IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS	)	
	)	CASE NO. CV-2016-09-3928
Plaintiff,	)	
	)	JUDGE TODD MCKENNEY
vs.	)	
	)	**SEPARATE ANSWER OF KISLING LEGAL GROUP, LLC**
KISLING, NESTICO & REDICK, LLC, et al.	)	
	)	
Defendants.	)	**JURY DEMAND ENDORSED HEREIN**
	)	

For its Answer to Plaintiff Member Williams' Complaint, Defendant Kisling Legal Group, LLC states and avers as follows:

I. NATURE OF THE ACTION

1. This Defendant denies the allegations contained in paragraph 1 of Plaintiff's Complaint.

2. This Defendant admits that the Plaintiff has alleged a class action under Ohio Civil Rule 23 alleging claims of breach of contract, fraud, and unjust enrichment under Ohio Law, but this Defendant denies the validity of any of Plaintiff's claims and further denies each and every other allegation contained in paragraph 2 of Plaintiff's Complaint.

3. This Defendant denies the allegations in paragraph 3 of Plaintiff's Complaint.

II. PARTIES

4. This Defendant denies the allegations in paragraph 4 of Plaintiff's Complaint, except to admit only that: (a) Kisling, Nestico & Redick LLC ("KNR") is a limited liability company formed under Ohio law; (b) KNR is a law firm focusing on personal-injury cases; (c) KNR's principal place of business is 3412 West Market Street, Fairlawn, Ohio 44333; (d) KNR has additional offices in Independence, Beachwood, Westlake, Cincinnati, Columbus, Dayton, Toledo, and Youngstown; (e) KNR engages in marketing and advertising; and (f) any of KNR's marketing or advertising speaks for itself. Responding further, this Defendant denies any allegation that is inconsistent with or contrary to KNR's marketing or advertising.

5. This Defendant denies the allegations in paragraph 5 of Plaintiff's Complaint, except to admit only that: (a) Plaintiff was a client of KNR from on or around September of 2013 until August of 2015 regarding a car accident; (b) she voluntarily signed a contingency fee agreement with KNR; (c) KNR obtained a settlement on her behalf; and (d) Plaintiff voluntarily signed the Settlement Memorandum (as required by Ohio law) after being fully advised of the information contained therein. Responding further, this Defendant admits that the contingency fee agreement between Plaintiff and KNR and the Settlement Memorandum speak for themselves and denies all allegations that are inconsistent with or contrary to the express terms of the contingency fee agreement and/or the Settlement Memorandum.

6. This Defendant denies the allegations in paragraph 6 of Plaintiff's Complaint, except to admit only that Alberto R. Nestico is a resident of Ohio.

7. This Defendant denies the allegations in paragraph 7 of Plaintiff's Complaint.

III. JURISDICTION AND VENUE

8. This Defendant states that paragraph 8 of Plaintiff's Complaint states a legal conclusion for which no response is necessary. To the extent an answer is required, this Defendant denies the allegations contained in paragraph 8 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

9. This Defendant denies the allegations contained in paragraph 9 of Plaintiff's Complaint.

IV. FACTUAL ALLEGATIONS

A. Plaintiff's Complaint improperly contains headings that contain allegations and is not in compliance with the Ohio Rules of Civil Procedure. For the record, this Defendant denies the allegations contained in section IV.A.

10. This Defendant denies the allegations in paragraph 10 of Plaintiff's Complaint, except to admit only that KNR has entered into contingency fee agreements with its clients, but said agreements are protected by the attorney-client privilege and work product doctrine. As it

relates to Plaintiff, who has waived any privilege, this Defendant admits that the contingency fee agreement between Plaintiff and KNR speaks for itself and denies all allegations that are inconsistent with or contrary to Plaintiff's contingency fee agreement. Responding further, this Defendant states that the contingency fee agreement complies with Ohio law.

