

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	:	Case No. CV-2016-09-3928
	:	
Plaintiffs,	:	Judge James A. Brogan
	:	
vs.	:	<b>KNR DEFENDANTS'</b>
	:	<b>MEMORANDUM IN OPPOSITION</b>
KISLING, NESTICO & REDICK, LLC, et	:	<b>TO PLAINTIFFS' MOTION TO</b>
al.	:	<b>COMPEL</b>
	:	
Defendants	:	

Mr. Nestico testified for almost 13 hours on February 7 and 8, 2019. At the conclusion of the second day of testimony, Plaintiffs' counsel did not attempt to suspend the deposition in progress. He concluded simply with "I appreciate your patience gentlemen – thank you. I understand." Now Plaintiffs have moved to compel additional testimony of Alberto Nestico on seven topics. Those are addressed in the order raised by Plaintiffs, below.

**1. KNR's advertising and solicitation of potential clients.**

This issue relates only to Plaintiffs' Exhibit 4, which is comprised of 6 pages from KNR's website which describe the firm's class action experience (A copy of Plaintiffs' Exhibit 4 is attached hereto as Exhibit A.)

In their motion, Plaintiffs cite to the Nestico transcript at 76:2 – 77:17 (Nestico Dep., Vol. 1, Feb. 7, 2019), but the question that appears at page 76:2 is:

MR. PATTAKOS: This is his communication with potential clients. It's relevant. I'm entitled to ask him questions about it.

The actual question that started the colloquy between counsel was posed on page 73, after Plaintiffs' counsel asked:

Okay. Do you have reason to dispute that the contents of this document [Plaintiffs' Exhibit 4] represents the KNR website as of today?

(Nestico Dep., Vol. 1, 73:16-18.) Deponent responded that he could not answer the question (because he had not reviewed the website), but stated to counsel, "If you printed it off, that's what it is." (Nestico Dep., Vol. 1, 77:11.)

Plaintiffs' counsel eventually asked the deponent:

Q. So you're not going to answer questions about this document at your attorney's instruction, Mr. Nestico?

A. Correct.

(Nestico Dep., Vol. 1, 77:24 – 78:2.) However, Mr. Nestico was questioned and testified about Plaintiffs' Exhibits 3, 5, 6, 7, and 8, all of which are copies of other portions of the KNR website. (Nestico Dep., Vol. 1, 80:1-132.)

As stated above, Plaintiffs' Exhibit 4 is a screen shot of the portion of KNR's website that detailed the firm's experience with class action and mass tort cases. None of the named Plaintiffs involved in this suit were represented by KNR in class action or mass tort suits. Mr. Nestico's counsel explained the reasons for his instruction to Mr. Nestico not to answer questions about Plaintiffs' Exhibit 4:

MR. MANNION: I am just going to say for the record, Peter, while he is reading that, none of the underlying plaintiffs had class action claims handled by KNR, so I don't see the relevance in this. And you're certainly not going to try to turn him into a class action expert, as he sits here. He is here as a fact witness.

(Nestico Dep., Vol. 1, 74:19 – 75:2.) Plaintiffs' counsel responded that Plaintiffs' Exhibit 4 is a communication with potential clients and therefore relevant. (Nestico Dep., Vol. 1, 76:2-4.) But the firm's class action and mass tort experience is not relevant to either class certification in this case or to the underlying merits; therefore, this

portion of KNR's website advertising KNR's class action and mass tort experience is not relevant to this case, and Mr. Nestico should not be required to testify about it.

Plaintiffs' next cite Nestico Dep., Vol. 1, 127:24 – 128:7, at which the following exchange took place :

Q. How much does the firm spend every year on advertising?

A. I'm not answering that question. That's proprietary. It's clear.

Q. Okay. It's increased over the years, hasn't it?

A. I'm not answering that question.

The KNR advertising budget is clearly proprietary and is not relevant in any way to the class action claims asserted in this matter.

Plaintiffs' final citation is to Nestico Dep., Vol.1, 146:13-25:

Q. \* \* \* How is it that you remain on the cutting edge of your field?

A. Technology.

Q. What type of technology?

A. The use of technology.

Q. What technology?

A. Again, I'm not going to tell you this is all proprietary, because I'm not going to tell you how we handle cases.

Q. Okay. Proprietary technology.

A. Did you say something?

Q. No. Proprietary technology, I just want to confirm that is your answer.

A. Okay.

This, again, is proprietary. How Mr. Nestico creates and maintains an advantage over other personal injury plaintiffs' counsel is protected as proprietary information and is totally irrelevant to this action.

For these reasons, Mr. Nestico should not be required to testify about Plaintiffs' Exhibit 4, or about his marketing strategy or use of technology in his practice.

**2. The reasons why KNR tracks referrals to and from medical providers.**

Plaintiffs' counsel cites Nestico Dep., Vol. 1, 209:3 – 210:10:

Q. Okay. You agree that the firm closely tracks its referrals to and from medical providers, correct?

A. You say, closely tracks. I wish it was closer, but we try our best.

Q. Okay. To track as accurately as possible the referral source of each case?

A. Yes.

Q. And what's the reason for doing that?

A. First of all, it's proprietary, and you're a competitor, so I'm not going to give out information as to why I do certain things. You wouldn't tell me.

