

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 7106

THE FUTURES GROUP, INC. and
GEOFF G. CRAMER,

Plaintiffs,

v.

DENIS BROSNAN,

Defendant.

**ORDER ON AIMEE BROSNAN'S
OBJECTION BASED ON SPOUSAL
PRIVILEGE AND MOTION FOR
PROTECTIVE ORDER**

And

**DENIS BROSNAN'S
MOTION FOR PROTECTIVE ORDER**

[PUBLIC]*

1. **THIS MATTER** is before the Court on non-party Aimee Brosnan's Objection Based on Spousal Privilege and Motion for Protective Order ("Motion"), (ECF No. 79), and Defendant Denis Brosnan's Motion for Protective Order,¹ (ECF No. 81).

2. Having considered the Motion, the related briefs, and the arguments of counsel at a hearing on the Motion, the Court hereby **SUSTAINS** the Objection and **GRANTS** in part and **DENIES** in part the Motion.

* Because the Motion involves privileged material, the Court originally filed its Order under seal, (ECF No. 108), and permitted the parties to submit proposed redactions. Having considered the parties' proposals, the Court now files a redacted version of its Order on the public record.

¹ Defendant Denis Brosnan did not file a supporting brief. Instead, he joins in Aimee Brosnan's Motion and "incorporates by reference" her brief, a practice not in accordance with this Court's rules. See BCR 7.2.

I. INTRODUCTION

3. Plaintiff Geoff G. Cramer (“Cramer”) is the founder and Chief Executive Officer of Plaintiff The Futures Group, Inc. (“Futures”). He was married to Aimee Brosnan (“Aimee”) from 1 November 2008 until 2 July 2021. This action was filed on 24 May 2021, a few weeks before their divorce was final.

4. In opposition to a Motion for Partial Summary Judgment filed by Futures against Defendant Denis Brosnan (“Brosnan”), Aimee’s father, Futures filed an affidavit from Cramer. (Aff. of Cramer [“Cramer Aff.”], ECF No. 74.) Attached to the affidavit were four audio recordings and corresponding transcripts of conversations Cramer had with Aimee while they were married. (Cramer Aff. Exs. 10, 12, 13, 14, ECF Nos. 74.10–74.19.) Aimee’s father, Brosnan, was a participant in two of the conversations, but two others occurred solely between Aimee and Cramer. It is undisputed that Cramer made the recordings surreptitiously.

5. The first of the four recorded conversations occurred on 7 November 2017 between three individuals, Aimee, Cramer, and Brosnan. During the conversation, the three discuss a plan to address Brosnan’s concerns regarding tax liability. Just two days later, on 9 November 2017, the second recorded conversation took place, this time between Aimee and Cramer alone. During this conversation Aimee repeats information given to her by her father regarding the same plan discussed with her father present just two days before. She refers to herself as the “middleman” and the “messenger” conveying information from her father to her husband.

6. Months pass, and a third conversation, again between all three plan participants, Cramer, Aimee, and Brosnan, takes place on 10 April 2019. Finally, almost a year passes, and a fourth conversation takes place on 1 March 2020, involving only Aimee and Cramer alone.

7. At issue with respect to Aimee's Motion are the two recorded conversations she had privately with Cramer; one on 9 November 2017, (ECF Nos. 74.14–74.15), and a second one that occurred on 1 March 2020,² (ECF Nos. 74.18–74.19) (together, the "Contested Conversations"). Both conversations happened before Aimee and Cramer separated.

8. Aimee objects to Cramer's use of, and testimony about, the Contested Conversations and asserts that they are confidential marital communications protected by North Carolina's spousal privilege. Aimee requests that this Court strike from the record the recordings, transcripts and any summaries of the Contested Conversations, and that it prohibit Futures or Cramer from admitting into evidence, or otherwise disclosing in the future, any privileged communications between Aimee and Cramer. (*See* ECF No. 79.)

9. Futures argues that the Contested Conversations are not privileged and that Aimee, as a non-party, lacks standing to contend otherwise.³ (*See* ECF No. 90.)

² Cramer and Aimee separated on 15 April 2020. (Aimee Brosnan's Obj. and Mot. Prot. Order ¶ 1, ECF No. 79.)

