

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p>Reply in Support of Plaintiffs’ Motion to Compel the Deposition of Richard Gunning, M.D., and Motion for Sanctions against Defendant Ghoubrial</p>
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Plaintiffs respectfully submit the following three points in reply to the opposition brief filed by Defendant Ghoubrial today.

First, because counsel for Ghoubrial (and, purportedly, Dr. Gunning¹) confirms that he does not oppose Plaintiffs’ request for an order requiring Gunning’s appearance at the scheduled December 12 deposition, the Court should enter such an order. *See* Ghoubrial Opp. at 1 (“Dr. Ghoubrial is not opposed to a Court Order requiring the Parties to convene on December 12, 2018 for Dr. Gunning’s deposition.”).

Second, if Dr. Gunning was really too sick to appear at his deposition last week (Ghoubrial Opp. at 3–4, Ex. A), one wonders why Ghoubrial’s attorney didn’t just say so in the first place instead of first attempting to excuse Gunning’s appearance by claiming that the Court’s order granting leave to file the Fifth Amended Complaint somehow left Gunning unprepared to testify. *See Ex. 12* to Plaintiffs’ Motion. It should also be noted that the “doctor’s note” attached to Ghoubrial’s opposition brief (Ex. A) was apparently written by another one of Ghoubrial’s employees, whose

¹ Ghoubrial’s opposition brief, still, offers no indication that Dr. Gunning has knowingly waived the conflict of interest between Dr. Ghoubrial and him in this case, nor any argument or caselaw supporting the notion that such a conflict could be consentable.

address at the Summa website is listed as “Sam Ghoubrial, M.D.” *See* website excerpt, accessed today, attached as **Exhibit 1**.

Finally, Ghoubrial profoundly misleads the Court by arguing that his confirmed intent to obstruct relevant deposition questioning is somehow excused by Plaintiffs’ counsel’s instructions to former Plaintiff Matthew Johnson that he not answer certain questions at his deposition. See Ghoubrial Opp. at 4–5. Plaintiffs’ counsel understands the Court’s reminder in its Nov. 27 order that “counsel may not instruct a witness not to answer questions except when necessary to preserve a privilege or to present a motion under Civ.R. 30(D).” But also relevant here is Local Rule 17.02(5)(B), which provides that an attorney may “instruct a witness not to answer a question” if the question is “not relevant; not likely to lead to the discovery of admissible evidence; and counsel has a good faith, reasonable belief that his or her position will be sustained by the judicial officer with jurisdiction over the case and can explain in detail and on the record at the time he or she instructs the witness not to answer the basis or bases for the instruction not to answer.” Here, it is important to note that Plaintiffs’ counsel only instructed Mr. Johnson not to answer questions about the following subjects:

1. The amount of income taxes paid by Mr. Johnson in 2017 (Johnson Tr. at 21–22²);
2. Why Mr. Johnson was laughing at defense counsel’s continued questioning about why he didn’t bring his tax returns to the deposition (*Id.* at 20);
3. The circumstances under which Mr. Johnson was arrested in connection with marijuana trafficking charges in 2015, including who was with him when he was arrested (*Id.* at 59–60, 63);
4. Whether Mr. Johnson smoked or smokes marijuana (*Id.* at 55–56);
5. A list of Mr. Johnson’s “prior girlfriends” (*Id.* at 115);

² The copy of Mr. Johnson’s deposition transcript that Defendants filed on Nov. 5, 2018 does not contain page or line numbers, thus Plaintiffs here refer to the Clerk of Courts’ pagination at the top of each page.

6. The race of the bus driver who caused the accident that led to Mr. Johnson seeking KNR's representation (*Id.* at 101);
7. The identity of Mr. Johnson's roommates at various times in his life (*Id.* at 111, 118);
8. Mr. Johnson's reasons for moving out of his parents' house years ago (*Id.* at 205–206).

Without drawing inferences as to Defendants' intent in posing such questions to Mr. Johnson—a class-action plaintiff who had relatively little to gain in participating in this lawsuit—it should be enough to note that this subject matter bears no relevance to what is actually at issue in the case, *i.e.*, whether KNR engaged in prohibited self-dealing by recommending a loan from a company with which it had an apparently improper relationship. Plaintiffs' counsel certainly had a good faith belief that the Court would sustain his position on the impropriety of these questions, much unlike Defendants position that questions about Ghoumbrial's fraudulent provision of trigger-point injections to KNR clients would be irrelevant to his provision of overpriced TENS units to them.

Thus, Ghoumbrial's shifting, concealed, and belated excuses for Gunning's failure to appear last week should not immunize him from sanctions here. Had he been more transparent about the purported medical issue and avoided the baseless argument about the Fifth Amended Complaint, the motion to compel would not have been necessary. The Court should require Ghoumbrial to pay for the work necessitated by his needlessly obfuscatory conduct.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on December 6, 2018, using the Court's electronic-filing system, which will serve copies on all necessary parties. Counsel for deponent Gunning, John Myers, Esq. (johnmyerscolpa@gmail.com), was also emailed a copy of this document on this date.

/s/ Peter Pattakos

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