

**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. 2016-CV-09-3928 Judge James A. Brogan Plaintiffs’ Motion to Strike Defendants’ Confidentiality Designations to Defendant Nestico’s Deposition Testimony
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Despite the Court’s order striking the KNR Defendants’ previously issued confidentiality designations to KNR operations manager Brandy Gobrogge’s deposition testimony, KNR has again attempted to impose needless and unconstitutional burden on the Court, Plaintiffs, and the public to hide information that is neither legitimately “confidential” nor properly shielded from public view by the protective order governing this or any Ohio case. *See* 09/12/2017 protective order, attached as **Exhibit 1**. The KNR Defendants have likewise ignored Plaintiffs’ counsel’s efforts to resolve this matter without Court intervention, and have not provided any explanation as to why these designations are necessary or how they differ in any way from the stricken designations to Ms. Gobrogge’s testimony, which the Court ruled did not involve any legitimately “confidential” information under the protective order.¹ *See* counsels’ 03/04–08/2019 email exchange attached as **Exhibit 2**.

¹ On 1/8/2019, the Court issued an order plainly and unequivocally ruling that information about KNR’s operations and practices, business strategies, and employees was not “confidential,” and therefore not subject to the protective order, because such information had “already been made public” or was “independently obtained by Plaintiffs” and the rest of the purportedly secret information was “general information” “not legitimately designated as ‘sensitive or proprietary’ or protectable as a ‘trade secret.’” *See* 01/08/2019 Order, at 1.

As explained below as well as in Plaintiffs' briefing on the overruled Gobrogge confidentiality designations, Defendants' confidentiality designations to Nestico's testimony, attached as **Exhibit 3**, (1) do not relate to any legitimately confidential information, (2) would work an unnecessary administrative burden on the Court and Plaintiffs, and (3) would wrongly shield Defendants' misconduct from public view in violation of the U.S. and Ohio constitutions' guarantee that courts be open and accessible to the public.

Under Paragraph 3 of the protective order, documents otherwise subject to discovery may be designated as "confidential" only "upon making a good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, privileged, medical or psychiatric information, trade secrets, personnel records, or other such sensitive or proprietary commercial information that is not publicly available." **Ex. 1**, at 2. Likewise, "public records and other information or documents that are publicly available may not be designated as "Confidential" under the protective order. *Id.* at 2-3. And, consistent with the bedrock principles guaranteeing open courts in Ohio and throughout the United States, the Northern District of Ohio's model protective order, adopted in this case, expressly and emphatically states that, "the Court highly discourages the manual filing of any pleadings or documents under seal." *Id.* at 7 (emphasis in original).

The KNR Defendants have nevertheless claimed that the following twelve subjects, which substantially overlap with their overruled confidentiality designations to Ms. Gobrogge's testimony, are entitled to protection:

1. KNR's ownership structure and how it has involved since the firm's founding (Ex. 2, Nestico Tr. at pp. 14-20);
2. How KNR compensates certain attorneys and employees (*Id.* at 21-26, 44, 57, 61);
3. How KNR manages its paralegals (*Id.* at 27-28);

4. How KNR manages its pre-litigation and litigation departments and determines which department should handle particular cases (*Id.* at 42-43);
5. Defendant Nestico's refusal to answer questions about KNR's advertising budget, in addition to the name of an individual who has assisted KNR in obtaining crash reports from police departments (*Id.* at 127-128);
6. Defendant Nestico's refusal to answer questions about the average number of cases KNR settles every year and whether KNR tracks such information (*Id.* at 132);
7. Quotas that the firm imposes on its attorneys regarding the amount of fees that KNR expects them to bring into the firm each month (*Id.* at 148);
8. A copy of the contingency-fee agreement used by KNR (*Id.* 170, Ex. 15);
9. A KNR document on "narrative and [withdrawal] procedures for Plambeck clinics and referring physicians" that lists a number of chiropractors from whom narrative report fees are paid "automatically," dictates certain procedures for high-referring physicians, and Defendant Nestico's testimony about these procedures (*Id.* at 340-345, Ex. 50);
10. A KNR document on after-hours intake procedures dictating that certain procedures be followed regarding two high-referring chiropractors' offices, and Defendant Nestico's testimony about these procedures (*Id.* at 363-368, Ex. 55);
11. A KNR document containing a "submission checklist" that lists Defendant Ghoubril and four chiropractic offices, and Defendant Nestico's testimony about this document (*Id.* at 394-395, Ex. 59); and
12. The purported importance of and reasons for charging clients separately for KNR investigators' obtaining police reports for every case and retrieving medical records from providers (*Id.* at 612-613, 623-628).

