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' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY ON DEFENDANTS' ASSETS AND NET WORTH**

The KNR Defendants respectfully request that this Court deny Plaintiffs' Motion to Compel Discovery on Defendants' Assets and Net Worth ("Motion to Compel"). There is no basis for discovery on the issues related to Defendants assets and net worth prior to the filing of a motion for class certification. As it relates to class certification, the net worth of the defendants will not make any fact in issue more or less likely to be true. Moreover, as of today Plaintiffs have claims against KNR for; (a) a $50 investigator fee, (b) a $200 case expense for a narrative report, and, (c) $300 in interest and fees paid on a loan. The claims related to the charges of non-party Clearwater Billing Services, LLC, are likewise nominal for the named Plaintiffs.

Plaintiffs' motion assumes that they have (1) already obtained class certification; and (2) overcome dispositive motions on the merits of their claims. In fact, this Court has previously denied Plaintiffs' motion to compel responses to interrogatories 3-2 and 3-3 related to financial information specifically stating: "The Defendants' objections to interrogatories 2 and 3 are sustained until this case has been certified as a class action." (Interrogatories 3-2 and 3-3 attached as Ex. A; Decision and Order of July 30, 2018 attached as Ex. B).

Nothing has changed with regard to class certification in the time that has elapsed since the Court addressed this issue the first time. Plaintiffs' counsel has presented no evidence to support his

feigned "concern" that any KNR defendant has "dissipated or transferred assets" – which is allegedly the basis for Plaintiffs' Motion. Plaintiffs' attorneys used the motion as a vehicle to publish co-defendant Ghoubrial's confidential protected information, to improperly influence the Court, and to harass and embarrass Defendants. Therefore, the Court should deny Plaintiffs' Motion to Compel.

A. The "Factual" Allegations in the Motion are False

Plaintiffs claim that Mr. Nestico's testimony somehow permits discovery of his and KNR's private financial records. "Defendant Nestico testified that he was unaware of the number of private corporations that he owns, and when he was examined as to specific documentation of his ownership in various corporations, including a Canadian corporation registered in his name, he claimed a complete lack of knowledge about them." (Plaintiffs' Motion to Compel at p.5). Mr. Nestico had no knowledge of this Canadian corporation because **Mr. Nestico does not own it.** Based upon the false allegations of Plaintiffs' attorneys, Defendants undertook the task (and incurred the cost) of locating the owner the of the Canadian corporation who merely has the same name as Mr. Nestico. At his deposition, Mr. Nestico honestly testified as follows:

Q. What is Canada, Inc?
A. I don't know.
Q. You don't know?
A. No.
Q. A company in Canada?
A. I have no idea.
Q. That you own?
A. I own?
Q. What's 22 Richgrove Drive?
A. I have no idea.
Q. Is there another Alberto Nestico that lives in Toronto?

A. I don't know. It's not me.

Deposition of Alberto Nestico Pt 2, (Page 503:13 to 503:25).

Upon receiving the instant motion, Defendants retained a Canadian attorney, Mr. Robert Karrass, to locate the owner of 10505021 Canada Inc.[1] The owner is in fact another individual named Alberto Nestico who resides in Toronto. (See correspondence of Robert Karrass and corporate documents attached as Ex. C). Thus, Mr. Nestico's testimony was not evasive or misleading – it was the absolute truth. Defendant Nestico does not own the Canadian corporation, nor did he have any knowledge of the corporation or the existence of a Toronto resident with the same name.

The same is true regarding Mr. Nestico's testimony regarding Panatha Holdings. Mr. Nestico is not, nor has he ever been an owner or director of Panatha Holdings. The attached correspondence from the office of attorney Chad Brenner confirms that Mr. Nestico's testimony was accurate. Panatha Holdings no longer exists. (Ex. D, attached). It was dissolved in September of 2012.

The predicate for Plaintiffs' Motion Compel is that Mr. Nestico was "ignorant or dishonest" regarding the Canadian the corporation and Panatha Holdings. This assertion is demonstrably false. Thus, there is no basis whatsoever for the Motion to Compel. Plaintiffs' Counsel failed to do a proper investigation before filing the Motion, just as he failed to do a proper investigation prior to moving to his amend the Complaint to add claims related to the use of narrative reports to prove the reasonableness of medical care, claims that Mr. Nestico owns Liberty Capital, and the claims related to Dr. Ghoubrial's treatment of his patients (over which KNR obviously has no control).[2] Plaintiffs'

[1] Note that Canadian corporations are designated by numbers rather than names.

[2] Every single witness (even disgruntled former employees who offered **opinions** critical of KNR) has testified that KNR did not control the care and treatment provided by any doctor.

attorneys have consistently taken a cavalier, "shoot first, ask questions later" approach to their accusations in this case. The bottom line is the purported factual predicate for the Plaintiffs' Motion to Compel is demonstrably false. The documents requested are not necessary to determine the issue of class certification, and will not be relevant at all unless and until (1) a class is certified; and (2) Plaintiffs establish a prima facie case on the issue of punitive damages.[3] A class has not been certified and the merits of the claims (including any claim for punitive damages) are not before the Court. Thus, the Motion should be denied.

B. Plaintiffs' Attorneys Have Demonstrated They Cannot be Trusted with Confidential Documents.

Yet another reason to preclude discovery of Defendants private financial information at this stage of the litigation is Plaintiffs counsel's atrocious record of dealing with confidential documents in this case. This Court may not be aware that the genesis of this lawsuit are documents stolen from KNR by a former employee and given to Plaintiffs' counsel Peter Pattakos. In other words, Mr. Pattakos did not begin this lawsuit with a client, he began with a stack of stolen documents that he knew or should have known were stolen, and that he was not authorized to view.

Defendants originally moved for a protective order regarding confidential information in this case on October 12, 2016. At the forefront of the issue were the documents stolen from KNR by the former employee and given to Plaintiffs' counsel without authorization. While the motion was pending, Plaintiffs' counsel sought to take matters into their own hands by maliciously **filing** the improperly obtained documents containing confidential and proprietary business information, which were:

[3] Plaintiffs' citation to *United States v. Matusoff Rental Co.*, 204 F.R.D. 396, 399 (S.D.Ohio 2001), is based upon federal law. Ohio Courts recognize that a prima facie showing of punitive damages is warranted before discovery on punitive damages. See, e.g., *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 716, 647 N.E.2d 507 (8th Dist.1994). Moreover, Matusoff merely holds that Plaintiffs are entitled to financial information **prior to trial;** not prior to a class certification motion.

(1) attached as Exhibits B, E, and F (collectively "Exhibits") to Plaintiff's proposed Second Amended Class-Action Complaint,
(2) collectively attached as Exhibit 1 to Plaintiff's Motion for Leave to File Second Amended Class-Action Complaint; and
(3) referenced, quoted and summarized in Plaintiffs' Motion for Reconsideration of the Court's March 16, 2017 Order Regarding Dismissal of Claims Against Defendant Nestico.

Plaintiffs' counsel, with full knowledge and awareness of a pending motion for protective order, filed the documents in the public record effectively circumventing the authority of the Court to determine whether the documents were confidential. After improperly filing these confidential documents so that they were viewable by the public, Plaintiffs' counsel went a step further and published links to the materials on their social media accounts. This issue was briefed in detail to the then presiding Judge Alison Breaux. (*See* Ex. E, Defendants' Motion for Emergency Hearing on Motion to Strike Confidential and Proprietary Information and Seal and Restrict Access, filed March 23, 2017).

Judge Breaux made it patently clear that Plaintiffs counsels' conduct was improper:

> I want to be clear: I find these filings to be a blatant attempt at circumventing my ruling. I think it would be prudent for all counsel to review Professional Rules 3.1, 3.4, 3.6 and 7.3. I'm going to advise that the counts that the parties have 24 hours to submit a joint proposed protective order with regard to all of the documents. If you feel you cannot do that, please submit your own. I will rule on that on Thursday. You have until the end of business day on Wednesday, March 29 to submit those orders. Everybody clear so far? In addition, I'm going to restrict any online access to any documents that have been filed that are still the subject of my rulings and your pending motions. That means there will be no links on social media, no Twitter, no Facebook; there will be nothing that has anything to do with the subject of those pending motions. If you would like those things, you may come down to the courthouse and you can get a copy of them in person. Are we clear?

Transcript of Proceedings, March 27, 2017, attached as Ex. F.

Undaunted, Plaintiffs' Counsel proceeded to accuse the judge of using "pejorative terms" to describe counsel's own pejorative conduct.[4] Despite the clear instructions of the Court during the hearing, an article appeared on Cleveland.com containing links to the potentially confidential documents which had yet to be restricted **just two hours after the hearing** of March 27, 2017. This was noted by the Court in an Order submitted on March 29, 2017, restricting access to the potentially confidential documents. (Ex. G).

In response, Plaintiffs filed an affidavit of prejudice against Judge Breaux claiming she was biased in favor defendants. Plaintiffs made salacious and false allegations regarding Judge Breaux to support the quest to have her disqualified, and likewise published these false allegations to the media. The Supreme Court of Ohio summarily rejected these false accusations. (See Ex. H, Order of June 21, 2017).

The purpose of rehashing these prior instances of misconduct is twofold. First, to inform the Court regarding the history of issues related breaches of confidentiality by Plaintiffs' attorneys; and second, to demonstrate that Plaintiffs' attorneys have no respect for the concept of confidentiality, much less any Order of this Court related to confidentiality. As it relates specifically to Attorney Pattakos, listed here are just a few examples of his conduct demonstrating a lack of respect for confidential information, and a desire to conduct discovery in a manner designed to intentionally embarrass or intimidate both parties and non-parties to associated with this litigation:

1. Attorney Pattakos attempted to induce Dr. Fonner into breaching the confidentiality provision of his Settlement Agreement with KNR by providing knowingly false advice to Dr. Fonner. (See Exhibit "I", Affidavit of Dr. Fonner).
2. In addition to former clients, Attorney Pattakos has knowingly contacted current clients of KNR in an attempt to interfere with KNR's representation

[4] The Court (accurately) used the term "shenanigans" to describe Plaintiffs' publication of the disputed documents while a motion for protective order regarding those same documents was under consideration by the Court.

of that client. See Affidavit of Anthony Kemp, attached hereto as Exhibit "J."

3. Attorney Pattakos questioned witness Dr. Richard Gunning regarding his personal medical conditions wholly unrelated to any issue in the case, despite an objection as to privilege. The only purpose of the questioning was to embarrass the witness.

4. Attorney Pattakos attempted to question witnesses regarding false accusations of racial stereotypes and marital infidelity in a case allegedly premised on the propriety of certain legal expenses. He subsequently opposed designations of this testimony as confidential. The only purpose of the questions was to embarrass the witnesses.

