

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Timothy Jackson,

Plaintiff,

v.

Laura Wright, et al.,
Defendants.

Case No. 4:21-cv-00033-ALM

NOTICE OF TAKING DEPOSITION

TO:

PHILIP EWELL

**C/O Richard Painter
S.Walter Ritchie Professor of Corporate Law
University of Minnesota
318 Mondale Hall
229 19th Ave. South
Minneapolis, MN 55455
rwpusa18@gmail.com**

PLEASE TAKE NOTICE: undersigned counsel will take the following deposition:

Name: Philip Ewell

Time: September 19, 2021, 10:00 a.m.

Place: **157 Church Street Downtown, 19th floor, New Haven, CT 06510**

upon oral examination before a Notary Public or other Officer authorized by law to take depositions in the State of Texas. The oral examination will continue from day-to-day until completed and is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under the Federal Rules of Civil Procedure. The deposition will continue from day-to-day until completed.

DATE: August 22, 2021

Respectfully submitted,

/s/Michael Thad Allen

Michael Thad Allen, Esq.
D. Conn. Bar No. CT29813
admitted *pro hac vice*
Lead Attorney
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PO Box 404
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for PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the date specified in the caption of this document, I electronically filed the foregoing with the Clerk of Court, to be served on all parties of record via the CM/ECF system.

/s/Michael Thad Allen

Michael Thad Allen

UNITED STATES DISTRICT COURT

for the

Eastern District of Texas

Timothy Jackson

Plaintiff

v.

Wright, et al.

Defendant

Civil Action No. 4:21-cv-00033-ALM

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Philip Ewell

(Name of person to whom this subpoena is directed)

☐ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: Regus Office, 14 Wall Street, 20th Floor, New York City, 10005	Date and Time: 07/08/2024 10:00 am
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The deposition will be recorded by this method: stenographically and video recording

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The Documents Responsive to the Requests set forth in the attached Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/16/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Timothy Jackson

, who issues or requests this subpoena, are:

Michael Thad Allen, ALLEN HARRIS PLLC, PO Box 404, Quaker Hill, PA 06320, (860) 772-4738,
mallen@allenharrislaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:21-cv-00033-ALM

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

Documents to Be Produced by Philip Ewell

I. DEFINITIONS AND INSTRUCTIONS

1. Each request shall operate and be responded to independently and, unless otherwise indicated, no request limits the scope of any other request.

2. Unless otherwise indicated, the relevant time period for these requests is from January 1, 2019, to the present.

3. Unless otherwise defined, the terms used should be read and construed in accordance with the English language and the ordinary meanings and definitions attached. You should, therefore: (i) construe the words “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the request more inclusive; (ii) construe the term “including” to mean “including, but not limited to”; and (iii) construe the words “all” and “each” to mean all and each.

The following definitions apply to each of these requests:

- The terms “**Philip Ewell**,” “**you**” and “**your**” refer to Philip Ewell, including any agent or person authorized to act for or on your behalf.
- The terms “**communication**” and “**communicate**” refer to any method used to transmit or exchange information, concepts, or ideas (whether verbal or nonverbal) including oral, written, typed, or electronic transmittal of any type of information or data, by the use of words, silence, numbers, symbols, images, or depictions, from one person or entity to another person or entity.
- The term “**document**” refers to the act of noting, recording, or preserving any type of information, data, or communication, without regard to the method used to note, record, or preserve such information, data, or communication. The term includes any e-mail or text message.
- The term “**entity**” means any legal entity inquired about (other than a natural person) including a partnership, professional association, joint venture, corporation, governmental agency, or other form of legal entity.

- The terms “**identify**” and “**identity**,” when used in connection with a natural person, require disclosure of that person’s full name, present or last known address, and present or last known telephone number. When used in connection with a legal entity, the terms require disclosure of its legal name, its address, and telephone number.
- The terms “**implement**” and “**implementation**” refer to any method, process, or action used to put a decision or plan into effect or achieve a goal or obligation.
- The term “**information**” refers to and includes documents, records, communications, facts, ideas, data, observations, opinions, photographs, slides, video recordings, audio recordings, and tangible and intangible items and evidence of any kind or sort.
- The terms “**person**” and “**persons**” mean any legal entity inquired about, whether a natural person, partnership, sole proprietorship, professional association, joint venture, corporation, governmental agency, or other form of legal entity.
- The term “**record**” means letters, words, sounds, or numbers, or the equivalent of letters, words, sounds, or numbers, that have been written, recorded, documented, or received by Defendant by:
 - (A) handwriting;
 - (B) typewriting;
 - (C) printing;
 - (D) photostat;
 - (E) photograph;
 - (F) magnetic impulse;
 - (G) mechanical or electronic recording;
 - (H) digitized optical image; or
 - (I) another form of data compilation.
- The term “**record**” also includes any communication, including an e-mail or text-message communication.
- The term “**reproduction**” means an accurate and complete counterpart of an original document or record produced by:
 - (A) production from the same impression or the same matrix as the original;
 - (B) photograph, including an enlargement or miniature;

- (C) mechanical or electronic re-recording;
 - (D) chemical reproduction;
 - (E) digitized optical image; or
 - (F) another technique that accurately reproduces the original.
- The term “**third party**” means any person, persons, or entity other than the defendants or the attorneys of record for the defendants.
 - The terms “**and**” and “**or**,” when used in these definitions and in the discovery requests, include the conjunction “and/or.”

II. DOCUMENTS REQUESTED

Request No. 1: A reproduction of each record constituting a communication (including all attachments or exhibits) that implements, mentions, discusses, or contains any information concerning your plenary address at the 2019 Society for Music Theory’s Annual Meeting, Timothy Jackson, the Journal of Schenkerian Studies, or the Ad Hoc Panel that investigated the Journal of Schenkerian Studies.

Request No. 2: All drafts or versions of petitions or open letters that implement, mention, discuss, or contain any information concerning Timothy Jackson or the Journal of Schenkerian Studies, regardless of whether those drafts or versions of petitions or open letters were submitted to any administrative official or faculty member of the University of North Texas or otherwise published, including a list of all signatories to any such document.

Request No. 3: A reproduction of each record constituting a communication (including all attachments or exhibits) with any of the following individuals: Patricia Hall, Robert Hatten, Gretchen Horlacher, Philip Stoecker, Jocelyn Neal, Inessa Bazayev, Anna Gawboy, Julian Hook, Jennifer Iverson, Nancy Yunhwa Rao, or Leigh VanHandel.