IN THE UNITED STATES DISTRIT COURT
FOR THE WESTER DISTRICT OF VIRGINIA
ABINGDON DIVISON

ELVIRA REYES-HERNANDEZ,

Plaintiff, Case No.: 1:23-cv-00001-JPJ-PMS

v.

MONSANTO COMPANY, wholly owned by BAYER CORPORATION; BAYER CORPORATION; HOLLAND LAW FIRM LLC; KETTERER, BROWNE & ASSOCIATES, LLC, fka KETTERER, BROWNE, & ANDERSON LLC; and GED LAWYERS LLP,

Defendants.
_____/

**DEFENDANT, GED LAWYERS LLP'S, MOTION TO DISMISS**

COMES NOW, Defendant, GED LAWYERS LLP, by and through undersigned counsel, and, pursuant to Fed. R. Civ. P. 12(b)(2) & (6) and Rule 11(c)(2) of the Local Rules of the United States District Court for the Western District of Virginia, hereby moves this Honorable Court for entry of an order dismissing Plaintiff's Complaint for Violations of 42 U.S.C. § 1981 for failure to state a claim upon which relief can be granted, for lack of personal jurisdiction, and for a lack of ripeness, and states in support thereof:

1. Plaintiff filed this action on January 19, 2023, alleging violations of 42 U.S.C. 1981 against the Defendant law firms for denying Plaintiff the right to enforce an attorney-client retainer agreement to pursue litigation; and another violation of 42 U.S.C. § 1981 against all Defendants for denying Plaintiff the right to make and enforce her agreement with Defendants to participate in the Roundup Settlement Program. [Doc. 1, p. 9, 11].

2. Defendant, Ged Lawyers LLP, is a law firm based in Boca Raton, Florida, which engaged in mass tort litigation through agreements with third-party firms, Ketterer et. al. and Holland Law.
3. Defendant, Ged Lawyers LLP, has never had any direct contact with the Plaintiff, and did not direct any advertisements into the Commonwealth of Virginia or secure the engagement of the Plaintiff as a client.
4. Ketterer et. al., through Broughton Partners, a legal marketing company, unilaterally controlled and conducted advertisement and client recruitment after receiving funds from all participating firms.
5. Defendant, Ged Lawyers LLP, exercised no control over Broughton and Ketterer in their advertising campaign and engagement of clients, and did not have control over which persons would be sent retainer agreements.
6. Defendant, Ged Lawyers LLP, has no physical office in Virginia, and has neither communicated with Plaintiff, nor been physically present in Virginia in furtherance of the retainer agreement, or sent any documentation to the Plaintiff.
7. Defendant, Ged Lawyers LLP's, actions pursuant to this agreement, and acquiring this agreement, were bound strictly within the states of Florida and Missouri, where performance and the alleged discriminatory breach occurred.
8. Plaintiff's Complaint alleges that Monsanto and Bayer limited the settlement program to United States Citizens only, or those legally domiciled in the United States. [Doc. 1, par. 4]

9. Plaintiff's Complaint asserts that all Defendant's acted together to deprive Plaintiff of her rights, but fails to assert any facts demonstrating coordination, collusion, or conspiracy between the Defendants. [Doc. 1, par. 1]
10. Rather, by Plaintiff's very own allegations, she recognizes that Monsanto alone made the decision to limit the availability of settlement funds to U.S. Citizens. [Doc. 1, par. 4].
11. Plaintiff was never denied any right by Defendant, Ged Lawyers LLP. The firm simply withdrew from representing her as a client upon learning she could not claim against or recover from the Settlement Program due to Monsanto's own limitations. She has not lost any right to sue, obtain legal representation, or maintain a claim against Monsanto. By her own allegations, Plaintiff has obtained new counsel, and has an active pending claim against Monsanto. [Doc. 1, par. 31][1]. Therefore, Plaintiff has not been denied any right, or incurred any injury, from any actions of Defendant Ged Lawyer's LLP.
12. Plaintiff's Complaint demonstrates that Defendant, Ged Lawyers LLP, did not drop Plaintiff as a client because she was not a U.S. Citizen; rather, it explicitly demonstrates that she was dropped because she was barred from recovery under the settlement by Monsanto's own qualifications to claim settlement funds.
13. Defendant, Ged Lawyers LLP, never denied Plaintiff any right to make and enforce a contract. Plaintiff's Complaint demonstrates that the Defendant firms withdrew from representing the client after determining that the client could not recover from Monsanto's settlement fund due to Monsanto's own qualifications for recovery.

