

IN THE COURT OF COMMON PLEAS
FOR SUMMIT COUNTY, OHIO

Member Williams,)	Case No. CV-2016-09-3928
)	
Plaintiff,)	JUDGE TODD MCKENNEY
)	
v.)	<u>COUNTERCLAIM OF DEFENDANTS</u>
)	<u>KISLING, NESTICO & REDICK, LLC</u>
Kisling, Nestico & Redick, LLC, <i>et al.</i>)	<u>AND ALBERTO R. NESTICO</u>
)	
Defendants.)	
)	Request for Temporary Restraining
)	Order and Preliminary and Permanent
)	Injunctive Relief
)	
)	Jury Demand

Now come Kisling, Nestico & Redick, LLC ("KNR") and Alberto R. Nestico ("Nestico") and hereby state for their Counterclaim as follows:

PARTIES

1. KNR is an Ohio law firm representing plaintiffs in civil litigation matters with its principal place of business located in Summit County, Ohio.
2. Nestico is the managing partner of KNR and a resident of Summit County, Ohio.
3. Plaintiff/Counterclaim Defendant, Member Williams ("Williams"), a resident of Medina County, Ohio, was a former client of KNR in a personal injury case arising out of an automobile accident

GENERAL ALLEGATIONS

4. KNR and Nestico hereby incorporate their Answer to Williams' Complaint and the foregoing paragraphs of this Counterclaim as if fully rewritten herein.
5. KNR hired Robert P. Horton, Esq. ("Horton"), Horton on February 20, 2012 as an attorney. Horton's responsibilities included providing prospective clients with a free, initial, consultation, determining if the claim had merit, and if so, arranging for the client to sign KNR's

fee agreement and medical authorizations, and collecting and preserving evidence.

6. On September 13, 2013, Williams called the firm and was transferred to Horton and discussed her accident. Horton decided she had a viable personal injury claim, and agreed to represent her on behalf of KNR.

7. Horton further engaged MRS Investigations, Inc. to meet with Williams the next day to execute the contingency fee agreement and obtain copies of relevant documents. Horton specifically communicated with Chuck DeRemer ("DeRemer"), an investigator with MRS Investigations, regarding the Williams matter. MRS Investigations charged separately for his services, regardless of whether KNR obtained a settlement or judgment. Horton explained to Williams that KNR would charge expenses to Williams' file only if recovery was made on her behalf.

8. On March 17, 2015 and prior to resolution of Williams' claim, Horton's employment with KNR ceased.

9. After Horton's departure, KNR settled Williams' personal injury claim with Williams' informed consent. KNR provided Williams with an itemized printout of all expenses, fees and payments which listed the investigator's charge as the first expense item. Williams was asked if she had any questions. Williams reviewed and signed the disbursement sheet, release and settlement check at KNR without any questions or objections.

10. On July 13, 2016, Williams filed this action.

11. Although Williams and her attorneys knew KNR's principal place of business was in Summit County, Ohio, and that all of the conduct giving rise to Williams' claim arose in Summit and/or Medina County, Williams filed her complaint in Cuyahoga County.

12. Upon information and belief, Williams filed in Cuyahoga County without any supporting legal authority.

13. On September 9, 2016, the Court of Common Pleas for Cuyahoga County, Ohio found there was no factual or legal basis for Williams to have filed her complaint in Cuyahoga

County, Ohio and transferred venue to the Court of Common Pleas for Summit County, Ohio.

14. During the week of September 5, 2016 Williams, acting through her agent, posted a request for assistance in finding new potential class members on social media. These posts include inaccurate and prejudicial language, including but not limited to, the incorrect allegation that KNR “has engaged in business practices that constitute fraud and other unlawful breaches against the majority of its clients dating back to 2006”.

15. On September 13, 2016, KNR and Nestico sent Williams, through her agents and attorneys, a letter requesting that she cease and desist from further defaming them and remove the defamatory posts from any and all social media, including Facebook and Twitter accounts. To date, Williams and her counsel have refused.

