

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>Plaintiffs' Motion for a Status Conference and Extension of the Class-Discovery Deadline</p>
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Named Plaintiffs hereby request an extension of the currently pending class-discovery deadline of November 1 to accommodate for the following: (1) Defendants' delay in complying with the Court's order that it respond to Plaintiffs written discovery requests, complete responses to which were submitted to Plaintiffs only yesterday; (2) Defendants' delay in providing requested deposition dates that were finally offered today despite Plaintiffs' repeated requests that have been pending since August 24; (3) Defendants' position, expressed for the first time today, that Defendant Nestico is unavailable for a deposition until October 29, just two days before the class-discovery deadline is set to expire; and (4) the need to complete fourteen depositions of named Defendants and key witnesses prior to the deadline's expiration.

Plaintiffs have not been dilatory in pursuing discovery in this case and have been acting on the reasonable expectations that they would, (1) receive a complete response to written discovery before being required to proceed with depositions in this case; and (2) proceed first with the deposition of Nestico—who is the only owner of the KNR law firm, who is alleged to be primarily responsible for the allegedly fraudulent conduct at issue in this case, and who should have the most knowledge about it—so that they could then assess and disprove his testimony by asking questions of other key witnesses. *See, e.g., In re Santa Fe Natural Tobacco Co. Marketing & Sales*

Practices & Prods. Liab. Litigation, D.N.M. No. MD 16-2695 JB/LF, 2018 U.S. Dist. LEXIS 140453, at *40 (Aug. 18, 2018) (requiring “plaintiffs to deliver responses to the [d]efendants’ written discovery requests ... before the depositions of the [p]laintiffs’ witnesses, so that the [d]efendants may make meaningful use of the responses at the depositions” and “because it would eliminate any potential need to reopen discovery to account for late-received materials”) (internal quotations omitted); *In re San Juan Dupont Plaza Hotel Fire Litigation*, D.P.R. MASTER FILE MDL 721, 1988 U.S. Dist. LEXIS 17332, at *84 (Dec. 2, 1988) (“In order to ensure that all parties can evaluate the benefits of attending particular depositions, and are properly prepared to participate in scheduled depositions, written discovery shall commence prior to deposition discovery”); *In re Oxbow Carbon LLC Unitholder Litigation*, Ch., 2017 Del. Ch. LEXIS 135, at *8 (July 28, 2017) (explaining and endorsing the “general custom” of “giv[ing] the party with the burden of proof the ability both to determine the order of witnesses and to question first if the party wishes to exercise that option,” which, “like the opportunity to present evidence first and to open and close, follow the burden of proof.”); *Russo v. Burns*, 2014-0952 (La. App. 4 Cir 09/09/14), 150 So.3d 67, 71-72 (observing that a trial court’s discretion “over trial proceedings and the order of witnesses” should not be “exercised in such a way that deprives a litigant of his day in court.”).

Thus, as explained further below, Plaintiffs request that the Court set this matter for a status conference so that a class-discovery deadline can be determined that will reasonably accommodate for the parties’ and counsels’ schedules in setting dates for the necessary depositions.

On July 24, the Court issued separate rulings on the parties’ cross-motions to compel the production of documents that had been pending since early March. In these orders, the Court set the November 1 deadline for class-discovery, which was the first discovery deadline to be established in this case, and ordered the Plaintiffs to produce certain documents to the

Defendants. On July 30, the Court issued another order overruling Defendants' objections to more than 140 of Plaintiffs' written discovery requests, effectively requiring Defendants to immediately respond to these requests.

On August 7, Defendants represented that they would provide their complete discovery responses "within a week or so." See **Exhibit 1**, email chain between Peter Pattakos and James Popson. At this time, Plaintiffs were prepared to produce their documents to the Defendants, and suggested that the parties make a simultaneous exchange to avoid the inference that Defendants' would withhold information in their discovery responses based on their knowledge of the documents in Plaintiffs' possession. *Id.* Defendants objected to this approach, insisting that Plaintiffs produce their documents immediately, which Plaintiffs did. *Id.* From there, three full weeks passed before Defendants produced any supplementary responses at all, on August 27, and it has taken an additional three-plus weeks for Defendants to complete their responses, having just yesterday produced the final four sets of complete written responses along with responsive documents. See Defendants' Notice of Service filed 09/17/2018.

