

DOCKET NO.: FST-CV-15-5014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	JUDICIAL DISTRICT OF
)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
)	JULY 14, 2016
Defendants.)	

**PLAINTIFF’S MOTION FOR PARTIAL RECONSIDERATION
OF THE COURT’S JUNE 29, 2016 ORDER**

Plaintiff William A. Lomas (“Lomas”) respectfully moves the Court for partial reconsideration of its June 29, 2016 Order, granting Defendants’ Request for Adjudication of a Discovery Dispute and Motion for Order of Compliance (Docket Nos. 160.00, 159.00), and allowing Defendants to take discovery on allegations in an unfiled, draft counterclaim.

Since the Court issued its Order, new information has come to light establishing that certain of the draft allegations – specifically allegations in paragraphs 66 through 69 and 106 through 108 of the draft counterclaim– are completely unfounded, and material witnesses who should have been questioned before these allegations were asserted were not questioned. Those witnesses are now prepared to offer evidence establishing that the allegations are completely baseless.

The purpose of a motion for re-argument or reconsideration is to demonstrate to the court that “there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of the facts.” *Jaser v. Jaser*, 37 Conn.App. 194, 202, 655 A.2d 790 (1995). “Newly discovered evidence may warrant

reconsideration of a court's decision. For evidence to be newly discovered, it must be of such a nature that [it] could not have been earlier discovered by the exercise of due diligence.” *Durkin Village Plainville, LLC v. Cunningham*, 97 Conn.App. 640, 656, 905 A.2d 1256 (2006). “The granting of a motion for reconsideration ... is within the sound discretion of the court.” *Swanson v. Groton*, 116 Conn.App. 849, 866, 977 A.2d 738 (2009).

During the hearing on Defendants’ Request for Adjudication and Motion for Order of Compliance, Lomas’ counsel raised his concern that the evidence supporting Defendants’ counterclaim – specifically with regard to Lomas’ purported solicitation of Defendants’ clients – was very thin. Lomas’ counsel also argued that unsigned, unfiled allegations should not form the basis for discovery because, unlike filed pleadings, there is no obligation to ensure that there is a good faith basis for the allegations as a matter of fact and that they are warranted under existing law. *See* Transcript from June 29, 2016 hearing, pgs. 14-15, attached as Exhibit A. In response, Defendants’ counsel stated:

As attorney for a party in this court I have a duty of candor to this court and an obligation to investigate anything before I sent it to counsel in the first place. By sending him the draft complaint I have effectively made that certification. I have not filed because of the procedural posture we find ourselves in this case.... I will represent to this Court as I did previously the answer in the counterclaim that we file will be substantially similar to the draft that has been given him. We have done a diligent investigation and whether I sign it or not the minute I sent it to him that was, in fact, a representation that I had done and complied with my obligations under Connecticut law.

See Exhibit A, pgs. 15-16.

Following the hearing, in preparation to oppose Defendants’ Application for a Prejudgment Remedy against Lomas (the “Application”)(Docket No. 154.00)¹, Lomas and his counsel identified “Confidential Client No. 1” and “Confidential Client No. 2” as alleged in

¹ Defendants’ Application was subsequently withdrawn on July 13, 2016 (Docket No. 167.00).

paragraphs 66 through 69, and 106 through 108 of Defendants' unfiled, draft counterclaim attached to their Application.

The allegations in the unfiled, draft counterclaim state:

66. Since withdrawing from PWM, Lomas has contacted at least several of PWM's clients, including some of the firm's largest clients. And some of these clients have either drawn down funds under management or else completely withdrawn as clients.
67. Confidential Client No. 1 withdrew nearly all of his assets – approximately \$15.5 million – in May 2015. Confidential Client No. 1 told Pratt-Heaney that Lomas had taken him to dinner and that the two had watched an NCAA basketball game in March 2016. Confidential Client No. 1 also told Pratt-Heaney that he and Lomas played golf together in April 2016 (and that Lomas, apparently, gave Confidential Client No. 1 home-made pickles).
68. Confidential Client No. 2 withdrew all of his assets – approximately \$25 million – from LLBH in August 2015.
69. Upon information and belief, Lomas has been and continues to initiate contact with Confidential Clients Nos. 1 and 2 for the purpose of encouraging these clients to discontinue, change or reduce such their existing Business relationships with PWM and/or LLBH.

See Exhibit J to Docket No. 160.00. Paragraphs 106 through 108 are nearly identical to those described above but are restated in Defendants' fifth count for breach of Lomas' non-solicitation covenant.

In preparing to oppose these allegations at the PJR hearing scheduled for July 15, 2016, Lomas' counsel spoke with Confidential Clients Nos. 1 and 2. Confidential Client No. 1 informed Lomas' counsel that all of Defendants' claims that Lomas encouraged him to move his investments, or in any way solicited his business, were completely false. Lomas never solicited him or his business in any way. He was unequivocal in his assertion that Lomas never suggested in any way that he should invest his money elsewhere. In fact, he made clear that Lomas was not aware that he was moving his investments because he never discussed the subject with Lomas.

He moved part of his account for reasons having nothing to do with Lomas. He also stated that he had discussed his specific reasons for leaving PWM with Defendant Pratt-Heaney, and Pratt-Heaney agreed it was the sensible decision to make because Confidential Client No. 1 would save a considerable sum of money in fees.

