COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT
Civil Action No. 2583CV00969

SANDRA FERNANDEZ,

Plaintiff,

v.

KECHES LAW GROUP, P.C., and
JONATHAN D. SWEET, ESQ.,

Defendants.

DEFENDANTS KECHES LAW GROUP, P.C. AND JONATHAN D. SWEET, ESQ.'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

This action against defendants Keches Law Group, P.C. and Jonathan D. Sweet, Esq. (together "Keches") is part of a campaign of frivolous and vexatious litigation by *pro se* plaintiff Sandra Fernandez ("Fernandez") and her husband, Dany Abouelkhier ("Abouelkhier"). The matter arises from a pending class action that Keches filed for the tenants of a luxury apartment building – including Fernandez and Abouelkhier – against their landlord, Marina Bay Residences, LLC, over water intrusion, captioned *Materna, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 (Norfolk County Superior Court) (the "Class Action"). After Fernandez and Abouelkhier discharged Keches, the Court removed Abouelkhier as class representative and severed their claims into a separate action.

Fernandez and Abouelkhier have since litigated *pro se*, making over 200 filings in the courts of the Commonwealth. This led the Norfolk Superior Court to issue an Order on November 19, 2025, that chastised them and restricted their filings to their severed action, describing Fernandez and Abouelkhier conduct as "vexatious" and nothing more than a "campaign of harassment."[1] Fernandez's current action against her former counsel Keches – who still represent the Class Action plaintiffs – is but a continuation of the "campaign of harassment," but now in Plymouth Superior Court, after having exhausted the patience of the Norfolk Superior Court.

The Court should dismiss the current action not only because it is vexatious, but also because Fernandez has suffered no cognizable harm. Fernandez apparently blames Keches for the severance of her claims from the Class Action and believes that she was somehow disadvantaged as a result. As a matter of law, however, all of her rights and claims were preserved intact in her severed action – until she abandoned her claims, resulting in the recent dismissal of her claims for failure to prosecute. Fernandez's claims also fail because she has not alleged all of the necessary elements for each claim to survive dismissal.

Keches conducted itself diligently and properly throughout its representation of the Class Action plaintiffs, including Fernandez and Abouelkhier. Accordingly, the Court should enter judgment on the pleadings in Keches' favor so that the firm may resume litigating the Class Action without further distraction.

STATEMENT OF FACTS[2]

A. The Original Engagement and Class Action

Marina Bay Residences, LLC ("Marina Bay") is the owner and landlord for the luxury apartments known as "Meriel Marina Bay" located at 550-552 Victory Road in Quincy, Massachusetts. *See Class Action Complaint and Demand For Jury Trial.*[3] The apartments at

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[1] *Court Order After the November 17, 2025 Conference and Hearing* at 5-6, *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364 (the "Order").

[2] "In deciding a rule 12(c) motion, "all facts pleaded by the nonmoving party must be accepted as true." *Jarosz v. Palmer,* 436 Mass. 526, 529 (2002). Keches presents the statement of facts for purpose of this motion only, dispute many of the facts set forth, and reserve the right to contest them if the case proceeds. *See Willitts v. Roman Catholic Archbishop of Boston*, 411 Mass. 202, 203 (1991).

[3] *Class Action Complaint and Demand For Jury Trial*, Doc. 1, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 ("Class Action Complaint"). The Court may consider "those facts of which judicial

Meriel Marina Bay apparently suffer from water intrusion issues. *Id.* Fernandez and Abouelkhier were tenants at Meriel Marina Bay. *Complaint and Jury Demand*[4] at ¶ 11.

On or about April 4, 2023, Fernandez retained Keches under a contingency fee agreement (the "Individual Fee Agreement") to represent her against Marina Bay on the water intrusion issues. *Id.* Thereafter, Keches met with other Marina Bay tenants, and discovered that many of them faced similar issues to their apartments as Fernandez. *See* April 26, 2023 letter.[5] Because of the number of plaintiffs, Keches determined that the case should proceed as a class action. *Id.*; Fernandez Complaint at ¶ 15.

On April 26, 2023, Keches and Abouelkhier entered into a class action contingency fee agreement with Abouelkhier designated as the class representative ("Class Action Fee Agreement"). *See* Class Action Fee Agreement, Answer at Exhibit C. The Class Action Fee Agreement defined the scope of representation as "All claims on behalf of the class of all current and former tenants" at Mariel Marina Bay. *Id.* This class of clients included Fernandez as a tenant at the property. Fernandez Complaint at ¶ 15. On April 26, 2023, Keches sent a letter to all of the class members (including Fernandez and Abouelkhier), writing that:

> [s]ince we will be proceeding with a class action, **it is no longer necessary to individually engage with my office. As an affected current or former tenant, you will automatically become a member of the class**.

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notice can be taken." *Jarosz,* 436 Mass. at 530. Specifically, "a judge may take judicial notice of the court's records in a related action." *Id*. citing *Brookline v. Goldstein*, 388 Mass. 443, 447 (1983).

