SAM GLASSCOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

May 14, 2014

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Re: *Flaa v. Montano*
Civil Action No. 9146-VCG

Dear Counsel:

On April 29, 2014, non-parties Calvin A. Wallen and Frank L. Broyles (the "Challengers") filed a Notice of Challenge to Confidential Treatment of Information Redacted from Public Version pursuant to Court of Chancery Rule 5.1(f), seeking that certain depositions, excerpts of depositions designated confidential, and exhibits filed under seal be filed publicly.[1] The documents sought include excerpts of the deposition of Daniel C. Montano marked "Highly Confidential," Exhibit 2 to the deposition of Daniel C. Montano, and the deposition transcript of Viktoriya T. Montano. On May 1, 2014, the Defendants filed a Motion Pursuant to Chancery Court Rule 5.1 to Maintain Under Seal Excerpts of

[1] *See* Ct. Ch. R. 5.1(d)(2) ("For administrative convenience, the filer need not file a public version of documentary exhibits or deposition transcripts. If there is a challenge to the Confidential Treatment of an exhibit or deposition transcript for which no public version has been filed, then the filer shall file a public version of the exhibit or deposition transcript in compliance with Rule 5.1(f).").

Deposition of Daniel C. Montano Designated as Highly Confidential. The Challengers have not filed a response to that Motion.

The document for which the Defendants seek to maintain confidentiality contains two excerpts from the full deposition of Daniel C. Montano. Excepting those confidential excerpts, the full deposition transcript is contained in a separate document filed on the docket, which clarifies that "highly confidential portions have been extracted and attached as a separate transcript."[2] The Challengers do not request a public filing for the full deposition transcript, but instead seek only the excerpted portions marked "Highly Confidential."[3]

Court of Chancery Rule 5.1(f)(2) states:

> If a public version of the Confidential Filing is accessible, any person may seek continued Confidential Treatment for the Confidential Information redacted from the public version by filing a motion within five days after the filing of the challenger's notice. The person challenging Confidential Treatment shall have five days to file an opposition. . . . If an opposition to the motion is not timely filed, then the challenge shall be deemed withdrawn and the Confidential Filing shall continue to receive Confidential Treatment.[4]

As the Challengers seek a public filing only of the excerpted portions of the deposition transcript designated confidential, and the Defendants have moved to continue confidential treatment only of those excerpts, I understand Rule 5.1(f)(2)

[2] Dep. of Daniel C. Montano at 1 (capitalization modified from original).
[3] Notice of Challenge at 2.
[4] Ct. Ch. R. 5.1(f)(2).

to control. Accordingly, because the Challengers failed to oppose the Defendants' Motion within five days, I deem the Challengers' Notice of Challenge withdrawn.

However, as neither the Plaintiff nor the Defendant have represented that good cause exists to continue confidential treatment of Exhibit 2 to the deposition of Daniel C. Montano or of the deposition of Viktoriya T. Montano,[5] the parties should promptly file public versions of those documents.

To the extent the foregoing requires an Order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

[5] Defs.' Mot. at ¶ 6 ("Defendants have no objection to unsealing the deposition of Viktoriya T. Montano and Exhibit 2 to the Deposition of Daniel C. Montano.").