**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT**
**IN AND FOR SARASOTA COUNTY, FLORIDA**
**CIVIL DIVISION**

JACK KOWALSKI, Individually and on behalf of M.K., a minor, and as Personal Representative of the Estate of BEATA KOWALSKI, Deceased,

Plaintiffs,

v.

JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC.,

Defendant.
_____/

**CASE NO.**: 2018-CA-005321-NC

**DEFENDANT'S MOTION FOR NEW TRIAL BASED ON JUROR MISCONDUCT, MOTION FOR JUROR INTERVIEW, MOTION TO OPEN DISCOVERY INTO EVIDENCE OF JUROR MISCONDUCT, AND EMERGENCY MOTION TO PRESERVE EVIDENCE**

Defendant, Johns Hopkins All Children's Hospital, Inc., by and through undersigned counsel, and pursuant to Rules 1.431 and 1.530, Florida Rules of Civil Procedure, hereby moves this Court for an order permitting an interview of Juror #1,[1] opening discovery into evidence of juror misconduct, requiring the preservation of certain evidence **on an**

[1] Florida Rule of Civil Procedure 1.431(h) states that a Motion for Juror Interview "must state the name and address of each juror to be interviewed and the grounds for challenge that the party believes may exist." While this Motion will refer to the juror at issue as "Juror #1," that juror is identified as Paul Lengyel, whose address is: 3760 Saint Charles Cir., Sarasota, FL 34233.

**emergency basis**, and granting a new trial based on juror misconduct, on the grounds set forth herein.[2]

## INTRODUCTION

According to the Florida Supreme Court, "potentially harmful [juror] misconduct" – including "[c]ontact with a juror during trial about the pending matter" – is "presumptively prejudicial." *Amazon v. State*, 487 So. 2d 8, 11 (Fla. 1986); *see also Norman v. Gloria Farms, Inc.*, 668 So. 2d 1016, 1020 (Fla. 4th DCA 1996). A party seeking a juror interview "does not have to conclusively establish" that the alleged juror misconduct occurred and "actually prejudiced his case." *Snook v. Firestone Tire & Rubber Co.,* 485 So. 2d 496, 498-99 (Fla. 5th DCA 1986), citing *Albertsons, Inc. v. Johnson*, 442 So. 2d 371 (Fla. 2d DCA 1983); *see also* Fla. R. Civ. P. 1.431(h) (motion for juror interview must state "the grounds for challenge that the party believes may exist"). Rather, "it is only necessary" that the party "establish a basis for an inquiry" or grounds the party believes "may exist." *Id.*

"Once improper contact or juror misconduct is established by juror interview, the moving party is entitled to a new trial *unless* the opposing party can demonstrate that there is no reasonable possibility that the juror

[2] In addition to the matters set forth herein, Defendant maintains that Juror #1 demonstrated prejudicial bias in Plaintiffs' favor throughout the course of trial warranting his removal as a juror. Therefore, Defendant incorporates herein its Motion to Disqualify Juror, filed November 2, 2023 (DIN 3589), as further support for Defendant's request for a juror interview and new trial based on juror misconduct.

misconduct affected the verdict." *Norman*, 668 So. 2d at 1020, citing *Amazon*, 487 So. 2d at 11. "A new trial based on…improper contact may be required under 'some circumstances as a matter of public policy for the purpose of maintaining confidence in the integrity of jury trials.'" *Del'Ostia v. Strasser*, 798 So. 2d 785, 787 (Fla. 4th DCA 2001), citing *Norman*, 668 So. 2d at 1019-20.

This motion sets forth a reasonable basis for a belief that Juror #1 – the foreperson – engaged in presumptively prejudicial misconduct during the course of the trial by deliberately disregarding the Court's specific instructions (i) not to discuss the case with anyone during the trial, (ii) not to consider any evidence or information outside of what was presented during the trial, and (iii) not to form or express any opinion about the case prior to deliberations.

This Motion is supported by the sworn affidavit of Ethen R. Shapiro, Esquire (attached hereto as Exhibit A). The Affidavit and evidence (attached hereto as Exhibit B) discovered by defense counsel after the verdict reveals "potentially harmful" and therefore "presumptively prejudicial" juror misconduct arising out of improper communications and contacts between Juror #1 and his wife ("Mrs. Lengyel") (collectively, the "Lengyels"), who resided in the same household during the course of the nine-week trial. The evidence reveals a shocking level of involvement in the case and palpable bias in favor of Plaintiffs on the part of Juror #1's

wife, Mrs. Lengyel, as well as social media posts sharing "inside" information Mrs. Lengyel could only have obtained from her husband.

Considered in its totality, the evidence provides a reasonable basis for a belief that Juror #1 disregarded his juror oath and this Court's instructions by engaging in improper juror communications and contacts. Juror #1's own post-verdict involvement on social media corroborates Defendant's belief that the Lengyels engaged in improper contacts and communications regarding the case and formed a shared bias in Plaintiffs' favor, as evidenced by the verdict. In addition to the "presumptively prejudicial" contacts and communications between Juror #1 and his wife, the evidence warrants a juror interview and a new trial for the added reason that Juror #1's wife's involvement on social media during the course of the trial, her undisguised bias in favor of Plaintiffs, and her alignment with a social media influencer closely linked to Plaintiffs, known as "Jules" – as the spouse of the jury foreman – undeniably compromises the integrity of the judicial system.[3]

Defendant therefore moves for an order permitting an interview of Juror #1 and his wife, Yolanda Lengyel, to establish the presumptively prejudicial contacts and communications described herein as grounds for

[3] Defendant notes that it has received unsolicited messages from social media sources expressing outrage over this show of misconduct and its obvious impact on the verdict, revealing that the social media posts have indeed impacted the credibility of the verdict and the judicial system as a whole.

Defendant's entitlement to a new trial. Defendant additionally moves for an order permitting discovery of information establishing juror misconduct by Juror #1, as well as an order requiring Juror #1 and his wife to preserve evidence – including text messages, social media activity, and other electronic data pertinent to their communications and contacts with one another and with other third-parties regarding the case – on an emergency basis to avoid spoliation of evidence.

**FACTUAL BACKGROUND**

Post-trial research and information obtained regarding Mrs. Lengyel's social media history reveals that her personal engagement with the public commentary of this trial is unlike that of a member of the public who shares a general interest in the case, and is particularly inappropriate given her role as the wife of the jury foreman. Mrs. Lengyel's social media posts foreshadowed questions from Juror #1 to witnesses, shared information on the thought-processes of the jury, and highlighted her heavy personal bias in favor of the Plaintiffs and emotional investment in a verdict in their favor – a bias apparently shared by her husband, Juror #1. The posts give rise to a reasonable belief and concern on the part of the Defendant that the jury's verdict has been tainted, and that Defendant has been deprived of its right to a fair trial before an impartial jury.

In addition to her posts, Mrs. Lengyel's presence at trial casts further doubt on the integrity of the jury verdict, which was guided by her

husband as the jury foreman. On October 30, 2023, Mrs. Lengyel physically attended the trial proceedings in this case, where her husband was empaneled as Juror #1. Juror #1 said nothing of her presence. Prior to her appearance, Mrs. Lengyel sought out Jules, who was demonstratively embedded with the Plaintiffs and served as their public advocate, if not *de facto* agent, both at trial and subsequent to the verdict. Mrs. Lengyel and Jules exchanged personal phone numbers, and Mrs. Lengyel made plans days in advance to meet Jules in the courtroom. On October 30, 2023, Mrs. Lengyel can be seen in video footage in the courtroom for the entire day, often *seated next to and speaking with Jules*. (Exhibit B, Slides 1, 15, 33).

For her part, Jules became notorious in the online communities that covered the trial because she not only physically attended each day of trial, but also provided regular updates on her social media platforms, such as TikTok and YouTube. Jules also shared her personal conversations with the Kowalski family, as well as her observations in the courtroom regarding the jury. It is apparent from these videos that Jules shares a close relationship with Jack and Maya Kowalski, making her friendship with Mrs. Lengyel all the more inappropriate. (Exhibit B, Slides 11-14, 16-17).

For example, on October 9, 2023, Jules posted a video on her TikTok page stating that she gave Maya Kowalski her rosary beads *prior to* Maya's

live testimony that day.[4] On October 11, 2023, Jules called into the Recovery Addict YouTube livestream covering the trial, stating that she texted with Maya over the weekend, and after giving her the rosary beads, asked Plaintiffs' counsel to not object to the jury's questions regarding whether Maya carried a rosary because she knew Maya had the rosary beads in her pocket.[5] This demonstrates that Jules was more than just a public observer of the trial, but an active participant and *de facto* agent for the Plaintiffs. Jules even publicly shared photographs of herself with Plaintiffs' experts and members of Plaintiffs' trial team, and even appeared center-stage in a photograph with the Plaintiffs and their counsel after the verdict was read. (Exhibit B, Slides 11, 16-17).

In light of Jules' intimate relationship with and bias in favor of Plaintiffs, the development of an alignment if not friendship between Jules and Juror #1's wife is alarming. Defendant was entitled to a trial before a fair and impartial jury. The fact that the jury foreman's wife – with whom he resided during the course of the nine-week trial – engaged in friendly discussions while in close proximity to Plaintiffs' advocate, Jules,

[4] @blind_gossip, TikTok (Oct. 9, 2023), at https://www.tiktok.com/@blind_gossip/video/7288076733549481259?lang=en, at 00:58.
[5] Recovery Addict, YouTube (Oct. 11, 2023), at https://www.youtube.com/live/tUkA8qGyiDk?si=jOQqdl8Hb_6tUvmo&t=12495, at 03:28:15.

contributes to Defendant's reasonable belief that it has been denied its right to a fair trial.

Defendant has obtained evidence demonstrating that Mrs. Lengyel was heavily engaged with the trial online both before and after she physically appeared in court, posting comments about the case that are *unequivocally and palpably pro-Plaintiff*. Operating under the YouTube username @Hippolover,[6] Mrs. Lengyel began posting information, insights, and opinions about the case as early as October 13, 2023, during livestream coverage of the trial on the Law and Lumber, Recovery Addict, and Lawyer You Know YouTube channels, and followed numerous journalists and vloggers covering this trial, including the producer of the Netflix documentary "Take Care of Maya" and Plaintiffs' trial technology consultant. (Exhibit B, Slides 2, 18-46, 56). On a near daily basis, Mrs. Lengyel spent hours online engaged in commentary about the trial proceeding, both in real time and after the trial day had ended and the jury was sent home (including her husband, Juror #1, with whom she resided).

These social media platforms transmitted commentary to audiences of thousands, and exposed Mrs. Lengyel – and brought into the Lengyel's

[6] The YouTube profile for @Hippolover is the first result that populates on Google when searching "Yolanda Lengyel YouTube". It also includes a video of Mr. and Mrs. Lengyel uploaded 10 years ago. (Exhibit B, Slide 2). *See* @Hippolover, YouTube, at www.youtube.com/@hippofi1972 (last visited November 14, 2023).

household - information about the trial that Juror #1 should not have been aware of, as well as evidence not made available to the jury. In several instances, Mrs. Lengyel *even donated money* to these YouTube channels that offered both live coverage and reaction commentary of the trial to *ensure that her comments would be spotlighted to the thousands of individuals that tuned into the livestream broadcasts.*

It strains credulity to believe that the Lengyels were not discussing the case, in violation of this Court's instructions. To the contrary, the evidence provides more than a "reasonable basis" to believe that the Lengyels were exchanging information and beliefs regarding the case, and about Defendant's predetermined culpability, in violation of this Court's instructions and Florida law.

For example, during the live testimony of Detective Graham, at a time when the detective was under cross-examination by Plaintiffs' counsel, Mrs. Lengyel *foreshadowed information she could only have learned from her husband, Juror #1*, when she posted the following comment: "THE JUROR LEO [Law Enforcement Officer] will be asking questions." (Exhibit B, Slides 3-4).[7] The day prior, Mrs. Lengyel portended a challenge by her

[7] Mrs. Lengyel paid to "Superchat" that comment on the livestream. Superchat essentially allows YouTube viewers to pay to pin a comment on live streams to be seen by the entire audience of the livestream.

husband, Juror #1, to Detective Graham when she posted: "Detective Grant … LEO [Law Enforcement Officer] juror lol." (Exhibit B, Slide 3).

On November 8, 2023, while the jury was deliberating, Mrs. Lengyel paid to "Superchat" the following comment: "I think the note yesterday was frustrated jury that cannot reach $ agreement and it will take days." (Exhibit B, Slide 5). Mrs. Lengyel was apparently interpreting the jurors' thoughts in relation to Juror #1's question, the day prior, regarding a request for a report by Plaintiffs' economist expert, Kristi Kirby. And she was right. Her comment contained inside information *she could have only obtained from her husband, Juror #1*.

