

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan Plaintiffs' Memorandum in Opposition to the KNR Defendants' Motions to Compel the Depositions of Monique Norris and Thera Reid, and Motion for Reconsideration of the Court's April 18, 2019 Oral Order
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On April 18, 2019, during a telephonic hearing that was convened for the purpose of addressing the KNR Defendants' last-minute effort to quash the deposition of Defendant Ghoumbrial's ex-wife Julie, the Court ordered not only that Julie's deposition go forward, but also that three depositions requested by the Defendants take place, too. Specifically, Defendants requested, and the Court, on April 18, orally ordered, (1) that non-party Brittany Holsey appear for a deposition even though the Defendants did not serve a subpoena on her until two business days before the expiration of the April 15 class-discovery deadline; and, (2) that the depositions of Named Plaintiffs Thera Reid and Monique Norris be reopened despite the absence of any legitimate need by Defendants to do so after each witness testified for a full day, answering every conceivably relevant question that Defendants posed to them and more. *See Exhibit 1*, Transcript of 04/18/2019 telephonic hearing, at 15:1–20, 19:5–12; 22;3–4.

Plaintiffs' and Ms. Holsey's combined motion to quash and memorandum in opposition to KNR's motion to compel her deposition was filed last Wednesday, April 17, the evening before the April 18 telephonic hearing, and five full days before it was due, in response to Defendants' April 11 motion to compel, under the Civil and Local Rules. The Defendants' motions to reopen Ms. Reid and

Ms. Norris's depositions were only filed on Monday, April 15, and Plaintiffs had not filed their opposition briefs to these motions before the Court issued its April 18 ruling (Plaintiffs' opposition briefs to these motions are not due until Thursday, April 28 under the Civil and Local Rules). In making its April 18 oral order, the Court indicated that it had not considered the parties briefing on any of these issues. *See* **Ex. 1**, 04/18/2019 Hearing Tr. at 6:20–24. Thus—while Thera Reid's deposition was reopened yesterday for another four hours, as ordered by the Court on April 18—Plaintiffs believe that the Court might be unaware that Defendants had already deposed Ms. Reid and Ms. Norris each for a full day,¹ and are filing the instant memorandum and motion to register their objection to and request the Court's reconsideration of the needless and patently abusive continuation of these depositions, as well as the deposition of Ms. Holsey.

It is extremely telling that Defendants, in moving to reopen Ms. Reid's and Ms. Norris's depositions, have not filed the transcripts of the day-long depositions they have already taken of these witnesses. Nor have the Defendants even tried to explain in either of their motions to compel why they were not able to complete these depositions in a full day, or what subjects were legitimately left to address. *See* Defs' 04/15/2019 Motions to Compel.

These failures by the Defendants are unsurprising because the notion that either of these depositions should have taken a full day in the first place is, frankly, ridiculous. Plaintiffs Reid and Norris are former clients of Defendant law firm and Defendant health-care providers who were unquestionably charged the fraudulent fees at issue. There is no dispute at all as to the only facts relating to Norris and Reid that are legitimately at issue on class-certification: Namely, that Norris and Reid were charged the allegedly fraudulent \$200 narrative fee to Defendant Floros out of their KNR settlements, and that Ms. Norris was similarly charged the allegedly fraudulent \$50 investigation fee, the

¹ *See* **Ex. A** to Defendants' 04/15/2019 Motion to Compel re: Ms. Reid, excerpt from deposition transcript showing that the deposition started 10:30 AM and concluded at 6:33 PM; **Ex. A** to Defendants' 04/15/2019 Motion to Compel re: Mr. Norris, excerpt from deposition transcript showing that the deposition started at 9:52 AM and concluded at approximately 6:00 PM.

allegedly fraudulent markup on a TENS unit from Defendant Ghoumbrial, and the allegedly fraudulent interest and fees for a loan from Liberty Capital. Given these facts, and that it is almost entirely Defendants' conduct that will constitute proof of the fraudulent nature of these charges, any additional testimony could at most go to the witnesses' credibility, and not in a manner that would be salient to the determination of class-certification. *See, e.g., Streeter v. Sheriff of Cook Cty.*, 256 F.R.D. 609, 613 (N.D. Ill. 2009) ("Credibility is not a requirement of a class representative"); *Seawell v. Universal Fidelity Corp.*, 235 F.R.D. 64, 66 (E.D. Pa. 2006) ("[Rule 23's] two-prong test [for adequacy of a class representative] invites inquiry into potential conflicts of interest between a class representative and other class members, not an inquiry into the credibility of the class representative."); *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 496 (S.D. Fla. 2004) ("[A]ny inquiry concerning a Plaintiff's credibility is an impermissible examination of the merits of the case. Accordingly, the Court finds that it is inappropriate to determine the credibility of named Plaintiffs ... at this stage of the litigation. Any credibility concerns may be appropriately raised and addressed at a later phase of litigation or at trial upon consideration of the merits of Plaintiff's claims.") (internal citations and quotations omitted).

Despite this, Defendants spent full days examining both Reid and Norris as if they were criminals for having dared to step forward to question KNR's practices in this lawsuit. For example, Defendants examined Ms. Reid about health issues and other personal issues that have no pertinence at all to this case, and spent the bulk of their time—including at the additional four-hour long continuation of Reid's deposition yesterday—questioning both Plaintiffs about things like (1) irrelevant conversations with family members (in an obvious attempt to threaten the Plaintiffs with the prospect of dragging their relatives into this dispute), (2) minor and irrelevant details from the pleadings or discovery responses drafted by Plaintiffs' counsel, and (3) theories of liability and damages that the layperson Plaintiffs—as this Court has since held, consistent with Ohio law—are not required to understand. *See* 03/26/2019 Court order at p. 4, fn 1 ("It is not expected that the Plaintiffs will know

the legal theory behind their claims because they are after all laypeople.”² Thus, again, it is no wonder that Defendants have withheld the transcripts of these depositions from the Court in requesting their needless continuation.

Additionally, Plaintiffs note that while there was a tentative agreement to resume Ms. Reid’s deposition after the Defendants insisted that they needed more time to finish it after taking the whole day on July 3, 2018, there was no such agreement regarding Ms. Norris, and Defendants cite no evidence to the contrary.³

“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Gattozzi v. Sheehan*, 2016-Ohio-5230, 57 N.E.3d 1187, ¶ 18 (8th Dist.) quoting *Amchem Prods.*

² See also, e.g., *Westgate Ford Truck Sales, Inc. v. Ford Motor Co.*, 8th Dist. Cuyahoga No. 86596, 2007-Ohio-4013, ¶ 73-74 (“In view of counsel’s role in prosecuting this action, [putative named plaintiff’s] role as class representative is nominal. It is not surprising that [he] lacked knowledge on how the complaint had been drafted and had not done any ‘special investigation’ of any of the topic areas contained in his notice of deposition.”); *Lewis v. Curtis*, 671 F.2d 779, 788–789 (3d Cir. 1982) (“the adequacy-of-representation test is not concerned whether plaintiff personally derived the information pleaded in the complaint or whether he will personally be able to assist his counsel”); *In re Third Circuit Task Force on the Selection of Class Counsel*, 3d Cir., 2002 U.S. App. LEXIS 30242, at *14 (Jan. 15, 2002) (“Often a lead plaintiff has only a small stake in the litigation and lacks the resources, sophistication or interest to engage in monitoring [the litigation]”); *Latuga v. Hooters, Inc.*, 1996 U.S. Dist. LEXIS 4169, at * 14 (N.D. Ill. Mar. 29, 1996) (“[A] representative plaintiff need not immerse himself in the case. The modern trend is to require little in the way of factual knowledge on the part of the class representative.”); *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430 (4th Cir. 2003) (“[I]n a complex lawsuit, such as one in which the defendant’s liability can be established only after a great deal of investigation and discovery by counsel against a background of legal knowledge, the representative need not have extensive knowledge of the facts of the case in order to be an adequate representative”); *Cassell v. Vanderbilt Univ.*, M.D.Tenn. No. 3:16-cv-2086, 2018 U.S. Dist. LEXIS 181850, at *15 (Oct. 23, 2018) (in a case involving fiduciary duties, class representatives’ “lack of specific knowledge about this complex case does not bar class certification”).

³ The only evidence Defendants’ present for their claim that Plaintiffs’ “agreed to present Ms. Norris” for her continued deposition (Defs’ 04/15/2019 Motion re: Norris at pp. 2, 4) is an April 2, 2019 email where the undersigned stated that he would “try to get [Defendants] another 90 minutes each” with Norris and Reid, to avoid escalating a dispute with the Court. After conferring with Ms. Norris and Ms. Reid about Defendants’ request, Plaintiffs informed Defendants of their position that the burden of resuming the depositions was not warranted under the circumstances, a position that Plaintiffs have consistently maintained regarding Ms. Norris’s deposition.

v. Windsor, 521 U.S. 591, 617, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). Thus, “Courts must ... take care to prevent the use of discovery to harass presumptive lead plaintiffs.” *In re Cendant Corp. Litigation*, 264 F.3d 201, 270 (3d Cir. 2001), fn. 49.

Thus, while Ms. Norris currently intends to appear for her continued deposition on May 3, consistent with the Court’s April 18 oral order, because Defendants have not explained and cannot explain any legitimate need to reopen this deposition prior to class certification, the Court should reconsider, vacate, and reverse the April 18 order with respect to Ms. Norris. It should do the same regarding Ms. Holsey—who also intends to appear on May 3 unless the Court grants the instant motion—for the reasons stated in Plaintiffs’ and Holsey’s 04/17/2019 motion to quash and opposition to Defendants’ motion to compel. Alternatively, the Court should limit the timeframe of the Holsey deposition and the continuation of the Norris deposition to 90 minutes at most.

In closing, Plaintiffs reiterate that they are filing this motion because (1) the Court indicated that it had not reviewed any of the briefs as to the Norris, Reid, and Holsey depositions in making its April 18 order, and; (2) the Court should, at least, take note that Norris and Reid have already been deposed for a full day as to every conceivably relevant subject, and that Defendants have not only failed to submit the transcripts of these depositions, they have not even tried to explain why they could not complete the depositions of these witnesses in a single day.

