

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
THERA REID**

Now come the KNR Defendants, by and through counsel, and hereby respectfully move this Honorable Court for an Order compelling the completion of Plaintiff Thera Reid's deposition, the first part of which was taken on July 3, 2018. As it became clear the deposition would not conclude unless it went into the evening or the following day, all counsel conferred off the record and agreed to recess for the day and reconvene at a later time. Counsel for Plaintiff Reid consented to same on the record and even expressed his gratitude:

MR. MANNION: Do you want to recess for now?

MR. PATTAKOS: Yes, sir.

MR. MANNION: Okay.

MR. PATTAKOS: Thank you.

(See Exhibit "A", Deposition Excerpts of Thera Reid, at p. 298, ll. 21-25)

Defendants' counsel subsequently requested a date to reconvene the deposition on more than 30 occasions, if not more than 50 occasions. Plaintiffs' counsel agreed to present Ms. Reid to continue her deposition, 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. Reid's availability before Defendants to entice them into trusting him and

not seeking court intervention (See Exhibit “B”, correspondence from Defendants’ counsel to Plaintiffs’ counsel):

- July 3, 2018: Plaintiffs’ counsel agreed to recess the deposition for “now” and to reconvene at a later date.
- October 24, 2018: “I suggest we do this [Ms. Reid’s deposition] on the same day that you take Monique Norris's deposition.”
- November 1, 2018: “[M]y clients and I are flexible as to scheduling depositions ... we can schedule the Reid, Norris, and Harbour depositions around [other depositions].”
- November 29, 2018: “Once we have Nestico's deposition firmed up then I can get you dates for the Plaintiffs. I am not going to bother them until then.”
- November 29, 2018: Plaintiffs’ counsel agreed to “get dates” for Ms. Reid’s deposition “immediately after” Mr. Nestico was deposed.
- January 7, 2019: Plaintiffs’ counsel agreed to produce Ms. Reid for deposition but requested the deposition occur at a location other than KNR’s offices. The Defendants consented.
- January 10, 2019: ... I did say at her deposition that we would come back to answer the questions you purported to need to ask...
- February 5, 2019: Plaintiffs’ counsel agreed to produce Ms. Reid for deposition (but attempting to limit the deposition to one hour).
- February 8, 2019: On the record during the second day of Mr. Nestico’s deposition, Plaintiffs’ counsel represented: “Thera Reid we offered would come back, we’ll figure it out, okay?”
- February 12, 2019: Plaintiffs’ counsel again represented he would present Ms. Reid for deposition, stating “2 more hours with Thera is fine.”
- February 13, 2019: “As for Ms. Reid and Ms. Holsey, their schedules are flexible and we can schedule those concurrently with

scheduling the remaining depositions we need to get on the calendar ... Please provide dates for those and we can fill in with Reid and Holsey as they are more flexible ...”

February 14, 2019: Plaintiffs’ counsel again agreed to produce Ms. Reid for deposition (by referring to prior responses to Defendants’ counsel).

February 22, 2019: Plaintiffs’ counsel proposed to “schedule Dr. Gunning’s resumed deposition for March 20, as well as the conclusion of Ms. Reid’s deposition, since you all are available.” (However, he corrected himself later that March 20, 2019, would be utilized for other depositions, not Ms. Reid’s deposition.”

February 28, 2019: Plaintiffs’ counsel stated the parties could “fill in” Ms. Reid’s deposition amongst other depositions because of her “relative flexibility” with her schedule.

April 2, 2019: Plaintiffs’ counsel proposed Ms. Reid’s continuation deposition take place on April 12, 2019, since all counsel were available.

Finally having a date certain for the deposition, the Defendants filed and served a Notice of Deposition for Ms. Reid for April 12, 2019. (See Notice of Deposition for April 12, 2019, attached as Exhibit “C”, along with original Notice of Deposition for July 3, 2018, attached as Exhibit “D”). 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. Reid 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. Ghoubrial, 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 Thera Reid 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 THERA REID 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)

