

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC,
et al.

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**Defendants Kisling, Nestico & Redick, LLC
and Dr. Sam Ghoumbrial's Joint Motion for
Sua Sponte Order Prohibiting Defamatory
Statements or Dissemination of Misleading
Information to the Public, Media or Press;
Request For Emergency Hearing and
Sanctions on Plaintiffs' Counsel**

Now come Defendants, Kisling, Nestico & Redick, LLC (KNR) and Sam Ghoumbrial, M.D., ("Dr. Ghoumbrial" jointly, "Defendants), by and through counsel, and hereby move this Court for a *sua sponte* Order enjoining Plaintiffs and their lawyers, representatives and agents from engaging in the following conduct:

1. Communicating inaccurate and/or misleading information to the press;
2. Communicating inaccurate and/or misleading information to putative class members;
3. Publishing false, misleading and/or defamatory statements regarding these Defendants in or on any forum, including, but not limited to, social media posts;
4. Ordering Plaintiffs and their counsel to immediately remove any and all false, misleading and/or defamatory social media posts about Defendants;
5. Ordering Plaintiffs' counsel comply with the Rules of Professional Conduct relative to his social media posts and his attempts to advertise for putative class members; and
6. Sanctioning Plaintiffs' counsel for his repeated false and defamatory social media posts about Defendants.

Enjoining Plaintiffs and their counsel from engaging in the above listed conduct is necessary to protect the integrity of these proceedings. And, to protect these Defendants from undue prejudice and extra-judicial influence. Defendants request an emergency hearing to address these critical

issues, and others, at the Court's earliest convenience. A memorandum in support is attached hereto and incorporated herein by reference.

Respectfully Submitted,

/s/ Bradley J. Barmen

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MEMORANDUM IN SUPPORT

Consistent with the conduct of his predecessor, Plaintiffs' counsel Peter Pattakos and his law firm, The Pattakos Law Firm, LLC, has engaged in a public smear campaign against these Defendants designed to negatively impact the reputations of Defendants and their employees in a blatant attempt to gain an unfair advantage in this litigation and to solicit additional putative class members prior to moving for class certification. While Defendants acknowledge Plaintiffs and their counsel have a First Amendment right to free speech, they do not have the right to defame these Defendants through false, misleading and malicious social media advertisements masquerading as social media posts. These false advertisements contained in Plaintiffs' counsel's recent social media posts violate Plaintiffs' counsel's ethical responsibilities as an officer of the Court, are only intended to taint the Defendants in the eyes of the public and the relevant jury pool. And, they are defamatory, highly inflammatory, misleading, and meant to cause irreparable harm to Defendants. Immediate Court intervention is necessary to prevent further irreparable harm and to protect the integrity of these proceedings.

Defendants recently discovered multiple false and defamatory posts on the Facebook page of the Pattakos Law Firm, LLC. Most recently, on January 26, 2019 at 6:08 AM, a post appeared on the Pattakos Law Firm, LLC's Facebook page soliciting putative class members that is defamatory and highly misleading. *See 1/26/2019 Facebook post*, (attached as Exhibit "A"). Shockingly, the post falsely implies that a conspiracy between KNR and Dr. Ghoumbrial *has already been proven*. *See* (Exhibit "A"). It also indicates that putative class members "might be entitled to recover up to and more than \$2,000 in a class-action lawsuit." *See* (Exhibit "A"). This is despite the fact Plaintiffs have yet to move for class certification, let alone proven any of their baseless allegations against Defendants. The January 26, 2019 post is only the most recent example of Plaintiffs' counsel's

improper use of social media. Without an Order mandating Plaintiffs' counsel immediately remove all false and defamatory social media posts and preventing him from any further attempts to defame the Defendants and try this case in the court of public opinion, Plaintiffs' counsel's wrongful conduct will continue unabated. This will result in severe prejudice, loss of reputation and business, and unnecessary and unwarranted embarrassment to the Defendants.

Generally, "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential rights of the parties." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101, 101 S. Ct. 2193, 68 L. Ed. 2d 693 (1981). The result should be a carefully drawn order that limits speech as little as possible. *See Id.* An acceptable limitation on communication between parties and putative class members is that which is "grounded in good cause and issued with a heightened sensitivity for [F]irst Amendment concerns." *Kleiner v. First Nat'l Bank*, 751 F.2d 1193, 1205 (11th Cir. 1985). However, district courts have held a need for limitations exist where counsel's precertification statements are "factually inaccurate, unbalanced, or misleading. *Katz v. DNC Services Corporation, et al.*, 275 F. Supp. 3d 579, *581, 2017 U.S. Dist. LEXIS 184442. See also, *Maddox v. Knowledge Learning Corp.*, 499 F. Supp. 2d 1338, 1344 (N.D. Ga. 2007); *Jones v. Casey's General Stores*, 517 F. Supp. 2d 1080, 1089 (S.D. Iowa 2007) (holding that Plaintiffs' one-sided, misleading communications with putative opt-in collective members...if permitted to continue, could easily have the effect of tainting the entire putative class and jeopardizing [the] entire litigation."); *Bobryk v. Durand Glass Mfg. Co.*, No. 15-5360, 2013 U.S. Dist. LEXIS 145758 *1, *9 (D.N.J. Oct. 9, 2013) ([T]he court agrees that the website still contains some misleading statements...Accordingly, the court orders Plaintiffs to modify the website to qualify or remove the conclusory language."). Plaintiffs' counsel's defamatory social media posts are precisely the conduct contemplated and prohibited by courts across the country.

In *Katz*, *surpa*, the Court addressed the misleading internet posts of the plaintiff and her counsel in the pre-certification phase of putative class action matter. After weighing the First Amendment rights of the plaintiff and her counsel against the interests of the Court in protecting the integrity of the litigation and protecting the parties from unbalanced and misleading statements, the Court determined limited, tailored restrictions of those posts was required. *Katz*, 275 F. Supp. 3d at 582. Among other things, the *Katz* Court determined the offending post of plaintiff and her counsel “implies that Defendants’ liability has been proven or is virtually uncontested...” *Id.* The offending Facebook posts of the Pattakos Law Firm do precisely the same thing and more. *See* (Exhibit “A”). Here, as in *Katz*, if Plaintiffs’ counsel wished to promote the relief sought in this litigation, he must do so in a way that accurately and explicitly characterizes his clients’ claims as yet unproven. *Id.*

The blatant misrepresentation of Plaintiffs’ counsel’s January 26, 2019 Facebook post states that:

“you might be entitled to recover up to and more than \$2,000 in a class-action lawsuit **based on proof that Dr. Ghoubrial and KNR conspired to overcharge the firm’s clients for medical supplies and fraudulent medical treatment...**

Plaintiffs’ counsel’s statement is not only misleading and conclusory, it is defamatory. *See* (Exhibit “A”). Not only does the post misrepresent the status of class certification, it intentionally implies Plaintiffs’ claims, including their fraud claims, have already been proven. Moreover, this “post” is actually a poorly disguised advertisement soliciting additional putative class members with the promise of thousands of dollars based on an allegedly proven “fraudulent scheme.” *See* (Exhibit “A”).¹ Not only must the offending post be immediately removed, along with all other false,

¹ Not only are Plaintiffs’ counsel’s Facebook posts wholly improper, they are a clear violation of the Ohio Rules of Professional Conduct. Rule 7.1 prohibits a lawyer from making or using false, misleading, or nonverifiable communications about the lawyer or the lawyer’s services. (footnote continued)

misleading and/or defamatory posts, Plaintiffs' counsel's conduct warrants the imposition of a gag order preventing any further similar conduct, as well as sanctions.

Trial courts have "wide discretion" to "protect the judicial process from influences that pose a danger to effective justice." *In re Scaldini*, 8th Dist. No. 90889, 2008-Ohio-6154, ¶ 12. This includes "gag orders". *Id.* Trial courts may issue gag orders *sua sponte*. *Id.* at ¶ 13. When extra-judicial statements by the parties would be "reasonably likely to prejudice the proceedings," issuing a gag order is appropriate. *Id.* at ¶ 15. Such orders will not be overturned without a finding of abuse of discretion. *Id.* at ¶ 13

The Eighth District has supported using gag orders in order to prevent a plaintiff, or a plaintiff's attorney, from making extra-judicial comments in order to prejudice a defendant. *See In re Scaldini*, 2008-Ohio-6154, ¶ 15. A trial court is correct to be concerned when a plaintiff's extra-judicial comments about a defendant negatively impact "the reputation and future" of the defendant in the community. *Id.* at ¶ 14. A gag order, when properly used, protects the rights of the litigants from such prejudice. *Id.* Here, one need only read the social media posts of Plaintiffs' counsel to see he intends for the posts to impact the reputation of these Defendants, now and in the future.

Here, immediate judicial intervention is necessary. Plaintiffs' counsel must be ordered to remove the offending posts without delay and he must be prevented from making any further false, misleading, and/or defamatory posts throughout the pendency of this matter. Without such an order Plaintiffs' counsel will continue to defame these Defendants causing irreparable harm to both their reputations and their abilities to defend against Plaintiffs' unproven claim while at the same time,

(ORPC 7.1). Under Rule 7.1, a communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading. *Id.* The subject Facebook post also runs afoul of ORPC 7.2 and 7.3 because it is an advertisement seeking putative class members but it does not contain the requisite language.

misleading the public in a shameless attempt to solicit additional putative class members. These Defendants have an absolute right to a fair trial by an unbiased jury. The conduct of Plaintiffs' counsel severely jeopardizes those fundamental rights and must be stopped if the integrity of this Court and these proceedings are to be preserved.

Wherefore, Defendants jointly request that this Court immediately issue an Order directing Plaintiffs' counsel to remove the January 26, 2019 Pattokos Law Firm Facebook post. See (Exhibit "A"). Defendants also request the Court issue a gag order preventing Plaintiffs' counsel, and his firm, from posting any additional material or statements on social media, or any other forum, that contain false, misleading and/or defamatory accusations or comments, or that run afoul of the Ohio Rules of Professional Conduct. Defendants request that Plaintiffs' counsel be sanctioned by this Court and ordered to pay all reasonable fees and expenses of undersigned counsel associated with the filing of this Motion and in obtaining the requested relief. Finally, Defendants request an emergency hearing, at the Court's earliest convenience, so the Plaintiffs' counsel's on-going abusing and improper conduct can be addressed and his Firm's social media accounts examined on the record so that all other improper postings can be appropriately addressed.

Respectfully Submitted,

/s/ Bradley J. Barmen

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CERTIFICATE OF SERVICE

The foregoing Defendants Kisling, Nestico & Redick, LLC and Sam Ghoubril, M.D.'s Motion for *Sua Sponte* Order Prohibiting Statements or Dissemination of Information to the Public, Media or Press has been filed on the 30th day of January, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubril, M.D.



The Pattakos Law Firm LLC

@pattakoslaw

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The Pattakos Law Firm LLC

January 26 at 6:08 AM ·

If you have been represented by the law firm of Kisling Nestico & Redick (KNR) and were sent by KNR to be treated by Doctor Sam Ghoubril or his associates you might be entitled to recover up to and more than \$2,000 in a class-action lawsuit based on proof that Dr. Ghoubril and KNR conspired to overcharge the firm's clients for medical supplies and fraudulent medical treatment, including the administration of "trigger point" injections.

Details about the fraudulent scheme, including a copy of the complaint, are available in the comments below.

For more information about how to participate in this lawsuit and recover funds unlawfully charged to you, please contact our law firm by phone at 330.836.8533, or by email at info [at] pattakoslaw.com.



EXHIBIT

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