

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	Case No. 2016 09 3928
	)	
Plaintiffs,	)	Judge Patricia A. Cosgrove
	)	
v.	)	
	)	<b><u>DEFENDANTS' BRIEF IN OPPOSITION TO</u></b>
KISLING, NESTICO & REDICK, LLC, et al.,	)	<b><u>PLAINTIFF'S MOTION TO COMPEL AARON</u></b>
	)	<b><u>CZETLI, AMC INVESTIGATIONS, INC.,</u></b>
Defendants.	)	<b><u>EDUARDO MATEO, GARY MONTO, AND</u></b>
	)	<b><u>DENNIS REES, AND MOTION FOR</u></b>
	)	<b><u>PROTECTIVE ORDER</u></b>
	)	

Defendants respectfully request that the Court deny Motion to Compel the production of records from Aaron Czetli, AMC Investigations, LLC., Eduardo Mateo, Gary Monto, and Dennis Rees ("Subpoenaed Persons"), and issue a protective order precluding Plaintiffs from harassing KNR's vendors with pre-certification discovery. Defendants not only adopt the position set forth by the Subpoenaed Persons, but further assert that the discovery sought by Plaintiffs is unduly burdensome, harassing and premature.

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).

Plaintiffs have issued subpoenas across the state seeking confidential, personal information from private investigators that have done work for KNR. Only one of these investigators, Aaron Czetli of AMC Investigations, performed work on behalf of the named Plaintiffs in this case. Plaintiffs' counsel is attempting to proceed as if he represents a class that has been certified. There is no basis to conduct discovery on each and every investigator that has ever performed work on a KNR matter. The only purpose served by Plaintiffs' non-party discovery is to harass these investigators and KNR.

The claims related to investigator fees were brought by Plaintiff Williams. Williams' claims are based on whether KNR's investigation fee charged to Williams and the putative class members was reasonable and appropriate. KNR represented Williams in a personal injury matter arising from an automobile accident. (Complaint, ¶110). Prior to the representation, Williams entered into a binding contingency-fee agreement with KNR in which purportedly the agreement, implicitly or expressly, allowed KNR to "deduct only reasonable expenses from a client's share of a settlement or judgment. (*Id.*, ¶79). Allegedly, Williams understood that KNR would deduct only reasonable expenses from her share of the proceeds. (*Id.* ¶79).

KNR obtained a settlement for Williams. (Complaint, ¶99). As part of that settlement and as required by Ohio law, Williams voluntarily signed a Settlement Memorandum that outlined the settlement amount and the fees and expenses that were deducted from that amount to be paid to KNR, with the remainder paid to Williams. (Complaint, ¶¶10, 81). The first expense on the Settlement Memorandum was \$50 that was paid to MRS Investigations, Inc. for an investigation fee. (Exh. 1 - Williams Settlement Memorandum, provided in Defs' Resp. to Plt's First Set of Req. for Prod., #7). Although she agreed to the fee, Williams now asserts that charging clients a flat rate for investigation services violates the Rules of Professional Conduct. (*Id.*, ¶96).

There is no dispute regarding the facts necessary to determine class certification as it relates to this class. The investigation services provided were different for each client. In some cases, the investigator went to the client's home to obtain a signed contract and case-related

materials. (Complaint, 1178). In other cases, the client came to the office or was met at a doctor's office. (Id.). The Third Amended Complaint acknowledges that in addition to "signing up" cases, the investigators (Czetli and Simpson) did "additional tasks." (Complaint, ¶189). Additional tasks were different in each case. In some cases, an investigator took photographs of the client's damaged automobile at a tow yard or their home. (Exh. 2 - Defs. Resp. Sec. Req. for Adm., #15; Exh. 3 - Def. Ans. To Plfs. First Set of Interrog., #2). In certain cases, the investigator photographed visible injuries. (Exh 2; Exh 3). In other cases, they traveled to the offices of health care providers to obtain records or medical bills. (Exh. 3). In some instances, it was one provider; in others, it was two or more. Investigators took photographs of accident scenes and obtained witness statements (Exh. 4 - Wiley Affidavit). At times, investigators traveled to pick up police reports and in other instances, reports were obtained electronically. (Exh. 3-4). When clients did not respond to mail or calls, an investigator traveled to the client's home. (Exhs. 3-4). In some matters, where the case was in suit, investigators filed pleadings. (Exhs. 3-4). The Second Request for Admissions propounded by Plaintiffs and admitted by Defendants states as follows:

12. Admit that not all clients, who are charged the same investigative fee receive the same measure of investigative services.

RESPONSE: Admitted.

