

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	Civil Case No.: 3:13-cv-01579-TJC-PDB
	)	
v.	)	
	)	
CURT VANDENHEUVEL,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S MOTION FOR LIMITED RECONSIDERATION AND  
NOTICE OF COMPLIANCE WITH THE COURT’S PROTECTIVE ORDER**

COMES NOW, Defendant CURT VAN DEN HEUVEL, and Third-party AMBER VAN DEN HEUVEL, by and through the undersigned counsel, hereby files this Motion for Limited Reconsideration and Notice of Compliance with the Court’s Protective Order {Doc No. 109}, and states in support thereof:

**I. Background**

The Court has taken notice that AMBER VANDENHEUVEL was recently diagnosed with T1D (Type 1 Diabetes). In fuller context, Type 1 is an autoimmune disease whereby Amber’s body is attacking the much needed beta cells in her pancreas. There is no way to prevent it, there is no known cause, and there is no cure. What this means is that Amber is constantly monitoring her blood (several times a day and throughout the night) and doing the necessary calculations to administer the right dose of drugs and/or food to keep her glucose levels between a set range, and as even as she possibly can. She is essentially doing manually doing what the pancreas does for people automatically. If she does not manage this properly it results in highs and/or lows which can become life threatening. Amber has a CGM (continuous

glucose monitor) attached to her at all times. It is not 100% foolproof and still requires her to test her blood. Swings in to highs and low can happen fast and if not caught in time can lead to a life threatening situation. There are documented deaths on the several T1D, most of them sudden and unexpected, wherein Amber is only months into treatment. It is difficult to assess how the emotions and stress of the deposition will affects her. It also bears mentioning she graciously and bravely takes part of a T1D Study, formally par of UF Health's "Trialnet" program (<http://trialnet.diabetes.ufl.edu/research/>), requiring various combinations of drugs given to her that may help others down the road with possible treatments. However, these regiments cause major side effect ranging from nausea, bone pain, and headaches. See Exhibit "A", recent picture of Amber. There are numerous instances of young adults dying suddenly, without any warning. See attached Article Exhibit "B"

## **II. ARGUMENT**

After discussing what would transpire with Amber and her treatment providers, it became evident that the stress or other emotions may cause significant disruptions in Amber's physiology, or require numerous breaks, wherein there is a chance that Amber may not be physically capable of finishing the deposition after five to ten minutes. Given what is not know about T1D, the full implications of the deposition were not know to the undersigned counsel, the Defendant, nor Defendant's daughter. On or about March 15, 2016, Amber's doctors confirmed the need for frequent breaks to check blood glucose, treat lows/highs, and that frequently stress/anxiety causes insulin requirements to be higher than usual. Amber and Defendant seek to mitigate the impact and/or risk of such issues by requesting a written deposition in lieu of an oral deposition.

**a. A Rule 31 Written Deposition is most appropriate given the context of the Order, the condition of the deponent, and need to keep the case on schedule.**

Fed. R. Civ. P., Rule 31 permits a party to present a written deposition to a party or non-party as either stipulates by the parties, or with leave of Court. A written deposition would allow Amber to respond to those targeted questions that Plaintiff would have presented during the 90 minutes, while minimizing the impact on Amber's condition. She can take the deposition while staying in proximity to her current treatment environment well before March 31, 2016. This would also reduce costs on the parties in conducting a formal deposition.

In the Court's wisdom, in light of Amber's condition and potential for embarrassment / harassment, the Court appropriately limited the deposition to 90 minutes. A written deposition would ensure that Plaintiff is able to present all appropriate questions, without complications resulting from breaks associated with Amber's condition. An important distinction (or clarification) is that a major shift in Amber's blood levels or activation of her CGM may not require just a break from Amber's questioning, but force Amber to withdraw from further questioning, resulting in a rescheduling. If there are fluctuations, it will force her to take medication that will impair her ability to respond to the questions, and create discomfort, nausea, etc... A written deposition would circumvent that risk, by allowing the deponent to proceed at her own pace, as her medications and conditions dictate.