In the meantime, despite that Defendants had not yet produced the written discovery responses that were due, Plaintiffs attempted to set dates for Nestico's deposition, and that of KNR office manager Brandy Gobrogge, whose emails are quoted extensively in the complaint. On August 24, three and a half weeks ago, Plaintiffs requested dates during the weeks of September 17 and 24 during which these depositions could be completed, confirming their availability for most of these two weeks. See **Exhibit 2**, email from Pattakos to Popson. Despite Plaintiffs' repeated follow-up requests, in which they reiterated their need to depose Nestico before most of the other witnesses (See **Exhibit 3**, email chain between Pattakos and Popson), Defendants only provided deposition dates today, stating that Gobrogge is available on October 15 or 16, Defendant Robert Redick on October 22 or 23, and Defendant Nestico not until

October 29, 30, or 31, just before the expiration of the November 1 deadline. *See Exhibit 4*, email chain between Pattakos and Popson. Despite Plaintiffs' follow-up requests that Defendants make Mr. Nestico available for deposition at an earlier date, including on October 15 or 16 when he is presumably planning to attend Ms. Gobrogge's deposition, Defendants have refused, and have stated that they will oppose any extension of the class-discovery deadline. *Id.*

Thus, the current discovery deadline is unworkable and would impose an unfair burden on Plaintiffs, particularly given the fact that, in addition to Nestico, Redick, and Gobrogge, Plaintiffs need to take the following eleven depositions before the class-discovery deadline:

1. Minas Floros—Defendant chiropractor alleged to have participated in a kickback scheme with the KNR Defendants;
2. Aaron Czetli—Primary investigator to whom the “investigation fee” was paid from KNR client-settlements;
3. Michael Simpson—Primary investigator to whom the fraudulent “investigation fee” was paid from KNR client-settlements;
4. Robert Horton—Former KNR attorney with knowledge of the claims at issue, who was sued by KNR for having provided Plaintiffs with documents and information referenced in the currently pending complaint, and who executed an affidavit in exchange for KNR dropping its suit against him;
5. Gary Petti—Former KNR attorney with knowledge of the claims at issue;
6. Paul Steele—Former KNR attorney with knowledge of the claims at issue;
7. Amanda Lantz—Former KNR attorney with knowledge of the claims at issue;
8. James E. Fonner—Columbus, OH chiropractor who was sued by KNR after refusing to accede to KNR's demands of their so-called "preferred chiropractors";
9. Philip Tassi—Akron, OH chiropractor who received fraudulent narrative-fee payments, including from the settlement of putative Named Plaintiff Monique Norris, and who, along with Defendants Nestico and Floros, has received cash kickbacks from putative Defendant Sam Ghoubril;
10. Ciro Cerrato—Owner and only apparent employee of the Liberty Capital loan company with whom KNR maintained an unlawful exclusive referral arrangement as alleged in the complaint;

11. Robert Roby—Columbus, OH, insurance-defense attorney with knowledge of the fraudulent practices alleged in the complaint, and insurance companies' responses to these practices that were knowingly disregarded by KNR in breach of the firm's duties to its clients so that the firm's kickback relationships could be preserved.

Plaintiffs had been waiting to schedule these depositions until a date for Nestico's deposition could be confirmed, having reasonably expected to be able to question these witnesses about Nestico's testimony. *See, e.g., In re Oxbow Carbon LLC*, 2017 Del. Ch. LEXIS 135, at *8, *Russo*, 150 So.3d 67, 71-72, *supra*. Now, given the course of events detailed above, including Defendants' position, expressed for the first time today, that Nestico is not available until October 29, Plaintiffs are now in a position where they must notice these depositions and risk moving forward with them blind to the testimony of Nestico, the most important witness with the most knowledge about the facts at issue in this case. *Id.* Absent the Court's intervention, it is likely that the parties will not be able to agree on dates for these depositions prior to November 1 in any event, and based on Defendants correspondence they will take the position that most of these depositions should not occur at all. *See Ex. 3.*

