

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	JUDGE JAMES BROGAN
)	
vs.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS' RESPONSE TO</u>
)	<u>PLAINTIFFS' MOTION FOR A</u>
Defendants.)	<u>PROTECTIVE ORDER BARRING</u>
)	<u>SPEAKING OBJECTIONS AT</u>
)	<u>DEPOSITIONS</u>
)	

Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("Defendants") hereby file their response to Plaintiffs' Motion for a Protective Order Barring Speaking Depositions at Depositions.

Defendants initially do not dispute that this Court's Local Rules speak for themselves and prohibit "speaking objections which refer to the facts of the case or suggest an answer to the deponent." Summit Loc.R. 17.02(b)(4). Defendants disagree, however, that any objections by undersigned counsel during depositions taken in this case were imposed to coach or deliver pertinent testimony in lieu of any witness or otherwise impede, delay, or frustrate Plaintiffs' attempts to depose any witness. *See, e.g., Hank v. Great Lakes Const. Co.*, No. 1:16-CV-02104, 2017 U.S.Dist. LEXIS 178556, **4-5 (N.D.Ohio Oct. 25, 2017) (denying sanctions where otherwise improper speaking objections of attorney and statements of "answer if you know" or "answer if you understand" "did not impede, delay, or frustrate the fair examination" of the witness).

All of the challenged objections lodged by counsel for Defendants at Ms. Gobrogge's deposition and Dr. Gunning's deposition related either to the relevance of questioning, the form of the questions being asked, improper implications of words used by questioning counsel, and improper organizational questioning of a lay witness that should be directed to a witness

designated under Civ.R. 30(B)(5). Each such objection is proper under the spirit of the Civil Rules and this Court's local rules and in no way evidence coaching of a witness or obstruction of deposition proceedings. Plaintiffs' citation to non-binding case law from non-Ohio jurisdictions and cherry-picked excerpts of deposition testimony do nothing to change this conclusion.

Moreover, the proverbial phrase "what's good for the goose is good for the gander" rings true here. It is counsel for Plaintiffs that has initiated the exact same conduct that they complain of now, and such "arguments are less persuasive where [their] own counsel engaged in similarly inappropriate behavior." *Hank*, 2017 U.S. Dist. LEXIS 178556 at *4-5.

For instance, at the April 18, 2018 deposition of Plaintiff Member Williams, the July 3, 2018 deposition of Plaintiff Thera Reid, and the July 6, 2018 Deposition of Former Plaintiff Matthew W. Johnson, Plaintiffs' counsel repeatedly engaged in what he now complains are improper "speaking objections," including objections that had no basis to be lodged whatsoever, and continually coached each client by suggesting answers to questions posed by counsel for Defendants:

April 18, 2018 Deposition of Plaintiff Member Williams

Page(s)	Testimony
97:14 to 99:3	<p style="text-align: center;">97</p> <p>14 Q And it was truthful that day, correct, when you</p> <p>15 signed this, correct?</p> <p>16 A Yes.</p> <p>17 Q You said, "I deny that Mr. Nestico does not</p> <p>18 have a financial interest in the investigation</p> <p>19 fee." Isn't that correct?</p> <p>20 A That's what it says.</p> <p>21 Q But today you admit readily that you have no</p> <p>22 idea one way or another whether he has an</p> <p>23 interest in the investigation fee, isn't that</p> <p>24 true?</p> <p>25 MR. PATTAKOS: Objection.</p> <p style="text-align: center;">98</p> <p>1 A Maybe I didn't understand it.</p> <p>2 Q Do you understand it now? You don't know if --</p> <p>3 A Thanks to you, yes, I do. And I think that he</p> <p>4 does; otherwise, why would he have an</p> <p>5 investigator and why would he have a charge.</p>

	<p>6 Q So earlier today you didn't tell us the truth 7 when you said I don't know one way or another 8 whether he has a financial interest or whether 9 he keeps the money or whether it goes to the 10 investigator? 11 MR. PATTAKOS: Objection. 12 Q Did you tell the truth when you said that? 13 MR. PATTAKOS: He is 14 mischaracterizing the witness' testimony. 15 Objection. 16 Q Did you say that? 17 A Yes, I did, because I don't know what he did 18 with it. But, of course, he had to have a 19 financial interest. If he had an investigator, 20 he wasn't going to pay it out of his pocket, 21 correct? So yes, he had it. And no, I don't 22 know where it went to. And I don't know. I 23 mean -- 24 Q Do you agree that you gave two different 25 answers? You denied on these written requests 99 1 that he had a financial interest and today you 2 said, "I don't know if he did or not." 3 MR. PATTAKOS: Objection.</p>
101:8 to 103:1	<p>101 8 Q Well, you don't have a choice. There's no such 9 thing as I don't want to answer because I'm 10 breaking a confidence. You're under oath. You 11 will either answer the question or the judge 12 will instruct you to answer it at an 13 appropriate time. 14 MR. PATTAKOS: If the witness is 15 trying to say that answering this question 16 would require her to disclose our 17 communications, then she is right to not answer 18 the question. 19 MR. BEST: I'm not asking what 20 you know. I'm asking what she knows. I never 21 asked her what you said. 22 I said do you personally have any 23 information to establish or prove that 24 Mr. Nestico has a financial interest in KNR 25 sending investigators to sign up accident 102 1 victims as quickly as possible? Do you 2 personally know anything that supports that 3 statement? 4 MR. PATTAKOS: Counsel, does it 5 help if I tell you that I have that 6 information?</p>

7	MR. BEST: No. I don't care what
8	you have, unless you want to get under oath.
9	And I'll have a fun day with that. But I want
10	her to answer. And you are instructed at this
11	point to quit giving speaking objections. If
12	you don't like that, then we'll go see whether
13	the judge agrees with me or not. Let her
14	answer the question.
15	MR. PATTAKOS: I would ask you to
16	please calm down and please stop harassing the
17	witness.
18	MR. BEST: Do you hear me?
19	THE WITNESS: You're making me
20	uncomfortable.
21	MR. PATTAKOS: Your tone right
22	now is uncalled for. Mr. Popson was able to
23	remain professional. I'd ask you to be
24	professional.
25	MR. BEST: Quit interrupting me
	103
1	and let her answer the question.

July 3, 2018 Deposition of Plaintiff Thera Reid

Page(s)	Testimony
84:16 to 85:22	<p>84</p> <p>16 Q Okay. I'm trying to find out when and why you</p> <p>17 went from very satisfied to not satisfied. You</p> <p>18 told me it was before this lawsuit, so when was</p> <p>19 it and why was it?</p> <p>20 MR. PATTAKOS: She told you a</p> <p>21 hundred times that she doesn't know, Tom.</p> <p>22 MR. MANNION: Okay.</p> <p>23 Q So you're not going to come into court then,</p> <p>24 ma'am, are you, and say this is why I was</p> <p>25 dissatisfied with KNR and this is when it</p> <p>85</p> <p>1 happened --</p> <p>2 MR. PATTAKOS: Objection.</p> <p>3 Q -- true?</p> <p>4 MR. PATTAKOS: Object.</p> <p>5 Q Or do you think this is a memory that might</p> <p>6 come back to you like some of the other</p> <p>7 memories?</p> <p>8 MR. PATTAKOS: Object.</p> <p>9 Go ahead.</p> <p>10 A Oh, my God.</p> <p>11 Q Ma'am, do you know who you're suing in this</p>

	<p>12 case?</p> <p>13 MR. PATTAKOS: Tom, you're</p> <p>14 doubling down on your client's abuse of</p> <p>15 Ms. Reid. I would ask you to please be</p> <p>16 professional.</p> <p>17 MR. MANNION: I've been very</p> <p>18 polite throughout this entire deposition and I</p> <p>19 will continue to and very professional. And</p> <p>20 don't make an allegation that I'm being</p> <p>21 unprofessional. Do not do that.</p> <p>22 MR. PATTAKOS: Tom –</p>
95:25 to 96:12	<p>95</p> <p>25 Q Okay. And I'm trying to find out what it is.</p> <p>96</p> <p>1 You're asking for damages from my clients, so I</p> <p>2 need to know when we go in front of a jury how</p> <p>3 are you going to say that they damaged you</p> <p>4 other than the 150 or \$200?</p> <p>5 MR. PATTAKOS: There's a</p> <p>6 difference between --</p> <p>7 MR. MANNION: Stop. No</p> <p>8 speaking objections.</p> <p>9 MR. PATTAKOS: -- how --</p> <p>10 MR. MANNION: Stop, stop,</p> <p>11 stop. If you want to object, you can say</p> <p>12 objection.</p>
164:12 to 166:8	<p>164</p> <p>12 Q The question is what did you review to prepare</p> <p>13 for today for the deposition?</p> <p>14 A Okay. I read what I needed to read, like</p> <p>15 what -- oh Lord, I don't know.</p> <p>16 Q It's not a trick question.</p> <p>17 A I know it's not a trick question. I read</p> <p>18 about -- I read up on class actions. I read up</p> <p>19 about the lawsuit. I read up on what the head</p> <p>20 of the class action does.</p> <p>21 Q And do you have copies of those documents?</p> <p>22 A No. It was on my phone.</p> <p>23 Q Okay. Do you still have that same phone?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p> <p>165</p> <p>1 MR. PATTAKOS: Tom, these are</p> <p>2 attorney/client communications.</p> <p>3 MR. MANNION: If she</p> <p>4 reviewed something to prepare for today's</p> <p>5 deposition, we're allowed copies of whatever</p> <p>6 she reviewed.</p> <p>7 MR. PATTAKOS: Not copies of</p>

	<p>8 E-mails from me to her.</p> <p>9 MR. MANNION: I'm not asking</p> <p>10 for your communications. But if she reviewed</p> <p>11 documents to prepare for today, we're entitled</p> <p>12 to them.</p> <p>13 MR. PATTAKOS: Unless they're</p> <p>14 my communications to her. So I sent her</p> <p>15 E-mails and text messages about this</p> <p>16 deposition, so you're not entitled to those.</p> <p>17 MR. MANNION: If you sent her</p> <p>18 documents to review, we are --</p> <p>19 MR. PATTAKOS: Well --</p> <p>20 MR. MANNION: -- if it was</p> <p>21 to prepare for today's deposition.</p> <p>22 MR. PATTAKOS: Okay, but not</p> <p>23 the actual contents of the E-mail itself.</p> <p>24 MR. MANNION: Not your E-mail</p> <p>25 to her.</p> <p>166</p> <p>1 MR. PATTAKOS: That's all I'm</p> <p>2 saying.</p> <p>3 MR. MANNION: Not your words</p> <p>4 between each other.</p> <p>5 MR. PATTAKOS: What you're</p> <p>6 asking her is bordering on asking for</p> <p>7 attorney/client privilege communication.</p> <p>8 MR. MANNION: Not at all.</p>
244:4 to 246:3	<p>REID, THERA, (Pages 244:4 to 246:3)</p> <p>244</p> <p>4 Q In fact, you're asking them for money for all</p> <p>5 sorts of different people that we don't even</p> <p>6 know their names yet, correct?</p> <p>7 A And I am trying my best, okay, I have medical</p> <p>8 conditions and I am trying my best to fight</p> <p>9 through this right now.</p> <p>10 Q Okay. What medical conditions do you have that</p> <p>11 are preventing you or causing you to have to</p> <p>12 fight through this?</p> <p>13 A I don't want to bring that. Just let me deal</p> <p>14 with this, please.</p> <p>15 Q Well, if I was a potential member of the class,</p> <p>16 do you think I'd have a right to know whether</p> <p>17 you have any medical conditions that might</p> <p>18 impact your ability to be my representative?</p> <p>19 THE WITNESS: You might want</p> <p>20 to get another head of the class, Peter.</p> <p>21 Seriously, I'm done.</p> <p>22 MR. PATTAKOS: There are</p> <p>23 plenty of them out there so okay.</p> <p>24 THE WITNESS: I'm done.</p>

