

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

RICHARD MCMILLIN, on behalf of himself)	
And a class of similarly situated individuals,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14AF-CC00154-01
)	
NOLAN FOGLE, et al.,)	
)	
Defendants.)	

ANSWER OF DEFENDANT NOLAN FOGLE

Defendant Nolan Fogle (“Nolan”), for his Answer to Plaintiff’s Petition for Damages, states as follows:

JURISDICTION & VENUE

1. Paragraph 1 consists of an introductory statement to which no response is required. To the extent that any response is required to the allegations of paragraph 1, they are denied.

2. The allegations of paragraph 2 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 2, they are denied.

PARTIES

3. Nolan is without sufficient knowledge or information to respond to the allegations of paragraph 3, and therefore denies the same.

4. Nolan admits that Fogle Enterprises, Inc. is a Missouri corporation doing business in and around Branson, Missouri. Nolan denies that it has ever engaged in any “unlawful practices.”

5. Nolan admits that he is a resident of Taney County, Missouri and is a shareholder of Fogle Enterprises, Inc. Nolan denies the remaining allegations of paragraph 5.

6. The allegations in paragraph 6 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 6, they are denied.

ALLEGATIONS

7. Nolan denies the allegations of paragraph 7.

8. Nolan denies the allegation of paragraph 8.

9. Nolan denies the allegations of paragraph 9.

10. Nolan denies the allegations of paragraph 10.

11. Nolan denies the allegations of paragraph 11.

12. Nolan denies the allegations of paragraph 12.

13. Nolan denies the allegations of paragraph 13.

14. Nolan denies the allegations of paragraph 14.

15. Nolan is without sufficient knowledge or information to respond to the allegations of paragraph 15, and therefore denies the same.

16. Nolan denies the allegations of paragraph 16.

CLASS ACTION ALLEGATIONS

17. The allegations of paragraph 17 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 17, they are denied.

18. The allegations of paragraph 18 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 18, they are denied.

19. Nolan denies the allegations of paragraph 19.

20. Nolan denies the allegations of paragraph 20.

21. Nolan denies the allegations of paragraph 21 and each of its subparts.

22. Nolan denies the allegations of paragraph 22.

23. Nolan denies the allegations of paragraph 23.

24. Nolan denies the allegations of paragraph 24.

25. Nolan denies the allegations of paragraph 25 and each of its subparts.

FIRST CAUSE OF ACTION

(For Violations of Missouri's Merchandising Practices Act, Mo.Rev.Stat. § 407.010, *et seq.*)

26. Nolan restates and realleges his responses to all paragraphs previously alleged herein.

27. The allegations of paragraph 27 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 27, they are denied.

28. The allegations of paragraph 28 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 28, they are denied.

29. Nolan denies the allegations of paragraph 29.

30. Nolan denies the allegations of paragraph 30.

31. Nolan denies the allegations of paragraph 31.

32. The allegations of paragraph 32 constitute legal conclusions to which no response is required. To the extent that any response is required to the allegations of paragraph 32, they are denied.

SECOND CAUSE OF ACTION
(Money Had and Received)

33. Nolan restates and realleges his responses to all paragraphs previously alleged herein.

34. Nolan denies the allegations of paragraph 34.

35. Nolan denies the allegations of paragraph 35.

36. Nolan denies the allegations of paragraph 36.

37. Nolan denies the allegations of paragraph 37.

THIRD CAUSE OF ACTION
(For Unjust Enrichment)

38. Nolan restates and realleges his responses to all paragraphs previously alleged herein.

39. Nolan denies the allegations of paragraph 39.

40. Nolan denies the allegations of paragraph 40.

41. Nolan denies the allegations of paragraph 41.

42. Nolan denies the allegations of paragraph 42.

AFFIRMATIVE DEFENSES

A. Plaintiff's First Cause of Action fails to state a claim upon which relief can be granted.

B. Plaintiff's Second Cause of Action fails to state a claim upon which relief can be granted.

C. Plaintiff's Third Cause of Action fails to state a claim upon which relief can be granted.

D. Plaintiff's claims and those of the proposed class members are barred by the applicable statutes of limitations.

E. Plaintiff's claims and those of the proposed class members are barred by the voluntary payment doctrine.

F. Plaintiff's claims and those of the proposed class members are barred by the doctrine of unclean hands.

G. Plaintiff's First Cause of Action fails to the extent the transactions of Plaintiff and the proposed class members were not "primarily for personal, family, or household purposes" as required by R.S.Mo. § 407.025.

H. Plaintiff's request for an award of punitive damages would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 10 of the Missouri Constitution in that Defendants did not act reprehensibly so as to justify an award of punitive damages. This case involves purely economic harm; Plaintiff has not pleaded and cannot prove any improper motive of Defendants that justifies an award of punitive damages.

I. This case may not be maintained as a class action because:

1. There is no question of law or fact common to the putative class;
2. Plaintiff's claims are not typical of the putative class;
3. Plaintiff will not fairly and adequately protect the interests of the putative class;
4. Common issues of fact or law do not predominate over questions affecting only individual members;

5. A class action is not a superior method for the fair and efficient adjudication of this controversy;

6. Other requirements of maintaining a class action under Missouri law have not been met.

J. Plaintiff and the putative class he seeks to represent are not entitled to relief because there is no injury, or no injury caused by Defendants. Defendants have not violated any of the laws of the State of Missouri.

K. Plaintiff's claims are barred, in whole or in part, because the alleged conduct of Defendants was undertaken in good faith for a valid business purpose.

L. Plaintiff's claims are barred by the doctrines of waiver and/or estoppel in that Plaintiff and members of the proposed class entered into the transactions at issue with knowledge of the issues to which Plaintiff complains.

M. Plaintiff's claims against Nolan fail because Nolan did not participate in the transaction Plaintiff complains of and Plaintiff has not pled sufficient facts to establish a claim against Nolan.

N. Defendants reserve the right to amend their Answer and raise additional affirmative defenses that may become available during the course of discovery in this matter.

WHEREFORE, having fully answered Plaintiff's Petition for Damages, Nolan Fogle prays for judgment in his favor, together with his costs and fees incurred herein and for such other further relief as the Court deems just as proper.

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and Nolan Fogle*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was filed with the Court's electronic filing system this 29th day of April, 2015, and forwarded by first class mail, postage prepaid to:

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