ALTERNATIVE GLOBAL ONE, LLC, ALTERNATIVE GLOBAL TWO, LLC, ALTERNATIVE GLOBAL THREE, LLC, ALTERNATIVE GLOBAL FOUR, LLC, ALTERNATIVE GLOBAL FIVE, LLC, ALTERNATIVE GLOBAL SIX, LLC, Plaintiffs/Respondents, vs. DAVID FEINGOLD AND MICHAEL DAZZO, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CIVIL ACTION DOCKET NO.: A-002066-23T4 Trial Court No.: MID-L-4804-23 Judge Below: The Hon. Jospeh L. Rea, J.S.C.

NON-PARTY MOVANT/APPELLANT, DANIEL W. AMANIERA'S BRIEF

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PRELIMINARY STATEMENT

The matter on appeal before the Court arises from an improper subpoena ad testificandum seeking irrelevant information from non-party/Appellant, Daniel W. Amaniera ("Amaniera"). Although the subpoena was solely issued to harass and intimidate Amaniera as well as to seek confidential information not subject to discovery, the trial court denied Amaniera's motion to quash the subpoena and for a protective order. In doing so, the trial court overlooked well established case law and Court Rules which are designed to protect non-parties from this exact type of conduct.

The result of the trial court's decision forces a non-party to testify related to irrelevant and confidential information as well as allow the Plaintiffs to continue to use the legal system to harass innocent and uninvolved non-parties.

It is therefore respectfully submitted that the trial court's orders should be reversed and an order be entered quashing the subject subpoena as well as issuing an protective order.

PROCEDURAL AND FACTUAL BACKGROUND[1]

This matter arises from a lawsuit pending before the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade

[1] This matter was commenced by way of motion pursuant to R. 4:11-4(b) seeking to quash an improper out of state subpoena and for a protective order. Therefore, the procedural and factual history related to the subpoena are limited and interrelated.

County, Florida.[2] The lawsuit filed on behalf of Alternative Global One, LLC, Alternative Global Two, LLC, Alternative Global Three, LLC, Alternative Global Four, LLC, Alternative Global Five, LLC and Alternative Global Six, LLC (collectively referred to as "Alternative Global" or "Plaintiff") is against Defendants, David Feingold ("Feingold") and Michael Dazzo ("Dazzo"). (7a-10a) This lawsuit is one of numerous actions filed in New York, South Carolina, Delaware and Florida State and Federal Courts. (7a-10a) Feingold and Dazzo a year earlier sued Richard Cardinale, in the United States District Court of the Southern District of Florida for fraud and various wrong doings related to Alternative Global.

Amaniera previously worked with Cardinale and ceased his work with Cardinale in December 2021 when he became aware that Cardinale was overbilling clients and misrepresenting his background. (4a-6a) He has no direct relationship with Alternative Global and is a Series B (non-voting) investor in Alternative Global Management. (4a-6a) Amaniera has also been affiliated with Titan Communications Group, LLC, a non-party Cardinale already attempted to subpoena testimony from with limited success, and Broadstreet, Inc. (a competitor). (4a-6a)

On or about August 20, 2023, a subpoena ad testificandum was served on Amaniera. (278a-284a) The subpoena generally requests

[2] Alternative Global One, LLC v. Daivd Feingold, et al., Case No.: 2023-00068 ("Underlying Litigation").

Amaniera appear at a deposition without providing the subject matter of which Amaniera is expected to testify. (278a-284a) As the subpoena was simply a continuing attempt by Alternative Global and Cardinale, who has usurped control of these entities, to harass non-parties and engage in abusive litigation practices, on or about August 25, 2023, Amaniera filed a motion to quash the subpoena and for a protective order. (1a-3a) Plaintiffs opposed the motion, and the Court entered an Order denying Amaniera's motion on March 7, 2024. (817a-818a) The March 7, 2024 Order was later amended on March 14, 2024. (819a-821a) On or about March 18, 2024 Amaniera filed a Notice of Appeal related to the March 7, 2024 and March 14, 2024 Orders (collectively referred to as the "Order"). (822a-827a)

While the underlying motion was pending, Cardinale filed a baseless complaint against Amaniera, and other defendants, in Florida State Court alleging that these parties made defamatory statements, tortiously interfered with business relations and conspired to make the alleged defamatory statements. The complaint was later dismissed. In direct response to Cardinale's continued abuse of the legal system and attempts to harass and intimidate Amaniera, Amaniera filed a Complaint seeking a declaratory judgment that Amaniera did not defame Cardinale, tortiously interfere with Cardinale's business relations or conspire to defame and tortiously interfere and that Cardinale cannot bring a

lawsuit in any forum related to these claims. This Complaint was filed to protect Amaniera from further baseless litigations. Cardinale has since amended the Complaint in Florida State Court to add Amaniera as a defendant asserting the same allegations related to defamation as the original Florida State Court action.

LEGAL ARGUMENT

I. The Court Erred in Denying Amaniera's Motion to Quash the August 17, 2023 subpoena as it is for Purposes of Harassment and Seeks Duplicative and Irrelevant Information. (819a-821a)

Court rulings on discovery issues will be reviewed by the Appellate Division using an abuse of discretion standard. Lipsky v. New Jersey Ass'n of Health Plans, Inc., 474 N.J. Super. 447, 463 (App. Div. 2023). However, the Appellate Court will intervene where there is an "abuse of discretion or a judge's misunderstanding or application of the law." Id. In this matter it is respectfully submitted that the trial court did not properly apply the applicable law when rendering its decision. More specifically, the trial court failed to properly apply the factors set forth in Berrie v. Berrie, 188 N.J. Super. 274,282 (Ch. Div. 1983) and overlooked the fact that the subpoena seeks to obtain information which is irrelevant and confidential.

A. The Trial Court Overlooked that the Subpoena Seeks Irrelevant Information. (819a-821a)

Subpoenas to third-parties are subject to close scrutiny. See Berrie, 188 N.J. Super. at 282. A subpoena seeking a deposition is subject to the protective provisions of R. 1:9-2 and R. 4:10-3. Pursuant to R. 1:9-2, a subpoena may be quashed or modified by the court if the compliance would be unreasonable or oppressive. R. 4:10-3 allows for the Court to "make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense…" including, under subpart (a) that "discovery not be had".

Generally, parties may discover non-privileged information "which is relevant to the subject matter involved in the pending action" R. 4:10-2(a). N.J.R.E. 401 defines "relevant evidence" as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action". Discovery requests must be "reasonably calculated to lead to discovery of admissible evidence." R. 4:10-2(a).

With this in mind, "the scope of discovery is not infinite." K.S. v. ABC Prof'l Corp., 330 N.J. Super. 288, 291 (App. Div. 2000) "The discovery rights provided by our court rules are not instruments with which to annoy, harass

or burden a litigant or a litigant's experts." Gensollen v. Pareja, 416 N.J. Super. 585, 591 (App. Div. 2010) Relevant to the analysis here, "the standards for nonparty discovery require a stronger showing of relevance than for simple party discovery." Stamy v. Packer, 138 F.R.D. 412, 419 (D.N.J. 1990). It is respectfully submitted that the trial court overlooked that the information being sought from Amaniera does not serve any useful purpose and is irrelevant.