It was not unreasonable for Plaintiffs to proceed as they have in this case so far. As the Court stated in its April 6th order denying Defendants' motion to strike Plaintiffs' class-action allegations, Plaintiffs' complaint is "well-pleaded," containing "fifty-six (56) pages of well-defined allegations, proposing four (4) separate classes." Given the volume of the evidence at issue regarding the separate fraudulent schemes alleged, as documented by the many emails quoted in the complaint, it is hardly unreasonable for Plaintiffs to request a fair opportunity to take fewer than a dozen depositions of key non-party witnesses with the full benefit of written discovery responses from the KNR Defendants that were only finally produced yesterday. *See, e.g., In re Santa Fe*, 2018 U.S. Dist. LEXIS 140453, at *40, *In re San Juan Dupont*, 1988 U.S. Dist. LEXIS 17332, at *84, *supra*. Such a fair opportunity can only be provided if the Court extends the currently

pending class-discovery deadline so that the parties and witnesses can agree to a reasonable schedule for the depositions listed above. With Nestico's deposition currently set for the end of October and Gobrogge's for October 16, it should be easy enough for the parties to schedule the rest of the depositions within a reasonable time thereafter, with the Court's facilitation and approval, so as to not unreasonably delay these proceedings. Finally, the requested extension will allow time for the Court to decide on Plaintiffs' pending motion for leave to file a fourth amended complaint and incorporate those claims into the class-discovery schedule as necessary.

Respectfully submitted,

/s/ Peter Pattakos

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Dean Williams (0079785)
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Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on September 18, 2018 using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs



Peter Pattakos <peter@pattakoslaw.com>

Williams, et al. v. KNR, et al.

Peter Pattakos <peter@pattakoslaw.com>
To: "James M. Popson" <jpopson@sutter-law.com>
Cc: "Nathan F. Studeny" <nstudeny@sutter-law.com>

Tue, Aug 14, 2018 at 6:35 PM

See attached.

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On Mon, Aug 13, 2018 at 12:44 PM, James M. Popson <jpopson@sutter-law.com> wrote:

You can reserve any right you want. To be clear, we are not waiving any objections regarding improper impeachment. Requesting that you send the documents is not designed to have you waive any rights, nor do we intend to waive any rights. We look forward to receiving the documents.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Monday, August 13, 2018 10:48 AM
To: James M. Popson
Cc: Nathan F. Studeny
Subject: Re: Williams, et al. v. KNR, et al.

Jim, I will send you the documents today if you insist, but in doing so I reserve our right to impeach your clients over insisting to see these documents before submitting complete responses to our discovery requests as ordered by the Judge. If you would rather just wait for a simultaneous exchange we will do that. Please confirm one way or another.

Peter Pattakos

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On Mon, Aug 13, 2018 at 8:53 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

The point of a simultaneous exchange is precisely to avoid gamesmanship. How is it that you're not the one who is actually engaging in gamesmanship here? You said you'd have us your supplemental response this week. Why else would it matter so much to you if we produce our documents on Tuesday as opposed to a couple of days later if your client doesn't want to use them to sanitize their discovery responses?

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On Fri, Aug 10, 2018 at 7:04 AM, James M. Popson <jpopson@sutter-law.com> wrote:

Not acceptable. We have produced documents long ago and will supplement again. You have been sitting on the stolen documents the entire case. The purpose of discovery is not for you to vaguely ask for documents you already have with the hope that the other side cannot identify or locate them. You are attempting to fabricate an argument that the opposition is "hiding documents." This is the definition of gamesmanship. Produce the stolen documents by Tuesday so that I do not need to move to show cause.

Jim

Sent from my iPhone

On Aug 9, 2018, at 6:57 PM, Peter Pattakos <peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>> wrote:

What I would like to avoid, and what I assume your clients would want to avoid as well, is an inference that your clients would change their discovery responses based on the documents we have thinking they could get away with hiding anything else. That can be avoided simply by us making a simultaneous exchange.

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On Wed, Aug 8, 2018 at 5:48 PM, James M. Popson <jpopson@sutter-law.com<mailto:jpopson@sutter-law.com>> wrote:

Why? I have to meet with my client and go through dozens of written responses and revise them. You have no work to do at all. You just have to send me a stack of documents improperly withheld for months.

Send me the documents. You have no legal basis to delay. If you are withholding the documents for tactical purposes, please advise. I do not anticipate Judge Brogan will allow you to do so.

Meanwhile, I will continue to be diligent in preparing responses consistent with the court order.

Jim

Sent from my iPhone

On Aug 8, 2018, at 4:12 PM, Peter Pattakos <peter@pattakoslaw.com<mailto:peter@pattakoslaw.com><mailto:peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>>> wrote:

How about I send you our document production as soon as I get your supplemental discovery responses?

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On Tue, Aug 7, 2018 at 2:27 PM, James M. Popson <jpopson@sutter-law.com<mailto:jpopson@sutter-law.com>>> wrote:

Peter,

I am working on supplemental discovery responses to bring us in compliance with the court's order on our objections. I expect to have them in a within a week or so. Please advise when we can expect to receive your document production.

Jim

From: Peter Pattakos [<mailto:peter@pattakoslaw.com><mailto:peter@pattakoslaw.com>>
<mailto:peter@pattakoslaw.com><mailto:peter@pattakoslaw.com>>]
Sent: Tuesday, August 07, 2018 1:47 PM
To: James M. Popson
Cc: Nathan F. Studeny; Barb Day
Subject: Re: Williams, et al. v. KNR, et al.

Hi Jim. I can't confirm this yet but, given Defendants' representations about the numerosity of the chiropractor-liens class and the Court's recent order sustaining Defendants' objections to document requests that we'd need to contest these representations, I expect Ms. Wright will shortly be seeking to withdraw her claims in this litigation. I will confirm one way or another as soon as possible. Thanks.

Peter Pattakos
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On Wed, Aug 1, 2018 at 2:41 PM, Barb Day <bday@sutter-law.com<mailto:bday@sutter-law.com>><mailto:bday@sutter-law.com<mailto:bday@sutter-law.com>>>> wrote:
Mr. Pattakos,

Attached please find correspondence from Jim Popson and an Amended Notice of Deposition of Plaintiff Naomi Wright Duces Tecum.

<image001.jpg><<http://sutter-law.com>>

Barb Day

Assistant to James Popson and Derek Hartman

3600 Erieview Tower

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P Please consider the environment before printing this e-mail.

James M. Popson

Sutter O'Connell Co.

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This is a privileged and confidential communication. If you are not the intended recipient, you must: (1) notify the sender of the error; (2) destroy this communication entirely, including deletion of all associated attachment files from all individual and network storage devices; and (3) refrain from copying or disseminating this communication by any means.



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Peter Pattakos <peter@pattakoslaw.com>

Williams, et al. v. KNR, et al.

Peter Pattakos <peter@pattakoslaw.com>

Fri, Aug 24, 2018 at 8:52 AM

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

Cc: "Nathan F. Studeny" <nstudeny@sutter-law.com>, Barb Day <bday@sutter-law.com>, Joshua Cohen <jcohen@crklaw.com>

Jim,

It's been two and a half weeks since you said you would provide the supplemental discovery responses "within a week or so" to comply with the Court's order. We were expecting the responses last week and now another full week has passed. Please let me know what is going on and when we can expect to receive the responses.

Also, please provide dates for the depositions of Nestico and Brandy Gobrogge (Lamtman). The weeks of Sept. 17 and Sept. 24 are generally open for us.

Thanks.

