

**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 & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>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</p>
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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 Ghoubrial'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 Ghoubril, 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

Peter Pattakos (0082884)

Dean Williams (0079785)

Rachel Hazelet (0097855)

THE PATTAKOS LAW FIRM LLC

101 Ghent Road

Fairlawn, Ohio 44333

Phone: 330.836.8533

Fax: 330.836.8536

peter@pattakoslaw.com

dwilliams@pattakoslaw.com

rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com
ekramer@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on April 23, 2019 using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

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IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs- CASE NO. CV-2016-09-3928

KISLING, NESTICO
& REDICK, LLC, et al.,

Defendants.

- - - -

Attempted deposition of JULIE GHOUBRIAL,
taken as if upon examination before Brian A.
Kuebler, a Notary Public within and for the State
of Ohio, at The Pattakos Law Firm, LLC, 101 Ghent
Road, Fairlawn, Ohio, at 10:31 a.m. on Thursday,
April 18, 2019, pursuant to notice and/or
stipulations of counsel, on behalf of the
Plaintiffs.

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JK COURT REPORTING
55 PUBLIC SQUARE
SUITE 1332
CLEVELAND, OHIO 44113
(216) 664-0541
www.jarkub.com

1 David M. Best, Esq. (Via phone)
David M. Best Co., LPA
2 4900 West Bath Road
Akron, Ohio 44333
3 (330) 665-1855
dmbest@dmbestlaw.com

4 On behalf of the Defendants,
5 Kisling Nestico & Redick, LLC
and Ghoubrial, Inc.

6 Gary M. Rosen, Esq. (Via phone)
7 Day Ketterer
200 Market Avenue N
8 Suite 300
Canton, Ohio 44702
9 (330) 455-0173,

10 On behalf of Julie Ghoubrial.

11 ALSO PRESENT:

12 Peter Graves - videographer

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1 APPEARANCES:

2 Peter Pattakos, Esq.
Rachel Hazelet, Esq.
3 101 Ghent Road
Akron, Ohio 44333
4 (330) 836-8533
peter@pattakoslaw.com
Rhazelet@pattakoslaw.com

5 On behalf of the Plaintiffs;

6 Thomas P. Mannion, Esq. (Via phone)
Lewis Brisbois
7 1375 East 9th Street, Suite 2250
Cleveland, Ohio 44114
8 (216) 344-9467
tom.mannion@lewisbrisbois.com

9 and

10 James M. Popson, Esq. (Via phone)
Sutter, O'Connell
11 3600 Erieview Tower
1301 East 9th Street
12 Cleveland, Ohio 44114
13 (216) 928-2200
jpopson@sutter-law.com

14 On behalf of the Defendants,
15 Kisling, Nestico & Redick, LLC;

16 Brad J. Barmen, Esq. (Via phone)
Lewis Brisbois
17 1375 East 9th Street, Suite 2250
18 Cleveland, Ohio 44114
19 (216) 344-9467

20 On behalf of the Defendants,
21 Sam N. Ghoubrial, MD;
22
23
24
25

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2 (Thereupon, a conference call was made.)

3 - - - -

4 UNIDENTIFIED VOICE: Hello.

5 MR. PATTAKOS: Hello. This is

6 Peter Pattakos. Who's on the call?

7 MR. MANNION: Tom Mannion here --

8 MR. BARMEN: Brad Barmen here.

9 MR. MANNION: -- and Dave Best

10 from this end.

11 MR. ROSEN: Gary Rosen.

12 MR. PATTAKOS: Okay. Well, I

13 think --

14 MR. MANNION: Brad, you on the

15 call?

16 MR. PATTAKOS: Pardon?

17 MR. BARMEN: I am here. Brad is

18 here.

19 MR. PATTAKOS: Okay. I think

20 that's everyone. I'm going to go ahead and

21 call the Judge -- dial the Judge in.

22 THE JUDGE: Hello.

23 MR. PATTAKOS: Good morning, Judge

24 Brogan, this is -- Judge Brogan, this is

25 Attorney Peter Pattakos. I believe I have

5

1 you on the line with counsel for all the
 2 parties and the witness, Julie Ghoubrial.
 3 THE JUDGE: Okay.
 4 MR. PATTAKOS: Is everyone else
 5 there?
 6 MR. MANNION: Tom Mannion, I'm
 7 here. Good morning, Your Honor.
 8 THE JUDGE: Good morning.
 9 MR. PATTAKOS: How about everyone
 10 --
 11 MR. BARMEN: Good morning, Judge.
 12 THE JUDGE: Good morning.
 13 MR. PATTAKOS: How about everyone
 14 just go around and identify themselves.
 15 Again, I'm Peter Pattakos, for the
 16 Plaintiffs and I'm here with my co-counsel,
 17 Rachel Hazelet.
 18 THE JUDGE: Okay.
 19 MR. BARMEN: Judge, this is Brad
 20 Barmen. I represent Dr. Sam Ghoubrial.
 21 THE JUDGE: Okay.
 22 MR. POPSON: Jim Popson on behalf
 23 of KNR, Defendant.
 24 MR. BEST: David Best.
 25 THE JUDGE: Okay.