[4] *Complaint and Jury Demand, Fernandez v. Keches Law Group, P.C. and Jonathan D. Sweet, Esq.*, Civil Action No. 2583-cv-00969 ("Fernandez Complaint").

[5] Attached as Exhibit D to *Answer And Jury Demand of Defendants Keches Law Group P.C. And Jonathan D. Sweet, Esq., Fernandez v. Keches Law Group, P.C. and Jonathan D. Sweet, Esq.*, Civil Action No. 2583-cv-00969 ("Answer"). On a motion under 12(c), the Court may consider documents fairly incorporated into the pleadings. *See Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 n.4 (2004) ("Where, as here, the plaintiff had notice of these documents and relied on them in framing the complaint, the attachment of such documents to a motion to dismiss does not convert the motion to one for summary judgment…"). *See also Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 224 (2011) citing J.W. Smith & H.B. Zobel, Rules Practice, supra at § 12.15, at 216. As Fernandez referenced this letter in ¶ 15 of the *Complaint*, the Court may consider it.

See April 26, 2023 letter, Answer at Exhibit D (emphasis added). Fernandez did not object to Keches about the arrangement.

On May 5, 2023, Keches filed the Class Action Complaint, naming Abouelkhier as the class representative.[6] The Class Action proceeded in the normal course for several months.[7]

B. Fernandez and Abouelkhier Are Severed From the Class Action.

On December 20, 2024, Marina Bay filed its response to the second amended complaint in the Class Action but included a counterclaim solely against Fernandez and Abouelkhier for unpaid rent of $68,039.96.[8] Keches advised Fernandez and Abouelkhier that they needed to respond to the counterclaim by engaging separate counsel or acting *pro se.* Neither Fernandez nor Abouelkhier responded to the counterclaims and on February 4, 2025, Marina Bay moved for entry of default on the counterclaim.[9]

Thereafter, the relationship between Fernandez, Abouelkhier, and Keches soured, and by February 12, 2025, Fernandez and Abouelkhier had discharged Keches as their counsel. Fernandez Complaint at ¶ 24. On March 30, 2025, Keches filed a motion in the Class Action to: (1) withdraw as counsel to Abouelkhier (as class representative); (2) sever Abouelkhier's individual claims and counterclaims against him; and (3) substitute Beth Materna for Abouelkhier as the class representative.[10] Keches filed the motion because Fernandez and Abouelkhier had

[6] *Class Action Complaint and Demand For Jury Trial*, Doc. 1, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389

[7] Docket, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389.

[8] *See Defendant Marina Bay Residences, LLC's Answer and Counterclaim to Plaintiff's First Amended Class Action Complaint*, Doc. 27 at p. 27, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 ("Counterclaim").

[9] *See Defendant Marina Bay Residences, LLC's Request for Entry of Default On Its Counterclaim*, Doc. 29, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 ("Request for Default").

[10] *See Motion to Withdraw As Counsel For Dany Abouelkhier and Motion to Sever Dany Abouelkhier's Individual Claims and Counterclaims Against Him and Motion to Substitute Beth Materna for Dany Abouelkhier As Putative*

discharged Keches as counsel and because the individual counterclaims against them put them in a different legal standing than the other Class Action plaintiffs, so they could no longer be members of the class.[11] On March 25, 2025, the Court allowed the motion and opened a new severed case for the claims and counterclaims between Abouelkhier and Marina Bay, to which Fernandez and her minor son were later added. *See* Class Action*, Endorsement on Motion to Withdraw* (Mar. 26, 2025); *see also Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364 (Norfolk County Superior Court) (the "Abouelkhier Action").[12]

Fernandez and Abouelkhier refused to litigate their claims in the Abouelkhier Action, failing to file any response to Marina Bay's counterclaims or even file an appearance. This led to Marina Bay filing *Marina Bay's Residences LLC's Motion to Dismiss for Failure to Prosecute* against both Fernandez and Abouelkhier Action on January 21, 2026 (the "Motion to Dismiss").[13] Fernandez not only declined to respond to the Motion to Dismiss, she filed a "notice of objection," in which she wrote, "I expressly and unequivocally object to being treated as party in [the Abouelkhier Action]."[14] On February 10, 2026, the Court allowed the Motion to Dismiss, dismissing the claims of both Fernandez and Abouelkhier Action and entering judgment in Marina

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Class Representative And For Leave To File Third Amended Class Action Complaint, Doc. 42, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 ("Motion to Withdraw").

[11] *See Plaintiff's Emergency Motion to Discharge Counsel and Compel Release of Case File*, Doc. 35, *Materna, et al. vs. Marina Bay Residences, LLC, et al.*, Civil Action No. 2382CV00389 ("Motion to Discharge")

[12] This action was retroactively docketed for December 6, 2024, which was the date that the *Second Amended Class Action Complaint and Demand for Jury Trial* was filed in the Class Action. The Court severed the claims and counterclaims concerning Abouelkhier and Fernandez from the Class Action on March 25, 2025.

