IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Plaintiffs' Motion for a Protective Order Regarding the Depositions of Robert Horton and Gary Petti**

I. Introduction

Plaintiffs issued subpoenas to former KNR attorneys Rob Horton and Gary Petti last fall and have been trying for months to schedule these depositions consistent with Plaintiffs' need to depose witnesses in a particular order to obtain discoverable information efficiently and in accord with the Civil Rules. Defendants have nevertheless insisted on (1) questioning Mr. Horton first at his deposition, despite that Defendants have never issued a subpoena to Mr. Horton, and obtained an affidavit from him after suing him into silence for having provided information to Plaintiffs that supports their fraud claims, and (2) proceeding with Mr. Petti's deposition prior to Mr. Nestico's despite that Plaintiffs' subpoena to Mr. Petti and efforts to schedule his deposition long predate Defendants' efforts to do the same.

The Court should not allow Defendants to interfere with Plaintiffs' investigation in this way, particularly given that Plaintiffs issued subpoenas for these depositions long before Defendants did—if at all—and have been diligently attempting to schedule them in a manner consistent with Plaintiffs' expressly stated need to depose witnesses in a particular order. *In re Oxbow Carbon LLC Unitholder Litigation*, Ch., 2017 Del. Ch. LEXIS 135, at *8 (July 28, 2017) (explaining and endorsing the "general custom" of "giv[ing] the party with the burden of proof the ability both to determine

the order of witnesses and to question first if the party wishes to exercise that option," which, "like the opportunity to present evidence first and to open and close, follow the burden of proof."); *In re Convergent Technologies Secs. Litigation*, 108 F.R.D. 328, 337 (N.D.Cal.1985) (finding that defendant's discovery demands imposed an undue burden on plaintiffs in part because the case was one where "defendants presumably have access to most of the evidence about their own behavior").

II. Facts

As early as the fall of 2017, Plaintiffs were clear with Defendants about their need to depose witnesses in a particular order, consistent with their burden of proof. **Exhibit 1**, Oct. 20, 2017 email from Pattakos to defense counsel. At the same time, in response to Defendants' efforts to prematurely notice Mr. Horton's deposition, Mr. Horton's attorney Tom Skidmore clarified that Mr. Horton would only appear to be deposed once, on consecutive days if necessary, *i.e.*, that "when his deposition is conducted it shall be continuous and will be completed." **Exhibit 2**, Oct. 20, 2017 emails between counsel.

In February 2018, Plaintiffs issued subpoenas to obtain documents from Mr. Horton and Mr. Petti. *See* Notices of Service, filed on Feb. 9 and Feb. 12, 2018. In the late summer, Plaintiffs' communicated their need to take Ms. Gobrogge's and Mr. Nestico's depositions first before proceeding with other witnesses, and specifically requested dates for Mr. Horton's and Mr. Petti's deposition. **Exhibit 3**, **Exhibit 4**, Sept. 6 and Sept. 13, 2018 emails from Pattakos to defense counsel.

Defendants were unresponsive to these requests, thus requiring Plaintiffs to move for an extension of the class discovery deadline on September 18, 2018, which the Court granted on October 1, 2018.

In September and November 2018, Plaintiffs properly served additional subpoenas on Mr. Petti and Mr. Horton to take their depositions. *See* Notices of Service, filed on Sept. 28 and Nov. 8,

2018. On October 16 and 17, 2018, Plaintiffs deposed KNR's operations manager, Brandy Gobrogge, after which, defense counsel requested a one-month postponement of Mr. Nestico's deposition that was scheduled for October 29 and 30, as well as a commensurate extension of the discovery deadline, ostensibly to allow the parties to participate in a mediation convened by the Court in the related coverage action brought by KNR's malpractice insurer in federal court in the Northern District of Ohio. Plaintiffs agreed and the Court granted the parties joint motion for modification of the scheduling order on November 6.

On Oct. 31, Plaintiffs requested dates for depositions of witnesses in a particular order, with Mr. Petti and Mr. Horton coming last, and reiterated this request several times throughout November and December. *See, e.g.*, **Exhibit 5,** emails between counsel. While the parties eventually agreed to reschedule Mr. Nestico's deposition for February 7 and 8, they were unable to agree to a reasonable schedule for the remaining depositions, requiring Plaintiffs to request another extension of the discovery deadline on January 2, which the Court granted on January 8, extending the deadline until May 1.