[1] Plaintiff's active case is styled as: *Elvira Reyes-Hernandez v. Monsanto Company* in the Circuit Court of St. Louis County, State of Missouri; Case No.: 22SL-CC03416; filed on July 22, 2022.

14. Plaintiff's Complaint demonstrates that the Defendant firms made a decision to only represent clients who could recover from the Settlement Program.
15. This withdrawal was not materially adverse to the Plaintiff, as she was able to obtain new counsel and file a claim without any loss. [Doc. 1, par. 31]
16. Ged Lawyers, LLP, a Florida-based law firm is permitted to withdraw from the representation of a client pursuant to R. Regulating Fla. Bar. 4-1.16(1) & (5) when such "withdrawal can be accomplished without material adverse effect on the interests of the client" or when "other good cause for withdrawal exists."
17. Plaintiff asserts that Defendant, Ged Lawyers LLP, and the Defendant firms, refused to honor Plaintiff's election to settle her claim under the Roundup Settlement Program. [Doc. 1, par. 43]. This assertion contradicts Plaintiff's own assertions, as she recognizes Monsanto qualified recovery from the Settlement Program based on U.S. citizenship or legal domicile, thus making her ineligible. [Doc. 1, par. 4]
18. Defendant, Ged Lawyers LLP, has no control over the terms and conditions Defendant Monsanto imposed on an injured party's ability to recover from its Settlement Program.
19. In this regard, Plaintiff wrongly conflates the capacity and agency of Defendant, Ged Lawyers LLP, and the other Defendant firms, with that of Monsanto.
20. In essence, as demonstrated by the allegations in the complaint, the Defendant firms did not withdraw from the representation of Plaintiff because she was not a U.S. Citizen, rather, they withdrew because Plaintiff could not recover from Defendant Monsanto's settlement fund based on Monsanto's imposed limitations on recovery, in which Defendant Ged Lawyers did not have role.

21. Defendant Monsanto is the entity who engaged in discrimination based on citizenship and alienage; Ged Lawyers simply conducted itself in accordance with the limitations on recovery from the Settlement Program based on Monsanto's restrictions and held no discriminatory animus in doing so.
22. Further, Plaintiff has suffered no damages because of the withdrawal, as she has retained new counsel and reinstituted her claim against Monsanto, and she may still recover from Monsanto.
23. Ultimately, this Honorable Court lacks specific, or general, jurisdiction over Defendant Ged Lawyers LLP, and therefore Plaintiff's Complaint against same must be dismissed.
24. Further, Plaintiff's allegations do not demonstrate the requisite elements necessary to recover under 42 U.S.C. § 1981, and therefore, Plaintiff's Complaint must be dismissed for failure to state a claim upon which relief may be granted.

***Memorandum of Law in Support:***

**I. *This Court lacks personal jurisdiction over Defendant, Ged Lawyers LLP.***

Defendant, Ged Lawyers LLP, is not subject to the jurisdiction of any court in the state of Virginia. Neither is there any nationwide service provision under the federal statute through which Plaintiff brings this action, 42 USC 1981. Ged Lawyers LLP does not have the necessary minimum contacts under the Virginia Long Arm Statute to establish personal jurisdiction. Therefore, this Court lacks personal jurisdiction over same.

The plaintiff bears the burden of making a *prima facie* showing of a sufficient jurisdictional basis to survive the jurisdictional challenge. *Consulting Engineers Corp v. Geometric Ltd.*, 561 F.35 273, 276 (4th Cir. 2009) (citing *Combs v. Bakker,* 886 F.2d 673, 676

(4th Cir.1989). Rule 4(k) of the Federal Rules of Civil Procedure guides the Court in determining whether it has personal jurisdiction over a Defendant. Fed. R. Civ. P. 4(k) states:

> **"(k) Territorial Limits of Effective Service.**
> (1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:
> (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;
> (B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or
> (C) when authorized by a federal statute.

Plaintiff asserts that the retainer agreement between herself and Ged Lawyers LLP, in conjunction with Defendants Ketterer et. al. and Holland Law, establishes personal jurisdiction under Virginia's Long Arm Statute. The Virginia Long Arm Statute states:

> **§ 8.01-328.1. When personal jurisdiction over person may be exercised.**
> A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:
>
> 1. Transacting any business in this Commonwealth;
>
> 2. Contracting to supply services or things in this Commonwealth
>
> 3. Causing tortious injury by an act or omission in this Commonwealth;
>
> 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth;
>
> 5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth;

7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;

8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces or civilian employees of the United States, including foreign service officers, pursuant to § 20-97, provided that proof of service of process on a nonresident party is made by a law-enforcement officer or other person authorized to serve process in the jurisdiction where the nonresident party is located; (ii) been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person; or (iii) shown by personal conduct in this Commonwealth, as alleged by affidavit, that the person conceived or fathered a child in this Commonwealth;

9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein; or

10. Having incurred a liability for taxes, fines, penalties, interest, or other charges to any political subdivision of the Commonwealth.

