



NAILAH K. BYRD
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Cleveland, Ohio 44113

Court of Common Pleas

MOTION Electronically Filed:
April 21, 2015 12:44

By: DAVID M. DVORIN 0067673

Confirmation Nbr. 418985

LOAY G. SAYAH

CV 15 839369

VTS.

Judge:

CHAD C. GOLEM

JOHN P. O'DONNELL

Pages Filed: 8

IN THE COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

| | | |
|---------------|---|------------------------------------|
| LOAY G. SAYAH | : | CASE NO. CV 15 839369 |
| | : | |
| Plaintiff | : | Judge John P. O'Donnell |
| | : | |
| v. | : | |
| | : | |
| CHAD C. GOLEM | : | <u>MOTION TO SHOW CAUSE</u> |
| | : | <u>AND REQUEST FOR</u> |
| | : | <u>REASONABLE EXPENSES</u> |
| Defendant. | : | |

* ... * ... *

Plaintiff Loay G. Sayah ("Plaintiff" or "Mr. Loay") respectfully requests that this Court issue an order requiring Allison Golem ("Mrs. Golem") to show cause why she should not be held in contempt of court and requiring Mrs. Golem to pay Mr. Sayah's reasonable expenses in connection with the preparation of this motion. Mr. Sayah is contemporaneously filing a related motion in this matter, dealing with the failure of the Defendant Chad C. Golem ("Defendant" or "Mr. Golem") to appear at his own deposition/debtor's exam and his failure to provide responses to Mr. Loay's requests for production of documents.

Mr. Sayah has sought the deposition both of the defendant and his wife, Mrs. Golem. Mrs. Golem is not a party to this action; therefore, in order to assure her attendance at the deposition, Mr. Sayah served her with a subpoena by certified mail. That was accomplished on February 17, 2015. See Exhibit A.

Mrs. Golem did not appear for her deposition scheduled for March 6, 2015. Despite overtures from Mr. Sayah's counsel, she did not provide an alternative date for her deposition. After the denial of Defendant's motion for stay of proceedings to enforce the cognovit judgment, to quash the subpoena, and for a protective order to prevent the debtor's examination and post

judgment discovery requests, Mrs. Golem failed to appear for her deposition on the rescheduled date of April 17, 2015. Mrs. Golem's refusal to appear for deposition, after she has been properly served with a subpoena, is in violation of the Ohio Rules of Civil Procedure.

Rule 45 of the Ohio Rules of Civil Procedure provides that, "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person ... who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery." Mrs. Golem's failure to appear should be treated as contempt of court and she should be ordered to show cause why she should not be held in contempt of this Court.

Mr. Sayah, therefore, urges this court to issue an order requiring Mrs. Golem to show cause why she should not be held in contempt of court and ordering her to pay Mr. Sayah "reasonable expenses, including reasonable attorney's fees."

Respectfully submitted,

/s/ David M. Dvorin
David M Dvorin (#0067673)
The Law Office of David Dvorin, LLC
Pepper Pike Place, Suite 300
30195 Chagrin Blvd.,
Pepper Pike, Ohio 44124
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dmd@dvorinlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2015, this Motion to Show Cause and Request for Reasonable Expenses was filed electronically on the Cuyahoga County Clerk of Courts' electronic case filing system. Notice of the filing will be delivered to the parties by operation of the Clerk of Courts' electronic case filing system. A copy of the filing can be accessed from this electronic case filing system.

/s/ David M. Dvorin
David M. Dvorin

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LOAY G. SAYAH

Plaintiff,

v.

CHAD C. GOLEM

Defendant.

) CASE NO.: CV-15-839369

) JUDGE: JOHN P. O'DONNELL

) **PLAINTIFFS' NOTICE OF SERVICE**
) **OF SUBPOENA TO ALLISON GOLEM**

Pursuant to Rule 45 of the Ohio Rules of Civil Procedure, I, David M. Dvorin, hereby provide notice that I served via certified mail the attached subpoena to Allison Golem. The return receipt is also attached.

