IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiff,	)	JUDGE TODD MCKENNEY
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	
	)	**DEFENDANTS' MOTION FOR JUDGMENT**
Defendants.	)	**ON THE PLEADINGS**
	)	

Pursuant to Ohio R. Civ. P. 12(C), Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Kisling Legal Group, LLC ("Defendants") respectfully file this Motion for Judgment on the Pleadings and move this Court for an order dismissing Mr. Nestico and Kisling Legal Group, LLC from the lawsuit with prejudice and dismissing Plaintiff Member Williams' request for declaratory and injunctive relief against Defendants. A memorandum in support of this motion is attached.

Respectfully submitted,

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, Plaintiff, v. KISLING, NESTICO & REDICK, LLC, et al., Defendants.	))))))))))	CASE NO. CV-2016-09-3928 JUDGE TODD MCKENNEY **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

The Plaintiff's Complaint is a poorly written diatribe that is legally insufficient in both form and substance. There are absolutely no factual allegations in Plaintiff's Class Action Complaint to support her: (1) breach of contract, fraud, and unjust enrichment claims against Defendants Alberto R. Nestico and Kisling Legal Group, LLC ("KLG"); (2) request for relief to pierce the corporate veil of Defendant Kisling, Nestico & Redick, LLC ("KNR" and collectively with KLG and Mr. Nestico, "Defendants") and hold Mr. Nestico and KLG liable for KNR's conduct; and (3) request for generic declaratory and injunctive relief. As such, Plaintiff's claims against Mr. Nestico and KLG, request to pierce KNR's corporate veil, and request for injunctive relief should be dismissed with prejudice.

Plaintiff's allegations are based on only KNR's conduct relating to Plaintiff and charging Plaintiff a pass through third party investigation fee. Plaintiff has not alleged that Mr. Nestico or KLG were parties to the contingency fee agreement. Plaintiff has not alleged that Mr. Nestico or KLG made any representations, let alone fraudulent representations, to Plaintiff. Plaintiff has not made any allegation that Mr. Nestico or KLG were unjustly enriched. There are simply no facts in the Complaint to support these claims against Mr. Nestico and KLG. Therefore, these claims against Mr. Nestico and KLG should be dismissed with prejudice.

To avoid this reality, Plaintiff asserts merely a legal conclusion, without any supporting factual allegations in her pleading, that Mr. Nestico and KLG are the alter egos of KNR, and

therefore, she should be able to pierce the corporate veil and hold Mr. Nestico and KLG liable for KNR's conduct. Ohio law and the lack of any factual allegations to support the alter ego conclusion in the Complaint completely undermine Plaintiff's request to pierce the corporate veil. Except in very rare circumstances, a shareholder or member of a corporation is not personally liable for the debts and obligations of the corporation. This case does not qualify for any of those narrow exceptions.

To satisfy that rare exception, Plaintiff's Complaint must allege that: (1) KNR is undercapitalized, insolvent, or a defunct entity; (2) KNR did not follow corporate formalities (e.g., annual corporate meeting); (3) Mr. Nestico held himself out as being personally liable for KNR's debts; (4) KNR did not keep corporate records; (5) Mr. Nestico comingled personal funds with KNR's funds; or (6) he appropriated corporate funds or property for his own use. The Complaint filed by Plaintiff does not make a single one of these allegations.

Without pleading the appropriate facts, Plaintiff cannot establish her legal conclusion that Mr. Nestico or KLG is the alter ego of KNR. An unsupported legal conclusion is not sufficient to survive a motion for judgment on the pleadings. Therefore, Plaintiff's requests to pierce KNR's corporate veil and hold Mr. Nestico and KLG liable for KNR's conduct and obligations fail as a matter of law.

Finally, Plaintiff has no standing to seek declaratory and injunctive relief, as she has no personal stake in the outcome of that relief (i.e., the injunctive relief would not benefit her). Because she already knows about KNR's investigation fee and her allegations that such a fee is purportedly fraudulent, Plaintiff will never use KNR or pay the investigation fee again. Without a risk of future harm from KNR's conduct, Plaintiff has no personal stake in seeking to enjoin KNR's conduct, and therefore, she has no standing to pursue such an injunction. Plaintiff's request for injunctive relief should be dismissed with prejudice.