[13] *See Marina Bay Residences, LLC's Motion to Dismiss For Failure to Prosecute*, Doc 37, *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364 ("Motion to Dismiss").

[14] *See Notice of Objection to Court-Directed Addition As A Party, Strict Limited Special Appearance, And Reservation of Appellate Rights*, Doc. 40 at p. 2, *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364 ("Fernandez Party Objection").

Bay's favor on its counterclaims for unpaid rent, writing that, "[t]hese plaintiffs have not taken any action in this case and have restated their intention, that is that the refuse to participate."[15]

C. Fernandez and Abouelkhier's Vexatious Litigation

Since the Court severed their claims, Fernandez and Abouelkhier have engaged in a campaign of vexatious litigation, filing over 200 motions and six appeals in the Class Action[16] as well as in an unrelated action between Marina Bay and the builder and architect of Merial Marina Bay.[17] Their extensive motion practice led to an omnibus hearing on November 17, 2025, in the Norfolk Superior Court concerning all matters related to the various Marina Bay litigations. *See Order*. After the hearing, the Court wrote that:

> By severing all claims by or against Dany Abouelkhier and Sandra Fernandez (for herself and her minor child) and consolidating them all in 2582CV0364 against the same defendants as are in the 2382CV0389 tenant suit, and importing all the same claims and defenses, including Marina Bay's counterclaim for non-payment of rent, **the non-parties' rights and defenses are all preserved. They are free to pursue them, or not, in the Superior Court. They have a remedy available to them should they chose to pursue one**.

See Id. (emphasis added). Additionally, the Court found that Fernandez and Abouelkhier:

> continue to vexatiously and wastefully consume the parties' resources and the clerk office's limited resources in reviewing, docketing, filing, and responding to these nonsensical papers . . .[and that they] have engaged in a campaign of harassment by their attempts to paper these cases to a slow, grinding halt. Their attempted filings are like sand in the gears that threaten to bring justice in these matters to a halt.

Order. The Order restricted Fernandez and Abouelkhier to filing only in the Abouelkhier Action.

[15] *See Endorsement on Motion to Dismiss For Failure to Prosecute* (Feb. 10, 2026), *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364.

[16] On January 5, 2026, counsel for Marina Bay filed a *Motion to Consolidate Appeals Under Mass. R. App. P. 10 (A)(5)* which attached an exhibit (attached as Exhibit A to the Keches' answer) that tries to track each of the over 200 filings since February 11, 2025. Keches direct the Court to this chart to streamline the Court's review of the filings.

[17] *Marina Bay Residences, LLC v. Callahan, Inc. et al.*, Civil Action No. 2182CV01044 (Norfolk County Superior Court). This action was between the Marina Bay against the general contractor and architect for the mixed-use building at 550-552 Victory Road in Marina Bay, Quincy. Filed on November 18, 2021, neither Fernandez nor Abouelkhier were parties to this action, but they have made numerous filings to intervene. *See* Order at 2.

ARGUMENT

I. THE COURT SHOULD DISMISS THIS ACTION AS PART OF FERNANDEZ'S "CAMPAIGN OF HARASSMENT" OF FRIVOLOUS AND VEXATIOUS LITIGATION.

The Court should dismiss the Complaint because, as described by Superior Court Judge Rosemary Connolly, Fernandez and Abouelkhier have engaged in a, "vexatious[]," "nonsensical" and "wasteful . . . campaign of harassment" against the parties to the Class Action. This action is just the latest salvo in that campaign of harassment, now directed against defendant Keches. *See Order* at 2, 5. After the Court removed Abouelkhier as the class representative and initiated a separate proceeding for the individual claims of Fernandez and Abouelkhier, they have been acting *pro se*. As *pro se* litigants, they have engaged in an extensive campaign of frivolous motion practice, filing so many motions that there does not appear to be an accurate count of their filings.

The proliferation of filings by the Fernandez and Abouelkhier led the Norfolk Superior Court to issue an extraordinary Order on November 19, 2025, that circumscribed their right to make any further filings. *See Order*. The Superior Court first described Fernandez's and Abouelkhier's frivolous litigation, writing that in an underlying action between the Mariel Bay and the builder and architect of the leaking building, Fernandez and Abouelkhier, "continuously demand to file nonsensical and usually 'emergency' motions making needless, and indeed wasteful, demands on the parties and the court's time," though they are not parties to that litigation. *Order* at 2. As of December 5, 2025, Marina Bay counted over 200 filings in the various courts of the Commonwealth by Fernandez and Abouelkhier, while the Superior Court observed that in the Class Action alone, "Mr. Abouelkhier filed approximately 114 filings and Ms. Fernandez filed another 81, not all of which have been docketed." *Order* at 3.

