

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	JUDGE JAMES BROGAN
)	
vs.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS’ BRIEF IN OPPOSITION TO</u>
)	<u>PLAINTIFFS’ THIRD MOTION TO COMPEL</u>
Defendants.)	<u>DISCOVERY FROM THE KNR</u>
)	<u>DEFENDANTS</u>
)	

Plaintiffs’ Third Motion to Compel seeks an order compelling Defendants to provide discovery responses that say what Plaintiffs’ prefer them to say. Defendants have provided detailed responses and information to each and every non-objectionable discovery request Plaintiffs have submitted in this case. As with Plaintiffs’ Second Motion to Compel, this new motion is again unsupported by the Civil Rules and case law as more fully described below, and must be denied.

Interrogatory No. 4-1 and Request for Production No. 6-1 seek information and documents regarding trips where KNR employees and chiropractors or other doctors were present together and the payment of expenses for such trips. While Plaintiffs claim this information “relates directly to the existence of a quid pro quo relationship between KNR and its preferred health-care providers” – and, thus, the merits of their case – they set forth no explanation as to how such information relates to or otherwise overlaps with class certification issues, nor have they attempted to explain how this information relates to certification whatsoever. The destination of trips taken, and who paid what expenses for what trip and when, certainly has no bearing on whether Plaintiffs can meet the elements of Civ.R. 23. Moreover, simply claiming that certification and merits discovery often overlap does not give Plaintiffs the wide-ranging authority to conduct a fishing expedition for information that has **nothing** to do with whether their claims can be certified as a class action. Plaintiffs’ failure to explain how the

requested information relates to in any way to class certification warrants denial of a motion to compel further responses. This is particularly true given the abundance of information already provided by Defendants in response to Plaintiffs' hundreds of discovery requests.

Interrogatory No. 4-3 and Request for Production No. 6-5 seek information and documents surrounding the distribution of "red bag referrals," the medical care providers to which clients receiving such materials were referred, and the reasoning behind such referrals. As Plaintiffs appear to recognize, Defendants did in fact provide detailed responsive information along with emails documentation regarding the identity of medical providers who received referrals after KNR clients responded to "red bag" marketing. Plaintiffs' single concern appears to surround the reasoning behind such procedure, but Plaintiffs only need to re-review Ms. Gobrogge's testimony to garner the response they seek, that the materials were used for marketing purposes. To the extent this information isn't what Plaintiffs want to hear, Plaintiffs are free to ask questions of Defendants at the upcoming depositions scheduled in this case. While Plaintiffs claim to be unsatisfied with the detailed response provided by Defendants, there is certainly no discovery violation.

Interrogatory No. 4-4 seeks information of work performed by investigators for over 60 KNR clients that are not parties to this case. Mr. Pattakos does not represent the 60 individuals from whose files he seeks detailed information about the investigation of their case. Plaintiffs claim that it is "well settled" such mere "factual" information is not privileged or otherwise attorney work product is both incorrect and misses the larger point. KNR has consistently maintained that it cannot identify each and every task that has ever been performed by an investigator since such tasks may not always be documented for every case. Therefore, even if Defendants were to voluntarily breach the confidences of its former clients as Plaintiffs request, it is possible the client file will not reference all work done by the investigator assigned to the case. Defendants have also agreed to stipulate that the work of an investigator varies from case to case, although the fee charged is generally the same. Moreover, once again, Plaintiffs

have failed to explain how this information is required to determine whether their claims can be certified as a class action. Defendants have provided ample information to Plaintiffs' request, and Plaintiffs are free to further inquire at the upcoming depositions. They will be deposing at least two of the investigators. There is no discovery violation.

Request for Production 6-2 seeks documents related to internal monthly goals for KNR paralegals to submit cases to the handling attorney for resolution. It would be unduly burdensome, time consuming, and costly to require Defendants to review thousands of client files from the date of the firm's inception to locate a request to a particular medial provider, and then attempt to determine whether such request was somehow connected to a monthly goal of a particular paralegal assigned to the file. More importantly, Plaintiffs have again set forth no explanation why this information is remotely related to certification, or even to the merits of their claims, nor have they described how such information overlaps with any questions involving class certification. While Plaintiffs were given latitude to question Ms. Gobrogge on this topic at her deposition, this alone does not give Plaintiffs carte blanche to fish for information utterly irrelevant to class certification.

Request for Production 6-3 has been answered and documents have been produced. Defendants have consistently maintained that chiropractor referrals are monitored for marketing purposes, business development, and to ensure that multiple quality medical care providers are available to KNR clients. While there is no reasonable search that can be run to determine the existence of "all" responsive documents, records were produced from a reasonable search of the most likely place responsive documents would be. It should not be surprising that a law firm does not have additional documents explaining the "reasons why" it monitors referrals. Defendants have been unable to locate any beyond what has been produced. Defendants cannot produce what they don't have or cannot reasonably locate.

Lastly, Request for Production No. 6-4 has also been answered and documents have been produced. While Defendants again maintained that there is no reasonable search that can

be run to determine the existence of “all” responsive documents, Defendants conducted a good faith, reasonable search and produced documents responsive to the request. Plaintiffs appear to willfully ignore this in their Motion, as no reference to the documents was made at all. To the extent Plaintiffs seek additional responsive documents, Defendants cannot produce what they don't have or cannot reasonably locate. There is no discovery violation.

Defendants have made a good faith and reasonable search for information and records responsive to each of the particular requests at issue – in accordance with this Court's discovery Orders – and have either provided a detailed response or otherwise produced documents responsive to the requests. Plaintiffs are again manufacturing discovery disputes and false implications that Defendants are withholding responsive information or documents. Defendants have made a good faith effort to provide responsive information. As a result, Plaintiffs' Third Motion to Compel should be overruled.

Respectfully submitted,

/s/ James M. Popson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 4th day of February, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson
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