Similarly, Confidential Client No. 2 told Lomas' counsel that Lomas never solicited him to leave PWM, that he never spoke with Lomas about his decision to move his portfolio from PWM's management, and that PWM made no efforts to keep his business after Lomas retired. He also stated that until Lomas' retirement was publically announced, he had no idea that Lomas was planning to leave and, to his knowledge, Lomas is not working as an investment advisor for his own account or for anyone else. He further stated that any claim that Lomas solicited his business, or influenced his decision to move investments from PWM, is completely false.

Moreover, both Confidential Client No. 1 and 2 stated that Defendants' counsel never contacted either one of them to investigate or discuss the Defendants' claims, nor did any of the Defendants ever discuss these matters with either Confidential Client No. 1 or 2. Consequently, it is clear that these allegations were not vetted as required and as represented to this Court, are unfounded, and are designed solely to harass and oppress Lomas.

Thus, since this Court issued its decision, it has become readily apparent that Defendants cannot substantiate the claims in their draft unfiled counterclaim at even the most basic level, that Defendants failed to investigate the allegations before asserting them, and that Defendants' counsel likewise failed to investigate the claims before presenting them to Lomas' counsel and this Court. The allegations against Lomas were made to harass and oppress him and to drive up the costs of this litigation. Likewise, any discovery related to these unfounded allegations would constitute harassment and oppression.

Accordingly, Lomas respectfully requests that the Court reconsider, in part, its June 29, 2016 Order and not allow any further discovery with respect to the claim that Lomas has violated his non-solicitation covenant. There are no other allegations in the draft counterclaim that would warrant such discovery.

THE PLAINTIFF,
WILLIAM A. LOMAS

By: /s/ Thomas J. Rechen
Thomas J. Rechen
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CERTIFICATE OF SERVICE

This is to certify that on July 14, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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/s/Thomas J. Rechen
Thomas J. Rechen

EXHIBIT A

NO: FST-CV155014808S : SUPERIOR COURT
LOMAS, WILLIAM : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
PARTNER WEALTH MANAGEMENT, LLC, : JUNE 29, 2016
ET AL

BEFORE THE HONORABLE DONNA HELLER, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

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Recorded By:
Cathy Plavcan

Transcribed By:
Kasey Hirschbeck
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 THE COURT: We're here on the matter of William
2 Lomas and Partner Wealth Management. Would counsel
3 identify themselves, please, for the record?

4 ATTY. RECHEN: Good morning, Your Honor, for the
5 plaintiff, Thomas Rechen of McCarter & English.

6 THE COURT: Okay. Good morning

7 ATTY. ALTABET: Good morning, Your Honor, Edward
8 Altabet, Gerard Fox Law for the defendants.

9 ATTY. BUTURLA: Good morning, Your Honor,
10 Richard Buturla, Berchem, Moses and Devlin, as both
11 the counsel for the defendants.

12 THE COURT: Thank you. So we're here on the
13 defendant's request for adjudication and motion for
14 order of compliance. I also do have the memorandum
15 in opposition filed by the plaintiff. Since the
16 defendants have requested that we all get together
17 I'll hear from defense counsel first.

18 ATTY. ALTABET: Thank you, Your Honor. Your
19 Honor, let me just give some background and then try
20 to suggest a practical resolution to this.

21 THE COURT: Okay.

22 ATTY. ALTABET: The -- we moved here -- we moved
23 for an order to compel certain -- Mr. Lomas to answer
24 questions at his deposition as well as for the
25 production of documents as well in addition to a
26 response to a particular interrogatory. Mr. Lomas's
27 deposition had been scheduled for June 23rd but about

1 a week before that counsel for Mr. Lomas informed me
2 that at the deposition he intended to direct his
3 client to not answer questions regarding the
4 defendant's defenses and counterclaims.

5 Now, the basis for that was that we have not yet
6 been able to a file a responsive pleading in this
7 case. However, I did provide counsel with a draft of
8 our answer and our counterclaims in order to provide
9 adequate notice. The basis for our not filing the
10 answer and counterclaims here is that there's a
11 motion to strike pending before Your Honor and as we
12 read Connecticut Law there's a risk that if we
13 interpose a responsive pleading at this point in time
14 we potentially prejudice the arguments raised in the
15 motion to strike.

16 THE COURT: Uh-huh. Okay.

17 ATTY. ALTABET: However, we have a strange
18 procedural posture here. This case was commenced
19 about a year ago on June 28th or 29th, I believe, the
20 trial was set for less than five months away at the
21 beginning of November. Not a single deposition has
22 taken place. The -- there's been no expert
23 disclosures yet so -- and the basis for all of
24 plaintiff's objections to in resisting discovery is
25 the fact that the answer and the counterclaim have
26 not yet been filed. In an our effort to keep with
27 the schedule, the defendants are prepared to

1 represent that we are prepared to file immediately
2 the answer and the counterclaim in order to -- to
3 deal with that objection provided that it's not going
4 to prejudice the motion to strike. If that's an
5 option for -- if that's an option to practically
6 resolve this issue so we can move forward warily with
7 discovery and keep a schedule we're happy to do that.
8 If that's not an option, I'm prepared to proceed into
9 the -- to the merits of the discovery dispute of why
10 discovery should nonetheless be permitted on the
11 basis of address, answer and counterclaims under
12 Connecticut Law.

