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**May 03 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

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Appellate Case No. 2021-001269

King Street Enterprises, LLC,  
Ohio Imaging Associates, Inc.,  
Mary Ann Kanters Cook a/k/a  
Marry Ann Kanters, and  
Dr. Albert James Cook II

Respondents,

v.

K-Con, Inc.

Appellant.

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MOTION FOR TAXATION OF COSTS AND  
MOTION FOR SANCTIONS

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Respondents, King Street Enterprises, LLC, Ohio Imaging Associates, Inc., Mary Ann Kanters, and Dr. Albert James Cook, II, through their undersigned counsel, hereby respectfully move for taxation of costs and sanctions against Appellant K-Con, Inc. and its counsel. This Motion is made pursuant to Rule 240, Rule 222, and Rule 269 of the South Carolina Appellate Court Rules.

MOTION FOR TAXATION OF COSTS

The grounds for Respondents' Motion for Taxation of Costs are as follows: 1) Appellant

filed and served a Notice of Appeal for this matter on October 28, 2021, 2) On November 17, 2021, this Court, noting the apparent interlocutory nature of the orders under appeal, requested that each party draft a memorandum addressing the issue of appealability, 3) The parties expended time and resources drafting their respective memorandums as to appealability, 4) On March 18, 2022, after considering the memorandums filed by the parties, this Court dismissed the appeal on the grounds that the orders under appeal were interlocutory and not immediately appealable, 5) The remittitur for this case was subsequently issued less than fifteen (15) days ago, on April 27, 2022, 6) Pursuant to Rule 222(a) and (b), SCACR, “costs **shall** bet taxed against the appellant when the appeal is dismissed” and “the party entitled to recover costs under the rule [...] **shall** be entitled to recover an attorney’s fee in an amount which shall be set by order of the Supreme Court. [Emphasis added]. By order dated January 17, 2018, the amount of attorney’s fees was set by the Supreme Court at \$2,500.00.

Pursuant to Rule 222(d), a sworn, itemized statement of costs, requesting taxation of costs in the amount of \$2,500.00 is attached hereto.

#### MOTION FOR SANCTIONS

The grounds for Respondents’ Motion for Sanctions are as follows:

On October 5, 2021, Counsel for Appellant K-Con, William A. Scott, Esq., emailed Counsel for Respondents that he intended to appeal the subject orders in this matter: “Brent and Dan: I intend on appealing one or both of the two recent orders issued by Judge Griffin, therefore, I am not sure if we need to have the status conference with Judge Young tomorrow. Please let me know what you think and what you think we can accomplish. Thanks. Bill.” (See Email, attached hereto as Exhibit A)

In response, counsel for Respondents immediately advised Mr. Scott that the orders were

clearly interlocutory and, therefore, not appealable, stating: “Bill, those orders are interlocutory. Not sure how you can appeal them or what you are seeming to propose below. Brent.” (See Email, attached hereto as Exhibit A).

Despite being advised by Respondent’s Counsel that the two subject orders were clearly interlocutory and not immediately appealable, Mr. Scott proceeded with filing a Notice of Appeal for both orders on behalf of Appellant, K-Con, Inc. As noted, *supra*, this Court quickly recognized that both subject orders appeared to be interlocutory and not immediately appealable, and requested that each party draft a memorandum as to appealability. On March 18, 2022, after considering the memorandums filed by the parties, this Court dismissed the appeal on the grounds that the orders under appeal were interlocutory and not immediately appealable.

The filing of the Appeal in this matter was frivolous. Mr. Scott was advised by Counsel for Respondents that the orders were interlocutory and not immediately appealable. Nevertheless, he filed a notice of appeal, which resulted in unnecessary delay and completely avoidable costs for the parties. The appeal was also a waste of judicial resources as it required the Court to request and review memorandums on the issue. Mr. Scott and his client should never have filed the appeal. Minimally, they should have withdrawn the appeal as it became more than abundantly clear that the orders were interlocutory and not immediately appealable.

Rule 269, SCACR, sets for the rule for Frivolous Appeals:

#### FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari even though the matter may be frivolous.

Appellant K-Con, Inc., through its counsel, filed the Notice of Appeal despite being made aware

of their interlocutory and unappealable nature. Accordingly, Respondents request that this Court grant sanctions against K-Con, Inc. and its Counsel in an amount sufficient to discourage like conduct in the future with regard to this or any other matter.

#### CONCLUSION

For the forgoing reasons, the above-named Respondents respectfully request that this Court grant their Motion for taxation of Costs and order Appellant to pay \$2,500.00 in Attorney's Fees as set forth by Rule 222, SCACR and the January 16, 2018 Order by the Supreme Court. In addition, Respondents request that this Court grant sanctions against K-Con, Inc. and its Counsel in an amount sufficient to discourage such conduct in the future with regard to this or any other matter.

Respectfully submitted,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)  
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HALVERSEN & HALVERSEN, LLC

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[brent@halversenlaw.com](mailto:brent@halversenlaw.com)

**Attorneys for All Respondents**

May 3, 2022  
Charleston, South Carolina

# EXHIBIT A

**From:** [Brent Halversen](#)  
**To:** [Bill Scott](#); [dan@slotchiverlaw.com](mailto:dan@slotchiverlaw.com)  
**Cc:** [Tracy Braceland](#)  
**Subject:** RE: K-Con v. Ohio Imaging  
**Date:** Tuesday, October 5, 2021 11:08:00 AM

---

Bill,

Those orders are interlocutory. Not sure how you can appeal them or what you are seeking to propose below.

