

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' MOTION TO
COMPEL CONTINUED
DEPOSITION OF PLAINTIFF
MONIQUE NORRIS**

Now come the KNR Defendants, by and through counsel, and hereby respectfully move this Honorable Court for an Order compelling the completion of Plaintiff Monique Norris' deposition, the first part of which was taken on January 28, 2019. The deposition started late due to circumstances that arose with Plaintiff Norris, and as it became clear that the deposition would not conclude unless it went into the evening or the following day, counsel for Plaintiff Norris unilaterally decided to conclude the deposition at 6 p.m., despite the "day to day" requirement of the Notice of Deposition *Duces Tecum*:

MR. MANNION: Pete, are you saying that depositions in this case are now limited to seven hours of testimony?

MR. PATTAKOS: I'm saying that the named plaintiff depositions in this case -- you've had plenty of time with Ms. Norris. We've given you all day. We've been here since 9:50 a.m. We're willing to go until 6. It's not Ms. Norris' fault that you are asking the same question over and over again, the same irrelevant questions over and over again about a loan where the only issue is whether she actually took out the loan, whether she paid interest on it, and whether KNR directed her to take the loan out. You know, we could have finished that in an hour.

So she's not going to come back tomorrow. If you really -- we can revisit the issue. If you need to resume this deposition prior to class certification briefing, we can try to reschedule. We can work with Ms. Norris. She's certainly not coming back tomorrow.

* * *

MR. BEST: Well, with all due respect, I don't think we got anything resolved here. We either get a stipulation agreement or we don't. So what's the answer? Do we have a stipulation that it's going to be seven hours and this witness is seven hours and we do -- there's actually been four hours of testimony. I checked the tape. So it hasn't been seven hours, despite your ramblings and, you know, protestations. Four hours and five minutes, that's how long this deposition has been.

MR. PATTAKOS: We have until 6:00 today and we can revisit the issue once the deposition is finished.

MR. BEST: So you're ignoring the notice that says it shall continue tomorrow?

MR. PATTAKOS: There was no agreement that she would come back tomorrow.

MR. BEST: There was a notice.

MR. PATTAKOS: I think it's -- you know, I'm not going to argue about this here. We can talk about it later.

(See Exhibit "A", Deposition Excerpts of Monique Norris, at pp. 285, ll. 10-25; 286, ll. 1-6; 287, ll. 12-25; 288, ll. 1-11). Defendants did not further push the issue on the day of the deposition seeing that Plaintiff Norris' counsel represented he would "work with Ms. Norris" to "resume the deposition prior to class certification briefing." (*Id.* at p. 286, ll. 2-5).

Defendants' counsel subsequently requested a date to reconvene the deposition on dozens of times. Plaintiffs' counsel agreed to present Ms. Norris "for a limited period of time" to continue her deposition and said she was "flexible," but also repeatedly refused to provide a proposed date for the deposition. As he did with Ms. Holsey's deposition (the subject of another motion), Plaintiffs' counsel again dangled the carrot of Ms. Norris' availability before Defendants to entice them into trusting him and not seeking court intervention (See Exhibit "B", correspondence from Defendants' counsel to Plaintiffs' counsel):

February 5, 2019, at 6:27 p.m.:

We need to finish Monique [Norris] and Thera [Reid]. As you know, Monique is class rep in 4 classes. We did not finish. ... With Monique, we would agree to limit to 3 hours.

February 13, 2019, at 10:39 a.m.:

The deposition of Ms. Norris was not concluded, as Mr. Pattakos stopped it at approximately 6 p.m. Please provide some proposed [d]ates for this to be continued. ... If you refuse to produce .. Ms. Norris .. please at least produce dates – and we can address it with the Court.

February 13, 2019, at 12:20 p.m.:

You STILL haven't provided dates for these witnesses. ... We are not asking to re-open Monique's deposition, we are asking to continue her deposition, as it has never been closed out. Please provide dates.

February 13, 2019, at 2:08 p.m.:

We did not finish Ms. Norris. You state we had to leave. So, she started late due to no fault of ours and you ended the deposition before we were done. We have multiple issues that were not yet fully addressed with Ms. Norris. If the deposition was closed, we would have to give you those topics. The deposition was left open, however, and we have no such obligation. Are you refusing to produce her?

February 19, 2019, at 5:08 p.m.:

Why don't we use Thursday for Norris and Halsey then? [following your cancellation of Paul Steele's deposition].

February 22, 2019, at 8:30 a.m.:

Please provide dates for ... Norris ... as we have requested just as often or more [as you requested deposition dates].

February 23, 2019, at 7:26 p.m.:

You did not respond to the verification page from of Nor[ri]s, which you promised almost a month ago and that was due many months ago. I did not see propose[d] dates for the witnesses either.

February 24, 2019, at 9:01 a.m.:

Are you providing a date for us to finish Norris's deposition?

