

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA,

vs.

GERALD A. SANDUSKY

CP-14-CR-2421-2011

CP-14-CR-2422-2011

AMICUS CURIAE BRIEF ON BEHALF OF

THE NATIONAL CENTER FOR VICTIMS OF CRIME

Statement of Interest

The National Center for Victims of Crime (National Center), a nonprofit organization based in Washington, DC, is the nation's leading resource and advocacy organization for all victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. Dedicated to serving individuals, families, and communities harmed by crime, the National Center, among its other efforts, advocates for laws and public policies that create resources and secure the rights and protections for victims of crime. The National Center is particularly interested in this issue because of its commitment to ensuring that every victim is treated with fairness, dignity and respect throughout the criminal process.

Statement of Facts

Gerald A. Sandusky ("Sandusky") is charged with over fifty counts of sexual abuse of young boys ("victims"), including involuntary deviate sexual intercourse with a person less than 16 years of age, indecent assault of a person less than 16 years of age, involuntary deviate sexual intercourse with a person less than 16 years of age, aggravated indecent assault of a person less than 16 years of age, indecent assault of a person less than 13 years of age, criminal attempt of indecent assault of a person less than 16 years of age, unlawful contact/communication with minor for the purpose of unlawful sexual activity, corruption of minors, and endangering the welfare of children.

Sandusky allegedly met the victims through the Second Mile, a charitable organization that he founded with the purported interest of improving the lives of at risk youth. The alleged sexual abuse occurred over the course of several years and in locations throughout the country. In defense of the criminal charges, Sandusky alleges that at least eight young male victims have conspired against him by contacting law enforcement authorities and pressing criminal charges against him, and falsifying detailed stories chronicling years of sexual abuse. Pursuant to this defense, Sandusky has issued subpoenas to a vast multitude of entities, including, but not limited to:

- a. Central Mountain School District;
- b. Bald Eagle Area School District;
- c. Mifflin County School District;
- d. Psychologist Alycia Chambers;
- e. Psychologist Mike Gillum;
- f. Clinton County Children and Youth;

- g. Centre County Children and Youth;
- h. Juniata College;
- i. The Second Mile;
- j. Pennsylvania State Police;
- k. Lewistown Police Department;
- l. Pennsylvania Department of Correction;
- m. Pennsylvania Department of Labor and Industry;
- n. Penn State University Police Services.

Sandusky very likely has issued additional subpoenas. At this point, there is no way to determine who has received a subpoena or the scope of information sought by each. What is perfectly clear, however, is that much of the information sought by the subpoenas would, if disclosed trample these sexual assault victims' rights, and that such information would not be admissible at trial to impeach the victims' credibility. The purpose of this *amicus* brief is to urge this Court not to permit the disclosure of such information. To that end, we join and support all the motions to quash pending before this Court.

Argument

I. DEFENDANT'S IMPROPER USE OF SUBPOENA POWER IS A VIOLATION OF THE VICTIMS' RIGHTS TO BE TREATED WITH FAIRNESS, DIGNITY AND RESPECT AS AFFORDED UNDER THE PENNSYLVANIA CRIME VICTIM ACT.

Under Pennsylvania law, material and documentation that is not discoverable pursuant to Pennsylvania Rule of Criminal Procedure 573, may be discovered through the service of a subpoena pursuant to Pennsylvania Rule of Criminal Procedure 107. *See Commonwealth v. Cook*, 865 A.2d 869, 877 (Pa. Super. 2004). Pursuant to this rule, however, a defendant must

articulate a reasonable basis prior to utilizing a subpoena. *See id.* A defendant is not permitted to issue a subpoena merely for inspection or to conduct a fishing expedition. *Id.*; *Commonwealth v. McEnany*, 667 A.2d 1143, 1149 (Pa. Super. 1995). Furthermore, a subpoena is improper when it is unduly broad or requires the improper inclusion of irrelevant information. *Commonwealth v. Meja-Arias*, 734 A.2d 870, 875 (Pa. Super. 1997).

