

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF ALBERTO R. NESTICO</u>
)	
Defendants.)	

State of Ohio)
	) ss:
County of Summit)

I, Alberto R. Nestico, 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 shareholder and the managing shareholder of Defendant Kisling, Nestico & Redick, LLC ("KNR"). I am also a member of the Disciplinary Committee of the Akron Bar Association.
2. Neither KNR nor I had or have any ownership or financial interest in Liberty Capital Funding, LLC ("Liberty Capital"). Neither KNR nor I formed (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assisted in forming, Liberty Capital.
3. Neither KNR nor I received or receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. Neither KNR nor I were or are involved in any self-dealing with any account at, or client of, Liberty Capital. Neither KNR nor I received or receive any financial, economic,

Exhibit B

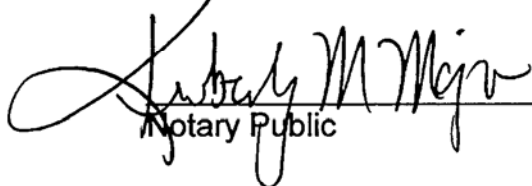
or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Affiant Further Sayeth Naught.



ALBERTO R. NESTICO

Sworn to before me and subscribed in my presence this 31 day of October, 2017.


Notary Public

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

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF ROBERT W. REDICK</u>
)	
Defendants.)	

State of Ohio)
	) ss:
County of Summit)

I, Robert W. Redick, 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 an attorney at Defendant Kisling, Nestico & Redick, LLC ("KNR") and a former equity shareholder. I am also a member of the Disciplinary Committee of the Akron Bar Association.
2. Neither KNR nor I had or have any ownership or financial interest in Liberty Capital Funding, LLC ("Liberty Capital"). Neither KNR nor I formed (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assisted in the formation of, Liberty Capital.
3. Neither KNR nor I received or receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. Neither KNR nor I were or are involved in any self-dealing with any account at, or client of, Liberty Capital. Neither KNR nor I received or receive any financial, economic,


Exhibit C

or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Affiant Further Sayeth Naught.


ROBERT W. REDICK

Sworn to before me and subscribed in my presence this 31st day of October, 2017.


Notary Public



Joanne M. Miller
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/22/2021

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,)	
et al.,	)	<u>AFFIDAVIT OF CIRO M. CERRATO</u>
)	
Defendants.)	

State of Florida)
) ss:
County of Palm Beach)

I, Ciro M. Cerrato, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and is true and accurate to the best of my belief and recollection:

1. I formed Liberty Capital Funding, LLC ("Liberty Capital") in or around April of 2012. A true and accurate copy of Liberty Capital's Electronic Articles of Organization is attached as Ex. A.
2. Kisling, Nestico & Redick, LLC, ("KNR"), Rob Nestico, and Robert Redick did not have any ownership or financial interest in Liberty Capital. KNR, Rob Nestico, and Robert Redick did not form, or assist in forming, Liberty Capital.
3. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.
4. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

Exhibit D

Affiant Further Sayeth Naught.


CIRO M. CERRATO

Sworn to before me and subscribed in my presence this 24 day of August, 2017.


Notary Public



JAVIER VAZQUEZ
MY COMMISSION # 08 023830
EXPIRES: August 28, 2020
Bonded thru Budget Notary Services

STATE OF FLORIDA
COUNTY OF Broward
Sworn to (or affirm) and subscribed before
me this 24 day of August, 2017
by Ciro M Cerrato

Personally Known _____ OR Produced Identification ✓
Type of Identification Produced Florida Drivers License

Exhibit A

Electronic Articles of Organization For Florida Limited Liability Company

L12000050978
FILED 8:00 AM
April 16, 2012
Sec. Of State
jbryan

Article I

The name of the Limited Liability Company is:
LIBERTY CAPITAL FUNDING LLC

Article II

The street address of the principal office of the Limited Liability Company is:
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

The mailing address of the Limited Liability Company is:
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

Article III

The purpose for which this Limited Liability Company is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:
CIRO M CERRATO
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: CIRO M. CERRATO

Article V

The name and address of managing members/managers are:

Title: MGRM
CIRO M CERRATO
8276 CALABRIA LAKES DR
BOYNTON BEACH, FL. 33473 US

L12000050978
FILED 8:00 AM
April 16, 2012
Sec. Of State
jbryan

Article VI

The effective date for this Limited Liability Company shall be:

04/14/2012

Signature of member or an authorized representative of a member

Electronic Signature: CIRO M. CERRATO

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

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. 2016-CV-09-3928 Judge Allison Breaux
MATTHEW JOHNSON'S RESPONSES TO DEFENDANT KISLING NESTICO & REDICK'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR ADMISSION	

Named Plaintiff Matthew Johnson responds to Defendant Kisling Nestico & Redick's first set of Interrogatories and Requests for Admission as follows.

GENERAL OBJECTIONS

1. Mr. Johnson's specific objections to each interrogatory or request are in addition to the General Objections set forth in this section. These General Objections form a part of the response to each and every request and are set forth here to avoid duplication. The absence of a reference to a General Objection in each response to a particular request does not constitute a waiver of any General Objection with respect to that request. All responses are made subject to and without waiver of Mr. Johnson's general and specific objections.

2. To the extent that Defendant's requests are inconsistent with each other, Mr. Johnson objects to such requests.

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Exhibit E

3. To the extent that Defendant's requests exceed the scope of permissible inquiry under the Ohio Rules of Civil Procedure, Mr. Johnson objects to such requests. To the extent that responses to such requests are provided herein, it is in an effort to expedite discovery in this action.

4. Mr. Johnson objects to Defendants' requests to the extent that they are unreasonably burdensome, and to the extent they call upon Mr. Johnson to investigate, collect and disclose information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that responses to such requests are provided herein, it is in an effort to expedite discovery in this action.

5. Mr. Johnson's responses and objections herein shall not waive or prejudice any objections Mr. Johnson may later assert, including but not limited to objections as to competency, relevance, materiality or admissibility in subsequent proceedings or at the trial of this or any other action.

6. Mr. Johnson objects to Defendant's requests to the extent they seek information or materials that are already within Defendant's possession, custody, or control, or that are equally available to him, on the grounds that such requests are unduly burdensome and oppressive.

7. Mr. Johnson objects to Defendant's requests to the extent that they call upon Mr. Johnson to produce information that is not in Mr. Johnson's possession, custody, or control.

8. Mr. Johnson objects to Defendant's requests to the extent they purport to seek any information immune from discovery because of the attorney-client privilege, the work-product doctrine, or any other applicable law, rule or privilege.

9. Mr. Johnson objects to any request to the extent that it refers to or incorporates a previous request to which an objection has been made.

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10. Mr. Johnson objects to Defendant's requests to the extent they are vague or ambiguous.

11. Mr. Johnson objects to Defendant's requests to the extent they seek information that is confidential and proprietary. Such information will be produced only in accordance with a duly entered protective order.

12. As discovery is ongoing, Mr. Johnson reserves the right to supplement these responses.

REQUESTS FOR ADMISSION AND INTERROGATORIES

REQUEST FOR ADMISSION NO. 1: Admit that KNR never had any financial or ownership interest in the Liberty Capital.

RESPONSE:

Deny.

INTERROGATORY NO. 1: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff objects to this contention interrogatory as overly broad and unduly burdensome. "[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted)). *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010).

Further, Plaintiff objects on the grounds that this is not an appropriate time for Defendant to serve or for Plaintiff to respond to contention interrogatories. "The general policy is to defer contention interrogatories until discovery is near an end, in order to promote

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efficiency and fairness.” *Ziemack v. Centel Corp.*, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995). Indeed, “[t]here is considerable authority for the view that the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period.” *Schweinfurth v. Motorola, Inc.*, No. 1:05CV0024, 2007 U.S. Dist. LEXIS 98182, 2007 WL 6025288, at *4 (N.D. Ohio Dec. 3, 2007) *aff’d*, 2009 U.S. Dist. LEXIS 8405, 2009 WL 349163 (N.D. Ohio Jan. 26, 2009). see also *Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.*, 2013 U.S. Dist. LEXIS 189111, *188-189 (N.D. Ohio Feb. 4, 2013) (“responses [to contention interrogatories] are inappropriate at this early stage of the proceeding.”); *Hazelkorn v. Morgan*, 1980 Ohio App. LEXIS 12762, *3 (Ohio Ct. App., Trumbull County Dec. 22, 1980) (“An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion, but the court may order that such an interrogatory be answered at a later time, or after designated discovery has been completed, or at a pretrial conference.”); *Graber v. Graber*, 2004 Ohio App. LEXIS 5585, 2004-Ohio-6143, ¶ 33 (Ohio Ct. App., Stark County Nov. 15, 2004) (same).

Plaintiffs are willing to respond fully to properly formed contention interrogatories at such time as discovery is substantially complete. At this time and subject to the above objections, Plaintiff refers the Defendant to the documents cited in and quoted from in the Complaint showing that Nestico directed KNR attorneys to recommend Liberty Capital to KNR clients only weeks after the company was formed, and weeks after he had asked KNR attorneys to send him the agreements that KNR used with other loan companies, including the KNR emails quoted in paragraphs 101–118.

REQUEST FOR ADMISSION NO. 2: Admit that at the time you filed the Complaint that you had no evidence that KNR had any financial or ownership interest in Liberty Capital.

RESPONSE:

Deny.

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INTERROGATORY NO. 2: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections and response to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 3: Admit that KNR never received any financial benefit from Liberty Capital loans to KNR clients.

RESPONSE:

Deny.

INTERROGATORY NO. 3: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 4: Admit that at the time you filed the Complaint that you had no evidence that KNR ever received any financial benefit from Liberty Capital loans to KNR's clients.

RESPONSE:

Deny.

INTERROGATORY NO. 4: If Plaintiff's response to the above Request for Admission is anything but an unqualified admission, identify all evidence and facts to support Plaintiff's response.

RESPONSE:

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Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1.

