

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MISSISSIPPI,
DIVISION**

PLAINTIFF

V.

CIVIL ACTION NO.:

DEFENDANTS

ANSWER AND DEFENSES

, by and through undersigned counsel, file this his/her/their Answer and Defenses to Plaintiff's Complaint, and in support hereof show this Court as follows:

FIRST DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief may be granted.

SECOND DEFENSE

MOTION TO DISMISS

The allegations of paragraphs 34 through 41, including the paragraphs referenced in paragraph 34 of the Complaint upon which said allegations relate or rely, are due to be dismissed in that said allegations are barred by the applicable statute of limitation. Said allegations constituting the only purported cause of action against Defendant, , individually, Defendant, , individually is due to be dismissed from this action with prejudice.

WHEREFORE, PREMISES CONSIDERED, Defendants move that all allegations contained in paragraphs through , including the paragraphs referenced in paragraph of the Complaint be dismissed with prejudice, with all costs assessed to Plaintiff.

THIRD DEFENSE

Defendants deny each and every material allegation of the Complaint by which Plaintiff seeks to impose liability upon the Defendants in any manner whatsoever.

FOURTH DEFENSE

MOTION TO DISMISS

Defendant, _____, bears no individual responsibility for any of the allegations contained in the Complaint, as he/she was at all times material hereto acting in his/her capacity as an officer of Defendant, _____, and executed the purported contract and related attachments, which are the subject of the instant litigation, in his/her capacity as President of Defendant, _____, rather than individually.

WHEREFORE, PREMISES CONSIDERED, Defendant, _____, moves this Court to Dismiss his/her, individually, from this action with prejudice with All costs assessed to Plaintiff.

FIFTH DEFENSE

While denying each and every material allegation of the Complaint by which Plaintiff seeks to impose liability upon Defendant, _____, should it be shown at the trial of this matter that Defendant, _____, breached the contract between Plaintiff and Defendant, _____, then Defendant, _____, respectfully demands that any award of damages for such breach be reduced by the amount attributable to Plaintiff's failure to mitigate its damages, if any.

SIXTH DEFENSE

While denying each and every material allegation of the Complaint by which Plaintiff seeks to impose liability on the Defendants in any manner whatsoever, should it be determined that Defendants acted in a manner which is compensable to Plaintiff, then Plaintiff's damages, if any, should be reduced by that amount of damages attributable to Plaintiff's own contributory negligence.

SEVENTH DEFENSE

While denying each and every material allegation of the Complaint by which Plaintiff seeks to impose liability on the Defendants in any manner whatsoever, Defendants affirmatively plead that Plaintiffs failed to comply with the terms and conditions of the contract which is the subject of this litigation and cannot now be heard to complain about Defendant, , alleged breach of same.

EIGHTH DEFENSE

The allegations of paragraphs through of the Complaint being grounded and contingent upon the validity and enforceability of the contract made the basis of this action, and the Plaintiff having failed to comply with the terms and conditions of said contract, said allegations are due to be dismissed with prejudice.

NINTH DEFENSE

The allegations of paragraphs through of the Complaint being grounded and contingent upon the validity and enforceability of the contract made the basis of this action, and the Plaintiff having failed to comply with the terms and conditions of said contract, said allegations are due to be dismissed with prejudice.

TENTH DEFENSE

The allegations of paragraphs through of the Complaint being grounded and contingent upon the validity and enforceability of the contract made the basis of this action, and the Plaintiff having failed to comply with the terms and conditions of said contract, said allegations are due to be dismissed with prejudice.

ELEVENTH DEFENSE

The allegations of paragraphs through of the Complaint being grounded and contingent upon the validity and enforceability of the contract made the basis of this action,

and the Plaintiff having failed to comply with the terms and conditions of said contract, said allegations are due to be dismissed with prejudice.

TWELFTH DEFENSE

The allegations of paragraphs through of the Complaint being grounded and contingent upon the validity and enforceability of the contract made the basis of this action, and the Plaintiff having failed to comply with the terms and conditions of said contract, said allegations are due to be dismissed with prejudice.

THIRTEENTH DEFENSE

Answering the allegations paragraph by paragraph, the Defendants, either collectively or individually as appropriate, allege and state as follows:

1. .
- 2.
3. .
4. .
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.

