

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE PATRICIA COSGROVE
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<u>DEFENDANTS' MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT ON PLAINTIFF MATTHEW</u>
Defendants.	)	<u>JOHNSON'S INDIVIDUAL CLAIMS IN THE</u>
	)	<u>THIRD AMENDED COMPLAINT</u>

Pursuant to Ohio R. Civ. P. 56(B), Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("Defendants") respectfully move this Court for summary judgment on Plaintiff Matthew Johnson's individual claims in the Third Amended Complaint. Defendants are entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty (Claim Seven) and unjust enrichment (Claim Eight). A Memorandum in Support of this motion and a sample Judgment Entry are attached.

Respectfully submitted,

/s/ James M. Popson

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Counsel for Defendants

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.)	CASE NO. CV-2016-09-3928
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Plaintiff,)	JUDGE PATRICA COSGROVE
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v.)	
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KISLING, NESTICO & REDICK, LLC,)	<u>MEMORANDUM IN SUPPORT OF</u> <u>DEFENDANTS' MOTION FOR SUMMARY</u> <u>JUDGMENT ON PLAINTIFF MATTHEW</u> <u>JOHNSON'S INDIVIDUAL CLAIMS IN THE</u> <u>THIRD AMENDED COMPLAINT</u>
et al.,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Plaintiff Matthew Johnson's lawsuit is based upon conjured conspiracy theory that Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("Defendants") had a financial and ownership interest in a lending company called Liberty Capital Funding LLC ("Liberty Capital"); or that Defendants steered Plaintiff to Liberty Capital for a pre-settlement loan because Defendants stood to benefit financially from such a loan via a kickback" payment from Liberty Capital. for steering Plaintiff to Liberty Capital. There are no facts to support this theory, and salacious innuendo is insufficient to create a genuine issue of material fact.

Affidavits from Nestico, Redick, Plaintiff Johnson's, and Ciro Cerrato, the owner of Liberty Capital, and the filing with the Florida Secretary of State, establish that Defendants did not have an ownership or financial interest in Liberty Capital and that there were no kickbacks to Defendants, and no self-dealing by Defendants. Plaintiffs have nothing to refute these facts and further discovery would serve only as tool to harass Defendants. Plaintiff cannot prove his breach of fiduciary duty and unjust enrichment claims. Therefore, Defendants are entitled to summary judgment as a matter of law on these claims.

II. FACTUAL BACKGROUND

A. Plaintiff voluntarily obtained a loan from Liberty Capital.

Plaintiff was involved in an automobile accident that resulted in personal injuries.¹ (Third Am. Compl., ¶ 13.) Plaintiff retained KNR as counsel for this personal injury matter. (Jenna Wiley Affidavit, ¶ 1, attached as Ex. A.) While a client of KNR, Plaintiff twice requested information from KNR regarding a possible advanced loan on his claim. (*Id.*, ¶¶ 4 and 7.) He first sought information about an interest free loan, which was a distribution from the medical payments coverage available under his insurance policy with Erie Insurance. (*Id.*, ¶ 4.) KNR worked with Plaintiff to obtain his medical payments coverage. (*Id.*, ¶¶ 5-6.)

After having exhausted his unemployment benefits and medical payments coverage, Plaintiff asked about a financial boost while his claim was pending. (*Id.*, ¶ 7.) In response, KNR informed Plaintiff that his only option was to obtain a loan against his case. (*Id.*, ¶ 8.) KNR explained to Plaintiff that he would have to pay interest on the loan, which was “essentially...paying money to borrow money.” (*Id.*) Based on this, KNR provided Plaintiff with Liberty Capital’s contact information. (*Id.*, ¶ 9.) Plaintiff responded that he would be willing to look into this loan arrangement. (*Id.*, ¶ 8.) Plaintiff proceeded to contact Liberty Capital and eventually purportedly received a \$250 loan from Liberty Capital at an annual interest rate of 49%, compounded semi-annually. (*Id.*, ¶¶ 10-12; Third Am. Compl., ¶ 13.) The 49% interest rate is stated in bold face type on page 1 of the loan agreement, above where Plaintiff signed his initials. (Wiley Affidavit, Ex. A.) Furthermore, only after Plaintiff completed the application and returned it to Liberty Capital did KNR receive a copy, and then, only to acknowledge that Plaintiff had applied for and received a loan. (*Id.*, KNR03287.)

¹ Defendants are not admitting all of the allegations in the Third Amended Complaint, except as expressly admitted in their Answers. In fact, Defendants denied many of the allegations. (Defendants’ Answers.) Nevertheless, Defendants cite to some of these contested allegations in order to satisfy the summary judgment standard of construing all facts in favor of Plaintiff. Even construing these contested facts in Plaintiff’s favor, there is still no genuine issue of material fact for the jury to decide. Defendants are still entitled to summary judgment.

B. Without any supporting facts, Plaintiff wildly speculates about alleged kickbacks between KNR and Liberty and self-dealing by KNR.

Without any facts as support, Plaintiff then alleges that Defendants assisted in forming Liberty Capital. (Third Am. Compl., ¶ 133.) In addition, Plaintiff alleges, based on pure innuendo, that Defendants had a financial or ownership interest in Liberty Capital. (*Id.*, ¶ 134.) As a result of this alleged relationship, Defendants purportedly received alleged kickbacks from Liberty Capital or received a financial benefit or kickback from each loan a KNR client made with Liberty Capital. (*Id.*)

Plaintiff then contends that Defendants failed to disclose these facts. (*Id.*, ¶¶ 13 and 130.) As a result, Defendants allegedly breached their fiduciary duty and were unjustly enriched. (*Id.*, Claims 7-8.)

C. Defendants did not and do not have a financial interest in Liberty Capital.

The actual facts tell a completely different story – one that cannot be disputed and one that cannot support Plaintiff's claims. Defendants had no ownership or financial interest in Liberty Capital. (Nestico Affidavit, ¶ 2, attached as Ex. B; Redick Affidavit, ¶ 2, attached as Ex. C; Ciro Cerrato Affidavit, ¶¶ 1-2, attached as Ex. D., Robert Horton Affidavit attached as Ex. F, ¶¶ 34-38.) Defendants never received any financial benefit or alleged kickback when KNR clients use Liberty Capital to secure an advance on a potential future recovery. (Nestico Affidavit, ¶ 3; Redick Affidavit, ¶ 3; Cerrato Affidavit ¶ 3; Horton Affidavit, ¶36.) Defendants never were involved in any self-dealing with any account at, or client of, Liberty Capital or KNR. (Nestico Affidavit, ¶ 4; Redick Affidavit, ¶ 4; Horton Affidavit, ¶¶34, 37.) In other words, Defendants never received any financial benefit from Liberty Capital for any loan transaction between Liberty Loan and any of KNR's clients. (*Id.*; Cerrato Affidavit, ¶ 4.) Defendants did not form (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assist in forming, Liberty Capital. (Nestico

Affidavit, ¶ 2; Redick Affidavit, ¶ 2; Horton Affidavit, ¶¶34-38; Liberty Capital's Florida Secretary of State Documents, attached as Ex. A to Cerrato Affidavit.)

D. This Motion is Ripe for Adjudication

Plaintiff Johnson has been a party to this case since July 5, 2017 (Second Amended Complaint). Plaintiff Johnson's discovery responses served on October 24, 2017, identified no evidence – documentary or otherwise – to support the theories of liability alleged in the Complaint. (Affidavit of James M. Popson and accompany electronic mail exhibits, attached as Ex. G). Plaintiff has not produced any documents whatsoever in response to discovery requests in this matter.

Absent any evidence to support these claims, Defendants filed a Motion for Leave to file this Motion for Summary Judgment in November 3, 2017, and attached most of the evidence described herein establishing that Defendants never had an ownership interest in Liberty Capital and never received any “kickback payments” as recklessly and falsely alleged by Johnson. Nor are Defendants in possession of any documents establishing the alleged relationship that simply does not exist. At a hearing on January 5, 2018, the Court granted Plaintiff's counsel 60 days to secure the deposition testimony of Mr. Cerrato who is apparently a resident of Florida. Plaintiff's counsel has failed to do so, and claims that Mr. Cerrato is evading service of a subpoena.

Most recently, Plaintiff's counsel has asserted (again, recklessly and falsely) that Defendants are somehow “complicit” in Mr. Cerrato's uncooperative behavior. (See Ex. G, Affidavit of James M. Popson and accompany electronic mail exhibits). The basis for this assertion is the mere fact that Defense counsel was able to secure an affidavit from Mr. Cerrato, while Plaintiff counsel has been unable to secure similar cooperation from the witness. (Id.) Defense counsel has provided the last known address and telephone number of Mr. Cerrato. (Id.) Apparently Plaintiff counsel has located the witness's business office and had a telephone conversation with him, but has been unable, or unwilling to expend the resources necessary to properly serve the witness.

Recognizing that he has failed to comply with the 60 day deadline, Plaintiff counsel has now taken the position that *Defense Counsel* is required to contact Mr. Cerrato and *advise him* to cooperate with Plaintiff's efforts to serve him. Plaintiff has falsely accused the witness of wrong-doing, and is now attempting to impose unwarranted discovery burdens on Defendants because the witness has (not surprisingly) taken offense and does not wish to speak to him.

Defense counsel properly responded that he is not counsel for Mr. Cerrato and cannot advise the witness with regard to accepting service of a subpoena. It is not the responsibility of a party to track down a third party witness and serve a subpoena – regardless of whether the witness is in Ohio or a foreign jurisdiction. Defendants have met their obligation to cooperate in discovery as it relates to this issue by providing the last known address and telephone number of the witness. Nevertheless, Plaintiff counsel has accused Defendants of being “complicit” in the witness's obstruction of discovery. The effort and costs associated with the task of service of *Plaintiff's* subpoena properly rests with the party that issued the subpoena. No authority exists for the proposition that a party can be compelled to participate in serving of a subpoena on a third party witness – even if the third party witness is improperly evading service.

Despite Plaintiff counsel's desperate effort to portray the facts otherwise, Defendants have not attempted to obstruct discovery on Mr. Cerrato and should not be subjected to any adverse consequences as a result of Plaintiff's failure to serve him. This Motion would and should be granted even if the Court ignored the affidavit of Mr. Cerrato submitted in support of this Motion. The affidavits of Ms. Wiley, Mr. Nestico, Mr. Redick, and Mr. Horton, as well as the public documents available from the Florida Secretary of State, are more than sufficient to support summary judgment as it relates to Plaintiff Johnson's fabricated claims.

This motion is ripe for consideration. Plaintiff should not be afforded an unlimited amount of time to respond merely because they cannot obtain service on Mr. Cerrato. This is particularly true where Plaintiff has *failed to produce any evidence whatsoever* in response to discovery requests asking for anything at all that supports these sinister allegations of wrong-

doing by Defendants. The failure to do so suggests that Plaintiff never had a good faith basis to bring these claims to begin with, and only filed the claims as a platform to launch a fishing expedition for purposes of embarrassing Defendants, and as a tool of harassment to increase Defendants' costs in defending phantom allegations of misconduct.

