

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiff,	)	JUDGE ALISON BREAUX
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC,	)	<u>REPLY BRIEF IN SUPPORT OF</u>
et al.,	)	<u>DEFENDANTS' PARTIAL MOTION FOR</u>
	)	<u>JUDGMENT ON THE PLEADINGS</u>
	)	<u>REGARDING PLAINTIFF'S FIRST</u>
Defendants.	)	<u>AMENDED COMPLAINT</u>

I. INTRODUCTION

Plaintiff's arguments in her Brief in Opposition simply ignore case law that establishes that she does not have standing to seek injunctive and declaratory relief. Instead, she contends that she is protecting this relief for the putative class. Courts in reviewing motions prior to class certification, however, consider the allegations relating only to the named plaintiffs – not putative class members. Here, Plaintiff, individually, has no standing to seek the injunctive relief because she will not use KNR again, or, even if she does, will not pay the investigation fee again. Whether a putative class member may want to seek such relief is immaterial. Therefore, the injunctive and declaratory relief should be dismissed with prejudice.

II. LEGAL ANALYSIS AND ARGUMENT

Plaintiff's Brief is silent on whether she has standing to seek injunctive and declaratory relief against Defendants. This silence is deafening because Plaintiff does not have such standing.

Plaintiff simply does not refute the following: (1) the case law that because she already knows of the alleged fraud that she is seeking to enjoin, she does not have standing to seek an injunction or declaratory judgment against that conduct; (2) she cannot demonstrate any possibility, let alone likelihood, that she will retain KNR again as counsel or pay the investigation fee, even if she did; and (3) she already suffered the alleged damage of being charged the

investigation fee. Under these unrefuted facts and law, Plaintiff has no standing to sue for injunctive and declaratory relief.

Undeterred, Plaintiff contends that she is preserving the injunctive and declaratory relief for the putative class. (Brief in Opposition, p. 4.) Such an argument completely ignores that the Motion for Judgment on the Pleadings is against here individually and whether *she* has standing. In deciding motions in class actions prior to class certification, courts consider only the allegations relating to the named parties and not putative class members. See, e.g., *Crissen v. Gupta*, 994 F. Supp. 2d 937, 945 (S.D. Ind. 2014) (“The Court notes at the outset that in considering a motion to dismiss filed before a class has been certified, it looks only to Mr. Crissen’s individual claims and the circumstances he alleges relating to the Property – and not to allegations surrounding the tax sales for properties owned by putative class members.”); *McCants v. NCAA*, Case No. 1:15-cv-176, 2016 U.S. Dist. LEXIS 106873, \*11 (M.D.N.C. Aug. 12, 2016) (“In considering the NCAA’s motion to dismiss Plaintiffs’ putative class action Complaint, the Court can only consider allegations related to the named plaintiffs – McCants and Ramsay – and not generalized allegations concerning unnamed plaintiffs or putative class members.”). Based on the allegations relating to Plaintiff, she has no standing. The injunctive and declaratory relief should be dismissed with prejudice. Rather, to the extent Plaintiff has individual standing to assert any claim, which KNR denies, it is for past damages and not injunctive and declaratory relief.

### III. CONCLUSION

Based on the foregoing and Defendants’ Motion for Judgment on the Pleadings, Plaintiff’s injunctive and declaratory relief claim against Defendants should be dismissed with prejudice. In addition, Defendants request the award of reasonable attorney’s fees in filing this motion.

Respectfully submitted,

/s/ Brian E. Roof

James M. Popson (0072773)

Brian E. Roof (0071451)

Sutter O'Connell

1301 East 9th Street

3600 Erieview Tower

Cleveland, OH 44114

(216) 928-2200 phone

(216) 928-4400 facsimile

[broof@sutter-law.com](mailto:broof@sutter-law.com)

[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)

Counsel for Defendants

**CERTIFICATE OF SERVICE**

A copy of the foregoing Reply Brief in Support of Defendants' Partial Motion for Judgment on the Pleadings was filed electronically with the Court on this 9<sup>th</sup> day of March, 2017. The parties may access this document through the Court's electronic docket system.

/s/ Brian E. Roof

Brian E. Roof (0071451)