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Clerk
Marion County, Indiana

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D01-2211-MI-038101

CAITLIN BERNARD, M.D., on her own behalf and on behalf of her patients; AMY CALDWELL, M.D., on her own behalf and on behalf of her patients,

Plaintiffs,

v.

TODD ROKITA, in his official capacity as Attorney General of the State of Indiana; SCOTT BARNHART, in his official capacity as Chief Counsel and Director of the Consumer Protection Division of the Office of the Attorney General of the State of Indiana,

Defendants.

MOTION TO STRIKE PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL AND TO RECONSIDER AND CORRECT ERROR IN THE COURT'S ORDER OF DECEMBER 2, 2022

Pursuant to Trial Rules 41(A), 41(F), 52(B), 53.4(A), and 59 and this Court's inherent power, Defendant Todd Rokita, the Attorney General of Indiana, hereby moves this Court to strike Plaintiffs' notice of voluntary dismissal and to reconsider and correct the erroneous finding in this Court's December 2, 2022 Order Denying Plaintiffs' Motion for Preliminary Injunction ("Order") that the Attorney General violated state law.

First, as decisional law interpreting Trial Rule 41(A)(1) makes clear, Plaintiffs' attempt at voluntary dismissal is improper because it followed on the heels of a preliminary injunction hearing and Order that went to the merits of the controversy. A voluntary dismissal under these circumstances would prejudice the Attorney General by denying him a full opportunity to

challenge and correct the Order's erroneous finding that he violated state law. In any event, this Court has several procedural mechanisms—including Trial Rules 41(A), 41(F), 52(B)(2), 53.4(A), and 59, as well as the Court's inherent power—for reconsidering and correcting (or at least vacating) the mistaken initial finding that the Attorney General violated Indiana Code § 25-1-7-10(a).

Moreover, on that score, the Attorney General submits that the Court erred in finding that certain of his public statements violated Indiana Code § 25-1-7-10(a), which provides that "all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee." Simply put, none of the public statements made by the Attorney General violated Indiana Code § 25-1-7-10(a) because none of those statements revealed the existence or contents of any complaints received by his office concerning a state licensee. The information shared by the Attorney General with the citizenry was merely that his office was investigating suspected violations of Indiana law based on facts known to the public. The Attorney General's public statements did not improperly divulge information "pertaining to … complaints" simply because some of the information in those statements also happened to appear in complaints made under the licensing statutes. The contrary finding in the Court's Order was erroneous and should be corrected. Maintaining public confidence in the Attorney General's adherence to the law is of vital importance, and therefore it is also vitally important to correct an erroneous judicial finding that the Attorney General violated state law.

BACKGROUND

On November 3, 2022, Plaintiffs Caitlin Bernard and Amy Caldwell filed their Complaint for Declaratory Judgment and Injunctive Relief ("Complaint") against Defendants. One week

later, on November 9, Plaintiffs filed a Motion for Preliminary Injunction seeking, *inter alia*, to enjoin Defendants from continuing to investigate any of the consumer complaints pending against the Plaintiffs. This Court held a preliminary injunction hearing on November 18 and 21. Because this was a preliminary injunction hearing, the issues should have been narrow and discrete, focused solely on matters at least arguably requiring immediate relief. Accordingly, the Attorney General's office offered no evidence regarding any public statements about the pending investigation into Dr. Bernard because the most salient evidence was that the last public statement was made on September 15, 2022, 48 days before this lawsuit was filed, 54 days before the preliminary injunction was sought, and 63 days before the hearing began. Events that happened more than two months prior to the hearing did not give rise to any need for immediate, preliminary relief, and therefore were not addressed at the hearing.

In its Order of December 2, 2022, this Court agreed with the Attorney General's position that Plaintiffs' request for preliminary relief should be denied. The Court found that "Dr. Bernard has failed to meet her burden on the likelihood [of] success [on this] preliminary injunction element." Order ¶ 152; *see also id.* ¶ 169. The Court denied Dr. Caldwell's request for preliminary relief on grounds of mootness. *See id.* ¶ 84.

Although it denied relief to the Plaintiffs, this Court nevertheless (and unnecessarily) found that certain public statements made by the Attorney General between July 13 and September 15, 2022, *see id.* ¶¶ 31–34, 39–44, violated Indiana Code § 25-1-7-10(a) and inflicted irreparable harm on Dr. Bernard, *see id.* ¶¶ 127–28, 138, 143, 150. Again, because these statements were made months before the hearing and supplied no basis for injunctive relief, they were not addressed by the Attorney General's office at the hearing, and therefore the Court's finding on this point was made on an incomplete record.

Less than a week after the Order, on December 8, 2022, Plaintiffs voluntarily dismissed under Trial Rule 41(A)(1)(a) all claims against Defendants pled in Plaintiffs' Complaint. *See* Notice of Plaintiffs' Voluntary Dismissal Without Prejudice. Plaintiffs did not ask Defendants to stipulate to voluntary dismissal under Rule 41(A)(1)(b), and Defendants did not so stipulate.

ARGUMENT

I. This Court Should Strike Plaintiffs' Notice of Voluntary Dismissal Because It Improperly Came After a Preliminary Injunction Hearing and Order That Went to the Merits and Because the Voluntary Dismissal Prejudices the Attorney General.

Plaintiffs' attempt at voluntary dismissal under Trial Rule 41(A)(1)(a) was improper because it was filed after a preliminary injunction hearing and Order that went to the merits of the controversy. *See Finke v. N. Indiana Pub. Serv. Co.*, 862 N.E.2d 266, 272 (Ind. Ct. App. 2006); *Rose v. Rose*, 526 N.E.2d 231, 235 (Ind. Ct. App. 1988). In addition, the voluntary dismissal prejudices the Attorney General by denying him the opportunity to challenge and correct the Order's erroneous finding that he violated state law. *Id.*

1. Despite Rule 41(A)(1)(a)'s permissive language, it is settled that in some circumstances "allowing a voluntary dismissal would violate the purpose of the rule and would result in legal prejudice to [the defendant]." *Rose*, 526 N.E.2d at 235. The Court of Appeals has explained that, "[w]here a hearing has been conducted on an issue which goes to the merits of the controversy, *voluntary dismissal is inappropriate*." *Finke*, 862 N.E.2d at 272 (quoting *Rose*, 526 N.E.2d at 235) (emphasis added). When faced with an improper notice of voluntary dismissal, the correct judicial response is to strike the notice. *See Rose*, 526 N.E.2d at 235 (affirming the trial court's "striking [the plaintiff's] notice of voluntary dismissal").

