IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge James A. Brogan **Notice of Filing Motion to Intervene and for Amendment of Confidentiality Order re: Julie Ghoubrial's deposition testimony in Summit County Case No. DR-2018-04-1027**

Plaintiffs hereby give notice to this Court that on February 12, 2019, they filed the attached Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order regarding Julie Ghoubrial's Deposition Testimony in Summit County Domestic Relations Court Case No. DR2018-04-1027, requesting that Julie Ghoubrial's deposition transcript in that case be provided to this Court for *in camera* review.

Respectfully submitted,

/s/ Rachel Hazelet

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Certificate of Service

The foregoing document was filed on February 13, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Rachel Hazelet
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL, Plaintiff, vs. SAMEH N. GHOUBRIAL, ET AL., Defendants.	Case No. DR 2018-04-1027 Judge John P. Quinn **Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoubrial's Deposition Testimony**

I. Introduction and Statement of Facts

This motion to intervene is made for the limited purpose of seeking amendment of this Court's January 25, 2019 Order providing for the confidentiality of the transcript of Plaintiff Julie Ghoubrial's deposition testimony. *See* Jan. 25 Order attached as **Exhibit 1**. This amendment is sought to release Julie's deposition testimony for the limited purpose of subjecting it to *in camera* review by presiding Judge James A. Brogan in Summit County Common Pleas Case No. CV-2016-09-3928 (the "civil case"), and a determination by Judge Brogan of whether portions of that transcript should be released to the plaintiffs in the civil case—Member Williams, Thera Reid, Monique Norris, and Richard Harbour—who are the Intervening Parties here.

The Intervening Parties seek this relief because their investigation has revealed that Julie was questioned for approximately one hour at her deposition in this domestic relations case by Attorney David Best—who also represents Sameh Ghoubrial, M.D. in the civil case, where Dr. Ghoubrial is also a defendant—and these questions pertained precisely to the allegations at issue in the civil case.[1]

[1] As Attorney Best only asked a limited set of questions at Julie's deposition, the Court may relatively efficiently refer to the questions asked by Attorney Best to confirm that these questions pertain to the allegations in the civil case. *See also* **Ex. 5**, attached, containing an excerpt from the pending complaint in the civil case with the pertinent allegations against Dr. Ghoubrial.

Judge Brogan has indeed ruled that this information, to the extent it is contained in Julie's transcript, "is highly relevant, probative, and subject to discovery in" the civil case. *See* Judge Brogan's Feb. 5, 2019 Order, attached as **Exhibit 2**, at 3. Judge Brogan has deferred his decision on whether to order Ghoubrial to produce the transcript in the civil case, in consideration of the "principles of comity and courtesy between separate divisions of courts" and "respect [for] the separate jurisdiction of" this Domestic Relations Court. *Id.* at 4–5. First, Judge Brogan noted that, "a third-party ... may intervene in the Domestic Relations Court for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for in camera inspection." *Id.* Then, after reiterating that "it is well-settled that different divisions of the Common Pleas Court maintain separate and distinct jurisdiction over their own statutorily assigned matters," Judge Brogan held that "this Court is not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausted the usual routes to legitimately obtain the deposition transcript (via intervention in [this] Domestic Relations Court)." *Id.* at 5.

Notably, Dr. Ghoubrial himself sought the January 25, 2019 Confidentiality Order, over Julie's objection, on the sole grounds that it contained "confidential business information regarding [his] business." *See* Dr. Ghoubrial's motion to mark Julie's deposition transcript as confidential, attached as **Exhibit 3**. Dr. Ghoubrial's business practices, however, are precisely at issue in the civil case, where he is alleged to have committed serial fraud against thousands of patients who were directed to treat with him by the Kisling Nestico & Redick law firm ("KNR"). Given the information that has already come to light in the civil case, as summarized below, there is no legitimate argument that the information at issue is "confidential." Indeed, Dr. Ghoubrial only sought the Confidentiality Order in this Court after Plaintiffs' requested a copy of the transcript in the civil case, over Julie's objection on grounds that (1) Dr. Ghoubral's motion was "inappropriate and based on inaccurate and misleading information"; (2) her deposition testimony was not covered

by any preexisting confidentiality agreements; (3) the testimony "was hers and hers alone." *See* Julie's response to Dr. Ghoubrial' motion to mark deposition transcript as confidential, attached as **Exhibit 4**.

Even if the information at issue could legitimately be considered "confidential," it is well established that courts should avoid shielding evidence of fraud on confidentiality grounds. Moreover, the First Amendment guarantees public access to Court proceedings, which may be sealed only when specific on-record findings are made to show that the restrictions are narrowly tailored and necessary to preserve value higher than litigants' and the public's First Amendment rights. No such findings were made in entering the Confidentiality Order at issue here (*See* **Ex. 1**), and no good reason exists to keep this information shielded from the civil proceedings—particularly where the Intervening Parties only seek to subject the transcript to in camera review by Judge Brogan, who would only release the portions of the transcript deemed to be relevant to the civil case, and even then only subject to the protective order in place in that case.

Thus, as explained further below, the above-identified plaintiffs in the civil case hereby seek amendment of the Court's Jan. 25 Confidentiality Order to subject Julie's deposition transcript to Judge Brogan's review and jurisdiction in the civil case, where any legitimately confidential information will be subject to the Protective Order in that case.

II. Law and Argument

A. Civ.R. 24(B) permits intervention to allow applicants to discover information that is subject to confidentiality orders.

Civ.R. 24(B) provides, in pertinent part, that "anyone may be permitted to intervene in an action ... when an applicant's claim or defense and the main action have a question of law or fact in common." Where, as here, "intervention is used to challenge a protective order, courts have expressly held that the legal or factual nexus required by the rule is relaxed," and "satisfied merely by virtue of the fact that the party seeking intervention is making a challenge to the validity of the

protective order." *Adams v. Metallica, Inc.*, 143 Ohio App.3d 482, 491-494, 758 N.E.2d 286 (1st Dist.2001) (citing cases).[2] *See also Meyer Goldberg, Inc. v. Fisher Foods*, 823 F.2d 159, 164 (6th Cir.1987) (intervention is proper where the intervening party seeks "to pursue a related claim in a somewhat similar time frame ..., and to seek out discovery material to assist in that pursuit in which the public has a strong interest."); Civ.R. 54 (any "order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties").

B. The First Amendment guarantees public access to judicial proceedings, which may be restricted only when specific findings are made to show, by clear and convincing evidence, that the restriction is (1) necessary to preserve values higher than litigants' and the public's First Amendment rights, and (2) is narrowly tailored to accomplish this purpose.

"What transpires in the courtroom is public property." *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994) citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569–73, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). "Attendance at a public trial," and, consequently, attention to the docket in litigation proceedings, "promotes fairness and enhances public confidence in the judicial system." *Id.* The guarantee that the workings of the judiciary branch remain public "is a cornerstone of our democracy which should not be circumvented unless there are extreme overriding circumstances." *Id.* citing *State v. Lane* (1979), 60 Ohio St.2d 112, 119, 14 O.O.3d 342, 397 N.E.2d 1338. Accordingly, "closed proceedings," including confidentiality and gag

[2] The *Adams* court held that "the avoidance of repetitive discovery, ... the nature of the protective order, the parties' reliance on it, the ability to gain access to the information in other ways, ... the nature of the material for which protection is sought, the need for continued secrecy, and the public interest involved" are all relevant factors for the court to consider in deciding on whether a protective order should bar disclosure of protected information to the intervening party. *Adams*. 143 Ohio App.3d 482 at 492. While the Intervening Parties here primarily challenge the Jan. 25 Order on First Amendment grounds, the *Adams* factors weigh heavily in favor of disclosure as well, as made clear below. Specifically, (1) the Intervening Parties have no other way to access Julie's deposition testimony unless the Jan. 25 Order is lifted; (2) Julie's testimony goes directly to the merits of the allegations in the civil case, which, (3) pertain to business practices that are not actually confidential, as well as (4) the public's interest in deterring the fraudulent high-volume business practices at issue.

orders, "although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness." *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 509, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984).

