	
	:	The proposed surreply is attached

Petitioner Stanley M. Chesley (“Chesley”) moves this Court for permission to file the attached Surreply In Opposition To Ford’s Motion To Dismiss because Ford’s Reply memo contains certain factual misstatements that cry out for correction.

A proposed order granting the motion is attached.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

Sheryl G. Snyder, Esq.
FROST BROWN TODD LLC
400 West Market Street, Suite 3200
Louisville, KY 40202
ssnyder@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a on this 14th day of May, 2015, a copy of the foregoing was served by ordinary U.S. Mail upon:

Christen M. Steimle, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

/s/ Vincent E. Mauer

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruehlman
	:	
v.	:	ORDER GRANTING
	:	MOTION FOR LEAVE TO
	:	FILE SURREPLY
Angela M. Ford, Esq, et al.	:	
	:	
Respondents.	:	

On May 14, 2015 Petitioner Stanley M. Chesley (“Chesley”) moved this Court for permission to file the Surreply In Opposition To Ford’s Motion To Dismiss. That Motion is GRANTED. The Surreply attached to Chesley’s May 14, 2015 motion is deemed filed at this time.

Judge Ruehlman
Hamilton County Court of Common Pleas

Copies to:

Vincent E. Mauer, Esq., Frost Brown Todd, LLC, 3300 Great American Tower, 301 E. Fourth Street, Cincinnati, Ohio 45202

Christen M. Steimle, Esq., Dinsmore & Shohl LLP, 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
	:	
Petitioner	:	Judge Ruchlman
	:	
v.	:	SURREPY IN OPPOSITION TO
	:	FORD'S MOTION TO DISMISS
Angela M. Ford, Esq, et al.	:	
	:	
Respondents.	:	

The Reply In Support of Defendant Angela M. Ford's Motion To Dismiss The Complaint (the "Reply") filed by Ford on May 13, 2014 contains certain errors so egregious that a response is mandated. In brief, Chesley notes:

1. Ford states in the Reply that "some day, someone might want" to domesticate the Chesley Judgment.¹ The evidence is (i) all of Chesley's assets are in Ohio; (ii) Ford has told the Boone Circuit Court that she intends to file fraudulent conveyance actions and (iii) Ford has sent e-mails threatening action against Chesley's spouse, children and other Ohioans. The someone is Ford and the time is now;

2. Chesley has not asked this Court to "interfere with proceedings in Kentucky" as asserted in the Reply.² Chesley asked this Court to enforce Ohio's procedural requirements to protect Ohioans and property in Ohio. The Kentucky Court was never asked to consider or apply Ohio law in this matter;

3. There is a controversy between Ford and Chesley because it is Ford who (i) wrote threatening e-mails, (ii) served discovery that seeks the private information of at least ten Ohioans, and (iii) asserted in Kentucky that she is not required to do the very things Ohio law

¹ See page 1 of the Reply.

² See page 1 of the Reply.

requires – disclose to Chesley the current name, address and amount owed to each judgment creditor. It is also Ford who refuses to disclose the amounts she has collected against the Chesley Judgment thereby hiding the current amount of the Chesley Judgment;

4. Ford admits that she has several Ohio clients who are among Chesley’s judgment creditors. The Reply admits that Chesley’s petition asserts facts that “arise from her [Ford’s] representation of clients, . . . , and a judgment from a Kentucky Court”, the Chesley Judgment.³ Chesley agrees that the assertions in his petition arise from Ford’s acts representing her clients who hold the Chesley Judgment and those clients include several Ohioans. Ford does not deny that she has communications and contracts with those clients and that she has sent money into Ohio the collection of which reduces the Chesley Judgment. Specific personal jurisdiction over Ford is appropriate in this case;

5. The Reply states that Chesley was informed “long ago” of who are his judgment creditors.⁴ The list used by Ford was created before 2004 and not updated when the Chesley Judgment was entered in 2014. Ford has never asserted through evidence or just by counsel that her old list is accurate. Ford knows people have moved, died or filed bankruptcy but she pretends those things have not happened to her list about 400 clients; and

6. Ford provides no evidence that she does not have minimum contacts with Ohio. As demonstrated in Chesley’s earlier filing, Chesley does not have to prove Ford’s minimum contacts because those minimum contacts were alleged and Ford has not provided any contrary evidence. Ford cites no law contrary to this argument in opposition to Chesley’s opposition to Ford’s motion to dismiss.

³ See page 3 of the Reply.

⁴ See page 3 of the Reply.

