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 **DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORDER TO LIMIT OR OTHERWISE BIFURCATE DISCOVERY, OR IN THE ALTERNATIVE, SHIFT COSTS**

I. INTRODUCTION

Defendants have produced three thousand eight hundred forty-nine (3,849) pages of documents in response to Plaintiffs' discovery requests and incurred approximately $500,000 in fees and expenses in defending this matter over almost two years – almost half of which is related to discovery. The cost of identifying and producing the documents Plaintiffs now seek is ***in excess of one million dollars.*** (Ex. A, Affidavit of Ethan Whitaker). Meanwhile, Plaintiffs themselves ***have produced zero (0) documents*** in response to Defendants' discovery requests and have spent costs limited to a filing fee and a few transcripts.

This case arises out of the legal representation of four individuals by attorneys employed by defendant law firm Kisling, Nestico & Redick, LLC ("KNR"). Each Plaintiff alleges a separate and distinct claim arising out of the legal representation by KNR's employees. The only common thread amongst these Plaintiffs is that they are now represented by the same attorney(s). Plaintiff Williams is seeking to recover $50 she alleges was improperly deducted from her settlement proceeds and paid to a private investigator assigned to her case. Plaintiff Wright's claim apparently seeks to prevent KNR from executing on an attorney lien after she terminated KNR's representation of her (although the lien is on attorney fees; not any funds

Wright is legally entitled to).[1] Plaintiff Reid seeks to recover $150 which she alleges was improperly deducted from her settlement proceeds and paid to her treating chiropractor for purposes of compensating the doctor for writing a narrative report on her behalf. Plaintiff Johnson seeks to recover an unspecified amount of money related to a $250 loan he repaid from settlement proceeds.

The collective amount in controversy at this time is less than $1,000. Comparatively, Defendants have spent hundreds of thousands of dollars and countless man hours participating in the discovery process of this case. Now, these Plaintiffs with less than $1,000 in economic damages seek to impose on Defendants discovery costs in excess of one million dollars.

The crux of the discovery dispute here is that Plaintiff counsel is attempting to conduct discovery as if the four putative classes of Plaintiffs have already been certified by this Court. No class has been certified, nor has Plaintiffs' counsel moved for certification. ***A motion to strike the class allegations has been pending since October 2017.***[2] If this motion is granted – as it should be – almost all of the discovery issues raised in Plaintiffs' Motion to Compel will cease to exist. Defendants should not be forced to bear the oppressive costs associated with post-certification discovery before certification has been adjudicated. As set forth in Defendants' Motion to Strike Class Allegations, there is no possibility that the classes described in the Complaint could ever be certified, and no amount of discovery could change that outcome. It defies logic and every principle of judicial discretion to compel Defendants to further respond to Plaintiffs onerous discovery requests while these motions remain pending. It should be axiomatic that the pending dispositive motions be resolved ***before*** determining the appropriate scope of discovery. Accordingly, Defendants seek a protective order staying or limiting discovery until the Court rules on the dispositive motions.

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[1] It is apparent that Plaintiff Wright has suffered no economic damages whatsoever as it relates to her claims in this case. No payment has been made on KNR's lien.

[2] There is also a motion for summary judgment pending on one class.

Courts generally do not permit parties to impose undue discovery burdens and costs on a defendant under the auspice of mere allegations that a class exists – particularly when a dispositive motion on class allegations is pending. See, e.g., *Capital One Bank (USA), NA v. Reese*, 2015-Ohio-4023, ¶ 102 (11th Dist.) (It is proper for a trial court to stay class discovery where discovery sought was "voluminous," and would have constituted an undue burden on defendants prior to resolution of the dispositive motion portion of the case). As in *Capital One Bank*, the pending motions in this case would be dispositive of the class allegations in this case, and thus should be resolved ***before*** considering any motion to compel.

Plaintiffs' lawsuit has now been pending before this Court for almost two years. Rather than seeking discovery relevant to the primary issue of class certification which must be done "as soon as practicable after the commencement" of their action pursuant to Civ.R. 23, Plaintiffs have chosen to use the discovery process as a weapon to embarrass and harass Defendants, and unnecessarily drive up the cost of defense. Plaintiffs have embarked on a lengthy and onerous fishing expedition that can only be seen as an effort to delay the inevitable certification decision and unnecessarily drive up Defendants' litigation costs. At a minimum, Plaintiffs' expansive discovery requests into the *merits* of their claims (as opposed to discovery related to the elements of Civ. R. 23) are irrelevant at this pre-certification stage of the litigation; and many of the requests simply have no bearing on any issue in this case whatsoever. Regardless of the outcome of these pending motions, the discovery conducted at this stage of the litigation must be limited to the information necessary to establish the elements set forth in Civ. R. 23 and required on a motion for class certification. After all, the granting or denial of motion under Civ. R. 23 is a final appealable order, and it is senseless for the parties to incur enormous expense with regard to discovery on the merits of the individual claims of putative class members until the issue of certification is resolved.

Plaintiffs' expansive discovery requests are focused on fishing for evidence on the *merits* of their putative class claims; and many of the requests are not even remotely related to *either*

the certification issue *or* the merits of the claims alleged. Put another way, Plaintiffs are fishing for evidence that Defendants engaged in some form of improper conduct. They are not seeking evidence that relates to the certification requirements of Civ. R. 23. Defendants have already spent an enormous amount of time, effort, and money since this putative class action lawsuit was filed two years ago. The discovery sought by Plaintiffs will astronomically increase that burden, which cannot possibly be justified if class certification is denied and the case proceeds, if at all, only as an individual action with negligible damages. Moreover, Plaintiffs have set forth no proposal to bear the exorbitant costs associated with their wild goose chase, and have refused to enter into reasonable stipulations proposed by Defendants in an effort to put the certification issue in front of the Court in a timely manner.

Prior to January of 2018, this case suffered from a lack of structure and order to the proceedings. Plaintiffs have run amok for almost two years; publicizing their scandalous accusations (to embarrass Defendants); engaging in oppressive discovery tactics (to harass Defendants); and seeking recusal and/or disqualification of two judges (to delay proceedings); without so much as ***suggesting*** that the issue of certification be addressed by the Court within any measurable period of time. This is in direct contravention of Civ. R. 23.

Defendants are respectfully requesting that this Court impose ***structure and order*** on these proceedings. To that end, Defendants request that the Court deny Plaintiff's motion to compel, and take up the pending dispositive motions related to the class allegations, and requests that the Court enter an Order limiting and/or bifurcating the discovery process to permit discovery *only* as it relates to certification at this time – consistent with case precedent and fundamental fairness. Taking into consideration the stipulations Defendants have offered in an effort to resolve the factual issues related to certification, Plaintiffs should be required to identify, precisely, any additional information ***necessary to resolve the issue of certification***.

Alternatively, if the Court is inclined to permit Plaintiffs to continue drive this case down the same protracted path we have been on for two years, Defendants move to shift the costs of the burdensome electronic discovery Plaintiffs seek.

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs brought this putative class action lawsuit against Kisling, Nestico & Redick, LLC and attorneys Rob Nestico and Robert Redick (collectively "Defendants"), proposing the following four classes as defined in their Third Amended Complaint:[3]

1. The "Investigation Fees Class," defined as: "All current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called 'investigator' or 'investigation' company ('investigation fees')." (Third Amended Complaint, ¶ 138(A)).
2. The "Akron Square Class," defined as: "All current and former KNR clients who were referred to KNR by Akron Square Chiropractic or referred to ASC by KNR, terminated KNR's services, and had a lien asserted by KNR on their lawsuit proceeds." (Third Amended Complaint, ¶ 138(B))
3. The "Liberty Class," defined as: "All current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding, LLC." (Complaint, ¶ 138(C)); and
4. The "Narrative Class," defined as: "All current and former KNR clients who had a narrative fee deducted by KNR from their settlement proceeds to be paid to a chiropractor." (Complaint, ¶ 138(D)).

To date, Plaintiffs have propounded a total of eighty (80) Interrogatories (including subparts), eighty-seven (87) Requests for Production, and one hundred eleven (111) Requests for Admission. Most of the discovery requests are directed at issues that are not in dispute, or have no bearing on Plaintiffs' burden to meet the class certification requirements of Civ.R. 23(A)

[3] By reciting the allegations of the Third Amended Complaint, Defendants do not admit or agree to the allegations or that they can be the basis for certifying a class action.

and (B), or otherwise have no relationship to their claims that is capable of plausible explanation.

Putting aside for the moment that almost none of Plaintiff's document requests seek documents necessary for class certification, the problems associated with Plaintiffs' document requests stem largely from the enormous amount of electronic data that must be culled to locate responsive documents. There is no separate file for any of the materials Plaintiffs seek. There is no separate file for documents related to chiropractic referrals; there is no separate file containing documents describing the work done by an investigator on any particular case; there is no file for any reciprocal agreements with chiropractors as Defendants contend no such agreements exist; and there is no file for assessing the relative value of a narrative fee charged by a chiropractor. The only way to locate documents ***possibly*** responsive to these requests is to search KNR's universe of electronically stored data, which encompasses more than 17 terabytes of information. To provide context to the vastness of this universe of documents, note that "[t]en terabytes of [digital] space would hold the printed collection of the Library of Congress[, and] eight terabytes printed would fill 2.72 million banker boxes." *United States v. Simpson*, N.D.Tex. No. 3:09-CR-249-D(06), 2011 U.S. Dist. LEXIS 20752, at *19 (Mar. 2, 2011), quoting *United States v. Faulkner*, No. 3:09-CR-249-D, 2010 U.S. Dist. LEXIS 141816 at*3 n.2

Thus, the process for identifying responsive documents must proceed as follows. Search terms must be identified, agreed upon, and input into the system. The system must have sufficient space to complete the search. (Ex. B, Deposition of Ethan Whitaker at p. 77-78). If the search returns more information than space available, the search cannot be completed. (Id.) If the search is completed, that does not mean that each and every item identified in the search will be responsive to the document request. Therefore, attorneys for the Defendant must review each and every document identified in the search to determine if it is responsive, and whether the document is subject to privilege or any other valid objection.

With limited exceptions, Defendant agreed to run searches as it relates to the document requests cited in Plaintiffs' Motion to compel. Ex. 2 to the deposition of Ethan Whitaker evidences the results of those searches. (Id., at Ex. 2). The searches failed because there was insufficient space to complete the searches. (Id. at pp. 77-78) Defendants cannot review – much less produce documents that cannot be pulled from a search. Plaintiffs have been afforded numerous opportunities to limit the scope of the searches so that the searches could be completed. For example, Plaintiffs refuse to place any date restrictions on the searches, and they refuse to limit the mailboxes searched to specific employees.

Instead, Plaintiffs is asking this Court to compel Defendants to purchase additional hardware and software so that these searches can be completed. The cost associated with running these searches is in excess of one million dollars ($1,000,000). (See Ex. A, Whitaker Affidavit). Moreover, assuming the millions of digital documents can pulled from KNR's system and placed on a "review platform" as suggested by Plaintiffs, defense counsel would be required to review each and every document to determine if it is responsive or subject to a valid objection before the documents could be produced to Plaintiff.

For instance, Plaintiffs have requested that Defendants search their entire universe of electronic records and produce all responsive information containing the following terms:

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

In a showing of good faith, Defendants ran certain searches as requested by Plaintiffs, many of which were unable to be completed because the size of each search was greater than the available storage space needed to conduct the search. (Ex. B, Whitaker Tr., pp. 77-78). Mr. Whitaker's affidavit establishes the cost of completing the searches and transferring the data to a "review platform" as requested by Plaintiffs is in excess of one million dollars. (Ex. A, Affidavit of Ethan Whitaker). Even more problematic, Mr. Whitaker estimated would take at least two years review 3.2 million items pulled from a total universe of documents exceeding 56 million. (See Whitaker Tr. at pp. 78-80).

Plaintiffs and their expert boasted the apparent ease and cost-effectiveness of utilizing a cloud-based, electronic document review platform such as Logikcull to conduct the review. However, Plaintiffs failed to identify the undue burden and cost of using such a service as it pertains specifically to the universe of information in this case. Indeed, cloud-based services such as Logikcull require data to be uploaded over the web, which in this instance would take more than two weeks to upload 17 terabytes of data at around 300 gigabytes a day. (Ex. A, Whitaker Affidavit). Most significantly, it would cost approximately $2,088,960.00 to use the Logikcull platform under the base monthly rate (17,408 gigabytes x $40.00 per gigabyte x 3 months). It would cost approximately $2,487,951.36 to obtain Logikcull's discounted monthly rate with an annual subscription (17,408 gigabytes x $11.91 x 12). (Id.) The term "unduly burdensome" has never been more appropriate.

Defendants have produced almost 4,000 pages of documents responsive to Plaintiffs' discovery requests (while Plaintiffs have refused to produce ***any*** documents). Defendants have explained, over and again, why the discovery sought by Plaintiffs at this pre-certification stage of the litigation was not warranted, unnecessary, not proportional to the needs of the case, and resulted in undue burden and expense to Defendants. (See, Ex. C, Discovery Correspondence between Counsel). Defendants have requested that Plaintiffs narrow the requested electronic searches to cull the amount of data generated to a reasonable amount that Defendants could

review for responsive information. Defendants have also proposed stipulations of fact that would seemingly resolve many of Plaintiffs' inquiries unnecessary and expedite the Rule 23 certification determination. (Ex. D, Proposed Stipulations) Plaintiffs have rejected each and every solution proposed by Defendants.

Defendants have filed a Motion to Strike Plaintiffs' proposed classes, which is fully briefed and remains pending before this court. Defendants have also filed a motion for summary judgment as it pertains to the Liberty Capital Class. This Court has previously held that it is proper to address faulty class allegations prior to a plaintiff filing a motion to certify.[4] The dispositive motions must be addressed in order to bring some sense of order to the discovery process.

It is already clear that Plaintiffs are unable to meet the rudimentary requirements for class certification of their four individual classes under Civ.R. 23. None of the expansive discovery now sought by Plaintiffs' will cure such obvious deficiencies. As a result, this Court should rule on the two pending motions, which would be dispositive of the class allegations if granted, before even considering Plaintiffs' motion to compel. The Motion to compel should otherwise be denied because the prolific burden and expense of responding to the requests – as they are currently framed by Plaintiffs – is unduly burdensome and disproportionate to the needs of the case. Regardless of the outcome of these motions, the Court should issue a Protective Order bifurcating certification and merit-based discovery, and set a date certain for Plaintiff to move for certification or risk dismissal of the class claims.[5] Alternatively, this Court should shift the enormous costs associated with these discovery requests, and require Plaintiffs to fund their own fishing expedition.

[4] In *Sliwinski v. Capital Props. Mgmt.*, this Court granted a motion to strike class allegations from a complaint. The decision was affirmed on appeal. *Sliwinski*, 2012-Ohio-1822, ¶ 14 (9th Dist.).

[5] For clarity of the record, Defendants are filing a separate motion to bifurcate discovery.

III. LAW AND ARGUMENT

A. This Court in its Discretion Should Limit or Otherwise Bifurcate Plaintiffs' Discovery to Class Certification Issues Only.

A trial court has broad discretion to regulate discovery proceedings. *See Miller v. Painters Supply & Equip. Co.*, Cuyahoga No. 95614, 2011-Ohio-3976, ¶39, citing *Whitt v. ERB Lumber*, 156 Ohio App.3d 518, 2004-Ohio-1302, 806 N.E.2d 1034, ¶28. "The court has the same if not greater right and duty to regulate discovery as it does to control the trial and to impose reasonable limits and conditions, consistent with the rules, to expedite the administration of justice." *Penn Central Transportation Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 271 N.E.2d 877, paragraph four of the syllabus (Montgomery C.P. 1971). This discretion extends to the issuance of protective orders made pursuant to Civ.R. 26(C), which permits a party to apply for a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. *See Howell v. Dayton Power & Light Co.*, 102 Ohio App.3d 6, 15, 656 N.E.2d 957 (4th Dist. 1995).

Civ.R. 23(C)(1) requires that the Court decide whether a class may be certified "[a]s soon as practicable after the commencement of an action brought as a class action." Ohio. Civ.R. 23(C)(1). In making this early determination, courts should not probe the probability of success on the merits, but should focus on whether the requirements of Civ.R. 23(A) and (B) are satisfied. *See, e.g. Weathers v. Peters Realty Corp.*, 499 F.2d 1197, 1201 (6th Cir. 1974) ("[W]hen determining the maintainability of a class action, the district court must confine itself to the requirements of Rule 23 and not assess the likelihood of success on the merits.").[6] "Consistent with the general principle that discovery operates under the broad discretion of the trial court, questions concerning matters of discovery relating to the presence or absence of class action requirements of Civ.R. 23(A) and (B) rest in the sound discretion of the trial court."

[6] Because Ohio Civ. R. 23 is virtually identical to Fed. R. Civ. P. 23, the Ohio Supreme Court has recognized that "federal authority is an appropriate aid to interpretation of the Ohio rule." *Marks v. C.P. Chem. Co., Inc.*, 31 Ohio St.3d 200, 201, 509 N.E.2d 1249 (1987).

Burrell v. Sol Bergman Estate Jewelers, Inc., 77 Ohio App.3d 766, 770, 603 N.E.2d 1059 (8th Dist. 1991), citing *Greater Cleveland Regional Transit Suth. V. Guzzo*, 6 Ohio St.3d 270, 452 N.E.2d 1314 (1983). *See also Phillips v. Philip Morris Cos.*, No. 5:10CV1741, 2013 U.S. Dist. LEXIS 91189, *7 (N.D. Ohio June 28, 2013) (finding "[t]he recognized need for pre-certification discovery . . . is subject to court-imposed limitations, and any such limitations are within the sound discretion of the trial court.")