³ Futures also seeks its expenses and attorney's fees with respect to Aimee's Motion. It argues that a protective order is not available to Aimee as a remedy because that relief is afforded by Rule 26 of the North Carolina Rules of Civil Procedure, and Aimee is not "a party or . . . the person from whom discovery is sought[.]" N.C.G.S. § 1A-1, Rule 26(c). In addition, Futures contends that Business Court Rule ("BCR") 10.9 provides the process for resolving

10. The Court, *ex mero motu*, directed that the Contested Conversations be placed under seal pending a determination of this Motion.

II. ANALYSIS

11. “Preliminary questions concerning . . . the existence of a privilege, or the admissibility of evidence shall be determined by the court[.]” N.C.G.S. § 8C-1, R. 104(a).

12. The evidentiary privilege over marital communications has deep roots in North Carolina law. *See, e.g., State v. Jolly*, 20 N.C. 108, 112 (1838); *State v. Brittain*, 117 N.C. 783, 785 (1895) (“The law requires and extorts this confidence, and it will protect it.”). More recently, our Supreme Court has observed that the privilege is “premised upon the belief that the marital union is sacred and that its intimacy and confidences deserves legal protection.” *State v. Rollins*, 363 N.C. 232, 236 (2009) (cleaned up).

13. The policy behind the privilege is “to preserve inviolate the peace, good order, and limitless confidence between the heads of the family circle so necessary to every well-ordered civilized society[.]” *Whitford v. North State Life Ins. Co.*, 163 N.C. 223, 226 (1913). These policy considerations apply to communications that occur

discovery disputes, and it has not been followed here. (Pl.’s Opp’n Mots. Prot. Ord.; Req. Award Reas. Atty. Fees 26 [“Futures’ Br.”], ECF No. 90.)

As discussed herein, the Court determines that Aimee has standing to object and seek relief, and it is within the Court’s inherent authority to decide whether the requested relief is appropriate. *See In re Miller*, 357 N.C. 316, 322 (2003); *Beard v. N.C. State Bar*, 320 N.C. 126, 129 (1987) (trial courts retain the inherent authority “to do all things that are reasonably necessary for the proper administration of justice”). Accordingly, the Court declines to award Futures the expenses and fees it has incurred in connection with Aimee’s Motion.

during the marriage even after the marriage ends. *See Jolly*, 20 N.C. at 112–13 (“It would outrage propriety if the law were to require or permit communications made [during marriage] to be published, to the injury or disgrace of the trusting party, after the marriage was dissolved.”).

14. As codified,⁴ N.C.G.S. § 8-56 provides that in a civil action: “No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage.”

15. The spousal privilege extends to (1) communications between spouses during marriage, (2) that are intended to be kept confidential, and (3) are “induced by the marital relationship and prompted by the affection, confidence, and loyalty engendered by such relationship.” *State v. Freeman*, 302 N.C. 591, 598 (1981).

16. “The claimant has the burden of proving the existence of the elements of the *prima facie* case for privilege.” Robert P. Mosteller et al., *North Carolina Evidentiary Foundations*, Ch. 8-10, § 8-3(A) (3rd ed. Matthew Bender). *Cf. K2 Asia Ventures v. Trota*, 215 N.C. App. 443, 448–53 (2011) (party claiming the attorney-client privilege has the burden to present specific objection).

⁴ There is a companion statute for application of the spousal privilege in criminal cases. *See* N.C.G.S. § 8-57. The North Carolina Supreme Court interprets the statutory language for the spousal privilege in N.C.G.S. § 8-57 in the same manner that it interprets the almost identical statutory language for the privilege in N.C.G.S. § 8-56. *See State v. Freeman*, 302 N.C. 591, 597–98 (1981) (criminal case) (“Whether a particular segment of testimony includes a ‘confidential communication’ within the meaning of the rule we adopt in this case is to be determined by the guidelines set forth in our previous decisions interpreting the term under [N.C.G.S. §] 8-56, the statute preserving a privilege in civil actions not to testify as to ‘confidential communications’ with one’s spouse.”).

17. Evidence of a marital communication protected by the spousal privilege can come in many different forms, including clandestine recordings. *See, e.g., Hicks v. Hicks*, 271 N.C. 204 (1967) (tape recording of spouses' conversation); *McCoy v. Justice*, 199 N.C. 602 (1930) (letter from husband to wife); *State v. Holmes*, 330 N.C. 826 (1992) (husband's comments to wife).