The parties then agreed to proceed with Mr. Horton's deposition on February 25 pursuant to the subpoena issued by Plaintiffs on November 8, 2018, but despite that Defendants never issued Mr. Horton a subpoena, Defendants have insisted on asking questions of Mr. Horton before Plaintiffs do. *See* **Exhibit 6,** Jan. 10, 2019 emails between counsel.

Additionally, while Plaintiffs confirmed Mr. Petti's availability to be deposed on March 1 and advised Defendants of their intent to proceed on that date, Defendants insist on proceeding with Mr. Petti's deposition on February 1, after having issued their own subpoena to him on January 15, 2019—several months after Plaintiffs' September 28, 2018 subpoena—and without conferring with Plaintiffs' counsel as to availability on that date. When Plaintiffs requested that Defendants honor Plaintiffs' earlier-issued subpoena and consistent months-long effort to schedule Mr. Petti's

deposition after certain other depositions took place, Defense counsel responded with histrionics, thus necessitating the instant motion. *See* **Exhibit 7**, Jan. 17 emails between counsel.

III. Law and Argument

A. Plaintiffs should be permitted to question Mr. Horton first at his February 25 deposition.

First, quite simply, Defendants have never served a subpoena on Mr. Horton and have no right to dictate the terms of his deposition that will take place pursuant to Plaintiffs' duly issued subpoena. Ohio law is clear that non-party witnesses may only be deposed upon issuance of a valid subpoena. *State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 11 ("[T]he attendance of a non-party witness deponent should be compelled by the use of subpoena as provided by Civ.R. 45" and thus, "[a] nonparty need not appear in a matter absent a properly served subpoena."); *Fletcher v. Bolz*, 35 Ohio App.3d 129, 131, 520 N.E.2d 22 (10th Dist.1987) ("[T]he proper procedure for requiring a witness to testify is through the use of a subpoena."); *Bank of New York Mellon v. Wahle*, 9th Dist. No. 26313, 2012-Ohio-6152, (it is improper to compel a witness for deposition "through a notice of deposition" instead of a properly served subpoena).

Moreover, even if Defendants had issued a subpoena to Mr. Horton, there would still be grounds for Plaintiffs to request that they be permitted to ask questions of him first at his deposition. This is due to the improper influence that Defendants have had on Horton by suing him into silence for having provided relevant information to Plaintiffs' counsel (including the documents quoted in the Second Amended Complaint) and obtaining an affidavit from him that they have filed in this lawsuit. *See KNR v. Horton*, Summit County Court of Common Pleas No. CV-2017-03-1236.[1]

[1] Defendants sued Mr. Horton for violating a confidentiality agreement that KNR forced him to sign upon employment despite clear controlling 9th District precedent holding that evidence of fraud cannot be subject to such an agreement. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809, N.E.2d 1161, ¶ 64 (9th Dist.) citing *King v. King*, 63 Ohio St. 363, 372, 59 N.E. 111 (1900) ("[C]ontracts which bring about results which the law seeks to prevent are unenforceable as against public policy. Moreover, actual injury is never required to be shown; it is the tendency to

Plaintiffs have not had any access to Mr. Horton since Defendants sued him and obtained their affidavit from him under duress. Thus, basic fairness dictates that it is now Plaintiffs' turn to speak with Horton, and they should be free to do so without having to unwind whatever Defendants intend to accomplish by their insistence on questioning him first. Defendants will have every opportunity to question Mr. Horton after Plaintiffs do and would not be unduly prejudiced by proceeding in this manner. *See* Civ.R. 26(C) ("[T]he court in which the action is pending may make any order that justice requires ... including ... that the discovery may be had only on specified terms