13 THE COURT: Okay. Well, you do have a pending
14 motion to strike. Let me just -- I just want to get
15 this up on my computer.

16 (Pause)

17 THE COURT: If the computer would cooperate.
18 Let's see, maybe we can get that now.

19 (Pause)

20 THE COURT: Are you moving to strike all counts
21 except the breach of contract count, is that correct?

22 ATTY. ALTABET: I believe we are moving to
23 strike counts two through six.

24 THE COURT: Two through six.

25 ATTY. ALTABET: But that one -- regardless, one
26 through seven will remain, which if I may, which
27 means that no matter happens even if that motion to

1 strike --

2 THE COURT: Uh-huh.

3 ATTY. ALTABET: -- is granted entirely in our
4 favor --

5 THE COURT: Right.

6 ATTY. ALTABET: -- this case continues and a
7 responsive pleading must be must be put in. So it's
8 not a situation where the motion to strike can
9 potentially resolve all issues. So a responsive
10 pleading must be filed at some point.

11 THE COURT: Okay. All right. Why don't you
12 have a seat for a second because I have a question
13 actually for Attorney Rechen. What's the authority
14 for directing Mr. Lomas not to answer questions
15 relating to the defendant's claims in this case?

16 ATTY. RECHEN: I'm sorry, Your Honor, I didn't
17 hear the beginning part?

18 THE COURT: The authority for -- I mean, as you
19 know, there are very, very limited circumstances
20 under which an attorney may direct a client not to
21 answer a question at a deposition.

22 ATTY. RECHEN: That's right, Your Honor.

23 THE COURT: So what would be the basis for your
24 directing Mr. Lomas not to answer questions
25 concerning the defendant's answer and counterclaim?

26 ATTY. RECHEN: Yes, Your Honor. The basis would
27 be that there are not claims in the case that would

1 permit these questions to be put to my client. And
2 so what I did is I called counsel.

3 THE COURT: Uh-huh.

4 ATTY. RECHEN: And I said, look it, I think
5 we've got a problem. As you know, I've consistently
6 taken the position that you're not entitled to this
7 discovery. You've noticed this deposition and I
8 reasonably anticipate that you may seek to ask
9 questions --

10 THE COURT: Uh-huh.

11 ATTY. RECHEN: -- on matters that are not of
12 record in this case. So I proposed alternatives.

13 THE COURT: Uh-huh.

14 ATTY. RECHEN: One of the alternatives, the
15 third alternative, was that I move for a protective
16 order --

17 THE COURT: Uh-huh.

18 ATTY. RECHEN: -- and I was prepared to do that
19 because I recognized that in the ordinary course of
20 courts.

21 THE COURT: Sure.

22 ATTY. RECHEN: That is my obligation --

23 THE COURT: Uh-huh.

24 ATTY. RECHEN: -- and I was fully prepared to do
25 that. But I proposed two other alternatives, as
26 well, Your Honor. The first alternative that I
27 proposed is that we simply proceed with the

1 understanding that there's not a counterclaim.

2 There's no basis for these questions in my view to be
3 put to my client that don't pertain to claims that
4 are not of record in the case. And so if we have a
5 gentlemen's understanding that you can conduct your
6 deposition. Your questioning will be limited to
7 matters that pertain to the case as framed by the
8 pleadings and if necessary in the event that a
9 counterclaim becomes of record, we can then resume
10 the deposition, presumably, a relatively short
11 deposition and you can complete it. That was one
12 alternative that I posed.

13 The second alternative that I posed, Your Honor,
14 was that we put the deposition off until such time as
15 the motion to strike is ruled upon, the counterclaim
16 if it is to be filed is filed and then once it's
17 filed we'll take the deposition, do a single
18 deposition and address both issues that relate to the
19 complaint as well as issues that relate to the -- the
20 counterclaim.

21 And then, I made the third alternative, which
22 was, if we can't agree on this I'm not -- I'm going
23 to be in the position where I have to file a motion
24 for protective order. So that call concluded with
25 Attorney Altabet indicated to me that he would take
26 the matter under advisement and get back to me. He
27 got back to me the next day and he said within a

1 matter of moments we're going to file our motion for
2 adjudication of a discovery dispute and that's what
3 happened. That having happened I did not, I mean,
4 the matter -- the issue was framed at that point.

5 THE COURT: Uh-huh, right.

6 ATTY. RECHEN: And so therefore, I did not file
7 our motion for protective order. This is not a
8 situation, Your Honor, where unbeknownst to counsel
9 and to the surprised, we commenced the deposition and
10 I instructed a witness not answer questions without
11 authority to do it. That's not what happened here.
12 What happened here was I called counsel and I said,
13 we have a problem and I anticipate this is what
14 you're going to do, here are my proposed resolutions
15 to the problem, if need be I'll file the protective
16 order. Their filing made the filing of the
17 protective order, I think, moot, if you will. So
18 that is why I did what I did.