Respectfully submitted,

/s/ Peter Pattakos

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/s/ Peter Pattakos
Attorney for Plaintiffs

<p style="text-align: center;">5</p> <p>1 you on the line with counsel for all the</p> <p>2 parties and the witness, Julie Ghoubrial.</p> <p>3 THE JUDGE: Okay.</p> <p>4 MR. PATTAKOS: Is everyone else</p> <p>5 there?</p> <p>6 MR. MANNION: Tom Mannion, I'm</p> <p>7 here. Good morning, Your Honor.</p> <p>8 THE JUDGE: Good morning.</p> <p>9 MR. PATTAKOS: How about everyone</p> <p>10 --</p> <p>11 MR. BARMEN: Good morning, Judge.</p> <p>12 THE JUDGE: Good morning.</p> <p>13 MR. PATTAKOS: How about everyone</p> <p>14 just go around and identify themselves.</p> <p>15 Again, I'm Peter Pattakos, for the</p> <p>16 Plaintiffs and I'm here with my co-counsel,</p> <p>17 Rachel Hazelet.</p> <p>18 THE JUDGE: Okay.</p> <p>19 MR. BARMEN: Judge, this is Brad</p> <p>20 Barmen. I represent Dr. Sam Ghoubrial.</p> <p>21 THE JUDGE: Okay.</p> <p>22 MR. POPSON: Jim Popson on behalf</p> <p>23 of KNR, Defendant.</p> <p>24 MR. BEST: David Best.</p> <p>25 THE JUDGE: Okay.</p>	<p style="text-align: center;">7</p> <p>1 THE JUDGE: I assume this is over</p> <p>2 husband/wife privilege or something.</p> <p>3 MR. PATTAKOS: Well, that was the</p> <p>4 third -- that was the third --</p> <p>5 UNIDENTIFIED VOICE:</p> <p>6 (Unintelligible) Your Honor --</p> <p>7 MR. PATTAKOS: Your Honor, that</p> <p>8 was the third issue.</p> <p>9 MR. MANNION: (Unintelligible).</p> <p>10 MR. PATTAKOS: Go ahead.</p> <p>11 MR. MANNION: Tom Mannion, Your</p> <p>12 Honor. As far as Julie Ghoubrial, there's</p> <p>13 a number of different issues, but there's</p> <p>14 also issues with respect to three other</p> <p>15 deponents as well, but with Julie that's</p> <p>16 one of the issues but I'd certainly let Dr.</p> <p>17 Ghoubrial's attorney talk to that.</p> <p>18 THE JUDGE: Okay.</p> <p>19 MR. BARMEN: Yeah. Your Honor,</p> <p>20 there are several different issues -- this</p> <p>21 is Brad Barmen again so you know who's</p> <p>22 talking --</p> <p>23 THE JUDGE: Okay.</p> <p>24 MR. BARMEN: -- if you'd like me</p> <p>25 to address those, I'm happy to do that now.</p>
<p style="text-align: center;">6</p> <p>1 MR. ROSEN: Judge, I'm Gary Rosen.</p> <p>2 I represent the deponent, Julie Ghoubrial.</p> <p>3 THE JUDGE: Okay.</p> <p>4 MR. MANNION: I would just say</p> <p>5 this, several deponents we're here to talk</p> <p>6 about, not just the one Gary represents,</p> <p>7 the witness.</p> <p>8 THE JUDGE: Okay. I'm in a car</p> <p>9 driving to Xenia right now, but I'll -- I</p> <p>10 can handle it, so...</p> <p>11 MR. PATTAKOS: Okay. Judge</p> <p>12 Brogan, I'm here with a court reporter that</p> <p>13 was here to conduct Julie's deposition. Do</p> <p>14 you mind if we record these proceedings?</p> <p>15 THE JUDGE: Okay.</p> <p>16 MR. PATTAKOS: Thank you. So all</p> <p>17 should note that this is being recorded by</p> <p>18 the court reporter and the videographer</p> <p>19 that is here for Julie's deposition.</p> <p>20 Your Honor, I don't know if you</p> <p>21 have had a chance to review any of the</p> <p>22 e-mails about this issue or the briefs that</p> <p>23 the parties have submitted?</p> <p>24 THE JUDGE: No, I haven't.</p> <p>25 MR. PATTAKOS: Okay. Well --</p>	<p style="text-align: center;">8</p> <p>1 If you want me to address them in a</p> <p>2 response to Mr. Pattakos, you tell me.</p> <p>3 THE JUDGE: No. The only thing I</p> <p>4 would say is clearly even if there's a</p> <p>5 privilege issue, under 104 -- Evidence Rule</p> <p>6 104, it's for the Court to decide and it</p> <p>7 would seem to me you could proceed with the</p> <p>8 deposition, she can answer the questions.</p> <p>9 Preserved -- at the beginning or some point</p> <p>10 during the deposition preserve your</p> <p>11 objection on privilege and simply file it</p> <p>12 under seal for purposes of an in-camera</p> <p>13 inspection and I'll decide whether, in</p> <p>14 fact, it's covered.</p> <p>15 There's a number of things,</p> <p>16 exceptions to husband/wife privilege and</p> <p>17 that has to do with the presence of a third</p> <p>18 party, did the parties intend the</p> <p>19 conversation to be privileged and so on and</p> <p>20 so forth.</p> <p>21 By the way, was privilege raised</p> <p>22 by the lawyer for Julie at the divorce?</p> <p>23 MR. ROSEN: That's me, Your Honor.</p> <p>24 This is Gary Rosen speaking. I'm --</p> <p>25 THE JUDGE: Okay.</p>

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1 MR. ROSEN: -- Ms. Ghoumbrial's
2 counsel and I was her counsel at the
3 divorce.

4 THE JUDGE: Okay. Did --

5 MR. ROSEN: As you may know, we
6 had a deposition of her during the divorce
7 --

8 THE JUDGE: Right.

9 MR. ROSEN: -- because the context
10 of the divorce privilege is rarely, if
11 ever, exercised --

12 THE JUDGE: Right.

13 MR. ROSEN: -- we did not utilize
14 that privilege there. I mean, I do
15 understand the arguments back and forth,
16 you know, that there's a different context,
17 and I would tend to agree with that. We
18 rarely, if ever, raise it in the context of
19 a divorce.

20 THE JUDGE: Okay.

21 MR. PATTAKOS: Your Honor --

22 THE JUDGE: But she discuss
23 apparently at some point her husband's
24 activity; is that correct?

25 MR. BEST: Well, Judge, this is

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1 David Best. I don't think it's even
2 appropriate for us to disclose anything
3 about that. I represented the corporation.

4 That deposition was taken under an
5 order of Judge Quinn that everything was
6 confidential --

7 THE JUDGE: Uh-huh.

8 MR. BEST: -- so there's no basis
9 -- and that order is still in place --

10 THE JUDGE: Okay.

11 MR. BEST: -- and there's no basis
12 for us to disclose that, even to you, with
13 all due respect, Your Honor --

14 THE JUDGE: Right.

15 MR. BEST: -- (unintelligible) --

16 THE JUDGE: Has anybody filed --
17 Has anybody filed --

18 MR. BEST: -- and there are
19 restrictions in that hearing that prohibit
20 any disclosure to anyone under any
21 circumstances --

22 THE JUDGE: Yeah. Has anybody --

23 MR. BEST: -- that there are
24 private matters that we can't even discuss
25 because they're confidential about the

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1 scope of that, so none of that --

2 THE JUDGE: Okay. Has anybody
3 filed an open --

4 MR. BEST: -- is discoverable and
5 it's not (unintelligible).

6 THE JUDGE: Has anybody filed an
7 open record's action against Judge Quinn to
8 open that proceeding?

9 MR. PATTAKOS: No, Your Honor.

10 And --

11 MR. BARMEN: Your Honor, this is
12 Brad --

13 MR. PATTAKOS: -- Your Honor, this
14 is Peter Pattakos. I think -- no one -- I
15 think the bigger issue here is that our
16 subpoena for Julie's deposition was issued
17 last October, six months ago, and these
18 parties all had every opportunity to file
19 objections, to move to quash, to move for a
20 protective order, they did not.

21 There has been multiple court
22 orders recognizing the relevancy of this
23 testimony and I need to disclose right now,
24 Your Honor, that I have been in a room with
25 Julie Ghoumbrial and two of her attorneys

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1 where she sat down and told me that she has
2 reviewed our Complaint and told me that the
3 allegations regarding her ex-husband, Dr.
4 Ghoumbrial, were true and there was more.

5 She told me about direct cash kickbacks --

6 THE JUDGE: All right. Let's --

7 MR. PATTAKOS: -- that Dr.

8 Ghoumbrial would pay to defendants --

9 THE JUDGE: -- let's don't get

10 into all of that right now. There's a
11 vehicle for handling this and you need to
12 proffer whatever you're going to proffer at
13 the deposition. Her deposition will take
14 place. It will be filed with -- under
15 seal, pursuant to the protection order.

16 There's a federal case, which I'm
17 coming to a traffic light, I can probably
18 pull it out for you. This says this is the
19 proper procedure to be done in a case of a
20 privilege issue.

21 And it is filed for an in-camera
22 inspection so that you make your objections
23 at the deposition and then I later rule on
24 its admissibility.

25 But Julie's deposition will take

13

1 place and then I will -- you shall file it
2 under the protection order for an in-camera
3 inspection by me -- and if you give me a
4 second I can give you the federal court --
5 I realize it's a federal rule, it has to do
6 with the crime/fraud exception which may be
7 here in this case, too. I don't know.

8 But it has to do with the vehicle
9 of the judge dealing with privileged
10 communications from a deposed witness. And
11 if --

12 MR. BARMEN: Your Honor --

13 THE JUDGE: Yeah.

14 MR. BARMEN: Your Honor, this is
15 Brad Barmen --

16 THE JUDGE: Yeah.

17 MR. BARMEN: -- respectfully we
18 had an issue with Dr. Gunning's deposition
19 where you instructed that he waive his
20 doctor/patient privilege and ended up
21 testifying about his own medical testimony.
22 You know, respectfully, the privilege is
23 the privilege.

24 THE JUDGE: I don't care.

25 MR. BARMEN: If this is a

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1 situation where I think if you're going to
2 instruct that the witness appear and
3 essentially Dr. Ghoumbrial himself has to
4 waive the privilege that he would have as
5 well as Julie Ghoumbrial waiving the
6 privilege that she clearly has, this is
7 something we have to file a mandamus on. I
8 think, respectfully, that order --

9 THE JUDGE: Okay.

10 MR. BARMEN: -- is improper.

11 THE JUDGE: All right. The case
12 is 491US554. It's a Supreme Court of the
13 United States case, US versus Zolin, that
14 deals exactly with this situation.

