

**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 Brogan Reply in Support of Plaintiffs' Motion to Compel the Continued Deposition of Defendant Alberto R. Nestico
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In opposing Plaintiffs' effort to remedy Defendant Nestico's wrongful refusal to answer a number of reasonably calculated and relevant questions at his deposition, the KNR Defendants do not cite to a single statute, case, or any authority whatsoever to contradict the fundamental standards that govern deposition discovery in Ohio courts and Summit County, let alone argue that any of these standards apply to excuse the obstruction at issue. *See* Pls' Mot. at 2–3, citing Civ.R. 26(B)(1), Civ.R. 30(C)(2), Civ.R. 30(D), Local Rule 17.02(5)(B), Evid.R. 401, Evid.R. 404(3), Evid.R. 607(A), and Evid.R. 608. Instead, Defendants' opposition brief breezes through a series of plain to risible misrepresentations about the relevance of the questions at issue, as if the credibility of these arguments hardly mattered. And in a sense, it doesn't, because no matter how the Court rules on this motion, Defendants have succeeded in evading and regrouping on probative questions that Nestico was apparently unprepared to answer the first time around. As explained further below, Defendants' opposition leaves no doubt that Nestico must be required to return for a second try.

1. Subject matter is not immune from discovery just because a litigant claims it is "proprietary."

As a preliminary matter, it should be noted that there is no support for Defendants' repeated efforts to excuse their obstruction by claiming that requested information is "proprietary." *See* Opp.

at 3–5. Not only do Defendants fail to explain how any of the information at issue could legitimately be considered “proprietary” under the circumstances, especially given the mounting evidence of a massive fraudulent scheme (as discussed further below), they provide no authority showing that relevant information is immune from discovery based on such an assertion. In any event, there is a protective order in place that would protect against the dissemination of any legitimately proprietary information.

2. KNR’s purported reasons for tracking referrals bear directly on essential allegations in this case and are subject to deposition discovery.

Plaintiffs’ allegations that KNR trades referrals in a quid-pro-quo arrangement with various healthcare providers are essential to establish their claims of fraud and self-dealing. If KNR purports to have a legitimate business reason, or “marketing purposes,” for its obsessive tracking of referrals from chiropractors, as reflected in many of the emails quoted in the pending complaint, Nestico cannot be excused from explaining what these purposes are by claiming that this information is somehow “proprietary.” Opp. at 4–5. *See also* Nestico Tr. at 58:1–3; 209:3– 210:10.

3. KNR’s advertising and solicitation of potential clients bear directly on essential allegations in this case and are subject to deposition discovery.

Nor are Defendants excused from answering questions about their advertising budget, and the specific claims made on their website about how they remain on the “cutting edge” of the personal injury field, by claiming that this information is “proprietary.” Opp. at 3–4; Nestico Tr. at 76:2–77:17; 127:24–128:7; 146:13–25. This is particularly so given that the only thing KNR appears to be on the “cutting edge” of is its willingness to leverage vast resources and exploit the recent relaxation of standards for attorney advertising to fund an inherently fraudulent business model.

Indeed, former KNR attorney Gary Petti specifically testified at his deposition on March 1 that KNR was leading a “race to the bottom” with its high-volume personal-injury practice. Petti Tr. at 42:16–24. Mr. Petti’s testimony confirms that it is precisely by prioritizing the providers’ interests

over the clients' by way of the alleged quid-pro-quo relationships that the firm keeps its high-volume model sustainable and profitable. Specifically, Petti testified that that he understood, based on his conversations with Nestico, that Nestico did not care whether defendants' auto-insurers disfavored treatment from KNR's so-called "preferred providers" (including Defendants Floros and Ghoubril¹), or even viewed it as outright fraudulent, because the firm would make up for it by continuing to drive a higher volume of clients with the assistance of these providers. Petti Tr. at 86:12–88:4; 98:15–101:20. In other words, it did not matter to Nestico whether the individual clients' settlements would decrease as a result of treating with these providers, because KNR would continue to profit by sending a greater number of clients through its pipeline.²

In this context, there can be no doubt that KNR's advertising budget and practices are highly relevant to, probative of, and subject to discovery as to the most essential allegations in this case.

4. The KNR Defendants' lawsuits and threats of litigation against other key witnesses go to the credibility of the KNR Defendants and these witnesses and are subject to deposition discovery.

After Mr. Nestico refused to answer questions at his deposition about the settlement of the lawsuit the KNR Defendants filed against former KNR attorney Robert Horton, the KNR

¹ Former KNR attorney Kelly Phillips similarly testified that he understood, based on his communications with Nestico, that if he were honest with the firm's clients about the fact that "[Defendant] Ghoubril's involvement is screwing [their] case[s] up," and "making [them] impossible to settle," he "wouldn't have been employed very long." Phillips Tr. at 69:22–71:22, 79:1–16; 54:14–55:16. *See also* Nestico Tr. at 421:7–423:4 (Q. "You don't care what the insurance companies are doing?" A. "I don't."). Phillips also confirmed that Nestico's goal was for KNR to take on as many personal injury clients as possible, and employed a massive advertising budget in furtherance of this goal. *See* Phillips Tr. at 19:19–20:1; 40:6–19; 112:14–113:13.

² Based on Nestico's testimony about the number of cases the KNR firm handles, the number of attorneys employed by the firm, and how many hours the attorneys were expected to work, the average KNR case could only receive at most 13.5 hours of attorney time, and likely much less. Nestico Tr. at 31:13–33:11, 38:17–39:11, 51:22–53:3, 63:9–64:4, 132:23–133:15, 137:13–15, 139:19–140:10.

