



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION Electronically Filed:
October 16, 2015 11:26

By: JENNIFER ARMSTRONG 0081090

Confirmation Nbr. 570205

EDWARD GRAHAM, ET AL

CV 15 846212

VTS.

Judge:

CITY OF LAKEWOOD, ET AL

JOHN P. O'DONNELL

Pages Filed: 23

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

EDWARD GRAHAM, *ET AL.*,

Plaintiffs,

v.

CITY OF LAKEWOOD, *ET AL.*,

Defendants.

CASE NO. CV-15-846212

JUDGE JOHN P. O'DONNELL

**DEFENDANT LAKEWOOD HOSPITAL ASSOCIATION'S MOTION FOR
PROTECTIVE ORDER FROM PLAINTIFFS' SUBPOENA *DUCES TECUM* ISSUED TO
TRIAD RESEARCH GROUP**

Pursuant to Rule 26 of the Ohio Rules of Civil Procedure, Lakewood Hospital Association ("LHA") respectfully moves this Court for a protective order. Plaintiffs are improperly attempting to obtain confidential LHA documents that are irrelevant to this lawsuit through a subpoena issued by Plaintiffs to Triad Research Group, Inc. ("Triad Subpoena," attached hereto as Exhibit 1) on October 9, 2015.

The grounds for this Motion are more specifically set forth in the accompanying Memorandum in Support, which is incorporated as if fully rewritten herein. Additionally, pursuant to Civ. R. 26(C), a certification showing that LHA made reasonable efforts to resolve this matter through attempted discussions with Plaintiffs' counsel prior to the filing of this Motion is attached as Exhibit 2 and incorporated herein by reference.

Respectfully submitted,

/s/ Jennifer Dowdell Armstrong

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Attorneys for Defendants
LAKEWOOD HOSPITAL ASSOCIATION

**MEMORANDUM IN SUPPORT OF DEFENDANT LAKEWOOD HOSPITAL
ASSOCIATION'S MOTION FOR PROTECTIVE ORDER FROM PLAINTIFFS'
SUBPOENA DUCES TECUM ISSUED TO TRIAD RESEARCH GROUP**

I. BACKGROUND

As this Court is by now fully aware, Plaintiffs are five disgruntled Lakewood residents that have refused to agree to a protective order governing discovery in this case. Instead, they have abused the discovery process by obtaining Defendants' confidential documents to further their political agenda and then repeatedly leaked those documents to the press. The Cleveland Clinic Foundation's ("CCF") September 25, 2015 Motion to Strike Plaintiff's "Emergency" Motion to Compel sets forth in great detail how this lawsuit has served as media fodder. (*See* CCF Mot. To Strike at 2-5.)

This Court indicated at the preliminary injunction hearing on August 13, 2015 that it expects to rule on Defendants' Motion to Dismiss prior to the pretrial conference on November 19, 2015. With the clock ticking, Plaintiffs have engaged in frenetic discovery efforts – much of it unrelated to the claims asserted in the lawsuit – and wholly ignored this Court's admonition that discovery be reasonable. Instead, Plaintiffs have issued no less than **ten** subpoenas on various non-party third party individuals and entities in the past two months.

On October 9, 2015, Plaintiffs served via hand-delivery a subpoena *duces tecum* (the "Triad Subpoena") on Triad Research Group, Inc., ("Triad") (*See* Ex. 1). Triad was retained by LHA to conduct a telephone poll of Lakewood citizens to determine the citizens' opinions regarding the potential closure of Lakewood Hospital. The Subpoena demands that Triad produce, among other things:

- Copies of any and all written or telephone poll questions prepared and used regarding Lakewood Hospital.

- The final report, executive summary, and/or written results of any and all written or telephone polling regarding Lakewood Hospital.
- All presentations, PowerPoints, or other written and/or ESI materials prepared and then provided to LHA, the City, and/or CCF regarding any written or telephone poll done by Triad regarding Lakewood Hospital.
- All ledger sheets, billing, and payments regarding polling and work performed by Triad regarding Lakewood Hospital for LHA, the City, and/or CCF.

(Exhibit 1 –Triad Subpoena).

