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ONEIDA COUNTY
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2021CV000073

**STATE OF
WISCONSIN**

**CIRCUIT
COURT**

**ONEIDA
COUNTY**

LAKELAND PRINTING CO., INC., and
GREGG WALKER,

Plaintiffs,

v.

KIRK BANGSTAD and
MINOCQUA BREWING COMPANY, LLC
(f/k/a Bangstad Brewing Company, LLC),

Defendants.

Case No.: 2021-CV-73

Case Code: 30106

Classification: Intentional Tort with
Money Judgment

**PLAINTIFFS’ BRIEF IN SUPPORT OF THEIR MOTION FOR CONTEMPT AGAINST
DEFENDANT KIRK BANGSTAD**

INTRODUCTION

Unsurprisingly, Kirk Bangstad has continued to make Facebook posts regarding this case, despite the Court’s order that prohibited him from posting about the trial. Over the course of the five-day jury trial, this Court made it clear that it was not going to tolerate Bangstad’s continued misconduct in and out of the courtroom. Because Bangstad has continued to violate the Court’s gag order, a remedial contempt order is warranted.

BACKGROUND

This matter was tried before a jury from October 23-27, 2023.¹ Bangstad got off to a rocky start, as he did not show up on the morning of the first day of trial, despite being under subpoena. He eventually appeared shortly before the lunch break, claiming illness and falsely asserting that the Court threatened to have him arrested if he did not appear. He was excused by the Court for the day, and was instructed that he was to produce a note from a physician as to why he could not appear at trial. He was also instructed to wear a mask when he returned.

¹ Because the trial transcript is not yet ready, the statements in the background section of this brief do not contain record citations.

On the morning of October 24, Bangstad arrived late and in the middle of Gregg Walker's testimony. Bangstad showed up without a physician's note and without a mask, in violation of the Court's instructions. This latter fact was ironic, given Bangstad's past funding of a lawsuit to forcibly mask schoolchildren. He subsequently blamed his non-appearance the previous day on a mystery illness that he never confirmed (aside from confidently telling the Court—without evidence or a negative test—that he did not have Covid).

During the morning of October 24, he made comments directed at Walker and a reporter for the *Lakeland Times*. The Court ordered Bangstad to stop making comments and to only speak with his attorney. Bangstad soon violated this order, as during a sidebar and with the jury present, he spoke directly to a paralegal with Plaintiff's counsel's firm, made mocking comments about Walker, disparaged undersigned counsel, and complained he might lose insurance coverage. The Court found Bangstad in summary contempt for misconduct and fined him \$250.00. The Court warned that if his misconduct continued, the sanctions would be more severe.

On October 25, Plaintiffs alerted the Court of a Facebook post made by Bangstad earlier that morning regarding the lawsuit and a comment Bangstad made on that post while he was in the courtroom.



Minocqua Brewing Company

October 25 at 7:23 AM · 🌐

...

Sorry you haven't heard from us for awhile.

We're defendants in a defamation trial held in, you guessed it, our home of Oneida County.

Who is suing us? Our local paper.

Why? Because for the first time in his adult life, someone stood up to the biggest bully in town, Lakeland Time's Gregg Walker, aka the BOSS HOGG of the Old Boys Network of Minocqua, AKA OBNOM.

The judge already held us in contempt of court for yep, standing up for ourselves, so its best we not say too much on this post.

It's probably hard for justice to be done in this case, given where we're being tried, and given that this suit wasn't dismissed already, but we're still hoping a jury of normal people sees the absurdity of this whole thing.

See you on the flip-side, probably next week, assuming this post doesn't land us in jail for yet another contempt of court order.



(Dkt. 338, Trial Ex. 165)

The Court informed Bangstad he was not allowed to have his phone in the courtroom and that he was not allowed to make any posts regarding the trial. The Court did not find Bangstad in contempt at that time. However, that afternoon, while Bangstad was testifying, the Court ordered the jury

out of the courtroom and cautioned Bangstad about his testimony and to stop adding additional commentary.

