IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Reply in Support of Plaintiffs' Motion to Compel Discovery on Defendants' Assets and Net Worth**

In responding to Plaintiffs' Motion to Compel Discovery on Defendants Assets and Net Worth, Defendants do nothing as much as engage in personal attacks on Plaintiffs' counsel. Through their individual responses, Defendant Floros, Defendant Ghoubrial, and the KNR Defendants continue to suggest that information pertaining to their business operations is entitled to some heightened sense of privacy, despite repeated Court orders to the contrary. *See, e.g.*, 5/23/19 Order. As explained below and more fully in Plaintiffs' Motion to Compel, the Court should order that Defendants produce this information because substantial evidence of a widespread scheme to defraud is at issue, and there are legitimately based concerns about improper dissipation or expenditure of fraud-derived assets from which Plaintiffs and class-members should be protected.

1. Ohio law does not require that Plaintiffs make a prima facie showing that they are entitled to punitive damages before "net worth" discovery is proper.

Defendants assert, citing *Tschantz v. Ferguson*, 97 Ohio App.3d 693 (1994), that Ohio law prevents discovery about a party's financial information unless the requesting party makes a *prima facie* showing of entitlement to punitive damages. *See* Floros Opposition, at 7; KNR Opp., at 4, FN 3. This is simply untrue. Whether to compel a party to produce financial information in discovery is a matter within the sound discretion of the trial court. *See, e.g.*, *Svoboda v. Clear Channel Communs., Inc.*, 6th Dist. Lucas No. L-02-1149, 2003-Ohio-6201, ¶ 21 ("Even though another judge may have ruled

differently by granting the protective order" regarding "personal salary and income information, … we cannot say that the trial court abused its discretion given the record in this case and the potential admissibility of such information.").

Additionally, as Plaintiffs point out in their motion, courts routinely order that defendants' assets in civil cases not only be disclosed and monitored by the plaintiffs, but also frozen to prevent against "improper dissipation" and "expenditure of fraud- derived assets." *Libbey-Owens-Ford Co. v. Skeddle*, 6th Cir. No. 95-3813, 1996 U.S. App. LEXIS 15626, at *15–16, *18–19 (May 31, 1996) (civil suit by corporation against former officers and directors alleging civil RICO violations, breach of fiduciary duty, fraud, conspiracy, and unjust enrichment arising from "three self-dealing schemes"); *Abrahamson v. Jones*, S.D.Ohio No. 1:16-cv-712, 2016 U.S. Dist. LEXIS 106984, at *6-7 (Aug. 12, 2016) (a civil defendant's assets are "subject to freezing or transfer via preliminary injunction" where there are "legitima[te] ... concerns that [defendant] may take some action to put [plaintiff's] assets at risk"); *Concheck v. Barcroft*, S.D.Ohio No. 2:10-cv-656, 2010 U.S. Dist. LEXIS 110325, at *6-7 (Oct. 18, 2010) (where plaintiffs allege "claims for unjust enrichment" "specifically seek[ing] the return of the money ... paid to [d]efendants," "preliminary injunctive relief freezing assets subject to the unjust enrichment claim" is proper because "a preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally").

Plaintiffs have put forth extensive evidence showing that fraud-derived assets are at issue here, and should be subject to scrutiny. *See*, *generally*, Plaintiffs' 05/15/2019 Motion for Class-Action Certification. Nothing in Defendants' opposition briefs counsels to the contrary.

2. **Plaintiffs' concerns about dissipation of assets are legitimate, notwithstanding Defendants' belated attempts to explain their inability to testify about them.**

Defendant Nestico and Defendant Floros have each offered documentation that purportedly shows their testimony was completely truthful and accurate, such that the Court should not order

that Defendants provide information about their financial assets and net worth. Defendant Nestico points to a letter he obtained stating that he does not own "Canada, Inc." *See* KNR Opposition, at 3, Ex. C. But such documentation misses the point, because Plaintiffs' concerns about Defendants' dissipating or fraudulently transferring their assets is based on Defendant Nestico's inability to testify about what he owns, not whether he specifically owns Canada, Inc. For example, at Defendant Nestico's deposition, the following exchange occurred:

> Q: "You're not going to answer the question of how many privately-held corporations you hold an interest in?
>
> A: "I don't know."
>
> Q: "You don't know the answer?"
>
> A: "No."

Nestico Tr. 496:20–25. When further asked to estimate the number of corporations in which Defendant Nestico owns an interest, he could only state that he possesses such an interest in between "five and 12" different corporations. *Id.* at 497:7–13.

For his part, Defendant Floros offers a similar letter to show that Panatha Holdings is no longer an active corporation. *See* Floros Opposition, at 4, Ex. B. This, again, misses the point. Plaintiffs are entitled to know the circumstances surrounding the apparent dissolution of Panatha Holdings LLC, especially because Defendant Nestico, Defendant Floros, and Defendant Ghoubrial were apparently connected by the existence of shared corporate interests. Defendant Nestico essentially admitted as much at this deposition. *See* Nestico Tr. 494:19–24 (discussing that Floros's address and KNR's address appear on Panatha's corporate documents); 495:10–15 ("Panatha Holdings was a business that Floros wanted to start"); and 498:1–11 (discussing that Nestico and Ghoubrial were each involved with TPI Airways).

As indicated by Defendants' inability to testify about their ownership of corporate assets or their participation with one another with respect to such interests, Plaintiffs have legitimate concerns

about the potential that Defendants' will use their unidentified assets to engage in improper dissipation or expenditure of fraud-derived assets.

3. Defendant Floros is not entitled to a protective order or sanctions regarding Plaintiffs' request for information about Floros's assets and net worth.

Finally, Defendant Floros asks the Court to grant him a protective order to "prevent Plaintiffs from seeking unnecessary and irrelevant information about Floros' financial status and assets." Floros Opp. at 9. He further asks the Court to sanction Plaintiffs' counsel to "put some order in this case and discourage these 'hardball' discovery litigation tactics." *Id.* The Court should deny both requests. As discussed above and in Plaintiffs' Motion to Compel, in this case involving a wide-spread fraudulent scheme in which Defendant Floros plays an integral role, information about his assets and net worth is relevant and discoverable under R.C. 2315.21.

Conclusion

The fraud at issue in this case alone, as well as the litigation tactics in which the Defendants have engaged to date, counsel disclosure of Defendants' assets to as to protect the class members. For the above stated reasons, and those discussed fully in Plaintiffs' Motion to Compel, the Court should, consistent with the pending protective order, require Defendants to produce a comprehensive statement of their net worth, including by providing precise information as to where all such assets are held.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on May 24, 2019, using the Court's e-filing system, which will serve copies on all necessary parties.

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