

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

SURENDER MALHAN,  
MARYANN PETRI,  
AND MICHAEL VOLPE

No. 3:22-cv-06353-MAS-TJB

PLAINTIFFS,

vs.

CHRISTINE NORBUT BEYER,  
COMMISSIONER OF NEW JERSEY  
DEP'T OF CHILDREN AND FAMILIES,  
HEIDI W. CURRI, DAVID KATZ,  
PETER MELCHIONNE, MATT  
PLATKIN, AND JOHN DOES 1  
THROUGH 10  
DEFENDANTS.

*Defendants.*

**AMENDED VERIFIED COMPLAINT**

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §1331. Plaintiff maintains this action under 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. § 2201. Defendants are depriving Plaintiff of liberty (free speech and freedom of the press) under color of law by threatening to enforce a “gag order” prohibiting plaintiff from discussing ongoing litigation of a civil rights lawsuits pending in federal and state courts.

## Summary

2. Gag Orders from 2015 and 2022 prohibit Malhan “from discussing any aspect of [his] experiences during child custody proceedings” in family court.
3. This is an action pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, to enjoin enforcement of various restrictions and “gag orders” imposed by the Courts of the State of New Jersey, that, if allowed to continue in effect, would impose an intolerable burden on speech and on the press, in violation of the First and Fourteenth Amendments and of the United States Constitution.
4. Some of the same issues are being litigated by Paul Argen in 2:18-cv-963, Argen v. Katz; and while Plaintiffs Petri and Volpe would have liked to join 2:18-cv-963 but in October 2023 the court in 2:18-cv-963 stated that no amendments to that case would be permitted.
5. Plaintiffs seeks prospective declaratory and injunctive relief against enforcement of gag orders issued by three Superior Court Judges of the State of New Jersey, Ordering a father not to discuss any matter involving custody with any member of the press, as well as enjoining the father from posting anything on social media related to his children or custody, and enjoining father from reporting disturbing conduct of his son to the son’s school. A copy of some of Gag Orders is attached hereto as Exhibit 1. The Gag Orders were entered without a plenary hearing or any weighing of competing interests.
6. In February 2022 the Gag Order was made permanent by the New Jersey family court, per Judge Terry Paul Bottinelli, ruling that Malhan had the burden of proving that the "temporary" Gag Order imposed in 2015 should not be made permanent. Plaintiff argues in the alternative that even if the 2015 Gag Order was not void ab initio that the entry of a permanent Gag Order without evidence and placing the burden on Malhan to disprove the Gag Order renders the Gag Order

unconstitutional.

7. A copy of the February 2022 permanent Gag Order is attached as Exhibit 2.

8. The February 2022 Order even expanded the scope of the 2015 Gag Order which the 2022 says “broadly prohibit[s] the parties from discussing any aspect of their experiences during child custody proceedings.”

9. For years, the New Jersey attorney general, inter alia in 2:18-cv-963, insisted that the 2015 Gag Order was limited and did NOT broadly prohibit Malhan from discussing any aspect of his experiences during child custody proceedings.

10. The revised interpretation of the 2015 Gag Order issued by the New Jersey family court is binding on federal courts as it is an authoritative interpretation by a state court of a matter of state law.

11. Mr. Malhan wants to talk about the number one threat to family, parents and children in America, and Journalists want to interview him.

12. Throughout the history of the human race, - gag orders and secrecy have been used to cover up crime and corruption.

13. In family courts taking the child away from one or both parents is very easy. This happens every day all over America: Take the child away based on a false alarm and order sweeping gag orders for secrecy.

14. This happens in family courts all over America.

15. As of this writing, it has come to Malhan's knowledge that Malhan's putative ex-wife Alina Myronova has fled from the State of New Jersey with Malhan's Children and has gone underground, gone off the radar.

16. This relocation was done without Malhan's knowledge in violation of the terms of the Judgement of Divorce entered in February 2022.

17. Malhan now has no knowledge of, where his two children are!

18. The only practical way Malhan has of trying to tell his children that he loves them and misses them is by posting messages on his Facebook page but the Gag

Order prevents him from even mentioning his children.

### **PARTIES**

19. Plaintiff Maryann Petri is an author, journalist and host of “Slam the Gavel Podcast” residing in Pennsylvania.
20. Petri is author of two books: Dismantling Family Court Corruption and Cry Out for Justice.
21. Petri’s podcast “Slam the Gavel” has conducted dozens of interviews with family court litigants and including journalists such as Michael Volpe (who also covers family court).
22. In January 2023 Petri interviewed Judge David Katz on her podcast at the request of Judge Katz.
23. In the January 2023 interview Judge David Katz discussed his actions as a family court judge and supervisor of other family court judges.
24. Petri wishes to interview Malhan on camera about Malhan's experiences in family court with the family court to get the “other side of the story”, but Petri is prevented from interviewing Malhan as a result of a Gag Order.
25. Plaintiff Michael Volpe is an adult residing outside of New Jersey. He is a reporter who has been covering family court abuses for years.
26. Michael Volpe has been a freelance investigative journalist since 2009. His work has been published locally in the Chicago Reader, Chicago Crusader, Chicago Heights Patch, and New City. Nationally, Volpe's work has appeared in a wide variety of publications including the Washington Examiner, the Daily Caller, Crime Magazine, the Southern Christian Leadership Conference Newsletter, and Counter Punch.
27. Volpe has been recognized by whistleblowers as leading the charge in getting their stories out.

28. In 2015 Volpe published a book - Bullied to Death: Chris Mackney's Kafkaesque Divorce. In this book he has referenced Malhan's case as well.

29. Volpe wishes to interview Malhan on camera about Malhan's experiences in family court with the family court but Volpe is prevented from conducting such interviews as a result of a Gag Order.

30. Plaintiff Surender Malhan is from India, and is the father of two children and has been subject to various Gag Orders since 2014 prohibiting him (inter alia) from speaking to anyone from the media about his children or broadly about "custody."

31. Although Malhan apparently is no longer permitted to contest whether the 2015 Gag Order was void ab initio as against the successors of Judge Kessler, for terms of the Amended Complain Malhan, and Malhan alone limits his claim to, and seeks Declaratory Relief that entry of the permanent Gag Order in February 2022 was unconstitutional and that various enforcement actions are unconstitutional.

32. Malhan also seeks injunctive and Declaratory relief vis-a-vis Christine Norbut Beyer that the Gag Order allegedly needed to protect confidential information from of New Jersey Dep't of Children and Families was void ab initio because Christine Norbut Beyer has never been a defendant in any suit Malhan has previously brought.

33. Malhan wishes to give statements to any and all media and press people, including Petri and Volpe but is barred from doing so by the Gag Order.

34. Christine Norbut Beyer is Commissioner of New Jersey Dep't of Children and Families, and each of its divisions including the Division of Child Protection and Permanency ("DCPP") on behalf of which the June 2015 Gag Order was entered and presumably is continued to be enforced.

35. Donald Kessler was a judicial officer of the State of New Jersey, Essex County Superior Court, Family Division who was the first Defendant in this case

and was the judge who crafted and entered as Gag Order in June 2015.

36. David Katz is a judicial officer of the State of New Jersey, Essex County Superior Court, Judge Katz repeatedly denied Malhan motions to vacate the Gag Order in each instance putting the burden on Malhan to disprove the need for a Gag Order and who sanctioned Malhan for alleged violations of the Gag Order.

37. In December 2022 Defendant Katz asked to be interviewed by Petri on her podcast.

38. In January 2023, Judge Katz gave an hour-long interview discussing his actions as a family court judge and supervisor of other family court judges.

39. Terry Paul Bottinelli was a judicial officer of the State of New Jersey, Bergen County Superior Court, Judge Bottinelli denied Malhan motions to vacate the Gag Order putting the burden on Malhan to disprove the need for a Gag Order and who sanctioned Malhan for alleged violations of the Gag Order, and who made the Gag Order permanent in February 2022.

40. Peter Melchionne is a judicial officer of the State of New Jersey, and presiding judge of Bergen County Superior Court. Since the retirement of Terry Paul Bottinelli, Judge Melchionne has been handling Malhan's case and has stated that he intends to enforce all previous orders in the case (which would include the Gag Order at issue in this case).

41. The Bergen County Court, concurrent with the appellate division has jurisdiction to order a stay of the Gag Order pending appeal.

42. Heidi W. Curri is a judicial officer of the State of New Jersey who signed an Order denying the stay of the Gag Order pending appeal.

43. As of the time of this filing, Malhan's case is on appeal before the Appellate Division.

44. The Appellate Division has jurisdiction to order a stay of the Gag Order pending appeal.

45. On or about May 6, 2022 Malhan filed a motion with the Appellate Division seeking a stay of the Gag Order pending appeal.
46. Judge Heidi W. Curri denied the motion for stay without comment in an Order dated May 26, 2022.
47. John Does including other unknown judges of the New Jersey Superior Court who have jurisdiction to attempt to enforce the Gag Order or to Order a Stay of the Gag Order.
48. All State officials are sued in their official and individual capacities under the doctrine of *Ex parte Young* to halt the ongoing violation of constitutional rights. *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645-46 (2002); *Balgowan v. State of N.J.*, 115 F.3d 214, 219 (3d Cir. 1997).
49. John Does 1 - 10 are New Jersey officials including New Jersey Superior Court judges who have or may have control over enforcement of the Gag Order at issue in this case--John Does have been added due to the fact that the specific State official responsible for enforcing the Gag Order has constantly shifted.
50. Acting Attorney General Matthew J. Platkin is the official charged with defending the constitutionality of state action and state laws, such as protecting the confidentiality of DCPD records. Since 2014 numerous superior court judges have come and gone but the State Official most responsible for the continuing application of the Gag Order is the Attorney General.
51. Attorney General Matthew J. Platkin has conspired with New Jersey judges to deprive Plaintiffs of free speech.
52. Judges such as Defendant Melchionne appear to have no say whatsoever as to whether a consent order will be entered in this case, but that decision is entirely in the hands of the attorney general as the ultimate policy-maker and decision maker for New Jersey on this issue.
53. The attorney general has power to stop gag orders immediately by issuing an

opinion that such orders are unconstitutional and informing judges that the Attorney General office will not defend Gag Orders.

### **Statement of Facts**

#### **Background Facts Relevant to Gag Orders and Public Interest**

54. According to the U.S. Census (census.gov) bureau 30% of children in the United States do not live with both parents.
55. According to the U.S. Census (census.gov) living with only one parent increases depression, anxiety, anger and aggression.
56. According to the U.S. Census (census.gov), in **2020**, across the country about 15.3 million children (21%) were living with their mother only and no father.
57. According to the U.S. Census (census.gov), in **1968**, across the country about 7.6 million children (11%) were living with their mother only and no father.
58. According to the U.S. Census (census.gov), in 2020, across the country about 3.3 million children (4.5%) were living with their father only and no mother.
59. This disproportionate number of times that women are awarded custody of children is based on systematic sexual discrimination against men on account of their sex or gender.
60. In New Jersey family courts disproportionately take children away from minority and “people of color” such as Malhan.
61. New Jersey family courts practice systematic RACIAL discrimination against men of color.
62. The underlying motive is "MONEY". (a) It is easier to sell that "father's are bad!" (b) Often father's have deeper pockets. (c) Taking custody away from a parent is the number one factor in prolonging litigation time and hence sucking out money from both litigants.
63. The central goal in all family court litigation is not "best interests" of the



child, but make the maximum possible money out from one or both litigants.

64. New Jersey has similar numbers to the national numbers or even worse.

65. According to the U.S. Census data, in 2020 in Hudson County 34.2% of households with children were single parent.

66. According to the U.S. Census data, in 2020 in Essex County 40.1% of households with children were single parent.

67. According to the U.S. Census data, in 2020 in Passaic County 35.0% of households with children were single parent.

68. The vast majority of these single parent households result from the family court awarding custody to the mother.

69. According to data published by the State of Florida (Based on research compiled by Florida House staff), having an “involved father” in the lives of a child are half as likely to show signs of depression, twice as likely to go to college and be employed and four times less likely to go to jail.

[www.flgov.com/wp-content/uploads/2022/04/The-Father-Crisis.pdf](http://www.flgov.com/wp-content/uploads/2022/04/The-Father-Crisis.pdf)

70. The number of fatherless, or more broadly, single parent homes and the role that family courts play in this phenomenon is a matter of great public interest.

### **Background Facts Relevant to Specific Gag Orders**

71. In 2004 Alina Myronova and her mother Viktoriya Myronova came from Ukraine. Alina lived with Malhan for 6 years and Alina filed for divorce after obtaining her Green Card. Alina is about 23 years younger than Malhan.

72. On February 24, 2011, Alina Myronova, the putative wife of Surender Malhan, filed an Order to Show Cause in Hudson County Family Court asking that full physical and legal custody of the children be given to her and all custody stripped from Surender Malhan.

73. Malhan had less than two hours' notice of a legal proceeding and had no time to seek legal advice or obtain counsel.

74. Malhan, appearing before the family part judge, contested all of Myronova's allegations about his alleged unfitness as a parent. Malhan stated that Myronova was lying. Malhan was not permitted to cross examine Myronova.