It is clear from the face of the Triad Subpoena that the document requests related to telephone opinion polling of Lakewood citizens in August 2015 are wholly irrelevant to the claims asserted in Plaintiffs' Amended Complaint. Yet rather than directly request such non-relevant, objectionable documents from LHA through party discovery, Plaintiffs instead attempts to obtain these confidential documents from a third party and leak them to the press and Save Lakewood Hospital Legal Committee -- which is chaired by Plaintiff's counsel -- in an another attempt to improperly influence the political process. Enough is enough. Accordingly, this Court should enter a protective order refusing to permit the disclosure of these documents to Plaintiffs.

II. LAW AND ARGUMENT

Rule 26(C) of the Ohio Rules of Civil Procedure provides that the court may issue any order that justice requires in order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including that discovery “not be had.” Ohio R. Civ. P. 26(C). Discovery may only be had if the information sought is reasonably calculated to lead to the discovery of admissible evidence. *Id.*

A trial court has broad discretion to regulate discovery proceedings. *Van-Am. Ins. Co. v. Schiappa*, 132 Ohio App.3d, 325, 330 (Ohio Ct. App. 7th Dist. 1999). This discretion extends to the issuance of protective orders made pursuant to Civ. R. 26(C). *Id.*

Ohio courts have held that “Civ. R. 26(C) court orders are designed to prevent an abuse of the discovery process.” *In re Guardianship of Johnson*, 35 Ohio App.3d 41, 42 (10th Dist. Ct. App. 1987). The Eighth District Court of Appeals recently upheld a trial court’s granting of a defendant’s party’s protective order when the plaintiff’s third-party subpoena sought the production of defendant’s documents that had no relevance to the claims in the lawsuit. *See, e.g., Esparza v. Klocker*, 27 N.E.3d 23, 2015-Ohio-110 PARA 32 (8th Dist. Ct. App. 2015).

As in *Esparza*, good cause exists here for the issuance of a protective order. The LHA information Plaintiffs demand in the Triad Subpoena is not relevant or reasonably calculated to lead to admissible evidence. Specifically, Plaintiffs’ Amended Complaint accuses the Defendants of engaging in a wild conspiracy to drive LHA into financial ruin over a twenty-year period. In stark contrast, the Triad documents pertain to Lakewood residents’ opinions in August 2015 of the potential closure of LHA. These documents are confidential and were shared only with the LHA Executive Committee and LHA’s counsel. And while such confidential information is wholly irrelevant to the lawsuit, Plaintiffs will undoubtedly mischaracterize the documents and leak it to the press in yet another attempt to improperly influence Lakewood voters. Accordingly, this Court should exercise its authority under Ohio Rule of Civil Procedure 26(C) to prevent such abuse of the discovery process and enter a protective precluding the production of the documents sought in the Triad Subpoena.

III. CONCLUSION

For the reasons set forth above, the Triad Subpoena is improper. This Court should refuse to allow the disclosure of the requested documents to Plaintiffs, and it should also award LHA its costs and fees in challenging the Triad Subpoena.

Respectfully submitted,

/s/ Jennifer Dowdell Armstrong

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Facsimile: 614-458-0028

Attorneys for Defendants
LAKEWOOD HOSPITAL ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of DEFENDANT LAKEWOOD HOSPITAL ASSOCIATION'S MOTION FOR PROTECTIVE ORDER FROM PLAINTIFFS' SUBPOENA DUCES TECUM ISSUED TO TRIAD RESEARCH GROUP was served via the Court's electronic filing system and via electronic mail, this 16th day of October 2015, pursuant to Ohio R. Civ. P. 5(B)(2)(f), upon the following:

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City of Lakewood, Ohio and
Mayor Michael Summers

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Director of Law, City of Lakewood
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Lakewood, OH 44107
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City of Lakewood, Ohio and
Mayor Michael Summers

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Healthcare, LLC

Kristine Hayes, Esq.
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Attorneys for Ohio Attorney General Mike DeWine

/s/ Jennifer Dowdell Armstrong
One of the Attorneys for
Lakewood Hospital Association

EXHIBIT 1

IN THE COURT OF COMMON PLEAS

SUBPOENA CIVIL RULE 45

THE STATE OF OHIO

ss.

Cuyahoga County

EDWARD GRAHAM, et al.

Plaintiff

No. CV-15-846212

vs.

THE CITY OF LAKEWOOD, et al.