III. ANALYSIS AND ARGUMENT

A. Plaintiff cannot offer evidence of kickbacks and self-dealing by Defendants.

Plaintiff simply offers innuendo and conjecture with regard to the claim that Defendants received kickbacks from the Liberty Capital loans and/or engaged in self-dealing. For example, Plaintiff contends: "The allegations above support a strong inference that Defendants assisted in Liberty Capital's formation." (Third Am. Compl., ¶ 133.) Plaintiff also asserts: "The allegations above support a strong inference that Defendants retained an ownership interest in Liberty Capital or obtained a kickback benefits for referring KNR clients for loans." (*Id.*, ¶ 134.). Similar statements are set forth in Plaintiff's discovery responses. "At this time and subject to the above objections, Plaintiff refers the Defendant to the documents cited in and quoted from in the Complaint showing that Nestico directed KNR attorneys to recommend Liberty Capital to KNR clients only weeks after the company was formed, and weeks after he had asked KNR attorneys to send him the agreements that KNR used with other loan companies, including the KNR emails quoted in paragraphs 101–118." (Ex. E, Response to Interrogatory No. 1).

These allegations merely invite conjecture and speculation based upon innuendo. Referring a client to a "newly formed" lender does not suggest, much less prove, an improper relationship between the attorney and the lender. Reviewing agreements with other loan companies prior to recommending a "newly formed" company to clients is precisely what one would expect an attorney to do. Plaintiff is not entitled to an *assumption* of some insidious motive to overcome summary judgment. He must offer *facts* demonstrating either ownership or illicit payments, and there are no *facts* to back up these allegations. Indeed, the affidavits of Nestico, Redick, Wiley, and Cerrato establish, the allegations are completely false.

No amount of discovery will change this. In fact, Plaintiff's responses to Defendants' Interrogatories on the "inference" allegations above provide no additional support other than the factually deficient allegations in the Third Amended Complaint. (Plaintiff's Responses to KNR's First Set of Interrogatories to Plaintiff Johnson, No. 22 and 23, a copy of which is attached as Ex. E.)² Plaintiff cannot rely only on false "inference" allegations in the Third Amended Complaint to defeat summary judgment. See *Plikerd v. Mongeluzzo*, 73 Oho App. 3d 115, 120-121, 596 N.E.2d 601 (3rd Dist. 1992) ("The allegations of the complaint are not sufficient to defeat a motion by the defendant for summary judgment. The plaintiff must support the allegations with counteraffidavits or other materials.") Because of the lack of factual allegations, this is merely a fishing expedition that is not supported in fact or law.

Black's Law Dictionary defines self-dealing and kickbacks. Self-dealing is "[p]articipation in a transaction that benefits oneself instead of another who is owed a fiduciary duty." Black's Law Dictionary. A kickback is "[a] return of a portion of a monetary sum received, esp. as a result of coercion or secret agreement." *Id.* None of the above speculation establishes either a kickback or self-dealing. Further, as outlined in Nestico, Redick, and Cerrato's affidavits, there are no facts that can establish either a kickback scheme (there was no money exchanged from Defendants to Liberty Capital for Liberty Capital to return a portion of it to Defendants) or self-dealing (Defendants received no financial benefit from Plaintiff's Liberty Capital loan). Indeed, the facts establish the opposite. Based on the actual facts rather than innuendo, Plaintiff's entire argument of a grand scheme of kickbacks and self-dealing has no foundation.

Plaintiff Johnson and his counsel filed this claim without sufficient evidence to form a good faith basis to believe the claim was meritorious. Merely referring a client to a service vendor does not support an inference that an attorney maintains a financial interest in the vendor, nor does it raise an inference that "kick-backs" were paid to the attorney or that some

² Interrogatory No. 22 refers to paragraph 119 of the Second Amended Complaint and Interrogatory No. 23 refers to paragraph 120 of the Second Amended Complaint. Paragraph 119 is now paragraph 133 of the Third Amended Complaint and Paragraph 120 is now paragraph 134 of the Third Amended Complaint.

illicit “scheme” is afoot. Plaintiff (more specifically Plaintiff’s counsel) has chosen to use words such as “kick-back” and “scheme” in an effort to sensationalize these false allegations, and leverage the case by garnering adverse media attention directed at Defendants. This claim and the salacious terms selected to support it were filed for purposes of harassment and to drive up the cost of litigation. Plaintiff has failed to back up these sensational allegations with real facts. Thus, Defendants are entitled to judgment as a matter of law, and possibly further relief pursuant to Civ. R. 11 and R.C. 2323.51.

B. The breach of fiduciary duty claim should be dismissed as a matter of law.

Plaintiff asserts a breach of fiduciary duty claim. (Third Am. Compl., Claim 7.) The elements of a breach of fiduciary duty claim are: (1) the existence of a duty arising from a fiduciary relationship; (2) the failure to observe the duty; and (3) an injury proximately resulting. *Vontz v. Miller*, 1st Dist. No. C-150693, 2016-Ohio-8477, ¶ 28. Again, Plaintiff sole basis for his breach of fiduciary duty claim is that Defendants had an ownership or financial interest in Liberty Capital and that they stood to benefit from Plaintiff’s loan with Liberty Capital. (Third Am. Compl., ¶¶ 133-134.) But as already established the facts do not support this assertion.

Plaintiff has *no evidence* to refute Defendants’ evidence that: (1) Defendants had no financial or ownership interest in Liberty Capital; (2) Defendants received no kickbacks or engaged in self-dealing; (3) Defendants received no financial benefit from the Liberty Capital loan; and (4) Defendants did not form (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.) or assist in forming Liberty Capital. (Nestico Affidavit, ¶¶ 2-4; Redick Affidavit, ¶¶ 2-4; Cerrato Affidavit, ¶¶ 2-4.) With these facts undisputed, Plaintiff’s innuendos cannot be a basis for a breach of fiduciary duty claim. There are simply *no facts* to support such a claim. Defendants are entitled to summary judgment on the breach of fiduciary duty claim as a matter of law.

C. Plaintiff's unjust enrichment claim should be dismissed as a matter of law.

Plaintiff asserts an unjust enrichment claim against Defendants. (Third Am. Compl., Claim 8.) The elements of an unjust enrichment claim are: (1) plaintiff conferred a benefit on defendant; (2) defendant knew of such benefit; (3) defendant retained the benefit under circumstances where it would be unjust to do so without payment. *Metz v. Am. Elec. Power Co.*, 172 Ohio App. 3d 800, 2007-Ohio-3520, ¶ 43 (10th Dist.). Plaintiff contends that by agreeing to a loan with Liberty Capital in which Defendants allegedly had a financial interest, he conferred a benefit on Defendants, which Defendants should not be able to retain. (Third Am. Compl., ¶¶ 200-201.) The undisputed facts prove otherwise.

Once again, because Defendants had no financial or ownership interest in Liberty Capital, any loans between Plaintiff (or any of KNR's clients) and Liberty did not unjustly enrich Defendants. In addition, Plaintiff cannot offer any evidence of kickbacks or self-dealing regarding these loans no matter the amount of discovery that he seeks. Without this evidence, there is no unjust enrichment. Defendants are entitled to summary judgment on Plaintiff's unjust enrichment claim as a matter of law.

IV. CONCLUSION

For the foregoing reasons, Defendants are entitled to summary judgment on Plaintiff Johnson's claims as a matter of law and the claims should be dismissed with prejudice. Discovery will not change this outcome. Further, Defendants reserve the right to seek further relief pursuant to Civ. R. 11 and/or R.C. 2323.51.

Respectfully submitted,

/s/ James M. Popson

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Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Motion for Summary Judgment was filed electronically with the Court on this 13th day of March 2018. The parties may access this document through the Court's electronic docket system.

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.)	CASE NO. CV-2016-09-3928
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Plaintiffs,)	JUDGE PATRICIA COSGROVE
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	<u>JUDGMENT ENTRY AND ORDER</u>
et al.,	)	<u>GRANTING MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT ON PLAINTIFF MATTHEW</u>
	)	<u>JOHNSON'S INDIVIDUAL CLAIMS IN THE</u>
Defendants.	)	<u>THIRD AMENDED COMPLAINT</u>
)	

Based on Defendants’ Motion for Summary Judgment on Plaintiff Matthew Johnson’s Individual Claims in the Third Amended Complaint, and after having fully reviewed and analyzed all briefs on this Motion, Defendants’ Motion is well taken and granted in its entirety. There are no genuine issues of material fact that would prevent summary judgment on Plaintiff Johnson’s claims for breach of fiduciary duty and unjust enrichment. Therefore, it is ordered and decreed that Defendants are entitled to summary judgment on Plaintiff Johnson’s claims as a matter of law and those claims are hereby dismissed with prejudice.

IT IS SO ORDERED:

Judge Patricia Cosgrove

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF JENNA WILEY</u>
)	
Defendants.)	

State of Ohio)
) ss:
County of Summit)

I, Jenna Wiley, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and the review of records and is true and accurate to the best of my belief and recollection:

- 1. I am a paralegal for Defendant Kisling, Nestico & Redick, LLC ("KNR"). My maiden name was Jenna Sanzone. Matthew Johnson retained KNR to represent him in his claim based on an automobile accident in which he suffered injuries. I was the paralegal working with Paul Steele, the attorney who initially represented Mr. Johnson with respect to injuries Mr. Johnson sustained in his 2012 auto accident.
- 2. Based on my experience working with attorneys employed by KNR, if a client needed money to pay medical and other bills before completing treatment or if it appeared settlement was not possible in the immediate future, the attorney or paralegal would explain the options available to the client including sending letters of protection, accessing no-fault medical payments coverage if purchased and available under the client's automobile policy, as well as pre-settlement loans available through third-party vendors.

3. Based on my experience working with KNR attorneys as well as my own practices, KNR would advise clients against taking out loans unless the client needed the money immediately or if the client had no other options such as letters of protection or the availability of medical payments coverage that would not result in additional cost.

4. On April 1, 2012, Mr. Johnson sent me an email requesting information about an "interest free" loan that would be against a settlement of his claim that, from my prior communications with Mr. Johnson, I understood to mean a distribution from the medical payments coverage available under the insurance policy issued by Erie Insurance to Mr. Johnson, which would have to be paid back to Erie out of any settlement to satisfy Erie's contractual right of subrogation. He requested information about the loan because he was not working and needed to pay his rent and his loan on his truck. A true and accurate copy of the April 1, 2012 email is attached hereto as Exhibit 1 that KNR received and maintains in the ordinary course of its business.

5. On May 6, 2012, consistent with KNR's advice and Mr. Johnson's request, I informed him that I would continue our efforts to obtain the remaining balance owed him under his medical payments coverage to assist him with his financial affairs. The May 6, 2012 is included in the email chain attached hereto as Exhibit 1.