19 I believe, Your Honor, that under the law of
20 this State and under the law of at least the Federal
21 Jurisdictions there are cases that I've cited in my
22 brief there's no basis for inquiry into matters that
23 are not of record and that's exactly why a pleading
24 needs to be filed, signed and not a threatened
25 pleading. What is required is something more than a
26 document that's stamped draft and is unsigned and
27 unfiled in order to frame claims and then trigger a

1 right to discovery.

2 THE COURT: Okay. So now you have a trial date
3 and your trial management conference is scheduled for
4 October 20, trial date of November 7th. No
5 depositions have been taken in this case. The motion
6 to strike was marked ready and, I believe, I heard
7 argument on it.

8 ATTY. RECHEN: Yes, Your Honor.

9 THE COURT: On May 9th. So you are going to get
10 a decision from me on that motion in the second half
11 of July or in August. It will not be before the
12 middle of July, I can tell you all that right now.
13 So how many depositions are the parties talking
14 about? You're basically running out of time and
15 that's what I'm concerned about.

16 ATTY. RECHEN: Your Honor, speaking for the
17 plaintiff --

18 THE COURT: Uh-huh.

19 ATTY. RECHEN: -- my plan was to initially was
20 to take two depositions --

21 THE COURT: Okay.

22 ATTY. RECHEN: -- on a complaint --

23 THE COURT: All right.

24 ATTY. RECHEN: -- that we filed. Now, I
25 reserved rights, I -- counsel and I have discussed
26 this on at least one, I think several occasions. My
27 plan was to take two depositions, maybe an expert

1 deposition, they disclosed an expert on some subject
2 where I concluded I needed a deposition.

3 THE COURT: Uh-huh.

4 ATTY. RECHEN: On -- but the case's material
5 will be change if and when a counterclaim gets filed
6 here, particularly, given the nature of the
7 allegations that are in the draft.

8 THE COURT: Uh-huh.

9 ATTY. RECHEN: And so if that becomes of record,
10 that's going to open the door to more discovery,
11 without question. And I presently anticipate that I
12 may take as many as five depositions if that
13 counterclaim becomes of record.

14 THE COURT: Okay. Thank you.

15 ATTY. ALTABET: Your Honor, from the defendant's
16 perspective we would anticipate, obviously, deposing
17 the plaintiff that would be one deposition. We will
18 likely have two experts and we'll produce expert
19 reports in that. They will like -- Mr. Rechen will
20 presumably want to depose them. We will want to
21 depose whatever other experts Mr. Rechen puts forward
22 and potentially one or two non-party witnesses to the
23 case depending upon what is in the discovery that we
24 are seeking to compel since that relates to our --
25 our claim for breach non-solicitation covenants.

26 THE COURT: Okay. How did we get to June of
27 2016 without there -- this case was returnable a year

1 ago today, actually.

2 ATTY. RECHEN: Yes, Your Honor.

3 THE COURT: And we still don't have a
4 counterclaim interposed.

5 ATTY. RECHEN: Your Honor, can I give you some
6 history here?

7 THE COURT: Yes, thank you.

8 ATTY. RECHEN: I think the -- well, last fall
9 after the Court issued the pre-judgment remedy in
10 favor of my client which was on the stipulation of
11 the parties.

12 THE COURT: Right.

13 ATTY. RECHEN: Shortly thereafter the parties
14 entered into settlement discussions. Those
15 settlement discussions, and I won't get into the
16 detail of them, although that may happen on our
17 hearing on Monday, that settlement -- those
18 settlement discussions were very serious. They came
19 close to resolving this matter. That -- those
20 discussions took place primarily in December and
21 January. Although, the parties got very close, it
22 didn't resolve and then there was a replacement of
23 counsel. If you recall, Your Honor, that initially a
24 David Lagasse from Mintz Levin was pro hac vice
25 counsel here.

26 THE COURT: Yes, uh-huh.

27 ATTY. RECHEN: And then, at the end of those

1 settlement discussions he was terminated as best as
2 -- well, his appearance was replaced by a counsel
3 from the Gerard Fox Law Firm.

4 THE COURT: Okay.

5 ATTY. RECHEN: And so between the settlement
6 discussions and the fits and starts with respect to
7 counsel and who was appearing in the case and getting
8 up to speed in the case there have been some delays.

9 THE COURT: Yes. Okay. So I think going to
10 need to ask counsel to file a new proposed scheduling
11 order. We're going to need another status
12 conference, not proposing changing the trial date.
13 If there is a counterclaim, I'd like you to at least
14 make an effort to try to get your discovery done on
15 the counterclaim.

16 As far as the motions today and the discovery,
17 if the counterclaim is inevitable, what I don't want
18 to see counsel do, I don't think it's not fair to
19 you, it's not fair to your clients is to, you know,
20 put off doing discovery you're going to do anyway and
21 have a procedural fight where those questions are
22 going to be asked. And, you know, your correct it's
23 something could be so irrelevant that it really just
24 is not proper and you would properly move for a
25 protective order.

