

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: "AF"

CASE NO.: 502023CA015733XXXAMB

BETH SAFFER and ARTHUR
ROBINS, individually and on behalf
of others similarly situated,

Plaintiffs,

v.

SANDRA KLIMAS, an individual;
ROBERT THOM aka ROB THOM, an
individual; ANTHONY DiGENNARO,
an individual; and ROBERT STERN aka
BOB STERN, an individual,

Defendants.

**DECLARATION OF ELAD BOTWIN IN SUPPORT
OF PLAINTIFFS' MOTION TO STRIKE MOTION FOR
PROTECTIVE ORDER FOR FAILURE TO COMPLY WITH LOCAL RULE 4**

I, Elad Botwin, declare:

1. I am an attorney at law duly licensed to practice in the State of Florida and am Of Counsel to the law firm of Sanchez-Medina, Gonzalez, Quesada, Lage, Gomez & Machado, LLP, and we represent the interests of Plaintiffs – who are elderly homeowners – on a purely *pro bono* basis. The reason for our *pro bono* representation in such a large litigation matter is that lives of hundreds of elderly, middle class, homeowners hang in the balance considering what we believe to be happening with respect to the Defendants' malfeasance.

2. I have personal knowledge of the following facts and if called to testify I could and would competently testify thereto.

3. Appended hereto as Exhibit 1 is a true and correct copy of 15th Judicial Circuit Local Rule 4. I retrieved this copy from the 15th Circuit's website at the following link: <https://www.15thcircuit.com/sites/default/files/administrative-orders/1.004.pdf>.

4. I state unequivocally that counsel for the Defendants never attempted to comply with Local Rule 4, which is why no certification is included with their motion. Indeed, had I even known that their motion would be based upon "immunity from litigation" I would have provided them with even more controlling authority that the Defendants are not immune in this case from litigation, as opposed to being immune from certain kinds of liability for ordinary negligence. These authorities will be included with Plaintiff's opposition papers, to be filed tomorrow.

5. Appended hereto as Composite Exhibit 2 is a true and correct copy of email correspondence between me and Kevin P. Yombor, counsel for Defendants on December 18 and December 19, 2023. Certain portions of pages 2, 3, and 5 of this Exhibit are highlighted to show where I supplied Mr. Yombor with controlling case law in Florida showing that the Defendants are not entitled to any relief with respect to the matters concerning their Motion for Protective Order separate and apart from the issue of immunity which was never interposed as a grounds for the stay of litigation the Defendants have been insisted upon. Instead, the Defendants raised some weird "closing of the pleadings" grounds which I provided case law refuting: as Exhibit 2 shows, in Florida the pendency of a motion to dismiss is no grounds to halt discovery.

6. Composite Exhibit 2 contains all substantive correspondence concerning the parties' attempts to resolve the issue of discovery. The Defendants did not include this full email

trail because they obviously knew my citation to controlling authority and their response made them look somewhat less than confident in their position at the time.

7. Counsel for Defendants did not make any attempt whatsoever to confer in-person or telephonically with me and/or other of Plaintiffs' counsel regarding these matters.

8. To reiterate, I have reviewed Defendants' Motion for Protective Order and it does not have any kind of in-person or telephonic conferral certification as required by Local Rule 4, paragraph 4. I have demanded that the Defendants withdraw their Motion and they have refused. To be sure, Plaintiffs substantive opposition will be filed tomorrow. But under Local Rule 4, I am duty bound to seek an order striking the Defendants' Motion so this Court is not burdened with lawyers who flout the Court's local rules.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true and correct.

Dated: December 27, 2023

/s/ El'ad D. Botwin
ELAD BOTWIN

EXHIBIT 1

(To Botwin Decl.)

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4*

IN RE: UNIFORM MOTION CALENDAR AND
SPECIALLY SET HEARINGS

_____:

Pursuant to the authority conferred by Rule 2.215(e), Fla. R. Jud. Admin., it is
ORDERED as follows:

1. Circuit and **County Court** judges in each division shall conduct a **Uniform Motion Calendar** on days and at a time specified by the judges of the division.
2. Prior to **filing and serving a Notice of Hearing for a Uniform Motion Calendar hearing or a specially set hearing**, the attorney noticing the motion for hearing shall attempt to resolve the matter and shall certify the good faith attempt to resolve.¹
3. The term "attempt to resolve the matter" in paragraph 2 shall require counsel to make reasonable efforts to speak to one another (in person or via telephone) and engage in reasonable compromises in a genuine effort to resolve or narrow the disputes before seeking Court intervention.² All parties are to act courteously and professionally in the attempted resolution of the disputes prior to **filing and serving a Notice of Hearing including responding timely to counsel who initiated the attempt to resolve the matter**.
4. All notices of hearings for matters scheduled on the Uniform Motion Calendar **or on a special setting** shall set forth directly above the signature block, the below certifications

¹ The requirements of this rule do not apply when the moving party or non-moving party is pro se.

² The requirements of this rule do not preclude the use of e-mail or other written communication in an effort to resolve a pending motion. Compliance with this rule, including "making reasonable efforts to speak to one another" in person or by telephone before filing and serving a Notice of Hearing is required when e-mail or other written communication efforts are unsuccessful.

without modification and shall designate with a check mark or other marking the specific certification(s) **that apply**:

_____ *Movant's attorney has spoken in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.*

_____ *Movant's attorney has attempted to speak in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion.*

_____ *One or more of the parties who may be affected by the motion are self represented.*

5. Failure to make a good faith attempt at resolving the issues may, in the Court's discretion, result in the motion being stricken from the Uniform Motion Calendar **or specially set hearing** and/or the imposition of sanctions. The Court may waive the good faith attempt at resolving the issues in appropriate circumstances.
6. **The attorney attending the hearing on behalf of the movant, as well as any attorney who is covering the hearing for another attorney, shall be prepared to specify to the Court the efforts made to confer when the parties' attorneys have not spoken.**
7. To the extent **reasonable**, the **movant's attorney** shall advise the Court in advance of the hearing of cancellation, or resolution of some or all of the issues raised by the motion.
8. **On Uniform Motion Calendar**, hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.
9. The moving party must furnish the Court with a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all **relevant** documents, pleadings and case authority which they wish the Court to consider.
10. Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall **file and serve** opposing counsel **with a Notice of Hearing** pursuant to the applicable rules of procedure, and the Standards of Professional Courtesy and Civility (**the "Standards"**), which have been endorsed by the judges of the Fifteenth Judicial Circuit. **The Standards are available on the Fifteenth Judicial Circuit and the Palm Beach County Bar Association websites.**
11. **Cases on the uniform motion calendar will be called** for hearing in the order in which **they appear on the sign-in sheet for that day**. Failure of any party to appear at the time

set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Palm Beach County,
Florida, this 18th day of July, 2017.



The image shows a handwritten signature in black ink over a circular official seal. The seal contains the text 'THE JUDICIAL BRANCH' and 'ADMINISTRATIVE OFFICE OF THE COURT'. The signature is written in a cursive style.

Krista Marx
Chief Judge

*Further amends the amendments to Local Rule 4 approved in 2015. Amendments (in bold) approved by the Supreme Court of Florida, June 29, 2017.

NOT A CERTIFIED COPY

COMPOSITE

EXHIBIT 2

(To Botwin Decl.)

NOT A CERTIFIED COPY

Elad Botwin

From: Elad Botwin
Sent: Tuesday, December 19, 2023 1:35 PM
To: Kevin P. Yombor
Cc: Labeed Choudhry; Tamara Bell; Samantha Franchi; Gustavo D. Lage; Raúl A. Reichard, Esq.
Subject: Re: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

Kevin:

Please do not lie. I have asked repeatedly for a reasonable date for the deposition convenient to your calendars. Further, I have offered to provide you with reasonable extensions for the documentary discovery.

Avail yourselves of my reasonable offers and I will respond. Continue playing games I will insist our notices be adhered to the letter.

I await reasonable dates for your compliance and the term reasonable dates does not mean "after motions are heard" but, for your assistance, involve simply looking at calendars and doing nothing else. Again, in the event gamesmanship persist, we expect to be awarded substantial sanctions in connection with this particular dispute.

Sincerely,
Elad

ELAD BOTWIN, OF COUNSEL
SMGQ LAW

201 Alhambra Circle | Suite 1205 | Coral Gables, Florida 33134
Office: 305.377.1000 | Direct: 727.215.2504 | Facsimile: 855.327.0391
ebotwin@smgqlaw.com | SMGQLAW.com

From: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Sent: Tuesday, December 19, 2023 1:08:34 PM
To: Elad Botwin <ebotwin@smgqlaw.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

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Elad,

We are not ceasing to take any position or admitting to any position through our emails. Nor are we retracting any positions We simply are seeking to find common ground to reschedule a deposition you unilaterally scheduled in violation of the rules of professional conduct. Based upon your email, it seems evident that you have no intention to reschedule the deposition. As such, we will take any and all steps needed to protect our clients.

Respectfully,

Kevin

Kevin P. Yombor

Partner

We have changed our email addresses to @KaufmanDolowich.com.
Please update your files with our new contact information. We will continue to receive emails sent to kdvlaw.com for a period of time.

KAUFMAN | DOLOWICH

100 SE Third Avenue, Suite 1500
Fort Lauderdale, FL 33394

Direct: 954-302-2742
Cell: 954-249-9894
Email: kyombor@kaufmandolowich.com

Mansfield Rule

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Please consider the environment before printing.

From: Elad Botwin <ebotwin@smgqlaw.com>

Sent: Tuesday, December 19, 2023 1:00 PM

To: Kevin P. Yombor <kyombor@kaufmandolowich.com>

Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>

Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXXX-MB

[EXTERNAL SENDER]

Kevin:

You have now ceased from alleging "unilateral" deposition violations and further ceased from alleging that discovery is barred until "the pleadings are closed" (your words, not mine). That is a good thing since now we are narrowing the issues, which is in furtherance of judicial economy. Instead, your claim now is pursuant to Fla. R. Civ. P. 1.280(g) through your allegation that the "scope of the subject matter won't be known until after [your] motion is heard."

At the outset, you now tacitly admit that Fla. R. Civ. P. 1.310(a) permits any plaintiff to take the deposition "of any person, including a party" after commencement of the action." We cited this statute for you before (following your "no discovery until the pleadings are closed" preposterousness) and you have now relented and conceded we are right.

Contemplated **Motion For Sanctions For Discovery Abuses:**

Unfortunately, you have now decided to take another unsupportable position. Because of that position, the following email to you is a "set up" email, which sets up Plaintiffs' claim for monetary sanctions and default judgment in event you continue on with your apparent nonsense. As we have always done with you and your clients, we are going to carefully

guide you through the applicable authorities so there will be no doubt you will be sanctioned in the event you continue ignoring your discovery obligations.

In the first instance, the problem with your latest analysis is that Section 1.280(b) clearly identifies several areas of questioning we have undertaken regarding documents in our document production requests, not to mention areas we are entitled to delve into in the deposition of Mr. Stern. For example, that section permits us to “obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery” Currently, there is a pending action and we are entitled to conduct discovery about it, which is what we are doing. We frankly don't care what frivolous motion to dismiss you intend to file, because our “pending action” sets forth important claims involving the very lives of elderly citizens and the potential theft and definite mismanagement by your clients. If you believe your clients are going to get away with theft, monetary diversions and asset diversions from the Palm Greens 1 and Palm Greens 2 communities, through your law firm's desire to make up new discovery rules, you will learn you are sadly mistaken.

The courts require that you demonstrate good cause by filing a motion in the event you wish to obtain relief from the rules governing discovery. Surely you know that only the “trial court has ... authority to regulate as well as to prevent the taking of depositions, but when this authority is exercised it should be only upon a showing of good cause by the party seeking to prevent discovery” by filing a motion setting forth the good cause-reasons. *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607, 610 (Fla. 4th DCA 1975). As the Court explained in *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976): “Since our Rules of Civil Procedure are patterned very closely after the Federal rules, and it has been the practice of the Florida courts closely to examine and analyze the Federal decisions and commentaries under the Federal rules in interpreting ours we turn, in the absence of a Federal decision on point, to Moore's Federal Practice, 2nd Edition, pgs. 493—495 and cite the test therein [involving the rule that “[a]ll motions under these subparagraphs of the rule must be supported by ‘good cause’ and a strong showing is required before a party will be denied entirely the right to take a deposition.” *Id.*, at 1170.

In furtherance of our attempt to obtain monetary sanctions and dismissal should your misconduct continue throughout the early phases of this case -- e.g., you have already taken and retracted four positions about why the deposition and discovery are being blocked by you -- please be advised that the exact position taken by you has been rejected by Florida's Courts of Appeal. Indeed, your position about wanting your motions to be heard before discovery was rejected in numerous cases, including Maris Distrib. Co. v. Anheuser-Busch, Inc., 710 So. 2d 1022, 1024–25 (Fla. 1st DCA 1998).

It is well settled that “a party may be permitted to discover relevant evidence that would be inadmissible at trial, so long as it may lead to the discovery of admissible evidence.” *Amente v. Newman*, 653 So.2d 1030, 1032 (Fla. 1995). “In short, the trial court may limit discovery only when the moving party has made an affirmative showing of good cause.” *Maris Distrib. Co.*, 710 So. 2d at 1024–25 (citing *Deltona Corporation v. Bailey*, 336 So.2d 1163, 1169 (Fla. 1976)). “[T]he pendency of unresolved motions ‘is not sufficient good cause shown within the purview of Rule 1.280(c) to justify postponing discovery for the protracted period of time which elapsed in the case at bar.’” *Deltona Corp.*, 336 So.2d at 1169 (citing *Smith v. Southern Baptist Hospital*, 564 So.2d 1115, 1118 (Fla. 1st DCA 1990) (emphasis added); *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607, 610–611 (Fla. 4th DCA 1975)).

When you change your position again on this matter and look for other authorities and reasons to attempt to avoid lawful discovery, it is advisable that you do a modicum of research to assure you are not placing yourself in a land of significant exposure to monetary sanctions and possible default judgment.

In closing, the discovery will go forward as noticed. Each position you have taken is contrary to law that we have cited for you. There is no “close the pleadings first” rule about discovery. There is no “scope of discovery” limitation circumventing Rule 1.310(a). In the event you wish to become reasonable and work out an ironclad and sensible schedule for your compliance with the outstanding discovery, please let me know as I am always amenable to extending professional courtesies. What I am not amenable to is gamesmanship and miscitation to the law, and if you continue on your current trek, we intend to either get judgment or substantial monetary sanctions (as explained above).

Respectfully,
Elad

ELAD BOTWIN, OF COUNSEL



SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, GOMEZ & MACHADO LLP

201 Alhambra Circle | Suite 1205 | Coral Gables, Florida 33134
Office: 305.377.1000 | Direct: 727.215.2504 | Facsimile: 855.327.0391
ebotwin@smgqlaw.com | SMGQLAW.com

From: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Sent: Tuesday, December 19, 2023 9:16 AM
To: Elad Botwin <ebotwin@smgqlaw.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXXA-MB

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Elad,

Fla. R. Civ. P. 1.280(b) governs the scope of discovery. A Party may only obtain discovery relevant to the subject matter. As we will be filing a motion to dismiss, the scope of the subject matter won't be known until after our motion is heard. We don't yet know the Court's schedule for special set hearings. We hope we can have the matter heard and resolved in February/March. As such, please provide your availability for April and May for Mr. Stern's deposition. Of course, should the Court's calendar not permit our motion to be heard and resolved by that time, we will be requiring the deposition to be rescheduled.

We continue to reserve all rights.

Kevin

Kevin P. Yombor
Partner

We have changed our email addresses to @KaufmanDolowich.com.
Please update your files with our new contact information. We will continue to receive emails sent to kdvlaw.com for a period of time.

KAUFMAN | DOLOWICH

100 SE Third Avenue, Suite 1500
Fort Lauderdale, FL 33394

Direct: 954-302-2742

Cell: 954-249-9894
Email: kyombor@kaufmandolowich.com

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From: Elad Botwin <ebotwin@smgqlaw.com>
Sent: Monday, December 18, 2023 7:19 PM
To: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

[EXTERNAL SENDER]

Kevin:

Your position that no deposition will be permitted until “the pleadings have been closed” stands in direct violation of Fla. R. Civ. P. Rule 1.310(a) which provides that depositions of “any person” may be taken “after the commencement of the action.” This is the law regarding all pretrial discovery. *See, e.g., Id.*, Rules 1.310(a), 1.320(a), 1.340(a), 1.350(b) and 1.290(a), Florida Rules of Civil Procedure.

These rules are particularly applicable here considering the circumstances of this case where (for example), earlier this evening, we learned that Mr. Stern announced in writing that he is directing the theft of approximately \$200,000.00 from the Recreation Association. This announcement by Mr. Stern contravenes not one and not two, but three different legal opinions issued over the past 14 months by three different law firms, none of which relied on the other in order to craft their opinion letters. Each of the opinions concluded that this diversion of funds was illegal after citation to significant authorities. Therefore, an emergent situation exists where insolvency is in the cards for your clients' principal and its thousands of residents and homeowners: we again remind you of your ethical obligations to such homeowners, as well as of the obligations owed by all persons paying your legal fees who have contractual or fiduciary duties to such homeowners. If you know of ongoing unlawful or quasi-criminal misconduct, you are duty bound to stop such conduct where it stands and certainly are not permitted to assist in achieving unlawful objectives.

