UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-60447-CIV-DIMITROULEAS/SNOW

ROBERT PALMISANO

Plaintiff,

v.

PARAGON 28, INC.,

Defendant.

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ORDER

THIS CAUSE is before the Court on Non-Party Robert Palmisano's Motion for Protective Order and Motion to Quash Deposition Subpoena and Incorporated Memorandum of Law (ECF No. 1), and Wright Medical Technology, Inc.'s Motion for Protective Order and Motion to Quash the Deposition Subpoena to Robert Palmisano and Incorporated Memorandum of Law. (ECF No. 4) The Honorable William P. Dimitrouleas referred the matter to United States Magistrate Judge, Lurana S. Snow for appropriate resolution. (ECF No. 6)

BACKGROUND

This matter stems from ongoing litigation between Wright Medical Technology and Paragon 28, Inc. currently pending before the United States District Court for the District of Colorado. See Wright Medical Tech., Inc., v. Paragon 28, Inc., 1:18cv691 (D. Col.).

Wright sued Paragon on March 23, 2018, claiming Paragon infringed various patents. (ECF No. 1 at 4) Wright later added claims for misappropriation of trade secrets, unfair competition, and intentional interference with contracts. (ECF No. 4 at 3) According to Wright, Paragon's founders used Wright's proprietary information and trade secrets to target its sales representatives and customers. (ECF No. 14 at 5)

In June 2019, Paragon noticed the deposition of then-Wright CEO Robert Palmisano. (ECF No. 4 at 6) Wright objected, claiming that the "apex doctrine" prevented his deposition because he had no unique, personal knowledge that could not be obtained using less intrusive discovery methods. (ECF No. 4-15 at 2) The parties agreed to defer the deposition until after Paragon deposed Wright's Rule 30(b)(6) representative, Patrick Fisher. Fed. R. Civ. P. 30(b)(6); (ECF No. 4-18 at 2) (ECF No. 14-9 at 3) Paragon stated, however, that it would re-serve Palmisano if it still believed he possessed personal, unique knowledge. (ECF No. 14-9 at 3)

Paragon deposed Fisher on February 15, and 16, 2021. (ECF No. 14 at 7) Unsatisfied with the information it obtained, Paragon served Palmisano with a deposition subpoena two days later. (ECF No. 14 at 8) Paragon claims Palmisano has unique, personal knowledge on two subjects: (1) the cause of Wright's declining sales and salesforce, and (2) the basis for statements made in Wright's Complaint, and the timing of the lawsuit. (ECF No. 18 at 12–14) (ECF No. 4 at 9)

Palmisano, now retired, is a Fort Lauderdale resident; accordingly, both he and Wright moved to quash the subpoena and for a protective order in this Court. (ECF No. 1) (ECF No. 4) They argue that Palmisano's deposition is untimely under the

Colorado court's Scheduling Order, and Palmisano was not given a reasonable time to comply with the subpoena. (ECF No. 1 at 9) They also contend that the deposition is barred by the apex doctrine. (ECF No. 1 at 7–9) (ECF No. 4 at 8) Finally, they argue that the subpoena imposes an undue burden, and it impermissibly requires Palmisano to disclose information protected by the attorney-client privilege. (ECF No. 1 at 8–9) (ECF No. 4 at 12)

DISCUSSION

A. Palmisano's deposition is consistent with the Colorado court's Scheduling Order

The deadline for fact discovery was February 19, 2019. (ECF No. 4 at 6) Paragon served the subpoena one day before the deadline and scheduled Palmisano's deposition for February 26, 2021. (ECF No. 4 at 7) Wright, on the final day of discovery, moved to extend the deadline because Winter Storm Uri disrupted two previously-scheduled depositions. (ECF No. 4-13) The Colorado court extended it to March 1, 2021, "for the limited purpose of completing depositions." (ECF No. 4-14)

Wright now claims that this extension of time did not apply to Paragon's deposition of Palmisano. (ECF No. 4 at 14) The Court finds this argument unpersuasive. The plain language of the Colorado court's Order does not limit the extension to a particular party: "The discovery deadline is extended to 3/1/2021 for the limited purpose of completing depositions." (ECF No. 4-14) And even if it did, the Colorado court has since granted Paragon two additional fact depositions and an additional Rule 30(b)(6) deposition. See Wright Medical Tech., Inc., v. Paragon 28, Inc., 1:18cv691 (D. Col.) (ECF No. 337) Accordingly, the Court finds Palmisano's

deposition consistent with the Colorado court's Scheduling Order and discovery process.