26 I think here, if all counsel have some sense of
27 what this case is going to look like, I mean, even if

1 you assume I grant the motion to strike this case,
2 the plaintiff's case survives and the defendant's
3 going to answer and has indicated we're filing a
4 counterclaim but we're not doing it while the motion
5 to strike is there then I think you all know that
6 those issues are going to be in the case. So if
7 let's say hypothetically, you were in the middle of a
8 deposition and you had instructed the client not to
9 answer so then you all called me, more than likely, I
10 would have directed that Mr. Lomas answer the
11 questions because the scope of the deposition being,
12 you know, discovery is not just what's admissible and
13 I know I don't need to tell any of you that you're
14 all experienced attorneys.

15 So I think you need to come up with a deposition
16 schedule, if you want to wait until after you have my
17 decision on the motion to strike that's fine but you
18 might be doing depositions every day for a month and
19 that doesn't seem to make sense. Attorney Rechen --

20 ATTY. RECHEN: Your Honor, if I may?

21 THE COURT: Sure.

22 ATTY. RECHEN: May I address Your Honor's
23 thoughts?

24 THE COURT: Uh-huh.

25 ATTY. RECHEN: Because I too have been trying to
26 and I think my telephone call to opposing counsel was
27 designed to try to avoid this so that we could move

1 discovery --

2 THE COURT: Right.

3 ATTY. RECHEN: -- forward but at the same time
4 not prejudice what at least I see as my client's
5 rights.

6 THE COURT: Right, and I'm not criticizing you
7 for making that call I think that that was, you know,
8 it's always better to have conversations about these
9 issues so --

10 ATTY. RECHEN: But here here's the problem that
11 I have. If we get this case what I'll say for the
12 moment procedurally out of order if I may use that
13 term, my client is entitled to have and certainly,
14 the rules of discovery as Your Honor has indicated
15 are broader than relevance for sure, but we're
16 talking about, at the moment, whether it's reasonably
17 calculated to leave to the discovery of admissible
18 evidence with respect to the claims in the complaint.
19 There's been no claim here that the two requests for
20 production, the one interrogatory and certainly the
21 questions that I anticipate at the deposition related
22 to the counterclaim in any way relate to the
23 complaint, they don't, they don't. They relate --
24 this discovery relates solely to matters that are in
25 the counterclaim.

26 Now, we have -- we have advised the defendants
27 that the draft counterclaim, as we've read it, we

1 believe the allegations in that draft are very thin.
2 And my client is entitled under our rules of practice
3 and the rules of practice in virtually every
4 jurisdiction in this country to have a lawyer sign a
5 pleading that says the facts have been investigated
6 and on these facts the claims are well grounded under
7 existing law. That's an obligation that -- that is
8 incumbent upon counsel for a party and a party and it
9 is that signature that then triggers discovery.

10 Now, we're entitled to that, seems to me,
11 because if they start taking discovery on a
12 counterclaim that doesn't exist, well, I mean, that
13 counterclaim can change. They can beef it up, they
14 can draw it back, they can do all sorts of things
15 that I certainly didn't have the opportunity to do
16 and no litigant has the opportunity or the right to
17 do with respect except through the amendment
18 procedures but that follows a complaint that has
19 previously been previously been vetted by counsel and
20 signed with a certification under 4-2 of our Practice
21 Book. That's an important obligation and an
22 important right that my client has.

23 One further point and it's a matter of
24 fundamental fairness, if you think about it this way,
25 with respect to a signed counterclaim, as a
26 counterclaimed defendant, my client has rights. My
27 client has a right to seek revision of it --

1 THE COURT: Sure.

2 ATTY. RECHEN: -- to strike it. But my client
3 can't defend against an unsigned pleading, against a
4 pleading that they're conducting discovery on even
5 though the issues aren't in the case but is not of
6 record and therefore is not otherwise subject to
7 attack by the counterclaimed defendant. So my
8 concern that is that we do want to keep the trial
9 date, that has been the plaintiff's objective
10 throughout here, but without sacrificing fundamental
11 rights that are insured to my client by the
12 procedures that we have here in Connecticut and
13 elsewhere in American Jurisprudence.

14 That's my client's concern, Your Honor, is to
15 move the case forward but -- but to not to do so in a
16 manner that prejudices my client's rights and ensures
17 that there is a complaint that's properly vetted and
18 grounded, signed, filed and of record.

19 ATTY. ALTABET: If I may briefly respond to --

20 THE COURT: Yes.

21 ATTY. ALTABET: -- that, Your Honor? As
22 attorney for a party in this court I have a duty of
23 candor to this court and an obligation to investigate
24 anything before I send it to counsel in the first
25 place. By sending him the draft complaint I have
26 effectively made that certification. I have not
27 filed because of the procedural posture we find

1 ourselves in this case. However, I provided counsel
2 with a copy of a draft of the complaint. He has a
3 written document in front of him, they are not
4 amorphous and ambiguous floating out there in the
5 ether. I did this in an attempt to balance all
6 interests here. Defendant's interest in conducting
7 timely and efficient discovery, the Court's interest
8 and need to take the time it needs to draft its
9 opinion on the motion to strike which raises
10 important issues of Connecticut Law as well as the
11 plaintiff's interest in having fair notice as to what
12 our claims are going to be. I will represent to this
13 Court as I did previously the answer in the
14 counterclaim that we file will be substantially
15 similar to the draft that has been given him. We
16 have done a diligent investigation and whether I sign
17 it or not the minute I sent it him that was, in fact,
18 a representation that I had done that and complied
19 with my obligations under Connecticut Law.

