

**COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT**

Docketing Statement

Appeal No. _____

A time-stamped copy of the final judgment being appealed must be attached to this statement.

Trial Court Name - Summit County Common Pleas Court

Trial Court Caption Member Williams, et al.
(Name of first plaintiff)

versus

Kisling, Nestico & Redick, LLC, et al.
(Name of first defendant)

Trial Court Case Number – 2016-CV-09-3928

Trial Court Judge James A. Brogan

Date of judgment appealed: January 26, 2024
Was the time to appeal extended
by App.R. 4(B)? ___ Yes X No

CALENDAR DESIGNATION

THIS APPEAL SHOULD BE ASSIGNED TO:

X Regular Calendar.

___ Accelerated Calendar. *See* Loc.R. 21.

___ Expedited Calendar (generally for appeals involving termination of parental rights). *See* App.R. 11.2.

THE RECORD

Mark the paragraph that applies.

TO THE CLERK OF COURTS: Please immediately assemble and transmit the record in this case. I certify that the paragraph I marked accurately describes the complete record to be filed:

1. ___ The record will consist of **ONLY** the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment.
2. X The record will include the original papers and exhibits filed in the trial court, a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by a court reporter appointed by the trial court, who I served with a praecipe that I also filed with this court. If only a partial transcript of proceedings is requested, see App.R. 9(B).
3. ___ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a statement of the evidence or proceedings pursuant to App.R. 9(C) or an agreed statement of the case pursuant to App.R. 9(D).
4. ___ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and both a transcript of proceedings prepared by a court reporter appointed by the trial court and a statement of the evidence or case pursuant to App.R. 9(C) or (D). If only a partial transcript of proceedings is requested, see App.R. 9(B).

If you intend to rely upon a transcript of proceedings filed in an earlier appeal, you must seek permission from the court to supplement the record in this appeal with the transcript filed in the earlier appeal.

**A time-stamped copy of the final judgment being appealed must be attached to this statement.
If the order appealed is not final and appealable under R.C. 2505.02, the Court must dismiss the appeal.**

THE PARTIES

Please provide the following information for **all** parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc). **See Local Rule 3.**

If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. **Appellant must attach a copy of any order that resolved a claim against any of the parties.**

<p>Party's name: Kisling, Nestico & Redick LLC</p> <p>Party's designation: Appellant</p> <p>Attorney's name: James M. Popson</p> <p>Attorney's registration number 0072773</p> <p>Address of counsel or party: Sutter O'Connell, 1301 E. 9th Street, 3600 Erieview Tower, Cleveland, OH 44114</p> <p>Phone (216) 928-2200 Fax (216) 928-4400</p> <p>Email: jpopson@sutter-law.com</p>	<p>Party's name: Alberto R. Nestico</p> <p>Party's designation: Appellant</p> <p>Attorney's name: James M. Popson</p> <p>Attorney's registration number: 0072773</p> <p>Address of counsel or party: Sutter O'Connell, 1301 E. 9th Street, 3600 Erieview Tower, Cleveland, OH 44114</p> <p>Phone (216) 928-2200 Fax: (216) 928-4400</p> <p>Email: jpopson@sutter-law.com</p>
<p>Party's name: Robert Redick</p> <p>Party's designation: Appellant</p> <p>Attorney's name: James M. Popson</p> <p>Attorney's registration number 0072773</p> <p>Address of counsel or party: Sutter O'Connell, 1301 E. 9th Street, 3600 Erieview Tower, Cleveland, OH 44114</p> <p>Phone (216) 928-2200 Fax (216) 928-4400</p> <p>Email: jpopson@sutter-law.com</p>	<p>Party's name: Kisling, Nestico & Redick LLC</p> <p>Party's designation: Appellant</p> <p>Attorney's name: Thomas P. Mannion</p> <p>Attorney's registration number: (0062551)</p> <p>Address of counsel or party: Lewis Brisbois, 1375 E. 9th Street, Suite 2250, Cleveland, OH 44114</p> <p>Phone (216) 344-9467 Fax (216) 344-9241</p> <p>Email tom.mannion@lewisbrisbois.com</p>
<p>Party's name: Alberto R. Nestico</p> <p>Party's designation: Appellant</p> <p>Attorney's name: Thomas P. Mannion</p> <p>Attorney's registration number: (0062551)</p> <p>Address of counsel or party: Lewis Brisbois, 1375 E. 9th Street, Suite 2250, Cleveland, OH 44114</p> <p>Phone (216) 344-9467 Fax (216) 344-9241</p> <p>Email tom.mannion@lewisbrisbois.com</p>	<p>Party's name: Robert Redick</p> <p>Party's designation: Appellant</p> <p>Attorney's name: Thomas P. Mannion</p> <p>Attorney's registration number: (0062551)</p> <p>Address of counsel or party: Lewis Brisbois, 1375 E. 9th Street, Suite 2250, Cleveland, OH 44114</p> <p>Phone (216) 344-9467 Fax (216) 344-9241</p> <p>Email tom.mannion@lewisbrisbois.com</p>