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[Quoted text hidden]



Peter Pattakos <peter@pattakoslaw.com>

Depositions

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

Fri, Sep 14, 2018 at 6:38 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "Joshua Cohen (jcohen@crklaw.com)" <jcohen@crklaw.com>, "shaunkedir@kedirlaw.com" <shaunkedir@kedirlaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Barb Day <bday@sutter-law.com>, "Mannion, Tom (Tom.Mannion@lewisbrisbois.com)" <Tom.Mannion@lewisbrisbois.com>, "Dmb@dmbestlaw.com" <Dmb@dmbestlaw.com>, "Stephen P. Griffin" <sgriffin@griff-law.com>, "Thomas Skidmore Esq. (thomasskidmore@rrbiznet.com)" <thomasskidmore@rrbiznet.com>

You are the one engaging in delay tactics. Again, I will provide the dates for the KNR employees ASAP. The other witnesses are not my problem.

Jim

Sent from my iPhone

On Sep 14, 2018, at 6:36 PM, Peter Pattakos <peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>> wrote:

Jim,

We cannot set dates for most of these other depositions until we have dates for Nestico, Redick, and Gobrogge. We are entitled to know what they have to say about the documents quoted in the Complaint and the ones produced before we check their testimony with the other key witnesses. You have known since at least last November that that is how we intended to proceed. It has now been three weeks and counting since I asked you for deposition dates for Nestico and Gobrogge and you still have not provided me with any. Additionally, we are still waiting for the KNR Defendants to comply with a Court order issued a month and a half ago to answer pending discovery requests that have been pending since summer of 2017, so we have been in no position to go forward with these depositions even if you had provided dates for them.

We are not asking for anything unreasonable here with these depositions. As of now it seems unrealistic to expect we will get all of these depositions done by November 1, but if you and the other Defendants are going to insist on that approach, at the very least we should all be working to coordinate dates for these depositions as soon as possible.

Counsel for Horton and Czetli are copied here as well, in addition to Floros's counsel. I presume Mr. Griffin will also be representing Mr. Simpson, but in any event I've attached a notice of service of subpoena on Simpson that we filed today.

Thank you.

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On Fri, Sep 14, 2018 at 10:10 AM, James M. Popson <jpopson@sutter-law.com<mailto:jpopson@sutter-law.com>> wrote:
Peter,

KNR only has control, and the ability to produce, three of the witnesses listed below. We have been discussing dates for Nestico and Gobrogge. We will provide available dates for those witnesses and Redick sometime today. Those dates will be prior to the current discovery deadline. As it relates to the discovery responses, we have been providing you supplemental responses as they are completed. We have had to review and modify multiple sets of voluminous discovery requests. The order did not provide a specific date for us to comply, but I will make an effort to get the remaining responses to you today or over the weekend.

There is plenty of time to take the 2 depositions you requested prior to today. Although you referenced some additional depositions last week without naming deponents, today is the first time you have notified us that you intend to depose 7 of the 10 witnesses on this list. You have been aware of most of these witnesses since the time you filed case, and all of them for at least 10 months. You have had more than enough time to get these depositions completed. Your sudden desire to depose these people with a discovery deadline approaching (and your motion to file a fourth amended complaint) are transparent attempts to delay the denial of class certification. Moreover, none of the non-KNR employees can possibly provide evidence relevant to certification under Civ. R. 23. We will oppose any effort on your part to delay this matter any further.

Finally, please provide us with the dates you intend to depose the non-KNR employees before issuing subpoenas so we can make sure we are available.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>]
Sent: Thursday, September 13, 2018 6:35 PM
To: James M. Popson
Cc: Joshua Cohen (jcohen@crklaw.com<mailto:jcohen@crklaw.com>); shaunkedir@kedirlaw.com<mailto:shaunkedir@kedirlaw.com>; Nathan F. Studeny; Barb Day; Mannion, Tom (Tom.Mannion@lewisbrisbois.com<mailto:Tom.Mannion@lewisbrisbois.com>); Dmb@dmbestlaw.com<mailto:Dmb@dmbestlaw.com>
Subject: Re: Depositions

Jim,

It has now been three weeks since I asked you for dates for Nestico's and Gobrogge's depositions, and a week since I sent my email below to which you still have not responded. In addition to Nestico and Gobrogge, we will need to complete the following depositions prior to the class-discovery deadline:

1. Robert Redick (Defendant)
2. Minas Floros (Defendant)
3. Mike Simpson (primary investigator)
4. Aaron Czetli (primary investigator)
5. Rob Horton (former KNR attorney)
6. Gary Petti (former KNR attorney)
7. Paul Steele (former KNR attorney)
8. James E. Fonner (Columbus, OH chiropractor who was sued by KNR after refusing to accede to KNR's demands of their so-called "preferred chiropractors")
9. Philip Tassi (Akron, OH chiropractor who has received narrative-fee payments and who, along with Floros and Nestico, has received cash payments as kickbacks from Dr. Ghoubrial)
10. Ciro Cerrato (Liberty Capital representative)

We might also need to add Dr. Ghoubrial to this list depending on what the court decides about our pending motion to amend the complaint.

It is going to take a lot of coordination to get these depositions done before November 1, and much of the problem is due to the KNR Defendants' delay in providing us discovery responses pursuant to court orders and their continued delay in providing us dates for the Nestico and Gobrogge depositions.

We will proceed to issue the necessary subpoenas for the above depositions and intend to ask the Court for an extension of time to allow them to be completed by Feb 1. Please let me know if you will join in this request, or otherwise not oppose it, and please get back to me ASAP regarding dates for these depositions.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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On Thu, Sep 6, 2018 at 4:46 PM, Peter Pattakos <peter@pattakoslaw.com<<mailto:peter@pattakoslaw.com>>> wrote: Jim, when I emailed you two weeks ago about deposition dates for Nestico and Gobrogge, I said that "the weeks of Sept. 17 and Sept. 24 are generally open for us," I did not just offer 9/17 as you suggest below. You also seem to suggest below that Nestico's and Gobrogge's are the only depositions we'll have to complete by November 1, but I expect there are about a dozen more witnesses we'll need to get on record by November 1. We need Nestico's and Gobrogge's depositions first and we need to get them done ASAP. Please let us know when they are available in the weeks of the 17th and 24th and I'll get back to you tomorrow or first thing next week with a list of the other depositions we'll need to complete.

If you agree that it makes sense to approach the Court about extending the discovery deadline, we should do that, but we can't have any further delay in any event.

Thank you.

Peter Pattakos

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On Thu, Sep 6, 2018 at 10:06 AM, James M. Popson <jpopson@sutter-law.com<<mailto:jpopson@sutter-law.com>>>

wrote:
Peter,

September 17 is not going to work for us. Please provide a few alternative dates in September and October so we can get the depositions done by November 1.

Jim

[cid:image002.jpg@01D44C11.96E4A970]<<http://sutter-law.com>>

James M. Popson
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<2018-09-14 Notice of Service of Subpoena MRS.pdf>



Peter Pattakos <peter@pattakoslaw.com>

Deposition dates for KNR employees

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

Tue, Sep 18, 2018 at 1:52 PM

To: Peter Pattakos <peter@pattakoslaw.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Cc: "Joshua Cohen (jcohen@crklaw.com)" <jcohen@crklaw.com>, "shaunkedir@kedirlaw.com" <shaunkedir@kedirlaw.com>, "Dmb@dmbestlaw.com" <Dmb@dmbestlaw.com>

I think we have made a good faith effort here. I have nothing else to say on the subject.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]**Sent:** Tuesday, September 18, 2018 1:50 PM**To:** Mannion, Tom**Cc:** James M. Popson; Joshua Cohen (jcohen@crklaw.com); shaunkedir@kedirlaw.com; Dmb@dmbestlaw.com**Subject:** Re: Deposition dates for KNR employees

Thank you, Tom. If that is the only reason for Nestico's position that he can't be deposed on October 15, I submit that Mr. Popson, Mr. Best, Mr. Kennedy, or any of the other lawyers who have appeared on Mr. Nestico's behalf in this litigation are all competent to represent him at the deposition and that we can proceed without Mr. Mannion in the event that his trial in Anchorage goes forward. Please advise.

