

**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>Plaintiffs' Motion to Compel the Production of the KNR's Settlement Agreements with Robert Horton and Paul Steele, and Motion for a Protective Order regarding KNR's Confidentiality Agreements with its Employees</p>
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I. Introduction and Statement of Facts

Robert Horton and Paul Steele are former KNR attorneys with knowledge about the claims at issue in this case. As a condition of their prior employment with the firm, KNR required Horton and Steele to execute extremely broad “confidentiality agreements” which purport to bar them from disclosing any information about, *inter alia*, the firm’s “business practices.” See **Exhibit 1** (KNR confidentiality agreement with Horton). KNR has in fact sued Mr. Horton for allegedly breaching this agreement, and has threatened to sue Mr. Steele for doing the same. See *KNR v. Horton*, Summit County Common Pleas No. CV-2017-03-1236; See also **Exhibit 2** (correspondence between attorneys for KNR and Mr. Steele). Thus, both Mr. Horton and Mr. Steele (among other former KNR attorneys) are unwilling to communicate with Plaintiffs’ counsel about the claims at issue in this case for fear of becoming subject to another retaliatory lawsuit for alleged breach of these agreements.

Additionally, KNR has entered settlement agreements with both Horton and Steele relating to their relationship with the firm, and, in Horton’s case, to resolve the lawsuit KNR filed against him, which pertained precisely to his communications with Plaintiffs’ counsel about the claims at issue in this case. Plaintiffs have asked the KNR Defendants to produce these settlement

agreements, which are relevant to this lawsuit not least with respect to an evaluation of the credibility of Mr. Horton's and Mr. Steele's testimony. The KNR Defendants have not only refused to produce these documents, Defendant Nestico refused to answer questions about his disputes with Mr. Horton and Mr. Steele at his deposition last Friday, claiming that he was not entitled to breach confidentiality terms in these settlement agreements. Additionally, the KNR Defendants have refused Plaintiffs' requests to agree that Mr. Horton and Mr. Steele may communicate with Plaintiffs' counsel about the business practices at issue in this case, subject to the protective order in this case, without fear of a retaliatory lawsuit under the confidentiality agreements. *See Exhibit 3*, emails between counsel for Plaintiffs and the KNR Defendants.

Thus, Plaintiffs hereby move for an order providing (1) that the KNR Defendants immediately produce all settlement agreements with Horton and Steele and all related documents; and (2) that Horton, Steele, and any other KNR employee, current or former, are authorized to communicate with Plaintiffs about the business practices at issue in this case, subject to the pending September 12, 2017 protective order (attached as **Exhibit 4**) and Plaintiffs' understanding that all such information provided is designated as confidential by the KNR Defendants under that order. The need for this order is especially urgent given that Mr. Steele's and Mr. Horton's depositions are respectively scheduled for next Thursday, February, 21, 2019, and the following Monday, February 25. .

II. Law and Argument

Litigants "may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality." *Oberthaler v. Ameristep Corp.*, No. 5:08-cv-1613, 2010 WL 1506908 at *1 (N.D. Ohio Apr. 13, 2010). Indeed, it is well established that parties may obtain discovery of confidential settlement agreements so long as they contain relevant evidence. *Id.*

at *1-*2; accord, *In re E.I. Du Pont de Nemours & Co. C-8 Personal Injury Litig.*, No. 2:13-md-2433, 2016 WL 5884964 at *8-*9 (S.D. Ohio Oct. 7, 2016).

Confidential settlement agreements, in other words “are not privileged.” *Oberthaler*, 2010 WL 1506908 at *1. The contents of such documents may provide relevant evidence reflecting upon the credibility of witnesses. *Thomas & Marcker Constr. Co. v. Wal-Mart Stores*, No. 3:06-cv-406, 2008 WL 3200642 at *3 (S.D. Ohio Aug. 6, 2008). More specifically, confidential settlement agreements may reveal whether one settling party has “motivation ... to provide favorable testimony” for the other. *See CadleRock Joint Venture v. Royal Indem. Co.*, Nos. 02cv16012, 02cv16019, 2012 WL 443316 at *2 (N.D. Ohio Feb. 10, 2012).