20 I'm going to -- let me just briefly mention the
21 -- the nitty gritty of the discovery here. When I
22 read the opposition I had to recheck the caption of
23 the case because the only thing in the opposition
24 there is a citations to Federal Law. Federal Law is
25 different than Connecticut Law. Rule 26F is much
26 narrower than Practice Book 13-2. 13-2 contains an
27 additional provision that says, discovery shall be

1 permitted if the disclosure sought would be of
2 assistance in the prosecution or defense of the
3 action.

4 In addition, the Connecticut case law that we
5 cited, Rosado in particular clearly make -- clearly
6 includes within the ambit of permissible discovery
7 issues that may become -- matters that may become an
8 issue in this litigation. We are not seeking
9 discovery concerning Mr. Lomas's personal life, his
10 relationship with his children and whatnot. This is
11 all discovery that is germane to the business dispute
12 that is going on in this case. He has fair notice
13 and as I said I'm happy to, if the Court desires, I
14 am happy to deal with his objection by simply filing
15 an answer and a counterclaim now but I just -- I need
16 assurances that it's not going to prejudice the
17 motion to strike.

18 THE COURT: Okay. Well, the motion to strike is
19 pending, so I don't think you need to file anything
20 now. I'm not sure how you're going to get the
21 pleadings closed if you do end up filing a
22 counterclaim between now and the trial date because
23 certainly if you filed a counterclaim Mr. Lomas can
24 file a request to revise, he can move to strike, he
25 can move to dismiss if there are claims you're
26 asserting for which you have -- and you have no
27 standing to assert them he can make that claim.

1 So we're looking at certainly the possibility
2 that there's going to be additional motion practice
3 which, you know, we make that trial date very
4 optimistic. And if it does look like you want to
5 continue that, any motion for continuance has to come
6 before Judge Mintz.

7 At this point, I think counsel need -- you
8 should come up with a new scheduling order because I
9 think virtually all of these dates have passed,
10 actually, all of them have passed and except for the
11 date of having dispositive motions marked ready on
12 the short calendar. But a new scheduling order with
13 the discovery you reasonably expect you're going to
14 do. If there is a counterclaim filed, which
15 certainly counsel has indicated is going to happen
16 and plaintiffs will have claims that are going to
17 survive even if I grant the motion to strike.

18 So I think you should come up with a realistic
19 scheduling order and if you want to take Mr. Lomas's
20 deposition in two steps and take half of it now
21 concerning the issues Mr. Lomas has raised and
22 schedule a date within the next 30 days to question
23 Mr. Lomas about the claims that the defendant raises.
24 I don't know if you're expecting a two-day deposition
25 in any event, but if you want to bifurcate it that
26 way, that avoids the issue that Mr. Lomas's attorney
27 has raised, you can certainly do that. But I'm not

1 going to put Mr. Lomas's deposition, he is the
2 plaintiff here, so we're not putting that off
3 indefinitely. So however counsel agrees, you do it
4 in two pieces or do it in one piece and get it
5 scheduled within the next 30 days.

6 You should get your other fact witnesses done
7 soon if you have experts and you haven't disclosed
8 them yet you're going to need to work that out and if
9 there is additional motion practice, I'll certainly
10 make every effort to keep up with you so that you
11 don't lose your trial or if it does have to be
12 continued it does not go out, you know, well into
13 2017 because this case was filed a year ago so you
14 should be preparing it for trial rather than still
15 litigating a motion to strike.

16 And I understand there are issues, there is new
17 counsel and that's certainly a reason for, you know,
18 considering a continuance. You were trying to
19 resolve the case and that's always a good thing. And
20 maybe you can engage in further talks, as well. So
21 are there any issues other than Mr. Lomas's
22 deposition?

23 ATTY. ALTABET: There's one, Your Honor.

24 THE COURT: Okay.

25 ATTY. ALTABET: Which is -- if I can briefly
26 comment on the --

27 THE COURT: Sure.

1 ATTY. ALTABET: We have concerns about doing a
2 bifurcated deposition because that increases that's
3 -- all of our schedules are busy, that increases the
4 costs when we have to pay two court reporters to show
5 up, everybody has to take a day. Our preference
6 would be to do this one day, get this done in a
7 costly efficient -- in a costly and efficient manner,
8 that's point' one. The other issue is and I think
9 Your Honor touched upon it before, but we have a
10 motion to compel that was brought simultaneously with
11 this and I just wanted clarity that the Court's
12 permitting discovery on the -- on the counterclaims
13 in the defenses at this point --

14 THE COURT: Yes.

15 ATTY. ALTABET: -- that we've moved to compel.
16 Thank you.

17 THE COURT: Yes, yes. And do you want to do
18 just one day and you want the benefit of the motion
19 to strike the decision then find a day in the first
20 week of August or, I mean, you may have vacation
21 days, Mr. Lomas may have vacations planned so I'm not
22 ordering that it be the first week of August but I
23 don't -- I think you need to find a reasonable time
24 for you to do it and, you know, get it scheduled
25 forthwith so that you can at least get your fact
26 discovery done. So and I will leave that to counsel
27 rather than setting the date but I'm not precluding

1 discovery on the proposed issues raised in the
2 proposed counterclaim and in the answer when that is
3 filed after the Court rules on the motion to strike
4 because I think you need to get your discovery done
5 and it sounds to me that these issues are inevitably
6 going to be in this case so you should just get
7 started and get that done. Are there any other
8 issues we need to discuss right now, or this morning
9 I should say?

