

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>Reply in Support of Plaintiffs' Motion to Strike Confidentiality Designations to Defendant Nestico's Deposition Testimony</p>
--	--

In asking the Court to uphold their confidentiality designations regarding Defendant Nestico's deposition testimony, the KNR Defendants declare that Defendant Nestico's deposition transcript contains information that is "certainly protectable as a trade secret" or contains otherwise "sensitive commercial information." *See* KNR's Opp. 3-4. Far from establishing that KNR's information involves "trade secrets" under Ohio law, however, the KNR Defendants rely on a series of conclusory statements, including that KNR's "internal information is valuable and will cause irreparable harm to its business if disclosed." *See id.*, at 4.

As explained in Plaintiffs' Motion to Strike Defendants' Confidentiality Designations as to Defendant Nestico's Deposition Testimony and more fully below, the Court should strike the confidentiality designations because (1) the same information has been publicly available on the docket since January 2019 in light of the Court's order ruling that Brandy Gobrogge's deposition testimony contained no legitimately confidential information; (2) the categories of information KNR believes are "trade secrets" relate only to general business information that relate to the alleged fraudulent schemes at issue; and (3) KNR has not meet its heavy burden of establishing that such information is entitled to protection under Ohio's trade secret statute, R.C. 1331.61(D).

1. The protective order does not apply to publicly available information.

The Court has unequivocally ruled that the categories of information the KNR Defendants sought to protect as “confidential” vis-à-vis Brandy Gobrogge’s deposition testimony was not properly deemed confidential under the protective order:

Plaintiffs’ December 6, 2018 Motion to Strike the Confidentiality Designations Regarding Brandy Gobrogge’s Deposition Testimony is GRANTED. It is apparent from a review of the motion, brief in opposition, and reply brief that most of the information Defendants assert is “Confidential” has already been made public or is the subject of documents independently obtained by Plaintiffs. The remainder is general information that is not legitimately designated as ‘sensitive or proprietary’ or protectable as a ‘trade secret.’

See 1/8/2019 Order, attached as **Exhibit 1**. Consistent with that order, Plaintiffs filed an unredacted copy of Ms. Gobrogge’s deposition transcript on 1/9/2019. As of that date, the contents of Ms. Gobrogge’s deposition testimony became “publicly available information.” Further, as fully explained in Plaintiffs’ Motion to Strike Defendants’ Confidentiality Designations to Defendant Nestico’s Deposition Testimony, Ms. Gobrogge offered testimony on the same purportedly “confidential” subjects as Defendant Nestico. *See* Plaintiffs’ 5/2/2019 Motion to Strike, at note 2.

The protective order states specifically that “information or documents that are publicly available may not be designated as” confidential. *See* Protective Order, attached as **Exhibit 2**, at ¶ 3. Because Ms. Gobrogge’s now publicly available information relates to the same information the KNR Defendants claim to be “confidential” regarding Defendant Nestico’s deposition testimony, the Court should strike the proposed confidentiality designations provided by the KNR Defendants.

2. None of the information at issue qualifies as a “trade secret” under Ohio law.

Even assuming that the information contained in Defendant Nestico’s deposition transcript had not been publicly available on the docket since January 2019, KNR cannot show that its information is otherwise protected under Ohio law. Merely claiming that information is a “trade secret” under R.C. 1331.61(D) does not make it so. The company “claiming trade secret status bears

the burden to identify and demonstrate that the material is included in categories of protected information under the statute.” *Svoboda v. Clear Channel Communs., Inc.*, 6th Dist. Lucas No. L-02-1149, 2003-Ohio-6201, ¶ 17. To make the requisite showing, the party must demonstrate *how* the information “derived actual or potential independent economic value from not being generally known to, and not being readily ascertainable to, persons who can obtain economic value from” its disclosure. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 404, 2000-Ohio-207, 732 N.E.2d 373. “Conclusory statements as to trade secret factors without supporting factual evidence” is “insufficient to meet the burden of establishing trade secret status.” *Arnos v. MedCorp, Inc.*, 6th Dist. Lucas No. L-09-1248, 2010-Ohio-1883, ¶ 28.¹

Accordingly, absent specific evidence to the contrary, training techniques, marketing strategies, and business models are not “trade secrets” under R.C. 1331.61(D). *See Tomaydo-Tomabhdoo L.L.C. v. Vozary*, 2017-Ohio-4292, 82 N.E.3d 1180, ¶ 28–¶ 31 (8th Dist.). Similarly, information about employee compensation or benefits is not a “trade secret” under the statute. *See Svoboda* at ¶ 17 (“[T]he specified definition of trade secrets does not include an employee’s compensation.”).