In the instant matter, Sandusky has failed to articulate a foundation as to the reasonableness, materiality and justiciability of each of his requests. Rather, the overwhelmingly broad requests appear to be designed to divert attention away from Sandusky and improperly place the victims on trial. Furthermore, the subpoenas request wholly irrelevant information as well as information that is privileged and protected by statute. Disclosure of such documents will undoubtedly embarrass and humiliate the victims all in an effort to intimidate.

Under Pennsylvania law, a victim has a right to be treated with dignity, respect, courtesy and sensitivity during the criminal justice proceedings, and this right must be enforced by the courts just as the rights of the defendant are so protected.

Pennsylvania's Crime Victims Act provides that:

(1) In recognition of the civic and moral duty of victims of crime to fully and voluntarily cooperate with the law enforcement and prosecutorial agencies and in further recognition of the continuing importance of victim cooperation to State and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this Commonwealth, all victims of crime are to be treated with dignity, respect, courtesy and sensitivity.

(2) The rights extended to victims of crime in [the Crime Victims Act] are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

Title 18 Pa. Stat. §11.102. (*emphasis provided*).

To stop child sexual abuse, perpetrators must be identified and prosecuted, which is only achieved by encouraging victims to come forward. The Pennsylvania legislature recognized the importance of protecting victims so as to encourage them to come forward, report the crimes and identify the perpetrator. Victims' right to dignity, respect, courtesy and sensitivity is designed to free victims from any concern that their history might be placed under a microscope so that victims would be more forthcoming and thereby promotes more effective law enforcement. Without such protection victims would not be as willing to come forward if irrelevant personal history is fair game for the defense to comb through in an effort to attack their credibility. In enacting the Crime Victims Act, Pennsylvania has directed the courts to enforce the victims' rights in equal vigor as they might enforce the numerous rights afforded criminal defendants.

The National Center was not able to locate a Pennsylvania appellate opinion on point but found New Jersey has a long history of enforcing victims' right fairness, compassion and respect and regards it as "among the most fundamental and important in assuring public confidence in the criminal justice process." N.J.S.A. 52:4b-35. As a pioneer of victims' rights, N.J. has created a "substantial need test" established in *State v. D.R.H.*, 127 N.J. 249 (N.J. 1992). The N.J. Supreme Court weighed the defendant's right to discovery against the child victim's well-being, and held the courts "must balance the possible emotional trauma, embarrassment, and intimidation to the complainant, particularly an extremely young child, against the likelihood that the examination will produce material, as distinguished from speculative, evidence." *State v. R.W.*, 104 N.J. 14 (1986).

Pennsylvania Rule of Criminal Procedure 107 and the holding in *Commonwealth v. Cook*, (supra) 865 A.2d 869, 877 (Pa. Super. 2004) provide this Court with authority to order Sandusky to articulate a reasonable basis that such discovery will produce competent and probative

evidence prior to subjecting these victims to the embarrassment, humiliation and intimidation it will cause to assure public confidence in the criminal justice process.

Secondly, child sex abuse is notoriously under reported due to the dynamics of the acquaintance perpetrator-child victim relationship, as is the case here. Sandusky has procured an improper fishing expedition of the victims' person records in an effort to dig up irrelevant and inadmissible private information about the victims' history. If Sandusky is permitted to engage in such inherently invasive discovery tactics, this will undoubtedly have a detrimental effect on his victims' and the likelihood of other victims reporting such crimes. The privacy of victims' records is a particularly important area of concern, especially in sexual assault cases.

