In the SUPREME COURT OF ALABAMA

Ex Parte MYRON ALLENSTEIN, *et al.*,	)	
	)	
Petitioners,	)	
	)	SUP. CT. Case Nos.
Ex Parte JEFFREY WRIGHT, *et al.*,	)	1130537 and 1130538
	)	
Petitioners,	)	
	)	
Re:	)	
	)	
MYRON ALLENSTEIN, *et al.*,	)	Etowah Circuit
	)	Court Nos.
v.	)	CV-12-900784;
	)	CV-12-900782
A-1 EXTERMINATING COMPANY, INC., *et al.*	)	(CONSOLIDATED)
	)	
	)	Hon. William Rhea
JEFFREY WRIGHT, on behalf of himself and others similarly situated	)	
	)	
v.	)	
	)	
A-1 EXTERMINATING COMPANY, INC., *et al.*	)	

MOTION FOR A STAY PENDING APPEAL

ORAL ARGUMENT REQUESTED

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CONSTITUTION AND RULES

Pursuant to Rule 8(b) of the Alabama Rules of Appellate Procedure, petitioners ask the Court to issue a stay of four orders entered by the Circuit Court of Etowah County, Alabama (Hon. William H. Rhea, III) on January 7, January 22, February 21, and February 27, 2014, which restrained the constitutionally protected speech of Plaintiffs, their lawyers, and their lawyers' firm, and which is the subject of a petition for a writ of mandamus filed last month and an amended petition addressing the more recent orders. EXA25 at 294; EXA28 at 315; affidavit of Keiron McGowin.[1]

The principal order at issue, although styled as a "protective order," is in fact a prior restraint of unprecedented breadth, forbidding plaintiffs and their counsel from speaking publicly or even privately about defendants A-1 Exterminating *et al.* EXA24. The prior restraint was entered without any of the findings required both by Alabama Rule 65 and by the First Amendment, without any supporting evidence

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[1] Most of the citations in this motion are to exhibits filed in support of the initial petition for a writ of mandamus. Because the trial judge issued very slightly amended gag orders after the mandamus petition was filed, petitioners are submitting an amended mandamus petition, relying on the previously submitted volume of exhibits. McGowin affidavit supplements the original record with newly-entered trial court gag orders, entered after the original petition was filed and served. The new orders are exhibits 41 through 44 of the Amended Record. As in the petitions, the citation "EXA2 at 35" refers to Exhibit Number 2, at page 35.

apart from the fact that statements had been made, and without affording plaintiffs or their counsel the opportunity to offer evidence showing the impropriety of the restraint. Defendant offered three separate reasons for the restraint – that plaintiffs' statements were allegedly false and defamatory, that plaintiffs' counsel were advertising their services to potential new clients, and that further public statements could possibly prejudice the jury that might be selected to try the case. None of these reasons is sufficient to justify the order, which violates the strict First Amendment rule against prior restraints, and which should, therefore, be stayed pending review of the mandamus petition.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

Petitioners are more than one hundred citizens of Alabama as well as their attorneys, Thomas F. Campbell, D. Keiron McGowin, and their firm, Campbell Law PC, who have brought a mass action and a putative class action against respondents A-1 Exterminating, A-1 Insulating, Wrenn Enterprises, and other defendants (collectively identified here as "A-1") for promising but not providing effective termite treatment in breach of contract, violation of statutory standards, and other claims. EXA1 at 1 (*Allenstein* mass tort action); EXA4

at 81 (*Wright* class action). The two actions, which were consolidated before Etowah County Circuit Judge William H. Rhea, III (EXA10 at 158), both allege that A-1 Exterminating and related entities and individuals systematically provided substandard professional advice, prescriptions and prevention services relating to subterranean termite customers with renewable guarantees. EXA1, 4.

To investigate the claims, find witnesses, and inform other A-1 customers that they may have rights that can be vindicated in court, the Campbell firm has publicly described the litigation using social media sites such as Facebook, the firm's own web site, and communications with the media. EXA33(2) (Campbell Affidavit); 33(4) (McGowin Affidavit). The trial court has yet to establish a schedule for the litigation.