Thus, as with Ms. Gobrogge's testimony,² most if not all of this purportedly "confidential" information has already been made public or is the subject of documents independently obtained by

² Indeed, Ms. Gobrogge testified about (1) KNR's basic business processes, including its intake and case-management procedures and why it uses investigators to sign-up clients (Gobrogge Tr. at 60:14-66:2; 70:17-90:4; 132:2-135:20; 145:7-154:25); (2) KNR's advertising practices, including why it sent clients to certain providers based on the type of advertising material the client had received (*Id.* at 378:5-391:3); (3) KNR's advertising practices, including why it sent clients to certain providers based on the type of advertising material the client had received (*Id.* at 378:5-391:3); (4) KNR's imposing quotas on its attorneys and assigning cases based on how well the attorney's performance measured up to the quota (*Id.* at 178:1-25; 456:16-462:24; 466:1-468:11; 472:1-473:16; 474:1-

Plaintiffs. In addition, the information contains direct evidence of the Defendants' self-dealing as well as information about KNR's general business operations and procedures, to which Plaintiffs must refer to prove their claims. Such information does not rise to the level of "sensitive or proprietary," or "trade secret," that would justify protection under this or any protective order in Ohio courts. *See, e.g., Hope Academy Broadway Campus v. White Hat Mgt., LLC*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911, ¶ 34 ("The court concluded that appellants' 'business model,' based on affiliated corporate entities was in no way proprietary The court stated that '[t]he idea that somehow this information is going to make [appellants] look bad to the public is not the basis for a protective order.'"); *Koval v. Gen. Motors Corp.*, 62 Ohio Misc.2d 694, 699, 610 N.E.2d 1199 (C.P.1990) ("The court concludes that this motion for a protective order has more to do with other litigation and bad publicity than with what the court finds to be but vague and conclusory allegations of competitively sensitive documents."); *State ex rel. Records Deposition Serv. v. Aurelius*, 8th Dist. Cuyahoga NO. 78456, 2001 Ohio App. LEXIS 1007, at *7 (Mar. 8, 2001) (noting that courts should not "honor overbroad claims, or even sham claims, of trade secrets" because such actions run "contrary to the courts' duty to search for the truth.")

Moreover, there is no basis on which the KNR Defendants could distinguish the confidentiality designations they issued concerning Ms. Gobrogge's testimony—which the Court found did not involve any legitimately "confidential" information—from the latest designations

477:24); (5) KNR's imposing quotas on its attorneys and assigning cases based on how well the attorney's performance measured up to the quota (*Id.* at 178:1–25; 456:16–462:24; 466:1–468:11; 472:1–473:16; 474:1–477:24); (6) procedures KNR instructed its employees to follow when handling phone calls with doctors and chiropractors who had referred clients to KNR (*Id.* at 225:13–227:23); (7) general information about KNR's employees, such as their job descriptions, responsibilities, and benefits (*Id.* at 27:1–29:25; 30:1–34:24; 92:11–110:22; 141:1–25; 164:1–167:11); and (8) KNR's practice of tracking referrals and managing relationships between KNR and providers with whom KNR maintained a referral relationship, including KNR's purported criteria for doctors and chiropractors to whom the firm would refer its clients (*Id.* at 228:6–230:7; 235:5–236:23; 242:1–23; 489:9–490:5).

concerning Defendant Nestico's testimony, because the designations relate to the same information. *See* FN2, *supra*. And as a result of the Court's 01/8/2019 order, Ms. Gobrogge's testimony has been publicly available on the docket since January 9, 2019. That Defendant Nestico provided additional or duplicative testimony about these publicly available subjects does not somehow transform them into "confidential," "sensitive," or "proprietary" information, or "trade secrets."³

III. Conclusion

Discovery in this case has uncovered substantial evidence that the Defendants' entire business model has been developed pursuant to a calculated and widespread scheme to defraud socioeconomically disadvantaged car-accident victims of millions of dollars. *See* Plaintiffs' 05/01/2019 Motion to Compel Discovery on Defendants' Assets and Net Worth at 2–3. The

