SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CATHERINE KASSENOFF, individually, and as mother and natural guardian of C.K and J.K., infants under the age of eighteen,

Index No. 67296/2021

*Plaintiffs*,

-against-

SUSAN ADLER,

*Defendant*.
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**MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY ALLAN KASSENOFF'S MOTION TO QUASH AND FOR A PROTECTIVE ORDER**

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## I. INTRODUCTION

This case is nothing more than the sad result of a mentally ill litigant who lost custody of her children and rather than getting the help that she needs, she has decided to use the judicial system to exact revenge upon everyone she blames for the loss of her children. Specifically, the Plaintiff, Ms. Catherine Kassenoff, and Mr. Allan Kassenoff, a non-party to the instant action, are in the midst of a contentious divorce action pending for over three years in the Supreme Court of Westchester County, *Kassenoff v. Kassenoff*, Index Number 58217/2019 (the "Matrimonial Action"), in which Judge Nancy Quinn Koba presided over a 2-week interim custody trial in July 2020. Following that trial, on August 17, 2020, Judge Koba issued a 46 page Decision and Order (Ex. 1,[1] the "August 2020 Decision"), which awarded Mr. Kassenoff temporary *sole* legal and physical custody over the parties' three young children, exclusive occupancy of the marital residence, and limited Ms. Kassenoff to only therapeutically supervised in-person visits with the children for two (2) hours twice per week, and fifteen (15) minutes of therapeutically supervised Zoom calls on the days that she does not have in-person visitation. (*Id.* at 43-44). The August 2020 Decision also prohibited Ms. Kassenoff from *any* non-therapeutically supervised access or communications with the children. (*Id.* at 44).

Amongst Judge Koba's conclusions were the following:

- "[G]iven the mother's actions over the past year and given her failure to recognize and understand that her actions have been and are deleterious to her children's psychological health and emotional well-being, the father's ability to provide for the children's emotional well-being and development is superior to that of the mother's at this time." (*Id.* at 31).

- "The mother's manipulative conduct demonstrates a deliberate 'placement of her self-interest above the interests of others.' The evidence of false allegations of abuse against the father, i.e., the March Zoom Visit, and the purposeful actions to alienate the children from him is 'so inconsistent with the best interests of the child[ren] that it raises, by itself, a strong probability that the offending party is unfit to act as a custodial parent.' There was

[1] All exhibits are attached to the Affirmation of Allan Kassenoff filed concurrently herewith.

no evidence presented that the father manipulated the children into making any false claims against the mother." (*Id.* at 38-39 (citations omitted)).

- "The Court is concerned the mother will continue her harmful behavior if she has unsupervised visits with the children because she testified multiple times that she does not believe her behavior was inappropriate. Given her lack of insight regarding her actions and how they are detrimental to her children, the Court concludes the best interests of the children require that the mother's visits with her children continue to be supervised by a therapeutic supervisor who can intervene if the mother begins to engage in harmful behavior and who can assist her in developing the skills to be with her children without damaging their emotional health." (*Id.* at 42).

Following Judge Koba's August 2020 Decision, Mr. Kassenoff sincerely hoped that Ms. Kassenoff would get the help that she needed so that she could one day have a meaningful and healthy relationship with the children. But she has steadfastly refused.[2] Instead, Ms. Kassenoff has opted to make it her life's mission to exact revenge upon each and every person involved in the Matrimonial Action that led to the loss of her children, including Judge Koba, Judge Lewis Lubell (another Westchester County divorce judge who presided over the Matrimonial Action in 2021), Carol Most (the attorney for the children ("AFC") previously representing the Kassenoff children in the Matrimonial Action), Dr. Marc Abrams (the first Court-appointed neutral forensic evaluator), Mr. Kassenoff, Mr. Constantine G. Dimopoulos (Mr. Kassenoff's attorney in the Matrimonial Action), and Dr. Carolyn McGuffog (a therapist who had been seeing one of the three Kassenoff children).[3]

[2] In fact, based upon the Verified Bill of Particulars Ms. Kassenoff filed in this action, she even stopped seeing her psychiatrist, Dr. Anna Filova, in December 2020. (NYSCEF # 42 at 3).

[3] Specifically, upon information and belief, in addition to the instant Action, Ms. Kassenoff has filed (i) judicial complaints against both Judge Koba and Judge Lubell; (ii) two complaints against Ms. Most with the Second Department's Office of Attorneys for Children; (iii) complaints against Dr. Abrams with the Mental Health Professionals Certification Committee as well as with the NYS Office of Professional Discipline; (iv) a lawsuit against Mr. Kassenoff and Mr. Dimopoulos in the Supreme Court of Kings County (Index Number 522543/2020); (v) a lawsuit against Mr. Kassenoff and Mr. Dimopoulos in the Southern District of New York (Civ. Action No. 7:22-cv-02162-KMK), (vi) a grievance against Mr. Kassenoff with the Attorney Grievance Committee of the First Judicial Department and (vii) a complaint against Dr. McGuffog with the State Board of

The instant lawsuit against Dr. Susan Adler is simply another of Ms. Kassenoff's attacks in furtherance of her misguided vendetta. Critically, all of the materials being sought from Mr. Kassenoff's law firm, Greenberg Traurig, LLP ("GT") by Plaintiff's Subpoena *Duces Tecum* (the "Subpoena") are "utterly irrelevant" to Plaintiff's sole remaining claim against Dr. Adler. Furthermore, the Plaintiff's real reason for serving the Subpoena is to conduct an impermissible "fishing expedition" to try and gather evidence for future lawsuits against Mr. Kassenoff, Ms. Most and/or Dr. McGuffog (lawsuits that the Plaintiff has already threated to bring on repeated occasions) and to continue harassing Mr. Kassenoff. Accordingly, for all of the foregoing reasons and as demonstrated further below, Mr. Kassenoff respectfully requests that the Court grant his motion to quash the Subpoena and enter a protective order preventing further harassing subpoenas from the Plaintiff.