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the prejudice of the public's good which vitiates contractual relations."). This principle applies with extra force in the context of an agreement between attorneys where one party seeks to use the agreement to conceal its own professional misconduct. As the 10th District observed in *Cecil & Geiser, LLP v. Plymale*, 10th Dist. Franklin No. 12AP-398, 2012-Ohio-5861, ¶ 9, "Just as private contracts are executed in the context of binding state and federal statutes, contracts between lawyers are executed in the context of the Ohio Rules of Professional Conduct." In other words, "the Ohio Rules of Professional Conduct trump any terms of an agreement between or among lawyers." *Id. See also Cochran v. N.E. Ohio Adoption Servs.*, 85 Ohio App.3d 750, 756, 621 N.E.2d 470 (11th Dist. 1993) ("[I]t is clear that the dictates of public policy would mandate disclosure of information likely to uncover fraud or misrepresentation."); *Goodman v. Genworth Fin. Wealth Mgmt.*, 881 F.Supp.2d 347, 355 (E.D.N.Y. 2012) citing RESTATEMENT (THIRD) OF UNFAIR COMPETITION, § 40, comment c, *Bartnicki v. Vopper*, 532 U.S. 514, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) ("Deceptive, illegal or fraudulent activity simply cannot qualify for protection as a trade secret."); *Soc. of Lloyds v. Ward*, S.D. Ohio No. No. 1:05-CV-32, 2006 U.S. Dist. LEXIS 29, *27–28 (Jan. 3, 2006) (holding that "documents that are neither privileged nor confidential are not covered" by confidentiality agreements, and that such agreements may not be "interpret[ed in a manner as to] lead to nonsensical results … [or] to perpetrate frauds and injustices in violation of public policy"); *In re JDS Uniphase Corp. Sec. Litig.*, 238 F.Supp.2d 1127, 1137-1138 (N.D. Cal. 2002) ("To the extent that this agreement can be read to prohibit an employee from providing any information about any wrongdoing by [defendant], it is plainly unenforceable. … [Defendant] cannot use its confidentiality agreements to chill former employees from voluntarily participating in legitimate investigations into alleged wrongdoing by [defendant]."); *Maddox v. Williams*, 855 F.Supp. 406, 414–15 (D.D.C. 1994) ("If [Defendants'] strategy were accepted, those seeking to bury their unlawful or potentially unlawful acts from consumers, from other members of the public, and from law enforcement or regulatory authorities could achieve that objective by a simple yet ingenious strategy: all that would need to be done would be to delay or confuse any charges of health hazard, fraud, corruption, overcharge, nuclear or chemical contamination, bribery, or other misdeeds, by focusing instead on inconvenient documentary evidence and labeling it as the product of theft, violation of proprietary information, interference with contracts, and the like. The result would be that even the most severe public health and safety dangers would be subordinated in litigation and in the public mind to the malefactors' tort or contract claims, real or fictitious. The law does not support such a strategy or inversion of values.").

and conditions, including a designation of the time or place."); and Civ.R. 1(B) ("These rules shall be construed and applied to effect just results.").

B. Gary Petti's deposition should take place on March 1, or on a date thereafter.

Similarly, the Court should not countenance Defendants' efforts to interfere with Plaintiffs' investigation by insisting that Mr. Petti's deposition take place on Feb. 1, the week before Nestico's deposition scheduled for February 7 and 8. Plaintiffs issued their subpoena for Mr. Petti's deposition long before Defendants did, and have been working for months to schedule this deposition consistent with their need to depose Mr. Petti after having obtained testimony from other key witnesses, including Nestico. *See, e.g.*, **Ex. 1, Ex. 3, Ex 4, and Ex. 5.** *See also In re Oxbow Carbon LLC Unitholder Litigation*, Ch., 2017 Del. Ch. LEXIS 135, at *8 (July 28, 2017) (explaining and endorsing the "general custom" of "giv[ing] the party with the burden of proof the ability both to determine the order of witnesses and to question first if the party wishes to exercise that option," which, "like the opportunity to present evidence first and to open and close, follow the burden of proof."); *Russo v. Burns*, 2014-0952 (La. App. 4 Cir 09/09/14), 150 So.3d 67, 71-72 (observing that a trial court's discretion "over trial proceedings and the order of witnesses" should not be "exercised in such a way that deprives a litigant of his day in court."); *In re Convergent Technologies Secs. Litigation*, 108 F.R.D. 328, 337 (N.D.Cal.1985) (finding that defendant's discovery demands imposed an undue burden on plaintiffs in part because the case was one where "defendants presumably have access to most of the evidence about their own behavior"). Civ.R. 26(C); and Civ.R. 1(B).