Defendants have since admitted the relevance of this settlement agreement by producing it at Mr. Horton's deposition. Opp. at 8; Horton Tr. at 471:24–472:18; 478:15–483:25. Now, Defendants claim that because Mr. Horton was questioned about this agreement at his deposition, there is somehow “no need” for Plaintiffs to question Nestico on the same subject, including his reasons for having sued Horton in the first place. Opp. at 8–9. This makes no sense, particularly given that Nestico sued Horton precisely for his having provided information to the Plaintiffs in this case, as well as that settlement agreements “may provide relevant evidence reflecting upon the credibility of witnesses,” and may reveal whether one settling party has “motivation ... to provide favorable testimony” for the other. *Thomas & Marker Constr. Co. v. Wal-Mart Stores*, No. 3:06-cv-406, 2008 WL 3200642 at *3 (S.D. Ohio Aug. 6, 2008); *CadleRock Joint Venture v. Royal Indem. Co.*, Nos. 02cv16012, 02cv16019, 2012 WL 443316 at *2 (N.D. Ohio Feb. 10, 2012).

The relevance and discoverability of such information, including Nestico's dispute with Paul Steele over purportedly “proprietary” relationships with chiropractors, is more fully discussed in Plaintiffs motion to compel filed on 02/14/2019, which further explains the need for Nestico to return to his deposition and answer the questions posed on these subjects.

5. The KNR Defendants' counterclaims against the Named Plaintiffs go to Defendants' credibility and are subject to deposition discovery.

The KNR Defendants' counterclaims against the Named Plaintiffs, discussed in detail in Plaintiffs' motion for sanctions filed on 03/06/2019, similarly reflect on Nestico's credibility in having filed them in an apparent effort to intimidate the Named Plaintiffs and other witnesses from coming forward with information relevant to this case. Nestico is not excused from answering questions about such apparently abusive tactics just because he decided to dismiss these counterclaims on the eve of his deposition.

Defendants misrepresent the record in claiming that Plaintiffs agreed to forgo testimony on this subject unless and until the counterclaims are re-filed. Opp. at 10–11 citing Nestico Tr. at 663:9–25). At this point in the deposition, Nestico and his counsel had already made clear that he would not answer any further questions about the counterclaims, and that Plaintiffs would need to move to compel that he do the same. Nestico Tr. at 656:9–658:7. By stating “you got a deal” in response to defense counsel’s later representation that Nestico would reappear for a deposition if the counterclaims were re-filed (*Id.* at 663:9–25), Plaintiff’s counsel only sought to protect his clients from further frivolous and retaliatory lawsuits, and did not intend to forgo the right to question Nestico on the counterclaims sooner. It is disingenuous for the Defendants to suggest otherwise.

6. Nestico’s knowledge about Julie Ghoumbrial’s deposition testimony bears directly on essential allegations in this case and is subject to discovery.

In arguing that he doesn’t have to testify about what he knows about Julie Ghoumbrial’s deposition because his attorney made him aware of these facts, Nestico repeats and apparently endorses Plaintiffs’ citation to *Pales v Fedor*, 8th Dist. Cuyahoga No. 106024, 2018-Ohio-2056, 113 N.E.3d 1019, ¶ 18, which confirms that “the privilege protects only attorney-client ‘communications’ from disclosure, ‘it does not prevent disclosure of the underlying fact[s].’” Thus, again, simply, if Nestico knows what Julie Ghoumbrial said at her deposition, attorney-client privilege does not immunize him from deposition discovery on his knowledge about these facts, no matter how he learned about them. Defendants do not present any authority to the contrary.

7. Nestico’s awareness of well-known racist stereotypes regarding black people and fried chicken bears directly on essential allegations in this case and is subject to deposition discovery.

The relevance of Nestico’s awareness of the racist fried-chicken stereotype in the context of his “Next time get Popeye’s chicken” email is unfortunately plain in this case alleging mass fraud and self-dealing by a high-advertising high-volume law firm against a socioeconomically disadvantaged clientele. Thus, the KNR Defendants, in opposition, have doubled down on their contrived outrage

and extreme misrepresentations regarding Plaintiffs' need to ask these questions. Opp. at 9–10; Nestico Tr. at 572:11–583:10.

For example, Defendants' accuse Plaintiffs of "an obvious bit of racial stereotyping," and "making a leap," for Plaintiffs having related Nestico's admission that his clients are largely from socioeconomic backgrounds to a conclusion that a relatively high portion of these clients are African American. *Id.* at 9. As if it were not well-known and well-documented that African Americans are a socioeconomically disadvantaged population in the United States. *See, e.g., Exhibit 1*, American Psychological Society, "Ethnic and Racial Minorities & Socioeconomic Status," available at <https://www.apa.org/pi/ses/resources/publications/minorities> (accessed March 22, 2019) (citing numerous studies, showing, *inter alia*, that, "In the United States, 39 percent of African-American children and adolescents and 33 percent of Latino children and adolescents are living in poverty, which is more than double the 14 percent poverty rate for non-Latino, White, and Asian children and adolescents. ... African American unemployment rates are typically double that of Caucasian Americans. African-American men working full-time earn only 72 percent of the average earnings of comparable Caucasian men and 85 percent of the earnings of Caucasian women. ... [And, a]t each level of income or education, African-Americans have worse [health] outcomes than Whites."). Further, Mr. Horton, at his deposition, expressly confirmed that KNR's clientele is composed of "a lot of African American clients," and that KNR attorney Josh Angelotta once said, as a result, that "he knew more black people than Martin Luther King." Horton Tr. at 431:25–432:20.

Additionally, the KNR Defendants repeat Nestico's egregious misrepresentation that "Popeye's Chicken is the closest restaurant to [KNR's] Youngstown office." Opp. at 10 citing Nestico Tr. at 574:12–14. A brief look at Google Maps shows that the nearest Popeye's is more than 5 miles and an 11-minute drive away from the Youngstown office, with dozens of restaurants,

including many in the similar price range as Popeye's, within a much closer range. *See* Google maps (accessed March 22, 2019) attached as **Exhibit 2**.

Finally, the KNR Defendants recently supplemented their opposition brief, on March 20, 2019, by filing affidavits of defense attorneys Thomas P. Mannion and Bradley J. Barmen misrepresenting an off-the-record conversation during a break at Nestico's deposition. In these affidavits, these attorneys claim that the undersigned stated that "he does not believe that Mr. Nestico is a racist," and thus "did not have a good faith basis for pursuing" the line of questioning about the Popeye's email. *See* Mannion Affidavit at ¶¶ 9, 12; Barmen Affidavit at ¶¶ 11, 12. It is unfortunate that defense counsel would attempt to so twist the undersigned's effort to defuse tension and display kindness at the deposition by acknowledging that there is a difference between overt and intentional hatred of other races, and the casual (if not callous) indifference to structural racial inequities reflected in Nestico's Popeye's email. Though it says plenty about the relevance of such apparent indifference to the claims alleged that defense counsel would file such affidavits at all.

Conclusion

Ohio law only permits Defendants to refuse to answer deposition questions under extremely limited circumstances that do not apply here, as much as Defendant Nestico has the means and incentive to pretend to the contrary here. As explained above, and more fully in Plaintiffs' motion, the Court should promptly order that Nestico's deposition be resumed during the week of April 1, where defense counsel has confirmed availability. *See* email exchange with Attorney Mannion attached as **Exhibit 3**. Given Defendants' dilatory response to related Court orders to date, as discussed in the footnote below,³ the need to order Nestico to reappear within an imminent and defined date range is apparent, particularly given the impending class-certification deadline of May 1.

³For example, the Court granted Plaintiffs motion to compel Dr. Gunning's continued deposition on January 29, 2019. Despite Plaintiffs' immediate requests to resume this deposition as promptly as

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possible, it was only last week that Defendants first responded to these requests, confirming April 9 for this deposition, which is only six days prior to expiration of the class certification deadline, and pushing Defendant Ghoumbrial's deposition to April 12. See correspondence attached as **Exhibit 4**. Additionally, the Court partially granted Plaintiffs' motion to compel discovery from Defendant Ghoumbrial on February 5, 2019, requiring him to provide complete responses to a number of Plaintiffs' written discovery requests. To date, 45 days since the Court's order, and again with the class-certification deadline impending, Ghoumbrial has still not provided any updated responses.

Ethnic and Racial Minorities & Socioeconomic Status

Socioeconomic status (SES) encompasses not just income but also educational attainment, financial security, and subjective perceptions of social status and social class. Socioeconomic status can encompass quality of life attributes as well as the opportunities and privileges afforded to people within society. Poverty, specifically, is not a single factor but rather is characterized by multiple physical and psychosocial stressors. Further, SES is a consistent and reliable predictor of a vast array of outcomes across the life span, including physical and psychological health. Thus, SES is relevant to all realms of behavioral and social science, including research, practice, education and advocacy.

SES Affects our Society

SES affects overall human functioning, including our physical and mental health. Low SES and its correlates, such as lower educational achievement, poverty and poor health, ultimately affect our society. Inequities in health distribution, resource distribution, and quality of life are increasing in the United States and globally. Society benefits from an increased focus on the foundations of socioeconomic inequities and efforts to reduce the deep gaps in socioeconomic status in the United States and abroad.

The relationship between SES, race and ethnicity is intimately intertwined. Research has shown that race and ethnicity in terms of stratification often determine a person’s socioeconomic status (U.S. Census Bureau, 2009). Furthermore, communities are often segregated by SES, race, and ethnicity. These communities commonly share characteristics: low economic development; poor health conditions; and low levels of educational attainment; Low SES has consistently been implicated as a risk factor for many of these problems that plague communities. Research indicates that there are large health disparities based on social status that are pervasive and persistent. These health disparities reflect the inequalities that exist in our society. It is important to understand how various social statuses intersect, because race and socioeconomic status affect health exclusively as well as mutually (Williams & Mohammed, 2013).

SES Impacts the Lives of Many Ethnic and Racial Minorities

Discrimination and Marginalization

Discrimination and marginalization can serve as a hindrance to upward mobility for ethnic and racial minorities seeking to escape poverty.

- In the United States, 39 percent of African-American children and adolescents and 33 percent of Latino children and adolescents are living in poverty, which is more than double the 14 percent poverty rate for non-Latino, White, and Asian children and adolescents (Kids Count Data Center, Children in Poverty 2014).
- Minority racial groups are more likely to experience multidimensional poverty than their White counterparts (Reeves, Rodrigue, & Kneebone, 2016).
- American Indian/Alaska Native, Hispanic, Pacific Islander and Native Hawaiian families are more likely than Caucasian and Asian families to live in poverty (U.S. Census Bureau, 2014).
- Although the income of Asian American families often falls markedly above other minorities, these families often have four to five family members working (Le, 2008). African-Americans (53 percent) and Latinos (43 percent) are more likely to receive high-cost mortgages than Caucasians (18 percent; Logan, 2008).
- African American unemployment rates are typically double that of Caucasian Americans. African-American men working full-time earn only 72 percent of the average earnings of comparable Caucasian men and 85 percent of the earnings of Caucasian women (Rodgers, 2008).

Education

Despite dramatic changes, large gaps remain when minority education attainment and outcomes are compared to white Americans.

