

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.,	)	<b><u>DEFENDANTS' OPPOSITION TO</u></b>
	)	<b><u>PLAINTIFFS' MOTION FOR EXTENSION OF</u></b>
Defendants.	)	<b><u>TIME TO COMPLETE PLAINTIFFS'</u></b>
	)	<b><u>DEPOSITIONS</u></b>
	)	

Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick (hereinafter "Defendants") hereby oppose Plaintiffs requested **two month extension** of the May 22, 2018 Court-ordered deadline to conduct the depositions of Plaintiffs Wright, Johnson, and Reid. Plaintiffs reason that since "every other discovery deadline set under the January 5 order had been pushed back substantially," so too should this deadline. However, the briefing schedule on the parties' discovery dispute has no bearing on whether Plaintiffs Wright, Johnson, and Reid can appear for their deposition by the May 22 deadline ordered by this Court. No briefing is required for these depositions – Plaintiffs' appearance is the only thing that is required.

This class action litigation has been pending for almost two years. Since that time, Defendants have continuously requested Plaintiffs' depositions to determine, among other things, whether these claims can ever be certified as a class and whether the named Plaintiffs are proper class representatives. Such endeavor is consistent with Civ.R. 23(C)(1), which requires a determination on class "[a]s soon as practicable after the commencement of an action brought as a class action." Ohio. Civ.R. 23(C)(1). Defendants explained this reasoning to the Court at the January 5, 2018 hearing, whereby the Court recognized that "we have to get moving here" and ordered the depositions to be conducted by May 22, 2018.

Since that time, only Plaintiff Williams has been deposed. Defendants sought to depose Plaintiffs Wright, Johnson, and Reid on May 9 and 10, two days proposed by Plaintiffs' counsel, but counsel apparently failed to preserve those days on his schedule. Defendants have offered additional days to conduct the depositions in advance of the May 22 deadline, which is now over two weeks away. This reasonable offer was met with Plaintiffs' motion seeking an extension.

There is ample time to schedule the depositions of Plaintiffs Wright, Johnson, and Reid before May 22, and Plaintiffs have not explained why they cannot appear for deposition by that deadline. Plaintiffs are represented by no less than five attorneys as noted on their signature block: Peter Pattakos; Dean Williams; Daniel Frech; Joshua R. Cohen; and Ellen M. Kramer. Surely one of them can make himself or herself available for three depositions over the next two weeks.

Indeed, and as Plaintiffs' counsel is surely aware, Plaintiff Williams' deposition testimony was damaging to her case, as it only confirmed what Defendants have consistently maintained in filings and hearings with this Court, namely that Plaintiff Williams is not a proper class representative and that her claims cannot be certified as a class action case. Thus, counsel's only plausible purpose for delaying the depositions of Plaintiffs Wright, Johnson, and Reid is to avoid facing these exact same results for their own separate claims. Clearly, Plaintiffs' counsel does not want to complete these depositions prior to the May 16, 2018 discovery hearing because he does not want to have to explain to this Court why his entire case against Defendants is not simply a sham.

This Court appreciated that this case needs to move forward and set the deposition deadline over four months ago, and Plaintiffs should be required to abide by it. This Court should not condone counsel's continued and unjustifiable delay in producing his clients for deposition, and the requested extension should be denied. Alternatively, should Plaintiffs disagree and maintain the need for their requested delay, Defendants respectfully request that the Court continue the May 16, 2018 discovery hearing until the depositions of Plaintiffs Wright,

Johnson, and Reid are completed, as their testimony will undoubtedly assist this Court with resolving many of the discovery disputes at issue in this case.

Respectfully submitted,

/s/ Nathan F. Studeny

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**CERTIFICATE OF SERVICE**

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that the foregoing was filed electronically with the Court on this 4th day of May, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ Nathan F. Studeny  
Nathan F. Studeny (0077864)