On October 31, 2023, the day after the testimony of Catherine Bedy, Mrs. Lengyel commented: "they [the jury] did not like [Cathi Bedy]" or any of the witnesses Defendant presented at trial the day prior. (Exhibit B, Slide 6). But how could Mrs. Lengyel have known whether the jury "liked" Ms. Bedy, aside from information she obtained from her husband? And how could she have known that the jury "did not like" any of the other defense witnesses, except from information communicated to her by Juror #1?

Other comments and posts by Mrs. Lengyel reflect that she was doing more than inappropriately engaging with the trial proceedings online; she was even monitoring the Court's docket and reviewing court filings. For example, on October 18, 2023, Mrs. Lengyel commented:

"Interesting motion just on the case about DV yesterday. On the sarasota county clerk of [court], the DV motion by the defendants basically said that if the judge granted, no [appellate] court." (Exhibit B, Slide 7). On November 3, 2023, regarding the Joint Commission issue that surfaced towards the end of the trial, Mrs. Lengyel wrote: "Deposition today at 4 in [Tampa] regarding JC documents. Motion is in the court Record [filed] by Mr. Anderson. (*Id.*). In that vein, Mrs. Lengyel also did Google research on the case, as evidenced by her comment: "There is a case on google … CARROLL vs Carroll about the judg Carolls mom about the judge when he was 16. Judge Alterbon was the appeals judge. supper interesting." (*Id.*). Mrs. Lengyel found "super interesting" and "post-worthy" that defense counsel, Chris Altenbernd, was involved years ago in an appeal involving the Judge presiding over the trial, which demonstrates how deeply involved she became not only in observing and commenting on the trial, but in researching about the trial and lawyers and even the Judge.

On October 27, 2023, Mrs. Lengyel commented: "I think Sally SM only relied on the Tampa [G]eneral [Hospital] to decide. Discounted all [others]." (Exhibit B, Slide 8). Mrs. Lengyel was advocating for the Plaintiffs' position and against the veracity of Dr. Sally Smith on a consequential issue in the case. Not coincidentally, in a proposed question dated October 12, 2023, Juror #1 questioned the Court regarding the existence of "probable cause of improper actions by/of Sally Smith in her assigned role

at JHACH, has/was she 'written-up' or 'coached.'" (*Id.*). Similarly, on October 19, 2023, while the jury was formulating questions related to the testimony of Johanna Klink, APRN, Mrs. Lengyel wrote: "they should ask if she [Nurse Klink] lied lol." (*Id.*). Mrs. Lengyel's posts, as compared with Juror #1's questions, are additional evidence of improper contacts and communications between the Lengyels, warranting both a juror interview and a new trial under Florida law.

Through several of her comments and posts, Mrs. Lengyel also inappropriately expressed concern that the clock was running out for Plaintiffs to put on their case. For example, in four separate comments posted on October 17, 2023, Mrs. Lengyel wrote: "anderson is burning time. He wont have any left to defend. He needs to be careful on time. I think you are right, depos to burn time and bringing witnesses that will burn Anderson so he will use time. I wonder if they defense are getting these witnesses so Anderson runs out of time! Don't burn your hours Anderson please. We need you!" (Exhibit B, Slide 9).

But why was Mrs. Lengyel of the opinion that Plaintiffs were running out of time, if she wasn't discussing the case with her husband? And who was she referring to when she said, "I think you are right?" Her bias in favor of Plaintiffs, and the depth of her knowledge regarding the case, in her role as the jury foreperson's wife – with whom he was living during the nine-week trial – is undeniable and palpable, and creates more than a

"reasonable basis" to believe what Defendants suspected when they filed their motion to disqualify: that Juror #1 shared that same bias.

Mrs. Lengyel also somehow knew or believed that the jury was asking questions that were purportedly serving to save Plaintiffs time on the shot clock. For example, on October 19, 2023, Mrs. Lengyel wrote: "Maybe Anderson will cross after questions to save time." (Exhibit B, Slide 10). On October 19, 2023, Mrs. Lengyel posted: "So proud of Anderson, he was like a Cat … no questions after … just to pounce after the jury Questions! Kudos." On October 20, 2023, Mrs. Lengyel paid to Superchat the following comment: "If plaintiff runs out of time, can the depositions be played since part goes to plaintiffs time?" (*Id.*). On October 25, 2023, Mrs. Lengyel commented: "yes more hours for plaintiff!!" (*Id.*). In response to continued questions from jurors, on October 19, 2023, Mrs. Lengyel commented: "JURY love it." (Exhibit B, Slide 23).

Even if evidence of a shared alignment between Juror #1 and his wife as to the desired outcome of the trial were not so compelling – and it is – Defendant would *still* satisfy the standard for a juror interview. Specifically, the *entire internet community* was made aware of the heavy bias in Plaintiffs' favor on the part of a juror's wife – plainly compromising the integrity of the jury process. As will be shown, even an appearance of impropriety warrants a new trial as a matter of public policy under Florida law.

As his wife and household companion during the course of the nine-week trial, Mrs. Lengyel was serving as Juror #1's "agent" to the internet world. Mrs. Lengyel has compromised the public confidence in the integrity of the jury system through her biased posts and improper emotional investment in a verdict in Plaintiffs' favor, given her role as Juror #1's spouse. Her actions also brought information into the Lengyels' household this Court prohibited the jurors from reviewing.

On November 6, 2023, the Court heard Defendants' Motion to Disqualify Juror #1 (DIN 3589), which was premised on Juror #1's suspected bias and prejudice in favor of Plaintiffs. Plaintiff's counsel, Mr. Anderson, changed his position several times throughout the course of oral argument on Defendant's Motion. Upon being pressed for a response by the Court, Mr. Anderson replied, "I changed my mind. I'll go with juror number [106]. So I'll agree with you." The Court then pressed again, and Mr. Anderson responded, "I think I'm gonna go with that." Then, as the Court was outlining the agreement of the parties and identifying which alternate would take Juror #1's place, Mr. Anderson abruptly announced: "You know who I didn't check with throughout this whole thing? My client." After about 15 seconds, Mr. Anderson changed his position yet again, and announced: "I'm gonna go with my client. I have to switch positions, because *my client feels more comfortable with juror #1*. So I'm going to switch positions based on my client's input." (emphasis added).

In response, Mr. Kowalski – who advocated to keep Juror #1 on the jury – can be seen turning to Jules and nodding his head with a smile.[8] This exchange is further evidence of an alignment between Plaintiffs and Jules to insulate a verdict in Plaintiffs' favor by retaining Juror #1, who, along with his wife, was heavily biased in Plaintiffs' favor.