6. On May 10, 2012, in response to Mr. Johnson's email of May 9, 2012 advising that he had nearly finished with his chiropractic treatment, I advised him that I would continue to look for his remaining medical payments check and inform him as soon as it came in. A copy of the May 10, 2012 email is attached hereto as Exhibit 2 that KNR received and maintains in the ordinary course of its business.

7. On July 16, 2012, Mr. Johnson, having exhausted his unemployment benefits and medical payments coverage, sent another email asking about a "financial boost" while his claim was pending. He sent this email because of his outstanding bills. A true and accurate copy of the July 16, 2012 email is attached hereto as Exhibit 3 that KNR sent, received, and maintains in the ordinary course of its business.

8. On the same day, I responded that: "The only option available is for you to take out a loan against your case, but you have to pay interest on it ...so essentially you're paying money to borrow money." Mr. Johnson replied: "I'd be willing to look into it to see how worth it it would be to help my [sic] get ahead." Exhibit 3.

9. In response to Mr. Johnson's request, I provided him with Liberty Capital Funding LLC's information. Exhibit 3.

10. Mr. Johnson contacted Liberty that day, and that afternoon, I received an email from Liberty requesting additional information regarding the case needed to evaluate Mr. Johnson's loan application as set forth in the email attached hereto as Exhibit 4 that KNR received, sent and maintains in the ordinary course of its business.

11. On July 17, 2012, I received an email from Liberty attaching a copy of the loan papers already reviewed, initialed and executed by Mr. Johnson requesting that Mr. Steele acknowledge Mr. Johnson's receipt of a pre-settlement loan in the amount of \$250.00. True and accurate copies of this email and the loan documents are attached as Exhibits 5 and 6 that KNR received and maintains in the ordinary course of its business.

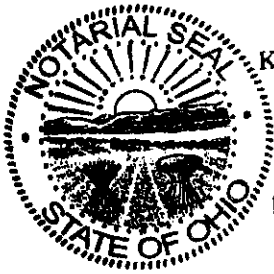
12. Paul Steele signed the acknowledgment as requested, and I returned it by email to Liberty. To my knowledge, there were no further communications between KNR,

Liberty and Mr. Johnson regarding the loan before Liberty distributed the \$250.00 directly to Mr. Johnson.

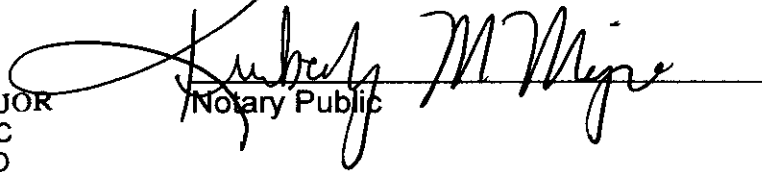
Affiant Further Sayeth Naught.


JENNA WILEY

Sworn to before me and subscribed in my presence this 1 day of November, 2017.



KIMBERLY M. MAJOR
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Portage County
My Comm. Exp. 9/13/22


Notary Public

Johnson, Mr. Matt
Case #: 219935 ()

Case Type: A
Class: CH

DOI: 1/13/2012
Assigned: MARK

LIM Date: 1/11/2014
Date Opened: 2/20/2012

3/24/2017 04:18 PM

Page 1 of 1

Case Note - Page 20 of 152

Date: 04/02/2012 10:51 AM Staff: PAUL

Topic: E-Mail

Case Status ☐

From: Matthew Johnson [mailto:moose4u2nv@gmail.com]
Sent: Sunday, April 01, 2012 9:22 PM
To: Jenna Sanzone
Subject: Couple questions

Hey Jenna it's Matt Johnson I didn't want to call and bug you tomorrow so I thought I'd just send you an email.

I talked to Paul and in conversation told him that my unemployment is ending April 7th and no income will be coming in till the numbness is out of my arms and left leg from the pinched nerves. He mentioned an interest free loan that would go against the settlement from my insurance company. I've been losing sleep and worrying about bills that are going to be coming in April especially my truck payment and rent I would like to get 5k if possible to hold me over and pay my rent ahead a little and my truck so I know my major bills and need as in a roof over my head and a vehicle to get to doc appts and to seek work when ready.

If you could look into this for me that would be awesome I really just don't want to lose everything I have over something that's not my fault and out of my control. Between you and me all this stuff has my extremely depressed and don't even feel like myself anymore. I've been doing everything the docs tell me and just want to get better. I hope you guys can make something happen it would definately put me at ease for awhile. Thank you for all you guys are doing I really appreciate the service you have helped me obtain the docs have been great. Have a good day.

Matt

Exhibit 1

7/14/2017

RE: I remember

RE: I remember

Jenna Sanzone

Sent: Sunday, May 06, 2012 11:39 AM

To: Matthew [Johnson]

You're not a bother at all. We are still waiting on the remaining medical payments money to come to give to you, so that should help. And we do have that letter from the employer you were supposed to go back to work for, so that will account for the wages lost because of the accident. Most important aspect of this whole thing is to get the medical care you need so there isn't any permanent damage!

Let me know if you need anything else, otherwise I'll let you know as soon as the other check comes in. And thanks for the good wishes for my knee! Doesn't seem to be too terrible (unfortunately I've been through this twice before) as of this point- back to work I go tomorrow! Enjoy the rest of your weekend :)

Thanks,

Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

-----Original Message-----

From: Matthew Johnson [<mailto:moose4u2nv@gmail.com>]

Sent: Sunday, May 06, 2012 12:32 PM

To: Jenna Sanzone

Subject: Re: I remember

I was under the impression that we were waiting for the MRI monies to clear and release that to me, I'm not far behind on anything a little boost would be nice. I'm in a financial situation that I've never been in before and its making me worry probably more than I should. I've been seeking employment in sales field being construction may not be good idea just yet figured I land sales job and like it may just stay there anyway when my body is 100%. The fact that the week after the accident I was supposed to be going to work for a contractor and would still be working for him and the amount of money ive lost out on as a result totally irks me, but I guess that's what I have you guys for. I'm def trying to keep my head up and stay positive and appreciate you guys I'm sure you guys think I'm annoying but I've just never had to deal with something like this so I apologize. Hope your knee feels better and heals quickly for you.

Matt

On May 6, 2012, at 10:57 AM, Jenna Sanzone <jsanzone@knrlegal.com> wrote:

> Hey Matt,

>

> Sorry I didn't get back to you sooner, I had knee surgery Friday and was out of the office. Anyway, 1st suggestion is to no longer try to do physically demanding sporting activities!! Since you are still healing, there is the chance that you could aggravate the injury even worse. Secondly, as far as your credit goes, having outstanding medical bills isn't going to hurt your credit. They're only on your credit score as outstanding and once they're paid in full they disappear. But then again, that doesn't account for missing car payments, etc. Unfortunately you're going to have to do whatever you can to mitigate the circumstances. What were you doing before the accident? Construction or something? It is unfortunate that your unemployment ran out

7/14/2017

RE: I remember

but you're going to have to find a way to survive and pay your bills. Lord knows the last thing you want to do is have this accident make life any worse for you. As long as you're trying to get a job then that's one step in the right direction. I wish I had a better answer for you in regard to gaining employment, but unfortunately that part's on you.

>

> Keep your head up...something will come along soon.

>

>

>

> Jenna Sanzone

> Kisling, Nestico & Redick

> Paralegal

> 3412 W. Market St., Akron, Ohio 44333

> Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

>

> Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

>

>

>

>

> -----Original Message-----

> From: Matthew Johnson [<mailto:moose4u2nv@gmail.com>]

> Sent: Friday, May 04, 2012 10:50 AM

> To: Jenna Sanzone

> Subject: I remember

>

> I feel like I bug you when I call so I thought I'd email you and spare you the phone call. I remember what I called for the other day. I got a phone call from my landlord for one, about being a Lil behind on my rent. I put that check you guys got to my toward my truck but still 30 days behind. Been interviewing for sales jobs figured its not physically demanding but haven't landed one yet. I'm not trying to be a burden trying to tough it out but have lost my unemployment benefits. Hoping this whole accident doesn't ruin my credit in the process. I guess I may just be freaking out a Lil bit been doing what I can to get better and yesterday didn't make it off the first tee box swung the club and could tell it was a bad idea, luckily they reimbursed me for the round. Any insight? If I don't hear from you have a great weekend.

>

> Matt

>

>

7/14/2017

RE: Chiropractor

RE: Chiropractor

Jenna Sanzone

Sent: Thursday, May 10, 2012 4:41 PM

To: Matthew [Johnson]

I'll let you know as soon as a check comes in. Glad to hear you're wrapping things up. Hopefully you feel better soon.

Thanks,

Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

-----Original Message-----

From: Matthew Johnson [<mailto:moose4u2nv@gmail.com>]

Sent: Wednesday, May 09, 2012 5:39 PM

To: Jenna Sanzone

Subject: Chiropractor

I have a visit Friday and a final evaluation on Monday and I should be all done with chiropractor care. He is writing another script for four more deep tissue visits because of the amount of time it's taking her to get the knots out. I'm feeling pretty good still numbness in my right arm/hand, have a possible job in the works. My cams are going out in my truck so when that check comes its going to be a blessing. My only question is does the chiropractor give me paperwork to give to you for "release" of care or give to you directly? Just want to know what is needed from my end so I don't hold anyone up. Have a great night hope your knee is getting better by the day.

Matt

Exhibit 2

7/16/2017

RE: Anymore help available

RE: Anymore help available

Jenna Sanzone

Sent: Monday, July 16, 2012 11:43 AM

To: Matthew [Johnson]

Liberty Capital Funding

1-866-612-6000

Tell them you're a client of Kisling, Nestico & Redick, attorney is Paul Steele

Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

-----Original Message-----

From: Matthew Johnson [mailto:moose4u2nv@gmail.com]

Sent: Monday, July 16, 2012 12:22 PM

To: Jenna Sanzone

Subject: Re: Anymore help available

I'd be willing to look into it to see how worth it it would be to help my get ahead.

Matt

On Jul 16, 2012, at 12:12 PM, Jenna Sanzone <jsanzone@knrlegal.com> wrote:

> The only option available is for you to take out a loan against your case, but you have to pay interest on it...so essentially you're paying money to borrow money. But if the need is necessary I can definitely get you the information.

>
> Thanks,

>
>
> Jenna Sanzone

> Kisling, Nestico & Redick

> Paralegal

> 3412 W. Market St., Akron, Ohio 44333

> Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

> Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

>
>
>
> -----Original Message-----

> From: Matthew Johnson [mailto:moose4u2nv@gmail.com]

> Sent: Monday, July 16, 2012 12:02 PM

> To: Jenna Sanzone

> Subject: Anymore help available

>
>
> Hi Jenna,

Exhibit 3

7/ 3/2017

RE: Anymore help available

>
> This doesn't need to waste phone time just wondering if there was any financial boost
available anymore till the end I'm busting my butt to get caught up on bills and almost there
since I'm working a little more I just iced and heat on my back and stretching more than I was and
it feels better so that's good. I missed a couple days work because of it though and just thought
I would email and ask you.