Additionally, confidentiality agreements may not be used to shield 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.”).

Finally, it is well-established that protective orders may serve to protect the parties’ interest in the confidentiality of information produced in discovery. *Cadlerock* at *3; accord, *Thomas & Marcker*, 2008 WL 3200642 at *3; *Splater v. Thermal Ease Hydronic Sys., Inc.*, 169 Ohio App.3d 514, 2006-Ohio-5452, 863 N.E.2d 1060, ¶ 11 (8th Dist.) (“The rules require the court to balance the need to preserve a trade secret with a party’s right to discover material that is relevant and reasonably necessary. As appropriate, the court may fashion a protective order which limits who may have access to the discovered evidence.”).

Thus, because any settlement agreement that Mr. Steele and Mr. Horton entered into with the KNR Defendants is not privileged, and bears upon, at minimum, the credibility of their testimony in this lawsuit, the Court should order these agreements, and all related documents, to be produced. Additionally, KNR's confidentiality agreements should not be used to prevent Mr. Steele, Mr. Horton, or any current or former KNR employee from providing information to Plaintiffs about the business practices at issue in this lawsuit, particularly given Plaintiffs' willingness to agree that all such information is designated as confidential pursuant to the September 12, 2017 protective order (**Ex. 4**).

For these reasons, the Court should order that (1) the KNR Defendants immediately produce all settlement agreements with Horton and Steele, and all related documents; and (2) that Horton and Steele are free to communicate with Plaintiffs about the business practices at issue in this case subject to the KNR Defendants' designation of all such information as confidential under the pending protective order.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Dean Williams (0079785)
Rachel Hazelet (0097855)
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jcohen@crklaw.com

Attorneys for Plaintiffs

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. Additionally, Plaintiffs have emailed this document to Attorneys Thomas Skidmore and Charles Kettlewell, counsel for Mr. Horton and Mr. Steele, respectively.

/s/ Peter Pattakos

Attorney for Plaintiffs

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made between Kisling, Nestico & Redick, LLC of 3412 W. Market St., Akron, Ohio 44333 and Rob P. Horton and is immediately effective upon signing of both parties.

For purposes of this Agreement, the party who owns the Confidential Information will be known as "KNR", and the party to whom the Confidential Information will be disclosed will be known as the "employee."

KNR is engaged in the practice of law and provides legal services to the general public. In the course and scope of their employment with KNR, confidential information will be disclosed to the employee. KNR has requested that the employee will protect the confidential information which may be disclosed during the course of the employee's association with KNR.

I. CONFIDENTIAL INFORMATION

The term "Confidential Information" is defined as information or material, both printed and electronic, regardless of format which is proprietary to KNR, whether or not owned or developed by KNR, which is generally not known other than by KNR and which the employee may obtain through the course of their employment.

- A. Confidential Information includes but is not limited to:
- Business Records or Plans
 - Business Practices and Structures
 - Client information
 - Client lists
 - Financial Statements
 - Marketing Practices and Strategies
 - Trade Secrets
 - Technical Information
 - Computer Programs and Listings
 - Copyrights and other Intellectual Property

II. PROTECTION OF CONFIDENTIAL INFORMATION

Employee understands and acknowledges that the Confidential Information has been developed or obtained by KNR by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset to KNR which provides KNR with a significant competitive advantage, and needs to be protected from improper disclosure. Employee agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without prior written consent from KNR. In addition, Employee agrees:

- A. No Copying/Modifying. Employee will not copy, download, upload, modify or in any way disseminate any Confidential Information to any person or entity without prior written consent of KNR.

EXHIBIT 1

B. Unauthorized Disclosure. If it appears through reasonable investigation that Employee has disclosed (or threatened to disclose) Confidential Information in violation of this agreement, KNR shall have the following remedies included but not limited to:

- I. Immediate dismissal from employment
- ii. Monetary Damages
- iii. Punitive Damages
- iv. Injunctive Relief

III. RETURN OF CONFIDENTIAL INFORMATION

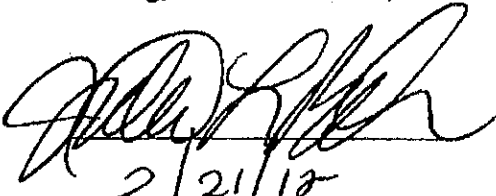
Upon termination of employment by either party and for any reason, Employee shall immediately return all Confidential Information, both written and electronic, in their possession. Failure to return all Confidential Information may delay Employee's receipt of final compensation until all materials are properly accounted for. Employee understands that the terms of this agreement shall remain in effect even after termination of employment.

IV. GENERAL PROVISIONS

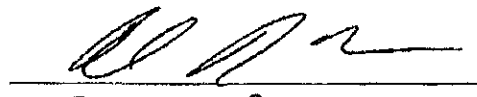
This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Ohio. This Agreement shall not be assignable by either party, and neither party may delegate its duties under the Agreement. The confidentiality provisions of this Agreement shall remain in full force and effect after the effective date of this Agreement regardless of Employee's employment status with KNR.

Kisling, Nestico & Redick, LLC

Employee



 2/21/12
 Date



 2-21-12
 Date



Kegler Brown Hill + Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
www.keglerbrown.com

Jonathan E. Coughlan, Esq.
Direct Dial: (614) 462-5455
Facsimile: (614) 464-2634
E-mail: jcoughlan@keglerbrown.com

February 26, 2016

VIA FACSIMILE and REGULAR U.S. MAIL
614-540-7473

Paul Steele, Esq.
Mularski, Bonham, Dittmer & Phillips LLC
107 W. Johnstown Rd
Gahanna, Oh 43230

RE: Kisling, Nestico & Redick

Dear Mr. Steele:

This law firm represents Kisling, Nestico & Redick (KNR). Your employment ended with KNR on September 15, 2015. As you know, you have obligations to KNR through the KNR Employee Manual, which you acknowledged receiving and reading on February 5, 2014. (A copy of the signature page is attached) Your obligations as detailed in the Employee Manual required you to maintain confidential certain firm information. Section 5-12 of the Employee Manual is entitled "Confidential Company Information" and states:

During the course of work, an employee may become aware of confidential information about Kisling, Nestico & Redick's business, including but not limited to information regarding Firm finances, pricing, products and new product development, software and computer programs, marketing strategies, suppliers, customers and potential customers. An employee also may become aware of similar confidential information belonging to the Firm's clients. It is extremely important that all such information remain confidential, and particularly not be disclosed to our competitors. Any employee who improperly copies, removes (whether physically or electronically), uses or discloses confidential information to anyone outside of the Firm may be subject to disciplinary action up to and including termination. Employees may be required to sign an agreement reiterating these obligations.

We recently learned that you have contacted Westgate Chiropractor, Town & Country Chiropractor among others and solicited their participation in a referral arrangement with you practice. As you know, KNR has close working relationships with

EXHIBIT 2

**KEGLER
BROWN
HILL
RITTER**

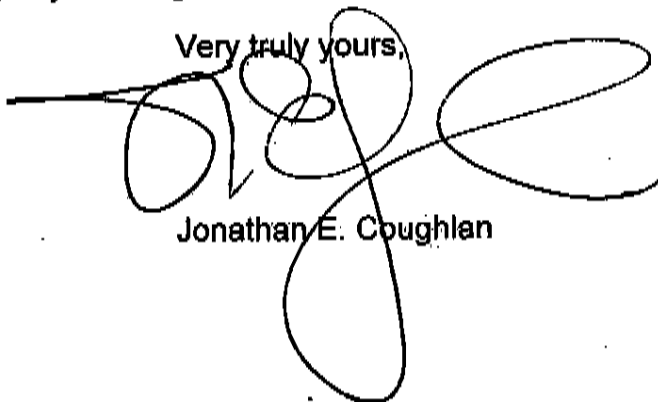
Paul Steele, Esq.
Mularski, Bonham, Dittmer & Phillips LLC
February 26, 2016
Page 2

these medical providers and your actions could well be viewed as a violation of your obligations under the Employee Manual.