10 ATTY. RECHEN: No, Your Honor, thank you.

11 THE COURT: Thank you. All right.

12 ATTY. ALTABET: No, other than that we will see
13 you, I guess, next morning on the PJR hearing.

14 THE COURT: Okay. So we're going forward on
15 that on the -- that's Tuesday the 15th.

16 ATTY. ALTABET: July 15th.

17 THE COURT: July 15th.

18 ATTY. ALTABET: Yes, at 9:30, Your Honor.

19 THE COURT: Okay. All right. So this is a
20 hearing to -- you're looking to modify that
21 stipulation is that the plan or vacate it what is the
22 --

23 ATTY. ALTABET: I've made three motions, Your
24 Honor. One is to vacate the pre-judgment remedy that
25 was imposed against the defendants, the second is for
26 the imposition of a pre-judgment remedy against Mr.
27 Lomas and the third is a motion for the disclosure of

1 Mr. Lomas's assets in conjunction with the
2 pre-judgment remedy application.

3 THE COURT: Okay. Do you think this is going to
4 take longer than three hours?

5 ATTY. RECHEN: Your Honor, maybe I can give a
6 little bit of a preview --

7 THE COURT: Sure. Okay.

8 ATTY. RECHEN: -- of what we anticipate from Mr.
9 Lomas's standpoint, okay. First, with respect to the
10 pre-judgment remedy that they seek to vacate, we're
11 going to oppose that, we're going to be filing our
12 opposition to that either today or tomorrow.

13 THE COURT: Okay.

14 ATTY. RECHEN: Just so Your Honor knows or
15 recalls, that pre-judgment remedy was on a -- or
16 excuse me, the orders that issued on September 21st
17 were on a stipulation.

18 THE COURT: Yes.

19 ATTY. RECHEN: And so we're going to be raising
20 issues as to whether they had any ability to modify
21 the stipulation that was placed on the record in
22 order to resolve Mr. Lomas's pre-judgment remedy
23 application. That relates to their motion to vacate.

24 At the same time, Your Honor, we're going to be
25 filing a motion to dismiss for lack of subject matter
26 jurisdiction with respect to their application for a
27 pre-judgment remedy. The Statute in this State, Your

1 Honor, is clear that their right to move for a
2 pre-judgment remedy is with respect to a signed and
3 filed counterclaim, not on a draft counterclaim. And
4 so we believe this Court doesn't have subject matter
5 jurisdiction to entertain the pre-judgment remedy
6 application at this time. We're going to be filing a
7 motion to that effect. I hope to have it on file
8 today, if it's not today it'll be tomorrow morning.
9 And that I don't -- you know, that may affect what
10 happens and how much time we need on Tuesday.

11 THE COURT: Okay. And in fact I have the -- the
12 transcript is in the court file you --

13 ATTY. RECHEN: It is, Your Honor.

14 THE COURT: -- may all have it but that was on
15 October 5th of 2015 its number 124 in the court file
16 if you want to review the transcript of those
17 proceedings. And the reason why I ask about the
18 timing is if it's going to be longer than three hours
19 then we need to get a date certain for a hearing. We
20 won't hear it on the short calendar and let me just
21 see if I can tell you what other matters I have on
22 for July 5th. I want to double-check this only
23 because we had last Monday -- it looks like I would
24 have time for you as long as it was not a long
25 hearing, so we could do -- so even up to a couple of
26 hours, but if it's going to be three hours or more
27 then you need to get a date certain for hearing. And

1 that wouldn't be like going out to November, I mean,
2 it would be some time relatively soon but then it
3 would be scheduled. We're trying avoid having PJR
4 hearings. We were doing them on Mondays but you
5 might have one that would realistically take three
6 days so you'd do, you know, two-and-a-half hours
7 every Monday for five months and that was not working
8 out very well.

9 ATTY. RECHEN: Your Honor, may I inquire through
10 the Court perhaps --

11 THE COURT: Sure. Uh-huh.

12 ATTY. RECHEN: -- of how many witnesses,
13 assuming that we get to an evidentiary hearing, how
14 many witnesses the counterclaim plaintiff would plan
15 to call?

16 ATTY. ALTABET: We would like call two
17 witnesses, the two affiants that were in support of
18 the -- of the application to vacate and the
19 application of a pre-judgment remedy. If I -- I
20 assume Mr. Lomas will -- will be there as well, so
21 that would be probably three witnesses all together
22 --

23 THE COURT: Okay.

24 ATTY. ALTABET: -- and then argument by counsel.
25 In light of the fact that an opposition is going to
26 be submitted, I guess, in -- in a day or two just
27 before a holiday weekend, I certainly would like the

1 opportunity to put in a reply so I could give
2 thoughtful argument to the court on the issues that
3 he's planning to raise. On the other hand if that's
4 not an option then I won't.

