

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
 CIVIL ACTION NO.: 2483cv00692

PAUL O'KEEFE, as Personal Representative of
 the Estate of JOHN JOSEPH O'KEEFE III, PAUL
 O'KEEFE, Individually, JOHN O'KEEFE II,
 MARGARET O'KEEFE as Grandparent/Guardian
 of KAYLEY FURBUSH;

Plaintiffs,

v.

C&C HOSPITALITY, LLC, d/b/a C.F.
 MCCARTHY'S, G&S HOSPITALITY LLC d/b/a
 C.F. MCCARTHY'S, WATERFALL BAR &
 GRILL, LTD d/b/a WATERFALL BAR & GRILL,
 and KAREN READ,

Defendants.

**NON-PARTIES NICOLE AND BRIAN ALBERT, JENNIFER, ALLIE, AND MATTHEW
 McCABE, AND BRIAN HIGGINS'S MEMORANDUM OF LAW IN OPPOSITION TO
 DEFENDANT KAREN READ'S MOTION TO COMPEL**

Non-parties Nicole Albert, Brian Albert, Jennifer McCabe, Matthew McCabe, Allie McCabe, and Brian Higgins (the “Non-Parties”), by their undersigned counsel, respectfully submit this memorandum of law in opposition to Defendant Karen Read’s (“Read”) Motion to Compel the Non-Parties to attend depositions and produce documents pursuant to various third-party subpoenas (the “Motion” or “Mot.”).

Read’s Motion asks this Court to find that the Non-Parties waived their objections to overbroad subpoenas *duces tecum* because they served written objections outside the ten-day window prescribed by Mass. R. Civ. P. 45(d)(1). That request should be denied. Waiver under Rule 45 is not automatic; it is a discretionary, disfavored remedy reserved for cases of egregious, unjustified, and deliberate delay. Here, the Non-Parties acted in good faith, their counsel was in continuous contact with Read’s counsel regarding compliance and scheduling, and the delay was modest and justified.

More fundamentally, good cause compels consideration of the Non-Parties’ objections. The subpoenas are facially overbroad—demanding, *inter alia*, “all documents, including communications, relating to Karen Read,” “all documents . . . relating to John O’Keefe,” and “all communications” with over a dozen named individuals spanning more than four years. This Court already agreed at a hearing on a separate motion to compel an identical subpoena that such requests are overbroad and violate Rule 45. Read has also been on notice of these overbreadth issues since April 27, 2026, when non-party Colin Albert—represented by the same counsel and served with an identical subpoena—timely objected. There is, thus, no surprise and no prejudice with respect to the Non-Parties’ same objections to these subpoenas.

With respect to the Non-Parties’ depositions, Read noticed deposition dates on which the Non-Parties and/or their counsel are unavailable and without first discussing mutually available

dates. The Non-Parties offered multiple alternative dates for their depositions, all of which fall within the Court's discovery scheduling period. Read declined to accept any of the Non-Parties' proposed dates and failed to cite any legitimate scheduling conflict in doing so. Read's unwillingness to coordinate dates for the Non-Parties' depositions violates the spirit of Rule 45.

The Court should decline to find waiver, consider the Non-Parties' objections on the merits, and deny the Motion.

I. ARGUMENT

A. Untimeliness Does Not Automatically Waive Rule 45 Objections

Courts uniformly hold that waiver under Rule 45 is discretionary, not automatic, and is disfavored as a remedy. The Court should do the same here.

"Failure to serve timely objections *may* waive the right to object," but "'the failure to act timely will not bar consideration of objections in unusual circumstances and for good cause shown.'" *Levy v. Gutierrez*, 2019 WL 1405850, at *4 (D.N.H. Mar. 28, 2019) (quoting *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 48 (S.D.N.Y. 1996)) (emphasis added). Indeed, courts have held that "[w]aiver is a remedy not to be used lightly; it is generally reserved for 'cases where the offending party committed unjustified delay in responding to discovery.'" *Santiago v. Lafferty*, 2015 WL 717945, at *3 (D. Mass. Feb. 19, 2015) (quoting *Stamps v. Town of Framingham*, 2014 WL 1598109, at *5 (D. Mass. Apr. 16, 2014)); accord *Maldondo v. Solara Medical Supplies, LLC*, 2021 WL 8323636, at *2 (D. Mass. June 2, 2021).

Waiver is "appropriate where the responding party's conduct evinces a 'deliberate pattern of delay' and is 'egregious.'" *In re Dept. of Justice Subpoenas to ABC*, 263 F.R.D. 66, 71 (D. Mass. 2009 (quoting *Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 9–11 (1st Cir. 1991))). Indeed, "waiver should only be found 'in the absence of mitigating considerations' that favor the subpoenaed party." *Id.* (citation omitted). The *ABC* court rejected any "*per se* rule" of waiver and

applied a “holistic reasonableness analysis,” declining to find waiver despite a *six-month* delay. *Id.* at 69-72. Similarly, in *In re Telexfree Securities Litig.*, 2024 WL 2186848, at *2 (D. Mass. May 15, 2024), the court held that “[w]hen objections are untimely because of justifiable delay . . . the objecting parties may be heard in opposition to the subpoena,” and declined to find waiver where the delay was justified.

Whether waiver applies turns on “the totality of the circumstances.” *Santiago*, 2015 WL 717945, at *3. Thus, the question is whether the Non-Parties’ conduct was “egregious” and reflected a “deliberate pattern of delay,” or whether “unusual circumstances” and “good cause” warrant consideration of their objections. As demonstrated below, this case falls squarely within the latter category.

B. Good Cause Warrants Consideration of the Non-Parties’ Objections

Courts have identified several factors establishing good cause and unusual circumstances sufficient to overcome untimeliness: “(1) the subpoena is overbroad on its face and exceeds the bounds of fair discovery, (2) the subpoenaed witness is a non-party acting in good faith, and (3) counsel for the nonparty and for the subpoenaing party were in contact with respect to the nonparty’s compliance prior to the time the nonparty challenged the subpoena.” *Levy*, 2019 WL 1405850, at *4 (quoting *Concord Boat*, 169 F.R.D. at 48). All factors are present here.

First, the subpoenas are paradigmatic examples of facial overbreadth. Schedule A requests “all documents, including communications, relating to” Karen Read, John O’Keefe, Michael Proctor, two criminal trials, the civil actions, and all communications with over a dozen named individuals spanning from January 28, 2022 to the present. These requests have no temporal limitation (for most categories), no subject-matter limitation beyond the broadest possible nexus, and would sweep in vast quantities of irrelevant personal communications and documents. Indeed,

at a hearing on non-party Colin Albert's motion to compel in the above-captioned action, this Court already observed that an identical subpoena was overbroad. The Court's prior conclusion provides compelling grounds for considering the Non-Parties' objections here, where the subpoenas are the same.

Moreover, Read suffers no prejudice or surprise should the Court consider the Non-Parties' objections. From April 27, 2026 forward—more than six weeks before Read filed this Motion on June 8, 2026—Read knew that the same counsel representing identically-situated non-parties was objecting to the identical document requests on overbreadth grounds. The substance of the Non-Parties' June 1, 2026 objections was entirely foreseeable and foreseen. Read has been litigating the scope of the documents called for by these subpoenas since at least April 27, 2026. No prejudice results from considering the Non-Parties' objections. Indeed, it would be fundamentally inequitable to compel the Non-Parties to produce documents in response to subpoenas that this Court has already found overbroad solely because their written objections were served days late, particularly when the issuing party had actual notice of identical substantive objections well before the Motion was even filed.

Next, the Non-Parties have at all times acted in good faith. Counsel accepted service on the Non-Parties' behalf on May 5, 2026, served written objections on June 1, 2026, and (as discussed in more detail, *infra*) proposed multiple alternative deposition dates. Indeed, as the Court is aware, between May 5 and June 1, counsel engaged in regular dialogue regarding the appropriate scope of the Colin Albert subpoena, which is identical to those at-issue in this Motion, and Read would therefore have been aware of the overbreadth concerns. *See Ex. 1*. This dialogue distinguishes this case from situations in which a non-party fails to communicate at all with the subpoenaing party. *See Levy*, 2019 WL 1405850, at *4 (citing cases).

Finally, nothing about the Non-Parties' conduct was "egregious," nor did it evince a "deliberate pattern of delay." *In re Dept. of Justice Subpoenas to ABC*, 263 F.R.D. at 71; *Santiago*, 2015 WL 717945, at *3; *Maldondo*, 2021 WL 8323636, at *2. The delay here was modest. The Non-Parties served objections on June 1, 2026—approximately seventeen days after the ten-day objection period expired and well in advance of any scheduled production or deposition date. *Compare ABC*, 263 F.R.D. at 71-72 (no waiver despite *six-month* delay). The Non-Parties simply required additional time to review the sweeping demands, obtain counsel's analysis of the facially overbroad requests, and prepare substantive objections—a process complicated by the breadth of the subpoenas themselves and the ongoing dispute regarding an identical subpoena on another non-party.

Under the totality of the circumstances, the Non-Parties' brief delay, in the context of their good-faith engagement and the patent overbreadth of the subpoenas, does not warrant the "drastic result" of waiver. *Maldondo*, 2021 WL 8323636, at *2. The mitigating considerations here overwhelmingly favor the Non-Parties.

C. Because the Subpoenas Are Overbroad, the Motion to Compel Document Production Should Be Denied

As set forth above—and as this Court has already determined in connection with an identical subpoena—the document requests are facially overbroad and exceed the bounds of fair discovery. The "any and all documents relating to" formulations, combined with expansive definitions and sweeping subject-matter categories, place an undue burden on non-parties who have no obligation to bear the litigation costs of parties. *See* Mass. R. Civ. P. 45(d)(1). For the

same reasons outlined in the briefing regarding Read's Motion to Compel Colin Albert, the instant Motion to Compel document production should be denied.¹

D. The Motion to Compel Deposition Testimony Should Be Denied Due to Read's Refusal to Accommodate the Non-Parties' Availability

Read's demand that the Non-Parties appear for depositions on dates that she unilaterally selected likewise cannot be reconciled with Rule 45. Non-parties "have a different set of expectations" than parties to the litigation, and courts must be solicitous of the burdens placed upon them. *Levy*, 2019 WL 1405850, at *3 (citing *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998)). This concern carries particular force in the deposition context, because "depositions are the most burdensome and intrusive form of discovery." *In re Telexfree Sec. Litig.*, 2024 WL 2186848, at *5.

Notably, the Non-Parties have never refused to be deposed. To the contrary, on multiple occasions, the Non-Parties offered various alternative dates for their depositions, all of which fall within the Court's discovery scheduling period. *See Ex. 2.*² Read's counsel has simply refused to accept those reasonable alternative dates. Instead, during the June 18, 2026 Rule 9C conference regarding the instant Motion, Read's counsel did not convey that they were unavailable during the alternative dates proposed; rather, they relayed that Read wishes to take the Non-Parties' depositions on earlier dates because it is their preference. *See Affidavit of Kieran T. Murphy in Support of Opposition* at ¶¶ 5-9. A subpoenaing party's preference for strategic advantage is not a basis to override a non-party's genuine unavailability and to insist on dates of the party's

¹ On June 18, 2026, counsel for the Non-Parties and Read's counsel met and conferred on the instant Motion pursuant to Mass. Super. Ct. R. 9C. While the deposition portion of the Motion was discussed, counsel did not discuss the scope of the document portion of the Motion given Read's staunch position that the Non-Parties waived their right to object.

² As detailed in **Exhibit 2**, the Non-Parties' scheduling conflicts with the originally noticed dates are due to a mixture of client and counsel unavailability.

unilateral choosing. Rule 45 demands the opposite: a good-faith effort to avoid imposing undue burden on non-parties, which necessarily includes working around their reasonable scheduling constraints. Read's refusal to do so, in service of strategy alone, is precisely the sort of conduct Rule 45(d)(1) forbids.

Accordingly, to the extent the Motion seeks to compel the Non-Parties to appear on Read's unilaterally noticed dates, it should be denied. The Court should instead direct the parties to proceed on the reasonable alternative dates the Non-Parties have offered within the discovery period.