What Defendant suspected *before* the verdict based on Juror #1's questions – *i.e.*, a bias in favor of Plaintiffs, warranting his removal as a juror and replacement with an alternative – was demonstrated beyond just a "reasonable belief" after the verdict. Specifically, Mrs. Lengyel was not the only member of the "husband and wife" pair to engage in public internet posts regarding the case. Following the verdict, Juror #1 joined his wife on these public platforms by immediately posting to the "Take Care of Maya" Facebook group – a Plaintiff-favored internet community hotly opposed to any commentary favoring the defense, created in response to the calculated and sensationalized "Take Care of Maya" Netflix series.

Juror #1 quickly posted "oh, now THAT is too funny, too cool too," to an AI generated image of Judge Carroll in battle gear standing in front of a smoking picture of a JHACH building with the caption "I went and

[8] Law & Crime Network, *WATCH LIVE: 'Take Care of Maya' Trial – Kowalski v. Johns Hopkins All Children's Hospital – Day 30*, YouTube (Nov. 6, 2023), https://www.youtube.com/live/BCzwd2jRp08?si=oUYX3tw01eMtfs7W&t=30153, at 08:22:50.

got the IJ documents myself!" (Exhibit B, Slide 50). The impropriety of an image of the judge presiding over this highly publicized trial condemning the defense – coupled with the jury foreman's undisguised delight in the image – is additional evidence of juror impropriety and misconduct.

On November 10, 2023, the day after the verdict was announced, Mrs. Lengyel posted a photo of Juror #1 on the "Take Care of Maya" Facebook group, thanking everyone who "stuck up for" Juror #1, presumably referring to Defendant's Motion to Disqualify Juror Number One (DIN 3589). (Exhibit B, Slide 47). That same day, Juror #1 posted the following comment in response:

> While the other jurors were escorted down to be transported, I was asked to remain by the SCSO Lieutenant. (**oh boy, I'm in trouble *once again***) but it was for just some security talk about that Oops.

(Exhibit B, Slide 51) (emphasis added).

Juror #1's comment about being "in trouble once again" indicates that he knew, prior to being released from the courthouse, that Defendant had moved to dismiss him as a juror – *a fact he should not have known about if he was abiding by this Court's explicit instruction to not discuss this case with anyone or to do any research on the case.* The fact that Juror #1 was exposed to information relating to Defendant's motion to remove him as a juror – in violation of this Court's instructions – is further evidenced by Mrs. Lengyel's post thanking the pro-Plaintiff Facebook group who "stuck up for" her husband.

Juror #1 continued to post in this Plaintiffs-favored Facebook group, which hailed him as a hero for being responsible for the verdict against the Defendant hospital. While Juror #1 made sure to repeatedly express that it was not solely his decision, he seemed to enjoy his newfound notoriety among these online platforms by engaging in posts and videos celebrating him as a hero. (Exhibit B, Slides 48-55).

To date, Juror #1 *continues* to post about the case, even to the point of advising the internet community regarding "filings" that will be made on Wednesday, November 22nd. The internet community, in turn, has suggested that Juror #1 remain humble and quiet out of respect for the process. But as Defendant has shown by reference to evidence, Juror #1 apparently has no respect for the judicial process, or for Defendant's right to a fair trial before an impartial jury.

If interviewed, Defendant expects Juror #1 to respond with a self-serving denial of any communications with his wife about the trial. But on Facebook, Juror #1 "loved" a comment by a user praising the fact that his whole family was able to come to court and observe the trial. In another comment, when a user pointed out that Juror #1's wife being in the audience could be a problem for the verdict, Juror #1 "laughed" at the comment to mock it. Juror #1 also "liked" a comment from the group, which advised him to "be careful" regarding what questions he asked, as

a new trial could be granted if he "says something now that implies he made up his mind." (Exhibit B, Slides 49, 52).

These posts demonstrate that Juror #1's bias, which served as the basis for Defendant's Motion to Disqualify Juror Number One (DIN 3589), was apparent to the Plaintiffs' favored online communities that supported Juror #1. Why else would Juror #1 need to "be careful" if he had remained impartial throughout the trial? And why did these users worry about Juror #1's wife being in the audience?

On November 11, 2023, Juror #1 also joined the Law and Lumber YouTube livestream, paid the host, known as "Rob", $100.00, and commented that he would be *happy to discuss the case with him*. (Exhibit B, Slide 54). Rob, a lawyer himself – appreciating the appearance of impropriety arising out of Juror #1's communications – advised Juror #1 to first consult with Plaintiffs' counsel before speaking publicly.[9] Juror #1 paid Rob $2.00 in return for the advice, commenting, "Agreed." (Exhibit B, Slide 54). Juror #1 later *removed several of his comments* from the Facebook group, evidence that he too realized the appearance of impropriety his actions were demonstrating to the internet community, and therefore that his conduct was necessarily undermining public confidence in the integrity of the jury system.

[9] Law & Lumber, YouTube (Nov. 10, 2023), at https://www.youtube.com/live/SkidZ9zrta0?si=Og9GLRMG2f4rdre_&t=2840.

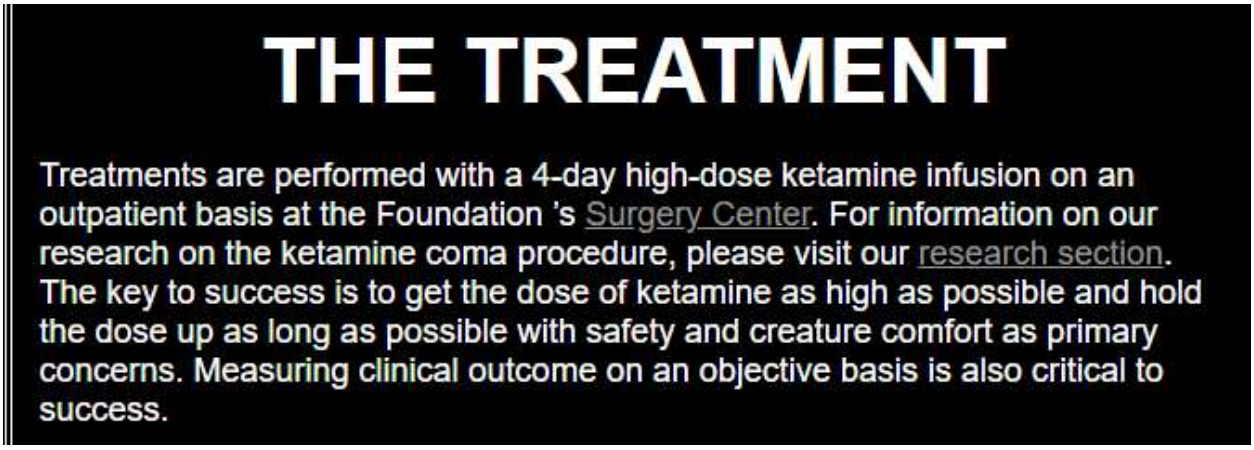
On November 19, 2023, shortly before filing this Motion, Juror #1 admitted to the "Take Care of Maya" Facebook group that he had contacted Plaintiffs' counsel, who advised him that this very Motion would be filed:

> Believe by this Wednesday, defense has to have something filed, then Judge C has to actually make some reviews and rullings before actually "hitting-the-gavel" and closing his phase of the case.
>
> So, We're listening to "council," as it ain't over yet.
>
> (Exhibit B, Slide 52).