Ford's motion to dismiss should be denied.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

Sheryl G. Snyder, Esq.
FROST BROWN TODD LLC
400 West Market Street, Suite 3200
Louisville, KY 40202
ssnyder@fbtlaw.com

0118087.0619701 4850-0618-0131v1



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
May 14, 2015 09:35 AM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 411289**

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

**JUDGE
JODY M LUEBBERS**

FILING TYPE: MEMORANDUM

PAGES FILED: 10

EFR200

EXHIBIT

9

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**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

STANLEY M. CHESLEY	:	Case No. A1500067
	:	
Petitioner,	:	Judge Ruehlman
	:	
v.	:	
	:	
ANGELA M. FORD, ESQ., et al.	:	
	:	
Respondent.	:	

**PETITIONER’S AMENDED MEMORANDUM IN OPPOSITION TO RESPONDENT’S
MOTION TO DECLARE THE RESTRAINING ORDER DISSOLVED OR TO
DISSOLVE THEM**

Petitioner Stanley M. Chesley (“Chesley”) respectfully submits this Amended Memorandum in Opposition to Respondent Angela M. Ford’s Motion to Declare the Restraining Order Dissolved or To Dissolve Them (the “Motion”).

PURPOSE OF THE AMENDMENT

This Amended Memorandum in Opposition to Respondent’s Motion to Declare the Restraining Order Dissolved or to Dissolve Them makes one significant change to the version previously filed in the Federal court. It presents to this Court some of Ford’s recent conduct that negatively impacts several Ohio individuals and entities. Specifically, Ford has recently issued several subpoenas that demonstrate her ongoing collection efforts in Ohio, and she has served discovery on Chesley regarding entities that are not parties to the action nor owned by Petitioner. The actions undermine Ford’s argument that the injunction is premised on a speculative future action and highlight her ongoing and calculated collection efforts.¹

¹ For the Court’s convenience, the additional information appears primarily on pp. 9-10.

BACKGROUND FACTS

There are two sets of facts relevant to this motion: facts in Kentucky that led to the “Chesley Judgment”²; and facts in Ohio. A complete description of the relevant facts is available in Chesley’s Filings (defined below). Chesley’s discussion of the facts herein will be limited to providing important facts that demonstrate why the Motion must be denied.

Ohio Facts. Chesley filed his: (a) Amended and Restated Verified Petition For Declaratory Judgment And Injunctive Relief (“Verified Petition”); (b) Petitioner’s Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (“Petitioner’s Motion”); (c) Petitioner’s Verified Memorandum in Support of Motion for Injunctive Relief (the “Verified Supporting Memo”); and (d) Combined (1) Verified Motion and (2) Supporting Memorandum Seeking Amplification of Restraining Order (“Amplification Motion”)³ because Ford threatened several actions in Ohio against Ohio citizens, residents, domiciliaries and property.

Chesley’s Filings include a thorough discussion of Ford’s threats to subpoena, depose and attempt to seize assets in Ohio from Ohio citizens. Ford is also trying to seize assets from Chesley and Chesley has admitted that all of his assets are located in Ohio.

On January 7, 2015, this Court entered an Ex Parte TRO, and set hearing to rule on a preliminary injunction on January 14, 2015. At the preliminary injunction hearing, the Court entered an order prohibiting Ford from taking certain actions in Ohio without complying with Ohio procedural rules (the “Injunction”). Although Ford received actual notice of the January 14th preliminary injunction hearing, she chose not to attend. On February 5, 2015 Ford removed

² Capitalized terms not defined herein have the same meaning as in Chesley’s Filings.

³ Collectively, those four filings are “Chesley’s Filings.” Three of the filings are verified so that the facts stated therein and the documents attached thereto are evidence that this Court may consider. Also available as evidence is the Affidavit of Frank V. Benton, IV filed with this Court on February 16, 2015 (“Benton Aff.”).

this action to Federal Court on diversity grounds. Ford then sought to dissolve the Injunction issued in this Court.

Kentucky Facts. After nearly ten years and two Kentucky Supreme Court decisions, Ford obtained for her about 400 clients in the Abbott Case (the “Ohio Respondents” and “Unknown Respondents” herein) summary judgment holding Chesley jointly liable for a seven year old \$42,000,000 judgment entered against two criminals and a third accused but not convicted former lawyer, what all parties label the “Chesley Judgment.”

As demonstrated in the Affidavit of Frank Benton (Doc. 11, Attachment 1), several of Chesley’s judgment creditors were and remain Ohio citizens.

