IN THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 50-2013-CP-005060-XXXX-NB
PROBATE DIVISION

IN RE: ESTATE OF DAVID ALAN KLEIMAN,

Deceased.

LYNN WRIGHT,

Petitioner,

v.

IRA KLEIMAN, as Personal Representative of the Estate of David Kleiman,

Respondent,

and

DR. CRAIG WRIGHT, TULIP TRUST, UYEN T. NGUYEN, W&K INFO DEFENSE RESEARCH, LLC, a Florida limited liability company, and COIN-EXCH PTY, LTD., an Australian proprietary limited company,

Interested Parties.

Adversary Proceeding
Case No. _____

RESPONDENT'S MOTION TO STAY DISCOVERY

Respondent Ira Kleiman, as Personal Representative of the Estate of David Kleiman, moves, pursuant to Florida Rule of Civil Procedure 1.280(c), for an order staying discovery in this action until Respondent's pending motion to dismiss is resolved.

FACTUAL BACKGROUND

On July 16, 2020, Lynn Wright filed the petition in this action (the "Petition"). In the Petition she seeks (1) an order concerning the ownership of an asset (W&K Info Defense Research, LLC ("W&K")) that is also claimed by the Estate of David Kleiman (the "Estate"), and (2) declaratory and injunctive relief concerning the Estate's right to exercise control over that asset. (*See* Pet. ¶¶ 31-54.) In particular, she seeks to enjoin the Estate from pursuing litigation on behalf of W&K against her ex-husband, Craig Wright, in the United States District Court for the Southern District of Florida (the "Federal Action"). (*See id.* ¶¶ 50-51.)

On August 4, Respondent filed a motion to dismiss the Petition. In that motion, Respondent argued that this case is a sham filing made at the direction of Lynn's ex-husband for the goal of using fraudulent evidence to obtain an order he can use to attempt to have a 2.5+ year old federal lawsuit against him that's set for trial in January 2021 dismissed. Of course, and as explained in Respondent's motion, this lawsuit to stop the Federal Action makes no sense if Lynn truly were a member of W&K, as she is seeking to stop litigation that would be incredibly lucrative to W&K.

The discovery Lynn seeks in this lawsuit further demonstrate that's exactly what this case is about. Lynn (for her ex-husband) has propounded 50 requests for production seeking documents Craig Wright clearly wants to access. For example, just to name a few, Lynn seeks copies of Ira's retention agreements with counsel, the terms of any litigation funding agreements Craig could not access in the Federal Action, documents related to the ownership of bitcoin (a central issue in the Federal Action), etc.

Respondent's motion to dismiss also argued the case should be dismissed because (1) all of Lynn's claims are barred by Florida's nonclaim statute, Fla. Stat. § 733.710, because Lynn filed the Petition *more than seven years* after the death of the decedent, Dave Kleiman (*see* MTD at 11-

14); (2) Lynn's claim concerning the ownership of W&K fails as a matter of law because it is not cognizable under the statutes that she invokes (*see id.* at 14-16); and (3) Lynn lacks standing to assert both of the claims that she asserts in the Petition (*see id.* at 17-19). Based on these arguments, Respondent respectfully requested that the Petition be dismissed in its entirety. (*See id.* at 21). Respondent further argued that, in the event that the Court disagreed that the Petition should be dismissed in full, this action should be stayed pending resolution of the Federal Action, where, in a pending motion for summary judgment, Lynn's ex-husband seeks, in essence, the same relief sought here. (*See id.* at 19-21.) Lynn set the hearing for Respondent's motion to dismiss for Thursday, December 3, 2020, at 2:00 pm.

On August 19, 2020, shortly after Respondent's motion to dismiss was filed, and before Lynn had responded in any way to that motion, Lynn served Respondent with a Request for Production (the "RFPs"), which included fifty separate document requests. The RFPs cover a range of topics, including Respondent's use of litigation funding, Dave Kleiman's death, and tax payments made (or not made) by various individuals and entities. Respondent's responses are due Friday, September 18.

ARGUMENT

"A trial court possesses broad discretion in overseeing discovery, and protecting the parties that come before it." *Rojas v. Ryder Truck Rental, Inc.*, 641 So. 2d 855, 857 (Fla. 1994) (citations omitted). Consistent with that discretion, pursuant to Florida Rule of Civil Procedure 1.280(c), "for good cause shown, the trial court may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." *Tennant v. Charlton*, 377 So. 2d 1169, 1170 (Fla. 1979). "In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served

by granting discovery or by denying it." *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 945 (Fla. 2002) (quoting *Rasmussen v. S. Fla. Blood Serv., Inc.*, 500 So. 2d 533, 535 (Fla. 1987)).

Because the Florida Rules of Civil Procedure "are patterned very closely after the Federal Rules," Florida courts "examine and analyze the Federal decisions and commentaries under the Federal rules in interpreting" Florida's own rules. *Deltona Corp. v. Bailey*, 336 So. 2d 1163, 1170 (Fla. 1976) (quoting *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 610 (Fla. 4th DCA 1975)); *see also Cotton States Mut. Ins. Co. v. Turtle Reef Assocs., Inc.*, 444 So. 2d 595, 596 (Fla. 4th DCA 1984) ("Because the applicable rule, Florida Rule of Civil Procedure 1.280(b)(2), closely resembles Federal Rule of Civil Procedure 26(b)(3), we look to federal case law for guidance."); 4 Fla. Prac., Civil Procedure § 1.280:1 (2020) ("Because of Florida's considerable borrowing from Federal Rule 26, federal decisions are given consideration in interpretations of the Florida rule."). Accordingly, Florida courts rely on federal court interpretations of Federal Rule of Civil Procedure 26(c)—the analogue to Florida Rule of Civil Procedure 1.280(c)—to determine whether "good cause" exists to stay discovery. *See Deltona*, 336 So. 2d at 1170 (adopting approach described in *Orlando Sports*, 316 So. 2d 607).

Consistent with this approach, Florida and federal courts both find that the existence of a pending motion to dismiss may (but does not necessarily) constitute "good cause" sufficient to stay discovery. *See id.* at 1169 (relying on federal case law, and explaining that "postponing discovery for a short period of time pending determination of material, outstanding motions may be within the discretion of the trial court," but that the "pendency of such unresolved motions is not sufficient 'good cause shown' within the purview of Rule 1.280(c) to justify postponing discovery for [a] protracted period of time"). Indeed, "[w]here a preliminary motion may dispose

of the entire action, a court has good cause to stay [discovery] pending resolution of the dispositive motion." *Safeco Ins. Co. of Am. v. Amerisure Ins. Co.*, No. 8:14-cv-774, 2014 WL 12621558, at *1 (M.D. Fla. Sept. 9, 2014); *see also Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003) (collecting cases that support the proposition that "courts have held good cause to stay discovery exists wherein 'resolution of a preliminary motion may dispose of the entire action'"); *Baptist Hosp. of Miami, Inc. v. DeMario*, 683 So. 2d 641, 643 (Fla. 3d DCA 1996) (relying on federal case law, and concluding that it was reversible error to compel "full class action discovery" prior to an "initial determination of [plaintiff's] standing to continue to serve as the class representative"); *cf. Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1264 (Fla. 4th DCA 2013) ("Denial of this petition is without prejudice for petitioners to ask the trial court to exercise its discretion and stay the discovery pending a ruling on the motion to dismiss.").

That is precisely the case here. Respondent's motion to dismiss, if granted, would dispose of the entire Petition, thereby rendering any response to Lynn's RFPs unnecessary. For this reason alone, allowing discovery to move forward at this stage would impose an undue burden and expense on Respondent.

This undue burden is exacerbated by the sheer amount of discovery sought. Lynn has served Respondent with ***fifty separate document requests*** in a case that her counsel has characterized as "not too difficult" and "fairly straightforward." (Ex. 1, Letter from A. Burger dated Aug. 14, 2020, at 2.) Worse, many of the RFPs are plainly objectionable, including those that seek irrelevant information concerning Respondent's fee arrangements and Dave Kleiman's medical records. (*See, e.g.*, RFP Nos. 1-2, 5, 47.) As a result, in the event that a stay is denied, Respondent would need to dedicate considerable resources to not only produce documents

responsive to Lynn's numerous requests (to the extent that any of those requests are actually proper), but also to resist discovery with respect to Lynn's improper document requests.

Furthermore, these requests are extremely prejudicial to Ira as Lynn is clearly a proxy for Craig and are being propounded to assist Craig in his litigation, and by their nature, seek documents no adversary to W&K should ever have access to. Of course, and as explained in Respondent's motion, this lawsuit to stop the Federal Action makes no sense if Lynn truly were a member of W&K, as she would be seeking to stop litigation that would be incredibly lucrative to W&K.

In contrast, the harm that Lynn would suffer if a stay is granted is nonexistent. She waited *more than seven years* after Dave's death to file the Petition. Indeed, she waited *more than two years* after the Federal Action commenced to file the Petition to stop that action from continuing. Requiring Lynn to wait an additional few months—after years of her own delay—would not result in any appreciable harm to her.

Moreover, the stay that Respondent seeks is not for a protracted period of time; instead, Respondent merely seeks to stay discovery until this Court decides Respondent's motion to dismiss. That motion is set for hearing on December 3, which is approximately two-and-one-half months from now. Thus, the requested stay would not materially delay these proceedings.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court stay discovery in this action pending resolution of Respondent's motion to dismiss.

Dated: September 17, 2020

Respectfully submitted,

/s/ Velvel (Devin) Freedman

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Counsel to Respondent Ira Kleiman as Personal Representative of the Estate of David Kleiman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2020, I electronically filed this Motion with the Palm Beach County Clerk of Court, which will send a notice of electronic filing to all counsel of record.

s/ Velvel (Devin) Freedman
VELVEL (DEVIN) FREEDMAN

EXHIBIT 1

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August 14, 2020

VIA E-MAIL
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RE: In Re: Estate of David Alan Kleiman
Palm Beach County Case No.: 50-2013-CP-005060-XXXX-NB
Lynn Wright v. Ira Kleiman, Dr. Craig Wright, Tulip Trust, Uyen Nguyen, W&K Info Defense Research, LLC and Coin-Exch Pty, Ltd.

Dear Mr. Freedman:

We are in receipt of your after-hours letter emailed on August 7, 2020 at 5:29 p.m. As the letter makes serious accusations, we are looking into the issues raised.

Please remember that for years you have been dealing with these parties and issues, but you demand that we take critical actions in days. Simply put, that is not fair. We must be given adequate time to investigate in order to form our opinion and advise our client, Lynn Wright.

While Mrs. Wright and others may have common interests, we do not and have not represented Dr. Wright, the Tulip Trust, or any other person or entity whom we understand to be associated with Craig Wright. And while you assert Craig Wright is untrustworthy and has engaged in improper conduct in the Federal Action, there are two outside constants that are directly relevant to the instant case notwithstanding the Federal Action. First, does your client, as the alleged sole beneficiary of David Kleiman's estate and as personal representative, have any economic interests in W&K Info Defense Research, LLC ("W&K")? Second, if so, what percent of all of the economic interests are owned by whom? These are questions that presently lie in the Circuit Court and, neither your litigation strategies nor those of Dr. Wright change these fundamental questions.

Rest assured, I will forthwith file your letter, this response, copies of Judge Reinhart's Order and Judge Bloom's Order [on the objections] with the Probate Court. You can make whatever arguments you wish about them or the impact of the Federal Action on this suit and vice versa.

Based on your letter, you know that Mrs. Wright testified in the Federal Action that she transferred all interests in W&K prior to her bankruptcy. How then can you now assert that the

statement in her petition that, from December of 2012 until July of 2020, she had no interest be considered inconsistent with that portion of her prior testimony? While it appears that Mrs. Wright may have been confused at times during her deposition, that doesn't make her a liar. To the contrary, it evidences that she is a typical non-party witness (albeit one going through chemotherapy treatments at the time of her deposition) who is not familiar with the day-to-day aspects of litigation and particularly with remote video depositions.

What we understand from documents we have reviewed in the Federal Action (a miniscule number, given there are 612 entries on the docket) is that Ira Kleiman asserts that Dave Kleiman and Craig Wright were 50/50 "partners" in W&K. Ira admits he knew or suspected of this relationship before Dave's death. Ira admits that someone other than his brother, "some rich guy," had interests in W&K. As we presently understand it, Craig Wright asserts they were never "partners" with respect to any bitcoin activities. Further, with respect to W&K, whatever interests "he" (Craig Wright) had were not owned individually but beneficially via Craig Wright R&D n/k/a the Tulip Trust. We also understand that Lynn Wright's present interests are derived from an original owner, the Tulip Trust.

You assert Judge Reinhart's binding factual findings are that the trust never existed. Given the nature of his findings and Judge Bloom's subsequent Order vacating most, if not all of the factual findings, I do not read Judge Bloom's order to result in a judicial finding that the trust never existed and does not now exist. If an Order with that express finding exists, please send it to us for review. Otherwise, I think your letter outlines your interpretations of Judge Reinhart's Order and Judge Bloom's Order. However, I suspect that others may read the two Orders and conclude that Judge Reinhart's findings on credibility stand in the Federal Action but his factual findings don't.

Lynn and Craig Wright both state they agreed to split their property as a part of their divorce. You say the written divorce settlement document was a falsity. Even if that is true, both Mrs. Wright and her ex-husband agreed to split property. She then transferred the W&K interests out. That transfer is undisputed. Interests in W&K have now been transferred to her. It matters not if you or your client believes the written property settlement is a forgery. Again, what matters is [by your client's own admission] did an owner of interests in W&K transfer interests to Lynn Wright in July of 2020? As the answer is yes, we maintain that she can proceed.

Clearly it appears that you are frustrated with the Federal Action. And you are right, these are "high stakes" matters. High enough, that someone, perhaps your client, may mislead. But, unlike you, I have no dog in the fight and will not risk my career on this or any other case. Likely the facts will show that, as in most cases, there are no angels on either side of the "v," but Mrs. Wright's Petition has merit. It's really not too difficult of a case unless you start bringing in extraneous "things" in an effort to try and obfuscate things. The fairly straightforward issues are:

1. Does Lynn Wright have membership interests in W&K?;
2. If yes, who else does? If no, case over.
3. If yes, what percentage does the Estate have? Who else has what interests?

4. As Ira only has an economic interest, does/did he have the right to bring litigation on behalf of the company?
5. What should happen with the company?

As indicated above, we will continue to investigate your assertions and to that end, please provide answers and/or documents to the following questions:

A. What documents do you have that show exactly who owned what in W&K and when?
B. What documents do you have that would prevent Craig Wright or a trust or any other "entity" from transferring some or all their interests in W&K to Lynn Wright?
C. What documents do you have that support your assertions that "Lynn seeks to dismiss the Federal Action" or, for that matter, what intent Lynn has?
D. What documents do you have to support your assertions that Lynn is not acting for her own interests?

It is unfortunate that your first communique to me was of this nature, which could itself be a violation of Bar Rules. Nevertheless, we await answers and documents. Hopefully, you can provide them expeditiously so we can continue to evaluate your assertions as to the propriety of Mrs. Wright's Petition. Otherwise, we will do as indicated in this letter and proceed in accordance with our client's directives.

Sincerely,

Alan M. Burger

Alan M. Burger

CC: Court File
Client