II. CONCLUSION

For the foregoing reasons, the Motion should be denied in its entirety, and the Court should grant any further relief deemed just and proper.

Dated in Boston, Massachusetts on this 22nd day of June, 2026.

NICOLE ALBERT, BRIAN ALBERT, JENNIFER
McCABE, MATTHEW McCABE, ALLIE
McCABE, AND BRIAN HIGGINS

By their attorney,

/s/ James L. Tuxbury
James L. Tuxbury (BBO No. 624916)
HINCKLEY ALLEN & SNYDER LLP
28 State Street
Boston, MA 02109
Tel: (617) 378-4100
jtuxbury@hinckleyallen.com

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I caused to be served a copy of the foregoing *Document* by electronic mail upon:

<u>Counsel to Plaintiffs:</u> Daniel T. Buck, Esq. Marc A. Diller, Esq. Diller Law, LLP 50 Congress St. Boston, Massachusetts 02109 dbuck@dillerlaw.com mdiller@dillerlaw.com Bibianne U. Fell, Esq. Marlee Horwitz, Esq. Fell Law, PC 10531 4S Commons Dr. – Ste. 166-610 San Diego, California 92127 bibi@fellfirm.com 10680 Treena St. – Ste. 160 San Diego, California 92131 marlee@fellfirm.com	<u>Counsel to Waterfall Bar & Grill:</u> John M. Dealy, Esq. David F. Hassett, Esq. Casey L. McCaffrey, Esq. Hassett and Donnelly, P.C. 446 Main St. – 12th Floor Worcester, Massachusetts 01608 jdealy@hassettdonnelly.com dhassett@hassettdonnelly.com cmccaffrey@hassettdonnelly.com John A. Donovan, Esq. Sloane and Walsh LLP One Boston Place 201 Washington St. – Suite 1600 Boston, Massachusetts 02108 jdonovan@sloanewalsh.com
<u>Counsel to C.F. McCarthy's:</u> Alexandra M. Beaton, Esq. Tamara Smith Holtslag, Esq., Esq. Lincoln Rose, Esq. Peabody and Arnold LLP 600 Atlantic Ave Boston, MA 02210 ambeaton@peabodyarnold.com tsmith@peabodyarnold.com lrose@peabodyarnold.com	<u>Counsel to Karen Read:</u> Michael William Bell, Esq. Arthur Maravelis, Esq. Sarah Anne Shipley, Esq. Thomas M. Tang, Esq. Tang and Maravelis, P.C. 111 South Bedor St. – Suite 200 Burlington, Massachusetts 01803 mbell@tangmaravelis.com amaravelis@tangmaravelis.com sshipley@tangmaravelis.com ttang@tangmaravelis.com Aaron Rosenberg, Esq. Damon M. Seligson, Esq. Charles Waters, Esq. Sheehan Phinney Bass and Green PA 28 State St. – 22nd Floor Boston, Massachusetts 02109 arosenberg@sheehan.com dseligson@sheehan.com cwaters@sheehn.com Alan Jackson, Esq. Elizabeth Little, Esq.

	Caleb E. Mason, Esq. Werksman Jackson & Quinn LLP 888 West Sixth St. – Fourth Floor Los Angeles, California 90017 cmason@werksmanjackson.com
--	--

/s/ Kieran T. Murphy
Kieran T. Murphy

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.: 2483cv00692

PAUL O'KEEFE, as Personal Representative of
the Estate of JOHN JOSEPH O'KEEFE III, PAUL
O'KEEFE, Individually, JOHN O'KEEFE II,
MARGARET O'KEEFE as Grandparent/Guardian
of KAYLEY FURBUSH;

Plaintiffs,

v.

C&C HOSPITALITY, LLC, d/b/a C.F.
MCCARTHY'S, G&S HOSPITALITY LLC d/b/a
C.F. MCCARTHY'S, WATERFALL BAR &
GRILL, LTD d/b/a WATERFALL BAR & GRILL,
and KAREN READ,

Defendants.

**AFFIDAVIT OF ATTORNEY KIERAN T. MURPHY IN SUPPORT OF
OPPOSITION TO MOTION TO COMPEL**

I, Kieran T. Murphy, on oath, hereby depose and state as follows:

1. I am an associate at Hinckley, Allen & Snyder, LLP and counsel to non-parties Nicole Albert, Brian Albert, Jennifer McCabe, Matthew McCabe, Allie McCabe, and Brian Higgins (the "Non-Parties"). I have personal knowledge of all things stated herein.

2. On June 18, 2026, I participated in a conference pursuant to Mass. Super. Ct. R. 9C regarding the subpoenas served by Defendant Karen Read ("Read") on the Non-Parties.

3. My co-counsel, Christopher Mattei, was in attendance, as was Charles Waters, Aaron Rosenberg, and Michael Bell, counsel to Defendant Read.

4. Among other items, counsel discussed scheduling the depositions of the Non-Parties in the above-captioned action.

5. Counsel for Defendant Read relayed that the proposed rescheduled dates for the depositions of Nicole Albert, Brian Albert, Jennifer McCabe, and Matthew McCabe offered by counsel for the Non-Parties were “too far off” from when Read preferred to take those Non-Parties’ depositions.

6. Counsel for Defendant Read did not relay that they were unavailable for the proposed rescheduled dates for the depositions of Nicole Albert, Brian Albert, Jennifer McCabe, and Matthew McCabe.

7. Counsel for Defendant Read instead relayed that it was Read’s preference to depose those Non-Parties between now and July 10. In response, counsel for the Non-Parties relayed that the dates upon which Read preferred to depose those Non-Parties conflicted with the summer vacation schedules of either counsel for the Non-Parties or the Non-Parties themselves.