5. Attorney Pattakos lied to, and attempted to intimidate witness Brandy Gobrogge by telling her Judge Brogan already expressed concerns her boss (Mr. Nestico) would perjure himself. After first accusing Ms. Gobrogge of perjury, Attorney Pattakos then made the following blatant misrepresentation to her:

> MR. PATTAKOS: We'll talk about -- we'll talk about that later. We'll talk about perjury later. I know Judge Brogan said on the phone call -- he mentioned the word, "Perjury," four times, when it came to Mr. Nestico's
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> testimony, so it's certainly a concern of the Court.

Attorney Pattakos' misrepresentation not only was an attempt to intimidate the witness, but it also suggests improper bias of this Court. The Court never expressed such a bias or concern.

These examples relate directly to the motives of Attorney Pattakos for his misconduct and his demonstrated belief that he can do as he pleases without regard to rules, Orders, or even common courtesy. Defendants' concern about this attorney being in possession of private, confidential information is not gamesmanship – it is a reasonable response to a pattern of misconduct by Attorney Pattakos. Defendants respectfully ask this Court to preclude Mr. Pattakos from obtaining Defendants' private, confidential financial information until such time as the information is relevant to an issue properly before the Court.

C. Plaintiffs' Allegations of a "Calculated and Widespread Scheme" are unproven and false.

At pages 2 and 3 of this Motion to Compel, Plaintiffs unnecessarily include a fairy tale of allegations couched as "facts" supporting a claim of a grand conspiracy to harm "socioeconomically disadvantaged clients." Given that the actual causes of action in the Complaint against KNR seek reimbursement for certain case expenses, it is clear that the purpose of Plaintiffs unnecessary narrative is simply to paint the Defendants as evil scoundrels in the eyes of the Court (and anyone else who reads the Motion on the public docket).

In response, Defendants would point out that Plaintiffs' allegations in this case have been repeatedly demonstrated to be categorically false. Even when the allegations are demonstrated false beyond any reasonable doubt, Plaintiffs' attorneys nevertheless continue the pursuit with full knowledge that the alleged facts are untrue. To demonstrate the degree the falsehoods propagated by these Plaintiffs' attorneys, note that these attorneys represented to this Court the Class "C" allegations (regarding Loans from Liberty Capital) were supported by Matt Johnson as a class representative. These lawyers knew full well Mr. Johnson never repaid his loan and never had any payments taken out of his settlement for repayment to Liberty. Attorney Pattakos has avoided any repercussions for this false accusation, at least for now, by dismissing Mr. Johnson.

Accusations made by these Plaintiffs' attorneys without evidentiary support should not be entertained by this Court.[5] The Court may be unaware that these Plaintiffs' attorneys continue to assert factual claims in the Fourth and Fifth Amended Complaints that they **know to be false based upon the testimony of their own clients.** Other claims continue to be pursued despite

[5] Plaintiffs cite to numerous transcripts allegedly supporting their narrative. The testimony cited does not contain admissible testimony of **admissible facts** supporting the claims. Plaintiffs cite primarily to the inadmissible lay opinions and hearsay contained in these transcripts.

contemporaneous business records that demonstrate the claim is false. A few examples are listed below because the actual number is too great to reasonably include in this brief:

a. Plaintiff Reid testified the Third Amended Complaint improperly stated the amount she received from the settlement (by about 50%), and she admitted the factual error should be corrected. Yet, Attorney Pattakos continued to include the factually incorrect allegation in the Fourth Amended Complaint and Fifth Amended Complaint.

b. Plaintiff Williams testified KNR **told her** the purpose of the investigation expense, yet the multiple subsequent Amended Complaints continue to propagate the exact opposite factual allegation: falsely alleging KNR never told her the purpose of the fee.

c. The Plaintiffs' attorneys know that Dr. Ghoubrial did not treat Monique Norris based upon contemporaneous records created 6 years ago, and uncontroverted evidence that the doctor was out of town on the day Ms. Norris claims he treated her. However, the Plaintiffs' attorneys continue to pursue claims against Dr. Ghoubrial on her behalf.

d. In the Fifth Amended Complaint Plaintiffs' attorneys allege that Dr. Ghoubrial injected Mr. Harbour with an "unspecified" medication, even though Mr. Harbour testified under oath in 2015, three and a half years before the Fifth Amended Complaint, that he knew the type of medication being injected (and that it provided relief).

e. Plaintiffs' attorneys include allegations in the Fifth Amended Complaint that potential class members were roped into signing with KNR because of promises of quick cash from Liberty Capital loans, despite the fact **none** of his putative class representatives had that occur to them.

f. Plaintiffs' attorneys include allegations in the Fifth Amended Complaint that potential class members were "chased down" by investigators, even though all of their clients have testified under oath and denied this occurred.

g. Plaintiffs' attorneys continue to allege in the Fifth Amended Complaint that potential class members were essentially hoodwinked into signing with KNR because of KNR's promotional advertisements, even though **none** of his putative class representatives have testified that they contacted KNR due to an advertisement or other promotional materials.

h. Plaintiffs' attorneys continues to pursue the Class C claims (Liberty Capital) making the absurd accusation that Mr. Nestico has a financial interest in the company even though the **only** evidence produced in the

> case to date demonstrates unequivocally that no one at KNR has ever had any ownership or financial interest in Liberty Capital.

There too many more instances to list. The point is that accusations by these Plaintiffs' attorneys directed at KNR have a demonstrated history of unreliability; and nevertheless the attorneys continue to maintain and pursue those accusations. This brings into serious question the purpose of the conduct of these attorneys. Plaintiffs' last minute Motion to Compel Discovery of Defendants' financial information should thus be viewed with scrutiny regarding the true purpose of the Motion. This is particularly true when the information sought is not related to class certification, and will be irrelevant in the likely event that class certification is denied or Defendants prevail on summary judgment as to the merits.

Conclusion

For the foregoing reasons, Plaintiffs' Motion to Compel must be denied. The Court has previously ruled that discovery of financial information was not appropriate during class discovery, and nothing has occurred warranting reconsideration of this Court's prior decision. The factual predicate for the Motion to Compel – that Mr. Nestico was dishonest or evasive regarding the Canadian corporation and Panatha Holdings – has been proven false. Discovery on assets and net worth is not necessary or warranted unless and until there is a class certified and summary judgment motions on the merits have been addressed.

Respectfully submitted,

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Counsel for KNR Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 13th day of May, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson
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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge Patricia Cosgrove

DEFENDANTS' OBJECTIONS AND ANSWERS TO PLAINTIFFS' FIRST REQUEST FOR INSPECTION, THIRD SET OF INTERROGATORIES, THIRD SET OF REQUESTS FOR ADMISSION, AND FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 33, 34 and 36 of the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC ("KNR"), Alberto R. Nestico, and Robert Redick (collectively "Defendants") object and respond as follows to Plaintiffs' First Request for Inspection, Third Set of Interrogatories, Third Set of Requests for Admission, and Fifth Set of Requests for Production of Documents ("Discovery Requests"):

GENERAL OBJECTIONS

1. Defendants object to Plaintiffs' Discovery Requests to the extent that they seek information protected by the attorney-client privilege, work product doctrine, the joint defense and common interest privilege, and other applicable privileges and rules. Specifically, some requests of Plaintiffs' Discovery Requests seek information and

EXHIBIT
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A

communications between Plaintiffs and KNR and between putative class members and KNR that are protected by the attorney-client privilege, work product doctrine, ethical and professional rules governing attorneys, or other applicable privileges. By filing this lawsuit, Plaintiffs have waived the attorney-client privilege and all other applicable privileges, as those privileges apply to only them, and not to putative class members.

2. Defendants object to the "Instructions" and "Definitions" preceding Plaintiffs' Discovery Requests on the grounds that they are vague, ambiguous, seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and seek to impose obligations on Defendants that are greater than, or inconsistent with, those obligations imposed by the Ohio Rules of Civil Procedure. Defendants will respond to these Discovery Requests in accordance with its obligations under the Ohio Rules of Civil Procedure.

3. Defendants object as overly broad and unduly burdensome to the extent that a discovery request seeks information relating to Medical Service Providers or Chiropractors other than Akron Square Chiropractic ("ASC").

4. Defendants object as overly broad and unduly burdensome to the extent a discovery request seeks information relating to Litigation Finance Companies other than Liberty Capital Funding, LLC ("Liberty Capital").

5. Defendants object as overly broad and unduly burdensome to the extent a discovery request seeks information relating to investigators other than Aaron Czetli and his company AMC Investigations and Michael Simpson and his company MRS Investigations.

6. Defendants object to the extent that requests are based on illegally obtained documents. Plaintiff should not be able to take advantage of the illegally obtained documents. *See Raymond v. Spirit AeroSystems Holdings, Inc.*, Case No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 101926 (D. Kan. June 30, 2017).

7. Defendants object that the terms "investigation fee," "investigative fee," and "investigatory fee" are vague, ambiguous, and undefined. Defendants will interpret these terms to mean the flat fee paid to investigators by KNR that are similar to the $50 fee paid to MRS Investigations, Inc. in Plaintiff Williams' case. All of Defendants' answers to requests involving these terms are based on Defendants' definition of those terms as outlined above.

8. Defendants state that they and the firm's IT vendor cannot conduct Boolean searches.

9. Defendants object that the Discovery Requests are overly broad and unduly burdensome in that there are no date limitations on the requests.

10. Defendants reserve their right to amend their responses to these Discovery Requests.

11. Defendants deny all allegations or statements in the Discovery Requests, except as expressly admitted below.

12. These "General Objections" are applicable to and incorporated in each of Defendants' responses to the Discovery Requests. Moreover, Defendants' responses are made subject to and without waiving these objections. Failing to state a specific objection to a particular Discovery Request should not be construed as a waiver of these General Objections.

13. Defendants' discovery responses are made without a waiver of, and with preservation of:

a. All questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this action and in any other action;

b. The right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceedings of this action and in any other action;

c. The right to object on any ground at any time to a demand or request for a further response to the requests or other discovery involving or relating to the subject matter of the Discovery Requests herein responded to;

d. The right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein and to provide information and produce evidence of any subsequently discovered facts;

e. The right to assert additional privileges; and

f. The right to assert the attorney-client privilege, attorney work product doctrine, or other such privilege as to the discovery produced or the information obtained therefrom, for any purpose in any further proceedings in this action and in any other action.

