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Michael D. Sullivan Order on Motions in Limine and Motion to Quash Notice to Produce

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Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICHAEL D. SULLIVAN,)
)
 Plaintiff,)
)
 v.)
)
 JAMES A. TORCHIA, et al.)
)
 Defendants/Third-Party Plaintiffs,)
)
 v.)
)
 SULLIVAN PROPERTIES, LP and BMLS)
 CORPORATION,)
)
 Proposed Third-Party Defendants.)



Civil Action File No. 2013CV229283

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**ORDER ON MOTIONS IN LIMINE AND
MOTION TO QUASH NOTICE TO PRODUCE**

Before the Court are (1) Defendants' Motion in Limine; (2) Plaintiff's Motion In Limine No. 1 (Excluding Reference to Alleged Sexual Assault); (3) Plaintiff's Motion In Limine No. 2 (Excluding Reference to Failure to Pay Back Taxes); and (4) Defendants' Motion to Quash Notice to Produce. Having considered the motions and arguments and representations made in the course of the Pre-Trial Conference held on November 13, 2014, the Court finds as follows:

Defendants' Motion in Limine

Defendants present an omnibus motion in limine with 20 separate parts; each part is discussed below as a separate motion:

1. Defendants move to invoke the rule of sequestration under O.C.G.A. § 24-6-615. Motion is **GRANTED**.

2. Defendants move to bar introduction of evidence of settlement discussions. Motion is **GRANTED**.

3. Defendants move to exclude texts between Sullivan and Torchia that are overly prejudicial and/or irrelevant. Motion is **GRANTED**.

4. Defendants move to exclude evidence of certain lawsuits involving Defendants. Motion is **GRANTED in part and DENIED in part**. Reference to the USI litigation will be allowed. (*Universal Settlements Int'l, Inc. v. Nat'l Viatical, Inc.*, Case No. 1:07-cv1243 (W.D. Mich); *Nat'l Viatical, Inc. v. Universal Settlements Int'l, Inc.*, Case No. 1:11-cv-1226 (W.D. Mich.)).

5. Defendants move to bar introduction of evidence or argument regarding damages that have not been specially pled. The Court acknowledges receipt of Plaintiff's First Amendment to Paragraphs 113, 118, 124, 131, 138, 151 of Plaintiff's Complaint filed with this Court on November 12, 2014. Motion is **RESERVED**.

6. Defendants move to bar introduction of unredacted financial records. Motion is **GRANTED**.

7. Defendants move to exclude testimony regarding any alleged extramarital affair between Carly Sullivan and James Torchia. Motion is **GRANTED**.

8. Defendants move to exclude evidence of complaints made by Torchia about Sullivan to the IRS, Judge Bagley, and the U.S. Attorney. Motion is **GRANTED**.

9. Defendants move to exclude evidence that National Viatical, Inc. ("NVI") is an assigned judgment creditor of Sullivan. Motion is **GRANTED**.

10. Defendants move to bar all evidence and testimony that Sullivan owned any interest in NVI on the basis of judicial estoppel. Motion is **DENIED**.

11. Defendants move to exclude lay witness testimony that Sullivan owned an interest in NVI. The Court will allow testimony of witnesses with personal knowledge of indicia of

partnership or ownership interest, but will not allow hearsay or impermissible speculation as specifically prohibited under the rules of evidence. As such, Motion is **RESERVED**.

12. Defendants move to exclude testimony and evidence relating to oral agreements for the ownership of real property owned by NVI—NVI corporate office property and a lake lot. Plaintiff has acknowledged that NVI is not the owner of the lake lot and will not introduce evidence or testimony regarding same. Otherwise, Motion is **DENIED**.

13. Defendants move to exclude hearsay testimony from Sullivan that he received opinions from accountants that he was not required to file personal income taxes. Motion is **GRANTED**.

14. Defendants move to exclude certain documentary evidence as hearsay. Motion is **GRANTED** subject to Plaintiff's argument and the Court's determination as to whether a hearsay exception applies when and if the evidence is proffered at trial.

15. Defendants move to exclude testimony from Sullivan and other witnesses that other individuals "believed" or "knew" that Sullivan owned NVI because that testimony would be impermissible speculation without personal knowledge and hearsay. Motion is **GRANTED**.

16. Defendants move to exclude all evidence relating to Sullivan's alleged claim an damages from Access Atlanta. Motion is **GRANTED**.

17. Defendants move to exclude any testimony or evidence that Defendants' attorney, James Graham, breached a fiduciary duty to Sullivan. Motion is **GRANTED**.

18. Defendants move to exclude testimony and evidence regarding the creation of off-shore entities paid for by NVI as irrelevant and overly prejudicial. Motion is **DENIED**.

19. Defendants move to exclude all testimony and evidence of Sullivan's alleged entitlement to proceeds of the sale of Synergy as time-barred under the applicable statute of

limitations. Motion is **DENIED**.

20. Defendants move to exclude all testimony and evidence of Sullivan's alleged partnership and ownership in NVI as time-barred under the applicable statute of limitations. Motion is **DENIED**.

Plaintiff's Motion in Limine No. 1
(Excluding Reference to Alleged Sexual Assault)

Plaintiff moves to exclude reference to rape and/or sexual assault charges filed against him. Motion is **GRANTED**.

Plaintiff's Motion in Limine No. 2
(Excluding Reference to Failure to Pay Back Taxes)

Plaintiff filed this motion to exclude reference to his failure to pay back taxes. Plaintiff represented that this motion was withdrawn at the Pre-Trial Conference. Therefore, Motion is **MOOT**.

Defendants' Motion to Quash Notices to Produce

Defendants filed their Motion to Quash the production of certain documents requested in Plaintiff's Notices to Produce. The Court will address each category of documents requested in turn:

First, Defendants move to quash the production of documents relating to the sale of assets of Access Atlanta. Defendants assert the request is unreasonable because any purported claim arising between Torchia and Sullivan out of any alleged partnership in Access Atlanta is unrelated to claims alleging a partnership or ownership interest in NVI and have only been raised in the proposed pre-trial order. The Court agrees; therefore, the request to quash this set of documents is **GRANTED**.

Next, Defendants object to Plaintiff's notice to produce certain bank records, account

records, and Quickbook reports from NVI, Credit Nation Lending Services, LLC (“CNLS”), and Credit Nation Auto Sales, LLC (“CNAS”). Defendants assert that the time period during which records are sought are unreasonably overbroad. The Court agrees; therefore, the request to quash this set of documents is **GRANTED in part** and the Defendants’ production of documents in this category shall be limited to NVI’s financial records from 2007 to June of 2009. Defendants also argue that the cost of producing all the financial records is unreasonably burdensome, particularly retrieval of information from Quickbooks. The Court will reserve its ruling on the allocation of reasonable expenses resulting from the limited production of banking and Quickbooks documents as requested by the notices to produce and as limited in scope herein.

Finally, Defendants object to the production of viatical policies as they existed in June of 2009 and “policy tracking reports.” Defendants argue that retrieving requested viatical policies as they existed in June of 2009 will be overly burdensome given the substantial expense to collect and produce the policies as they existed at a particular point in time. Defendants also argue that the “policy tracking reports” contain irrelevant and confidential medical information for non-party viators. The Court agrees; therefore, the request to quash this set of documents is **GRANTED**.

SO ORDERED this 17th day of November, 2014.



ELIZABETH E. LONG, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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