

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  
(sitting by assignment)

**BRIEF IN OPPOSITION TO MOTION  
TO COMPEL AARON CZETLI, AMC  
INVESTIGATIONS, INC., EDUARDO  
MATEO, GARY MONTO, AND  
DENNIS REES**

**AND**

**MOTION TO QUASH/MOTION FOR  
PROTECTIVE ORDER**

The pending Motion to Compel the production of records from Aaron Czetli, AMC Investigations, LLC.<sup>1</sup>, Eduardo Mateo, Gary Monto, and Dennis Rees<sup>2</sup> ("Subpoenaed

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<sup>1</sup> Plaintiffs seek to compel "AMC Investigations, Inc." No such entity was subpoenaed. Plaintiffs issued a single subpoena to "Aaron Czetli AMC Investigations, LLC." It is not clear which person Plaintiffs intended to subpoena, but in good faith, Mr. Czetli responded on behalf of both. If Plaintiffs wanted to subpoena both Mr. Czetli and AMC Investigations, LLC, they should have issued two distinct subpoenas. Notwithstanding Plaintiffs civilly deficient shortcut, Mr. Czetli and AMC Investigations, LLC objected to the subpoena.

<sup>2</sup> Dennis Rees is currently battling late stage cancer. (See **Exhibit 1**, Rees Affidavit). He is securing documentation from treating physicians that he can neither testify in this matter, nor physically make efforts to be involved in the *duces tecum* portion of Plaintiffs' subpoena due to his critical health. The Record will be supplemented in this regard. In any event, Plaintiffs' requests to Mr. Rees are duplicative of the requests of all other Subpoenaed Persons and there is no good reason that this civil litigation should be used to visit further unnecessary physical and mental stress upon a man already dealing with a serious and life-threatening medical condition.

Persons”) is a waste of time. Plaintiffs were instructed that the Subpoenaed Persons did not have any non-privileged/confidential records responsive to the subpoenas. Counsel’s apparent frustration with the discovery process in this complex civil litigation has now spilled over to non-parties who have little to offer. And the limited information the Subpoenaed Persons possess is more readily obtained from the parties to this proceeding, thereby negating the need to pry into their private and sensitive personal and financial information. Plaintiffs’ Motion to Compel should be denied. Instead, the Court should quash the subpoenas and issue a protective order enjoining any further pursuit of the private, sensitive financial information of the non-party investigators identified by Plaintiffs.

**I. There are no documents relative to most of Plaintiffs’ requests.**

Rather than parse through the oppressive definitions and lists of 24 different categories of documents requested by Plaintiffs in their subpoenas, it is easier to identify the documents that each of the Subpoenaed Persons would have (if not otherwise objectionable) pertaining to the information requested. Notably, just because a party has raised an Objection to a subpoena, it does not mean that the party actually possesses documents in the event the Objection is overruled. The failure to raise an objection pursuant to Civ.R. 45(C) within fourteen (14) days of service results in waiver. *Jones v. Records Deposition Serv. of Ohio, Inc.*, 6th Dist. Lucas No. L-01-1333, 2002-Ohio-2269, ¶ 12

Plaintiffs have been issuing subpoenas throughout the state (Cuyahoga Falls, Oregon, Youngstown, and South Lebanon to name a few) to various persons who have provided investigation services in personal injury claims. Given the broad net cast and

the short period of time upon service of a subpoena to object under Civ.R. 45(C), all potentially-applicable objections must therefore be raised. Notwithstanding, Plaintiffs were instructed in the Objections that the Subpoenaed Persons did not possess any non-privileged, non-confidential, or non-proprietary documents responsive to the subpoenas. That statement is as true today as it was when the Subpoenaed Persons objected. AMC Investigations, LLC., Aaron Czetli, Eduardo Mateo, Gary Monto, and Dennis Rees have no documents responsive to the requests of Plaintiffs pertaining to individual investigations, correspondence, communication, case files, or otherwise. (See Exhibits 1, 2, 3, and 4).