Q. Brandy testified all about this.

A. Okay. I wouldn't have.

Q. And, now, you're not going to testify?

A. No, I'm not going to.

Q. Okay.

A. You want general, I'll give you general. I'm not going to tell you what we do.

Q. Why don't you give me generally, then.

A. Any business wants to track their resources. I'm sure you do.

Q. Okay. But the reason you do it, you are going to keep a secret?

A. It's for marketing purposes.

Q. For marketing purposes. Marketing to who?

A. To the public.

Q. You track your referrals, so that you could analyze how effective your marketing is?

A. That's one of the reasons, sure.

Q. What are the other reasons?

A. You're getting back to, it's proprietary, and I'm not going to tell you.

Mr. Nestico testified that the reason KNR tracks referrals is for marketing purposes. The specific use of that information in KNR's marketing efforts is proprietary, and Plaintiffs' counsel is a competitor of KNR. Second, this information is not relevant to the claims asserted in the instant complaint. Third, as Plaintiffs' counsel stated, Brandy (an employee of KNR) already testified "all about it;" thus, there is no need for Mr. Nestico to do so.

**3. Mr. Nestico's knowledge about the testimony Julie Ghoubrial provided in her divorce case about the allegations in this lawsuit.**

Mr. Nestico did not attend Ms. Ghoubrial's deposition. He testified that what he knows about Julie Ghoubrial's deposition "\* \* \* is what my lawyers have told me." (Nestico Dep., Vol. 2, 471:20; 474:14-15, Feb. 28, 2019.) Mr. Nestico was instructed by the undersigned that "If the only source of your information is what your lawyer told you, you don't have any information that you can disclose period." (Nestico Dep., Vol. 2, 474:25 – 475:3.) Plaintiffs' counsel did not ask a follow-up question. (See Nestico Dep., Vol. 2, 475:22, *et seq.*) Obviously, what Mr. Nestico's counsel remembered from the deposition and repeated to Nestico is privileged. It, by necessity, contains the mental

impressions of the lawyer. The question did not, therefore, call for the disclosure of a “fact.” That transcript has apparently been marked confidential in the domestic relations matter, and Plaintiffs’ counsel was attempting to improperly ascertain what Ms. Ghoumbrial testified to.

The case cited by Plaintiffs as support for their assertion that Mr. Nestico should be forced to testify about what his lawyer told him about Ms. Ghoumbrial’s deposition does not support that contention. In *Pales v Fedor*, 8th Dist. Cuyahoga No. 106024, 2018-Ohio-2056, 113 N.E.3d 1019, ¶ 18, the court of appeals addressed a trial court order commanding the attorney to disclose the names, addresses, and telephone numbers of certain of the lawyer’s clients as well as his IOTLA records. The court stated, in pertinent part:

A communication need not “pertain purely to legal advice” in order for it to be protected from disclosure by the attorney-client privilege. “[I]f a communication between a lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged.” However, the privilege protects only attorney-client “communications” from disclosure, “it does not prevent disclosure of the underlying fact[s].”

*Id.* at ¶ 23 (internal citations omitted). Plaintiffs’ counsel did not question Mr. Nestico about the context of the attorney-client communication in which Mr. Nestico’s counsel relayed his impressions and recollection of Ms. Ghoumbrial’s deposition testimony. He is therefore unable to establish that the communication was not made to “facilitate the rendition of legal services or advice.”

Mr. Nestico should not be required to testify about what his lawyer told him about the deposition of Ms. Ghoumbrial.

**4. KNR’s decision to file a lawsuit against chiropractor James Fonner.**

Plaintiffs’ counsel asked:

Q. Why did you sue Dr. Phone ER [Fonner]?

A. You know I can't answer that.

Q. You're not going to answer the question about Mr. - - you're , not going to answer the question about - -

A. If you want to look, it's on the docket. I can't talk about it.

Q. And you're not going to answer questions about your settlement with Rob Horton either, are you?

(Nestico Dep., Vol. 2, 644:24 – 645:11.)

The question "Why did you sue Dr. [Fonner]" obviously seeks more information than is contained in the complaint. The factual foundations of the complaint are patent from the complaint itself, and the complaint is public record. The question, however, sought the strategy behind filing the complaint.

KNR was represented by counsel in that suit. KNR's motivation/strategy (if there was one other than the recovery of the damages sought in the suit) is the result of attorney-client communication and is privileged. Additionally, KNR's motivation for suing Dr. Fonner cannot arguably lead to the discovery of admissible evidence because it is completely unrelated to the allegations asserted in this case. Finally, James Fonner has given testimony in this matter by way of affidavit (previously filed and attached hereto as KNR Exhibit B).

After being subpoenaed to the office of Plaintiffs' counsel for deposition, and being "interviewed" by Mr. Pattakos after he canceled the deposition without notice to Mr. Fonner, Mr. Fonner also told Mr. Pattakos that he "could not talk about the lawsuit because of a Confidentiality and Non-Disparagement Agreement." Despite Attorney Pattakos's legal advice to Dr. Fonner that the Agreement "did not apply" to this case and that it was okay to discuss it, Dr. Fonner refused to do so. Clearly, both parties to that

Agreement have the same understanding of the confidentiality obligations created by the Agreement. The complaint details the legal theories asserted against Mr. Fonner. Mr. Nestico should not be required to testify about his motivation/strategy in filing the suit.