Respectfully submitted,

//s/ David M. Dvorin

DAVID M. DVORIN (0067673)
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(216) 453-1100
(216) 292-3340 fax
dmd@dvorinlaw.com

Attorney for Plaintiff Loay G. Sayah

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

//s/ David M. Dvorin
DAVID M. DVORIN (#0067673)

IN THE COURT OF COMMON PLEAS
SUBPOENA CIVIL RULE 45

THE STATE OF OHIO

ss.

Cuyahoga County

Loay G. Sayah

Plaintiff

No. CV-15-839369

vs.

Chad C. Golem

Defendant

Judge John P. O'Donnell

To Allison Golem
7385 Ledgewood Dr.
Willoughby, OH 44094-9457

YOU ARE COMMANDED to appear in the Court of Common Pleas to testify as witness on behalf of the (PLAINTIFF/DEFENDANT) in the above entitled case and not depart the Court without leave. Fail not under penalty of the law. Your appearance is required on the ___ of ___ at ___ o'clock ___ M. in Courtroom No. ___ of the:

Justice Center-Court Tower
1200 Ontario Street
Cleveland, Ohio 44113

Courthouse Square
310 W. Lakeside Ave.
Cleveland, OH 44113

Cuyahoga County Courthouse
One Lakeside Avenue
Cleveland, Ohio 44113

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of deposition in the above case.

30195 Chagrin Blvd, Suite 300, Pepper Pike, Oh 44124 03/06/2015 10am
PLACE OF DEPOSITION DATE TIME

YOU ARE COMMANDED to produce and permit inspection, copying, testing or sampling of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE DATE TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES DATE TIME

To insure taxation of their fees, witnesses must report each attendance to the Clerk of Court of Common Pleas on the first floor of the Justice Center-Courts Tower.

Section 2335.06 of the Ohio Revised Code provides that witnesses are entitled to receive \$12.00 for each full day's attendance and \$6.00 for each half day's attendance, plus ten cents per mile traveled to and from his place of residence outside of the City of Cleveland proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

David M. Dvorin 30195 Chagrin Blvd, Suite 300, Pepper Pike, Ohio 44124
ATTORNEY NAME ADDRESS
Loay G. Sayah 02/11/2015
SIGNATURE REPRESENTING DATE

Clerk of Courts

by

Clerk

THE STATE OF OHIO

ss.

Cuyahoga County

Affidavit of Service of Subpoena by Sheriff or Officer, Attorney or Private Person

On the 17th day of February, 2015

I served this Subpoena on the within named:

as follows:

Certified mail

SHERIFF'S FEES

Service on \$
Copy
Miles Travel
Return
\$
Witness entitled to miles

By [Signature] (#0067673) Deputy Sheriff/Attorney

Subscribed and sworn to before me, a
This day of , 20

RULE 45. RULES OF CIVIL PROCEDURE, PARTS C & D

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS. (1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA. (2) A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(IV)(D), (B), (IV), OR (C) OF THIS RULE NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION, HEARING, OR TRIAL. (3) SUBJECT TO DIVISION (2)(D) OF THIS RULE, A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(I)(B)(D), (B), (IV), OR (C) OF THIS RULE MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SEVERE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO PRODUCTION. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO PRODUCTION EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE PRODUCTION COMMANDED. (4) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING: (A) FAILS TO ALLOW REASONABLE TIME TO COMPLY; (B) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES; (C) REQUIRES DISCLOSURE OF A FACT KNOWN OR OPINION HELD BY AN EXPERT NOT RETAINED OR SPECIALLY EMPLOYED BY ANY PARTY IN ANTICIPATION OF LITIGATION OR PREPARATION FOR TRIAL, AS DESCRIBED BY CIV. R. 26(D)(4), IF THE FACT OR OPINION DOES NOT DESCRIBE SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTS FROM STUDY BY THAT EXPERT THAT WAS NOT MADE AT THE REQUEST OF ANY PARTY; (D) SUBJECTS A PERSON TO UNDUE BURDEN. (5) BEFORE FILING A MOTION PURSUANT TO DIVISION (3)(D) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY, A MOTION FILED PURSUANT TO DIVISION (3)(D) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN. (6) IF A MOTION IS MADE UNDER DIVISION (3)(A)(C) OR (3)(D) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARSHNESS AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL, AT THE PERSON'S OPTION, PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR ORGANIZED AND LABELED TO CORRESPOND WITH THE CATEGORIES IN THE SUBPOENA. A PERSON PRODUCING DOCUMENTS OR ELECTRONICALLY STORED INFORMATION PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING. (2) IF A REQUEST DOES NOT SPECIFY THE FORM OR FORMS FOR PRODUCING ELECTRONICALLY STORED INFORMATION, A PERSON RESPONDING TO A SUBPOENA MAY PRODUCE THE INFORMATION IN A FORM OR FORMS IN WHICH THE INFORMATION IS ORDINARILY MAINTAINED IF THAT FORM IS REASONABLY USABLE, OR IN ANY FORM THAT IS REASONABLY USABLE UNLESS ORDERED BY THE COURT OR AGREED TO BY THE PERSON SUBPOENED. A PERSON RESPONDING TO A SUBPOENA NEED NOT PRODUCE THE SAME ELECTRONICALLY STORED INFORMATION IN MORE THAN ONE FORM. (3) A PERSON NEED NOT PROVIDE DISCOVERY OF ELECTRONICALLY STORED INFORMATION WHEN THE PRODUCTION IMPOSES UNDUE BURDEN OR EXPENSE. ON MOTION TO COMPEL DISCOVERY OR FOR A PROTECTIVE ORDER, THE PERSON FROM WHOM ELECTRONICALLY STORED INFORMATION IS SOUGHT MUST SHOW THAT THE INFORMATION IS NOT REASONABLY ACCESSIBLE BECAUSE OF UNDUE BURDEN OR EXPENSE. IF A SHOWING OF UNDUE BURDEN OR EXPENSE IS MADE, THE COURT MAY NONETHELESS ORDER PRODUCTION OF ELECTRONICALLY STORED INFORMATION IF THE REQUESTING PARTY SHOWS GOOD CAUSE. THE COURT SHALL CONSIDER THE FACTORS IN CIV. R. 26(B)(4) WHEN DETERMINING IF GOOD CAUSE EXISTS. IN ORDERING PRODUCTION OF ELECTRONICALLY STORED INFORMATION, THE COURT MAY SPECIFY THE FORMAT, EXTENT, TIMING, ALLOCATION OF EXPENSES AND OTHER CONDITIONS FOR THE DISCOVERY OF THE ELECTRONICALLY STORED INFORMATION. (4) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIAL, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONTEST THE CLAIM. (5) IF INFORMATION IS PRODUCED IN RESPONSE TO A SUBPOENA THAT IS SUBJECT TO A CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL PREPARATION MATERIAL, THE PERSON MAKING THE CLAIM MAY NOTIFY ANY PARTY THAT RECEIVED THE INFORMATION OF THE CLAIM AND THE BASIS FOR IT. AFTER BEING NOTIFIED, A RECEIVING PARTY MUST PROMPTLY RETURN, SEQUESTER, OR DESTROY THE SPECIFIED INFORMATION AND ANY COPIES WITHIN THE PARTY'S POSSESSION, CUSTODY OR CONTROL. A PARTY MAY NOT USE OR DISCLOSE THE INFORMATION UNTIL THE CLAIM IS RESOLVED. A RECEIVING PARTY MAY PROMPTLY PRESENT THE INFORMATION TO THE COURT UNDER SEAL FOR A DETERMINATION OF THE CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL PREPARATION MATERIAL. IF THE RECEIVING PARTY DISCLOSED THE INFORMATION BEFORE BEING NOTIFIED, IT MUST TAKE REASONABLE STEPS TO RETRIEVE IT. THE PERSON WHO PRODUCED THE INFORMATION MUST PRESERVE THE INFORMATION UNTIL THE CLAIM IS RESOLVED.

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David M. Dvorin
30195 Chagrin Blvd., Suite 300
Pepper Pike, OH 44124

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COMPLETE THIS SECTION ON DELIVERY

1. Article Number: *7255*

2. Service type: **CERTIFIED MAIL**

3. Restricted Delivery? (Extra Fee) Yes No

4. Article Addressed to: *Alison Caplan
7385 Ledgewood Dr
Willoughby OH 44094*

5. Signature: *[Handwritten Signature]*

6. Date: *2/19/15*

7. Post Office: *[Stamp]*

8. Domestic Return Fee: Yes No

9. PS Form 3811, February 2014