

**IN THE COURT OF COMMON PLEAS**

**COUNTY OF SUMMIT**

MEMBER WILLIAMS, ET AL.	)	CASE NO. CV-2016-09-3928
	)	
Plaintiff	)	JUDGE JAMES A. BROGAN
-vs-	)	MAGISTRATE PATRICIA A.
	)	HIMELRIGH
KISLING NESTICO & REDICK LLC, ET	)	
AL.	)	
	)	<b><u>MAGISTRATE'S ORDER</u></b>
Defendant	)	
	)	
	)	

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This matter comes before the Court upon several pending motions and emergent discovery disputes. Pursuant to Civ. R. 53, the undersigned Magistrate makes the following Orders for the orderly progress of this case:

- (1) KNR Defendants' April 11, 2019 Motion to Compel<sup>1</sup> the Deposition of Eyewitness Brittany Holsey is GRANTED. Ms. Holsey is alleged to be a material witness to four of the five potential classes. The deposition should be amicably scheduled by counsel for a mutually agreeable date and time within fifteen (15) days of the date of this Order. Counsel shall take notice that this Court will not tolerate abusive and harassing conduct during depositions and such conduct is subject to sanction.
- (2) KNR Defendants' April 15, 2019 Motion to Compel the Continued Deposition of Plaintiff Thera Reid has been rendered MOOT by subsequent continued deposition testimony on April 22, 2019.
- (3) KNR Defendants' April 15, 2019 Motion to Compel<sup>2</sup> the Continued Deposition of Plaintiff Monique Norris is GRANTED. However, the Court limits the time for such continued deposition to two hours. Counsel shall take notice that this Court will not tolerate abusive or harassing conduct during depositions designed to intimidate putative class-action plaintiffs. Further, counsel has been placed on notice that 'it is not expected that plaintiffs will know the legal theory behind their claims because they are after all laypersons.' See March 26, 2019 Court Order at pg. 4, fn 1.

<sup>1</sup> And see Plaintiffs' April 17, 2019 Motion to Quash, Motion for Protective Order and Brief in Opposition to Defendants' Motion to Compel.

<sup>2</sup> And see Plaintiffs' April 23, 2019 Memorandum in Opposition to the KNR Defendants' Motions to Compel the Depositions of Monique Norris and Thera Reid [and Motion for Reconsideration/Bench Brief].

(4) KNR Defendants' April 15, 2019 Motion to Compel<sup>3</sup> Production of Documents from Plaintiff Monique Norris is GRANTED IN PART AND OVERRULED IN PART. The Motion is GRANTED to the extent that Ms. Norris shall provide (a) verification for her answers to interrogatories, and (b) bank account and routing information with a signed authorization to enable Defendants to subpoena her records re: Liberty Capital Loan Check within fourteen (14) days of the date of this Order. The Motion to Compel e-mail correspondence is OVERRULED.

(5) GLOBAL RESOLUTION OF ISSUES RAISED RE: Julie Ghoubrial

- a. Plaintiffs' April 3, 2019 Supplemental Motion to Compel Production of Relevant Portions of Julie Ghoubrial's Deposition Transcript<sup>4</sup>
- b. KNR Defendants' and Defendant Ghoubrial's April 17, 2019 Motion to Quash and Motion for Protective Order re: Deposition of Julie Ghoubrial<sup>5</sup>

To resolve the issues presented in (a) and (b) above, the undersigned Magistrate ORDERS AND COMPELS non-party Julie Ghoubrial to produce her deposition transcript/testimony which was taken during Domestic Relations proceedings in Case No. DR2018-04-1027.

First, in February 2019 Plaintiffs' counsel represented to this Court that he received information that Julie was in fact questioned by Attorney David Best during the Domestic Relations court deposition/testimony about the allegations in Plaintiffs' Fifth Amended Class Action Complaint. See February 5, 2019 Court Order, pg. 4-5. Upon such representation, this Court found the testimony – if it occurred – “highly relevant, probative, and subject to discovery in this case.” *Id.*

Second, it is undisputed that Julie's deposition was never filed in the Domestic Relations Court and thus never became a “court record.” Nevertheless, the Domestic Relations judge labeled the deposition transcript/testimony “confidential” over Julie's objection and without making any findings on the record to justify the “confidential” designation.

Third, Plaintiffs – at this Court's direction – attempted an amicable resolution of the matter by attempting to intervene in the Domestic Relations Court's proceedings for the limited purpose of obtaining a copy of the deposition/transcript under seal for *in camera* review by

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<sup>3</sup> And see Plaintiffs' April 23, 2019 Memorandum in Opposition to Defendants' Motion to Compel Production of Documents from Plaintiff Monique Norris.

<sup>4</sup> And see Defendant Ghoubrial's April 8, 2019 Memorandum in Opposition.

<sup>5</sup> And see Plaintiffs' April 18, 2019 Motion to Compel the Deposition of Julie Ghoubrial and Opposition to Defendants' Motion to Quash and for Protective Order; Defendant Ghoubrial's April 24, 2019 Motion for Reconsideration [Bench Brief]; Julie Ghoubrial's April 25, 2019 Motion to Reconsider Court's April 18, 2019 Oral Order [Bench Brief]

Judge Brogan in this Court. Plaintiffs' efforts to intervene on a limited basis were denied by the Domestic Relations Court.

Courts routinely compel information deemed "confidential" for various reasons for *in camera* review when circumstances warrant. This case, and the arguments and issues in the briefs on this issue, present such legitimate and necessary circumstances for this Court to compel the deposition/testimony from non-party Julie Ghoubrial. Accordingly, the undersigned Magistrate ORDERS AND COMPELS non-party Julie Ghoubrial to produce a hard-copy of the deposition transcript within fifteen (15) days of the date of this Order in a sealed envelope to this Court, for filing under seal subject to the Court's previously issued September 12, 2017 Protective Order. Once that document is produced an *in camera* review will be conducted to determine (1) whether Julie Ghoubrial was in fact questioned about the allegations in Plaintiffs' Fifth Amended Class Action Complaint, by Attorney David Best, and, if so (2) whether such testimony results in a waiver of the Ghoubrials' spousal immunity. In the meantime, the subpoenaed deposition testimony of Julie Ghoubrial – in this case – is HELD IN ABEYANCE.

IT IS SO ORDERED.

**This is a Magistrate's Order pursuant to Civ.R. 53(D)(2). Any party may move to set aside this Order within ten (10) days of the date of filing. A motion to set aside does not stay the effectiveness of this Order. See Civ.R. 53(D)(2)(b).**



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MAGISTRATE PATRICIA A. HIMELRIGH

CC: JUDGE JAMES A. BROGAN  
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ATTORNEY RACHEL HAZELET  
ATTORNEY PETER PATTAKOS  
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