

**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	)	<b><u>ORDER</u></b>
LLC, et al.	)	
	)	
Defendants	)	

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On May 23, 2019, the Plaintiffs moved to amend the complaint to conform to the evidence. They tendered to the Court their Sixth Amended Class Action Complaint with the motion. They seek to amend the complaint to add five new defendants as well as new claims against the existing defendants and to change the identity of the purported classes. This Court has set a hearing on the Fifth Amended Complaint for class certification pursuant to Civ.R. 23 for **August 20, 2019**.

The Plaintiffs asserted in their motion that recently discovered evidence makes clear that the defendants have violated the Ohio Corrupt Practices Act (OCPA) by conspiring to defraud thousands of former KNR clients including the named plaintiffs. The Plaintiffs also seek to add five chiropractors who they contend joined in the conspiracy with KNR. Two of the named chiropractors practice in Columbus, one in Canton, Ohio, one in Cleveland, and one in Toledo. The Plaintiffs also seek to amend the Complaint to conform to recently discovered evidence to streamline their existing claims from 17 causes of action to 12. The Plaintiffs contend their requested amendment should not substantially delay the Court’s class action determination.

The Plaintiffs claim that their new claims, primarily under OCPA, are all based on the same evidence that Plaintiffs have obtained in support of their existing claims and have been completely consented to by the existing parties who have long been on notice of their own conduct. The Plaintiffs argue that this Court should permit the new claims against the existing Defendants to be added to this lawsuit pursuant to Civ.R. 15(B). The Plaintiffs argue that they have submitted evidence sufficient to meet all four elements of a OCPA claim.

KNR contends that the Plaintiffs' motion should be denied because there is no basis to amend the Complaint pursuant to Civ.R. 15(B) and such amendment is futile, untimely, and unduly prejudicial. KNR notes that this Court previously issued an order on November 17, 2018, stating that this Court is not inclined to allow any amendments at this stage of the proceedings absent a showing of substantial showing of a need to amend. KNR also argues Plaintiffs have failed to identify the substance of the purported new information. KNR also argues that courts have held that motions to amend after the filing of a class action matter are untimely and prejudicial. They also argue that the addition of new defendants would essentially reset the entire discovery process in this case. They also note the Sixth Amended Complaint does not allege that KNR had any interaction with the five putative new Defendants. Dr. Ghoubrial and Dr. Floros make similar arguments to those made by KNR. Non-party Nazreen Khan and Stephen Rendek have also responded in opposition to the motion.

Civ.R. 15(A) addresses amendments before trial. That rule provides that the Court may freely grant leave when justice so requires. A motion for leave should be denied if there is a showing of "bad faith, undue delay or prejudice to the opposing party." *Hoover v. Sumlin*, 12 Ohio St.3d 1, 465 N.E. 2d 377 (1984). Courts may consider a motion for leave prejudicial if a proposed amendment alters the case's theory and is proposed late enough to require the defendant engage in significant new preparation.

In the Fifth Amended Complaint, the Plaintiffs alleged that Dr. Ghoubrial intentionally exploited KNR clients by administering overpriced injections and took exorbitant profits from selling devices to the clients without disclosing his financial interests in the transactions and then washed them through the settlement proceeds. The Plaintiffs allege in the same Complaint that Defendant Floros was one of KNR's "partner chiropractors" that do not accept payment from insurance companies to permit them to take a higher percentage of the KNR settlement that would otherwise be entitled under prevailing insurance-industry standards. This Court does not believe the requested amendments to the Fifth Amended Complaint cause material prejudice to the Defendants.

Therefore, upon due consideration, the Court grants Plaintiffs' leave to Amend the Complaint to conform to the existing evidence as it relates to all existing named Defendants in this case. The amendment shall serve to streamline Plaintiffs existing claims and conform to the proposed classes in Plaintiffs Motion for Class Certification, including adding the new allegations relating to the Ohio Corrupt Practices Act, R.C. 2923.34. The Court finds the existing Defendants have been or should have been on notice that their alleged conduct could result in such additional claims and there will be no surprise or prejudice by the amendment.<sup>1</sup>

As to Plaintiffs' request to bring new defendants into this litigation, the Court finds the motion untimely and further finds such addition would result in undue delay of the scheduled class certification proceedings. These new Defendants would undoubtedly need time to answer the Sixth Amended Complaint and pursue the exhaustive discovery encountered previously in the present litigation.

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<sup>1</sup> The Court will allow supplemental briefing on the new allegations during the class-certification process.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Amend the Complaint is GRANTED IN PART AND OVERRULED IN PART as set forth in the body of this Order.

IT IS SO ORDERED.



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

The Clerk shall serve all counsel and parties of record.