Petti has agreed to be deposed on March 1, and the parties should proceed with his deposition on that date.

IV. Conclusion

Plaintiffs have been diligent in their efforts to conduct discovery in this case despite extreme obstruction from Defendants, and have lawfully issued subpoenas and scheduled depositions for

Mr. Horton and Mr. Petti on February 25 and March 1, 2019, respectively. The requested protective order is necessary to prevent Defendants from interfering with those efforts and should be granted.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Dean Williams (0079785)
Rachel Hazelet (0097855)
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Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on January 18, 2019 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>

Re: Williams v KNR: Rob Horton's deposition

Peter Pattakos <peter@pattakoslaw.com> Fri, Oct 20, 2017 at 6:40 PM
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
Cc: Daniel Frech <dfrech@pattakoslaw.com>, thomasskidmore@rrbiznet.com, Joshua Cohen <jcohen@crklaw.com>

Tom, I'm with my family at the moment and only have time to briefly respond, but I'm sure you're aware that courts interpreting the civil rules are deferential to plaintiffs in matters of witness ordering, in large part because plaintiffs are the ones with the burden of proof. If your clients have nothing to hide, it is mystifying as to why you would be concerned over witness ordering anyway. I too am confident that we should be able to resolve this issue without the court's intervention and will look forward to talking with you next week about that. Have a great weekend.

Peter

On Oct 20, 2017 5:43 PM, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com> wrote:

> Mr. Pattakos:
>
> Please allow me to address two statements you made in the email below and to address the timing of Mr. Horton's deposition.
>
> **Pattakos' Statement: "…it's not the Defendants' prerogative to dictate the order in which we take depositions in our case."**
>
> We truly do not understand your assertion that we are attempting to dictate the order of depositions in your case. This is our case as much as it is your case. We are both pursuing and defending against certain claims. In pursuant to our duty to represent our clients, we properly noticed the deposition of a fact witness, Rob Horton. We did not notice Mr. Horton's deposition in **your** case. We noticed his deposition as part of our representation of our clients. You will certainly have the right to ask questions at the deposition as well, though.
>
> While Rob Horton might be a law school classmate and friend of yours, he's not "your" witness any more than he is "our" witness. Rather, Rob Horton is an independent fact witness. Importantly, he is an independent fact witness who is represented by counsel. Yet, you have contacted him and attempted to talk to him about his testimony despite knowing he is represented by counsel. We would ask that you please refrain from attempting to talk to Mr. Horton re: the matters on which he is represented unless his counsel is present. Moreover, Mr. Horton's counsel has specifically requested this as well.
>
> **Pattakos' Statement: "…we do not intend to proceed with Mr. Horton's deposition until after we've had the chance to depose Mr. Nestico."**
>
> Under the Ohio Rules of Civil Procedure, my client has a right to notice the deposition of any witness in this case. Nothing requires us to wait until after Rob Nestico's deposition before we take Rob Horton's deposition. While we can certainly discuss the order and timing of witnesses, we are under no obligation to agree that Rob Horton's deposition takes place after Rob Nestico's deposition. In fact, it seems to me that logic would be the opposite. It makes more sense to take Rob Horton's deposition before Rob Nestico's deposition.
>
> Regardless of whether we agree on that or not, you will have to show us where in the Civil Rule it permits the Plaintiff to dictate the order and timing of witnesses. If you can show us where in the Civil Rules such a right exists, we would gladly reconsider. If we can't work it out

EXHIBIT 1

amicably amongst us, either side also has the right petition the Court to intervene in discovery. In over 20 years of practice, though, I've never seen a Court have to decide a Motion on the order of facts witnesses because one side or the other thinks they get to decide the order. We will abide by the Ohio Rules of Civil Procedure and all Orders of Judge Breaux. We will also attempt to work things out amicably before approaching the Court on any discovery issues.