25	MR. MANNION: Move to strike
	245
1	his comments.
2	MR. BEST: Ma'am, are you
3	withdrawing as a plaintiff in this case? Is
4	that what you're saying?
5	MR. PATTAKOS: I'm going to
6	instruct her not to answer that question.
7	Are you done, Thera?
8	MR. BEST: Are you
9	withdrawing as a class representative in this
10	case, ma'am?
11	MR. PATTAKOS: She'll take it
12	under advisement. Why don't we take a recess
13	for the day.
14	MR. MANNION: Well, I do have
15	a couple more questions on Interrogatory Number
16	29 though.
17	MR. GOETZ: We have to
18	finish this up.
19	MR. BEST: Yes.
20	MR. PATTAKOS: Well, she said
21	she doesn't want to be a class rep anymore.
22	MR. BEST: Then you either
23	withdraw it or we continue the deposition.
24	There's no stopping this deposition.
25	MR. PATTAKOS: We can stop
	246
1	this deposition.
2	MR. BEST: Under what
2	rule –

July 6, 2018 Deposition of Former Plaintiff Matthew W. Johnson

Page(s)	Testimony
17:4 – 21:3	<p>17</p> <p>4 Q Okay. Did you bring your tax returns with you</p> <p>5 today?</p> <p>6 A No.</p> <p>7 Q I'm sorry. Was something funny?</p> <p>8 A No. I just -- I don't understand why that</p> <p>9 question --</p> <p>10 MR. PATTAKOS: It is funny,</p> <p>11 Tom. I object.</p> <p>12 A It's irrelevant.</p> <p>13 MR. PATTAKOS: It's</p> <p>14 ridiculous. It's harassment.</p> <p>15 MR. MANNION: Stop.</p>

16 MR. PATTAKOS: It is insane.
 17 MR. MANNION: Stop it.
 18 MR. PATTAKOS: We're going to
 19 file a motion for a --
 20 MR. MANNION: Stop it.
 21 MR. PATTAKOS: -- protective
 22 order.
 23 MR. MANNION: Stop it.
 24 MR. PATTAKOS: You should stop
 25 it, Tom.

18

1 Q Do you find it funny?
 2 MR. PATTAKOS: He should.
 3 A I don't --
 4 MR. MANNION: Stop it.
 5 A It's not that funny.
 6 MR. PATTAKOS: I would like
 7 you to stop it, Tom.
 8 MR. MANNION: Peter, please.
 9 I was very patient last time. I'm not going to
 10 have you give speaking objections.
 11 MR. PATTAKOS: I was very
 12 patient last time, Tom.
 13 MR. MANNION: Okay. That's
 14 enough.
 15 Q Go ahead.
 16 You were laughing about that. Was there
 17 something funny about that?
 18 A It was just -- I mean --
 19 MR. PATTAKOS: Don't answer
 20 that question.
 21 Tom, move on.
 22 MR. MANNION: You're
 23 instructing him not to answer why he was
 24 laughing?
 25 MR. PATTAKOS: Yes, I am. Go

19

1 on.
 2 MR. MANNION: Okay.
 3 MR. PATTAKOS: Ask a question.
 4 You can file a motion on that if you want.
 5 MR. MANNION: We'll move on.
 6 Q Have you filed -- when's the last time you
 7 filed taxes?
 8 A Last year.
 9 Q Okay. What was your gross income?
 10 A I don't remember.
 11 Q You don't even have an estimate?
 12 A I don't worry about that.
 13 Q More than 50,000 a year?
 14 A No.