- African-Americans and Latinos are more likely to attend high-poverty schools than Asian-Americans and Caucasians (National Center for Education Statistics, 2007).
- From 2000 to 2013 the dropout rate between racial groups narrowed significantly. However, high school dropout rates among Latinos remain the highest, followed by African-Americans and then Whites (National Center for Education Statistics, 2015).
- In addition to socioeconomic realities that may deprive students of valuable resources, high-achieving African American students may be exposed to less rigorous curriculums, attend schools with fewer resources, and have teachers who expect less of them academically than they expect of similarly situated Caucasian students (Azzam, 2008).
- 12.4 percent of African-American college graduates between the ages of 22 and 27 were unemployed in 2013, which is more than double the rate of unemployment among all college graduates in the same age range (5.6 percent; J. Jones & Schmitt, 2014).

institutional discrimination creates barriers to health care access. Even when stigmatized groups can access care, cultural racism reduces the quality of care they receive (Williams & Mohammed, 2013).

- Racial and ethnic minorities have worse overall health than that of White Americans. Health disparities may stem from economic determinants, education, geography and neighborhood, environment, lower quality care, inadequate access to care, inability to navigate the system, provider ignorance or bias, and stress (Bahls, 2011).
- Socioeconomic status and race/ethnicity have been associated with avoidable procedures, avoidable hospitalizations, and untreated disease (Fiscella, Franks, Gold, & Clancy, 2008).
- At each level of income or education, African-Americans have worse outcomes than Whites. This could be due to adverse health effects of more concentrated disadvantage or a range of experiences related to racial bias (Braveman, Cubbin, Egerter, Williams, & Pamuk, 2010).
- Low birth weight, which is related to a number of negative child health outcomes, has been associated with lower SES and ethnic/minority status (Fiscella et al., 2008).
- There are substantial racial differences in insurance coverage. In the preretirement years, Hispanics and American Indians are much less likely than Whites, African-Americans, and Asians to have any health insurance (Williams, Mohammed, Leavell, & Collins, 2010).

Psychological Health

Socioeconomic deprivation and racial discrimination have been implicated in higher psychological distress.

- Wealth partially explains racial and ethnic differences in depression. Negative net worth, zero net worth and not owning a home in young adulthood are significantly associated with depressive symptoms, independent of the other socioeconomic indicators (Mossakowski, 2008).
- Hispanics and African-Americans report a lower risk of having a psychiatric disorder compared with their white counterparts, but those who become ill tend to have more persistent disorders (McGuire & Miranda, 2008).
- Research on post-traumatic stress disorder (PTSD) indicates that African-Americans, Hispanics, Asians, American Indians, and Native Hawaiians have higher rates of PTSD than Whites, which are not accounted for by SES and their history of psychiatric disorders (Carter, 2007).
- American Indians are at heightened risk for PTSD and alcohol dependence (McGuire & Miranda, 2008).
- Perceived discrimination has been shown to contribute to mental health disorders among racial/ethnic groups such as Asian Americans and African Americans (Jang, Chiriboga, Kim, & Rhew, 2010; Mezuk et al., 2010).
- Compared with Whites, African-Americans are more frequently diagnosed with schizophrenia, a low-prevalence but serious condition (McGuire & Miranda, 2008).

Get Involved

- Consider SES in your education, practice and research efforts.
- Stay up to date on legislation and policies that explore and work to eliminate socioeconomic disparities. Visit the Government Relations webpage (/pi/gr) for more details.
- Visit APA’s Office on Socioeconomic Status (OSES) (/pi/ses) website.
- Visit APA’s Office on Aging website (/pi/aging) .
- Visit APA’s Office on Ethnic Minority Affairs website (/pi/oema) .

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Additional SES Resources

- Download Fact Sheet (PDF, 398KB)
- The SES Indicator
- Publications
- APA Policy Statements on Socioeconomic Status
- Ethnic Minority Affairs Resources and Publications

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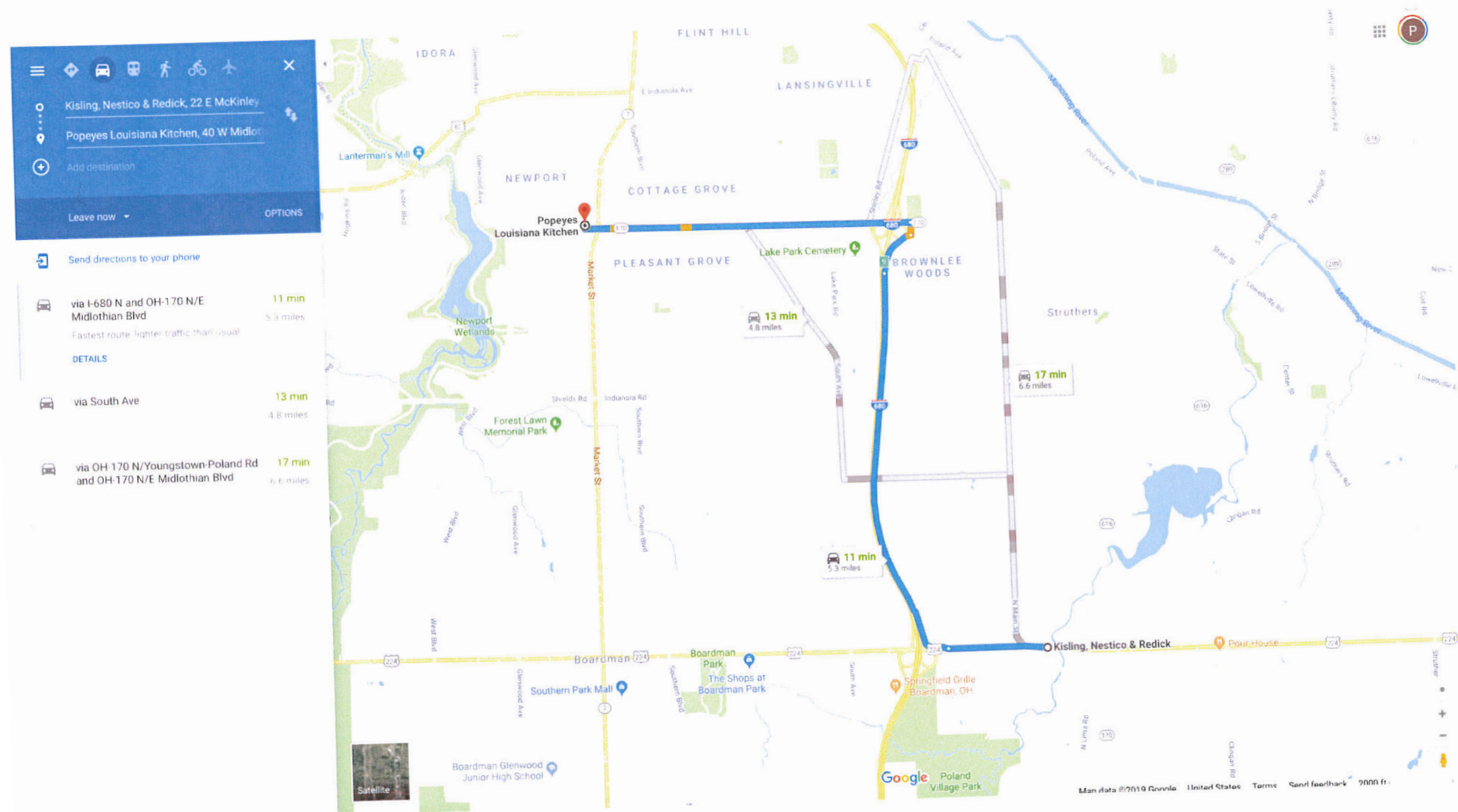
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**EXHIBIT 2**

Restaurants

Price

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Rating at least

Any rating

MORE OPTIONS

Cocca's Pizza

4.2 ★★★★★

\$ Pizza 18 E McKinley Way

Relaxed pick for pies, subs & wings

Open until 11:00 PM

Papa John's Pizza

3.3 ★★★★★

\$ Pizza 1502 Boardman Poland Rd

Take-out & delivery pizza chain

Open until 1:30 AM

Subway Restaurants

3.5 ★★★★★

\$ Sandwich 1311 Boardman Poland Rd

Build your own sandwich chain

Open until 10:00 PM

Dunkin'

4.0 ★★★★★

\$ Coffee shop 1305 Boardman Poland Rd

Chain known for donuts & coffee

What's Cook'n

4.5 ★★★★★

\$ American 1607 South Ave

Open until 7:00 PM

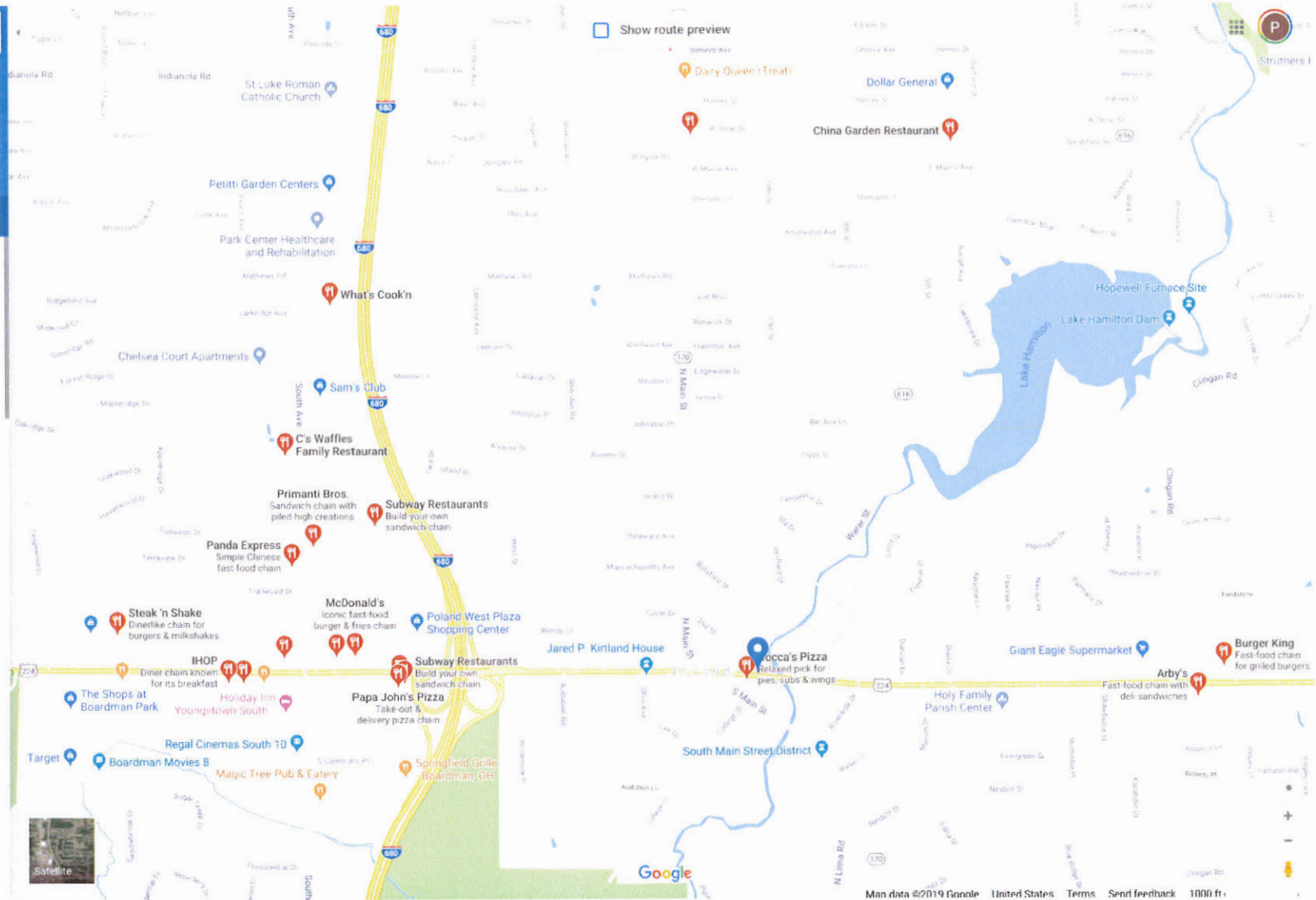
Primanti Bros.

