**IN THE SUPERIOR COURT
OF FULTON COUNTY
GEORGIA**

DEZSO BENEDEK and ANN BENEDEK,	)	
	)	
Plaintiffs,	)	**No.** 2017CV289247
	)	
vs.	)	**JURY TRIAL DEMANDED**
	)	
MICHAEL F. ADAMS, NOEL FALLOWS, JUDITH SHAW, JANE GATEWOOD, KASEE LASTER, JOHN DOES, THE BOARD OF REGENTS of the UNIVERSITY SYSTEM OF GEORGIA, SUSAN E. EDLEIN, SAM OLENS and THE ATTORNEY GENERAL OF GEORGIA	)	
	)	
Defendants.	)	

BENEDEKS' RESPONSE TO MOTION FOR PROTECTIVE ORDER

For good cause shown pursuant to Uniform Superior Court Rule 6.7, the Court should deny the Attorney General's Motion for a Protective Order today, without delay, in time for the noticed deposition of Judith Shaw to proceed today as scheduled at 2 pm.

The Attorney General has had notice, from the Benedeks' pleadings and an October 27, 2017 phone courtesy phone call to schedule them at a mutually convenient time, that the maximum 90-day stay of discove3ry has expired according to the controlling statute, OCGA 9-11-12(j), and that Plaintiffs intended to conduct certain depositions prior to the hearing scheduled on November 22,

2017.

On October 27, the Senior Assistant Attorney General refused to discuss such scheduling, dismissing the Benedeks' case in derogatory terms and calling their counsel a liar and hanging up the phone in his face. This phone conversation is documented in the Affidavit of Non-receipt of E-filed Order, filed on November 9, 2017.

Judith Shaw has been properly served with the deposition notice, summons, and complaint. A week ago subpoenas were issued for the remaining two deposnents with personal knowledge regarding events as to which the Attorney General has attempted to improperly prejudice the Court against Plaintiffs and their counsel by calling the Benedeks' allegations lies, slander, and insults. The Benedeks merely wish to have the signing attorney with personal knowledge to identify, under oath, the exact matter claimed to be false.

Otherwise, as previously stated in the pleadings, Plaintiffs seek discovery of matters related to issues in pending motions to be decided by the Court pursuant to the November 22 hearing.

Though the Attorney General has been aware of this dispute since October 27, the Motion for Protective Order was not filed in time to be entered on the Court docket

(it is not on the docket at the time of this filing), or for Plaintiffs to be served with the Motion prior to the day of the scheduled deposition. The depositions were scheduled after expiration of the stay in time for any relevant matter to be filed with the Court in advance of the November 22 hearing.

Though several emails were exchanged on this subject during the course of last week and over the weekend, no copy of the motion was sent to Plaintiffs until late Saturday night.

Without waiting for a court order regarding the properly noticed depositions, the Attorney General has advised that Defendants and their counsel will not be attending the depositions (though one deponent is a third party not represented by the Attorney General). That refusal leaves only this morning for the issue to be decided in advance of the first schedule depositions. In particular, court reporters are waiting for instructions after the deadline for charging for cancellation.

Plaintiffs further incorporate by reference the Motion to Lift Stay of Discovery and Reply re Motion to Lift Stay of Discovery.

Plaintiffs can well understand why the Attorney General kept its motion for a protective order under wraps until late Saturday night—because there is nothing in

it. The Attorney General, without any legal leg to stand on, and facing voluminous documentation from the state's own records of serious wrongdoing in the Attorney General's office itself, has to depend on evasions and distortions. Increasingly, the Department of Law has been reduced to ad hominem attacks, trying to prejudice the Court and distract from the real legal issues.

Meanwhile, the Attorney General has no answer for the expiration of the maximum stay of discovery, 90 days after the filing of a motion to dismiss. As the motion was filed on August 10, the stay expired November 8. None of the cases cited by the Attorney General in the motion even mention discovery, much less support the claim that sovereign immunity protects the Defendants from discovery related to their asserted sovereign immunity defenses.

Despite the protestations, the Attorney General has cited no burdens or oppressions caused by the discovery that has been noticed. Only one of the noticed deponents is even in government service. Judith Shaw is retired. Michael D'Antignac left government service for private practice. Only McLaurin Sitton still serves in a state position where he spends a great deal of his time claiming Plaintiffs are liars regarding matters on which he has personal knowledge, particularly with respect to the conduct of Judge Susan Edlein. It should pose little extra inconvenience for the

signing attorney on the pleadings to raise his right hand and make the same assertions under oath and see if his testimony stands up to the evidence already in Plaintiffs' possession.

Since the Attorney General mentions policies behind sovereign immunity, we should be clear what purpose sovereign immunity is not meant to serve: it is not intended as a shield for government officials to abuse the powers entrusted to them by the pubic with impunity. Sovereign immunity is certainly not meant as a sword for use in a criminal enterprise. The value the Attorney General places the least value on is the truth.

Instead, the Attorney General keeps harping on the service issue—which aside from being irrelevant if a stay is granted—has been procured in bad faith by the Defendants. The Attorney General has never been properly served in this case and there is no affidavit of service to file with the Court because the attorney General actually refused service in this case, while the evidence shows that other Defendants were being advised not to cooperate and to evade service in this matter. This was happening while Plaintiffs were unaware of an order entered approximately five weeks after the complaint was filed—not after several months of doing nothing to evade service.

This issue of service was procured in bad faith by the Attorney General and is being used in bad faith now to distract from the real issues before the Court regarding the noticed discovery. Wherefore, premises considered, the Motion for Protective Order, which seeks to violate Plaintiffs' due process rights, should be summarily denied without delay, in time for the depositions to proceed as scheduled in advance of the November 22 hearing.

In addition, the claims of ineffective service are specific grounds for allowing discovery to show bad faith in attempts to cause non-compliance with June 7 order and otherwise cause harassment, undue cost delay and prejudice to Plaintiffs. Meanwhile, the Benedeks would not have relied on seeking a stay of the proceeding to await the outcome of related proceedings in the Eleventh Circuit and the Georgia Court of Appeals if they had known of the June 27 order.

The alternative to discovery is to stay the proceedings to avoid inconsistent court rulings as Plaintiffs requested and the Attorney General refused.

Respectfully submitted this 13th day of November, 2017.

STEPHEN F. HUMPHREYS, P.C.

/s/ Stephen F. Humphreys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Defendants have been served this Response to Motion for Protective Order, this 13th day of November, 2017, as follows:

Chris Carr
Kathleen Pacious
Loretta L. Pinkston-Pope
C. McLaurin Sitton
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