IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FL

CASE NO. 50-2021-CA-004758-XXXX-MB

RAMONA ANG, as Trustee of the TULIP TRUST, Successor-in-Interest to CRAIG WRIGHT R&D,

Plaintiff,

vs.

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

Defendant.
_____/

DEFENDANT'S MOTION TO STRIKE AND DISMISS COMPLAINT OR, IN THE ALTERNATIVE, MOTION TO STAY

Defendant Ira Kleiman, as Personal Representative of the Estate of Dave Kleiman, hereby files this Motion to Strike and Dismiss Complaint or, in the Alternative, Motion to Stay and states as follows:

INTRODUCTION

Simply stated, this case is a sham, the Complaint should be stricken, and the case should be dismissed. At a minimum, because this case presents "claims" that are identical to one of the central defenses Plaintiff's husband, Craig Wright, is attempting to use in a Federal lawsuit pending against him and set for trial later this year, Florida law requires that this case be stayed pending resolution of that case.

Indeed, as detailed below, this is the second time Craig Wright has had one of his wives (first his former wife and now his current wife) bring a lawsuit in Palm Beach County which had the primary purpose of derailing the Federal case against him. This is exactly the type of situation

that Florida law seeks to prevent, and therefore requires stay of the later-filed proceedings until the earlier case is resolved.

BACKGROUND

The case is brought by Ramona Ang, the wife of Craig Wright, the Defendant in a Federal lawsuit brought by the Estate of Dave Kleiman (the "Federal lawsuit"). Ms. Ang claims to be acting here in her capacity as the trustee for the "Tulip Trust." As detailed below, the Federal Magistrate presiding over the Federal lawsuit found, by clear and convincing evidence, that the "Tulip Trust" likely *does not even exist*. Additionally, although Ms. Ang purports to bring claims arising out of the Trust's alleged ownership interest in W&K Info Defence Research LLC ("W&K"), the Federal lawsuit likewise established (at least according to the sworn Declaration and testimony of Dr. Wright) that the Trust possesses no such ownership interest in W&K.[1]

This case is a not so transparent attempt to circumvent the jurisdiction of the United States District Court for the Southern District of Florida, and to try to shield Craig Wright (the husband of the Plaintiff in this action) from being held to account for his theft of assets from the Estate of Dave Kleiman and W&K. Indeed, this case is the second time Craig Wright has enlisted the services of his spouse as part to use this Courts to hijack the Federal lawsuit against him. The first one failed – this one should too.

ARGUMENT

A. Craig Wright's Continuing Scheme to Avoid Accountability

As stated above, everything about this case is a sham. Indeed, the instant lawsuit is part of a well-established pattern by Craig Wright to misuse the courts in this country (Federal and State),

[1] Notably, Plaintiff has not attached to her Complaint any documents evidencing the existence of the Trust, or its alleged ownership in W&K.

in an effort to avoid accountability. His misconduct started in the Federal lawsuit itself and has, unfortunately, now continued in the Courts of Palm Beach County.

The Magistrate in the Federal lawsuit has found, by clear and convincing evidence, that Craig Wright has engaged in massive fraud in that case. *See* Ex. A, Order on Plaintiff's Motion to Compel, dated August 27, 2019. He found that Craig gave "intentionally false testimony" and "that there is a strong, and unrebutted, circumstantial inference that Dr. Wright willfully created [] fraudulent documents." *Id.* at 21. Notably, these findings are not just about Wright's general conduct in that case, the findings specifically are directed at the documents Craig produced and the testimony he gave about the "Tulip Trust," the purported Plaintiff here. Specifically, Magistrate Judge Reinhart found as follows with regard to the "Tulip Trust":

> ***The totality of the evidence in the record does not substantiate that the Tulip Trust exists. Combining these facts with my observations of Dr. Wright's demeanor during his testimony, I find that Dr. Wright's testimony that this Trust exists was intentionally false***

Id.

Indeed, after reviewing the altered documents Craig had submitted and listening to his testimony, and otherwise conducting a full evidentiary hearing, Judge Reinhart concluded that "***Dr. Wright intentionally submitted fraudulent documents to the Court, obstructed a judicial proceeding, and gave perjurious testimony.***" *Id.*

Magistrate Reinhart is not alone in this regard. Judge Bloom affirmed Judge Reinhart's findings regarding the credibility of Wright, finding that they were fully supported by the evidentiary record. *See* Ex. B, Order on Defendant Craig Wright's Objection to Magistrate Order "Deeming" Certain Facts Established and "Striking" Certain Affirmative Defenses, dated January 10, 2020. Moreover, Judge Bloom herself evaluated Wright's various stories regarding the same ownership interests in W&K allegedly at issue here, and found it appropriate to analogize Wright's

multiple versions of the facts related to W&K to the timeless quote from Sir Walter Scott – **"Oh what a tangled web we weave when first we practice to deceive."** *See* Ex. C, Order on Defendant Craig Wright's Motion for Judgment on the Pleadings, dated August 15, 2019.

Having been appropriately branded as a liar by the federal courts, Dr. Wright moved his scheme to the state court system -- twice.

First, last year Dr. Wright's ex-wife, Lynn Wright, brought suit claiming that *she* had ownership rights in W&K Info Defence Research LLC ("W&K), a company formed by Dave Kleiman, and one of the Plaintiffs in the Federal lawsuit. *See* Ex. D, Petitioner Lynn Wright's Verified Petition to Determine Beneficiary Shares and for Declaratory Judgment and Injunctive Relief, dated July 16, 2020. Preposterously, Lynn Wright claimed that she obtained that ownership interest in W&K via a transfer from the "Tulip Trust" less than a week before she filed her claim. *Id.* She provided no evidence to substantiate that transfer, nor did she allege that any consideration was given for same. And even though she was claiming partial ownership interest in W&K, who was on the verge of a trial in which it was seeking billions of dollars of damage, the primary relief Lynn requested was ***dismissal of that lawsuit***. *Id.* In other words, if her alleged ownership interest in W&K was valid (it was not), her own lawsuit if successful would cause substantial economic damage to herself. Indeed, the *only* person who would benefit if her lawsuit was successful would be Craig Wright, her ex-husband who she had admitted she is financially dependent on.

Judge Keever-Agrama saw the obvious implications Wright's machinations, through his ex-wife, could have on the pending federal lawsuit. Accordingly, she stayed the Lynn Wright's case pending resolution of the Federal lawsuit:

> ***In sum, this matter is a very large onion of which only one court – the federal court, as the "first-filed" court – should peel back its several layers. Accordingly, following Florida's well established precedent, this Court is staying its hand while the federal court completes the case before it.***

See Ex. E, Order Staying Petition of Lynn Wright's, dated December 14, 2020.

But Wright was undeterred on his mission to derail the Federal lawsuit against him. Now, having failed in his first scheme advanced by his ex-wife, Wright is back at it again – this time, his *current* wife brings the instant lawsuit. This one, however, is even more of a sham than the one brought by Lynn Wright.

Here, Wright's current wife, ***represented by Craig Wright's lawyers in the Federal lawsuit***, claims to be acting as the trustee of the "Tulip Trust." She claims that this Trust has an ownership interest in W&K. Previously, in the Lynn Wright lawsuit, Lynn had claimed that the "Tulip Trust" transferred an ownership interest to her enable *her* lawsuit. Now, the Trust claims it still has ownership in W&K so it can pursue *this* lawsuit.[2]

Yes, the same "Tulip Trust" that the Federal court had found Wright created and produced false documents about, gave false testimony about, and likely does not even exist, is here as a "plaintiff." Even assuming the Tulip Trust "exists," its alleged connection to Ira Kleiman or the Estate of his late brother Dave Kleiman, does not. The Tulip Trust claims that it "held an interest" in W&K by way of being the successor an interest to "Craig Wright R&D". However, this claim regarding the alleged ownership of "Craig Wright R&D" in W&K is especially odd given that Wright has sworn under oath that he never had any ownership interest in W&K nor did he have any idea who did. *See* Ex. F, Declaration of Craig Wright, dated April 15, 2018. Specifically, in an affidavit to the federal court submitted in April 2018, Craig swore that he had "**never** been a member of W&K," nor had he ever been a "director, member, shareholder, officer, employee or

[2] Admittedly, the pleading in the Lynn Wright petition is not crystal clear if the Tulip Trust only transferred some of its alleged interest in W&K to her. This vagueness is exacerbated by the fact that neither of the Wright wives attach to their respective complaints any documents evidencing their alleged ownership interests (or transfers thereof) in W&K.

representative of W&K…." *Id.* He later affirmed this in his deposition, testifying that he did not have any ownership in W&K and had "no idea" who did. *See* Ex. G, Deposition of Craig Wright dated April 4, 2019. Craig did not claim that he, or the Tulip Trust f/k/a Craig Wright R&D were members of W&K.

Of course, this sworn testimony from Craig was directly at odds with Lynn's story in her lawsuit that (1) Craig was the trustee, and then the beneficiary, of a trust that is the "sole member with the right to vote with respect to the transfer of membership interests of [W&K]," and (2) Craig has had an ownership interest in W&K (through a trust) since February 2011. It is also directly at odds with the allegations made in the instant action by Craig's current wife in this case. *See* Ex. D, Petitioner Lynn Wright's Verified Petition to Determine Beneficiary Shares and for Declaratory Judgment and Injunctive Relief, dated July 16, 2020.

Even worse, the claims made here by Ms. Ang are a core part of the defense put forward by Wright in the federal lawsuit. In other words, under the guise of an affirmative "claim" in the state court, Wright's wife seeks to prove the validity of Wright's defense in the Federal lawsuit, just as his former wife's lawsuit sought to protect him from liability in the Federal lawsuit.

Specifically, the federal lawsuit revolves (in part) around a claim that Wright and Dave Kleiman formed a partnership which, amongst other activities, mined bitcoin. In that case, the Estate of Dave Kleiman alleges that after Dave died, Wright stole billions of dollars of bitcoin that the partnership had mined, assets that should have gone to Dave's Estate. Wright does not deny that Dave Kleiman mined a substantial amount of bitcoin. Instead, he claims Dave mined that bitcoin outside of any partnership with him and within W&K. Wright further alleges that Ira Kleiman effectively destroyed that bitcoin by altering certain of Dave's electronic devices after Dave's death, which Craig contends contained the only "private keys" to unlock the bitcoin.

Through his current wife, Wright is advancing the same claim here, effectively suing the Estate and alleging that the bitcoin mined by Dave belonged to W&K, and that the "Tulip Trust" has been damaged because Ira destroyed the ability to retrieve the bitcoin. In other words, the "claim" here by Craig Wright's wife is the same defense Wright is asserting in the Federal lawsuit.

In short, this is a case brought by what appears to be a non-existent entity, setting forth claims based on an alleged ownership interest it does not have, and is refuted by Craig's sworn affidavits and testimony in the Federal lawsuit. The Complaint is a sham, it should be stricken, and the matter be dismissed.[3]

In the alternative, if the Court does not strike the Complaint and dismiss the case, for the reasons set forth below the Court should stay this action pending resolution of the Federal lawsuit.

B. Alternative Motion to Stay

As demonstrated above, the claims alleged here are also presented by Craig as primary defenses in the Federal lawsuit. The Federal case has been pending since 2018 and, but for the COVID-related shutdown of the federal courts, would have already been tried.

The Federal lawsuit has been extensively litigated by the parties with over 650 docket entries. In excess of 25 depositions have been taken. The parties have collectively retained and disclosed at least 9 expert witnesses. Hundreds of pages of briefing has been done on omnibus motions in limine and *Daubert* motions, all of which have been ruled on. The parties have filed voluminous dispositive motions, all of which have also been ruled on. Proposed jury instructions and verdict forms have been submitted. Exhibit lists, and objections thereto, have been exchanged.

[3] If the Court were to deny this motion, and require a response to the Complaint, Defendant reserves the right to assert additional substantive bases for dismissal.

As have witness lists and statements of anticipated testimony. Effectively, nearly all the pre-trial work has been completed and the case is ***specially set*** for trial commencing on November 1, 2021.

It is well established in Florida that "'where courts within one sovereignty have concurrent jurisdiction, the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed with that case,' based on the 'principle of priority.'" *Graham v. Graham*, 648 So. 2d 814, 816 (Fla. 4th DCA 1995) (quoting *Bedingfield v. Bedingfield,* 417 So. 2d 1047, 1050 (Fla. 4th DCA 1982)). "Florida recognizes this principle of priority or comity where actions involving the same parties and subject matter are pending concurrently in two different states or pending concurrently in state and federal courts." *Id.*

Accordingly, "[i]t is well-settled that when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action should be stayed pending the disposition of the federal action." *Robeson v. Melton*, 52 So. 3d 676, 679 (Fla. Dist. Ct. App. 2009) (quoting *Beckford v. Gen. Motors Corp.*, 919 So.2d 612, 613 (Fla. 3rd DCA 2009)).

The rationale for this rule is easy to understand. "Otherwise, it is possible that the federal court will retain jurisdiction and the result will be two duplicative proceedings with the possibility of inconsistent results." *Id.* Thus, "[a]bsent extraordinary circumstances, a trial court abuses its discretion when it fails to respect the principle of priority." *Perelman v. Estate of Perelman*, 124 So. 3d 983, 986 (Fla. 4th DCA 2013); *see also, e.g.*, *Robinson v. Royal Bank of Canada*, 462 So. 2d 101, 102 (Fla. 4th DCA 1985) ("The trial court clearly departed from the essential requirements of law by refusing to decline jurisdiction as a matter of comity. A grant of stay is appropriate where two actions are pending simultaneously which involve the same parties and substantially the same causes of action." (internal citations omitted)).

As one court explained, the "pivotal question" in determining whether a stay is appropriate is whether the later-filed action is sufficiently similar to the earlier-filed action such that resolution of the earlier-filed action will resolve many of the issues in the later-filed action:

> In applying the principle of priority, the pivotal question is whether the second-filed action is sufficiently similar in parties and issues as to be unnecessarily duplicative of the prior-filed proceeding. Florida law is clear that the causes of action do not have to be identical to require a stay of the second-filed action. It is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case. Nor does the principle of priority require an absolute identity of parties between the two actions, with regards to the propriety of a stay.

InPhyNet Contracting Servs., Inc. v. Matthews, 196 So. 3d 449, 464-65 (Fla. Dist. Ct. App. 2016) (citations and quotation marks omitted).

That is the case here. The Federal litigation was commenced approximately three years before this case. The factual allegations made by Ms. Ang here mirror a central tenet of her husband's defense in the Federal lawsuit; namely, the allegation that Ira Kleiman destroyed the "private keys" to over a billion dollars worth of bitcoin.

That issue will be undoubtedly be tried to, and resolved by, the jury that will decide the Federal lawsuit. As a result, if the Court believes that outright dismissal of Ms. Ang's lawsuit is not appropriate, the principle of priority calls for a stay of it pending resolution of the Federal lawsuit. *See, e.g.*, *Am. Airlines*, 741 So. 2d at 589 ("As to American's petition to determine beneficiaries, the determination of whether Mr. Montero is the son of the decedent is already an element of the wrongful death suit in federal court. Under the facts of this case, it was within the discretion of the probate court to defer to the already pending federal court action.").

CONCLUSION

This case is a sham. The Complaint should be stricken and the case should be dismissed. At a minimum, the case should be stayed pending resolution of the Federal lawsuit.

Dated: May 26, 2021

Respectfully submitted,

/s/ Andrew. S. Brenner.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of Courts, which will send a notice of electronic filing to all counsel of record on this 26th day of May, 2021.

By: *s/Andrew S. Brenner*
ANDREW S. BRENNER

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CIV-80176-Bloom/Reinhart

IRA KLEIMAN, as personal representative of the estate of David Kleiman, and W&K INFO DEFENSE RESEARCH, LLC,

Plaintiffs,

v.

CRAIG WRIGHT,

Defendant.
_____/

ORDER ON PLAINTIFFS' MOTION TO COMPEL [DE 210][1]

This matter is before the Court on the Plaintiffs' Motion to Compel, DE 210, and the Court's Order dated June 14, 2019. DE 217. The Court has considered the totality of the docketed filings, including all pleadings referenced herein and transcripts of all cited court proceedings. As the judicial officer who presided at the relevant proceedings, I retain a current and independent recollection of the events discussed below. I have reviewed all of the exhibits introduced into the record at the evidentiary hearing, including the deposition excerpts filed in the record. *See* DE 270. Finally, I have carefully considered the arguments of counsel. The Court is fully advised and this matter is ripe for decision. The Court announced its ruling from the bench on August 26,

[1] Magistrate judges may issue an order on any "pretrial matter not dispositive of a party's claim or defense." Fed. R. Civ. P. 72(a). "Thus, magistrate judges have jurisdiction to enter sanctions orders for discovery failures which do not strike claims, completely preclude defenses or generate litigation-ending consequences." *Wandner v. Am. Airlines*, 79 F. Supp. 3d 1285, 1295 (S.D. Fla. 2015) (J. Goodman).

2019. This Order memorializes that ruling. To the extent the relief granted in the written Order deviates from the oral pronouncement, the Order controls.

Two preliminary points. First, the Court is not required to decide, and does not decide, whether Defendant Dr. Craig Wright is Satoshi Nakamoto, the inventor of the Bitcoin cybercurrency.[2] The Court also is not required to decide, and does not decide, how much bitcoin, if any, Dr. Wright controls today. For purposes of this proceeding, the Court accepts Dr. Wright's representation that he controlled (directly or indirectly) some bitcoin on December 31, 2013, and that he continues to control some today.

PROCEDURAL HISTORY

This case arises from a dispute over the ownership of bitcoin and Bitcoin-related intellectual property. Plaintiffs allege in the Second Amended Complaint that David Kleiman and Dr. Wright were partners in the creation of the Bitcoin cybercurrency and that they "mined" (i.e., acquired) a substantial amount of that currency together. DE 83. Dr. Wright denies any partnership with David Kleiman, and further denies that David Kleiman had an ownership interest in the bitcoin that was mined. Alternatively, Dr. Wright asserts that David Kleiman transferred any interest he had in the bitcoin and the intellectual property to Dr. Wright in exchange for equity in a company that ultimately failed. *See* DE 87. David Kleiman died in 2013.

As early as July 2018, Plaintiffs sought discovery to identify the bitcoin that Dr. Wright owned and controlled (his "bitcoin holdings"). In Ira Kleiman's First Set of Interrogatories served on July 31, 2018, he asked Dr. Wright to identify "public keys and public addresses" for any cryptocurrency he currently or previously owned. DE 91-2 at 8. Dr. Wright responded on

[2] A note on terminology. Unless otherwise specified, when I refer to units of the cybercurrency, I will use the lower-case "bitcoin" (like "dollars"). When I refer to the particular cybercurrency system, I will use the upper-case "Bitcoin" (like "the U.S. Dollar").

February 1, 2019, by objecting that the discovery request was "irrelevant, grossly overbroad, unduly burdensome, harassing and oppressive, and not proportional to the needs of the case." DE 91-2 at 14-19.[3] Under the procedures required by my Standing Discovery Order (DE 22, 102), the parties requested a discovery hearing to resolve their respective objections. That hearing was scheduled for February 20, 2019. DE 90.

Dr. Wright submitted his pre-hearing memorandum on February 14, 2019. DE 92. He noted that Plaintiffs had requested all documents relating to any bitcoin transactions by Dr. Wright between 2009 and 2014. *Id.* at 3. Dr. Wright argued that the discovery requests were disproportionate to the needs of the case. He represented that he "stands ready to produce documents in his possession, custody, or control that relate to Dave [Kleiman], any trust in which Dave [Kleiman] was a trustee or beneficiary, and W&K Info Defense Research, LLC." *Id.* at 4.

At the hearing on February 20, the Court and the parties had a discussion about Plaintiffs' request for evidence relating to Dr. Wright's bitcoin transactions. DE 123 at 120-123 (hearing transcript). I declined to order Dr. Wright to produce his current bitcoin holdings. Rather, I said Plaintiffs should identify a starting date and seek production of Dr. Wright's bitcoin holdings on that date. Plaintiffs could use the Bitcoin evidence trail to trace forward from there.

Running in parallel with the interrogatories, Plaintiffs served a Second Set of Requests for Production on Dr. Wright on or about January 17, 2019. DE 92-5 at 30. Request for Production #1 sought "All documents or communications that provide and/or estimate the value of your cryptocurrency holdings. This includes, but is not limited to, loan applications, financial statements, tax returns, life insurance applications, financing agreements, sale papers, assignment contracts, etc." 2 DE 114-1 at 5-6. On February 19, Dr. Wright served a written objection to

[3] Discovery was stayed from August 2, 2018, to December 31, 2018. DE 57, 72.

Request #1 based on relevance, over-breadth, harassment, and disproportionality. *Id.* at 5-6. The parties conferred but were unable to resolve the objection. *Id.* at 7. A discovery hearing was scheduled for March 6, 2019. DE 104.

On March 4, the parties submitted their Joint Discovery Memorandum. DE 109. They indicated that Plaintiffs' Request for Production #1 was still in dispute. *Id.* at 7. The hearing was held on March 6. DE 110, DE 122 (hearing transcript). The parties deferred the Request for Production issue to the next discovery hearing. DE 122 at 56. Plaintiffs explained that they were revising the Request for Production related to Dr. Wright's bitcoin holdings: "We have chosen – we have moved everything back to 2013, which is when Dave died. You Honor will have an opportunity to hear from both sides, but we basically said give us the information as of that date and then we will move forward from there." *Id.* at 62. Another discovery hearing was set for March 14.