	<p>15 Q More than 30,000 a year?</p> <p>16 MR. PATTAKOS: His taxes are</p> <p>17 not relevant to this case in any way. We are</p> <p>18 not going to go down this road. I'm going to</p> <p>19 instruct him not to answer any questions about</p> <p>20 this. Move on.</p> <p>21 Q Did you earn more than 30,000 last year?</p> <p>22 MR. PATTAKOS: Take it up with</p> <p>23 the Court, please, Tom. Please. Take it up</p> <p>24 with the Court.</p> <p>25 Q Are you refusing to answer, sir?</p> <p>20</p> <p>1 MR. PATTAKOS: I am --</p> <p>2 A I do what my lawyer --</p> <p>3 MR. PATTAKOS: -- instructing</p> <p>4 him not --</p> <p>5 A -- tells me to.</p> <p>6 MR. PATTAKOS: -- to answer,</p> <p>7 Tom.</p> <p>8 MR. MANNION: Stop. Stop.</p> <p>9 MR. PATTAKOS: Matt, I'm</p> <p>10 instructing you not to answer any of these</p> <p>11 questions.</p> <p>12 Move on. Let's get to the merits of this</p> <p>13 case.</p> <p>14 Q How much did you earn in 2016?</p> <p>15 MR. PATTAKOS: Don't answer</p> <p>16 the question.</p> <p>17 Q How much did you earn in 2015?</p> <p>18 MR. PATTAKOS: Don't answer</p> <p>19 the question.</p> <p>20 Q How much did you earn in 2014?</p> <p>21 MR. PATTAKOS: Repeat. Repeat</p> <p>22 objection.</p> <p>23 Tom, move on.</p> <p>24 Q On advice of counsel, you refuse to answer any</p> <p>25 of those questions, sir?</p> <p>21</p> <p>1 A (Indicating.)</p> <p>2 Q You need to say "yes" or "no," please.</p> <p>3 A Yes.</p>
23:15 to 24:14	<p>23</p> <p>15 Q What's the judge's name?</p> <p>16 A The judge's name?</p> <p>17 Q Yes.</p> <p>18 A Brogan.</p> <p>19 Q Okay. What's his background?</p> <p>20 A I'm not trying to laugh. I just -- I don't</p> <p>21 know.</p> <p>22 MR. PATTAKOS: You can laugh,</p>

	<p>23 Matt.</p> <p>24 THE WITNESS: I don't --</p> <p>25 MR. PATTAKOS: You can laugh.</p> <p>24</p> <p>1 THE WITNESS: I don't want to</p> <p>2 laugh. I don't want to be rude.</p> <p>3 MR. MANNION: Mr. Pattakos,</p> <p>4 please stop the comments.</p> <p>5 MR. PATTAKOS: You can be</p> <p>6 natural.</p> <p>7 MR. MANNION: Please stop the</p> <p>8 comments.</p> <p>9 MR. PATTAKOS: Tom, it's all</p> <p>10 proportional, sir, and you understand that.</p> <p>11 Thank you.</p> <p>12 MR. MANNION: Tell me when</p> <p>13 you're done.</p> <p>14 MR. PATTAKOS: Go on, Tom.</p>
52:16 to 58:9	<p>52</p> <p>16 Q Are you under the influence of any illegal</p> <p>17 drugs?</p> <p>18 A No, sir.</p> <p>19 Q Do you use illegal drugs?</p> <p>20 A No, sir.</p> <p>21 Q Okay. When did you stop using illegal drugs?</p> <p>22 MR. PATTAKOS: Objection. Go</p> <p>23 on. Tom, move on. We object.</p> <p>24 Q Go ahead.</p> <p>25 MR. PATTAKOS: He's not going</p> <p>53</p> <p>1 to answer talking about illegal drugs. It has</p> <p>2 nothing to do with this case. Go ahead and</p> <p>3 file a motion to compel on that, and if the</p> <p>4 Court says you can ask questions about drug</p> <p>5 use, then we can come back. Okay?</p> <p>6 Q Do you agree as a representative of a class</p> <p>7 that you should not be using illegal drugs when</p> <p>8 you represent the class?</p> <p>9 A I do agree with that and that's why I don't.</p> <p>10 Q Okay. Is that when you stopped, when you</p> <p>11 became the class representative?</p> <p>12 MR. PATTAKOS: Objection.</p> <p>13 A No.</p> <p>14 MR. PATTAKOS: Move on. Move</p> <p>15 on, Tom.</p> <p>16 THE WITNESS: Well, the</p> <p>17 answer's no, so it doesn't matter.</p> <p>18 MR. PATTAKOS: Well, it does</p> <p>19 matter.</p> <p>20 Go on. This is harassment.</p>

21 Q Do you still smoke marijuana?
 22 MR. PATTAKOS: Objection.
 23 A No.
 24 MR. PATTAKOS: Don't answer.
 25 A No.
 54
 1 MR. PATTAKOS: Objection.
 2 Don't answer.
 3 Q When did you stop?
 4 MR. PATTAKOS: Objection.
 5 Don't answer.
 6 Tom, move on.
 7 Q Do you refuse to answer that question?
 8 MR. PATTAKOS: Yes, he does.
 9 A Yes.
 10 MR. MANNION: Well, he needs
 11 to tell me that.
 12 A My attorney told me not to answer it.
 13 Q Okay. When you did smoke marijuana, for what
 14 purpose did you do it?
 15 MR. PATTAKOS: Objection.
 16 Don't answer. Matt, don't answer.
 17 Q Do you refuse to --
 18 MR. PATTAKOS: Tom --
 19 Q -- answer?
 20 A Yes.
 21 MR. PATTAKOS: -- move on.
 22 Q Okay. Do you have any criminal convictions
 23 involving dishonesty?
 24 A I don't think so.
 25 Q Okay. What about whether or not it involves
 55
 1 honesty, any criminal convictions in the past
 2 10 years?
 3 A Yes, sir.
 4 Q Okay. What are those?
 5 MR. PATTAKOS: Go ahead.
 6 A Trafficking.
 7 Q Anything else?
 8 MR. BEST: What did he
 9 say?
 10 MR. MANNION: Trafficking.
 11 Q Anything else?
 12 A I don't remember all of the charges.
 13 Q Anything other than from that incident?
 14 A Like, does an accident count?
 15 Q Not if -- I don't care about traffic.
 16 A Oh.
 17 Q I'm just talking about actual criminal.
 18 A I don't think so. You're making me question
 19 myself.