The Court made findings, writing that Abouelkhier and Fernandez:

> Continue to vexatiously and wastefully consume the parties' resources and the clerk office's limited resources in reviewing, docketing, filing, and responding to these nonsensical papers.
> . . .
> The court finds that the contents, volume, and timing of Dany Abouelkhier and Sandra Fernandez's filings lack any meritorious legal or factual substance . . . [they] have engaged in a campaign of harassment by their attempts to paper these cases to a slow, grinding halt. Their attempted filings are like sand in the gears that threaten to bring justice in these matters to a halt.
> . . .
> Dany Abouelkhier shows little respect for the Superior Court and its rules. For example, he and Sandra Fernandez refuse to follow the Superior Court Rule 9A requirement of serving their papers on all parties before attempting to file them with the court. Instead, they label everything as an "emergency" motion to by-pass the Rule 9A requirements.

Id. at 5-6.

The current action by Fernandez against her former counsel – who are still representing the Class Action plaintiffs – is but a continuation of the "campaign of harassment," but in a different venue, after having exhausted the patience of the Norfolk Superior Court. She seeks to export her particular brand of vexatious litigation and chaos to the Plymouth Superior Court after having struck-out in Norfolk Superior Court. This Court should not countenance Fernandez's expansion of her litigation into Plymouth Superior Court and should dismiss her complaint in its entirety.

II. FERNANDEZ HAS NOT SUFFERED ANY HARM BECAUSE HER CLAIMS AND RIGHTS REMAINED INTACT IN A SEPARATE ACTION, AND ANY DAMAGES ARE SELF-INFLICTED.

The Court should dismiss Fernandez's claims for legal malpractice (Count I), breach of fiduciary duty (Count II), and breach of contract (Count IV) because: (a) she has not lost any rights or suffered any harm as a result of the severance of her litigation against Marina Bay from the Class Action; and (b) any alleged damages that she may have suffered were caused by her own actions, not anything done by Keches.

A. The Court Merely Severed Fernandez's Case Into a Separate Proceeding – Not Dismissed – So Her Rights Were Preserved.

Fernandez has suffered no harm where her claims against Marina Bay were severed from the Class Action and not curtailed in any way. Absent harm, Fernandez lacks standing to bring this action and cannot fulfill the elements required by her claims. Under Massachusetts law, "[i]njuries that are speculative, remote, and indirect are insufficient to confer standing." *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 323 (1998); *see also Slama v. Attorney General*, 384 Mass. 620, 624-625 (1981) ("[t]o have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury"); *Barbara F. v. Bristol Div. of Juvenile Court Dept.*, 432 Mass. 1024, 1024 (2000) (dismissing case for lack of standing where plaintiff could not show injury). Moreover, actual damages are a necessary element of each of Fernandez's claims. *See e.g.*, *Frankston v. Denniston*, 74 Mass. App. Ct. 366, 374 (2009) (legal malpractice); *UBS Fin. Servs., Inc. v. Aliberti*, 483 Mass. 396, 405–06 (2019) (breach of fiduciary duty); *Singarella v. Boston*, 342 Mass. 385, 387 (1961) (breach of contract). When a plaintiff fails to plead recoverable damages, the Court should dismiss the action for failure to state a claim for relief. *See MacDonald v. Morin*, 3 Mass. App. Ct. 796, 796 (1975) (affirming dismissal of complaint where plaintiff "failed to assert any form of damages which would have been recoverable under prevailing principles of law"). Indeed, Fernandez's failure to plausibly allege recoverable damages is grounds for dismissal of the Complaint. *See e.g.*, *Coastal Orthopaedic Inst., P.C. v. Bongiorno*, 61 Mass. App. Ct. 55, 63 (2004) (affirming dismissal of legal malpractice claim for lack of damages); *Greenwald v. Burns & Levinson*, LLP, 84 Mass. App. Ct. 1128 (2014) (Issued under Mass. App. Ct. R. 23.0) (affirming dismissal of legal malpractice claim for lack of damages).

Here, Fernandez did not suffer any harm or damages because she retained all her rights and remedies at law from the Class Action – just in a severed action. Indeed, the Court specifically held that Fernandez's "rights and defenses are all preserved" that she is "free to pursue them", and that she has "a remedy available to [her] should [she] chose to pursue one." *Id.* Accordingly, Fernandez has suffered no harm, warranting dismissal of her claims.

B. To the Extent that Fernandez May Suffer Any Damages, It Is the Direct Result of Her Own Inaction.

Fernandez cannot sabotage her own legal rights and then point the finger at Keches. This Court originally removed Fernandez from the Class Action because she and Abouelkhier were differently situated from the other members of the class where Marina Bay brought counterclaims only against them for their failure to pay rent. The docket in the Abouelkhier Action reflects that the Court dismissed Fernandez's claims and entered judgment in favor of Marina Bay on the counterclaims against her due to her own inaction.

