

**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. CV-2016-09-3928</p> <p>Judge James Brogan</p> <p>Plaintiffs' Third Motion to Compel Discovery from the KNR Defendants</p>
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On November 27, 2018, the KNR Defendants filed responses to four interrogatories and six requests for production of documents that Plaintiffs recently served to test the veracity of certain highly relevant and probative testimony provided by KNR's operations manager Brandy Gobrogge at her October deposition. Each of these requests quoted the specific portions of Gobrogge's testimony that was at issue, regarding such highly pertinent subjects as: (1) the exotic vacations that KNR's partners and employees organized with various doctors and chiropractors who treated KNR clients (including Defendants Ghoubrial and Floros); (2) KNR's practice of referring its clients to certain chiropractors (including Defendant Floros) based solely on whether the client was solicited by a "red bag" of KNR promotional material left on the clients' doorknobs; and (3) a document showing that KNR's two primary "investigators" were paid on 22 cases on a single day in 2014 that were taken in on that day from locations across Ohio, including Dayton, Toledo, Akron, and Shaker Heights.

Unfortunately, even in the wake of Ms. Gobrogge's repeated claims that she did not know or could not remember basic information about these subjects despite her participation in email conversations about all of them, the KNR Defendants' so-called "responses" to Plaintiffs' written

requests for related information are anything but. **Exhibit 1**, KNR's responses to Plaintiffs' fourth set of interrogatories, sixth set of requests for production, and fourth set of requests for admission. Rather, Defendants lodged boilerplate objections to every one of these requests, completely refused to respond to all but three of them, and only provided incomplete, evasive, and self-serving answers to the three requests to which they did purport to respond.

Upon receiving the KNR Defendants' responses, Plaintiffs' attempted in good faith to resolve their deficiencies by conferring with Defendants. **Exhibit 2**, November 30, 2018, email from Pattakos to defense counsel. Defendants did not respond to this letter and to date have done nothing to remedy the deficiencies at issue, thus necessitating this motion, the grounds for which are set forth in more detail below.

I. Law and Argument

Under Civ.R. 37(A)(3)(a)(iii) and (iv), "a party seeking discovery may move for an order compelling an answer [or] production ... if ... a party fails to answer an interrogatory submitted under Rule 33" or "fails to produce documents ... as requested under Rule 34." The scope of discovery is broad, permitting parties to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter" at issue, and which relates to "the claim or defense" of any party. Civ.R. 26(B)(1). "Matters are exempt from discovery only if the matter is privileged or is totally irrelevant to the subject matter of the inquiry." *Insulation Unlimited v. Two J's Properties, Ltd.*, 95 Ohio Misc.2d 18, 22, 705 N.E.2d 754 (C.P.1997).

Even before a class has been certified, "the class-certification analysis will frequently 'overlap with the merits of the plaintiff's underlying claim' because a 'class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'" *Pivonka v. Sears*, 8th Dist. Cuyahoga No. 106749, 2018-Ohio-4866, ¶ 50, quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 27-28, 133 S.Ct. 1426, 185 L.Ed.2d. 515 (2013).

Yet again, the KNR Defendants have asserted inapplicable boilerplate objections to Plaintiffs' highly specific requests, which go directly to Ms. Gobrogge's testimony about key documents on which Plaintiffs' claims are based, demonstrating the unlawful quid pro quo relationships that are at the heart of Plaintiffs' claims. For example:

1. Interrogatory 4-1 and RFP 6-1 re: KNR's exotic vacations with doctors and chiropractors who treated their clients

Interrogatory 4-1 and RFP 6-1 seek basic information about trips that KNR organized and attended with health-care providers, such as Defendants Sam Ghoubril and Minas Floros. *See* **Ex. 1**, at 3; 5. Specifically, Plaintiffs requested that the KNR Defendants identify who attended such trips and the "expenses paid or advanced by KNR" for certain health-care providers to attend. This information relates directly to the existence of a quid pro quo relationship between KNR and its preferred health-care providers. *See, e.g.*, FAC, ¶ 51 ("The KNR Defendants would further reward their high-referring chiropractors like ASC by taking them on vacations to locations like Cancun, Mexico, and Punta Cana in the Dominican Republic ... Gobrogge emailed 'room arrangements' for a trip to Cancun that KNR arranged for Nestico, Redick, their 'prelit intake' attorneys, and their highest referring doctors and chiropractors, including Defendants Floros and Ghoubril.").