20 Q Nope. I'm just asking you.
 21 A I don't think so.
 22 Q So tell me about the trafficking charge. What
 23 happened?
 24 A That's irrelevant to this.
 25 MR. PATTAKOS: Yeah. Tom,
 56
 1 we're not going to get into this.
 2 A I'm not going to answer that.
 3 MR. PATTAKOS: It's public
 4 record. You can have access to the public
 5 record. If you want to ask him questions about
 6 this background, then you can get an order from
 7 the Court.
 8 Q When were you arrested and for what reason?
 9 MR. PATTAKOS: Go ahead. You
 10 can answer that question.
 11 A August 12, 2015.
 12 Q And tell me the circumstances under which you
 13 were arrested.
 14 MR. PATTAKOS: No. No.
 15 That's all public record. I'm going to
 16 instruct him not to answer. We're not getting
 17 into that.
 18 MR. MANNION: Public record
 19 is not a valid reason to instruct a witness not
 20 to answer --
 21 MR. PATTAKOS: Well, but given
 22 its --
 23 MR. MANNION: -- a question.
 24 MR. PATTAKOS: -- complete
 25 irrelevance to this case, you can get -- it's
 57
 1 admissible, the fact of the conviction. That
 2 is it. That is simply all that is admissible
 3 in this case, Tom, the fact that he was
 4 convicted for drug trafficking. The
 5 circumstances are irrelevant. You don't get to
 6 stand up there in court and talk about and
 7 relitigate his criminal case. Are you
 8 disputing that?
 9 MR. MANNION: Are you done?
 10 MR. PATTAKOS: I'm objecting
 11 and I'm instructing my witness not to answer
 12 the question. If you want to try to explain to
 13 me that you have a legitimate basis for asking
 14 these abusive questions, I'm all ears,
 15 otherwise we can move on. Okay?
 16 MR. MANNION: This has --
 17 discoverability and relevancy at trial are two
 18 different things, as you know. And we are

	<p>19 asking him these questions because not only are</p> <p>20 they discoverable as to his own credibility,</p> <p>21 but perhaps as to his adequacy as a class</p> <p>22 representative.</p> <p>23 And there's multiple other reasons. I</p> <p>24 don't need to describe them all here. If you</p> <p>25 want to object, you object. If you want to</p> <p>58</p> <p>1 instruct him not to answer, you instruct him</p> <p>2 not to answer.</p> <p>3 Q So you're not going to tell me the</p> <p>4 circumstances under which you were arrested,</p> <p>5 sir?</p> <p>6 MR. PATTAKOS: He is not. I'm</p> <p>7 going to instruct him not to answer.</p> <p>8 Q You need to tell me that.</p> <p>9 A No, sir.</p>
59:3 to 60:8	<p>59</p> <p>3 Q What drug were you trafficking?</p> <p>4 A Just weed. Marijuana.</p> <p>5 Q Marijuana?</p> <p>6 You need to say yes.</p> <p>7 A Yes.</p> <p>8 Q Okay.</p> <p>9 MR. PATTAKOS: It's legal in,</p> <p>10 like, five states, Tom. Did you know that?</p> <p>11 Q And you knew it was not legal in Ohio at the</p> <p>12 time, correct, sir?</p> <p>13 MR. PATTAKOS: Don't answer</p> <p>14 that. Move on.</p> <p>15 Q Isn't that true, sir?</p> <p>16 MR. PATTAKOS: Tom, move on.</p> <p>17 Don't answer that question, Matt.</p> <p>18 It's irrelevant, not reasonably</p> <p>19 calculated to lead to the discovery of</p> <p>20 admissible evidence. It's harassment, it's</p> <p>21 inappropriate, it's unprofessional. Move on.</p> <p>22 Q And, sir, was Ohio one of the five states your</p> <p>23 lawyer referred to as having marijuana</p> <p>24 legalized --</p> <p>25 MR. PATTAKOS: Don't answer --</p> <p>60</p> <p>1 Q -- at the time you --</p> <p>2 MR. PATTAKOS: -- the</p> <p>3 question.</p> <p>4 Q -- were trafficking?</p> <p>5 MR. PATTAKOS: Don't answer</p> <p>6 the question, Matthew.</p> <p>7 Q Do you refuse to answer?</p> <p>8 A Yes, sir.</p>

61:23 to 62:23	<p style="text-align: center;">61</p> <p>23 Q Okay. Do you know why you were charged with</p> <p>24 corruption of another?</p> <p>25 MR. PATTAKOS: Objection.</p> <p style="text-align: center;">62</p> <p>1 Don't answer.</p> <p>2 I'm instructing the witness not to answer</p> <p>3 the question.</p> <p>4 Q Do you refuse to answer that?</p> <p>5 MR. PATTAKOS: Matt, just say</p> <p>6 yes and let's move on.</p> <p>7 A Yes.</p> <p>8 Q Okay. Do you agree you were charged with</p> <p>9 corruption of another --</p> <p>10 MR. PATTAKOS: Objection.</p> <p>11 Q -- with drugs?</p> <p>12 MR. PATTAKOS: Don't answer</p> <p>13 the question.</p> <p>14 This is harassment.</p> <p>15 Q Do you agree with that, sir, that you were</p> <p>16 charged with corrupting another --</p> <p>17 MR. PATTAKOS: Matt, just keep</p> <p>18 saying --</p> <p>19 Q -- with drugs?</p> <p>20 MR. PATTAKOS: -- "I refuse to</p> <p>21 answer that question."</p> <p>22 A I refuse to answer that question.</p> <p>23 MR. PATTAKOS: Thank you.</p>
62:24 to 63:12	<p style="text-align: center;">62</p> <p>24 Q Okay. If you were a class member, would you</p> <p>25 want to know whether the representative of your</p> <p style="text-align: center;">63</p> <p>1 class had any drug convictions or used drugs?</p> <p>2 MR. PATTAKOS: Matt, once</p> <p>3 again I'm instructing you not to answer that</p> <p>4 question.</p> <p>5 MR. MANNION: Wait. For what</p> <p>6 possible basis there?</p> <p>7 MR. PATTAKOS: Because this</p> <p>8 whole line of questioning is harassment. It's</p> <p>9 not reasonably calculated to lead to the</p> <p>10 discovery of relevant evidence. Go ahead and</p> <p>11 brief it. I really -- this is completely</p> <p>12 inappropriate and abusive.</p>
74:7 to 75:18	<p style="text-align: center;">74</p> <p>7 Q So as the class representative, if you take the</p> <p>8 stand at trial, what are you going to tell a</p> <p>9 jury is your evidence?</p>

	<p>10 A Well, that would give me more time to prepare, 11 so I would hope I would be okay by then.</p> <p>12 Q Well, when you know what that evidence is, can 13 you through your attorney let us know so we can 14 take your deposition again and ask about that 15 evidence?</p> <p>16 MR. PATTAKOS: Tom, you can 17 ask him about the evidence. We've already 18 provided you --</p> <p>19 MR. MANNION: Stop.</p> <p>20 MR. PATTAKOS: -- with the 21 precise answers --</p> <p>22 MR. MANNION: Stop.</p> <p>23 MR. PATTAKOS: -- that you're 24 asking for.</p> <p>25 MR. MANNION: Stop.</p> <p>75</p> <p>1 MR. PATTAKOS: So please stop 2 harassing --</p> <p>3 MR. MANNION: Peter.</p> <p>4 MR. PATTAKOS: -- and 5 condescending to the --</p> <p>6 MR. MANNION: Please.</p> <p>7 MR. PATTAKOS: -- witness.</p> <p>8 MR. MANNION: Please.</p> <p>9 Please. Please.</p> <p>10 MR. PATTAKOS: Okay?</p> <p>11 MR. MANNION: Please.</p> <p>12 MR. PATTAKOS: Please, Tom.</p> <p>13 MR. MANNION: Stop with 14 the --</p> <p>15 MR. PATTAKOS: I ask you the 16 same thing.</p> <p>17 MR. MANNION: Stop with the 18 speaking objections.</p>
113:11 to 114:10	<p>JOHNSON, MATTHEW W., (Pages 113:11 to 114:10) 113</p> <p>11 Q Please identify all individuals who have ever 12 lived with you --</p> <p>13 MR. PATTAKOS: Yeah, no.</p> <p>14 Q -- at Thayer Street other than you and your 15 son.</p> <p>16 MR. PATTAKOS: Nope. Not 17 going to go there.</p> <p>18 Q Who are your prior girlfriends in the last --</p> <p>19 MR. PATTAKOS: Not going to go 20 there. Yeah, not going to go there, Tom.</p> <p>21 A Are you serious?</p> <p>22 MR. PATTAKOS: Yeah, no.</p> <p>23 A Man.</p>

	<p>24 MR. PATTAKOS: No. Matt, 25 don't answer the questions. Tom knows what 114 1 he's doing and he can move on. 2 MR. MANNION: Please stop 3 with the comments. 4 MR. PATTAKOS: No, Tom, I'm 5 not going to stop objecting to harassing -- 6 MR. MANNION: You can object. 7 MR. PATTAKOS: To harassment 8 of my client. 9 MR. MANNION: Stop. Stop. 10 Stop. Stop.</p>
115:25 to 117:1	<p>115 25 Q I'm just asking who you lived there with. 116 1 A I lived with a friend. 2 MR. PATTAKOS: Tom, how is it 3 relevant? He doesn't want to bring other 4 people's names into this. 5 Q Are you not going to answer the question? 6 MR. PATTAKOS: He'll answer 7 the question. I'll instruct him to answer the 8 question if you can explain a remotely 9 conceivable basis for why it would be relevant 10 to this case. 11 Q Sir, are you going to answer the question? 12 A I lived there with my friend Dan. 13 MR. PATTAKOS: Matt, I'm -- 14 A I'm not going to -- 15 MR. PATTAKOS: -- instructing 16 you not -- 17 Q -- give you his -- 18 MR. PATTAKOS: -- to answer 19 these questions. 20 A -- full name, sir. 21 Q You refuse to? 22 MR. PATTAKOS: Yes, he does. 23 A I refuse to on the ... 24 MR. PATTAKOS: On the advice 25 of counsel. 117 1 A On the advice of counsel.</p>
129:8 to 129:19	<p>129 8 Q Do you have possession of any documents 9 relating to communications between yourself and 10 KNR? 11 MR. PATTAKOS: Tom, why don't 12 you review the docket for the pending motions.</p>