ADDITIONAL INTERROGATORIES

INTERROGATORY NO. 5: Identify all Persons who drafted, assisted in drafting, or provided information for the responses to these Discovery Requests.

RESPONSE:

Matthew Johnson, Peter Pattakos, Dan Frech.

INTERROGATORY NO. 6: Identify all Persons who may have discoverable evidence, information, or knowledge relating to the allegations and claims in this Lawsuit or Complaint, including, without limitation, the allegations in IV.H. of the Second Amended Complaint, class certification allegations, and Claims 7-9 and 11.

RESPONSE:

As discovery has not yet begun in earnest, this list is only partial as Plaintiffs are not currently aware of all of the many witnesses with evidence to support their claims:

- Each of the named Plaintiffs to testify about their experience with KNR
- Nestico, Redick and a corporate representative of KNR to discuss the firm's relationships with chiropractors, marketing practices, use of investigators and fees associated therewith, and use of litigation finance companies including Liberty Capital.
- Other potential witnesses who do or have worked at KNR, to be questioned on the same general topics, include but are not limited to Brandy Lamtman, Holly Tusko, Robert Horton, Gary Petti, Paul Steele, Courtney Weaver, and Megan Jennings.
- Minas Floros and other chiropractors and physicians may be called to testify regarding their referral relationships with KNR.
- Devin Oddo, Matt Ameer, Robert Horton, Jeff Allen, and others may be called to testify specifically regarding their representations of the named Plaintiffs.
- Aaron Czetli, Michael Simpson, AMC Investigations, MRS Investigations, or either company's employees, Gary Monto, Wes Steele, Paul Hillenbrand, Jon Thomas, Jeff

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Allen, Tom Fisher, Dave French, Glenn Jones, Gary Krebs, James Smith, Steven Tobias, Ayan Noor, or David Hogan may be called to testify regarding their “investigations” and billing to KNR.

- Ciro Cerrato may be called to testify regarding his time at Liberty Capital and his relationship with the Defendants.

INTERROGATORY NO. 7: Identify all Persons that Plaintiff plans to call as fact witnesses at trial or any hearing in this Lawsuit, and identify the anticipated subject matter of each fact witnesses’ testimony.

RESPONSE:

Plaintiff objects to this request as premature. Plaintiff will comply with all Local Rules and Court Orders in providing a witness list prior to Defendant in advance of trial. Subject to that objection, Plaintiff directs Defendant to those individuals identified in response to Interrogatory No. 6.

INTERROGATORY NO. 8: Identify all Persons that Plaintiff plans to call as expert or opinion witnesses (including, without limitation, expert or opinion witnesses for class certification and related issues) at trial or any hearing in this Lawsuit, and for each witness, state the subject matter on which the expert or opinion witness will testify.

RESPONSE:

Plaintiff objects to this request as premature. Plaintiff will comply with all Civil Rules, Local Rules, and Court Orders in disclosing experts, producing reports and files, and making experts available for deposition in advance of trial. Subject to that objection, Plaintiff states that no expert has yet been engaged.

INTERROGATORY NO. 9: Identify and list each exhibit, Document or any other intangible object that Plaintiff intends to introduce into evidence or use at trial or any hearing (including, without limitation, any class certification hearing) in this Lawsuit.

RESPONSE:

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Plaintiff objects to this request as premature Plaintiff will comply with all Local Rules and Court Orders in providing trial exhibits to Defendant in advance of trial.

INTERROGATORY NO. 10: State whether you have ever been involved in any legal proceeding, whether civil or criminal, and, if so, provide the venue, case number, and outcome of the proceeding, such as acquittal, *nolle prosequi*, conviction, settlement, defense verdict, plaintiff verdict, etc.

RESPONSE:

Plaintiff objects to this inquiry to the extent it seeks information about matters unrelated to this case and seeks information on criminal convictions for non-felonies and/or crimes committed more than 10 years ago. Subject to that objection, Plaintiff refers Defendant to Summit County Court of Common Pleas Case Nos. DR-2004-06-2154, CV-2013-12-5734, and CR-2015-08-2506.

INTERROGATORY NO. 11: State whether Plaintiff or her attorneys have communicated, either directly or indirectly, orally or in writing, with any putative member of the alleged class regarding this Lawsuit, its pendency, the allegations of the Complaint, or class certification and, if so, identify each communication (you may exclude communications between an attorney and a client or a prospective client who has, on the initiative of the client or prospective client, consulted with, employed, or proposed to employ the attorney).

RESPONSE:

Any communications Plaintiff's counsel has had with potential class members were initiated by the class member.

INTERROGATORY NO. 12: Identify and calculate the alleged damages that Plaintiff is seeking to recover in this Lawsuit and that the class members are seeking to recover in this Lawsuit.

RESPONSE:

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Plaintiff objects to this interrogatory as premature, and as requesting information within the possession of the Defendants and not the Plaintiffs. Without waiving these objections, Plaintiff refers Defendants to the allegations of the Complaint and further states that he seeks damages, on behalf of himself and the class, in the amount of interest and fees on the loans taken from Liberty Capital.