11. This Defendant denies the allegations in paragraph 11 of Plaintiff's Complaint, except to state only that all contingency fee agreements with clients other than Plaintiff, who has waived any privilege, are protected by the attorney client privilege and work product doctrine. Responding further, this Defendant states that the contingency fee agreement complies with Ohio law.

12. This Defendant denies the allegations in paragraph 12 of Plaintiff's Complaint, except to state only that all contingency fee agreements with clients and all communications with clients, other than Plaintiff, who has waived any privilege, are protected by the attorney-client privilege and work product doctrine. As it relates to Plaintiff, this Defendant admits that the contingency fee agreement between Plaintiff and KNR speaks for itself and denies all allegations that are inconsistent with or contrary to Plaintiff's contingency fee agreement. Responding further, this Defendant states that the contingency fee agreement complies with Ohio law.

B. Plaintiff's Complaint improperly contains headings that contain allegations and is not in compliance with the Ohio Rules of Civil Procedure. For the record, this Defendant denies the allegations contained in section IV.B.

13. This Defendant denies the allegations in paragraph 13 of Plaintiff's Complaint, except to state only that all Settlement Memoranda with clients and all communications with clients, other than Plaintiff, who has waived any privilege, are protected by the attorney-client privilege and work product doctrine. Responding further, this Defendant states that the Settlement Memorandum complies with Ohio law.

14. This Defendant denies the allegations in paragraph 14 of Plaintiff's Complaint, except to state only that all Settlement Memoranda with clients and all communications with clients, other than Plaintiff, who has waived any privilege, are protected by the attorney-client privilege and work product doctrine. Responding further, this Defendant states that the Settlement Memorandum complies with Ohio law.

15. This Defendant denies the allegations in paragraph 15 of Plaintiff's Complaint, except to state only that all Settlement Memoranda with clients and all communications with clients, other than Plaintiff, who has waived any privilege, are protected by the attorney-client privilege and work product doctrine. Responding further, this Defendant states that the Settlement Memorandum complies with Ohio law.

16. This Defendant denies the allegations in paragraph 16 of Plaintiff's Complaint, except to state only that all Settlement Memoranda with clients and all communications with clients, other than Plaintiff, are protected by the attorney-client privilege and work product doctrine. Responding further, this Defendant states that the Settlement Memorandum complies with Ohio law.

C. Plaintiff's Complaint improperly contains headings that contain allegations and is not in compliance with the Ohio Rules of Civil Procedure. For the record, this Defendant denies the allegations contained in section IV.C.

17. This Defendant denies the allegations in paragraph 17 of Plaintiff's Complaint.

18. This Defendant denies the allegations in paragraph 18 of Plaintiff's Complaint, except to admit only that Exhibit B attached to Plaintiff's Complaint, KNR's marketing and advertising, and contingency fee agreement speak for themselves and denies all allegations that are inconsistent with or contrary to the express terms of these documents. Responding further, this Defendant states that the contingency fee agreement and marketing comply with Ohio law.

19. This Defendant denies the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. This Defendant denies the allegations contained in paragraph 20 of Plaintiff's Complaint. Responding further, this Defendant states that the contingency fee agreement and marketing materials comply with Ohio law. In addition, this Defendant states that the Settlement Memoranda with clients and all communications with clients, other than Plaintiff, are protected by the attorney-client privilege and work product doctrine. This Defendant further states that the Settlement Memoranda complies with Ohio law. Finally, Plaintiff's Settlement Memoranda speaks for itself and denies all allegations that are inconsistent with or contrary to Plaintiff's Settlement Memorandum.

21. This Defendant denies the allegations contained in paragraph 21 of Plaintiff's Complaint, except to admit that KNR has retained AMC Investigations, Inc. as an independent contractor.

22. This Defendant denies the allegations contained in paragraph 22 of Plaintiff's Complaint, except to admit that KNR has retained MRS Investigations, Inc. as an independent contractor.