Testimony was completed on October 26. On the morning of the final day of trial on October 27, Bangstad appeared in court wearing a hooded sweatshirt and a ski cap. When asked by the Court to remove his ski cap, Bangstad demanded to know why it was necessary. When the Court instructed him that it was to show proper respect for the decorum of the Court, Bangstad asked the Court, rhetorically, “You believe you are entitled to respect after what has happened this week?” After Bangstad removed his cap, he disparagingly referred to the Court as “Michael,” a ham-fisted attempt to mock the Court by utilizing the first name of the wrong judge.

The matter was submitted to the jury on October 27. While the jury was deliberating, Bangstad was not in the courtroom. Rather, he was recording a Facebook live video, while driving away from Rhinelander, wherein he criticized the trial. (Fernholz Aff., ¶2.)



He indicated the even though the jury had not yet reached a verdict, he was going to appeal. (*Id.*)

In his video, Bangstad stated:

0:00

Ok folks...how you doin'? It's Kirk Bangstad here. Uh...you haven't seen me for a while because I've been in a defamation lawsuit for the last five days and uh...Holy cow!

Uh...I'm actually driving from it right now. (0:21) I'm driving south to Madison visiting some friends. I had to shake Oneida County off. I had to shake Oneida County off of me because for the first time in my life, **I feel like I experienced what it feels like when the justice system doesn't work.** (0:41) Anyways, I wanted to make a quick, uh quick broadcast, I am here. (0:46) **The Judge put a gag order on me and said I could not use Facebook throughout the course of the uh... I couldn't use Facebook throughout the course of the trial which is crazy** (0:59).

1:00

Uh... this trial is the Lakeland Times, is our local newspaper. I call it a "fishwrapper." The publisher, Gregg Walker is suing me for Defamation (1:10). He did sue me for defamation, so I had a five-day long defamation trial 'cause I called him a "Crook." I called him a "Misogynist," um... and a few other things (1:22) and uh... let me report that I don't think uh... I don't think the justice (audio breaking up) is working fully. (1:30) **We had a justice called uh... Judge "Michael Steitz" [sic] from Forest County. Forest County is a population of 8,000 people in it.** (1:39) **And the Judge uh...has probably never tried a defamation lawsuit in his life and it showed.** (1:46) The Judge deemed that Gregg Walker, the publisher of the Lakeland Times, who co-writes opinion pieces in the Lakeland Times was not a... (audio breaks up-1:59).

2:00

He's not a public figure and that set the whole trial off in a terrible way, because that means that the bar for actually finding me guilty for defamation was much lower than it should, should've been so... (2:13) We're gonna Appeal this case. **We haven't had the verdict yet, but I just wanted to say I'm back, uh... I'll be posting about this more on Sunday.** (2:22) **But what I can say to you right now is that this was a "Kangaroo Trial."** (2:28) I feel like I sound a little bit like Donald Trump. You don't take responsibility. I'm taking responsibility for my actions. (2:36) I called the guy a "Crook and a Misogynist" and a few other things but.... Oh my God! I feel like the process for this trial, the Judge would not let me explain the reasonings for my...uh... what I said. (2:55) He wouldn't let me talk to the jury uh...fully.

3:00

Um... he ruled against lots of evidentiary evidence that we tried to admit. He ruled against it so the jury couldn't see it. (3:07) The Judge overruled so many of our objections to what the uh... what the Attorney, Gregg Walker's Attorney was uh...trying, was trying to submit into evidence and was trying to say. (3:20) It was...**I've never been a part of such a one-sided Trial in all of my life. (3:26) So... regardless of the outcome, um... I don't have to be there for the verdict.** I'm getting out of Oneida County. I gotta take a shower after this lawsuit. (3:37) Uh... I'm gonna head to Madison where I can talk to some like-minded

people because this was uh... this was really painful for me to have to sit through a five-day long Trial. (3:48) **I had a gag order. I couldn't even be on Facebook during this trial.** Um... and I really am...uh... we will appeal this case, even if we win because...

4:00

the precedent in Wisconsin is not, shouldn't be that the publisher of a newspaper is not a public figure which lowers the bar. A newspaper shouldn't be able to sue a private individual for defamation for one. (4:14) It's the first time in the history of Wisconsin this has been done and uh... and there's a reason why newspapers don't sue for defamation. (4:22) Because if you, if you're a newspaper, and let's say the Koch Brothers don't like what they, what you have to say about them, uh... and the Koch Brothers sue you, the newspaper, like the New York Times for example, they sue the New York Times they didn't like what the New York Times had to say, and if they were allowed to win, then that means the New York Times would cease to exist. (4:45) Rich people just keep on suing newspapers. So... the fact that a newspaper sued me because they didn't like what I had to say about the publisher and the newspaper in general, is like...