REID, THERA
07/03/2018

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1 STATE OF OHIO,)
 COUNTY OF SUMMIT,) SS:
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 IN THE COURT OF COMMON PLEAS
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 MEMBER WILLIAMS, et al.,)
 4)
 Plaintiffs,)
 5)
 vs.) JUDGE BREAUX
 6) CASE NO. CV-2016-09-3928
 KISLING, NESTICO &)
 7 REDICK, LLC, et al.,)
 8)
 Defendants.)
 9)
 THE VIDEOTAPE DEPOSITION OF
 10 THERA REID
 TUESDAY, JULY 3, 2018
 11
 The deposition of THERA REID, called by the
 12 Defendants for examination pursuant to the Ohio
 13 Rules of Civil Procedure, taken before me, the
 14 undersigned, Margaret A. Trombetta, RMR and Notary
 15 Public within and for the State of Ohio, taken at
 16 the offices of Kisling, Nestico & Redick, LLC, 3412
 17 W. Market Street, Fairlawn, Ohio, commencing at
 18 10:30 a.m., the day and date above set forth.
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 23
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Page 3

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 John Reagan, Esq.
 18 Rob Nestico, Esq.
 19 Robert Redick, Esq.
 20 Alex Cook, Videographer
 21
 22
 23
 24
 25

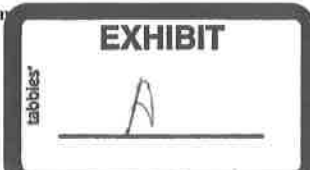
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REID, THERA
07/03/2018

Pages 297-300

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1 the \$150 report that you think was only worth
2 85?
3 A Well, yeah because it wasn't even worth 85, to
4 be honest with you.
5 Q Okay. So you'd rather have just paid the whole
6 5,025?
7 A I'd rather not even pay that.
8 Q Well, I mean Akron Square had a right to be
9 paid for the treatment they gave you --
10 A Yes --
11 Q -- don't they?
12 A -- they had a right to be paid for the
13 treatment and that was costly treatment.
14 Q Okay. And you're not alleging that the cost of
15 that treatment was improper, are you?
16 MR. PATTAKOS: Objection.
17 A No.
18 MR. MANNION: Basis?
19 MR. PATTAKOS: Form.
20 Q Are you alleging in any way that Akron Square's
21 bills to you, the \$5,025 for the treatment that
22 you received there was fraudulent or incorrect
23 in any way?
24 A No, just costly.
25 Q Well --

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1 A I get they're costly.
2 Q Well, how much was it a visit?
3 A I don't know how much it was a visit.
4 Q How many visits did you have?
5 A I don't even remember.
6 Q Have you called other chiropractors to see what
7 they charge?
8 A No, but I get they're expensive.
9 Q Okay. And in fact, they had to forego getting
10 paid for --
11 A A few visits, yes, I understand that. Quite a
12 while actually.
13 Q Exactly, which is money they could have had in
14 their business?
15 A I understand that.
16 Q Okay. You're certainly grateful to Akron
17 Square for reducing their bill by \$525, aren't
18 you?
19 A Yes.
20 Q Okay.
21 MR. MANNION: Do you want to
22 recess for now?
23 MR. PATTAKOS: Yes, sir.
24 MR. MANNION: Okay.
25 MR. PATTAKOS: Thank you.

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1 THE VIDEOGRAPHER: Off the record.
2 The time is 6:33.
3 - - - - -
4 (Deposition was concluded at 6:33 p.m.)
5 - - - - -
6 (Signature reserved.)
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1 THE STATE OF OHIO,) SS:
2 COUNTY OF CUYAHOGA.)
3
4 I, Margaret A. Trombetta, a Notary Public
5 within and for the State of Ohio, duly commissioned
6 and qualified, do hereby certify that THERA REID,
7 was first duly sworn to testify the truth, the whole
8 truth and nothing but the truth in the cause
9 aforesaid; that the testimony then given by her was
10 by me reduced to stenotypy in the presence of said
11 witness, afterwards transcribed on a
12 computer/printer, and that the foregoing is a true
13 and correct transcript of the testimony so given by
14 her as aforesaid.
15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified. I do further certify that I am not a
18 relative, counsel or attorney of either party, or
19 otherwise interested in the event of this action.
20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Cleveland, Ohio, on
22 this 16th day of July, 2018.
23 _signature_
24 Margaret A. Trombetta, Notary Public
25 within and for the State of Ohio



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April 14, 2019

VIA ELECTRONIC MAIL ONLY

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

Dear Mr. Pattakos:

This correspondence addresses Plaintiff Thera Reid's refusal to present for the completion of her deposition. We have attempted to resolve this dispute with you amicably for over 5 months. Despite your repeated representations to present Ms. Reid for the conclusion of her deposition, you have failed to provide dates for the deposition and failed to appear when the deposition was properly noticed for the very date you suggested.