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On Tue, Sep 18, 2018 at 1:45 PM, Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

I have a trial starting 10/1 in Anchorage, and it will last into the week of October 15th. I am not available the 15th or 16th for Rob's deposition, but I do not need to be there for Brandy's. That's one reason. But I'm not speaking for Jim as to Rob's or anyone else's availability.



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

Sent: Tuesday, September 18, 2018 1:43 PM

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

Cc: Joshua Cohen (jcohen@crklaw.com) <jcohen@crklaw.com>; shaunkedir@kedirlaw.com; Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; Dmb@dmbestlaw.com

Subject: Re: Deposition dates for KNR employees

Jim,

I have asked a simple question that you have not yet answered: Why can't we proceed with Mr. Nestico's deposition on October 15?

Peter Pattakos

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On Tue, Sep 18, 2018 at 1:40 PM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

Your assumption that all necessary defense counsel for each witness is available on all dates proposed is incorrect. I have offered the dates the best I can in good faith. You are free to send notices for the dates as set forth in my proposal if you choose to do so.

Jim

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

Sent: Tuesday, September 18, 2018 1:05 PM

To: James M. Popson

Cc: Joshua Cohen (jcohen@crklaw.com); shaunkedir@kedirlaw.com; Mannion, Tom (Tom.Mannion@lewisbrisbois.com); Dmb@dmbestlaw.com

Subject: Re: Deposition dates for KNR employees

Jim,

Is there a reason why we can't proceed with Nestico's deposition on October 15? You do not identify any such reason below so I am again requesting that we proceed with his deposition on that date. If Ms. Gobrogge is out of the country for the second half of October, we can either proceed with her deposition on October 16, or find another date in the full month between now and then to proceed. Please advise.

Additionally, I am in fact available on all of the dates you identify below, as is, apparently, counsel for the KNR defendants. Thus, I request that you keep all of these dates open for additional depositions on the dates during which Nestico's, Gobrogge's, and Redick's depositions do not take place.

Thank you.

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On Tue, Sep 18, 2018 at 12:18 PM, James M. Popson <jjpopson@sutter-law.com> wrote:

Peter,

It appears you are available on all the dates proposed. The local rules require you to consult with us on the availability of witnesses and counsel for taking depositions. Ms. Gobrogge will be out of the country for the latter half of October. So she is available and you are available on October 15 or 16. Redick's availability is limited due to a medical condition. He is available and you are available on October 22 or 23. Mr. Nestico and his counsel are available at the end of the month (October 29, 30, or 31). We also need to consider the availability of Mr. Kedir and his client, so we will need to wait to hear from him as well. You waited more than two years to request these depositions with full knowledge of the identity of the witnesses involved, with the first request coming just 60 days before the deadline. We are working to accommodate that schedule in good faith despite the approaching deadline. The order you to prefer to take depositions is not a valid basis to delay the deadline, and we will oppose any motion to extend deadlines.

Jim

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

Sent: Tuesday, September 18, 2018 10:27 AM

To: James M. Popson

Cc: Joshua Cohen (jcohen@crklaw.com); shaunkedir@kedirlaw.com; Mannion, Tom (Tom.Mannion@lewisbrisbois.com); Dmb@dmbestlaw.com

Subject: Re: Deposition dates for KNR employees

Jim,

As the owner of the KNR firm, Mr. Nestico is the most important witness here and we have told you repeatedly that we want to proceed with his deposition first so we can ask other witnesses about his testimony. We would like to proceed with Mr. Nestico's deposition on October 15 or 16. We can then proceed with either Gobrogge and Redick on the other dates.

Assuming Mr. Nestico is planning to attend all of these depositions, as he has with the others, he should be available on October 15th or 16th. Please confirm or provide earlier dates for Mr. Nestico.

Thank you.

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On Tue, Sep 18, 2018 at 9:40 AM, James M. Popson <jpopson@sutter-law.com> wrote:

Peter,

We have the following dates available:

Brandy Grobrogge : October 15 or 16

Robert Redick: October 22 or 23

Rob Nestico: October 29, 30, or 31.

Jim

**James M. Popson**

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