Defendant

Judge JOHN P. O'DONNELL

To Triad Research Group, Inc.
c/o Its Statutory Agent Robert Dykes
1127 Euclid Avenue, Suite 1100
Cleveland, Ohio 44115

(Via Certified Mail)

☐ YOU ARE COMMANDED to appear in the Court of Common Pleas to testify as witness on behalf of the (PLAINTIFF/DEFENDANT) in the above entitled case and not depart the Court without leave. Fail not under penalty of the law. Your appearance is required on the _____ of _____ at _____ o'clock _____ M. in Courtroom No. _____ of the:

Justice Center-Court Tower
1200 Ontario Street
Cleveland, Ohio 44113

☐

Courthouse Square
310 W. Lakeside Ave.
Cleveland, OH 44113

☐

Cuyahoga County Courthouse
One Lakeside Avenue
Cleveland, Ohio 44113

☐

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of deposition in the above case.

PLACE OF DEPOSITION

623 West Saint Clair Ave, CLF, OH 44113

DATE

TIME

☒ YOU ARE COMMANDED to produce and permit inspection, copying, testing or sampling of the following documents or objects at the place, date, and time specified below (list documents or objects):

(See attached Exhibit A)

At the law offices of Morganstern, MacAdams & DeVito Co., L.P.A.

623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204

10/16/15

12:00P.M.

PLACE

DATE

TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE

TIME

To insure taxation of their fees, witnesses must report each attendance to the Clerk of Court of Common Pleas on the first floor of the Justice Center-Courts Tower.

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 Cleveland proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Christopher M. DeVito

623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204

ATTORNEY NAME

ADDRESS

SIGNATURE

Plaintiffs

REPRESENTING

09/25/2015

DATE

Cuyahoga County, Clerk of Courts

by

Robert X. Byrd

Clerk

THE STATE OF OHIO

ss.

Cuyahoga County

Affidavit of Service of Subpoena by Sheriff or Officer, Attorney or Private Person

On the 9th day of October, 2015

I served this Subpoena on the within named:

Triad Research Group, Inc.

as follows:

c/o ITS Station Agent Robert Dykes
at 2001 Crocker Park, suite 530, Westlake,
Ohio 44145 via Hand Delivery

SHERIFF'S FEES

Service on _____ \$ _____
Copy _____
Miles Travel _____
Return _____
\$ _____
Witness entitled to _____ milesBy [Signature] Deputy Sheriff
John Marcar
Subscribed and sworn to before me, aThis 9th day of October, 2015[Signature]CHRISTOPHER M. DEVITO, Attorney at Law
NOTARY PUBLIC — STATE OF OHIO
My commission has no expiration date.

RULE 45. RULES OF CIVIL PROCEDURE, PARTS C & D

(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.

(D) 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)(D)(D) OF THIS RULE, A PERSON REQUESTING 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)(D)(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)(D)(C) OR (C)(D)(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 ELECTRONICALLY STORED INFORMATION OR ORGANIZED AND LABELED TO CORRESPOND WITH THE CATEGORIES IN THE SUBPOENA, A PERSON PRODUCING DOCUMENTS OR ELECTRONICALLY STORED INFORMATION FURNISHING 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 USABLE, OR IN ANY FORM THAT IS REASONABLY USABLE, 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.

EXHIBIT

A

EXHIBIT 2

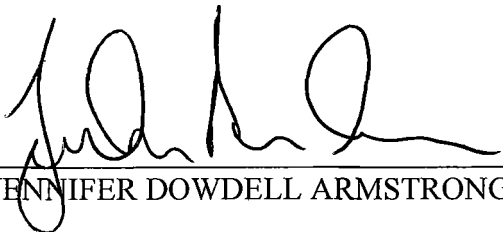
AFFIDAVIT OF JENNIFER DOWDELL ARMSTRONG, ESQ.

I, **JENNIFER DOWDELL ARMSTRONG, ESQ.**, declare as follows:

1. This Affidavit is based upon my personal knowledge.
2. I am over the age of 18 years and know of no physical or mental reason that would prohibit me from giving this Affidavit.
3. I am a Member with the law firm of McDonald Hopkins LLC in Cleveland, Ohio. I was admitted to the Ohio Bar on November 6, 2006. Along with O. Judson Scheaf III and Sara H. Jodka, I have responsibility for representing Defendant Lakewood Hospital Association ("LHA") in this matter.
4. On October 15, 2015, I called the office of Plaintiffs' counsel, Christopher DeVito, Esq. to discuss Plaintiffs' subpoena *duces tecum* issued on Triad Research Group, Inc. on October 9, 2015 ("Triad Subpoena"). A copy of the Triad Subpoena and Proof of Service are attached to this Motion as Exhibit 1.
5. Mr. DeVito's receptionist informed me on October 15, 2015 that he was in his office but on another telephone call. I left Mr. DeVito a detailed voicemail message explaining that LHA objected to the Triad Subpoena because the documents demanded were irrelevant and asked him to call me to determine if we could resolve this matter through discussion.
6. Later that afternoon, I sent Mr. DeVito an e-mail reiterating LHA's objections to the Subpoena and asked him to discuss the issue on October 16, 2015 at 9:00 a.m. I told him that I was also available to talk during the evening on October 15, 2015, if that time worked better for him. I did not receive a response to this e-mail, nor did Mr. DeVito return my call the morning of October 16, 2015 to attempt to resolve this dispute.

7. I declare under penalty of perjury that the foregoing is true and correct, based upon my knowledge, information and belief.

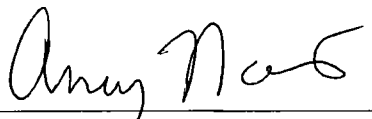
Executed on October 16, 2015


JENNIFER DOWDELL ARMSTRONG, ESQ.

SWORN to and SUBSCRIBED before me this 16th day of October, 2014.



AMY NORRIS
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga County
My Comm. Exp. 4/7/19


NOTARY PUBLIC

My commission expires: 4/7/19

EXHIBIT 1

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.

Plaintiffs

v.

CITY OF LAKEWOOD, et al.

Defendants

CASE NO. CV-15-846212

JUDGE JOHN P. O'DONNELL

**NOTICE OF PROOF OF SERVICE,
VIA HAND DELIVERY, OF
SUBPOENA DUCES TECUM ON
TRIAD RESEARCH GROUP, INC.**

Plaintiffs Edward Graham, et al., by and through undersigned counsel, hereby give notice of the proof of service, via hand delivery, for the subpoena duces tecum issued upon Triad Research Group, Inc., c/o Its Statutory Agent Robert Dykes, 2001 Crocker Park, Suite 530, Westlake, Ohio 44145 (Exhibit A) on October 9, 2015.

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito (0047118)

Morganstern, MacAdams & DeVito Co., L.P.A.

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216-687-1212 – Office

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-and-

/s/ A. Steven Dever

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

A copy of the foregoing **Notice of Proof of Service, Via Hand Delivery, of Subpoena Duces Tecum on Triad Research Group, Inc.** has been filed through the Court's electronic case management system ("ECM"), is available for review on-line by counsel and parties, will be provided notice of filing by the Court's ECM system, and a courtesy pdf copy is also being sent via email only on this 12th day of October, 2015, to the following:

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kevin.butler@lakewoodoh.net
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-and-

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and Mayor Michael Summers*

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and Dr. Delos Cosgrove*

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and Thomas Gable*

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Lakewood Hospital Foundation, Inc.
and Kenneth Haber*

*Attorneys for Defendant
Subsidium Healthcare, LLC*

*Attorneys for Defendant
The Ohio Attorney General
Mike DeWine*

s/ Christopher M. DeVito
Christopher M. DeVito (0047118)
Morganstern, MacAdams & DeVito Co., L.P.A.
Attorney for Plaintiffs

L:\CLIENTS-CMD\LakewoodHospital\Subpoenas\2015.09.28.Triad Research Group\2015.10.09.Notice of Serv Via
Hand Delivery.Subpoena.Triad.docx

THE STATE OF OHIO

ss.

Cuyahoga County

Affidavit of Service of Subpoena by Sheriff or Officer, Attorney or Private Person

On the 9th day of October, 2015

I served this Subpoena on the within named:

Triad Research Group, Inc.

as follows:

c/o ITS Station Agent Robert Dykes
at 2001 Crocker Park, Suite 530, Westlake,
Ohio 44145 via Hand Delivery

SHERIFF'S FEES

Service on _____ \$ _____
Copy _____
Miles Travel _____
Return _____
\$ _____
Witness entitled to _____ milesBy [Signature] Deputy Sheriff
John Marcar
Subscribed and sworn to before me, aThis 9th day of October, 2015[Signature]CHRISTOPHER M. DEVITO, Attorney at Law
NOTARY PUBLIC — STATE OF OHIO
My commission has no expiration date.

