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*Attorneys for Plaintiff
Exeter Township*

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| EXETER TOWNSHIP | : | IN THE COURT OF COMMON PLEAS OF |
| | : | BERKS COUNTY, PENNSYLVANIA |
| Plaintiff, | : | |
| | : | CIVIL ACTION – LAW |
| vs. | : | |
| | : | |
| JERRY GELEFF, an adult individual, THE | : | NO. 2022 - 16476 |
| EXETER EXAMINER, an unincorporated | : | |
| business, THE EXETER | : | |
| UNDERGROUND, an unincorporated | : | |
| business, and JERRY GELEFF MEDIA, | : | |
| | : | |
| Defendants. | : | JURY TRIAL DEMANDED |

PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR CONTEMPT

Plaintiff Exeter Township (“Township”), by and through its undersigned counsel, files the following Brief in Support of its Motion for Contempt, which has been filed contemporaneously herewith, and avers as follows:

I. PROCEDURAL HISTORY

This case was initiated on December 15, 2022, when the Township filed a Complaint in the above-captioned matter concerning the unauthorized access to and dissemination of Township property – specifically, an investigation report protected by the attorney-client privilege and found by the Office of Open Records a “public record” under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Plaintiff filed an Emergency Motion for Preliminary Injunction, and Defendants

attended the hearing held on December 15, 2022. On that date, Judge Theresa Johnson issued an order enjoining Defendants “from publishing or otherwise disseminating any information in the investigative report commissioned by the Township ... which Defendants have improperly obtained” and ordering Defendants to return and destroy all physical or electronic copies of the Report.

II. STATEMENT OF FACTS

By information and belief, Jerry Geleff (“Geleff”) owns or operates various unincorporated businesses, including The Exeter Examiner, The Exeter Underground, Jerry Geleff Media, and Jgmedia.us (collectively, “Businesses”). Through the Businesses, Geleff expresses his thoughts and opinions concerning events occurring within the Township. The Exeter Underground is a podcast run or operated by Geleff and Jerry Geleff Media, with a website at <https://jgmedia.us/podcasts>. As a podcast, The Exeter Underground is accessible to listeners worldwide. The Exeter Examiner consists of a Facebook page with an address of <https://www.facebook.com/TheExeterExaminer> and a website with an address of <https://exeterexaminer.us/>. As a Facebook page and website, The Exeter Examiner is accessible to readers worldwide.

In early 2022, the Township received complaints that one of its Supervisors was allegedly engaged in sexual harassment of female employees. In response to these allegations, the Township, on April 11, 2022, entered into an agreement with the law firm of MacMain, Connell and Leinhauser to serve as special counsel to conduct an investigation into the claims of sexual harassment. Between April 21, 2022, and July 27, 2022, Attorney Matt Connell interviewed 15 current or former public officials concerning the allegations. On July 27, 2022, Attorney Connell submitted a 43-page report (the “Report”) to the Township detailing the results of his investigation,

including his conclusions and recommendations. The Report is marked “ATTORNEY-CLIENT PRIVILEGED,” and the Township paid MacMain, Connell and Leinhauser for the Report.

Geleff subsequently filed a Right-to-Know Law, 65 P.S. 67.101 *et seq.*, for the Report with the Township, which the Township denied on September 13, 2022, under the attorney-work product doctrine, the attorney-client privilege, a statutory exemption for noncriminal investigative records and the constitutional right to privacy. Geleff appealed the Township’s denial of the Report to the Office of Open Records, which docketed the appeal as *Jerry Geleff v. Exeter Township*, OOR Dkt. AP 2022-2244. The OOR subsequently issued a final order on November 22, 2022 that concluded that the Report is not a public record under 65 P.S. § 67.708(b)(17). *See Jerry Geleff v. Exeter Township*, OOR Dkt. AP 2022-2244. As of this writing, Geleff has not filed an appeal of the OOR’s decision in *Jerry Geleff v. Exeter Township*, OOR Dkt. AP 2022-2244.

During a broadcast of the Exeter Underground podcast on December 14, 2022, Geleff stated that he was provided with a copy of the Report. Geleff did not identify who provided the Report to him. During the Exeter Underground podcast on December 14, 2022, Geleff stated that he was physically holding three pages of the Report. Geleff then proceeded to read excerpts from the Report during the Exeter Underground podcast. Geleff stated that he would be posting images from the Report on the Exeter Examiner website.

At approximately 5 p.m. on December 14, 2022, Geleff posted the following message on The Exeter Examiner Facebook page, “Jerry got ahold of the report and exposed it for Exeter to see. There will be a report in The Exeter Examiner including screenshots of the copies of the report that Jerry read....” On December 14, 2022, Geleff posted the content and images of portions of the Report on The Exeter Examiner website.

The next day, the Township filed an Emergency Motion seeking a Preliminary Injunction (“Motion”). The Township provided notice to Geleff of the filing of the Motion by way of an email sent on December 15, 2022 at 10:45 a.m., and Geleff acknowledged receipt of the email by way of a response email, stating that he would attend the emergency preliminary injunction hearing later that day. The Township filed the Motion following Geleff’s response.

On December 15, 2022, Geleff posted the following message on The Exeter Examiner: “[S]ave the pictures. Have them ready to share. It might come in handy.” At approximately 12:28 p.m., Geleff posted a message encouraging people to, “Download the podcast [in which Geleff divulged the Township’s privileged information] NOW. Go to [The Exeter Examiner website] and get the pictures. Save them.”