Defendant A-1 moved quickly to preempt plaintiffs' effort to investigate the case or, indeed, to communicate with other victims of A-1's alleged misconduct. EXA7. Based on a loose concatenation of arguments about defamation, solicitation of clients, and prejudicial pretrial publicity, A-1 filed a motion on March 5, 2013, asking the trial court to enjoin plaintiffs, and well as their lawyers, from making any

communications about the case or its "surrounding circumstances" except in court. EXA7 at 132. The motion contained several examples of the statements that A-1 hoped to enjoin, but provided no evidence of falsity, of advertising that went beyond the bounds protected by Rule 3.6 of the Alabama Rules of Professional Conduct and by the First Amendment, or of potential prejudice to a fair trial. *Id.* Over the ensuing several months, A-1 submitted several supplements to its motion for an injunction, supplying additional examples of speech that defendants deemed objectionable, but still providing no evidence to support its vague claims that any extrajudicial statements were false or misleading, or that they threatened the court's ability to guarantee a fair trial. EXA13, 15, 20, 23. Plaintiffs and their counsel repeatedly asked the trial court to schedule a hearing at which they could offer evidence and argument in defense of their First Amendment rights. However, no hearing was held. EXA2 and EXA5 (case action summaries); EXA33 at 432-433 (Campbell Affidavit ¶¶ 5 to 11).

Despite the lack of supporting evidence, and the lack of a hearing, the trial court entered a prior restraint in precisely the terms proposed by defendants. Compare EXA24

with EXA25, including the recitation of the fact that a hearing has been held even though no hearing **was** held. The January 7, 2014 order stated

> Plaintiffs and Plaintiffs' Counsel are . . . barred and enjoined from extrajudicial references to the circumstances of the . . . case. Plaintiffs' counsel shall remove all mention of the above-styled cases and the surrounding circumstances . . . from its website, Facebook page, social media . . . and related web search engines. Plaintiffs and Plaintiffs' counsel are otherwise ordered to refrain from referencing this case and/or its surrounding circumstances outside of court. *Id.*

The order imposed no limits on what defendants could say about the case or about the practices at issue in the litigation.

On January 13, 2014, contending that petitioners had taken insufficient steps to comply with the January 7 order, A-1 filed a motion to compel immediate compliance. EXA26. That motion was granted on January 22, 2014, again without any hearing. EXA28.

On February 5, plaintiffs and their counsel moved Judge Rhea to reconsider or at least narrow his order, and sought a stay of the order pending appellate review. EXA30, EXA32. Counsel also sought transcripts of prior court sessions from the trial court's in-house reporter, seeking to build an appellate record. EXA33 at 423-424; EXA40. After petitioners served their mandamus petition on Judge Rhea, he reissued the

gag order in precisely the same terms as previously ordered, with the caveat that counsel and their staff may "discuss [the] case with their respective clients, internally with persons working at any such law firm, with other attorneys involved in this case, including those attorneys staff, and/or with any expert witnesses." Exhibits 41-44. Although this change removed **some** of the constraints on counsel's litigation of the case, it left many such restraints in place, such as talking to actual or potential **non**-expert witnesses, to government regulators, and to contractors about the repair of their clients' homes. The reference to "their respective clients," *id.*, leaves unclear whether counsel or staff are able to talk to putative class members. Indeed, the proviso allows lawyers to talk to each other but would not allow the Campbell firm or even those of its clients who are A-1 customers to talk to A-1 about their houses. Judge Rhea re-issued this revised gag order on February 27, 2014.

Although Judge Rhea did not expressly rule on the motion for a stay pending appeal or to obtain transcripts, he set a hearing on all pending motions for April 24, 2014. As a practical matter, the trial judge is either denying a stay, or refusing to address the issue of stay in a timely manner.

ARGUMENT

THE "PROTECTIVE ORDER" SHOULD BE STAYED BECAUSE IT IS AN IMPERMISSIBLE PRIOR RESTRAINT THAT IS CAUSING IRREPARABLE INJURY TO PLAINTIFFS AND THEIR COUNSEL BY VIOLATING THEIR FIRST AMENDMENT RIGHTS WITHOUT ANY JUSTIFICATION IN THE RECORD, AND WITHOUT ANY SUPPORTING FINDINGS.

This Court's decision about a stay pending appeal depends on four factors: likelihood of success on appeal; irreparable injury to appellant if a stay is denied; whether issuance of the stay will substantially injure appellee; and the public interest. *Ruiz v. Estelle*, 650 F.2d 555, 565-566 (5th Cir. 1981), cited with approval in *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987). These factors are balanced: the appellant seeking the stay may **either** make a strong showing of likelihood of success on the merits, **or** show that the equitable factors militate in favor of a stay, and show that there is a substantial case on the merits. *Id.* In this case, all four elements strongly favor an appellate stay.