Indeed, as recognized by the U.S. Supreme Court, class action lawsuits present the opportunity for discovery abuse, and a trial court "has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100, 101 S. Ct. 2193, 68 L. Ed.2d 693 (1981). *See also Besinga v. United States*, 923 F.2d 133, 135 (9th Cir. 1991) (citation omitted) ("[I]t bears repeating that '"[c]lass action are unique creatures with enormous potential for good and evil."'") Such control over the discovery process is especially warranted when the amount of discovery is not proportional to the issues in the case and, in effect, serves as a prejudicial fishing expedition. *See, e.g. Fleming v. Honda of Am. Mfg.*, No. 2:16-cv-421, 2017 U.S. Dist. LEXIS 161578 (S.D. Ohio Sept. 28, 2017).

In an effort to make the class determination "as soon as practicable" after a class action lawsuit is filed, many courts endorse limiting or bifurcating discovery into two phases: a certification phase and a merit phase. *See, e.g. Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570-71 (11th Cir. 1992) ("To make early class determination practicable and to serve the ends of fairness and efficiency, courts may allow class wide discovery on the certification issue and postpone class-wide discovery on the merits."). "Though the Federal Rules of Civil Procedure do not explicitly provide for bifurcated discovery, the 2003 Advisory Committee Notes to Rule 23 recognize that bifurcation is often necessary: 'it is appropriate to conduct controlled discovery . . . limited to those aspects relevant to making the certification decision on an informed basis.'" *Harris v. comScore, Inc.*, No. 11 CV 5807, 2012 U.S. Dist.

LEXIS 27665, *3 (N.D.Ill. March 2, 2012), citing Fed. R. Civ. P. 23 Advisory Committee Notes. Indeed, recognizing the complexities of class action litigation and the prospect of burdensome and expensive discovery during the pre-certification stage, the Manual for Complex Litigation issued by the Federal Judicial Center takes this exact approach:

> Discovery relevant only to the merits delays the certification decision and may ultimately be unnecessary. Courts often bifurcate discovery between certification issues and those related to the merits of the allegations. Generally, discovery into certification issues pertains to the requirements of Rule 23 and tests whether the claims and defenses are susceptible to class-wide proof; discovery into the merits pertains to the strength or weaknesses of the claims or defenses and tests whether they are likely to succeed. There is not always a bright line between the two. Courts have recognized that information about the nature of the claims on the merits and the proof that they require is important to deciding certification. Arbitrary insistence on the merits/class discovery distinction sometimes thwarts the informed judicial assessment that current class certification practice emphasizes.
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> Allowing some merits discovery during the precertification period is generally more appropriate for cases that are large and likely to continue even if not certified. On the other hand, ***in cases that are unlikely to continue if not certified, discovery into aspects of the merits unrelated to certification delays the certification decision and can create extraordinary and unnecessary expense and burden.*** If merits discovery is stayed during the precertification period, the judge should provide for lifting the stay after deciding the certification motion.

Manual for Complex Litigation (4th) § 21.14 (2004) (emphasis added).

Here, the claims of the named Plaintiffs are not large, and are unlikely to continue if not certified. As noted herein, ***no named Plaintiff has claim for more than a few hundred dollars.*** It stretches the bounds of credibility to suggest that hundreds of thousands of dollars in discovery expenses – or millions of dollars – are warranted prior to certification in this case. Discovery in this case has become ***a weapon,*** and has taken on a life of its own separate and apart from the legitimate purposes of litigation.

Plaintiffs' argument in support of their motion to compel is focused ***almost exclusively on the professed merits*** of their claims. (See Plaintiffs' Motion to Compel at pp. 1-3). Plaintiffs expound on the alleged "seriousness" of the alleged misconduct and demand "transparency" in the form of answers to a series of seven questions that all begin with the word "why." "Why" did

Defendants charge their clients $50? "Why" did Defendants track referrals? "Why" were clients referred to particular chiropractors? The list goes on – with one common thread: all of the questions deal with the ***merits*** of Plaintiffs alleged claims. None have anything to do with the certification under rule Civ. R. 23.

Since a court must confine itself to the requirements of Rule 23 and not analyze the likelihood of success on the merits when confronted with class certification, the Northern District of Ohio in tobacco class action litigation recognized that pre-certification discovery should be limited:

> "The discovery permitted must be sufficiently broad in order that plaintiffs have a realistic opportunity to meet these requirements (of Rule 23, Fed.R.Civ.P.); at the same time, the defendant must be protected from discovery which is overly burdensome, irrelevant, or which invades privileged or confidential areas. Discovery is not to be used as a weapon, nor must discovery on the merits be completed precedent to class certification. Unnecessarily broad discovery will not benefit either party."

Phillips, 2013 U.S. Dist. LEXIS 91189 at **7-8, quoting *National Organization for Women, Farmington Valley Chapter v. Sperry Rand Corp.*, 88 F.R.D. 272, 277 (D.Conn. 1980) (internal citation omitted).

This approach has been adopted uniformly by other courts throughout the country. *See, e.g. Miller*, 2011-Ohio-3976, ¶41 (recognizing "that it is not unusual for a trial court to limit discovery with request to class certification issues" and upholding trial court's denial of plaintiff's request to obtain unredacted fax transmission list with identifies of potential class members where "plaintiffs fail[ed] to show how this information was pertinent to establishing the class certification requirements."); *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570-71 (11th Cir. 1992) ("To make early class determination practicable and to best serve the ends of fairness and efficiency, courts may allow classwide discovery on the certification issue and postpone classwide discovery on the merits."); *Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir. 1982) ("In light of the mandate of Rule 23(c)(1) that a certification determination be made '[a]s soon as practical after the commencement of [the] action,' we think it imperative that the

district court be permitted to limit pre-certification discovery to evidence that, in its sound judgement, would be 'necessary or helpful' to the certification decision."); *Harris v. Option One Mortg. Corp.*, 261 F.R.D. 98, 111 (D.S.C. 2009) (granting bifurcation of discovery and limiting pre-certification discovery to issues relevant to class determination); *Bradford v. W.R. Starkley Mortgage, LLP*, 2007 U.S. Dist. LEXIS 60612, **1-2 (N.D. Ga. Aug. 2, 2007) (denying the plaintiffs motion to compel requesting loan documentation related to other mortgage borrowers because "class wide discovery . . . prior to class certification" was improper.); *Rebman v. Follett Higher Educ. Group, Inc.*, No. 6:06-cv-1476-Orl-28KRS, 2007 U.S. Dist. LEXIS 32601, **11-12 (M.D. Fla. May 3, 2007) (denying motion to compel "merits and damages discovery" prior to class certification for all class members other than the named plaintiffs); *Larson v. Burlington N. & Santa Fe Ry. Co.*, 210 F.R.D. 663, 665 (D. Minn. 2002) (approving bifurcation for precertification discovery).

The Northern District of Illinois in *comScore* identified three factors that courts should consider to determine whether class and merits discovery should be limited or bifurcated prior to class certification:

(1) expediency, meaning whether bifurcated discovery will aid the court in making a timely determination on the class certification motion;

(2) economy, meaning "the potential impact a grant or denial of certification would have on the pending litigation" and whether the definition of the class would "help determine the limits of discovery on the merits;" and

(3) severability, meaning whether class certification and merits issues are closely enmeshed.

comScore, 2012 U.S. Dist. LEXIS 27665, at **8-9 (citations omitted). Here, it is obvious that these factors weigh heavily in favor of limiting or otherwise bifurcating Plaintiffs' discovery at this juncture.

Although a number of the cases cited herein are rulings of federal courts, Ohio courts have taken the same approach in dealing with class discovery. See, *Burrell v. Sol Bergman Estate Jewelers, Inc.*, 77 Ohio App.3d 766, 770, (8th Dist.1991); *Capital One Bank (USA), NA v.*

Reese, 2015-Ohio-4023, ¶ 102 (11th Dist.). Discovery in cases involving class allegations should be structured to reasonably preserve the resources of the parties and the court. Here, Plaintiffs have failed to come forward with any compelling reason why they cannot address the issue of class certification based upon the information currently in their possession. None of the information sought by Plaintiffs' motion to compel relates to the requirements of Civ. R. 23.

1. ***Limiting and/or bifurcating discovery will expedite a ruling on Defendants' Motion to Strike or otherwise expedite the determination of class certification.***

Plaintiffs' class action claims have been pending for almost two years. Defendants have filed a Motion to Strike the class allegations, which is fully briefed and pending before the Court. Beyond a self-righteous recitation of the purported merits of their case spanning 8 pages in their Motion to Compel, Plaintiffs fail to direct this Court to one piece of discovery that they do not yet have that would assist with requesting the Court to certify their proposed classes under Civ.R. 23(A) and (B). Plaintiffs' broad class-wide discovery flies in the face of expediency and efficiency.

As the *comScore* court recognized, "[p]roceeding with merits discovery, which may well involve the review of millions of documents not directly relevant to the issues of class certification, may delay the parties' submission of [ ] briefing on the class certification issue," and "[a]ny delay would frustrate the court's effort to certify the action as a class action." *comScore*, 2012 U.S. Dist. LEXIS 27665, at *9.

2. ***Limiting and/or bifurcating discovery will serve the interests of judicial economy, as this case may not proceed if certification is denied or proceed only as an individual action with negligible damages, and defining the class at certification, if approved, would focus merits discovery.***

As aptly said by the Northern District of Illinois:

> [I]f the plaintiffs' prospects for obtaining class certification are dim, regardless of the scope of discovery, that is plainly a factor that supports bifurcation – it would be utterly inefficient and unjust to subject a defendant to months, if not years, of onerous and expensive discovery so that the plaintiffs may continue a quixotic undertaking destined to fail.

Christian v. Generation Mortg. Co., No. 12 C 5336, 2013 U.S. Dist. LEXIS 69855, *12 (N.D. Ill. May 16, 2013). Moreover, "it is axiomatic that defining the class will make it easier to determine the limits of discovery on the merits." *Lake v. Unilever U.S., Inc.*, 964 F. Supp.2d 893, 933 (N.D. Ill. 2013).

The same is true here. Plaintiffs are on a sanctimonious, quixotic mission to certify four separate classes, each destined to fail. Plaintiffs' professed strong belief in the merits of their position is no substitute for the plain requirements of Civ. R. 23, which are not any less applicable when accompanied by the righteous indignation of the moving party. The benefits of proceeding to limit discovery to certification are obvious in this case. If none of the classes are certified, the scope of discovery is significantly reduced. Even if only one or two of the classes are certified, the scope of discovery would theoretically be cut in half. The proper scope of discovery on the merits cannot be determined in this case until the issue of certification is resolved.

3. *Class certification issues can be severed from merits issues.*

Defendants do not ignore that certification and merits discovery can overlap, as Plaintiffs claim in their Motion to Compel. However, the expansive discovery sought by Plaintiffs here seeks merit discovery related to putative members and is not solely focused on the claims brought by the named plaintiffs or the elements of Civ. R. 23. Discovery regarding the named plaintiffs alone as opposed to the entire class will sufficiently develop the record for the Court to make a certification determination under Civ.R. 23. *See, e.g. Larson*, 210 F.R.D. at 665. The plaintiffs in *Larson* alleged that the defendant railroad engaged in a company-wide scheme to fraudulently settle FELA claims with its employees that suffered noise induced hearing loss. *Id.* at 663. The named plaintiff sought the production of over 8,000 employee claims involving hearing loss, forcing the defendant to review approximately 36,000 files over 720 days at a cost of almost $1.3 million in order to respond to the discovery requests. *Id.* at 664. The defendant thus sought to restrict discovery to class certification issues, and as in the instant case, the

plaintiffs in *Larson* opposed bifurcation, claiming certification discovery was "'inextricably intertwined" with merits discovery. *Id.*

The Court approved the defendant's request for bifurcation:

> Here, we conclude that the mandate of Rule 1, Federal Rules of Civil Procedure [that the rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding], is best implemented by bifurcated discovery – that is, by completing discovery as to the claims of the four named-Plaintiffs, prior to extensive discovery on the merits of the "class claims." In practical effect, as the parties implicitly concede, merits discovery, and class discovery, could well overlap as to the claims of the named-Plaintiffs. The Defendant acknowledges that the Plaintiffs should be able to depose those persons whose knowledge is implicated by the testimony of those directly involved in handling the named-Plaintiffs' [hearing loss] claims. The Plaintiffs agree, but they would initiate the discovery at the highest levels of the claims handling process, rather than at the level which acted, one-on-one, with the named-Plaintiffs. We find the Defendant's approach most consonant with the directives of Rule 1.

Id. at 665.

Plaintiffs' citations to the Northern District Court of Nebraska in *Telco Group, Inc. v. Ameritrade, Inc.*, No. 8:05CV387, 2006 U.S. Dist. LEXIS 13264 (D. Nev. Mar. 6, 2006) and the Northern District of Ohio in *Lonardo v. Travelers Indem. Co.*, 706 F. Supp.2d 766 (N.D. Ohio 2010) in this regard are unpersuasive. In *Telco Group*, while the Court did compel the defendant broker to produce information regarding all of the named-plaintiff's account activity and not just those transactions identified in the complaint, the court refused to compel the broker to produce general account information ***from other customers*** and non-account specific regulatory information, as the plaintiff failed to show how such information was relevant to the class certification issues present in the case. *Telco Group*, 2006 U.S. Dist. LEXIS 13264, at **21-24.

The *Lonardo* decision is equally inapplicable. The case involved a motion for approval of a class action settlement agreement, and while the court in passing identified the overlap in class and merits discovery and the "significant discovery in preparation for the motion for class

certification," the decision is silent on the specifics of the discovery conducted or whether the defendant acquiesced in or objected to this discovery plan. *See Lonardo*, 706 F. Supp2d at 782.

Ohio Civ. R. 1(B) is similar to its federal counterpart, and is equally applicable here. applicable here: "These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice." Permitting Plaintiffs carte blanche discovery on the merits of their claims prior to certification obviously has caused (and will continue to cause) delay, unnecessary expense, and generally impede expeditious administration of this case. To the extent Plaintiffs overcome the dispositive motions pending on class certification, the boundaries of discovery should be drawn to move the case toward resolution of the class issues before engaging in costly merit based discovery.

B. The Discovery Requests At Issue Are Either Wholly Irrelevant to Plaintiffs' Claims Or Have No Bearing On Certification Related To The Four Proposed Classes.

At section III (E) of their Motion to Compel, Plaintiffs address specific requests they contend warrant judicial intervention requiring Defendants to produce certain documents. They claim generally that Defendants have failed to conduct a "comprehensive search of their files" to identify responsive documents. At best, this is a mischaracterization of the searches conducted by defendants. At worst, the statement is patently false.

Comprehensive searches have been conducted in the form of electronic searches using Boolean terms in an effort to identify potentially responsive documents. The searches were run on the entire universe of searchable, retrievable electronic documents maintained by KNR. Thus, it is difficult to support an accusation that the searches conducted were somehow not "comprehensive." However, it is true that Defendants were not able to produce documents as it relates to many of the searches due to the volume of data generated as a result of the search. In other words, the searches revealed so much data that either; (a) the searches were unable to be completed due to lack of storage space, or (b) the amount of data retrieved was so large that

manually reviewing the data to identify responsive documents to an individual request would have taken months or possibly years. (Ex. B, Whitaker Tr. at pp. 77-78). In response, defendants offered to reduce the size of the search by limiting date ranges and/or the number of "custodians" searched.[7] Plaintiffs have refused to provide in any proposed searches limited by time or custodian(s). Thus, the assertion that Defendants have "refused to conduct a comprehensive search of their files" is inaccurate.

1. Specific Searches addressed in Plaintiff's Motion are irrelevant to certification.

At p. 21 of their motion, Plaintiffs assert that seven (7) requested searches related to KNR's private investigators are reasonably calculated to lead to admissible evidence, and implies that the defendants refused to conduct all the searches. Once again, the representation is inaccurate. Defendants responded to these requests via correspondence of February 14, 2018, as follows:

- investigator!

Defendants informed Plaintiffs they have previously run a search for the term "investigator" and returned 49,096 "hits" for that term. Defendants accurately stated that adding the exclamation point will only produce more results and that reviewing those documents for responsive material was unduly burdensome. In essence, plaintiffs counsel's effort to resolve our prior dispute was ***to ask for even more documents.***

- investigat! AND expense!

Defendants previously produced documents based on searches for "investigation fee" for the seven crucial witnesses in this case: Aaron Czetli; Brandy Latman; Rob Nestico; Robert Redick; Michael Simpson; Holly Tusko; and Jenna Wiley. Plaintiffs new request was not limited to any specific time period and did not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections that these searches have nothing to do with class certification, Defendants agreed to run the search, and if a reasonable number of items are identified, to review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- "sign up!" AND fee!
- SU AND fee!

[7] A "custodian" is a keeper of data – in lay terms it would be the electronic mailbox of an individual employee. KNR's database includes more than 350 "custodians" – meaning current and former employees who maintained electronic mailboxes.

Defendants have produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. Plaintiffs' new request was again not limited to any specific time period and did not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants agreed to run the searches, and if a reasonable number of items are identified, to review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- Aaron! AND Mike!
- AMC AND MRS

Defendants again noted that the requests were not limited to any specific time period and did not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants agreed to run the search, and if a reasonable number of items are identified, to review the items to determine if they are responsive to any request for production and/or subject to any privilege.

It is noteworthy that Defendants agreed to run some of these searches in a spirit of cooperation despite the fact that Plaintiffs admit they are not seeking information related to class certification. Plaintiffs state: "These documents will allow Plaintiffs and the Court to assess whether defendants wrongfully charged their clients [for the investigation fee]." Plaintiffs' counsel is seeking documents to prove the merits of the claims of thousands of individuals he does not represent, without evidence that any of these people believe they have been treated in a fraudulent manner. See *Burrell v. Sol Bergman Estate Jewelers, Inc.*, 77 Ohio App.3d 766, 771, (8th Dist.1991). Moreover, Defendants have offered to stipulate that each investigator is paid the flat rate on each case, the fee is paid to the investigators by KNR, the fee is charged to the client as an expense if there is a recovery, and that the investigators' work on each file varies. The stipulation is further supported by the affidavit of former KNR attorney Robert Horton (Plaintiffs purported "star witness"), which describes the typical activities of investigators working on KNR's cases. (Ex. E, Affidavit of Robert Horton at ¶28). What more information is possibly necessary to assess whether this group of individuals is a class under Rule 23?

- chiro! AND refer!

Defendants agreed to run the search, and if a reasonable number of items are identified, to review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- (Minas OR Floros OR "Akron Square!" OR ASC) AND refer!

Defendants previously produced responsive and non-privileged documents generated from searches of Rob Nestico's and Robert Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!, which are the main two witnesses who would have any information or documents regarding the alleged quid pro quo relationship between KNR and ASC or Dr. Floros and the narrative fee. Plaintiffs new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving these objections, Defendants agreed to run the search, and if a reasonable number of items are identified, to review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- "red bag!"

Defendants objected to this search as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. A red bag is promotional material distributed KNR. By Plaintiffs counsel's own admission, the purpose of the search is to identify evidence supporting the merits of his claim of quid pro quo relationship between KNR and ASC. Counsel cannot, and does not, attempt to explain how documents containing the words "red bag" relate the requirements of Civ. R. 23.

- narrative!

Defendants previously ran a search for "narrative" at Plaintiffs request. The search returned 57,840 hits. Adding the exclamation point would only produce more results. Plaintiffs had no explanation as to how this new request could resolve the issue of returning an unduly burdensome amount of documents. Instead of narrowing his request, Plaintiffs' counsel expanded his request. The only reason to do so is to falsely assert that Defendants "refuse to cooperate."

- Plambeck!

Defendants objected to this request as not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs have failed to explain how any document containing the word "Plambeck" could contain evidence that supports class certification under Civ. R. 23.

Similar to the investigator fee class, Plaintiffs' discovery requests with regard to KNR's relationship with ASC and other chiropractors are designed to seek evidence on the merits of claims of individuals Plaintiffs' counsel does not represent, and the requests are not related to any element of Civ. R. 23. The information sought has no bearing on the issue of class certification. Defendants have offered to stipulate that ASC is paid a flat fee to write a narrative report for almost every case. There is no dispute that the fees are paid and the reports are written. Plaintiffs allege that the reports are "worthless." Obviously, the relative "value" of a

narrative report varies from case to case. Based on these facts alone this cannot be a class, and Plaintiffs should not be permitted to engage in merit based class discovery until Civ. R. 23 has been satisfied.

2. Plaintiffs are not entitled to all of Defendants Communications with any Chiropractor

The breadth of the request should speak for itself. Plaintiffs' counsel does not represent individuals who were referred to these other chiropractors for which he seeks discovery. This again is merit based discovery prior to class certification related to putative class members Plaintiff counsel does not represent. Defendants informed Plaintiffs they are willing to enter into a stipulation that KNR's policy is to receive a narrative report from ASC on all cases, except for cases involving clients under the age of 12 and a few other minor exceptions, for $150. (Ex. C, Correspondence of 11/15/2017). Even if this fee was the result of a "quid pro quo relationship" (which it was not), Plaintiffs cannot satisfy the requirements of Civ. R. 23 to constitute a class. No amount of discovery will change the outcome. Thus, it is unduly burdensome to run electronic document searches at the cost of hundreds of thousands of dollars for a class that will never be certified.

3. Information regarding "red bag" referrals is not related to class certification

Plaintiff Wright is seeking information regarding "red bag" referrals to prove the merits of her claim that there is a "quid pro quo" relationship between KNR and ASC. By her own admission, Plaintiff is seeking this information only to determine ***why*** "Defendants would refer their clients to certain chiropractors" allegedly based upon promotional materials. (Plaintiffs' Motion to Compel at p. 26). Plaintiff does not explain how obtaining this information relates to establishing any element under Civ. R. 23. Defendants should not be forced to conduct additional expensive electronic discovery unrelated to Civ. R. 23 prior to certification.

4. Defendants do not possess documents related to Plambeck lawsuits

Plaintiffs' discovery requests and motion to compel imply that Defendants should have "changed their policies" due to lawsuits involving "Plambeck-owned" chiropractic clinics. Defendants did not change their policies based on these lawsuits and therefore have no documents reflecting changes that never occurred. Producing every document that contains the word "Plambeck" is overbroad and unduly burdensome on its face. Plaintiff is asking that Defense counsel review each and every document containing this word and identify some request that could be related to the document. This is the definition of a fishing expedition. Defendants stand by their objection to running this search, and also note that Plaintiffs have failed to explain how any document they hope to discover could possibly be related to the requirements of Civ. R. 23.

5. Defendants do not keep separate files documenting the work of individual investigators on individual cases.

Perhaps Plaintiffs most overbroad request is for documentation of every task performed by every investigator on every file in the history of KNR. For example, Plaintiffs seek "daily intake emails showing which investigator was paid on each case." (Plaintiffs' Motion to Compel at p. 27). They claim this information is relevant because it could demonstrate that an investigator was paid for multiple cases in one day that originated from different parts of the state. This is a fact that is not in dispute. Defendants have repeatedly offered to enter into a stipulation regarding the payment of investigators. An investigator is paid on every case. That single payment is for dedicated work over the duration of the file – regardless of how great or small that work may be. The client is only responsible for the fee if there is a recovery – otherwise the cost is borne by KNR. The payment is made by KNR to an investigator when the client retains KNR, and KNR does not dispute that an investigator may receive multiple assignments in one day from different offices. Plaintiff cannot explain how review of tens of

thousands of intake e-mails could reveal some fact that has any bearing whatsoever on the elements of Civ. R. 23.

Plaintiffs' counsel only represents four people, and only one who has made a claim for reimbursement of the $50 investigation fee. This does not open discovery to the investigator assignment and work done on every file in the history of a law firm. Moreover, defendants cannot readily locate any documents responsive to this request. Defendants do not keep documents related to the work of investigators in a searchable and retrievable format. Investigators do not write down or electronically document the work they do on each case. Plaintiffs request essentially amounts to asking Defendants to review every case (tens of thousands) in the history of the law firm and look for random documentation of the work done by each investigator on each case.

Plaintiffs have refused limit the scope of this search in any way. They have already conceded that the work done on each case is different. This alone demonstrates that a class can never be certified on this claim, and further demonstrates that the request is intentionally overbroad and merely for purposes of harassment. It is patently unreasonable to require Defendants and their attorneys to search each and every client file for evidence to prove or disprove the merits of claims of individuals who are not parties to this case, and have not filed claims of their own. The requests related to the individual files of all KNR clients are unduly burdensome on their face, and disproportionate to the needs of the case. Plaintiffs' motion to compel should be denied.

6. Defendants have produced the files of all named Plaintiffs.

Plaintiffs complain that Defendants have failed to identify the work done by investigators on the claims of the named Plaintiffs. Defendants have produced the files of these named Plaintiffs. Moreover, only one Plaintiff (Williams) has claim for return of an investigation fee. The other Plaintiffs are merely putative class members. Even if Defendants were required to answer an interrogatory under oath, there is no employee who could testify with personal knowledge

regarding exactly what was done by any investigator in a particular case. The presence of certain materials in a file could be highly suggestive that certain work was done by the investigator, but no KNR employee can say for certain each and every task performed by an investigator on a particular file. The investigator could possibly recall exactly what was done on a specific file, but this is unlikely due to the volume of work done by the investigator and the passage of time. Plaintiff can take the deposition of the investigator who worked on the file of Plaintiff Williams and ask his questions with the benefit of Williams's file. The motion to compel should otherwise be denied.

7. Defendants' production of redacted documents was proper.

Defendants redacted information for some of the documents produced. The redactions were to confine the production to responsive information, or protect confidential or privileged information. Defendants will submit unredacted copies to the Court for in camera review upon request. However, it is clear from Plaintiffs' argument regarding redaction that none of the redacted information has any bearing on class certification. Therefore, the motion to compel should be denied.

8. Plaintiffs' Argument on "Specific Requests" should be rejected

In section 8 at the end of their brief, Plaintiffs provide an unexplained laundry list of discovery requests without argument to support a motion to compel related to these issues. These issues are sufficiently addressed herein. Plaintiff's motion to compel should be denied and the Court should proceed to decide the pending motions which are dispositive of the class allegations in this case. Upon ruling on those motions, the proper scope of discovery can be determined. Defendants have established that the cost of the discovery sought by Plaintiffs exceeds one million dollars and could run in excess of two million dollars. Including the time for counsel to review the materials, the cost is even higher. Discovery requests that require millions of dollars and thousands of hours of attorney time are unduly burdensome and are so

disproportionate to the needs of the case as to the render them vexatious. The motion to compel must be denied.

D. Alternatively, Plaintiffs Should Be Required To Fund Their Own Expansive Discovery.

To the extent the Court does not approve a bifurcation or limitation of the extensive discovery served on Defendants at this pre-certification stage of the litigation, Plaintiffs should bare sole financial responsibility for the electronic discovery they seek, and Defendants respectfully request that the Court shift the costs of such discovery. Civ.R. 26(B)(4) specifically recognizes the potential for undue burden and expense to a party when faced with a discovery request for electronically stored information ("ESI"), stating that "[a] party need not provide discovery of electronically stored information when the production imposes undue burden or expense" unless "the requesting party shows good cause." Civ.R. 26(B)(4). The Rule directs the court to analyze the following factors to determine if good cause exists:

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

Id. If the court orders production of electronic discovery upon a showing of good cause, "the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information." *Id.*

While there is a dearth of case law on Ohio's ESI Rule, Civ.R. 26(B)(4) closely tracks the language of its federal counterpart, Fed.Civ.R. 26(b)(2)(B), and federal case law interpreting the federal rule is persuasive. *See First Bank of Marietta v. Mascrete, Inc.*, 79 Ogio St.3d 503, 508, 1997-Ohio-158, 684 N.E.2d 38 (1997) ("Though federal law is not controlling with regard to

interpretation of the Ohio Rules of Civil Procedure, it can be instructive where, as here, the rules are similar").

The U.S. District Court for the Eastern District of Pennsylvania in *Boeynaems v. La Fitness Int'l*, 285 F.R.D. 331 (E.D. Pa. 2012) was faced with a pre-certification electronic discovery issue strikingly similar to the situation currently before this Court. In *Boeynaems*, the plaintiffs, who were customers of the defendant's fitness clubs, filed a class action complaint alleging claims for breach of contract and violation of consumer protection laws surrounding their desire to terminate their fitness agreements. *Boeynaems*, 285 F.R.D. at 332. The parties could not agree on a pre-certification discovery plan, and at the initial discovery conference, the court directed that pre-certification discovery on both certification and merits should focus on the named plaintiffs, further directing that merit discovery should be limited to the class action determination. *Id.* at 332. The parties' relationship during discovery was contentious: they corresponded on numerous occasions to stake their positions, the plaintiffs filed a motion to compel, and the court held three additional discovery conferences in an attempt to resolve the disputes. *Id.*

The defendant claimed it expended significant time and expense in investigating and producing information responsive to the plaintiffs' expansive pre-certification discovery requests and objected to continued discovery as burdensome and/or irrelevant since the court had not yet certified a class. *Id.* In particular, the defendant estimated the cost to review 5 years of electronic member notes requested by the plaintiffs would cost $360,000, and to perform a search and production of e-mails from active accounts of 7 custodians requested by the plaintiffs would cost $219,000. *Id.* at 340.The defendant also expended $300 a month for storing over 1,000 boxes of documented cancellation notices. *Id.* In light of this undertaking, the defendant sought to limit the pre-certification discovery or otherwise shift the cost burden to the plaintiffs. *Id.* at 341.

The court first recognized the economic significance and strain placed on the defendant in light of plaintiffs' class action complaint and the potential class involved if certified, noting "[t]he thrust of recent appellate holdings on class actions had been to put significant limits on their scope. Any observer of class action jurisprudence over the last fifty years knows that courts have become much more exacting and demanding that class certification will be fair to a defendant." *Id.* at 334 (citations omitted). The court also acknowledged that the discovery in the case was asymmetrical in both volume and cost, meaning the plaintiffs and any putative member would likely only have a limited number of documents dealing with their club membership, while the defendant "has millions of documents and millions of items of electronically stored information ("ESI"). Thus, the cost of production of these documents is a significant factor in the defense of the litigation." *Id.*

Upon analyzing Fed.Civ.R. 26(b)(2)(B) and persuasive case law throughout the county discussing pre-certification discovery and the allocation of discovery costs for unduly burdensome electronic and paper discovery, the court ultimately agreed that a mechanism of cost shifting was warranted in the case, aptly stating:

> Based on the legal discussion above and extensive review of the parties positions, the Court mandates cost allocation as fair and appropriate. The Court concludes that where (1) class certification is pending, and (2) the plaintiffs have asked for very extensive discovery, compliance with which will be very expensive, that absent compelling equitable circumstances to the contrary, the plaintiffs should pay for the discovery they seek. If the plaintiffs have confidence in their contention that the Court should certify the class, then the plaintiffs should have no objection to making an investment. Where the burden of discovery expense is almost entirely on the defendant, principally because the plaintiffs seek class certification, then the plaintiffs should share the costs.
>
> Plaintiffs seek to represent a very extensive class, and if, as Plaintiffs anticipate, their class action motion is granted, this case will suddenly turn from a routine case to a major financial exposure for Defendant. The *Hydrogen Peroxide* decision [*In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3rd Cir. 2008)] and its progeny require that the Court make a very detailed analysis as to whether Plaintiffs can meet their Rule 23 burdens. Plaintiffs have already amassed, mostly at Defendant's expense, a very large set of documents that may be probative as to the class action issue.

> The Court is persuaded, it appearing that Defendant has borne all of the costs of complying with Plaintiffs' discovery to date, that the cost burdens must now shift to Plaintiffs, if Plaintiffs believe that they need additional discovery. In other words, given the large amount of information Defendant has already provided, Plaintiffs need to assess the value of additional discovery for their class action motion. If Plaintiffs conclude that additional discovery is not only relevant, but important to proving that a class should be certified, then Plaintiffs should pay for that additional discovery from this date forward, at least until the class action determination is made.
>
> The Court is firmly of the view that ***discovery burdens should not force either party to succumb to a settlement that is based on the cost of litigation rather than the merits of the case.***

Id. at 341-342. (emphasis added). The costs shifted to the plaintiffs as ordered by the court included, but were not limited to: "the appropriately allocated salaries or individuals employed by Defendant who participate in supplying the information which Plaintiffs request, including managers, in-house counsel, paralegals, computer technicians, and others involved in the retrieval and production of Defendant's ESI." *Id. Accord Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 358, 98 S. Ct. 2380, 57 L. Ed.2d 253 (1978) (finding a trial court has the authority under Fed.Civ.R. 26(c) to grant orders "conditioning discovery on the requesting party's payment of the costs of discovery"); *Schweinfurth v. Motorola, Inc.*, No. 1:05CV0024, 2008 U.S. Dist. LEXIS 82772, **6-7 (N.D. Ohio Sept. 30, 2008) (shifting costs of discovery in pre-certification class action litigation); *Varghese v. Royal Maccabes Life Ins. Co.*, 181 F.R.D. 359 (S.D. Ohio 1998) (ordering cost sharing for certain document production); *Clean Harbors Envtl. Servs., Inc. v. ESIS, Inc.*, No. 09C3789, 2011 U.S. Dist. LEXIS 53212 (N.D. Ill. May 17, 2011) (ordering plaintiff and defendant equally share costs of electronic discovery).

As outlined above Plaintiffs demand that Defendants search their entire electronic records database – 17 terabytes of data – for an exhaustive amount of information that is irrelevant to class certification at this juncture and/or simply has no bearing on the claims brought by the named plaintiffs. Defendants have produced almost four thousand pages of documentation (3,849) directly responsive to the claims being brought by the named Plaintiffs and at least arguably related to the class certification issue.

Defendants have also explained on multiple occasions through its attorneys and its own corporate witness that Defendants are unable to complete the broad electronic searches proposed by Plaintiffs without incurring substantial burden and cost described in Mr. Whitaker's affidavit, not to mention the attorney time necessary to review the material which Mr. Whitaker estimated would take at least two years "to get through 3.2 million items" pulled from a total universe of documents exceeding 56 million. (*See* Whitaker Tr. at pp. 78-80). Indeed, Plaintiffs' suggested approach in using the cloud-based service Logikcull would not rectify this undue burden and expense, costing a whopping $1 to $2 million and further kicking the proverbial can down the road in determining whether Plaintiffs' four classes can be certified, to the extreme prejudice of Defendants.

As fittingly stated by the Eastern District of Pennsylvania in *Boeynaems*, "[i]f Plaintiffs' counsel has confidence in the merits of their case, they should not object to making an investment in the cost of securing documents from Defendant[.]" To the extent Plaintiffs dispute the cost estimates obtained by Mr. Whitaker, the purported savings would be theirs. Plaintiffs should properly bear the risk of which expert is correct as to the costs associated with the proposed discovery, as Defendants have already incurred hundreds of thousands of dollars in costs related to document discovery while Plaintiffs have incurred none. Thus, should the Court believe Plaintiffs' discovery is warranted at this juncture, Defendants respectfully request that the Court shift the burden and cost of securing same to Plaintiffs.

