

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WALID JAMMAL, et al.,)	CASE NO. 1:13-CV-00437
)	
)	
)	
Plaintiffs,)	JUDGE DONALD C. NUGENT
)	
vs.)	
)	
AMERICAN FAMILY INSURANCE)	
GROUP, et al.,)	
)	
Defendants.)	

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants American Family Insurance Company, American Family Mutual Insurance Company, American Family Life Insurance Company, American Standard Insurance Company of Wisconsin, American Family Termination Benefits Plan, Retirement Plan for Employees of American Family Insurance Group, American Family 401K Plan, Group Life Plan, Group Health Plan, Group Dental Plan, Long Term Disability Plan, American Family Insurance Group Master Retirement Trust, 401K Plan Administration Committee, and the Committee of Employee and District Manager Retirement Plan (collectively “defendants”), through their attorneys, hereby answer plaintiffs’ Second Amended Complaint (“Second Amended Complaint”) in accordance with the numbered paragraphs thereof as follows:

1. Defendants deny the allegations contained in Paragraph 1 of the Second Amended Complaint. The Employee Retirement Income Security Act (“ERISA”) speaks for itself.
2. Defendants deny the allegations contained in Paragraph 2 of the Second Amended Complaint.

3. Defendants deny the allegations contained in Paragraph 3 of the Second Amended Complaint, except they admit certain American Family entities have entered into independent contractor agreements with certain independent insurance agents and that these independent contractor agents may sell insurance products.

4. Defendants deny the allegations contained in Paragraph 4 of the Second Amended Complaint except that they admit that American Family agents are independent contractors and that status confers agents with certain advantages.

5. Defendants deny the allegations contained in Paragraph 5 of the Second Amended Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Second Amended Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Second Amended Complaint except they admit that both American Family and the independent insurance agents may end the contractual relationship per the terms of the contract.

8. Defendants deny the allegations contained in Paragraph 8 of the Second Amended Complaint and its footnote, and specifically deny that there is any ERISA employee benefit plan with the title "Termination Benefits Plan", except they admit that American Family provides compensation to the independent contractors as stated in the terms of the American Family Agent Agreements which speaks for themselves.

9. Defendants deny the allegations contained in Paragraph 9 of the Second Amended Complaint, except they admit that American Family provides compensation to the independent contractors as stated in the terms of the American Family Agent Agreement which speaks for itself.

10. Defendants deny the allegations contained in Paragraph 10 of the Second Amended Complaint, except they admit that the “Termination Benefits Plan” is not in fact an ERISA plan and that they have not contended otherwise.

11. Defendants deny the allegations contained in Paragraph 11 of the Second Amended Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of the Second Amended Complaint, except they admit plaintiffs are not eligible to participate in defendants’ employee benefits due to, among other reasons, the fact they are independent contractors.

13. Defendants deny the allegations contained in Paragraph 13 of the Second Amended Complaint.

14. Defendants admit that plaintiffs are seeking the relief stated in Paragraph 14 of the Second Amended Complaint and its subparts, but deny they are entitled to any of the relief they seek.

15. Defendants admit that this Court has jurisdiction over this dispute.

16. Defendants admit that venue is proper in the United States District Court for the Northern District of Ohio.

17. Defendants are without sufficient information to admit or deny plaintiff Walid Jammal’s allegation as to his residence. To the extent a response is required, defendants deny the allegation. Defendants also deny the allegation that plaintiff was ever an employee of defendants as well as the other allegations contained in Paragraph 17 of the Second Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Second Amended Complaint except they admit that plaintiff Jammal entered into an American Family Agent Agreement on or about 2003 and that the contractual relationship was subsequently terminated.

19. Defendants are without sufficient information to admit or deny plaintiff's allegation as to plaintiff Kathleen Tuersley's residence. To the extent a response is required, defendants deny the allegation. Defendants also deny the allegation that plaintiff was ever an employee of defendants as well as the other allegations contained in Paragraph 19 of the Second Amended Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Second Amended Complaint except they admit that plaintiff Tuersley entered into an American Family Agent Agreement on or about 1999 and that the contractual relationship was subsequently terminated.

21. Defendants are without sufficient information to admit or deny plaintiff's allegation as to plaintiff Cinda J. Durachinsky's residence. To the extent a response is required, defendants deny the allegation. Defendants also deny the allegation that plaintiff Durachinsky was ever an employee of defendants as well as the other allegations contained in Paragraph 21 of the Second Amended Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Second Amended Complaint except they admit that plaintiff Durachinsky entered into an American Family Agent Agreement on or about 2008 and the contractual relationship was subsequently terminated.