First, the fact that the orders under appeal are prior restraints is alone sufficient to support a finding of several irreparable injuries. The denial of First Amendment rights, even for a moment, constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), the Supreme Court held

that an injunction forbidding a community group from distributing leaflets criticizing a local real estate company was an impermissible prior restraint. And *Capital Cities Media v. Toole,* 463 U.S. 1303 (1983), granted a stay of state-court gag orders because "even a short-lived 'gag' order in a case of widespread concern to the community constitutes a substantial prior restraint and causes irreparable injury to First Amendment interests as long as it remains in effect [and] it appears that there is a significant possibility that this Court would grant plenary review and reverse the lower court's decision." *Id.* at 1304.

Moreover, while the one-sided gag order is in place, the public will be deprived of significant information about possible flaws in the services provided by defendants, to the public's detriment. Existing customers whose rights have been violated by defendants may be deprived of information about possible causes of action. Potential customers may be deceived by A-1's own communications about the issues in the litigation (which have not been restrained) into doing business with A-1, and may suffer harm as a result, because the marketplace of ideas has been deprived of plaintiffs' contributions. And plaintiffs' counsel are significantly

impeded in the representation of their current clients in the litigation, despite the modest proviso added to the gag order adopted in response to their motion for reconsideration.[2]

By contrast, no cognizable injury will be caused to appellees by granting the stay. Appellees chose to introduce no evidence that plaintiffs or their counsel made false statements, no evidence that false statements were hurting their business, and no evidence whatsoever that the statements posed the slightest risk to their ability to get a fair trial. Thus, the balance of hardships tips decidedly in favor of issuance of a stay.

Moreover, a judicial order that forbids speech in advance of its utterance, placing the speaker under pain of punishment for contempt without even the opportunity to show that his speech was proper, is a prior restraint, even if it is a permanent injunction entered after a full trial on the merits. *Alexander v. United States*, 509 U.S. 544, 550 (1993); *Doe v. Roe*, 638 So.2d 826, 827 (Ala. 1994). Prior restraints are

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[2]The attached affidavits of plaintiffs' counsel Campbell and of Trent Garmon show some of the ways in which the revised gag order continues to impede the efforts of plaintiffs' counsel to pursue this litigation on behalf of existing clients, and to advise A-1 customers and their lawyers about their rights even if those customers approach plaintiffs' counsel, rather than responding to advertisements.

forbidden by the First Amendment except in the most extreme circumstances. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). A prior restraint on pure speech can be justified only if the speech to be forbidden threatens a constitutional value even more precious than the First Amendment. *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996). Such countervailing values as national security interests, *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971), or the protection of reputation, *Organization for a Better Austin v. Keefe*, 402 U.S. at 418, or the protection of litigation against public pressure, *United States v. Columbia Broadcasting Sys.*, 497 F.2d 102 (5th Cir. 1974), or the need for orderly processing of class actions, *Bernard v. Gulf Oil Co.*, 619 F.2d 459, 474 (5th Cir. 1980) (*en banc*), *aff'd sub nom. Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981), have all been held to be insufficient justification for prior restraints.

Although the trial judge's failure to provide any explanation or issue any factual findings in support of his order impedes review, it can be said with assurance that not one of the three justifications that defendants advanced in favor of their proposed order is sufficient to justify the

order that was entered. The main reason given below in the motion for a protective order, and the supplemental filings, was that plaintiffs' counsel were supposedly making false and defamatory statements that could discourage potential customers from using A-1's services, potentially depriving it of profitable business. EXA7 at 132, 134; EXA15 at 211; EXA20 at 236-238; EXA23 at 255. But the Supreme Court of the United States has squarely held that a preliminary injunction to prevent defamation that impedes a business is an impermissible prior restraint. *Organization for a Better Austin*, 402 U.S. at 418. "No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court." *Id.* at 420. If defendants believe that they have a cause of action for defamation against plaintiffs' counsel, they could file an action for defamation and make the constitutionally required showings of falsity and actual malice. But their prior restraint should be reversed.