>
>
> Matt
>
>

7/13/2017

RE: Matthew Johnson

RE: Matthew Johnson

Jenna Sanzone

Sent: Monday, July 16, 2012 2:08 PM**To:** Ciro [Cerrato]**Importance:** High**Attachments:** Police Report.pdf (168 KB) ; image001.jpg (5 KB) ; image002.jpg (1 KB) ; image003.jpg (1 KB) ; image004.jpg (1 KB) ; image005.jpg (1 KB)

Date of Accident: 1/13/2012

Description of Accident: He was driving his truck and was forced off the road by a METRO Bus

At Fault Insurance: Ohio Transit Risk Pool (METRO)

UM / MP: Erie Insurance

Injuries: neck and shoulders, collar bone

Treatment : ER, Chiropractor, M.D., Neurologist, Massage Therapist

Thank you,



Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati,
Columbus, Dayton, Toledo & Youngstown**From:** Ciro Cerrato [mailto:lcfunding1@gmail.com]**Sent:** Monday, July 16, 2012 2:03 PM**To:** Jenna Sanzone**Subject:** Matthew Johnson

Hi Jenna,

Matthew has contacted us for an advance on his settlement. Can you please send the Police Report and provide the info below?

Date of Accident:

Description of Accident:

At Fault Insurance:

UM / MP:

Injuries:

Treatment :

Exhibit 4

7/13/2017

RE: Matthew Johnson

Thank you,

Ciro Cerrato

Liberty Capital Funding L.L.C.

lc funding1@gmail.com

PH 1.866.612.6000

Fax: 561.423.0931

7/13/2017

RE: Matthew Johnson Contract

RE: Matthew Johnson Contract

Jenna Sanzone

Sent: Tuesday, July 17, 2012 10:36 AM**To:** Ciro [Cerrato]**Importance:** High**Attachments:** Atty Acknowledgment Matt J~1.PDF (45 KB) ; image001.jpg (5 KB) ; image002.jpg (1 KB) ; image003.jpg (1 KB) ; image004.jpg (1 KB) ; image005.jpg (1 KB)

Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

*Locations: Akron, Canton, Cleveland, Cincinnati,
Columbus, Dayton, Toledo & Youngstown***From:** Ciro Cerrato [mailto:lcfunding1@gmail.com]**Sent:** Tuesday, July 17, 2012 11:21 AM**To:** Jenna Sanzone**Subject:** Matthew Johnson Contract

Attached. Please have signed.

Thanks,

—
Ciro Cerrato

Liberty Capital Funding L.L.C.

lcfunding1@gmail.com

PH 1.866.612.6000

Fax: 561.423.0931

Exhibit 5

FAX COVER SHEET

TO	Matthew Johnson
COMPANY	
FAX NUMBER	13306283743
FROM	Ciro Cerrato
DATE	2012-07-16 21:22:46 GMT
RE	Matthew Johnson Contract

COVER MESSAGE

Please initial EVERY page and sign on pg7.

Fax back to 561.423.0931

Thanks,

LCF

866.612.6000

If Need to fax call me at (330) (618-5640)
first so I can go Retrieve it.

FAX to (330) 628-3743.

I would like direct deposit.

Thanks,

MAT

Exhibit 6

WWW.EFAX.COM

KNR03279

Sandra Kurt, Summit County Clerk of Courts

My name is Matthew Johnson and I reside at 2427 Edwin Ave, Akron, OH 44305. I am entering into this non-recourse civil litigation advance agreement ("Agreement") with Liberty Capital Funding LLC ("Company") as of 7/17/2012.

1. I accept the sum of \$250.00 from Company. I direct the funds to be distributed as follows: \$250.00 payable to Matthew Johnson.

2. I assign to Company an interest in the proceeds from my Legal Claim (defined below) equal to the funded amount of \$250.00 plus all other fees and costs to be paid out of the proceeds of my legal claim. I understand that the amount I owe at the end of the first six month interval shall be based upon the amount funded plus the displayed annual percentage rate of return (APRR) charge plus the below listed fees. Each six month interval thereafter shall be computed by taking prior six month balance owed and accessing the displayed six month APRR charge to that total (semi-annual compounding) plus the below listed fees. This shall continue for thirty-six months or until the full amount has been repaid.

MANDATORY DISCLOSURE STATEMENT

1. Total amount of funding received by consumer \$ 250.00

2. Itemized fees:

Application Fee	\$ 0.00
Processing	\$ 20.00
Attorney review	\$ 0.00
Broker	\$ 0.00
Delivery Fee	\$ 50.00
Total fees:	\$ 0.00

3. Total amount to be repaid by consumer - (plus itemized fees)

* if at 6 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 398.40**

if at 12 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 496.01**

if at 18 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 617.53**

if at 24 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 768.82**

if at 30 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 957.18**

if at 36 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding) **\$ 1191.69**

Seller Initials

MWJ

"The "if at 6 months" payment means any payment I make between the day after I get the money and 6 months from that date. The "if at 12 months" payment means any payment I make between the 6 months date and the 12 month date. This is how all the payment dates are calculated.

DEFINITIONS

3. "**Customer or Seller**" is *Matthew Johnson* who gets the money.
4. "**Company or LCF**" is Liberty Capital Funding LLC, Liberty Capital Funding LLC who gives the money.
5. "**Legal Claim**" means (a) the matter which occurred on or about 1/13/2012 which is captioned *Matthew Johnson* ; (b) all applicable proceedings, proceedings on appeal or remand, enforcement, ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or relating to such case; (c) any other proceedings founded on the underlying facts giving rise to such case in which Customer is a party; and (d) any arrangements made with Customer with another party to such case which resolves any of the Customer's claims against such party.
6. "**Proceeds**" means all property or things of value payable on account of the Legal Claim including, without limitation, cash, negotiable instruments, contract rights, annuities and securities whether obtained by judgment, settlement, arbitration award or otherwise. Without limitation, "Proceeds" shall include a reasonable estimate of the monetary value of all non-cash benefits receivable by Customer on account of the Legal Claim.

OBLIGATION TO REPAY IS CONTINGENT

7. If my Legal Claim is lost and no money is awarded or owed to me then I do not have to repay any money to Company. If I am successful on my Legal Claim and I am awarded or owed money, Company shall receive its money before I receive any remaining monies.

FEES AND COSTS

8. I agree to pay the entire amounts listed on the schedule on page 1. I understand that all fees and costs will be added to the APRR sums that I pay company out of the proceeds of my legal claim.
9. The annual percentage rate of return (APRR) is charged starting from the date of this Agreement until the first date of the scheduled payment period(s) listed on page 1. So for example if you make a payment in month 5, you shall pay the full amount owed listed in "if at 6 months" and so on.
10. In the case of multiple fundings, each funding will be treated as a separate and independent transaction and these fees shall accrue on each funded sum from the date

Seller Initials

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of each individual funding.

ASSIGNMENT OF PROCEEDS

11. I hereby assign to and grant to Company an assignment, lien and security interest in the proceeds of the Legal Claim in the amount listed on the last line of the Mandatory Disclosure Statement (\$1191.69), which is the amount I would be required to repay after 36 months from today. Nonetheless, I will pay Company the amount that is due at the time of payment, which shall fully satisfy my obligation to Company under this Agreement, whether that amount is lower or higher than \$1191.69.

12. If this assignment and / or lien violates any law, then I agree to pay Company all of the funds due under this Agreement immediately upon the payment of the Legal Claim proceeds as a separate and independent contractual obligation.

13. I direct my attorney, and any future attorney representing me in my Legal Claim, to honor this assignment and/ or lien.

14. The amount due under this Agreement shall be deducted from any money collected as a result of my Legal Claim and will be paid immediately upon collection to Company. The only payments that will take priority over this, and be paid first, are my attorney's fees and costs, legitimate medical liens and payment to any statutory lien holders.

15. I will not receive any money from the proceeds of the Legal Claim until Company has been paid in full. I acknowledge that my receipt or use of any funds prior to the full re-payment to Company may constitute an illegal conversion.

REPRESENTATIONS AND WARNINGS

16. Company has explained to me that the cost of this transaction may be more expensive than traditional funding sources such as a bank, credit card, finance company or obtaining money from a friend or relatives.

17. I acknowledge that my attorney has not offered any tax or financial advice. My attorney has made no recommendations regarding this transaction other than the appropriate statutory disclosures.

18. Company has advised me to consult a lawyer of my own choosing before signing this Agreement. I have either received such legal advice or knowingly choose not to.

19. Company has advised me to consult a financial or tax professional of my own choosing before proceeding with this transaction. I have either received such professional advice or knowingly choose not to.

Seller Initials

MWS

20. Because Company is taking a significant and genuine risk in giving me this funding, I understand that they expect to make a profit. However, Company will be paid only from the proceeds of my Legal Claim, and agrees not to seek money from me directly if my Legal Claim is not successful.

21. I have every intension of pursuing my legal claim to its conclusion. I understand that if I decide not to pursue the Legal Claim, I must notify Company by writing, email or fax within FIVE (5) BUSINESS DAYS of that decision.

22. I agree that I will not knowingly create additional assignments of or liens against the proceeds of the Legal Claim without the prior written consent of Company except for those liens or assignments that naturally arise during the prosecution of any Legal Claim (e.g. medical, Medicare, etc as permitted by law). I specifically promise not to create any assignments and / or liens against the proceeds of the Legal Claim in connection with any additional fundings or loans from other companies or persons that I might receive after the date of this Agreement. Any additional unauthorized funding may be deemed a default under this agreement by Company and may result in all sums becoming immediately due and owing. Upon notification of customers desire to seek additional funding, Company may demand the name of such other funding company and seek to offer a lower cost solution to customer; seek to be "bought out" of its position; do nothing but maintain its position and await the conclusion of the legal claim.

23. Company reserves the right to decline any further advances agreed upon but not yet made under this Agreement if, in the sole discretion of Company, the circumstances of the Legal Claim have adversely changed. This shall not affect my obligations to Company regarding any funds that actually were advanced, including but not limited to fees and charges.

OTHER PROVISIONS

24. THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM.

25. I understand that I am not assigning my cause of action (the Legal Claim) to Company, but rather I am assigning a right to a portion of and granting a lien against any proceeds of my Legal Claim. Company will play no role whatsoever in the prosecution or the settlement of my legal claim.

26. I have instructed my attorney to cooperate with Company and to give Company periodic updates of the status of my Legal Claim as Company requests. I consent to the sharing of this information. If I change attorneys, I will notify Company within 48 hours of

Seller Initials

MSJT

the change, and provide Company with the name, address and phone number of my new attorney.

