

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

MARNI BRYSON,

Case No.: 50-2019-CA-004756-XXXX-MB

Plaintiff,

v.

WILLIAM R. SCHERER JR., and
CONRAD & SCHERER, LLP,

Defendant.

/

**PLAINTIFF'S RESPONSE TO NON-PARTY TRIPP SCOTT, P.A.'S OBJECTION TO
SUBPOENA DUCES TECUM**

Marni Bryson ("Bryson") files this response to Non-Party Tripp Scott, P.A.'s ("Tripp Scott") Objection to Subpoena Duces Tecum¹.

This case centers on the use of an intimate photograph purportedly of Bryson to extort her into abandoning discovery in her marital proceeding. In their defense of this case, Defendants claim Bryson cannot claim intentional infliction of emotional distress because she disseminated the intimate photograph(s). No witness or party, however, has produced the native version or original electronic communication evidencing this dissemination. Instead, the documentation produced by Defendants includes print outs of e-mail communication between Peter Kemp ("Kemp") and Stephanie Toothaker ("Toothaker") where Kemp purportedly forwards Toothaker the intimate photograph(s). The e-mail address that received these communications included Toothaker's work e-mail address, "sjt@trippscott.com."² Toothaker testified that she no longer has in her possession the electronic records and she is not employed by Tripp Scott.

Additionally, Defendants produced an October 2015 affidavit executed by Kemp referring to and concerning the dissemination of an intimate photograph by Bryson.³ This affidavit directly

¹ Non Party Subpoena to Tripp Scott, attached as **Exhibit A**.

² Defendants Production at CS0032–CS0035 and Exhibits 6 and 7 to Toothaker Deposition, attached as **Exhibit B**.

³ Defendants Production at CS0078, attached as **Exhibit C**.

contradicts Kemp's text message with Bryson in which he unequivocally states he is unaware of any intimate photographs of her. Regardless, the affidavit is notarized by Tripp Scott employee Mindy Hertzog who Toothaker testified was her assistant while she was employed at Tripp Scott.⁴

Bryson issued an amended subpoena to Tripp Scott seeking e-mails for certain individuals during a particular period of time. *Importantly, the Court has already ruled that the period of time that Bryson is seeking records was appropriate for both non-parties Stephanie Toothaker and Peter Kemp.*

Without articulating any factual or legal basis, Tripp Scott objects to the subpoena.⁵ It is impossible to divine what the basis of the objection is. Counsel for Tripp Scott has ignored undersigned counsel's overtures to discuss the subpoena, what the actual basis of the objection is and how the parties can resolve some or all of the issues Tripp Scott may have to the subpoena. Regardless, based upon the record evidence, Bryson's subpoena for records to Tripp Scott will lead to the discovery of admissible evidence and Tripp Scott's objection should be overruled.

Memorandum of Law and Argument

A trial court possesses broad discretion in overseeing discovery. Rule 1.280 provides:

Parties may 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 or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Fla. R. Civ. P. 1.280(b)(1) (emphasis added).

I. Tripp Scott, P.A. Records Are Relevant to Defendants' Affirmative Defenses

From the outset of this case, the Defendants argue Bryson is the party who acted "irrationally

⁴ Toothaker deposition testimony at 12:21–25; 13:1–5, relevant portions of transcript attached as **Exhibit D**.

⁵ Tripp Scott's Objection to Subpoena Duces Tecum, attached as **Exhibit E**.

and compulsively in threatening Defendants' client" leading "Bryson to contact the estranged husband of Defendants' client [Kemp], invite him to meet for cocktails and then later the same evening send that man nude photos of herself."⁶ Bryson denies she ever sent a nude photograph to Kemp and contends the only person who would have access to any photograph of her is her prior husband, Blake MacDiarmid ("MacDiarmid"). Communication produced by the Defendants reflects Kemp sent Toothaker an e-mail containing intimate photographs—purportedly of Bryson and sent to him by Bryson—to Toothaker's former Tripp Scott e-mail address.⁷ Defendants swear, however, in responses to interrogatories they are not in possession and never were in possession of the native version of these communications.⁸

In light of these facts on the record, Bryson is entitled to evaluate the e-mail communications in Tripp Scott's possession for the specific time periods set forth to discover: 1) whether these forensic hallmarks exist and 2) explore the circumstances of how these photos were received in order to challenge the affirmative defenses asserted by Defendants.

II. Bryson's Subpoena to Tripp Scott is Narrowly Tailored Scope and in Time.

On April 30, 2020 Bryson filed a notice of intent to serve a subpoena to Tripp Scott. No party or other non-party objected and the subpoena was served. In this subpoena Bryson limited the time frame for the records sought.⁹ The two periods of time are from:

- 1) February 1, 2014 to November 1, 2014; and
- 2) May 1, 2015 to August 1, 2016.

The documentation sought is only for these time periods as the conduct and communication (and

⁶ Defendants' Answer and Affirmative Defenses to Complaint at p. 10, attached hereto as **Exhibit F**.

⁷ See Exhibit B.

