

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE JAMES BROGAN
	)	
vs.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<b><u>KNR DEFENDANTS' BRIEF IN RESPONSE</u></b>
	)	<b><u>TO THE COURT'S MAY 22, 2019 SHOW</u></b>
Defendants.	)	<b><u>CAUSE ORDER</u></b>
	)	

Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("KNR Defendants" or "Defendants") hereby respond to this Court's May 22, 2019 Order directing the parties to show cause why prior depositions that have been filed in this matter should not be unsealed.

**I. INTRODUCTION**

The KNR Defendants have designated limited portions of the deposition testimony of KNR employee Brandy Gobrogge and Defendant Alberto Nestico as confidential under this Court's Protective Order and urge that the depositions either remain under seal or be redacted prior to disclosure on the public docket of this case.<sup>1</sup> As outlined below, Defendants maintain that these designations are afforded protection under the Protective Order and outweigh any potential *interest* the public-at-large may have to judicial proceedings in Ohio (regardless of whether any particular citizen would have sufficient standing to bring an action to enforce such *interest*, which raises a separate issue altogether).

It is important to note that, with this Response, Defendants take no issue with the Court reviewing the redacted information or the contents of such information placed under seal in its determination of any issue of fact or law in this case. On the other hand, Defendants are rightly concerned with the actions and history of Plaintiffs' counsel in routinely disseminating and

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<sup>1</sup> The KNR Defendants recognize that this Court has already issued a ruling on Defendants' confidential designations for Ms. Gobrogge. However, Defendants maintain that the topics designated remain confidential under the Protective Order, and urge this Court to reconsider its decision.

publicizing, in print and social media, confidential documents and testimony of these Defendants, and other Defendants, without any regard for Orders issued by this Court.

In light of the current briefing on class certification and the hearing the Court intends to conduct in August 2019 on certification issues, Defendants respectfully suggest that the Court hold in abeyance the issue of whether such sealed testimony should or should not be publically disclosed until class certification issues are resolved. No party, nor the public-at-large, will suffer any imminent prejudice by delaying resolution of these issues following a determination of whether Plaintiffs' class claims can be certified.

## **II. FACTUAL BACKGROUND**

As this Court is well-aware, this case involves class action claims brought against a law firm by four of its former clients, which was founded on confidential documents and communications that were stolen by a former attorney, provided to Plaintiffs' counsel, and wildly disseminated by that counsel both on the docket of this case and throughout print and social media. In response to that conduct, and recognizing that the class claims involved privileged, confidential, and/or proprietary business information of an ongoing law firm business, the Court issued a Protective Order governing both documents produced during discovery and testimony provided by deposition. (See September 12, 2017 Protective Order, attached hereto as Exhibit "A")

Pertinent to the instant Response is the KNR Defendants' designation of limited portions of the deposition testimony of Ms. Gobrogge (October 16, 2018) and Mr. Nestico (February 6 and 7, 2019) as confidential under Paragraphs Three and Four of the Protective Order, which provide in pertinent part:

3. **DOCUMENTS WHICH MAY BE DESIGNATED AS 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, medical or psychiatric information, trade secrets, personnel records, or such other sensitive or proprietary commercial information that is not publically available.*** Public records and other information or documents that are publically available may not be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.

(See Exhibit A)(Emphasis added in bold italics). The Protective Order allows portions of deposition testimony taken in this case to be so designated as confidential:

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 exhibit to be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER. Thereafter, the deposition transcripts and any of those portions so designated shall be protected as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL: ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER, pending objection, under the terms of this Order.

The KNR Defendants so designated limited portions of these depositions as confidential under the Protective Order in good faith because they involved either “confidential personal information, privileged . . . information, trade secrets, personnel records, or such other sensitive or proprietary commercial information that is not publically available” on the following five categories of information:

1. Internal information about the financial ownership structure of KNR as a private business (Nestico Tr. at pp. 14-20);
2. Internal information about the compensation, salary, and/or benefits provided to KNR employees (Nestico Tr. at pp. 21-28, 44, 57, 60-61, 148);
3. Internal information and documents about how KNR trains and evaluates its employees and manages and strategizes cases on behalf of its clients (Gobrogge Tr. at pp. 27-29, 30-34, 51-53, 60-66, 70-89, 92-110, 132-135, 141, 145-154, 164-165, 178, 225-229, 235-236, 242, 456-463, 466-468, 472-477, 489-490; Nestico Tr. at pp. 42-43, 132, 340-345, 363-368, 394-395, 612-63, 627-628).
4. Internal information about KNR’s marketing practices and financials (Gobrogge Tr. at pp. 27-29, 378-391; Nestico Tr. at pp. 127-128); and

5. Internal and privileged communications and/or case notes involving KNR clients (Gobrogge Tr. at pp. 230-234; Nestico Tr. at pp. 623-625).