Courts recognize that the existence of a counterclaim against the putative class representative can undermine the required element of adequacy to serve as class representative. *See e.g.*, *TBK Partners v. Chomeau*, 104 F.R.D. 127, 132 (E.D. Mo. 1985) (counterclaim undermined class plaintiff's adequacy as a class representative); *Boro Hall v. Metro. Tobacco Co.*, 74 F.R.D. 142, 145 (E.D.N.Y. 1977) (counterclaim raised judicial concern that class representative may wish to settle the case to avoid liability and raises question as to whether he would fairly and adequately protect the interests of the class); *Rollins v. Sears, Roebuck & Co.*, 71 F.R.D. 540, 545 (E.D. La. 1976) (counterclaim raises possibility that net judgment will favor defendant thus barring plaintiff from being an adequate class representative). Accordingly, the severance of Abouelkhier and Fernandez from the Class Action, to the extent that it caused any harm, was due to their own decision to stop paying rent to Marina Bay.

Moreover, since the severance of their litigation from the Class Action, Fernandez and Abouelkhier have refused to litigate in the Abouelkhier Action, failing to file any response to

Marina Bay's counterclaims or even file an appearance.[18] *See Order* ("Abouelkhier has shown growing disrespect to the court by refusing to obey the court's order to answer the counterclaim"). In Massachusetts, a plaintiff in a legal malpractice action "has a duty to mitigate damages that were avoidable by the use of reasonable precautions." *Kiribati Seafood Co., LLC v. Dechert LLP*, 478 Mass. 111, 123 (2017) (holding "the client's duty to mitigate damages might in some circumstances require appealing from that adverse decision to a higher court to correct the lower court's error of law."). Here, Fernandez took no action to prosecute her claims in the Abouelkhier Action. Indeed, the failure to respond to the counterclaim or prosecute its case led to Marina Bay filing *Marina Bay's Residences LLC's Motion to Dismiss for Failure to Prosecute* ("Marina Bay's Motion to Dismiss") against both Fernandez and Abouelkhier on January 21, 2026. Fernandez not only declined to respond to Marina Bay's Motion to Dismiss, she filed a "notice of objection," in which she wrote, "I expressly and unequivocally object to being treated as party in [the Abouelkhier Action]."[19] On February 10, 2026, the Court allowed Marina Bay's Motion to Dismiss, dismissing the claims of both Fernandez and Abouelkhier Action and entering judgment in Marina Bay's favor on its counterclaims for unpaid rent, writing that, "[t]hese plaintiffs have not taken any action in this case and have restated their intention, that is that the refuse to participate."[20] Accordingly, to the extent that any harm arose from the loss of claims, it was a result of Fernandez's own actions and not anything that Keches did.

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[18] The irony of Fernandez' sudden litigation reticence in the Abouelkhier Action in light of her enthusiastic motion practice in the other actions (including litigation where she is not a party) should not be lost upon this Court.

[19] *See Notice of Objection to Court-Directed Addition As A Party, Strict Limited Special Appearance, And Reservation of Appellate Rights*, Doc. 40 at p. 2, *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364 ("Fernandez Party Objection").

[20] *See Endorsement on Motion to Dismiss For Failure to Prosecute* (Feb. 10, 2026), *Abouelkhier, et al. v. Marina Bay Residences, LLC, et al.*, Civil Action No. 2582CV00364.

III. Fernandez's Individual Claims Also Suffer from Legal and Pleading Deficiencies Particular to the Claims.

A. Keches Did Not Represent Fernandez Individually After the Class Action Engagement.

Fernandez's claims for legal malpractice (Count I), breach of fiduciary duty (Count II), and breach of contract (Count IV) also fail for the separate and independent reason that the individual representation contemplated in the Individual Fee Agreement was superseded by the Class Action Fee Agreement. A written agreement is modified where "the conduct of the parties and [] the attendant circumstances" evince mutual agreement. *Cambridgeport Sav. Bank v. Boersner*, 413 Mass. 432,439 (1992); *Parker v. Enernoc, Inc.*, 484 Mass. 128, 132 n.11 (2020).

Although Keches and Fernandez initially entered into the Individual Fee Agreement on April 4, 2023, the Individual Fee Agreement was superseded by the Class Action Fee Agreement. Keches' April 26th letter explicitly explained to all putative class members, including Fernandez that, "[s]ince we will be proceeding with a class action, it is no longer necessary to individually engage with my office. As an affected current or former tenant, you will automatically become a member of the class." Fernandez made no protest. Indeed, the parties conduct in the months following the signing of the Class Action Fee Agreement – including Fernandez's participation in the Class Action – establishes that Fernandez understood that her individual representation was subsumed into the class representation.

In any event, even Fernandez concedes that she terminated the attorney-client relationship by February 12, 2025, and the docket reflects that Keches withdrew from representing Abouelkhier with the Court's permission. *See* Class Action*, Endorsement on Motion to Withdraw* (Mar. 26, 2025). There is no legitimate argument that Keches owed any duty of care or fiduciary duty to Fernandez after the termination of its engagement.

Courts routinely dismiss legal malpractice actions at the pleadings stage where the allegations go beyond the scope of the parties' engagement. *See e.g., Orbian Corp. Ltd. v. Burns & Levinson LLP*, No. 2584CV00701-BLS1, 2025 WL 3711138, at *2 (Mass. Super. Ct. Sep. 26, 2025) (dismissing legal malpractice at pleadings stage, where alleged representation went beyond scope of law firm's engagement); *Nat'l Air Cargo, Inc. v. Jenner & Block, LLP*, 203 A.D.3d 1655, 165 N.Y.S.3d 643 (2022) (affirming dismissal of complaint against law firm at pleadings stage because scope of its legal representation did not include reviewing insurance policies); *AmBase Corp. v. Davis Polk & Wardwell*, 866 N.E.2d 1033, 8 N.Y.3d 428, 432 (2007) (affirming dismissal at pleadings stage of legal malpractice action against law firm where tax issue was "outside the scope of its representation"); *Attallah v. Milbank*, *Tweed, Hadley & McCloy, LLP*, 168 A.D.3d 1026, 1028, 93 N.Y.S.3d 353 (2019) (affirming dismissal of legal malpractice action at pleadings stage, stating "An attorney may not be held liable for failing to act outside the scope of a retainer"); *DeNatale v. Santangelo*, 65 A.D.3d 1006, 884 N.Y.S.2d 868 (2009) (affirming dismissal at pleadings stage based on limited scope of engagement); *Allegrino v. Ruskin Moscou Faltischek, P.C.*, No. 19-CV-08900 (PMH), 2021 WL 429121 (S.D.N.Y. Feb. 8, 2021), aff'd, 2021 WL 5500084 (2d Cir. Nov. 24, 2021) (dismissing legal malpractice at pleadings stage, stating that a "plaintiff cannot state a legal malpractice claim against an attorney where the actions of the attorney giving rise to the claim fall outside of the scope of the attorney's representation"). Therefore, all claims arising from the Individual Fee Agreement fail and should be dismissed.

B. <u>The Litigation Privilege Precludes Fernandez's Claims Arising From Keches' Filings and Representations to the Court Following Keches' Discharge By Fernandez.</u>

Fernandez's claim for fraud, invasion of privacy, and defamation fail because the gravamen of these claims arise from statements Keches made about Fernandez (or her minor child) either to other class members or in open court, following Keches' discharge as Fernandez's counsel.

Massachusetts recognizes an absolute litigation privilege that "'precludes civil liability based on communications made by' an 'attorney in connection with judicial proceedings or contemplated litigation.'" *Nnodim v. U.S. Bank Tr. Ass'n as Tr. for LB-Igloo Series IV Tr.*, 703 F. Supp. 3d 296, 302 (D. Mass. 2023) (quoting *Bassichis v. Flores*, 490 Mass. 143, 144 (2022)). *See also Blanchette v. Cataldo,* 734 F.2d 869, 877 (1st Cir. 1984) ("Under Massachusetts law, an attorney's statements are absolutely privileged where such statements are made by an attorney engaged in his function as an attorney whether in the institution or conduct of litigation or in conferences and other communications preliminary to litigation" (internal quotations omitted)). "The privilege applies regardless of malice, bad faith, or any nefarious motives on the part of the lawyer so long as the conduct complained of has some relation to the litigation." *Nnodim* 703 F. Supp. 3d at 303 (citation omitted). "The privilege is designed to promote 'zealous advocacy' by an attorney in representing his clients." *Id.* (quoting *Bassichis v. Flores*, 490 Mass. at 156).

Here, the allegations of fraud, invasion of privacy, and defamation arise from the same Keches statements concerning Fernandez (or her minor) following Keches' discharge as counsel. As alleged in the Fernandez Complaint, Fernandez discharged Keches on February 12, 2025 (*Compl.* at ¶ 12), and the statements made concerning Fernandez occurred after Keches was discharged, so the statements are privileged. For example, the Fernandez Complaint alleges that Keches made defamatory statements when the firm "made and published false and disparaging statements concerning Plaintiff Sandra Fernandez, both in written pleadings and in oral statements before the court..." *Compl.* at ¶ 94 (emphasis added). Such statements could only have been made once Fernandez had been severed, as there is no allegation that Keches made any disparaging statements about Fernandez in the pleadings filed for the class action plaintiffs including Fernandez.