Jurisdiction in subdivision 9 is valid only upon proof of service of process pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of § 8.01-320. Jurisdiction under clause (iii) of subdivision 8 is valid only upon proof of personal service on a nonresident pursuant to § 8.01-320.

B. Using a computer or computer network located in the Commonwealth shall constitute an act in the Commonwealth. For purposes of this subsection, "use" and "computer network" shall have the same meanings as those contained in § 18.2-152.2.

C. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; however, nothing contained in this chapter shall limit, restrict, or otherwise affect the jurisdiction of any court of this Commonwealth over foreign corporations that are subject to service of process pursuant to the provisions of any other statute.

Va. Code Ann. § 8.01-328.1.

Virginia defines its long arm statute as a single transaction statute requiring only one (business) transaction in Virginia to confer jurisdiction on its courts. *See I.T. Sales, Inc. v. Dry*, 222 Va. 6 (Va. 1981) (citing *Kolbe, Inc. v. Chromodern, Inc., 211 Va*. 736, 740, 180 S.E.2d 664, 667 (1971)). In *I.T. Sales*, the parties each signed the contract while physically within the Commonwealth of Virginia.

In *Consulting Engineers Corp v. Geometric, Ltd.*, the Fourth Circuit Court of Appeals determined that Virginia's Long-Arm Statute, housed under Va. Code. Ann. § 8.01-328.1(A)(1) and referred to by Virginia Courts as a single transaction long-arm statute, is intended to extend personal jurisdiction to the furthest extent permissible under the due process clause. *Consulting Engineers Corp*, 561 F.3d at 277; *see Kolbe.* Thus, the statutory inquiry merges with the constitutional inquiry. *Id.* (citing *Young v. New Haven Advocate,* 315 F.3d 256, 261 (4th Cir.2002) (citing *Stover,* 84 F.3d at 135–36); *see also English & Smith v. Metzger,* 901 F.2d 36, 38 (4th Cir.1990); *Peninsula Cruise, Inc. v. New River Yacht Sales, Inc.,* 257 Va. 315, 512 S.E.2d 560, 562 (1999)).

The Constitutional analysis required to satisfy the constitutional due process requirement is simply the minimum contacts analysis. *Id.* (citing *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). The minimum contacts test requires the plaintiff to show that the defendant "purposefully directed his activities at the residents forum" and that the plaintiff's cause of action "arises out of" those activities. *Id*. (quoting *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The test is designed to ensure that the defendant is not "haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. *Id.* The analysis has been synthesized for asserting specific personal jurisdiction in a three part test which considers: 1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the state

(minimum contacts); 2) whether the plaintiff's claims arise out of those activities directed at the state; and 3) whether the exercise of personal jurisdiction would be constitutionally reasonable. *Id.* (citing *ALS Scan, Inc. v. Digital Serv. Consultants, Inc*., 293 F.3d 707, 712 (4th Cir. 2002)).

In the business context courts have considered various non-exclusive factors which include:

> "• whether the defendant maintains offices or agents in the forum state, *see McGee v. Int'l Life Ins. Co.,* 355 U.S. 220, 221, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957);
>
> • whether the defendant owns property in the forum state, *see Base Metal Trading, Ltd. v. OJSC,* 283 F.3d 208, 213 (4th Cir.2002);
>
> • whether the defendant reached into the forum state to solicit or initiate business, *see McGee,* 355 U.S. at 221, 78 S.Ct. 199; *Burger King,* 471 U.S. at 475–76, 105 S.Ct. 2174;
>
> • whether the defendant deliberately engaged in significant or long-term business activities in the forum state, *see Burger King,* 471 U.S. at 475–76, 481, 105 S.Ct. 2174;
>
> • whether the parties contractually agreed that the law of the forum state would govern disputes, *see Burger King,* 471 U.S. at 481–82, 105 S.Ct. 2174;
>
> • whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship, *see Hirschkop & Grad, P.C. v. Robinson,* 757 F.2d 1499, 1503 (4th Cir.1985);
>
> • the nature, quality and extent of the parties' communications about the business being transacted, *see English & Smith,* 901 F.2d at 39; and
>
> • whether the performance of contractual duties was to occur within the forum, *see Peanut Corp. of Am. v. Hollywood Brands, Inc.,* 696 F.2d 311, 314 (4th Cir.1982)."

*Id.* at 278.

Through an analysis of these factors, if a court finds that the defendant availed itself of the privilege of conducting business in the forum, specific jurisdiction exists, because the defendant's activities are shielded by the benefits and protections of the forum's laws it is

presumptively not unreasonable to require it to submit to the burdens of litigation in that forum as well. *Id.* (quoting *Burger King*, 471 U.S. at 472).

Here, no factor identified by the Fourth Circuit applies to Defendant Ged Lawyers LLP. The retainer agreement between Ged Lawyers LLP, the other Defendant firms, and the Plaintiff, was not made, performed, or breached in Virginia.

There are numerous essential facts to this retainer agreement which Plaintiff omits in her assertion of jurisdiction. First, no Defendant law firm, especially Ged Lawyers LLP, maintains a physical office in the state of Virginia. Ged Lawyers LLP has never made in person, or any type of contact, with the Plaintiff. The services under the contract were to be, and were, performed in Missouri, specifically, the Circuit Court of St. Louis County in Missouri, regarding Round Up litigation presided. The agreement was allegedly breached in Missouri when Defendant, Holland Law, decided to unilaterally withdraw from the representation of the Plaintiff on the behalf of all Defendant firms upon discovering Plaintiff could not recover from the Settlement Program. Further, the agreement explicitly states, as agreed to by Plaintiff, that <u>any disputes regarding the agreement were to be resolved pursuant to the law of the State of Maryland</u>. (*See* Exhibit "A", sub par. "Complete Agreement"). This gives credence to the fact that the Defendant firms, especially Ged Lawyers LLP, never intended to avail itself of the law of the Commonwealth of Virginia.

Additionally, Ged Lawyers LLP was not the firm that conducted advertisement, engaged with the Plaintiff, conducted intake, or sent the retainer agreement to the Plaintiff. In fact, Defendant, Ged Lawyers LLP, <u>has never had any direct contact with the Plaintiff whatsoever</u>. It was Defendant Ketterer et. al., by and through their agent Broughton Partners, Inc. who discovered the client and engaged with her about representation for a mass tort class action case

against Monsanto and Bayer. Ketterer et. al., through Broughton Partners, a legal marketing company, was the firm which conducted all advertising, with no control or input from Ged Lawyers regarding where the advertisements would be sent, or what they would contain. All intake and discovery of clients was conducted by Ketterer et. al., through Broughton, and secondarily Holland Law. Further, as evidenced by the retainer agreement attached hereto, Ketterer is the firm that drafted and sent the retainer agreement to Plaintiff. Ketterer et. al., through Broughton Partners is the firm that managed the advertising campaign and directed advertisements into Plaintiff's state. Defendant, Ged Lawyers LLP, only engaged with the cases after they were brought in and divided amongst the firms. Ged Lawyers never specifically contracted for advertising into the state of Virginia, and never engaged in the initial contact for business with the Plaintiff. Ged Lawyers did provide money into a mutual fund between participating law firms to pay to a third-party, Broughton Partners, to conduct advertising and find clients. Ged Lawyers had no say in where advertising was directed or who was engaged as a client. Ged Lawyers role was providing the funds to produce the cases brought to it by Ketterer et. al. through Broughton Partners. Each Defendant is a different and unique legal entity, which engaged in a joint venture, with separate responsibilities delegated to each.

For purposes of specific personal jurisdiction, the contacts of a third-party may be imputed to the defendant under either an agency or alter ego theory. *Celgard, LLC v. SK Innovation Co.*, *Ltd.*, 792 F.3d 1373, 1379 (Fed. Cir. 2015). In order to establish jurisdiction under the agency theory, the plaintiff must show that the defendant exercises control over the activities of the third-party. *Id.* (citing *Damier AG v. Bauman*, 134 S. Ct. 746, 759 n. 13 (2014) ("A corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there.") (emphasis added). No Defendant in this action is an alter ego of the other, as

there is no common ownership, no funneling of profits to one entity alone, and all are transacting at arm's length. *See Id.* Further, the Supreme Court has forbidden the exercise of jurisdiction over a defendant on the basis of unilateral acts of third-parties. *Id.* at 1980. In *Hanson v. Denckla,* the Supreme Court explained that the "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State" because it is essential that the *defendant* take actions purposefully availing him or her of the privileges and benefits of the forum state. *Id.* (citing 357 U.S. 235, 253–54 (1958) (citing *Int'l Shoe,* 326 U.S. at 319, 66 S.Ct. 154)).