A second justification that pervaded A-1's motion papers in support of the order under review is the contention that plaintiffs' counsel were improperly advertising their

services. Even if this were a fair characterization of counsel's speech, that would not be a justification for the order. *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748, 758-770 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350, 383 (1977). The Supreme Court has specifically upheld lawyers' right to advertise in the mass media to tell consumers about their rights vis-á-vis particular defendants and products. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). Particular advertisements may be enjoined if they are deceptive or misleading, *Friedman v. Rogers*, 440 U.S. 1, 9 (1979), but A-1 presented no evidence below that the extra-judicial statements of counsel were in any way false or misleading.

The third reason given below for the issuance of a prior restraint was that counsel's communications could pollute the jury pool and make it impossible for A-1 to obtain a fair trial. But lawyers do not surrender their First Amendment rights at the courthouse door, even when they wish to speak about the litigation in which they are engaged. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1066 (1991); *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 249-253 (7th Cir. 1975). "[T]here must be an imminent, not merely a likely,

threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." *Bernard*, 619 F.2d at 474; *Columbia Broadcasting System*, 497 F.2d at 104. Moreover, in Alabama, before pretrial publicity will require a change of venue to avoid impact on the right to a fair trial, a party arguing that its fair trial rights have been affected by media coverage of litigation must show that those rights have been prejudiced by "community saturation" of publicity on the issue. *Perkins v. State*, 808 So.2d 1041, 1068-1069 (Ala. Crim. App. 1999), *vacated on other grounds*, Perkins v. Alabama, 536 U.S. 953 (2002), *on remand, Ex parte Perkins*, 851 So.2d 453 (Ala. 2002); *Coleman v. Kemp*, 778 F.2d 1487, 1490 (11th Cir. 1985). Meeting this burden requires admissible evidence presented at an actual hearing, and "[a] defendant bears an extremely heavy burden of proof under this standard." *Wilson v. State*, 777 So.2d 856, 924 (Ala. Crim. App. 1999).[3]

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[3] The supposedly prejudicial pretrial publicity, as presented by defendants' multiple filings, consisted of two 4x4 ads in the local paper, one TV news story (featuring A-1 and three competitors), and fourteen Facebook posts that collectively were "shared" by non-unique users world-wide 67 times, "commented" upon 74 times, and "liked" 128 times over a 15 month period prior to entry of the protective order. No data was submitted about the degree of exposure to residents of Etowah County.

Moreover, not only has no compelling need been shown for the prior restraint, the gag order entered below is infirm for two fundamental procedural reasons. First, when a prior restraint is sought against speech, the Supreme Court requires the trial court to take extra precautions to ensure that the party sought to be enjoined has received notice of the proceeding and a full opportunity to participate. *Carroll v. President & Commissioners of Princess Anne County*, 393 U.S. 175 (1968). "Certainly, the failure to invite participation of the party seeking to exercise First Amendment rights reduces the possibility of a narrowly drawn order, and substantially imperils the protection which the Amendment seeks to assure." *Id.* at 384. Second, both Rule 65 of the Alabama Rules of Civil Procedure and the First Amendment require that an injunction limiting speech be based on particularized findings and conclusions of law showing the abuses that have been found and the reasons why the relief issued is needed. *Bernard* , 619 F.2d at 477; *N.A A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982) (when court's judgment affects protected speech, First Amendment requires clear findings of actionable conduct); *Monte Sano Research Corp. v. Kratos Defense & Sec. Solutions*, 99 So.3d 855, 863

(Ala. 2012). Under *Butler v. Roome*, 907 So.2d 432, 434-435 (Ala. 2005), the trial court's failure to explain the reasons for the injunction as required by Rule 65(d)(2) of the Alabama Rules of Civil Procedure is alone a sufficient reason to overturn it.

The failure to hold a hearing or to build a record supporting the gag order was one of the reasons why a stay pending appeal was entered in *Capital Cities Media*, 463 U.S. at 1305, and equally supports a stay pending appeal here.

CONCLUSION

The motion for a stay pending appeal should be granted.

Respectfully submitted,

/s/ Paul Alan Levy
Paul Alan Levy (pro hac vice)
Adina Rosenbaum (pro hac vice)

/s/ Thomas Campbell
Thomas F. Campbell (CAM036)
D. Keiron McGowin (MCG058)

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March 3, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2014 a copy of the foregoing PETITION FOR WRIT OF MANDAMUS has been served on the following by through first-class mail, postage prepaid, and via electronic transmission to the email addresses on file with the Clerk of the Trial Court, below:

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Honorable William H Rhea III
Etowah County Courthouse
801 Forrest Ave., Ste. 305
Gadsden, Alabama 35901

Thomas F. Campbell

IN THE SUPREME COURT OF ALABAMA

Ex parte MYRON ALLENSTEIN, *et al.*,	)	
	)	
Petitioners;	)	**CASE NO.1130538**
	)	
Ex parte JEFFREY WRIGHT, *et al.*,	)	
	)	**CASE NO.1130537**
Petitioners,	)	
	)	
Re.:	)	
	)	
MYRON ALLENSTEIN, *et al.*,	)	
	)	
vs.	)	
	)	
A-1 EXTERMINATING COMPANY, INC., *et al.*;	)	
	)	
JEFFREY WRIGHT, on behalf of Himself and others similarly situated,	)	
	)	
vs.	)	
	)	
A-1 EXTERMINATING COMPANY, INC., *et al.*	)	

AFFIDAVIT OF D. KEIRON MCGOWIN SUPPLEMENTING RECORD IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

D. KEIRON MCGOWIN, being first duly sworn, deposes and says as follows:

1. I am an adult resident and native citizen of the State of Alabama, am over the age of nineteen, and

am one of the attorneys for Plaintiffs in the above-styled, consolidated actions. I have been continuously licensed to practice law before this Honorable Court, with such license being continuously held in good standing, since 1998. I have personal knowledge of the facts recited herein and am competent to so testify. I make this affidavit in support Plaintiffs' Petition for Writ of Mandamus, and for such other use and purpose as may be permitted by law.

2. Attached to my affidavit are four orders. Three of these orders of the trial court were received February 21, 2014, and one was received February 27, 2014: 1) 2/21/14 Amended Protective Order (amending 1/7/14 Protective Order - Petition EXA25), 2) 2/21/14 Order (granting Plaintiffs'/Petitioners' motion for leave to file 3rd Amended Complaint), 3) 2/21/14 Order (setting "all pending motions" and a scheduling conference for April 24, 2014), and 4) 2/27/14 Amended Protective Order. This latest order is identical in substance to the above-described 2/21/14 Amended Protective Order. It is, however, in a different font and is entered in the *Wright* class action case as

opposed to the 2/21 order which was entered only in the *Allenstein* mass action case.

3. These documents supplement the record for this Court to review on the Petition for Writ of Mandamus, Amended Petition, and Motion for Stay. These documents are true and correct copies of the on-line records of the Etowah Circuit Court in this matter obtained by my firm from alacourt.com. Each is so stamped in the top, right corner. Each copy I gathered from my law firm's internal electronic file storage system with which I am familiar and have access as a co-custodian. I have worked at my firm for almost eleven years and have become very familiar with our internal electronic file storage system and procedures. Whenever any document (pleading, motion, order, etc.) has been electronically filed in these consolidated cases *via* AlaFile, I, personally, as well as others in my firm have received exact PDF copies of each through AlaFile's email service system. I personally received each of the attached in such manner on February 21 and 27, 2014. Our firm's procedure and regular business practice is that each document so received is contemporaneously

saved into the firm's internal electronic file storage system in the corresponding case's folder. Each document so saved is an exact replica of the document received from AlaFile. It is part of our firm's regular business practice to keep and maintain these records indefinitely on our server. The documents attached hereto are exact copies of the records from our internal system obtained from AlaFile.

4. All versions of the attached Amended Protective Order, which "bar[s] and enjoin[s]" only Plaintiffs/Petitioners and their counsel, states that it "came on to be heard." This is inaccurate. No notice of hearing was provided prior to the entry of these orders and no hearing was held concerning these orders, unless it was a hearing between the trial court and Defendants and their counsel; Plaintiffs/Petitioners and their counsel knew of and attended no hearing. This order also states the trial court "...considered...the arguments of counsel..." This is inaccurate, if the trial court includes oral arguments. No hearing has ever been held in this case which included the Plaintiffs/Petitioners or their counsel and which

concerned the 1/7/14 Protective Order (Petition EXA25), the 1/22/14 Order compelling immediate compliance with the 1/7/14 Protective Order (Petition EXA28), or the attached Amended Protective Orders.

The forgoing statements are true and accurate under the laws of perjury in the State of Alabama.

Further this affiant saith not.