## II. FACTUAL BACKGROUND

### A. The Plaintiff's Action Against Dr. Adler

On January 24, 2022, Ms. Kassenoff filed her unverified Complaint against Dr. Adler, "a psychotherapist licensed by the State of New York who maintains a private practice in Westchester County." (NYSCEF # 4 at ¶ 1). Dr. Adler began seeing two of the three Kassenoff children ("C.K." and "J.K.") in October or November 2019, shortly after the commencement of the Matrimonial Action.[4] (*Id.* at ¶¶ 71-72). Dr. Adler continued seeing C.K. and J.K. until Ms. Kassenoff filed the instant action against her, based upon the incredulous allegation that Dr. Adler

Education. Ms. Kassenoff is also embroiled in litigation with Marcia Kusnetz, one of the 15 lawyers she has retained over the course of the Matrimonial Action. (*The Law Office of Marcia E. Kusnetz, P.C. v. Catherine Kassenoff*, Index Number 60707/2021).

[4] The third Kassenoff child engaged in therapy with Dr. Carolyn McGuffog, that is until Ms. Kassenoff filed a complaint against her with the State Board of Education, at which point Dr. McGuffog stopped seeing the child.

"intentionally ignored [the Children's] needs, and cast aside her moral and ethical obligations, by manipulating the Children and unjustifiably recommending their removal from the custody of [Ms.] Kassenoff." (*Id.* at ¶ 2). Instead, according to Ms. Kassenoff, Dr. Adler "intended to utilize 'reprogramming' therapy with the Children" with the alleged "goal of promoting a fabricated claim of parental alienation in support of Allan Kassenoff's litigation efforts to hide his domestic violence and abuse and win a custody dispute." (*Id.* at ¶¶ 65, 229; *see also id.* at ¶ 100 ("To 'reprogram' the Children, Adler estranged them from Plaintiff as much as possible during therapy sessions by smearing their image of Plaintiff while praising Allan Kassenoff.")). Based upon this allegation, the Complaint includes the following six causes of action:

1. "Professional Malpractice – by the Children"
2. "Negligence – by the Children"
3. "Breach of Fiduciary Duty – by the Children"
4. "Breach of Contract – by Plaintiffs"
5. "Fraudulent Inducement – by [Ms.] Kassenoff"
6. "Negligent Infliction of Emotional Distress – by [Ms.] Kassenoff)"

On February 14, 2022, Dr. Adler filed a motion to dismiss all of Plaintiff's claims. (NYSCEF ## 5-12). On September 17, 2022, this Court issued its Decision/Order, dismissing five of the six causes of action asserted by Ms. Kassenoff. (NYSCEF # 32). Specifically, the Court first concluded that "the father has been awarded temporary sole legal and physical custody of the children. [Ms.] Kassenoff has neither. Consequently, [Ms.] Kassenoff cannot appear for the children." (*Id.* at 6). Accordingly, the Court dismissed Plaintiff's "first four causes of action on the grounds that the party asserting the cause of action lacks legal capacity to sue." (*Id.* at 7). Additionally, this Court dismissed the Plaintiff's sixth count, concluding that "'extreme and outrageous conduct is an essential element of a cause of action to recover damages for negligent infliction of emotional distress'" and Ms. Kassenoff's allegations in her Complaint "do[] not meet this standard." (*Id.* at 14-15 (quoting *Taggart v. Costabile*, 131 AD3d 243, 253-54 [2d Dept

2015]). Accordingly, the only remaining claim in Plaintiff's frivolous lawsuit is her "fraudulent inducement" cause of action (Count five).

Plaintiff's "fraudulent inducement" claim appears in Paragraphs 227-34 of the Complaint and is reproduced in full below:

227. Plaintiffs repeat and reallege Paragraph 1 to 157 of the Complaint as though set forth herein.

228. On or about October 12, 2019, Adler knowingly and intentionally induced Kassenoff to enter the Contracts by withholding material information concerning her longstanding personal and professional relationships with Most, Abrams, and others that created an actual, potential, or perceived conflict of interest that would inappropriately influence and compromise her ability to exercise professional judgment and render treatment to the Children.

229. On or about October 12, 2019, Adler knowingly and intentionally induced Kassenoff to enter the Contracts by misrepresenting the true nature of her services to the Children and concealing that she intended to subject the Children to "reprogramming therapy" with the goal of promoting a fabricated claim of parental alienation in support of Allan Kassenoff's litigation efforts to hide his domestic violence and abuse and win a custody dispute.

230. Adler made such material misrepresentations and omissions prior to the formation of any agreement with Kassenoff.

231. Kassenoff reasonably relied on these material misrepresentations and omissions to enter the Contracts.

232. Had Kassenoff known the truth concerning Adler's relationships with Most, Abrams, and others, she would have never entered the Contracts and paid tens of thousands of dollars to Adler to harm the Children.

