

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

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. 2016-CV-09-3928 Judge James A. Brogan Plaintiffs' Motion for Leave to File Sur-reply in Opposition to the KNR Defendants' Motion to Compel Answers to Contention Interrogatories
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Plaintiffs hereby seek leave to submit the following sur-reply, *instantly*, to briefly address Defendant's contention that they are the victims of a "disingenuous shell game" whereby the only evidence for Plaintiffs' claims of which they have been made aware are the allegations and documents quoted in the Complaint.¹ *See* KNR Defendants' Feb. 21, 2019 Reply at 4.

The Court need only briefly refer to the deposition transcripts of KNR's operations manager Brandy Gobrogge (filed on Jan. 9, 2019), and KNR's owner, Defendant Nestico (filed under seal on Feb. 27, 2019), to confirm the lack of merit to this contention. These transcripts show that Gobrogge was examined by Plaintiffs' counsel on 75 documents that were marked as exhibits to her deposition (*See* Gobrogge Tr. at 338), and that Defendant Nestico was similarly examined on 103 documents (*See* Nestico Tr. at 300). These documents, and the testimony given on them and generally by Nestico and Gobrogge, as well as Defendant Ghoubril's employee Dr. Gunning (transcript filed on Dec. 20, 2018), and former KNR attorneys Kelly Phillips and Robert Horton who testified just last Friday, Monday, and yesterday, rather obviously constitutes the bulk of the

¹ Plaintiffs also wish to briefly point out, in response to Defendants' complaint that the cases cited by Plaintiffs interpreting Fed.R.Civ.P. 33 do not "opine on the Ohio Rules of Civil Procedure" (Reply at 2), that the text of the Federal Rule and the Ohio Rule are substantially similar. *See Myers v. City of Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, ¶ 18 (where the language of both rules is similar, "federal case law that interprets the federal rule, while not controlling, is persuasive").

evidence supporting Plaintiffs' claims. Plaintiffs have repeatedly explained in Court filings about how this evidence applies to support their claims, and will continue to do so as discovery progresses, new evidence is discovered, and these theories develop. Thus, Defendants' suggestion that the only evidence Plaintiffs have revealed in this case are the allegations and documents in the Complaint is extremely misleading and should be rejected, along with the rest of Defendants' motion, as explained more fully in Plaintiffs' opposition brief.

Indeed, the Court may refer to Defendant Nestico's deposition transcript at pages 490:1–503:12—where Nestico is unable to explain various public records showing his involvement in separate privately held corporations with Defendant Floros, and KNR “investigator” Aaron Czetli—to infer an improper purpose behind Defendants' insistence that Plaintiffs answer contention interrogatories before discovery is closed. *See also, e.g., In re E. I. du Pont de Nemours*, S.D.Ohio No. 2:13-md-2433, 2015 U.S. Dist. LEXIS 178306, *1119-1122 (May 20, 2015) (finding contention interrogatories to be unduly burdensome where they were “not directed at eliciting previously unknown information, but rather appear to be directed at uncovering the [plaintiffs'] roadmap of the universe of discovery that has already been exchanged, *i.e.*, the [plaintiffs'] work product.”); *Norwood v. Radtke*, No. 07-cv-624, 2008 U.S. Dist. LEXIS 108765, at *2 (W.D. Wis. Feb. 26, 2008) (“[A party] cannot simply ask [the opposing party] to give him a copy of everything ... that they intend to use [to support claims]. This puts an impossible burden on [a party] and it invades their attorney-client and work product privileges.”).

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536

peter@pattakoslaw.com
rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com

Attorneys for Plaintiffs

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The foregoing document was filed on February 27, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs