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CIRCUIT COURT  
DANE COUNTY, WI  
2018CV003122

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 SUPPLEMENTAL FEE RESPONSE

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Defendant Fetzter, through counsel, opposes Plaintiff's fee petition on the grounds that the number of hours expended in response to Defendant Fetzter's second violation of the Court's confidentiality order was excessive. Defendant's response focused almost entirely on the time spent to draft the motion and assumed that lawyers' efforts were duplicative. That is incorrect. Defendant failed to consider the time Plaintiff's counsel spent counseling their client, investigating the scope and extent of the unauthorized disclosure, or even the actual time incurred attending the hearing.

**I. ARGUMENT**

**A. Defendant Fetzter is Not Going to Pay**

It is a bit puzzling why Defendant would waste the Court's time arguing about attorney's fees that Defendant Fetzter has no intention of paying. Defendant's counsel has already indicated that Defendant Fetzter does not have enough money to pay even

the amount Defendant Fetzer proposed in his objection. And as Plaintiff previously noted, Defendant Fetzer promised his donors that none of the money he raised in his post-trial fundraising efforts would go to Mr. Pozner. *See* Dkt. 327 at 4 (“100% of the funds raised go to Dr. Fetzer’s attorney and legal defense....”). If Defendant Fetzer is planning to disregard this Court’s order to pay the Plaintiff’s fees anyway, then this criticism of Plaintiff’s submission is a waste of everyone’s time.

**B. Plaintiff’s Attorney Time Was Accurate and Necessary.**

Plaintiff’s submission was reasonable given the time required to respond to investigate and prepare filings related to Defendant Fetzer’s conduct. Defendant argues that the total attorney time for three lawyers to prepare for and attend the contempt hearing should be no more than three hours. That is not reasonable.

The March 17 contempt hearing lasted about 1 hour and 14 minutes. Ignoring for a moment the time to prepare for the hearing, Defendant Fetzer’s proposed fee does not even cover the time actually spent by Plaintiff’s counsel attending the hearing. Given the breadth of issues raised and range of potential sanctions implicated by Defendant’s intentional violation, it was not unreasonable for three lawyers to attend and to bill their time for attending the hearing. The fact that this case is currently on appeal means Plaintiff’s counsel needed to be able to quickly coordinate between lawyers primarily responsible for handling the appeal, the collection efforts including bankruptcy counsel, and the lawyer who conducted the investigation into the extent of the unauthorized disclosure. Thus, it was reasonable for three of Mr. Pozner’s lawyers to bill for their time attending the hearing.

Defendant Fetzer's objection focuses only on the time needed to write the motion and attend the hearing. But that is only a part of the effort Plaintiff's counsel was required to undertake as a direct result of Defendant Fetzer's contempt. Defendant Fetzer sent Plaintiff's deposition transcript to Alison Maynard. She posted it on her blog. Others, including at least fellow hoaxer Wolfgang Halbig, obtained that transcript and used parts of it publicly. Plaintiff's counsel spent a significant amount of time investigating the scope of the unauthorized release. That included reviewing the transcripts for the previous contempt hearing, Mr. Bolton's comments during the October 14 pre-trial hearing regarding contempt, and blog posts and other online content by Defendant Fetzer, Alison Maynard, and Wolfgang Halbig. Moreover, Ms. Maynard changed the content of her blog post, meaning that Plaintiff had to try to find an archived version of the blog that included the original content.

Moreover, Defendant's response to Plaintiff's Motion required additional investigation. In particular, Defendant submitted affidavits by Alison Maynard. One of those affidavits made the startling claim that Mr. Pozner's gave Ms. Maynard "effective consent" to publicly release the confidential deposition transcript. Dkt. 382 at ¶ 2.

Ms. Maynard later filed a second affidavit that made it clear that the claim of consent was pure fantasy. She threatened to release Mr. Pozner's deposition transcript, along with a background report that includes Mr. Pozner's social security number and other personal identifying information for Mr. Pozner and his relatives, if he did not remove information critical of Ms. Maynard from a website. Because that

information was not removed from the website, she retaliated by publishing Mr. Pozner's confidential deposition transcript.

As frivolous as Ms. Maynard's assertion of consent turned out to be, Plaintiff's counsel was obligated to investigate because if Mr. Pozner had somehow granted actual consent, then the disclosure would have been authorized and Defendant Fetzer would not have violated the Court's Order. It is more than disingenuous for Defendant Fetzer and his counsel to complain about the amount of time spent on this issue given that Defendant's actions and filings contributed to Plaintiff's expenditure of time.

## II. CONCLUSION

Defendant Fetzer is hardly in a position to complain about Plaintiff's attorney fees, given that his misconduct forced Plaintiff's counsel to expend time and effort, and because he has no intention of paying the fees.

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