23. Defendants are without sufficient information to admit or deny plaintiff Nathan Garrett's allegation as to his residence. To the extent a response is required, defendants deny the allegation. Defendants also deny the allegation that plaintiff was ever an employee of defendants as well as the other allegations contained in Paragraph 23 of the Second Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Second Amended Complaint except they admit that plaintiff Garrett entered into an American Family Agent Agreement on or about 2005 and that the contractual relationship was subsequently terminated

25. Defendants admit the allegations contained in Paragraph 25 of the Second Amended Complaint.

26. Defendants admit the allegations contained in Paragraph 26 of the Second Amended Complaint.

27. Defendants admit the allegations contained in Paragraph 27 of the Second Amended Complaint.

28. Paragraph 28 of the Second Amended Complaint does not contain a factual assertion to which a response is required.

29. Paragraph 29 of the Second Amended Complaint does not contain a factual assertion to which a response is required.

30. Defendants deny the allegations contained in Paragraph 30 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

31. Defendants admit the allegations contained in Paragraph 31 of the Second Amended Complaint. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

32. Defendants deny the allegations contained in Paragraph 32 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

33. Defendants admit the allegations contained in Paragraph 33 of the Second Amended Complaint. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

34. Defendants admit the allegations contained in Paragraph 34 of the Second Amended Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

36. Defendants deny the allegations contained in Paragraph 36 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

37. Defendants deny the allegations contained in Paragraph 37 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

38. Defendants deny the allegations contained in Paragraph 38 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

39. Defendants deny the allegations contained in Paragraph 39 of the Second Amended Complaint and specifically deny that any such plan exists. By way of further answer, defendants deny plaintiffs are participants and/or beneficiaries in any such plan.

40. Paragraph 40 of the Second Amended Complaint does not contain a factual assertion to which a response is required. To the extent a response is required, defendants deny the allegation.

41. Defendants admit the allegations contained in Paragraph 41 of the Second Amended Complaint.

“FACTS”

42. Defendants deny the allegations contained in Paragraph 42 of the Second Amended Complaint and the heading contained immediately above it.

43. Defendants deny the allegations contained in Paragraph 43 of the Second Amended Complaint except they admit that all independent contractor agents, including plaintiffs, must sign the American Family Agent Agreement prior to engaging in an independent contractor relationship with American Family.

44. Defendants deny the allegations contained in Paragraph 44 of the Second Amended Complaint.

45. Defendants admit the allegations contained in Paragraph 45 of the Second Amended Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Second Amended Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Second Amended Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Second Amended Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Second Amended Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Second Amended Complaint and further state that Exhibit C to the Second Amended Complaint speaks for itself.

51. Defendants deny the allegations contained in Paragraph 51 of the Second Amended Complaint and further state that the American Family Agent Agreement speaks for itself.

52. Defendants deny the allegations contained in Paragraph 52 of the Second Amended Complaint.

53. Defendants deny the allegations contained in Paragraph 53 and each of its subparts and further state that the referenced documents speak for themselves.

54. Defendants deny the allegations contained in Paragraph 54 of the Second Amended Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Second Amended Complaint and further state that the referenced documents speak for themselves.

56. Defendants deny the allegations contained in Paragraph 56 of the Second Amended Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Second Amended Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Second Amended Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Second Amended Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Second Amended Complaint and the heading immediately above it and its footnote and further state that the referenced documents and provisions speak for themselves.

61. Defendants deny the allegations contained in Paragraph 61 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

62. Defendants deny the allegations contained in Paragraph 62 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

63. Defendants deny the allegations contained in Paragraph 63 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

64. Defendants deny the allegations contained in Paragraph 64 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

65. Defendants deny the allegations contained in Paragraph 65 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

66. Defendants deny the allegations contained in Paragraph 66 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

67. Defendants deny the allegations contained in Paragraph 67 of the Second Amended Complaint except that they admit that the independent contractor agreements speak for themselves.

68. Defendants deny the allegations contained in Paragraph 68 of the Second Amended Complaint except that they admit that the independent contractor agreements speak for themselves.

69. Defendants deny the allegations contained in Paragraph 69 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

70. Defendants deny the allegations contained in Paragraph 70 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

71. Defendants deny the allegations contained in Paragraph 71 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

72. Defendants deny the allegations contained in Paragraph 72 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

73. Defendants deny the allegations contained in Paragraph 73 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

74. Defendants deny the allegations contained in Paragraph 74 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

75. Defendants deny the allegations contained in Paragraph 75 of the Second Amended Complaint and further state that the referenced documents and provisions speak for themselves.