D. KEIRON MCGOWIN

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)
)

SWORN TO AND SUBSCRIBED before me on this, the 3rd day of ~~February~~ March, 2014.

Notary Public

(SEAL)

Notary Public - Alabama State At Large
My Commission Expires
August 28, 2017
Bonded Thru Notary Public Underwriters

My Commission Expires: _____

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

ALLENSTEIN MYRON K,	)	
ROBERSON CAROLYN,	)	
ABEL BILL,	)	
ABEL KAYE ET AL,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2012-900784.00
	)	
A-1 EXTERMINATING CO., INC.,	)	
A-1 INSULATING CO., INC.,	)	
WRENN ENTERPRISES,	)	
BUCHANAN TERRY ET AL,	)	
Defendants.	)	

AMENDED PROTECTIVE ORDER

This matter came on to be heard on Defendants, A-1 Exterminating Company, Inc.'s, Edward Wrenn's, David Wrenn's, and Terry Buchanan's March 5, 2013 motion for protective order. Having considered that Motion, Defendants' supplement of September 16, 2013, Plaintiffs' September 16, 2013 reply, Defendants' second supplement filed November 11, 2013, and Defendants' third supplement. Having considered the Motion and the arguments of counsel, the Court finds that the Motion is due to be **GRANTED**.

Accordingly, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that the motion for protective order is **GRANTED**. The Plaintiffs

and Plaintiffs' counsel are hereby barred and enjoined from extrajudicial references to the circumstances of the above-styled case, Plaintiffs' counsel and his firm shall remove all mention of the above-styled case and the surrounding circumstances of the above-styled case from the firm's website and from the firms and/or his individual Facebook page, LinkedIn Page, and all social media (including electronic social media), and related web search engines. Plaintiffs and Plaintiffs' counsel are otherwise ordered to refrain from referencing this case and/or its surrounding circumstances outside of court.

Nothing in this order shall prevent any attorney, law firm, and/or that law firms staff from discussing this case with their respective clients, internally with persons working at any such law firm, with other attorneys involved in this case, including those attorneys staff, and/or with any expert witnesses.

DONE this 21st day of February, 2014.

/s/ WILLIAM H RHEA III
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

ALLENSTEIN MYRON K,	)	
ROBERSON CAROLYN,	)	
ABEL BILL,	)	
ABEL KAYE ET AL,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2012-900784.00
	)	
A-1 EXTERMINATING CO., INC.,	)	
A-1 INSULATING CO., INC.,	)	
WRENN ENTERPRISES,	)	
BUCHANAN TERRY ET AL,	)	
Defendants.	)	

ORDER

Plaintiffs' Motion for Leave to File Third Amended Complaint is hereby GRANTED.

DONE this 21st day of February, 2014.

/s/ WILLIAM H RHEA III
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

ALLENSTEIN MYRON K,	)	
ROBERSON CAROLYN,	)	
ABEL BILL,	)	
ABEL KAYE ET AL,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2012-900784.00
	)	
A-1 EXTERMINATING CO., INC.,	)	
A-1 INSULATING CO., INC.,	)	
WRENN ENTERPRISES,	)	
BUCHANAN TERRY ET AL,	)	
Defendants.	)	

ORDER SETTING HEARING

Oral argument on ALL PENDING MOTIONS and a SCHEDULING CONFERENCE is hereby SET as follows:

April 24, 2014 (4/24/14) at 9:30 o'clock a.m.

DONE this 21st day of February, 2014.

/s/ WILLIAM H RHEA III
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

WRIGHT JEFFREY E, Plaintiff,	)	
V.	)	Case No.: CV-2012-900782.00
A-1 EXTERMINATING CO., INC., A-1 INSULATING CO., INC., WRENN ENTERPRISES, INC., BUCHANAN TERRY ET AL, Defendants.	)	

AMENDED PROTECTIVE ORDER

This matter came on to be heard on Defendants, A-1 Exterminating Company, Inc.'s, Edward Wrenn's, David Wrenn's, and Terry Buchanan's March 5, 2013 motion for protective order. Having considered that motion, Defendants' supplement of September 16, 2013, Plaintiff's September 16, 2013 reply, Defendants' second supplement filed November 11, 2013, and Defendants' third supplement. Having considered the motion and the arguments of counsel, the Court finds that the Motion is due to be **GRANTED**.