233. Had Kassenoff known the truth that Adler would subject the Children to "reprogramming therapy," she would have never entered the Contracts and paid tens of thousands of dollars to Adler to harm the Children.

234. As a proximate result of Adler's conduct alleged herein, Kassenoff has been damaged in an amount to be proven at trial but that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

(NYSCEF # 4).

As can readily be seen, none of the allegations that form the basis of Ms. Kassenoff's fraudulent inducement claim against Dr. Adler are directed towards any actions and/or communications of Mr. Kassenoff.

**B. The Subpoena**

On November 14, 2022, Plaintiff served the Subpoena on GT, seeking the following categories of documents:

1. All documents and correspondence sent by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) to Susan Adler (drsusanadler@aol.com) from January 1, 2019 to present date.

2. All documents and correspondence received by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) from Susan Adler (drsusanadler@aol.com) from January 1, 2019 to present date.

3. All documents and correspondence related to Susan Adler from January 1, 2019 to present date.

4. All documents and correspondence sent by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) to Carol Most (carolmost@cwmost.com) and/or any other employees of the law firm Most & Schneid, P.C., 222 Bloomingdale Road, Suite 410, White Plains, NY 10605 from January 1, 2019 to present date.

5. All documents and correspondence received by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) from Carol Most (carolmost@cwmost.com) and/or any other employees of the law firm Most & Schneid, P.C., 222 Bloomingdale Road, Suite 410, White Plains, NY 10605 from January 1, 2019 to present date.

6. All documents and correspondence sent by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) to Carolyn McGuffog (drmcguffog@gmail.com) from January 1, 2019 to present date.

7. All documents and correspondence received by Allan Kassenoff through his Greenberg Traurig email account (KassenoffA@gtlaw.com) from Carolyn McGuffog (drmcguffog@gmail.com) from January 1, 2019 to present date.

(Ex. 2).

As demonstrated below, the Subpoena (1) is hopelessly overbroad in that it seeks "*[a]ll* documents and correspondence" – rather than seeking *specific* documents – for each of the seven categories; (2) seeks materials that are "utterly irrelevant" to Plaintiff's sole remaining claim in her action against Dr. Adler; and (3) is nothing more than an improper "fishing expedition" designed to harass Mr. Kassenoff. Accordingly, Mr. Kassenoff respectfully requests that the Court grant his motion to quash and for a protective order in its entirety.

## III. LEGAL STANDARD

The New York Court of Appeals has held that "section 3101(a)(4)'s notice requirement . . . obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, 'the circumstances or reasons such disclosure is sought or required.'" *Kapon v. Koch*, 23 NY3d 32, 39 [2014] (quoting CPLR § 3101(a)). Assuming the party moving to quash the subpoena under CPLR §2304 establishes "that the discovery sought is 'utterly irrelevant' to the action or that the 'futility of the process to uncover anything legitimate is inevitable or obvious' . . ., the subpoenaing party must then establish that the discovery sought is 'material and necessary' to the prosecution or defense of an action, i.e., that it is relevant." *Id.* at 34; *see also Etkin v. Sherwood 21 Assocs., LLC*, 2021 NY Slip Op 30372[U], at 8 [Sup Ct, NY County 2021) ("A motion to quash a subpoena will be granted when the futility of uncovering anything legitimate is obvious, or the information sought is, 'utterly irrelevant to any proper inquiry.'") (quoting *Kapon*, 23 NY3d at 38). Moreover, "where the requests are palpably overbroad, neither the subpoenaed party nor the court is required to prune the requests to 'cull the good from the bad.'" *Etkin*, 2021 NY Slip Op 30372[U], at 8 (quoting *Grotallio v. Soft Drink Leasing Corp.*, 97 AD2d 383, 383 [1st Dept 1983]). Furthermore, "[i]t is well settled that a subpoena must not be used as a tool of harassment or for a 'fishing expedition to ascertain the existence of evidence.'" *Harris v. Harris*, 2020 NY Slip Op 31937[U], at 2 [Sup Ct, NY County 2020] (quoting *Reuters Ltd. v. Dow Jones Telerate, Inc.*, 231 AD2d 337, 337 [1st Dept 1997]); *see also Law Firm of Ravi Batra, P.C. v. Rabinowich*, 77 AD3d 532 [1st Dept 2010].

CPLR § 3103(a) allows any person "from whom or about whom discovery is sought" to seek a protective order "denying, limiting, conditioning or regulating the use of any disclosure device." Further, "[s]uch order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." *Id.* A protective

order may be issued when a demand for disclosure is "palpably improper," when the party seeking disclosure fails to demonstrate the relevancy of the requested information to the case at bar, when the disclosure sought is overbroad in demanding excessive information, or when a party demanding production engages in an improper fishing expedition. *See, e.g., Herscovit v. County of Nassau*, 89 AD2d 598, 598-99 [2d Dept 1982] (granting motion for protective order as to treatment by medical personal after plaintiff's fall in defendant's hospital on ground that such information was irrelevant to plaintiff's claims of negligence and malpractice); *Savitsky v. General Motors Corp.*, 40 AD2d 1025, 1025, 338 NYS2d 923, 923 [2d Dept 1972] (reversing denial of protective order where plaintiffs' discovery requests were "much too broad" and failed to establish relevancy of requested documents).

## IV. ARGUMENT

### A. The Subpoena Is Overbroad

It is well-settled that a subpoena may only seek "to compel the production of *specific documents* that are relevant and material to facts at issue in a pending judicial proceeding." *Constantine v. Leto*, 157 AD2d 376, 557 NYS2d 611 [3d Dept 1990] (emphasis added) (citations and internal quotations omitted). In other words, "[a] subpoena is required to 'specify with reasonable precision the records sought.'" *The Marmara, Inc. v. Pantoja*, Sup Ct, NY County, July 5, 2017, Mendez, J., index No. 152927/2013, at 2 (Ex. 3) (quoting *Grotallio v. Soft Drink Leasing Corp.*, 97 AD2d 383, 383 [1st Dept 1983]); *see also Glassman v. Weinberg*, 2018 NY Slip Op 32001[U], at 4 [Sup Ct, NY County 2018] (holding that a subpoena is used 'to compel the production of *specific documents* that are relevant and material to facts at issue in a pending judicial proceeding'") (emphasis added). Furthermore, "[a] subpoena that demands 'any' and 'all' documents are [sic] overbroad since it may encompass some materials that are be [sic] privileged or 'clearly irrelevant.'" *Etkin*, 2021 NY Slip Op 30372[U], at 7-8. In fact, in *Grotallio*, the First

Department quashed the plaintiff's subpoena on non-party Coca-Cola as "overly broad" despite the fact that some of the sought materials were "undoubtably relevant":

> Although some of the records sought are undoubtedly relevant the subpoenas are overly broad. Besides seeking matter which is clearly irrelevant, the subpoenas with their "any and all" demands would require the production of materials which may well be privileged.

97 AD2d at 383.

Finally, "where a subpoena is over-broad, the witness is not obligated to cull the good from the bad." *Platt v. GC Eng & Assocs. Eng'g, P.C.*, 2014 NY Slip Op 31579[U], at 4 [Sup Ct, NY County 2014] (granting motion to quash as it "would be unreasonable for the non-party entities which were issued these subpoenas to have to determine which documents directly address respondent's demand for materially relevant information and which documents do not"); *see also Etkin*, 2021 NY Slip Op 30372[U], at 8 ("Further, where the requests are palpably overbroad, neither the subpoenaed party nor the court is required to prune the requests to 'cull the good from the bad.'").

The Plaintiff's Subpoena includes seven "Document Demands," each of which seeks "*[a]ll* documents and correspondence" that fit within the specified Demand. By requesting "all" such documents and correspondence, the Subpoena is hopelessly overbroad and should be quashed for that reason alone. *See, e.g., id.* at 10 (granting the non-parties' motion to quash because, *inter alia*, "[t]he subpoenas are also overbroad as written as they each seek '*[a]ll* documents and *all* communications (including, but not limited to, communications with Sherwood or the Board) concerning the Building's windows,' failing to specify with any precision the records sought") (emphasis in original).

**B. The Subpoena Seeks Materials That Are "Utterly Irrelevant" To Plaintiff's Sole Remaining Claim Against Dr. Adler**

As set forth above, Plaintiff's sole remaining claim in this action is that Dr. Adler

fraudulently induced her to enter the contracts to treat C.K. and J.K. (the "Contracts") by failing to disclose "her longstanding personal and professional relationships with Most, Abrams, and others" and "concealing that she intended to subject the Children to 'reprogramming therapy.'" (NYSCEF # 4 at ¶¶ 228-29). Because this claim has nothing to do with Mr. Kassenoff, none of the materials sought by the Subpoena can possibly have any relevance to the instant action. For example, none of the correspondence between Mr. Kassenoff and Ms. Most and/or Dr. McGuffog – or even Dr. Adler herself – is relevant as to whether or not Dr. Adler "knowingly and intentionally induced [Ms.] Kassenoff to enter the Contracts by withholding material information" or "by misrepresenting the true nature of her services to the Children and concealing that she intended to subject the Children to 'reprogramming therapy.'" (*Id.*) Although Ms. Kassenoff may argue that the Subpoena is seeking evidence of some sort of conspiracy between Dr. Adler, Ms. Most, Dr. McGuffog and Mr. Kassenoff, the Complaint does not include any such conspiracy claim. In fact, the Supreme Court recently addressed – and rejected – a litigant's attempt to subpoena evidence in support of a claim that was not asserted in the complaint in *Etkin v. Sherwood 21 Assocs., LLC*, 2021 NY Slip Op 30372[U] [Sup Ct, NY County 2021].

In *Etkin*, the plaintiff had purchased a Manhattan condominium unit through defendant Sherwood 21 Associates, LLC ("Sherwood"), the sponsor for the condominium's offering plan. *Id.* at 2. The plaintiff brought suit against Sherwood seeking "damages for allegedly defective or scratched windows in the Manhattan condominium unit he purchased." *Id.* at 1. According to Etkin, "56 of the 64 windows in the unit were so scratched prior to moving in that he could not see out of them and that, pursuant to the terms of the condominium's offering plan, incorporated by reference into the contract of sale, Sherwood was required to repair or replace them and has refused to do so, thus breaching the agreement." *Id.* at 2. During the course of discovery, the plaintiff

served 8 non-party subpoenas seeking documents and depositions. *Id.* at 1. Sherwood and KPF (the architect for the condominium and one of the subpoenaed non-parties) moved to quash all 8 subpoenas "on the grounds that the requests are overbroad, harassing, and are made of parties that would not have any relevant information [and] that the subpoenas seek disclosure that is related not to the breach of contract claim against Sherwood but to Etkin's cause of action for breach of fiduciary duty against the defendant Board, which was dismissed." *Id.* at 6. The court granted the motion to quash, concluding that the subpoenas (1) were irrelevant to the plaintiff's breach of contract claim against Sherwood and (2) impermissibly sought discovery on "some sort of fraud or conspiracy" not alleged in the complaint:

> *The discovery sought is not "material and necessary" to Etkin's complaint* – the only remaining cause of action relating to the condominium's windows is the cause of action for breach of contract. As previously stated, according to Etkin, Sherwood refused to repair or replace the scratched windows despite having a contractual obligation. The only discovery relevant to such a cause of action is the condominium's offering plan and purchase agreement and any provision therein requiring Sherwood to repair the windows, any proof as to whether the windows were repaired and any damages sustained by Etkin.
>
> As correctly noted by Sherwood and KPF, *Etkin's subpoenas relate to his personal belief and continuing accusation that Sherwood engaged in some sort of fraud or conspiracy to sell the various units in the building and avoid repairing the windows until the contractual period in which to bring any claim for repairs or replacement expired*. ***Indeed, on their face, the subject subpoenas appear to be seeking discovery merely to explore and support these fraud claims.*** *However, the operative complaint does not allege any cause of action relating to these allegations.* Thus, the subpoenas must be quashed as the sought discovery is nothing more than a "fishing expedition to ascertain the existence of evidence."

*Id.* at 9 (emphasis added) (quoting *Reuters*, 231 AD2d at 337); *see also id.* at 10-11 ("Again, whether there may have been other units in the building with scratched windows has no bearing on Etkin's cause of action alleging that Sherwood failed to replace or repair the windows in his unit pursuant to the terms of the purchase agreement."). Accordingly, the *Etkin* Court granted the motion to quash.

Similarly, in the instant case, Ms. Kassenoff may have a "personal belief" of "some sort of fraud or conspiracy" amongst Dr. Adler, Ms. Most, Dr. McGuffog and Mr. Kassenoff. But, as in *Etkin*, "the operative complaint does not allege any cause of action relating to these allegations. Thus, the subpoena[] must be quashed as the sought discovery is nothing more than a 'fishing expedition to ascertain the existence of evidence.'" *Id.* at 9; *see also Shea v. Mad River Bar & Grille*, 2019 WL 4277004, at *5 [Sup Ct, NY County Sept. 10, 2019] (granting non-party's motion to quash plaintiff's subpoena, holding that "it is not permissible [to serve a pre-action non-party subpoena] as a fishing expedition to ascertain whether a cause of action exists"); *see also id.* ("it does appear, despite her protestations to the contrary, that plaintiff is attempting to depose the nonparties to obtain information to draft a complaint against them"); *see also Arias v. Vecchione*, 2020 NY Slip Op 34670[U], at 4 [Sup Ct, NY County 2020] (granting a motion to quash where the information sought was irrelevant to the plaintiff's claims and, thus "amounts to an impermissible fishing expedition"); *Rivera-Mejia v. Schwartz*, 2018 WL 10701865, at *5 [Sup Ct, Westchester County Jan. 8, 2018] (granting motion to quash non-party subpoena because the "defendants failed to carry their burden to show that [the sought] discovery is even minimally relevant to this action. Accordingly, the subpoena is at best substantially overbroad, if not altogether irrelevant and illegitimate."). Because the Subpoena seeks information that is "utterly irrelevant" to Ms. Kassenoff's remaining claim against Dr. Adler, Mr. Kassenoff's motion to quash should be granted. *Kapon*, 23 NY3d at 34.

### C. The Subpoena Is Nothing More Than A "Fishing Expedition" Designed To Harass Mr. Kassenoff

Rather than seeking information that is "material and necessary in the prosecution" of her action against Dr. Adler (as permitted by CPLR § 3101(a)), Ms. Kassenoff served the Subpoena (on Mr. Kassenoff's employer no less) in order to further harass Mr. Kassenoff with the hope that