II. ALLEGED FACTUAL BACKGROUND

Plaintiff has filed a putative class action lawsuit against Defendants for breach of contract, fraud, and unjust enrichment. Plaintiff's lawsuit is based on whether KNR's investigation fee charged to Plaintiff was valid and lawful.[1] KNR represented Plaintiff in an automobile matter. (Complaint, ¶ 5.) Prior to the representation, Plaintiff entered into a contingency fee agreement with KNR in which purportedly the agreement, implicitly or expressly, allowed KNR to "deduct only reasonable expenses from a client's share of" a settlement or judgment. (*Id.*, ¶¶ 5; 10-12.) Allegedly, Plaintiff understood that "**KNR** would not incur expenses unreasonably and would not charge them for unreasonable expenses." (*Id.*, ¶ 12, emphasis added.) KNR obtained a settlement for Plaintiff. (*Id.*, ¶ 5.)

As part of that settlement and as required by Ohio law, Plaintiff voluntarily signed a Settlement Memorandum that outlined the settlement amount and the fees and expenses that were deducted from that amount to be paid to KNR, with the remaining paid to Plaintiff. (Complaint, ¶¶14; 29.) The first expense on the Settlement Memorandum was $50 that was paid to MRS Investigations, Inc. for an investigation fee. (*Id.*, ¶ 29 and Ex. C thereto.) Plaintiff, however, contends that "**KNR** never advised Plaintiff as to the purpose of the charge to MRS Investigations, Inc., and never obtained Plaintiff's consent for the charge." (*Id.*, ¶ 29, emphasis added.) Plaintiff further alleges that she never interacted with anyone from MRS Investigations and that "[n]o services were ever provided to Plaintiff in connection with the $50 payment to MRS Investigations, Inc." (*Id.*)

Based on these allegations against KNR, Plaintiff sued Defendants for breach of contract, fraud, and unjust enrichment. In addition to KNR Plaintiff also names Mr. Nestico and KLG as party defendants. The Complaint, however, has no factual allegations to support her claims against Mr. Nestico and KLG. Rather she offers the following legal conclusions: (1) Mr.

[1] By reciting the allegations of the Complaint in this Motion for Judgment on the Pleadings, Defendants do not admit or agree to those allegations. In fact, Defendants incorporate by reference herein their Answers.

Nestico is an Ohio resident who "owned and controlled KNR and KLG and caused these corporations to engaged in the conduct alleged in this Complaint"; (2) KLG "is an Ohio corporation that is owned by KNR and Nestico"; and (3) "KNR and Nestico formed KLG and wholly own and control it such that the three entities are 'alter egos,' are one and the same, and have no separate mind, will, or existence of their own." (*Id.*, ¶¶ 6-7.) Plaintiff offers no facts to support these conclusions.

Finally, despite not asserting a claim for it, Plaintiff also seeks declaratory and injunctive relief against Defendants. (Complaint, Prayer for Relief, ¶ 3.) Plaintiff, however, does not allege that she will use KNR as counsel in the future or pay the investigation fee. It is simply included without any detail or substance in the prayer for relief.

III. LEGAL ANALYSIS AND ARGUMENT

A. Plaintiff's claims against Mr. Nestico and KLG and her request for declaratory and injunctive relief cannot survive this Civ. R. 12(C) Motion.

Civ. R. 12(C) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Civ. R. 12(B)(6) and 12(C) motions are similar, with Civ. R. 12(C) motions used for resolving questions of law. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569, 1996-Ohio-459 (citing to *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 166). "Under Civ. R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the Complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *Id.*

In other words, Civ. R. 12(C) requires a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law. *Id*., at 570. *See also Ohio Ass'n of Public School Employees (OAPSE)/AFSCME LOCAL 4, AFL-CIO v. Madison Local School Dist. Bd. of Ed.*, 190 Ohio App.3d 254, 2010-Ohio-4942, ¶ 17 (11th Dist.). A claim is doomed by law when, taking the factual allegations in the complaint as true and disregarding

unsupported conclusions, it appears that the plaintiff can prove no set of facts that would justify a court granting relief. *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 324 (1989); *O'Brien v. Univ. Comm.Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). Plaintiff's claims against Mr. Nestico and KLG, request to pierce KNR's corporate veil, and request for declaratory and injunctive relief against all Defendants do not survive this standard.

B. As a matter of law, Plaintiff has not asserted claims against Mr. Nestico and KLG for fraud, breach of contract, and unjust enrichment.

1. Plaintiff has asserted no facts that Mr. Nestico and KLG were parties to the contract, breached the contract, committed any fraud, or were unjustly enriched.