Indeed, we are not going to play games with you and are expressly notifying you that the activities now do indeed border serious misconduct -- unless of course you can find caselaw supporting a fiduciary's diversion of hundreds of thousands of dollars in contravention of three legal independently issued opinion letters in which case we would be happy to review the caselaw or authorities you are relying on. For example, if Mr. Stern received a legal opinion from qualified counsel approving of the diversion -- or if you are providing such opinion -- please just provide us with the documentation and perhaps we may be willing to relent.

And your repeated insistence that we unilaterally noticed the deposition is belied by the fact that we have consistently told you that any date you wish to choose for Mr. Stern's deposition is acceptable to us.

The deposition will go forward either on a date chosen by you convenient to your and your client's calendar or, if you continue to persist with frivolity, on the date noticed considering you will not agree to any other calendar date.

Furthermore, we expect all discovery served today to be timely responded to, unless you reach an agreement with us for an extension. The law is very clear that there is no rule that “discovery is disallowed before the pleadings are closed” -- as you claim -- and in fact the rules and cases are expressly to the contrary, with parties typically being sanctioned for taking such frivolous positions.

Govern yourself accordingly.

Respectfully,
Elad

ELAD BOTWIN, OF COUNSEL



SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, GOMEZ & MACHADO LLP

201 Alhambra Circle | Suite 1205 | Coral Gables, Florida 33134
Office: 305.377.1000 | Direct: 727.215.2504 | Facsimile: 855.327.0391
ebotwin@smgqlaw.com | SMGQLAW.com

From: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Sent: Monday, December 18, 2023 5:11 PM
To: Elad Botwin <ebotwin@smgqlaw.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

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Elad,

It is you and your firm's practice to breach the standards of professional courtesy and civility by unilaterally schedule and notice depositions and then inviting us to schedule a deposition improperly scheduled by you? Seems backwards.

This matter is still in the pleading stages. We will not agree to any deposition date until the pleadings have been closed. The pleadings will not be closed on January 4: the date you unilaterally scheduled for this deposition. Pleadings likely wont be closed for sometime.

We will not allow our client to be deposed until the pleadings have been closed. Once the pleadings are closed we can coordinate and schedule Mr. Stern's deposition.

Please confirm you will be cancelling the improperly noticed deposition until after pleadings have been closed.

Thanks

Kevin

Kevin P. Yombor

Partner

We have changed our email addresses to @KaufmanDolowich.com. Please update your files with our new contact information. We will continue to receive emails sent to kdvlaw.com for a period of time.

KAUFMAN | DOLOWICH

100 SE Third Avenue, Suite 1500
Fort Lauderdale, FL 33394

Direct: 954-302-2742
Cell: 954-249-9894
Email: kyombor@kaufmandolowich.com

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Please consider the environment before printing.

From: Elad Botwin <ebotwin@smgqlaw.com>

Sent: Monday, December 18, 2023 4:43 PM

To: Kevin P. Yombor <kyombor@kaufmandolowich.com>

Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>

Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

[EXTERNAL SENDER]

Kevin:

It goes without saying that you may change the date of Mr. Stern's deposition to whatever you believe to be a more convenient date for your respective calendars. That protocol is standard and accepted practice and our firm's policy, with every deposition notice we serve as an invitation to you to choose alternative dates acceptable to you.

You will find that attempting to litigate this matter regarding frivolous issues will get you nowhere but in worse shape. Either give us a date convenient to you and Mr. Stern's calendar or appear on the date noticed. If you do not do so, that will be Exhibit 1 for the proposition that you are not cooperating on reaching an agreeable date for the deposition.

As I said before, I am always appreciative of your professionalism if and when it occurs, which does not include your most recent email where instead of telling us about acceptable dates you simply attacked me. You are not going to find professional courtesies regularly forthcoming in such an environment and you will ultimately find you might need such benefits considering the weakness of your position.

Govern yourself accordingly.

Sincerely,

Elad

ELAD BOTWIN, OF COUNSEL



SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, GOMEZ & MACHADO LLP

201 Alhambra Circle | Suite 1205 | Coral Gables, Florida 33134
Office: 305.377.1000 | Direct: 727.215.2504 | Facsimile: 855.327.0391
ebotwin@smgqlaw.com | SMGQLAW.com

From: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Sent: Monday, December 18, 2023 4:21 PM
To: Elad Botwin <ebotwin@smgqlaw.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: RE: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

SECURITY NOTE: *This email has originated from OUTSIDE of SMGQ Law. Please exercise caution with attachments and links *

Elad,

Perhaps I missed the e-mails, but did your office coordinate the deposition for Mr. Stern with our office? Or did you simply unilaterally schedule a deposition without conferring with us? Please note that unilaterally scheduling depositions without communicating with us is a violation of the Palm Beach County Standards of Professional Courtesy and Civility.

If you sought to coordinate the depositions, please provide us with the e-mails, because none were received by me. I also did not receive any phone call from you concerning the topic. Should this be a unilaterally scheduled deposition, please confirm your agreement to cancel the deposition. Failure to do so will result in us filing a motion to strike the notice, where we will note your failure to comply with the applicable Professional Standards.

You have until the end of the day on Wednesday to cancel the deposition before we take action with the Court. If we need to file a motion to strike, we will seek our fees. And unlike you and your firm, we are not taking this case pro bono. So there will be fees incurred.

I do hope this is not how you intend to practice throughout this litigation.

Kevin

Kevin P. Yombor
Partner

We have changed our email addresses to @KaufmanDolowich.com.
Please update your files with our new contact information. We will continue
to receive emails sent to kdvlaw.com for a period of time.

KAUFMAN | DOLOWICH

100 SE Third Avenue, Suite 1500
Fort Lauderdale, FL 33394

Direct: 954-302-2742
Cell: 954-249-9894
Email: kyombor@kaufmandolowich.com

Mansfield Rule

Certified 2022-2023 DIVERSITY LAB

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Please consider the environment before printing.

From: Elad Botwin <ebotwin@smgqlaw.com>
Sent: Monday, December 18, 2023 4:12 PM
To: Kevin P. Yombor <kyombor@kaufmandolowich.com>
Cc: Labeed Choudhry <labeed.choudhry@kaufmandolowich.com>; Tamara Bell <tbell@kaufmandolowich.com>; Samantha Franchi <sfranchi@kaufmandolowich.com>; Gustavo D. Lage <GLage@smgqlaw.com>; Raúl A. Reichard, Esq. <raul@reichardtornes.com>
Subject: SERVICE OF COURT DOCUMENT -- Saffer, et. al., v. Klimas, et. al., 15th Fla. Jud. Cir. Case No. 50-2023-CA-015733-XXA-MB

[EXTERNAL SENDER]

Dear Kevin:

Enclosed herewith is new discovery served on you and your colleagues in connection with the class action complaint against your clients:

The following attached document(s) has/have been electronically served in accordance with Fla. R. Jud. Admin. 2.516:

Court	In The Circuit Court Of The Fifteenth Judicial Circuit in and for Palm Beach County, Florida
Case No.:	50-2023-CA-015733-XXA-MB
Style:	Saffer, et. al., v. Klimas, et. al.
Document(s):	Notice of Taking Deposition of Robert Stern Request for Production to Sandra Klimas Request for Production to Anthony DiGennaro Request for Production to Robert Stern Request for Production to Robert Thom
Attorney for Plaintiffs	Gustavo D. Lage, Esq., Telephone: (305) 377-1000

Naturally, as Mr. Stern's notice of deposition states, we are willing to forego making him appear in person if you wish to enter into the standard remote/Zoom stipulation: the choice is yours.

Although we were previously inclined to involuntarily stay proceedings in this matter considering what we felt were potentially favorable settlement negotiations, recent developments reflect that settlement does not appear to be a reasonable possibility for a whole host of reasons too extensive to merit serious discussion.

Finally, we plan to separately sue the insurer later this week and ask again whether you are authorized to accept service of process. If not, as we have indicated, we will proceed to serve the insurer directly and we are uncertain that is what the insurer wants to have happen considering the nature of the lawsuit.

Thank you for your continuing professionalism in this matter.

Sincerely,
Elad

ELAD BOTWIN, OF COUNSEL



SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, GOMEZ & MACHADO LLP

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