IV. CONCLUSION

Based upon the foregoing, Defendants respectfully request that the Court deny Plaintiffs' Motion to Compel and issue a protective order bifurcating and limiting Plaintiffs' merit based discovery at this pre-certification stage of the litigation. A proposed Order is attached. The pending dispositive motions should be taken up by the Court, and with the scheduling of a time limited oral argument. If any of Plaintiffs' class allegations survive the motion, the parameters of discovery can be set to steer the case toward a deadline for filing of a formal motion to certify

the classes. Alternatively, Defendants move the Court to shift the costs of any further discovery to Plaintiffs.

Respectfully submitted,

/s/ James M. Popson
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Counsel for Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORDER TO LIMIT OR OTHERWISE BIFURCATE DISCOVERY, OR IN THE ALTERNATIVE, SHIFT COSTS* was filed electronically with the Court on this 30th day of March, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ James M. Popson
James M. Popson (0072773)

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	Case No. 2016 09 3928
	)	
Plaintiffs,	)	Judge Patricia A. Cosgrove
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	AFFIDAVIT OF ETHAN WHITAKER
	)	
Defendants.	)	
	)	
	)	

I, ETHAN WHITAKER, being duly sworn, depose and state as follows:

1. I am over 18 years of age, and am fully competent to testify to the matters set forth herein.

2. I am the President of Whitaker Networks, an information technology business (hereinafter "IT") I founded in October 2006. Its business address is 3200 W. Market St., #110, Akron, OH 44333.

3. Whitaker Networks provides IT management and consulting services to various companies in the Northeast Ohio market. Managed IT services involve the practice of outsourcing day-to-day management responsibilities and functions as a strategic method for improving operations and reducing expenses. IT consulting services involve network setup, configuration, implementation, troubleshooting, reporting, strategy, and planning, among others.

4. Whitaker Networks presently contracts IT management and consulting services to Kisling, Nestico & Redick, LLC ("KNR") and has provided such services to KNR for approximately ten or more years.

5. As part of my employment, I am familiar with KNR's electrically stored data system and the systems and processes used to store the electronic data such as that requested by Plaintiffs' discovery in this case. I provided testimony in this regard on February 1, 2018.

EXHIBIT
tabbies
A

6. Attached as Exhibits A and B to this Affidavit are true and accurate copies of fee quotations I received from the cloud-based, electronic review litigation platforms Logikcull and CloudNine, respectively. These documents are business records generated and maintained by Whitaker Networks in the ordinary course and scope of its business relationship with KNR, and I have personal knowledge of their contents.

7. Based on my familiarity with KNR's electrically stored data system, I am aware that the total universe of KNR's electronically stored data is approximately 17 terabytes, or 17,408 gigabytes of information (1 terabyte = 1,024 gigabytes).

8. The only way to transfer data to Logikcull would be to upload the data over the internet, via their secure website. Based upon the amount of data in question, I estimate it would take at least 17 days or more to upload the entirety of KNR's electronically stored data to a cloud-based platform, presuming a 100 megabyte upload speed running at 24 hours a day and no errors are encountered during the upload process. Logikcull further estimates it would take another 60 to 90 days or more for the program to process the electronic data before it can be searched. CloudNine offers software to assist in the upload process but transfer time and processing time remain similar to Logikcull.

9. With no commitment, Logikcull charges a base monthly rate of $40.00 per gigabyte to host data on its cloud-based platform. Logikcull provides a discounted monthly rate of $11.91 per gigabyte for customers that pay an annual subscription up front.

10. Assuming the upload and processing go favorably, it would cost at a minimum $2,088,960.00 to upload and process the data (17,408 gigabytes x $40.00 per gigabyte x 3 months), or $2,487,951.36 utilizing the discounted monthly rate with an annual subscription (17,408 gigabytes x $11.91 x 12). Logikcull believes their system will be able to handle this volume, but mentioned they have yet to be contracted for a case this size.

11. CloudNine charges a base monthly rate of $35.00 per gigabyte to host data on its cloud-based platform with no commitment. CloudNine provides a discounted monthly rate of $11.00 per gigabyte for customers that pay a 6-month subscription up front.

12. At the very minimum, and again assuming the upload and processing go favorably, it would cost approximately $1,827,840.00 to use the CloudNine platform under the base monthly rate (17,408 gigabytes x $35.00 per gigabyte x 3 months) or $1,148,928.00 to obtain CloudNine's discounted monthly rate with a 6-month subscription (17,408 gigabytes x $11.00 x 6). CloudNine advises these charges do not include additional services like collection of the data, upfront imaging, etcetera.

13. The above pricing does not include the costs associated with uploading the total universe of documents to the cloud-based platform and troubleshooting failed uploads and other problems.

FURTHER AFFIANT SAYETH NOT

Ethan Whitaker

SWORN TO BEFORE ME and subscribed in my presence this 29TH day of March, 2018.

Susan Rae Brown

NOTARIAL SEAL STATE OF OHIO

Susan Rae Brown
Resident Summit County
Notary Public, State of Ohio
My Commission Expires:
September 30 2022

EXHIBIT A

Nathan F. Studeny

From: Ethan Whitaker <ethan@whitakernetworks.com>
Sent: Wednesday, March 21, 2018 2:24 PM
To: Nathan F. Studeny; James M. Popson
Subject: Fwd: Information for KNR

The response from logikcull is below.

Ethan Whitaker, President
Whitaker Networks, Inc.
O: 330.517.9934 | M: 440.812.5412

From: Todd Eastman <todd.eastman@logikcull.com>
Sent: Wednesday, March 21, 2018 2:11 PM
Subject: Re: Information for KNR
To: Ethan Whitaker <ethan@whitakernetworks.com>

Ethan,

So Logikcull charges $40/gb/mo as our base or normal rate with no commitment. If a customer wants economies of scale, they can enter into an annual subscription.

Based on an annual subscription, the customer would pay up front and by doing that you can benefit from substantial discounts.

The discounting in this example would be as follows:

17 TBs x 1024 (number of GBs in a TB) = 17,408 Gbs. Discount rate in an annual agreement would be $11.91/gb or $207,301/month or $2.4 Million dollars total. A discount of 70.31% off of the $40 rate.

There is also what is called data expansion which means the data needed could actually be even higher than the amount you are considering, meaning an even higher cost associated. For now, we have little to go on other than this number, so we are doing our best to show the potential expense.

I hope that further clarifies things. If the customer does in fact have this case, but didn't want to do an annual subscription, they could enter into our $40/gb/month model. You could simple do $40 x 17,408 to get a monthly estimate of the cost. You would also want to account for the expansion of data. We typically see 1.5x.

Just as a disclaimer, this is not an official quote, just showcasing the potential costs for the exercises of the courts.

Please call with any other needs/questions.

Best,

Todd

Todd Eastman
VP Business Development **Logikcull.com**
todd.eastman@logikcull.com | 202-595-4529
DC Metro Region

Nathan F. Studeny

From: Nathan F. Studeny
Sent: Thursday, March 29, 2018 10:38 AM
To: Nathan F. Studeny
Subject: FW: Information for KNR

From: Todd Eastman [mailto:todd.eastman@logikcull.com]
Sent: Monday, March 5, 2018 2:20 PM
To: Ethan Whitaker <ethan@whitakernetworks.com>
Subject: Information for KNR

Hi Ethan,

Here is some information to share with your client:

1) The only way to get data into cloud vendors is to upload the data over the web. This is due to security and only the user having upload access to the account. There is currently no other viable way to move vast amounts of data into a product like Logikcull. This is going to be a challenge, especially considering the amount of data in question.

2) Processing that amount of data for anyone is going to take time. Based on some back of the envelope math, you could theoretically have that done in 60 days. That is assuming a high rate of de-dupcation, but considering that is not the case, you could be looking at closer to 90 days or longer. It is impossible to predict not knowing the data, but my assumption is based on a single case throughput and about 300 GBs a day or thereabouts. There are sizeable variables with this estimate.

3) The cost for a case like this would get the per GB rate down pretty low. Our base is $40, so this would apply our highest tier or $10/gb. Assuming they would be able to buy a subscription which is annual, we could offer that level of volume discounting. Applying the amount of data you suggest, it would be roughly 17,023 GBs x $10 or roughly $1.7 million. Now if this turns into something they feel they 100% have to do, there is the likelihood I could get that a little lower, but right now that is a 75% discount from our list.

Ethan, I realize this is a unique scenario, so please let me know if you need anything further here.

Thanks

Best,

Todd

Todd Eastman
VP Business Development Logikcull.com
todd.eastman@logikcull.com | 202-595-4529
DC Metro Region

Nathan F. Studeny

Sutter O'Connell Co.
Direct: 216.928.3566
Mobile: 216.409.9343

EXHIBIT B

Nathan F. Studeny

From: Nathan F. Studeny
Sent: Thursday, March 29, 2018 10:35 AM
To: Nathan F. Studeny
Subject: FW: CloudNine Pricing Follow Up

Nathan F. Studeny

Sutter O'Connell Co.
Direct: 216.928.3566
Mobile: 216.409.9343

---------- Forwarded message ----------
From: **"Nick Noland"** <nnoland@ediscovery.co>
Date: Wed, Mar 14, 2018 at 6:20 PM -0400
Subject: CloudNine Pricing Follow Up
To: "Ethan Whitaker" <ethan@whitakernetworks.com>

Ethan,

Great speaking with you today. I have attached a link below that discusses our published pricing around hosting in CloudNine. The pricing can be either a month to month per GB model or a volume based pricing model with a 6 month commitment. As I mentioned on our call, we are willing to work with folks on pricing as long as it makes sense for all parties.

https://www.ediscovery.co/ediscovery-software-and-service-pricing/

That said, for the type of project you mentioned with about 17.5 TB of data, we would come in at about $11/GB/month(discounted volume based pricing) to host the data. I believe that comes in around $192,500/month to host this data. This does not include any other services like collection of the data, upfront imaging, etc.

If the law firm decides to host any portion of the data, please reach out to me directly and I would be happy to put together a formal proposal and conduct a demo of our tool.

Thanks,

Nick Noland
Business Development
CloudNine
513.701.9253 Direct
713.462.6464 Main
www.cloudninediscovery.com
Come see CloudNine March 8 & 9 at the ABA TechShow

