

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
THIRD DISTRICT

CASE NO. 3D2024-1318

EARL TAKEFMAN,

Petitioner,

vs.

**THE PICKLEBALL CLUB, LLC and
MATTHEW GORDON,**

Respondents.

On discretionary certiorari review of an order granting a motion for a protective order, entered by the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida

**APPENDIX TO THE PICKLEBALL CLUB, LLC AND
MATTHEW GORDON'S RESPONSE TO THE
PETITION FOR CERTIORARI**

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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-026281-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

The Pickleball Club, LLC

Plaintiff(s)

vs.

Earl Takefman

Defendant(s)

ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

This matter came before the Court on December 5, 2023, upon Plaintiff The Pickleball Club, LLC's ("TPC") Emergency Motion for a Temporary Injunction (the "Motion").^[1] TPC filed the Motion on November 14, 2023 and Defendant Earl Takefman ("Mr. Takefman") received notice on the same date. A hearing on TPC's Motion was set for December 5, 2023.^[2] In light of newly discovered evidence, on November 17, 2023, TPC filed an Emergency Motion to Expedite the Hearing. On November 20, 2023, the Court held an initial hearing and granted the Motion from the bench on a temporary basis, documented by an order dated November 26, 2023.^[3] TPC posted the required bond on November 27, 2023.^[4] The Court, having conducted an evidentiary hearing on December 5, 2023, considered TPC's Verified Complaint and the exhibits attached thereto, TPC's Emergency Motion for Temporary Injunction, TPC's Emergency Motion to Expedite the Hearing and the exhibits attached thereto, TPC's Reply in Support of its Motion for Temporary Injunction, the Affirmation of Matthew Gordon in Support of TPC's Motion and the exhibits attached thereto, four responses in Opposition to TPC's Motion submitted by Mr. Takefman and the exhibits attached thereto, all relevant legal authority submitted by the parties, the testimony of TPC's Chief Financial Officer Matthew Gordon and the testimony of Defendant Mr. Takefman, and having heard argument of counsel and Mr. Takefman (who is self-

represented)^[5], finds as follows:

FINDINGS OF FACT

Background

TPC was founded in 2019 to develop premier private indoor pickleball facilities.^[6] It opened its first pickleball facility in Lakewood Ranch, Florida in May 2023, currently has six additional facilities under development, and a growth plan to open fifteen facilities.^[7] The funding for TPC is based on private investment by individual accredited investors, and lenders.^[8]

TPC affirms that it spent thousands of hours and substantial capital to develop confidential and proprietary business information necessary to execute on its business plan and growth strategy, as well in developing its substantial relationships with existing and prospective investors, and its business goodwill.^[9] Some of the proprietary and confidential business information includes, but is not limited to, market research, development pipeline, revenue projections, membership forecasts, operating expenses, sales and marketing, its growth plan, shareholder reports, and financial statements.^[10]

TPC engaged Mr. Takefman under an Independent Contractor Agreement to perform services including scouting potential locations for pickleball clubs throughout Florida and assisting with capital investors.^[11] Before and during his affiliation with TPC, the company gave Mr. Takefman access to this business information.^[12]

To protect its proprietary business interests and information, TPC undertook significant steps including but not limited to, (i) requiring Mr. Takefman to agree to a restrictive covenant governing confidential information; (ii) restricting access to its prospective investor data room with password protected, monitored, access and ‘view-only’ rights; (iii) prohibiting distribution of any material from its confidential investor memoranda; and (iv) requiring investors to agree to

contractual confidentiality restrictions to obtain company financials in a password protected portal.^[13]

The Independent Contractor Agreement and the Release Agreement

TPC secured Mr. Takefman’s services under an Independent Contractor Agreement dated January 23, 2023, (“Independent Contractor Agreement”) to perform services including scouting potential locations for pickleball clubs throughout Florida and assisting with capital investors.^[14]

The Independent Contractor Agreement contains confidentiality covenants set forth in Appendix B.^[15] The term “Confidential Information” includes:

[A]ny Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom Consultant called or with whom Consultant became acquainted during the term of my provision of services for the Company), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to Consultant by the Company either directly or indirectly in writing, orally or by drawings or observation...^[16]

The Independent Contractor Agreement further mandates that Mr. Takefman shall use Confidential Information “solely for the Company’s benefit... [and] during the term of Employment and thereafter, all Confidential Information shall be the property of the Company and Consultant shall have no interest in it whatsoever.”^[17]

TPC terminated Mr. Takefman on or about July 5-6, 2023, and on or about September 16, 2023, the parties entered a second agreement titled the Settlement and Release Agreement (“Release Agreement”).^[18] The confidentiality restriction in the Independent Contractor Agreement survived the Release Agreement.^[19] In the Release Agreement, Mr. Takefman agreed to two additional confidentiality obligations. Section 5 of the Release Agreement mandates that Mr. Takefman shall “destroy any TPC confidential information . . . including any proprietary

information . . . recordings, software, business plans, videos, and memoranda” and under “no circumstances,” “publish or disclose” any of this information.”^[20] Additionally, Section 8 of the Release Agreement prescribes that Mr. Takefman shall not “participate in or contribute to any public discussion” regarding any of the “allegations and facts of this case,” including but not limited to posting on LinkedIn.^[21] Under the Release Agreement, Mr. Takefman agreed that if he violated the confidentiality obligation, he would be required to disgorge the settlement payment in addition to any other damages.^[22]

