

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan Plaintiffs' Opposition to KNR Defendants' Motion to Compel Production of Documents from Plaintiff Monique Norris
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The KNR Defendants have asked the Court to compel the production documents that do not exist, and are in no event relevant to what is at issue in this case. Specifically—in addition to their request for a verification that Norris has agreed to produce, and which Plaintiffs do not oppose¹—Defendants have requested (1) the production of email records that are not in Ms. Norris's possession, and (2) bank records from 2012 that are not in Ms. Norris's possession, and also not maintained by Ms. Norris's bank. Neither category of documents has any bearing on what is at issue in this case and Defendants' request that Ms. Norris provide her bank account information so that a subpoena may be served on her bank is unduly burdensome under the circumstances. Thus, as explained further below, Defendants' 04/15/2019 motion to compel the production of documents from Ms. Norris should be denied.

1. Ms. Norris is not in possession of the emails that the KNR Defendants have requested.

Defendants accuse Ms. Norris of having failed to produce responsive documents from her two personal email accounts, but Ms. Norris has searched these accounts and is simply not in possession of any documents relating to her case with KNR, or her related loan with Liberty Capital, which took

¹ Ms. Norris will produce an executed verification for her interrogatory responses at her earliest convenience, either prior to her continued deposition, should the Court order that her deposition be re-opened, or else on a date prior to Plaintiffs' submission of their motion for class-certification.

place approximately 7 years ago. Ms. Norris simply cannot be ordered to produce documents that she does not have.

2. Ms. Norris and her bank are not in possession of the bank records from 2012 that the KNR Defendants have requested, and Ms. Norris's banking information is in no event relevant to this case.

Defendants have also requested “documented proof of Ms. Norris’s deposit of a Liberty Capital loan check into her personal bank account.” Mot. at 4. Ms. Norris has requested this information from her bank, Huntington, who has informed her that they do not keep records back to 2012. Thus, again, Ms. Norris cannot be compelled to produce documents that she does not have and are not in her custody or control.

Defendants also ask that Ms. Norris provide “bank-account statements, [her bank account] number, [and] routing number” so that they may serve a subpoena on Huntington. But they fail to establish any justification of imposing the burden on Ms. Norris to provide such sensitive personal information, which could subject her to severe financial abuse if mishandled.

Indeed, the Huntington records are completely irrelevant to anything that is actually at issue in this case. Defendants claim, without any citation to Ms. Norris’s deposition testimony, that the bank records will somehow “validate or disprove” Ms. Norris’s claims “by ostensibly showing the date [that her loan] payment [from Liberty Capital] was received ..., the actual payor of the funds ..., and how the funds were deposited.” *Id.* at 6. But (1) Plaintiffs do not dispute that Liberty Capital is the payor of the funds that constituted the Liberty Capital loan, (2) the date of the payment from Liberty—which was obviously at some point after she retained KNR and before she resolved her claim—is completely immaterial, and (3) so is the question of “how the funds were deposited.”

Most critically, there is no dispute that Ms. Norris had \$800 deducted from her KNR settlement in satisfaction of her \$500 Liberty Capital loan, which was taken out as an advance on her KNR settlement, and the documentation for which was signed by her KNR attorney Mr. Horton. *See Exhibit*

1, Defendants' Responses to Plaintiffs' Seventh Set of Requests for Admission at p. 6, RFA Nos. 1–2. Thus, the only factual issues about Ms. Norris's Liberty Capital loan that have any bearing at all on the resolution of this matter relate entirely to whether the KNR Defendants retained an unlawful ownership interest in Liberty Capital. Ms. Norris's records from Huntington quite plainly do not bear on these issues in the slightest.

For these reasons, Defendants' motion to compel the production of documents from Ms. Norris should be denied.

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com

/s/ Joshua R. Cohen

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com
ekramer@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on April 23, 2019 using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Responses and Objections to Plaintiffs’ Seventh Set of Interrogatories, Eighth Set of Requests for Production of Documents, and Seventh Set of Requests for Admission to the KNR Defendants</p>
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Under Ohio Rule of Civil Procedure 33 and 36, Defendants Alberto R. Nestico, Robert Redick, and Kisling, Nestico, and Redick respond to Plaintiffs’ Seventh Set of Interrogatories, Eighth Set of Requests for Production of Documents, and Seventh Set of Requests for Admission as follows.

Answers to Interrogatories

1. For the following former KNR clients—Michael Booker, Chetoiri Beasley, Taijuan Carter, Kimberly Fields, Ronnia Fort, Brittany Justice, Sharde Perkins, Richard Harbour, and Monique Norris—please identify (A) each and every task performed by an “investigator” for whose work the investigation fee was deducted from the client’s settlement, and (B) every service performed and every medical supply provided by Medical Service Providers to the client for which payment was made from the client’s KNR settlement; and (C) each and every disclosure that was made to the client about the firm’s relationships with the Medical Service Providers with whom these clients treated.

ANSWER: Objection. Michael Booker, Chetoiri Beasley, Taijuan Carter, Kimberly Fields, Ronnia Fort, Brittany Justice, and Sharde Perkins are not parties to this case and counsel for Plaintiffs has not confirmed representation of these individuals. Thus, their client files and the work done on these files are subject to privilege. Further, KNR does not keep records in a manner suitable to determining “each and every task performed” by the investigator assigned to any particular matter.

Without waiving these objections, defendant identifies the following tasks – at minimum that appear to have been completed by the assigned investigator at it relates to Plaintiff

Richard Harbour:

April 18, 2011 incident: AMC obtained and reviewed Bath Police Department report and picked up medical records. If available, the investigator also obtained Mr. Harbour's hospital discharge paperwork and health insurance card.

May 11, 2012 incident: MRS obtained and reviewed Bath Police Department report and picked up medical records. If available, the investigator also obtained Mr. Harbour's hospital discharge paperwork and health insurance card.

April 12, 2015 incident: AMC obtained and reviewed Norton Police Department report and picked up medical records. If available, the investigator also obtained Mr. Harbour's hospital discharge paperwork and health insurance card.

May 13, 2016 incident: AMC met with client at his residence to sign forms. The investigator also obtained and reviewed Wadsworth PD report, took photos and picked up medical records. If available, the investigator also obtained Mr. Harbour's hospital discharge paperwork and health insurance card.

Without waiving these objections, defendant identifies the following tasks – at minimum - that appear to have been completed by the assigned investigator at it relates to Plaintiff Monique Norris:

MRS met with Ms. Norris at her residence. The investigator also obtained and reviewed the Akron Police Department report and took photos. If available, he also obtained copies of her hospital discharge paperwork and health insurance card.

2. Identify the precise means by which you determined, as stated in your offered stipulation of facts submitted to Plaintiffs counsel on December 20, 2017, that "Since 2009, KNR has settled between 40,000 to 45,000 cases in which investigators were used and the investigation fee was charged."

ANSWER: The estimate is based upon a percentage of the number of cases opened in the Akron office between 2009 and 2016.

3. Identify the amount the firm has spent on advertising for each year from 2005 to the present.

ANSWER: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, disproportionate to the needs of the case, and is not reasonably related to the issue of class certification or any of the five claims made by Plaintiffs: (1) the client expense of an investigator fee, (2) the client expense of a narrative report from a medical provider, (3) client loans to Liberty Capital Funding, (4) the cost of TENs units charged by Defendant Ghoubril, or (5) the prescription of cortisone injections by Dr. Ghoubril. The cost of advertising will not tend to make any fact related to any claim

more or less likely to be true, and constitutes harassment in the form of an unwarranted and unjustified intrusion into KNR's finances and confidential and proprietary business decisions.

4. Identify the account numbers for the KNR firm's cost account, operating account, and IOLTA account as identified by Defendant Nestico at his deposition for each year from 2005 to the present and identify the bank where each account was held.

ANSWER: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is disproportionate to the needs of the case, and is not reasonably related to the issue of class certification or any of the five claims made by Plaintiffs: (1) the client expense of an investigator fee, (2) the client expense of a narrative report from a medical provider, (3) client loans to Liberty Capital Funding, (4) the cost of TENs units charged by Defendant Ghoubrial, or (5) the prescription of cortisone injections by Dr. Ghoubrial. The requested account numbers will not tend to make any fact related to any claim more or less likely to be true, and constitutes harassment in the form of an unwarranted and unjustified intrusion into KNR's finances.

