

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al

Plaintiffs,

v.

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

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**KNR Defendants' Motion to Quash
and Motion for Protective Order re:
Deposition of Julie Ghoubrial**

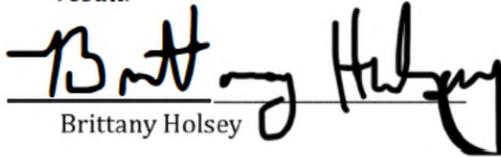
Now come the KNR Defendants, by and through undersigned counsel, pursuant to the Ohio Rules of Civil Procedure, and hereby join in Defendant Ghoubrial's Motion for a Protective Order and/or Motion to Quash to preclude the deposition of Julie Ghoubrial from moving forward on April 18, 2019.

The KNR Defendants were promised by Attorney Pattakos that he would produce certain witnesses, whom he also represents, for deposition. Attorney Pattakos made these promises for months. However, despite over 50 requests for these depositions, Attorney Pattakos sandbagged the Defendants and then refused to produce the witnesses, including intentional violations valid Notices of Deposition and validly issued and served subpoenas. The Defendants hereby incorporate their Motions to Compel previously filed on the depositions of Brittany Holsey, Thera Reid, and Monique Norris into this brief, as if fully incorporated herein.

Moreover, since those briefs were filed, Plaintiffs' counsel expressly induced Brittany Holsey, an important non-party witness whom Attorney Pattakos did not represent at the time he so induced her, into ignoring a validly issued and served subpoena. In fact, he told her she could essentially ignore the subpoena and helped her send the following objection on the eve of the deposition, which was set for today:

April 16, 2019

I, Brittany Holsey, object to the subpoena that the KNR Defendants served on me on April 11, 2019 in Summit County Case No. CV-2016-0 as unduly burdensome under the circumstances, given the relative unimportance of my testimony to class-certification issues. Further, I understand that the discovery deadline for class-certification is April 15, 2019, and that the subpoena served on me is untimely as a result.


Brittany Holsey

Please note such objection specifically violates the Ohio Civil Rules regarding subpoenas, which expressly state an objection relating to undue burden may not be filed absent an attempt to resolve the issue, with Ms. Holsey did not do. Moreover, the reasons for the alleged burdensome nature have nothing to do with a “burden”, but have to do with legal issues that clearly Attorney Pattakos advised Ms. Holsey on despite not representing her at the time. Specifically, she claimed her testimony has “relative unimportance” to the “class-certification issues”, a fact or opinion she would have no idea about and which is entirely inaccurate. Moreover, while she cites to the discovery deadline, Ms. Holsey may have been completely unaware that Attorney Pattakos had told us all communications with her should go through him, even though he did not represent her, and that he would agree to produce and Ms. Holsey agreed to attend a deposition. He made this promise for over two months, ever since February 5, 2019. He even told all Defendants her schedule was flexible and she could easily be worked in with other witnesses. However, he refused to provide a single proposed date for her deposition, forcing Defendants to Notice the deposition and serve a subpoena on her (which Attorney Pattakos accepted service of per her authorization). Then, on the eve of the deposition, the objection was sent.

Of course, an objection is not valid grounds not to appear, and we so advised Ms. Holsey and Attorney Pattakos. Moreover, although he threatened to file a Motion to Quash, he never did. Instead, he told Ms. Holsey she did not need to appear, even though the subpoena was validly issued and served. This morning, Ms. Holsey and Attorney Pattakos both failed to show for that deposition. She is also subpoenaed for tomorrow morning, and Attorney Pattakos has advised Ms. Holsey will not honor that subpoena as well.

Importantly for this motion, when Defendants' counsel objected to these very same grounds on Ms. Ghoubrial's deposition, Attorney Pattakos claimed these are not valid objections (despite the fact he used these very objections the night before). Attorney Pattakos specifically stated this Honorable Court had previously ruled depositions on issues not related to class-certification were proper. We understood the Court to mean if a witness was being deposed on class-certification issues, counsel would not be prohibited from questioning on overlapping issues as well. The Defendants did not see an Order from the Court indicating witnesses ONLY being deposed on credibility issues or issues unrelated to class certification could go forward.

Regardless of the Court's intent in that regard, the ruling has to apply to all parties. Plaintiffs' counsel cannot object to Ms. Holsey's deposition as irrelevant to class-certification issues¹ and not show for a validly noticed and subpoenaed deposition but then threaten sanctions against Defendants and the non-party witness herself, Ms. Ghoubrial, for raising the same objection. The Defendants will abide by the scope of discovery this Court orders, whatever that scope is in this regard, but it simply needs to be followed by all parties, not just Defendants. Plaintiffs' counsel cannot decide on his own whim which Civil Rules and Court Orders he will follow or not follow.

¹Ms. Holsey's testimony is actually highly relevant to class-certification issues on Classes "A", "B", "C", and "D", at a minimum, as will be outlined in briefing regarding her deposition.

As with Defendant Sam Ghoubril, M.D., the KNR Defendants are not moving the Court to preclude the deposition of Julie Ghoubril forever. Rather, this Motion requests the Court issue an Order staying the deposition until a ruling on class certification, as her testimony does not impact class certification issues.

Based on the foregoing, and in the interests of justice, the KNR Defendants respectfully request this Court to enter a Protective Order and Order quashing the subpoena to Julie Ghoubril and precluding the deposition from going forward **at this time**. Plaintiffs can certainly notice the deposition if a class is certified, and Ms. Ghoubril, through counsel, has agreed to appear if so noticed.

Respectfully Submitted,

/s/ Thomas P. Mannion

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CERTIFICATE OF SERVICE

The foregoing motion on behalf of the KNR Defendants was filed on this 17th day of April, 2019 using the Court's electronic filing system and sent via electronic correspondence to all counsel listed below. Notice of this filing will also be sent to all parties by operation of the Court's electronic filing system.

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