**5. KNR's respective termination of—and separation with—former attorneys and key witnesses Robert Horton and Paul Steele.**

With regard to the case against Rob Horton, Plaintiffs' counsel asked "I want to know what you settled the case for - - with Rob Horton." (Nestico Dep., Vol. 2, 645:17-19.) That settlement was confidential at the time of Mr. Nestico's deposition, and Mr. Nestico was bound by the confidentiality agreement. Since that time, the agreement has been provided to Plaintiffs' counsel by Mr. Horton's counsel at Mr. Horton's deposition. Thus, further questioning regarding the terms of the settlement are not needed, nor are such questions relevant to the instant action.

With regard to Paul Steele, Plaintiffs' counsel asked:

Q Why did you threaten to sue Paul Steele?

A What?

Q. You had your attorney send a letter to Paul Steele, didn't you?

MR. MANNION: Objection

Q. You had Mr. Coughlan send Paul Steele a letter, right?

A. Yeah, he did, he sent him a lawyer [letter]

Q. Why? That letter is not confidential, we have a copy of it.

\* \* \* \* \*

Q. You have a confidentiality agreement with Paul Steele?

A. I do.



Q. Why?

A. What do you mean, why?

Q. Why do you have a confidentiality agreement with him.

A. His lawyer asked for it.

Q. What does it cover?

A. I can't answer, Peter.

(Nestico Dep., Vol. 2, 647:3 – 648:17.)

The questions asked of Mr. Nestico were answered. If Plaintiffs' counsel was attempting to inquire as to the terms of the settlement, those are both confidential and are not relevant to the instant case.

**6. Nestico's awareness of well-known racist stereotypes regarding black people and fried chicken.**

Plaintiffs' counsel tries to justify his ridiculous questioning of Mr. Nestico about an article related to the basis of the "Fried Chicken Stereotype" (Plaintiffs' Exhibit 87, a copy of which is attached hereto as Exhibit C), by citing Mr. Nestico's testimony that " \* \* \* we are representing a lot of people that other firms don't represent. The lower socioeconomic. They don't have health insurance, can't afford it." (Nestico Dep., Vol. 2, 477:11-14.) Plaintiffs' counsel makes the leap that "lower socioeconomic" clients mean African-American clients—an obvious bit of racial stereotyping on the part of Plaintiffs' counsel himself.

Plaintiffs' Exhibit 86 evidenced the fact that one of KNR's clients sold a gift card to the Macaroni Grill to a pawn shop. (A copy of Plaintiffs' Exhibit 86 is attached hereto as Exhibit D.) KNR clients receive gift cards for completing a survey at the conclusion of the representation. (Nestico Dep., Vol. 2, 573:2-4.) In Exhibit 86, Nestico asked, "They

don't like Macaroni Grill? Next time, get Popeye's Chicken." The Macaroni Grill is obviously more expensive than Popeye's Chicken, so a customer can get more food at Popeye's than at the Macaroni Grill. And, as Nestico explained, this email originated in the Youngstown office, and Popeye's Chicken is the closet restaurant to the Youngstown office. (Nestico Dep., Vol. 2, 574:12-14.)

The basis of the stereotype of fried chicken as a food eaten by African-Americans is not relevant to the instant suit. The article, "Where Did that Fried Chicken Stereotype Come From?"—which attempts to document the basis of the stereotype—is one step removed from the actual stereotype, and Mr. Nestico's view of whether that article is accurate is even further removed from the operative facts of this suit.

This questioning implied that Mr. Nestico is racist. That line of questioning, in this case, is irrelevant, offensive, objectionable, and improper. Mr. Nestico should not be compelled to be answer questions about the origins of the stereotype that African-Americans like fried chicken.

**7. Why KNR dismissed its counterclaims against Plaintiffs a few days before Nestico's deposition.**

Plaintiffs now seek to compel Mr. Nestico's testimony about why the KNR Defendants dismissed their counterclaims against Plaintiffs. But this issue was resolved by agreement at deposition. Plaintiffs' counsel asked:

MR. PATTAKOS: So as soon as you re-file your counterclaims, we can come back for Mr. Nestico's deposition. You're agreeing to that?

MR. MANNION: At a mutually convenient time, yes.

MR. PATTAKOS: We gotta deal, Tom.

MR. MANNION: Okay.

THE WITNESS: No, you don't.

MR. PATTAKOS: Well, let me just - - give me one - -

MR. MANNION: On the counterclaim.

MR. PATTAKOS: Right, on the counterclaim.

THE WITNESS: He can ask me about the counterclaim when it comes.

MR. MANNION: Yeah.

(Nestico Dep., Vol. 2, 663:9-25.)

### **Conclusion**

For the above stated reasons, Mr. Nestico should not be compelled to testify about any of the above issues.