5:00

the t... t... t... tail wagging the dog. It shows that they have no respect for criticism and no respect for actual conversation and uh... uh... and criticism and argument and debate. (5:15) So, uh... anyways, the newspaper sued me, first time in the history of Wisconsin this has been done and it was done in Oneida County with a Judge from Forest County, one of the smallest populated counties in Wisconsin and **I've never seen a Judge so one-sided.** (5:36) And the answer is that he had to be elected to be a Judge in Wisconsin and Forest County went sixty-five percent Trump and thirty-five percent Biden in the last election. In order to get elected as Judge in Forest County, you have to get the support of the Republican Party. (5:53) **I have to believe that this Judge because he was so one-sided in his decisions...**

6:00

which limited our ability to defend myself properly in front of the jury, made it a real terrible five days. (6:11) I felt like I was getting, I felt like we were playing a football game and the refs kept calling fouls [sic] every time we got the ball, the ref would call a foul [sic]. (6:23) So, we couldn't move the ball down the field. That's exactly what uh... I felt in the last five days. Uh... we don't know what's going to happen yet. **The verdict hasn't come out**, but we know we will appeal even if I win because precedent in Wisconsin has to tell other Judges in the future that... that publishers of newspapers are public figures and the bar to somehow uh... criticize them in a way that's too much. (6:55) It should be very high because they buy ink by the barrel. (6:59)

(7:00)

When you buy ink by the barrel, you can say whatever you want to. If... if... Gregg Walker didn't like what I said about him, he obviously could publish... he publishes twice a week. (7:09) He could publish a newspaper article twice a week for the next two years defending himself against my apparent terrible uh... (laughing) statements. I called him a "Crook and a Misogynist." (7:25) Obviously, he can write about that and defend himself. There should never be a defamation lawsuit from a newspaper to an individual. (7:31) **So... anyways, I've said enough about that but ... I... uh... just wanted to show you that I'm not in jail. (7:38) I was threatened, ... I was threat ... I was held in contempt of court already**

in this case cause I argued with the Judge too much. (7:46) I argued with the Judge cause I was like how could you be treating us this unfairly, and he put me in contempt of court. He charged me \$250 and he threatened to jail me if I kept on arguing with him. (7:59)

(8:00)

Which I almost said, I dare you to jail me for telling you that this is unfair. (8:07) Anyways, ... uh ... it's a ... folks ... I'll write more about this on Sunday, but I'm really ... uh ... I've never seen the justice system up close like this and I guess this probably happens to other people, but I thought Wisconsin was better. (8:24) I thought Northern Wisconsin was better- at least the Judges were better. **But ... uh ... from what I've seen today, the Judges are just as corrupt as the planning department, just as corrupt as the Town of Minocqua. (8:38) And I... I'm not saying this flippantly. Listen ... I I ... I live up there. I want things to be good up there, but uh ... uh ... it is not. (8:48) The Northern Wisconsin that I grew up in seemingly is more corrupted than it was when I grew up. (8:57)** So, anyways folks ... thanks a lot for listening. I'll write about this on Sunday.... uh ... who knows what the verdict will be ... but regardless ... I gotta take a shower. I gotta take a shower and wash off the unclean feeling I have from the justice system, the trial that I just went through... me being ... (recording cut off and stopped at 9:21)

(*Id.*)

On October 29, Bangstad made a post on the Minocqua Brewing Company's Facebook criticizing the verdict, the jury, and the judge. (Fernholz Aff., ¶3, Ex. 1.) Bangstad even went so far as to criticize his own witnesses, suggesting they either perjured themselves, or responded with "I don't remember" to avoid lying. (*Id.*) He stated:

The jury awarded publisher Gregg Walker, whose newspapers continue to amplify Trump's lies that undermine conservative voters' faith in our elections and institutions, over \$700K in damages.

You read that right, ~ \$700K.

The average annual income of someone living in Oneida County is \$36,898, meaning that statistically, this jury of 13 people awarded the equivalent of 20 years' worth of wages to the biggest bully and one of the wealthiest men in the county.

In other words, I lost spectacularly. No jury would do something like this unless they were angry. They wanted to punish me, and this was their way to do it.

I'm still processing what happened, but the overwhelming feeling I had throughout last week's trial was that of a caged animal being prodded and poked. The only thing I could do was parry, dodge, and weave—but I wasn't allowed to fight back.

I felt this because, from the very beginning, the judge in this case, Leon Stenz (please excuse me for not typing "his honor," because my fingers might fall off in protest), did everything in his power to hamstring my defense.

...

Judge Stenz is from Forest County, one of the least populated in the state with ~8K people. 65% of the people in Forest County voted for Donald Trump, which was one of the most lopsided victories in the state. Cripes, even the local newspaper is called “The Forest Republican.” One would assume that given these demographics, if you want to win an election to become a judge, you most likely need to help of the local Republican Party, assuming that there are any other lawyers in the county that are able to run against you.

...

Had the judge ruled that Walker was a public figure over two years ago, he would have been forced to dismiss this case. Instead, he allowed this lawsuit to move forward and I was forced into a jury trial comprised of people who live in a county where Trump won by almost 60% of the vote and where the only local newspaper one can buy is owned by the plaintiff who has collectively published a total of 68 hit pieces against me over the last three years.

The odds of me getting a favorable jury in this county weren’t good even if the judge had turned out to be fair.

Let’s just say that when I was on the witness stand, and I defended my claim that Walker was a “crook” because he repeatedly published lies that Trump won the presidential election in Wisconsin, I saw members of the jury look at me with anger in their eyes.

...

Apart from a seemingly partisan judge and jury, there was one more aspect of this trial that really hurt our defense.

Many of the people we asked to be witnesses in this case refused to help us, and I think the reason was because they knew that Gregg Walker, at least at the local level, has the ability to ruin reputations. He’s done that numerous times over the last few decades, which seemingly has had a chilling effect over most local progressives.

Additionally, some of the witnesses we did try to call, not necessarily friends of mine but long-time community members that ultimately told me the stories that I used to write some of my more sharper missives against Walker, inexplicably testified “I don’t remember” when being asked under oath if they indeed told me the stories that I ultimately repeated in writing that were later added as additional defamation claims in this lawsuit.

It's hard to perjure yourself with the words “I don’t remember,” because who can legally tell you you’re lying about your own memory?

It was like the whole town went silent when it came to any subject that might anger Gregg Walker.

...

We’re going to appeal to a higher court that’s not located in a county where every jurist who wants to read the local paper will eventually come across, on average about twice a month, an article that attacks me.

We're going to appeal to a higher court where a jury is not allowed to exact anger on the one person with a megaphone loud enough to remind them that their cult leader is a liar, and that he indeed lost the presidential election in Wisconsin, fair and square.

We're going to appeal to a higher court where the results of that judge's decision doesn't affect whether or not the Republican Party supports him in his next election, nor whether the paper in the neighboring county takes its revenge by endorsing his opponent.

We're going to appeal to a higher court where justice is blind, like it's supposed to be . . .

(*Id.*) Over the next couple of days Bangstad made several shorter posts that were critical of the “one-sided coverage” of the defamation law suit, the judgment, and some seemed to mock the verdict. (Fernholz Aff., ¶¶4-8, Ex. 2, Ex. 3, Ex. 4, Ex. 5.) On November 4, Bangstad posted a clip of him singing over a montage of headlines regarding the verdict. (Fernholz Aff., ¶8.)

Bangstad made another lengthy Facebook post on November 5 commenting on the lawsuit, which stated, in pertinent part:

In 1983, Huster magazine ran a full-page parody ad against televangelist and conservative political commentator Jerry Falwell Sr., depicting him as an incestuous drunk who had sex with his mother in an outhouse. The ad was marked as a parody that was “not to be taken seriously.”

In response, Falwell sued Hustler and the magazine's publisher Larry Flynt for intentional infliction of emotional distress, libel, and invasion of privacy, but Flynt defended the ad's publication as protected by the First Amendment.

In an 8-0 decision five years later, SCOTUS held that the emotional distress inflicted on Falwell by the ad was not a sufficient reason to deny the First Amendment protection to speech that is critical of public officials and public figures.