On March 13, the parties submitted their Joint Discovery Memorandum for the March 14 discovery hearing. DE 114. Plaintiffs represented that they had "limited the request to: 'produce any documents that existed as of 12/31/13 which estimate the value of Defendant's bitcoin holdings.'" *Id.* at 3. Plaintiffs argued that this information was relevant to trace the assets of the alleged partnership between David Kleiman and Dr. Wright. *Id.* Dr. Wright argued that, even as limited, the request was "overly broad, unduly burdensome and harassing by seeking such personal financial information such as loan applications, financial statements, tax returns, life insurance applications, etc." *Id.*

At the hearing on March 14, Plaintiffs further explained that the purpose of this request for production was to help establish the universe of bitcoin that was mined during the alleged Kleiman-Wright partnership. DE 124 at 18-19 (hearing transcript). Plaintiffs agreed that what they were

really seeking was "a listing of all the bitcoin that was owned [by Dr. Wright directly or indirectly] on December 31, 2013." *Id.* at 19-20. Dr. Wright objected on relevance grounds. The Court found "what bitcoin existed on December 31, 2013, and where it's gone since then is relevant to [Plaintiffs'] claim." *Id.* at 21. Turning to proportionality and undue burden, the Court asked Dr. Wright's counsel, "[H]ow difficult would it be to come up with information? I assume it's just a list of Bitcoin wallets from December 2013." *Id.* at 21. Dr. Wright's counsel responded, "Well, it's a list of – it would be a list of public addresses, but it would identify Craig Wright as being the owner of those addresses, which sort of like opens the door to, you know, a lot of financial information, and without any evidence that all of those — or what portion of those Dave Kleiman had an interest in." *Id.*

The Court ruled that Plaintiffs were entitled to a list of Dr. Wright's bitcoin holdings, but granted Dr. Wright leave to file a motion for protective order based on undue burden. *Id.* at 22-23. Notably, the Court did not specify the information Dr. Wright was required to use to generate the list. Specifically, the Court did not order production of a list of public addresses. The Court did not set a specific deadline for production or for the filing of the motion for protective order.

Dr. Wright was deposed on April 4. During his deposition, he testified that a trust called the Tulip Trust was formalized in 2011, but never owned or possessed private keys to bitcoin addresses. DE 270-1 at 22. He also testified that Uyen Nguyen had ceased to be a trustee of any trust related to Dr. Wright in 2015. *Id.* at 24. He further testified that he had stopped mining bitcoin in 2010. He declined to answer questions about how much bitcoin he mined in 2009-2010; this issue was reported to the Court during the deposition. I deferred ruling on the issue. DE 137 at ¶ 1 ("The request to compel Dr. Wright to disclose the amount of bitcoin he mined during 2009 and 2010 is denied without prejudice. The Court will revisit this issue after the parties brief

whether production of a list of Dr. Wright's bitcoin ownership would be unduly burdensome."). Again, the Court referenced "a list of Dr. Wright's bitcoin ownership." The Court did not mention a list of public addresses.

A discovery hearing was held on April 11. DE 142. At that hearing, I set a deadline of April 19 for Dr. Wright to file a motion regarding Plaintiffs' request for a list of his bitcoin holdings on December 31, 2013. DE 146 at 38-39 (hearing transcript).

On April 18, Dr. Wright filed a Sealed Motion Regarding Production of a List of the Public Addresses of his Bitcoin as of December 31, 2013. DE 155.[4] Dr. Wright incorrectly framed the issue as, "The Court has ordered Dr. Wright to identify all public addresses that he owned as of December 31, 2013 or, if he cannot do so, explain why identification is unduly burdensome." *Id.* at 1. He then stated:

> Dr.Wright does not have a complete list of the public addresses that he owned as of any date. To create such a list would be unduly burdensome. A Bitcoin public address is an identifier of 26-35 alphanumeric characters. Such addresses are not intended to be memorized and remembered for a period of nearly a decade. However, Dr. Wright knows that he mined the [redacted] on the blockchain. Because the public addresses associated with blocks are publicly available, Dr. Wright is able to identify the public addresses associated with the [redacted] blocks on the blockchain and provides those public addresses below. [redacted] Dr. Wright did not keep track of which Bitcoin blocks he mined. Dr. Wright does not know any of the other Bitcoin public addresses.
>
> In 2011, Dr. Wright transferred ownership of all of his Bitcoin into a blind trust. Dr. Wright is not a trustee or a beneficiary of the blind trust. Nor does Dr. Wright know any of the public addresses which hold any of the bitcoin in the blind trust. Thus, Dr. Wright does not know and cannot provide any other public addresses.
>
> First, as of December 31, 2013, all of Dr. Wright's bitcoin had been transferred to the blind trust, and therefore are owned by the trusts, not by Dr. Wright. The public addresses referenced above are as follows:

[4] The motion was filed under seal. A redacted version of the motion is filed in the public record at Docket Entry 184.

[REDACTED] [5]

DE 184 at 1-2. As shown above, the Court had not ordered Dr. Wright to produce a list of public addresses. Dr. Wright did not assert, then, that public addresses were a meaningless data point. He simply argued that he could not produce them.

Plaintiffs filed a response in opposition to the Motion. DE 162.[6] They sought an order requiring Dr. Wright to identify all bitcoins he owned as of December 31, 2013, to provide the trust documents, and to provide a sworn statement identifying all bitcoins he transferred to the blind trust as well as the identities of the trustees and trust beneficiaries. DE 183 at 5-6.

The Court denied Dr. Wright's Motion on May 3, 2019. DE 166. After reviewing the procedural history, the Court stated:

> Thereafter, Dr. Wright filed an unverified motion in which he identified a number of bitcoin public addresses that he mined. Although not delineated as a Motion for Protective Order, that is what the pleading is. Dr. Wright asserted that he does not have a complete list of the public addresses he owned on any date, including December 31, 2013. He further asserted that in 2011 he transferred ownership of all his bitcoin to a blind trust. Although he makes the conclusory statement that it would be unduly burdensome to produce a list of his bitcoin holdings as of December 31, 2013, this conclusion is not supported by facts. In essence, he does not argue undue burden, he argues impossibility. The argument that Dr. Wright is incapable of providing an accurate listing of his current or historical bitcoin holdings was never presented in any of the prior hearings before this Court, when the Court was crafting the scope of discovery. Notably, [Dr. Wright's motion] does not refute the obvious response to this argument – get the information from the trustee of the blind trust.

DE 166 at 2-3. Again, the Court referenced a "listing of" Dr. Wright's bitcoin holdings, not a list of public addresses. The Court ordered:

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[5] Dr. Wright produced a partial list of bitcoin public addresses that he mined prior to 2011. DE 155 at 2-3.

[6] The Response was filed under seal. A redacted version is filed in the public record at Docket Entry 183.

- On or before May 8, 2019, at 5:00 p.m. Eastern time, Dr. Wright shall provide to Plaintiffs a sworn declaration identifying the name and location of the blind trust, the name and contact information for the current trustee and any past trustees, and the names and contact information of any current or past beneficiaries.

- On or before May 9, 2019, at 5:00 p.m. Eastern time, Dr. Wright shall produce to Plaintiffs a copy of any and all documents relating to the formation, administration, and operation of the blind trust. The production shall be accompanied by a sworn declaration of authenticity.

- On or before May 15, 2019, at 5:00 p.m. Eastern time, Dr. Wright shall produce all transactional records of the blind trust, including but not limited to any records reflecting the transfer of bitcoin into the blind trust in or about 2011. The production shall be accompanied by a sworn declaration of authenticity.

- Dr. Wright shall execute any and all documents, or other legal process, necessary to effectuate the release of documents in the possession, custody, or control of the Trustee.

Id. at 4.

Defendant's counsel sought an extension of time to comply with the May 3 Order so that they could fly to London to meet with their client in person to prepare the required declaration. DE 167. That request was granted. DE 195 (Telephonic Hearing Transcript), DE 172.

Dr. Wright provided a sworn declaration dated May 8, 2019. DE 222.[7] He swore that he had met with his counsel in person on May 7 and 8 to "provide them with additional details and clarity regarding trusts that I settled that hold or held Bitcoin that I mined or acquired on or before December 31, 2013." DE 222 at ¶ 3. Dr. Wright further swore:

- In 2009 and 2010 he had mined bitcoin directly into a trust in Panama, that there were no transactions related to those bitcoin, and that he later "transferred the encrypted files that control access to these Bitcoin in 2011, as explained below." *Id.* ¶ 4.

- In June 2011, he consolidated "the Bitcoin that I mined with Bitcoin that I acquired and other assets." *Id.* ¶ 5.

[7] A sealed copy was filed at DE 223. A redacted copy was filed at DE 222.

- To that end, "[i]n October 2012, a formal trust document was executed, creating a trust whose corpus included the Bitcoin that I mined, acquired and would acquire in the future. The name of that trust is Tulip Trust. It was formed in the Seycelles [sic]." *Id.*

- The trustees of Tulip Trust I are COIN Ltd. UK., Uyen Nguyen, Dr. Wright, David Kleiman, Panopticrypt Pty. Ltd, and Savannah Ltd. *Id.* ¶ 6. Dr. Wright is the contact person for COIN Ltd. UK. The contact person for Panoptycript Pty. Ltd. is Dr. Wright's wife. The contact person for Savannah Ltd. is Denis Mayaka. *Id.* ¶¶ 9-12.

- The beneficiaries of Tulip Trust I are Wright International Investments Ltd. and Tulip Trading Ltd. Dr. Wright is the point of contact for both of the beneficiaries. *Id.* ¶¶ 13-14.

- A second Tulip Trust exists. Dr. Wright and his wife are the beneficiaries. *Id.* at ¶¶ 19-20.

- "Access to the encrypted file that contains the public addresses and their associated private keys to the Bitcoin that I mined, requires myself and a combination of trustees referenced in Tulip Trust I to unlock based on a Shamir scheme." *Id.* at ¶ 23.

He also provided certain documents related to the trust.[8]

On June 3, Plaintiffs filed a Motion to Compel Defendant to Comply with this Court's Orders Directing Him to Produce a List of the Bitcoins He Held as of December 31, 2013. DE 197 (sealed) (redacted version filed at DE 210). Plaintiffs asked the Court to impose sanctions under Rule 37 and to order Dr. Wright to provide a sworn statement identifying the public addresses of the bitcoin transferred into the Tulip Trusts, to provide transactional records and communications relating to the trusts, and to sit for a renewed deposition. DE 210 at 6. Although

[8] Plaintiffs represent, "In response to the Court's order, Craig produced two sworn statements, copies of various trust instruments, and a statement from the purported trustee re-attaching a trust instrument." DE 210 at 3. Dr. Wright's Response states that he "produced trust formation documents along with a sworn declaration of authenticity," as well as "documents reflecting the use of bitcoin rights from the trust to support research and development by his Australian entities." DE 211 at 3.

the Plaintiffs "defer[red] to the Court's judgment as to the appropriate sanction," they requested that if Dr. Wright continued to refuse to comply that the Court deem all of Dr. Wright's holdings in the Tulip Trust to be joint property belonging to both Dr. Wright and David Kleiman. DE 210 at 6; DE 221 at 15.

In his response, Dr. Wright conceded that he has not complied with the Court's order, but argued that compliance was impossible. DE 204 (redacted version filed at DE 211). Expanding on the representation made in Paragraph 23 of his declaration, he argued that information necessary to produce a complete list of his bitcoin holding on December 31, 2011, was in the Tulip Trust I in a file that is encrypted using "'Shamir's Secret Sharing Algorithm', an algorithm created by Adi Shamir to divide a secret, such as a private encryption key, into multiple parts." DE 211 at 5. Dr. Wright asserted that he could not decrypt the outer level of encryption because he did not have all of the necessary decryption keys. *Id.* He stated that after using a Shamir system to encrypt this information, "The key shares were then distributed to multiple individuals through the [blind] trusts" and "he alone does not have ability to access the encrypted file and data contained in it." *Id.*

The Court held a hearing on June 11 on the Motion. DE 221. Plaintiffs' counsel pointed out that under oath in his deposition Dr. Wright denied ever putting bitcoin into a trust, and denied putting any private keys into the Tulip Trust. DE 221 at 8-9. After hearing further oral argument from the parties, the Court once again gave Dr. Wright an opportunity (and a deadline of June 17, 2019) to "produce a complete list of all bitcoin that he mined prior to December 31, 2013." DE 217. Again, the Court did not order a list of public addresses. The Court simultaneously entered an Order to Show Cause why it should not certify a contempt of court to the District Judge. The Court also put Dr. Wright on notice that it was considering sanctions under Rule 37 for his

continued non-compliance with the Court's March 14 Order. DE 217 at 5; DE 221 at 32-33. An evidentiary hearing was scheduled for June 28.

Dr. Wright's deposition reconvened on June 28 immediately prior to the evidentiary hearing. I presided over the deposition to rule on any objections. Dr. Wright was asked about the trusts referenced in his declaration. He responded, "I'm not the trustee of these trusts." DE 270-2 at 7. Dr. Wright was asked if he transferred all of his bitcoin into blind trust in 2011. He responded, "What I actually did was, I transferred the algorithms and software that I had used, the nonpublic version of Bitcoin that I was working on, into an encrypted file. The encrypted file was then – basically the key was split so that other people could have it." DE 270-2 at 21-22.

THE EVIDENTIARY HEARING

The Court heard from three live witnesses during two days of testimony: Dr. Wright, Steven Coughlan a/k/a Steve Shadders, and Dr. Matthew Edman. DE 236, 264. Plaintiffs also submitted excerpts from the depositions of Jonathan Warren and Dr. Wright. DE 261, 270. The Court heard oral argument on August 26, 2019.

Dr. Wright testified to his inability to comply with the Court's Orders. He claimed that after drug dealers and human traffickers began using Bitcoin, he wanted to disassociate himself completely from it. He engaged David Kleiman for that purpose. As part of that process, Dr. Wright put control over the bitcoin he mined in 2009-2010 into an encrypted file, which he put into a blind trust called the Tulip Trust. The encryption key was divided into multiple key slices. A controlling number of the key slices were given to Mr. Kleiman, who distributed them to others through the trust. Today, Dr. Wright does not have access to a sufficient number of the key slices to decrypt the file. Therefore, he cannot produce a list of his bitcoin holdings.

Mr. Shadders testified to efforts he made to filter the public Bitcoin blockchain to identify Dr. Wright's bitcoin. Dr. Edman testified about alleged alterations to documents.

APPLICABLE LEGAL PRINCIPLES

The Court gave notice that it would consider discovery sanctions under Federal Rule of Civil Procedure 37, and independently consider sanctions for contempt.[9]

Rule 37

Rule 37 authorizes the Court to award attorney's fees against a party and/or the party's counsel as a sanction for certain discovery-related conduct. Additionally, the Court may impose sanctions that affect the further litigation of the merits (what I will call "substantive sanctions"), including:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

[9] Plaintiffs' Motion for Sanctions also references the Court's inherent power to sanction for bad faith conduct. DE 210 at 5. The June 14 Order on Plaintiff's Motion to Compel did not put Dr. Wright on notice that the Court would consider sanctions under its inherent power. The sanctions otherwise available under Rule 37 are sufficient to address Dr. Wright's behavior, so the Court would not impose additional sanctions even if it were to invoke its inherent power.

Fed R. Civ. P. 37(b)(2)(A).

The burden of proof for Rule 37 sanctions is a preponderance of the evidence. *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 777 (7th Cir. 2016). Rule 37 sanctions "are intended to: (1) compensate the court and other parties for the added expense caused by discovery abuses; (2) compel discovery; (3) deter others from engaging in similar conduct; and (4) penalize the offending party or attorney." *Steward v. Int'l Longshoreman's Ass'n., Local No. 1408*, 306 Fed. Appx. 527, 529 (11th Cir. 2009). District courts possess wide discretion over the discovery process and when discovery sanctions are appropriate. *Dude v. Cong. Plaza, LLC,* 17-80522-CIV, 2018 WL 4203888, at *5 (S.D. Fla. July 20, 2018) (J. Matthewman), *report and recommendation adopted sub nom. Dude v. Cong. Plaza. LLC,* 17-CV-80522, 2018 WL 4203886 (S.D. Fla. Aug. 29, 2018). "The severe sanctions permitted by Rule 37(b) are usually only imposed by district courts upon a finding '(1) that the party's failure to comply with the order was willful or a result of bad faith, (2) the party seeking sanctions was prejudiced by the violation, and (3) a lesser sanction would fail to adequately punish and be inadequate to ensure compliance with court orders.'" *Id.* (citations omitted).

In a situation where a party asserts inability to comply with a discovery order, the proponent of sanctions bears the initial burden of making a *prima facie* showing that the opposing party failed to comply with the Court's order. Once the moving party makes that showing, the opposing must introduce evidence that it was impossible to comply. *See Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542-43 (11th Cir. 1993) (affirming sanctions where non-movant had "shown no evidence of inability to comply"); *Broadcast Music, Inc. v. Bourbon Street Station, Inc.,* 2010 WL 1141584, *2 (M.D. Fla. Mar. 23, 2010); *Chairs v. Burgess,* 143 F.3d 1432, 1436 (11th Cir. 1998) (quoting *Citronelle-Mobile Gathering, Inc. v. Watkins,* 943 F.2d 1297, 1301 (11th Cir. 1991)). That is, the

party must establish that he "has in good faith employed the utmost diligence in discharging his ... responsibilities." *Phoenix Marine Enterprises, Inc. v. One (1) Hylas 46' Convertible Sportfisherman Hull No. 1,* 681 F. Supp. 1523, 1528–29 (S.D. Fla. 1988) (J. Nesbitt) (quoting *Natural Resources Defense Council, Inc. v. Train*, 510 F.2d 692, 713 (D.C. Cir. 1975)); *Piambino v. Bestline Prod., Inc.*, 645 F. Supp. 1210, 1214 (S.D. Fla. 1986).

> This burden is satisfied by making "in good faith *all* reasonable efforts to comply." *United States v. Rizzo*, 539 F.2d 458, 465 (5th Cir. 1976). We construe this requirement strictly. "Even if the efforts he did make were 'substantial,' 'diligent' or 'in good faith,' ... the fact that he did not make 'all reasonable efforts' establishes that [respondent] did not sufficiently rebut the ... prima facie showing of contempt. The ... use of a 'some effort' standard for measuring the strength of [the] defense [would be] an abuse of discretion."

*Id.*at 1213 (quoting *United States v. Hayes*, 722 F.2d 723, 725 (11th Cir.1984)).[10]

Several provisions of the Federal Rules of Civil Procedure authorize reasonable expenses, including attorney's fees, as a sanction for discovery violations. *See* Fed. R. Civ. P. 37(a)(5)(A) (expenses associated with motion to compel); Fed. R. Civ. P. 37(b)(2)(C) (expenses associated with failure to comply with discovery order); Fed. R. Civ. P. 26(c)(3) (expenses associated with motion for protective order); Fed. R. Civ. P. 26(g)(3) (expenses associated with non-compliance with discovery certification). Rule 37(a)(5) authorizes an award of expenses if a Motion to Compel is granted after a party "fails to produce documents . . . as requested under Rule 34." Fed. R. Civ. P. 37(a)(3)(iv). "[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4). All of these rules apply the same structure: the prevailing party receives reasonable expenses, including attorney's fees, unless the

[10] Many of the cases addressing inability to comply involve contempt proceedings, not Rule 37 sanctions. Nevertheless, the situations are analogous and I will apply the same burden-shifting approach.

losing party's conduct was "substantially justified" and/or "other circumstances make an award of expenses unjust."

Contempt

Where, as here, the parties have not consented to have a United States Magistrate Judge preside over this civil case, I cannot hold a person in civil contempt or indirect criminal contempt (i.e., a contempt occurring outside the Court's presence). 28 U.S.C. § 636(e)(6)(B). Instead, if the person's conduct, "in the opinion of the magistrate judge," constitutes an indirect criminal contempt or a civil contempt, "the magistrate judge shall forthwith certify the facts to a district judge" for further proceedings. *Id.*

The sanction of civil contempt "may be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC,* 478 U.S. 421, 443 (1986) (internal quotation marks omitted), *cited and quoted in F.T.C. v. Leshin*, 719 F.3d 1227, 1231 (11th Cir. 2013). "A finding of civil contempt must be supported by clear and convincing evidence . . . The evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order. The absence of willfulness is not a defense to a charge of civil contempt, and substantial, diligent, or good faith efforts are not enough; the only issue is compliance." *Jysk Bed'N Linen v. Dutta-Roy*, 714 Fed. Appx. 920, 922 (11th Cir. 2017) (citations omitted). Clear and convincing evidence is evidence that "place[s] in the mind of the ultimate factfinder an abiding conviction that the truth of its factual contentions is 'highly probable.'" *Colorado v. New Mexico,* 467 U.S. 310, 316 (1984); *Powell v. Home Depot U.S.A.,* 2009 WL 1515073, at *8 (S.D. Fla. June 1, 2009) (J. Hurley).

Criminal contempt is punitive. An alleged criminal contempt occurring outside the presence of the Court (i.e., an indirect contempt) must be proven beyond a reasonable doubt. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 834 (1994).

FINDINGS

I make the following findings, each of which will be further explained below. First, I find that Dr. Wright has not met his burden of proving by a preponderance of the evidence that he is unable to comply with the Court's Orders. Second, in my opinion the evidence in the record before me does not rise to the level of proof beyond a reasonable doubt necessary for a criminal contempt. Although I find clear and convincing evidence that would support a civil contempt, the sanctions available under Rule 37 are sufficient, so I exercise my discretion and do not certify facts to Judge Bloom for civil contempt proceedings. Third, an award of attorney's fees is warranted against Dr. Wright, but not against his counsel. Fourth, I impose the following sanctions pursuant to Rule 37(b). For purposes of this action, it is established that (1) Dr. Wright and David Kleiman entered into a 50/50 partnership to develop Bitcoin intellectual property and to mine bitcoin; (2) any Bitcoin-related intellectual property developed by Dr. Wright prior to David Kleiman's death was property of the partnership, (3) all bitcoin mined by Dr. Wright prior to David Kleiman's death ("the partnership's bitcoin") was property of the partnership when mined; and (4) Plaintiffs presently retain an ownership interest in the partnership's bitcoin, and any assets traceable to them. To conform to these established facts, the Court strikes Dr. Wright's Third Affirmative Defense (Good Faith), Fourth Affirmative Defense (Accord and Satisfaction), Fifth Affirmative Defense (Release), Sixth Affirmative Defense (Payment), Seventh Affirmative Defense (Set-off), Eighth Affirmative Defense (Failure to Mitigate Damages), Seventh [sic] Affirmative Defense (Waiver), and Tenth Affirmative Defense (Statute of Frauds).

DISCUSSION

The factual issue for decision is whether a preponderance of the evidence proves that Dr. Wright is incapable of complying with the Court's Orders, specifically, whether Dr. Wright proved that the evidence necessary to identify his bitcoin holdings on December 31, 2013, is encrypted in a file that is in a blind trust and for which Dr. Wright does not have (and cannot presently get) the decryption keys. The evidence offered in support of this hypothesis was (1) the testimony of Dr. Wright and (2) the testimony of Steven Coughlan a/k/a Steve Shadders.

