

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

MEMBER WILLIAMS, et al.)	CASE NO.: CV-2016-09-3928
)	
Plaintiffs)	JUDGE JAMES A. BROGAN
-vs-)	
)	
KISLING NESTICO & REDICK)	<u>DECISION</u>
LLC, et al.)	
)	
Defendants		

- - -

KNR Defendants request that this Court issue an order compelling Plaintiffs Member Williams, Thera Reid, and Monique Norris (collectively “Plaintiffs”) to provide responses to the KNR Defendants’ Interrogatories requesting the factual and/or evidentiary basis of the Plaintiffs’ claims. Defendants submitted these “contention” interrogatories to determine the facts and evidence supporting Plaintiffs’ claims. This type of interrogatory is specifically contemplated and allowed by the Ohio Rules of Civil Procedure.

Defendants note that Plaintiffs simply refuse to answer the discovery and do exactly what the rules prohibit: object on the basis the interrogatories relate to contentions.

The Defendants state they have attempted to resolve this matter without court intervention on numerous occasions.

Defendants further note that in further hindrance of Defendants’ right to know the basis of the claims against them, the individual Plaintiffs refused to answer these questions on deposition. The Defendants asked each and every Plaintiff for the facts supporting the class claims for which that Plaintiff is a putative class representative. They note they were unable to articulate the factual basis or evidence supporting their allegations. Instead, they claimed their

lawyer possessed the information and showed them, but they can't remember what it was. The Defendants argue that Plaintiffs are not permitted to hide behind their collective "lack of awareness" and use their lawyers as a discovery shield.

On February 6, 2019, the Plaintiffs responded to the Defendants' requests to answer the interrogatories by requesting Plaintiffs provide the evidence they claim support the allegations in their complaint. They state as follows:

Plaintiff objects to this contention interrogatory as overly broad and unduly burdensome. "[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted)). *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010).

Further, Plaintiff objects on the grounds that this is not an appropriate time for Defendant to serve or for Plaintiff to respond to contention interrogatories. "The general policy is to defer contention interrogatories until discovery is near an end, in order to promote efficiency and fairness." *Ziemack v. Centel Corp.*, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995). Indeed, "[t]here is considerable authority for the view that the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period." *Schweinfurth v. Motorola, Inc.*, No. 1:05CV0024, 2007 U.S. Dist. LEXIS 98182, 2007WL6025288, at *4 (N.D. Ohio Dec. 3, 2007) *aff'd*, 2009 U.S. Dist. LEXIS 8405, 2009WL349163 (N.D. Ohio Jan. 26, 2009). see also *Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.*, 2013 U.S. Dist. LEXIS 189111, *188-189 (N.D. Ohio Feb. 4, 2013) ("responses [to contention interrogatories] are inappropriate at this early stage of the proceeding."); *Hazelkorn v. Morgan*, 1980 Ohio App. LEXIS 12762, *3 (Ohio Ct. App., Trumbull County Dec. 22, 1980) ("An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion, but the court may order that such an interrogatory be answered at a later time, or after designated discovery has been completed, or at a pretrial conference."); *Graber v. Graber*, 2004 Ohio App. LEXIS 5585, 2004-Ohio-6143, ¶ 33 (Ohio Ct. App., Stark County Nov. 15, 2004) (same).

Plaintiffs are willing to respond fully to properly formed contention interrogatories at such time as discovery is substantially complete.

Civ.R. 33(B) provides that “an interrogatory otherwise proper is not objectionable merely because the answer to the interrogatory involves an opinion, contention, or legal conclusion but the court may order that such an interrogatory be answered at a later time, or after designated discovery has been completed, or at a pretrial conference.” The Plaintiffs’ have cited *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (1985) in support of their position. In that case, the court held that the plaintiff would not be compelled to answer contention interrogatories prior to substantial completion of document productions by the defendants given that answers to certain interrogatories were most likely to be found in the documents defendants were in the process of producing for plaintiffs.

The Court noted the jurisdiction for compelling early answers to contention interrogatories may vary with the complexity of the case or the subtlety of Plaintiffs’ theories, as well with the quality of the information provided in the complaint. If the complaint proceeds on relatively well established legal theories, an attempt to justify early use of contention interrogatories on the ground that answers would clarify the issues would not be especially persuasive.

It is noteworthy that this case is not complex securities litigation like *In re Convergent Technologies*. The allegations are that the Defendants fraudulently overcharged their clients for an “investigative fee,” facilitated the defendant physician in charging a worthless “narrative fee,” fraudulently assisted the defendant chiropractor in overcharging patients for medical devices, and fraudulently referred their clients to a financing company which one of the KNR defendants had a financial interest without disclosing this to their clients.

Much, if not all, the pertinent information is already in the hands of the defendants. Extensive discovery has already been completed.

This Court agrees that the present Plaintiffs cannot withhold evidence regarding the factual basis of these claims and the interrogatories propounded by the Defendants are permissible. It is also not too early as the discovery cut-off date for the certification question is April 15, 2019. This matter has been pending since 2016. The Defendants' motion to compel discovery responses from the Plaintiffs, Williams, Reid, and Norris to the "contention" interrogatories hereby GRANTED¹.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

The Clerk of Courts shall serve all counsel/parties of record.

¹ It is not expected that the Plaintiffs will know the legal theory behind their claims because they are after all laypeople.