Mr. Takefman’s Poor Job Performance and Demand for Increased Pay

TPC avers that Mr. Takefman performed his job duties poorly, but despite this, he insisted on increased responsibilities and increased pay.^[23] In an email dated April 14, 2023, Mr. Gordon documented instances where Mr. Takefman exceeded his role in connection with real estate transactions.^[24] He wrote: “You[r] role . . . is to locat[e] and initiate; you’ve done it, now you have to let the other members of the team perform their roles . . . [P]lease don’t be upset.”^[25] On June 1, 2023, in connection with TPC’s attempt to acquire real estate to develop a new facility, TPC’s Chief Executive Officer described Mr. Takefman’s excessive contact with the real estate broker as a “nuisance” and an “interfer[ence].”^[26] On June 13, 2023, Mr. Takefman ignored direct instructions from Mr. Gordon and emailed a potential target with unapproved questions.^[27] Mr. Gordon explained: “I asked you for the questions so I could comment on them. slow down.” *Id.*

At the same time, Mr. Takefman insisted on pay increases.^[28] In an email thread dated July 3, 2023, Mr. Takefman became more insistent stating: “Please don't cancel our scheduled call at 10 am regarding compensation” and then demanding: “Why wasn't I paid?????????”^[29] The issue came to an impasse—and resulted in his termination—when his payment demands turned into threats:

That's not the way it was handled in the past. I was paid the \$8,333.00 before I even earned it.

We had better talk quickly!

You are pushing us where we both do not want to go.^[30]

TPC terminated Mr. Takefman on or about July 5 or 6, 2023.^[31]

TPC's Efforts to Protect Its Confidential and Proprietary Business Information

To protect its proprietary business interests and information, TPC employed reasonable efforts under the circumstances, including but not limited to the following steps. TPC required Mr. Takefman to agree to a restrictive covenant governing the receipt and use of confidential information.^[32] For prospective investors, TPC maintains a virtual data room through 'DocSend' which creates a unique virtual data room for each person.^[33] The data room is password protected.^[34] TPC limits the access in the virtual data room by time and by limiting the viewing rights to 'view-only,' ensuring the material does not leave the data room via download or otherwise.^[35] The prospective investor data room typically contains the confidential investor memorandum, operating agreement, and subscription agreement.^[36] To access the confidential investor memorandum the prospective investor acknowledges that "Distribution of the presentation to any person other than the recipient and those persons retained to advise the recipient is unauthorized. Materials must not be copied, reproduced, distributed, or passed to others at any time without the prior written consent of the company."^[37]

Investors of TPC are bound by contractual confidentiality obligations through the operating and subscription

agreements.^[38] TPC maintains a separate investor portal for current investors with additional proprietary business information such as financial statements, reports from the company's accounting firm, and shareholder updates.^[39] The investor portal has additional layers of security and requires two-factor authentication linked to each individual shareholder's email address.^[40]

TPC Terminates Mr. Takefman and He Downloads Documents

TPC terminated Mr. Takefman on or about July 5-6, 2023.^[41] On July 6, 2023, after his termination, Mr. Takefman downloaded confidential information from TPC's password-protected document management system, including confidential investor memoranda, management presentations, operating agreements, and subscription agreements.^[42] The confidential investor memoranda contain information that includes, but is not limited to, market research, development plans, revenue projections, membership forecasts, operating expenses, sales and marketing, and TPC's business and growth plan.^[43] Mr. Takefman admits to downloading the documents but claims that he did so because he believed they would be discoverable in a future litigation.^[44]

Mr. Takefman's Email to TPC Following the Release Agreement

On September 16, 2023, the Parties entered into the Release Agreement.^[45] On or about September 23, 2023, Mr. Takefman received the settlement payment under the Release Agreement.^[46] Just two days after receiving the settlement payment, on September 25, 2023, Mr. Takefman emailed TPC and its legal counsel:

BTW, the agreement you created was the worst release and discharge agreement I have ever seen drafted by any lawyer. . . [Y]ou left your clients totally vulnerable by eliminating the non-disparagement obligations altogether.^[47] Such bad lawyering. Perhaps you should have sought legal advice from others.^[47]

Mr. Takefman's Conduct Following the Release Agreement

Also on September 25, 2023, the same day that he emailed TPC about the lack of a

contractual non-disparagement clause, he initiated contact with an investor to discuss the ‘Round D’ confidential investor memorandum and explained he wanted to “offer some advice” because he “no longer believe[d] in their business model.”^[48] On November 3, 2023, Mr. Takefman emailed the same investor and stated what his true intention was: “My ONLY intentions in contacting you were to try and help you recover your money, if you felt that you ‘wanted out.’”^[49]

Beginning on September 25, 2023, Mr. Takefman contacted several investors with similar communications. For example, on September 28, 2023, Mr. Takefman emailed Investor G.B. to review the Round D Investment documents and then suggested specific questions that Investor G.B. should pose to TPC.^[50] Mr. Takefman’s inquiries with investors soon extended beyond the information already in his possession. For example, Mr. Takefman admits that in October 2023 he set up a Zoom call with Investor G.B. to review the “latest interim financial results from the shareholder portal.”^[51]

On October 2, 2023, Mr. Takefman contacted Investor M.M. and requested a copy of TPC’s shareholder update that is sent solely to existing investors on a confidential basis—and Investor M.M. complied.^[52] Mr. Takefman next asked Investor M.M. to “send [profit and loss] info from their portal.”^[53]

Also in October 2023, through a series of additional emails, Mr. Takefman asked Investor M.M. to request the identity of a fellow investor in TPC and through Investor M.M., learned that investor was a principal of a private equity firm.^[54] Mr. Takefman took that information and directly emailed the senior officers of that private equity firm with the subject line ‘WARNING – The Pickleball Club.’^[55]

On or about October 26, 2023, Mr. Takefman publicly posted to LinkedIn soliciting any investor of TPC to contact him: “If anyone is [sic] my network is an existing shareholder of The

Pickleball Club please message or email me at eMr. Takefman@hotmail.com.”^[56]