A finder of fact must consider the following questions in assessing witness credibility:

1. Did the witness impress you as one who was telling the truth?

2. Did the witness have any particular reason not to tell the truth?

3. Did the witness have a personal interest in the outcome of the case?

4. Did the witness seem to have a good memory?

5. Did the witness have the opportunity and ability to accurately observe the things he or she testified about?

6. Did the witness appear to understand the questions clearly and answer them directly?

7. Did the witness's testimony differ from other testimony or other evidence?

Eleventh Circuit Pattern Civil Jury Instruction 3.4. As will be discussed below, the evidence in the record demonstrated that Dr. Wright (directly and through counsel) made inconsistent statements about material matters. In considering that evidence, the Court is mindful "that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an

important fact or about an unimportant detail." Eleventh Circuit Pattern Civil Jury Instruction 3.5.1. A party's disbelieved testimony can be considered substantive evidence in support of the opposing party's burden of proof. *United States v. Brown,* 53 F.3d 312, 314 (11th Cir. 1995) ("[A] statement by a defendant, if disbelieved by the jury, may be considered as *substantive evidence* of the defendant's guilt.") (emphasis in original).

Mr. Shadders testified that he was asked by Dr. Wright to try to reconstruct Dr. Wright's bitcoin holdings by applying six data filters to the public Bitcoin blockchain. Mr. Shadders is the Chief Technology Officer at nChain, Ltd., a Bitcoin technology company in London. DE 264 at 12. Dr. Wright is the Chief Scientist at nChain. DE 236 at 5.

Dr. Wright provided the six filter criteria. Mr. Shadders wrote computer code to apply the criteria to the master blockchain. Mr. Shadders devoted approximately 12-16 hours total to the project. DE 264 at 49. His analysis identified approximately 27,000 bitcoin public addresses that met all six criteria. Because one of the criteria was that the public address correspond to a newly mined Bitcoin block, each public address represents 50 bitcoin. Therefore, Mr. Shadders' analysis identified approximately 1,350,000 bitcoin. These could not be further distilled to identify bitcoin controlled by Dr. Wright.

I found Mr. Shadders' testimony about his effort to apply filter criteria to the public blockchain to be credible and worthy of belief. I understand the inference that Dr. Wright would not have wasted Mr. Shadders' time if Dr. Wright were capable of complying with the Court's Orders. I also accept that Mr. Shadders' efforts demonstrate a good faith attempt by Dr. Wright to comply. For the reasons discussed below, however, I give limited weight to these inferences.

I now turn to Dr. Wright's testimony.

Apparently, dead men tell no tales, but they (perhaps) send bonded couriers. *See* John Dryden, "The Spanish Fryar or The Double Discovery", Act IV, Scene 1 (1681) ("there is a Proverb, I confess, which says, That Dead men tell no Tales."). I completely reject Dr. Wright's testimony about the alleged Tulip Trust, the alleged encrypted file, and his alleged inability to identify his bitcoin holdings.

Dr. Wright's story not only was not supported by other evidence in the record, it defies common sense and real-life experience. Consider his claims. He designed Bitcoin to be an anonymous digital cash system with an evidentiary trail. DE 236 at 15. He mined approximately 1,000,000 bitcoin, but there is no accessible evidentiary trail for the vast majority of them. He is a latter-day Dr. Frankenstein whose creation turned to evil when hijacked by drug dealers, human traffickers, and other criminals. *Id.* at 16-17. To save himself, he engaged David Kleiman to remove all traces of his involvement with Bitcoin from the public record. *Id.* at 16. As part of his efforts to disassociate from Bitcoin and "so that I wouldn't be in trouble," he put all his bitcoin (and/or the keys to it – his story changed) into a computer file that is encrypted with a hierarchical Shamir encryption protocol. *See Id.* at 23. He then put the encrypted file into a "blind" trust (of which he is one of the trustees), gave away a controlling number of the key slices to now-deceased David Kleiman, and therefore cannot now decrypt the file that controls access to the bitcoin. His only hope is that a bonded courier arrives on an unknown dated in January 2020 with the decryption keys. If the courier does not appear, Dr. Wright has lost his ability to access billions of dollars worth of bitcoin, and he does not care. *Id.* at 21-22. Inconceivable.

During his testimony, Dr. Wright's demeanor did not impress me as someone who was telling the truth. When it was favorable to him, Dr. Wright appeared to have an excellent memory and a scrupulous attention to detail. Otherwise, Dr. Wright was belligerent and evasive. He did

not directly and clearly respond to questions. He quibbled about irrelevant technicalities. When confronted with evidence indicating that certain documents had been fabricated or altered, he became extremely defensive, tried to sidestep questioning, and ultimately made vague comments about his systems being hacked and others having access to his computers. None of these excuses were corroborated by other evidence.

Sadly, Dr. Wright does not write on a clean slate. As Judge Bloom recently noted in denying Dr. Wright's Motion for Judgment on the Pleadings, Dr. Wright has taken directly conflicting factual positions at different times during this litigation. DE 265 at 10 ("[T]he record is replete with instances in which the Defendant has proffered conflicting sworn testimony before this Court."). As discussed below, that behavior continued before me.

Dr. Wright has a substantial stake in the outcome of the case. If Plaintiffs succeed on their claims, Dr. Wright stands to lose billions of dollars. That gives him a powerful motive not to identify his bitcoin. As long as the relevant addresses remain secret, he can transfer the bitcoin without the Plaintiffs being able to find them. After all, Bitcoin is an anonymous cybercurrency.

Similarly, Dr. Wright had many reasons not to tell the truth. Most notably, Dr. Wright might want to prevent the Plaintiffs (or others) from finding his Bitcoin trove. Alternatively, there was evidence indicating that relevant documents were altered in or about 2014, when the Australian Tax Office was investigating one of Dr. Wright's companies. Perhaps Dr. Wright's testimony here is motivated by certain legal and factual positions he took in the Australian Tax Office investigation and from which he cannot now recede.

There was substantial credible evidence that documents produced by Dr. Wright to support his position in this litigation are fraudulent. There was credible and compelling evidence that documents had been altered. Other documents are contradicted by Dr. Wright's testimony or

declaration. While it is true that there was no direct evidence that Dr. Wright was responsible for alterations or falsification of documents, there is no evidence before the Court that anyone else had a motive to falsify them. As such, there is a strong, and unrebutted, circumstantial inference that Dr. Wright willfully created the fraudulent documents.

One example is the Deed of Trust document for the Tulip Trust. Among the trust assets identified in the purported Deed of Trust creating the Tulip Trust on October 23, 2012, are "All Bitcoin and associated ledger assets transferred into Tulip Trading Ltd by Mr David Kleiman on Friday, 10th June 2011 following transfer to Mr Kleiman by Dr Wright on the 09th June 2011 . . .This incles [sic] the 1,200,111 Bitcoin held under the former arrangement and the attached conditions." P. Ex. 9 at 2. Notably absent from the list of trust assets is any encrypted file, software, public or private keys. The Deed of Trust states that the parties forming the Tulip Trust are Wright International Investments Ltd and Tulip Trading Ltd. *Id.* at 1. There was credible and conclusive evidence at the hearing that Dr. Wright did not control Tulip Trading Ltd. until 2014. P. Exs. 11-14; DE 236 at 88-96. Moreover, computer forensic analysis indicated that the Deed of Trust presented to the Court was backdated. The totality of the evidence in the record does not substantiate that the Tulip Trust exists. Combining these facts with my observations of Dr. Wright's demeanor during his testimony, I find that Dr. Wright's testimony that this Trust exists was intentionally false.[11]

Dr. Wright's false testimony about the Tulip Trust was part of a sustained and concerted effort to impede discovery into his bitcoin holdings. Start with Dr. Wright's deceptive and incomplete discovery pleadings. He testified at the evidentiary hearing that at least as early as

[11] Although I am only required to make this finding by a preponderance of the evidence, I find clear and convincing evidence to support it.

December 2018 he knew that he could not provide a listing of his bitcoin holdings. Yet, the Court was not told this "fact" until April 18, 2019. I give Dr. Wright the benefit of the doubt that prior to May 14 the Plaintiffs were seeking information that went beyond a list of his bitcoin holdings on December 31, 2013. After the May 14 discovery hearing, however, Dr. Wright was aware that the Court expected him to provide Plaintiffs with sufficient information so those bitcoin holdings could be traced.

Nevertheless, having failed to hold off discovery on legal grounds, after March 14, Dr. Wright changed course and started making affirmative misleading factual statements to the Court. His April 18 Motion argued for the first time, "In 2011, Dr. Wright transferred ownership of all his Bitcoin into a blind trust. Dr. Wright is not a trustee or beneficiary of the blind trust. Nor does Dr. Wright know any of the public addresses which hold any of the bitcoin in the blind trust. Thus, Dr. Wright, does not know and cannot provide any other public addresses." This pleading was intended to communicate the impression that Dr. Wright had no remaining connection to the bitcoin. It was also intended to create the impression that the bitcoin themselves had been transferred to the trust. [12]

Dr. Wright almost immediately made irreconcilable statements about the Tulip Trust. The April 18 Motion stated it was a blind trust and he was not a trustee. His sworn declaration three weeks later stated that he is one of the trustees of the Tulip Trust. The trust can hardly be considered "blind" (as represented in the April 18 Motion) if Dr. Wright is one of the trustees. At

[12] Although the pleading was not verified, it was signed by Dr. Wright's counsel. By signing the document, they certified that "the allegations and other factual contentions [in the pleading had] evidentiary support." Fed. R. Civ. P. 11. The sole source for that evidentiary support would have been Dr. Wright, so the Court finds that he provided the information contained in the April 18 Motion.

least one set of these representations about the trust and Dr. Wright's status as a trustee necessarily is intentionally misleading.

Dr. Wright also changed his story about what is in the alleged trust. The April 18 Motion states that Dr. Wright's *bitcoin* had been transferred to a blind trust, and therefore are owned by the trusts, not by Dr. Wright. The Court gave Dr. Wright an extension of time so he could meet with his counsel to draft and file a declaration about the trust. In the May 8 declaration, he swore that he met with counsel and that he provided counsel "with additional details and clarity regarding trusts that I settled that *hold or held Bitcoin* that I mined or acquired on or before December 31, 2013." DE 222 at ¶ 3 (emphasis added). He further swore, "In June 2011, I took steps to consolidate the Bitcoin I mined with Bitcoin that I acquired and other assets. In October 2012, a formal trust document was executed, creating a trust *whose corpus included the Bitcoin that I mined, acquired and would acquire* in the future. The name of that trust is Tulip Trust. It was formed in the Seycelles [sic]." *Id.* at ¶ 5 (emphasis added). His declaration was unequivocal that the trust held bitcoin. Nevertheless, at his deposition on June 26 (and at the evidentiary hearing), he changed his story to say that the trust contained an encrypted file with the keys to the bitcoin, not the bitcoin itself.

The hearing testimony that the trust holds only keys, not bitcoin, cannot be reconciled with the statements in the April 18 Motion and the May 8 declaration that it contains bitcoin. At least one of these representations is intentionally false. During his testimony at the evidentiary hearing, Dr. Wright made a point of being precise in his use of terms, including contesting whether a document was an email or a pdf of an email. It is not credible that, given his claim to have an unmatched understanding of Bitcoin, he would have mistaken the Bitcoin currency for the keys that control the ability to transfer the currency. I find instead that he belatedly realized that any

transaction(s) transferring bitcoin into the alleged Tulip Trust would be reflected on the Bitcoin master blockchain, that he would then be required to identify those transaction(s), and that Plaintiffs could use that information to trace the bitcoin. So, Dr. Wright changed his story to say that only the keys had been transferred.

Ultimately, Dr. Wright's claim of inability to comply with the Court's Orders relies on the existence of an encrypted file in the Tulip Trust containing the information necessary to reconstruct Dr. Wright's bitcoin holdings. I find that this file does not exist. Dr. Wright testified this file is an encrypted compressed file containing multiple sub-files. He swore, "Each of those files has a differently calculated encryption key . . . It's a hierarchical system, where, based on a combination of the file hash and the original encryption key – there are a variety of those – there are multiple Shamir schemes." DE 236 at 107. The Shamir scheme divides a single encryption key into multiple key slices; some subset of the total key slices is needed to decrypt the file.[13] Dr. Wright testified that 15 key slices existed for the outermost file, only eight key slices were needed to decrypt this file, but he only had access to seven key slices. DE 236 at 125-26; *see also* DE 236 at 114 ("The eight of 15 is the key that we're talking about to regenerate all of the addresses"). After observing Dr. Wright's demeanor and the lack of any other credible evidence in the record that this file exists, I find that a preponderance of the evidence establishes that no such file exists and that Dr. Wright's testimony was intentionally false. [14]

[13] For a more detailed discussion of the Shamir scheme see this Court's Order on Plaintiff's Motion to Compel, DE 217, and Appendix 1 to this Order.

[14] Here, too, although the necessary burden of proof is a preponderance of the evidence, there was clear and convincing evidence to support this finding. One other point. Dr. Wright testified that the key slices had to be applied in a particular order. DE 236 at 108, 125-26. This testimony is inconsistent with Dr. Shamir's paper describing his encryption scheme. *See* Adi Shamir, How to Share a Secret, Communications of the ACM, Vol 22, No. 11, Nov. 1979, at 612. According to the paper, a Shamir Scheme is decrypted by inserting each key slice into the same polynomial to

Another aspect of Dr. Wright's story also changed at the evidentiary hearing. He argued for the first time that a list of public addresses was meaningless. This position is particularly disturbing because it was Dr. Wright who first injected the idea of public addresses into this discovery matter. At the May 14 hearing, Dr. Wright's counsel first introduced the idea of compiling a list of his Bitcoin holdings by using public addresses. Admittedly, counsel answered the Court's question without consulting with Dr. Wright and without time to fully research the situation. If, as Dr. Wright now asserts, counsel was wrong, Dr. Wright (the self-proclaimed creator of Bitcoin and therefore a person who claims to have intimate knowledge of how Bitcoin works) should have corrected the record long before the evidentiary hearing. Instead, in his April 18 motion, Dr. Wright explained why he could not produce a list of public addresses. He never said that public addresses lacked evidentiary value. This behavior continued in Dr. Wright's May 8 declaration, where he again talked about public addresses, but never argued that they were meaningless.

Although Dr. Wright may not have an obligation to correct an opposing party if its discovery request is imprecise, the Court is different, particularly where (as here) the Court's intent was unmistakable. It was clear that the Court was ordering Dr. Wright to produce evidence to document the existence and extent of his bitcoin holdings, so that Plaintiffs could attempt to trace them through the master blockchain. If, as Dr. Wright now claims, the public addresses are not the proper data point to identify the bitcoin he held on December 31, 2013, he had an obligation

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create a series of linear equations. These equations are then solved simultaneously. There is no ordering of the key slices. *See* Exhibit 1. That being said, I do not exclude the possibility that Dr. Wright could have employed a modified Shamir Scheme, so I do not consider this testimony in making my findings.

to tell the Court. Either his delay in to doing so is deceptive and misleading, or his testimony that the public address is a meaningless piece of evidence is intentionally false.

In sum, after days of testimony, multiple discovery hearings, and lengthy pleadings, the sole evidence supporting Dr. Wright's claim that he cannot comply with the Court's Orders is the uncorroborated word of Dr. Wright. That word is insufficient to meet his evidentiary burden. Moreover, the totality of the evidence, including a negative inference drawn from Dr. Wright's incredible testimony and use of fraudulent documents, is more than sufficient to meet Plaintiffs' burden.

Dr. Wright argues that he would never risk going to jail for contempt or having sanctions imposed against him if he could produce a list of his bitcoin holdings. He argues it would not be credible that anyone would make that choice. Equally, if not more incredible, is the idea that someone who controlled almost 1 million bitcoin would encrypt it in a way that he could not access it, and then would not care if he lost it all. Additionally, as discussed above, there are many reasons a person in Dr. Wright's situation would take that risk.

REMEDY

I now turn to the question of a proper remedy. Plaintiffs' Motion asked the Court to declare that "the 1,100,111 bitcoin referenced to in to [sic] the Tulip Trust document is joint property belonging equally to both Dave Kleiman and Craig Wright." DE 210 at 6. On August 26, at oral argument on the Motion, Plaintiffs asked the Court to strike Dr. Wright's pleadings. Rule 37 specifically recognizes that an appropriate discovery sanction is for the Court to deem certain facts established for purposes of this action. Fed. R. Civ. P. 37(b)(2)(a)(i). Rule 37 also permits a Court to strike pleadings. Fed. R. Civ. P. 37(b)(2)(A)(iii).

I find without hesitation that sanctions are not warranted against Dr. Wright's counsel. Several Rules of Civil Procedure authorize the Court to require a party's counsel to pay expenses associated with discovery violations; the expense award can be separately against counsel or jointly against counsel and the client. *See* Fed. R. Civ. P. 37(a)(5)(A), (B); Fed. R. Civ. P. 37(b)(2)(C); Fed. R. Civ. P. 26(g)(3). The Court finds no basis to sanction Dr. Wright's counsel. I have conducted numerous hearings and have been able to closely observe counsel's conduct. Counsel has zealously and ethically advocated for their client. Counsel has unfailingly been candid with this Court, even when Dr. Wright's conduct and conflicting statements have created awkward situations for counsel. I find that counsel reasonably relied on Dr. Wright as a source of information. I find that Dr. Wright, alone, is fully responsible for any evasion, incomplete or false representations to the Court, or non-compliance with the Court's orders.

There is clear and convincing evidence that Dr. Wright's non-compliance with the Court's Orders is willful and in bad faith, that Plaintiffs have been prejudiced, and (particularly given the extended pattern of non-compliance and its egregiousness) a lesser sanction is not adequate to punish or to ensure future compliance with the Court's Orders. Therefore, sanctions under Rule 37(b) are warranted.

To this day, Dr. Wright has not complied with the Court's orders compelling discovery on May 14 and June 14. Rather, as described above, the evidence establishes that he has engaged in a willful and bad faith pattern of obstructive behavior, including submitting incomplete or deceptive pleadings, filing a false declaration, knowingly producing a fraudulent trust document, and giving perjurious testimony at the evidentiary hearing. Dr. Wright's conduct has prevented Plaintiffs from obtaining evidence that the Court found relevant to Plaintiffs' claim that Dr. Wright and David Kleiman formed a partnership to develop Bitcoin technology and to mine bitcoin.

Plaintiffs have also been prejudiced by not being able to try to trace the bitcoin that was mined. His conduct has wasted substantial amounts of the Court's and the Plaintiffs' time and resources. It has unnecessarily protracted this litigation.

Counsel for Dr. Wright argued that it would be fundamentally unfair to Dr. Wright, and contrary to concepts of justice to impose discovery sanctions that forfeited his right to fully litigate the merits of his case. I have found that Dr. Wright intentionally submitted fraudulent documents to the Court, obstructed a judicial proceeding, and gave perjurious testimony. No conduct is more antithetical to the administration of justice. The sanctions I am imposing are necessary to achieve the remedial and punitive purposes of Rule 37. No lesser sanction would suffice.

WHEREFORE, it is ordered that:

1. The Motion to Compel [DE 210] is GRANTED. The Court will consider an award of reasonable expenses, including attorney's fees, related to filing and litigating this motion. *See* Fed. R. Civ. P. 37(a)(5)(A).
2. The Court will consider an award of reasonable expenses, including attorney's fees, related to filing and litigating Dr. Wright's Motion Regarding Production of a List of the Public Addresses of his Bitcoin as of December 31, 2013 [DE 155], which the Court construes as a Motion for Protective Order. *See* Fed. R. Civ. P. 26(c)(3).
3. On or before **September 20, 2019**, Plaintiffs may submit a request for reasonable fees and costs. A Response and Reply may be filed in accordance with time frames in the Local Rules. The parties should indicate in their respective pleadings whether they believe an evidentiary hearing is needed.
4. Pursuant to Fed. R. Civ. P. 37(b)(2)(A)(i), the Court deems the following facts to be established for purposes of this action: (1) Dr. Wright and David Kleiman entered into

a 50/50 partnership to develop Bitcoin intellectual property and to mine bitcoin; (2) any Bitcoin-related intellectual property developed by Dr. Wright prior to David Kleiman's death was property of the partnership, (3) all bitcoin mined by Dr. Wright prior to David Kleiman's death ("the partnership's bitcoin") was property of the partnership when mined; and (4) Plaintiffs presently retain an ownership interest in the partnership's bitcoin, and any assets traceable to them.

5. Pursuant to Fed. R. Civ. P. 37(b)(2)(A)(ii) and (iii), the Court strikes Dr. Wright's Third Affirmative Defense (Good Faith), Fourth Affirmative Defense (Accord and Satisfaction), Fifth Affirmative Defense (Release), Sixth Affirmative Defense (Payment), Seventh Affirmative Defense (Set-off), Eighth Affirmative Defense (Failure to Mitigate Damages), Seventh [sic] Affirmative Defense (Waiver), and Tenth Affirmative Defense (Statute of Frauds).

DONE AND ORDERED in Chambers this 27th day of August, 2019, at West Palm Beach in the Southern District of Florida.

BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-80176-BLOOM/Reinhart

IRA KLEIMAN, *et al.*,

Plaintiffs,

v.

CRAIG WRIGHT,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court upon Defendant Craig Wright's Objection to Magistrate Order "Deeming" Certain Facts Established and "Striking" Certain Affirmative Defenses (the "Objection"). *See* ECF No. [311]. The Court has reviewed the Objection, the opposing and supporting submissions, the record and applicable law, and is otherwise fully advised. For the reasons that follow, Defendant's Objection is sustained in part and overruled in part. The Magistrate Judge's Order, ECF No. [277], is vacated in part.

I. BACKGROUND

The factual background giving rise to this action has been set forth previously in prior opinions issued by this Court and are incorporated by reference. *See e.g.* ECF No. [68].