Thus, under Ohio law, an order restricting access to judicial proceedings cannot issue without specific findings showing that such order is (1) necessary to preserve values higher than litigants' and the public's First Amendment rights, and (2) that they are narrowly tailored to accomplish this purpose. *State ex rel. National Broadcasting Co. v. Court of Common Pleas of Lake County*, 52 Ohio St. 3d 104, 108, 556 N.E.2d 1120 (1990); *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 32–37. These findings must be "specific," "on the record," and constitute "clear and convincing evidence" that the restrictions are "essential" to protect higher values than those protected by the First Amendment. *Id. See also* Sup.R. 45(E)(2).

Moreover, public access may not be restricted on the mere assumption that reputational harm will result from making judicial proceedings available to the public, because:

> The natural desire of parties to shield prejudicial information contained in judicial records from competitors and the public … cannot be accommodated by courts without seriously undermining the tradition of an open judicial system. Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know.

Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983). *See also Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996) ("The private litigants' interest in protecting their vanity or their commercial self-interest simply does not qualify as grounds for imposing a prior restraint. It is not even grounds for keeping the information under seal."); *Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014) (in "consumer fraud cases," "the public and press enjoy a presumptive right of access to civil proceedings and documents filed therein, notwithstanding the negative publicity those documents may shower upon a company").

C. The Jan. 25 Confidentiality Order is not supported by the required findings that the need for confidentiality outweighs First Amendment considerations, nor could it be.

Here, not only did the Court decline to make any specific on-record findings to show that the Confidentiality Order was justified by clear and convincing evidence, it did not make any findings at all, nor did it refer to Julie's various grounds for objecting to the order. *See* Order, **Ex. 1.** Thus, the Intervening Parties would be entitled to obtain a writ of prohibition or mandamus against the Court to have the Order lifted or declared void. *See* Summit County Court of Appeals No. CA-28642, *State ex rel. Advance Ohio Media v. Breaux*; *State ex rel. Beacon Journal v. Bond*, 98 Ohio St. 3d 146, 160 (2002) ("Although prohibition is the appropriate remedy to invalidate such orders, mandamus is the appropriate vehicle to compel disclosure of specific records").

Moreover, it would not be possible for the Court to make the required findings to justify the Confidentiality Order, because Dr. Ghoubrial cannot show that his purported interest in protecting "confidential business information" outweighs the Intervening Parties' right of public access to Court proceedings. Indeed, the information contained Julie's testimony that Dr. Ghoubrial seeks to keep sealed cannot be considered "confidential" at all because it is already at issue in the pending civil case, where the Plaintiffs come forward with detailed allegations about a fraudulent scheme implemented by Ghoubrial to enrich himself at the expense of the unsuspecting patients directed to treat with him by the KNR firm. *See* **Exhibit 5**, excerpts from Fifth Amended Complaint in civil case containing detailed allegations against Dr. Ghoubrial by his former patients. Supporting these allegations, Dr. Ghoubrial's own employee Richard Gunning, M.D., contacted the Intervening Parties' attorneys in the civil case to report that Ghoubrial pressured him into executing an affidavit, spoke over the phone for two hours about the fraudulent business practices at issue, and has since provided public testimony concerning the same. *See* **Exhibit 6**, excerpt from Plaintiffs' Motion to

Compel the Continued Deposition of Richard Gunning, M.D., at 4-6 (quoting Dr. Gunning's deposition transcript which has been filed and is a public record in the civil case).

Finally, even if the fraudulent practices Dr. Ghoubrial seeks to shield were not already in public view, a Confidentiality Order would be further unwarranted due to the public's interest in understanding the truth about the high-volume and highly advertised fraud at issue in this case. *See, e.g.*, *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) ("[C]ommon sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know."). Even if such information could be legitimately considered "confidential" in the civil case (it cannot), the law abhors confidentiality as an excuse for shielding evidence of fraud. *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 the prejudice of the public's good which vitiates contractual relations."); *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.").[3]

[3] *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

D. To the extent that the Jan. 25 Confidentiality Order purports to bar *in camera* review in the civil case, it is not narrowly tailored, as any legitimate concerns over the "confidentiality" of Julie's testimony are adequately protected by the Protective Order in the civil case.

It is worth emphasizing again that the Intervening Parties are not asking this Court to make Julie's deposition transcript public. Rather, they only seek to subject Julie's testimony to Judge Brogan's *in camera* review to determine which, if any, limited portions of the testimony are subject to discovery in the civil case, where a protective order is already in place to prevent public disclosure of legitimately confidential information. *See* Protective Order in the civil case, attached as **Exhibit 7**. To the extent that this Court's Jan. 25 Confidentiality Order purports to bar *in camera* review by Judge Brogan for this purpose, it cannot possibly be narrowly tailored as required by the First Amendment and controlling Supreme Court of Ohio precedent and court rules. *State ex rel. National Broadcasting Co.*, 52 Ohio St. 3d 104, 108; *Wolff*, 2012-Ohio-3328, ¶ 32–37; Sup.R. 45(E)(2).

Given these protections, and the guarantee that any legitimately confidential information pertaining to Dr. Ghoubrial's business will remain so subject to the Protective Order in the civil case, there is no justification for undermining "the basic tenet of Ohio jurisprudence that cases should be decided on their merits" by keeping Julie's testimony hidden from the Intervening Parties. *Perotti v. Ferguson*, 7 Ohio St.3d 1, 3, 454 N.E.2d 951 (1983). *See also, e.g., Franklin United Methodist Home, Inc. v. Lancaster Pollard & Co.*, 909 F.Supp.2d 1037, 1044-1045 (S.D.Ind.2012) ("[C]ourts asked

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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.").

to issue discovery orders in litigation pending before them have not shied away from" compelling "confidential" information, even if it would modify or circumvent a discovery order by another court, if … such a result was considered justified.") (citing cases); *United States v. GAF Corp.*, 596 F.2d 10, 16 (2d Cir. 1979) ("[Protective] orders are subject to modification to meet the reasonable requirements of parties in other litigation."); *Meyer Goldberg, Inc. v. Fisher Foods*, 823 F.2d 159, 163-164 (6th Cir.1987) ("Given that proceedings should normally take place in public, imposing a good cause requirement on the party seeking modification of a protective order is unwarranted. If access to protected fruits can be granted without harm to legitimate secrecy interests, or if no such interests exist, continued judicial protection cannot be justified. In that case, access should be granted even if the need for the protected materials is minimal.").

III. Conclusion

For the foregoing reasons, the Court should grant this motion to intervene, and amend the Jan. 25 Confidentiality Order to subject Julie's deposition transcript to Judge Brogan's review and jurisdiction in the civil case, where any legitimately confidential information will be subject to the Protective Order in that case.

Respectfully submitted,

/s/ Peter Pattakos
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Attorneys for Intervening Parties Member Williams, Thera Reid, Monique Norris, and Richard Harbour

Certificate of Service

The foregoing document was filed on February 12, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

Julie Ghoubrial	*	Case No.: DR 2018-04-1027
Plaintiff	*	Judge Quinn
vs.	*	Magistrate Dennis
Sameh N. Ghoubrial, et al.	*	**ORDER TO MARK DEPOSITION TRANSCRIPT AS CONFIDENTIAL**
Defendants	*	**INFORMATION**

Based upon written motion and for good cause shown, the following terms shall apply:

1. The deposition transcript of Plaintiff taken on or about October 12, 2018, shall remain under seal of this Court and shall not be distributed, copied, or provided to any third parties.

2. The deposition transcript shall only be used by the parties to the within action.

3. The Court Reporter shall mark each and every one of the pages contained in the deposition as confidential and subject to the Protective Order previously executed by the parties and filed with this Court.

EXHIBIT 1

4. This deposition transcript shall only be used by parties and counsel for the limited purposes of the within divorce case and for no other purposes of any kind or nature.

IT IS SO ORDERED.

____
Judge Quinn

Approved By:

/s/ Adam R. Morris
Adam R. Morris (0086513)
Randal A. Lowry (0001237)
Mora Lowry (0070852)
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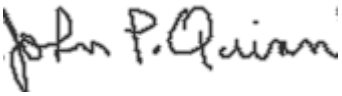
The foregoing document styled 'ORDER TO MARK DEPOSITION TRANSCRIPT AS CONFIDENTIAL INFORMATION' and consisting of 2 pages plus this signature page is hereby approved and made an Order of this Court.