- 15.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.
- 26.
- 27.
- 28.

FOURTEENTH DEFENSE

The Plaintiff, by and through its agents, employees or assigns, counseled, recommended and induced the Defendant, _____, to break its contract with another entity and competitor of Defendant, _____, and for the purpose of establishing an adhesion contract and overbearing relationship with Defendant, _____. Rather than comply with Plaintiff's illegal, unethical and violative request, Defendant, _____, continued to honor its contract with the Plaintiff's competitor while using its best efforts to satisfy the contract made the basis of Plaintiff's Complaint. Plaintiff's actions, as described above, provides proof of Plaintiff's "unclean hands" in the circumstance. Accordingly, Plaintiff is entitled to no relief whatsoever of and from the Defendants.

FIFTEENTH DEFENSE

Although having previously denied that the Plaintiff is entitled to punitive damages or any relief whatsoever against Defendants, Defendants affirmatively plead that:

(A) Plaintiff's Complaint fails to allege facts or circumstances sufficient to support an award of punitive damages under applicable law.

(B) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the fifth and fourteenth Amendments to the United States Constitution and Section 14 of the Mississippi Constitution;

(C) No legislation has been enacted authorizing punitive damages in a civil action such as this or placing any limit on the amount of punitive damages awardable;

(D) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and Section 14 of the Mississippi Constitution;

(E) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissibly vague, imprecise and inconsistent and are therefore in violation of the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution;

(F) An award of punitive damages in this civil action would amount to an excessive fine in violation of the Eighth Amendment to the United States Constitution and of Section 28 of the Mississippi Constitution;

(G) An award of punitive damages in this civil action would violate the equal protection provisions of the Fourteenth Amendment to the United States Constitution in that such a sanction is discriminatory and arbitrary in penalizing the Defendants on the basis of assets;

(H) To the extent that Defendants are subjected to a criminal sanction through punitive damages, the burden of proof required to impose the same should be proved "beyond a reasonable doubt," and punitive damages should not be awarded without affording the Defendants the full range of criminal procedural safeguards afforded pursuant to the Fourth, Fifth and Sixth Amendments to the United States Constitution;

(I) An award of punitive damages in this civil action would violate Article I, Section X of the United States Constitution;

(J) An award of punitive damages in this civil action would violate similar and related provisions, as noted above, of the Constitution of the State of Mississippi.

SIXTEENTH DEFENSE

MOTION TO BIFURCATE

Defendants, by and through undersigned counsel, files this their Motion to Bifurcate the punitive damages issues from the claims for compensatory damages pursuant to Miss. Code Ann. § 11-1-65(b) and (c) (1972), as amended, and in support hereof show this Court as follows:

1.

Plaintiff has made a separate claim against Defendants for alleged conduct which, Plaintiff alleges, gives rise to the imposition of punitive damages against Defendants.

2.

Pursuant to Miss. Code Ann. § 11-1-65(b) and (c), Defendants are entitled to a separate evidentiary hearing on the punitive damages issue, which said hearing should be commenced if, but only if, an award of compensatory damages has been made against Defendants.

WHEREFORE, PREMISES CONSIDERED, Defendants pray this Court will bifurcate the punitive damages issues from the underlying compensatory damages claims by deferring any

address of punitive damages issues until a determination has been made as to Plaintiff's claims for compensatory damages.

SEVENTEENTH DEFENSE

The facts not having been fully developed, Defendants further affirmatively plead the following affirmative defenses as may be applicable in this action: Plaintiffs' failure to mitigate damages or take reasonable steps to avoid damages, accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

AND NOW HAVING FULLY AND FINALLY answered the allegations of the Complaint, Defendants respectfully demand that they be dismissed from this action with all costs taxed to Plaintiff.

,
INDIVIDUALLY

BY: _____

ATTORNEYS FOR DEFENDANTS

OF COUNSEL:

CERTIFICATE OF SERVICE

This is to certify that, _____, I have this day served a true and correct copy of the foregoing via facsimile transmission and via U.S. Mail, postage pre-paid and properly addressed to:

This the _____ day _____, _____.