³ The KNR Defendants' designations continue to improperly subject the Court and Plaintiffs to needless burden by requiring Plaintiff's counsel to file under seal any substantive motion referring to Defendant Nestico's deposition testimony, which contains no legitimately "confidential" information. *See* **Ex. 1**, Section 8, pp. 7–8. Such designations also violate the guarantee that the courts will be open and accessible to the public. *See also State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994) ("What transpires in the courtroom is public property."); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569–73, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) ("The guarantee of a public trial is a cornerstone of our democracy which should not be circumvented unless there are extreme overriding circumstances."); *PressEnterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 509, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984) ("[C]losed proceedings ... although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness."); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) ("The natural desire of parties to shield prejudicial information contained in judicial records from competitors and the public ... cannot be accommodated by courts without seriously undermining the tradition of an open judicial system. Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know."); *Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996) ("The private litigants' interest in protecting their vanity or their commercial self-interest simply does not qualify as grounds for imposing a prior restraint. It is not even grounds for keeping the information under seal."); *Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014) (in "consumer fraud cases," "the public and press enjoy a presumptive right of access to civil proceedings and documents filed therein, notwithstanding the negative publicity those documents may shower upon a company"). Additionally, should the Court allow this information to remain shielded, any member of the public would have grounds to sue for a writ of mandamus compelling this information's disclosure. *See, e.g., State ex rel. Advance Ohio Media v. The Honorable Alison Breaux*, Summit County/Ninth District No. CA-28642.

Court's rulings on this case are properly a matter of public concern, and Defendants have not and cannot present any justification for why any evidence pertaining to the alleged scheme should be shielded from public scrutiny. Thus, pursuant to Sections 9 and 10 of the protective order, the Court should strike the KNR Defendants confidentiality designations to Defendant Nestico's deposition testimony.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on May 2, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Rachel Hazelet
Attorney for Plaintiffs

SANDRA KURT

IN THE COURT OF COMMON PLEAS
2017 SEP 12 AM 9:22 COUNTY OF SUMMITMEMBER WILLIAMS, et al.,
CLERK OF COURTS

Plaintiffs,

-vs-

KISLING, NESTICO & REDICK,
LLC, et al.

Defendants;

(CASE NO.: CV-2016-09-3928

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(JUDGE ALISON BREAUX

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(**ORDER**

) (Protective Order)

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This matter comes before the Court on the Motion for Protective Order filed by Defendants, Kisling, Nestico & Redick, LLC; Alberto R. Nestico; and Robert W. Redick (Defendants), on October 12, 2016. Plaintiffs, Member Williams; Naomi Wright; and Matthew Johnson (Plaintiffs), filed their Motion for Protective Order and Opposition to Defendants' Motion for Protective Order on October 28, 2016. Defendants filed their Brief in Opposition to Plaintiffs' Motion for Protective Order and in Support of Defendants' Motion for Protective Order on November 4, 2017. Plaintiffs filed their Reply in Support of Plaintiffs' Motion for Protective Order and in Opposition to Defendants' Motion for Protective Order on November 11, 2016. Plaintiffs then filed their Combined Motion for Protective Order and Opposition to Defendants' Motion to Compel on December 2, 2016. Defendants filed their Brief in Opposition to Plaintiffs' Motion for Protective Order and Reply Brief in Support of Their Motion to Compel Discovery on December 12, 2016. The matter has been fully briefed and is ripe for consideration. The Court notes the parties submitted a number of proposed protective orders and could not reach an agreement for a stipulated protective order. Therefore, it is hereby **ORDERED**:

1. **SCOPE.** All documents produced in the course of discovery, including, without limitation, all responses to discovery requests, all electronic discovery, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning confidential

information as set forth below. This Order is subject to the Local Rules of this Court and Ohio Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **FORM AND TIMING OF DESIGNATION.** A party may designate documents as confidential and restricted in disclosure under this Order by designating the information and placing or affixing the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" or similar designation on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or "CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" designation. Documents shall be designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents. The designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.
3. **DOCUMENTS WHICH MAY BE DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.** Any party may designate documents as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER upon making a *good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, privileged, medial or psychiatric information, trade secrets, personnel records, or such other sensitive or proprietary commercial information that is not publicly available.* Public records and other information or documents that are publicly available may not be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

4. **DEPOSITIONS.** Deposition testimony shall be deemed CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions of the transcript or any exhibit to be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER. Thereafter, the deposition transcripts and any of those portions so designated shall be protected as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, pending objectIOn, under the terms of this Order.
5. **PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.**
- a. **GENERAL PROTECTIONS.** Documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 5(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.
- b. **LIMITED THIRD-PARTY DISCLOSURES.** The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents to any third person(s) or entity except as set forth in subparagraphs i – vi. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER:
- i. **COUNSEL.** Counsel for the parties and employees and agents of counsel who have responsibility for the preparation and trial of the action;
- ii. **PARTIES.** Parties and employees of a party to this Order.
- iii. **THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;
- iv. **CONSULTANTS, INVESTIGATORS AND EXPERTS.** Consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such

persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound;

- v. **OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound; and
- vi. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient.
- c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.
- d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

6. PROTECTION OF MATERIAL DESIGNATED CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

- a. **GENERAL PROTECTIONS.** Documents that contain highly sensitive trade secrets or other highly sensitive competitive or confidential information, the disclosure

of which to another party would result in demonstrable harm to the disclosing party, may be designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order and shall not be used or disclosed to counsel for the parties or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof.

- b. LIMITED THIRD-PARTY DISCLOSURES.** The parties and Counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs i – iv. Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

- i. COUNSEL.** Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action but only if:
- a.** It is necessary to disclose the designated document to them for purposes of this action;
 - b.** They are under the supervision and control of litigation counsel; and
 - c.** All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound.
- ii. THE COURT, COURT REPORTERS AND RECORDERS.** The Court and court reporters and recorders engaged for depositions;
- iii. OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound; and

- iv. **AUTHORS AND RECIPIENTS.** The author, addressee, or any other person identified in the document as a prior recipient; and
- v. **CONSULTING AND TESTIFYING EXPERTS.** Consulting or testifying experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound. A party may not disclose Confidential Information to experts unless: 1) it is necessary to disclose the designated document to them for purposes of this action; 2) they are not parties or producing third parties, or affiliates of parties or producing third parties; and 3) they are not officers, directors or employees of parties or producing third parties, or affiliates of parties, or of competitors or vendors or customers of parties or producing third parties.
- c. **CONTROL OF DOCUMENTS.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO A PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.
- d. **COPIES.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with

the designation CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

- e. **COMPETITION.** Notwithstanding the foregoing provisions of this Protective Order, information and documents designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall not be disclosed or provided, under any circumstance, to any attorney or law firm that competes with Defendants.
7. **INADVERTENT PRODUCTION.** Inadvertent production of any document or information without a designation of CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or any inadvertent production of a document protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege shall be governed by Ohio R. Evid. 501. Such inadvertent production of such a document or information shall not be deemed a waiver of that privilege or protection or of the producing party's right to assert that the document is CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER or is protected by the attorney-client privilege, work product doctrine, common interest privilege, or similar privilege. The receiving party shall treat the document or information as if it were so designated as confidential, protected, or privileged.
8. **FILING OF CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER DOCUMENTS OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER UNDER SEAL.** The Court highly discourages the manual filing of any pleadings or documents under seal. However, to the extent that a brief, memorandum, or pleading references any document marked as CONFIDENTIAL –

SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, then the brief, memorandum, or pleading shall refer the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.

- a. Before any document marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY— SUBJECT TO PROTECTIVE ORDER is filed under seal with the Clerk, the filing party shall first consult with the party that originally designated the document as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER to determine whether, with the consent of that party, the document or a redacted version of the document may be filed with the Court not under seal.
- b. Where agreement is not possible or adequate, before a CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER document is filed with the Clerk, it shall be placed in a sealed envelope marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” displaying the case name, docket number, a designation of what the document is, the name of the party on whose behalf it is submitted, and the name of the attorney who has filed the documents on the front of the envelope. A copy of any document filed under seal shall also be delivered to the judicial officer's chambers.
- c. To the extent that it is necessary for a party to discuss the contents of any *confidential information or designated document in a written pleading, then such* portion of the pleading may be filed under seal with leave of Court. In such circumstances, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents. The confidential version shall be a full and complete version of the pleading and shall be filed with the Clerk under seal as

above. A copy of the unredacted pleading also shall be delivered to the judicial officer's chambers.

- d. The party seeking to file a brief, pleading, or exhibit under seal shall first file a motion for leave to file under seal prior to filing such brief, pleading, or exhibit.

9. CHALLENGES BY A PARTY TO DESIGNATION AS CONFIDENTIAL. Any

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party with standing to object (hereafter "party"). Before filing any motions or objections to a confidentiality designation with the Court, the objecting party shall have an obligation to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

- 10. ACTION BY THE COURT.** Applications to the Court for an order relating to any documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER shall be by motion and any other procedures set forth in the presiding judge's standing orders or other relevant orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

- 11. USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION AT TRIAL.** All trials are open to the public. Absent order of the Court, there will be no restrictions on the use of any document that may be introduced by any party during the trial. If a party intends to present at trial CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom, such party shall provide advance notice to the other party at least ten days before the commencement of trial by identifying the documents or information at issue as specifically as possible (i.e., by

Bates number, page range, deposition transcript lines, etc.) without divulging the actual CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents or information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

12. OBLIGATIONS ON CONCLUSION OF LITIGATION.

- a. **ORDER REMAINS IN EFFECT.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

13. RETURN OF CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER OR CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

- a. **RETURN OF CONFIDENTIAL DOCUMENTS.** Within 30 days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶¶ 5(d) and 6(d), shall be returned to the producing party unless: 1) the document has been offered into evidence or filed without restriction as to disclosure; 2) the parties agree to destruction in lieu of return; or 3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certified to a producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or

CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER documents.

- b. **RETURN OF DOCUMENTS FILED UNDER SEAL.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

14. **ORDER SUBJECT TO MODIFICATION.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter.

15. **NO PRIOR JUDICIAL DETERMINATION.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Ohio Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

16. **PERSONS BOUND.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

IT IS SO ORDERED


JUDGE ALISON BREAU

CC: ALL PARTIES OF RECORD

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.,	(CASE NO.: CV-2016-09-3928
)	
Plaintiffs,	(JUDGE ALISON BREAUX
-vs-)	
	(
KISLING, NESTICO & REDICK,)	
LLC, et al.	(
)	
Defendants;	(
)	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order dated September 12, 2017 in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Court of Common Pleas of Summit County in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purpose of the above-captioned action, and to not disclose any such documents or information derived directly therefrom to any other person, firm, or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of Court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date

Signature



Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR - Nestico Confidentiality Designations

Peter Pattakos <peter@pattakoslaw.com>

Fri, Mar 8, 2019 at 11:33 AM

To: "James M. Popson" <jpopson@sutter-law.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "Nathan F. Studeny" <nstudenys@sutter-law.com>

Cc: Rachel Hazelet <rhazelet@pattakoslaw.com>

Counsel,

The protective order is only intended to apply to legitimate trade secrets and sensitive personal information like medical records. None of the Nestico testimony that you marked as confidential falls into this category. Your confidentiality designations cover the following subjects:

pp. 14-20: The ownership structure of the firm and how it's evolved since the firm's founding;

21-26, 44, 57, 61: How certain attorneys and employees are compensated by the firm;

27-28: How the firm manages its paralegals;

42-43: How the firm manages its pre-litigation vs. litigation departments, and decides which cases should be handled by each department.

127-128: Nestico's refusal to answer questions about the firm's advertising budget and the name of an individual who assisted the firm in obtaining crash reports from police departments;

132: Nestico's refusal to answer questions about the average number of cases the firm settles every year, and whether the firm tracks this information;

148: Quotas that the firm imposes on its attorneys regarding the amount of fees the attorneys are expected to bring into the firm each month;

170, Ex. 15: A copy of the contingency fee agreement used by the firm;

340-345, Ex. 50: A KNR document on "narrative and [withdrawal] procedures for Plambeck clinics and referring physicians" that lists a number of chiropractors from whom narrative report fees are paid "automatically," dictates certain procedures for high-referring physicians, and Nestico's testimony about these procedures;

363-368, Ex. 55: A KNR document on after-hours intake procedures that dictating that certain procedures be followed regarding two high-referring chiropractors' offices, and Nestico's testimony about these procedures;

394-395, Ex. 59: A KNR form containing a "submission checklist" that lists Defendant Ghoumbrial and four chiropractic offices, and Nestico's testimony about this form;

612-613, 623-628: The purported importance of and reasons for charging clients separately for KNR investigators to obtain police reports for every case, and to pick up medical records from providers.