B. Paragon provided reasonable time for compliance with the subpoena

Rule 45(d) directs courts to quash or modify subpoenas that fail to allow a reasonable time for compliance. Fed. R. Civ. P. 45(d)(3)(A)(i). Reasonableness is not defined and depends on the circumstances of the case. Parrot, Inc. v. Nicestuff Distrib. Int'l, Inc., No. 06-61231-CIV- DIMITROULEAS/ROSENBAUM, 2009 WL 197979, *4 (S.D. Fla. Jan. 26, 2009).

Palmisano claims he was not given a reasonable time to comply with the subpoena because it was served eight days before the date of the deposition. (ECF No. 1 at 10) Paragon counters that Palmisano was not required to produce any documents, and eight days is a reasonable time to prepare to testify truthfully. (ECF No. 14 at 12)

The Court finds that eight days' notice was reasonable, given the circumstances of this case. Paragon initially served Palmisano with a notice of deposition in June 2019. (ECF No. 14-7 at 2) Although Paragon withdrew the notice, both Wright and Palmisano knew he would be subpoenaed if Fisher could not provide adequate information at the Rule 30(b)(6) deposition. (ECF No. 14-9 at 2) When Fisher was unable to answer relevant questions, Paragon promptly subpoenaed Palmisano. (ECF No. 4 at 7) (ECF No. 14-7 at 6–7) (ECF No. 18-8 at 8) The subpoena does not require him to produce documents; it only asks that he testify truthfully. (ECF No. 14 at 12) Given Palmisano's prior notice, Paragon's prompt efforts, and the lack of required documents, the Court finds that eight days was a reasonable time for

compliance.[1] See Parrot, 2009 WL 197979, *4 (finding six-days' notice reasonable because the deposition notice was delivered earlier than the subpoena, there was no evidence of bad faith, and Defendant had time to gather all requested documents); Sec. & Exch. Comm'n v. Levine, No. 09-80135-MC, 2009 WL 10712514, at *6 (S.D. Fla. May 5, 2009) (finding nine days' notice reasonable to prepare for deposition and produce fifteen sets of documents).[2]

C. The apex doctrine does not bar Palmisano's deposition

Rule 26(c) empowers courts to issue protective orders when discovery is sought to annoy, embarrass, oppress, harass, or cause undue burden or expense. Fed. R. Civ. P. 26(c)(1). High-ranking corporate executives—by nature of their positions—are particularly vulnerable to abusive, harassing depositions. Brown v. Branch Banking & Trust Co., No. 13-81192-CIV, 2014 WL 235455, at *2 (S.D. Fla. Jan. 22, 2014). As a result, courts have developed the apex doctrine.

Under the apex doctrine, courts generally restrict the deposition of high-ranking executives unless: (1) the executive has unique, personal knowledge of relevant facts, and (2) other less intrusive means of discovery have been exhausted

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[1] Palmisano cites one district court in the Eleventh Circuit that found eight days' notice unreasonable: Hamilton v. Coffee Health Grp., No. CV-10-S- 3621-NE, 2011 WL 13286731, at *3 (N.D. Ala. Nov. 16, 2011). The Court finds Hamilton distinguishable. There, the deposing party served a subpoena eight days before the deposition, then served a supplemental subpoena five-days prior. Id. at *2. Both subpoenas directed the defendant to produce documents. Id. By contrast, Paragon issued a single subpoena eight days prior to the deposition that required no production of documents.

[2] Report and Recommendation adopted, No. 09-80135-MC, 2009 WL 10712513 (S.D. Fla. July 21, 2009).

without success. Noveshen v. Bridgewater Assocs., LP, No. 13-61535-CIV, 2016 WL 536579, at *1 (S.D. Fla. Feb. 3, 2016). The party seeking the deposition bears the burden of proof. Sun Cap. Partners, Inc. v. Twin City Fire Ins., 310 F.R.D. 523, 527 (S.D. Fla. 2015).

Palmisano is Wright's former CEO. His deposition, therefore, is subject to the apex doctrine. Off. Depot, Inc. v. Elementum Ltd., No. 9:19-CV-81305, 2020 WL 5506445, at *1 (S.D. Fla. Sept. 14, 2020) (applying the apex doctrine to former board members). Accordingly, the Court must determine whether Paragon satisfied both prongs.

