

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**DEFENDANT SAM GHOUBRIAL,
M.D.'S MOTION TO STRIKE, FOR
SANCTIONS AND A FINDING OF
CONTEMPT**

Now comes Defendant, Sam Ghoubril, M.D. ("Dr. Ghoubril"), by and through undersigned counsel, and respectfully moves this Court for an Order striking Plaintiffs' Motion to Compel Discovery on Defendants' Assets and Net Worth ("Motion to Compel").¹ Once again Plaintiffs and their counsel have blatantly and brazenly violated an Order of this Court by including confidential and protected information in a public filing.² Once again Plaintiffs' counsel has demonstrated his disdain for the authority of this Court and for the judicial process. And once again Plaintiffs' counsel, through his blatant and repeated violations of Court Orders, has demonstrates his belief that the rules apply to all counsel and parties except for he and his clients. Plaintiffs' Motion must be stricken from the docket and Plaintiffs' counsel should be made to appear and show cause why he should not be held in contempt for his latest intentional violation of an Order of this Court. Dr.

¹ Plaintiffs' Motion to Compel is frivolous and filed in bad faith considering Defendants objection to Plaintiffs' request for this net worth information was previously sustained by the Court. Plaintiffs' filing on the Motion to Compel after Defendants' objection to the production of the requested information was sustained violates Civ. R. 11 and is sanctionable for that reason alone.

² Plaintiff's counsel referenced Dr. Ghoubril's confidential deposition testimony in footnote 1 on page 3 of his Motion for Protective Order filed 4/18/19. He did this before the deposition had been transcribed and before he moved to file the transcript under seal knowing the transcript was to marked confidential subject to the Protective Order. Shockingly he did this shortly after the 4/18/19 telephone conference with the Court wherein the Court instructed the Defendants to move to hold him in contempt if he violated any confidentiality order.

Ghoubrial also respectfully requests that Plaintiffs' counsel be sanctioned to fullest extent permissible, including, but not limited to, the costs associated with the filing of this Motion.

As the Court is well-aware, a Protective Order has been in place in this case since September 12, 2017. *See* 9/12/17 Protective Order, attached as Exhibit "A". The Protective Order deems deposition testimony "Confidential – Subject to Protective Order.." when the transcripts are so designated by any party. *See* Exhibit "A," ¶ 4. The Parties have been designating all deposition transcripts as confidential throughout discovery in the case. Plaintiffs' counsel is certainly aware of the Protective Order and that all deposition transcripts have been designated as confidential under the Protective Order. However, and despite moving to file the transcripts under seal, Plaintiffs' counsel has repeatedly cited to confidential deposition testimony in his filings, most recently in his May 2, 2019 Motion to Compel.

Plaintiffs' Motion to Compel repeatedly cites to the confidential deposition testimony of Dr. Ghoubrial and Dr. Richard Gunning throughout.³ *See* Plaintiff's Motion to Compel pp. 2-5. Plaintiffs' Motion cites this confidential deposition testimony, including the testimony and the page and line of the transcripts, despite the fact that the transcripts were filed under seal with leave of Court, and despite the fact the Protective Order expressly prohibits such public use of the confidential testimony. It is obvious Plaintiffs' counsel is growing increasingly more desperate as the deadline to move for class certification approaches. However, his realization that he has been unable to uncover any evidence, let alone sufficient clear and convincing evidence, to warrant certification of a single class does not justify his blatant violation of the Protective Order for the transparent and improper purpose of negatively influencing the Court.

³ The transcripts of Dr. Ghoubrial and Dr. Gunning were sealed by Order of this Court on April 22, 2019. Plaintiffs' Motion to Compel also cites to the confidential deposition testimony of Defendants Robert Nestico and Minas Floros multiple times.

Plaintiffs' counsel's repeated and intentional mishandling of confidential material and information has been addressed with the Court in the past.⁴ During a phone conference with counsel and the Court on April 18, 2019, defense counsel again raised these legitimate and troubling concerns with the Court.⁵ When discussing the filing of a deposition of a transcript under seal, the following exchange occurred:

Mr. Best: Judge, you know, one of the problems we have here is Mr. Pattakos doesn't care about confidentiality orders. He puts stuff on his website, he gives it to reporters. If he would ever get that confidential information – and I was involved in a different capacity during the divorce for the corporate defendants –

The Court: Uh-huh.