Finke and *Rose* confirm that the rule against improper voluntary dismissal applies here. *Finke* reaffirmed *Rose*'s approving discussion of a case applying the federal counterpart to Rule

41(A). In the case, "a hearing on the plaintiff's motion for a preliminary injunction … squarely raised the merits of the controversies. … The court held that under these circumstances, allowing a voluntary dismissal, though attempted prior to any answer or motion for summary judgment was filed, would not be in accord with the essential purpose of rule 41(a)"—which "was to eliminate evils resulting from the absolute right of a plaintiff to take a voluntary nonsuit at any stage … before the pronouncement of judgment and after the defendant had incurred substantial expense or acquired substantial rights." *Finke*, 862 N.E.2d at 272, 270 (quoting *Rose*, 526 N.E.2d at 235, 234) (discussing *Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105, 107 (2d Cir. 1953)).

Here, as in the fact-pattern discussed in *Finke* and *Rose*, this Court held a preliminary injunction hearing that "squarely raised the merits of the controversies." *Id.* After the hearing, the Court's Order of December 2, 2022, found (based on an incomplete record) that the Attorney General violated Section 25-1-7-10 of the Code. That finding, too, went directly to the merits of the case. Plaintiffs had raised this alleged violation in their Complaint and sought relief based on it. *See* Complaint ¶¶ 105–13.

2. The voluntary dismissal also prejudices the Attorney General, who disputes the erroneous finding that he violated state law. It is the Attorney General's duty to uphold the law, and he did so in this case. And the Court can and should correct its prior finding to the contrary. Plaintiffs' attempted voluntary dismissal of their action would prevent the Attorney General from proving in this case the error of the finding that he violated the law. For that reason, permitting Plaintiffs to voluntarily dismiss their case at this stage "would violate the purpose of the rule and would result in legal prejudice to" the Attorney General. *Rose*, 526 N.E.2d at 235. For these reasons, the Court should strike Plaintiffs' voluntary dismissal and permit the Attorney General to challenge and correct the mistaken finding in the December 2, 2022 Order.

The Attorney General will also be prejudiced if he cannot challenge this Court's erroneous finding because Plaintiff Bernard is relying on that finding and using it against the Attorney General in another ongoing proceeding. On November 30, 2022, the Attorney General filed an Administrative Complaint against Dr. Bernard with the Medical Licensing Board of Indiana. *See In re License of Caitlin Bernard, M.D.*, No. 2022 MLB 0024. The Attorney General alleged in his complaint that Dr. Bernard violated her professional obligations as a licensee (1) by failing to obtain written authorization to release medical information about her patient, the 10-year-old girl from Ohio upon whom Dr. Bernard performed an abortion, in violation of HIPAA and Indiana privacy law, and (2) by failing to immediately report suspected child abuse to local law enforcement in Indianapolis or the Indiana Department of Child Services. In that proceeding, Dr. Bernard has raised as an Affirmative Defense that "Attorney General Rokita has already been found to have 'violated Indiana law when discussing the confidential investigations of Dr. Bernard in the media' and that his statements caused Dr. Bernard 'irreparable harm.' Marion County Order Denying Preliminary Injunction (December 2, 2022), at 32." Answer, *In re License of Caitlin Bernard, M.D.*, No. 2022 MLB 0024, at 25–26 (brackets omitted).[1] The Attorney General's prosecution of the licensing proceeding thus may be impeded if he is not permitted to challenge this Court's erroneous finding that he violated Indiana law.

3. Other rules also authorize the relief sought here. For instance, Trial Rule 41(F) states: "REINSTATEMENT FOLLOWING DISMISSAL. For good cause shown and within a reasonable time the court may set aside a dismissal without prejudice." For all the reasons outlined above, the Attorney General has easily satisfied Rule 41(F)'s "good cause" standard.

[1] Dr. Bernard filed her Answer making offensive use of the erroneous finding on December 27, 2022. The Office of the Attorney General received the Answer through the mail in early January 2023.

Trial Rules 52 and 53 also authorize the relief that the Attorney General requests. Rule 52(A)(1) requires this Court to make "special findings of fact" when it "grant[s] or refus[es] preliminary injunctions." And Rule 52(B)(2) provides that the Court on its own motion or "as part of a motion to correct errors by any party" may "amend or make new findings of fact" if the "special findings of fact required by this rule are lacking, incomplete, [or] inadequate ...." Rule 53.4(A) further authorizes a trial court "to reconsider orders or rulings upon a motion." "[P]rior to the entry of final judgment," "motions to reconsider are properly made and ruled upon" pursuant to Rule 53.4(A). *Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998). Because there has not yet been an "entry of final judgment," Rule 53.4(A) permits the Court to entertain and to rule upon the present motion to reconsider. And Rule 52(B)(2) allows the Court to "amend or make new findings of fact" on the issue of the Attorney General's compliance with Section 25-1-7-10 of the Code.

In all events, "[i]t is well settled that a trial court has inherent power to reconsider an order or ruling if the action remains *in fieri*, or pending resolution." *Severance v. Pleasant View Homeowners Ass'n, Inc.*, 94 N.E.3d 345, 349 (Ind. Ct. App. 2018) (citing *Pond v. Pond*, 700 N.E.2d 1130, 1135 (Ind. 1998)). And, even if one were to take the position that Plaintiffs' voluntary dismissal means that this action is no longer "pending resolution" for TR-53 purposes, this Court could still correct the erroneous finding pursuant to Trial Rule 59. "Under TR. 59(A) the motion to correct errors can present to the trial court almost any conceivable error and can pray for relief suitable to the alleged error. Under the provisions of TR. 59(E) the trial court is empowered to grant any appropriate relief ...." *Bradburn v. Cnty. Dep't of Pub. Welfare of St. Joseph Cnty.*, 266 N.E.2d 805, 806 (Ind. App. 1971); *see also Kelly v. Bank of Reynolds*, 358 N.E.2d 146, 150 (Ind. App. 1976).