4.3 ★★★★★

\$ Grill Southlane Crossings 5731 South Ave

Sandwich chain with piled high creations

Showing results 1 - 20



Restaurants

Price

\$

\$\$

\$\$\$

\$\$\$\$

Rating at least

Any rating

MORE OPTIONS

Nicolinni's Ristorante

4.6 ★★★★★

\$\$ Italian

1247 Boardman Poland Rd

Elegant bistro serving Italian fare

Open until 10:00 PM

Springfield Grille - Boardman, OH

4.5 ★★★★★

\$\$ American

3908 413 T.Mary St

Comfy, upscale spot for American food

Open until 11:00 PM

Red Lobster

4.2 ★★★★★

\$\$ Seafood

1410 Boardman Poland Rd

New England-themed seafood chain

Open until 11:00 PM

Outback Steakhouse

4.2 ★★★★★

\$\$ Steak

1328 Boardman Poland Rd

Lovely Australian-themed chain

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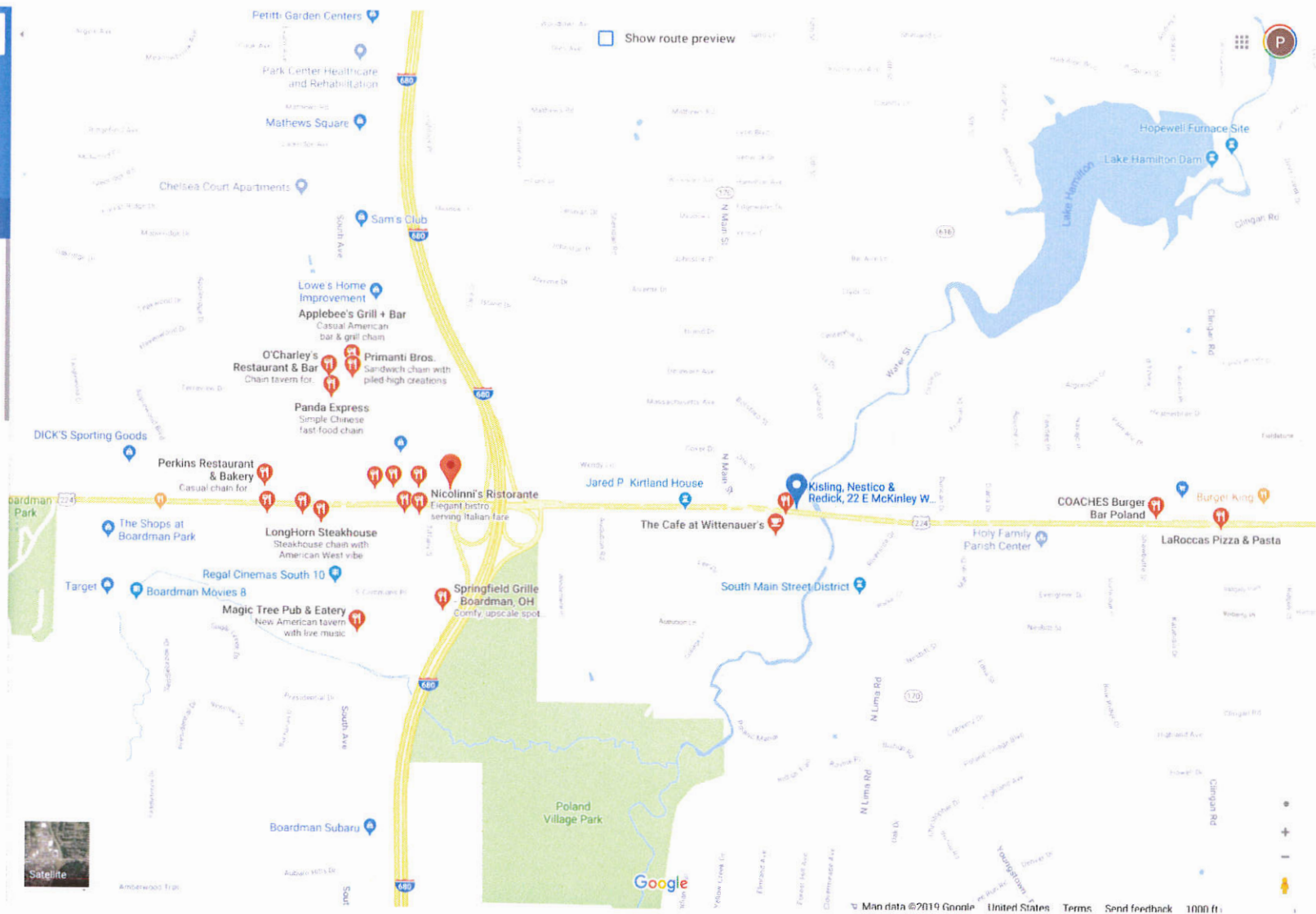
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Peter Pattakos <peter@pattakoslaw.com>

March 28th still doesn't work for me... do you have April 3 open?

