**IN THE SUPREME COURT OF MISSOURI**

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| STATE OF MISSOURI ex rel.<br>E. STANLEY KROENKE,<br><br>Relator,<br><br>v.<br><br>THE HONORABLE CHRISTOPHER MCGRAUGH,<br><br>Respondent. | Case No. _____<br><br>From the Circuit Court of St. Louis City<br>Cause No. 1722-CC00976<br><br>Div. No. 19 |

**RELATOR'S PETITION FOR WRIT OF PROHIBITION**
**AND SUGGESTIONS IN SUPPORT OF PETITION**

This Court's immediate intervention is necessary to prevent irreparable harm because the circuit court exceeded its authority and abused its discretion in ordering intrusive punitive damages discovery from individuals and entities that are not parties to this case and had no involvement with the events giving rise to this litigation. Relator Stan Kroenke is the owner of the Los Angeles Rams, and is a defendant in litigation arising from the Rams' relocation from St. Louis to Los Angeles in 2016. On July 12, 2021, Respondent, the Honorable Christopher McGraugh, erroneously concluded that Plaintiffs were entitled to punitive damages discovery from Mr. Kroenke and several other defendants. One month later, on August 11, 2021, Respondent ordered Mr. Kroenke to produce not only information regarding his and the Rams' finances and net worth, but also three years' worth of financial statements for every other "entity owned in whole or in part or directly or indirectly" by Mr. Kroenke. Respondent also ordered Mr. Kroenke to

produce three years of federal income tax returns that he jointly files with his wife, whose independent financial situation is not at issue in this case.

Absent this Court's intervention, Mr. Kroenke's wife and multiple private entities—including other sports franchises, management groups, a winery, and several other businesses—will be required to disclose sensitive financial information, even though they were not involved in the Rams' relocation and there is no scenario in which punitive damages could be awarded against them. These businesses, their other owners and investors, and Mr. Kroenke's wife are "stranger[s] to the underlying action" whose affairs "will be open to a complete and searching view if production is required." *State ex rel. Wohl v. Sprague*, 711 S.W.2d 583, 586 (Mo. App. E.D. 1986).

Plaintiffs have no conceivable need for this invasive discovery. Respondent ordered Mr. Kroenke to produce (1) his personal financial statements for the last three years; (2) verification of his financial statements; and (3) a sworn interrogatory answer confirming his net worth based on his assets' fair market value. Mr. Kroenke will produce all of this information; none of it is disputed for purposes of this petition. The value of Mr. Kroenke's ownership in other business entities will be reflected in his verified net worth statement. Information relevant to Mr. Kroenke's net worth that appears on his jointly filed federal income tax returns will be reflected on his personal financial statement. Plaintiffs should not be able to obtain discovery of confidential and sensitive financial information of non-party entities and family members when the only relevant information regarding Mr. Kroenke's net worth will be obtained through other means.

Respondent failed to "balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it." *State ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 328 (Mo. App. E.D. 1985). The result is so intrusive and unnecessary that it warrants the exercise of extraordinary intervention. *See Wohl*, 711 S.W.2d at 586 (granting writ of prohibition against discovery intrusive to third-party interests); *Anheuser*, 692 S.W.2d at 328 (same). Accordingly, Mr. Kroenke requests that this Court issue a preliminary and permanent writ to prohibit this discovery.

## I. Facts

### A. The Underlying Action

This case concerns the Rams' relocation from St. Louis to Los Angeles in 2016. Plaintiffs—the City of St. Louis, St. Louis County, and a municipal corporation—contend that internal guidelines issued by the National Football League precluded the Rams from relocating to Los Angeles. Plaintiffs assert contract and tort claims against the Rams, the NFL, and 88 other defendants (including all other NFL clubs and owners). Relator Stan Kroenke, the Rams' owner, has been sued as an individual defendant. In addition to owning the Rams, Mr. Kroenke has interests in various other businesses and professional sports franchises. This case does not involve any of those other entities.

Plaintiffs' theory of recovery, which has no basis in the law, is that the NFL's internal relocation policy is a "contract" because it was issued pursuant to the NFL's Constitution, and they are third-party beneficiaries of that "contract" despite the fact that this policy explicitly states, "each club's ***primary obligation*** to the League and to all other member clubs is ***to advance the interests of the League*** in its home territory." Ex. 1, Relocation Policy at 1 (emphases added). These exact arguments have been rejected when

other cities have challenged NFL team relocations. *See City of Oakland v. The Oakland Raiders*, No. 20STCV20676, at *6 (Cal. Super. Ct. Apr. 20, 2021) ("Simply put, the Relocation Policy does not contain a promise that Defendants will consider anything, and thus, a breach of contract action cannot be maintained."). Plaintiffs' unjust enrichment, fraud, and tortious interference claims all suffer from equally fatal defects under clear Missouri law. Defendants have moved for summary judgment, and that motion remains pending as of the date of this petition.