The only documents that any of the Subpoenaed Persons possess that would be at all responsive are personal tax returns and their accompanying schedules and attachments. (See Exhibits 1, 2, 3 and 4). As addressed below, those documents should not be ordered to be produced.

**II. The tax documents of the Subpoenaed Persons are confidential, private, and sensitive and warrant protection from discovery.**

The Subpoenaed Persons have objected to the subpoenas due to the confidential and sensitive nature of the information that is reflected upon their personal income tax returns. Private citizens have a right to privacy and the inherent dangers of the “proliferation of personal information in today’s computerized age threatens that right.” *City of Columbus v. Lyft, Inc.*, 22 N.E.3d 304, 209 (M.C. 2014), c.f. *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (2000); *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180.

Ohio courts have only allowed discovery of personal tax information **of parties to litigation** when *that party* places its income directly in issue.<sup>3</sup> *Hudson v. United Servs. Auto. Assn. Ins. Co.*, 902 N.E.2d 101, 2008-Ohio-7084 ¶¶15-17, citing *Mandell v. Yellow Cab Co. of Cleveland* (C.P.1958), 170 N.E.2d 296. Otherwise, given the inherent privacy concerns associated with sensitive personal information, that personal financial information should be protected from discovery. See, e.g., *Ramun v. Ramun*, 7th Dist. Mahoning No. 08 MA 185, 2009-Ohio-6405, ¶ 18 (trial court properly granted protective order relative to request for personal tax returns); *Hope Academy Broadway Campus v. White Hat Mgt., L.L.C.*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911, (trial court properly granted protective order for personal tax returns requested).

And even when personal tax information might be discoverable, it should clearly appear that the information is relevant to the subject matter at issue and “that there is a compelling need therefor **because the information contained therein is not otherwise readily obtainable**” from another source. *Hudson, supra*, at ¶ 15 (emphasis added); *State ex rel. Fisher v. Cleveland*, 8th Dist. No. 83945, 2004-Ohio-4345, 2004 WL 1846124; *Credit Life Ins. Co. v. Uniworld Ins. Co. Ltd.* (S.D. Ohio 1982), 94 F.R.D. 113; see also *Cooper v. Hallgarten & Co.* (S.D.N.Y.1964), 34 F.R.D. 482, 484.

Here, Plaintiffs only seek tax records from the Subpoenaed Persons because Plaintiffs ostensibly want to discover the extent of compensation received by the

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<sup>3</sup> Plaintiffs have incorrectly suggested that AMC Investigations, LLC does not have any privacy interests in its personal financial information. The entity is a single-member LLC. It is treated as a disregarded entity by the IRS. It is axiomatic that single-member LLCs are not even required to obtain taxpayer ID numbers and may instead use the social security number of their sole member. Therefore, any financial or tax-related information of the entity is necessarily that of Mr. Czetli. Just because he operates through an LLC does not strip him of his privacy interests relative to personal and sensitive information.

Subpoenaed Persons for providing investigative services to KNR. But if this inquiry is relevant to Plaintiffs' pursuits, that is a fact more easily, and appropriately, discovered from the actual party to this litigation that issued forms such as 1099's to the Subpoenaed Persons - KNR. Pursuant to the cases referenced here, the Subpoenaed Persons should not be stripped of their right to privacy in furtherance of Plaintiffs' hopeful class action. The Subpoenaed Persons have no stake in Plaintiffs' game. Certainly, Plaintiffs can obtain copies of all 1099s, W-2's, or other tax documentation **from the party Defendants** that directly reflects the information sought by Plaintiffs through their exhaustive and largely oppressive Exhibit A to their subpoenas.