On November 15, 2023, Law and Lumber hosted Plaintiffs' expert, Dr. Joe Corcoran, on his YouTube livestream. Dr. Corcoran spoke about his view that the video of the then-current CEO and then-interim CEO of Johns Hopkins All Children's Hospital should not have been excluded in the punitive damages phase, and that if it had not, "*you can ask Juror # 1*, that would have put another zero on the punitive damages[.]" In response, Juror #1 commented that it would have added 14 zeros. (Exhibit B, Slide 55).

In addition to the above improper contacts and communications, Defendant has a reasonable basis to believe that Juror #1 also inappropriately conducted internet research regarding one or more issues in this case, in violation of this Court's order to not consider information outside of the evidence presented at trial. *See, e.g., State v. Needelman*, 276 So. 3d 444, 446 (Fla. 5th DCA 2019) (new trial warranted where juror's

engagement in on-line research revealed through jury interview). On October 9, 2023, Juror #1 posed the following question to Maya Kowalski: "When it comes to 'creature comforts,' were you made to feel comfortable, or were you made to - or just felt - that you were in a hostile place?" The phrase "creature comfort" was not used by any witness at trial, but it *is* used on Dr. Kirkpatrick's RSD Foundation website related to ketamine treatment,[10] as demonstrated below:




Moreover, in videos on his website depicting his treatment of other females of similar age as Maya, Dr. Kirkpatrick often uses the phrase "creature comforts" when speaking to patients about the circumstances under which ketamine treatment is most effective. It is Defendant's reasonable belief, based on the foregoing, that Juror #1 visited Dr. Kirkpatrick's website to research issues in this case, including with

[10] RSD Foundation, *The Treatment*, at http://www.rsdfoundation.org/ketamine-therapy.html (last visited November 15, 2023).

respect to diagnosis and treatment of CRPS, in violation of this Court's order.

Finally, it appears, based on a public search of the Sarasota County court docket, that Debra Salisbury[11] was involved in Mrs. Lengyel's 2007 domestic relations proceeding, a *fact never disclosed on Juror #1's jury questionnaire during voir dire*. (Exhibit C, Juror #1's Prospective Juror Questionnaire, at 3). Similarly, Juror #1 denied viewing the Netflix documentary related to this case, "Take Care of Maya," on his Supplemental Juror Questionnaire, and denied having any conversations or overhearing any conversations concerning this movie. (Exhibit C, at 5). This seems unlikely given Mrs. Lengyel's heavy engagement, investment, and close monitoring of the case, the court docket, and her following on social media of the movie producers for the documentary. (Exhibit B, Slide 56). Juror #1's post-trial posts to the "Take Care of Maya" Facebook group further undermine his feigned ignorance of the documentary.

Evidence of juror misconduct on the part Juror #1 – both individually and arising out of his wife's involvement in the case, social media posts, and obvious bias in favor of Plaintiffs – is substantial, presumptively prejudicial, and compromises the integrity of the verdict, the jury system,

[11] Debra Salisbury was the attorney who represented Jack Kowalski in the underlying DCF proceedings, who also served as a witness for the Plaintiffs in this action and was featured heavily in the Netflix documentary about this case, "Take Care of Maya." However, due to the protected status of the documents in the court docket, it is not easily discernible whether Attorney Salisbury represented Mrs. Lengyel in that matter.

and the judicial process as a whole. The evidence gives rise to a reasonable belief that Juror #1 impermissibly obtained and shared information about the case during the course of the trial with and through his wife, as well as Plaintiffs' advocate, Jules, in violation of this Court's instructions and the requirements of Florida law. And because the evidence provides a reasonable "basis for an inquiry," Defendant moves for an interview of Juror #1 in support of its motion for new trial, and at the Court's discretion, for an interview of Juror #1's wife, Yolanda Lengyel. In addition, Defendant further requests limited discovery into the issue of juror misconduct in anticipation of the interview, as well as an emergency order requiring Juror #1 and his wife to preserve text messages, social media activity, and other electronic data evidencing communications regarding the trial.

**LEGAL STANDARD**

In support of a Motion for New Trial, Florida Rule of Civil Procedure 1.431(h) permits a party to move for a juror interview if the party believes that grounds for legal challenge to a verdict "may exist." An interview of a juror is proper where there is a reasonable basis to believe that a prejudicial act occurred supporting a legal basis for a new trial, such as "improper contact with a juror" or "misconduct of a juror." *Snook*, 485 So. 2d at 498.

A party moving for a juror interview "does not have to conclusively establish that the alleged incident occurred and actually prejudiced his case." *Id.* at 498-99. Instead, it is only necessary to establish a "basis for an inquiry." *Id.*, citing *Albertsons,* 442 So. 2d at 372. In "contrast to what is needed to prove entitlement to a new trial, a party seeking only a juror interview must set forth sworn factual allegations that, *if true*, would require a trial court to order a new trial." *State Farm Mut. Auto. Ins. Co. v. Lawrence*, 65 So. 3d 52, 56 (Fla. 2d DCA 2011), citing *Baptist Hosp. of Miami, Inc. v. Maler*, 579 So. 2d 97, 100 (Fla. 1991). In this regard, a party "should be allowed the opportunity to prove…that he is entitled" to a juror interview. *Sconyers v. State*, 513 So. 2d 1113, 1116 (Fla. 2d DCA 1987).

"Contact with a juror during trial about the pending matter" – as Defendant believes occurred in this case – constitutes "presumptively prejudicial" juror misconduct. *Norman*, 668 So. 2d at 1020. Once an improper contact has been established, "the burden then shifts to the party seeking to preserve the jury's verdict to demonstrate that the contact was harmless." *Id.* In this regard, "[o]nce improper contact or juror misconduct is established by juror interview, the moving party is then entitled to a new trial *unless* the opposing party can demonstrate that there is no reasonable possibility that the juror misconduct affected the verdict." *Id.* (emphasis in original).