A vast majority of victims do not report child sex abuse because of the shame, humiliation, and embarrassment they may experience. In fact, an extremely small percentage of victims ever report their abuse. While approximately one in every three to four women and one in five to six men are sexually abused as children, only about 10% report their abuse to the authorities. Mary Gail Frawley-O'Dea, Perversion of Power: Sexual Abuse in the Catholic Church 6-7 (Vanderbilt University Press 2007); What Do U.S. Adults Think About Child Sexual Abuse? Measures of Knowledge and Attitudes Among Six States, Stop It Now!, 7 (2010), www.StopItNow.org/rdd_survey_report ("Nearly 30% of women and 14% of men reported on the survey that they had been sexually abused as children. The percentage of adults in our survey who experienced sexual abuse in childhood is consistent with prevalence rates established in other research with adults."); J. Briere and D.M. Eliot, Prevalence and Psychological Sequence of Self-Reported Childhood Physical and Sexual Abuse in General Population, 27 (10) *Child Abuse & Neglect*, 1205-1222 (2003) (finding that as many as one in three girls and one in seven boys will be sexually abused at some point in their childhood); R. F. Hanson, et al., Factors

Related to the Reporting of Childhood Sexual Assault, 23 Child Abuse & Neglect 559-569 (1999) (noting that in the U.S., only 12% of child sexual abuse is reported to authorities).

Victims find it difficult to tell even close family and friends about the abuse; forcing their personal history into the public spotlight only inflicts further unnecessary harm and dissuades them from pursuing meritorious claims and identifying their perpetrators to the public. Victims should not be forced to expose their personal histories to the world as the price for justice. There is a national public policy interest in protecting the privacy of victims of child sex abuse, even if they are adults, because many victims will not report child sexual abuse to authorities if they fear public embarrassment resulting from disclosure of their personal histories.

Furthermore, because child sex abuse inflicts lifelong harm, Laura P. Chen, BS, et al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders, 85 (7) Mayo Clin. Proc. 618 (July 2010) (concluding that history of sexual abuse is associated with increased risk of lifetime diagnosis of multiple psychiatric disorders), victims are routinely psychologically disabled by the abuse and need to be protected from public embarrassment and shame even into adulthood. Therefore, defendants, such as Sandusky, should not be permitted to use the psychological injury caused by the abuse that they inflicted to intimidate a victim or attack their credibility.

If Sandusky is permitted to dig into the intimate and private records of these victims, this will undoubtedly discourage other victims to come forward and report. Such broad discovery tactics are contrary to the public policy concerns emphasized in the Crime Victims Act.

Thus, these subpoenas should be quashed and a hearing ordered requiring Sandusky present evidence that such discovery will produce competent and probative evidence before such invasive subpoenas may be issued. Or in the alternative, the subpoenaed records should be deposited with the Court, placed under seal, and made available to the Sandusky if, and only if,

the material becomes relevant after *in camera* review. Lastly, Sandusky should be required to identify all subpoenas issued to date so that an appropriate determination may be made of the application of the privileges and interests outlined herein or any other applicable law relating to the privacy interests of victims.

II. THE SUBPOENAS TO CENTRAL MOUNTAIN, BALD EAGLE, AND MIFFLIN COUNTY SCHOOL DISTRICTS SHOULD BE QUASHED AS THEY REQUEST PRIVILEGED AND PROTECTED INFORMATION.

The Family Education Right and Privacy Act and its implementing regulations, 34 C.F.R. Part 99, require that all student records containing personally identifiable information concerning an individual student must be kept confidential and cannot be disclosed without parental consent, or the student's consent if the student has reached eighteen years of age, unless otherwise authorized. Family Education Right and Privacy Act, 20 U.S.C. § 1232g(b)(1) (2010). The only relevant exception to this rule allows disclosure to an entity or persons designated in any subpoena issued for a law enforcement purpose. *Id.* § 1232g(b)(1)(J)(ii). However, before the school can disclose information pursuant to an order or subpoena, it must make a reasonable effort to notify the parent or eligible student of the order or subpoena so that the eligible party may seek protective action. 34 C.F.R. 99.31(a)(9)(ii) (2012). If protective action is sought, the Court may, upon good cause shown, prevent the disclosure of this information. 20 U.S.C. § 1232g(b)(1)(J)(ii). In deciding whether protective action is necessary, a trial judge, in the exercise of discretion, must conduct a balancing test in which the privacy interest of the student is weighed against the genuine need of the party requesting the information for its disclosure. Zaal v. State, 326 Md. 54, 72, 602 A.2d 1247, 1256 (Md. 1992) (citations omitted).