Pursuant to 28 U.S.C. § 636 and this District's Magistrate Judge Rules, all discovery matters in this action were previously referred to the Honorable Bruce E. Reinhart. *See* ECF No. [21]. The proceedings relevant to the present appeal relate to a discovery dispute, initiated when the Plaintiffs sought to identify the bitcoin owned and controlled by the Defendant (herein referred to as Defendant's "Bitcoin Holdings"), and are as follows:

a. Plaintiffs' First Set of Interrogatories

On July 31, 2018, Plaintiffs served their First Set of Interrogatories, requesting Defendant identify the "public keys and public addresses" for any cryptocurrency he currently or previously owned. ECF No. [91-2], at 8. Defendant objected to the discovery request as "irrelevant, grossly overbroad, unduly burdensome, harassing and oppressive, and not proportional to the needs of the case." ECF No. [91-2], at 14-19. The Defendant, however, did not object in his discovery responses that the information sought was impossible to produce. *See generally* ECF No. [91-2].

A discovery hearing to resolve these respective objections was scheduled before Judge Reinhart on February 20, 2019. ECF No. [90]. In the parties' Joint Discovery Memorandum, Defendant argued that the Plaintiffs' requests were disproportionate to the needs of the case because they sought all documents relating to any bitcoin transactions by him between 2009 and 2014. ECF No. [92], at 3-4. The Defendant represented, however, that he "stands ready to produce documents in his possession, custody, or control that relate to David [Kleiman], any trust in which David [Kleiman] was a trustee or beneficiary, and W&K Info Defense Research, LLC." *Id.* At the hearing, the Court directed the Plaintiffs to identify the starting date and seek production of Defendant's Bitcoin Holdings on that date, and then use the Bitcoin evidence trail to trace forward from there. ECF No. [123], at 120-123. The Defendant did not object in his discovery responses that the information sought was impossible to produce.

b. Plaintiffs' Second Set of Requests for Production

On January 17, 2019, Plaintiffs served a Second Set of Requests for Production on Defendant. ECF No. [92-5], at 13-30. In Request No. 1 of the Second Set of Requests for Production (herein referred to as "Request No. 1") Plaintiffs sought "[a]ll documents or

communications that provide and/or estimate the value of your cryptocurrency holdings. This includes, but is not limited to, loan applications, financial statements, tax returns, life insurance applications, financing agreements, sale papers, assignment contracts, etc." ECF No. [92-5], at 18. Defendant objected to Request No. 1 on relevance, over-breadth, harassment, and disproportionality grounds. ECF No. [114-1], at 5-7. Defendant again did not object in his discovery responses that the information sought was impossible to produce. *See generally id.*

Another discovery hearing was thereafter scheduled. ECF No. [104]. In the parties' pre-hearing Joint Discovery Memorandum, they indicated that Request No. 1 was still in dispute. ECF No. [109], at 7. The discovery hearing was held on March 6, 2019. ECF Nos. [110], [122]. At the hearing, the parties deferred the issues surrounding Request No. 1 to the next discovery hearing after the Plaintiffs represented that they were revising the scope of time referenced in Request No. 1. ECF No. [122], at 56-62. Defendant again did not argue that the information sought was impossible to produce. The Court scheduled another discovery hearing for March 14, 2019.

c. The March 14, 2019 Discovery Hearing

In the Joint Discovery Memorandum for the March 14 discovery hearing, Plaintiffs represented that they had limited Request No. 1 to "produce any documents that existed as of 12/31/13 which estimate the value of Defendant's bitcoin holdings," arguing that such information was relevant to trace the assets of the alleged partnership between David Kleiman and Defendant. ECF No. [114], at 3. Defendant argued that the request was still "overly broad, unduly burdensome and harassing by seeking such personal financial information such as loan applications, financial statements, tax returns, life insurance applications, etc." *Id.* The Defendant did not object, however, that the discovery was impossible to produce. *See generally id.*

At the hearing the Plaintiffs argued that the information sought in Request No. 1 was

necessary to establish the universe of bitcoin that was mined during the alleged partnership between David Kleiman and Defendant. ECF No. [124], at 18-19. Plaintiffs ultimately agreed that what they were seeking was "a listing of all the bitcoin that was owned [by Dr. Wright directly or indirectly] on December 31, 2013." *Id.* at 20:21-25. Plaintiff reiterated that "it's just an attempt to find the partnership's assets." *Id.* at 19:7-8. At the hearing, the Defendant conceded that the information sought was relevant, but objected to its production on the basis of proportionality and potential undue burden. *Id.* at 21:6-10.

At that time, Defendant admitted that a list of public addresses would "identify Craig Wright as being the owner of those addresses, which sort of like opens the door to, you know, a lot of financial information, and without any evidence that all of those — or what portion of those David Kleiman had an interest in." *Id.* at 21:17-22. Based on this representation, the Court ruled that Plaintiffs were entitled to a list of Defendant's bitcoin holdings, but granted Defendant leave to file a motion for protective order based on undue burden. *Id.* at 22-23. At this hearing, the Defendant did not argue that the information sought was impossible to produce.

d. Defendant's April 4, 2019 Deposition

The Defendant was deposed on April 4, 2019. During his deposition, he testified that a trust called the Tulip Trust was formalized in 2011 ("Tulip Trust I"), but that Tulip Trust I never owned or possessed private keys to bitcoin addresses. ECF No. [270-1], at 22. Defendant also refused to answer questions about how much bitcoin he mined in 2009-2010. The parties raised this issue with Judge Reinhart, who deferred ruling on the issue. ECF No. [137], at ¶ 1 ("The request to compel Dr. Wright to disclose the amount of bitcoin he mined during 2009 and 2010 is denied without prejudice. The Court will revisit this issue after the parties brief whether production of a list of Dr. Wright's bitcoin ownership would be unduly burdensome.").

e. April 11, 2019 Discovery Hearing

Another discovery hearing was held on April 11, 2019. ECF No. [142]. During this hearing, Judge Reinhart required the Defendant file a motion for protective order regarding Plaintiffs' request for a list of his Bitcoin Holdings no later than April 19, 2019. ECF No. [146], at 38-39.

Pursuant to the Magistrate Judge's instructions, the Defendant timely filed a sealed motion. ECF No. [155]. In that Motion, the Defendant represented that he did "not have a complete list of the public addresses that he owned as of any date." *Id.* at 1. He also argued that the creation of such a list would be unduly burdensome. *Id.* Beyond identifying himself as the miner for the first 70 blocks of the bitcoin blockchain, and providing the public addresses for those blocks, the Defendant also claimed that he did not know any other bitcoin public addresses. *Id.* The Defendant represented that in 2011, he transferred ownership of all of his Bitcoin into a blind trust, of which he was not a trustee or a beneficiary. *Id.* at 2. Defendant also claimed that he did not "know any of the public addresses which hold any of the bitcoin in the blind trust . . . and cannot provide any other public addresses." *Id.* Thus, Defendant maintained that as of December 31, 2013, all of his bitcoin had already been transferred into the blind trust, and therefore are owned by the trusts, not the Defendant himself. *Id.*

Judge Reinhart denied the Defendant's Motion, finding Defendant's assertion that the production of a complete list of his public addresses he owned as of December 31, 2013 was unduly burdensome to be unsupported by the facts. ECF No. [166], at 2. The Court further stated that the Defendant "does not argue undue burden, he argues impossibility," and noted that "[t]he argument that Dr. Wright is incapable of providing an accurate listing of his current or historical bitcoin holdings was never presented in any of the prior hearings before this Court." *Id.* at 2-3.

Judge Reinhart then ordered the Defendant provide (1) a sworn declaration identifying the name and location of the blind trust, the name and contact information for the current trustee and any past trustees and the names and contact information of any current or past beneficiaries; (2) a copy of any and all documents relating to the formation, administration, and operation of the blind trust, accompanied by a sworn declaration of authenticity; (3) all transactional records of the blind trust, including but not limited to any records reflecting the transfer of bitcoin into the blind trust in or about 2011, accompanied by a sworn declaration of authenticity; and (4) ordered the Defendant execute any and all documents, or other legal process, necessary to effectuate the release of documents in the possession, custody, or control of the trustee. *Id.* at 4.

In his attempts to comply with Judge Reinhart's Order, the Defendant provided a sworn declaration, in which he stated that he had met with his counsel and provided them "with additional details and clarity regarding trusts that I settled that hold or held Bitcoin that I mined or acquired on or before December 31, 2013." ECF No. [222], at ¶ 3. Defendant further affirmed that he had mined bitcoin in 2009 and 2010 directly into a trust in Panama, that there were no transactions related to that bitcoin, and that he later "transferred the encrypted files that control access to these Bitcoin in 2011, as explained below." *Id.* ¶ 4. In June 2011, the Defendant represented that he consolidated "the Bitcoin [] mined with Bitcoin that [he] acquired and other assets." *Id.* ¶ 5. Defendant claims that "[i]n October 2012, a formal trust document was executed, creating a trust whose corpus included the Bitcoin that [he] mined, acquired and would acquire in the future. The name of that trust is Tulip Trust. It was formed in the Seycelles [sic]." *Id.* Defendant then identified the trustees of Tulip Trust I as (1) COIN Ltd. UK,[1] (2) Uyen Nguyen, (3) Dr. Wright, (4) David

[1] Dr. Wright is the contact person for CO1N Ltd. UK.

Kleiman, (5) Panopticrypt Pty. Ltd,[2] and (7) Savannah Ltd.[3] *Id.* ¶ 6. Dr. Wright is the contact person for CO1N Ltd. UK. The contact person for Panoptycript Pty. Ltd. is Defendant's wife. The contact person for Savannah Ltd. is Denis Mayaka. *Id.* ¶¶ 9-12. Defendant further affirmed that the beneficiaries of Tulip Trust I are Wright International Investments Ltd. and Tulip Trading Ltd. Defendant is the point of contact for both of the beneficiaries. *Id.* ¶¶ 13-14. Defendant then asserted for the first time that "[a]ccess to the encrypted file that contains the public addresses and their associated private keys to the Bitcoin [] mined, requires myself and a combination of trustees referenced in Tulip Trust I to unlock based on a Shamir scheme." *Id.* at ¶ 23.

The Defendant's affidavit also outlined the structure of the second Tulip Trust ("Tulip Trust II"). Defendant admitted that he and his current wife are the beneficiaries to Tulip Trust II. *Id.* at ¶¶ 19-20. At that time, Defendant provided a limited number of documents related to the trust. According to the Plaintiffs, Defendant "produced two sworn statements, copies of various trust instruments, and a statement from the purported trustee re-attaching a trust instrument." ECF No. [210], at 3. The documents, however, apparently did not identify the specific bitcoin that were transferred into the blind trusts, nor did they indicate what the blind trusts have done with the bitcoin since their transfer. *Id.* Defendant claimed that he "produced trust formation documents along with a sworn declaration of authenticity," as well as "documents reflecting the use of bitcoin rights from the trust to support research and development by his Australian entities." ECF No. [211], at 3. Defendant did not produce any documents related to the administration and operation of the blind trust as ordered by the Court. *See* ECF No. [166]; ECF No. [197] at 4, fn 1.

f. Plaintiffs' Motion to Compel

On June 3, 2019, Plaintiffs filed a Motion to Compel Defendant to Comply with this

[2] The contact person for Panoptycript Pty. Ltd. is Dr. Wright's wife.
[3] The contact person for Savannah Ltd. is Denis Mayaka.

Court's Orders Directing Him to Produce a List of the Bitcoins He Held as of December 31, 2013. ECF No. [197] (the "Motion to Compel"). In the Motion to Compel, Plaintiffs sought an order from the Court imposing sanctions under Federal Rule of Civil Procedure 37, and to order the Defendant to provide a sworn statement identifying the public addresses of the bitcoin transferred into the Tulip Trusts, to provide transactional records and communications relating to the trusts, and to sit for a renewed deposition. *Id.* at 6. Plaintiffs specifically requested that should the Defendant continue to refuse to comply with the Court's Orders, that the Court deem all of Dr. Wright's holdings in the Tulip Trust to be joint property belonging to both the Defendant and David Kleiman. ECF No. [210], at 6.

In his Response in Opposition to the Motion to Compel, Defendant conceded that he did not comply with the Court's Order. ECF No. [204]. However, for the first time, Defendant argued in these discovery proceedings that compliance with the Court's Order was "impossible." ECF No. [204]. Moreover, in this Response, Defendant claimed that information necessary to comply with the Court's Order was in Tulip Trust I in an encrypted file protected by a "Shamir's Secret Sharing Algorithm."[4] ECF No. [204], at 5. Defendant then represented that he could not decrypt the "outer level of encryption" because he did not have all of the necessary keys, and represented that the encryption keys needed were "distributed to multiple individuals through the [blind] trusts" and "he alone does not have ability to access the encrypted file and data contained in it." *Id.*

A held was hearing on June 11, 2019 on the Motion to Compel. ECF No. [221]. At the hearing, Plaintiffs' counsel presented the Court with the Defendant's earlier deposition where he denied ever putting bitcoin into a trust and denied putting any private keys into the Tulip Trust, which was contrary to the position the Defendant was now taking in his Opposition to the Motion

[4] An algorithm created by Adi Shamir to divide a secret, such as a private encryption key, into multiple parts. ECF No. [277], at 10.

to Compel. ECF No. [221], at 8-9. The Court once again gave the Defendant an opportunity to "produce a complete list of all bitcoin that he mined prior to December 31, 2013," and entered an Order to Show Cause why it should not certify a contempt of court to the District Judge. ECF No. [217]. An evidentiary hearing was scheduled for June 28, 2019.

g. Evidentiary Hearing

On June 28, 2019, a two-day evidentiary hearing began before Magistrate Judge Reinhart. The Court heard from three witnesses (1) the Defendant, (2) Steven Coughlan a/k/a Steve Shadders, and (3) Dr. Matthew Edman. ECF Nos. [236], [264]. Plaintiffs also submitted excerpts from the depositions of Jonathan Warren and Dr. Wright. ECF Nos. [261], [270]. The Magistrate Judge also heard oral argument on August 26, 2019.

During the Defendant's testimony, the Defendant testified that it was impossible to comply with the Court's Orders regarding his Bitcoin Holdings due to the Shamir Scheme implemented related to the encrypted file. Defendant also claimed that he enlisted the now deceased David Kleiman to implement and carry out these safeguards. ECF No. [236], at 125:15-126:23. He testified that to decrypt the outer most layer of the encryption he needed eight "key slices," of which he presently only has seven in his possession. *Id.* at 125. It was the Defendant's position that he simply could not produce a list of his Bitcoin Holdings even if he wanted to. *Id.* at 14:8-14. Judge Reinhart did not find the Defendant's testimony to be credible, and his testimony and demeanor did not impress Judge Reinhart as someone who was "telling the truth." ECF No. [277], at 19.

Steven Coughlan a/k/a Steve Shadders ("Shadders") testified as to his effort to apply the filter criteria to identify the Defendant's Bitcoin Holdings. Judge Reinhart found Shadders' testimony to be credible and worthy of belief. ECF No. [277], at 18. Judge Reinhart found that

employing Shadders to identify the Bitcoin Holdings demonstrated a "good faith attempt" by the Defendant to comply with the Court's Order. However, Judge Reinhart found that this finding warranted little weight in light of the Defendant's conduct. *Id.* Finally, Matthew Edman testified about alleged alterations in the documents produced by the Defendant during discovery.

h. The Order on the Motion to Compel

On August 27, 2019, Judge Reinhart issued his Order on Plaintiffs' Motion to Compel, ECF No. [277] (the "Order"). In the Order, he found that the Defendant had not met his burden of proving by a preponderance of the evidence that he was unable to comply with the Court's Order, and thus Rule 37 sanctions were warranted.[5] As one of those sanctions, the Magistrate Judge held that for the purposes of this action the following facts were deemed established:

> (1) Dr. Wright and David Kleiman entered into a 50/50 partnership to develop Bitcoin intellectual property and to mine bitcoin;
>
> (2) any Bitcoin-related intellectual property developed by Dr. Wright prior to David Kleiman's death was property of the partnership;
>
> (3) all bitcoin mined by Dr. Wright prior to David Kleiman's death ("the partnership's bitcoin") was property of the partnership when mined; and
>
> (4) Plaintiffs presently retain an ownership interest in the partnership's bitcoin, and any assets traceable to them.

ECF No. [277], at 16 (herein referred to as the "Deemed Facts"). The Magistrate Judge also struck several of the Defendant's affirmative defenses, including: Third Affirmative Defense (Good

[5] The Court notes that although the Defendant was ordered to produce all documents related to the blind trust by May 9, 2019, ECF No. [166], the Defendant had still failed to timely produce all documents that he had in his possession as of the evidentiary hearing date. In fact, as late as January 6, 2020, it was the Plaintiff who advised the Court that the Defendant produced another document purportedly related to the blind trusts. ECF No. [369]. Plaintiffs advise that the Defendant has not provided any explanation as to the document's late disclosure. ECF No. [367]. At the status conference on January 9, 2020, Plaintiffs also called into question the document's authenticity.

Faith); Fourth Affirmative Defense (Accord and Satisfaction); Fifth Affirmative Defense (Release); Sixth Affirmative Defense (Payment); Seventh Affirmative Defense (Set-off); Eighth Affirmative Defense (Failure to Mitigate Damages); Seventh [*sic*] Affirmative Defense (Waiver); and Tenth Affirmative Defense (Statute of Frauds). *Id.* (collectively referred to as the "Affirmative Defenses").

While Judge Reinhart found that there was clear and convincing evidence that would support a civil contempt certification, he determined that the sanctions imposed pursuant to Rule 37 and referenced above, were sufficient to sanction the Defendant for his conduct. *Id.* at 16. In exercising his discretion, Judge Reinhart, therefore, did not certify facts to this Court for civil contempt proceedings. *Id.* The Magistrate Judge also noted that while he found that the record evidence could support a civil contempt certification, he did not find the record evidence rose to the level of proof beyond a reasonable doubt needed to support a certification of facts for criminal contempt proceedings. *Id.* Judge Reinhart also awarded the Plaintiffs attorneys' fees associated with bringing the Motion to Compel. *Id.* at 28.

Defendant now appeals the Magistrate Judge's Order, arguing that there is "no basis" to impose any sanctions on the Defendant because his "uncontroverted" testimony evidences that he is unable to access the information sought by the Plaintiffs. *See generally* ECF No. [311]. Defendant characterizes the sanctions imposed by Judge Reinhart as "draconian" and argues that their imposition would violate his due process rights. *Id.* Finally, the Defendant argues that the factual findings made by the Magistrate Judge went far beyond the limited discovery issue that was before the Court.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 72(a) provides that upon the filing of objections to a magistrate judge's order regarding a non-dispositive matter, the district judge to whom the case is assigned shall consider such objections and modify or set aside any portion of the order found to be clearly erroneous or contrary to law. This is an extremely deferential standard of review, and this "high bar" is "rarely invoked." *Cox Enters., Inc. v. News-Journal Corp.*, 794 F.3d 1259, 1272 (11th Cir. 2015). The magistrate judge's orders should not be disturbed absent a clear abuse of discretion that leaves the reviewing court with the "definite and firm conviction that a mistake has been committed." *Linea Naviera de Cabotaje C.A. v. Mar Caribe de NevaGacion, C.A.*, 169 F. Supp. 2d 1341, 1355 (11th Cir. 2001).

III. DISCUSSION

In his Objection, the Defendant argues that there was no basis for the Magistrate's imposition of sanctions, and further that their imposition would violate his due process rights. *See generally id.* Defendant also contends that the Deemed Facts went far beyond the limited discovery issue before the Court. *See generally id.* Thus, the Defendant seeks an order from this Court reversing and vacating Judge Reinhart's Order. *Id.* Plaintiffs oppose the relief sought, claim that the record supports the sanctions imposed in Judge Reinhart's Order and their imposition was well within his discretion and authority. For the reasons that follow, the Defendant's Objection is sustained in part and overruled in part. The Magistrate Judge's Order is vacated in part.

The Court has the "inherent power to regulate litigation and sanction the parties ... for abusive practices." *Tarasewicz v. Royal Caribbean Cruises, Ltd.*, Case No. 14-CIV-60885-Bloom/Valle, 2016 WL 3944176, at * 4 (S.D. Fla. Feb. 9, 2016) (citations omitted) (report and recommendation adopted by *Tarasewicz*, 2016 WL 3944178 (S.D. Fla. March 17, 2016)). The

Court's authority to impose sanctions must, however, be "exercised with restraint and discretion." *Sahyers v. Prugh, Holliday & Karatinos, P.L.*, 560 F.3d 1241, 1244 (11th Cir. 2009) (citing *Chambers v. NASCO, Inc.*, 111 S.Ct. 2123, 2132 (1991)).

Federal Rule of Civil Procedure 37 authorizes the Court to award attorneys' fees against a party and/or the party's counsel as a sanction for certain discovery-related conduct. Thus, when a party refuses to participate in discovery, the court may issue an order compelling the party to disclose. Fed. R. Civ. P. 37(a). If a party then disobeys the court's order, more severe sanctions are available. *See* Fed. R. Civ. P. 37(b)(2). Federal Rule of Civil Procedure 37(b)(2) states in relevant part:

> (2) Sanctions Sought in the District Where the Action Is Pending.
> (A) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent--or a witness designated under Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:
> (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
> (iii) striking pleadings in whole or in part;
> (iv) staying further proceedings until the order is obeyed;
> (v) dismissing the action or proceeding in whole or in part;
> (vi) rendering a default judgment against the disobedient party; or
> (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37 (b)(2). "These sanctions 'are intended to 1) compensate the court and parties for the added expenses caused by discovery abuses, 2) compel discovery, 3) deter others from engaging in similar conduct, and 4) penalize the offending party or attorney.'" *Thornton v. Hosp. Mgmt. Assocs., Inc.*, 787 F. App'x 634, 638 (11th Cir. 2019) (citing *Wouters v. Martin County*, 9

F.3d 924, 933 (11th Cir. 1993)). District courts possess wide discretion over the discovery process and when discovery sanctions are appropriate. *Dude v. Cong. Plaza, LLC,* 17-80522-CIV, 2018 WL 4203888, at *5 (S.D. Fla. July 20, 2018), *report and recommendation adopted sub nom. Dude v. Cong. Plaza. LLC,* 17-CV-80522, 2018 WL 4203886 (S.D. Fla. Aug. 29, 2018). "The severe sanctions permitted by Rule 37(b) are usually only imposed by district courts upon a finding '(1) that the party's failure to comply with the order was willful or a result of bad faith, (2) the party seeking sanctions was prejudiced by the violation, and (3) a lesser sanction would fail to adequately punish and be inadequate to ensure compliance with court orders.'" *Id.* (citations omitted).

a. The Defendant's Conduct Warrants Sanctions

In his Objection, the Defendant first argues that there is "absolutely no basis" to impose any sanctions on the Defendant because his "uncontroverted" testimony evidences that he is unable to comply with the Court's Order. ECF No. [311], at 3. The Court first notes the obvious novelty of this argument. Indeed, the Defendant testified that the now deceased David Kleiman was the only person he is aware of who knew who else controlled the Shamir key slices. ECF No. [236], at 126:20-23. Therefore, the only testimony that could conceivably rebut the Defendant's testimony is from one who is deceased. A fact of which the Defendant is fully aware.

Additionally, the sole evidence put forward to establish the Defendant's claim of impossibility, his own testimony, was found not to be credible by Judge Reinhart.[6] *See* ECF No. [277] ("I completely reject Dr. Wright's testimony about the alleged Tulip Trust, the alleged

[6] Defendant also takes issue with the Order's "attack" on his character. In his Objection, the Defendant argues that the Magistrate Judge's character determinations should have no bearing on whether he is able to produce the list of Bitcoin Holdings. ECF No. [311], at 13. As the judge presiding over the Evidentiary Hearing, it was entirely proper for the Court to consider the entire record, the Defendant's prior statements and whether there were any inconsistencies with his present testimony, and the Defendant's conduct in evaluating the Defendant's credibility. Therefore, these determinations by the Magistrate Judge are relevant to the extent that they relate to whether the Magistrate Judge believed the Defendant to be credible.

encrypted file, and his inability to identify his bitcoin holdings . . . During his testimony, Dr. Wright's demeanor did not impress me as someone who was telling the truth."). This Court is not required to rehear witness testimony in accepting a Magistrate Judge's credibility findings. *See United States v. Cofield*, 272 F.3d 1303, 1305–06 (11th Cir. 2001) (citing *United States v. Raddatz*, 447 U.S. 667 (1980)). The Court has also reviewed the transcripts from the Evidentiary Hearing held by Judge Reinhart and agrees with his credibility findings relating to Defendant. Indeed, in answering opposing counsel's questions, the Defendant was evasive, refused to give and interpret words in their very basic meanings, was combative, and became defensive when confronted with previous inconsistencies.[7]

Second, even if the Court believed the Defendant's testimony that it is impossible to comply with the Magistrate Judge's Order, he has still failed to satisfy his burden that he has made "in good faith *all* reasonable efforts to comply." *United States v. Rizzo*, 539 F.2d 458, 465 (5th Cir. 1976). It is undisputed that the Defendant has failed to produce a list of his Bitcoin Holdings and has failed to comply with the Magistrate Judge's discovery order. Therefore, it was the Defendant's burden to introduce evidence not only that it was impossible to comply, but that he had made all reasonable efforts to comply. While the Court notes that the Defendant did present evidence of a single good faith attempt to comply with the Order—his recruitment of Shadders to apply the filter criteria to the public blockchain–such does not demonstrate that the Defendant made *all* reasonable efforts to comply. Indeed, the Defendant admitted during the Evidentiary Hearing that he had not even "looked" at the encrypted file. *See* ECF No. [236], at 124:12-16 ("A. I haven't looked at the file. No one asked me to look at the file. Q. You were ordered to produce the addresses; is that correct? A. Um, yes, but this is not the addresses.").

[7] The Defendant also argues that the Magistrate Judge improperly relied on hearsay evidence in issuing his ruling. ECF No. [311], at 23-25. The Court rejects this argument.

Notably, the Defendant admitted in his November 25, 2019 Objection that he did not even turn over the encrypted file to the Plaintiffs until August 27, 2019—the day the Magistrate Judge issued his Order on the Motion to Compel. *See* ECF No. [311], at 17. The Defendant cannot in good faith contend that he made all reasonable efforts to comply, where throughout the entirety of these proceedings, he failed to even look at the encrypted file he maintains prohibits his compliance.

Next, the Court notes the obvious. Given the posture and the amount of effort expended by the parties on this discovery issue, even if the Court were to find the Defendant's assertion that the information sought was impossible to obtain, sanctions would still be warranted. Defendant had a continued duty to advise the Court if compliance with its orders was not possible. Pursuant to Federal Rule of Civil Procedure 37(c) the Court may award sanctions where a party fails to disclosure or supplement an earlier response given throughout the discovery process. Rule 37 (c) states in relevant part:

> If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
> (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
> (B) may inform the jury of the party's failure; and
> (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

Fed. R. Civ. P. 37(c). Federal Rule of Civil Procedure 37(c) "provides the consequences for a party's failure to disclose, pursuant to the requirements of Rule 26." *Nance v. Ricoh Elecs, Inc.*, 381 Fed. Appx. 919, 922 (11th Cir. 2010). Because, under Rule 26(e)(1)(A), supplementation of

incorrect responses is required, the obligation to supplement pertinent information continues throughout the case.

Here, Plaintiffs first requested that the Defendant identify the public addresses for any of his cryptocurrency in their First Set of Interrogatories served on July 26, 2018. ECF No. [92-2], at 8. ("[i]dentify the . . . public addresses for any cryptocurrency that . . .you possess the private keys to."). The request was later reasserted as Request No. 1 of Plaintiffs' Second Request for Production. ECF No. [92-5], at 18. The Defendant's argument that compliance with the Court's discovery orders was impossible, however, completely ignores the fact that the Defendant did not even raise this issue with the Court until the filing of his Response in Opposition to the Motion to Compel in June 2019. *See* ECF No. [211].[8]

Further, the Defendant explicitly testified at the Evidentiary Hearing that he had been aware that he could not generate the list of Bitcoin Holdings throughout the entirety of the discovery proceedings on this specific issue:

> Q. Until at least 2020, you have no ability to get to these files, is that what your testimony is?
> A. Yes, Your Honor.
> Q. Okay. And so you knew that fact on February 19th of this year, correct?
> A. Yes.
> Q. You knew that on March 14th of this year, correct?
> A. Yes.
> Q. And you knew that on April 8th of this year?
> A. Yes.

[8] The Court also notes that Federal Rule of Civil Procedure 34(b)(2)(C) requires that objections to discovery specifically state the basis that the discovery is being withheld. *See* Fed. R. Civ. P. 24(b)(2)(C) ("An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest."). Further, it is possible for an objection to be waived if it is not timely raised by the party withholding the discovery. *Bailey v. City of Daytona Beach Shores*, 286 F.R.D. 625, 628 (M.D. Fla. 2012) (finding a party has waived a relevance objection where it was not initially asserted); *Bank of Mongolia v. M & P Glob. Fin. Servs., Inc.*, 258 F.R.D. 514, 518 (S.D. Fla. 2009) (holding a defendants' untimely objections were waived).

ECF No. [236], at 127:5-14. Therefore, the Defendant readily admits that he knew it was "impossible" to comply with the Court's discovery order but chose not to notify the Court or the parties of this fact. Rather, the Defendant wasted both time and resources litigating this issue for the past seven months.

Rule 37 provides in pertinent part that, "[i]f the motion [to compel] is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party ... whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5) (emphasis added). However, "the court must not order this payment if ... (i) the movant filed the motion before attempting in good faith to obtain the disclosure of discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." *Id.* Nothing in the record demonstrates, however, that the Defendant's non-disclosure was substantially justified.

Accordingly, the Defendant cannot in good faith argue that there is "absolutely no basis" to issue sanctions against him. Discovery is meant to ensure that the parties have fair and timely access to the documents and facts needed to litigate their case. The Defendant has willfully obstructed this process. Accordingly, the Court agrees with Judge Reinhart's Order that attorneys' fees are warranted in this case. As to the award of attorneys' fees against the Defendant related to filing and litigating the Motion to Compel, the Order is affirmed.

b. The Deemed Facts and the Striking of Defendant's Affirmative Defenses

In his Objection, the Defendant also argues that the imposition of the Deemed Facts as a sanction violated the Defendant's due process rights and exceeded the Magistrate Judge's

jurisdiction and authority for resolving a limited discovery issue. ECF No. [311], at 8. After a close review of the record revolving around the discovery issue at the center of these proceedings—the list of Defendant's Bitcoin Holdings—and a review of the sanctions imposed, the Court agrees with the Defendant that this sanction was improperly imposed.

The broad discretion of the district court to manage its affairs is governed, of course, by the most fundamental safeguard of fairness: the Due Process Clause of the Fifth Amendment. *See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 708 (1982). "To comply with the Due Process Clause, a court must impose sanctions that are both 'just' and 'specifically related to the particular 'claim' which was at issue in the order to provide discovery.'" *Serra Chevrolet, Inc. v. Gen. Motors Corp.*, 446 F.3d 1137, 1151 (11th Cir. 2006).

In *Serra Chevrolet, Inc. v. Gen. Motors Corp.*, the Eleventh Circuit Court of Appeals reversed the lower court's order in part, finding that the district had erred where it struck the defendant's affirmative defenses, and there was "no nexus" between the documents the district court ordered be produced in its discovery orders and the court's sanction striking the defendant's affirmative defenses. *Serra Chevrolet, Inc.*, 446 F.3d at 1152. There the Eleventh Circuit found that the defenses struck by the district court had no apparent relationship with the discovery abuse. *Id.*

As it relates to the Deemed Facts imposed by the Magistrate Judge in his Order, the Court agrees with the Defendant that those facts are not specifically related to the particular discovery abuse at issue. The discovery issue pending before the Magistrate Judge was the production of a list of the Defendant's Bitcoin Holdings on December 31, 2013. ECF No. [124], at 19-20; ECF No. [92-5], at 8. Moreover, the Magistrate Judge determined that the failure to provide the discovery and the Defendant's false testimony were relevant to the issue of sanctions. The Deemed

Facts, however, are aimed at establishing the partnership that is alleged to have existed between David Kleiman and the Defendant and the determination of that partnership's property:

> (1) Dr. Wright and David Kleiman entered into a 50/50 partnership to develop Bitcoin intellectual property and to mine bitcoin;
>
> (2) any Bitcoin-related intellectual property developed by Dr. Wright prior to David Kleiman's death was property of the partnership;
>
> (3) all bitcoin mined by Dr. Wright prior to David Kleiman's death ("the partnership's bitcoin") was property of the partnership when mined; and
>
> (4) Plaintiffs presently retain an ownership interest in the partnership's bitcoin, and any assets traceable to them.

ECF No. [277], at 16. The Magistrate Judge noted that "the Court was ordering Dr. Wright to produce evidence to document the existence and extent of his bitcoin holdings, so that Plaintiffs could attempt to trace them through the master blockchain." *See* ECF No. [277] at 25. However, even if this Court were to permit the Deemed Facts to remain established, the discovery abuse remains "uncured" because the amount of bitcoin owned by the Defendant remains unknown, or at the very least, still at issue. Because the Court finds that the Deemed Facts do not specifically relate to the discovery issue that was pending before the Magistrate Judge, the Court agrees that the Deemed Facts imposed as a sanction was not proper.

Further, because the Court agrees with the Defendant that the Deemed Facts are improper, the striking of the affirmative defenses as a sanction must also be set aside. In his Order, the Magistrate Judge solely indicated that he was striking the Affirmative Defenses in order "[t]o conform to these established facts." ECF No. [277], at 16. Because the Court finds that the Deemed Facts were improper, it cannot permit the striking of affirmative defenses premised on the conformity of a sanction set aside.

Accordingly, the Order is vacated in part, to the extent that it sought to impose sanctions, which included the establishing of the Deemed Facts, and the striking of the Defendant's Affirmative Defenses.

Defendant also argues that there is no basis to impose sanctions because there is no record evidence that Plaintiffs have suffered any prejudice. ECF No. [311], at 11. Specifically, the Defendant argues that the Plaintiffs' inability to trace the Bitcoin is insufficient to establish prejudice. *Id.* Sanctions permitted by Rule 37(b) "are usually only imposed" when "the party seeking sanctions was prejudiced by the violation." *Dude v. Cong. Plaza*, LLC, 2018 WL 4203888, at *5 (S.D. Fla. 2018), *report and recommendation adopted*, *Dude v. Cong. Plaza. LLC*, 2018 WL 4203886 (S.D. Fla. 2018) (citations omitted);

Here, the Court has no doubt that the Plaintiffs were prejudiced by the Defendant's antics. It is clear to the Court that the Defendant's conduct was anything but substantially justified or harmless. Defendant's conduct delayed and obstructed the discovery process of this case, wasted valuable time and resources in litigating this issue, and prevented the Plaintiff from obtaining evidence that the Magistrate Judge found relevant to the Plaintiffs' claims. Therefore, the Court rejects the Defendants' argument that no prejudice has been suffered by the Plaintiffs as a result of the Defendant's conduct. Such argument is entirely devoid of merit.

Finally, the Defendant argues that at minimum he "should have been afforded the opportunity to wait until [the date the bonded courier is set to come] to see if he receives the key slices to generate the list of his bitcoin holdings, which he could then provide to plaintiffs." ECF No. [311], at 13. Defendant contends that in the event this occurs, "even plaintiffs would have to concede that Dr. Wright's inability to do the impossible and comply with the discovery order caused them absolutely no prejudice." *Id.* Given the Defendant's many inconsistencies and

misstatements, the Court questions whether it is remotely plausible that the mysterious "bonded courier" is going to arrive, yet alone that he will arrive in January 2020 as the Defendant now contends. However, given that the Defendant maintains that he should at least be afforded this opportunity, the Court will indulge him this much.

In light of the Defendant's representations that the bonded courier is scheduled to arrive in January 2020, the Court will permit the Defendant **through and including February 3, 2020**, to file a notice with the Court indicating whether or not this mysterious figure has appeared from the shadows and whether the Defendant now has access to the last key slice needed to unlock the encrypted file. In the event this occurs, and further if the Defendant produces his list of Bitcoin Holdings as ordered by the Magistrate Judge, then this Court will not impose any additional sanctions other than the ones discussed above.

In the event the bonded courier does not arrive, and the Plaintiffs are not given access to this information, which the Court has already founded directly relevant to their claims, the Court finds additional sanctions would be warranted. Specifically, pursuant Rule 37(c)(1)(B), the Court will inform the jury of the Defendant's failure to disclose the information sought by the Plaintiffs. *See* Fed. R. Civ. P. 37(c)(1)(B). The Court will also extend the discovery period, upon motion by the Plaintiffs, in order to permit the Plaintiffs to conduct additional discovery beyond the presently set discovery cutoff period. Additionally, the Court will consider any renewed discovery requests that the Plaintiff may have.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Order, **ECF No. [277]**, is **AFFIRMED IN PART AND REVERSED IN PART**. The Order is **VACATED** solely as it relates to the imposition of the

Deemed Facts and Striking of the Defendant's Affirmative Defenses. The Order is **AFFIRMED** as it relates to the award of reasonable attorneys' fees and costs against the Defendant related to litigation surrounding the Motion to Compel.

2. Defendant's Objection, **ECF No. [311]**, is **SUSTAINED IN PART AND OVERRULED IN PART** as articulated in this Order.

DONE AND ORDERED in Chambers at Miami, Florida on January 10, 2020.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

The Honorable Bruce E. Reinhart

Counsel of Record

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-80176-BLOOM/Reinhart

IRA KLEIMAN, *et al.*,

Plaintiffs,

v.

CRAIG WRIGHT,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court upon Defendant Craig Wright's Motion for Judgment on the Pleadings, ECF No. [144] ("Motion"). The Court has reviewed the Motion, all supporting and opposing submissions, the record and applicable law, considered the arguments presented by counsel at the hearing on July 10, 2019, and is otherwise fully advised. For the reasons that follow, the Motion is denied.

I. BACKGROUND

The factual background giving rise to this action has been set forth previously in prior opinions issued by this Court and are incorporated by reference. *See e.g.* ECF No. [68]. The facts relevant to the instant Motion are as follows. On April 15, 2019, the Defendant filed the instant Motion challenging the Court's subject matter jurisdiction. Specifically, the Defendant argues that the record evidence demonstrates that Dave Kleiman was not the sole member of Plaintiff W&K Info Defense Research, LLC ("W&K"), and that other members of the company exist whose membership would destroy diversity. The other proposed members include: 1) Uyen Nguyen ("Nguyen"); 2) Coin-Exch PTY Ltd. ("Coin-Exch"); and 3) Lynn Wright.

Further, the Defendant argues that the Second Amended Complaint ("SAC"), ECF No. [83], is deficient because it alleges that both that W&K's exact ownership structure is "unclear due to Craig's contradictory statements" and that "[a]s best as can presently be discerned, [Dave Kleiman] was the sole 'member' of W&K." ECF No. [83], at ¶¶ 70-71. Therefore, the Defendant challenges the Court's subject matter jurisdiction in both a factual and facial attack. On July 10, 2019, the Court held an extensive hearing ("Hearing") on the instant Motion.

II. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). It is presumed that a federal court lacks jurisdiction in a particular case until the plaintiff demonstrates the court has jurisdiction over the subject matter. *See id.* (citing *Turner v. Bank of No. Am.*, 4 U.S. 8, 11 (1799); *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 182 (1936) ("It is incumbent upon the plaintiff properly to allege the jurisdictional facts ...."). A district court may inquire into the basis of its subject matter jurisdiction at any stage of the proceedings. *See* 13 C. WRIGHT, A. MILLER & E. COOPER, Federal Practice & Procedure § 3522 (1975).

Attacks on subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure may be either facial or factual. *See Lawrence v. Dunbar*, 919 F.2d 1525, 1528-29 (11th Cir. 1990). Like a Rule 12(b)(6) motion, "[a] 'facial attack' on the complaint requires the court merely to look and see if plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in the complaint are taken as true...." *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980) (citing *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). Factual attacks differ because they "challenge[ ] the existence of subject matter jurisdiction in fact ... and matters outside of the pleadings, such as testimony and affidavits, are

considered." *Id.* If a defendant shows a lack of diversity by meeting its burden of production for a factual attack, then the plaintiff must respond with proof definitively evincing diversity exists. *See OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002). Factual attacks also differ from facial attacks because "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen*, 549 F.2d at 891.

III. DISCUSSION

In the instant Motion, the Defendant argues that the SAC should be dismissed because the Court lacks subject matter jurisdiction over this action. Federal district courts have subject matter jurisdiction over civil actions where the amount in controversy exceeds $75,000.00 and the suit is between citizens of different states. *See* 28 U.S.C. § 1332(a). In analyzing diversity, the citizenship of a limited liability company is determined by the citizenship of its members. *See Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (requiring all LLC members to be diverse from all opposing parties). In the Defendant's Motion, he asserts a factual challenge on subject matter jurisdiction. However, in his Reply, the Defendant has focused on a facial challenge. *Compare* ECF No. [144], at 9-14 *with* ECF No. [171], at 5. As for his factual attack, the Defendant suggests that other foreign members of W&K exist and thus diversity jurisdiction is destroyed. ECF No. [144], at 9-14. As for the Defendant's facial argument, the Defendant contends that the SAC fails to allege the complete membership of W&K and includes language that reveals that the Plaintiff may be uncertain as to the company's actual ownership. ECF No. [171], at 5. Thus, the Defendant claims that the SAC is facially deficient by failing to adequately allege diversity jurisdiction exists. The Court addresses each argument in turn.

a) Factual Attack

Defendant first focuses his factual attack on the Court's subject matter jurisdiction. "While the plaintiff has the burden to prove diversity in a factual attack, that burden exists only if the defendant has first proffered evidence to show a lack of diversity." *JPMCC 2005-CIBC13 Collins Lodging*, 2010 WL 11452084, at *3 (denying motion because defendant's "factual attack on diversity of citizenship is *devoid of evidentiary support*") (emphasis added); s*ee also RG Martin Investments, LLC v. Virtual Tech. Licensing, LLC*, 2017 WL 7792564 at *2 (S.D. Fla. July 7, 2017) ("The burden of pleading diversity of citizenship is upon the party invoking federal jurisdiction, and if jurisdiction is *properly challenged*, that party also bears the burden of proof.") (emphasis added). For the reasons that follow, the Court finds that the Defendant has failed to provide *credible* evidence showing a lack of diversity. As such, he has failed to satisfy his burden of production.

In his Motion, Defendant argues that both Nguyen and Coin-Exch were members of W&K, and that their membership would destroy diversity in this action. ECF No. [144], at 11-13. Then, for the first time in his Reply, the Defendant argues that his ex-wife Lynn Wright was also a member of W&K. ECF No. [171], at 6-7.

"Oh! What a tangled web we weave when first we practice to deceive."
Sir Walter Scott, Marmion (1808).

This is not the first time that the Defendant has made certain representations regarding the membership of W&K. Indeed, the Court notes that the Defendant has made ***several conflicting statements*** regarding even his own ownership of W&K. ECF No. [256], at 29:24-25 ("Judge, I get that there are a number of different statements by Dr. Wright.")

These statements include:

On ***April 2, 2013***, the Defendant signed a contract, representing that Dave Kleiman is **100% owner** of W&K, which was filed before the Supreme Court of New South Wales. ECF No. [83-5], at 1.

On or about ***July and August of 2013***, the Defendant filed a sworn affidavit in the Supreme Court of New South Wales declaring that he and Dave Kleiman each **owned 50%** of W&K. ECF No. [83-4], at 4.

On ***April 16, 2018***, in a sworn affidavit the Defendant stated that he has "**never** been a member of W&K." ECF No. [12-2], at ¶ 12 (emphasis added).

On ***June 28, 2019***, during his deposition the Defendant testified under oath that he has "**no idea**" who the owners of W&K were, and unequivocally stated that he was not an owner of W&K. *See* ECF No. [242-1], at (233:12-14) ("Q: Who owned W&K in reality? A. Not me.") and (233:22-23) ("Q. You have no idea who owns W&K? A. I do not know that.").