76. Defendants deny the allegations contained in Paragraph 76 of the Second Amended Complaint.

77. Defendants deny the allegations contained in Paragraph 77 of the Second Amended Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Second Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Second Amended Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Second Amended Complaint and specifically deny that defendants have failed to comply with ERISA.

81. Defendants deny the allegations contained in Paragraph 81 of the Second Amended Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of the Second Amended Complaint and the heading immediately above it except they admit American Family provides certain employee benefits to certain of its employees and that agents such as plaintiffs are not covered under the plans' terms.

83. Defendants deny the allegations contained in Paragraph 83 of the Second Amended Complaint except they admit American Family provides certain employee benefits to certain of its employees.

84. Defendants deny the allegations contained in Paragraph 84 of the Second Amended Complaint except they admit American Family provides certain employee benefits to its employees.

85. Defendants deny the allegations contained in Paragraph 85 of the Second Amended Complaint except they admit plaintiffs are not eligible for American Family employee benefits due to their independent contractor status and/or per the language and eligibility requirements of the terms of the plans.

86. Defendants deny the allegations contained in Paragraph 86 of the Second Amended Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Second Amended Complaint and the heading immediately above it except they admit that American Family has maintained that the independent contractors who have entered into American Family Agent Agreements are independent contractors. By way of further answer, the agents have been held to be independent contractors. *See, e.g., Wortham v. Am. Family Ins. Group*, 385 F.3d 1139 (8th Cir. 2004).

88. Defendants admit the allegations contained in Paragraph 88 of the Second Amended Complaint and that they are in fact independent contractors.

89. Defendants deny the allegations contained in Paragraph 89 of the Second Amended Complaint.

“CLASS ALLEGATIONS”

90. Defendants admit that plaintiffs purport to bring an individual lawsuit and class action as defined in the Second Amended Complaint but deny that this action is suitable for class action treatment or that the proposed class definition is proper.

91. Defendants admit plaintiffs seek to propose a “Class Period” for their proposed class but deny that the proposed Class Period is appropriate.

92. Defendants admit plaintiffs purport to bring a class action as defined in the Second Amended Complaint but deny any such class is appropriate.

93. Defendants deny the allegations contained in Paragraph 93 of the Second Amended Complaint.

94. Defendants deny the allegations contained in Paragraph 94 and each of its subparts of the Second Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Second Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Second Amended Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of the Second Amended Complaint.

FIRST CAUSE OF ACTION

98. Defendants, for their response to Paragraph 98 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 97 of plaintiffs' Second Amended Complaint as though set forth fully herein.

99. Defendants admit plaintiffs are seeking the relief identified in Paragraph 99 and its subparts of the Second Amended Complaint but deny plaintiffs are entitled to the relief they seek.

SECOND CAUSE OF ACTION

100. Defendants, for their response to Paragraph 100 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 99 of plaintiffs' Second Amended Complaint as though set forth fully herein.

101. Defendants deny the allegations contained in Paragraph 101 of the Second Amended Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Second Amended Complaint.

103. Defendants admit plaintiffs are seeking the relief identified in Paragraph 103 and its subparts of the Second Amended Complaint but deny plaintiffs are entitled to the relief they seek.

THIRD CAUSE OF ACTION

104. Defendants, for their response to Paragraph 104 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 103 of plaintiff's Second Amended Complaint as though set forth fully herein.

105. Defendants deny the allegations contained in Paragraph 105 of the Second Amended Complaint. ERISA speaks for itself.

106. Defendants deny the allegations contained in Paragraph 106 of the Second Amended Complaint. ERISA speaks for itself.

107. Defendants deny the allegations contained in Paragraph 107 of the Second Amended Complaint.

108. Defendants deny the allegations contained in Paragraph 108 of the Second Amended Complaint. ERISA speaks for itself.

109. Defendants deny the allegations contained in Paragraph 109 of the Second Amended Complaint.

110. Defendants deny the allegations contained in Paragraph 110 of the Second Amended Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Second Amended Complaint. ERISA speaks for itself.

112. Defendants deny the allegations contained in Paragraph 112 of the Second Amended Complaint and specifically deny that what plaintiffs describe as a "Termination Benefit Plan" exists or is subject to ERISA's requirements. The independent contractor agency agreements speak for themselves.

