

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,)	
)	JUDGE ALISON BREAUX
v.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,)	<u>DEFENDANTS ALBERTO R. NESTICO AND</u>
)	<u>ROBERT W. REDICK'S MOTION FOR</u>
Defendants.)	<u>JUDGMENT ON THE PLEADINGS</u>
)	<u>REGARDING PLAINTIFFS' SECOND</u>
)	<u>AMENDED COMPLAINT</u>

Pursuant to Civ.R. 12(C) and 9(B), Defendants Alberto R. Nestico and Robert W. Redick respectfully file this Motion for Judgment on the Pleadings on Plaintiffs' Second Amended Complaint and move this Court for an order dismissing them from the lawsuit with prejudice.

Defendant Rob Nestico previously filed a Motion for Judgment on the Pleadings to Plaintiff Member Williams' original Complaint. In response, Plaintiff Williams filed a Motion For Leave to File First Amended Complaint, which was granted. Based on the First Amended Complaint, Mr. Nestico filed a second Motion for Judgment on the Pleadings. The Court granted that Motion for Judgment on the Pleadings, dismissing Mr. Nestico with prejudice. Nevertheless, the Court also permitted Plaintiff to file a Second Amended Complaint, which adds two additional Plaintiffs (Naomi Wright and Matthew Johnson) and one additional Defendant (Robert Redick). Nestico and Redick now file this Motion for Judgment on the Pleadings on all claims (Claims 1, 3-12) filed against them. A memorandum in support of this motion and proposed judgment entry and order are attached.

Respectfully submitted,

/s/ Brian E. Roof

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)	<u>MEMORANDUM IN SUPPORT OF</u>
KISLING, NESTICO & REDICK, LLC,)	<u>DEFENDANTS ALBERTO R. NESTICO AND</u>
et al.,)	<u>ROBERT W. REDICK'S MOTION FOR</u>
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I. INTRODUCTION

This is the third bite at the apple for Plaintiffs' counsel to sue Alberto Nestico personally (and now Robert Redick). The third time is not a charm for Plaintiffs' counsel. Despite repeated attempts by Plaintiffs, their third set of claims fail as a matter of law - either they still have not offered facts to support their claims or Ohio law precludes the claims. Either way, Nestico and now Redick should be dismissed with prejudice as to all claims asserted against them.

First, Plaintiff Member Williams' claims for fraud and unjust enrichment against Nestico have already been dismissed with prejudice. Those claims are no longer part of this case as a result of this Court's March 16, 2017 Order. They should still be dismissed with prejudice as demonstrated below.

Second, Plaintiffs cannot tie Nestico and Redick to any alleged fraud. Neither Nestico nor Redick have had any communications with Plaintiffs to make any misrepresentations or withhold information. There simply has been no opportunity to speak or withhold information. Therefore, Plaintiff Member Williams and Naomi Wright cannot satisfy the first prong (misrepresentation or withholding information) of the fraud claim with particularity. The fraud claim should be dismissed with prejudice.

Third, the breach of fiduciary duty claim suffers the same result. The simple fact that Nestico and Redick may be managing or equity shareholders of Kisling, Nestico & Redick, LLC

("KNR") does not create any special fiduciary obligation to Plaintiffs under Ohio law. Again, neither Nestico nor Redick had any individual dealings with Plaintiffs whatsoever, and Plaintiffs have not alleged an express undertaking by either Nestico or Redick individually to act primarily for the benefit of Plaintiffs. Moreover, Plaintiffs have not alleged, nor can they (as they have never communicated with them), that they have reposed a special confidence and trust in Nestico and Redick individually. Therefore, Plaintiffs' breach of fiduciary relationship claim against Nestico and Redick individually should also be dismissed with prejudice.

Fourth, there are no facts to support that Nestico and Redick were unjustly enriched. Plaintiff Williams' \$50 investigation went to MRS Investigations as a pass through expense via KNR. Neither Nestico nor Redick received that \$50. Indeed, she never conferred any benefit on either of them. As for Plaintiffs Wright and Johnson, they terminated their relationships with KNR before KNR was ever paid. There are no facts demonstrating that Wright or Johnson conferred any benefit on Nestico or Redick. Therefore, Plaintiffs' unjust enrichment claim fails as a matter of law and should be dismissed with prejudice.