In the instant matter, Defendant has not expressed a genuine need in requesting these various school records. Furthermore, none of the known subpoenas indicate why the information

concerning the victims are relevant or admissible in the case at bar, and there is no evidence that this information is or would be admissible or relevant. To the contrary, the Pennsylvania Rules of Evidence preclude such evidence as a rape victims' prior bad acts, uncharged acts or reputation. See Pa. R. Evid. 608.

Furthermore, much of the documentation and information requested constitutes confidential and/or privileged information. Specifically, any communications between a guidance counselor and a student are confidential communications pursuant to 42 Pa. Cons. Stat. §5945. To the extent that these subpoenas request additional medical information, psychiatric and psychological records, these are not discoverable as outlined in subsection B below.

Therefore, the National Center asks this Honorable Court for an order quashing all subpoenas to all school districts or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than Sandusky; and that the records be placed under seal and made available to the Sandusky if, and only if, the material becomes relevant after *in camera* review by the Court.

III. THE SUBPOENAS TO PSYCHOLOGISTS ALYCIA CHAMBERS AND MICHAEL GILLUM SHOULD BE QUASHED AS THEY REQUEST PRIVILEGED INFORMATION

Sexual assault counselor's records are absolutely privileged by 42 Pa. Cons. Stat. § 5945.1, which provides in pertinent part: "(1) No sexual assault counselor may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding." 42 Pa. Cons. Stat. § 5945.1 further defines "Sexual assault counselor" as:

[a] person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the

control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

The legislature intended to prevent the acquisition of all confidential communications by a victim of sexual assault, whether in the form of live testimony or through the production of records or other documents. Commonwealth v. Wilson, 529 Pa. 268, 602 A.2d 1290, 1992 Pa. LEXIS 35 (Pa. 1992), writ of certiorari denied by, 504 U.S. 977, 112 S. Ct. 2952, 119 L. Ed. 2d 574, 1992 U.S. LEXIS 3482, 60 U.S.L.W. 3828 (1992); Commonwealth v. Gibbs, 434 Pa. Super. 280, 642 A.2d 1132 (Pa. Super. Ct. 1994); Commonwealth v. Kennedy, 413 Pa. Super. 95, 604 A.2d 1036 (Pa. Super. Ct. 1992).

42 Pa. Cons. Stat. § 5944 also recognizes a privilege of confidential communications between patients and their psychiatrists and licensed psychologists. This statute states:

No psychiatrist or person who has been licensed under the Act of March 23, 1972 (P.L. 136, no. 52), to practice psychology shall be, without the written consent of his client, examined in any civil or criminal matter as to any information acquired in the course of his professional services in behalf of such client. The confidential communications between a psychologist or psychiatrist and his client shall be on the same basis as those provided or prescribed by law between an attorney and client. 42 Pa. Cons. Stat. § 5944.

Finally, The Mental Health Procedures Act, 50 P.S. § 7111 (2012), provides:

All documents concerning persons in treatment shall be kept confidential and, without the person's written consent may not be released or their contents disclosed to anyone except:

- (1) those engaged in providing treatment for the person;
- (2) the county administrator, pursuant to section 110;
- (3) a court in the course of legal proceedings authorized by this Act; and

(4) pursuant to federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a federal agency.

In no event however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent.

The Mental Health Procedures Act is to be strictly construed. Commonwealth v. Blaker, 293 Pa. Super. 391, 446 A.2d 976 (Pa. Super. Ct. 1981). A patient's mental health records may be used by a court only when the legal proceedings are within the framework of the Act, that is, involuntary and voluntary mental health commitment proceedings. Commonwealth v. Moyer, 407 Pa. Super. 336, 595 A.2d 1177 (Pa. Super. Ct. 1991).