IT IS SO ORDERED



Judge QUINN, JOHN

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.	)	CASE NO.: CV-2016-09-3928
	)	
Plaintiffs	)	JUDGE JAMES A. BROGAN
-vs-	)	
	)	
KISLING NESTICO & REDICK LLC, et al.	)	**O R D E R**
	)	
	)	
Defendants		

- - -

This matter comes before the Court upon (1) Plaintiffs' Motion to Compel discovery from Defendant Minas Floros and (2) Plaintiffs' Motion to Compel discovery from Defendant Sam Ghoubrial, M.D.

(1) Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros

Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros is OVERRULED because Plaintiffs failed to comply with Civ.R. 37(A)'s requirement to make a good faith attempt to confer with opposing counsel prior to asking for Court action. The purpose of this requirement is to endorse and enforce the view that, in general discovery is self-regulating and should require court intervention only as a last resort. See Staff Note, Civ.R. 37.

(2) Plaintiffs' Motion to Compel Discovery from Defendant Sam Ghoubrial, M.D.

Plaintiffs' Motion to Compel Discovery from Defendant Sam Ghoubrial, M.D. is GRANTED as Plaintiffs have demonstrated compliance with Civ.R. 37 in bringing the motion to the Court's attention after attempting to confer with opposing counsel over the issues raised. Further, the motion is granted to the extent that the Court order and requires Defendant Ghoubrial to provide complete answers to Plaintiffs' discovery requests, subject to the following Court rulings on the objections posed by Defendant Ghoubrial in response to each discovery request:

EXHIBIT 2

Rulings on Objections to Plaintiff Norris's First Set of Requests for Admission:
Objections in RFA 4, 9, 17 and 18 are overruled.

Rulings on Objections to Plaintiff Norris's First Set of Interrogatories:
Interrogatory 1 – objection overruled
Interrogatory 2 – objection overruled
Interrogatory 3 – objection overruled
Interrogatory 4 – objection overruled
Interrogatory 5 – objection overruled
Interrogatory 6 – objection overruled
Interrogatory 7 – objection overruled
Interrogatory 8 – objection overruled (the information sought is not covered by the attorney-client privilege because the KNR attorneys do not represent Dr. Ghoubrial)
Interrogatory 9 – objection overruled
Interrogatory 10 – objection sustained
Interrogatory 11 – objection sustained
Interrogatory 12 – objection sustained
Interrogatory 13 – objection overruled
Interrogatory 14 – objection overruled
Interrogatory 15 – objection sustained
Interrogatory 16 – objection overruled (you need not identify the patient name)
Interrogatory 17 – objection overruled (you need not identify the patient name)
Interrogatory 18 – objection overruled
Interrogatory 19 – objection overruled
Interrogatory 20 – objection overruled
Interrogatory 21 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing any patient names)
Interrogatory 22 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing patient names)
Interrogatory 23 – objection overruled
Interrogatory 24 – objection sustained in part (limit the answer to injections to KNR clients in 2015 and 2016 without reference to patient names)
Interrogatory 25 – objection sustained in part (limit the answer to injections between 2015 and 2016 without reference to patient names)
Interrogatory 26 – objection overruled
Interrogatory 27 – objection overruled
Interrogatory 28 – objection overruled
Interrogatory 29 – objection overruled
Interrogatory 30 – objection sustained
Interrogatory 31 – objection overruled
Interrogatory 32 – objection overruled
Interrogatory 33 – objection overruled (do not identify patient names)
Interrogatory 34 – objection overruled
Interrogatory 35 – objection overruled
Interrogatory 36 – objection overruled
Interrogatory 37 – objection overruled
Interrogatory 38 – objection overruled

Interrogatory 39 – objection overruled
Interrogatory 40 – objection sustained
Interrogatory 41 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 42 – objection overruled (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 43 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 44 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 45 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 46 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)
Interrogatory 47 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Rulings on Objections to Plaintiff Norris's First Set of Requests for Production of Documents:

RFP 1 – objection sustained
RFP 2 – objection overruled
RFP 3 – objection overruled
RFP 4 – objection sustained
RFP 5 – objection overruled
RFP 6 – objection overruled
RFP 7 – objection overruled
RFP 8 – objection overruled
RFP 9 – objection overruled
RFP 10 – objection sustained
RFP 11 – objection overruled
RFP 12 – objection overruled
RFP 13 – objection overruled
RFP 14 – objection overruled
RFP 15 – objection overruled
RFP 16 – objection sustained
RFP 17 – objection overruled
RFP 18 – objection overruled
RFP 19 – objection overruled
RFP 20 – objection sustained
RFP 21 – objection sustained
RFP 22 – objection overruled
RFP 23 – objection sustained
RFP 24 – objection overruled
RFP 25 – objection overruled
RFP 26 – objection overruled
RFP 27 – objection overruled
RFP 28 – objection overruled

Rulings on Objections to Plaintiffs' Second Set of Requests for Production of Documents:

Plaintiffs seek a portion of the transcript of Julie Ghoubrial's deposition taken in Domestic Relations Court Case No. DR2018-04-1027, wherein Julie Ghoubrial was questioned about the allegations relating to this lawsuit. Plaintiffs seek only a portion of the transcript, indicating they have reliable information that Attorney David Best posed questions to Julie Ghoubrial about the allegations in the instant lawsuit.

Defendant Ghoubrial objected to production of the transcript because there is a Confidentiality Order in place by Judge Quinn in Domestic Relations Court.

Upon review of the exhibits filed by Plaintiffs' it appears Mr. Ghoubrial moved the Domestic Relations Court to deem the entire deposition transcript confidential because the testimony contained "confidential business information." That order was granted over Julie Ghoubrial's objections. The Order states the transcript "shall only be used for the limited purposes of the within divorce case and for no other purpose of any kind or nature."

Plaintiffs cite *Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005 Ohio 680, for the proposition that a court may order disclosure of information (covered by another court's confidentiality order) when pertinent to pending civil and criminal actions. Plaintiffs ask this Court to compel a copy of the transcript for *in camera* review pursuant to the *Grantz* case. Plaintiffs argue there is no legitimate argument for shielding Julie Ghoubrial's deposition testimony from these proceedings particularly as related to the veracity of Plaintiffs' allegations against Dr. Ghoubrial in this lawsuit.

Defendant Ghoubrial objects to production of the deposition transcript because it is protected by a confidentiality designation by the Domestic Relations Court. Defendant further distinguishes the *Grantz* case as it dealt exclusively with the release of a juvenile's records only after the juvenile and his parents executed waivers authorizing the release pursuant to R.C. 1347.08. Defendant Ghoubrial also argues the three-part test *Grantz* utilized for *in camera* inspection of such records is only applicable to confidential juvenile records and *Grantz* is wholly inapplicable to getting confidential records from a Domestic Relations court.

The Court agrees that *Grantz* is distinguishable and inapposite to the issues raised herein. There are principles of comity and courtesy between separate divisions of courts and courts respect the separate jurisdiction of each separate division of court. The proper method to obtain discovery under such circumstances is intervention in the proceedings. For example, a third-party (such as Plaintiffs' counsel) may intervene in the Domestic Relations Court

proceedings for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for *in camera* inspection.

Under the circumstances, and upon Plaintiffs' representation that Julie Ghoubrial was in fact questioned about allegations in this lawsuit, the Court finds the information inquired into during Julie Ghoubrial's deposition testimony is highly relevant, probative, and subject to discovery in this case. However, it is well-settled that different divisions of the Common Pleas Court maintain separate and distinct jurisdiction over their own statutorily assigned matters and this Court is not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausting the usual routes to legitimately obtain the deposition transcript (via intervention in the Domestic Relations Court). Accordingly, the objection is sustained regarding Request for Production of Documents 1.

Rulings on Objections to Plaintiffs' Second set of Interrogatories:
Interrogatory 1 – objection overruled

Rulings on Objections to Plaintiffs Second Set of Requests for Admission:
Objections in RFA 1- 4 are overruled

Finally, Defendant Ghoubrial's sur-reply brief sought sanctions against Plaintiffs' counsel under Civ.R. 11 and R.C. 2323.51. This separate request for sanctions is OVERRULED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros is OVERRULED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Ghoubrial is GRANTED subject to the separate rulings on the objections in the body of the Decision.

IT IS SO ORDERED.

JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: ALL COUNSEL/PARTIES OF RECORD

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

Julie Ghoubrial	*	Case No.: DR 2018-04-1027
Plaintiff	*	Judge Quinn
vs.	*	Magistrate Dennis
Sameh N. Ghoubrial, et al.	*	**MOTION TO MARK DEPOSITION TRANSCRIPT AS CONFIDENTIAL**
Defendants	*	**INFORMATION**

Now comes Defendant, Sameh N. Ghoubrial, by and through counsel, and hereby requests an order from this Court requiring the designation of the Plaintiff's deposition in this matter taken on October 12, 2018 as confidential information in accordance with the Stipulated Protective Order filed on August 23, 2018.

More specifically, the Defendant took the deposition of Plaintiff on October 12, 2018. The Plaintiff testified to confidential business information regarding Defendant's business. Further, Plaintiff is an office holder in Defendant's business. Defendant has attempted to resolve this matter with Plaintiff's counsel. Plaintiff's counsel has refused to abide by the terms of the Stipulated Protective Order.

Wherefore, Defendant, Sameh N. Ghoubrial, is hereby requesting an order from this Court requiring the Plaintiff to mark the deposition transcript as confidential information in accordance with the Stipulated Protective Order and follow all terms of the Stipulated Protective Order.

EXHIBIT 3

Respectfully submitted,

/s/ Adam R. Morris
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Randal A. Lowry (0001237)
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(330) 576-3363

CERTIFICATE OF SERVICE

I, Adam R. Morris, do hereby certify that a copy of the foregoing has been sent via e-mail this 24th day of January, 2019 to:

Gary Rosen, Esq.
grosen@goldman-rosen.com

/s/ Adam R. Morris
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IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL Plaintiff, -vs- SAMEH N. GHOUBRIAL, et al Defendants.	)	CASE NO: DR-2018-04-1027 JUDGE QUINN MAGISTRATE DENNIS **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO MARK DEPOSITION TRANSCRIPT AS CONFIDENTIAL INFORMATION**

Comes now Plaintiff, **Julie Ghoubrial**, by and through undersigned counsel, in response to the Motion to Mark Deposition Transcript as Confidential Information, filed by Defendant, Sameh N. Ghoubrial, on January 24, 2019, in this matter, and states the following:

1. The Defendant's request to mark the deposition transcript from Defendant's deposition of Plaintiff on October 12, 2018, is inappropriate and based upon inaccurate and misleading information.
2. The parties previously agreed upon, and the Court issued on August 23, 2018, a Confidentiality Agreement and Stipulated Protective Order, which is attached hereto as ***Plaintiff's Exhibit 1***.
3. That Order states: "This Protective Order shall govern all designated documents, tangible things, testimony, and information produced, provided, or made available in this action by the Third-Party Defendant business entities hereto, Blue Streak Flight Group, LLC, Clearwater Billing Services, LLC, GLTCP Health Care Services, Inc., Sam H. Ghoubrial, MD, Inc., SGM Holdings, Inc., and TPI Airways, LLC"
4. The Deposition of Plaintiff on October 12, 2018, is plainly not covered by the terms of the Confidentiality Agreement and Stipulated Protective Order.
5. The Confidentiality Agreement and Stipulated Protective Order pertains solely to discovery materials produced by the Third-Party Defendant business entities.
6. Plaintiff's deposition testimony is not the testimony of any of the business entities. Rather, Plaintiff's testimony was hers and hers alone.
7. Defendant's interpretation of the Confidentiality Agreement and Stipulated Protective Order is

EXHIBIT 4

erroneous and should be disregarded by this Court.

WHEREFORE, Plaintiff prays for the following:

1. That Defendant's Motion be dismissed, and all relief requested therein be denied;
2. For such other relief as shall be deemed necessary and proper.

Respectfully submitted,

/s/ Gary M. Rosen

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Attorneys for Plaintiff, Julie Ghoubrial

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was sent by email, on this **24th** day of **January, 2019**, to, Randal A. Lowry & Adam R. Morris, Attorneys for Defendant, Randal A. Lowry & Associates, 4000 Embassy Parkway, Suite 200, Akron, Ohio 44333, *Email: rlowry@randallowry.com & amorris@randallowry.com,* and a courtesy copy was sent by email to: **Stephen P. Griffin, Co-Counsel for Third-Party Defendants**, Griffin Law, LLC, 4051 Whipple Avenue NW, Suite 201, Canton, Ohio 44718, sgriffin@griff-law.com and **David M. Best, Co-Counsel for Third-Party Defendants**, David M. Best Co., LPA, 4900 West Bath Road, Akron, Ohio 44333, dmbest@dmbestlaw.com

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clients.

81. After all the deductions KNR made from Ms. Reid's settlement proceeds to pay attorneys fees and other expenses incurred at KNR's direction, including to doctors, chiropractors, loan companies, and medical imaging and billing companies, Ms. Reid received only $12,349.70 of the $48,720 that KNR recovered on her behalf. Ms. Norris received $1,845.91 of her $6,732.55 settlement.

F. Defendant Ghoubrial intentionally exploits KNR clients by administering overpriced injections regardless of the clients' needs and takes exorbitant profits from selling medical devices to the clients without disclosing his financial interest in the transactions.

82. During Ms. Norris's treatment by Dr. Floros at Akron Square Chiropractic, which she received at the KNR Defendants' instruction, Dr. Floros told Ms. Norris that he intended to refer her to "pain management," and that Defendant Sam Ghoubrial, M.D. was "who we use for that."

83. According to testimony given by another former KNR client, Debbie Andrews, in Summit County Court of Common Pleas Case No. CV-2013-08-4148, KNR clients are shuttled by a van from Akron Square Chiropractic directly to Ghoubrial's office.[2] Ms. Andrews testified that she "filled out her KNR paperwork" at Akron Square after having been picked up by a van owned by ASC, and was then taken by the same van ("the van takes you everywhere," she said) to Dr. Ghoubrial's office after "the chiropractor," Dr. Floros, told her that "she would be going to a doctor" "for medicine." According to Ms. Andrews, "they put you on a little table," "the doctor [Ghoubrial] comes in and shakes your hand and meets you, and he feels where it hurts and all," "and

[2] The relevant testimony from the Andrews case is summarized in the defendant's response in opposition to Ghoubrial's motion for a protective order filed on August 18, 2014 in that case (CV-2013-08-4148) and publicly available for review on the Summit County Clerk of Courts' online docket along with the deposition transcripts and other exhibits attached to the defendant's brief.

EXHIBIT 5

then he puts shots in my back," "cortisone shots," and "then he gives you, when you leave there, you go out front and they give you the prescriptions and an appointment card for next time." According to Ms. Andrews, her interactions with Dr. Ghoubrial lasted between 5 and 15 minutes.

84. Former KNR attorneys have informed Plaintiffs that Ghoubrial would often travel to the offices of KNR's "preferred" chiropractors statewide to treat KNR clients, and testimony in the *Andrews* case suggests that Ghoubrial would travel by private plane to do so.

85. Peer-reviewed research published in the Annals of Internal Medicine in April of 2017, showed "no difference in pain or function between a single intramuscular injection of [corticosteroids] compared with placebo in patients with acute low back pain."[3] A review of peer-reviewed research published in the Journal of Family Practice in May of 2011 concluded that, "short courses of systemic steroids [such as cortisone] ... are ineffective."[4]

86. Despite their dubious efficacy, Ghoubrial administered "trigger point injections" of cortisone and other pain-blocking or anti-inflammatory medications as a matter of policy to KNR clients who were directed to treat with him by the firm because the administration of shots required a medical procedure—as opposed to simply issuing a prescription for pills—for which he could obtain a higher fee for services. Ghoubrial's goal in treating KNR clients was to administer as many injections to them as possible so as to inflate their medical bills as much as possible. Ghoubrial routinely pressured and coerced KNR clients into accepting these injections, including by threatening to withhold a prescription for pills if the client would not accept the injections, telling

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[3] Qaseem A, Wilt TJ, McLean RM, Forciea MA, for the Clinical Guidelines Committee of the American College of Physicians. "Noninvasive Treatments for Acute, Subacute, and Chronic Low Back Pain: A Clinical Practice Guideline From the American College of Physicians," *Ann Intern Med.* 2017;166:514–530. doi: 10.7326/M16-2367

[4] Mark Johnson, DO, Jon O. Neher, MD, Leilani St. Anna, MLS, AHIP, "How effective—and safe—are systemic steroids for acute low back pain?" *J Fam Pract.* 2011 May; 60(5): 297-298.

the clients that if they weren't in enough pain to receive injections then they weren't in enough pain to receive a prescription for pain pills. Ghoubrial would also frequently administer these injections against the clients' will, sneaking the needle into the client's back without warning the client that he was going to do so, and would then tell the client afterwards that he did it for the client's own good, and that he was injecting the medicine "into the pain." Ghoubrial instructed the other practitioners who worked for him to employ the same coercive tactics in treating KNR clients. He would often scold and discipline his employees for failing to administer enough of these injections when treating KNR clients off-site, and routinely admonished his employees that his practice would not make money if these injections were not administered to the KNR clients at a high enough rate.