February 26, 2019, at 9:12 a.m.:

Please respond. [To request for dates for Norris, et al.]

February 26, 2019, at 9:15 a.m.:

[W]ould you take a few moments to respond to questions we have been asking for a long time. Some of these are rather simple - verification pages, simple confirmation on whether you will produce something to avoid court intervention, etc. [attaching request: Are you providing a date for us to finish Norris's deposition?]

February 28, 2019, at 9:24 a.m.:

So, we have 1 witness outstanding and you have multiple. ... You, however, certainly control Norris, ... You owe us dates for at least 6 depositions. You have provided ZERO dates. ... Please provide some proposed dates for your witnesses. Even if you are going to file a MPO on Norris.. at least provide proposed dates.

March 12, 2019, at 9:12 a.m.:

If you don't give us dates for Norris... 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.

March 30, 2019, at 11:06 a.m.:

When are we getting dates for .. Thera Reid, Monique Norris.. continuation depositions. You have utterly refused to provide dates. ... We are okay with taking the Plaintiffs' continuation depositions after April 15th [if Pattakos' and the witness's schedules did not permit beforehand], as those depositions should not impact your May 1st deadline. We've been asking for these for many months.

On April 2, 2019, Plaintiff Norris' counsel finally proposed a date certain to continue Ms. Norris' deposition, and the Defendants filed and served a Notice of Deposition for Ms. Norris for April 12, 2019. (See 4/2/19 email correspondence from Plaintiffs' counsel to Defendants' counsel, attached as Exhibit C. See also Notice of Deposition for April 12, 2019, attached as Exhibit "D", along with original Notice of Deposition for January 28, 2019, attached as Exhibit "E"). However,

two days before the deposition, Plaintiffs' counsel claimed the Notice was not valid and his client would not show for her deposition. Defendants' counsel advised Plaintiffs' counsel they intended to appear, as the deposition was validly noticed, all counsel were available, and Ms. Norris and her counsel had previously agreed on multiple occasions to complete her deposition.

On April 12, 2019, counsel for the KNR Defendants, counsel for Dr. Ghoumbrial, and counsel for Dr. Floros all appeared for the deposition. Neither Plaintiffs' counsel nor Plaintiff appeared.

Based on the foregoing, and in the interests of justice, Defendants respectfully requests this Honorable Court for an Order compelling Plaintiff Monique Norris to present for her continuation deposition. This Motion is supported by the Ohio Rules of Civil Procedure and the case law construing those rules, along with the attached Exhibits.

Respectfully submitted,

/s/ James M. Popson

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Counsel for KNR Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing KNR DEFENDANTS' MOTION TO COMPEL CONTINUED DEPOSITION OF PLAINTIFF MONIQUE NORRIS was filed electronically with the Court on this 15th day of April, 2019. The parties may access this document through the Court's electronic docket system.

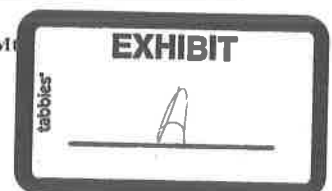
/s/ James M. Popson

James M. Popson (0072773)