**B. The Punitive Damage Discovery at Issue**

Missouri law allows for punitive damages discovery if the trial court finds "that it is more likely than not that the plaintiff will be able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages." § 510.263.8 RSMo (2016). On the same day Defendants moved for summary judgment, Plaintiffs moved for punitive damages discovery.

Plaintiffs originally demanded "[e]ach and every document referencing, reflecting or that concerns, relates to, or mentions the assets, liabilities, ownership interests, and accounts of" each and every Defendant. *See* Mot. for Protective Order (July 1, 2021). On July 1, 2021, Defendants filed a motion for protective order arguing that these requests were overbroad, unduly burdensome, and impossible to comply with. *Id.* On July 12, 2021, Respondent held that Plaintiffs were entitled to punitive damages discovery from some Defendants (including Mr. Kroenke), and ordered the parties to meet and confer as to "assets or net worth information and report back to the court." Ex. 2, July 12, 2021 Min. Order.

The Rams and Mr. Kroenke agreed to stipulate to their net worth, and offered to provide net worth and balance sheet information prepared or audited by independent third parties. Plaintiffs rejected that offer, and filed an opposition to Defendants' motion for protective order. In their opposition, Plaintiffs now demanded:

- "Personal financial statements … on an annual basis, including any financial statements provided as part of any transaction or loan or otherwise";
- "Financial statements of any entity owned in whole or in part or directly or indirectly (including the defendant teams)";
- "Verification under oath that the financial statements are accurate and prepared on a fair market basis";
- "Individual federal income tax returns"; and
- "Sworn interrogatory answer stating Defendant's current net worth based on the fair market value of Defendants' [sic] assets."

Opp. to Mot. for Protective Order (Aug. 9, 2021) at 8. At oral argument, Mr. Kroenke's counsel argued that a request for financial statements of "subsidiary businesses that are not defendants in this case" was "totally uncalled for" because this information was "not necessary since we're providing another statement that sets forth the assets and values here." Ex. 3, Aug. 11, 2021 Tr. at 70, 77–80. Respondent denied the motion and ordered Mr. Kroenke to comply with Plaintiffs' revised discovery requests in full. *Id.* at 80. On August 24, 2021, Relator filed a petition for a writ of prohibition in the Missouri Court of Appeals for the Eastern District. That petition was denied on August 25, 2021.

Respondent's order permits sweeping, intrusive, and unnecessary discovery into the confidential financial affairs of strangers to this litigation. Respondent's abuse of discretion requires the immediate action of this Court. Relator therefore petitions this Court for a preliminary and permanent writ of prohibition, forbidding discovery of the

financial statements of "any entity owned in whole or in part or directly or indirectly" by Mr. Kroenke other than the Rams and the federal income tax returns that Mr. Kroenke jointly filed with his wife.

## II. Jurisdictional Statement

This Court has jurisdiction to issue remedial writs pursuant to Article V, § 4.1 of the Missouri Constitution and § 530.020 RSMo. "A writ of prohibition is appropriate where there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision." *State ex rel. Wolfrum v. Wiesman*, 225 S.W.3d 409, 411 (Mo. banc 2007) (internal quotation omitted). "Prohibition is the proper remedy for an abuse of discretion during discovery." *State ex rel. Ford Motor Co. v. Messina,* 71 S.W.3d 602, 607 (Mo. banc 2002).

Punitive damages discovery is only permitted in exceptional circumstances. A plaintiff cannot obtain punitive damages discovery "merely because he made a submissible case for an intentional tort," and instead must "present clear and convincing evidence of evil motive and reckless indifference to [its] rights." *Horizon Mem'l Grp., L.L.C. v. Bailey*, 280 S.W.3d 657, 662–63 (Mo. App. W.D. 2009); *Romeo v. Jones*, 144 S.W.3d 324, 334 (Mo. App. E.D. 2004). A writ of prohibition regarding such discovery is appropriate when a trial court's discovery ruling "is clearly against the logic of the circumstances, is arbitrary and unreasonable, and indicates a lack of careful consideration." *Messina,* 71 S.W.3d at 607. Indeed, once such information is produced in discovery, the harm is irreparable. *State*

*ex rel. Becker v. Lamke*, 589 S.W.3d 44, 47 (Mo. App. E.D. 2019) ("[A] relator may suffer irreparable harm due to discovery that would not be adequately remedied on appeal.").