Rob Horton's Deposition

Out of consideration for Attorneys Skidmore and Horton, we have agreed to schedule the deposition at a time where hopefully it can be completed in one sitting. And, when the deposition was initially noticed, like you did with your Notice of Deposition, we indicated that the deposition would only go forward at a "mutually convenient" date and time. Of course, that was out of consideration for all involved, including yourself, and to comply with both the rules and the intent of the Civil Rules.

We look forward to hearing your explanations and would suggest a date/time to discuss this next week to hopefully work out our differences amicably.

Tom

LEWIS BRISBOIS

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Peter Pattakos <peter@pattakoslaw.com>

Re: Williams v KNR: Rob Horton's deposition

thomasskidmore@rrbiznet.com <thomasskidmore@rrbiznet.com> Fri, Oct 20, 2017 at 11:44 AM
To: Peter Pattakos <peter@pattakoslaw.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
Cc: dfrech@pattakoslaw.com, Joshua Cohen <jcohen@crklaw.com>

Counsel,

I am not available on October 26, 2017 for deposition and will provide available dates once I coordinate with Attorney Horton. When his deposition is conducted it shall be continuous and will be completed. Should you believe you need more than one day, then schedule it as such. If other discovery needs to be completed before his deposition, then let me know and we will set dates thereafter.

I will not allow the deposition to be piecemealed so plan accordingly.

Thanks,

Thomas A. Skidmore, Esq.
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Akron, Ohio 44308
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From: Peter Pattakos
Sent: Friday, October 20, 2017 11:07 AM
To: Mannion, Tom ; thomasskidmore@rrbiznet.com
Cc: dfrech@pattakoslaw.com ; Joshua Cohen
Subject: Re: Williams v KNR: Rob Horton's deposition

Mr. Skidmore and Mr. Mannion,

This is in response to Mr. Mannion's letter of yesterday regarding the notice and scheduling of Mr. Horton's deposition. If Mr. Mannion is in a hurry to take Mr. Horton's deposition before we have a fair chance to complete documentary discovery, we have no objection to that, provided that we'll be permitted to reopen the deposition once documentary discovery is substantially complete.

If there is no issue with that, we can proceed with scheduling the first part of the deposition. Otherwise, we'll have to take the issue up with the Court before any deposition goes forward.

Please advise. Thank you.

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EXHIBIT 2

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Depostions

Peter Pattakos <peter@pattakoslaw.com> Thu, Sep 6, 2018 at 4:46 PM
To: "James M. Popson" <jpopson@sutter-law.com>
Cc: "Joshua Cohen (jcohen@crklaw.com)" <jcohen@crklaw.com>, "shaunkedir@kedirlaw.com" <shaunkedir@kedirlaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Barb Day <bday@sutter-law.com>, "Mannion, Tom (Tom.Mannion@lewisbrisbois.com)" <Tom.Mannion@lewisbrisbois.com>, "Dmb@dmbestlaw.com" <Dmb@dmbestlaw.com>

Jim, when I emailed you two weeks ago about deposition dates for Nestico and Gobrogge, I said that "the weeks of Sept. 17 and Sept. 24 are generally open for us," I did not just offer 9/17 as you suggest below. You also seem to suggest below that Nestico's and Gobrogge's are the only depositions we'll have to complete by November 1, but I expect there are about a dozen more witnesses we'll need to get on record by November 1. We need Nestico's and Gobrogge's depositions first and we need to get them done ASAP. Please let us know when they are available in the weeks of the 17th and 24th and I'll get back to you tomorrow or first thing next week with a list of the other depositions we'll need to complete.

If you agree that it makes sense to approach the Court about extending the discovery deadline, we should do that, but we can't have any further delay in any event.

Thank you.

