IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge Todd McKenney

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PROTECTIVE ORDER AND IN OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Named Plaintiff submits the following reply to briefly address certain especially misleading arguments contained in Defendants' Brief in Opposition to Plaintiff's Motion for Protective Order.

First, Defendants' claim that this case involves "KNR's proprietary and confidential information" is false. (Defs' Opp. at 1.) What this case involves is KNR's practice of 1) chasing down fresh car-accident victims with so-called "investigators" who do nothing but sign these car-accident victims to KNR fee-agreements so that KNR doesn't lose their business to another law firm, and 2) fraudulently charging these clients $50 for being so pursued, on the false premise that this pursuit constituted a separately chargeable "investigation" performed on the client's behalf as opposed to a KNR marketing expense already subsumed in KNR's contingency fee. This practice is known to all current and former KNR attorneys and a significant portion of current and former KNR staff, and is in no way a "confidential and proprietary" trade secret entitled to legal protection.

See R.C. 1333.51(D) (providing, in part, that information is not subject to protection as a trade secret when it is "generally known" or "readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use"). *See also Goodman v. Genworth Fin. Wealth Mgmt.*, 881 F. Supp. 2d 347, 355 (E.D.N.Y. 2012) citing RESTATEMENT (THIRD) OF UNFAIR COMPETITION, § 40, comment c, *Bartnicki v. Vopper*, 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001) ("Deceptive, illegal or fraudulent activity simply cannot qualify for protection as a trade secret.").

Additionally, Defendants illegitimately claim that they are entitled to "additional protection" providing that Robert Horton, a former KNR attorney who is a key witness for Plaintiffs, "cannot have access to any document under any circumstances, as it is believed that he already has disclosed KNR's confidential and proprietary information to third parties." (Defs' Opp. at 2.) Defendants further claim that by merely asserting this so-called "belief," they "have demonstrated that they are entitled to this additional protection regarding Mr. Horton." (*Id.*) This is not the law. Rather, Ohio law requires Defendants to make "specific demonstrations of fact, supported where possible by affidavits and concrete examples" to show, "with sufficient particularity," that "the harm [they] will suffer" as a result of the requested discovery outweighs the competing interests in allowing the discovery to proceed. *Lima Mem'l Hosp. v. Almudallal*, 3rd Dist. Allen Nos. 1-15-05, 1-16-11, 2016-Ohio-5177, ¶ 57; *Montrose Ford, Inc. v. Starn*, 147 Ohio App.3d 256, 259, 2002-Ohio-87, 770 N.E.2d 83 (9th Dist. 2002).

Thus, not only would Defendants have to make specific demonstrations of fact to show that Mr. Horton has "disclosed KNR's confidential and proprietary information" (he has not). Defendants would also have to show that Mr. Horton's exposure (or re-exposure) to certain documents would cause them harm that would outweigh the interest in his testimony about such documents as one of Plaintiff's key witnesses with knowledge of the fraudulent scheme at issue in this case. Defendants do not even attempt to make such a showing, and even if they did, it would be

beside the point, because any conceivable concern about Mr. Horton's exposure to so-called "confidential and proprietary information" would be fully ameliorated by entry of Plaintiff's proposed protective order. Naturally, Defendants would prefer that Mr. Horton not testify against them in this case but that in no way justifies the extreme restrictions that Defendants propose.

Finally, Defendants argue that their Protective Order provides a "mechanism to challenge any designation and to raise issues regarding the application of the protective order." (Defs' Opp. at 4.) While this might be true in a technical sense, it does not justify imposing otherwise baseless restrictions (such as Defendants' proposed restrictions on the participation of Mr. Horton and other former KNR attorneys with knowledge of the fraud, and Ohio Plaintiffs' attorneys who will testify to industry-standard practices in this case) from which Plaintiffs would be required to obtain relief in order to conduct basic discovery and present relevant and probative evidence to prove their case.

For the reasons stated above and in Named Plaintiff's Motion for Protective Order, the Court should enter a protective order consistent with that submitted by Named Plaintiff, which is sufficient to protect any legitimately protectable information that might be produced in this case.

Dated: November 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on November 11, 2016.

/s/ Peter Pattakos
One of the Attorneys for Plaintiff