Plaintiffs' "whistleblower" Robert Horton admitted in his Affidavit that "the amount of work performed by an investigator, investigative firm, or third-party vendor depended on the individual case." (Exh. 5 - Horton Affidavit). These investigation services were all provided as part of the flat fee of \$50. There were no additional charges. (Exh. 5). It is difficult to imagine how additional discovery will change the facts established by the discovery already provided, and the information Plaintiff should have received from her "whistleblower."

The discovery sought by Plaintiffs is not relevant to issue of class certification, and thus serves no purpose other than to harass KNR and its investigator contractors at this stage of the

litigation. The Subpoenaed Persons state they only have documents responsive to the requests for personal financial information. What purpose could possibly be served in this case by requiring these investigators to turn over their personal tax records when there is no dispute with regard to the fact that the fees at issue in this case were, in fact, paid to the investigators by KNR? There is no legitimate reason for Plaintiffs to conduct discovery on any of the Subpoenaed Persons prior to class certification.

Accordingly, Defendants join the Subpoenaed Persons in opposing the Motion to Compel, and further request that, for good cause shown, this Court issue the attached Protective Order precluding Plaintiff from serving discovery requests or subpoenas on KNR's non-party investigators until such time as the issue of class certification has been addressed by the Court.

Respectfully submitted,

*/s/ James M. Popson*

James M. Popson (0072773)

Sutter O'Connell

1301 East 9th Street

3600 Erieview Tower

Cleveland, OH 44114

(216) 928-2200 phone

(216) 928-4400 facsimile

[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)

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' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AARON CZETLI, AMC INVESTIGATIONS, INC., EDUARDO MATEO, GARY MONTO, AND DENNIS REES, AND MOTION FOR PROTECTIVE ORDER* was filed electronically with the Court on this 5th day of April, 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-CV-09-3928

Plaintiffs,

JUDGE ALISON BREAUX

vs.

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

Defendants.

**RESPONSE TO REQUEST FOR PRODUCTION OF  
DOCUMENTS NO. 7**



233588 / Member Williams

Settlement MemorandumRecovery:

REC	State Farm Insurance	\$ 9,965.30
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\$ 9,965.30DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
MRS Investigations, Inc.;	\$ 50.00
Selson Clinics Neurology; /bd	\$ 43.44
Selson Clinics Neurology; /bd	\$ 15.32
Summa Wadsworth-Rittman Hospital; /bd	\$ 5.00
UHMP; 2128/bc	\$ 42.78
IOD Incorporated (Crystal Clinic); 28447554/bc	\$ 33.56

Total Due	<u>\$ 190.10</u>
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DEDUCT AND RETAIN TO PAY TO OTHERS:

Kisling, Nestico & Redick, LLC	\$ 3,321.76
Selson Clinics Neurology	<i>MW</i> \$ 121.10
Summa Wadsworth-Rittman Hospital	\$ 463.80

Total Due Others	<u>\$ 3,906.66</u>
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<b>Total Deductions</b>	<b>\$ 4,096.76</b>
Total Amount Due to Client	\$ 5,868.54
Less Previously Paid to Client	\$ 0.00
Amount to be paid by Client	\$121.10
<b>Net Amount Due to Client</b>	<b>\$ 5,989.64</b>

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 8/7/15Name: *[Signature]*  
Member WilliamsFirm: Kisling, Nestico & Redick, LLC

KNR00465

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge Alison Breaux</p>
<p><b>DEFENDANTS' RESPONSES TO PLAINTIFFS' SECOND SET OF REQUESTS FOR ADMISSION</b></p>	

Pursuant to Rule 36 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' Second Set of Requests for Admission ("Requests for Admission"):

**GENERAL OBJECTIONS**

1. Defendants object to Plaintiffs' Requests for Admission to the extent that they seek information protected by the attorney-client privilege, work product doctrine, and the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiffs' Requests for Admission 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,





11. Admit that not all clients who are charged an investigative fee receive investigative services.

**RESPONSE:** Objection. Defendants object that the terms “investigative fee” and “investigative services” are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants deny this request as drafted. All clients who are charged an investigative fee receive some type of investigative services. Each client’s case is different and may require different types of investigative services.

12. Admit that not all clients who are charged the same investigative fee receive the same measure of investigative services.

**RESPONSE:** Defendants admit this request.

13. Admit that some portion of the value of the investigative services charged to clients accrues to the benefit of KNR.

**RESPONSE:** Objection. Defendants object that the term “investigative services” and the phrases “some portion of value” and “accrues to the benefit of” are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants deny the request. Responding further, Defendants state that the investigative fee is a pass through expense with no up charge.