Plaintiffs, in support of their argument that the subpoena is proper, claimed that Amaniera was involved in the "tracking and tracing of the stolen assets". However, that is simply not true. Amaniera is not a party to the Underlying Litigation and is not mentioned anywhere in the Complaint filed in the Underlying Litigation. There is no allegation that Amaniera converted funds or was otherwise involved in the claims in the Underlying Litigation. Simply because Amaniera previously worked with an investment firm formed by, and solely managed by, Richard Cardinale and is now currently affiliated with Broadstreet, Inc. (a competitor) does not require that he be deposed related to the Underlying Litigation, where he has no involvement with the underlying claims.

In an attempt to support Plaintiffs' argument that the subpoena sought relevant information; the Plaintiffs relied

upon a several affidavits. (321a-504a) However, these affidavits only further establish that there is no conceivable reason to depose Amaniera. The affidavits highlight that Cardinale has riled up (and deceived) Cardinale's own investors in the L3 Fund that he solely manages to fabricate issues with Broadstreet and Feingold and Dazzo, not Amaniera, to distract them from Cardinale's own wrongdoings while twenty six L3 investors have sued Cardinale for investment fraud. (546a-572a) These affidavits also demonstrate that Amaniera had limited involvement and communications with investors during his normal course of employment and did not convey any information related to the claims in the Underlying Litigation or have any direct knowledge of the underlying facts. Therefore, there is no relevant information related to the Underlying Litigation that Plaintiffs can seek solely from Amaniera.

It is also well settled that a subpoena "must be specified with reasonable certainty, and that there must be a substantial showing that the evidence sought to be adduced is relevant and material to the issues in the case." Wasserstein v. Swern & Co., 84 N.J. Super. 1, 6-7 (App. Div. 1964) (citing from State v. Cooper, 2 N.J. 540, 556 (1949)).

The subpoena does not outline the topics on which

Plaintiffs are seeking to depose Amaniera and it was only during the underlying motion that Plaintiffs revealed certain areas where testimony may be elicited. As the subpoena does not provide the areas of anticipated questioning there is no limitation on the topics and areas Plaintiffs may address during any deposition. This alone demonstrates the Plaintiffs intention in using the deposition for purposes of harassing Amaniera and information being sought by Plaintiffs serves no purpose other than to force Amaniera to testify related to topics which are irrelevant to the claims in the Underlying Litigation.

It is clear that in applying the Rules of Court related to discovery and applicable cases there is no basis for the subpoena. Therefore, it is respectfully submitted that the trial court's order should be reversed.

B. The Trial Court Misapplied the Factors Set Forth in Berrie v. Berrie (819a-821a)

R. 4:10-2(g)(2) addresses the scope of discovery that may be limited by the court. More specifically, the court can limit discovery where "(1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking

discovery has had ample opportunity by discovery in the action to obtain the information sought…" R. 4:10-2(g)(2)

As stated in Berrie v. Berrie, 188 N.J. Super 274, 285 (Ch. Div. 1983):

> The factors to be weighed in the consideration of an application by a non-party to limit discovery are the interest of the proposed deponent in the outcome of the litigation, the necessity or importance of the information sought in relation to the main case, the ease of supplying the information requested, the significance of the rights or interests which the non-party seeks to protect by limiting disclosure, and the availability of a less burdensome means of accomplishing the objective of the discovery sought.

Applying the Berrie factors, it is clear that there is no basis for Amaniera's deposition. With regard to the first factor, Amaniera is not a party to the Underlying Litigation, had what can only be classified as limited, general, conversations with a handful of investors, and has no interest in the outcome of the Underlying Litigation. With regard to the second factor under Berrie, Amaniera is not part of any "scheme", is not a party to the Underlying Litigation and is not mentioned anywhere in the Complaint of the action from which the subpoena was generated. There is no allegation that Amaniera converted funds or was otherwise involved in the claims in the Underlying

Litigation.

With regard to the third Berrie factor, Amaniera's deposition must be balanced against the necessity of the information and the ease of obtaining the information through other means. Plaintiffs did not establish that they are unable to get the discovery they are seeking through other means (i.e. depositions or basic discovery) or that this information is relevant or necessary to the claims in the Underlying Litigation.

With regard to the fourth Berrie factor, Cardinale stated in the underlying motion that Broadstreet is a "competitor equity firm". While Plaintiffs have still not stated what exact information would be seeking, it is assumed that Plaintiffs would be seeking information about investments at Broadstreet, Broadstreet's finances and other information, all of which are confidential in nature.

With regard to the last Berrie factor, it is also unclear what "unique knowledge" Amaniera possesses. This is a dispute between Plaintiffs and Defendants; Feingold and Dazzo are partners of Broadstreet and it has not been alleged in the Underlying Litigation that Amaniera had any involvement related to the underlying claims and as demonstrated by the affidavits, does not have any unique knowledge related to the Underlying Litigation. Therefore,

when applying the Berrie factors it is clear that the deposition seeks irrelevant information and must be quashed.

Further, given the numerous other litigations and discovery that has already been conducted, there is no conceivable testimony that could be given by Amaniera that is not already known to Cardinale, either due to his personal knowledge or obtained during discovery in the other litigations. In truth, Cardinale is seeking to insert Amaniera into the litigation mix to harass him and distract from Cardinale's own investment frauds. Plaintiffs have not demonstrated that there is no less burdensome means to obtain the information they are seeking such as taking the depositions of the Defendants or conducting basic discovery in the Underlying Litigation related to the involvement of the parties.

Therefore, it is respectfully submitted that the trial court's order should be reversed.

II. The Court Erred in denying Amaniera's Motion for a Protective Order. (819a-821a)

While the Plaintiffs are entitled to seek relevant discovery pursuant to R. 4:10-2, a party's discovery rights are not unlimited. Pinero v. Div. of State Police, 404 N.J. Super. 194, 204 (App. Div. 2008). As noted above, it appears that the sole purpose of the subpoena is to harass Amaniera

as any conceivable testimony is duplicative of discovery already conducted in the underlying litigation.

Cardinale alleged in its opposition to the underlying motion that "Amaniera has information directly involving the tracking and tracing of the stolen assets in question given his status as the primary communicator between the parties at the time the money went missing and his status as an employee of Broadstreet – an entity that has asserted dominion and control over the assets." As stated in the Certification of Daniel Amaniera, submitted with the motion to quash, any information Cardinale is seeking related to Broadstreet which appears to include information about investments at Broadstreet and Broadstreet's finances is confidential business information as Plaintiff is self-proclaimed competitor of Broadstreet (a non-party). (4a-6a) Therefore, the information Cardinale is allegedly seeking is clearly subject to a protective order. See R. 4:10-3(g) (a protective order can be issued related to "trade secrets or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.")

Therefore, it is respectfully submitted that the trial court's order should be reversed.

CONCLUSION

Based on the foregoing, it is respectfully requested that the orders at issue must be reversed.

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Dated: May 2, 2024

ALTERNATIVE GLOBAL ONE, LLC, ALTERNATIVE GLOBAL TWO, LLC, ALTERNATIVE GLOBAL THREE, LLC, ALTERNATIVE GLOBAL FOUR, LLC, ALTERNATIVE GLOBAL FIVE, LLC, ALTERNATIVE GLOBAL SIX, LLC, Plaintiffs/Respondents, vs. DAVID FEINGOLD AND MICHAEL DAZZO, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002066-23T4 *Civil Action* Trial Court No.: MID-L-4804-23 Sat Below: The Hon. Jospeh L. Rea, J.S.C.

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Plaintiffs Alternative Global One, LLC, Alternative Global Two, LLC, Alternative Global Three, LLC, Alternative Global Four, LLC, Alternative Global Five, LLC, Alternative Global Six, LLC (the "Alternative Global Companies") submit this brief in response to the appeal filed by Non-Party Daniel W. Amaniera ("Amaniera") of the Court's March 7, 2024 Order (the "Order").

PRELIMINARY STATEMENT

Daniel Amaniera ("Amaniera") is a witness to (and potential participant in) an organized scheme to divert tens of millions of investor funds from the Alternative Global Companies. The scheme was led by two now-resigned Managers of the Alternative Global Companies, David Feingold ("Feingold") and Michael Dazzo ("Dazzo"), who diverted millions of dollars of investment monies to companies that they own or control, directly or indirectly, and have refused to turn over all information about the investment monies requested by the Alternative Global Companies.

To cover up their tracks, Feingold, Dazzo, and those persons associated with their new business, Broadstreet Global Management ("Broadstreet"), including Amaniera, have virtually objected to every attempt to discover what they did with the investor monies funded by the Alternative Global Companies. The pattern consists of vague objections to the relevance of the discovery and

character attacks on Richard Cardinale ("Cardinale"), the remaining Manager of the Alternative Global Companies. To further conceal the misdeeds, Amaniera claims that the stolen investor monies are now commingled with other funds, so the Alternative Global Companies cannot learn about the stolen funds because the use of the commingled funds are now somehow "confidential information."

Amaniera continues this pattern by fighting vigorously to prevent his deposition being taken in connection with an action filed by the Alternative Global Companies in Florida. The Trial Court has denied Amaniera's motion for a protective order, which is now the subject of this appeal. The Trial Court also denied Amaniera's motion for a stay of his deposition pending appeal, finding that Amaniera failed to demonstrate any of the elements for a stay pending appeal. Amaniera sought a further delay by seeking a stay pending appeal before this Court, which this Court rightly rejected. Amaniera has now filed a half-hearted motion for reconsideration of that decision, which the court has denied.

Amaniera essentially is taking the position that the efforts to take his deposition are harassing and seek irrelevant information. That position is not well-founded. Plaintiffs have submitted eight (8) Affidavits of investors that put the lie to Amaniera's denials and show that discovery from Amaniera is relevant to the underlying Florida action. The Affidavits attest that Amaniera:

(1) actively solicited investor funds; (2) was given access to, and explained to investors, the underlying investments of the Alternative Global Companies; (3) was the messenger for Feingold and Dazzo's resignations from the Alternative Global Companies; (4) solicited the investors for duplicate real estate deals on behalf of Broadstreet into the same properties as the Alternative Global Companies; (5) denied the investors any further information, claiming he had been "slapped" by Broadstreet before for giving away too much information; and (6) once Broadstreet was caught holding investor funds, Amaniera undertook to extricate Broadstreet by trying to convince investors to take a raw deal that purported to reimburse the investor funds Broadstreet held by short-changing them the funds owed. These Affidavits suffice in and of themselves to show why discovery from Amaniera is relevant.

Accordingly, for the reasons set forth herein, the Trial Court's Order should be affirmed.

FACTUAL BACKGROUND

A. The Underlying Action.

In 2019, Cardinale, a successful securities broker, put together a pooled investment fund. Aa371-72.[1] Feingold, Dazzo, and Cardinale acted as managers

[1] "Aa" and "Ab" refer, respectively, to Amaniera's Appendix and Brief on this appeal. "Pa" refers to the Alternative Global Companies' Appendix on this appeal.

and each held an equal interest as members of 33.33% in this investment fund. Aa375 Feingold, who is a licensed attorney, took charge of designing the legal structure of the proposed investment fund. Aa374 Specifically, he suggested creating an income fund (the "L3 Fund") to act as a vehicle for raising capital from individual investors, which capital would in turn be loaned to a series of companies—the Alternative Global Companies—which, in turn, would invest in specific industries. Id. Feingold and Dazzo were not managers or members of the L3 Fund.

To effectuate this structure, Cardinale raised the funds from individual investors, while Feingold and Dazzo identified investment opportunities and managed those opportunities. Aa375. Feingold and Dazzo also co-managed the Alternative Global Companies, and were responsible for, among other things, keeping and maintaining the books and records relating to investments, preparing quarterly reports for investors, and managing the day-to-day operational activities. Aa385-86.

The L3 Fund, formed in August 2019, raised more than $81 million from individual investors, which monies were loaned directly to the six, separate Alternative Global Companies. Aa367, 377-78. The Alternative Global Companies then used the loan proceeds to invest in companies and opportunities

in the debt settlement, merchant cash advance, and real estate industries (the "Investment Companies").

Beginning in the fourth quarter of 2021, the relationship between Cardinale, Feingold, and Dazzo deteriorated. Aa393. The Alternative Global Companies repeatedly requested information about their investments, and, instead of providing that information, in January 2022, Feingold and Dazzo resigned as managers and withdrew as members of the Alternative Global Companies. Aa393-99. Following their resignations, Feingold and Dazzo failed to turn over the Alternative Global Companies' books and records to the Alternative Global Companies. Aa395-99.

In January 2023, the Alternative Global Companies filed the underlying state court action in Florida ("Underlying Action"), in which they sought "significant damages and related relief against [Feingold and Dazzo] out of their theft of corporate books and records identifying, among other things, the nature and status of investments totaling in excess of $81 Million that [Feingold and Dazzo] managed as the then [Managers] of the Alternative Global Companies." Aa366-67. Specifically, the Alternative Global Companies allege that Feingold and Dazzo: breached their fiduciary duties, before and after their resignations (Counts I-II); committed civil theft (Count III); committed conversion by depriving the Alternative Global Companies of their books and records (Count

IV); unlawfully detained the Alternative Global Companies' books and records (replevin) (Count V); committed civil conspiracy (Count VI); tortiously interfered with the Alternative Global Companies' business relationships (Counts VII, VIII and IX); required an equitable accounting of all funds and investment opportunities to determine misappropriation (Count IX); and have been unjustly enriched by their actions (Count X). Aa407-21.

B. Daniel Amaniera.

Amaniera solicited investors for the L3 Fund that funded the Alternative Global Companies. Aa291-302, 307-16, 325, 330-31, 335, 341-42, 344, 350, 354, 359. Amaniera was contracted to perform his investment activities, and was compensated for doing so. Aa291-302, 307-16. Amaniera communicated with the investors prior to and at time of their investments. Aa325, 330-31, 335, 341-42, 344, 349-50, 354, 359. He interfaced during the course of the investments and provided administrative information to the investors. Aa341-42, 354. He was given access to, and explained to investors, exactly the Investment Companies that the Alternative Global Companies invested into. Aa339.

Amaniera informed the investors of the resignation of Feingold and Dazzo. Aa330-31. After joining Feingold and Dazzo at Broadstreet,[2] Amaniera

[2] *See*, *e.g.*, Pa23 (Broadstreet website featuring Profile of Daniel Amaniera).

subsequently contacted the investors. Aa327, 333, 341-42, 350, 360-63. Amaniera proceeded to solicit the investors on behalf of Broadstreet (Aa330-31, 350) for duplicate deals on behalf of Broadstreet into the same properties as the Alternative Global Companies. Aa332-33, 361. But when the investors demanded information, Amaniera refused, claiming he had been "slapped" by Broadstreet before for giving away too much information. Aa331, 361-63. Having been caught holding investor funds, Broadstreet then offered to reimburse the investor funds it had taken, but tried to short-change the investors with an unfair deal. Aa327, 333, 337, 341-42, 346-47, 352, 362-63. Amaniera tried in vain to smooth the deal over with the investors, only to be told that it was unfair. Aa337, 356-57, 363. As a result, the investors have attested that Broadstreet, Feingold, and Dazzo are in control of the investor funds. Aa326-27, 332-33, 336-37, 341-42, 346, 351, 356-57, 363.

Amaniera is front and center in the scheme to steal the assets of and conceal information from the Alternative Global Companies to defraud the L3 investors. His deposition is both material and necessary for the reasons below.

PROCEDURAL HISTORY

On August 16, 2023, the court in the Underlying Action issued a commission to the Alternative Global Companies to take Amaniera's deposition

where he resides in New Jersey. Aa283-84. The Alternative Companies served a subpoena on Amaniera for his deposition to occur in September 2023. Aa278.

On August 25, 2023, Amaniera filed a motion in the Trial Court for a protective order to prevent his deposition from being taken. Aa1. The Trial Court denied the motion for a protective order on March 7, 2024. Aa817. The Trial Court found that:

- "This deposition is not harassment as claimed by the Defendant."
- "This deposition is being held in order to gather information known by Mr. Amaniera that may be relevant to the case, without the deposition the information cannot be gathered."
- "There is no showing by [Amaniera] that the subpoena should be quashed."
- "[Amaniera] made a blanket statement claiming the information is privileged without specifics included in their papers."

Aa821.

On March 14, 2024, Amaniera filed a Notice of Appeal of the order denying his motion for a protective order. Aa822.

On March 13, 2024, Amaniera filed a motion to stay his deposition before the Trial Court. Pa1. Again, the Trial Court denied Amaniera's motion on April

16, 2024. Pa4. The Trial Court found that none of the factors for a stay pending appeal weighed in Amaniera's favor. Pa4.

Meanwhile, on March 9, 2024, Amaniera affirmatively filed a Complaint in the Superior Court of New Jersey, Monmouth County against Cardinale. Pa6. The Complaint discusses Amaniera's role with the Alternative Global Companies and seeks a declaratory judgment that Amaniera "did not defame Cardinale, tortiously interfere with Cardinale's business relations or conspire to defame and tortiously interfere" and affirmatively demands damages against Cardinale for tortiously interfering with "Amaniera's business relationship with his clients and investors." Id. In addition to all of the evidence submitted in connection with Amaniera's motion for a protective order, which the Trial Court found was sufficient to demonstrate that Amaniera has information "that may be relevant to the case," the new Complaint filed by Amaniera proves that he possesses relevant information and that the deposition sought by the Alternative Global Companies is not for an improper purpose but rather seeks evidence relevant to the claims asserted by the Alternative Global Companies in the Underlying Action.

On April 29, 2024, Amaniera filed a motion with this Court for a stay pending appeal. Pa13. The Alternative Global Companies opposed that motion. This Court denied the motion to stay on May 15, 2024. Pa16. On May 28, 2024,

Amaniera filed a motion for reconsideration of that decision. Pa18. This Court denied the motion for reconsideration on May 30, 2024. Pa21.

LEGAL STANDARD

Appellate courts "accord substantial deference to a trial court's disposition of a discovery dispute." *Brugaletta v. Garcia*, 234 N.J. 225, 240 (2018). "[A]ppellate courts 'generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law.'" *State v. Brown*, 236 N.J. 497, 521 (2019) (quoting *Pomerantz Paper Corp. v. New Cmty. Corp.*, 207 N.J. 344, 371 (2011)).

The Trial Court did not abuse its discretion in determining that Amaniera's deposition should go forward.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE REQUESTED DEPOSITION SEEKS RELEVANT INFORMATION (AA821)

As an initial matter, "a non-party deponent may not assert lack of relevancy or materiality since he has no real interest in the outcome of the pending litigation." *Berrie v. Berrie*, 188 N.J. Super. 274, 282-83 (Ch. Div. 1983). Even assuming Amaniera can assert a relevance objection, the deposition

is plainly relevant, and the Trial Court did not abuse its discretion when making that determination.

The scope of pretrial discovery is extraordinarily broad. *Marrero v. Feintuch*, 418 N.J. Super. 48 (App. Div. 2011); *Jenkins v. Rainner*, 69 N.J. 50, 56 (1976). Barring a claim of privilege, "[p]arties may obtain discovery regarding any matter . . . which is relevant to the subject matter involved in the pending action." R. 4:10-2. "[O]ur courts have held that rules of discovery are to be liberally construed and accorded the broadest possible latitude." *Marrero*, 418 N.J. Super. at 48 (quoting *Blumberg v. Dornbusch*, 139 N.J. Super. 433, 437-38 (App. Div. 1976). "Our court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts." *Jenkins v. Rainner*, 69 N.J. 50, 56 (1976).

When examining a request to restrict pretrial discovery, "the principle guiding the court should be to generally permit the widest latitude in the use of available discovery tools." *Marrero*, 418 N.J. Super at 891. In its review, a court must also keep in mind "[i]t is not ground for objection that the information sought [in discovery] will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence[.]" R. 4:10-2(a) (emphasis added); *see also Pfenninger v.*

Hunterdon Cent. Reg'l High Sch., 167 N.J. 230, 237 (2001). "'Relevant evidence,' although not defined in the discovery rules, is defined elsewhere as 'evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.'" *Payton v. N.J. Turnpike Auth.*, 148 N.J. 524, 535 (1997) (citing N.J.R.E. 401). Weighed against these standards, Amaniera's testimony is clearly relevant.

"A movant resisting the deposition ordinarily has the burden of proving 'good cause' for a protective order-that is, the movant must establish 'that a protective order is necessary." *Horon Holding Corp. v. McKenzie*, 341 N.J. Super. 117, 128 (App. Div. 2001) (quoting *Kerr v. Able Sanitary & Environmental Servs.*, 295 N.J. Super. 147 (App. Div. 1996)).

