

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 4 –
Defendant's Answers to Plaintiff's First Set of
Interrogatories

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MEMBER WILLIAMS,)	Case No. CV 16 866123
)	
Plaintiff,)	Judge Cassandra Collier-Williams
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS' ANSWERS TO PLAINTIFF'S</u>
)	<u>FIRST SET OF INTERROGATORIES TO ALL</u>
Defendants.)	<u>DEFENDANTS</u>

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Kisling Legal Group, LLC ("Defendants") object and respond as follows to Plaintiff Member Williams First Set of Interrogatories ("Interrogatories"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Interrogatories to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiff's Interrogatories seek information and communications between Plaintiff and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this lawsuit and attaching the Settlement Statement to her Class Action Complaint, Plaintiff has waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only her, and not to putative class members.

2. Defendants also object to Plaintiff's Interrogatories to the extent that they seek information that Defendants considers proprietary and/or confidential. Defendants will produce or disclose its proprietary and/or confidential information subject to a stipulated protective order.

3. Defendants object to the "Instructions" and "Definitions" preceding Plaintiff's Interrogatories on the grounds that they are vague, ambiguous, seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by

the Ohio Rules of Civil Procedure. Defendants will respond to these Interrogatories in accordance with its obligations under the Ohio Rules of Civil Procedure.

4. Defendants reserve their right to amend their responses to these Interrogatories.
5. Defendants deny all allegations or statements in the Interrogatories, except as expressly admitted below.

6. These "General Objections" are applicable to and incorporated in each of Defendants' responses to the Interrogatories. Moreover, Defendants' responses are made subject to and without waiving these objections. Failing to state a specific objection to a particular Interrogatory should not be construed as a waiver of these General Objections.

7. Defendants' discovery responses are made without a waiver of, and with preservation of:

- a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;
- b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;
- c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Interrogatories herein responded to;
- d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;
- e. The right to assert additional privileges; and
- f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

INTERROGATORIES

1. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-who performed any service for Plaintiff in connection with the \$50 payment to MRS Investigations, Inc., as defined in Request for Admission No. 3 ("the \$50 payment").

RESPONSE: Objection. Defendants object that the term "service" is vague, ambiguous, and undefined. Defendants further object that this request seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants identify as follows:

Chuck DeRemer, 1745 24th Street, Cuyahoga Falls, Ohio 44223

Michael Simpson

2. Identify the service or services that were performed in exchange for the \$50 payment.

RESPONSE: Objection. Defendants object that the term "service[s]" is vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants state that KNR deducted \$50 from the settlement proceeds that KNR obtained on behalf of Plaintiff for the services and work that MRS Investigations, Inc. ("MRS") performed in Plaintiff's legal matter. MRS invoiced KNR for the \$50 investigation fee for Plaintiff and KNR was required to pay MRS the \$50 fee regardless of whether KNR obtained a settlement or judgment on behalf of Plaintiff. Responding further, Defendants state that, among other things, the services and work performed by MRS for Plaintiff, included, without limitation, reviewing the police report of Plaintiff's accident and

having an MRS representative (Chuck DeRemer) visit Plaintiff's home at 11:00 a.m. on September 14, 2013 to obtain required signatures on documents, additional documents, and photographs. Plaintiff refused to meet with Chuck DeRemer. In addition, depending on the case or matter, MRS provides other services, including, without limitation, obtaining police records, obtaining witness statements, collecting scene investigation evidence and other evidence, taking photographs, obtaining medical records and affidavits, tracking down witnesses and clients, and filing court documents. This is all done for the flat fee that MRS has charged KNR. Over the years, the fee has ranged from \$30 to \$50.

3. Identify every topic and objective of any investigation performed on behalf of Plaintiff in connection with the \$50 payment.

RESPONSE: Objection. Defendants object that the terms "topic," "objective," and "investigation" are vague, ambiguous, and undefined. Defendants further object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants refer Plaintiff to their answer to Interrogatory No. 2.

4. Identify every task performed as part of any investigation or any other service performed on behalf of Plaintiff in connection with the \$50 payment.

RESPONSE: Objection. Defendants object that the terms "task," "service," and "investigation" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary

information. Subject to and without waiving these objections, Defendants refer Plaintiff to their answer to Interrogatory No. 2.

5. Identify every piece of information that was discovered in any investigation performed on behalf of Plaintiff in connection with the \$50 payment.

RESPONSE: Objection. Defendants object that the terms "information" and "investigation" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, because Plaintiff refused to meet with the MRS representative at Plaintiff's residence on September 14, 2013 at 11:00 a.m., MRS did not obtain any documents or information from Plaintiff. The MRS representative also reviewed the police report at issue.

6. Identify every disclosure of information that any Defendant (including any employee or representative of KNR) made to Plaintiff relating to the \$50 payment, including about any related investigation performed on her behalf, including the date on and format in which the disclosure was made, the person who made the disclosure, and the information contained in the disclosure.

