

January 16, 2018

**EMAILED AND MAILED ON SAME DATE**

**egolen@nycourts.gov**

Hon. Roger D. McDonough  
Albany County Supreme Court and  
Albany County Court  
Albany County Courthouse  
Room 341  
16 Eagle Street  
Albany, NY 12207

**RE: *People of the State of New York v. Joseph J. O'Hara and Toni F. Natalie a/k/a Toni Foley***

Indictment: 34-7323

Index No.: DA-172-15

Dear Judge McDonough:

I am writing in response to the January 10, 2018 letter to the Court from Paul DerOhannesian II on behalf of NXIVM Corporation ("NXIVM"), wherein he requested that the Court order me – and one of my co-defendants in this matter, Toni Natalie a/k/a/ Toni Foley ("Ms. Natalie/Foley") – to return the computers and NXIVM-related materials (collectively, "the Personal Property") that were originally seized from us by the New York State Police ("NYSP") on October 23, 2013 and that were voluntarily returned to us by the NYSP on or about December 21, 2017. In this regard, I respectfully ask that the Court deny Mr. DerOhannesian's request for such an order for the following reasons:

- The Court no longer has jurisdiction over me or Ms. Natalie/Foley. In this regard, the criminal charges against us were fully dismissed via an Adjournment in Contemplation of Dismissal ("ACOD") agreement on February 10, 2016 – and the applicable 6-month "waiting period" regarding that ACOD agreement expired on August 10, 2016. On that date, Stephen W. Herrick, the then-presiding judge in this matter, dismissed all the charges against me and Ms. Natalie/Foley and ordered the file regarding this matter sealed.
- Upon the expiration of the ACOD "waiting period," all the Personal Property that had been seized from me and Ms. Natalie/Foley should have been immediately returned to us in the same condition it was in before it was seized. In this regard, the executed ACOD

agreements state, *inter alia*: ***“Upon dismissal of the action, the arrest and prosecution shall be deemed a nullity and I shall be restored to the status I occupied before my arrest or prosecution...”*** (emphasis added). That “status” obviously included our ownership rights in – including the right to possession of – our Personal Property.

- In addition to its obligation under the ACOD agreements to return our Personal Property, the prosecution was also obligated to do so per the applicable statutory law in New York State: ***“The granting of an adjournment in contemplation of dismissal shall not be deemed to be a conviction or an admission of guilt”*** (N.Y. Criminal Procedure Law 150.55(8) (emphasis added). Directly dispositive here, New York law prohibits the very forfeiture that NXIVM is asking the Court to bless: ***“No person shall suffer any disability or forfeiture as a result of such an order. Upon the dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution”*** (N.Y. Criminal Procedure Law 160.50) (emphasis added).
- After the ACODs were executed, the prosecution – consistent with the ACOD agreements and the New York statutes cited above - never raised any question as to whether Ms. Natalie/Foley and I were entitled to the return of our Personal Property. To the contrary, the prosecution in this matter has never even appeared before the Court to argue against the return of our Personal Property. Instead, it has been two *non-parties* to this matter – the NYSP and NXIVM – that have made that specious argument (Note: In reality, neither the NYSP or NXIVM has any standing to advance any argument before the Court as regards any aspect of this matter—and neither should have even been allowed to appear in same).
- Mr. DerOhannesian’s aforementioned letter notes NXIVM’s intent to bring a civil lawsuit against me and Ms. Natalie/Foley. In this regard, such an action, with its attendant civil discovery processes and protections, would be the appropriate procedure for NXIVM to utilize if it seeks to obtain control or possession of our Personal Property. Instead, NXIVM is seeking to use this closed criminal proceeding as a backdoor to obtain discovery for a civil case that it has not yet initiated.
- In addition to its total lack of any substantive legal basis, Mr. DerOhannesian’s request is also untimely – and amounts to an after-the-fact request for an enlargement of time without showing any justification for such an enlargement. Since the Court’s November 20, 2017 Order provided a 45-day period within which NXIVM could have filed a motion

seeking to preclude the return of the Personal Property, any such filing needed to be made on or before January 4, 2018 to even merit consideration. In this regard, the fact that the NYSP had already voluntarily returned our Personal Property to me and Ms. Natalie/Foley prior to that date clearly presented no obstacle to NXIVM's filing of a timely motion – or, more appropriately, the filing of a civil action – concerning same.

Thank you for your consideration. Please feel to contact me if you have any questions about – and/or if you need more information concerning – this matter.

Respectfully submitted,

*Joseph J. O'Hara*

Joseph J. O'Hara

PS/I would have responded sooner to Mr. DerOhannesian's letter, but I was under the mistaken belief that I was being represented by outside counsel in this matter. Instead, I have been notified via an email that I received earlier today that I am, as before, proceeding on a *pro se* basis.

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