REQUEST FOR INSPECTION (KNR DEFENDANTS ONLY)

1. Under Civ.R. 34, Plaintiffs request to inspect and test all systems or databases in Defendants' custody or control on which any and all of the KNR Defendants' emails are stored. This includes any internet-based or cloud-based system or database to which the KNR Defendants have access through a third-party vendor and any storage system or database to which emails have been moved for any reason, including for preservation or searching. The purposes of this inspection and test are as follows: 1) to determine the search functionality of the systems or databases on which the KNR Defendants' emails are stored; 2) to determine the veracity of the KNR Defendants' repeated claims—including at the November 2 meet and confer between counsel, and in Brian Roof's November 15, 2017 letter—that routine email searches including essential terms at issue in this lawsuit would somehow "crash the system" used by the KNR Defendants to store emails (*see* Nov. 15 Roof letter at 2); 3) to determine the veracity of the KNR Defendants' other representations relating to email searches it has performed in

response to Plaintiffs' requests; and 4) more broadly, to further documentary discovery in this case consistent with the Civil Rules. This inspection and test may take place at the KNR Defendants' offices, or any place of Defendants' choosing where such systems or databases may be accessed and searched. This inspection and test shall take place at the same time as the 30(b)(5) deposition that Plaintiffs noticed on September 7, 2017 and shall be recorded by a qualified Notary Public by video and stenographic means.

RESPONSE: Objection. Defendants object to this request as unduly burdensome, disproportionate to the needs of the case, and completely unnecessary. They further object that the request is only being asked to harass Defendants. Defendants also object that this request seeks proprietary and confidential information that even the protective order is not sufficient to protect. This is especially true since Plaintiffs' law firm is a newly formed law firm that competes directly with KNR and granting Plaintiffs' attorneys access to KNR's document system and database would be unfairly prejudicial and detrimental to its business. In addition, this request would allow for the review of information and documents protected by the attorney-client privilege and work product. The Rule 30(B)(5) deposition should be sufficient to answer all of Plaintiffs' questions outlined above (1-4) regarding KNR's document system and database.

INTERROGATORIES (ALL DEFENDANTS)

1. Identify all bank accounts that you use or have used for any purpose whatsoever since 2008, business or personal, whether or not the account is in your name, including by the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address. This includes all accounts to which you have deposited or from which you have withdrawn funds, or to or from which anyone has done so on your behalf.

RESPONSE: Objection. Defendants object that this interrogatory seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence, especially the request regarding the personal bank accounts. Defendants further object that this interrogatory is simply being posed to harass Defendants, especially the request regarding the personal bank accounts. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it requests information dating back to 2008 and requests the identity for bank accounts "used for any purpose whatsoever." The request is not even limited to the lawsuit. Defendants also object that this request seeks confidential and proprietary information that not even the protective order is sufficient to protect.

INTERROGATORIES (KNR DEFENDANTS ONLY)

2. Identify all bank accounts from which you paid "investigators" (including Aaron Czetli or AMC Investigations, Michael Simpson or MRS Investigations, Chuck Deremer, and the "investigators" identified in your third amended response to Plaintiffs' Interrogatory No. 1-8), including the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address.

RESPONSE: Objection. Defendants object that this interrogatory generally seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on investigators other than MRS and AMC. Defendants further object that this interrogatory is simply being posed to harass Defendants. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that there is no date range. Defendants further object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request seeks confidential and proprietary information. Subject to and without waiving this objection, see document bates stamped KNR00021 for the check paid to MRS in Plaintiff Williams' case.

3. Identify all bank accounts (including the name of the account holder, the type of account, the purpose of the account, the account number, and the bank name and address) from which you paid "narrative fees" to any chiropractor or Medical Service Provider, including the narrative fees identified in your response to RFA No. 32, in Brian Roof's letter of November 15, 2017 at page 2, and in the KNR emails attached to Plaintiffs' motion for leave to file the Second Amended Complaint.

RESPONSE: Objection. Defendants object that this interrogatory generally seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on Medical Service Providers other than ASC. Defendants further object that this interrogatory is simply being posed to harass Defendants. In addition, Defendants object that this interrogatory is overly broad and unduly burdensome in that it has no date range. Defendants further object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request seeks confidential and proprietary information.

4. Identify all changes in KNR's policies, procedures, or practices relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Objection. Defendants have already answered this interrogatory in its amended response to Plaintiffs' Fourth Set of Requests for Production No. 4. In addition, Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants, based on the information known to date, do not recall making any changes to its policies, procedures, or practices relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint.

5. Identify all steps taken to search for documents responsive to Plaintiffs' Request for Production No. 4-2 and reach the determination—as stated in Defendants' amended response to the request and Brian Roof's Nov. 15, 2017 letter—that "there are no responsive documents" to this Request, including the names and positions of all persons who participated and their specific roles in conducting this search and reaching this determination.

RESPONSE: Objection. Defendants object that this request seeks information protected by the attorney-client privilege and work product doctrine. Plaintiffs can ask a factual question at the deposition of any of KNR's witnesses about whether he or she searched for such documents, but the interrogatory as phrased seeks privileged information.

6. Identify all work performed for Defendants by investigators (including Aaron Czetli, Michael Simpson, Chuck Deremer, and those identified in your third amended response to Plaintiffs' Interrogatory No. 1-8) that did not relate to the pass-through "investigation" expense that was charged to KNR clients, and did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for the holidays, and running errands for Rob Nestico and other KNR personnel.

RESPONSE: Objection. Defendants object that this interrogatory is vague, ambiguous, confusing, unintelligible, and compound. Also, Defendants object

that the word "work" is vague, ambiguous, and undefined. In addition, Defendants object this interrogatory seeks irrelevant information not likely to lead to the discovery of admissible evidence. Defendants also object that this interrogatory seeks information on investigators other than MRS and AMC. Subject to and without waiving these objections, Aaron Czetli and Michael Simpson, as independent contractors, have previously performed other work (such as stuffing envelopes and running errands) for KNR that were unrelated to a specific client and was not charged to a specific client. They performed this work when they were not acting as investigators on behalf of KNR's clients.

REQUESTS FOR ADMISSION (KNR DEFENDANTS ONLY)

1. Admit that KNR did not make any changes to its policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants do not recall, based on the information known to date, making any changes to its policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint.

2. Admit that no Defendant is in possession of any documents reflecting, discussing, or considering changes (or the consideration or discussion of such changes) to KNR policies, procedures, or practices regarding chiropractic referrals relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17).

RESPONSE: Defendants object that the terms "policies, procedures, or practices" are vague, ambiguous, and undefined. Subject to and without waiving these objections, Defendants admit this request based on the information currently available to them. See Response to RFA No. 1.

3. Admit that Defendants' representation that "there are no responsive documents" to Plaintiffs' Request for Production of Documents No. 4-2—including in Plaintiffs' Amended Response to that Request and in Brian Roof's November 15, 2017 letter—is false.

RESPONSE: Deny. Defendants do not recall any documents responsive to Request for Production of Documents No. 4-2. See Response RFA Nos. 1 and 2.

4. Admit that some of the investigators (including Aaron Czetli, Michael Simpson, Chuck Deremer, and those identified in your third amended response to Plaintiffs' Interrogatory No. 1-8) regularly performed work for Defendants that did not relate to the pass-through "investigation" expense that was charged to KNR clients, and did not relate to any specific client file, such as stuffing promotional envelopes, decorating the office for the holidays, and running errands for Rob Nestico and other KNR personnel.

RESPONSE: Defendants object that this interrogatory seeks irrelevant information not likely to lead to the discovery of admissible evidence. Defendants also object to this interrogatory seeking information on investigators other than MRS and AMC. Subject to and without waiving these objections, see response to Interrogatory No. 6.

REQUESTS FOR PRODUCTION OF DOCUMENTS (ALL DEFENDANTS)

Please produce the following documents:

1. All insurance policies that do or could conceivably provide coverage for the defense or payment of the claims at issue in this lawsuit, and documents sufficient to determine the full extent of any such coverage.

RESPONSE: Objection. This request seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. The only relevant and discoverable information regarding the policy is the policy limits, which is $1 million.

REQUESTS FOR PRODUCTION OF DOCUMENTS (KNR DEFENDANTS ONLY)

Please produce the following documents:

2. All documents relating to the lawsuits by insurance companies against Plambeck-owned chiropractic clinics discussed in Paragraph 38 of the Third Amended Complaint (*See also* Defendants' Response to Interrogatory 2-17) including all documents in which these lawsuits are discussed or mentioned in any way.

RESPONSE: Objection. This request seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request is overly broad and unduly burdensome as the Plambeck lawsuits go back to 2012. Subject to and without waiving any objections, see Response to RFA Nos. 1-3. In addition, Defendants are currently unaware of any responsive documents and that searching for any unlikely potential email is unduly burdensome and overly broad.

3. All letters or documents by which KNR asserted liens on the proceeds of lawsuits of clients whose representation with KNR had ended, with any privileged information redacted (the name and address of any person receiving the lien letter cannot in any case be privileged, nor can the amount of the lien).

RESPONSE: Objection. Defendants object that this request seeks information relating to putative class members. As Defendants have previously stated, Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. In addition, this request seeks information outside the scope of Class B (Naomi Wright's class), which is specifically limited to cases referred to or from ASC. Subject to and without waiving these objections, Defendants will produce the seven letters for the seven potential clients who fall within Class B. KNR did not send a lien letter on one of the potential Class B members.

4. All documents consisting of, referring to, or reflecting any instance where Defendants advised a client as to the purpose of the investigation fee in writing (not including engagement agreements or settlement statements).

RESPONSE: Objection. Defendants object that this request seeks information relating to putative class members. As Defendants have previously stated,

Plaintiffs are not entitled to discovery relating to putative class members until the case has been certified as a class action. Defendants also object that this request is overly broad and unduly burdensome, and disproportionate to the needs of the case in that it would require a search of over 50,000 files. Subject to and without waiving these objections, Defendants are currently unaware of any responsive documents based on the information known to date.

As to objections,

/s/ Brian E. Roof

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
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(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

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

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
Lewis Brisbois
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' Answer to Plaintiffs' First Request for Inspection, Third Set of Interrogatories, Third Set of Requests for Admission, and Fifth Set of Requests for Production of Documents was sent this 15th day of December, 2017 to the following via electronic Mail:

Peter Pattakos
Daniel Frech
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, Ohio 44333
peter@pattakoslaw.com
dfrech@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

John F. Hill
Meleah M. Kinlow
Buckingham, Doolittle & Burroughs, LLC
3800 Embassy Parkway, Suite 300
Akron, OH 44333-8332
jhill@bdblaw.com
mkinlow@bdblaw.com

Counsel for Defendant Minas Floros, D.C.

/s/ Brian E. Roof
Brian E. Roof (0071451)

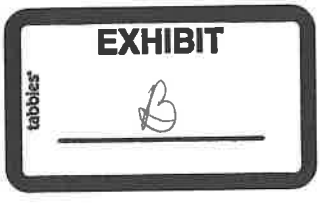
IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

MEMBER WILLIAMS, et al. Plaintiffs -vs- KISLING, NESTICO & REDICK, LLC, et al. Defendants	)	CASE NO. CV 2016 09 3928 JUDGE JAMES A. BROGAN (Sitting by Assignment #18JA1214 **DECISION**

On February 28, 2018, the Defendants filed their objections and answers to Plaintiffs' first request for inspection, third set of interrogatories, third request for admissions, and fifth set of requests for production of documents.

The Court will defer ruling on the Plaintiffs' request to inspect and test all systems or databases in Defendants' custody on which their emails are stored until Plaintiffs complete their depositions of the Defendants. The Defendants' objections to interrogatories 2 and 3 are sustained until this case has been certified as a class action. The Court sustains the Defendants' objections to interrogatories 4 and 5, but overrules Defendants' objection to interrogatory 6. The Court overrules the Defendants' objections to Plaintiffs' request for admissions 1, 2 and 4. The Court overrules the Defendants' objection to request for production no. 1, but sustains the Defendant's objection to Plaintiffs' request no. 2 because lawsuits are a matter of public record. The Defendants' objection to Plaintiffs' third and fourth request for production of documents is sustained.



On February 28, 2018, the Defendants filed their responses to Plaintiffs' second set of interrogatories. The Defendants' objections to interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 18, 24, 26, 27, 30, 31, 32, 33, 34, 35, 42, 46 and 47 are overruled. The remaining objections to the 47 interrogatories propounded are sustained.

On February 28, 2018, the Defendants filed their responses to Plaintiffs' third set of request for production of documents to all Defendants. The Defendants' objections to requests 1, 2, 3, 4, 5, 6, 7, 9, 14, 20, 27, 28, 29, 30, 35, 37, 38, 41, 43, 44, 45, 46, 47, 48, 62 and 63 are all overruled. The remaining objections are sustained.

On the same day, February 28, 2018, the Defendants filed their amended responses to Plaintiffs' first set of requests for production of documents to all Defendants. The Defendants' objection to request 1 is overruled. The Defendants' objections to requests 2, 3, 4, 5, 6, 8, 9 and 11 are sustained. The Defendants' objections to interrogatories 7 and 10 are overruled. On March 30, 2018, the Defendants filed their amended answers to Plaintiffs' first set of interrogatories to all Defendants. The Defendants' objections to interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 12 and 16 are overruled. The other objections to the other interrogatories are sustained.

On February 28, 2018, the Defendants filed their first amended responses to Plaintiffs' fourth set of requests for production of documents to all Defendants. The Defendants' objections to requests 1, 3 and 4 are sustained. The objection to request 2 is overruled.

On April 5, 2018, the Defendants' filed their amended answers to Plaintiffs' first set of interrogatories to all Defendants. The Court overrules the Defendants' objections to the following interrogatories: 1, 2, 6, 7, 8, 9, 10, 12 and 16. The remaining objections of the Defendants are sustained.

On April 5, 2018, the Defendants filed their responses to Plaintiffs' second set of request for admissions. The Plaintiffs requested that the Defendants make eighty-eight separate admissions. The Court overrules all of the Defendants' objections except those to the following requests: 4, 5, 6, 9, 11, 15, 56, 58, 59, 60, 82, 85, 86, 87 and 88.

IT IS SO ORDERED.

JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

The Clerk of Courts shall serve all parties of record.

JAB:lcb
16-3928d

ROBERT KARRASS
BARRISTER & SOLICITOR

Robert Karrass
T. (416) 477-6022 Ext. 202
robert@karrasslaw.com

May 9, 2019

Alberto Nestico
3412 West Market Street
Akron, OH 44333
T: (330) 869-9007
F: (330) 869-9008

Dear Mr. Nestico

RE: 10505021 CANADA INC. and Alberto Nestico

Further to our recent conversation and my retainer, I have obtained the corporate documents related to 10505021 Canada Inc.

I have further made a search for the owner and director of 10505021 Canada Inc. "Alberto Nestico" which resulted in multiple entries in the Toronto Area.

I am pleased to inform you that I was able to locate Alberto Nestico and can definitively confirm that you and he are not the same individual.

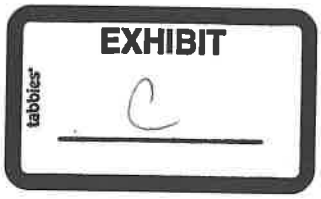
The Alberto Nestico identified in the corporate documents for 10505021 Canada Inc. is an individual working and residing in Toronto. His personal address and corporate address are the same, 22 Richgrove Drive Toronto ON M9R 2K9. I have had the opportunity to speak with him and am advised by him that 10505021 Canada Inc. is a company engaged in the sale of industrial hydraulics.

I have also made note of his home and cellular contact information in the event that it is required in the future.

If you have any questions or concerns or if you would like clarification of any sort please do not hesitate to contact me by phone or by email.

I believe this concludes my retainer and I will mark your matter as closed.

Thank you for the opportunity to assist you in this matter.



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www.karrasslaw.com

ROBERT KARRASS
BARRISTER & SOLICITOR

Yours Very Truly,
ROBERT KARRASS
PROFESSIONAL CORPORATION

Per: Robert Karrass

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Innovation, Science and Economic Development Canada
Corporations Canada

Innovation, Sciences et Développement économique Canada
Corporations Canada

Certificate of Incorporation

Canada Business Corporations Act

Certificat de constitution

Loi canadienne sur les sociétés par actions

10505021 CANADA INC.

Corporate name / Dénomination sociale

1050502-1

Corporation number / Numéro de société

I HEREBY CERTIFY that the above-named corporation, the articles of incorporation of which are attached, is incorporated under the *Canada Business Corporations Act*.

JE CERTIFIE que la société susmentionnée, dont les statuts constitutifs sont joints, est constituée en vertu de la *Loi canadienne sur les sociétés par actions*.

Virginie Ethier

Director / Directeur

2017-11-21

Date of Incorporation (YYYY-MM-DD)
Date de constitution (AAAA-MM-JJ)

Canada

Innovation, Science and Economic Development Canada
Corporations Canada

Innovation, Sciences et Développement économique Canada
Corporations Canada

Form 1
Articles of Incorporation
Canada Business Corporations Act (s. 6)

Formulaire 1
Statuts constitutifs
Loi canadienne sur les sociétés par actions (art. 6)

1 Corporate name
Dénomination sociale

10505021 CANADA INC.

2 The province or territory in Canada where the registered office is situated
La province ou le territoire au Canada où est situé le siège social

ON

3 The classes and any maximum number of shares that the corporation is authorized to issue
Catégories et le nombre maximal d'actions que la société est autorisée à émettre

See attached schedule / Voir l'annexe ci-jointe

4 Restrictions on share transfers
Restrictions sur le transfert des actions

See attached schedule / Voir l'annexe ci-jointe

5 Minimum and maximum number of directors
Nombre minimal et maximal d'administrateurs

Min. 1 Max. 3

6 Restrictions on the business the corporation may carry on
Limites imposées à l'activité commerciale de la société

None

7 Other Provisions
Autres dispositions

See attached schedule / Voir l'annexe ci-jointe

8 **Incorporator's Declaration:** I hereby certify that I am authorized to sign and submit this form.
Déclaration des fondateurs : J'atteste que je suis autorisé à signer et à soumettre le présent formulaire.

Name(s) - Nom(s)	Original Signed by - Original signé par
ALBERTO NESTICO	ALBERTO NESTICO ALBERTO NESTICO

Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding $5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

Faire une fausse déclaration constitue une infraction et son auteur, sur déclaration de culpabilité par procédure sommaire, est passible d'une amende maximale de 5 000 $ et d'un emprisonnement maximal de six mois, ou l'une de ces peines (paragraphe 250(1) de la LCSA).

You are providing information required by the CBCA. Note that both the CBCA and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la LCSA. Il est à noter que la LCSA et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Canada

IC 3419 (2008/04)

Schedule / Annexe
Description of Classes of Shares / Description des catégories d'action

The corporation is authorized to issue Class A common shares, Class B common shares, Class A preferred shares, Class B preferred shares, Class C preferred shares and Class D preferred shares with the following rights, privileges, restrictions and conditions:

1. Class A common shares, without nominal or par value, the holders of which are entitled:
a. to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote; and
b. to receive the remaining property of the corporation upon dissolution.

2. Class B common shares, without nominal or par value, the holders of which are entitled:
a. to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote; and
b. to receive the remaining property of the corporation upon dissolution.

3. Class A preferred shares, which shall carry the right:
a. to a dividend as fixed by the board of directors and
b. upon the liquidation or winding-up of the corporation, to repayment of the amount paid for such share (plus any declared and unpaid dividends) in priority to the Class A common shares and Class B common shares, but they shall not confer a right to any further participation in profits or assets.

4. Class B preferred shares, which shall carry the right:
a. to a dividend as fixed by the board of directors and
b. upon the liquidation or winding-up of the corporation, to repayment of the amount paid for such share (plus any declared and unpaid dividends) in priority to the Class A common shares and Class B common shares, but they shall not confer a right to any further participation in profits or assets.

5. Class C preferred shares, which shall carry the right:
a. to a dividend as fixed by the board of directors and
b. upon the liquidation or winding-up of the corporation, to repayment of the amount paid for such share (plus any declared and unpaid dividends) in priority to the Class A common shares and Class B common shares, but they shall not confer a right to any further participation in profits or assets.

6. Class D preferred shares, which shall carry the right:
a. to a dividend as fixed by the board of directors and
b. upon the liquidation or winding-up of the corporation, to repayment of the amount paid for such share (plus any declared and unpaid dividends) in priority to the Class A common shares and Class B common shares, but they shall not confer a right to any further participation in profits or assets.

7. The holders of Class A preferred shares, Class B preferred shares, Class C preferred shares and Class D preferred shares shall not be entitled to vote at all meetings of shareholders except as otherwise specifically provided in the Canada Business Corporations Act.

Schedule / Annexe

Restrictions on Share Transfers / Restrictions sur le transfert des actions

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares of the Corporation without the approval of:
The shareholders of the Corporation expressed by resolution passed by the votes cast by a majority of the shareholders who voted in respect of the resolution or signed by all shareholders entitled to vote on that resolution.