Mr. Best: I know Mr. Pattakos will not care about your order and he will violate it –

The Court: Well –

Mr. Best: -- and so that's the position you're putting these people in, he has no integrity about confidentiality. And while it may be sealed and it may be only theoretically in your eyes, that's not the way it works in the real world, he has no integrity.

The Court: Well, then you move to hold him in contempt, okay?

See transcript of 4/18/19 Phone conference, attached as Exhibit "B", pp. 22-23. Plaintiffs' Motion to Compel illustrates how the defenses' concerns regarding Plaintiff's counsel's improper conduct and lack of respect for the authority of this Court were well-founded. As the Court suggested in the April 18, 2019 telephone conference, Plaintiffs' counsel should be made to appear and show cause why he should not be held in contempt for his latest violation of the Protective Order.

⁴ The Court has already determined some of Plaintiffs' Counsel's social media posts are misleading.

⁵ The April 18, 2019 phone conference was recorded and transcribed.

Plaintiffs' counsel's latest knowing violation of the Protective Order warrants a finding of contempt. This is especially true considering a violation of a court order need not be willful to constitute contempt. *Kurincic v. Kurincic*, 8th Dist. Cuyahoga No. 76505, 200 Ohio App. LEXIS 3957 (Aug. 31, 2000). Courts classify contempt as criminal or civil, depending on the nature of the sanction imposed. *Camp-Out, Inc. v. Adkins*, 6th Dist. Wood No. WD-06-057, 2007 Ohio 3964; see also R.C. 2705.01(A). Sanctions for criminal contempt are punitive, rather than coercive in nature, and are aimed at vindicating the authority of the court. *Id.* Criminal contempt sanctions are imposed as "punishment for the completed act of disobedience" and usually consist of fines and/or an unconditional period of incarceration. *McCall v. Cunard*, 6th Dist. Sandusky No. S-07-013, 2008 Ohio 378, citing *In re Purolo*, 73 Ohio App.3d 306, 596 N.E.2d 1140 (1991). Here, Plaintiffs' counsel's willful violations of the Protective Order amount to criminal contempt and the conduct will continue unabated unless and until he is punished by this Court.

Plaintiff's counsel's wrongful conduct is made more egregious by the fact the information he seeks to compel, despite Defendants' objections to producing the net worth information having already been sustained, has absolutely nothing to do with class certification or any issue in this case. Moreover, Plaintiff's counsel again resorts to deliberately misleading this Court in an effort to get what he wants. While Plaintiff's counsel cites to a motion filed by Julie Ghoubril in the divorce action as if that motion itself is somehow evidence supporting his baseless allegations herein, he fails to note the allegations raised in that motion were never addressed by Judge Quinn in the divorce case, there is no ruling or order finding those allegations to have any merit, and there was never any order in the divorce impacting or freezing assets in any way. Plaintiff's counsel's improper implications notwithstanding, unsupported allegations raised in motions never ruled upon have no evidentiary weight and should not be considered by this Court for any purpose.

Again, Plaintiff's counsel is clearly desperate with the deadline for class certification briefing looming and he is now trying to bias the Court against the Defendants any way he can. Plaintiff's counsel has lied to the Court about the evidence, he has publically published misleading information about the evidence and the status of the case on the internet, he has taken numerous steps to embarrass individual Defendants for the express purpose of damaging their personal and professional reputations, and he has violated Orders of the Court on multiple occasions with impunity. He has done these things in a calculated manner without shame or consequence. Undoubtedly Plaintiff's counsel will continue to ignore his ethical obligations, the integrity of these proceedings, and the authority of this Court unless and until he is appropriately sanctioned.

For the foregoing reasons, Plaintiff's Motion to Compel must be stricken from the record. The Motion to Compel must be removed from the docket to preserve and protect the confidential deposition testimony Plaintiff's counsel knowingly cited in the Motion in direct violation of the Protective Order and the April 22, 2019 Order sealing the transcripts of Dr. Ghoubril and Dr. Gunning. In addition, Plaintiff's counsel must be made to appear and show cause as to why he should not be held in contempt for his blatant violations of the Orders of this Court. Finally, Plaintiff's counsel must be severely sanctioned for his on-going complete and total disregard for the authority of this Court, including, but not limited to, being ordered to reimburse Defendant Ghoubril for all costs associated with the filing of this Motion. Anything less would be an endorsement of Plaintiff's counsel's intentional wrongful conduct.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

LEWIS BRISBOIS BISGAARD & SMITH LLP

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Counsel for Defendant Sam N. Ghoubrial, M.D.

CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s Motion to Strike has been filed this 3rd day of May, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

*Counsel for Defendant
Sam N. Ghoubrial, M.D.*

information as set forth below. This Order is subject to the Local Rules of this Court and Ohio Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **FORM AND TIMING OF DESIGNATION.** A party may designate documents as confidential and restricted in disclosure under this Order by designating the information and placing or affixing the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" or similar designation on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" designation. Documents shall be designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents. The designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.
3. **DOCUMENTS WHICH MAY BE DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.** Any party may designate documents as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER upon making a good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, privileged, medial or psychiatric information, trade secrets, personnel records, or such other sensitive or proprietary commercial information that is not publicly available. Public records and other information or documents that are publicly available may not be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

4. **DEPOSITIONS.** Deposition testimony shall be deemed CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions of the transcript or any exhibit to be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER. Thereafter, the deposition transcripts and any of those portions so designated shall be protected as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, pending objectIION, under the terms of this Order.
5. **PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.**
- a. **GENERAL PROTECTIONS.** Documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 5(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.
- b. **LIMITED THIRD-PARTY DISCLOSURES.** The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents to any third person(s) or entity except as set forth in subparagraphs i – vi. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER:
- i. **COUNSEL.** Counsel for the parties and employees and agents of counsel who have responsibility for the preparation and trial of the action;
 - ii. **PARTIES.** Parties and employees of a party to this Order.
 - iii. **THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;
 - iv. **CONSULTANTS, INVESTIGATORS AND EXPERTS.** Consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such

persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound;

- v. **OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgement of Understanding and Agreement to be Bound; and
 - vi. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient.
- c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.
 - d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.
6. **PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.**
- a. **GENERAL PROTECTIONS.** Documents that contain highly sensitive trade secrets or other highly sensitive competitive or confidential information, the disclosure

of which to another party would result in demonstrable harm to the disclosing party, may be designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order and shall not be used or disclosed to counsel for the parties or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.

- b. LIMITED THIRD-PARTY DISCLOSURES.** The parties and Counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs i – iv. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.
- i. COUNSEL.** Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action but only if:
 - a.** It is necessary to disclose the designated document to them for purposes of this action;
 - b.** They are under the supervision and control of litigation counsel; and
 - c.** All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound.
 - ii. THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;
 - iii. OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound; and

- iv. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient; and
- v. **CONSULTING AND TESTIFYING EXPERTS.** Consulting or testifying experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound. A party may not disclose Confidential Information to experts unless: 1) it is necessary to disclose the designated document to them for purposes of this action; 2) they are not parties or producing third parties, or affiliates of parties or producing third parties; and 3) they are not officers, directors or employees of parties or producing third parties, or affiliates of parties, or of competitors or vendors or customers of parties or producing third parties.
- c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.
- d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with

the designation CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

- e. **COMPETITION.** Notwithstanding the foregoing provisions of this Protective Order, information and documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall not be disclosed or provided, under any circumstance, to any attorney or law firm that competes with Defendants.
7. **INADVERTENT PRODUCTION.** Inadvertent production of any document or information without a designation of CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or any inadvertent production of a document protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege shall be governed by Ohio R. Evid. 501. Such inadvertent production of such a document or information shall not be deemed a waiver of that privilege or protection or of the producing party's right to assert that the document is CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or is protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege. The receiving party shall treat the document or information as if it were so designated as confidential, protected, or privileged.
8. **FILING OF CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER DOCUMENTS OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER UNDER SEAL.** The Court highly discourages the manual filing of any pleadings or documents under seal. However, to the extent that a brief, memorandum, or pleading references any document marked as CONFIDENTIAL –

SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, then the brief, memorandum, or pleading shall refer the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.