Prohibiting the deposition of a relevant witness is generally an extraordinary remedy. *A.D. v. Ranney Sch. & James Paroline*, 2023 N.J. Super LEXIS 605 (App. Div. Dec. 21, 2022) (reversing trial court order prohibiting deposition where "the [trial] court simply reasoned defendants should be precluded from taking the deposition of a clearly essential witness based on vague assertions of putative harm, without regard to defendants' need for and right to obtain the information C.S. possesses"); *Yawger v. Suburban Propane*, 27 N.J. Super. Unpub. LEXIS 3764, at *3 (N.J. Super. Aug. 18, 2017) (compelling further party deposition, reasoning "due to the remarkable breadth

of [p]laintiff's claims for damages, this Court finds that [d]efendant's deposition questions are relevant to the case and that [d]efendant is not attempting to harass [p]laintiff with irrelevant questions").

Berrie v. Berrie, 188 N.J. Super. 274, 282-83 (Ch. Div. 1983), cited by Amaniera, counsels in favor of compelling Amaniera's deposition. The first *Berrie* factor, "the interest of the proposed deponent in the outcome of the litigation," weighs heavily in favor of the deposition. Amaniera was the primary communicator when Feingold and Dazzo stole the Alternative Global Companies' assets. Aa325, 330-31, 344, 349, 354. It was Amaniera who communicated with the L3 investors (Aa339, 354), advised them on the Alternative Global Companies' investments (Aa339),[3] solicited them to invest in duplicative projects for Broadstreet (Aa330-32), deprived them of information, claiming he had been "slapped" by Broadstreet before for giving away too much information (Aa332), and then tried to short-change them when reimbursing the investor monies. Aa333, 337. It was Amaniera who admits he is employed by Broadstreet (Aa5), the entity that took the assets. Aa326-27, 333, 337, 341-42, 346, 351, 357. He is hardly a disinterested third party.

The second *Berrie* factor, "the necessity or importance of the information

[3] *See also* Aa319 (e-mail to Ryan Feingold, son of Feingold, requesting reports because "Danny [Amaniera] just asked me, he has some clients asking him.").

sought in relation to the main case," likewise points to the need for Amaniera's deposition. The Alternative Global Companies are trying to track down the monies that Feingold, Dazzo, and Broadstreet converted (Aa326-27, 333, 337, 341-42, 346, 351, 357) and need information and answers. Amaniera -- who is front and center in the scheme -- wants to hide behind mischaracterizations of his role and character attacks on Cardinale (a non-party to the case).

The third *Berrie* factor, "the ease of supplying the information requested," also points to the need for Amaniera's deposition. Amaniera identifies no undue burden from his deposition -- aside from being forced to tell the truth.

The fourth *Berrie* factor, "the significance of the rights or interests which the nonparty seeks to protect by limiting disclosure," weighs in favor of a deposition because Amaniera has not articulated any such rights or interests. He claims that he is trying to protect confidential business information[4] that would be hypothetically asked in a deposition, but doesn't identify what it is. We now know that the confidential business information is none other than the same exact projects into which the Alternative Global Companies were invested. Aa332, 361.

[4] Aa5 ("I am currently affiliated with Broadstreet, Inc., and believe Cardinale is seeking to obtain confidential business information from me, related to Broadstreet, Inc., as he is a self-proclaimed competitor.").

Finally, the last *Berrie* factor, "the availability of a less burdensome means of accomplishing the objective of the discovery sought," overwhelmingly points to the need for a deposition. Amaniera possesses unique knowledge about his individual communications. The Alternative Global Companies (Aa396-99) and the investors themselves (Aa332) have tried to trace the assets of the Alternative Global Companies, only to be rejected by Amaniera and by Feingold and Dazzo. Each of the investor-affidavits attests that Feingold and Dazzo have not provided documentation on the Alternative Global Companies' investments. Aa326, 332-33, 336-37, 341, 345, 351, 356.

To further conceal their theft, Feingold and Dazzo have engaged in delay tactics in the Underlying Action to thwart discovery: (i) filing a motion to stay the case – which was denied (Aa422); (ii) filing an appeal of the denial of the motion to stay the case, which was denied; and (iii) serving a set of boilerplate objections to all discovery directed to them. Aa429.

POINT II

THE DEPOSITION IS NOT HARASSMENT (AA821)

A. The Deposition Seeks Relevant Information.

Feingold and Dazzo listed Daniel Amaniera as a relevant witness in the Joint Case Management Report of the Underlying Action. Aa490. Yet,

Amaniera claims his testimony is not relevant. For the reasons set forth above, the testimony is clearly relevant.

If a subpoena seeks relevant information, it generally cannot be unreasonable, harassing, or oppressive. New Jersey courts may consider a subpoena to be burdensome or harassing when the discovery would not "serve any useful purpose[.]" *Gierman v. Toman*, 77 N.J. Super. 18, 24 (N.J. Super. 1962) (quoting *Blackman v. Pink*, 54 A.2d 728, 729 (N.J. App. 1947)) (holding that a subpoena request for information relevant only to punitive damages was harassing because information related to punitive damages would only be relevant after the right to recover had been established and determined).

Where discovery seeks relevant information, it is not for purposes of harassment. *Perform Content Servs. v. Ness Global Servs*., 2021 N.J. Super. Unpub. LEXIS 1598 (N.J. Super Jul. 2, 2021) (where discovery "may reasonably lead to relevant information in connection with the claims asserted under the complaint," it is not for purposes of "harass[ment]"); *Trunzo v. Hackensack Univ. Med. Ctr. & John Doe 1-10 Fictitiously*, No. BER-L-2991-17, 2019 N.J. Super. Unpub. LEXIS 6113, at *4 (N.J. Sup. Ct. Nov. 22, 2019) (subpoena request was not unreasonable or oppressive because it "lead to relevant information regarding the Plaintiff[.]").

Amaniera asserts that the subpoena is improper because it "does not outline the topics on which Plaintiffs are seeking to depose Amaniera." But the case cited by Amaniera on that point -- *Wasserstein v. Swern & Co.*, 84 N.J. Super. 1, 6-7 (App. Div. 1964) – addresses a subpoena for documents, not a deposition, which is what this subpoena seeks. There is no support for the proposition that a deposition subpoena to an individual must state the topics as to which testimony is sought.

B. The Discovery Is Not Duplicative.

Amaniera states that "any conceivable testimony is duplicative of discovery already conducted in the underlying litigation." Ab11. Amaniera does not identify which testimony he is referring to or which deposition he is referring to in the Underlying Action. If Amaniera knows of the testimony, he should file it. And, if Amaniera's testimony will be "duplicative" of discovery already being conducted, how can he, at the same time, maintain that his testimony is not relevant if others are being examined on the identical issues?

Amaniera further states: "there is no conceivable testimony that could be given by Amaniera that is not already known to Mr. Cardinale, either due to his personal knowledge or obtained during discovery in the other litigations." Ab10-11. Amaniera once again does not identify what "conceivable testimony" he has in mind, what it is that is "known," and what other discovery he is

referencing. Amaniera's position -- that if a party has personal knowledge of a fact, then no other witnesses can testify about those facts -- would undo the Court Rules, which permit a party to issue a third party subpoena of a witness. R. 1:9-1 ("A subpoena may be issued…and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.").

C. The Cited Orders Are Irrelevant and In Another Case.

To muddy the waters, Amaniera claims the Alternative Global Companies should not be permitted to depose him because Cardinale -- not the Alternative Global Companies -- issued Subpoenas to *other* persons on *other* issues in *another* case in a *different* court in *another* state ("Federal Case") -- not the Underlying Action -- that were limited by a federal court.