In the instant matter, Sandusky has requested the entire files of victims 1 and 6 from their respective psychologists. Under the above statutes, the information requested is privileged and cannot be disclosed without the written consent of the victims. To our knowledge, none of the victims has given written consent to the disclosure of privileged communications or treatment documents. Therefore, the National Center asks that this Honorable Court enter an order quashing all subpoenas to all psychologists or psychiatrists who treated the victims, or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than Sandusky, and that the records will be placed under seal, and made available to Sandusky if, and only if, the material becomes relevant after *in camera* review.

IV. THE SUPOENAS TO CENTRE COUNTY CHILDREN AND YOUTH SERVICES AND CLINTON COUNTY CHILDREN AND YOUTH SERVICES SHOULD BE QUASHED AS THEY REQUEST PRIVILEGED AND/OR PROTECTED INFORMATION

The Pennsylvania Legislature saw fit to protect the privacy of victims of sexual abuse as minors to encourage complete reporting of childhood abuse. In particular, Pennsylvania's Child Protective Services Law ("CPSL"), 23 Pa.Cons.Stat. § 6303 states, in pertinent part, that:

(b) PURPOSE.-- **It is the purpose of this chapter to encourage more complete reporting of suspected child abuse;** to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk. (**emphasis added**).

Furthermore, two examples of confidentiality provisions are found in Section 6701 et seq. of the CPSL, where the Legislature provides for address confidentiality for domestic violence and sexual assault victims; and in Section 6339, which provides that reports of suspected child abuse are kept confidential.

To the extent that the subpoenas request interviews and various documents related to the investigation, those requested documents are privileged and protected under the Mental Health Procedures Act, 50 P.S. § 7111 (2012), and the Sexual Assault Counselor's Records Privilege Statute, 42 Pa. Cons. Stat.. § 5945.1 as outlined in subsection B.

These interviews and various documents are also protected pursuant to 23 Pa. Cons. Stat. § 6339, which states that reports of child abuse "including, but not limited to, report summaries of child abuse and written reports...as well as any other information obtained, reports written or

photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential 23 Pa. Cons. Stat. § 6339.

Furthermore, to the extent that these subpoenas request law enforcement records or treatment records of the victims while they were minors, these documents are protected by the Juvenile Act, 42 Pa. Cons. Stat. § 6301 *et seq.* Specifically: "Law enforcement records and files concerning a child...shall not be open to public inspection or their contents disclosed to the public" except when the child has committed certain enumerated offenses. 42 Pa. Cons. Stat. § 6308(a). Thus, only records related to those certain enumerated offenses could be viewed by the public.

However, just because the records can be viewed by the public does not mean that they would be admissible in a court of law. "The legislature explicitly has directed that juvenile adjudications do not rise to the level of an adult criminal conviction. Such adjudications have therefore been held to be inadmissible for impeachment purposes." Commonwealth v. Katchmer, 453 Pa. 461, 465-466 (Pa. 1973).

Therefore, the National Center asks that this Honorable Court enter an order quashing all subpoenas to County Children & Youth Offices, or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than Sandusky, and that the records will be placed under seal, and made available to Sandusky if, and only if, the material becomes relevant after *in camera* review.