Respectfully submitted,

/s/ George D. Jonson

GEORGE D. JONSON (83926)  
MONTGOMERY, RENNIE & JONSON  
36 East Seventh Street, Suite 2100  
Cincinnati, Ohio 45202  
Tel: (513) 768-5220  
Fax: (513) 768-9220  
[gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com)

*Counsel for Defendants Kisling, Nestico  
& Redick, LLC, Alberto R. Nestico, and  
Robert W. Redick*

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ George D. Jonson

GEORGE D. JONSON



ABOUT

PRACTICE AREAS

SERIOUS INJURIES

LOCATIONS

CONTACT

Search



## OHIO CLASS ACTION LAWYERS

*Dangerous products and services devastate the lives of thousands of trusting users every year. Even with strict compliance standards and oversight, faulty products affect a lot of people. It's important to remember in these situations that you are not alone. There are often large companies responsible for your injuries and by joining forces with other victims, you can hold them responsible.*

COMMUNITY SUPPORT

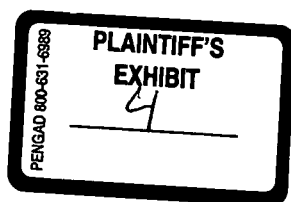
COMMUNITY SUPPORT

### KNR CARES ABOUT KIDS

In 2019, KNR will focus on supporting Ohio's kids to reach their full potential.

### SUPPORT TEAM KNR

Join KNR and donate to our goal for the 16th Annual Portage Lakes Polar Bear Jump.



ON THIS PAGE

# EXHIBIT A





The negligent actions of large companies and other entities can impact a lot of individuals, across multiple jurisdictions. When this happens, the potential for harm is not only increased, but so is the level of risk and difficulty. Holding large companies and several individuals accountable can be intimidating, but fortunately, the law allows individuals in similar circumstances the opportunity to level the playing field by banding together in either a class action or mass tort.

Through a mass tort or class action, you may be able to recover compensation for:

- *Medical costs and hospital bills*
- *Loss of income*
- *Disability or physical impairment*
- *Disfigurement*
- *Pain and suffering*
- *Mental anguish*
- *Loss of consortium*

At Kisling, Nestico & Redick, our [Ohio personal injury lawyers](#) represent individuals, groups, and classes of all sizes in these highly complex matters and use our more than 400 years of combined experience to successfully obtain compensation to help our clients move forward with their lives.

If you or a loved one has been harmed by the negligent or fraudulent actions of another person or large company, contact us at 1-800-HURT-NOW for a free consultation. KNR is a leading Ohio firm, serving the needs of those harmed by dangerous or defective products and services.

## UNDERSTANDING THE DIFFERENCE BETWEEN CLASS ACTIONS & MASS TORTS

### OHIO INVOKANA LAWSUIT CLAIMS

### DEPUY ATTUNE KNEE REPLACEMENT SYSTEMS

### Helpful Resources

### WHAT IS A CLASS ACTION LAWSUIT?

*"I feel that I was in great hands and my well being was the main concern."*

### - KNR CLIENT





Kisling, Nestico  
& Redick  
OHIO INJURY ATTORNEYS

[ABOUT](#)[PRACTICE AREAS](#)[SERIOUS INJURIES](#)[LOCATIONS](#)[CONTACT](#)[Search](#)

RECOVERIES.

- **What is a Class Action?**

In a class action, the parties involved are grouped together as a class and represented by one or a few individuals. Rather than having every affected member, which could be thousands of people, participate in their own court cases, a class action allows the issues to be resolved for everyone in one lawsuit. This makes it more affordable for people to participate since the expenses are pulled from the total recovery obtained on behalf of the members. The remainder of the recovery is then distributed amongst the class members. This type of case often is pursued when the harm experienced is primarily financial rather than for personal injuries.

- **What is a Mass Tort Claim?**

In a mass tort claim, one attorney or a group of attorneys can represent numerous people who were injured by a particular product, such as a dangerous drug or defective medical device. However, each person retains his or her own individual claim rather than becoming part of a single claim as in a class action lawsuit. Mass torts allow you to be represented as an individual and to pursue your own case, but also to pool resources with other attorneys and plaintiffs handling similar claims to make litigation more efficient and cost-effective. Because you retain your individual claim, you also retain the ability to come to an individual settlement or verdict in your case that you don't have to divide among numerous other plaintiffs.

Both types of legal actions allow injured people the opportunity to pursue the compensation they need from companies who have large teams of attorneys dedicated to preserving their own interests. At KNR, our legal team can explain which of these may be appropriate in your specific case, and we will work tirelessly to obtain the justice you deserve.

## MASS TORTS INVOLVING DANGEROUS DRUGS & MEDICAL PRODUCTS





Kisling, Nestico  
& Redick  
OHIO INJURY ATTORNEYS

[ABOUT](#)[PRACTICE AREAS](#)[SERIOUS INJURIES](#)[LOCATIONS](#)[CONTACT](#)[Search](#)

If a prescription or over-the-counter medication is defective or has dangerous side effects, a user can experience serious harm, such as with arthritis drugs that were discovered to cause heart problems with long-term use. Additionally, defective medical devices can cause irreversible damage. Poorly designed, manufactured, tested, and labeled devices can all contribute to personal injury and significant pain. What makes the situation even worse is that when these items are used nationwide, the effects can be widespread and affect thousands, or even millions, of people.

Cases involving injuries caused by defective drugs and medical devices are usually pursued as mass tort claims. At Kisling, Nestico & Redick, our Ohio personal injury attorneys have extensive experience with mass tort claims involving dangerous drugs and defective medical devices. We have achieved successful outcomes in many of these types of cases, including several multi-million dollar settlements or verdicts for individuals who were harmed by dangerous or defective medical products.