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1 MR. ROSEN: Judge, I'm Gary Rosen.
 2 I represent the deponent, Julie Ghoubrial.
 3 THE JUDGE: Okay.
 4 MR. MANNION: I would just say
 5 this, several deponents we're here to talk
 6 about, not just the one Gary represents,
 7 the witness.
 8 THE JUDGE: Okay. I'm in a car
 9 driving to Xenia right now, but I'll -- I
 10 can handle it, so...
 11 MR. PATTAKOS: Okay. Judge
 12 Brogan, I'm here with a court reporter that
 13 was here to conduct Julie's deposition. Do
 14 you mind if we record these proceedings?
 15 THE JUDGE: Okay.
 16 MR. PATTAKOS: Thank you. So all
 17 should note that this is being recorded by
 18 the court reporter and the videographer
 19 that is here for Julie's deposition.
 20 Your Honor, I don't know if you
 21 have had a chance to review any of the
 22 e-mails about this issue or the briefs that
 23 the parties have submitted?
 24 THE JUDGE: No, I haven't.
 25 MR. PATTAKOS: Okay. Well --

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1 THE JUDGE: I assume this is over
 2 husband/wife privilege or something.
 3 MR. PATTAKOS: Well, that was the
 4 third -- that was the third --
 5 UNIDENTIFIED VOICE:
 6 (Unintelligible) Your Honor --
 7 MR. PATTAKOS: Your Honor, that
 8 was the third issue.
 9 MR. MANNION: (Unintelligible).
 10 MR. PATTAKOS: Go ahead.
 11 MR. MANNION: Tom Mannion, Your
 12 Honor. As far as Julie Ghoubrial, there's
 13 a number of different issues, but there's
 14 also issues with respect to three other
 15 deponents as well, but with Julie that's
 16 one of the issues but I'd certainly let Dr.
 17 Ghoubrial's attorney talk to that.
 18 THE JUDGE: Okay.
 19 MR. BARMEN: Yeah. Your Honor,
 20 there are several different issues -- this
 21 is Brad Barmen again so you know who's
 22 talking --
 23 THE JUDGE: Okay.
 24 MR. BARMEN: -- if you'd like me
 25 to address those, I'm happy to do that now.

8

1 If you want me to address them in a
 2 response to Mr. Pattakos, you tell me.
 3 THE JUDGE: No. The only thing I
 4 would say is clearly even if there's a
 5 privilege issue, under 104 -- Evidence Rule
 6 104, it's for the Court to decide and it
 7 would seem to me you could proceed with the
 8 deposition, she can answer the questions.
 9 Preserved -- at the beginning or some point
 10 during the deposition preserve your
 11 objection on privilege and simply file it
 12 under seal for purposes of an in-camera
 13 inspection and I'll decide whether, in
 14 fact, it's covered.
 15 There's a number of things,
 16 exceptions to husband/wife privilege and
 17 that has to do with the presence of a third
 18 party, did the parties intend the
 19 conversation to be privileged and so on and
 20 so forth.
 21 By the way, was privilege raised
 22 by the lawyer for Julie at the divorce?
 23 MR. ROSEN: That's me, Your Honor.
 24 This is Gary Rosen speaking. I'm --
 25 THE JUDGE: Okay.

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1 MR. ROSEN: -- Ms. Ghoubrial'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 Ghoubrial 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 Ghoubrial, 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 Ghoubrial 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 profer whatever you're going to profer 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. Ghoubrial himself has to
4 waive the privilege that he would have as
5 well as Julie Ghoubrial 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. Ghoubrial 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

15

1 Tom Mannion. If I may, we're not here just
2 to talk about Julie Ghoubrial'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,

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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 Ghoubrial, 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

18

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

19

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 Ghoubrial 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 Ghoubrial 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

20

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 Ghoubrial'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

21

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

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

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 --

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.

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

1
 2
 3 C E R T I F I C A T E
 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 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 - - - -
 22
 23
 24
 25

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