

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge Patricia A. Cosgrove</p> <p><b>Plaintiffs' Motion To Compel Discovery from KNR "investigators" Aaron Czetli, AMC Investigations, Inc., Eduardo Mateo, Gary Monto, and Dennis Rees</b></p>
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### I. Introduction

Plaintiffs properly served third-party subpoenas under Civ.R. 45(A) to four of the so-called "investigators" that worked directly for or on behalf of the KNR Defendants, and for whose "investigative" work a \$50 to \$150 fee was deducted from every KNR client's settlement (including Named Plaintiff Member Williams's). The subpoenas (attached as **Exhibit 1**) sought specific, relevant information related to the investigators' relationships with KNR that would allow Plaintiffs to assess whether the fee was legitimately charged to KNR clients as a separate expense.

The investigators' response to these subpoenas has been one of complete and apparently coordinated obstruction. The investigators have engaged the same legal counsel, have objected to the subpoenas on the same meritless grounds, have ignored Plaintiffs' responses to their initial objections, and in fact, have collectively produced *nothing* in response to the subpoenas.

Accordingly, Plaintiffs respectfully request that the Court issue an order under Civ. R. 45(C)(2)(b) compelling the investigators (Aaron Czetli/AMC Investigations, Inc., Eduardo Mateo, Gary Monto, and Dennis Rees) to comply with the subpoenas within fourteen days of the date that the Court grants Plaintiffs' motion, and appear for depositions at times mutually agreed upon by the

parties and investigators or at the Court's discretion. Because the investigators lack an adequate excuse for their failure to comply with Plaintiffs' subpoenas, Plaintiffs' further request that the Court hold them responsible for Plaintiffs' attorneys' fees incurred in connection with this motion, under Civ.R. 45(E).

**II. 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.**

Named Plaintiff Member Williams's putative class-action claim 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, the KNR 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!!!!!!!" Third Amended Complaint ("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.<sup>1</sup> 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 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

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<sup>1</sup> Defendants have submitted a proposed Joint Stipulation which 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."

all of the former KNR clients who were charged the investigation fee are entitled to reimbursement of the fee from the KNR Defendants.

### III. Law and Argument

#### A. Civ.R. 45 standard of review

The management of discovery lies within the sound discretion of the trial court. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973), paragraph one of the syllabus. “[C]ourts have broad discretion over discovery matters.” *McDade v. Morris*, 9th Dist. Summit No. 27454, 2015-Ohio-4670, ¶ 8 (citing *State ex rel. Citizens for Open, Responsive & Accountable Gov’t v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, ¶ 18, 876 N.E.2d 913). Rule 45 of the Civil Rules provides the means by which a party may seek discovery from third parties by subpoena. *See* Civ.R. 45 et seq. Upon objection by the party commanded to produce information, the party serving the subpoena may move at any time for an order to compel the production. Civ.R. 45(C)(2)(b).

A party may not choose to simply disobey a properly issued subpoena. For example, it is not an adequate response to a subpoena for a party to assert, without sufficient justification, burden for its reasons for noncompliance. It is the party’s burden who asserts an objection to establish that the subpoena subjected it to undue burden. *McDade*, 9th Dist. Summit No. 27454, 2015-Ohio-4670, ¶ 11 (citations omitted). In addition, the party issuing the subpoena may recover expenses and costs as sanctions against party who frivolously resists such discovery. Civ.R. 45(E).

#### B. The investigators have improperly objected to providing *any* responsive materials.

Three of the served investigators, Aaron Czetli (along with AMC Investigations LLC) (served on November 13, 2017), Eduardo Mateo, and Gary Monto (served on December 1, 2017), have objected to providing *any* information in response to Plaintiffs’ subpoenas for information related to their arrangements with KNR and their investigative (or other) services rendered to KNR. The requested information relates directly to Plaintiffs’ claims that KNR wrongly charged such

“investigative fees” to clients under false and unlawful pretenses. These investigators are all represented by the same legal counsel and their objections are identical and baseless. *See* Stephen Griffin letter to Peter Pattakos, Nov. 13, 2017, and Pattakos letter to Griffin, Nov. 17, 2017, attached as **Exhibits 2** and **3**. The investigators have no legitimate reason for their refusal to provide a single document that Plaintiffs requested or to obstruct discovery in the manner they have chosen to proceed, which is unfortunately consistent with the KNR Defendants’ extremely obstructive discovery tactics. *See* Plaintiffs’ Motion to Compel Discovery from the KNR Defendants, Feb. 28, 2018.

The fourth served investigator, Dennis Rees, has not responded or objected in any way to Plaintiffs’ subpoena served on him December 1, 2017. Accordingly, as explained in further detail below, the Court should grant Plaintiff’s Motion to Compel all of the investigators to adequately respond and produce the materials that have been requested.

**C. Plaintiffs are entitled to discovery of all the information they requested from the investigators.**

Plaintiffs served subpoenas to the investigators with 24 requests seeking the following relevant information:

1. Customers of the investigators’ apart from Defendants and their clients,
2. Proportion of revenue apart from their work for Defendants,
3. Correspondence with KNR regarding billing, payment, invoices or services provided,
4. Documents reflecting any non-cash compensation received from KNR (insurance benefits, retirement benefits, in-kind services, technology provided, vehicle allowance),
5. Documentation as to what was done to earn the investigation fee with respect to the named plaintiffs identified in the Complaint,
6. All documents reflecting any Defendants’ process or policies for selecting the investigators,
7. Documents reflecting the investigators’ efforts to solicit or obtain business from or through any of the Defendants,
8. Documents reflecting any Defendants’ efforts to solicit or obtain services from the investigators,
9. Documents reflecting efforts by any Defendant to ensure that the investigators were providing the most competitive terms and most reliable service,

10. Written agreements between the investigators and any Defendant and all documents relating to the negotiation or maintenance of any such agreements,
11. Documents showing that the investigators performed services for any Defendant apart from investigative services,
12. Documents containing a description of the work performed by the investigators for any Defendant,
13. Communications by the investigators directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit,
14. Communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit,
15. Documents reflecting the expertise of the investigators' staff in conducting investigations, including any accreditations or relevant training,
16. All 1099s, W-2s, W-9s, K-1s, or any other tax forms the investigators received from any Defendant,
17. Documents reflecting any payments made to the investigators by any Defendant that were not reflected on a tax form,
18. Documents reflecting the total amount of fees, revenues, or payments the investigators collected from any Defendant on a monthly or yearly basis,
19. Documents reflecting overhead expenses associated with the investigators' operations,
20. Tax returns for the investigators since 2011,
21. Documents reflecting payments made by KNR to the investigators personally as opposed to business related,
22. Documents reflecting the rates the investigators charged other customers for services similar or identical to those services they provided KNR,
23. Documents in which it is claimed or asserted that the investigators are or are not employees of KNR or any Defendant,
24. Documents in which it is claimed or asserted that the investigators are or are not controlled by KNR or any Defendant.

Each of these requests seek information relevant to and probative of an assessment as to whether KNR improperly double-billed for regular overhead expenses in charging the "investigation fee" to its clients. Plaintiffs are entitled to such information to the extent that the investigators possess it.

**D. Investigators Czetli, Mateo, and Monto's objections are improper and without merit.**

1. **The investigators improperly claim that they do not have an obligation to produce documents that "belong" to KNR and may be in KNR's possession.**

In their effort to avoid compliance with the subpoenas, the investigators claim that they are

not obligated to provide documents that “might belong to third parties.” **Ex. 1**, Nov. 13 Griffin letter at 1. Yet, it is notable that the investigators do not claim that they do not *possess* such documents; instead, they take the position that they “cannot and will not produce documents belonging to third parties” such as KNR. Griffin emails to Pattakos, Nov. 25, 2017, and Nov. 26, 2017 attached as **Exhibits 4** and **5**.

Plaintiffs are not asking for the investigators to produce any documents that are not within their possession or control. The mere fact, though, that documents reference or relate to KNR, involve the investigators’ dealings with KNR, were generated by KNR, or may have been sent by or to KNR does not mean they should not be produced if they remain in the custody or control of the investigators. Plaintiffs seek documents in the investigators’ possession related to KNR (regardless if it is a “KNR document”). It is not a proper objection to refuse to produce responsive documents on the grounds that the documents “belong” to someone else if the documents are in the investigators’ possession and are not otherwise protected from discovery. Any documents and materials withheld on such grounds should be produced.