Brent

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**From:** Bill Scott <[bscott@pslawpc.com](mailto:bscott@pslawpc.com)>  
**Sent:** Tuesday, October 5, 2021 11:00 AM  
**To:** [dan@slotchiverlaw.com](mailto:dan@slotchiverlaw.com); Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>  
**Cc:** Tracy Braceland <[tracy@pslawpc.com](mailto:tracy@pslawpc.com)>  
**Subject:** K-Con v. Ohio Imaging

Brent and Dan:

I intend on appealing one or both of the two recent orders issued by Judge Griffin, therefore, I am not sure if we need to have the status conference with Judge Young tomorrow. Please let me know what you think and what you think we can accomplish.

Thanks. Bill

William A. Scott, Esq.  
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Marry Ann Kanters, and  
Dr. Albert James Cook II

Respondents,

v.

K-Con, Inc.

Appellant.

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PROOF OF SERVICE

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I do hereby certify that on this 3rd day of May 2022, I served a copy of Respondents' *Motion for Taxation of Costs and Motion for Sanctions, Itemized Statement of Costs, and Notice of Appearance* on all counsel of record via their AIS-designated email at the below email addresses. Pursuant to Rule 262(C)(3), SCACR, and the Order of The Supreme Court of South Carolina, RE: Methods of Electronic Filing Under Rule 262 of the South Carolina Appellate Court Rules, entered August 25, 2021, a copy of the email to counsel is attached.


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**Attorney for Appellant**

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**Attorneys for all Respondents**

s/Jesse Sanchez  
Jesse Sanchez (SC Bar No. 101906)  
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[jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)  
**Attorney for all Respondents**

Charleston, South Carolina  
May 3, 2022

**From:** Jesse Sanchez [jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com) 

**Subject:** K-Con v. KSE - Appellate Case No. 2021-001269

**Date:** May 3, 2022 at 6:50 PM

**To:** Bill Scott [bscott@pslawpc.com](mailto:bscott@pslawpc.com)

**Cc:** Brent Halversen [Brent@halversenlaw.com](mailto:Brent@halversenlaw.com), Dan [dan@slotchiverlaw.com](mailto:dan@slotchiverlaw.com), Susan Maulden [paralegal@slotchiverlaw.com](mailto:paralegal@slotchiverlaw.com)



Counsel,

For service, please find the attached Cover Letter, *Motion for Taxation of Costs and Motion for Sanctions*, and Itemized Statement of Costs, all of which are being filed momentarily with the South Carolina Court of Appeals via OneDrive Electronic Submission.

Regards,

Jesse

--

Jesse Sanchez  
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2021-001269 -  
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**From:** Jesse Sanchez [jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)   
**Subject:** Re: K-Con v. KSE - Appellate Case No. 2021-001269  
**Date:** May 3, 2022 at 7:04 PM  
**To:** Bill Scott [bscott@pslawpc.com](mailto:bscott@pslawpc.com)  
**Cc:** Brent Halversen [Brent@halversenlaw.com](mailto:Brent@halversenlaw.com), Dan [dan@slotchiverlaw.com](mailto:dan@slotchiverlaw.com), Susan Maulden [paralegal@slotchiverlaw.com](mailto:paralegal@slotchiverlaw.com)



For service, please also find the attached Notice of Appearance.

Thank you,

Jesse

On Tue, May 3, 2022 at 6:50 PM Jesse Sanchez <[jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)> wrote:  
Counsel,

For service, please find the attached Cover Letter, *Motion for Taxation of Costs and Motion for Sanctions*, and Itemized Statement of Costs, all of which are being filed momentarily with the South Carolina Court of Appeals via OneDrive Electronic Submission.

Regards,

Jesse

--

Jesse Sanchez  
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**May 03 2022**

**SC Court of Appeals**

May 3, 2022

VIA ONE DRIVE ELECTRONIC SUBMISSION

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

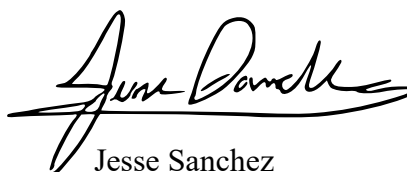
RE: King Street Enterprises, LLC, Ohio Imaging Associates, Inc., Mary Ann  
Kanters Cook, and Dr. Albert James Cook II, Respondents v. K-Con, Inc.,  
Appellant – Appellate Case No. 2021-001269

Dear Ms. Kitchings:

Attached for filing, please find Respondents' Motion for Taxation of Costs and Motion for Sanctions, the corresponding Proof of Service, and a fifty dollar (\$50.00) check from my firm for the motion filing fee. To the extent deemed necessary, I am also enclosing a Notice of Appearance for the undersigned (the undersigned previously filed Respondents' Memorandum on Appealability, but had not been copied on subsequent Court correspondence).

Thank you for your attention to this matter. Should you have any questions about this submission, please do not hesitate to contact me directly.

Sincerely,



Jesse Sanchez

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