27. I understand that the risk of me not recovering in my Legal Claim is Company's risk. If I do not recover money, I will owe Company nothing.

28. This is a non-recourse funding and is not a loan, but if a Court of competent jurisdiction determines that it is a loan, then I agree that interest shall accrue at the maximum rate permitted by law or the terms of this agreement, whichever is less.

29. If any provision of this Agreement shall be deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other provision. This written Agreement represents the entire agreement between the parties. It may only be modified in writing. No prior understandings, representations or agreements between us can change the written terms of this Agreement.

30. Company has fully explained to me the contents of this Agreement and all of its principal terms, and answered all questions that I had about this transaction. This was done in English or French or Spanish (*when appropriate*), the language I speak best.

31. Company will send any notices required under this Agreement to me at the address listed above, *and to my attorney, at the address listed in this paragraph*. If I move, I will notify Company of my new address within 72 hours.

Paul Steele
3412 West Market Street
Akron, OH 44333

32. I represent to Company that there are no pending tax claims, child support liens, criminal allegation(s) or charge(s) against me.

33. If there is a dispute as to the amount owed at the time that my Legal Claim is resolved, it is expressly understood that my attorney shall not disburse any proceeds to me, or to anyone else on my behalf, except for the fees and/or actual disbursements incurred by my attorney in connection with the prosecution of my Legal Claim, until such dispute is resolved. I hereby make the foregoing an irrevocable direction to my attorney, or his successors. Additionally, my attorney shall keep the proceeds in his or her client trust account while any dispute is pending. If this dispute continues beyond a 120 day period, my attorney may elect to transfer the funds from his or her client trust account and deposit the proceeds with a court of competent jurisdiction.

34. I consent to my credit report being run at any time in connection with my applying for and receiving this funding.

35. I further instruct my attorney to not attempt to assert any type of "equitable fund" or

Seller Initials

MWJ

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KNR03284

attorney's fees or costs to be paid by Company for my attorneys' efforts to pay Company their proceeds.

MISSTATEMENTS, FRAUD, CRIMINAL ACTS

36. I will be liable to Company for all sums advanced, together with outstanding fees and charges, and regardless of the outcome of my Legal Claim, if and only if I make a material misstatement in this application or in connection with my Legal Claim, or commit a fraudulent or criminal act either in connection with this transaction or in a matter that would adversely and significantly impact on my Legal Claim or the ability of Company to recover from the proceeds under this agreement.

CONSUMER'S RIGHT TO CANCELLATION:

37. YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM COMPANY.

To cancel this agreement you must either return to the company the full amount of disbursed funds by delivering the company's uncashed check to the company's offices in person, within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of the disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation.

CHOICE OF LAW, VENUE AND FEES/COSTS FOR DISPUTE RESOLUTION

38. I agree that any disputes that may arise out of this Agreement shall be adjudicated in Florida. This Agreement will be interpreted in accordance with the laws of the State of Florida.

39. I understand that if Company does not receive payment as required by this Agreement and Company needs to take action to pursue such payment, Company may collect, in addition to the amount due and owing, reasonable attorney's fees and costs incurred in enforcing its rights. I agree that an amount equal to one third (33 1/3%) of the amount due and owing is a reasonable attorney's fee. More generally, I and Company agree that the prevailing party in any legal action arising out of this Agreement shall be entitled to reasonable attorney's fees and costs, and one-third (33%) of the sum at issue is a reasonable attorney's fee. Additionally, either party may demand that such dispute be heard under the rules of the American Arbitration Association before a single arbitrator with his or her decision being considered final and non-appealable by either party.

Seller Initials

MWS

40. I understand that if a dispute arises between myself and the company concerning this agreement, that the responsibilities of my attorney, representing me in my legal claim, shall not be any greater than my attorneys responsibilities under the Florida Rules of Professional Conduct.

INSTRUCTIONS

41. This Agreement may be executed in separate counterparts. A signature transmitted by FAX or Email shall be effective with the same force and effect as an original signature.

42. I will instruct my attorney to mail all payments to:

Liberty Capital Funding LLC
8276 Calabria Lakes Dr.
Boynton Beach, FL 33473

The payment instructions set forth herein are irrevocable and are not subject to modification in any manner, except by Company or any successor to Company so identified by them and only by written notice to me canceling or modifying the payment instructions contained herein. A copy of this contract shall be provided to both me and my attorney. I hereby accept funding from Company under the terms of this Agreement, grant Company a Security Interest and Lien under the terms hereof, and assign the proceeds of my Legal Claim as specified in this Agreement on the 17th day of July, 2012.

DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY, OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.



Seller

Seller Initials

AWJ

ATTORNEY ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS OF CLAIM

I, Paul Steele of Kisling Nestico & Redick LLC, am counsel to Matthew Johnson in the Legal Claim which arose on or about 1/13/2012 in which Matthew Johnson is expected to receive proceeds from its resolution. I hereby acknowledge the assignment and/or placement of a lien upon the proceeds of the above Legal Claim by my client and granted to Liberty Capital Funding LLC pursuant to a Funding Agreement between both parties. I understand that I am instructed to follow Matthew Johnson's Irrevocable direction and authorization to pay such sums that shall be due and owing at the time of the resolution of the above Legal Claim. At such time that the above Legal Claim is ready for disbursement, I shall contact the above Company for a proper pay-off amount I shall at disbursement time send said check made payable to Liberty Capital Funding LLC located at 8276 Calabria Lakes Dr. Boynton Beach, FL 33473.

If any dispute arises over the amount owed LCF, it is expressly understood that I shall pay LCF the non-disputed amount owed by Matthew Johnson. I shall not disburse any proceeds to Matthew Johnson or to anyone else on Matthew Johnson's behalf, except for my attorney's fees (not to exceed 40%) and/or actual disbursements incurred by me in connection with the prosecution of this Legal Claim, until such dispute is resolved. I shall keep the proceeds in my client trust account while any dispute is pending. If the dispute continues beyond 120 days, I may notify LCF and Matthew Johnson and then transfer the funds from my client trust account and deposit the proceeds with a court of competent jurisdiction. I am being paid per a written contingent fee agreement and all proceeds of the civil claim or action will be disbursed via my client trust account or settlement fund established to receive proceeds from the defendant on behalf of Matthew Johnson. I further represent that to the best of my knowledge Matthew Johnson has NOT taken any other fundings, advances, loans or any funding encumbrances on the above Legal Claim other than LCF herein. I agree to notify LCF if at any time I am no longer counsel on this Legal Claim, or I have joined additional co-counsel to also work on this Legal Claim. While I am not endorsing or recommending this transaction, I have reviewed the contract and all costs and fees have been disclosed to my client, including the annualized rate of return applied to calculate the amount to be repaid by my client. This document is part of the contract between Customer and Company for purposes of Ohio Revised Code Section 1349.55.

Dated: 7/17/12

Kisling Nestico & Redick LLC

By: 

Attorney Signature

Given this 17th day of July, 2012.

Seller Initials



**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF ALBERTO R. NESTICO</u>
)	
Defendants.)	

State of Ohio)	
	)	ss:
County of Summit)	

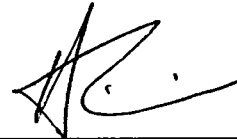
I, Alberto R. Nestico, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and the review of records and is true and accurate to the best of my belief and recollection:

1. I am a shareholder and the managing shareholder of Defendant Kisling, Nestico & Redick, LLC ("KNR"). I am also a member of the Disciplinary Committee of the Akron Bar Association.
2. Neither KNR nor I had or have any ownership or financial interest in Liberty Capital Funding, LLC ("Liberty Capital"). Neither KNR nor I formed (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assisted in forming, Liberty Capital.
3. Neither KNR nor I received or receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. Neither KNR nor I were or are involved in any self-dealing with any account at, or client of, Liberty Capital. Neither KNR nor I received or receive any financial, economic,

Exhibit B

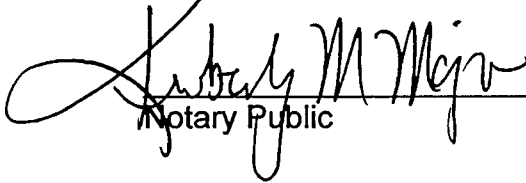
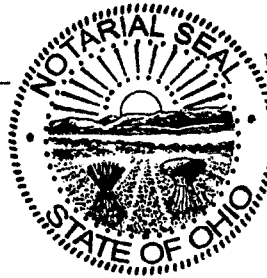
or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Affiant Further Sayeth Naught.



ALBERTO R. NESTICO

Sworn to before me and subscribed in my presence this 31 day of October, 2017.


Notary Public

KIMBERLY M. MAJOR
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Portage County
My Comm. Exp. 8/13/22

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF ROBERT W. REDICK</u>
)	
Defendants.)	

State of Ohio)
) ss:
County of Summit)


I, Robert W. Redick, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and the review of records and is true and accurate to the best of my belief and recollection:

1. I am an attorney at Defendant Kisling, Nestico & Redick, LLC (“KNR”) and a former equity shareholder. I am also a member of the Disciplinary Committee of the Akron Bar Association.
2. Neither KNR nor I had or have any ownership or financial interest in Liberty Capital Funding, LLC (“Liberty Capital”). Neither KNR nor I formed (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assisted in the formation of, Liberty Capital.
3. Neither KNR nor I received or receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. Neither KNR nor I were or are involved in any self-dealing with any account at, or client of, Liberty Capital. Neither KNR nor I received or receive any financial, economic,

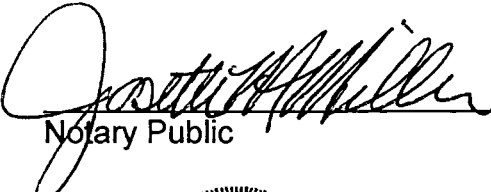
Exhibit C

or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Affiant Further Sayeth Naught.


ROBERT W. REDICK

Sworn to before me and subscribed in my presence this 31st day of October, 2017.


Notary Public



Joanne M. Miller
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/22/2020

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF CIRO M. CERRATO</u>
)	
Defendants.)	

State of Florida)	
)	
	) ss:	
County of Palm Beach)	

I, Ciro M. Cerrato, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and is true and accurate to the best of my belief and recollection:

1. I formed Liberty Capital Funding, LLC ("Liberty Capital") in or around April of 2012. A true and accurate copy of Liberty Capital's Electronic Articles of Organization is attached as Ex. A.
2. Kisling, Nestico & Redick, LLC, ("KNR"), Rob Nestico, and Robert Redick did not have any ownership or financial interest in Liberty Capital. KNR, Rob Nestico, and Robert Redick did not form, or assist in forming, Liberty Capital.
3. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Exhibit D

Affiant Further Sayeth Naught.


CIRO M. CERRATO

Sworn to before me and subscribed in my presence this 24 day of August, 2017.


