

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge Patricia A. Cosgrove Reply in Support of Plaintiffs' Motion for Protective Order and in Opposition to Defendants' Motion to Compel
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Defendants' opposition to Plaintiffs' Feb. 28, 2018 Motion for Protective Order is based on the premise that Plaintiffs' concerns over spoliation and obstruction do "not [constitute] a legally supportable justification to withhold discoverable documents." Defs' Mar. 15, 2018 Br. at 1. This is nonsense. The Court has broad discretion to regulate discovery, and Civ.R. 26(C) explicitly permits courts to grant, on motion, "any order that justice requires to protect a party ... from ... undue burden or expense, including ... that the discovery may be had only on specified terms and conditions, including a designation of the time or place." Plaintiffs properly moved for just such an order, and set forth good cause to support it, including an offer (that Defendants' opposition completely ignores) to present, *in camera*, documents that Defendants have falsely stated do not exist.

Defendants' attempt to convince the Court that it lacks authority to grant Plaintiffs' requested protective order is consistent with their extreme obstruction of discovery in this case and further shows why Plaintiffs' motion should be granted. None of the cases Defendants cite in opposition involve facts that are remotely comparable to those at issue here, as summarized in

footnote 1 below.¹ This is a case alleging fraud and self-dealing by attorneys against their fiduciaries, in which the Defendants are in possession of all of the relevant information, and where Plaintiffs have supported their allegations with great detail and documentation. Defendants have gone to extreme lengths to prevent Plaintiffs from conducting discovery on their claims (*See, e.g.*, Plaintiffs' Feb. 28, 2017 Motion to Compel) and the Court should grant Plaintiffs' requested protective order to prevent further obstruction.

Respectfully submitted,

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¹ *Springfield Local Sch. Dist. Bd. of Ed. v. Ohio Ass'n of Pub. Sch. Employees*, 106 Ohio App.3d 855, 667 N.E.2d 458 (9th Dist. 1995) analyzed a school board's unsupported claim of privilege over discussions that took place in executive session; In *Massara v. Henery*, 9th Dist. Summit C.A. NO. 19646, 2000 Ohio App. LEXIS 5425 (Nov. 22, 2000), the trial court disallowed expert testimony where the proffering party failed to identify experts by the established deadline and failed to request an extension; The trial court in *Shoreway Circle v. Gerald Skoch Co., L.P.A.*, 92 Ohio App.3d 823, 825, 637 N.E.2d 355 (8th Dist. 1994) sanctioned plaintiff for "fail[ing] to provide discovery as ordered by the court," where "[p]laintiff ... demonstrated a pattern of refusal to comply with the most simple requests for discovery" and "was cautioned that sanctions, including dismissal, would be imposed for failure to answer outstanding discovery by [a certain date];" In *Covad Communs. Co. v. Revonet, Inc.*, 258 F.R.D. 17, 24 (D.D.C. 2009), the sanctioned party "offer[ed] no legitimate reason why it didn't answer the interrogatory fully" and did not to move for a protective order regarding the same; In *Blake Assocs., Inc. v. Omni Spectra, Inc.*, 118 F.R.D. 283, 288 (D.Mass.1988), plaintiff was sanctioned for "stating that regardless of what the Court orders, the plaintiff will not obey the Court's orders unless Omni produces its documents first;" and in *Massachusetts School of Law v. Am. Bar Assn.*, 914 F.Supp. 1172, 1178 (E.D.Pa.1996), the court's observation that "discovery is not poker where the cards are turned up one at a time" related to a lawyer's attempt to "justify ignoring discovery requests and court orders with an objection which, to that point, he ha[d] kept to himself."

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CERTIFICATE OF SERVICE

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on March 16, 2018.

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