In that landmark decision, SCOTUS also referenced *New York Times vs. Sullivan*, another landmark decision that greatly limited the ability for public figures to sue for defamation.

Here is a quote from that decision:

“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. The freedom to speak one's mind is not only as aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole . . . The First Amendment envisions that the sort of robust political debate that takes place in a democracy will occasionally yield speech critical of public figures who are intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large . . . the “breathing space” that freedom of expression requires in order to flourish must tolerate occasional false statements, lest there be an intolerable chilling effect on speech that does have constitutional value.”

Lots to read there, but the gist is that if you're a public figure, you'd better have some thick skin because a healthy democracy yields a lot of public bickering, some of which can get pretty intense.

We lost a historic defamation case last week, and a jury in rural Oneida county awarded right-wing newspaper publisher Greg [sic] Walker \$750,000 in damages largely because of the parody I wrote entitled "Scene from a Mysogynist [sic] Publisher's Bedroom," in which I clearly told my audience that the story they were reading was a parody.

Additionally, in other pieces that weren't written as "parody," I always used the word "alleged" when repeating stories that I heard from others that I couldn't prove to be true, and I publicly retracted statements that were later proven to me to be false.

Given that the Minocqua Brewing Company is neither a magazine nor a newspaper—both of which should seemingly be held to higher journalistic standards than a brewery—how could Hustler and the New York Times have beaten their defamation lawsuits while we lost ours in spectacular fashion?

Because Judge Leon Stenz, on loan from neighboring and tiny Forest County, WI (Pop. ~8K), inexplicably ruled that the publisher of the only two local newspapers in Oneida county was NOT A PUBLIC FIGURE.

To add insult to injury, Stenz dismissed our countersuit against Gregg Walker, filed after he referred to me as "Bagdad Bangstad" and a "Jackbooted Liberal" in two out of the 68 hit pieces published against me and my company over the last 3 years, by ruling that I, the owner of a brewery and not a media company—WAS A PUBLIC FIGURE.

Stenz's decision was appalling, and it must be overturned on appeal—not only for my sake—but to make sure this never happens again. To let this decision stand is to invite every right MAGA bully in Wisconsin to sue progressive activists into oblivion, assuming they live in the "right" (pun intended) part of the state.

So what do we do now?

We appeal, of course, but the path forward on exactly how to do that was a bit murky when I wrote about this decision last week.

...

So that's the plan. I'm being told the road to appeal may last another year, and to hire additional lawyers outside of those hired by my insurance company will cost money.

If you think this decision was bad not only for me and the Minocqua Brewing Company, but also for free speech in Wisconsin, and want help make sure that legal precedent is rectified in this case, here's a link to chip in and help us fight back.

...

(Fernholz Aff., ¶9, Ex. 6.)

STANDARD FOR CONTEMPT

A circuit court has inherent and statutory power to sanction parties who fail to obey court orders. *In re Termination of Parental Rts. To Jayton S.*, 2001 WI 119, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. Under this authority, a circuit court may sanction a party who fails to comply with a court order. *Id.* The decision to sanction a party is within the sound discretion of the circuit court. *Id.*, ¶18; *see also Oostburg State Bank v. United Sav. & Loan Ass'n*, 130 Wis. 2d 4, 11, 386 N.W.2d 53 (1986). “An order or judgment which requires specific conduct . . . can be enforced by contempt. Neither the statute . . . nor case law requires that an order contain the specific term ‘enjoin’ or ‘injunction’ to allow the court to use contempt powers to enforce its orders.” *Carney v. CNH Health & Welfare Plan*, 2007 WI APP 205, ¶17, 305 Wis. 2d 443, 740 N.W.2d 625. Furthermore, a court’s contempt power “is not limited to instances of noncompliance with specific orders but has been used in many other situations in which judicial authority has been attacked or ignored,” such as intimidation of witnesses. *Id.*, ¶20 (quoting *In re Kading*, 74 Wis. 2d 405, 411, 246 N.W.2d 903 (1976)).

Contempt of court is defined as intentional: “(a) [m]isconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court; [or] (b) [d]isobedience, resistance or obstruction of the authority, process or order of a court.” Wis. Stat. § 785.01(1)(a), (b); *see also Ash Park, LLC v. Alexander & Bishop, Ltd.*, 2010 WI 44, ¶78, 324 Wis. 2d 703, 783 N.W.2d 294 (“[a] party’s unwillingness to obey a court order is the very definition of contempt.”).