What is more, Plaintiffs continue to issue and attempt to serve additional subpoenas to persons who also may have provided investigative services to KNR. Plaintiffs' approach smacks of harassment of nonparties and not the good-faith pursuit of relevant information in discovery, given that the desired information is easily obtained without burdening countless others. If the Court is inclined to permit Plaintiffs' efforts to understand the amount of money paid to investigators, it should only be through discovery submitted to KNR to produce 1099's or other tax forms reflecting amounts paid. But there is no good reason to compel the Subpoenaed Persons to lay bare their private and personal information. They are not parties to this case and have no interest in the outcome.

**III. Plaintiffs' requests for depositions.**

Plaintiffs failed to tender witness fees and mileage (Plaintiff tendered only a half day witness fee to one out of county witness but no mileage) as required by Civ.R. 45, thereby rendering their subpoenas defective and invalid as a matter of law to Mr. Monto,

Mr. Mateo, and Mr. Rees. *A.O. Smith Corp. v. Perfection Corp.*, 10<sup>th</sup> Dist. Franklin No. 03AP-266, 2004-Ohio-4041. To that end, Civ.R 45(B) states:

If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage **shall be tendered** without demand.

(emphasis added). A failure to tender a witness fee and mileage is fatal to the proper issuance of a subpoena for testimony of a witness. *Perfection Corp.* at \*4-5. See also *Hill v. Hill*, 5<sup>th</sup> Dist. Licking No. 95-CA-114, 1996 WL 363546 (May 15, 1996). Stated differently, a subpoena that fails to provide mandatory witness fees is "invalid." *State v. Griffin*, 12<sup>th</sup> Dist. Butler No. CA98-05-100, 1999 WL 270321 (May 3, 1999); see also, *Cincinnati Bar Assn. v. Adjustment Serv. Corp.*, 89 Ohio St.3d 385, 732 N.E.2d 362 (2000).

As to Mr. Czetli and AMC Investigations, LLC, while the failure to tender mileage and a witness fee to an in-county witness does not render the subpoena invalid on its face, the request and objection was properly made relative to the failure to tender the fee upon demand under Civ.R. 45.

#### **IV. Regarding Plaintiffs' demand for attorney's fees.**

As shown, of the four subpoenas at issue, three of the four subpoenas (Mr. Monto, Mr. Mateo, and Mr. Rees) are defective/invalid as a matter of law based upon Plaintiffs' failure to serve them in accordance with the mandatory requirements of Civ.R. 45(B). The other subpoena was served identifying two distinct persons/entities – another unapproved practice under Civ.R. 45. Notwithstanding those procedural oddities, the only available documents that are responsive (tax records) have been routinely found by courts throughout Ohio to warrant protection from unfettered access in discovery.

Despite this, Plaintiffs' Counsel initiated this subpoena salvo with the following retort: "It would be hard to imagine a more obstructionist response[.]" See Plaintiffs' Exhibit 3 to Motion. Plaintiffs' Counsel invective does not constitute authority for any legal principle let alone warrant an award of attorney's fees. There is no reason to award attorney's fees here. Rule 45(E) of the Civil Rules only permits an award of attorney's fees in the event a party "frivolously resists discovery." Plaintiffs have not made any cogent showing of frivolity. Rather, the Subpoenaed Parties properly protected themselves in the manner precisely outlined in the Civil Rules. Even if the Court ultimately required the Subpoenaed Parties to produce their tax records pursuant to an appropriate protective order, attorney's fees would not be appropriate.

#### **V. Conclusion**

Of the numerous categories of documents sought by Plaintiffs, the Subpoenaed parties possess virtually nothing. Those few documents that are in their possession are strictly limited to tax records that are otherwise private and warrant an appropriate protective order from production or dissemination. But the substantive information contained in the tax documents is just as easily obtained from the party defendant to this litigation, rather by than burdening non-parties throughout the state of Ohio. Because it is readily obtainable from other sources, it should not be compelled for production through Plaintiffs' subpoenas. Plaintiffs' Motion to Compel should be denied and a protective order should issue, quashing the subpoenas to the Subpoenaed Parties in their entirety and prohibiting the production of the tax records.

Respectfully submitted,

**GRIFFIN LAW, LLC**

/s/ Stephen P. Griffin

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*Attorney for non-parties Aaron Czetli, AMC  
Investigations, Inc., Eduardo Mateo, Gary  
Monto, and Dennis Rees*



**CERTIFICATE OF SERVICE**

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Brief in Opposition to Motion to Compel and Motion for Protective Order* was filed electronically with the Court on this 15<sup>th</sup> day of March, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ Stephen P. Griffin  
Stephen P. Griffin, Esq. (0039655)

AFFIDAVIT OF DENNIS REES

The undersigned, Dennis Monto, upon being first duly sworn in accordance with Ohio law, states as follows:

1. I have personal knowledge of all matters set forth within this Affidavit, and am competent to testify thereto and/or upon the same.

2. I am in receipt of a subpoena ("Subpoena") served upon me by the Plaintiffs in *Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.*, Summit County Common Pleas Case No. 2016 09 3928.

3. I do not maintain any documents or records responsive to Plaintiffs' numerous requests set forth within the Subpoena pertaining to individual investigative services provided by me.


4. Work was performed upon each of the case files or assignments given to me, but there are no documents in my possession, that pertain to "communication" with any person or agent affiliated with the Kisling, Nestico & Redick law firm, or any of the cases upon which investigative services were performed.

5. The only documents in my possession that would be responsive in any way to the written requests set forth in the Subpoena are my personal tax returns. These documents contain numerous pieces of personal and sensitive information, including, but not limited to, my social security number, home address, personal income amounts, and the account and routing numbers of my bank account.

6. Pertinent to Plaintiffs' efforts to learn how much money was paid to me, any information on my personal tax returns relative to same would also be reflected upon documents prepared by the Kisling, Nestico & Redick law firm, such as a Form 1099.

7. I am currently undergoing treatment for late stage cancer.

FURTHER AFFIANT SAYETH NAUGHT.


  
Dennis Rees

STATE OF OHIO        )  
                              ) ss:  
COUNTY OF Warren )

Sworn to and subscribed before me, a Notary Public, Dennis Rees who made himself known to me to be the person signing this Affidavit this 14 day of March, 2018.



Virginia Mae Pence  
Notary Public, State of Ohio  
My Commission Expires  
1-May-22

  
Notary Public  
My commission expires: May 01, 2022

AFFIDAVIT OF AARON CZETLI

The undersigned, Aaron Czetli, upon being first duly sworn in accordance with Ohio law, states as follows:

1. I have personal knowledge of all matters set forth within this Affidavit, and am competent to testify thereto and/or upon the same.

2. I am in receipt of a subpoena ("Subpoena") served by the Plaintiffs in *Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.*, Summit County Common Pleas Case No. 2016 09 3928 to "Aaron Czetli AMC Investigations, LLC."

3. I am the President and sole member of AMC Investigations, LLC.

4. Neither AMC Investigations, LLC nor myself maintain any documents or records responsive to Plaintiffs' numerous requests set forth within the Subpoena pertaining to individual investigative services provided by me or AMC Investigations, LLC.


5. Work was performed upon each of the case files or assignments given to me, but there are no documents in my possession, nor in the possession of AMC Investigations, LLC, that pertain to "communication" with any person or agent affiliated with the Kisling, Nestico & Redick law firm, or any of the cases upon which investigative services were performed.

6. The only documents in my possession that would be responsive in any way to the written requests set forth in the Subpoena are my personal tax returns. These documents contain numerous pieces of personal and sensitive information, including, but not limited to, my social security number, home address, personal income amounts, and the account and routing numbers of my bank account.

7. Pertinent to Plaintiffs' efforts to learn how much money was paid to either myself or AMC Investigations, LLC, any information on my personal tax returns relative

to same would also be reflected upon documents prepared by the Kisling, Nestico & Redick law firm, such as a Form 1099.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Aaron Czetli

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF Summit        )

Sworn to and subscribed before me, a Notary Public, by Aaron Czetli who made himself known to me to be the person signing this Affidavit this 12<sup>th</sup> day of March, 2018.