23. This Defendant denies the allegations contained in paragraph 23 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

24. This Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

25. This Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint. Responding further, this Defendant refers Plaintiff to Defendants' responses to Plaintiff's discovery requests.

26. This Defendant denies the allegations contained in paragraph 26 of Plaintiff's Complaint.

27. This Defendant denies the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. This Defendant denies the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. This Defendant denies the allegations contained in paragraph 29 of Plaintiff's Complaint, except to admit that the Settlement Memorandum executed by Plaintiff speaks for itself.

Responding further, this Defendant denies all allegations that are inconsistent with or contrary to Plaintiff's Settlement Memorandum. Finally, this Defendant states that the Settlement Memorandum complies with Ohio law.

V. CLASS ALLEGATIONS

30. This Defendant denies the allegations in paragraph 30 of Plaintiff's Complaint, except to admit that Plaintiff has brought this action under Ohio Civil Rule 23(a) and 23(b)(3) on behalf of Plaintiff and a putative class. However, this Defendant denies that this is an appropriate class action, that there is any wrongful or fraudulent conduct that has been conducted by this Defendant, or any of the other Defendants, and further denies the validity of all Plaintiff's claims.

31. This Defendant denies the allegations contained in paragraph 31 of Plaintiff's Complaint.

32. This Defendant denies the allegations contained in paragraph 32, including, but not limited to, subparagraphs 32(a), 32(b), 32(c), 32(d), 32(e), 32(f) and 32(g) of Plaintiff's Complaint.

33. This Defendant denies the allegations contained in paragraph 33 of Plaintiff's Complaint.

34. This Defendant denies the allegations contained in paragraph 34 of Plaintiff's Complaint.

35. This Defendant denies the allegations contained in paragraph 35 of Plaintiff's Complaint.

36. This Defendant denies the allegations contained in paragraph 36 of Plaintiff's Complaint.

VI. CLAIMS

CLAIM 1: FRAUD

37. This Defendant hereby incorporates its responses in paragraphs 1 through 36 of this Answer as if fully rewritten herein.

38. This Defendant denies the allegations contained in paragraph 38 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

39. This Defendant denies the allegations contained in paragraph 39 of Plaintiff's Complaint.

40. This Defendant denies the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. This Defendant denies the allegations contained in paragraph 41 of Plaintiff's Complaint.

42. This Defendant denies the allegations contained in paragraph 42 of Plaintiff's Complaint.

43. This Defendant denies the allegations contained in paragraph 43 of Plaintiff's Complaint.

44. This Defendant denies the allegations contained in paragraph 44 of Plaintiff's Complaint.

45. This Defendant denies the allegations contained in paragraph 45 of Plaintiff's Complaint.

46. This Defendant denies the allegations contained in paragraph 46 of Plaintiff's Complaint.

47. This Defendant denies the allegations contained in paragraph 47 of Plaintiff's Complaint.

48. This Defendant denies the allegations contained in paragraph 48 of Plaintiff's Complaint.

49. This Defendant denies the allegations contained in paragraph 49 of Plaintiff's Complaint.

CLAIM 2: BREACH OF CONTRACT

50. This Defendant hereby incorporates its responses in paragraphs 1 through 49 of this Answer as if fully rewritten herein.

51. This Defendant denies the allegations contained in paragraph 51 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

52. This Defendant denies the allegations contained in paragraph 52 of Plaintiff's Complaint, except to admit that Plaintiff's contingency fee agreement with KNR speaks for itself. Responding further, this Defendant denies all allegations that are inconsistent with or contrary to the express terms of Plaintiff's contingency fee agreement. In addition, this Defendant states that all contingency fee agreements with clients, other than Plaintiff's contingency fee agreement, are protected by the attorney client privilege and work product doctrine. Finally, this Defendant states that the contingency fee agreement complies with Ohio law.