Thus, Plaintiff must demonstrate that Ketterer et. al. and Broughton were acting as Ged Lawyers LLP's agents if it intends to argue specific personal jurisdiction. Specifically, Plaintiff must demonstrate that Ketterer et. al. and Broghton were acting under the control and direction of Ged Lawyers LLP to conduct advertising and client recruitment in Virginia, which did not happen. There was no agency between Ketterer et. al., through Broughton, and Defendant Ged Lawyers LLP. Any advertisements or engagement with persons within the state of Virginia were the unilateral acts of a third-party, Ketterer et. al. and Broughton. Defendant, Ged Lawyers LLP, never personally engaged in any conduct that was directed towards the state of Virginia. Ketterer et. al. and Broughton were acting of their own accord, with an agreement to disburse the clients between firms after screening and intake.

Ultimately, Defendant, Ged Lawyers LLP, neither made no intentional contact with the Commonwealth of Virginia, nor did it direct any party as an agent to conduct activities therein. Ged Lawyers LLP has not availed itself of any benefit of the laws of the Commonwealth of Virginia in any shape or form. Ged Lawyers has not even had any direct contact with the

Plaintiff in this claim, therefore, this Court lacks personal jurisdiction, and the claim must be dismissed with prejudice.

## II. *Plaintiff has failed to state a claim for alienage discrimination under 42 USC § 1981 against Ged Lawyers LLP.*

### *a. Legal Standard.*

To withstand a motion to dismiss under Rule 12(b)(6), a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A "claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff's allegations must amount to "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. In order survive a motion to dismiss, a plaintiff must essentially plead sufficient facts to support the elements of a legally cognizable claim.

The Supreme Court in *Iqbal* set forth a two-prong approach for determining the sufficiency of a complaint. First, the trial court must "identify pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. To the extent they are not supported by factual allegations, such legal conclusions may be disregarded. *See Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (trial court should "eliminate any allegations in the complaint that are merely legal conclusions"). Second, the court must determine whether the well-pled factual allegations, if assumed to be true, "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. The reviewing court may draw on its judicial experience and common sense in determining a motion to dismiss. *Id*. at 679. When the factual allegations are "not only compatible with, but indeed [are] more likely explained by" lawful activity, the complaint must be dismissed. *Id*. at 680; *see also Am. Dental Ass'n*, 605 F.3d at 1290

("courts may infer from the factual allegations in the complaint 'obvious alternative explanations,' which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer").

***b. Plaintiff has failed to allege discriminatory intent on the part of Ged Lawyers LLP.***

Section 1981 provides that "all persons within the jurisdiction of the United States shall have the same right in every State ... to make and enforce contracts ...." 42 U.S.C. § 1981(a). As relevant here, § 1981 "prohibits private discrimination against aliens[.]" *Duane v. GEICO*, 37 F.3d 1036, 1044 (4th Cir. 1994). Thus, to prevail on their § 1981 claim, plaintiffs must ultimately prove (1) that defendants "intended to discriminate" on the basis of citizenship and alienage and (2) "that the discrimination interfered with a contractual interest*." Denny v. Elizabeth Arden Salons, Inc.*, 456 F.3d 427, 434 (4th Cir. 2006). Of course, "[Section] 1981 ... can be violated only by purposeful discrimination." *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 391, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982). In the § 1981 context, actionable discrimination is "conduct motivated by a discriminatory purpose," rather than conduct that "merely result[s] in a disproportionate impact on a particular class." Id.

42 U.S.C. § 1981 does not create a claim for relief against private actors regarding discrimination based on citizenship or alienage, only state actors. *Bhandri v. First Nat. Bank of Commerce*, 829 F.2d 1343, 1351 (5th Cir. 1987). But, recognizing that the Fourth and Second Circuit Courts of Appeal have held that 42 U.S.C. § 1981 does create a cause of action for discrimination based on alienage against private actors, Defendant asserts arguments to dismiss the claim under the umbrella of a cognizable claim for relief. *See generally Duane v. GEICO*, 37 F.3d 1036, 1042-43 (4th Cir. 1994); *Anderson v. Conboy*, 156 F.3d 167, 180 (2d Cir. 1998).