Now, in his Motion and contrary to the statements above, the Defendant argues that three additional parties may be members of W&K. Defendant claims that the record evidence supports the presence of the additional members. ECF No. [144], at 11-14. The Defendant recognizes, in both his Motion and at the Hearing, that in determining whether the Defendant has sufficiently challenged subject matter jurisdiction on a factual attack, the Court is "free to weigh the evidence" presented by the Defendant in his challenge. ECF No. [144], at n.3 (citing *RG Martin Inv., LLC v. Virtual Tech. Licensing, LLC*, 2017 WL 7792564, at *2); ECF No. [256], at 12:14 ("[M]y obligation is—initially to put this in play, is to show the Court evidence. The Court can weigh the evidence."). The Court has thus conducted a careful review of the evidence presented by the Defendant and the record in this case, and finds, however, that the Defendant has failed to present any *credible* evidence showing that any of the parties he suggests are *members* of W&K.

i) Uyen Nguyen & Coin-Exch

In his Motion, the Defendant argues that Nguyen, a Vietnamese national, is a member of W&K and Coin-Exch, an Australian corporation, is a member of W&K. ECF No. [144], at 11-13.

Because Nguyen is a foreign national and Coin-Exch is a foreign corporation, Defendant asserts that their membership in W&K destroys diversity jurisdiction. *Id.* At the time the Defendant filed his Motion, the Defendant's evidentiary support for these assertions included emails between Dave Kleiman, Craig Wright, and Lynn Wright, public filings available on the Florida Department of State Division of Corporations ("Sunbiz"), and several letters from Ira Kleiman to the Australian Tax Office ("ATO").

As for the emails, which were between Nguyen and Dave Kleiman, the Defendant claimed it evidenced Dave Kleiman extending an offer to serve as a "director" of W&K to Nguyen. ECF No. [144-1]. Three days after the instant Motion was filed, the Defendant filed a Notice Withdrawing Exhibit A. ECF No. [154] (the "Notice"). In the Notice, the Defendant indicated that Exhibit A was being withdrawn because the Defendant could not "verify the date of the email exchange." ECF No. [154]. At the Hearing, the Defendant also withdrew another exhibit (Exhibit F), ECF No. [144-6], attached to his Motion, which was an additional email exchange between Dave Kleiman and Nguyen for the same reasons presented in his Notice. ECF No. [256], at 39:6-9 ("We're not relying on [Exhibit F] ... I would withdraw it now."). In their Response to the Motion, Plaintiffs argued that Exhibit A was a forged email which came to light as a result of the public exposing it as a fraud. ECF No. [159], at 6-11. Specifically, the Plaintiffs claim Exhibit A was withdrawn after members of the public uncovered that the "PGP signature"[1] of the email, purported to be authored/sent by Dave Kleiman, was created ***a year after his death***. *Id.* at 6-7. Nonetheless, because the Defendant has now withdrawn each of these exhibits[2] the Court will not consider either for the purposes of this Motion.

[1]"PGP" stands for "Pretty Good Privacy" and is a computer software program that allows a user to "encrypt and decrypt data such as emails, files, or documents." ECF No. [159], at 10.
[2] The Court also notes that the emails in question were produced by the Defendant during discovery. The Defendant, however, is not the sender, recipient, nor copied to the emails. At the Hearing, given that the

As for the Sunbiz filings, the Defendant contends that the March 28, 2014, Sunbiz filing evidences that Nguyen and Coin Exch were members, because Nguyen listed herself as the registered agent and "MS," and Coin Exch as "DR." *Id.* At the Hearing, the Defendant argued that "DR" stood for "director" but that there was some ambiguity as to what "MS" possibly meant. Defendant claims that "M" could be an abbreviation for "manager," however, it could also stand for "member." ECF No. [256], at 35:13-16 ("But Judge, for the purpose of this discussion, we can think of 'M' as manager. But I just want to suggest to the Court the way the State sets this up there's an ambiguity and it could also mean member.").

Taking the 2014 Sunbiz filing at face value, it cannot be discerned that Nguyen nor Coin-Exch were listed as members of W&K. Indeed, in the March 2014 Sunbiz filing, Nguyen solely listed herself as W&K's "registered agent" and "MS." ECF No. [83-25]. Nguyen further listed Coin Exch as holding the position of "DR." *Id.* Sunbiz provides a "Title Abbreviations" index for the public to utilize. *See* ECF No. [159-3]. This index states that the list of abbreviations is not exhaustive and further, that other abbreviations "may be used that are not identified." However, the index provides that the listed abbreviations can hold the following meanings: 1) M = Manager; 2) S = Secretary; and 3) D = Director. ECF No. [159-3], at 3-4. Therefore, the evidence the Defendant attempts to utilize to support the additional membership of Nguyen and Coin-Exch in W&K is completely speculative in nature.

Concerning the May 1, 2014, letter from Ira Kleiman to the ATO, this document evidences solely Ira Kleiman's belief that Nguyen was a director of W&K. *See* ECF No. [144-7], at 2 ("I understand that Ms[.] Nguyen was appointed as a director [of W&K]."). Even the Defendant

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Defendant claims he has not been in contact with Nguyen "in years," the Court questioned how the Defendant came into possession of the emails. The Defendant claimed he received them as "records" from companies when he left Australia.

testified during his deposition that he understood Nguyen to be the director and not the manager of W&K. *See* ECF No. [246-1] (287:24-288:1) ("Q. Are you aware of any role [Nguyen] played with W&K? A. I believe she was a director."). For purposes of diversity jurisdiction, it is the citizenship of an LLC's members—not its managers—that is relevant. *Silver Crown Investments, LLC v. Team Real Estate Mgmt., LLC*, 349 F. Supp. 3d 1316, 1324 (S.D. Fla. 2018) (Martinez J.) (citing *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004).

The Defendant also argues that the Court should look at the extrinsic evidence to demonstrate that Nguyen is a member of W&K. Specifically, he cites her reinstatement of W&K and the payment of the annual fees in 2014. ECF No. [171], at 7-8. The Court first notes that these filings occurred after Dave Kleiman's death. Further, it is disputed by the parties whether Nguyen or Coin-Exch were even authorized to file on behalf of W&K after Dave Kleiman's death. As such, the "extrinsic evidence" that the Defendant argues should be considered in his factual attack relating to whether Nguyen and Coin Exch were members of W&K is simply not credible. The Defendant also contends that Ira Kleiman did not have the authority to remove Nguyen and Coin-Exch as members of W&K. ECF No. [144], at 13. Because the Court finds that no credible evidence has been presented that Nguyen and Coin-Exch were even members of W&K it need not address this argument.

The evidence proffered by the Defendant is insufficient to meet his burden of production. If the evidence proffered is representative of anything, it does nothing more than represent that other people/entities held officer positions within the company. It does not evidence that W&K had other members.

ii) Lynn Wright

For the first time and in his Reply, the Defendant argues that his ex-wife, Lynn Wright, may also be a member of W&K. ECF No. [171], at 6-7. As evidence of Lynn Wright's membership, the Defendant proffered a February 16, 2011, email between Dave Kleiman, Lynn Wright, and the Defendant. *See generally* ECF No. [157-2]. At the Hearing, the parties disputed whether the email exchange was truly between Dave Kleiman, the Defendant, and Lynn Wright, or just Dave Kleiman and the Defendant due to the varying names that appear in the sender, recipient, and courtesy copy lines of the emails. The sum and substance of the email exchange includes the inquiry by Dave Kleiman as to whether he could list "you as mgr or mgrm with a foreign address." *Id.* at 2. First, the Court notes that it is unclear whether this question was directed to the Defendant or Lynn Wright. Second, the email chain does not show the response by either the Defendant or Lynn Wright to this question. *See generally id.*

As for the parties surmising what Dave Kleiman intended, even the Defendant's counsel conceded at the Hearing that interpretation of these emails was "extremely speculative." *See* ECF No. [256], at 94:18-21 (". . . the series of emails is interpretations which are extremely speculative, about what was in David Kleiman's head."). Nonetheless, this email does not demonstrate what ultimately occurred. Indeed, upon the first registration of W&K as a limited liability company in Florida, Dave Kleiman listed himself as the "mgrm," the managing member. *See* ECF No. [83-3].

Further, in the Defendant's June 14, 2019 sworn affidavit, the Defendant identified "all potential witnesses relevant to this lawsuit." ECF No. [33-3], at ¶ 20. Of note is that while the Defendant now claims that this email evidences that his then wife Lynn Wright was a member of W&K, he did not list her as a relevant witness at that time. *Id.* Then at his April 4, 2019 deposition, the Defendant testified that he had no idea who owned W&K. *See* ECF No. [242-1], at 22-23 ("Q.

You have no idea who owns W&K? A. I do not know that."). Similar to the claims made relating to Nguyen and Coin-Exch, the Defendant fails to proffer any credible evidence challenging the Court's subject matter jurisdiction.

At the Hearing, Defendant argued that the Court cannot both rely upon and find that the statements and evidence provided by him are untrue. *See* ECF No. [256], at 100:6-9 ("Judge, if everything's a lie, then the stuff they rely on when Wright files a contract, or when Wright makes a statement, can't be credited either."). Here, Defendant's argument is novel. He seems to argue that even though his numerous conflicting statements are the very reason confusion has been created as to the ownership of W&K, the Court should nonetheless use these statements as a basis to challenge the Court's subject matter jurisdiction. In essence, the Defendant uses the evidence proffered as both his sword and his shield. Unfortunately, the record is replete with instances in which the Defendant has proffered conflicting sworn testimony before this Court. In weighing the evidence, the Court simply does not find the Defendant's testimony to be credible. As for the remaining "extrinsic evidence," none of the evidence demonstrates additional membership in W&K other than Dave Kleiman.

Accordingly, the Court finds that the Defendant's assertions in his Motion are insufficient as he has failed to provide any credible evidence showing a lack of diversity. While the plaintiff has the burden to prove diversity in a factual attack, that burden exists only if the defendant has first proffered evidence to show a lack of diversity. *See OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002). The Defendant has utterly failed in his burden of production.

b) Facial Attack

As for his facial attack, Defendant argues in his Reply that the SAC insufficiently alleges the citizenship of the parties. ECF No. [171], at 5. A complaint survives a facial attack on subject

matter jurisdiction if the plaintiff's allegations, which are taken as true, sufficiently provide a basis for subject matter jurisdiction. *See Menchaca*, 613 F.2d at 511. As a limited liability company, W&K's citizenship is determined by the citizenship of its members. The SAC alleges that the "exact ownership structure [of W&K] is unclear due to Craig's contradictory statements." ECF No. [83], at ¶ 70. However, the SAC then alleges in the next paragraph that "[a]s best as can presently be discerned, Dave was the sole 'member' of W&K." *Id.* at ¶ 71. During the Hearing, Plaintiff argued that the SAC was drafted to reflect that the only possible members of W&K could have been the Defendant or Dave Kleiman. ECF No. [256], at 84:17-22 ("And so we were just being careful, saying: "Look, as best as can be discerned, based on everything we have, on our information and belief, and on all the evidence available to us, [publicly] available and privately available, Dave Kleiman was the sole member."). Since the initiation of this case, however, the Defendant has unequivocally affirmed in a sworn affidavit that he has "never been a director, member, shareholder, officer, employee, or representative of W&K." ECF No. [12-2], at ¶ 12. A "[c]ourt may dismiss the complaint based on a facial challenge only if it is clear that no relief could be granted *under any set of facts that could be proven consistent with the allegations*." *World Fuel Servs., Inc. v. Pan Am World Airways Dominicana, S.A.*, No. 18-20321-Civ, 2018 WL 3730903, at *2 (S.D. Fla. Apr. 17, 2018) (Torres, J.) (emphasis added) (quoting *Hames v. City of Miami*, 479 F. Supp. 2d 1283-84 (S.D. Fla. 2007)).

Here, the Court is cognizant of the Defendant's argument that the SAC includes an allegation that the exact ownership structure of W&K is "unclear." However, by the Defendant's own admission, he was not an owner nor a member of W&K. Thus, any ambiguity in the SAC is easily dispelled. Further, the SAC also directly states that Dave Kleiman was the "sole owner" of

W&K. As such, the Court concludes that the SAC survives the facial attack related to the Court's diversity jurisdiction.

Accordingly, it is **ORDERED AND ADJUDGED** that the Motion, **ECF No. [144]**, is **DENIED**.

DONE AND ORDERED in Chambers, at Miami, Florida, on August 15, 2019.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

EXHIBIT D

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. _____

PETITIONER LYNN WRIGHT'S VERIFIED PETITION TO DETERMINE BENEFICIARY SHARES AND FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Petitioner, Lynn Wright ("Lynn"), an Interested Person, pursuant to Florida Probate Rule 5.385 and sections 86.041 and 733.105, Florida Statutes, brings this Petition to Determine Beneficiary Shares and for Declaratory Judgment and Injunctive Relief Against Respondent, Ira Kleiman, as Personal Representative of the Estate of David Kleiman, stating:

Jurisdiction and Parties

1. The circuit court has exclusive jurisdiction over the settlement of estates of decedents. § 26.012(c), Fla. Stat.

2. Pursuant to section 86.041, Florida Statutes, this Court has jurisdiction to declare rights of an interested party and to direct the personal representative to refrain from particular actions.

3. Petitioner, Lynn Wright ("Lynn"), is a resident of New South Wales, Australia, and is an interested party.

4. Respondent, Ira Kleiman ("Ira"), is an individual residing in Palm Beach County, Florida, who has been appointed Personal Representative of the Estate of David Alan Kleiman ("Estate"), Case No. 50-2013-CP005060-XXXX-NB, Probate Division, in the 15th Judicial Circuit, in and for Palm Beach County, Florida.

5. W&K Info Defense Research, LLC ("W&K Info Defense") is a Florida limited liability company and an interested party.

6. Dr. Craig Wright ("Craig") is a resident of London, United Kingdom, and is an interested party, upon information and belief, as a beneficiary of Tulip Trust.

7. Tulip Trust is a foreign trust and an interested party as it is, upon information and belief, the sole member with the right to vote with respect to the transfer of membership interests of W&K Info Defense. Uyen T. Nguyen ("Ms. Nguyen") was previously a resident of Palm Beach Gardens, Florida, and, upon information and belief, is now a resident of Palm Beach Gardens, California, and may be an interested party.

8. Coin-Exch Pty, Ltd. ("Coin-Exch") is an Australian proprietary limited company and may be an interested party.

General Allegations

9. David Alan Kleiman ("Dave") passed away April 26, 2013.

10. Ira, Dave's brother, claims to be a beneficiary of the Estate.

11. Letters of Administration appointing Ira as the personal representative of the Estate were issued on February 4, 2016.

12. One of the assets of the Estate is an unknown and disputed interest in W&K Info Defense.

13. In February 2011, W&K Info Defense Research, LLC ("W&K Info Defense") was formed as a Florida limited liability company. Lynn was an initial member of and owner of 1/3 of the membership interests in W&K Info Defense. In addition to Lynn, upon information and belief, Craig Wright R&D, for which Wright acted as trustee, and Dave were also initial members of and each owners of 1/3 interests in W&K Info Defense.[1]

14. The name W&K Info Defense was comprised of "W" for Lynn Wright, "K" for Dave Kleiman, and "Info Defense" for Craig, as he already was the principal of Information Defense Proprietary, Limited, an Australian entity.

15. On February 16, 2011, Dave filed the Articles of Organization of W&K Info Defense with the State of Florida, which listed the effective date of the LLC as February 14, 2011, and named Dave as a Manager Member. A copy of the Articles is attached as **Exhibit 1.**

[1] At the time that W&K Info Defense was formed, it was governed by the then existing Florida Limited Liability Company Act, Chapter 608, Florida Statutes. In 2013, Chapter 608 was repealed and the Florida Revised Limited Liability Company Act, Chapter 605, was passed by the Florida legislature, effective January 1, 2014. For all LLCs formed prior to that date, as of January 1, 2015, Chapter 605 went into effect and Chapter 608 was repealed. Louis T. M. Conti & Gregory M. Marks, *Florida's New Revised LLC Act, Part I*, 87-Oct Fla. B.J. 52 (2013). Therefore, Chapter 605 now governs W&K Info Defense.

16. Upon information and belief, there is no fully executed written operating agreement for W&K Info Defense.

17. In November, 2010, Lynn and Craig separated as husband and wife with their divorce being finalized on March 15, 2013. Prior to the divorce being finalized, Craig and Lynn agreed to and effected, in part, a property settlement agreement in June 2011. As part of the property settlement, in June 2011, Craig, as the then trustee of Craig Wright R&D, transferred 50% of its transferable interest in W&K Info Defense to Lynn. Thus, shortly after W&K Info Defense was formed, Lynn became the owner of one-half (1/2) of Craig Wright R&D's initial interest in W&K Info Defense, in addition to her one-third (1/3) membership interest in W&K Info Defense.

18. At the time of Craig Wright R&D's transfer to Lynn, it possessed at least 1/3 of the membership interests in W&K Info Defense.

19. In December 2012, Lynn transferred 100% of her transferrable interests in W&K Info Defense to Craig Wright R&D.

20. Upon information and belief, sometime after Dave's passing, Craig Wright R&D changed its name to Tulip Trust.

21. Upon information and belief, Craig Wright is not presently a trustee of the Tulip Trust.

22. Upon information and belief, Ramona Ang is a trustee of the Tulip Trust with full rights and power to make transfers from the Tulip Trust to other persons.

23. On March 28, 2014, it is believed that Ms. Nguyen filed an LLC Reinstatement for W&K Info Defense with the Florida Secretary of State, changing the registered agent from Dave to Ms. Nguyen, changing the principal place of business of W&K Info Defense to

California, and listing herself and Coin-Exch Pty, Ltd. as authorized persons. A copy of the 2014 Reinstatement is attached as **Exhibit 2.**

24. On April 22, 2015, it is believed that Ms. Nguyen (apparently, as the online document is unsigned) filed an Annual Report for W&K Info Defense with the Florida Secretary of State, again listing herself and Coin-Exch Pty, Ltd. as authorized persons. A copy of the 2015 Annual Report is attached as **Exhibit 3.**

25. Upon information and belief, Ms. Nguyen may claim an interest in W&K Info Defense and that she is also a member of W&K Info Defense. If true, that would dilute the interests of the other members, Lynn and the Tulip Trust, and the distribution interest of the Estate.

26. Ms. Nguyen and Coin-Exch are personally unknown to Lynn, except that she more recently learned of their existence and that each may claim some rights or interest in W&K Info Defense, and that there may be a business relationship between Ms. Nguyen and Ira to attempt to obtain control of W&K Info Defense.

27. On April 12, 2018, Ira filed an LLC Reinstatement for W&K Info Defense with the Florida Secretary of State, listing himself as registered agent, with the principal place of business now shown as 5104 Robino Circle, West Palm Beach, Florida, and listing himself as MGRM or Manager Member. A copy of the 2018 LLC Reinstatement is attached as **Exhibit 4.**

28. On February 22, 2019, Ira filed an Annual Report for W&K Info Defense with the Florida Secretary of State, again listing himself as registered agent and a Manager Member. A copy of the 2019 Annual Report is attached as **Exhibit 5.**

29. On March 3, 2020, Ira filed an Annual Report for W&K Info Defense with the Florida Secretary of State, again listing himself as registered agent and a Manager Member. A copy of the 2020 Annual Report is attached as **Exhibit 6**.

30. On or about July 10, 2020, Tulip Trust transferred to Lynn one-third of all of the membership interest in W&K Info Defense representing, without limitation, one-third of all of the voting interest in W&K Info Defense and one-third of all the transferable economic interest in W&K Info Defense, which includes, but is not limited to, one percentage interest in W&K Info Defense previously owned only by Tulip Trust which was not previously owned by Lynn.

Count I - Petition to Determine Beneficiary Shares

31. Lynn incorporates the allegations in paragraphs 1 through 30 as though restated in their entirety.

32. Ira has claimed at times that Dave's interest in W&K Info Defense was 50% and at other times 100%.

33. Lynn is presently a member of W&K Info Defense with a one-third membership interest in W&K Info Defense, with all voting rights as such member.

34. The names, residences, and post office addresses of all persons in interest, except creditors, as far as known or ascertainable by diligent search and inquiry, and the nature of their respective interests are as follows:

NAME	ADDRESS	INTEREST
Ira Kleiman, as Personal Representative of the Estate of David Kleiman	5104 Robino Circle West Palm Beach, FL 33417	a disputed interest in W&K Info Defense
Lynn Wright	c/o Alan M. Burger, Esq. McDonald Hopkins LLC 505 S. Flagler Drive, #300 West Palm Beach, FL 33401	a disputed interest in W&K Info Defense
Craig Wright as beneficiary of the Tulip	c/o Andres Rivero, Esq. Rivero Mestre LLP	a disputed interest in W&K Info Defense, held in a

Trust; Ramona Ang as Trustee of Tulip Trust	2525 Ponce de Leon Boulevard, Suite 1000 Miami, FL 33134	beneficial trust
W&K Info Defense Research, LLC	5104 Robino Circle West Palm Beach, FL 33417	an interest in having the disputed ownership of the company determined
Uyen T. Nguyen	4371 Northlake Blvd., #314 Palm Beach Gardens, FL 33410 3128 Merced Avenue, El Monte, El Monte Palm Beach Gardens, CA 91733	a possible disputed interest in W&K Info Defense
Coin-Exch Pty, Ltd.	502 / 32 Delhi Rd North Ryde, NSW 02113 AU	a possible disputed interest in W&K Info Defense

35. None of the above persons is believed to be a minor or an incapacitated person or under legal guardianship in this state.

36. There may be persons who have interests in this estate as beneficiaries of the decedent whose names are not known to the petitioner.

WHEREFORE, Petitioner, Lynn Wright, asks this Court, after formal notice and hearing, to enter its order determining the percentage of distributions from W&K Info Defense Research, LLC to which the Estate is entitled, and for such other and further relief as this Court deems just and proper.

Count II – Declaratory Judgment and Injunctive Relief

37. Lynn incorporates the allegations in paragraph 31 as though restated in their entirety.

38. Florida's declaratory judgment act provides:

> Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary in the administration of a trust, a guardianship, or the estate of a decedent . . . may have a declaration of rights or equitable or legal relations to:

> (1) Ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
>
> (2) Direct the executor, administrator, or trustee to refrain from doing any particular act in his or her fiduciary capacity; or
>
> (3) Determine any question related to the administration of the guardianship, estate, or trust, including questions of construction of wills and other writings.