53. This Defendant denies the allegations contained in paragraph 53 of Plaintiff's Complaint.

54. This Defendant denies the allegations contained in paragraph 54 of Plaintiff's Complaint.

55. This Defendant denies the allegations contained in paragraph 55 of Plaintiff's Complaint.

CLAIM 3: UNJUST ENRICHMENT

56. This Defendant hereby incorporates its responses in paragraphs 1 through 55 of this Answer as if fully rewritten herein.

57. This Defendant denies the allegations contained in paragraph 57 of Plaintiff's Complaint for want of knowledge or information sufficient to state the truth or veracity thereof.

58. This Defendant denies the allegations contained in paragraph 58 of Plaintiff's Complaint.

59. This Defendant denies the allegations contained in paragraph 59 of Plaintiff's Complaint.

60. This Defendant denies each and every allegation in Plaintiff's Complaint, except as expressly admitted in paragraphs 1 through 59 of this Complaint.

ADDITIONAL DEFENSES

1. Plaintiffs Complaint fails to state claims for which relief can be granted.

2. Plaintiffs fail to satisfy all or part of the requirements set forth in Ohio R. Civ. P. 23(a)(1) through (4) inclusive.

3. Plaintiffs fail to satisfy all or part of the requirements set forth in Ohio R. Civ. P. 23(b)(1) through (3) inclusive.

4. Plaintiffs have pled no set of facts sufficient to sustain their burden of proving that she is a representative of any alleged class.

5. Plaintiffs' claims, and some or all of the purported class, in whole or in part, are barred by operation of the applicable statutes of limitation.

6. Plaintiff's claims, and some or all of the purported class, are barred by operation of the doctrines of laches, waiver, estoppel, and/or unclean hands.

7. Plaintiff lacks standing to bring and maintain her claims on behalf of the putative class and standing to pursue, among other claims, her declaratory and injunctive relief.

8. Any alleged injury or damage claimed by Plaintiff or some or all of the purported class, which this Defendant denies, was the direct and proximate result of acts or omissions of persons or entities other than this Defendant or the other Defendants.

9. Any alleged injury or damage claimed by Plaintiff, or some or all of the purported class, which Defendant denies, was caused in whole or in part by the negligence, recklessness, lack of due care, or fault of persons or entities other than this Defendant or the other Defendants.

10. Any alleged injury or damage claimed by Plaintiff, or some or all of the purported class, which Defendant denies, was caused in whole or in part by the intervening and/or superseding acts, events, or omissions of persons or entities.

11. Plaintiff and some or all of the purported class have failed to mitigate any damages caused by any purported injury.

12. The claims of Plaintiff and some or all of the purported class are bound and precluded, in whole, or in part of the doctrines of *res judicata*, collateral estoppel, judicial estoppel, and judicial approval.

13. The claims of Plaintiff and some or all of purported class are barred in whole or in part by the doctrines of contributory negligence or fault pursuant to Ohio law.

14. Plaintiff's claims are barred, in whole or in part, by the Due Process and Equal Protection Clauses of Fifth and Fourteenth Amendments and the Seventh Amendments' guarantee of a jury trial under the United States Constitution to the extent Plaintiff seeks to extrapolate liability, causation or damages on a class-wide basis, instead of proving liability, causation and damages for each individual class member.

15. Any award of punitive damages would constitute the imposition of a criminal penalty without the safeguards guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and similar provisions of the Ohio Constitution.

16. The imposition of punitive or exemplary damages would constitute an excessive fine under the Eighth Amendment, would deny Defendant of equal protection of the laws under the Fourteenth Amendment and similar provisions of the Ohio Constitution, and would violate the due process clauses of the Ohio Constitution.

17. Plaintiff's claim for punitive or exemplary damages against Defendant cannot be maintained unless the trial is bifurcated. Any award of punitive damages without bifurcating the trial and trying all punitive damages issues only if and after liability on the merits has been found, would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Ohio Constitution.

18. The imposition of punitive damages in this case against this Defendant would contravene the Commerce Clause of the United States Constitution in that such an award would constitute an undue and unreasonable burden on interstate commerce.