15 Presumably Dr. Ghoumbrial objects,
16 I know that or you wouldn't be objecting,
17 and Julie apparently doesn't object. She's
18 there. So what --

19 UNIDENTIFIED VOICE: That's not
20 accurate, Your Honor.

21 THE JUDGE: All right. Either
22 way. They both object -- if they both
23 object, they can still take the deposition
24 subject to my in-camera review.

25 MR. MANNION: Your Honor, this is

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1 Tom Mannion. If I may, we're not here just
2 to talk about Julie Ghoumbrial's
3 deposition --

4 THE JUDGE: Okay.

5 MR. MANNION: -- we had properly
6 noticed the Plaintiff's for the 12th, for
7 Friday, they didn't show, that was a date
8 suggested by Mr. Pattakos. On at least one
9 of them he agreed for months he would
10 produce, they didn't show, they didn't --

11 THE JUDGE: Yeah, and I agree on
12 that one -- I agree on that one. That --
13 what's her name? Was suppose to appear for
14 a deposition or provide material? What's
15 her name?

16 MR. MANNION: Reid, Holsey and
17 Norris, all three.

18 THE JUDGE: Right. All three of
19 them should comply and I will put an order
20 to that effect.

21 MR. MANNION: Thank you. And we
22 still don't have answers to those
23 contention interrogatories which you
24 ordered, he should get 21 days --

25 THE JUDGE: Well, you haven't

16

1 filed anything with me on that, so I don't
2 -- I ordered it --

3 MR. MANNION: (Unintelligible).

4 THE JUDGE: Yeah, but you haven't
5 filed anything in --

6 MR. MANNION: Yeah, there was a
7 motion to compel you granted 21 days ago
8 for him to produce those --

9 THE JUDGE: I understand.

10 MR. MANNION: -- he's promising
11 he'll send them, but he still hasn't.

12 THE JUDGE: All right. He should
13 do that.

14 MR. PATTAKOS: Your Honor, we're
15 -- Your Honor, we're working on that.

16 THE JUDGE: I'm sitting in a car
17 right now -- I'm sitting in a car --

18 MR. PATTAKOS: Okay.

19 THE JUDGE: -- I can journalize
20 this later, but you are to comply with the
21 contention interrogatories. These people
22 who need to be deposed -- need to be
23 deposed or I will use sanctions.

24 Now, as far as the method of
25 dealing with this privileged communication,

<p style="text-align: right;">17</p> <p>1 you can file your mandamus, you can do 2 whatever you want, but this is the 3 procedure the United States Supreme Court 4 thought was appropriate with privileged 5 material that dealt with the possibility of 6 a crime/fraud exception. 7 The Court had to examine it to 8 determine at some point something wasn't 9 privileged. And that's for the Court to 10 decide in-camera. That's what the US 11 Supreme Court said. 12 Now, I realize you're probably 13 going to (unintelligible) federal rule, but 14 don't make me look stupid because I somehow 15 am doing something that's out of bounds. 16 It's clearly not out of bounds, so -- 17 MR. MANNION: Your Honor, we 18 respectfully -- 19 MR. BARMEN: Go ahead, Tom. 20 MR. MANNION: This is Tom Mannion 21 and I wouldn't file a mandamus on this 22 because the issue involves Ghoumbrial, not 23 us, but what I'd like to say is perhaps, 24 you know, if we're going to have these 25 depositions, we need dates certain and</p>	<p style="text-align: right;">19</p> <p>1 any of this is necessary to resolve the 2 class action issue. 3 I'm going to continue the class 4 action request for an additional 15 days. 5 I'm trying to tell you the rulings I'm 6 going to do, but right now I'm sitting in a 7 car outside of the Green County Courthouse, 8 this deposition of Ghoumbrial will take 9 place, the depositions of the three people 10 that KNR want to depose, will take place or 11 you'll be held in contempt. And let's get 12 these depositions scheduled. And the 13 contention interrogatories will be answered 14 or you'll be held in contempt. 15 Now, let's get to work and do the 16 things you're suppose to do. And the 17 appropriateness of my ordering this 18 Ghoumbrial deposition -- I don't know what 19 you're going to file, a writ of 20 prohibition, I have jurisdiction to make my 21 order -- mandamus, I don't know what the 22 hell you're talking about -- but I have 23 discretion to make this order that 24 distinctly the United States thought was 25 appropriate on a federal case, so you can</p>
<p style="text-align: right;">18</p> <p>1 perhaps -- 2 THE JUDGE: I thought you were 3 there for -- I thought you were there for 4 the deposition. That's what -- 5 MR. MANNION: Well -- 6 THE JUDGE: -- the lady said last 7 night when she called me at 9:00 last night 8 to tell me you were going to have a 9 deposition this morning. 10 MR. MANNION: My point is Ms. 11 Holsey is not there and she was subpoenaed 12 as well. 13 MR. PATTAKOS: Your Honor, that 14 subpoena was just issued on Friday -- that 15 subpoena was just issued on Friday. They 16 did not negotiate any reasonable dates with 17 this witness who is a third-party who has a 18 full-time job -- 19 MR. MANNION: It wasn't Friday, 20 but -- 21 MR. PATTAKOS: Sorry, it was 22 Thursday. 23 THE JUDGE: Let me tell you this, 24 Mr. Pattakos, Holsey will be deposed. Now, 25 get a date with -- soon. I don't know if</p>	<p style="text-align: right;">20</p> <p>1 do what you want to do. 2 MR. PATTAKOS: Your Honor, if I 3 may clarify that -- 4 MR. MANNION: Your Honor -- 5 MR. PATTAKOS: -- Your Honor, this 6 is Peter Pattakos, if I may clarify, the 7 Julie Ghoumbrial's attorney has notified the 8 Court, he sent a letter this morning that 9 Julie is available to be deposed today and 10 that she can be at my office for the 11 deposition within 30 minutes. 12 Is this an order that this 13 deposition, in fact, get done today since 14 the witness is ready and all defendants 15 have been on notice and should also be 16 available and we have the court reporters 17 here and I can get this done by the end of 18 the day today easily? 19 THE JUDGE: Yeah, that's fine with 20 me. 21 MR. PATTAKOS: Okay. Then we'll 22 see everyone at my office as soon as 23 everyone can get here -- 24 MR. BEST: Wait a minute -- 25 MR. PATTAKOS: Can we say everyone</p>

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1 --

2 MR. MANNION: Wait a minute, wait
3 a minute. Attorney Best was saying
4 something and you cut him off, Peter.

5 MR. BEST: We don't even have the
6 lawyers here, we're in different cities
7 right now, so Pattakos you think you're the
8 judge, but you're not, the judge --

9 THE JUDGE: Yeah, I heard that --

10 MR. BEST: -- said

11 (unintelligible) 15 days, so we'll get a
12 date that works for everybody.

13 THE JUDGE: Okay. I agree with
14 Attorney Best on that. Okay. So get that
15 settled. If you're in two different cities
16 -- I thought you were all sitting pretty
17 close -- you were close, but I realize
18 you're some distance away, so get that set
19 up appropriately for all of you, okay? On
20 the Ghoubrial deposition.

21 MR. MANNION: Thank you, Your
22 Honor.

23 THE JUDGE: And all these other
24 orders I'll put on, but right now I'm not
25 in a position to do that. And the lady

22

1 that's helping up in Akron, will put those
2 orders on pursuant to my decision.

3 Let's get these depositions done
4 that KNR wants done, no more delays, let's
5 get the Ghoubrial deposition done, file it
6 under seal for my in-camera inspection and
7 I'll put an order on to that effect, okay?

8 MR. PATTAKOS: Thank you, Your
9 Honor.

10 MR. MANNION: Thank you, Your
11 Honor.

12 MR. BEST: Judge, you know, one of
13 the problems we have here is Mr. Pattakos
14 doesn't care about confidentiality orders.
15 He puts stuff on his website, he puts it
16 out in the public, he gives it to
17 reporters. If he would ever get that
18 confidential information -- and I was
19 involved in a separate capacity during the
20 divorce for the corporate defendants --

21 THE JUDGE: Uh-huh.

22 MR. BEST: -- I know Mr. Pattakos
23 will not care about your order and he will
24 violate it --

25 THE JUDGE: Well --

23

1 MR. BEST: -- and so that's the
2 position you're putting these people in, he
3 has no integrity about confidentiality.
4 And while it may be sealed and it may be
5 only theoretically for your eyes, that's
6 not the way it works in the real world, he
7 has no integrity.

8 THE JUDGE: Well, then you move to
9 hold him in contempt, okay?

10 MR. BEST: Yeah, well, then the
11 cat's out of the bag and then this is
12 already in the press and then these
13 peoples' businesses destroyed potentially
14 because he makes stuff up, so that's the
15 world we live in unfortunately, Judge --

16 THE JUDGE: Doesn't the affidavit
17 or the Complaint itself, which is -- which
18 is not protected under the protective
19 order, have all these details in it
20 already?

21 MR. PATTAKOS: It does, Your
22 Honor.

23 MR. BARMEN: They're allegations,
24 Your Honor. And much like -- this is Brad
25 Barmen -- much like Mr. Pattakos in the

24

1 motions he filed and what he's represented
2 to the Court about you previously ordering
3 that Julie Ghoubrial's testimony is highly
4 relevant, your order says based on
5 Pattakos' representation --

6 THE JUDGE: That's right, that's
7 right.

8 MR. BARMEN: -- and his
9 allegations are the same. You have not
10 held that any of this stuff is true.
11 There's been no ruling that these
12 allegations have merit, they're just
13 allegations --

14 THE JUDGE: I understand that.

15 MR. BARMEN: -- and it's the same
16 thing with his representations about what
17 Julie Ghoubrial allegedly testified to.