113. Defendants deny the allegations contained in Paragraph 113 of the Second Amended Complaint and further state that what plaintiffs describe as a "Termination Benefit Plan" was not

subject to ERISA's requirements. The independent contractor agency agreements speak for themselves.

114. Defendants deny the allegations contained in Paragraph 114 of the Second Amended Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of the Second Amended Complaint.

116. Defendants deny the allegations contained in Paragraph 116 of the Second Amended Complaint.

FOURTH CAUSE OF ACTION

117. Defendants, for their response to Paragraph 117 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 116 of plaintiffs' Second Amended Complaint as though set forth fully herein.

118. Defendants deny the allegations contained in Paragraph 118 of the Second Amended Complaint and specifically deny that what plaintiffs describe as a "Termination Benefits Plan" exists or is subject to ERISA's requirements. The independent contractor agency agreements speak for themselves.

119. Defendants deny the allegations contained in Paragraph 119 of the Second Amended Complaint.

120. Defendants deny the allegations contained in Paragraph 120 of the Second Amended Complaint. ERISA speaks for itself.

121. Defendants deny the allegations contained in Paragraph 121 of the Second Amended Complaint and specifically deny that what plaintiffs describe as a "Termination Benefits Plan" exists or is subject to ERISA's requirements. The independent contractor agency agreements speak for themselves.

122. Defendants deny the allegations contained in Paragraph 122 of the Second Amended Complaint.

123. Defendants deny the allegations contained in Paragraph 123 of the Second Amended Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of the Second Amended Complaint and specifically deny that what plaintiffs describe as a “Termination Benefits Plan” exists or is subject to ERISA’s requirements. The independent contractor agency agreements speak for themselves.

125. Defendants deny the allegations contained in Paragraph 125 of the Second Amended Complaint and specifically deny that what plaintiffs describe as a “Termination Benefits Plan” exists or is subject to ERISA’s requirements. The independent contractor agency agreements speak for themselves.

126. Defendants deny the allegations contained in Paragraph 126 of the Second Amended Complaint.

FIFTH CAUSE OF ACTION

127. Defendants, for their response to Paragraph 127 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 126 of plaintiffs’ Second Amended Complaint as though set forth fully herein.

128. Defendants deny the allegations contained in Paragraph 128 of the Second Amended Complaint. ERISA speaks for itself.

129. Defendants deny the allegations contained in Paragraph 129 of the Second Amended Complaint except they admit that American Family provides certain benefits to its employees.

130. Defendants admit the allegations contained in Paragraph 130 of the Second Amended Complaint, subject to the terms of the plan.

131. Defendants deny the allegations contained in Paragraph 131 of the Second Amended Complaint.

132. Defendants deny the allegations contained in Paragraph 132 of the Second Amended Complaint.

133. Defendants deny the allegations contained in Paragraph 133 of the Second Amended Complaint.

134. Defendants deny the allegations contained in Paragraph 134 of the Second Amended Complaint.

135. Defendants deny the allegations contained in Paragraph 135 of the Second Amended Complaint.

136. Defendants deny the allegations contained in Paragraph 136 of the Second Amended Complaint.

137. Defendants deny the allegations contained in Paragraph 137 of the Second Amended Complaint.

138. Defendants deny the allegations contained in Paragraph 138 of the Second Amended Complaint.

139. Defendants deny the allegations contained in Paragraph 139 of the Second Amended Complaint.

SIXTH CAUSE OF ACTION

140. Defendants, for their response to Paragraph 140 of the Second Amended Complaint, incorporate their admissions, denials, and responses to Paragraphs 1 through 139 of plaintiffs' Second Amended Complaint as though set forth fully herein.

141. Defendants deny the allegations contained in Paragraph 141 of the Second Amended Complaint. ERISA speaks for itself.

142. Defendants deny the allegations contained in Paragraph 142 of the Second Amended Complaint, except they admit that plaintiffs are not eligible for American Family employee benefits due to their independent contractor status per the language and eligibility requirements of the terms of the plans and because they have not otherwise satisfied plan requirements.

143. Defendants deny the allegations contained in Paragraph 143 of the Second Amended Complaint.

144. Defendants deny the allegations contained in Paragraph 144 of the Second Amended Complaint.

145. Defendants deny the allegations contained in Paragraph 145 of the Second Amended Complaint.

146. Defendants deny the allegations contained in Paragraph 146 of the Second Amended Complaint.

147. Defendants deny the allegations contained in Paragraph 147 of the Second Amended Complaint.

148. Defendants deny plaintiffs are entitled to any of the relief they seek and specifically controvert the demand for relief set forth on pages 35-36 of the Second Amended Complaint.

