IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge Patricia A. Cosgrove **Plaintiffs' Motion to Compel Discovery from the KNR Defendants**

I. Introduction

The KNR Defendants' posture toward discovery in this case has been one of extreme obstruction that, when boiled down, is based on the fantastical notion that Plaintiffs' claims against them are frivolous. On this false premise, Defendants have maintained that Plaintiffs are entitled to only a bare minimum of discovery, and have only produced a small fraction of the information that Plaintiffs have requested.

Defendants' obstructive approach finds no support in Ohio law, which places the burden on a party opposing discovery to prove that it is not reasonably calculated to lead to admissible evidence. Defendants cannot meet this burden with respect to the discovery at issue and they cannot come close.

Defendants' claims of undue burden ring especially hollow in this case, where the Plaintiffs have pleaded their claims in great detail, supporting them with extensive quotes from Defendants' own documents and sworn statements from Defendants' former employees. This information raises serious questions relating to serious professional misconduct, including calculated consumer fraud

and self-dealing, for which Defendants have no apparent good answers:

- Why did the KNR Defendants' charge their clients (including Named Plaintiff Member Williams) an across-the-board $50–$150 "investigation fee" for basic administrative tasks that related to no actual "investigation," that Defendants referred to as a "sign-up fee" behind closed doors, and whose purpose, as revealed by documented statements from Defendants' own office manager, was to keep the firm from "losing clients"—*i.e.*, to sign them up as quickly as possible before another law firm did? (*See* Third Amended Complaint ("TAC") ¶¶ 100–111, Defs' Proposed Joint Stipulation, attached as **Exhibit 1**, ¶¶ 1–2);
- Why did the KNR Defendants obsessively count their referrals to and from certain chiropractors, and direct their clients to treat with individual chiropractors based not on the clients needs, but on the number of referrals each chiropractor sent to KNR, or the specific promotional materials (such as "red bags") by which the clients were solicited? (*Id.* at ¶¶ 17–52; *See* ¶¶ 37, 39–42 re: "red bag" referrals);
- Why did the KNR Defendants pay, out of client funds (including from the settlement of Named Plaintiff Thera Reid), an across-the-board "narrative fee," described as a "kickback" in a sworn statement by former KNR attorney Gary Petti, paid only to certain selected chiropractors, immediately upon referral to or from a case with those chiropractors, before it was ever determined whether a medical narrative would be useful in resolving a given clients' case? (*Id.* at ¶¶ 57–76 citing, *inter alia*, Affidavit of Gary Petti, attached as **Exhibit 2**);
- Why did the KNR Defendants continue to refer their clients (including Named Plaintiff Naomi Wright) to chiropractors from Plambeck-owned clinics, to whom the bulk of KNR's referrals and narrative-fee payments were made, even though KNR knew that major insurance companies were engaged in a massive fraud lawsuit against these clinics, alleging that the clinics conspired with attorneys to fraudulently inflate billing in lawsuits, and that these insurance companies would naturally view any claims involving these clinics as suspect? (*Id.* at ¶¶ 38–42, 65–68; Defs' Answer to Interrogatory No. 2-17, attached at **Exhibit 3**);
- Why did the KNR Defendants fail to advise their clients of the lawsuits against Plambeck, and continue in their referral policies as if these lawsuits did not exist? (*See, e.g.*, Defs' Answer to Interrogatory No. 3-4, attached at **Exhibit 4** ("Defendants ... do not recall making any changes to its policies, procedures, or practices relating to lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Para 39 of the Third Amended Complaint."));
- Why did Defendant Rob Nestico, the managing partner of KNR, instruct all KNR attorneys and staff to refer all KNR clients (including Named Plaintiff Matthew Johnson) to a single source for settlement advances, at extremely high interest rates, from a now-defunct loan company with no track record, run by a former insurance salesman with no experience in the lending industry, only weeks after the company was formed, and weeks after Rob Nestico requested copies of the forms KNR used with other competing loan companies? (TAC ¶¶ 112–134).
- Why, when one of Nestico's partners questioned the reasons for this curious new

> referral arrangement, was Nestico's only response to say, through his office manager, that, "Rob wants to try this new company"? (KNR03391, May 14, 2012 email exchange between KNR name-partner Gary Kisling (the "K" in "KNR") and KNR office manager Brandy Lamtman, attached as **Exhibit 5**).

Rather than acknowledge the seriousness of the inferences these documents raise and afford transparency on information that would shed light on the answers to these questions, Defendants have denied Plaintiffs' right to investigate them at all. They've raised specious and shifting objections on relevancy and undue burden grounds, they've distorted and misrepresented the requirements that Ohio law imposes on them in complying with discovery, and they've cherry-picked the evidence they are willing to produce.

Plaintiffs have made every reasonable effort to resolve these issues without the Court's intervention, but the Defendants' obstruction has left them no other choice. Thus, under Ohio Rules of Civil Procedure 26, 33, 34, 36, and 37, Plaintiffs respectfully request that the Court enter an order in the form of the attached proposed order, or otherwise compel Defendants to properly and adequately respond to Plaintiffs' discovery requests as outlined and for the reasons explained below.

II. Plaintiffs' discovery requests are based on detailed and well-documented allegations of the KNR Defendants' self-dealing at the expense of their clients.

Plaintiffs' claims are based on detailed and well-documented allegations, from Defendants' own written communications, showing that KNR engaged in self-dealing at the expense of its clients in three primary ways:

A. Plaintiffs have alleged detailed and well-documented claims that KNR improperly double-bills its clients for overhead expenses by way of a fraudulent "investigation fee" deducted from every client settlement after the fact.

The first category of claims relates to KNR's practice of charging an across-the-board $50—$150 "investigation fee" for basic administrative tasks that related to no actual "investigation," including, primarily, signing potential clients to a KNR engagement letter before they could sign

with another firm. Accordingly, Defendants referred to this fee as a "sign-up fee" behind closed doors, including in an email from KNR's office manager Brandy Lamtman, where she admonished KNR attorneys and staff that, "we MUST send an investigator to sign up clients!! We cannot refer to Chiro and have them sign forms there." As Lamtman explained, "This is why we have investigators. We are losing too many cases doing this!!!!!!!" TAC ¶ 101.

An email from Defendant Robert Redick further confirmed that the fee Defendants present to their clients as an "investigation fee," was actually paid merely for "signing up" a client, and that if the "investigators" performed any other task on a case, such as, "pick up records, [or] knock on the door to verify address, they CAN be paid on a case by case basis depending on the task performed." *Id.* at ¶ 102.

KNR deliberately misleads its clients as to the nature of the fee, which does not relate to any "investigation" that would be separately chargeable, but rather only to basic marketing or administrative tasks that any law firm would have to perform to represent the clients, thus, already subsumed in the firm's contingency fee.[1] KNR's so-called investigators are not licensed (*See* KNR Defendants' Answer to TAC at ¶ 90), as private investigators are required to be under Ohio law (*See* Ohio Revised Code 4749.13(A)), and are functionally KNR employees, who act at Defendants' beck and call, and are required to follow Defendants' strict and narrow instructions as to the basic tasks assigned.

Ohio law prohibits a law firm from charging its clients separately under such an

[1] Defendants' proposed Joint Stipulation (**Ex. 1**) states, at ¶¶ 1–2, that, "For the flat fee, the investigators ... pick up police reports, addendums and photos; take accident scene photos; take or obtain property damage photos at body shops; take or obtain photos of client injuries; obtain medical records and bills; obtain regular and/or certified copies from courts and agencies; locate witnesses and obtained statements; deliver and obtain execution of documents including but not limited to medical authorizations, IRS authorizations, powers of attorney, and settlement agreements and releases after the client's consultation with his attorney; pick up and drop off settlement checks; perform 'door knocks' at the suspected residence of clients who have failed to respond to KNR's attempts to contact them by phone, email and/or mail; serve 180-day letters and subpoenas; file pleadings and briefs as needed; and perform other litigation-related investigations."

arrangement, recognizing that such services are properly subsumed in a firm's hourly rate or contingency-fee percentage, and that this practice constitutes double-billing for overhead expenses. *Columbus Bar Ass'n v. Brooks*, 87 Ohio St. 3d 344, 346, 721 N.E.2d 23 (1999) (holding that attorneys are prohibited from billing "normal overhead" expenses to contingency clients, including "secretarial" services or the work performed by "paraprofessionals"); *See also Columbus Bar Assn. v. Mills*, 109 Ohio St.3d 245, 2006-Ohio-2290, 846 N.E.2d 1253, ¶¶ 6, 10, 20 (holding that an attorney violated the prohibition against "collecting an illegal or clearly excessive fee" by "aggressively billing for secretarial, clerical, and other 'administrative' activities"); Formal Opinion No. 93-379 of the American Bar Association's Committee on Ethics and Professional Responsibility ("In the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional source of profit for the law firm beyond that which is contained in the provision of professional services themselves. The lawyer's stock in trade is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services."). Thus, Named Plaintiff Member Williams and all of the former KNR clients who were charged the investigation fee are entitled to reimbursement of the fee from the KNR Defendants.

B. Plaintiffs have alleged detailed and well-documented claims that the KNR Defendants have engaged in unlawful self-dealing with a network of chiropractors, including by transferring client funds to these chiropractors as a kickback in the form of a fraudulent "narrative fee."

The second category of claims documented in the Third Amended Complaint relates to KNR's alleged quid pro quo relationships with a network of chiropractors. The Complaint alleges specific details from KNR's internal documents showing that the firm obsessively counted their referrals to and from certain chiropractors, direct their clients to treat with chiropractors based on the number of referrals each chiropractor sent to KNR, and based on the specific promotional materials ("red bags") by which the clients were solicited. TAC ¶¶ 17–52.

The Third Amended Complaint also includes documents showing that the KNR Defendants paid out of client funds, an across-the-board "narrative fee," described as a "kickback" in a sworn statement by former KNR attorney Gary Petti, whose employment was terminated by KNR immediately after he raised questions about the propriety of the fee. *Id.* at ¶¶ 57–76 citing, *inter alia*, Affidavit of Gary Petti (**Ex. 2)**.

The documents in the Third Amended Complaint further show that KNR only paid the narrative fee to certain selected chiropractors, immediately upon referral to or from a case with those chiropractors, before it was ever determined whether a medical narrative would be useful in resolving a given clients' case. *Id.*

And perhaps most troublingly, Plaintiffs have set forth detailed allegations showing that the KNR Defendants continued to refer their clients to chiropractors from Plambeck-owned clinics, to whom the bulk of KNR's referrals and narrative fee payments were made, even though KNR knew that major insurance companies were engaged in massive fraud lawsuits against these clinics, alleging that they conspired with attorneys to fraudulently inflate bills in personal-injury suits. *Id.* at ¶¶ 36–43. *Id. See also* Defs' Answer to Interrogatory No. 2-17 (**Ex. 3**) ("Defendants likely found out about these [lawsuits against Plambeck] in or around the beginning of 2012."). Despite their awareness of these suits, and the likelihood that these insurance companies would naturally view any claims involving these clinics as suspect, the KNR Defendants have admitted that they failed to advise their clients of these Plambeck lawsuits, and did not make any changes to their policies relating to referrals to Plambeck-owned clinics. *Id.* at ¶¶ 38–42, 65–68; Defs' Answer to Interrogatory No. 3-4 (**Ex. 4**) ("Defendants ... do not recall making any changes to its policies, procedures, or practices relating to lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Para 39 of the Third Amended Complaint.").

These documents, and others, establish a strong inference of self-dealing that is prohibited

by Ohio law, and, if proven, would entitle KNR clients, including Named Plaintiffs, to disgorgement of any fees the law firm or chiropractors collected through the unlawful arrangement. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 38, 47, 57, 57, 27 N.E.2d 939 (1940) (holding that disgorgement is a proper remedy against a self-dealing fiduciary "notwithstanding there may be no causal relation between [the defendants'] self-dealing and the loss or deprecation incurred," as matter of "public policy" to deter "self-dealing ... [in] relation[s] which demand[ ] strict fidelity to others," and to deter the natural "temptation to wrong-doing" that fiduciary relations create); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶¶ 23, 26, 30, 33, FN 20, 38, 766 N.E.2d 612 (2001) quoting 49 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115 ("When agents intentionally conceal material facts or secure to themselves enrichment directly proceeding from their fiduciary position, agreements accompanying such conduct are fraudulent and may be set aside."), OHIO JURISPRUDENCE 3D (1984) 191, Fiduciaries, § 94 ("The law is strict in seeing that a fiduciary shall act for the benefit of the person to whom he stands in a relation of trust and confidence and in maintaining the trust free from the pollution of self-seeking on the part of the fiduciary."); *Hendry v. Pelland*, 73 F.3d 397, 402 (D.C. Cir. 1996); (holding that attorneys, as any fiduciaries, face liability for forfeiture or disgorgement based on their fiduciary breaches, regardless of any proof of consequential injury).[2]

[2] See also *Miller v. Cloud*, 7th Dist., No. 15 CO 0018, 2016-Ohio-5063, ¶92 ("[W]hen a party is a wrongdoer, disgorgement is an option."); 49 OHIO JURISPRUDENCE 3D (1984) 66, 71, Fiduciaries, § 13 ("Abuse of a relation of trust or confidence for personal aggrandizement is the cardinal sin of a fiduciary, and courts are quick to denounce, prevent, or remedy any such action."), *Greenberg v. Meyer*, 50 Ohio App.2d 381, 384, 363 N.E.2d 779 (1st Dist.1977) ("The rule [providing that "it is immaterial whether the principal suffered injury or damage" when "agents/fiduciaries" breach their duties of "absolute good faith and loyalty"] does not depend upon whether ... the principal is injured by the conduct of the agent. The wholesome rule is that the agent shall not put himself in a position where he may be tempted to betray his principal, or to serve himself at the expense of his principal. The rule ... was intended not solely to remedy actual wrongs caused by such misconduct, but to discourage the occurrence of such misconduct altogether."); *First United Pentecostal Church v. Parker*, 514 S.W.3d 214, 221 (Tx, 2017) (the "central purpose" of this principle "is to protect relationships of trust by discouraging [attorneys'] disloyalty").

C. Plaintiffs have alleged detailed and well-documented claims that the KNR Defendants have engaged in unlawful self-dealing with a loan company, with whom Defendants entered an exclusive referral arrangement for their own benefit.

The third and final category of claims relate to the Defendants' relationship with a loan company called "Liberty Capital Funding," and its representative, Ciro Cerrato. The Third Amended Complaint quotes from documents showing that Defendant Rob Nestico, the managing partner of KNR, instructed all KNR attorneys and staff in May of 2012 to refer all KNR clients to Liberty Capital as a single source for settlement advances, at extremely high interest rates, only weeks after the company was formed, and weeks after Rob Nestico requested copies of the forms KNR used with other competing loan companies. TAC ¶¶ 112–134. At the time KNR entered this exclusive referral relationship, Liberty Capital had no track record, and was run by a former insurance salesman with no experience in the lending industry, Cerrato, out of Cerrato's own home. *Id.* at ¶¶ 127–28.

When one of Nestico's partners, Gary Kisling, questioned the reasons for this curious new referral arrangement, explaining that another loan company the firm had used was "excellent at getting reductions on loans to get cases settled," KNR's office manager could only reply that, "Rob wants to try this new company." **Ex. 5**, KNR03391, May 14, 2012 email exchange between KNR name-partner Gary Kisling and KNR office manager Brandy Lamtman. By the end of 2014, Liberty Capital was defunct, and by early 2015, the KNR Defendants had acknowledged the impropriety of an exclusive referral arrangement with a loan company, instructing their employees to "be sure to offer two different companies to your clients, only if they request a loan." TAC ¶¶ 126, 132.

As with the chiropractor claims, these well-documented allegations create a strong inference of self-dealing that is prohibited by Ohio law, and that, if proven, would entitle the KNR clients, including Named Plaintiffs, to reimbursement for or disgorgement of all interest and fees paid on

Liberty Capital loans. *See* Section II.B., above, citing, inter alia, *In re Binder*, 137 Ohio St. 26, 38.

III. Timeline of the KNR Defendants' obstruction to date

When this case was originally filed in July of 2016, it was only about the investigation fees. On March 22, 2017, the Plaintiffs filed a Second Amended Complaint including substantial new documentary evidence of the investigation-fee fraud, and adding the two additional classes of claims—also supported by substantial detail from Defendants' own documents. On July 27, 2017, Plaintiffs served discovery relating to the Second Amended Complaint, including their third and fourth requests for production of documents that included 70 requests in total.

A. Upon receiving Plaintiffs' second round of discovery requests, Defendants completely refused to respond to 45 of 70 requests for production of documents, and only minimally responded to the rest, ultimately producing a small portion of documents responsive to only 8 of the requests.

On October 23, 2017, Defendants filed their written responses to these document requests, which are attached as **Exhibits 6** and **7**. In these responses, Defendants stated their complete refusal to produce documents responsive to 45 of the 70 requests, including basic information essential to the claims at issue in the lawsuit, including documents reflecting the following:

- KNR's policies and procedures on when and how to use an "investigator" on a client matter, and when an "investigation fee" should be charged (Request Nos. 3-41, 3-43, 3-44, 4-1);
- policies and procedures on the referral or steering of clients to chiropractors, and obtaining referrals from chiropractors (3-37, 3-46, 3-47);
- changes to KNR's policies and procedures in response to the fraud lawsuits by large insurance companies against the Plambeck-owned chiropractic clinics to which KNR routinely directed its clients under the alleged quid-pro-quo relationship (4-2);
- policies and procedures on when and how to request a "narrative" report from a chiropractor, including when to charge the "narrative fee" that Plaintiffs allege to be a kickback payment for referrals (3-45, 3-48);
- discussions, communications or assessments of the value of narrative reports in pursuing personal injury settlements, and KNR's requirements for those reports (3-27, 3-28, 3-29);
- negotiations with and solicitation of chiropractors about referrals (3-21, 3-30) and narrative fees (3-22);

- Defendants' efforts to determine the financial stability or general quality of Liberty Capital Funding prior to Defendant Nestico asking that his employees recommend them exclusively to KNR clients only weeks after Liberty Capital was formed (3-2, 3-6, 3-7);
- The employment files for Rob Horton and Gary Petti, former KNR attorneys who are key witnesses for Plaintiffs, and who Defendants have tried to discredit in part by reference to their reasons for terminating these attorneys' employment (3-55, 3-56);
- Documents relating to litigation between Defendants and a chiropractor named James Fonner, in which Dr. Fonner asserted a counterclaim alleging that KNR "has a scheme in place whereby it sends clients who were allegedly injured in motor vehicle accidents to its 'preferred chiropractor' and that KNR's "preferred chiropractors" were required to "follow [KNR's] demands and requests as it relates to treatment, billing, and reducing bills." (3-60) *See Kisling, Nestico & Redick, LLC v. Fonner*, Franklin County C.P. No. 15-CV-003216, Sep. 15, 2015 Counterclaim of Dr. James E. Fonner.

Defendants even went so far as to refuse producing the complete "email chains" from which, as Defendants repeatedly stated in their Answer, the emails Plaintiffs quoted in the Second Amended Complaint were allegedly "taken out of context" (3-1); *See also* Nestico's Answer to SAC, filed Jul. 20, 2017, at ¶¶ 21, 27–35, 37, 39, 40–42, 46–49, 58, 60–61, 87–88, 91–92, 94, 96, 100–102, 104–106, 115, 118 (repeatedly stating that the quoted emails "have been removed from the chain of emails and are taken out of context"). In sum, Defendants only produced documents responsive to 8 of the 70 requests, with most of the approximately 3,000 pages produced having little to no bearing on the matters in dispute (2,158 pages of the Named Plaintiffs' client files and a 992-page manual for Defendants' computer system).

On October 26, 2017, Plaintiffs sent a letter to the Defendants (attached as **Exhibit 8**) detailing their concerns with Defendants' discovery responses. In response to this letter, the Defendants agreed to meet and confer on November 2, 2017 to discuss these issues.

B. Defendants made unsupported claims of undue burden, and falsely represented to Plaintiffs and the Court that searching for responsive documents was "crashing" their computer system.

At this meeting, Defendants' counsel presented Plaintiffs' counsel with a series of printouts from KNR's computer system (attached as **Exhibit 9**), representing these documents to be evidence

that their attempted searches for responsive documents were "crashing" KNR's computer system, and, thus, that Plaintiffs' requests were unduly burdensome. These printouts revealed Defendants' so-called efforts to run a total of six searches of their choosing, three of which contained so many terms, or such broad terms, as to appear deliberately designed to return a large amount of unresponsive data. These printouts also showed "hit" counts pertaining to various search terms. At first, Plaintiffs misunderstood these "hit" counts to refer to the number of documents each search was returning, as opposed to the number of times each term appeared in the search results (given that any given term could appear multiple times in a single document). Defendants allowed both the Plaintiffs and the Court to persist in this misunderstanding, including at the January 5, 2018 status conference. *See* excerpts from Jan. 5 hearing transcript, attached as **Exhibit 10**, at 30:18–31:5, 55:1–15, 65:12–23.

In response to Defendants' representations about the searches they had conducted, Plaintiff followed up with a November 7, 2017 letter (attached as **Exhibit 11**) conceding that Defendants need not search results for 14 single-term searches that were returning a large number of hits, but also maintaining that the Defendants search for responsive documents relating to essential terms including "investigation fee," "sign-up fee," "investigator," "narrative fee," "narrative report," "referrals," and "Liberty Capital." In this letter, and a follow-up letter of November 11 (attached as **Exhibit 12**) Plaintiff suggested six additional searches that would return a narrower set of results.

On November 15, 2017, Defendants responded with a letter (attached as **Exhibit 13**) stating that they "will not review and search [the requested terms] as part of your fishing expedition," and claiming that "run[ning[these searches on the entire database ... will be unduly burdensome and crash the system, as we have established before with the documents we provided to you at the [Nov. 2] meeting." *See* **Ex. 9**. In this letter, Defendants stated that they would produce responsive documents from five narrow searches of their choosing, on a limited number of mailboxes of their

choosing, and ultimately produced about 500 pages of responsive documents from those searches.[3]

In response to this letter from Defendants, Plaintiffs sent another letter on December 8 (attached as **Exhibit 14**), reiterating their need for Defendants to conduct a comprehensive search of their files, and the relevance of particular document requests. Defendants met this with their own letter of December 20 (attached as **Exhibit 15**) by which they hardly gave an inch, offering only as much as to run a search for "investigative fee" on a few more mailboxes, and a few stipulations that do not negate Plaintiffs' need for the information that is the subject of this motion.

At the January 5, 2017 status conference, Defendants maintained their position on all of the above, repeatedly representing to the Court that Plaintiffs' requests were "crashing their system," and were "not possible" to perform. *See* **Ex. 10**, Jan. 5, 2018 hearing transcript, at 54:18–55:4, 58:15–20, 60:17–24. These representations were shortly revealed to be false, and further evidence of a calculated plan to obstruct Plaintiffs' efforts to obtain discovery on their claims.

C. Testimony from KNR's IT manager has revealed that the requested searches were not "crashing KNR's computer system," and that Defendants have not made a good-faith effort to comply with Plaintiffs' discovery requests.

On February 1, 2018, the Plaintiffs took a deposition, under Civ.R.30(b)(5), of KNR's IT manager Ethan Whitaker, whom Defendants designated to testify about the storage and retrieval of responsive documents from Defendants' computer files. At Mr. Whitaker's deposition (excerpts

[3] The five searches from which Defendants have produced responsive documents, as summarized in Defendants' November 15, 2017 letter (**Ex. 13**) are as follows: 1) "Sign up fee" and "SU fee" from all mailboxes (a search that resulted in a mere 166 "hits"); 2) "investigation fee" from seven mailboxes of Defendants' choosing; 3) "Ciro" and "Cerrato" from Defendants Nestico's and Defendant Redick's mailboxes; 4) "(Akron Square" or ASC or Floros AND narrative!) from Nestico's and Redick's mailboxes, and 5) communications between Nestico or Redick with Defendant Floros containing the term "referral!." Defendants also finally agreed to produce the "email chains" from which they alleged—in their Answer—that the documents quoted in the Second Amended Complaint were "taken out of context." *See* Defendant Nestico's Answer to SAC, filed Jul. 20, 2017, at ¶¶ 21, 27–35, 37, 39, 40–42, 46–49, 58, 60–61, 87–88, 91–92, 94, 96, 100–102, 104–106, 115, 118 (repeatedly stating that the quoted emails "have been removed from the chain of emails and are taken out of context").

from transcript attached as **Exhibit 16**), he made clear that KNR's email system had never "crashed" in response to Plaintiffs' searches, but rather only that certain searches were returning a data set that was too large to fit in the relatively small storage space that Defendants had allocated for it. **Ex. 16**, Whitaker Tr., at 74:15–75:17; 77:16–78:2. Mr. Whitaker confirmed that it would cost approximately $1,000 to $2,000 and take a "couple hours" of his time to set up storage space that would accommodate these searches (which is only a fraction of the expense the KNR Defendants incurred by sending three senior attorneys to Mr. Whitaker's three-hour long deposition), but that no one had asked him to do that. *Id.* at 78:6–79:14. And he testified that this storage space could be repeatedly cleared to perform as many searches as were necessary. *Id.* at 87:9–88:24.

Mr. Whitaker also confirmed that the Defendants only asked him to run approximately six searches for responsive documents (three of which, as noted above, appear to have been deliberately designed to return a large amount of unresponsive data[4]), and testified that he was never asked to upload search results onto a document review platform that would have allowed for easy searching and elimination of repetitive data. *Id.* at 72:11–73:10, 82:7–23, 84:8–17, 84:18–85:7. He also confirmed that Defendants' "hit" counts refer only to the number of times the search terms appear in the documents searched, as opposed to the number of individual documents each search turns up as Defendants allowed Plaintiffs and the Court to mistakenly believe. *Compare Id.* at 98:14–99:21 with **Ex. 10**, Jan. 5 hearing transcript, at 30:18–31:5, 55:1–15, 65:12–23.

Mr. Whitaker's testimony confirms that he was never asked to solve any of the alleged problems that the KNR Defendants have claimed to have with searching for responsive documents. *See* **Ex. 16**, Whitaker Tr., at 25:24–26:22, 77:25–79:15, 101:13–24.

[4] For example, one of the six searches Defendants asked Mr. Whitaker to run (*See* **Ex. 9** at 2) was for all "hits" in KNR's electronic documents relating to the following terms: Williams, Matthew, Matt, Johnson, Member, Wright, Reid, and Naomi, as well as various combinations of these terms. Another included all hits for the term "liberty," which increased the number of hits in the search from approximately 27,000 to approximately 153,000.

D. The Defendants have maintained their refusal to comprehensively search their files for responsive documents, despite the availability of affordable tools that would allow them to efficiently do so.

After Mr. Whitaker's February 1 deposition, at Plaintiffs' request, the Defendants agreed to an extended deadline for Plaintiffs motion to compel to make an effort to narrow the parties' dispute in light of the information that Mr. Whitaker provided. On February 5, Plaintiffs sent Defendants a letter (**Exhibit 17**) in which they requested that Defendants run the following sixteen searches on their electronic files, and produce all responsive documents from the results:

- "Liberty Capital!"
- Ciro
- Cerrato
- loan! AND refer!
- chiro! AND refer!
- (Minas OR Floros OR "Akron Square!" OR ASC) AND refer!
- "red bag!"
- investigator!
- investigat! AND fee!
- investigat! AND expense!
- "sign up!" AND fee!
- SU AND fee!
- Aaron! AND Mike!
- AMC AND MRS
- narrative!
- Plambeck!

Two days later, on February 7, Plaintiffs followed up with a letter (**Exhibit 18**) summarizing the pending discovery requests to which they must insist on a complete response.

Defendants replied a week later, on February 14 (**Exhibit 19**), stating that they would agree to run 12 of the 16 requested searches, but would only review and produce responsive documents *if and only if* they determined that a "reasonable number of items are identified." Defendants' February 14 letter further reaffirmed their refusal to review "12,204 hits" for the term "Ciro," "49,096 hits" for the term "investigator," and "57,840 hits" for the term "narrative," thus clarifying that if any of the other searches returned as many "hits" as "12,204," Defendants would refuse to review those

results on "unreasonableness" grounds.

Importantly, and as Plaintiffs pointed out to Defendants in a letter the next day (**Exhibit 20**) Defendants' continued reference to the number "hits" that searches return shed little to no light on the amount of material that would actually have to be reviewed from those searches. Given Defendants' extensive use of group-email lists to send messages to many users at once (such as all attorneys, all staff, or all "prelitigation" attorneys and staff), the actual number of documents to review would be only a fraction of these "hit" counts if Defendants would only endeavor to make use of affordable document review platforms that allow for deduplication of data at the push of a button. *See* Affidavit of e-discovery expert Brett Burney, attached as **Exhibit 21**, at ¶¶ 7–10. As Defendants were undoubtedly aware before receiving Plaintiffs' letter, these platforms would allow the KNR Defendants to host their data for approximately $40 per gigabyte per month, run all of the searches Plaintiffs requested, remove all duplicate items from the search, and provide Plaintiffs with an accurate and meaningful number of documents that would actually have to be reviewed in response to Plaintiffs' requests. *See Id.* at ¶¶ 7–15.

Thus, as Plaintiffs stated in their Feb. 15 letter (**Ex. 20**), it's apparent from Defendants' own communications that it would make no sense for them to comprehensively review their files for responsive documents without using a review platform with deduplication capabilities. The KNR Defendants have refused to do make use of this technology, as confirmed by Mr. Popson on a phone call with Mr. Pattakos on Feb. 15, which gives rise to the bulk of the parties' current dispute. In short, Defendants' are intentionally handcuffing themselves by refusing to make use of available tools to efficiently search their files, or even evaluate how burdensome it would be to do so. If the Court permits the Defendants to maintain this refusal, there will be no way for Plaintiffs to ensure a complete response to their discovery requests or fair litigation of their claims, as explained more fully below. This would be contrary to Ohio law, including the Civil Rules, and would effectively

deny Plaintiffs access to Ohio courts.

III. Law and argument

A. Civ.R. 37 standard of review

Civ.R. 37 provides that, "on notice to other parties and all affected persons, a party may move for an order compelling discovery." Civ.R. 37(A)(1). A party may move to compel a response to an interrogatory and request for documents. Civ.R. 37(A)(3)(a)(iii) and (iv). Moreover, an evasive or incomplete answer shall be treated as a failure to answer. Civ.R. 37(A)(4). Courts may also award the moving party attorneys' fees and costs associated with filing a motion to compel under Civ.R. 37(A)(5)(a) where the opposing party's resistance to discovery is not "substantially justified."

B. Civ.R. 26(B)(4) standard of review

Under Civ.R. 26(B)(1), "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . , including . . . electronically stored information." With respect to electronically stored information, Civ.R. 26(B)(4) provides as follows:

> A party need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the party from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause.

Townsend v. Ohio DOT, 10th Dist. Franklin No. 11AP-672, 2012-Ohio-2945, ¶ 15.

Even if Defendants could show that the requested electronic searches resulted in undue burden or expense, discovery may still be permitted upon a showing of good cause. *Id.* at ¶17. Civ.R. 26(B)(4) lists the four factors used for determining whether good cause exists:

> (a) whether the discovery sought is unreasonably cumulative or duplicative;
>
> (b) whether the information sought can be obtained from some other

> source that is less burdensome, or less expensive;
>
> (c) whether the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; and
>
> (d) whether the burden or expense of the proposed discovery outweighs the likely benefit, taking into account the relative importance in the case of the issues on which electronic discovery is sought, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.

Here, as shown above and below, it impossible for Defendants to establish a claim of undue burden or expense with respect to Plaintiffs' requests. And even if Defendants could establish undue burden, good cause exists for requiring the production of responsive material under Rule 26(B)(4).

C. Putative class-action plaintiffs are entitled to discover information relevant to class certification requirements under Civ.R. 23, and to discovery relating to the merits of their claim, and especially so when merits and class-certification discovery overlap.

In a putative class-action suit a plaintiff is entitled to discover information relevant to class certification requirements. *See In re Hydrogen Peroxide Antitrust Lit.*, 552 F.3d 305, 317 (3d Cir. 2008). Thus, even before a class is certified, a plaintiff is entitled to discovery regarding the substance of the class-action claim to the extent necessary to satisfy Rule 23's certification requirements. *Bell v. Lockheed Martin Corp.*, D.N.J. No. 08-6292 (RBK/AMD), 2010 U.S. Dist. LEXIS 96864, at *22 (Sep. 15, 2010).

It is commonly understood that evidence relevant to class certification and the merits of the case will frequently overlap. *See Manual for Complex Litigation* § 21.14 (4th ed. 2004) ("There is not always a bright line between [discovery related to certification issues and discovery related to merits issues]. Courts have recognized that information about the nature of the claims on the merits and the proof that they require is important to deciding certification."). Thus, a "plaintiff should have the opportunity to obtain evidence which tends to show the fact of, and reasons behind, the alleged [harm] occasioned by the defendants' conduct . . . [when] it is clear the merits discovery and discovery for the class certification issue overlap as to the plaintiff." *Telco Group, Inc. v. Ameritrade,*

Inc., D.Neb. No. 8:05CV387, 2006 U.S. Dist. LEXIS 13264, at *16-17 (Mar. 6, 2006); *See also Lonardo v. Travelers Indemn. Co.*, 706 F.Supp.2d 766, 782 (N.D.Ohio 2010) (noting with approval that the parties were able to engage in discovery on the merits of individual plaintiffs' claims as well as class discovery because there was significant overlap between merit-based issues and certification, "especially the basis for the Plaintiffs' fraud allegations.").

Here, as shown above and below, there is a near-complete overlap of the evidence pertaining to class certification, and that pertaining to the merits of Defendants' individual claims. Evidence that would shed light on whether the Named Plaintiffs were improperly assessed fees under the allegedly unlawful relationships is the same evidence that would show whether all KNR clients were similarly injured by the same alleged pattern of self-dealing. Contrary to what Defendants have maintained throughout this litigation, Plaintiffs' claims are especially well-suited for resolution as a class action and, indeed, could not realistically be resolved by any other means.

D. Discovery requests are not unduly burdensome merely because they require the review and production of a voluminous amount of records. Where the requested information serves the purpose of resolving issues in the case, there is little basis for a claim of undue burden.