Moreover, concerning the alleged invasion of privacy, the Fernandez Complaint alleges that "Defendants further referenced Plaintiff's minor child's medical and personal circumstances in open court…" *Id.* at ¶ 71 (emphasis added). As detailed throughout the remainder of the Fernandez Complaint, Fernandez's issues with these statements occurred after filing of the *Second Amended Class Action Complaint and Demand for Jury Trial*, which the Court retroactively docketed the Abouelkhier Action. *See* Fernandez Complaint at ¶¶ 3, 16, 20, 21, 25, 46, 70, and 71. Concerning the alleged fraudulent statements, the Fernandez Complaint alleges that "[o]n or about March 3, 2025, Sweet further represented in filings…" *Id.* at ¶ 57 (emphasis added). Such statements were made after the firm was discharged and were made in representation of the class and in an effort to mitigate the disruption Fernandez and Abouelkhier were causing. Accordingly, the litigation privilege applies to preclude the claims for fraud, invasion of privacy, and defamation against Keches arising subsequent to Keches being discharged.

c. <u>Fernandez's Claim For Fraud / Fraudulent Statements (Count III) Fails As She Has Not Satisfied Mass. R. Civ. P. 9(d).</u>

The Court should also dismiss Fernandez's claim for fraud for the independent reason that she has failed to allege a claim sufficient to meet the heightened standards under Mass. R. Civ. P. 9(b). Mass. R. Civ. P. 9(b) requires a plaintiff to, "state with particularity the circumstances constituting fraud or mistake." "[A] plaintiff must 'at a minimum' support their claim for fraud by specifically alleging 'the identity of the person(s) making the' allegedly fraudulent 'representation, the contents of the misrepresentation, and where and when it took place,' and must also 'specify the materiality of the misrepresentation, [plaintiff's] reliance thereon, and resulting harm.'" *Digital Strategists, LLC v. Leap Payments, Inc.*, No. 1884CV00868-BLS2, 2018 WL 4700493, at *5 (Mass. Super. Ct. July 17, 2018) (allowing motion to dismiss where "plaintiffs' conclusory allegations of harm are not sufficient and do not satisfy the requirements of Rule

9(b).”), quoting *Equipment & Systems for Industry, Inc. v. NorthMeadows Constr. Co., Inc.*, 59 Mass. App. Ct. 931, 931-32 (2003). “Merely suspicious circumstances, however, are not enough” to prove fraud. *Cohen v. Santoianni*, 330 Mass. 187, 192-93 (1953). Rather, “[i]t is elementary that fraud is never presumed, but must be affirmatively alleged and proved by the party who relies upon it for the purpose of either attack or defence [sic].” *Id.*, at 192.

Here, Fernandez’s allegations of fraudulent statements cannot satisfy the heightened pleading standard, where Fernandez fails to allege with particularity the materiality of those alleged statements or the resulting harm. “Nothing here remotely complies with Mass. R. Civ. P. 9(b) . . . which requires that allegations of fraud and deceit must be pleaded with particularity.” *Equipment & Systems For Industry, Inc.*, 59 Mass. App. Ct. 931 (dismissing fraud/deceit claim with prejudice where the complaint only alleged that the defendant agreed to execute whatever agreements were necessary; that it refused to execute the agreements; and that it benefited). Moreover, as described *supra* Fernandez suffered no harm from any of the alleged fraudulent statements, and thus has not met her burden under M.R.C.P. 9(b).

D. Fernandez’s Claim for Unjust Enrichment (Count VI) Should Be Dismissed Because Keches Received No Benefit From Fernandez.

The Court should dismiss Fernandez’s claim of unjust enrichment because Keches did not receive a measurable benefit from Fernandez and she did not expect any compensation from Keches. The Fernandez Complaint alleges that Keches received a measurable benefit because the firm “built their case on Plaintiff’s personal life” for which Fernandez “herself performed the majority of [the] factual development.” Fernandez Complaint at ¶ 13.

To recover for quantum meruit, however, a plaintiff must prove: “(1) that it conferred a measurable benefit upon the defendants; (2) that the claimant reasonably expected compensation from the defendants; and (3) that the defendants accepted the benefit with the knowledge, actual or chargeable, of the claimant's reasonable expectation." *Finard & Co., LLC v. Sitt Asset Mgmt.*, 79 Mass. App. Ct. 226, 229 (2011). First, the claim fails because any alleged benefit provided by Fernandez was to the class and *herself* as parties to the Class Action, not to Keches as their counsel. Second, Fernandez has not alleged (nor can she) that she reasonably expected compensation. As described in the Fernandez Complaint, when Fernandez undertook her efforts, it was for class, including herself, with the expectation that her work would enhance the recovery for the class of plaintiffs. She has not alleged that she expected compensation from Keches for her work, nor has she alleged that she was commissioned by Keches to conduct any investigation or any other work. Indeed, her representation would have remained the same had she not lifted a finger. Accordingly, the Court should dismiss Fernandez's claim for unjust enrichment because she has failed to allege that she conferred a measurable benefit upon Keches or that she expected compensation.