Finally, this Court has inherent authority to reconsider and correct the finding that the Attorney General violated Indiana Code § 25-1-7-10(a) because of the public interest in the issue. Although the general rule is that "a trial court's grant"—if proper—"of a plaintiff's motion to voluntarily dismiss a suit … renders any contested issues as to the dismissed claims moot," *Kenworthy v. Lyons Ins. & Real Est., Inc.*, 185 N.E.3d 405, 411 (Ind. Ct. App. 2022), consideration of the finding of a § 25-1-7-10(a) violation would still be warranted in this case. As the Indiana Supreme Court has explained, "[w]hile … the United States Constitution limits the jurisdiction of federal courts to actual cases and controversies, the Indiana Constitution does not contain any similar restraint. Thus, … Indiana courts have long recognized that a [moot] case may be decided on its merits … when the case involves questions of 'great public interest.'" *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991) (quoting *Indiana Educ. Emp. Rels. Bd. v. Mill Creek Classroom Tchrs. Ass'n*, 456 N.E.2d 709, 712 (Ind. 1983)). It should go without saying that the extent of the Attorney General's "duty to keep the public informed about pending cases and the activities of his or her office" is an issue of "great public interest." *Am. Dry Cleaning & Laundry v. State*, 725 N.E.2d 96, 99 (Ind. Ct. App. 2000).

The Indiana Supreme Court has also remarked that "[c]ases found to fall within the public interest exception [to the general mootness rule] typically contain issues likely to recur." *Lawrance*, 579 N.E.2d at 37. That is certainly true of the issue in this case: The Attorney General is constantly investigating potential violations of law and communicating with the people of Indiana about his office's activities. Questions of what may and may not be said about those activities in light of Indiana Code § 25-1-7-10 are likely to arise again, and such questions should not be judicially resolved without thorough briefing and argument.

In sum, under Trial Rules 41(A), 41(F), 52(B)(2), 53.4(A), and 59, and this Court's inherent power, the Attorney General respectfully requests that the Court strike Plaintiffs' notice of voluntary dismissal and reconsider and correct the Order's finding that the Attorney General violated Indiana Code § 25-1-7-10(a). As we now demonstrate, that finding was erroneous.

II. The Attorney General's Public Statements About His Investigation of Dr. Bernard's Conduct Comported with His State Law Duties, Including Indiana Code § 25-1-7-10.

As the Indiana Supreme Court has made clear, "the Attorney General's role in the administration of justice ... extends statewide and encompasses a wide range of ... civil, administrative and regulatory matters .... Put simply, [he] is the chief legal officer of the State of Indiana." *Matter of Hill*, 144 N.E.3d 184, 193–94 (Ind. 2020) (cleaned up). It is well established, moreover, that the Attorney General has the authority—and, indeed, the duty—to inform the public about his law enforcement activities. "[T]he office of the attorney general" is one that has long "existed at common law." *State ex rel. Neeriemer v. Daviess Cir. Ct. of Daviess Cnty.*, 142 N.E.2d 626, 629 (Ind. 1957). And deeply rooted in "common law principles" is the Attorney General's duty to disseminate "information about the activities of [his] office" and "apprise the public of developments and events in ... pending case[s] ...." *Sims v. Barnes*, 689 N.E.2d 734, 736–37 (Ind. Ct. App. 1997). The Indiana Supreme Court recognized as much in *Foster v. Pearcy*, 387 N.E.2d 446 (Ind. 1979), where it recognized that a prosecutor has absolute immunity for informing the public about the activities of his office. Specifically, the Court held that, "since it is a prosecutor's duty to inform the public as to his investigative, administrative and prosecutorial activities, the prosecutor must be afforded an absolute immunity in carrying out these duties." *Id.* at 449. That holding rested "primarily on the common law immunity traditionally accorded to prosecuting attorneys." *Id.*; *accord Am. Dry Cleaning & Laundry*, 725 N.E.2d at 99.

1. Against this backdrop, Indiana Code § 25-1-7-10 enacts a narrow exception to the Attorney General's duty and right to disclose information about his activities. The statute provides that, following the receipt of consumer complaints about a state licensee, "all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee." Ind. Code § 25-1-7-10(a). Thus, the statute requires that consumer "complaints and information pertaining to the complaints" be kept confidential. *Id.* Nevertheless, it is "presume[d] that the legislature does not intend by the enactment of a statute to make any change in the common law beyond what it declares, either in express terms or by unmistakable implication." *Rocca v. S. Hills Counseling Ctr., Inc.*, 671 N.E.2d 913, 920 (Ind. Ct. App. 1996); *accord Miami Cnty. Bd. of Comm'rs v. US Specialty Ins. Co.*, 158 N.E.3d 415, 420 (Ind. Ct. App. 2020). In light of this interpretive principle (as well as the plain statutory language), it would be unreasonable to construe Indiana Code § 25-1-7-10 as forbidding the Attorney General from saying *anything* about his office's ongoing investigations; rather, the only rational interpretation is that Section 25-1-7-10 forbids the Attorney General from saying anything about the existence or contents of a complaint made pursuant to Indiana Code § 25-1-7-4, or anything that might identify the complainant, but still permits him to perform his traditional duty of informing the public about ongoing investigations. Such communications cannot be forbidden simply because some of the information communicated also happens to appear in a complaint made under Indiana Code § 25-1-7-4. A public official must have the breathing room to comment on matters of public importance. And, a trial court cannot be used as an instrument to impose a gag order on a public official on an entire subject simply because that subject also forms part of a consumer complaint.