75. Malhan told the court that he wished to present evidence to refute the allegations made by Myronova, but the court did not permit Malhan to present any evidence at this proceeding.

76. On February 24, 2011, the Court stripped Malhan of custody ordering Myronova to assume full legal and physical custody of the two children.

77. Myronova kept sole legal and physical custody of the two children for sixteen months. During this sixteen month period Malhan was never granted a plenary hearing or permitted to contest any of the allegations.

78. In February 2014 Malhan and others filed a class action law suit against New Jersey alleging widespread violation of the due process rights of parents in New Jersey, in particular that the State deprives parents of custody of their children without a plenary hearing when the state gives custody to another parent. Edelglass, et al, v. New Jersey, et al, No. 3:14-cv-00760-FLW-DEA.

79. On or about February 18, 2014, a television news reporter for WWOR, interviewed Malhan and two other plaintiffs in the instant suit about their experience in family court and their complaints about constitutional deprivations.

80. On April 4, 2014, the Defendants Sivilli and Essex County Superior Court, Family Part issued a "gag order" retraining Malhan from discussing any issues surrounding the divorce or custody proceedings with any employee of any media anywhere in the universe and further restrained Malhan for posting anything on the internet discussing these issues.

81. The Gag Order also required Malhan to remove specific parts of a posting on

his website that criticized the Superior Court and the presiding judge by name.

82. The Court did not hold a plenary hearing and made no findings whatsoever specific to Malhan or his children. The Court "found" generally that publicity about divorce proceedings was not in the best interests of children.

83. On or about April 8, 2014, Malhan applied to the Appellate Division for leave to file an emergent interlocutory appeal, but this request was denied by the Appellate Division on April 8, 2014.

84. When Malhan's request to file an emergent appeal was denied Malhan filed a non emergent motion for interlocutory appeal to vacate the Gag Order.

85. The Appellate Division denied Malhan's motion to vacate in a written order dated June 9, 2014 and issued by Presiding Judge YANNOTTI that stated:

Defendant's motion for leave to appeal and for reversal of paragraphs 4 through 8 of the Family Part's order of April 4, 2014, is denied.

We note that at the proceeding of April 4, 2014, the judge found that "it would not be in the children's best interests to have this litigation played out in the social media or the public media." The judge added that defendant had the opportunity to present the opinion of an expert that such public discussion of the litigation would not be contrary to the children's best interests.

Therefore, the court's order does not preclude defendant from seeking to have the restraints vacated if he can establish, with an expert's opinion, that they are not required to protect the children's best interests.

Moreover, nothing in the order precludes defendant from seeking to limit or vacate the restraints if he can establish that the children are not likely to be exposed to any discussion of the parties, the parties' children, or the litigation in the public media and/or social media, or establish that measures can put in place that would protect the children from any such exposure.

Emphasis added.

86. As seen above, the New Jersey Appellate Division, per Judge Yannotti held that the burden was on Malhan to disprove the need for a Gag Order.

87. Throughout the state court litigation no proponent of the Gag Order has ever been required to submit any evidence or opinion justifying the need for a gag order; rather, every state court to have addressed the Gag Order has placed the burden on Malhan to disprove the need for a Gag Order.

88. On May 1, 2014 (while the Appellate Division was contemplating Malhan's motion for interlocutory appeal) the Judge Sivilli and Essex County Superior Court issued an Amended Order, slightly modifying the April 4 Gag Order.

89. On or about May 6, 2014, Malhan brought suit in federal court seeking to have the Gag Order declared unconstitutional and also filed an application for a TRO to enjoin enforcement of the gag order. In a written Order per Judge Wolfson, issued May 8, 2014, the Court ruled that “the state court judge did not conduct any meaningful weighing of Plaintiff’s First Amendment freedom of speech rights . . . important First Amendment issues are implicated by the broad sweeping language of the Gag Order . . . nevertheless, Plaintiffs instant motion falls squarely with the Rooker-Feldman doctrine . . . .”

90. In June 2014, Bergen Dispatch Reporter Paul Nichols brought suit in New Jersey Federal District Court to enjoin enforcement of the Gag Order.

91. Judge Sivilli made a motion to Dismiss, which was denied by the Court per Judge Martini in December 2014.

92. Specifically, the District Court ruled (inter alia):

The *Dow Jones & Co. Court*, which found that a similar gag order was not a prior restraint on the press, upheld the order only after concluding that it was justified. . . . Moreover, the judge issuing the gag order “properly recognized [that] before entering an injunction against speech he had to explore whether other available remedies would effectively mitigate the prejudicial publicity.” *Dow Jones & Co.*, 842 F.2d at 609, 612 (citing *Nebraska Press*, 427 U.S. at 562).

According to the SAC [Second Amended Complaint], Judge Sivilli did not engage in this type of analysis before issuing the Gag Order. The

Gag Order – which is attached to the SAC – broadly prohibits Malhan from discussing any aspect of his divorce, including his experiences during child custody proceedings. (SAC at ¶ 17). The SAC alleges that despite its far-reaching scope, the Gag Order was issued “in a summary proceeding without any evidentiary hearing or any weighing of competing interests....” (SAC at ¶ 26). ... The Court therefore rejects Defendants’ argument that Nichols has failed to adequately allege a First Amendment violation.

Nichols v. Sivilli, CIV. 2:14-3821 WJM, 2014 WL 7332020, at \*6 (D.N.J. 2014)

93. A few weeks after the Judge Martini decision, on January 25, 2015 Judge Sivilli scheduled “an evidentiary hearing to weigh the competing interests of the best interests of the parties’ children and defendant’s First Amendment rights.”

94. However, three days later, Judge Sivilli cancelled the plenary hearing, and recused herself from further participation.

95. The Nichols lawsuit generated a great deal of public interest, for example, Eugene Volokh, publisher of the popular blog, The Volokh Conspiracy published an article on the Nichols suit at WashingtonPost.com entitled "First Amendment challenge to broad order on family court litigants" on December 30, 2014. (The Volokh Conspiracy - <https://reason.com/volokh>, is a blog co-founded in 2002 by law professor Eugene Volokh. It is one of the most widely read and cited legal blogs in the United States.

96. The Volokh article explicitly discusses the details of the Myronova and Malhan case and remains available on washingtonPost.com for all to read.

97. The case generated comments from not just legal experts but from common people all across the United States, for example, if one simply googles "Nichols Sivilli" one finds threads of comments such as a comment about Judge Sivilli from Sam J Ervin from North Carolina who posted the following comment available for all to read:

She [Judge Sivilli] thinks she has the power to issue gag orders to

enjoin people from commenting about her corruption in office. And I do believe an overseeing court bitch-slapped her.

As long as shysters like this evil woman, the skank Lee Solomon, the whore Nanny Famular, and so many others occupy positions of power in New Jersey, it will be black-listed as a state unfit to live in, or even travel through.

<https://groups.google.com/g/alt.appalachian/c/LEj85qwJYIA/m/-yub111YBQAJ>

98. The web address cited above has even more harsh words for Judge Sivilli whose gag order disgusted ordinary members of the public.
99. The web address cited above also explicitly discusses "Malhan and his children."
100. The above are just two examples, but there are many more websites discussing the Sivilli Gag Order against Malhan.
101. The Sivilli Gag order exposed the New Jersey Judiciary to justifiable criticism and derision.
102. The Sivilli Gag Order was and is a matter of wide public interest and existing public comment.
103. Judge Sivilli was eventually succeeded by Judge Donald Kessler.
104. On May 29, 2015 Judge Kessler scheduled a plenary hearing to permit Myronova to present evidence to support the issuance of a Gag Order, which was part of what the federal District Court, per Judge Martini had stated was required before issuance of a Gag Order.
105. The May 29, 2015 Kessler Order stated:
  1. This matter shall be scheduled for a hearing on June 18, 2015 at 9:00a.m. to address the pending issue of the gag order and hold a plenary hearing on any aspect of the pending issue, if necessary.
  2. Defendant shall submit his position including the legal basis therefore and relevant documents on or before June 3, 2015.
  3. Plaintiff shall submit her reply to the legal position and any relevant

documents on or before June 10, 2015.

4. The parties shall, by June 10, 2015 provide a list of any witnesses whom testimony they claim is required at the hearing with a summary of the witness testimony.

106. On June 18, 2015, Myronova failed to present any evidence.

107. Judge Kessler stated on the record:

The change that we have since Judge Sivilli entered her order is that we have the orders -- the -- the ruling by Judge Martini, and the essence of Judge Martini's decision, as I understand it, is that the court needs to hold a plenary hearing before it can have an enforceable gag order. So that -- and that was what I tried to join for today.

108. Judge Kessler then stated that he was inclined to give Myronova yet more time to try to justify the Gag Order, stating: "So now I am at a point where I have to schedule a further plenary hearing."

109. Malhan asked that the Gag Order be vacated entirely as Myronova had failed to present any evidence for a Gag Order.

110. Judge Kessler stated that he was not going to vacate the order entirely but he going to issue a narrower gag order, even without a plenary hearing.

111. The family court, with the assistance of Deputy Attorney General Alaina Antonucci entered a Gag Order supposedly to protect confidential DCPD information:

THE COURT: I am at a point where I have to schedule a further plenary hearing subject -- unless everyone agrees we don't need it -- that's always an option -- but that plenary hearing would be -- I may need to enter some kind of order for today, and certainly one thing I do need to do, and Mr. Clark agrees with me on this, is anything from DCPD will remain confidential.

MR. CLARK: Yes, Your Honor.

THE COURT: So then the question is: Where do we draw the line? And I'll get to that in a moment. Now I'd like to turn to the Deputy Attorney General for -- for a minute, and thank -- thank her for coming today. And I can't quite -- I know you gave me your appearance for the

record, but I can't read the appearance you gave. Give me name again; I'm sorry.

MS. ANTONUCCI: Alaina Antonucci

THE COURT: I'm sorry, Ms. Antonucci. I got it.

MS. ANTONUCCI: Your Honor, we take absolutely no position on the gag order. Our records are affected by statute. (ECF 4-4 Tr. 22:19-23:15).

112. Upon information and belief, the Gag Order would have been vacated had DCCP or the Attorney General's office informed the family court that the gag order was not legal and not necessary.

113. The family court went on to state that it was going to enter a gag order pursuant to a statutory obligation to protect DCCP information:

Just so everyone knows that at this point time, I am going to limit the gag order, and what I'm going to limit it to because I haven't seen -- I haven't presented with anything else that tells me I shouldn't limit it, and I agree that it's plaintiff's burden of proof, but I still have to be mindful that if I have a statutory obligation as a judge, I have to -- you know -- I've got to respect that statutory obligation. So that's really -- and I recognize that there -- I can deviate if there's a proper record, but there would have to be a proper record. So my inclination is to limit the gag order only to disseminating information or discussing the -- the substance of the custody issues.

114. Judge Kessler further stated: that the basis for the Gag Order according to Judge Kessler was supposedly to prevent Malhan for revealing information contained in DCCP reports:

THE COURT: I do think it's [the Gag Order] over-broad, but I am only going to have one restraint at this point in time and I'll hear from [Myronova's Counsel] on this.

MR. CLARK: Okay, yeah. I mean if the order is limited to not revealing the DCCP reports --

THE COURT: Well, it's more than that. You can't really discuss the custody issues and -- because how do you draw the line -- you know -- how does a litigant who's not a lawyer really appreciate where the line -- between what the DCCP has decided and what the other custody



issues are.

115. Judge Kessler then signed a new Gag Order providing:

It is on this 18th day of June 2015 hereby ORDERED:

1. All parties are hereby restrained and enjoined from speaking with, appearing for an interview, or otherwise discussing any custody information to any reporters, journalists, newscasters or other news media employees or from posting any blogs or information not previously posted or disseminated relating to the children or any custody issue in this case pending a further hearing. Judge Sivilli's Gag Orders dated April 4, 2014 and May 1, 2014 are hereby vacated except as set forth above.

116. A partially redacted copy of the court Order is attached hereto as **Exhibit 1**.

117. Moreover, the June Gag Order only stated that Malhan was restrained "from posting any blogs or information not previously posted or disseminated." At this point in time (June 2015) Malhan had several years of postings to Facebook and other social media all of which remain available to this day.

118. For example, on November 11, 2012 Malhan posted the following which has been continuously available on the internet since 2012 to this very day:

I never wanted to be on any social media site. But now I want the power and reach of social media to tell everyone ... I got scammed by my scam wife Alina Myronova and my scam mother-in-law Viktoriya Myronova. ... Alina was never my wife. She was a thief a scammer who pretended to be my wife and entered my house and went on a looting spree.

119. The above post goes on for eleven pages describing this "marriage scam" in detail--and the June 2015 Gag Order allows this information to remain on the internet, and this post and many more like it have remained for years and Myronova's own expert has opined that there has been no adverse effect on Malhan's children.

120. At the June 2015 proceeding at which the Gag Order was discussed

Myronova asked the court to order all these postings removed but Judge Kessler denied that request because he was only concerned about protecting confidential DCPD information.

121. The June 2015 Court Order did not further specify the meaning of “custody information” Malhan was not to discuss with news media.

122. As can be seen from the above language, read literally Malhan was also broadly restrained from posting any additional blogs or information online “relating to the children or any custody issue in this case.”