8. Counsel for the Non-Parties have repeatedly conveyed that the Non-Parties are available to be deposed on the following dates:

- a. Nicole Albert: July 20-31, 2026
- b. Brian Albert: July 20-31, 2026
- c. Matthew McCabe: July 27-29, 2026; August 4-6, 2026
- d. Jennifer McCabe: July 23-24, 2026; July 27-30, 2026; August 4-7, 2026; August 10-14, 2026

9. Counsel for Defendant Read has refused to accept any of these proposed dates.

10. The deposition of Allie McCabe took place on June 18, 2026.

11. The deposition of Brian Higgins is currently scheduled for July 9, 2026.

SUBSCRIBED AND SWORN TO UNDER THE PENALTIES OF PERJURY THIS 22nd DAY OF JUNE, 2026.

/s/ Kieran T. Murphy
Kieran T. Murphy

CERTIFICATE OF SERVICE

I hereby certify that, on June 22, 2026, I cause to be served a copy of the foregoing *Document* by electronic mail upon:

<u>Counsel to Plaintiffs:</u> Daniel T. Buck, Esq. Marc A. Diller, Esq. Diller Law, LLP 50 Congress St. Boston, Massachusetts 02109 dbuck@dillerlaw.com mdiller@dillerlaw.com Bibianne U. Fell, Esq. Marlee Horwitz, Esq. Fell Law, PC 10531 4S Commons Dr. – Ste. 166-610 San Diego, California 92127 bibbi@fellfirm.com 10680 Treena St. – Ste. 160 San Diego, California 92131 marlee@fellfirm.com	<u>Counsel to Waterfall Bar & Grill:</u> John M. Dealy, Esq. David F. Hassett, Esq. Casey L. McCaffrey, Esq. Hassett and Donnelly, P.C. 446 Main St. – 12th Floor Worcester, Massachusetts 01608 jdealy@hassettdonnelly.com dhassett@hassettdonnelly.com cmccaffrey@hassettdonnelly.com John A. Donovan, Esq. Sloane and Walsh LLP One Boston Place 201 Washington St. – Suite 1600 Boston, Massachusetts 02108 jdonovan@sloanewalsh.com
<u>Counsel to C.F. McCarthy’s:</u> Alexandra M. Beaton, Esq. Tamara Smith Holtslag, Esq., Esq. Lincoln Rose, Esq. Peabody and Arnold LLP 600 Atlantic Ave Boston, MA 02210 ambeaton@peabodyarnold.com tsmith@peabodyarnold.com lrose@peabodyarnold.com	<u>Counsel to Karen Read:</u> Michael William Bell, Esq. Arthur Maravelis, Esq. Sarah Anne Shipley, Esq. Thomas M. Tang, Esq. Tang and Maravelis, P.C. 111 South Bedor St. – Suite 200 Burlington, Massachusetts 01803 mbell@tangmaravelis.com amaravelis@tangmaravelis.com sshipley@tangmaravelis.com ttang@tangmaravelis.com Aaron Rosenberg, Esq. Damon M. Seligson, Esq. Charles Waters, Esq. Sheehan Phinney Bass and Green PA 28 State St. – 22nd Floor Boston, Massachusetts 02109 arosenberg@sheehan.com dseligson@sheehan.com

	cwaters@sheehn.com Alan Jackson, Esq. Elizabeth Little, Esq. Caleb E. Mason, Esq. Werksman Jackson & Quinn LLP 888 West Sixth St. – Fourth Floor Los Angeles, California 90017 cmason@werksmanjackson.com
--	---

/s/ Kieran T. Murphy
Kieran T. Murphy

EXHIBIT 1

Murphy, Kieran T.

From: Murphy, Kieran T.
Sent: Friday, May 22, 2026 5:37 PM
To: 'Charles M. Waters'
Cc: Damon M. Seligson; Aaron D. Rosenberg; Christopher Mattei; Tuxbury, James L.
Subject: RE: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Chas—

Respectfully, I decline to engage in a line-by-line dissection of our responses and objections to the subpoena. This subpoena was issued to a non-party pursuant to Rule 45, and as you are well aware, non-parties are afforded specific protections from undue burden under the Massachusetts Rules of Civil Procedure. We have made our position clear that this subpoena exceeds permissible bounds and violates those protections. Moreover, we have now inquired twice—without receiving any response—regarding the relevance of Colin Albert's testimony to the wrongful death action. The disposition of that case requires answering a singular question: whether your client is responsible for the death of John O'Keefe. Colin Albert was not present at 34 Fairview at the time of Mr. O'Keefe's death, and you have provided no explanation as to how his testimony assists in resolving that central issue. Absent such an explanation, our objections to the subpoena remain unchanged.

Notwithstanding the foregoing objections, we have attempted in good faith to reach a reasonable compromise by agreeing to produce the following categories of documents:

1. Communications from January 28, 2022 to present between Colin Albert and Michael Proctor, Yuriy Bukhenik, or any other law enforcement official associated with the investigation and criminal trials of Karen Read; and
2. All communications between Colin Albert and any other individual at or around January 28, 2022 pertaining to the circumstances surrounding the death of Officer O'Keefe and the investigation conducted into the same.

I have confirmed that only a single text exchange is responsive to those categories: communications between Colin Albert and Allie McCabe regarding the time Ms. McCabe picked up Colin Albert at 34 Fairview. That text exchange was used by Ms. Read's criminal defense counsel during Colin Albert's cross-examination at her first trial, which supports our position that it is already within Ms. Read's possession, custody, and control. However, as I previously stated, if for whatever reason Ms. Read no longer has access to that exchange, we are prepared to produce it upon the issuance of a new subpoena, as the prior subpoena has expired and was not renewed.

Regarding Colin Albert's deposition, we've received a subpoena today from the Plaintiffs in the wrongful death suit for his deposition on May 28, 2026.

Finally, I am not in a position to provide further detail regarding my client's availability constraints beyond what has already been communicated. Colin Albert will be unavailable for an extended period after June 2, 2026 due to work-related obligations. Accordingly, we look forward to completing his deposition before that date.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Thursday, May 21, 2026 12:04 PM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>

Subject: FW: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

EXTERNAL EMAIL

Kieran –

1. You must have missed my earlier response to Chris's email. I've placed it below chronologically for clarity in our communications.
2. Your statement below that "no further documents exist that [you] are willing to produce at this time," is of course the exact issue with which we are concerned.
3. Please describe the "reasonable" search you claimed to have conducted;
4. Please produce all responsive documents that you are "willing to produce at this time" pursuant to that reasonable search, regardless of whether you think Ms. Read may or may not have them already.
5. Relating to the responsive documents that you are "[not] willing to produce," please identify what they are, including:
 - a. Are there any responsive documents relating to the "Investigation," "Criminal Trials," and "Civil Actions" (all defined terms)? How many?
 - b. Regarding Colin Alberts' parents, what is the volume of responsive documents? As you know, we've reduced the scope to communications in a 4-month period; and
 - c. Other than his parents, did your reasonable search identify any responsive communications with:
 - i. Paul O'Keefe;
 - ii. Courtney Elburg;

- iii. Kerry Roberts;
- iv. Brian Higgins;
- v. Brian Albert;
- vi. Nicole Albert;
- vii. Matthew McCabe;
- viii. Jennifer McCabe;
- ix. Allie McCabe;
- x. Brian Albert, Jr

6. Were there any responsive documents that you “are not willing to produce” relating to: “All communications with Chris Albert or Julie Albert from May 1, 2022 to the present concerning the events of January 28th and 29th, 2022; Karen Read; John O’Keefe III; the investigation into Mr. O’Keefe’s death; the Massachusetts State Police, Canton Police Department, or any member, officer, employee, representative, or agent thereof; the Norfolk District Attorney’s Office or any employee, representative, or agent thereof; the Commonwealth prosecution of Karen Read; Alan Jackson; David Yannetti; Robert Alessi; the United States Attorney’s Office, the Federal Bureau of Investigation, or the United States Department of Justice or any employee, representative, or agent thereof; or any other police department or law enforcement body or agency or any employee, representative, or agent thereof.
7. As for Colin Albert’s deposition, we served him with a subpoena on 4/21 for a deposition scheduled on 4/29. We began communicating with your office on 4/23. Last night’s email (5/20) was the first time you told us that Colin Albert “is away from the Massachusetts area for a significant period due to work-related matters beginning on June 2, 2026.” You then provide two dates next week for his deposition, both of which do not work for me because I am out of state both days.

Please provide additional dates in June as I requested yesterday. If necessary for Mr. Albert’s schedule, I would consider taking his deposition on a Saturday. If you claim to have no dates in June, please explain the details of why Mr. Albert cannot come to Massachusetts at any time in the month of June for his deposition, and when you first learned this.

I look forward to your response.

Chas.

From: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Sent: Wednesday, May 20, 2026 9:51 PM

To: Charles M. Waters <cwaters@sheehan.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>; Christopher Mattei <CMattei@koskoff.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>

Subject: RE: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Chas—

As Chris previewed in his email below, the proposed modifications to Colin Albert’s subpoena do not cure the issues we have already discussed with respect to scope. It is essentially identical to the original version, with an edit addressing one of the examples of overbreadth that we identified on our April 28 meet and

confer. The subpoena still seeks over four years of communications between Colin and over a dozen individuals, some of which are family members, regardless of issue or subject matter. As we indicated in our April 26 responses and objections, such requests are (*inter alia*) overbroad, unduly burdensome, vague, ambiguous, and seek documents and information that is neither relevant nor reasonably likely to lead to the discovery of admissible evidence. The proposed modifications do little to address those issues.

As we also discussed on the April 28 meet and confer, we strain to see the relevance that Colin Albert has to the wrongful death case as a general matter. Among other things, Colin has never been associated with or testified to hearing Ms. Read's alleged incriminating statements, and we understand it to be undisputed that Colin left 34 Fairview prior to the time Ms. Read's vehicle arrived at the home. The only relevance he appears to have in the wrongful death case is that Ms. Read accused (or, perhaps, continues to accuse) him of being associated in some manner with Officer O'Keefe's murder on January 29, 2022.

With that in mind, in the interest of compromise, we will agree to produce to Ms. Read all communications from January 28, 2022 to present between Colin Albert and Michael Proctor, Yuriy Bukhenik, or any other law enforcement official associated with the investigation and criminal trials of Karen Read. We will also agree to produce all communications between Colin Albert and any other individual at or around January 28, 2022 pertaining to the circumstances surrounding the death of Officer O'Keefe and the investigation that was conducted into the same. However, after conducting a reasonable search for those categories of documents, we can confirm that no responsive documents exist that are not already in the possession, custody, and control of Ms. Read. For example, we understand that Ms. Read is already in possession of text messages between Colin Albert and Allie McCabe regarding the fact that Allie McCabe picked up Colin Albert from 34 Fairview prior to the time Ms. Read's vehicle arrived at the home. If that is not the case, we are happy to provide those messages. Otherwise, no further responsive documents exist that we are willing to produce at this time.

Regarding Colin Albert's deposition, he will be away from the Massachusetts area for a significant period due to work-related matters beginning on June 2, 2026. Accordingly, we propose that his deposition be conducted on either May 28, 2026, or May 29, 2026.

Let me know if it would be helpful to set up a call to discuss. Otherwise, I look forward to hearing from you.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters

Sent: Wednesday, May 20, 2026 11:11 AM

To: 'Christopher Mattei' CMattei@koskoff.com; Tuxbury, James L. jtuxbury@hinckleyallen.com; Murphy, Kieran T. kmurphy@hinckleyallen.com

Cc: Damon M. Seligson dseligson@sheehan.com; Aaron D. Rosenberg arosenberg@sheehan.com

Subject: RE: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Chris, which paragraph(s) do you claim is(are) not "appropriately scoped." Are you able to provide a compromise/alternative for each that addresses both your and our concern similar to what Aaron proposed to you three weeks ago. As for the other paragraphs that you consider "appropriately scoped," please let me know when you intend to produce responsive documents.

Also, please provide some date in early to mid-June for Colin Albert's deposition. The judge in our case is giving us a short runway to get all depositions done, and we need to take this one soon.

Best,
Chas.

From: Christopher Mattei <CMattei@koskoff.com>

Sent: Wednesday, May 20, 2026 10:08 AM

To: Charles M. Waters <cwaters@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>

Subject: RE: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

EXTERNAL EMAIL

Good morning.