1) Paragon has shown that Palmisano likely has unique, personal knowledge

Paragon's theory of the case is that Wright's declining sales and salesforce were the result of poor management and poor strategic decisions rather than Paragon's alleged improper actions. (ECF No. 14 at 12–13) Paragon claims Palmisano has unique, personal knowledge relevant to this issue. (ECF No. 14 at 13)

First, Paragon points to statements Palmisano made during earnings calls with investors, where he attributed Wright's declining sales to factors like "bad weather," "supply constraints," and a lack of focus by the salesforce. (ECF No. 14 at 13) Second, Paragon provides evidence that Palmisano was directly involved in meetings where he and executives assessed the possible causes for Wright's declining sales. (ECF No. 14 at 13) (ECF No. 18-1 at 6–7). In particular, Paragon shows that Palmisano was directly involved in diagnosing the shortcomings of a recently

implemented project that he and others believed may have contributed to declining sales. (ECF No. 18-1 at 6–7, 13) (ECF No. 18-2) (ECF No. 18-4)

Wright and Palmisano, however, contend that Palmisano lacks unique, personal knowledge. (ECF No. 1 at 7–8) (ECF No. 4 at 9–10) They claim that Palmisano's earnings-calls statements do not show personal knowledge because he relied entirely on a script prepared by other employees. (ECF No. 1 at 7) (ECF No. 4 at 9) They also argue that Fisher answered all relevant questions about the earnings calls during his Rule 30(b)(6) deposition. (ECF No. 4 at 10) Moreover, they state that Palmisano's involvement with the recently implemented project occurred through meetings or emails with others. (ECF No. 24 at 5) Thus, they claim any knowledge he has is not unique to him. (ECF No. 24 at 5)

The Court finds that Palmisano likely possesses unique, personal knowledge about Wright's declining sales and salesforce. Although Wright contends that his earnings-calls statements were based on a pre-written script, Fisher testified that Palmisano went off-script during parts of the question-and-answer session. (ECF No. 24-2 at 27) In particular, when asked why Palmisano made a statement about the misguided focus of Wright's salesforce, Fisher stated that he did not know because Palmisano went "off the cuff." (ECF No. 14 at 14) (ECF No. 24-2 at 27) Thus, at least some of Palmisano's statements were based on personal knowledge of factors that he believed contributed to decreased sales.[3] See Reilly v. Chipotle Mexican Grill, Inc.,

[3] Although two Wright employees were also on the calls, they are the ones who wrote the script. (ECF No. 18-8 at 6) (ECF No. 24 at 5) As a result, it is unlikely that they know the basis for Palmisano's unscripted answers.

No. 15-CV-23425, 2016 WL 10644064, at *6 (S.D. Fla. Sept. 26, 2016) (finding that executive had unique knowledge when he was directly involved with the process and may be the only employee with the requisite recollection). Accordingly, the Court finds it likely that Palmisano has unique, personal knowledge about the basis for statements he made during earnings calls regarding Wright's declining sales and salesforce.

Likewise, the Court finds that Palmisano likely has unique, personal knowledge on the effect of the recently implemented project on sales. Palmisano was directly involved in meetings where he diagnosed the project's problems and suggested improvements. (ECF No. 18-1 at 13–14) (ECF No. 18-2 at 4–6) Although Wright argues that Palmisano's knowledge is not unique because other employees were present, the evidence indicates that Palmisano developed a personal understanding of the issues that differed from other employees. For example, when Palmisano expressed his opinion on the project's shortcomings and suggested specific improvements, another Wright employee responded that his experience was "totally different," before explaining the problems he observed. (ECF No. 18-2 at 5) Statements Palmisano made about how the salesforce perceived the project are also at odds with the testimony of at least one Wright witness. (ECF No. 18-12 at 4) Finally, Palmisano was involved in email discussions where employees brainstormed how the project could be causing sales to decline. (ECF No. 18-5); See Shenzhen Kinwong Elec. Co. v. Kukreja, No. 18-61550-CIV, 2019 WL 8298217, at *2 (S.D. Fla. Dec. 12, 2019) (allowing party to depose executive—despite signed declaration

attesting to a lack of personal knowledge—because he was included on an email chain discussing the relevant issue). For those reasons, the Court finds it likely that Palmisano has unique, personal knowledge about the project's effect on Wright's declining sales and salesforce.