In addition, Ms. Gobrogge verified at her deposition that such trips occurred, and testified about e-mails she sent to help organize such trips. *See* Gobrogge Tr. at 449:22-25 ("Q: There were trips to Cancun and Dominican Republic, too, weren't there? A: "Yes."); and 452:14-453:16 ("Q: To the best of your recollection, what destinations can you recall for trips that KNR personnel or employees took with doctors or chiropractors? ... A: So Cancun, Dominican. I think there may have been a cruise."); *see also* **Exhibit 3**, Nov. 6, 2013 email from Brandy Gobrogge about room arrangements. Critically, Ms. Gobrogge claimed that she did not know why the individuals who participated in these trips were selected to attend, and could not recall how many of these trips took place, or who all participated in these trips, which is precisely the information sought by

Interrogatory 4–1 and RFP 6–1 to which Defendants have refused to respond. Gobrogge Tr. at 450:20–451:23; 452:14–456:14.

2. Interrogatory 4-3 and RFP 6-5 re: KNR’s practice of practice of referring its clients to certain chiropractors based solely on whether the client was solicited by a “red bag” of KNR promotional material left on the clients’ doorsteps

Plaintiffs also sought information from the KNR Defendants about its documented and admitted practice of sending clients to certain chiropractors depending on whether the client received a “red bag” of promotional material at their home, including by asking the KNR Defendants to identify where KNR directed such referrals, when it so directed them, and why such referrals were directed to those particular providers. *See Ex. 1*, at 4. Again, this information is direct proof of the unlawful quid pro quo referral relationship at issue in this lawsuit and is therefore highly relevant to Plaintiffs’ claims. *See, e.g.*, FAC, ¶ 45 (“The KNR Defendants’ special kickback relationship ... requires them to provide preferential treatment to ... ASC. For example, KNR sends ASC all its so-called “red bag” referrals.”).

In response to Interrogatory 4-3 and RFP 6-5, (*Ex. 1* at 4) KNR claims that its clients “could and did receive alternative recommendations, and could and did select different chiropractors depending upon the client’s individual circumstances and preferences” This response completely avoids addressing the main question of *why* KNR chose to direct “red bag” referrals to certain providers instead of others in the area at any given time, which not only goes to directly to the quid pro quo relationship alleged, but also serves to contradict KNR’s claims that its strict management of referrals was intended to “spread them out” evenly. *Compare* Gobrogge Tr. at 240:14–15 (“That’s part of my job. So I was making sure that the referrals are spread out.”); 385:1–19 (“The red bag referrals were sent to Akron Square.”); and *Ex. 4*, Gobrogge email instructing prelitigation attorneys to send all red-bag referrals to Akron Square. Finally, yet again, Gobrogge denied any knowledge of why the “red bag” referrals were handled in this way, despite her own documented instructions to

KNR attorneys to ensure that they were. *See, e.g., Ex. 4*, Gobrogge Tr. at 379:9–13 (Q: “And you don’t have any idea as to why, if a client came in on a red bag referral, that they would be sent to a particular chiropractor?” A. “I do not.”); 384:1–25, Ex. 51 (Q. “Then you write, ... ‘please get the next Akron case to Dr. Holland at Akron Injury. Please just make sure it’s not a red bag referral ...’ Why would it matter whether it were a red bag referral or not?” A. “I -- I don’t have an answer for that. I don’t remember.” ... Q. “And you can’t think of any reason why you would not send a red bag referral to Dr. Holland?” A. “I don’t know.”).

Thus, the Court should order the KNR Defendants to provide Plaintiffs a complete response to Interrogatory No. 4-3 and RFP 6-5 which request basic information and documentation relating to these “red bag” referrals.

3. Interrogatory 4-4 re: tasks performed by investigators Czetli and Simpson on 22 cases taken in on a single day from locations across Ohio including Toledo, Dayton, Akron, and Shaker Heights

Plaintiffs also requested from the KNR Defendants specific information pertaining to the work of KNR investigators Aaron Czetli and Michael Simpson on 22 cases from all across Ohio (including Toledo, Dayton, Akron, and Shaker Heights) for which they were paid for “investigative work” on a single day (October 14, 2014) as shown by KNR’s own documentation. **Ex. 1**, at 5; Spreadsheet attached as **Exhibit 5**. This information is highly relevant to Plaintiffs’ allegation that investigators are merely used to solicit KNR clients, and that Czetli and Simpson are paid from client funds on a rotating basis for cases that are signed up without the assistance of an investigator even though they have no involvement at all with these cases. FAC, ¶ 4, 121, 123, 129–130.