NORRIS, MONIQUE
01/28/2019

Pages 1-4

<p>Page 1</p> <p>1 COMMON PLEAS COURT OF THE STATE OF OHIO</p> <p>2 IN AND FOR THE COUNTY OF SUMMIT</p> <p>3</p> <p>4 MEMBER WILLIAMS, et al.,</p> <p>5 Plaintiffs,</p> <p>6 vs. JUDGE JAMES A. BROGAN</p> <p>7 CASE NO. CV-2016-09-3928</p> <p>8</p> <p>9 KISLING, NESTICO & REDICK</p> <p>10 LLC, et al.,</p> <p>11 Defendants.</p> <p>12</p> <p>13 VIDEOTAPED DEPOSITION OF MONIQUE NORRIS</p> <p>14 MONDAY, JANUARY 28, 2019</p> <p>15 9:52 A.M.</p> <p>16 DoubleTree by Hilton Hotel</p> <p>17 3150 West Market Street</p> <p>18 Fairlawn, Ohio</p> <p>19</p> <p>20</p> <p>21 REPORTED BY:</p> <p>22 Sarah R. Drown</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 For Defendant Rob A. Nestico, Esq.:</p> <p>2 DAVID M. BEST CO., LPA</p> <p>3 DAVID M. BEST, ESQ.</p> <p>4 4900 West Bath Road</p> <p>5 Akron, Ohio 44333</p> <p>6 (330) 665-1855</p> <p>7 dmb@dbestlaw.com</p> <p>8</p> <p>9 For the Defendant Robert W. Redick, Esq.:</p> <p>10 WEISMAN, KENNEDY & BERRIS CO., LPA</p> <p>11 DANIEL P. GOETZ, ESQ.</p> <p>12 1600 Midland Building</p> <p>13 101 West Prospect Avenue</p> <p>14 Cleveland, Ohio 44115</p> <p>15 (216) 781-1111</p> <p>16 dgoetz@weismanlaw.com</p> <p>17</p> <p>18 For the Defendant Sam N. Ghoubril, M.D.:</p> <p>19 LEWIS BRISBOIS BISGAARD & SMITH LLP</p> <p>20 BRADLEY J. BARMEN, ESQ.</p> <p>21 1375 East 9th Street, Suite 2250</p> <p>22 Cleveland, Ohio 44114</p> <p>23 (216) 344-9422</p> <p>24 brad.barmen@lewisbrisbois.com</p> <p>25</p>
<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For Plaintiffs:</p> <p>4 PATTAKOS LAW FIRM LLC</p> <p>5 PETER PATTAKOS, ESQ.</p> <p>6 101 Ghent Road</p> <p>7 Fairlawn, Ohio 44333</p> <p>8 (330) 836-8533</p> <p>9 peter@pattakoslaw.com</p> <p>10</p> <p>11 For Defendant Kisling, Nestico & Redick LLC:</p> <p>12 LEWIS BRISBOIS BISGAARD & SMITH LLP</p> <p>13 THOMAS P. MANNION, ESQ.</p> <p>14 1375 East 9th Street, Suite 2250</p> <p>15 Cleveland, Ohio 44114</p> <p>16 (216) 344-9422</p> <p>17 tom.mannion@lewisbrisbois.com</p> <p>18 - and -</p> <p>19 SUTTER O'CONNELL CO.</p> <p>20 JAMES M. POPSON, ESQ.</p> <p>21 3600 Erieview Tower</p> <p>22 1301 East 9th Street</p> <p>23 Cleveland, Ohio 44114</p> <p>24 (216) 928-4504</p> <p>25 jpopson@sutter-law.com</p>	<p>Page 4</p> <p>1 ALSO PRESENT:</p> <p>2</p> <p>3 IVAN BERCIAN, VIDEOGRAPHER</p> <p>4 ROB A. NESTICO, ESQ.</p> <p>5 JOHN J. REAGAN, ESQ.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



NORRIS, MONIQUE
01/28/2019

Pages 285-288

Page 285

1 completed"?
2 Did I read that correctly?
3 A Yes.
4 Q Are you refusing to show up tomorrow if we need
5 to continue?
6 A I'm not refusing, but I do -- you guys should
7 have told me that, because I do -- I am
8 scheduled to work.
9 Q Okay.
10 MR. MANNION: Pete, are you
11 saying that depositions in this case are now
12 limited to seven hours of testimony?
13 MR. PATTAKOS: I'm saying that
14 the named plaintiff depositions in this case --
15 you've had plenty of time with Ms. Norris.
16 We've given you all day. We've been here since
17 9:50 a.m. We're willing to go until 6. It's
18 not Ms. Norris' fault that you are asking the
19 same question over and over again, the same
20 irrelevant questions over and over again about
21 a loan where the only issue is whether she
22 actually took out the loan, whether she paid
23 interest on it, and whether KNR directed her to
24 take the loan out. You know, we could have
25 finished that in an hour.

Page 286

1 So she's not going to come back tomorrow.
2 If you really -- we can revisit the issue. If
3 you need to resume this deposition prior to
4 class certification briefing, we can try to
5 reschedule. We can work with Ms. Norris.
6 She's certainly not coming back tomorrow.
7 MR. MANNION: Okay. Well, I
8 will at some point have to let some of the
9 other lawyers go. I will need to pass before
10 6:00 and if we come back, I don't want to be
11 occluded from asking more questions because I'm
12 passing. Otherwise we're never going to get to
13 anybody else here because I do have more
14 questions.
15 The reason it's gone so long is because
16 she's not answering questions.
17 MR. PATTAKOS: I'm sure --
18 MR. MANNION: It took a half
19 hour and I still don't know whether those are
20 her initials.
21 MR. PATTAKOS: Well, you could
22 have just brought out the fact that it was an
23 electronic signature from the beginning, but
24 you had to beat around the bush for an hour.
25 MR. MANNION: I didn't beat

Page 287

1 around the bush, Peter. She said she signed
2 them at a table.
3 MR. PATTAKOS: Okay.
4 MR. MANNION: So anyway.
5 The question is, Pete, are you taking the
6 position that depositions of your witnesses are
7 limited to seven hours but not ours? We'll
8 talk about this issue later so we don't waste
9 any more time here?
10 MR. PATTAKOS: Good idea.
11 MR. MANNION: Okay.
12 MR. BEST: Well, with all
13 due respect, I don't think we got anything
14 resolved here. We either get a stipulation
15 agreement or we don't. So what's the answer?
16 Do we have a stipulation that it's going to be
17 seven hours and this witness is seven hours and
18 we do -- there's actually been four hours of
19 testimony. I checked the tape. So it hasn't
20 been seven hours, despite your ramblings and,
21 you know, protestations. Four hours and five
22 minutes, that's how long this deposition has
23 been.
24 MR. PATTAKOS: We have until
25 6:00 today and we can revisit the issue once

Page 288

1 the deposition is finished.
2 MR. BEST: So you're
3 ignoring the notice that says it shall continue
4 tomorrow?
5 MR. PATTAKOS: There was no
6 agreement that she would come back tomorrow.
7 MR. BEST: There was a
8 notice.
9 MR. PATTAKOS: I think it's --
10 you know, I'm not going to argue about this
11 here. We can talk about it later.
12 MR. BEST: Well, we can't
13 talk about it later because Tom is not going to
14 pass and not have the ability to recontinue to
15 cross-examine this witness and yet other people
16 want to ask questions.
17 MR. PATTAKOS: I think that,
18 you know --
19 MR. BARMEN: I represent a
20 different defendant and I need my opportunity
21 to question. So we do need to figure it out
22 now.
23 MR. PATTAKOS: I think you
24 guys should figure out how to be efficient with
25 these last two hours we'll leave it at that.



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April 13, 2019

VIA ELECTRONIC MAIL ONLY

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
E-Mail: peter@pattakoslaw.com

Re: Member Williams, et al. vs. Kisling Nestico & Redick, et al.
Summit County Common Pleas Case No. 2016-09-3928

Dear Mr. Pattakos:

We have not completed Ms. Norris's deposition. As you know, Ms. Norris's deposition started late due to circumstances that arose with Ms. Norris, not due to the fault of any of the Defendants or Defendants' counsel. In addition, at 4 p.m. on the day of the deposition, you unilaterally decided the deposition would conclude at 6 p.m. Ms. Norris and you also indicated outright refusal to appear the next day to finish the deposition, despite the "day to day" requirement of the Notice of Deposition *Duces Tecum*.

The Defendants did not push the issue on the day of Ms. Norris's deposition because you represented you would "work with Ms. Norris" to "resume the deposition prior to class certification briefing." Despite your representation on the record at Ms. Norris's deposition, you and your client have never provided a single proposed date to complete the deposition and failed to appear when the deposition was noticed.

Ms. Norris's other outstanding discovery obligations in separate correspondence. Please note we will be filing a Motion to Compel on the continuation deposition and the other outstanding discovery deficiencies, as we have attempted to resolve these amicably many, many times. If you reconsider your position on any of those issues, please advise immediately so we can avoid court intervention.



Peter Pattakos, Esq.
April 13, 2019
Page 2

I. PLAINTIFF MONIQUE NORRIS'S DEPOSITION WAS NOT COMPLETED DUE TO THE FAULT OF PLAINTIFF MONIQUE NORRIS AND HER COUNSEL, PETER PATTAKOS, ESQ.

Monique Norris's January 28, 2019, deposition was noticed on December 27, 2018. The deposition was noticed to continue "from day to day" until finished, just as Plaintiffs noticed their depositions. Ms. Norris's deposition was not completed on January 28, 2019, due to multiple delays caused by you and/or Ms. Norris, along with Ms. Norris's refusal to answer the questions (or even agree with her own Answers to Requests for Admissions). We were willing to stay and complete the deposition, but you unilaterally imposed a 6 p.m. deadline on how late the deposition could go that evening. Moreover, Ms. Norris and you refused to come back on January 29, 2019, or any other day to complete the deposition.

A. Delays Caused by Plaintiff and Plaintiff's Counsel

We noticed the deposition to begin at 9:30 a.m., per agreement of the parties. A copy of the Notice of Deposition Duces Tecum was marked as Exhibit FF at the deposition. However the deposition did not start until 9:52 a.m., 22 minutes late, due to Ms. Norris needing to handle an issue with her child. We understand things like this occur, and Defendants made the necessary adjustment, without complaint. However, this was still a 22-minute delay not caused by the Defendants or Defendants' counsel.

Breaks at the deposition constituted 2 hours and 23 minutes. (10:34-10:44; 11:42-11:56; 12:42-1:49; 2:44-3:00; 3:49-4:02; 4:42-4:58; 5:45-5:52). Thus, the actual deposition was 5 hours and 53 minutes. Counting approximately 15 pages of speaking objections by you, the deposition lasted approximately 5 ½ hours (see pages 160-165, 227-228, 285-291, and 399-400).

B. Plaintiff's Refusal to Appear for Continuation of Her Deposition

At approximately 4 p.m. on the day of deposition, Defendants were advised for the first time that you were imposing a 6 p.m. deadline on the deposition and that neither Norris nor you would agree to come back the next day to complete the deposition. See, for example, *Norris deposition* at p. 285, wherein your client and you stated:

Q. If you look at the last sentence of the first paragraph, do you see where it says "Said deposition will continue from day to day until completed"?

A. Yes.

Peter Pattakos, Esq.
April 13, 2019
Page 3

Q. Are you refusing to show up tomorrow if we need to continue?

A. I'm not refusing, but I do - - you guys should have told me that, because I do - I am scheduled to work.

Mr. Mannion: Peter, are you saying that depositions in this case are now limited to 7 hours?

Mr. Pattakos: We're willing to go until 6. ... So she's not going to come back tomorrow. ... She's certainly not coming back tomorrow.

You did not object to the "day to day" portion of the Notice of Deposition at any time in the 32 days prior to her deposition. Obviously, you also never explained to Ms. Norris the "day to day" requirement imposed on her by the Notice. While your client stated "you guys should have told me that", the truth is, we did - it's in the Notice itself. She claimed she read it. But you obviously did not discuss that issue with her.

Regarding the attempted 7-hour limitation, you have zero basis to unilaterally impose such a time limit on the Plaintiff's deposition. No such limitation exists in the Summit County local rules or the Ohio Rules of Civil Procedure. No such limitation was imposed by Judge Brogan or any other judge in our case. No such agreement was reached by the parties. And, you didn't even raise this issue until 4 p.m. on the day of the deposition.

C. Failure to Answer Questions

We will not highlight the multiple failures of your client to answer the question. It really was a "Who's on first" at times, as she would not even admit her initials were hers (despite admitting such in Answers to Requests for Admissions), would not admit KNR never "recommended" (as opposed to "directed") her to get a loan with Liberty Capital (despite admitting such in her Answers to Requests for Admissions), and numerous other evasive and outright fabricated answers.

Peter Pattakos, Esq.
April 13, 2019
Page 4

II. MONIQUE NORRIS FAILED TO COMPLY WITH THE *DUCES TECUM*; DEFENDANTS HAVE A RIGHT TO QUESTION HER ON THOSE DOCUMENTS

The Notice of Deposition *Duces Tecum* was served 32 days before her deposition. In addition to multiple Requests for Production previously served on Plaintiff Norris, the deposition's *duces tecum* directed Ms. Norris to bring the following documents at deposition:

1. All documents relating to income earned by Plaintiff from January 1, 2013 to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.
2. All documents relating to communications between Plaintiff and KNR at any time.
3. All documents relating to communications between Plaintiff and Nestico at any time.
4. All documents relating to communications between Plaintiff and Redick at any time.
5. All documents related to communication between Plaintiff and Floros at any time.
6. All documents related to communication between Plaintiff and Ghoubril at any time.
7. All documents related to communications between Plaintiff and Akron Square at any time.
8. All documents related to communications between Plaintiff and Gunning at any time.
9. All documents related to communications between Plaintiff and Liberty Capital at any time.
10. Any and all documents you have reviewed in preparation for your deposition.

Ms. Norris did not bring a single document responsive to the above requests, despite her clear duty to so under the Ohio Rules of Civil Procedure. Ms. Norris gave several different (but all unjustified) reasons for not complying with the document request:

1. She simply "didn't remember to bring them." Ms. Norris testified:

Q. So you've seen [the *duces tecum* requests]?

A. Uh-huh.

Q. Did you bring any documents responsive to these requests?

A. No.

Q. Why not?

A. I just didn't remember to bring them. *Norris deposition* at p. 168.
2. She "didn't have time to go the bank to get them" in the 30 days she had notice. *Norris deposition* at p. 168. (And the request for these documents was actually 95 days before the deposition given the date Requests for Production of Documents were served on her).

Peter Pattakos, Esq.
April 13, 2019
Page 5

3. She did not even take the time to look for emails with Liberty Capital (or Oasis for that matter) because she "didn't think I would have any." *Norris deposition* at p. 170.

Q. Did you look in your email for those?

A. No.

Q. Why not?

A. Because I didn't think I would have any emails from Liberty Capital.
Norris deposition at p. 170.

Of course, in addition to the *duces tecum* request, the Defendants served Requests for Production of Documents on Ms. Norris on October 25, 2018. That is, 95 days before Ms. Norris's deposition. Most, if not all, of the documents requested in the *duces tecum* were also requested in the Requests for Production of documents. Thus, not having sufficient time to obtain the documents was obviously not a valid excuse.

At any rate, the Defendants have a right to question Ms. Norris re: these documents, and Defendants were unable to do so at her deposition because of the failure to comply with written discovery and the *duces tecum*.

III. DEFENDANTS HAVE SENT NUMEROUS REQUESTS FOR MS. NORRIS'S DEPOSITION

At deposition, you agreed to produce Ms. Norris for her continuation deposition:

If you need to resume this deposition prior to class certification briefing, we can try to reschedule. We can work with Ms. Norris. (*Norris deposition* at p. 286).