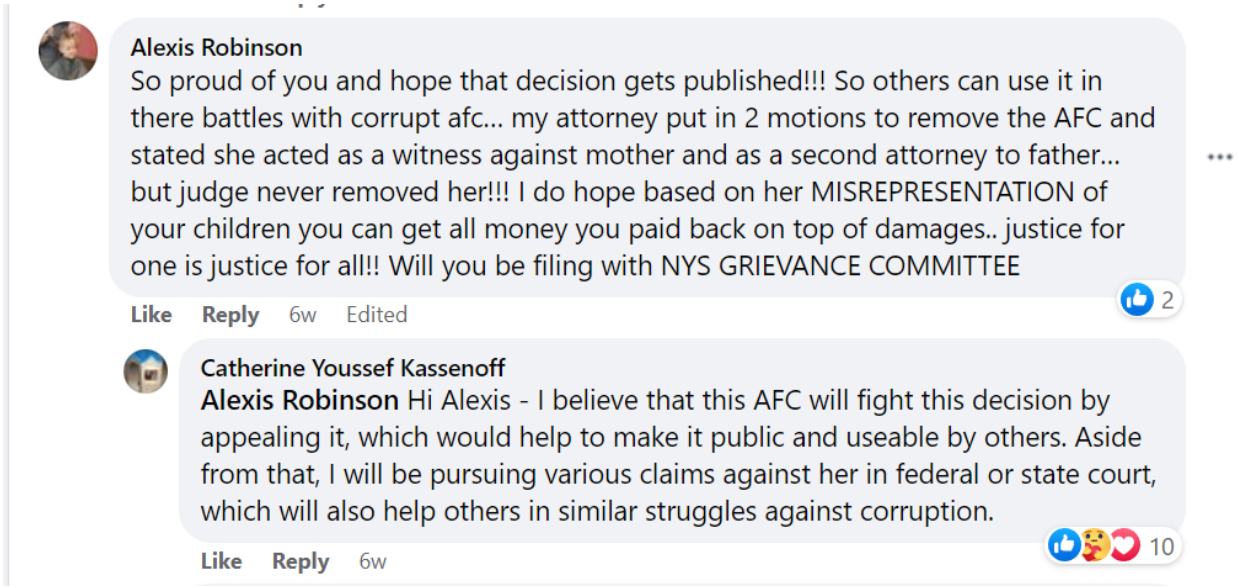
she uncovers evidence that can be used against Mr. Kassenoff, Ms. Most and/or Dr. McGuffog in future litigation. In order to protect non-parties from such obtrusive discovery demands from overly aggressive litigants (like Ms. Kassenoff), "[t]he Court of Appeals has consistently held that a subpoena *duces tecum* 'may not be used for the purpose of discovery or to ascertain the existence of evidence,' but rather 'to compel the production of *specific documents* that are relevant and material to facts at issue in a pending judicial proceeding.'" *Glassman*, 2018 NY Slip Op 32001[U], at 4 (emphasis added) (quoting *Matter of Terry D.*, 81 NY2d 1042, 1044 [2015]). In other words, "a subpoena must not be used as a tool of harassment or for a 'fishing expedition to ascertain the existence of evidence.'" *Harris*, 2020 NY Slip Op 31937[U], at 2 (N.Y. Sup. Ct. 2020) (quoting *Reuters*, 231 AD2d 337).

Rather than seeking information that is "material and necessary" to the instant action, Ms. Kassenoff served the Subpoena in an effort to find evidence to use in future litigations. In addition to the instant action against Dr. Adler, the litigious Ms. Kassenoff has already sued Mr. Kassenoff and Mr. Dimopoulos in two separate actions – one in the Supreme Court of Kings County (Index Number 522543/2020) and one in the Southern District of New York (Civ. Action No. 7:22-cv-02162-KMK). Furthermore, she has sent countless emails to Mr. Dimopoulos and/or Mr. Kassenoff threatening even more litigation against them. For example, on October 26, 2022, Ms. Kassenoff sent an email to Mr. Dimopoulos with the subject line "False Arrest, Malicious Prosecution, Libel, Slander and False Words" which read, in pertinent part, as follows:

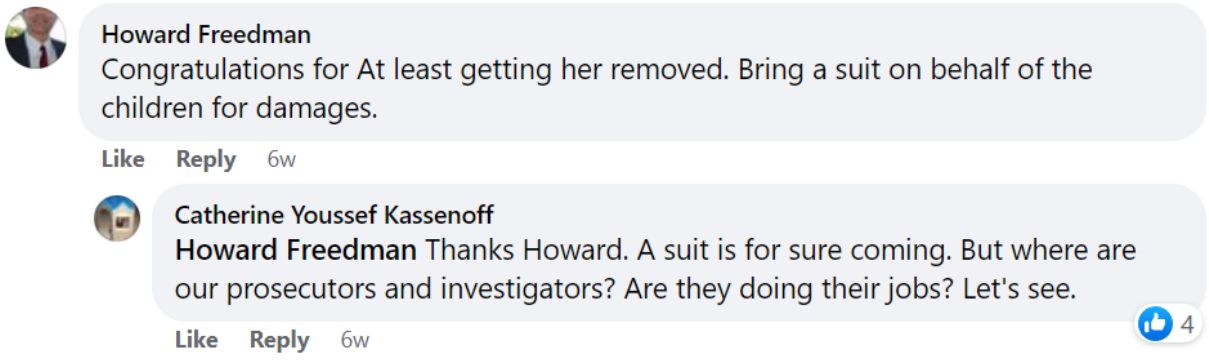
> In view of your persistent efforts to have me falsely arrested and prosecuted in January 2022 and the events and false reports leading up to that incident, I note CPLR Section 215, which provides for a one year statute of limitations. It may or may not be applicable, but I want to alert you to it inasmuch as *I intend to preserve my rights to bring an action for such misconduct by you and your client* – which had disastrous effects on my career and otherwise.

(Ex. 4) (emphasis added).

Similarly, upon information and belief, Ms. Kassenoff has repeatedly threatened to bring suit against Ms. Most. In fact, Ms. Kassenoff has made multiple posts on her public Facebook page indicating that she is preparing federal and/or state law cases against Ms. Most. In response to one of Ms. Kassenoff's many Facebook posts attacking Ms. Most (this one dated October 31, 2022), one of the commentators stated "[c]an you legally sue [Ms. Most]?" to which Ms. Kassenoff responded: "Working on it." (Ex. 5 at 3). Similarly, in response to one of her follower's comments to another of her posts (dated October 7, 2022), Ms. Kassenoff stated that she "will be pursuing various claims against [Ms. Most] in federal or state court":




(Ex. 6 at 7). If that comment was not clear enough, Ms. Kassenoff reiterated that "[a] suit is for sure coming" against Ms. Most in response to yet another one of her followers:



(*Id.* at 9-10).