Schedule / Annexe
Other Provisions / Autres dispositions

a. The number of shareholders in the Corporation, exclusive of employees and former employees who, while employed by the Corporation were, and following the termination of that employment, continue to be, shareholders of the Corporation, is limited to not more than fifty, two or more persons who are the joint registered holders of one or more shares being counted as one shareholder.

b. Any invitation to the public to subscribe for securities of the Corporation is prohibited.

c. If authorized by by-law which is duly made by the directors and confirmed by ordinary resolution of the shareholders, the directors of the Corporation may from time to time:

i. borrow money upon the credit of the Corporation;
ii. issue, reissue, sell or pledge debt obligations of the Corporation; and
iii. mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired to secure any debt obligation of the Corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the Corporation to such extent and in such manner as may be set out in the by-law. Nothing herein limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

d. The directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual general meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual general meeting of shareholders.

Innovation, Science and Economic Development Canada
Corporations Canada

Innovation, Sciences et Développement économique Canada
Corporations Canada

Form 2
Initial Registered Office Address and First Board of Directors
Canada Business Corporations Act (CBCA) (s. 19 and 106)

Formulaire 2
Siège social initial et premier conseil d'administration
Loi canadienne sur les sociétés par actions (LCSA) (art. 19 et 106)

1 Corporate name
Dénomination sociale

10505021 CANADA INC.

2 Address of registered office
Adresse du siège social

Care of / À l'attention de : ALBERTO NESTICO
22 RICHGROVE DRIVE
TORONTO ON M9R 2K9

3 Additional address
Autre adresse

4 Members of the board of directors
Membres du conseil d'administration

		Resident Canadian / Résident Canadien
ALBERTO NESTICO	22 RICHGROVE DR, ETOBICOKE ON M9R 2K9, Canada	Yes / Oui

5 Declaration: I certify that I have relevant knowledge and that I am authorized to sign this form.
Déclaration : J'atteste que je possède une connaissance suffisante et que je suis autorisé(e) à signer le présent formulaire.

Original signed by / Original signé par
ALBERTO NESTICO

ALBERTO NESTICO
4167523778

Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding $5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

Faire une fausse déclaration constitue une infraction et son auteur, sur déclaration de culpabilité par procédure sommaire, est passible d'une amende maximale de 5 000 $ et d'un emprisonnement maximal de six mois, ou l'une de ces peines (paragraphe 250(1) de la LCSA).

You are providing information required by the CBCA. Note that both the CBCA and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la LCSA. Il est à noter que la LCSA et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Canada

IC 2904 (2008/04)

BKM BRENNER KAPROSY MITCHELL, L.L.P.

ATTORNEYS AT LAW

30050 CHAGRIN BLVD., SUITE 100
PEPPER PIKE, OHIO 44124-5704
PHONE: 216-292-5555
FAX: 216-292-5511

E-MAIL: RCBRENNER@BRENNER-LAW.COM

February 18, 2019

Rob Nestico, Esq.
3412 West Market St.
Fairlawn, OH 44333

Re: Giovant Properties, LLC (Delaware) and Panatha Holdings, LLC (Florida)

Dear Mr. Nestico:

In response to your questions regarding the above captioned LLC's, I reviewed our files and records on these entities. Giovant Properties, LLC was formed in Delaware on 8/16/2007. The sole member of this entity was Saverio Nestico. The Delaware Secretary of State's records reflect that Giovant was formally dissolved in 2015. All taxes and fees were paid in full at that time. Brenner Kaprosy Mitchell, LLP did not handle the dissolution.

Panatha Holdings, LLC was formed in Florida on 7/2/2010. Minas Floros was the sole member/ manager. Neither you nor Giovant Properties, LLC were members or owners of Panatha Holdings, LLC at any time. As a courtesy to your client, Giovant Properties, LLC, as manager, filed the 2011 Annual Report for Panatha Holdings, LLC. Subsequently, this entity was administratively dissolved by the Secretary of State for failure to file the required annual report in 2012. The dissolution was effective 9/28/2012.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria H. Janda,
Paralegal

EXHIBIT
tabbies
D

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	CASE NO. CV-2016-09-3928 JUDGE ALISON BREAUX **DEFENDANTS' MOTION FOR EMERGENCY HEARING ON MOTION TO STRIKE CONFIDENTIAL AND PROPRIETARY INFORMATION AND SEAL AND RESTRICT ACCESS, AND MOTION FOR SANCTIONS**

Defendant Kisling, Nestico & Redick, LLC and proposed Defendants Alberto R. Nestico and Robert Redick (collectively "Defendants") hereby request that this Court immediately schedule a hearing to take place on the record with regard to Defendants' Motion to Strike Confidential and Proprietary Information and Seal and Restrict Access, and Motion for Sanctions (collectively "Motion"), which is being filed contemporaneously with the filing of this request.

As this Court is aware, Plaintiff has filed a putative class action against Defendants for breach of contract, fraud, and unjust enrichment surrounding KNR's representation of Plaintiff in an automobile matter. Plaintiff and Defendants have attempted to reach an agreement on a stipulated order protecting the exchange of confidential and proprietary information during discovery in this matter, but the parties have been unable to reach a consensus. Defendants have since filed an individual Motion for Protective Order on this crucial issue, which is fully brief and pending before this Court.

Sandra Kurt, Summit County Clerk of Courts

Despite this, on March 22, 2017, Plaintiff and her attorneys sought to take matters into their own hands by maliciously filing improperly obtained documents containing confidential and proprietary business information, which were attached as Exhibits B, E, and F (collectively "Exhibits") to Plaintiff's proposed Second Amended Class-Action Complaint with Jury Demand ("Proposed Amended Complaint"), which were further collectively attached as Exhibit 1 to Plaintiff's Motion for Leave to File Second Amended Class-Action Complaint with Jury Demand. Plaintiff also referenced and quoted these materials in the Amended Complaint and a Motion for Reconsideration of the Court's March 16, 2017 Order Regarding Dismissal of Claims Against Defendant Nestico ("Motion for Reconsideration") filed that same day. The documents attached as Exhibits to the Amended Complaint, which are both quoted and referred to in the Amended Complaint and Motion for Reconsideration, are the exact same types of materials that Defendant has sought to protect with the filing of its Motion for Protective Order with this Court, and the action taken by Plaintiff can only be seen as an attempt to circumvent the Court's review and decision on that motion.

The Amended Complaint, Exhibits, and Motion for Reconsideration not only contain clearly confidential and proprietary information, but they also contain information being unlawfully obtained and disseminated by a disgruntled former employee in direct violation of his confidentiality agreements. Furthermore, Exhibit F discloses personal identifiable information, including the name of a minor child. As a result, Defendants seek an immediate hearing on their Motion to shield this confidential and proprietary information from ongoing view by the public and competitors of KNR as a result of the Amended Complaint, Exhibits, and Motion for Reconsideration being maliciously filed by Plaintiff and her attorneys.

Additionally, Defendants have reason to believe that Plaintiff will continue to publically disseminate Defendants' confidential and proprietary information, which is presumably being improperly obtained and shared with Plaintiff and her attorneys by a former employee of KNR in

Sandra Kurt, Summit County Clerk of Courts

direct violation of a confidentiality agreement. In light of this ongoing conduct, Defendants have moved the Court for sanctions against Plaintiff and her attorneys and seek an immediate hearing on this motion pursuant to R.C. 2323.51(B)(2) to swiftly bring an end to this frivolous conduct.

In light of the continuous and ongoing harm to Defendants through the public display of their confidential and proprietary information on this Court's docket and the current and anticipated future frivolous conduct of Plaintiff and her attorneys in producing such materials to obtain a competitive advantage in this case, Defendants request that this Court schedule and conduct an immediate hearing on Defendants' Motion to discuss and dispose of these issues.

Respectfully submitted,

/s/ Brian E. Roof
James M. Popson (0072773)
Brian E. Roof (0071451)
SUTTER O'CONNELL CO.
1301 East 9th Street
3600 Erieview Tower
Cleveland, Ohio 44114
(216) 928-2200
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 23rd day of March, 2017. The parties may access this document through the Court's electronic docket system.

Peter Pattakos
Subodh Chandra
Donald Screen
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Peter.pattakos@chandralaw.com
Subodh.chandra@chandralaw.com
Donald.screen@chandralaw.com

Attorneys for Plaintiff Member Williams

/s/ Brian E. Roof
Brian E. Roof (0071451)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

MEMBER WILLIAMS,	)	CASE NO. 2016-09-3928
Plaintiff,	)	
vs.	)	TRANSCRIPT OF PROCEEDINGS
KISLING, NESTICO & REDICK, LLC,	)	
Defendant.	)	VOLUME 1 (Of 1 Volume)

- - -

APPEARANCES:

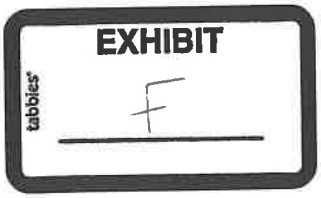
SUBODH CHANDRA, Attorney at Law, (VIA TELEPHONE)
PETER PATTAKOS, Attorney at Law, (VIA TELEPHONE)
On behalf of the Plaintiff.

JAMES M. POPSON, Attorney at Law, (VIA TELEPHONE)
BRIAN E. ROOF, Attorney at Law, (VIA TELEPHONE)
On behalf of the Defendant.

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas, Summit County, Ohio, before THE HONORABLE ALISON BREAUX, Judge Presiding, commencing on March 27, 2017, the following proceedings were had, being a Transcript of Proceedings:

TERRI G. SIMS, RDR, CRR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308



*****Monday, March 27, 2017

(VIA TELEPHONE)

P R O C E E D I N G S

- - -

THE COURT: Good morning. This is Judge Breaux. I'm in my chambers and I have my judicial attorney, Catherine Loya with me, and I also have court reporter Terri Sims with me. She's going to address you folks first.

THE COURT REPORTER: Gentlemen, since we're conducting this hearing over the phone, please identify yourselves before you speak so that I can make sure that I have it correct in the record. If you would speak loudly and clearly, it would make my job a whole lot easier and I would really appreciate it.

THE COURT: All right? Obviously, I'm in receipt of numerous filings that occurred last week. I want to be sure that I make things clear to all of you.

I have before me filings on behalf of the plaintiff, which seem to include matters that are now public record, which

are also the subject of pending motions that I have not yet ruled upon.

And, please understand, you all had a joint motion to set this for a hearing which is supposed to be taking place on April 5th. I will address all of those motions at that time.

I want to be clear: I find these filings to be a blatant attempt at circumventing my ruling.

I think it would be prudent for all counsel to review Professional Rules 3.1, 3.4, 3.6 and 7.3.

I'm going to advise that the counts that the parties have 24 hours to submit a joint proposed protective order with regard to all of the documents. If you feel you cannot do that, please submit your own. I will rule on that on Thursday. You have until the end of business day on Wednesday, March 29 to submit those orders.