A primary objective of the Employee Manual was to prevent the misuse of KNR's Confidential Information by its employees and former employees. Your actions appear to be the very harm the Employee Manual was designed to prevent. The Employee Manual requires you to keep KNR's Confidential Information in strict confidence and prohibits its use by you or anyone else. You are hereby instructed to cease and desist from any further violations of the terms of the Employee Manual.

The purpose of this letter is to remind you of your obligations and to inform you that if you take any further actions which violate your obligations as they relate to KNR's Confidential Information, we will pursue appropriate legal action against you. Accordingly, your cooperation in adhering to your obligations is expected and appreciated.

Very truly yours,



Jonathan E. Coughlan

cc: Rob Nestico

General Handbook Acknowledgment

This Employee Manual is an important document intended to help you become acquainted with Kisling, Nestico, & Redick, LLC. This document is intended to provide guidelines and general descriptions only. It is not the final word in all cases. Individual circumstances may call for individual attention.

Because the Firm's operations may change, the contents of this Manual may be changed at any time, with or without notice, in an individual case or generally, at the sole discretion of management.

Please read the following statements and sign below to indicate your receipt and acknowledgment of this Employee Manual.

I have received and read a copy of Kisling, Nestico, & Redick, LLC's Employee Manual. I understand that the policies, rules and benefits described in it are subject to change at the sole discretion of the Firm at any time.

I further understand that my employment is terminable at will, either by myself or the Firm, with or without cause or notice, regardless of the length of my employment or the granting of benefits of any kind.

I understand that no contract of employment other than "at will" has been expressed or implied, and that no circumstances arising out of my employment will alter my "at will" status except IN AN INDIVIDUAL CASE OR GENERALLY in a writing signed by the Partners of the Company.

I understand that my signature below indicates that I have read and understand the above statements and that I have received a copy of the Firm's Employee Manual.

Employee's Printed Name: Paul Steele Position: Att

Employee's Signature: [Signature] Date: 2/25/14

The signed original copy of this acknowledgment should be given to management - it will be filed in your personnel file.

Charles J. Kettlewell LLC

Of Counsel:
Kitrick, Lewis & Harris Co., LPA

Attorney & Counselor at Law
445 Hutchinson Avenue, Suite 100
Columbus, OH 43235-8630
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P: 614 436-2750
F: 614 436-2865

Of Counsel:
Robert J. Wagoner Co., LLC

March 1, 2016

Jonathan Coughlan, Esq.
Kegler Brown Hill & Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215

VIA EMAIL ONLY
jcoughlan@keglerbrown.com

Re: KNR/Paul Steele

Dear Mr. Coughlan:

Please accept this correspondence in response to your letter of February 26, 2016 to my client, Paul Steele. To the extent additional communications should be necessary related to claims made by KNR against Mr. Steele, please continue to assume I am representing him on all KNR related matters and address all such correspondence to me.

Had this matter been given a little more thoughtful reflection before your letter was sent, I expect either KNR or you would have realized that sending such a letter to Mr. Steele would be a waste of everyone's time. Obviously Mr. Steele and I acknowledge that your letter and enclosure correctly references the KNR employee manual which Mr. Steele did, in fact, sign on February 5, 2014. However, the employee manual section referenced in your letter is speaking about actions by employees of KNR, and not past employees. This is clearly conveyed in language used in the handbook as the punishment for this violation is termination.

Moreover, Mr. Nestico and you apparently forget that on September 17, 2015 Mr. Nestico signed a Settlement Agreement and Release of **All** Claims. (09/17/15 Settlement Agreement) (Emphasis added.) (Enclosed)

As such, with regards to KNR's relationship with and/or Mr. Steele's relationships with "Westgate Chiropractor, Town & Country Chiropractor, among others," as referenced in your letter, the operative portion of the 09/17/15 Settlement Agreement provides as follows:

WHEREAS, both of the Parties are **permitted to contact all individuals with whom they have had prior professional relationships with as lawyers****** (Emphasis added.)