KNR is one of thousands of personal injury law firms in the State of Ohio. Any company, let alone a law firm such as KNR, is at all times at risk of competitors, or adversaries, stealing valuable information involving the way it conducts and markets its business, how it trains its employees, or how such employees are compensated to either obtain a competitive edge or harm the standing of the business in the marketplace. Employee compensation and benefits are also personal and sensitive to each individual, as are internal privileged communications and/or notes involving KNR clients.

The categories of information designated as confidential by the KNR Defendants are internal to KNR and have not been publically disseminated by KNR or any employee or agent of KNR. Plaintiffs' should not benefit from their counsel's attempts at an end-around of these confidential designations and this Court's Protective Order by improperly and recklessly publishing documents stolen by a former KNR employee in print and social media. Plaintiffs are free to use such information under seal in pursuing their claims in this Court, to the extent they have any relevance to the baseless claims brought in this case, and there is simply no other reason for the public release of such protected information beyond the malicious intent to harm Defendants publically. As a result, Defendants urge this Court to sustain Defendants' confidential designations and preserve this information under seal pursuant to the Protective Order.

### **III. LAW & ARGUMENT**

While there is a common law right of public access to judicial proceedings in civil cases, that right is not absolute. See, e.g. *Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834, 840-841 (6<sup>th</sup> Cir. 2000), citing *United States v. McDougal*, 103 F.3d 651, 659 (8<sup>th</sup> Cir. 1996) (finding "no *First Amendment* right to government information in a particular form, as long as the information sought is made available as required by the *First Amendment*"). For instance, the public's

access to proceedings may be limited by a protective order, which weighs the privacy rights of the party seeking the order with the public's First Amendment right to obtain information about the judicial proceeding. *See, e.g. Seattle Times Co. v. Reinhart*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed.2d 17 (1984); Civ.R. 26(C).

Additionally, civil discovery is typically conducted by the parties in private proceedings, and a right of public access does not attach to documents exchanged by parties or to pretrial discovery that is not filed with the court. *Id.* at 26. As most aptly stated by the United States Supreme Court:

[E]very court has supervisory power over its own records and files, and access has been denied where the court files might become a vehicle for improper purposes . . . the decision as to access is best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.

*Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598-99, 98 S. Ct. 1306, 55 L. Ed.2d 570 (1978).

Trial courts have broad discretion to determine whether compelling reasons exists to seal judicial records. *See, e.g. Nixon*, 435 U.S. at 599. Examples may include when records are “used to gratify public spite or promote public scandal,” to disseminate “libelous statements for press consumption,” or “as sources of business information that might harm a litigant’s competitive standing.” *Id.* at 598 (citations omitted).

As noted above, KNR is but one of thousands of personal injury law firms in the State of Ohio. Defendants have spent considerable time, effort, resources, and expense in developing its confidential and proprietary business practices, including employee training, compensation, and marketing and advertising strategies, the release of which could lead to improper use by its competitors or adversaries to the detriment of KNR. Courts throughout the country have recognized that the public release of such proprietary business information would serve to harm a litigant’s competitive standing and outweigh any public interest in disclosure. *See, e.g. The*

*Proctor & Gamble Co. v. Ranir, LLC*, S.D.Ohio No. 1:17-cv-185, 2017 U.S. Dist. LEXIS 131141, \*9-10 (finding compelling reasons to seal business information, including sales and marketing data and strategic business plans, from public view where it would serve to cause harm if made public and the redactions were narrowly tailored); *Columbus Bookkeeping & Bus. Servs. V. Ohio State Bookkeeping, LLC*, 10th Dist. Franklin No. 11AP-227, 2011 Ohio App. LEXIS 5655 \*12 (Dec. 30, 2011) (recognizing that client lists may be trade secrets, and “disclosure to a competitor grants the competitor a tremendous advantage in not having to spend the time and money to develop that same information”); *Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1667, ¶ (10th Dist.) (recognizing that attorney compensation may be protectable as a trade secret, disclosure of which might “give an unfair advantage [to a competitor] in recruiting certain employees”); *Energy Intelligence Grp., Inc. v. Canal Barge Co.*, E.D.La. No. 12-2107, 2013 U.S. Dist. LEXIS 202896, \*6 (Oct. 28, 2013) (recognizing the confidentiality of employee compensation); *Tropical Sails Corp. v. Yext, Inc.*, S.D.N.Y. No. 14-CV-7582, 2016 U.S. Dist. LEXIS 49029, at \*4 (Apr. 12, 2016) (granting motion to redact documents “relating to marketing and business development activities [such] as sales training materials, internal marketing strategies, company marketing plans, and internal emails regarding marketing tests”); *Algarin v. Maybelline, LLC*, S.D.Cal. No. 12cv3000, 2014 U.S. Dist. LEXIS 23882, at \*3 (Feb. 21, 2014) (recognizing the release of proprietary business strategies could damage a litigant by “circumvent[ing] the time and resources necessary in developing [the competitor’s] own practices and strategies”).<sup>2</sup>