Everybody clear so far?

In addition, I'm going to restrict any online access to any documents that

have been filed that are still the subject of my rulings and your pending motions. That means there will be no links on social media, no Twitter, no Facebook; there will be nothing that has anything to do with the subject of those pending motions. If you would like those things, you may come down to the courthouse and you can get a copy of them in person.

Are we clear?

MR. PATTAKOS: Your Honor, Peter Pattakos for the plaintiffs.

THE COURT: Are we clear?

MR. PATTAKOS: Your Honor, Peter Pattakos for the plaintiffs.

THE COURT: I heard you.

MR. PATTAKOS: Okay.

THE COURT: I'm not finished.

MR. PATTAKOS: Okay.

THE COURT: In addition, I will be submitting a gag order with regard to counsel for any of the shenanigans that continue; do you understand that?

I do not appreciate that these things are suddenly trying to be tried in

the media. This will be tried in my court. I want you all to be very clear on that. I do not want you to take advantage of the media as an opportunity to try and sway me one way or the other. Are we understood?

MR. CHANDRA: Your Honor, Subdoh Chandra for the plaintiff.

THE COURT: Yes.

MR. CHANDRA: We have not had the opportunity to submit a full response, so if possible could have a hearing on the issue of the gag order, or is that going to be issued without us having that opportunity?

THE COURT: That's going to be issued if this continues.

MR. CHANDRA: So the order has not been issued then, Your Honor?

THE COURT: Correct. If these shenanigans continue, it will be ordered.

MR. POPSON: Your Honor, Jim Popson.

MR. CHANDRA: And if I --

MR. POPSON: Go ahead, I'm sorry.

MR. CHANDRA: If I may for the record.

Your Honor, respectfully, we do not believe that any violation of Rule 3.6(B) has occurred, and so we are uncertain about what the Court is referring to when it says "if this continues."

The conduct which we have engaged has been fully ruled on and has been fully vetted through that rule. So we are unclear on what the Court specifically is referring to, and if the Court is interested or is considering issuing a gag order, then we would like full due process on that issue.

THE COURT: I'm sure that you would.

Listen --

MR. POPSON: Your Honor -- Your Honor, Jim Popson on behalf of Kisling, Nestico & Redick.

THE COURT: Go ahead.

MR. POPSON: Okay. Our request would be, and it's been requested in our motion, you can grant this motion sua

sponte, okay? We are asking that you issue the order now, and we fully understand that the plaintiff is entitled to be heard on the issue, and we would request that you issue the order and allow them an -- and it would be in effect until they have the opportunity to demonstrate that it should be lifted. That will definitely stop the shenanigans right now which is what we need to have happen.

If you don't issue an order today, Your Honor, they're just going to continue on doing exactly what they're doing with no ramifications because there's no order from you to stop them from doing it.

We want the order issued today and you can comply with their due process by telling them they're free to file their brief in response and brief this entirely, and we can have a hearing; and if it turns out that they're correct, that there's a reason, a legitimate reason, for them to publicize the documents that were the subject of this -- potentially the subject of this protective order, if there's

really a legitimate reason for them to do that, you would be free then at that time to go ahead and lift the order.

But as we get off this phone conference today, on behalf of the Kisling, Nestico & Redick, we are requesting that order be granted right now because these attorneys have demonstrated that they do not intend to stop until you make them stop.

MR. PATTAKOS: Your Honor, Peter Pattakos. If I may briefly respond to that.

THE COURT: You may respond.

MR. PATTAKOS: Thank you.

Every day across the country plaintiffs and prosecutors accuse corporations and their officers of committing fraud. Every day plaintiffs and prosecutors issue press releases accurately summarizing the allegations against the defendant and you never see these plaintiffs and prosecutors sanctioned for these efforts.

There's nothing different about

this case. This -- the reason this is so important is, how are we supposed to be able to investigate? We have a number of messages that came in about this case, and --

THE COURT: Because you are seeking that information off of the Internet.

MR. PATTAKOS: -- and we have a --

THE COURT: Stop, stop, stop.

Mr. Pattakos, none of that was recorded. None of that was being considered because you would not stop talking.

Listen. You -- you sought out all of this information on the Internet by providing all of these documents. This is -- let the court reporter catch up.

Tell me when your ready.

I think you all are very, very clear as to what I'm talking about, Mr. Chandra, the subject documents.

MR. CHANDRA: Respectfully, Your Honor, I'm not. You referred to something called "shenanigans," which is a pejorative term, and I genuinely don't

understand what you are referring to when every single social media post we have made is 100 percent legal compliant with Rule 3.6(B).

Accordingly, I am left with no understanding of why the Court is using pejorative terminology like that towards our posts because they are no different than any post made by any prosecutor when an indictment is filed, or any transaction firm when any complaint is filed. There's nothing different, and so we do not understand what the Court is referring to and we are left, as Mr. Pattakos was trying to say, without guidance because we have a lot of people who are trying to contact us now as a result of our post because they have awareness of the case and they are trying to provide us with information that is vital to our ability to prosecute the case.

And so I would ask to please compare our -- the actual posts with Rule 3.6(B), and the Court will see that they're totally compliant. They

accurately summarize what is alleged. This is all they do.

THE COURT: I am talking about putting online the documents and items that are subject to a pending motion that is before me right now for which we have an oral argument scheduled on April 5th. That is what I'm talking about.

I do not appreciate that you put those things into the record when I have not yet ruled on whether or not they are protected or not. That is what I'm talking about.

I'm going to grant the motion to strike at this point with regard to the motion for reconsideration the second amended complaint and all of the exhibits that were attached thereto.

I will see you all on April 5th.

MR. CHANDRA: Is that a denial of the motion to amend the complaint, Your Honor?

THE COURT: We didn't get that. What -- I'm sorry. The court reporter did not pick that up.

MR. CHANDRA: I'm sorry. Subodh Chandra again.

I want to try to understand the Court's ruling with regard to the motion to strike because we never had a full opportunity to respond to that motion, research and respond to it.

Now it's been granted and we need to try to understand what the scope of that ruling is. Does that, in effect, mean that we are not permitted to file our second amended complaint or that our second amended complaint motion is also being denied?

THE COURT: No, it does not. I am not saying that. It is stricken for purposes of right now because it includes documents that are still pending before me. We will deal with it after April 5th, which is the next time I will see you.

MR. PATTAKOS: Your Honor, Peter Pattakos.

If I may, if you -- for clarification, does this mean rather that the public documents and the allegations

in the second amended complaint will actually be sealed --

THE COURT: Yes.

MR. PATTAKOS: -- not stricken?

THE COURT: Yes.

MR. PATTAKOS: Not stricken, they're sealed? Okay. Thank you.

THE COURT: We'll see you on the 5th.

* * *

C E R T I F I C A T E

I, Terri G. Sims, Official Shorthand Reporter, Court of Common Pleas, Summit County, Ohio, do hereby certify that I reported in Stenotypy the proceedings had and testimony taken in the foregoing-entitled matter, and I do further certify that the foregoing-entitled TRANSCRIPT OF PROCEEDINGS, consisting of 14 typewritten pages, is a complete, true, and accurate record of said matter and TRANSCRIPT OF PROCEEDINGS.

TERRI G. SIMS, RDR, CRR
Official Court Reporter

Dated: March 27, 2017
AKRON, OHIO

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS,

Plaintiff,

-vs-

KISLING, NESTICO & REDICK, LLC, et al.

Defendants;

(CASE NO.: CV-2016-09-3928
) JUDGE ALISON BREAUX
(
). **ORDER**
((Denying and Striking Plaintiff's Motion for
(Leave to File Second Amended Complaint;
) Granting Defendants' Motion to Strike
(Confidential and Proprietary Information and
) Restrict Public Access; Granting Defendants'
(Motion for Sua Sponte Order Prohibiting
) Statements or Dissemination of Information to
*** the Public, Media, or Press)

This matter comes before the Court on the Motion for Leave to File Second Amended Complaint filed by Plaintiff, Member Williams, on March 22, 2017. Defendant, Kisling, Nestico & Redick, LLC and proposed Defendants Alberto R. Nestico and Robert Redick (Defendants), filed their Motion to Strike Confidential and Proprietary Information and Seal and Restrict Public Access on March 23, 2017. Defendants also filed their Motion for a Sua Sponte Order Prohibiting Statements or Dissemination of Information to the Public, Media, or Press on March 23, 2017. Plaintiff filed her Notice of Intent to File Opposition to Defendants' Motion for Gag Order and Motion to Strike on March 24, 2017. This Court held an emergency telephone status conference with all counsel of record present on March 27, 2017 at 11:00 a.m. This Court notes the rapid developments commencing mere hours after the emergency telephone status conference has had a direct effect on this present order.

Upon due consideration of the evidence presented, the facts of this case, S.C.C. 7.04(E) and Sup.R. 45(E) and applicable law, this Court finds that Defendants' motions are well-taken and must be GRANTED.

ANALYSIS

A. FACTS AND ARGUMENTS PRESENTED

In Plaintiff's First Amended Complaint, she alleges Defendant, Kisling, Nestico & Redick (KNR), and proposed Defendants Alberto R. Nestico (Nestico), and Robert Redick (Redick), have engaged, and continue to engage, in a deliberate scheme to defraud their clients

by charging them expenses for investigations that are never actually performed. Specifically, Plaintiff alleges she entered into a contingency fee agreement with KNR allowing KNR to "deduct only reasonable expenses from a client's share of" a settlement or judgment. (Amended Complaint, ¶¶5; 10-12.) During the course of representation, KNR obtained a settlement for Plaintiff. According to Plaintiff, she signed a Settlement Memorandum outlining the settlement amount along with the fees and expenses that were deducted from that amount to be paid to KNR, with the remainder paid to Plaintiff. (Amended Complaint, ¶¶14; 29.) Included in the fees and expenses to be paid to KNR was a $50.00 fee paid to MRS Investigations, Inc. (*Id.* at 29.) Plaintiff asserts KNR never advised her of the purpose of the charge to MRS Investigations, Inc. and never obtained her consent to same. Plaintiff contends "[n]o services were ever provided to Plaintiff in connection with the $50 payment to MRS Investigations, Inc." (*Id.*)

In her Motion for Leave to File Second Amended Complaint, Plaintiff attached her proposed Second Amended Complaint asserting twelve additional causes of action against Defendant KNR and added Defendants Nestico and Redick. In these additional causes of action, Plaintiff asserts Defendants "engaged in a deliberate scheme to defraud their clients," including failing to disclose conflicts of interest, charging fraudulent narrative and investigation fees, and pressuring clients into engaging into unwanted healthcare with certain healthcare providers. (See, generally, Plaintiff's Second Amended Complaint).