87. Because a relatively high proportion of KNR clients are black people, Ghoubrial would sometimes refer to "trigger point injections" as "n*gger point injections" (referring to the racist slur), and also would joke that he was in the "Afro-puncture" business.[5]

88. Like KNR's "partner" chiropractors, Ghoubrial does not accept payment from insurance companies for his services to KNR clients even though he accepts insurance payments from other patients, a practice by which he purports to be entitled to a higher percentage of the KNR clients' settlements than he would otherwise be entitled under applicable law (*e.g.*, O.R.C. 1751.60 and O.A.C. 5160-1-13.1) and prevailing insurance-industry standards, and also allows him to avoid scrutiny from insurance companies of the treatment he provided to the KNR clients.

[5] Defendant Nestico shared in Dr. Ghoubrial's casual racism and was not shy about it. For example, on November 27, 2012, KNR attorney Nomiki Tsarnas emailed all KNR attorneys under the subject line, "Gotta love our clients!!!" to inform her colleagues that she just learned that a KNR client went to a pawn shop to sell a restaurant gift-certificate that the firm had provided the client (KNR, as a matter of firm policy, provides these gift certificates worth approximately $25 to its clients as a parting gift when the clients sign off on their settlement memoranda). In response to this email from Tsarnas, Nestico replied, also copying all KNR attorneys, "They don't like Macaroni Grill? Next time get Popeye's chicken," referring to the common stereotype that black people love to eat fried chicken. *See* Demby, Gene, "Where Did That Fried Chicken Stereotype Come From?," NPR.org (May 22, 2013), available at https://www.npr.org/sections/codeswitch/2013/05/22/186087397/where-did-that-fried-chicken-stereotype-come-from

89. Dr. Ghoubrial would often administer multiple injections to KNR clients, to different parts of the spine, in the same appointment, charging anywhere from approximately $880 to $1280 for each injection, which was an extremely high price for the treatment he provided. It was well-known among KNR attorneys (including Defendants Nestico and Redick) and other personal injury lawyers statewide that that the same treatment Dr. Ghoubrial provided, including the injections, could be obtained at a fraction of the price from other doctors, who would charge approximately $300 to $400 for the same injections that Ghoubrial would charge $880 to $1280 for.

90. The KNR Defendants also knew that the insurance companies who represented the defendants in their clients' cases viewed Dr. Ghoubrial's treatment of KNR clients with extreme skepticism, and that their clients' cases suffered as a result of KNR directing these clients to treat with Dr. Ghoubrial. For example, representatives from Nationwide Insurance company repeatedly informed KNR attorneys that they refused to pay anything for Ghoubrial's treatment of KNR clients, and representatives from other insurance companies repeatedly told KNR attorneys that they disregarded Ghoubrial's treatment and would only pay a small fraction of his medical bills if at all. These insurance companies, too, were aware that other competent doctors statewide would charge approximately $300 to $400 for the same injections that Ghoubrial would charge $880 to $1280 for.

91. KNR attorneys expressed their concerns over Ghoubrial's treatment of KNR clients to firm management, including Defendants Nestico and Redick. These attorneys complained to Nestico and Redick that KNR attorneys could not legitimately claim to be acting in their clients' best interests by sending the clients to treat with Ghoubrial, knowing that the insurance companies viewed his treatment with such extreme skepticism, and knowing that the clients could have obtained the same treatment for a fraction of the price elsewhere. The KNR Defendants did not change their practices in response to these complaints and subjected the attorneys who made these

complaints to discipline and ridicule. KNR maintained its relationship with Dr. Ghoubrial, as described above, believing that his reliably inflated medical bills would inure to the benefit of the law firm in the form of higher attorneys' fees on cases that would otherwise not be worth as much to the firm as well as kickback payments from Ghoubrial.

92. Ms. Andrews's testimony regarding Ghoubrial, quoted above, is consistent with the experience of Named Plaintiffs Norris and Harbour.

93. Ms. Norris was sent by Dr. Floros to meet Dr. Ghoubrial at an unmarked facility on Brown Street and Cole Avenue in Akron. The facility was crowded with more than a dozen other people who were apparently there for treatment. Ms. Norris was shocked that this facility was a doctor's office given its condition. Ms. Norris met with Dr. Ghoubrial for approximately 15 minutes at this facility, during which Dr. Ghoubrial examined her briefly, expressed his intent to inject her with medication that Ms. Norris declined, and handed her an electrical-nerve-stimulation device (a "TENS unit") telling her that it would "help her nerves" and "make her feel better," and briefly instructed her on how to use the device.

94. According to the April 2017 peer-reviewed study published in the Annals of Internal Medicine quoted above (*See* FN2, above), TENS Units "had no effect on pain or function compared with control [or 'sham'] treatments."

95. In concluding his first appointment with Ms. Norris, Dr. Ghoubrial asked Ms. Norris, "what kind of medicine do you want?," apparently offering to write her a prescription for a drug of her choice. Ms. Norris, who works in the healthcare industry, currently as a pharmacy technician, was disappointed that this doctor was apparently liberally offering to prescribe her addictive narcotics regardless of her need for them.

96. Another former KNR client, Naomi Wright, has informed Plaintiffs that at her initial appointment with Dr. Ghoubrial, he offered to prescribe her Oxycontin, a painkiller widely known

to be highly and dangerously addictive. When Ms. Wright told Dr. Ghoubrial that she would be fine taking Ibuprofen, a non-addictive anti-inflammatory, Dr. Ghoubrial scoffed and said that Ibuprofen "wouldn't make a dent" in her pain.

97. Ms. Norris shortly complained to her KNR attorney about the treatment that she received from Dr. Ghoubrial and the condition of the Brown Street facility and told him that she wanted to see another physician at the Akron General Health and Wellness Center in Green. Her KNR attorney advised her not to do this, saying of Ghoubrial and Floros that, "we all work together in partnership," and that it would hurt her case if she saw another doctor. The KNR attorney also told Ms. Norris that the other people at the crowded Brown Street facility were "just people who are having problems with their accidents."

98. Dr. Ghoubrial did not tell Ms. Norris that she would be charged for the TENS unit that he sent her home with, though $500 was ultimately deducted from her KNR settlement to pay Dr. Ghoubrial for it through Clearwater Billing Services, as reflected on the settlement memorandum attached as **Exhibit D**. TENS units are readily available for purchase at various outlets, easily located by an internet search, for prices ranging from $34.99 to $150.00.

99. In the aforementioned *Andrews* case (Summit County C.P. No. CV-2013-08-4148), the following pertinent facts were established regarding Dr. Ghoubrial and his distribution of TENS Units to KNR clients: (A) It was undisputed that Ghoubrial had provided a TENS unit to the plaintiff in January 2013, for which he charged her $500.00. Ms. Andrews further testified that Ghoubrial's receptionist "handed her a TENS unit on the way out the door and said that the directions were included, but otherwise provided no instruction on how to use the TENS unit. ... Dr. Ghoubrial never sent the Plaintiff a bill for his medical care, or for the cost of the TENS unit;" (B) As part of his application for the license required to sell a TENS unit, Ghoubrial provided the State of Ohio with a Certificate of Insurance from Nationwide Insurance indicating that the "Certificate

Holder" was "Sam N. Ghoubrial, Inc. and Clearwater Billing, LLC." The same Certificate of insurance indicated that the "insured" was "Tritec Sales, Inc."; (C) The Ohio Secretary of State's records reveal that there is an Ohio corporation called Tritec Distribution Services, Inc., and a Reinstatement and Appointment of Agent for that corporation was filed on November 4, 2011 and signed by two "authorized representatives," one of which was Defendant Nestico; (D) The Defendants in the *Andrews* case submitted a photograph of a TENS unit that they believed to have been provided to another Ghoubrial patient reflecting that the TENS unit came from "Tritec Medical Supply" on Eagon Street, in Barberton, Ohio, the same street address identified in the Certificate of Insurance that Dr. Ghoubrial provided to the State of Ohio in his application for the license to sell TENS units.