Fifth, Ohio statutory and common law is clear that the OCSPA does not apply to attorneys and law firms. Nestico and Redick are Ohio attorneys. Therefore, the OCSPA claims against them are barred as a matter of law. The claims should be dismissed with prejudice.

II. ALLEGED FACTUAL BACKGROUND

A. Plaintiffs' classes and claims against Nestico and Redick

Plaintiffs have filed a putative class action lawsuit against KNR, Nestico, and Redick, which is broken down into three classes.¹ The first class (the "Investigation Fees Class") is defined as: "All current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called 'investigator' or

¹ By reciting the allegations of the Second Amended Complaint in this Motion for Judgment on the Pleadings, Nestico and Redick do not admit or agree to those allegations. Nestico and Redick incorporate herein by reference their Answers.

'investigation' company ('investigation fees')." (Sec. Am. Compl., ¶ 124(A).) Williams is the class representative. She has asserted claims for fraud, breach of fiduciary duty, unjust enrichment, and alleged violation of the Ohio Consumer Sales Practices Act ("OCSPA") against Nestico and Redick. (*Id.*, Claims 1; 3; 4; 10.)²

The second class (the "Chiropractor Class") is defined as: "All current and former KNR clients who were referred to KNR by Akron Square Chiropractic or referred to ASC by KNR, terminated KNR's services, and had a lien asserted by KNR on their lawsuit proceeds." (Sec. Am. Compl., ¶ 124(B).) Wright is the class representative. She has asserted claims for breach of fiduciary duty, unjust enrichment, and alleged violation of the OCSPA. (*Id.*, Claims 5-6; 12.)

The third class (the "Liberty Class") is defined as: "All current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding, LLC." (Sec. Am. Compl., ¶ 124(C).) Johnson is the class representative. He has asserted claims for fraud, breach of fiduciary duty, unjust enrichment, and alleged violation of the OCSPA against Nestico and Redick. (*Id.*, Claims 7-9; 11.)

B. The factual allegations relating to the Investigation Fees Class

Williams' claims are based on whether KNR's investigation fee charged to Williams was valid and lawful. KNR represented Williams in a personal injury matter arising from an automobile accident. (Sec. Am. Compl., ¶ 9.) Prior to the representation, Williams entered into a binding 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.*, ¶¶ 9 and 85.) Allegedly, Williams understood that "KNR could deduct only reasonable expenses from a client's share of the proceeds..." (*Id.*, ¶ 65.)

KNR obtained a settlement for Williams. (*Id.*, ¶ 9.) As part of that settlement and as required by Ohio law, Williams voluntarily signed a Settlement Memorandum that outlined the settlement amount and the fees and expenses that were deducted from that amount to be paid

² The second claim is a breach of contract claim that is against only KNR; not Nestico and Redick.

to KNR, with the remaining paid to Williams. (Amended Complaint, ¶¶ 9 and 85.) The first expense on the Settlement Memorandum was \$50 that was paid to MRS Investigations, Inc. for an investigation fee. (*Id.*, ¶ 85 and Ex. C thereto.) Williams, 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.*, ¶ 85, emphasis added.) Williams 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.*)

Williams, however, never alleges that she had any interactions with Nestico or Redick. She does not contend that Nestico or Redick specifically made any representations to her or that they withheld any information from her. There is absolutely nothing in the Second Amended Complaint that ties Nestico and Redick to Williams and her individual claims. Nevertheless, Williams asserts fraud, breach of fiduciary duty, unjust enrichment, and OCSA claims against them.

C. The factual allegations relating to the Chiropractor Class

The basis for the Chiropractor Class claims is the alleged quid pro quo relationship between KNR and Akron Square Chiropractic (“ASC”). The alleged quid pro quo relationship is that KNR will refer its clients to ASC for treatment and ASC will refer its clients to KNR for legal representation. (Sec. Am. Compl., ¶ 37.) It also allegedly involves KNR pressuring its clients to treat with ASC, even though the clients would prefer to treat elsewhere. (*Id.*, ¶¶ 44-50.) The quid pro quo relationship continues with KNR allegedly not negotiating lower rates and fees for ASC, or in other words, guaranteeing ASC’s fees. (*Id.*, ¶¶ 51-54.) Finally, it concerns the clients paying ASC narrative fees for purportedly drafting worthless reports. (*Id.*, ¶¶ 55-62.)

Specifically, Wright contends that Nestico and Redick unlawfully solicited her through ASC and deceived and coerced her into accepting conflicting legal representation and unwanted medical care. (Sec. Am. Compl., ¶ 10.) After Wright terminated KNR’s representation, KNR asserted liens against any recovery Wright may obtain. (*Id.*)

Similar to Williams, however, Wright never alleges that she had any interactions with Nestico or Redick. She never contends that Nestico or Redick specifically made any representations to her or that they withheld any information from her. The Second Amended Complaint does not tie Nestico and Redick to Wright and her individual claims. Regardless, Wright asserts breach of fiduciary duty, unjust enrichment, and OCSPA claims against them.

D. The factual allegations relating to the Liberty Class

The Liberty Class is based on KNR allegedly recommending that its clients take out loans with Liberty Capital Funding, LLC ("Liberty") at exorbitant interest rates in order for the clients to obtain a portion of any recovery up front. (Sec. Am. Compl., ¶¶ 98-120.) Specifically, Johnson alleges that KNR advised him to enter into a loan with Liberty with annual interest rate of 49%, which included a \$50 delivery fee and a \$20 processing fee that also accrued interest at 49%. (*Id.*, ¶ 107.) Johnson allegedly repaid his loan after approximately one year. (*Id.*) Based on no facts whatsoever, Johnson makes legal conclusions, not inferences, that Nestico and Redick assisted in forming Liberty and retained an ownership interest in Liberty. (*Id.*, ¶¶ 119-120.)

But once again, Johnson does not allege that he had any interactions with Nestico or Redick. He never contends that Nestico or Redick specifically made any representations to him or that they withheld any information from him. The Second Amended Complaint does not tie Nestico and Redick to Johnson and his personal claims. Irrespective, Johnson asserts fraud, breach of fiduciary duty, unjust enrichment, and OCSPA claims against them.

III. LEGAL ANALYSIS AND ARGUMENT

A. Plaintiffs' claims against Nestico and Redick 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, 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). Plaintiffs’ fraud, breach of fiduciary duty, unjust enrichment, and OCSPA claims against Nestico and Redick do not survive this standard.

B. As a matter of law, Plaintiffs have not asserted any valid claim against Nestico or Redick.

1. This Court already dismissed Williams’ fraud and unjust enrichment claims.

Williams’ First Amended Complaint asserted fraud and unjust enrichment claims against Nestico. (First Am. Compl., Claim 1 and 3.) In response, Nestico filed a Motion for Judgment on the Pleadings on the fraud and unjust enrichment claims. On March 16, 2017, this Court granted Nestico’s motion and dismissed the fraud and unjust enrichment claims with prejudice. (March 16, 2017 Order, pg. 5.) The Court has neither retracted nor voided the Order. Therefore, it is still valid and enforceable, and as a result, Williams’ fraud and unjust enrichment claims are dismissed with prejudice. As demonstrated below, Williams’ fraud and unjust enrichment claims should still be dismissed with prejudice.

2. Williams and Johnson have asserted no facts that Nestico and Redick personally committed fraud.

Williams and Johnson assert fraud claims against Nestico and Redick. (Sec. Am. Compl., Claims 1 and 7.) Via these claims, they contend that under Ohio law an officer or director of a corporation can be held personally liable for a corporation's purported fraud, and thus, Nestico and Redick can be held personally liable in this case for fraud. That may be true, but Williams and Johnson still need to prove the elements of fraud with particularity as required under Civ.R. 9(B) and that Nestico and Redick were personally involved in the fraud. Williams and Johnson disregard that they must show that: (1) Nestico and Redick personally made the false statement (or withheld information), (2) they personally knew that it was a false statement, (3) they personally intended for Williams and Johnson to act in reliance upon it, and (4) Williams and Johnson in fact acted and were injured. *Cincinnati Bible Seminary v. Griffiths*, 1st Dist. No. C-830867, 1984 Ohio App. LEXIS 11028, *6 (citing *Centennial Ins. Co. v. Vic Tanny Int'l of Toledo, Inc.*, 46 Ohio App. 2d 137, 142 (6th Dist. 1975)). This personal involvement requirement is fatal to the fraud claims against Nestico and Redick.

Williams and Johnson cannot satisfy the personal involvement requirement that Nestico and Redick made a false statement or personally concealed information. Williams and Johnson do not allege, nor can they, that they had any dealings or interactions with Nestico and Redick, let alone that Nestico or Redick made misrepresentations to them or that they personally withheld information. Nestico and Redick have never met or spoken to any of the Plaintiffs. Indeed, Williams and Johnson cannot satisfy the who, when and where of the particularity requirement under Rule 9(B). *Toledo Trust Co. v. Justen*, 6th Dist. Lucas No. L-85-318, 1986 Ohio App. LEXIS 6864, *5 (May 23, 1986); *Sanderson v. HCA-The Healthcare Co.*, 447 F.3d 873, 877 (6th Cir. 2006). There is absolutely nothing in the Second Amended Complaint that ties Nestico and Redick to the alleged fraud. Without an allegation that Nestico or Redick

personally made a fraudulent representation or withheld information, Williams and Johnson's fraud claims against Nestico and Redick should be dismissed with prejudice.

3. Nestico and Redick do not individually owe Plaintiffs a fiduciary duty.

Plaintiffs also bring breach of fiduciary duty claims against Nestico and Redick. (Sec. Am. Compl., Claims 3, 5, and 8.) Plaintiffs' theory is that Nestico and Redick, as the "sole equity partners and controlling shareholders of KNR . . . owed all KNR clients a fiduciary duty and intentionally breached that fiduciary duty." (*Id.*, ¶¶ 121-123.) Beyond broad conclusory allegations (which are not to be accepted as true), however, Plaintiffs have set forth no facts establishing that any such fiduciary obligation exists in this instance.

"A 'fiduciary relationship' is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *Belvedere Condominium Unit Owners' Ass'n v. R.E. Roark Cos.*, 67 Ohio St.3d 274, 282, 617 N.E.2d 1075 (1993), quoting *In re Termination of Employment of Pratt*, 40 Ohio St.2d 107, 115, 321 N.E.2d 603 (1974). "The person in whom the 'special confidence and trust' are reposed, the fiduciary, has a 'duty to act for someone else's benefit, while subordinating [his or her] personal interests to that of the other person.'" *Id.*, quoting Black's Law Dictionary (6 Ed.1990) 625. A fiduciary relationship may be created by agreement, by statute, or de facto by an informal relationship, but "only where both parties understand that a special trust and relationship has been reposed" will a de facto fiduciary relationship be recognized. *Id.* at 283; *Umbaugh Pole Bldg. Co. v. Scott*, 58 Ohio St.2d 282, 287, 390 N.E.2d 320 (citations omitted). Ohio "courts have been reluctant to characterize relationships between individuals as being fiduciary in nature, with the obvious exception of those relationships that involve statutorily-imposed duties." *Casey v. Reidy*, 180 Ohio App.3d 615, 2009-Ohio-415, ¶ 35 (7th Dist.) (citations omitted.)

Plaintiffs have set forth no agreement or statute creating a fiduciary relationship between themselves and Nestico and Redick individually. Nor have Plaintiffs plead any facts to establish

a purported fiduciary obligation by either Nestico or Redick through a de facto informal relationship. As they readily admit in their Second Amended Complaint, Plaintiffs retained KNR to prosecute their personal injury claims, not Nestico or Redick individually. Moreover, the Second Amended Complaint is void of any allegation that Plaintiffs ever communicated or otherwise dealt with Nestico and Redick either before, during, or after their representation by KNR. Simply put, Plaintiffs have identified no facts that they “reposed a special trust and confidence” in Nestico and Redick individually solely by virtue of retaining the KNR firm as a whole, nor have they plead any facts establishing that Nestico and Redick individually understood that Plaintiffs reposed any such trust to support a de facto fiduciary obligation, especially viewing that Plaintiffs had no contact with either Nestico or Redick whatsoever. As a result, their breach of fiduciary duty claims against Nestico and Redick (Claims 3, 5, and 8) should be dismissed with prejudice.

4. Plaintiffs have asserted no facts that Nestico and Redick were unjustly enriched.

Plaintiffs each assert an unjust enrichment claim against Nestico and Redick. (Sec. Am. Compl., Claims 4, 6, and 9.) To pursue an unjust enrichment claim, Plaintiffs must establish that (1) they conferred a benefit on Nestico and Redick; (2) Nestico and Redick knew of such benefit; and (3) Nestico and Redick retained the benefit under circumstances where it would be unjust to do so without payment. *Metz v. Am. Elec. Power Co.*, 172 Ohio App. 3d 800, 2007-Ohio-3520, ¶ 43 (10th Dist.). Plaintiffs cannot satisfy the elements for unjust enrichment.

First, there are no factual allegations that Nestico and Redick personally were unjustly enriched by KNR’s representation of Williams. The Second Amended Complaint alleges that KNR deducted the investigation fee from the settlement proceeds. (Sec. Am. Compl., ¶ 160.) In addition, Williams does not allege that she paid Nestico or Redick personally. Nor does she allege that Nestico or Redick 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, which went to KNR as a pass through expense. (Ex. C to Sec. Am. Compl.)

Similarly, the Second Amended Complaint is devoid of any facts that because of the alleged quid pro quo relationship with ASC that money that should have gone to Wright went directly to Nestico and Redick. In fact, Ms. Wright terminated her relationship with KNR and KNR has not been paid anything, let alone Nestico or Redick receiving an unjust benefit. Without conferring a benefit, the unjust enrichment claim should be dismissed with prejudice.

The same result is true with Johnson, who terminated KNR. The Second Amended Complaint is lacking any facts that there was a recovery on behalf of Johnson that went directly to Nestico and Redick to constitute unjust enrichment. There are simply no facts that either Nestico or Redick had an ownership or financial interest in Liberty and no facts from which to draw an inference that they do. Therefore, the unjust enrichment claims fail as a matter of law.

5. The OCSPA expressly does not apply to attorneys and law firms.

Each Plaintiff asserts an OCSPA claim against Nestico and Redick. (Sec. Am. Compl., Claims 10-12.) The OCSPA claims, however, fail as a matter of law because the statute does not apply to attorneys and law firms.

The OCSPA specifically excludes transactions between attorneys and clients from the definition of consumer transaction: “‘Consumer transaction’ does not include transactions between attorneys... and their clients....” O.R.C. 1345.01(A). As such, Ohio courts have refused to apply the OCSPA to law firms. See, e.g., *Patton v. Diemer*, 35 Ohio St. 3d 68, 70 (1988) (“R.C. 1345.01(A) specifically excludes the attorney-client relationship....”); *Reynolds v. Kuby*, 11th Dist. No. 96-G-1977, 1997 Ohio App. LEXIS 1784, *5-6 (“R.C. 1345.01(A) specifically provides that a transaction between a lawyer and his or her client is not a consumer transaction.”); *Burke v. Gammarino*, 108 Ohio App. 3d 138, 142 (1st Dist. 1995) (“This act [OCSPA], however, does not apply to transactions between attorneys and their clients, and Gammarino’s reliance on it was completely misplaced.”); *Lee v. Traci*, 8th Dist. No. 65368, 1994

Ohio App. LEXIS 2384, *20-21 (“[I]t is clear that transactions between attorneys and their clients, which is the basis for the claim at issue, are not actionable under the [OCSPA] by virtue of the specific exclusion of attorney-client transactions from the definition of a deceptive act or practice in connection with a consumer transaction.”). See also, *Reuss v. First Fin. Collection Co.*, Case No. 1:08-cv-697, 2009 U.S. Dist. LEXIS 115624, *8 (S.D. Ohio Dec. 11, 2009) (“Ohio courts routinely hold that both an attorney and a law firm of attorneys are exempt from the OCSPA.”).