123. The Court, per Judge Kessler, did not offer any reasons why it was enjoining Malhan “from posting any blogs or information not previously posted or disseminated relating to the children or any custody issue in this case” as this was not even mentioned by the Court on the record June 18—in other words, Judge Kessler did NOT explore whether other available remedies would effectively mitigate the prejudicial publicity, or even discuss what pre-trial publicity was of concern, or why. In fact, the court explicitly denied the request to make Malhan remove prior internet postings.

124. Six months after the Gag Order was entered Judge Kessler expanded upon his earlier comments and emphasized again that the Gag Order was supposed to protect confidential DCPD information; on December 21, 2015, the Court per judge Kessler explained why he was not vacating the Gag Order as demanded by Malhan and why the family court had issued the Gag Order in the first place:

On June 18, 2015, the Court held a hearing regarding the gag orders. Plaintiff [Myronova], who had the burden of persuasion, failed to present any evidence in support of gag orders. For that reason, the Court vacated the substantial portion of the gag orders dated April 4, 2014 and May 1, 2014. However, this Court determined based on the information then known to it that the parties should not discuss the custody proceedings with the media for the following reasons. Since the inception of its assignment of this case, this Court had been

presented with materials from the DCCP, shared with counsel and the parties, suggesting that the children were being emotionally abused by being placed in the middle of the parties acrimonious relationship, that the children may have been subjected to physical and emotional abuse, that [Son] responded to certain inquiries in the DCCP investigation in a robotic fashion and that [Son] may be suffering from parental alienation. The Court pointed out that the DCCP aspects of the proceedings were subject to confidentiality in accordance with the public policy of N.J.S.A. 9:b-8a, This statute is designed to protect children who have been subject to abuse from any potential harm and embarrassment that might result from the public disclosure of a DCCP investigation. Div.of Youth and Fam. Serv. v. M.S. (340 N.J. Super. 126, 132-133 (App, Div. 2001). ... Counsel for both parties agreed, on June 18, 2015, that the information provided to the Court which was shared with counsel and the parties should remain Confidential. Mr. Clark, on behalf of Defendant, initially objected to any restraint other than discussion of DCCP matters. The Court was concerned that the parties would not be able to draw the line between matters that came to their attention in DCCP proceedings and custody matters only relating to the divorce case. The inability of the parties to draw the line between confidential DCCP matters and other custody matters was exacerbated by the acrimony and highly contentious nature of the divorce proceedings. (ECF 13-2, at 13).

125. Judge Kessler apparently meant to cite N.J.S.A. 9:6-10a (“Reports and information of child abuse reports; confidentiality; release”).

126. Accordingly, both at the time of the Gag Order being considered on June 15, 2015 and later Judge Kessler stated that the Gag Order was intended to protect DCCP information--the very same DCCP which was and always has been represented by the Attorney General of New Jersey.

127. After Judge Kessler replaced Judge Sivilli and issued the new gag order, Reporter Paul Nichols moved leave to amend his complaint to add Judge Kessler as the new defendant in place of Judge Sivilli.

128. The New Jersey Attorney General’s Office represented all of the judges and

opposed the motion.

129. Although it took the Court some time to issue a ruling, in June 2016 the federal court per Judge Martini issued a decision granting Nichols motion to add Judge Kessler as a party.

130. Of particular interest the federal district court decision stated:

While Malhan has indicated that he does not intend to discuss the “minutia” of his custody issues with the press, he has never expressed an outright unwillingness to offer public comments on broader custody-related topics, including his distrust of the family court system. To the contrary, the series of gag orders that have been the subject of this litigation were entered in direct response to Malhan discussing those issues with members of the press. This is pertinent because Judge Kessler's gag order does not prohibit discussions that concern “the minutia” of custody issues; instead, it plainly prohibits *any* discussions with the media that concern custody, period. Moreover, while Malhan may not currently plan to mount his own challenge to the new gag order, it does not necessarily follow that he would continue to refrain from speaking with the press if the gag order were vacated.

Nichols v. Sivilli, 2:14-3821 (WJM), 2016 WL 3388296, at \*4 (D.N.J. June 14, 2016) (emphasis original).

131. A few days after the above decision was handed down, Paul Nichols died.

132. None of Nichols’s business associates or heirs was interested in pursuing the litigation in Nichols’s place so the Amended Complaint was never filed and the case was closed a few months later.

**Malhan “Temporarily” Loses Custody in September 2017 without Due Process and Wishes to Discuss these Events with Media**

133. Following the death of Paul Nichols the Judge Kessler Gag Order lay dormant for some time.

134. From June 2012 to September 8, 2017 Malhan had custody of children 4 days

a week on week days when school was in session and 50% custody when school was not in sessions - i.e. about 54% overall custody. Alina with the assistance of several other actors kept making undying efforts to take away Malhan's custody.

135. On September 11, 2017 Myronova filed an 18-page Order to show cause, and the only “evidence” alleged or attached was a statement by Myronova. Myronova did not claim to have witnessed any of the events but claimed to repeat a number of statements allegedly made to her by a couple of people repeating what the children supposedly told them that Malhan had said at an unspecified time and place. The main allegation was that Malhan told the children he was going to commit suicide by eating a dirty napkin off the floor.

136. At a proceeding September 12, 2017 Presiding Judge Katz suspended Malhan’s custody but stated he was acting on secret ex parte communication Judge Katz had received from the New Jersey Division of Child Protection and Permanency (DCPP).

137. Judge Katz stated that he was not going to tell Malhan what the allegations were. But promised him to keep the separation for Malhan’s children short.

138. Judge Katz acknowledged that it was difficult for Malhan not to even be informed of the allegation against him: “difficult as it is for the defendant because he has denied it, doesn’t understand the basis of [the court’s actions].

139. Judge Katz also stated: “I do have information, and it’s not that I’ve done an investigation ex parte before the lawyers came in. We have -- every vicinage has a DCPP liaison. Our staff reached out to the liaison.”

140. The Court did not set a return date for the OTSC but the order merely stated: “Parties to appear 10/6/17 at 9:30.” 9/12/2017 Order.

141. On October 6, 2017, Malhan again moved for the Court to dismiss all restrictions on Malhan and restore his custody, again noting that no evidence had ever been admitted that permitted the Court to suspend Malhan’s custody.

142. In response the Court stated that Malhan did not know what the allegations were and the Court was not going to tell him:

THE COURT: But you know the Division interviewed the children. You do know that?

MR. CLARK: Right, but that's not -- that's not corroboration of anything.

THE COURT: **Well, you don't** --

MR. CLARK: Anybody could talk to anybody else.

THE COURT: -- **know, and I'm not about to disclose what the children may or may not have said**, but -- but based on that, the Division has requested a psychological evaluation.

Emphasis added.

143. The Court per Judge Katz continued to rely on this secret evidence to deny Malhan any custody.

144. Judge Katz also refused to Order any parenting time, even supervised visitation.

145. On November 21, 2017 DCPD provided a copy of its report to the Family Court the report concluded that the allegations against Malhan were unfounded.

146. On November 22, 2017 Malhan was informed by DCPD that they had concluded their investigation.

147. DCPD also told Mr. Malhan that they had provided a copy of the report to the Court.

148. Malhan's expert, Dr. Lidia Abrams conducted a full evaluation of Malhan and concluded that he posed absolutely no danger to the children and moreover that the separation of the children from their father is contrary to the best interests of the children.

149. At the November 30 proceeding the family court announced that DCPD had conclude that the allegations were unfounded and had closed the case.

150. The Court did not submit this report into evidence, and Malhan objected it

would not be admissible anyway without a witness.

151. Malhan then asked the Court to immediately restore Malhan's custody rights and go back to the four overnights per week Malhan had exercised from August 2012 until September 2017.

152. The family court per Judge Katz ordered that Malhan would have two weekends of unsupervised visitation during the day (Saturday and Sunday).

153. Specifically the Court order stated:

IT IS on this 30th day of November, 2017;

ORDERED:

1) That the restraints on Defendant's parenting time have been lifted pursuant to the DPC&P report received by the Court on November 21, 2017 for the reasons stated on the record.

2) That Defendant shall have unsupervised day-time visits with the children on Saturdays and Sundays from 8:00AM until 7:00PM beginning December 2, 2017 and continuing for two consecutive weekends, so as to transition the children back into parenting time with Defendant, for the reasons stated on the record.

154. This is a pattern - a Judge will enforce his orders only and only when his real intent and the order - match. When the hidden agenda and the order - does not match, then the Judge plays the standard game - to pass the order to make himself look good and do nothing to enforce it.

155. Malhan's long-estranged wife blatantly defied the November 30 Order and refused to turn over the children to Malhan.

156. On December 5, 2017 Malhan filed an Order to Show Cause asking the Court to at least enforce the November 30 Order.

157. On December 21, Judge Kessler heard Malhan's OTSC, but instead of enforcing the November 30 Order, Judge Kessler suspended all of Malhan's parenting time and all overnight custody.

158. Disappointed and appalled by his treatment at the hands of Judge Kessler and

Judge Katz, Malhan in early 2018 was eager and willing to share his experience with members of the press about the court system and how it is destroying his family - and virtually every family that step into the family court.

159. In January 2018, by Malhan and Paul Argen filed suit in federal district court to contest the constitutionality of the Gag Order.

### **Events After the Filing of the Argen Federal Suit Relative to the Continued Gag Order**

160. On February 24, 2018 Judge Kessler ordered that each party was to retain its own expert to opine on the effects of publicity—but he refused to vacate the Gag Order and the Gag Order remained in effect.

161. The February 24, 2018 Order required that an expert report on the effects of publicity be completed within 90 days, however, Myronova failed to produce or submit a report—yet the Gag Order remained in effect.

162. Myronova identified an expert pursuant to the February 24, 2018 Order however she later fired her expert without having him submit a report.

163. Myronova then hired new expert, Paul Dasher and asked the court to delay trial while her new expert worked on a report.

164. It took Myronova over two years to produce an expert report during the entire time the Gag Order remained in effect.

165. While this two-year delay was going on Malhan and Paul Argen continued to pursue the instant case, and Malhan repeatedly moved in the family court for the Gag Order to be vacated.

166. Argen and Malhan sought a preliminary injunction and Defendants made a motion to dismiss.

167. In denying the motion for an injunction the court per Judge McNulty emphasized the allegedly temporary nature of the Gag Order:



Judge Kessler scheduled a plenary hearing on the Sivilli gag order for June 18, 2015. (Id. ¶j 28, 29.) At the hearing, Myronova did not present any witnesses or submit any evidence. (Id. ¶ 30.) After the hearing, Judge Kessler vacated the previous two orders and entered a new order. That new order, dated December, 2015 (the Gag Order now at issue) barred both Malhan and Myronova “from speaking with, appearing for an interview, or otherwise discussing any custody information to any reporters, journalists, newscasters or other news media employees or from posting any blogs or information not previously posted or disseminated relating to the children or any custody issue in this case pending a further hearing.” (Id. (Ex. A ¶ 1).) It is fair to say that Judge Kessler intended this Gag Order as an interim measure to preserve the status quo while the parties compiled the necessary record regarding the effect of publicity on the children. The Gag Order was explicitly entered “pending a further hearing.”

Argen v. Kessler, CV 18-963 (KM)(JBC), 2018 WL 4676046, at \*9 (D.N.J. Sept. 28, 2018).

168. Judge McNulty's decision went on to explain:

Here, the Gag Order is unquestionably in effect, not merely threatened. It is true that it was entered on an interim basis, pending the parties' submission of psychological reports, which has not occurred.

169. Further Judge McNulty's decision also stated

That Judge Sivilli or Judge Kessler, in the spirit of Judge Martini's ruling, later attempted to hold hearings and gather evidence in connection with the gag order is not evidence that the federal court had ordered declaratory relief or enjoined them to do so. At most it is evidence that the state court was trying, with precious little cooperation from the litigants, to gather evidence of potential harm to the children that would justify continuation, modification, or dissolution of the gag order.

170. While a temporary Gag Order does not make it constitutional, the Court in this case denied Malhan and Argen's motion at least in part based upon the understanding that the Gag Order was a temporary measure that would be justified

at some point in time.

171. While the federal litigation in this case discussed above was happening, Malhan was constantly fighting the Gag Order in State court as well.

172. In 2018 Malhan began to make some posts about his case to Facebook but avoided mentioning his children by name and attempted to stay within the parameters of the June 2015 Gag Order that he was also challenging.

173. In March 2019 Malhan filed a motion with the state family court arguing the Gag Order that had not been in effect in one form or another for four years was unconstitutional, that it had been issued without any evidence presented of the need for a Gag Order.

174. Myronova filed a cross motion demanded that the family court rule that Malhan had violated the Gag Order by his Facebook posts that criticized the court but avoided mentioning the children.

175. On May 31, 2019 Judge Katz denied Malhan's motion and once again refused to even address the constitutional free speech arguments; the decision on the Gag order began:

1. Gag Order

Defendant seeks to vacate Judge Kessler's Gag Order dated June 18, 2015. Defendant in essence seeks reconsideration of that Order. Defendant, however, fails to satisfy Rule 4:49-2. Specifically, Defendant has not set forth a basis for this Court to conclude that the June 18, 2015 Order is "based upon palpably incorrect basis or [that] it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Said another way, a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

176. The above statement was wrong as to both the facts and the law.

177. In addition to violating Malhan's due process rights by again shifting the

burden to him, the family court also had to ignore well-settled state court rules of court to avoid addressing Malhan's constitutional challenge.