**b. The Written Deposition will ensure compliance with the Court's instructions and directions, therein ensuring that Amber's medical condition is not exacerbated.**

The only recourse Amber and counsel would have to embarrassing and harassing questions would be to object to form, and explain to opposing counsel that the question is

inconsistent with the Protective Order. However, the damage would already be done. Should the questions persist that are inconsistent with the Order, this would further escalate the tension and stress experienced, requiring a civil exchange between counsels as to the issue, or engagement of the bench for intervention. Alternatively, Amber may avoid exposure to such exchanges, wherein counsel could not any objections to certain questions, and Amber may proceed to respond.

**c. If the deposition is still to proceed as Ordered, Amber will require supervision to include her Mother's presence to assist as a caregiving.**

At the very least, Amber must be accompanied by a caregiver, such as her mother, should any fluctuations occur in her blood level. Accordingly, Amber and Defendant request that a stipulation be entered permitting Amber's mother to attend the deposition with her, for purposes of serving as a care giver and assisting in the monitoring of Amber's vitals. Notably, Plaintiff has expressed their willingness to pay for a nurse practitioner to physically monitor Amber throughout the course of the deposition. Should the Court find that a written deposition is not appropriate, Amber and the Defendant would request the Court allow for Amber's mother to be present during the deposition, along with a licensed Nurse Practitioner paid for by the Plaintiff.

### **III. CONCLUSION**

For the above stated reasons, a written deposition is in the best interest of the both parties, and Amber. It would allow for the least stressful environment for Amber to respond to the questions Plaintiff desires to present, would ensure that there are no interruptions or rescheduling issues, and would ensure the questions are consistent with the Court's Order.

WHEREFORE, for the foregoing reasons, Defendant, CURT VAN DEN HEUVEL and AMBER VAN DEN HEUVEL, respectfully requests that this Honorable Court enter an Amended Protective Order GRANTING providing the following:

1. That Plaintiff submit to Amber, a written deposition, consistent with all directions and instructions provided in the order
2. Amber shall have till March 31, 2016 to complete the written deposition.

Should the Court determine that a written deposition is not appropriate, then Malibu shall bear the expense to have a Nurse Practitioner physically present during the deposition to assist Amber, and allow Amber's mother to be there for assistance as well.

**NOTICE OF COMPLIANCE WITH THE COURT'S PROTECTIVE ORDER**

In compliance with the Court's Protective Order {Doc no. 110}, Opposing Counsel is herein noticed that Amber is available March 25, 2016 at 1:30 pm, March 31, 2016 at 10am, and April 1, 2016, at 10 am. While the last date is outside of the March 31, 2016 window, it is the only close date to the 31<sup>st</sup> that is available.

**CERTIFICATE OF GOOD-FAITH CONFERENCE**

I hereby certify that, I conferred with counsel for Plaintiff, and addressed the basis for this motion, wherein opposing counsel did not consent to the requested relief to supplement the oral deposition with a written deposition. Counsel for each of the parties could not agree on the matter or merits related to same.

Dated: March 16, 2016

Respectfully submitted,

By: /s/ Joshua A. Cossey  
Joshua A. Cossey (Bar No. 0059716)  
Joshua@DHClawyers.com

Charles T. Douglas (Bar No. 0025896)  
Charlie@DHClawyers.com  
Douglas Hedstrom Cossey, P.A.  
3168 US 17 South  
Orange Park, FL 32003  
Tel: (800) 369-6657  
Fax: (386) 385-5916  
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2015, a true and correct copy of the foregoing document was served via U.S. Mail and/or email to the following:

Jason H. Cooper (98476)  
jcooper@lebfirm.com  
LIPSCOMB EISENBERG & BAKER, PL  
2 South Biscayne Blvd.  
Penthouse 3800  
Miami, FL 33131  
Telephone: (786) 431-2228  
Facsimile: (786) 431-2229  
*Attorneys for Plaintiff*

By: /s/ Joshua A. Cossey