## III. Argument

### A. Net Worth Discovery From Third Parties Who Could Never Be Subject To Punitive Damages Is Intrusive, Unreasonable, and Overbroad.

While Mr. Kroenke strongly disputes any basis for punitive damages discovery, there is one aspect of the ordered discovery that is clearly improper and requires this Court's immediate intervention: intrusive discovery of strangers' financial information. The third-party entities that Mr. Kroenke owns "in whole or in part or directly or indirectly" have nothing to do with this litigation. *See State ex rel. MacDonald v. Franklin*, 149 S.W.3d 595, 599 (Mo. App. S.D. 2004) (granting writ because "[t]he relevancy … seem[s] remote and tenuous in light of the ultimate factual issue"); *see also Liberty Fin. Mgmt. Corp. v. Beneficial Data Processing Corp.*, 670 S.W.2d 40, 52 (Mo. App. E.D. 1984) ("[W]e start from the principle that ordinarily two separate corporations are to be regarded as wholly distinct legal entities, even though the stock of one is owned partly or entirely by the other." (internal quotation marks omitted)). The same is true of Mr. Kroenke's wife. Requiring these third parties to disclose their financial information "is a significant invasion of privacy." *Wohl*, 711 S.W.2d at 586. For that reason, such discovery is "unacceptable without demonstrating the information sought cannot be acquired through less intrusive means." *Id.* (granting writ); *MacDonald*, 149 S.W.3d at 598 (court must "balance the need of the interrogator to obtain the information against the responding party's burden in furnishing it, including the extent to which the request will be an invasion of privacy").

This principle has been honored by Missouri appellate courts in countless cases. *See, e.g.*, *Anheuser*, 692 S.W.2d at 327 (granting writ); *State ex rel. Blue Cross & Blue Shield of Mo. v. Anderson*, 897 S.W.2d 167, 171 (Mo. App. S.D. 1995) (granting writ because "privacy rights of non-parties must be considered in weighing the need for requested documents"); *State ex rel. Kawasaki Motors Corp., U.S.A. v. Ryan*, 777 S.W.2d 247, 252 (Mo. App. E.D. 1989) (granting writ to prohibit "defectively overbroad, oppressive, burdensome and intrusive" discovery); *State ex rel. Whitacre v. Ladd*, 701 S.W.2d 796, 798–99 (Mo. App. E.D. 1985) (rejecting subpoena of physician for records of "patients who have no connection with the lawsuit"). Just as *Whitacre* denied discovery into all of an expert doctor's patients where only one was at issue, 701 S.W.2d at 799, and *Kawasaki* rejected discovery of 37 other ATV models that defendant designed where only the 38th was at issue, 777 S.W.2d at 252, so too punitive damages discovery should stop with the net worth of the actual parties in this case. *Accord State ex rel. Horenstein v. Eckelkamp*, 228 S.W.3d 56, 58 (Mo. App. E.D. 2007); *State ex rel. Coffman Grp., L.L.C. v. Sweeney*, 219 S.W.3d 763, 768 (Mo. App. S.D. 2005).

Indeed, "Missouri decisional law" recognizes the "limits upon the broad scope of discovery" that apply to "the discoverability of net worth." *Kawasaki*, 777 S.W.2d at 251, 253 (collecting cases). In *Kawasaki*, the Court of Appeals confronted nineteen expansive discovery requests, including one for "copies of all documents reflecting the net worth of all defendants since 1980, including financial statements and documents evidencing retained earnings." 777 S.W.2d at 249. It held that "the [discovery] request made in this case is overbroad, burdensome and oppressive because the request is not … in conformity

with judicial decisions relating to … the discoverability of net worth." *Id.* at 253. As one case cited in *Kawasaki* explained, "[s]ince the purpose of presenting to the jury the amount of defendant's wealth is only to furnish to them a guide for suitable punishment, there is no need for a plaintiff to explore the details of a defendant's assets and liabilities." *Rupert v. Sellers*, 368 N.Y.S.2d 904, 913 (N.Y. App. Div. 1975).