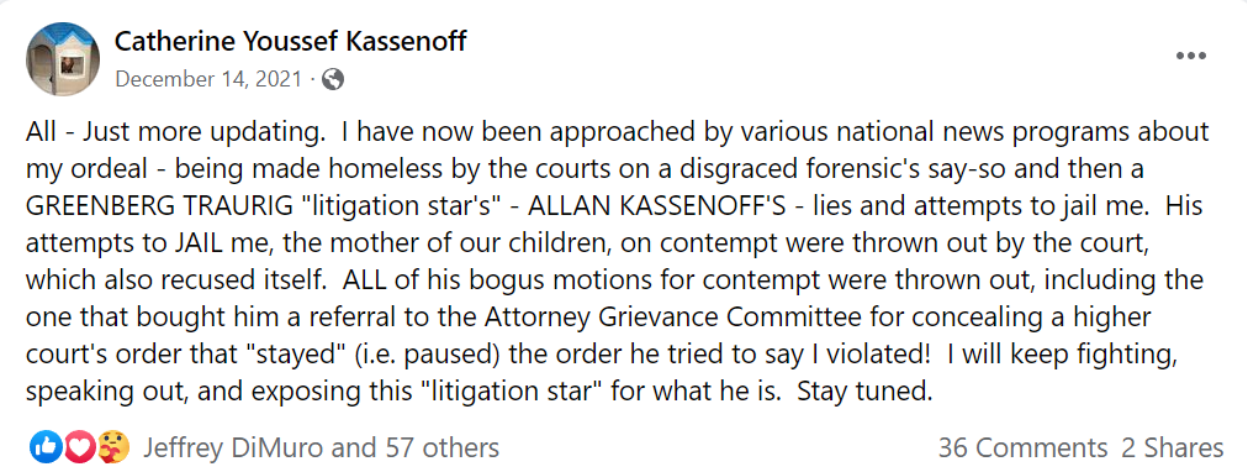
Similarly, Ms. Kassenoff has been relentlessly attacking Dr. McGuffog. In addition to filing a complaint against Dr. McGuffog with the State Board of Education, Ms. Kassenoff sent an email to the Matrimonial Court on May 23, 2022, alleging that Dr. McGuffog's treatment of the third Kassenoff child ("A.K.") was "objectionable and unethical":

> In direct response to this email and attachments from Dr. McGuffog, *I wish to point out a few things about Dr. McGuffog's "treatment" of [A.K.] - which I find objectionable and unethical*. Under no circumstances do I believe she should have ever treated [A.K.] or should continue to do so. First, she allows the Father - who has exerted undue influence over the children and who has been found by the court to have made "disturbing" statements that are in "sharp contrast" to Ms. Culley's - to sit in on therapy sessions, OVER [A.K.'S] OBJECTION. This is confirmed in transcripts of court conferences, in NYSCEF filings, and in Dr. McGuffog's invoices. Second, she has completely suppressed [A.K.'s] statements about her Father's abuse, as recounted to Dr. Alan Ravitz, MD, in her multiple run-aways from the Father's home, and more. *Third, she is a proponent of "reprogramming" therapy, which [A.K.] has complained about to me repeatedly.* Fourth, she takes input only from the Father and not from me (who was the primary caregiver before divorce) - which is completely antithetical when treating a child. This practice contravenes ethical standards applicable to psychologists and psychiatrists. She does not even tell me whether she has been treating [A.K.] and yet demands payment from me. Fifth, she was hand-selected by the AFC, who has taken extreme positions in this case - which were rejected. Sixth, she has conceded in writing that she is not able to work well with [A.K.]. I have additional objections. I believe Dr. McGuffog should no longer treat [A.K.], assuming she still is.

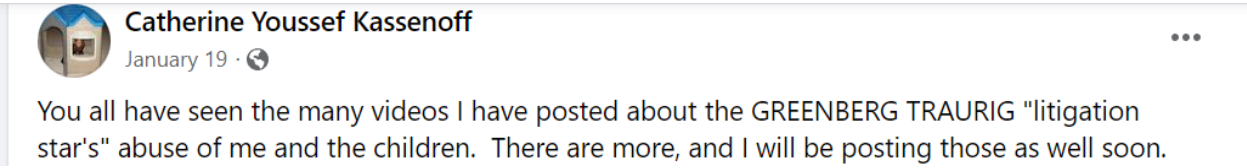
(Ex. 7 (emphasis added)). Given the above email and Ms. Kassenoff's litigious nature, it is not a stretch to believe that Ms. Kassenoff will likely file a civil complaint against Dr. McGuffog for allegedly "reprogramming" A.K. – the very thing she is accusing Dr. Adler of doing.