The Defendants are a law firm and attorneys, and Plaintiffs’ claims relate to a transaction involving legal representation with them. Therefore, the OCSPA does not apply to this case as a matter of law. The OCSPA claims should be dismissed with prejudice.

Plaintiffs futilely try to avoid the above case law by citing to the following three cases in their Second Amended Complaint: (1) *Gugliotta v. Morano*, 161 Ohio App. 3d 152, 2005-Ohio-2570 (9th Dist.); (2) *Elder v. Fischer*, 129 Ohio App. 3d 209 (1st Dist. 1998); and (3) *Summa Health Sys. v. Viningre*, 140 Ohio App. 3d 780 (9th Dist. 2000). (Sec. Am. Compl., ¶ 208.) All three are distinguishable, not on point, and not controlling law.

First, in *Gugliotta*, the attorney was also an engineer and the court held that his consumer transaction was in his role as an engineer and attorney, rather than just as an attorney. *Gugliotta*, 161 Ohio App. 3d at ¶ 43. Because the attorney was also acting as an engineer, he was not fully engaged in the practice of law, and therefore, the OCSPA applied. *Id.* at ¶ 43.

Second, *Elder* involved whether the OCSPA applied to the billing practices of a residential care facility. *Elder*, 129 Ohio App. 3d at 211. This is completely irrelevant to whether attorneys and law firms are exempt from the OCSPA. Plaintiffs have failed to cite to one case that concludes that attorneys and law firms are not exempt.

Third, *Summa* is similar to *Elder* in that the court concluded that there is no clear exemption for a healthcare provider under the OCSPA. *Summa Health Sys.*, 140 Ohio App. 3d

780 at 795. Again, this decision is completely irrelevant to attorneys and law firms. Therefore, neither *Gugliotta*, *Elder*, nor *Summa* undermine the conclusion that the OCSA specifically excludes attorneys and law firms, including Defendants, from liability under the statute.

In a final vain attempt to avoid Ohio law, Plaintiffs assert nothing but speculative conclusions that Nestico and Redick were not engaged in the practice of law for purposes of the OCSA claims. (Sec. Am. Compl., ¶¶ 209; 213; 217.) But with judgment on the pleadings under Rule 12(C), the trial court does not have to accept unsupported conclusions. *Capots*, 45 Ohio St.3d at 324. The statements that Nestico and Redick were not engaged in the practice of law are nothing more than unsupported conclusions. No facts support them.

The bottom line is that no matter how hard Plaintiffs try, Ohio law is clear that the OCSA does not apply to attorney-client transactions, which Plaintiffs are trying to do here. The OCSA claims should be dismissed with prejudice.

IV. CONCLUSION

Despite a third bite at the apple, Plaintiffs' Second Amended Complaint does not offer the requisite facts or law to assert claims against Nestico and Redick for fraud, breach of fiduciary duty, unjust enrichment, and violation of the OCSA. Enough is enough and Plaintiffs' claims against Nestico and Redick should be dismissed with prejudice.

Respectfully submitted,

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)	<u>FOR JUDGMENT ON THE PLEADINGS</u>
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Based on Defendant Alberto Nestico and Robert Redick's Motion for Judgment on the Pleadings Regarding Plaintiff's Second Amended Complaint, and after having fully reviewed and analyzed all briefs on this Motion, Defendants' Motion is well taken and granted in its entirety. Therefore, it is ordered and decreed that the fraud, breach of fiduciary duty, unjust enrichment, and OCSPA claims (Claims 1 and 3-12) against Defendants Alberto Nestico and Robert Redick are hereby dismissed with prejudice. They are no longer Defendants in this lawsuit.

SO ORDERED:

Judge Alison Breaux

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants Alberto R. Nestico and Robert Redick's Motion For Judgment On The Pleadings Regarding Plaintiffs' Second Amended Complaint was filed electronically with the Court on this 3rd day of August, 2017. The parties may access this document through the Court's electronic docket system.

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