⁸ Defendants' Amended Responses to First Interrogatories, Interrogatory No. 3 & Defendant's Responses to Plaintiff's Second Interrogatories, Interrogatory Nos. 1 and 2; Defendant's Response to Plaintiff Second Request for Production, Request No. 2, attached hereto as Composite **Exhibit G**.

⁹ See Exhibit A.

frequency or lack thereof) between the parties and non-parties at issue in this case took place over these time periods will lead to the discovery of admissible evidence. These timeframes are when the alleged intimate photos of Bryson were forwarded by Kemp to Toothaker.

Additionally, the subpoena is only limited to communications between and certain key witnesses in this case. The records sought are for communications between Tripp Scott employees, Stephanie Toothaker and Mindy Hertzog, and Kemp and Bryson's former husband MacDiarmid.

Finally, if Tripp Scott's objection is predicated on undue burden or cost in identifying responsive materials, it has failed to comply with Rule 1.410(c) which requires the producing party to show that "the information sought or the form requested is not reasonably accessible because of undue costs or burden." Tripp Scott has not proffered any factual basis to the time or cost that would result in searching for responsive materials. To the extent Tripp Scott raises this issue for the first time at a hearing, Plaintiff should be entitled to review the proffered undue burden or cost to either contest it or limit or revise the search criteria to accommodate any legitimate cost or burden issues.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document is being served, pursuant to Rule 2.516(b), Fla. R. Jud. Admin., via Florida Courts e-Filing Portal to the names and e-mail addresses provided by all parties, counsel of record, and pro se parties.

Dated: July 2, 2019

Respectfully submitted,

/s/Ariella Gutman

Paul D. Turner (113743) pturner@pbyalaw.com
Jonathan Feldman (12682) jfeldman@pbyalaw.com
Ariella Gutman (91447) agutman@pbyalaw.com
PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.
200 South Andrews Avenue, Suite 600
Fort Lauderdale, FL 33301
T: (954) 566-7117 / F: (954) 566-7115
Attorneys for Plaintiff

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

MARNI BRYSON,

Case No.: 50-2019-CA-004756-XXXX-MB

Plaintiff,

v.

WILLIAM R. SCHERER JR., and
CONRAD & SCHERER, LLP,

Defendant.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION
RECORDS MAY BE MAILED IN LIEU OF APPEARANCE

THE STATE OF FLORIDA:

TO: Records Custodian
Tripp Scott, P.A.
Via Its Registered Agent
Dennis D. Smith
110 SE 6th Street, 15th Floor
Ft Lauderdale, FL 33301

YOU ARE HEREBY COMMANDED to produce to **Perlman, Bajandas Yevoli & Albright, 200 S. Andrews Avenue Suite 600, Fort Lauderdale, FL 33301, on June 22, 2020 at 10:00 a.m.**, the following any and all documents in your possession, custody or control that may be considered responsive to the requests set forth in the Exhibit "A" appended to this Subpoena.

The items described in Exhibit "A" will be inspected and may be copied at that time. You will not be required to surrender the original items. **You may comply with this part of the subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation.**

You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. If you fail to:

1. appear as specified; or
2. furnish the records instead of appearing as provided above; or
3. object to this subpoena, you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN

Dated: May 29, 2020.

Issuing Attorney: /s/Paul Turner

Paul D. Turner (113743)

For the Clerk of the Court.

Paul D. Turner (113743) pturner@pbyalaw.com

Jonathan Feldman (12682) jfeldman@pbyalaw.com

Oliver M. Birman (123750) obirman@pbyalaw.com

PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.

200 South Andrews Avenue, Suite 600

Fort Lauderdale, FL 33301

T: (954) 566-7117 / F: (954) 566-7115

Attorneys for Plaintiff

COUNSEL FOR DEFENDANTS:

Gail A. McQuikin, Esq.

gam@kttlaw.com

Harley S. Tropin, Esq.

hst@kttlaw.com

KOZYAK TROPIN THROCKMORTON, LLP

2525 Ponce de Leon Boulevard, 9th Floor

Miami, FL 33134

Tel: (305) 372-1800 / Fax: (305) 372-3508

Bruce S. Rogow

brogow@rogowlaw.com

BRUCE S. ROGOW, P.A.

100 N.E. Third Ave., Ste. 1000

Fort Lauderdale, FL 33301

P: (954) 767-8909 / F: (954) 764-1530

DEFINITIONS

(a) The words “you,” or “your” shall mean Tripp Scott, P.A., or any of its predecessors, subsidiaries, or affiliates, and includes any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf.

(b) The word “document” shall mean any writing, recording, electronically stored information or photograph in your actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, plans, memoranda, notes, messages, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, microfilm, video tapes or tape recordings.

(c) The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

—remainder of page intentionally left blank; see Exhibit A the following page—

Exhibit A

All e-mail communications, including their attachments, during the time periods of: a) February 1, 2014, to November 1, 2014; and b) May 1, 2015, to August 1, 2016, by and between (current and/or former Tripp Scott employees) Stephanie Toothaker and Mindy Hertzog and the following email addresses: peter.kemp@chasepaymentech.com, jbm207@gmail.com, and peter.kemp@live.com.

NOT A CERTIFIED COPY

Affidavit of Tripp Scott, P.A.'s Records Custodian

STATE OF _____ }

COUNTY OF _____ }

Before me, the undersigned authority, personally appeared _____,
who was sworn and stated:

1. I am a resident of _____ County, in the State of _____ and a
citizen of the United States.

2. I am over the age of majority.

3. This affidavit is made based on my personal knowledge and my designation as
affiant for, and custodian of records for, Tripp Scott, P.A. (the "Company"), whose records I
reviewed in order to gather the knowledge sufficient to make these averments under oath. My title
is _____, a position that I have held for _____. In particular, I
have personal knowledge of the Company's record-keeping, and I am competent to testify on those
matters. Moreover, I have reviewed and am familiar with the discovery parameters that frame the
response of documents and information.

4. The records produced by the Company on or about _____, 2020
attached and incorporated hereto as "Exhibit A," in response to Plaintiff's Subpoena *Duces Tecum*
Without Deposition were made at or near the time of the occurrence of the matters set forth within
them and/or gathered from information transmitted by a person having knowledge of those matters;
were kept in the course of regularly conducted business of the Company; and were made as a
regular practice in the course of the regularly conducted activity of the Company.

5. The Company incorporated and produced some records provided by to the
Company by others in the regular course of business. The Company keeps these records in the

ordinary course of a regularly conducted business activity and the records are made either by a person having personal knowledge of the information contained therein or based on information conveyed by a person having knowledge of the information contained therein.

6. The records consist of both hard copy information and electronic information that is generated, stored, and maintained in accordance with generally accepted standards in the Company's industry by individuals that possess the knowledge and training necessary to ensure the accuracy and reliability of the records.

FURTHER AFFIANT SAYETH NAUGHT

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true and correct to the best of my knowledge and recollection.

Name:

Title:

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020, by _____, who is:

____ Personally known to me; or

____ Produced _____ as identification.

Notary Seal:

Notary Public

From: Peter Kemp <peter.kemp@live.com>
Date: August 16, 2014 at 12:57:29 AM EDT
To: Blackberry ID <stoothaker@hotmail.com>
Subject: Fwd: IMG_2025.jpeg

Sent from my iPhone

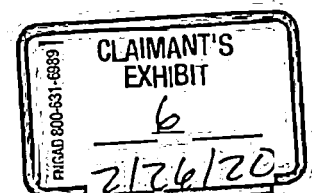
Begin forwarded message:

From: Peter Kemp <peter.kemp@live.com>
Date: August 16, 2014, 12:54:40 AM EDT
To: "Stephanie J. Toothaker" <sjt@trippscott.com>
Subject: Fwd: IMG_2025.jpeg

Sent from my iPhone

Begin forwarded message:

From: Peter Kemp <peter.kemp@live.com>
Date: July 11, 2014, 11:38:56 AM EDT
To: "peter.kemp@live.com" <peter.kemp@live.com>
Subject: IMG_2025.jpeg



REDACTED

NOT A CERTIFIED COPY

Sent from my iPhone

CONFIDENTIAL

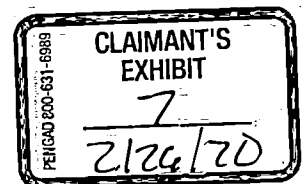
From: "Peter Kemp" <peter.kemp@live.com>
To: "Blackberry ID" <stoothaker@hotmail.com>
Subject: Fwd: IMG 1658.png

Sent from my iPhone

Begin forwarded message:

From: Peter Kemp <peter.kemp@live.com>
Date: July 17, 2014, 12:21:13 PM EDT
To: peter.kemp@live.com
Subject: IMG_1658.png

Sent from my iPhone



REDACTED

NOT A CERTIFIED COPY

CONFIDENTIAL

AFFIDAVIT OF PETER SCOTT KEMP

STATE OF FLORIDA }
 }
COUNTY OF BROWARD }

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, on this day personally appeared before me, PETER S. KEMP, who after being first duly sworn, deposes and says:

1. In June, 2014 Judge Marni Bryson transmitted to me a naked picture of herself via text message.
2. In approximately April 2015 Marni Bryson contacted me to tell me she was filing a legal motion against her ex-husband. During the conversation she shared specific passages of the motion that she stated were designed to embarrass Ms. Toothaker.
3. Also in June 2015, Judge Bryson and I discussed an "anonymous" letter that was mailed to many of Ms. Toothaker's law partners, the Broward County Commissioners, Delray Beach Commissioners, other elected officials, and Ms. Toothaker's private club that contained disparaging statements about Ms. Toothaker. The specific and unique information about Ms. Toothaker detailed in the letter was shared *by me directly* to Judge Bryson.
4. In September 24 2015 at 11:40PM Judge Bryson sent me an email that stated "Hey. Call me. You are getting a subpoena" in a matter to which I am neither a party nor involved. In a subsequent phone conversation she stated she was going to subpoena "Stephanie and all of Stephanie's friends".
5. On a number of occasions in 2014 and 2015, Judge Bryson stated to me that she intended to send at least one Palm Beach County Deputy to "interrogate" Stephanie Toothaker at Stephanie's office. She also stated there was a "task force" that was "going after Stephanie" at her request.
6. Judge Bryson on more than one occasion stated to me she is engaging in actions to cause Stephanie Toothaker to lose her Florida Bar license.
7. Judge Bryson also stated to me she is making attempts to use her "connections" to have Stephanie Toothaker's membership revoked at a private club that Ms. Toothaker is a member of.

8. Judge Bryson stated to me in the summer of 2015 she had spent at least \$1000.00 to send a process server on a number of days/nights to the home of Stephanie Toothaker to serve her ex-husband,

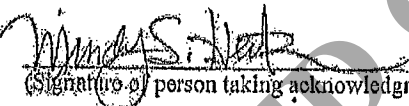
FURTHER AFFIANT SAYETH NAUGHT.


PETER S. KEMP

The foregoing instrument was acknowledged before me this 11 day of October 2015, by PETER S. KEMP who is personally known to me or who has produced (type of identification) as identification and who did (did not) take an oath.

(SEAL)




(Signature of person taking acknowledgment)

MINDY S. HERTZOG
(Name of Officer taking Acknowledgment)
[printed, typed or stamped]

(Title or rank)

(Serial Number, if any)

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 50-2019-CA-004756-XXXX-MB

MARNI BRYSON,

Plaintiff,

vs.

WILLIAM R. SCHERER, JR, and
CONRAD & SCHERER, LLP,
Defendants.

One East Broward Blvd,
Fort Lauderdale, Florida,
Wednesday, February 26, 2020,
10:05 a.m.

DEPOSITION OF STEPHANIE TOOTHAKER

Taken on behalf of the Plaintiff before
Barbara Wilkie, Professional Court Reporter and Notary
Public in and for the State of Florida at Large,
pursuant to a Third Re-Notice of Taking Deposition Duces
Tecum in the above cause.

1 work there as an attorney?

2 A Yes.

3 Q And were you a partner when you were there?

4 A They don't have partners.

5 Q Okay. So, if you had a title there, would it
6 be fair to say that your title was just "attorney" at
7 Tripp Scott, or was there a title that was specific to
8 the law firm that they issued or gave to you when you
9 were there?

10 A Director.

11 Q And what kind of work were you doing when you
12 were at Tripp Scott?

13 A Land use, what I do, zoning.

14 Q Did you have an immediate supervisor or, for
15 lack of a better word, "boss" that you reported to when
16 you were working at Tripp Scott?

17 A No.

18 Q Who was your legal assistant when you worked
19 at Tripp Scott, or legal assistants, if there was more
20 than one?

21 A I don't remember all their names. The last
22 one was Mindy.

23 Q And what was Mindy's last name, if you
24 remember?

25 A Hertzson.

1 Q And for how long did Mindy serve as your legal
2 assistant?

3 A She wasn't my legal assistant. She was a
4 secretary.

5 Q Okay.

6 A I didn't have a legal assistant.

7 Q Gotcha. So did she do administrative tasks
8 for you?

9 A She made appointments.

10 Q Gotcha.

11 A And she worked for --

12 Q Several people?

13 A -- five people.

14 Q Gotcha. Did you also have a paralegal that
15 assisted you in any way when you were working at Tripp
16 Scott?

17 A I don't use paralegals. It's not my practice.

18 Q Gotcha. All right. So the answer would be,
19 no, you did not use any paralegals when you were at
20 Tripp Scott?

21 A No.

22 Q Are you currently in touch with Mindy as
23 social friends?

24 A No.

25 Q Were you friendly with Mindy outside of the

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

CASE NO. 50-2019-CA-004756-XXXX-MB

MARNI BRYSON,

Plaintiff,

-VS-

WILLIAM R. SCHERER JR., and
CONRAD & SCHERER, LLP,

Defendants.

NOTICE OF OBJECTION TO SUBPOENA FOR DUCES TECUM

The law firm of Tripp Scott, P.A., by and through undersigned counsel, hereby gives notice of its objection to a non-party subpoena duces tecum without deposition served on the firm by the Plaintiff, MARNI BRYSON, on June 3, 2020.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served, via the Florida E-filing Portal, on Paul D. Turner, Esquire, Jonathan Feldman, Esquire, Oliver M. Birman, Esquire, Counsel for Plaintiff, (pturner@pbyalaw.com; jfeldman@pbyalaw.com; obirman@pbyalaw.com); Gail A. McQuikin, Esquire and Harley S. Tropin, Esquire, (gam@kttlaw.com; hst@kttlaw.com) and Bruce S. Rogow, Esquire, (brogow@rogowlaw.com) Counsel for Defendants on June 16, 2020.

TRIPP, SCOTT, P.A.
110 SE 6th Street, 15th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 525-7500
Facsimile: (954) 761-8475

By /s/Edward R. Curtis
Edward R. Curtis
Florida Bar No. 236845
Email: erc@trippscott.com

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

MARNI BRYSON,

Plaintiff,

v.

WILLIAM R. SCHERER JR., and
CONRAD & SCHERER, LLP,

Defendants.

Case No.: 502019CA004756XXXXMB
Division AK

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendants William R. Scherer and Conrad & Scherer, LLP file this Answer and Affirmative Defenses to the Complaint as follows:

INTRODUCTION

Defendants deny the statements made in the first paragraph of the introduction to the Complaint. Defendants admit that Bryson has sued Defendants for intentional infliction of emotion distress, seeks damages and injunctive relief.

The Child Custody Proceeding

1. Defendants are without knowledge and therefore deny the allegations in paragraph "1" other than the allegation that Bryson is a sitting judge serving Palm Beach County.

2. Defendants are without knowledge and therefore deny the allegations in paragraph "2".

3. Defendants are without knowledge and therefore deny the allegations in paragraph "3".

EXHIBIT F

4. Defendants are without knowledge and therefore deny the allegations in paragraph “4”.

5. Defendants are without knowledge and therefore deny the allegations in paragraph “5”.

6. Defendants are without knowledge and therefore deny the allegations in paragraph “6”.

7. Defendants are without knowledge and therefore deny the allegations in paragraph “7”.

8. Defendants are without knowledge and therefore deny the allegations in paragraph “8”.

9. Defendants are without knowledge and therefore deny the allegations in paragraph “9”.

Local Fort Lauderdale Attorney, Third-Party Witness

10. Defendants are without knowledge and therefore deny the allegations in paragraph “10”.

11. Defendants are without knowledge and therefore deny the allegations in paragraph “11”.

12. Defendants are without knowledge and therefore deny the allegations in paragraph “12”.

13. The allegations contained in paragraph “13” are nonspecific as to the referenced “FTL Attorney” and therefore, Defendants cannot admit or deny the allegations. However, Defendants admit that Bryson’s attorney issued a notice of intent to serve a subpoena upon Ms. Stephanic Toothaker.

14. The allegations contained in paragraph “14” are nonspecific as to the referenced “her” and therefore, Defendants cannot admit or deny the allegations. However, if the “her” refers to Ms. Stephanie Toothaker, Defendants admit that they served as legal counsel to Ms. Stephanie Toothaker regarding the prospective Bryson subpoena.

“Play Ball of Else”

15. Defendants deny the allegations contained in paragraph “15”.
16. Defendants are without knowledge and therefore deny the allegations in paragraph “16”.
17. Defendants are without knowledge and therefore deny the allegations in paragraph “17”.
18. Defendants are without knowledge and therefore deny the allegations in paragraph “18”.
19. Defendants are without knowledge and therefore deny the allegations in paragraph “19”.
20. Defendants are without knowledge and therefore deny the allegations in paragraph “20”.
21. Defendants are without knowledge and therefore deny the allegations in paragraph “21”.
22. Defendants are without knowledge and therefore deny the allegations in paragraph “22”.
23. Defendants are without knowledge and therefore deny the allegations in paragraph “23”.

24. Defendants are without knowledge and therefore deny the allegations in paragraph “24”.

25. Defendants are without knowledge of the allegations in the first two sentences of paragraph “25”, and therefore deny the allegations. Defendants deny the allegations in the last sentence of paragraph “25”.

26. Defendants are without knowledge and therefore deny the allegations in paragraph “26”.

Treating with Bill Scherer

27. Defendants are without knowledge and therefore deny the allegations in paragraph “27”.

28. Defendants are without knowledge and therefore deny the allegations in paragraph “28”.

29. Defendants are without knowledge and therefore deny the allegations in paragraph “29”.

30. Defendants are without knowledge and therefore deny the allegations in paragraph “30”. Defendants specifically deny the allegation of “Bill Scherer’s plot.”

31. Defendants are without knowledge and therefore deny the allegations in paragraph “31”.

32. The allegations contained in paragraph “32” are nonspecific as to the referenced “FTL Attorney” and therefore, Defendants cannot admit or deny the allegations. However, if the reference is to Ms. Toothaker, Defendants admit that Bryson’s did not serve the subpoena on Ms. Toothaker and did not take her deposition but deny all other allegations in paragraph “32”.

33. Defendants deny the allegations of “Bill Scherer’s threats, and are without knowledge and therefore deny the remaining allegations in paragraph “33”.

34. Defendants deny the allegations in paragraph “34”.

35. Defendants deny the allegations in paragraph “35”.

THE PARTIES

36. Defendants are without knowledge and therefore deny the allegations in paragraph “36”.

37. Defendants admit the allegations in paragraph “37”.

38. Defendants admit the allegations in paragraph “38”.

JURISDICTION AND VENUE

39. Defendants deny the allegations in paragraph “39”.

40. Defendants deny the allegations in paragraph “40”.

41. Defendants deny the allegations in paragraph “41”.

42. Defendants deny the allegations in paragraph “42”.

43. Defendants deny the allegations in paragraph “43”.

Count I. Intentional Infliction of Emotional Distress

44. Paragraph “44” does not contain allegations that can be admitted or denied, but to the extent the allegations in paragraphs “1”- “43” are re-stated, Defendants deny the allegations not specifically admitted in those paragraphs.

45. Defendants admit the allegations in paragraph “45” but deny that the Florida Bar Rules are relevant to this action.

46. Defendants deny the allegations in paragraph “46”.

47. Defendants deny the allegations in paragraph “47”.

48. Defendants admit that paragraph “48” recite Section 836.05 but deny all other allegations.

49. Defendants deny the allegations in paragraph “49”.

50. Defendants deny the allegations in paragraph “50”.

51. Defendants deny the allegations in paragraph “51”.

52. Defendants deny the allegations in paragraph “52”.

53. Defendants deny the allegations in paragraph “53”.

54. Defendants deny the allegations in paragraph “54”.

55. Defendants deny the allegations in paragraph “55”.

56. Defendants deny the allegations in paragraph “56”.

57. Defendants deny the allegations in paragraph “57”.

58. Defendants admit that Florida Rules of Professional Conduct govern lawyers but deny that it is relevant to this action.

59. Defendants admit that paragraph 59 recites a portion of the Florida Rules of Professional Conduct but deny that it is relevant to this action.

60. Defendants deny the allegations in paragraph “60”.

61. Defendants deny the allegations in paragraph “61”.

62. The allegations contained in paragraph “62” have been stricken by the Court, and therefore do not require an admission or denial.

63. The allegations contained in paragraph “63” have been stricken by the Court, and therefore do not require an admission or denial.

64. The allegations contained in paragraph “64” have been stricken by the Court, and therefore do not require an admission or denial.

65. The allegations contained in paragraph “65” have been stricken by the Court, and therefore do not require an admission or denial.

66. The allegations contained in paragraph “66” have been stricken by the Court, and therefore do not require an admission or denial.

67. Defendants deny the allegations in paragraph “67”.

68. Defendants deny the allegations in paragraph “68”.

69. Defendants deny the allegations in paragraph “69”.

70. Defendants deny the allegations in paragraph “70”.

71. Defendants deny the allegations in paragraph “71”.

72. Defendants deny the allegations in paragraph “72”.

73. Defendants deny the allegations in paragraph “73”.

74. Defendants deny the allegations in paragraph “74”.

75. Defendants deny the allegations in paragraph “75”.

76. Defendants deny the allegations in paragraph “76”.

Count II. Injunctive Relief

77. Paragraph “77” does not contain allegations that can be admitted or denied, but to the extent the allegations in paragraphs “1”-“76” are re-stated, Defendants deny the allegations not specifically admitted in those paragraphs.

78. Defendants admit the allegations in paragraph “78” that Bryson seeks injunctive relief, but deny Bryson is entitled to seek such relief.

79. Defendants deny the allegations in paragraph “79”.

80. Defendants deny the allegations in paragraph “80”.

81. Defendants deny the allegations in paragraph “81”.

82. Defendants deny the allegations in paragraph “82”.

83. Defendants deny the allegations in paragraph “83”.

84. Defendants deny the allegations in paragraph “84”.

PUNITIVE DAMAGES: RESERVATION OF RIGHT TO AMEND

Defendants deny that Bryson is entitled to seek punitive damages under applicable Florida law.

REQUEST FOR JURY TRIAL

Defendants admit that Bryson is entitled to request a jury trial but deny that Bryson has stated a claim for relief and thus as a matter of law Bryson is not entitled to a jury trial.

PRAYER FOR RELIEF

Defendants deny Bryson is entitled to seek the relief requested.

AFFIRMATIVE DEFENSES

Fails to State a Claim

Bryson fails to state a claim for intentional infliction of emotional distress because the conduct alleged does not constitute outrageous conduct under Florida law. Outrageous conduct must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Bryson alleges only that Defendant Scherer had a conversation with an unidentified attorney. Thus, Bryson cannot state a supportable claim for intentional infliction of emotional distress.

Unclean Hands

Bryson is not entitled to prevail on her claims for intentional infliction of emotional distress or injunctive relief because she has engaged in deceit, bad faith and wrongful conduct in the

matters underlying this action. Bryson had no interaction with Defendants in 2015 and has knowingly made false statements against Defendants with the intent to injure their reputation.

Estoppel

Bryson is estopped from asserting her claims. Had Bryson suffered emotional distress in 2015 as alleged, she had the duty to have that known to Defendants and not remain silent until 2019. The extent of defendant's involvement in the Bryson post-divorce custody proceeding was to represent the interests of a non-party who Bryson sought, improperly, to make a part of the proceedings. Bryson was not asked to abandon her post-divorce child custody claims and never disclosed to defendants that she would abandon her claims for modifying child custody if the non-party witness represented by defendants asserted her rights. Defendants relied on her silence in closing their file and ending their brief involvement in the Bryson's child custody proceeding. Bryson's position today is contrary to the position she took in 2015 and thus she is estopped from bringing her claims.