On November 14, 2023, Mr. Takefman sent an email ‘bcc’ to an unknown number of investors in which he stated his purpose was to “cause you to reconsider my warnings,” and purported to share quotes from twelve anonymous investors and ex-employees of TPC that Mr. Takefman had allegedly collected.^[57] He added a disclaimer that he had not verified any of the statements himself.^[58] In the same email, he told TPC’s investors that he disclosed information from TPC’s financial forecasts to several competitors: “I have spoken to the CEO and owners of all the other pickleball clubs. The Pickle Mall, The Picklr, Ace Pickleball, Diadem, Dill Dinkers, Center Court, and others . . . NOT A SINGLE ONE believes that Matt’s forecasted sales . . . has even a 1% chance of being realized.”^[59] Finally, he concluded the email by offering to schedule a Zoom conference.^[60]

CONCLUSIONS OF LAW

I. LEGAL STANDARD

Under Florida law “a court shall enforce a restrictive covenant by any appropriate and effective remedy, including, but not limited to, temporary and permanent injunctions.” Fla. Stat. § 542.335(1)(j). TPC has proven the elements required for the issuance of a temporary injunction: (1) a substantial likelihood of success on the merits; (2) irreparable harm; (3) lack of an adequate remedy at law; and (4) that temporary injunctive relief will serve the public interest. *Family Heritage Life Ins. Co. of Am. v. Combined Ins. Co. of Am.*, 319 So. 3d 680, 684 (Fla. 3d DCA 2021); *Alonso-Llamazares v. Int’l Derm. Rsch., Inc.*, 339 So. 3d 385, 392–93 (Fla. 3d DCA 2022). The Court finds that TPC has met its burden to establish each of these elements.

II. TPC HAS SATISFIED THE ELEMENTS FOR A TEMPORARY INJUNCTION ON ITS BREACH OF CONTRACT CLAIM.

A court “shall construe a restrictive covenant in favor of providing reasonable protection to all legitimate business interests established by the person seeking enforcement.” Fla. Stat. § 542.335(1)(g)(4). Section 542.335(1)(b) provides a non-exhaustive list of statutorily protected legitimate business interests. This list includes “valuable confidential business or professional information that otherwise does not qualify as trade secrets,” “substantial relationships with specific prospective or existing customers,” and goodwill associated with an “ongoing business or professional practice.” *Id.*; see *Allied Universal Corp. v. Given*, 223 So. 3d 1040, 1043 (Fla. 3d DCA 2017).

The restrictive covenants of the Independent Contractor Agreement and the Release Agreement are enforceable to protect TPC’s legitimate business interests. At the evidentiary hearing on the motion for temporary injunction, TPC presented unrebutted evidence of the existence of statutorily legitimate business interests to be protected. TPC’s Chief Financial Officer, Mr. Gordon, testified that the company spent thousands of hours and substantial capital to develop confidential and proprietary business information necessary to execute on its business plan and growth strategy, as well as in developing its substantial relationships with existing and prospective investors, and its business goodwill.^[61] Some of the proprietary and confidential business information includes, but is not limited to, market research, development pipeline, revenue projections, membership forecasts, operating expenses, sales and marketing, its growth plan, shareholder reports, and financial statements.^[62] As such, TPC’s evidence was sufficient to create a rebuttable presumption of irreparable injury for purposes of obtaining a temporary injunction under section Fla. Stat. § 542.335(j).

The burden then shifted to Mr. Takefman, the party opposing enforcement, to establish the absence of an injury. Fla. Stat. § 542.335(j). Mr. Takefman failed to present such evidence. Mr. Takefman argues that he did not breach the confidentiality covenant because the information that he used falls within an exception to the meaning of ‘confidential information’ under the

Independent Contractor Agreement:

Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act or omission of Consultant or of others who were under confidentiality obligations as to the item or items involved or improvements or new versions thereof. [\[63\]](#)

The Court disagrees. The information Mr. Takefman downloaded and later discussed with investors, such as the Round D confidential investor memorandum, cannot fall within the exception because it is not “publicly known.” TPC has established that it employed reasonable measures to protect the confidentiality of its proprietary business information under the circumstances, including password protection and restricted access viewing. *See e.g., Southeastern Mechanical Services, Inc.*, 2008 WL 4613046 at *9 (citing *US Green Fiber v. Brooks*, No. 02–2215, 2002 U.S. Dist. LEXIS 27944, at *12 (W.D.La. Oct. 25, 2002) (plaintiff took reasonable efforts to maintain the secrecy of information by instituting a confidentiality policy and by using password protection to limit access to this information to authorized employees). Further, the information was not “made generally available through no wrongful act or omission of Consultant or of others who were under confidentiality obligations.” The evidence shows that Mr. Takefman obtained additional confidential information by soliciting it from investors, who themselves are subject to confidentiality obligations, in an improper attempt to circumvent the restriction. *See e.g., Southeastern Mechanical Services, Inc. v. Brody*, 2008 WL 4613046 at *9 (Granting temporary injunction where “[Defendant] circumvented [TPC]’s restricted access to financial information by obtaining some information from another [TPC] employee.”).