**2. The investigators improperly assert confidentiality in an effort to justify their failure to comply with the subpoenas.**

The gist of the investigators objections based on confidentiality or privacy is twofold: (1) that the information is private personal financial information; and (2) that the subpoenas seek trade secrets. **Ex. 2**, Nov. 13 Griffin letter, at 2.

First, Plaintiffs are entitled to discover evidence relevant to their claims of improper charges of investigative fees by KNR which is directly related to the compensation that the investigators received from KNR, including on what terms, for what services, when and in what form they received compensation. Such information goes to the core of Plaintiffs’ claims. Indeed, cases involving discovery of tax returns and private financial information hold that production of those

documents will be compelled over objection where they are relevant to the subject matter of the action and there is a compelling need for the information. *Hudson v. United Servs. Auto Assn. Ins. Co.*, 150 Ohio Misc.2d 23, 2008-Ohio-7084, 902 N.E.2d 101 (Greene Cty. C.P.) (citation omitted).

Second, the investigators' broad and unsubstantiated refusal to produce documents that they claim constitute "trade secrets" and "confidential" is neither sufficient nor justified by the law. Courts have repeatedly held 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, "[t]he burden to demonstrate that the requested information contains trade secrets is on the party asserting trade secret status." *Mulkerin v. Cho*, 9th Dist. Medina No. 07CA007-M, 2007-Ohio-6550, ¶6. "An entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy." See *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 181, 1999-Ohio-260, 707 N.E.2d 853.

Unsupported assertions that documents are trade secrets are insufficient, as are self-serving affidavits absent actual evidence. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 400, 2000-Ohio-207, 732 N.E.2d 373 (a conclusory statement in an affidavit is insufficient to establish a document as a trade secret). The investigators have neither produced nor referred to any evidence that would suggest that any responsive documents in their possession are trade secrets protected by Ohio law.

Finally, under Ohio law, entry of a protective order is the appropriate remedy when issues arise regarding confidential or proprietary information. *Tesseron, Ltd. v. R.R. Donnelley & Sons Co.*, 2007 U.S. Dist. LEXIS 49728, \*13, 2007 WL 2034286 (N.D. Ohio 2007) ("the appropriate remedy



to a Parties' desire to keep their confidential and and proprietary information safe is a protective order.”). Even if the investigators could show that any of their documents could legitimately be considered confidential and proprietary, Plaintiffs have offered to consider the application of a protective order to this information and this offer has thus far gone ignored. **Ex. 3**, Nov. 17 Pattakos letter, at 3.

Thus, the investigators should be required to establish such protections under the law, or produce the information sought in the subpoenas.

**3. There is no undue burden for the investigators to comply with the subpoenas.**

Without further explanation, the investigators object to producing materials because doing so would be “unnecessarily and unduly burdensome.” **Ex. 2**, Nov. 13 Griffin letter, at 2. Such a generalized claim necessarily lacks merit. The fact that responding to a subpoena is inconvenient does not render it unduly burdensome as the investigators suggest. “The burden to establish that a subpoena duces tecum is unreasonable or oppressive is on the person who seeks to have it quashed. He cannot rely on a mere assertion that compliance would be burdensome and onerous without showing the manner and extent of the burden and the injurious consequences of compliance.” 9 *Wright & Miller*, Section 2457, p.435; *Goodman v. United States*, 369 F.2d 166, 169 (9th Cir. 1966). Further, even “[w]here 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. The court is given an effective technique in the authorization to require the subpoenaing party to advance the cost of producing the items as a condition of allowance of the subpoena.” *First Bank of Marietta v. Mitchell*, 4th Dist. Washington Nos. 82x5, 82x14, 1983 Ohio App. LEXIS 13535, at \*50 (Nov. 28, 1983) (citing Anderson’s Ohio Practice, Section 179.11).

In recognition of the potential concern for the time and expense of producing the materials requested, Plaintiffs have explicitly offered to discuss search criteria or methodologies that might lessen the burden of the review and production on the investigators. **Ex. 3**, Nov. 17 Pattakos letter, at 3. If burden were a legitimate concern, one would expect the investigators to respond to Plaintiffs' offer to compromise. They have not.

**4. The investigators wrongly claim they possess no responsive materials that are not confidential or privileged.**

In the face of their refusal to produce any materials based on their numerous, unfounded objections, the investigators ultimately claim they do not possess *any* responsive documents that are not privileged or confidential. *See Ex. 2*, Nov. 13 Griffin letter, at 3; **Ex. 4**, Nov. 25 Griffin email, at 1; and **Ex. 5**, Nov. 26 Griffin email, at 1. Yet, the investigators have not produced a privilege log pursuant to Civ.R. 45(D)(4) to facilitate a cooperative discussion about the information they are withholding. In the spirit of cooperation, Plaintiffs have suggested entering into a protective order (*see Ex. 3*, Nov. 17 Pattakos letter, at 3)—the appropriate remedy for the exchange of genuinely confidential and privileged information. *See Tesson, Ltd. v. R.R. Donnelley & Sons Co.*, 2007 U.S. Dist. LEXIS 49728, \*13, 2007 WL 2034286 (N.D. Ohio 2007) (“the appropriate remedy to a Parties’ desire to keep their confidential and proprietary information safe is a protective order.”). Again, however, despite Plaintiffs attempts to resolve these issues, the investigators have failed to respond in any meaningful way. *See* Pattakos letter to Griffin, Dec. 1, 2017, attached as **Exhibit 6**; Pattakos email to Griffin, Jan. 16, 2018, attached as **Exhibit 7**.

**C. Investigator Rees has failed to respond or object in any way.**

Under Civ.R. 45(E), the “[f]ailure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.” Investigator Rees has neither objected nor responded in any manner to the

subpoena served on December 1, 2017. Accordingly, Plaintiffs' respectfully move the Court for an Order compelling Investigator Rees to properly respond and/or object to the subpoena, or in the alternative, and Order requiring Investigator Rees to provide a showing to the Court of just cause why he should not be held in contempt under Civ.R. 45(E).

### III. Conclusion

The investigators have refused to cooperate in any way with their obligations to produce responsive materials to which Plaintiffs are entitled through subpoenas under Civ.R. 45. Their obstructionist conduct is especially concerning given the KNR Defendants' similar posture (*see* Plaintiffs' Motion to Compel Discovery from the KNR Defendants, Feb. 28, 2018), and the claim that the investigators operate independently from KNR. Based on the foregoing, Plaintiffs respectfully request an Order compelling the investigators to properly comply with the subpoenas and produce all responsive documents in their possession. Finally, because the investigators lack an adequate excuse for their failure to properly respond to Plaintiffs' subpoenas, Plaintiffs request that the Court award attorney fees for the preparation of this Motion under Civ.R. 45(E) and any other relief that the Court deems appropriate.

Respectfully submitted,

/s/ Peter Pattakos

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### CERTIFICATE OF SERVICE

The foregoing document was served on counsel of record for all parties by operation of the Court's e-filing system, and by email and regular mail to Stephen P. Griffin, 4051 Whipple Ave. NW, Suite 201, Canton, Ohio 44718, sgriffin@griff-law.com, on March 1, 2018.

*/s/ Peter Pattakos*  
*Attorney for Plaintiffs*

SUBPOENA  
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, et al.,

ADDRESS: The Pattakos Law Firm  
101 Ghent Road  
Fairlawn, OH 44333  
peter@pattakoslaw.com

Defendants.

SUPREME CT. NO. 0082884

TO: AARON CZETLI AND  
AMC INVESTIGATIONS LLC  
1679 23RD ST  
CUYAHOGA FALLS, OH 44223

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE DOCUMENTS AND ELECTRONICALLY STORED INFORMATION IDENTIFIED IN THE ATTACHED EXHIBIT 1 IN ACCORDANCE WITH THE INSTRUCTIONS THEREIN ON OR BEFORE November 21, 2017 AND

XX. ATTEND AND GIVE TESTIMONY AT A DEPOSITION ON February 22, 2017, or on another mutually convenient date, at 9:00 AM

AT THE OFFICES OF:

COHEN, ROSENTHAL, & KRAMER  
700 W. SAINT CLAIR AVE., #400  
CLEVELAND, OH 44113

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 2nd DAY OF NOVEMBER, 2017



Attorney Peter Pattakos

## RETURN OF SERVICE

Received this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ M. and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_, I served the same upon \_\_\_\_\_ by delivering to \_\_\_\_\_

Personally or Residential a true copy of this subpoena.

