KELAHER, VAN DYKE & MORIARTY
A PROFESSIONAL CORPORATION
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Attorneys for Menashe Miller
Our File No. 13011.33859- PVD/ss
Peter J. Van Dyke, Esq. - Attorney I.D. #014851981

YECHESKEL SCHWAB AND DATAMAP INTELLIGENCE LLC

Plaintiff(s),

vs.

JOYCE BLAY, HERSHEL HERSKOWITZ A/K/A HAROLD HERSKOWITZ, SHLOMIE KLEIN A/K/A SHLOMO KLEIN, ABRAHAM SHARABY, JOHN DOES 1-10, ABC CORPS. A-J

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. OCN-L-2695-18

Civil Action

CROSS NOTICE OF MOTION TO QUASH SUBPOENA RULE 1:9-2

RETURNABLE: 03/01/2019

Willard C. Shih, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive, Ste. 900
118 Washington Street
Woodbridge, NJ 07095
Attorney for Plaintiff(s)

Bruce S. Rosen, Esq.
210 Park Avenue, Ste. 301
Florham Park, NJ 07932
Attorney for Defendant, Joyce Blay

Solomon Rubin, Esq.
2077 Center Ave., Suite 6E
Fort Lee, NJ 07024
Attorney for Defendants, Hershel Herskowitz a/k/a Harold Herskowitz, Shlomie Klein a/k/a Shlomo Klein & Abraham Sharaby

SIR(S): PLEASE TAKE NOTICE that the undersigned will apply to the above-named Court at the Ocean Court House, Toms River, New Jersey, on Friday, March 1, 2019, at 9:00 a.m. or as soon thereafter as counsel may be heard,

for an Order to quash the Subpoena issued to Menashe Miller, a copy of which is attached to the Attorney Certification.

Defendants will rely upon the Certification annexed hereto.

TAKE FURTHER NOTICE that the undersigned hereby requests oral argument.

KELAHER, VAN DYKE & MORIARTY

BY: _____
PETER J. VAN DYKE
Attorneys for Menashe Miller

DATED: February 20, 2019

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Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. OCN-L-2695-18

Civil Action

ORDER TO QUASH SUBPOENA ISSUED TO MENASHE MILLER DATED 12/24/2018

This matter having been opened to the Court on motion of the attorney for Menashe Miller, for an Order to quash a Subpoena served on Menashe Miller commanding him to produce certain documents; and the Court having considered the pleadings; and for other good cause having been shown;

IT IS, on this day of , 2019,

ORDERED that the December 24, 2018 Subpoena issued to Menashe Miller is hereby quashed; and it is further

ORDERED, that a copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for Menashe Miller.

_____
J.S.C.

_____ opposed

_____ unopposed

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YECHESKEL SCHWAB AND DATAMAP INTELLIGENCE LLC

Plaintiff(s),

vs.

JOYCE BLAY, HERSHEL HERSKOWITZ A/K/A HAROLD HERSKOWITZ, SHLOMIE KLEIN A/K/A SHLOMO KLEIN, ABRAHAM SHARABY, JOHN DOES 1-10, ABC CORPS. A-J

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. OCN-L-2695-18

Civil Action

ATTORNEY CERTIFICATION IN SUPPORT OF CROSS-MOTION TO QUASH SUBPOENA

I, PETER J. VAN DYKE, being duly sworn, according to law, upon my oath depose and say:

1) I am an attorney admitted to practice before this Court, and the contents of this Certification are based on my personal knowledge obtained as attorney for Menashe Miller, who is not a party to the instant litigation, although the Complaint mentions that he has been a victim of defamation along with plaintiffs.

2) The twenty-four (24) page Complaint filed in this case (on or about November 6, 2018) asserts, in general, that defendants have defamed plaintiffs and harmed plaintiffs' data collection and real

estate business interests, briefly, by falsely asserting that there exists a "hidden business relationship" between plaintiff Schwab, Lakewood Township Deputy Mayor Menashe Miller and "others."

3) The plaintiffs allege that these false allegations cause potential new clients (municipal entities, etc.) to shy away from doing business with plaintiffs, in part because defendants accused plaintiffs of criminal activity.

4) Attached hereto is a copy of a Subpoena issued by the attorney for defendants that scheduled the deposition of my client, Menashe Miller, for January 28, 2019 in Lakewood, and commands Mr. Miller to produce at his deposition an eleven-item list of documents, including records related to any business owned/run by plaintiff Schwab, Mr. Miller's own federal and state tax returns filed since 2014, records related to plaintiffs business, records related to a certain property in Lakewood, records related to approximately twenty (20) Limited Liability Companies, with no indication of relevance to the litigation, as well as records of various communications as described in items No. 8 through No. 11 in the attached Subpoena.

5) The attached Subpoena is self-evidently burdensome and intrusive, seeks private financial documents of a non-litigant, and also a variety of documents related to twenty (20) (apparent) Limited Liability Companies not mentioned in the 24-page Complaint, with no indication of the connection, if any, they have to the case, nor any suggestion that Mr. Miller has access to these documents.

6) R. 1:9-2 provides, in part, that "[t]he court on motion made promptly may quash a subpoena . . . if compliance would be unreasonable or oppressive."

7) In State v. Cooper, 2 N.J. 540, 546 (1949), the Supreme Court noted the subpoena's subject "must be specified with reasonable certainty, and there must be a substantial showing that they contain evidence relevant and material to the issue. If the specification is so broad and indefinite as to be oppressive and in excess of the demandant's necessities, the subpoena is not sustainable."

8) In this matter, the requested information is so broad and indefinite as to be oppressive.

9) R. 4:10-3 provides for protective orders.

10) Pursuant to that rule, the Court, for good cause shown, may make any order that justice requires to protect a person from annoyance, oppression or undue burden or expense.

11) A Court has the discretion to order that the discovery not be had.

12) The scope of discovery in New Jersey is not infinite. "It is limited by R. 4:10-2(a) to information that is 'relevant to the subject matter involved in the pending action....' The definition of relevancy in this context is supplied by N.J.R.E. 401. Evidence is relevant if it has a 'tendency in reason to prove or disprove any fact of consequence to the determination of the action.'" K.S. v. ABC Professional Corp, 330 N.J. Super. 288, 291 (App.Div.2000).

13) The defendants' first request from a non-party is for all documents that refer to or relate to businesses owned by another, i.e., the plaintiff. The request is overly broad, burdensome and solely meant to harass since it relates to documentation regarding businesses operated by another and not by Mr. Miller.

14) The defendants next two requests seek personal financial records, including tax returns, from a non-party.

15) As it relates to personal income tax returns, New Jersey has permitted the discovery and inspection of income tax returns only for good cause. DeGaaff v. DeGaaff, 163 N.J.Super. 578 (App.Div.1978); and Ullmann v. Hartford Fire Insurance Co., 87 N.J. Super. 409 (App.Div.1065). The case law supports the position that a Court should not order the production of tax returns unless it clearly appears that they are relevant to the subject matter of the action or to the issues raised in the action and that there is a compelling need for the tax returns. Ullmann v. Hartford Fire Insurance Co., 87 N.J.Super. 409 (App.Div.1965).

16) The Courts have stated that disclosure of tax returns is a "highly sensitive endeavor." Campione v. Soden, 150 N.J. 163, 190 (1997). As such, tax returns are not to be ordered for production unless a "strong need" for the information is proven. Ibid.

17) Again, Mr. Miller is not a litigant and, as such, has not chosen to put in issue his assets, income, business activities or other personal activities, all of which are not relevant to this suit.

18) The next four requests (4, 5, 6 and 7) ask for all documentation about certain entities and involving certain properties. The requests are overly broad, burdensome and solely meant to harass since they are not specific as to content, type or time.

19) The last four requests (8, 9, 10 and 11) ask for all communications between Mr. Miller and anyone; between Mr. Miller and the plaintiff about the defendants; between Mr. Miller and Kenneth Garzo; and between Mr. Miller and the plaintiff about Mr. Garzo or any litigation in which "he" was involved. The requests are overly broad, burdensome and solely meant to harass since they are not specific as to content, type or time.

20) I am making this Certification to support a Motion to Quash the attached Subpoena for the reasons stated above.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

KELAHER, VAN DYKE & MORIARTY

BY: _____
PETER J. VAN DYKE
Attorneys for Menashe Miller

Dated: February 20, 2019

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YECHESKEL SCHWAB AND DATAMAP INTELLIGENCE LLC

Plaintiff(s),

vs.