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

vs. Case No. CV-2016-09-3928

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

Defendants.
~~~~~~~~~~~~~~~~~~~~~

Deposition of
ETHAN WHITAKER,

February 1, 2018
10:01 a.m.
Taken at:
Cohen Rosenthal & Kramer, LLP
3208 Clinton Avenue
1 Clinton Place
Cleveland, Ohio 44113
Tracy Morse, RPR and Notary Public

EXHIBIT
tabbies
B

correct?

MR. POPSON: Same objection.

Go ahead.

A. Incorrect.

Q. Okay. Please -- oh, because you are referring to the instance on the fourth page here where it says, "An error occurred when searching Rob Nestico. The message is, 'The process failed to get the correct properties.'"

A. That's the page I'm referring to, yes.

Q. But it is true for the other five pages, correct?

A. That's correct.

Q. All right. I know this isn't a technical term, but did you ever tell anyone in connection with these searches that the system crashed as a result of them?

A. "Crashed" is not a technical term. The system did not crash. It did slow down during this. It wasn't able to furnish the results because of the hard drive space, is what I told them.

Q. Did they ever ask you to run these

searches using additional hard drive space?

A. No.

Q. Did you ever suggest that?

A. It was spoken about.

Q. How was it spoken about?

A. I said, "If you must have these searches, we would have to add approximately 3 terabytes to 4 terabytes of space to store the search results."

Q. How much would that cost?

A. The cost will depend on the timeframe it needs to be yielded. So the longer the timeframe, the cheaper the cost. Slower storage is cheaper. So in something reasonable, it would cost 1 to $2,000 probably for additional hard drives to fit the server and a couple hours of tech time to integrate the disks.

Q. Had you done that, the problem here would have been solved, would it not?

MR. POPSON: Object to form.

A. Which problem are you speaking toward?

Q. The problems on these first six pages of these documents of the search failing

because the estimated size of the search is greater than the available space.

A. That's correct, they would have been solved.

Q. Was there any further conversation, after you advised KNR that they would need to have approximately 3 to 4 terabytes of space to store the results?

A. Between myself and KNR, no.

Q. Between you and anyone.

A. No.

Q. That was the end of the conversation.

A. Yes, for the part I played in it.

Q. Sure. Did you ever tell anyone that you could not do this or that you did not think it was a good idea to do this?

A. Can you clarify?

Q. Did you ever tell anyone that it was somehow unworkable or impracticable to add this approximately 3 to 4 terabytes of space to store these search results?

A. Yes, in a manner of speaking. What I said was, It will be expensive to the tune of 1,000 or $2,000, if you need them in a quick

timeframe. And I believe I alluded to the size of the data also, that it seems impractical to me to sort through that many emails in anything short of two years. And if it was really important, we would have the storage and complete the searches.

Q. What do you mean, "In anything short of two years"?

A. That's my estimation of how long it would take to get through 3.2 million items.

Q. You mean just to lay eyes on them?

A. Correct --

Q. Sure, understand.

A. -- guesstimate.

Q. Now, apart from -- let me back up one moment. What I'm trying to understand is exactly how many searches you ran for KNR at Brian Roof's request. I understand you said that technically for each one of these terms, it's considered a search, but what I'm referring to is, Would you also agree -- strike that. Would you agree that this first page also in a sense reflects one search --

MR. POPSON: Object to form.

Go ahead.

SUTTER O'CONNELL ATTORNEYS

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

August 15, 2017

VIA E-MAIL &
REGULAR U.S. MAIL
Peter.pattakos@chandralaw.com

Peter Pattakos
The Chandra Law Firm, LLC
1265 E. 6th Street, Suite 400
Cleveland, Ohio 44113

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

Dear Mr. Pattakos:

We are in receipt of your discovery dispute letter dated August 3, 2017. This is Defendants Kisling, Nestico & Redick, LLC and Rob Nestico's response to that letter.

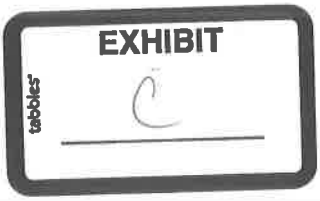
1. Requests for Admission Nos. 14, 17, and 18.

Please see the amended responses to Requests for Admission Nos. 14, 17, and 18.

2. Request for Production of Documents No. 3.

Request No. 3 seeks all Settlement Memoranda for KNR's clients reflecting payments to investigators. As outlined in the attached amended response to Request No. 3, this request seeks documents protected by the attorney-client privilege and work product doctrine. It also seeks confidential and proprietary information and is unduly burdensome and overly broad. Defendants continue to assert these objections and refuse to produce documents.

Furthermore, Plaintiffs do not have standing or the right to waive the attorney-client privilege, work product doctrine, and other applicable privileges for the putative class members. As you know, the privilege is the client's privilege to assert or waive. *See Miller v. Bassett,* 8th Dist. No. 86938, 2006-Ohio-3590, ¶ 13. Therefore, each individual putative class member must waive the applicable privileges before Defendants can produce the Settlement Memoranda. Without a specific waiver, Defendants will not produce the Settlement Memoranda.



3. Interrogatory Nos. 17.

Regarding Interrogatory No. 17, Defendants stand by their objections. First, none of the cases to which you cite applied Ohio law and none have expressly stated that the identities of the clients in a putative class action are discoverable and not privileged. In addition, there are potential issues of confidentiality provisions in settlement agreements that could preclude the release of the names of KNR's clients.

Second, Interrogatory No. 17 is premature as the case has not been certified. There is no pre-certification requirement to identify putative class members. *See Berdysz v. Boyas Excavating, Inc.*, 8th Dist. No. 104001, 2017-Ohio-530, ¶ 24 ("The identities of class members do not have to be specified in order to demonstrate that a class actually exists; rather, the class definition must be precise enough to permit identification within reasonable effort.").

Third, the lawsuit is a matter of public record in which you can just as easily obtain the information. By obtaining the information through the public record, Defendants will not have to waive the applicable privileges and confidences of KNR's clients.

In addition, you completely ignore that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to December of 2004, which include over tens of thousands of cases or matters. This is especially true considering that the Court has yet to certify a class.

4. Interrogatory No. 18.

In response to Interrogatory No. 18, Defendants already provided you with an estimate of the number of clients ("tens of thousands"). This is sufficiently responsive to Interrogatory No. 18, without having to undertake the unduly burdensome task of reviewing each and every file since the inception of the firm. This is especially true since the case has not been certified, which is not guaranteed.

5. Request for Production of Documents No. 4 and Interrogatory No. 11.

Request No. 4 and Interrogatory No. 11 are overly broad and unduly burdensome, as they seek information and documents dating back to late 2008 and early 2009. In response to Interrogatory No. 8, Defendants have agreed to provide Plaintiffs with a list of the investigators subject to an appropriate protective order.

6. Interrogatory Nos. 20-22 and Request for Production of Document No. 9.

First of all, Defendants answered Interrogatory No. 22. The *Cunningham* case is the only lawsuit that is responsive to Interrogatory No. 22. As for Interrogatory Nos. 20 and 21, please see the attached amended responses. Because Defendants are unaware of any questions or complaints in response to Interrogatory Nos. 20 and 21, there are no responsive documents in answering Request for Production No. 9. Defendants have fully responded To Interrogatory Nos. 20-22 and Request for Production No. 9.

We trust that the above satisfies your additional inquiries into Defendants' discovery responses. Please contact me with any questions or comments.

Sincerely,

Sutter O'Connell

Brian E. Roof

BER/ma
Enclosure

cc: James M. Popson
Subodh Chandra

SUTTER O'CONNELL ATTORNEYS

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

September 21, 2017

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333

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

Dear Mr. Pattakos:

We are in receipt of your discovery dispute letter dated September 7, 2017. This is Defendants Kisling, Nestico & Redick, LLC and Rob Nestico's response to that letter. Defendants stand by their objections in their discovery responses and in the August 15, 2017 letter.

First the entire Settlement Memorandum is protected by the attorney-client privilege and work product, including the information that you seek (i.e., the investigator's name and the amount of the fee). As you know, the privilege belongs to each client to waive. As of the date of this letter, you have not provided a waiver from any of the putative class members.

However, per our prior response to Interrogatory No. 8, we have amended the response to include the list of investigators. Defendants' amended response to Interrogatory No. 8 is designated "confidential: attorney's eyes only" under the Protective Order in this case. A copy of the amended response to Interrogatory No. 8 is attached.

In addition, we will provide you with exemplars of the Settlement Memoranda, which are also designated "confidential: attorney's eyes only" under the Protective Order. Furthermore, the amount of investigation fee has ranged from $30 to $100 from late 2008 or early 2009 (when KNR started using investigators) to the present. Accordingly, we have provided you with the information that you are seeking in the Settlement Memoranda without compromising the applicable privileges and without putting Defendants through the undue burden of producing every Settlement Memorandum since 2008-2009.

Second, as for the amount paid to MRS Investigations, AMC Investigations, and the other investigators, we have provided that to you in Defendants' discovery responses and above. Again, we have provided you with the requested information. Therefore, we are at a loss as to what additional information you are looking for.

We trust that the above satisfies your additional inquiries into Defendants' discovery responses. Please contact me with any questions or comments.

Sincerely,

Sutter O'Connell

Brian E. Roof

BER/ma
Enclosure

cc: James M. Popson

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

DEFENDANTS' AMENDED ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR") and Alberto R. Nestico ("Defendants") object and respond as follows to Plaintiff Member Williams First Set of Interrogatories ("Interrogatories"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Interrogatories to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiff's Interrogatories seek information and communications between Plaintiff and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this lawsuit and attaching the Settlement Statement to her Class Action Complaint, Plaintiff has waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only her, and not to putative class members.

2. Defendants also object to Plaintiff's Interrogatories to the extent that they seek information that Defendants considers proprietary and/or confidential. Defendants will produce or disclose its proprietary and/or confidential information subject to a stipulated protective order.

3. Defendants object to the "Instructions" and "Definitions" preceding Plaintiff's Interrogatories on the grounds that they are vague, ambiguous, seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by the Ohio Rules of Civil Procedure. Defendants will respond to these Interrogatories in accordance with its obligations under the Ohio Rules of Civil Procedure.

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

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

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

7. Defendants' discovery responses are made without a waiver of, and with preservation of:

a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;

b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;

c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Interrogatories herein responded to;

d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;

e. The right to assert additional privileges; and

f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

INTERROGATORIES

1. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-who performed any service for Plaintiff in connection with the $50 payment to MRS Investigations, Inc., as defined in Request for Admission No. 3 ("the $50 payment").

RESPONSE: Objection. Defendants object that the term "service" is vague, ambiguous, and undefined. Defendants further object that this request seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants identify as follows:

Chuck DeRemer, 1745 24th Street, Cuyahoga Falls, Ohio 44223

Michael Simpson

2. Identify the service or services that were performed in exchange for the $50 payment.

RESPONSE: Objection. Defendants object that the term "service[s]" is vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants state that KNR deducted $50 from the settlement proceeds that KNR obtained on behalf of Plaintiff for the services and work that MRS Investigations, Inc. ("MRS") performed in Plaintiff's legal matter. MRS invoiced KNR for the $50 investigation fee for Plaintiff and KNR was required to pay MRS the $50 fee regardless of whether KNR obtained a settlement or judgment on behalf of Plaintiff. Responding further, Defendants state that, among other things, the services and work performed by MRS for Plaintiff, included, without limitation, reviewing the police report of Plaintiff's accident and

having an MRS representative (Chuck DeRemer) visit Plaintiff's home at 11:00 a.m. on September 14, 2013 to obtain required signatures on documents, additional documents, and photographs. Plaintiff refused to meet with Chuck DeRemer. In addition, depending on the case or matter, MRS provides other services, including, without limitation, obtaining police records, obtaining witness statements, collecting scene investigation evidence and other evidence, taking photographs, obtaining medical records and affidavits, tracking down witnesses and clients, and filing court documents. This is all done for the flat fee that MRS has charged KNR. Over the years, the fee has ranged from $30 to $50.

3. Identify every topic and objective of any investigation performed on behalf of Plaintiff in connection with the $50 payment.

RESPONSE: Objection. Defendants object that the terms "topic," "objective," and "investigation" are vague, ambiguous, and undefined. Defendants further object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants refer Plaintiff to their answer to Interrogatory No. 2.

4. Identify every task performed as part of any investigation or any other service performed on behalf of Plaintiff in connection with the $50 payment.

RESPONSE: Objection. Defendants object that the terms "task," "service," and "investigation" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary

information. Subject to and without waiving these objections, Defendants refer Plaintiff to their answer to Interrogatory No. 2.

5. Identify every piece of information that was discovered in any investigation performed on behalf of Plaintiff in connection with the $50 payment.

RESPONSE: Objection. Defendants object that the terms "information" and "investigation" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, because Plaintiff refused to meet with the MRS representative at Plaintiff's residence on September 14, 2013 at 11:00 a.m., MRS did not obtain any documents or information from Plaintiff. The MRS representative also reviewed the police report at issue.

6. Identify every disclosure of information that any Defendant (including any employee or representative of KNR) made to Plaintiff relating to the $50 payment, including about any related investigation performed on her behalf, including the date on and format in which the disclosure was made, the person who made the disclosure, and the information contained in the disclosure.

RESPONSE: Objection. Defendants object that the terms "information," "disclosure," and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between Plaintiff and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants also object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants refer

Plaintiff to the Contingency Fee Agreement between Plaintiff and KNR and the Settlement Statement reviewed and signed by Plaintiff. As required under the ethical rules and KNR's policies and procedures, Attorney Rob Horton was required to review the Contingency Fee Agreement with Plaintiff on intake, which occurred on or about September 13, 2013. Attorney Rob Horton, who is no longer with KNR, has personal knowledge as to whether he in fact reviewed the agreement with Plaintiff. Attorney Rob Horton's replacement, Attorney Mark Lindsey, reviewed the Settlement Statement with Plaintiff via telephone in early August 2015. When Plaintiff picked up her settlement check at KNR's office on August 7, 2015, Attorney Kimberly Lubrani met with Plaintiff and asked if she had any questions. Plaintiff then signed the necessary documents, including the Settlement Statement, after reviewing them. Finally, Defendants refer Plaintiff to her file, which will be produced subject to an agreed-upon protective order.

7. Identify every conversation that any Defendant (including any employee or representative of KNR) had with Plaintiff relating to the $50 payment, including about any related investigation performed on her behalf, including the date of the conversation, the means by which the conversation was had (e.g., in-person, telephone, e-mail, etc.), the conversation's participants, and the subject matter of the conversation.

RESPONSE: Objection. Defendants object that the terms "conversation," "representative," and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between Plaintiff and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants refer Plaintiff to the Contingency Fee Agreement between Plaintiff and KNR and the Settlement

Statement, both of which were reviewed and signed by Plaintiff. Responding further, Defendants refer Plaintiff to their Response to Interrogatory No. 6.

8. Identify every individual or corporation whom KNR engages or has engaged, on behalf of its clients, to perform services similar to those performed by MRS Investigations, Inc. on Plaintiffs behalf, as identified in your response to Interrogatory No. 2.

RESPONSE: Objection. Defendants object that the terms "services" and "investigation" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. In addition, Defendants object that this interrogatory seeks proprietary and confidential information. Subject to and without waiving these objections and an agreed-upon protective order, Defendants identify the following individuals who may have served as investigators over the years:

1. Paul Hillenbrand
2. Tom Fisher
3. Brett Webb
4. Harold Green
5. Rick Hall
6. David French
7. Gary Monto
8. Dennis Rees
9. Gary Krebs
10. Chuck Shonkwiler
11. Michael Tsagaris

12. Eduardo Mateo

13. Aaron Samuels

14. Aaron Czetli

15. Mike Simpson

16. Eddie Shumaker

17. Jeff Allen

18. Ted Whittaker

19. Wes Steele

20. James Smith

21. Glenn James

22. Also, pursuant to Civ.R. 33(c), see names in documents produced.

The identities of these individuals and the response to Interrogatory No. 8 are designated "confidential: attorney's eyes only – subject to protective order."

9. For each individual identified in your response to Interrogatory No. 8, identify their true, full and correct names, employers (including whether they are employees of any Defendant), positions, supervisors, and present addresses and phone numbers.

RESPONSE: Defendants refer Plaintiff to their objections and response to Interrogatory No. 8.

10. For each corporation identified in your response to Interrogatory No. 8, identify their true, full and correct names, each employee or representative of such corporation with whom any Defendant has had contact, and present addresses and phone numbers.

RESPONSE: Defendants refer Plaintiff to their objections and response to Interrogatory No. 8.

11. Identify every payment made by any Defendant to any individual or corporation identified in your response to Interrogatory No. 8, including by identifying the date and amount of each payment,

and the persons or corporations making and receiving each payment.

RESPONSE: Objection. Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory is unduly burdensome and overly broad in that it seeks information dating back to late 2008 to early 2009.

12. Identify the date on which KNR first began engaging individuals or corporations, as identified in your response to Interrogatory No. 8, to perform services similar to those performed by MRS Investigations, Inc. on Plaintiffs behalf, as identified in your response to Interrogatory No. 2.

RESPONSE: Objection. Defendants object that the terms "services" and "similar to" are vague, ambiguous, and undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Subject to and without waiving these objections, Defendants state that KNR began using AMC in or around late 2008 or beginning of 2009. Defendants further state that KNR started using MRS in the beginning of 2011.

13. Identify each service for which any Defendant has engaged or employed Aaron M. Czetli or Michael R. Simpson to perform, whether for Defendant or on behalf of Defendant's clients.

RESPONSE: Objection. Defendants object that the term "services" is vague, ambiguous, and

undefined. Furthermore, Defendants object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants also object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence to the extent that it seeks information regarding any work that Messrs. Czetli and Simpson performed for Defendants, as opposed to perform on behalf of Defendants' clients. In addition, Defendants object that this interrogatory seeks confidential and proprietary information. Subject to and without waiving these objections, Defendants state Michael Simpson and Aaron M. Czetli have never been employees of KNR. In addition, Defendants refer Plaintiff to their responses to the Interrogatories and Requests for Admission.

14. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-with knowledge of the facts, claims, or defenses alleged in this case and identify the relevant subject matter of each person's relevant knowledge known to you.

RESPONSE: Defendants respond as follows: (1) all parties; (2) Robert Horton, former attorney with KNR who was counsel of record for Plaintiff; current attorney with Slater & Zurz, 80 S. Summit St, Akron, Ohio 44308; (3) Peter Pattakos; (4) Michael Simpson, as identified above; (5) Chuck DeRemer, as identified above; (6) Mark Lindsey, attorney with KNR who replaced Robert Horton as counsel of record for Plaintiff (contact through Defendants' counsel); (7) Kimberly Lubrani, attorney with KNR who met with Plaintiff to sign Settlement Memorandum (contact through Defendants' counsel); and (8) Robert Redick, partner in KNR (contact through Defendants' counsel). Also, Defendants refer Plaintiff to the documents to be produced in discovery for additional

potential witnesses.

15. Identify all persons-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers-who participated in the decision to charge Plaintiff the $50 payment, and identify each such person's role in the decision-making process.

RESPONSE: Defendants identify Robert Redick (contact through Defendants' counsel).

16. Identify the date on which KNR first began using the "Needles" computer system to track client information.

RESPONSE: Objection. Defendants object that the terms "computer system" and "track" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants state KNR began using the commercially available software system called Needles to assist KNR in managing its docket of cases in 2005.

17. Identify all KNR clients, past or current, whom the law firm represented in publicly filed lawsuits.

RESPONSE: Objection. Defendants object that this interrogatory seeks information that may be protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, and other applicable privileges. Defendants also object that this interrogatory seeks confidential and proprietary information. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to December 2004 (over tens of thousands of cases or matters). Finally, Defendants object that this interrogatory is premature, as the class has not been certified.

18. Identify the number of clients for whom KNR, through its representation of the client, has recovered a settlement or judgment on the client's behalf.

RESPONSE: Objection. This interrogatory is unduly burdensome and overly broad in that it requires an electronic review or a manual review of hard copies of over tens of thousands of cases or matters. In addition, Defendants object that this interrogatory is premature, as the class has not been certified.

19. Identify all witnesses, including expert witnesses, you intend to use at trial; describe the subject matter of each witness's or expert's expected testimony, the facts provided to or obtained by any expert in generating his or her opinions, and the opinions held by each expert who will provide testimony at trial without regard to whether the expert will testify regarding that specific opinion at trial.

RESPONSE: Objection. Defendants object that this interrogatory seeks information protected by the attorney-client privilege and work product doctrine. Defendants also object that this interrogatory is premature as discovery has just started. Subject to and without waiving these objections, Defendants will identify its expert witnesses in accordance with the Ohio Rules of Civil Procedure, the Local Rules, and the Court's orders.

20. Identify every current or former KNR attorney or employee who raised questions or made complaints about charges to KNR clients, including those for payments to MRS Investigations, AMC Investigations, or any other party identified in your response to Interrogatory No. 8, including but not limited to questions conveyed orally, documented within electronic or hard-copy correspondence, fee-disputes through bar associations, or civil lawsuits filed against any Defendant.

RESPONSE: Objection. Defendants object that the terms "questions," "complaints," and "charges" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and

professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to late 2008 to early 2009. In addition, Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff to the extent it seeks information relating to alleged lawsuits against Defendants. Subject to and without waiving these objections, Defendants state that they are unaware of any questions or complaints responsive to this interrogatory.