5. (To Defendant Nestico only): Identify the purpose of your affiliation with Panatha Holdings, LLC, and the Effin Good Company, including by listing the purpose of each company, all known employees and owners of each entity, and the percentage of ownership of each owner identified.

ANSWER: As it relates to Panatha Holdings, see letter from Mr. Brenner attached as an exhibit to KNR DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO THE KNR DEFENDANTS' MOTION TO COMPEL ANSWERS TO CONTENTION INTERROGATORIES.

As it relates to Effin Good Company, the entity was formed for purposes of a micro-brewery that never materialized. The owners of the company were Ethan Whitaker, Aaron Czetli, and Rob Nestico. Mr. Nestico was also a director, representative, and the statutory agent. The company had no employees and no income.

6. (To each KNR Defendant, individually): Identify the total amount of your net worth, and provide a summary of the assets that comprise this amount, including by identifying every privately held corporation in which you retain an ownership interest, the purpose of each such corporation, any co-owners of each such corporation, and the percentage of ownership of each owner.

ANSWER: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome and disproportionate to the needs of the case, and is not reasonably related to the issue of class certification or any of the five claims made by Plaintiffs: (1) the client expense of an investigator fee, (2) the client expense of a narrative report from a medical provider, (3) client loans to Liberty Capital Funding, (4) the cost of

TENs units charged by Defendant Ghoumbrial, or (5) the prescription of cortisone injections by Dr. Ghoumbrial. The net worth of the named defendants will not tend to make any fact related to any claim more or less likely to be true, and constitutes harassment in the form of an unwarranted and unjustified intrusion into Defendants' personal finances.

7. Identify all benchmarks or quotas suggested or imposed on KNR attorneys, including all such benchmarks or quotas on which bonus payments are determined.

ANSWER:

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence, is disproportionate to the needs of the case, and is not reasonably related to the issue of class certification or any of the five claims made by Plaintiffs: (1) the client expense of an investigator fee, (2) the client expense of a narrative report from a medical provider, (3) client loans to Liberty Capital Funding, (4) the cost of TENs units charged by Defendant Ghoumbrial, or (5) the prescription of cortisone injections by Dr. Ghoumbrial. The bonus structure for attorneys will not tend to make any fact related to any claim more or less likely to be true, and constitutes harassment in the form of an unwarranted and unjustified intrusion into Defendants' business decisions.

Without waiving this objection, the response is *none*. KNR attorneys are not provided "benchmarks or quotas." Bonuses are paid to all attorneys on every case they resolve based upon a percentage of the attorney fee collected by KNR. The amount of each bonus paid to attorneys is generally based upon a formula scaled with higher percentages for fees collected above certain goals established for the attorneys. The attorneys' goals and percentages paid for bonuses have varied over the years.

Responses to Requests for Production

1. Please produce all documents relating to the following former KNR clients— Michael Booker, Chetoiri Beasley, Taijuan Carter, Kimberly Fields, Ronnia Fort, Brittany Justice, Sharde Perkins, Richard Harbour, and Monique Norris—including all settlement memoranda, Needles notes, bills and medical records from any Medical Service Providers, including hospitals or emergency rooms, and any medical reports, including narrative reports from chiropractors.

ANSWER: Objection. Michael Booker, Chetoiri Beasley, Taijuan Carter, Kimberly Fields, Ronnia Fort, Brittany Justice, and Sharde Perkins are not parties to this case and counsel for Plaintiffs has not confirmed representation of these of these individuals. Thus, their client files and the work done on these files are subject to privilege.

Without waiving these objections, Defendants will produce Plaintiff Richard Harbour's client files and needles notes and Plaintiff Monique Norris's client file and needles notes. The files have been retrieved from storage and will produced immediately as they are

reviewed and Bates stamped.

2. Please produce all documents relating to or reflecting a decision by Ciro Cerrato or Liberty Capital to deny a requested loan or cash advance to a KNR client.

Objection: this request is unduly burdensome, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not related to the issue of class certification, not does the request “overlap” any issue of liability.

Plaintiffs’ lawsuit claims that KNR or some employee of KNR had an ownership interest Liberty Capital Funding. A loan denial by Liberty Capital Funding could not make it more or less likely whether any disputed fact is true.