	<p>13 We know you have a pending motion to compel. 14 We have filed a motion for protective order. 15 It's all pending. I don't know why you're 16 asking the witness about this or why you even 17 served a notice of deposition duces tecum, 18 which isn't even a thing under Ohio law. So, 19 you know, let's move on. Please.</p>
Page 172:12 to 172:23	<p style="text-align: center;">172</p> <p>12 Q Did you realize your obligation was to pay 13 medical bills? 14 A I don't know, sir. 15 Q What are you going to do to find out? 16 A I don't know, sir. 17 MR. PATTAKOS: I don't think 18 he needs to do anything to find out, Tom. 19 MR. MANNION: I don't think 20 it's for you to answer the question. 21 MR. PATTAKOS: I think it's 22 time for you to move on to something that's 23 relevant.</p>
173:20 to 174:24	<p style="text-align: center;">173</p> <p>20 Q On Exhibit 6 in the same email -- 21 MR. PATTAKOS: He's answering 22 all -- 23 Q -- you indicate -- 24 MR. PATTAKOS: -- your 25 questions, Tom.</p> <p style="text-align: center;">174</p> <p>1 MR. MANNION: Do not 2 interrupt me again. 3 MR. PATTAKOS: I'm 4 responding -- 5 MR. MANNION: Stop it. 6 MR. PATTAKOS: -- to your 7 baseless -- 8 MR. MANNION: Please stop. 9 MR. PATTAKOS: -- accusations 10 that you -- 11 MR. MANNION: Please stop. 12 MR. PATTAKOS: -- directed 13 toward me -- 14 MR. MANNION: Please stop. 15 Your actions are -- 16 MR. PATTAKOS: -- against my 17 client. 18 MR. MANNION: -- wholly 19 inappropriate in this deposition. 20 MR. PATTAKOS: Tom. 21 MR. MANNION: In fact, that's</p>

	<p>22 one of the things perhaps your client should</p> <p>23 consider in choice of counsel is the</p> <p>24 inappropriate objections and what you're doing.</p>
190:5 to 192:2	<p>190</p> <p>5 Q Sure.</p> <p>6 If you find out that your factual</p> <p>7 allegation that Mr. Nestico has a financial</p> <p>8 interest or ownership interest in Liberty</p> <p>9 Capital is in fact false, will you agree to</p> <p>10 withdraw that allegation?</p> <p>11 A No.</p> <p>12 Q Why not?</p> <p>13 A Because that's my answer.</p> <p>14 Q Even if it's not true, you'll pursue it?</p> <p>15 A Why not?</p> <p>16 Q Okay. And do you think that would be good</p> <p>17 advice for you to give to the other prospective</p> <p>18 class members?</p> <p>19 A Absolutely.</p> <p>20 Q Great. Okay.</p> <p>21 MR. PATTAKOS: Tom, he's going</p> <p>22 to rely on the advice of his attorneys and he</p> <p>23 knows if we don't have evidence for the claims</p> <p>24 we're not going to pursue them. Okay? If</p> <p>25 you're worried about that or if you think</p> <p>191</p> <p>1 that's relevant in any way, you know, you can</p> <p>2 follow up.</p> <p>3 We have a duty as professionals to not</p> <p>4 pursue claims where there's no evidence.</p> <p>5 Q If you don't see evidence that Mr. Nestico --</p> <p>6 if you don't find evidence or don't see</p> <p>7 evidence that Mr. Nestico actually had a</p> <p>8 financial interest or ownership interest in</p> <p>9 Liberty Capital --</p> <p>10 A Just because I can't remember what all the</p> <p>11 evidence is today doesn't mean that there's not</p> <p>12 evidence, sir.</p> <p>13 Q Okay. That wasn't my question, though. Okay?</p> <p>14 A Well, that's how I'm answering it.</p> <p>15 MR. PATTAKOS: Well, you keep</p> <p>16 saying that, Tom.</p> <p>17 A That's the end of the question. Next question,</p> <p>18 please.</p> <p>19 MR. PATTAKOS: You keep</p> <p>20 misrepresenting his testimony. He's right.</p> <p>21 You keeping badgering him and you keep</p> <p>22 misrepresenting his testimony.</p> <p>23 MR. MANNION: And you keep</p> <p>24 trying to testify for him. So let's just move</p>

	<p>25 forward and have the witness testify. 192 1 MR. PATTAKOS: I'm not 2 testifying. Okay.</p>
203:16 to 206:13	<p>203 16 Q And what were the circumstances of you moving 17 out of your parents' home? 18 MR. PATTAKOS: Objection. 19 This is -- same objection as before. Let's 20 move on. 21 Q Sir, do you recall? 22 MR. PATTAKOS: I'm instructing 23 him not to answer that question. 24 Q Sir, do you recall? 25 MR. PATTAKOS: Tom, I'm 204 1 instructing him not to answer the question. 2 Ask another question. 3 Q And do you recall, sir, that your father got in 4 your face and said you were a sponge and he 5 wanted you out? 6 MR. PATTAKOS: Oh, my God. 7 Q Do you recall that, sir? 8 MR. PATTAKOS: Good one, Tom. 9 The judge is going to love this. 10 Matt. 11 Q I'm asking. 12 MR. PATTAKOS: Matt. 13 Let's move on. You know what, we're 14 going -- 15 Q You were -- 16 MR. PATTAKOS: -- to take a 17 break. 18 Q -- having financial -- 19 MR. MANNION: No. I'm in the 20 middle of a question. 21 MR. PATTAKOS: No. Tom, we're 22 going to take a break. 23 MR. MANNION: No, we're not. 24 We're in the middle -- 25 MR. PATTAKOS: We're going 205 1 to -- 2 MR. MANNION: No, we're not. 3 MR. PATTAKOS: We're going to 4 take a five-minute break. 5 MR. MANNION: This has to do 6 with his financial difficulties. 7 MR. PATTAKOS: His financial 8 difficulties --</p>