Defendants repeatedly assert in their objections and correspondence that Plaintiffs' discovery requests are "burdensome" or "unreasonable." Yet they do so without recognizing, as courts in Ohio and elsewhere have, that "virtually all responsibilities in responding to discovery are *burdensome*," and it is the objecting party's responsibility to "establish[] that the request is *unduly* burdensome" within the context of the claims at issue. *Wichita Fireman's Relief Ass'n v. Kan. City Life Ins.* Co., 11-1029-CM-KGG, 2011 U.S. Dist. LEXIS 118990, *23 (D. Kan) (emphasis in original). In other words, "where the effort is great, but the documents serve the purpose of resolution of the issues, there is little basis for a claim of unreasonableness or oppression in having to respond to a [request] for the production of documents." *First Bank of Marietta v. Mitchell* (4th Dist. Nov. 28,

1983), Nos. 82 x 5; 82 x 14, 1983 Ohio App. LEXIS 13535, *32-33 (quoting Anderson's Ohio Civil Practice). "To allow a defendant whose business generates massive records to frustrate discovery, by creating an inadequate filing system, and then claiming undue burden, would defeat the purposes of the discovery rules." *Dunn v. Midwestern Indemn.*, 88 F.R.D. 191, 198 (S.D.Ohio 1980). *See also Wichita Fireman's Relief Ass'n*, 2011 U.S. Dist. LEXIS 118990, *23 (The "mere fact that compliance with an inspection order will cause great labor and expense or even considerable hardship and the possibility of injury to the business of the party from whom discovery is sought does not itself require denial of the motion [to compel].").

Accordingly, "the relevancy test for purposes of discovery has been given a very liberal construction." *Insulation Unlimited v. Two J's Properties, Ltd.*, 95 Ohio Misc.2d 18, 22, 705 N.E.2d 754 (C.P.1997). It stands well settled in Ohio that the party opposing a discovery request, "ha[s] the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence." *State ex rel. Fisher v. Rose Chevrolet, Inc.*, 82 Ohio App. 3d 520, 532 (12th Dist. App. 1992). *See also Tucker v. Webb Corp.*, 4 Ohio St.3d 121, 123, 447 N.E.2d 100 (1983) (reversing appellate court's affirmation of summary judgment where reasonable access to necessary documents and witnesses was wrongly denied).

These principles apply with extra force in the context of claims alleging fraud and deceptive trade practices, where Defendants have a great incentive to conceal relevant evidence from the public, and a great advantage in terms of access to relevant information, while Plaintiffs are confronted with a high burden of proof. *Ex parte John Alden Life Ins. Co.*, 999 So.2d 476, 485 (Ala. 2008) ("A plaintiff in a fraud action is accorded a broader range of discovery in order to meet the heavy burden imposed on one alleging fraud.").

E. Plaintiffs' requests are not unduly burdensome and the Court should require Defendants to produce information responsive to them under the Civil Rules.

As set forth in detail above, Defendants have failed to properly respond to Plaintiffs' discovery requests in two main ways: 1) First, Defendants have refused to conduct a comprehensive search of their files, at best having only conducted a few searches on a small set of documents and producing a handful of documents from these incomplete searches, such that their response to nearly every one of Plaintiffs' requests is incomplete; 2) Second, with respect to certain requests, Defendants have refused to comply even partially, either claiming that they are not required to produce any information at all under the requests at issue, or claiming that no responsive documents exist even though Plaintiffs are in possession of KNR documents proving to the contrary.

Defendants' obstruction has not just been extreme, but also erratic. In some instances, Defendants' excuse for refusing to respond to a request has shifted, from first refusing to respond to certain searches on relevance grounds, then, after being presented with an explanation of why the requested material is relevant, claiming that it would be too burdensome to conduct a search for responsive documents. Additionally, Plaintiffs' efforts to reiterate the relevance and discoverability of the subjects of certain other requests have gone largely ignored.

Thus, this motion focuses mainly on the overarching issue of Defendants' refusal to search their files comprehensively, as well as six broad categories of key information that Defendants have refused to produce. Finally, section III.E.8. below summarily treats a number of more specific requests that have largely gone ignored by Defendants, the relevancy of which should not be in dispute, and to which the Defendants should also be compelled to completely respond.

1. The Court should require Defendants to comprehensively search their files for responsive documents.

Based on the legal standards cited above, the Defendants cannot meet their burden to show that it would be unduly burdensome for them to comply with Plaintiffs' requests. This is especially

so given the Defendants' failure to even attempt to deduplicate their data using available and affordable technology. But even if these tools were not otherwise available, it would be contrary to law for the Court to punish the Plaintiffs by denying them discovery merely because Defendants possess a voluminous amount of data from which responsive documents must be culled. *First Bank of Marietta,* 1983 Ohio App. LEXIS 13535, *32-33 (quoting Anderson's Ohio Civil Practice) ("where the effort is great, but the documents serve the purpose of resolution of the issues, there is little basis for a claim of unreasonableness or oppression in having to respond to a [request] for the production of documents."). Discovery is only unduly burdensome when would not reasonably lead to the discovery of admissible evidence. *Insulation Unlimited*, 95 Ohio Misc.2d 18, 22.

Here, the requests submitted by Plaintiffs will undoubtedly lead to the discovery of admissible evidence. For example:

The requested searches for 1) investigator!, 2) investigat!,AND fee!, 3) investigat! AND expense!, 4) "sign up!" AND fee!, 5) SU AND fee!, 6) Aaron! AND Mike!, and 7) AMC AND MRS, will lead to the production of responsive documents to Plaintiffs' requests about the work the investigators performed both for KNR and its clients, and Defendants' purported justification for charging a separate fee for this work. These documents will allow Plaintiffs and the Court to assess whether Defendants wrongly charged their clients for normal overhead that was properly subsumed in the firm's contingency fee, and whether the investigators were improperly considered "independent contractors" as opposed to KNR employees for this purpose. *See* Section II.A., above.

The requested searches for 1) chiro! AND refer!, 2) (Minas OR Floros OR "Akron Square!," OR ASC) AND refer!, 3) "red bag!," 4) narrative!, and 5) Plambeck! will lead to the production of responsive documents to Plaintiffs' requests about KNR policies and practices in referring cases to chiropractors, and automatically charging a narrative fee to its clients in certain cases. These documents will allow Plaintiffs and the Court to assess whether the Defendants maintained an illegal

quid pro quo relationship with certain chiropractors, including those primarily from Plambeck-owned clinics, whether the Defendants analyzed or changed their policies or advised their clients in response to the lawsuits by large insurance companies against Plambeck alleging fraudulently inflated billing in personal injury cases, and whether the narrative fees were paid as an illegal kickback pursuant to the alleged quid pro quo relationship. *See* Section II.B., above.

Finally, the requested searches for 1) "Liberty Capital!," 2) Ciro!, and 3) Cerrato! will lead to responsive documents to Plaintiffs' requests about Defendants' decision to enter an exclusive referral arrangement with the Liberty Capital loan company, including its communications with Liberty Capital's owner and apparently its only employee, Ciro Cerrato. These documents will allow Plaintiffs and the Court to assess whether the Defendants received kickbacks or any other benefits from this relationship that the law would have required them to disclose to their clients. *See* Section II.C., above.

For all three categories of claims, there is a near-complete overlap of the evidence pertaining to class certification, and that pertaining to the merits of Defendants' individual claims. Evidence that would shed light on whether the Named Plaintiffs were improperly assessed fees under the allegedly unlawful relationships is the same evidence that would show whether all KNR clients were similarly injured by the same alleged pattern of self-dealing. Here, Named Plaintiffs are entitled to full discovery as to whether they were defrauded as part of a wider scheme of self-dealing, particularly give the well-pleaded and well-documented allegations showing the same. *Telco Group, Inc.*, 2006 U.S. Dist. LEXIS 13264, at *16-17) ("[P]laintiff should have the opportunity to obtain evidence which tends to show the fact of, and reasons behind, the alleged [harm] occasioned by the defendants' conduct . . . [w]hen it is clear the merits discovery and discovery for the class certification issue overlap as to the plaintiff."); *Lonardo*, 706 F.Supp.2d 766, 782 (noting with approval that the parties were able to engage in discovery on the merits of individual plaintiffs'

claims as well as class discovery because there was significant overlap between merit-based issues and certification, "especially the basis for the Plaintiffs' fraud allegations.").

Further, even if Defendants could establish that they were "unduly burdened" by Plaintiffs' requests for electronically stored information, Plaintiffs' have shown that good cause would exist under Civ.R. 26(B)(4) to require the production of the requested information even despite any such burden. First, under section (a) of the rule, the information Plaintiffs seek is not unreasonably cumulative or duplicative. Defendants have not conceded any element of Plaintiffs' claims, let alone that Plaintiffs are in possession of all possible evidence that would be needed to prove them. Further, under R.26(B)(4)(b) and (c), there can be no suggestion that the electronically stored information Plaintiffs' seek could be obtained from another source, or that Plaintiffs have had any opportunity to discover it to date (let alone the "ample opportunity" contemplated by the Rule. Plaintiffs have diligently attempted to obtain the discovery through means authorized by the Civil Rules, but Defendants have falsely claimed problems with their computer system or flatly refused to search for the information. Defendants are the only parties in possession of the requested materials. Finally, under R.26(B)(4)(3), the requested material is critical to resolution of the issues in this case, which implicates widespread self-dealing and fraud by one of the highest-volume law firms in Ohio against all of its clients. *See Townsend*, 10th Dist. Franklin No. 11AP-672, 2012-Ohio-2945, ¶ 17 (ordering defendant to search for and produce electronically stored information even where defendant claimed the information was deleted and may include confidential and privileged information); *Covad Communs. Co. v. Revonet, Inc.*, 258 F.R.D. 5, 12-13 (D.D.C.2009) (finding "that the potential benefit of the [e-discovery] outweighs its burden" under Rule 26(B)(4) where Defendant argued undue burden "because the servers to be searched are old and may crash, its business will be disrupted while the search is conducted, and the search may yield data that is subject to confidentiality agreements with other clients").

By agreeing to accept results from a limited set of searches, Plaintiffs have made a substantial accommodation to Defendants, who are otherwise required by law to make a complete search of their files. Defendants cannot meet their burden to show that Plaintiffs' requests would not reasonably lead to the discovery of relevant evidence, or that the burden in doing so outweighs the need for discovery of the widespread fraud alleged. Thus, the Court should not allow the Defendants to maintain their refusal to comprehensively search their files for documents responsive to Plaintiffs' requests.

2. The Court should require Defendants to produce responsive documents relating to all chiropractors, not just Dr. Floros at Akron Square.

Defendants have flatly refused to search for and produce responsive information related to the chiropractors with whom Defendants maintained business relationships. In Defendants' November 15 letter (**Ex. 13**), Brian Roof states that "we will not run searches for all chiropractors, as the other chiropractors are not part of Class B [relating to referrals]," and "because Plaintiff Reid saw only Dr. Floros as a patient ... and she only sued Dr. Floros, Defendants will not search the other chiropractors for Class D [relating to narrative fees]."

Neither of these justifications is legitimate. The Third Amended Complaint contains quotes from a number of KNR documents showing that Defendants' maintained reciprocal referral agreements that are barred by Ohio law, directing their clients to treat with chiropractors who sent them the greatest number of referrals. TAC ¶¶ 17–52. The Plaintiffs are entitled to assess KNR's relationship with ASC in the context of its relationships with other providers, and to discovery as to why the Defendants would treat some chiropractors differently from others in referring their clients. This assessment would be rendered extremely difficult to impossible if Defendants were permitted to withhold documents relating to other chiropractors with whom they do business.

The same goes for responsive documents relating to the narrative fee. As documents quoted

in the Third Amended Complaint show, the Defendants paid this narrative fee as a matter of policy on every case referred by or to a certain select group of chiropractors. TAC ¶¶ 57–76 citing, *inter alia*, **Ex. 2**, Affidavit of Gary Petti. Former KNR attorney Gary Petti has testified that he was informed that Defendant Nestico offered this chiropractor the same arrangement in exchange for establishing an exclusive referral arrangement. *Id.* And Plaintiff Reid seeks to recover on behalf of "all current and former KNR clients who had a narrative fee deducted by KNR from their settlement proceeds to be paid to a chiropractor," meaning any chiropractor, not just those from Akron Square. *See* TAC ¶ 138D. There is no basis for Defendants to insist that Plaintiffs discovery be limited only to narrative fees paid to Floros and Akron Square.

3. The Court should require Defendants to produce responsive documents relating to "red bag" referrals to chiropractors.

In their correspondence with Plaintiffs, Defendants have repeatedly indicated their refusal to search for documents relating to their alleged practice of sending all clients to Akron Square Chiropractic who were solicited by KNR using a "red bag" of promotional materials that the Defendants would hang on car-accident-victims' doorknobs. In Defendants' February 14 letter (**Ex. 19**, p. 3), Jim Popson maintains the claim that Plaintiffs' request for documents relating to these "red bag" referrals is "not reasonably calculated to lead to the discovery of admissible evidence." This could hardly be further from the truth. The Third Amended Complaint (¶ 41) quotes an email from KNR's office manager reminding KNR's prelitigation attorneys to "make sure it's not a red bag referral" before referring a case to a chiropractor who was not at Akron Square. Paragraph 37 quotes another email where a KNR administrator writes to all the firm's attorneys and intake staff: "I CANNOT express enough the importance of making sure that the referred by's are correct (regardless if it's chiros, directs, etc. … If they received a Direct mail YOU MUST ASK if they received a red bag on their door or if they received a mailer in their mailbox." There is no apparent

legitimate explanation for why Defendants would refer their clients to a certain chiropractor based on the promotional materials that the given client received, and such a practice creates a strong inference of an unlawful referral relationship. There is no basis for Defendants' continued refusal to produce information relating to the "red bag" referrals, and the Court should order that this information be produced.

4. The Court should require Defendants to produce responsive documents relating to Plambeck-owned chiropractic clinics.

Defendants have similarly refused to search for documents using the term "Plambeck," and have maintained the claim that Plaintiffs' request for documents relating to Defendants' relationships with Plambeck-owned clinics are "not reasonably calculated to lead to the discovery of admissible evidence." **Ex. 19**, Feb. 14 Popson letter at 5.

Again, there is no basis for this statement, which, like Defendants' claims regarding the alleged irrelevance of the "red bag" referrals, appears calculated precisely to keep Plaintiffs from discovering evidence that is especially probative of their claims. Plaintiffs are in possession of documents showing that chiropractors from Plambeck-owned clinics, including Akron Square, received special treatment from KNR, including in terms of referrals, and the payment of narrative fees. *See* TAC ¶¶ 59–60, 66, 115. Based on these documents and other information provided by former KNR attorneys Horton and Petti, Plaintiffs have alleged that the existence of an unlawful quid pro quo relationship with the Plambeck providers can be proven by the fact that Defendants did not change their policies even after they became aware of lawsuits against Plambeck by Allstate and State Farm insurance companies alleging that the Plambeck chiropractors conspired with a network of lawyers and telemarketers to fraudulently inflate billings. As stated in the Third Amended Complaint (¶ 38),

> Defendants knew about these lawsuits and knew that these insurance companies, which provided coverage for the defendants in countless

> KNR-clients' cases, would view client treatment at Plambeck clinics as inherently suspect and treat the KNR-clients' cases accordingly. Yet Defendants had no concern for this in continuing to pressure their clients to treat at ASC and other Plambeck clinics, thus prioritizing their own kickback arrangement with the chiropractors over the interests of their clients.

And Defendants have admitted both that they were aware of these suits, and did not make any changes to their referral policies in response to them. *See* Defs' Answer to Interrogatory No. 2-17 (**Ex. 3**) ("Defendants likely found out about these [lawsuits against Plambeck] in or around the beginning of 2012."); Defs' Answer to Interrogatory No. 3-4 (**Ex. 4**) ("Defendants ... do not recall making any changes to its policies, procedures, or practices relating to lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Para 39 of the Third Amended Complaint.").

Thus, it is not just improper, it is absurd for the Defendants to maintain their claim that they should be insulated from discovery relating to the Plambeck-owned clinics. They should be ordered to produce all responsive materials relating to the Plambeck clinics.

5. The Court should require Defendants to produce documentary evidence of work performed by KNR's so-called "investigators," information sufficient to identify the investigators, and documents showing how and why the investigators were paid on any given case.

Whether the Plaintiffs were properly charged a separate fee for "investigative services," and the work performed by KNR's so-called "investigators," is a primary issue in this case. Yet, not only have Defendants maintained their refusal to comprehensively search their files for documents relating to this work (as discussed in Section II.D and III.E.1, above), they have refused to provide contact information for their investigators (which has prevented Plaintiffs from seeking information from them) and have also refused to produce daily intake emails showing which investigator was paid on each case, and where that case originated. *See* **Ex.15**, Dec. 20 Roof letter at 4–5.

The Third Amended Complaint (at ¶¶ 104-105) contains information from two of these

daily intake emails, showing that Defendants paid an "investigator" as a matter of policy on every single case they took in, and paid certain investigators on cases in which they had no involvement at all. One of these emails (TAC ¶ 105) shows that an Akron-based investigator was paid one day on two cases from the Sycamore Spine & Rehabilitation clinic in Dayton, Ohio, while also being paid on two cases from Cleveland (200 miles away from Dayton), two from Akron, one from Stark County, and four more from undisclosed sources. Defendants have claimed in their correspondence that they should not be required to produce the rest of these emails, because they have provided a "stipulation as to the investigation work generally done and the estimated number of settlements" on which the investigation fee was paid. **Ex. 15**, Dec. 20 Roof letter at 4. But the Plaintiffs are still entitled to investigate and prove that investigators were routinely paid on the same day, on cases that were taken in hundreds of miles apart, and on which the investigators had no involvement, and these daily intake emails will allow them to do that. It will also allow the Plaintiffs to verify the Defendants' testimony as to why the investigators were paid in this strange manner, and to draw their own conclusions about the same.

Additionally, the Defendants have refused to produce comprehensive evidence of the work performed by the investigators, both for the Defendants, and on behalf of KNR's clients. (*See* **Ex. 6**, Defendants' response to RFP 4-4, at 5–6). There is similarly no basis for this refusal. As stated in Section III.E.1 above, Plaintiffs are entitled to evaluate Defendants' justification for charging a separate fee to its clients for this work. They are entitled to information that will allows them to assess whether the Defendants wrongly charged their clients for normal overhead that was properly subsumed in the firm's contingency fee, and whether the investigators were improperly considered "independent contractors" as opposed to KNR employees for this purpose. Defendants' proposed stipulations are not sufficient for these purposes, and the Plaintiffs are entitled to verify the Defendants' testimony as to what their investigators actually do and on what basis.

Finally, there is no justification for Defendants' refusal to produce current contact information for all of the KNR "investigators." *See* **Ex. 15**, Dec. 20 Roof letter, at 5. This is basic and essential information in Defendants' possession that will allow Plaintiffs to investigate their claims. Thus, the Court should order the Defendants to produce this contact information, the daily intake emails discussed above, and responsive documents showing the work that the investigators actually performed for KNR and its clients.

6. The Court should require Defendants to answer interrogatories relating to the so-called "investigations" performed on behalf of Named Plaintiffs Naomi Wright and Matthew Johnson.

Defendants have also refused to answer interrogatories from named Plaintiffs Naomi Wright and Matthew Johnson about the work that KNR investigators performed on their behalf. *See* **Ex. 3**, Defs' Answers to Interrogatory Nos. 24–25, 46–47. Defendants have claimed that, "Plaintiffs are not entitled to the investigative work done on the other Plaintiffs because they are merely putative class members for Class A." **Ex. 15**, Dec. 20 Roof letter, at 4.

There is no logic or law that supports this position. Plaintiffs are entitled to information that would be relevant to and probative of their claims that all KNR clients were victims of the same schemes, including specific information about the investigative work that was performed on behalf of the Named Plaintiffs. There is no privilege or other principle that would prevent the disclosure of this relevant and probative information here, and the Defendants should be made to produce it. *See Telco Group, Inc.*, 2006 U.S. Dist. LEXIS 13264, at *16-17) ("[P]laintiff should have the opportunity to obtain evidence which tends to show the fact of, and reasons behind, the alleged [harm] occasioned by the defendants' conduct . . . [w]hen it is clear the merits discovery and discovery for the class certification issue overlap as to the plaintiff."); *Lonardo*, 706 F.Supp.2d 766, 782 (noting with approval that the parties were able to engage in discovery on the merits of individual plaintiffs' claims as well as class discovery because there was significant overlap between merit-based issues

and certification, "especially the basis for the Plaintiffs' fraud allegations.").

7. The Court should require Defendants to produce unredacted copies of improperly redacted documents.

Further revealing a deliberate effort to conceal evidence that is especially relevant to Plaintiffs' claims, the Defendants have improperly redacted especially relevant information from the documents that it has produced so far.

For example, Defendants produced an email (attached as **Exhibit 22**) from their office manager Brandy Lamtman to the entire firm's "staff" on January 23, 2012, stating that, "Until further notice, NO narrative fee checks [would be issued] to any of the [redacted] EXCEPT [Defendant] Floros." This same document includes a reply from Defendant Redick saying, "Including [redacted] .... interesting ☺."

Additionally, Defendants produced a document (KNR03332) regarding KNR's procedures on "after-hours intakes," containing instructions that after-hours intake calls from certain healthcare providers were to receive different treatment than other intake calls. But the Defendants redacted the information necessary to identify one of these providers.

These redactions are plainly improper. Again, Plaintiffs are entitled to discovery as to why KNR treats certain providers differently from others, including as to why it issues narrative fee checks to some and not others, who gets special treatment in KNR's intake procedures and why, why the firm decided to stop paying narrative fees to a certain provider, and why Defendant Redick found this to be "interesting."

There are many other instances where health-care providers' names are redacted, or the word "Plambeck" is obviously redacted. Again, there is no basis for this. Plaintiffs' claims are based on documented allegations about a quid pro quo relationship with Plambeck-owned chiropractic clinics, and in no event would it be proper to redact a providers' name.

Examples of documents in Defendants' production that were apparently improperly redacted, in the manner described above, include the following: KNR03331-03335, 0333, 3540, 3571, 3643-44, 3673, 3693, 3706, 3742-46, 3769, 3779, 3782-83, 3795, 3809, 3810, and 3812.

The Court should order the Defendants to produce unredacted copies of these documents, or a log explaining why these redactions are necessary. Plaintiffs' February 19 email to Defendants requesting the same has gone unanswered to date.

8. The Court should require Defendants to properly respond to a number of Plaintiffs' specific requests, all of which are reasonably calculated to lead to the discovery of admissible evidence.

Given the Defendants' broad refusal to engage in a comprehensive search for responsive documents, as detailed above, it is impossible to say they've provided a complete response to any but a few of Plaintiffs' requests. Thus, in addition to ordering that the Defendants comprehensively search their files, using the searches provided by Plaintiffs identified above, the Court should also require Defendants to confirm that they have completely responded to the following requests from Plaintiffs' First, Third, and Fourth sets of requests for production of documents (Defendants' responses to which are attached at **Exhibits 23**, **6**, and **7**, respectively:

- 1-8, 3-39, 3-43, for documents pertaining to KNR's policy of engaging investigators as independent contractors;
- 1-10, for documents reflecting the KNR's document retention policies;
- 3-2, for documents reflecting communications with Liberty Capital representative Ciro Cerrato;
- 3-6, 3-7, for documents reflecting Defendants' efforts to ensure the quality of Liberty Capital, before deciding to recommend it exclusively to their clients; to which they referred their clients;
- 3-16, 4-3, for daily intake emails showing which "investigator" was paid on each case that came in on a given day, from which city each case originated, and the referral source for each case;
- 3-19, for documents reflecting trips, retreats, meetings, or other occurrences intended to allow for interaction between health-care providers and KNR personnel (*See* TAC ¶ 45 re: the KNR sponsored-trip to Cancun to which various KNR attorneys and high-referring doctors were invited);

- 3-15, 3-20, 3-21, 3-22, 3-23 for documents reflecting agreements or negotiations over chiropractic referrals or narrative fees;
- 3-24, 3-25, for documents reflecting payments between Defendants and any chiropractor not associated with medical services or narrative reports provided to or for a specific KNR client;
- 3-26, for documents relating to "red bag" referrals, or any joint advertising or marketing agreement with any chiropractor;
- 3-27, 3-28, 3-29, 3-45, 3-48, for documents reflecting KNR's requirements for the content of narrative reports, Defendants' communications or assessments of the value of narrative reports, their policies on when to request or charge for a narrative report, and their basis for believing that the narrative reports provide a benefit to KNR clients in excess of the fee for such reports;
- 3-31, 3-33, for documents reflecting contracts or payments for services in obtaining contact information for recent car-accident victims, and KNR's policies regarding their efforts to obtain the same;
- 3-35, for documents reflecting collaboration with chiropractors over advertising material;
- 3-37, for documents directing KNR attorneys to steer clients to a particular chiropractor;
- 3-38, for documents reflecting KNR's policy of advising clients that treating with a medical provider other than the one recommended by KNR would negatively impact the clients' cases;
- 3-40, for documents reflecting payments to "investigators" that were not related to a "sign up" or "sign up" fee;
- 3-41, 3-44, 4-1; for documents relating Defendants' policies on charging an "investigation fee" or "sign up fee";
- 3-30, 3-46, 3-47, for documents reflecting policies and procedures regarding giving or obtaining referrals of KNR clients to chiropractors and other healthcare providers;
- 3-54, for documents reflecting quotas that KNR imposes on or suggests to its attorneys or staff;
- 3-55, 3-56, for Robert Horton's and Gary Petti's employment files, including all documents pertaining to KNR's reasons for terminating Horton's and Petti's employment with the firm;
- 3-60, for documents relating to discovery in Defendants' lawsuit against chiropractor James E. Fonner, who alleged that KNR "has a scheme in place whereby it sends clients who were allegedly injured in motor vehicle accidents to its 'preferred chiropractor' and that KNR's "preferred chiropractors" were required to "follow [KNR's] demands and requests as it relates to treatment, billing, and reducing bills." *See Kisling, Nestico & Redick, LLC v. Fonner*, Franklin County C.P. No. 15-CV-003216, Sep. 15, 2015 Counterclaim of Dr. James E. Fonner..
- 4-2, for documents relating to referrals to Plambeck-owned clinics, including documents reflecting any changes in the Defendants' policies or practices that were related to the fraud lawsuits against Plambeck and associated law firms for fraudulently inflating

billing; and

- 4-4. for documents pertaining to any actual investigative work performed by KNR's "investigators."

In confirming the completeness of their responses to these requests, Defendants should be required to clarify their repeated statements that their responses to discovery are "subject to and without waiving these [various] objections." To the extent that Defendants responses are incomplete because they are subject to Defendants "objections," Defendants should be compelled to say so, including by describing the material that has been withheld. On the other hand, if Defendants maintain that their responses are complete despite such qualifications, Defendants should also be compelled to clarify the record accordingly.

IV. Conclusion

Defendants should not be allowed to skirt their discovery responsibilities and benefit from their obstructionist tactics. This is particularly true given the need for broader discovery in cases involving fraud, and the great detail and documentation with which Plaintiffs have pleaded their claims here. Based on the above, Plaintiffs respectfully request that the Court enter the attached proposed order, or an order otherwise compelling Defendants to properly and adequately respond to Plaintiffs' discovery requests as outlined above. Plaintiffs further request that Defendants be held responsible for paying Plaintiffs' attorneys' fees incurred in drafting this motion under Civ.R. 37(A)(5)(a)'s provision for fees where the opposing party's resistance to discovery is not "substantially justified."

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Dean Williams (0079785)
Daniel Frech (0082737)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 Phone
330.836.8536 Fax
peter@pattakoslaw.com
dwilliams@pattakoslaw.com
dfrech@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen M. Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
3208 Clinton Avenue
1 Clinton Place
Cleveland, Ohio 44113
216.815.9500 Phone
216.815.9500 Fax
jcohen@crklaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on February 28, 2018.

/s/ Peter Pattakos
Attorney for Plaintiffs

Exhibit 1

Defendants' proposed Joint Stipulation

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Patricia Cosgrove

THE PARTIES' JOINT STIPULATION ON CERTAIN FACTS

Based on negotiations among counsel for Plaintiffs Member Williams, Naomi Wright, Matthew Johnson, and Thera Reid (collectively "Plaintiffs") and counsel for Defendants Kisling, Nestico & Redick LLC ("KNR"), Alberto Nestico, and Robert Redick (collectively "KNR Defendants"), and counsel for Minas Floros, D.C. as well as the parties discovery requests and responses, the parties have agreed to the following factual stipulations only:

1. Since 2009 to the date of this filing, KNR has paid investigators a flat fee (ranging from $30-$100 depending on the time period and the investigator) upfront on the vast majority of cases and that most of the clients were charged (as long as there was a recovery) the flat fee. As set forth in Defendants' discovery responses, for that flat fee, the investigators provide other services, including, without limitation: pick up police reports, addendums and photos; take accident scene photos; take or obtain property damage photos at body shops; take or obtain photos of client injuries; obtain medical records and bills; obtain regular and/or certified copies from courts and

agencies; locate witnesses and obtained statements; deliver and obtain execution of documents including but not limited to medical authorizations, IRS authorizations, powers of attorney, and settlement agreements and releases after the client's consultation with his attorney; pick up and drop off settlement checks; perform "door knocks" at the suspected residence of clients who have failed to respond to KNR's attempts to contact them by phone, email and/or mail; serve 180-day letters and subpoenas; file pleadings and briefs as needed; and perform other litigation-related investigations.

2. As set forth in Defendants' discovery responses, Aaron Czetli and Michael Simpson, as independent contractors, have previously performed other work (such as stuffing envelopes and running errands) for KNR that were unrelated to a specific client and was not charged to a specific client. They performed this work when they were not acting as investigators on behalf of KNR's clients.
3. KNR pays and paid that investigation fee to the investigator whether or not KNR obtained a recovery on behalf of the client.
4. The flat fee is and was clearly set forth on the Settlement Memorandum issued to, reviewed by, and signed by each client.
5. There were, and are, no upcharge or surcharge on the investigation fee by KNR. The investigation fee was and is a third-party pass through expense.
6. Since 2009, KNR has settled between 40,000 to 45,000 cases in which investigators were used and the investigation fee was charged.

7. KNR's policy has been to receive a narrative report from ASC on all cases, except for cases involving clients under the age of 12 and a few other minor exceptions, for $100-200.
8. AMC and MRS have not and do not receive W-2, W-9, or 1099 forms from KNR. Rather, AMC and MRS receive an individual check for the case they are assigned. AMC and MRS are paid $35-50 per case for their investigative work.

This stipulation is not valid or enforceable unless all parties have signed the document. Unless otherwise entered into in writing by the parties and signed by the parties, there are no other stipulations regarding the facts of this case.

Peter Pattakos (0082884)
Daniel Frech (0082737)
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
(330) 836-8533 phone
(330) 836-8536 facsimile
peter@pattakoslaw.com
dfrech@pattakoslaw.com

Counsel for Plaintiffs

James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants Kisling, Nestico & Redick LLC, Alberto Nestico, and Robert Redick

John F. Hill
Meleah M. Kinlow
Buckingham, Doolittle & Burroughs, LLC
3800 Embassy Parkway, Suite 300
Akron, OH 44333-8332

(330) 376-5300 phone
(330) 258-6559 facsimile
jhill@bdblaw.com
mkinlow@bdblaw.com

Counsel for Minas Floros

Exhibit 2

Affidavit of Gary Petti

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 Alison Breaux

AFFIDAVIT OF GARY PETTI

I, Gary Petti, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. In March of 2012, I became employed as a prelitigation attorney with the law firm of Kisling, Nestico & Redick, LLC ("KNR") in Akron, Ohio. Before my employment with KNR, I had worked since 1997 as a personal-injury lawyer with the Akron-based law firm of Slater & Zurz, primarily on behalf of insurance companies on the defense side, and car-accident victims on the plaintiffs' side. I resigned from my position at Slater & Zurz to join KNR because my practice at Slater & Zurz required me to travel frequently to Columbus, Ohio, and the KNR position would allow me to remain closer to my home in Wadsworth, Ohio while my wife went back to school to obtain her degree as a nurse-anesthetist. My wife and I have three children, who, at the time, were ages 6, 10, and 13. When I left Slater & Zurz to join KNR, I took

approximately 200 cases with me, and continued to represent these clients through KNR.

2. While I was working for Slater & Zurz, I first learned that KNR paid kickbacks to certain chiropractors in the form of a "narrative fee." When I spoke with certain chiropractors from Plambeck-owned clinics who would occasionally refer me cases, they told me that KNR paid them a narrative-report fee every time the chiropractors referred a case to KNR, and asked if I would do the same. I told them that I would not. I did not understand at the time that this was KNR's firm-wide policy, as opposed to a practice followed by certain KNR attorneys, and when I went to work for KNR, I assumed that I would not be required to charge my clients for unnecessary narrative-fee expenses.

3. When I began working at KNR, I primarily worked on the cases that I had brought to the firm, and when I closed these cases, no narrative fee was charged to these clients because I never ordered narrative reports for them. It was always my understanding that the decision as to whether a narrative report is worthwhile in a case is the attorney's to make, upon consultation with the client. I always understood that narrative reports were only properly used to allow a medical professional to explain why the plaintiff's injuries were different or more challenging than they might appear from the contents of the medical records, and in doing so, provide information that was not included in the records.

4. As I began to work on cases from KNR that had been taken in and previously worked on by other KNR attorneys, I would see the narrative fee appear on the client's settlement statement. I assumed that these fees were for narrative reports that were ordered by the previous KNR attorney who worked on the case. I soon learned that these narrative reports ordered by KNR were very different from the narrative reports that I was accustomed to using, and were essentially worthless, containing no information that was not already apparent from the client's medical records. The narrative reports provided by Dr. Minas Floros of Akron Square

Chiropractic, a Plambeck-owned clinic in Akron, were especially bad, and the worst narrative reports I had ever seen. They appeared to follow a basic formula of a few sentences where Floros merely filled in the blanks with information that was readily apparent from the medical records. It was clear that virtually no time or effort could have been expended on his worthless narratives—certainly no effort remotely justifiable by the narrative fees being paid.

5. As I continued to work at KNR, and continued to close the cases that I brought to the firm, I began working on KNR cases that I had taken in while at the firm. On several occasions while I was working at KNR, I took calls from chiropractors from Plambeck-owned clinics who were present on the line with a patient that the chiropractors sought to refer to KNR.

6. In approximately mid-to-late November of 2012, my paralegal Megan Jennings began to collect a package of documentation on a case that was to be submitted to the defendant's insurance company, including police reports, and medical records. When she submitted this package to me for my approval, I noticed a charge for a narrative report in the documents. I immediately expressed my surprise and disapproval that the narrative fee would be included in this package, and asked Jennings why this was the case. I also told her that I am the lawyer, so I'm the one who gets to advise the client as to whether the narrative report is a justifiable expense. In response, Jennings informed me that narrative fees are paid on every case that comes in from Akron Square Chiropractic and other Plambeck-owned clinics, and that the check is made out to the chiropractor personally and sent directly to the chiropractor's house. I then told her that I would not approve of any such fees being charged to my clients without my express approval.

7. Within a few days, I was working with Jennings on another case that was affiliated with Akron Square Chiropractic. On November 28, 2012, I emailed Jennings about this case to instruct her that no narrative fee was to be paid on it. I wrote, "Remember, no reports from

doktor flooroes," deliberately misspelling his name in an effort to defuse tension with humor. I also wrote, as a follow-up to our previous conversation, "I've asked a number of adjusters about the importance of those reports and the most common response is nearly uncontrolled laughter." This comment, while hyperbolic, referred to the fact that on the occasions when I attempted to refer to Plambeck narrative-reports in negotiating settlements on behalf of KNR clients, the insurance adjusters paid absolutely no regard to these reports.

8. Within approximately two weeks of having sent this email to Jennings, KNR terminated my employment. I was told by KNR attorney John Regan that I was "not a good fit" there. I could not disagree and little else was said in the meeting. I understood that by stating that I was "not a good fit" at KNR, Regan was only referring to my unwillingness to participate in KNR's schemes to defraud their clients, like with the narrative fees, as there were no other issues of which I was made aware. At that point, I was glad to leave KNR and the practice of law, and have since been working in the construction business.

9. During my time working at KNR, I became aware of the firm's so-called investigators, including Aaron Czetli and Michael Simpson. I would often witness Czetli and Simpson performing odd jobs around KNR's Akron office, such as stuffing envelopes and putting up holiday lights. Although I had ample opportunity to observe their activities, comings, goings, and work-product, I never witnessed or became aware of these so-called investigators performing any actual investigations. To my knowledge, their only involvement with client matters was to meet potential clients and sign them to KNR fee agreements.

10. Within a few months before KNR terminated my employment, KNR Managing Partner Rob Nestico criticized me in front of other KNR attorneys for my unwillingness to be dishonest to potential KNR clients. This happened in a meeting where all KNR prelitigation attorneys were present, and Nestico played a recording of a phone call that I had over the firm's phone line

with a potential client. On this call, a car-accident victim told me that he was an independent contractor and sub-contractor, and was concerned about recovering lost wages for work missed due to his car-accident injuries. I advised this potential client that his status as a contractor would make it more complicated to recover damages because he would have to prove not only that he did not work as a result of the accident, but also that he would have otherwise worked on certain jobs, for a certain amount of money during the same time period. After Nestico played the recording of the phone call for everyone in the room, he asked what I had done wrong on the call. The answer, according to Nestico, was that I was too honest with the client in advising him of the complications in recovering damages due to his status as an independent contractor, and that I did not tell the potential client "what he wanted to hear."

11. On March 23, 2017, I received a phone call from a man who identified himself as Attorney Brian Roof with the law firm of Sutter O'Connell, and said that he represents KNR and Nestico in the above-captioned lawsuit. He asked me if I was familiar with the lawsuit and the recently filed proposed Second Amended Complaint. I told him that I was, and had read a press release about the Second Amended Complaint. He asked me about my time at KNR and what documents I took with me when I left, and he said that it was his clients' position that all such documents were confidential. I interpreted this as a threat, and told Mr. Roof that as far as I'm concerned, everything in the press release is true, and that I was terminated by KNR because of my refusal to participate in their kickback schemes.

12. Every document I have disclosed and all information I have provided to Plaintiffs' counsel in this litigation was and is, to the best of my knowledge and understanding, evidence of fraud and illegal activity by KNR. I do not believe that any of it is confidential or subject to any confidentiality agreement. I can't imagine that my own emails mocking the fraud would be confidential.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 4/3/17
Date

State of Ohio
County of Summit

Sworn to and subscribed before me on 4-3-2017

at Sharon Center, Ohio.

(Signature of Notary Public)

(Notary Public Seal)

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Peter Pattakos
(Printed Name of Notary Public)

Notary Public, State of Ohio

My commission expires on N/A

Exhibit 3

Defendants' Answers and Objections to Plaintiffs' Second Set of Interrogatories

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Alison Breaux

DEFENDANTS' RESPONSES TO PLAINTIFFS' SECOND SET OF INTERROGATORIES

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Robert Nestico (collectively "Defendants") object and respond as follows to Plaintiffs' Second Set of Interrogatories ("Interrogatories"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' 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 Plaintiffs' Interrogatories seek information and communications between Plaintiffs 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 the Class Action Complaint, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' 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.

3. Defendants object as overly broad and unduly burdensome to the extent that an interrogatory seeks information and documents relating to Medical Service Providers or Chiropractors other than Akron Square Chiropractic ("ASC").

4. Defendants object as overly broad and unduly burdensome to the extent an interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding, LLC ("Liberty Capital").

5. Defendants object that there are no date limitations on these interrogatories, which makes them overly broad and unduly burdensome.

6. Defendants object to the extent that interrogatories are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

7. Defendants object that the terms "investigation fee," "investigative fee," and "investigatory fee" are vague, ambiguous, and undefined. Defendants will interpret these terms to mean the flat fee paid to investigators by KNR that are similar to the $50 fee paid to MRS Investigations, Inc. in Plaintiff Williams' case. All of Defendants' answers to interrogatories involving these terms are based on Defendants' definition of those terms as outlined above.

8. Defendants object to the extent that the interrogatory seeks information relating to other clients it is unduly burdensome, overly broad, and premature.

9. Defendants reserve their right to amend their responses to these Interrogatories.

10. Defendants deny all allegations or statements in the Interrogatories, except as expressly admitted below.

11. 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.

12. 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.

MEMBER WILLIAMS' INTERROGATORIES

1. Identify all of the "documents" on which Chuck DeRemer sought to obtain Member Williams' "required signatures" as described in Defendants' response to Interrogatory No. 2 in Plaintiff Williams' First Set of Interrogatories.

RESPONSE: Objection. Defendants object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants identify the Contingency-Fee Agreement and the Patient Authorization Form.

2. Identify all of the "additional documents, and photographs" that Chuck DeRemer sought to obtain from Member Williams as described in Defendants' response to Interrogatory No. 2 in Plaintiff Williams' First Set of Interrogatories.

RESPONSE: Objection. Defendants object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants state that Mr. De Remer would have taken photographs of the damaged car and injuries to Ms. Williams, if any. In addition, Mr. DeRemer would have obtained insurance information (e.g. medical insurance card, auto insurance card, other paperwork the client may have) and documents (e.g., Contingency-Fee Agreement, Proof of Representation (Medicare), and Patient Authorization Form).

3. Identify all of the "information" that Chuck DeRemer sought to obtain from Member Williams as described in Defendants' response to Interrogatory No. 5 in Plaintiff Williams' First Set of Interrogatories.

RESPONSE: Objection. Defendants object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants refer Plaintiffs to their response to Interrogatory No. 2. In addition, after reviewing the intake, Chuck DeRemer may have sought the Social Security number, date of birth, and date of loss, if missing from the intake.

4. Identify whether any of the "documents" and "information" that Chuck DeRemer sought to obtain from Member Williams as described in Defendants' response to Interrogatories No. 2 and 5 in Plaintiff Williams' First Set of Interrogatories were otherwise obtained by KNR by other means, and identify the means by which such "documents" and "information" were obtained.

RESPONSE: Objection. Defendants object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants state that they obtained the photographs of the damage to the car and Patient Authorization Form from Ms. Williams through Jill Gardner.

NAOMI WRIGHT'S INTERROGATORIES

5. Identify any training, policy or procedure provided to KNR intake lawyers as to how and when to refer new clients to Medical Service Providers.

RESPONSE: Objection. Defendants object that the terms "training," "policy," "procedure," and "intake lawyers" as vague, ambiguous, and undefined. Defendants also object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants state that there are no specific training, policies, or procedures regarding how and when to refer new clients to a Medical Service Provider. In all probability, most referrals are done verbally at or near the time of the initial contact. Finally, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

6. Identify any training, policy or procedure provided to KNR intake lawyers regarding how to decide what Medical Service Provider, if any, a new client should be referred to.

RESPONSE: Objection. Defendants object that the terms "training," "policy," "procedure," and "intake lawyers" are vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Provider other than ASC. Subject to and without waiving these objections, Defendants state that KNR when possible vetted Chiropractors individually by questioning (including, but not limited to, do they negotiate rates, do they sue patients, do they accept letters of protection, will they testify at trial, will they author medical reports, the existence of other medical providers depending on the type and severity of the injury, client's desires, etc.) the Chiropractors in a face-to-face meeting. In addition, Defendants state that referrals are monitored for marketing purposes, business development, and to ensure compliance with ethical obligations prohibiting a quid pro quo relationship. Finally, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

7. Identify the process, including any request for proposal ("RFP") process, by which KNR has determined which Medical Service Providers best suit its clients' needs.

RESPONSE: Objection. Defendants object that the term "process and the phrases "request for proposal process" and "best suit" are vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Provider other than ASC. Subject to and without waiving these objections, see answer to No. 6.

8. Identify every Medical Service Provider with whom any Defendant has a reciprocal referral agreement.

RESPONSE: Objection. Defendants object that the term "reciprocal referral agreement" is vague, ambiguous, and undefined. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Provider other than ASC. Subject to and without waiving these objections, Defendants state that they have no agreement, including a "reciprocal referral agreement" with ASC or any Medical Service Provider. Responding further and by way of explanation, Defendants state that referrals are monitored for marketing purposes, business development, and to ensure compliance with ethical obligations prohibiting a quid pro quo relationship.

9. Identify every Medical Service Provider with whom any Defendant has agreed that the Medical Service Provider may prepare a narrative report and/or charge a narrative fee without first obtaining authorization from the KNR attorney on the case.

RESPONSE: Objection. Defendants object that the terms "narrative report" and "narrative fee" are vague, ambiguous, and undefined. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants state that KNR receives narrative reports automatically from ASC, unless instructed not to.

10. Identify every Medical Service Provider to whom KNR guarantees payment for services rendered on any cases referred.

RESPONSE: Objection. Defendants object that this interrogatory is confusing and unintelligible. Defendants further object that the term "referred" and the phrase "services rendered" is vague, ambiguous and undefined. Defendants also object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants state that KNR does not make such guarantees to any Medical Service Provider.

11. Identify any policy, procedure, training or other criteria provided to KNR attorneys to use in determining whether or not to solicit a narrative report from a chiropractor.

RESPONSE: Objection. Defendants object that the terms "policy," "procedure," "training," and "narrative report" are vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to chiropractors other than ASC. Subject to and without waiving these objections, see answer to No. 9. Defendants further state that the decision not to obtain a narrative report from ASC depends on various factors, including without limitation, the nature of the injuries involved, the value of the case, whether the injury is to a minor under 12, local court rules, cost of report, and the specific needs and requirements of the adjuster handling the case. In addition, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

12. Identify any client complaints regarding KNR's relationship with any Medical Service Provider including the nature of the complaint, the date of the complaint and the Medical Service Provider relationship to which the complaint related.

RESPONSE: Objection. Defendants object that the terms “complaints” and “relationship” are vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants state that it is not aware of any complaints described above.

13. Identify every Medical Service Provider to or for whom any Defendant has paid any non-case-related expense including, but not limited to, travel, lodging, meals or entertainment.

RESPONSE: Objection. Defendants object that the term “non-case-related expense” is vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants have on a few occasions paid for group meals and drink that involve ASC representatives. Any travel and lodging expenses paid by KNR were reimbursed by ASC.

14. Identify any payment - including the payee, the amount, the purpose and the date of such payment - made to any Medical Service Provider for any non-case related expense.

RESPONSE: Objection. Defendants object that the term “non-case-related expense” is vague, ambiguous, and undefined. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving these objections, Defendants state that KNR never made such payments.

15. Identify all persons—including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers—who is now or at any time was responsible for developing or maintaining KNR’s relationships with chiropractors

RESPONSE: Objection. Defendants object that the terms “responsible for” and “relationships” are vague, ambiguous, and undefined. Defendants further object that this interrogatory is unduly burdensome and overly broad in that it goes back

to beginning of KNR's existence. Subject to and without waiving these objections, Defendants state that Mr. Nestico, Holly Wilson, Brandy Gobroggi, and Alex Van Allen are, or have been, responsible for working with Chiropractors.

16. Identify all disclosures made to Naomi Wright regarding KNR's ongoing business/referral relationship with Akron Square Chiropractic.

RESPONSE: Objection. Defendants object that term "ongoing business/referral relationship" is vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that conversations with clients regarding ASC vary greatly. Defendants further state that it is more likely than not that there was some discussions with Naomi Wright of a relationship between KNR and ASC.

17. Identify the date on which you became aware of the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 36 of the Second Amended Complaint.

RESPONSE: Defendants likely found out about these cases in or around the beginning of 2012.

18. Identify the criteria by which KNR or Nestico selected the attendees of the trip to Cancun discussed in Paragraph 43 of the Second Amended Complaint.

RESPONSE: Objection. Defendants object that the terms "criteria" and "selected are vague and ambiguous. In addition, Defendants object that this interrogatory assumes that there was a criteria or selection process. Subject to and without waiving these objections, Defendants state this was a firm trip for the benefit of the attorneys and several medical providers were asked to attend. There was no criteria.

19. State, with as much particularity as possible, what percentage of KNR's client representations ultimately result in all the client's medical bills related to the subject of the representation being repaid in full.

RESPONSE: Objection. Defendants object that the phrases "as much particularity as possible" and "repaid in full" are vague, ambiguous, and undefined. Defendants object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical

Service Providers other than ASC. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years and requires a review of thousands of files. Subject to and without waiving these objections, Defendants state that there are no means by which to reasonably calculate the requested percentage. In addition, KNR, with respect to all healthcare providers, generally negotiates a reduction in a client's medical bills whenever possible and feasible.

20. State, with this much particularity as possible, what percentage of KNR's client representations that result from a referral from a Medical Service Provider ultimately result in the referring Medical Service Provider's bills being paid in full.

RESPONSE: Objection. Defendants object that the phrases "this much particularity as possible" and "paid in full" are vague, ambiguous, and undefined. Defendants also object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years and requires a review of thousands of files. Subject to and without waiving these objections, Defendants state that there are no means by which to reasonably calculate the requested percentage. In addition, KNR, with respect to all healthcare providers, generally negotiates a reduction in a client's medical bills whenever possible and feasible.

21. State, with as much particularity as possible, what percentage of medical services provided to KNR clients by ACS for injuries related to the representation are ultimately paid in full.

RESPONSE: Objection. Defendants object that the phrases "as much particularity as possible" and "paid in full" are vague, ambiguous, and undefined. Defendants also object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Defendants object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years and requires the review of hundreds of files. Subject to and without waiving these objections, Defendants state that there are no means by which to reasonably calculate the requested percentage. In addition, KNR generally negotiates a reduction in a client's medical bills whenever possible and feasible.

22. Identify all Medical Service Providers with whom any Defendant has entered a confidentiality agreement.

RESPONSE: Objection. Defendants object that the term "confidentiality agreement" is vague, ambiguous, and undefined. Defendants also object that this interrogatory is overly broad and unduly burdensome in that it seeks information and documents relating to Medical Service Providers other than ASC. Subject to and without waiving this objection, Defendants state that, other than the confidentiality agreement in the resolution of the Fonner lawsuit, that it has not entered into any confidentiality agreement with any Medical Service Providers, including ASC.

23. Identify all civil lawsuits to which any Defendant has been party against any Medical Service Provider or other attorney or law firm, including attorneys who work or worked for KNR.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Defendants identify the following cases: (1) *Kisling Nestico & Redick, LLC v. James E. Fonner*, Franklin County Common Pleas Case No. 15-CV-003216 and KNR's lawsuit against Robert Horton in Summit County; (2) a KNR lawsuit against Jay Linnen in Summit County Court of Common Pleas, Case No. CV-2014-04-1937; (3) Eshelman Legal Group v. Kisling Legal Group, Case No. CV-2005-03-1717; and (4) the KNR lawsuit against Robert Horton.

24. Identify all persons—including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers—who were paid for or performed any "investigations" relating to Naomi Wright as described in Defendants' responses to Interrogatories No. 2–5 in Plaintiff Williams' First Set of Interrogatories.

RESPONSE: Objection. Defendants object that this interrogatory seeks information relating to a putative class member about Class A (the Investigation Fee Class). Ms. Wright is not the class representative of Class A, but rather a putative class member and Defendants are not required to provide discovery regarding putative class members until there is a certified class.

25. Identify every topic and objective of any such investigation relating to your response to the immediately preceding Interrogatory, including all tasks performed by the investigator, every piece of information that was sought or discovered in the investigation, and every document for which any investigator

sought Ms. Williams' signature.

RESPONSE: Objection. Defendants object that this interrogatory seeks information relating to a putative class member about Class A (the Investigation Fee Class). Ms. Wright is not the class representative of Class A, but rather a putative class member and Defendants are not required to provide discovery regarding putative class members until there is a certified class.

26. Identify all facts, policies, procedures or determinations that led to KNR terminating the employment of Gary Petti.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "determinations," are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Defendants further object that this interrogatory seeks confidential information. Subject to and without waiving these objections, Defendants state that Mr. Petti's performance did not meet the high standard of KNR. By way of example only, Mr. Petti did not return client calls, did not handle afterhours intake, was often absent without notification, and had a poor work attitude.

27. Identify all facts, policies, procedures or determinations that led to KNR terminating the employment of Robert Horton.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "determinations," are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Defendants further object that this interrogatory seeks confidential information. Subject to and without waiving these objections, Defendants state that Mr. Horton stole documents and breached his confidentiality agreement. In addition, Mr. Horton tried to set up a competitive firm and recruit KNR attorneys.

28. Identify all payments of any kind made to "Attorney at Law Magazine," including by payment amount and the service received for any payment, including advertising.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence.

29. Identify all conversations that led to KNR having been featured as "Law Firm of the Month" in Volume 3, Section 6 of "Attorney at Law Magazine," including by identifying who initiated the conversations, the dates of any such conversations, and who took part in them.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence.

MATTHEW JOHNSON'S INTERROGATORIES

30. Identify all disclosures made to Matthew Johnson regarding KNR's ongoing business/referral relationship with Liberty Capital Funding.

RESPONSE: Objection. Defendants object that the term "business/referral relationship" is vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that in response to Mr. Johnson's request for contact information regarding a potential lender, KNR provided him with Liberty Capital's contact information.

31. Identify the process, including any request for proposal ("RFP") process, by which KNR has determined which Litigation Finance Company's products best suit its clients' needs.

RESPONSE: Objection. Defendants object that the terms "process" and "needs" and the phrases "request for proposal process" and "best suit" are vague, ambiguous, and undefined. Defendants also object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants further object that it assumes a duty or legal or professional obligation. Subject to and without waiving these objections, Defendants state the Litigation Finance Companies have made presentations to KNR attorneys regarding their companies. In addition, KNR's decision to provide information on a Litigation Finance Company depended on the specific facts of the matter or case and was based on experience with the Litigation Finance Company.

32. Please identify the criteria considered in any RFP or similar process identified in response to the Interrogatory above.

RESPONSE: Objection. Defendants object that the terms "criteria," "RFP process," and "similar process" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance

Companies other than Liberty Capital Funding. Subject to and without waiving these objections, Defendants state that there is no set criteria. In addition, depending on the facts of the case, KNR attorneys consider the following factors, among others: (1) the amount of money at issue in the case; (2) amount of money sought for the loan; (3) ability to negotiate a reduction in the repayment of the loan; and (4) standards and underwriting criteria of the loan company.

33. Identify by name and business address every Litigation Finance Company Defendants have instructed their lawyers or other employees to recommend to clients at any point in time.

RESPONSE: Objection. Defendants object that the term "recommend" is vague, ambiguous, and undefined. Defendants also object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for information that goes back years and requires the review of hundreds of files. Subject to and without waiving these objections, Defendants identify the following companies: Oasis Financial, Preferred Capital, and Liberty Capital.

34. Identify any financial or business benefit to any Defendant—beyond the service provided to KNR's clients—of KNR's relationship with any Litigation Finance Company including the type of benefit, the amount of the benefit and from what Litigation Finance Company it was received.

RESPONSE: Objection. Defendants object that the term "financial or business benefit" is vague, ambiguous, and undefined. Defendants also object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Subject to and without waiving these objections, Defendants state that they have received no financial, business, or any other form of benefit from any Litigation Finance Company.

35. Identify any payments made to or from any Defendant by Liberty Capital Funding or Ciro Cerrato that were not directly associated with a specific client matter.

RESPONSE: Objection. Defendants object that this interrogatory assumes that defendants made payments to Liberty Capital Funding or Ciro Cerrato that were not directly associated with a specific client matter. Defendants deny such an assumption. In addition, Defendants object that "not directly associated with as

specific client matter" is vague and ambiguous. Subject to and without waiving this objection, Defendants state that there were no such payments.

36. Identify any payments made to or from any Defendant to any Litigation Finance Company that were not directly associated with a specific client matter.

RESPONSE: Objection. Defendants object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants also object that this interrogatory assumes that defendants made payments to Litigation Finance Companies that were not directly associated with a specific client matter. Defendants deny such an assumption. In addition, Defendants object that "not directly associated with as specific client matter" is vague and ambiguous. Subject to and without waiving this objection, Defendants state that there were no such payments.

37. Identify all client complaints regarding Liberty Capital Funding.

RESPONSE: Objection. Defendants object that the term "complaints" is vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that they are unaware of any formal or specific client complaints regarding Liberty Capital Funding.

38. State, with as much particularity as possible, what percentage of KNR's client representations ultimately result in a settlement.

RESPONSE: Objection. Defendants object that the phrase "as much particularity as possible" is vague, ambiguous, and undefined. Defendants further object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Defendants roughly estimate that around 80% of matters result in settlement. This is not an exact calculation.

39. State, with this much particularity as possible, what percentage of KNR's client representations ultimately result in all advances from Litigation Funding Companies being repaid in full.

RESPONSE: Objection. Defendants object that the phrases "this much particularity as possible" and "repaid in full" is vague, ambiguous, and undefined. Defendants also object as overly broad and unduly burdensome in that this

interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years and requires the review of hundreds of files. Subject to and without waiving these objections, Defendants state that there are no means to reasonably calculate the requested percentage.

40. State, with this much particularity as possible, what percentage of litigation funding advances provided to KNR clients is ultimately repaid.

RESPONSE: Objection. Defendants object that the term "litigation funding advances" and the phrases "this much particularity as possible" and "ultimately repaid" are vague, ambiguous, and undefined. Defendants also object as overly broad and unduly burdensome in that this interrogatory seeks information and documents relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years and requires the review of hundreds of files. Subject to and without waiving these objections, Defendants state that there are no means to reasonably calculate the requested percentage.

41. State, with this much particularly as possible, what percentage of litigation funding advances provided to KNR clients by Liberty Capital Funding was ultimately repaid.

RESPONSE: Objection. Defendants object that the term "litigation funding advances" and the phrases "this much particularity as possible" and "ultimately repaid" are vague, ambiguous, and undefined. Defendants further object that this interrogatory is unduly burdensome and overly broad in asking for a calculation that goes back years. Subject to and without waiving these objections, Defendants state that there are no means to reasonably calculate the requested percentage.

42. 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, counterclaims, or defenses alleged in this case and identify the relevant subject matter of each person's relevant knowledge known to you.

RESPONSE: Objection. Defendants object that this interrogatory is overly broad

and unduly burdensome. Subject to and without waiving these objections, Defendants identify the following individuals: Rob Nestico, Ciro Cerrato, Mark Lindsey, Brandy Gobroggi, Holly Tusko, Kimberly Lubran, Jill Gardner, Aaron Czetli, Michael Simpson, Johnson, Paul Steele, Robert Horton, Jenna Wiley Wright, Divin Oddo. In addition, attorneys and paralegals over the years would have knowledge of some of the facts and allegations in this case. These individuals are employees of KNR, who are represented by counsel. Please contact these individuals through KNR's counsel.

43. Identify every current or former KNR attorney or employee who raised questions or made complaints about the practices that are the subject of the Second Amended Complaint, including those relating to payments to investigators, Medical Service Provider referrals, or Litigation Finance Company referrals, 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 "raised questions" and "complaints," "Medical Service Provider referrals," and "Litigation Finance Company referrals" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that they are unaware of any formal or specific complaint relating to investigators, Medical Service Provider referrals, or Litigation Finance Company referrals.

44. Identify every non-KNR attorney or employee, including any current or former clients, or third parties, who raised questions or made complaints about the practices that are the subject of the Second Amended Complaint, including those relating to payments to investigators, Medical Service Provider referrals, or Litigation Finance Company referrals, 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 "raised questions" and "complaints" "Medical Service Provider referrals," and "Litigation Finance Company referrals" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that they are unaware of any formal or specific complaint relating to investigators, Medical Service Provider referrals, or Litigation Finance Company referrals. The one exception would be the Cunningham lawsuit. Responding further, there may be informal and unspecified questions or complaints about the allegations in the Second Amended Complaint that were published on various online formats.

45. Identify all civil lawsuits to which any Defendant has been party against any Litigation Finance Company or other attorney or law firm, including attorneys who work or worked for KNR.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Defendants further object that this Interrogatory is compound. Subject to and without waiving this objection, Defendants refer Plaintiffs to Defendants' Response to Interrogatory No. 23.

46. Identify all persons – including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers—who were paid for or performed any "investigations" relating to Matthew Johnson as described in Defendants' responses to Interrogatories No. 2–5 in Plaintiff Williams' First Set of Interrogatories.

RESPONSE: Objection. Defendants object that this interrogatory seeks information relating to a putative class member about Class A (the Investigation Fee Class). Mr. Johnson is not the class representative of Class A, but rather a putative class member and Defendants are not required to provide discovery regarding putative class members until there is a certified class.

47. Identify every topic and objective of any such investigation relating to your response to the immediately preceding Interrogatory, including all tasks performed by the investigator, every piece of information that was sought or discovered in the investigation, and every document for which any investigator sought Mr. Johnson's signature.

RESPONSE: Objection. Defendants object that this interrogatory seeks information relating to a putative class member about Class A (the Investigation Fee Class). Mr. Johnson is not the class representative of Class A, but rather a putative class member and Defendants are not required to provide discovery regarding putative class members until there is a certified class.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Responses to Plaintiffs' Second Set of Interrogatories was sent this 23rd day of October, 2017 to the following via electronic Mail:

Peter Pattakos
Daniel Frech
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com
dfrech@pattakoslaw.com

Counsel for Plaintiff

Joshua R. Cohen
Cohen Rosenthal & Kramer LLP
The Hoyt Block Building, Suite 400
700 West St. Clair Avenue
Cleveland, Ohio 44114
jcohen@crklaw.com

/s/ Brian E. Roof
Brian E. Roof (0071451)

Exhibit 4

Defendants' Answers and Objections to Plaintiffs' Third Set of Interrogatories

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Patricia Cosgrove

DEFENDANTS' OBJECTIONS AND ANSWERS TO PLAINTIFFS' FIRST REQUEST FOR INSPECTION, THIRD SET OF INTERROGATORIES, THIRD SET OF REQUESTS FOR ADMISSION, AND FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 33, 34 and 36 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Robert Redick (collectively "Defendants") object and respond as follows to Plaintiffs' First Request for Inspection, Third Set of Interrogatories, Third Set of Requests for Admission, and Fifth Set of Requests for Production of Documents ("Discovery Requests"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Discovery Requests 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 Plaintiffs' Discovery Requests seek information and

communications between Plaintiffs 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, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Discovery Requests 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 Discovery Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

3. Defendants object as overly broad and unduly burdensome to the extent that a discovery request seeks information relating to Medical Service Providers or Chiropractors other than Akron Square Chiropractic ("ASC").

4. Defendants object as overly broad and unduly burdensome to the extent a discovery request seeks information relating to Litigation Finance Companies other than Liberty Capital Funding, LLC ("Liberty Capital").

5. Defendants object as overly broad and unduly burdensome to the extent a discovery request seeks information relating to investigators other than Aaron Czetli and his company AMC Investigations and Michael Simpson and his company MRS Investigations.

6. Defendants object to the extent that requests are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

7. Defendants object that the terms "investigation fee," "investigative fee," and "investigatory fee" are vague, ambiguous, and undefined. Defendants will interpret these terms to mean the flat fee paid to investigators by KNR that are similar to the $50 fee paid to MRS Investigations, Inc. in Plaintiff Williams' case. All of Defendants' answers to requests involving these terms are based on Defendants' definition of those terms as outlined above.

8. Defendants state that they and the firm's IT vendor cannot conduct Boolean searches.

9. Defendants object that the Discovery Requests are overly broad and unduly burdensome in that there are no date limitations on the requests.

10. Defendants reserve their right to amend their responses to these Discovery Requests.

11. Defendants deny all allegations or statements in the Discovery Requests, except as expressly admitted below.

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

13. 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 Discovery Requests 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.

REQUEST FOR INSPECTION (KNR DEFENDANTS ONLY)

1. Under Civ.R. 34, Plaintiffs request to inspect and test all systems or databases in Defendants' custody or control on which any and all of the KNR Defendants' emails are stored. This includes any internet-based or cloud-based system or database to which the KNR Defendants have access through a third-party vendor and any storage system or database to which emails have been moved for any reason, including for preservation or searching. The purposes of this inspection and test are as follows: 1) to determine the search functionality of the systems or databases on which the KNR Defendants' emails are stored; 2) to determine the veracity of the KNR Defendants' repeated claims—including at the November 2 meet and confer between counsel, and in Brian Roof's November 15, 2017 letter—that routine email searches including essential terms at issue in this lawsuit would somehow "crash the system" used by the KNR Defendants to store emails (*see* Nov. 15 Roof letter at 2); 3) to determine the veracity of the KNR Defendants' other representations relating to email searches it has performed in

response to Plaintiffs' requests; and 4) more broadly, to further documentary discovery in this case consistent with the Civil Rules. This inspection and test may take place at the KNR Defendants' offices, or any place of Defendants' choosing where such systems or databases may be accessed and searched. This inspection and test shall take place at the same time as the 30(b)(5) deposition that Plaintiffs noticed on September 7, 2017 and shall be recorded by a qualified Notary Public by video and stenographic means.

RESPONSE: Objection. Defendants object to this request as unduly burdensome, disproportionate to the needs of the case, and completely unnecessary. They further object that the request is only being asked to harass Defendants. Defendants also object that this request seeks proprietary and confidential information that even the protective order is not sufficient to protect. This is especially true since Plaintiffs' law firm is a newly formed law firm that competes directly with KNR and granting Plaintiffs' attorneys access to KNR's document system and database would be unfairly prejudicial and detrimental to its business. In addition, this request would allow for the review of information and documents protected by the attorney-client privilege and work product. The Rule 30(B)(5) deposition should be sufficient to answer all of Plaintiffs' questions outlined above (1-4) regarding KNR's document system and database.

INTERROGATORIES (ALL DEFENDANTS)

1. Identify all bank accounts that you use or have used for any purpose whatsoever since 2008, business or personal, whether or not the account is in your name, including by the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address. This includes all accounts to which you have deposited or from which you have withdrawn funds, or to or from which anyone has done so on your behalf.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence, especially the request regarding the personal bank accounts. Defendants further object that this interrogatory is simply being posed to harass Defendants, especially the request regarding the personal bank accounts. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it requests information dating back to 2008 and requests the identity for bank accounts "used for any purpose whatsoever." The request is not even limited to the lawsuit. Defendants also object that this request seeks confidential and proprietary information that not even the protective order is sufficient to protect.

INTERROGATORIES (KNR DEFENDANTS ONLY)

2. Identify all bank accounts from which you paid "investigators" (including Aaron Czetli or AMC Investigations, Michael Simpson or MRS Investigations, Chuck Deremer, and the "investigators" identified in your third amended response to Plaintiffs' Interrogatory No. 1-8), including the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address.

RESPONSE: Objection. Defendants object that this interrogatory generally seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on investigators other than MRS and AMC. Defendants further object that this interrogatory is simply being posed to harass Defendants. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that there is no date range. Defendants further object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request seeks confidential and proprietary information. Subject to and without waiving this objection, see document bates stamped KNR00021 for the check paid to MRS in Plaintiff Williams' case.

3. Identify all bank accounts (including the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address) from which you paid "narrative fees" to any chiropractor or Medical Service Provider, including the narrative fees identified in your response to RFA No. 32, in Brian Roof's letter of November 15, 2017 at page 2, and in the KNR emails attached to Plaintiffs' motion for leave to file the Second Amended Complaint.

RESPONSE: Objection. Defendants object that this interrogatory generally seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on Medical Service Providers other than ASC. Defendants further object that this interrogatory is simply being posed to harass Defendants. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it has no date range. Defendants further object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request seeks confidential and proprietary information.

4. Identify all changes in KNR's policies, procedures, or practices relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Objection. Defendants have already answered this interrogatory in its amended response to Plaintiffs' Fourth Set of Requests for Production No. 4. In addition, Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants, based on the information known to date, do not recall making any changes to its policies, procedures, or practices relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint.

5. Identify all steps taken to search for documents responsive to Plaintiffs' Request for Production No. 4-2 and reach the determination—as stated in Defendants' amended response to the request and Brian Roof's Nov. 15, 2017 letter—that "there are no responsive documents" to this Request, including the names and positions of all persons who participated and their specific roles in conducting this search and reaching this determination.

RESPONSE: Objection. Defendants object that this request seeks information protected by the attorney-client privilege and work product doctrine. Plaintiffs can ask a factual question at the deposition of any of KNR's witnesses about whether he or she searched for such documents, but the interrogatory as phrased seeks privileged information.

6. Identify all work performed for Defendants by investigators (including Aaron Czetli, Michael Simpson, Chuck Deremer, and those identified in your third amended response to Plaintiffs' Interrogatory No. 1-8) that did not relate to the pass-through "investigation" expense that was charged to KNR clients, and did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for the holidays, and running errands for Rob Nestico and other KNR personnel.

RESPONSE: Objection. Defendants object that this interrogatory is vague, ambiguous, confusing, unintelligible, and compound. Also, Defendants object

that the word "work" is vague, ambiguous, and undefined. In addition, Defendants object this interrogatory seeks irrelevant information not likely to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on investigators other than MRS and AMC. Subject to and without waiving these objections, Aaron Czetli and Michael Simpson, as independent contractors, have previously performed other work (such as stuffing envelopes and running errands) for KNR that were unrelated to a specific client and was not charged to a specific client. They performed this work when they were not acting as investigators on behalf of KNR's clients.

REQUESTS FOR ADMISSION (KNR DEFENDANTS ONLY)

1. Admit that KNR did not make any changes to its policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants do not recall, based on the information known to date, making any changes to its policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint.

2. Admit that no Defendant is in possession of any documents reflecting, discussing, or considering changes (or the consideration or discussion of such changes) to KNR policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants admit this request based on the information currently available to them. See Response to RFA No. 1.

3. Admit that Defendants' representation that "there are no responsive documents" to Plaintiffs' Request for Production of Documents No. 4-2—including in Plaintiffs' Amended Response to that Request and in Brian Roof's November 15, 2017 letter—is false.

RESPONSE: Deny. Defendants do not recall any documents responsive to Request for Production of Documents No. 4-2. See Response RFA Nos. 1 and 2.

4. Admit that some of the investigators (including Aaron Czetli, Michael Simpson, Chuck Deremer, and those identified in your third amended response to Plaintiffs' Interrogatory No. 1-8) regularly performed work for Defendants that did not relate to the pass-through "investigation" expense that was charged to KNR clients, and did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for the holidays, and running errands for Rob Nestico and other KNR personnel.

RESPONSE: Defendants object that this interrogatory seeks irrelevant information not likely to lead to the discovery of admissible evidence. Defendants also object to this interrogatory seeking information on investigators other than MRS and AMC. Subject to and without waiving these objections, see response to Interrogatory No. 6.

REQUESTS FOR PRODUCTION OF DOCUMENTS (ALL DEFENDANTS)

Please produce the following documents:

1. All insurance policies that do or could conceivably provide coverage for the defense or payment of the claims at issue in this lawsuit, and documents sufficient to determine the full extent of any such coverage.

RESPONSE: Objection. This request seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. The only relevant and discoverable information regarding the policy is the policy limits, which is $1 million.

REQUESTS FOR PRODUCTION OF DOCUMENTS (KNR DEFENDANTS ONLY)

Please produce the following documents:

2. All documents relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17) including all documents in which these lawsuits are discussed or mentioned in any way.

RESPONSE: Objection. This request seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request is overly broad and unduly burdensome as the Plambeck lawsuits go back to 2012. Subject to and without waiving any objections, see Response to RFA Nos. 1-3. In addition, Defendants are currently unaware of any responsive documents and that searching for any unlikely potential email is unduly burdensome and overly broad.

3. All letters or documents by which KNR asserted liens on the proceeds of lawsuits of clients whose representation with KNR had ended, with any privileged information redacted (the name and address of any person receiving the lien letter cannot in any case be privileged, nor can the amount of the lien).

RESPONSE: Objection. Defendants object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. In addition, this request seeks information outside the scope of Class B (Naomi Wright's class), which is specifically limited to cases referred to or from ASC. Subject to and without waiving these objections, Defendants will produce the seven letters for the seven potential clients who fall within Class B. KNR did not send a lien letter on one of the potential Class B members.

4. All documents consisting of, referring to, or reflecting any instance where Defendants advised a client as to the purpose of the investigation fee in writing (not including engagement agreements or settlement statements).

RESPONSE: Objection. Defendants object that this request seeks information relating to putative class members. As Defendants have previously stated,

Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request is overly broad and unduly burdensome, and disproportionate to the needs of the case in that it would require a search of over 50,000 files. Subject to and without waiving these objections, Defendants are currently unaware of any responsive documents based on the information known to date.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

/s/ R. Eric Kennedy
R. Eric Kennedy (0006174)
Daniel P. Goetz (0065549)
Weisman Kennedy & Berris Co LPA
101 W. Prospect Avenue
1600 Midland Building
Cleveland, OH 44115
(216) 781-1111 phone
(216) 781-6747 facsimile
ekennedy@weismanlaw.com
dgoetz@weismanlaw.com

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
Lewis Brisbois
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
(216) 344-9467 phone
(216) 344-9241 facsimile
Tom.mannion@lewisbrisbois.com

Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Answer to Plaintiffs' First Request for Inspection, Third Set of Interrogatories, Third Set of Requests for Admission, and Fifth Set of Requests for Production of Documents was sent this 15th day of December, 2017 to the following via electronic Mail:

Peter Pattakos — Counsel for Plaintiff
Daniel Frech
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com
dfrech@pattakoslaw.com

Joshua R. Cohen
Cohen Rosenthal & Kramer LLP
3208 Clinton Avenue
1 Clinton Place
Cleveland, Ohio 44113-2809
jcohen@crklaw.com

John F. Hill — Counsel for Defendant Minas Floros, D.C.
Meleah M. Kinlow
Buckingham, Doolittle & Burroughs, LLC
3800 Embassy Parkway, Suite 300
Akron, OH 44333-8332
jhill@bdblaw.com
mkinlow@bdblaw.com

/s/ Brian E. Roof
Brian E. Roof (0071451)

Exhibit 5

May 14, 2012 email from Gary Kisling to Brandy Lamtman

Re: Loans

Brandy Brewer
Sent: Monday, May 14, 2012 11:49 AM
To: Gary Kisling

Rob wants to try this new company

Sent from my iPhone

On May 14, 2012, at 11:43 AM, "Gary Kisling" <kisling@knrlegal.com> wrote:

Why are we using the new firm rather than Preferred Capital? Brian is excellent at getting reductions on his loans to get cases settled.

<image006.jpg> Gary W. Kisling
Kisling, Nestico & Redick
Attorney At Law
3412 W. Market St., Akron, Ohio 44333
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007
Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown
<image007.jpg><image008.jpg> <image009.jpg> <image010.jpg>

From: Brandy Brewer
Sent: Monday, May 14, 2012 10:42 AM
To: Staff
Subject: Loans

For today or until further notice, please use Preferred Capital instead of new company. We are ironing out some glitches.

<image011.jpg> *Brandy Brewer*
Kisling, Nestico & Redick
Executive Assistant to Attorney Nestico
3412 W. Market St., Akron, Ohio 44333
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007
Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown
<image012.jpg><image013.jpg> <image014.jpg> <image015.jpg>

Exhibit 6

Defendants' Responses and Objections to Plaintiffs' Third Set of Requests for Production of Documents

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Alison Breaux

DEFENDANTS' RESPONSES TO PLAINTIFFS' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Robert Redick (collectively "Defendants") object and respond as follows to Plaintiffs' Third Set of Requests for Production of Documents ("Document Requests"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Document Requests 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 Plaintiffs' Document Requests seek information and communications between Plaintiffs 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, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants also object to Plaintiffs' Document Requests to the extent that they seek information that Defendants considers confidential. Defendants will produce or disclose its confidential information subject to a stipulated protective order.

3. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Document Requests 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 Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

4. Defendants object as overly broad and unduly burdensome to the extent that a request for documents seeks information relating to Medical Service Providers or Chiropractors other than Akron Square Chiropractic ("ASC").

5. Defendants object as overly broad and unduly burdensome to the extent a request for documents seeks information relating to Litigation Finance Companies other than Liberty Capital Funding, LLC ("Liberty Capital").

6. Defendants object that there are no date limitations on these requests, which makes them overly broad and unduly burdensome.

7. Defendants object to the extent that requests are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally

obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

8. Defendants object that the terms "investigation fee," "investigative fee," and "investigatory fee" are vague, ambiguous, and undefined. Defendants will interpret these terms to mean the flat fee paid to investigators by KNR that are similar to the $50 fee paid to MRS Investigations, Inc. in Plaintiff Williams' case. All of Defendants' answers to requests involving these terms are based on Defendants' definition of those terms as outlined above.

9. Defendants state that they and the firm's IT vendor cannot conduct Boolean searches.

10. Defendants object that the Document Requests are overly broad and unduly burdensome in that there are no date limitations on the requests.

11. Defendants reserve their right to amend their responses to these Document Requests.

12. Defendants deny all allegations or statements in the Document Requests, except as expressly admitted below.

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

14. 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 Document Requests 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.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents:

1. All documents completing all of the "chain[s] of email" you repeatedly identify in your Answer to the Second Amended Complaint, or supplying the "context" to which emails have been "taken out of" as you repeatedly allege in your Answer. Please organize your response to this request by identifying the paragraph of the Second Amended Complaint to which each document pertains.

   RESPONSE: Objection. Defendants object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

2. All documents reflecting communications between any Defendant or KNR employee and Ciro Cerrato or Liberty Capital Funding not related to a specific client matter.

   RESPONSE: Objection. Defendants object that this request is overly broad and

unduly burdensome. Defendants also object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

3. All documents reflecting any financial interest any Defendant or employee of KNR might have had in Liberty Capital Funding.

RESPONSE: Objection. Defendants object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017). Subject to and without waiving these objections, there are no responsive documents.

4. All documents reflecting any business or financial benefit Defendants derived from their relationship with Liberty Capital Funding or Ciro Cerrato.

RESPONSE: Objection. Defendants object that the term "business or financial benefit" are vague, ambiguous, and undefined. Defendants further object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017). Subject to and without waiving this objection, there are no responsive documents.

5. All documents reflecting Defendants' process or policies for selecting a Litigation Finance Company (including Liberty Capital Funding) to refer to clients for the provision of advances to clients, including but not limited to any internal discussions or discussions with Litigation Finance Companies.

RESPONSE: Objection. Defendants object that the terms "process," "policies," and "advances" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Litigation Finance Companies other than Liberty Capital. In addition, the request is generally overly broad and unduly burdensome. Subject to and without waiving these objections, there are no responsive documents.

6. All documents reflecting efforts by Defendants to assure that the Litigation

Finance Company to which they referred clients at any given time was the company providing the most competitive terms and most reliable service.

RESPONSE: Objection. Defendants object that the terms "efforts" "most competitive terms" and "most reliable service" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Litigation Finance Companies other than Liberty Capital Funding. Defendants further object that this request is generally overly broad and unduly burdensome. Defendants also object to the extent the request assumes a duty or creates a legal or professional obligation to compare Litigation Finance Companies.

7. All documents reflecting any efforts to determine the financial stability or general quality of Liberty Capital Funding prior to Defendant Nestico asking that his employees recommend them exclusively.

RESPONSE: Objection. Defendants object that the terms "efforts," "financial stability," and "general quality" are vague, ambiguous, and undefined. Defendants further object that this request is generally overly broad and unduly burdensome.

8. All documents reflecting payments withheld from client settlements for purposes of satisfying loans made by Liberty Capital Funding, including but not limited to settlement memoranda.

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. Defendants also object that this request seeks documents 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 information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients that Plaintiffs' counsel does not represent. Responding further, to the extent that this request is needed to establish numerosity, Defendants are not contesting numerosity for the Liberty Capital Funding Class (Class C).

9. All documents reflecting how and by whom Liberty Capital Funding obtained the capital necessary to make loans to your client.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence. Subject to and without waiving this objection, there are no responsive documents.

10. All documents reflecting any payments received from Liberty Capital Funding not specific to any KNR client.

RESPONSE: There are no responsive documents.

11. All documents reflecting both the amount borrowed and the amount repaid for any loan made to a KNR client by Liberty Capital Funding.

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. Defendants object that this request seeks documents 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 information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients that Plaintiffs' counsel does not represent. Responding further, to the extent that this request is needed to establish numerosity, Defendants are not contesting numerosity for the Liberty Capital Funding Class (Class C).

12. All documents reflecting any audit, risk analysis modeling or other analytic assessment of Liberty Capital Funding and whether their rates were accordant with the risk of the loans they were making.

RESPONSE: Objection. Defendants object that the terms "audit," "risk analysis modeling," and "analytic assessment" are vague, ambiguous, and undefined. Defendants also object to the extent the request assumes a duty or creates a legal or professional obligation to compare Litigation Finance Companies. Subject to and without waiving these objections, there are no responsive documents.

13. All documents, including e-mails and other communications not officially in the client's "file," regarding or mentioning the named Plaintiffs in this lawsuit.

RESPONSE: Objection. Defendants object that this request seeks documents

protected by the attorney-client privilege and work product doctrine. In addition, Defendants object that this request may seek documents that are confidential and proprietary. Subject to and without waiving these objections, Defendants will produce documents based on the search of emails of the assigned attorneys and paralegals using the different iterations of the four named Plaintiffs. Defendants will also produce the client files for each of the four named Plaintiffs. See Documents bates stamped KNR00023-00743 (Plaintiff Williams); KNR00761-01427 (Plaintiff Wright); KNR01428-01682 (Plaintiff Johnson); KNR01683-02199 (Plaintiff Reid); and KNR03279.

14. All schematics, data maps, documentation, user's manuals, or other documents intended to describe the function, content and functionality of Needles as employed by KNR, KNR's EDMS, KNR's accounting system, and KNR's e-mail system.

RESPONSE: Objection. Defendants object that this request is confusing and unintelligible. In addition, Defendants object that the terms "schematic," "data maps," "user's manuals," "function," "content," "functionality," and "EDMS" are vague, ambiguous, and undefined. Defendants further object that this request seeks proprietary and confidential documents. Defendants also object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence. Subject to and without waiving these documents, Defendants will produce responsive documents. See Documents bates stamped KNR02200-03192, the manual for Needles.

15. All documents reflecting a comparison or discussion of the number of referrals made by KNR to a given chiropractor(s) and referrals made by that chiropractor to KNR over any period of time.

RESPONSE: Objection. Defendants object that the term "referrals" is vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is overly broad and unduly burdensome.

16. All emails sent by KNR's intake department containing a chart of each day's intakes, including which investigator was paid on each intake, with client names, addresses, and phone numbers redacted.

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to

putative class members until the case has been certified as a class action. Defendants object that the term "intake department" is vague, ambiguous, and undefined. Defendants further object that this request seeks documents 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 request is overly broad and unduly burdensome.

17. All documents stating or reflecting the reasons why KNR does not pay narrative fees on any minor patient, as set forth in the email cited in Paragraph 60 of the Second Amended Complaint.

RESPONSE: Defendants state that there are no responsive documents.

18. All documents reflecting communications from Defendants to any chiropractor or chiropractor's office where such communications *do not* relate or refer to a specific client/patient.

RESPONSE: Objection. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request generally is overly broad and unduly burdensome.

19. All documents reflecting communication with any referring chiropractor(s) regarding trips, retreats, meetings or other occurrences intend to allow for interaction between chiropractors and KNR employees or Defendants.

RESPONSE: Objection. Defendants object that the terms "referring chiropractor(s)" and "other occurrences" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad.

20. All documents reflecting an agreement, formal or otherwise, to refer clients to a particular chiropractor or for a particular chiropractor to refer patients to KNR.

RESPONSE: Objection. Defendants object that the terms "agreements" and "refer" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad.

21. All documents reflecting negotiations with any Chiropractor over referrals.

RESPONSE: Objection. Defendants object that the terms "negotiations" and "referrals" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad.

22. All documents reflecting negotiations with any Chiropractor over narrative fees.

RESPONSE: Objection. Defendants object that the term "negotiations" and "narrative fees" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad.

23. All documents, including but not limited to spreadsheets, quantifying the number of referrals to and from specific Chiropractor(s) over time.

RESPONSE: Objection. Defendants object that the term "referrals" is vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, Defendants state the following for 2012-2017:

	2012	2013	2014	2015	2016	2017
ASC	440	517	544	584	721	459
KNR	175	231	289	296	316	188

Prior to that date range, it is unduly burdensome to provide the information.

24. All documents reflecting any payment made to any Defendant by any chiropractor.

RESPONSE: Objection. Defendants object that this request incorrectly assumes that there were payments from any Chiropractor to any Defendant. Defendants deny that such payments occurred. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, Defendants reimburse ASC for the care of the patient

and reimbursement of Dr. Floros for the narrative report (including the medical records) and deposition.

25. All documents reflecting any payment made by any Defendant to any chiropractor *not associated* with medical services or narrative reports provided to/for a *specific* KNR client.

RESPONSE: Objection. Defendants object that this request incorrectly assumes that there were payments from Any Defendant to any Chiropractor not associated with medical services or narrative reports provided to/for as specific KNR client. Defendants deny such payments occurred. In addition, Defendants object that the term "narrative reports" is vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, Defendants refer Plaintiffs to Defendants' response to Request No. 24.

26. All documents reflecting joint advertising or marketing agreements with any chiropractor(s), including but not limited to any agreement regarding the funding of the "Red Bags" placed on the doors of potential clients.

RESPONSE: Objection. Defendants object that this request incorrectly assumes that there were joint advertising or marketing agreements with Chiropractors. Defendants deny such an assumption. In addition, Defendants object that the terms "joint advertising or marketing agreements" and "Red Bags" is vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Defendants object that the term "business or financial benefit" are vague, ambiguous, and undefined. Defendants further object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017). Subject to and without waiving these objections, Defendants state that there are no responsive documents relating to ASC.

27. All documents reflecting KNR's requirements for the content of narrative reports from chiropractors.

RESPONSE: Objection. Defendants object that the term "narrative reports" is vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is

generally unduly burdensome and overly broad.

28. All documents reflecting KNR's basis for believing that narrative reports from chiropractors provide a benefit to their clients in excess of the fee for such reports.

RESPONSE: Objection. Defendants object that the term "narrative report" is vague, ambiguous, and undefined. Defendants also because medical opinions are required to establish causation and reasonableness of medical bills. Subject to and without waiving these objections, Defendants refer Plaintiffs to Plaintiff Reid's narrative report and ASC records, which are bates stamped KNR03193-03225.

29. All documents reflecting discussions, communications or assessments on the value of narrative reports in pursuing personal injury settlements.

RESPONSE: Objection. Defendants object that the term "narrative report" is vague, ambiguous, and undefined. Defendants also object to the extent that this request is overly broad and unduly burdensome. Defendants object that the terms "business or financial benefit" are vague, ambiguous, and undefined. Defendants further object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

30. All documents reflecting solicitations to Chiropractors asking, suggesting, urging or incentivizing them to refer clients to KNR.

RESPONSE: Objection. Defendants object that the terms "solicitations" and "refer" are vague, ambiguous, and undefined. In addition, this request is generally unduly burdensome and overly broad.

31. All documents reflecting contracts or payments made by KNR for services in obtaining contact information for individuals recently involved in auto accidents.

RESPONSE: Objection. Defendants object that the term "services" is vague, ambiguous, and undefined. Defendants also object that this request is overly broad and unduly burdensome. Defendants further object that this request seeks irrelevant documents not likely to lead to the discovery of admissible evidence.

32. All documents reflecting contracts or payments made by KNR, directly or indirectly, for any advertising, including but not limited to mailings and material left on potential clients' doors, that did not bear the name of KNR or any Defendant.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents not likely to lead to the discovery of admissible evidence. Defendants also object that this request is overly broad and unduly burdensome.

33. All job descriptions, policies, or procedures related to the obtaining of contact information for individuals recently involved in auto accidents.

RESPONSE: Objection. Defendants object that the terms "job descriptions," "policies, and "procedures" are vague, ambiguous, and undefined. Defendants further object that this request seeks irrelevant documents not likely to lead to the discovery of admissible evidence.

34. All documents reflecting payments made by any Defendant for postage or materials used in mailings sent by any Chiropractor.

RESPONSE: Objection. Defendants object that this request incorrectly assumes that Defendants paid for postage or other materials used in Chiropractor mailings. Defendants deny such an assumption. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, Defendants state that there are no responsive documents.

35. All documents reflecting any input provided by any Defendant into the content or design of any mailing sent by any Chiropractor.

RESPONSE: Objection. Defendants object that this request incorrectly assumes that Defendants provided any input into the content or design of mailings used by any Chiropractor. Defendants deny such an assumption. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, Defendants state that there are no responsive documents as to ASC.

36. All e-mails sent or received by Defendants Nestico or Redick regarding intake procedures or referrals.

RESPONSE: Objection. Defendants object that the terms "intake procedures" and "intake referrals" are vague, ambiguous, and undefined. Defendants further object that this request is overly broad and unduly burdensome to the extent that it has no date limitation. In addition, Defendants object that the request is generally overly broad and unduly burdensome.

37. All documents directing intake attorneys to steer clients to a particular Chiropractor.

RESPONSE: Objection. Defendants object that the terms "intake attorneys" and "steer" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC and that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, Defendants refer Plaintiffs' to Defendants' responses to Interrogatory Nos. 6 and 7.

38. All documents advising intake attorneys to tell KNR clients or potential clients that going to a medical provider other than the one being suggested by KNR will negatively impact the client or potential client's case.

RESPONSE: RESPONSE: Objection. Defendants object that the term "negatively impact" is vague, ambiguous, and undefined. Subject to and without waiving this objection, without any search terms, Defendants are not aware of any responsive documents. In addition, this request is generally unduly burdensome and overly broad.

39. All documents reflecting KNR's employment (whether as a provider or contractor) at any time of an "investigator" or individual whose job involved going to the homes or workplaces of prospective clients to obtaining signatures or documents.

RESPONSE: RESPONSE: Objection. Defendants object that the terms "provider" and "employment" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to investigators other than MRS Investigations, Inc. and AMC Investigations, Inc., which are independent contractors. In addition, Defendants object that this request is overly broad and unduly burdensome to the extent that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, Defendants will produce documents. See documents bates stamped KNR03226-03277. Client names and identifying

information have been redacted in these documents.

40. All documents reflecting KNR payments to contract investigators for work done on prospective client matters that do not result in the client signing a contract with KNR.

RESPONSE: Defendants object that this request seeks documents 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 information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients. Subject to and without waiving these objections, there are no responsive documents. Responding further, investigators do not investigate claims of individuals who are not clients of the firm.

41. All documents containing or reflecting policies and procedures regarding when an "investigation fee" should be charged.

RESPONSE: Objection. Defendants object that the terms "policies" and "procedures" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

42. All versions of fee agreements that KNR has used with its clients since the firm's inception.

RESPONSE: Objection. Defendants object that this request is overly broad and unduly burdensome in that it requests documents dating back to the inception of KNR. Defendants also object that this request seeks confidential and proprietary information. Defendants object that the term "business or financial benefit" are vague, ambiguous, and undefined. Defendants further object that this request is based on illegally obtained documents. Subject to and without waiving these objections, Defendants have previously produced sample versions of fee agreements after 2009. See documents bates stamped KNR00001-00020.

43. All documents containing or reflecting policies and procedures on when and how to use an "investigator" on a client or potential client matter.

RESPONSE: Objection. Defendants object that the terms "policies" and "procedures" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Defendants object that the term "business or financial benefit" are vague, ambiguous, and undefined. In addition, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document. Defendants further object that this request is based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

44. All documents relating or referring to "sign up" fees or "SU" fees including all policies and procedures regarding when a "sign up" fee or "SU" fee should be charged.

RESPONSE: Objection. Defendants object that the terms "policies" and "procedures" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Also, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

45. All documents containing or reflecting policies and procedures on when and how to request a "narrative" report from a Chiropractor.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "narrative report" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. This request is generally unduly burdensome and overly broad. Also, there is no uniform manner in which narrative reports are requested, as each case is unique and the circumstance may vary depending on nature of injures, age of client, etc. Finally, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

46. All documents containing or reflecting policies and procedures regarding the referral of KNR clients to chiropractors or other Medical Service Providers.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "referral" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors or Medical Service Providers other than ASC and that it has no date limitation. Also, this request is generally unduly burdensome and overly broad.

47. All documents containing or reflecting policies and procedures regarding obtaining referrals of clients from chiropractors or other Medical Service Providers.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "referral" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors or Medical Service Providers other than ASC. Also, this request is generally unduly burdensome and overly broad.

48. All documents containing or reflecting policies and procedures regarding when a narrative fee should be charged and how to determine if a particular charge is reasonable.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," "narrative fee," and "reasonable" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. In addition, Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Also, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, Defendants state that they will produce portions of the training manual. See document bates stamped KNR03278 (attorney's eyes only).

49. All documents containing or reflecting policies and procedures relating to handling calls from potential new clients.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "handling" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. Also, this request is generally unduly burdensome and

overly broad. In addition, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

50. All documents containing or reflecting policies and procedures related to new case intake.

RESPONSE: Objection. Defendants object that the terms "policies," "procedures," and "intake" are vague, ambiguous, and undefined. Defendant further objects that this request is overly broad and unduly burdensome in that it has no date limitation. Also, this request is generally unduly burdensome and overly broad. In addition, Defendants object that this request seeks a training manual that is proprietary and confidential information. Defendants will not produce this document.

51. All documents containing or reflecting policies and procedures identified in your response to any Interrogatory served by Plaintiffs in this lawsuit.

RESPONSE: Objection. Defendants object that this request does not identify the specific policy or procedure. In addition, Defendants object that this request is overly broad and unduly burdensome.

52. All documents supporting the truth of your response to any Interrogatory served by Plaintiffs in this lawsuit.

RESPONSE: Objection. Defendants object that this request does not identify the specific policy or procedure. In addition, Defendants object that this request is overly broad and unduly burdensome. Defendants will supplement if appropriate.

53. All documents supporting the truth of your denial of any Request for Admission served by Plaintiffs in this lawsuit.

RESPONSE: Objection. Defendants object that this request is overly broad and unduly burdensome. Defendants will supplement if appropriate.

54. All documents regarding "quotas" of any type.

RESPONSE: Objection. Defendants object that this request is confusing and unintelligible. Defendants further object that the phrase "quotas of any type" is vague, ambiguous, and undefined.

55. Gary Petti's employment file, including all documents reflecting evaluations of Petti's performance and all documents relating to the reasons for KNR's termination of Petti's employment.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence. Defendants further object that to produce the responsive documents will require written approval of Gary Petti.

56. Rob Horton's employment file, including all documents reflecting evaluations of Horton's performance and all documents relating to the reasons for KNR's termination of Horton's employment.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence. Defendants further object that to produce the responsive documents will require written approval of Robert Horton.

57. All documents, including but not limited to job descriptions, describing the responsibilities and means of assessment for KNR's "Intake Manager."

RESPONSE: There are no responsive documents.

58. All documents, including but not limited to job descriptions, describing the responsibilities and means of assessment for KNR's "Executive Assistant to Attorney Nestico."

RESPONSE: There are no responsive documents.

59. All documents, including but not limited to job descriptions, describing the responsibilities and means of assessment for KNR's "Director of Operations."

RESPONSE: There are no responsive documents.

60. All discovery requests and written discovery responses served by all parties to the lawsuit *Kisling Nestico & Redick, LLC v. James E. Fonner*, Franklin County Common Pleas Case No. 15-CV-003216.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not reasonably calculated to lead to the discovery of admissible evidence.

61. All documents, including emails, text messages, or demand letters, reflecting or containing threats of litigation, or the suggestion of the possibility of litigation, by any Defendant against any Medical Service Provider or other attorney or law firm, including attorneys who work or worked for KNR.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not reasonably calculated to lead to the discovery of admissible evidence.

62. All documents relating to Naomi Wright, including relating to any disclosures made to Wright regarding KNR's ongoing business/referral relationship with Akron Square Chiropractic.

RESPONSE: Objection. Defendants object that this request seeks confidential and proprietary information. Subject to and without waiving these objections, see response to Request No. 13. See documents bates stamped KNR00761-01427 (Plaintiff Wright).

63. All documents relating to Matthew Johnson, including relating to any disclosures made to Johnson regarding KNR's ongoing business/referral relationship with Liberty Capital Funding.

RESPONSE: Objection. Defendants object that this request seeks confidential and proprietary information. Subject to and without waiving these objections, see response to Request No. 13. See documents bates stamped KNR01428-01682 (Plaintiff Johnson).

64. All documents reflecting communications with “Attorney at Law Magazine.”

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence.

65. All documents reflecting payments of any kind to “Attorney at Law Magazine.”

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence.

66. All documents reflecting or containing policies and procedures regarding reviews on Google, Facebook, and other websites, including all documents reflecting any instructions or suggestions to employees regarding these reviews.

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents that are not likely to lead to the discovery of admissible evidence.

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

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

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Responses to Plaintiffs' Third Set of Requests for Production of Documents to All Defendants was sent this 23rd day of October, 2017 to the following via electronic Mail:

Peter Pattakos
Daniel Frech
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com
dfrech@pattakoslaw.com

Counsel for Plaintiff

Joshua R. Cohen
Cohen Rosenthal & Kramer LLP
The Hoyt Block Building, Suite 400
700 West St. Clair Avenue
Cleveland, Ohio 44114
jcohen@crklaw.com

/s/ Brian E. Roof
Brian E. Roof (0071451)

Exhibit 7

Defendants' Responses and Objections to Plaintiffs' Fourth Set of Requests for Production of Documents

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Alison Breaux

DEFENDANTS' FIRST AMENDED RESPONSES TO PLAINTIFFS' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Robert Redick (collectively "Defendants") object and respond as follows to Plaintiffs' Fourth Set of Requests for Production of Documents ("Document Requests"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Document Requests 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 Plaintiffs' Document Requests seek information and communications between Plaintiffs 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, Plaintiffs

have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Document Requests 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 Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

3. Defendants object as overly broad and unduly burdensome to the extent that a request for documents seeks information relating to Medical Service Providers or Chiropractors other than Akron Square Chiropractic ("ASC").

4. Defendants object as overly broad and unduly burdensome to the extent a request for documents seeks information relating to Litigation Finance Companies other than Liberty Capital Funding, LLC ("Liberty Capital").

5. Defendants object that there are no date limitations on these requests, which makes them overly broad and unduly burdensome.

6. Defendants object to the extent that requests are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

7. Defendants object to the extent that a request for production pertains to the class claims in the Second Amended Complaint, which are subject to a Motion to

Strike. Requiring responses to these requests for documents when the Motion to Strike may be granted is unduly burdensome and overly broad.

8. Defendants object to the extent that the request seeks documents relating to other clients it is unduly burdensome, overly broad, and premature.

9. Defendants state that they and the firm's IT vendor cannot conduct Boolean searches.

10. Defendants object that the Document Requests are overly broad and unduly burdensome in that there are no date limitations on the requests.

11. Defendants reserve their right to amend their responses to these Document Requests.

12. Defendants deny all allegations or statements in the Document Requests, except as expressly admitted below.

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

14. 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 Document Requests 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.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents:

1. All documents relating to "sign ups," or sending an "investigator" or any other person or company to "sign" or "sign up" a client, including all documents relating to "sign up" fees.

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. In addition, Defendants object that the terms "sign up fees," "sign" and "sign up" are vague, ambiguous and undefined. Defendants also object that this request is overly broad and unduly burdensome in that there is no date restriction. Defendants finally object that this request is generally overly broad and unduly burdensome.

2. All documents relating to the referral of KNR clients to Plambeck-owned chiropractic clinics, including documents reflecting any changes in or analysis of this policy taken in response to lawsuits by insurance companies against Plambeck-owned clinics, and any disclosures to clients regarding the same (See Paragraph 36 of the Second Amended Complaint).

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a

class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. Defendants also object that the terms "this policy" and "Plambeck-owned chiropractic clinics" are vague, ambiguous, and undefined. Defendants further object that this request is outside the scope of Defendants' knowledge (e.g., which clinics are owned by Plambeck). It further cannot be answered based on reasonable inquiry. Defendants also object as overly broad and unduly burdensome to the extent that this request for admission seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, there are no responsive documents.

3. For the daily intake summary emails requested in No. 16 of Plaintiffs' third set of requests for production, please provide the emails reflecting the intakes for plaintiffs Williams, Johnson, and Wright with all information pertaining to plaintiffs, including their names, unredacted.

RESPONSE: Objection. Defendants object that this request is overly broad and unduly burdensome.

4. All documents showing or reflecting that AMC Investigations, MRS Investigations, or either company's employees, or Gary Monto, Wes Steele, Paul Hillenbrand, Jon Thomas, Jeff Allen, Tom Fisher, Dave French, Glenn Jones, Gary Krebs, James Smith, Steven Tobias, Ayan Noor, or David Hogan ever performed any actual investigative work whatsoever on behalf of KNR clients (as opposed to signing up clients or obtaining client signatures on documents).

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. Defendants object that this request seeks documents that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants object that the phrase "any actual investigative work whatsoever" is vague, ambiguous, and undefined. Defendants object that this request is generally unduly burdensome

and overly broad.

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

/s/ R. Eric Kennedy
R. Eric Kennedy (0006174)
Daniel P. Goetz (0065549)
Weisman Kennedy & Berris Co LPA
101 W. Prospect Avenue
1600 Midland Building
Cleveland, OH 44115
(216) 781-1111 phone
(216) 781-6747 facsimile
ekennedy@weismanlaw.com
dgoetz@weismanlaw.com

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
Lewis Brisbois
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
(216) 344-9467 phone
(216) 344-9241 facsimile
Tom.mannion@lewisbrisbois.com

Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' First Amended Responses to Plaintiffs' Fourth Set of Requests for Production of Documents to All Defendants was sent this 15th day of November 2017 to the following via electronic Mail:

Peter Pattakos
Daniel Frech
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com
dfrech@pattakoslaw.com

Counsel for Plaintiff

Joshua R. Cohen
Cohen Rosenthal & Kramer LLP
The Hoyt Block Building, Suite 400
700 West St. Clair Avenue
Cleveland, Ohio 44114
jcohen@crklaw.com

John F. Hill
Meleah M. Kinlow
Buckingham, Doolittle & Burroughs, LLC
3800 Embassy Parkway, Suite 300
Akron, OH 44333-8332
jhill@bdblaw.com
mkinlow@bdblaw.com

Counsel for Defendant Minas Floros, D.C.

/s/ Brian E. Roof
Brian E. Roof (0071451)

Exhibit 8

Oct. 26, 2017 letter from Peter Pattakos to Brian Roof

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

October 26, 2017

By e-mail to broof@sutter-law.com

Brian Roof
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Mr. Roof:

This letter is to follow up on our discussion about the substantial deficiencies in Defendants' responses to Plaintiffs' requests for production of documents. Of the 70 pending requests in Plaintiffs' third and fourth sets, Defendants only produced documents responsive to eight of them, with most of the "3,000 pages" produced having little to no bearing on the case (2,158 pages of the Named Plaintiffs' client files and a 992-page manual for Defendants' computer system). Moreover, Defendants have stated that they refuse to produce documents responsive to 45 of Plaintiffs' pending requests. This refusal pertains to requests for basic information essential to the claims at issue in the lawsuit, including documents reflecting the following:

- the complete "email chains" from which Defendants have claimed that the emails quoted in the second amended complaint were "taken out of context" (3-1);
- policies and procedures on when and how to use an "investigator" on a client matter, and when an "investigation fee" should be charged (3-43, 3-41, 4-1);
- policies and procedures relating to "sign-ups" and "sign-up fees" (or "SU fees"), terms that are apparently synonymous with "investigations" and "investigation" fees (3-44, 4-1);
- evidence of actual "investigative" work that was performed by Defendants' so-called "investigators" (4-4);
- daily intake emails showing which "investigator" was paid on each case, and from where each case originated (3-16, 4-3);
- policies and procedures on the referral or steering of clients to chiropractors, and obtaining referrals from chiropractors (3-37, 3-46, 3-47);
- changes to KNR's policies and procedures in response to the fraud lawsuits by insurance companies against Plambeck-owned chiropractic clinics, of which Defendants' admit they were aware (4-2);
- policies and procedures on when and how to request a "narrative" report from a chiropractor (3-45, 3-48);
- discussions, communications or assessments of the value of narrative reports in pursuing personal injury settlements, and KNR's requirements for those reports (3-27, 3-28, 3-29);
- negotiations with and solicitation of chiropractors about referrals (3-21, 3-30) and narrative fees (3-22);

- payments made by Defendants to chiropractors that are not associated to a specific KNR client (3-25);
- formal or informal agreements to refer clients to a particular chiropractor or for a particular chiropractor to refer patients to KNR (3-20);
- payments made by KNR Defendants for advertising by other business entities, including chiropractic offices (3-32);
- non-client-specific communications with Liberty Capital representative Ciro Cerrato (3-2);
- Defendants' efforts to assure that the Litigation Finance Company to which they referred clients was the company providing the most competitive terms and most reliable service (3-6);
- Defendants' efforts to determine the financial stability or general quality of Liberty Capital Funding prior to Defendant Nestico asking that his employees recommend them exclusively (3-7);
- comparisons or discussion of the number of referrals made by KNR to a given chiropractor(s) and referrals made by that chiropractor to KNR over any period of time (3-15);
- Defendants' imposition or suggestion of quotas or benchmarks on their employees, including as to the amount of intakes, cases resolved, or amounts recovered in any given period of time (3-54);
- The employment files for Rob Horton and Gary Petti (3-55, 3-56);
- Documents relating to the litigation between Defendants and Dr. James Fonner, which involved allegations substantially similar to those at issue here (3-60).

None of these requests are vague, and none are overbroad or unduly burdensome in the context of what is at issue in this litigation, despite Defendants' assertion of these objections more than 45 times. It's impossible to look at Defendants' summary refusal to produce these documents without inferring a deliberate intent to violate the Civil Rules and abuse the discovery process. And the above is only a partial list of the documents that Defendants have wrongfully withheld.

Because Defendants have seen fit to assert literally hundreds of objections in their responses to 70 document requests, I won't take the time to address each of them individually, but will rather address them categorically.

First, there are myriad objections to the "vagueness" of terms or language used in Plaintiffs' RFPs. These include objections to basic terms like "you," "instructed," investigatory fee," "referrals," routine practice," and the like (*see* responses to RFP Nos. 3-4, 3-5, 3-6, 3-7, 3-12, 3-14, etc). It's hard to believe that you don't understand what we're asking for with any of these requests, but to the extent this is the case, I'm sure any misunderstanding can be resolved through a simple conversation regarding what Plaintiffs intended certain terms to mean, a conversation I'm prepared to have immediately. In each instance, "vague" language should be

capable of resolution between the parties and should in no case serve as a basis for failing to respond to any RFP.

Second, in no less than 45 of Defendants' responses, they recite a claim that the request is "overly broad and/or unduly burdensome" and, either in whole or in part, refuse to respond on these grounds (see responses to RFP Nos. 3-2, 3-5, 3-6, 3-7, 3-8, 3-11, 3-15, etc.). These assertions are made in offhandedly and in every instance unsupported by any evidence regarding the burden that complying with the request would "unduly" create for the Defendants. I'm sure Defendants understand that, "[m]ere recitation of the familiar litany that an interrogatory or a document production request is 'overly broad, burdensome, oppressive and irrelevant' will not suffice." *Momah v. Albert Einstein Med. Ctr.*, 164 F.R.D. 412, 417 (E.D. Pa. 1996); see also *Cattanach v. Burlington Northern Santa Fe, LLC,* 2014 U.S. Dist. LEXIS 186374, *21-22, 2014 WL 11429037 (D. Minn) ("the Court gave no weight to BNSF's burdensomeness argument because it offered no factual support for this conclusory contention. Broad allegations of burdensomeness, without more, will not suffice."). Rather, as the party objecting to discovery, Defendants have "the burden of showing facts justifying their objection by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome." *Moss v. Blue Cross & Blue Shield of Kan., Inc.,* 241 F.R.D. 683, 689, 2007 U.S. Dist. LEXIS 25301, *9-10. (D. Kan.). "[V]irtually all responsibilities in responding to discovery are *burdensome*," it is the responsibility of the Defendant to prove that each individual assertion of this objection "established that the request is *unduly* burdensome" within the context of the claims at issue. *Wichita Fireman's Relief Ass'n v. Kan. City Life Ins.* Co., 2011 U.S. Dist. LEXIS 118990, *23, 2011 WL 4908870 (D. Kan). The "mere fact that compliance with an inspection order will cause great labor and expense or even considerable hardship and the possibility of injury to the business of the party from whom discovery is sought does not itself require denial of the motion [to compel]." *Id.*

As noted in the bullet points above, Defendants have lodged this objection to requests for information that is basic and essential to the claims at issue in this lawsuit. It could not possibly be considered *unduly* burdensome to produce this information. Thus, if Defendants continue to withhold this information based on this objection, Plaintiffs will have no choice but to file a motion to compel and seek their fees for being forced to do so.

Plaintiffs are willing to consider that certain categories of information not set forth in the above bullet points may not be worth the burden of producing at the moment, at least until after a class is certified. But Defendants cannot continue to maintain the "unduly burdensome" objection by mere dint of their assertion. They must provide evidence satisfying their burden to show that producing the information would actually be unduly burdensome.

Third, Defendants repeatedly refuse to provide documents responsive to RFPs on the grounds that "Plaintiffs should not be able to take advantage of illegally obtained documents" (*see* RFP Response Nos. 3-1, 3-2, 3-3, 3-4, 3-26, 3-29, 3-41, 3-42, 3-43). Defendants state this objection despite the fact that there has not been nor could there be a finding by any court or regulatory

body that the Plaintiffs' "illegally" obtained documents that were freely given to them by a former KNR employee. Moreover, even if this objection were not based on a false premise, it would still not supported by the single extraordinary District Court case from Kansas that Defendants' use to support it: *Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017). The *Raymond* decision—which, not surprisingly, the sanctioned party intends to appeal—involved a discovery sanction providing that Plaintiffs' would turn over certain documents obtained from a confidential informant and not be allowed to obtain further documents based on their knowledge of these documents. Unlike in our case, the documents in *Raymond* were clearly attorney-work product and marked as privileged and confidential. Unlike in our case, the documents in *Raymond* did not constitute evidence of fraud that cannot in any event be shielded by a confidentiality agreement. And unlike in *Raymond*, the Court presiding over our case has entered no sanction against the Plaintiffs that would restrict their reliance on any document or class of documents. Indeed, the Court has already rejected the Defendants' invitation to enter such a sanction. *See* 06-29-2017 Order denying Defendants' 03-27-16 Motion for Discovery Sanctions. Thus, as I'm sure you understood when you served your discovery responses, every assertion of an "objection" based on this extraordinary and inapplicable case is necessarily baseless. We will move to compel any documents withheld on these grounds and will seek our fees in doing so.

Fourth, you identify but repeatedly refuse to produce a "training manual" that you claim is "proprietary and confidential information" (3-44, 3-45, 3-48, 3-49, 3-50). You are surely aware that this is never sufficient grounds on which to refuse to produce relevant evidence, and that the appropriate remedy to a party's desire to keep allegedly confidential and proprietary information safe is a protective order. *Tesseron, Ltd. v. R.R. Donnelley & Sons Co.*, 2007 U.S. Dist. LEXIS 49728, *13, 2007 WL 2034286 (N.D. Ohio 2007) ('these problems can be overcome by discovery of the confidential and proprietary information under an appropriate protective order.") Courts have repeated *ad nuseum* that "there is no absolute privilege for confidential information." *Federal Open Market Committee v. Merrill*, 443 U.S. 340, 362, 99 S. Ct. 2800, 2813, 61 L. Ed. 2d 587 (1979); *Hartley Pen Co. v. United States Dist. Court for the S. Dist. of Cal.*, 287 F.2d 324, 330 (9th Cir. 1961); *Centurion Indus., Inc. v. Warren Steurer & Assoc.*, 665 F.2d 323, 325 (10th Cir. 1981).

Rather, Courts have made clear that if a party "truly believe it has confidential proprietary information that should be protected," it should "enter[] into a stipulated protective order with plaintiff or filed a motion for a protective order before the date by which it was to respond to plaintiff's requests." *See, e.g.*, *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 690 (D. Kan. 2004) Plaintiffs and Defendants in this case already have a protective order in place and it is sufficient to protect any "confidential or proprietary" information the Plaintiffs might be requesting.

Thus, the training manual, which you concede to be responsive to several of Plaintiffs' requests (3-44, 3-45, 3-48, 3-49, 3-50), must be provided and marked accordingly under the Parties' stipulated protective order. Again, if Plaintiffs' have to move to compel the production of this

clearly relevant and non-privileged document, they will seek and expect the Court to award their fees for doing so.

Fifth, Defendants' claim that they cannot produce the employment records of Robert Horton or Gary Petti without their permission is plainly wrong and without any support in the law. Additionally, any legitimate concerns over the confidentiality of these documents (we don't suppose there are any) would be easily resolved by the binding protective order as set forth above. Thus, this information, as well, should be immediately produced.

Sixth, Defendants' claims that they do not have to provide any information regarding class members, including information about the "investigation fees" charged to the Named Plaintiffs' files, are similarly baseless. The information requested about these so-called "investigations" must be produced.

Seventh, Defendants' repeated contention that they do not have to produce information relating to any chiropractor other than those at ASC is also baseless. Given the claims at issue, Plaintiffs are entitled to discover any and all evidence pertaining to quid pro quo relationships between Defendants and any chiropractor. All of the requested information relating to all chiropractic referrals and narrative fees must also be produced.

Finally, to address the outstanding issues relating to Plaintiffs' first and second sets of document requests that were the subject of our earlier correspondence (most recently your 09-21-17 letter that was in response to my 09-07-17 letter):

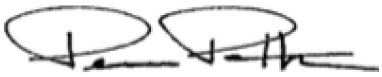
Regarding RFP 1-3: As we discussed in Court last Monday, if Defendants will stipulate as to the percentage of closed cases on which the investigation fee was charged (such as by stipulating that it was charged on every settled case except for a handful), and stipulate as to tell us how many settled cases there were, then we will not need the settlement statements for class certification purposes.

And regarding RFP 1-4 and Interrogatory 1-11, our position is not negotiable on these requests. We will need to see documentation of every payment made from or through the Defendants to the investigators for any service whatsoever, for the reasons explained in my August 3, 2017 letter to you, which includes any and all tax forms issued by Defendants to the investigators (such as W-2, W-9, or 1099 forms). We are entitled to this information to disprove Defendants' contention that the investigation fees were appropriately charged to clients as opposed to an overhead expense that was already subsumed in the firm's contingency fee, and to prove that the so-called "investigators" were, for all intents and purposes, KNR employees, intentionally disguised as independent "investigators" for Defendants' own benefit.

In summary, we are asking you to consider the lack of legal basis underlying most all of Defendants' refusals to produce responsive documents, and to be prepared to discuss these

matters as soon as possible. As you know, you may contact me anytime to schedule a call or meeting on these issues.

Sincerely,



Peter Pattakos

cc: Josh Cohen
Dan Frech
Eric Kennedy
Tom Mannion
James Popson

Exhibit 9

Screenshots provided by Defendants to Plaintiffs to justify Defendants' claims that electronic searches for Plaintiffs' requested documents were "crashing the system"

#2

Status: Search Failed

User: Administrator

Date: 10/19/2017 11:35 AM

Size: 0 B

Items: 0 (3256925 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: Multi-mailbox search failed because the estimated size of the search 2.287 TB (2,514,499,314,462 bytes) is greater than the available space 49.84 GB (53,510,599,084 bytes) in the destination mailbox. We won't try to copy search results.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
Liberty	126773	301
Liberty Capital	14568	93
Ciro	12204	49
Liberty Finance	14	1
Cerato	6	1

#3

Status: Search Failed

User: Administrator

Date: 10/20/2017 9:13 AM

Size: 0 B

Items: 0 (3260195 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: Multi-mailbox search failed because the estimated size of the search 2.543 TB (2,796,387,788,594 bytes) is greater than the available space 50 GB (53,686,658,152 bytes) in the destination mailbox. We won't try to copy search results.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
Williams	481778	325
Matthew	426975	336
Matt	395148	324
Johnson	386429	333
Member	364385	286
Wright	91425	309
Reid	12760	254
Naomi	10237	251
Member Williams	1859	64
Matthew Johnson	1212	111
Johnson, Matthew	932	77
Thera	925	108
Matt Johnson	661	44
Naomi Wright	581	50
Thera Reid	575	59
Williams, Member	152	6
Reid, Thera	61	15
Wright, Naomi	53	4
Johnson, Matt	31	10

#1

Status: Search Failed

User: Administrator

Date: 10/19/2017 11:34 AM

Size: 0 B

Items: 0 (3256922 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: Multi-mailbox search failed because the estimated size of the search 2.326 TB (2,557,360,091,329 bytes) is greater than the available space 49.84 GB (53,510,599,084 bytes) in the destination mailbox. We won't try to copy search results.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
ASC	156147	289
Akron Square	81877	275
Akron Square Chiropractic	31513	250
Akron Square Chiro	2782	148

Intake-Procedure-Referral Search

Status: Search partially succeeded

User: Administrator

Date: 10/20/2017 10:46 AM

Size: 23.59 GB

Items: 107742 (33886 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: An error occurred when searching Rob Nestico. The message is 'The process failed to get the correct properties.'., An error occurred when searching Robert Redick. The message is 'The process failed to get the correct properties.'.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
"Intake"	111921	2
"Procedure"	6209	2
"Referrals"	4878	2

#7

Status: Search Failed

User: Administrator

Date: 10/20/2017 9:13 AM

Size: 0 B

Items: 0 (3260967 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: Multi-mailbox search failed because the estimated size of the search 2.264 TB (2,489,456,795,962 bytes) is greater than the available space 50 GB (53,686,658,152 bytes) in the destination mailbox. We won't try to copy search results.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
Investigator	49096	312
Investigation Fee	3685	123
Sign Up Fee	95	29
SU Fee	71	26

#5

Status: Search Failed

User: Administrator

Date: 10/20/2017 9:13 AM

Size: 0 B

Items: 0 (3260195 unsearchable)

Results: DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]

Errors: Multi-mailbox search failed because the estimated size of the search 2.271 TB (2,496,568,958,541 bytes) is greater than the available space 50 GB (53,686,658,152 bytes) in the destination mailbox. We won't try to copy search results.

Keyword statistics: (Duplicates not excluded)

Keyword	Hits	Mailboxes
Narrative	57840	267
Narrative Report	16823	217
Narrative Fee	3121	110

Exhibit 10

Excerpts from transcript of Jan. 5, 2018 status conference

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
Plaintiffs,	)	
	)	
vs.	)	TRANSCRIPT OF PROCEEDINGS
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	
Defendants.	)	VOLUME 1 (Of 1 Volume)

- - -

APPEARANCES:

PETER PATTAKOS,	Attorney at Law,
DEAN WILLIAMS,	Attorney at Law,
JOSH COHEN,	Attorney at Law,
	on behalf of the Plaintiffs.
JAMES M. POPSON,	Attorney at Law,
BRIAN E. ROOF,	Attorney at Law,
THOMAS P. MANNION,	Attorney at Law,
R. ERIC KENNEDY,	Attorney at Law,
	on behalf of the Defendants.
John F. Hill,	Attorney at Law,
Meleah M. Kinlow,	Attorney at Law,
	on behalf of Defendant Minas Floros, D.C.

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas, Summit County, Ohio, before THE HONORABLE PATRICIA A. COSGROVE, Judge Presiding, commencing on January 5, 2018, the following proceedings were had being a Transcript of Proceedings:

Maryann Ruby, RPR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308

What was the date that you gave them, too? I'm sorry.

THE COURT: January 19th.

MR. MANNION: Thank you. I appreciate it.

MR. PATTAKOS: Okay. And then as far as discovery issues go, we have been doing a lot to try to complete documentary discovery so that we may proceed with depositions in this case.

We have been met with extreme obstruction from the Defendants in terms of producing documents. We have exchanged letters. We have met and conferred.

And I believe we have sent them three or four letters. They have sent us two letters.

They are refusing to engage in basic searches for basic terms. They are telling us that hit counts are too high for them to have to search.

And we are talking about key terms like: "Liberty Capital," "investigators," "investigations," "chiropractors," "chiropractor referrals," et cetera,

yielding as little as 6,000 documents, 12,000 documents, et cetera; where a total universe of 100,000 documents, that they are telling us that is too burdensome for them to search.

They are refusing to give us the addresses of their investigators. This is just a small sample of the kind of obstruction that we have been met with.

Now, what we have been trying to do is we don't want to submit these issues piecemeal. We have been trying to take a comprehensive approach, so we do have a motion to compel drafted at this point. We have been at this for two months now trying to resolve these issues.

We do have a motion to compel drafted. It's about 18 pages long. It is not quite complete.

And we wanted to see as well how the Count wanted to proceed before filing that.

We would suggest that the Court schedule a discovery conference to discuss these issues, and we can come specifically

prepared to discuss these issues either before or after a motion to compel is filed. The issues are many, Your Honor.

So at this point, our position is that if these documentary issues, these issues with documents that we need to get before we can even begin to prepare for these depositions needs to be resolved. And the issues are unfortunately rather massive.

THE COURT: All right. Have you designated a time period -- before we talk about the various requests, have you designated a specific time period for these requests?

MR. PATTAKOS: No, Your Honor.

THE COURT: All right. Let me hear from the Defense.

Attorney Popson?

MR. POPSON: First, there is one additional motion that is on record. And that is a motion for summary judgment as relates to the Liberty class. That motion is out there. They have not filed a response to that.

Go ahead.

MR. POPSON: I think we were over to the Defense side before we got sidetracked. And all I brought up was the motion for summary judgment.

THE COURT: No one needs leave to file anything. Just file it. Like I said, I don't want to hear it twice.

MR. POPSON: Your Honor, I need to address the allegations of obstructionism in discovery.

We have produced over 3,800 pages of documents. We have run every request they have asked us to run in terms of computer searches. We don't refuse to run computer searches.

What is happening, Your Honor, is they are asking us to search the entire computer universe at KNR, which is a large universe, for certain search terms.

And when you do that, some of the results that are coming back for the searches that they are requesting are so large, they are crashing the system.

In other words, we are getting so many hundreds of thousands of documents that hit on certain search terms that we can't even produce them.

When we do get -- we have like 103,000 document that we have had hits on as it relates to certain specific requests.

But what they are expecting us to do then is to go through each one of those 103,000 documents, and we have to determine manpower and to determine whether or not it's actually responsive, whether or not it is privileged, et cetera.

What we have done is we have invited them to give us more reasonable search parameters, such as:

Limiting the number of mailboxes we search to relevant individuals and witnesses in the case or parties in the case.

Narrowing down the terms so that we can produce or we can generate hits that are manageable, that human beings can

actually reasonably go through all of the paperwork and determine whether documents are responsive and provide responses.

So there has been no obstructionism on our part. It's a matter of trying to get the requests in a format that are reasonably capable of production to the Plaintiffs in the case. And we have produced 3,800 pages of document.

On the other side, the Plaintiffs have not, to this date, over the last several months, produced even verification pages for their responses to interrogatories.

They have given us about 150 pages of documents so far.

And every time -- their responses to all of our discovery requests are essentially: Well, it's in the complaint.

So from our perspective, we have been cooperative in trying to provide documents and propose stipulations to the other side, but we are being pushed back in the other direction.

THE COURT: When you say

"stipulations," are you talking specifically about narrowing the search field? Or those aren't part of the stipulation?

MR. POPSON: That is separate and apart.

You know, the issue here -- we are trying to get these class allegations resolved. Because we believe these are not classes, they can never be classes the way that they are pled.

We have proposed stipulations to the other side that would minimize the amount of discovery that needs to be done to determine whether or not -- so that we can determine whether or not there are classes here.

In other words, we proposed to stipulate that: Yes, every investigator gets paid $50 on a case.

We have a very lengthy stipulation that we have gone back and forth with Mr. Pattakos, and he has refused to agree with any of them.

May I hand you the proposed

stipulations? Do you want to see them?

THE COURT: Okay.

This has been said, but it has not agreed to?

MR. POPSON: Exactly.

MR. ROOF: If I may, Your Honor?

THE COURT: Go ahead.

MR. ROOF: On the whole document production and the issues we are having with searching the entire database, we have offered a Rule (30)(b)(5) deposition of KNR's IT person, Ethan Whitaker, that would explain it.

We have produced documents that showed that the computer has crashed.

We have offered Mr. Whitaker to -- would explain that the computer crashes and would not allow some of these searches to be done.

Plaintiffs have refused to take the deposition of the (30)(b)(5) deposition. They cancelled the deposition. We did not.

We were scheduled to go forward

with the (30)(b)(5) to allow Mr. Pattakos to ask questions, to understand our computer system and how the document searches are run. And Mr. Pattakos has refused to proceed with that deposition.

MR. PATTAKOS: Your Honor, I object to Mr. Roof's misrepresentation of the (30)(b)(5) deposition.

When they last asked about the (30)(b)(5) deposition, what I said was: We need to have a judge in place, that we are not going to take any depositions until we are sure who the judge is. That is all I said.

We would like to take that (30)(b)(5) deposition because, frankly, the idea that a law firm has an e-mail system where doing basic searches would somehow crash the system just does not stand to basic scrutiny.

We have asked for, under the Civil Rules, we have asked for to inspect the computer system, which the Civil Rules allow for, just so that we can see one of KNR's IP people run the search on their

system so we can see that it, in fact, crashes. They are refusing to show us that.

We wanted to have a judge in place so that we could get this issue resolved and whether we can actually see the computer system while they run a basic search, one of any of the searches that we have asked for, so that we can see how this, in fact, crashes.

But the key point here is that we have not refused to take the deposition. We were merely waiting to see when -- waiting for a judge to appointed to this case and be sure that the judge would remain on the case, so.

MR. ROOF: One last thing, Your Honor. Our computer person will testify and told us that it takes hours to run these searches.

So the ability to sit there in a deposition to have a search run is not possible because it is going to take hours upon hours to run a search.

That is what our IT person told us,

and that is what he would testify.

And if he's not happy with that deposition testimony, that that -- those are the facts. Those are the facts. That is what Mr. Whitaker will testify to.

THE COURT: Now, you know, a lot of times the parties get together and talk about honing in on a specific term that might narrow the inquiry.

You have attorneys on both sides who can talk to one another. And are you able to do that? I mean, you don't want every e-mail in the universe?

MR. PATTAKOS: No, of course, we don't, Your Honor.

And we have narrowed search terms. We have taken out huge categories of search hits that they identified for us.

And the search terms that we are asking for and the documents that we are asking them to review, to suggest that reviewing 100,000 documents in the context of a litigation like this, given the issues, given what is at issue, that is not unduly burdensome in this context,

Your Honor.

We simply have to have this information. Otherwise, we would not be able to litigate this case.

Now, I believe we are unfortunately getting into too much of the nitty-gritty at this point. It would be better presented with briefing or at a separate discovery conference than this time so that we can organize the issues.

MR. ROOF: Your Honor, if I may. We have agreed on certain terms on our end.

For example: We searched Mr. Nestico's documents for, "Akron Square," "ASC" and "Floros." And we searched for the word "narrative."

And we searched Robert Redick's documents for, "Akron Square," "ASC," "Floros" and "narrative."

And those are the key players that would be on the issue of the narrative reports, which is Class D, and we produced those documents.

They refused to say that that is

enough.

Those are the key players on that issue of the narrative reports. We ran those searches, and we produced those documents.

We have also run searches for, "investigative fee," the word "investigative fee," which is Class A. And we ran them on seven of the key witnesses -- we have identified as seven key witnesses.

We have asked Plaintiffs to provide us with other witnesses that they would like to have us run that term for. They have not provided us with names.

They want us to run the entire database, which we keep telling them is not possible.

So we have offered, on our end, to limit the searches, and we have also done it for Liberty Capital as well.

You know, Rob Nestico and Robert Redick are the only individuals who would have any information regarding Liberty Capital and the, quote, unquote, financial

interest or kickbacks.

And we ran searches of their documents for, "Liberty Capital," "Ciro Cerrato," and we have produced those documents. So on our end, we have limited and tried to limit the scope of the document production.

We have produced those documents. Those are part of the 3,800 documents. And those documents show no ownership interest or kickbacks going on with Ciro Cerrato or Liberty Capital.

MR. PATTAKOS: Your Honor, if I may respond.

They are, of course, picking very selective things that they have done without a complete picture that it's impossible to address the meaning of that.

What I can tell you is that we have identified terms, essential terms: "Investigation fee," "signup fee," "SU fee," "investigator," "narrative fee," "narrative report," "referrals," "Liberty Capital," "Ciro," "Cerrato."

These search terms, they have told

us if running a universal search, not just a few key witnesses that they have identified, if there are other KNR attorneys talking about Liberty Capital, we are entitled to discovery that.

And we have reason to believe, based on what Mr. Horton has told us, that there were attorneys inside KNR who were very concerned about the relationship with Liberty Capital.

If those e-mails exist, we are entitled to those. And they have shown us the number of documents that these basic terms have turned up: 3,685 for "investigation fee," 95 for "signup fee," 71 for "SU fee," 49,000 for "investigator," 3,121 for "narrative fee," 16,000 for "narrative report," and et cetera.

We simply can't say that they don't have to search these and that we are going to proceed with their handpicked, cherry-picked selection of documents.

THE COURT: Okay. Look. Sit down. I don't want to hear any more.

moving here. But I understand also what Plaintiff counsel is saying.

So we will have a discovery hearing on March 16th.

Let's set a deadline to have the depositions of the Plaintiffs done by May 22nd.

Is there any -- dare I ask -- are there any other issues that either side wishes to raise at this times?

MR. PATTAKOS: None for Plaintiffs, Your Honor.

MR. POPSON: None, Your Honor.

THE COURT: Very well.

The Court will put an order on in reference to the dates that we have scheduled in this case, and we will go from there. Thank you.

(Whereupon, Court's Exhibit A was marked and admitted - EXHIBIT SEALED.)

(Whereupon, the proceedings were concluded.)

* * *

C E R T I F I C A T E

I, Maryann Ruby, Official Shorthand Reporter for the Court of Common Pleas, Summit County, Ohio, duly appointed therein, do hereby certify that I reported in Stenotypy the proceedings had and testimony taken in the foregoing-entitled matter consisting of 89 pages, together with exhibits (if applicable), and I do further certify that the foregoing-entitled TRANSCRIPT OF PROCEEDINGS conducted before the Honorable PATRICIA A. COSGROVE, Judge of said court, is a complete, true, and accurate record of said matter and TRANSCRIPT OF PROCEEDINGS.

_____
Maryann Ruby, RPR
Official Court Reporter

Dated: January 15, 2108
AKRON, OHIO

Exhibit 11

Nov. 7, 2017 letter from Peter Pattakos to Brian Roof

PATTAKOS
LAW FIRM LLC

1041 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

November 7, 2017

By e-mail to broof@sutter-law.com

Brian Roof
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Mr. Roof:

This is to follow up on our meeting of last Thursday, which was intended to address the outstanding deficiencies in Defendants' document production as outlined in my October 26, 2017 letter to you. At this meeting, you, Jim Popson, and Eric Kennedy provided Josh Cohen and me with the attached documents reflecting hit counts for searches of Defendants' email files using various key words of varying relevance to our lawsuit. You also expressed your contention that these hit counts are so numerous as to excuse Defendants' failure to produce documents responsive to the requests identified in my October 26 letter.

We have considered the information you provided to us at last week's meeting, including following hit counts for these essential terms:

- Investigation fee: 3,685
- Sign up fee: 95
- SU fee: 71
- Investigator: 49,096
- Narrative fee: 3,121
- Narrative report: 16,823
- Referrals: 4,878
- Liberty Capital: 14,568
- Ciro: 12,204

There is no apparent reason why these categories of documents were not already searched, and responsive documents produced. These documents should be produced as soon as possible.

As for searches that led to substantially larger hit counts or were related to less essential terms, we will concede, in response to your request, that Defendants need not search the results for the following single-term searches:

- Liberty: 126,773
- Intake: 111,921
- ASC: 156,147
- Akron Square: 81,877

- Akron Square Chiropractic: 31,513
- Akron Square Chiro: 2,782
- Williams: 481,778
- Matthew: 426,975
- Matt: 395,148
- Johnson: 386,429
- Member: 364,385
- Wright: 91,425
- Reid: 12,760
- Naomi: 10,237

In response to your request that we provide additional search terms to help narrow your searches for responsive documents relating to the terms immediately above, we submit that Defendants should produce responsive documents based on the following searches as soon as possible:

1. chiropract! AND referral!
2. chiropract! AND narrative!
3. "red bag!"
4. ("Akron Square" or ASC or Floros) AND referral!
5. ("Akron Square" or ASC or Floros) AND narrative!

In light of the above, we do not see any need to reduce the searches to certain mailboxes as you suggested. And again we emphasize that Plaintiffs are entitled to discover any and all evidence pertaining to quid pro quo relationships between Defendants and any chiropractor, not just those from Akron Square. All of the requested information relating to all chiropractic referrals and narrative fees must be produced.

Additionally, there are open items to which hit counts from searches should be irrelevant. This includes,

- the complete "email chains" from which, Defendants have repeatedly claimed in their respective Answers, that the emails quoted in the second amended complaint were "taken out of context" (RFP 3-1);

- the daily intake emails showing which "investigator" was paid on each case, and from where each case originated (RFP 3-16, 4-3);

- the employment files for Rob Horton and Gary Petti (RFP 3-55, 3-56);

- documents relating to the litigation between Defendants and Dr. James Fonner, which involved allegations substantially similar to those at issue here (RFP 3-60).

These documents should all be produced immediately, as should the entire "training manual" to which you have repeatedly referred in your responses to our document requests (RFP 3-44, 3-45,

3-48, 3-49, 3-50), and in last week's meeting. Plaintiffs are entitled to discover the entire manual, not just the selected excerpts that you said the Defendants would produce. Plaintiffs are entitled to discovery as to how Defendants trained their employees, including to discover which subjects were and were not covered or emphasized in KNR's training, as well as instances where Defendants' conduct is contradicted by their manual.

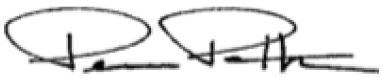
Also, regarding Interrogatory Nos. 24, 25, 46, and 47, Defendants are obligated to answer these interrogatories about the "investigative work" charged on Matthew Johnson's and Naomi Wright's files. Please provide this information and any responsive documentation of such "investigations" (RFP 3-52) immediately.

Relatedly, Plaintiffs are entitled to all evidence of "investigative work" performed by the so-called "investigators" (RFP 4-1, 4-4) as well as other work performed for Defendants by the investigators that did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for holidays, running errands for Rob Nestico, or performing other odd jobs (RFP 3-39, RFA 2-77, RFP 1-11). Based on the attached documents you provided us at last week's meeting, there are 19,427 items in investigator Aaron Czetli's KNR email inbox, and 18,534 in investigator Michael Simpson's. Presumably, there are even fewer items relating to the other 21 investigators you identified in your second amended response to Interrogatory 1-8. These items should all be searched and all responsive documents should be produced immediately.

And finally, our concerns regarding RFP 1-3, 1-4, and Interrogatory 1-11, as stated in my October 26, 2017 letter, remain unaddressed. All of this requested information, including all tax forms issued by Defendants to the investigators (such as W-2, W-9, or 1099 forms), should be produced immediately.

We hope that these issues relating to Defendants' document production will be resolved shortly so that we may proceed with third-party discovery and depositions. Please advise as to any further questions or concerns.

Sincerely,



Peter Pattakos

cc: Josh Cohen
Dan Frech
Eric Kennedy
Tom Mannion
James Popson

Exhibit 12

Nov. 10, 2017 letter from Peter Pattakos to Brian Roof

PATTAKOS
LAW FIRM LLC

1301 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

November 10, 2017

By e-mail to broof@sutter-law.com

Brian Roof
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Mr. Roof:

This letter is to add to my letter of November 7, which was to follow up on our meeting of last Thursday where we discussed the outstanding deficiencies in Defendants' document production as outlined in my October 26, 2017 letter to you.

At last Thursday's meeting, when we discussed the seventh bullet-point in my October 26, 2017—about our Request No. 4-2, for documents reflecting "changes to KNR's policies and procedures in response to the fraud lawsuits by insurance companies against Plambeck-owned chiropractic clinics, of which Defendants' admit they were aware"—you and your co-counsel said that you would not produce such documents because none existed. He also said that there were no changes to KNR's policies and procedures in response to these lawsuits.

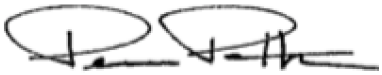
If this is the case, then please confirm as much in writing, as your current response to Request No. 4-2 only states baseless objections to the request. If it is not the case, please produce all responsive documents immediately. To this end, we suggest the term "Plambeck" to add to the list of suggested search terms that we provided in my November 7 letter. This search term is also likely to yield documents responsive to our requests numbered 3-1, 3-15, 3-19–27, 3-30, 3-37, 3-46–48, and 3-62. If Defendants really do not know "which clinics are owned by Plambeck," as you state in your response to RFP 4-2, there should not be an unmanageable number of documents to review here.

Additionally, to follow up on my November 6 email to Brian Roof in which I asked him to provide current addresses for the 21 "investigators" you identified in your amended response to Interrogatory No. 1-8: These addresses were requested in our Interrogatories along with the rest of the investigators' contact information and should have been provided by now. KNR contracts with and sends payments to these investigators so it should be easy for them to provide the requested contact information. We need this information immediately so that we may continue serving subpoenas on the investigators. There is no legitimate basis for you to withhold it.

Finally, we see from the affidavits attached to your motions to strike and for summary judgment that you've been in touch with former Liberty Capital representative Ciro Cerrato. Thus, we would appreciate if you would follow up with him to ask if he will accept service of our subpoena either through you, his counsel, or directly. This courtesy would save us from incurring significant and seemingly unnecessary fees in otherwise getting the subpoena issued and served.

I look forward to your prompt response to the above, and my November 7 letter.

Sincerely,



Peter Pattakos

cc: Josh Cohen
Dan Frech
Eric Kennedy
Tom Mannion
James Popson

Exhibit 13

Nov. 15, 2017 letter from Brian Roof to Peter Pattakos

SUTTER O'CONNELL ATTORNEYS

Brian E. Roof
Phone: 216.928.4527
Fax: 216.928.4400
Cell: 440.413.5919
broof@sutter-law.com

November 15, 2017

VIA E-MAIL

Peter Pattakos
peter@pattakoslaw.com
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333

Re: Member Williams v. Kisling, Nestico and Redick, LLC, et al.
Summit County, Court of Common Pleas Case No. CV-2016-09-3928
Our File No. 10852-00001

Dear Peter:

We are in receipt of your letters dated November 7, 2017 and November 10, 2017. This letter serves as Defendants' formal response to these letters as well as your October 26, 2017 letter, and our meeting on November 2, 2017 with you and Joshua Cohen.

Response to November 7, 2017 Letter

You listed the following items demanding that Defendants produce these voluminous documents.

- Investigation fee: 3,685
- Sign up fee: 95
- SU fee: 71
- Investigator: 49,096
- Narrative fee: 3,121
- Narrative report: 16,823
- Referrals: 4,878
- Liberty Capital: 14,568
- Ciro: 12,204

Defendants will not review and search over 104,500 items (which could include thousands of more pages of documents) as part of your fishing expedition. The fishing expedition is confirmed by Plaintiffs' lack of proper responses to Defendants' interrogatories and requests for admission in which it has offered no evidence of any wrong doing by Defendants. There are absolutely no facts to support Plaintiffs' allegations. In addition, this request is extremely unduly burdensome. Furthermore, this amount of discovery is not proportional to the needs of the case, considering the stipulations to which Defendants are willing to enter as outlined below. *See*

Fleming v. Honda of Am. Mfg., S.D. Ohio Case No. 2:16-cv-421, 2017 U.S. Dist. LEXIX 161578, * 6-11 (applying the proportionality standard and noting that the court has the right to prevent a fishing expedition by plaintiff) Indeed, as you have stated before most of the facts are not in dispute.

However, Defendants will produce the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and the 71 hits for "SU fee." In addition, Defendants will run searches for "investigation fee" for the seven (Aaron Czetli, Brandy Lamtman, Rob Nestico, Robert Redick, Michael Simpson, Holly Tusko, and Jenna Wiley) individuals previously identified in our spreadsheet. Defendants will produce responsive and non-privileged documents. This should provide responsive documents regarding Class A (Investigation Fee Class).

As for Class C (the Liberty Class), we will run searches of Nestico's documents for Ciro or Cerrato and Redick's documents for Ciro or Cerrato. Defendants will produce responsive and non-privileged documents. This should provide the necessary responsive documents for Class C.

You listed the following potential search terms to be run on KNR's entire database:

- chiropract! AND referral!
- chiropract! AND narrative!
- "red bag!"
- ("Akron Square" or ASC or Floros) AND referral!
- ("Akron Square" or ASC or Floros) AND narrative!

We will not run these searches on the entire database as that will be unduly burdensome and crash the system, as we have established before with the documents that we provided to you at the meeting (see attached documents: "Multi-mailbox search failed because the estimated size of the search…"). Again, your request is not proportional to the needs of the case and is a fishing expedition.

But we will run searches of Nestico's documents for ("Akron Square" or ASC or Floros) AND narrative! and of Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!. Defendants will produce responsive and non-privileged documents. This should resolve the production of documents for Classes B (Lien Class) and D (Narrative Fee Class). As an alternative, Defendants are willing to enter into a stipulation that KNR's policy is to receive a narrative report from ASC on all cases, except for cases involving clients under the age of 12 and a few other minor exceptions, for $150.

In addition, we ran searches of communications between Nestico and Floros with the search term "referral!" and searches of communications between Redick and Floros with the search term "referral!". However, the search resulted in no responsive documents.

Furthermore, we will not run searches for all chiropractors, as the other chiropractors are not part of Class B, as Class B is specifically limited to ASC. Per our prior discussions, because ASC is the only chiropractor listed in the class, we will only produce documents outlined above relating to ASC. Similarly, because Plaintiff Reid saw only Dr. Floros as a patient (and not any

of the other chiropractors) and she only sued Dr. Floros, Defendants will not search for other chiropractors for Class D. Your request for all of these documents is not proportional to the needs of the case.

As for the open items to which hit counts from searches should be irrelevant, we will review and produce any responsive, non-privileged documents that complete the "email chains" (RFP 3-1) referenced in Defendants' Answers. We agreed to this in the November 2nd meeting. This search and review will take several weeks to complete.

Regarding the daily intake emails showing which "investigator" was paid on each case, and from where each case originated (RFP 3-16, 4-3), Defendants stand by their objections that these requests seek documents relating to putative class members in which Plaintiffs are not allowed, as the case has not been certified as a class action. In addition, this request is unduly burdensome as it would require a review of each day's emails going back to 2009.

Furthermore, these requests seek irrelevant documents that are not reasonably calculated to lead to the discovery of admissible evidence. Defendants admit that since 2009 KNR has paid the investigator a flat fee (e.g., $30-$100) upfront on each individual case, that most of the clients were charged (as long as there was a recovery) the flat fee, which was clearly set forth on the Settlement Memorandum, and that there were no upcharge or surcharge on that flat fee. Defendants are not hiding these facts, as Defendants have stated the same facts in their discovery responses. Therefore, it is unduly burdensome and irrelevant to go through thousands of pages of documents to establish these admitted facts. Moreover, during the meeting you were open to a stipulation on this issue and agreed to provide us with a draft of the stipulation. Please provide us with a draft of the stipulation for review and consideration.

As for the employment files for Rob Horton and Gary Petti (RFP 3-55, 3-56), Defendants stand by their objection that they cannot produce these files without Horton and Petti's written permission. Per our discussion at the meeting, you can easily obtain their written permission (especially Gary Petti as he is your witness), which will eliminate this issue. You are creating a discovery dispute where there is none.

Regarding the documents relating to the litigation between Defendants and Dr. James Fonner (RFP 3-60), Defendants will not produce these documents as they are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the documents can be obtained from the Court's website and from Dr. James or his counsel.

As we expressed in our meeting, Defendants will not produce the three entire training manuals as the majority of them are irrelevant and are not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs are not entitled to all the information regarding the training of their employees. Plaintiffs are only entitled to portions of the training manuals that are responsive to Plaintiffs' document requests (RFP 3-44, 3-45, 3-48, 3-49, 3-50). Furthermore, KNR will not produce the entire manuals as they are proprietary and confidential. This objection is especially relevant considering that The Pattakos Law Firm is a new law firm and competitor of KNR, which in fact advertises as a law firm handling personal injury and auto accident cases.

Regarding Interrogatory Nos. 24, 25, 46, and 47 and RFP 3-52, Defendants are not obligated to answer these interrogatories and produce responsive documents about the

"investigative work" charged on Matthew Johnson and Naomi Wright's files, as they are not named Plaintiffs of Class A (Investigation Fee Class). In addition, Johnson and Wright have not asserted any claims relating to the investigation fee. As we have repeatedly stated and which you have failed to provide any case law to the contrary, Plaintiffs are not entitled to the discovery of putative class members until the case has been certified as a class action, which obviously has not happened. Johnson and Wright are putative class members of Class A, and therefore, Plaintiffs are not entitled to discovery on the investigation work for them.

Similarly, Plaintiffs are not entitled to all evidence of "investigative work" performed by the so-called "investigators" (RFP 4-1, 4-4). But as we discussed, we are willing to produce exemplars of some of the investigative work done by MRS and AMC. We are in the process of collecting these exemplars.

In addition, Plaintiffs cannot discover the other work performed by Aaron Czetli and Michael Simpson for Defendants that do not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for holidays, running errands for Rob Nestico, or performing other odd jobs (RFP 3-39, RFA 2-77, RFP 1-11). The focus of the Third-Amended Complaint, specifically Class A (Investigation Fee Class), is the work done for the investigation fee. And right now, Plaintiff is entitled to only discovery on the investigation fee as it relates to Member Williams. Defendants have produced that information and documents.

Regarding your concerns about RFP 1-3, 1-4, and Interrogatory 1-11, as we have repeatedly stated, we are open to a stipulation on this issue and have been waiting for a proposed stipulation from you. Our letters and discovery responses provide the information for which you are asking. Please provide us with a proposed stipulation to resolve this discovery issue.

Finally, as we explained during our meeting, Aaron Czetli and Michael Simpson do not receive W-2, W-9, or 1099 forms from KNR. Rather, they receive an individual check for each case they are assigned. Defendants are not going to produce thousands of checks to establish, which we again are willing to stipulate to, that MRS and AMC are paid $50 per case for their investigative work. This is a pass-through, third-party expense with no surcharge or upcharge. There is absolutely no need to produce the checks.

Response to November 10, 2017 Letter

Regarding Request No. 2 from the Fourth Set of Requests for Production of Documents, please see the First Amended Responses. Because there are no responsive documents, we will not run searches for "Plambeck." Also, please see the First Amended Responses to the Third Set of Requests for Production of Documents.

As for your unreasonable request for the current addresses of the 21 investigators, Defendants will not provide the information. This lawsuit and specifically Plaintiff Williams' investigation fee claim are only about MRS and AMC. The other investigators are not relevant to the lawsuit, as none of them were used on Plaintiff Williams' case. Your attempt to subpoena them is nothing but pure harassment and a fishing expedition to drive up litigation costs for everyone, including third parties who have nothing to do with this lawsuit.

Finally, we will not assist in your efforts to subpoena Ciro Cerrato. You are perfectly capable of serving a subpoena on him.

This should address all of your concerns and resolve the discovery dispute. Please contact me with any questions or comments.

Sincerely,

Sutter O'Connell

Brian E. Roof

BER/ma
Enclosure
cc: James M. Popson
Eric Kennedy
Tom Mannion
John F. Hill

Exhibit 14

December 8, 2017 letter from Dean Williams to Brian Roof

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

December 8, 2017

By e-mail to broof@sutter-law.com

Brian Roof
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Mr. Roof:

I am writing to formally respond to your letter of November 15, 2017 in which you have made it abundantly clear that Defendants will not earnestly cooperate to produce documents and materials to which Plaintiffs are entitled, and that Defendants will continue to obstruct discovery and force Plaintiffs to seek Court intervention. Put simply, the positions that Defendants have taken and the objections that you assert are untenable and unacceptable. In the spirit of cooperation, we hope that you will reconsider.

Improper objections as to burden and proportionality

A recurring theme for your objections and refusal to produce documents is based on "burden" and "proportionality." As you are well aware, and as Peter Pattakos referenced in his letter to you of October 26, 2017, Defendants have "the burden of showing facts justifying their objection by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome." *Moss v. Blue Cross & Blue Shield of Kan., Inc.,* 241 F.R.D. 683, 689, 2007 U.S. Dist. LEXIS 25301, *9-10 (D. Kan.). "[V]irtually all responsibilities in responding to discovery are *burdensome*," it is the responsibility of the Defendants to prove that each individual assertion of this objection "established that the request is *unduly* burdensome" within the context of the claims at issue. *Wichita Fireman's Relief Ass'n v. Kan. City Life Ins.* Co., 11-1029-CM-KGG, 2011 U.S. Dist. LEXIS 118990, *23 (D. Kan) (emphasis in original). The "mere fact that compliance with an inspection order will cause great labor and expense or even considerable hardship and the possibility of injury to the business of the party from whom discovery is sought does not itself require denial of the motion [to compel]." *Id.* Plaintiffs' claims include, in part, elements of fraud and deceptive practices. In that regard, it is disingenuous for Defendants to assert "burden" as an objection to producing information that potentially could exonerate them.

With regard to "proportionality," the Ohio Civil Rules regarding discovery do not include the same "proportionality" amendment as the Federal Rules; *i.e.*, Federal Rule 26(b)(1) includes the language "proportional to the needs of the case," whereas Ohio Rule 26 does not—Ohio's rule adheres to the traditional standard that Defendants must produce materials that are reasonably calculated to lead to the discovery of admissible evidence. Accordingly, it stands well settled in Ohio that the party opposing a discovery request "ha[s] the burden to establish that the requested information would

not reasonably lead to the discovery of admissible evidence." *State ex rel. Fisher v. Rose Chevrolet, Inc.*, 82 Ohio App. 3d 520, 532 (12th Dist. App. 1992).

That said, even the Federal Rule as amended does not require a showing by Plaintiffs of proportionality to obtain discovery. Rather, Defendants must prove disproportionality. *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) ("[A]mendment does not place the burden of proving proportionality on the party seeking discovery.").

Accordingly, it is blatantly improper to simply assert burden and proportionality as reasons for refusing to comply with Plaintiffs' discovery requests. For each request that Defendants assert these objections, Plaintiffs will seek Court intervention if Defendants continue to engage in such obstructionist conduct.

Electronic searches

You state in your November 15 letter that Defendants maintain their refusal to conduct a review and search for discoverable information contained in the following search results:

- Investigation fee: 3,685
- Sign up fee: 95
- SU fee: 71
- Investigator: 49,096
- Narrative fee: 3,121
- Narrative report: 16,823
- Referrals: 4,878
- Liberty Capital: 14,568
- Ciro: 12,204

Your position is that "Defendants will not review and search over 104,500 items" and state that it is "extremely unduly burdensome." You stated that Defendants would only search for "SU fee" and "Sign up fee" and "investigation fee" for seven individuals of Defendants' choosing. Defendants have recently produced on December 4, 2017, only approximately 100 pages of documents purportedly related in part to "SU fee" and "Sign up fee," as an apparent result of those limited searches (KNR03288-03396). You also unilaterally limited Defendants' searches to "Ciro" and "Cerrato" in only Nestico's and Redick's documents (although such results do not appear to be included in the materials produced thus far). Such limitations are unacceptable.

As you must know in your experience with complex litigation, particularly class actions, searching for and reviewing records for discoverable material routinely involves volumes of documents. Surely you aren't suggesting that searching the nine categories above resulting in 104,500 search hits is so voluminous and overwhelming as to make it unworkable for sophisticated clients such as KNR and counsel such as yourself. Plaintiffs have already agreed to Defendants' request to not search records of fourteen other terms with apparently much higher search "hits" (as stated in Peter Pattakos's November 7, 2017 letter to you). Plaintiffs' request for the above terms is not only reasonable, but the terms are directly related to Defendants' alleged wrongdoing in this case. You have not offered any legitimate reason under the rules of discovery or law to justify Defendants' outright refusal, and

therefore, Plaintiffs restate their request that Defendants search for and provide responsive material related to the nine items above or Plaintiffs will be forced to seek Court intervention. It is instructive that Defendants have only produced approximately 3,400 pages to date (the majority of which have little to no bearing on the case)—a mere fraction of the 104,500 "hits" in which it is reasonable to assume will include relevant or discoverable material.

It is similarly improper and unacceptable for Defendants to refuse to search for the following narrower, combined terms that Plaintiffs requested:

· chiropract! AND referral!
· chiropract! AND narrative!
· "red bag!"
· ("Akron Square" or ASC or Floros) AND referral!
· ("Akron Square" or ASC or Floros) AND narrative!

You claim that such a search will "crash the system," yet you have also refused to allow Plaintiffs' counsel an inspection as requested to independently verify your claim. Defendants' again unilaterally seek to limit the searches above to only one of the terms in only Nestico and Redick files; that is insufficient to provide the information to which Plaintiffs are entitled. Regardless, it is Defendants' responsibility to search for and produce responsive materials. It is not a valid objection under any rules of discovery or e-discovery protocols to simply refuse to conduct a search on the presumption that the search will fail. Defendants (in any litigation) cannot be permitted to thwart discovery simply by claiming that discoverable material directly related to Plaintiffs' claims is difficult to retrieve.

Chiropractors

Defendants' refusal to search for and produce responsive information related to all chiropractors is also improper and without justification. As we have stated, Plaintiffs are entitled to discover evidence pertaining to quid pro quo relationships between Defendants and any chiropractor, not just those from Akron Square. Information is discoverable and relevant in this context related to negotiations and correspondence with chiropractors about referrals (RFP 3-21, 3-30) and narrative fees (RFP 3-22), as well as payments made by Defendants to chiropractors that are not associated to a specific KNR client (RFP 3-25), and including formal or informal agreements to refer clients to a particular chiropractor or for a particular chiropractor to refer patients to KNR (RFP 3-20). Indeed, Defendants may be resisting, in part, because such information could implicate claims or cross-claims against KNR related to improper inducement of chiropractors to enter into unlawful transactions and/or referral schemes. Regardless, as noted above, your objection based on proportionality is misplaced and not supported by the Ohio Civil Rules. All of the requested information relating to all chiropractic referrals and narrative fees must be produced, or Plaintiffs will be forced to seek Court intervention.

In addition, in response to Plaintiffs requests for admission, Defendants have repeatedly stated that they "deny this request as to ASC" (*i.e.* RFA 2-16, 2-17, 2-18, 2-19, 2-20, 2-25, 2-30, 2-31, 2-41). As outlined above, Plaintiffs are entitled to complete discovery responses with regard to all

chiropractors—not just Akron Square. Accordingly, for each request for admission that Defendants have limited their denials to "ASC," Defendants must respond without such limitation.

Refusing, without any justification, to add a simple search for the relevant term "Plambeck" is also unacceptable. As previously stated to you, this search is related to and is reasonably calculated to lead to the discovery of admissible evidence likely responsive to our requests numbered 3-1, 3-15, 3-19–27, 3-30, 3-37, 3-46-48, and 3-62. There is no burden to Defendants to add this search term; Plaintiffs request that Defendants search for and produce documents accordingly.

Email chains

Plaintiffs have also requested: "the complete 'email chains' from which, Defendants have repeatedly claimed in their respective Answers, that the emails quoted in the second amended complaint were 'taken out of context' (RFP 3-1)." Defendants' most recent document production includes documents referred to as "Email Chains" (KNR03342-03396). However, in your November 15, 2017 letter you stated that producing the email chains that Plaintiffs requested would take "several weeks." Please confirm whether Defendants have produced all responsive documents to this request or if there are additional documents that Defendants are compiling for production.

Training manual

Your suggestion is preposterous that Plaintiffs' counsel would use KNR's training manual for any purpose other than to obtain evidence about KNR's practices for training employees that are potentially related to "investigative fees," use of "investigators," chiropractor or other medical provider referrals and protocols, "narrative fees," and any other information related to Plaintiffs' claims and Defendants' improper conduct. The manual (that you reference in response RFP 3-44, 3-45, 3-48, 3-49, 3-50) should be produced in its entirety, not just the selected excerpts that Defendants have decided to produce (KNR03330-03341).

Plaintiffs are entitled to discovery as to how Defendants trained their employees, including which subjects were and were not covered or emphasized in KNR's training, as well as instances where Defendants' conduct may be contradicted by their manual. With regard to your suggestion of potential misuse by Plaintiffs' counsel, rest assured that The Pattakos Law Firm is not interested in using any of KNR's "proprietary" training materials as instructions for the conduct of its lawyers. Regardless, any such objection is improper based on the stipulated protective order in place in this case.

"Investigations" and "investigators"

Defendants are wrong in their refusal to produce the daily intake emails showing which "investigator" was paid on each case, and from where each case originated (RFP 3-16, 4-3). This information is related to the improper charging of investigators' fees which is the basis for part of Plaintiffs' claims; it is not solely related to putative class members as Defendants improperly assert. This information is also directly related to other information Plaintiffs have requested regarding Interrogatory Nos. 24, 25, 46, and 47.

Plaintiffs are further entitled to information about the "investigative work" charged on Matthew Johnson's and Naomi Wright's files. Defendants have no legitimate basis for refusing to provide such information. Thus, Plaintiffs request again that Defendants provide this information and any responsive materials of such "investigations" (RFP 3-52) immediately.

Moreover, Plaintiffs are entitled to all evidence of "investigative work" performed by the "investigators" (RFP 4-1, 4-4) as well as other work performed for Defendants by the "investigators" that did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for holidays, running errands for Rob Nestico, or performing other odd jobs (RFP 3-39, RFA 2-77, RFP 1-11). Such information goes directly to the heart of whether the "investigators" were performing "investigative work" associated with the fees charged to KNR clients, or if they were paid fees for work related to overhead expenses which were then improperly passed through to reduce clients' settlement recovery and increase KNR's bottom line. Plaintiffs are entitled to independently analyze such evidence.

Contrary to Defendants' position, a simple admission that there was a flat fee paid to "investigators" is inadequate to respond to Plaintiffs' requests—Plaintiffs are seeking any and all information related to: who was the "investigator"; what was the actual "investigation" and "investigative work" performed, and; when such "investigation" and "investigative work" took place. Defendants are not entitled to pick and choose at their leisure what relevant evidence they will or won't produce. "Exemplars" chosen by Defendants do not adequately respond to Plaintiffs' requests given the nature of this case, and do not allow Plaintiffs their right to independently verify whether "investigative fees" were appropriately charged to clients for "investigative work."

Similarly, the "exemplars" of settlement memoranda produced electronically by Defendants on December 6, 2017 (KNR03397-03411) do not provide sufficient responsive materials. Defendants have offered no discovery rule that allows them to choose at their will which "examples" of responsive material they will produce; Defendants have obstructed discovery enough. Therefore, Plaintiffs request all settlement memoranda be produced in order to independently evaluate the evidence as opposed to "examples" from Defendants' own (unchecked) choosing (*see* RFP 1-3, 1-4, and Interrogatory 1-11).

The addresses for the other twenty-one "investigators" is more than relevant for Plaintiffs to independently obtain information related to Defendants' improper "investigative fee" practices. If Defendants' practices are not improper, as Defendants maintain, than there is no reason to refuse to provide such information. Plaintiffs request that Defendants provide all of the information requested above or they will be forced to seek Court intervention.

Stipulation of certain facts

The "Stipulation of Certain Facts" that Defendants provided on November 30, 2017, does not Plaintiffs' need for the materials we have requested. Specifically, the Stipulation does not explain what, if any, "investigative work" was performed as part of the "flat fee" arrangement. In addition, the Stipulation does not include the number of settled cases (as stated in Peter Pattakos' October 26, 2017 letter to you). In light of Defendants' obstructive tactics to date, it is reasonable to conclude that Defendants are not entirely forthcoming in their proposed stipulated facts (and discovery

responses in general for that matter). While these stipulations might prove useful in class certification or at trial, Plaintiffs are entitled to the information they have requested, in part, to independently verify the stipulations proposed by Defendants.

Other outstanding issues

Interrogatory 1-17: Plaintiffs are entitled to this public, non-confidential, and non-privileged information regarding KNR client names, and further entitled to this information to allow these individuals the opportunity to participate in the lawsuit and to conduct discovery into their specific circumstances with KNR practices. Defendants must provide such information.

RFP 3-64, 3-65, 3-66 and Interrogatory 2-29: Plaintiffs are entitled to discover this information, including to discover whether the practices and procedures actually followed by KNR when handling clients' cases are consistent with their advertised standards. Moreover, Plaintiffs are entitled to evidence regarding the purpose, timing, and driving factors (including any financial incentive from KNR) behind the Attorney At Law Magazine article, including to prove that KNR is deceptively holding out a paid advertisement as earned media coverage. Defendants must provide such information.

RFP 3-26: Plaintiffs are entitled to information about the "red bag" referrals, and all documents reflecting the reasons why they were directed to ASC or other chiropractors at any given time. Defendants' response that there are no responsive documents directly contradicts the KNR correspondence quoted in the complaint. Defendants must supplement and/or amend their response accordingly.

Defendants' continued refusal to provide the employment records of Robert Horton and Gary Petti (RFP 3-55, 3-56) without their permission is an attempt to further obstruct discovery. Any concern of confidentiality is improper given the protective order in place in this case. Defendants are also improperly refusing to produce documents related to litigation between Defendants and Dr. James Fonner, which involved allegations substantially similar to those at issue here (3-60). Defendants provide no legitimate reason for refusing to produce such materials. Accordingly, Defendants should produce the Horton, Petti, and Fonner materials immediately.

Defendants have improperly qualified numerous responses to Plaintiffs' requests for admission by stating that they "deny the request as drafted." This is particularly noteworthy because Defendants have chosen not to add the "as drafted" qualification in other responses. In several instances, *see* responses to RFA 2-14, 2-15, 2-21, 2-33, 2-42, 2-43, 2-49, 2-50, 2-51, 2-52, 2-69, 2-81, Defendants' "qualified" denials are directly contradicted by documents quoted in the complaint. If there is confusion as to how any particular request for admission is drafted, Defendants must provide Plaintiffs the opportunity to modify their request so that Defendants can properly respond. Otherwise, Defendants must provide unqualified admissions or denials without the "as drafted" limitations in their responses.

Likewise, Defendants repeatedly state that their responses to discovery are "Subject to and without waiving these objections." To the extent that Defendants responses are incomplete because they are subject to Defendants "objections," Defendants must state so accordingly. On the other hand, if

Defendants maintain that their responses are complete despite such qualifications, Defendants must also say so.

In summary, in light of all of the above concerns and outstanding issues with Defendants' discovery responses, it is imperative that Defendants fully and adequately respond to all of the requests discussed above as well as all previous requests regarding outstanding discovery as stated in Peter Pattakos's letters of October 26, November 7, and November 10, 2017. It is also imperative that Defendants fully and adequately respond to the following requests, notwithstanding Defendants' improper "burden" and other objections as noted above: RFP 1-8, 1-10, 3-11, 3-18, 3-19, 3-24, 3-31, 3-33, 3-35 (without limitations to ASC), 3-36, 3-38, 3-49, 3-50, 3-54, 3-61, and Interrogatories 1-13; 1-18, 2-9, and 2-13.

I look forward to your response and complete production of the requested information. Please contact me with any questions or concerns about the above.

Sincerely,

Dean Williams

cc: Peter Pattakos
Josh Cohen
Dan Frech
James Popson
Eric Kennedy
Tom Mannion

Exhibit 15

Dec. 20, 2017 letter from Brian Roof to Peter Pattakos

SUTTER O'CONNELL ATTORNEYS

Brian E. Roof
Phone: 216.928.4527
Fax: 216.928.4400
Cell: 440.413.5919
broof@sutter-law.com

December 20, 2017

VIA E-MAIL

Peter Pattakos
peter@pattakoslaw.com
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333

Re: Member Williams v. Kisling, Nestico and Redick, LLC, et al.
Summit County, Court of Common Pleas Case No. CV-2016-09-3928
Our File No. 10852-00001

Dear Peter:

We are in receipt of Dean Williams' December 8, 2017 letter that we did not receive until after business on that Friday. This letter will address the flawed arguments in Mr. Williams' letter.

Improper objections as to burden and proportionality

Defendants reiterate its position that it will not review and search over 104,500 hits as part of your fishing expedition. The fishing expedition is confirmed by Plaintiffs' failure to provide actual facts to support their claims in response to Defendants' interrogatories, requests for admission, and document requests. The lack of actual facts confirms that Plaintiffs have no case. In addition, this request is extremely unduly burdensome to review documents relating to over 104,500 hits considering the lack of supporting facts for your case. As outlined in my November 15, 2017, we proposed a suitable compromise on the searches, which you have rejected out of hand and offered no other compromise. We look forward to your agreement on our compromise, or receiving an alternative compromise from you that limits the search and resulting hits and documents.

Furthermore, this amount of discovery is not proportional to the needs of the case, considering the revised stipulations to which Defendants are willing to enter into as outlined below. As the trial court in *Stonehenge Land Co. v. Bod. of Educ.*, 2014 Ohio Misc. LEXIS 10895, *8 (Franklin Cty. Common Pleas) states: "At some point a line must be drawn when discovery requests become disproportionate to the issues in the case and an end in-and-of themselves." This is especially true when, as set forth in the Motion to Strike the Class Allegations, Plaintiffs' Brief in Opposition to the Motion to Strike the Class Allegations, and in Defendants' Motion for Summary Judgment on Plaintiff Johnson's claims, Plaintiffs have no facts to support their lawsuit. For example, Plaintiff Johnson has not offered one fact that supports his claim that Defendants have an ownership and/or financial interest in Liberty

Capital. After over a year of this litigation, it is still simply innuendo. On the other hand, Defendants have offered three affidavits, all from the key players, that Defendants did not have an ownership or financial interest in Liberty Capital. This should end all discovery on Liberty Capital and Ciro Cerrato. Nevertheless, in the spirit of compromise, Defendants produced communications between Rob Nestico and Ciro Cerrato and Robert Redick and Ciro Cerrato (the only individuals who would have any information about any potential ownership or financial interest in Liberty Capital). None of documents (KNR03433-03580; KNR03581-03650) even comes close to establishing your baseless ownership and financial interest claim. The fishing expedition ends here and Plaintiff Johnson's claims should be dismissed.

Electronic searches

As Defendants agreed, they produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and the 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. The other documents were either nonresponsive or were privileged documents relating to this lawsuit and were created after Plaintiffs already filed the initial Complaint.

In addition, and as agreed to, Defendants have produced documents (KNR03412-3432) based on searches for "investigation fee" for the seven individuals (Aaron Czetli, Brandy Lamtman, Rob Nestico, Robert Redick, Michael Simpson, Holly Tusko, and Jenna Wiley) previously identified in our spreadsheet. These are the critical witnesses in this case and requiring the search of the entire database is completely unnecessary and nothing but a fishing expedition. If there are additional names that you would like to add to this list (which we have previously suggested that you provide), we would in further spirit of compromise consider adding them to the search.

As for Class C (the Liberty Class), we already addressed that above. There will be no more document discovery on this class.

Defendants stand by their objections and responses regarding the following search terms:

- chiropract! AND referral!
- chiropract! AND narrative!
- "red bag!"
- ("Akron Square" or ASC or Floros) AND referral!
- ("Akron Square" or ASC or Floros) AND narrative!

As for your request to run these searches during the Rule 30(B)(5) deposition, Mr. Whitaker will explain that to run these searches takes many hours so your request for access to KNR's database to run these searches is a waste of time and unduly burdensome. However, Plaintiffs do not have these answers on the record because you chose to cancel the scheduled deposition of Mr. Whitaker.

Again, as promised, we ran searches of Rob Nestico's documents for ("Akron Square" or ASC or Floros) AND narrative! and of Robert Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!. Defendants have produced the responsive documents (KNR003651-

03783; KNR03784-03830.) Again, these are the main witnesses who would have any information or documents regarding your alleged quid pro quo relationship between KNR and ASC or Dr. Floros and the narrative fee. Plus, the narrative fee is resolved by the stipulation as discussed below.

As an alternative, Defendants originally provided you with a stipulation, which you flatly rejected without providing a substitute stipulation. What is it that you want Defendants to state in the stipulation regarding the narrative fee (within reason)? Defendants will consider whether it is true and whether they can stipulate to it. However, you have chosen not to engage in good faith negotiations to resolve these discovery issues by stipulation, which you previously agreed to do.

In the stipulation, Defendants agree that KNR's policy has been to receive a narrative report from ASC on all cases, except for cases involving clients under the age of 12 and a few other minor exceptions, for $100-200. That is exactly what you are seeking in your discovery requests regarding ASC and the narrative fee. Therefore, with the documents that have been produced and the stipulation, the extensive document discovery of KNR's entire database on ASC is no longer necessary. This resolves the production of documents for Classes B (Lien Class) and D (Narrative Fee Class).

Class B is further resolved because Defendants have produced the lien letters (except for one where no lien letter was sent) of the entire putative class members of Class B (seven putative members). Per Mr. Williams' letter, Plaintiffs would agree to dismiss Class B with additional support that there are only seven putative members. The document production of the lien letters (KNR03831-03849) is that additional proof. Accordingly, please dismiss Plaintiff Wrights' claims and Class B.

Chiropractors

Defendants also stand by their objections and responses regarding the issue with discovery of all chiropractors, including the Plambeck chiropractors. You continue to completely ignore (for good reason as you have no response) the position that you are not entitled to discovery of putative class members or putative class issues (e.g., other chiropractors) without the case being certified as a class action. As you know, the case has yet to be certified. The other chiropractors are irrelevant and not part of Class B (which as discussed above should already be dismissed), as Class B is specifically limited to ASC. Per our prior discussions, because ASC is the only chiropractor listed in the class, Defendants will only respond to discovery relating to ASC.

Similarly, because Plaintiff Reid saw only Dr. Floros as a patient (and not any of the other chiropractors) and she only sued Dr. Floros, Defendants will not search for other chiropractors for Class D and will only answer discovery requests relating to ASC. If you can provide us with case law that you are entitled to a putative class member and putative class issue discovery before the case has been certified, then we will take that under advisement and possibly reconsider our position. Until then, our position stands.

The entire Plambeck lawsuit is a red herring and another fishing expedition. In addition, the discovery related to the Plambeck lawsuit seeks irrelevant information that is not reasonably

calculated to lead to the discovery of admissible evidence. Nevertheless in another spirit of compromise, we responded to the discovery regarding Plambeck in the last set of Plaintiffs' discovery requests. Those responses were provided on December 15, 2017. This should resolve the Plambeck issue.

Email chains

All documents relating to the "email chains" that Defendants have been able to discover have been produced.

Training manual

Regarding the training manuals, Defendants stand by their production. Those are the relevant documents from the manuals relating to the relevant issues in this case. Again, Plaintiffs are just fishing by wanting to know everything in the training manuals, including "how Defendants trained their employees, including which subjects were and were not covered or emphasized in KNR's training, as well as instances where Defendants' conduct may be contradicted by the manual." How Defendants trained their employees on certain issues (e.g., when someone calls and their attorney/paralegal is no longer with the firm, logging mail, etc.) and what topics they are trained on that are unrelated to this case are utterly irrelevant. Defendants will not produce these unnecessary documents.

Furthermore, it is a legitimate concern that a newly started plaintiff's firm that directly competes with one of the most successful plaintiff firms, KNR, wants all of KNR's training manuals. The protective order is not sufficient to protect KNR's interest on this issue, and neither is your word.

"Investigations" and "Investigators"

The issue of the "daily intake emails" is resolved by the revised stipulation. Defendants admit that since 2009 KNR has paid the investigator a flat fee (e.g., $30-$100) upfront on the majority of individual cases, that most of the clients were charged (as long as there was a recovery) the flat fee, which was clearly set forth on the Settlement Memorandum, and that there were no upcharge or surcharge on that flat fee. The stipulation has been revised to outline the investigation work generally done and the estimated number of settlements/resolutions (40,000-45,000). Defendants are not hiding these facts, as Defendants have stated the same facts in their discovery responses. Amazingly, you have provided no facts to contradict them. In addition, you can ask Rob Nestico, Robert Redick, Aaron Czetli, Mike Simpson, and the other two investigators (assuming you can work out your issues with counsel for the investigators) that you subpoenaed in their depositions what investigative work they do and what other work they do. What additional and relevant information do you think the "daily intake emails" will provide? If you can provide us this information, then we can possibly resolve this issue. You insisting on them with no justification is not sufficient for their production. The bottom line is that the stipulations and depositions should answer all your questions regarding "investigations" and "investigators."

Again, Plaintiffs are not entitled to the investigative work done on the other Plaintiffs because they are merely putative class members for Class A. The case has yet to be certified.

The same is true for all settlement memoranda. We provided you with exemplars of the settlement memoranda as a compromise and to show that the settlement memoranda clearly identify the investigation fee. Again, you can ask questions about the settlement memoranda in depositions.

You have already subpoenaed four investigators. There is no need to subpoena and depose all of them. Defendants' proposal is to proceed with these four and see if there is truly a need for the remaining investigators. Issuing subpoenas for all the investigators is just another example of your fishing expedition and a waste of everyone's time. It is also unduly expensive.

Stipulation of certain facts

As discussed above, and as seen in the attached amended stipulation, Defendants have revised the stipulation to address the issues that you raised in the December 8, 2017 letter. The stipulation has been revised to outline the investigation work and the estimated number of settlements/resolutions (40,000-45,000). In addition, the stipulation includes a paragraph on the non-client related "work" that the investigators do. Again, you can ask additional questions on these issues during their depositions. Please feel free to make suggestions to the stipulation and we will consider them. We are willing to work with you on the stipulation.

Other outstanding issues

Interrogatory No. 17: Defendants stand by their objections that this is privileged information (Defendants cannot just provide their clients' names to whomever) and you are not entitled to this information until the case has been certified.

RFP 3-64, 3-65, 3-66 and Interrogatory 2-29: These discovery requests are absolutely nonsense. There is no legitimate need for documents or information relating to the "Attorney At Law" article. The requests seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This is further evidence of your fishing expedition and unwillingness to compromise on discovery, including this trivial issue. Defendants stand by their objections.

RFP 3-26: Please see Defendants' response on chiropractors.

Robert Horton and Gary Petti's employment files: As for the employment files for Rob Horton and Gary Petti, Defendants stand by their objection that they cannot produce these files without Horton and Petti's written permission. Per our discussion at the meeting and my November 15, 2017 letter, you can easily obtain their written permission (especially since Gary Petti is your witness and you have had communications with Rob Horton's counsel), which will eliminate this issue. You are creating a mountain out of a mole hill when you can easily resolve this situation. You would not produce a former employee's employment file in litigation without written consent and neither will Defendants. This is clearly an example of your failure to engage in any form of compromise to resolve the discovery issues.

Issues with Requests for Admissions: Defendants are allowed to qualify their answers to Plaintiffs' Requests for Admissions as they see fit, especially poorly drafted Requests for Admission. It is not Defendants job to tell Plaintiffs how to properly draft intelligible Requests

for Admission. This seems to be habit of yours that you want Defendants to always correct your mistakes; that is not Defendants' job. We will not engage in further discussions on this issue.

"Subject to and without waving these objections": Now you are just making up arguments for the sake of having an argument. The "subject to and without waiving these objections" language (or similar language) is standard language used by every attorney that I have seen in answering discovery requests where they assert an objection. In fact, you did the same in your discovery responses. The language means exactly what it says: Defendants are answering the discovery request subject to and without waiving the objections. There is no need for further clarification. We will not engage in further discussions on this issue.

Plaintiffs' discovery issues

As for your failure to "simultaneously" produce discovery, Defendants are again demanding production of Plaintiffs' documents. There is no further excuse for not producing the documents, as Defendants have produced over 3,800 pages of documents. In addition, Defendants request dates for the depositions of Plaintiffs Williams, Wright, and Reid. Furthermore, Defendants demand that Plaintiffs provide the executed verification for Plaintiffs' interrogatory responses. After having discussions with your client regarding your request to recuse Judge Cosgrove, you should have been able to obtain the verification pages. We will not accept your word on the verification pages and the veracity of the responses.

Finally, we look forward to you signing the stipulation or providing us with revisions to the stipulation that we may consider. In the interim, Please contact me with any questions or comment.

Sincerely,

Sutter O'Connell

Brian E. Roof

BER/ma
Enclosure
cc: James M. Popson
Eric Kennedy
Tom Mannion
John F. Hill

Exhibit 16

Excerpts from transcript of the Feb. 1, 2018 deposition of KNR's IT manager Ethan Whitaker

IN THE COURT OF COMMON PLEAS
OF SUMMIT COUNTY, OHIO
~~~~~~~~~~~~~~~~~~~~

MEMBER WILLIAMS, et al.,

Plaintiffs,

vs. Case No. CV-2016-09-3928

KISLING, NESTICO & REDICK, LLC, et al.,

Defendants.
~~~~~~~~~~~~~~~~~~~~

Deposition of
ETHAN WHITAKER

February 1, 2018
10:01 a.m.
Taken at:
Cohen Rosenthal & Kramer, LLP
3208 Clinton Avenue
1 Clinton Place
Cleveland, Ohio 44113
Tracy Morse, RPR and Notary Public

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responding to the document requests that the plaintiffs have made in this lawsuit.
A. KNR hasn't asked that of me. The requests I got in relation to this case were from Brian Roof.
Q. And what were they?
A. Oh, I don't recall them all.
Q. Do you recall any of them?
A. They would email me and ask for something to be searched or to furnish the -- actually, they were all searches -- can you furnish these search results, can you take a screen-shot of this, that kind of thing.
Q. So they asked you just to run specific searches. They did not turn over our document requests and say, Find us these documents. Is that right?
A. No, sir. What I would get is a list of numbered bullet points with search terms that my understanding was negotiated between you to be searched and I would perform those and would furnish the results.
Q. Have you ever helped any of your employers or clients at Whitaker Networks respond to litigation requests before?

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A. Respond to? Yes.
Q. How many times?
A. A handful, two or three maybe.
Q. Okay. Were these extensive projects or --
A. No. This is far and away the most extensive, in terms of what I've been asked to look up.
Q. Okay. We'll come back to that. So a handful of times, like two or three times?
A. Yes, sir.
Q. Okay. Does KNR have its own IT people in-house that you ever work with?
A. No.
Q. Are you aware that they have anyone who specializes in computers or IT in their office?
A. No.
Q. How often are you in the office?
A. My company?
Q. Start with your company and then you.
A. My company is physically in the office, I would say, three to five times a week --

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MR. POPSON: We're talking about KNR's office?
THE WITNESS: Well, KNR's Akron office.
MR. POPSON: Okay.
A. -- yeah, I would say, three to five times a week, typically limited engagements. A scanner is broken. You can't fix that remotely, that type of thing.
Q. How often are you in their office?
A. So in what time period, a month, three months? In three months, I might be there twice. I might be there once. I might be there ten times, if a server has gone down. It depends.
Q. Understood. What would you say; in a normal three months, how many times would you be there?
A. Probably once, maybe twice, maybe.
Q. So is it your level 1 guy or your level 2 guy or person that --
A. Who usually goes?
Q. They're both male, right?
A. Correct.
Q. Okay.

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A. It's the level 2 guy. Historically it's been the level 2 guy, Zach. Lately the level 1 guy has been going more.
Q. Because he's getting better?
A. He's getting better, exactly.
Q. All right. Do you have any understanding of what this case is about?
A. Not really.
Q. None at all?
A. Apart from what I read online.
Q. What have you read online?
A. I've read online that they're accused of, I believe the term is, quid pro quo with chiropractors.
Q. Anything else?
A. No.
Q. Do you understand this to be a case involving allegations of fraud?
A. No.
Q. So you don't understand this case to involve allegations of widespread consumer fraud.
A. No.
Q. Okay. Have you read the complaint in this case?

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A. I would give him the results in the way he asked for them.
Q. Which way would he ask for them?
A. As an example, when he asked to search for email, I would ask him if a screen-shot was okay because the enumeration of items is so large, and he said that would be okay, something like that.
Q. So you've confirmed that KNR's emails are hosted on an on-site Microsoft Exchange server, correct?
A. Correct.
Q. Is this information stored anywhere else, to your knowledge?
A. Backups only, also on site.
Q. What are the backups stored on? How are the backups stored?
A. Physically or programmatically speaking?
Q. Both.
A. Programmatically speaking, they're stored in server images held on a network attached storage device referred to as a NAS. And that NAS is then backed up to another NAS.
Q. In what form -- you said, "Images."

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What type of images?
A. They're created by a program called AppAssure, A-p-p, Assure.
Q. Is the Microsoft Exchange server 2010 or 2013?
A. '10.
Q. Does KNR use any cloud-based information storage systems, to your knowledge?
A. No.

- - - - -

(Thereupon, Deposition Exhibit 2, 10/2017 Mailbox Searches With Attachments, was marked for purposes of identification.)

- - - - -

Q. Please take sometime to review this document and let me know when you're ready.
A. Okay.
Q. I realize this is a compilation of various documents --
A. Yeah.
Q. -- but they are related. These were produced to me by KNR's lawyers, Mr. Popson included here. Let's just look at the first six pages here. And when I refer to,

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"Page 2," I'm referring to the backside of the first physical page. As you can see, this is printed double sided --
A. Yes, sir.
Q. -- so page 2 is the backside of the first physical page for clarity. Can you please identify what these first six pages are?
A. They are the results of the search terms that Mr. Roof had asked me to search for you.
Q. Do these six pages represent all of the searches that Mr. Roof asked you to run?
A. There are many searches he asked me to run. I couldn't recall if these are all of them. It looks like --
Q. Please review them and let me know what you think.
MR. POPSON: Objection.
Go ahead.
A. I couldn't answer that without reviewing what he actually asked me in comparison to what you've given me.
Q. All right. But you said before that it could be --
MR. POPSON: Objection.

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A. Yeah.
Q. -- this could be all of them.
MR. POPSON: Objection.
A. Multiple pages.
Q. Yeah, the six different searches that are reflected here, correct?
MR. POPSON: Objection.
Go ahead.
A. Correct. This could be all of them?
Q. Okay.
A. I was asking for clarification.
Q. Yeah, that's what I'm asking.
A. Perhaps it could be all of them.
Q. So there was about six different searches he asked you to run, give or take.
MR. POPSON: Objection.
Go ahead.
A. In looking at key terms, each of these terms, these key words are different searches. So this number of searches could be everything. This is a matter of specificity, spec -- if you need to be specific, I would have to look at his requests.
Q. Of course. I understand that.

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Well, we can get back to this. Let's look at this first page here where it says, "#2 Status: Search Failed," "Date: 10/19/2017 11:35 a.m." under the "Results," heading, it says, "DiscoverySearchMailbox...@knrlegal.com." Does this confirm that you used a Discovery Search Mailbox when you were conducting these searches?

MR. POPSON: Objection.

Go ahead.

A. Discovery Search Mailbox is a system account where searches on Exchange are conducted from systematically. That would be true of any Exchange server.

Q. So you would say this is a default mailbox that's set up in Exchange for the specific purpose of storing search results pulled for the purposes of discovery, for example, correct?

MR. POPSON: Objection.

A. Yeah, correct.

Q. By default this mailbox is only allocated 50 gigabytes, correct, or about 50 gigabytes?

A. Incorrect.

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Q. Okay. Please explain.

A. The mailbox has available to it whatever hard disk the server has, which at the time of this search was 50 gig free.

Q. So you're saying that you were limited to the 49.84 gigabytes here on this page of Exhibit 2 because that's how much space was left on the server at that time, correct?

A. Correct.

Q. The Exchange server, correct?

A. Correct.

Q. And the main problem you were having when you ran these searches was that they were returning results in amounts that were greater than the 49.84 gigabytes here, correct?

A. Correct.

Q. I want to understand something about this page. You have all these key words here: Liberty, Liberty Capital, Ciro, Liberty Finance and Cerato. When this says under "Errors," the "Multi-mailbox search failed because the estimated size of the search...is greater than the available space...," does that mean that every mailbox was searched for every

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one of these key words that are listed here and that that is the estimated size that this document refers to?

MR. POPSON: Object to form.

Go ahead.

A. Yes.

Q. Okay. Let's say, for example, had you just put in, "Liberty Capital," and searched the same mailboxes, it would have only returned 14,568 hits from 93 mailboxes and the size of the search would have been smaller, correct?

MR. POPSON: Object to form.

Go ahead.

A. Correct.

Q. Okay. So in large part, whether the search is going to succeed or fail depends on the size of the data that the search returns versus the size available in the default mailbox, correct?

MR. POPSON: Object to form.

Go ahead.

A. In this instance, correct.

Q. In this instance and in every one of these instances on the first six pages here,

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correct?

MR. POPSON: Same objection.

Go ahead.

A. Incorrect.

Q. Okay. Please -- oh, because you are referring to the instance on the fourth page here where it says, "An error occurred when searching Rob Nestico. The message is, 'The process failed to get the correct properties.'"

A. That's the page I'm referring to, yes.

Q. But it is true for the other five pages, correct?

A. That's correct.

Q. All right. I know this isn't a technical term, but did you ever tell anyone in connection with these searches that the system crashed as a result of them?

A. "Crashed" is not a technical term. The system did not crash. It did slow down during this. It wasn't able to furnish the results because of the hard drive space, is what I told them.

Q. Did they ever ask you to run these

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searches using additional hard drive space?
A. No.
Q. Did you ever suggest that?
A. It was spoken about.
Q. How was it spoken about?
A. I said, "If you must have these searches, we would have to add approximately 3 terabytes to 4 terabytes of space to store the search results."
Q. How much would that cost?
A. The cost will depend on the timeframe it needs to be yielded. So the longer the timeframe, the cheaper the cost. Slower storage is cheaper. So in something reasonable, it would cost 1 to $2,000 probably for additional hard drives to fit the server and a couple hours of tech time to integrate the disks.
Q. Had you done that, the problem here would have been solved, would it not?
MR. POPSON: Object to form.
A. Which problem are you speaking toward?
Q. The problems on these first six pages of these documents of the search failing

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because the estimated size of the search is greater than the available space.
A. That's correct, they would have been solved.
Q. Was there any further conversation, after you advised KNR that they would need to have approximately 3 to 4 terabytes of space to store the results?
A. Between myself and KNR, no.
Q. Between you and anyone.
A. No.
Q. That was the end of the conversation.
A. Yes, for the part I played in it.
Q. Sure. Did you ever tell anyone that you could not do this or that you did not think it was a good idea to do this?
A. Can you clarify?
Q. Did you ever tell anyone that it was somehow unworkable or impracticable to add this approximately 3 to 4 terabytes of space to store these search results?
A. Yes, in a manner of speaking. What I said was, It will be expensive to the tune of 1,000 or $2,000, if you need them in a quick

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timeframe. And I believe I alluded to the size of the data also, that it seems impractical to me to sort through that many emails in anything short of two years. And if it was really important, we would have the storage and complete the searches.
Q. What do you mean, "In anything short of two years"?
A. That's my estimation of how long it would take to get through 3.2 million items.
Q. You mean just to lay eyes on them?
A. Correct --
Q. Sure, understand.
A. -- guesstimate.
Q. Now, apart from -- let me back up one moment. What I'm trying to understand is exactly how many searches you ran for KNR at Brian Roof's request. I understand you said that technically for each one of these terms, it's considered a search, but what I'm referring to is, Would you also agree -- strike that. Would you agree that this first page also in a sense reflects one search --
MR. POPSON: Object to form.
Go ahead.

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Q. -- correct? In that you ran one search for all documents including the terms, "Liberty," "Liberty Capital," "Ciro," "Liberty Finance" and, "Cerato," into one search and this was your results as reflected on this page 1 here.
MR. POPSON: Object to form.
Go ahead.
A. If that's how the search was requested to be run, then that's how it was performed.
Q. And that's what you did, correct?
MR. POPSON: Object to form.
Go ahead, answer if you can.
A. I don't recall this exact search. I would have to look at how it was requested, but I searched them exactly how they were requested just in case I ended up doing this.
Q. Sure. I'm glad you did. So while you can't say for sure if this document reflects what it reflects, this is probably a search that Brian Roof asked you to run, correct?
A. This is a search Brian Roof asked me to run, yes.

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Q. The second page is also a search that Brian Roof asked you to run, correct?
A. Yes.
Q. As are the third, fourth, fifth and sixth pages, correct?
A. Yes.
Q. You think that the total number of these searches was close to 6 or so, correct?
MR. POPSON: Objection.
Go ahead.
A. The total number of the searches -- I want to answer with specificity, but I can't without looking at his search requests.
Q. I understand you cannot answer with specificity, so I'm requesting you to answer to the best of your recollection.
MR. POPSON: Objection.
Go ahead.
A. Okay.
To the best of my recollection, these are searches he asked me to run. If they encompassed everything he asked me to run, I think is what you're getting at, I don't know.
Q. I'm just asking: Was it about this many, if it wasn't exactly this many?

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MR. POPSON: Objection.
Go ahead.
A. Perhaps context will help. Brian Roof is the only person who asked us to run searches. People lose stuff all the time, they need something from us, something else. So we get peppered with a lot of search requests. So Mr. Roof --
Q. From KNR or from all your clients?
A. All clients --
Q. Okay.
A. -- as well as KNR.
Q. Okay.
A. Mr. Roof's request doesn't stick out like a sore thumb. Does that make sense? So I don't recall if it was six or eight or thirteen or five.
Q. It wasn't a hundred, though, was it?
A. No.
Q. It wasn't fifty either, was it?
A. No.
Q. Probably wasn't even twenty, correct?
MR. POPSON: Objection.

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Go ahead, answer if you can.
MR. PATTAKOS: What's the objection?
A. I can't say.
Q. It probably wasn't twenty, was it?
MR. POPSON: Objection.
MR. MANNION: Asked and answered.
Q. Okay. You can't say. I'm just asking for an estimated range of how many searches, Mr. Whitaker.
MR. POPSON: Objection.
Go ahead.
A. If I had to guess at it --
Q. Please.
A. -- this looks to be about it. I mean, there probably wasn't more than this, if there were more than this.
Q. Thank you. Okay. I just want to confirm. You never placed any documents on a review platform for KNR to review, did you?
MR. POPSON: Object to form.
Go ahead.
A. Clarify what you mean by, "Review platform."
Q. Well, you pull documents from the

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search results, for example, and then there are programs like Logical or Nextpoint, for example, where you would upload the documents into it using a PST file, for example --
A. No.
Q. -- you never did that?
A. Nothing like that, no.
Q. Nothing like that. What did you do with the search results that you were able to pull? Some of these searches, you were able to pull documents from, correct?
A. Some of the searches returned documents --
Q. Yeah.
A. -- I did whatever the request asked.
Q. What did they ask you to do?
A. If the request asked to -- oftentimes a request just asked for a number of documents, which is why we have these printouts. If the search request asked for, send those to me in PDF form, please, then I would have done that.
Q. Did they ask you to do that?
A. Once.

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Q. What else did they ask you to do, if anything?
MR. POPSON: Objection.
Go ahead.
A. Just what I described to you, to perform searches.
Q. So there was only one occasion where you actually pulled search results and sent them to KNR.
A. Correct.
Q. And that was in PDF form.
A. Yes, those were PDF documents.
Q. And you sent them to Brian Roof.
A. I sent them to -- I put them on a CD, yes, and sent them to Brian Roof. Or it may have been a USB stick.
Q. When you did send those documents in PDF form, do you remember how much data it was?
A. No.
Q. Was it a lot?
MR. POPSON: Object to form.
Go ahead.
A. Not by comparison.
Q. You said it was sent either by

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email or a thumb drive.
A. It was sent either by CD or thumb drive. I don't recall which.
MR. PATTAKOS: Okay. Let's take a short break.
MR. POPSON: Okay.
(Recess taken.)
BY MR. PATTAKOS:
Q. Mr. Whitaker, I want to go back to these searches on Exhibit 2. Do you agree that apart from the option of obtaining additional space, the additional 3 or 4 terabytes to store these results, that it would have been possible for you to run each search on a limited number of mailboxes and then export the contents out of the discovery mailbox to -- anywhere else, either into a PST file or onto a review platform, then delete the information that was in the discovery mailbox and then run the search again on another group of custodians and continue to repeat this process?
MR. POPSON: Object to form.
Go ahead.
A. Did you say, is it possible? Is that what you're asking?

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MR. PATTAKOS: Please read the question back, please.
(Record was read.)
MR. POPSON: Objection.
Go ahead.
A. Technically speaking, yes, it's possible. If I can elaborate.
Q. (Nodding.)
A. My experience would be that some of those mailboxes by themselves will not fit in that 50 gig available. Some of the mailboxes being searched themselves are larger than 50 gigabytes.
Q. Sure, I understand. You could also even break up -- say for Rob Nestico's email box, for example, you could break up the information in the mailboxes, too, right? It's just a matter of either creating more space or breaking up the searches into smaller pieces, correct?
MR. POPSON: Object to form.
Go ahead.
A. Correct. That would technically have been possible.
Q. Okay. Let's look back at page 1 of

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Exhibit 2, again, please. For these key words, I understand that, "Liberty," and "Liberty Capital," were both used as key words for this search here on page 1. Does that mean that you put "Liberty Capital" in quotes so that you would get results where the words, "Liberty Capital," appeared in that precise order?
A. I searched exactly how they were asked. In this case, I don't believe they were put in quotes --
Q. Okay.
A. -- for reference, you might look at page 4, which is where the key words do appear in quotes.
Q. What happens when you put those key words in quotes?
A. The system treats -- it looks for that specific word. It treats it as a trade term, what we call a string. It searches within that string.
Q. Why would you put a single word in quotes?
A. Because it was asked that way. There wouldn't be a technical reason for it. A single word in quotes or without quotes is the

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same search.
MR. POPSON: (Inaudible.)
MR. PATTAKOS: Jim, I was thinking the same thing.
MR. POPSON: Yeah.
Q. So if Liberty Capital here -- and what I just overheard Mr. Popson say is it does not really make sense, because if "Liberty Capital," were put in without quotes, you would have returned all the hits for the word, "Liberty," as well as all the hits for the term, "Capital," which would have left you with more hits for "Liberty Capital," than you had for, "Liberty." Wouldn't that be the case?
A. Presuming that Exchange search -- Exchange search is not like a regular SQL database search. So presuming that Exchange looks at that space between, "Liberty," space, "Capital," and considers it a delimiter, which is trade language, if it sees it as a delimiter, it might systematically put quotes around both search terms and do exactly that --
Q. I see.
A. -- it also may see them between the, "Or," or the, "And," statement and assume

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that they're the same and put quotes around that.
Q. Okay. That makes sense. Do you have any idea why on this page 4, quotation marks were put around these words?
A. I know exactly why. They were emailed to me in that way.
Q. I understand. Do you have any idea why they were emailed to you in that way?
A. I don't ask. It's not mine to ask.
Q. Do you think this search might have gone differently if you had not included those quotation marks there?
A. In that search?
Q. Yes.
A. No.
Q. Do you think it's possible that, for example, if we look at page 1, "Liberty Capital," here without quotes returned 14,568 hits as opposed to the 126,000 hits that "Liberty," returned that quotation marks were automatically put in for, "Liberty Capital," as you just testified might have been the case, do you think it's possible that quotation marks were automatically put around the quotation

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marks on these terms on page 4 --
MR. POPSON: Object to form.
Go ahead.
Q. -- that would have caused a problem with, you know, this error message here that seems to be unique from the other error messages on these other six pages where we're getting, you know, a different error?
MR. POPSON: Object to form.
Go ahead.
MR. PATTAKOS: Fair enough.
A. That would be speculative, to assume that it put quotes around the quotes --
Q. Okay, sure.
A. -- in my experience, Microsoft is better at finding duplication than that.
Q. Okay. If you would have cut the, "Liberty," term out from this first search, this first one, that would have cut the results from approximately 153,000 hits total here to only about 27,000, correct?
A. Which page are you speaking to?
Q. The first page. If you would have just cut this first word out, "Liberty," and just searched for, "Liberty Capital," et

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cetera, it would have cut the results by quite a bit, correct?
A. We did search for, "Liberty Capital," separate on the second line and it returned less results --
Q. I understand.
A. -- but the term, "Liberty," also appears in that search. So if, "Liberty," returns 126,773 hits and you add, "Capital," to that, it would be that first number, 126,773 plus 14,568, but it wasn't, which tells me that the system looked at that string between the, "And," and the, "Or," or the, "Or," and the "Or," however it was requested, looked it up under the "Capital," string, ignored the space and considered it a full search string. So it searched for the whole word, "Liberty Capital," as it was entered.
Q. I see. But you could have just searched for, "Liberty Capital," separately and, "Liberty Finance," separately and not included the results for, "Liberty," correct?
MR. POPSON: Objection.
Go ahead.
A. Well --

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Q. I mean, look, I can do this in LexisNexis where I only want to get results for, "Liberty Capital." I don't want every result that has the word, "Liberty," in it, right? You could have done that, correct?
A. We did do that. One search was, "Liberty," and then a second line item was, "Liberty Capital," as a full search string.
Q. Right. But when we see the estimated size of the search failed, you're aggregating all those results and measuring that size, correct?
A. I understand what you're saying. So you're asking, could I have just searched the word, "Liberty," and programmed a whole separate search for just the word, "Liberty Capital."
Q. Yes.
A. Yes, that wasn't the way it was asked, though.
Q. Okay. What is the notation under, "Items," at the top where it says in parentheses, "3256925 unsearchable"? What does that mean?
A. Items that are unsearchable --

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Q. Yeah.
A. -- so to clarify, items in an Exchange database are everything that might be in the database. This would be contacts, calendar appointments, drop-down list emails, tasks, actual email messages. All of these things might comprise or be designated as an item as Exchange might look at it. So these things that you noticed are unsearchable items could be something as simple as expired reminders or things that don't have text property, calendar reminders, appointments, whatever.
Q. Got it. Emails would not be included there.
A. Emails are also items.
Q. Okay. They could have been unsearchable.
A. Possible. Unlikely.
Q. Why is that?
A. Because they're text documents. So for an email to be unsearchable, it would have to be corrupt inside the database.
Q. So just to be clear: When you see this notation that 3,256,925 items were

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unsearchable, that doesn't concern you?
A. It's not alarming to me, not with a database this size.
Q. I understand. Okay. Very good. It's your opinion that all of the relevant email boxes are in fact being searched here.
A. Yes.
MR. POPSON: Objection.
Q. Okay. Now, on page 2, number 3 at the top, 10/20/2017 at 9:13 a.m., we see a lot more hits for a lot more search terms that have been entered than we saw on the first page, correct?
A. There are different terms, but you're correct.
Q. Yeah. So here we have on the second page -- let me just do some quick and dirty math. So 500,000, plus 400,000 is 900,000, plus another 800,000, it looks like there are about 2.1 million hits here based on these hit numbers. Is that correct?
A. I would have to do my own math --
Q. Sure.
A. -- there's a lot.
Q. Does that look about right, about

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2.1 million? Take your time and see --
A. If you want an answer, hang on.
MR. POPSON: Can we just agree it speaks for itself?
A. It's a lot, yeah --
MR. PATTAKOS: Yeah, we can agree to that.
A. -- somewhere between 2 and 3 million is probably accurate, yeah.
Q. Okay. Then on this first page, we only have about 160,000 results, correct? 160,000 hits, correct?
A. That's correct.
Q. We see on the first page, the estimated size of the search is 2.287 TB. As you confirmed for us earlier, that is the size of the hits that are returned on this search, correct?
A. Is that your interpretation? That's the size of the data returned, the estimated size of the data. The estimated size of the search is that big, so it needs that much room to store it for you then to go through and look at all the emails where this stuff showed up --

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Q. Absolutely --
A. -- right --
Q. -- that's what I meant.
A. -- okay. So we're clear.
Q. So this search of these five terms returns 2.287 TB of data. If we look on the second page, the same search returns 2.543 TB of data, even though there are ten to twenty times more hits.
A. I understand what you're asking.
Q. Yes.
A. They don't correlate obviously.
Q. Explain why?
A. I'll explain to you what hits are. On this notice of deposition, for instance, you might look at the word, "Document," how many times does, "Document," appear in this Word document. That would be your hits --
Q. Oh.
A. -- perhaps the word, "Document," appears 200 times, but this file size might be 3 megabytes, it might be 3 gigabytes. That's why the size of the data returned is so much larger.
Q. Well, that's easy. Thank you. So

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this isn't the number of documents --
A. No.
Q. -- this is just the number of times the term appears.
A. Correct, across all 8 terabytes of mail storage.
Q. See the light-bulb going over my head right now? (Including.)
A. I do.
Q. Is there a way for you to run these searches and tell us or tell KNR how many documents these hits represent?
MR. POPSON: Object to form.
Go ahead.
A. In a manner of speaking. The search would have to complete successfully and then this size and item count up here would tell us exactly how many items -- (Indicating.)
Q. Oh.
A. -- but we need the space for the search to finish.
Q. I see. Okay. On page 4, we see this page 4 is different from the other six pages of search results, correct?
A. The error is different, yes.

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Q. The error is different. Right. Can you tell me what the error is here?
A. Process failed to get the correct properties. I can't speak toward which properties or what item was incorrect. When it searched Robert Redick's mailbox, that's what it's returning saying it failed to get the correct properties in searching Rob's mailbox. Property could be something as simple as a phone number in a contact card or something like that, is what it's in reference to. This one did return search results. You can see up there where it says "Size," a little under 24 gigabytes of information, 107,742 mailbox items were --
Q. Stop there. Of that 33,886 unsearchable, is that inclusive of the 107,742 or is that in addition to the 107,742?
A. That's a good question. I don't know the answer to that.
Q. Okay. So what do you think happened here? What do you think the problem is with this search, if it's not the size?
MR. POPSON: Object to form.
Go ahead.

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A. What I think happened is exactly what it tells us. Computers are great in that way. They're very specific. Something about the properties of some of the items, it couldn't read or search. Why that's the case, I don't know.
Q. What do you think it could be?
MR. POPSON: Objection.
Go ahead.
A. I can't necessarily speculate on something that might cause that. I don't know what would cause that.
Q. How would you solve this problem?
A. If I were asked to solve this problem, excellent question, what I would do is search the Microsoft knowledge base and perhaps call Microsoft, if necessary. I would search windows and error logs of those logs surrounding the search for more context, error messages, event IDs, that kind of thing looking for what kind of issue the system had.
Q. You were never asked to solve this problem, though, correct?
A. No.
MR. PATTAKOS: Tracy, can you

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please read back his answer about how to solve this problem.
(Record was read.)
Q. Okay. Let's turn the page, "Total Universe of Documents." I believe this is now the seventh page of Exhibit 2. Do you recognize what this is?
A. I don't recognize the document itself, but I do recall gathering a lot of this information.
Q. Why did you gather a lot of this information?
A. Mr. Roof requested it.
Q. He wanted to know the number of Outlook mailbox items and the number of electronic documents that were in each of these seven mailboxes.
A. Yes.
Q. Did he ask you for this information for any additional mailboxes?
A. Not to my recollection, no.
Q. Would you say that this spreadsheet here on this page 7 is a reflection of what appears on the following pages? I guess the following seven pages, it looks like

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screen-shots basically conveying the very same information.
A. The pages that follow, I do recall compiling this information.
Q. Great. So maybe Mr. Roof compiled this or someone else compiled this just to summarize.
A. Page 7?
Q. Yes.
A. That's what I'm seeing, yes.
Q. Is there anything else significant about this summary of information that you think that I should know?
MR. POPSON: Object to form.
Go ahead.
A. I don't think so. As it would relate to what? The completeness of stuff?
Q. Sure. I'm just trying to make sure we are engaging in reasonable searches and --
A. Yeah, yeah. This would be everything electronic that I would be able to go find for you. This is an accurate representation of what was available at the time of the request.
Q. Okay. I have recently received a

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quote -- in fact, just yesterday I received a quote from a representative of Logical, which is a document review platform that's commonly used in litigation. Are you familiar with this platform?
A. No.
Q. Okay. But you're familiar that these platforms exist and --
A. Yes.
Q. Okay. You've never worked with them specifically, though, correct?
A. Correct.
Q. I had a representative of Logical tell me that their price is $40 per gigabyte per month to host this information on this platform with no upfront fee. Do you have any reason to believe that's not true?
A. My experience would tell me that you're probably going to also pay for upload and download and time taken to search. You only mentioned price for storage. There are several other functions performed that use system resources. That's how those companies typically make their money.
Q. Well, they said no upfront fee, so

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I wonder -- but I appreciate that.
MR. PATTAKOS: Okay. Let me take a short break. I think we're done. I just want to look at one thing.
MR. POPSON: Sure.
(Recess taken.)
MR. PATTAKOS: Okay. I'm done with questions for Mr. Whitaker. I believe in light of the information that Mr. Whitaker has provided, what I'd like to do is exchange in another meet and confer about what we can do about these searches. I believe we'll need an extension on our motion to compel that's due on Monday. But we can take a week for starters and see what we can figure out.
MR. POPSON: Okay.
MR. PATTAKOS: And I've got time blocked off tomorrow to work on this, so I will try to get you a letter by the end of the day tomorrow, Jim.
MR. POPSON: All right.
MR. PATTAKOS: And hopefully you can turn your attention to it first thing next week and we can come to maybe some kind of agreement on what searches we'll be run going

forward so we don't have to start where we were with Brian's last letter, which is, you know --

MR. POPSON: Okay.

MR. PATTAKOS: Off the record.

(Discussion held off the record.)

MR. POPSON: Yes, we will agree to meet and confer and we'll allow you additional time to file your motion to compel.

MR. PATTAKOS: Do we want to agree on a timeframe so we can present this to the Judge? because I imagine the Judge is not going to want us to take too much time on this. We have the discovery hearing set for the 16th. I imagine she will not want to move that if we can avoid it. Do you want to plan on a week?

MR. POPSON: Sure, let's plan on a week. And we'll talk about how we can meet and confer or who you need to talk to in the event that I'm not around. Okay?

MR. PATTAKOS: Thank you. That sounds great.

MR. POPSON: Okay.

(Thereupon, the deposition was adjourned at 12:55 p.m.)

Whereupon, counsel was requested to give instruction regarding the witness's review of the transcript pursuant to the Civil Rules.

SIGNATURE:

Transcript review was requested pursuant to the applicable Rules of Civil Procedure.

TRANSCRIPT DELIVERY:

Counsel was requested to give instruction regarding delivery date of transcript.
Peter Pattakos ordered the original transcript, expedited 4-day delivery.
Copy--James Popson, regular delivery

REPORTER'S CERTIFICATE

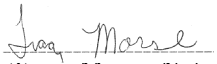
The State of Ohio,)
SS:
County of Cuyahoga.)

I, Tracy Morse, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ETHAN WHITAKER, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 5th day of February, 2018.



Tracy Morse, Notary Public
within and for the State of Ohio
My commission expires 1/26/2023.

Veritext Legal Solutions
1100 Superior Ave - Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

February 5, 2018

To: Mr. Popson

Case Name: Williams, Member, et al. v. Kisling, Nestico & Redick, LLC, et al.
Veritext Reference Number: 2808516
Witness: Ethan Whitaker Deposition Date: 2/1/2018

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized and forward errata sheet back to us at the address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 2808516
CASE NAME: Williams, Member, et al. v. Kisling, Nestico & Redick, LLC, et al.
DATE OF DEPOSITION: 2/1/2018
WITNESS' NAME: Ethan Whitaker
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Ethan Whitaker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 2808516
CASE NAME: Williams, Member, et al. v. Kisling, Nestico & Redick, LLC, et al.
DATE OF DEPOSITION: 2/1/2018
WITNESS' NAME: Ethan Whitaker
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Ethan Whitaker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
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Date Ethan Whitaker
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

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Notary Public

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Commission Expiration Date

Exhibit 17

Feb. 5, 2018 letter from Peter Pattakos to Jim Popson

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

February 5, 2018

By e-mail to jpopson@sutter-law.com with copy to counsel of record for all parties

James Popson, Esq.
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Jim,

This letter is to follow up on our agreement to revisit our pending dispute over the KNR Defendants' document production in light of the information that KNR's IT representative Ethan Whitaker provided at his deposition last Thursday.

As a preliminary matter, we're concerned by Mr. Whitaker's testimony that the KNR Defendants did not take advantage of available measures by which they could have ensured that responsive documents could not have been deleted from their computer systems. Thus, we request that these measures be taken immediately.

We further request, based on the sum of Mr. Whitaker's testimony, that the KNR Defendants reconsider their refusal to conduct certain searches for responsive documents stored in their computer systems. Without recounting this testimony fully here, it should be enough to note the following:

- Mr. Roof's repeated representations—both in his letters to us and in his statements to the Court on January 5—that our requested email searches were "crashing the system," and "not possible" were plainly false. Mr. Whitaker made clear that no system "crashed," but rather only that certain searches were returning a data set that was too large to fit in the relatively small storage space that was allocated for it.
- Mr. Whitaker confirmed that it would cost approximately $1,000 to $2,000 and take a "couple hours" of his time to create storage space that would accommodate these searches, and that this storage space could be repeatedly cleared to perform as many searches as were necessary.
- Mr. Whitaker confirmed that Mr. Roof only asked him to run approximately six searches for responsive documents, three of which were apparently poorly designed to return such documents.
- Mr. Whitaker confirmed that he was never asked to upload search results onto a document review platform.
- Mr. Whitaker confirmed that he was never asked to solve any of the alleged problems that the KNR Defendants claimed to have with searching for responsive documents.
- While Mr. Roof allowed us and the Court to believe that the "hit" counts Defendants provided related to the number of documents returned for each search term, Mr.

> Whitaker confirmed that these numbers refer only to the number of times the terms appear in the responsive documents. To date, we have not been provided with any information as to how many documents each search would return.

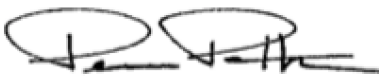
Thus, we ask the KNR Defendants to confirm that they will run the following searches, comprehensively, and produce all responsive documents from the results:

- "Liberty Capital!"
- Ciro
- Cerrato
- loan! AND refer!
- chiro! AND refer!
- (Minas OR Floros OR "Akron Square!" OR ASC) AND refer!
- "red bag!"
- investigator!
- investigat! AND fee!
- investigat! AND expense!
- "sign up!" AND fee!
- SU AND fee!
- Aaron! AND Mike!
- AMC AND MRS
- narrative!
- Plambeck!

While this list might be incomplete, it should at least give us a good start in identifying responsive documents and additional search-terms as necessary going forward. I will follow up shortly with a summary of the pending document requests for which we must insist on a complete response, as discussed in our earlier correspondence, but this list will be largely irrelevant to resolving our dispute if the KNR Defendants will not agree to perform the above searches as required by the Civil Rules.

I hope to hear from you shortly in hopes of narrowing the focus of our motion to compel that is due next Monday, February 12 pending the Court's acceptance of our unopposed request for an extension to that date.

Sincerely,



Peter Pattakos

Exhibit 18

Feb. 7, 2018 letter from Peter Pattakos to Jim Popson

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

February 7, 2018

By e-mail to jpopson@sutter-law.com with copy to counsel of record for all parties

James Popson, Esq.
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Jim,

This letter is to follow up on my letter of February 5 requesting that the KNR Defendants reconsider their refusal to conduct certain searches for responsive documents stored in their computer systems. As promised, I am providing below a list of pending document requests for which we must insist on a complete response for class-certification purposes, starting at least with the searches that I identified in the February 5 letter:

1-8, 1-10, 1-11, 3-1, 3-2, 3-6, 3-7, 3-11, 3-15, 3-16, 3-19, 3-20, 3-21, 3-22, 3-23, 3-24, 3-25, 3-26, 3-27, 3-28, 3-29, 3-30, 3-31, 3-33, 3-35, 3-36, 3-37, 3-38, 3-39, 3-41, 3-43, 3-44, 3-45, 3-46, 3-47, 3-48, 3-49, 3-50, 3-54, 3-55, 3-56, 3-60, 3-61, 4-1, 4-2, 4-3, 4-4.

Please note that we must continue to insist on a complete response as to all chiropractors to which these requests relate, not just Akron Square.

Please also note that we have narrowed this list from that provided in our earlier correspondence based on the stipulations that the KNR Defendants have proposed. You may refer to our earlier correspondence as to our need for these documents, which should in any event be self-evident, and which I would be glad to discuss further if necessary.

Thus, we hope you will confirm that the KNR Defendants will provide a complete response to these requests by doing at least the following: 1) Confirming that all of the KNR Defendants' officers, employees, and agents have will review these requests and provide all responsive documents of which they are personally aware; 2) running the searches identified in my February 5 letter against all email files in the KNR Defendants' custody and producing all responsive documents from the results.

Finally, we must again request your assistance in obtaining service of our subpoena on Ciro Cerrato, whose recent affidavit you have obtained and filed in this lawsuit. When we previously asked for your assistance in this regard, Brian Roof communicated your flat refusal in his November 15, 2017 letter: "We will not assist in your efforts to subpoena [Mr.] Cerrato. You are perfectly capable of serving a subpoena on him."

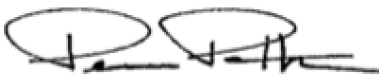
Since then, we have undertaken the effort and expense of obtaining a commission for issuance of a Florida subpoena, having that subpoena issued by the Palm Beach County Clerk of Courts, and attempting personal service of this subpoena on Mr. Cerrato. In this process, we learned that Mr. Cerrato no longer lives at the Boyton Beach address listed in our petition for commission, which

is now currently occupied by his (apparently estranged) wife, who did not provide us with additional information. As you can see from the attached affidavit of our process server, when we attempted to serve Mr. Cerrato at his workplace, he refused to come out of his office to accept the subpoena, and instructed his office's receptionist to falsely claim that he was not present in the office. When we attempted service again at his workplace, Mr. Cerrato's receptionist informed us that he "knows what the papers are about" and "does not want to deal with it at work," but did not provide us with any additional information as to how Mr. Cerrato would prefer to be served.

Given that you were able to convince Mr. Cerrato to provide you with an affidavit for use in this lawsuit, we hope you will also convince him to stop creating unnecessary burden and expense for us by dodging service of our subpoena, and provide us with his current home address, or, preferably, a means by which he will accept service.

Again, I hope to hear from you shortly so that we may cooperatively narrow the issues to be resolved by the Court.

Sincerely,



Peter Pattakos

Exhibit 19

Feb. 14, 2018 letter from Jim Popson to Peter Pattakos

SUTTER O'CONNELL ATTORNEYS

James M. Popson
Phone: 216.928.4504
Fax: 216.928.4400
Cell: 216.570.7356
jpopson@sutter-law.com

February 14, 2018

VIA E-MAIL

Peter Pattakos
peter@pattakoslaw.com
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333

Re: *Member Williams v. Kisling, Nestico and Redick, LLC, et al.*
Summit County, Court of Common Pleas Case No. CV-2016-09-3928
Our File No. 10852-00001

Dear Mr. Pattakos:

We are in receipt of your letter dated February 5, 2018. This letter serves as Defendants' formal response to that letter and our discussion on February 1, 2018 at the deposition of Ethan Whitaker.

At the outset, your suggestion that Defendants have not "take[n] advantage of available measures" to secure electronically stored documents in this matter is false. Until now, you have never requested that Defendants hold or otherwise preserve identifiable electronically stored documents, and your current request "that these measures be taken immediately" is so broad, vague, and unduly burdensome that Defendants are unable to provide a meaningful response. Defendants run a business and have no obligation to maintain every electronic file or shred of paper simply because you filed a lawsuit. *See, e.g. In re Nat'l Century Fin. Enters.*, No. 2:03-md01565, 2009 U.S. Dist. LEXIS 68379, *42 (S.D. Oh. Jul. 16, 2009). Moreover, since the onset of this litigation, Defendants have fulfilled – and will continue to fulfill – their responsibility to preserve information relevant to this lawsuit as required by law. *See, e.g. Loukinas v. Roto-Rooter Servs. Co.*, 167 Ohio App.3d 559, 2006-Ohio-3172, ¶18. You have not identified any instance where Defendants have not met this obligation, and Defendants are aware of none.

Mr. Whitaker's deposition testimony confirmed the burden and expense of your expansive discovery requests. Civ.R. 26(B)(4). First, you parse the words of Mr. Roof and incorrectly claim that he somehow misrepresented the results of certain searches. There is no question from Mr. Whitaker's testimony that these searches could not be completed because the size of each search was greater than the available storage space needed to conduct the search. *See* Whitaker Tr. at pp. 75-76. Ultimately, Mr. Whitaker confirmed that many of your broad searches cannot be completed without additional storage space, and the exact phrasing of such result (whether "crashing the system" or "not [being] possible") is surely inconsequential and does not change this fact.

Moreover, you have not put forth any proposal for Plaintiffs to bear the substantial costs associated with these overbroad discovery requests. Mr. Whitaker elaborated not only on the cost of adding additional storage space to finish the searches you requested (3 to 4 terabytes of space costing $1,000 or $2,000 plus tech time), but also the cost of reviewing the size of the data generated from the searches, which he estimated would take at least 2 years "to get through 3.2 million items" pulled from a total universe of documents exceeding 56 million. *See* Whitaker Tr. at pp. 78-80. The data generated by your broad searches not only increases the expense and time of the search, they then involve attorney hours to review the documents before the production for privilege and to identify documents responsive to a specific discovery request. Defendants have an obligation to review each and every document generated by this law firm prior to production to protect the confidences of its clients. No protective order will allow Defendants to simply turn over several terabytes of electronic data for your review without first conducting our own review for responsiveness and privilege. Defendants will not fund your fishing expedition, nor are they required to. *See, e.g.* Civ.R. 26(B)(4) ("A party need not provide discovery of electronically stored information when the production imposes undue burden and expense."); *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 358, 98 S.Ct. 2380 (recognizing under identical federal rules, courts may shift costs to the non-producing party upon a showing of undue burden and expense).

As outlined in our December 20, 2017 correspondence and as explained to you and the Court at the January 5, 2018 hearing, Defendants have agreed to stipulate to multiple facts that would render your overwhelming search of Defendants' computer system unnecessary and these discovery issues moot. As we have explained in our prior correspondence, this amount of discovery is not proportional to the needs of the case, considering the stipulations which Defendants are willing to enter into. See Stonehenge Land Co. v. Bd. of Edu., Franklin C.P. No.. 13CV-4730, 2014 Ohio Misc. LEXIS 10895, *8 (June 20, 2014) (Recognizing "[a]t some point a line must be drawn when discovery requests become disproportionate to the issues in the case and an end in-and-of themselves."). Your refusal to agree to the proposed stipulations, or provide reasonable suggested stipulations of your own, is a classic example of the "undue burden and expense" contemplated by Civ.R. 26(B)(4) when coupled with the challenges identified by Mr. Whitaker above.

Finally, it is clear that none of these requests are related to the individual claims of the named Plaintiffs in this case, nor are any of these requests aimed at obtaining information necessary to establish a class pursuant to Civ. R. 23. Rather, these requests are either (a) related to the merits of an existing class claim; or (b) unrelated to any claim whatsoever in the case. My client should not be forced to bear the costs of hundreds or thousands of hours of attorney time to review documents for a class that has not been certified, or for a fishing expedition into matters unrelated to any claim made in the case.

In light of these considerations, Defendants respond to the additional search terms proposed in your letter as follows:

- "Liberty Capital!"

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- Ciro

Defendants have already run a search for "Ciro" at your request. As you are aware, the search revealed 12,204 hits. This identical request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail, so we should get the same or similar results. In light of the considerations identified above, please reasonably narrow the scope of this search by identifying a specific timeframe, person, and/or mailbox to which the search relates, and Defendants will attempt to re-run the search as you propose within the identified parameters.

- Cerrato

Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- loan! AND refer!

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- chiro! AND refer!

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- (Minas OR Floros OR "Akron Square!" OR ASC) AND refer!

Defendants have already produced responsive and non-privileged documents generated from searches of Rob Nestico's and Robert Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!, which are the main two witnesses who would have any information or documents regarding your alleged quid pro quo relationship between KNR and ASC or Dr. Floros and the narrative fee. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving these objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. Again, this assumes the software is capable of Boolean searches.

- "red bag!"

Defendants object to this search as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

- investigator!

Defendants have previously run a search for the term "investigator." As you are aware, the search returned 49,096 hits. Adding the exclamation point will only produce more results. Please explain how this new request will resolve the issue of returning an unduly burdensome amount of documents.

- investigat! AND expense!

Defendants have produced documents based on searches for "investigation fee" for the seven crucial witnesses in this case: Aaron Czetli; Brandy Latman; Rob Nestico; Robert Redick; Michael Simpson; Holly Tusko; and Jenna Wiley. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- "sign up!" AND fee!

Defendants have produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- SU AND fee!

Defendants have produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- Aaron! AND Mike!

Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- AMC AND MRS

This request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- narrative!

Defendants have already run a search for "narrative" at your request. As you are aware, the search returned 57,840 hits. Adding the exclamation point will only produce more results. Please explain how this new request will resolve the issue of returning an unduly burdensome amount of documents.

- Plambeck!

Defendants object to this request as it is not reasonably calculated to lead to the discovery of admissible evidence. Please identify the specific document request that this search request is related to, and we may reconsider our objection.

Please understand that by agreeing to run the searches as noted above, Defendants are not agreeing to simply produce every document generated from the search, assuming the search completes. Rather, Defendants will identify the "hits" and data generated from the searches. To the extent the data generated from a specific search is reasonable in scope, Defendants will review the material for non-privileged, responsive information. If the amount of data generated would require an unreasonable amount of time to review and identify responsive, non-privileged documents, we will not agree to review and produce the documents without reimbursement for the astronomical cost imposed on my client. We do not waive any objections to production by agreeing to run any particular search of electronic data.

I would be happy to meet with you this week to discuss reasonable parameters for completing the additional searches as identified above.

Sincerely,

Sutter O'Connell

James M. Popson

JMP/
cc: Eric Kennedy
Tom Mannion
John F. Hill

Exhibit 20

Feb. 15, 2018 letter from Peter Pattakos to Jim Popson

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

February 15, 2018

By e-mail to jpopson@sutter-law.com with copy to counsel of record for all parties

James Popson, Esq.
Sutter O'Connell
3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

Re: *Member Williams et al. v. Kisling Nestico & Redick LLC, et al.*

Dear Jim,

This is to respond to your letter of yesterday about our pending dispute over the KNR Defendants' document production, in which you maintain your clients' refusal to comprehensively search their files for responsive documents relating to key terms at issue in this lawsuit. For example, your letter indicates your clients' refusal to search "12,204 hits" for the term "Ciro," "49,096 hits" for the term "investigator," and "57,840 hits" for the term "narrative."

Throughout your letter, you claim that your client will agree to run most of the other searches we've requested, and review and produce responsive documents *if and only if* you determine that a "reasonable number of items are identified." Your letter further indicates that you are only willing to measure the "number of items" by the number of "hits" the searches return, and that you have already determined that "12,204 hits" is too many to be reasonable, no matter how relevant or responsive the search term.

Thus, first, I must again ask you to acknowledge that the number of "hits" is irrelevant to the number of items that must be reviewed with respect to any given search or group of searches. Given that the KNR Defendants are represented by a team of experienced defense attorneys who have surely all handled cases requiring the use of cost-effective document review platforms with data deduplication capabilities, your continued refusal to acknowledge the availability of these tools is troubling.

As you know, and as shown by the KNR emails quoted in the Third Amended Complaint, the KNR Defendants made extensive use of email listservs in their communications, by which a single email would go out to multiple users. Given KNR's frequent use of these listservs, the number of "hits" a search returns is likely to be multiples greater than the number of documents that would have to be reviewed to produce responsive documents from these searches. Affordable document review platforms like Logickull ($40 per gigabyte per month) would allow the KNR Defendants to run all of the searches we requested, remove all duplicate items from the search results, and provide us with an accurate and meaningful number of documents that would have to be reviewed as opposed to the meaningless "hit" counts you've thus far provided.

Further, by uploading all relevant mailboxes and other electronic files to such a platform, the KNR Defendants would partially resolve our concerns regarding their failure to preserve electronic data. *See* Whitaker Tr., 62:7–16 (confirming that the KNR Defendants did not place a preservation hold on any documents apart from Member Williams' client file).

At this point, it's clear that there is no reasonable or manageable way to accommodate our requests without using a review platform with deduplication capabilities, and we are asking you to agree that the KNR Defendants will do so.

It's no response for you to continue to claim that our requests are unreasonable or oppressive just because they require the review of a voluminous amount of records. To the contrary, "where the effort is great, but the documents serve the purpose of resolution of the issues, there is little basis for a claim of unreasonableness or oppression in having to respond to a subpoena for the production of documents." *First Bank of Marietta v. Mitchell* (4th Dist. Nov. 28, 1983), Nos. 82 x 5; 82 x 14, 1983 Ohio App. LEXIS 13535, *32-33 (quoting Anderson's Ohio Civil Practice). Claims of burden can only be heard where effort would be expended without yielding responsive results, which is not an issue with respect to the targeted searches we've identified relating to key terms at issue in this case.

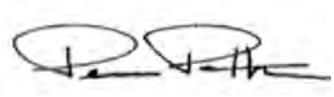
To this last issue, and your statements that our request for searches for "Plambeck!" and "red bag!" are "not reasonably calculated to lead to the discovery of admissible evidence," we refer you to the detailed allegations contained in paragraphs 38–42 of the Third Amended Complaint quoting documents showing the following:

- The KNR Defendants sent all "red bag" referrals to Akron Square Chiropractic (a Plambeck-owned clinic) as a matter of policy pursuant to the alleged unlawful quid pro quo relationship; and
- continued to refer its clients to Plambeck-owned clinics, without any changes to their referral or disclosure policies, despite their awareness that Plambeck was sued in various courts by both Allstate and State Farm insurance companies for fraudulently inflating billings, and knew that these insurance companies, would view client treatment at Plambeck clinics as inherently suspect and treat the KNR-clients' cases accordingly.

Thus, our document requests relating to "red-bag" referrals and Plambeck clinics are reasonably calculated to lead to the discovery of evidence showing that Defendants engaged in self-dealing and breached their fiduciary duties by prioritizing their referral relationship with ASC and the other Plambeck clinics over their clients' interests.

At this point, it seems clear that the bulk of our dispute comes down to whether the KNR Defendants will agree to employ a document review platform with deduplication capabilities and use that platform engage in the comprehensive searches that we've requested. I trust this is something to which you've already given due consideration so I hope we can come to some resolution—or, at least, an agreement to disagree—on this matter by the end of the day tomorrow. I'll try to reach you by phone in the morning and will be available most of the day for a return call.

Sincerely,



Peter Pattakos

Exhibit 21

Affidavit of Plaintiffs' e-discovery expert Brett Burney

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge Patricia A. Cosgrove **Affidavit of Brett Burney**

I, Brett Burney, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am over the age of 18 and I am competent to testify as to the matters set forth herein.

2. I received my undergraduate education from the University of North Texas and received a Bachelor of Arts in 1997. I received my Juris Doctorate degree from the University of Dayton School of Law in 2000.

3. I am currently the Principal of Burney Consultants LLC where I provide independent e-discovery and litigation support consulting services for law firms and corporations. I have assisted many clients with the identification, collection, preservation, review, and production of electronically stored information (ESI) for the purposes of litigation and investigations. Because I am an independent consultant, as opposed to someone that sells e-discovery products or processes ESI or hosts data for document reviews, etc., I am regularly retained to supervise the activities and vet the recommendations of e-discovery vendors and service providers.

4. I have presented on e-discovery topics for numerous state, local, and national CLE seminars. I have authored numerous articles and reviews on e-discovery related topics for print and online

publications such as Law.com, Law Technology News Magazine, TechnoLawyer Newsletters, Inside Counsel Magazine and the ABA GP/Solo Magazine.

5. In my current position at Burney Consultants LLC, I have assisted many law firms through the logistics of electronic discovery involving sophisticated, high-stakes, complex litigation matters including overseeing the collection, processing and review of Terabytes of relevant ESI; attending meetings with opposing counsel before arbitrators and Special Masters; composing technical replies and interrogatories to be sent to opposing counsel; participating in "meet & confers" with opposing parties to resolve issues with ESI production; and coordinating the review and analysis of data processing and document review with multiple vendors and litigation support personnel. I have also assisted corporations in vetting e-discovery platforms for internal use and assisting in creating team-based workflows composed of individuals from legal, IT, business and records management positions. Prior to launching my independent consulting practice at Burney Consultants LLC, I worked for over five years at a 400+ lawyer law firm serving as the primary firm-wide resource for all litigation support and e-discovery engagements.

6. I have been engaged by the Pattakos Law Firm LLC in the above referenced litigation to provide consulting services for the e-discovery issues involved. I have been asked to provide an Affidavit regarding the document review capabilities of a Logikcull, an online, cloud-based, SaaS (software-as-a-service) document review platform that offers an array of features for processing, reviewing, and producing ESI, including the ability to de-duplicate ESI.

7. When the collection of ESI is reasonably small (e.g. a few hundred documents), it is entirely possible that a party may print out each document and manually read each and every document to determine whether it is relevant and/or privileged. When the collection of ESI is voluminous, which is increasingly the case in today's world, it is virtually impossible for a party to manually review all of

the ESI efficiently without the assistance of an electronic document review platform such as Logikcull (www.logikcull.com).

8. Logikcull is a web-based, cloud-based, SaaS document review platform that is accessible from any web browser on a computer or mobile device. There is no need for a party to purchase a server, or engage a consultant to start using Logikcull – all they need is a computer with a web browser. You simply visit www.logikcull.com and sign up for an account. To load ESI into Logikcull, you simply upload files through the web browser such as PST files for email, or Microsoft Word documents, or PDF files, etc. Once the ESI is loaded, Logikcull will "process" the data, which involves a variety of steps including the extraction of metadata from the files, checks for viruses, what languages are present in the data set, OCR if necessary, and a determination of whether files are duplicates of each other. After the data is processed, the files and documents are presented in a database for review.

9. Logikcull provides a variety of methods for searching and "culling" the documents to better pinpoint the most relevant files in an ESI collection. Most notably, Logikcull features an innovative "carousel" that allows ESI to be immediately filtered by facets such as individual custodian, document type, file extension, date ranges, file sizes, email domains, and more. In addition, Logikcull offers a powerful search engine including an "Advanced Search" to build more complicated queries, or perform a "Bulk Keyword Search." When a relevant document is found, it can easily be "tagged" as responsive/relevant, privileged, confidential, "hot," or with any number of custom tags that can be created in the system.

10. When faced with a large collection of ESI to review, a standard, "best practice" is to de-duplicate the data to significantly reduce the need to unnecessarily review duplicate files or email messages. On average, de-duplication can reduce the total volume of data to be reviewed by 30% to 40% and oftentimes much more, particularly in cases where the producing party has made extensive

use of email lists to send the same email to multiple users, in which case the de-duplicated data would be a fraction of the producing party's entire file. De-duplication is performed automatically when uploading ESI (such as PST files) to a document review platform such as Logikcull. De-duplication is performed by creating a digital "fingerprint" of each file, and the comparing the fingerprints to see if they are duplicates.

11. The "fingerprint" is created as an MD5 hash calculated on the following fields of email data:

- From
- To
- CC
- BCC
- Subject
- Sent Date+Time
- Email Body Text
- and Attachment Names.

12. Logikcull (and most document review platforms) de-duplicate at a "family level" where the email message is a "parent" and the attachment is a "child." The entire family (email and attachment) must match another family to be considered a duplicate. For example, if the exact same document is attached to two separate email messages with different body text, those families are NOT duplicates so the attachment will appear twice in the review database.

13. There are two main methods for de-duplication:

- Global (horizontal) deduplication removes duplicates across all custodians.
- Custodial (vertical) deduplication removes duplicates within a single custodian's collection.

14. An excellent feature of document review platforms such as Logikcull is that you are not limited to a single decision on the level of de-duplication since you can easily switch between global and custodial de-duplication within the platform. You can do this across the entire document collection, or you can switch deduplication methods after filtering the collection by keyword search

terms, date ranges, etc. In addition, Logikcull also automatically applies a "QC Tag" (quality control) entitled "Has Duplicates" to any document families that Logikcull finds are duplicates so you can quickly filter by that tag.

15. Lastly, in Logikcull, once you click to view a document that has a duplicate, you can scroll down to find the list of duplicates. For each duplicate, you can click on the entry and see the exact file directory or mailbox folder from where it originated. For example, if you are viewing the documents under "Custodian Dedupe" you would presumably find a copy of an email in Sender's Sent Items folder, and the same email (the duplicate) in Recipient's Inbox.

16. I hereby state under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of February 2018.

Brett Burney

DENISE ALMEIDA
Notary Public, State of Ohio
My Commission Expires July 5, 2020

2/22/18

Exhibit 22

Improperly redacted Jan. 23, 2012 email exchange between Robert Redick and Brandy Lamtman

From: Robert Redick
Sent: Monday, January 23, 2012 1:34 PM
To: Brandy Brewer
Subject: RE: Until Further Notice.....

Including .....interesting ☺

Robert W. Redick
Kisling, Nestico & Redick
Attorney At Law
3412 W. Market St., Akron, Ohio 44333
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007
Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

---

From: Brandy Brewer
Sent: Monday, January 23, 2012 1:31 PM
To: Staff; Rob Nestico
Subject: Until Further Notice.....
Importance: High

NO narrative fee checks to any of the EXCEPT Floros

Brandy Brewer
Kisling, Nestico & Redick
Executive Assistant to Attorney Nestico
3412 W. Market St., Akron, Ohio 44333
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007
Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

REDACTED

Exhibit 23

Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Production of Documents

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, e*t al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Alison Breaux

DEFENDANTS' AMENDED RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR") and Alberto R. Nestico ("Defendants") object and respond as follows to Plaintiff Member Williams First Set of Requests for Production of Documents ("Document Requests"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Document Requests 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 Document Requests 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 Document Requests 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 Document Requests 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 Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

4. Defendants reserve their right to amend their responses to these Document Requests.

5. Defendants deny all allegations or statements in the Document Requests, except as expressly admitted below.

6. These "General Objections" are applicable to and incorporated in each of Defendants' responses to the Document Requests. Moreover, Defendants' responses are made subject to and without waiving these objections. Failing to state a specific objection to a particular Document Request 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 Document Requests 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.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified in response to any of the Interrogatories or Requests for Admission.

RESPONSE: Objection. Defendants object that this request seeks documents 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 request seeks confidential and proprietary information. Subject to and without waiving these objections and subject to an agreed-upon protective order, Defendants will produce responsive, non-privileged documents.

2. All documents pertaining to "the $50 payment" as defined in Request for Admission No. 3.

RESPONSE: Objection. Defendants object that this request seeks documents 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 request seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients. Subject to and without waiving these objections and subject to an agreed-upon protective order, Defendants will produce responsive, non-privileged documents.

3. All Settlement Memoranda for all KNR clients reflecting a paid fee to MRS Investigations, Inc., AMC Investigations, Inc., or any other similar corporation or individual, as identified in your response to Interrogatory No. 8. All privileged information should be redacted, which does not include the name of the corporation or individual receiving the fee, the amount of the fee charged, and the date of the Settlement Memorandum.

RESPONSE: Objection. Defendants object that this request seeks documents 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 information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents dating back over nine years and requires the review of thousands of files.

4. All documents reflecting payments identified in your response to Interrogatory No. 11.

RESPONSE: Objection. Defendants object that this request seeks documents 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 request seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. In addition, Defendants object that this request seeks confidential and proprietary information. Defendants also object that this request is overly broad and unduly burdensome in that it seeks documents dating back to late 2008 to early 2009 would require the review of thousands of files.

5. All contracts or agreements between any Defendant and any corporation or individual identified in your response to Interrogatory No. 8.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is

not likely to lead to the discovery of admissible evidence. Defendants further object that this request seeks confidential and proprietary information. Subject to and without waiving these objections and subject to an agreed-upon protective order, there are no responsive documents.

6. If any of the individuals identified in your response to Interrogatory No. 8 are or were employees of any Defendant, produce all employment agreements, written job descriptions for each employee, and all other documents relating to or reflecting the employee's job description.

RESPONSE: Objection. Defendants object that this request seeks confidential and proprietary information. Subject to and without waiving this objection, there are no responsive documents.

7. All documents pertaining to KNR's representation of Plaintiff Member Williams, including Plaintiff's complete KNR client file, and all documents pertaining to the services performed on Plaintiff's behalf by MRS Investigations, Inc., as identified in your response to Interrogatory No. 2.

RESPONSE: Objection. Defendants object that this request seeks documents that may be subject to 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. Defendants further object that this request seeks confidential and proprietary information. Subject to and without waiving these objections and subject to an agreed-upon protective order, Defendants will produce responsive documents.

8. All documents pertaining to KNR's policy of 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 "policy," "services," and "similar to" are vague, ambiguous, and undefined. Defendants further object that this request seeks confidential and proprietary information. Finally, this request is overly broad and unduly burdensome in that it seeks all documents relating to investigations dating back to late 2008 or early 2009. Subject to and without waiving these objections and subject to an agreed-upon protective order, there are no responsive documents.

9. All documents reflecting questions or complaints identified in your responses to Interrogatory Nos. 20 and 21.

RESPONSE: Objection. Defendants object that the terms "questions," "complaints," and "charges" are vague, ambiguous, and undefined. Defendants also object that this request 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 request is overly broad and unduly burdensome in that it seeks documents dating back to December, 2004. In addition, Defendants object that this request 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. Furthermore, Defendants object that this request seeks confidential and proprietary information. Finally, Defendants object that this request seeks certain information that is available to the public and Plaintiff to the extent it seeks information relating to alleged lawsuits

against Defendants. Subject to and without waiving these objections, Defendants state that there are no responsive documents.

10. All documents reflecting or relating to document retention policies employed by KNR since the firm's founding in 2005.

RESPONSE: Objection. Defendants object that the term “document retention policies” is vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state that KNR maintains its documents in accordance with its ethical obligations.

11. If your response to any Request for Admission is anything but an unqualified admission, produce all documents supporting or relating to the basis for your qualification or denial of each such request.

RESPONSE: Objection. Defendants object that this request seeks documents 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 request seeks confidential and proprietary information. Subject to and without waiving these objections and subject to an agreed-upon protective order, Defendants will produce responsive, non-privileged documents.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Amended Responses to Plaintiff's First Set of Requests for Production of Documents to All Defendants was sent this 15th day of August, 2017 to the following via electronic and Regular U.S. Mail:

Subodh Chandra
Donald Screen
Peter Pattakos
The Chandra Law Firm, LLC
1265 E. 6th Street, Suite 400
Cleveland, Ohio 44113
subodh.chandra@chandralaw.com
donald.screen@chandralaw.com
peter.pattakos@chandralaw.com

Counsel for Plaintiff

/s/ Brian E. Roof
Brian E. Roof (0071451)