Mr. Takefman further argues that no harm has occurred because TPC has raised additional capital and grown its business since his departure. However, it is well-established that proof of actual harm is not required at the temporary injunction stage because (i) irreparable harm is presumed under Fla. Stat. § 542.335 and (ii) the very purpose of injunctive relief is prospective in nature. *See Capraro v. Lanier Bus. Prods., Inc.*, 466 So.2d 212, 213 (Fla. 1985). A party seeking

injunctive relief is required to establish a likelihood of irreparable harm and threatened injury-not that the harm has already occurred. *See Reliance Wholesale v. Godfrey*, 51 So.3d 561, 564 (Fla. 3d DCA 2010). TPC’s Chief Financial Officer testified that if its proprietary business information were made public, it “could be used as a roadmap” for competitors to undermine TPC’s growth plan.^[64] Further, the evidence demonstrates that Mr. Takefman’s intention is to cause investors to seek a return of their investment and his ventures into the public sphere are likely to cause reputational damage to TPC, hindering its ability to operate and grow as planned. There is no adequate remedy at law for disclosure of this type of confidential information nor is there an adequate remedy at law to prevent future harm to the business. *Am. II Elecs., Inc. v. Smith*, 830 So.2d 906, 908 (Fla. 2d DCA 2002) (recognizing that “a party seeking to enforce a restrictive covenant by injunction need not directly prove that the defendant’s specific activities will cause irreparable injury if not enjoined”). “To require that a plaintiff prove irreparable injury as a prerequisite to injunctive relief, as petitioner urges, would, in most instances, defeat the purpose of the plaintiff’s action. Immediate injunctive relief is the essence of such suits and oftentimes the only effectual relief. It truly can be said in this type of litigation that relief delayed is relief denied.” *Capraro v. Lanier Bus. Prod., Inc.*, 466 So.2d 212, 213 (Fla. 1985).

Finally, granting the injunction request serves the public interest. The public has a “cognizable interest” in the protection and enforcement of contractual rights. *Telemundo Media, LLC v. Mintz* No. 3D16-154 (Fla. 3d DCA May 6, 2016) (citing *Hilb Rogal & Hobbs of Fla., Inc. v. Grimmel*, 48 So. 3d 957, 962 (Fla. 4th DCA 2010)). More specifically, enforcement of the contractual rights in this case furthers the public policy rationale underlying § 542.335, Florida Statutes: “A court shall construe a restrictive covenant in favor of providing reasonable protection to all legitimate business interests established by the person seeking performance.” Fla. Stat. § 542.335(1)(h).

Accordingly, TPC has made the requisite showings for the issuance of an injunction on its

breach of contract claim.

III. TPC HAS SATISFIED THE ELEMENTS FOR A TEMPORARY INJUNCTION ON ITS TORTIOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONSHIPS CLAIM.

Tortious interference with business relationships provides a separate and distinct basis for the issuance of a temporary injunction. The elements of tortious interference with an advantageous business relationship are fourfold: (1) the existence of a business relationship, not necessarily evidenced by an enforceable contract; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff because of the breach of the relationship. *GNB, Inc. v. United Danco Batteries, Inc.*, 627 So. 2d 492, 494 (Fla. Dist. Ct. App. 1993) (citing *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126 (Fla.1985)). The party who seeks a temporary injunction under this cause of action is generally required to show: “(1) a clear legal right or interest in the subject matter of the suit, (2) a substantial likelihood of success on the merits, and (3) the likelihood of irreparable harm because of the unavailability of an adequate remedy at law.” 29 Fla. Jur. 2d Injunctions § 48 (citing *Advantage Digital Systems, Inc. v. Digital Imaging Services, Inc.*, 870 So. 2d 111, 111 (Fla. 2d DCA 2003)). TPC has presented sufficient evidence that it is substantially likely to succeed on the merits of this cause of action.

TPC has established the existence of an advantageous business relationship between TPC and its current investors and between TPC and certain prospective investors that were in active discussions. The relationship between TPC and its current investors is established by contract, i.e. subscription agreements.^[65] Florida courts recognize the relationship between an investor and a private business in this context. *See e.g., Alphamed Pharms. Corp. v. Arriva Pharms., Inc.*, 391 F. Supp. 2d 1148, 1165 (S.D. Fla. 2005) (denying motion to dismiss tortious interference claim premised on interference with relationship between biopharmaceutical company and its “chief

investor.”). But a business relationship or prospective business relationship does not need to be evidenced by an enforceable contract to be the subject of improper interference. *Charles Wallace Co. v. Alternative Copier Concepts, Inc.*, 583 So. 2d 396, 397 (Fla. 2d DCA 1991). Florida courts also recognize a business relationship with prospective investors where tortious conduct delays or interferes with additional investment opportunities. *See e.g., Fusion Properties Mgmt. Grp., Inc. v. Ocelotl Grp. LLC*, No. 22-60135-CIV, 2022 WL 3575350, at *3 (S.D. Fla. Aug. 11, 2022), *report and recommendation adopted*, No. 22-CV-60135, 2022 WL 3577110 (S.D. Fla. Aug. 19, 2022) (holding competitor tortiously interfered by posting disparaging press release to farming equipment manufacturer’s Facebook page, resulting in current and prospective investors cancelling tour of manufacturer’s facility). TPC’s Chief Financial Officer testified that one of TPC’s strongest avenues of raising capital has been from “[current] investors investing in subsequent rounds.”^[66] He also testified that TPC has received a “good stream of investors who referred their friends and business acquaintances” who became investors.^[67] Finally, he testified that a number of investors and potential investors who were in active discussions are “kind of stunned and upset,” and likely cannot “continue those tracts.”^[68] Mr. Takefman, hired as an independent contractor to assist with raising capital, had knowledge of TPC’s business relationships.

Mr. Takefman interfered by directly contacting TPC’s investors by email and by phone after he was terminated, by disparaging the company, by soliciting and misusing proprietary information obtained from current investors, by contacting and ‘warning’ the employer of TPC’s largest investor, by publicly soliciting all TPC investors to contact him via LinkedIn, by circulating unverified and defamatory quotes from anonymous sources to current investors, and among other things, telling investors that TPC’s competitors do not believe the sales projections he shared with them will be achieved. Much like *Fusion Properties Mgmt. Grp., Inc. v. Ocelotl Grp. LLC*, where a competitor emailed investors and posted a disparaging press release in a Facebook group with known investors, Mr. Takefman has interfered with TPC’s business

relationships with investors by disparaging TPC's business through email and public solicitation. 2022 WL 3575350, at *3.