	<p>9 A My financial difficulties has --</p> <p>10 MR. PATTAKOS: -- has nothing</p> <p>11 to do --</p> <p>12 A -- nothing to do with this case.</p> <p>13 MR. PATTAKOS: -- with this</p> <p>14 case.</p> <p>15 MR. MANNION: Yeah, they do.</p> <p>16 That's why he took out the loan.</p> <p>17 MR. PATTAKOS: His reasons for</p> <p>18 taking out the loan have nothing to do with</p> <p>19 this case either.</p> <p>20 MR. BEST: You're leaving</p> <p>21 with a question on the table.</p> <p>22 MR. PATTAKOS: Yeah, we sure</p> <p>23 are.</p> <p>24 MR. BEST: Good. Just so</p> <p>25 the judge knows that.</p> <p>206</p> <p>1 MR. PATTAKOS: Okay.</p> <p>2 MR. BEST: And you know</p> <p>3 that's inappropriate.</p> <p>4 MR. PATTAKOS: Not under these</p> <p>5 circumstances it's not. We're very confident</p> <p>6 in that.</p> <p>7 MR. REDICK: Under all</p> <p>8 circumstances.</p> <p>9 MR. PATTAKOS: Pardon?</p> <p>10 MR. REDICK: Under all</p> <p>11 circumstances it's inappropriate.</p> <p>12 MR. PATTAKOS: You can have</p> <p>13 your opinion and I'll have mine.</p>
207:15 to 208:12	<p>207</p> <p>15 Q Who were you referring to when you used that</p> <p>16 expletive earlier?</p> <p>17 A What expletive?</p> <p>18 Q Are you denying it?</p> <p>19 A What expletive are you talking about?</p> <p>20 Q We have you on video and audio, sir.</p> <p>21 MR. PATTAKOS: Hey, Tom --</p> <p>22 A I don't even know what I said, man.</p> <p>23 MR. PATTAKOS: Tom.</p> <p>24 Q Okay.</p> <p>25 MR. PATTAKOS: Tom, you know</p> <p>208</p> <p>1 what, his demeanor at trial's going to be a lot</p> <p>2 different because there's going to be a judge</p> <p>3 there that's going to keep you from harassing</p> <p>4 him, asking him questions about his tax</p> <p>5 returns, prior convictions, expletives,</p> <p>6 questions about his son, questions about who</p>

	<p>7 lived with him at his house, questions about</p> <p>8 what his father said to him in a private</p> <p>9 conversation, all of this completely harassing</p> <p>10 lines of questioning, abusive conduct. So his</p> <p>11 demeanor will probably be a lot different at</p> <p>12 trial.</p>
219:4 to 219:18	<p>219</p> <p>4 Q Well, do you know as a class representative</p> <p>5 whether you can sue a lawyer for damages for an</p> <p>6 alleged ethical violation as opposed to</p> <p>7 actually being damaged financially?</p> <p>8 A Like in a separate suit or?</p> <p>9 Q In this suit.</p> <p>10 A I don't know. I would have to review if that's</p> <p>11 in my notes or not.</p> <p>12 MR. PATTAKOS: We already won</p> <p>13 the motion to strike on this, Tom.</p> <p>14 Q Okay.</p> <p>15 MR. PATTAKOS: We already won</p> <p>16 this legal issue.</p> <p>17 MR. MANNION: Stop it.</p> <p>18 Please.</p>
246:23 to 248:10	<p>246</p> <p>23 Q The next Roman numeral, ii, "Defendants</p> <p>24 received kickback payments for every loan</p> <p>25 transaction that Liberty Capital completed with</p> <p>247</p> <p>1 KNR clients."</p> <p>2 What do you base that on?</p> <p>3 A I don't know.</p> <p>4 MR. PATTAKOS: Excuse me.</p> <p>5 Q You have no idea if it's true, do you?</p> <p>6 MR. MANNION: Objection.</p> <p>7 A Yeah, I do.</p> <p>8 MR. PATTAKOS: Objection.</p> <p>9 Tom.</p> <p>10 Q What's it based on, then?</p> <p>11 MR. PATTAKOS: Objection.</p> <p>12 Matthew, don't answer --</p> <p>13 MR. MANNION: You can</p> <p>14 object --</p> <p>15 MR. PATTAKOS: -- the</p> <p>16 question.</p> <p>17 MR. MANNION: -- for the</p> <p>18 record.</p> <p>19 Q What's it based on?</p> <p>20 MR. PATTAKOS: What I'm</p> <p>21 objecting is that you are mischaracterizing the</p> <p>22 complaint which says that these are questions.</p>

23	These are legal issues. These issues include
24	the determinations as to whether. Okay? So
25	don't tell him that this is something that he
	248
1	alleged.
2	Q Are you --
3	MR. PATTAKOS: This is
4	something that needs to be examined through
5	discovery in this case, that the allegations
6	that have been put forward have left these
7	inferences open. We are entitled to discovery
8	to discover them. Stop grilling him as if he's
9	saying that they exist or that it's happened.
10	Okay?

The conduct to which Plaintiffs' complain is certainly not one-sided. "Incivility breeds incivility, and disrespect breeds disrespect." *Sandenberg v. John T. Crouch Co.*, 2nd Dist. Montgomery No. 21342, 2006-Ohio-4519, ¶ 164. While Plaintiffs' seek a protective order based on Defendants' conduct solely, such effort is done disingenuously and without regard to the conduct of their own counsel. Plaintiffs certainly cannot seek such relief when their counsel initiated "improper" conduct from the start.

Therefore, since the conduct complained of by Plaintiffs was not improper under the civil rules or local rules of this Court, Defendants respectfully request that Plaintiffs' motion be denied. Alternatively, Defendants request that any such protective order issued by the Court in this circumstance be equally applied to all parties and their counsel in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 7th day of January, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson
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