Defendants do not keep records of instances where a client sought a loan from a third party and the loan was denied or rejected. Defendants provide clients with contact information for lending companies, and may or may not be notified if a client contacts a particular lender. Even if Defendants are contacted, KNR *only keeps records of loans that were accepted by a client* – not those that were denied by the lender or rejected by the client. Defendants would have to search each and manually every file and review all electronic (or “needles” note) for every KNR client file (approximately 50,000 files) to determine if the client was provided contact information for Liberty Capital, and then either received a loan elsewhere or received no loan. Even if such a project were undertaken, it would likely be uncertain whether Liberty Capital actually denied the loan or the client chose not to accept a loan from that company.

3. Please produce all documents showing or reflecting any instance where KNR (or a KNR attorney) did not order a narrative report for a client who was treated by Dr. Floros or any of the other chiropractors listed in KNR03769, WILLIAMS000570-WILLIAMS000571, KNR03278.

Objection: this request is unduly burdensome, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not related to the issue of class certification, not does the request “overlap” any issue of liability.

KNR does not keep records of cases where a report *is not* ordered, nor should there be any reasonable expectation that such information would be documented and identifiable. Defendants only document payment for a report that *is ordered*. KNR generally does not order reports for minors unless ordered to do so by a probate court. In order to accurately comply with this request, Defendants would be required to manually review each and every client file and all electronic (or “needles”) notes in the history of the law firm to identify every medical provider who treated every client.

4. Please produce all documents showing or reflecting an effort by KNR (or a KNR attorney) to advise a client that an insurance company or insurance company representative took a negative view of a Medical Service Provider with whom the client was treating or had treated.

Objection: this request is privileged to the extent it directly seeks advice provided by counsel, is unduly burdensome, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not related to the issue of class certification, not does the request "overlap" any issue of liability.

KNR does not keep records of attorneys "advising clients that an insurance company or insurance company representative took a negative view of a Medical Service Provider," nor should there be any reasonable expectation that such information would be documented and identifiable. In order to accurately comply with this request, Defendants would be required to manually review each and every client file in the history of the law firm and all electronic (or "needles") notes to discern the views of each individual insurance representative who communicated with KNR attorneys.

Responses to Requests for Admission

1. Admit that Monique Norris took out a \$500 loan with Liberty Capital on terms reflected by the document marked as Exhibit N to Defendants' deposition of Ms. Norris.

RESPONSE: Admit.


2. Admit that \$800 was deducted from the settlement of the case that KNR handled for Ms. Norris to repay the Liberty Capital loan identified in Request No. 1 above.

RESPONSE: Admit.

As to objections,


James M. Popson

Respectfully submitted,


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

R. Eric Kennedy (0006174)
Daniel P. Goetz (0065549)
Weisman Kennedy & Berris Co LPA
101 W. Prospect Avenue
1600 Midland Building
Cleveland, OH 44115
(216) 781-1111 phone
(216) 781-6747 facsimile
ekennedy@weismanlaw.com
dgoetz@weismanlaw.com

Thomas P. Mannion (0062551)
Lewis Brisbois Bisgaard & Smith LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
(216) 344-9467 phone
(216) 344-9241 facsimile
Tom.mannion@lewisbrisbois.com

Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Responses to Plaintiffs' Seventh Set of Interrogatories, Eighth Requests for Production of Documents and Seventh Set of Requests for Admission to the KNR Defendants were sent this 15th day of March, 2019 to the following via electronic and Regular U.S. Mail:

Peter Pattakos
THE PATTAKOS LAW FIRM, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com

Counsel for Plaintiff


Joshua R. Cohen
COHEN ROSENTHAL & KRAMER LLP
3208 Clinton Avenue
1 Clinton Place
Cleveland, Ohio 44113-2809
jcohen@crklaw.com

Shaun H. Kedir
KEDIR LAW OFFICES LLC
1400 Rockefeller Building
614 West Superior Avenue
Cleveland, Ohio 44113
shaunkedir@kedirlaw.com

Counsel for Defendant Minas Floros, D.C.

Bradley J. Barmen
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Brad.barmen@lewisbrisbois.com

Counsel for Defendant Dr. Sam Ghoubrial


James M. Popson (0072773)