

1           **II.     LACK OF SUBJECT MATTER JURISDICTION Pursuant to Ohio Civil**  
2                           **Rule 12(B)(1)**

3           The Complaint fails to allege any subject matter upon which this Court can  
4 exercise jurisdiction. The standard of review for a motion to dismiss pursuant to Rule  
5 12(B)(1) is whether the claim raises any action cognizable by the Court. Milhoan v. E.  
6 Local School Dist. Bd. Of Edn (2004), 157 Ohio App.3d 716. Determination of this  
7 standard involves an analysis of whether the complaint itself states any valid claim for  
8 relief. In this case, Plaintiff makes two claims for relief, neither of which constitutes a  
9 cognizable claim for which this Court can exercise jurisdiction.

11           **A.     Unjust enrichment.**

12           Plaintiff alleges that the Defendant had been unjustly enriched by "the money and  
13 personal property she was *given*" in anticipation of marriage. This allegation is  
14 completely without merit. Under Ohio law, the intent of a gift is to enrich the donee and  
15 the donee's enrichment, therefore, cannot be unjust. In Cooper v. Smith 155 Ohio  
16 App.3d 218 (2003) the Court explained clearly that,

19                   "The issue of enrichment does not arise with absolute gifts  
20 because '*enrichment of the donee is the intended purpose of a*  
21 *gift*.'" Id., citing to Lane v. Saunders (Dec. 13, 1985).

22           Plaintiff's claim of unjust enrichment for gifts he made to the Defendant does not  
23 state a valid cause of action under Ohio law.

24           **B.     Fraud.**

25           Plaintiff alleges, without specificity, that he gave Defendant \$300,000 in  
26 anticipation of marriage. In Ohio, gifts made during a courtship, with the exception of an  
27 engagement ring, are considered inter vivos gifts which are *irrevocable*, unless expressed  
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1 conditions for their return have been imposed by the donor. Derrit v. Derrit 163 Ohio  
2 App.3d 52, 64, citing to Cooper v. Smith 155 Ohio App.3d 218 (2003). Plaintiff's  
3 complaint states that he "gave" the defendant money and property during their  
4 relationship. Plaintiff's complaint mentions no conditions on these gifts.  
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6 Moreover, as relates to Count Two of the Complaint, Plaintiff does not allege that  
7 he was fraudulently induced into making any of these gifts. Indeed, Plaintiff's complaint  
8 clearly states Plaintiff's intent to move to California and details his frequent trips to  
9 California and his purchase of household furnishings in California for this purpose. See  
10 Cooper v. Smith 155 Ohio App.3d 218 (2003).  
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12 In this case, a personal relationship that ended without marriage. Clearly there  
13 was no fraud involved and Plaintiff's complaint fails to make any claim that any actions  
14 by the Defendant involved fraud. Under Ohio law, therefore, this Court does not state a  
15 valid claim for which relief can be granted. As neither of the Counts in Plaintiff's  
16 Complaint allege a valid cause of action, this case should be dismissed as a matter of law.  
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18 **III. FAILURE TO STATE A CLAIM AGAINST DEFENDANT UPON**  
19 **WHICH RELIEF CAN BE GRANTED Pursuant to Ohio Civil Rule**  
20 **12(B)(6)**

21 The Complaint alleges two counts: unjust enrichment and fraud. Based on the  
22 reasons set forth above in great detail, and incorporating them by reference, neither of  
23 these allegations states a valid claim for which relief can be granted. Plaintiff's claims of  
24 unjust enrichment and fraud for irrevocable inter vivos gifts he made to the Defendant are  
25 incorrect as a matter of law and do not state a valid cause of action under Ohio law. This  
26 case should be dismissed as a matter of law for failure to state a claim upon which relief  
27 can be granted.  
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**DEFENDANT'S MOTION TO DISMISS**