§ 86.041, Fla. Stat.

39. Upon the death of Dave, upon information and belief, Craig Wright R&D, n/k/a Tulip Trust, was the sole remaining member of W&K Info Defense with the right to vote with respect to the transfer of membership interests in W&K Info Defense.

40. After formation of a limited liability company, a person only becomes a member with the consent of all of the members. § 605.0401(3)(c), Fla. Stat. (2020). Upon information and belief, Tulip Trust has never given its consent to admit Ira as a member of W&K Info Defense.

41. Section 605.0504 of the Florida Revised LLC Act governs the "Power of legal representative," stating:

> If a member who is an individual dies . . . the member's legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had to give a transferee the right to become a member.

§ 605.0504, Fla. Stat. (2020). However, a legal representative does not automatically become a member of an LLC. Instead, the Estate (and ultimately the heirs) is a transferee by operation of law who obtains a transferable interest. *See* § 605.0102(65)-(67), Fla. Stat. (2020).

42. A "transferable interest" means the right to receive distributions from a limited liability company. § 605.0102(66), Fla. Stat. (2020).

43. Section 605.0502 governs the transfer of a transferable interest:

(1) Subject to s. 605.0503,[2] a transfer, in whole or in part, of a transferable interest:

* * *

(c) Does not entitle the transferee to:

1. Participate in the management or conduct of the company's activities and affairs; or

2. Except as otherwise provided in subsection (3), have access to records or other information concerning the company's activities and affairs.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

Therefore, Ira, as the personal representative, does not obtain the voting rights of Dave, the deceased member, and is not entitled to participate in the management and conduct of W&K Info Defense, but only has the rights under section 605.0504 to settle the Dave's Estate and to receive distributions as a beneficiary of the Estate.

44. Ira contends that he has the authority to act as a member of W&K Info Defense by holding himself out to the State of Florida as a manager member of W&K Info Defense and by listing himself as the registered agent and as MGRM on filings with the State of Florida, all of which he lacked authority to do.

45. Ira contends that he has the authority to act as a member of W&K Info Defense by his act of filing a lawsuit in federal court, naming W&K Info Defense as one of the plaintiffs, which he had no authority to do, and Ira continues to prosecute that action. *See Ira Kleiman and W&K Info Defense Research, LLC v. Craig Wright*, Case No. 9:18-cv-80176-BB, in the United States District Court, Southern District of Florida.

46. Section 605.0301, Florida Statutes, provides:

A person does not have the power to bind a limited liability company, except to the extent the person:

---

[2] Section 605.0503 relates to charging orders against an LLC.

(1) Is an agent of the company by virtue of s. 605.04074[3];

(2) Has the authority to do so under the articles of organization or operating agreement of the company;

(3) Has the authority to do so by a statement of authority filed under s. 605.0302; or

(4) Has the status of an agent of the company or the authority or power to bind the company under a law other than this chapter.

Lynn contends that Ira, as personal representative of the Estate or otherwise, fits none of these categories and is therefore not authorized to act on behalf of W&K Info Defense.

47. Lynn also contends that neither the Estate nor its heirs are entitled to obtain property of W&K Info Defense, to act on its behalf, or to meddle in its operation. Until W&K Info Defense is dissolved and wound down, the Estate, and ultimately the heirs, are only entitled to the right to receive *distributions* to which Dave would otherwise be entitled. "A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution." § 605.0404(2), Fla. Stat. (2020),

48. Ira has acted and continues to act completely outside his authority as personal representative of the Estate and on behalf of W&K Info Defense.

49. An actual, justiciable, and continuing dispute and controversy therefore exists between Lynn, on the one hand, and Ira, on the other hand, with respect to Ira's ability to act as a member of W&K Info Defense in the manner in which he is presently acting through the litigation of the federal court case, his filings with the State of Florida, and any other actions he has taken on behalf of W&K Info Defense.

[3] § 605.04074 governs agency rights of members and managers.

50. Lynn seeks a declaration, pursuant to section 86.041, Florida Statutes, that Ira did not and presently does not have authority as personal representative of the Estate to initiate the suit against Craig on behalf of W&K Info Defense or to continue to prosecute the lawsuit on behalf of W&K Info Defense, that he is not a member of W&K Info Defense with the right to vote with respect to the transfer of membership interests in W&K Info Defense and does not have authority to hold himself out as such, and that he does not have authority to act on behalf of W&K Info Defense.

51. Pursuant to section 86.041(3), Florida Statutes, Lynn seeks an order directing Ira, as personal representative of the Estate and in his individual capacity, to immediately cease any and all of these unauthorized activities and enjoining Ira from further acting on behalf of W&K Info Defense in any manner.

52. The names, residences, and post office addresses of all persons in interest, except creditors, as far as known or ascertainable by diligent search and inquiry, and the nature of their respective interests are as follows:

NAME	ADDRESS	INTEREST
Ira Kleiman, as Personal Representative of the Estate of David Kleiman	5104 Robino Circle West Palm Beach, FL 33417	a disputed interest in W&K Info Defense
Lynn Wright	c/o Alan M. Burger, Esq. McDonald Hopkins LLC 505 S. Flagler Drive, #300 West Palm Beach, FL 33401	a disputed interest in W&K Info Defense
Craig Wright, as beneficiary of the Tulip Trust; Ramona Ang as Trustee of Tulip Trust	c/o Andres Rivero, Esq. Rivero Mestre LLP 2525 Ponce de Leon Boulevard, Suite 1000 Miami, FL 33134	a disputed interest in W&K Info Defense, held in a beneficial trust
W&K Info Defense Research, LLC	5104 Robino Circle West Palm Beach, FL 33417	an interest in having the disputed ownership of the company determined

Uyen T. Nguyen	4371 Northlake Blvd., #314 Palm Beach Gardens, FL 33410 3128 Merced Avenue, El Monte, El Monte Palm Beach Gardens, CA 91733	a possible disputed interest in W&K Info Defense
Coin-Exch Pty, Ltd.	502 / 32 Delhi Rd North Ryde, NSW 02113 AU	a possible disputed interest in W&K Info Defense

53. None of the above persons is believed to be a minor or an incapacitated person or under legal guardianship in this state.

54. There may be persons who have interests in this Estate as beneficiaries of the decedent whose names are not known to the petitioner.

WHEREFORE, Petitioner, Lynn Wright, requests this Court (1) enter a declaratory judgment that Respondent Ira Kleiman is not a member of W&K Info Defense, that he has no authority to act on behalf of W&K Info Defense, that he has authority only in his capacity as personal representative of the Estate to act in such manner as is necessary to determine the Estate's interest in W&K Info Defense; (2) order and direct Ira Kleiman, as personal representative of the Estate and individually, to forthwith and forever cease and desist from any further action on behalf of W&K Info Defense, except for seeking a determination from this Court as to the Estate's interest in W&K Info Defense; (3) for such supplemental relief pursuant to section 86.061, Florida Statutes, as may be appropriate, including attorneys' fees and other damages under section 605.0205, Fla. Stat., and (4) for such other and further relief as this Court deems just and proper.

Respectfully submitted this 16 day of July, 2020.

MCDONALD HOPKINS LLC
Attorneys for Petitioner Lynn Wright
505 South Flagler Drive, Suite 300
West Palm Beach, FL 33401
Tel: 561-472-2121
Fax: 561-472-2122
aburger@mcdonaldhopkins.com
ltimeteo@mcdonaldhopkins.com
wpbpleadings@mcdonaldhopkins.com

By: */s/Alan M. Burger*
ALAN M. BURGER
Florida Bar No. 833290

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged

re true, to the best of my knowledge and belief.

Lynn Wright

Lynn Wright

The undersigned certifies that a copy hereof has been furnished to the following persons by the method of service designated below on the dates shown.

Name	Address	Method of Service	Date
Ira Kleiman, as Personal Representative of the Estate of David Kleiman	c/o Devin Freedman, Esq. Boies Schiller Flexner LLP 100 SE Second Street Miami, FL 33131	FedEx overnight, signature required	7/16/20
Craig Wright, as beneficiary of Tulip Trust; Ramona Ang as Trustee of Tulip Trust	c/o Andres Rivero, Esq. Rivero Mestre LLP 2525 Ponce de Leon Boulevard, Suite 1000 Miami, FL 33134	FedEx overnight, signature required	7/16/20
W&K Info Defense Research, LLC	5104 Robino Circle West Palm Beach, FL 33417	FedEx overnight, signature required and U.S. Mail	7/16/20
Uyen T. Nguyen	4371 Northlake Blvd., #314 Palm Beach Gardens, FL 33410 3128 Merced Avenue, El Monte, El Monte Palm Beach Gardens, CA 91733	FedEx overnight, signature required, to both addresses, and U.S. Mail	7/16/20
Coin-Exch Pty, Ltd.	502 / 32 Delhi Rd North Ryde, NSW 02113 AU	FedEx overnight, signature required and U.S. Mail	7/16/20

By: */s/Alan M. Burger*
ALAN M. BURGER
Florida Bar No. 833290

Electronic Articles of Organization For Florida Limited Liability Company

L11000019904
FILED 8:00 AM
February 16, 2011
Sec. Of State
tcline

Article I

The name of the Limited Liability Company is:

W&K INFO DEFENSE RESEARCH LLC

Article II

The street address of the principal office of the Limited Liability Company is:

3119 CONTEGO LANE
PALM BEACH GARDENS, FL, US 33418

The mailing address of the Limited Liability Company is:

4371 NORTHLAKE BLVD #314
PALM BEACH GARDENS, FL, US 33410

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:

DAVID A KLEIMAN
3119 CONTEGO LANE
PALM BEACH GARDENS, FL 33410

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DAVE KLEIMAN

L11000019904
FILED 8:00 AM
February 16, 2011
Sec. Of State
tcline

Article V

The name and address of managing members/managers are:

Title: MGRM
DAVID A KLEIMAN
4371 NORTHLAKE BLVD #314
PALM BEACH GARDENS, FL 33410 US

Article VI

The effective date for this Limited Liability Company shall be:

02/14/2011

Signature of member or an authorized representative of a member

Electronic Signature: DAVE KLEIMAN

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

2014 LIMITED LIABILITY COMPANY REINSTATEMENT

FILED
Mar 28, 2014
Secretary of State

DOCUMENT# L11000019904

Entity Name: W&K INFO DEFENSE RESEARCH LLC

Current Principal Place of Business:

3119 CONTEGO LANE
PALM BEACH GARDENS, FL 33418 US

New Principal Place of Business:

3128 MERCED AVE, EL MONTE
EL MONTE
PALM BEACH GARDENS, CA 91733 US

Current Mailing Address:

4371 NORTHLAKE BLVD #314
PALM BEACH GARDENS, FL 33410 US

New Mailing Address:

3128 MERCED AVE, EL MONTE
EL MONTE
PALM BEACH GARDENS, CA 91733 US

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired (X)**

Name and Address of Current Registered Agent:

KLEIMAN, DAVID A
3119 CONTEGO LANE
PALM BEACH GARDENS, FL 33410 US

Name and Address of New Registered Agent:

NGUYEN, UYEN T
4371 NORTHLAKE BLVD #314
PALM BEACH GARDENS, FL 33410 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida

SIGNATURE: UYEN NGUYEN 03/28/2014
Electronic Signature of Registered Agent Date

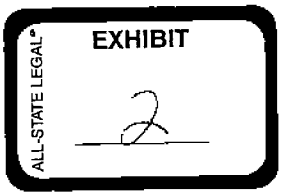
AUTHORIZED PERSONS:

Title MS
Name: NGUYEN, UYEN T MS
Address: 4371 NORTHLAKE BLVD #314
City-St-Zip PALM BEACH GARDENS, FL 33410 US

Title DR
Name: COIN-EXCH PTY LTD
Address: 502 / 32 DELHI RD
City-St-Zip NORTH RYDE, NS 02113 AU

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am authorized to execute this report as required by Chapter 605, Florida Statues

SIGNATURE: UYEN NGUYEN MS 03/28/2014
Electronic Signature of Authorized Person Date



2015 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L11000019904

Entity Name: W&K INFO DEFENSE RESEARCH LLC

Current Principal Place of Business:

3128 MERCED AVE. EL MONTE
EL MONTE
PALM BEACH GARDENS, CA 91733

Current Mailing Address:

3128 MERCED AVE. EL MONTE
EL MONTE
PALM BEACH GARDENS, CA 91733 US

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

NGUYEN, UYEN T
4371 NORTHLAKE BLVD #314
PALM BEACH GARDENS, FL 33410 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

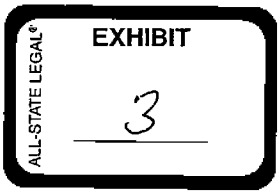
Title	MS	Title	DR
Name	NGUYEN, UYEN T MS	Name	COIN-EXCH PTY LTD
Address	4371 NORTHLAKE BLVD #314	Address	502 / 32 DELHI RD
City-State-Zip:	PALM BEACH GARDENS FL 33410	City-State-Zip:	NORTH RYDE NS 02113

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: UYEN NGUYEN MS 04/22/2015

Electronic Signature of Signing Authorized Person(s) Detail — Date

FILED
Apr 22, 2015
Secretary of State
CC0951473007



2018 FLORIDA LIMITED LIABILITY COMPANY REINSTATEMENT

DOCUMENT# L11000019904

Entity Name: W&K INFO DEFENSE RESEARCH LLC

Current Principal Place of Business:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417

Current Mailing Address:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417 US

FEI Number: NOT APPLICABLE

FILED
Apr 12, 2018
Secretary of State
CR3065128037

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

KLEIMAN, IRA
5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida

SIGNATURE: IRA KLEIMAN 04/12/2018

Electronic Signature of Registered Agent — Date

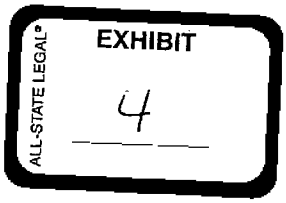
Authorized Person(s) Detail :

Title	MGRM
Name	KLEIMAN, IRA
Address	5104 ROBINO CIRCLE
City-State-Zip	WEST PALM BEACH FL 33417

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or in an attachment with all other like empowered.

SIGNATURE: IRA KLEIMAN MGRM 04/12/2018

Electronic Signature of Signing Authorized Person(s) Detail — Date



2019 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L11000019904

Entity Name: W&K INFO DEFENSE RESEARCH LLC

Current Principal Place of Business:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417

Current Mailing Address:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417 US

FEI Number: NOT APPLICABLE

FILED
Feb 22, 2019
Secretary of State
1374505525CC

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

KLEIMAN, IRA
5104 ROBINO CIRCLE
WEST PALM BEACH FL 33417 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: IRA KLEIMAN 02/22/2019

Electronic Signature of Registered Agent — Date

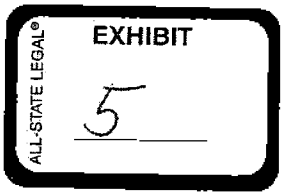
Authorized Person(s) Detail :

Title	MGRM
Name	KLEIMAN, IRA
Address	5104 ROBINO CIRCLE
City-State-Zip	WEST PALM BEACH FL 33417

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a manager or authorized representative of this limited liability company or that I am otherwise authorized to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: IRA KLEIMAN MGRM 02/22/2019

Electronic Signature of Signing Authorized Person(s) Detail — Date



2020 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L11000019904

Entity Name: W&K INFO DEFENSE RESEARCH LLC

Current Principal Place of Business:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417

Current Mailing Address:

5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417 US

FEI Number: NOT APPLICABLE

FILED
Mar 03, 2020
Secretary of State
6162834032CC

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KLEIMAN, IRA
5104 ROBINO CIRCLE
WEST PALM BEACH, FL 33417 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: IRA KLEIMAN 03/03/2020

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MGRM
Name	KLEIMAN, IRA
Address	5104 ROBINO CIRCLE
City-State-Zip	WEST PALM BEACH FL 33417

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: IRA KLEIMAN MGRM 03/03/2020

Electronic Signature of Signing Authorized Person(s) Detail — Date

ALL-STATE LEGAL®
EXHIBIT
6

EXHIBIT E

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

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

DAVID ALAN KLEIMAN,
Decedent.
_____/

ORDER STAYING PETITION OF LYNN WRIGHT

THIS CAUSE comes before the Court on the motion ("Motion") of Ira Kleiman ("Ira"), as personal representative of the estate of David Alan Kleiman, to dismiss or alternatively, stay, the petition ("Petition") filed by Lynn Wright ("Lynn") seeking a determination of her interest in W&K Info Defense Research, LLC ("W&K") and also seeking a declaratory judgment enjoining Ira from pursuing the action styled, *Ira Kleiman, as personal representative of the Estate of David Kleiman and W&K Info Defense Research, LLC v. Craig Wright*, No. 9:18-cv-80176-BB (USDC S.D. Fla.) ("the Federal Case"). (Petition, D.E. # 50.) Ira filed his Motion on August 4, 2020 (D.E. # 53). On November 24, 2020, Ira filed a notice of supplemental authority and motion to supplement his motion to dismiss (D.E. # 64). (Hearing no objection from Lynn, the motion for leave is hereby granted, and the Court will consider the supplement.) Lynn responded to the Motion on November 24, 2020 (D.E. # 65). Ira filed a reply on November 30, 2020 (D.E. # 69.) The Court held a hearing on the Motion on December 3, 2020. The Court has considered the submissions of the parties and the arguments of counsel, it has reviewed the docket and certain matters in the Federal Case, and is otherwise advised of the premises.

BACKGROUND

The background of this matter is complex and must be recounted in order to afford full context to the dispute and the basis for the Court's decision. In doing so, pursuant to section 90.202(6), Florida Statutes, the Court takes judicial notice of certain aspects of the record of proceedings before the United States District Court for the Southern District of Florida in the Federal Case.

In their submissions the parties do not provide the Court any information regarding the underlying stakes of the dispute between them, but during oral argument and in reference to the

pending Federal Case, the matter relates to Bitcoin. As explained by the federal court, David and Craig Wright ("Craig") allegedly created Bitcoin, a cybercurrency computer protocol/system. (Federal Case, Omnibus Order Sept. 21, 2020 at 3, ECF # 615.) Together, they allegedly "mined" bitcoins ("bitcoin," with a lower-case "b," being the term used for the unit of currency, as opposed to the Bitcoin protocol/system) and also developed "blockchain" related intellectual property. (*Id.*) (The Court will not here go into the complexities of the Bitcoin system, "mining" bitcoins, or the meaning and purpose of a "blockchain," as those matters are immaterial to the Motion before this Court.) In February 2011 David formed W&K as a Florida limited liability company, and it was allegedly through that entity that David and Craig continued their work. (*Id.*)

(a) Lynn's Petition.

According to Lynn's Petition in this case, David formed W&K as a Florida limited liability company in February 2011. (Petition, D.E. # 50, ¶ 13.) Lynn alleges in her Petition that when W&K was formed, she was an initial member and owner of one-third of the membership interest in W&K; Craig, through an entity called Craig Wright R & D, of which Craig was trustee, owned a one-third interest in W&K; and David owned the remaining one-third. (*Id.*) She alleges that on February 14, 2011, David filed the articles of organization for W&K, naming himself as the managing member. (*Id.*, ¶ 15.) She further alleges that there is no "fully executed" operating agreement for W&K. (*Id.*, ¶ 16.)

Lynn further alleges in her Petition that she was married to Craig, and they divorced effective March 15, 2013. (*Id.*, ¶ 17.) She further alleges that before their divorce, in June 2011 Craig and she agreed to a property settlement under which half of Craig Wright R & D's one-third interest in W & K Info was transferred to her, essentially making her just shy (33.33% plus 16.66%, or 49.99%) of owning half of the membership interest in W & K Info. (*Id.*)

Lynn then alleges that in December 2012 – before her divorce from Craig became final – she transferred all of her interests in W & K Info back to Craig Wright R & D. (*Id.*, ¶ 19.) This would make Craig Wright R & D the owner of two-thirds of W&K, with David still holding the remaining third.

David died on or about April 26, 2013 (the exact date of death has not been established; the death certificate states as the date of death, "FOUND ON April 26, 2013.") (Death Certificate, D.E. #6.) On October 25, 2013, Ira, as a named personal representative in David's will, initiated the proceedings before this Court by filing his Petition for Disposition of Personal Property Without Administration and also filing a copy of David's will. (D.E. # 5, 6.) The Court denied that petition on November 11, 2013 (D.E. # 11), and Ira then filed an amended petition on January 6, 2014 (D.E. # 12). He then filed a petition for subsequent administration on February 2, 2016. (D.E. 16.)

By Order filed February 4, 2016, this Court admitted the will to probate, appointed Ira as personal representative as per the will, and issued letters of administration. (D.E. # 23, 24.) Ira filed the Federal Case on February 14, 2018.

To return to the chronology alleged in Lynn's Petition, after she conveyed all of her interests in W&K back to Craig Wright R & D in December 2012, she thus had no interest in W&K at the time of David's death in April 2013. Lynn then makes a series of allegations about Craig Wright R & D changing its name to Tulip Trust at some point after David's death (D.E. # 51, ¶ 20), that Craig is not a trustee of Tulip Trust (*id.*, ¶ 21), that a person named "Ramona Ang" is a trustee of Tulip Trust, "with full right and power to make transfers from the Tulip Trust to other persons" (*id.*, ¶ 22), that a "Ms. Nguyen" came into the picture, along with an entity called Coin-Exch Pty, Ltd., and "it is believed" that Ms. Nguyen made filings with the Florida Secretary of State's Office reinstating W&K's status and changing W&K's registered agent from David to Ms. Nguyen and changing the principal place of business to California. (*Id.*, ¶ 23, 24.)

There is still more in the Petition about Ms. Nguyen and Coin-Exch, with allegations that "Ms. Nguyen may claim an interest in W&K Info Defense" and there "may be a business relationship between Ms. Nguyen and Ira to attempt to obtain control of W&K Info Defense." (*Id.*, ¶ 25, 26). Lynn then alleges that in 2018 Ira filed a reinstatement of W&K with the Florida Secretary of State, claiming to be the registered agent and managing member, and that in 2019 and 2020 Ira filed annual reports on behalf of W&K, again stating himself as registered agent

and managing member. (Id., ¶¶ 27-29.)