We'll respond more substantively later today, but, in short, we do not agree that the revised subpoena is appropriately scoped. And, although of course you can take whatever position you choose, I just note that the revisions do not accurately reflect the position that we took in our discussion with Aaron.

It is our understanding that you do not want to take Colin's deposition until these production issues are resolved.

Chris

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Tuesday, May 19, 2026 5:04 PM

To: Christopher Mattei <CMattei@koskoff.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Murphy, Kieran T. <kmurphy@hinckleyallen.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>

Subject: FW: [External] O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Chris et al., we haven't received a response to Aaron's email below. Can you let us know if we have an agreement on the scope of the modified subpoena we sent to you three weeks ago as a compromise, and when we can expect responsive documents?

Also, please provide a few dates in early to mid-June to re-schedule this deposition.

Best,
Chas.

Charles M. Waters
Shareholder

SHEEHAN PHINNEY

Sheehan Phinney Bass & Green
28 State Street
Boston, MA 02109
T 617.897.5644 (direct)
T 617.429.1265 (cell)
cwaters@sheehan.com
www.sheehan.com



From: Aaron D. Rosenberg
Sent: Wednesday, April 29, 2026 12:15 PM
To: Christopher Mattei <cmattei@koskoff.com>
Cc: Damon M. Seligson <dseligson@sheehan.com>; Charles M. Waters <cwaters@sheehan.com>; Fish, Jr., William S. <wfish@hinckleyallen.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Renee Mihail <rmihail@koskoff.com>; Murphy, Kieran T. <KMurphy@hinckleyallen.com>
Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Chris,

Thanks for the call yesterday. I've thought through your team's proposals on consolidation and the subpoena to Colin Albert and have discussed them with our group.

We do not agree to consolidate discovery in your clients' defamation case with the *O'Keefe* litigation. As we discussed, we are already well down the road in discovery in that case with almost all documents produced, multiple rounds of interrogatories and answers exchanged between all parties, and over 20 depositions scheduled in the upcoming months. Also, Judge Gildea has been insistent that we do all we can to stick to the existing discovery deadline in August, and I don't believe he would be inclined to allow consolidation that would necessarily require a significant extension of that deadline. Also, although I know you weren't yet involved in the case, your clients previously resisted our efforts to make

these proceedings more efficient by bringing our claims against them in the *O'Keefe* case last year, then, when we filed those claims in a separate superior court action, they removed it to federal court, preventing any chance of consolidation. We do not think now consolidating only your affirmative claims, which your clients opted to bring in yet another superior court proceeding rather than in the existing federal case, would be efficient or fair.

Attached is a proposed narrowing of the document subpoena to Colin Albert, particularly the portion of the last request seeking communications with Colin Albert's parents, as you requested in our 9C call. Please let us know if you will agree to produce documents responsive to these narrower requests. We reserve the right to seek additional categories of documents in the future, pursuant to the applicable Rules, but are willing to accept this scope of documents at this point, prior to the deposition.

Thanks,

Aaron

Aaron D. Rosenberg

SHEEHAN PHINNEY

28 State Street, 22nd Floor, Boston, MA 02109

T 617.897.5664

arosenberg@sheehan.com

www.sheehan.com



From: Aaron D. Rosenberg

Sent: Monday, April 27, 2026 4:21 PM

To: 'Tuxbury, James L.' <jtuxbury@hinckleyallen.com>; Charles M. Waters <cwaters@sheehan.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Fish, Jr., William S. <wfish@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; Renee Mihail <rmihail@koskoff.com>; Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Jim,

Yes, we can discuss both topics tomorrow. Confirmed that Wednesday's deposition will be rescheduled to a different date. See you virtually tomorrow.

Best,

Aaron

Aaron D. Rosenberg

SHEEHAN PHINNEY

28 State Street, 22nd Floor, Boston, MA 02109

T 617.897.5664

arosenberg@sheehan.com

www.sheehan.com



From: Tuxbury, James L. <jtuxbury@hinckleyallen.com>

Sent: Monday, April 27, 2026 2:54 PM

To: Charles M. Waters <cwaters@sheehan.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Fish, Jr., William S. <wfish@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; Renee Mihail <rmihail@koskoff.com>; Murphy, Kieran T. <KMurphy@hinckleyallen.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Chas,

Why don't we have a 9C tomorrow at 10 during the already scheduled call?

Further, to clarify are you cancelling the deposition scheduled for Wednesday?

Thanks,

Jim

James L. Tuxbury

Partner

Hinckley Allen

28 State Street

Boston, MA 02109-1775

p: 617-378-4162 | f: 617-345-9020

jtuxbury@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Monday, April 27, 2026 12:57 PM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>; Aaron D. Rosenberg <arosenberg@sheehan.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Fish, Jr., William S.

<wfish@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; Renee Mihail <rmihail@koskoff.com>

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

EXTERNAL EMAIL

Kieran –

I'm taking this deposition. Please provide a few times in the next day or two when you/your team are available for a 9C conference to narrow this dispute.

Under the circumstances, it makes sense to take Colin Albert's deposition after all responsive documents are produced.

Chas

Charles M. Waters
Shareholder

SHEEHAN PHINNEY

Sheehan Phinney Bass & Green
28 State Street
Boston, MA 02109
T 617.897.5644 (direct)
T 617.429.1265 (cell)
cwaters@sheehan.com
www.sheehan.com



From: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Sent: Monday, April 27, 2026 11:24 AM

To: Aaron D. Rosenberg <arosenberg@sheehan.com>

Cc: Damon M. Seligson <dseligson@sheehan.com>; Charles M. Waters <cwaters@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Fish, Jr., William S. <wfish@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; Renee Mihail <rmihail@koskoff.com>

Subject: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - Colin Albert Subpoena Responses

Aaron—

Attached please find non-party Colin Albert's responses and objections to the subpoena duces tecum that was served on him on April 21, 2026.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

THIS MESSAGE IS ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN CONFIDENTIAL AND PRIVILEGED INFORMATION. Any dissemination, distribution or copying of this communication other than by the intended recipient(s) is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (collect), and destroy all copies of this communication. Thank you.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

EXHIBIT 2

Murphy, Kieran T.