\_\_\_\_\_  
 Sheriff-Attorney-Process Server-  
 Notary

Mileage: \_\_\_\_\_ miles @ \_\_\_\_\_ : TOTAL \$ \_\_\_\_\_

## PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

2. (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv) or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by CIV R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; subjects a person to undue burden.

4. Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

5. If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

## DUTIES IN RESPONDING TO SUBPOENAS:

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information responding is ordinarily maintained if that form is reasonable useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
3. A person 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 person 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. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for discovery of the electronically stored information.

4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

## EXHIBIT 1

### INSTRUCTIONS

- A. Definitions. In answering each request, use the following definitions:
1. The word “person” means any natural person, firm, partnership, association, corporation, whether public or private, governmental agency or entity, joint venture, or any other form of business entity.
  2. “You,” “Your” and “AMC” refer to the recipient of this subpoena, AMC Investigations LLC and its principal, Aaron Czetli, when acting on the behalf of AMC.
  3. “KNR” refers to Defendant, Kisling, Nestico & Redick, LLC.
  4. The term “Complaint” refers to the operative complaint filed in the above-captioned matter.
  5. The terms “Defendant” or “Defendants” refers to the Defendants in the above-captioned matter.
  6. The term “document” or “documents” means the original and a copy, regardless of origin or location, of any writing or records of any type or description, whether official or unofficial, including, but not limited to, the original and any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, inter- or intra-office communication, handwritten or other note, working paper, publication, permit, ledger and/or journal, whether general or special, chart, paper, graph, survey, index tape, disk, data sheet or data-processing card, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which Defendant had access or now has access. “Document” or “documents” also includes any magnetically, mechanically, and/or electronically stored, maintained, and/or recorded data, whether the data consists of words, symbols, numbers, graphs, or other matters, including but not limited to **email and text messages**.
  7. “Identify” means, with respect to any individual person, that the answer shall state, to the extent known, the person’s name, sex, approximate age, present home address, present home telephone number, present business address, present business telephone number, present employer, present title, present job description, salary grade, roll group, and relationship to Defendant, if any. If Defendant does not know the person’s present home address, he shall so state and list the person’s last-known home address. If Defendant does not know the person’s name, he shall so state and provide a physical description of the person, including describing the clothing the person was wearing at the time of the events charged in the Complaint. “Identify” means, with respect to a communication, the place of the communication, the date and time of the



communication, the participants in the communication, and the substance of the communication.

8. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

9. The term "current" means as of the date of service of these requests for production and "concerning" or "regarding" and their cognates mean "in whole or in part."

10. "Any" includes the word "all," and "all" includes the word "any."

11. "Relate to" and "relating to" mean regarding, concerning, containing, consisting of, referring to, reflecting, supporting, demonstrating, showing, identifying, mentioning, contradicting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing, constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed.

B. These requests shall be deemed continuing in nature and are to be supplemented as additional information or documents pertinent to any interrogatory is obtained or created, including, but not limited to, additional information that adds to a previous answer, corrects a previous answer, and/or clarifies a previous answer.

C. Privileges

1. For each request you refuse to answer on grounds of privilege, state:

- a. The specific privilege asserted;
- b. The basis for the privilege; and
- c. The identity of the documents and/or information claimed to be privileged.

D. Information requested is any and all information within your knowledge or that of your agents, employees, attorneys, representatives, and/or assigns.

#### REQUESTS

Provide the following documents in accordance with the instructions above.

1. Any list of current or past AMC customers.
2. Documentation sufficient to show what portion of Your revenue comes from Defendants and to identify all other sources of revenue for AMC and Aaron Czetli apart from their work for Defendants.
3. All correspondence with KNR regarding billing, payment, invoices or services provided.
4. Any documents reflecting any non-cash compensation received by Aaron Czetli or AMC Investigations from KNR (insurance benefits, retirement benefits, in-kind services, technology provided, vehicle allowance,

5. Any documentation as to what was done to earn the investigation fee You charged KNR with respect to the named plaintiffs identified in the Complaint.
6. All documents reflecting any Defendants' process or policies for selecting AMC or Aaron Czetli to perform services for any of Defendants' clients.
7. All documents reflecting Czetli's or AMC's efforts to solicit or obtain business from or through any of the Defendants.
8. All documents reflecting any Defendants' efforts to solicit or obtain services from Czetli or AMC.
9. All documents reflecting efforts by any Defendant to ensure that Czetli and AMC were providing the most competitive terms and most reliable service.
10. Any written agreements between Aaron Czetli or AMC and any Defendant and all documents relating to the negotiation or maintenance of any such agreements whether written or otherwise.
11. Any documents showing that Czetli or AMC performed services for any Defendant apart from investigative services.
12. Any documents containing a description of the work performed by Czetli or AMC for any Defendant.
13. All communications by Aaron Czetli or AMC Investigations directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit.
14. All communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit.
15. All documents reflecting the expertise of Your staff in conducting investigations, including any accreditations or relevant training.
16. All 1099s, W-2s, W-9s, K-1s, or any other tax forms You received from any Defendant.
17. Documents reflecting any payments made to AMC or Czetli by any Defendant that were not reflected on a tax form.
18. All documents reflecting the total amount of fees, revenues, or payments AMC or Czetli collected from any Defendant on a monthly or yearly basis.
19. Any documents reflecting overhead expenses associated with the operation of AMC.
20. Tax returns for Czetli and AMC since 2011, including all relevant forms, attachments, and schedules.
21. Any documents reflecting payments made by KNR to Aaron Czetli (in his personal capacity) rather than to AMC.
22. Any documents reflecting the rates AMC charges other customers for services similar or identical to those services they provide KNR.

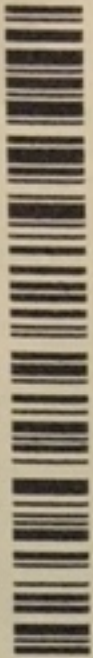
23. Any documents in which it is claimed or asserted that Aaron Czetli is or is not an employee of KNR or any Defendant.
24. Any documents in which it is claimed or asserted that AMC is or is not controlled by KNR or any Defendant.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Aaron Czetti  
 AMC Investigations  
 1679 23d St.  
 Cayahoga Falls OH 44223*



9590 9403 0176 5120 6988 46

2. Article Number (Transfer from service label)

7015 1520 0001 5321 1015

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*X* *Marcus Czetti*  Agent  Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

SUBPOENA  
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, et al.,

ADDRESS: The Pattakos Law Firm  
101 Ghent Road  
Fairlawn, OH 44333  
peter@pattakoslaw.com

Defendants.

SUPREME CT. NO. 0082884

TO: GARY MONTO  
3442 PICKLE RD  
OREGON, OH 43616

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE DOCUMENTS AND ELECTRONICALLY STORED INFORMATION IDENTIFIED IN THE ATTACHED EXHIBIT 1 IN ACCORDANCE WITH THE INSTRUCTIONS THEREIN ON OR BEFORE December 4, 2017 AND

XX. ATTEND AND GIVE TESTIMONY AT A DEPOSITION ON February 8, 2017, or on another mutually convenient date, at 9:00 AM

AT THE OFFICES OF:

COHEN, ROSENTHAL, & KRAMER  
700 W. SAINT CLAIR AVE., #400  
CLEVELAND, OH 44113

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 9th DAY OF NOVEMBER, 2017



Attorney Peter Pattakos

RETURN OF SERVICE

Received this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_M. and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_, I served the same upon \_\_\_\_\_ by delivering to \_\_\_\_\_

Personally or Residential a true copy of this subpoena.

\_\_\_\_\_  
Notary Sheriff-Attorney-Process Server-

Mileage: \_\_\_\_\_ miles@ \_\_\_\_\_ : TOTAL \$ \_\_\_\_\_

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

2. (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv) or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by CIV R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; subjects a person to undue burden.

4. Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

5. If a motion is made under division(C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

DUTIES IN RESPONDING TO SUBPOENAS:

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information responding is ordinarily maintained if that form is reasonable useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

3. A person 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 person 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. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for discovery of the electronically stored information.

4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

## EXHIBIT 1

### INSTRUCTIONS

- A. Definitions. In answering each request, use the following definitions:
1. The word “person” means any natural person, firm, partnership, association, corporation, whether public or private, governmental agency or entity, joint venture, or any other form of business entity.
  2. “You,” “Your,” and “Gary Monto” refer to the recipient of this subpoena, Gary Monto, and any business, entity or nonprofit through which Gary Monto performed services for any of the Defendants.
  3. “KNR” refers to Defendant, Kisling, Nestico & Redick, LLC.
  4. The term “Complaint” refers to the operative complaint filed in the above-captioned matter.
  5. The terms “Defendant” or “Defendants” refers to the Defendants in the above-captioned matter.
  6. The term “document” or “documents” means the original and a copy, regardless of origin or location, of any writing or records of any type or description, whether official or unofficial, including, but not limited to, the original and any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, inter- or intra-office communication, handwritten or other note, working paper, publication, permit, ledger and/or journal, whether general or special, chart, paper, graph, survey, index tape, disk, data sheet or data-processing card, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which Defendant had access or now has access. “Document” or “documents” also includes any magnetically, mechanically, and/or electronically stored, maintained, and/or recorded data, whether the data consists of words, symbols, numbers, graphs, or other matters, including but not limited to **email and text messages**.
  7. “Identify” means, with respect to any individual person, that the answer shall state, to the extent known, the person’s name, sex, approximate age, present home address, present home telephone number, present business address, present business telephone number, present employer, present title, present job description, salary grade, roll group, and relationship to Defendant, if any. If Defendant does not know the person’s present home address, he shall so state and list the person’s last-known home address. If Defendant does not know the person’s name, he shall so state and provide a physical description of the person, including describing the clothing the person was wearing at the time of the events charged in the Complaint. “Identify” means, with respect to a communication, the place of the communication, the date and time of the



communication, the participants in the communication, and the substance of the communication.

8. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

9. The term "current" means as of the date of service of these requests for production and "concerning" or "regarding" and their cognates mean "in whole or in part."

10. "Any" includes the word "all," and "all" includes the word "any."

11. "Relate to" and "relating to" mean regarding, concerning, containing, consisting of, referring to, reflecting, supporting, demonstrating, showing, identifying, mentioning, contradicting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing, constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed.

B. These requests shall be deemed continuing in nature and are to be supplemented as additional information or documents pertinent to any interrogatory is obtained or created, including, but not limited to, additional information that adds to a previous answer, corrects a previous answer, and/or clarifies a previous answer.

C. Privileges

1. For each request you refuse to answer on grounds of privilege, state:

- a. The specific privilege asserted;
- b. The basis for the privilege; and
- c. The identity of the documents and/or information claimed to be privileged.

D. Information requested is any and all information within your knowledge or that of your agents, employees, attorneys, representatives, and/or assigns.

#### REQUESTS

Provide the following documents in accordance with the instructions above.

1. Any list of Your current or past customers for investigative services.
2. Documentation sufficient to show what portion of Your revenue comes from Defendants and to identify all other sources of revenue for You.
3. All correspondence with KNR regarding billing, payment, invoices or services provided.
4. Any documents reflecting any non-cash compensation received by You from the Defendants.
5. All documents reflecting any Defendants' process or policies for selecting Gary Monto to perform services for any of Defendants' clients.

6. All documents reflecting Your efforts to solicit or obtain business from or through any of the Defendants.
7. All documents reflecting any Defendants' efforts to solicit or obtain services from You.
8. All documents reflecting efforts by any Defendant to ensure that You were providing the most competitive terms and most reliable service.
9. Any written agreements between You and any Defendant and all documents relating to the negotiation or maintenance of any such agreements whether written or otherwise.
10. Any documents showing that You performed services for any Defendant apart from investigative services.
11. Any documents containing a description of the work performed by You for any Defendant.
12. All communications by You directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit.
13. All communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit.
14. All documents reflecting the expertise of Your staff in conducting investigations, including any accreditations or relevant training.
15. All 1099s, W-2s, W-9s, K-1s, or any other tax forms You received from any Defendant.
16. Documents reflecting any payments made to You by any Defendant that were not reflected on a tax form.
17. All documents reflecting the total amount of fees, revenues, or payments You collected from any Defendant on a monthly or yearly basis.
18. Any documents reflecting overhead expenses associated with Your operations.
19. Your tax returns since 2011, including all relevant forms, attachments, and schedules.
20. Any documents reflecting payments made by KNR to Gary Monto (in his personal capacity).
21. Any documents reflecting the rates You charge other customers for services similar or identical to those services they provide KNR.
22. Any documents in which it is claimed or asserted that or considered whether You are or are not an employee of KNR or any Defendant.
23. Any documents in which it is claimed or asserted that or considered whether You are or are not controlled by KNR or any Defendant.

SUBPOENA  
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, et al.,

ADDRESS: The Pattakos Law Firm  
101 Ghent Road  
Fairlawn, OH 44333  
peter@pattakoslaw.com  
330.836.8533

Defendants.

SUPREME CT. NO. 0082884

TO: EDUARDO MATEO  
8534 CHERRY HILL PLACE  
YOUNGSTOWN, OH 44514

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE DOCUMENTS AND ELECTRONICALLY STORED INFORMATION IDENTIFIED IN THE ATTACHED EXHIBIT 1 IN ACCORDANCE WITH THE INSTRUCTIONS THEREIN ON OR BEFORE December 4, 2017 AND

XX. ATTEND AND GIVE TESTIMONY AT A DEPOSITION ON February 5, 2018, or on another mutually convenient date, at 9:00 AM

AT THE OFFICES OF:

COHEN, ROSENTHAL, & KRAMER  
700 W. SAINT CLAIR AVE., #400  
CLEVELAND, OH 44113

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 9th DAY OF NOVEMBER, 2017



Attorney Peter Pattakos

## RETURN OF SERVICE

Received this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ M. and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_, I served the same upon \_\_\_\_\_ by delivering to \_\_\_\_\_

Personally or Residential a true copy of this subpoena.

\_\_\_\_\_  
 Sheriff-Attorney-Process Server-  
 Notary

Mileage: \_\_\_\_\_ miles @ \_\_\_\_\_ : TOTAL \$ \_\_\_\_\_

## PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

2. (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv) or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by CIV R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; subjects a person to undue burden.

4. Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

5. If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

## DUTIES IN RESPONDING TO SUBPOENAS:

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information responding is ordinarily maintained if that form is reasonable useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
3. A person 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 person 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. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for discovery of the electronically stored information.

4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

## EXHIBIT 1

### INSTRUCTIONS

- A. Definitions. In answering each request, use the following definitions:
1. The word “person” means any natural person, firm, partnership, association, corporation, whether public or private, governmental agency or entity, joint venture, or any other form of business entity.
  2. “You,” “Your,” and “Eduardo Mateo” refer to the recipient of this subpoena, Eduardo Mateo, and any business, entity or nonprofit through which Eduardo Mateo performed services for any of the Defendants.
  3. “KNR” refers to Defendant, Kisling, Nestico & Redick, LLC.
  4. The term “Complaint” refers to the operative complaint filed in the above-captioned matter.
  5. The terms “Defendant” or “Defendants” refers to the Defendants in the above-captioned matter.
  6. The term “document” or “documents” means the original and a copy, regardless of origin or location, of any writing or records of any type or description, whether official or unofficial, including, but not limited to, the original and any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, inter- or intra-office communication, handwritten or other note, working paper, publication, permit, ledger and/or journal, whether general or special, chart, paper, graph, survey, index tape, disk, data sheet or data-processing card, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which Defendant had access or now has access. “Document” or “documents” also includes any magnetically, mechanically, and/or electronically stored, maintained, and/or recorded data, whether the data consists of words, symbols, numbers, graphs, or other matters, including but not limited to **email and text messages**.
  7. “Identify” means, with respect to any individual person, that the answer shall state, to the extent known, the person’s name, sex, approximate age, present home address, present home telephone number, present business address, present business telephone number, present employer, present title, present job description, salary grade, roll group, and relationship to Defendant, if any. If Defendant does not know the person’s present home address, he shall so state and list the person’s last-known home address. If Defendant does not know the person’s name, he shall so state and provide a physical description of the person, including describing the clothing the person was wearing at the time of the events charged in the Complaint. “Identify” means, with respect to a communication, the place of the communication, the date and time of the

communication, the participants in the communication, and the substance of the communication.

8. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

9. The term "current" means as of the date of service of these requests for production and "concerning" or "regarding" and their cognates mean "in whole or in part."

10. "Any" includes the word "all," and "all" includes the word "any."

11. "Relate to" and "relating to" mean regarding, concerning, containing, consisting of, referring to, reflecting, supporting, demonstrating, showing, identifying, mentioning, contradicting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing, constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed.

B. These requests shall be deemed continuing in nature and are to be supplemented as additional information or documents pertinent to any interrogatory is obtained or created, including, but not limited to, additional information that adds to a previous answer, corrects a previous answer, and/or clarifies a previous answer.

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1. For each request you refuse to answer on grounds of privilege, state:

- a. The specific privilege asserted;
- b. The basis for the privilege; and
- c. The identity of the documents and/or information claimed to be privileged.

D. Information requested is any and all information within your knowledge or that of your agents, employees, attorneys, representatives, and/or assigns.

#### REQUESTS

Provide the following documents in accordance with the instructions above.

1. Any list of Your current or past customers for investigative services.
2. Documentation sufficient to show what portion of Your revenue comes from Defendants and to identify all other sources of revenue for You apart from Your work for Defendants.
3. All correspondence with KNR regarding billing, payment, invoices or services provided.

4. Any documents reflecting any non-cash compensation received by Eduardo Mateo from KNR (insurance benefits, retirement benefits, in-kind services, technology provided, vehicle allowance, etc.).
5. Any documentation as to what was done to earn the investigation fee You charged KNR with respect to the named plaintiffs identified in the Complaint.
6. All documents reflecting any Defendants' process or policies for selecting You to perform services for any of Defendants' clients.
7. All documents reflecting Your efforts to solicit or obtain business from or through any of the Defendants.
8. All documents reflecting any Defendants' efforts to solicit or obtain services from You.
9. All documents reflecting efforts by any Defendant to ensure that You were providing the most competitive terms and most reliable service.
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11. Any documents showing that You performed services for any Defendant apart from investigative services.
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13. All communications by You directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit.
14. All communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit.
15. All documents reflecting the expertise of Your staff in conducting investigations, including any accreditations or relevant training.
16. All 1099s, W-2s, W-9s, K-1s, or any other tax forms You received from any Defendant.
17. Documents reflecting any payments made to You by any Defendant that were not reflected on a tax form.
18. All documents reflecting the total amount of fees, revenues, or payments You collected from any Defendant on a monthly or yearly basis.
19. Any documents reflecting overhead expenses associated with the operations of Eduardo Mateo.
20. Your tax returns for since 2011, including all relevant forms, attachments, and schedules.
21. Any documents reflecting payments made by KNR to Gary Mateo (in his personal capacity).



22. Any documents reflecting the rates You charge other customers for services similar or identical to those services You provide KNR.
23. Any documents in which it is claimed or asserted that or considered whether You are or are not an employee of KNR or any Defendant.
24. Any documents in which it is claimed or asserted that or considered whether You are or are not controlled by KNR or any Defendant.

SUBPOENA  
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, et al.,

ADDRESS: The Pattakos Law Firm  
101 Ghent Road  
Fairlawn, OH 44333  
peter@pattakoslaw.com  
330.836.8533

Defendants.

SUPREME CT. NO. 0082884

TO: DENNIS REES  
5221 GRANTS GROVE  
SOUTH LEBANON, OH 45065

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE DOCUMENTS AND ELECTRONICALLY STORED INFORMATION IDENTIFIED IN THE ATTACHED EXHIBIT 1 IN ACCORDANCE WITH THE INSTRUCTIONS THEREIN ON OR BEFORE December 4, 2017 AND

XX. ATTEND AND GIVE TESTIMONY AT A DEPOSITION ON February 9, 2017, or on another mutually convenient date, at 9:00 AM

AT THE OFFICES OF:

COHEN, ROSENTHAL, & KRAMER  
700 W. SAINT CLAIR AVE., #400  
CLEVELAND, OH 44113

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 9th DAY OF NOVEMBER, 2017



Attorney Peter Pattakos

## RETURN OF SERVICE

Received this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ M. and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_, I served the same upon \_\_\_\_\_ by delivering to \_\_\_\_\_

Personally or Residential a true copy of this subpoena.

\_\_\_\_\_  
 Sheriff-Attorney-Process Server-  
 Notary

Mileage: \_\_\_\_\_ miles @ \_\_\_\_\_ : TOTAL \$ \_\_\_\_\_

## PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

2. (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv) or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by CIV R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; subjects a person to undue burden.

4. Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

5. If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

## DUTIES IN RESPONDING TO SUBPOENAS:

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information responding is ordinarily maintained if that form is reasonable useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
3. A person 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 person 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. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for discovery of the electronically stored information.

4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

## EXHIBIT 1

### INSTRUCTIONS

- A. Definitions. In answering each request, use the following definitions:
1. The word “person” means any natural person, firm, partnership, association, corporation, whether public or private, governmental agency or entity, joint venture, or any other form of business entity.
  2. “You,” “Your,” and “Dennis Rees” refer to the recipient of this subpoena, Dennis Rees, and any business, entity or nonprofit through which Dennis Rees performed services for any of the Defendants.
  3. “KNR” refers to Defendant, Kisling, Nestico & Redick, LLC.
  4. The term “Complaint” refers to the operative complaint filed in the above-captioned matter.
  5. The terms “Defendant” or “Defendants” refers to the Defendants in the above-captioned matter.
  6. The term “document” or “documents” means the original and a copy, regardless of origin or location, of any writing or records of any type or description, whether official or unofficial, including, but not limited to, the original and any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, inter- or intra-office communication, handwritten or other note, working paper, publication, permit, ledger and/or journal, whether general or special, chart, paper, graph, survey, index tape, disk, data sheet or data-processing card, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which Defendant had access or now has access. “Document” or “documents” also includes any magnetically, mechanically, and/or electronically stored, maintained, and/or recorded data, whether the data consists of words, symbols, numbers, graphs, or other matters, including but not limited to **email and text messages**.
  7. “Identify” means, with respect to any individual person, that the answer shall state, to the extent known, the person’s name, sex, approximate age, present home address, present home telephone number, present business address, present business telephone number, present employer, present title, present job description, salary grade, roll group, and relationship to Defendant, if any. If Defendant does not know the person’s present home address, he shall so state and list the person’s last-known home address. If Defendant does not know the person’s name, he shall so state and provide a physical description of the person, including describing the clothing the person was wearing at the time of the events charged in the Complaint. “Identify” means, with respect to a communication, the place of the communication, the date and time of the

communication, the participants in the communication, and the substance of the communication.

8. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

9. The term "current" means as of the date of service of these requests for production and "concerning" or "regarding" and their cognates mean "in whole or in part."

10. "Any" includes the word "all," and "all" includes the word "any."

11. "Relate to" and "relating to" mean regarding, concerning, containing, consisting of, referring to, reflecting, supporting, demonstrating, showing, identifying, mentioning, contradicting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing, constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed.

B. These requests shall be deemed continuing in nature and are to be supplemented as additional information or documents pertinent to any interrogatory is obtained or created, including, but not limited to, additional information that adds to a previous answer, corrects a previous answer, and/or clarifies a previous answer.

C. Privileges

1. For each request you refuse to answer on grounds of privilege, state:

- a. The specific privilege asserted;
- b. The basis for the privilege; and
- c. The identity of the documents and/or information claimed to be privileged.

D. Information requested is any and all information within your knowledge or that of your agents, employees, attorneys, representatives, and/or assigns.

#### REQUESTS

Provide the following documents in accordance with the instructions above.

1. Any list of Your current or past customers for investigative services.
2. Documentation sufficient to show what portion of Your revenue comes from Defendants and to identify all other sources of revenue for You.
3. All correspondence with KNR regarding billing, payment, invoices or services provided.
4. Any documents reflecting any non-cash compensation received by You from the Defendants,
5. Any documentation as to what was done to earn the investigation fee You charged KNR with respect to the named plaintiffs identified in the Complaint.

6. All documents reflecting any Defendants' process or policies for selecting You to perform services for any of Defendants' clients.
7. All documents reflecting Your efforts to solicit or obtain business from or through any of the Defendants.
8. All documents reflecting any Defendants' efforts to solicit or obtain services from You.
9. All documents reflecting efforts by any Defendant to ensure that You were providing the most competitive terms and most reliable service.
10. Any written agreements between You and any Defendant and all documents relating to the negotiation or maintenance of any such agreements whether written or otherwise.
11. Any documents showing that You performed services for any Defendant apart from investigative services.
12. Any documents containing a description of the work You performed for any Defendant.
13. All communications by You directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit.
14. All communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit.
15. All documents reflecting the expertise of Your staff in conducting investigations, including any accreditations or relevant training.
16. All 1099s, W-2s, W-9s, K-1s, or any other tax forms You received from any Defendant.
17. Documents reflecting any payments made to You by any Defendant that were not reflected on a tax form.
18. All documents reflecting the total amount of fees, revenues, or payments You collected from any Defendant on a monthly or yearly basis.
19. Any documents reflecting overhead expenses associated with Your operations.
20. Tax returns for You since 2011, including all relevant forms, attachments, and schedules.
21. Any documents reflecting payments made by KNR to Dennis Rees (in his personal capacity).
22. Any documents reflecting the rates You charge other customers for services similar or identical to those services they provide KNR.
23. Any documents in which it is claimed or asserted that or considered whether You are or are not an employee of KNR or any Defendant.
24. Any documents in which it is claimed or asserted that or considered whether You are or are not controlled by KNR or any Defendant.



Stephen P. Griffin, Esq.

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Fax: 234-360-3329  
sgriffin@griff-law.com  
www.griff-law.com

4051 Whipple Ave NW  
Suite 201  
Canton, OH 44718

November 13, 2017

**Via Email** peter@pattakoslaw.com **and**  
**Regular Mail**

Peter Pattakos, Esq.  
101 Ghent Road  
Fairlawn, OH 44333

Re: *Member Williams v. Kisling, Nestico & Redick, LLC, et al.*  
Summit County Court of Common Pleas  
Case No. 2016-CV-09-3928  
Subpoena to Aaron Czetli and AMC Investigations LLC

Dear Attorney Pattakos:

I represent AMC Investigations LLC and Aaron Czetli (collectively, "AMC") and am in receipt of a subpoena plaintiff herein attempted to serve on AMC recently. AMC does not waive the requirements of service of any subpoena under Civ.R. 45. Further, pursuant to Civ.R. 45(C)(2)(b), please allow this letter to serve as formal notice of AMC's substantive Objections to the subpoena.

As an initial matter, no witness fee or mileage expenses were tendered with the subpoena. And yet, the subpoena commands AMC to appear at counsel's office in Cuyahoga County for a deposition. Please see Civ.R. 45(B). Moreover, to the extent the subpoena commands AMC to produce documents that might belong to third parties, such as Kisling, Nestico & Redick, LLC or others, AMC does not have any responsive documents. It is not clear why AMC has been directed to produce records or documents that belong to other entities.

Second, AMC objects to the "instructions" and "definitions" included in Exhibit 1 to the subpoena. It is unclear how some of the definitions are applicable to a subpoena duces tecum. As you know, AMC cannot be compelled to submit written responses to a subpoena duces tecum. This may be a secretarial error of copying and pasting definitions plaintiff previously appended to discovery requests. AMC is not a party to the immediate lawsuit. Further, Instruction "B" misstates the law. There is no continuing duty to



Peter Pattakos, Esq.  
November 13, 2017  
Page 2

supplement responses to a subpoena after the date for compliance passes. As to Instruction "D," AMC will comply with its duty to reasonably inquire relative to its possession of responsive documents. However, to the extent the subpoena attempts to create an affirmative obligation upon AMC to do discovery for plaintiffs, that is an impermissible use of a subpoena. Finally, Instruction D also asks for documents of AMC's legal counsel. Obviously, to the extent there are any responsive documents at all, those documents are protected by the attorney-client privilege.

Third, the subpoena is objectionable under Civ.R. 45(C)(3)(b). Requests 2, 3, 4, 16, 17, 18, 19, 20, 21, and 22 specifically seek personal financial information of AMC. Such requests are unduly burdensome and improperly seek to invade AMC's confidential and protected privacy interests. See *Crow v. Dotson* (2000), 2000 WL 1867262 (8<sup>th</sup> Dist.); *Stegawski v. Cleveland Anesthesia Group, Inc.* (1987), 37 Ohio App.3d 78; *ShopKo Group v. Springdale* (1989), 64 Ohio App.3d 373; *State ex rel. Beacon Journal Publishing Company v. City of Akron* (1994), 70 Ohio St.3d 605, 640 N.E.2d 164; *Cincinnati v. Bawtenheimer*, 63 Ohio St.3d 260, 586 N.E.2d 1065; *Church of Scientology v. Internal Revenue Service*, 484 U.S. 9, 108 S.Ct. 271; *Stinchcomb v. Mammone*, 166 Ohio App.3d 45, 2006-Ohio-1276, 849 N.E.2d 54; Civ.R. 45(C)(3)(b, d).

Fourth, the subpoena is objectionable in that it seeks information that is confidential, proprietary, and/or a trade secret of AMC relative to its business, pricing, and customer terms.

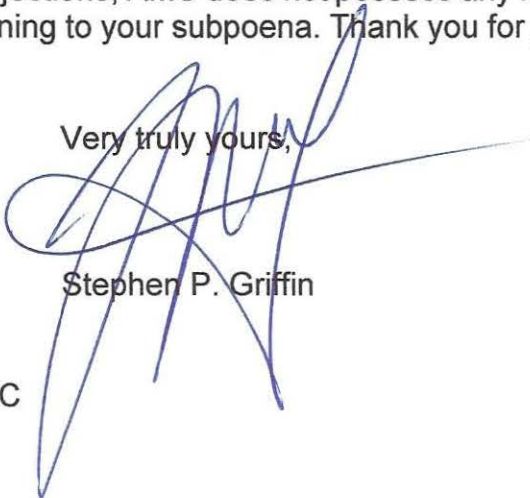
Fifth, the subpoena is objectionable under Civ.R. 45(C)(3)(d). Many of the requests are not reasonably limited in scope or time frame. It appears Plaintiff is asking AMC to review any documents it has ever possessed since it was formed in 2008 to determine whether those documents are responsive to the voluminous requests of Plaintiff. The broad net Plaintiff attempts to cast with the subpoena unreasonably foists a significant financial burden upon a small limited liability company. The request is unreasonably without focus and limits. As such, the requests are unnecessarily and unduly burdensome. AMC cannot comply without incurring significant man hours of review and loss of attention to its business concerns.

Sixth, the subpoena asks AMC to prepare and produce certain lists or summaries (including but not limited to request 1). No such documents exist and the subpoena is unduly burdensome in that it requests that AMC create documents. See Civ.R. 45(C)(3)(d). The Civil Rules do not obligate a party under subpoena to manufacture documents that do not otherwise exist. The subpoena renders AMC a workhorse for plaintiff to conduct improper discovery and is far outside the bounds of reasonable limitations placed by the Ohio Rules of Civil Procedure.

Peter Pattakos, Esq.  
November 13, 2017  
Page 3

Without waiving the Objections, AMC does not possess any non-privileged or non-confidential documents pertaining to your subpoena. Thank you for your kind attention to this matter

Very truly yours,



Stephen P. Griffin

SPG:dlv

cc: AMC Investigations LLC  
Aaron Czetli  
All Counsel of Record

LAW FIRM LLC

PHONE: 330.836.8533 • FAX: 330.836.8536

WWW.PATTAKOSLAW.COM

November 17, 2017

By e-mail to [sgriffin@griff-law.com](mailto:sgriffin@griff-law.com)Stephen P. Griffin  
4051 Whipple Ave. NW, Ste. 201  
Canton, OH, 44718Re: *Member Williams et al. v. Kislung Nestico & Redick LLC, et al.*,  
Subpoena to Aaron Czetli and AMC Investigations

Dear Mr. Griffin:

It would be hard to imagine a more obstructionist response than that represented in your November 13, 2017 letter to me regarding the above subpoena. While I'm sure you understand that such an approach will not hold up in Court, it's strange that your client would take to the same abusive discovery tactics that the Defendants have. Aaron Czetli and AMC are not on trial here and should have nothing to hide. We are simply requesting documents from your clients in an effort to better understand the mechanics of their relationship with KNR, who we believe took money from our clients and putative class members under false pretenses. Your clients should be as interested as anyone in the truth coming to light here.

Thus, to respond to your objections and purported concerns in roughly the order you offered them:

First, as for witness fees, mileage and document duplication cost, we will pay the required fees upon request. Rule 45 only requires fees to be tendered without demand "if the witness being subpoenaed resides outside the county in which the court is located." Here, both the witness and the Court are in Summit County. Make your demand for fees, and we will pay them, consistent with the Civil Rules.

Second, we're not asking your clients to produce any documents that are not within their possession or control. That said, the mere fact that documents reference or relate to KNR, involve your client's business dealings with KNR or may have been sent by or to KNR does not mean they are not within your clients control or that they are KNR documents. We are, in large part, requesting documents belonging to your clients related to KNR. That is no basis for an objection.

Third, while your objections to the definitions and instructions are noted, they do not appear to be ultimately relevant to any of your non-responses. But again, regarding instruction D, the mere fact that documents may be in possession of AMC's counsel does not make those documents privileged; documents related to AMC that are in your possession are legally within your client's control and unless they are privileged must be produced.

Fourth, your statement regarding requests seeking "personal financial information" of "AMC," as defined to include both AMC Investigations LLC and Aaron Czetli personally is rather obtuse. AMC Investigations LLC does not have "personal financial information," as it is a corporation. Aaron Czetli as an individual does, but the case law you cite does not stand for the grand proposition that any requests for personal financial information "are unduly burdensome and improperly invade [Czetli's] confidential and protected privacy interest." Without parsing the entirety of your string

cite, those cases relate to the social security numbers of employees and to the tax returns of expert witnesses. The information being requested in those cases is tangential and, regardless, the prohibition is hardly complete. Here, unlike in the cases you cited involving expert witnesses, what compensation Czetli received from KNR, on what terms, for what services, when and in what form is directly relevant to the core of Plaintiffs' case. Even those cases involving tax returns and the most clearly personal and private financial information hold that production of those documents will be compelled where they are relevant to the subject matter of the action and there is a compelling need for the information. *Hudson v. United Servs. Auto Assn. Ins. Co.*, 150 Ohio Misc.2d 23, 2008-Ohio-7084, 902 N.E.2d 101 (Greene Cty. C.P.) (citation omitted). If you do not agree to produce these obviously pertinent documents, we will move to compel their production and seek our attorneys' fees for having done so.

Fifth, your broad and unsubstantiated assertion that you will not produce documents that constitute "trade secrets" or that are "confidential" is neither sufficient nor justified by the law. Courts have repeated time and again 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, "[t]he burden to demonstrate that the requested information contains trade secrets is on the party asserting trade secret status." *Mulkerin v. Cho*, 9th Dist. Medina No. 07CA007-M, 2007-Ohio-6550, ¶ 6. "An entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy." See *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 181, 1999-Ohio-260, 707 N.E.2d 853. This requires an examination of the factors identified in *State ex rel. Plain Dealer v. Ohio Dep't of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661, "(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information."

Blithe assertions that documents are trade secrets are insufficient, as are self-serving affidavits absent actual evidence. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 400, 2000-Ohio-207, 732 N.E.2d 373 (a conclusory statement in an affidavit is insufficient to establish a document as a trade secret); see also *Svoboda v. Clear Channel Communs., Inc.*, 6th Dist. Lucas No. L-02-1149, 2003-Ohio-6201, ¶ 17 (an affidavit that merely "states the six factors but fails to factually demonstrate them as *Besser* requires" is insufficient). You've neither produced nor referred to any evidence that would suggest that any responsive documents in your possession are trade secrets protected by Ohio law. If such evidence exists, please produce it otherwise, please withdraw the objection and produce any documents being withheld on that basis.

Sixth, your generalized claim that "many of the requests" are unduly burdensome is similarly without merit. We are not asking your client to review "any documents it has ever possessed," only certain of those documents it currently possesses. As above regarding trade secrets, "[t]he burden to establish that a subpoena duces tecum is unreasonable or oppressive is on the person who seeks to have it

quashed. He cannot rely on a mere assertion that compliance would be burdensome and onerous without showing the manner and extent of the burden and the injurious consequences of compliance.” 9 *Wright & Miller*, Section 2457, p.435; *Goodman v. United States*, 369 F.2d 166, 169 (9th Cir.1966).

Further, even, “[w]here 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. The court is given an effective technique in the authorization to require the subpoenaing party to advance the cost of producing the items as a condition of allowance of the subpoena.” *First Bank of Marietta v. Mitchell*, 4th Dist. Washington Nos. 82 x 5, 82 x 14, 1983 Ohio App. LEXIS 13535, at \*50 (Nov. 28, 1983) citing Anderson’s Ohio Practice, Section 179.11. Because we share your concerns regarding time and expenses, we would be glad to discuss specific search criteria or methodologies that might lessen the burden of the review. But the fact that responding to a subpoena is inconvenient does not render it unduly burdensome, as you seem to be suggesting. Again, here, the requested documents go to the heart of Plaintiffs’ claims and must be produced. If you do not produce them or adequately explain why doing so would be unduly burdensome, we will move to compel and seek our attorneys’ fees in doing so.

Seventh, we are not asking your client to produce or manufacture any documents. Request No. 1 is for any client lists AMC has in their possession in any format, keeping in mind that AMC’s clients are the entities that pay AMC, not the parties on whose behalf they may work. If no such lists exist, simply state as much in replying to the request.

Finally, the statement in your last paragraph regarding the lack of responsive documents cannot be taken at face value given your apparent definitions regarding what is privileged and, more disconcertingly, “confidential.” Please produce a privilege log pursuant to Civ.R. 45(D)(4) and let’s discuss your claims that any or all other responsive documents are “confidential.” We are potentially willing to enter into a protective order, which is the appropriate remedy when issues like this arise. *Tesson, Ltd. v. R.R. Donnelley & Sons Co.*, 2007 U.S. Dist. LEXIS 49728, \*13, 2007 WL 2034286 (N.D. Ohio 2007) (“the appropriate remedy to a Parties’ desire to keep their confidential and and proprietary information safe is a protective order.”). In any event, absent agreement or the proof required by law in order to evoke trade secret protection, we will be forced to file a motion to compel.

I look forward to your prompt response and your client’s prompt compliance with the Civil Rules.

Sincerely,



Peter Pattakos

cc: Josh Cohen Dan Frech James Popson Meleah Kinlow  
Eric Kennedy Tom Mannion Brian Roof John Hill



Peter Pattakos <peter@pattakoslaw.com>

## Gary Monto - Subpoena Duces Tecom

Stephen P. Griffin <sgriffin@griff-law.com>

Sat, Nov 25, 2017 at 1:21 PM

To: "Peter Pattakos Esq. (peter@pattakoslaw.com)" <peter@pattakoslaw.com>

Cc: "tom.mannion@lewisbrisbois.com" <tom.mannion@lewisbrisbois.com>, "Brian Roof Esq. (broof@sutter-law.com)" <broof@sutter-law.com>, "ekennedy@weismanlaw.com" <ekennedy@weismanlaw.com>, "jhill@bdblaw.com" <jhill@bdblaw.com>, "Thomas Skidmore Esq. (thomasskidmore@rrbiznet.com)" <thomasskidmore@rrbiznet.com>

Mr. Pattakos

I hope your Thanksgiving was restful.

Gary Monto has retained me relative to a subpoena that was recently attempted to be served upon him. It is the virtually identical with few differences from the subpoena served on Aaron Czetli/AMC. This is notice of formal Objections to the subpoena now served on Mr. Monto. To avoid redundancy, I hereby adopt all objections formally posed in response to the prior subpoena on AMC on behalf of Mr. Monto.

To recap:

1. Mr. Monto does not waive service requirements of Rule 45.
2. Witness fees and travel expenses are demanded and not waived. Rule 45(B)
3. Mr. Monto cannot and will not produce documents belonging to third parties.
4. Objection is posed to the instructions provided to with the subpoena to the extent they divert with Ohio law as described further in the AMC letter. (written responses required; Mr. Monto is a non-party; No continuing duty to supplement responses; No obligation to perform discovery for Plaintiff; Attempt to circumvent Atty-client and work product privileges).
5. Objection pursuant to Civ.R.45(C)(3)(b) seeking personal financial information.
6. Requests are Unduly Burdensome.
7. Requests improperly seek to invade Mr. Monto's confidential and protected privacy interests.
8. Requests improperly seek information that is confidential, proprietary, and/or trade secret of Mr. Monto relative to his business, pricing, competition and customer terms.
9. Objection pursuant to Civ.R.45(C)(3)(d), not limited in scope or time frame.
10. The subpoena is unnecessarily and unreasonably burdensome and costly on an individual.
11. The subpoena forces significant man hours with a resultant loss of attention to business concerns.
12. Subpoena seeks preparation and creation of lists and summaries that currently do not exist. Mr. Monto is being forced to prepare/manufacture documents for plaintiff's benefit at his own financial cost. Civ.R.45(C)(3)(d).