E. Fernandez's Claim for Conversion (Count VII) Fails Because Keches Returned Her Client File.

Fernandez's claim that Keches committed conversion and misappropriation of her confidential materials fails because Keches never misappropriated any of her personal property or personal information. Her claim for conversion states that following Keches being discharged, that Keches continued to use her information in subsequent filings and did not return her "full" client file. Fernandez Complaint at ¶ 88. "To prevail on a claim for conversion under Massachusetts law, a plaintiff must show that (1) the defendant intentionally and wrongfully exercised control or dominion over the personal property; (2) the plaintiff had an ownership or possessory interest in the property at the time of the alleged conversion; (3) the plaintiff was damaged by the defendant's conduct; and (4) if the defendant legitimately acquired possession of the property under a good-faith claim of right, the plaintiffs demand for its return was refused."

Walgreen Co. v. Haseotes, 778 F.Supp.3d 264, 295 (2025) (quoting *United States v. Peabody Const. Co.*, Inc., 392 F.Supp.2d 36, 37 (D. Mass. 2005)).

Here, Fernandez provided information for the Class Action for the benefit of the entire class while she was still a member. Fernandez provided no "confidential work product" as alleged in the Fernandez Complaint, but instead, provided information to further the Class Action for the benefit of the class plaintiffs including herself and Abouelkhier. Indeed, no information shared among the class or published in pleadings can be considered confidential. Fernandez' information was included in the *Class Action Complaint and Jury Demand*, the *First Amended Class Action Complaint and Jury Demand*, as well as other filings docketed while Fernandez was a member of the class and with her full knowledge and consent. Once Fernandez discharged Keches she did not provide Keches with any new or additional information, therefore, all information used was what had been shared and published with Fernandez's consent. Under these circumstances, the "confidential materials" at issue were neither confidential nor misappropriated.

To the extent, that Fernandez claims that Keches did not return the "full" client file, even she concedes that Keches sent its client file to Fernandez on February 26, 2025. At most Fernandez alleges that she had technical issues unpacking the files, which does not support any conclusion that Keches withheld her documents (Fernandez Complaint at ¶ 22). Fernandez's vaguely allegation that Keches withheld "substantial portions" of the client file fails to identify what documents were allegedly withheld. (Fernandez Complaint at ¶ 88).

G. Fernandez's Claim for Violation of M.G.L. c.93A (Count IX) Fails Because the Allegations Against Keches Are In the Nature of Negligence, Not the Unfair of Deceptive Conduct Forbidden Under c. 93A.

Fernandez's claim for violation of M.G.L. c. 93A arises from the same material facts as her claims for legal malpractice and for that reason it fails. As a matter of law, legal malpractice

– as alleged by Fernandez – is insufficient to sustain a c.93A claim. *See, e.g., Meyer v. Wagner*, 429 Mass. 410, 424 (1999).

H. Fernandez's Claim for Intentional Infliction of Emotion Distress Fails Because She Does Not Allege That Keches Engaged In Extreme or Outrageous Conduct.

Fernandez's claim for intentional infliction of emotion distress (Count IX)[21] fails because she has not alleged any egregious conduct by Keches. *See Wehringer v. Powers & Hall*, 874 F. Supp. 425, 429 (D. Mass. 1995); *Horvath v. Adelson, Golden & Loria, P.C.*, No. 00-P-1403, 2002 WL 1931997, at *3 n.8 (Mass. App. Ct. Aug. 21, 2002); *Iacono v. Boncore*, 2003 WL 22285514, at *2 (Mass. Super. Ct. June 18, 2003). The gravamen of an intentional infliction of emotion distress claim is that Keches had engaged in "extreme and outrageous" conduct, and legal malpractice actions generally do not rise to that level. *See Tetrault v. Mahoney, Hawkes & Goldings*, 425 Mass. 456, 466 (1997). To prove intentional infliction of emotion distress, Fernandez must establish, among other things, that (1) Keches' conduct was "beyond all possible bounds of decency and utterly intolerable in a civilized community"; and (2) that her emotional distress "was severe and of such a nature that no reasonable person could be expected to endure it." *See id.* Here, even assuming the truth of all of Fernandez's allegations, the conduct she alleges would amount to no more than misrepresentation and negligence, which is not enough to sustain an intentional infliction of emotional distress claim.

CONCLUSION

For the reasons stated above the Court should allow the motion for judgment on the pleadings on all counts of the complaint in favor of defendants Keches Law Group, P.C. and Jonathan D. Sweet, Esq.

[21] The Fernandez Complaint labels this claim as Count IX, though it is really the tenth count.

Respectfully submitted,

KECHES LAW GROUP, P.C. and
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By their attorneys,

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Dated: February 20, 2026

CERTIFICATE OF CONSULTATION

I, Eyal Schwartz, certify that on February 19, 2026, prior to serving this Motion, I conferred with plaintiff Sandra Fernandez. The parties were unable to resolve the issues presented in the Motion.

/s/ Eyal Schwartz
Eyal Schwartz

CERTIFICATE OF SERVICE

I certify that this document was served on plaintiff by email and first-class mail at:

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