18 One of the issues I've raised multiple
19 times, how would he know what she testified
20 to in the divorce --

21 MR. PATTAKOS: Because --

22 MR. BARMEN: -- that was
23 confidential?

24 MR. PATTAKOS: -- because she --

25 MR. BARMEN: Whether he's grasping

25

1 at straws or he's already violated another
2 court's order --

3 MR. PATTAKOS: Or I've spoken with
4 the witness herself, okay?

5 MR. BEST: She has nothing to say
6 about the class certification issues. He's
7 making it up. He just makes up evidence.
8 Virtually every plaintiff who has testified
9 during their sworn testimony when we asked
10 them how do you know this is true, they
11 look at Pattakos, they point to him and
12 they say, he told me. And we say give us a
13 document --

14 MR. PATTAKOS: Your Honor --

15 MR. BEST: -- something, some
16 other evidence and they all turn to him and
17 say he told me.

18 MR. PATTAKOS: Your Honor, I'm not
19 going to address these misrepresentations
20 that are not based on anything, any
21 documents, any actual testimony. I'm not
22 going to engage in this. I'm just going to
23 say this is unfair and it's untrue and this
24 can all be decided on the record as
25 appropriate. I'm not going to engage these

26

1 ridiculous insults.

2 THE JUDGE: Okay. All right.
3 Listen, I made some orders here which are
4 oral orders, I will try and get them done
5 when Patty Himmelright [phonetic] gets back
6 in the office. She's out sick today.

7 I'll try and put them on effective
8 tomorrow. You set up the Ghoubrial
9 deposition at a convenient time and you'll
10 file it under seal and I do not expect to
11 see any of that information from the
12 Ghoubrial deposition in the public sphere
13 until I make a ruling. And if it ends up
14 that way, we'll have to find out how it got
15 there. So if those fears are real, then
16 take that to heart, Mr. Pattakos.

17 And I'm ordering those depositions
18 and I see no reason not to follow the
19 method of doing this pursuant to the
20 protection order.

21 Now, one thing is pretty clear, in
22 Summit County they tend to close divorce
23 proceedings because they think something is
24 embarrassing. They do not do that anywhere
25 in the state that I know of. Divorce

27

1 proceedings are open. And they do not get
2 closed by courts because somebody thinks
3 some information is going to be
4 embarrassing even to a doctor or a doctor's
5 company. They don't do it. So you've got
6 the order from Judge Quinn and nobody has
7 challenged it under the open records law so
8 we'll see where that goes.

9 All right. Thank you, bye.

10 MR. PATTAKOS: Thank you.

11 MR. MANNION: You guys all want to
12 stay on the line to get dates?

13 MR. ROSEN: I'm still on. This is
14 Gary Rosen.

15 MR. PATTAKOS: Yeah, sure.

16 MR. MANNION: Peter, you still on?

17 MR. PATTAKOS: Yeah.

18 MR. MANNION: Let's talk about
19 some dates.

20 MR. PATTAKOS: Okay. When is
21 Julie available?

22 MR. MANNION: Well,
23 (unintelligible) we can talk Julie's date
24 first.

25 MR. PATTAKOS: Yep.

28

1 MR. ROSEN: Why don't you do that
2 then you can talk about other stuff after I
3 leave the call.

4 MR. PATTAKOS: How about --

5 MR. BEST: Well, Brad, I think you
6 need to decide how much time do you need to
7 address what you're going to do about this
8 judge's order, if anything. Because
9 there's no point in -- if he's going to put
10 an order on tomorrow or Monday claiming
11 that the privilege is waived --

12 MR. MANNION: Well, let's get a
13 date on.

14 MR. BEST: I'm just trying to say
15 don't set a date for tomorrow --

16 MR. MANNION: No, no --

17 MR. BARMEN: I understand what
18 David is saying and I agree, we should be
19 looking at least a week out for Julie. The
20 Judge said 15 days because I will have to
21 file something.

22 MR. PATTAKOS: That's fine. What
23 about the 25th?

24 MR. ROSEN: 25th, that's okay with
25 me.

29

1 MR. MANNION: (Unintelligible).
 2 MR. BARMEN: 25th and 26th do not
 3 work for me.
 4 MR. MANNION: What about the 24th?
 5 MR. ROSEN: It's okay so long as
 6 we're not too late in the day. I have to
 7 teach class at the end of the day.
 8 MR. PATTAKOS: That's fine.
 9 MR. MANNION: How are you, Brad?
 10 MR. BARMEN: I can make the 24th
 11 work.
 12 MR. MANNION: Okay.
 13 MR. BARMEN: Peter?
 14 MR. PATTAKOS: Yep, that works for
 15 me.
 16 MR. BARMEN: 10:00 a.m.
 17 MR. MANNION: That's good for me.
 18 MR. PATTAKOS: Let's start at --
 19 if Gary has to leave early, let's start at
 20 9:00.
 21 MR. ROSEN: I mean, I don't know
 22 how long you anticipate going --
 23 MR. PATTAKOS: Well, you know, I
 24 always -- I only take a few hours and then
 25 the defendants go around in circles for

30

1 hours and hours, so I think we better take
 2 the full day.
 3 MR. MANNION: Peter, that's an
 4 outright lie.
 5 MR. BEST: You are so full of
 6 crap, Pattakos. You can't even say the
 7 truth if God was looking at you in the eye.
 8 MR. ROSEN: I can start at 9:00,
 9 9:30.
 10 MR. PATTAKOS: Let's start at 9:00
 11 a.m. on Wednesday.
 12 MR. MANNION: Okay. And what
 13 dates for your witnesses, Peter?
 14 MR. PATTAKOS: Well, why don't you
 15 let me know some dates that work for you
 16 guys --
 17 MR. ROSEN: Okay. I'm leaving the
 18 call. Thank you.
 19 MR. PATTAKOS: Yep, thanks, Gary.
 20 UNIDENTIFIED VOICE: Thank you,
 21 Gary.
 22 MR. PATTAKOS: Why don't you
 23 fellows let me know some dates that work
 24 for you. I'm obviously going to have to
 25 get on the phone.

31

1 MR. MANNION: No, no, wait, wait a
 2 minute --
 3 MR. BEST: We're doing dates right
 4 now, Pattakos.
 5 MR. MANNION: Yeah, yeah.
 6 MR. PATTAKOS: That's fine, I have
 7 to confer with my clients, so --
 8 MR. BARMEN: What the 23rd?
 9 MR. PATTAKOS: Does that work for
 10 you guys?
 11 MR. BARMEN: Well, I suggested it
 12 because it works for me.
 13 MR. MANNION: That doesn't work
 14 for me. I have a deposition that day in --
 15 that might go all day. We're okay with --
 16 I can do -- well, Holsey is only good, best
 17 on Mondays, right?
 18 MR. PATTAKOS: Well, she got a new
 19 job so I need to check with her. She got
 20 transferred to a new Post Office I think.
 21 MR. BEST: No, there's no
 22 checking, the Judge orders that, Pattakos.
 23 She's showing up.
 24 MR. MANNION: The 29th for her?
 25 MR. PATTAKOS: I'll talk to her.

32

1 Just give me some dates that work and I'll
 2 -- then I'll see what I can make work with
 3 the witnesses.
 4 MR. BEST: No, that's not what the
 5 Judge ordered. You're going to make a
 6 commitment now.
 7 MR. PATTAKOS: No, David, I'm not
 8 going to make a commitment before I talk to
 9 my client --
 10 MR. MANNION: Well, then we're not
 11 committing to Julie's --
 12 MR. BEST: Julie is not taking
 13 place --
 14 MR. MANNION: Yeah.
 15 MR. BEST: -- fine.
 16 MR. MANNION: Okay. Is that how
 17 you want it?
 18 MR. PATTAKOS: Hey, you guys are
 19 on the record, you know? Hey, hey, you
 20 guys are still on the record, I'll have you
 21 know. If you're going to act like this,
 22 you should at least like rein it in a
 23 little bit. I obviously have a right to
 24 confer --
 25 MR. BEST: I'm glad we're on the

33

1 record because you are unwilling to follow
2 the Judge's order. The Judge's order was
3 get the dates. You're saying I'll get back
4 to you about the dates --

5 MR. MANNION: And that's what
6 you've been doing for months on these.

7 MR. BEST: -- so you are not an
8 honorable man who tells the truth.

9 MR. MANNION: We're not going to
10 do the carrot dangling anymore, Peter. We
11 want dates.

12 MR. PATTAKOS: Give me some dates
13 that work --

14 MR. MANNION: (Unintelligible) --

15 MR. PATTAKOS: -- give --

16 MR. MANNION: -- you've lied to
17 the Court, you've lied to us, you've lied
18 to other people, you've lied to the press
19 and we're sick of it.

20 MR. PATTAKOS: Okay. Tom, I know
21 you have your opinions. Let's --

22 MR. MANNION: Those aren't really
23 opinions --

24 MR. BEST: Those are facts.

25 MR. PATTAKOS: Give me some dates

35

1 I can call my clients and then I can get
2 back on the line with you, how about that?

3 MR. MANNION: No, we're going to
4 set the dates now and you'll tell your
5 clients when to show.

6 MR. PATTAKOS: That's not how this
7 -- that's not how this --

8 MR. MANNION: They're under court
9 order --

10 MR. PATTAKOS: -- no, that's not
11 what the Court ordered. That's not -- the
12 Court did not order that my clients have to
13 comply with whatever dates we come up with.
14 My clients have to -- my clients work, my
15 clients have lives, okay? So --

16 MR. MANNION: What are we? So
17 does other people --

18 MR. PATTAKOS: Right, that's why
19 I'm asking you to tell me what days work
20 for you.

21 MR. MANNION: -- (unintelligible)
22 that's just the way it works.

23 MR. PATTAKOS: Yeah. Okay. If
24 you're not going to tell me what dates work
25 for you then --

34

1 that work and I will work with my clients
2 to see I can make those work for them.

3 MR. MANNION: No, no, no. We're
4 going to get these now and they're going to
5 show.

6 MR. PATTAKOS: All right. We can
7 end this call then and do the rest of this
8 by e-mail because this is ridiculous.

9 MR. MANNION: No, we can't --

10 MR. BEST: Nope, we're not.

11 MR. MANNION: -- no, we're not
12 agreeing to Julie Ghoubrial's deposition if
13 we don't have dates for the others. Are
14 you going to specifically and expressly go
15 against what Judge Brogan just said?

16 MR. PATTAKOS: No, I'm not. We're
17 going to go with Julie on the 24th because
18 everybody is available and then I will
19 confer with my clients --

20 MR. MANNION: No, no, no, unless
21 we have other dates, we're not doing that.

22 MR. BEST: No, all four depositions are
23 going to get set right now.

24 MR. PATTAKOS: You guys can stay
25 on hold. If you want to give me dates and

36

1 MR. MANNION: (Unintelligible).

2 MR. PATTAKOS: Yeah, okay. Good
3 one, Tom. Listen, if you guys aren't going
4 to provide me with some dates to take to my
5 clients, I guess this call is over.