Obviously Mr. Steele is not prohibited by the 09/17/15 Settlement Agreement from contacting Westgate Chiropractor, Town & Country Chiropractor, and/or anyone else with

whom he had a prior professional relationship with as a lawyer precisely because **he expressly reserved the right to do so** in the 09/17/15 Settlement Agreement that you I and negotiated on behalf of our respective clients.

Additionally, to the extent that KNR is now taking the position that it can pursue claims against Mr. Steele based on its employee handbook, I would draw you and your client's attention to the following paragraph from the 09/17/15 Settlement Agreement:

Except with respect to any claim arising under or relating to this Agreement,¹ KNR, its representatives, successors, agents, assigns and attorneys, and those claiming through them, and its directors, officers, members, principals, employees, subsidiaries, parents, affiliates, representatives, successors, agents, assigns and attorneys, hereby RELEASE AND FOREVER DISCHARGE Steele, his heirs, representatives, successors, agents, assigns and attorneys, and those claiming through them, from all actions and causes of actions, suits, debts, claims, and demands whatsoever, in law or in equity, which they ever had, may now have, or may hereafter have, whether known or unknown, on the effective date of this Agreement. (Emphasis added.)

As you can see from the foregoing, as of September 17, 2015 when Mr. Nestico executed the 09/17/15 Settlement Agreement, KNR expressly released Mr. Steele from any pre-existing claims, whether known or unknown, which included any claims that could have been based on the employee handbook. Given both of these provisions in the 09/17/15 Settlement Agreement, Mr. Steele and I are both at a loss as to why you sent any letter to him last week.

Finally, even if: 1) the 09/17/15 Settlement Agreement did not expressly permit Mr. Steele to contact anyone with whom he had a prior professional relationship; and, 2) the 09/17/15 Settlement Agreement did not release Mr. Steele from all prior claims KNR may have had based on some alleged breach of an employee handbook; KNR still would have no legal basis whatsoever for claiming that Mr. Steele cannot communicate with Westgate Chiropractor, Town & Country Chiropractor, and/or anyone else who is in the business of providing services to individuals in need of legal representation. These are publicly available companies that advertise their services on the internet and elsewhere. Even if the employee handbook had any bearing in this situation (and it most certainly does not given the subsequent 09/17/15 Settlement Agreement and release therein), simply including a company that advertises its services to the public in an employee handbook does not suddenly make these services "confidential" or "proprietary" and therefore subject to some cause of action by the employer against the employee.

The reality is that neither I, Mr. Steele, nor any court with jurisdiction cares about KNR's "close working relationships" with third parties that do business with other lawyers. KNR is not legally entitled to have a mutually exclusive relationship with any of these third parties, and their money and your energy would be better spent elsewhere as Mr. Nestico signed a Settlement

¹ Obviously claims based on the KNR employee handbook are not claims arising under or relating to the 09/17/15 Settlement Agreement.

Agreement with Mr. Steele, and Mr. Steele has not breached any of the terms of that agreement and all other claims KNR may have had were released.

Very truly yours,

A handwritten signature in blue ink, appearing to read "C. Kettlewell", is written over a light blue rectangular background.

Charles J. Kettlewell

Enclosure:



Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Documents re: settlements with Paul Steele and Rob Horton

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

Mon, Jan 28, 2019 at 8:54 AM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Mr. Pattakos:

A confidential settlement agreement is exactly that: confidential. We have no legal right or obligation to produce the settlement agreement. This is a blatant attempt to induce KNR to breach a contract. Just like you unsuccessfully attempted with Dr. Fonner.