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EXHIBIT 3

Peter Pattakos <peter@pattakoslaw.com>

Depostions

Peter Pattakos <peter@pattakoslaw.com> Thu, Sep 13, 2018 at 6:34 PM
To: "James M. Popson" <jpopson@sutter-law.com>
Cc: "Joshua Cohen (jcohen@crklaw.com)" <jcohen@crklaw.com>, "shaunkedir@kedirlaw.com" <shaunkedir@kedirlaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Barb Day <bday@sutter-law.com>, "Mannion, Tom (Tom.Mannion@lewisbrisbois.com)" <Tom.Mannion@lewisbrisbois.com>, "Dmb@dmbestlaw.com" <Dmb@dmbestlaw.com>

Jim,

It has now been three weeks since I asked you for dates for Nestico's and Gobrogge's depositions, and a week since I sent my email below to which you still have not responded. In addition to Nestico and Gobrogge, we will need to complete the following depositions prior to the class-discovery deadline:

1. Robert Redick (Defendant)
2. Minas Floros (Defendant)
3. Mike Simpson (primary investigator)
4. Aaron Czetli (primary investigator)
5. Rob Horton (former KNR attorney)
6. Gary Petti (former KNR attorney)
7. Paul Steele (former KNR attorney)
8. James E. Fonner (Columbus, OH chiropractor who was sued by KNR after refusing to accede to KNR's demands of their so-called "preferred chiropractors")
9. Philip Tassi (Akron, OH chiropractor who has received narrative-fee payments and who, along with Floros and Nestico, has received cash payments as kickbacks from Dr. Ghoubrial)
10. Ciro Cerrato (Liberty Capital representative)

We might also need to add Dr. Ghoubrial to this list depending on what the court decides about our pending motion to amend the complaint.

It is going to take a lot of coordination to get these depositions done before November 1, and much of the problem is due to the KNR Defendants' delay in providing us discovery responses pursuant to court orders and their continued delay in providing us dates for the Nestico and Gobrogge depositions.

We will proceed to issue the necessary subpoenas for the above depositions and intend to ask the Court for an extension of time to allow them to be completed by Feb 1. Please let me know if you will join in this request, or otherwise not oppose it, and please get back to me ASAP regarding dates for these depositions.

Thank you.

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EXHIBIT 4

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR depositions

Peter Pattakos <peter@pattakoslaw.com> Wed, Oct 31, 2018 at 4:43 PM
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
Cc: Joshua Cohen <jcohen@crklaw.com>, "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, padkinson@poling-law.com

Counsel:

Given the agreement to amend the discovery schedule, we need to get new dates set for depositions.

1. Since we already have counsel's availability confirmed for 11/20, we will proceed on that day with Julie Ghoubrial and Dr. Gunning, one in the morning and one in the afternoon. A notice of deposition is attached.

2. Mr. Nestico is confirmed for 11/29 and 11/30, also per the attached notice.

3. Mr. Czetli and Mr. Simpson are tentatively scheduled for 1/15 (we can do both of those in one day).

4. Please provide dates in December for Kelly Phillips and Paul Steele.

5. Please provide dates in the first half of January for Dr. Floros, Dr. Ghoubrial, and Mr. Redick.

6. Please provide dates in the second half of January for Rob Horton and Gary Petti.

7. Please provide three dates in February to block off for any additional depositions that might be necessary as a result of the above.

Please advise as soon as possible regarding which depositions your client will need counsel to appear at as well as counsel's availability. Any delays in this regard will be grounds for postponement of the discovery deadline.

Thank you.

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EXHIBIT 5

2018-10-31 Notice of Deposition of J. Ghoubrial, Gunning, Nestico.pdf
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Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR depositions

Peter Pattakos <peter@pattakoslaw.com> Tue, Dec 4, 2018 at 9:42 PM
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Brad.Barmen@lewisbrisbois.com
Cc: Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Counsel:

Please provide dates on which you are available for the following depositions:

Early to mid January for Paul Steele and Kelly Phillips, in that order;

Mid to late January for Rob Horton and Gary Petti, in that order, and Julie Ghoubrial;

Mid to late February for Dr. Floros, Dr. Ghoubrial, and Redick, in that order.

Also please provide dates when you would like to take Ms. Norris and Mr. Harbour's deposition.

Please get me as many open dates as you can so that we can do our best to accommodate the witnesses. We are of course agreeable to extending the class discovery deadline if that's what it takes to get these scheduled in this order and within this general timeframe.

Please advise ASAP.

Thank you.