**First Cause of
Action**
(Frivolous Conduct – O.R.C. § 2323.51)

16. KNR and Nestico hereby incorporate their Answer and the foregoing paragraphs of this Counterclaim as if fully restated herein.

17. Williams has, by and through her agents, brought this suit to harass and maliciously injure KNR and Nestico, and for the improper purposes of defaming KNR and Nestico and harming their reputation and goodwill.

18. Williams’ action consists of allegations or other factual contentions that have no evidentiary support.

19. Pursuant to O.R.C. § 2323.51(B), KNR and Nestico are entitled to an award of their costs, reasonable attorney’s fees and expenses incurred in defending Williams’ frivolous action.

Second Cause of Action
(Abuse of Process)

20. KNR and Nestico hereby incorporate their Answer and the foregoing paragraphs of this Counterclaim as if fully restated herein.

21. KNR and Nestico deny the allegations of Williams' Complaint, but in the alternative, plead that Williams, by and through her agents, has brought this action for unlawful, ulterior purposes rather than to redress damages incurred by Williams.

22. In particular, Williams and her agents have brought the instant case for purposes of defaming KNR and Nestico and harming their reputation and goodwill.

23. Williams and her agents' conduct is intentional, malicious, and without justification.

24. Williams has assisted, acquiesced to, and/or ratified the misconduct of her agents.

25. The conduct of Williams, as alleged above, constitutes malicious, oppressive, fraudulent, willful, and wanton tortious behavior, in blatant and reckless disregard of KNR and Nestico's rights, for which KNR and Nestico should recover compensatory and punitive damages in an amount sufficient to deter Williams, her agents, and other persons similarly situated from repeating similar conduct in the future.

26. As a direct and proximate result of Williams and her agents' abuse of process, KNR and Nestico have suffered compensatory and punitive damages, including, without limitation, damage to their reputations, economic loss, business losses, lost profits, opportunity costs, and inconvenience in excess of \$25,000, the exact amount to be proven at trial.

Third Cause of Action
(Tortious Interference With Existing and Prospective Business Relationships)

27. KNR and Nestico hereby incorporate their Answer and the foregoing paragraphs of this Counterclaim as if fully restated herein.

28. KNR and Nestico have ongoing business relationships with clients, and further, because such relationships are usually limited to representation for a single auto accident, KNR and Nestico depend upon obtaining new clients through marketing and referrals from prior clients and other professionals to maintain their business and profession.

29. Williams and her agents have actual and/or constructive knowledge of KNR and Nestico's business relationships and the importance of maintaining their business reputations to obtain new clients.

30. Williams, by and through her agents, has recklessly, willfully, wantonly and/or intentionally interfered with KNR and Nestico's present and future business relationships by disseminating, without any justification and beyond any reasonable scope, false and inflammatory allegations against KNR and Nestico including but not limited to Williams' claim that KNR defrauded her as well as the majority of its clients since 2006.

31. Williams and her agents' interference was intentional, malicious, illegal, and without any legitimate, protected, commercial justification.

32. Williams has assisted, acquiesced to, and/or ratified the misconduct of her agents.

33. KNR and Nestico have sustained damages as a result of Williams' wrongful interference with their current and prospective business relationships.

34. The conduct of Williams, as alleged above, constitutes malicious, oppressive, fraudulent, willful, and wanton tortious behavior, in blatant and reckless disregard of KNR and Nestico's rights, for which KNR and Nestico should recover compensatory and punitive damages in an amount sufficient to deter Williams, her agents, and other persons similarly situated from repeating similar conduct in the future.

35. As a direct and proximate result of Williams and her agents' tortious conduct, KNR and Nestico have suffered compensatory and punitive damages, including, without limitation, damage to their reputations, economic loss, business losses, lost profits, opportunity costs, and inconvenience in excess of \$25,000, the exact amount to be proven at trial.

Fourth Cause of Action
(Deceptive Trade Practices – O.R.C. § 4165.02)

36. KNR and Nestico hereby incorporate their Answer and the foregoing paragraphs of this Counterclaim as if fully restated herein.