100. Documents filed in the *Andrews* case also show that Dr. Ghoubrial provided other Tritec products to KNR clients, including neck, knee, and back braces for which KNR clients were charged from their settlement proceeds just as Ms. Norris was for the TENS unit. Former KNR attorney Gary Petti has further informed the Plaintiffs that KNR clients were routinely charged for neck, knee, and back braces provided by or through Ghoubrial's office. This equipment was all distributed through Tritec.

101. At Dr. Ghoubrial's deposition in the *Andrews* case, he did not have an issue with a single question posed to him until the issue of Tritec and its ownership came up. When the defense attorneys attempted to question Dr. Ghoubrial about Tritec, Ghoubrial refused to answer any more questions, postponed the remainder of the deposition, and filed a motion for protective order asking the court to excuse him from answering any further questions about Tritec. The *Andrews* case shortly resolved before any additional facts were discovered about Tritec. Ghoubrial was represented in the *Andrews* case by Attorney David Best, who entered an appearance on behalf of the KNR Defendants in this lawsuit in April of 2018.

102. Plaintiffs have since discovered, through information provided to them by Tritec representatives, that Ghoubrial paid Tritec $27.50 for each of the TENS units that Ghoubrial then sold to KNR clients for $500, a profit margin of more than 1,800%. KNR clients, including Ms. Norris, were never informed of Ghoubrial's financial interest in these transactions. These KNR clients were not informed that Ghoubrial took a profit from these transactions at all, let alone at such an exorbitant level.

103. Mr. Harbour was represented by KNR in connection with four separate cases involving four separate car accidents he was in between 2011 and 2016. In the first case, in 2011, he was instructed by KNR attorney Mark Lindsey that he should treat with chiropractors from Rolling Acres chiropractic, and a doctor named Sam Ghoubrial, who Mr. Lindsey referred to as "our doctor."

104. Mr. Harbour saw Dr. Ghoubrial several times in connection with this first accident over the course of only a few months. Each time he saw Dr. Ghoubrial, the appointment took approximately ten minutes, Dr. Ghoubrial did not check on any of his vital signs, he gave Mr. Harbour an injection of some kind of unspecified medication, and he gave Mr. Harbour a prescription for Flexeril, a muscle relaxer.

105. Mr. Harbour has cerebral palsy, and he did not react well to the Flexeril when he first took it, so he stopped taking the Flexeril after only having taken it once or twice. When he went back to Dr. Ghoubrial's office for his second appointment with him, he gave Harbour another prescription for Flexeril. When Harbour told Ghoubrial that he did not need this prescription because he still had a whole bottle of the medication at home, Ghoubrial did not respond, and indicated that Harbour should take the prescription anyway.

106. Harbour then asked his KNR attorneys about why Dr. Ghoubrial would give him this prescription when Harbour told him he did not need it, and Defendant Redick said in response that Harbour should get the prescription filled even if he wasn't taking the pills, because it was

important for the case that it looked like he was following the doctor's orders.

107. At one of Mr. Harbour's appointments with Dr. Ghoubrial in connection with the 2011 accident, Ghoubrial gave Harbour a TENS unit to take home with him. Ghoubrial never informed Harbour that he would be charged for the device, he never informed Harbour that he would earn a profit from charging him for this device, and he never informed Harbour or suggested that Harbour could or should obtain a similar device for a lower price elsewhere.

108. When Mr. Harbour retained KNR a second time in connection with a car accident that happened in 2012, he was directed by his KNR attorneys to treat with Dr. Ghoubrial again. Again, Dr. Ghoubrial gave him a TENS unit to take home. When Harbour told Ghoubrial that he still had his TENS unit from the 2011 accident, Ghoubrial simply told him he should take another one. Again, Ghoubrial never informed Harbour that he would be charged for the device, he never informed Harbour that he would earn a profit from charging him for this device, and he never informed Harbour or suggested that Harbour could or should obtain a similar device for a lower price elsewhere.

109. As with his appointments with Dr. Ghoubrial in connection with the 2011 accident, each time Harbour saw him in connection with the 2012 accident, the appointment took approximately ten minutes, Dr. Ghoubrial did not check on any of his vital signs, he gave Harbour an injection of some kind of medication, and he gave him a prescription for Flexeril.

110. Harbour trusted and assumed that KNR, as his attorneys, and Ghoubrial, as his doctor, would not charge him extreme markups for medical treatment or supplies, and would not provide him such treatment or supplies at an extreme profit without informing him that he could obtain the same treatment or devices at a lower cost from alternative sources.

111. Approximately two days after one of his appointments with Dr. Ghoubrial in connection with the 2012 accident, Harbour complained to his chiropractor Dr. Auck that he did

not feel well. Dr. Auck checked Harbour's blood pressure in response to his complaint, found that it was extremely high, and recommended that he go immediately to a hospital. Harbour thus went immediately to the emergency room at Barberton Hospital where he was treated for high blood pressure. After this episode, Harbour informed his KNR doctors that he would no longer treat with Dr. Ghoubrial again for any reason.

112. KNR deducted $2,050 from Mr. Harbour's settlement for the 2011 accident, and $1,950 from his settlement for the 2012 accident, to pay Dr. Ghoubrial for his fraudulent treatment of Mr. Harbour. In exchange for this $4,000, Ghoubrial provided nothing more than approximately 5 trigger point injections that Mr. Harbour could have obtained from any of a number of other sources for approximately $1,500 in total, two TENS units that Ghoubrial paid $27.50 for, and a handful of prescriptions for "muscle-relaxer" pills that Harbour never took but that Ghoubrial and Harbour's KNR lawyers told him he needed to pay for anyway.

113. Not only did the KNR Defendants seek to profit from inflated attorneys' fees resulting from Ghoubrial's inflated medical bills, Defendants Nestico and Floros also received direct cash kickbacks from Dr. Ghoubrial in the form of cash kickbacks that the parties referred to in code as "olives." The Defendants also paid kickbacks to one another by way of various joint real estate investments and other corporate entities through which the Defendants hid the profits they unlawfully took from the KNR clients.

G. KNR fraudulently charges clients "investigation fees" for investigations that never take place.

114. Since its founding in 2005, KNR has entered into contingency-fee agreements with its clients which contain the following standard language authorizing recovery of reasonable advanced expenses:

> The Attorneys shall receive as a fee for their services, one-third of the total gross amount of recovery of any and all amounts recovered, and

4. When his deposition finally took place, Dr. Gunning displayed a selective memory of his conversation with Pattakos, and Defendants' attorneys repeatedly coached him with speaking objections and instructed him not to answer questions about highly relevant subjects.

When Dr. Gunning's deposition finally took place on December 12, Dr. Gunning claimed that he could not remember substantial portions of his October 2 conversation with Pattakos, in part because he was on an anti-anxiety medication, Ativan, during the phone call. *See*, *e.g.*, Gunning Tr. at 32:1–6. Gunning did unambiguously confirm, as noted above, that Ghoubrial "bullied" him into executing an affidavit, that he spent two hours on the phone with Pattakos on October 2 discussing Ghoubrial's practice, and that he has wanted to leave Ghoubrial's practice for years, but has been unable to do so, in part because he fears retaliation from Ghoubrial. *Id.* at 10:13–25, 11:1–11, 11:24–13:10, 55:23–56:14, 60:1–12; 63:7–64:19, 79:4–13. Gunning also provided the following noteworthy testimony as to Plaintiffs' allegations that Ghoubrial and the KNR Defendants are engaged in a scheme to enrich themselves by administering overpriced "trigger-point" injections and medical supplies to KNR clients regardless of the clients' wants or needs for such treatment:

- Since approximately 2011, Dr. Ghoubrial—who runs a family practice based in Wadsworth, Ohio—has maintained a separate business through which he treats car-accident victims in what he calls a "personal injury clinic." *Id.* at 16:13–17:16, 88:20–89:11, 94:3–16. Ghoubrial spends at least two days a week outside of the Wadsworth office treating these personal injury clients at various locations, such as at the offices of certain chiropractors, including Defendant Floros in Akron, as well as a clinic in Columbus to which Ghoubrial travels by private plane that he co-owns. *Id.* at 94:7–19, 99:21–101:3, 115:20–116:14. According to Gunning's estimates, "the majority" of these personal injury clients, approximately 60% to 70%, are represented by the KNR law firm, and "the majority, 60, 75 percent" were also clients of Defendant Floros's chiropractic clinic. *Id.* at 109:12–110:21. For approximately 5 years, beginning in or around 2011, Dr. Gunning worked one morning a week at the personal injury clinic, where he treated an estimated 8 to 22 patients per morning. 98:18–100:1, 102:15–22, 136:21–25. Gunning could not

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same case."); *CenTra, Inc. v. Estrin*, 538 F.3d 402 (6th Cir. 2008) ("[A] conflict is nonconsentable when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances."); *Johnson v. Clark Gin Serv.*, E.D.La. No. 15-3290, 2016 U.S. Dist. LEXIS 166206, at *11-13 (Dec. 1, 2016) (nonconsentable conflict where plaintiffs' attorneys sought to represent several railroad employees who had an interest in shifting blame onto each other as well as the defendants regarding a train accident).