178. The New Jersey Supreme Court has explained the standard for a motion to reconsider a prior order in the case:

Because Rule 4:49-2 applies only to motions to alter or amend final judgments and final orders, and doesn't apply when an interlocutory order is challenged, so too the standard described in *Cummings v. Bahr* – the standard cited by the trial judge that requires a showing that the challenged order was the result of a “palpably incorrect or irrational” analysis or of the judge's failure to “consider” or “appreciate” competent and probative evidence, 295 N.J. Super. at 384, 685 A.2d 60 – did not apply to the motion before the trial judge. Instead, in ruling on the motion at hand, the judge should have been guided only by Rule 4:42-2 and its far more liberal approach to reconsideration, not the methodology employed when a motion is based on Rule 4:49-2.

Rule 4:42-2 declares that interlocutory orders “shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice.” A motion for reconsideration does not require a showing that the challenged order was “palpably incorrect,” “irrational,” or based on a misapprehension or overlooking of significant material presented on the earlier application.

*Lawson v. Dewar*, 468 N.J. Super. 128, 134–35 (N.J. Super. App. Div. 2021)

179. Judge Katz cited the incorrect rule, Rule 4:49-2 applying to final judgments instead of Rule 4:42-2 applying to interlocutory orders in a deliberate attempt to avoid addressing the merits of the issue, such as weighing First Amendment interests with whatever other interests there might be.

180. The family court from 2014 to now, has never conducted any sort of balancing of interests, nor has ever discussed any potentially less restrictive methods for addressing any alleged dangers.

181. Judge Katz went on to rule that Malhan had violated the Gag Order by

posting the following:

On Saturday, 23 Feb 2019, I was allowed to see my children for two hours from 10 am to 12 noon in Newark Court House supervised by Court staff. My children were not allowed to touch me, hug me, or call me 'daddy'. My two little children sat on the other side of the table, they were instructed to just play with their iPods and pretend that their father does not exist. In addition to prior instruction/coercion, they were being monitored and controlled remotely through Apps on their iPod.

182. This Order constituted a substantial expansion of the Gag Order because when Judge Kessler was entering the Gag Order Judge Kessler stated:

So my inclination is to limit the gag order only to disseminating information or discussing the -- the substance of the custody issues.

183. A month after the Court denied Malhan's motion to vacate the Gag Order Myronova's expert Dasher finished a report that was provided to Malhan in June 2019. The Dasher report contained a single, short paragraph (less than eight lines of text) discussing publicity and concluded: "Neither child presently appears to be experiencing any adverse affects by any publicity in this case." Page 21.

184. Based in part of the final report of the opposing expert (three years delayed) that neither child had suffered any ill effects despite eight years of publicity in the case, Malhan yet again filed a motion to vacate the Gag Order.

185. The family court denied the motion to vacate, in an Order and Opinion dated December 2, 2019, again refused to address the merits and again insisted that Malhan had not presented new facts (despite bring to the Court's attention the opinion of Myronova's own expert; the Court opinion stated:

Defendant's instant application to vacate the Gag Order does not present any new facts or arguments. The motion is, in essence, for reconsideration, and nothing has been added that the Court was not aware of when it rendered its written findings on May 31, 2019. As such, the motion to vacate will be denied.

186. As to the opinion of Myronova's expert Dr. Dasher that “Neither child presently appears to be experiencing any adverse affects by any publicity in this case.” Judge Katz merely stated/ruled:

Thus, trial, which is ongoing, is necessary to resolve the myriad of factually disputed issues regarding the Gag Order and at this point Dr. Dasher has opined that the postings have a psychological impact on the children.

187. Judge Katz in December 2019 again ruled that Malhan had violated the Gag Order by posting generalized comments about the court case (for example, avoiding mentioning the names of his two children) and criticizing Judge Katz for his handling of the case.

188. Right after the December 2019 Order mentioned in the above paragraph was issued, Myronova asked the Court per Judge Katz to further expand the Gag Order, or issue a new Gag Order.

189. Yet again, Malhan countered by arguing that the 2015 Gag Order was unconstitutional and should be vacated.

190. On January 20, 2020 (“January 2020 Opinion”) the Court per Judge Katz denied Malhan's motion to vacate the Gag Order ruled that the burden was on Malhan to disprove the need for Gag Order; the family court also ruled in January 2020 the Malhan had actually violated the Gag Order,

191. In denying the motion to vacate the Gag Order Judge Katz wrote:

The parties at trial will be given an opportunity to establish, through expert testimony, their purported positions on whether the public posts about the custody and parenting issues in this matter are harmful to the children.

Plaintiff has proffered that her expert - who is likely to be the next witness produced by Plaintiff at the ongoing trial - will testify as to the harm the posts are causing to the children. ...

Based on the undisputed facts that the parties oldest child, a teenager, is internet savvy and that he and his friends have access to the posts, as well as the fact that at least one expert has proffered the alleged harmful effects that

the public posts have on the children, the Court has refused to vacate the Gag Order.

192. Aside from the family court treating an "opinion" as an "undisputed fact" in actual fact the expert had opined that "Neither child presently appears to be experiencing any adverse affects by any publicity in this case" and yet ignoring that report the court concluded an expert had proffered something else.

193. As discussed further below when this expert, Dr. Dasher actually testified he did not testify about "harmful effects that the public posts have on the children," quite the contrary he testified there were no harmful effects and never had been any harmful effect on the children.

194. The State court January 20, 2020 Order again refused to address the constitutional arguments or the burden of proof argument on the merits but ignored these argument by simply asserting: "With regard to Defendant's instant application seeking yet again to vacate the Gag Order, Defendant does not present any new facts or arguments." Emphasis by court.

195. Judge Katz also sanctioned Malhan \$1000 for comments about the case Malhan posted to Facebook in December 2019.

196. In January 2020 the court per Judge Katz also placed additional restrictions on the speech and association of Malhan including and Order:

Precluding Defendant from contacting high schools that the parties' son, [initials]., is applying to

197. A few days later, on or about January 30, 2020 the family court issued an even more restrictive restraint on Malhan that stated:

Defendant, or anyone on his behalf, is hereby precluded and enjoined from contacting, corresponding with, and/or communicating with any private high school in New Jersey and/or any of their agents or employees. This includes contact, correspondence, and/or communication with respect to [son], and whether he has applied to or

been accepted by a particular high school.

4. Any violation of this Order in the next fifteen (15) days will result in sanctions in the amount of \$10,000 for the first violation, and an additional \$10,000 for each subsequent violation (e.g., first violation: \$10,000; second violation: \$20,000; third violation: \$30,000).

198. Ten days later on February 11, 2020, the above gag order was made permanent.

199. This gag order was apparently supposedly to keep Malhan from finding out where his son was attending school but Malhan found out through mutual acquaintances that his son would be attending DelBarton high school.

200. The above order was interlocutory and therefore presumably intended to be temporary, but as discussed below, this restriction was made permanent in 2022.

201. In July 2020 Malhan (Malhan alone, neither Petri nor Volpe) filed a suit in federal Court arguing that the latest round of Gag Orders entered in early 2020 were unconstitutional ab initio--Malhan v. Katz, 2:20-cv-8955.

202. Malhan filed a new suit rather than amend the instant case because in the Summer of 2020 the instant case was before the Third Circuit where Malhan and Argen were appealing denial of the preliminary injunction. Argen v. Katz, 821 F. App'x 104 (3d Cir. Sept 15 2020).

203. The New Jersey Attorney General in the name of Judge Katz filed a motion to dismiss 2:20-cv-8955.

204. The District Court summarily dismissed 2:20-cv-8955 in a short order dated October 21, 2020.

205. The reasoning and doctrine behind the dismissal of Malhan's case was not entirely clear but the court Order stated:

WHEREAS Section 1983 precludes the imposition of injunctive relief against “a judicial officer for an act or omission taken in such officer’s judicial capacity ... unless a declaratory decree was violated or

declaratory relief was unavailable.” 42 U.S.C. § 1983. ... Here, no declaratory decree was violated, although declaratory relief is available. Therefore, Plaintiff’s claims against Judge Katz must be dismissed

206. The above reasoning was rejected by the Third Circuit in the instant case in its decision issued August 18, 2022 which affirmed that state judges can be sued for Declaratory Relief for Gag Orders they have implemented.

207. The district court's October 2020 Order further contained the following footnote 3:

<sup>3</sup> Plaintiff specifically seeks relief from orders prohibiting him from discussing his divorce or child custody proceedings in the media or online, (see D.E. 2-1 at 2-22), or communicating with Delbarton High School where his son currently attends school, (see D.E. 2-1 at 2, D.E. 1 Ex. 4, 5). As to the former, this Court has previously denied the relief Plaintiff seeks in decisions issued in *Argen v. Katz*, Civ. No. 18-963 on September 28, 2018 (D.E. 26), May 10, 2019 (D.E. 37), and January 28, 2020 (D.E. 68), decisions which were affirmed by the Third Circuit on September 15, 2020, (see Civ. No. 18-963 D.E. 77).

208. While the Third Circuit affirmed the denial of injunctive relief the Third Circuit ultimately reversed those decisions as to the availability of Declaratory Relief in a decision issued August 18, 2022.

209. In a one-sentence decision the Third Circuit affirmed the district court's October 2020 Order in 2:20-cv-8955 without comment. 859 F. App'x 838 (Mem).

210. The Third Circuit later held in a decision issued August 18, 2022 that as to Malhan that footnote three indicated that Malhan had in 2:20-cv-8955 already adjudicated whether the June 2015 Gag Order was unconstitutional ab initio and pendent lite and thus the 2:20-cv-8955 was res judicata as to some of the Gag Orders as to some of the Defendants.

211. Back in State Court, the final, permanent Gag Order as to Malhan was not entered until February 2022 so the October 2020 dismissal could not apply to the



2022 Order making the 2015 Gag Order permanent.

212. The final, permanent Gag Order as to Malhan that he not have any contact with any private New Jersey high schools was entered in February 2022 so the October 2020 dismissal could not apply to the 2022 Order making the Delbarton Gag Order permanent.

213. The state family court trial finally began in August 2019 and dragged on for three years.

214. In December 2020 Judge Bottinelli replaced Judge Katz as trial judge.

215. No direct evidence with regard to the Gag Order was presented at trial.

216. The Gag Order was barely discussed, however, Myronova called as an expert witness Paul Dasher who among other things offered an opinion on how publicity had affected the Malhan children.

217. Specifically Dasher testified that in 2019 when he completed his report he had not seen any ill effect on the Malhan children from publicity:

THE COURT: Well, let's go to the first question first. Has anything happened [to the children as a result of publicity]?

THE WITNESS: You're asking me, Your Honor?

THE COURT: Yeah.

THE WITNESS: Um, well, I was asked, I think, as I read that I was asked to consider any -- any -- any publicity that would affect the children and I felt, as I recalled at the time, that I -- that I didn't see any adverse impact at that -- at that point in time back in 2019 but I think I -- I said as the children mature and peer relationships become more important, if this -- if this kind of information is out there on the internet for people to see, then -- then it could have an adverse impact on the children. But I -- I didn't see that it had had an inverse -- an adverse impact at that time.

Tr. 4/20/2021 130:6-21

218. Dasher was then asked hypothetically could publicity be a problem in the future despite the fact that it not a problem in the past:

THE COURT: Uh, so now, Doctor, with regard to information that may [emphasis added] come to the children's knowledge, was there any risk of harm to the children by them being, uh, exposed to, if they were to encounter that -- that information, is there any risk of harm to them?

THE WITNESS: Uh, I don't think, um, on an individual basis. I think -- I think if -- I think they would be embarrassed if it -- if it were -- were -- if it came to the attention of their peers, if people -- people brought it to their attention.

I think in that context it would be harmful, um, but I don't -- I don't -- I think they're familiar enough with the kinds of problems that have existed, uh, in this situation ov-- over the years and I don't -- I don't think that, you know, reading anything on their own would be problematic per se.

And I -- and I don't -- I didn't -- I didn't get the impression that they were actively seeking that information on line.

219. Dr. Dasher was then asked about specific posts that Malhan had made over the years (many of which were ruled by the family court to be a violation of the Gag Order); Dr. Dasher specifically was asked how he thought the children would react if they were to read these post (which they in fact had never read) and Dasher opined:

THE WITNESS: Um, well, again, Your Honor, I -- I, um, I think the children would, if they saw that, they would probably think well, that's just my father being my father, uh, uh, and I -- and I think they would kind of just dismiss that information on line.

Tr. 134:17-21

220. The only "harm" that Dr. Dasher posited might take place was that IF some of the children's peers saw information on line, and IF those peers realized the discussion was about the children's parents, and IF the peers asked the children about the case then the children MIGHT be embarrassed.

221. At the end of the trial, Malhan, through counsel, asked the court for

clarification of the "gag Order" because other than the testimony of Dr. Dasher discussed above, Myronova had not even attempted to present any evidence of any harm caused by publicity or the need for any other type of Gag Order:

MR. CLARK: They have no witnesses on the gag order? I know we had -- they had their so-called expert.

THE COURT: The gag order -- the gag order is I have no idea because my understanding is that that was part of a Federal case. I don't if that's -- that's stare decisis or not. I don't know whether they have ruled or not ruled. You said there was an allegation of deprivation of Federal constitutional rights. I -- I don't know. It hasn't been broofed (sic) -- and briefed and is not part of this case as of this point.

[Myronova Counsel]: Yes.

...

THE COURT: The case was dismissed.

MR. CLARK: I don't think the Federal Courts --

THE COURT: So you want to re-litigate something that was dismissed.

222. The reason that the Gag Order had not been briefed was that the trial court had not allowed any briefing on the issue in pre-trial briefing.

223. The trial court then concluded:

THE COURT: You know what? I think that you should make a formal motion with regard to this, because I'm not doing it. It is -- I don't intend to address those issues. When we met originally I limited it to certain issues. ... We've heard testimony on the cause of action, we've heard testimony on custody and parenting time, we have had testimony with regard to spousal support, child support is -- there has been some testimony with regard to child support, whether or not under Appendix 9 there's going to be anything additional that needs to be addressed.

Transcript November 16, 2021 at 245:9-248:21

224. The full relevant part of the trial transcript is attached as Exhibit 3.

225. The above selection shows that the trial court did not take any evidence on

the Gag Order.

226. The trial court required Malhan to file a motion to vacate the Gag Order which he did.

227. Malhan then filed yet another motion again pointing out that the burden is on the party seeking a Gag Order to show the need for one and that Myronova had never shown the need for one either at trial or prior to trial.

228. Malhan's 2021 motion to vacate various Gag Orders pointed out:

[G]ag orders are presumptively unconstitutional because they are content based. In re Murphy-Brown, LLC, 907 F.3d 788, 797 (4th Cir. 2018) (citing Nat'l Inst. of Family and Life Advocates v. Becerra, — U.S. —, 138 S.Ct. 2361, 2371, 201 L.Ed.2d 835 (2018) (presumption against content-based restraints). ...

The party seeking a Gag Order bears the burden of proving it should be entered. The proponent of any gag order or prior restraint on speech “carries a heavy burden of showing justification for the imposition of such a restraint.” Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 558 (1976).

229. These legal points were totally ignored by the family court order.

230. Malhan's 2021 motion brief also pointed out that there had been a great deal of publicity about the case, and Malhan had posted many comments about his legal problems going all the way back to 2012, but Myronova's expert Dr. Dasher had testified that there had been no harm to the children as a result.

231. Malhan's motion to vacate was again denied without any sort of evidentiary hearing on the Gag Order.

232. Once again the trial court put the burden of proof on Malhan to disprove the need for a Gag Order.

233. The decision on the Gag Order was a mere two-and-a-half pages and failed to address any constitutional issues or discuss any alternatives.

234. A full copy of the two-and-a-half page decision is attached as Exhibit 2.

235. The family court opinion began as follows:

After years of discovery and an extraordinary number of Court proceedings, oral, non-routine, substantive Motions made during trial without advance notice to the other side were [sic] likely denied if the moving party did not demonstrate “exceptional circumstances” or present other legitimate reason to grant relief under R. 1:1-2. Around the 93rd day of trial defendant orally moved to vacate what he called the “Gag Order” previously entered by the Superior Court in 2015. There are Orders which limit defendant’s publication about the children, custody, interference with educational institutions, etc. in place and noted as well in Federal filings. There was no notice of the motion to the plaintiff or the Court, no brief submitted, no affidavits and little explanation of what issues the defendant labeled as a “Gag Order” that he sought to address. ... He did not present any testimony from any expert to address the issue of impact on the children by postings on social media.

236. As can be seen from the above, the family court did not require the proponent of the Gag Order to justify it, or the entry of a permanent restraint, rather the court put the burden on Malhan and even applied an “exceptional circumstances” test.

237. The trial court went on to assert:

That Order broadly prohibited the parties from discussing any aspect of their experiences during child custody proceedings. The intent of the Order is clear, the Judge sought to protect the children from being the subject of public discussions concerning the custody battle going in between their mother and father. The rationale behind this Order is clearly to protect the privacy of the children. Similarly, it is common for Courts to adopt fictitious names in Opinions to achieve this goal. See: R. 1:38 addressing Public Access to Court Records. Defendant presented no evidence to refute the prior determination that the rights of the children are paramount to the minor limitations which could impact on defendant’s First Amendment rights. He presented no evidence on how the Order has impacted his rights other than that his violations have resulted in sanctions. The Court has weighed the best interests of the parties’ children against the defendant’s First Amendment rights and his desire to

publish information about the children in relation to the custody and parenting time litigation against his First Amendment rights. Overall, the Court finds that this rather limited interference with the defendant's rights pales in comparison to the lifelong scars that could be suffered by the children should the restriction be lifted. His Motion is Denied.

238. As can be seen from the above the court cited no evidence justifying the Gag Order as no evidence was taken.

239. As can be seen from the above the court again wrongly placed the burden on Malhan to positively refute the need for a Gag Order as the trial court wrote "Defendant presented no evidence to refute the prior determination."

240. As can be seen from the above the court engaged in no weighing of rights took place.

241. As can be seen from the above the court did not consider any less severe restrictions.

242. As can be seen from the above the court made all restrictions on Malhan permanent without any explanation of the need for a permanent restriction.

243. Malhan is forever barred from ever having any contact with any private high school in New Jersey or any employee of any private high school.

244. As of the filing of this Complaint it appears that Malhan's son no longer attends DelBarton or any other school in New Jersey.

245. Upon information and belief Mahan's son now resides in Florida.

246. In violation of the Judgment of Divorce Malhan's ex-wife Myronova relocated Malhan's children without even telling him.

247. As to the prohibition of Malhan having contact with the schools the final "judgement of Divorce" (on appeal as of the filing of this amended complaint, states: "the prohibition of defendant [Malhan] having contact with the schools attended by the children will continue."

248. While the above paragraph only explicitly references " the prohibition of defendant [Malhan] having contact with the schools attended by the children", that would "continue" the prior order that appears to "continue" prohibited Malhan, "from contacting, corresponding with, and/or communicating with **any** private high school in New Jersey and/or **any** of their agents or employees."

249. The Opinion accompanying the Order referenced in the paragraph above on page 147 of the opinion specifically quotes the language of the 2020 Order that Malhan is precluded from contacting **any private high school in New Jersey**.

250. An interlocutory order normally does not survive final judgement unless it is incorporated into the final judgment, but here the terms of the 2020 Order appear to have so incorporated--Malhan runs the risk of having the Order so interpreted.

251. All of the Gag Orders and restraints in the past have been expansively interpreted so for purposes of this suit, Plaintiffs' assume that Malhan and anyone on his behalf (including co-plaintiffs here) are enjoined from communicating with any private high school anywhere in New Jersey.

252. Moreover, the family court again interpreted the Gag Order as expansively as possible, stating in the Opinion: "That [2015 Gag] Order broadly prohibited the parties from discussing **any aspect of their experiences** during child custody proceedings."

253. At no time from the first Gag Order in 2014 to the final judgment in 2022 did any family court ever require any proponent of any gag order to present any evidence or expert testimony to justify any gag order, but consistently put the burden on Malhan to disprove the Gag Order.

254. In 2022, Malhan sought a stay of the enforcement of the Gag Order from the Appellate Division that was denied.

255. As of February 1, 2023 the Malhan family court case is still on appeal.

256. To this day there are hundreds of documents available on-line to anyone who

wishes to access them describing Malhan's legal situation, custody issues and what Malhan calls his "scam marriage to a lady from Ukraine".

257. Documents discussing custody include more than two dozen legal decisions from this court and the Third Circuit (available on PACER and other web sites.

258. Malhan's related successful appeal to the Third Circuit in *Malhan v. Secretary U.S. Dep't of State*, 938 F.3d 453, 456 (3d Cir. 2019) has also received widespread attention, and has been widely cited as an important precedent. See, e.g., <http://ca3blog.com/cases/new-opinion-rooker-feldman-again/>

259. There is at least one YouTube video discussing Malhan legal battles over custody and child support entitled "FATHER FILED LAWSUIT & WON. You Can Defeat Child Support in Federal And State Courts. HOORAY" found at <[www.youtube.com/watch?v=bWXjjxUfgW4&t=10s](http://www.youtube.com/watch?v=bWXjjxUfgW4&t=10s)>

260. The YouTube video referenced above had 62,734 views as of October 2022 and had 95 comments.

261. Malhan himself would like to comment on this video about him but is prohibited from doing so by the Gag Orders.

262. The case *Malhan v. Secretary U.S. Dep't of State*, 938 F.3d 453, 456 (3d Cir. 2019) has become an important precedent and had been cited by over 100 other court decisions often describing the details about Malhan's custody battle.

263. Documents discussing custody include more than a dozen legal briefs by Malhan and the various defendants from briefings to this court and the Third Circuit (available on PACER and many other free web sites.

264. There are hundreds of other websites that discuss Malhan's legal campaign and aspect of his "custody" battle including such prominent websites as the American bar association.

[www.abajournal.com/news/article/dads\\_sue\\_new\\_jersey\\_family\\_court\\_judges\\_claim\\_best\\_interest\\_of\\_the\\_child\\_st](http://www.abajournal.com/news/article/dads_sue_new_jersey_family_court_judges_claim_best_interest_of_the_child_st)



265. Other websites discussing aspects of Malhan's case that he himself is not allowed to post can be found at, to cite just a few sites:

<https://lawdiva.wordpress.com/tag/surender-malhan/>

[www.commdiginews.com/life/family-judge-lisa-gorcyca-issues-gag-orders-and-jail-time-57804/](http://www.commdiginews.com/life/family-judge-lisa-gorcyca-issues-gag-orders-and-jail-time-57804/)

<https://nationalparentsorganization.org/blog/22109-federal-judge-quashes-gag-order-by-new-jersey-family-court>

[www.pressreader.com/usa/the-trentonian-trenton-nj/20150115/281552289244702](http://www.pressreader.com/usa/the-trentonian-trenton-nj/20150115/281552289244702)

<https://prawfsblawg.blogs.com/prawfsblawg/2019/09/minding-the-attention-gaps.html>

<http://blog.amjudges.org/?m=201503>

<http://blog.angry-dad.com/2015/01/nj-family-court-gag-order.html>

266. Malhan's case, repeating details of his "custody situation" have even been discussed in law review articles: Hasan, Noor-ul-ain, Jurisdictional Boomerang: How the Uniform Child Custody Jurisdiction and Enforcement Act Amplifies Hardship for Domestic Violence Survivors (February 10, 2020). GONZAGA LAW REVIEW, Vol. 56.

267. Malhan's case is also discussed in Bradford Higdon, "The Rooker Feldman Doctrine: the case for putting it to Work not to Rest,": U. Cin. L. Rev, (2021).

268. The fact that details of Malhan's decade plus long legal battle are widely available on the internet negates any possible basis for a Gag Order to avoid "publicity."

269. The Gag Orders in this case have actually attracted attention to Malhan.

270. Despite over a decade of publicity in this case, partially described above, it was undisputed in the state court that there has never been any harm to Malhan's

children (insofar as that might be advanced as an excuse).

### **Judge David Katz Interview January 2023**

271. On or about December 9, 2022 Maryann Petri received a phone call from Chrisie Yabu on behalf of Judge Katz.

272. Chrisie Yabu is apparently some sort of assistant to Judge Katz but her exact role and position is unclear.

273. Yabu told Petri that Judge Katz would like to be interviewed by Petri on her podcast “Slam the Gavel.”

274. Petri arranged for Judge Katz to appear for an interview on January 11, 2023.

275. Judge Katz subsequently appeared for an interview that lasted 58 minutes.

276. Although Judge Katz did not explicitly mention Surrender Malhan by name, Judge Katz’s comments about how the family court system works, and claims about the fairness and integrity of Judge Katz himself and the family court system in general explicitly contradicted the comments that Malhan had posted about Judge Katz.

277. Judge Katz sanctioned Malhan thousands of dollars for the comments Malhan made about Judge Katz—comments that Judge Katz on “Slam the Gavel” contradicted.

278. Petri and Malhan wish to timely respond to Defendant Judge Katz’s comments about family courts.

### **COUNT ONE**

#### **DECLARATORY AND INJUNCTIVE RELIEF THAT THE GAG ORDER WAS VOID AB INITIO (PLAINTIFFS PETRI & VOLPE)**

279. All above paragraphs are incorporated herein as if restated.

280. Upon information and belief, imposition of gag orders in family matters

(sometimes based on alleged "best interest" sometimes not) is common in New Jersey. *Borra v. Borra*, 333 N.J. Super. 607, 614, 756 A.2d 647, 651 (Ch. Div. 2000) (ruling that "when presented with a choice between parent's rights and children's rights, children's welfare and best interests will always be paramount"); Kelly Kanavy, The State and the "psycho Ex-Wife": Parents' Rights, Children's Interests, and the First Amendment, 161 U. Pa. L. Rev. 1081, 1083-84 (2013) ("These types of [gag] orders, however, are actually quite common in family court proceedings.")