But Amaniera makes his argument with sleight of hand and stunning lack of candor. He fails to inform this Court that the Judge in the Underlying Action has already decided that the Underlying Case and the Federal Case "relate to *different claims* between *different parties* based upon *different relationships* and *different conduct*. Aa425 (emphasis added). Feingold and Dazzo, the Defendants in the Underlying Action, tried to employ one of their delay tactics in the Underlying Action by claiming that it overlapped with the Federal Case, and should be stayed. The Court in the Underlying Action soundly rejected that

delay tactic – finding that the cases had "different parties," "different claims," "different relationships," and "different conduct." Id.

It is understandable why. In the Federal Case, Feingold and Dazzo have sued Cardinale, his wife, and two related companies -- none of the Alternative Global Companies is parties to that action. Aa68. In that action, Feingold and Dazzo have demanded payment for the fair market value of their membership interest at the time of their resignation and withdrawal (Count I), claimed breach of fiduciary duty based on Cardinale's alleged failure to disclose his personal interests (Count II), conversion for Cardinale's alleged "siphon[ing]" of funds (Count III), fraudulent misrepresentation related to corporate members and administrative expenses (Counts IV-V), conspiracy to commit fraud and civil conspiracy between Cardinale and his wife (Counts VI-VII), and aiding and abetting Cardinale's alleged breach of fiduciary duty against Cardinale's wife (Count IX). Id.

That is not the issue in the Underlying Action, where the Alternative Global Companies are the plaintiffs asserting that Feingold and Dazzo stole their assets and information.

Finally, Amaniera misrepresents the orders in the Federal Case. The

Orders concerning the Titan Subpoena expressly invited[5] and permitted a subpoena of a non-party Titan Communications. Aa32. When the deposition was obstructed with numerous objections and instructions not to answer, the Court allowed a second deposition to go forward, but this time in the presence of the presiding Magistrate Judge. Aa503.

POINT III

AMANIERA'S ASSERTION OF UNSPECIFIED CONFIDENTIAL INFORMATION IS INSUFFICIENT TO PREVENT HIS DEPOSITION (AA821)

Amaniera's hypothetical belief that he will be asked at the deposition about confidential information is insufficient to quash the subpoena. *V.K. v. N.J. Mfrs. Ins. Co*., 2013 N.J. Super. Unpub. LEXIS 2111, at 26 (N.J. Super. Aug. 26, 2013) (holding that it will be "necessary" for deponent to "demonstrate that a protective order was necessary as to specific an discrete questions" on privilege grounds, "rather than asserting a blanket objection to the deposition in its entirety"); *Anderson v. City of New Brunswick*, C.A. 12-2502 (MDS) (TJB), 2017 U.S. Dist. LEXIS 165852, at *11 (D.N.J. Oct. 4, 2017) (affirming denial of motion for "protective order to guard [deponent] against questions pertaining

[5] Aa23 (expressly permitting subpoena to Titan, stating "Defendants may subpoena evidence from Titan Communications; however, the requests must be narrowly tailored to Defendants' stated defense regarding pass through payments to Titan Communications").

to" another action); *Aetrex Worldwide, Inc. v. Burten Distrib.*, No. 13-1140 (SRC), 2014 U.S. Dist. LEXIS 172857, at *16 (D. N.J. Dec. 12, 2014) (denying motion to quash, holding, "quashing subpoenas in this instance for the mere potential disclosure of confidential information is an extreme remedy").

Amaniera has not shown any specific questions he would be asked that invade confidentiality, nor has he made any showing of confidentiality. *Aetrex Worldwide, Inc.*, 2014 U.S. Dist. LEXIS 172857, at *16 (denying motion to quash where "no attempt has been made to identify the confidential information which is purportedly sought by the subpoenas."). Amaniera admits that he works for Broadstreet -- the same company that the investors attest has possession and control of their investments (Aa326-27, 333, 337, 341-42, 346, 351, 357) -- and claims he "believe[s] Cardinale is seeking to obtain confidential business information from me, related to Broadstreet, Inc., as he is a self-proclaimed competitor." Aa5. Amaniera doesn't explain what is the "confidential business information", what is the harm he will suffer, or, if it is the same confidential business information that he was given access to and used to solicit the L3 investors into duplicate investments. Aa325-27, 350, Nor does he explain why Cardinale is a "self-proclaimed competitor" -- and his Certification says nothing about the Alternative Global Companies. Amaniera does not explain what the competing company is, or why Cardinale's business

actions should preclude the Alternative Global Companies. This conclusory statement is insufficient to prohibit the deposition.

"[T]o overcome the presumption in favor of discoverability, a party must show "good cause" for withholding relevant discovery by demonstrating, for example, that the information sought is a trade secret or is otherwise confidential or proprietary." *Capital Health Sys. v. Horizon Healthcare Servs.*, 230 N.J. 73, 79-80 (2017). "The party attempting to show that secrecy outweighs the presumption of discoverability must be specific as to each document; broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient." *Id*. at 79-80.

Amaniera fails to offer a shred of evidence -- not a single document, certification or deposition testimony -- demonstrating that the hypothetical information sought at the deposition is highly secretive, that disclosure of the information would harm him in any way, or that the Alternative Global Companies would seek to compete in some way if it could gain access to the information. This utter failure is significant because it is Amaniera's burden to demonstrate that he will be prejudiced by his disclosure of such information. *Capital Health,* 230 N.J. at 80 ("The party attempting to show that secrecy outweighs the presumption of discoverability must be specific as to each

document; broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient.").

Amaniera also fails to cite a single case where a court denies access to relevant discovery based on an unsubstantiated threat of disclosure. *Deffaa v. Pivotel Am., Inc.*, 2021 U.S. Dist. LEXIS 171321, at *5 (S.D.N.Y. Sep. 9, 2021) (holding that moving party has "not met its burden of showing a substantial risk of harm that would result from disclosure" and noting lack of any cases "in which attorneys' eyes only designation was upheld simply due to one party's mistrust of another").

Any concern about confidentiality can be mitigated by a stipulated confidentiality order. *Hancock v. Credit Pros. Int'l Corp.*, 2021 U.S. Dist. LEXIS 131055, at *22 (D. N.J. Jul. 13, 2021) (denying motion for protective order as to subpoena based on claim of "confidential information" in light of "discovery confidentiality order"); *Aetrex Worldwide, Inc.*, 2014 U.S. Dist. LEXIS 172857, at *16 (denying motion to quash where "such information would be subject to the provisions of the DCO [Discovery Confidentiality Order]" and "it appears that [p]laintiff is willing to enter into a separate or supplemental agreement which would protect any such confidential information"). Courts routinely permit the disclosure of confidential information in litigation and protect against improper use through carefully crafted protective orders. Thus,