Notary Public



JAVIER VAZQUEZ
MY COMMISSION # 08 628830
EXPIRES: August 28, 2020
Bonded thru Budget Notary Services

STATE OF FLORIDA
COUNTY OF Broward
Sworn to (or affirm) and subscribed before
me this 24 day of August, 2017
by Ciro M Cerrato

Personally Known _____ OR Produced Identification ✓
Type of Identification Produced Florida Drivers License

Exhibit A**Electronic Articles of Organization
For
Florida Limited Liability Company****L12000050978
FILED 8:00 AM
April 16, 2012
Sec. Of State
jbryan****Article I**

The name of the Limited Liability Company is:
LIBERTY CAPITAL FUNDING LLC

Article II

The street address of the principal office of the Limited Liability Company is:
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

The mailing address of the Limited Liability Company is:
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

Article III

The purpose for which this Limited Liability Company is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:
CIRO M CERRATO
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: CIRO M. CERRATO

Article V

The name and address of managing members/managers are:

Title: MGRM
CIRO M CERRATO
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473 US

L12000050978
FILED 8:00 AM
April 16, 2012
Sec. Of State
jbryan

Article VI

The effective date for this Limited Liability Company shall be:

04/14/2012

Signature of member or an authorized representative of a member

Electronic Signature: CIRO M. CERRATO

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. 2016-CV-09-3928 Judge Allison Breaux
MATTHEW JOHNSON'S RESPONSES TO DEFENDANT KISLING NESTICO & REDICK'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR ADMISSION	

Named Plaintiff Matthew Johnson responds to Defendant Kisling Nestico & Redick's first set of Interrogatories and Requests for Admission as follows.

GENERAL OBJECTIONS

1. Mr. Johnson's specific objections to each interrogatory or request are in addition to the General Objections set forth in this section. These General Objections form a part of the response to each and every request and are set forth here to avoid duplication. The absence of a reference to a General Objection in each response to a particular request does not constitute a waiver of any General Objection with respect to that request. All responses are made subject to and without waiver of Mr. Johnson's general and specific objections.

2. To the extent that Defendant's requests are inconsistent with each other, Mr. Johnson objects to such requests.

3. To the extent that Defendant's requests exceed the scope of permissible inquiry under the Ohio Rules of Civil Procedure, Mr. Johnson objects to such requests. To the extent that responses to such requests are provided herein, it is in an effort to expedite discovery in this action.

4. Mr. Johnson objects to Defendants' requests to the extent that they are unreasonably burdensome, and to the extent they call upon Mr. Johnson to investigate, collect and disclose information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that responses to such requests are provided herein, it is in an effort to expedite discovery in this action.

5. Mr. Johnson's responses and objections herein shall not waive or prejudice any objections Mr. Johnson may later assert, including but not limited to objections as to competency, relevance, materiality or admissibility in subsequent proceedings or at the trial of this or any other action.

6. Mr. Johnson objects to Defendant's requests to the extent they seek information or materials that are already within Defendant's possession, custody, or control, or that are equally available to him, on the grounds that such requests are unduly burdensome and oppressive.

7. Mr. Johnson objects to Defendant's requests to the extent that they call upon Mr. Johnson to produce information that is not in Mr. Johnson's possession, custody, or control.

8. Mr. Johnson objects to Defendant's requests to the extent they purport to seek any information immune from discovery because of the attorney-client privilege, the work-product doctrine, or any other applicable law, rule or privilege.

9. Mr. Johnson objects to any request to the extent that it refers to or incorporates a previous request to which an objection has been made.

10. Mr. Johnson objects to Defendant's requests to the extent they are vague or ambiguous.

11. Mr. Johnson objects to Defendant's requests to the extent they seek information that is confidential and proprietary. Such information will be produced only in accordance with a duly entered protective order.

12. As discovery is ongoing, Mr. Johnson reserves the right to supplement these responses.

REQUESTS FOR ADMISSION AND INTERROGATORIES

REQUEST FOR ADMISSION NO. 1: Admit that KNR never had any financial or ownership interest in the Liberty Capital.

RESPONSE:

Deny.

INTERROGATORY NO. 1: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff objects to this contention interrogatory as overly broad and unduly burdensome. "[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted). *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010).

Further, Plaintiff objects on the grounds that this is not an appropriate time for Defendant to serve or for Plaintiff to respond to contention interrogatories. "The general policy is to defer contention interrogatories until discovery is near an end, in order to promote

efficiency and fairness.” *Ziemack v. Centel Corp.*, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995). Indeed, “[t]here is considerable authority for the view that the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period.” *Schweinfurth v. Motorola, Inc.*, No. 1:05CV0024, 2007 U.S. Dist. LEXIS 98182, 2007 WL 6025288, at *4 (N.D. Ohio Dec. 3, 2007) *aff’d*, 2009 U.S. Dist. LEXIS 8405, 2009 WL 349163 (N.D. Ohio Jan. 26, 2009). see also *Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.*, 2013 U.S. Dist. LEXIS 189111, *188-189 (N.D. Ohio Feb. 4, 2013) (“responses [to contention interrogatories] are inappropriate at this early stage of the proceeding.”); *Hazelkorn v. Morgan*, 1980 Ohio App. LEXIS 12762, *3 (Ohio Ct. App., Trumbull County Dec. 22, 1980) (“An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion, but the court may order that such an interrogatory be answered at a later time, or after designated discovery has been completed, or at a pretrial conference.”); *Graber v. Graber*, 2004 Ohio App. LEXIS 5585, 2004-Ohio-6143, ¶ 33 (Ohio Ct. App., Stark County Nov. 15, 2004) (same).

Plaintiffs are willing to respond fully to properly formed contention interrogatories at such time as discovery is substantially complete. At this time and subject to the above objections, Plaintiff refers the Defendant to the documents cited in and quoted from in the Complaint showing that Nestico directed KNR attorneys to recommend Liberty Capital to KNR clients only weeks after the company was formed, and weeks after he had asked KNR attorneys to send him the agreements that KNR used with other loan companies, including the KNR emails quoted in paragraphs 101–118.

REQUEST FOR ADMISSION NO. 2: Admit that at the time you filed the Complaint that you had no evidence that KNR had any financial or ownership interest in Liberty Capital.

RESPONSE:

Deny.

INTERROGATORY NO. 2: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections and response to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 3: Admit that KNR never received any financial benefit from Liberty Capital loans to KNR clients.

RESPONSE:

Deny.

INTERROGATORY NO. 3: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 4: Admit that at the time you filed the Complaint that you had no evidence that KNR ever received any financial benefit from Liberty Capital loans to KNR's clients.

RESPONSE:

Deny.

INTERROGATORY NO. 4: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1.

ADDITIONAL INTERROGATORIES

INTERROGATORY NO. 5: Identify all Persons who drafted, assisted in drafting, or provided information for the responses to these Discovery Requests.

RESPONSE:

Matthew Johnson, Peter Pattakos, Dan Frech.

INTERROGATORY NO. 6: Identify all Persons who may have discoverable evidence, information, or knowledge relating to the allegations and claims in this Lawsuit or Complaint, including, without limitation, the allegations in IV.H. of the Second Amended Complaint, class certification allegations, and Claims 7-9 and 11.

RESPONSE:

As discovery has not yet begun in earnest, this list is only partial as Plaintiffs are not currently aware of all of the many witnesses with evidence to support their claims:

- Each of the named Plaintiffs to testify about their experience with KNR
- Nestico, Redick and a corporate representative of KNR to discuss the firm's relationships with chiropractors, marketing practices, use of investigators and fees associated therewith, and use of litigation finance companies including Liberty Capital.
- Other potential witnesses who do or have worked at KNR, to be questioned on the same general topics, include but are not limited to Brandy Lamtman, Holly Tusko, Robert Horton, Gary Petti, Paul Steele, Courtney Weaver, and Megan Jennings.
- Minas Floros and other chiropractors and physicians may be called to testify regarding their referral relationships with KNR.
- Devin Oddo, Matt Ameer, Robert Horton, Jeff Allen, and others may be called to testify specifically regarding their representations of the named Plaintiffs.
- Aaron Czetli, Michael Simpson, AMC Investigations, MRS Investigations, or either company's employees, Gary Monto, Wes Steele, Paul Hillenbrand, Jon Thomas, Jeff

Allen, Tom Fisher, Dave French, Glenn Jones, Gary Krebs, James Smith, Steven Tobias, Ayan Noor, or David Hogan may be called to testify regarding their “investigations” and billing to KNR.

- Ciro Cerrato may be called to testify regarding his time at Liberty Capital and his relationship with the Defendants.

INTERROGATORY NO. 7: Identify all Persons that Plaintiff plans to call as fact witnesses at trial or any hearing in this Lawsuit, and identify the anticipated subject matter of each fact witnesses’ testimony.

RESPONSE:

Plaintiff objects to this request as premature. Plaintiff will comply with all Local Rules and Court Orders in providing a witness list prior to Defendant in advance of trial. Subject to that objection, Plaintiff directs Defendant to those individuals identified in response to Interrogatory No. 6.

INTERROGATORY NO. 8: Identify all Persons that Plaintiff plans to call as expert or opinion witnesses (including, without limitation, expert or opinion witnesses for class certification and related issues) at trial or any hearing in this Lawsuit, and for each witness, state the subject matter on which the expert or opinion witness will testify.

RESPONSE:

Plaintiff objects to this request as premature. Plaintiff will comply with all Civil Rules, Local Rules, and Court Orders in disclosing experts, producing reports and files, and making experts available for deposition in advance of trial. Subject to that objection, Plaintiff states that no expert has yet been engaged.

INTERROGATORY NO. 9: Identify and list each exhibit, Document or any other intangible object that Plaintiff intends to introduce into evidence or use at trial or any hearing (including, without limitation, any class certification hearing) in this Lawsuit.

RESPONSE:

Plaintiff objects to this request as premature Plaintiff will comply with all Local Rules and Court Orders in providing trial exhibits to Defendant in advance of trial.

INTERROGATORY NO. 10: State whether you have ever been involved in any legal proceeding, whether civil or criminal, and, if so, provide the venue, case number, and outcome of the proceeding, such as acquittal, *nolle prosequi*, conviction, settlement, defense verdict, plaintiff verdict, etc.

RESPONSE:

Plaintiff objects to this inquiry to the extent it seeks information about matters unrelated to this case and seeks information on criminal convictions for non-felonies and/or crimes committed more than 10 years ago. Subject to that objection, Plaintiff refers Defendant to Summit County Court of Common Pleas Case Nos. DR-2004-06-2154, CV-2013-12-5734, and CR-2015-08-2506.

INTERROGATORY NO. 11: State whether Plaintiff or her attorneys have communicated, either directly or indirectly, orally or in writing, with any putative member of the alleged class regarding this Lawsuit, its pendency, the allegations of the Complaint, or class certification and, if so, identify each communication (you may exclude communications between an attorney and a client or a prospective client who has, on the initiative of the client or prospective client, consulted with, employed, or proposed to employ the attorney).