21. Identify every non-KNR attorney or employee, including any current or former clients, or third parties, who raised questions or made complaints about charges to KNR clients, including those for payments to MRS Investigations, AMC Investigations, or any other party identified in your response to Interrogatory No. 8, including but not limited to questions conveyed orally, documented within electronic or hard-copy correspondence, fee-disputes through bar associations, or civil lawsuits filed against any Defendant.

RESPONSE: Objection. Defendants object that the terms "questions," "complaints," and "charges" are vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to late 2008 or early 2009. In addition, Defendants

object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff to the extent it seeks information relating to alleged lawsuits against Defendants. Subject to and without waiving these objections, Defendants state that they are unaware of any questions or complaints responsive to this interrogatory.

22. Identify each civil lawsuit filed against any Defendant in connection with any category of fees or expenses alleged to be improperly charged to KNR clients.

RESPONSE: Objection. Defendants object that the term "improperly charged" is vague, ambiguous, and undefined. Defendants also object that this interrogatory seeks information and communications between putative class members and KNR that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this interrogatory is overly broad and unduly burdensome in that it seeks information dating back to December, 2004. In addition, Defendants object that this interrogatory seeks irrelevant information that is not likely to lead to the discovery of admissible evidence in that it seeks information on issues that are not related to the specific allegations that are the basis of Plaintiff's Class Action Complaint. Defendants also object that this interrogatory seeks confidential and proprietary information. Finally, Defendants object that this interrogatory seeks information that is available to the public and Plaintiff. Subject to and without waiving these objections, Defendants identify the case captioned *Paul Cunningham v.*

Kisling, Nestico & Redick LLC Law Firm, Summit County Court of Common Pleas, Case No. CV-2013-031312.

23. If your response to any Request for Admission is anything but an unqualified admission, identify the basis for your qualification or denial of each such request.

RESPONSE: Objection. Defendants object that this interrogatory is basically separate interrogatories for each Request for Admission, which places the number of interrogatories in excess of the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving this objection, Defendants incorporate their objections and responses to Plaintiff's Requests for Admission.

24. Identify every person who participated in the preparation of these responses and each Defendant's responses to the Requests for Admission and Requests for Production of Documents served with the Complaint-including their true, full and correct names, employers, positions, supervisors, and present addresses and phone numbers, the specific discovery requests to which each person's participation pertained, and each task that each person performed in preparing the responses.

RESPONSE: Objection. Defendants object that this interrogatory seeks information protected by the attorney-client privilege and work product. Defendants also object that this interrogatory exceeds the limit of 40 interrogatories under Civ. R. 33. Subject to and without waiving these objections, Defendants refer Plaintiff to their verification page for the responses to these interrogatories.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof
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Brian E. Roof (0071451)
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Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Amended Answers to Plaintiff's First Set of Interrogatories to All Defendants was sent this 21st day of September, 2017 to the following via electronic and Regular U.S. Mail:

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Donald Screen
Peter Pattakos
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Counsel for Plaintiff

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

SUTTER O'CONNELL ATTORNEYS

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November 2, 2017

Peter Pattakos
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Joshua R. Cohen
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Cleveland, Ohio 44114

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

Dear Messrs. Pattakos and Cohen:

Thank you for meeting with us today regarding the alleged issues in Defendants' document production as outlined in Mr. Pattakos' October 26, 2017 letter. Per our discussion, we will wait to formally respond to the October 26, 2017 letter until, we receive from you additional information to narrow the document requests and searches. We look forward to working with you on these issues.

As a follow up regarding Ms. Reid's settlement check, KNR has sent that check directly to her with a copy of the cover letter to you. Finally, please find enclosed document bates stamped KNR03279-03287 (Plaintiff Johnson's fully executed loan agreement) that should have been part of the original production.

Please contact me with any questions or comments.

Sincerely,

Sutter O'Connell

Brian E. Roof

BER/ma
cc: James M. Popson
Eric Kennedy

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November 15, 2017

VIA E-MAIL

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

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

Dear Peter:

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

Response to November 7, 2017 Letter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response to November 10, 2017 Letter

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

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

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

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

Sincerely,

Sutter O'Connell

Brian E. Roof

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

#2

Status: Search Failed

User: Administrator

Date: 10/19/2017 11:35 AM

Size: 0 B

Items: 0 (3256925 unsearchable)

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

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

Keyword statistics: (Duplicates not excluded)

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

#3

Status: Search Failed

User: Administrator

Date: 10/20/2017 9:13 AM

Size: 0 B

Items: 0 (3260195 unsearchable)

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

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

Keyword statistics: (Duplicates not excluded)

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

#1

Status:	Search Failed
User:	Administrator
Date:	10/19/2017 11:34 AM
Size:	0 B
Items:	0 (3256922 unsearchable)
Results:	DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]
Errors:	Multi-mailbox search failed because the estimated size of the search 2.326 TB (2,557,360,091,329 bytes) is greater than the available space 49.84 GB (53,510,599,084 bytes) in the destination mailbox. We won't try to copy search results.
Keyword statistics:	(Duplicates not excluded)

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

Intake-Procedure-Referral Search

Status: Search partially succeeded

User: Administrator

Date: 10/20/2017 10:46 AM

Size: 23.59 GB

Items: 107742 (33886 unsearchable)

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

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

Keyword statistics: (Duplicates not excluded)

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

#7

Status:	Search Failed
User:	Administrator
Date:	10/20/2017 9:13 AM
Size:	0 B
Items:	0 (3260967 unsearchable)
Results:	DiscoverySearchMailbox{D919BA05-46A6-415f-80AD-7E09334BB852}@knrlegal.com [open]
Errors:	Multi-mailbox search failed because the estimated size of the search 2.264 TB (2,489,456,795,962 bytes) is greater than the available space 50 GB (53,686,658,152 bytes) in the destination mailbox. We won't try to copy search results.
Keyword statistics:	(Duplicates not excluded)

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

#5

Status: Search Failed

User: Administrator

Date: 10/20/2017 9:13 AM

Size: 0 B

Items: 0 (3260195 unsearchable)

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

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

Keyword statistics: (Duplicates not excluded)

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

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

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

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

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Document Requests to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiffs' Document Requests seek information and communications between Plaintiffs and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this lawsuit and attaching the Settlement Statement to her Class Action Complaint, Plaintiffs

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

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Document Requests on the grounds that they are vague, ambiguous, seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by the Ohio Rules of Civil Procedure. Defendants will respond to these Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

14. Defendants' discovery responses are made without a waiver of, and with preservation of:

a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;

b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;

c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Document Requests herein responded to;

d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;

e. The right to assert additional privileges; and

f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents:

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

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

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

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

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

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

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

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

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

and overly broad.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

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

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

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Document Requests to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiffs' Document Requests seek information and communications between Plaintiffs and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this

lawsuit and attaching the Settlement Statement to her Class Action Complaint, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Document Requests on the grounds that they are vague, ambiguous, seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by the Ohio Rules of Civil Procedure. Defendants will respond to these Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

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

13. Defendants' discovery responses are made without a waiver of, and with preservation of:

a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;

b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;

c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Document Requests herein responded to;

d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;

e. The right to assert additional privileges; and

f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents:

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

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

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

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

30, 2017).

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

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

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

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

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

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

6. All documents reflecting efforts by Defendants to assure that the Litigation Finance Company to which they referred clients at any given time was the company providing the most competitive terms and most reliable service.

RESPONSE: Objection. Defendants object that the terms "efforts" "most

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

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

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

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

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

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

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

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

RESPONSE: There are no responsive documents.

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

RESPONSE: Objection. Defendants object that this request seeks documents relating to putative class members when the case has yet to be certified as a class action. Plaintiffs are not entitled to documents and information related to putative class members until the case has been certified as a class action. Defendants object that this request seeks documents that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients that Plaintiffs' counsel does not represent. Responding further, to the extent that this request is needed to establish numerosity, Defendants are not contesting numerosity for the Liberty Capital Funding Class (Class C).

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

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

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

RESPONSE: Objection. Defendants object that this request seeks documents protected by the attorney-client privilege and work product doctrine. In addition, Defendants object that this request may seek documents that are confidential and proprietary. Subject to and without waiving these objections, Defendants will produce documents based on the search of emails of the assigned attorneys and paralegals using the different iterations of the four named Plaintiffs. Defendants will also produce the client files for each of the four named Plaintiffs. See

Documents bates stamped KNR00023-00743 (Plaintiff Williams); KNR00761-01427 (Plaintiff Wright); KNR01428-01682 (Plaintiff Johnson); KNR01683-02199 (Plaintiff Reid); and KNR03279.

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

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

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

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

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

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

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

RESPONSE: Defendants state that there are no responsive documents.

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

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

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

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

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

RESPONSE: Objection. Defendants object that the terms "agreements" and "refer" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, there are no responsive documents.

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

RESPONSE: Objection. Defendants object that the terms "negotiations" and

"referrals" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving any objections, there are no responsive documents.

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

RESPONSE: Objection. Defendants object that the term "negotiations" and "narrative fees" are vague, ambiguous, and undefined. Defendants object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. In addition, this request is generally unduly burdensome and overly broad. Subject to and without waiving these objections, there are no responsive documents.

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

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

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

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

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

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

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

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

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

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

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

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

28. All documents reflecting KNR's basis for believing that narrative reports from

chiropractors provide a benefit to their clients in excess of the fee for such reports.

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

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

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

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

RESPONSE: Objection. Defendants object that the terms "solicitations" and "refer" are vague, ambiguous, and undefined. In addition, this request is generally unduly burdensome and overly broad. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to Chiropractors other than ASC. Subject to and without waiving these objections, there are no responsive documents.

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

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

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

RESPONSE: Objection. Defendants object that this request seeks irrelevant documents not likely to lead to the discovery of admissible evidence. Defendants also object that this request is overly broad and unduly burdensome. Subject to and without waiving these objections, there are no responsive documents.

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

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

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

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

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

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

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

procedures or referrals.

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

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

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

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

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

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

RESPONSE: RESPONSE: Objection. Defendants object that the terms "provider" and "employment" are vague, ambiguous, and undefined. Defendants further object as overly broad and unduly burdensome to the extent that this request for documents seeks information relating to investigators other than MRS Investigations, Inc. and AMC Investigations, Inc., which are independent contractors. In addition, Defendants object that this request is overly broad and unduly burdensome to the extent that it has no date limitation. In addition, this request is generally unduly burdensome and overly broad. Subject to and

without waiving these objections, Defendants will produce documents. See documents bates stamped KNR03226-03277. Client names and identifying information have been redacted in these documents.

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

RESPONSE: Defendants object that this request seeks documents that may be subject to the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. Defendants further object that this information seeks confidential and proprietary information. In addition, Defendants object that the request is unduly burdensome and overly broad to the extent that it seeks documents relating to other clients. Subject to and without waiving these objections, there are no responsive documents. Responding further, investigators do not investigate claims of individuals who are not clients of the firm.

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

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

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

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

43. All documents containing or reflecting policies and procedures on when and how

to use an "investigator" on a client or potential client matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: There are no responsive documents.

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

RESPONSE: There are no responsive documents.

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

RESPONSE: There are no responsive documents.

60. All discovery requests and written discovery responses served by all parties to

the lawsuit *Kisling Nestico & Redick, LLC v. James E. Fonner*, Franklin County Common Pleas Case No. 15-CV-003216.

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

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

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

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

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

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

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

64. All documents reflecting communications with "Attorney at Law Magazine."

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

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

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

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

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

Respectfully submitted,

/s/ Brian E. Roof
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Brian E. Roof (0071451)
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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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Counsel for Defendant Minas Floros, D.C.

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

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.,	)	**DEFENDANTS' NOTICE OF SERVICE**
Defendants.	)	

Notice is hereby given that on this 15th day of November, 2017, counsel for Defendants has served Defendants' First Amended Responses to Plaintiffs' Third Set of Requests for Production of Documents to All Defendants and Defendants' First Amended Responses to Plaintiffs' Fourth Set of Requests for Production of Documents to All Defendants upon Plaintiffs by electronic and Regular U.S. mail, a true and accurate copy of said documents and this Notice on the date referenced above.

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing *Notice of Service* was sent this 15th day of November, 2017 to the following via electronic and Regular U.S. Mail:

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Counsel for Defendant Minas Floros, D.C.

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

Barb Day

From: Brian E. Roof
Sent: Friday, December 01, 2017 6:22 PM
To: Peter Pattakos
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson
Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Peter,

The Court's October 16th ruling trumps the April 5th order. And even if it didn't, you are not complying with it by
not producing your documents simultaneously.

In addition, based on your below email you have no evidence of counsel or Defendants destroying any documents. You just like to make baseless accusations.

Regards,

Brian

Sent from my iPhone

On Dec 1, 2017, at 5:44 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

> Brian,
>
> Re: Number 2 below, you're referring to the wrong Court order. Please refer to the briefing on our Motion for Protective Order that we filed on Dec. 02, 2016, and the Court's order of Apr. 05, 2017 granting our request that the parties produce documents simultaneously despite Defendants' protests to the contrary that you essentially repeat below. We will present our concerns over spoliation to the new Judge if necessary.
>
> Re: Number 3, why can't you just provide us the basic information about the Defendant's email systems? What is the point of obstructing here? We will proceed on 12/15, and will seek our costs if forced to reconvene due to your obstruction.
>
> Thanks.

Peter Pattakos
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On Fri, Dec 1, 2017 at 5:22 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter:

1. Hopefully, we can agree on stipulations that will address most of the discovery disputes.

2. Regarding your lack of document production, we don't know what Horton provided you so we are entitled to those documents. And we can't trust Horton on what he says he produced to you. Once again you make things up. The Court never granted you a protective order that required Defendants to produce all of their documents before Plaintiffs were required to produce their documents. There is nothing on the docket that reflects that order. Rather, because you made such a big issue that you served your document requests a day earlier, you wanted Defendants to produce their documents a day before Plaintiffs had to produce their documents. The Court reluctantly agreed that Defendants would produce their documents on Monday and then Plaintiffs would produce their documents on Tuesday. Read the transcript of the October 16 hearing. We have produced over 3,000 pages of documents and are continuing to produce documents (next week). There is no excuse for you not to produce your documents, other than the fact that once again you want to dictate discovery. That is not how it works. Produce your documents immediately. Finally, you have no good faith basis to contend that officers of the court would destroy documents. That is a false and defamatory statement.

3. Regarding your questions about KNR's email system, you can ask those questions of Mr. Whitaker on December 15, assuming that the deposition still proceeds. You will not have access to KNR's document system for the deposition. As we stated earlier, we object to the inspection. Please confirm whether Mr. Whitaker's deposition will proceed on December 15.

Please contact me with any questions or comments.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Friday, December 01, 2017 3:53 PM

To: Brian E. Roof
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson
Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

1) Thanks for the stipulations. Some of them appear to be useful in at least some regard. We'll get back to you on them in our response to your Nov. 15 letter.

2) I don't see any need to add what I've already made clear about the deposition scheduling, other than to address Mr. Mannion's separate email about the documents, to which you refer below.

3) To respond to Mr. Mannion's email, and your related claims below that we "just refuse to produce the documents despite [y]our repeated requests," we have repeatedly made clear to you the following: Defendants are already in possession of all of the documents Horton provided us, and were even before you filed your strike suit against Horton. We have repeatedly told you we will produce copies of these documents that we have despite your lack of legitimate need for them, but only after Defendants' production is complete. As we've explained, including in our motion for protective order that the Court granted, we've insisted on this approach to ensure that Defendants do not wrongfully destroy or withhold evidence from us based on their knowledge of what is in our possession. As Defendants' obstructive responses to our requests have so far made clear—and as will be made increasingly clear if Defendants continue to obstruct—it's a good thing we took this approach.