INTERROGATORY NO. 13: With respect to the first communication Plaintiff had with her attorney regarding the Lawsuit, identify the date and describe the circumstances surrounding the communication, including the date of the communication, and the individual who initiated the communication.

RESPONSE:

Plaintiff objects to this interrogatory as not reasonably calculated to lead to the discovery of relevant evidence; Plaintiff also objects to the extent this interrogatory request any information protected by the attorney client or work product privilege. Subject to that objection, Plaintiff states that he first contacted counsel in August of 2016.

INTERROGATORY NO. 14: Identify all facts that support Plaintiff's contentions that "KNR directed its clients to take out high-interest loans with Liberty Capital Funding, a company in which Defendants maintained a financial interest."

RESPONSE: Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including KNR's advertising materials and the KNR emails quoted in paragraphs 101–118.

INTERROGATORY NO. 15: Identify all facts that support Plaintiff's contentions in paragraph 99 of the Complaint.

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RESPONSE: Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including KNR's advertising materials and the KNR emails quoted in paragraphs 101–118.

INTERROGATORY NO. 16: Identify when Plaintiff first became aware of or had knowledge of Defendants' alleged self-dealing with Liberty Capital.

RESPONSE: Plaintiff first became aware of or had knowledge of Defendants' alleged self-dealing with Liberty Capital in March of 2017.

INTERROGATORY NO. 17: Identify all facts that support Plaintiff's contentions that: "Defendants subjected KNR attorneys and staff to harsh discipline if they disbursed settlement or judgment funds to a client without paying amounts owed to Liberty Capital, including, deduction of the amounts owed to Liberty Capital from the KNR attorneys' and staff members' paychecks."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff states that Robert Horton has informed Plaintiff of this fact.

INTERROGATORY NO. 18: Identify all facts that support Plaintiff's contentions that: "Liberty Capital stopped making loans in 2014, and ceased operations shortly thereafter. KNR clients were Liberty Capital's only customers, or the great majority of its customers, throughout the history of its operations."

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RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff states that Robert Horton has informed Plaintiff of this fact, which is also supported by emails from Rob Nestico that will be produced, and documents publicly available at the Florida Secretary of State's website.

INTERROGATORY NO. 19: Identify all facts that support Plaintiff's contentions in paragraph 116 of the Complaint.

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including paragraphs 101–118, as well as Ciro Cerrato's LinkedIn page, and further states that Robert Horton has informed Plaintiff of some of these facts.

INTERROGATORY NO. 20: Identify all facts that support Plaintiff's contentions that: "As with all of the unlawful practices described in this document, KNR's unlawful relationship with Liberty Capital was a routine subject of discussion among KNR's rank-and-file attorneys. These attorneys were fearful of raising their concerns with Defendants Nestico & Redick, who ruled the firm with an iron fist and swiftly dismissed any dissenters * * *."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

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At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including regarding Gary Petti, and further states that Robert Horton and Gary Petti have informed Plaintiff of these facts.

INTERROGATORY NO. 21: Identify all facts that support Plaintiff's contentions in paragraph 118 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118, and particularly the email quoted in paragraph 118 itself.

INTERROGATORY NO. 22: Identify all facts that support Plaintiff's contentions in paragraph 119 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 23: Identify all facts that support Plaintiff's contentions in paragraph 120 of the Complaint.

RESPONSE:

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Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 24: Identify all facts that support Plaintiff's contentions that: "Defendants Nestico and Redick are personally responsible for KNR's unlawful acts."

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 121–123.

INTERROGATORY NO. 25: Identify all facts that establish or support the allegations that Defendants' committed fraud as alleged in Claim 7.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 26: Identify all facts that establish or support the allegations that

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Defendants' breached their fiduciary duty as alleged in Claim 8.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 27: Identify all facts that establish or support the allegations that Defendants were unjustly enriched as alleged in Claim 9.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 28: Identify all facts that establish or support the allegations that Defendants are liable for unfair or deceptive trade practices under the Ohio Consumer Sales Practices Act, as outlined in Claim 11 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the

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documents cited, facts stated, and communications described in the Complaint, including at paragraphs 101–118.

INTERROGATORY NO. 29: Identify all facts that support Plaintiff's contentions in paragraphs 126(C) and 127-130 of the Complaint.

RESPONSE:

Plaintiff incorporates, as though fully rewritten here, Johnson's objections to Interrogatory No. 1 with respect to contention interrogatories seeking "all evidence and facts" and the timing of the interrogatory.

At this time and subject to those objections, Plaintiff refers the Defendant to the documents cited, facts stated, and communications described in the Complaint, including KNR's advertising materials and in paragraphs 101–118.

INTERROGATORY NO. 30: Describe how the putative members of Class C will be identified.

RESPONSE:

Plaintiffs will be able to ascertain the class members of Class C using data and information in the possession of the Defendants. Plaintiffs have requested a deposition with a KNR corporate representative to discuss their communications and information systems, their document management and data systems, and document retention policies.