Mr. Takefman's interference was unjustified. The concept of justification is a two-prong issue involving both motive and method. First, a defendant's interference with advantageous business relationships motivated solely out of malice or ill will, with no valid business purpose, is tortious without regard to the method of interference. *GNB, Inc.* 627 So. 2d at 492 (citing *McCurdy v. Collis*, 508 So.2d 380 (Fla. 1st DCA), *review denied*, 518 So.2d 1274 (Fla.1987)). On the other hand, if a defendant has a valid business purpose, interference with advantageous business relationships is still tortious if improper means are employed. *Id.* (citing *Security Title Guarantee Corp. of Baltimore v. McDill Columbus Corp.*, 543 So.2d 852, 855 (Fla. 2d DCA 1989) (internal quotation omitted)).

Mr. Takefman's interference was not motivated by financial interest or competition. He never invested any money in TPC, has no financial interest in the operation of the business, and no financial interest in the outcome of anyone else's investment.^[69] See Florida Standard Jury Instructions in Civil Cases § 408.8, *Affirmative Defense – Financial Interest*; see *Security Title Guarantee Corp. of Baltimore v. McDill Columbus Corp.*, 543 So. 2d 852, 855 (Fla. 2d DCA 1989) (“The unchallengeable controlling principle is that ‘so long as improper means are not employed, activities taken to safeguard or promote one’s own financial . . . interests are entirely nonactionable.’”). Similarly, none of Mr. Takefman's statements to investors were motivated by competition nor does Mr. Takefman argue that he is in the pickleball industry today. Thus, Mr. Takefman's conduct is not protected by any qualified business privilege. See Florida Standard Jury Instructions in Civil Cases § 408.7, *Affirmative Defense – Competition*; *Perez v. Rivera*, 534 So. 2d 914, 916 (Fla. 3d DCA 1988) (“If the defendant can prove that the interference was lawful competition—a privilege which the courts recognize when a contract is terminable at will—the defendant will not be found to have committed the tort of wrongful business interference.”). Neither the financial interest nor the competition affirmative defenses excuse Mr. Takefman's conduct.

Where a defendant has interfered with a business relationship without a qualified privilege, the question becomes whether the conduct was motivated by malice or ill will. *See GNB, Inc.* 627 So. 2d at 492. If the defendant’s motivation was malice, then an action for tortious interference is appropriately stated. Here, TPC presented evidence that demonstrates a substantial likelihood that Mr. Takefman was motivated to harm the company that fired him. TPC terminated Mr. Takefman after repeatedly exceeding his authority and his duties in search of increased opportunities. Although his responsibility with real estate transactions was to “locate and initiate,” he inserted himself in the more complicated facets and ultimately, the Chief Executive Officer described him as a “nuisance” and “interference.”^[70] At the same time, he insisted on increased compensation and when his demands were not met, they turned into threats. On July 3, 2023, Mr. Takefman emailed the Chief Financial Officer the following statements: “Please don't cancel our scheduled call at 10 am regarding compensation” and “We had better talk quickly! You are pushing us where we both do not want to go.”^[71] The evidence of Mr. Takefman’s conduct after his termination also supports the conclusion that he acted out of ill will. On September 25, 2023, two days after receiving his settlement payment, Mr. Takefman emailed TPC’s legal counsel that he “left [TPC] totally vulnerable by eliminating the non-disparagement obligations” from the Release Agreement.^[72] The same day he contacted an investor to discuss the Round D investment documents and “offer advice,” but later told the same investor his intention was to “help you recovery your money.”^[73] Having observed the testimony, and considering all the evidence, the Court rejects and gives no weight to Mr. Takefman’s testimony that he was motivated by his conscience to protect persons to whom he had recommended to invest in TPC.

Mr. Takefman argues that he was terminated for a different reason which provides justification. At the hearing on the motion for temporary injunction, Mr. Takefman suggested he was terminated for raising concerns to TPC’s management about its financial projections.^[74] But the substantial weight of the evidence disproves this. On July 18, 2023, after his termination and after he allegedly raised these concerns, he attempted to broker a transaction between TPC and a

lender using the very same forecasts he purportedly disavowed.^[75] His motivation was clear: to be compensated. In this transaction, Mr. Takefman proposed that he would be paid a \$125,000 fee plus 3% of future loans given by this lender.^[76] The Court therefore determines that TPC has proved that there is a substantial likelihood of success on the merits at trial and that Defendant's interference was not justified.

In the absence of an injunction, TPC will suffer irreparable harm for which there is no adequate remedy at law. TPC need not establish actual damages to succeed on its motion for temporary injunction. A party seeking injunctive relief is required to establish a likelihood of irreparable harm and threatened injury-not that the harm has already occurred. *See Reliance Wholesale*, 51 So.3d at 564. An injunction is an appropriate remedy for tortious interference claims where it serves to restrain future tortious conduct from interfering with business relationships involving loss of future business and reputational harm. *See Azar v. Lehigh Corp.*, 364 So. 2d 860 (Fla. 2d DCA 1978) (upholding temporary restraining order enjoining former employee from soliciting motel owner and real estate developer's guests and inducing them to rescind real estate purchase agreements to purchase cheaper property); *see Advantage Digital Systems, Inc.*, 870 So. 2d at 116 ("By its nature, an injunction restrains commission of a future injury; a court cannot prevent what has already occurred. . .").

Furthermore, public policy weighs in favor of issuing the temporary injunction. The public interest is served by allowing TPC to operate its business, which provides outdoor entertainment to Florida communities, without unjust interference. Conversely, Mr. Takefman has no identifiable interest in the subject matter to be restrained. Moreover, courts have the authority to enjoin a defendant's speech where defamatory words were made in the furtherance of the commission of another tort, such as tortious interference with business relations. *See Zimmerman v. D.C.A. at Welleby, Inc.*, 505 So.2d 1371 (Fla. 4th DCA 1987); *see also Murtagh v. Hurley*, 40 So.3d 62 (Fla. 2d DCA 2010)^[77].