Privilege

Defendants undertook the representation of a non-party who was being abused by Bryson for an improper purpose. Bryson threatened to subpoena Defendants' client and to require her to produce documents in her possession related to her allegations in Bryson's post-divorce child custody dispute. Defendants' client was not a relevant or competent witness to any matter susceptible of being tried in that dispute. Bryson was engaging in bad faith and abusive conduct directed to Defendants' client. Defendants acted within the scope of their duty owed to their client and to the Court and their actions are therefore privileged.

Absence of Proximate Cause

Bryson suffers from a mental illness that pre-existed the events alleged in her Complaint. Among other things, Bryson engaged in aggressive compulsive acts designed to control the life of her former husband after the divorce. Bryson stalked her former husband and verbally attacked and threatened women who Bryson believed were seeing her ex-husband post-divorce.

Bryson acted irrationally and compulsively in threatening defendants' client. These threats included threats of physical harm and public embarrassment and humiliation of defendants' client. This pre-existing mental condition led Bryson to contact the estranged husband of Defendants' client, invite him to meet for cocktails and then later the same evening send that man nude photos of herself. However, the account Bryson sent the nude photos to was a shared account with Defendants' client.

Bryson's pre-existing mental illness is the cause of any purported mental distress, emotional injury and/or emotional suffering, not the conduct alleged against the defendants.

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2019, I electronically filed the foregoing with the Florida Court E-Filing Portal, which will serve it via electronic mail to all counsel of record.

By: /s/ Gail A. McQuilkin

11T4146

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

MARNI BRYSON,

CASE NO.: 502019CA004756

Plaintiff,

v.

WILLIAM R. SCHERER, JR., and
CONRAD SCHERER, LLP,

Defendants.

**DEFENDANT CONRAD & SCHERER, LLP'S AMENDED RESPONSES TO
PLAINTIFF, MARNI BRYSON'S FIRST SET OF INTERROGATORIES**

Responses and Objections

1. Provide the name, address, telephone number, place of employment and job title of any person who has, claims to have, or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action.

ANSWER:

- Marni Bryson, c/o Perlman, Bajandas, Yevoli & Albright, 200 S. Andrews Avenue, Suite 600, Fort Lauderdale, FL 33301.
- William R. Scherer, 633 South Federal Highway, Suite 800, Fort Lauderdale, FL 33301, 954-462-5500.
- Stephanie Toothaker, 901 Ponce de Leon Dr., Fort Lauderdale, FL, 954-648-9376.
- Blake MacDiarmid, address and phone unknown.
- Peter Kemp, address and phone unknown.
- Jack Scarola, 2139 Palm Beach Lakes Blvd., West Palm Beach, FL, 561-686-6300.
- Stuart Grossman, 2525 Ponce de Leon Blvd., #1150, Coral Gables, FL 305-4428666.
- William Gardiner, 633 South Federal Highway, Suite 400, Fort Lauderdale, FL, 954-635-2665.
- Jordan Jarjura, 101 SE 4th Ave., Delray Beach, FL, 561-282-5000.

- Edward Pozzuoli, 110 SE 6th Street, Floor 15, Fort Lauderdale, FL, 954-525-7500.
- Paul Lopez, 110 SE 6th Street, Floor 15, Fort Lauderdale, FL, 954-525-7500.

2, State the specific nature and substance of the knowledge that you believe the person(s) identified in your response to Interrogatory No. 1 may have.

ANSWER: The facts and circumstances surrounding the subpoena to Stephanie Toothaker.

3. Describe how you came into possession of any photographs of Plaintiff including but not limited to the date you obtained these photographs, the method (i.e. e-mail, certified mail, text message, etc.) and who sent these photographs.

ANSWER: The photographs were sent by the Plaintiff to Peter Kemp via text in June and July, 2014. They were given to me by Stephanie Toothaker.

4. Describe any communications between you and Jack Scarola relating to either Plaintiff, Stephanie Toothaker, or Blake MacDiarmid including but not limited to the date of the communication, location of the communication, type of communication (i.e. phone conference, in person communication, or skype), approximate duration of the communication, and the purpose of the communication.

ANSWER: On November 13, 2015 I met with Jack Scarola at the Searcy, Denney, et al. law office regarding a subpoena which had been served on my client Stephanie Toothaker. The purpose of the meeting was to explain the unnecessary complications that would arise if third party witnesses such as Ms. Toothaker are deposed and required to produce documents that should remain private. Relevant emails exchanged with Jack Scarola will be produced.

5. Describe any communications between you and Blake MacDiarmid relating to either Plaintiff, Stephanie Toothaker, or Jack Scarola including but not limited to the date of the communication, location of the communication, type of communication (i.e. phone conference, in person communication, or skype), approximate duration of the communication, and the purpose of the communication.

ANSWER: The defendant objects because the communications involved fact investigation of text messages and emails which the Plaintiff sent to Ms. Toothaker and others and are subject to the work product privilege.

6. Describe any facts that support your belief that an attorney in Palm Beach County represented Plaintiff, as alleged in paragraph 4 of the Motion to Dismiss filed on May 15, 2019.