6 MR. MANNION: Well, we've got the
7 29th. I have the 22nd in the morning we
8 can do one of them. Which one do you want
9 to put on there?

10 MR. PATTAKOS: The 22nd in the
11 morning. What time?

12 MR. MANNION: I can do 9:00.

13 MR. PATTAKOS: 9:00. Okay. What
14 else is available? Someone said the 29th.

15 MR. MANNION: The 29th and --
16 yeah, 29th. And --

17 MR. PATTAKOS: I have the 29th
18 open so I will try for that. And then, you
19 know, Ms. Holsey I think -- Ms. Holsey
20 might have to appear on a Saturday because
21 of her job, so --

22 MR. MANNION: I'll just subpoena
23 her then if we can't get a date, I mean --

24 MR. PATTAKOS: Well, look, I've
25 got to talk to her, so the 22nd and 29th.

37

1 So if we have the full day on the 29th and
2 the morning of the 22nd, we can get these
3 three done, right?

4 MR. MANNION: Maybe. What
5 about --

6 UNIDENTIFIED VOICE: May 2.

7 MR. MANNION: I can't do May 2.

8 UNIDENTIFIED VOICE: May 2 is out.

9 MR. MANNION: Well, yeah, I can
10 because it's not til -- I can probably do
11 May 2 in the morning, too -- no, I have a
12 deposition in Mentor. Let's do the 22nd
13 and the 29th and see if we can get them
14 done.

15 MR. PATTAKOS: Can you give me one
16 more day just so I can see, just in case
17 these dates can't work? Just give me one
18 more day. How about -- what's the next
19 week look like?

20 MR. BARMEN: How's May 3rd?

21 MR. PATTAKOS: Friday? I can do
22 May 3rd.

23 MR. MANNION: I can too. That's
24 good too.

25 MR. PATTAKOS: Okay. So I've got

38

1 4/22, 4/29 and 5/3. I will do my best to
2 make those -- I will do my best to confirm
3 those with Reid, Norris and Holsey. And
4 I'm just concerned that Holsey might --

5 MR. MANNION: If we don't hear
6 back from you by the end of the day we're
7 just going to subpoena and notice
8 everybody, so --

9 MR. PATTAKOS: Well, okay.

10 MR. MANNION: -- get back with us
11 by the end of the day.

12 MR. PATTAKOS: Okay. Well, I will
13 get back to you as soon as I can.
14 Hopefully by the end of the day today. I'm
15 a little worried that Holsey might need a
16 Saturday, but hopefully not so I'll keep
17 you posted.

18 All right. Thanks, guys.

19 - - - -

20 (Thereupon, the phone call ended.)

21 - - - -

39

2 C E R T I F I C A T E

3
4
5 I, Brian A. Kuebler, a Notary Public within
6 and for the State of Ohio, do hereby certify that
7 I attended the taking of the foregoing statement
8 in its entirety; that I wrote the same in
9 stenotypy, and that this is a true and correct
10 transcript of my computer-aided notes.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand and seal of office, at Cleveland, Ohio, this
13 ____ day of _____ A.D. 20 ____.

14
15
16
17
18
19 Brian A. Kuebler, Notary Public, State of Ohio
20 55 Public Square, Suite 1332
21 Cleveland, Ohio 44115
22 My commission expires June 12, 2022
23
24
25

1	44114 [3] - 2:8, 2:13, 2:18 44115 [1] - 39:19 44333 [2] - 2:3, 3:2 44702 [1] - 3:8 455-0173 [1] - 3:9 4900 [1] - 3:2 491US554 [1] - 14:12	aided [1] - 39:10 Akron [3] - 2:3, 3:2, 22:1 al [2] - 1:3, 1:6 allegations [5] - 12:3, 23:23, 24:9, 24:12, 24:13 allegedly [1] - 24:17 ALSO [1] - 3:11 answer [1] - 8:8 answered [1] - 19:13 answers [1] - 15:22 anticipate [1] - 29:22 appear [3] - 14:2, 15:13, 36:20 APPEARANCES [1] - 2:1 appropriate [4] - 10:2, 17:4, 19:25, 25:25 appropriately [1] - 21:19 appropriateness [1] - 19:17 April [1] - 1:14 arguments [1] - 9:15 assume [1] - 7:1 Attempted [1] - 1:9 attended [1] - 39:7 Attorney [2] - 4:25, 21:14 attorney [3] - 7:17, 20:7, 21:3 attorneys [1] - 11:25 available [5] - 20:9, 20:16, 27:21, 34:18, 36:14 Avenue [1] - 3:7	2:15, 2:20, 3:4, 3:10, 5:22 Best [7] - 3:1, 3:1, 4:9, 5:24, 10:1, 21:3, 21:14 best [3] - 31:16, 38:1, 38:2 BEST [30] - 5:24, 9:25, 10:8, 10:11, 10:15, 10:18, 10:23, 11:4, 20:24, 21:5, 21:10, 22:12, 22:22, 23:1, 23:10, 25:5, 25:15, 28:5, 28:14, 30:5, 31:3, 31:21, 32:4, 32:12, 32:15, 32:25, 33:7, 33:24, 34:10, 34:22 better [1] - 30:1 bigger [1] - 11:15 bit [1] - 32:23 bounds [2] - 17:15, 17:16 brad [1] - 4:8 Brad [10] - 2:17, 4:14, 4:17, 5:19, 7:21, 11:12, 13:15, 23:24, 28:5, 29:9 Brian [3] - 1:10, 39:5, 39:18 briefs [1] - 6:22 Brisbois [2] - 2:7, 2:17 Brogan [4] - 4:24, 6:12, 34:15 businesses [1] - 23:13 bye [1] - 27:9	certify [1] - 39:6 challenged [1] - 27:7 chance [1] - 6:21 check [1] - 31:19 checking [1] - 31:22 circles [1] - 29:25 circumstances [1] - 10:21 cities [2] - 21:6, 21:15 claiming [1] - 28:10 clarify [2] - 20:3, 20:6 class [4] - 19:2, 19:3, 25:6, 29:7 clear [1] - 26:21 clearly [3] - 8:4, 14:6, 17:16 CLEVELAND [1] - 1:19 Cleveland [5] - 2:8, 2:13, 2:18, 39:12, 39:19 client [1] - 32:9 clients [10] - 31:7, 34:1, 34:19, 35:1, 35:5, 35:12, 35:14, 35:15, 36:5 close [3] - 21:17, 26:22 closed [1] - 27:2 Co [1] - 3:1 co [1] - 5:16 co-counsel [1] - 5:16 coming [1] - 12:17 commission [1] - 39:20 commitment [2] - 32:6, 32:8 committing [1] - 32:11 COMMON [1] - 1:1 communication [1] - 16:25 communications [1] - 13:10 company [1] - 27:5 compel [1] - 16:7 Complaint [2] - 12:2, 23:17 comply [3] - 15:19, 16:20, 35:13 computer [1] - 39:10 computer-aided [1] - 39:10 concerned [1] - 38:4 conduct [1] - 6:13 confer [3] - 31:7, 32:24, 34:19 conference [1] - 4:2 confidential [4] - 10:6, 10:25, 22:18, 24:23
2	2 [4] - 37:6, 37:7, 37:8, 37:11 20 [1] - 39:13 200 [1] - 3:7 2019 [1] - 1:14 2022 [1] - 39:20 21 [2] - 15:24, 16:7 216 [3] - 2:9, 2:14, 2:19 216)664-0541 [1] - 1:20 2250 [2] - 2:8, 2:18 22nd [5] - 36:7, 36:10, 36:25, 37:2, 37:12 23rd [1] - 31:8 24th [3] - 29:4, 29:10, 34:17 25th [3] - 28:23, 28:24, 29:2 26th [1] - 29:2 29th [9] - 31:24, 36:7, 36:14, 36:15, 36:16, 36:17, 36:25, 37:1, 37:13	5 5/3 [1] - 38:1 55 [2] - 1:18, 39:19 6 665-1855 [1] - 3:3 8 836-8533 [1] - 2:4 9 928-2200 [1] - 2:14 9:00 [6] - 18:7, 29:20, 30:8, 30:10, 36:12, 36:13 9:30 [1] - 30:9 9th [3] - 2:8, 2:13, 2:18 A A.D [1] - 39:13 a.m [3] - 1:13, 29:16, 30:11 accurate [1] - 14:20 act [1] - 32:21 action [3] - 11:7, 19:2, 19:4 activity [1] - 9:24 actual [1] - 25:21 additional [1] - 19:4 address [4] - 7:25, 8:1, 25:19, 28:7 admissibility [1] - 12:24 affidavit [1] - 23:16 ago [2] - 11:17, 16:7 agree [5] - 9:17, 15:11, 15:12, 21:13, 28:18 agreed [1] - 15:9 agreeing [1] - 34:12 ahead [3] - 4:20, 7:10, 17:19	B bag [1] - 23:11 BARMEN [26] - 4:8, 4:17, 5:11, 5:19, 7:19, 7:24, 11:11, 13:12, 13:14, 13:17, 13:25, 14:10, 17:19, 23:23, 24:8, 24:15, 24:22, 24:25, 28:17, 29:2, 29:10, 29:13, 29:16, 31:8, 31:11, 37:20 Barmen [6] - 2:17, 4:8, 5:20, 7:21, 13:15, 23:25 based [2] - 24:4, 25:20 basis [2] - 10:8, 10:11 Bath [1] - 3:2 beginning [1] - 8:9 behalf [7] - 1:15, 2:6,	C camera [6] - 8:12, 12:21, 13:2, 14:24, 17:10, 22:6 Canton [1] - 3:8 capacity [1] - 22:19 car [4] - 6:8, 16:16, 16:17, 19:7 care [3] - 13:24, 22:14, 22:23 carrot [1] - 33:10 CASE [1] - 1:5 case [7] - 12:16, 12:19, 13:7, 14:11, 14:13, 19:25, 37:16 cash [1] - 12:5 cat's [1] - 23:11 certain [1] - 17:25 certainly [1] - 7:16 certification [1] - 25:6
3	30 [1] - 20:11 300 [1] - 3:8 330 [3] - 2:4, 3:3, 3:9 344-9467 [2] - 2:9, 2:19 3600 [1] - 2:12 3rd [2] - 37:20, 37:22			
4	4/22 [1] - 38:1 4/29 [1] - 38:1 44113 [1] - 1:19			