2) Paragon has exhausted less intrusive discovery options

Even if a corporate executive has relevant knowledge, courts may require parties to exhaust alternative discovery methods before permitting a deposition. Salter v. Upjohn, 593 F. 2d 649, 651 (5th. Cir. 1979). Complete exhaustion, however, is not an absolute requirement. Reilly, 2016 WL 10644064, at *7. Instead, it is a factor the Court should consider when exercising its broad discretion to control the timing of discovery. Id.; Salter, 593 F.2d at 651.

Here, the Court finds that Paragon made sufficient effort to satisfy the exhaustion prong of the apex doctrine. Paragon served Requests for Production seeking documents related to Palmisano's earnings-calls statements. (ECF No. 14-10 at 7–8, 9–11, 14–15) The requests were unsuccessful because Wright claimed all information was provided to Palmisano verbally. (ECF No. 14-1 at 15) Paragon also deposed more than 25 Wright witnesses and conducted a two-day deposition of Fisher. (ECF No. 4 at 2) Fisher, however, was unable to answer certain questions for which Palmisano likely has relevant knowledge. (ECF No. 18-7 at 6–7, 10) (ECF No. 24-2 at 26–27) Given Paragon's efforts, the Court finds that it satisfied the second prong of the apex doctrine. See Reilly, 2016 WL 10644064, at *6 (finding second prong satisfied despite plaintiff having taken just four individual depositions and no

30(b)(6) deposition). Accordingly, the apex doctrine does not bar Palmisano's deposition.

D. Paragon's subpoena does not cause an undue burden

Rule 26(c) allows the court to issue a protective order when discovery is intended to cause undue burden or expense. Fed. R. Civ. P. 26(c)(1). Similarly, Rule 45 requires a court to quash or modify a subpoena that subjects a person to undue burden. Fed. R. Civ. P. 45(d).

Palmisano argues that Paragon's subpoena creates an undue burden because he has no unique, personal knowledge relevant to the lawsuit. (ECF No. 1 at 9–10) Paragon, however, argues that Palmisano possesses such knowledge. (ECF No. 14 at 18–19) Paragon also points out that Palmisano is now retired; thus, a short, remote deposition will not conflict with any executive duties he once had. (ECF No. 14 at 19) Finally, Paragon states that the lawsuit is between two competitors and worth a substantial sum of money, as evidenced by the volume of litigation and as recognized by the Colorado court. (ECF No. 14 at 19)

When determining whether a subpoena imposes an undue burden, courts must balance the requesting party's need for discovery against the burden imposed on the subpoenaed party. Coleman v. Lennar Corp., Case No. 18-20182-MC, 2018 WL 3672251, at *3 (S.D. Fla. June 14, 2018). Courts consider various factors, including the relevance of the sought-after information and the breadth of information requested. Trigeant Ltd. v. Petroleos De Venezuela, S.A., No. 08-80584-CIV, 2009 WL 10668731, at *2 (S.D. Fla. May 5, 2009).

Here, the Court finds that Paragon's need for discovery outweighs the burden imposed on Palmisano. Palmisano likely has unique, personal knowledge about the reasons for Wright's decreased sales and salesforce. This information is relevant to Wright's claim that Paragon's misappropriation caused monetary damages. (ECF No. 4-2 at 74) It is also relevant to Wright's entitlement to damages under the Colorado Uniform Trade Secrets Act. Atlas Biologicals, Inc. v. Kutrubes, No. 15-CV-00355-CMA-KMT, 2019 WL 4594274, at *16 (D. Colo. Sept. 23, 2019). Paragon has made extensive effort to obtain the information, but that effort has not been fruitful. The Court, therefore, finds the deposition necessary to obtain relevant information.

The Court does not find an undue burden imposed on Palmisano. The subpoena does not require Palmisano to produce any documents. Moreover, the deposition is only focused on a narrow set of issues, and Paragon states that it will be short and conducted remotely. (ECF No. 14 at 18) Finally, the deposition will not conflict with Palmisano's obligations as Wright's CEO because he is retired. In re 3M Combat Arms Earplug Prod. Liab. Litig., No. 3:19-2885-MD, 2020 WL 6438614, at *5 (N.D. Fla. Nov. 2, 2020) (finding that "a brief, remote deposition" would not unduly burden a CDC employee, despite conclusory statements about his obligations during a global pandemic). Accordingly, the Court finds that Paragon's need outweighs any burden on Palmisano, and the subpoena does not create an undue burden.