Accordingly, all the requisite elements for injunctive relief exist and injunctive relief against Mr. Takefman is warranted, Plaintiff's Motion is **GRANTED**, and the Court will enjoin Mr. Takefman as follows:

TEMPORARY INJUNCTION

1. Earl Mr. Takefman and all persons in active concert or participation with him shall be temporarily enjoined from:

- a. using, disclosing, or continuing to possess TPC's confidential or proprietary information, including but not limited to, its investor memoranda, management presentations, shareholder updates or reports, financial statements, bank statements, business plans, and investor or prospective investor lists or contact information, ether original, copied, duplicated, reproduced, computerized, handwritten, recreated, compiled, or stored in any way whatsoever (including on computer software, USB removable drive, disk, laptop or desktop computer, tablet, iPhone or other android device, removable hard drive, and/or any other type of computer of digital information storage device);
- b. attempting to obtain additional confidential or proprietary information of TPC;
- c. communicating with any investor, prospective investor, shareholder, lender, member, competitor, or other business associates of TPC to discuss any confidential or proprietary business information of TPC, assist them with seeking to rescind their investments or dissuade future investments, or otherwise disparage TPC, including but not limited to, disparaging its individual members and its management; and
- d. directly or indirectly making public remarks or solicitations, including the use of social media or news outlets, to disparage TPC, including but not limited to its individual members and its management, or solicits communications from its investors and to the extent any such public comments are currently posted, to remove them.

2. Earl Mr. Takefman and all persons in active concert or participation with him shall Abide by the restrictive covenants in the independent contractor agreement and settlement and release

agreement.

3. Within 14 days of the entry of the Order Mr. Takefman and all persons in active concert or participation with him shall turn over to TPC all confidential and proprietary information of TPC.
4. Within 21 days of the entry of the Order Mr. Takefman and all persons in active concert or participation with him shall turn over to TPC all communications, including email, text messages, or other written messages, with TPC's investors, prospective investors, shareholders, members, competitors, lenders, or other business associates, regarding TPC dated after July 5, 2023.

BOND TO BE POSTED

TPC has already posted a bond of \$10,000, which shall remain posted as surety throughout the duration of the temporary injunction.

DURATION OF TEMPORARY INJUNCTION

The Temporary Injunction will remain in effect until final judgment has been entered in this case, or until further order of this Court dissolving or amending the temporary injunction.

[\[1\]](#) Dkt. 10.

[\[2\]](#) Dkt. 20.

[\[3\]](#) Dkt. 21; Dkt. 26.

[\[4\]](#) Dkt. 27.

[\[5\]](#) The Court expressly notes that it has reviewed the emails and attachments emailed to the Court on December 22, 2023 by Mr. Takefman from etakefman@hotmail.com and etakefman1@gmail.com.

- [\[6\]](#) Verified Compl. at ¶ 6.
- [\[7\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 45:21-24); Verified Compl. at ¶ 10.
- [\[8\]](#) Verified Compl. at ¶ 11.
- [\[9\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 58-61.
- [\[10\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 46-59.
- [\[11\]](#) Verified Compl. at Ex. 1, App. A.
- [\[12\]](#) Verified Compl. at Ex. 1, App. B.
- [\[13\]](#) Verified Compl. at Ex. 1, App. B; Dec.5, 2023 Hearing Tr. (Gordon) at 48-58.
- [\[14\]](#) Verified Compl. at Ex. 1, App. A.
- [\[15\]](#) Verified Compl. at ¶¶ 15-17.
- [\[16\]](#) Verified Compl. at Ex. 1, App. B.
- [\[17\]](#) Verified Compl. at Ex. 1, App. B.
- [\[18\]](#) Dec.5, 2023 Hearing Tr. (Mr. Takefman) at 15; Verified Compl. at ¶ 20, Ex. 2.
- [\[19\]](#) Verified Compl. at ¶ 21 Ex. 2 § 5.
- [\[20\]](#) Verified Compl. Ex. 2 at § 5.
- [\[21\]](#) Verified Compl. Ex. 2 at § 8.
- [\[22\]](#) Verified Compl. Ex. 2 at § 5.
- [\[23\]](#) Post-Hearing Affirmation of Matt Gordon (“Second Gordon Aff.”) at Ex. 32-36.
- [\[24\]](#) Second Gordon Aff. at Ex. 32, April 14, 2023 Gordon Email.
- [\[25\]](#) *Id.*
- [\[26\]](#) *See* Second Gordon Aff. at Ex. 33, June 1, 2023 Brian McCarthy Email.
- [\[27\]](#) *See* Second Gordon Aff. at Ex. 34, June 13, 2023 Mr. Takefman and Gordon Email.
- [\[28\]](#) *See* Second Gordon Aff. at Ex. 35, June 28, 2023 Mr. Takefman Email.
- [\[29\]](#) *See* Second Gordon Aff. at Ex. 36, July 3, 2023 Mr. Takefman Email.

[\[30\]](#) *Id.*

[\[31\]](#) Dec.5, 2023 Hearing Tr. (Mr. Takefman) at 15.

[\[32\]](#) Verified Compl. at Ex. 1, App. B.

[\[33\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 47-48.

[\[34\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 48.

[\[35\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 49.

[\[36\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 49.

[\[37\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 58.

[\[38\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 60.

[\[39\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 59-60.

[\[40\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 60.

[\[41\]](#) Dec.5, 2023 Hearing Tr. (Mr. Takefman) at 15.

[\[42\]](#) *Id.*; (Dkt. 33, Affirmation of Matthew Gordon dated December 1, 2023 in Support of TPC’s Reply Brief in Support of Motion for Temporary Injunction (“Gordon Aff.”), at ¶ 6, Ex. 31.),

[\[43\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 46-59.