- a. Before any document marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER is filed under seal with the Clerk, the filing party shall first consult with the party that originally designated the document as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER to determine whether, with the consent of that party, the document or a redacted version of the document may be filed with the Court not under seal.
- b. Where agreement is not possible or adequate, before a CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER document is filed with the Clerk, it shall be placed in a sealed envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER," displaying the case name, docket number, a designation of what the document is, the name of the party on whose behalf it is submitted, and the name of the attorney who has filed the documents on the front of the envelope. A copy of any document filed under seal shall also be delivered to the judicial officer's chambers.
- c. To the extent that it is necessary for a party to discuss the contents of any confidential information or designated document in a written pleading, then such portion of the pleading may be filed under seal with leave of Court. In such circumstances, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents. The confidential version shall be a full and complete version of the pleading and shall be filed with the Clerk under seal as

above. A copy of the unredacted pleading also shall be delivered to the judicial officer's chambers.

- d. The party seeking to file a brief, pleading, or exhibit under seal shall first file a motion for leave to file under seal prior to filing such brief, pleading, or exhibit.

9. CHALLENGES BY A PARTY TO DESIGNATION AS CONFIDENTIAL. Any

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party with standing to object (hereafter "party"). Before filing any motions or objections to a confidentiality designation with the Court, the objecting party shall have an obligation to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

- 10. ACTION BY THE COURT.** Applications to the Court for an order relating to any documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall be by motion and any other procedures set forth in the presiding judge's standing orders or other relevant orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

- 11. USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION AT TRIAL.** All trials are open to the public. Absent order of the Court, there will be no restrictions on the use of any document that may be introduced by any party during the trial. If a party intends to present at trial CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom, such party shall provide advance notice to the other party at least ten days before the commencement of trial by identifying the documents or information at issue as specifically as possible (*i.e.*, by

Bates number, page range, deposition transcript lines, etc.) without divulging the actual
 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL:
 ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or
 information. The Court may thereafter make such orders as are necessary to govern the
 use of such documents or information at trial.

12. OBLIGATIONS ON CONCLUSION OF LITIGATION.

- a. **ORDER REMAINS IN EFFECT.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

13. RETURN OF CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

- a. **RETURN OF CONFIDENTIAL DOCUMENTS.** Within 30 days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶¶ 5(d) and 6(d), shall be returned to the producing party unless: 1) the document has been offered into evidence or filed without restriction as to disclosure; 2) the parties agree to destruction in lieu of return; or 3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certified to a producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or

CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents.

- b. **RETURN OF DOCUMENTS FILED UNDER SEAL.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.
14. **ORDER SUBJECT TO MODIFICATION.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter.
15. **NO PRIOR JUDICIAL DETERMINATION.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Ohio Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.
16. **PERSONS BOUND.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

IT IS SO ORDERED



JUDGE ALISON BREAU

CC: ALL PARTIES OF RECORD

1

1 IN THE COURT OF COMMON PLEAS

2 SUMMIT COUNTY, OHIO

3 MEMBER WILLIAMS, et al.,

4 Plaintiffs,

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

6 KISLING, NESTICO

7 & REDICK, LLC, et al.,

8 Defendants.

9 - - - - -

10 Attempted deposition of JULIE GHOUBRIAL,

11 taken as if upon examination before Brian A.

12 Kuebler, a Notary Public within and for the State

13 of Ohio, at The Pattakos Law Firm, LLC, 101 Ghent

14 Road, Fairlawn, Ohio, at 10:31 a.m. on Thursday,

15 April 18, 2019, pursuant to notice and/or

16 stipulations of counsel, on behalf of the

17 Plaintiffs.

18 - - - - -

19 JK COURT REPORTING

20 55 PUBLIC SQUARE

21 SUITE 1332

22 CLEVELAND, OHIO 44113

23 (216) 664-0541

24 www.jarkub.com

25

3

1 David M. Best, Esq. (Via phone)

2 David M. Best Co., LPA

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4 Akron, Ohio 44333

5 (330) 665-1855

6 dmbest@dmbestlaw.com

7 On behalf of the Defendants,

8 Kisling Nestico & Redick, LLC

9 and Ghoubrlal, Inc.