37. Williams, by and through her agents, has engaged in an advertising campaign that contains false and misleading statements in violation of O.R.C. § 4165.02(A)(10).

38. Williams has assisted, acquiesced to, and/or ratified the misconduct of her agents.

39. These false and misleading statements are material because they are likely to adversely affect client decisions with respect to KNR and Nestico's services, and have misled consumers causing damage to KNR and Nestico that cannot be fully calculated.

40. Unless this Court enjoins Williams and her agents from continuing to make these false and misleading statements and orders their retraction, the false and misleading statements will continue to harm the general public, which has an interest in being free from mistake and deception.

41. Unless this Court enjoins Williams and her agents from continuing to make these false and misleading statements and orders their retraction, the false and misleading statements will continue to cause KNR and Nestico to suffer a loss of consumer confidence, sales, profits, reputation, and goodwill.

42. KNR and Nestico's reputation and goodwill have been irreparably harmed because Williams and her agents' false and misleading statements deceive consumers and cause them to lose confidence in KNR and Nestico and their services.

43. If Williams and her agents are permitted to continue to make such false and misleading statements, KNR and Nestico will suffer further irreparable harm by the continued spread of false statements to consumers.

44. Williams and her agents' false and misleading statements are willful and made with malicious and deceptive intent, making this an exceptional case.

45. By reason of Williams and her agents' acts, KNR and Nestico's remedy at law is not adequate to compensate them for the injuries inflicted by Williams and her agents. Accordingly, KNR and Nestico are entitled to a temporary restraining order and preliminary and permanent injunctive relief pursuant to O.R.C. § 4165.02.

46. By reason of Williams and her agents' willful acts, KNR and Nestico are entitled to damages, which damages may be trebled under O.R.C. § 4165.02.

47. This is an exceptional case making KNR and Nestico eligible for an award of attorneys' fees under O.R.C. § 4165.02.

WHEREFORE, KNR and Nestico respectfully request that the Court enter judgment dismissing Williams' Complaint and a judgment in favor of KNR and Nestico as follows:

1. Awarding KNR and Nestico nominal, actual, presumed, special, and punitive damages in excess of Twenty-Five Thousand Dollars (\$25,000);

2. Awarding treble damages under O.R.C. § 4165.02;

3. Awarding KNR and Nestico their costs, expenses and attorney's fees under O.R.C. § 2323.51(B) and awarding KNR and Nestico their costs, expenses and attorney's fees in prosecuting this Counterclaim;

4. Awarding KNR pre- and post-judgment interest;

5. Granting a temporary restraining order, preliminary injunction, and permanent injunction enjoining Williams, her agents, her attorneys and persons acting in concert with her or acting on her behalf, from the following acts:

a. Making any false, misleading, libelous, slanderous, defamatory, or disparaging statements or engaging in false, misleading or unfair trade practices or tortious interference with business relationships, including without limitation stating, claiming, suggesting, intimating or implying in any manner whatsoever that any of KNR or Nestico's legal representation and/or billing of Williams and/or other clients was

deceptive or fraudulent;

- b. Making any other false, misleading, slanderous, disparaging or defamatory statements about KNR, Nestico or their services; and
- c. Otherwise engaging in acts, either directly or through other entities, of false advertising, product disparagement, libel, slander, unfair and deceptive trade practices, unfair competition, or tortious interference with actual or prospective business relations;
- d. Publicizing the case in a manner inconsistent with the Ohio Rules of Professional Conduct and/or for purposes of improperly influencing the jury venire.

6. Award all such other and further relief, in law or in equity, to which KNR and Nestico may be entitled or which the Court deems just and proper.

Respectfully submitted,

/s/ Lawrence A. Sutter

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DEMAND FOR JURY TRIAL

KNR and Nestico hereby demand a trial by jury of all issues of fact presented by their Counterclaim in accord with the Ohio Rules of Civil Procedure.

/s/ Lawrence A. Sutter

Lawrence A. Sutter (0042664)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Counterclaim was filed electronically with the Court on this 20th 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.

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