the claimed confidential nature of the information -- whatever that is -- is not a basis to object to its production here. *See, e.g., Capital Health*, 230 N.J. at 83 (approving chancery judge's determination that "any legitimate claim asserted by [defendants] that the material was proprietary would be adequately protected by the confidentiality order"); *ALK Assocs., Inc. v. Multimodal Applied Sys., Inc*., 276 N.J. Super. 310, 316 (1994) (finding, in trade secret context, that trial court may enter protective order limiting disclosure of confidential information to parties' attorneys and experts who must agree to make no further disclosure to their clients); *see also Selective Ins. Co. of Am. v. Smiley Body Shop, Inc.,* 2016 U.S. Dist. LEXIS 148649, at *19 (S.D. Ind. Oct. 27, 2016) (denying motion for new protective order where prior protective order already "mitigates any possible prejudice" to movant and explaining that the court "declines to assume that any party would violate the Court's protective order and use, in any way, the information learned from this case to further its cause in any other case"); *U.S. ex rel. Daugherty v. Bostwick Labs.*, 2013 U.S. Dist. LEXIS 89683, at *45 (S.D. Ohio June 24, 2013) (where use of potentially competitive documents is "already governed by a protective order," holding that it is "inappropriate" to assume that party would violate protective order); *Med. Ctr. at Elizabeth Place, LLC v. Premier Health Partners*, 294 F.R.D. 87, 97 (S.D. Ohio 2013) ("Assuming the information possesses the sensitivity that Anthem attributes to

it, Anthem's concerns assume that the parties will violate the Protective Order. There is no basis to presume that such a violation will occur. This Court has repeatedly recognized that an appropriate Protective Order provides the necessary safeguards." (citing cases)); *Pfizer Inc. v. Apotex Inc.*, 744 F. Supp. 2d 758, 765 (N.D. Ill. 2010) (refusing to bar litigation counsel from reviewing competitor's documents where Pfizer "submitted no evidence supporting its [m]otion" and "[w]ithout such evidence, a party has not shown why a court should impose a bar on opposing counsel's activities"); *U.S. Steel Corp. v. United States,* 730 F.2d 1465, 1467-68 (Fed. Cir. 1984) (reversing denial of motion for access to confidential information based on assumption that counsel might "breach their duty under a protective order" and holding that any risk of disclosure can be "achievable in the design of a protective order").

The trial court in the Underlying Action can enter an appropriate protective order to alleviate any confidentiality concerns.

CONCLUSION

The Court should affirm the Trial Court's Order.

Dated: June 3, 2024

GREENBERG TRAURIG, LLP

By: /s/ Aaron Van Nostrand
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Attorneys for Plaintiffs/Respondents

ALTERNATIVE GLOBAL ONE, LLC, ALTERNATIVE GLOBAL TWO, LLC, ALTERNATIVE GLOBAL THREE, LLC, ALTERNATIVE GLOBAL FOUR, LLC, ALTERNATIVE GLOBAL FIVE, LLC, ALTERNATIVE GLOBAL SIX, LLC, Plaintiffs/Respondents, vs. DAVID FEINGOLD AND MICHAEL DAZZO, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CIVIL ACTION DOCKET NO.: A-002066-23T4 Trial Court No.: MID-L-4804-23 Judge Below: The Hon. Jospeh L. Rea, J.S.C.

NON-PARTY MOVANT/APPELLANT, DANIEL W. AMANIERA'S REPLY BRIEF

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PRELIMINARY STATEMENT

Plaintiffs/Respondents, Alternative Global One, LLC, Alternative Global Two, LLC, Alternative Global Three, LLC, Alternative Global Four, LLC, Alternative Global Five, LLC and Alternative Global Six, LLC (collectively referred to as "Alternative Global" or "Respondents") brief fails to demonstrate why non-party-movant/ Appellant Daniel Amaniera's ("Amaniera") deposition is relevant and necessary or why the information cannot be obtained through the normal course of discovery in the underlying Florida State Court litigation. It is respectfully submitted that the trial court overlooked well established case law and Court Rules entitling Amaniera to protection from Alternative Global's unnecessary and unwarranted conduct.

It is therefore respectfully submitted that the trial court's orders should be reversed and an order be entered quashing the subject subpoena as well as issuing an protective order.

LEGAL ARGUMENT

POINT I

The Trial Court Abused its Discretion in finding that the Subpoena Seeks Relevant Information. (819a-821a)

Alternative Global's opposition overlooks the Court Rules and specifically R. 4:10-2(g), which addresses circumstances where discovery should be limited.

Additionally applicable case law as well as the fact that Amaniera does not have any relevant information that cannot be obtained during the normal course of discovery in the Underlying Litigation further demonstrates that the trial court improperly denied Amaniera's motion to quash and for a protective order.

It is well established that "the scope of discovery is not infinite." K.S. v. ABC Prof'l Corp., 330 N.J. Super. 288, 291 (App. Div. 2000). Discovery is not to be used to annoy, harass or burden a party. Gensollen v. Pareja, 416 N.J. Super. 585, 591 (App. Div. 2010) That is exactly what Alternative Global is using the subpoena to accomplish.

Alternative Global has undertaken a campaign to attack Amaniera for no conceivable reason. To date, Alternative Global has sought to take Amaniera's deposition, which as discussed below is improper and solely for purposes of harassment, forcing Amaniera to file a motion to quash the subpoena and for a protective order. Richard Cardinale ("Cardinale"), one of the individuals who formed Alternative Global, then filed a baseless complaint against Amaniera, and other defendants, in Florida State Court alleging that these parties made defamatory statements, tortiously interfered with business relations and conspired to make the alleged defamatory statements, which was later dismissed. Amaniera, to protect himself from further frivolous litigation,

filed a complaint in the Superior Court of New Jersey, Monmouth County against Cardinale seeking declaratory judgment that Amaniera did not defame Cardinale, tortiously interfere with Cardinale's business relations or conspire to defame and tortiously interfere and that Cardinale cannot bring a lawsuit in any forum related to these claims. This demonstrates Cardinale's underlying intentions and attempts to bring Amaniera into a litigation as a party or non-party.

Respondents' brief focuses on affidavits obtained by Respondents in support of its argument that Amaniera somehow has relevant knowledge and information related to the Underlying Litigation.[1] However, at most, the affidavits demonstrate Amaniera's limited involvement and communications with investors during his normal course of employment and did not convey any information related to the claims in the Underlying Litigation or have any direct knowledge of the underlying facts. (753a-798a)

Cardinale, in fact, is a Defendant in several lawsuits filed by investors alleging that Cardinale defrauded them (40a-107a) and as set forth in the Affidavits of Richard Kessler (198a-202a) and Gregg Barbagallo (204a-208a), Cardinale has misrepresented information to investors and

[1] Alternative Global One, LLC v. Daivd Feingold, et al., Case No.: 2023-00068 ("Underlying Litigation").

close friends related to his abilities and background and status of investments. Additionally alarming is that there is currently a $77 million judgment obtained by the New York Attorney General related to Cardinale's ownership in a fraudulent MAC company (838a-842a) and a finding by the arbitrator in the Alternative Global Management, LLC dissolution arbitration that Cardinale cannot account for $25 million (847a-852a).