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

Thu, Mar 21, 2019 at 12:08 PM

To: Peter Pattakos <peter@pattakoslaw.com>, Amanda Lantz <amandalantz@yahoo.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>

The 28th will work.

From: Peter Pattakos [mailto:peter@pattakoslaw.com]**Sent:** Thursday, March 21, 2019 12:01 PM**To:** Amanda Lantz <amandalantz@yahoo.com>**Cc:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>**Subject:** Re: [EXT] Re: March 28th still doesn't work for me... do you have April 3 open?

Tom,

I am available on 3/28 and we are coming up against the discovery deadline. Is it really not possible to have one of the many attorneys representing the KNR Defendants to handle this deposition on that day? Your firm alone has sent 4 different attorneys to depositions, and there is also Mr. Popson's firm, Mr. Kennedy's firm, Mr. Best, Mr. Jonson, and Mr. Coughlan.

There can't be any good reason this shouldn't go forward on the 28th to accommodate a third-party witness who's a busy attorney and 7.5 months pregnant who has to drive 3 hours each way to make the deposition.

Peter Pattakos

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On Thu, Mar 21, 2019 at 11:24 AM Amanda Lantz <amandalantz@yahoo.com> wrote:

Tom,

I am in court a lot with my domestic, criminal and custody cases. The week of April 1, I have 2-4 hearings every day and then a prenatal dr appointment on Friday (I'm 7.5 months pregnant).

Right now, March 28 is honestly the only day that I have free that will allow for 6 hours of travel and a full day for a depo.

Also, I will not be able to attend a deposition from the last week of May until August, due to my maternity leave.

On Thursday, March 21, 2019, 11:00:45 AM EDT, Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Do you have any days that week that work?

From: Amanda Lantz [mailto:amandalantz@yahoo.com]

Sent: Thursday, March 21, 2019 11:00 AM

To: Peter Pattakos; Mannion, Tom

Subject: [EXT] Re: March 28th still doesn't work for me... do you have April 3 open?

External Email

I have 4 hearings in Clark County on that day. It will not work

On Thursday, March 21, 2019, 10:03:59 AM EDT, Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Thomas P. Mannion
Attorney | Cleveland Managing Partner

Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Peter Pattakos <peter@pattakoslaw.com>Tue, Mar 12, 2019 at 4:32 PM

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

Cc: "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>, Joshua Cohen <jcohen@crklaw.com>, John Myers <johnmyerscolpa@gmail.com>

An amended notice of depositions is attached. Thanks.

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On Tue, Mar 12, 2019 at 2:15 PM Peter Pattakos <peter@pattakoslaw.com> wrote:
We would prefer to avoid an extension if at all possible. We'll go ahead and do Gunning on 4/9, Ghoubrial on 4/11, and Redick on 4/12 then. Keep 4/15 open for Julie Ghoubrial. Thank you.

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On Tue, Mar 12, 2019 at 1:06 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

We already knew you would try to get an extension no matter what. You noticed him for 4/12. And then, after telling you it works for us and the witness, you unilaterally cancel it. That hardly gives you the right for an extension. Mr. Redick is not available next week, and neither am I. He is having surgery 4/15. You have no valid reason to move his deposition from 4/12, the date you noticed him and the date we told you he is available and we are available.

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

Sent: Tuesday, March 12, 2019 1:02 PM

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

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

Subject: Re: [EXT] Re: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

If the weeks of 3/25 and 4/1 are completely out then please confirm Mr. Redick's availability for next Thursday, next Friday, or April 15, or we'll have to get another extension.

Peter Pattakos

EXHIBIT 4

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On Tue, Mar 12, 2019 at 12:57 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

What don't you understand about the fact I'm in trial March 25th and it will last two weeks. Neither Brad nor I are available those two weeks.

You noticed Redick for April 12th, and he is available.

If you push for depositions the weeks of 3/25 and 4/1 of Redick we will not only file a MPO, we will file the strongest of sanctions motions possible given your absolute disregard for the civil rules.

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, March 12, 2019 12:55 PM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>; Joshua Cohen <jcohen@crklaw.com>
Subject: Re: [EXT] Re: Williams v. KNR: Ghoubril, Gunning, Floros depositions

I'm not taking Redick's and Ghoubril's deposition on the same day. Please provide an alternative date during the weeks of March 25 or April 1. Thank you.

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On Tue, Mar 12, 2019 at 12:51 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

You already know 3/29 and 4/4 are not good. And no, he is not avaiable and neither am I. You noticed him for 4/12 and he is available. If you only need an hour, let's do him and Ghoubrial on same day.

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, March 12, 2019 10:13 AM
To: Barmen, Brad <Brad.Barmen@lewisbrisbois.com>
Cc: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; John Myers <johnmyerscolpa@gmail.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>; Joshua Cohen <jcohen@crklaw.com>
Subject: Re: [EXT] Re: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

OK, we can do Gunning on 4/10 and Ghoubrial on 4/12, then. I will issue an amended notice. Tom, is Mr. Redick available on 3/29 or 4/4? Otherwise, please provide alternative dates for him.

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On Tue, Mar 12, 2019 at 9:56 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Inexcusable? You mean like a plaintiff’s lawyer refusing to produce his plaintiffs for deposition? Or making up evidence? Or mispresenting the case to the public as the Court found? I could go on...