Plaintiff further identifies two additional Plaintiffs, Naomi Wright and Matthew Johnson, who claim Defendants "deceived and coerced" them into accepting a high-interest loan agreement and unlawfully asserted liens against their respective lawsuit proceeds after Plaintiffs Wright and Johnson terminated their relationship with Defendants. *Id.* at ¶4. Plaintiff attached approximately forty-five (45) pages of internal KNR documents, including inter-office emails and memoranda between employees regarding both general policy and specific matters, in support of her allegations.

Defendants assert the materials included in Plaintiff's Motion for Leave to File Second Amended Complaint were subject to a pending Motion for Protective Order filed October 12, 2016. In their October 12, 2016 Motion, Defendants seek an order from this Court to 1) prevent Plaintiff from disclosing "attorney's eyes only" documents to "Robert Horton or any law firm that is a competitor of KNR," and 2) bar experts "who are competitors of KNR from reviewing 'attorney's eyes only' information." (Defendant KNR's Motion for Protective

Order). Defendants further assert the materials included in Plaintiff's Motion for Reconsideration of the Court's March 16, 2017 Order Regarding Dismissal of Claims Against Defendant Nestico (Motion for Reconsideration) are the very materials it moved this Court to safeguard through its petition for a protective order.

This Court held an emergency telephone status conference on the record on March 27, 2017 at 11:00 a.m. Counsel for both parties was present. Defendants reiterated their position previously asserted in their October 12, 2017 motion and raised their concerns over the dissemination of potentially protected documents to the media by Plaintiff's counsel. Plaintiff's counsel asserted any dissemination of materials was vital to the public interest and protected by the First Amendment. This Court indicated it would issue a gag order if the public airing of materials subject to the pending motion for protection order continued. In particular, the Court indicated it would issue a sua sponte order prohibiting statements or dissemination of information to the public, media or press if Counsel continued to make accessible the materials sought to be protected by a protective order still pending before the Court. In response to Plaintiff's counsel's request for clarification and inquiry into what the Court meant by "if this continues," the Court replied:

> **THE COURT:** I am talking about putting online the documents and items that are subject to a pending motion that is before me right now for which we have an oral argument scheduled on April 5th. That is what I am talking about.
>
> I do not appreciate that you put those things into the record when I have not yet ruled on whether they are protected or not. (Hearing Transcript, Page 10, Lines 3-13.

* * *

Moreover, the Court finds concerning the publication of an article on Cleveland.com not less than two hours after the commencement of the emergency telephone status, which includes a link to a copy of Plaintiff's Second Amended Complaint. Said article was published March 27, 2017 at 12:31 p.m. (See, http://www.cleveland.com/akron/index.ssf/2017/03/class-action_suit_claims_pers.html).

This Court finds Plaintiff's Second Amended Complaint, Exhibits to same, and Motion for Reconsideration contain internal office correspondence, client spreadsheets, and the personal identifying information of KNR's clients, including the name of a minor. This Court further finds Plaintiff's Second Amended Complaint, Exhibits to same, and Motion for Reconsideration all contain information subject to the provisions of S.C.C. Rule 7.04(E) and Sup. R. 45(E)(2).

While this Court has not yet ruled on whether or not certain materials that are the subject of the protection order will be admissible, counsel for both sides are certainly aware the motion is **still pending**, creating the possibility some or all of those materials would be inadmissible in future proceedings or subject to sealing.

The Supreme Court of Ohio has distinguished gag orders limiting the *parties'* freedom to disseminate information from gag orders on the *media*. *In re T.R.*, 52 Ohio St. 3d 6 at 21, 556 N.E.2d 439 (Ohio, 1990). The *T.R.* court expressly held that gag orders "are considered a less restrictive alternative to restrictions imposed directly on the media." *Id.* at 40, citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 564, 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976). Most analogous to the matter before this Court is the Ohio Supreme Court's unequivocal point in *T.R.* that:

> In the presumptively *open* atmosphere of the adult criminal or civil trial, orders which are effectively prior restraints on the litigants have been frequently used...**to secure a litigant's confidentiality interest in information subject to civil discovery**, *e.g.*, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (protective order prohibiting defendant newspaper from publishing confidential material obtained from plaintiff in libel action); *Triangle Ink & Color Co., Inc. v. Sherwin-Williams Co.* (N.E. Ill. 1974), 61 F.R.D. 634 (protection of trade secrets)[.] (Empahsis added).

* * *

After review, the Court, relying on the extraordinary amount of dissemination of materials that are the subject of pending motions through social media and other Internet avenues, finds it necessary to issue a gag order limiting the parties' and their counsel's freedom to disseminate

information regarding any materials that are the subject of pending motions as well as any information that is the subject of the hearing on April 5th, 2017. This gag order includes the dissemination of any court documents, exhibits, and filings to the press or the public by any means, including but not limited to social media such as Twitter, Facebook, or LinkedIn, and law firm websites, including links thereto.

Furthermore, this Court finds the actions of counsel have compelled it to issue an order to the Summit County Clerk of Courts to restrict online access to any and all filings in this matter **forthwith**. Any concerns about "secret proceedings" is easily resolved by this restriction, as a copy of any filings or documents not under seal may be requested from the Clerk of Courts, and any hearing conducted by this Court remains a proceeding open to the public.

This Court previously indicated at the telephone status conference it would rule on the pending motion for protective order by March 29, 2017, but given the rapidity of the breakdown in communication between the parties and the Court subsequent to the telephone status conference, this Court will hold its ruling on the pending motion for protective order in abeyance until after April 5, 2017.

COURT ORDERS

Based on the foregoing, Plaintiff's Leave to File Second Amended Complaint is **DENIED.** Plaintiff's Leave to File Second Amended Complaint is hereby **STRIKEN FROM THE RECORD.**

The Plaintiff may renew its Motion for Leave to File Second Amended Complaint after the hearing on April 5th, 2017.

The Summit County Clerk of Courts shall hereby **RESTRICT PUBLIC ACCESS** to any and all filings in this matter **FORTHWITH.**

This Court hereby issues a **GAG ORDER** on all parties and their counsel regarding the dissemination of any information that is the subject of any pending motion for protective order,

as well as any **information that is the subject of the hearing on April 5th, 2017**. This gag order includes the **dissemination of any court documents, exhibits, and filings to the press or the public by any means**, including *but not limited to* social media such as Twitter, Facebook, or LinkedIn, and law firm websites.

The Court will consider lifting or otherwise modifying these orders after the hearing on April 5th, 2017.

The hearing on any and all pending motions, the issue of the gag order issued by this Court, and the issue of Defendant Nestico's attorneys' fees with regard to the research and preparation of Defendant Nestico's Motion for Judgment on the Pleadings Regarding Plaintiff's First Amended Complaint is confirmed for **April 5th, 2017 at 9:00 a.m.**

IT IS SO ORDERED

JUDGE ALISON BREAUX

The Supreme Court of Ohio

In re Disqualification of Hon. Alison Breaux

Supreme Court Case No. 17-AP-041

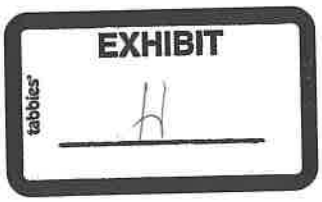
JUDGMENT ENTRY AND DECISION

ON AFFIDAVIT OF DISQUALIFICATION in *Member Williams v. Kisling, Nestico & Redick, LLC, et al.*, Summit County Court of Common Pleas, General Division, Case No. CV-2016-09-3928.

Subodh Chandra has filed an affidavit and two supplemental affidavits with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge Alison Breaux from presiding over any further proceedings in the above-referenced case in the Summit County Common Pleas Court.

Mr. Chandra represents the plaintiff in a civil case against Kisling, Nestico & Redick, LLC, ("KNR") and its managing partner, Rob Nestico. Although originally filed in Cuyahoga County, the case was transferred to the docket of former Summit County Common Pleas Court Judge Todd McKenney in September 2016. Judge Breaux defeated Judge McKenney at the November 2016 general election, and she assumed this case in January 2017.

Citing *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), Mr. Chandra asserts that due process requires Judge Breaux's disqualification based on KNR's contribution to her campaign for judicial office. Mr. Chandra also claims that the judge's political and personal connections to KNR and Nestico—combined with a series of allegedly lawless decisions—have created an appearance of impropriety warranting her removal. *See* Chandra affidavit at 2-3, 15, 29-33.



Judge Breaux has responded in writing to Mr. Chandra's affidavits, denying any bias in favor of the defendants.

Upon review of the filings, no basis has been established to order the disqualification of Judge Breaux.

Caperton v. A.T. Massey Coal Co.

Caperton held that due process requires a judge's recusal "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." 556 U.S. at 884, 129 S.Ct. 2252, 173 L.Ed.2d 1202. Under this test, the United States Supreme Court held that a state supreme court justice was required to recuse himself from a case involving a corporate litigant whose chief executive officer had contributed $3 million to the justice's campaign for office. The executive's contributions were more than three times the amount spent by the justice's other supporters and three times the amount spent by the justice's own campaign committee. "On these extreme facts the probability of bias [rose] to an unconstitutional level." *Id.* at 884-887.

Mr. Chandra argues that *Caperton* similarly requires Judge Breaux's disqualification from the underlying case. Her campaign-finance reports indicate that during the 2016 election cycle, KNR donated advertising space on a billboard truck to the judge's campaign committee. The committee valued KNR's in-kind contribution at $3,600, which Mr. Chandra notes was the maximum amount that an organization could contribute to a judicial candidate. According to Mr. Chandra, because Judge Breaux's campaign received only $32,930 in outside contributions, KNR's reported $3,600 contribution amounted to approximately 11% of the judge's total outside contributions. Mr. Chandra further believes that Judge Breaux "massively undervalued" the fair

market value of the billboard space and that she should have valued it much higher, closer to $24,000. If Judge Breaux had accurately valued the billboard, Mr. Chandra argues, KNR's contribution would have amounted to 56% of her total contributions. Mr. Chandra concludes that under either scenario, KNR's "extraordinary" contribution requires Judge Breaux's removal under *Caperton*. *See* Chandra affidavit at 4-8, 31-33, Ex. 1.

In response, Judge Breaux states that her campaign took in approximately $93,000 and therefore KNR's contribution was neither 11% nor 56% of her total contributions. She characterizes Mr. Chandra's assertions about the true cost of the billboard space as "false," and she references an affidavit from James E. Schooling, a representative of the company that leased billboard trucks to KNR during the 2016 election cycle. Mr. Schooling averred that the total cost/value of Judge Breaux's advertising space was $2,561. (Incidentally, Mr. Schooling also averred that KNR used billboard trucks to advertise for 10 different candidates during the 2016 election, including Judge Breaux's election opponent.) *See* Breaux response at 2-3; Schooling affidavit at 2-3.