The cases cited by Alternative Global in support of its argument that prohibiting the deposition of a relevant witness is an extraordinary remedy are not applicable to this matter. More specifically, A.D. v. Ranney Sch. & James Paroline, 2023 N.J. Super Unpub. LEXIS 605 (App. Div. Dec 21., 2022), addressed a situation where the plaintiff alleged that her child was assaulted and defendants sought to take the deposition of the child and Yawger v. Suburban Propane, 2017 N.J. Super. Unpub. LEXIS 3764 (N.J. Super. Aug. 18, 2017), involved a situation where the defendant sought to compel the plaintiff to appear and complete her deposition. The matter before the Court relates to a non-party subpoena not a relevant party deposition and therefore these cases are clearly distinguishable.

The factors set forth in Berrie v. Berrie, 188 N.J. Super 274, 285 (Ch. Div. 1983) clearly demonstrate that the trial

court erred in denying Amaniera's motion to quash and for a protective order. More specifically, with regard to the first factor, Amaniera is not a party to the Underlying Litigation, and, based on affidavits obtained by Respondents, had what can only be classified as limited, general, conversations with a handful of investors, and has no interest in the outcome of the Underlying Litigation. These affidavits highlight that Cardinale has riled up (and deceived) Cardinale's own investors in the L3 Fund that he solely manages to fabricate issues with Broadstreet, Inc. ("Broadstreet") and David Feingold ("Feingold") and Michael Dazzo ("Dazzo"), not Amaniera, to distract them from Cardinale's own wrongdoings while thirteen L3 Fund investors have sued Cardinale for fraud with twelve others to sue imminently. (753a-798a) Amaniera's limited involvement in this matter demonstrates that his deposition would serve no purpose other than to harass Amaniera.

With regard to the second factor under Berrie, Amaniera is not "front and center in the scheme"; he is not a party to the Underlying Litigation and is not mentioned anywhere in the Complaint filed in the Underlying Litigation. Respondents are apparently "trying to track down the monies that **Feingold, Dazzo and Broadstreet** converted." (emphasis added) (Respondents' Brief at pg. 14). Amaniera's name is

noticeably absent from this statement. That is because there is no allegation that Amaniera converted funds or was otherwise involved in the claims in the Underlying Litigation.

With regard to the third Berrie factor, Amaniera's deposition must be balanced against the necessity of the information and the ease of obtaining the information through other means. Alternative Global has not established that they are unable to obtain the discovery they are seeking through other means (i.e. depositions or basic discovery) or that this information is relevant or necessary to the claims in the Underlying Litigation. Respondents do not address why it cannot obtain this information in the Underlying Litigation rather than jumping right into a non-party deposition.

With regard to the fourth Berrie factor, Cardinale stated that Broadstreet is a "competitor equity firm". (403a-404a) Respondents have not stated in the deposition notice what topics Amaniera will be deposed; rather, Respondents argue that Amaniera should guess what information will be sought at the deposition and preemptively demonstrate that those areas are protected. This is clearly an undue burden upon Amaniera, however it is assumed that the deposition would be seeking information about

investments at Broadstreet, Broadstreet's finances and other confidential information, all of which are confidential in nature.

With regard to the last Berrie factor, it appears that since Respondents have been unsuccessful in obtaining discovery from the parties in the Underlying Litigation, it has now turned to non-parties; however, Respondents have not demonstrated that there is not a less burdensome means of obtaining this discovery. Logically, it appears that this information would be within the possession of Feingold and Dazzo, the defendants in the Underlying Litigation rather than Amaniera a non-party.

To the extent that there are discovery disputes in the Underlying Litigation, those are issues for the Florida Court to address and have no impact on the pending appeal before this Court.

It is clear that in applying the Rules of Court related to discovery and applicable case law there is no basis for the subpoena. Therefore, it is respectfully submitted that the trial court's order should be reversed.

POINT II

The Trial Court Overlooked that the Underlying Purpose for the Subpoena is to Harass Amaniera. (819a-821a)

A. The subpoena does not seek any relevant information.

As stated above, Alternative Global has not demonstrated that Amaniera has any information which cannot be discovered during the normal course of discovery. Discovery constituting a "'fishing exhibition' to establish otherwise unsupported accusations" is not permitted by the Court. Perform Content Servs. v. Ness Global Servs., 2021 N.J. Super. Unpub. LEXIS 1597 (N.J. Sup. Ct. July 2, 2021). Closely scrutinizing the request for third-party discovery it is clear that that nothing has been provided demonstrating the necessity for Amaniera's deposition other than a desire to harass Amaniera and force him to appear at a deposition where he does not have any direct knowledge.

Alternative Global notes that Amaniera is listed as a relevant witness in a document prepared in the Underlying Litigation without his knowledge or involvement and that somehow requires that he appear for a deposition. However, Alternative Global has not cited to any case law which demonstrates that the inclusion of Amaniera on this document mandates that he be deposed.

B. The subpoena seeks duplicative discovery.

Any information related to Broadstreet, Feingold or Dazzo can be or has already been obtained in the Underlying Litigation. Amaniera has no direct relationship with any of the Alternative Global entities and therefore any topics related to his deposition would be duplicative of discovery in the Underlying Litigation. It is clear that because Alternative Global has been unable to obtain information from the Defendants in the Underlying Litigation, it has decided to subpoena Amaniera, a non-party. Respondents have failed to establish that it cannot or is unable to obtain the same information in the Underlying Litigation rather than harassing and requiring a non-party to be deposed related to information which conceivably is available from the parties in the Underlying Litigation.

C. The Cited Orders are Relevant.

The orders submitted in support of the motion are relevant as they show Cardinale's conduct in the underlying litigation and the tactics he has undertaken. Cardinale's discovery tactics directly support the underlying motion as the orders demonstrate that Carindale's intentions are not to obtain relevant discovery but rather to harass and intimidate innocent third parties. (12a-16a; 18a-33a)

Therefore, it is respectfully submitted that the trial

court's order should be reversed.

POINT III

The Trial Court Overlooked that Amaniera is Entitled to a Protective Order due to Respondents Seeking Confidential Information (819a-821a)

Alternative Global spent considerable time addressing concerns regarding a confidentiality order. However, Amaniera sought a protective order to avoid "annoyance, embarrassment, oppression, or undue burden and expense" related to the subpoena. R. 4:10-3. The protective order was not being sought solely related to concerns over potentially confidential information being sought.

To the extent Alternative Global intends on seeking information from Amaniera related to confidential business information related to his relationship with Feingold, Dazzo or Broadstreet, that is clearly confidential and cannot be sought through a deposition. In fact, Feingold and Dazzo have filed a separate motion on this basis in the Underlying Litigation, in part, due to the fact that confidential information may be disclosed by virtue of Amaniera's deposition, to the extent it takes place. (510a- 692a) Further, Cardinale stated that Broadstreet is a "competitor equity firm". (403a-404a) This is a valid concern given the claims in the Underlying Litigation and Cardinale's past conduct.

Additionally, any argument that the parties can simply enter into a confidentiality order misses the basis for Amaniera's request for a protective order and that he has no relevant information and therefore any deposition is solely for purposes of harassment, annoyance, oppression and unduly burdensome. The Court ordering that the parties enter into a confidentiality order does not resolve the fact that there is no basis for the third-party subpoena to Amaniera. Therefore, it is respectfully submitted that the trial court's order should be reversed.

CONCLUSION

Based on the foregoing, it is respectfully requested that the orders at issue must be reversed.

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