<p>Party's name: Kisling, Nestico & Redick LLC</p> <p>Party's designation: Appellant</p> <p>Attorney's name: R. Eric Kennedy (0006174) and Daniel P. Goetz (0065549)</p> <p>Address of counsel or party: Weisman, Kennedy & Berris Co., LPA, 101 W. Prospect Avenue, 1600 Midland Building, Cleveland, OH 44115</p> <p>Phone (216) 781-1111 Fax: (216) 781-6747</p> <p>Email: ekennedy@weismanlaw.com and dgoetz@weismanlaw.com</p>	<p>Party's name: Alberto R. Nestico</p> <p>Party's designation: Appellant</p> <p>Attorney's name: R. Eric Kennedy (0006174) and Daniel P. Goetz (0065549)</p> <p>Address of counsel or party: Weisman, Kennedy & Berris Co., LPA, 101 W. Prospect Avenue, 1600 Midland Building, Cleveland, OH 44115</p> <p>Phone (216) 781-1111 Fax: (216) 781-6747</p> <p>Email: ekennedy@weismanlaw.com and dgoetz@weismanlaw.com</p>
<p>Party's name: Robert Redick</p> <p>Party's designation: Appellant</p> <p>Attorney's name: R. Eric Kennedy (0006174) and Daniel P. Goetz (0065549)</p> <p>Address of counsel or party: Weisman, Kennedy & Berris Co., LPA, 101 W. Prospect Avenue, 1600 Midland Building, Cleveland, OH 44115</p> <p>Phone (216) 781-1111 Fax: (216) 781-6747</p> <p>Email: ekennedy@weismanlaw.com and dgoetz@weismanlaw.com</p>	<p>Party's name: Member Williams</p> <p>Party's designation: Appellee</p> <p>Attorney's name: Peter Pattakos (0082884), Zoran Balac (0100501) and Gregory Gipson (0089340)</p> <p>Address of counsel or party: The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, OH 44333</p> <p>Phone (330) 836-8533 Fax: (330) 836-8536</p> <p>Email: peter@pattakoslaw.com, zbalac@pattakoslaw.com, and ggipson@pattakoslaw.com</p>
<p>Party's name: Thera Reid</p> <p>Party's designation: Appellee</p> <p>Attorney's name: Peter Pattakos (0082884), Zoran Balac (0100501) and Gregory Gipson (0089340)</p> <p>Address of counsel or party: The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, OH 44333</p> <p>Phone (330) 836-8533 Fax: (330) 836-8536</p> <p>Email: peter@pattakoslaw.com, zbalac@pattakoslaw.com, and ggipson@pattakoslaw.com</p>	<p>Party's name: Monique Norris</p> <p>Party's designation: Appellee</p> <p>Attorney's name: Peter Pattakos (0082884), Zoran Balac (0100501) and Gregory Gipson (0089340)</p> <p>Address of counsel or party: The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, OH 44333</p> <p>Phone (330) 836-8533 Fax: (330) 836-8536</p> <p>Email: peter@pattakoslaw.com, zbalac@pattakoslaw.com, and ggipson@pattakoslaw.com</p>

