

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER,

Defendant.

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PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SANCTIONS AND  
ORDER TO SHOW CAUSE

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On September 26, 2019, this Court held Defendant James Fetzer in contempt for violating the Court's Confidentiality Order. Despite express, clear, and repeated warnings, Defendant Fetzer once more violated the Court's Confidentiality Order. Defendant Fetzer sent Plaintiff Leonard Pozner's confidential deposition transcript to Alison Maynard. At the first Contempt Hearing, this Court unambiguously informed Defendant Fetzer that Ms. Maynard was not authorized to receive confidential information from that deposition. *See* Dkt. Nos. 283 and 285. Defendant Fetzer knew full well that he would face swift and severe sanctions for a second willful violation. *See id.* Despite these warnings, Defendant Fetzer clearly believes the Court lacks power to sanction him in any meaningful way given the \$450,000 judgment against him.

Ms. Maynard, a suspended lawyer currently under investigation for the unauthorized practice of law and violating the Colorado Supreme Court's suspension

of her license, knew that she should not obtain nor share Mr. Pozner's confidential deposition video or transcript. *See* Dkt. No. 288. In fact, Defendant Fetzer's counsel acknowledged during the first contempt proceedings that he spoke with Ms. Maynard. *Id.* Counsel informed this Court that Ms. Maynard "reported" that she had "deleted" an earlier copy of the deposition videos and, other than Mr. Halbig, those she had sent the video file to "also reported to have deleted it." *Id.* Yet, just a few months later, Ms. Maynard once again flouted this Court's order by distributing Mr. Pozner's confidential information.

Rather than merely sending the confidential information to Wolfgang Halbig and a handful of other hoaxers, as she did leading up to the first contempt, this time Ms. Maynard posted Mr. Pozner's deposition transcript on the internet for the world to see. In addition, and although Defendant Fetzer represented to this Court that Ms. Maynard deleted her copies of Mr. Pozner's video deposition (dkt. no. 288), she blogged a link to those video files and uploaded them to a cloud storage site. Her suggestion that Mr. Pozner consented to her unlawful possession or disclosure of that deposition transcript is nothing short of delusional.

Defendant Fetzer now comes before the Court attempting to avoid sanctions for his contempt by allegedly giving up his access to the confidential material. With all due respect, Defendant Fetzer offers too little, too late.

Plaintiff requests the Court take two approaches in response to Defendant Fetzer's second violation of the Court's Confidentiality Order: punitive sanctions and

remedial sanctions.<sup>1</sup> The Court is allowed to impose punitive and remedial contempt sanctions concurrently. *See, e.g.*, Wis. Stat. § 785.03(1)(c) (allowing joint hearing and trial on summary and remedial sanctions).

Plaintiff requests that the Court appoint a special prosecutor for imposition of a punitive sanction pursuant to Wis. Stat. § 785.04.

Plaintiff also requests that the Court impose a remedial sanction intended to ensure compliance. Just like last time, Defendant Fetzer's contempt is ongoing—Plaintiff's confidential information has not been retrieved from all unauthorized recipients. As such, a remedial sanction is appropriate. To effectuate that remedial sanction, Plaintiff requests that the Court order Defendant Fetzer incarcerated for a period of time not to exceed six months and impose the following three purge conditions.

First, Plaintiff requests that the Court appoint an independent computer forensic analyst, at Defendant Fetzer's expense, to analyze Ms. Maynard's account on her cloud-based storage service, Box.com. Any number of people may have accessed and downloaded those documents. An independent computer forensic analyst would be able to determine the IP addresses of everyone who accessed the documents on Ms. Maynard's Box.com account.

Second, Plaintiff further requests that the Court appoint a computer forensic analyst, at Dr. Fetzer's expense, to access his computer systems and those of Ms.

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<sup>1</sup> In addition, as noted in its opening brief, Plaintiff requests that Defendant Fetzer be required to pay Plaintiff's attorney fees associated with this second contempt.

Maynard for the purpose of ensuring that the confidential information has truly been deleted from all of their systems. This is not the first time Defendant Fetzer or his “colleagues” have stated that they deleted Plaintiff’s confidential information. Given that Ms. Maynard appears to have misrepresented her access to those files, a report from a computer forensic investigator’s assistance seems appropriate.

These measures serve the remedial goal by confirming that the files have actually been deleted and also determining the scope of the violation. Plaintiff believes that Defendant Fetzer has the ability to persuade Ms. Maynard to allow a forensic computer analyst to access Ms. Maynard’s Box.com account and computers. Being incarcerated will motivate Defendant Fetzer to be persuasive.

Finally, Plaintiff requests that Defendant Fetzer be ordered to produce all communications between himself and anyone else to whom he provided directly or indirectly Mr. Pozner’s confidential information, including but not limited to Ms. Maynard and Mr. Halbig. Reviewing this communication will help Plaintiff ascertain the scope of potential distribution of Plaintiff’s confidential information and also whether Defendant is telling the truth about his prior knowledge or coordination of Ms. Maynard’s public disclosure.

Defendant Fetzer has again violated this Court’s Confidentiality Order, despite express, clear, and repeated warnings. Defendant Fetzer’s disregard for this Court’s orders resulted in the release of Mr. Pozner’s confidential information to a broad audience of which an untold number accessed the confidential information. Therefore, both remedial and punitive sanctions are appropriate. Mr. Pozner asks

this Court to find Defendant Fetzer in contempt, to appoint a special prosecutor, and to appoint computer forensic analysts—at Defendant Fetzer’s expense—to review Defendant Fetzer’s and Ms. Maynard’s computers to determine who accessed the confidential information and to confirm its deletion.

Dated: February 26, 2020.

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