From: Murphy, Kieran T.
Sent: Thursday, June 11, 2026 4:33 PM
To: 'Charles M. Waters'
Cc: 'Aaron D. Rosenberg'; 'Damon M. Seligson'; Tuxbury, James L.; 'Christopher Mattei'; 'dbuck@dillerlaw.com'; 'Marc Diller'; 'bibi@fellfirm.com'; 'marlee@fellfirm.com'; 'ambeaton@peabodyarnold.com'; 'tsmith@peabodyarnold.com'; 'lrose@peabodyarnold.com'; 'jdealy@hassettdonnelly.com'; 'dhassett@hassettdonnelly.com'; 'jdonovan@sloanewalsh.com'; 'mbell@tangmaravelis.com'; 'amaravelis@tangmaravelis.com'; 'sshipley@tangmaravelis.com'; 'ttang@tangmaravelis.com'; 'cmason@werksmanjackson.com'
Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Chas—

We understand that Judge Gildea entered an order today requiring the parties in the wrongful death case to provide him with a list of depositions that have been noticed to-date. We've sent you a few emails now indicating our unavailability on the dates contained in the original deposition subpoenas issued to Jen McCabe, Matt McCabe, Nicole Albert, Brian Albert, and Brian Higgins. We have also provided you with dates that our clients and counsel are available to appear for depositions, but we have not heard back, and our clients have not been served with new subpoenas for the dates we are available. Obviously, it is in everybody's interests that the parties work cooperatively with third party witnesses to schedule their depositions, which we have been trying to do. Accordingly, it is our understanding and our position that the depositions for those five individuals have not yet been noticed.

Do you plan to issue new subpoenas for our clients prior to tomorrow's 12pm deadline? If not, please confirm that our clients will not be listed in whatever is filed by Ms. Read tomorrow.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Murphy, Kieran T.
Sent: Tuesday, June 9, 2026 1:05 PM
To: 'Charles M. Waters' <cwaters@sheehan.com>
Cc: Aaron D. Rosenberg <aosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L.

<jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; jdealy@hassettdonnely.com; dhassett@hassettdonnely.com; jdonovan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Chas—

We are available on the dates I sent on June 2. While I didn't feel the need to elaborate any further at the time, conflicts with earlier dates are due to a combination of scheduling issues among the clients and counsel. We gave multiple dates for each witness prior to the close of your discovery period. Please let us know which ones you would like to select for each witness.

In terms of documents, I refer you back to our June 1 responses and objections outlining the categories of documents we are willing to produce absent any further conferral among counsel or a court order. We are hopeful that we can produce those to you in the next couple weeks, and well before any depositions to give you ample time to review.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Tuesday, June 9, 2026 10:20 AM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; jdealy@hassettdonnely.com; dhassett@hassettdonnely.com; jdonovan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

EXTERNAL EMAIL

Kieran —

Fortunately, we have a record of our communications in writing. There's no need to debate how to characterize what's in our emails about these subpoenas, and the Colin Albert subpoena.

Rather than continue to posture, just give me multiple proposed alternative dates for each of your client's depositions that fall somewhere around the dates I noticed them. And, to the extent you are going to voluntarily produce documents without court order, tell me what documents you will produce and when you will produce them.

Chas.

From: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Sent: Tuesday, June 9, 2026 10:03 AM

To: Charles M. Waters <cwaters@sheehan.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnelly.com; dhassett@hassettdonnelly.com; jdonoan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Chas—

You and your team's continued gaslighting efforts are unproductive and contrary to our obligations under the rules. We disagree with both your characterization of the history and your attempt to manufacture a basis for unnecessary and harassing motion practice. It is unfortunate that you did not ask about our availability prior to unilaterally serving these subpoenas. Had you done so, we could have addressed scheduling in the ordinary course. Instead, you ignored my email about our third-party clients' availability and served this motion. Due to your lack of response, Allie McCabe was able to change her plans and has now made herself available for the time you chose. With respect to the other non-parties, as we've indicated, we are available on the proposed dates in my email. I ask that you please review the dates of availability set forth in my email and get back to me on mutually agreeable dates.

Further, your statements that these non-party witnesses "refused to produce a single document" is inaccurate. We asserted well-grounded objections to the subpoenas, including to the overbroad and improper categories of documents you demanded. But we also made clear that we *would* produce certain documents in response to the subpoenas, namely documents relevant to this litigation and proportionate to the demands of a third party. With respect to Allie, the documents that you received yesterday are responsive to the categories of documents that we agreed to produce. To the extent that you disagree with our proposed categories, as I've already indicated, that will be addressed in your pending motion to compel compliance with the identical subpoena you sent to Colin Albert. If you continue to rest on the position that we "waived" the *identical* objections we made in the subsequent responses and objections (of which you've now been on notice for over a month), that is fine, and we can address it accordingly. However, at no point have our clients "refused" to do anything.

To be clear: nothing about our position has "changed." You seem to have transformed a simple scheduling issue into a motion to compel. This constant back-and-forth from you and your team indicating the contrary is an attempt to hinder, rather than further, our efforts work with you professionally. These are non-party witnesses (not "House Defendants," as you call them) that have already testified under oath multiple times about the events that are the subject of the lawsuit against your client. As such, this unnecessarily aggressive

email practice adopted by you and your team is contrary to the rules and the Court's order in your case from yesterday. We are simply looking for a courteous relationship with your team to address what appears to be simple scheduling issues involving our third-party witnesses. We cannot, however, accept any mistreatment or disrespect of our clients, or obvious efforts to manufacture a fabricated record through email.

I look forward to hearing back from you regarding deposition dates for the five remaining non-parties that we represent.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Monday, June 8, 2026 8:06 PM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnelly.com; dhassett@hassettdonnelly.com; jdonovan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

EXTERNAL EMAIL

Kieran –

You heard from me 15 minutes before you sent this email about those depositions when I served you with our motion to compel.

Also, Damon did not tell Jim anything like what you're gratuitously now reporting below. But more importantly, if it's my deposition, communicate with me, not someone else in my office in a verbal conversation in the back of a courtroom – especially if it's allegedly about the same topic as our emails below.