None of this information constitutes a legitimate trade secret, a lot of it is direct evidence of self-dealing (including the testimony as to quotas, and the documents on narrative fees and after hours procedures, much of which are already public record), and the rest of it is mundane business information to which it will be necessary for Plaintiffs to refer to prove their claims.

We are requesting that you withdraw these designations or we will have to take this up with the Court. See, e.g., *Hope Academy Broadway Campus v. White Hat Mgt., LLC*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911, ¶ 34 ("The court concluded that appellants' 'business model,' based on affiliated corporate entities was in no way proprietary and was unrelated to providing a quality education to children enrolled in schools that appellees operated. The court stated that '[t]he idea that somehow this information is going to make [appellants] look bad to the public is not the basis for a protective order.'"); *Koval v. Gen. Motors Corp.*, 62 Ohio Misc.2d 694, 699, 610 N.E.2d 1199 (C.P.1990) ("The court concludes that this motion for a protective order has more to do with other litigation and bad publicity than with what the court finds to be but vague and conclusory allegations of competitively sensitive documents.").

If we do not hear from you by the end of the day Tuesday on this we will proceed with our motion. As with the Gobrogge testimony, we are going to need to file motions quoting the Nestico testimony and your designations have improperly made it so that practically any motion we file would have to be under seal. That is not proper and not what the protective order was intended for.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
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Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
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On Mon, Mar 4, 2019 at 4:46 PM Nathan F. Studeny <nstudeny@sutter-law.com> wrote:

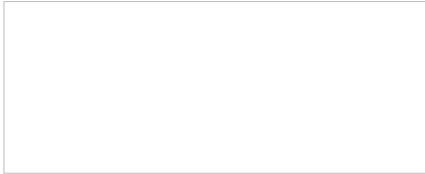
Peter,

Attached are the portions of Mr. Nestico's deposition transcript that we are designating as confidential under the

September 12, 2017 Protective Order. Please advise if you have an objection so we can work to resolve prior to involving the Court per the Order.

Thank you.

Nate



Nathan F. Studeny

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1301 E. 9th Street

Cleveland, OH 44114

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2016 09 3928

Judge James A. Brogan

**CONFIDENTIALITY DESIGNATIONS OF THE
DEPOSITION OF ALBERTO R. NESTICO
PURSUANT TO PROTECTIVE ORDER**

Now come Defendants, Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick, (collectively "Defendants"), and hereby designate the following excerpts of the February 7, 2019 and February 8, 2019 deposition transcripts of Alberto R. Nestico as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" pursuant to Paragraph 4 of the Protective Order issued on September 12, 2017:

Videotaped deposition of Alberto R. Nestico, February 7, 2019

PAGE:LINE	to	PAGE:LINE
14:2		15:6
15:8		
15:10		17:2
17:5		18:2
18:4		
18:8		
18:14		19:1
19:3		
19:6		19:13
19:16		19:18
19:21		20:3
21:9		21:19
21:21		22:7
22:10		22:17
22:21		22:23
23:2		23:6
23:9		23:10
23:19		23:23
24:17		25:2
25:10		25:12
26:6		
27:5		27:14
28:4		28:20

42:17		43:1
43:6		43:13
44:10		44:15
57:2		57:3
57:5		57:14
60:24		61:2
61:5		61:16
127:20		127:25
128:2		
128:5		128:7
132:9		132:15
148:8		148:23
170:23		170:24

Videotaped deposition of Alberto R. Nestico, February 8, 2019

PAGE/LINE	to	PAGE/LINE
340:23		340:24
341:4		341:17
341:22		341:24
342:3		343:14
343:16		
343:19		343:22
343:24		345:19
363:11		363:12
363:15		364:9
364:18		365:1
365:8		365:9
365:12		365:13
365:20		367:13
367:15		367:22
368:2		368:5
368:7		
394:4		394:21
394:25		395:16
612:11		613:20
623:19		624:1
624:7		624:21
624:23		625:16
627:20		627:22
628:6		628:11

Additionally, Exhibits 15, 50, 55, 59, and 98 to the deposition were originally designated as either "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL:

ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and shall retain such protection as designated by Defendants.

Respectfully submitted,

/s/ James M. Popson

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Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Confidentiality Designations of the Deposition of Alberto R. Nestico was sent this 4th day of March, 2019 to the following via electronic and Regular U.S. Mail:

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/s/ James M. Popson
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