EXHIBIT 6

explain why Ghoubrial runs the personal injury clinic as a separate business from the family practice, and also testified that he had "no idea" how the personal injury clients knew to go to these various facilities to be treated by Ghoubrial and his employees. *Id.* at 108:5–109:11.

- In or around summer of 2017, Ghoubrial excluded Gunning from working at the off-site personal injury clinics. *Id.* 14:5–15; 107:15–21. When asked to confirm that he told Pattakos on Oct. 2 that he was pulled from these clinics because he wasn't administering enough of the trigger-point injections, Gunning testified, "I don't know if that was the reason. I assumed that it was the reason ... ." *Id.*

- When asked to confirm that he told Pattakos that Ghoubrial "'constantly' told him that the practice didn't make money if he didn't administer shots," Gunning said, "I don't recall the actual words I said that day. I was very anxious, upset, angry. I had taken some Ativan, prior to [the conversation], and the conversation was months ago. I don't think I can recall the actual quotations." *Id.* at 31:18–32:6. *See also Id.* at 26:6–31:16.

- When asked to confirm that he told Pattakos that Dr. Ghoubrial once lost his temper at him because he saw a certain number of personal injury clients in one day and only administered two injections, Gunning said, "I don't recall those particular words," and added, when pressed, that "Sam is a volatile person and can lose his temper frequently and has. He feels bad about it afterwards. I don't recall having said that particular comment." *Id.* at 32:12–33:13.

- When Gunning was asked to confirm that he told Pattakos that Dr. Ghoubrial instructed him, when treating the personal injury patients, to sneak the injections into the clients' backs when they weren't looking, Gunning said, "[H]e has his own way of dealing with these clients, especially people who might be needle-phobic. He would say, 'Don't necessarily say the word 'needle' to them. Don't necessarily say, 'shot.' Tell them that you want to put the medication right where the pain is.' And that was his approach to informed consent ... I'll admit, I'm not as good a salesperson in getting people to take shots ... ." *Id.* at 22:17–23:14. Gunning later confirmed that, "I think I had six patients tell me that they didn't want shots and the next thing they knew they were getting a shot." *Id.* at 34:25–35:11.

- When Gunning was asked whether any other employees of Ghoubrial's office overheard him complaining to Dr. Ghoubrial about his practices in administering the injections, Gunning said, "I don't know if they overheard anything. I don't know if they overheard me talk to Ghoubrial about anything. It's possible. I mean, it's a big office, but it's possible, but I don't particularly recall any particular incident, no, not right now." Id. at 178:6–179:20.

- When Gunning was asked to confirm that he told Pattakos that former Ghoubrial employee Joshua Jones, M.D., who left Ghoubrial's practice, was not comfortable with the practices that he was instructed to undertake at Ghoubrial's office, Gunning said, "He wasn't happy in Wadsworth. You could tell. He used to be a jokester and then the jokes stopped. He became morose. We assumed that it was

family troubles. His wife had two kids and she became a different person after that, but he wasn't happy with the practice." *Id.* at 174:22–175:3.

- Gunning was also asked to recall a time when he was at Defendant Nestico's house for a social event, Nestico's sister had just been in an auto accident, and Ghoubrial and his former employee Frank Lazzerini were joking to Nestico about how they were going to shoot his sister up with a number of injections and send her home with a back brace. *Id.* at 45:10–18. Gunning recalled that this conversation took place ("they were saying about how they would go ahead and give her shots and get her, you know, a back brace that she needed"), but when asked if Ghoubrial and Lazzerini were laughing at the notion that Nestico's sister would receive the same treatment that the KNR clients received, Gunning said, "I don't recall their intent ... As far as whether they were laughing or why they were laughing, I don't recall ever saying anything as to the reason why they would have done that, if they did that. ... I don't remember why I [mentioned this discussion]. I do know that both [Ghoubrial and Lazzerini] were better at convincing their patients to get shots than I was." *Id.* at 47:9–22, 51:15–22, 52:25–53:25.

This testimony was regularly interspersed with improper speaking objections by defense counsel that interfered with Plaintiffs' counsel's questioning and suggested answers to the witness. *See*, *e.g.*, *Id.* at 27:13–31:25, 34:7–13, 42:7–8, 46:13–15, 51:25–52:15, 53:18–20, 56:11–59:25, 61:8–62:13, 79:20–80:19, 80:24–81:1, 86:3–11, 93:20, 106:13–16, 114:11–12, 140:5–21, 141:19–20, 147:10–11, 149:5–7, 154:1–4, 156:23–157:3, 157:19–22, 169:23–170:7, 175:17–18, 178:6–179:14, 223:22–24, 225:9–10. These improper objections are discussed in detail in Plaintiffs' motion for a protective order filed concurrently with this motion.

Additionally, counsel for Ghoubrial instructed Gunning not to answer questions about the following subjects:

- Whether Gunning told Pattakos on October 2 that Dr. Ghoubrial would refer to the trigger point injections as, "n*gger point injections," and "afro-puncture," referring to the racist slur for black people and the fact that Ghoubrial's personal injury practice treated a larger proportion of black people than his family practice did. *Id.* at 42:22–45:19.

- Whether Gunning told Pattakos on October 2 that he believed Ghoubrial was intentionally running his medical practice in a way that would cause it not to make money so that he could avoid paying his wife, Julie, in currently pending divorce proceedings; *Id.* at 66:8–66:22.

- Whether Gunning told Pattakos on October 2 that another Ghoubrial employee overheard Ghoubrial plotting with someone to "make sure that Julie's name stays on their home mortgage so her debt-to-asset ratio stays so high that she has to live in an apartment for the rest of her life." *Id.* at 67:10–70:12.

- Whether Gunning told Pattakos on October 2 that he believed it was possible that Monique Norris's medical records that Ghoubrial filed with the Court had been fraudulently altered to falsely portray that Gunning treated Ms. Norris instead of Dr. Ghoubrial. *Id.* at 81:15–83:14.

- Whether Gunning believes that the currently pending 272-felony-count indictment against former Ghoubrial employee Frank Lazzerini, pertaining to charges that Lazzerini "overprescribed pain medications for profit," has merit based on Gunning's personal experience working with Lazzerini under Ghoubrial's supervision. *Id.* at 171:12–174:2.

As explained further below, these questions are all reasonably calculated to lead to the discovery of admissible evidence, and Gunning should be ordered to return to his deposition to answer them.

Law and Argument

Under Civ.R. 26(B)(1), information is discoverable as long as it is "appears reasonably calculated to lead to the discovery of admissible evidence." Under Civ.R. 30(C)(2), "[a] person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by a court, or to present a motion under Civ.R. 30(D)." Civ.R. 30(D) provides that a court may end or "limit the scope" of a deposition "upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party." Finally, Local Rule 17.02(5)(B) provides that an attorney may "instruct a witness not to answer a question" if the question is "not relevant; not likely to lead to the discovery of admissible evidence; and counsel has a good faith, reasonable belief that his or her position will be sustained by the judicial officer with jurisdiction over the case and can explain in detail and on the record at the time he or she instructs the witness not to answer the basis or bases for the instruction not to answer."

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.,	(	CASE NO.: CV-2016-09-3928
	)	
	(	JUDGE ALISON BREAUX
	)	
Plaintiffs,	(	
	)	
-vs-	(	**ORDER**
KISLING, NESTICO & REDICK, LLC, et al.	)	(Protective Order)
	(	
	)	
Defendants;	(	

***

This matter comes before the Court on the Motion for Protective Order filed by Defendants, Kisling, Nestico & Redick, LLC; Alberto R. Nestico; and Robert W. Redick (Defendants), on October 12, 2016. Plaintiffs, Member Williams; Naomi Wright; and Matthew Johnson (Plaintiffs), filed their Motion for Protective Order and Opposition to Defendants' Motion for Protective Order on October 28, 2016. Defendants filed their Brief in Opposition to Plaintiffs' Motion for Protective Order and in Support of Defendants' Motion for Protective Order on November 4, 2017. Plaintiffs filed their Reply in Support of Plaintiffs' Motion for Protective Order and in Opposition to Defendants' Motion for Protective Order on November 11, 2016. Plaintiffs then filed their Combined Motion for Protective Order and Opposition to Defendants' Motion to Compel on December 2, 2016. Defendants filed their Brief in Opposition to Plaintiffs' Motion for Protective Order and Reply Brief in Support of Their Motion to Compel Discovery on December 12, 2016. The matter has been fully briefed and is ripe for consideration. The Court notes the parties submitted a number of proposed protective orders and could not reach an agreement for a stipulated protective order. Therefore, it is hereby **ORDERED:**

1. **SCOPE.** All documents produced in the course of discovery, including, without limitation, all responses to discovery requests, all electronic discovery, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning confidential

EXHIBIT 7

information as set forth below. This Order is subject to the Local Rules of this Court and Ohio Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **FORM AND TIMING OF DESIGNATION.** A party may designate documents as confidential and restricted in disclosure under this Order by designating the information and placing or affixing the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" or similar designation on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" designation. Documents shall be designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents. The designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

3. **DOCUMENTS WHICH MAY BE DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.** Any party may designate documents as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER upon making a *good faith determination that the documents contain information protected from* disclosure by statute or that should be protected from disclosure as confidential personal information, privileged, medial or psychiatric information, trade secrets, personnel records, or such other sensitive or proprietary commercial information that is not publicly available. Public records and other information or documents that are publicly available may not be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

4. **DEPOSITIONS.** Deposition testimony shall be deemed CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions of the transcript or any exhibit to be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER. Thereafter, the deposition transcripts and any of those portions so designated shall be protected as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, pending objectION, under the terms of this Order.

5. **PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.**

   a. **GENERAL PROTECTIONS.** Documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 5(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.

   b. **LIMITED THIRD-PARTY DISCLOSURES.** The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents to any third person(s) or entity except as set forth in subparagraphs i – vi. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER:

      i. **COUNSEL.** Counsel for the parties and employees and agents of counsel who have responsibility for the preparation and trial of the action;

      ii. **PARTIES.** Parties and employees of a party to this Order.

      iii. **THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;

      iv. **CONSULTANTS, INVESTIGATORS AND EXPERTS.** Consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such

persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound;

v. **OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgement of Understanding and Agreement to be Bound; and

vi. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient.

c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.

d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term "copies" shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

6. **PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.**

a. **GENERAL PROTECTIONS.** Documents that contain highly sensitive trade secrets or other highly sensitive competitive or confidential information, the disclosure

of which to another party would result in demonstrable harm to the disclosing party, may be designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order and shall not be used or disclosed to counsel for the parties or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.

b. **LIMITED THIRD-PARTY DISCLOSURES.** The parties and Counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs i – iv. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

i. **COUNSEL.** Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action but only if:

a. It is necessary to disclose the designated document to them for purposes of this action;

b. They are under the supervision and control of litigation counsel; and

c. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound.

ii. **THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;

iii. **OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound; and

iv. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient; and

v. **CONSULTING AND TESTIFYING EXPERTS.** *Consulting or testifying* experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound. A party may not disclose Confidential Information to experts unless: 1) it is necessary to disclose the designated document to them for purposes of this action; 2) they are not parties or producing third parties, or affiliates of parties or producing third parties; and 3) they are not officers, directors or employees of parties or producing third parties, or affiliates of parties, or of competitors or vendors or customers of parties or producing third parties.

c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.

d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of documents designated as CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with

the designation CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term "copies" shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

e. **COMPETITION.** Notwithstanding the foregoing provisions of this Protective Order, information and documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall not be disclosed or provided, under any circumstance, to any attorney or law firm that competes with Defendants.

7. **INADVERTENT PRODUCTION.** Inadvertent production of any document or information without a designation of CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or any inadvertent production of a document protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege shall be governed by Ohio R. Evid. 501. Such inadvertent production of such a document or information shall not be deemed a waiver of that privilege or protection or of the producing party's right to assert that the document is CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or is protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege. The receiving party shall treat the document or information as if it were so designated as confidential, protected, or privileged.

8. **FILING OF CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER DOCUMENTS OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER UNDER SEAL.** The Court highly discourages the manual filing of any pleadings or documents under seal. However, to the extent that a brief, memorandum, or pleading references any document marked as CONFIDENTIAL –

SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, then the brief, memorandum, or pleading shall refer the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.

a. Before any document marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY—SUBJECT TO PROTECTIVE ORDER is filed under seal with the Clerk, the filing party shall first consult with the party that originally designated the document as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER to determine whether, with the consent of that party, the document or a redacted version of the document may be filed with the Court not under seal.

b. Where agreement is not possible or adequate, before a CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER document is filed with the Clerk, it shall be placed in a sealed envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER," displaying the case name, docket number, a designation of what the document is, the name of the party on whose behalf it is submitted, and the name of the attorney who has filed the documents on the front of the envelope. A copy of any document filed under seal shall also be delivered to the judicial officer's chambers.

c. To the extent that it is necessary for a party to discuss the contents of any confidential information or designated document in a written pleading, then such portion of the pleading may be filed under seal with leave of Court. In such circumstances, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents. The confidential version shall be a full and complete version of the pleading and shall be filed with the Clerk under seal as

above. A copy of the unredacted pleading also shall be delivered to the judicial officer's chambers.

d. The party seeking to file a brief, pleading, or exhibit under seal shall first file a motion for leave to file under seal prior to filing such brief, pleading, or exhibit.

9. **CHALLENGES BY A PARTY TO DESIGNATION AS CONFIDENTIAL.** Any CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party with standing to object (hereafter "party"). Before filing any motions or objections to a confidentiality designation with the Court, the objecting party shall have an obligation to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

10. **ACTION BY THE COURT.** Applications to the Court for an order relating to any documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall be by motion and any other procedures set forth in the presiding judge's standing orders or other relevant orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

11. **USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION AT TRIAL.** All trials are open to the public. Absent order of the Court, there will be no restrictions on the use of any document that may be introduced by any party during the trial. If a party intends to present at trial CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom, such party shall provide advance notice to the other party at least ten days before the commencement of trial by identifying the documents or information at issue as specifically as possible (i.e., by

Bates number, page range, deposition transcript lines, etc.) without divulging the actual CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

12. **OBLIGATIONS ON CONCLUSION OF LITIGATION.**

    a. **ORDER REMAINS IN EFFECT.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

13. **RETURN OF CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.**

    a. **RETURN OF CONFIDENTIAL DOCUMENTS.** Within 30 days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶¶ 5(d) and 6(d), shall be returned to the producing party unless: 1) the document has been offered into evidence or filed without restriction as to disclosure; 2) the parties agree to destruction in lieu of return; or 3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certified to a producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or

CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents.

b. **RETURN OF DOCUMENTS FILED UNDER SEAL.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

14. **ORDER SUBJECT TO MODIFICATION.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing *concerning the subject matter.*

15. **NO PRIOR JUDICIAL DETERMINATION.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Ohio Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

16. **PERSONS BOUND.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

IT IS SO ORDERED

JUDGE ALISON BREAUX

CC: ALL PARTIES OF RECORD

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.,	( )	CASE NO.: CV-2016-09-3928
Plaintiffs,	(	JUDGE ALISON BREAUX
-vs-	) (	
KISLING, NESTICO & REDICK, LLC, et al.	) (	
Defendants;	) (	

***

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order dated September 12, 2017 in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Court of Common Pleas of Summit County in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purpose of the above-captioned action, and to not disclose any such documents or information derived directly therefrom to any other person, firm, or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of Court.

Name: ______________________________

Job Title: ______________________________

Employer: ______________________________

Business Address: ______________________________

______________________ ______________________

Date Signature