

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MARTIN ZAKARIAN, and
MARY JONES, on behalf of themselves and
those similarly situated,

Plaintiffs,

THE RAWLINGS COMPANY LLC,
RAWLINGS FINANCIAL SERVICES, LLC
and RAWLINGS & ASSOCIATES, PLLC,

Defendants.

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) Case No. 4:24-cv-00229-SRB
) Judge Stephen R. Bough
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DEFENDANTS' ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT

Defendants The Rawlings Company LLC, Rawlings Financial Services, LLC, and Rawlings & Associates, PLLC (collectively, “Rawlings” or “Defendants”) file this Answer to Plaintiffs’ Class Action Complaint (the “Complaint”) [ECF No. 1].

PARTIES

1. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 1 of the Complaint regarding Plaintiff Martin Zakarian’s (“Zakarian”) residency, and therefore deny them.

2. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint regarding Plaintiff Mary Jones’ (“Jones”) residence, and therefore deny them.

3. In response to the allegations in Paragraph 3 of the Complaint, Defendants admit that The Rawlings Company LLC is a Kentucky limited liability company with its principal place of business in Kentucky.

4. In response to the allegations in Paragraph 4 of the Complaint, Defendants admit that Rawlings Financial Services, LLC is a Kentucky limited liability company with its principal place of business in Kentucky.

5. In response to the allegations in Paragraph 5 of the Complaint, Defendants deny the allegations in Paragraph 5 and state that Rawlings & Associates, PLLC is a Kentucky professional limited liability company with its principal place of business in Kentucky.

6. Defendants deny the allegations in Paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 7 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

8. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 8 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

9. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 9 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

CLASS DEFINITIONS

10. Defendants admit that Plaintiff Zakarian purports to bring a class action under Federal Rule of Civil Procedure 23 but deny that they breached any promises to Plaintiff Zakarian

or committed any wrongdoing and deny that class certification is proper or that Plaintiff Zakarian can satisfy the requirements of Federal Rule of Civil Procedure 23.

11. Defendants admit that Plaintiff Jones purports to bring a class action under Federal Rule of Civil Procedure 23 but deny that they breached any promises to Plaintiff Jones or committed any wrongdoing and deny that class certification is proper or that Plaintiff Jones can satisfy the requirements of Federal Rule of Civil Procedure 23.

COMMON FACTUAL ALLEGATIONS

12. Paragraph 12 of the Complaint contains allegations not directed at Defendants and, as such, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 12.

13. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore deny them.

14. Paragraph 14 of the Complaint contains allegations not directed at Defendants and, as such, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 14.

15. Defendants admit that Plaintiff Zakarian settled a lawsuit with a third party arising out of injuries Plaintiff Zakarian allegedly sustained in connection with an automobile accident caused by the third party but lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 15 of the Complaint, and therefore deny them.

16. Defendants admit that The Rawlings Company LLC asserted and enforced various Medicare recovery rights under the Medicare Secondary Payer Act (“MSP”) against the proceeds of Plaintiff Zakarian’s settlement with a third party for conditional medical expenses paid by Medicare. Defendants deny the remaining allegations in Paragraph 16 of the Complaint.

17. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 17.

18. Defendants admit that Plaintiff Zakarian remitted monies to The Rawlings Company LLC pursuant to his obligations under the MSP following negotiations between the parties. Further responding, Defendants state that Plaintiff Zakarian has failed to exhaust his claims for Medicare Part C benefits as required under federal law. Among other things, Plaintiff Zakarian did not exhaust the required administrative remedies before the Secretary of Health and Human Services as required for claims arising under the Medicare Act. The Complaint lacks any allegation that Plaintiff Zakarian made any attempt to comply with the exhaustion requirement, including disputing the amount of the Medicare recovery rights enforced by The Rawlings Company LLC, as required by law, or exhausted any of the other levels of administrative appeal required.

19. Paragraph 19 of the Complaint contains allegations not directed at Defendants and, as such, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 19.

20. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore deny them.

21. Defendants admit that Plaintiff Jones settled a dispute with a third party arising out of injuries Plaintiff Jones allegedly sustained in connection with an automobile accident caused by the third party but lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint, and therefore deny them.

22. Defendants admit that The Rawlings Company LLC asserted and enforced various Medicare recovery rights under the MSP against the proceeds of Plaintiff Jones' settlement with a third party for conditional medical expenses paid by Medicare. Defendants deny the remaining allegations in Paragraph 22 of the Complaint.

23. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 23 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

24. Defendants admit that Plaintiff Jones remitted monies to The Rawlings Company LLC pursuant to her obligations under the MSP following negotiations between the parties. Further responding, Defendants state that Plaintiff Jones has failed to exhaust her claims for Medicare Part C benefits as required under federal law. Among other things, Plaintiff Jones did not exhaust the required administrative remedies before the Secretary of Health and Human Services as required for claims arising under the Medicare Act. The Complaint lacks any allegation that Plaintiff Jones made any attempt to comply with the exhaustion requirement, including disputing the amount of the Medicare recovery rights enforced by The Rawlings Company LLC, as required by law, or exhausted any of the other levels of administrative appeal required.

25. Defendants admit that The Rawlings Company LLC provides claims recovery services for the healthcare industry, including on behalf of health insurance companies. Defendants deny the remaining allegations in Paragraph 25 of the Complaint.

26. Defendants state that the language on the website quoted in Paragraph 26 of the Complaint speaks for itself, and therefore, no response is required to Paragraph 26. To the extent

that Paragraph 26 contains factual allegations to which a response is required, Defendants deny them.

27. Defendants state that the language on the website quoted in Paragraph 27 of the Complaint speaks for itself, and therefore, no response is required to Paragraph 27. To the extent that Paragraph 27 contains factual allegations to which a response is required, Defendants deny them.

28. Defendants deny the allegations in Paragraph 28 of the Complaint.

29. Defendants deny the allegations in Paragraph 29 of the Complaint.

30. Defendants deny the allegations in Paragraph 30 of the Complaint.

31. Defendants state that 42 C.F.R. § 411.37 is a federal regulation that speaks for itself, and therefore, no response is required to Paragraph 31 of the Complaint.

32. Defendants state that 42 C.F.R. § 411.37 is a federal regulation that speaks for itself, and therefore, no response is required to Paragraph 32 of the Complaint.

33. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 33 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

CLASS ALLEGATIONS

34. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 34 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

35. Defendants state that this Paragraph, and its subparts, contain legal conclusions to which no response is required. To the extent that Paragraph 35 of the Complaint, and its subparts, contain factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

36. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 36 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

37. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 37 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

38. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 38 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

39. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 39 of the Complaint contains factual allegations

to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

COUNT I - NEGLIGENCE *PER SE*

40. Defendants incorporate their responses to Paragraphs 1-39 of the Complaint as if fully restated herein.

41. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 41 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

42. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 42 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

43. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 43 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations.

44. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 44 of the Complaint contains factual allegations to which a response is required, Defendants deny the allegations and specifically deny that they committed any wrongdoing and deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

COUNT II - BREACH OF CONTRACT

45. Defendants incorporate their responses to Paragraphs 1-44 of the Complaint as if fully restated herein.

46. Defendants state that this Paragraph contains legal conclusions to which no response is required. Further responding, Defendants state that this Paragraph contains allegations not directed to Defendants and, as such, no response is required. To the extent that Paragraph 46 of the Complaint contains factual allegations to which a response is required, Defendants deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23 and expressly deny that any of the Defendants are parties to any contracts between Medicare and Plaintiffs and/or the alleged members of the putative classes, that any such contracts were assigned to Defendants, or that Defendants are otherwise liable thereunder.

47. Defendants deny the allegations in Paragraph 47 of the Complaint and specifically deny that they breached any promises to Plaintiffs or that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

48. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 48 of the Complaint contains factual allegations to which a response is required, Defendants deny that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23 and expressly deny that any of the Defendants are parties to any contracts between Medicare and Plaintiffs and/or the alleged members of the putative classes, that any such contracts were assigned to Defendants, or that Defendants are otherwise liable thereunder.

49. Defendants state that this Paragraph contains legal conclusions to which no response is required. To the extent that Paragraph 49 of the Complaint contains factual allegations

to which a response is required, Defendants deny the allegations and specifically deny that they breached any promises to Plaintiffs or that class certification is proper or that Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23.

50. Defendants deny each and every allegation of the Complaint that is not expressly admitted herein.

PRAYER FOR RELIEF

Defendants deny that Plaintiffs and/or the purported Classes are entitled to relief against them, and Defendants request that the Court dismiss with prejudice all claims and counts against them, enter judgment in Defendants' favor and against Plaintiffs, and order such further relief in Defendants' favor as the Court deems just and proper, including to the extent appropriate, all allowable costs and fees.

DEFENDANTS' AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burdens not otherwise imposed by law, Defendants assert the following defenses to Plaintiffs' claims. All such defenses are pleaded in the alternative, and do not constitute an admission of liability or an admission that Plaintiffs are entitled to any relief whatsoever.

FIRST DEFENSE

The Complaint fails to state a claim against Defendants upon which relief may be granted including that Plaintiffs have not adequately alleged that Defendants are parties to or have breached any express provision of any contract.

SECOND DEFENSE

The Complaint fails to plead claims against Defendants with sufficient particularity.

THIRD DEFENSE

The claims brought by Plaintiffs and others who failed to exhaust the administrative remedies available under the Medicare Act are barred.