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Depositions

Peter Pattakos <peter@pattakoslaw.com> Fri, Dec 21, 2018 at 5:23 PM
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>
Cc: Brad.Barmen@lewisbrisbois.com, Shaun Kedir <shaunkedir@kedirlaw.com>

Tom, I've probably written to you a dozen times by now that we'll be glad to schedule Norris and Harbour's depositions once we have dates nailed down for the depositions that I've been requesting for months, in this order: Paul Steele and Kelly Phillips; Rob Horton and Gary Petti; Dr. Floros, Dr. Ghoubrial, and Mr. Redick; As well as Julie Ghoubrial which can take place at any time. At this point it's clear that the class discovery deadline will have to be extended. I hope you will agree to a reasonable proposal for that during which we can get these depositions done. Otherwise we will move next week to extend the deadline. Please advise ASAP.

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Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR

Mannion, Tom <Tom.Mannion@lewisbrisbois.com> Thu, Jan 10, 2019 at 9:29 PM
To: Peter Pattakos <peter@pattakoslaw.com>
Cc: "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>

You are so wrong on so many fronts. But will have to respond tomorrow as I'm exhausted. We are deposing Horton first. And if you don't want my concession, then I won't stop questioning after the first hour.

Sent from my iPhone

LEWIS BRISBOIS

Thomas P. Mannion
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On Jan 10, 2019, at 9:01 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

External Email

To respond to the rest of your questions below:

1) Re: Horton, Defendants have never served a subpoena on him for his deposition, while Plaintiffs have, while I have served multiple subpoenas on him for his deposition. You have no right to notice a deposition of a non-party witness whom you have not served with a subpoena and no right to ask questions first at a deposition noticed by an opposing party who has issued a valid subpoena. The law is clear on this. *See State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 11-12 ("The Supreme Court of Ohio expressly stated the use of a subpoena is not only a way to compel a non-party witness but the way it should be done. Civ.R. 30(A) provides that the attendance of a non-party witness deponent should be compelled by the use of subpoena as provided by Civ.R. 45. ... This indicates that other ways of compelling a deposition of a non-party are improper.") (internal citations and quotations omitted).

You will have every opportunity to question Horton after I am through with my questions. Even if you had issued a subpoena, we'd still have grounds to request a Court order that we question him first given your actions in suing him to cut him off from communicating with us and to execute your affidavit.

2. If you want Nestico and Redick to be deposed at a "neutral" location, as you put it, that's fine with us, as long as Defendants' bear the expense and allow us final approval of their proposed location. Otherwise there is no reason for them not to take place at my office. If you want to take Plaintiffs' depositions at the same place that would be

EXHIBIT 6

fine, too, but again, at your expense as again there is no reason these couldn't take place at my office.

3/4. See my response from earlier today (below) re: Reid and Williams.

5. Re: Petti, I'm working on confirming a date for him, which I anticipate will be some time after Horton's deposition.

6. It is doubtful that there is any legitimate need for you to depose Ms. Norris's cousin and aunt prior to class certification, if at all. Unless you can explain grounds to the contrary, we will have to take this issue up with the Court if you insist on pressing it.

7. We do stand by our objection to your contention interrogatories. We have identified every witness we intend to rely on in class certification, and have produced every such document of which we are aware. To the extent you are taking the position that we are obliged to identify for you every single fact from these documents and every single fact that we believe these witnesses will testify to that we believe support our claims, we would have to disagree with you as we have not even made such determinations for ourselves at this point and will surely do so by the time we file our motion for class certification. If you legitimately need additional discovery upon review of our motion we can consider that before having to trouble the Court about it, but I doubt it will be an issue.

Also, please let me know about Paul Steele who has confirmed his availability to be deposed on 2/21 per my email to you of yesterday.

Thanks.

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On Thu, Jan 10, 2019 at 11:31 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

> Just got word this morning that the 29th is good for Harbour and we're not going to reopen Ms. Williams' deposition without a court order, as I've said repeatedly. Will get you responses on the rest shortly.
>
> Peter Pattakos
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>
> ---
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>
> On Thu, Jan 10, 2019 at 8:51 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:
>
> > Mr. Pattakos:
> >
> > You never seem to lack time to write writing emails. Unless, of course, It is in response to one of my request to

usually work out discovery issues. Please advise as follows:

1. Do you agree with my proposal on Horton? If not, I will simply do all of my questioning first and not turn it over after an hour, or we can both address the issue with the court.