Accordingly, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that the motion for protective order is **GRANTED**. The Plaintiff and Plaintiff's counsel are hereby barred and enjoined from extrajudicial references to the circumstances of the above-styled case, Plaintiff's counsel and his firm shall remove all mention of the above-styled case and the surrounding circumstances of the above-styled case from the firm's website and from the firm's and/or his individual Facebook page, Linkedin Page, and all social media (including electronic social

media), and related web search engines. Plaintiffs and Plaintiffs' counsel are otherwise ordered to refrain from referencing this case and/or its surrounding circumstances outside of court.

Nothing in this order shall prevent any attorney, law firm, and/or that law firm's staff from discussing this case with their respective clients, internally with persons working at any such law firm, with other attorneys involved in this case, including those attorney's staff, and/or with any expert witnesses.

DONE this 27th day of February, 2014.

/s/ WILLIAM H RHEA III
CIRCUIT JUDGE

In the SUPREME COURT OF ALABAMA

Ex Parte MYRON ALLENSTEIN, *et al.*	Case No. 1130538
Petitioners,	
Ex Parte JEFFREY WRIGHT, *et al.*,	Case No. 1130537
Petitioners,	
Re:	
MYRON ALLENSTEIN, *et al.*,	Etowah Circuit Court
	Nos. CV-12-900784; and
v.	CV-12-900782
	(CONSOLIDATED)
A-1 EXTERMINATING COMPANY, INC., *et al.*	Hon. William Rhea
JEFFREY WRIGHT, on behalf of himself and others similarly situated	
v.	
A-1 EXTERMINATING COMPANY, INC., *et al.*	

AFFIDAVIT OF THOMAS F. CAMPBELL IN SUPPORT OF MOTION FOR STAY AND IN SUPPORT OF AMENDED PETITION FOR WRIT OF MANDAMUS

I, Thomas Campbell, am one of the attorneys representing the Plaintiffs in the above-captioned lawsuits I am over the age of 19 years and have personal knowledge of the matter stated herein.

1. I have reviewed Judge Rhea's amended protective orders marked as Exhibit to D. Keiron McGowin's Affidavit and included in the Amended Record on Amended Petition for Writ of Mandamus as EXA 41-44. While the order permits me to talk with staff, or expert witnesses, and opposing counsel outside of court, it still contains restrictions on my ability to represent existing or future clients, interact with the Court staff in a reasonable fashion, or to otherwise prepare my case for trial and motion practice in any reasonable fashion. As with prior order's the Trial Court just signed what was presented by one-side without any trial or hearing about what the facts are or are not.

2. The entry of the injunction has devastated my ability to communicate with well over 100 potential percipient witnesses in the case and lifting the stay is needed so we can start the time consuming and very expensive process of finding the witnesses. The Court mandated removal of information from online accounts where my firm had active and direct links through various web sites. Because the Court's order required removal of information from the internet rather than mere de-

publication (often referred to as "hiding" in the vernacular of online social media) those electronic links are broken. In virtually all instances, my firm has no address, telephone, email or other reliable means of communicating with these witnesses. While the Court's injunction prohibits ever communicating with these witnesses, and presuming the writ is granted as we expect it will be, it will take months and cost a substantial sum to duplicate the ability to contact even a fraction of the witnesses so it is critical to begin repairing that damage to my clients' case immediately.

3. The following is a partial list of activities or communications that are essential to my effective representation of existing clients and my ability to represent the putative class of all current and former A-1 customers. The amended protective order still bars:

   a. Lawyers and their employees and investigators talking to experts who have not been designated "expert witnesses" in the litigation which means, as a practical matter, plaintiffs counsel still cannot communicate with consulting experts who may or may not later be retained as "expert witnesses" as that phrase is commonly understood by

litigators and as used in the Alabama Rules of Civil Procedure;

b. lawyers and their employees talking to consulting experts about the status of assigned tasks and outstanding invoices;

c. lawyers and their employees and investigators communicating with various people to see if they are, in fact, witnesses and if they are how they could help;

d. lawyers and their employees and investigators seeking witnesses from the public through advertising or internet marketing;

e. lawyers and their employees and investigators interviewing witnesses or interviewing people to find known witnesses who cannot be contacted now because the Court's protective order destroyed the means of communicating with them;

f. lawyers and their employees and investigators talking to putative class members;

g. lawyers and their employees and investigators talking to referring lawyers;

h. lawyers and their employees and investigators talking to potential clients who have contacted the firm (there are potential clients in addition to those referred to by attorney Trent Garmon in his affidavit testimony);

i. lawyers and their staff talking to the Court's staff and court reporter;

j. lawyers and clients talking to regulators about pending investigations involving numerous clients' homes;

k. lawyers and their staffs cannot talk to former employees of defendants who are otherwise permissible to interview;

l. Plaintiffs talking to spouses/significant others;

m. Plaintiffs talking to other termite service providers (including defendant A-1 Exterminating Co. Inc.);

n. Plaintiffs talking to contractors about repairs;

o. Plaintiffs talking to potential witnesses, and

p. Plaintiffs communicating with A-1 about compliance with regulator's directives about their houses.

Counsel complained about all of the foregoing restrictions in the motion for stay filed with the Trial Court but the amended protective order fails to make allowance for these forms of case preparation and communication.

4. As I explain in the affidavit filed in support of the Motion to Vacate, Alter or Amend, (Record, EXA33) because of the difficulty obtaining reliable information through defendants in prior litigation, it is my opinion that this case will require extensive preparation through means other than formal discovery.

Further, this affiant saith not.

THOMAS F. CAMPBELL

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)
)

SWORN TO AND SUBSCRIBED before me on this, the 3rd day of March, 2014.

Notary Public

(SEAL)

My Commission Expires:

Notary Public - Alabama State At Large
My Commission Expires
August 28, 2017
Bonded Thru Notary Public Underwriters

STATE OF ALABAMA)

COUNTY OF ETOWAH)

AFFIDAVIT OF TRENT GARMON

COMES NOW, Trent Garmon, Affiant, and states as follows:

"My name is Trent Garmon, and I am over the age of 19 years and I have personal knowledge of the facts contained herein.

I am a born-again Christian, husband, father of three (3) and attorney who resides in Etowah County, Alabama. On 05 February 2014 my office (the Garmon Law Firm) received a telephone call from Client Two. Client Two was told about a lawsuit pending against A1 by someone from the local Toyota Dealership where he had taken his automobile to be serviced. Given I referred a prior case (Client One) to the Campbell Law Group in Birmingham I was familiar with the ongoing litigation against A1. I contacted Tom Campbell on 05 February 2014 via email and he indicated that he was not able to discuss anything surrounding the A1 litigation per a Gag Order entered by Judge Rhea.

Client Two came into my office on 06 February 2014 and completed an intake for us to have his A1 case evaluated. Despite a deep respect and professional love for Judge Rhea, I am unsure of the basis of the Gag Order given there are a number of people in the community who are potential victims of the alleged Fraud and Breach of Contract. The hope of aiding these alleged victims in said claims is being suppressed. It should be noted that as an Etowah County resident I have noticed since litigation began that A1 has initiated a Billboard Marketing campaign with Lamar. In my 34 years as a resident of Gadsden I do not recall any prior Billboard Campaigns by A1, while such may have perhaps been done before. Thus, in my opinion a clear unilateral suppression is occurring by way of the Gag Order. The alleged perpetrator of the Fraud (A1) are not only benefiting from said suppression, but are in fact marketing their business in a positive light via Lamar Billboards, perhaps as a means of promoting their business but it is possible such is done to fostering "good will" merely to win favor with any potential jury pool.

Regardless, my office via our receptionist/paralegal Angie King was contacted by Client Two on 05 February 2014 wherein he was inquiring about representation against A1. I have met with him and have initiated an intake upon which I am asking Tom Campbell, based on my prior knowledge of his involvement in the litigation, to conduct a case evaluation. I my opinion, Tom Campbell, Keiron McGowin and their firm are uniquely qualified to advise my client who needs immediate, competent assistance about legal and termite prevention options.

FURTHER, AFFIANT SAYETH NOT.

DATED this the 28th day of February, 2014.

TRENTON ROGERS GARMON

STATE OF ALABAMA)

COUNTY OF ETOWAH)

Personally appeared before me, the undersigned authority in and for the aforesaid County and State, TRENTON ROGERS GARMON, who acknowledged that he/she signed, executed, and delivered the above and foregoing instrument on the date thereof and for the use and purposes therein mentioned as his/her voluntary act and deed.

Given under my hand and official seal, this the 28th day of February, 2014.

NOTARY PUBLIC
State of Alabama at Large
My commission expires: 8-15-17