Tom

Sent from my iPhone



Thomas P. Mannion
Attorney | Cleveland Managing Partner
Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | LewisBrisbois.com**Representing clients from coast to coast. View our locations nationwide.**

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On Jan 28, 2019, at 7:57 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

External Email

Jim and Tom: If you intend to respond to this please do so promptly as we will shortly be filing a motion to compel if you do not confirm that you will produce the requested information. Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
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Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
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and alert us.

On Fri, Jan 18, 2019 at 1:34 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Counsel:

In response to our subpoena to Paul Steele he sent us the attached documents that reference a settlement agreement between him and KNR by which KNR purported to assert a proprietary interest in its relationships with chiropractors. Please produce all documents pertaining to the dispute between KNR and Steele that led to the settlement agreement as well as the agreement itself, as these documents are responsive to a number of Plaintiffs' requests about KNR's relationships with chiros and also go directly to the credibility of Mr. Steele's testimony.

Please also produce the settlement agreement that you reached with Horton after you sued him for giving us documents, and any related documents, which are responsive to our requests as well and again obviously go to the credibility of Horton's affidavit and other testimony.

To the extent you intend to take the position that these requests are not responsive to any of the requests we have served so far, you may consider this email as a formal request under Civ.R. 34, although we expect this information to be produced in advance of the Horton and Steele depositions and will seek a Court order requiring the same if necessary.

I look forward to your prompt response. Thank you.

Peter Pattakos
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Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Rob Horton and Paul Steele

Peter Pattakos <peter@pattakoslaw.com>

Thu, Feb 14, 2019 at 10:23 AM

To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Tom, we need these answers to prepare for Horton's and Steele's depositions which begin next week. We did not know until we took his deposition last week that Nestico would unlawfully refuse to answer questions about his disputes and various agreements with these former KNR attorneys. These are yes or no answers to simple questions. Please stop delaying.

Also, I have answered every question you have posed. Go back and check the responses to the various emails you have sent in various threads that you have needlessly re-started, none of which involve issues as pressing as this one.

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On Thu, Feb 14, 2019 at 9:51 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

You just sent us this yesterday. We have many outstanding questions to you as well. You knew about these issues for a long time. I have a deposition today but will send a response when it's over. In the meantime, could you please respond to our questions as well.

Sent from my iPhone



Thomas P. Mannion
Attorney | Cleveland Managing Partner
Tom.Mannion@lewisbrisbois.com
T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

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On Feb 14, 2019, at 9:40 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:



External Email

Jim and Tom:

Please advise on this ASAP. These are basic yes or no questions and KNR's responses on them have important implications on the depositions of the former KNR attorneys that are scheduled to go forward beginning next week—implications that are amplified by Mr. Nestico's refusal to testify on these subjects when asked at his deposition. Thank you.

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On Wed, Feb 13, 2019 at 4:06 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Please also consider that "litigants may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality." *Oberthaler v. Ameristep Corp.*, No. 5:08-cv-1613, 2010 WL 1506908 at *1 (N.D. Ohio Apr. 13, 2010). Parties may therefore obtain discovery of confidential settlement agreements so long as they contain relevant evidence. *Id.* at *1-*2; *accord, In re E.I. Du Pont de Nemours & Co. C-8 Personal Injury Litig.*, No. 2:13-md-2433, 2016 WL 5884964 at *8-*9 (S.D. Ohio Oct. 7, 2016). Confidential settlement agreements, in other words "are not privileged." *Oberthaler*, 2010 WL 1506908 at *1. The contents of such documents may provide relevant evidence reflecting upon the credibility of witnesses. *Thomas & Marker Constr. Co. v. Wal-Mart Stores*, No. 3:06-cv-406, 2008 WL 3200642 at *3 (S.D. Ohio Aug. 6, 2008). More specifically, confidential settlement agreements may reveal whether one settling party has "motivation ... to provide favorable testimony" for the other. See *CadleRock Joint Venture v. Royal Indem. Co.*, Nos. 02cv16012, 02cv16019, 2012 WL 443316 at *2 (N.D. Ohio Feb. 10, 2012). Stipulated protective orders may serve to protect the parties' interest in the confidentiality of confidential settlement agreements produced in discovery. *Id.* at *3; *accord, Thomas & Marker*, 2008 WL 3200642 at *3

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On Wed, Feb 13, 2019 at 3:53 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Thanks.

Peter Pattakos
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Fairlawn, OH 44333
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peter@pattakoslaw.com
www.pattakoslaw.com

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

On Wed, Feb 13, 2019 at 3:31 PM James M. Popson <jpopson@sutter-law.com> wrote:

Got your emails. As soon as I get a chance to talk to Tom we will respond.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Wednesday, February 13, 2019 3:17 PM
To: Mannion, Tom; James M. Popson
Subject: Williams v. KNR: Rob Horton and Paul Steele

Tom and Jim,

Please advise immediately as to whether (1) it is KNR's position that Paul Steele and Robert Horton would be in breach of their respective confidentiality agreements if they conferred with me to discuss the allegations at issue in this case and provide information about KNR's liability on the existing claims; and, if so, whether (2) KNR would agree that such communications are authorized if they take place pursuant to the protective order, and we agree that no such information that we gain from those communications would be disseminated outside of Horton and Steele's deposition testimony, which would be subject to KNR's confidentiality designations.

We are also again requesting copies of the settlement agreements that KNR has reached with Horton and Steele.

We need a prompt response on this as it will determine what, if any, motion practice is necessary before we proceed with these depositions that are scheduled to take place next week.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333



Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR

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

Thu, Feb 14, 2019 at 4:46 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: Joshua Cohen <jcohen@crklaw.com>, "James M. Popson" <jpopson@sutter-law.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

What? Our answer is our answer. We do not represent them

Sent from my iPhone

On Feb 14, 2019, at 3:01 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

I can only assume from the below that your answer is no, KNR will not agree that Mr. Steele or Mr. Horton may speak with us subject to the protective order in this case without fear of being sued by KNR under the confidentiality agreement.

I also understand that KNR continues to refuse to produce its settlement agreements with Mr. Horton and Mr. Steele.

Please correct me if I'm wrong on either of these two points.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
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www.pattakoslaw.com

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

On Thu, Feb 14, 2019 at 1:52 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

Stop with your histrionics. You still haven't told me whether you represent Ms. Halsey. You said you would accept a subpoena on her behalf. Does that mean you represent her as well? Or just for purposes of accepting the subpoena.

We have answered your questions. We do not represent Mr. Steele or Mr. Horton. You have them scheduled for depositions, so ask them questions at deposition. We aren't talking with Mr. Horton or Mr. Steele either.

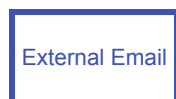
Don't forget - you talked to Mr. Horton MORE THAN 10 TIMES without him having counsel present and without us present. We have NEVER talked to him without his counsel present.

We completely disagree as to the discoverability of the settlement agreements.

You wouldn't even produce documents Matt Johnson reviewed to prepare for deposition even though they were on his counter; you wouldn't produce documents Ms. Norris used to prepare for deposition EVEN THOUGH THOSE DOCUMENTS REFRESHED HER RECOLLECTION, you have failed to produce multiple, multiple documents and informaiton. And yet you are pushing us to disclose documents which would amount to a breach of a confidentiality agreement? You already tried to dupe a non-lawyer by telling Dr. Fonner the confidentiality agreement he has did not apply to discussions with you. Seriously? Think about what you did. You tried to induce a non-lawyer to breach a legal obligation. Now, you are trying to induce my clients to do the same. No thank you.

Tom

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, February 14, 2019 1:31 PM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: Joshua Cohen <jcohen@crklaw.com>; James M. Popson <jpopson@sutter-law.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>
Subject: [EXT] Re: Williams v KNR



Tom, you didn't answer either of my questions. Contrary to your statement below, we are not asking for "a blanket waiver of your rights to object, or to designate testimony as subject to the Protective Order. Again, what we are asking is simple: (1) is it KNR's position that Paul Steele and Robert Horton would be in breach of their respective confidentiality agreements if they conferred with me to discuss the allegations at issue in this case and provide information about KNR's liability on the existing claims? and, (2), Would KNR agree that any such conversations I have with Horton and Steele through their counsel could be designated as subject to the protective order, and no such information that we gain from those communications would be disseminated outside of Horton and Steele's deposition testimony, which would be subject to KNR's confidentiality designations?