V. THE SUBPOENAS TO THE PENNSYLVANIA STATE POLICE AND THE LEWISTOWN BOROUGH POLICE DEPARTMENT SHOULD BE QUASHED AS THEY ARE OVERLY BROAD AND REQUEST INADMISSIBLE EVIDENCE

To the extent that these subpoenas request law enforcement records of the victims while they were minors, these documents are protected by the Juvenile Act as outlined in subsection C. Moreover, these requested documents, if they are produced, could be inadmissible at trial. Pennsylvania has "long held that prior bad acts not resulting in a conviction are not admissible to impeach a witness' credibility. Thus, the fact of a prior arrest cannot be used to challenge credibility." Commonwealth v. Katchmer, 453 Pa. 461, 464, 309 A.2d 591, 593 (Pa. 1973). See also Commonwealth v. Burton, 491 Pa. 13, 19, 417 A.2d 611, 614 (Pa. 1980) (prior criminal acts not resulting in a conviction are not admissible to impeach a witness' credibility); Commonwealth v. Ross, 434 Pa. 167, 170, 252 A.2d 661, 662 (Pa. 1969). Additionally, evidence of prior bad acts generally is not admissible if offered merely to show bad character. Commonwealth v. Barger, 1999 PA Super 306, 743 A.2d 477, 480 (Pa. Super. Ct. 1999) (en banc).

Therefore, the National Center asks that this Honorable Court enter an order quashing all subpoenas to all police departments and the Department of Corrections, or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than Sandusky, and that the records will be placed under seal, and made available to Sandusky if, and only if, the material becomes relevant after *in camera* review.

VI. ANY AND ALL SUBPOENAS THAT REQUEST INFORMATION RELATED TO DRUG AND ALCOHOL TREATMENT OF ANY OF THE VICTIMS SHOULD BE QUASHED AS THIS INFORMATION IS PRIVILEGED.

To the extent that any subpoenas request any drug and/or alcohol records of any of the victims they also should be quashed pursuant to 71 P.S. § 1690.108 of the Pennsylvania Drug and Alcohol Abuse Act. This statute provides, in pertinent part, as follows:

(b) All patient records (including all records relating to any commitment proceeding) prepared or obtained pursuant to this act, and all information contained therein, shall remain confidential, and may be disclosed only with the patient's consent and only (i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient or (ii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence except that in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient. Disclosure may be made for purposes unrelated to such treatment or benefits only upon an order of a court of common pleas after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information sought to be disclosed against the possible harm of disclosure to the person to whom such information pertains, the physician-patient relationship, and to the treatment services, and may condition disclosure of the information upon any appropriate safeguards. No such records or information may be used to initiate or substantiate criminal charges against a patient under any circumstances.

Again, to our knowledge none of the victims has given written consent to the disclosure of any of their privileged drug and alcohol records. Furthermore, to the extent that these subpoenas request drug and alcohol treatment records of the victims while they were minors, such records are protected by 42 Pa. Cons. Stat. § 6352.1. This statute requires consent of the child or the child's parents before disclosing drug and alcohol treatment records of the minor child and only in limited circumstances and to limited parties. Id. Furthermore, this information may only be used to carry out the purposes of the Juvenile Act and should not be released to any other person. Thus, this information is privileged, protected and not discoverable.

Therefore, the National Center asks that this Honorable Court enter an order quashing any subpoenas that request any drug and/or alcohol records of any of the victims, or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than

Sandusky, and that the records will be placed under seal, and made available to Sandusky if, and only if, the material becomes relevant after *in camera* review.

Conclusion

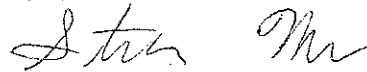
Although Sandusky may be entitled to certain of the subpoenaed information, his unrestrained and overly broad issuance of subpoenas warrants the Court's intervention and implementation of appropriate controls to protect the rights of the victims. To the extent any recipient of a subpoena at issue fails to assert all appropriate objections, the victim's right to dignity, respect, courtesy and sensitivity has been unjustly denied by Sandusky's issuance of an improper subpoena.

For the foregoing reasons, the National Center joins in the filed motions to quash, and asks for an order quashing all of the above specifically identified subpoenas, or, in the alternative, an order that the subpoenaed records shall be deposited with the Court rather than Sandusky, and that the records will be placed under seal, and made available to Sandusky if, and only if, the material becomes relevant after *in camera* review.

Respectfully Submitted,

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