5 THE COURT: All right. Well, and I think you
6 can certainly file a reply. What I'm thinking is
7 that this should go down for a date certain though
8 because the issues are not simple in this case and I
9 want to make sure I have time to just spend with you
10 and not have other matters coming in and out. So
11 unless there is a tremendous need and some exigent
12 circumstances to have this heard on the fifth I think
13 it would be better to get a date certain to hear this
14 application and the attendant motions. Does that
15 present a problem?

16 ATTY. ALTABET: I mean, the only issue, Your
17 Honor, is that my clients are subject to continue --
18 or required to continue to pay in an escrow, which is
19 obviously an issue for them. You know, -- if we
20 can -- the next payment of the escrow, I believe, is
21 due on the 15th of July, so they believe that they
22 are entitled to stop the escrow payments under the
23 terms of the agreement.

24 THE COURT: Well, you know, they entered into a
25 stipulation that was approved and so ordered by the
26 Court so --

27 ATTY. ALTABET: They --

1 THE COURT: -- when that's -- as long as that's
2 in effect if they don't comply with it they --

3 ATTY. ALTABET: Oh, no, no, no.

4 THE COURT: -- it presents a problem.

5 ATTY. ALTABET: They -- no, no.

6 THE COURT: Okay.

7 ATTY. ALTABET: Please don't misinterpret me,
8 Your Honor. There's an order enforced, my clients
9 will comply with that order to the letter until --

10 THE COURT: Okay.

11 ATTY. ALTABET: -- until such time as the order
12 is vacated. Absolutely not there will be no contempt
13 of the court here.

14 On the other hand, they feel they're entitled
15 since the stipulation can't grant any rights that are
16 superior to what's in the contract which is the basis
17 for the recovery, then their basis for vacating is a
18 contractual right that they have. They certainly
19 didn't waive any contractual rights. So while I'm
20 prepared to put in a reply, I am concerned that if it
21 goes much past the 15th they're going to be subject
22 to another escrow payment.

23 ATTY. RECHEN: Your Honor, just so that we're
24 clear, all of what has just been stated is very much
25 in dispute. This is no longer governed by in
26 contract it's governed by Your Honor's order.

27 THE COURT: Yes, there is a court order. You

1 can stipulate to many things that are not technically
2 part of the party's contract it becomes another
3 contract. So but why don't you see if you can get a
4 date before the 15th. Let me just see if I can tell
5 you. I know I'm starting a trial in the middle of
6 July. Let me just go back to that.

7 (Pause)

8 THE COURT: Let's see if I can tell you when and
9 know when we'll have time.

10 (Pause)

11 THE COURT: It appears that I don't have any --
12 let's see -- the trial I have is not on until the
13 19th. It does not look like I have any other trials
14 assigned to me. So I suggest going to case flow and
15 just see what they have. I mean, they may know there
16 are other things that are coming my way that are not
17 on the calendar at the moment so that's why I can't
18 just schedule this. But if you want to go and speak
19 with them and see if there is another day that we
20 could do this hearing between July 5th and 15th,
21 there certainly should be based on what I'm looking
22 at on my calendar. July 14th would not be a good
23 day, that's the only thing I can tell you. Otherwise
24 I think any of those days should be all right,
25 provided that case flow agrees. So if you want to
26 check on that then we can take up the PJR issues and
27 the other motions at that time. And I do have a

1 number of matters that are in the pipeline ahead of
2 you but I will do what I can do to at least get a
3 decision on the motion to strike even if I give you
4 an articulation later.

5 ATTY. RECHEN: So should we assume that we need
6 to appear on Tuesday or should we see what we can
7 arrange with case first?

8 THE COURT: If you get a new date with case flow
9 then the proceeding on Tuesday will go off and that
10 can be marked off. So speak with her. If not, we'll
11 do what we can on Tuesday, but I think it would be
12 preferable to have a separate date on that one.

13 ATTY. ALTABET: Okay

14 THE COURT: Okay.

15 ATTY. RECHEN: Thank you, Your Honor.

16 THE COURT: Anything further?

17 ATTY. ALTABET: No, Your Honor.

18 THE COURT: Okay.

19 ATTY. RECHEN: No, Your Honor, thank you.

20 THE COURT: All right. And then if Megan in
21 case flow has any questions she can also call me and
22 let me know. All right.

23 ATTY. RECHEN: Thank you, Your Honor.

24 THE COURT: Thank you all very much. Have a
25 good day, folks.

26 ATTY. RECHEN: You too, Your Honor.

27 ATTY. ALTABET: Thank you.

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THE COURT: Thank you. So we are in recess.

Thank you.

NO: FST-CV155014808S : SUPERIOR COURT
LOMAS, WILLIAM : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
PARTNER WEALTH MANAGEMENT, LLC, : JUNE 29, 2016
ET AL

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Donna Heller, Judge, on June 29, 2016.

Dated June 30, 2016 in Stamford, Connecticut.

NOT SIGNED
Kasey Hirschbeck
Court Recording Monitor

NO: FST-CV155014808S

: SUPERIOR COURT

LOMAS, WILLIAM

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

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ET AL

: JUNE 29, 2016

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ELECTRONIC

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Kasey Hirschbeck
Court Recording Monitor