Tom is correct, you knew about this trial and you intentionally noticed the depositions during trial in an effort to create issues where they don’t exists. I anticipate being done with trial no later than 4/8. I can make anytime the rest of that week work.

Regards

Brad

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, March 12, 2019 9:43 AM
To: Mannion, Tom
Cc: Barmen, Brad; James M. Popson; Shaun Kedir; John Myers; Rachel Hazelet; Joshua Cohen
Subject: Re: [EXT] Re: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Brad, please provide dates for Gunning and Ghoubrial immediately. If you have a trial scheduled that's going to knock you out for 2 of the 4 weeks that we have left, as Tom suggests below, that makes your delay in getting these on the calendar all the more inexcusable.

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On Tue, Mar 12, 2019 at 9:12 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Everyone already confirmed for the 20th for Floros, so not sure why you are making baseless threats re: his deposition. I also told you April 12th worked for Mr. Redick, so that's another baseless threat. Redick will NOT be deposed at your office, per our prior agreement. As far as Dr. Ghoubrial and Dr. Gunning, you can address that with Brad. However, you already have been told he has trial March 25th, which means he will not be available March 29th (or April 4th for that matter). You obviously chose those dates on purpose. I am also not available those 2 dates.

If you don't give us dates for Ms. Halsey, Norris, Williams, Reid, and Norris's boyfriend/friend (Marcus), then we will also have "no choice" (as you put it), to file a Motion to Compel and/or just Notice them and/or just subpoena them.

Also - provide alternative dates you are available for Amanda Lantz or we will move forward as scheduled.



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From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Monday, March 11, 2019 5:34 PM
To: Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>; Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; John Myers <johnmyerscolpa@gmail.com>
Cc: Rachel Hazelet <rhazelet@pattakoslaw.com>; Joshua Cohen <jcohen@crklaw.com>
Subject: [EXT] Re: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Counsel:

Please see attached notice of depositions that I just filed for Floros (Mar. 20), Gunning (Mar. 29), Ghoubrial (Apr. 4), and Redick (Apr. 12). I have made every reasonable effort to confer with you on scheduling these. If I do not get confirmation of these dates, or workable alternatives, by the end of the day Wednesday I will have no choice but to file a motion to compel.

Thank you.

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On Fri, Mar 8, 2019 at 4:59 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

I'm still waiting for dates for Gunning and Ghoubrial. We can go forward with Floros on March 20 assuming our Feb. 15 written discovery requests are timely and fully answered. Tom, you mentioned an April date for Mr. Redick? I should be able to keep my

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On Fri, Feb 22, 2019 at 7:47 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

Counsel:

It has been more than three weeks since the Court ordered Dr. Gunning to return to his deposition and you have still not provided dates. Please comply immediately or we will seek a court order and sanctions. I propose we schedule Dr. Gunning's resumed deposition for March 20, as well as the conclusion of Ms. Reid's deposition, since you all are available.

Also, please provide dates for Ghoubrial, Floros, and Redick, as I have requested many times.

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On Thu, Feb 14, 2019 at 11:53 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

[Works for me as well.](#)

[Thanks](#)



Brad J. Barmen
Partner
Brad.Barmen@lewisbrisbois.com

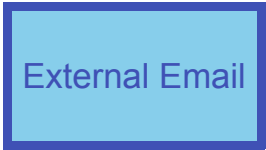
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From: James M. Popson [<mailto:jpopson@sutter-law.com>]
Sent: Thursday, February 14, 2019 11:52 AM
To: Shaun Kedir
Cc: Peter Pattakos; Barmen, Brad; Mannion, Tom; John Myers; Joshua Cohen; Rachel Hazelet
Subject: [EXT] Re: Williams v. KNR: Ghoubrial, Gunning, Floros depositions



March 20 is good for me too.

Sent from my iPhone

James M. Popson

Sutter O'Connell Co.
Direct: 216.928.4504
Mobile: 216.570.7356

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On Feb 14, 2019, at 11:46 AM, Shaun Kedir <shaunkedir@kedirlaw.com<<mailto:shaunkedir@kedirlaw.com>>> wrote:

Peter, let me know if March 20th or April 3rd works for Floros’ deposition. I will also have a response by tomorrow (or earlier) to your pending discovery requests. Thank you.

Shaun

Shaun H. Kedir
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From: Peter Pattakos<mailto:peter@pattakoslaw.com>
Sent: Tuesday, February 12, 2019 7:40 PM
To: Barmen, Brad<mailto:Brad.Barmen@lewisbrisbois.com>; Mannion, Tom<mailto:Tom.Mannion@lewisbrisbois.com>; James M. Popson<mailto:jpopson@sutter-law.com>; Shaun Kedir<mailto:shaunkedir@kedirlaw.com>; John Myers<mailto:johnmyerscolpa@gmail.com>
Cc: Joshua Cohen<mailto:jcohen@crklaw.com>; Rachel Hazelet<mailto:rhazelet@pattakoslaw.com>
Subject: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Counsel,

We need to get these depositions on the calendar ASAP.

- 1) It's been almost two weeks since I asked you for dates to resume Dr. Gunning's deposition as ordered by the Court. Please provide dates immediately.
- 2) Brad, please let us know when you expect Dr. Ghoubrial to come into compliance with last week's Court order granting our motion to compel so that we can set a date for Dr. Ghoubrial's deposition that gives us some time to seek Court intervention on the amended responses as necessary.
- 3) Shaun, please advise as to our pending requests, as clarified in our motion to compel, and also provide dates for Dr. Floros's deposition.

Thank you.

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