18. However, only communications that are confidential can be privileged. *See Hicks*, 271 N.C. at 205 (“[o]nly confidential communications are within the rule” (quoting Stansbury, *North Carolina Evidence* § 60 (2d ed. 1963))).

19. When assessing confidentiality, courts examine the circumstances surrounding the communication. *See, e.g., Rollins*, 363 N.C. at 237–38 (interpreting § 8-57); *accord State v. Godbey*, 250 N.C. App. 424, 430–31 (2016). Courts have considered the physical location where the communication took place, whether third parties were known to be present, the context and subject of the communication, and whether either spouse intended for the discussion to be shared with a third person. *See, e.g., Freeman*, 302 N.C. at 598 (“[s]uch actions in a public place and in the presence of a third person could not have been a communication made in the confidence of the marital relationship”); *Whitford*, 163 N.C. at 228 (communications between husband and wife with respect to purely business matters not intended to be kept confidential are not privileged).

20. Moreover, the privilege may not be waived by one spouse alone. Both spouses hold the privilege, and one may prevent the other from revealing protected communications. *See, e.g., Scott v. Kiker*, 59 N.C. App. 458, 461 (1982) (“nonwitness

spouse holds the privilege and may prevent the witness spouse from testifying” (citing *Hicks*, 271 N.C. 204)). This is true regardless of whether the disclosure occurs directly or indirectly, such as through a recording. *See, e.g., Hicks*, 271 N.C. at 206 (“plaintiff should not be permitted to circumvent this rule by divulging his wife’s statements indirectly by mechanical means”); *McCoy*, 199 N.C. at 611–12 (holding that husband held privilege over marital communications in a letter he wrote to his wife even after the wife willingly disclosed the letter to a third-party).

21. Communications shielded by the spousal privilege are incompetent evidence. *See Holmes*, 330 N.C. at 826. It is well-established that incompetent evidence is subject to being stricken by the Court. *Cf. Hodges v. Wilson*, 165 N.C. 323, 327 (1914). Rule 12(f) of the North Carolina Rules of Civil Procedure (“Rule(s)”) specifies that “upon the judge’s own initiative at any time, the judge may order stricken from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter.” N.C.G.S. § 1A-1, R. 12(f).

22. Consequently, should the Court determine that any portions of the Contested Conversations are protected by the spousal privilege, those portions would be incompetent for use either in the pleadings or as evidence in this civil action.

A. Aimee’s Standing

23. The Court begins with Futures’ objection to Aimee’s Motion on the grounds that, as a non-party, N.C.G.S. § 8-56 does not give her standing to seek protection against its use of the Contested Conversations in this litigation. Futures asserts that “§ 8-56 concerns the situation where the spouse of a party is compelled to testify

against the party” and further that “it is dispositive that Aimee is not a party to this action and that Futures is using the evidence [not against her former husband but] against [her father] Denis.” (Pl.’s Opp’n Mots. Prot. Ord.; Req. Award Reas. Atty. Fees 1, 16 [“Futures’ Br.”], ECF No. 90.)

24. In support of its position, Futures cites two North Carolina cases. It quotes *Scott v. Kiker* for the proposition that “[s]ince plaintiff’s ex-wife is not a party to the action, nothing prohibited plaintiff from testifying about her adultery.” 59 N.C. App. at 461. But the *Kiker* court was interpreting the language of § 8-56 prior to its amendment in 1983. Compare *Kiker*, 59 N.C. at 461 (“According to [the former] G.S. 8-56 . . . [n]othing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action or proceeding in consequence of adultery, or . . . criminal conversation.” (quoting N.C.G.S. § 8-56)), with N.C.G.S. § 8-56, as amended (“No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage.”). See also 1983 N.C. Sess. Laws (Reg. Sess., 1984), ch. 1037, s. 3 (amending § 8-56).⁵

25. The current language of § 8-56 neither mentions proceedings “in consequence of adultery” or for “criminal conversation,” nor requires that one spouse bring an action against the other in order for the privilege to apply. Simply put, the statute, as amended and currently applicable, prevents the disclosure of a confidential marital communication in any civil action when either of the spouses who

⁵ There are additional distinguishing factors in *Kiker*. Perhaps the most notable is that the party appealing the alleged violation of the spousal privilege was not one of the spouses, but rather was the paramour of the plaintiff’s spouse. Clearly, the paramour did not hold the spousal privilege and, therefore, could not assert it. See *Kiker*, 59 N.C. at 461–62.

was a party to that communication objects. *See Hicks*, 271 N.C. at 205–06. *See also Holmes*, 330 N.C. at 835 (“The privilege . . . of choosing not to testify against the other spouse . . . should not be confused with the privilege of the communicating spouse to prevent disclosure of confidential marital communications.”).