149. Defendants deny each and every allegation in plaintiffs' Second Amended Complaint that they have not specifically admitted in this Answer.

FIRST DEFENSE

150. The Second Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

151. Some or all of the claims of plaintiffs and/or the putative class members' are barred, in whole or in part, by estoppel inasmuch as plaintiffs represented under the penalties of perjury that they were independent contractors and not employees during all relevant times.

THIRD DEFENSE

152. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, by the applicable limitations periods provided by law.

FOURTH DEFENSE

153. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, by plaintiffs' failure to exhaust their internal and/or administrative remedies, including but not limited to the administrative remedies set forth in at-issue benefit plans.

FIFTH DEFENSE

154. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, because plaintiffs were at all times independent contractors and not employees under ERISA.

SIXTH DEFENSE

155. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, because they are excluded from participating in the at-issue American Family employee benefit plans under the express terms of those plans.

SEVENTH DEFENSE

156. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, because plaintiffs have named entities and benefit plans that do not exist, including but not limited to the defendants identified as "American Family Termination Benefits Plan", "Group Life Plan", "Group Health Plan", "Group Dental Plan", "Long Term Disability Plan" and "Committee of Employee and District Manager Retirement Plan."

EIGHTH DEFENSE

157. Plaintiffs' damages and/or those of the putative class members are limited to the extent they have failed to mitigate their damages.

NINTH DEFENSE

158. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, because plaintiffs seek remedies beyond those which are available under ERISA.

TENTH DEFENSE

159. Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, by the equitable doctrines of estoppel, judicial estoppel, waiver and/or unclean hands.

ELEVENTH DEFENSE

160. Plaintiffs' claims are barred, in whole or in part, because they lack standing to pursue those claims on behalf of themselves and/or some or all of the putative class members.

TWELFTH DEFENSE

161. Defendants have at all times attempted, in good faith, to comply with the provisions of ERISA and had reasonable grounds for believing they were in compliance.

THIRTEENTH DEFENSE

162. Plaintiffs' claims are barred because they are not entitled to benefits under the terms of the applicable plans and/or did not satisfy the requirements of the applicable plans.

FOURTEENTH DEFENSE

163. Some or all of the claims of plaintiffs and/or the putative class members are barred because they received all payments to which they were entitled.

FIFTEENTH DEFENSE

164. Some or all of the claims of plaintiffs and/or the putative class members' are barred, in whole or in part, by the equitable doctrine of laches inasmuch as they have inexcusably and unreasonably delayed the filing of this action causing prejudice to defendants.

SIXTEENTH DEFENSE

165. Plaintiffs are not entitled to class certification because their claims do not meet any or all of the prerequisites for certification set forth in or otherwise required under Rule 23 of the Federal Rules of Civil Procedure, including, but not limited to, those prerequisites described in Rule 23, Sections (a) and (b).

SEVENTEENTH DEFENSE

166. Certain of plaintiffs' claims are barred by res judicata and/or collateral estoppel.

EIGHTEENTH DEFENSE

167. Defendants incorporate by reference their motion to dismiss and memorandum in support thereof as to each claim including but not limited to that of new plaintiff Nathan Garrett [ECF No. 31].

NINETEENTH DEFENSE

168. Plaintiffs' claims, or portions of plaintiffs' claims, are barred due to the failure of a condition precedent.

TWENTIETH DEFENSE

169. Plaintiffs lack standing to pursue all or portions of the claims asserted in the Second Amended Complaint.

TWENTY-FIRST DEFENSE

170. The defendant plans and entities identified by plaintiffs in their Second Amended Complaint are not liable for any conduct or acts outside of their own individual plan terms.

TWENTY-SECOND DEFENSE

171. Some or all of the claims of plaintiffs and/or the putative class action members are barred, in whole or in part, by the principles of accord and satisfaction and/or payment.

WHEREFORE, defendants respectfully requests that this Honorable Court dismiss plaintiffs' claims in their entirety and award defendants the costs they incurred in defending this action, including their reasonable attorneys' fees, and such other relief as the Court deems equitable and just.

Respectfully submitted,

/s/ Gregory V. Mersol

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Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that on July 11, 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Gregory V. Mersol

Attorney for Defendants