

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	JUDGE ALISON BREAU
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>EXHIBIT TO DEFENDANTS' MOTION TO</u>
)	<u>STRIKE CLASS ALLEGATIONS</u>
Defendants.)	
)	

EXHIBIT 6 -
Affidavit of Robert Paul Horton

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

KISLING, NESTICO & REDICK, LLC)	Case No. CV-2017-03-1236
)	
Plaintiff,)	Judge Alison Breaux
)	
vs.)	
)	<u>Affidavit of Robert Paul Horton, Esq.</u>
ROBERT PAUL HORTON)	
)	
Defendant.)	
)	
)	

Now comes affiant, Robert Paul Horton, Esq., after first being duly sworn according to law, and states the following to be true:

1. I am over 18 years old, of sound mind, a Defendant in the above-captioned action, and a licensed attorney in good standing with the State of Ohio, registration number 0084321.
2. I have personal knowledge of the statements made in this Affidavit, and all statements are made to the best of my knowledge.
3. Kisling Legal Group, LLC dba Kisling, Nestico & Redick, LLC, hired me as an employee on February 20, 2012. My position was as an "associate attorney" in the pre-litigation group, where I primarily represented claimants in personal injury actions prior to the filing of a lawsuit (hereinafter referred to as "claimants" or "clients").
4. At the time of my hire, I signed a Confidentiality Agreement, a true and accurate copy of which is attached as Exhibit "A".
5. My employment with Kisling Legal Group, LLC dba Kisling, Nestico & Redick, LLC terminated on March 17, 2015.



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6. Prior to the termination of my employment, I did not report or threaten to report Kisling Legal Group, LLC, dba Kisling, Nestico & Redick, LLC or any of its owners, stockholders, partners, associates, employees, or other agents or representatives (hereinafter collectively referred to as "KNR") to any governmental, professional, or other authority for any reason, including but not limited to any violations of law, violations of the Ohio Rules of Professional Conduct, ethical violations, fraud, or other legal wrongdoing.

7. During my employment with KNR, I did not violate the Ohio Rules of Professional Conduct.

8. During my employment with KNR, I did not personally observe any violations of the Ohio Rules of Professional Conduct, including in the Member Williams case.

9. During my employment with KNR, I did not report or threaten to report KNR to any governmental, professional, or other authority for any reason, including violations of the Ohio Rules of Professional Conduct, ethical violations, or fraud.

10. The pleadings in the case of Member Williams, et al. v. Kisling, Nestico & Redick, LLC action, Case No. CV-2016-09-3928, refer to me as a "whistleblower." I do not consider myself a "whistleblower" under Ohio law or federal law.

11. On September 13, 2013, Member Williams was involved in a motor vehicle accident (hereinafter referred to as the "Accident").

12. I represented Member Williams through my employment with KNR to obtain compensation for her for the injuries she suffered in the Accident.

13. I contacted Chuck DeRemar, who I understood to work for third-party vendor MRS Investigations. When I contacted this Chuck DeRemar, and I knew that Kisling, Nestico & Redick, LLC would pay MRS Investigations.

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14. On September 17, 2013, Member Williams signed a Contingency Fee Agreement for her representation by me and Kisling, Nestico & Redick, LLC.

15. I represented Member Williams under the terms and conditions of this Williams Contingency Fee Agreement and pursuant to my duties and responsibilities under the Ohio Rules of Professional Conduct.

16. I believe the Williams Contingency Fee Agreement was proper under the Ohio Rules of Professional Conduct.

17. I represented Member Williams until my departure from KNR on March 17, 2015, performing legal services on her behalf.

18. During my representation of Member Williams, and to the best of my knowledge:

- a. Neither KNR nor I requested Member Williams treat with any chiropractor as a result of the Accident;
- b. Neither KNR nor I requested or obtained a medical report on Member Williams' behalf from any chiropractor as a result of the Accident;
- c. I was not aware of KNR fronting any expenses for a chiropractor report for Member Williams;
- d. I complied with the Ohio Rules of Professional Conduct in my representation of Member Williams;
- e. I was not aware of payments made by any medical providers to KNR as a result of their treatment of Member Williams or as a result of their payment for reports related to Member Williams' case;
- f. I was not aware of any payments made by MRS Investigations, Inc. or any person associated with MRS Investigations, Inc. to KNR as a result of Member Williams' case;
- g. I did not take, witness, or become aware of any "kickbacks" by any individual or entity to KNR, Robert Nestico, Robert Redick, or any other person or entity as a result of the Accident. KNR's representation of Member Williams, or the settlement of Member Williams' claim;

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- h. Member Williams was not advised by me to take any loan, including any loan with Liberty Capital or any other loan company in which the loan would be guaranteed by the prospective proceeds of the settlement of her claim;
- i. I was not aware of anyone at KNR advising Member Williams to take any such loan;
- j. I was not aware of any loan that Member Williams entered into guaranteed by the prospective proceeds of the settlement of her claim.