INTERROGATORY NO. 31: Identify all Persons with whom you communicated about retaining The Chandra Law Firm, LLC, Subodh Chandra, Donald Screen, and Peter Pattakos as your attorneys to represent you in this Lawsuit.

RESPONSE:

Plaintiff objects to this interrogatory because it is not reasonably calculated to lead to the discovery of relevant evidence and would require the disclosure of information protected by the work-product and attorney-client privileges.

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REQUEST FOR PRODUCTION OF DOCUMENTS

Responding to all of Defendants' Requests for Production, Plaintiff states, subject to the above and below objections and clarifications, that all of the responsive documents in Plaintiffs's possession were provided to Plaintiff by former KNR attorneys Rob Horton and Gary Petti. Plaintiff has produced or will produce all of the documents provided by Horton and Petti and nothing written above or below should be taken as a statement that Plaintiff intends to withhold any such documents.

1. All Documents Plaintiff used, relied upon, or referred to in answering KNR's First Set of Requests for Admission and Interrogatories.

RESPONSE: All such documents have been or will be produced.

2. All Documents relating to the requests, allegations, and responses in the above First Set of Requests for Admission and Interrogatories.

RESPONSE: Subject to the objections stated herein, all such documents have been or will be produced.

3. All Documents obtained from Robert Horton relating to this Lawsuit, KNR, Nestico, Redick, and the allegations in the Complaint, including, without limitation, Liberty Capital and the alleged undisclosed self-dealing and kickbacks with Liberty Capital.

RESPONSE: All such documents have been or will be produced.

4. All Documents obtained from Gary Petti relating to this Lawsuit, KNR, Nestico, Redick, and the allegations in the Complaint, including, without limitation, Liberty Capital and the alleged undisclosed self-dealing and kickbacks with Liberty Capital.

RESPONSE: All such documents have been or will be produced.

5. All Documents relating to the factual and legal allegations in the Counterclaim.

RESPONSE Objection: A request for "all documents" related to the Defendants multi-claim

Sandra Kurt, Summit County Clerk of Courts

Counterclaim is overbroad and unduly burdensome. *See, e.g. Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.”). Without waiving this objection, these objections, Plaintiff directs the Defendants to the documents cited in and quoted from in the Plaintiffs’ Complaint, and the other documents produced by Plaintiff in this lawsuit.

6. All Documents relating to, used in, or relied upon in filing Plaintiffs’ Motion for Class Certification.

RESPONSE: Plaintiff objects to this request as premature and overbroad. No depositions have been taken and few documents exchanged. Plaintiffs do not know which documents they will use or rely in their motion for class certification, apart from the documents quoted in the Complaint, and will produce any documents they intend to use as exhibits to their class certification motion prior to or upon the filing of that motion.

7. All Documents relating to the allegations in paragraphs 126(C) and 127-130 of the Complaint.

RESPONSE: Plaintiff objects to this request as premature and overbroad. No depositions have been taken and few documents exchanged. Plaintiffs will support the validity of their class claims in their motion for class certification, plaintiffs will produce any documents they intend to use as exhibits to their class certification motion prior to or upon the filing of that motion.

8. All Documents relating to Plaintiff’s allegations in the Complaint, including, without limitation, IV.H. of the Complaint.

RESPONSE: Plaintiffs object to this discovery request on the basis of vagueness and overbreadth. Further, the request is beyond the scope of permissible discovery. This case is about the behavior of the Defendants and they do not need to be made aware of the contents of

Sandra Kurt, Summit County Clerk of Courts

their own documents. The request serves only to allow Defendants to determine what information the Plaintiffs have discovered. Because the second-hand knowledge of the plaintiffs and/or their attorneys is not relevant nor reasonably calculated to lead to admissible evidence, it is beyond the scope and objectives of legitimate discovery. *See Smith v. BIC Corp.*, 121 F.R.D. 235, 244-245 (E.D.Pa. 1988). In addition, Plaintiffs object to this request on the basis that the defendant has equal or greater access to the information sought. Furthermore, Plaintiffs object on the basis of the attorney work-product doctrine, insofar as the selection of the documents requested would reveal the mental impressions, opinions, and/or trial strategy of Plaintiffs' attorneys. *Gould v. Mitsui Mining & Smelthing*, 825 F.2d 676, 680 (2nd Cir. 1987); *Shelton v. American Motors*, 805 F.2d 1323, 1328-1329 (8th Cir. 1986); *Sporck v. Pell*, 759 F.2d 312, 316 (3rd Cir. 1985). Notwithstanding these objections, Plaintiff directs the Defendants to the documents cited in and quoted from in the Plaintiffs' Complaint, and the other documents Plaintiff has produced in this lawsuit.

9. All Documents relating to Plaintiff's contention that Defendants are liable for fraud, as outlined in Claim 7 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

10. All Documents relating to Plaintiff's contention that Defendants are liable for breach of fiduciary duty, as outlined in Claim 8 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

11. All Documents relating to Plaintiff's contention that Defendants are liable for unjust enrichment, as outlined in Claim 9 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

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12. All Documents relating to Plaintiff's contention that Defendants are liable for unfair or deceptive trade practices under the Ohio Consumer Sales Practices Act, as outlined in Claim 11 of the Complaint.

