

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,)	Case No. 2016 09 3928
)	
Plaintiffs,)	Judge James Brogan
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS' MOTION FOR PROTECTIVE</u>
)	<u>ORDER LIMITING THE SCOPE OF</u>
Defendants.)	<u>DEPOSITIONS TO CLASS CERTIFICATION</u>
)	<u>ISSUES ONLY</u>
)	

Pursuant to Rule 26(C) of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick (collectively "Defendants") respectfully move this Court for a Protective Order limiting the scope of depositions sought by Plaintiffs to class certification issues only as provided by Civ.R. 23 at this stage of the litigation. Defendants seek this relief in accordance with the Court's July 24, 2018 Order setting a November 1, 2018 deadline to complete class discovery, which conveyed the Court's intention that such discovery on this issue only should be completed before the parties are forced to expend resources to seek discovery related to the merits of Plaintiffs' allegations.

It is well established that a trial court has broad discretion in regulating the discovery process. See *Breech v. Turner*, 127 Ohio App.3d 243, 248, 712 N.E.2d 776 (4th Dist. 1998). The Rule states in pertinent part that a protective order can require, among other things, "that certain matters not be inquired into or that the scope of the discovery be limited to certain matters." Civ. R. 26(C)(4). The purpose of protective orders is to prevent an abuse of the discovery process. See *In re Guardianship of Johnson*, 35 Ohio App.3d 41, 519 N.E.2d 655, paragraph 1 of the syllabus (10th Dist. 1987). A trial court's determination of whether a protective order is necessary is within its sound discretion. See *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St. 3d 181, 2009-Ohio-2496, ¶¶ 13, 23, 909 N.E. 2d 1237.

Plaintiffs have belatedly sought to depose approximately fourteen (14) witnesses prior to the class discovery deadline and have asked this Court to extend that deadline to accommodate them. The depositions of three (3) of those witnesses that would arguably have information relevant to the class certification question – KNR employees Brandy Gobrogge, Defendant Rob Nestico, and Defendant Robert Redick – are each set to be completed prior to the current November 1 discovery deadline.¹ For the remaining eleven (11) witnesses, Plaintiffs have either been dilatory in deposing them or have failed to show what knowledge they may have that is relevant to the certification of any class – the only relevant issue at this juncture – as opposed to the merits of Plaintiffs' claims. (See Defendants' Brief in Opposition to Plaintiffs' Motion for a Status Conference and Extension of the Class Discovery Deadline, filed 9/21/18). It is clear Plaintiffs are seeing to conduct merit-based discovery in contravention of the Court's July 24 Order.

Therefore, for the foregoing reasons and consistent with the Court's July 24 Order, a Protective Order limiting the scope of any depositions to class certification issues only as provided by Civ.R. 23 should be granted. A proposed Protective Order is being submitted concurrently with this Motion.

Respectfully submitted,

/s/ James M. Popson

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¹ Ms. Gobrogge on October 16; Mr. Nestico on October 29; and Mr. Redick on October 22 or 23

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *DEFENDANTS' MOTION FOR PROTECTIVE ORDER LIMITING THE SCOPE OF DEPOSITIONS TO CLASS CERTIFICATION ISSUES ONLY* was filed electronically with the Court on this 25th day of September, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)