14. Admit that KNR’s intake department, for some period of time, sent a daily email containing a chart of each day’s intakes, including which investigator was paid on each intake.

**RESPONSE:** Objection. Defendants object that the phrase “for some period of time” is vague, ambiguous, and undefined. In addition, Defendants object that this request incorrectly assumes that investigators are paid on intake. Defendants deny such an assumption. Subject to and without waiving these objections, Defendants deny the request as drafted. Responding further, Defendants state that there were occasions on which an email was distributed regarding new matters opened. KNR’s policy is to pay the investigator only when a matter is opened and not on intake.

15. Admit that it is beneficial to KNR for investigators to go to clients houses and “sign them up.”

**RESPONSE:** Objection. Defendants object that term “beneficial” and the phrase “sign them up” are vague ambiguous, and undefined. Defendants object that this request incorrectly assumes that the investigators only job is to sign up potential clients. As set forth in their responses to Plaintiff’s First Set of Interrogatories, the investigator does more than sign up clients. Subject to and without waiving these objections, Defendants deny this request as drafted. Responding further, Defendants state that it is beneficial to the handling of the matter for investigators to go to the client’s house because they can obtain additional documentation,

including, but not limited to, photographs of the car and client's injuries, Proof of Representation, Patient Authorization Form, insurance documents, and missing information such as Social Security Number, date of birth, date of loss.

16. Admit you have entered into agreements with Chiropractors to exchange referrals.

**RESPONSE:** Objection. Defendants object that the term "agreements" and the phrase "exchange referrals" are vague, ambiguous, and undefined. Defendants object to the definition of "you." Defendants further 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, Defendants deny this request as to ASC as drafted.

17. Admit you have shared the cost of marketing and advertising with Chiropractors.

**RESPONSE:** Objection. Defendants object to the definition of "you." Defendants further 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 this objection, Defendants deny this request as to ASC.

18. Admit that you have contributed funds to Chiropractor's advertising or marketing campaigns.

**RESPONSE:** Objection. Defendants object to the definition of "you." Defendants further 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 this objection, Defendants deny this request as to ASC.

19. Admit that Chiropractors have contributed funds to your advertising or marketing campaigns.

**RESPONSE:** Objection. Defendants object to the definition of "your." Defendants further 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 this objection, Defendants deny this request as to ASC.

20. Admit that you assure Medical Service Providers with whom you have an ongoing relationship that they will be paid for their services on all referrals they make who KNR subsequently represents.

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MEMBER WILLIAMS,

Plaintiff,

v.

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

Defendants.

) Case No. CV 16 866123

) Judge Cassandra Collier-Williams

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

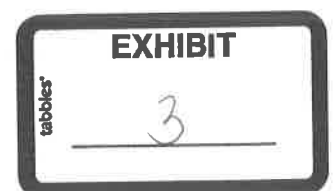
Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Kisling Legal Group, LLC ("Defendants") object and respond as follows to Plaintiff Member Williams First Set of Interrogatories ("Interrogatories"):

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



**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 24<sup>th</sup> 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

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,

Plaintiffs,

v.

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

Defendants.

) CASE NO. CV-2016-09-3928

) JUDGE ALISON BREAUX

) AFFIDAVIT OF JENNA WILEY

State of Ohio )

) ss:

County of Summit )

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

1. I am a paralegal for Defendant Kisling, Nestico & Redick, LLC ("KNR"). My maiden name was Jenna Sanzone. Matthew Johnson retained KNR to represent him in his claim based on an automobile accident in which he suffered injuries. I was the paralegal working with Paul Steele, the attorney who initially represented Mr. Johnson with respect to injuries Mr. Johnson sustained in his 2012 auto accident.

2. Based on my experience working with attorneys employed by KNR, if a client needed money to pay medical and other bills before completing treatment or if it appeared settlement was not possible in the immediate future, the attorney or paralegal would explain the options available to the client including sending letters of protection, accessing no-fault medical payments coverage if purchased and available under the client's automobile policy, as well as pre-settlement loans available through third-party vendors.



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

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

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

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

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

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

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

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

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

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



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

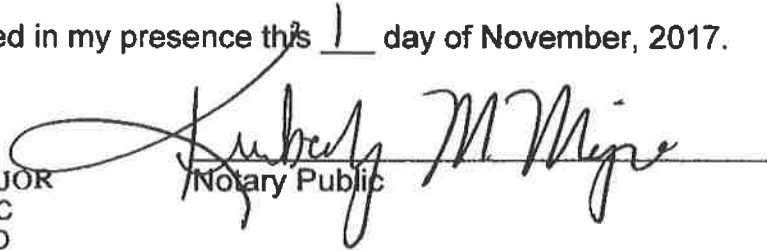
Affiant Further Sayeth Naught.