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

  
\_\_\_\_\_  
Notary Public

My commission expires: 8/13/2022

AFFIDAVIT OF GARY MONTO

The undersigned, Gary Monto, upon being first duly sworn in accordance with Ohio law, states as follows:

1. I have personal knowledge of all matters set forth within this Affidavit, and am competent to testify thereto and/or upon the same.
2. I am in receipt of a subpoena ("Subpoena") served upon me by the Plaintiffs in *Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.*, Summit County Common Pleas Case No. 2016 09 3928.
3. I do not maintain any documents or records responsive to Plaintiffs' numerous requests set forth within the Subpoena pertaining to individual investigative services provided by me.
4. Work was performed upon each of the case files or assignments given to me, but there are no documents in my possession, that pertain to "communication" with any person or agent affiliated with the Kisling, Nestico & Redick law firm, or any of the cases upon which investigative services were performed.
5. The only documents in my possession that would be responsive in any way to the written requests set forth in the Subpoena are my personal tax returns. These documents contain numerous pieces of personal and sensitive information, including, but not limited to, my social security number, home address, personal income amounts, and the account and routing numbers of my bank account.
6. Pertinent to Plaintiffs' efforts to learn how much money was paid to me, any information on my personal tax returns relative to same would also be reflected upon documents prepared by the Kisling, Nestico & Redick law firm, such as a Form 1099.

FURTHER AFFIANT SAYETH NAUGHT.

Gary L. Monto  
Gary Monto

STATE OF OHIO )  
COUNTY OF LUCAS ) ss:

Sworn to and subscribed before me, a Notary Public, Gary Monto who made himself known to me to be the person signing this Affidavit this 13 day of March, 2018.

Ashley Peria  
Notary Public  
My commission expires: 12-18-22

SEAL



ASHLEY PERIA  
Notary Public, State of Ohio  
My Comm. Expires Dec. 18, 2022  
Recorded in Wood County

AFFIDAVIT OF EDUARDO MATEO

The undersigned, Eduardo Mateo, upon being first duly sworn in accordance with Ohio law, states as follows:

1. I have personal knowledge of all matters set forth within this Affidavit, and am competent to testify thereto and/or upon the same.
2. I am in receipt of a subpoena ("Subpoena") served upon me by the Plaintiffs in *Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.*, Summit County Common Pleas Case No. 2016 09 3928.
3. I do not maintain any documents or records responsive to Plaintiffs' numerous requests set forth within the Subpoena pertaining to individual investigative services provided by me.
4. Work was performed upon each of the case files or assignments given to me, but there are no documents in my possession, that pertain to "communication" with any person or agent affiliated with the Kisling, Nestico & Redick law firm, or any of the cases upon which investigative services were performed.
5. The only documents in my possession that would be responsive in any way to the written requests set forth in the Subpoena are my personal tax returns. These documents contain numerous pieces of personal and sensitive information, including, but not limited to, my social security number, home address, personal income amounts, and the account and routing numbers of my bank account.
6. Pertinent to Plaintiffs' efforts to learn how much money was paid to me, any information on my personal tax returns relative to same would also be reflected upon documents prepared by the Kisling, Nestico & Redick law firm, such as a Form 1099.



FURTHER AFFIANT SAYETH NAUGHT.

Eduardo Mateo  
Eduardo Mateo

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF Mahoning )

Sworn to and subscribed before me, a Notary Public, Eduardo Mateo who made himself known to me to be the person signing this Affidavit this 14<sup>th</sup> day of March, 2018.



Amber Angelilli  
Resident Mahoning County  
Notary Public, State of Ohio  
My Commission Expires: 2/6/22

Amber Angelilli  
Notary Public  
My commission expires: 2-6-2022