These are yes or no questions. The upshot is that we want to be able to talk with Horton and Steele in advance of their depositions. They are refusing to talk with us because they are worried KNR will sue them under the confidentiality agreements. Thus, we are asking for KNR's agreement as to the above, which would keep all confidential information protected under the protective order in our case. Please let me know one way or another immediately. It should not have taken this long to get an answer on this.

Also, are you still refusing to produce copies of the settlement agreements that KNR has reached with Horton and Steele? Yesterday I sent you the below caselaw which makes clear that these documents should be produced. Please advise immediately.

"Litigants may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality." *Oberthaler v. Ameristep Corp.*, No. 5:08-cv-1613, 2010 WL 1506908 at *1 (N.D. Ohio Apr. 13, 2010). Parties may therefore obtain discovery of confidential settlement agreements so long as they contain relevant evidence. *Id.* at *1-*2; *accord, In re E.I. Du Pont de Nemours & Co. C-8 Personal Injury Litig.*, No. 2:13-md-2433, 2016 WL 5884964 at *8-*9 (S.D. Ohio Oct. 7, 2016). Confidential settlement agreements, in other words "are not privileged." *Oberthaler*, 2010 WL 1506908 at *1. The contents of such documents may provide relevant evidence reflecting upon the credibility of witnesses. *Thomas & Marker Constr. Co. v. Wal-Mart Stores*, No. 3:06-cv-406, 2008 WL 3200642 at *3 (S.D. Ohio Aug. 6, 2008). More specifically, confidential settlement agreements may reveal whether one settling party has "motivation ... to provide favorable testimony" for the other. *See CadleRock Joint Venture v. Royal Indem. Co.*, Nos. 02cv16012, 02cv16019, 2012 WL 443316 at *2 (N.D. Ohio Feb. 10, 2012). Stipulated protective orders may serve to protect the parties' interest in the confidentiality of confidential settlement agreements produced in discovery. *Id.* at *3; *accord, Thomas & Marker*, 2008 WL 3200642 at *3

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

On Thu, Feb 14, 2019 at 12:18 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

I am still in the first of two depositions, but will respond as follows.

Please immediately retract your accusation that Attorney Nestico "unlawfully refuse[d] to answer questions." He is bound by the confidentiality agreements and is not going to breach them just because Peter Pattakos says he can. You are not a party to those agreements nor do you represent either Mr. Horton or Mr. Steele. Likewise, we do not represent Attorney Horton or Attorney Steele. Any questions re: how those witnesses answer questions should be addressed to their individual lawyers. It is our understanding Tom Skidmore represents Attorney Horton and Charles Kettlewell represents Paul Steele. You have spoken with both lawyers, so we know you have their contact information. We certainly are not going to provide a blanket waiver of our rights to object and/or to designate testimony to be subject to the Protective Order, especially since the confidential settlements have no bearing on class certification or the underlying class claims.

Please also stop accusing us of delaying. YOU are the one who has canceled multiple depositions multiple times. We are not threatening to delay future depositions, you are.

We continue to ask for you to supplement your discovery responses, including answering contention interrogatories, providing the information for Ms. Reid's relative who gave her information on the value of the report (are you really forcing us to file a Motion to Compel on this), dates for your clients' depositions, and the many other discovery deficiencies we have addressed in multiple correspondence to you.

Tom

<image001.png>

Thomas P. Mannion
Attorney | Cleveland Managing Partner
Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | LewisBrisbois.com

SANDRA KURT

IN THE COURT OF COMMON PLEAS
2017 SEP 12 AM 9:22 COUNTY OF SUMMIT

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

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