An affidavit of disqualification is not the appropriate forum to determine the correct value of an in-kind campaign contribution—especially considering the conflicting evidence in the record here. Therefore, at this point, it must be assumed that Judge Breaux accurately reported the value of KNR's donation of advertising space. As the court explained in *Caperton*, "[n]ot every campaign contribution by a litigant or attorney creates the probability of bias that requires a judge's recusal." 556 U.S. at 884, 129 S.Ct. 2252, 173 L.Ed.2d 1208. And based on this record, it is not reasonable to conclude that KNR's contribution of the billboard space had "a significant and disproportionate influence" in placing Judge Breaux on the underlying matter. Indeed, it difficult to see how a litigant's donating advertising space on a single shared billboard truck—regardless

of the true fair market value—could result in a "significant and disproportionate influence" on a county-wide judicial election. At bottom, the circumstances here are distinguishable from the "extreme" facts in *Caperton*, and therefore KNR's in-kind contribution did not create a serious probability of actual bias rising to an unconstitutional level.

The appearance of impropriety

As *Caperton* recognized, the due process clause demarks only the outer boundaries of judicial disqualification, and states may impose more rigorous standards. *Id.* at 889-890. In Ohio, for example, the chief justice may disqualify a judge for bias or to avoid an appearance of bias. *See* Ohio Constitution, Article IV, Section 5(C); R.C. 2701.03; *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 884 N.E.2d 1082, 2004-Ohio-7359, ¶ 8 (defining the test for determining whether a judge's participation in a case presents an appearance of impropriety). Mr. Chandra asserts that Judge Breaux's political and personal connections to the defendants, combined with erroneous legal decisions in the defendants' favor, have created an appearance of impropriety. But for the following reasons, Mr. Chandra has not established that an objective observer would reasonably question Judge Breaux's impartiality in this case.

First, under long-standing Ohio precedent and the Code of Judicial Conduct, it is not reasonable to question a judge's impartiality based solely upon counsel's or a litigant's contribution to the judge's election campaign. *See In re Disqualification of Cleary*, 77 Ohio St.3d 1246, 674 N.E.2d 357 (1996) ("the fact that a party or lawyer in a pending case campaigned for or against the judge is not grounds for disqualification"); *In re Disqualification of Burnside*, 113 Ohio St.3d 1211, 2006-Ohio-7223, 863 N.E.2d 617 (a large contribution by law-firm defendant did not call into doubt the judge's ability to preside fairly and impartially); Jud.Cond.R. 2.11 cmt. [1] ("A judge's knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge's

election campaign within the limits set forth in Rules 4.4(J) and (K) * * * does not, in and of itself, disqualify the judge"). Certainly, there are circumstances in which counsel's or a litigant's participation in a judge's campaign *may* require judicial disqualification. *See, e.g.*, Board of Professional Conduct Adv. OP. 2014-1. The ability of a judge to serve fairly and impartially in these situations is determined on a case-by-case basis. *In re Disqualification of Celebrezze*, 74 Ohio St.3d 1231, 657 N.E.2d 1341 (1991). KNR's contribution alone, however, does not create any inference of an appearance of impropriety.

Second, Mr. Chandra's various allegations regarding personal connections between Judge Breaux, Judge Joy Malek Oldfield, and the defendants similarly do not support an appearance of impropriety. For example, Mr. Chandra avers that because Judge Breaux campaigned with Judge Oldfield, any Nestico-affiliated contributions directed to Judge Oldfield should also be considered contributions to Judge Breaux. *See* Chandra affidavit at ¶20-37. In response, Judge Breaux acknowledged that she and Judge Oldfield campaigned together, but she further states that their committees split expenses for all joint events and that all monetary contributions were made to each campaign individually. *See* Breaux response at 3. Mr. Chandra's arguments here are too speculative, and "[a]llegations that are based solely on hearsay, innuendo, and speculation—such as those here—are insufficient to establish bias or prejudice." *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4.

Third, "affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings." *In re Disqualification of D'Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶5. Accordingly, the fact that Mr. Chandra disagrees with Judge Breaux's recent decisions, especially her "gag order," is not evidence of bias. It is not the role of the chief justice in deciding an affidavit

of disqualification to review the correctness of a trial judge's decisions—especially before the court of appeals has had an opportunity to rule on the legal issues. Without more, the record does not establish that Judge Breaux's recent legal decisions were the product of bias or favoritism toward defendants based on KNR's contribution to her campaign.

For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Breaux.

Dated this 21st day of June, 2017.

MAUREEN O'CONNOR
Chief Justice

Copies to: Sandra H. Grosko, Clerk of the Supreme Court
Hon. Alison Breaux
Summit County Clerk of Courts
Subodh Chandra, Esq.
James Popson, Esq.
R. Eric Kennedy, Esq.
Thomas Mannion, Esq.

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, Plaintiff, v. KISLING, NESTICO & REDICK, LLC, et al., Defendants.	Case No. CV-2016-09-3928 Judge BROGAN **AFFIDAVIT OF JAMES E. FONNER, D.C.**

Now comes affiant, James E. Fonner, D.C., after first being duly sworn according to law and states the following to be true and accurate to the best of my knowledge:

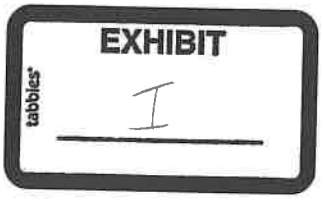
1. I am a Doctor of Chiropractic care licensed to practice by the Ohio State Chiropractic Board, license number DC-03599.

2. During the first week of October, 2018, I was served with a copy of a Subpoena in a Civil Case, a copy of which is attached as Exhibit "A", by Attorney Peter Pattakos.

3. The Subpoena directed me to attend and give testimony at a deposition on October 23, 2018, at 9:30 a.m., at the Pattakos Law Firm, 101 Ghent Road, Fairlawn, Ohio, 44333.

4. The Subpoena warned me that it was a penalty of law not to show:

HEREOF FAIL NOT UNDER PENALTY OF THE LAW.



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5. The Subpoena also warned me that I could be subject to sanctions if I did not obey the Subpoena:

> SANCTIONS:
>
> 1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

6. Prior to October 23, 2018, neither Peter Pattakos nor anyone from his office contacted me to let me know the deposition was no longer going forward and that I did not need to appear at his office by 9:30 a.m. on October 23, 2018.

7. As of the morning of October 23, 2018, it was my belief I was under a legal obligation, pursuant to the subpoena served on me by Attorney Pattakos, to appear at the offices of Attorney Peter Pattakos by 9:30 a.m. on October 23, 2018.

8. Accordingly, at approximately 7 a.m. on October 23, 2018, I drove approximately 120 - 130 miles from Pataskala, Ohio to Fairlawn, Ohio, to the offices of Attorney Pattakos.

9. I arrived at the offices of Attorney Peter Pattakos, 101 Ghent Road, Fairlawn, Ohio, before 9:30 a.m. on October 23, 2018, pursuant to the Subpoena he issued on me, and it did not appear anyone was there.

10. I called the phone number on the subpoena and talked with the office, and then talked with Attorney Pattakos, who invited me into the office.

11. When I arrived inside the offices of Attorney Peter Pattakos, he was the only attorney present to my knowledge, and I was not introduced to any attorneys for any other parties in the case. Attorney Pattakos then informed me the deposition had been canceled.

12. After informing me the deposition was canceled, Attorney Pattakos interviewed me with respect to my interactions with and allegations against KNR and Rob Nestico. He made

EXHIBIT U

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numerous derogatory comments concerning Rob Nestico. He asked me about preferred clinics and any deals with KNR, and I told him I don't know anything about that issue and that I don't have any agreements with KNR.

13. Attorney Pattakos also told me that he knew KNR previously filed a lawsuit against me, and he began to ask me details about the lawsuit. I immediately advised him Attorney Pattakos that I could not talk about the lawsuit because of a Confidentiality and Non-Disparagement Agreement. Attorney Pattakos told me that I did not need to worry about the Confidentiality and Non-Disparagement Agreement because it "did not apply" in the case for which I was subpoenaed, and that therefore it would be okay to discuss it. I refused to provide any confidential information that could breach my obligations under the Confidentiality and Non-Disparagement Agreement.

14. When Attorney Pattakos was done interviewing me, I drove the 120 – 130 miles back from Fairlawn, Ohio to Pataskala, Ohio.

15. I canceled all of my patients for October 23, 2018, due to the Subpoena issued by Attorney Pattakos.

16. Driving approximately 240 – 260 miles roundtrip between Pataskala, Ohio and Fairlawn, Ohio, canceling my patients, losing income, incurring substantial lost time for a deposition that did not go forward, and otherwise complying with the Subpoena was an unnecessary and undue burden on me given that it had been previously canceled but Attorney Pattakos did not advise me of the cancellation.

EXHIBIT U

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Further affiant sayeth naught.

James E. Fonner, D.C.

11/30/2018
Date

STATE OF OHIO)
)
COUNTY OF FRANKLIN)
)

Sworn to before me and subscribed in my presence this 30 day of November, 2018.

Notary Public

JEFFREY T. KLUESENER
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No Expiration Date

EXHIBIT U

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STATE OF OHIO:)
) SS.
COUNTY OF CUYAHOGA:)

AFFIDAVIT OF ANTHONY KEMP

Now comes the Affiant, Anthony Kemp, and after being duly sworn according to law, states as follows:

1. I have personal knowledge of the facts contained in this affidavit.
2. I live at 1855 Cliffview Road, Apt. 9A, Cleveland, Ohio 44112.
3. I am a current client of Kisling, Nestico & Redick.
4. I was contacted by The Pattakos Law Firm who inquired about my representation with Kisling, Nestico & Redick and my medical providers.
5. At no time did I ever initiate contact, in person, by phone or via internet with The Pattakos Law Firm or anyone affiliated with The Pattakos Law Firm.
6. I have no idea or knowledge how The Pattakos Law Firm became aware of who I was or what my phone number was.

FURTHER AFFIANT SAYETH NAUGHT.

ANTHONY KEMP

SWORN TO AND SUBSCRIBED before me this 21st day of March, 2019 by Anthony Kemp

Michael A. Saltzer, Attorney At Law
Notary Public, State of Ohio
My Commission is Continuous Under
Section 147.03 Revised Code

NOTARY PUBLIC

EXHIBIT J