

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

ROBERT DAVIS and MICHAEL LANG,

Plaintiffs,

v.

JAMES BOEHEIM and SYRACUSE  
UNIVERSITY,

Defendants.

Index No. 113967 / 2011

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS'  
ORDER TO SHOW CAUSE FOR LIMITED DISCOVERY IN AID OF  
PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO TRANSFER  
VENUE**

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Plaintiffs Robert (“Bobby”) Davis and Michael (“Mike”) Lang respectfully submit this reply memorandum of law in support of Plaintiffs’ Order to Show Cause seeking targeted, narrow, and expedited discovery in aid of Plaintiffs’ response to Defendants’ motion to transfer venue from this Court to the Onondaga County Supreme Court.

### **PRELIMINARY STATEMENT**

Defendants’ blanket refusal to answer four targeted interrogatories narrowly tailored to identify witnesses who are likely to have material information about Boeheim’s knowledge of Bernie and Laurie Fine’s sexual relationships with boys and young men who were directly under Boeheim’s care and guidance—even as Boeheim chose publicly to denounce Plaintiffs as liars—is telling. Rather than simply answer the requests, which ask Defendants to identify individuals whom they believe engaged in sexual relationships with either Bernie or Laurie Fine or complained to or otherwise notified Defendants about such behavior, and to provide the last-known contact information for team members who were present during a short five-year time period when Plaintiff knows these relationships occurred and were openly being discussed, Defendants choose instead to hide behind arguments that the information is irrelevant and not necessary right now. They are wrong on both counts. As set forth below, the information is relevant and necessary precisely because defendants chose to pursue a strategy designed to cause their venue motion be heard with priority over their motion to dismiss.

It is unfortunately not surprising that Syracuse University and Jim Boeheim perceive that the targeted discovery relates to “irrelevant information” and

nothing more than “salacious gossip.” Defendants’ Mem. of Law in Opp’n to Plaintiffs’ Order to Show Cause (“Defs.’ Opp’n”) at 8. Apparently, to Defendants, the grossly dysfunctional behavior evidenced by Laurie and Bernie Fine is just “irrelevant” and “gossip.” The fact that at least two grown men still struggle each day to deal with the sexual abuse they suffered at Bernie Fine’s hands as boys and young men is of no moment to Syracuse or Boenheim, even now. Given their cavalier attitude, it is not surprising that Boenheim and his employer consistently have chosen to close ranks and denigrate as liars the victims who had the courage to come forward.

It is also remarkable that Syracuse and Boenheim complain that Plaintiffs did not provide these allegations in the Verified Complaint, and claim that Plaintiffs seek only “to generate headlines” by this application. Defs.’ Opp’n at 2. Plaintiffs seek expedited relief because the information they seek is directly relevant to their response to Defendants’ motion to transfer venue. Moreover, the accusation that Plaintiffs simply seek “headlines” ignores the fact that, for years, Bobby Davis tried to get people in Syracuse to listen to what he had to say, and to take seriously his reports that he had been sexually abused by Fine. *See* Compl. ¶¶ 33-40 (attached as Ex. 1 to Affirmation of Mariann Meier Wang, dated Jan. 30, 2012 (“Wang Aff.")). Had Syracuse actually taken Bobby Davis’s private complaints in 2005 seriously, and had they acted reasonably in response, there would be no headlines today, and Davis would have nothing but praise for a University that addressed the issue promptly and thoroughly.

Instead it is Syracuse and Boenheim who chose for years to ignore Bernie Fine’s behavior and to respond to Bobby Davis’s and Mike Lang’s allegations by

immediately, publicly, and repeatedly calling them liars and money-grubbers. It is *Defendants'* callous and shameful behavior that makes headlines.

## ARGUMENT

### **I. The Targeted Interrogatories Should Be Answered Now Precisely Because Defendants' Motion to Transfer Venue Currently Has Priority.**

#### **A. Defendants' Ensured That The Venue Argument Be Heard First**

The information sought through the targeted interrogatories is unquestionably relevant now to the issue that *Defendants* have chosen as their strategic priority in this action: moving this case up to Syracuse, where the community is dominated by diehard Syracuse basketball fans, and where Jim Boeheim and the University wield enormous power and influence, including as prime generators of income and employment for many thousands of Syracuse citizens.

Defendants could have responded to the Verified Complaint by simply filing a combination of their Motion to Dismiss and a Motion to Transfer Venue, or by serving their demand to transfer venue and then filing their motion to dismiss immediately thereafter. *Cf.* CPLR 511(a) (“A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served.”); *Terezakis v. Goldstein*, 168 Misc.2d 298, 302, 640 N.Y.S.2d 1005, 1007 (N.Y. County Sup. Ct. 1996). That would have prioritized the motion to dismiss, which by Defendants' own admission can be decided on legal argument alone without any discovery. Boeheim and Syracuse University instead actively have maneuvered to place their Motion to Transfer Venue before the Onondaga Court as a priority over any motion to dismiss.

Indeed, Defendants pursued a calculated strategy to achieve just such priority. Although they had until January 20, 2012, to respond to the Verified Complaint, they chose to ensure, by serving Plaintiffs on Friday afternoon before New Year's weekend with a Demand to Transfer Venue, that they would be able to file their Motion to Transfer Venue three days before their response was due—on January 17, 2012, with a return date of February 21 in Onondaga County. Wang Aff. Ex. 6. On January 19, one day before their response to the Verified Complaint was due in New York County, Defendants then sought emergency relief, through an Order to Show Cause filed in Onondaga County, to have *all* aspects of this case stayed pending resolution of their venue transfer motion. Wang Aff. Ex. 7. Although the Court in Onondaga County expressly deleted from the Order to Show Cause the paragraph that Defendants sought above all—that they be excused from responding to the Verified Complaint so that the Motion to Transfer Venue could be decided first, *see id.* at page 2—Syracuse and Boeheim plainly want their venue motion decided first. When they did file their Motion to Dismiss on January 20, they unilaterally chose a distant return date of March 14, again plainly hoping to ensure that the Motion to Transfer Venue would be decided as a priority over the Motion to Dismiss.

In other words, although Defendants conveniently purport now to want to avoid expenditure of unnecessary resources and to prioritize the dismissal of this action on legal grounds, they themselves sought as the utmost priority in this case to have the action transferred to Onondaga County *before* the Motion to Dismiss even was filed, much less addressed.

Defendants' gamesmanship is transparent. Their priority is to avoid having this Court consider their legal arguments about the sufficiency of the Verified Complaint—even though Defendants have audaciously asserted that their arguments unquestionably will dispose of this case without a single party or witness being deposed regardless of where they are heard. They instead seek to have the Motion to Transfer Venue as a priority so they can enjoy a home court advantage.

**B. The Identity of These Non-Party Witnesses Is Pertinent to Venue and to the Merits of This Action.**

Given Defendants' maneuverings, Plaintiffs have the right *now* simply to seek information directly relevant to the arguments on venue.<sup>1</sup> As Defendants themselves concede, Defs.' Opp'n at 5-6, the location of non-party witnesses is of course germane to a discretionary change of venue under C.P.L.R. 510(3), which motion Plaintiffs plan to make in response to Defendants' motion to transfer venue to Onondaga County. And despite their weak efforts to deflect the relevance of these facts, there is no question that witnesses who have information about Boenheim's and the University's knowledge and awareness of Bernie and Laurie Fine's sexual relationships with boys and young men in their charge also have material information with respect to whether Boenheim was negligent, reckless, and/or malicious in announcing to the world in November 2011 that Bobby Davis and Mike Lang are liars. As is well established under New York law, Boenheim's negligence and/or recklessness is an element of Plaintiffs'

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<sup>1</sup> Of course, if Defendants were to agree to adjourn the stay motion until after the motion to dismiss is decided, this entire Order to Show Cause would be moot. Given that they themselves moved by Order to Show Cause before the Onondaga County court to stay all proceedings other than the venue motion, Plaintiffs surmise that Defendants will not agree to such an approach, though Plaintiffs would stipulate to withdraw this motion if Defendants stipulated to that course.

defamation claim. *See, e.g., Dillon v. City of New York*, 261 A.D.2d 34, 38, 704 N.Y.S.2d 1, 5 (1st Dep’t 1999) (listing the elements of a defamation claim under New York law, including “fault as judged by, at a minimum, a negligence standard”).

Any individual with common sense would and could easily connect the few dots that Defendants deliberately—as they have for many years—refuse to see as “relevant.” If Laurie Fine indeed was having sexual relations with multiple basketball team players spanning years, with players routinely and openly discussing that fact, and if Bernie Fine, Boenheim’s right hand, indeed approved or allowed such behavior because of his own sexual predilections for boys and young men—all of which is established by Bobby Davis’s sworn affidavit in support of this Order to Show Cause—then Jim Boenheim, the head coach known for his fierce control and management of his team, aided for nearly thirty-five years by his friend of fifty years, Bernie Fine, either knew about these sick relationships or consciously and deliberately chose to ignore the many varied signs of what was occurring.

The four interrogatories would identify witnesses with material and necessary information for Plaintiffs’ defamation claim. Their identity and location is relevant to the venue motion, and should either be provided forthwith, or Defendants’ Motion to Dismiss should be given priority and decided before their venue motion is considered.

### **CONCLUSION**

For the foregoing reasons, the Court should grant Plaintiffs limited relief from the automatic stay pursuant to C.P.L.R. 3214(b), and should direct Defendants to respond to Plaintiffs’ four interrogatories by February 12, two days prior to Plaintiffs’

February 14, 2012 deadline to respond to Defendants' motion to transfer venue to Onondaga County.

Dated: February 9, 2012  
New York, New York

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