There are two types of contempt procedures: “nonsummary” and “summary.” Wis. Stat. § 785.03(1). Section 785.03(1) controls the imposition of a nonsummary contempt sanction, and § 785.03(2) controls the imposition of a summary contempt sanction. Nonsummary procedure requires “a separate hearing or trial on the contempt charge.” *Gower v. Circuit Ct. for Marinette*

Cnty., 154 Wis. 2d 1, 9, 452 N.W.2d 354 (1990). A summary contempt procedure is used for addressing contempt that occurs “in the courtroom while court proceedings are taking place.” *Id.* at 12 (citing *Currie v. Schwalbach*, 139 Wis. 2d 544, 552-53 & n.4, 407 N.W.2d 862 (1987)). Furthermore, as set forth in § 785.03(1), the nonsummary procedures provides for either a remedial sanction or a punitive sanction. The summary procedure involves solely punitive sanctions. § 785.03(2).

A punitive sanction is “imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” Wis. Stat. § 785.01(2). “A court issuing a punitive sanction is not specifically concerned with the private interests of a litigant.” *Diane K.J. v. James L.J.*, 196 Wis. 2d 964, 969, 539 N.W.2d 703 (Ct. App. 1995). A punitive sanction under the nonsummary procedures requires that a district attorney, attorney general, or special prosecutor formally prosecute the matter by filing a complaint and following the procedures set out in the criminal code. Wis. Stat. § 785.03(1)(b).

A remedial sanction, on the other hand, is civil and is “imposed for the purpose of terminating a continuing contempt of court.” Wis. Stat. § 785.01(3). Remedial contempt is concerned with the private interests of the litigant and is “designed to force one party to accede to another’s demand.” *See State v. King*, 82 Wis. 2d 124, 130, 262 N.W.2d 80 (1978). A person aggrieved by another person’s contempt may file a motion for imposition of a remedial sanction for the contempt, and the court may impose an authorized sanction. Wis. Stat. 785.03(1)(a). Remedial sanctions may include imprisonment, forfeitures, and “[p]ayment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.” Wis. Stat. § 785.04(1)(a), (b), and (c). The sanction imposed must be purgeable through compliance with the original court order, or the court may establish an alternate purge condition that will purge the contempt if met. *See Benn v. Benn*, 230 Wis. 2d 301, 311, 602 N.W.2d 65 (Ct.

App. 1999). A court may also award attorney's fees incurred in pursuing a contempt of court action under § 785.04(1)(a). *Id.* at 315, 602 N.W.2d 65 (citing *Town of Seymour v. City of Eau Claire*, 112 Wis. 2d 313, 320, 332 N.W.2d 821 (Ct. App. 1983)). In a remedial contempt proceeding, the burden of proof is on the person against whom contempt is sought. *State v. Rose*, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992); *see also Balaam v. Balaam*, 52 Wis. 2d 20, 30, 187 N.W.2d 867 (1971).

ARGUMENT

I. BANGSTAD'S OCTOBER 27 FACEBOOK POST VIOLATED THE COURT'S ORDER PROHIBITING HIM FROM POSTING ABOUT THE TRIAL

On October 25, 2023, the Court clearly ordered that Bangstad was not allowed to post anything regarding the trial. While the jury was deliberating, Bangstad made a Facebook live post criticizing the trial and promising to provide more detail that upcoming Sunday. This is a direct violation of the Court's order. The Court did not specify an end date of the gag order, nor did it lift the gag order at the end of the trial. Because the Court did not lift the gag order and it still has to address any post-verdict motions, the order is in effect until the matter has concluded. Alternatively, even if the order was only in place during the course of the trial, as there was no verdict when Bangstad made his post, he was still expected to follow the Court's order and was not allowed to make any posts regarding the trial. The post constitutes a continuing contempt because the post is still viewable on the Minocqua Brewing Company's Facebook page, and the contempt will continue until the post has been removed.

