

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge Patricia A. Cosgrove Plaintiffs' Motion for Extension of Time regarding the Plaintiffs' Depositions
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Plaintiffs hereby move for a two-month extension of the current May 22, 2018 deadline for completing the Plaintiffs' depositions that the Court established by its January 5, 2018 scheduling order. The Plaintiffs have made every reasonable effort to schedule their depositions in a timely manner, including by seeking an agreement with the KNR Defendants as to the requested extension. The KNR Defendants have stated that they "cannot agree to an extension" of this deadline, and that they intend to oppose this motion, the grounds for which are as follows:

In its January 5, 2018 order (attached as **Exhibit 1**) the Court set three other dates pertaining to discovery, all prior to the May 22 deposition deadline at issue, all of which have since been substantially postponed by up to two months. This included a February 5 deadline for Plaintiffs to file a motion to compel, a March 5 deadline for Defendants to file the same, and a hearing date of March 16 on the pending discovery dispute. The first of these dates was initially postponed because the KNR Defendants were unable to make their IT manager, Ethan Whitaker, available for a deposition until February 1. Based on the information that came to light at Mr. Whitaker's deposition, the parties jointly requested an extension of the deadline on Plaintiffs' motion to compel

so they could make an effort at narrowing their discovery dispute, and the Court granted that extension. Plaintiffs then filed their motion to compel on February 28, and the Defendants requested an extension until March 30 in which file an opposition. Plaintiffs consented, and the Court granted that unopposed extension. The Court then granted Plaintiffs until April 20 to file a reply in support of their motion to compel, and rescheduled the March 16 hearing for May 16. Due to the extent and nature of the parties' discovery dispute, the briefing required on Plaintiffs' motion to compel has been extensive.

During this time period, the Named Plaintiffs provided, at the KNR Defendants' request, dates on which they would be available for their respective depositions. Specifically, on March 22, Plaintiffs responded to Defendants' March 21 request by confirming that Member Williams was available on April 18, Thera Reid was available on April 19, and that counsel had May 1, 2, 9, and 10 available to complete the depositions of the other two Named Plaintiffs. (*See Exhibit 2*, attached, containing counsels' pertinent correspondence on deposition scheduling in reverse chronological order.) Ms. Williams' deposition went forward as scheduled on April 18, and while Ms. Reid was willing and able to proceed on April 19 as agreed, the KNR Defendants were required to postpone her deposition because they had neglected to confer with Defendant Floros's counsel in scheduling it. (*See Exhibit 3*, attached, containing the pertinent correspondence with Floros's counsel.)

Plaintiffs' March 22 offer of dates to complete the remaining depositions went unanswered by Defendants for almost a full month. On April 20, KNR counsel finally responded to ask, "are we still good for May 9 and 10 on the remaining plaintiffs?" **Ex. 2.** Plaintiffs' counsel shortly advised that they were now unavailable on those dates, and offered to complete the depositions during the weeks of May 21 or May 28, or in the first half of June. *Id.* In response, KNR counsel first erroneously advised that "the Court ordered us to have these depositions complete by May 15" (the day before the discovery hearing now set for May 16), and then corrected himself to note that the

January 5 order provided for a May 22 deadline for the Plaintiffs' depositions. *Id.*

Plaintiffs' counsel then proposed that the parties jointly approach the Court to request an extension of the May 22 deadline to allow the depositions to be complete by mid-June. *Id.* Plaintiffs reasoned that every other discovery deadline set under the January 5 order had been pushed back substantially, up to two months, due in large part to the extensive briefing that was required on the pending discovery dispute. *Id.* Such an extension would be consistent with the Court's initial decision, in its January 5 order, to give the parties more than two months after the discovery hearing (which has since been rescheduled from March 16 to May 16) to complete the Plaintiffs' depositions.

In response, the KNR Defendants have stated, without explanation, that they "cannot agree to an extension" of this deadline, and that they intend to oppose any request for one. **Ex. 2.**

The requested extension is necessary to reasonably accommodate counsels' schedules, is not interposed for the purpose of delay, and would not affect any other pending deadline in this case. Given the facts outlined above and confirmed in the attached exhibits, Plaintiffs respectfully request that the Court extend the current May 22 deadline for their depositions by two months, to July 22.

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)

Dean Williams (0079785)

Daniel Frech (0082737)

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Attorneys for Plaintiffs

Certificate of Service

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on April 30, 2018.

/s/ Peter Pattakos
Attorney for Plaintiffs

SANDRA KURT
2018 JAN -5 PM 3:12
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
SUMMIT COUNTY
CLERK OF COURTS

MEMBER WILLIAMS, et al.

CASE NO. CV 2016-093928

Plaintiffs,

JUDGE PATRICIA A. COSGROVE
(Sitting by Assignment)

-VS-

KISLING, NESTICO & REDICK, LLC, et al.

ORDER ON DISCOVERY

Defendants.

On January 4, 2018, the Court conducted a status conference on this case. Pursuant to discussions with counsel for the parties, the Court enters the following orders for the progression of this case.

FEBRUARY 5, 2018: Deadline for Plaintiffs to file motion to compel.

MARCH 5, 2018: Deadline for Defendants to file motion to compel.

The motions shall contain specific information as to the dates, times, and persons the discovery is being sought from and why the discovery is relevant or could lead to discoverable evidence in this case.

MARCH 16, 2018: Hearing on cross-motions to compel discovery. The hearing will be held in the Visiting Judge's courtroom located on the second floor of the Courthouse Annex.

Miscellaneous Issues:

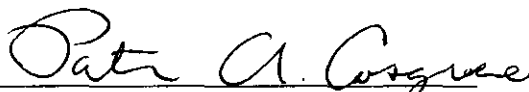
The Court grants Plaintiffs' motion for an extension of time to respond to Defendant Floras' motion to strike class allegations in the complaint. Plaintiffs are granted leave by the Court until January 19, 2018 to file a motion in opposition.

EXHIBIT 1

The Court grants Plaintiffs' petition for Commission to issue a Florida subpoena to Ciro M. Cerrato. A separate order has signed and filed with the Summit County Clerk of Court. The Court orders the depositions of the Plaintiffs to be held prior to May 22, 2018.

The attorneys and parties stipulated that the Honorable Judge Patricia A. Cosgrove shall preside over all future proceedings in this case and waived any conflict of interest issues.

IT IS SO ORDERED.


JUDGE PATRICIA A. COSGROVE
(Sitting by Assignment – 17JA3075)
Ohio Constitution
Art. IV, Sec. 6

cc: The Summit County Clerk of Court shall electronically serve all attorneys of record.



Peter Pattakos <peter@pattakoslaw.com>

Plaintiff depositions

James M. Popson <jpopson@sutter-law.com>

Mon, Apr 30, 2018 at 2:20 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "shaunkedir@kedirlaw.com" <shaunkedir@kedirlaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Barb Day <bday@sutter-law.com>, "ekennedy@weismanlaw.com" (ekennedy@weismanlaw.com)" <ekennedy@weismanlaw.com>

Peter,

I cannot agree to an extension. We will serve notices and oppose the requested extension.

Jim

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

Sent: Wednesday, April 25, 2018 2:48 PM

To: James M. Popson

Cc: shaunkedir@kedirlaw.com; Nathan F. Studeny; Barb Day; 'ekennedy@weismanlaw.com' (ekennedy@weismanlaw.com)

Subject: Re: FW: Plaintiff depositions

Jim, I'm not proposing any general or broad extension. I'm proposing that we agree on three dates between May 21 and mid June and only request an extension to accommodate those dates. Do you object to this?

On Wed, Apr 25, 2018, 2:02 PM James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

The KNR defendants will not agree to a general extension. If three dates are necessary, we propose doing one deposition on May 9 – a date you previously provided; one on May 14 or 15; and then the last one the week of May 21 – possibly even on the 21st. We have been trying to get these depositions for an extended period of time. We object to any broad extension of the May 22nd deadline.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, April 24, 2018 7:22 PM
To: James M. Popson
Cc: shaunkedir@kedirlaw.com; Nathan F. Studeny; Barb Day; 'ekennedy@weismanlaw.com' (ekennedy@weismanlaw.com)
Subject: Re: FW: Plaintiff depositions

Thanks for clarifying, Jim. I suppose we will have to ask for an extension then, which I suppose the Court will be likely to grant given that every other deadline on that order was pushed back substantially, up to two months, due in large part to the extensive briefing that was required on the discovery issues. I've given you a 4 week timeframe of general availability that overlaps with the May 22 deadline. Please get back to me with some dates within that time frame, or other dates that work for you, and I will confer with my clients about scheduling and prepare an extension motion for filing. Please also let me know you would like this to be a joint motion, or, alternatively, if I can indicate that the extension motion is unopposed. Finally, please note that we will need three separate days for the three depositions.

Thanks again.

