

In May 2013, Mr. and Ms. MacKenzie won a Powerball Lottery jackpot of \$590 million, which they had agreed to split evenly. Given that Ms. MacKenzie was 84 years old at the time and had no experience handling such a fortune, Ms. MacKenzie sought Mr. MacKenzie's help and he naturally assisted her in finding an investment advisor. When Ms. MacKenzie's investment advisor put her in low-risk investments that preserved her wealth in accordance with her wishes, while putting Mr. MacKenzie in slightly higher-risk investments that generated greater returns, Plaintiffs sued Mr. MacKenzie, his trusts and his charitable foundation seeking more than \$10 million – the purported difference in growth between their respective investment accounts.

Having demanded a staggering amount of money based on such a spurious claim, Plaintiffs are now stonewalling Mr. MacKenzie from taking basic discovery in the case. On December 6, 2018, Mr. MacKenzie served Plaintiffs with five initial discovery requests: (i) Scott MacKenzie's First Set of Interrogatories to Gloria MacKenzie, (ii) Scott MacKenzie's First Set of Interrogatories to Jaimie Weinberg, (iii) Scott MacKenzie's First Set of Interrogatories to Alexander Weinberg, (iv) Scott MacKenzie's First Set of Interrogatories to Matthew Weinberg, and (v) Scott MacKenzie's First Request to Produce to Plaintiffs. Including the additional five days for mailing, Plaintiffs' responses were due by January 10, 2019. *After* the response deadline had already passed, counsel for the Plaintiffs emailed requesting a 30-day extension of time to serve responses and documents. Mr. MacKenzie did not agree to the extension.

On February 4, Mr. MacKenzie sent Plaintiffs a letter advising that all objections had been waived and requesting Plaintiffs provide complete responses and produce all responsive documents. Instead, on February 14, five weeks after the response deadline passed, Plaintiffs moved to extend the response deadline another month – until March 10, 2019. To date, Plaintiffs

have failed to serve any responses or produce any documents in response to Mr. MacKenzie's December discovery requests. Compounding the issue and belying their need for "more time" to respond to these discovery requests, Plaintiffs have moved to compel Mr. MacKenzie to produce volumes of confidential, personal financial information that have no bearing on any issue in this case.

MEMORANDUM OF LAW

A party's failure to object to discovery responses in a timely manner results in a waiver of those objections. *See* Fla. R. Civ. P. 1.280(b)(5), 1.380(d). The First DCA has affirmed courts of this judicial circuit in drawing a bright line striking discovery objections that were made only a few days after the response deadline has passed. *See American Funding Ltd. v. Hill*, 402 So. 2d 1369, 1370 (Fla. 1st DCA 1981) (striking as untimely objections filed 14 days after the response deadline). Such a result also applies to the untimely assertion of privilege claims. *See Kaye Scholer LLP v. Zalis*, 878 So. 2d 447, 449 (Fla. 3d DCA 2004). In *Zalis*, a responding party failed to respond to a propounding party's discovery requests or produce a privilege log identifying the documents to be withheld. The trial court denied a motion to compel brought by the propounding party, which then sought certiorari review. The Third District granted cert, and remanded with instructions to quash the order denying the motion to compel and find that the responding party had waived any claims of privilege. *Id.*

Here, Plaintiffs have failed to respond in any way to discovery requests that were propounded more than two and a half months ago. Plaintiffs brought this action, and having done so they should be made to participate in discovery. Plaintiffs' failure to respond to basic discovery in a timely manner results in a clear waiver of any objections.

Mr. MacKenzie has in good faith conferred with counsel for the Plaintiffs in an effort to secure the information or material without court action. Mr. MacKenzie is entitled to an award of his reasonable expenses including attorneys' fees and costs in having to bring this motion pursuant to Rule 1.380.

WHEREFORE, defendant Scott MacKenzie respectfully requests that the Court enter an order (i) striking any late-filed objections by Plaintiffs, (ii) compelling Plaintiffs to serve complete responses to all of Mr. MacKenzie's pending discovery requests and produce all responsive documents within twenty (20) days, and (iii) awarding Mr. MacKenzie his attorneys' fees and costs in bringing this motion.

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 26, 2019, a copy of the foregoing was filed with the Florida Courts E-Filing Portal, which served a copy of it on the following:

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