In this case, Dr. Bernard's performance of an abortion on a 10-year-old girl from Ohio became a matter of public concern, and a matter of concern to the Attorney General's office, when the IndyStar published its story on July 1, 2022. *See* Order ¶ 12. In the days that followed, questions were raised in the media concerning whether Dr. Bernard had filed a Terminated Pregnancy Report ("TPR"), and whether she had reported the rape to the authorities. In response, the Attorney General's office began to investigate this matter of public concern.[2]

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[2] Although Indiana Code § 25-1-7-2 empowers "[t]he office of the attorney general" to "investigate, and prosecute complaints concerning regulated occupations," this provision is far from the only one that authorizes the investigations publicly discussed by the Attorney General in this case, and nothing in the Indiana Code makes a complaint pursuant to Indiana Code § 25-1-7-4 a prerequisite to his office's investigation of potential violations of state law governing licensed professions. For one, "Indiana Code § 4-6-3-3 instructs the Attorney General to investigate violations of various business and trade laws of this state and authorizes discovery pursuant to such an investigation." *Auto-Owners Ins. Co. v. State*, 692 N.E.2d 935, 936 (Ind. Ct. App. 1998); *see also id.* at 938 ("I.C. 4-6-3-3 provides that the Attorney General may conduct an investigation to determine if a person 'is or has been' engaged in a violation of any statute enforced by the Attorney General."). This statute provides that, "[i]f the attorney general has reasonable cause to believe that a person may be in ... control of documentary material, or may have knowledge ... relevant to an investigation" into a potential "violation of ... IC 25-1-7 ... or any other statute enforced by the attorney general," "the attorney general may issue" and "serve[] upon the person ... an investigative demand that requires that the person served" either "[p]roduce the documentary material," "[a]nswer ... interrogatories," or "[a]ppear and testify under oath." Ind. Code § 4-6-3-3. No provision of law requires that a complaint pursuant to Indiana Code § 25-1-7-4 be made before the Attorney General may investigate or serve an investigative demand under § 4-6-3-3. Indeed, courts have uniformly rejected the argument that § 4-6-3-3 "requir[es] reasonable cause to believe that a statutory violation occurred before an investigation is ... initiated." *Auto-Owners Ins.*, 692 N.E.2d at 939; *accord Oman v. State*, 737 N.E.2d 1131, 1139 n.12 (Ind. 2000). "The Attorney General needs to establish only that there is an investigation and that there are reasonable grounds to believe that the person to whom the [investigative demand] is directed has information relevant to that investigation.... Demonstration can be by a verified petition, affidavit, or testimony or other admissible evidence presented at a hearing." *Nu-Sash of Indianapolis, Inc. v. Carter*, 887 N.E.2d 92, 96 (Ind. 2008). No particular sort of complaint, whether one made pursuant to Indiana Code § 25-1-7-4 or otherwise, is required. In the case just quoted, for instance, the Attorney General sought information concerning suspected violations of state law requiring certain terms in consumer home-improvement contracts, and the Supreme Court noted that "the fact that [the party served with the investigative demand] is or was in the home improvement business would do the trick"—that is, would "show[] it is reasonable to believe [the party] has relevant information." *Id.*

Furthermore, the Attorney General has the power under Indiana Code § 4-6-3-3 and other provisions of law to investigate possible violations of the Deceptive Consumer Sales Act ("DCSA"), Indiana Code § 24-5-0.5 et seq; *see also* Ind. Code § 24-5-0.5-4(c)(4) (recognizing this authority); Ind. Code § 24-5-0.5-7(a) (same). The Attorney General was also investigating whether Dr. Bernard violated assurances to her patients that their medical privacy would be respected. Such conduct would violate the DCSA. *See Bremer v. Cmty. Hosps. of Indianapolis, Inc.*, 583 N.E.2d 780, 782 (Ind. Ct. App. 1991). (Nor would any state enforcement action fall under the Medical Malpractice Act, since it "is not a claim for 'bodily injury or death on account of malpractice.'" *Lake Imaging, LLC v. Franciscan All., Inc.*, 182 N.E.3d 203, 209 (Ind. 2022) (quoting Ind. Code § 34-18-8-1).) The Attorney General was additionally looking into whether the same conduct violated the Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. § 1320 *et seq.*, another statute he has the authority to enforce, *see* 42 U.S.C. § 1320d-5(d)(1); since HIPAA is a "statute enforced by the attorney general," *see* Ind. Code § 4-6-3-3, he may invoke his usual slate of investigative powers with respect to potential HIPAA violations. And once again, there is no requirement that a complaint must be made in order for the Attorney General to investigate suspected violations of either the DCSA or HIPAA.

Later in the month, the Attorney General's office began to receive and process consumer complaints about Dr. Bernard. *See id.* ¶¶ 22–28. Without disclosing those consumer complaints, the Attorney General's office opened investigations into them. *See id.* ¶¶ 29–30, 35–38. The record shows that the Attorney General's office complied with Indiana Code § 25-1-7-10 and kept the existence of those complaints confidential. None of the public statements by the Attorney General regarding his office's investigations of this matter, including the inquiries into whether Dr. Bernard filed a TPR or reported the rape, violated that code provision.

A commonsense reading of Section 25-1-7-10 confirms this conclusion. Again, the provision states that "complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of [his] intent to prosecute the licensee." Ind. Code § 25-1-7-10(a). Obviously, the Attorney General did not publicly disclose the content of any "complaints" made pursuant to the relevant Code Chapter—which "must be written and signed by the complainant and initially filed with the director" of the division of consumer protection of the Attorney General's office, Ind. Code § 25-1-7-4—nor even that any such complaints were made. Thus, the only line of argument left for Plaintiffs is that the Attorney General disclosed information "*pertaining* to … complaints." But this theory is also unsound.

"Pertain" is defined as "[t]o relate directly to; to concern or have to do with." Black's Law Dictionary (11th ed. 2019); *see also Pertain*, American Heritage Dictionary of the English Language (5th ed. 2022) ("[t]o have reference; relate" or "[t]o belong as an adjunct"); *Pertain*, Webster's Third New International Dictionary 1688 (1976) ("to belong to something as a part or member or accessory or product"). The information shared by the Attorney General with the citizenry regarding the investigation of Dr. Bernard did not "pertain" to any "complaints" against her made pursuant to Indiana Code § 25-1-7-4; at most, it "pertain[ed]" only to his office's

investigation of suspected violations of Indiana law based on facts made known to the public by the doctor herself. Never once did the Attorney General cite or even alluded to any complaint made under Section 25-1-7-4 as a basis for the investigation, nor did he disclose details discovered through such a complaint or share any other information from which details about any such complaint or complainant could be inferred.