RESPONSE: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce documents responsive to this request.

13. All Documents relating to Attorney Robert Horton.
14. All Documents relating to Gary Petti.
15. All Documents relating to KNR.
16. All Documents relating to Nestico.
17. All Documents relating to Redick.
18. All Documents relating to Liberty Capital.
19. All Documents relating to Defendants' alleged undisclosed self-dealing and kickbacks with Liberty Capital.
20. All Documents relating to the alleged damages that Plaintiff seeks to recover in this Lawsuit.
21. All Documents that allegedly demonstrate that Defendants were purportedly unjustly enriched.
22. All Documents relating to putative class members relating to the allegations in the Complaint.

RESPONSE to Requests 13–22: See objection to RFP No. 8. Without waiving this objection, Plaintiff will produce responsive documents.

23. All Documents that Plaintiff may use as exhibits, introduce as evidence, or rely upon at trial or any hearing (including, without limitation, any class certification hearing) in this Lawsuit.

RESPONSE: Objection: This request is premature. Plaintiff will comply with all Local Rules and

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Court Orders in providing trial exhibits to Defendant in advance of trial.

24. All Documents provided to, relied upon by, created by, generated by, or reviewed by Plaintiff's opinion or expert witness (including, without limitation, opinion or expert witnesses on class certification and related issues) in reaching his or her opinion, performing any analysis, reaching any conclusion, or drafting his or her expert report.

RESPONSE: Objection: This request is premature. Plaintiff will comply with all Local Rules and Court Orders in disclosing experts, producing reports and files, and making experts available for deposition in advance of trial.

25. To the extent not previously requested herein, all Documents that relate in any way to the Lawsuit.

RESPONSE: See objection to RFP No. 8.

Dated: October 24, 2017

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)

Daniel Frech (0082737)

THE PATTAKOS LAW FIRM LLC

101 Ghent Road

Fairlawn Ohio

P: 330.836.8533

F: 330.836.8536

peter@pattakoslaw.com

dfrech@pattakoslaw.com

*Attorneys for Plaintiffs Member Williams, Matthew Johnson
and Naomi Wright*

CERTIFICATE OF SERVICE

The foregoing document was served on counsel for Defendants by email on October 24, 2017.

/s/ Peter Pattakos

Attorney for Plaintiffs

Sandra Kurt, Summit County Clerk of Courts

Sandra Kurt, Summit County Clerk of Courts

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.

Exhibit F

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.

RPT

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.

RPH

26. During my representation of claimants as an attorney with KNR, I was not aware of any payments made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick that could be considered a "kickback." I am not aware of payments of any kind made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick.

27. During my representation of claimants as an attorney with KNR, I was never aware of KNR requesting reimbursement from a client for a case-related expense that was not paid by KNR.

28. Third party vendors, such as MRS Investigations, Inc. and other independent contractors, would at times perform the following functions: obtaining the accident report, periodically taking photographs of the vehicles involved in the accident, periodically taking photographs of injured claimants, or other activities. The amount of work performed by the investigator, investigative firm, or third party vendor depended on the individual case.

29. On the cases that I handled and all cases of which I am aware during my employment with KNR, third party vendors were paid by KNR, and then listed as an expense to the client, but the client was not immediately responsible for repaying the expense.

30. I was never aware of an "upcharge" or "surcharge" on any expenses charged to clients. All expenses were simply pass-through expenses that KNR had incurred, and only the actual cost was charged to the client, to the best of my knowledge.

31. If the client did not recover on the client's personal injury claim, KNR did not seek reimbursement of the investigator expense or any other fees or expenses.

32. I never became aware of any case in which the client did not agree to the fee but KNR charged the investigator fee anyway. I am not aware of a circumstance in which a claimant objected to the investigator fee.

RPH

33. To the best of my memory, KNR voluntarily discounted their fees in the vast majority of cases that I settled while working at KNR.

34. I am not aware of any "quid pro quo" relationship between Liberty Capital Funding, LLC and KNR, its owners, or its employees. I discouraged KNR clients to obtain such loans.

35. I never demanded any clients borrow from Liberty Capital Funding, LLC (hereinafter "Liberty Capital"). While some of my clients borrowed from Liberty Capital, such transaction was only completed after I counseled the client against entering into the loan agreement.

36. I am not aware of any "kickback" or other payments made by Liberty Capital to KNR or any of its owners or employees in return for KNR directing clients to borrow from Liberty Capital. In fact, I am not aware of any payments of any kind being made by Liberty Capital Funding to KNR or any of its owners or employees.

37. I am not aware of the ownership structure of Liberty Capital nor do I have information to suggest that Rob Nestico, Robert Redick, or anyone at KNR had any financial or ownership interest in Liberty Capital Funding, LLC.

38. During my time with KNR, I did not observe KNR ever forcing or requiring a client to take a loan with Liberty Capital or any other lender.

39. The reports prepared by chiropractors or other health care providers served the purpose of documenting the injury. I sometimes used these reports to support the clients' claims during settlement negotiations with insurance companies.