Some of the current types of cases we're handling include:

- *Zimmer Persona @ trabecular metal tibial plate*
- *Testosterone drugs*
- *Granuflo & Naturalyte*
- *DePuy Attune Knee Replacement Systems*
- *Ohio Invokana Lawsuit Claims*

## OTHER TYPES OF OHIO CLASS & MASS TORT CASES WE HANDLE

Class Actions and Mass Torts are often massive in scope and involve complicated issues ranging from contractual agreements, false product claims, fraud, bad faith denials, product liability, and negligence amongst others. The attorneys with Kisling,



Powered by ApexChat



Kisling, Nestico  
& Redick  
OHIO INJURY ATTORNEYS

[ABOUT](#)[PRACTICE AREAS](#)[SERIOUS INJURIES](#)[LOCATIONS](#)[CONTACT](#)[Search](#)

we represent groups of plaintiffs in a broad range of cases, including:

- [Product Liability](#)
- [Mesothelioma](#)
- [Insurance Bad Faith](#)

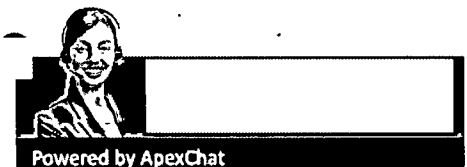
## CONTACT AN OHIO CLASS ACTION LAWYER

If you have been injured or suffered losses because of a faulty product or due to the actions of a corporation, you may be entitled to damages. The experienced [Ohio personal injury lawyers with KNR](#) can determine your eligibility for either a mass tort or class action and properly advise you on the best way to move forward. To schedule a free, no-risk consultation with an attorney, call 1-800-HURT-NOW and review all your options and learn how to recover what you deserve.

*Free Consultation // No Recovery, No Fee.*

CONTACT KNR TODAY

*Enter your zipcode to find  
the KNR location closest to you*





[ABOUT](#)[PRACTICE AREAS](#)[SERIOUS INJURIES](#)[LOCATIONS](#)[CONTACT](#)

Search

11 LOCATIONS  
THROUGHOUT OHIO

[Akron](#)  
[Beachwood](#)  
[Canton](#)

[Cincinnati](#)  
[Cleveland](#)  
[Columbus](#)

[Dayton](#)  
[Independence](#)  
[Toledo](#)

[Westlake](#)  
[Youngstown](#)



Disclaimer: Kisling, Nestico & Redick provides legal representation and legal advice to clients throughout the State of Ohio. Prior case results and client testimonials do not guarantee or predict a similar outcome in any future case. The photos and imagery on this website are purely for dramatization purposes and do not reflect actual events of past or current clients. The review or use of information on this site is not intended to create an attorney-client relationship. Any information you provide directly through chat, email, contact form, text message, or phone call will be kept confidential. Please feel free to contact us at [contact@knrlegal.com](mailto:contact@knrlegal.com) for any further questions. © 2017 by Kisling, Nestico & Redick. All rights reserved. [Click for sitemap](#) || [Click for privacy policy](#)



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

MEMBER WILLIAMS,

Case No. CV-2016-09-3928

Plaintiff,

Judge BROGAN

V.

**AFFIDAVIT OF JAMES E. FONNER, D.C.**

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

Defendants.

Now comes affiant, James E. Fonner, D.C., after first being duly sworn according to law and states the following to be true and accurate to the best of my knowledge:

1. I am a Doctor of Chiropractic care licensed to practice by the Ohio State Chiropractic Board, license number DC-03599.
  2. During the first week of October, 2018, I was served with a copy of a Subpoena in a Civil Case, a copy of which is attached as Exhibit "A", by Attorney Peter Pattakos.
  3. The Subpoena directed me to attend and give testimony at a deposition on October 23, 2018, at 9:30 a.m., at the Pattakos Law Firm, 101 Ghent Road, Fairlawn, Ohio, 44333.
  4. The Subpoena warned me that it was a penalty of law not to show:
- HEREOF FAIL NOT UNDER PENALTY OF THE LAW.

## EXHIBIT B

**Sandra Kurt, Summit County Clerk of Courts**

5. The Subpoena also warned me that I could be subject to sanctions if I did not obey the Subpoena:

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

6. Prior to October 23, 2018, neither Peter Pattakos nor anyone from his office contacted me to let me know the deposition was no longer going forward and that I did not need to appear at his office by 9:30 a.m. on October 23, 2018.

7. As of the morning of October 23, 2018, it was my belief I was under a legal obligation, pursuant to the subpoena served on me by Attorney Pattakos, to appear at the offices of Attorney Peter Pattakos by 9:30 a.m. on October 23, 2018.

8. Accordingly, at approximately 7 a.m. on October 23, 2018, I drove approximately 120 - 130 miles from Pataskala, Ohio to Fairlawn, Ohio, to the offices of Attorney Pattakos.

9. I arrived at the offices of Attorney Peter Pattakos, 101 Ghent Road, Fairlawn, Ohio, before 9:30 a.m. on October 23, 2018, pursuant to the Subpoena he issued on me, and it did not appear anyone was there.

10. I called the phone number on the subpoena and talked with the office, and then talked with Attorney Pattakos, who invited me into the office.