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<sup>2</sup> See, also, *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal documents containing “highly proprietary material concerning the defendants’ marketing strategies, product development, costs and budgeting”); *Gelb v. Am. Tel. & Tel. Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993) (McKenna, D.J.) (recognizing “defendants’ assertion that its competitors . . . could use [the information] to do competitive injury to the defendants is, on the facts of this case, a sufficient basis” for sealing); *Cumberland Packing Corp. v. Monsanto Co.*, 184 F.R.D. 504, 506 (E.D.N.Y. 1999) (“Documents falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.”) *Bauer Bros. LLC v. Nike, Inc.*, S.D.Cal. No. 09cv500, 2012 U.S. Dist. LEXIS 72862, \*6-8 (May 24, 2012) (ordering documents containing marketing and advertising strategies and data sealed); *Magnavox Co. v. Mattel, Inc.*, N.D.Ill. No. 80-4124 (March 24, 1981) (agreements between

There is no question that the information designated as confidential by Defendants has independent value to KNR, which Defendants have continuously protected from disclosure to competitors, and the disclosure of such information would serve to irreparably harm Defendants and its competitive standing in the Ohio legal market. This harm outweighs any interest the public may have in viewing judicial documents of this Court.

Moreover, there is no legitimate reason why the confidentially-designated information should be made available to persons outside of the parties to this litigation, as the information has little to do with the claims brought by Plaintiffs in this case. It is the Court that is the gatekeeper of confidential information produced during discovery, not Plaintiffs' counsel who has continuously tried to usurp this authority by widely distributing and commenting on stolen documents in court filings, on social media, and in the press. *See, e.g. Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937, 939-940 (7th Cir. 2015) (finding that newspaper "possess[ed] no [First Amendment] constitutional right either to obtain [police] officers' personal information from government records or to subsequently publish that unlawfully obtained information" in violation of the Driver's Privacy Protection Act); *DVD Copy Control Assn. v. Bunner*, 31 Cal.4<sup>th</sup> 864, 75 P.3d 1 (Cal. 2003) (finding that court injunction prohibiting website owner from publishing trade secrets acquired by a third-party through improper means does not violate First Amendment guarantees).

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patentee and licensee, patent sub-license agreements, and royalty reports); *Chesa Int'l, Ltd. v. Fashion Assocs., Inc.*, 425 F. Supp. 234 (S.D.N.Y.), *aff'd mem.*, 573 F.2d 1288 (2d Cir. 1977) (customer list); *Vollert v. Summa Corp.*, 389 F. Supp. 1348 (D.Hawaii 1975) (financial records detailing capitalization, net worth, and annual income); *Maritime Cinema Serv. Corp. v. Movies En Route, Inc.*, 60 F.R.D. 587 (S.D.N.Y.1973) (license fees and oral contracts with customers); *Spartanics, Ltd. v. Dynetics Eng'r. Corp.*, 54 F.R.D. 524 (N.D.Ill.1972) (information pertaining to market entry); *Russ Stonier, Inc. v. Droz Wood Co.*, 52 F.R.D. 232 (E.D.Pa.1971) (customer and supplier list); *Corbett v. Free Press Assoc.*, 50 F.R.D. 179 (D.Vt.1970) (profit and gross income data); *Hecht v. Pro-Football, Inc.*, 46 F.R.D. 605 (D.D.C.1969) (financial statements); *Borden Co. v. Sylk*, 289 F. Supp. 847 (E.D.Pa.1968), appeal dismissed, 410 F.2d 843 (3d Cir. 1969) (prices charged and volume sold to customer); *Turmenne v. White Consol. Indus., Inc.*, 266 F. Supp. 35 (D.Mass.1967) (customer lists); *American Oil Co. v. Pennsylvania Petrol. Prods. Co.*, 23 F.R.D. 680 (D.R.I.1959) (lists of dissatisfied customers).

#### IV. CONCLUSION

The KNR Defendants have continuously sought to maintain the confidentiality of certain information that is proprietary to its business or otherwise confidential or protected under the Protective Order issued in this case. Defendants have thus made limited confidentiality designations of Ms. Gobrogge and Mr. Nestico to preserve the privacy of that information from its competitors in the legal market, the disclosure of which would cause irreparable harm to its business and outweighs any right of the public to documents of Ohio's courts. Moreover, Plaintiffs' have ready access to this information to the extent it has any relevance to their class-action claims while under seal with this Court. As a result, Defendants respectfully requests that the Court maintain this information under seal and protected from public view or otherwise redact those portions of the transcripts that Defendants have designated as confidential under the Protective Order. Alternatively, Defendants respectfully suggest that the Court hold these issues in abeyance until class certification issues are resolved.

Respectfully submitted,

/s/ James M. Popson

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Counsel for Defendants

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically with the Court on this 17th day of June, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson  
James M. Popson (0072773)

SANDRA KURT

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

Plaintiffs,

-vs-

KISLING, NESTICO & REDICK,  
LLC, et al.

Defendants;

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

)

( JUDGE ALISON BREAUX

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( **ORDER**

) (Protective Order)

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

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

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

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

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

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

- v. **OTHERS BY CONSENT.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, 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