2. This interpretive conclusion follows from the legislature's choice of words: the statute forbids premature disclosure of information pertaining to "complaints"—not to "alleged violations of the licensing laws," or to the "factual basis for complaints." Ind. Code § 25-1-7-10. The Attorney General's public statements in this case perhaps arguably "pertain[ed]" to the latter two, but certainly not to the first. And Section 25-1-7-10 certainly does not bar the public dissemination of information about investigations that are not consumer complaint investigations. Indeed, to read Indiana Code § 25-1-7-10 otherwise would have the bizarre effect of requiring the Attorney General to withhold information from the public about ongoing investigations simply because that same information also happened to form the basis for a concerned citizen's complaint under Indiana Code § 25-1-7-4. *See City of N. Vernon v. Jennings Nw. Reg'l Utils.*, 829 N.E.2d 1, 4–5 (Ind. 2005) (Courts "do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.").

The reasoning of one Indiana decision applying similar statutory language is instructive. *See Consumer Att'y Servs., P.A. v. State*, 71 N.E.3d 362, 367 (Ind. 2017) (interpreting statute by reference to similarly worded Code provisions). The court in that case confronted this state's Access to Public Records Act—which, at the time, provided that "[p]ersonnel files of public employees" were exempt from disclosure, "except for ... information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or

discharged." Ind. Code § 5-14-3-4(b)(8) (2003). A requester of records argued that the material it sought concerning an employee's misconduct fell within the latter clause, but the court disagreed: "The[] materials are not information concerning the final action taken, i.e., the discipline and discharge of [an employee], but are instead investigatory documents concerning the incident which eventually led to the discharge of [that employee]." *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trustees of Ind. Univ.*, 787 N.E.2d 893, 916 (Ind. Ct. App. 2003). The court explained that "[i]nformation concerning the final disciplinary action might encompass the nature, extent, and general reason behind" that action, "but not ... details of the factual investigation which forms the basis of the action." *Id.* Here, there is an analogous distinction for purposes of Indiana Code § 25-1-7-10 between the Attorney General's disclosure of "information concerning" (i.e., "information pertaining to") a *complaint* against Dr. Bernard made pursuant to Indiana Code § 25-1-7-4, which would likely be prohibited; and his disclosure of information pertaining to "factual" allegations that "form[] the *basis* for" such a complaint, which is permitted.

In fact, the legislature responded to *Trustees of Indiana University* by amending the statute at issue there to provide for disclosure of "*the factual basis for* a disciplinary action ... that resulted in the employee being suspended, demoted, or discharged," 2003 Ind. Legis. Serv. P.L. 200–2003 § 3 (S.E.A. 169) (emphasis added), as opposed to merely "information concerning disciplinary actions." This amendment reflects the legislature's awareness of the distinction between information pertaining to a charge or finding, and the factual basis underlying such a charge or finding—and suggests that weight should be afforded to the legislative choice in Indiana Code § 25-1-7-10 to only require confidentiality of information pertaining to "complaints," rather than the "factual basis for" complaints. *Cf. State v. Kuebel*, 172 N.E.2d 45, 47–48 (Ind. 1961) ("[I]n determining [legislative intent] it is proper to consider the history of [a] statutory enactment ....").

3. It is also "proper," given the dearth of binding precedent interpreting Indiana Code § 25-1-7-10, to consult caselaw from other jurisdictions "construing statutory language which is identical or of a similar import." *Witherspoon v. Salm*, 243 N.E.2d 876, 878 (Ind. 1969) (cleaned up); *see also Fratus v. Marion Cmty. Schs. Bd. of Trs.*, 749 N.E.2d 40, 44 (Ind. 2001). Such authorities reinforce the conclusion that the Attorney General in this case did not violate Section 25-1-7-10.

The first such source of authority arises from a similarly-worded Connecticut law providing that "[w]henever in any criminal case ... the accused ... is found not guilty ... or the charge is dismissed, all police and court records ... pertaining to such charge shall be erased." Conn. Gen. Stat. § 54-142a(a). Courts have largely rejected the argument that this provision mandates erasure of any and all "records or materials [that] become the basis (or form a part) of an unsuccessful prosecution under a criminal statute," explaining that, "[o]n its face, [the statute] limits the police records which are erased to those 'pertaining to' a criminal 'charge,'" which does not necessarily include "all records pertaining to a criminal investigation." *Penfield v. Venuti*, 93 F.R.D. 364, 367–68 (D. Conn. 1981); *see also O'Neil v. LT of Stamford, LLC*, No. FSTCV166028203S, 2016 WL 5009626, at *1 (Conn. Super. Ct. Aug. 10, 2016) (same). Similarly, in this case, only information "pertaining to" a *complaint* against a license holder is protected against premature disclosure by Indiana Code § 25-1-7-10; just as in *Penfield*, this does not mean that all information "pertaining to" the allegations to which a complaint relates is necessarily kept under wraps by Section 25-1-7-10.

Texas law provides another example. That state's expunction statute provides that one who has been arrested "for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if" certain conditions are met. Tex. Code Crim.

Proc. art. 55.01(a). Texas courts have uniformly rejected arguments that information about "the conduct underlying the arrest is subject to expunction," reasoning that "the statute's plain text limits the scope of expunction" to records "relating to the arrest": "The Legislature could have included in the statute's scope ... the expunction of [an arrestee's] conduct that led to the arrest, but it did not do so." *Tex. Educ. Agency v. H.C.V.*, 575 S.W.3d 30, 35 (Tex. App. 2019); *accord Ex parte S.C.*, 305 S.W.3d 258, 268–269 (Tex. App. 2009); *Ex parte Vega*, 510 S.W.3d 544, 550 (Tex. App. 2016); *Gomez v. Tex. Educ. Agency, Educator Certification & Standards Div.*, 354 S.W.3d 905, 918 (Tex. App. 2011). Just as these courts have recognized a distinction between information "relating to [an] arrest" and information relating to the conduct on which the arrest was based (as have courts in other jurisdictions confronted with analogous questions of statutory interpretation[3]), this Court should recognize the like distinction between "information pertaining to ... complaints" and information pertaining to the allegations on which those complaints were based for purposes of Indiana Code § 25-1-7-10. Here, the Attorney General at most disclosed only the latter to the public, and hence did not violate the statute.

4. The same conclusion is compelled by the principle that, "[w]hen interpreting a statute," a court "presume[s] the legislature intended to apply harmoniously Indiana Code sections with a similar purpose and subject matter." *Alberici Constructors, Inc. v. Ohio Farmers Ins. Co.*,

[3] For instance, caselaw construing a New York statute providing that "all official records and papers ... *relating to* a case involving ... a youthful offender, are confidential" for most purposes, N.Y. Crim. Proc. Law § 720.35(2) (emphasis added), has consistently held that the provision protects from disclosure information "relating specifically to the *charges* filed against [an alleged offender]"—including "whether he pleaded guilty to any of those charges, or whether he was adjudicated a youthful offender"—but not "the *facts* underlying" an alleged instance of misconduct, "even though those facts also form the basis of his youthful offender adjudication," *Barnett v. David M.W.*, 802 N.Y.S.2d 711, 712 (N.Y. App. Div. 2005); *accord State Farm Fire & Cas. Co. v. Bongiorno*, 667 N.Y.S.2d 378, 380 (N.Y. App. Div. 1997). For other examples of courts drawing similar distinctions, *see Ingram v. Adena Health Sys.*, 777 N.E.2d 901, 904 (Ohio Ct. App. 2002) (interpreting Ohio Rev. Code § 2317.02, which establishes privileges against giving testimony "concerning a communication" with one's lawyer or physician, and holding that the provision "does not prevent disclosure of the underlying fact, it only protects against ... disclosure of the communications" themselves); *Sparshott v. Feld Ent., Inc.*, 311 F.3d 425, 428, 434 (D.C. Cir. 2002) (interpreting Va. Code § 19.2-392.3(A), which provides for confidentiality of "an expunged court or police record" and "any information from it," to nonetheless permit disclosure of information about "facts underlying a charge that had been expunged").

866 N.E.2d 740, 743 (Ind. 2007). Other provisions of the Code make clear that the information conveyed by the Attorney General here was not intended to be kept under wraps by Indiana Code § 25-1-7-10. In particular, the statute conferring the Attorney General's power to issue investigative demands provides that, "[i]f [he] has reasonable cause to believe that a person may be in … control of documentary material, or may have knowledge … relevant to an investigation conducted to determine if a person is or has been engaged in a violation of … IC 25-1-7 … or any other statute enforced by the attorney general," "the attorney general may issue" and "serve[] upon the person or the person's representative … an investigative demand that requires that the person served" either "[p]roduce the documentary material for inspection and copying or reproduction," "[a]nswer under oath and in writing written interrogatories," or "[a]ppear and testify under oath before the attorney general or [his] duly authorized representative." Ind. Code § 4-6-3-3. Every such demand must include "[a] general description of the subject matter being investigated and a statement of the applicable provisions of law." Ind. Code § 4-6-3-4(1). "If [the] person [served] objects …, the attorney general may file in the circuit or superior court … an application for an order to enforce the demand.… Notice of hearing … shall be served upon that person, who may appear in opposition …. The attorney general must demonstrate to the court that the demand is proper." Ind. Code § 4-6-3-6(a).

Since the Attorney General must inform the court and the party upon whom an investigative demand is served about the nature of the investigation and basis for serving the demand, and no one involved in the process is required to keep this information confidential, it would make little sense to read Indiana Code § 25-1-7-10 as prohibiting disclosure of the very same information—namely, the fact that an investigation is underway and the reasons therefore (if those reasons are based on publicly available information, as they are in this case). Such

"incongruous result[s]" are disfavored in statutory interpretation. *State v. Evans*, 810 N.E.2d 335, 337 (Ind. 2004).

5. In light of the foregoing, it is clear that none of the statements found to violate Indiana Code § 25-1-7-10 were in fact violative of that provision, properly construed. First, this Court found that, on July 13, 2022, "the Attorney General disclosed the investigations against Dr. Bernard on a national television network." Order ¶ 31. Appearing on the Jesse Watters show on Fox News, the Attorney General stated: "Then we have the rape. And then we have this abortion activist acting as a doctor with a history of failing to report. So, we're gathering the information, we're gathering the evidence as we speak and we're going to fight this to the end, including looking at her licensure, if she failed to report. In Indiana it's a crime, for, to not report, to intentionally not report." Television Interview by Jesse Watters, host of *Primetime*, Fox News Channel, with Indiana Governor Todd Rokita (July 13, 2022), available at https://archive.org/details/FOXNEWSW_20220713_230000_Jesse_Watters_Primetime (4:46 PM & 4:47 PM PDT clips) (last accessed Jan. 6, 2023). But this comment by the Attorney General did not violate Indiana Code § 25-1-7-10 because it did not reveal the existence of or discuss any confidential complaints against Dr. Bernard. Again, by its terms, the statute is concerned with the confidentiality of "*complaints* and information pertaining to the complaints." *Id.* (emphasis added). The Attorney General did not mention any confidential complaints against Dr. Bernard.

Indeed, this Court's Order did not find or cite any evidence that the Attorney General even knew of the existence of any confidential consumer complaints when he appeared on the Jesse Watters show. And, in fact, the Attorney General was not aware of the existence of any such complaints at that time. *See* Decl. of Todd E. Rokita (Exhibit F). Therefore, nothing he said on the Jesse Watters show could have violated Indiana Code § 25-1-7-10.

The Attorney General's comment about Dr. Bernard's "history of failing to report" echoed Jesse Watters' own commentary from two days earlier, July 11, when Watters stated on air that "Indiana law also requires for someone like Dr. Bernard to report child rape to law enforcement but we can't find any evidence that she did that there. In fact, Bernard has a history of not reporting abuse cases to the police, which we'll discuss later. So we're having no luck confirming this story." Jesse Watters, *Primetime*, Fox News Channel (July 11, 2022), available at https://archive.org/details/FOXNEWSW_20220711_230000_Jesse_Watters_Primetime (4:07 PM & 4:08 PM PDT clips) (last accessed Jan. 6, 2023).

Also on July 13, 2022, as this Court's order noted, the Attorney General "made public a letter he sent to Governor Holcomb that repeatedly referenced Dr. Bernard's name and the allegations he made on national television." Order ¶ 32; *see also id.* at ¶ 40. But once again, nothing in that letter violated Indiana Code § 25-1-7-1. The fact that the letter referred to Dr. Bernard by name did not violate the statute. Nor did the Attorney General's letter to the Governor reveal the existence of or discuss confidential complaints against Dr. Bernard. The letter began by stating "As you are aware, news accounts have swirled in recent days regarding a 10-year-old victim of sexual assault who traveled to Indiana from Ohio to obtain an abortion from Dr. Caitlin Bernard." Letter from Todd Rokita, Indiana Att'y Gen., to Governor Eric Holcomb (July 13, 2022), https://tinyurl.com/ycxjth9c (Exhibit A). The letter explained that "A physician presented with a pregnant pre-teen—a victim of sexual assault—must report the assault to law enforcement immediately. One who aborts the pregnancy of such a rape victim must within three days file a report of the abortion with both the Indiana Department of Health and the Indiana Department of Child Services." *Id.* The letter advised the Governor that the Attorney General's office called the IDOH on July 11 to determine if Dr. Bernard had filed a Terminated Pregnancy Report reporting

the performance of an abortion on a 10-year-old. *Id.* As of July 13, the Attorney General stated, IDOH had produced no TPR to the Attorney General's office. *Id.* The Attorney General also explained that "On July 12, my staff also reached out multiple times by email to the Department of Child Services to obtain proof that a report of suspected child abuse has been filed in response to this case. We have received no response." *Id.* The Attorney General advised the Governor that, "[i]f Dr. Bernard has failed to file the required reports on time, she has committed an offense, the consequences of which could include criminal prosecution and licensing repercussions." *Id.* Nothing in this letter—not a word—came close to violating Indiana Code § 25-1-7-10. This is so because the letter said nothing about any complaints against Dr. Bernard. The statute did not bar the Attorney General from releasing to the public his letter informing the Governor about his investigation of Dr. Bernard. The publication of the letter was an entirely proper act in furtherance of the Attorney General's "duty to inform the public as to his investigative ... activities." *Foster*, 387 N.E.2d at 449.

For the same reasons, the Attorney General's press releases of July 14 and August 19 (*see* Order ¶¶ 33–34, 41) did not violate Indiana Code § 25-1-7-10 or even come close to doing so. The July 14 release stated in full:

> Aside from the horror caused here by illegal immigration, we are investigating this situation and are waiting for the relevant documents to prove if the abortion and/or the abuse were reported, as Dr. Caitlin Bernard had requirements to do both under Indiana law. The failure to do so constitutes a crime in Indiana, and her behavior could also affect her licensure. Additionally, if a HIPAA violation did occur, that may affect next steps as well. I will not relent in the pursuit of the truth.

Press Release, Off. of the Ind. Att'y Gen., Attorney General Todd Rokita issues statement regarding Dr. Caitlin Bernard case (July 14, 2022), https://tinyurl.com/488cn9st (Exhibit B). The longer August 19 press release said the following about Dr. Bernard (albeit without using her name):

> Based on a doctor intentionally reporting her patient's circumstances to the media, my office undertook a review of that act in response to public concern. I reported that fact in response to media inquiries and public outcry, and in doing so met my duty to inform the public, which is an important role of the Attorney General. My comments are supported by facts, as are all statements from my office.
>
> Since the doctor's comments to the media about her patient made international news, the disclosure of such private information—which is protected by state and federal law—is a matter of substantial public interest. The indication of a review or subsequent investigation does not imply guilt or innocence and the media and others need to stop rushing to judgment and keep an open mind, relying on my and my office's promise to get all of the facts and not be deterred.

Press Release, Off. of the Ind. Att'y Gen., Attorney General Todd Rokita and team committed to finding the truth (Aug. 19, 2022), https://tinyurl.com/3ztp9z2x (Exhibit C). Like the Attorney General's other public statements on the topic, these press releases did not disclose the existence of or discuss any confidential complaints against Dr. Bernard. Therefore, the press release did not violate, or even implicate, Indiana Code § 25-1-7-10.

The last three public statements by the Attorney General described in the Order are no different. *See* Order ¶¶ 42–44. The Order found that, "In a 'Facebook Live' broadcast on September 1, 2022, the Attorney General made more public comments about his investigation of Dr. Bernard." Order ¶ 42. *See also* Attorney General Todd Rokita, *Attorney General Todd Rokita Press Event,* Facebook (Sept. 1, 2022, 10:54 AM) ("Video"), https://www.facebook.com/agtoddrokita/videos/attorney-general-todd-rokita-press-event/573016414605476/. "Asked 'the status of the investigation into Dr. Caitlin Bernard,' the Attorney General publicly stated that '[w]e're looking into [the] standards of practice of the profession if they were met. If any state or federal laws, [including] privacy laws, were violated. And just as background, based on a doctor intentionally reporting her patient's circumstances to the media, my office has undertaken a review of that act in response, again to public concern. My comments are supported by facts as are all statements from my office." *Id.* *See also* Video at

26:52. This statement did not reveal the existence of or discuss any confidential consumer complaints and thus did not implicate Indiana Code § 25-1-7-10. In fact, the statement refers to other types of investigations that do not in any way depend upon consumer complaints. Among these were, for example, possible violations of the Deceptive Consumer Sales Act ("DCSA"), Indiana Code § 24-5-0.5 *et seq.*, which the Attorney General has the independent statutory power to investigate. *See* Ind. Code § 4-6-3-3; *see also* Ind. Code § 24-5-0.5-4(c)(4) (recognizing that the Attorney General has this power); Ind. Code § 24-5-0.5-7(a) (same). The Attorney General was investigating, among other things, whether Dr. Bernard had violated her own assurances to patients that their medical privacy would be respected. Such conduct would violate the DCSA. *See Bremer v. Cmty. Hosps. of Indianapolis, Inc.*, 583 N.E.2d 780, 782 (Ind. Ct. App. 1991).