10 Gary M. Rosen, Esq. (Via phone)

11 Day Ketterer

12 200 Market Avenue N

13 Suite 300

14 Canton, Ohio 44702

15 (330) 455-0173,

16 On behalf of Julie Ghoubrlal.

17 ALSO PRESENT:

18 Peter Graves - videographer

19

20

21

22

23

24

25

2

1 APPEARANCES:

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3 Rachel Hazelet, Esq.

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9 On behalf of the Plaintiffs;

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16 and

17 James M. Popson, Esq. (Via phone)

18 Sutter, O'Connell

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21 Cleveland, Ohio 44114

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24 On behalf of the Defendants,

25 Kisling, Nestico & Redick, LLC;

Brad J. Barmen, Esq. (Via phone)

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Cleveland, Ohio 44114

(216) 344-9467

On behalf of the Defendants,

Sam N. Ghoubrlal, MD;

4

1 - - - - -

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

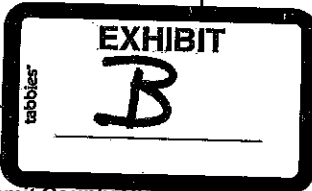
21 call the Judge -- dial the Judge in.

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.

6

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 --

7

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.

9

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

10

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

11

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

12

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

14

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,

17	<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 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</p>	19	<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 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</p>
18	<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>	20	<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 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</p>