<p>confidentiality [2] - 22:14, 23:3 confirm [1] - 38:2 contempt [3] - 19:11, 19:14, 23:9 contention [3] - 15:23, 16:21, 19:13 context [3] - 9:9, 9:16, 9:18 continue [1] - 19:3 convenient [1] - 26:9 conversation [1] - 8:19 corporate [1] - 22:20 corporation [1] - 10:3 correct [2] - 9:24, 39:9 counsel [5] - 1:15, 5:1, 5:16, 9:2 County [2] - 19:7, 26:22 COUNTY [1] - 1:2 Court [11] - 8:6, 14:12, 17:3, 17:7, 17:9, 17:11, 20:8, 24:2, 33:17, 35:11, 35:12 COURT [2] - 1:1, 1:18 court [6] - 6:12, 6:18, 11:21, 13:4, 20:16, 35:8 court's [1] - 25:2 Courthouse [1] - 19:7 courts [1] - 27:2 covered [1] - 8:14 crap [1] - 30:6 crime/fraud [2] - 13:6, 17:6 cut [1] - 21:4 CV-2016-09-3928 [1] - 1:5</p>	<p>19:4, 21:11, 28:20, 35:19 dealing [2] - 13:9, 16:25 deals [1] - 14:14 dealt [1] - 17:5 decide [4] - 8:6, 8:13, 17:10, 28:6 decided [1] - 25:24 decision [1] - 22:2 Defendant [1] - 5:23 Defendants [4] - 1:7, 2:15, 2:20, 3:4 defendants [4] - 12:8, 20:14, 22:20, 29:25 delays [1] - 22:4 deponent [1] - 6:2 deponents [2] - 6:5, 7:15 depos [1] - 34:22 depose [1] - 19:10 deposed [5] - 13:10, 16:22, 16:23, 18:24, 20:9 deposition [29] - 1:9, 6:13, 6:19, 8:8, 8:10, 9:6, 10:4, 11:16, 12:13, 12:23, 12:25, 13:18, 14:23, 15:3, 15:14, 18:4, 18:9, 19:8, 19:18, 20:11, 20:13, 21:20, 22:5, 26:9, 26:12, 31:14, 34:12, 37:12 depositions [5] - 17:25, 19:9, 19:12, 22:3, 26:17 destroyed [1] - 23:13 details [1] - 23:19 determine [1] - 17:8 dial [1] - 4:21 different [5] - 7:13, 7:20, 9:16, 21:6, 21:15 direct [1] - 12:5 disclose [3] - 10:2, 10:12, 11:23 disclosure [1] - 10:20 discoverable [1] - 11:4 discretion [1] - 19:23 discuss [2] - 9:22, 10:24 distance [1] - 21:18 distinctly [1] - 19:24 divorce [9] - 8:22, 9:3, 9:6, 9:10, 9:19, 22:20, 24:20, 26:22, 26:25 dmbest @dmbestlaw</p>	<p>.com [1] - 3:3 doctor [1] - 27:4 doctor's [1] - 27:4 doctor/patient [1] - 13:20 document [1] - 25:13 documents [1] - 25:21 done [9] - 12:19, 20:13, 20:17, 22:3, 22:4, 22:5, 26:4, 37:3, 37:14 down [1] - 12:1 Dr [7] - 5:20, 7:16, 12:3, 12:7, 13:18, 14:3, 14:15 driving [1] - 6:9 due [1] - 10:13 during [4] - 8:10, 9:6, 22:19, 25:9</p>	<p>expect [1] - 26:10 expires [1] - 39:20 expressly [1] - 34:14 eye [1] - 30:7 eyes [1] - 23:5</p> <p style="text-align: center;">F</p> <p>fact [2] - 8:14, 20:13 facts [1] - 33:24 Fairlawn [1] - 1:13 far [2] - 7:12, 16:24 fears [1] - 26:15 federal [5] - 12:16, 13:4, 13:5, 17:13, 19:25 fellows [1] - 30:23 few [1] - 29:24 file [10] - 8:11, 11:18, 13:1, 14:7, 17:1, 17:21, 19:19, 22:5, 26:10, 28:21 filed [9] - 10:16, 10:17, 11:3, 11:6, 12:14, 12:21, 16:1, 16:5, 24:1 fine [5] - 20:19, 28:22, 29:8, 31:6, 32:15 Firm [1] - 1:12 first [1] - 27:24 follow [2] - 26:18, 33:1 foregoing [1] - 39:7 forth [2] - 8:20, 9:15 four [1] - 34:22 Friday [5] - 15:7, 18:14, 18:15, 18:19, 37:21 full [4] - 18:18, 30:2, 30:5, 37:1 full-time [1] - 18:18</p>	<p>9:1, 15:2, 20:7, 24:3, 34:12 glad [1] - 32:25 God [1] - 30:7 granted [1] - 16:7 grasping [1] - 24:25 Graves [1] - 3:12 Green [1] - 19:7 guess [1] - 36:5 gunning's [1] - 13:18 guys [8] - 27:11, 30:16, 31:10, 32:18, 32:20, 34:24, 36:3, 38:18</p>
D		E	<p style="text-align: center;">G</p> <p>gary [1] - 4:11 Gary [8] - 3:6, 6:1, 6:6, 8:24, 27:14, 29:19, 30:19, 30:21 Ghent [2] - 1:12, 2:3 Ghoubrial [21] - 2:20, 3:5, 3:10, 5:2, 5:20, 6:2, 7:12, 11:25, 12:4, 12:8, 14:3, 14:5, 14:15, 17:22, 19:8, 19:18, 21:20, 22:5, 24:17, 26:8, 26:12 GHOUBRIAL [1] - 1:9 Ghoubrial's [6] - 7:17,</p>	H
<p>dangling [1] - 33:10 date [7] - 15:7, 18:25, 21:12, 27:23, 28:13, 28:15, 36:23 dates [22] - 17:25, 18:16, 27:12, 27:19, 30:13, 30:15, 30:23, 31:3, 32:1, 33:3, 33:4, 33:11, 33:12, 33:25, 34:13, 34:21, 34:25, 35:4, 35:13, 35:24, 36:4, 37:17 Dave [1] - 4:9 David [5] - 3:1, 3:1, 10:1, 28:18, 32:7 david [1] - 5:24 days [6] - 15:24, 16:7,</p>		<p>e-mail [1] - 34:8 e-mails [1] - 6:22 early [1] - 29:19 easily [1] - 20:18 East [3] - 2:8, 2:13, 2:18 effect [2] - 15:20, 22:7 effective [1] - 26:7 either [1] - 14:21 embarrassing [2] - 26:24, 27:4 end [7] - 4:10, 20:17, 29:7, 34:7, 38:6, 38:11, 38:14 ended [2] - 13:20, 38:20 ends [1] - 26:13 engage [2] - 25:22, 25:25 entirety [1] - 39:8 Erievew [1] - 2:12 Esq [7] - 2:2, 2:2, 2:7, 2:11, 2:17, 3:1, 3:6 essentially [1] - 14:3 et [2] - 1:3, 1:6 Evidence [1] - 8:5 evidence [2] - 25:7, 25:16 ex [1] - 12:3 ex-husband [1] - 12:3 exactly [1] - 14:14 examination [1] - 1:10 examine [1] - 17:7 exception [2] - 13:6, 17:6 exceptions [1] - 8:16 exercised [1] - 9:11</p>		<p>hand [1] - 39:12 handle [1] - 6:10 handling [1] - 12:11 happy [1] - 7:25 Hazelet [2] - 2:2, 5:17 hear [1] - 38:5 heard [1] - 21:9 hearing [1] - 10:19 heart [1] - 26:16 held [3] - 19:11, 19:14, 24:10 hell [1] - 19:22 hello [3] - 4:4, 4:5, 4:22 helping [1] - 22:1 hereby [1] - 39:6 hereunto [1] - 39:11 herself [1] - 25:4 highly [1] - 24:3 Himmelright [1] - 26:5 himself [1] - 14:3 hold [2] - 23:9, 34:25 Holsey [9] - 15:16, 18:11, 18:24, 31:16, 36:19, 38:3, 38:4, 38:15 Honor [31] - 5:7, 6:20, 7:6, 7:7, 7:12, 7:19, 8:23, 9:21, 10:13, 11:9, 11:11, 11:13, 11:24, 13:12, 13:14, 14:20, 14:25, 16:14, 16:15, 17:17, 18:13, 20:2, 20:4, 20:5, 21:22, 22:9, 22:11, 23:22, 23:24, 25:14, 25:18 honorable [1] - 33:8 hopefully [2] - 38:14, 38:16 hours [3] - 29:24, 30:1 husband [1] - 12:3</p>