Here, a demand for the financial statements of every entity affiliated with Mr. Kroenke goes far beyond discovery of any ***party's*** assets. *See* § 510.263.8 RSMo (stating that "[d]iscovery as to a ***defendant's*** assets shall be allowed only after a trial court has granted leave" (emphasis added)). This case is about the Rams' relocation from St. Louis, and Plaintiffs have no need for the financial statements of other unrelated businesses or professional sports teams. *See, e.g.*, *State ex rel. Ford Motor Co. v. Nixon*, 160 S.W.3d 379, 380 (Mo. banc 2005) (prohibiting discovery for "information and documents regarding every product containing asbestos that was ever manufactured, sold or distributed by [defendant] in its 102-year history without limitation as to locality or as to the specific products to which [plaintiff] was allegedly exposed"); *State ex rel. Am. Standard Ins. Co. of Wis. v. Clark*, 243 S.W.3d 526, 531 (Mo. App. W.D. 2008) (prohibiting discovery for "every document that [defendant] had for every [insurance] claim filed against it since 2000," which "undoubtedly would require [defendant] to produce hundreds of thousands—if not millions—of documents, many of which would be tangential to the lawsuit, if related at all").

These concerns also apply to Mr. Kroenke's federal tax returns. In *Wohl*, the Court of Appeals rejected a nearly identical demand for discovery of jointly filed tax returns

involving a relator and his wife. 711 S.W.2d at 586. As the Court explained in issuing a writ of prohibition, "[t]ax returns contain information required to be given under penalty of law. Confidentiality of the returns is ensured by statute to encourage honesty in reporting and to facilitate tax administration in general." *Id.* at 585. For that reason, "the information in the return is protected from unnecessary prying, and, therefore, the detailed information in a tax return is protected with the sensible expectation the protective shield will not be lifted unless good cause is shown." *Id.* In barring such discovery, the *Wohl* Court held,

> The number of questions that may be answered by information gleaned from relator's tax returns is not what is determinative here. What is determinative is the private affairs reflected in the tax returns of relator and his wife—a stranger to the underlying action—will be open to a complete and searching view if production is required. This is a significant invasion of privacy, which is unacceptable without demonstrating the information sought cannot be acquired through less intrusive means. Here, the burden to relator and his wife outweighs [plaintiff's] needs.

*Id.* at 586. The same is true here. Plaintiffs have no need for discovery of ***Mrs. Kroenke's*** tax returns, and any relevant information on ***Mr. Kroenke's*** net worth "can be adequately furnished in a manner less intrusive, less burdensome or less expensive." *Id.* at 585; *see also State ex rel. Delmar Gardens North Operating, LLC v. Gaertner*, 239 S.W.3d 608, 612 (Mo. banc 2007) (discovery of sensitive, confidential information must be limited to matters put at issue in the pleadings).

**B. Net Worth Discovery From Third Parties Is Unnecessary.**

Mr. Kroenke will produce all of the requested information that discloses his personal net worth, including personal financial statements, verifications of those documents, and a sworn interrogatory related to that valuation. Opp. to Mot. for Protective Order (Aug. 9,

2021) at 8; Ex. 3, Aug. 11, 2021 Tr. at 80. That is more than enough evidence to establish his net worth and test its reliability. The value of Mr. Kroenke's ownership interest in other entities will already be reflected on his own sworn and verified net worth information. In other words, Plaintiffs will receive all the information needed to show Mr. Kroenke's net worth without any confidential financial information from uninvolved third parties. *See Messina*, 71 S.W.3d at 607–08 (granting writ where "plaintiffs' need for the discovery is slight").

Respondent's decision to allow discovery into third parties' sensitive financial documents simply because portions of those documents may provide information that Plaintiffs already have is a clear reason to grant this writ. "In ruling upon objections to discovery requests, trial judges must consider not only questions of … relevance and tendency to lead to the discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it." *Anheuser*, 692 S.W.2d at 328.

Plaintiffs have no "need" to obtain the same information twice. *Wohl*, 711 S.W.2d at 586 ("Since relator, in effect, has admitted the fact [Plaintiff] seeks, the fact is no longer in issue. This need claimed by [Plaintiff] has been satisfied."). Respondent reasoned that financial statements of non-party entities could be used to verify Mr. Kroenke's net worth. Ex. 3, Aug. 11, 2021 Tr. at 78–79. But Mr. Kroenke is already providing several sources of verification, including multiple years of financial statements, independent verification of the financial statements, and a sworn interrogatory response. That information will fully address any supposed concerns regarding the accuracy of his financial information.