Plaintiff's Complaint fails to allege facts demonstrating that Defendant, Ged Lawyers LLP, along with the Defendant law firms, intended to discriminate against her based on her citizenship and alienage when it withdrew from representing her, or even made the decision to withdraw from her representation. No allegations in Plaintiff's Complaint demonstrate any discriminatory animus toward the Plaintiff on the part of Ged Lawyers LLP, or on the part of any other Defendant firm. Rather, the withdrawal of Ged Lawyers LLP, and the Defendant firms, was the result of the discriminatory purpose of Monsanto. Once the Settlement was approved by the court, the Defendant firms believed the non-qualifying clients were incapable of making claims against and recovering from the Settlement Program as a result of Monsanto's restrictions. The Defendant firms' decision to withdraw from the representation of persons who were barred from recovery under Monsanto's Settlement Program may have resulted in a disparate impact on persons who are not United States Citizens or legally domiciled, but such citizenship status was not the animus behind the decision. Ultimately, Plaintiff's complaint demonstrates that the Defendant firms' withdrawal from the representation of the Plaintiff lacked the discriminatory purpose, or animus, in its decision based solely on the fact that Plaintiff is not a U.S. Citizen or legally domiciled. Indeed, had the Defendant firms withdrawn from representation of the Plaintiff after learning of her citizenship status, without the conditions imposed by Monsanto and Bayer on recovery, Plaintiff would state a viable cause of action under 42 U.S.C. 1981. But that is not the case here. Indeed, Plaintiff's Complaint demonstrates the Defendant firm's withdrawal from representation was based solely on the fact that Plaintiff could not recover from the settlement program, not because of her citizenship status.

Further, Defendant, Ged Lawyers LLP, and the Defendant firms, are not responsible for the limitations imposed by Defendant Monsanto. It was Monsanto, an adversary of Plaintiff and

the Defendant firms and from whom the attorneys sought to recover, which placed the restrictions upon recovery from its Settlement Program. Ged Lawyers LLP, and the Defendant firms had no control over the decisions of Monsanto, and to assert that Monsanto acted "together with Plaintiff's own lawyers" to deprive her of the right to make and enforce contracts is simply implausible. Plaintiff has alleged no facts asserting that the limitations were devised by the Defendant firms. Rather, Plaintiff recognizes that Monsanto and Bayer are the parties responsible for the citizenship limitations barring recovery to non-citizens and illegal residents. [Doc. 1, par. 4].

Additionally, Plaintiff has not been denied the right to engage in a settlement agreement with Monsanto and Bayer. Plaintiff has an active lawsuit against Monsanto and Bayer which may very well result in its own separate settlement agreement. It is possible Plaintiff will obtain a sum greater than she would have recovered under the Settlement Program established for the class of claimants represented by the Defendant Firms. While Plaintiff was excluded by Monsanto, pursuant to Bayer and Monsanto's imposed qualifications for recovery, from recovering from the Settlement Program, she has not been precluded from making a settlement agreement with Monsanto separately from her now active individual suit.

Therefore, because Plaintiff's Complaint fails to allege sufficient facts to demonstrate the elements of a claim under 42 U.S.C. 1981 – that Defendant, Ged Lawyers LLP acted with a discriminatory purpose or intent – Plaintiff's Complaint must be dismissed.

III. ***Plaintiff's claim lacks sufficient ripeness for judicial determination.***

A claim should be dismissed as unripe if the plaintiff has not yet suffered injury and any future impact remains wholly speculative. *Doe v. Virginia Dept. of State* Police, 713 F.3d 745, 758 (4th Cir. 2013) (quoting *Gasner v. Bd. of Supervisors*, 103 F.3d 351, 361 (4th Cir. 1996)). In

determining ripeness, the court balances the fitness of the issues for judicial decision with the hardship of the parties of withholding court consideration. *Id*. A case is fit for judicial decision when the issues are purely legal and when the action in controversy is final and not dependent on future uncertainties. *Id.* (citing *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006)). Like the redressability requirement for standing, ripeness doctrine prevents a court from considering a controversy until it is presented in "clean-cut and concrete form." *Id.* (citing *Rescue Army v. Mun. Ct. of Los Angeles*, 331 U.S. 549, 584 (1947)). As with standing, the party bringing the suit the burden of proving ripeness. *Id.*

As previously stated herein, Plaintiff currently has an active claim for her injuries relating to the use of roundup against Monsanto and Bayer, with new counsel. This is the same claim for which the Defendant firms represented her. While Plaintiff may have been precluded from recovering on her tort claim against Monsanto and Bayer in one instance, the aforementioned Settlement Program, she has not been barred from recovering via judgment or settlement entirely. Plaintiff may still recover via a judgment after a jury trial, or through her own individual settlement with Defendants Monsanto and Bayer. She has not been precluded from making a settlement contract with Monsanto and Bayer. Plaintiff may perhaps recover an even greater amount than she would have under the Settlement Program by way of a judgment or settlement for her individual case. Plaintiff's case is dependent on the future uncertainty that she will be forever precluded form recovering from Defendant's Monsanto and Bayer because of the limitations on this one Settlement Program. But, in reality, she has the same opportunity to recover from said Tortfeasor Defendants as before. Her claim is still live, and viable. Plaintiff will suffer no hardship from a lack of judicial consideration of this matter and her future impact

is purely speculative. Therefore, her claim in this action is not ripe for judicial determination and must be dismissed.