JOYCE BLAY, HERSHEL HERSKOWITZ A/K/A HAROLD HERSKOWITZ, SHLOMIE KLEIN A/K/A SHLOMO KLEIN, ABRAHAM SHARABY, JOHN DOES 1-10, ABC CORPS. A-J

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO. OCN-L-2695-18

Civil Action

CERTIFICATION OF SERVICE

The undersigned hereby certifies as follows:

1) I am employed by the law firm of KELAHER, VAN DYKE & MORIARTY.

2) On this date, the undersigned electronically filed and/or mailed a copy of the within pleadings to the following parties:

Ocean County Clerk's Office,
P.O. Box 2191
118 Washington Street
Toms River, NJ 08754-2191

Willard C. Shih, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive, Ste. 900
P.O. Box 10
Woodbridge, NJ 07095

Bruce S. Rosen, Esq.
McCusker, Anselmi, Rosen & Carvelli, P.C.
210 Park Avenue, Ste. 301
Florham Park, NJ 07932

Solomon Rubin, Esq.
Solomon Rubin, Esq.
2077 Center Ave., Suite 6E
Fort Lee, NJ 07024

I certify that the aforesaid statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Susana Simat
SUSANA SIMAT

Dated: February 20, 2019

33859

Solomon Rubin, Attorney ID 022162003
2077 Center Ave, Suite 6E
Fort Lee, NJ 07024
Tel: (718) 974-9303
Attorney for Defendants, Hershel Herskowitz, Shlomie Klein, and Abraham Sharaby

YECHESKEL SCHWAB and DATAMAP INTELLIGENCE LLC, Plaintiffs, vs. JOYCE BLAY, HERSHEL HERSKOWITZ a/k/a HAROLD HERSKOWITZ, SHLOMIE KLEIN a/k/a SHLOMO KLEIN, ABRAHAM SHARABY, JOHN DOES 1-10, ABC CORPS A-J Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY Docket No.: OCN-L-2695-18 Civil Action **SUBPOENA**

State of New Jersey to: Menashe Miller
189 Pine Street
Lakewood, NJ 08701

YOU ARE HEREBY COMMANDED to appear so that Defendants, Hershel Herskowitz, Shlomie Klein, and Abraham Sharaby, may take your deposition by oral examination. This deposition will commence on Monday, January 28, 2019, at 10:00 a.m., and will continue from day to day until completed, at 212 2nd Street, Suite 405, Lakewood, NJ 08701, and will be taken before a person authorized by the laws of the State of New Jersey to administer oaths. The deposition will be recorded by stenographic means and by an audiovisual recording.

PLEASE TAKE FURTHER NOTICE that you are hereby commanded to bring with you for inspection and copying the following documents and tangible things.

1. All documents related to any businesses owned or run on whole or part by Yecheskel Schwab since January 1, 2014.

2. All documents related to any sources of income you have had since January 1, 2014.

3. All federal and state tax returns you filed since 2014.

4. All documents related to DataMap Intelligence, LLC.

5. All documents related to Flowing White Milk LLC.

6. All documents related to the property in Lakewood Township identified as Block 190, Block 58.13.

7. All documents related to Diamond Triumph Properties LLC, Pinerock Lakewood LLC, Richatz LLC, North Lake Realty LLC, Land Barron LLC, Diamond Triumph Properties LLC, Pinerock Capital LLC, Pinerock Lakewood LLC, Clifton Rock LLC, North Lake Realty LLC, Land Barron LLC, Lippencott Capital LLC, Andy17 LLC, Janicerock LLC, Rack Holdings LLC, Lennyrock LLC, Ridge Rock Holdings LLC, Janice Rocks LLC, Pine Rock Terra LLC, and/or Chaldt Enterprises LLC.

8. All communications between you and anyone about any lawsuit for defamation filed against Defendants, Hershel Herskowitz, Shlomie Klein, and Abraham Sharaby.

9. All communications between you and Yecheskel Schwab related to Hershel Herskowitz, Shlomie Klein, and Abraham Sharaby.

10. All communications you have had with Kenneth Garzo.

11. All communications between you and Yecheskel Schwab about Kenneth Garzo, or any litigation in which he was involved.

PLEASE TAKE FURTHER NOTICE that, in accordance with R. 4:14-7(c), the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition. If the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the Court or the release is consented to by all parties to the action.

Failure to appear or comply with the command of this Subpoena will subject you to the penalties provided by law.

Solomon Rubin

/s/ Jennifer M. Perez

Solomon Rubin
Attorney for Defendants, Harold Herskowitz, Shlomie Klein, and Abraham Sharaby

Dated: December 24, 2018