RULE 45. RULES OF CIVIL PROCEDURE, PARTS C & D

(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)(i), (ii), (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)(i), (ii), (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)(3), 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 REQUESTING 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 ELECTRONICALLY STORED INFORMATION OR OTHERWISE, 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 USABLE, OR IN ANY FORM THAT IS REASONABLY USABLE, 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, REQUESTER, 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.

EXHIBIT

A

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IN THE COURT OF COMMON PLEAS

SUBPOENA CIVIL RULE 45

THE STATE OF OHIO

ss.

Cuyahoga County

EDWARD GRAHAM, et al.

Plaintiff

No. CV-15-846212

vs.

THE CITY OF LAKEWOOD, et al.

Defendant

Judge JOHN P. O'DONNELL

To Triad Research Group, Inc.
c/o Its Statutory Agent Robert Dykes
1127 Euclid Avenue, Suite 1100
Cleveland, Ohio 44115

(Via Certified Mail)

☐ YOU ARE COMMANDED to appear in the Court of Common Pleas to testify as witness on behalf of the (PLAINTIFF/DEFENDANT) in the above entitled case and not depart the Court without leave. Fail not under penalty of the law. Your appearance is required on the _____ of _____ at _____ o'clock _____ M. in Courtroom No. _____ of the:

Justice Center-Court Tower
1200 Ontario Street
Cleveland, Ohio 44113

☐

Courthouse Square
310 W. Lakeside Ave.
Cleveland, OH 44113

☐

Cuyahoga County Courthouse
One Lakeside Avenue
Cleveland, Ohio 44113

☐

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of deposition in the above case.

623 West Saint Clair Ave, CLF, OH 44113 10/16/15 12:00P. M.

PLACE OF DEPOSITION

DATE

TIME

☒ YOU ARE COMMANDED to produce and permit inspection, copying, testing or sampling of the following documents or objects at the place, date, and time specified below (list documents or objects):

(See attached Exhibit A)

At the law offices of Morganstern, MacAdams & DeVito Co., L.P.A.

623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204

10/16/2015

12:00P.M.

PLACE

DATE

TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE

TIME

To insure taxation of their fees, witnesses must report each attendance to the Clerk of Court of Common Pleas on the first floor of the Justice Center-Courts Tower.

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 Cleveland proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Christopher M. DeVito

623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204

ATTORNEY NAME

ADDRESS

SIGNATURE

Plaintiffs

REPRESENTING

09/25/2015

DATE

Cuyahoga County, Clerk of Courts

by

Handwritten signature

Clerk

CERTIFICATE OF SERVICE

A copy of the foregoing **Subpoena Duces Tecum to Triad Research Group, Inc.** has been filed through the Court's electronic case management system ("ECM"), is available for review on-line by counsel and parties, will be provided notice of filing by the Court's ECM system, and a courtesy pdf copy is also being sent via email only on this 28th day of September, 2015, to the following:

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-and-

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astevendevery@aol.com

Attorneys for Plaintiffs

EXHIBIT A

Responsive documents include Electronically Stored Information ("ESI") and paper contracts, letters, faxes, emails texts, reports, studies, etc. and should be from the time period 2010 to the present. Reference to "CCF" refers to The Cleveland Clinic Foundation, reference to "LHA" refers to Lakewood Hospital Association, reference to "City" refers to the City of Lakewood, and reference to "Triad" refers to Triad Research, Inc. dba Triad Research Group.

1. Produce any and all engagement letters and contracts entered into between LHA and Triad.
 2. Produce any and all engagement letters and contracts entered into between the City and Triad.
 3. Produce any and all engagement letters and contracts entered into between CCF and Triad.
 4. Produce any and all minute meeting notes between Triad and LHA, City, and/or CCF.
 5. Produce copies of any and all written or telephone poll questions prepared and used regarding Lakewood Hospital.
 6. Produce the final report, executive summary, and/or written results of any and all written or telephone polling regarding Lakewood Hospital.
 7. Produce all presentations, PowerPoints, or other written and/or ESI materials prepared and then provided to LHA, City, and/or CCF regarding any written or telephone poll done by Triad regarding Lakewood Hospital.
 8. Produce all ledger sheets, billing, and payments regarding polling and work performed by Triad regarding Lakewood Hospital for LHA, City, and/or CCF.
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