ARGUMENT

A. The January 14, 2015 Order was not a Temporary Restraining Order

Ford’s initial argument seems to be that because the Injunction is in fact just a temporary restraining order masquerading as a preliminary injunction, the order has expired by virtue of Federal Rule of Civil Procedure 65(b)(2). Yet, the Court’s *Ex Parte* Order provides, “This matter will come on for a hearing on the Motion’s request for a **preliminary injunction** and consideration of the status of the Unknown Respondents on January 14, 2015 at 9 a.m. o’clock.” (See Notice of Filing Doc. 1-1, Exhibit A p. 97.) Thus, as the Court made clear, a temporary restraining order had already been entered and the January 14th hearing was set to consider whether the court should grant a *preliminary injunction*, and the order issued pursuant to that hearing was, accordingly, not a temporary restraining order.

Fed. R. Civ. P. 65(b)(2) is inapplicable to the matter at hand. By its own terms, that section applies only to temporary restraining orders granted “without notice,” and Ford cites to no mandatory authority that contradicts the express language of the statute. Here, Ford had

notice that a preliminary injunction hearing was to take place on January 14, 2015. In fact, Petitioner's counsel submitted an affidavit stating that he not only mailed the notifying documents to Ms. Ford on the very day that the Ex Parte TRO was granted, he also emailed her a copy of the Court's Ex Parte Order. Petitioner's counsel further testified that Ms. Ford responded to that e-mail, which demonstrates that she had actual knowledge of the proceedings. Thus, even if the Injunction was in fact a temporary restraining order as Ford claims, the 14 day deadline imposed by Fed. R. Civ. P. 65(b)(2) would not apply.

B. Ohio Courts have Personal Jurisdiction over Ford

Using NO evidence, Ford next argues that both the Federal Court and the Ohio Court of Common Pleas lack jurisdiction over her. However this fails to mesh with the facts. A court can only exercise personal jurisdiction if jurisdiction is (1) authorized under the applicable state law; and (2) consistent with due process. *Youn v. Track, Inc.*, 324 F.3d 409, 417 (6th Cir. 2003). As the Ohio long-arm statute, O.R.C. 2307.382, is not coextensive with an 14th Amendment analysis, both prongs must be separately considered. *Kauffman Racing Equip., L.L.C. v. Roberts*, 930 N.E.3d, 784, 792 (2010).

The long arm statute enumerates nine different ways an out of state defendant may be subject to the jurisdiction of an Ohio state court. O.R.C. 2307.382(A)(1)-(9). Meanwhile, the due process analysis hinges on whether Ford has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe co. v. Washington*, 326 U.S. 310, 316, (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Minimum contacts are present when the Defendant's conduct and connection with the state are strong enough that he can "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). It is also

necessary that the Defendant purposefully avail himself of the forum state, its benefits, and the protection of its laws. *Youn*, 324 F.3d at 417.

As part of this analysis, the Supreme Court distinguishes between general jurisdiction and specific jurisdiction. *Id.* at 417-18. If a defendant has substantial contacts with the forum state that are “continuous and systematic,” the court may exercise personal jurisdiction even when the defendant’s actions were not directly related to the defendant’s contacts with the state. *Id.* Otherwise the forum state may only exercise jurisdiction in those cases where the suit arises out of the defendant’s contacts with the state. *Id.*

As argued in the Motion for Leave to File the Amended Verified Petition, Chesley’s judgment creditors are Ford’s clients and several of them are Ohioans. Furthermore, Ford herself asserts that she has a contract with each of her clients. Pursuant to those contracts, Ford has collected money owed to those Ohioans and withheld from their distributions several amounts that Ford herself calculated and controlled.

Money aside, it must be true that Ford directed many communications to her Ohio clients over the 10 years that the Abbott Case has been pending. Those communications meet the requirements of Ohio’s long arm statute and the constitution’s due process requirements. *Schneider v. Hardesty*, 669 F.3d 693 (Sixth App. 2012).⁴ In *Schneider*, a defendant wrote two “to whom it may concern” letters that he knew would be forwarded to persons possibly including Ohioans. Applying the lessons of *Schneider* to our facts, Ford’s many communications to multiple Ohioans and contracts with each of several Ohioans meet Ohio’s long arm statute because she is conducting business in this state and contracting to supply services to Ohioans. See O.R.C. sub-sections 2307.382(A)(1) and (2).

⁴ Brian Sullivan, Esq., Ford’s counsel, was involved in this case. He knows that Ohio has jurisdiction over Ford.

Applying the lessons of *Schneider* to our facts, Ford “purposefully availed” herself of the opportunity to do business in Ohio when she made contracts with Ohioans.⁵ Moreover, Ford’s known many contacts with multiple Ohioans (contracts, communications and the sending of money) arise specifically from the Abbott Case and have a substantial connection with this case. The requirements of due process are met. Jurisdiction over Ford can be exercised in Ohio.