Speaking of which, the last thing you told me on Tuesday June 2nd was that all "House Defendants" and Allie McCabe were not available on the dates required by the subpoena and that you refused to produce a single document. As you know, that's the subject matter of the motion to compel that I then prepared and served on you prior to your email below.

In tonight's email, it appears you've changed your written position from six days ago. You now report that Allie McCabe is available on the date in the subpoena – Wednesday June 10th - and you claim to provide

documents pursuant to the subpoena. However, I relied on your written earlier refusal to attend any of the depositions on the dates they were scheduled and I've now scheduled other commitments for Wednesday.

This is the same type of gamesmanship that we've seen with how you handled Colin Albert's deposition, and I intend to raise this with the Court.

Despite the inconvenience, I am now rescheduling my commitments on Wednesday so that I can depose Allie McCabe. Please have her at my office at 10:00 a.m.

Finally, please tell me now what other "House Defendant" is now available on the dates of their subpoenaed depositions, and what documents you intend to produce.

Chas.

From: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Sent: Monday, June 8, 2026 5:24 PM

To: Charles M. Waters <cwaters@sheehan.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnelly.com; dhassett@hassettdonnelly.com; jdonovan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Chas—

I have not heard back from you regarding our clients' availability for their depositions in the wrongful death action. I understand that Jim indicated to Damon after last week's defamation hearing that he is unavailable for the dates of the depositions in late June and, in response, Damon agreed that we would work to find alternative dates in the ranges that we proposed. As such, please advise which of the proposed dates work for the parties to that action and we will coordinate with our clients to confirm.

With respect to Allie McCabe, however, we understand her deposition is scheduled for this Wednesday. Given that we have not yet heard back from you regarding alternative dates, we have coordinated with Allie to make her available this coming Wednesday at 10am. In anticipation of that deposition, attached are the documents that we indicated we would produce in our response to her document subpoena.

See you on Wednesday.

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Murphy, Kieran T.

Sent: Tuesday, June 2, 2026 9:20 PM

To: 'Charles M. Waters' <cwaters@sheehan.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnelly.com; dhassett@hassettdonnelly.com; jdonovan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Chas—

These subpoenas were mirror images of the one Ms. Read previously served on Colin Albert, about which we've already had a meet and confer, so you've had our position on their vagueness and overbreadth for quite some time. We've relayed on multiple occasions that we are unwilling to produce over four years of communications among family members and others in response to non-party subpoenas that do not make any good faith effort to tailor the requests by topic or scope. The outcome of your pending motion to compel compliance with Colin Albert's subpoena will undoubtedly influence these identical subpoenas, and we will modify our responses and objections accordingly (and to the extent necessary) following the Court's ruling on that motion.

With respect to the depositions, our clients are not available on the dates proposed in the subpoenas. Their availability to sit for depositions in the wrongful death action is as follows:

- Brian Albert: July 20-31
- Nicole Albert: July 20-31
- Jennifer McCabe: July 23-24, July 27-30, August 4-7, August 10-14
- Matthew McCabe: July 27-29, August 4-6
- Allie McCabe: June 22, July 20
- Brian Higgins: July 29-30

Please let us know which of these dates also work for the parties in the wrongful death action and we will confirm the depositions with each of our clients promptly.

Regards,

Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Tuesday, June 2, 2026 10:59 AM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnely.com; dhassett@hassettdonnely.com; jdonoan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

EXTERNAL EMAIL

Mass. R. Civ. P. 45 requires objections to subpoenas within 10 days after service. Here, that deadline passed on May 15th without objection. Therefore, the attachments to your email below are not effective objections.

Please produce all responsive documents immediately pursuant to the properly issued and served subpoenas that require production of responsive documents by June 1st so that I have them in time for the depositions.

Chas.

From: Murphy, Kieran T. <KMurphy@hinckleyallen.com>

Sent: Monday, June 1, 2026 4:31 PM

To: Charles M. Waters <cwaters@sheehan.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>; dbuck@dillerlaw.com; Marc Diller <mdiller@dillerlaw.com>; bibi@fellfirm.com; marlee@fellfirm.com; ambeaton@peabodyarnold.com; tsmith@peabodyarnold.com; lrose@peabodyarnold.com; idealy@hassettdonnely.com; dhassett@hassettdonnely.com; jdonoan@sloanewalsh.com; mbell@tangmaravelis.com; amaravelis@tangmaravelis.com; sshipley@tangmaravelis.com; ttang@tangmaravelis.com; cmason@werksmanjackson.com

Subject: RE: O'Keefe et al v. C&C Hospitality LLC et al (2483cv00692) - May 5 Subpoena Responses

Hi Chas—

Attached please find responses and objections to the May 5 subpoenas that were served on non-parties Brian Albert, Nicole Albert, Jennifer McCabe, Matthew McCabe, Allie McCabe, and Brian Higgins in the above-referenced matter. Copying in all counsel of record for transparency.

Also, please note, “Allie” McCabe is not short for “Allison.”

Regards,
Kieran

Kieran T. Murphy

Associate

Hinckley Allen

30 South Pearl Street, Suite 1101

Albany, NY 12207-3492

p: 518-396-3143 | c: 860-936-5622

KMurphy@hinckleyallen.com

From: Charles M. Waters <cwaters@sheehan.com>

Sent: Tuesday, May 5, 2026 2:15 PM

To: Murphy, Kieran T. <KMurphy@hinckleyallen.com>; Tuxbury, James L. <jtuxbury@hinckleyallen.com>; Christopher Mattei <cmattei@koskoff.com>

Cc: Aaron D. Rosenberg <arosenberg@sheehan.com>; Damon M. Seligson <dseligson@sheehan.com>

Subject:

EXTERNAL EMAIL

Per your agreement to accept service on behalf of the above-referenced individuals, kindly see attached subpoenas.

Best,
Chas.

Charles M. Waters
Shareholder

SHEEHAN PHINNEY

Sheehan Phinney Bass & Green

28 State Street

Boston, MA 02109

T 617.897.5644 (direct)

T 617.429.1265 (cell)

cwaters@sheehan.com

www.sheehan.com



Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and automatically archived by Mimecast.