4) What you are saying about the email system doesn't make any sense. It does not seem plausible that running a basic search of a law firm's email system would take hours. Please confirm that KNR's email system is Outlook based, and that all emails are stored on a cloud, or advise us as to the system type and means of storage so we may consider this claim. Additionally, there is no concern about the disclosure of "confidential, proprietary, and privileged information in the document system that you are not allowed to see." We are officers of the Court and are subject to a protective order, and have no intent to disclose any such information, and in any event, we are only asking to see hit counts for searches using certain key terms. This is in no way privileged or protected information.

I'll await your response on point 4. I don't need to hear back from you on points 2 and 3. If you have any more to say on them, you can take it up with the Court.

Thank you.

Peter Pattakos

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On Fri, Dec 1, 2017 at 1:35 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter,

Again, as Mr. Hill pointed out, you do not get to determine when we take our depositions. You seem to protest too much that you are not dictating the scheduling of depositions, but that is exactly what you are doing, as Mr. Hill stated in his email. It is obvious from your correspondence that you want to control discovery and the depositions, without providing any "compelling reasons" for this. There is nothing in the rules or the custom of the practice that allows you to do this.

In addition, as Mr. Mannion mentioned, you supposedly have all the documents you need to prove your case. So your argument that you do not have "any documents of any substantial relevance to the claims at issue" is false. You just refuse to produce the documents despite our repeated requests. Furthermore, whether we want to proceed with the depositions of Plaintiffs without document production is our choice. You have no say in the matter. Please provide us with dates for the depositions of Plaintiffs Williams, Wright, and Reid.

As for the deposition of Mr. Whitaker, we are objecting to your complete access to KNR's document system that you have requested ("Plaintiffs request to inspect and test all systems or databases in Defendants' custody or control on which any and all of the KNR Defendants' emails are stored."). There is confidential, proprietary, and privileged information in the document system that you are not allowed to see. Defendants will not allow you complete access to KNR's document system.

In addition, your request that Mr. Whitaker log into the system to show searches will not provide you with the information you desire. It is my understanding that to run the searches that Mr. Whitaker did and show that they crashed takes a couple of hours. We provided you with the documents that show the crash and you can ask Mr. Whitaker about those documents and the crashes. In addition, Defendants have no obligation to have Mr. Whitaker log-in and run searches, as that was not part of the Rule 30(B)(5) deposition notice. Please confirm whether Mr. Whitaker's deposition will proceed on December 15 (without access to KNR's data system) and its location.

Finally, attached for your review is a draft of the joint stipulations. Please review and provide us with your thoughts and comments. In the interim, please contact me with any questions or comments.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, November 30, 2017 5:46 PM
To: Brian E. Roof
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson

Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

1) As I've made clear below and in previous correspondence, absent a Court order we will not proceed with the depositions of the Plaintiffs or Mr. Horton until documentary discovery is

complete, and we will not proceed with Mr. Horton's deposition until after we have taken the testimony of other key witnesses. We've explained to you our compelling reasons for this, while you've offered no explanation at all for your contrary positions. If you insist on maintaining them, we can talk about it with the Judge.

2) Thank you for confirming the 30(b)(5) deposition on 12/15, but please explain what the problem is with Mr. Whitaker logging into the email system and showing us how basic searches "crash the system," and explain how privilege issues are implicated at all here. We're entitled to test the veracity of such obviously questionable contentions by which you're purporting to deny us discovery, and we should not have to convene more than once with Mr. Whitaker to get to the bottom of this.

3) As I have told you, we are in the process of responding to your November 15 letter in which you essentially make clear that it will be necessary for us to file a motion to compel. While we intend to make one last effort at resolving the pending disputes, there is a lot to process given the extent of Defendants' obstruction and the volume of information at issue in this case. Thus, we will wait to receive your proposed stipulations before finalizing our response. And we look forward to receiving the document production.

Thank you.

Peter Pattakos

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On Thu, Nov 30, 2017 at 4:50 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter,

The email enclosing the initial deposition notices of Plaintiffs stated that you should call with any questions. Similarly, you noticed the Rule 30(B)(5) deposition without prior discussion with us regarding the deposition date, but stated that we should give you a call if the initial date did not work. Both correspondence are essentially the same. Therefore, your initial complaint about not following Local Rule 17.02(b)(2) rings hollow. Nevertheless, in order to work with you, we proposed new dates for Plaintiffs' depositions. But you have unilaterally refused to produce Plaintiffs for their depositions until you decide the time is right. You believe that you control discovery and the sequence of depositions. That is not how it works. We get to decide when we want to depose Plaintiffs – not you. If December 11 and 12 do not work for you or your clients, please provide us with dates for the depositions of Plaintiffs Williams, Wright, and Reid. If the 11th and 12th are good, we will serve deposition notices for them.

Regarding Mr. Horton, he is a third-party witness who can be subpoenaed by any part at any time for any date. Again, you do not get to dictate when we subpoena Mr. Horton. We will issue a subpoena for Mr. Horton's deposition at an appropriate date and time.

As for the deposition of KNR's Rule 30(B)(5) deposition, Mr. Whitaker is the witness, and we will produce him on December 15. However, as we will explain in more detail in Defendants' formal response to Plaintiffs' Request for Inspection, Defendants will not allow the inspection of KNR's document system. There is absolutely no need for the inspection, it raises ethical and privilege issues, and it is meant merely to harass Defendants. You can obtain the appropriate answers regarding KNR's document system from deposing Mr. Whitaker.

Finally, we will begin producing the documents that we indicated that we would produce next week. Despite repeated requests that you provide us with stipulations to avoid these discovery issues, you have failed to do so. Instead, we will provide you with proposed stipulations in the next several days.

Please contact me with any questions or comments.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Wednesday, November 29, 2017 5:55 PM
To: Brian E. Roof
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech
Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

I don't understand why you're telling us that depositions are off when you never conferred with us about scheduling them in the first place. *See* Local Rule 17.02(b)(2). t's obvious that we have a lot of work to do on documentary discovery before it makes sense to proceed with depositions of substantive witnesses. Under different circumstances, we might be inclined to make an exception and make the Plaintiffs available for early depositions, but we are especially disinclined to do so here given the pendency of Defendants' counterclaims that accuse Plaintiffs of deliberately filing and maintaining their claims in bad faith and for ulterior purposes. Thus, we expect you to understand that our clients will testify only after Defendants have adequately responded to our written discovery requests, consistent with the normal process in most any litigation and especially litigation as contentious as this. If you have a good reason to take a different approach here, please advise so that we may consider it.

As for Mr. Horton, his attorney has told us he will only make his client available for deposition once, for all parties, and I have already written to you (by email on October 20) that we do not intend to proceed with this deposition until other depositions have been taken, including Mr. Nestico's. As I have explained to you before, Plaintiffs are the ones with the burden of proof and it is not Defendants' prerogative to manipulate the ordering in which we question witnesses in investigating and proving our claims. Again, if Defendants have nothing to hide, one would assume they would want to avoid insisting to the contrary, but if that is what you intend to do we'll have to take the issue up with the Court. At this point, consistent with Judge Breaux's pending order of Oct. 16, we ask that any such issues be raised with the Court in conference first so that we may determine whether motion practice may be avoided.

In the meantime, we hope Defendants will work on searching the categories of documents that you have identified containing responsive search terms, and produce responsive documents to our requests as required by the Civil Rules. In doing so, please understand that we find your November 15 letter wholly insufficient in addressing Defendants' failure to respond to our document requests, as outlined in my letters to you of October 26, November 7, and November

10. We're currently working on a formal response to you on that in final hopes of avoiding a motion to compel, and will get that to you as soon as possible.

Finally, I assume you meant to communicate below that Ethan Whitaker will be Defendants' 30(b)(5) designee. If that's the case, we can proceed on December 15th. Please confirm, and confirm that our request for inspection will take place at the same time. Assuming Defendants' email systems can be accessed and searched remotely, the deposition can take place at Mr. Cohen's office. Otherwise, we'll defer to you on the location.

Thank you.

Peter Pattakos

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On Mon, Nov 27, 2017 at 3:02 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter,

Plaintiffs' depositions are off for December 4 and 5. We propose the following rescheduling of all of the depositions that have been noticed to date (these dates and times work for Defendants' counsel):

1. December 11 – Deposition of Naomi Wright (morning at Sutter O'Connell);

2. December 12 – Deposition of Thera Reid (morning at Sutter O'Connell) and Member Williams (afternoon at Sutter O'Connell); and

3. December 15 – Deposition of Ethan Whitaker (morning at Plaintiff counsel's office) and Horton (afternoon at Tom Mannion's office).

Again, these depositions will be contingent on a judge be assigned to the case at the time of the depositions. Please let us know if they work for you.

Thanks,

Brian

<image001.jpg>

Brian E. Roof
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Cleveland, OH 44114

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Mobile: 440.413.5919
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Sutter O'Connell Co.

Direct: 216.928.4527
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Barb Day

From: Brian E. Roof
Sent: Friday, December 01, 2017 1:36 PM
To: Peter Pattakos
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson
Subject: RE: Williams v. KNR -- Plaintiffs Depositions
Attachments: Joint Stipulations on Certain Facts.DOCX

Peter,

Again, as Mr. Hill pointed out, you do not get to determine when we take our depositions. You seem to protest too much that you are not dictating the scheduling of depositions, but that is exactly what you are doing, as Mr. Hill stated in his email. It is obvious from your correspondence that you want to control discovery and the depositions, without providing any "compelling reasons" for this. There is nothing in the rules or the custom of the practice that allows you to do this.

In addition, as Mr. Mannion mentioned, you supposedly have all the documents you need to prove your case. So your argument that you do not have "any documents of any substantial relevance to the claims at issue" is false. You just refuse to produce the documents despite our repeated requests. Furthermore, whether we want to proceed with the depositions of Plaintiffs without document production is our choice. You have no say in the matter. Please provide us with dates for the depositions of Plaintiffs Williams, Wright, and Reid.

As for the deposition of Mr. Whitaker, we are objecting to your complete access to KNR's document system that you have requested ("Plaintiffs request to inspect and test all systems or databases in Defendants' custody or control on which any and all of the KNR Defendants' emails are stored."). There is confidential, proprietary, and privileged information in the document system that you are not allowed to see. Defendants will not allow you complete access to KNR's document system.

In addition, your request that Mr. Whitaker log into the system to show searches will not provide you with the information you desire. It is my understanding that to run the searches that Mr. Whitaker did and show that they crashed takes a couple of hours. We provided you with the documents that show the crash and you can ask Mr. Whitaker about those documents and the crashes. In addition, Defendants have no obligation to have Mr. Whitaker log-in and run searches, as that was not part of the Rule 30(B)(5) deposition notice. Please confirm whether Mr. Whitaker's deposition will proceed on December 15 (without access to KNR's data system) and its location.

Finally, attached for your review is a draft of the joint stipulations. Please review and provide us with your thoughts and comments. In the interim, please contact me with any questions or comments.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, November 30, 2017 5:46 PM
To: Brian E. Roof
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson
Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

1) As I've made clear below and in previous correspondence, absent a Court order we will not proceed with the depositions of the Plaintiffs or Mr. Horton until documentary discovery is complete, and we will not proceed with Mr. Horton's deposition until after we have taken the testimony of other key witnesses. We've explained to you our compelling reasons for this, while you've offered no explanation at all for your contrary positions. If you insist on maintaining them, we can talk about it with the Judge.

2) Thank you for confirming the 30(b)(5) deposition on 12/15, but please explain what the problem is with Mr. Whitaker logging into the email system and showing us how basic searches "crash the system," and explain how privilege issues are implicated at all here. We're entitled to test the veracity of such obviously questionable contentions by which you're purporting to deny us discovery, and we should not have to convene more than once with Mr. Whitaker to get to the bottom of this.

3) As I have told you, we are in the process of responding to your November 15 letter in which you essentially make clear that it will be necessary for us to file a motion to compel. While we intend to make one last effort at resolving the pending disputes, there is a lot to process given the extent of Defendants' obstruction and the volume of information at issue in this case. Thus, we will wait to receive your proposed stipulations before finalizing our response. And we look forward to receiving the document production.

Thank you.

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On Thu, Nov 30, 2017 at 4:50 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter,

The email enclosing the initial deposition notices of Plaintiffs stated that you should call with any questions. Similarly, you noticed the Rule 30(B)(5) deposition without prior discussion with us regarding the deposition date, but stated that we should give you a call if the initial date did not work. Both correspondence are essentially the same. Therefore, your initial complaint about not following Local Rule 17.02(b)(2) rings hollow. Nevertheless, in order to work with you, we proposed new dates for Plaintiffs' depositions. But you have unilaterally refused to produce Plaintiffs for their depositions until you decide the time is right. You believe that you control discovery and the sequence of depositions. That is not how it works. We get to decide when we want to depose Plaintiffs – not you. If December 11 and 12 do not work for you or your clients, please provide us with dates for the depositions of Plaintiffs Williams, Wright, and Reid. If the 11th and 12th are good, we will serve deposition notices for them.

Regarding Mr. Horton, he is a third-party witness who can be subpoenaed by any part at any time for any date. Again, you do not get to dictate when we subpoena Mr. Horton. We will issue a subpoena for Mr. Horton's deposition at an appropriate date and time.

As for the deposition of KNR's Rule 30(B)(5) deposition, Mr. Whitaker is the witness, and we will produce him on December 15. However, as we will explain in more detail in Defendants' formal response to Plaintiffs' Request for Inspection, Defendants will not allow the inspection of KNR's document system. There is absolutely no need for the inspection, it raises ethical and privilege issues, and it is meant merely to harass Defendants. You can obtain the appropriate answers regarding KNR's document system from deposing Mr. Whitaker.

Finally, we will begin producing the documents that we indicated that we would produce next week. Despite repeated requests that you provide us with stipulations to avoid these discovery issues, you have failed to do so. Instead, we will provide you with proposed stipulations in the next several days.

Please contact me with any questions or comments.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Wednesday, November 29, 2017 5:55 PM
To: Brian E. Roof
Cc: Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech
Subject: Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

I don't understand why you're telling us that depositions are off when you never conferred with us about scheduling them in the first place. *See* Local Rule 17.02(b)(2). t's obvious that we have a lot of work to do on

documentary discovery before it makes sense to proceed with depositions of substantive witnesses. Under different circumstances, we might be inclined to make an exception and make the Plaintiffs available for early depositions, but we are especially disinclined to do so here given the pendency of Defendants' counterclaims that accuse Plaintiffs of deliberately filing and maintaining their claims in bad faith and for ulterior purposes. Thus, we expect you to understand that our clients will testify only after Defendants have adequately responded to our written discovery requests, consistent with the normal process in most any litigation and especially litigation as contentious as this. If you have a good reason to take a different approach here, please advise so that we may consider it.

As for Mr. Horton, his attorney has told us he will only make his client available for deposition once, for all parties, and I have already written to you (by email on October 20) that we do not intend to proceed with this deposition until other depositions have been taken, including Mr. Nestico's. As I have explained to you before, Plaintiffs are the ones with the burden of proof and it is not Defendants' prerogative to manipulate the ordering in which we question witnesses in investigating and proving our claims. Again, if Defendants have nothing to hide, one would assume they would want to avoid insisting to the contrary, but if that is what you intend to do we'll have to take the issue up with the Court. At this point, consistent with Judge Breaux's pending order of Oct. 16, we ask that any such issues be raised with the Court in conference first so that we may determine whether motion practice may be avoided.

In the meantime, we hope Defendants will work on searching the categories of documents that you have identified containing responsive search terms, and produce responsive documents to our requests as required by the Civil Rules. In doing so, please understand that we find your November 15 letter wholly insufficient in addressing Defendants' failure to respond to our document requests, as outlined in my letters to you of October 26, November 7, and November 10. We're currently working on a formal response to you on that in final hopes of avoiding a motion to compel, and will get that to you as soon as possible.

Finally, I assume you meant to communicate below that Ethan Whitaker will be Defendants' 30(b)(5) designee. If that's the case, we can proceed on December 15th. Please confirm, and confirm that our request for inspection will take place at the same time. Assuming Defendants' email systems can be accessed and searched remotely, the deposition can take place at Mr. Cohen's office. Otherwise, we'll defer to you on the location.

Thank you.

Peter Pattakos

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On Mon, Nov 27, 2017 at 3:02 PM, Brian E. Roof <broof@sutter-law.com> wrote:

Peter,

Plaintiffs' depositions are off for December 4 and 5. We propose the following rescheduling of all of the depositions that have been noticed to date (these dates and times work for Defendants' counsel):

1. December 11 – Deposition of Naomi Wright (morning at Sutter O'Connell);

2. December 12 – Deposition of Thera Reid (morning at Sutter O'Connell) and Member Williams (afternoon at Sutter O'Connell); and

3. December 15 – Deposition of Ethan Whitaker (morning at Plaintiff counsel's office) and Horton (afternoon at Tom Mannion's office).

Again, these depositions will be contingent on a judge be assigned to the case at the time of the depositions. Please let us know if they work for you.

Thanks,

Brian

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

THE PARTIES' JOINT STIPULATION ON CERTAIN FACTS

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

1. Since 2009 and continuing through today, KNR has paid investigators a flat fee (ranging from $30-$100 depending on the time period and the investigator) upfront on each individual case and that most of the clients were charged (as long as there was a recovery) the flat fee.
2. KNR pays and paid that investigation fee to the investigator whether or not KNR obtained a recovery on behalf of the client.
3. The flat fee is and was clearly set forth on the Settlement Memorandum issued to, reviewed by, and signed by each client.
4. There were, and are, no upcharge or surcharge on the investigation fee by KNR. The investigation fee was and is a third-party pass through expense.

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

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

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Daniel Frech (0082737)
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jhill@bdblaw.com
mkinlow@bdblaw.com

Counsel for Minas Floros

Barb Day

From: Brian E. Roof
Sent: Wednesday, December 06, 2017 2:53 PM
To: Peter Pattakos
Cc: James M. Popson; jhill@bdblaw.com; Eric Kennedy; Thomas P. Mannion (Tom.Mannion@lewisbrisbois.com); Michele Adornetto; Dean Williams; Joshua Cohen; Daniel Frech
Subject: RE: Williams v. KNR

Peter,

These are exemplars of settlement memorandum instead of producing all settlement memoranda that you requested and in which you are not entitled to as the case has not been certified. You are not entitled to all the settlement memoranda. It was intended as a compromise on your request for all settlement memoranda.

Regards,

Brian

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Wednesday, December 06, 2017 2:44 PM
To: Brian E. Roof
Cc: James M. Popson; jhill@bdblaw.com; Eric Kennedy; Thomas P. Mannion (Tom.Mannion@lewisbrisbois.com); Michele Adornetto; Dean Williams; Joshua Cohen; Daniel Frech
Subject: Re: Williams v. KNR

Brian,

What is the point of producing 15 apparently random settlement memoranda with the clients' names redacted? What pending request is this intended to resolve?

Please advise. Thank you.

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On Wed, Dec 6, 2017 at 2:32 PM, Michele Adornetto <madornetto@sutter-law.com> wrote:

RE: Member Williams v. KNR et al.

Summit County Court of Common Pleas Case No. CV-2016-09-3928

Our File No. 10852-00001

Dear Mr. Pattakos:

Please find documents Bates-stamped Nos. KNR03397-KNR03411 with regard to the above captioned matter.

Should you have any questions, please feel free to contact our office.

SUTTER O'CONNELL ATTORNEYS

Michele Adornetto
Assistant to B. Roof, D. Richardson, K. Kita and D. Leister
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Brian E. Roof

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Barb Day

From:	Michele Adornetto
Sent:	Wednesday, December 20, 2017 3:17 PM
To:	peter@pattakoslaw.com
Cc:	Brian E. Roof; James M. Popson; Eric Kennedy; Thomas P. Mannion (Tom.Mannion@lewisbrisbois.com); jhill@bdblaw.com; mkinlow@bdblaw.com; Barb Day; kdornack@bdblaw.com
Subject:	Williams v. KNR
Attachments:	Pattakos 12-20-17.pdf; Joint Stipulation.pdf

RE: Member Williams v. KNR et al.
Summit County Court of Common Pleas Case No. CV-2016-09-3928
Our File No. 10852-00001

Dear Counsel:

Please find attached correspondence and enclosures regarding the above captioned matter.

Should you have any questions, please feel free to contact our office.

SUTTER O'CONNELL ATTORNEYS

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December 20, 2017

VIA E-MAIL

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

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

Dear Peter:

We are in receipt of Dean Williams' December 8, 2017 letter that we did not receive until after business on that Friday. This letter will address the flawed arguments in Mr. Williams' letter.

Improper objections as to burden and proportionality

Defendants reiterate its position that it will not review and search over 104,500 hits as part of your fishing expedition. The fishing expedition is confirmed by Plaintiffs' failure to provide actual facts to support their claims in response to Defendants' interrogatories, requests for admission, and document requests. The lack of actual facts confirms that Plaintiffs have no case. In addition, this request is extremely unduly burdensome to review documents relating to over 104,500 hits considering the lack of supporting facts for your case. As outlined in my November 15, 2017, we proposed a suitable compromise on the searches, which you have rejected out of hand and offered no other compromise. We look forward to your agreement on our compromise, or receiving an alternative compromise from you that limits the search and resulting hits and documents.