Finally, in addition to being an improper fishing expedition, Ms. Kassenoff served the Subpoena on GT in order to harass Mr. Kassenoff in a (continued) effort to get him fired. In fact, serving the Subpoena on GT was not Ms. Kassenoff's first (or even second) attempt at interfering with Mr. Kassenoff's job. Rather, almost since the very beginning of the Matrimonial Action, Ms. Kassenoff has made it her mission to get Mr. Kassenoff fired. For example, on February 20, 2020,

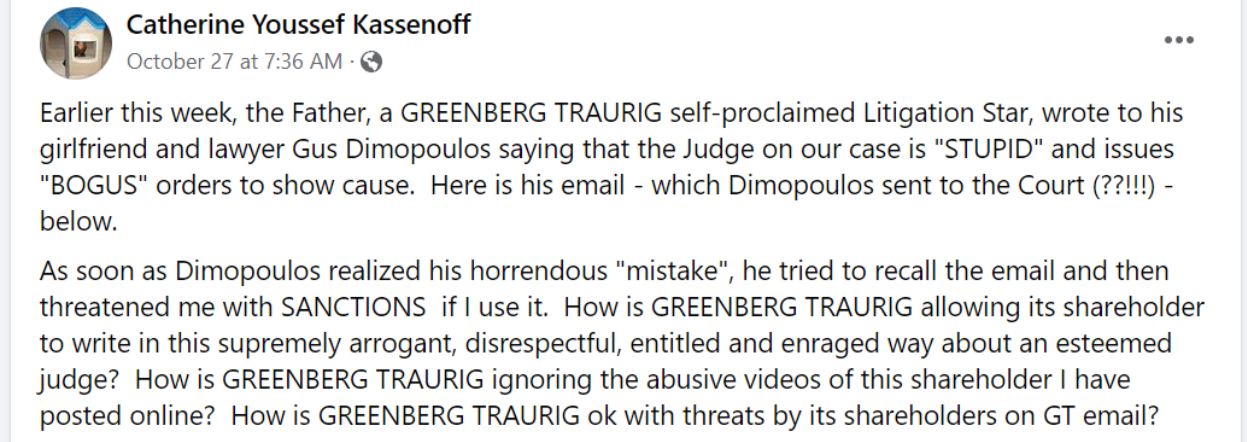
Ms. Kassenoff emailed Martin Kaminsky, Esq., GT's General Counsel, reporting Mr. Kassenoff for "abundantly using GT resources for his personal reasons [including] his GT email [and] GT telephone conference number." (Ex. 8). When that failed to get Mr. Kassenoff fired, she proceeded to file a grievance against him with the Attorney Grievance Committee of the First Judicial Department on April 3, 2020. (Kassenoff Aff. at ¶ 13). Then, on December 30, 2020, she sent a "Preservation Notice" via email to several members of GT's executive committee – including Mr. Kaminsky and Richard Rosenbaum (GT's Executive Chairman) – regarding the instant action, alleging that her claims against Dr. Adler "relate to Mr. Kassenoff's abuse of his children and of [her]." (Ex. 9). If that were not enough, Ms. Kassenoff constantly posts slanderous lies about Mr. Kassenoff on her public Facebook account – often identifying him as a Greenberg Traurig (in all capitals) Shareholder – in an effort to harass him and (hopefully) get him fired. Below are just a few examples of Ms. Kassenoff's harassing posts:




(Ex. 10).




(Ex. 11).



Catherine Youssef Kassenoff
October 27 at 7:36 AM ·

Earlier this week, the Father, a GREENBERG TRAURIG self-proclaimed Litigation Star, wrote to his girlfriend and lawyer Gus Dimopoulos saying that the Judge on our case is "STUPID" and issues "BOGUS" orders to show cause. Here is his email - which Dimopoulos sent to the Court (??!!!) - below.

As soon as Dimopoulos realized his horrendous "mistake", he tried to recall the email and then threatened me with SANCTIONS if I use it. How is GREENBERG TRAURIG allowing its shareholder to write in this supremely arrogant, disrespectful, entitled and enraged way about an esteemed judge? How is GREENBERG TRAURIG ignoring the abusive videos of this shareholder I have posted online? How is GREENBERG TRAURIG ok with threats by its shareholders on GT email?

(Ex. 12).

In short, the Plaintiff's Subpoena is *not* directed to "specific documents" that are "material and necessary" to the prosecution of her action against Dr. Adler. *Glassman*, 2018 NY Slip Op 32001[U], at 4; *Kapon*, 23 NY3d at 39. At best, the Subpoena is an improper fishing expedition with the hope that it uncovers evidence that Ms. Kassenoff can use against Mr. Kassenoff, Ms. Most and/or Dr. McGuffog in one or more future litigations. At worst, the Subpoena is just another attempt to harass Mr. Kassenoff. Regardless of which it is, Mr. Kassenoff's motion should be granted in its entirety.

## V. CONCLUSION

For all of the foregoing reasons, Mr. Kassenoff respectfully requests that the Court grant his motion to quash the Subpoena under CPLR § 2304 and enter a protective order under CPLR § 3103(a) preventing further harassing subpoenas from the Plaintiff.

Dated: November 30, 2022

Respectfully submitted,

By: */s/ Allan Kassenoff*
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*Pro Se* Non-party

**CERTIFICATION OF COMPLIANCE**
**PURSUANT TO 22 N.Y.C.R.R 202.8-B**

The undersigned hereby certifies pursuant to the Uniform Civil Rules for the Supreme Court, as follows:

1. The total number of words in the within motion, as calculated by the word processing system used to prepare it, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certificate of Compliance is: 5,759.

2. The within affirmation complies with 22 N.Y.C.R.R. 202.8b(a)(i) limiting affidavits, affirmations, briefs, and memorandum of law in chief to 7,000 words each.

Dated: White Plains, New York
November 30, 2022

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