Indeed, these entities' annual financial statements are not ***valuations***, and thus will not provide any information about Relator's proportional share of that business's long term value that could verify (or impeach) Mr. Kroenke's net worth disclosure. The same is true about his income tax returns. *See Wohl*, 711 S.W.2d at 586 ("we see little if any relevancy in relator's 1978–1982 tax returns to relator's present financial wealth"). The financial statements from non-party entities and jointly filed tax returns will not provide Plaintiffs any information about Mr. Kroenke's current net worth that is not already contained in his sworn interrogatory response and personal financial statements.

In fact, none of this discovery is even necessary. Mr. Kroenke's net worth, which is monitored by Forbes, will exceed any constitutional limits on punitive damages. *See Cobb v. Superior Court for Los Angeles County*, 99 Cal.App.3d 543, 551 (1980) (directing that if "inquiry … reveal[s] that the defendant may be in a position to satisfy the claim if established without the necessity of a full and complete disclosure of all of his financial affairs," that should end the inquiry); *Kawasaki*, 777 S.W.2d at 251, 253 n.5 (citing *Cobb*). In other words, the discovery that Mr. Kroenke will already provide goes beyond anything that Plaintiffs could actually "need" for this case, *Anheuser*, 692 S.W.2d at 328, particularly in light of Mr. Kroenke's offer to stipulate to his net worth. Requiring uninvolved third parties to produce their financial statements or tax returns on top of this discovery is simply a "request to fish through" sensitive documents. *Wohl*, 711 S.W.2d at 586. Respondent's "discovery procedure has not been formulated" to reflect that Plaintiffs will "already" be "in possession of all the facts" upon production of Mr. Kroenke's personal financial

statements, and the failure to limit such discovery is grounds for prohibition. *Anheuser*, 692 S.W.2d at 327.

## IV. Conclusion

For these reasons, Relator E. Stanley Kroenke respectfully requests that this Court (a) assume jurisdiction of this proceeding; (b) issue a preliminary writ of prohibition ordering Respondent to take no further action in this case with respect to production of (i) financial statements related to third-party entities "owned in whole or part or directly or indirectly" by Relator other than the Rams; and (ii) Relator's federal income tax returns; (c) upon final review after briefing and argument, make the writ of prohibition permanent; and (d) order such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: September 2, 2021

By: /s/ Robert T. Haar_____

HAAR & WOODS, LLP
Robert T. Haar, #30044
Lisa A. Pake, #39397
Jozef J. Kopchick, #67685
St. Louis, Missouri 63101
Telephone: (314) 241-2224
Facsimile: (314) 241-2227
roberthaar@haar-woods.com
lpake@haar-woods.com
jkopchick@haar-woods.com

KIRKLAND & ELLIS LLP
Andrew A. Kassof, P.C. (*pro hac vice*)
James R.P. Hileman (*pro hac vice*)
300 N. LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
andrew.kassof@kirkland.com
james.hileman@kirkland.com

*Attorneys for The Rams Football Company, LLC and E. Stanley Kroenke*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 2, 2021, a true copy of the foregoing was served upon the following via electronic mail and first class mail:

The Honorable Christopher McGraugh
Circuit Court of St. Louis City, Division 19
10 N. Tucker Blvd.
St. Louis, MO 63101
Christopher.McGraugh@courts.mo.gov

***Respondent***

BLITZ, BARDGETT & DEUTSCH, L.C.

Robert D. Blitz #24387
Christopher O. Bauman #52480
120 South Central Ave.,
Suite 1500
St. Louis, Missouri 63105
314-863-1500
314-863-1877 (facsimile)
rblitz@bbdlc.com
cbauman@bbdlc.com

DOWD BENNETT LLP

James F. Bennett #46826
Edward L. Dowd, Jr. #28785
Michelle Nasser #68952
7733 Forsyth Blvd., Suite 1900
St. Louis, Missouri 63105
314-889-7300
314-863-2111 (facsimile)
jbennett@dowdbennett.com
edowd@dowdbennett.com
mnasser@dowdbennett.com

***Attorneys for Plaintiffs***

CARMODY MacDONALD P.C.
Gerard T. Carmody, #24769
Meghan M. Lamping, #59987
Patrick G. Carmody, #62784
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
gtc@carmodymacdonald.com
mml@carmodymacdonald.com
pgc@carmodymacdonald.com

COVINGTON & BURLING LLP
Gregg H. Levy (*pro hac* admission)
John E. Hall, #39434
Benjamin J. Razi (*pro hac* admission)
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
Telephone: (202) 662-6000
Facsimile: (202) 662-6291
glevy@cov.com
jhall@cov.com
brazi@cov.com

***Attorneys for the NFL Defendants***

/s/ Robert T. Haar