Once again, Ms. Gobrogge could not provide any relevant testimony about the document at issue, underscoring the importance that KNR respond fully to Interrogatory 4-4. *See* Gobrogge Tr. at 202:9-13 (“Q: [D]o you believe that Mike and Aaron performed investigative work on every one of these 22 cases of the date that this email was sent? A: I cannot answer that question... Q: So you

don't know? A: Correct.”).

KNR's objections do not excuse compliance here. In addition to their usual boilerplate objections, the KNR Defendants also objected to Interrogatory No. 4-4 on the basis of the attorney-client privilege and the work-product doctrine, neither of which protect the information from disclosure here. First, it is well settled that the attorney-client privilege does not protect factual information from disclosure merely because an attorney is involved. *See, e.g., Bennett v. Roadway Express*, 9th Dist. Summit No. 20317, 2001 Ohio App. LEXIS 3394, *42 (Aug. 1, 2001) (“it is important to note that ‘the privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.’”). Because Interrogatory 4-4 calls for a list of tasks KNR investigators performed and does not ask the KNR Defendants to reveal communications made to KNR attorneys about those tasks for the purpose of obtaining legal advice, the privilege does not apply.

Similarly, the work-product doctrine does not protect the sought-after information from discovery, because Interrogatory 4-4—which asks for a list of tasks that KNR investigators performed—does not call for information that would reveal the mental impressions or opinions of KNR attorneys. Further, even accepting KNR's claim that Interrogatory 4-4 could be construed to ask for such “work product,” it cannot be shown that it is impossible to provide the requested factual information without revealing its impressions, theories, and legal conclusions, and KNR has not even attempted to make any such effort. *Owens v. ACS Hotels, LLC*, 9th Dist. Summit No. 27787, 2016-Ohio-5506, ¶ 8.

Nor does Defendants' offered stipulation excuse their failure to respond to Interrogatory 4-4 (**Ex. 1**, at 5), as it is nothing more than a self-serving statement, calculated to assist the KNR Defendants in their defense of this action. Plaintiffs are entitled to the facts supporting the allegedly fraudulent “investigation fee,” and are not in any sense required to accept KNR's self-serving

representations regarding these facts. The spreadsheet at issue is compelling evidence of the fee's fraudulent nature and the Court should require Defendants to provide the basic information requested about the fees documented therein.

4. **RFP Nos. 6-2, 6-3, and 6-4 regarding Gobrogge's testimony about the quotas KNR imposed on its employees, KNR's claim that it closely managed referrals to ensure they are "spread out" evenly among health care providers, and KNR's claim that its investigators engaged in hot pursuit to "sign up" potential clients due to their concern that clients would settle claims without representation.**

The KNR Defendants have also refused to produce documents relating to various spurious claims made by Gobrogge that are contradicted by relevant documents on which she was examined. For example:

When questioned about a document in which she asks KNR employees, "who needs rec[ords]/narrative report from [Floros/Akron Square Chiropractic] in order to make your number?," Gobrogge claimed that it was not unusual for her to make this request of various providers, not just Floros and Akron Square (with whom Defendants are alleged to maintain an unlawful quid pro quo relationship). Gobrogge Tr. 460:8–463, Ex. 66. RFP 6-2 simply requests documents showing that this is the case, and Defendants have refused, even after expressly stating at Ms. Gobrogge's deposition that Plaintiffs "know how to ask for [these] documents in discovery." **Ex. 1**, at 5; Gobrogge Tr. 463:3–4. There is no conceivable argument for KNR's objection that this request "is not reasonably calculated to lead to the discovery of admissible evidence," nor should the Court countenance their claims of burden in light of Gobrogge's testimony. *Id.* The Defendants' objections to this request should be overruled and they should be ordered to make a good faith search for responsive documents.

Additionally, RFP 6-3 requests documents relating to KNR's claim and Gobrogge's related testimony that referrals were closely monitored and directed "to ensure that referrals are 'spread out' or evenly distributed to qualified Providers." **Ex. 1** at 6; KNR response to Plaintiffs' Second Set of

Interrogatories No. 6; Gobrogge Tr. at 236, 238-240, 254. This request goes directly to KNR's main defense against the allegations of a quid pro quo relationship, and again is targeted at highly relevant and probative information. The KNR Defendants produced a mere thirteen pages of documents purporting to be responsive to this request based on a single limited search of Gobrogge's emails, while stating that "KNR does not keep documents in a manner that permits identification of 'all' documents that may recommend attorneys to refer clients to different medical providers." *Id.* Here, again, the Court should not countenance KNR's claims of burden or "proprietary information" as an excuse for their failure to make a complete response to this request. *Id.* Again, the Defendants' objections should be overruled and they should be ordered to make a good faith search for responsive documents notwithstanding the purported inefficiencies of their document-keeping system.