RESPONSE:

Any communications Plaintiff's counsel has had with potential class members were initiated by the class member.

INTERROGATORY NO. 12: Identify and calculate the alleged damages that Plaintiff is seeking to recover in this Lawsuit and that the class members are seeking to recover in this Lawsuit.

RESPONSE:

Plaintiff objects to this interrogatory as premature, and as requesting information within the possession of the Defendants and not the Plaintiffs. Without waiving these objections, Plaintiff refers Defendants to the allegations of the Complaint and further states that he seeks damages, on behalf of himself and the class, in the amount of interest and fees on the loans taken from Liberty Capital.

INTERROGATORY NO. 13: With respect to the first communication Plaintiff had with her attorney regarding the Lawsuit, identify the date and describe the circumstances surrounding the communication, including the date of the communication, and the individual who initiated the communication.

RESPONSE:

Plaintiff objects to this interrogatory as not reasonably calculated to lead to the discovery of relevant evidence; Plaintiff also objects to the extent this interrogatory request any information protected by the attorney client or work product privilege. Subject to that objection, Plaintiff states that he first contacted counsel in August of 2016.

INTERROGATORY NO. 14: Identify all facts that support Plaintiff's contentions that "KNR directed its clients to take out high-interest loans with Liberty Capital Funding, a company in which Defendants maintained a financial interest."

RESPONSE: Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including KNR's advertising materials and the KNR emails quoted in paragraphs 101–118.

INTERROGATORY NO. 15: Identify all facts that support Plaintiff's contentions in paragraph 99 of the Complaint.

RESPONSE: Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including KNR's advertising materials and the KNR emails quoted in paragraphs 101–118.

INTERROGATORY NO. 16: Identify when Plaintiff first became aware of or had knowledge of Defendants' alleged self-dealing with Liberty Capital.

RESPONSE: Plaintiff first became aware of or had knowledge of Defendants' alleged self-dealing with Liberty Capital in March of 2017.

INTERROGATORY NO. 17: Identify all facts that support Plaintiff's contentions that: "Defendants subjected KNR attorneys and staff to harsh discipline if they disbursed settlement or judgment funds to a client without paying amounts owed to Liberty Capital, including, deduction of the amounts owed to Liberty Capital from the KNR attorneys' and staff members' paychecks."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff states that Robert Horton has informed Plaintiff of this fact.

INTERROGATORY NO. 18: Identify all facts that support Plaintiff's contentions that: "Liberty Capital stopped making loans in 2014, and ceased operations shortly thereafter. KNR clients were Liberty Capital's only customers, or the great majority of its customers, throughout the history of its operations."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff states that Robert Horton has informed Plaintiff of this fact, which is also supported by emails from Rob Nestico that will be produced, and documents publicly available at the Florida Secretary of State's website.

INTERROGATORY NO. 19: Identify all facts that support Plaintiff's contentions in paragraph 116 of the Complaint.

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including paragraphs 101–118, as well as Ciro Cerrato's LinkedIn page, and further states that Robert Horton has informed Plaintiff of some of these facts.

INTERROGATORY NO. 20: Identify all facts that support Plaintiff's contentions that: "As with all of the unlawful practices described in this document, KNR's unlawful relationship with Liberty Capital was a routine subject of discussion among KNR's rank-and-file attorneys. These attorneys were fearful of raising their concerns with Defendants Nestico & Redick, who ruled the firm with an iron fist and swiftly dismissed any dissenters * * *."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

Sandra Kurt, Summit County Clerk of Courts

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including regarding Gary Petti, and further states that Robert Horton and Gary Petti have informed Plaintiff of these facts.

INTERROGATORY NO. 21: Identify all facts that support Plaintiff's contentions in paragraph 118 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118, and particularly the email quoted in paragraph 118 itself.

INTERROGATORY NO. 22: Identify all facts that support Plaintiff's contentions in paragraph 119 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 23: Identify all facts that support Plaintiff's contentions in paragraph 120 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 24: Identify all facts that support Plaintiff's contentions that: "Defendants Nestico and Redick are personally responsible for KNR's unlawful acts."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 121–123.

INTERROGATORY NO. 25: Identify all facts that establish or support the allegations that Defendants' committed fraud as alleged in Claim 7.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 26: Identify all facts that establish or support the allegations that

Defendants' breached their fiduciary duty as alleged in Claim 8.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 27: Identify all facts that establish or support the allegations that Defendants were unjustly enriched as alleged in Claim 9.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 28: Identify all facts that establish or support the allegations that Defendants are liable for unfair or deceptive trade practices under the Ohio Consumer Sales Practices Act, as outlined in Claim 11 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the

documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 29: Identify all facts that support Plaintiff's contentions in paragraphs 126(C) and 127-130 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including KNR's advertising materials and in paragraphs 101–118.

INTERROGATORY NO. 30: Describe how the putative members of Class C will be identified.

RESPONSE:

Plaintiffs will be able to ascertain the class members of Class C using data and information in the possession of the Defendants. Plaintiffs have requested a deposition with a KNR corporate representative to discuss their communications and information systems, their document management and data systems, and document retention policies.

INTERROGATORY NO. 31: Identify all Persons with whom you communicated about retaining The Chandra Law Firm, LLC, Subodh Chandra, Donald Screen, and Peter Pattakos as your attorneys to represent you in this Lawsuit.

RESPONSE:

Plaintiff objects to this interrogatory because it is not reasonably calculated to lead to the discovery of relevant evidence and would require the disclosure of information protected by the work-product and attorney-client privileges.

REQUEST FOR PRODUCTION OF DOCUMENTS

Responding to all of Defendants' Requests for Production, Plaintiff states, subject to the above and below objections and clarifications, that all of the responsive documents in Plaintiffs's possession were provided to Plaintiff by former KNR attorneys Rob Horton and Gary Petti. Plaintiff has produced or will produce all of the documents provided by Horton and Petti and nothing written above or below should be taken as a statement that Plaintiff intends to withhold any such documents.

1. All Documents Plaintiff used, relied upon, or referred to in answering KNR's First Set of Requests for Admission and Interrogatories.

RESPONSE: All such documents have been or will be produced.

2. All Documents relating to the requests, allegations, and responses in the above First Set of Requests for Admission and Interrogatories.

RESPONSE: Subject to the objections stated herein, all such documents have been or will be produced.

3. All Documents obtained from Robert Horton relating to this Lawsuit, KNR, Nestico, Redick, and the allegations in the Complaint, including, without limitation, Liberty Capital and the alleged undisclosed self-dealing and kickbacks with Liberty Capital.

RESPONSE: All such documents have been or will be produced.

4. All Documents obtained from Gary Petti relating to this Lawsuit, KNR, Nestico, Redick, and the allegations in the Complaint, including, without limitation, Liberty Capital and the alleged undisclosed self-dealing and kickbacks with Liberty Capital.

RESPONSE: All such documents have been or will be produced.

5. All Documents relating to the factual and legal allegations in the Counterclaim.

RESPONSE Objection: A request for "all documents" related to the Defendants multi-claim

Counterclaim is overbroad and unduly burdensome. *See, e.g. Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.”). Without waiving this objection, these objections, Plaintiff directs the Defendants to the documents cited in and quoted from in the Plaintiffs’ Complaint, and the other documents produced by Plaintiff in this lawsuit.

6. All Documents relating to, used in, or relied upon in filing Plaintiffs’ Motion for Class Certification.

RESPONSE: Plaintiff objects to this request as premature and overbroad. No depositions have been taken and few documents exchanged. Plaintiffs do not know which documents they will use or rely in their motion for class certification, apart from the documents quoted in the Complaint, and will produce any documents they intend to use as exhibits to their class certification motion prior to or upon the filing of that motion.

7. All Documents relating to the allegations in paragraphs 126(C) and 127-130 of the Complaint.

RESPONSE: Plaintiff objects to this request as premature and overbroad. No depositions have been taken and few documents exchanged. Plaintiffs will support the validity of their class claims in their motion for class certification, plaintiffs will produce any documents they intend to use as exhibits to their class certification motion prior to or upon the filing of that motion.

8. All Documents relating to Plaintiff’s allegations in the Complaint, including, without limitation, IV.H. of the Complaint.

RESPONSE: Plaintiffs object to this discovery request on the basis of vagueness and overbreadth. Further, the request is beyond the scope of permissible discovery. This case is about the behavior of the Defendants and they do not need to be made aware of the contents of

their own documents. The request serves only to allow Defendants to determine what information the Plaintiffs have discovered. Because the second-hand knowledge of the plaintiffs and/or their attorneys is not relevant nor reasonably calculated to lead to admissible evidence, it is beyond the scope and objectives of legitimate discovery. *See Smith v. BIC Corp.*, 121 F.R.D. 235, 244-245 (E.D.Pa. 1988). In addition, Plaintiffs object to this request on the basis that the defendant has equal or greater access to the information sought. Furthermore, Plaintiffs object on the basis of the attorney work-product doctrine, insofar as the selection of the documents requested would reveal the mental impressions, opinions, and/or trial strategy of Plaintiffs' attorneys. *Gould v. Mitsui Mining & Smelthing*, 825 F.2d 676, 680 (2nd Cir. 1987); *Shelton v. American Motors*, 805 F.2d 1323, 1328-1329 (8th Cir. 1986); *Sporck v. Pell*, 759 F.2d 312, 316 (3rd Cir. 1985). Notwithstanding these objections, Plaintiff directs the Defendants to the documents cited in and quoted from in the Plaintiffs' Complaint, and the other documents Plaintiff has produced in this lawsuit.

9. All Documents relating to Plaintiff's contention that Defendants are liable for fraud, as outlined in Claim 7 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

10. All Documents relating to Plaintiff's contention that Defendants are liable for breach of fiduciary duty, as outlined in Claim 8 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

11. All Documents relating to Plaintiff's contention that Defendants are liable for unjust enrichment, as outlined in Claim 9 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

12. All Documents relating to Plaintiff's contention that Defendants are liable for unfair or deceptive trade practices under the Ohio Consumer Sales Practices Act, as outlined in Claim 11 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

13. All Documents relating to Attorney Robert Horton.
14. All Documents relating to Gary Petti.
15. All Documents relating to KNR.
16. All Documents relating to Nestico.
17. All Documents relating to Redick.
18. All Documents relating to Liberty Capital.
19. All Documents relating to Defendants' alleged undisclosed self-dealing and kickbacks with Liberty Capital.
20. All Documents relating to the alleged damages that Plaintiff seeks to recover in this Lawsuit.
21. All Documents that allegedly demonstrate that Defendants were purportedly unjustly enriched.
22. All Documents relating to putative class members relating to the allegations in the Complaint.

RESPONSE to Requests 13–22: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce responsive documents.

23. All Documents that Plaintiff may use as exhibits, introduce as evidence, or rely upon at trial or any hearing (including, without limitation, any class certification hearing) in this Lawsuit.