11. When I arrived inside the offices of Attorney Peter Pattakos, he was the only attorney present to my knowledge, and I was not introduced to any attorneys for any other parties in the case. Attorney Pattakos then informed me the deposition had been canceled.

12. After informing me the deposition was canceled, Attorney Pattakos interviewed me with respect to my interactions with and allegations against KNR and Rob Nestico. He made

numerous derogatory comments concerning Rob Nestico. He asked me about preferred clinics and any deals with KNR, and I told him I don't know anything about that issue and that I don't have any agreements with KNR.

13. Attorney Pattakos also told me that he knew KNR previously filed a lawsuit against me, and he began to ask me details about the lawsuit. I immediately advised him Attorney Pattakos that I could not talk about the lawsuit because of a Confidentiality and Non-Disparagement Agreement. Attorney Pattakos told me that I did not need to worry about the Confidentiality and Non-Disparagement Agreement because it "did not apply" in the case for which I was subpoenaed, and that therefore it would be okay to discuss it. I refused to provide any confidential information that could breach my obligations under the Confidentiality and Non-Disparagement Agreement.

14. When Attorney Pattakos was done interviewing me, I drove the 120 – 130 miles back from Fairlawn, Ohio to Pataskala, Ohio.

15. I canceled all of my patients for October 23, 2018, due to the Subpoena issued by Attorney Pattakos.

16. Driving approximately 240 – 260 miles roundtrip between Pataskala, Ohio and Fairlawn, Ohio, canceling my patients, losing income, incurring substantial lost time for a deposition that did not go forward, and otherwise complying with the Subpoena was an unnecessary and undue burden on me given that it had been previously canceled but Attorney Pattakos did not advise me of the cancellation.

Further affiant sayeth naught.

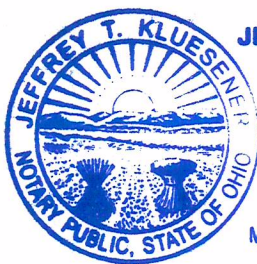
James E. Fonner D.C.  
James E. Fonner, D.C.

11/30/2018  
Date

STATE OF OHIO           )  
                                      )  
COUNTY OF FRANKLIN   )  
                                      )

Sworn to before me and subscribed in my presence this 30 day of November, 2018.

Jeff Kluesener  
Notary Public



**JEFFREY T. KLUESENER**  
**ATTORNEY AT LAW**  
NOTARY PUBLIC  
STATE OF OHIO

My Commission Has No Expiration Date

**Pick Your NPR Station**

There are at least two stations nearby



DONATE

CODE SWITCH



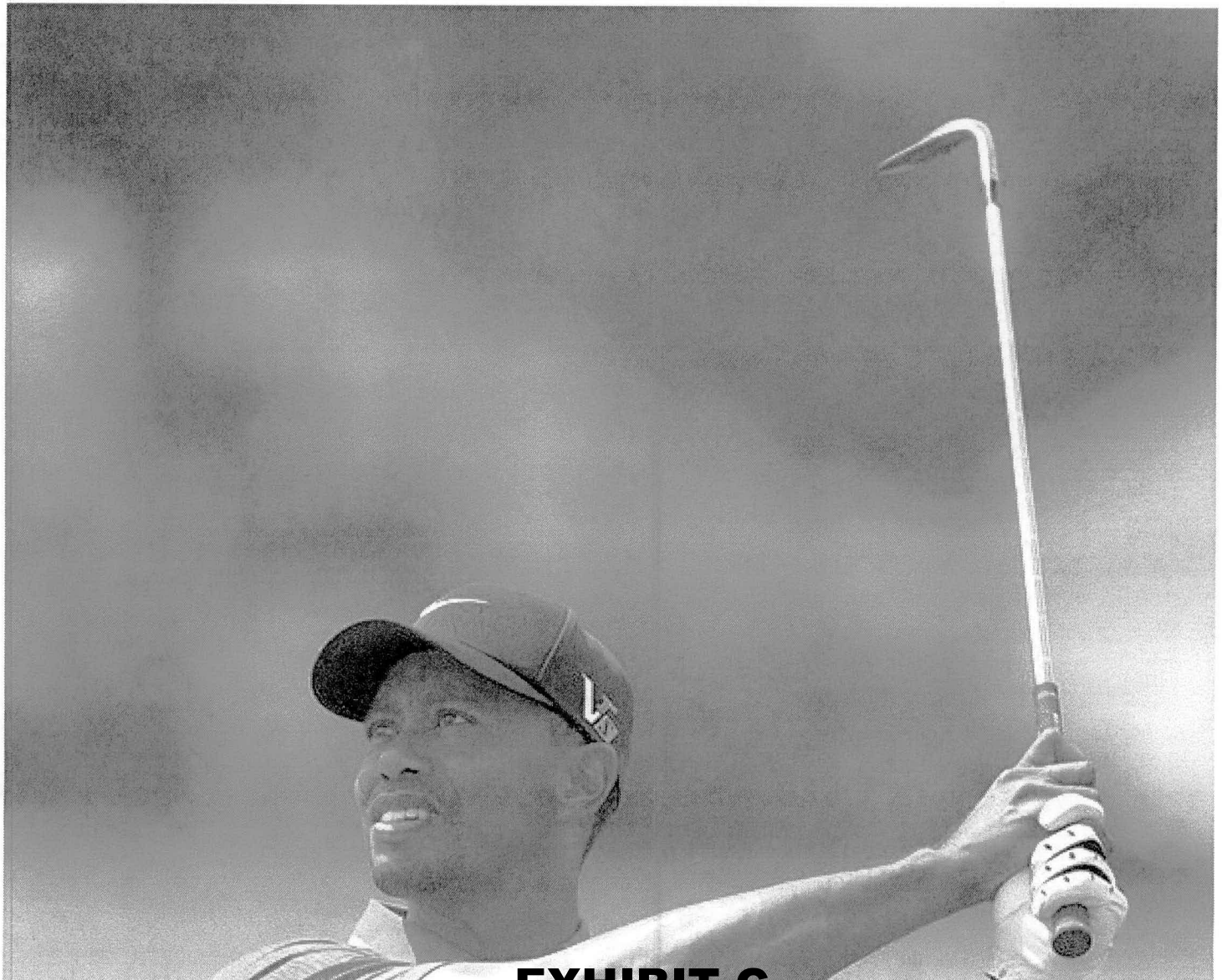
SUBSCRIBE TO CODE SWITCH

# Where Did That Fried Chicken Stereotype Come From?

May 22, 2013 · 6:03 PM ET

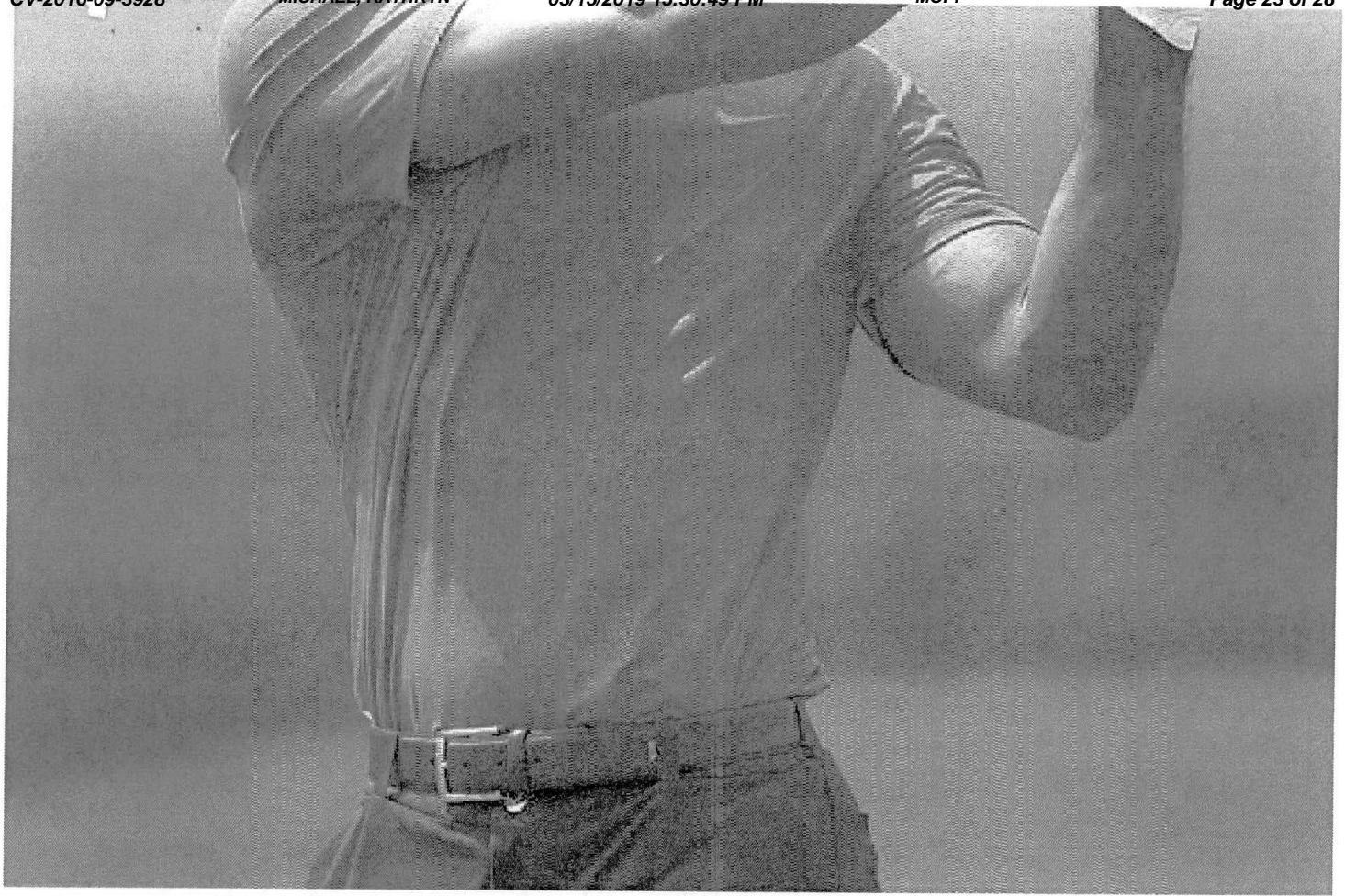


GENE DEMBY

**EXHIBIT C**

Sandra Kurt, Summit County Clerk of Courts





A rival of Tiger Woods made a joke that was construed by many as racist.