[\[44\]](#) Dec.5, 2023 Hearing Tr. (Mr. Takefman) at 16:10-25.

[\[45\]](#) Verified Compl. at ¶ 20, Ex. 2.

[\[46\]](#) Hearing Tr. (Mr. Takefman) at 29:12-22.

[\[47\]](#) (Dkt. 33, Reply Affirmation of Matt Gordon (“Gordon Aff.”) at Ex. 28, September 25, 2023 Mr. Takefman Email) (emphasis in original).

[\[48\]](#) Verified Compl. at Ex. 3.

[\[49\]](#) Verified Compl. at ¶ 54., Ex. 22.

[\[50\]](#) Verified Compl. at ¶¶ 28-29, Ex. 5

[\[51\]](#) Defendant’s Submission of Evidence for Dec. 5th Evidentiary Hearing at 14.

[\[52\]](#) Verified Compl. at ¶¶ 30-31. Ex. 6.

[\[53\]](#) Verified Compl. at ¶ 32, Ex. 7.

[\[54\]](#) Verified Compl. at ¶¶ 33-36, Ex. 8-10.

[\[55\]](#) Verified Compl. at ¶¶ 39-41, Ex. 13.

[\[56\]](#) Verified Compl. at ¶ 46, Ex. 16.

[\[57\]](#) Pl.'s Mot. to Expedite, Ex. A.

[\[58\]](#) *Id.*

[\[59\]](#) *Id.*

[\[60\]](#) *Id.*

[\[61\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 58-61.

[\[62\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 46-59.

[\[63\]](#) Verified Compl. at Ex. A, App. B,

[\[64\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 61.

[\[65\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 60.

[\[66\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 63:23-25.

[\[67\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 64:1-5.

[\[68\]](#) Dec.5, 2023 Hearing Tr. (Gordon) at 64:6-11.

[\[69\]](#) Dec. 5, 2023 Hearing Tr. (Mr. Takefman) at 14-15.

[\[70\]](#) Second Gordon Aff., Ex. 32-34.

[\[71\]](#) Second Gordon Aff., Ex. 35.

[\[72\]](#) Gordon Aff., Ex. 28.

[\[73\]](#) Verified Compl. at Ex. 3, 23.

[\[74\]](#) Hearing Tr. (Mr. Takefman) at 108.

[\[75\]](#) *See* Second Gordon Aff. at Ex. 36, July 18, 2023 Mr. Takefman and Gordon Email.

[76] *Id.*

[77] The court also addressed **the occupants' argument that the injunction interfered with their constitutional right of free speech**. *Id.* at 1374–76. The court recognized authority standing for the proposition that equity will generally not be used to enjoin a person from making allegedly defamatory statements. *Id.* at 1375. However, the court noted an exception for cases in which such defamatory statements are “uttered or published incident to another tort.” *Id.* The court explained that such defamatory statements constitute “verbal acts,” which “are published or made as a part and parcel of a course of conduct deliberately carried on to further a fraudulent or other unlawful purpose,” and that injunctive relief to prevent irreparable injury based on these verbal acts was proper. *Id.* (quoting *West Willow Realty Corp. v. Taylor*, 23 Misc.2d 867, 198 N.Y.S.2d 196, 198 (N.Y.Sup.Ct.1960)).

Based on this analysis, the court upheld the injunction in part, stating as follows:

We approve the trial court's finding that some of the activities enjoined constitute or are incident to conduct which constitutes intentional interference with potentially advantageous business relationships, and that the rights thus tortiously violated are entitled to be protected by equitable intervention in the form of a temporary injunction.

Id. at 1376.

Murtagh v. Hurley, 40 So. 3d 62, 66 (Fla. 2d DCA 2010) (emphasis added).

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 2nd day of January, 2024.


2023-026281-CA-01 01-02-2024 3:45 PM

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Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE PICKLEBALL CLUB, LLC,
a Florida Limited Liability Company,

Plaintiff,

vs.

COMPLEX BUSINESS DIVISION

Case No: 2023-026281-CA-01

EARL TAKEFMAN, Individually,

Defendant.

_____ /

NOTICE OF HEARING

PLEASE TAKE NOTICE that on May 3, 2024 at 11:00 a.m. EST, or as soon thereafter as counsel may be heard, Plaintiff will call up for hearing its Motion for Protective Order, [DKT 70], before the Honorable Thomas J. Rebull. The hearing will be conducted in person, at the Dade County Courthouse, 73 West Flagler Street, Room DCC 817, Miami, FL 33130.¹ One hour has been reserved for this hearing.

Dated this 29th day of April, 2024.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

/s/ Scott N. Sherman

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Florida Bar No. 0020159
201 17th Street NW, Suite 1700
Atlanta, GA 30363
(404) 322-6231
Joshua R. Lewin, Esq.
Florida Bar No. 1034789
2 South Biscayne Boulevard
21st Floor
Miami, Florida 33131

¹ Should any party have an issue with travel, accommodation will be made to attend the hearing via Zoom.

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Primary Email: Scott.Sherman@nelsonmullins.com

Primary Email: Josh.Lewin@nelsonmullins.com

Secondary Email: Marisa.Armaz@nelsonmullins.com

Secondary Email: Yasmin.Alatin@nelsonmullins.com

Attorneys for Plaintiff and Counterclaim Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2024, I certify that the foregoing document is being served this day on Defendant via transmission generated by the Florida Courts E-Filing Portal and e-mail to 'etakefman@hotmail.com.'

/s/ Joshua R. Lewin _____

Joshua R. Lewin

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-026281-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

The Pickleball Club, LLC

Plaintiff(s)

vs.