We are hopeful you will reconsider your and your client's unreasonable position after reviewing the chronology set forth below concerning our attempts to obtain Ms. Reid's continuation deposition. If mutually agreed upon dates are agreed upon, we will agree to withdraw the forthcoming Motion to Compel on that issue.

I. Plaintiff Thera Reid's Deposition was Recessed at Your Request

As you may recall, the deposition of Ms. Reid was noticed for July 3, 2018, to continue day to day until completed. At approximately 6:30 p.m. that evening, with the deposition clearly not completed, all counsel agreed to reach a good stopping point and then reconvene on another date. Following a line of questioning re: Ms. Reid's medical bills, Defendants asked you if Plaintiff



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April 14, 2019
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wanted to recess "for now", to which you agreed and expressed your gratitude (see Deposition of Thera Reid, at p. 298, ll. 21-25):

MR. MANNION: Do you want to recess for now?

MR. PATTAKOS: Yes, sir.

MR. MANNION: Okay.

MR. PATTAKOS: Thank you.

Everyone understood Ms. Reid's deposition was going to be reconvened for another date, as that was discussed multiple times off the record and the above time on the record.

II. Thera Reid's Continuation Deposition has been Requested for over Five Months

The Defendants have requested dates to complete the deposition of Thera Reid for over 5 months. On October 5, 2018, we requested as follow:

Please also provide dates for the continuation deposition of Plaintiffs Matthew Johnson and Thera Reid.

Please provide deposition dates for the continuation depositions of Plaintiff Matthew Johnson and Plaintiff Thera Reid as soon as possible. Please also supplement Plaintiffs' document production as discussed herein.

You did not respond to the above. Thus, four days later, October 9, 2018, we asked:

Also - please provide potential dates for Thera Reid and Matt Johnson. I only need approximately 1 hour with each of them, assuming they bring the documents with them and answer the questions appropriately. I cannot speak for the other parties, other than I know everyone would like to get these done in 4 hours or less. I believe we can finish each of these depositions within a few hours, with 4-5 hours being the outside assuming nothing crazy happens.

You responded to various document requests the following day, October 10, 2018, as discussed below, but failed to address Ms. Reid's continuation deposition.

During this time period, some discussion ensued as to whether Ms. Reid would withdraw as a putative class representative, given the fact she outright admitted at deposition she was not qualified in that regard. However, on October 24, 2019, you advised us that Ms. Reid was not

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April 14, 2019
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withdrawing as a putative class representative. Thus, we again requested her continuation deposition:

Now that Ms. Reid is not withdrawing as a class representative, please provide a supplemental deposition date for her. It has been over 100 days since her first deposition. Please also provide her emails related to communications with KNR or any of the allegations or defenses, other than her communications with her counsel.

Later that day, October 24, 2018, you agreed to produce Ms. Reid for deposition and suggested we complete the deposition on the same day as Ms. Norris:

If you really need to continue Ms. Reid's deposition, I suggest we do this on the same day that you take Monique Norris's deposition.

However, at that time, Ms. Norris's deposition had not yet been set. Additionally, we had estimated approximately 4 hours for everyone to complete their questioning of Ms. Reid, which obviously could not be done on the same day as Ms. Norris. However, at least you acknowledged Ms. Reid's obligation to appear for the completion of her testimony.

We did not hear from you for another week concerning a date for Ms. Reid's testimony. Thus, on October 31, 2018, we sent the following correspondence:

And, let me ask you, do you still ... 5) Refuse to produce Ms. Reid for her continued deposition...

Still without a proposed date for Ms. Reid's continuation deposition, we sent the following on November 1, 2018:

You STILL have not provided a single proposed deposition date for Thera Reid and Matt Johnson so we can complete those depositions.

You responded that same day with another confirmation that you would produce Ms. Reid for the completion of her deposition. You stated Ms. Reid and you were both "flexible as to scheduling depositions" and that we could schedule Ms. Reid's deposition "around" the "deposition that Plaintiffs need to take." Your email stated:

[M]y clients and I are flexible as to scheduling depositions. Because the Defendants are having so much trouble finding time to accommodate our

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April 14, 2019
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scheduling requests, it makes sense for us to firm up the depositions that Plaintiffs need to take, and **we can schedule the Reid**, Norris, and Harbour depositions **around that**. (Emphasis added).

As November continued, and despite your representation Ms. Reid would appear and had a flexible schedule, you simply refused to provide a single proposed date for her deposition. On November 12, 2018, without having heard from you re: Ms. Reid, we served additional discovery requests on Ms. Reid. And, you continued to be absolutely silent on providing dates for the deposition you requested by recessed until another day.

Therefore, on November 21, 2018, we suggested November 30' 2018, for Ms. Reid's deposition, since her schedule is flexible and you were available (you had set Mr. Nestico for November 29th and 30th but decided to unilaterally cancel):

If you are not going to show [for Mr. Nestico's deposition], then produce Thera Reid ... on the 30th, we know you're available.

Not surprisingly, given your conduct to that date, you ignored the request and provided no alternative dates either. Therefore, four days later, on November 25, 2018, we again requested dates for Ms. Reid:

Please provide deposition dates for ... Ms. Reid for January.

After you continued to ignore our requests for dates for Ms. Reid's deposition, we asked on November 29, 2018:

I have asked for dates of your witnesses ... multiple times. So, I am asking again - please provide dates for your ... parties. Let's start with: Thera Reid.

Later that same day, November 29, 2018, we followed up as follows:

Also - you still have not provided a single deposition date for your folks. We need dates for ... Reid

Later that day, you finally responded to our repeated requests throughout October and November, 2018, for Ms. Reid's deposition. Unfortunately, you did not provide a proposed date for the deposition, but rather unilaterally stated you would not provide a date for Ms. Reid's continuation deposition until after Mr. Nestico was deposed (ignoring the fact you had unilaterally

Peter Pattakos, Esq.
April 14, 2019
Page 5

canceled his deposition several times and the fact Ms. Reid's deposition was still in progress and had not yet been completed). Your email of November 29, 2018, stated:

Once we have Nestico's deposition firmed up then I can get you dates for the Plaintiffs. I am not going to bother them until then

Later that same day, November 29, 2018, you again agreed you would produce Ms. Reid for deposition. In fact, you acknowledged you would know more about your schedule after Mr. Nestico was deposed, at which time you would "get dates for .. Reid.. immediately after." (Mr. Nestico was deposed on February 8th and 9th, and we are more than two months past y..).

Since you expressly refused to provide a proposed date for Ms. Reid's deposition, we followed up the following day, November 30, 2018, as follows:

Please also provide potential dates for your clients. We have asked numerous times for the deposition dates of your clients. If we do not hear from you by the end of the day, given the fact that we've asked for these so often and for so long, we will have to notice them. If the dates we notice do not work for you, then we will agree to reschedule if we can come up with mutually convenient dates. We've attempted every step of the way to have depositions on mutually convenient dates. You simply refuse to cooperate.

Your response addressed the scheduling of Mr. Nestico's deposition but AGAIN ignored our request for a date for Ms. Reid to finish her testimony. We replied later on November 30, 2018:

[P] lease provide proposed dates for your clients' depositions.

While you replied to the above email, you again only addressed issues OTHER THAN Ms. Reid's continuation deposition. Instead, you blatantly ignored the request for her deposition.

We heard nothing further from you re: Ms. Reid until December 10, 2018. However, you again refused to address a deposition date to conclude her testimony. Instead, you requested an 11-day extension for Ms. Reid to respond to discovery requests, which were due that day. We agreed and consented to same, in the spirit of cooperation and believing you would make good on your representation to provide a date to conclude Ms. Reid's deposition.

Peter Pattakos, Esq.
April 14, 2019
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On December 20, 2018, we again requested dates for Ms. Reid's deposition:

We still need dates for your clients

On December 21, 2018, you served Ms. Reid's discovery responses, but indicated you could not answer some without her deposition testimony (which was referenced in the discovery requests). We immediately sent you all cited pages. In addition, in separate correspondence that day, you again indicated you would not provide dates for depositions you had requested (which requests, by the way, were well after our requests for Ms. Reid's deposition). It was another empty promise by you to eventually provide dates for Ms. Reid's continuation deposition. We responded:

What you were saying is for me to give you dates, and you would check schedules, rather than you provide me dates. I have asked for dates for [the depositions]. We have more than satisfied our obligation to work with you cooperatively and have no choice left but to notice them unilaterally, unless you provide some proposed convenient dates.. I don't want to do that. I would like proposed dates. ...

We then inquired into whether you were refusing to provide dates for Ms. Reid's deposition:

Just to clarify - you are refusing to provide any dates for your clients' depositions? We have attempted to work these out with you in good faith. ...What date to you propose for ... Thera Reid?

Of course, your subsequent responses to these emails failed to even address Ms. Reid. We then waited until after the New Year to again address the issue, again requesting as follow on January 4, 2019, in two separate emails:

Please also provide dates for Member Williams and Thera Reid, as requested many times.

.....

We also request the depositions of your clients - .. Reid.

While you responded to the email on other issues, you again refused to address the deposition request. Accordingly, we followed up that afternoon (January 4, 2019):

Do you have proposed dates for Reid ?

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April 14, 2019
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Your response? None. So, we followed up on January 5, 2019, asking for Ms. Reid's deposition and copying you on our prior November 25, 2018, request for her deposition:

Here is one of many requests for depositions dates of Reid ...

The next day, January 6, 2019, you provided lengthy responses to other issues, including the scheduling of other depositions. But, you again refused to address Ms. Reid's deposition, as we pointed out in our reply correspondence that day:

[Y]ou have refused to confirm your clients' depositions (Norris and Harbour) or provide dates to complete the depositions of Williams and Reid.

The next day, January 7, 2019, you again represented you would produce Ms. Reid for deposition, but again also failed to provide a proposed date for the depositions. Rather, you instead only stated you wanted a new location (other than KNR's office) for Ms. Reid's deposition (which request was acquiesced to, as evidenced by emails and the depositions of Norris and Harbour).

Rather than respond with a date, you again stated Ms. Reid would appear, but not at KNR's office:

... While I was willing to acquiesce to Defendants' request that Ms. Reid ... be deposed at KNR's offices, my clients reported that they were distressed by being made to return there...

While we eventually reached an agreement on location of the deposition, you still had not provided a proposed date for Ms. Reid's deposition, which we again pointed out on January 7, 2019:

You still have not provided dates for Reid

And the response from Plaintiff Reid and you? No response. None. Not a single proposed dates. At this time, discovery was then extended, and so we followed up on January 9, 2019, as follows:

With discovery moved to 4/1, we obviously have a bit more time, but we still need these dates on the book. Please advise as to the following, which we've asked about many, many times:

2. Dates for Reid

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April 14, 2019
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In the exchange of emails over this time period, you addressed many other topics but again failed to address Ms. Reid's deposition. Thus, on January 10, 2019, we sent you the following:

You never seem to lack time to write writing emails. Unless, of course, It is in response to one of my request to usually work out discovery issues. Please advise as follows:

...

Please provide dates for Reid and Williams.

....

Again, emails were exchanged but you ignored Ms. Reid's deposition requests. We followed up much later that day with:

We have afforded great deference to you in scheduling of witnesses, including location, time, place, date, order, etc. But we also have a case to defend, and we also have to take affirmative discovery. While I will not change the dates of the depositions we have scheduled, you have refused to provide dates for many others. And you have refused - OUTRIGHT REFUSED - to provide us available dates for yourself or for the other witnesses.

....

With respect to Reid and the others - we await dates.

Your response was a classic non-response. In fact, you even sent one email referring to a proposed response re: Reid, but that proposed response wasn't a response at all. On January 10, 2019, you emailed:

See my response from earlier today (below) re: Reid and Williams.

But, your response from earlier that day was:

Will get you responses on the rest shortly

So, your reference to "See my response from earlier today (below) re: Reid" was a response that said you would respond "shortly." That is, another non-response.

Peter Pattakos, Esq.
April 14, 2019
Page 9

You also responded on January 10, 2019, with another confirmation you would produce her to conclude the deposition, but again provided no proposed date:

.. I did say at her deposition that we would come back to answer the questions you purported to need to ask about her discovery responses, so we can make her available for an hour or so for that at some point in march once we get the remaining depositions scheduled on our side.

Of course, you NEVER limited her continuation deposition to this area during the first day of her deposition, nor at any time before January 10, 2019. Moreover, you knew full well all the parties had not yet even questioned Ms. Reid and that I was not done with my inquiry of her.

So, did you respond "shortly"? Of course not. Not that day. Not the remainder of that week. Not the following week. And not even the next week. So, on January 25, 2019, we reminded you:

Please provide some dates when you are available for ... Thera Reid... [A]t least provide available dates, or we are left with no option but to just subpoena and notice them.

You did not respond that day. Or the rest of the month. Or into the first week of February. So, we sent another request on February 5, 2019:

Reid: Depo dates?

You responded later that day, again conceding you would produce Ms. Reid for deposition, but trying to limit the deposition to one hour and STILL NOT PROVIDING A PROPOSED DATE FOR MS. REID'S DEPOSITION:

... To avoid a dispute with the Court we will make her available to you for another hour if you can agree to that.

We responded that same evening:

We need to finish ... Thera. ... As far as Thera, we might be able to get her done in an hour. I am confident we can get her done within 2-3 hours. We would agree to limit it to 2 hours - but we would have to have some assurances that it only includes actual testimony not breaks.

Peter Pattakos, Esq.
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While we still could not get a date from you, a perfect opportunity to reach a mutually convenient date arose on February 8, 2019, the second day of Mr. Nestico's deposition. First, you had said multiple times that once Mr. Nestico's deposition date was set, you would get immediately get us a date for Ms. Reid. On February 8th, Mr. Nestico's deposition was not only set, it was being concluded. Second, Ms. Reid was present at this deposition. Third, all counsel were present in person. So, we attempted to get a proposed date for Ms. Reid multiple times off the record and at least once on the record, all to no avail:

MR. MANNION: Peter, are you providing dates for Member Williams and Thera Reid?

MR. PATTAKOS: You guys can put whatever nonsense you want on the record --

MR. MANNION: Just that we get proposed dates and we can ask the Court whether they go forward.

MR. PATTAKOS: Tom, just send me an e-mail and we can talk about it.

MR. MANNION: I sent you many -- like a dozen e-mails and you won't provide me any dates.

MR. PATTAKOS: Then you can use those. Take your break. Sir, please change the tape.

After a few minutes, you agreed to produce Ms. Reid for two hours for the completion of her deposition:

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MR. PATTAKOS: -- okay? Thera Reid we offered would come back, we'll figure it out, okay?

MR. MANNION: Okay.

MR. PATTAKOS: She'll come back for two hours.

MR. MANNION: I want dates for both of them today.

MR. PATTAKOS: She would come back for two hours. We're not going to give you dates for Member Williams, Tom.

Despite the perfect opportunity, you failed to discuss a proposed date with us that day. Or any other day during the month of February, 2019. Nothing but radio silence and written silence. Not a thing. So, we waited a week and followed up on February 12, 2019:

... I've been asking for months for convenient dates for depositions from you. Reid. ... You refused to provide dates you are available, let alone the witnesses.

You responded later in the day on February 12, 2019, agreeing to produce Plaintiff Reid for two hours for deposition:

2 more hours with Thera is fine.

But, of course, you did not provide a proposed date. We again asked on February 12, 2019, we asked for dates again:

Please also provide dates for the conclusion of Ms. Reid's and ... depositions. ... (since Mr. Pattakos agreed at Nestico's deposition that he would provide dates for Ms. Reid) .. .

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You actually responded on February 13, 2019, to the above email, but, of course without providing a date. Rather, you said again Ms. Reid's schedule was flexible and her deposition could be scheduled around the remaining depositions:

As for Ms. Reid and Ms. Holsey, their schedules are flexible and we can schedule those concurrently with scheduling the remaining depositions we need to get on the calendar ... Please provide dates for those and we can fill in with Reid and Holsey as they are more flexible ...

Of course, we scheduled ALL of the depositions you requested, but you still failed to provide a date for Ms. Reid's deposition. We responded that same day:

And you have no right to withhold deposition dates. Nor are we required to wait for you to finish your discovery before we complete our discovery. ... However, those issues do not impact your ability to give me a few dates in which YOU are available. ...

Of course, you still did not provide dates, and so we followed up the following day, February 14, 2019, as follows:

We continue to ask for ... dates for your clients' depositions....

And again on February 14, 2019, we emailed you:

You STILL haven't provided dates for these witnesses. What dates? We do not agree to a 2-hour limitation, but will try our best to get the deposition done in that time frame. Without long speaking objections like you did with Harbour and Norris, we can probably finish in less than two hours. This is true for both witnesses. ... Please provide dates.

Your response to the above was simply referring to your prior response offering Ms. Reid for two hours, to which we responded:

What are you talking about [that is, you offered no dates]? You offered a 2-hour window. ... We will LIKELY get done, but we can't know that in advance given your conduct throughout depositions. Your refusal to provide dates provides only 1 option for us [unilaterally schedule the deposition]. Or, you can give us dates and we can try to get done in 2 hours.