RESPONSE: Objection. Defendants object that the terms "information," "disclosure," and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between Plaintiff and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants also object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants refer

Plaintiff to the Contingency Fee Agreement between Plaintiff and KNR and the Settlement Statement reviewed and signed by Plaintiff. As required under the ethical rules and KNR's policies and procedures, Attorney Rob Horton was required to review the Contingency Fee Agreement with Plaintiff on intake, which occurred on or about September 13, 2013. Attorney Rob Horton, who is no longer with KNR, has personal knowledge as to whether he in fact reviewed the agreement with Plaintiff. Attorney Rob Horton's replacement, Attorney Mark Lindsey, reviewed the Settlement Statement with Plaintiff via telephone in early August 2015. When Plaintiff picked up her settlement check at KNR's office on August 7, 2015, Attorney Kimberly Lubrani met with Plaintiff and asked if she had any questions. Plaintiff then signed the necessary documents, including the Settlement Statement, after reviewing them. Finally, Defendants refer Plaintiff to her file, which will be produced subject to an agreed-upon protective order.

7. Identify every conversation that any Defendant (including any employee or representative of KNR) had with Plaintiff relating to the \$50 payment, including about any related investigation performed on her behalf, including the date of the conversation, the means by which the conversation was had (e.g., in-person, telephone, e-mail, etc.), the conversation's participants, and the subject matter of the conversation.

RESPONSE: Objection. Defendants object that the terms "conversation," "representative," and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between Plaintiff and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants refer Plaintiff to the Contingency Fee Agreement between Plaintiff and KNR and the Settlement

Statement, both of which were reviewed and signed by Plaintiff. Responding further, Defendants refer Plaintiff to their Response to Interrogatory No. 6.

8. Identify every individual or corporation whom KNR engages or has engaged, on behalf of its clients, to perform services similar to those performed by MRS Investigations, Inc. on Plaintiffs behalf, as identified in your response to Interrogatory No. 2.

RESPONSE: Objection. Defendants object that the terms "services" and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. In addition, Defendants object that this interrogatory seeks proprietary and confidential information. Subject to and without waiving these objections and an agreed-upon protective order, Defendants will supply this information.

9. For each individual identified in your response to Interrogatory No. 8, identify their true, full and correct names, employers (including whether they are employees of any Defendant), positions, supervisors, and present addresses and phone numbers.

RESPONSE: Defendants refer Plaintiff to their objections and response to Interrogatory No. 8.

10. For each corporation identified in your response to Interrogatory No. 8, identify their true, full and correct names, each employee or representative of such corporation with whom any Defendant has had contact, and present addresses and phone numbers.

RESPONSE: Defendants refer Plaintiff to their objections and response to Interrogatory No. 8.

11. Identify every payment made by any Defendant to any individual or corporation identified in your response to Interrogatory No. 8, including by identifying the date and amount of each payment, and the persons or corporations making and receiving each payment.

RESPONSE: Objection. Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory is unduly burdensome and overly broad in that it seeks information dating back to late 2008 to early 2009.

12. Identify the date on which KNR first began engaging individuals or corporations, as identified in your response to Interrogatory No. 8, to perform services similar to those performed by MRS Investigations, Inc. on Plaintiffs behalf, as identified in your response to Interrogatory No. 2.

RESPONSE: Objection. Defendants object that the terms "services" and "similar to" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants state that KNR began using AMC in or around late 2008 or beginning of 2009. Defendants further state that KNR started using MRS in the beginning of 2011.

13. Identify each service for which any Defendant has engaged or employed Aaron M. Czetli or Michael R. Simpson to perform, whether for Defendant or on behalf of Defendant's clients.

RESPONSE: Objection. Defendants object that the term "services" is vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants also object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence to the extent that it seeks information regarding any work that Messrs. Czetli and Simpson performed for Defendants, as opposed to perform on behalf of Defendants' clients. In addition, Defendants object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants state Michael Simpson and Aaron M. Czetli have never been employees of KNR. In addition, Defendants refer Plaintiff to their responses to the Interrogatories and Requests for Admission.

14. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-with knowledge of the facts, claims, or defenses alleged in this case and identify the relevant subject matter of each person's relevant knowledge known to you.

RESPONSE: Defendants respond as follows: (1) all parties; (2) Robert Horton, former attorney with KNR who was counsel of record for Plaintiff; current attorney with Slater & Zurz, 80 S. Summit St, Akron, Ohio 44308; (3) Peter Pattakos; (4) Michael Simpson, as identified above; (5) Chuck DeRemer, as identified above; (6) Mark Lindsey, attorney with KNR who replaced Robert Horton as counsel of record for Plaintiff (contact

through Defendants' counsel); (7) Kimberly Lubrani, attorney with KNR who met with Plaintiff to sign Settlement Memorandum (contact through Defendants' counsel); and (8) Robert Redick, partner in KNR (contact through Defendants' counsel). Also, Defendants refer Plaintiff to the documents to be produced in discovery for additional potential witnesses.

15. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-who participated in the decision to charge Plaintiff the \$50 payment, and identify each such person's role in the decision-making process.