husband 's ^[1] - 9:23 husband /wife ^[2] - 7:2, 8:16	6:15, 6:24, 7:1, 7:18, 7:23, 8:3, 8:25, 9:4, 9:8, 9:12, 9:20, 9:22, 10:7, 10:10, 10:14, 10:16, 10:22, 11:2, 11:6, 12:6, 12:9, 13:13, 13:16, 13:24, 14:9, 14:11, 14:21, 15:4, 15:11, 15:18, 15:25, 16:4, 16:9, 16:12, 16:16, 16:19, 18:2, 18:6, 18:23, 20:19, 21:9, 21:13, 21:23, 22:21, 22:25, 23:8, 23:16, 24:6, 24:14, 26:2 judge ^[5] - 6:1, 6:11, 13:9, 21:8 judge's ^[1] - 28:8 Judge's ^[2] - 33:2 JULIE ^[1] - 1:9 Julie ^[19] - 3:10, 5:2, 6:2, 7:12, 7:15, 8:22, 11:25, 14:5, 14:17, 15:2, 20:7, 20:9, 24:3, 24:17, 27:21, 28:19, 32:12, 34:12, 34:17 Julie's ^[6] - 6:13, 6:19, 11:16, 12:25, 27:23, 32:11 June ^[1] - 39:20 jurisdiction ^[1] - 19:20	leave ^[2] - 28:3, 29:19 leaving ^[1] - 30:17 letter ^[1] - 20:8 Lewis ^[2] - 2:7, 2:17 lie ^[1] - 30:4 lied ^[4] - 33:16, 33:17, 33:18 light ^[1] - 12:17 line ^[3] - 5:1, 27:12, 35:2 listen ^[2] - 26:3, 36:3 live ^[1] - 23:15 lives ^[1] - 35:15 LLC ^[4] - 1:6, 1:12, 2:16, 3:5 look ^[4] - 17:14, 25:11, 36:24, 37:19 looking ^[2] - 28:19, 30:7 LPA ^[1] - 3:1	mean ^[3] - 9:14, 29:21, 36:23 medical ^[1] - 13:21 MEMBER ^[1] - 1:3 Mentor ^[1] - 37:12 merit ^[1] - 24:12 method ^[2] - 16:24, 26:19 might ^[4] - 31:15, 36:20, 38:4, 38:15 mind ^[1] - 6:14 minute ^[4] - 20:24, 21:2, 21:3, 31:2 minutes ^[1] - 20:11 misrepresentations ^[1] - 25:19 Monday ^[1] - 28:10 Mondays ^[1] - 31:17 months ^[3] - 11:17, 15:9, 33:6 morning ^[11] - 4:23, 5:7, 5:8, 5:11, 5:12, 18:9, 20:8, 36:7, 36:11, 37:2, 37:11 motion ^[1] - 16:7 motions ^[1] - 24:1 move ^[3] - 11:19, 23:8 MR ^[210] - 4:5, 4:7, 4:8, 4:9, 4:11, 4:12, 4:14, 4:16, 4:17, 4:19, 4:23, 5:4, 5:6, 5:9, 5:11, 5:13, 5:19, 5:22, 5:24, 6:1, 6:4, 6:11, 6:16, 6:25, 7:3, 7:7, 7:9, 7:10, 7:11, 7:19, 7:24, 8:23, 9:1, 9:9, 9:13, 9:21, 9:25, 10:8, 10:11, 10:18, 10:23, 11:4, 11:9, 11:11, 11:13, 12:7, 13:12, 13:14, 13:17, 13:25, 14:10, 14:25, 15:5, 15:16, 15:21, 16:3, 16:6, 16:10, 16:14, 16:18, 17:17, 17:19, 17:20, 18:5, 18:10, 18:13, 18:19, 18:21, 20:2, 20:4, 20:5, 20:21, 20:24, 20:25, 21:2, 21:5, 21:10, 21:21, 22:8, 22:10, 22:12, 22:22, 23:1, 23:10, 23:21, 23:23, 24:8, 24:15, 24:21, 24:22, 24:24, 24:25, 25:3, 25:5, 25:14, 25:15, 25:18, 27:10, 27:11, 27:13, 27:15, 27:16, 27:17, 27:18, 27:20, 27:22,	27:25, 28:1, 28:4, 28:5, 28:12, 28:14, 28:16, 28:17, 28:22, 28:24, 29:1, 29:2, 29:4, 29:5, 29:8, 29:9, 29:10, 29:12, 29:13, 29:14, 29:16, 29:17, 29:18, 29:21, 29:23, 30:3, 30:5, 30:8, 30:10, 30:12, 30:14, 30:17, 30:19, 30:22, 31:1, 31:3, 31:5, 31:6, 31:8, 31:9, 31:11, 31:13, 31:18, 31:21, 31:24, 31:25, 32:4, 32:7, 32:10, 32:12, 32:14, 32:15, 32:16, 32:18, 33:5, 33:7, 33:9, 33:12, 33:14, 33:15, 33:16, 33:20, 33:22, 33:24, 33:25, 34:3, 34:6, 34:9, 34:10, 34:11, 34:16, 34:20, 34:22, 34:24, 35:3, 35:6, 35:8, 35:10, 35:16, 35:18, 35:21, 35:23, 36:1, 36:2, 36:6, 36:10, 36:12, 36:13, 36:15, 36:17, 36:22, 36:24, 37:4, 37:7, 37:9, 37:15, 37:20, 37:21, 37:23, 37:25, 38:5, 38:9, 38:10, 38:12 multiple ^[2] - 11:21, 24:18
I		M		
identify ^[1] - 5:14 improper ^[1] - 14:10 IN ^[2] - 1:1, 39:11 in-camera ^[6] - 8:12, 12:21, 13:2, 14:24, 17:10, 22:6 Inc ^[1] - 3:5 information ^[3] - 22:18, 26:11, 27:3 inspection ^[4] - 8:13, 12:22, 13:3, 22:6 instruct ^[1] - 14:2 instructed ^[1] - 13:19 insults ^[1] - 26:1 integrity ^[2] - 23:3, 23:7 intend ^[1] - 8:18 interrogatories ^[3] - 15:23, 16:21, 19:13 involved ^[1] - 22:19 involves ^[1] - 17:22 issue ^[8] - 6:22, 7:8, 8:5, 11:15, 12:20, 13:18, 17:22, 19:2 issued ^[3] - 11:16, 18:14, 18:15 issues ^[6] - 7:13, 7:14, 7:16, 7:20, 24:18, 25:6 itself ^[1] - 23:17	keep ^[1] - 38:16 Ketterer ^[1] - 3:7 kickbacks ^[1] - 12:5 KISLING ^[1] - 1:6 Kisling ^[2] - 2:16, 3:5 KNR ^[3] - 5:23, 19:10, 22:4 Kuebler ^[3] - 1:11, 39:5, 39:18	mail ^[1] - 34:8 mails ^[1] - 6:22 man ^[1] - 33:8 mandamus ^[4] - 14:7, 17:1, 17:21, 19:21 MANNION ^[67] - 4:7, 4:9, 4:14, 5:6, 6:4, 7:9, 7:11, 14:25, 15:5, 15:16, 15:21, 16:3, 16:6, 16:10, 17:17, 17:20, 18:5, 18:10, 18:19, 20:4, 21:2, 21:21, 22:10, 27:11, 27:16, 27:18, 27:22, 28:12, 28:16, 29:1, 29:4, 29:9, 29:12, 29:17, 30:3, 30:12, 31:1, 31:5, 31:13, 31:24, 32:10, 32:14, 32:16, 33:5, 33:9, 33:14, 33:16, 33:22, 34:3, 34:9, 34:11, 34:20, 35:3, 35:8, 35:16, 35:21, 36:1, 36:6, 36:12, 36:15, 36:22, 37:4, 37:7, 37:9, 37:23, 38:5, 38:10 Mannion ^[6] - 2:7, 4:7, 5:6, 7:11, 15:1, 17:20 Market ^[1] - 3:7 material ^[2] - 15:14, 17:5 matters ^[1] - 10:24 MD ^[1] - 2:20		
J	K		N	
James ^[1] - 2:11 jim ^[1] - 5:22 JK ^[1] - 1:18 job ^[3] - 18:18, 31:19, 36:21 journalize ^[1] - 16:19 jpopson @sutter ^[1] - 2:14 jpopson @sutter-law .com ^[1] - 2:14 Judge ^[16] - 4:21, 4:23, 4:24, 5:11, 5:19, 9:25, 10:5, 11:7, 22:12, 23:15, 27:6, 28:20, 31:22, 32:5, 34:15 JUDGE ^[59] - 4:22, 5:3, 5:8, 5:12, 5:18, 5:21, 5:25, 6:3, 6:8,	lady ^[2] - 18:6, 21:25 last ^[3] - 11:17, 18:6, 18:7 late ^[1] - 29:6 Law ^[1] - 1:12 law ^[1] - 27:7 law.com ^[1] - 2:14 lawyer ^[1] - 8:22 lawyers ^[1] - 21:6 least ^[3] - 15:8, 28:19, 32:22		name ^[2] - 15:13, 15:15 necessary ^[1] - 19:1 need ^[9] - 11:23, 12:11, 16:22, 17:25, 28:6, 31:19, 38:15 negotiate ^[1] - 18:16 Nestico ^[2] - 2:16, 3:5 NESTICO ^[1] - 1:6 new ^[2] - 31:18, 31:20 next ^[1] - 37:18 night ^[2] - 18:7 NO ^[1] - 1:5 nobody ^[1] - 27:6 none ^[1] - 11:1 Norris ^[2] - 15:17, 38:3 Notary ^[3] - 1:11, 39:5, 39:18 note ^[1] - 6:17	