  
JENNA WILEY

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



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

  
Notary Public

Johnson, Mr. Matt Case #: 219935 ( )	Case Type: A Class: CH	DOI: 1/13/2012 Assigned: MARK	LIM Date: 1/11/2014 Date Opened: 2/20/2012
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3/24/2017 04:18 PM

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Case Note - Page 20 of 152

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

Topic: E-Mail

Case Status 

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

Sent: Sunday, April 01, 2012 9:22 PM

To: Jenna Sanzone

Subject: Couple questions

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

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

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

Matt

Exhibit 1

7/14/2017

RE: I remember

**RE: I remember**

Jenna Sanzone

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

To: Matthew [Johnson]

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

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

Thanks,

Jenna Sanzone

Kisling, Nestico &amp; Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

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

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

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

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

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

To: Jenna Sanzone

Subject: Re: I remember

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

Matt

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

&gt; Hey Matt,

&gt;

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

7/14/2017

RE: I remember

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

&gt;

&gt; Keep your head up...something will come along soon.

&gt;

&gt;

&gt;

&gt; Jenna Sanzone

&gt; Kisling, Nestico &amp; Redick

&gt; Paralegal

&gt; 3412 W. Market St., Akron, Ohio 44333

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

&gt;

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

&gt;

&gt;

&gt;

&gt;

&gt; -----Original Message-----

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

&gt; Sent: Friday, May 04, 2012 10:50 AM

&gt; To: Jenna Sanzone

&gt; Subject: I remember

&gt;

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

&gt;

&gt; Matt

&gt;

&gt;

7/14/2017

RE: Chiropractor

**RE: Chiropractor**

Jenna Sanzone

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

To: Matthew [Johnson]

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

Thanks,

Jenna Sanzone

Kisling, Nestico &amp; Redick

Paralegal

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

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

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

To: Jenna Sanzone

Subject: Chiropractor

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

Matt

Exhibit 2

RE: Anymore help available

7/16/2017

**RE: Anymore help available**

Jenna Sanzone

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

To: Matthew [Johnson]

Liberty Capital Funding  
1-866-612-6000

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

Jenna Sanzone  
Kisling, Nestico & Redick  
Paralegal  
3412 W. Market St., Akron, Ohio 44333  
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

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

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

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

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

To: Jenna Sanzone

Subject: Re: Anymore help available

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

Matt

On Jul 16, 2012, at 12:12 PM, Jenna Sanzone <[jsanzone@knrlegal.com](mailto:jsanzone@knrlegal.com)> wrote:

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

>  
> Thanks,

>  
> Jenna Sanzone  
> Kisling, Nestico & Redick  
> Paralegal  
> 3412 W. Market St., Akron, Ohio 44333  
> Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

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

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

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

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

> To: Jenna Sanzone

> Subject: Anymore help available

> Hi Jenna,

**Exhibit 3**

7: 3/2017

RE: Anymore help available

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

>  
>  
> Matt  
>  
>

7/13/2017

RE: Matthew Johnson

**RE: Matthew Johnson**

Jenna Sanzone

**Sent:** Monday, July 16, 2012 2:08 PM

**To:** Ciro [Cerrato]

**Importance:** High

**Attachments:** Police Report.pdf (168 KB) ; image001.jpg (5 KB) ; image002.jpg (1 KB) ; image003.jpg (1 KB) ; image004.jpg (1 KB) ; image005.jpg (1 KB)

Date of Accident: 1/13/2012

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

At Fault Insurance: Ohio Transit Risk Pool (METRO)

UM / MP: Erie Insurance

Injuries: neck and shoulders, collar bone

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

Thank you,



Jenna Sanzone  
Kisling, Nestico & Redick  
Paralegal  
3412 W. Market St., Akron, Ohio 44333  
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

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



**From:** Ciro Cerrato [mailto:lcfunding1@gmail.com]  
**Sent:** Monday, July 16, 2012 2:03 PM  
**To:** Jenna Sanzone  
**Subject:** Matthew Johnson

Hi Jenna,

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

Date of Accident:

Description of Accident:

At Fault Insurance:

UM / MP:

Injuries:

Treatment :

Exhibit 4



7/13/2017

RE: Matthew Johnson

Thank you,

---

**Ciro Cerrato**

***Liberty Capital Funding L.L.C.***

[lcfunding1@gmail.com](mailto:lcfunding1@gmail.com)

PH 1.866.612.6000

Fax: 561.423.0931

7/13/2017

RE: Matthew Johnson Contract

**RE: Matthew Johnson Contract**

Jenna Sanzone

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

Jenna Sanzone

Kisling, Nestico &amp; Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

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

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

Attached. Please have signed.