E. Attorney-Client Privilege

Rule 45 directs courts to modify or quash a subpoena that requires the disclosure of privileged information. Fed. R. Civ. P. 45(d)(3)(A)(iii). The party

claiming the privilege bears the burden of proving its existence. See, e.g., In re Grand Jury Investigation (Schroeder), 842 F.2d 1223, 1225 (11th Cir.1987).

Paragon seeks to depose Palmisano on the factual basis for allegations made in the Complaint because Palmisano, as CEO, authorized the lawsuit. (ECF No. 4 at 5) (ECF No. 14 at 3, 14) Paragon also seeks to question Palmisano on his rationale regarding the timing of the lawsuit. (ECF No. 18-1 at 15) Paragon states that this information is relevant because Wright filed suit to disrupt Paragon's rumored acquisition. (ECF No. 4 at 14)

Wright and Palmisano, however, contend that any knowledge Palmisano has is protected by the attorney-client privilege. (ECF No. 1 at 8) (ECF No. 4 at 12–13) They state that Wright's general counsel conducted a six-month investigation into Paragon's activities, then communicated the results to Palmisano, who authorized the suit. (ECF No. 4 at 5) As a result, they argue that any testimony Palmisano could give is privileged because his knowledge is derived from communications with counsel. (ECF No. 1 at 9) (ECF No. 4 at 12) Likewise, they claim that Palmisano's rationale for authorizing suit is privileged because it reflects these confidential communications. (ECF No. 24 at 9) Wright and Palmisano, therefore, seek a protective order and ask the Court to quash the subpoena. (ECF No. 1 at 8) (ECF No. 4 at 12–13)

The attorney-client privilege protects confidential communications the client makes to an attorney for the purpose of obtaining legal advice. Fisher v. Dist. Ct. of Sixteenth Jud. Dist., 424 U.S. 382, 391 (1976). It also protects the attorney's

communications to a client if they contain legal advice or otherwise reveal the client's confidential communications. R.B. v. Ford Motor Co., No. 4:05CV481, 2007 WL 9735726, at *4, *6 n.3 (N.D. Fla. Aug. 15, 2007) (citing Wells v. Rushing, 755 F.2d 376, 379 n.2 (5th Cir. 1985)); Bellsouth Advert. & Pub. Corp. v. Am. Bus. Lists, Inc., No. 1:90-CV-149, 1992 WL 338392, at *7 (N.D. Ga. Sept. 8, 1992).

The attorney-client privilege only extends to communications; it does not extend to the underlying facts. Upjohn Co. v. United States, 449 U.S. 383, 396 (1981). Thus, while the privilege applies when a questioner directly asks a deponent about discussions with counsel, the "attorney-client privilege simply does not extend to facts known to a party that are central to that party's claims, even if such facts came to be known through communications with counsel who had obtained knowledge of those facts through an investigation into the underlying dispute." B.C.F. Oil Ref., Inc. v. Consol. Edison Co., 168 F.R.D. 161, 165 (S.D.N.Y. 1996); Wiand v. Wells Fargo Bank, N.A., No. 8:12-CV-557-T-27EAJ, 2013 WL 6170616, at *1 (M.D. Fla. Nov. 22, 2013) (compelling disclosure over deponent's objection that he had no independent knowledge of the underlying facts outside of those learned through counsel); Hernandez v. Motorola Mobility, Inc., No. 12-60930-CIV, 2013 WL 4773263, at *3 (S.D. Fla. Sept. 4, 2013) ("A party's knowledge of facts, from whatever source, is not privileged."); Thurmond v. Compaq Comput. Corp., 198 F.R.D. 475, 483 (E.D. Tex. 2000) (requiring disclosure of facts defendant "only learned through communications with counsel"); Henry v. Champlain Enters., Inc., 212 F.R.D. 73, 91 (N.D.N.Y. 2003); Kansas Wastewater, Inc. v. Alliant Techsystems, Inc., 217 F.R.D. 525, 528, 532 n.3

(D. Kan. 2003) ("It is well established that a party may not withhold relevant facts from disclosure simply because they were communicated to, or learned from, the party's attorney.").