RESPONSE: Defendants identify Robert Redick (contact through Defendants' counsel).

16. Identify the date on which KNR first began using the "Needles" computer system to track client information.

RESPONSE: Objection. Defendants object that the terms "computer system" and "track" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state KNR began using the commercially available software system called Needles to assist KNR in managing its docket of cases in 2005.

17. Identify all KNR clients, past or current, whom the law firm represented in publicly filed lawsuits.

RESPONSE: Objection. Defendants object that this interrogatory seeks information that may be protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, and other applicable privileges. Defendants also object that this interrogatory seeks confidential and proprietary information. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to December 2004 (over tens of

thousands of cases or matters).

18. Identify the number of clients for whom KNR, through its representation of the client, has recovered a settlement or judgment on the client's behalf.

RESPONSE: Objection. This interrogatory is unduly burdensome and overly broad in that it requires an electronic review or a manual review of hard copies of over tens of thousands of cases or matters.

19. Identify all witnesses, including expert witnesses, you intend to use at trial; describe the subject matter of each witness's or expert's expected testimony, the facts provided to or obtained by any expert in generating his or her opinions, and the opinions held by each expert who will provide testimony at trial without regard to whether the expert will testify regarding that specific opinion at trial.

RESPONSE: Objection. Defendants object that this interrogatory seeks information protected by the attorney-client privilege and work product doctrine. Defendants also object that this interrogatory is premature as discovery has just started. Subject to and without waiving these objections, Defendants will identify its expert witnesses in accordance with the Ohio Rules of Civil Procedure, the Local Rules, and the Court's orders.

20. Identify every current or former KNR attorney or employee who raised questions or made complaints about charges to KNR clients, including those for payments to MRS Investigations, AMC Investigations, or any other party identified in your response to Interrogatory No. 8, including but not limited to questions conveyed orally, documented within electronic or hard-copy correspondence, fee-disputes through bar associations, or civil lawsuits filed against any Defendant.

RESPONSE: Objection. Defendants object that the terms "questions," "complaints," and "charges" are vague, ambiguous, and undefined. Defendants also object that this interrogatory

seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to late 2008 to early 2009. In addition, Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff to the extent it seeks information relating to alleged lawsuits against Defendants.

21. Identify every non-KNR attorney or employee, including any current or former clients, or third parties, who raised questions or made complaints about charges to KNR clients, including those for payments to MRS Investigations, AMC Investigations, or any other party identified in your response to Interrogatory No. 8, including but not limited to questions conveyed orally, documented within electronic or hard-copy correspondence, fee-disputes through bar associations, or civil lawsuits filed against any Defendant.

RESPONSE: Objection. Defendants object that the terms "questions," "complaints," and "charges" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to late 2008 or early 2009. In addition, Defendants

object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff to the extent it seeks information relating to alleged lawsuits against Defendants.

22. Identify each civil lawsuit filed against any Defendant in connection with any category of fees or expenses alleged to be improperly charged to KNR clients.

RESPONSE: Objection. Defendants object that the term "improperly charged" is vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to December, 2004. In addition, Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff. Subject to and without waiving these objections, Defendants identify the case captioned *Paul Cunningham v. Kisling, Nestico & Redick LLC Law Firm*, Summit County Court of Common Pleas, Case No. CV-2013-031312.

23. If your response to any Request for Admission is anything but an unqualified admission, identify the basis for your qualification or denial of each such request.

RESPONSE: Objection. Defendants object that this interrogatory is basically separate interrogatories for each Request for Admission, which places the number of interrogatories in excess of the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants incorporate their objections and responses to Plaintiff's Requests for Admission.

24. Identify every person who participated in the preparation of these responses and each Defendant's responses to the Requests for Admission and Requests for Production of Documents served with the Complaint-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers, the specific discovery requests to which each person's participation pertained, and each task that each person performed in preparing the responses.

RESPONSE: Objection. Defendants object that this interrogatory seeks information protected by the attorney-client privilege and work product. Defendants also object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving these objections, Defendants refer Plaintiff to their verification page for the responses to these interrogatories.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof

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Counsel for Defendants Kisling, Nestico & Redick,
LLC, Alberto R. Nestico, and Kisling Legal Group, LLC

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Answers to Plaintiff's First Set of Interrogatories to All Defendants was sent this 16th day of August, 2016 to the following via electronic and Regular U.S. Mail:

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Counsel for Plaintiff

/s/ Brian E. Roof

Brian E. Roof (0071451)

VERIFICATION

I, Alberto R. Nestico, as a member of Kisling, Nestico & Redick, LLC and as an individual defendant in this lawsuit, being duly sworn, state that I am duly authorized to verify the foregoing answers to these interrogatories on behalf of Defendants and the answers to these interrogatories have been made based upon a reasonable investigation of information and documents available to Kisling, Nestico & Redick, LLC and are true and accurate to the best of my knowledge and belief.

Alberto R. Nestico

Sworn to and Subscribed before me this ____ day of August, 2016.

Notary Public