C. **Chesley is Not Challenging the Full Faith and Credit**

Petitioner’s next argument asserts that in granting the Injunction, the Court failed to afford the Kentucky judgment full faith and credit. This argument is misplaced and fails to acknowledge that Chesley does not seek redetermination of the merits of the Kentucky judgment; rather, he seeks only a determination that the judgment is procedurally proper for execution under Ohio law.

There are two means of domesticating a foreign judgment in Ohio: through the procedures set forth in the *Uniform Enforcement of Foreign Judgments Act* (“UEFJA”), Ohio Rev. Code Section 2329.022, or through the commencement of a new lawsuit in Ohio in which the plaintiff asks the court to domesticate the foreign judgment in Ohio. In both instances, the relief sought by Chesley is entirely appropriate.

Ohio’s version of the UEFJA provides, in relevant part, as follows:

. . . . The clerk shall treat the foreign judgment in the same manner as a judgment of a court of common pleas. **A foreign judgment filed pursuant to this section has the same effect and is subject to the same procedures**, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas. (emphasis added).

⁵ In *Youn v. Track, Inc.*, 324 F.3d 409, 419 (6th Cir.2003), the court said that a single act can satisfy the purposeful availment prong of the due process analysis. *Id.*

Ohio Revised Code Section 2329.022. This provision is implemented in cases that give full faith and credit to the foreign judgment but apply Ohio law to the use or collection of the foreign judgment. See *Salyer v. Eplion*, No. 08CA18, 2009 WL 891797 (Ohio Ct. App. Mar. 31, 2009) (discussing the use of a Kentucky judgment in Ohio the court said “Rather, Appellee would have been required to obtain an Ohio certificate of judgment pursuant to his domesticated foreign judgment before his judgment would constitute a valid judgment lien capable of being foreclosed upon.”). Accord, *First Am. Bank of Ashland v. Stonehenge Computer*, No. 1905, 1990 WL 71918 (Ohio Ct. App. May 25, 1990). (When a Kentucky judgment was brought to Ohio using a new lawsuit instead of the UEFJA, Ford would have to list her clients as plaintiffs – same result as use of the UEFJA.)

The decision in *Rion v. Mom and Dad’s Equipment Sales and Rentals*, 116 Ohio App 3d. 161 (Ohio Ct. App. 1996) provides a clear example of how Ohio courts implement Ohio procedural rules and insist on compliance with those rules in the context of enforcing foreign judgments. In *Rion*, the Ohio court allowed the domestication in Ohio of a 19 year old Florida judgment that was still enforceable in Florida but then denied execution against any Ohio property because Ohio’s 15 year statute of limitations applied. Addressing the very issues raised in Ford’s Filings, the court said:

The “full faith and credit” language has also been codified in Section 1738, Title 28, U.S.Code. In essence, this constitutional provision requires the courts of this state to honor judgments from other states without re-examining the merits of their claims However, as stated by the Ohio Supreme Court “Full faith and credit does *not* mean that a judgment of a court in one state is automatically entitled to *enforcement* in another state.” . . . (emphasis original)

In this case, the validity of the **foreign judgment** is not questioned, only its enforceability. Thus, defendant has raised a defense under Ohio law, applicable to UEFJA proceedings by way of R.C. 2329.022. This defense is also valid. . . . Since plaintiffs brought their judgment to Ohio beyond the statutorily stated time period, enforcement is barred. (citations omitted)

The *Rion* case supports exactly what the Chesley's Filings seek: assurance that the Chesley Judgment will comply with applicable Ohio law before it is enforced in Ohio and the requirement that Ohio judgment enforcement procedures be followed.⁶

Though Ford later again argues that "The Restraining Orders interfere with Kentucky Law and Procedure," the above argument again applies. The Injunction only requires that Ford follow the correct procedure before domesticating the Kentucky judgment or acting in furtherance of that judgment. (*Motion to Dissolve* pp. 12-13.)

D. **The Injunction was Properly Granted under Ohio Law**

Ford's remaining arguments, that the "Restraining Orders are Contrary to Ohio Law," and that "Chesley Cannot Establish the Prerequisites for Injunctive Relief," seek to re-argue the merits of the Temporary Restraining Order and the Injunctions themselves. The merits of each of these filings have already been argued, heard, and considered. As a result of this process, the Court saw fit to grant the Injunction at issue. (*See* Doc. 1-1, Exhibit A p. 89).

Ford knew of the January 14th hearing on the Injunction and *chose* not to attend. She cannot now use this Court as a makeshift court of appeals to voice untimely opposition to a motion to which she had every opportunity to respond. Rather than repeat verbatim the analysis which was set forth in the Motion for Injunctive Relief, Chesley incorporates the arguments of his Verified Memorandum in Support of Motion for Injunctive Relief as if fully restated herein.

In addition, though Plaintiff devotes a fair portion of final argument to the notion that Chesley cannot prove irreparable harm, Chesley does not allege mere monetary damages.

⁶ Other states (e.g. Arizona, Kansas, and Maryland) have the same rule: foreign judgments can be domesticated (some states say "registered" or "enrolled"), but local law applies to determining when, if and how that judgment can be enforced. *Bank v. Yoo*, 2005 WL 3817602 (Md. Circuit Court, Dec. 28, 2005) (holding that applying the forum state's statute of limitations does not violate the full faith and credit clause of the Constitution of the United States of America).

Instead, as the Verified Memorandum sets forth in detail, without the needed information, Chesley is denied any chance to make a rational settlement offer to any of the individual Unknown Respondents because he does not know how much money is owed or even *who* is owed. The Unknown Respondents, in turn, will be deprived of their right to determine if they want to settle with Chesley. This not only demonstrates the harm Chesley faces, but also undermines established public policy in favor of settlement. *See Krischbaum v. Dillon*, 567 N.E.2d 1291 (1991).

Finally, it is worth noting that Ford has moved this Court for an order dissolving the Injunction—a clear indication that Ford seeks to enforce the Kentucky judgment in Ohio. This runs directly counter to her argument, also presented in her Motion to Dismiss, which was incorporated into this Motion by reference, that this matter “is premised on speculative future events regarding the collection of a judgment awarded against him.” (Motion p. 16.) In short, she argues both that she is not seeking to domesticate the Kentucky judgment in Ohio while simultaneously arguing that this Injunction impermissibly inhibits her from domesticating the Kentucky judgment in Ohio. Neither argument can bear the weight of this contradiction.

Furthermore, Ford’s collection efforts are more than speculative—they are ongoing. Not only has she filed the instant Motion, she has also issued Kentucky subpoenas to (a) Clark, Schaeffer Hackett & Co., Chesley’s accountant, seeking a broad swath of confidential financial information relating to Ohio citizens, (b) two banks and seven insurance companies, seeking information regarding Ohio transactions. Ford has also issued a second set of interrogatories in the Kentucky action that specifically target nonparty Ohio entities. These actions undermine any argument Ford had that her collection efforts were merely “speculative,” and instead demonstrate the immediacy of the present litigation.

CONCLUSION

Accordingly, Petitioner Stanley M. Chesley respectfully requests that this Court deny Respondent Angela Ford's Motion to Declare the Restraining Order Dissolved or To Dissolve Them.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
Kevin T. Shook (0073718)
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com
kshook@fbtlaw.com

*Trial Attorneys for Petitioner Stanley M.
Chesley*

CERTIFICATE OF SERVICE

I hereby certify that a on this 14th day of May, 2015, a copy of the foregoing was served by ordinary U.S. Mail upon:

Christen M. Steimle, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

/s/ Vincent E. Mauer

0118087.0619701 4820-4073-9619v1

Respectfully submitted,

/s/ Marion H. Little, Jr.

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
Phone: (614) 365-4113
Fax: (614) 365-7900
Email: zeiger@litohio.com
little@litohio.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Donald J. Rafferty

Donald J. Rafferty (0042614)
Cohen Todd Kite & Sanford, LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202
Phone: (513) 333-5243
Fax: (513) 241-4490
Email: DRafferty@ctks.com

*Attorneys for Proposed Intervenor
Waite, Schneider, Bayless & Chesley Co.,
L.P.A.*

/s/ Vincent E. Mauer

Vincent E. Mauer (0038997)
Frost Brown Todd LLP
301 E. Fourth Street, Suite 3300
Cincinnati, Ohio 45244
Phone: (513) 651-6785
Fax (513) 651-6981
Email: vmauer@fbtlaw.com

*Attorneys for Proposed Intervenor
Stanley M. Chesley*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of October, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, and electronic mail pursuant to Civil Rule 5(B)(2)(c) and (f) on:

Brian S. Sullivan, Esq.
Christen M. Steimle, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Attorneys for Relator Angela M. Ford

James W. Harper, Esq.
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

*Attorneys for Respondent
the Honorable Robert P. Ruehlman*

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)