Peter Pattakos

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On Tue, Apr 24, 2018 at 3:53 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

The Order actually says May 22, 2018. See copy attached. We intend to make every effort to comply with

the Order. None of the issues to be argued on May 16 should have any effect on this deadline. Please advise if you will agree to any of the dates proposed, or if you have alternatives within the timeframe set forth in the Order.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, April 24, 2018 3:39 PM
To: James M. Popson
Cc: shaunkedir@kedirlaw.com; Nathan F. Studeny; Barb Day; 'ekennedy@weismanlaw.com' (ekennedy@weismanlaw.com)

Subject: Re: FW: Plaintiff depositions

Jim, can you please refer me to this Court order? I'm not aware of any such order and I went back to review the Court's orders and still do not see it anywhere. Nor do I understand why any such order would make sense given the current posture of the case. Please advise ASAP. Thanks.

On Tue, Apr 24, 2018, 3:04 PM James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

The Court ordered us to have these depositions completed by May 15. Counsel for the KNR defendants and Dr. Floros are available May 7, 8, 9, 14 and 15. We need 2 days to complete the depositions. Please select two of these dates so that we can comply with the court's order. In the alternative please propose different dates within the specified timeframe and we will see if we can make them work.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Monday, April 23, 2018 2:25 PM
To: James M. Popson
Cc: shaunkedir@kedirlaw.com; Nathan F. Studeny; Barb Day
Subject: Re: FW: Plaintiff depositions

Jim,

I'm no longer available on those dates. The weeks of 5/21 and 5/28 look good apart from Tuesday 5/22 and Memorial Day (5/28). Early June is generally good for me as well but not late June. Please get me some dates and I'll confirm with my clients.

Thanks.

Peter Pattakos

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On Fri, Apr 20, 2018 at 11:08 AM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

Are we still good for May 9 and 10 on the remaining Plaintiffs? We would like to notice Reid for May 9 at 9:00 a.m. Wright for May 9 at 1:00. And Johnson for May 10 at 10:00 a.m. All at my office. Please advise if that works for you.

I have copied Shaun Kedir on this email. It is my understanding that he will be entering an appearance for Dr. Floros and will be attending the upcoming depositions.

Jim

From: James M. Popson
Sent: Friday, April 20, 2018 8:36 AM
To: James M. Popson
Subject: FW: Plaintiff depositions

From: James M. Popson
Sent: Monday, April 02, 2018 3:27 PM
To: James M. Popson
Subject: FW: Plaintiff depositions

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, March 22, 2018 7:30 PM
To: James M. Popson
Subject: Re: Plaintiff depositions

Jim,

I have Member Williams confirmed for 4/18 and Thera Reid confirmed for 4/19. Ms. Wright and Mr. Johnson will need to be scheduled on separate days. I have May 1 and 2 available, or May 9 and 10. Please let me know if those dates work for you.

Thanks.

Peter Pattakos

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On Wed, Mar 21, 2018 at 12:46 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

Let me know when you have confirmation from your clients so I can get notices out. We can do these over 2 days (2 each day). We also have Tuesday open that week. We can do 17-18 or keep 18-19. 17th is actually even better for me. Just let me know after you confirm with your clients.

Jim

Sent from my iPhone

James M. Popson
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3600 Erieview Tower
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Cleveland, OH 44114
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Mobile: 216.570.7356



Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR - Depositions

John Hill <jhill@bdblawn.com>

Tue, Apr 10, 2018 at 5:06 PM

To: Peter Pattakos <peter@pattakoslaw.com>, Meleah Kinlow <mkinlow@bdblawn.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>

The Thera Reid deposition is going to have to be postponed. Dr. Floros wants to be there and he cannot attend on that date (not can I, due to my own scheduling issues).

As for Member Williams, I will see if he will agree for me to attend without him, or whether we even need to attend that one, since she was never a patient of his. I'll let you know tomorrow.

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

Sent: Tuesday, April 10, 2018 3:36 PM

To: Meleah Kinlow

Cc: John Hill; James M. Popson

Subject: Re: Williams v. KNR - Depositions

Hi Meleah, Member Williams' deposition is currently scheduled for next Wednesday and Thera Reid's for next Thursday. Please note that we do not intend to make the Plaintiffs available for multiple depositions so if the KNR Defendants have not conferred with you on this and you are not prepared to proceed next week we will have to postpone. Please advise.

Thank you.

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On Tue, Apr 10, 2018 at 2:43 PM, Meleah Kinlow <mkinlow@bdblawn.com> wrote:

Hello, Peter:

It has been brought to my attention that depositions may have been scheduled recently in this case. To the extent that is true, could you send me the dates and times of these deposition(s) and the witnesses to be deposed?

Thanks,

Meleah

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