ANSWER: Jack Scarola was identified in a newspaper article as the attorney for the Plaintiff.

7. Describe any prior allegations of legal malpractice, litigation misconduct, fraud, extortion, infliction of emotion distress (intentional or negligent), or blackmail mad against any of Your attorney, whether litigation was initiated based on the allegation or not, including the date, substance of the allegation, who made the allegation, who the allegations was against, and whether litigation ensued based on this allegation..

ANSWER: The Defendant objects to this Interrogatory because it is irrelevant and immaterial based on the Court's Order striking paragraphs 61 through 66 of Plaintiff's complaint.

8. Identify all cellular phone numbers issued by Your firm from 2015-2017, the person who the cellular phone was issued, the name of each cellular phone account, and the service provider for each.

ANSWER: The Defendant objects to this Interrogatory because it is overbroad and not relevant to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

Verification

The undersigned states, under penalty of perjury, that he has read the foregoing responses to the interrogatories hereinabove and that they are true and correct.

CONRAD & SCHERER, LLP

By: _____

WILLIAM R. SCHERER, Managing Partner

Dated: _____

11/19/19

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been furnished *via* e-mail upon all parties listed on the attached Service List on this 19 day of November 2019.

/s/ Gail A. McQuilkin

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NOT A CERTIFIED COPY

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

MARNI BRYSON,

CASE NO.: 502019CA004756

Plaintiff,

v.

WILLIAM R. SCHERER, JR., and
CONRAD SCHERER, LLP,

Defendants.

**DEFENDANT CONRAD & SCHERER, LLP'S RESPONSES TO PLAINTIFF,
MARNI BRYSON'S SECOND SET OF INTERROGATORIES**

Responses

1. With respect to CS0033 and CS0035, identify who provided such documents to you, the date and time when you received the photographs and the manner such documents were provided to you (e.g. e-mail, text message or hard physical document).

ANSWER: Hard copies of the documents were provided to me by Stephanie Toothaker in October or November of 2015.

2. Identify the e-mail addresses associated with the exchange of the photographs produced and labeled as CS00and CS0035 including the e-mail and/or phone number account that sent the photograph and the e-mail and/or phone number account that received he photographs.

ANSWER: The photographs were sent from "peter.kemp@live.com to stoothaker@hotmail.com and sjt@trippscott.com.

3. State the means by which you came into possession of “the photograph you showed” Jack Scarola referenced in the December 1, 2015 e-mail correspondence produced and labeled as CS0044 and explain the circumstances and manner in which you showed the photographs to Scarola.

ANSWER: I did not show any photographs to Jack Scarola.

Verification

The undersigned states, under penalty of perjury, that he has read the foregoing responses to the interrogatories hereinabove and that they are true and correct.

CONRAD & SCHERER, LLP

By: William R. Scherer

WILLIAM R. SCHERER, Managing Partner

Dated: 2/24/20

Dated: March 3, 2020

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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2020, a true and correct copy of the foregoing document is being served via email upon counsel for Plaintiff, Jonathan Feldman, Esq., jfeldman@pbyalaw.com; Paul D. Turner, Esq., pturner@pbyalaw.com; Ariella J. Gutman, Esq., agutman@pbyalaw.com; and Oliver M. Birman, Esq., obirman@pbyalaw.com.

By: /s/ Gail A. McQuilkin

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

MARNI BRYSON,

CASE NO.: 502019CA004756

Plaintiff,

v.

WILLIAM R. SCHERER, JR., and
CONRAD SCHERER, LLP,

Defendants. _____/

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S SECOND REQUEST FOR PRODUCTION**

Defendants, Conrad & Scherer, LLP ("C&S") hereby files its Response to Plaintiff's Second Request for Production dated January 29, 2020, and states as follows:

Responses

1. Phone records for Bill Scherer for October and November 2015.

Response:

Defendant objects to producing any telephone records to the extent they exist as overly broad by asking for "phone records" without qualification, and calling for the production of documents that may reveal attorney/client privileged information. In addition, this request is not reasonably limited to the scope of the case as alleged and not tailored to lead to the discovery of relevant evidence that would make any issue in this case more or less likely.

2. Original native format of all documents produced by Defendants.

Response:

Defendant does not have documents in native format. All documents produced were copies of documents provided to C&S by its client. All documents from which copies were made were returned to the client in early 2016.

3. All documents concerning or constituting any oral, written or electronic data (including emails and text messages) communications to or from Gelin.

Response:

Defendant has no documents responsive to this request.

Dated: March 3, 2020

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I HEREBY CERTIFY that on March 3, 2020, a true and correct copy of the foregoing document is being served via email upon counsel for Plaintiff, Jonathan Feldman, Esq., jfeldman@pbyalaw.com; Paul D. Turner, Esq., pturner@pbyalaw.com; Ariella J. Gutman, Esq., agutman@pbyalaw.com; and Oliver M. Birman, Esq., obirman@pbyalaw.com.

By: /s/ Gail A. McQuilkin