We have followed up with you dozens of times to obtain such a date. In addition to the numerous verbal requests for a mutually convenient date to complete Ms. Norris's deposition, we have also sent numerous written requests. Despite these requests, you have refused to provide a single proposed date for Ms. Norris's deposition. Some, but not all, of Defendants' counsel's written email requests to you for a deposition date are listed below:

- A. February 5, 2019, at 6:27 p.m.:

We need to finish Monique [Norris] and Thera [Reid]. As you know, Monique is class rep in 4 classes. We did not finish. ... With Monique, we would agree to limit to 3 hours.

LEWIS BRISBOIS BISGAARD & SMITH LLP

www.lewisbrisbois.com

Peter Pattakos, Esq.
April 13, 2019
Page 6

B. February 13, 2019, at 10:39 a.m.:

The deposition of Ms. Norris was not concluded, as Mr. Pattakos stopped it at approximately 6 p.m. Please provide some proposed [d]ates for this to be continued. ... If you refuse to produce .. Ms. Norris .. please at least produce dates – and we can address it with the Court.

C. February 13, 2019, at 12:20 p.m.:

You STILL haven't provided dates for these witnesses. ... We are not asking to re-open Monique's deposition, we are asking to continue her deposition, as it has never been closed out. Please provide dates.

D. February 13, 2019, at 2:08 p.m.:

We did not finish Ms. Norris. You state we had to leave. So, she started late due to no fault of ours and you ended the deposition before we were done. We have multiple issues that were not yet fully addressed with Ms. Norris. If the deposition was closed, we would have to give you those topics. The deposition was left open, however, and we have no such obligation. Are you refusing to produce her?

E. February 19, 2019, at 5:08 p.m.:

Why don't we use Thursday for Norris and Halsey then? [following your cancellation of Paul Steele's deposition].

F. February 22, 2019, at 8:30 a.m.:

Please provide dates for ... Norris ... as we have requested just as often or more [as you requested deposition dates].

G. February 23, 2019, at 7:26 p.m.:

You did not respond to the verification page from of Nor[ri]s, which you promised almost a month ago and that was due many months ago. I did not see propose[d] dates for the witnesses either.

Peter Pattakos, Esq.
April 13, 2019
Page 7

H. February 24, 2019, at 9:01 a.m.:

Are you providing a date for us to finish Norris's deposition?

I. February 26, 2019, at 9:12 a.m.:

Please respond. [To request for dates for Norris, et al.]

J. February 26, 2019, at 9:15 a.m.:

[W]ould you take a few moments to respond to questions we have been asking for a long time. Some of these are rather simple - verification pages, simple confirmation on whether you will produce something to avoid court intervention, etc. [attaching request: Are you providing a date for us to finish Norris's deposition?]

K. February 28, 2019, at 9:24 a.m.:

So, we have 1 witness outstanding and you have multiple. ... You, however, certainly control Norris, ... You owe us dates for at least 6 depositions. You have provided ZERO dates. ... Please provide some proposed dates for your witnesses. Even if you are going to file a MPO on Norris.. at least provide proposed dates.

L. March 12, 2019, at 9:12 a.m.:

If you don't give us dates for Norris... 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.

M. March 30, 2019, at 11:06 a.m.:

When are we getting dates for .. Thera Reid, Monique Norris.. continuation depositions. You have utterly refused to provide dates. ... We are okay with taking the Plaintiffs' continuation depositions after April 15th [if Pattakos' and the witness's schedules did not permit beforehand], as those depositions should not impact your May 1st deadline. We've been asking for these for many months.

Peter Pattakos, Esq.
April 13, 2019
Page 8

IV. PLAINTIFF NORRIS FAILED TO COMPLY WITH TWO VALID NOTICES OF DEPOSITION

Plaintiff Monique Norris's refusal to continue her deposition "day to day" in January, 2019, and her continued refusal to appear for the completion of her deposition outright violate the duties created by the original Notice of Deposition *Duces Tecum* and the Amended Notice of Deposition *Duces Tecum*.

Plaintiff Monique Norris's failure to appear yesterday for deposition was also a failure to comply with the more recent Notice of Deposition served on her to appear on April 12, 2019, for the completion of her deposition.

You never filed a Motion for Protective Order on any of the above 3 Notices of Deposition. No legal basis exists for your client to ignore these Notices and refuse to appear for the completion of her deposition. All other parties were present, as counsel for the KNR Defendants, Dr. Ghoubrial, and Dr. Floros appeared for the deposition. You and your client did not appear for the deposition.

V. PLAINTIFF'S COUNSEL'S UNILATERAL LIMITATIONS ON CONTINATION DEPOSITION ARE NOT ACCEPTED

On April 10, 2019, you indicated Ms. Norris "would consider answering a limited set of written deposition questions (20 or so) but I have advised her there is no need for her to reappear [for deposition]." Of course, your advice is mistaken. The need for her to appear for the completion of her deposition was created by the Ohio Rules of Civil Procedure, which imposes an obligation on her to attend, given the Notice of Deposition *Duces Tecum* and Amended Notice of Deposition *Duces Tecum* for January 28, 2019, and the subsequent Notice of Deposition for April 12, 2019,

On April 11, 2019, you indicated you "might be able to negotiate [60 minutes over the phone] with Ms. Norris" for this coming Friday, April 19, 2019. We are available to complete Ms. Norris's deposition on that date, but we will not agree to a telephonic deposition. It must be in person. We also do not agree to a 60-minute limitation.

If you are willing to produce Ms. Norris for deposition in person on April 19, 2019, we will agree to a 2-hour limitation (minus speaking objections or breaks), assuming she answers the questions forthright. If we seek court intervention, we will not agree to a 2-hour limitation. Your client is a putative class representative in 4 classes. We have the right to depose her on all issues. We also have a right to depose her on her answers to contention interrogatories and on her bank records, emails with Liberty Capital and Oasis, and other documents not produced at her deposition. (The

Peter Pattakos, Esq.
April 13, 2019
Page 9

tax records can be dealt with after class certification; we are not pushing for those records before class certification).

We look forward to you and your client hopefully reconsidering your unreasonable position and agreeing to appear in person, at a mutually convenient time, to complete Ms. Norris's deposition.

Very truly yours,

/s/ Thomas P. Mannion

Thomas P. Mannion of
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: Joshua R. Cohen, Esq.
James Popson, Esq.
Bradley Barmen, Esq.
David M. Best, Esq.
Shaun Kedir, Esq.
Nathan Studeny, Esq.
Rachel Hazelet, Esq.

LEWIS BRISBOIS BISGAARD & SMITH LLP

www.lewisbrisbois.com

Nathan F. Studeny

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Tuesday, April 02, 2019 4:23 PM
To: Mannion, Tom
Cc: James M. Popson; Dmb@dmbestlaw.com; Barmen, Brad; Nathan F. Studeny; Shaun Kedir
Subject: Re: Williams v KNR: Contention Discovery

I should have the contention answers to you next week. As for Plaintiffs' depositions, you have already spent a full day with each of them, which was more than enough under the circumstances, but to avoid escalating a dispute with the Court I will try to get you another 90 minutes each with Thera and Monique. I propose that this take place on April 12, when we were already slotted for Redick (who, I understand, cannot go forward on that date). Otherwise, the earliest I could do it is May 21 or 22.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Tue, Apr 2, 2019 at 12:20 PM Mannion, Tom <Tom.Mannion@lewisbrisois.com> wrote:

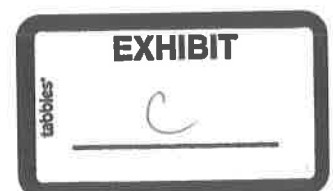
Mr. Pattakos:

Please provide an estimate as to when you will provide answers to the Contention discovery.

Please also provide dates for the depositions of your clients. We can probably get by with 4 hours or less each, and so perhaps we can just do back to back days, 2 a day.

We're ok if these occur after 4/15. In fact, even the first two weeks of May are ok as far as we're concerned, as the depositions of your own clients will not require a continuance for you to file the initial class action briefing.

Thanks,



Tom



Thomas P. Mannion

Attorney | Cleveland Managing Partner

Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

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Representing clients from coast to coast. View our locations nationwide.

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

MEMBER WILLIAMS, et al.,)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	JUDGE JAMES A. BROGAN
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS' NOTICE TO TAKE</u>
)	<u>DEPOSITIONS OF PLAINTIFFS MONIQUE</u>
Defendants.)	<u>NORRIS AND THERA REID</u>
)	
)	

Please take notice that, pursuant to the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick, by and through undersigned counsel, will take the discovery depositions of **Plaintiffs Thera Reid (10:00 a.m.) and Monique Norris (1:00 p.m.)**, upon oral examination, on **Friday, April 12, 2019** at the Hilton Akron/Fairlawn Hotel and Suites, located at 3180 W. Market Street, Fairlawn, Ohio 44333 before a notary public. The depositions will be taken stenographically and by audiovisual reporting. Said deposition will continue from day to day until completed.

Respectfully submitted,

/s/ James M. Popson

James M. Popson (0072773)

Sutter O'Connell

1301 East 9th Street

3600 Erieview Tower

Cleveland, OH 44114

(216) 928-2200 phone

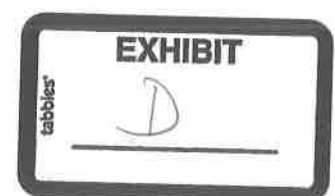
(216) 928-4400 facsimile

jpopson@sutter-law.com

Counsel for Defendants

Kisling, Nestico & Redick LLC, Alberto R.

Nestico, and Robert Redick



CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2019, the Notice to Take Depositions of Plaintiffs Thera Reid and Monique Norris was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ James M. Popson
James M. Popson (0072773)

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

MEMBER WILLIAMS, et al.,)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	JUDGE JAMES A. BROGAN
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS' AMENDED NOTICE OF</u>
)	<u>DEPOSITION OF PLAINTIFF MONIQUE</u>
Defendants.)	<u>NORRIS DUCES TECUM</u>
)	
)	

Please take notice that, pursuant to the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick, by and through undersigned counsel, will take the discovery deposition of **Plaintiff Monique Norris**, upon oral examination, on **Monday, January 28, 2019 at 9:30 a.m. at the DoubleTree Hotel located at 3150 W. Market Street, Akron, Ohio 44333**, before a notary public. The deposition will be taken stenographically and by audiovisual reporting. Said deposition will continue from day to day until completed.

In addition to appearing for oral examination, it is requested that the deponent bring to the deposition the documents listed on Exhibit A attached hereto.

Respectfully submitted,

/s/ James M. Popson
James M. Popson (0072773)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com

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



EXHIBIT A**A. DEFINITIONS**

For the purpose of these requests, unless otherwise stated, the following terms shall have the meanings indicated:

1. "Plaintiff" or "you" or "your" means Plaintiff Monique Norris, as well as all of her employees, attorneys, agents, partners, members, affiliates, representatives, and all other persons acting on her behalf.
2. "KNR" means Defendant Kisling, Nestico & Redick, LLC, and all of its officers, directors, employees, agents, partners, members, shareholders, affiliates, representatives, and all other persons acting on its behalf.
3. "Nestico" means Defendant Alberto R. Nestico, a member of KNR.
4. "Redick" means Defendant Robert W. Redick.
5. "Floros" means Defendant Minas Floros, D.C.
6. "Ghoubrial" means Defendant Sam Ghoubrial, M.D.
7. "Akron Square" means Akron Square Chiropractic, and all of its officers, directors, employees, agents, partners, members, shareholders, affiliates, representatives, and all other persons acting on its behalf.
8. "Gunning" means Richard Gunning, M.D.
9. "Liberty Capital" means Liberty Capital Funding LLC, and all of its officers, directors, employees, agents, partners, members, shareholders, affiliates, representatives, and all other persons acting on its behalf.
10. "Communication" means any written or oral statement or notation of any nature, including but not limited to conversations, correspondence, dialogue, discussions, e-mails, interviews, consultations, meetings, telephone calls, letters, telecopies, telephone logs, diaries, agreements and other understandings between or among two or more persons, and all other forms of oral or written expression by which information may be conveyed.
11. "Document" or "documents" means any and all records, statements, memoranda, reports, letters, notes, messages, written communications, correspondence, emails, text messages, social media communications (e.g., Twitter and Facebook), contracts, forms, manuals, charts, graphs, data sheets, spreadsheets, bulletins, computer runs, journals, ledgers, books, bills, transcripts, checks, drafts, photographs, audio and/or video tape recordings, mechanical and/or electrical records, electronic documents, computer documents, punch cards, print-out sheets, notes, books of account, brochures, circulars, magazines, notebooks, diaries, calendars, appointment books, tables,

papers, minutes of meetings of any kind, drafts of any documents, data processing disks or tapes or computer produced interpretations of the above, and any and all tangible items or written matter whatsoever of any kind or nature in Plaintiff's possession or control or within the possession and control of Plaintiff's attorney, agents, or other representative of Plaintiff and Plaintiff's attorney.

12. "Relating to" or "relate to" shall include, without limitation, embodying, pertaining to, reflecting, referring to, regarding, referencing, concerning, constituting, comprising, discussing, or having any bearing upon or logical or factual connection with the subject matter in question.

B. DOCUMENTS TO BE PRODUCED

You are requested to bring with you any and all documents in your possession or in the possession of your attorney relating to the following:

1. All documents relating to income earned by Plaintiff from January 1, 2013 to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.
2. All documents relating to communications between Plaintiff and KNR at any time.
3. All documents relating to communications between Plaintiff and Nestico at any time.
4. All documents relating to communications between Plaintiff and Redick at any time.
5. All documents related to communication between Plaintiff and Floros at any time.
6. All documents related to communication between Plaintiff and Ghoubril at any time.
7. All documents related to communications between Plaintiff and Akron Square at any time.
8. All documents related to communications between Plaintiff and Gunning at any time.
9. All documents related to communications between Plaintiff and Liberty Capital at any time.
10. Any and all documents you have reviewed in preparation for your deposition.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2019, the Amended Notice of Deposition of Plaintiff Monique Norris Duces Tecum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ James M. Popson
James M. Popson (0072773)