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Attorneys for Defendant Ruby Receptionists, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

**ANSWER TO CLASS ACTION
ALLEGATION COMPLAINT**

Defendant Ruby Receptionists, Inc. (“Defendant”), by and through its undersigned counsel, hereby answers and asserts defenses and affirmative defenses in response to the Class Action Allegation Complaint of Plaintiffs McKenzie Law Firm, P.A. (“MLF”) and Oliver Law Offices, Inc. (“OLO”) (together, “Plaintiffs”) (Dkt. No. 1) (the “Complaint”). Defendant’s answer, defenses, and affirmative defenses are based on information and knowledge thus far secured by Defendant, and Defendant reserves the right to amend or supplement its answer, defenses, or affirmative defenses based on facts later discovered, pleaded, or offered. To the extent that any express or implied allegations in the Complaint are not specifically admitted herein, Defendant denies such allegations.

INTRODUCTION

1. Paragraph 1 simply identifies the purported class that Plaintiff seeks to represent and the services forming the basis of Plaintiff’s claims, to which no response is required. To the extent that a response is required, Ruby denies that this action is subject to class treatment or that any class can or should be certified in this action.

2. Ruby admits that it bills in half-minute increments rounded up to the nearest half-minute and that calls are rarely placed in a hold queue. Defendant denies the remaining allegations set forth in paragraph 2.

THE PARTIES

3. Defendant admits that MLF contracted with Ruby for receptionist services on or about April 27, 2016. Defendant lacks knowledge and information sufficient to form a belief as to MLF’S alleged practice of law in Pensacola, Florida, and on that basis denies that allegation. Defendant denies the remaining allegations set forth in paragraph 3.

4. Defendant admits that OLO contracted with Ruby for receptionist services on or about September 19, 2012, used Ruby’s services on a temporary basis between September 21, 2012 and October 20, 2012, and reinstated regular service on or about October 23, 2012. Defendant denies the remaining allegations set forth in paragraph 4.

5. Ruby admits the allegations set forth in paragraph 5.

JURISDICTION AND VENUE

6. Defendant denies the allegations set forth in paragraph 6.
7. Defendant admits the allegation set forth in paragraph 7.
8. Defendant admits the allegation set forth in paragraph 8.
9. Defendant admits the allegation set forth in paragraph 9.
10. Defendant admits that Defendant has consented to this Court's jurisdiction.

Defendant denies the remaining allegations set forth in paragraph 10.

FACTUAL ALLEGATIONS

11. Defendant admits the allegation set forth in paragraph 11.
12. Defendant admits the allegation set forth in paragraph 12.
13. Defendant admits that it offers services priced according to several different plans.

Defendant denies the remaining allegations in paragraph 13.

14. Defendant admits that certain FAQs appear and have previously appeared at various times on the website www.callruby.com and speak for themselves. Defendant denies the remaining allegations in paragraph 14.

15. Defendant admits that it markets its services to a variety of clients, including law firms. Defendant further admits that for a portion of time for which MLF was a customer, it had a monthly service plan that included 200 receptionist minutes for a set monthly fee of \$468.28 that was billed in 30 second increments. Defendant denies the remaining allegations set forth in paragraph 15.

16. Defendant denies the allegations set forth in paragraph 16.
17. Defendant denies the allegations set forth in paragraph 17.
18. Defendant denies the allegations set forth in paragraph 18.

19. Defendant admits that receptionist minutes are billed in half-minute increments and that calls are rounded up to the nearest half-minute. Defendant denies the remaining allegations set forth in paragraph 19.

20. Defendant denies the allegations set forth in paragraph 20.

21. Defendant denies the allegations set forth in paragraph 21.

22. Defendant denies the allegations set forth in paragraph 22.

23. Defendant denies the allegations set forth in paragraph 23.

24. Defendant admits that since it began operations in 2003, Defendant's client roster has included thousands of small businesses, and that Plaintiffs MLF and OLO have each previously contracted with Defendant for receptionist services. Defendant further admits that certain statements appear and have appeared on the website www.callruby.com and speak for themselves. Defendant denies the remaining allegations set forth in paragraph 24.

25. Defendant denies the allegations set forth in paragraph 25.

26. Defendant denies the allegations set forth in paragraph 26.

27. Defendant denies the allegations set forth in paragraph 27.

28. Defendant denies the allegations set forth in paragraph 28.

29. Defendant denies the allegations set forth in paragraph 29.

30. Defendant denies the allegations set forth in paragraph 30.

31. Defendant denies the allegations set forth in paragraph 31.

32. Defendant denies the allegations set forth in paragraph 32.

CLASS ACTION ALLEGATIONS

33. Paragraph 33 contains no allegations of fact and no response is required. To the extent a response is required, Defendant denies that this action is subject to class treatment or that any class can or should be certified in this action.

34. Defendant admits that neither Defendant, nor any entity in which Defendant has a controlling interest or that has a controlling interest in (or is under common control with) Defendant, nor Defendant's legal representatives, assignees, or successors, nor the judge to whom this case is assigned or any member of the judge's immediate family, is eligible for inclusion in any putative class for which Plaintiffs intend to seek certification, as this action is not subject to class treatment and no class should be certified in this action. Defendant denies the remaining allegations set forth in paragraph 34.