RESPONSE: Objection: This request is premature. Plaintiff will comply with all Local Rules and

Court Orders in providing trial exhibits to Defendant in advance of trial.

24. All Documents provided to, relied upon by, created by, generated by, or reviewed by Plaintiff's opinion or expert witness (including, without limitation, opinion or expert witnesses on class certification and related issues) in reaching his or her opinion, performing any analysis, reaching any conclusion, or drafting his or her expert report.

RESPONSE: Objection: This request is premature. Plaintiff will comply with all Local Rules and Court Orders in disclosing experts, producing reports and files, and making experts available for deposition in advance of trial.

25. To the extent not previously requested herein, all Documents that relate in any way to the Lawsuit.

RESPONSE: See objection to RFP No. 8.

Dated: October 24, 2017

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)

Daniel Frech (0082737)

THE PATTAKOS LAW FIRM LLC

101 Ghent Road

Fairlawn Ohio

P: 330.836.8533

F: 330.836.8536

peter@pattakoslaw.com

dfrech@pattakoslaw.com

*Attorneys for Plaintiffs Member Williams, Matthew Johnson
and Naomi Wright*

CERTIFICATE OF SERVICE

The foregoing document was served on counsel for Defendants by email on October 24, 2017.

/s/ Peter Pattakos

Attorney for Plaintiffs

Sandra Kurt, Summit County Clerk of Courts

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

KISLING, NESTICO & REDICK, LLC

Plaintiff,

vs.

ROBERT PAUL HORTON

Defendant.

Case No. CV-2017-03-1236

Judge Alison Breaux

Affidavit of Robert Paul Horton, Esq.

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

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

Exhibit F

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RPH

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

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

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

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

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

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

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

RPH

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

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

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

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

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

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

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

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

RPH

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


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

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

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

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

Further affiant sayeth naught.

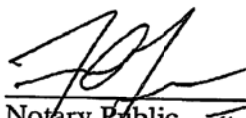

Robert Paul Horton

8-8-17
Date

STATE OF OHIO)

COUNTY OF SUMMIT)

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


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

RPH

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2016 09 3928

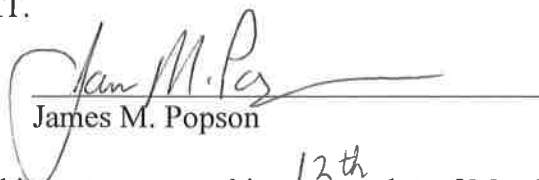
Judge Patricia A. Cosgrove

AFFIDAVIT OF JAMES M. POPSON

I, James M. Popson, having duly sworn, and having knowledge of the facts contained herein,
state:

1. I am counsel for the Defendants in the above captioned matter.
2. Attached to this Affidavit are true and accurate copies of electronic mail correspondence between myself and counsel for Plaintiff, Mr. Peter Pattakos, regarding (a) his efforts to serve a subpoena on third party witness Ciro Cerrato, and; (b) his accusations that I am complicit in the witness obstructing those efforts. The individual items appear in reverse chronological order due to the limitations of my electronic mail software.
3. Mr. Cerrato previously communicated with my former partner Brian Roof, and signed an Affidavit which was mailed to our office. The Affidavit has been submitted as evidence in support of a Motion for Summary Judgment related to the claims of Plaintiff Johnson. I have not personally communicated with Mr. Cerrato.

FURTHER AFFIANT SAYETH NAUGHT.


James M. Popson

SWORN TO BEFORE ME and subscribed in my presence this 13th day of March,
2018.


Notary Public

Exhibit G

From: [James M. Popson](#)
To: [Peter Pattakos](#)
Cc: [Nathan F. Studeny](#)
Subject: Re: KNR - Response to Request for Additional searches
Date: Thursday, March 08, 2018 7:02:36 PM

Peter,

I appreciate your response. Please note that I did agree to exchange information as we are all required to do. Unfortunately my information was no different than yours. Based upon your reported difficulties, it is apparent to me that Mr. Cerrato does not desire to voluntarily appear for deposition. I disagree that it is my place, and it certainly is not my obligation, to give him advice on that issue. It puts me in a bad spot. I am required by ethical duties to be completely honest with him if I were to call him - i.e., I would have to tell him I am asking for a different address so he can be served with a subpoena. I am not going to participate in tricking him.

I certainly understand why he won't speak to you. In his view, you have falsely accused him of participating in wrongdoing. But the mere fact that he spoke to Roof voluntarily and refuses to speak to you does not create any affirmative duty for me to call him or speak to him at all - not under the ethical rules or the rules of civil procedure. I sincerely hope that you get him served because I already know his testimony is favorable to my defense, but it is simply not my responsibility to call Mr. Cerrato and coerce him to give you the information you seek.

Jim

Sent from my iPhone

On Mar 8, 2018, at 5:54 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Jim,

I have only asked you to make a phone call to see if the same key witness who gave you an affidavit would also give you his address so we could avoid undertaking a needless burden to stake him out. See The Supreme Court of Ohio's Lawyer's Creed, Para. 3 ("I shall attempt to agree with other counsel on a voluntary exchange of information."). You told me three weeks ago that you would get back to me on this and did not do so until yesterday, when you came back with the same address that we already knew was no good. If you really intend to take the position you express below, you are only confirming your client's intent to take advantage of Cerrato's obstruction, and below, I only asked you to consider the appearance that this would create for your client. You may not see it the same way, and it is clear that we disagree about the underlying facts, but that doesn't mean I am accusing you, yourself, of any misconduct. Similarly, when we point out that the KNR Defendants are wrongfully withholding documents, that does not mean we are saying that you or your co-counsel are personally responsible for it. I hope we can keep the two things separate going forward. I have told you directly on the phone that I believe you're a straight shooter, and that I had heard as much from other attorneys who had worked with you.

Anyway, if you do intend to maintain the position that we're no longer entitled to take Cerrato's deposition, please confirm and we can tee that up for the Court as well. Judge Cosgrove did say at the 1/5 hearing that she would like us to get his deposition done within 60 days, but I do not believe she ordered us to do so and given his obstruction I believe it is especially unlikely that she'll hold us to that deadline. We have made every reasonable effort to get him served and had been waiting on you to provide the address as you said you would.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

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On Thu, Mar 8, 2018 at 4:23 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

I will not tolerate your accusations of misconduct on my part. Your inclination to toss around allegations of misconduct whenever you become frustrated with a problem is troubling. I follow the rules. It is improper for you to accuse me of violating the rules of discovery without pointing me to a rule or a case that you believe requires me to act. I provided you with the name, address and the phone number we have for this witness. I double checked our internal notes here at my office and the address he provided us is the same address I gave you. The telephone number I gave you was accurate. I have had numerous conversations with you and exchanged correspondence with you on this topic multiple times – all at the cost of my time which is a cost to the defense of this case. I will say it one last time: I am not obstructing your efforts to serve Mr. Cerrato. I am not Mr. Cerrato's counsel, and I cannot (and have not) advised him on accepting or rejecting service of a subpoena. I have not, nor would I ever encourage a witness to dodge service. Mr. Cerrato is making his own decisions. If he is choosing to be uncooperative with you, that is his decision – not mine. And instead of coming to me with hat in hand asking for the professional courtesy of more time – you instead choose to falsely accuse me of being “complicit” in Mr. Cerrato's efforts to avoid service.

You need to understand that there are consequences for falsely accusing opposing counsel of misconduct. You do this repeatedly and without apology, and are

apparently so devoid of self-awareness that you maintain a full expectation of further friendly cooperation from the victims of your wild accusations and antics. The consequence here is that I will not agree to any extensions of time with regard to serving Cerrato or responding to our motion regarding this class. The Liberty Capital issue has been pending since November when we filed our motion regarding this class. At the last hearing the judge gave you 60 days to have Mr. Cerrato served and deposed. Apparently you found him - but he is refusing or dodging service. My client is not required to bear the cost and expense of your efforts to serve this witness – and that includes costs and expenses for my time. You filed this lawsuit and the false allegations regarding Liberty Capital, and if you needed to pay for someone to sit on Mr. Cerrato's house until he was served then that was your burden to bear – not my client's. We will oppose any more delays on your response to the Motion on the Liberty Capital class. Time is money and you are wasting my client's. You chose not to expend the resources to serve the witness, and instead resorted to absurdly blaming me for the conduct of the witness and your own failure to get him served.

As I have demonstrated during my time on this case, I am generally amenable to cooperating with opposing counsel regarding deadlines, and I am willing to make efforts to resolve discovery disputes and narrow issues where possible. However, your false allegations regarding my "complicity" in Mr. Cerrato's conduct leave me disinclined to agree to any further extensions of time on this issue. We are going to ask the court to require you to respond to the motion with or without Mr. Cerrato's deposition. Your failure to serve Mr. Cerrato is just that – your failure.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Thursday, March 08, 2018 1:55 PM

To: James M. Popson

Subject: Re: KNR - Response to Request for Additional searches

Jim,

I assume you didn't just find his affidavit that you filed with your summary judgment motion. Someone had to contact Cerrato to obtain it. If you're refusing to do the same regarding a simple address that's your right, I suppose, but the Civil Rules require cooperation in discovery and ultimately we will seek to hold

your client responsible for whatever burden we have to undertake to get the discovery to which we're entitled. This is a key witness with information to which we're clearly entitled. I'd think you would not want to be complicit in his attempted obstruction. What does it look like when you can get an affidavit from him but can't get us his address?

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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On Thu, Mar 8, 2018 at 1:43 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

It does not stand to reason that I can find his home address. I don't have it. If I had it, I would give it to you. We have born enough of the burden of the cost and expense of discovery. The burden of serving Mr. Cerrato rests with you.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Thursday, March 08, 2018 1:34 PM

To: James M. Popson
Cc: Nathan F. Studeny; Barb Day

Subject: Re: KNR - Response to Request for Additional searches

Jim, I reached Mr. Cerrato by phone this afternoon. He refused to provide any information to me and hung up on me. As you know, we've been informed that the Calabria Lakes address is no good for him, and he refuses to accept service at his office. Because your office was able to obtain an affidavit from him, it stands to reason that you would also be able to get us his current address where he can be served. If you're refusing to do that, please confirm and we'll go ahead and undertake more burdensome means of service as necessary.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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On Wed, Mar 7, 2018 at 10:51 AM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

I am told we do not have a personal address. The last address KNR has related to Cerrato is the address for Liberty Capital at 8276 Calabria Lakes Drive, Boynton Beach, Florida, 33473. We also have a phone number – (561) 735-1571.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Wednesday, March 07, 2018 10:25 AM

To: James M. Popson

Cc: Nathan F. Studeny

Subject: Re: KNR - Response to Request for Additional searches

Jim,

You said you would get back to me on Cerrato, at least as to an address (per the below), and I still haven't heard anything on that. Please advise.

Thanks.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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