The Complaint, including the fraud, breach of contract, and unjust enrichment claims, is focused on the alleged conduct of KNR. (Complaint, ¶¶ 10-32.) For example, the Complaint alleges:

- "Since its founding in 2005, **KNR** has entered into contingency-fee agreements with its clients…"
- "**KNR's** contingency-fee agreements expressly or impliedly provided that **KNR** could deduct only reasonable expenses from a client's share of proceeds…."
- "In all cases where **KNR** recovered money for a client in a judgment or settlement, **KNR** followed the standard practice of requiring client to execute a 'Settlement Memorandum" that the firm prepared before distribution."
- "**KNR's** Settlement Memoranda purport to set forth the expenses that **KNR** and [sic] incurred or advanced on each client's behalf and the corresponding amounts that **KNR** deducted and retained from each client's recovery to pay for those expenses."
- "When itemizing the amounts deducted and retained from the recovery amount, **KNR** represented to its clients on each Settlement Memorandum that the deductions were only for reasonable expenses…."
- "**KNR**, as a matter of policy, deducted and retained from clients' recoveries as a case expense in this investigation fee that **KNR** never disclosed to client in **KNR's** promotional materials, clients' contingency-fee agreements, nor in any other way."
- "**KNR** deducted an investigation fee from the settlement it obtained on behalf of Plaintiff as a $50 expense payable to MRS Investigations, Inc., as reflected on the Settlement Memorandum…."

- "**KNR** never advised Plaintiff as to the purpose of the charge to MRS Investigations, Inc., and never obtained Plaintiff's consent for the charge."

(*Id.*, ¶¶ 10, 12, 13-15, 20, 29, emphasis added.) None of these allegations reference Mr. Nestico or KLG. Nor does the Complaint satisfy the elements necessary for a breach of contract, fraud, and unjust enrichment claims against Mr. Nestico or KLG. [2]

First, the Complaint does not allege that Plaintiff had a contract with Mr. Nestico. In fact, the contingency-fee agreement is between only Plaintiff and KNR. (Ex. A to Complaint.) In addition, Mr. Nestico is not a party to the Settlement Memorandum. (Ex. C to Complaint.) Without a contract with Mr. Nestico, Plaintiff cannot satisfy any of the elements for a breach of contract claim, namely the existence of a contract, as a matter of law. *See Povroznik v. Mowinski Builders, Inc.*, 8th Dist. No. 93225, 2010-Ohio-1669, ¶13 ("To succeed on a breach of contract claim, a party must prove the existence of a contract, the party's performance under the contract, the opposing party's breach, and resulting damages."); *Tenable Protective Services v. Bit E-Technologies, L.L.C.,* 8th Dist. No. 89958, 2008-Ohio-4233, ¶ 17 (noting that individual shareholders were not parties to the contract and did not have any obligations or liabilities under the contract).

Second, Plaintiff also does not allege that she had any dealings or interactions with Mr. Nestico, let alone that Mr. Nestico made misrepresentations to her or that he personally withheld information. There is absolutely nothing in the Complaint that ties Mr. Nestico to the alleged fraud. Without an allegation that Mr. Nestico made a fraudulent representation or withheld information, Plaintiff's fraud claim against him should be dismissed with prejudice. *See Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-119, ¶ 47 (2006) (setting forth the elements of a fraud claim).

[2] As set forth in the affidavit to Defendants' Motion for Change of Venue and incorporated into KLG's Answer, KLG is no longer a legal entity. KLG changed its name to KNR. Therefore, KNR is the only legal entity that has any potential liability in this case. KLG should be dismissed with prejudice on this basis alone. Nevertheless, the same arguments made by Mr. Nestico apply to KLG, and therefore, KLG should be dismissed for the same reasons as Mr. Nestico.

Finally, there are no factual allegations that Mr. Nestico personally was unjustly enriched. The Complaint alleges that KNR deducted the investigation fee from the settlement proceeds. (Complaint, ¶ 29.) Plaintiff does not allege that she paid Mr. Nestico personally. Nor does she allege that Mr. Nestico received a direct benefit from her. Rather, as the Settlement Statement outlines, KNR charged as an expense $50 against the settlement to cover the investigation fee. (Ex. C to Complaint.)