21	23
<p>1 --</p> <p>2 MR. MANNION: Wait a minute, wait</p> <p>3 a minute. Attorney Best was saying</p> <p>4 something and you cut him off, Peter.</p> <p>5 MR. BEST: We don't even have the</p> <p>6 lawyers here, we're in different cities</p> <p>7 right now, so Pattakos you think you're the</p> <p>8 judge, but you're not, the judge --</p> <p>9 THE JUDGE: Yeah, I heard that --</p> <p>10 MR. BEST: -- said</p> <p>11 (unintelligible) 15 days, so we'll get a</p> <p>12 date that works for everybody.</p> <p>13 THE JUDGE: Okay. I agree with</p> <p>14 Attorney Best on that. Okay. So get that</p> <p>15 settled. If you're in two different cities</p> <p>16 -- I thought you were all sitting pretty</p> <p>17 close -- you were close, but I realize</p> <p>18 you're some distance away, so get that set</p> <p>19 up appropriately for all of you, okay? On</p> <p>20 the Ghoubrial deposition.</p> <p>21 MR. MANNION: Thank you, Your</p> <p>22 Honor.</p> <p>23 THE JUDGE: And all these other</p> <p>24 orders I'll put on, but right now I'm not</p> <p>25 in a position to do that. And the lady</p>	<p>1 MR. BEST: -- and so that's the</p> <p>2 position you're putting these people in, he</p> <p>3 has no integrity about confidentiality.</p> <p>4 And while it may be sealed and it may be</p> <p>5 only theoretically for your eyes, that's</p> <p>6 not the way it works in the real world, he</p> <p>7 has no integrity.</p> <p>8 THE JUDGE: Well, then you move to</p> <p>9 hold him in contempt, okay?</p> <p>10 MR. BEST: Yeah, well, then the</p> <p>11 cat's out of the bag and then this is</p> <p>12 already in the press and then these</p> <p>13 peoples' businesses destroyed potentially</p> <p>14 because he makes stuff up, so that's the</p> <p>15 world we live in unfortunately, Judge --</p> <p>16 THE JUDGE: Doesn't the affidavit</p> <p>17 or the Complaint itself, which is -- which</p> <p>18 is not protected under the protective</p> <p>19 order, have all these details in it</p> <p>20 already?</p> <p>21 MR. PATTAKOS: It does, Your</p> <p>22 Honor.</p> <p>23 MR. BARMEN: They're allegations,</p> <p>24 Your Honor. And much like -- this is Brad</p> <p>25 Barmen -- much like Mr. Pattakos in the</p>
22	24
<p>1 that's helping up in Akron, will put those</p> <p>2 orders on pursuant to my decision.</p> <p>3 Let's get these depositions done</p> <p>4 that KNR wants done, no more delays, let's</p> <p>5 get the Ghoubrial deposition done, file it</p> <p>6 under seal for my in-camera inspection and</p> <p>7 I'll put an order on to that effect, okay?</p> <p>8 MR. PATTAKOS: Thank you, Your</p> <p>9 Honor.</p> <p>10 MR. MANNION: Thank you, Your</p> <p>11 Honor.</p> <p>12 MR. BEST: Judge, you know, one of</p> <p>13 the problems we have here is Mr. Pattakos</p> <p>14 doesn't care about confidentiality orders.</p> <p>15 He puts stuff on his website, he puts it</p> <p>16 out in the public, he gives it to</p> <p>17 reporters. If he would ever get that</p> <p>18 confidential information -- and I was</p> <p>19 involved in a separate capacity during the</p> <p>20 divorce for the corporate defendants --</p> <p>21 THE JUDGE: Uh-huh.</p> <p>22 MR. BEST: -- I know Mr. Pattakos</p> <p>23 will not care about your order and he will</p> <p>24 violate it --</p> <p>25 THE JUDGE: Well --</p>	<p>1 motions he filed and what he's represented</p> <p>2 to the Court about you previously ordering</p> <p>3 that Julie Ghoubrial's testimony is highly</p> <p>4 relevant, your order says based on</p> <p>5 Pattakos' representation --</p> <p>6 THE JUDGE: That's right, that's</p> <p>7 right.</p> <p>8 MR. BARMEN: -- and his</p> <p>9 allegations are the same. You have not</p> <p>10 held that any of this stuff is true.</p> <p>11 There's been no ruling that these</p> <p>12 allegations have merit, they're just</p> <p>13 allegations --</p> <p>14 THE JUDGE: I understand that.</p> <p>15 MR. BARMEN: -- and it's the same</p> <p>16 thing with his representations about what</p> <p>17 Julie Ghoubrial allegedly testified to.</p> <p>18 One of the issues I've raised multiple</p> <p>19 times, how would he know what she testified</p> <p>20 to in the divorce --</p> <p>21 MR. PATTAKOS: Because --</p> <p>22 MR. BARMEN: -- that was</p> <p>23 confidential?</p> <p>24 MR. PATTAKOS: -- because she --</p> <p>25 MR. BARMEN: Whether he's grasping</p>

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

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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.

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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

<p style="text-align: right;">33</p> <p>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</p>	<p style="text-align: right;">35</p> <p>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 --</p>
<p style="text-align: right;">34</p> <p>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</p>	<p style="text-align: right;">36</p> <p>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.</p>

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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

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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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1
 2
 3 CERTIFICATE
 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

<p>1</p> <p>101 [2] - 1:12, 2:3 104 [2] - 8:5, 8:8 10:00 [1] - 29:16 10:31 [1] - 1:13 12 [1] - 39:20 12th [1] - 15:6 1301 [1] - 2:13 1332 [2] - 1:19, 39:19 1375 [2] - 2:8, 2:18 15 [2] - 19:4, 21:11, 28:20 18 [1] - 1:14</p>	<p>44114 [3] - 2:8, 2:13, 2:18 44115 [1] - 39:19 44333 [2] - 2:3, 3:2 44702 [1] - 3:8 465-0173 [1] - 3:9 4900 [1] - 3:2 491US554 [1] - 14:12</p>	<p>aided [1] - 39:10 Akron [3] - 2:3, 3:2, 22:1 af [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, 19:26, 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</p>	<p>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 Brfsbois [2] - 2:7, 2:17 Brogan [4] - 4:24, 6:12, 34:15 businesses [1] - 23:13 bye [1] - 27:9</p>	<p>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 [6] - 2:8, 2:13, 2:18, 39:12, 39:19 client [1] - 32:9 clients [10] - 31:7, 34:1, 34:19, 35:1, 36:5, 35:12, 35:14, 36:16, 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</p>							
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