However, the privilege does extend to facts learned from counsel if disclosure would also reveal counsel's legal advice. Thurmond, 198 F.R.D. at 484. For example, in Thurmond, the defendant, accused of selling defective computer code, released a software patch. Id. At defendant's employee's deposition, the plaintiff asked questions designed to link the timing of the release of the software patch to a court hearing. Id. Thus, disclosure was effectively asking whether defense counsel advised the client to release the patch prior to the hearing. Id. The court found that the questions sought privileged legal advice. Id. It reasoned that defense counsel likely calculated the strategic implications that the release's timing would have on the case. Id.

Likewise, in Protective Nat. Ins. v. Commonwealth Ins., 137 F.R.D. 267, 280–81 (D. Neb. 1989), the court stated that while the privilege does not apply to a party's knowledge about the basis for specific factual allegations in the complaint, it does extend to his or her knowledge about the basis for conclusory legal allegations. The Court explained that lay witnesses can hardly be expected to know how certain facts relate to certain legal theories; therefore disclosure would effectively reveal legal advice. Id.

Here, Paragon seeks Palmisano's personal knowledge about the basis for statements in the Complaint. (ECF No. 14 at 3, 14) To the extent that Paragon seeks his knowledge about the basis for specific factual allegations, the information is not

privileged, regardless of how Palmisano learned the facts. E.g., Wiand, 2013 WL 6170616, at *2 (compelling disclosure over deponent's objection that he had no independent knowledge of the underlying facts outside of those learned through counsel); Thomasson v. GC Servs. Ltd. P'ship, No. 05CV0940-LAB (CAB), 2006 WL 8451615, at *3 (S.D. Cal. Oct. 11, 2006) (compelling disclosure over objection that any information was received from counsel and stating that if "plaintiff's counsel told him any facts supporting the allegation, [he] should have disclosed them"); Alliant, 217 F.R.D. at 528, 532 n.3 (compelling disclosure of factual basis for claims over objection that it would necessarily reveal communications with counsel); Protective, 137 F.R.D. at 280–81 (finding the attorney-client privilege inapplicable when the deponent's knowledge of the factual basis for the Complaint was reported to him by counsel).

Paragon may not, however, seek Palmisano's knowledge about the basis for conclusory legal allegations in the Complaint. Id. Palmisano cannot be expected to know how certain facts relate to certain legal theories, and disclosure would effectively reveal legal advice conveyed by Wright's counsel. Id. at 280–81; see also Wiand, 2013 WL 6170616, at *2 (finding that questions asking deponent to explain why certain legal doctrines apply could result in the disclosure of privileged communications).

Nor may Paragon question Palmisano about his rationale for the timing of the lawsuit. (ECF No. 14 at 14–15) At Fisher's Rule 30(b)(6) deposition, Paragon asked whether he knew Palmisano's "logic for the timing of when he authorized the filing of the Complaint." (ECF No. 24-2 at 15) Such questions seek knowledge that necessarily

reflects legal advice communicated by counsel; therefore it is protected by the attorney-client privilege. Thurmond, 198 F.R.D. at 484 (finding that questions aimed at linking the timing of mitigation efforts to a court hearing sought legal advice). In making this finding, the Court clarifies that Paragon may ask Palmisano if he knew about Paragon's rumored acquisition, and, if so, when he became aware of that information. Tardiff v. Cty. of Knox, 246 F.R.D. 66, 80 (D. Me. 2007) (requiring plaintiff to identify *when* he first learned he may have a claim because the question only asked about plaintiff's knowledge, not how the plaintiff gained such knowledge). Purely factually-based questions are permissible as more fully explained above.

Based on the foregoing, the Court limits the scope of the deposition subpoena in accordance with this Order and denies Wright and Palmisano's Motions to Quash and for a Protective Order. The Court also denies Wright and Palmisano's request for attorneys' fees.

CONCLUSION

Having carefully reviewed the Motions, the Responses and Replies thereto, the court file and applicable law, it is hereby

ORDERED AND ADJUDGED that Non-Party Robert Palmisano's Motion for Protective Order and Motion to Quash Deposition Subpoena and Incorporated Memorandum of Law (ECF No. 1) and Wright Medical Technology, Inc.'s Motion for

Protective Order and Motion to Quash the Deposition Subpoena to Robert Palmisano and Incorporated Memorandum of Law (ECF No. 4) are DENIED.

DONE AND ORDERED this 7th day of April, 2021, Ft. Lauderdale, Florida, Broward County.

LURANA S. SNOW
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable William P. Dimitrouleas

All Counsel of Record