FOURTH DEFENSE

The Court lacks subject matter jurisdiction over the Plaintiffs' claims based on their failure to exhaust the administrative remedies available under the Medicare Act.

FIFTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, in whole or in part, by the doctrine of laches and/or waiver.

SIXTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred because Defendants did not breach any duties to Plaintiffs and/or others alleged to be putative class members.

SEVENTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, in whole or in part, because, at all times, Defendants and their employees and agents acting within the scope of their employment, conducted themselves in good faith and at no time engaged in any wrongful conduct.

EIGHTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, or damages reduced, because the alleged injuries were caused by acts or omissions of the Plaintiffs/the putative class member and/or third parties.

NINTH DEFENSE

This action, in whole or in part, is not maintainable as a class action because the proposed class does not satisfy the requirements for class certification under Federal Rule of Civil Procedure 23, including, but not limited to, the subclass definitions, ascertainability, numerosity, commonality, typicality, adequacy of representation, superiority, and manageability. The damages sought by Plaintiffs on behalf of others alleged to be putative class members cannot be recovered without specific proof by each purported class member that he or she has been injured.

TENTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, in whole or in part, under the voluntary payment doctrine.

ELEVENTH DEFENSE

Plaintiffs and others alleged to be putative class members lack standing to bring some or all of the claims set forth in the Complaint because they have not suffered any injury in fact.

TWELFTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims, are barred, in whole or in part, because they consented to the amounts of the conditional Medicare payments that The Rawlings Company LLC recovered under the MSP that are at issue in the Complaint.

THIRTEENTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, or damages reduced, in whole or in part, because at all times Defendant acted in good faith and in compliance with any applicable statutes and/or regulations.

FOURTEENTH DEFENSE

Defendants are informed and believe that Plaintiffs' and others alleged to be putative class members' claims are barred, in whole or in part, as a result of their failure to mitigate their alleged damages, if any, and any recovery should be reduced in proportion to their failure to mitigate such damages.

FIFTEENTH DEFENSE

Plaintiff and/or others alleged to be putative class members are estopped from bringing any claims or from claiming any damages if any, because they approved and/or ratified Defendants' conduct by agreeing to pay the amounts of the conditional Medicare payments that The Rawlings Company LLC recovered under the MSP that are at issue in the Complaint.

SIXTEENTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred to the extent they exceed the applicable statute of limitations.

SEVENTEENTH DEFENSE

Plaintiffs' and/or others alleged to be putative class members' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

EIGHTEENTH DEFENSE

Plaintiffs' and others alleged to be putative class members' breach of contract claims are barred due to lack of privity because Defendants are not a party to any contract between Plaintiffs and/or others alleged to be putative class members.

NINETEENTH DEFENSE

Plaintiffs' and others alleged to be putative class members' breach of contract claims are barred because Defendants are not assignees of any contracts to which Plaintiffs and/or others alleged to be putative class members are parties.

TWENTIETH DEFENSE

Plaintiffs and others alleged to be putative class members cannot state a negligence per se claim because the statute at issue is not a public safety statute, Plaintiffs and others alleged to be putative class members are not within members of the class of persons intended to be protected by 42 C.F.R. § 411.37, and because Plaintiffs and others alleged to be putative class members have not suffered any personal injuries or physical injury to property based on the conduct alleged in the Complaint.

TWENTY-FIRST DEFENSE

Plaintiffs' and others alleged to be putative class members' claims are barred, in whole or in part, because they are preempted by federal or other law.

TWENTY-SECOND DEFENSE

Plaintiffs' and others alleged to be putative class members' claims are barred because the Complaint improperly names parties as defendants that had no role in or involvement with the conduct alleged in the Complaint.

RESERVATION OF RIGHTS

Defendants reserve the right to supplement their Answer and defenses with additional defenses that become available or apparent during the course of investigation, preparation, or discovery, and to amend their Answer accordingly.

DEFENDANTS' REQUEST FOR RELIEF

WHEREFORE, having fully answered, Rawlings respectfully prays that:

1. Plaintiffs take nothing by virtue of their Class Action Complaint;
2. Plaintiffs' Class Action Complaint be dismissed in its entirety with prejudice;
3. Defendants be granted their reasonable attorneys' fees, costs, and expenses; and
4. The Court award such other and further relief as it deems just and proper.

DATED: September 12, 2024

Respectfully Submitted,

/s/ Traci L. Martinez

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**Attorneys for Defendants, The Rawlings Company
LLC, Rawlings Financial Services, LLC, and Rawlings
& Associates, PLLC**

CERTIFICATE OF SERVICE

I certify that on September 12, 2024, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Western District of Missouri, using the electronic case filing system of the court, which sent notification of such filing to all CM/ECF participants.

/s/ Traci L. Martinez

Traci L. Martinez