2. Do you agree as it relates to a neutral, mutually agreed-upon location for the depositions of witnesses who do not feel comfortable being deposed at your office or KNR's office? And, do you have a proposed location? I will send some proposed locations as well.

3. Have you confirmed Harbour?

4. Please provide dates for Reid and Williams.

5. Do you have a proposed date for Gary Petti?

6. Please provide propose dates for the cousin and aunt identified by Monique Norris. Please also provide the address for these witnesses.

7. Do you continue to stand by your objection to contention interrogatories, even though the Ohio Civil Rules specifically state that's not a valid objection? You need to seek leave of court if you need extra time for contention interrogatories. You have not done so. In addition, you have a duty to provide the information that you have, and then supplement later.

Thank you,

Tom

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Peter Pattakos <peter@pattakoslaw.com>

Gary Petti deposition

Mannion, Tom <Tom.Mannion@lewisbrisbois.com> Thu, Jan 17, 2019 at 6:39 PM
To: Peter Pattakos <peter@pattakoslaw.com>
Cc: "James M. Popson" <jpopson@sutter-law.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>, Shaun Kedir <shaunkedir@kedirlaw.com>

Peter:

What do you mean you know have him set for March 1st? You did that after we noticed and set his deposition for 2/1. I have been asking you for months for a date so we could depose him - and you have outright refused to provide a date. So, we noticed it for deposition and subpoened him. And you are telling me now that you don't believe Mr. Petti will show up for deposition even though he was subpoened? I hope it's not you giving him that advice. We have a case to defend. We are moving forward on 2/1 and asking questions of Petti. He is one of your primary witnesses and we have a right to depose him. He is properly noticed, properly subpoened, and has agreed to the date.

You have listed two primary witnesses in your various arguments ot the Courts. Two witnesses who gave you documents despite a confidentiality agreement. Two witnesses whom you relied on in filing pleadings and making allegations. We have a right to depose those witnesses. We are deposing Gary Petti on 2/1 and Rob Horton on 2/25. And, we are asking questions first, as they were noticed by us and both witnesses have agreed to appear (and have been subpoenaed).

If you want to tell the Court that we have no right to depose the witnesses you claim are bearing testimony against us, then I look forward to reading that argument. Is that California law as well, like your refusal to answer contention interrogatories is based on. I've had enough of your games. We are taking these depositions as noticed. If we can reach another mutually agreeable date before 2/7 for Mr. Petti, then we'll be glad to ask questions that date instead.

You are not Judge Pattakos. You are not Supreme Court Justice Pattakos. You are not the writer of the rules. You are actually required to FOLLOW the rules. The OHIO rules. Not California. Not the rules by Peter Pattakos. Your games are way past being old, and we've given you way too much deference. Both parties have a right to take depositions. And we are taking Mr. Petti on 2/1.

Tom

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, January 17, 2019 2:57 PM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: James M. Popson <jpopson@sutter-law.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>

EXHIBIT 7

Subject: Re: [EXT] Gary Petti deposition

Tom,

We served a subpoena for Mr. Petti's deposition long before you did, and have been working to schedule it. Mr. Petti won't be deposed twice, and I am not available on Feb. 1 in any event (once again you never even attempted to confer with me on this date). We now have him set for March 1 and will proceed on that date unless this date won't work for Defendants, in which case it will take place some time after March 1. While I do not believe Mr. Petti will show up for a deposition date that isn't agreed upon by all parties, please confirm as to whether you are going to insist on proceeding with his deposition prior to March 1, in which case we will seek a protective order barring the same.

Thank you.

Thank you.

Peter Pattakos

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On Thu, Jan 17, 2019 at 11:07 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

> Mr. Pattakos:
>
> We have already noticed Mr. Petti for 2/1, which you were served with. And, we have subpoened him for that date. That is good enough reason enough not to go forward on 3/1, unless you intend to depose him again on 3/1.

Tom

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From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, January 17, 2019 10:41 AM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>
Subject: [EXT] Gary Petti deposition

External Email

Mr. Petti has confirmed his availability for March 1 so we will go ahead with his deposition on that date at my office unless I hear from you that there is a good reason not to. Thanks.

Peter Pattakos

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