19. I believe that the intake department at KNR sent me a copy of the accident report / police report from the Stow Police Department in Member Williams' case. I do not know how the intake department obtained the accident report / police report.

20. Following my departure from KNR, I sent a text message to Brandy Gobrogge at KNR recommending that KNR call Member Williams.

21. Before I texted with Brandy Gobrogge, I talked with Member Williams. During my conversation with Member Williams, I did not advise her that any fraud or ethical violations had occurred with her case and I was not aware of any fraud or ethical violations that had occurred with her case.

22. During my employment with KNR, I represented over 1000 other claimants for which I negotiated settlements for personal injuries.

23. In representing the claimants mentioned in the preceding paragraph, claimants were not always treated by a chiropractor. I did not force a claimant to ever use a specific chiropractor.

24. When discussing the distribution of settlement proceeds with my and KNR's clients, I obtained client approval before deducting those fees or costs from the settlement proceeds.

25. I only asked my and KNR's clients to sign the Settlement Memorandum if I believed the fees, expenses, and payments to the client were fair and reasonable and the client agreed to them.

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26. During my representation of claimants as an attorney with KNR, I was not aware of any payments made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick that could be considered a "kickback." I am not aware of payments of any kind made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick.

27. During my representation of claimants as an attorney with KNR, I was never aware of KNR requesting reimbursement from a client for a case-related expense that was not paid by KNR.

28. Third party vendors, such as MRS Investigations, Inc. and other independent contractors, would at times perform the following functions: obtaining the accident report, periodically taking photographs of the vehicles involved in the accident, periodically taking photographs of injured claimants, or other activities. The amount of work performed by the investigator, investigative firm, or third party vendor depended on the individual case.

29. On the cases that I handled and all cases of which I am aware during my employment with KNR, third party vendors were paid by KNR, and then listed as an expense to the client, but the client was not immediately responsible for repaying the expense.

30. I was never aware of an "upcharge" or "surcharge" on any expenses charged to clients. All expenses were simply pass-through expenses that KNR had incurred, and only the actual cost was charged to the client, to the best of my knowledge.

31. If the client did not recover on the client's personal injury claim. KNR did not seek reimbursement of the investigator expense or any other fees or expenses.

32. I never became aware of any case in which the client did not agree to the fee but KNR charged the investigator fee anyway. I am not aware of a circumstance in which a claimant objected to the investigator fee.

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33. To the best of my memory, KNR voluntarily discounted their fees in the vast majority of cases that I settled while working at KNR.

34. I am not aware of any "quid pro quo" relationship between Liberty Capital Funding, LLC and KNR, its owners, or its employees. I discouraged KNR clients to obtain such loans.

35. I never demanded any clients borrow from Liberty Capital Funding, LLC (hereinafter "Liberty Capital"). While some of my clients borrowed from Liberty Capital, such transaction was only completed after I counseled the client against entering into the loan agreement.

36. I am not aware of any "kickback" or other payments made by Liberty Capital to KNR or any of its owners or employees in return for KNR directing clients to borrow from Liberty Capital. In fact, I am not aware of any payments of any kind being made by Liberty Capital Funding to KNR or any of its owners or employees.

37. I am not aware of the ownership structure of Liberty Capital nor do I have information to suggest that Rob Nestico, Robert Redick, or anyone at KNR had any financial or ownership interest in Liberty Capital Funding, LLC.

38. During my time with KNR, I did not observe KNR ever forcing or requiring a client to take a loan with Liberty Capital or any other lender.

39. The reports prepared by chiropractors or other health care providers served the purpose of documenting the injury. I sometimes used these reports to support the clients' claims during settlement negotiations with insurance companies.

40. I am not aware of any chiropractor, medical doctor, or other health care provider sending any payments to KNR, its employees, or its owners, for referral of any claimant to the chiropractor, medical doctor, or other health care provider.

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41. I am not aware of Akron Square Chiropractics or any other chiropractor, medical doctor, or other health care provider making a payment or "kickback" to KNR, its employees, or its owners.

