

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p><b>Plaintiffs' Response to Ghoubrial's Supplemental Memorandum in Opposition to Plaintiffs' Motion to Compel</b></p>
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Critically, in his “Supplemental Memorandum in Opposition” to Plaintiffs’ motion to compel, Defendant Ghoubrial does not deny that portions of his wife Julie’s testimony in their currently pending divorce proceedings (Summit County D.R. No. 2018-04-1027) confirmed the truth of Plaintiffs’ allegations against him in this lawsuit. Instead, further affirming the importance of Julie’s deposition testimony to this case, Ghoubrial has asked the Court to completely deny Plaintiffs access to it based on a claim that a confidentiality order entered just last week in the divorce case, that (1) Ghoubrial himself asked the Court to enter, (2) on dubious grounds, (3) against Julie’s opposition, and (4) long after Plaintiffs in this case moved to compel its production, “prevents the disclosure and/or use of” the transcript “for any other purpose” outside of that case. *See* Ghoubrial Supp. Opp. at 2, Ex. A.

Indeed, the incontrovertible facts that Ghoubrial omits from his “Supplemental Memorandum” show that he’s engaged in an effort to manipulate the divorce court precisely to obstruct discovery and circumvent the Court’s authority in this case. As the docket in the divorce case shows, Defendant Ghoubrial only requested this confidentiality order last week, on January 24, on the sole and specious grounds that Julie’s testimony pertained to “confidential business information regarding [his] business,” the same grounds upon which he has flatly refused to respond

to nearly all of Plaintiffs' written discovery requests in this case, and the same grounds that have already been rejected by this Court pertaining to Brandy Gobrogge's testimony about KNR's purportedly confidential "business information." *See* Ghoubrial motion to mark Julie's deposition transcript as confidential, attached hereto as **Exhibit 1**; *See also* Jan. 8, 2019 Court order granting Plaintiffs' motion to strike KNR Defendants' confidentiality designations to Ms. Gobrogge's transcript. In opposing the motion, Julie stated that, (1) Ghoubrial's request to mark the transcript as confidential is "inappropriate and based upon inaccurate and misleading information;" (2) the transcript is "plainly not covered by the terms of" the previously applicable confidentiality agreement and protective order in the divorce case (contrary to Ghoubrial's statement to this Court in initially opposing Plaintiffs' motion to compel<sup>1</sup>), and (3) Julie's "deposition testimony is not the testimony of any of the business entities" but "rather," "hers and hers alone." *See* Julie's opposition to Ghoubrial motion to mark transcript as confidential at 1, attached hereto as **Exhibit 2**.

Not only does Ghoubrial's "Supplemental Opposition" self-servingly avoid advising this Court of how this confidentiality order came into being, it also fails to address well-established Ohio law providing that Julie's testimony is *not* shielded from discovery in this lawsuit merely because of such an order in the divorce case. Again, as noted in Plaintiffs' motion to compel, "the confidential nature" of information covered by a particular statute, or another court's confidentiality order, "is not absolute." *See, e.g., Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680, ¶ 19. Rather, a court "may order disclosure" of such information "when pertinent to pending civil and criminal actions" after holding "an in camera inspection to determine:

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<sup>1</sup> In his initial opposition brief, filed on Jan. 7, 2019 (at 5), Ghoubrial sought to take refuge in the fact that the court reporter's record of Julie's transcript had not yet been formally transcribed. Ghoubrial also stated that, "even if the deposition transcript was transcribed, which it is not, Plaintiffs would be able to purchase a copy directly from the court-reporter, assuming the orders in place in the divorce proceeding would permit it, which they likely would not." Now that Julie has ordered the transcript, not only has Ghoubrial changed his tune about whether "Plaintiffs would be able to purchase a copy," he has sought and obtained a court order by which he purports to keep them from doing so.

1) whether the records are necessary and relevant to the pending action; 2) whether good cause has been shown by the person seeking disclosure; and 3) whether their admission outweighs ... confidentiality considerations.” *Id.* at ¶ 13, 19.

Moreover, to conserve “time and resources” of the parties and the courts, the party seeking allegedly “confidential” information already provided in a different lawsuit should not be required to intervene in those proceedings to seek modification of the confidentiality order. *See, e.g., Abel v. Mylan, Inc.*, N.D.Okla. No. 09-CV-0650-CVE-PJC, 2010 U.S. Dist. LEXIS 106436, at \*8-11 (Oct. 4, 2010) (“Plaintiff here should not be required to take action to seek modification of the various protective orders entered in these cases. This is a waste of time and resources.”); *Franklin United Methodist Home, Inc. v. Lancaster Pollard & Co.*, 909 F.Supp.2d 1037, 1044-1045 (S.D.Ind.2012) (“[C]ourts asked to issue discovery orders in litigation pending before them have not shied away from” compelling “confidential” information, even if it would modify or circumvent a discovery order by another court, if ... such a result was considered justified.”) (citing cases); *United States v. GAF Corp.*, 596 F.2d 10, 16 (2d Cir. 1979) (“[Protective] orders are subject to modification to meet the reasonable requirements of parties in other litigation.”); *Meyer Goldberg, Inc. v. Fisher Foods*, 823 F.2d 159, 163-164 (6th Cir.1987) (“Given that proceedings should normally take place in public, imposing a good cause requirement on the party seeking modification of a protective order is unwarranted. If access to protected fruits can be granted without harm to legitimate secrecy interests, or if no such interests exist, continued judicial protection cannot be justified. In that case, access should be granted even if the need for the protected materials is minimal.”).

Here, under the three-part test in *Grantz* or otherwise, there is no legitimate argument for shielding Julie’s testimony from these proceedings. First, because Julie was questioned specifically by Attorney Best (who represents the KNR Defendants in this case) as to the veracity of Plaintiffs’ specific allegations against Ghoubril in this lawsuit, there is no question that this testimony

constitutes highly relevant and probative information. Second, good cause exists for the disclosure of this testimony because it contains information that is not otherwise available to Plaintiffs, in part due to the Defendants' own obstruction. Finally, granting Plaintiffs access to Julie's relevant testimony outweighs any purported interest in keeping it confidential because Plaintiffs have sought only those portions of Julie's deposition transcript that are relevant to this lawsuit, and even Julie herself does not object to release of this information. *See* Motion to Compel at 5-6, Ex. 3, Page 54 (requesting specifically that Ghoubril produce "[p]ortions of the transcript ... where Julie was questioned about any allegation relating to this lawsuit."); **Ex. 2**, Julie Opp. to confidentiality order.

Thus, not only do all three *Grantz* factors weigh heavily in favor of production here, no conceivable prejudice would result from releasing the transcript to Plaintiffs, particularly where Julie herself believes the transcript should not be kept confidential. Indeed, the dubious grounds on which the confidentiality order was requested and entered, only after Plaintiffs moved to compel it in this case, as avoided by Ghoubril's misleading presentation to this Court, only further counsel in favor of granting Plaintiffs' motion to compel. Thus, as set forth above and in Plaintiffs' motion to compel and subsequent reply, the Court should order that Ghoubril make the transcript available for an in camera review, and release the relevant portions of the transcript to Plaintiffs.

Respectfully submitted,

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*Attorneys for Plaintiffs*

### **Certificate of Service**

The foregoing document was filed on January 30, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

*/s/ Peter Pattakos*

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*Attorney for Plaintiffs*

IN THE COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
SUMMIT COUNTY, OHIO

Julie Ghoubrial	*	Case No.: DR 2018-04-1027
Plaintiff	*	Judge Quinn
vs.	*	Magistrate Dennis
Sameh N. Ghoubrial, et al.	*	<b><u>MOTION TO MARK DEPOSITION</u></b>
Defendants	*	<b><u>TRANSCRIPT AS CONFIDENTIAL</u></b> <b><u>INFORMATION</u></b>

Now comes Defendant, Sameh N. Ghoubrial, by and through counsel, and hereby requests an order from this Court requiring the designation of the Plaintiff's deposition in this matter taken on October 12, 2018 as confidential information in accordance with the Stipulated Protective Order filed on August 23, 2018.

More specifically, the Defendant took the deposition of Plaintiff on October 12, 2018. The Plaintiff testified to confidential business information regarding Defendant's business. Further, Plaintiff is an office holder in Defendant's business. Defendant has attempted to resolve this matter with Plaintiff's counsel. Plaintiff's counsel has refused to abide by the terms of the Stipulated Protective Order.

Wherefore, Defendant, Sameh N. Ghoubrial, is hereby requesting an order from this Court requiring the Plaintiff to mark the deposition transcript as confidential information in accordance with the Stipulated Protective Order and follow all terms of the Stipulated Protective Order.

**EXHIBIT 1**

Respectfully submitted,

/s/ Adam R. Morris

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### **CERTIFICATE OF SERVICE**

I, Adam R. Morris, do hereby certify that a copy of the foregoing has been sent via e-mail this 24<sup>th</sup> day of January, 2019 to:

Gary Rosen, Esq.  
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/s/ Adam R. Morris

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IN THE COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL	)	CASE NO: DR-2018-04-1027
	)	
Plaintiff,	)	JUDGE QUINN
	)	
-vs-	)	MAGISTRATE DENNIS
	)	
SAMEH N. GHOUBRIAL, et al	)	<u>PLAINTIFF'S RESPONSE TO</u>
	)	<u>DEFENDANT'S MOTION TO</u>
Defendants.	)	<u>MARK DEPOSITION</u>
	)	<u>TRANSCRIPT AS CONFIDENTIAL</u>
	)	<u>INFORMATION</u>

Comes now Plaintiff, **Julie Ghoubrial**, by and through undersigned counsel, in response to the Motion to Mark Deposition Transcript as Confidential Information, filed by Defendant, Sameh N. Ghoubrial, on January 24, 2019, in this matter, and states the following:

1. The Defendant's request to mark the deposition transcript from Defendant's deposition of Plaintiff on October 12, 2018, is inappropriate and based upon inaccurate and misleading information.
2. The parties previously agreed upon, and the Court issued on August 23, 2018, a Confidentiality Agreement and Stipulated Protective Order, which is attached hereto as *Plaintiff's Exhibit 1*.
3. That Order states: "This Protective Order shall govern all designated documents, tangible things, testimony, and information produced, provided, or made available in this action by the Third-Party Defendant business entities hereto, Blue Streak Flight Group, LLC, Clearwater Billing Services, LLC, GLTCP Health Care Services, Inc., Sam H. Ghoubrial, MD, Inc., SGM Holdings, Inc., and TPI Airways, LLC"
4. The Deposition of Plaintiff on October 12, 2018, is plainly not covered by the terms of the Confidentiality Agreement and Stipulated Protective Order.
5. The Confidentiality Agreement and Stipulated Protective Order pertains solely to discovery materials produced by the Third-Party Defendant business entities.
6. Plaintiff's deposition testimony is not the testimony of any of the business entities. Rather, Plaintiff's testimony was hers and hers alone.
7. Defendant's interpretation of the Confidentiality Agreement and Stipulated Protective Order is

**EXHIBIT 2**



erroneous and should be disregarded by this Court.

**WHEREFORE**, Plaintiff prays for the following:

1. That Defendant's Motion be dismissed, and all relief requested therein be denied;
2. For such other relief as shall be deemed necessary and proper.

Respectfully submitted,

/s/ Gary M. Rosen

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**Joshua A. Lemerman, #0091841**

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**Attorneys for Plaintiff, Julie Ghoubril**

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was sent by email, on this 24<sup>th</sup> day of **January, 2019**, to, Randal A. Lowry & Adam R. Morris, Attorneys for Defendant, Randal A. Lowry & Associates, 4000 Embassy Parkway, Suite 200, Akron, Ohio 44333, *Email: [rlowry@randallowry.com](mailto:rlowry@randallowry.com) & [amorris@randallowry.com](mailto:amorris@randallowry.com)*, and a courtesy copy was sent by email to: **Stephen P. Griffin, Co-Counsel for Third-Party Defendants**, Griffin Law, LLC, 4051 Whipple Avenue NW, Suite 201, Canton, Ohio 44718, [sgriffin@griff-law.com](mailto:sgriffin@griff-law.com) and **David M. Best, Co-Counsel for Third-Party Defendants**, David M. Best Co., LPA, 4900 West Bath Road, Akron, Ohio 44333, [dmbest@dmbestlaw.com](mailto:dmbest@dmbestlaw.com)

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