IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

KNR DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO THE KNR DEFENDANTS' MOTION TO COMPEL ANSWERS TO CONTENTION INTERROGATORIES

In their Sur-reply, Plaintiffs do not address the case law cited by Defendants in their Motion and Reply, which hold that contention interrogatories are recognized as a proper form of discovery under Civil Rule 33, whether originating under federal or state law. Rather, Plaintiffs seek to once again cloud the salient issue by referring to deposition exhibits in hopes of sidestepping their obligation to respond. However, Plaintiffs cannot avoid a response to proper contention interrogatories by simply referencing their pleadings, deposition testimony, or documents. *See, e.g., Fresenius Med. Care Holdings, Inc. v. Roxane Labs, Inc.*, No. 2:05-cv-0889, 2007 U.S. Dist. LEXIS 10122, * (S.D.Oh. Feb. 14, 2007) (rejecting simple reference to "specific detail" in pleadings in response to an interrogatory, as "[t]here is value in having an interrogatory answer be clear and precise so that it can be used either as the basis for further discovery. As the basis for a request for stipulation, or even for impeachment at trial"); *United States v. Dist. Council of New York City*, No. 90 Civ. 5722, 1992 U.S. Dist. LEXIS 11201, *15 (S.D.N.Y. July 30, 1992) ("Where the interrogating party makes a request for an answer to certain questions, a [party] responds inappropriately by merely designating documents because the interrogatory did not call for business records"); *Mahoney v. Kempton*, 142 F.R.D. 32, 33 (D. Mass. 1992) (reference to prior trial testimony in response to interrogatory was "totally improper," as "interrogatory answers must be

complete in and of themselves; other documents or pleadings may not be incorporated into an answer by reference"); *Smith v. Logansport Comm. Sch. Corp.*, 139 F.R.D. 637, 650 (N.D. Ind. 1991), quoting 4A J. Moore, J. Lucas, *Moore's Federal Practice*, para. 33.25[1] (2d ed. 1991) (reference to depositions in response to contention interrogatories was "evasive and clearly insufficient," finding it "well-established that an answer to an interrogatory 'must be responsive to the question. It should be complete in itself and should not refer to the pleadings, or to depositions or other documents, or to other interrogatories, at least where such references make it impossible to determine whether an adequate answer has been given without an elaborate comparison of answers.'").

Plaintiffs' Sur-reply makes a point of noting that the 178 documents marked as exhibits to depositions in this case, and the deposition testimony given on them and other topics thus far, "rather obviously constitutes the bulk of the evidence supporting Plaintiffs' claims." (Sur-reply, pp. 1-2). Such representation by counsel, however, fails to comply with discovery rules requiring that "[e]ach interrogatory . . . be answered ***separately and fully in writing under oath*** . . .." Civ.R. 33(A)(3) (emphasis added). If Plaintiffs are now taking the position with this statement that they have produced all facts and evidence supporting their claims of which they are presently aware, they should be required to say so in response to the interrogatories at issue and immediately withdraw the objections. Plaintiffs can certainly supplement responses consistent with the Civil Rules should additional facts or evidence be uncovered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 5th day of March, 2019. The parties may access this document through the Court's electronic docket system.

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