## LEGAL ARGUMENT

### A. Evidence of Juror Misconduct Undermines the Integrity of the Judicial Process and Warrants a New Trial As A Matter of Public Policy.

A "[j]uror who is biased or prejudiced is not fair-minded and impartial, as required to prevent impairment of [the] right to [a] jury trial." *Johnson v. Reynolds*, 121 So. 793, 794 (Fla. 1929). The "importance of an impartial jury" is so fundamental that it is initially scrutinized at the inception of trial on juror challenges for cause. *See Moore v. State*, 525 So. 2d 870, 872 (Fla. 1988) (citing *Singer v. State*, 109 So. 2d 7 (Fla. 1959)) ("[I]f there is a basis for any reasonable doubt as to any juror's possession of that state of mind which will enable him to render an impartial verdict…he should be excused"); *Peters v. State*, 874 So. 2d 677, 679 (Fla. 4th DCA 2004) ("The test for juror competency is whether a juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the instructions on the law given by the court."); *Bell v. Greissman*, 902 So. 2d 846, 847 (Fla. 4th DCA 2005) (if "there is a reasonable doubt about the jury's impartiality, the juror should be dismissed for cause.").

Evidence of juror misconduct is also evaluated after a jury is seated. Specifically, "[i]t is within the trial court's discretion to grant a new trial" where it is later "suspected" that the jury has been "tainted," based on the "basic premise" that parties "are entitled to a fair trial." *Policari v. Cerbasi*,

625 So. 2d 998 (Fla. 5th DCA 1993). In *Norman*, for example, the Fourth District determined that evidence of conversations between the jury foreman and his brother, who was an agent of the defendant's liability insurer, warranted a new trial, even though the juror testified in a post-trial deposition that "no substantive matters concerning the case" were discussed. 668 So. 2d at 1019. The Fourth District noted that the trial judge had "expressly and repeatedly instructed the jury" that "they were prohibited from discussing the case with third parties in order to prevent outside influence," and had "further instructed them not to prematurely form an opinion as to the merits of the case or receive any evidence outside of the courtroom." *Id.* Notwithstanding the trial court's "explicit instruction," the "offending juror admittedly engaged in two separate conversations with his brother regarding the case during the three-day trial." *Id.*

The Fourth District determined that the juror's conversations with his brother "constitute[d] objective acts" that "compromise[d] the integrity of the fact-finding process" and represented an "instance of improper contact which will not be tolerated as a matter of public policy." *Id.* The Court referred to the "general rule" that "potentially harmful misconduct is presumptively prejudicial" and that "[c]ontact with a juror during trial about the pending matter falls within this category." *Id.* at 1020, *citing Amazon*, 487 So. 2d at 11. Because the "record demonstrates that a

potentially prejudicial communication occurred and defendant did not dispel the presumption of prejudice," the *Norman* Court determined that the "juror's relationship to and conversations with his brother…substantially undermined plaintiffs' right to a fair trial, compromised the integrity of this jury trial, and thwarted substantial justice," warranting a new trial. *Id.*

Defendant submits that it too is entitled to a new trial as a matter of public policy based on the undeniable appearance of impropriety arising out of the actions and conduct of Juror #1 and his wife. In this regard, Defendant believes a jury interview will shed additional light on the misconduct demonstrated by this motion and accompanying affidavit. And even if the misconduct is denied (as Defendant predicts), neither Juror #1 nor his wife can erase the appearance of impropriety shown by their actions and social media posts. That appearance of impropriety, in turn, presents an independent basis for a new trial. *See, e.g., Norman.*

**B. Defendant is Entitled to a Juror Interview to Establish Grounds for a Legal Challenge to the Verdict.**

Defendant submits that it has satisfied the standard for obtaining a juror interview based on Juror #1's suspected contacts and communications with his wife regarding the case, presumed receipt of information from outside influences, and apparent internet research during the trial. *See, e.g., Snook*, 485 So. 2d at 498-99 (movant seeking

juror interview "does not have to conclusively establish" misconduct occurred but only of a "basis for an inquiry"). Evidence of Juror #1's suspected bias in favor of Plaintiffs, more specifically set forth in Defendant's Motion to Disqualify Juror, has been compounded and confirmed by unsolicited evidence discovered post-trial involving the heavy social media participation in the trial on the part of Juror #1's wife and presumptive "agent," Mrs. Lengyel, as well as Mrs. Lengyel's presence at trial and friendly communications with Plaintiffs' advocate, "Jules." It has also been confirmed by Juror #1's own social media participation post-trial, which even the internet community has recognized is indicative of jury taint and misconduct.

As noted, Mrs. Lengyel's social media posts include information she could only have obtained from her husband, Juror #1. The evidence therefore provides a reasonable basis for Defendant to believe that Juror #1 communicated with his wife during the trial regarding the case, in violation of this Court's instruction. Such communications, in turn, constitute "presumptively prejudicial" misconduct under Florida law. *Norman*, 668 So. 2d at 1020 ("Contact with a juror during trial about the pending matter" falls within the category of "potentially harmful" and "presumptively prejudicial" misconduct.).

The record evidence incorporated herein "demonstrates that [ ] potentially prejudicial communication[s]" between Juror #1 and his wife

occurred during the course of the nine-week trial. *Id.* Defendant does "not have to conclusively establish" that the misconduct occurred and "actually prejudiced [its] case," but only a "basis for an inquiry." *Snook*, 485 So. 2d at 499. Defendant has satisfied its burden by "support[ing] [its] motion for an interview with allegations of juror misconduct." *Snook*, 485 So. 2d at 499.

As in *Snook*, Juror #1 is "alleged to have deliberately disregarded the court's instructions not to discuss the case and to base the verdict solely on evidence presented during trial," as supported by substantial evidence submitted with this motion and a supporting affidavit. *Id.* Juror #1's wife, Mrs. Lengyel, has not only demonstrated a shocking alignment with and emotional investment in a verdict in favor of Plaintiffs, but as the wife of the jury foreman, her conduct threatens the integrity of the judicial process. Defendant, at a minimum, is therefore entitled to interview Juror #1 to determine the nature and extent of his communications with his wife, with whom he resided during the course of a nine-week trial. If the social media posts and commentary of Mrs. Lengyel are any indication, those communications have been substantial, in direct violation of this Court's instructions to the jurors, and therefore compromise the integrity of the judicial system and warrant a new trial as a matter of law.

### C. Defendant is Entitled to a New Trial if the Juror Interview Establishes Improper Contacts and Communications Between Juror #1 and His Wife Regarding the Case.