At approximately 1:30 p.m. on December 15, 2022, a hearing on the Motion was held before the Honorable Theresa Johnson. Geleff attended the hearing on the Motion. During the hearing, Geleff acknowledged that the Report bore the words “ATTORNEY-CLIENT PRIVILEGED” on its face. During the hearing, Geleff acknowledged that the Office of Open Records had determined that the Report was not a “public record” under the Right-to-Know Law. *See Geleff v. Exeter Township*, OOR Dkt. AP OOR Dkt. AP 2022-2244.

At the end of the hearing, Judge Johnson issued an Order enjoining Defendants “from publishing or otherwise disseminating any information in the investigative report commissioned by the Township ... which Defendants have improperly obtained” and ordering Defendants to return and destroy all physical or electronic copies of the Report. Geleff was physically handed a copy of the Order at the conclusion of the hearing, which ended at approximately 2 p.m. on December 15, 2022.

Despite receiving the Order, at approximately 5:30 p.m. on December 15, 2022, Geleff posted the following on The Exeter Examiner Facebook page: “Oh, the other thing to report..... Somebody bought gardellagate.com and has put up a single page site!! Hilarious.” This website contains the same images of the Report posted by Geleff through his Businesses.

At 5:46 p.m. on December 15, 2022, Attorney J. Chadwick Schnee notified Geleff, in an email with the subject line of “Contempt,” that his posting “has resulted in the further dissemination of the investigation report, despite” the Order and asked Geleff to “remove any links to any websites containing the investigation report.” Attorney Schnee also included a copy of the Order that Geleff had previously received earlier that day.

Additionally, during an “emergency” edition of The Exeter Underground podcast starting at approximately 8 p.m. on December 15, 2022, Geleff, by information belief, mentioned the “gardellagate.com” website.

III. QUESTIONS PRESENTED

- A.** Are Defendants in contempt of court where Defendants have publicly disseminated copies of the Report despite this Court Orders not to do so?

SUGGESTED ANSWER: YES

IV. LEGAL STANDARD

Courts generally have the authority to punish individuals for acting in contempt. *See Commonwealth v. Bowden*, 838 A.2d 740, 760 (Pa. 2003) (“Courts possess an inherent power to enforce their orders by way of the power of contempt.”); *Rouse Philadelphia Inc. v. Ad Hoc '78*, 417 A.2d 1248, 1257 (Pa. Super. 1979) (“It is axiomatic that courts have always possessed the inherent power to enforce their orders and decrees by imposing sanctions for failure to comply with said orders”).

To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. *Lachat v. Hinchcliffe*, 769 A.2d 481, 489 (Pa. Super. 2001).

“Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.” *Brocker v. Brocker*, 241 A.2d 336, 339 (Pa. 1968), *cert. denied*, 393 U.S. 1081 (1969). “The court may impose an unconditional fine upon a contemnor in order to encourage future compliance for the benefit of the injured private party.” *Schnabel Assocs., Inc. v. Bldg. & Const. Trades Council of Philadelphia & Vicinity, AFL-CIO*, 487 A.2d 1327, 1338 (Pa. Super. 1985). Attorneys’ fees and other disbursements necessitated by the civil contemnor’s noncompliance may be recovered by the aggrieved party. *Thompson v. Johnson*, 410 F.Supp. 633 (E.D.Pa. 1976), *aff’d mem.*, 556 F.2d 568 (3d Cir. 1977).

V. ARGUMENT

A. DEFENDANT’S ACTIONS CONSTITUTE CIVIL CONTEMPT

Contemnor had notice of the specific order which he is alleged to have disobeyed. Geleff was present at the hearing when the Honorable Theresa Johnson granted the Township’s Emergency Motion seeking a preliminary injunction, and Geleff was physically handed a copy of the order at the conclusion of the hearing. Further, at 5:46 p.m. on December 15, 2022, Attorney J. Chadwick Schnee, Solicitor to the Township emailed Geleff a copy of the Order.

The act constituting the contemnor's violation was volitional. Geleff disseminated a link, via a Facebook page under his control, to a website that includes a copy of the Report. Geleff also mentioned on The Exeter Underground podcast after the Order was issued the name of the website that includes the same pages of the Report posted earlier by Defendants.

The contemnor acted with wrongful intent. Geleff was at the hearing at which the preliminary injunction was granted. He knew at the conclusion of the hearing that he was to stop disseminating the Report through any and all means, yet he willfully chose to continue doing so through The Exeter Examiner Facebook page and The Exeter Underground podcast. Such injunctive relief was continued by way of the Order, a copy of which was sent to Geleff by the Court as well as, at 5:46 p.m., a copy of the Order by attorney J. Chadwick Schnee.

Demonstrating Defendants' wrongful intent is Geleff's own words in response to Attorney Schnee where he requested the removal of privileged Township property from his various media outlets: "[n]ot only won't I comply, but I will now put their chickenshit asses on blast. Get ready for the next level of how you've wronged the people of Exeter."

In this matter, Defendants willful violation of this Court's order justifies the imposition of a fine against Defendants and an award of the Township's reasonable attorneys' fees and court costs associated with this Motion for Contempt.

VI. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that Defendants be held in civil contempt of the Order dated December 15, 2022.

LAW OFFICE OF TUCKER R. HULL, LLC

/s/ Tucker R. Hull

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Counsel for Plaintiffs

Date: December 23, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Tucker R. Hull
Tucker R. Hull, Esquire

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| Defendants. | : | JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I, Tucker R. Hull, Esquire, hereby certify that on the 23rd day of December, 2022, a true and correct copy of the foregoing document was served by email and First Class United States mail postage prepaid, addressed as follows:

Paula Knudson Burke, Esquire
 Reporters Committee for Freedom of the Press
 PO Box 1328
 Lancaster, PA 17608
 pknudsen@rcfp.org

/s/ Tucker R. Hull

 Tucker R. Hull, Esquire