IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Reply in Support of Plaintiffs' Motion for a Status Conference and Extension of the Class-Discovery Deadline**

In considering Defendants' opposition to Plaintiffs' request for a short extension of the class-discovery deadline, it is important to take note of the Court's statement, in its April 6, 2018 order denying Defendants' motions to strike Plaintiffs' class-action claims, that "Plaintiffs have not yet moved for [class-certification]; nor are they required to when discovery has been delayed in such fashion as present in the circumstances of this case." This statement by the Court not only highlights the reasonableness of Plaintiffs' approach in waiting to receive a complete response to written discovery before being required to proceed with depositions in this case, it essentially gave express permission for it. Again, Defendants only provided complete responses last week to the written discovery requests served in the summer of 2017, to which the Court's April 6 statement about "delay" pertained in significant part.

Defendants nevertheless ask the Court to punish the Plaintiffs for relying on this basic expectation,[1] which was affirmed by the Court's own statement. They also again ask the Court to

See also, *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

draw an artificial and self-serving distinction between class and merits discovery that is contradicted by controlling Ohio law and routinely criticized by courts nationwide. *See Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 18 (holding that class certification issues "frequently ... overlap with the merits of the plaintiff's underlying claim."); *Chen-Oster v. Goldman Sachs & Co.*, 285 F.R.D. 294, 299 (S.D.N.Y. 2012) ("class-related discovery ... often overlaps substantially with the merits."); *In re Riddell Concussion Reduction Litig.*, 2016 U.S. Dist. LEXIS 89120, 2016 WL 4119807, *2 (D.N.J. 2016) ("More often than not there is no 'bright line' between class certification and merits issues."); *In re Plastics Additives Antitrust Litig.*, No. 03-2038, 2004 U.S. Dist. LEXIS 23989 at *9 (E.D. Pa. Nov. 29, 2009) ("[T]he distinction between merits-based discovery and class-related discovery if often blurry, if not spurious."); *Ahmed v. HSBC Bank*, No. ED CV 15-2057 FMO (SPX), 2018 U.S. Dist. LEXIS 2286 at *8-*9 (C.D. Cal. Jan. 5, 2018) (noting that "the distinction between class certification and merits discovery is murky at best and impossible to determine at worst" and collecting cases in support of same). *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 487 (C.D.Cal.2012) ("[I]t is often easy for a [class-action] defendant to paint a dismal picture of plaintiffs' prospects [when] plaintiffs do not have the benefit of discovery into the merits of a case.").

Defendants are undoubtedly correct that there are "dozens of individuals who ... have information related to the merits of Plaintiffs' allegations." Defs' Opp. at 1–2. Here, Plaintiffs only seek to depose fewer than one dozen of them, and will do so without benefit of documents from Defendants' files that the Court excused Defendants from having to search for and produce prior to class-certification. *See* July 24, 2018 Court order. Defendants' discussion of the witnesses Plaintiffs

---

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 ... .").

seek to depose only affirms that Plaintiffs be given a fair opportunity to do so before class-discovery is complete. *See*, *e.g.*, Defs' Opp. at 8 (criticizing Plaintiffs for "dramatically describ[ing]" Robert Horton as a "whistleblower" and "star witness," and referring to the affidavit Defendants obtained from Horton after suing him as "refuting" Plaintiffs' allegations).[2] Moreover, counsel for the KNR investigators has indicated his unavailability on the remainder of the dates provided by KNR counsel for depositions, further confirming the need to extend the class-discovery deadline. *See* email exchange between Peter Pattakos and Stephen Griffin, attached as **Exhibit 1**.

As shown in Plaintiffs' motion, they have moved with all deliberate speed in pursuing discovery, both before and subsequent to the Court's recent order establishing a class-discovery deadline for the first time in this lawsuit. Under the circumstances, particularly given the Court's April 6 order excusing Plaintiffs from moving for class certification due to "the fashion in which discovery has been delayed" in this case, and that such delay was only resolved as of last week, a short extension to complete a defined set of depositions is not unwarranted and will not unduly prejudice anyone.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Dean Williams (0079785)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
dwilliams@pattakoslaw.com

[2] Defendants are correct in pointing out Plaintiffs' counsel's error in identifying Philip Tassi as the chiropractor to whom putative new Plaintiff Norris's narrative fee was paid. Tassi was in fact paid a narrative fee from another former KNR client with whom Plaintiffs counsel has been in contact, not Ms. Norris, and has been identified by witnesses with personal knowledge as instrumental to and a primary beneficiary of the schemes alleged in the complaint.

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on September 24, 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>

Aaron Czetli deposition

Stephen P. Griffin <sgriffin@griff-law.com> Sat, Sep 22, 2018 at 1:30 PM
To: Peter Pattakos <peter@pattakoslaw.com>

Same problem Peter. JT's

Steve

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Wednesday, September 19, 2018 11:23 AM
To: Stephen P. Griffin <sgriffin@griff-law.com>
Subject: Re: Aaron Czetli deposition

How about 10/22 or 10/23?

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

On Wed, Sep 19, 2018 at 11:15 AM, Stephen P. Griffin <sgriffin@griff-law.com> wrote:

> Sorry Peter

EXHIBIT 1

I have two JT in October and not available 10/15.

Steve

Sent from my iPad

On Sep 19, 2018, at 10:55 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Mr. Griffin,

We would like to proceed with Mr. Czetli's deposition on October 15. Please let us know if he is available on that day.

Thank you.

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