281. Despite being common Gag Orders nonetheless are an exception rather than the rule, that is, the large majority of divorce cases do not have a gag order, even to try to protect DCPD information.

282. With respect to Malhan's case Judge Kessler issued the Gag order in a summary proceeding without any evidentiary hearing despite his own acknowledgement that Judge Martini had ruled that such a plenary hearing was necessary.

283. Federal Courts to address this issue have routinely held such gag orders in family court to be unconstitutional. See also *Nichols v. Sivilli*, 2:14-3821 (WJM), 2016 WL 3388296, at \*4 (D.N.J. June 14, 2016) (involving three separate Gag Orders) and authorities cited therein.

284. State appellate courts also have repeatedly invalidated similar gag orders in family court. *In re T.T.*, 779 N.W.2d 602, 612 (Ne. App. 2009); *State Ex Rel. LM*, 37 P.3d 1188 (Utah App. 2001); *In re K.D.*, 929 N.E.2d 863 (Ind. App. 2010); *In Re Marriage of Newell*, 192 P.3d 529, 538 (Colo. App. 2008).

285. Plaintiffs Petri and Volpe wish to interview Mr. Malhan on camera about his suit but is unable to do so by reason of the Gag Orders issued by the Court.

286. The Gag Orders prohibit Plaintiffs from interviewing Malhan about a story of incredible public interest.

287. Mr. Malhan wants to talk about the **threat to family, parents and children in America.**

288. Mr. Malhan wants to talk about the **threat to our freedoms and to our constitution.**

289. Indeed, the previous suit by Paul Nichols received widespread attention, such as on the popular legal blog, The Volokh Conspiracy.

<[www.washingtonpost.com/news/volokh-conspiracy/wp/2014/12/30/first-amendment-challenge-to-broad-gag-order-on-family-court-litigants/?utm\\_term=.319d53b1e192](http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/12/30/first-amendment-challenge-to-broad-gag-order-on-family-court-litigants/?utm_term=.319d53b1e192)>.

290. Although the Kessler Gag Order does not absolutely prohibit Malhan from speaking to the press, the restriction that Malhan not mention "any custody information" makes it impossible as a practical matter to perform a full and proper interview.

291. In fact, the primary issue that Malhan will want to discuss in an interview is his "loss" of custody, whether temporary or not.

292. Moreover, although in theory Malhan could talk about the Gag Order itself, he could not even speak meaningfully about that because he cannot explain the background and why he thinks the Gag Order is unconstitutional.

293. Third Parties subject to the effects of a gag order have standing to challenge such orders. *FOCUS v. Allegheny Cnty. Court of Common Pleas*, 75 F.3d 834, 836 (3d Cir. 1996).

294. Plaintiffs Petri and Volpe (and other members of the press) are substantially impaired in their ability to cover a story of public interest that could affect tens of thousands of parents and their children.

295. Declaratory relief alone appears to be inadequate to remedy the constitutional violations at issue here. Indeed, Judge Martini's decision was the effective equivalent of a declaratory Judgment yet Judge Kessler failed to comply with the

federal court's December 2014 ruling that a Gag Order could; only be entered after more extensive proceedings.

296. Indeed, even after acknowledging on the record that a plenary hearing was required, and even after scheduling a hearing at which no evidence was presented, Judge Kessler simply entered the June 2015 Gag Order "in the teeth" of this Court's December 2014 Order. *Nichols v. Sivilli*, CIV. 2:14-3821 WJM, 2014 WL 7332020 (D.N.J. Dec. 19, 2014)

### **Relief**

WHEREFORE, Plaintiffs respectfully request that the Court:

a. Under the Declaratory Judgment Act, declare that the gag orders are unconstitutional under the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution, and are therefore invalid and unenforceable;

b. Preliminarily and permanently enjoin Defendants, including DCPD and those persons in concert or participation with them from taking any actions to enforce the gag orders.

c. Award Plaintiff reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. Award Plaintiff other and further relief as the Court deems just and proper.

### **COUNT TWO**

#### **DECLARATORY AND INJUNCTIVE RELIEF THAT THE PERMANANT GAG ORDER ENTERED IN FEBRUARY 2022 IS UNCONSTITUTIONAL RESTRAINT ON SPEECH (ALL PLAINTIFFS)**

297. All above paragraphs are incorporated herein as if restated.

298. Content based prior restrictions on speech are subject to strict scrutiny and must be narrowly tailored to a compelling state interest.

299. Permanent Gag Orders by definition are not narrowly tailored because such permanent orders continue long after circumstances that gave rise to the Order have ceased. *Butterworth v. Smith*, 494 U.S. 624, 632 (1990).

300. Regardless of the legality of the Gag Order entered in 2015, the entry of a permanent Gag Order in 2022 was not narrowly tailored and therefore unconstitutional.

### **Relief**

WHEREFORE, Plaintiffs respectfully request that the Court:

a. Under the Declaratory Judgment Act, declare that the gag orders are unconstitutional under the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution, and are therefore invalid and unenforceable;

b. Preliminarily and permanently enjoin Defendants including Judge Katz or his successors and those persons in concert or participation with them from taking any actions to enforce the gag orders.

c. Award Plaintiff reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. Award Plaintiff other and further relief as the Court deems just and proper.

### **COUNT THREE**

DECLARATORY AND INJUNCTIVE RELIEF THAT THE STATE OF NEW JERSEY DENIED PLAINTIFFS DUE PROCESS BY MAKING TEMPORARY INJUNCTION PERMANANT WIHTOUT REQUIRING THE PROPONENT OF A GAG ORDER TO PRESENT ANY EVIDENCE AT TRIAL

301. All above paragraphs are incorporated herein as if restated.

302. Even if a Gag Order is initially justified the Gag Order will become

unconstitutional if the circumstances advanced as a justification for the Gag Order change.

303. To obtain a preliminary injunction the proponents must make a “showing of the likelihood of ultimate success on the merits.” *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) (emphasis added)

304. The typical preliminary injunction is generally seeks only to maintain the status quo pending a trial on the merits. *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 583 (3d Cir. 2002); *Tom Doherty Associates, Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34 (2d Cir. 1995).

305. Even when a litigant obtains a preliminary injunction the party still must present evidence at trial to justify the entry of a permanent injunction. *Alexander v. Primerica Holdings, Inc.*, 811 F. Supp. 1025, 1037–38 (D.N.J. 1993). See also *Kraft Foods Group Brands LLC v. Cracker Barrel Old Country Store, Inc.*, 735 F.3d 735, 740 (7th Cir. 2013) (holding that a plaintiff is only entitled to a preliminary injunction when “the plaintiff has a strong likelihood of prevailing in the full trial.”)

306. In Malhan’s case, Judge Kessler sua sponte issued a Gag Order in June 2015 purportedly to protect DCPD information and without any evidence or burden on anyone.

307. Judge Kessler’s Gag Order was defended on the basis that it was only temporary.

308. When there finally was trial of the case the Gag Order was treated as absolute and Malhan was required to show extraordinary circumstances to have it vacated.

309. Treating the 2015 Gag Order as unassailable and making it permanent without the need for the proponent to submit evidence was an egregious denial of due process.

310. This issuance of a permanent injunction against Malhan violated this Court's directions to Judge Sivilli and her successors in Nichols v. Sivilli, CIV. 2:14-3821 WJM, 2014 WL 7332020, at \*6 (D.N.J. Dec. 19, 2014).

### **Relief**

WHEREFORE, Plaintiffs respectfully request that the Court:

a. Under the Declaratory Judgment Act, declare that placing any burden on the subject of a gag orders at an FRO hearing is unconstitutional under the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution, and are therefore invalid and unenforceable;

b. Preliminarily and permanently enjoin Judge Katz or his successors and those persons in concert or participation with them from taking any actions to enforce the gag orders.

c. Award Plaintiff reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. Award Plaintiff other and further relief as the Court deems just and proper.

### **COUNT FOUR**

DECLARATORY AND INJUNCTIVE RELIEF THAT THE STATE OF NEW JERSEY MAY NOT RESTRAIN MALHAN PERMANENTLY FROM HAVING ANY CONTACT WITH ANY EMPLOYEE OR AGENT OF ANY PRIVATE HIGH SCHOOL IN NEW JERSEY

311. All above paragraphs are incorporated herein as if restated.

312. Even if a restraint is initially justified the Gag Order will become unconstitutional if the circumstances advanced as a justification for the Gag Order.

313. In February 2023 the State of New Jersey by and through Judge Bottinelli



made permanent an order that Malhan “or anyone on his behalf, is hereby precluded and enjoined from contacting, corresponding with, and/or communicating with any private high school in New Jersey and/or any of their agents or employees.”

314. Malhan’s son was relocated to Florida without Malhan’s knowledge in violation of the family court judgment of divorce, but for the rest of Malhan’s life he is precluded “from contacting, corresponding with, and/or communicating with any private high school in New Jersey and/or any of their agents or employees.”

315. This requirement is overbroad and unconstitutional.

316. This restraint is a violation of Malhan’s constitutional rights to freedom of association and speech and is another form of a Gag Order.

### **Relief**

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Under the Declaratory Judgment Act, declare that the gag orders respecting speaking to agents of private high schools are unconstitutional under the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution, and are therefore invalid and unenforceable;
- b. Preliminarily and permanently enjoin Defendants including Judge Katz or his successors and those persons in concert or participation with them from taking any actions to enforce the gag orders.
- c. Award Plaintiff reasonable costs and attorneys’ fees pursuant to 42 U.S.C. § 1988; and
- d. Award Plaintiff other and further relief as the Court deems just and proper.

### **COUNT FIVE**

DECLARATORY AND INJUNCTIVE RELIEF AND DISGORGEMENT OF

\$5,072 ILLEGALLY SIEZED FROM MALHAN'S FEDERAL TAX REFUND  
IN VIOLATION OF FEDERAL LAW.

317. All above paragraphs are incorporated herein as if restated.

318. On or about July 17, 2022 the State of New Jersey seized a federal tax refund of \$5,072 for Malhan despite Malhan being current with all court ordered payments.

319. In August 2022 Malhan sent Probation a formal objection to the seizure of his \$5,072 federal tax refund asking Probation to administratively review the seizure because it was illegal under federal law.

320. As of February 1, 2023 Probation has not responded at all to Malhan's request for administrative review.

321. Frustrated by Probation's failure to respond to the request for administrative review, in November 2022 Malhan filed suit against Probation in New Jersey Superior court seeking, inter alia, Disgorgement of the \$5,072 federal tax refund.

322. New Jersey superior court judge Mary Costello sua sponte dismissed Malhan's complaint against Probation WITH PREJUDICE before Probation was even required to Answer the Complaint.

323. Malhan filed a motion for reconsideration in state court and Judge Mary Costello in December 2022 changed the dismissal of Malhan's suit against Probation to a dismissal WITHOUT PREJUDICE.

324. Malhan is not required to exhaust administrative remedies or state remedies before filing suit in federal court, but nonetheless he has sought remedy in state agencies and courts but has been rebuffed.

325. U.S. Code Title 42, Section 664(a) establishes a program to collect past-due support from federal tax refunds and requires the Secretary of the Treasury, upon being notified by a state "that a named individual owes past-due support which has been assigned to such State," to determine whether the individual is due an income

tax refund and, if so, to “withhold from such refunds an amount equal to the past-due support.”

326. U.S. Code Title 42, Section 664(a)(3)(D) requires a State to return to the taxpayer any seizure “in excess of the amount actually owed”:

In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

327. The term “past-due support” is defined in subparagraph (c) of the statute, which states:

“[T]he term ‘past-due support’ means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.”

328. As applied to a debt or claim, “delinquent” means simply “due and unpaid at the time appointed by law or fixed by contract; as, a delinquent tax.” Black's Law Dictionary (5 Ed.1979), at 385.

329. Thus, a delinquency is created by a default in performance, not merely by the existence of an outstanding debt.

330. The leading case on whether states can seize funds to pay child support when there is an arrearage, but the parent is current with all court ordered installments to repay the arrearage is *Gladysz v. King*, 103 Ohio App. 3d 1 (Ohio App. 1995) that held:

An arrearage for purposes of Ohio Adm. Code Chapter 5101:1–30, therefore, is the amount of a delinquency resulting from the failure of an

obligor to pay an amount when it is due according to the terms of a child support order, not simply the amount of a child support debt outstanding.

Id. at 4–5.

331. The court went on to hold:

Here, defendant-appellee King was found to be indebted to the Department of Human Services for the expenses of the mother's pregnancy and confinement and, pursuant to R.C. 3111.13(C) he was ordered to pay one-half that amount. He has not extinguished that debt, but he is not delinquent because he is not in default of the payment obligation fixed by the court. As there is no delinquency resulting from a failure to pay, there is no past-due child support contemplated by R.C. 5101.32. CSEA may not seek to collect monies under the federal program from any federal income tax refund payable to King.

Id. at 7 (emphasis original).

