IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge James Brogan **Motion for Leave to File Exhibit 2 to Plaintiffs' Motion to Strike Defendants' Confidentiality Designations regarding Brandy Gobrogge's Deposition Testimony under Seal pursuant to the September 12, 2017 Protective Order**

Further demonstrating the impropriety of and needless burden created by the KNR Defendants' designations of portions of the deposition of their operations manager Brandy Gobrogge as confidential—as set forth in Plaintiffs' motion to strike these designations filed on December 6, 2018—the applicable September 12, 2017 Protective Order (at Section 8.d., p. 9) requires that "a party seeking to file a brief, pleading, or exhibit under seal shall first file a motion for leave to file under seal prior to filing such brief, pleading, or exhibit." *See also* Section 8.c., p. 8 ("To the extent that it is necessary for a party to discuss the contents of any confidential information ... in a written pleading, then such portion of the pleading may be filed under seal with leave of Court.") (emphasis added).

While the Protective Order also provides that, "the Court highly discourages the manual filing of any pleadings or documents under seal" (Sept. 12, 2017 Protective Order at Section 8, p. 7, emphasis in original), Plaintiffs here have no choice. The Defendants have insisted that certain portions of Ms. Gobrogge's deposition transcript are entitled to protection under the Order, and Plaintiffs are thus required to maintain the confidentiality of these portions by the Order's terms. *Id.* at Section 8, p. 7–8 ("[T]o the extent that a brief, memorandum, or pleading references any

document marked as [confidential], then the brief, memorandum, or pleading shall refer to the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.").

This requirement—that Plaintiffs need to file a motion to get permission to file a motion every time they need to refer to the mundane information that the Defendants have designated as "confidential"—only confirms that information should only be so designated under the most compelling circumstances. *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 509, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984) ("[C]losed proceedings ... although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness."). Those circumstances do not exist here. This case is not about any confidential information, it is about lawyers and their "partner" doctors and chiropractors who prioritized their desire to serve as many clients as possible over their duties to those clients. There are no secrets about this and any notion to the contrary is both absurd and an affront to the U.S. and Ohio constitutions' guarantee of open courts.

For the reasons stated above and more fully in Plaintiffs' Dec. 6 motion to strike, the Court should issue an order permitting Plaintiffs to file **Exhibit 2** to the motion to strike, and grant that motion, making clear to the parties that further needless confidentiality designations will subject the designating party to sanctions

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on December 7, 2018, using the Court's electronic-filing system, which will serve copies on all necessary parties.

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