26. *Futures* also cites *McCoy v. Justice*, 199 N.C. 602 (1930), in support of its argument. In *McCoy*, a paramour, having had a judgment entered against him for alienation of affections, sued to set aside that judgment on the grounds that his former love interest and her husband had pretended to separate so that it would appear that their affections had been alienated when, in fact, that was not true. At issue was a letter between the two spouses referencing their separation. The paramour claimed that he had received the letter from a third party but with the wife’s knowledge. The Court held that even if the wife had consented to disclosure of the letter, without the husband’s consent, the letter—a confidential marital communication—was inadmissible. *McCoy*, 199 N.C. at 612.

27. Thus, *McCoy* simply affirms the principle that because both spouses hold the privilege, consent from both is needed to waive it. *Id.* *See also* Walker Jameson Blakey et al., *North Carolina Evidence: Courtroom Manual* 501(1)(A) (2022) (“a privilege is essentially a personal right to preserve the confidentiality of certain private communications”).

28. To adopt *Futures*’ construction of § 8-56 would be to invite a rogue spouse to circumvent the privilege by connivance. Our Supreme Court has cautioned against such attempts. *See Hicks*, 271 N.C. at 206 (“both spouses [are] protected, not only

from being compelled to disclose a communication made in confidence between them, but also from disclosure by or through the connivance of the other” (quoting *Stansbury*, *North Carolina Evidence* § 60 (2d ed. 1963))). *See also Jolly*, 20 N.C. at 113 (“The rule we deem a valuable one, and we view with apprehension any exception having a tendency more or less direct to promote cunning, or to generate distrust, where the best interests of society require that perfect frankness and confidence ought to prevail.”).⁶

29. Fundamentally, standing refers to whether a party has a sufficient personal stake in the outcome of a controversy to seek its adjudication. *See, e.g., Comm. to Elect Forest v. Employees PAC*, 376 N.C. 558, 609 (2021); *Musi v. Town of Shallotte*, 200 N.C. App. 379, 381 (2009). Here, Aimee holds a personal privilege that protects disclosure of her confidential marital communications with Cramer. *Walker v. Lewis*, 127 F.R.D 466, 467–68 (W.D.N.C. 1989) (applying North Carolina law and citing *Hicks*). Even though she is not a party to the action, Aimee’s assertion that the communications she had with her husband were private, reflected in her objection on grounds of the spousal privilege, gives her a personal stake in a justiciable controversy. Nothing further is required.

⁶ Of particular relevance here, the Supreme Court has specifically held that a spouse is protected even when there is an attempted use of a recorded marital conversation rather than live testimony. *See Hicks*, 271 N.C. at 206 (“plaintiff should not be permitted to circumvent this rule by divulging his wife’s statements indirectly by mechanical means”).

30. Because the Court determines that Aimee has standing to object to the disclosure of her marital communications in this litigation, the Court next evaluates that objection with respect to each of the Contested Conversations.⁷

B. The Contested Conversations

31. Futures argues that the Contested Conversations are not privileged because Aimee was communicating business matters⁸ on behalf of her father, Brosnan, and consequently her statements were not prompted by “affection, confidence and loyalty” engendered by her marriage. (Futures’ Br. 20–21.) Futures argues that Aimee spoke to Cramer not as his wife, but as Brosnan’s agent. Moreover, Futures contends that it is apparent from the content of the conversations that Aimee never intended for the communications to remain solely between husband and wife. This is obvious, Futures asserts, because “everything Aimee says to Cramer is materially identical to what Aimee says to [Brosnan] and what [Brosnan] says to Cramer” in the two uncontested conversations. (Futures’ Br. 2.) Thus, Futures

⁷ In reaching its decision, the Court conducted a detailed in camera review of the relevant recordings and transcripts.