Without intending to waive any of the foregoing objections, be advised, Mr. Monto does not possess any non-privileged or non-confidential documents responsive to Plaintiff's subpoena.

Very truly yours,

SPG

Stephen P. Griffin, Esq.

Griffin Law, LLC

4051 Whipple Avenue NW, Suite 201

Canton, OH 44718

Phone: (234) 360-8090

Fax: (234) 360-3329

email: [sgriffin@griff-law.com](mailto:sgriffin@griff-law.com)

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Peter Pattakos <peter@pattakoslaw.com>

## Eduardo Mateo: Subpoena Duces Tecum

Stephen P. Griffin <sgriffin@griff-law.com>

Sun, Nov 26, 2017 at 2:01 PM

To: "Peter Pattakos Esq. (peter@pattakoslaw.com)" <peter@pattakoslaw.com>

Cc: "tom.mannion@lewisbrisbois.com" <tom.mannion@lewisbrisbois.com>, "Brian Roof Esq. (broof@sutter-law.com)" <broof@sutter-law.com>, "ekennedy@weismanlaw.com" <ekennedy@weismanlaw.com>, "jhill@bdblaw.com" <jhill@bdblaw.com>, "Thomas Skidmore Esq. (thomasskidmore@rrbiznet.com)" <thomasskidmore@rrbiznet.com>

Mr. Pattakos

It appears Plaintiff's broad fishing expedition net now includes Eduardo Mateo who recently retained me about yet another subpoena issued by your office relative to this lawsuit you are promulgating in Summit County. In review of the docket pleadings I am not following the relevancy of many of these subpoenas to matters and investigators outside of your own class definitions. If you are issuing subpoenas that are seeking matters outside of the relevancy scope of discovery in the underlying case, then of course, these subpoenas are by definition harassment upon the growing number of recipients you are including. I will not engage in the endeavor to evaluate the relevancy of your subpoenas but be advised, that if the Court deems your expedition herein, to be an irrelevant pursuit, my fees, and my clients expenses and costs associated with responding to these improper subpoenas will ultimately be yours to bear.

It appears that Mr. Mateo's subpoena is virtually identical, with few differences from, the subpoena served on Aaron Czetli/AMC and Gary Monto. This is notice of formal Objections to the subpoena now served on Mr. Mateo. To avoid redundancy, I hereby adopt all objections formally posed in response to the prior subpoena on AMC, Mr. Monto on behalf of Mr. Mateo.

Like those served before him:

1. Mr. Mateo does not waive service requirements of Rule 45.
2. Witness fees and travel expenses are demanded and not waived. Rule 45(B)
3. Mr. Mateo cannot and will not produce documents belonging to third parties.
4. Objection is posed to the instructions provided to with the subpoena to the extent they divert with Ohio law as described further in the AMC and Monto letters. (written responses required; Mr. Mateo is a non-party; No continuing duty to supplement responses; No obligation to perform discovery for Plaintiff; Attempt to circumvent Atty-client and work product privileges).
5. Objection pursuant to Civ.R.45(C)(3)(b) seeking personal financial information.
6. Requests are Unduly Burdensome.
7. Requests improperly seek to invade Mr. Mateo's confidential and protected privacy interests.
8. Requests improperly seek information that is confidential, proprietary, and/or trade secret of Mr. Mateo relative to his business, pricing, competition and customer terms.
9. Objection pursuant to Civ.R.45(C)(3)(d), not limited in scope or time frame.
10. The subpoena is unnecessarily and unreasonably burdensome and costly on an individual.
11. The subpoena forces significant man hours with a resultant loss of attention to business concerns.



12. Subpoena seeks preparation and creation of lists and summaries that currently do not exist. Mr. Mateo is being forced to prepare/manufacture documents for plaintiff's benefit at his own financial cost. Civ.R.45(C)(3)(d).

Without intending to waive any of the foregoing objections, be advised, Mr. Mateo does not possess any non-privileged or non-confidential documents responsive to Plaintiff's subpoena.

Very truly yours,

SPG

Stephen P. Griffin, Esq.

Griffin Law, LLC

4051 Whipple Avenue NW, Suite 201

Canton, OH 44718

Phone: (234) 360-8090

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December 1, 2017

By e-mail to [sgriffin@griff-law.com](mailto:sgriffin@griff-law.com)

Stephen P. Griffin  
4051 Whipple Ave. NW, Ste. 201  
Canton, OH, 44718

Re: *Member Williams et al. v. Kisting Nestico & Redick LLC, et al.*,  
Subpoenas to Eduardo Mateo and Gary Monto

Dear Mr. Griffin:

This is to respond to the two emails you sent me over Thanksgiving weekend, on November 25 and 26, about the subpoenas we served on KNR “investigators” Eduardo Mateo and Gary Monto.

In those emails, you raise identical objections that you’ve already raised on behalf of Aaron Czetli and AMC investigations. In my November 17, 2017 letter to you, I responded to those objections individually and in detail, explained why we believe they are groundless, and asked you to please clarify your objections or produce responsive documents as required by the Civil Rules. I haven’t heard anything back from you in response to that letter. Thus, you may refer to it in response to your objections raised on behalf of Mssrs. Mateo and Monto, which are equally groundless for the same reasons.

In doing so, I hope you will reconsider the contradictory statements in your November 26 email, by which you first accuse us of having engaged in a “broad fishing expedition” and claim to question the relevancy of the information we’ve requested, but then claim that you “will not engage in the endeavor to evaluate the relevancy of [our] subpoenas.” First, if you have not in fact endeavored to “evaluate the relevancy of [our] subpoenas,” it’s impossible that your objections and accusations of a “fishing expedition” could be legitimate. So please make sure that you do in fact evaluate the relevancy of our subpoenas, in part by considering the following: The Defendants have admitted that they charge an “investigation fee” of \$50 or more to every single client for whom the KNR firm resolves a case. Our claim, which you can see is well-founded based on KNR’s own documents that are quoted in the Complaint, is that this “investigation fee” is a scheme to disguise overhead costs that are not lawfully chargeable to contingency-fee clients. Your clients have been identified by Defendants as “investigators” for whose work the “investigation fee” was charged to the putative class members. As we are seeking to represent a class consisting of all current or former KNR clients who were charged the “investigation fee,” we are entitled to information from all of the so-called “investigators.” This is beyond reasonable dispute, so I can only assume from your response that you are either intentionally obstructing or were fundamentally misunderstanding our claims and what is at issue in the case.

I certainly hope it’s the latter, in which case I hope you’ll revisit your objections and get back to me shortly with responsive documents and a response to my November 17, 2017 letter.

Also, if you will be representing all of the KNR “investigators,” please confirm, and let us know if you will accept service of subpoenas on their behalf so we may avoid the expense and effort of serving them ourselves.

Again, I look forward to your prompt response.

Thank you,

A handwritten signature in black ink, appearing to read "Peter Pattakos". The signature is stylized with large, rounded letters and a long horizontal stroke at the end.

Peter Pattakos

cc: Josh Cohen  
Dean Williams  
Dan Frech  
John Hill  
Eric Kennedy  
Brian Roof  
Tom Mannion



Peter Pattakos <peter@pattakoslaw.com>

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## Eduardo Mateo: Subpoena Duces Tecum

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**Peter Pattakos** <peter@pattakoslaw.com>  
To: "Stephen P. Griffin" <sgriffin@griff-law.com>  
Cc: Dean Williams <dwilliams@pattakoslaw.com>

Tue, Jan 16, 2018 at 10:49 AM

Mr. Griffin,

I never received a response from you to my December 1 letter below or to my Nov. 17 letter about the AMC subpoena. If you do not intend to make a substantive response we will have no choice but to file a motion to compel.

Please advise. Thank you.

Peter Pattakos  
The Pattakos Law Firm LLC  
101 Ghent Road  
Fairlawn, OH 44333  
330.836.8533 office; 330.285.2998 mobile  
[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)  
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This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

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