SUBPOENA

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel. Data Trace Information Services, LLC, et al.
Relators,

Case No. 2010-2029

vs.

Recorder of Cuyahoga County, Ohio
Respondent,

To: John Kandah
c/o David Movius, Esq.
McDonald Hopkins
600 Superior Avenue, East
Suite 2100
Cleveland, OH 44114

FILED
JAN 07 2011
CLERK OF COURT
SUPREME COURT OF OHIO

You Are Hereby Commanded To:

☒ Appear at the place, date and time specified below to testify at the taking of deposition in the above-captioned case:

| | | |
|---|---|---|
| The offices of Baker & Hostetler LLP<br>Suite 3200, PNC Center, 1900 East 9th St.<br>Cleveland, OH 44114 | 1/14/11<br>(Date) | 1:30<br>(Time) |

Section 2335.06 of the Ohio Revised Code provides that witnesses are entitled to receive $12.00 for each full day's attendance and $6.00 for each half day's attendance, plus ten cents per mile traveled to and from his place of residence outside of the City of Youngstown proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Signed and issued by:

John Blanton, Bar No. 0086836
Baker & Hostetler LLP
1900 East 9th St., Ste. 3200
Cleveland, Ohio 44114
Tel 216.621.0200 / jblanton@bakerlaw.com
Attorney for Relators

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JAN 07 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Civ. R. 45 Subpoena
* * *

**(C) Protection of persons subject to subpoenas**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the

person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

## Return of Service

On the 6th day of January, 2011, I served this Subpoena upon

David Morris

in the following manner: by hand at the offices of McDonald-Hopkins.

By: [signature]
John Blanton, Attorney (Bar No. 0086836)

Subscribed and sworn to before me, a

NOTARY PUBLIC

This 6TH day of JANUARY, ~~2010~~ 2011

Sheila A. Maio

SHEILA A. MAIO, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Oct. 17, 2015