

**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-	)	(Sitting by Assignment)
	)	
KISLING NESTICO & REDICK	)	
LLC, et al.	)	<b><u>DECISION</u></b>
	)	
Defendants	)	

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On May 22, 2019, this Court ordered counsel to file briefs and show cause why the depositions filed on the Court’s docket, under seal, should not be unsealed.<sup>1</sup>

Defendant Floros states he made limited confidentiality designations to a portion of his transcript including certain financial information exhibits. He states he has an expectation of privacy with regard to the information he deems confidential.

Plaintiffs’ position is that none of the deposition transcripts or exhibits at issue could be lawfully redacted or kept under seal if they constitute evidence by the Court in issuing any ruling in this case. Plaintiffs concede that personal identifying information and private medical or personal information having nothing to do with the claims at issue should be properly redacted from the depositions filed on this Court’s docket. Plaintiffs state it is critical that the public be able to review the information to analyze and critique the Court’s reasoning in ruling upon the substantive issues in this case.

The KNR Defendants urge that the materials remain under seal and they assert that certain information should be properly redacted. They state they only designated specific portions of depositions under the general language in the Protective Order, *to wit*: “confidential personal information, privileged, medical or psychiatric information, trade secrets, personnel records, or other such sensitive or proprietary commercial information that is not publically available.” September 12, 2017 Protective Order, paragraph 3. They assert they made these limited designations to preserve the privacy of their business information from competitors in the legal market. Further, they concede that Plaintiffs (and/or the Court) are free to utilize the

<sup>1</sup> And see Plaintiffs’ May 2, 2019 Motion to Strike Confidentiality Designations to Defendant Nestico’s Deposition Testimony (and the KNR Defendants’ May 13, 2019 Brief in Opposition).

discovery materials, including information under seal, in pursuing their claims (which includes briefing the class-certification issue, or filing any other substantive motion, and/or utilizing information during trial pursuant to the Protective Order). See June 17, 2019 KNR Defendants' Brief in Response to the Court's May 22, 2019 Show Cause Order at page 4.

The Court has been clear throughout that it maintains open records of its proceedings. The Court only seeks to hold the parties to the terms of their Protective Order and impress upon counsel their need to appropriately redact information filed on this Court's docket.<sup>2</sup> The Protective Order provides that confidentiality designations to certain information obtained in discovery are to be specific. Counsel were previously unable to amicably agree on the confidentiality designations so the Court allowed counsel to file the materials under seal. Now however, Plaintiffs have referred to certain sealed materials in briefing the class-certification issue, and this Court may find it necessary to refer to certain sealed materials in ruling upon class certification. In order to maintain a clean record for potential future appellate review, counsel shall make the necessary redactions to the depositions which have already been filed. Once redacted, counsel shall re-file those depositions for the record. The exhibits filed with the class-certification materials may remain under seal, with the understanding that the parties and/or the Court may reference the materials in briefing and or ruling upon substantive issues in this case.

Concerning Defendant Nestico's deposition transcript, the Court conducted an *in camera* review of the proposed confidentiality designations. There has been no showing that any of the information in the transcript qualifies for protection under Ohio's Trade Secrets Act, R.C. 1333.61. However, the Protective Order does allow Defendants to redact information they deem, in good faith, to be "sensitive or proprietary" to their business, and the Court will allow the redactions as set forth in the briefs on this topic.<sup>3</sup> This ruling is again made with the understanding that the parties and/or the Court may generally refer to the materials when relevant and necessary to either briefing, or ruling upon the substantive issues in this case.

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<sup>2</sup> It is counsels' responsibility to redact prior to filing – information that is confidential personal identifying information (including information protected from disclosure by statute), privileged medical or psychiatric information, confidential financial information, or other sensitive or proprietary information.

<sup>3</sup> The KNR Defendants also asked the Court to reconsider its prior order concerning the confidentiality designations to Brandy Gobrogge's deposition testimony. For good cause shown, the KNR Defendants may also appropriately redact portions of Brandy Gobrogge's deposition transcript which they consider to contain "sensitive or proprietary" to their business (and any other personal identifying information that is subject to confidentiality by statute). Again, this is with the understanding that the parties or the Court may refer to the information in filing briefs on substantive issues and/or making rulings on the issues in this case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the parties shall be held to the terms of the Protective Order filed in this case. The Court overrules the Motion to Strike to the Confidentiality Designations to Defendant Nestico's deposition transcript. And, the Court reconsiders its prior ruling concerning the confidentiality designations of Brandy Gobrogge's deposition transcript. The KNR Defendants shall redact the information in the transcripts which they deem sensitive or proprietary to their business and file the redacted deposition for the record.

IT IS FURTHER ORDERED, counsel for the parties shall make appropriate redactions to the depositions filed under seal and re-file the materials, as redacted, for purposes of open records and potential future appellate review.

IT IS SO ORDERED.



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

CC: ALL ATTORNEYS / PARTIES OF RECORD