Therefore, Plaintiff cannot establish the elements (e.g., Plaintiff conferred a benefit on Mr. Nestico) necessary to support an unjust enrichment claim against Mr. Nestico as a matter of law. *See Metz v. Am. Elec. Power Co.*, 172 Ohio App. 3d 800, 2007-Ohio-3520, ¶ 43 (10th Dist.) (the requirements for an unjust enrichment claim are: (1) plaintiff conferred a benefit on defendant; (2) defendant knew of such benefit; (3) defendant retained the benefit under circumstances where it would be unjust to do so without payment); *Acquisition Services, Inc. v. Zeller*, 2nd Dist. No. 25486, 2013-Ohio-3455, ¶ 61 (dismissing unjust enrichment claim because "there is no evidence that Zeller and Smith derived any benefit from the sale.").

2. Plaintiff has asserted only a legal conclusion, and no facts, that KNR's corporate veil should be pierced.

Knowing that there are no facts to satisfy the elements of her claims against Mr. Nestico and KLG, Plaintiff is left with arguing that she should be able to pierce KNR's corporate veil to hold Mr. Nestico and KLG liable for KNR's alleged liabilities. However, her piercing the corporate veil request suffers from the same fatal error – there are no facts to support such relief. Plaintiff merely recites the legal conclusion for piercing the corporate veil, without any supporting facts. This is not sufficient to survive a motion for judgment on the pleadings.

It is a bed rock principle of Ohio law that shareholders, officers, and directors of a corporation are generally not liable for the debts of the corporation. *Dombroski v. WellPoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827895, ¶ 16. Therefore, Mr. Nestico, solely for being a member of KNR, an Ohio limited liability company, is not personally liable for KNR's obligations,

either in contract or tort. *See* O.R.C. 1705.48(B) (a member of the limited liability company is not personally liable to satisfy any judgment or order of a court or any other debt, obligation or liability of the company solely for being a member of the company); *Tenable Protective Services*, 8th Dist. No. 89958, 2008-Ohio-4233, ¶¶ 15-16; 24 (applying O.R.C. 1705.48(B) and dismissing breach of contract and fraud claims against the member); *Acquisition Services*, 2013-Ohio-3455 at ¶ 44 ("Under R.C. 1705.48(B), Zeller and Smith would not be liable for Griffin's debts or obligations. . . since Griffin was the only party to the agreement.").

Despite this general and broad rule, shareholders in very limited circumstances may be held personally liable where recognition of the corporation's existence furthers a "criminal or fraudulent purpose to the detriment of a third party." *Dombroski*, 119 Ohio St.3d 506 at ¶ 17. Courts created this equitable exception to protect a corporation's creditors: "An exception to this rule was developed in equity to protect creditors of a corporation from shareholders who use the corporate entity for criminal or fraudulent purposes." *Belvedere Condominium Unit Owners' Ass'n v. R.E. Roark Companies, Inc.*, 67 Ohio St.3d 274, 287, 1993-Ohio-119 (emphasis added). "Piercing the corporate veil in this manner remains a 'rare exception,' to be applied only 'in the case of fraud or certain other exceptional circumstances.'" *Dombroski*, 119 Ohio St.3d 506 at ¶ 17 (citation omitted; emphasis added).

Ohio courts have applied the following three-prong test in determining whether a corporation's veil should be pierced and a shareholder held liable for the corporation's conduct: "'(1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.'" *Id.*, at ¶ 18 (citing *Belvedere*, 67 Ohio St.3d at 288-89).

The focus of this three-prong test is on the extent of the shareholder's alleged control over the corporation and whether the shareholder abused the corporate form to commit

egregious acts against the plaintiff. *Id*. In evaluating these elements, courts consider facts supporting the following factors: "(1) grossly inadequate capitalization; (2) failure to observe corporate formalities; (3) insolvency of the debtor corporation at the time the debt is incurred; (4) shareholders holding themselves out as personally liable for certain corporate obligations; (5) diversion of funds or other property of the company property for personal use; (6) absence of corporate records; and (7) the fact that the corporation was a mere façade for the operations of the dominant shareholder." *LeRoux's Billyle Supper Club v. Ma*, 77 Ohio App.3d 417, 422-23 (6th Dist. 1991); *Tandem Staffing v. ABC Automation Packing, Inc.*, 9th Dist. No. 19774, 2000 Ohio App. LEXIS 2366, *13-14 (June 7, 2000) (quoting *LeRoux*); *Clendenning v. NewPage Corp.*, No. 3:09-cv-493, 2010 U.S. Dist. LEXIS 112897, *18 (S.D. Ohio Oct. 12, 2010) (denying leave to amend the complaint to assert piercing the corporate veil, in part, because the "Plaintiffs have not met their burden of proof . . . The evidence and argument presented regarding the relationship between NewPage and NPWSI discusses none of the factors to be considered . . ."). Plaintiff's Complaint does not address these factors.

Instead, the sole basis for her argument that she should be able to pierce KNR's corporate veil are the following legal conclusions: (1) Mr. Nestico "owned and controlled KNR and KLG and caused these corporations to engage in the conduct alleged in this Complaint"; (2) KLG "is an Ohio corporation that is owned by KNR and Nestico"; and (3) "KNR and Nestico formed KLG and wholly own and control it such that the three entities are 'alter egos,' are one and the same, and have no separate mind, will, or existence of their own." (Complaint, ¶¶ 6-7.) This is merely parroting the three-prong test. In addition, the allegations are inconsistent and make no sense as to whether KLG owns KNR or vice versa. Plaintiff has offered no facts to support these legal conclusions.

Specifically, Plaintiff has not alleged any of the factors that courts consider in determining whether to pierce the corporate veil. *See LeRoux's*, 77 Ohio App.3d at 422-23. Plaintiff cannot allege that KNR is undercapitalized, insolvent (now or at the time it charged the

investigation fee), or a defunct entity. There are no allegations that: (1) KNR did not follow corporate formalities (e.g., annual corporate meeting); (2) Mr. Nestico held himself out as being personally liable for KNR's debts; (3) KNR did not keep corporate records; (4) Mr. Nestico comingled personal funds with KNR's funds; or (5) he appropriated corporate funds or property for his own use. Furthermore, this is not the typical piercing the corporate veil case where the corporate defendant (i.e., KNR) does not have the assets to satisfy any debt or obligation. *See Belvedere*, 67 Ohio St. 3d at 287 (piercing the corporate veil developed in equity to protect a corporation's creditors); *Tandem Staffing*, 2000 Ohio App. LEXIS 2366 at *12 ("An exception exists where creditors of a corporation may 'pierce the corporation's veil' and hold shareholders liable. . ."). No such allegations are included in the Complaint.

Without any alleged supporting facts, Plaintiff has not met her burden in asserting her piercing the corporate veil claim for relief. Therefore, Mr. Nestico and KLG should be dismissed with prejudice. *See Oliver v. St. Luke's Dialysis, LLC*, No. 1:10-CV-2667, 2011 U.S. Dist. LEXIS 40147, *19 (N.D. Ohio Apr. 5, 2011) ("Here, Oliver asserts no factual allegations that, if proven true, would justify holding Defendants . . . liable for the alleged wrongdoing of their subsidiary..."); *Clendenning*, 2010 U.S. Dist. LEXIS 112897 at *18 (denying motion to amend complaint to assert piercing the corporate veil).

C. Because Plaintiff will never seek representation from KNR again, Plaintiff has no standing to seek declaratory and injunctive relief.

Although Plaintiff does not assert a declaratory judgment or injunctive relief claim, Plaintiff seeks a generic declaratory judgment and injunctive relief against Defendants' "unlawful conduct" in her prayer for relief. (Complaint, Prayer for Relief, ¶ 3.) However, Plaintiff does not have standing to seek declaratory and injunctive relief against Defendants. Therefore, the request for declaratory and injunctive relief should be dismissed.

Standing determines whether a plaintiff may properly assert a particular claim. *Woods v. Oak Hill Community Medical Center, Inc*., 134 Ohio App.3d 261, 268 (4th Dist. 1999). The

standing issue is dependent on whether the plaintiff has a "personal stake in the outcome of the controversy." *Id*. at 268 (quoting *Cleveland v. Shaker Heights*, 30 Ohio St.3d 49, 51 (1987)). The personal stake requirement has three elements: "(1) injury in fact to the plaintiff that is concrete and particularized; (2) a causal connection between the injury and the conduct complained of; and (3) redressability." *Id*. at 268-69 (quotations and citations omitted). In this particular case, the standing requirement is necessary regardless of whether plaintiff brings a class action: "Thus, if a named plaintiff purporting to represent a class does not establish the requisite standing, he may not seek relief on behalf of himself or any other member of the class." *Id*. at 269 (citing *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)). "The relevant inquiry in an analysis of standing for injunctive relief focuses on whether the injunction sought would provide the [plaintiff] with some tangible good, i.e., whether he has some 'personal stake' in the injunction being granted." *Id*. at 270 (quoting *Ottawa Cty. Bd. of Commrs. v. Marblehead*, 102 Ohio App.3d 306, 316 (6th Dist. 1995)). Under this three-prong test, Plaintiff does not have standing to sue for injunctive and declaratory relief.