Finally, when questioned about an email where she wrote that KNR was "losing too many cases" by failing to "send an investigator to sign up clients," and "this is why we have investigators," Gobrogge first claimed that "it wasn't about losing the case to another firm," but rather "for the client's sake," to guard against "insurance companies [that] send people out to have people sign releases" which, Gobrogge claimed, "we've had happen many times." Gobrogge Tr. at 106:6-24, 112:9-113:1, Ex. 4 (also attached hereto as **Exhibit 6**). While Gobrogge later backed off the claim that she wasn't referring to losing cases to other firms (*Id.* at 113:8-117:3), Plaintiffs requested by RFP 6-4 any documents substantiating the notion that KNR was broadly concerned "that its clients or potential clients were settling cases with insurance companies or other potential defendants" in light of Ms. Gobrogge's testimony that this was the case. **Ex. 1**, at 6; **Ex. 6**, email about chiropractor referrals. Again, this request goes to a key document and key issue in the case (Ex. 6), Defendants' objections to it should be overruled, and Defendants should be ordered to make a good faith search for responsive documents.

II. Conclusion

By lodging objections denying the relevance of interrogatories requesting specific information about their own documents and testimony that go to the heart of the allegations in the case, Defendants leave no doubt as to their intent to obstruct to the fullest extent the Court will permit. Thus, the Court should overrule the KNR Defendants' objections to Plaintiffs' fourth set of interrogatories, sixth set of requests for production, and fourth set of requests for admission, and order them to provide complete responses to the requests, including by affirming they have made a good faith search for all responsive documents.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on January 23, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos _____
Attorney for Plaintiffs

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<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>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 A. Brogan</p> <p>RESPONSES TO Plaintiffs' Fourth Set of Interrogatories, Sixth Set of Requests for Production of Documents, and Fourth Set of Requests for Admission to the KNR Defendants</p>
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Now come Defendants, and for their Responses to Plaintiffs' Fourth Set of Interrogatories, Sixth Set of Requests for Production of Documents and Fourth Set of Requests for Admission, state as follows:

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Interrogatories and Document Requests to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiffs' Document Requests seek information and communications between Plaintiffs and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this lawsuit and attaching the Settlement Statement to her Class Action Complaint, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.
2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Interrogatories and Document Requests on the grounds that they are vague, ambiguous, seek

EXHIBIT 1

irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by the Ohio Rules of Civil Procedure. Defendants will respond to these Document Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

3. Defendants object that there are no date limitations on these requests, which makes them overly broad and unduly burdensome.

4. Defendants object to the extent that requests are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. See *Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

5. Defendants object that the terms “investigation fee,” “investigative fee,” and “investigatory fee” are vague, ambiguous, and undefined. Defendants will interpret these terms to mean the flat fee paid to investigators by KNR that are similar to the \$50 fee paid to MRS Investigations, Inc. in Plaintiff Williams’ case. All of Defendants’ answers to requests involving these terms are based on Defendants’ definition of those terms as outlined above.

6. Defendants reserve their right to amend their responses to these Interrogatories and Document Requests.

7. Defendants deny all allegations or statements in the Document Requests, except as expressly admitted below.

8. These “General Objections” are applicable to and incorporated in each of Defendants’ responses to the Interrogatories and Document Requests. Moreover, Defendants’ responses are made subject to and without waiving these objections. Failing to state a specific objection to a particular Document Request should not be construed as a waiver of these General Objections.

9. Plaintiff has exceeded the maximum number of interrogatories permitted under the Rules of Civil Procedure.

10. Defendants' discovery responses are made without a waiver of, and with preservation of:

a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;

b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;

c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Interrogatories and Document Requests herein responded to;

d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;

e. The right to assert additional privileges; and

f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

Answers to Interrogatories

1. Identify all of the expenses paid or advanced by KNR relating to the trip to Cancun, Mexico identified in Brandy Gobrogge's November 6, 2013 email produced in this litigation as bates-numbered document WILLIAMS000226, and identify all of the attendees of this trip. *See* Gobrogge dep. tr. 447-456, Ex. 65.

ANSWER: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, this request is not related to class certification, nor does information sought "overlap" with any issue related to class certification.

2. Identify all trips taken outside of the state of Ohio or outside of the United States that were attended by both KNR employees and any Medical Service Providers, identify all of the attendees on each such trip, and identify all of the expenses paid or advanced by KNR relating to each such trip. *See* Gobrogge dep. tr. 447–456, Ex. 65.

ANSWER: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, this request is not related to class certification, nor does information sought “overlap” with any issue related to class certification.

3. Identify all of the Medical Service Providers to whom KNR directed its “red bag referrals” at any given time, including by identifying the region and period of time during which the firm directed these “red bag referrals” to each particular Medical Service Provider, and the reasons why each provider received such referrals during each particular time period. *See* KNR Defs’ responses to RFA No. 2–44, Interrogatory No. 2–6; Gobrogge dep. tr. 378–394, Exhibits 50–54.

ANSWER: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, and is disproportionate to the needs of the case. Moreover, this request is not related to class certification, nor does information sought “overlap” with any issue related to class certification. The request is not limited to any specific period of time and requests that Defendants review tens of thousands emails to fully respond to the request. A previous search of KNR’s electronic mail system for “red bag!” produced 67,555 hits in 267 different mailboxes. Defendant does not maintain any historical list of recommendations for “Red Bag” referrals.

Without waiving this objection, defendant recalls recommending referral of clients who reported receiving a “red bag” to the following medical care providers at different times over the years:

For a period of time, Red Bag referrals in Akron were to initially be recommended for referral to Akron Square Chiropractic. This was a recommendation, not a requirement. Clients could and did receive alternative recommendations, and could and did select different chiropractors depending upon the client’s individual circumstances and preferences.

For a period of time, Red Bag referrals in Columbus were to initially be recommended for referral to Columbus Injury West. This was a recommendation, not a requirement. Clients could and did receive alternative recommendations, and could and did select different chiropractors depending upon the client’s individual circumstances and preferences.

For a period of time, Red Bag referrals in Lorain were to initially be recommended for referral to Xcell Chiropractic. This was a recommendation, not a requirement. Clients could and did receive alternative recommendations, and could and did select different

chiropractors depending upon the client's individual circumstances and preferences.

4. Identify all of the tasks or work performed by "investigators" Aaron Czetli, Michael Simpson, or any "investigators" from the MRS or AMC investigation companies on each of the KNR client matters referenced in the Holly Tusko emails produced in this litigation as bates-numbered documents WILLIAMS000025 and WILLIAMS000026. *See* Gobrogge dep. tr. 193–204, Ex. 13.

ANSWER: Objection. This interrogatory seeks information subject to attorney-client privilege and/or work product privilege from over 60 client files of individuals not parties to this case, and who can likely never be parties to this case due to the statute of limitations. The interrogatory is also not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, and is disproportionate to the needs of the case. KNR cannot identify "all of the tasks or work performed" by any investigator on a particular case because it does not document "all tasks or work performed" by any investigator. Some of the tasks or work could be documented in, or inferred from, the "Needles Notes" for individual files of KNR clients, which are privileged. Moreover, Defendants have offered a stipulation to the effect that the work of an investigator varies from case to case although the charge to the client is generally the same.

Responses to Requests for Production

1. Please produce all documents relating to the trips referenced in Interrogatories No. 1 or 2 above, including all documents showing that "any travel and lodging expenses paid by KNR were reimbursed by ASC" or any of the other Medical Service Providers who attended. *See* KNR Defs' response to Interrogatory No. 2-13, 2-18; Gobrogge dep. tr. 447–456, Ex. 65.

RESPONSE: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, this request is not related to class certification, nor does information sought "overlap" with any issue related to class certification. The trip was not a "reward" to "high referring chiropractors" as alleged in the fourth amended complaint.

2. Please produce all documents relating to any requests by KNR employees to any Medical Service Providers that were made in connection with KNR employees' monthly submission goals, including documents relating to any such requests made so that KNR employees could "make their numbers," as described in Brandy Gobrogge's July 24, 2012 email produced in this litigation as bates-numbered document KNR03751. *See* Gobrogge dep. tr. 460–463, Ex. 66.

RESPONSE: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome and disproportionate to the needs of the case, and is not related to class certification or any claim alleged in the complaint. Defendants would need to search each and every file to locate a records request directed each medical service provider on each case in connection with the

monthly submission goals of each paralegal.

3. Please produce all documents showing that referrals to and from Medical Service Providers are “monitored to ensure compliance with ethical obligations prohibiting a quid pro quo relationship,” including all documents showing that KNR acts to ensure that referrals are “spread out” or evenly distributed to qualified Providers. *See* KNR Defs’ response to Plaintiffs’ Second Set of Interrogatories No. 6; Gobrogge dep. tr. at 236, 238–240, 254.

RESPONSE: Objection. This request is unduly burdensome and disproportionate to the needs of the case, is not related to any issue regarding class certification or the underlying claims. The request seeks proprietary information not subject to discovery. Further, KNR does not keep documents in a manner that permits identification of “all” documents that may recommend attorneys to refer clients to different medical providers.

Without waiving this objection, defendants are producing documents obtained from a search of the subject line from the email box of Brandy Gobrogge for the terms “Chiro Referrals” which contains documents responsive to this request. See KNR 04001-04013.

4. Please produce all documents reflecting a concern by KNR or its employees that its clients or potential clients were settling cases with insurance companies or other potential defendants without the firm’s assistance in a manner that was improper or detrimental to the client. *See* Gobrogge dep. tr. at 105–108, 112–117, 146–147, 156; Ex. 4; Ex. 10.

RESPONSE: Objection. This request is unduly burdensome and disproportionate to the needs of the case. There is no search that Defendants can run of their document system to identify “all documents” related to potential clients settling cases with insurance companies on their own in a manner that may be detrimental to the potential client’s best interest.

Without waiving this objection, Defendants have located the following documents responsive to this request: KNR 04014-04019. Documents are redacted to remove potential client’s name and identifying information.

5. Produce all documents showing that KNR distributed “red bag referrals” in the manner identified in your response to Interrogatory No. 3 above.

RESPONSE: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome and disproportionate to the needs of the case, and is not related to the issue of class certification. There is no search that Defendants can run of their document system to identify “all documents” showing that KNR distributed “red bad referrals” in the manner identified in response to Interrogatory No. 3. The request is not limited to any specific period of time and requests that Defendants review tens of thousands emails to fully respond to the request. A previous search of KNR’s electronic mail system for “red bag!” produced 67,555 hits in 267 different mailboxes. Defendant does

not maintain any historical list of recommendations for "Red Bag" referrals.

6. Produce all documents relating to or reflecting any of the tasks or work identified in your response to Interrogatory No. 4, above.

RESPONSE: Objection. This interrogatory seeks information subject to attorney-client privilege and/or work product privilege from over 60 client files of individuals not parties to this case, and who can likely never be parties to this case due to the statute of limitations. The interrogatory is also not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, and is disproportionate to the needs of the case. KNR cannot identify "all of the tasks or work performed" by any investigator on a particular case because it does not document "all tasks or work performed" by any investigator. Some of the tasks or work could be documented in, or inferred from, the "Needles Notes" for individual files of KNR clients, which are privileged. Moreover, Defendants have offered a stipulation to the effect that the work of an investigator varies from case to case although the charge to the client is generally the same.

Responses to Requests for Admission


1. Admit that KNR never sent a "red bag referral" to any chiropractor or chiropractic clinic or office in Akron, Ohio except for the chiropractors at Akron Square Chiropractic.

RESPONSE: DENIED.

2. Admit that KNR "investigators" Aaron Czeti, Michael Simpson, or their companies MRS or AMC Investigations ("the investigators"), were paid an "investigation fee" from the settlement proceeds from some of the client matters referenced in Interrogatory No. 4 above even when the investigators performed no services at all for some of the clients who were so charged.

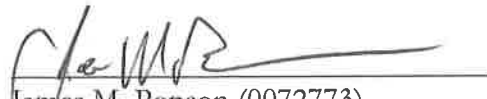
RESPONSE: DENIED. Defendants are not aware of any client matter where a client paid a fee for an investigator when no work was done by the investigator.

As to objections,



James M. Popson

Respectfully submitted,



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Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Responses to Plaintiffs' Fourth Set of Interrogatories, Sixth Request for Production of Documents and Fourth Requests for Admissions were sent this 27th day of November, 2018 to the following via electronic and Regular U.S. Mail:

Peter Pattakos
THE PATTAKOS LAW FIRM, LLC
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peter@pattakoslaw.com

Counsel for Plaintiff

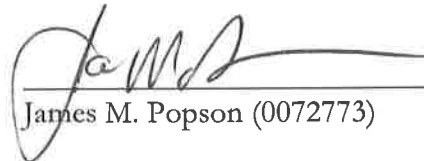
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James M. Popson (0072773)



Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR

Peter Pattakos <peter@pattakoslaw.com>

Fri, Nov 30, 2018 at 5:05 PM

To: "James M. Popson" <jpopson@sutter-law.com>

Cc: Joshua Cohen <jcohen@crklaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Jim:

This is to follow up on Defendants' most recent written discovery responses (4th Rogs, 6th RFPs, 4th RFAs) in an effort to avoid Court intervention.

Rogs 4-1, and 4-2 and RFP 6-1 relate to the trips to Cancun and other exotic locations that KNR organized and attended with health care providers, as Brandy Gobrogge testified at her deposition. With these we are simply asking for information about which providers attended these trips, and how much KNR ended up paying for them to do so. Your claim that this isn't "reasonably calculated to lead to the discovery of admissible evidence" in this case—which, as you know, is mainly about the firm's improper quid pro quo relationships with the providers—is rather outrageous, Jim. Please reconsider.

Rog 4-3 and RFP 6-5 relate to the "red bag" referrals, and KNR's unexplained practice of sending clients to certain chiropractors based on the promotional materials that the client received from the firm. Again it is outrageous to suggest that this information is not highly relevant. We have a number of documents showing that every "red bag" in Akron went to ASC, and that they went to other chiropractors exclusively in other cities. The Defendants have repeatedly tried to claim that "red bags" were sometimes sent elsewhere in Akron, including at Gobrogge's deposition, so please tell us where and when, as well as for these other cities, and produce whatever documents you can find proving as much.

Also, Rog 4-3 asks for the Defendants to identify the reasons why each provider received the red bag referrals during each time period. In your lengthy but ultimately non-responsive answer, you did not identify a single reason why the firm would be sending clients to chiropractors based on advertising material. Please provide a complete answer to the interrogatory.

Rog 4-4 asks for the Defendants to identify the tasks that the investigators performed as to a limited set of client files identified in two KNR emails showing that two investigators were paid on dozens of cases opened all across the state in the very same day. We have very good reason to believe these investigators did nothing more than sign some of these clients to a fee agreement, and did nothing on some of the other files. We have only asked you to identify tasks performed by the investigators. The attorney client privilege could not possibly apply to that, as it only applies to communications between clients and attorneys made for the purpose of obtaining legal advice. The work product privilege does not apply either because that only applies to written work product revealing the mental impressions of an attorney. If these investigators actually did any work on these files, it should be easy enough for the Defendants to tell us what they did and produce redacted documentation of the work under RFP 6-6 without identifying the client and

without violating any privilege. If there are any concerns the information can be submitted to the court for in camera review.

As for the other requests for production, RFP 6-2 (requests made to health care providers so that KNR employees could make their montly quotas), RFP 6-3 (documents supporting Defendants' testimony that KNR monitors and directs health care provider referrals to ensure that the referrals are "spread out" or evenly distributed), and RFP 6-4 (documents showing that the firm sent investigators to sign up clients because it was concerned about "losing the cases" to insurance companies), again, this information is all plainly relevant to the case, particularly because it goes right to Defendants' purported excuses for their unlawful conduct. To the extent Defendants or any of their employees are aware of any such documents existing, they should produce them. Otherwise they will be prohibited from trying to introduce any such information later.

Please let me know your clients' position on these issues ASAP.

Thank you.

Peter Pattakos
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This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

[Quoted text hidden]

2 attachments



imageb16aa6.JPG
826K



imageb16aa6.JPG
826K

Monday, June 15, 2015 at 8:33:42 PM Eastern Daylight Time

Subject: Rooms.....

Date: Wednesday, November 6, 2013 at 8:59:12 AM Eastern Standard Time

From: Brandy Brewer

To: Prelit Attorney, Mike Simpson, Mike Simpson (michaelsimpson12@yahoo.com)

Priority: High

Room Arrangements:

- Cawley/Floros
- Tassi/Schneider
- Tony/Waleed
- Rob/Paul
- Sam
- Simpson/Matt
- Horton/Robert
- Zaber/Tom
- Jason/Josh



Brandy Brewer

Kisling, Nestico & Redick

Director of Operations

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Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown



EXHIBIT 3



WILLIAMS000226 1 of 1

From: Brandy Lamtman <brandy@knrlegal.com>
Sent: Wednesday, December 19, 2012 4:13 PM
To: Prelit Attorney
Subject: REMINDER

Importance: High

ALL RED BAG REFERRALS NEED TO GO TO AKRON SQUARE.



Brandy Lamtman
Executive Assistant to Attorney Nestico
 Kisling, Nestico, & Redick, LLC
 3412 W. Market Street
 Akron, Ohio 44333
 Phone: 330-869-9007
 Fax: 330-869-9008

brandy@knrlegal.com



EXHIBIT 4



1
1

WILLIAMS000284

WILLIAMS000025

30 Auto (359 so far for October)
1 Knee

	10/14/14	10/14/14	A	Heather / Paul	Gary Krebs \$100			-
	10/14/14	10/14/14	A	Courtney / Josh	MRS \$50	Akron Square		-
	10/14/14	10/14/14	A	Lisa / Amanda	Wes Steele \$50	Town & Country		-
	10/14/14	10/14/14	A	Paige / Ken	Hillenbrand \$100	TV-Columbus		-
	10/14/14	10/14/14	A	Nicole / Devin	MRS \$50	DM 09/15/2014 Stark Red Bag		-
	10/14/14	10/14/14	A	Nicole / Devin	MRS \$50	DM 09/15/2014 Stark Red Bag		-
	10/14/14	10/14/14	A	Bre / Rob H	AMC \$50	Toledo Injury		-
	10/14/14	10/14/14	A	Paige / Ken	MRS \$50	Atlantic Chiro	Comp to	-
	10/14/14	10/14/14	A	Paige / Ken	MRS \$50	Atlantic Chiro	Comp to	-
	10/14/14	10/14/14	A	Bre / Rob H	AMC \$50	Shaker Blvd Rehab		-
	10/14/14	10/14/14	A	Jill / John	AMC \$50	YP	OBJ	-
	10/14/14	10/14/14	A	Heather / Paul	Wes Steele \$50	Red Bag Columbus		-
	10/14/14	10/14/14	A	Nicole / Devin	AMC \$50	TV-Akron / Cleveland		-
	10/14/14	10/14/14	A	Lisa / Amanda	Wes Steele \$50	Whitehall Inj		-
	10/14/14	10/14/14	A	Courtney / Josh	AMC \$50	Web Page		-
	10/14/14	10/14/14	A	Lorene / Tom	MRS \$50	DM 10/06/2014 Ytown Red Bag		-
	10/14/14	10/14/14	A	Bre / Rob H	AMC \$50	Akron Square	COMMERCIAL DEF	-
	10/14/14	10/14/14	A	Lindsay / Brian	Hillenbrand \$100	TV-Columbus		-
	10/14/14	10/14/14	A	Heather / Paul	MRS \$50	Direct Mail- Columbus	OBJ	-
	10/14/14	10/14/14	A	Heather / Paul	MRS \$50	Direct Mail- Columbus	OBJ	-
	10/14/14	10/14/14	A	Heather / Paul	MRS \$50	Direct Mail- Columbus	OBJ	-
	10/14/14	10/14/14	A	Courtney / Josh	AMC \$50	Akron Square		-
	10/14/14	10/14/14	A	Courtney / Josh	AMC \$50	Akron Square	Comp to	-
	10/14/14	10/14/14	A	Lindsay / Brian	Wes Steele \$50	Whitehall Inj		-
	10/14/14	10/14/14	A	Paige / Ken	MRS \$50	Akron Square		-
	10/14/14	10/14/14	A	Bre / Rob H	MRS \$50	Akron Square	Comp to	-
	10/14/14	10/14/14	A	Courtney / Josh	AMC \$50			-
	10/14/14	10/14/14	A	Nicole / Devin	Glen Jones \$100	Friend - Unknown		-
	10/14/14	10/14/14	A	Lisa / Amanda	Wes Steele \$50	Col Inj - East		-
	10/14/14	10/14/14	A	Nicole / Devin	MRS \$50	Xcell		-
	10/14/14	10/14/14	KNEE	Watson	AMC \$50	YP		-



Holly Tusko

Kisling, Nestico & Redick
Intake Manager

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Locations: Akron, Canton, Cleveland,
Cincinnati, Columbus, Dayton, Toledo
& Youngstown



EXHIBIT 5

From: **Brandy Lamtman** brandy@knrlegal.com
Subject: Chiropractor Referrals
Date: May 6, 2013 at 6:14 PM
To: Prelit Attorney PrelitAttorney@knrlegal.com
Cc: Rob Nestico nestico@knrlegal.com



We MUST send an investigator to sign up clients!! We cannot refer to Chiro and have them sign forms there. This is why we have investigators. We are losing too many cases doing this!!!!!!

If a client is already at the chiro's office then of course it is ok. Other than that send an investigator.

No faxing or emailing forms unless it is approved by Rob, Robert or I.

Sent from my iPhone



EXHIBIT 6

WILLIAMS000001