CV-2016-00-3028 CA-31008	MICHAEL, KATHRYN Appeals, Court of	01/31/2024 08:51:08 AM 08 AM	DOST DOST Page 4 of 8 Page 4 of 8
	<p>Party's name: Richard Harbour</p> <p>Party's designation: Appellee</p> <p>Attorney's name: Peter Pattakos (0082884), Zoran Balac (0100501) and Gregory Gipson (0089340)</p> <p>Address of counsel or party: The Pattakos Law Firm LLC, 101 Ghent Road, Fairlawn, OH 44333</p> <p>Phone (330) 836-8533 Fax: (330) 836-8536</p> <p>Email: peter@pattakoslaw.com, zbalac@pattakoslaw.com, and ggipson@pattakoslaw.com</p>	<p>Party's name: Sam Ghoubrial, M.D.</p> <p>Party's designation: Defendant</p> <p>Attorney's name: Bradley J. Barmen</p> <p>Attorney's Registration Number: 0076515</p> <p>Address of counsel or party: Lewis Brisbois, 1375 E. 9th Street, Suite 2250, Cleveland, OH 44114</p> <p>Phone: (216) 344-9422 Fax: (216) 344-9421</p> <p>Email: brad.barmen@lewisbrisbois.com :</p>	
	<p>Party's name: Minas Floros, D.C.</p> <p>Party's designation: Defendant</p> <p>Attorney's name: Shaun H. Kedir</p> <p>Address of counsel or party: Kedir Law Offices, 1400 Rockefeller Building, 614 West Superior Avenue, Cleveland, OH 44113</p> <p>Phone: (216) 696-2852 Fax: (216) 696-3177</p> <p>Email: shaunkedir@kedirlaw.com</p>		

GENERAL INFORMATION

Was a stay requested in the trial court? ☐ Yes ☒ No

If a stay was requested, how did the trial court rule? ☐ Granted ☐ Denied ☐ Pending

If this case has previously been before this Court, list prior appellate case number(s): 29630, 29636, 30602 and 30604

List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

Probable issues for appeal: Whether the trial court abused its discretion in certifying a class action.

CRIMINAL CASE

☐ Misdemeanor ☐ Felony
☐ Trial ☐ Guilty/No contest plea

Charges _____

Sentence _____

Type of Appeal: ☐ Defendant's Appeal as of Right ☐ State's Appeal as of Right
☐ Defendant's Appeal by Leave of Court ☐ State's Appeal by Leave of Court

CIVIL CASE

Type of action in trial court? Legal malpractice, fraud, breach of contract, unjust enrichment

Did the judgment dispose of all claims by and against all parties? ☐ Yes ☒ No

If not, is there a determination that there is "no just reason for delay?" Civ.R. 54(B). ☐ Yes ☒ No

Have the parties previously participated in mediation of this dispute? ☒ Yes ☐ No

Would a mediation conference assist in the resolution of this matter? ☐ Yes ☒ No ☐ Maybe

Must this case be expedited as being one of the following types of cases? ☐ Yes ☒ No

☐ App.R. 11.2(B) or (C) appeals (abortion without parental consent, adoption, and parental rights)

☐ App.R. 11.2(D) appeals (dependent, abused, neglected, unruly, or delinquent child appeals)

☐ Appeal under determination of local fiscal emergency brought by municipal corporation

☐ Election contests as provided in R.C. 3515.08

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE ATTACHED A COPY OF THE FINAL JUDGMENT FROM WHICH THIS APPEAL IS TAKEN.

/s/ James M. Popson (0072773)

Signature of Counsel (or party if not represented by counsel)

SUMMIT COUNTY
CLERK OF COURTS

In this matter, this Court will certify as Class A only those patients and clients of the defendants who were alleged victims of the price gouging scheme who did not receive a reduction of their medical bills or fees and were told not to use their health insurance carriers to avoid scrutiny of these charges and fees. These charges by Ghoubrial were for trigger point injections, TENS units and back braces.

The fact that some of the patients and clients received more of the procedures or devices than others should not prevent them being in the same class in this lawsuit.

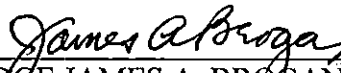
Judge Henzel stated in Mozingo v. 2007 Gaslight Ohio, LLC (2016) Ohio 4828 the fact that each of the class members may have a different amount of damages does not automatically make the class unmanageable and not “superior” to other available methods for adjudication of the controversy.

For the purposes of this class action, the “necessity” for the medical injections and devices will be conceded. The Plaintiff will have to prove in the action that the prices for these items would not be covered by the standard health insurance coverages for these individuals.

The defendants have not asserted in their motion to dismiss that any of the clients or patients have attempted to start a parallel action or to intervene in one, and it seems unlikely in light of the relatively small individual recoverys that would be sought.

Thera Reid qualifies as a class representative because she alleged in the complaint that she was charged unreasonable rates for trigger point injections by Dr. Ghoubrial pursuant to the price gouging scheme alleged in the complaint.

IT IS SO ORDERED.



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

The Clerk of Courts shall serve all counsel/parties of record.

JAB:lcb
16-3928remand3