332. The court further reasoned that any other interpretation would be unworkable and counter-productive:

Limitation of this method of recoupment to delinquencies is necessary if the system is to operate with any sense of order. The amount of any child support obligation and the terms of its payment are determined by the courts. If the court finds an arrearage, the court may order terms for its payment, as well. These may include payroll withholding or similar measures provided by statute. If child support agencies are permitted to go around the court's orders to seize the obligor's assets, regardless of his compliance with the court's orders, the system could be thrown into chaos. That is not what the federal program provides for.

333. If the court has ordered (as is the situation in Malhan's case) that a debtor is to repay \$1000 a week towards the total debt the child support agency has no authority to decide that he needs to pay more.

334. This situation is no different than if a bank wanted to foreclose on a mortgage for which the debtor has made all scheduled payments.

335. Moreover, this reasoning has been adopted by every court to have considered the issue, including New Jersey courts.

336. In *Cameron v. Cameron*, 440 N.J.Super. 158, 162 (Chancery Div. 2014) the court came to the same conclusion that collection procedures should not be used against a debtor who owes arrears but is current with his court ordered payment on those arrears.

337. The *Cameron* court explained:

[T]he court established plaintiff's new child support obligation to defendant in the amount of \$86 per week, retroactive to the original motion filing date of July 18, 2014, and payable through the Ocean County probation department.

The period between the July 18 filing date and the November 17 conclusion of the litigation totaled 122 days, or 17.43 weeks. As a result of the retroactive nature of the new child support order, plaintiff owed defendant \$1499 in technical arrears (\$86 per week x 17.43 weeks), and was directed to repay such arrears at an additional \$14 per week on top of her ongoing, \$86 per week prospective child support obligation, for a total child support obligation of \$100 per week.

*Id.* at 162.

338. The basic holding was expressed thus:

[T]he court holds that the statute applies in cases where a parent fails to honor an existing child support order, but does not equitably apply in situations where an obligor suddenly owes arrears as the result of a retroactively imposed or increased support order.”

*Id.* at 161.

339. The court also offered compelling reasons for this ruling, explaining:

The legislative statement reveals that the purpose of the statute was to address the problem of delinquent obligors. There is nothing in the history which reflects that the Legislature intended for the consequences of this statute to also apply to a non-delinquent obligor, who technically owes money only as the result of a retroactively imposed order, but who has never missed a payment or otherwise violated the order itself. In fact, there is no compelling evidence that the Legislature considered this technical circumstance, much less explicitly intended to treat and categorize a technical obligor as a “delinquent” payor, subject to the same legal consequences as an obligor who defiantly fails to honor an established and existing order.

340. As the Court went on to explain:

[T]he court notes that “owing support” and being “delinquent on support” are not always one and the same. A debtor may owe money without being delinquent. In our credit-driven society, people constantly owe balances on one outstanding invoice or another without such bills being considered “delinquent” for legal purposes. It is only when payments are missed or late beyond certain pre-determined and established due dates and deadlines that the term “delinquency” begins to apply.

Black's Law Dictionary defines “delinquent” as “failing to perform an obligation.” Black's Law Dictionary (p. 520) (10th ed. 2014). In the realm of child support orders, one cannot be “delinquent” in meeting an identified and quantified court-ordered obligation before the order even exists. Yet, due to the nature of a retroactively imposed obligation, it is possible that one can owe child support arrears, even in excess of \$1000, without having ever missed a court-ordered payment.

*Id.* at 165-66.

341. Just as in the *Cameron* case, Malhan owes money as a result of the retroactive changes and such, but he has not missed a court ordered payment.

342. Enforcement mechanisms such as jail, loss of license or passport, seizure of tax refunds and liens on property should only be available for debtors who are delinquent on their court ordered payments.

343. Every court in the United States to have addressed the issue has concluded that tax refunds cannot be seized from an obligor who is not delinquent on payments ordered by the court. *Laub v. Zaslavsky*, 369 Pa. Super. 84 (Pa. Super. 1987); *Davis v. N. Carolina Dept. of Human Resources, Div. of Soc. Services, Child Support Enf't Sec.*, 349 N.C. 208, 210–11 (1998); *In re R.C.T.*, 294 S.W.3d 238, 244-45 (Tex. App. 2009); *Department of Revenue, Child Support Enforcement ex rel. Harper v. Cessford*, 100 So.3d 1199, 1204 (Fla. App. 2012); ; *Fei Xu v. Dept. of Revenue ex rel. Ning Zhang*, 128

So. 3d 891, 892 (Fla. 4th Dist. App. 2013); Kenck v. State, Child Support Enf't Div., 373 Mont. 168, 176 (2013).

344. Even under New Jersey law, Malhan does not have any “past due” amounts.

345. NEW JERSEY STAT. § 2A:17-56.41 provides:

If the child support arrearage equals or exceeds the amount of child support payable for six months ... and all appropriate enforcement methods to collect the child support arrearage have been exhausted, the Probation Division shall send a written notice to the obligor, by certified and regular mail, return receipt requested, at the obligor's last-known address or place of business or employment, advising the obligor that the obligor's license may be revoked or suspended ... If a child support- related warrant for the obligor exists, the professional, occupational, recreational or sporting license revocation or suspension shall be terminated if the obligor pays the full amount of the child support arrearage[.]

Emphasis added.

346. N.J.A.C. 10:110-1A.1 defines arrearage:

"Arrearage" means the amount of unpaid support that is past due under a court order or an administrative order from a jurisdiction, for support of a child or of a child and the custodial parent.

Emphasis added.

347. Pursuant to both federal law and N.J.A.C. 10:110-1A.1 Malhan does not have any past due support or “arrearage” as defined in the code.

348. On February 25, 2022 the family court issued a judgment of divorce.

349. As of the filing of this Complaint, Malhan is appealing the Judgment of Divorce.

350. The judgment of divorce Ordered Malhan to pay child support of \$675 per week.

351. The family court also ordered Malhan to pay \$2 million in counsel fees that were then converted to “child support.”

352. The Court also retroactively increased spousal support from \$1000 per

month, pendente lite, to \$4,714 per month which resulted in a further spousal support debt of \$252,054.

353. In addition to the \$252,054 from the retroactive increase in Spousal Support, the judgment of divorce also failed to credit Malhan another \$62,000 Malhan paid in SPOUSAL SUPPORT between April 1 2011 and November 2012.

354. As of the date of the Child Support Order and Judgment of Divorce, February 25, 2022, Malhan actually had no arrearage at all, and the resulting \$2 million debt is entirely a result of retroactive modification of support and new orders to pay entirely new amounts, primarily \$2 million in counsel fees - classified/accounted as "child-support backlog".

355. The Child support order provides that effective February 25, 2022 Malhan is to pay \$675 per week in child support and \$1000 per week toward arrears.

356. Since February 25, 2022 Malhan has made every weekly payment of \$1675 on time or ahead of time—he has not missed nor been late with a single payment since the entry of the 2/25/22 Order.

357. Accordingly, Malhan owes no “past due” payments.

358. Pursuant to 42 USC 664(a)(3)(D) New Jersey Probation must to return to Malhan the \$5,072 seized “in excess of the amount actually owed.”

**WHEREFORE**, Malhan prays for relief as follow:

- A. Defendants must disgorge the \$5,072 illegally seized;
- B. Declaring that defendants may not either itself or by use of other governments or organizations seize Malhan’s federal tax refund so long as Malhan is not delinquent on court ordered payments;
- C. Preliminarily and permanently enjoining defendants from seizing Malhan’s federal tax refund so long as Malhan is not delinquent on court ordered payments



- D. Award counsel fees and costs;
- E. Any other actions the Court deems just and proper.

## **COUNT SIX**

### **DECLARATORY RELIEF AND DISGORGEMENT OF \$1,449 ILLEGALLY SIEZED FROM MALHAN’S FEDERAL TAX REFUND IN VIOLATION OF FEDERAL LAW.**

359. All above paragraphs are incorporated herein as if restated.

360. On or about June 2, 2022 New Jersey seized Malhan’s State tax refund of \$1,449 despite Malhan being current with all court ordered payments.

361. In August 2022 Malhan sent Probation a formal objection to the seizure of his \$1,449 state tax refund asking Probation to administratively review the seizure because it was illegal under federal law.

362. As of February 1, 2023 Probation has not responded at all to Malhan’s request for administrative review.

363. Frustrated by Probation’s failure to respond to the request for administrative review, in November 2022 Malhan filed suit against Probation in New Jersey Superior court seeking, inter alia, disgorgement of the \$1,449 tax refund.

364. New Jersey superior court judge Mary Costello sua sponte dismissed Malhan’s complaint against Probation **WITH PREJUDICE** before Probation was even required to **ANSWER** the Complaint but later changed the dismissal of Malhan’s suit against Probation to a dismissal **WITHOUT PREJUDICE**.

365. Malhan is not required to exhaust administrative remedies or state remedies before filing suit in federal court, but nonetheless he has sought remedy in state agencies and courts but has been rebuffed.

366. Subsection 666(a)(1)(3)(A) of the Child Support Enforcement Act provides that a state may collect state tax refunds when child support is “overdue”:

any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent; (B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

367. For the same reasons discussed above, Malhan is current with all scheduled child support payments and is not “past due” with any payment as defined by both federal and state law.

368. Because Malhan was not past due with any payment, Malhan’s state tax refund should not have been seized.

369. Malhan remains at risk of future state tax refunds being seized which makes Declaratory relief appropriate.

**WHEREFORE**, Malhan prays for relief as follow:

- A. Defendants must disgorge the \$1,449 illegally seized;
- B. pre-judgment and post judgment interest;
- C. Declaring that defendants may not either itself or by use of other governments or organizations seize Malhan’s state tax refund so long as Malhan is not delinquent on court ordered payments;
- D. Counsel fees and costs of suit;
- E. Any other actions the Court deems just and proper.

## **COUNT SEVEN**

**DECLARATORY AND INJUNCTIVE RELIEF AND DISGORGEMENT OF  
\$124,000 NOT CREDITTED TO MALHAN.**

370. All above paragraphs are incorporated herein as if restated.

371. Between February 2011 and November 2012 Malhan paid \$62,000 in spousal support and another \$62,000 in child support—a total of \$124,000.

372. Between 2011 and 2021 this \$124,000 was not disputed.

373. In October 2021 New Jersey Child Support Enforcement conducted an audit of Malhan that inexplicably failed to credit him the \$124,000 Malhan had paid between February 2011 and November 2012.

374. Malhan pointed this error out to the trial court and provided proof of the \$124,000 that was not credited, however, the trial court accepted the New Jersey Child Support Enforcement audit as unassailable.

375. As a result New Jersey claims that Malhan owes an additional \$124,000 in arrearage that he actually has already paid.

376. In August 2022 Malhan pointed this out to Probation and asked Probation to administratively review the record and correct the error, but Probation failed to even respond to Malhan.

377. Frustrated by Probation's failure to respond to the request for administrative review, in November 2022 Malhan filed suit against Probation in New Jersey Superior court seeking, inter alia, proper credit for the \$124,000 not credited.

378. New Jersey superior court judge Mary Costello sua sponte dismissed Malhan's complaint against Probation WITH PREJUDICE before Probation was even required to ANSWER the Complaint, but later changed the dismissal of Malhan's suit against Probation to a dismissal WITHOUT PREJUDICE.

379. Malhan is not required to exhaust administrative remedies or state remedies before filing suit in federal court, but nonetheless he has sought remedy in state agencies and courts but has been rebuffed.

380. By taking Malhan's money and then failing to give him credit and demanding that he pay it again upon threat of imprisonment and further by failing to provide

him any meaningful opportunity to prove that he has paid the debt, the State has denied Malhan property under color of law without due process.

381. Malhan faces other sanction for alleged debt of this \$124,000 including loss of passport and loss of future tax refunds for a debt he does not owe.

382. Moreover, Defendants have also violated the federal Child Support Enforcement Act which authorizes State to take various enforcement actions “only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information.” Subsection 666(a)

383. By Probation refusing to even respond to Malhan’s attempt to contest the accuracy of the 2021 accounting, and further, by the State Court sua sponte dismissing Malhan’s suit against Probation (at first with prejudice), Defendants have violated Malhan’s federally guaranteed right to “to contest the accuracy of” the alleged debt.

**WHEREFORE**, Malhan prays for relief as follow:

- A. Defendants must disgorge the \$124,000 that Malhan paid for child support but which has not been credited, or in the alternative credit this \$124,000 towards any theoretical child or spousal support;
- B. Pre-judgment and post judgment interest;
- C. Granting Declaratory Judgment that defendants may not refuse to credit \$124,000 paid by Malhan for child support paid in 2011 and 2012;
- D. Granting Declaratory Judgment that defendants must give Malhan a reasonable opportunity to contest the accuracy of the alleged child support arrearage;
- E. Enjoining further violation of the Child Support Enforcement Act by failing to allow a reasonable opportunity to contest the accuracy of the alleged child support arrearage

F. Any other actions the Court deems just and proper.

## **COUNT EIGHT**

### **DECLARATORY AND INJUNCTIVE RELIEF AND DISGORGEMENT OF \$15,907.16 TAKEN FROM MALHAN**

384. All above paragraphs are incorporated herein as if restated.

385. In July 2018 New Jersey levied Malhan's bank account and seized \$15,907.16 supposedly for overdue child support.

386. Despite seizing \$15,907.16 from Malhan's bank account until December 2020, when Malhan filed suit in federal court against Probation to get his money back, New Jersey denied it had even taken the money.