***Conclusion:***

Based on the aforementioned grounds, Plaintiff's claims must be dismissed with prejudice against Defendant Ged Lawyers LLP. Plaintiff has failed to state a claim upon which relief can be granted against Ged Lawyers, as she has not alleged any discriminatory animus or purpose on the part of Ged Lawyers. Plaintiff's claim lacks ripeness for judicial determination. Further, this Honorable Court does not have personal jurisdiction over Ged Lawyers LLP, as said Defendant has not purposefully availed itself of the laws of the state of Virginia.

**WHEREFORE**, Defendant, GED LAWYERS LLP, by and through undersigned counsel, respectfully requests this Honorable Court for entry of an order dismissing Plaintiff's Complaint against Ged Lawyers LLP with prejudice for failure to state a claim upon which relief can be granted, and for lack of personal jurisdiction, and lack of ripeness for judicial determination.

DATED: February 17, 2023 Respectfully Submitted,

s/Mark S. Brennan
MARK S. BRENNAN, ESQ.
Virginia Bar No.: 25991
ASHLEY G. MOSS, ESQ.
Virginia Bar No.: 82448
Woods Rogers Vandeventer Black PLC
901 E. Byrd Street, Suite 1600
Richmond, VA 23219
Telephone: (804) 237-8804
Facsimile: (804) 237-8801
mark.brennan@wrvblaw.com
ashley.moss@wrvblaw.com
Attorneys for Defendant
Ged Lawyers LLP

RICHARD B. BUSH, ESQ.
Florida Bar No.: 294152
TIMOTHY J. ROSS, II, ESQ.
Florida Bar No.: 1039309
BUSH & AUGSPURGER, P.A.
3375-C Capital Circle NE., Suite 200
Tallahassee, FL 32308
(850) 386-7666
rbb@bushlawgroup.com
tmr@bushlawgroup.com
Attorneys for Defendant
Ged Lawyers LLP

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on this day he filed the foregoing document with the Court's CM/ECF system, thereby achieving service upon the below registered participant(s) in the Court's CM/ECF system in accordance with LR 7(g)(3):

Sarah E. Siskind (*PHV pending*)
ssiskind@lawmbg.com
Benjamin J. Blustein (*PHV pending*)
77110) bblustein@lawmbg.com
Paul S. Balik (*PHV pending*)
pbalik@lawmbg.com
MINER, BARNHILL & GALLAND, P.C.
325 N. LaSalle St., Ste. 350
Chicago, IL 60654
Telephone: (312) 751-1170
Fax: (312) 751-0438

Rachel C. McFarland (VSB 89391)
rmcfarland@justice4all.org
Simon Sandoval-Moshenberg (VSB
simon@justice4all.org
Jason Yarashes (VSB 90211)
jasony@justice4all.org
LEGAL AID JUSTICE CENTER
1000 Preston Avenue, Suite A
Charlottesville, VA 22903
Telephone: (434) 977-0553
Fax: (434) 977-0558

Shawn Collins (*PHV pending*)
shawn@collinslaw.com
Edward J. Manzke (*PHV pending*)
ejmanzke@collinslaw.com
Margaret Galka (*PHV pending*)
mgalka@collinslaw.com
THE COLLINS LAW FIRM, P.C.
1770 Park St., Ste. 200
Naperville, IL 60563
Telephone: (630) 537-1595
Fax: (630) 527-1193

Kathryn J. Youker (*PHV pending*)
kyouker@lawyerscommittee.org
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street, NW, Ste. 900
Washington, D.C. 20005
Telephone: (202) 662-8375
Fax: (202) 783-0857

Mark V. Dugan (PHV *pending*)
Mark@duganschlozman.com
DUGAN SCHLOZMAN LLC
8826 Santa Fe Dr., Ste. 307
Overland Park, KS 66212
Telephone (913) 322-3528
Fax: (913) 904-0213

Michael T. Kirkpatrick (PHV *pending)*
mkirkpatrick@citizen.org
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
Telephone (202) 588-7728

s/Mark S. Brennan

# EXHIBIT "A":

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**Ketterer, Browne & Anderson, LLC**
**ATTORNEY CONTINGENCY FEE AGREEMENT**

This retainer agreement is made between Elvira Reyes Hernandez ("Client") and Ketterer, Brown & Anderson, LLC ("KBA") and Holland Law Firm, & GED Lawyers, LLP. (jointly, "the Attorneys"). Client retains and employs Attorneys to recover compensation for Client's injuries suffered from . This agreement is intended to bind Client's heirs, death beneficiaries, and Client's estate representative in the event of a death. It does not include Workers Compensation, Americans with Disability Act, or Social Security Disability claims, or any appeals:

It is further understood and agreed as follows:

- **FREE CASE EVALUATION:** Attorneys will evaluate Client's claim at no upfront expense or fee.
- **NO FEES OR EXPENSES UNLESS WE RECOVER FOR YOU:** If there is no recovery, Client will not owe Attorneys anything.
- **ATTORNEYS WILL NOT SUE CLIENT'S DOCTOR(S), THE VA OR THE GOVERNMENT:** Client understands and agrees that the Attorneys will not investigate or pursue a medical malpractice claim or any claim against Client's doctor(s).

**ATTORNEYS' FEE & COSTS:** Client agrees to pay forty percent (40%) of the GROSS settlement or recovery in case of settlement or verdict as a reasonable Attorneys' fee for Attorneys' services. This fee applies regardless of whether the case goes to trial or settles before a lawsuit is filed or trial. It does not include any appeal of a trial verdict or court decision. Client agrees that Attorneys are to be reimbursed for all costs incurred pursuing Client's claim. Attorneys will deduct costs AFTER and in addition to Attorneys' fees. The Attorneys' fees shall be shared as follows: KBA 5.00 %, Holland Law Firm, 50.00 % , & GED Lawyers, LLP., 45.00 %. Client is responsible for all liens, subrogation, medical bills, or other claims asserted by third parties such as Medicare.

**ASSOCIATION OF OTHERS:** Attorneys may employ other Attorneys outside KBA to help with Client's claims at their discretion. All Attorneys will be jointly responsible for representing Client. Additional Attorneys will not increase the Attorneys' Fee payable by Client. This does not include Attorneys or other professionals to assist with any workers' compensation, estate, bankruptcy, or lien resolution matters.

**STATUTE OF LIMITATIONS:** Client's claims must be brought within a limited time period, called the Statute of Limitations or Repose, or Client's legal rights can be lost or barred forever. Attorneys require at least several months to investigate Client's claims. Prompt return of this Agreement is very important. Client assumes the risks associated with and understands, agrees, and consents that the Attorneys shall not be required to pursue the Client's claims, to file a lawsuit, or to take any action to protect against or comply with any Statute of Limitations or Repose, if such limitations period expires within 180 days of the date this signed Agreement is received by the Attorneys or as such longer time as it takes to obtain necessary records and documents from Client and/or third parties such as medical providers.

**TERMINATION OF REPRESENTATION:** Client retains the right to terminate Attorneys at any time, but must provide written notice to Attorneys. However, Client agrees that if Client terminates this agreement without a valid reason, Attorneys shall be entitled, but not limited to, the following: 1) reimbursement for costs spent to date; 2) Attorneys' fees for the work done based on the higher of their Quantum Meruit and 3) a lien may be placed on future proceeds generated by Client's claim.

**LIMITED POWER OF ATTORNEY:** Client authorizes Attorneys to execute documents Attorneys deem necessary or appropriate related to Client's claims.

**CLIENT OBLIGATIONS:** Client agrees to update Attorneys immediately if Client's contact information changes. Client agrees to provide complete and truthful information. Client agrees not to file any lawsuits or claims except through Attorneys or to negotiate or settle claims without Attorneys' knowledge. Client agrees to not share information obtained through Attorneys. Client agrees to preserve all documents and things, including electronic information about Client's claim. If Client filed bankruptcy before, Client will tell Attorneys immediately. If Client decides to file for bankruptcy, Client will inform Attorneys first. Client consents to receive future communications electronically at Attorneys' discretion and at Client's risk. Client will make all social media accounts private. Client will inform Attorneys if anyone asserts any claim to Client's funds. Client agrees Client's claim may be part of a larger number of claims such as an MDL or aggregate settlement.

**COMPLETE AGREEMENT:** Attorneys make no promises or guarantees regarding the outcome. This is the entire agreement. It may be changed only by a writing signed by Attorneys. If any part is or becomes unenforceable, the rest remains valid and enforceable. Any part may be "blue penciled" to make it comport with controlling law if it is invalid. Attorneys' choice to not enforce a provision is not a waiver of the right. All issues regarding this Agreement are governed by Maryland law. If Client and Attorneys cannot resolve a dispute related to this matter, they will mediate it before a mutually agreeable mediator.

| DocuSigned by: Elvira Reyes Hernandez | Elvira Reyes Hernandez | 6/19/2019 \| 3:34 PM EDT |
|---|---|---|
| Client Signature | Printed Name | Date |