Defendant believes it will establish improper contacts and communications between Juror #1 and his wife during the trial, or other jury misconduct (such as improper internet research) by juror interview. If so, the Defendant will be entitled to a new trial as a matter of law, *unless* Plaintiffs "can demonstrate that there is no reasonable possibility that the juror misconduct affected the verdict." *Norman*, 668 So. 2d at 1020. In the face of substantial evidence of presumptively prejudicial juror misconduct – culminating in an exorbitant verdict awarding Plaintiffs every dollar requested on every count of their Complaint, which itself should shock the Court's judicial conscience – Defendant submits that it will be impossible for Plaintiffs to satisfy their burden of demonstrating "no reasonable possibility that the jury misconduct affected the verdict."

Not surprisingly, Defendant has not located a reported decision revealing the extent of social media participation and blatant bias exhibited in this case. The Fifth District has noted that "[j]urors who tweet, blog, and surf continue to disrupt and derail lengthy trials, resulting in mistrials and unnecessary waste of public and private resources." *Needelman,* 276 So. 3d at 445. But this motion does not involve a mere instance of "tweeting" and "blogging" or alleged "juror misconduct arising from the use of social media during a trial." *Murphy v. Roth*, 204 So. 3d

43, 48 (Fla. 4th DCA 2016). Rather, the evidence presented reveals a shocking and pervasive "use of social media" by the *spouse of a jury foreperson,* with whom the juror resided during the course of a nine-week trial, accompanied by a highly improper and pervasive bias in Plaintiffs' favor. The evidence also reveals Juror #1's participation in the same social media activity post-trial, demonstrating a shared bias in Plaintiffs' favor on the part of the Lengyels.

Mrs. Lengyel, as Juror #1's wife, should have displayed an extra level of respect for the judicial process, if only to avoid any appearance of impropriety arising out of her role as the wife of the jury foreman. But instead, she incessantly and publicly posted "inside" information on social media about the trial *she could only have obtained from her husband*. In clear contrast with *Murphy*, the circumstances at issue have "substantially undermined [Defendant's] right to a fair trial," compromised the integrity of the judicial system, and "thwarted substantial justice," warranting a new trial. *Norman*, 668 So. 2d at 1016.

Indeed, while Defendant has not located a Florida state court decision with analogous facts – likely because of the egregious and therefore uncommon nature of the misconduct at issue – other courts have condemned the type of intra-family communications between jurors and their spouses or other family members that appear to have occurred in this case, even without evidence of actual prejudice. In *United States v.*

*Gaffney*, 676 F. Supp. 1544 (M.D. Fla. 1987), for example, the district court acknowledged that "extraneous influences" demonstrating the existence of "partiality or bias" may be shown by "communications or other contact between jurors and third persons." *Id.* at 1550. The *Gaffney* court noted that "third-party contact with jurors, once proven by a defendant, creates a presumption of prejudice and shifts the burden to rebut such prejudice" to the opponent, acknowledging that the "[f]ailure to negate the presumed prejudice results in a new trial." *Id.* at 1551.

In *Gaffney*, "[t]wo jurors readily admitted they discussed the case regularly with their spouses," which the court observed was "in direct contravention to the court's repeated admonition not to discuss the case with anyone." *Id.* at 1557. The *Gaffney* court concluded that discussing the case with family members "creates a *possibility* that some juror's considered either evidence, issues, or opinions not considered by other jurors," and that "discussion with family members about the case cannot be dismissed as harmless." *Id.* at 1558. (emphasis added). The *Gaffney* court therefore determined that the misconduct warranted a new trial. *Id.* at 1559.

In *Stouffer v. Trammell*, 738 F.3d 1205 (10th Cir. 2013), the Tenth Circuit concluded that even evidence of "non-verbal communications" between a juror and a juror's spouse was improper, warranting an evidentiary hearing. A trial witness in *Stouffer* testified to observing

"repeated non-verbal communication between Juror Vetter and her husband," including the juror "look[ing] to her husband with a 'questioned look in her face,'" and her husband "respond[ing] by nodding and rolling his eyes." *Id.* at 1215. The witness explained that the juror had given her husband the "questioned look" in response to a "strong point" by the prosecutor. *Id.* at 1216.

Although the district court concluded that the defense "had produced nothing more" than "speculation" and denied the defendant's request to examine the juror, the Tenth Circuit reversed, noting that the "timing and context of the Vetter's non-verbal communications and the [witness's] specific observation *strongly indicate* [the Vetters] were discussing matters pending before the jury." *Id.* at 1217 (emphasis added). The Tenth Circuit concluded that "[t]his is improper juror communication," and that the "state trial court erred in failing to allow a hearing to investigate it," characterizing as "implausible" the argument that the "Vetter's communication did not favor either side." *Id.*

Notably, the Tenth Circuit in *Stouffer* rejected the argument that a hearing was not necessary because Juror Vetter stated she had "refused to talk about the case" when her husband had "attempted to talk to her" about the trial. *Id.* at 1217-18. The Tenth Circuit considered the juror's credibility, determining that the witness's testimony regarding the non-verbal communications "constituted credible evidence of improper jury

communication," and disregarding Juror Vetter's explanation. The Court went on to conclude that the "proper remedy" was a hearing to determine the "extent of the prejudice, if any, to the defendant," concluding that the trial court "abused its discretion by failing to investigate this communication adequately." *Id.* at 1218.

In *State v. Perry*, 740 S.W. 2d 723 (Tenn. App. 1987), the court similarly determined that juror misconduct had occurred as a result of expressions of bias against the defendant on the part of a juror's husband, requiring a new trial, "even though the misconduct probably did not alter the result of the trial." *Id.* at 726. Evidence was presented that the juror's husband had expressed his disdain for the defendant and hope of an indictment to a witness for the State, telling the witness he had talked to his wife, who had "already decided he's guilty" and was "just waiting to hear your testimony." *Id.* at 724. When subsequently questioned regarding his statements, however, the juror's husband stated he was just "running off" at the mouth and "did not in fact talk with his wife." *Id.* at 725. The juror corroborated her husband's explanation, stating "her husband did not tell her the substance of the conversation" and that "[s]he told her husband that she had rather not discuss this case." *Id.*

Like the court in *Stouffer*, the *Perry* court properly weighed the credibility of the juror and her husband and ultimately found, "from circumstantial evidence," that the juror's husband had "related prejudicial

information" to his wife. *Id.* Concluding that a "*prima facie* showing was made and not refuted by the State," the court determined that the husband's "expressed anxiety for the defendant to be convicted," and his "inclination to discuss the case," was "sufficient circumstantial evidence to support" a finding of jury misconduct, acknowledging that "[m]isconduct of a jury may be established by circumstantial evidence." *Id.* at 726. Even though both the juror and her husband refuted the existence of improper communications, the *Perry* court disregarded their testimony under the "circumstances" and made a finding of juror misconduct.

These decisions are instructive on the issue before the Court. Specifically, courts that have specifically addressed juror misconduct arising out of conversations between a juror and his or her spouse or family member regarding the case have determined that such communications are not "harmless" but, instead, presumptively prejudicial. Here, Defendant has presented evidence and a sworn affidavit establishing a reasonable basis for the belief that Juror #1 and his wife, Mrs. Lengyel, who resided together during the course of the nine-week trial, engaged in improper contacts and communications regarding the case in violation of this Court's instructions. Mrs. Lengyel's social media posts reveal far more than a passing interest in the case, and instead, a strong bias in favor of Plaintiffs and emotional investment in a verdict in their favor – similar to the juror's husband in *Perry*.

Under the "circumstances," it strains credulity to believe that Mrs. Lengyel and her husband, Juror #1, did not discuss the case during the nine-week trial. To the contrary, the content of Mrs. Lengyel's social media posts reveal "inside" information she could only have discovered from her husband. Her heavy emotional investment in the trial and in a verdict in Plaintiffs' favor is further evidence of a shared bias on the part of her husband, Juror #1 – the same bias that prompted Defendant's motion to remove him as a juror before the verdict. The "circumstantial evidence" gives rise to a reasonable belief that Juror #1 and his wife, together, formulated a shared bias in favor of Plaintiffs during the trial, discussed that bias and the case throughout the trial, resulting in "presumptively prejudicial" misconduct undermining the integrity of the jury process and warranting a new trial.

Defendant therefore requests a juror interview in order to establish the existence of presumptively prejudicial communications between Juror #1 and Mrs. Lengyel. Although such communications surely will be denied, this Court – like the courts in *Stouffer* and in *Perry* – has discretion to assess the Lengyels' credibility under the circumstances, and to rely instead on the evidence in its totality. Moreover, assuming such communications are established, Defendant further submits that it will be impossible for Plaintiffs to prove "there is no reasonable possibility that the juror misconduct affected the verdict." *Norman*, 668 So. 2d at 1020.

Accordingly, Defendant submits it has satisfied the standard for entitlement to a juror interview, and that its entitlement to a new trial will be established once the requested juror interview is conducted. *Norman*, 668 So. 2d at 1020; *Amazon*, 487 So. 2d at 11.

### D. Juror #1 and His Wife Should Be Ordered to Preserve All Text Messages, Social Media Activity, and Other Electronic Data Evidencing Communications Regarding the Trial.

Defendant has learned that individuals associated with Juror #1 and his wife have begun deleting social media posts and presumably text messages, upon the belated realization that Mrs. Lengyel (along with Juror #1) are participants in juror misconduct. Any such spoliation of evidence on the part of Juror #1 and his wife will necessarily undermine Defendant's ability to provide the Court with a complete record of the misconduct set forth herein.

Defendant therefore requests the entry of an emergency order precluding Juror #1 and his wife from deleting text messages, social media activity, and any other form of electronic data pertaining to the case, pending the requested juror interview. *See, e.g., Naugle v. Philip Morris USA, Inc.*, 133 So. 3d 1235, 1237 (Fla. 4th DCA 2014) (granting emergency motion to interview jurors and to preserve text messages and ordering foreperson to appear in court and to bring his cell phone for an *in camera* review); *see also People v. Neulander*, 162 A.D. 3d 1763, 1767 (N.Y. App. 2018) (noting that "[f]orensic examination of [juror's] cell phone revealed

that [juror] had selectively deleted scores of messages or parts thereof" including "entire web browsing history" and that her "selective deletion of certain text messages demonstrated 'a consciousness that she had engaged in misconduct, in violation of the Court's admonitions."). Defendant further requests limited discovery into the referenced communications and electronic data in preparation for the requested juror interview.

**CONCLUSION**

Circumstantial evidence creating an appearance of juror misconduct undermines the integrity of the judicial process and warrants a new trial under Florida law as a matter of public policy. A more compelling case of juror misconduct than the one presented by this motion can hardly be imagined. Defendant suspected Juror #1 of a bias in favor of Plaintiffs before the jury began their deliberations, and therefore moved to disqualify Juror #1 to replace him with an alternate. Deferring to his "client," Jack Kowalski predictably chose to allow Juror #1 to remain, acknowledging his victory with a smile to his TikTok advocate Jules, who developed a friendship at trial with Juror #1's wife, Yolanda Lengyel. Mrs. Lengyel's social media posts and commentary, in turn, reveal not only a palpable bias and prejudice in Plaintiffs' favor, but "inside" information she only could have obtained from her husband, Juror #1. The Lengyels resided together in the same household for the course of the entire nine-week trial.

It strains credulity to believe that the Lengyels were not sharing information regarding the case, particularly given the nature of their social media participation.

Defendant does not have to prove "actual" misconduct to be entitled to a juror interview under Florida law. Rather, Defendant only has to establish a "reasonable belief" that misconduct occurred to be entitled to interview a juror regarding presumed misconduct. And once juror misconduct is established, a new trial is warranted, unless the non-moving party can establish "beyond reasonable possibility" that juror misconduct did not affect the verdict.

Defendant has more than satisfied its burden of proof on its entitlement to a juror interview under Florida law. Defendant therefore requests that the Court order an interview of Juror #1 and, in the Court's discretion, of his wife, Yolanda Lengyel, regarding the communications and contacts alleged herein and in the affidavit accompanying this motion. Defendant further requests the entry of an emergency order requiring the Lengyels to preserve text messages, social media activity, and other electronic data evidencing communications regarding the trial pending the interview. Finally, Defendant requests limited discovery regarding the issues set forth herein, in preparation for the requested juror interview.

**WHEREFORE**, Defendant, Johns Hopkins All Children's Hospital, Inc., moves this Court for an order permitting Defendant to interview Juror #1 and his wife, Yolanda Lengyel, regarding the evidence discussed herein, opening discovery into further evidence of juror misconduct, and requiring Juror #1 and his wife to preserve all text messages, social media posts, and other forms of electronic data pertaining to the trial on an emergency basis.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on November 22, 2023, I electronically filed the foregoing with the Clerk of Court by using eFilings through the Florida Courts ePortal System, which will provide a Notice of eFiling to counsel of record.

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