⁸ Indeed, Futures argues that Aimee was communicating *illicit* business matters. Aimee disputes the characterization. (See Aimee Brosnan’s Reply Br. 8 fn.4, ECF No. 95.) Unlike the attorney-client privilege, to date North Carolina has not recognized a crime-fraud exception to the spousal privilege. *But see* N.C.G.S. § 8-57.1 (regarding abuse or neglect of a child under the age of 16 years); N.C.G.S. § 8-57.2 (exception for paternity cases); N.C.G.S. § 52C-3-315(h) (exception for child support cases); N.C.G.S. § 7B-1109(f) (exception for termination of parental rights). *Compare Holmes*, 330 N.C. at 835 (excluding testimony by wife that husband told her he was going to shoot and kill a third-party because it was “induced by the confidence of the marital relationship”).

concludes that the spousal privilege does not apply to either of the Contested Conversations.

32. Conversely, Aimee urges the Court to consider “the entire conversations in the context of [Aimee’s] express statements to Plaintiff Cramer, the parties’ marital relationship, and the fact that no one else was present during these discussions[.]” (Aimee Brosnan’s Reply Futures’ Opp. 9 [“Aimee’s Reply Br.”], ECF No. 95.) Aimee points to her use of [REDACTED] when speaking with Cramer on 9 November 2017. (Cramer Aff. Ex. 12, 5:19.) She also relies on [REDACTED]

[REDACTED]

[REDACTED]

(Cramer Aff. Ex. 14, 3:23–24, 9:19–20, ECF No. 74.19.) Aimee says that when read in context, “it is apparent that [Aimee] was speaking freely to Plaintiff Cramer because he was her spouse and she believed that their communications were private.” (Aimee’s Reply Br. 9–10.)⁹

33. The Court addresses the two Contested Conversations in turn.

i. The 9 November 2017 Conversation

34. The content of the 9 November 2017 conversation reveals that, at times, Aimee was relaying information from her father regarding the plan that the three of them—Aimee, Cramer, and Brosnan—had discussed together two days prior. In those instances, she acted as a messenger—a conduit for business information

⁹ The Court observes that Aimee Brosnan did not submit an affidavit or other evidence in support of her position; consequently, the Court evaluates whether the Contested Conversations were confidential based on the recordings themselves.

between the two men—not as a wife sharing intimacies with her husband. In other parts of the conversation, however, she [REDACTED]. As to those parts, the Court determines that Aimee is speaking in confidence to her husband.

35. The recording starts with Aimee telling Cramer, “[a]ll I did was capture information and follow instructions. So I’m sitting down, not to have an argue (sic) with you – argument with you, to give you information. Okay?” (Cramer Aff. Ex. 12, 2:6–9.) They then talk privately for a few moments before she repeats that she is “just following instructions,” (Cramer Aff. Ex. 12, 2:20–21), and adds, “[a]ll I’m doing is giving you information.” (Cramer Aff. Ex. 12, 3:6–7.) She then explains “the changes [that] Dad wanted to effect[,]” (Cramer Aff. Ex. 12, 3:15–21), and tells her husband “what Dad’s intentions are.” (Cramer Aff. Ex. 12, 4:11–5:10.) They again talk privately for a few moments before Aimee reiterates, “I’m just the middleman here, giving both of you information with which you can do whatever you want,” (Cramer Aff. Ex. 12, 5:21–23), and says explicitly, “Geoff, I am the messenger.” (Cramer Aff. Ex. 12, 19:18–19.)

36. Cramer asks for clarification about Brosnan’s instructions, and Aimee provides it, concluding with “[a]nd you can have all of that conversation with him.” (Cramer Aff. Ex. 12, 6:4–8:16.)

37. At several points in the conversation, when Cramer expresses discomfort, Aimee invites—even implores—him to tell her father about his concerns, indicating

that she does not expect Cramer's expressions of worry to remain private between them. (Cramer Aff. Ex. 12, 9:5–21, 13:3–7, 19:12–21.)

38. After additional private conversation, Aimee's description of her father's plan continues. (Cramer Aff. Ex. 12, 16:25–18:5.) Again, it is apparent from her statements that this is information she did not intend to remain between husband and wife. Her father, Brosnan, was also privy to it, and she shared it with Cramer to bring him under the tent. The conversation then concludes with more private sentiment expressed between husband and wife.

39. Thus, the Court concludes that Aimee has not met her burden of establishing that those portions of the 9 November 2017 conversation specifically identified above by page number and line(s) were confidential between the couple. With respect to the plan, her father, although not present, was clearly "in the know." As for Cramer's discomfort, given that she expressly and repeatedly directed Cramer to tell her father how he felt, Aimee cannot now claim that she did not intend for her father to know. *See Hicks*, 271 N.C. at 205 ("[o]nly confidential communications are within the rule"). Accordingly, as to these portions, specifically identified by page and line numbers above, the Court determines that the spousal privilege does not apply.

40. As for the balance of the 9 November 2017 conversation, however, the Court concludes that the spousal privilege applies and, absent the consent of both spouses, the remaining portions of this conversation are incompetent evidence in this civil action.

ii. 1 March 2020 Conversation

41. The second Contested Conversation between Aimee and Cramer occurred on 1 March 2020. Although Cramer now contends that there was a growing lack of affection in their marriage in March 2020, Aimee does not, and the circumstances indicate that Aimee relied on the confidence and loyalty she had in the marriage when speaking to her then-husband. (See Aimee Brosnan's Obj. and Mot. Prot. Order ¶ 3.)

42. Unlike their earlier conversation, there is no indication in this one that Aimee is merely repeating to her husband the same information she had discussed with her father. Instead, Aimee [REDACTED]. There is no suggestion that Aimee's father is even aware of the conversation, much less of its content.

43. In addition, it is plain from the words used that Aimee considered the communication confidential. For instance, [REDACTED] (Cramer Aff. Ex. 14, 3:23–24.) At another point, Aimee [REDACTED] (Cramer Aff. Ex. 14, 9:19–20, 23.) Cramer acknowledges the confidential nature of the conversation when he says, [REDACTED] (Cramer Aff. Ex. 14, 10:18–19.) There is no indication that anyone else was present. (See generally Cramer Aff. Ex. 14, ECF Nos. 74.18, 74.19.)

44. Contrary to Futures' argument, the possibility that Aimee or Cramer may have discussed some of the same *topics* with Aimee's father, Brosnan, in another,

uncontested conversation is not dispositive. Earlier conversations with other parties do not, in and of themselves, prevent Aimee from believing in good faith that a later conversation she had with her husband would remain private. As most married couples can attest, the affection, trust and loyalty resulting from a marriage makes spouses more apt to be candid in their private conversations, sometimes expressing sentiments to each other that they would not express in the presence of third parties. *See, e.g., Whitford*, 163 N.C. at 226 (the privilege is meant “to preserve inviolate the peace, good order, and limitless confidence between the heads of the family circle so necessary to every well-ordered civilized society”).

45. Because the circumstances surrounding the 1 March 2020 conversation support Aimee’s contention that it was, in its entirety, a confidential marital communication, the Court determines that the spousal privilege applies to the conversation in its entirety, and it is incompetent evidence in this civil action.

III. CONCLUSION

46. WHEREFORE, the Court ORDERS as follows:

- a. The Court **SUSTAINS** Aimee Brosnan’s Objection and **GRANTS** Aimee Brosnan’s Motion for Protective Order with respect to the entirety of the 1 March 2020 conversation, and to all portions of the 9 November 2017 conversation *except the following segments*: Cramer Aff. Ex. 12, (ECF Nos. 74.14 and 74.15), 2:6–9; 2:20–21; 3:6–7; 3:15–21; 4:11–5:10; 5:21–23; 6:4–8:16; 9:5–21; 13:3–7; 16:25–18:5; 19:12–21.

- b. The 1 March 2020 Conversation, Cramer Aff. Ex. 14, (ECF Nos. 74.18 and 74.19), shall remain under seal and is not competent evidence in this civil action.
- c. Futures is directed to redact and refile the 9 November 2017 Conversation, (ECF Nos. 74.14 and 74.15), Futures' Brief in Opposition to Brosnan's Motion for Partial Summary Judgment, (ECF No. 73), and Futures' Brief in Opposition to Non-Party Aimee Brosnan's Motion for Protective Order, (ECF No. 90), in accordance with the terms of this Order.
- d. Unredacted versions of ECF Nos. 73, 74.14, 74.15, and 90 shall remain under seal. The sealed portions of the 9 November 2017 Conversation, (ECF Nos. 74.14 and 74.15), are not competent evidence in this civil action.
- e. Denis Brosnan's Motion for Protective Order, unaccompanied by a brief is summarily **DENIED** pursuant to Business Court Rule 7.2.

IT IS SO ORDERED, this the 10th day of February, 2023.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases