

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MITCHELL D. POTTERF, IV, et al.,	:	Case No. 14 CV 003293
Plaintiffs,	:	
v.	:	Judge Guy L. Reece II
NATIONAL STRENGTH AND	:	
CONDITIONING ASSOCIATION, et al.	:	
Defendants	:	

PLAINTIFFS' MOTION TO REACTIVATE THE CASE

Now come Plaintiffs, by and through counsel, and hereby move this Honorable Court for an Order reactivating the case. The case has been stayed because of the pendency of a related case in the Ohio Court of Claims. The Court Claims case has now been settled with a final resolution of all of the claims against the State of Ohio parties. Accordingly, this case should be reactivated and the parties should be ordered to proceed to trial. A Memorandum in Support of this Motion is attached.

Respectfully submitted,
/s/ Kenneth R. Donchatz

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MEMORANDUM IN SUPPORT

When this case was originally filed, a similar claim was filed by the Plaintiffs in the Ohio Court of Claims in a case captioned as *Mitchell D. Potterf, IV, et al, v. The Ohio State University*, Case No. 2015-00729. The State of Ohio Defendants in the instant case filed a Motion to Dismiss, arguing that the Court of Claims had exclusive jurisdiction over any claims against them. Plaintiffs responded and argued that instead of a dismissal, the instant case should be stayed pending the outcome of the case pending in the Court of Claims.

The Court adopted the Plaintiffs' arguments in an August 13, 2014 Order. The Order specifically provided that the "Court finds it appropriate to stay this case until the Court of Claims determines whether Defendant Devor is entitled to personal immunity under section 9.86 of the Revised Code and whether the Court of Common Pleas have jurisdiction over the civil action." In accordance with this Order, the State defendants and the Plaintiffs litigated their claims in the Ohio Court of Claims.

On September 21, 2016, the parties in the Court of Claims case settled all of the pending claims that the Plaintiffs had asserted against the State of Ohio Defendants. On September 22, 2016, the parties advised the Court of Claims that the case was settled. Thus, there are no further claims pending against the State of Ohio Defendants, and the Court of Claims case is fully settled. At this point, the only claims remaining are the claims that the Plaintiffs have asserted in the instant case against the private defendants, namely the National Strength and Conditioning Association and John Does

1-14.

Plaintiffs anticipate that once the case is reactivated, they will file an Amended Complaint that will dismiss the State of Ohio Defendants (Steven T. Devor and Michael M. Smith) and name the John Does. Plaintiffs are prepared to proceed with the filing of the Amended Complaint.

For all of the foregoing reasons, this case should be reopened and placed on the active docket.

Respectfully submitted,

/s/ Kenneth R. Donchatz

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this MOTION was served upon all of the parties through the Clerk of Courts ECF system and was also served via regular United States mail, this 29th day of September, 2016, upon each of the following:

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