II. BANGSTAD'S FACEBOOK POSTS FROM OCTOBER 29 THROUGH NOVEMBER 5 VIOLATED THE COURT'S ORDER PROHIBITING HIM FROM POSTING ABOUT THE TRIAL

Between October 29 and November 5, Bangstad made six additional Facebook posts regarding the trial. (Fernholz Aff., ¶¶3-9, Exs. 1-6.) Some of the posts, including the ones from October 29 and November 5, were critical of the trial as a whole, and included more direct

criticisms of the judge, the jury, and even some of the witnesses. (Fernholz Aff., ¶¶3, 9, Ex. 1, Ex. 6.) Other posts merely seemed to mock the verdict. (Fernholz Aff., ¶¶ 5, 7-8, Ex. 3, Ex. 5.)

As provided above, at the end of the trial the Court did not lift the gag order. As such, the gag order was still in effect after October 27 and will remain in effect until either the Court lifts the order or the matter concludes. Therefore, any posts made by Bangstad regarding the trial are each a violation of the Court's order. Each post constitutes an individual, continuing contempt as all are still available on the Minocqua Brewing Company's Facebook page and will all be continuing until each post has been removed.

Moreover, in his November 5 post seeking funds from his supporters, Bangstad erroneously asserts the jury's decision was based on a post he made about Walker's ex-wife. (Aff. of Fernholz, Ex. 6) However, that was not a part of the verdict. While that particular post was an exhibit in the trial, it was not the basis for any of the claims. In making that allegation, Bangstad continues to spread false information to the public, and he is using that as a basis in an attempt to raise money.

III. BANGSTAD'S COMMENTS IN HIS OCTOBER 29 POST CAN BE CONSTRUED AS WITNESS INTIMIDATION, WHICH ALSO FALLS UNDER THE COURT'S CONTEMPT POWER

Even if the Court determines the gag order was limited to the duration of the trial, Bangstad's post on October 29 still constitutes contempt because it included commentary on witnesses that suggested they either lied under oath, or responded with "I don't remember" to prevent perjuring themselves. (Fernholz Aff., ¶3, Ex. 1.)

It is well established that the underlying purpose of contempt is to uphold the authority and dignity of the court. *Carney*, 305 Wis. 2d 443, ¶20. However, Wisconsin courts have also recognized that the court's contempt power "is not limited to instances of noncompliance with specific orders but has been used in many other situations in which judicial authority has been attacked or ignored, e.g., unauthorized practice of law, intimidation of witnesses, [and an]

improper remark by attorney in court.” *Id.* (quoting *In re Kading*, 74 Wis. 2d 405, 411, 246 N.W.2d 903 (1976)). Both the United States and Wisconsin Supreme Court agree that courts have inherent authority to investigate claims that a party is engaging in fraudulent behavior or improperly influencing witnesses. *See O’Brien v. State*, 261 Wis. 570, 577, 53 N.W.2d 534 (1952) (“It was not only the right of the court, but its duty, to investigate allegations of that nature in the interest of protecting witnesses from intimidation and maintaining such order as would insure honest testimony in the case.”).

Bangstad has made it clear in his October 29 post that he was displeased with the performance of his witnesses. Specifically, he stated:

Additionally, some of the witnesses we did try to call, not necessarily friends of mine but long-time community members that ultimately told me the stories that I used to write some of my more sharper missives against Walker, inexplicably testified “I don’t remember” when being asked under oath if they indeed told me the stories that I ultimately repeated in writing that were later added as additional defamation claims in this lawsuit.

It's hard to perjure yourself with the words “I don’t remember,” because who can legally tell you you’re lying about your own memory?

(Fernholz Aff., ¶3, Ex. 1.) While his comments came after the witnesses testified, Bangstad has indicated he is not done litigating this case, whether that is by appeal or requesting a new trial. If this matter is tried again, those individuals would be called as witnesses again, and Bangstad’s comments can be viewed as an attempt to intimidate those witnesses to testify in his favor. As such, the Court should find Bangstad in contempt for his commentary on the testimony of witnesses.

CONCLUSION

For the foregoing reasons, the Court should find Bangstad in contempt of court and order remedial sanctions of \$2,000 per day, payable to Walker, from the date each count of contempt began until each count of contempt has been remedied. In addition, the Court should award Walker his attorney’s fees incurred in bringing this motion. *Benn*, 230 Wis. 2d at 315. Finally, the Court

should order that Bangstad remove all postings relating to the trial that were made after the gag order was issued.

Dated this 16th day of November, 2023.

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