19. The imposition of punitive damages under applicable law would be unlawful and unauthorized, would be void for vagueness, both facially and as applied, as a result of, among other deficiencies, the absence of adequate notice of what conduct is subject to punishment, the absence of adequate notice of what punishment may be imposed, and the absence of a predetermined limit, such as a maximum multiple of compensatory damages or maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, and the common law and public policy of Ohio.

20. Plaintiff's claim for punitive damages is subject to the limitations established by R.C. §§2307.80 and 2315.21.

21. Plaintiff has failed to join all necessary and/or indispensable parties required for a just adjudication of this case.

22. Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

23. This Defendant incorporates herein Defendants' Motion for Change of Venue.

24. Plaintiff has intentionally waived the attorney-client privilege, work product doctrine, and other applicable privileges only as those privileges relate to her and her relationship with KNR. Plaintiff cannot establish that she has the right to waive the attorney-client, work product, and other applicable privileges for any and all alleged members of the putative class.

25. Plaintiff reviewed and voluntarily signed her contingency fee agreement with KNR and the Settlement Memorandum. Plaintiff approved the Settlement Memorandum and the dispersal of all expenses.

26. This Defendant incorporates herein Defendants' responses to Plaintiff's discovery requests.

27. Plaintiff's fraud claim is not pled with particularity as required by Ohio R. Civ. P. 9(b).

28. Plaintiff cannot satisfy her burden in establishing a piercing the corporate veil claim for relief.

29. Plaintiff and the class have failed to satisfy conditions precedent, including, without limitation, privity of contract, under the applicable agreements.

30. This Defendant is no longer a legal entity, as established by Mr. Nestico's affidavit attached to Defendants' Motion for Change of Venue.

31. Plaintiff's Complaint fails for insufficiency of process.

32. Plaintiff's Complaint fails for insufficiency of service of process.

33. This Court lacks jurisdiction (e.g., personal, subject matter, etc.) over this Defendant and this case and, therefore, Plaintiff's Complaint should be dismissed.

34. Plaintiff's Complaint is frivolous and factually and legally baseless and violates Ohio R. Civ. P. 11 and Ohio law (e.g., R.C. § 2323.51).

35. Plaintiff's claims are barred, in whole or in part, by the doctrines of accord and satisfaction and novation.

36. This Defendant reserves the right to amend its Answer to assert any additional defenses, cross-claims, counterclaims and/or third-party complaints to the extent that discovery in this matter reveals any basis for the assertion of such defenses.

WHEREFORE, having fully responded to Plaintiff's Complaint herein, this Defendant requests that the Complaint be dismissed with prejudice, that it recover its costs, expenses, and reasonable attorney's fees incurred herein, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Lawrence A. Sutter
Lawrence A. Sutter (0042664)
Brian E. Roof (0071451)
SUTTER O'CONNELL CO.
1301 East 9th Street
3600 Erieview Tower
Cleveland, Ohio 44114
(216) 928-2200
(216) 928-4400 facsimile
lsutter@sutter-law.com
broof@sutter-law.com

Attorneys for Defendants

JURY DEMAND

Now comes Defendant, by and through counsel, and herein demand a trial by jury of the issues triable of and by a jury in this action.

/s/ Lawrence A. Sutter
Lawrence A. Sutter (0042664)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Separate Answer of Defendant Kisling Legal Group, LLC was filed electronically with the Court on this 19th day of September, 2016. The parties may access this document through the Court's electronic docket system. A copy has also been sent by Ordinary U.S. Mail.

Peter Pattakos
Subodh Chandra
Donald Screen
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Peter.pattakos@chandralaw.com
Subodh.chandra@chandralaw.com
Donald.screen@chandralaw.com

Attorneys for Plaintiff Member Williams

/s/ Lawrence A. Sutter
Lawrence A. Sutter (0042664)