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The Hon. Michael P. Shea
(via email Emily_Gait@ctd.uscourts.gov)

November 6, 2020

Re: *Bracho v. The Kent School Corporation*, 3:18-cv-00021-MPS

Dear Judge Shea:

This letter constitutes Defendant Kent School's submission under the Court's discovery dispute protocol. There are three disputes: (1) refusal/objection of Plaintiffs' counsel to allow counsel for Kent School to question Plaintiff Danilo Bracho about surveillance video of Danilo; (2) refusal/objection of Plaintiffs' counsel to allow counsel for Kent School to question non-party David Bracho about the Bracho family's financial status; and (3) refusal/objection of Plaintiffs' counsel to allow counsel for Kent School to show Dr. Jesse Jupiter, one of Danilo's treaters, the surveillance video of Danilo.

## I. Kent School Is Entitled to Question Danilo Bracho About the Surveillance Video of Him and Plaintiffs' Counsel Improperly Blocked That Questioning.

Shortly before the start of Plaintiff Danilo Bracho's continued deposition (ordered by the Court), Plaintiffs' counsel objected to counsel for Kent School questioning Danilo about surveillance video of Danilo, writing: "It's not clear to me how the surveillance relates to any one of the three permitted topics" (*i.e*, the topics Plaintiffs' counsel argued were permitted by the Court). Plaintiffs' counsel reiterated this objection again at the start of the deposition: "I don't understand how we're going to get into the video." The parties called the Court, but it was not able to resolve this issue at that time. Plaintiffs' counsel once again reiterated his "objection to moving beyond the topics discussed by the judge at the May 20, 2020, hearing." The parties nevertheless proceeded with questioning to which there was no dispute. At no point during Danilo's deposition did Plaintiffs' counsel withdraw his objection. Plaintiffs' counsel did withdraw his objection *after* Danilo's deposition, during David's deposition.

As Kent School understands it, Plaintiffs' counsel now argues that he did not object to Kent questioning Danilo about the video. The record refutes that position. This was a bad faith strategy by Plaintiffs' counsel and he's now playing loose with the facts because he knows he acted inappropriately. Plaintiffs have waived the merits of their objection (they allowed David to view the video during his deposition). Plaintiffs allowed David to view the video because their objection was meritless and they realized the problem they caused. The Court's order (Docket Entry 118) allowed Kent School to question Danilo about the video because it was not available to Kent School at Danilo's first deposition.

## II. Plaintiffs Placed the Bracho Family's Finances At Issue Yet Improperly Precluded Questioning About That Topic.

The Plaintiffs' damages model is based on Danilo being a U.S. citizen. Plaintiffs' immigration rebuttal expert opines that Danilo can gain U.S. citizenship under the EB-5 Visa

Immigrant Investor Program, which requires applicants to invest significant money in a U.S. business that they will run and hire U.S. workers for. (*see* www.uscis.gov/eb-5) Plaintiffs' expert testified, "[I]f Danilo satisfies the requirements of this program, including any requirements concerning the source of the invested funds, then, more likely than not, he would be able to obtain full permanent residence." Plaintiffs' expert "assume[d] that [Danilo] could meet the capital requirement" for that program. At his recent deposition, David Bracho testified that Danilo will use family finances to satisfy the requirements of the Immigrant Investor Program. (David: "Will [Danilo] have the money to be an investor? He will certainly have." David: "My account, [Danilo's] account, the corporate accounts of the companies we own, my father's account, my mother's account. It's all the same account. We are a family.")

Clearly, the family finances are at issue. The Bracho family contends that they will use their comingled funds to help Danilo immigrate to the United States. Information about those funds (including what accounts and funds the family has, how much money is accessible, what the source(s) of the funds are (as Plaintiffs' expert acknowledges that the source of investment funds is at issue in the EB-5 program), and other information about the funds is relevant to and discoverable in this case.

Stunningly, Plaintiffs' counsel instructed David not to answer questions about the family's companies, including a family company that Danilo sits on the board. For example, Kent School asked how Bancasa AG, a family company that Danilo is on the board of makes its money. Even though that question is directly relevant to the source of funds of Danilo's potential investment, and even though Plaintiffs' own expert notes that lawful source of funds is a requirement for the EB-5 program,[1] Plaintiffs' counsel refused to let David answer that question.

Plaintiffs cannot have it both ways. They cannot claim their family's finances will gain Danilo U.S. citizenship while simultaneously precluding discovery into that topic. *See* Fed. R. Civ. P. 26(b)(1). Kent School is entitled to question David about the family's finances.

### III. It *is* Appropriate For Dr. Jupiter to View the Surveillance Video.

Dr. Jupiter performed surgery on Danilo's wrist in August, 2019. The surveillance video of Danilo, taken a couple months later, shows Danilo using his wrist to perform everyday activities. The surveillance video is relevant to Kent School's questioning of Dr. Jupiter because it directly bears on Dr. Jupiter's treatment and prognosis and Danilo's ability to use his wrist. And the video contradicts contentions by Plaintiffs and his experts. Once again, Plaintiffs' counsel makes a baseless objection. He refuses to permit Kent School from showing the video to Dr. Jupiter. Kent School is certainly entitled to show Dr. Jupiter the video as a basis for questioning him about his treatment and prognosis.

Very Truly Yours */s/ John C. Pitblado* (cc: Antonio Ponvert III, Esq., APonvert@koskoff.com)

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[1] Source of funds is a key issue because there is evidence that officials in Venezuela accused Bancasa AG (of which Danilo is a board member) and David Bracho of engaging in illicit activity and because the Bracho family's businesses and finances are largely in Venezuela. Certainly the U.S. government will not grant citizenship to someone who derives funding from illicit activities. At a minimum, U.S. officials will investigate that funding and Kent School is entitled to much more information from Plaintiffs.