Furthermore, this amount of discovery is not proportional to the needs of the case, considering the revised stipulations to which Defendants are willing to enter into as outlined below. As the trial court in *Stonehenge Land Co. v. Bod. of Educ.*, 2014 Ohio Misc. LEXIS 10895, *8 (Franklin Cty. Common Pleas) states: "At some point a line must be drawn when discovery requests become disproportionate to the issues in the case and an end in-and-of themselves." This is especially true when, as set forth in the Motion to Strike the Class Allegations, Plaintiffs' Brief in Opposition to the Motion to Strike the Class Allegations, and in Defendants' Motion for Summary Judgment on Plaintiff Johnson's claims, Plaintiffs have no facts to support their lawsuit. For example, Plaintiff Johnson has not offered one fact that supports his claim that Defendants have an ownership and/or financial interest in Liberty

Capital. After over a year of this litigation, it is still simply innuendo. On the other hand, Defendants have offered three affidavits, all from the key players, that Defendants did not have an ownership or financial interest in Liberty Capital. This should end all discovery on Liberty Capital and Ciro Cerrato. Nevertheless, in the spirit of compromise, Defendants produced communications between Rob Nestico and Ciro Cerrato and Robert Redick and Ciro Cerrato (the only individuals who would have any information about any potential ownership or financial interest in Liberty Capital). None of documents (KNR03433-03580; KNR03581-03650) even comes close to establishing your baseless ownership and financial interest claim. The fishing expedition ends here and Plaintiff Johnson's claims should be dismissed.

Electronic searches

As Defendants agreed, they produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and the 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. The other documents were either nonresponsive or were privileged documents relating to this lawsuit and were created after Plaintiffs already filed the initial Complaint.

In addition, and as agreed to, Defendants have produced documents (KNR03412-3432) based on searches for "investigation fee" for the seven individuals (Aaron Czetli, Brandy Lamtman, Rob Nestico, Robert Redick, Michael Simpson, Holly Tusko, and Jenna Wiley) previously identified in our spreadsheet. These are the critical witnesses in this case and requiring the search of the entire database is completely unnecessary and nothing but a fishing expedition. If there are additional names that you would like to add to this list (which we have previously suggested that you provide), we would in further spirit of compromise consider adding them to the search.

As for Class C (the Liberty Class), we already addressed that above. There will be no more document discovery on this class.

Defendants stand by their objections and responses regarding the following search terms:

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

As for your request to run these searches during the Rule 30(B)(5) deposition, Mr. Whitaker will explain that to run these searches takes many hours so your request for access to KNR's database to run these searches is a waste of time and unduly burdensome. However, Plaintiffs do not have these answers on the record because you chose to cancel the scheduled deposition of Mr. Whitaker.

Again, as promised, we ran searches of Rob Nestico's documents for ("Akron Square" or ASC or Floros) AND narrative! and of Robert Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!. Defendants have produced the responsive documents (KNR003651-

03783; KNR03784-03830.) Again, these are the main witnesses who would have any information or documents regarding your alleged quid pro quo relationship between KNR and ASC or Dr. Floros and the narrative fee. Plus, the narrative fee is resolved by the stipulation as discussed below.

As an alternative, Defendants originally provided you with a stipulation, which you flatly rejected without providing a substitute stipulation. What is it that you want Defendants to state in the stipulation regarding the narrative fee (within reason)? Defendants will consider whether it is true and whether they can stipulate to it. However, you have chosen not to engage in good faith negotiations to resolve these discovery issues by stipulation, which you previously agreed to do.

In the stipulation, Defendants agree that KNR's policy has been to receive a narrative report from ASC on all cases, except for cases involving clients under the age of 12 and a few other minor exceptions, for $100-200. That is exactly what you are seeking in your discovery requests regarding ASC and the narrative fee. Therefore, with the documents that have been produced and the stipulation, the extensive document discovery of KNR's entire database on ASC is no longer necessary. This resolves the production of documents for Classes B (Lien Class) and D (Narrative Fee Class).

Class B is further resolved because Defendants have produced the lien letters (except for one where no lien letter was sent) of the entire putative class members of Class B (seven putative members). Per Mr. Williams' letter, Plaintiffs would agree to dismiss Class B with additional support that there are only seven putative members. The document production of the lien letters (KNR03831-03849) is that additional proof. Accordingly, please dismiss Plaintiff Wrights' claims and Class B.

Chiropractors

Defendants also stand by their objections and responses regarding the issue with discovery of all chiropractors, including the Plambeck chiropractors. You continue to completely ignore (for good reason as you have no response) the position that you are not entitled to discovery of putative class members or putative class issues (e.g., other chiropractors) without the case being certified as a class action. As you know, the case has yet to be certified. The other chiropractors are irrelevant and not part of Class B (which as discussed above should already be dismissed), as Class B is specifically limited to ASC. Per our prior discussions, because ASC is the only chiropractor listed in the class, Defendants will only respond to discovery relating to ASC.

Similarly, because Plaintiff Reid saw only Dr. Floros as a patient (and not any of the other chiropractors) and she only sued Dr. Floros, Defendants will not search for other chiropractors for Class D and will only answer discovery requests relating to ASC. If you can provide us with case law that you are entitled to a putative class member and putative class issue discovery before the case has been certified, then we will take that under advisement and possibly reconsider our position. Until then, our position stands.

The entire Plambeck lawsuit is a red herring and another fishing expedition. In addition, the discovery related to the Plambeck lawsuit seeks irrelevant information that is not reasonably

calculated to lead to the discovery of admissible evidence. Nevertheless in another spirit of compromise, we responded to the discovery regarding Plambeck in the last set of Plaintiffs' discovery requests. Those responses were provided on December 15, 2017. This should resolve the Plambeck issue.

Email chains

All documents relating to the "email chains" that Defendants have been able to discover have been produced.

Training manual

Regarding the training manuals, Defendants stand by their production. Those are the relevant documents from the manuals relating to the relevant issues in this case. Again, Plaintiffs are just fishing by wanting to know everything in the training manuals, including "how Defendants trained their employees, including which subjects were and were not covered or emphasized in KNR's training, as well as instances where Defendants' conduct may be contradicted by the manual." How Defendants trained their employees on certain issues (e.g., when someone calls and their attorney/paralegal is no longer with the firm, logging mail, etc.) and what topics they are trained on that are unrelated to this case are utterly irrelevant. Defendants will not produce these unnecessary documents.

Furthermore, it is a legitimate concern that a newly started plaintiff's firm that directly competes with one of the most successful plaintiff firms, KNR, wants all of KNR's training manuals. The protective order is not sufficient to protect KNR's interest on this issue, and neither is your word.

"Investigations" and "Investigators"

The issue of the "daily intake emails" is resolved by the revised stipulation. Defendants admit that since 2009 KNR has paid the investigator a flat fee (e.g., $30-$100) upfront on the majority of individual cases, that most of the clients were charged (as long as there was a recovery) the flat fee, which was clearly set forth on the Settlement Memorandum, and that there were no upcharge or surcharge on that flat fee. The stipulation has been revised to outline the investigation work generally done and the estimated number of settlements/resolutions (40,000-45,000). Defendants are not hiding these facts, as Defendants have stated the same facts in their discovery responses. Amazingly, you have provided no facts to contradict them. In addition, you can ask Rob Nestico, Robert Redick, Aaron Czetli, Mike Simpson, and the other two investigators (assuming you can work out your issues with counsel for the investigators) that you subpoenaed in their depositions what investigative work they do and what other work they do. What additional and relevant information do you think the "daily intake emails" will provide? If you can provide us this information, then we can possibly resolve this issue. You insisting on them with no justification is not sufficient for their production. The bottom line is that the stipulations and depositions should answer all your questions regarding "investigations" and "investigators."

Again, Plaintiffs are not entitled to the investigative work done on the other Plaintiffs because they are merely putative class members for Class A. The case has yet to be certified.

The same is true for all settlement memoranda. We provided you with exemplars of the settlement memoranda as a compromise and to show that the settlement memoranda clearly identify the investigation fee. Again, you can ask questions about the settlement memoranda in depositions.

You have already subpoenaed four investigators. There is no need to subpoena and depose all of them. Defendants' proposal is to proceed with these four and see if there is truly a need for the remaining investigators. Issuing subpoenas for all the investigators is just another example of your fishing expedition and a waste of everyone's time. It is also unduly expensive.

Stipulation of certain facts

As discussed above, and as seen in the attached amended stipulation, Defendants have revised the stipulation to address the issues that you raised in the December 8, 2017 letter. The stipulation has been revised to outline the investigation work and the estimated number of settlements/resolutions (40,000-45,000). In addition, the stipulation includes a paragraph on the non-client related "work" that the investigators do. Again, you can ask additional questions on these issues during their depositions. Please feel free to make suggestions to the stipulation and we will consider them. We are willing to work with you on the stipulation.

Other outstanding issues

Interrogatory No. 17: Defendants stand by their objections that this is privileged information (Defendants cannot just provide their clients' names to whomever) and you are not entitled to this information until the case has been certified.

RFP 3-64, 3-65, 3-66 and Interrogatory 2-29: These discovery requests are absolutely nonsense. There is no legitimate need for documents or information relating to the "Attorney At Law" article. The requests seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This is further evidence of your fishing expedition and unwillingness to compromise on discovery, including this trivial issue. Defendants stand by their objections.

RFP 3-26: Please see Defendants' response on chiropractors.

Robert Horton and Gary Petti's employment files: As for the employment files for Rob Horton and Gary Petti, Defendants stand by their objection that they cannot produce these files without Horton and Petti's written permission. Per our discussion at the meeting and my November 15, 2017 letter, you can easily obtain their written permission (especially since Gary Petti is your witness and you have had communications with Rob Horton's counsel), which will eliminate this issue. You are creating a mountain out of a mole hill when you can easily resolve this situation. You would not produce a former employee's employment file in litigation without written consent and neither will Defendants. This is clearly an example of your failure to engage in any form of compromise to resolve the discovery issues.

Issues with Requests for Admissions: Defendants are allowed to qualify their answers to Plaintiffs' Requests for Admissions as they see fit, especially poorly drafted Requests for Admission. It is not Defendants job to tell Plaintiffs how to properly draft intelligible Requests

for Admission. This seems to be habit of yours that you want Defendants to always correct your mistakes; that is not Defendants' job. We will not engage in further discussions on this issue.

"Subject to and without waving these objections": Now you are just making up arguments for the sake of having an argument. The "subject to and without waiving these objections" language (or similar language) is standard language used by every attorney that I have seen in answering discovery requests where they assert an objection. In fact, you did the same in your discovery responses. The language means exactly what it says: Defendants are answering the discovery request subject to and without waiving the objections. There is no need for further clarification. We will not engage in further discussions on this issue.

Plaintiffs' discovery issues

As for your failure to "simultaneously" produce discovery, Defendants are again demanding production of Plaintiffs' documents. There is no further excuse for not producing the documents, as Defendants have produced over 3,800 pages of documents. In addition, Defendants request dates for the depositions of Plaintiffs Williams, Wright, and Reid. Furthermore, Defendants demand that Plaintiffs provide the executed verification for Plaintiffs' interrogatory responses. After having discussions with your client regarding your request to recuse Judge Cosgrove, you should have been able to obtain the verification pages. We will not accept your word on the verification pages and the veracity of the responses.

Finally, we look forward to you signing the stipulation or providing us with revisions to the stipulation that we may consider. In the interim, Please contact me with any questions or comment.

Sincerely,

Sutter O'Connell

Brian E. Roof

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

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

THE PARTIES' JOINT STIPULATION ON CERTAIN FACTS

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

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

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

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

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

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

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February 14, 2018

VIA E-MAIL

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

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

Dear Mr. Pattakos:

We are in receipt of your letter dated February 5, 2018. This letter serves as Defendants' formal response to that letter and our discussion on February 1, 2018 at the deposition of Ethan Whitaker.

At the outset, your suggestion that Defendants have not "take[n] advantage of available measures" to secure electronically stored documents in this matter is false. Until now, you have never requested that Defendants hold or otherwise preserve identifiable electronically stored documents, and your current request "that these measures be taken immediately" is so broad, vague, and unduly burdensome that Defendants are unable to provide a meaningful response. Defendants run a business and have no obligation to maintain every electronic file or shred of paper simply because you filed a lawsuit. *See, e.g. In re Nat'l Century Fin. Enters.*, No. 2:03-md01565, 2009 U.S. Dist. LEXIS 68379, *42 (S.D. Oh. Jul. 16, 2009). Moreover, since the onset of this litigation, Defendants have fulfilled – and will continue to fulfill – their responsibility to preserve information relevant to this lawsuit as required by law. *See, e.g. Loukinas v. Roto-Rooter Servs. Co.*, 167 Ohio App.3d 559, 2006-Ohio-3172, ¶18. You have not identified any instance where Defendants have not met this obligation, and Defendants are aware of none.

Mr. Whitaker's deposition testimony confirmed the burden and expense of your expansive discovery requests. Civ.R. 26(B)(4). First, you parse the words of Mr. Roof and incorrectly claim that he somehow misrepresented the results of certain searches. There is no question from Mr. Whitaker's testimony that these searches could not be completed because the size of each search was greater than the available storage space needed to conduct the search. *See* Whitaker Tr. at pp. 75-76. Ultimately, Mr. Whitaker confirmed that many of your broad searches cannot be completed without additional storage space, and the exact phrasing of such result (whether "crashing the system" or "not [being] possible") is surely inconsequential and does not change this fact.

Moreover, you have not put forth any proposal for Plaintiffs to bear the substantial costs associated with these overbroad discovery requests. Mr. Whitaker elaborated not only on the cost of adding additional storage space to finish the searches you requested (3 to 4 terabytes of space costing $1,000 or $2,000 plus tech time), but also the cost of reviewing the size of the data generated from the searches, which he estimated would take at least 2 years "to get through 3.2 million items" pulled from a total universe of documents exceeding 56 million. *See* Whitaker Tr. at pp. 78-80. The data generated by your broad searches not only increases the expense and time of the search, they then involve attorney hours to review the documents before the production for privilege and to identify documents responsive to a specific discovery request. Defendants have an obligation to review each and every document generated by this law firm prior to production to protect the confidences of its clients. No protective order will allow Defendants to simply turn over several terabytes of electronic data for your review without first conducting our own review for responsiveness and privilege. Defendants will not fund your fishing expedition, nor are they required to. *See, e.g.* Civ.R. 26(B)(4) ("A party need not provide discovery of electronically stored information when the production imposes undue burden and expense."); *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 358, 98 S.Ct. 2380 (recognizing under identical federal rules, courts may shift costs to the non-producing party upon a showing of undue burden and expense).

As outlined in our December 20, 2017 correspondence and as explained to you and the Court at the January 5, 2018 hearing, Defendants have agreed to stipulate to multiple facts that would render your overwhelming search of Defendants' computer system unnecessary and these discovery issues moot. As we have explained in our prior correspondence, this amount of discovery is not proportional to the needs of the case, considering the stipulations which Defendants are willing to enter into. See Stonehenge Land Co. v. Bd. of Edu., Franklin C.P. No.. 13CV-4730, 2014 Ohio Misc. LEXIS 10895, *8 (June 20, 2014) (Recognizing "[a]t some point a line must be drawn when discovery requests become disproportionate to the issues in the case and an end in-and-of themselves."). Your refusal to agree to the proposed stipulations, or provide reasonable suggested stipulations of your own, is a classic example of the "undue burden and expense" contemplated by Civ.R. 26(B)(4) when coupled with the challenges identified by Mr. Whitaker above.

Finally, it is clear that none of these requests are related to the individual claims of the named Plaintiffs in this case, nor are any of these requests aimed at obtaining information necessary to establish a class pursuant to Civ. R. 23. Rather, these requests are either (a) related to the merits of an existing class claim; or (b) unrelated to any claim whatsoever in the case. My client should not be forced to bear the costs of hundreds or thousands of hours of attorney time to review documents for a class that has not been certified, or for a fishing expedition into matters unrelated to any claim made in the case.

In light of these considerations, Defendants respond to the additional search terms proposed in your letter as follows:

- "Liberty Capital!"

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- Ciro

Defendants have already run a search for "Ciro" at your request. As you are aware, the search revealed 12,204 hits. This identical request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail, so we should get the same or similar results. In light of the considerations identified above, please reasonably narrow the scope of this search by identifying a specific timeframe, person, and/or mailbox to which the search relates, and Defendants will attempt to re-run the search as you propose within the identified parameters.

- Cerrato

Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- loan! AND refer!

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- chiro! AND refer!

Assuming the software is capable of Boolean searches, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege.

- (Minas OR Floros OR "Akron Square!" OR ASC) AND refer!

Defendants have already produced responsive and non-privileged documents generated from searches of Rob Nestico's and Robert Redick's documents for ("Akron Square" or ASC or Floros) AND narrative!, which are the main two witnesses who would have any information or documents regarding your alleged quid pro quo relationship between KNR and ASC or Dr. Floros and the narrative fee. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving these objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. Again, this assumes the software is capable of Boolean searches.

- "red bag!"

Defendants object to this search as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

- investigator!

Defendants have previously run a search for the term "investigator." As you are aware, the search returned 49,096 hits. Adding the exclamation point will only produce more results. Please explain how this new request will resolve the issue of returning an unduly burdensome amount of documents.

- investigat! AND expense!

Defendants have produced documents based on searches for "investigation fee" for the seven crucial witnesses in this case: Aaron Czetli; Brandy Latman; Rob Nestico; Robert Redick; Michael Simpson; Holly Tusko; and Jenna Wiley. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- "sign up!" AND fee!

Defendants have produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- SU AND fee!

Defendants have produced the responsive and non-privileged documents relating to the 95 hits for "Sign up fee" and 71 hits for "SU fee." Out of 166 hits, Defendants produced 108 responsive documents. This new request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- Aaron! AND Mike!

Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- AMC AND MRS

This request is not limited to any specific time period and does not identify any specific person or mailbox in terms of a search for electronic mail. Without waiving any objections, Defendants will attempt to run the search, and if a reasonable number of items are identified, will review the items to determine if they are responsive to any request for production and/or subject to any privilege. This assumes the software is capable of Boolean searches.

- narrative!

Defendants have already run a search for "narrative" at your request. As you are aware, the search returned 57,840 hits. Adding the exclamation point will only produce more results. Please explain how this new request will resolve the issue of returning an unduly burdensome amount of documents.

- Plambeck!

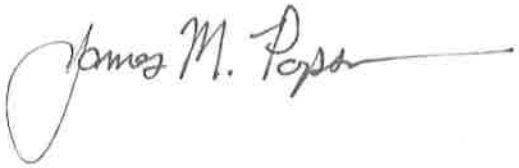
Defendants object to this request as it is not reasonably calculated to lead to the discovery of admissible evidence. Please identify the specific document request that this search request is related to, and we may reconsider our objection.

Please understand that by agreeing to run the searches as noted above, Defendants are not agreeing to simply produce every document generated from the search, assuming the search completes. Rather, Defendants will identify the "hits" and data generated from the searches. To the extent the data generated from a specific search is reasonable in scope, Defendants will review the material for non-privileged, responsive information. If the amount of data generated would require an unreasonable amount of time to review and identify responsive, non-privileged documents, we will not agree to review and produce the documents without reimbursement for the astronomical cost imposed on my client. We do not waive any objections to production by agreeing to run any particular search of electronic data.

I would be happy to meet with you this week to discuss reasonable parameters for completing the additional searches as identified above.

Sincerely,

Sutter O'Connell



James M. Popson

JMP/
cc: Eric Kennedy
Tom Mannion
John F. Hill

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

THE PARTIES' JOINT STIPULATION ON CERTAIN FACTS

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

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

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

2. As set forth in Defendants' discovery responses, Aaron Czetli and Michael Simpson, as independent contractors, have previously performed other work (such as stuffing envelopes and running errands) for KNR that were unrelated to a specific client and was not charged to a specific client. They performed this work when they were not acting as investigators on behalf of KNR's clients.
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6. Since 2009, KNR has settled between 40,000 to 45,000 cases in which investigators were used and the investigation fee was charged.

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Counsel for Minas Floros

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

KISLING, NESTICO & REDICK, LLC	)	Case No. CV-2017-03-1236
Plaintiff,	)	Judge Alison Breaux
vs.	)	**Affidavit of Robert Paul Horton, Esq.**
ROBERT PAUL HORTON	)	
Defendant.	)	

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.

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.

RPK

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;

RPK

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 repesented 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.

KPH

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. (0003774)
My Commission Has No Expiration

RPH