

**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 & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Plaintiffs' Petition for Commission to Issue Florida Subpoena</p>
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Under Rule 45 of the Ohio Rules of Civil Procedure, Rule 1.410(g) of the Florida Rules of Civil Procedure, and Florida Statute § 92.251, Plaintiffs respectfully request that the Court grant a Commission (attached as **Exhibit A**) to allow the Plaintiffs to issue a subpoena from a court of competent jurisdiction in Florida to a non-party that has documents and information relevant to Plaintiffs' claims:

USI INSURANCE SERVICES
 c/o C T CORPORATION SYSTEM
 1200 SOUTH PINE ISLAND ROAD
 PLANTATION, FL 33324

USI Insurance Services is the current employer of Ciro Cerrato, who was the founder and apparently the only employee of Liberty Capital Funding, a loan company operated out of Mr. Cerrato's home. Named Plaintiff Matthew Johnson's claims in this lawsuit are based on detailed and documented allegations showing that Defendants breached various legal duties¹ to Mr. Johnson and

¹ Under Ohio law, when attorneys refer their clients to a loan or financing company, they are required to "carefully consider whether the referral is in the client's best interest," including by "encourag[ing] the client to consider other possible sources of loans," and "assist[ing] the client in determining" whether such loans are necessary as opposed to, for example, "use of the client's already established credit cards." These specific duties—which go along with an attorney's broader fiduciary duties to their clients, including their duty to avoid self-dealing in the attorney-client

the putative class by engaging in self-dealing with Liberty Capital (and, apparently, Cerrato) between 2012 and 2014. These allegations are based largely on Defendants' own written communications, showing that Defendant Rob Nestico, the managing partner of KNR, instructed all KNR attorneys and staff in May of 2012 to refer all KNR clients to Liberty Capital as a single source for settlement advances, at extremely high interest rates, only weeks after the company was formed, and weeks after Nestico requested copies of the forms KNR used with other competing loan companies. Third Amended Complaint ("TAC") ¶¶ 112–134. At the time KNR entered this exclusive referral relationship, Liberty Capital had no proven business track record, and Cerrato—a former insurance salesman with no experience in the lending industry—was operating the business out of his own home. *Id.* at ¶¶ 127–28.

relationship—were set forth by the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, in formal Opinion 94-11.

Opinion 94-11 reads, in part, as follows:

[B]efore referral to a financing company, a lawyer must carefully consider whether the referral is in the client's best interest. A lawyer should consider whether he or she could provide pro bono representation or whether the client might be eligible to receive pro bono representation elsewhere. A lawyer should assist the client in determining whether payment of the legal services or costs and expenses of litigation could be accomplished through the use of the client's already established credit cards, particularly if the interest rates are lower. *See* Opinion 91-12 (1991). A lawyer should encourage a client to consider other possible sources of loans that might carry lower interest rates, such as bank loans or personal loans from family or friends. An attorney should consider whether or not to advance or guarantee the expenses of litigation as permitted under DR 5-103(B). *See* Op. 87-001 (1987) ("[i]t is ethically proper for an attorney to advance expenses of litigation on behalf of a client, provided the client remains ultimately liable for such expenses"); Op. 94-5 (1994) (advising on the issue of settling a lawsuit against a client for expenses of litigation). Finally, the attorney must be satisfied that the terms and conditions of the financing company do not involve the attorney in a violation of the Ohio Code of Professional Responsibility.

When one of Nestico's partners, Gary Kisling, questioned the reasons for this new referral arrangement, explaining that another loan company the firm had used was "excellent at getting reductions on loans to get cases settled," KNR's office manager only replied that, "Rob wants to try this new company." By the end of 2014, Liberty Capital was defunct, and by early 2015, the KNR Defendants had acknowledged the impropriety of an exclusive referral arrangement with a loan company, instructing their employees to "be sure to offer two different companies to your clients, only if they request a loan." TAC ¶¶ 126, 132.

Mr. Cerrato, as the Company's principal and registered agent is presumably in possession of documents and other information that would reflect the nature of Liberty's relationship with KNR.

On November 11, 2017, Plaintiffs asked Defendants for assistance in serving Cerrato based on the fact that Defendants had obtained an affidavit from him to attach to their motion for summary judgment that they first moved to file on November 3, 2017. Defendants refused, stating that, "we will not assist in your efforts to subpoena Ciro Cerrato. You are perfectly capable of serving a subpoena on him."

As a result, Plaintiffs filed for a petition for commission to issue an out of state subpoena to Cerrato on December 7, 2017. The Court issued the commission on January 5, 2018, and Plaintiffs had the subpoena issued by the Florida court by January 24, 2018. Upon attempting to serve Cerrato with this subpoena, however, Plaintiffs' process servers have found, (1) that Cerrato claims to no longer live at the Liberty Capital address where he once resided, which is the same home address that the Defendants provided for him, and the same address where his wife apparently lives; and (2) when the process servers tried to serve him at his workplace, Cerrato refused to accept service, refusing to come out of his office despite claiming to know what the subpoena is about.² Plaintiffs

² The Affidavit of [Plaintiffs' Florida process server] Michael Bryant states, in part, that when Bryant attempted service at USI's office in Fort Lauderdale, Cerrato "refused to come out to accept he

have also attempted to reach Cerrato by phone, but when the undersigned called and identified himself and asked Cerrato where and how he would like to accept service of the subpoena, Cerrato said, "I'm not interested, thank you," and hung up the phone.