Ohio and federal courts, applying the same three-prong test for standing, *Fednav Ltd. v. Chester*, 547 F.3d 607, 614 (6th Cir. 2008), have concluded that where the plaintiff already knows of the alleged wrongful conduct (fraud, deceptive advertising, etc.) that she is seeking to enjoin, and received the relief sought, the plaintiff does not have standing to sue for injunctive and declaratory relief. In *Woods*, the plaintiff sought medical treatment from defendant where a blood test was performed. *Woods*, 134 Ohio App.3d at 265. The test results indicated that the plaintiff's lab results were within the "normal" range, when in fact they were not. *Id.* In that class action, the plaintiff sought injunctive relief requiring the defendant to notify its other patients that the lab reports were incorrect. *Id*. at 269. The Fourth Appellate District Court affirmed the dismissal for lack of standing because the plaintiff was already made aware of the inaccurate lab results. *Id*. at 269. The court further concluded that even if the plaintiff could argue that the incorrect lab results caused an injury in fact, the plaintiff could not prevail on the redressability

element because he already received the relief for which he sought. *Id*. *See also Feathers v. Gansheimer*, 11th Dist. No. 2007-A-0052, 2008-Ohio-1652 (the plaintiff had no standing as he already received the relief sought); *Hange v. City of Mansfield*, 257 Fed. Appx. 887, 891 (6th Cir. 2007) ("[t]he individual must allege a substantial likelihood that he or she will be subjected in the future to the allegedly illegal policy."); *Neuman v. L'Oreal USA S/D, Inc.*, No. 1:14-CV-01615, 2014 U.S. Dist. LEXIS 146525 (N.D. Ohio Oct. 14, 2014) (concluding that a plaintiff who suffers no risk of future injury cannot obtain an injunction). "In sum, '[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.'" *Hange*, 257 Fed. Appx. at 892 (quoting *O'Shea*, 414 U.S. 488, 94 S. Ct. 669 (1974)). *See also, Cattie v. Wal-Mart Stores, Inc.*, 504 F. Supp. 2d 939, 951 (S.D. Cal. 2007) (finding that the plaintiff lacked standing to seek injunctive relief because "it is unclear how prospective relief will redress her injury, since she is now fully aware of the linens' thread count" and she was not "'realistically threatened by a *repetition* of the violation'" to support declaratory or injunctive relief.)(citation omitted).

Here, Plaintiff seeks injunctive and declaratory relief, but cannot demonstrate any possibility, let alone likelihood, that her alleged injury will occur again. In other words, she has no personal stake in the matter to seek injunctive relief. She already suffered the alleged damage of being charged the investigation fee, without any argument that she would pay the fee again. Indeed, Plaintiff does not, nor could she, allege that she would retain KNR as counsel in a lawsuit in the future. Based on her allegations of fraud and deception, it would be illogical for Plaintiff to retain KNR in the future. Rather, Plaintiff's sole remedy is to seek reimbursement of the investigation fee, which she is already pursuing in this lawsuit. Prospective relief in the form of an injunction will not redress her injury (i.e., she will receive no benefit from the requested injunction). Without a personal stake in obtaining injunctive relief, Plaintiff's request for declaratory and injunctive relief should be dismissed with prejudice for lack of standing.

IV. CONCLUSION

Plaintiff's Complaint did not offer the requisite facts to assert claims against Mr. Nestico and KLG for breach of contract, fraud, and unjust enrichment. Furthermore, Plaintiff cannot allege any facts to support her request to pierce KNR's corporate veil and hold Mr. Nestico and KLG personally liable for KNR's conduct. All Plaintiff does is assert a legal conclusion that Mr. Nestico and KLG are the alter egos of KNR. Under Ohio law, a legal conclusion, without supporting factual allegations, does not survive a motion for judgment on the pleadings. Therefore, all claims against Mr. Nestico and KLG should be dismissed with prejudice.

In addition, Plaintiff has offered no facts to contend that she has standing to seek declaratory and injunctive relief. Because she will not use KNR as her future counsel, let alone again pay the investigation fee, Plaintiff has no personal stake in obtaining the injunctive relief. Accordingly, Plaintiff lacks standing to pursue this relief and the declaratory and injunctive relief claim should be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion was filed electronically with the Court on this 22nd day of September, 2016. The parties may access this document through the Court's electronic docket system.

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