*John Raoux/AP*

Sports-talk radio was abuzz Wednesday morning with some comments that Sergio Garcia, the professional golfer, made about his frequent foil, Tiger Woods.

"We'll have him 'round every night," Garcia said. "We will serve fried chicker."

The comment came after Garcia was asked if he would invite his rival, with whom he has a frosty relationship, to his house during next month's U.S. Open. Woods responded to Garcia's tweets on Twitter: "The comment that was made wasn't silly. It was wrong, hurtful and clearly inappropriate ... I'm confident that there is real regret that the remark was made." (Garcia offered a textbook nonapology apology.)

Wait. *This again?*

This black-people-and-fried-chicken thing is really old — it's not even the first time a

professional golfer made a joke about fried chicken and Tiger Woods.

What is it with this stereotype about black people loving fried chicken?

I asked Claire Schmidt for help. She's a professor at the University of Missouri who studies race and folklore. Schmidt said chickens had long been a part of Southern diets, but they had particular utility for slaves. They were cheap, easy to feed and a good source of meat.

Article continues below

## Sign Up For The Code Switch Newsletter

See what news, politics and culture say about race and identity, sent weekly.

What's your email?

SUBSCRIBE

By subscribing, you agree to NPR's terms of use and privacy policy.

But then, Schmidt says, came Birth of a Nation.

D.W. Griffith's seminal and supremely racist 1915 silent movie about the supposedly heroic founding of the Ku Klux Klan was a huge sensation when it debuted. One scene in the three-hour features a group of actors portraying shiftless black elected officials acting rowdy and crudely in a legislative hall. (The message to the audience: These are the dangers of letting blacks vote.) Some of the legislators are shown drinking. Others had their feet kicked up on their desks. And one of them was very ostentatiously eating fried chicken.

"That image really solidified the way white people thought of black people and fried chicken," Schmidt said.



Schmidt said that like watermelon, that other food that's been a mainstay in racist depictions of blacks, chicken was also a good vehicle for racism because of the way people eat it. (According to government stats, blacks are underrepresented among watermelon consumers.) "It's a food you eat with your hands, and therefore it's dirty," Schmidt said. "Table manners are a way of determining who is worthy of respect or not."

But why does this idea still hold traction, since fried chicken is clearly a staple of the American diet? Surely, KFC, Popeyes and Church's ain't national chains — and chicken and waffles aren't a brunch staple — because of the supposed culinary obsessions of black folks.

"It's still a way to express racial [contempt] without getting into serious trouble," Schmidt said. (Among the Code Switch team, we've started referring to these types of winking statements as "racist bank shots.")

"How it's possible to be both a taboo and a corporate mainstream thing just shows how complicated race in America is," Schmidt said.

It's also worth citing the great and very NSFW social theorist Dave Chappelle, who quipped that when it comes to race and food, people of color suffer from some real information asymmetry.

"The only reason these things are even an issue is because nobody knows what white people eat," Chappelle said.

## Sign Up For The Code Switch Newsletter

See what news, politics and culture say about race and identity, sent weekly.

What's your email?

## SUBSCRIBE

By subscribing, you agree to NPR's terms of use and privacy policy.

**CODE SWITCH**

**About  
Subscribe  
Connect With Us**

**READ & LISTEN**

**Home**

**News**

**Arts & Life**

**Music**

**Podcasts**

**Programs**

**CONNECT**

**Newsletters**

**Facebook**

**Twitter**

**Instagram**

**Contact**

**Help**

**ABOUT NPR**

**Overview**

**Finances**

**People**

**Press**

**Public Editor**

**Corrections**

**GET INVOLVED**

**Support Public Radio**

**Sponsor NPR**

**NPR Careers**

**NPR Shop**

**NPR Events**

**Visit NPR**

terms of use

privacy

your privacy choices

text only

© 2019 npr

Subject: FW: Gotta love our clients!!!

From: gpetti@knrlegal.com  
To: pettigary@yahoo.com  
Date: Tuesday, November 27, 2012, 3:25:57 PM EST

Gary M. Petti  
Kisling, Nestico & Redick  
Attorney At Law  
3412 W. Market St., Akron, Ohio 44333  
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

-----Original Message-----

From: Rob Nestico  
Sent: Tuesday, November 27, 2012 3:25 PM  
To: Nomiki Tsarnas  
Cc: Attorneys; Brandy Lamtman  
Subject: Re: Gotta love our clients!!!

They don't like macaroni grill? Next time get Popeyes chicken.

Sent from iPhone of Rob Nestico

On Nov 27, 2012, at 3:19 PM, "Nomiki Tsarnas" <Tsarnas@knrlegal.com> wrote:

> One of our clients sold our gift card to a pawn shop April's friend works at!!! LMAO!!!!

>

> From: 3305064473@vzwpx.com [mailto:3305064473@vzwpx.com]

> Sent: Tuesday, November 27, 2012 3:17 PM

> To: Nomiki Tsarnas

> Subject:

>

>

> <IMG\_6568.jpg>



GMP000018

Sandra Kurt, Summit County Clerk of Courts

**EXHIBIT D**