Here, KNR insists that five categories of information constitute “trade secret,” including information about (1) KNR’s financial structure; (2) how KNR pays its employees; (3) how KNR trains its employees and manages and strategizes its cases; (4) KNR’s marketing and advertising practices; and (5) the reasons why it obtains police reports on the firm’s cases. *See* KNR’s Opposition, at 2-3. KNR has not met its heavy burden to show that this general business information is “trade secret” under R.C. 1331.61(D). Nor could it, because general information about training, marketing, business models, and employee compensation is not “trade secret” absent

¹ To establish that KNR’s internal information constitutes a “trade secret” under R.C. 1333.61(D), Ohio law requires that the KNR Defendants offer specific factual evidence of the information’s concrete value to KNR’s business operations, including the “savings effected,” the “value” of having the information versus its “competitors,” and how much “effort or money” went into obtaining or gathering the information.” *Arnos*, at ¶ 28. KNR’s conclusory statements that its information is “valuable” or that KNR would be “harmed” from its disclosure is not sufficient.

detailed, specific factual evidence to the contrary. See *Vozary* at ¶ 28–¶ 31 and *Svoboda* at ¶ 17. Thus, the Court should strike the KNR Defendants’ confidentiality designations regarding Defendant Nestico’s deposition testimony.

Conclusion

The protective order was not designed to needlessly impose administrative burden on the parties, the Court, or the public or to shield information about KNR’s fraudulent business practices simply because the KNR Defendants have claimed without explanation that their “internal” information contains “trade secrets.” Because Defendant Nestico testified to no legitimately confidential information and the KNR Defendants cannot show that its information is protected under Ohio law, the Court should again strike KNR’s confidentiality designations.

Respectfully submitted,

/s/ Rachel Hazelet

Peter Pattakos (0082884)
Rachel Hazelet (00097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com

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

Attorneys for Plaintiffs

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.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, ET AL.) CASE NO.: CV-2016-09-3928
Plaintiffs) JUDGE JAMES A. BROGAN
-vs-)
KISLING NESTICO & REDICK LLC,) ORDER
ET AL.)
Defendants)

This matter is before the Court upon several pending motions. Upon due consideration of the issues raised in each, the Court makes the following rulings and orders:

- (1) Plaintiffs' December 6, 2018 Motion for Sanctions against Defendant Ghoubril is OVERRULED.1
(2) Plaintiffs' December 6, 2018 Motion to Strike the Confidentiality Designations regarding Brandy Gobrogge's Deposition Testimony is GRANTED. It is apparent from a review of the motion, brief in opposition, and reply brief that most of the information Defendants assert is "Confidential" has already been made public or is the subject of documents independently obtained by Plaintiffs. The remainder is general information that is not legitimately designated as "sensitive or proprietary" or protectable as a "trade secret."
(3) Plaintiffs' December 6, 2018 Second Motion to Compel Discovery from KNR and Motion for Sanctions is OVERRULED. KNR should continue to make a good faith and comprehensive search of documents relevant in this case and supplement as necessary. However, as it stands there is no proof that KNR is not conducting its search for documents or supplementing discovery in good faith.

EXHIBIT 1

1 The Court already issued a partial Entry & Order granting and compelling the deposition of Richard Gunning. M.D.

- (4) Defendants' (KNR, Nestico, Redick) December 12, 2018 Motion for Protective Order is OVERRULED. Counsel shall only ask questions about the underlying conduct at issue without making reference to the Ohio Rules of Professional Conduct.²
- (5) Defendant Floros' December 12, 2018 Motion to Dismiss is OVERRULED. The Court carefully considered the motion and brief in opposition and finds the issues raised premature as Plaintiffs' claims are sufficiently pleaded to withstand a Civ.R. 12(B)(6) Motion to Dismiss. Defendant Floros may renew his arguments on these issues at a later stage in these proceedings.
- (6) Plaintiffs' December 20, 2018 Motion for Protective Order Barring Speaking Objections is OVERRULED, however the Court admonishes counsel to avoid speaking objections suggesting answers to witnesses.
- (7) Plaintiffs' January 2, 2019 Motion for a Status Conference Regarding the Scheduling of Depositions and Extension for Class-Discovery is GRANTED IN PART. The Court extends the deadline for class certification to May 1, 2019. However, the Court is not inclined to conduct a status conference merely to order counsel to work together professionally in conducting discovery. The working relationship between counsel in completing the tasks at hand requires that counsel meet and confer to reach agreement on mutually available deposition dates/times, and to timely answer correspondence, etc., in order to complete discovery within this extended time-line.

IT IS SO ORDERED.



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

CC: ALL PARTIES OF RECORD

² Defendants' (KNR, Nestico, Redick) January 4, 2019 Motion for Leave to File *Instante*r Reply Brief in Support of Motion for Protective Order is GRANTED. The Reply Brief is considered filed *Instante*r with the Clerk of Court.

SANDRA KURT

IN THE COURT OF COMMON PLEAS
2017 SEP 12 AM 9:22 COUNTY OF SUMMIT

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

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

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

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

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

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

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

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

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

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

i. COUNSEL. Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action but only if:

- a.** It is necessary to disclose the designated document to them for purposes of this action;
- b.** They are under the supervision and control of litigation counsel; and
- c.** All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound.

ii. THE COURT, COURT REPORTERS AND RECORDERS. The Court and court reporters and recorders engaged for depositions;

iii. OTHERS BY CONSENT. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to be Bound; and

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

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

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

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

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

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

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

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

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

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

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

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

12. OBLIGATIONS ON CONCLUSION OF LITIGATION.

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

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

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

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

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

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

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

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

IT IS SO ORDERED



JUDGE ALISON BREAU

CC: ALL PARTIES OF RECORD

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

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

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

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

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date

Signature