

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS 715 Woodcrest Drive Wadsworth, Ohio 44281</p> <p>Plaintiff,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC 4490 Litchfield Drive Copley, Ohio 44321</p> <p>ALBERTO R. NESTICO Kisling, Nestico & Redick 5005 Rockside Road, #600 Independence, Ohio 44131</p> <p>Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge Todd McKenney</p>
FIRST AMENDED CLASS-ACTION COMPLAINT WITH JURY DEMAND	

I. NATURE OF THE ACTION

1. Defendant Kisling, Nestico & Redick, LLC (“KNR”) is a Northeast-Ohio-based law firm that has engaged, and continues to engage, in a deliberate scheme to defraud its clients by charging them “expenses” for so-called “investigations” that are never actually performed. KNR abuses its position of trust with its clients to dupe them into paying for these “investigations,” despite knowing that no investigation ever takes place, and that the so-called “investigators” never perform any services that are properly charged to clients as a separate case expense.
2. This is a class action under Ohio Civ. R. 23, alleging claims for breach of contract, fraud, and unjust enrichment under Ohio law.

3. Unless otherwise specified, the practices described in this complaint date back to KNR's founding in 2005 and are ongoing.

II. PARTIES

4. Defendant KNR is an Ohio law firm focusing on personal-injury cases, mainly representing car-accident victims. Founded in 2005, KNR has three offices in the Cleveland area—in Independence, Beachwood, and Westlake—and a single office in each of the Akron, Canton, Cincinnati, Columbus, Dayton, Toledo, and Youngstown areas. KNR aggressively markets its services to the public through a multimedia advertising campaign with the tagline “Hurt in a car? Call KNR.”

5. Plaintiff Member Williams is a Wadsworth, Ohio resident and was a KNR client from September 2013 until August 2015. KNR represented Williams as her attorneys under a contingency-fee agreement in connection with a car accident that injured her. KNR recovered a settlement on Williams' behalf and, before disbursing settlement proceeds to her, required her to execute a Settlement Memorandum as described below. As KNR did with its other clients, KNR fraudulently charged Ms. Williams for an “investigation fee” as described below.

6. Defendant Alberto R. Nestico is an Ohio resident who, at all relevant times, owned and controlled KNR and caused the corporation to engage in the conduct alleged in this Complaint.

III. JURISDICTION AND VENUE

7. The Court has original jurisdiction under R.C. 2305.01. Removal under the Class Action Fairness Act (28 U.S.C. § 1453) would be improper because two-thirds or more of the members of the proposed class are Ohio citizens, the primary defendants are Ohio citizens, and the primary injuries alleged occurred in Ohio.

8. Venue is proper under Ohio Civ. R. 3(B) because Defendant KNR is headquartered in Summit County and conducted activity in Summit County that gave rise to the claim for relief, including the use of a Summit County office to solicit clients to whom KNR charged the fraudulent and unlawful expenses at issue.

IV. FACTUAL ALLEGATIONS

A. KNR's standard contingency-fee agreement promises that KNR will charge class members only for reasonable and necessary case expenses.

9. Since its founding in 2005, KNR has entered into contingency-fee agreements with its clients which contain the following standard language:

The Attorneys shall receive as a fee for their services, one-third of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients [*sic*] case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs attorneys to deduct from Clients [*sic*] share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients [*sic*] care and treatment.

(**Exhibit A**, emphasis in original.)

10. To the extent that KNR and its clients have entered into contingency-fee agreements with differing language, this differing language was substantially similar to the language in ¶ 10, and KNR drafted this differing language with the same intended legal effect as the language in ¶ 10.

11. KNR's contingency-fee agreements expressly or impliedly provided that KNR could deduct only reasonable expenses from a client's share of proceeds—that is, reasonably priced services that were actually and reasonably undertaken to advance the client's case, and not a KNR overhead expense that was already subsumed in KNR's contingency fee percentage. All class members understood that KNR would not incur expenses unreasonably and would not charge them for unreasonable expenses.

B. KNR requires its clients to sign a “Settlement Memorandum” before it will disburse proceeds to them.

12. 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.

13. KNR's Settlement Memoranda purport to set forth the expenses that KNR and 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.

14. 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—that is, for reasonably priced services that were reasonably and actually undertaken in furtherance of the client's legal matter, and not a KNR overhead expense that was already subsumed in KNR's contingency fee percentage.

15. In requiring the client's signature on each Settlement Memorandum, KNR purported to obtain the client's written approval for KNR's deductions and conditioned the disbursement of the client's money on KNR's receipt of this purported approval.

C. KNR charges clients “investigation fees” for investigations that never take place.

16. During the class period, KNR aggressively pursued prospective clients, subjecting its attorneys and staff to discipline if prospective clients were not signed up within 24 hours of the prospective client's first contact with KNR. If a prospective client would not come to a KNR office to sign a fee agreement within 24 hours, KNR attorneys and staff were instructed to "send an investigator" to the client.

17. During the class period, KNR's promotional material promised prospective clients a free consultation, and promised that if a prospective client could not travel to a KNR office, KNR would "come to them." (*See Exhibit B*). Neither KNR's promotional material nor eventual fee agreement stated or implied that KNR would charge prospective clients a fee for KNR coming to them. KNR never disclosed to its clients or prospective clients that they would be so charged.

18. But KNR charged its clients a fee of approximately \$50 and more (an "investigation fee") for sending employees to clients' homes, places of employment, chiropractors' offices, doctors' offices, or other locations for the purpose of obtaining their signature on KNR's contingency-fee agreement and, in some cases, to obtain copies of case-related documents from the client.

19. KNR, as a matter of policy, deducted and retained from clients' recoveries as a case expense this investigation fee that KNR never disclosed to clients in KNR's promotional materials, clients' contingency-fee agreements, nor in any other way. The charge for the investigation fee appears on the client Settlement Memoranda, as charged to "AMC Investigations, Inc.," "MRS Investigations, Inc.," or to other corporations or people purporting to provide investigative services.

20. AMC Investigations, Inc. is an Ohio corporation registered to Aaron M. Czetli, a personal friend of Defendant Nestico, KNR's managing partner. Since 2005, KNR has employed Czetli as an employee or independent contractor, mainly to stuff envelopes for promotional mailers

and to perform other odd jobs, in addition to meeting prospective clients to sign them to contingency-fee agreements.

21. MRS Investigations, Inc. is an Ohio corporation registered to Michael R. Simpson, who, like Aaron Czetli, is Nestico's personal friend. Like Czetli, KNR has employed Simpson since 2005 as an employee or independent contractor, mainly to stuff envelopes for promotional mailers and to perform other odd jobs, in addition to meeting prospective clients to sign them to contingency-fee agreements.

22. Czetli and Simpson are not licensed as private investigators by the Ohio Department of Public Safety. Nor are any of the other so-called "investigators" KNR engaged.

23. Although registered with the Ohio Secretary of State, AMC Investigations and MRS Investigations, do not do any business apart from Czetli's and Simpson's employment with KNR as described above—nor does any other investigation entity whose fees KNR charges to its clients.

24. In some cases, Czetli, Simpson, or other "investigators," such as Wesley Steele, in the Columbus area, or Gary Monto, in the Toledo area, traveled to prospective clients' homes, places of employment, chiropractors' offices, doctors' offices, or other locations to obtain signatures to fee agreements and, in some cases, to obtain copies of case-related documents from the potential client. This was the only task that Czetli, Simpson, or the other investigator ever performed in connection with any KNR client's file, and it was the only task performed in connection with the "investigation fee" that KNR charged every class member.

25. In most cases, KNR's clients would sign their fee agreement at a KNR office or a chiropractor's office, or would otherwise provide the signed agreement by fax, mail, or email. In these instances, neither Czetli, Simpson, nor any other investigator performed any task at all in

connection with the client. But KNR still deducted the investigation fee from the settlement or judgment proceeds obtained on behalf of these clients.

26. In no case was the investigation fee properly chargeable to any KNR client as a case expense. Even in the cases where the so-called “investigator” travelled to the prospective client’s home to obtain a signature or documentation, the prospective client—who was promised a free consultation—never agreed to be charged for the so-called service. By passing this charge off as a fee for an “investigation,” Defendants defrauded KNR clients into paying KNR’s overhead expenses above and beyond the level properly subsumed in KNR’s contingency fee.

27. In rare cases, such as when a court or outside attorney reviewed a client’s Settlement Memorandum, KNR removed the investigation fee to avoid scrutiny of it. On some of these occasions, senior KNR attorneys specifically instructed junior KNR attorneys and staff to remove references to the investigation fee from Settlement Memoranda.

28. 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 attached as **Exhibit C**. Plaintiff never had any interaction with any representative of MRS Investigations, Inc. When Plaintiff signed up as a KNR client, she traveled herself to a KNR office to sign up in person. KNR never advised Plaintiff as to the purpose of the charge to MRS Investigations, Inc., and never obtained Plaintiff’s consent for the charge. No services were ever provided to Plaintiff in connection with the \$50 payment to MRS Investigations, Inc.

V. CLASS ALLEGATIONS

29. Plaintiff brings this action under Ohio Civ.R. 23(A) and (B)(3) on behalf of Plaintiff and the following Class of all others similarly situated:

All current and former KNR clients to whom KNR charged fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any individual or corporation that KNR engaged to perform similar so-called “services” on behalf of KNR clients (“investigation fees”).

30. The Class is so numerous that joinder of all class members is impracticable. And while Plaintiff is unable to state at this time the exact size of the potential class, based on KNR’s extensive public advertising and high-volume business model, Plaintiff believes the Class consists of thousands of people.

31. Common legal or factual issues predominate individual issues affecting the Class, including:

- a. That the so-called “investigators” never performed any investigations;
- b. That in the majority of instances where the investigation fee was charged, the so-called “investigators” never performed any task at all in connection with the client;
- c. That the so-called “investigators” never performed any services that were properly chargeable to clients as separate case expenses, as opposed to an overhead expense that was subsumed in KNR’s contingency fee percentage;
- d. That KNR never properly disclosed to its clients what the investigation fee was for;
- e. That KNR never obtained its clients’ consent for the investigation fee;
- f. That Defendants intended to mislead KNR clients into paying the investigation fee;
- g. That KNR breached its fee agreement with its clients in assessing and collecting the investigation fee.

32. The claims of Plaintiff are typical of Class members' claims. Plaintiff's claims arise out of the same course of conduct by Defendants and are based on the same legal theories as Class members' claims.

33. Plaintiff will fairly and adequately protect Class members' interests. Plaintiff's interests are not antagonistic to, but instead comport with, the interests of the other Class members. Plaintiff's counsel are adequate class counsel under Civ.R. 23(F)(1) and (4) and are fully qualified and prepared to fairly and adequately represent the Class's interests.

34. The questions of law or fact that are common to the Class, including those listed above, predominate over any questions affecting only individual members.

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring Class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys' fees, and demands on court resources. The Class members' claims are sufficiently small that it would be impracticable for them to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case under Civ.R. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

VI. CLAIMS

CLAIM 1: FRAUD

36. Plaintiff incorporates all previous allegations.

37. Plaintiff asserts this claim against all Defendants.

38. Defendants induced Plaintiff and the Class to pay the investigation fees knowing that no investigation ever took place, and that the so-called "investigators" never performed any services that were properly chargeable to clients.

39. Defendants made false representations of fact to KNR clients about what the investigation fees were for, with knowledge or with utter disregard and recklessness about the falsity of these statements. By charging KNR clients for the investigation fees, Defendants misrepresented to KNR clients that those fees were for investigative services that were actually performed and properly charged as a separate case expense as opposed to an overhead expense that was subsumed in KNR's contingency fee percentage.

40. Defendants knowingly concealed facts about the investigation fees, including their knowledge that these fees were not incurred for investigative services or any services that were properly chargeable as a separate case expense.

41. Defendants' misrepresentations about and concealment of facts regarding the investigation fees were material to the Plaintiff's and the Class's decision to approve their Settlement Memoranda and thus pay these fees.

42. Defendants' misrepresentations about and concealment of facts regarding the investigation fees were made with the intent of misleading Plaintiff and the Class into relying upon them.

43. Defendants knew that KNR clients were more likely to approve the fraudulent expenses when receipt of their settlement or judgment proceeds was dependent on such approval.

44. Plaintiff and the Class were justified in relying on Defendants' misrepresentations and concealment of facts, and did, in fact, so rely.

45. Plaintiff only became aware of Defendants' misrepresentations and concealment of facts in November of 2015. The other class members remain unaware as of the filing of this Complaint.

46. The actions, omissions, and course of conduct and dealing of Defendants as alleged above were undertaken knowingly and intentionally, with a conscious disregard of the rights and interests of Plaintiff and the Class, and with certainty of inflicting harm and damage on Plaintiff and the Class.

47. Plaintiff and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' misrepresentations about and concealment of facts regarding the investigation fees.

48. Plaintiff and the Class are entitled to compensatory damages and punitive damages, including the reasonable value of their attorneys' services, as a result of Defendants' fraud.

CLAIM 2: BREACH OF CONTRACT

49. Plaintiff incorporates all previous allegations.

50. Plaintiff asserts this claim against Defendant KNR.

51. Every fee agreement that KNR has ever entered with its clients provides, whether expressly or impliedly, that KNR may only deduct reasonable expenses from a client's share of proceeds—that is, KNR may only deduct fees for reasonably priced services that were actually and reasonably undertaken in furtherance of the client's legal matter, and properly chargeable as a separate case expense as opposed to an overhead expense that was subsumed in KNR's contingency fee percentage. In all cases, the parties to the agreement understood that KNR would not be permitted to incur expenses unreasonably and then charge their clients for those unreasonable expenses.

52. By collecting the investigation fees from their clients when these fees were for expenses not reasonably undertaken for so-called "services" that were not properly chargeable as a

separate case expense, or were never performed at all, KNR materially breached its fee agreements with its clients, including its agreements with Plaintiff and the Class.

53. Plaintiff and the Class have suffered monetary damages as a result of these breaches in the amount of the investigation fees paid, and are entitled to repayment of these amounts.

CLAIM 3: UNJUST ENRICHMENT

54. Plaintiff incorporates all previous allegations.

55. Plaintiff asserts this claim against all Defendants.

56. By unwittingly allowing KNR to deduct the investigation fees from their lawsuit proceeds, Plaintiff and the Class have, to their substantial detriment, conferred a substantial benefit on Defendants of which Defendants are aware.

57. Retention of these fees by Defendants without repayment to Plaintiff and the Class would be unjust and inequitable.

VII. PRAYER FOR RELIEF

Plaintiff, and all those similarly situated, collectively request that this Court provide the following relief:

- (1) An order permitting this litigation to proceed as a class action, and certifying the Class under Civ.R. 23(A) and (B)(3);
- (2) An order to promptly notify to all class members that this litigation is pending;
- (3) Declaratory judgment and injunctive relief against Defendants' unlawful conduct;
- (3) Damages for Plaintiff and the class represented in excess of \$25,000;
- (4) Attorneys' fees, costs, and pre-judgment interest; and
- (5) Such other relief as this Court deems just and proper.

VIII. JURY DEMAND

Plaintiff demands a trial by jury on all issues within this Complaint.

Respectfully submitted,

THE CHANDRA LAW FIRM, LLC

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