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You did not respond for 8 days, but then FINALLY responded with a potential proposed date for Ms. Reid:

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.

However, the March 20, 2019, proposed date was not real. You also requested to depose Dr. Gunning and Dr. Ghoubril that day. Due to the confusion, counsel for Dr. Gunning sent all counsel a letter attempting to clarify:

Peter, can you clarify your previous email? Are you proposing that we have Floros' deposition on the same day as Dr. Gunning and Ms. Reid? I am confused because you ended your email with another request for dates for Floros' deposition. It sounds like we have a date that works for everyone-- March 20th. ...

You responded with clarification that you proposed March 20, 2019, for Dr. Floros, not the other depositions. And, in fact, his deposition proceeded that day.

Another week went by (actually 8 days) before you again "responded" to our request for a date for Ms. Reid's deposition. Unfortunately, when you responded on February 28, 2019, you again failed to provide a date for her but simply stated we could "fill in" her deposition amongst other depositions because of her 'relative flexibility.'

And then, another 12 days went by without you providing a date. So, we emailed you on March 12, 2019, as follows:

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

You then went underground again, refusing to even address Ms. Reid's deposition for several weeks. On March 30, 2019, we emailed you as follows:

When are we getting dates for Thera Reid, Monique Norris, and Member Williams continuation depositions. You have utterly refused to provide dates. ... We are okay with taking the Plaintiffs' continuation depositions

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after April 15th, as those depositions should not impact your May 1st deadline. We've been asking for these for many months.

On April 2, 2019, you suggested April 12, 2019, for the deposition of Ms. Reid:

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.

As of this time, early April, 2019, we had requested a date for Ms. Reid's continuation deposition over 30 times in writing, at least once on the record at another deposition, and multiple times off the record at depositions. You had agreed to produce her for depositions a minimum of 10 times, but failed to provide proposed dates for months. We advised you numerous times that we would simply Notice Ms. Reid if you failed to provide a date. However, due to you again dangling your "carrot of consent to produce her voluntarily" and consistent with the Court's Order to schedule the depositions "professionally", we patiently waited for a date without unilateral noticing Ms. Reid's deposition.

Then, on April 2, 2019, you provided – for the first time - a true proposed date for the continuation deposition. You suggested April 12, 2019, and knowing you were available that date, we noticed Ms. Reid's continuation deposition for the very day you suggested. Despite the valid notice and your prior emails, you responded two days before the deposition and renege on your multiple prior agreements to produce Ms. Reid in person for at least 2 hours of deposition by indicating:

After consulting with Ms. Reid and Ms. Norris about your request to reopen their depositions, I can confirm that Ms. Reid is willing to appear for one hour by phone next Friday, April 19. ... I am not inclined to advise her that she is required to appear at all unless the Court were to order otherwise.

This was the first time you ever advised us that you would not voluntarily produce Ms. Reid for her continuation deposition or that you were withdrawing the date you provided us yourself. And, as you know, all defense counsel appeared for the April 12, 2019, continuation deposition of Ms. Reid. Neither you, Mr. Cohen, Ms. Hazelet, nor Ms. Reid appeared.

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The above chronology tells the story. You requested the recess, with an agreement to reconvene on another date. You agreed more than a dozen times to produce Ms. Reid for the completion of her testimony. You FINALLY – after five months – provided us a proposed date for Ms. Reid's deposition. And then you and your client refused to appear at the validly noticed deposition. If you would like to discuss further, please email me or give me a call. You have my office and cell phone numbers. Best regards.

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.

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 THERA REID</u> |
| Defendants. |) | <u>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 Thera Reid**, upon oral examination, on **Tuesday, July 3, 2018 at 10:30 a.m.** at the offices of Kisling, Nestico & Redick, 3412 West Market St., Akron, OH 44333 (Phone: 330-869-9007), 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 with her 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
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Counsel for Defendants
 Kisling, Nestico & Redick LLC, Alberto R.
 Nestico, and Robert Redick

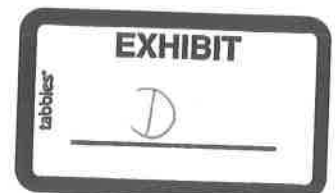


EXHIBIT A

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 Thera Reid, 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. "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.
6. "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.
7. "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. Any and all documents you have reviewed in preparation for your deposition.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2018, the Amended Notice of Deposition of Plaintiff Thera Reid 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)