The Order further finds that "On September 14, [the Attorney General] gave an interview to a local newspaper, stating the investigation of Dr. Bernard was 'ongoing' and making other comments about the investigation." Order ¶ 43 & n.3 (citing Johnny Magdaleno, *Indiana Attorney General Rokita's office declines to share info on Dr. Bernard complaints,* IndyStar (Sept. 14, 2022, 12:15 PM ET), https://tinyurl.com/mtpx89zf). But the Attorney General did not comment on any confidential consumer complaints against Dr. Bernard. Indeed, the very title of the article cited by the Court is "*Indiana Attorney General Rokita's office declines to share info on Dr. Bernard complaints.*" The article reports that, "Two weeks later [after the Attorney General's July 13 appearance on Fox News], Bernard's attorney Kathleen DeLaney released a statement saying Rokita's office put Bernard on notice that an investigation had been launched into six consumer complaints against the doctor." Magdaleno, *supra* (Exhibit D). Thus, it was Dr. Bernard's own lawyer who in late July disclosed the existence of the consumer complaints—not the Attorney General's office. The IndyStar article goes on to say that the paper requested information about

the complaints, but the Attorney General's office in a letter denied the request. "All complaints against a licensed professional are 'held in strict confidence,' the letter states, until Rokita formally lets the appropriate licensing board know that his office is going to prosecute." *Id.* "The [Attorney General's] office said it found six records related to IndyStar's request. But it would not be providing those six records because 'any licensing complaints or information pertaining to such complaints that may be filed against Dr. Caitlin Bernard are exempt from disclosure as they are considered confidential by law,' the letter states." *Id.*

Finally, the Order finds that, "On September 15, 2022, the Attorney General again discussed his investigation into Dr Bernard in a local media interview." Order ¶ 44 (citing a Sept. 15, 2022 FOX59 article). In fact, according to the resulting article, "Rokita declined to share whether he has uncovered any evidence of wrongdoing. He also could not provide a date for when the investigation may end." Kristen Eskow, *Indiana AG Rokita talks enforcement of abortion ban, lawsuits filed,* Fox59 (Sept. 15, 2022, 7:55 PM EDT, updated Sept. 18, 2022, 9:15 AM EDT), https://tinyurl.com/2s45rew7 (Exhibit E). In any event, it does not violate any Indiana law, including Indiana Code § 25-1-7-10, for an Attorney General to discuss the status of an investigation with the news media. Rather, it is the Attorney General's "duty to inform the public as to his investigative ... activities." *Foster*, 387 N.E.2d at 449. The Attorney General did not, in this interview, reveal the existence of any confidential consumer complaints against Dr. Bernard. Her own lawyers had already done so more than a month before.

At any rate, even if the Attorney General's contested statements *had* divulged "information pertaining to ... complaints" within the meaning of Indiana Code § 25-1-7-10, those statements would still be lawful, for the same provision permits "disclosure of information concerning [a] complaint" if the disclosure is "required for the advancement of an investigation." Ind. Code § 25-

1-7-10(b). And the chapter of the Code pertaining to licensed professions clearly contemplates that primary responsibility for determining when such disclosure is "required for the advancement of an investigation" lies with the Attorney General, who is empowered by the statute to "investigate, and prosecute complaints concerning regulated occupations." Ind. Code § 25-1-7-2.[4] This language is merely a recognition of the Attorney General's established "'discretionary judicial power to investigate and determine who shall be prosecuted and who shall not be prosecuted.'" *Oman*, 737 N.E.2d at 1137 n.8 (quoting *State ex rel. Spencer v. Criminal Court of Marion Cnty.*, 15 N.E.2d 1020, 1022 (Ind. 1938)); *see also Meyers v. State*, 364 N.E.2d 760, 763 (Ind. 1977); *State v. Clamme*, 134 N.E. 676, 682 (Ind. App. 1922). As this state's top court has admonished, "[j]udges and courts may not substitute their discretion for that of [a] prosecuting attorney." *Spencer*, 15 N.E.2d at 1022.[5] The Attorney General in this case reasonably determined that, under the circumstances, the public statements he made were "required for the advancement of [the] investigation" of Plaintiffs. Such announcements are an important investigative tool, as they often prompt citizens with information relevant to an investigation to come forward. Moreover, since the events that spurred the investigation, as well as Plaintiffs' connection to those events, were already public knowledge at the time the Attorney General made the statements at issue, he reasonably determined that the benefits of these announcements to the investigation outweighed the risk of subjecting private persons to undue public scrutiny.

[4] Section 25-1-7-10(b) seems chiefly concerned with disclosure by individuals *other* than the Attorney General himself, as is evinced by the fact that provision's restriction is addressed to "person[s] in the employ of the office of attorney general, the Indiana professional licensing agency," and "any [other] person[s] not a party to the complaint."

[5] While *Oman*, *Spencer*, and *Meyers* involved county prosecutors, those cases' statements regarding investigative discretion apply with equal force to the Attorney General, whose "broad statutory authority" is not "meaningfully different in terms of the administration of justice"; "In fact, the Attorney General's role in the administration of justice—which … encompasses a wide range of criminal, civil, administrative and regulatory matters—greatly exceeds that of … a county prosecutor…. [T]he Attorney General is an officer charged with administration of the law at least to the same extent as a prosecutor, if not substantially more so." *Hill*, 144 N.E.3d at 193–94 (cleaned up).

In short, none of the Attorney General's statements on this subject violated Indiana Code § 25-1-7-10. And even if there were any doubt in this regard, the Attorney General is entitled to a presumption that he acted in good faith. *See Dowd v. Harmon*, 96 N.E.2d 902, 905 (Ind. 1951) ("It is presumed that a public administrator acts in good faith, with honest motives, for the purpose of promoting the public good and protecting the public interest.")—a presumption that this Court nowhere acknowledged, much less applied in making its finding that he violated that section. This Court's gratuitous finding that the Attorney General violated that provision can and must be corrected, or at least withdrawn or vacated.

III. Once the Court Corrects the Erroneous Finding in the Order, This Case May Be Voluntarily Dismissed.

The Attorney General files this motion for the limited purpose of correcting the Court's erroneous finding that he violated state law. Once the Court grants the relief the Attorney General has requested, if Plaintiffs still seek voluntary dismissal pursuant to Trial Rule 41(A)(1)(b), the Defendants are willing stipulate to that request and the case may be dismissed on that basis.

CONCLUSION

For the foregoing reasons, this Court should grant the Attorney General's motion, strike Plaintiffs' notice of voluntary dismissal, and reconsider and correct the Order's erroneous and prejudicial finding that the Attorney General violated Indiana Code § 25-1-7-10. The record is clear that the Attorney General complied with *both* the statute and his duty to inform the public about his activities, and that he did not publicly reveal the existence of or discuss any confidential consumer complaints.

Dated: January 9, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 9, 2023, I electronically filed the foregoing document using the Indiana E-filing system ("IEFS"). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

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