In response to Cerrato's obstruction, Plaintiffs have continued to seek Defendants' assistance, asking them to explain to Cerrato that obstructing was not in his or any party's best interests, and also to obtain a current address for him to accept service. In response, on February 16, defense counsel wrote, "I will not agree to reach out to him or advise him on attendance or service." Defendants then shortly filed a motion for summary judgment on the Liberty Capital claims, which the Court stayed as premature pursuant to Plaintiffs' Rule 56(F) motion filed on March 23, 2018.

Plaintiffs have continued to obtain service on Cerrato to no avail, and Defendants continue to refuse to assist in these efforts, with defense counsel having maintained that, "the mere fact that [Cerrato provided an affidavit for Defendants] voluntarily does not create any affirmative duty for me to call him or speak to him at all."

Thus, Plaintiffs seek, by the requested subpoena, information from Cerrato's employer, USI Insurance Services, that would allow them to obtain his current home address and employment schedule to assist them in obtaining service the Florida subpoena to Cerrato that the Court has already approved. Specifically, Plaintiffs are seeking:

Any and all documents, electronic information, and other tangible things reflecting a current home address for and the work schedule of Ciro Cerrato, including documents sufficient to show when and where he is expected to be in the office, or regularly expected to be present for his employment duties at or on behalf of USI Insurance Services

subpoena, the receptionist had him on speaker phone, he said "tell her I am not in." The affidavit further states that the receptionist told Mr. Bryant that Cerrato "said he knows what the papers are about and he does not want to deal with it at work." The Bryant Affidavit and all other documents quoted in this petition are attached as Exhibits to Plaintiffs' Motion to Stay Summary Judgment Proceedings under Civ.R. 56(F) that was filed on March 23, 2018.

Accordingly, Plaintiffs request that the Court grant the Commission to Issue Florida Subpoena (attached as **Exhibit A**) requesting that the court in Florida issue a subpoena (attached as **Exhibit B**) for the production of documents to USI Insurance Services.

Respectfully submitted,

/s/ Peter Pattakos

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on July 6, 2018 a copy of the above Petition was filed with the Court's electronic filing system and service will be made on all necessary parties through that system:

/s/ Peter Pattakos

Attorney for Plaintiff

Exhibit A

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 & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Commission to Issue Florida Subpoena on USI Insurance Services</p>
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TO: The Clerk of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County

WHEREAS, there is an action in this, the Summit County Court of Common Pleas, captioned as above, and this Court is of the opinion that complete justice in the action cannot be done without a subpoena issuing and being served on USI Insurance Services, within your jurisdiction requiring the non-party to produce certain documents; and

WHEREAS, this Court has determined that good cause exists for the production of certain documents in this case.

THEREFORE, this Court requests, in the interest of justice and under Rule 45 of the Ohio Rules of Civil Procedure, Rule 1.410(g) of the Florida Rules of Civil Procedure, and Florida Statute § 92.251, that the Clerk issue a subpoena by the Circuit Court's proper and usual process summoning:

USI INSURANCE SERVICES
C T CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

to produce certain documents identified in the subpoena noticed by Plaintiffs in this case.

Judge James A. Brogan

Date

Exhibit B

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

Case No. _____

Division: _____

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Pending in Summit County Ohio Case No. 2016-CV-09-3928 Judge James A. Brogan</p>
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**SUBPOENA FOR PRODUCTION OF DOCUMENTS
UPON NONPARTY IN THE STATE OF FLORIDA**

TO: USI Insurance Services, c/o C T CORPORATION SYSTEM, 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324

YOU ARE ORDERED TO produce to Florida Court Reporting, 2161 Palm Beach Lakes Blvd., Suite 302, West Palm Beach FL 33409, by August 2, 2018 at 10:00 AM, or at another mutually convenient date and time to be determined, the following:

Any and all documents, electronic information, and other tangible things reflecting a current home address for and the work schedule of Ciro Cerrato, including documents sufficient to show when and where he is expected to be in the office, or regularly expected to be present for his employment duties at or on behalf of USI Insurance Services.

These items will be inspected and may be copied at that time. You will not have to leave the original items.

You may comply with this subpoena by providing readable copies of the items to be produced to the Plaintiffs **or** their attorney, Peter Pattakos, The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, Ohio 44333, 330.836.8533, peter@pattakoslaw.com, on or before July 2, 2018. You may condition the preparation of the copies upon payment in advance of the reasonable cost of preparation. If you mail or deliver the copies to the attorney whose name appears on this subpoena before the date indicated above, you do not have to deliver the documents in person.

You may be in contempt of court if you fail to: (1) furnish the records as provided above; or (2) object to this subpoena. You can only be excused by the Plaintiffs' attorney whose name appears on this subpoena and, unless excused by that attorney or the Court, you shall respond as directed.

Date: _____

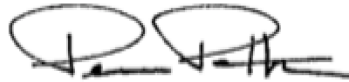
Clerk of the Circuit Court

OR

Attorney

I CERTIFY that I gave notice to every other party of this action of my intent to serve a subpoena upon a person who is not a party to this action directing that person to produce documents or things without deposition. I also certify that no objection under Florida Rule of Civil Procedure 1.351 has been received by the undersigned within 10 days of service of this notice, if service was by hand delivery or appropriate facsimile transmission, and within 15 days if service was by mail.

Date: _____



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