35. Defendant denies the allegations set forth in paragraph 35.
36. Defendant denies the allegations set forth in paragraph 36.
37. Defendant denies the allegations set forth in paragraph 37.
38. Defendant denies the allegations set forth in paragraph 38.
39. Defendant denies the allegations set forth in paragraph 39.
40. Defendant denies the allegations set forth in paragraph 40.
41. Defendant denies the allegations set forth in paragraph 41.
42. Defendant denies the allegations set forth in paragraph 42.
43. Defendant denies the allegations set forth in paragraph 43.
44. Defendant denies the allegations set forth in paragraph 44.

FIRST CAUSE OF ACTION

(Breach of Contract)

45. Defendant incorporates by reference its responses to paragraphs 1 through 44 of the Complaint, as though fully stated herein.

46. Defendant admits that it entered into agreements with each of Plaintiffs to provide certain services. Defendant denies the remaining allegations set forth in paragraph 46.

47. Defendant admits that it entered into valid and enforceable contracts with each of Plaintiffs. Defendant denies the remaining allegations set forth in paragraph 47.

48. Defendant admits that it entered into agreements with each of Plaintiffs to provide certain services. Defendant denies the remaining allegations set forth in paragraph 48.

49. Defendant denies the allegations set forth in paragraph 49.
50. Defendant denies the allegations set forth in paragraph 50.
51. Defendant denies the allegations set forth in paragraph 51.
52. Defendant denies the allegations set forth in paragraph 52.

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

53. Defendant incorporates by reference its responses to paragraphs 1 through 52 of the

Complaint, as though fully stated herein.

54. Paragraph 54 contains only a legal conclusion to which no response is required. To the extent a response is required, Denies denies the allegations in paragraph 54.

55. Defendant lacks knowledge and information sufficient to form a belief as to the allegations in paragraph 55 and, on that basis, denies the allegations in paragraph 55.

56. Defendant denies the allegations set forth in paragraph 56.

57. Defendant denies the allegations set forth in paragraph 57.

58. Defendant denies the allegations set forth in paragraph 58.

59. Defendant denies the allegations set forth in paragraph 59.

60. Defendant denies the allegations set forth in paragraph 60.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

61. Defendant incorporates by reference its responses to paragraphs 1 through 60 of the Complaint, as though fully stated herein.

62. Defendant denies the allegations set forth in paragraph 62.

63. Defendant denies the allegations set forth in paragraph 63.

64. Defendant denies the allegations set forth in paragraph 64.

65. Defendant denies the allegations set forth in paragraph 65.

FOURTH CAUSE OF ACTION

(Money Had and Received - Accounting)

66. Defendant incorporates by reference its responses to paragraphs 1 through 65 of the Complaint, as though fully stated herein.

67. Defendant denies the allegations set forth in paragraph 67.

68. Defendant denies the allegations set forth in paragraph 68.

69. Defendant denies the allegations set forth in paragraph 69.

70. Defendant denies the allegations set forth in paragraph 70.

71. Defendant denies the allegations set forth in paragraph 71.

72. Defendant denies the allegations set forth in paragraph 72.

73. Defendant denies the allegations set forth in paragraph 73.

PRAYER FOR RELIEF

With respect to Plaintiffs' prayer for relief, Defendant denies that Plaintiffs are entitled to any relief whatsoever, and denies all other allegations contained in the prayer for relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted.

2. Plaintiffs' claims fail because Plaintiffs and the putative class have suffered no ascertainable loss or damages.

3. Plaintiffs and/or others alleged to be members of the putative class lack standing to assert the claims stated in the Complaint and to seek some or all of the relief requested.

4. Plaintiffs' claims and/or those asserted by members of the putative class fail because plaintiffs and/or others alleged to be members of the putative class failed to take reasonable steps to mitigate their alleged damages, if any, and their recovery must be barred or diminished accordingly.

5. Plaintiffs' allegations that this action should be certified as a class action or representative action are barred by Plaintiffs' failure to allege facts sufficient to warrant class certification and/or an award of class damages. Plaintiffs likewise failed to set forth any facts supporting any other form of representative action.

6. The putative class cannot be certified under Federal Rule of Civil Procedure 23(a), given the necessarily individualized nature of the claims, which predominate over common questions of law and fact.

7. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

8. Plaintiffs' claims and/or those asserted by members of the putative class are barred by the doctrine of unclean hands.

9. Plaintiffs' claims and/or those asserted by members of the putative class are barred under the accounts stated doctrine.

10. Plaintiffs and/or members of the putative class are estopped from recovering from Defendant.

11. Plaintiffs and/or members of the putative class have waived any right to recovery from Defendant.

12. Plaintiffs' allegations that this action should be certified as a class action or representative action are barred by the ORCP 32I motion that Defendant has filed in the parallel action and that, if granted, will have an offensive collateral estoppel effect in this action.

Defendant reserves the right to amend, modify, revise or supplement its Answer, and to plead such further affirmative defenses and take such further actions as it may deem proper and necessary in its defense upon the completion of their investigation into Plaintiffs' allegations.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court:

1. Dismiss Plaintiffs' Complaint with prejudice;
2. Award Defendant its costs and its attorneys' fees; and
3. Award Defendant such other relief as the Court may deem just and proper.

Respectfully submitted this 9th day of May, 2019.

s/ Andrew R. Escobar

Andrew R. Escobar, OSB No. 106671

s/ Austin Rainwater

Austin Rainwater, OSB No. 162613

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Attorneys for Defendant Ruby Receptionists, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated this 9th day of May, 2019.

s/ Alicia Morales
Alicia Morales, Legal Practice Specialist

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