42. I will return to KNR all documents, electronic mails (emails), electronic information, downloaded information, and all other information obtained from KNR by August 8, 2017.

43. I will provide copies of the items mentioned in the preceding paragraph to the Court and will thereafter destroy all such information in my possession and agree not to disseminate such information in any manner, unless otherwise ordered to do so by a Court of competent jurisdiction.

44. I am not aware of any attorney, owner, or other employee of KNR conspiring with any chiropractors or any other third party vendors to inflate billings.

45. I have reviewed this affidavit with my attorney and voluntarily agree to provide this affidavit, which is truthful to the best of my knowledge.

Further affiant sayeth naught.

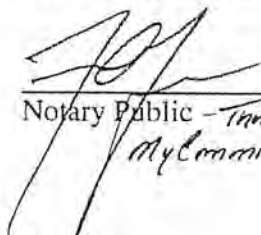

Robert Paul Horton

8-8-17
Date

STATE OF OHIO)

COUNTY OF SUMMIT)

Sworn to before me and subscribed in my presence this 8th day of August 2017.


Notary Public - Thomas A. Sledzicek, Esq. (#0038746)
My Commission Has No Expiration

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CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made between Kisling, Nestico & Redick, LLC of 3412 W. Market St., Akron, Ohio 44333 and Rob P. Horton and is immediately effective upon signing of both parties.

For purposes of this Agreement, the party who owns the Confidential Information will be known as "KNR", and the party to whom the Confidential Information will be disclosed will be known as the "employee."

KNR is engaged in the practice of law and provides legal services to the general public. In the course and scope of their employment with KNR, confidential information will be disclosed to the employee. KNR has requested that the employee will protect the confidential information which may be disclosed during the course of the employee's association with KNR.

I. CONFIDENTIAL INFORMATION

The term "Confidential Information" is defined as information or material, both printed and electronic, regardless of format which is proprietary to KNR, whether or not owned or developed by KNR, which is generally not known other than by KNR and which the employee may obtain through the course of their employment.

- A. Confidential Information includes but is not limited to:
- Business Records or Plans
 - Business Practices and Structures
 - Client information
 - Client lists
 - Financial Statements
 - Marketing Practices and Strategies
 - Trade Secrets
 - Technical Information
 - Computer Programs and Listings
 - Copyrights and other Intellectual Property

II. PROTECTION OF CONFIDENTIAL INFORMATION

Employee understands and acknowledges that the Confidential Information has been developed or obtained by KNR by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset to KNR which provides KNR with a significant competitive advantage, and needs to be protected from improper disclosure. Employee agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without prior written consent from KNR. In addition, Employee agrees:

- A. No Copying/Modifying. Employee will not copy, download, upload, modify or in any way disseminate any Confidential Information to any person or entity without prior written consent of KNR.

Sandra Kurt, Summit County Clerk of Courts



Sandra Kurt, Summit County Clerk of Courts

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B. Unauthorized Disclosure. If it appears through reasonable investigation that Employee has disclosed (or threatened to disclose) Confidential Information in violation of this agreement, KNR shall have the following remedies included but not limited to:

- I. Immediate dismissal from employment
- II. Monetary Damages
- III. Punitive Damages
- IV. Injunctive Relief

III. RETURN OF CONFIDENTIAL INFORMATION

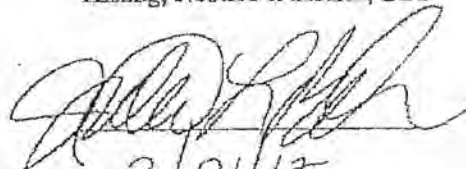
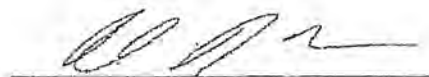
Upon termination of employment by either party and for any reason, Employee shall immediately return all Confidential Information, both written and electronic, in their possession. Failure to return all Confidential Information may delay Employee's receipt of final compensation until all materials are properly accounted for. Employee understands that the terms of this agreement shall remain in effect even after termination of employment.

IV. GENERAL PROVISIONS

This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Ohio. This Agreement shall not be assignable by either party, and neither party may delegate its duties under the Agreement. The confidentiality provisions of this Agreement shall remain in full force and effect after the effective date of this Agreement regardless of Employee's employment status with KNR.

Kisling, Nestico & Redick, LLC

Employee


Date 2/21/12
Date 2-21-12

Sandra Kurt, Summit County Clerk of Courts

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