notes [1] - 39:10 nothing [1] - 25:5 notice [3] - 1:14, 20:15, 38:7 noticed [1] - 15:6 notified [1] - 20:7 number [2] - 7:13, 8:15	outright [1] - 30:4 outside [1] - 19:7 own [1] - 13:21	com [1] - 2:4 phone [7] - 2:7, 2:11, 2:17, 3:1, 3:6, 30:25, 38:20 phonetic [1] - 26:5 place [6] - 10:9, 12:14, 13:1, 19:9, 19:10, 32:13 plaintiff [1] - 25:8 Plaintiff's [1] - 15:6 Plaintiffs [4] - 1:4, 1:16, 2:6, 5:16 PLEAS [1] - 1:1 point [6] - 8:9, 9:23, 17:8, 18:10, 25:11, 28:9 Popson [2] - 2:11, 5:22 POPSON [1] - 5:22 position [2] - 21:25, 23:2 possibility [1] - 17:5 Post [1] - 31:20 posted [1] - 38:17 potentially [1] - 23:13 presence [1] - 8:17 PRESENT [1] - 3:11 preserve [1] - 8:10 preserved [1] - 8:9 press [2] - 23:12, 33:18 presumably [1] - 14:15 pretty [2] - 21:16, 26:21 previously [1] - 24:2 private [1] - 10:24 privilege [14] - 7:2, 8:5, 8:11, 8:16, 8:21, 9:10, 9:14, 12:20, 13:20, 13:22, 13:23, 14:4, 14:6, 28:11 privileged [5] - 8:19, 13:9, 16:25, 17:4, 17:9 problems [1] - 22:13 procedure [2] - 12:19, 17:3 proceed [1] - 8:7 proceeding [1] - 11:8 proceedings [3] - 6:14, 26:23, 27:1 produce [2] - 15:10, 16:8 profer [2] - 12:12 prohibit [1] - 10:19 prohibition [1] - 19:20 promising [1] - 16:10 proper [1] - 12:19 properly [1] - 15:5	protected [1] - 23:18 protection [3] - 12:15, 13:2, 26:20 protective [2] - 11:20, 23:18 provide [2] - 15:14, 36:4 public [2] - 22:16, 26:12 Public [4] - 1:11, 39:5, 39:18, 39:19 PUBLIC [1] - 1:18 pull [1] - 12:18 purposes [1] - 8:12 pursuant [4] - 1:14, 12:15, 22:2, 26:19 put [7] - 15:19, 21:24, 22:1, 22:7, 26:7, 28:9, 36:9 puts [2] - 22:15 putting [1] - 23:2	reporter [2] - 6:12, 6:18 reporters [2] - 20:16, 22:17 REPORTING [1] - 1:18 represent [2] - 5:20, 6:2 representation [1] - 24:5 representations [1] - 24:16 represented [2] - 10:3, 24:1 represents [1] - 6:6 request [1] - 19:4 resolve [1] - 19:1 respect [2] - 7:14, 10:13 respectfully [4] - 13:17, 13:22, 14:8, 17:18 response [1] - 8:2 rest [1] - 34:7 restrictions [1] - 10:19 review [2] - 6:21, 14:24 reviewed [1] - 12:2 rhazelet @ pattakoslaw .com [1] - 2:5 ridiculous [2] - 26:1, 34:8 Road [3] - 1:13, 2:3, 3:2 room [1] - 11:24 Rosen [5] - 3:6, 4:11, 6:1, 8:24, 27:14 ROSEN [14] - 4:11, 6:1, 8:23, 9:1, 9:5, 9:9, 9:13, 27:13, 28:1, 28:24, 29:5, 29:21, 30:8, 30:17 rule [3] - 12:23, 13:5, 17:13 Rule [1] - 8:5 ruling [2] - 24:11, 26:13 rulings [1] - 19:5
O	P	Q	R	S
O'Connell [1] - 2:12 object [3] - 14:17, 14:22, 14:23 objecting [1] - 14:16 objection [1] - 8:11 objections [2] - 11:19, 12:22 objects [1] - 14:15 obviously [2] - 30:24, 32:23 October [1] - 11:17 OF [1] - 1:1 office [4] - 20:10, 20:22, 26:6, 39:12 Office [1] - 31:20 OHIO [2] - 1:2, 1:19 Ohio [12] - 1:12, 1:13, 2:3, 2:8, 2:13, 2:18, 3:2, 3:8, 39:6, 39:12, 39:18, 39:19 one [14] - 6:6, 7:16, 11:14, 15:8, 15:12, 22:12, 24:18, 26:21, 36:3, 36:8, 37:15, 37:17 open [6] - 11:3, 11:7, 11:8, 27:1, 27:7, 36:18 opinions [2] - 33:21, 33:23 opportunity [1] - 11:18 oral [1] - 26:4 order [23] - 10:5, 10:9, 11:20, 12:15, 13:2, 14:8, 15:19, 19:21, 19:23, 20:12, 22:7, 22:23, 23:19, 24:4, 25:2, 26:20, 27:6, 28:8, 28:10, 33:2, 35:9, 35:12 ordered [4] - 15:24, 16:2, 32:5, 35:11 ordering [3] - 19:17, 24:2, 26:17 orders [7] - 11:22, 21:24, 22:2, 22:14, 26:3, 26:4, 31:22	pardon [1] - 4:16 parties [4] - 5:2, 6:23, 8:18, 11:18 party [2] - 8:18, 18:17 Pattakos [18] - 1:12, 2:2, 4:6, 4:25, 5:15, 11:14, 15:8, 18:24, 20:6, 21:7, 22:13, 22:22, 23:25, 25:11, 26:16, 30:6, 31:4, 31:22 PATTAKOS [75] - 4:5, 4:12, 4:16, 4:19, 4:23, 5:4, 5:9, 5:13, 6:11, 6:16, 6:25, 7:3, 7:7, 7:10, 9:21, 11:9, 11:13, 12:7, 16:14, 16:18, 18:13, 18:21, 20:2, 20:5, 20:21, 20:25, 22:8, 23:21, 24:21, 24:24, 25:3, 25:14, 25:18, 27:10, 27:15, 27:17, 27:20, 27:25, 28:4, 28:22, 29:8, 29:14, 29:18, 29:23, 30:10, 30:14, 30:19, 30:22, 31:6, 31:9, 31:18, 31:25, 32:7, 32:18, 33:12, 33:15, 33:20, 33:25, 34:6, 34:16, 34:24, 35:6, 35:10, 35:18, 35:23, 36:2, 36:10, 36:13, 36:17, 36:24, 37:15, 37:21, 37:25, 38:9, 38:12 pattakos [1] - 8:2 Pattakos' [1] - 24:5 Patty [1] - 26:5 pay [1] - 12:8 people [5] - 16:21, 19:9, 23:2, 33:18, 35:17 peoples' [1] - 23:13 perhaps [2] - 17:23, 18:1 Peter [12] - 2:2, 3:12, 4:6, 4:25, 5:15, 11:14, 20:6, 21:4, 29:13, 30:3, 30:13, 33:10 peter [1] - 27:16 peter @pattakoslaw .	quash [1] - 11:19 questions [1] - 8:8 Quinn [3] - 10:5, 11:7, 27:6	Rachel [2] - 2:2, 5:17 raise [1] - 9:18 raised [2] - 8:21, 24:18 rarely [2] - 9:10, 9:18 ready [1] - 20:14 real [2] - 23:6, 26:15 realize [3] - 13:5, 17:12, 21:17 really [1] - 33:22 reason [1] - 26:18 reasonable [1] - 18:16 recognizing [1] - 11:22 record [5] - 6:14, 25:24, 32:19, 32:20, 33:1 record's [1] - 11:7 recorded [1] - 6:17 records [1] - 27:7 Redick [2] - 2:16, 3:5 REDICK [1] - 1:6 regarding [1] - 12:3 Reid [2] - 15:16, 38:3 rein [1] - 32:22 relevancy [1] - 11:22 relevant [1] - 24:4	Sam [2] - 2:20, 5:20 sanctions [1] - 16:23 sat [1] - 12:1 Saturday [2] - 36:20, 38:16 scheduled [1] - 19:12 scope [1] - 11:1 seal [5] - 8:12, 12:15,

22:6, 26:10, 39:12 sealed [1] - 23:4 second [1] - 13:4 see [8] - 20:22, 26:11, 26:18, 27:8, 32:2, 34:2, 37:13, 37:16 seem [1] - 8:7 send [1] - 16:11 sent [1] - 20:8 separate [1] - 22:19 set [6] - 21:18, 26:8, 28:15, 34:23, 35:4, 39:11 settled [1] - 21:15 several [2] - 6:5, 7:20 shall [1] - 13:1 show [4] - 15:7, 15:10, 34:5, 35:5 showing [1] - 31:23 sick [2] - 26:6, 33:19 simply [1] - 8:11 sitting [4] - 16:16, 16:17, 19:6, 21:16 situation [2] - 14:1, 14:14 six [1] - 11:17 so.. [1] - 6:10 someone [1] - 36:14 soon [3] - 18:25, 20:22, 38:13 sorry [1] - 18:21 speaking [1] - 8:24 specifically [1] - 34:14 sphere [1] - 26:12 spoken [1] - 25:3 SQUARE [1] - 1:18 Square [1] - 39:19 start [4] - 29:18, 29:19, 30:8, 30:10 State [3] - 1:11, 39:6, 39:18 state [1] - 26:25 statement [1] - 39:7 States [3] - 14:13, 17:3, 19:24 stay [2] - 27:12, 34:24 stenotypy [1] - 39:9 still [7] - 10:9, 14:23, 15:22, 16:11, 27:13, 27:16, 32:20 stipulations [1] - 1:15 straws [1] - 25:1 Street [3] - 2:8, 2:13, 2:18 stuff [4] - 22:15, 23:14, 24:10, 28:2 stupid [1] - 17:14 subject [1] - 14:24 submitted [1] - 6:23	subpoena [5] - 11:16, 18:14, 18:15, 36:22, 38:7 subpoenaed [1] - 18:11 suggested [2] - 15:8, 31:11 SUITE [1] - 1:19 Suite [4] - 2:8, 2:18, 3:8, 39:19 Summit [1] - 26:22 SUMMIT [1] - 1:2 suppose [2] - 15:13, 19:16 Supreme [3] - 14:12, 17:3, 17:11 Sutter [1] - 2:12 sworn [1] - 25:9	Thursday [2] - 1:13, 18:22 til [1] - 37:10 today [5] - 20:9, 20:13, 20:18, 26:6, 38:14 tom [1] - 4:7 Tom [7] - 5:6, 7:11, 15:1, 17:19, 17:20, 33:20, 36:3 tom.mannion @ lewisbrisbois .com [1] - 2:9 tomorrow [3] - 26:8, 28:10, 28:15 Tower [1] - 2:12 traffic [1] - 12:17 transcript [1] - 39:10 transferred [1] - 31:20 true [4] - 12:4, 24:10, 25:10, 39:9 truth [2] - 30:7, 33:8 try [3] - 26:4, 26:7, 36:18 trying [2] - 19:5, 28:14 turn [1] - 25:16 two [2] - 11:25, 21:15	V
			vehicle [2] - 12:11, 13:8 versus [1] - 14:13 via [5] - 2:7, 2:11, 2:17, 3:1, 3:6 videographer [2] - 3:12, 6:18 violate [1] - 22:24 violated [1] - 25:1 virtually [1] - 25:8 VOICE [6] - 4:4, 7:5, 14:19, 30:20, 37:6, 37:8 vs [1] - 1:5
			W
	T	U	wait [5] - 20:24, 21:2, 31:1 waive [2] - 13:19, 14:4 waived [1] - 28:11 waiving [1] - 14:5 wants [1] - 22:4 website [1] - 22:15 Wednesday [1] - 30:11 week [2] - 28:19, 37:19 West [1] - 3:2 WHEREOF [1] - 39:11 WILLIAMS [1] - 1:3 WITNESS [1] - 39:11 witness [7] - 5:2, 6:7, 13:10, 14:2, 18:17, 20:14, 25:4 witnesses [2] - 30:13, 32:3 works [5] - 21:12, 23:6, 29:14, 31:12, 35:22 world [2] - 23:6, 23:15 worried [1] - 38:15 writ [1] - 19:19 wrote [1] - 39:8 www.jarkub.com [1] - 1:21
			X
			Xenia [1] - 6:9
			Z
			Zolin [1] - 14:13