387. In or around January 2021 in answering Malhan's Complaint Probation admitted that it had seized \$15,907.16 from Malhan's bank account.

388. Despite admitting in or around January 2021 that it had seized \$15,907.16 from Malhan's bank, Probation refused to give Malhan any credit.

389. The federal district court dismissed Malhan's suit against Probation with respect to the \$15,907.16 on procedural grounds but that suit is currently on appeal before the Third Circuit.

390. In October 2021 New Jersey Child Support Enforcement conducted an audit of Malhan that listed \$15,907.16 as "on hold" but New Jersey again refused to either return this money to Malhan or credit it towards child support.

391. On February 25, 2022 the family court issued a judgment of divorce that relied upon Probation Audit and treated that audit as unassailable.

392. In August 2022 Malhan pointed this out to Probation and asked Probation to administratively review the record and correct the error, but Probation failed to even respond to Malhan.

393. Frustrated by Probation's failure to respond to the request for administrative review, in November 2022 Malhan filed suit against Probation in New Jersey Superior court seeking, inter alia, proper credit for the \$15,907.16 not credited.

394. New Jersey superior court judge Mary Costello sua sponte dismissed Malhan's complaint against Probation before Probation was even required to ANSWER the Complaint.

395. By taking Malhan's money and then failing to give him credit and demanding that he pay it again upon threat of imprisonment and further by failing to provide him any meaningful opportunity to prove that he has paid the debt, the State has denied Malhan property under color of law without due process.

396. Malhan faces other sanction for alleged debt of this \$15,907.16 including loss of passport and loss of future tax refunds for a debt he does not owe.

397. As of the filing of this Complaint, Malhan's passport has been suspended.

398. Moreover, Defendants have also violated the federal Child Support Enforcement Act which authorizes State to take various enforcement actions "only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information." Subsection 666(a)

399. By Probation refusing to even respond to Malhan's attempt to contest the accuracy of the 2021 accounting, and further, by the State Court sua sponte dismissing Malhan's suit against Probation (at first with prejudice), Defendants have violated Malhan's federally guaranteed right to "to contest the accuracy of" the alleged debt.

400. The original seizure of the \$15,907.16 in 2018 has never been adjudicated on the merits, but regardless, the failure to account for the \$15,907.16 in 2021 and the refusal to even respond to Malhan's request for review in 2022 constitutes a new cause of action.

401. The refusal to return the \$15,907.16 is well known to defendants from the Attorney General down.

**WHEREFORE**, Malhan prays for relief as follow:

- A. Defendants must disgorge the \$15,907.16 seized by the State in 2018, or in the alternative credit this money towards any theoretical child or spousal support;
- B. Granting Declaratory Judgment that defendants may not refuse to credit \$15,907.16 seized by the State.
- C. Pre-judgment and post judgment interest;
- D. Granting Declaratory Judgment that defendants must give Malhan a reasonable opportunity to contest the accuracy of the alleged child support arrearage;
- E. Enjoining further violation of the Child Support Enforcement Act by failing to allow a reasonable opportunity to contest the accuracy of the alleged child support arrearage;
- F. Granting Counsel Fees and Costs;
- G. Any other actions the Court deems just and proper.

## **COUNT NINE**

### **DECLARATORY AND INJUNCTIVE RELIEF THAT NEW JERSEY MAY NOT SIEZE PROPERTY, PLACE A LIEN ON PROPERTY OR TAKE ANY OTHER ADVERSE ACTIONS AGAINST DEBTOR WHO IS NOT DELINQUENT ON COURT ORDERED CHILD SUPPORT PAYMENTS**

402. All above paragraphs are incorporated herein as if restated.

403. The Child support order provides that effective February 25, 2022 Malhan is to pay \$675 per week in child support and \$1000 per week toward arrears.

404. Since February 25, 2022 Malhan has made every weekly payment of \$1675 on time or ahead of time—he has not missed nor been late with a single payment since the entry of the 2/25/22 Order.

405. Despite Malhan being current with all court ordered payments, the State of New Jersey put a lien on several properties owned by Malhan.

406. Or about July 12, 2022 the State of New Jersey seized \$48,372.07 from the Sale of a Property despite Malhan being current with all court ordered payments.

407. In early August 2022, Malhan notified Probation that he objected to the seizure of \$48,372.07 seized from the Sale of a Property and objected to the \$6521.00 tax refund, and further asked Probation to administratively review these actions as they were illegal under state and federal law.

408. As of the filing of this complaint, New Jersey has placed a lien on all of Malhan's properties and is proceeding to seize any money obtained by him from sale of property.

409. Malhan is not delinquent with any court ordered payments.

410. The leading case on whether states can seize funds to pay child support when there is an arrearage, but the parent is current with all court ordered installments to repay the arrearage is -- Gladysz v. King, 103 Ohio App. 3d 1, 4-5 (Ohio App. 1995) that people who owe a theoretical arrearage but who are current with their payments, be given the opportunity to lead a normal life:

Limitation of this method of recoupment to delinquencies is necessary if the system is to operate with any sense of order. The amount of any child support obligation and the terms of its payment are determined by the courts. If the court finds an arrearage, the court may order terms for its payment, as well. These may include payroll withholding or similar measures provided by statute. If child support agencies are permitted to go around the court's orders to seize the obligor's assets, regardless of his compliance with the court's orders, the system could be thrown into chaos. That is not what the federal program provides for.

411. Accordingly, Defendants should not be permitted to seize funds from sale of property so long as Malhan has no overdue payments.



**WHEREFORE**, Malhan prays for relief in the form of declaratory judgment and injunctive relief as follow:

- A. Declaring that the state may not levy Malhan's property or proceeds from the sale of property and enjoining Defendants from taking any further liens on the basis of an alleged support obligation so long as Malhan is not delinquent on court ordered payments;
- B. Pre-judgment and post judgment interest;
- C. Granting Counsel Fees and Costs;
- D. Any other actions the Court deems just and proper.

### **COUNT TEN**

#### **DECLARATORY RELIEF THAT UNDER THE FEDERAL CHILD SUPPORT ENFORCEMENT ACT COUNSEL FEES MAY NOT BE CONVERTED TO CHILD SUPPORT UNLESS DIRECTLY RELATED TO COLLECTION OF CHILD SUPPORT**

412. All above paragraphs are incorporated herein as if restated.

413. The State of New Jersey in the Judgment of Divorce awarded Myronova approximately \$2 million in counsel fees, including every minute of counsel time for the entire trial.

414. The Judgment of Divorce then converted this \$2 million to child support including every minute of counsel time for trial without any discussion of whether some or any of the time was related to child support.

415. Most of the trial had nothing to do with child support.

416. Notably, although no attempt was made at trial to justify the Gag Orders, significant time was spent trying to show that Malhan had violated the Gag Order.

417. For example, on May 25, 2021, Myronova played a several minutes long video that Malhan had posted to FaceBook in August 2020 which in the trial

transcripts runs from 18:9 to 21:6. The video message began:

Hello, [Son] [Daughter], this is daddy. How are you doing? [Daughter], it's your birthday. Happy birthday, my dear. You're 11 years old. Oh, my goodness. You're 11 years old. I remember the day 11 years back when you were born, how I held you in my arms, how happy I felt, how wonderful it felt, how nice it was. Eleven years have passed. Three years back they took your daddy away from you brutally and we were able to see each other maybe an hour or two, uh, once in a month, twice in a month. The past eight months you haven't -- you have not seen me at all. I'm so sorry that Judge David Katz, Attorney General Gurbir Grewal, and Governor Phil Murphy, nobody can help you see your daddy. Even on your birthday they will not help you see even your daddy's photograph.

... I'm very sorry that everybody betrayed your trust and harmed you, abused you. I am so sorry. But please know there are good people out there. Do not lose faith in humanity. And, uh, no matter however people may be, how inhuman they may be, we have to be human. We have to be kind, compassionate, honest, and nice to everybody. Don't ever lose faith in humanity and, uh, if everybody has betrayed our faith, that's even more important that we need to be nice, we need to be human.

Some day you may bump into children of or grandchildren of Judge Katz or Gurbir Grewal or Governor Phil Murphy, you may bump into them themselves, hate the sin, not the sinner. Be nice to them. Forgive them. They don't have the strength, you know. They're in tremendous pressure from everybody around them to do what they -- to do the illegal act that they're doing. They just don't have the courage to stand up and protect children like you. I love you very much, my dear. ... Stay safe and daddy loves you very much, my dear. Daddy loves you very much. ... I love you very much, so see you some day soon, my dear. Love you, dear. Bye.

418. This video Myronova claimed violated the 2015 Gag Order.

419. The Court per Judge Bottinelli agreed and sanctioned Malhan another \$35,000 for allegedly violating the 2015 Gag Order.

420. The New Jersey court sanctioned Malhan \$2 million in counsel fees including the time to play this video and called it child support.

421. Child support debts are unique and result in imprisonment, loss of passport and cannot be discharged in bankruptcy.

422. The \$2 million was also entered out of animosity to Malhan and a bare desire to harm.

423. Throughout the trial both Judge Katz and Judge Bottinelli displayed open hostility to Malhan and his counsel.

424. No matter what, the \$2 million was awarded to Myronova as "legal fees", and NOT Child Support Backlog. Ordering that the State enter this in its accounting books as "Child Support Backlog" is gravely illegal, it is Criminal. No individual, no business is allowed to do such an accounting - to label "Apple" as "Orange".

425. "Child Support" is to support a child, not to support or pay "legal fees".

426. Accounting \$2 million awarded in legal fees as "Child Support Backlog", is not mere accounting misclassification. "Child Support Backlog" is very serious!  
This is like putting a noose around Malhan's neck for the rest of his life on Earth!

**WHEREFORE**, Malhan prays for relief in the form of declaratory judgment as follow:

- A. Declaring that the state may not convert counsel fees into child support unless there is a specific finding that the fees were incurred to collect child support;
- B. Declaring that the \$2 million counsel fee award is not child support;
- C. Granting Counsel Fees and Costs;
- D. Any other actions the Court deems just and proper.

## **COUNT ELEVEN**

**DECLARATORY RELIEF THAT MALHAN HAS A FIRST AMENDMENT  
RIGHT TO POST A SPECIFIC HAPPY BIRTHDAY VIDEO**

427. All above paragraphs are incorporated herein as if restated.

428. Malhan wishes to make a new video to post on the birthdays of his son and daughter every year stating:

Hello, [Son or Daughter], this is daddy. It's your birthday. Happy birthday, my dear. You're [ ] years old. Oh, my goodness. You're [ ] years old. I remember the day [ ] years back when you were born, how I held you in my arms, how happy I felt, how wonderful it felt, how nice it was. [ ] years have passed. [ ] years back they took your daddy away from you brutally. For few months we were able to see each other maybe an hour or two, once in a month, twice in a month.

The past [ ] years you have not seen me at all. I'm so sorry that Judge David Katz, Attorney General Matthew Platkin, and Governor Phil Murphy, nobody can help you see your daddy. Even on your birthday they will not help you see even your daddy's photograph.

I'm very sorry that everybody betrayed your trust and harmed you, abused you. I am so sorry. But please know there are good people out there. Do not lose faith in humanity. And, no matter however people may be, how inhuman they may be, we have to be human. We have to be kind, compassionate, honest, and nice to everybody. Don't ever lose faith in humanity and, if everybody has betrayed our faith, that's even more important that we need to be nice, we need to be human.

Some day you may bump into children of or grandchildren of Judge Katz or Matthew Platkin or Governor Phil Murphy, or you may bump into them themselves. Hate the sin, not the sinner. Be nice to them. Forgive them. They don't have the strength, you know. They're in tremendous pressure from everybody around them to do what they do -- to do the illegal, sinful inhuman acts that they're doing. They just don't have the courage to stand up and protect children like you.

The challenge I give you is this - think this way and resolve to do this - think what was done to you, and then resolve that you will not let anyone do this to the children and grandchildren of Governor Phil Murphy, Attorney General Matthew Platkin, ex-Attorney General Gurbir Grewal, Judge David B Katz, Judge Terri Bottinelli, Judge Donald J Kessler, etc.

I love you very much, my dear. ... Stay safe, stay strong and daddy loves you very much, my dear. Daddy loves you very much. ... I love you very much.

See you some day soon, my dear. Love you, dear. Bye.

**WHEREFORE**, Malhan prays for relief in the form of declaratory judgment as follow:

- A. Declaring that Malhan has a First Amendment right to post a video using this script on the birthdays of both his children;
- B. Granting Counsel Fees and Costs;
- C. Any other actions the Court deems just and proper.

Respectfully Submitted,

/s/ Paul A. Clark  
Paul A. Clark, Esquire (PC4900)  
10 Huron Ave, #1N  
Jersey City, NJ 07306

**VERIFICATION**

- 1. I am plaintiff in the above action and have personal knowledge of the facts asserted herein as they pertain to me.
- 2. The above complaint is true and accurate to the best of my knowledge.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

*SurenderMalhan*  
Surender Malhan