Lynn then alleges that on July 10, 2020 (six days prior to the filing of her Petition, as Ira points out in his submissions), Tulip Trust "transferred" to her "one-third of all of the membership interest" in W&K, representing "one-third of all voting interest" and "one-third of all the transferable economic interest" in W&K, which includes a "one percentage interest" in W&K that was "previously owned only by Tulip Trust" and not "previously owned" by Lynn. (*Id.*, ¶ 30.)

Lynn then filed her Petition on July 16, 2020. In Count I of her Petition, she seeks a "determination of beneficiary shares" in W&K. (*Id.*, ¶¶ 31-36.) (As Ira notes in his submissions, Lynn is not named as a "beneficiary" in David's will.) In Count II, she seeks a "declaratory judgment and injunctive relief" under section 86.041, Florida Statutes, seeking to prohibit Ira, as personal representative of David's estate, from acting in the capacity as a representative of W&K, including his prosecution of the Federal Case against Craig. (Id., ¶¶ 37-51.)

(b) The Federal Case.

Because the pending Federal Case bears directly on the Court's decision in this Order, the Court will recount pertinent aspects of that case. Ira filed the Federal Case on February 14, 2018. The docket in the Federal Case, which consists of over 600 entries, reflects that discovery has been robust, dispositive motion practice essentially has been completed, and the case currently is set for a jury trial beginning on June 1, 2021. (ECF # 626.)

Ira's second amended complaint in the Federal Case (ECF # 83), filed January 14, 2019, is 49 pages long and contains ten counts, all of which pertain to the relationship between David and Craig and the dispute over the ownership interests in W&K, assets allegedly held by W&K, and/or assets held by David. The complaint contains detailed allegations about schemes perpetrated by Craig to take, from David and David's estate, David's interest in W&K, assets allegedly held by that entity, and/or assets held by David, individually. Review of the voluminous summary judgment submissions filed in the Federal Case by the parties demonstrates that the Federal Case turns on disputes between Ira and Craig over David's ownership of W&K and its assets and Craig's interest (if any) therein, David's own assets, the existence of trusts and

roles of trusts including the Tulip Trust, the role and involvement of Coin-Exch, the role and involvement of Uyen Nguyen with respect to W&K, and Lynn's alleged ownership interests in W&K. (Federal Case, ECF # 487, 488, 495, 511, 531, 535, 549, 550, 560, 561.)

The federal court's 93-page Omnibus Order on the motions for summary judgment (ECF # 615) demonstrates that issues regarding the ownership interests in W&K and its assets, and David's individual assets, are fundamentally intertwined with that case.

The federal court's Omnibus Order, other orders and the overall record of the federal case demonstrate that there are numerous, complicated factual issues before the federal court bearing upon the very issue that Lynn presents in her Petition before this Court; *i.e.*, her "beneficial" interest (even though she is not named as a "beneficiary" in David's will), if any, in W&K. Additionally, the Court notes that in her Petition, Lynn names all of the same individuals and entities peripherally referenced in the Federal Case that might have an interest in W&K – Ira, Lynn, Craig (as beneficiary of the Tulip Trust), Ms. Ang (as trustee of the Tulip Trust), W&K, Uyen Nguyen, and Coin-Exch. (Petition, ¶ 34.)

(c) The Motion.

Ira asserts in his Motion that Lynn's petition should be dismissed on three grounds, each of which is contested by Lynn. Alternatively, Ira alternatively requests the Court to stay the proceedings before it pending final resolution of the proceedings in the Federal Case. For the reasons next explained, the Court has determined that all proceedings related to Lynn's Petition should be stayed pending final resolution of the Federal Case.

-

ANALYSIS

The Court's focus is on Ira's alternative request to stay Lynn's petition pending resolution of the Federal Case. The Court has carefully reviewed the docket in the Federal Case (a docket that comprises over 600 entries), Florida law governing a state court's staying of proceedings in favor of a prior, pending federal action, and the so-called "probate exception" to federal diversity jurisdiction.

I. The principles underlying a stay of the Petition pending resolution of the Federal Case.

"'It is well-settled that when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action should be stayed pending the disposition of the federal action.'" *Robeson v. Melton*, 52 So. 3d 676, 679 (Fla. 4th DCA 2009) (quoting *Beckford v. General Motors Corp.*, 919 So. 2d 612, 613 (Fla. 3d DCA 2006). "Comity principles dictate that '[w]here a state and federal court have concurrent jurisdiction over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains jurisdiction.'" *OPKO Health, Inc. v. Lipsius*, 279 So.3d 787, 791 (Fla. 3d DCA 2019) (quoting *Shooster v. BT Orlando Ltd. P'ship,* 766 So. 2d 1114, 1115 (Fla. 5th DCA 2000) (citing *Wade v. Clower*, 114 So. 548, 551 (Fla. 1927)). "'Florida law is clear that, "the causes of action do not have to be identical ... [i]t is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case."'" *Id.* (quoting *Pilevsky v. Morgans Hotel Grp. Mgmt., LLC,* 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007) (quoting *Fla. Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994))). Likewise, complete identity of the parties and claims is not required. *In re Guardianship of Morrison*, 972 So. 2d 905, 910 (Fla. 2d DCA 2007). A stay (as opposed to abatement) does not require complete identity of both the parties and the causes of action, but requires a substantial similarity of the parties and actions. *Sauder v. Rayman*, 800 So.2d 355, 358 (Fla. 4th DCA 2001). While the decision whether to grant a stay is within the trial court's "broad discretion," the failure to stay a subsequently filed state court action in favor of a previously filed federal action involving the same parties or privies and substantially the same issues is "an abuse of discretion." *Fla. Crushed Stone, supra.*

The purposes underlying these principles are equally well settled: staying the subsequently filed state court case while the federal case proceeds to final disposition avoids "duplication of efforts and costs, as well as the possibility of inconsistent judgments." *J.M. Smucker Co. v. Rudge*, 877 So. 2d 820, 822 (Fla 3d DCA 2004.) Moreover, the disposition of the federal

action may dispose of or materially affect the claims asserted in the state court action. *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 129 So. 3d 1153, 1155 (Fla. 3d DCA 2014).

Applying these principles, the Federal Case necessarily involves the same foundational issues that Lynn's Petition presents to this Court, among them being the membership interests in W&K, both at its creation and its evolution, the assets alleged held in W&K, and the alleged transference of interests in W&K, or assets of W&K, to Craig Wright R & D, then to Tulip Trust, and/or Ms. Nguyen and Coin-Exch. Indeed, Lynn asserts as much in her own Petition. (Petition, ¶ 34.) That Lynn is not a party to the Federal Case does not militate against staying the proceedings before this Court: By the allegations of her own Petition, her interests in W&K derive from the "chain" she describes in her Petition, ending up with the alleged transfer by Tulip Trust to her in July 2020.

All of this convinces the Court that a stay of all proceedings relating to Lynn's Petition before this Court is not only warranted but would be an abuse of discretion not to do so. *Fla. Crushed Stone, supra*. If the Court were to proceed with the Petition in the face of the previously filed and greatly developed Federal Case, and if the Court were not to dispose of the Petition on Ira's pending Motion (which is well argued by both sides), the Court perceives that much of the same, voluminous discovery that has occurred in the Federal Case (which itself produced many skirmishes) would be sought in the proceedings before this Court, creating expensive duplication of effort which could be entirely meaningless in event of final disposition in the Federal Case that might entirely foreclose Lynn's Petition. Additionally, were this Court to move forward with Lynn's Petition in the face of the pending Federal Case, the hazard of inconsistent or conflicting results is starkly self-evident.

In sum, this matter is a very large onion of which only one court – the federal court, as the "first-filed" court – should peel back its several layers. Accordingly, following Florida's well-established precedent, this Court is staying its hand while the federal court completes the case before it.

II. The "Probate Exception."

The Court also should address Lynn's contention that the so-called "probate exception" to federal court jurisdiction precludes a stay. (Lynn response to Motion at 14-15, D.E. # 65.) Of course, it is not within the province of this Court to determine issues regarding the federal court's jurisdiction – that is the federal court's prerogative. However, insofar as Lynn is suggesting that this Court should rely upon the "probate exception" to forge ahead without regard to the pendency of the Federal Case, this Court will not do so. The "probate exception" is neither as broad nor as absolute as Lynn asserts. Contrary to Lynn's reliance on the decision in *Marshall v. Marshall*, 547 U.S. 293, 126 S.Ct. 1735 (2006), in fact that decision rejects the view she espouses and particularly rejects the notion, implied by Lynn, that a state probate court can unilaterally ignore a pending federal action and declare exclusive jurisdiction over all things that might impact interests in an estate.

As Justice Ginsburg explained in *Marshall*, the holdings in *Markham v. Allen*, 326 U.S. 490, 66 S.Ct. 296 (1946) that draw the limited contours of the "probate exception" are still good law, and *Marshall* does not depart from them. In *Markham*, while a state court probate administration was pending, a federal district court exercised jurisdiction in ruling that resident heirs had no interest in the estate at issue, and the Alien Property Custodian (a federal officer appointed by the President pursuant to the Trading with the Enemy Act), acting on behalf of German legatees, was entitled to the entire net estate. *Marshall*, 527 U.S. at 309-10. The Ninth Circuit Court of Appeals reversed, holding that the district court was without jurisdiction under the "probate exception." *Allen v. Markham*, 147 F.2d 136 (9th Cir. 1945).

The Supreme Court in *Markham* reversed, establishing the limits of the "probate exception:"

> It is true that a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction conferred by the Judiciary Act of 1789, 1 Stat. 73, and s 24(1) of the Judicial Code, which is that of the English Court of Chancery in 1789, did not extend to probate matters. . . . **But it has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and**

> **heirs and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.** . . .
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, . . . **it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.** . . .
>
> Although in this case petitioner sought a judgment in the district court ordering defendant executor to pay over the entire net estate to the petitioner upon an allowance of the executor's final account, the judgment declared only that petitioner 'is entitled to receive the net estate of the late Alvina Wagner in distribution, after the payment of expenses of administration, debts, and taxes.' **The effect of the judgment was to leave undisturbed the orderly administration of decedent's estate in the state probate court and to decree petitioner's right in the property to be distributed after its administration. This, as our authorities demonstrate, is not an exercise of probate jurisdiction or an interference with property in the possession or custody of a state court.**

Markham, 326 U.S. at 494-95 (citations omitted, emphasis added.)

In *Marshall*, the issue centered on disputes between Vickie Lynn Marshall (a/k/a Anna Nicole Smith) and the heirs of her late husband, J. Howard Marshall II. The particular dispute in *Marshall* was an adversary proceeding brought by Mr. Marshall's son in Ms. Marshall's Chapter 11 bankruptcy proceedings alleging that Ms. Marshall had defamed him. Ms. Marshall counterclaimed against the son for tortiously interfering with her expectancies of an inheritance or gift from Mr. Marshall upon his death. The adversary proceeding was brought while Mr. Marshall's probate was pending before a Texas probate court. The bankruptcy court for the Central District of California dismissed the son's complaint and ruled in favor of Ms. Marshall on her counterclaim. The son then moved to set aside the judgment in favor of Ms. Marshall, arguing that under the "probate exception" the bankruptcy court had no jurisdiction over her counterclaim; it was within the exclusive province of the Texas probate court. The bankruptcy court rejected the son's argument, and the federal district court confirmed the bankruptcy court's decision (as modified), relying upon *Markham*. *Marshall*, 547 U.S. at 293-94 (syllabus).

The stepson appealed to the Ninth Circuit Court of Appeals, which reversed, holding that

the "probate exception" applied to bar the bankruptcy court's jurisdiction over Ms. Marshall's counterclaim, particularly noting that the Texas probate court had ruled that it had exclusive jurisdiction over Ms. Marshall's claims. *Id.* at 294-95 (syllabus). The Supreme Court reversed. Justice Ginsburg, writing for the Court, reaffirmed the holdings of *Markham* in ruling that the "probate exception" did not apply to divest the bankruptcy court of jurisdiction. *Id.* at 308-12.

Markham and *Marshall* control the question of the "probate exception." Distilled to its essence, the Federal Case involves claims and causes of action arising from the business relationships between David and Craig. Were David alive, he could have prosecuted these same claims in federal court, but he is dead, and Ira, as personal representative of David's estate, is pursuing them in his stead, as he is authorized to do. Personal representatives routinely prosecute (and defend) actions on behalf of a decedent's estate before state and federal courts, outside of proceedings before the probate court, which well might affect those claiming interests in the estate. Such actions, however, do not offend the jurisdiction of a probate court or implicate the "probate exception" recognized in federal court jurisdiction. Applying *Markham* and *Marshall*, nothing in the Federal Case suggests that the federal court, in entertaining that case, is usurping or interfering with this Court's probate jurisdiction.

Accordingly, it is hereby **ORDERED** -

That the Petition of Lynn Wright, and all pending motions relating thereto, and all discovery relating thereto, are hereby **STAYED** pending final disposition of the Federal Case; Ira's Motion, insofar as it seeks outright dismissal of Lynn's Petition, is denied without prejudice to present those issues later, should they maintain vitality after final disposition of the Federal Case.

DONE AND ORDERED, in Palm Beach Gardens, Palm Beach County, Florida this 14th day of December, 2020.

50-2013-CP-005060-XXXX-NB 12/14/2020
Dina Keever-Agrama Judge

50-2013-CP-005060-XXXX-NB 12/14/2020
Dina Keever-Agrama
Judge

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JOSEPH STUART KARP	2875 PGA BLVD #100 PALM BEACH GDNS, FL 33410	E-FILING@KARPLAW.COM klf@karplaw.com
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EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-80176

IRA KLEIMAN,
as personal representative of
the estate of David Kleiman,

Plaintiff,

v.

CRAIG WRIGHT,

Defendant.
_____/

DECLARATION OF CRAIG WRIGHT

I, Craig Wright, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am over the age of 18, and I am competent to testify.

I give this declaration based on my personal knowledge.

I am a citizen of Australia and Antigua.

I reside in London, England.

I have never been a citizen of the United States or a resident of Florida.

1. I have been to Florida only once in my life. Specifically, in approximately March 2009, I attended a cyber-security conference in Orlando where I spoke about information security. I was there for approximately seven days. My attendance at that conference was unrelated to Bitcoin, W&K Info Defense Research LLC ("W&K"), or Dave Kleiman.

2. Dave Kleiman was my friend. We first became acquainted in an online forum on cryptography.

3. I only met Dave in person twice. The first time we met in person was at a cyber security conference in San Diego, California before 2009, which I attended as an invited speaker. My attendance at that conference was unrelated to Bitcoin, W&K, or Dave Kleiman. The second and last time I met Dave was when I was in Florida for the Orlando conference in 2009, where I was an invited speaker.

4. I have never been to Dave's home or to any W&K office in Florida or elsewhere.

5. I do not have any assets, property, funds, business interests, or bank accounts in the United States.

6. I have never had an office in Florida.

7. I have never had a license to do business in Florida.

8. I have never advertised services in Florida or to Florida residents.

9. I have never been a member of W&K or any Florida business.

10. I have never shared in the profits, or had a duty to share in the losses, of W&K or any Florida business.

11. I have never been an agent of W&K or any Florida business.

12. I have never been a director, member, shareholder, officer, employee, or representative of W&K or of any Florida business.

13. I have never exercised authority or control over W&K or any Florida business, and have not had any right to exercise authority or control over W&K or any Florida business.

14. I have never used or accessed hardware located in Florida or anywhere else in the United States to mine or obtain Bitcoin.

15. I have never configured hardware or developed software in Florida or anywhere else in the United States or for any purpose relating to a Florida business, including W&K.

16. I have never transferred Bitcoin to a trust in Florida or anywhere else in the United States.

17. Documents and information about any Australian Tax Office ("ATO") investigation relating to me are supposed to be located in Australia. I have never authorized the ATO or anyone else to release, leak, or otherwise make public any of the confidential or privileged information, documents, transcripts, or records from any ATO investigation related to me.

18. I have no documents in my possession from any ATO investigation. To the extent that my attorneys have any documents from any ATO investigation related to me, those documents would be located in Australia.

19. The transcripts attached to the Complaint as exhibits 6 and 7 are not accurate.

20. As far as I know, all potential witnesses relevant to this lawsuit are located outside of Florida, including:

a. **Hoa Doa,** who is listed in the Complaint as an ATO official present at an ATO interview held on February 26, 2014. To the best of my knowledge, she is located in Australia.

b. **Marina Doleviski,** who is listed in the Complaint as an ATO official present at an ATO interview held on February 18, 2014. As far as I know, she is located in Australia.

c. **John Chesher,** who was an advisor to me and to a group of companies ultimately owned by Demorgan Ltd., a group of Australian businesses in which I was a

founder and a shareholder. To the best of my knowledge, he is located in Sydney, New South Wales, Australia.

d. **Des McMaster,** who is listed in the Complaint as an ATO official present at an ATO interview held on February 26, 2014. To the best of my knowledge, he is located in Australia.

e. **Andrew Miller,** who is listed the Complaint as an ATO auditor present at an ATO interview held on February 25, 2014. To the best of my knowledge, he is located in Australia.

f. **Uyen Nguyen,** who is listed in the Complaint as a manager and secretary of W&K. To the best of my knowledge, she is located in California.

g. **Alan Pedersen,** who is a manager of Demorgan Ltd. living in Australia.

h. **Andrew Sommer,** who was my solicitor in Australia and is a partner at the law firm of Clayton Utz. By referring to him here, I do not mean to waive any privilege afforded me by law, including the attorney-client privilege.

i. **Janifer Trinh,** who is listed in the Complaint as a bookkeeper present at an ATO interview held on February 25, 2014. To the best of my knowledge, she is located in Australia.

j. **Ann Wrightson,** who is listed in the Complaint as a bookkeeper for Demorgan Ltd. To the best of my knowledge, she is located in Australia.

21. As far as I know, all businesses (active and inactive) relevant to this lawsuit are located outside of the United States, including:

a. **C01n Pty. Ltd.**, Australian company number 152 222 421, an Australia company registered in New South Wales. To the best of my knowledge, its books and records are in Australia;

b. **Cloudcroft Pty. Ltd.**, Australian company number 149 732 365, an Australia company registered in New South Wales. To the best of my knowledge, its books and records are in Australia;

c. **Coin-Exch Pty. Ltd.**, Australian company number 163 338 467, an Australia company registered in New South Wales. It is under external administration. To the best of my knowledge, its books and records are in Australia;

d. **Demorgan Ltd.**, Australian company number 601 560 525, an Australia company registered in Queensland, Australia. To the best of my knowledge, its books and records are in Australia;

e. **Hotwire Preemptive Intelligence Pty. Ltd.**, Australian company number 164 068 348, an Australia company registered in New South Wales and deregistered in 2017. To the best of my knowledge, its books and records are in Australia;

f. **Panopticrypt Pty. Ltd.**, Australian company number 151 567 118, is an Australian company registered in New South Wales. To the best of my knowledge, its books and records are in Australian; and

g. **Pholus Pty. Ltd.**, Australian company number 165 472 079, is an Australia company registered in New South Wales. To the best of my knowledge, its books and records are in Australia.

22. I do not store any digital or paper records, files, or documents in the United States.

23. As a citizen of New South Wales, Australia, I am amenable to service of process for litigation there.

I declare that the foregoing is true and correct under penalty of perjury and in accordance with the laws of the United States of America.

This sworn declaration was signed in 16 on April ___, 2018.

Craig Wright
Identification Number:

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IRA KLEIMAN, as the personal representative of the Estate of David Kleiman, and W&K Info Defense Research, LLC Plaintiffs, v. CRAIG WRIGHT Defendant.	CASE NO: 9:18-cv-80176-BB/BR

Videotape Deposition of
CRAIG STEVEN WRIGHT

On Thursday, 4th April 2019

Taken at the offices of:

Boies Schiller Flexner LLP
5 New Street Square,
London EC4A 3BF

Reported by: Paula Foley

a few different projects together, including that, that would enable him to hopefully get some money to be able to work less, as he was in the hospital.

Q. What was your involvement in W&K?

A. Very little.

Q. How much was your involvement? What was your involvement in W&K?

A. Talking about it and then going off and writing some papers, full stop.

Q. Did you have any ownership in W&K?

A. No.

Q. Who owned W&K?

A. The records for W&K exist. I do not know if the records are accurate.

Q. Who owned W&K in reality?

A. Not me.

MS. MARKOE: Objection.

BY MR. FREEDMAN:

Q. Who?

A. Who owns BHP Billiton in reality? It is not my company. I do not care.

Q. You have no idea who owns W&K?

A. I do not know that.

MS. MARKOE: Objection.

THE WITNESS: If I do not own it, I do

not care about it.

BY MR. FREEDMAN:

Q. Did W&K ever mine Bitcoin?

A. I do not know what other companies that are not mine do.

Q. Did you ever tell anyone that W&K mined Bitcoin?

MS. MARKOE: Objection. You can answer if you remember.

THE WITNESS: I have no idea.

BY MR. FREEDMAN:

Q. Is there a reason you would have told somebody why W&K mined Bitcoin?

MS. MARKOE: Objection. If he does not know if he has told anyone then the question lacks a predicate.

MR. FREEDMAN: He does not recall. I am asking if there is a reason why he might have said it.

MS. MARKOE: Answer if you can, but I am objecting.

THE WITNESS: The nature of Bitcoin is a predicate-based system. It either fails true or false. If it is true, a transaction is valid. If it is false, it is rejected and never talked of again. This will be never talked of again.

BY MR. FREEDMAN:

Q. To the best of your knowledge did W&K ever have valuable intellectual property?

MS. MARKOE: Objection. You can answer.

THE WITNESS: I have stated before, I care about my own companies. I really do not care about any other in existence anywhere on the planet that has nothing to do with my companies, or cannot hand me something.

BY MR. FREEDMAN:

Q. Did you ever obtain valuable intellectual property from W&K?

MS. MARKOE: Objection. You can answer.

THE WITNESS: Yes.

BY MR. FREEDMAN:

Q. How?

A. I paid for work to be done through my companies.

Q. Was W&K your company?

MS. MARKOE: Objection.

THE WITNESS: No.

BY MR. FREEDMAN:

Q. So how did you get W&K's valuable intellectual property?

MS. MARKOE: Objection: asked and