40. I am not aware of any chiropractor, medical doctor, or other health care provider sending any payments to KNR, its employees, or its owners, for referral of any claimant to the chiropractor, medical doctor, or other health care provider.

RPH

41. I am not aware of Akron Square Chiropractics or any other chiropractor, medical doctor, or other health care provider making a payment or "kickback" to KNR, its employees, or its owners.


42. I will return to KNR all documents, electronic mails (emails), electronic information, downloaded information, and all other information obtained from KNR by August 8, 2017.

43. I will provide copies of the items mentioned in the preceding paragraph to the Court and will thereafter destroy all such information in my possession and agree not to disseminate such information in any manner, unless otherwise ordered to do so by a Court of competent jurisdiction.

44. I am not aware of any attorney, owner, or other employee of KNR conspiring with any chiropractors or any other third party vendors to inflate billings.

45. I have reviewed this affidavit with my attorney and voluntarily agree to provide this affidavit, which is truthful to the best of my knowledge.

Further affiant sayeth naught.

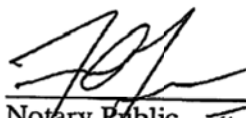

Robert Paul Horton

8-8-17
Date

STATE OF OHIO)

COUNTY OF SUMMIT)

Sworn to before me and subscribed in my presence this 8th day of August 2017.


Notary Public - Thomas A. Skidmore, Esq. (#0038746)
My Commission Has No Expiration

RPH

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2016 09 3928


Judge Patricia A. Cosgrove

AFFIDAVIT OF JAMES M. POPSON

I, James M. Popson, having duly sworn, and having knowledge of the facts contained herein,
state:

1. I am counsel for the Defendants in the above captioned matter.
2. Attached to this Affidavit are true and accurate copies of electronic mail correspondence between myself and counsel for Plaintiff, Mr. Peter Pattakos, regarding (a) his efforts to serve a subpoena on third party witness Ciro Cerrato, and; (b) his accusations that I am complicit in the witness obstructing those efforts. The individual items appear in reverse chronological order due to the limitations of my electronic mail software.
3. Mr. Cerrato previously communicated with my former partner Brian Roof, and signed an Affidavit which was mailed to our office. The Affidavit has been submitted as evidence in support of a Motion for Summary Judgment related to the claims of Plaintiff Johnson. I have not personally communicated with Mr. Cerrato.

FURTHER AFFIANT SAYETH NAUGHT.


James M. Popson

SWORN TO BEFORE ME and subscribed in my presence this 13th day of March,
2018.




Notary Public

Exhibit G

From: James M. Popson
To: Peter Pattakos
Cc: Nathan F. Studeny
Subject: Re: KNR - Response to Request for Additional searches
Date: Thursday, March 08, 2018 7:02:36 PM

Peter,

I appreciate your response. Please note that I did agree to exchange information as we are all required to do. Unfortunately my information was no different than yours. Based upon your reported difficulties, it is apparent to me that Mr. Cerrato does not desire to voluntarily appear for deposition. I disagree that it is my place, and it certainly is not my obligation, to give him advice on that issue. It puts me in a bad spot. I am required by ethical duties to be completely honest with him if I were to call him - i.e., I would have to tell him I am asking for a different address so he can be served with a subpoena. I am not going to participate in tricking him.

I certainly understand why he won't speak to you. In his view, you have falsely accused him of participating in wrongdoing. But the mere fact that he spoke to Roof voluntarily and refuses to speak to you does not create any affirmative duty for me to call him or speak to him at all - not under the ethical rules or the rules of civil procedure. I sincerely hope that you get him served because I already know his testimony is favorable to my defense, but it is simply not my responsibility to call Mr. Cerrato and coerce him to give you the information you seek.

Jim

Sent from my iPhone

On Mar 8, 2018, at 5:54 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Jim,

I have only asked you to make a phone call to see if the same key witness who gave you an affidavit would also give you his address so we could avoid undertaking a needless burden to stake him out. See The Supreme Court of Ohio's Lawyer's Creed, Para. 3 ("I shall attempt to agree with other counsel on a voluntary exchange of information."). You told me three weeks ago that you would get back to me on this and did not do so until yesterday, when you came back with the same address that we already knew was no good. If you really intend to take the position you express below, you are only confirming your client's intent to take advantage of Cerrato's obstruction, and below, I only asked you to consider the appearance that this would create for your client. You may not see it the same way, and it is clear that we disagree about the underlying facts, but that doesn't mean I am accusing you, yourself, of any misconduct. Similarly, when we point out that the KNR Defendants are wrongfully withholding documents, that does not mean we are saying that you or your co-counsel are personally responsible for it. I hope we can keep the two things separate going forward. I have told you directly on the phone that I believe you're a straight shooter, and that I had heard as much from other attorneys who had worked with you.

Anyway, if you do intend to maintain the position that we're no longer entitled to take Cerrato's deposition, please confirm and we can tee that up for the Court as well. Judge Cosgrove did say at the 1/5 hearing that she would like us to get his deposition done within 60 days, but I do not believe she ordered us to do so and given his obstruction I believe it is especially unlikely that she'll hold us to that deadline. We have made every reasonable effort to get him served and had been waiting on you to provide the address as you said you would.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

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On Thu, Mar 8, 2018 at 4:23 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

I will not tolerate your accusations of misconduct on my part. Your inclination to toss around allegations of misconduct whenever you become frustrated with a problem is troubling. I follow the rules. It is improper for you to accuse me of violating the rules of discovery without pointing me to a rule or a case that you believe requires me to act. I provided you with the name, address and the phone number we have for this witness. I double checked our internal notes here at my office and the address he provided us is the same address I gave you. The telephone number I gave you was accurate. I have had numerous conversations with you and exchanged correspondence with you on this topic multiple times – all at the cost of my time which is a cost to the defense of this case. I will say it one last time: I am not obstructing your efforts to serve Mr. Cerrato. I am not Mr. Cerrato's counsel, and I cannot (and have not) advised him on accepting or rejecting service of a subpoena. I have not, nor would I ever encourage a witness to dodge service. Mr. Cerrato is making his own decisions. If he is choosing to be uncooperative with you, that is his decision – not mine. And instead of coming to me with hat in hand asking for the professional courtesy of more time – you instead choose to falsely accuse me of being "complicit" in Mr. Cerrato's efforts to avoid service.

You need to understand that there are consequences for falsely accusing opposing counsel of misconduct. You do this repeatedly and without apology, and are

apparently so devoid of self-awareness that you maintain a full expectation of further friendly cooperation from the victims of your wild accusations and antics. The consequence here is that I will not agree to any extensions of time with regard to serving Cerrato or responding to our motion regarding this class. The Liberty Capital issue has been pending since November when we filed our motion regarding this class. At the last hearing the judge gave you 60 days to have Mr. Cerrato served and deposed. Apparently you found him - but he is refusing or dodging service. My client is not required to bear the cost and expense of your efforts to serve this witness - and that includes costs and expenses for my time. You filed this lawsuit and the false allegations regarding Liberty Capital, and if you needed to pay for someone to sit on Mr. Cerrato's house until he was served then that was your burden to bear - not my client's. We will oppose any more delays on your response to the Motion on the Liberty Capital class. Time is money and you are wasting my client's. You chose not to expend the resources to serve the witness, and instead resorted to absurdly blaming me for the conduct of the witness and your own failure to get him served.

As I have demonstrated during my time on this case, I am generally amenable to cooperating with opposing counsel regarding deadlines, and I am willing to make efforts to resolve discovery disputes and narrow issues where possible. However, your false allegations regarding my "complicity" in Mr. Cerrato's conduct leave me disinclined to agree to any further extensions of time on this issue. We are going to ask the court to require you to respond to the motion with or without Mr. Cerrato's deposition. Your failure to serve Mr. Cerrato is just that - your failure.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, March 08, 2018 1:55 PM

To: James M. Popson
Subject: Re: KNR - Response to Request for Additional searches

Jim,

I assume you didn't just find his affidavit that you filed with your summary judgment motion. Someone had to contact Cerrato to obtain it. If you're refusing to do the same regarding a simple address that's your right, I suppose, but the Civil Rules require cooperation in discovery and ultimately we will seek to hold

your client responsible for whatever burden we have to undertake to get the discovery to which we're entitled. This is a key witness with information to which we're clearly entitled. I'd think you would not want to be complicit in his attempted obstruction. What does it look like when you can get an affidavit from him but can't get us his address?

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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www.pattakoslaw.com

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On Thu, Mar 8, 2018 at 1:43 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

It does not stand to reason that I can find his home address. I don't have it. If I had it, I would give it to you. We have born enough of the burden of the cost and expense of discovery. The burden of serving Mr. Cerrato rests with you.

Jim

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

Sent: Thursday, March 08, 2018 1:34 PM

To: James M. Popson
Cc: Nathan F. Studeny; Barb Day

Subject: Re: KNR - Response to Request for Additional searches

Jim, I reached Mr. Cerrato by phone this afternoon. He refused to provide any information to me and hung up on me. As you know, we've been informed that the Calabria Lakes address is no good for him, and he refuses to accept service at his office. Because your office was able to obtain an affidavit from him, it stands to reason that you would also be able to get us his current address where he can be served. If you're refusing to do that, please confirm and we'll go ahead and undertake more burdensome means of service as necessary.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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peter@pattakoslaw.com

www.pattakoslaw.com

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On Wed, Mar 7, 2018 at 10:51 AM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

I am told we do not have a personal address. The last address KNR has related to Cerrato is the address for Liberty Capital at 8276 Calabria Lakes Drive, Boynton Beach, Florida, 33473. We also have a phone number – (561) 735-1571.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Wednesday, March 07, 2018 10:25 AM
To: James M. Popson
Cc: Nathan F. Studeny

Subject: Re: KNR - Response to Request for Additional searches

Jim,

You said you would get back to me on Cerrato, at least as to an address (per the below), and I still haven't heard anything on that. Please advise.

Thanks.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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