

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Motion for Leave to File under Seal Defendant Nestico's Deposition Transcript and Portions of Plaintiffs' Motion to Compel Mr. Nestico's Continued Deposition</p>
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Plaintiffs hereby seek leave to file under seal the deposition transcript of Defendant Alberto R. Nestico, and related portions of a motion to compel his continued deposition, because the KNR Defendants insisted at Mr. Nestico's two-day deposition that the entire transcript is designated as "confidential" under the protective order until more specific confidentiality designations are provided (which Defendants agreed to provide within one week of delivery of the transcript). Due to this blanket designation, Plaintiffs are required by the September 12, 2017 Protective Order to file this information under seal until the specific confidentiality designations can be resolved. *See* Protective Order, Section 8.d., p. 9 (requiring that "a 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." *See also Id.*, Section 8.c., p. 8 ("To the extent that it is necessary for a party to discuss the contents of any confidential information ... in a written pleading, then such portion of the pleading may be filed under seal with leave of Court.") (emphasis added).

While the Protective Order also provides that, "the Court highly discourages the manual filing of any pleadings or documents under seal" (Sept. 12, 2017 Protective Order at Section 8, p. 7, emphasis in original), Plaintiffs here have no choice, because as discussed above, the Defendants insisted that the entire transcript was "confidential" and subject to the Order. *Id.* at Section 8, p. 7–8

(“[T]o the extent that a brief, memorandum, or pleading references any document marked as [confidential], then the brief, memorandum, or pleading shall refer to the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.”). Once the Defendants issue specific confidentiality designations regarding Mr. Nestico’s deposition testimony, Plaintiffs will promptly file a copy of the transcript reflecting those specific portions of the transcript Defendants believe to be “confidential.” Plaintiffs counsel tried to obtain permission to file this motion as unopposed, but Defendants declined, for indiscernible reasons, to grant that permission. See **Exhibit 1**, correspondence between counsel.

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

The foregoing document was filed on February 14, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs



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Nestico deposition transcript

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Wed, Feb 13, 2019 at 2:10 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, "James M. Popson" <jpopson@sutter-law.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

I could care less whether YOU intend to depose Mr. Horton's deposition. He is under subpoena to appear, the Notice of Deposition is proper, you are available, he is available, his counsel is available, and the Court has Ordered it go forward.

From: Peter Pattakos [mailto:peter@pattakoslaw.com]**Sent:** Wednesday, February 13, 2019 2:07 PM**To:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>**Cc:** Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; James M. Popson <jpopson@sutter-law.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>**Subject:** Re: [EXT] Re: Nestico deposition transcript

1) Yes, the motion to resume the deposition will be to answer the questions/address the subjects that he was instructed not to (or otherwise refused) to answer or discuss. Most urgently, at this point, Mr. Horton and the dispute between them. We are not inclined to proceed with Mr. Horton's deposition until we hear from Mr. Nestico on this and review the settlement agreement.

2) All we are asking for is consent to file the Nestico transcript and any motions that reference its testimony under seal, as we need to get the Court's permission to file anything under seal per the protective order. If you don't want to give your consent, I'll indicate that you refused, but that wouldn't make much sense since you are the ones insisting on the protective order in the first place.

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On Wed, Feb 13, 2019 at 2:02 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Why exactly would you file a Motion to Compel the continuation deposition of Mr. Nestico when you never even asked for one. What is the basis? Do you mean just on those items he was instructed not to answer?

I guess I'm a bit lost as to what you are asking.



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From: Peter Pattakos [<mailto:peter@pattakoslaw.com>]

Sent: Wednesday, February 13, 2019 1:15 PM

To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; James M. Popson <jpopson@sutter-law.com>

Cc: Rachel Hazelet <rhazelet@pattakoslaw.com>

Subject: [EXT] Re: Nestico deposition transcript

External Email

Counsel, please advise on the below as we need to get our motion on file soon. Also, we will be asking to file a motion to compel Mr. Nestico's continued deposition under seal, as we are required given our agreement to wait a week from receiving the

transcript for your confidentiality designations. Please advise as to whether we can file the motion to file these documents under seal as unopposed. Thank you.

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On Tue, Feb 12, 2019 at 7:15 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Counsel:

I understand that we've agreed to wait a week from delivery of the Nestico transcript to obtain Defendants' confidentiality designations under the protective order and then to take those up with the Court as necessary. As we anticipate the need to refer the Court to this testimony in the meantime, we intend to seek leave of Court to file the transcript under seal as required by the protective order. Please let me know if Defendants object to this or whether we may file this motion as unopposed.

Thank you.

Peter Pattakos

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