

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

TERESA L. O'MALLEY,

Plaintiff,

Case No.: 3:12-cv-326

vs.

NAPHCARE, INC., *et al.*,

Judge Walter H. Rice

Magistrate Judge Michael J. Newman

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO  
CORRECT AND ADD AFFIDAVIT (DOC. 47)**

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This is a civil case for which Plaintiff has been afforded multiple opportunities to amend her complaint. In response to Plaintiff's third amended complaint, Defendants have filed a motion to dismiss. Doc. 42. This dispositive motion has been fully briefed, and is now before the Court for review and decision. Subsequent to the briefing on the motion to dismiss, Plaintiff now moves to correct a clerical error in her memorandum in opposition and also to add an affidavit of an individual, Juahara Devon Kniess. Doc. 47. In the motion, Plaintiff's counsel advises the Court that Defendants consent to the correction of the clerical error but challenge the appropriateness of including the Kniess affidavit in the Court's consideration of the pending motion to dismiss. *Id.* at PageID 434.

For good cause shown, Plaintiff's motion is **GRANTED** with respect to the correction of the clerical error, and her memorandum in opposition is **SO AMENDED**. Recognizing, on the other hand, that the dismissal motion before the Court was filed under Rule 12(b)(6), and that documents attached to a memorandum in opposition may not be considered in a 12(b)(6) review, *see Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008), Plaintiff's request to add the affidavit is **DENIED**.

**IT IS SO ORDERED.**

May 19, 2014

s/ **Michael J. Newman**  
United States Magistrate Judge