Earl Takefman

Defendant(s)

**FIRST ORDER ON PLAINTIFF THE PICKLEBALL CLUB, LLC'S MOTION FOR
PROTECTIVE ORDER AND DEFENDANT EARL TAKEFMAN'S MOTION TO
COMPEL IMPROVED DISCOVERY**

This action came before the Court on May 3, 2024, upon Plaintiff The Pickleball Club, LLC's ("TPC") Motion for Protective Order ("the "Motion") and Defendant Earl Takefman's ("Mr. Takefman") Cross-Motion to Compel Improved Discovery. The Court, having considered the motions, heard argument of counsel and Mr. Takefman (who is self-represented), rules as follows:

This order only addresses the depositions Mr. Takefman seeks of "existing investors," "prospective investors," and the "private equity firm."

TPC accuses Mr. Takefman as follows in Count 2 of its complaint:

76. TAKEFMAN intentionally and unjustifiably interfered with the business relationships between TPC and investors

77. TAKEFMAN intentionally and unjustifiably interfered with the business relationship of TPC and the private equity firm by **contacting members of that firm** and disseminating misleading information about TPC.

78. Because TAKEFMAN was employed as an independent contractor for TPC, he

also

has knowledge of TPC's business model and intentionally and unjustifiably interfered with the

business relationship between TPC, its investors and **prospective investors**.

(emphasis added).

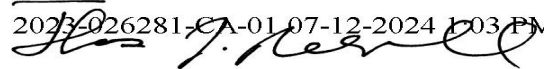
TPC has put in issue its relationship with its existing and prospective investors, and a private equity firm. It accuses Mr. Takefman of having done something which was the legal cause of damage to the relationship between TPC and these nonparties. Mr. Takefman is certainly entitled to know the identity of the specific human beings who it claims Mr. Takefman contacted to damage TPC's relationship with them. Moreover, he is plainly entitled to take their depositions to inquire, among other things, whether anything he did caused them to change their relationship with TPC in a manner adverse to TPC. It may be, for example, that after having considered Mr. Takefman's communications, a particular investor will testify that they decided not to change anything about their existing relationship with TPC; or that they chose to disregard Mr. Takefman's communications and warnings. In such a scenario, it would be difficult for TPC to prove that Mr. Takefman interfered with that relationship or caused any harm to TPC as it relates to that identified investor.

If TPC wants the Court to appoint a special master to preside over these depositions, and it is willing to bear that expense, the Court is certainly amenable to such a request. But having alleged that Mr. Takefman interfered with its relationship with certain nonparties, the law does not permit the Court to preclude Mr. Takefman from inquiring of those nonparties.^[1] In sum, TPC's motion for protective order is denied to the extent it seeks to preclude Mr. Takefman from deposing persons who it accuses him of having contacted and caused damage to their relationship with TPC.

The Court will issue a separate order as to the other issues raised by the motions.

[1] TPC can also, of course, voluntarily dismiss its claim for tortious interference, which is what puts in issue its relationships with existing and potential investors, and the private equity firm members.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 12th day of July, 2024.

 2023-026281-CA-01 07-12-2024 1:03 PM

2023-026281-CA-01 07-12-2024 1:03 PM

Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-026281-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

The Pickleball Club, LLC

Plaintiff(s)

vs.

Earl Takefman

Defendant(s)

**SECOND ORDER ON PLAINTIFF THE PICKLEBALL CLUB, LLC'S MOTION FOR
PROTECTIVE ORDER AND DEFENDANT EARL TAKEFMAN'S MOTION TO
COMPEL IMPROVED DISCOVERY**

This action came before the Court on May 3, 2024, upon Plaintiff The Pickleball Club, LLC's ("TPC") Motion for Protective Order ("the "Motion") and Defendant Earl Takefman's ("Mr. Takefman") Cross-Motion to Compel Improved Discovery. The Court, having considered the motions, heard argument of counsel and Mr. Takefman (who is self-represented), rules as follows:

This order specifically and only addresses the deposition of "Mr. T.D." TPC accuses Mr. Takefman as follows in Count 2 of its complaint:

77. TAKEFMAN intentionally and unjustifiably interfered with the business

relationship of TPC and the private equity firm by **contacting members of that firm** and disseminating misleading information about TPC.

(emphasis added).

If Mr. T.D. is one of the "members of that [private equity] firm" who it is alleging Mr.

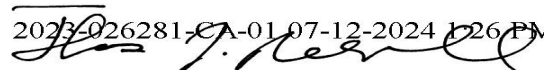
Takefman contacted, and which TPC further alleges such contact caused it damage to its relationship with that firm, then Mr. Takefman is entitled to take Mr. T.D.'s deposition. The issue is not the fact of whether the communication or email was sent or received, but instead whether such communication was the legal cause of damage or interference with the relationship.

A person interferes with a [contractual relationship] [business relationship] [prospective business relationship] between two [or more] other persons if [he] [she] [it] **induces or otherwise causes one of them to** [breach the contract] [terminate the relationship] [not form the relationship].

Florida Standard Jury Instructions in Civil Cases 408.6 (emphasis added).

This Second Order should be read in conjunction with the First Order entered on these related matters. The Court will issue a separate order as to the other issues raised by the motions.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 12th day of July, 2024.

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2023-026281-CA-01 07-12-2024 1:26 PM

Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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earl Takefman, etakefman1@gmail.com
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Physically Served:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Respondents' Appendix to The Pickleball Club, LLC And Matthew Gordon's Response To The Petition For Certiorari was filed with the Court through the Florida Statewide E-Filing Portal, which will serve the below-named pro se litigant of record by e-mail service this 26th day of August 2024.

Earl Takefman, pro se
851 NE 1st Avenue, #2710
Miami FL 33132
etakefman@hotmail.com

/s/ Josh Lewin

Joshua R. Lewin, Esq.