Thanks,

Ciro Cerrato

Liberty Capital Funding L.L.C.

[lcfunding1@gmail.com](mailto:lcfunding1@gmail.com)

PH 1.866.612.6000

Fax: 561.423.0931

Exhibit 5

Jul 17 12 10:45a

CREATIVE INNERVISIONS, IN

330-753-8544

p.1

To: Matthew Johnson

Page: 1 of 2

2012-07-16 21:22:46 GMT

FAX COVER SHEET

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

COVER MESSAGE

Please initial EVERY page and sign on pg7.

Fax back to 561.423.0931

Thanks,

LCF

866.612.6000

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

FAX to (330) 628-3743.

I would like direct deposit.

Thanks,  
MATT

Exhibit 6

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

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

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

**MANDATORY DISCLOSURE STATEMENT**

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

2. Itemized fees:

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

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

* if at 6 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 398.40
if at 12 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 496.01
if at 18 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 617.53
if at 24 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 768.82
if at 30 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 957.18
if at 36 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)	\$ 1191.69

Seller Initials

MWJ

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

### DEFINITIONS

3. "Customer or Seller" is *Matthew Johnson* who gets the money.

4. "Company or LCF" is Liberty Capital Funding LLC, Liberty Capital Funding LLC who gives the money.

5. "Legal Claim" means (a) the matter which occurred on or about 1/13/2012 which is captioned *Matthew Johnson* ; (b) all applicable proceedings, proceedings on appeal or remand, enforcement, ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or relating to such case; (c) any other proceedings founded on the underlying facts giving rise to such case in which Customer is a party; and (d) any arrangements made with Customer with another party to such case which resolves any of the Customer's claims against such party.

6. "Proceeds" means all property or things of value payable on account of the Legal Claim including, without limitation, cash, negotiable instruments, contract rights, annuities and securities whether obtained by judgment, settlement, arbitration award or otherwise. Without limitation, "Proceeds" shall include a reasonable estimate of the monetary value of all non-cash benefits receivable by Customer on account of the Legal Claim.

### OBLIGATION TO REPAY IS CONTINGENT

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

### FEES AND COSTS

8. I agree to pay the entire amounts listed on the schedule on page 1. I understand that all fees and costs will be added to the APRR sums that I pay company out of the proceeds of my legal claim.

9. The annual percentage rate of return (APRR) is charged starting from the date of this Agreement until the first date of the scheduled payment period(s) listed on page 1. So for example if you make a payment in month 5, you shall pay the full amount owed listed in "if at 6 months" and so on.

10. In the case of multiple fundings, each funding will be treated as a separate and independent transaction and these fees shall accrue on each funded sum from the date

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MWJ

of each individual funding.

#### ASSIGNMENT OF PROCEEDS

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

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

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

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

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

#### REPRESENTATIONS AND WARNINGS

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

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

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

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

Seller Initials

MWS

Jul 17 12 10:46a

CREATIVE INNERVISIONS, IN

330-753-8544

p.5

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

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

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

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

#### **OTHER PROVISIONS**

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

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

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

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MWT



Jul 17 12 10:47a

CREATIVE INNERVISIONS, IN

330-753-8544

p.6

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

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

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

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

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

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

Paul Steele  
3412 West Market Street  
Akron, OH 44333

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

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

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

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

Seller Initials

MWJ

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KNR03284

Sandra Kurt, Summit County Clerk of Courts



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

#### **MISSTATEMENTS, FRAUD, CRIMINAL ACTS**

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

#### **CONSUMER'S RIGHT TO CANCELLATION:**

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

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

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

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

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

Seller Initials

MWS

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

**INSTRUCTIONS**


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

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

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

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

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

  
\_\_\_\_\_  
Seller

Seller Initials AWJ

**ATTORNEY ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS OF CLAIM**

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

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

Dated: 7/17/12

Kisting Nestico & Redick LLC

By:   
Attorney Signature

Given this 17<sup>th</sup> day of July, 2012.

Seller Initials

AWJ

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

KISLING, NESTICO & REDICK, LLC	)	Case No. CV-2017-03-1236
	)	
Plaintiff,	)	Judge Alison Breaux
	)	
vs.	)	
	)	<u>Affidavit of Robert Paul Horton, Esq.</u>
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.



RPH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.



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.

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. Siedmar, Esq. (00039746)  
My Commission Has No Expiration

RPH